

CALIFORNIA COASTAL COMMISSION

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Thu 7b

Filed: February 5, 2008
49th Day: March 25, 2008
Staff: Toni Ross-SD
Staff Report: February 20, 2008
Hearing Date: March 5-7, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved with Conditions

APPEAL NO.: A-6-CII-08-019

APPLICANT: City of Carlsbad

PROJECT DESCRIPTION: The dredging, improving and long-term maintenance of portions of Agua Hedionda and Calavera Creeks for flood control enhancement purposes. The portion of the project in the Coastal Zone is the portion of Agua Hedionda Creek from the El Camino Real Bridge to the downstream side of Cannon Road Bridge.

PROJECT LOCATION: At and near the intersection of El Camino Real and Cannon Road and within the nearby Rancho Carlsbad residential community.

APPELLANTS: Preserve Calavera, c/o Diane Nygaard.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad LCP; the City of Carlsbad staff report and file for CDP 06-04; City of Carlsbad Planning Commission Resolution #6379; Letter from Preserve Calavera dated January 24, 2008, Letter from the Carlsbad Watershed Network dated January 24, 2008; City of Carlsbad Drainage Master Plan Update EIR dated June 13, 2007; Appeal form from Preserve Calavera.

I. Appellants Contend That: The appellants contend that the project as approved is inconsistent with numerous City of Carlsbad LCP provisions, including: (1) the procedures for issuing a Notice of Final Action; (2) the previously approved 1994 Master Drainage Plan; (3) the mitigation requirements for impacts to wetlands; (4) the requirement to avoid and minimize wetland impacts; (4) the requirement to adequately survey biological resources. The appellants also contend that the project, as approved, has not been finalized as the EIR has yet to be certified and the mitigation requirements and locations have yet to be determined. The appellants further contend that alternatives that would result in fewer impacts to wetlands and wildlife corridors have not been adequately evaluated.

II. Local Government Action: A coastal development permit was approved by the Planning Commission on January 16, 2008. The development was approved with conditions pertaining to the certification, adoption and approval of the EIR and Mitigation, Monitoring and Reporting Program, as well as all other discretionary review permits. An additional condition requires that all grading be completed outside the shorebird breeding season, or receive approval from the responsible wildlife agencies. A further condition requires that the long-term maintenance of the project shall occur according to the Monitoring and Maintenance Plan contained within Appendix B on the Final EIR (04-02) and its associated Mitigation Monitoring and Reporting Program.

III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within appealable areas as defined in Coastal Act §30603. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the

Commission may proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-CII-08-019 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-CII-08-019* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.1. Project Description/Permit History.a. History.

The approved project includes the dredging of both Agua Hedionda and Calavera Creeks. The area located within the Coastal Zone, and thus the subject of this appeal, includes only that portion of the project in Agua Hedionda Creek from the El Camino Real Bridge to the downstream side of the Cannon Road Bridge (ref. Exhibit Nos. 1-3). The original segments of Agua Hedionda and Calavera Creeks in this location were constructed as man-made waterways in approximately 1969. These waterways are not navigable and do not have any associated public access trails. The basic project description for dredging of Agua Hedionda and Calavera Creeks was included in the City's 1994 Master Drainage Plan. Due to a series of significant storm events in 2005, the City of Carlsbad approved an emergency coastal development permit for the dredging of both creeks in 2006. The dredge work included the removal of approximately 30,000 to 40,000 cubic yards of sediment to restore the channels to their original design conditions. All of the vegetation removal associated with the project was located within the Coastal Zone. Because of the nature of the construction, a Federal Consistency determination was waved by the Coastal Commission because the project would require an after-the-fact Coastal Development Permit that would be appealable to the Coastal Commission (ref. Exhibit #9). The project resulted in impacts to approximately five acres of wetlands and associated vegetation. While the City states that all impacts were intended to be within the Coastal Zone, given that there are no as-built plans, or post-construction surveys, it is unclear at this time what portion of the 5 acres of wetland impacts were located within the Coastal Zone. To date, no CDP following-up on the emergency permit has been approved by the City, nor has the mitigation for the wetland impacts associated with this previous dredging been completed.

b. Proposed Project

As approved by the City, 3,000 linear feet of dredging will be conducted in Agua Hedionda Creek and 3,400 linear feet of dredging in Calavera Creek. However, the exact distance included within the Coastal Zone has not been specified. Agua Hedionda Creek is proposed to be widened by 27 ft. and dredged to up to 6 ft. in depth. The work at this site would include dredging as well as; dewatering, beach and non-beach spoil disposal and bridge stabilization. Calavera Creek would be widened from 4-9 ft. and its slope

would be repaired and enhanced and drop structures (gabions) would be constructed to control storm water velocity. The project includes long term maintenance (including future sediment and vegetation removal), removal and replacement of eroded concrete aprons and down drains, construction of a desilting basin within the channel for temporary sediment control measures during construction and for permanent sediment control as part of the long term maintenance plan for Agua Hedionda Creek, the removal of retaining walls, the installation of rock slope protection for slope stability and structural enhancement to the bridges including providing monolithic structures by encasement of existing bridge piers. The project also includes the construction of a permanent access road between El Camino and Cannon Road bridges.

Calavera Creek flows along the north boundary of Rancho Carlsbad and joins Agua Hedionda Creek, which passes through the center of the community, just upstream of El Camino Real. From their confluence, Agua Hedionda Creek continues and exits the Rancho Carlsbad community under El Camino Real. West of El Camino Real, Agua Hedionda Creek bends west, where it passes beneath Cannon Road and flows into a natural stream channel that drains into Agua Hedionda Lagoon (ref. Exhibit 2). Again, the area located within the Coastal Zone, and thus the subject of this appeal, includes only those improvements within Agua Hedionda Creek from the El Camino Real Bridge to the downstream side of the Cannon Road Bridge (ref. Exhibit Nos. 1-3).

The project should take four to five months. The EIR indicates that impacts will be mitigated to the level of insignificance; however, no mitigation acreage has been determined for impacts associated with dredging and vegetation removal within the Coastal Zone.

The primary goal of this project is to protect existing development from flooding. Rancho Carlsbad is an existing residential mobile home community located east of El Camino Real and south of Cannon Road (ref. Exhibit #1-3). Over 50% of the mobile homes (278 of the 504 units) are located within the floodplain. As modified by this project, all but approximately 9 of the 278 lots would be alleviated or partially alleviated from the potential for flooding during a 100 year flood event.

The City of Carlsbad has, with this action, approved a dredging effort in addition to the one it approved through an emergency permit in 2006. This new dredging project will take place in the same location as the prior project, and this new project also includes various other improvements, all of which would serve to better protect the surrounding and downstream developments from flooding. An EIR has been completed, but not yet certified, for this project. The EIR includes the work associated with the subject appeal as well as an updated Drainage Master Plan for the City of Carlsbad. This CDP includes approval for the dredging of Calavera and Agua Hedionda Creeks in addition to associated flood control improvements. The City has included in their permit analysis findings indicating that the current project is consistent with the previously approved Master Drainage Plan that is incorporated into the currently certified LCP. Therefore, the approved dredging is not reliant upon the approval of an LCP amendment for the updated Drainage Master Plan that is included in the previously referenced EIR.

The City of Carlsbad certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. This project is located within the Mello II segment of the City and as such, all applicable policies certified for the Mello II segment area are the standard of review for this project. Policies contained within other segments of the City of Carlsbad LCP are not applicable and therefore are not included.

2. Impacts to Wetlands/Environmentally Sensitive Habitat Areas (ESHA). The appellants contend that the approval of the coastal development permit is inconsistent with several policies pertaining to the protection of wetlands/ESHA included in the City of Carlsbad's certified LCP. Specifically the appellants contend that the project, as approved by the City, is not designed to minimize and/or avoid impacts to wetlands to the extent feasible. The appellants claim that the project fails to mitigate for impacts to the wildlife corridor that exists at this location. The appellants also contend that because mitigation is not yet specified, it is unclear that the impacts to wetlands/ESHA will be adequately mitigated. The appellants further contend that the project is inconsistent with the "no net loss" policy of the Habitat Management Plan (HMP) in that mitigation for the impacts associated with the dredging in 2006 have not been completed, and therefore the true impacts for this development cannot be adequately assessed until the previous project's mitigation requirements have been fulfilled. The City of Carlsbad's LCP has specific policies pertaining to protection of wetlands/ESHA and state in part:

Mello II Policy 3-1.2 – Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Mello II Policy 3-1.7 Wetlands

Pursuant to California Public Resources Code Section 30121 and Title 14, California Code of Regulations Section 13577(b), 'wetland' means lands within the coastal zone, which may be covered periodically or permanently with shallow water and include salt water marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens. Wetland shall include land where the water table is at, near, or above the land surface long enough to promote formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil poorly developed or absent as a result of frequent and drastic or other substances in the substrate. A preponderance of hydric soils or a preponderance of wetland indicator species shall be considered presumptive evidence of wetland conditions.

Wetlands as delineated following the definitions and boundary descriptions in Section 13577 of the California Code of Regulations.

Pursuant to California Public Resources Code Section 30233, no impacts to wetlands shall be allowed except as follows:

- a. The diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

[...]

(5) Incidental public service purposes, including and not limited to, burying cables and pipes or inspection of piers and maintenance of existing intakes and outfall lines.

- b. Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils for beach replenishment should be transported for such purposes to appropriate beached or into suitable long shore current systems.
- c. In addition to the other provisions of this section, diking, filling or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...

Mello II Policy 3-1.8 – Wetland Mitigation Requirements

If impacts to a wetland are allowed consistent with Policy 3-1.7, mitigation shall be provided at a ratio of 3:1 for riparian habitats and 4:1 for saltwater or freshwater wetland or marsh impacts.

Mello II Policy 3-1.9 – No Net loss of Habitat

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland within the Coastal Zone of Carlsbad. Mitigation for impacts to any of these habitat types, when permitted, shall include a creation component that achieves no net loss standard. Substantial restoration of highly degraded areas (where effective functions of the habitat type have been lost) may be substituted for creation subject to the consultation and concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game (wildlife agencies). The Coastal Commission shall be notified and provided an opportunity to comment upon proposed substitutions of substantial restoration for the required creation component. Development shall be consistent with Policy 3-1.2 of this section, unless proposed impacts are specifically identified in the HMP; these impacts shall be located to

minimize impacts to Coastal Sage Scrub and maximize protection of the Coastal California gnatcatcher and its habitat.

The project, as approved by the City, consists of dredging of Agua Hedionda Creek as well as construction of the following improvements:

- 1) Removal and replacement of eroded concrete aprons and down drains
- 2) Slope stabilization with slope treatment material
- 3) Construction of a desilting basin within the channel for temporary sediment control measures during construction and for permanent sediment control as part of the long term maintenance plan for Agua Hedionda Creek
- 4) Installation of drop structures (gabions) to control stormwater velocity
- 5) Removal of retaining wall

The appellants contend that the project, as approved by the City, does not adequately assess the impacts to the wildlife movement corridor Link B – as included in the City’s certified HMP. Link B connects Core areas two, three and four, and is considered an area where revegetation and enhancement could be beneficial (ref. Exhibit # 10). This wildlife movement corridor is currently disrupted by construction of three roadways in the project area. The appellants contend that the only functioning part of this corridor that remains is the actual creek channel. The EIR does include statements that this area functions as a moderate quality movement corridor. The EIR determined that the bridge over-crossing of Agua Hedionda Creek at El Camino Real has sufficient height to allow mammal species to go under. The EIR also indicates that some temporary impacts will result to the wildlife corridor during construction but that these impacts are not significant and therefore do not require mitigation. To date, the City has not yet provided the Commission with full size site plans indicating the location of the improvements listed above. In the absence of these plans, it is unclear where slope stabilization treatments will be located. Therefore, it is unclear what impact these treatments may have on movement within the wildlife corridor. Further, as stated previously, the project also includes structural enhancement to the bridges to include providing monolithic structures by encasement of existing bridge piers. These monolithic structures may impede the movement of wildlife at the over-crossing referenced in the EIR. Neither of these potential impacts were addressed by the EIR or the City’s approval. As it is not clear what impacts (either temporary or permanent) the approved development will have on existing wildlife corridors, the project, as approved by the City, is not consistent with the policies within the HMP, which is included in the certified LCP, that protect said wildlife corridors.

The appellants further contend that the City, in its approval of the project, did not adequately avoid and/or minimize impacts to wetlands to the extent feasible as required by the certified LCP. The project analysis failed to assess other flood control methods, such as control of erosion and sediment load upstream, or to incorporate these alternatives into the project design. The appellants contend that if these alternatives were addressed, most, if not all of the proposed dredging of Calavera and Agua Hedionda Creeks might not be necessary. The City’s LCP requires that impacts to wetlands be

approved only where there are no feasible less environmentally damaging alternatives. Further, the appellants contend that the portion of the dredging located in the Coastal Zone could be done by hand, thus eliminating the need for storage and an access road in this area. This is of particular concern to the appellants because most of the sensitive resources identified in the biological survey are located in this area. The City did not address this as an alternative. Therefore, as approved, the City failed to look at alternatives for decreasing sediment load upstream and for minimizing impacts associated with the staging and access for future dredging, and therefore the project is not consistent with the City's certified LCP.

The Final EIR states that the project will result in temporary impacts to 4.2 acres of riparian habitat (including 3.8 acres of wetlands, and .4 acres of "bank"). In a different section, the EIR states that the project will result in impacts to 5.41 acres of CDFG Jurisdictional Area (area in the Coastal Zone). It is unclear at this point whether the total impacts include the temporary impacts or if these impacts are separate. Further, the EIR does not assess what portion of these temporary impacts are located within the Coastal Zone. Because it is unclear what the amount of total impacts will be within the Coastal Zone, it is unclear how this project should be mitigated. Further, the EIR does not calculate the amount of mitigation required, nor does it determine how or where these mitigation requirements will be fulfilled, therefore, even if the project approved by the CDP complies with the EIR, it will still be inconsistent with the LCP policies cited above.

Furthermore, the appellants contend that the mitigation requirements for the emergency dredging conducted in 2006 have yet to be fulfilled. It is unclear where this mitigation will occur, but as stated in the HMP, mitigation for these impacts should occur within the Coastal Zone, and as stated in the LCP, the diking, filling or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. To date, the wetland areas impacted by the previous dredging have not been restored onsite, nor have those impacts been adequately mitigated. In fact, the required follow-up CDP for this emergency dredging has not yet been reviewed or approved by the City. The EIR considers impacts associated with the previous dredging separate from the proposed project, in that, the areas impacted by the previous dredging were not included in the total impacts. The appellants contend that the wetland function needs to be brought back to the condition prior to the recent activities and only then can adequate mitigation for additional impacts be assessed. Therefore, it is unclear what the impacts of this previous development were, how these impacts will be mitigated and how the impacts relate to the proposed dredging. As such, the project as approved is not consistent with the City's policies pertaining to mitigation for unavoidable wetland impacts.

The fourth contention raised by the appellants relating to wetland impacts pertains to the biological reports. The most recent plant surveys were conducted in 2002 and the most recent bird surveys were conducted in 2005. The City's LCP and HMP do not include limitations for biological surveys. As such, the dates of the biological surveys are not reason enough to consider these reports inconsistent with the LCP based on policy alone.

However, standard practice typically requires that biological reports be completed within a year of the project approval. The extent of mitigation for possible impacts to sensitive birds includes the avoidance of active nests only. However, the appellants contend that avoiding active nests alone is not sufficient to assure protection of the birds. Commission biological staff has yet to review the biological reports for the project and as such, it is not clear if the project impacts can be adequately assessed without updated vegetation and sensitive bird surveys.

Lastly, the appellants claim that there are no project conditions required to assure compliance with the provisions of the HMP regarding mitigation. However, as stated above, the resolution associated with this development does include conditions requiring that the project is subject to the certification, adoption and approval of the EIR and Mitigation, Monitoring and Reporting Program, as well as all other discretionary review permits. This mitigation plan that must be approved in order for the EIR to be certified will have to be consistent with the HMP, however, given that the details for mitigation requirements are uncertain at this point, substantial issue may be raised with respect to the scope of mitigation required.

In conclusion, the appellants contend that the project, as approved by the City, is not consistent with the certified LCP in that project alternatives were not properly addressed, biological surveys are outdated, impacts associated with the second dredging project (subject review) cannot be determined until the mitigation for the previous dredging has been completed, and, given that the impacts have not been completely detailed nor the mitigation measures regarding revegetation determined, it is unclear if these sensitive resources are being adequately protected. For these reasons, the Commission finds that this project raises a substantial issue regarding the consistency of the project to the certified LCP's policies pertaining to wetland impact avoidance and mitigation and protection of sensitive resources.

3. Inconsistency with the Approved 1994 Master Drainage Plan. The appellants contend that the project, as approved by the City, is inconsistent with the 1994 Master Drainage Plan, included by reference within the Certified LCP. Therefore, because this project is not consistent with the project described within the Master Drainage Plan, the modifications to the project should require an amendment to the LCP, and because no such amendment has been approved by the Commission, the project is therefore inconsistent with the current certified LCP. The appellants have indicated that the City of Carlsbad is currently in the process of amending the LCP to reference an updated Master Drainage Plan (MDP) (the Master Plan that is a component of this project's EIR). The updated MDP includes the project as it is currently proposed. The appellants contend that the current project has a larger footprint than the project described in the current MDP, which will result in more wetland impacts and thus, require more mitigation. The updated MDP will also include plans for on-going maintenance which will add temporary intermittent impacts for many years. The following policies are contained within the current certified LCP and state:

Mello II Policy 3-4 – Grading and Landscaping Requirements

a) All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants erosion and sedimentation in accordance with the requirements of the City’s Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation Plan (SUSMP), Master Drainage Plan, and the following additional requirements. The SUSMP, dated April 2003 as amended, the Master Drainage Plan (1994) are hereby incorporated into the LCP by reference. Development must also comply with the San Diego County Hydrology Manual to the extent that these requirements are not inconsistent with any policy of the LCP.

f) Development projects should be designed to comply with the following site design principles:

- 1) Protect slopes and channels to decrease the potential for slopes and/or channels from eroding and impacting storm water runoff.....
- 3) Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands and buffer zones. Land acquisition of such areas shall be encouraged.
- 4) Provide development-free buffer zones for natural water bodies.
- 5) Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of new development and redevelopment.
- 6) Where feasible implement site design/landscape features to slow runoff and maximize on-site infiltration of runoff.....
- 9) Limit disturbances of natural water bodies and natural drainage systems caused by development including roads, highways and bridges.

[...]

q) Any minor changes made pursuant to the above list shall be accompanied by a finding that the changes will improve and better protect coastal water quality. The City Engineer or Planning Director shall notify the Executive Director to determine whether an LCP amendment is necessary, and if necessary, shall subsequently apply for an LCP amendment for these changes.

Mello II Policy 4-7 Flood Hazards

(f) Master Drainage Plan.

Adopt the provisions of the Master Drainage Plan to ameliorate flood and drainage hazards within the planning area.

At the present time, Commission staff does not have the current plans for the City of Carlsbad’s MDP. It is therefore not possible at this point to ascertain whether or not this project, as approved, is within substantial conformance with the current Master Drainage Plan for the dredging of Calavera and Agua Hedionda Creeks. However, the City of

Carlsbad Planning Commission found, when it approved of this project, that the project is consistent with the Drainage Master Plan. These findings state:

Planning Commission approval of the three permits above (EIR certification, Zoning and LCP modifications for the updated Drainage Master Plan, and the CDP and associated approvals for the dredging of both creeks) for the dredging of Agua Hedionda and Calavera creeks is dependent upon certification of the Final EIR but is not dependent upon approval of the DMP update. *This is because dredging of the creeks is a component of the current Master Drainage and Storm Water Quality Management Plan adopted in 1994* [emphasis added].....All aspects of the project, including the proposed Local Coastal Program and Zoning Ordinance amendments and permits to dredge and improve the creeks, are consistent with the applicable portions of the General Plan, *remaining portions of the Zoning Ordinance and the Local Coastal Program not proposed for change* [emphasis added]....

Again, based on the statements above, it appears the City has made the finding that the project is consistent with the current Master Drainage Plan and thus the LCP. However, as noted above, the Commission has not yet had the opportunity to make its own findings with respect to whether or not the project, as approved by the City, is consistent with the current MDP, as the current MDP has not yet been provided to Commission staff for such review. Therefore, the Commission finds the project raises a substantial issue with regards to the grounds on which the appeal was filed.

4. Certification of the Environmental Impact Report. The appellants contend that the Notice of Final Action was sent prematurely as the environmental review document (EIR) has yet to be certified by the City Council. The Coastal Development Permit (CDP) has been approved by the City of Carlsbad Planning Commission, however, only the City Council can approve the EIR. Therefore, the appellants contend that by sending the Notice of Final Action prior to EIR certification the CDP is inconsistent with the City's Certified LCP. The appellants contend that because the CDP is subject to the approval of the EIR, it is therefore invalid until such certification is approved. However, the City of Carlsbad does not have any policies regarding the EIR certification process when approving coastal development permits within the certified LCP. Included below is the condition included in the CDP referencing the requirement of the certification of the EIR.

Planning Commission Resolution 6379

- 9) This approval is granted subject to the certification, adoption, and approval of the Environmental Impact Report (EIR 04-02) and Mitigation Monitoring and Reporting Program, SUP 06-02 and HMPP 06-03, and is subject to all conditions contained in Planning Commission Resolutions No. 6376, 6380, 6381 for those other approvals incorporated herein.

The appellants contend that in order for the Notice of Final Action sent to the Coastal Commission to be valid, the EIR for the project must first be certified by Carlsbad's City Council. As previously stated, the EIR for this project also includes the updated

Drainage Master Plan for the City of Carlsbad. The Coastal Commission does not include in its review of appealed projects whether the associated EIR is adequate; the Commission's standard of review is whether the project approved in the CDP is consistent with the certified LCP. The City of Carlsbad LCP does not contain any policies that require an EIR to be certified prior to the issuance of a coastal development permit. And, because the City of Carlsbad's certified LCP does not require that all environmental documents or Environmental Impacts Reports (EIR) be certified prior to CDP approval, this contention does not raise a substantial issue.

In conclusion, the project as approved by the City, raises several concerns regarding the consistency of the project to the City of Carlsbad's certified LCP. The main concerns the appellants raise include the lack of detail included in the mitigation requirements for the dredging and vegetation removal, the inadequate analysis for alternatives or impacts to the wildlife corridor located at this site and the lack of information regarding impacts specific to the Coastal Zone. Further, given the time constraints, staff has not yet reviewed the project for its consistency with the 1994 Master Drainage Plan, included in the City's LCP. The project therefore raises substantial issue for the above stated reasons.

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SEE 1087 MAP

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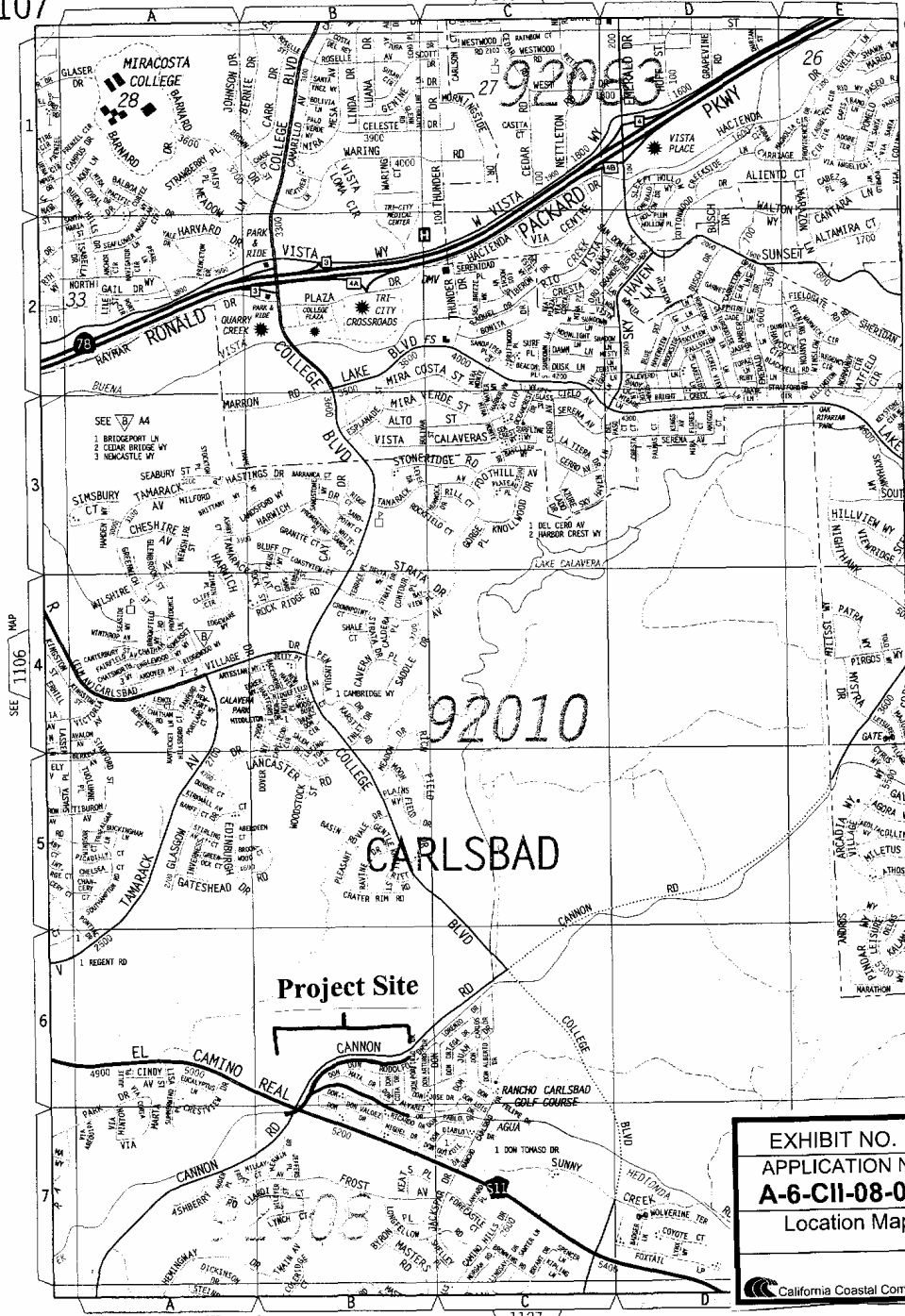


EXHIBIT NO. 1
APPLICATION NO.
A-6-CII-08-019
Location Map

California Coastal Commission

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Agua Hedionda and Calavera Creek
Channel Dredging Project

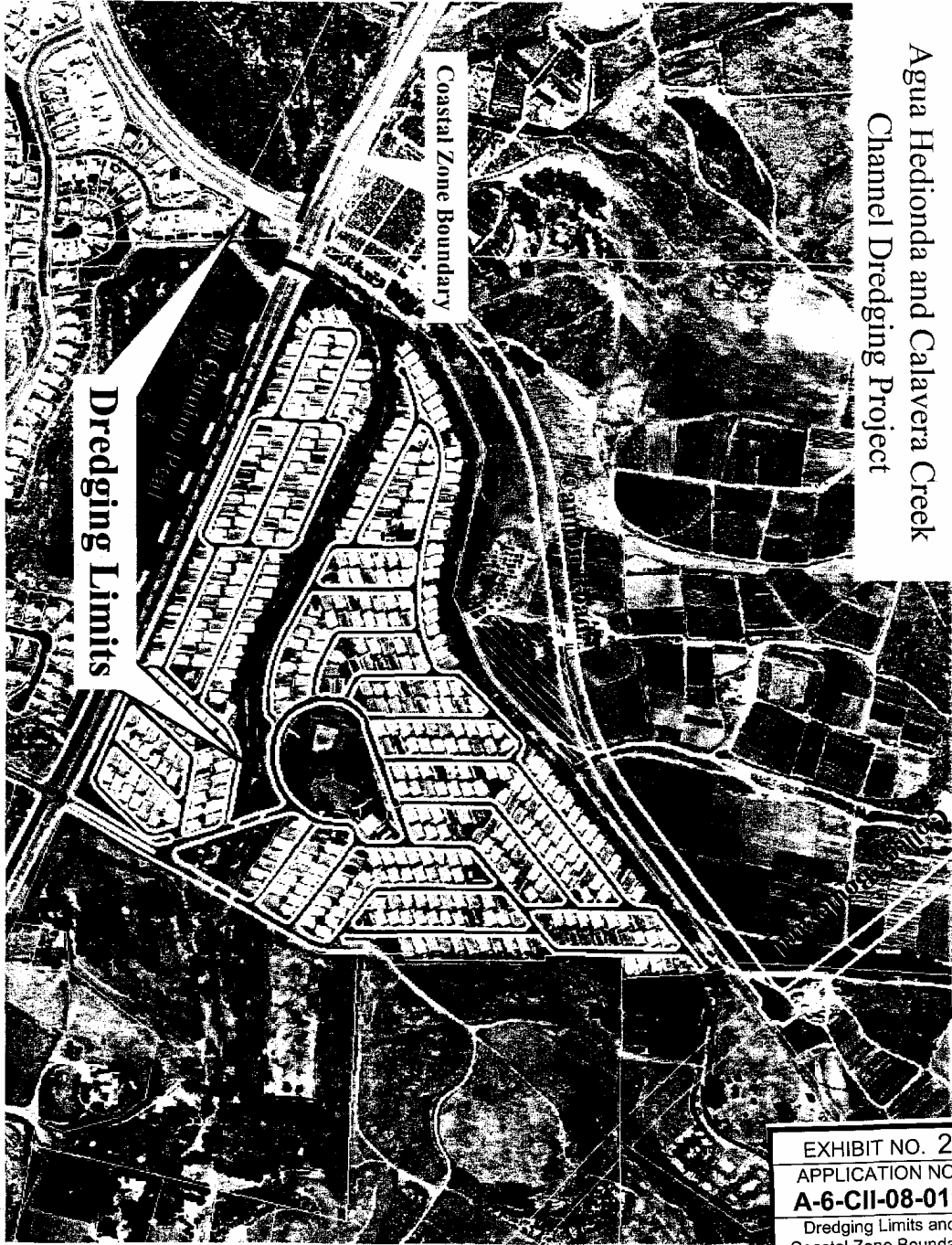

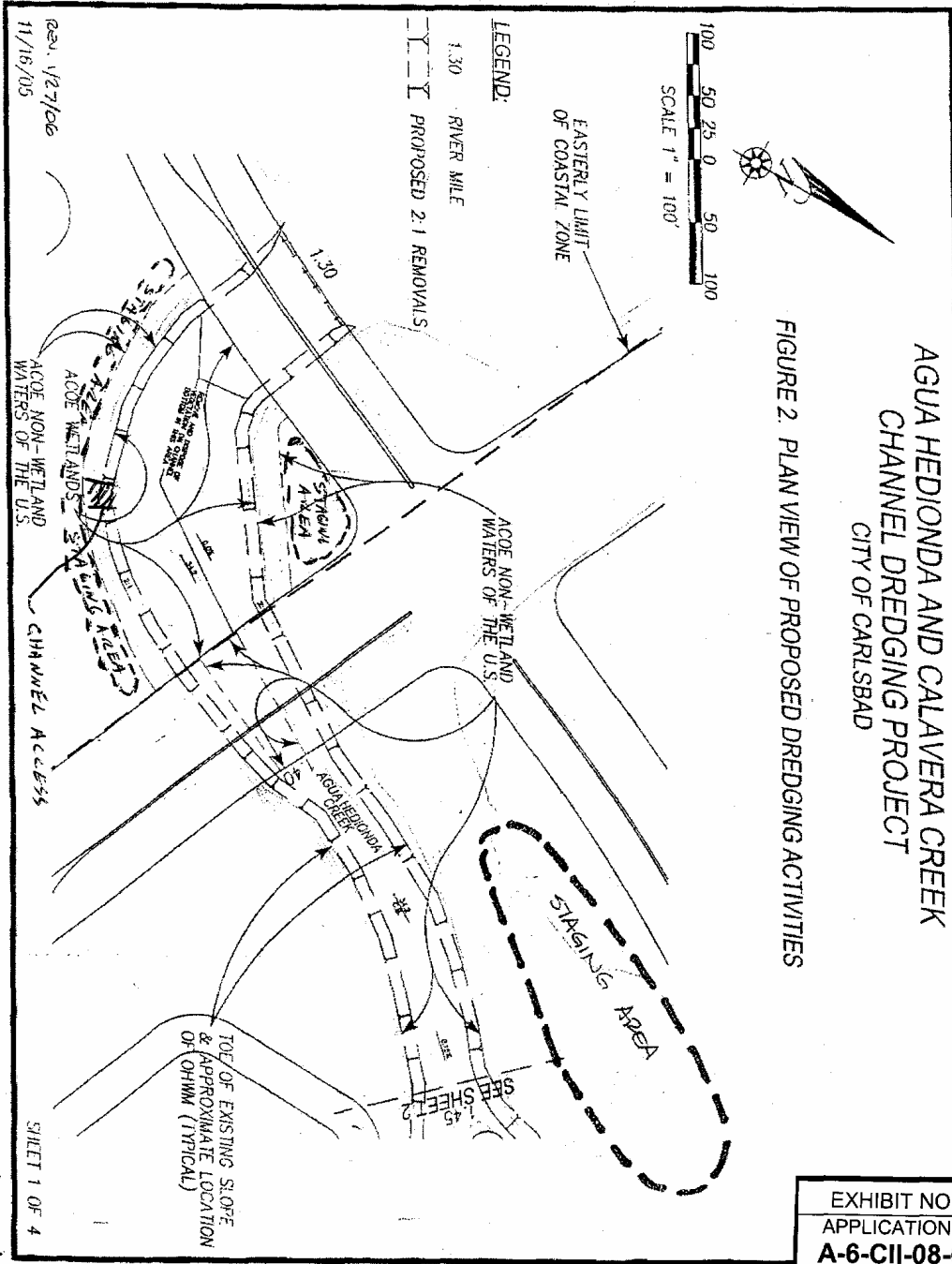


EXHIBIT 'A' 2/6/06

EXHIBIT NO. 2
APPLICATION NO.
A-6-CII-08-019
Dredging Limits and Coastal Zone Boundary
 California Coastal Commission



AGUA HEDIONDA AND CALAVERA CREEK
CHANNEL DREDGING PROJECT
CITY OF CARLSBAD

FIGURE 2. PLAN VIEW OF PROPOSED DREDGING ACTIVITIES

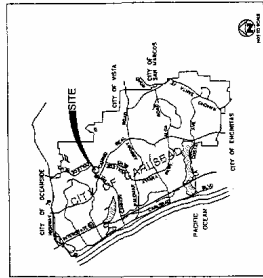
EXHIBIT NO. 3
APPLICATION NO.
A-6-CII-08-019
Plan View
California Coastal Commission

EXHIBIT 'B' 2/6/06

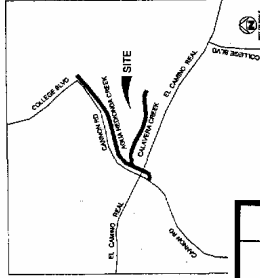
SHEET 1 OF 4

CDP 06-04/HMPP 06-03/SUP 06-02

AGUA HEDIONDA & CALAVERA CREEKS DREDGING AND IMPROVEMENTS PROJECT NO. 3338-1



VICINITY MAP



LOCATION MAP

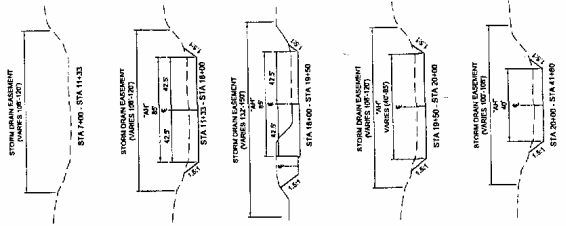
NOTICE TO CONTRACTOR: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

GENERAL NOTES: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

CONSTRUCTION METHODS: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

QUALITY CONTROL: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

CONSTRUCTION SCHEDULE: THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



AGUA HEDIONDA CREEK
TYPICAL SECTIONS
CALAVERA CREEK
TYPICAL SECTIONS

CITY OF CARLSBAD

BROWN AND CALDWELL

AGUA HEDIONDA & CALAVERA CREEKS
DREDGING AND IMPROVEMENTS PROJECT

PROJECT NO. 3338-1

SCALE: 1" = 10'-0"

DATE: 06/03/02

DRAWN BY: J. [Name]

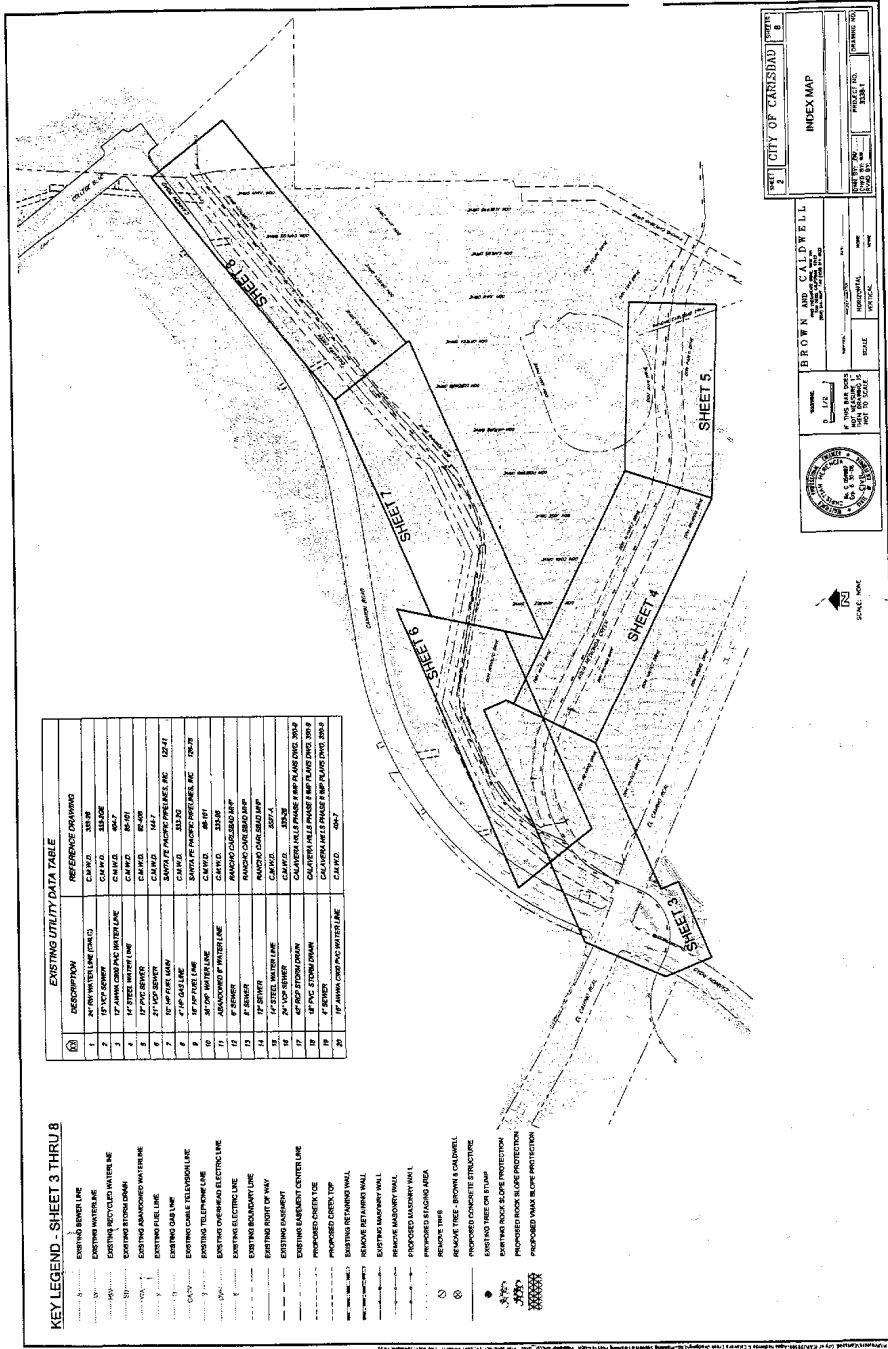
CHECKED BY: J. [Name]

APPROVED BY: J. [Name]

EXHIBIT NO. 4
APPLICATION NO.
A-6-CII-08-019
Site Plans

1 of 8

California Coastal Commission



KEY LEGEND - SHEET 3 THRU 8

- EXISTING WATER LINE
- EXISTING RECYCLED WATER LINE
- EXISTING STORM DRAIN
- EXISTING FUEL LINE
- EXISTING GAS LINE
- EXISTING CABLE TELEVISION LINE
- EXISTING TELEPHONE LINE
- EXISTING OVERHEAD ELECTRIC LINE
- EXISTING ELECTRIC LINE
- EXISTING RIGHT OF WAY
- EXISTING DASHBOARD
- EXISTING EMBANKMENT CENTERLINE
- PROPOSED CROWN TOE
- EXISTING RETAINING WALL
- EXISTING MAINTENANCE WALL
- PROPOSED MAINTENANCE WALL
- PROPOSED FILLING AREA
- REMOVE TREE
- REMOVE TREE TO BE EXTRACTED
- REMOVE TREE TO BE PRESERVED
- PROPOSED TREE TO BE EXTRACTED
- PROPOSED TREE TO BE PRESERVED
- PROPOSED WALK-BELOW-ROADWAY

EXISTING UTILITY DATA TABLE

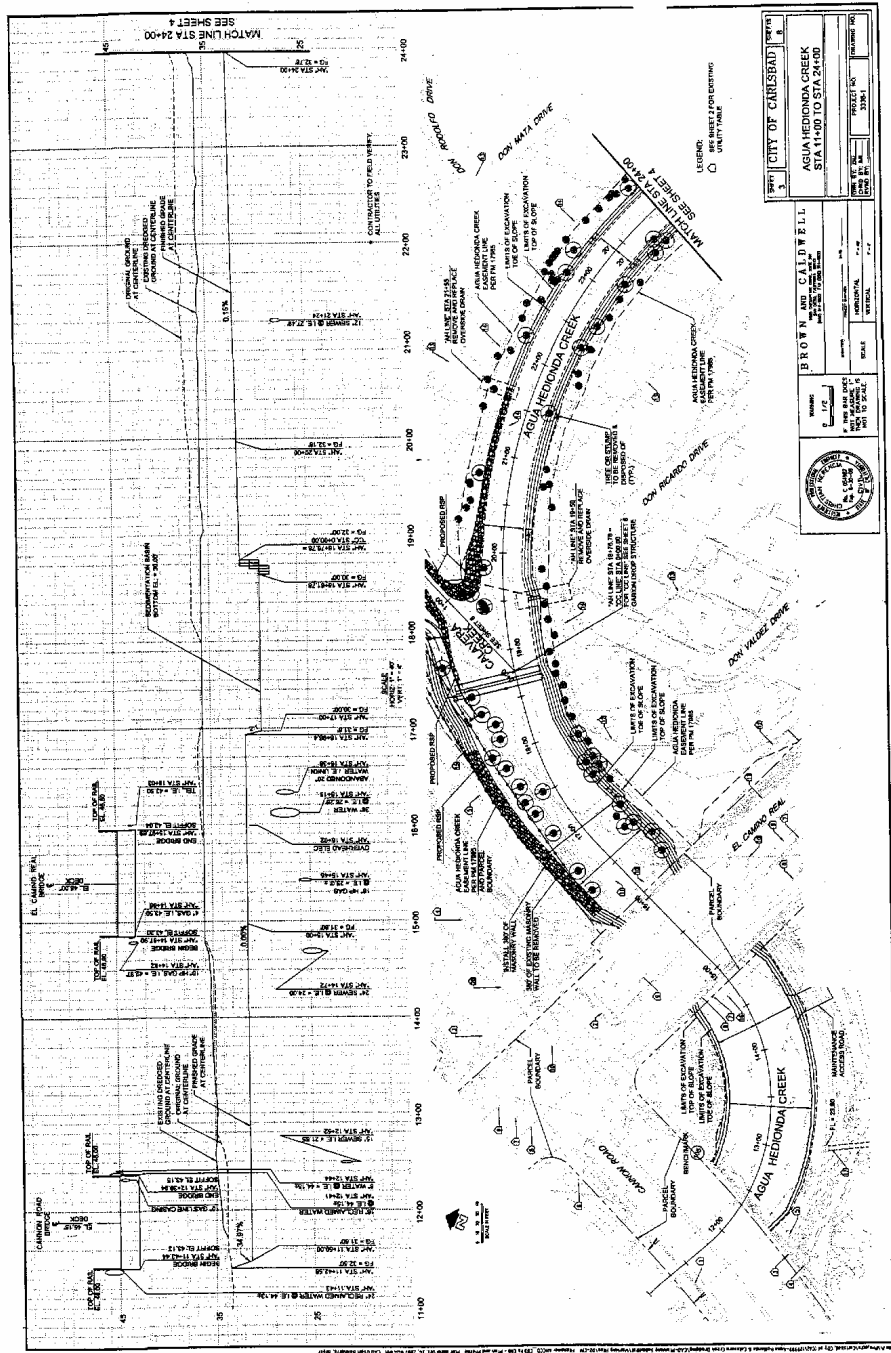
ID	DESCRIPTION	REFERENCE DRAWING
1	24" DIAM WATER LINE (FELD)	CA 612-10
2	24" DIAM WATER LINE (MKT)	CA 612-10
3	12" DIAM OVERHEAD WATER LINE	CA 612-10
4	12" DIAM WATER LINE	CA 612-10
5	24" DIAM WATER LINE	CA 612-10
6	24" DIAM WATER LINE	CA 612-10
7	24" DIAM WATER LINE	CA 612-10
8	24" DIAM WATER LINE	CA 612-10
9	24" DIAM WATER LINE	CA 612-10
10	24" DIAM WATER LINE	CA 612-10
11	24" DIAM WATER LINE	CA 612-10
12	24" DIAM WATER LINE	CA 612-10
13	24" DIAM WATER LINE	CA 612-10
14	24" DIAM WATER LINE	CA 612-10
15	24" DIAM WATER LINE	CA 612-10
16	24" DIAM WATER LINE	CA 612-10
17	24" DIAM WATER LINE	CA 612-10
18	24" DIAM WATER LINE	CA 612-10
19	24" DIAM WATER LINE	CA 612-10
20	24" DIAM WATER LINE	CA 612-10


CITY OF CARLSBAD
 2
 INDEX MAP

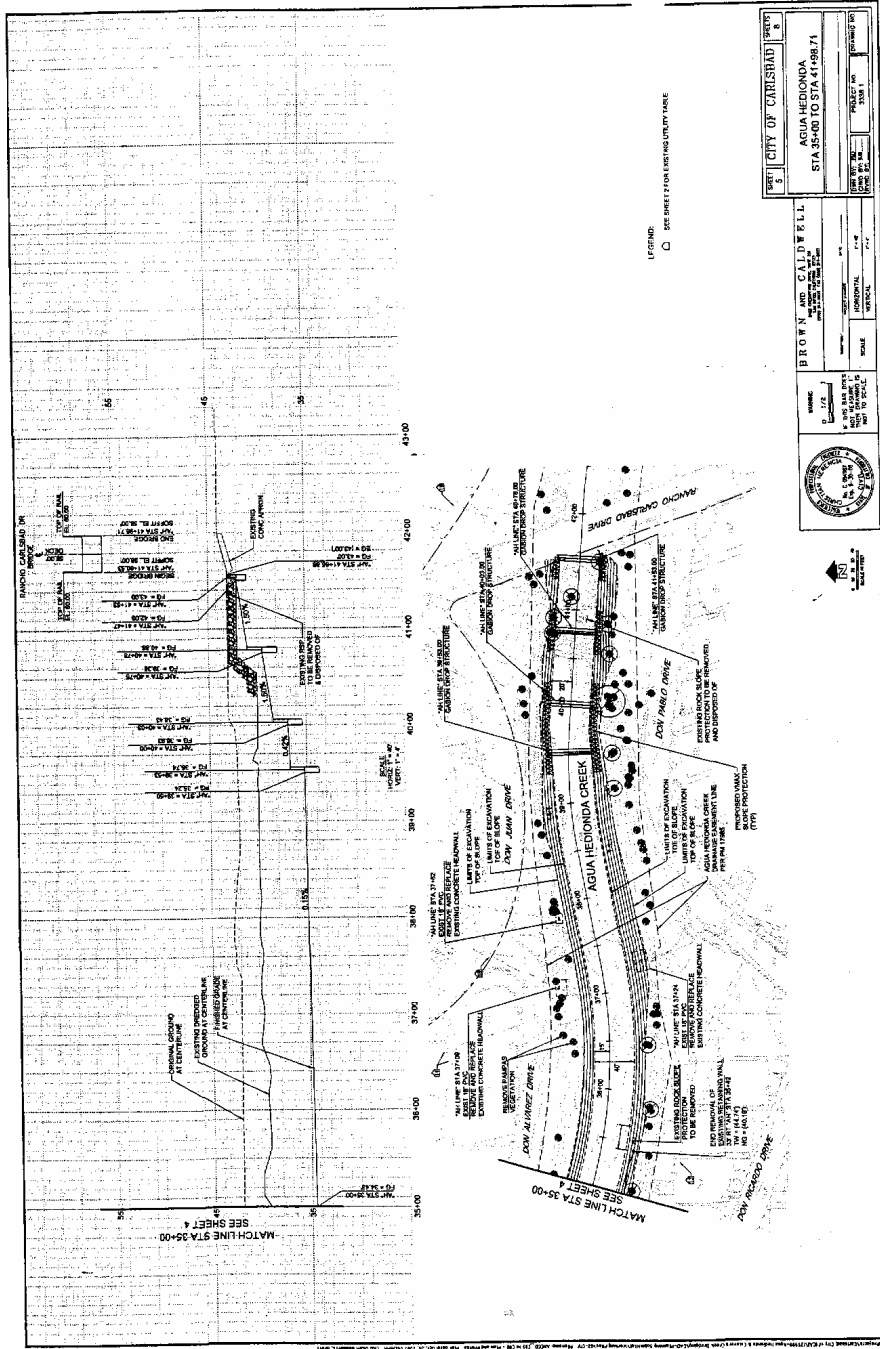
BROWN AND CALDWELL
 PROFESSIONAL ENGINEERS
 10210 VIA VALERIO DRIVE, SUITE 200
 CARLSBAD, CA 92008
 (760) 439-8800
 FILING NUMBER:
 STATE: CA
 SCALE: 1"=40' (VARIABLE)
 DATE:
 DRAWN BY:
 CHECKED BY:
 IN CHARGE:
 PROJECT NUMBER:
 SHEET NO. 18
 TOTAL SHEETS: 18



SCALE: 1"=40'



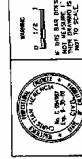
	
CITY OF CARLSBAD 3	
BROWN AND CALDWELL ENGINEERS 1100 S. EL CAMARILLO REAL CARLSBAD, CA 92008 TEL: 760-439-1100 FAX: 760-439-1101 WWW: WWW.BROWNANDCALDWELL.COM	
AGUA HEDIONDA CREEK STA 11400 TO STA 24400	
DATE: 08/11/09 DRAWN BY: [Name] CHECKED BY: [Name]	PROJECT NO.: 33881 SHEET NO.: 19

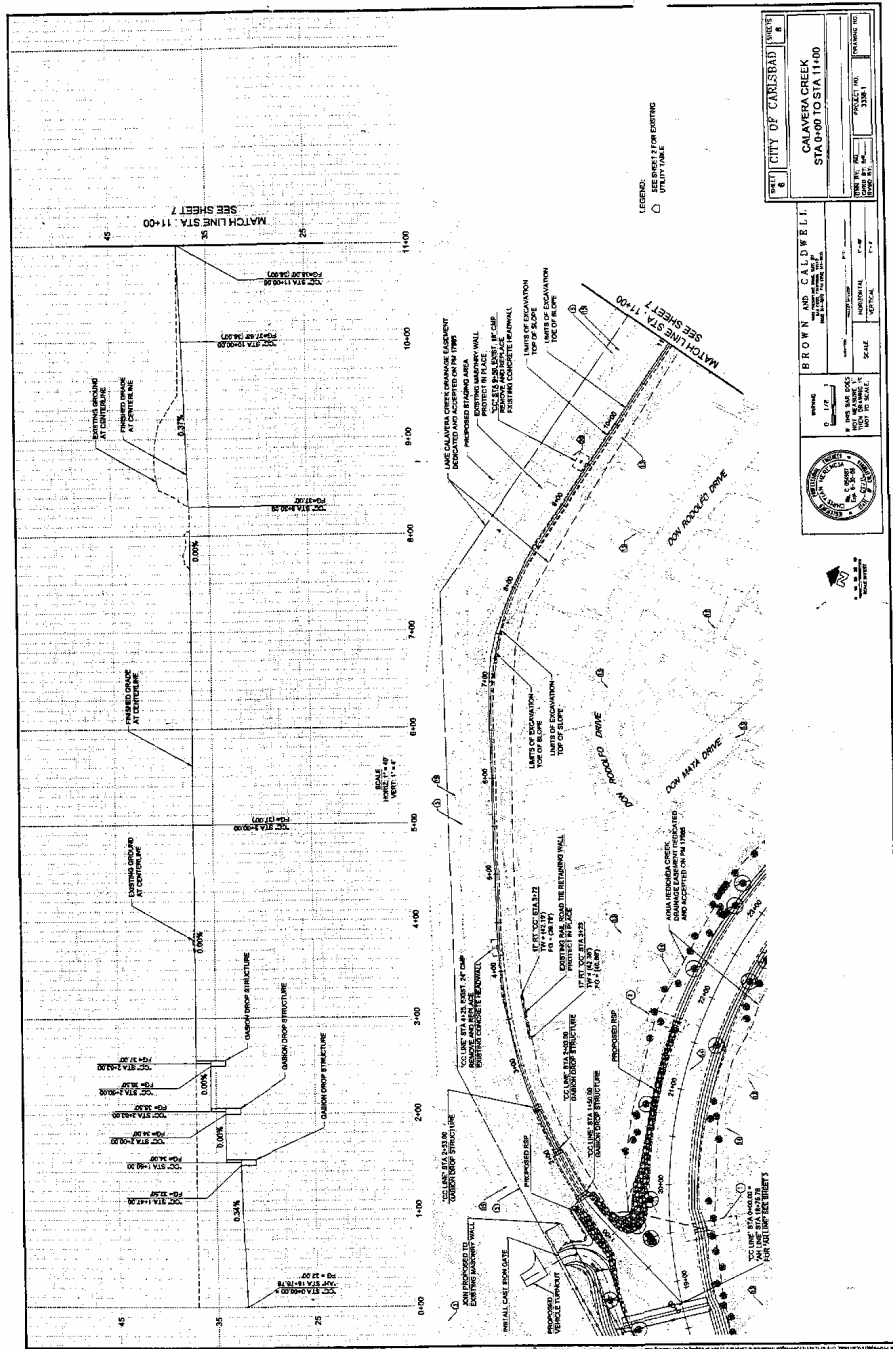


LEGEND:
□ SEE SHEET 2 FOR LOT AND PLUMPY TABLE

CITY OF CARLSBAD		PROJECT NO.	DATE
5	8	100000000	11/11/08
AGUA HEDIONDA		PROJECT NAME	PROJECT NO.
STA 35+00 TO STA 41+98.71		100000000	100000000
DESIGNED BY	CHECKED BY	SCALE	VERTICAL
10/11/08	11/11/08	1" = 40'	1" = 4'

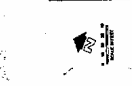
BROWN AND CALDWELL
REGISTERED PROFESSIONAL ENGINEERS
No. 100000000
State of California
Civil Engineering
100000000
100000000





CITY OF CAMELSBAD	
CHAMBERLAIN CREEK	
STATION TO STA 11+00	
DATE: 11/11/11	DRAWN BY: JAC
SCALE: AS SHOWN	CHECKED BY: JAC
PROJECT NO. 11-00	ISSUED BY: JAC

BROWN AND CALDWELL	
ENGINEERS & ARCHITECTS	
200 N. 10TH STREET, SUITE 200	
CAMELSBAD, PA 18024	
PHONE: 717-261-1111	FAX: 717-261-1112
WWW: www.brownandcaldwell.com	
PA STATE LICENSE NO. 003402	PROFESSIONAL SEAL

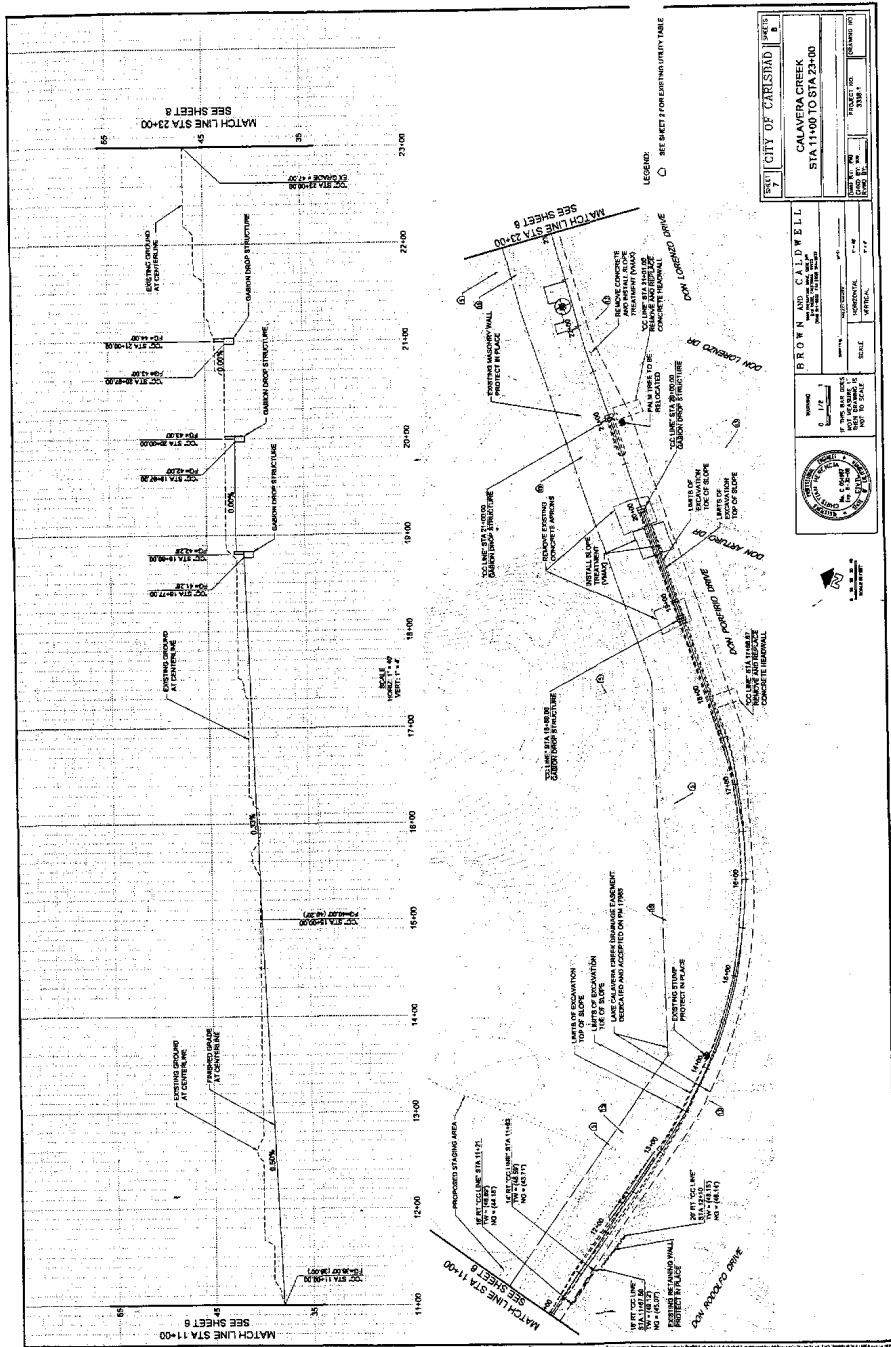


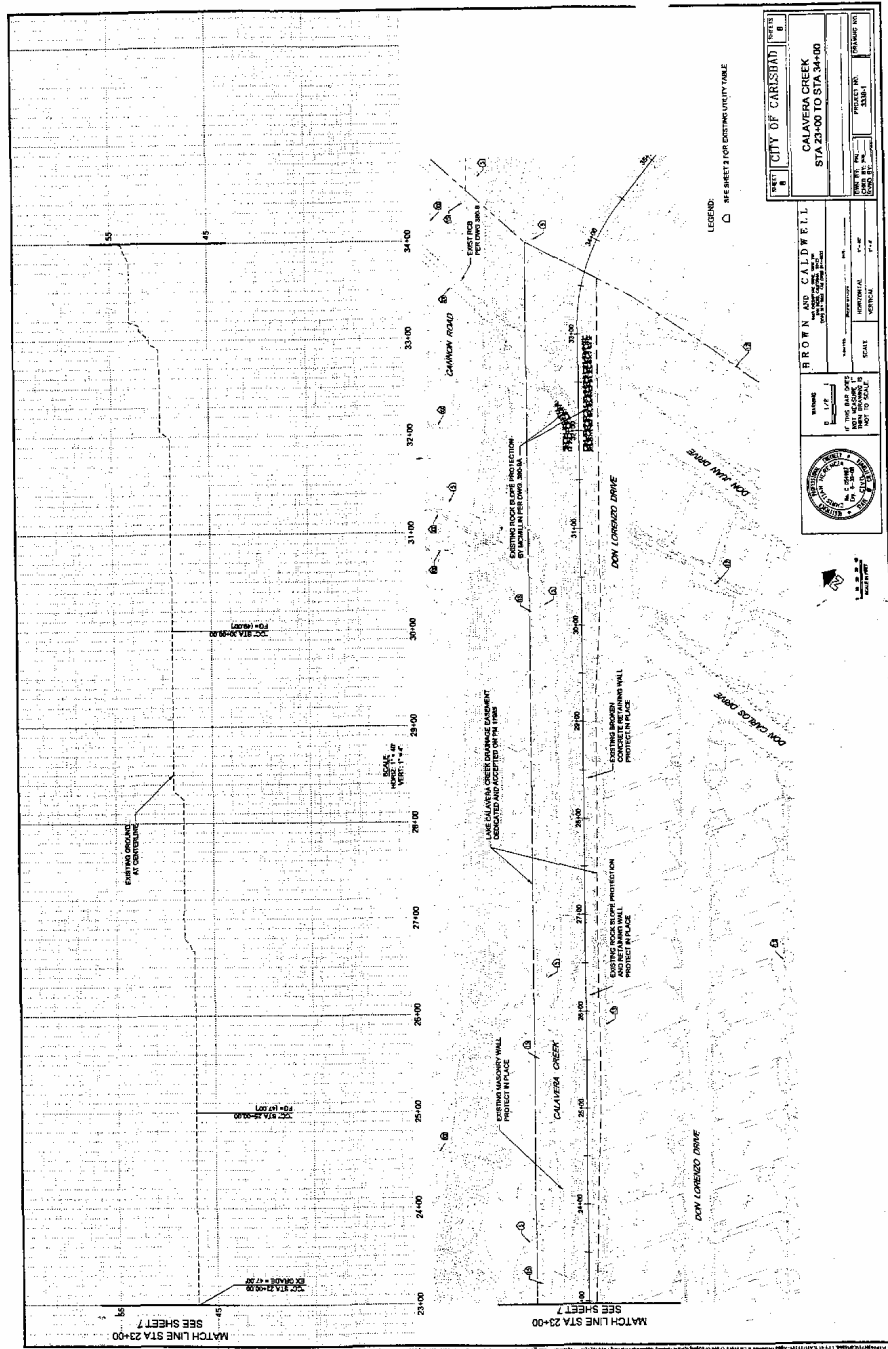
LEGEND:
 ○ SEE SHEET FOR EXISTING
 □ UTILITY TUBES

SCALE: 1" = 20'



SECTION A
 SECTION B
 SECTION C
 SECTION D
 SECTION E
 SECTION F





RECEIVED
JAN 22 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

PLANNING COMMISSION RESOLUTION NO. 6379

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP 06-04 TO ALLOW DREDGING AND IMPROVEMENTS FOR ENCHANCED FLOOD CONTROL ON A PORTION OF AGUA HEDIONDA CREEK IN THE COASTAL ZONE THAT IS BETWEEN THE EL CAMINO REAL BRIDGE AND THE DOWNSTREAM SIDE OF THE CANNON ROAD BRIDGE IN LOCAL FACILITIES MANAGEMENT ZONES 8 AND 24.

CASE NAME: AGUA HEDIONDA AND CALAVERA CREEKS
CASE NO.: CDP 06-04

WHEREAS, City of Carlsbad, "Developer," has filed a verified application with the City of Carlsbad regarding property owned by Carlsbad Canterbury Association and Evans Point Homeowners Association, "Owners," with easements granted or dedicated to the City of Carlsbad for road, drainage, open space, sewer, and maintenance purposes and described as

A portion of Lot 148 of City of Carlsbad Tract No 96-07, Kelly Ranch Village E, in the City of Carlsbad, County of San Diego, State of California, according to map thereof No. 13715, as filed in the Office of the County Recorder of San Diego County on December 31, 1998, and; a portion of Lot 195 of City of Carlsbad Tract No. 91-3, Evans Point, in the City of Carlsbad, County of San Diego, State of California, according to map thereof No. 13189, as filed in the Office of the County Recorder of San Diego County on February 10, 1995

("the Property"); and

WHEREAS, said verified application constitutes a request for a Coastal Development Permit as shown on Exhibits A - H dated January 16, 2008, on file in the Planning Department, AGUA HEDIONDA AND CALAVERA CREEKS, provided by Chapter 21.201.040 of the Carlsbad Municipal Code; and

WHEREAS, the Planning Commission did, on January 16, noticed public hearing as prescribed by law to consider said request; and

EXHIBIT NO. 5
APPLICATION NO.
A-6-CII-08-019
Planning Commission Resolution
1 of 5
 California Coastal Commission

1 WHEREAS, at said public hearing, upon hearing and considering all testimony
2 and arguments, if any, of all persons desiring to be heard, said Commission considered all factors
3 relating to the CDP.

4
5 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning
6 Commission of the City of Carlsbad as follows:

- 7 A) That the foregoing recitations are true and correct.
- 8 B) That based on the evidence presented at the public hearing, the Commission
9 APPROVES AGUA HEDIONDA AND CALAVERA CREEKS – CDP 06-04
10 based on the following findings and subject to the following conditions:

11 **Findings:**

- 12 1. That the proposed development is in conformance with the Certified Local Coastal
13 Program (LCP) and all applicable policies in that it is **the intent of the LCP to allow**
14 **implementation of drainage projects that are part of the City's drainage master**
15 **planning program.**
- 16 2. The proposal is in conformity with the public access and recreation policies of Chapter 3
17 of the Coastal Act in that **the project involves dredging of existing creeks that are not**
18 **navigable, used for recreation or bordered by public trails or recreation areas.**
- 19 3. The project is consistent with the provisions of the Coastal Resource Protection Overlay
20 Zone (Chapter 21.203 of the Zoning Ordinance) in that the project will adhere to the
21 City's Master Drainage Plan (**as well as the proposed Drainage Master Plan Update**),
22 Grading Ordinance, Storm Water Ordinance, Standard Urban Storm Water Mitigation
23 Plan (SUSMP), and Jurisdictional Urban Runoff Management Program (JURMP) to
24 avoid increased urban runoff, pollutants, and soil erosion. No steep slopes are located on
25 the subject property and the site is not located in an area prone to landslides. **To enhance**
26 **flood control, the project does propose removal of native vegetation and**
27 **construction of improvements within a floodway; however, the existing Local**
28 **Coastal Program requires storm drainage facilities in developed areas to be**
 improved and enlarged according to the City's existing Master Drainage Plan and
 thus it is the intent of the LCP to allow implementation of drainage projects that are
 part of the City's drainage master planning program. Furthermore, LCP Policy 3-
 1.7(a)(5) permits impacts to wetlands for dredging required for public service
 purposes and there is no feasible alternative to dredging the area between the El
 Camino Real and Cannon Road bridges (the portion of the project within the
 Coastal Zone) that would provide flood protection to Rancho Carlsbad to the extent
 feasible and restore 100-year flood capacity in the creeks. Finally, impacts to
 wetlands would be mitigated to a level of insignificance, and the portion of the
 project within the Coastal Zone is not part of a Habitat Management Plan Hardline
 Preserve.

- 1 4. Natural vegetation would be retained as much as possible, such as along creek
2 banks. Additionally, on-site mitigation could potentially occur on the creek banks,
3 where feasible, to restore natural vegetation in place of existing exotic or ornamental
4 vegetation. Further, the long-term maintenance plan would promote the growth of
5 native vegetation on the creek bank where appropriate and discourage
6 establishment of invasive exotic, nonnative, and ornamental vegetation via
7 maintenance activities.
- 8 5. Implementation of the project's Stormwater Pollution Prevention Program and
9 long-term maintenance plan would be consistent with requirements of LCP policies
10 4-5 (erosion control) and 4-6 (sediment control).
- 11 6. This Coastal Development Permit has been submitted following the City's issuance
12 of an emergency Coastal Development Permit on February 6, 2006, to permit
13 emergency dredging of the project portion of Agua Hedionda Creek within the
14 Coastal Zone. Mitigation for biological impacts associated with the emergency work
15 have been or will be mitigated separately from this Coastal Development Permit.
16 Subject to the conditions of approval, this Coastal Development Permit also permits
17 improvements and dredging beyond those accomplished by the emergency permit
18 and includes a long term maintenance plan for creek dredging and enhanced flood
19 control on a permanent basis.

20 **Conditions:**

21 Note: Unless otherwise specified herein, all conditions shall be satisfied prior to **issuance of a**
22 **grading permit or start of construction, whichever occurs first.**

- 23 1. If any of the following conditions fail to occur, or if they are, by their terms, to be
24 implemented and maintained over time, if any of such conditions fail to be so
25 implemented and maintained according to their terms, the City shall have the right to
26 revoke or modify all approvals herein granted; deny or further condition issuance of all
27 future building permits; deny, revoke, or further condition all certificates of occupancy
28 issued under the authority of approvals herein granted; record a notice of violation on the
property title; institute and prosecute litigation to compel their compliance with said
conditions or seek damages for their violation. No vested rights are gained by Developer
or a successor in interest by the City's approval of this **Coastal Development Permit**.
2. Staff is authorized and directed to make, or require the Developer to make, all corrections
and modifications to the **Coastal Development Permit** documents, as necessary to make
them internally consistent and in conformity with the final action on the project.
Development shall occur substantially as shown on the approved Exhibits. Any proposed
development, different from this approval, shall require an amendment to this approval.
3. Developer shall comply with all applicable provisions of federal, state, and local laws and
regulations in effect at the time of building permit issuance.
4. If any condition for construction of any public improvements or facilities, or the payment
of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are

- 1 challenged, this approval shall be suspended as provided in Government Code Section
2 66020. If any such condition is determined to be invalid, this approval shall be invalid
3 unless the City Council determines that the project without the condition complies with
4 all requirements of law.
- 5 5. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold
6 harmless the City of Carlsbad, its Council members, officers, employees, agents, and
7 representatives, from and against any and all liabilities, losses, damages, demands, claims
8 and costs, including court costs and attorney's fees incurred by the City arising, directly
9 or indirectly, from (a) City's approval and issuance of this **Coastal Development Permit**
10 **06-04**, (b) City's approval or issuance of any permit or action, whether discretionary or
11 nondiscretionary, in connection with the use contemplated herein, and
12 (c) Developer/Operator's installation and operation of the facility permitted hereby,
13 including without limitation, any and all liabilities arising from the emission by the
14 facility of electromagnetic fields or other energy waves or emissions. This obligation
15 survives until all legal proceedings have been concluded and continues even if the City's
16 approval is not validated.
- 17 6. Developer shall include, as part of the plans submitted for any permit plancheck, a
18 reduced legible version of all approving resolution(s) in a 24" x 36" blue-line drawing
19 format (including any applicable Coastal Commission approvals).
- 20 7. This project shall comply with all conditions and mitigation measures which are required
21 as part of the Zones **8 and 14** Local Facilities Management Plans and any amendments
22 made to that Plan prior to the issuance of grading permits.
- 23 8. This approval is granted subject to the certification, adoption, and approval of the
24 Environmental Impact Report (**EIR 04-02**) and Mitigation Monitoring and Reporting
25 Program, **SUP 06-02** and **HMPP 06-03**, and is subject to all conditions contained in
26 Planning Commission Resolutions No. **6376, 6380, and 6381** for those other approvals
27 incorporated herein by reference.
- 28 9. Developer shall implement, or cause the implementation of, the **EIR 04-02** Project
Mitigation Monitoring and Reporting Program.
10. This approval shall become null and void if grading permits are not issued or construction
is not started for this project within 24 months from the date of project approval.
11. Prior to the issuance of building permits, the applicant shall apply for and obtain a
grading permit issued by the City Engineer.
12. If a grading permit is required, all grading activities are prohibited from (February 1st for
gnatcatcher or **March 15** for vireo) to (**September 15th** for gnatcatcher or vireo). All
erosion control measures must be installed prior to the initial grading. Any grading
extensions into the grading prohibition period must receive written approval of the
Planning Director, City Engineer, and the responsible wildlife agencies (California
Department of Fish and Game/United States Fish and Wildlife Service).

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- 13. Long term maintenance of the project portion of Agua Hedionda Creek is approved and shall occur according to the (1) "Monitoring and Maintenance Plan for Agua Hedionda and Calavera Creeks Dredging and Improvements Project" contained in Appendix B of the Final EIR 04-02; (2) the Mitigation Monitoring and Reporting Program; and (3) these conditions of approval.

- 14. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy #17, the License Tax on new construction imposed by Carlsbad Municipal Code Section 5.09.030, and CFD #1 special tax (if applicable), subject to any credits authorized by Carlsbad Municipal Code Section 5.09.040. Developer shall also pay any applicable Local Facilities Management Plan fee for Zones 8 and 14, pursuant to Chapter 21.90. All such taxes/fees shall be paid at issuance of building permit. If the taxes/fees are not paid, this approval will not be consistent with the General Plan and shall become void.

- 15. Prior to the issuance of the Coastal Development Permit, Developer shall submit to the City a Notice of Restriction executed by the owner of the real property to be developed. Said notice is to be filed in the office of the County Recorder, subject to the satisfaction of the Planning Director, notifying all interested parties and successors in interest that the City of Carlsbad has issued a Coastal Development Permit by Resolution No. 6379 on the property. Said Notice of Restriction shall note the property description, location of the file containing complete project details and all conditions of approval as well as any conditions or restrictions specified for inclusion in the Notice of Restriction. The Planning Director has the authority to execute and record an amendment to the notice which modifies or terminates said notice upon a showing of good cause by the Developer or successor in interest.

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NOTICE

Please take **NOTICE** that approval of your project includes the "imposition" of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as "fees/exactions."

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby **FURTHER NOTIFIED** that your right to protest the specified fees/exactions **DOES NOT APPLY** to water and sewer connection fees and capacity charges, nor planning, zoning, grading, or other similar application processing or service fees in connection with this project; **NOR DOES IT APPLY** to any fees/exactions of which you have previously been given a **NOTICE** similar to this, or as to which the statute of limitations has previously otherwise expired.

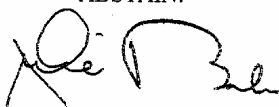
PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on **January 16, 2008**, by the following vote, to wit:

AYES: Chairperson Baker, Commissioners Boddy, Dominguez, Douglas, Montgomery, and Whitton

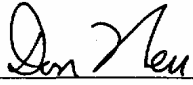
NOES:

ABSENT: Commissioner Cardoso

ABSTAIN:



JULIE BAKER, Chairperson
CARLSBAD PLANNING COMMISSION

ATTEST:


DON NEU
Planning Director
PC RESO NO. 6379

STATE OF CALIFORNIA - THE RESOURCES AGENCY

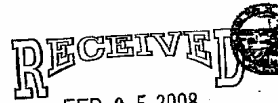
010 101 6000

1-504 P.001/005 F-206

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
75 METROPOLITAN DRIVE, SUITE 102
SAN DIEGO, CA 92108-4421
(619) 757-2370



FEB 05 2008

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Preserve Calavera c/o Diane Nygaard
5020 Night Hawk Way, Oceanside, CA
92056 (760) 724-3887
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad

2. Brief description of development being appealed: Agua Hedionda and Calavera Creek Drudging

3. Development's location (street address, assessor's parcel no., cross street, etc.): Near Canyon Rd + El Camino Real in Carlsbad

- 4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: CDP 06-04
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: 6-CII-08-019

DATE FILED: 2-5-08

DISTRICT: _____

EXHIBIT NO. 6
APPLICATION NO.
A-6-CII-08-019
Appeal Form & Attachment
1 of 9
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: January 14, 2008
7. Local government's file number (if any): COP 06-04

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

City of Carlsbad
1200 Carlsbad Village Dr
Carlsbad, CA

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Russ Kohl + Bill Arnold
Rancho Carlsbad HOA
- (2) David Bentley
Developer of Cullarini Project
- (3) Isabelle Kay on behalf of
Carlsbad Watershed Network
- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Improper filing of Notice of Final Action
Violation of HMP and LCP provisions for:
protection of wildlife corridor,
reference to project,
wetland avoidance, minimization + mitigation
inadequate biological surveys
inadequate revegetation - see att.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed Deane Nygaard
Appellant or Agent

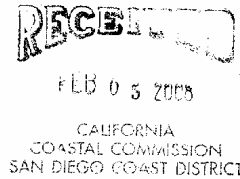
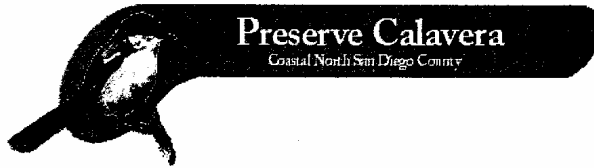
Date February 4, 2008

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed _____
Appellant

Date _____

0016F



February 4, 2008

Toni Ross
California Coastal Commission
7575 Metropolitan Dr Suite 103
San Diego, CA 92108-4402

**Subject: Appeal of Coastal Development Permit CDP 06-04
Agua Hedionda and Calavera Creeks Dredging**

Dear California Coastal Commission:

Please accept these comments as part of Section IV of the appeal by Preserve Calavera of the City of Carlsbad Coastal Development Permit (CDP) for the Agua Hedionda and Calavera Creeks Dredging Project. On January 16, 2008 the Planning Commission of the City of Carlsbad approved the CDP for this proposed project to dredge about 3,000 linear feet of these two creeks, partially in the Coastal Zone. Subsequent to that approval the City submitted a Notice of Final Action for issuance of the CDP to the California Coastal Commission. Preserve Calavera is appealing this CDP.

The following provides further information for Section IV of this appeal:

1. The Notice of Final Action was not properly submitted.

While the Planning Commission had the authority to issue the CDP, in both the staff report (pp 1 and 2 att) and the Planning Commission Resolution 6379 Condition 9 (p3 att) it is clear that this approval is subject to certification of the Environmental Impact Report(EIR) which has not been certified. The Planning Commission recommended certification of the EIR, but this certification is the authority of the City Council and this item has not yet been scheduled for hearing before the City Council. The NOFA is not properly submitted to the CCC until the EIR has been certified.

2. The project as proposed is not consistent with the existing 1994 Master Drainage Plan- which is the document referenced in the City of Carlsbad LCP.

Since this is not the same project that was described in the existing Master Drainage Plan it is not the project referenced in the LCP and therefor it is not consistent with the LCP. The City of Carlsbad is currently in the process of amending the LCP which would reference an updated Master Drainage Plan(MDP).

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www.preservecalavera.org

This updated MDP includes the project as it is currently proposed. The current project has a larger footprint, will impact more wetland habitat, will require more mitigation, and includes plans for on-going maintenance- which will add temporary intermittent impacts for years. These additional impacts were considered significant by the City and resulted in their decision to require an EIR for this project.

Until the LCP is amended to reference the updated Master Drainage Plan- which is the version that includes this project, the project is not consistent with the LCP which describes a smaller project.

3. The project has not properly identified or mitigated for potential impacts to the regional wildlife movement corridor.

The LCP was recently updated to incorporate the Habitat Management Plan (HMP) The HMP identifies the project area as part of wildlife movement corridor Link B- connecting the Lake Calavera area with Agua Hedionda Lagoon. This wildlife movement corridor is currently disrupted by construction on three roadways in the project area- College Blvd, Cannon Road and El Camino Real. This area construction has already caused significant wildlife impacts, including the roadkill deaths of 5 coyotes within a few feet of each other along El Camino Real. The only functioning part of the corridor is the actual creek channel- the same area that will be disrupted by this dredging project. The project design, EIR, and mitigation measures failed to assure that this critical wildlife corridor link to the lagoon is not impacted. This failure to protect the identified wildlife movement corridor is a violation of the HMP, and through its reference in the LCP, it is also a violation of the LCP.

4. Wetlands impacts have not been avoided and minimized to the extent feasible.

The project proposes temporary, permanent, and on-going maintenance impacts to wetland vegetation. The key issue is sediment deposit in the project area, yet no alternative looked at measures to reduce the amount of sediment deposit by addressing upstream areas of erosion and sediment load. Since drainage control is a public benefit the city has the ability to look outside the immediate project area for alternatives that would reduce the sediment load and avoid or reduce the need to dredge. No such alternatives were even considered, although such methods are being included in the Agua Hedionda Watershed Management Plan currently in process.

Also, it would appear that the small area to be dredged west of El Camino Real and south of Cannon could be done by hand- eliminating the need for storage and an access road in this area. This is of particular concern because most of the sensitive resources identified in the biological survey (Appendix D- Recon bio survey Figure 4) are located west of El Camino Real , in the Coastal Zone, so minimizing impacts in this area is most important.

Furthermore an environmentally preferred alternative was rejected because more lots in Rancho Carlsbad might have an unspecified level of standing water for an unspecified

amount of time. The analysis failed to provide sufficient justification for rejecting this alternative that would reduce wetland impacts.

5. Wetland habitat mitigation has not been specified and prior impacts have yet to be mitigated.

The EIR includes just a general description of several mitigation alternatives. These potential alternatives include payment of fees for credits at the North County Mitigation Bank-which will provide no benefit to the basin of impact or to the impaired Agua Hedionda Lagoon. The city has not provided mitigation for the impacts from the emergency dredging project that occurred 2 years ago- yet they propose further impacts to this same area. The wetlands function in the project area has already been significantly degraded- from inadequate BMP's from prior construction that failed with the first substantial rainfall causing flooding and excess sediment load, and from the emergency dredging project that has yet to be mitigated. A complete mitigation plan and schedule is required to assure that there will be no net loss of wetland function as is required by the LCP and HMP. The wetland function needs to first be brought back to the conditions prior to the recent series of failures, only then can adequate mitigation for a new round of impacts be assessed.

6. Inadequate surveys for presence of sensitive species.

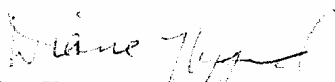
There is no explanation for the statement in the EIR that there is no need to assess presence of any rare plant species and the surveys for Light-footed Clapper Rail, Least Bell's vireo and Southwestern willow flycatcher are all out of date. (Bird surveys were done in 2005, most recent plant surveys in 2002). The standard survey protocol is to provide a survey within one year of the EIR issue date- particularly when prior surveys have found endangered species present. The surveys are out of date and should be updated as current information could effect mitigation. Avoiding active nests alone (the only direct mitigation for these impacts) is not sufficient given the history of damage to this area and the fact that mitigation for the emergency work still has not been done. One should presume higher presence of listed species if they had not already been forced out of the area twice in recent years.

7 Inadequate provisions for revegetation.

There are no project conditions that assure compliance with the provisions of the HMP sections F.2.A restoration and revegetation and F.3.C landscaping and LCP provisions on vegetation preservation.

Thank you for your consideration of this appeal.

Sincerely,


Diane Nygaard, President
On Behalf of Preserve Calavera

EIR 04-02/ZCA 07-04/LCPA 07-06/CDP 06-04/SUP 06-02/HMPP 06-03 – CITY OF CARLSBAD DRAINAGE MASTER PLAN UPDATE/AGUA HEDIONDA AND CALAVERA CREEKS

January 16, 2008

Page 2

City's current Master Drainage and Storm Water Quality Management Plan, adopted in 1994 and amended in 1996.

Components of both the existing and proposed drainage master plans are the dredging and improvements of portions of Agua Hedionda Creek and Calavera Creek in and near the Rancho Carlsbad mobile home community. The proposed dredging and improvements would provide enhanced flood control protection to the community by removing the threat of flooding from approximately 270 homes.

To accomplish the project objectives are three different proposed actions, all of which require a Planning Commission recommendation or approval as identified herein:

1. *EIR 04-02* – Certify a Final Environmental Impact Report for both the proposed DMP Update and the dredging of the two creeks. The Final EIR analyzes most Update components at a “program level” based on the preliminary design information available for these components. For the two Update components that would result in the dredging of portions of Agua Hedionda and Calavera creeks in and near Rancho Carlsbad and the intersection of El Camino Real and Cannon Road, the Final EIR provides a “project level” analysis based on the advanced design work completed.

With regards to the program level analysis, the EIR represents the best effort to evaluate environmental impacts associated with implementation of the DMP Update given its long-term planning horizon. It can be anticipated that development conditions could change; however, the assumptions used are the best available at the time of preparation and reflect existing knowledge of patterns of development, land use designations, and technological factors related to engineering and design.

2. *ZCA 07-04 & LCPA 07-04* – Amend the policies of the Local Coastal Program and sections of the Zoning Ordinance to reference the proposed Drainage Master Plan. The amendments, which can be characterized as “housekeeping” changes, would delete references to the current “Master Drainage Plan” or similar term and uniformly replace them with references to the “City of Carlsbad Drainage Master Plan.” The amendments would also delete references to the Model Erosion Control Ordinance and Model Grading Ordinance, both of which are identified as part of the existing Master Drainage Plan but which were not adopted and were replaced by other regulations; in one instance, the reference to the Model Erosion Control Ordinance would be replaced by a new reference to the City's Engineering Standards, the regulations that address erosion control, among other things.

The proposed Local Coastal Program Amendment affects all segments of the City's Coastal Zone except the Carlsbad Village Segment. Because the Village area is essentially developed and lacks sensitive habitat, this segment lacks goals or policies that relate to drainage infrastructure, storm water conveyance, or biological resources.

3. *CDP 06-04, SUP 06-02 & HMPP 06-03* – Approve a Coastal Development Permit, Special Use Permit (floodplain), and Habitat Management Plan Permit for the proposed

①

EIR 04-02/ZCA 07-04/LCPA 07-06/CDP 06-04/SUP 06-02/HMPP 06-03 – CITY OF CARLSBAD DRAINAGE MASTER PLAN UPDATE/AGUA HEDIONDA AND CALAVERA CREEKS

January 16, 2008

Page 3

dredging and improvements of Agua Hedionda and Calavera creeks. The Coastal Development Permit applies only to the portion of the dredging and improvement project in the Coastal Zone, which is the part of Agua Hedionda Creek between the Cannon Road and El Camino Real bridges.

Planning Commission approval of the three permits above for the dredging of Agua Hedionda and Calavera creeks is dependent upon certification of the Final EIR but is not dependent upon approval of the DMP Update. This is because dredging of the creeks is a component of the current Master Drainage and Storm Water Quality Management Plan adopted in 1994.

Also, adoption of the Drainage Master Plan Update is not subject to Planning Commission review or recommendation and instead requires only the approval of the City Council. This approval will occur at a later date. Staff has provided a copy of the DMP Update to the Planning Commission for information only. An excellent description and analysis of the DMP Update is also provided in the Final EIR.

All aspects of the project, including proposed Local Coastal Program and Zoning Ordinance amendments and permits to dredge and improve the creeks, are consistent with the applicable portions of the General Plan, remaining portions of the Zoning Ordinance and the Local Coastal Program not proposed for change, and other applicable regulations such as the Habitat Management Plan.

III. PROJECT DESCRIPTION AND BACKGROUND

Drainage Master Plan Update – Since adoption of the existing Master Drainage and Storm Water Quality Management Plan in 1994, rapid growth and subsequent development of the City have resulted in the need to reassess existing storm water infrastructure requirements and pipeline capacities to accommodate projected drainage flows. The Drainage Master Plan Update is a guidance document and contains the results of the assessment of existing storm drain infrastructure, the identification of needed improvements required to accommodate storm water flows resulting from new developments within the city limits, and a recalculation of the Planned Local Drainage Area (PLDA) Fee Program. The PLDA Fee is paid by developers and used by the City to construct and maintain storm water infrastructure required for handling the increased storm water flows resulting from new developments.

The purpose of the DMP Update is to identify and implement necessary drainage improvements to provide adequate storm water conveyance and flood control protection throughout the city. Implementation of the proposed DMP Update would accomplish the following objectives:

1. Address existing and anticipated future drainage infrastructure deficiencies within the city at a basinwide level;
2. Provide facilities to accommodate storm flows from future development contemplated by the City's General Plan;

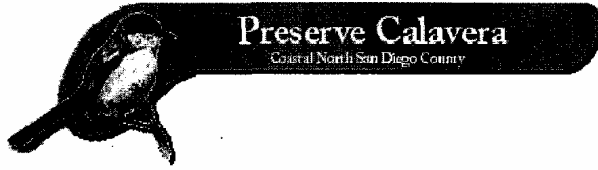
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Planning Commission Resolution 6379
CDP 06-04

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challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid, this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.

5. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this Coastal Development Permit 06-04, (b) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. This obligation survives until all legal proceedings have been concluded and continues even if the City's approval is not validated.
6. Developer shall include, as part of the plans submitted for any permit plancheck, a reduced legible version of all approving resolution(s) in a 24" x 36" blue-line drawing format (including any applicable Coastal Commission approvals).
7. This project shall comply with all conditions and mitigation measures which are required as part of the Zones 8 and 14 Local Facilities Management Plans and any amendments made to that Plan prior to the issuance of grading permits.
- 8.
9. This approval is granted subject to the certification, adoption, and approval of the Environmental Impact Report (EIR 04-02) and Mitigation Monitoring and Reporting Program, SUP 06-02 and HMPP 06-03, and is subject to all conditions contained in Planning Commission Resolutions No. 6376, 6380, and 6381 for those other approvals incorporated herein by reference.
10. Developer shall implement, or cause the implementation of, the EIR 04-02 Project Mitigation Monitoring and Reporting Program.
11. This approval shall become null and void if grading permits are not issued or construction is not started for this project within 24 months from the date of project approval.
12. Prior to the issuance of building permits, the applicant shall apply for and obtain a grading permit issued by the City Engineer.
13. If a grading permit is required, all grading activities are prohibited from (February 1st for gnatcatcher or March 15 for vireo) to (September 15th for gnatcatcher or vireo). All erosion control measures must be installed prior to the initial grading. Any grading extensions into the grading prohibition period must receive written approval of the Planning Director, City Engineer, and the responsible wildlife agencies (California Department of Fish and Game/United States Fish and Wildlife Service).



Received
JAN 24 2008

California Coastal Commission
San Diego County Office

January 24, 2008

Mayor and City Council
City of Carlsbad
1200 Carlsbad Village Dr
Carlsbad, CA 92008

Subject: LCP Amendment
Comments on FEIR
Drainage Master Plan Update
HMP Consistency

Dear Mayor and City Council

These comments on the LCP amendment related to the Master Drainage Plan (MDP) and associated documents are made on behalf of Preserve Calavera. Preserve Calavera is a grassroots organization of residents of Carlsbad, Oceanside, and Vista and users of the open space around Mount Calavera in northeastern Carlsbad. The area is the largest remaining natural land in a coastal North County city.

We are concerned about the public notice associated with the proposed LCP amendments, and the Coastal Development Permit (CDP) for the Agua Hedionda and Calavera creeks dredging project. The Planning Commission staff report stated that the City Council would consider approving the DMP and LCP changes following review of all comments on the LCP after a 6 week public review period from December 14 - January 24, 2008. As a commenter on this project we believe we should have received notice of such public comment period for the LCP. The only mailed notice we received for this project was for the FEIR and this did not include any notice of the proposed LCP amendment. The first public notice of the LCP amendment that we are aware of occurred with the posting of the Planning Commission Agenda for the January 16, 2008 meeting which we believe was received via email on January 10, 2008. The 45 day public comment period on the LCP amendments was not posted on the city website until about January 16 (see email from Scott Donnell), just a few days before the end of the comment period.

Furthermore this was not sent out to the list of interested parties who have notified the city in writing that they wish to be informed of such notices. While notifying agencies and putting legal notices in two local newspapers meets the letter of the law, it certainly is not consistent with the intent of providing reasonable public notice nor is it consistent with the standard city public notice procedures.

Furthermore, we were not aware until January 23, 2008 (during a phone call to CA C Commission staff) that the city had processed the Coastal Development Permit for the project based on the EIR certification by the Planning Commission. The public com

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www.preservecalavera.org

EXHIBIT NO. 7
APPLICATION NO.
A-6-CII-08-019
Preserve Calavera letter of opposition
1 of 14
California Coastal Commission

for the LCP was still underway, the MDP had not been approved, yet the notice of final action for this permit was submitted.

We request that all LCP amendments and coastal development permits be treated the same as all other city project notices- with posting on the city website and email notification to those persons who have signed up for the city's routine notice system.

The projects included within the Master Drainage Plan are located throughout the city - with several in the Coastal Zone or immediately adjacent to the Coastal Zone where they can have both direct and indirect impacts on sensitive coastal resources. Our concerns are the impact on the Buena Vista and Agua Hedionda watersheds including the associated lagoons and coastal waters, the effect on the regional and local wildlife corridors, the proximity to existing regional and state reserves, and the cumulative impacts to sensitive wetland resources. Development of the projects as proposed doesn't just impact the few acres identified for direct impacts, it could impact hundreds of acres of high quality wetland and upland habitat causing further damage to our coastal watersheds.

At the Planning Commission hearing on January 16, 2008 they certified the Final EIR associated with both the program and project level components of the MDP. But at that hearing it was stated that approval of the MDP and LCP amendments that reference the MDP were the authority of the City Council. Those additional items were just submitted to the Planning Commission for information and would be heard by the Council at a future hearing. We believe the content of the MDP and adequacy of the EIR and mitigation measures are critical to any decision to amend the LCP that will then incorporate these by reference. Our comments therefor include all of these related documents.

We reviewed the responses to comments and changes made to the FEIR, submitted further comments to the Planning Commission, and testified at the hearing on January 16, 2008. We believe that many of the written responses and verbal responses made at the hearing failed to address key issues, or provided incomplete information. The result is that what sounds like very innocuous amendments to the LCP, in fact would incorporate this MDP and the mitigation proposed in the FEIR in a way that is not consistent with related documents that better protect coastal resources.

The following are our concerns about the MDP and the proposed LCP amendments that incorporate the MDP into the LCP. The following will identify key issues with first the program and following that the project level elements of the MDP. Reference numbers are those used in the responses to comments to the FEIR. Comment is identified in plain text. Applicant response is shown in *Italics*. Current comment is in **bold**. Please note that these are preliminary comments, prior to close of the public comment period, and prior to release of the staff report on the MND and LCP.

Section I discusses the MND and analysis of impacts shown in the FEIR - particularly concerns related to the Coastal Zone, Section II HMP Consistency and Section III Proposed LCP Amendment.

Section I Program Level MDP Components

L3-5 We are particularly concerned about assumptions about land use and watershed

improvement efforts that could dramatically reduce volume and velocity of flows entering Carlsbad. What efforts have been made to coordinate plans with the upstream parts of the sub-watersheds that are outside of the city of Carlsbad boundaries?

The City made efforts to discuss improvements that may impact other jurisdictions, such as the California Department of Transportation. However, because the DMP Update did not require detailed hydraulic calculations, coordination with upstream jurisdictions was not necessary.

The point is not that the drainage system proposed in Carlsbad would effect the other jurisdictions- it is that what the upstream jurisdictions are doing could dramatically change the volume and velocity of water entering Carlsbad. "Making efforts" could be leaving a phone message. The response doesn't even indicate that there is an intent to properly coordinate- and to consider alternatives should there be a dramatic change in land use, run-off control, or other factors that impact the volume and velocity of flows entering Carlsbad.

How will the city update the MDP to incorporate such changes?

L3-7 The MDP should include some guidelines about how choices were made to use such measures(hardscape engineering solutions) rather than a bioengineering/acquisition/restoration choice that would allow natural creek function. Please particularly identify the decision to install or increase the size of culverts and/or concrete channels instead of using more natural means to control flows.

The use of culverts and/or concrete channels is in part based on the slope of the conveyance, expected discharge volume, depth, and velocity of flow. In most instances flow velocities that are greater than 5 to 7 feet per second introduce instability in unlined channels. The other factors are associated with the soil properties, such as soil type, cohesion, infiltration, etc. These play a role in the channel stability.

Putting a natural creek into a culvert or lining it with concrete is damaging to the natural functions of a creek. Repeated dredging of a creek instead of addressing the upstream issues that are causing silt deposit is also usually not the best solution for the plants and animals that need a functioning creek to survive- or to reduce the silt and pollutant load that reaches the downstream lagoon. The comment was to include guidelines- guidelines that would provide the conditions under which a culvert is determined to be the best solution, and conditions under which it is not. At the hearing staff stated there are policies in place that make it clear that things like culverting creeks are a last resort- however none of this was included in the MDP- and it is the MDP that is referenced in the LCP.

L3-21 It appears that this is really a flood control program and that any benefits to water quality are accidental. If water quality improvements are really part of the project objectives then this requires much more analysis and discussion in both the MDP Plan and the EIR

... The objectives of the DMP Update relative to water quality have been clarified in section 3.2 of the EIR....

What was done was to eliminate" indirect benefits to water quality" from the project goals. Instead of integrating water quality improvement planning with flood control the two are

being treated as completely separate activities. All over this country public jurisdictions are working to improve water quality- doing things like taking creeks out of culverts and creating more natural wetlands as part of that effort- a practice that when properly designed can also have significant flood control benefits.

Instead of eliminating any reference to water quality, the MDP and LCP should clearly state how flood control will be integrated with the required run-off control program of the RWQCB. It should also include a statement that where there are conflicts between flood control and water quality provisions or HMP how these will be resolved.

L3-23The hydrology study needs to assess the impacts of lesser flow volumes and assure that these, as well as the 100 year floods, are being addressed.

...By proposing DMP Update components that would accommodate the 100-year floods citywide, the City is addressing any lesser degree of flooding....

Our point was that much smaller levels of run-off than the 100-year flood are causing damage to our local creeks and adding silt and other pollutants to our lagoons. Of course the flooding is less- but the damage occurs much more frequently and cumulatively may even be worse than a single large flood. The response completely ignores this by only considering flooding- and only at the 100-year flood level. This is another example of why it is important to integrate this with broader watershed protection - that doesn't just consider flooding- but looks at scouring and undercutting, buffers along creeks, and opportunities for retrofits that accomplish flood control but also address the impacts from the lesser storm events.

L3-26 The EIR should identify the total amount of the system that is culverted/channelized or otherwise precluded from natural function and compare what is proposed with the current MDP update and current conditions. The EIR then needs to evaluate the impact of the full extent of such changes on natural hydrology and wetlands function.

A description of each project component proposed in the DMP Update is provided in Tables 3-1 and 3-2 of the EIR.

Tables 3-1 and 3-2 appear to include a total of 17,885 feet of culverting/channelization for the PDLA projects and 1,290 for the non-PDLA for a total of 19,175 linear feet or over 3.6 miles. The explanation has failed to identify how this massive increase in hardscape has minimized either wetlands impacts, or permeable cover. Even though a significant part of these are within developed areas, many are areas with some existing biological functions that will be essentially destroyed. At the hearing staff stated that the prior MDP reduced the amount of creeks that were being culverted/channelized. However 19,175 feet remains a substantial impact. The MDP and FEIR failed to adequately consider the cumulative impacts of such significant changes to existing creeks and drainage channels.

L3-31 The EIR says that no beneficial uses are identified for Calavera Creek. This is not correct.

Section 4.9.1.5 of the EIR has been revised to identify the beneficial uses of Calavera Creek.

The FEIR was modified to correct this error by adding in the list of beneficial uses. However, the point is not to just list the beneficial uses- the intent is to analyze whether there are any adverse impacts to any of the beneficial uses from what is being proposed. The city has failed to demonstrate that any analysis was done on the effects of dredging over 3,000 feet of this creek channel on the beneficial uses of the creek- and the downstream lagoon which is a 303(d) listed impaired waterbody.

L-33 The condition of a creek bottom has a significant effect on the biological resources of the creek. This project should not just return the creeks to their current degraded condition- it should restore them to a reasonable level of biological function. This should include providing some variations in creek bottom to create riffles and ponds and allow for natural variability of flow conditions.

....It is anticipated that the existing biological function of the creeks will be restored following implementation of the project.

There is nothing in the MDP, analysis of impacts, project description or even project goals that indicates that the biological function of the creek is even an issue of concern. The EIR process requires that impacts from the project are addressed. However given the degraded condition of most of our creeks returning them to post project condition is not sufficient. Without real actions to address the biological functions of the creeks the statement that they will be restored is really just empty words.

L3-55 Alternatives analysis is a key element in the CEQA process. .. The alternatives analysis in the FEIR is insufficient as it does not include a feasible environmentally superior alternative to the selected project at the program or project level. Feasible alternatives do exist therefore the city must deny the project as currently proposed and revise the MDP.

Feasible alternatives at the program and project level include a relatively modest change in land use- with greater emphasis on Low Impact Development and control of hydromodification.. A modified version of Alternative B from the Rick Engineering study could both substantially meet objectives- and spare Calavera creek from such extensive dredging.

Refer to response to comment L3-51. Alternative B from the Rick Engineering Study was considered and rejected because it clearly did not meet the project goal to maximize to the extent feasible the number of lots that would receive 100-year flood protection.

The response to comment only discussed alternatives for the project level and not the program level components. There was an environmentally preferred alternative. Why has the city chosen to move forward with the MDP when their own analysis shows it could be done better? Furthermore there is no discussion about whether an environmentally preferred alternative could at least have been considered for the Coastal Zone.

L3-59 The DEIR assumed there are no cumulative impacts to biological resources because there is a regional conservation plan that protects the resources. A plan is a pile of paper. A plan doesn't protect resources.

...because mitigation measures are consistent with the goals and policies of the City's HMP cumulative impacts would be considered less than significant after implementing mitigation.

It is now over 3 years since the city of Carlsbad adopted their HMP- yet the contract for the land manager has yet to be executed, and the regional funding source that is essential to meet all of the conditions of the HMP has been delayed for years. The city cannot rely on a "plan" to address cumulative impacts- they must fully be meeting all of the conditions of the plan. The city has not met all of the conditions of the HMP - specifically the city owned hardline preserve land is not being managed as there is no contract in place with a land manager. Therefor the HMP does not mitigate for the identified, significant cumulative impacts of this project, or any other project that impacts sensitive habitat or the watershed.

L3-61 ...Recent estimates are that the Agua Hedionda watershed is already at 32% impervious cover. (Tetrattech presentation to AHWMP Stakeholders). Studies show a direct correlation between the health of the watershed and the percentage of impervious cover. Watersheds with 10% or more impervious cover are already considered impaired. ...

...the DMP Update would not substantially increase the amount of impervious surfaces within the city (relative to the current 32% cover) and would serve to improve the overall flood and storm water conveyance in the city.

Cumulative impacts analysis is not concerned with just the direct project impacts- but with the impacts of the project along with all of the other projects that are causing adverse impacts. The problem is that there is nothing in place to assure that the watershed will not be subject to further degradation and it is already impaired. The MDP does not even have any goals that show this is even a consideration in the project design.

L3-65 Poor integration of wetlands mitigation. Because several related projects are being addressed independently, the wetlands impacts and mitigation are also being addressed independently. ... There is no evidence to support the conclusion that BMP's on new construction alone are sufficient to prevent adverse cumulative impacts to hydrology and the adverse impacts on the lagoon and coastal waters.

... see response to comment L3-61 regarding impervious cover...The questions regarding water quality do not relate to the EIR. The cumulative analysis has appropriately addressed the potential impacts of other proposed projects.

This was not responsive to the comment which is poor integration of planning of wetland mitigation. Failure to adequately coordinate planning for numerous projects - both city wide, and in the Agua Hedionda/ Calavera creeks project area, fails to address the cumulative impacts to all of the watersheds in this part of the CHU. The city needs to develop better procedures to properly coordinate mitigation planning for anticipated projects at a sub-watershed level- with clear preference for mitigating impacts within the same sub- watershed and with some mitigation sites available within the Coastal Zone.

Project Level MDP Issues

Our priority concerns with the project level components are :

- Direct and indirect impacts to wetland and buffers

- Protection of viable wildlife movement
- Insufficient mitigation measures to address all project impacts
- Insufficient alternatives analysis
- Lack of integration with CWN Watershed Management Plan and currently underway Agua Hedionda Watershed Management Plan

L3-8 It would appear that the small area to be dredged west of El Camino Real and south of Cannon could be done by hand- eliminating the need for storage and an access road in this area. This is of particular concern because most of the sensitive resources identified in the biological survey (Appendix D- Recon bio survey Figure 4) are located west of El Camino Real so minimizing impacts in this area is most important.

...The amount of silt and debris that has accumulated since the emergency dredge project is estimated to be the same or more than what was previously dredged.

The area of greatest impact is in the Coastal Zone and it will be subjected to on-going impacts from planned future dredging. Such a huge amount of silt deposit in the short time period since the emergency dredging is a clear indication of upstream problems. The MDP/FEIR does not indicate any action to address the upstream problems. Of course the silt needs to be removed. But without addressing the root problem there will just be a continuous cycle of dredging and continuing impacts to this area. This is an example of how important it is to integrate the flood control system with watershed planning. Failing to do this will result in continuing cumulative impacts to this area - impacts that have not been adequately addressed in the MDP or FEIR.

L3-9 Please clarify exactly where the mitigation for the Phase I emergency dredging mitigation for permanent impacts to .45 acres willow riparian and .03 acres southern willow scrub is located, plus the Phase II temporary mitigation for 3.06 acres WUS.

....A conceptual mitigation plan has been prepared. The city is in the process of coordinating with the resource agencies to identify a suitable offsite mitigation area.. Impacts to willow riparian and southern willow scrub are considered permanent and will be mitigated by the emergency dredge project in accordance with the permits issued by the resource agencies....

It is now almost 2 years since this sensitive habitat was destroyed by the emergency project. Of course emergency projects require immediate action- but that does not excuse the fact that almost 2 years later this habitat has not been replaced and the plan has not even been completed. If this DMP were integrated with watershed planning there would be projects pre-identified and ready to use for exactly such circumstances. There needs to be a real effort to pre-identify mitigation sites and have a time frame for replacement when habitat is destroyed. The plants and wildlife who depended on this habitat could not wait that long for action- it's too late for them.

L3-34 The wildlife agency comment letter on the project scope, Att item 4.e asked for a discussion of possible conflicts resulting from wildlife-human interactions at the interface between the project sites and natural habitats.

... During project level environmental review for specific DMP updates components, impacts to specific wildlife movements would be evaluated and specific mitigation would be identified.

The proposed project work will impact wildlife movement- in an area already experiencing a high rate of roadkill because of disruption in the wildlife movement corridor. (See Att Report by Karen Merrill). This condition will be exacerbated by further dredge activities in the one part of the wildlife corridor that has not already been cut off by the construction - the actual creek corridor. During the hearing staff stated that the only sensitive species in the project area are birds therefor wildlife movement was not a concern. They also stated that this was really just a lack of understanding about the "level of significance" of the impact- and it was determined that these impacts were less than significant. Protecting the movement corridors of terrestrial species, particularly the mesopredators, is key to protecting the ecosystem. Impacts in this area are significant now- and could be dramatically worse if they are not addressed. Further mitigation is required to protect wildlife movement through this area- both during and post construction.

L3-38 and 39 ... There is no explanation for the statements that there is no need to assess presence of any rare plant species. ... The surveys for Light-footed Clapper Rail, Least Bell's vireo and Southwestern willow flycatcher are all out of date. ...

.. the study area for Agua Hedionda and Calavera creeks was surveyed in August 2005Additionally rare plant species were not were not detected within or along Agua Hedionda Creek during the wetland delineation in 2002 (RECON 2002).

These surveys are 2 and 1/2 to 5 years old and will be even more obsolete by the time work is actually done. Standard protocol is to provide a survey within one year of the EIR issue date- particularly when prior surveys have found endangered species present. The surveys are out of date and should be updated as current information could effect mitigation. Avoiding active nests alone (the only direct mitigation for these impacts) is not sufficient- given the history of damage to this area and the fact that mitigation for the emergency work still has not been done.

L3-45/46 Bio 1a defers description of program and project level mitigation until agency permitting.

The requirement for a mitigation plan is only appropriate for project level components where impacts are known.....A mitigation plan is being prepared for the proposed Agua Hedionda and Calavera creeks dredging ... and will be presented to the resource agencies as part of the permit process.

Agua Hedionda and Calavera creeks are project level components, therefor the mitigation plan should have been included in order to meet public review requirements- both for the mitigation plan and the HMP consistency determination. Failure to include this violates provisions of CEQA and the HMP.

L3-49/51 Alternative B in the Rick Engineering report was rejected as 33 lots were still subject to flooding. Similarly, the 2:1 Side Slope Alternative was rejected because 26 lots were subject to flooding - yet the selected alternative has 9 lots subject to flooding. What is the threshold for

acceptability? Dredging of Calavera creek could be avoided while impacting only 15 more lots than the selected alternative- most of the direct biological resource impacts would be avoided .

...The primary objective of the dredging and improvements to Agua Hedionda and Calavera creeks is to provide 100-year flood protection to the maximum number of lots feasible and practicable. In this case, all but 9 lots would receive protection from a 100-year flood event.

The errata distributed at the Planning Commission hearing changed this to "approximately" 9 lots. In addition, testimony by staff made it clear that in all but one case "flooding" meant part of a lot was wet for a limited period of time not the actual homes. The response fails to provide any explanation for how it was determined that still flooding parts of 9 lots meets the criteria- and that protecting all but "approximately" 9 lots is the maximum level practicable and feasible. The ACOE 404 permit requires justification for the least damaging practicable alternative. The FEIR has failed to provide any justification for the conclusion that what is proposed represents a reasonable trade-off between minimal flooding and damaging the biological function of the creek. What is the LEDPA? Since part of this proposed dredging is in the Coastal Zone there should be further discussion that justifies the impacts to coastal resources.

Section II HMP Consistency

The proposed MDP is not fully consistent with the HMP and the analysis of consistency was inadequate in the FEIR and staff report.. Either the project needs to be revised, project conditions need to be added, or a minor amendment to the HMP needs to be processed to address the areas of inconsistency. Furthermore, the LCP has already been amended to incorporate provisions of the HMP, and to add more specific requirements in the Coastal Zone. This lack of consistency could therefor cause even greater impacts in the Coastal Zone.

The following are four specific areas where the project is not consistent with the HMP:

1. Specific mitigation for the identified wetlands impacts is not provided. In the absence of such information it is impossible to determine if the requirements for no net loss have been met. Furthermore, it is stated throughout the FEIR and staff report that mitigation for the impacts from the emergency dredging project of 2006 have yet to be implemented. There is already a net loss of wetlands function in the project area- a condition that will be exacerbated by the additional impacts from the proposed project.
2. There is no discussion of protection of wildlife movement in spite of this area having been identified as a problem area for wildlife movement. The HMP includes specific provisions to protect wildlife movement but these have been ignored in project design and conditions. There is a requirement for a project biologist- to mark project boundaries, and assure no impacts to nesting species. But this biologist is not tasked with assuring that wildlife movement is not disrupted. This is of particular concern with the Agua Hedionda and Calavera Creek dredging project . This is the area of highest roadkill and it is right on the border of the Coastal Zone, at El Camino Real and Cannon Rds.
3. L3-42 states the project is consistent with the provisions of the HMP sections F.2.A restoration and revegetation and F.3.C landscaping. However the mitigation measures do not

require this. Without project conditions to require this there is no assurance that these provisions will be met.

4. The proposed mitigation measures do not fully address all of the potential edge effects of development- in spite of the project area being adjacent to state of CA preserve land, on the west and city of Carlsbad HMP preserve land on the east.

Section III LCP Amendment

In addition to concerns about public notification, we object to the proposed LCP amendment for the following reasons as discussed above:

1. The project as proposed is not consistent with the HMP as discussed in Section II .
2. The MDP and FEIR is inadequate as discussed in Section I .
3. The LCP discusses methods to protect water quality- an item that was specifically removed from the MDP Update.
4. The project as proposed could have significant adverse cumulative impacts on coastal resources. The MDP includes proposed culverting of 19,175 linear feet or over 3.6 miles of natural and disturbed wetlands. There is essentially no discussion of avoidance or minimization measures.
5. Discrepancies in the hardline preserve description between the HMP and the proposed project have not been adequately explained.

Recommendations

We believe these comments fully support our recommendation to:

1. Make a real commitment to integrate plans for flood control with comprehensive watershed planning - including water quality and habitat conservation. Include language that says the plans are all intended to be consistent and establish a process for resolving any inconsistencies that might later be identified. Require that future projects are integrated with the recommendations of the Agua Hedionda Watershed Management Plan and any future plans for watersheds that extend into Carlsbad. .
2. Add a project condition that requires establishing guidelines for when a creek can be culverted or a natural creek channel can be lined with concrete.
3. Provide the full project level Mitigation Plan for the Agua Hedionda and Calavera creek dredging project for public review and comment.
4. Integrate planning for wetlands mitigation for the prior emergency dredging project, the current project, and any others that might be anticipated in the project area to assure the best outcome for the watershed. This is especially critical for projects like this wher the direct impacts extend into the Coastal Zone.
5. Add a mitigation measure to address the wildlife movement corridor issues in the project area that will only be made worse by this project.
6. Require the city to have the HMP required habitat land manager contract signed and in place before allowing any further coastal development permits, or any further loss of wetland habitat anywhere in the city.
7. Conduct a more comprehensive review of HMP consistency and document specifically how each of the MHCP edge effect conditions will be addressed.

We urge you to adopt these recommendations and assure that this project does what it is intended to- but doesn't cause unintended damage to our coastal resources or the upper watershed through piecemeal planning.

Sincerely,

Diane Nygaard
On Behalf of Preserve Calavera

Cc: David Mayer CDFG, David Zoutendyk USFWS, Mike Porter RWQCB , Toni Ross CCC

Att - Report by Karen Merrill.

Master Drainage Plan lcp Jan 08

November 19, 2007

RE: Review of Report on Road-kill at El Camino Real and Cannon Road

This letter is in response to the Road-kill report by Melissa Booker, biological monitor for the Robertson Ranch East Village Project. We visited the area for a look at the conditions called out in the report. We inspected a much larger area than shown on Figure 1 which is likely why we came to slightly different conclusions.

The basic questions are :

1. Why are we seeing an increase in roadkill at El Camino Real/Cannon?
2. Is the construction associated with the Robertson Ranch project effecting normal wildlife movement through this area?
3. What corrective action is needed ?

The following discusses each of these three questions.

1. Why are we seeing an increase in roadkill at El Camino Real/Cannon?

It is possible that this is just a temporary seasonal increase. However, construction is occurring simultaneously along College, Cannon, and El Camino Real- all at locations associated with existing and new wildlife undercrossings. While no single of these areas would be expected to cause an increase in roadkill (they still have quite a few alternate routes possible), it seems reasonable that the combination of construction along roadways at the time of normal seasonal dispersion is a factor.

2. Is the construction associated with the Robertson Ranch project effecting normal wildlife movement through this area?

Our assessment is that:

- wildlife moving east/west immediately east of Cannon road are not effected by the RR construction

They likely are following Agua Hedionda Creek, are out of the construction zone and cross under El Camino Real at the undercrossing at the creek the same as was done prior to the construction.

- wildlife moving east/west immediately west of Cannon Road have had their normal movement patterns disrupted

This disruption has occurred in several stages over time, probably shifting them further to the west- northwest after crossing College. These animals might have been following Calavera Creek. The culverted creek is no longer functional for wildlife movement. The creek near the culvert is being used as a human latrine and has numerous piles of fresh and historic human feces and toilet paper. This alone would result in wildlife avoiding this area (it sure made us leave quickly). The roadway area that roughly parallels the original creek alignment is now blocked by j-bar. The new undercrossing of College near the creek will eventually help- but remains a construction zone on the southern side- and has no fencing in place on either side to direct wildlife movement away from the road and to the wildlife undercrossing. There was coyote sign on both sides of the new wildlife undercrossing at College Blvd. The movement pattern runs through the preserved habitat west of the project footprint to El Camino Real where they are crossing at grade level. (We did not see evidence of wildlife movement along Cannon road between the j-bar and new boundary wall- but tracking conditions were poor.)

The determination that animals are using the Cannon Road box culverts (Report Figures 4 & 5) from the Aqua Hedionda Creek corridor to reach the area NW of Cannon and N of El Camino Real is incorrect. The culverts (see Photo #PC1) showed no signs of recent wildlife passing through. One of the three culverts appeared to be regularly used by humans. Movement from the creek corridor is blocked by the old flood wall at Rancho Carlsbad and a fenced off opening (see Photo #PC2). There is a small cut in that fencing but not conducive to wildlife passing

through because if they are in the creek corridor already they would continue under El Camino Real following the creek.

- wildlife moving east/west further north- up to development prior to Tamarack have had no disruption in potential movement patterns through this area- but they are not currently using the existing underpass of El Camino Real

The house at the high point of this area probably historically divided wildlife movement into two routes around it. The one to the east is now fully graded with essentially no cover for several hundred feet and lots of heavy equipment. But the path on the west is still natural habitat all the way up to El Camino Real.

The culvert at El Camino Real (Report Figure 6) shows sign of small mammal use only. Coyote sign is evident along the footpaths on the N side of El Camino Real. Crossing at grade appears to be the preferred movement pattern.

3. What corrective action is needed ?

With the opening of Cannon Rd, this intersection has seen increased traffic volume which is likely contributing to the increase in road-kill in this area. This is a new condition that will continue to be a problem for wildlife movement.

Wildlife Movement Recommendations

- Wildlife Crossing signage should be installed along this section of Cannon/El Camino Real to alert drivers and reduce wildlife mortality.
- We agree there is a need for fencing along the north side of El Camino Real to funnel movement through the existing culvert. It is assumed (could not verify) this culvert exits beyond the existing chain link fencing across El Camino Real. Until such time as recommended fencing is installed, the existing chain link fencing (CDF&G) on the south side of El Camino Real bars wildlife from entering the riparian area and their natural movement corridor. Modification to allow access for wildlife will be necessary in the interim.
- The new wildlife undercrossing on College Blvd. should have fencing installed on both sides of the road to facilitate crossing below grade.

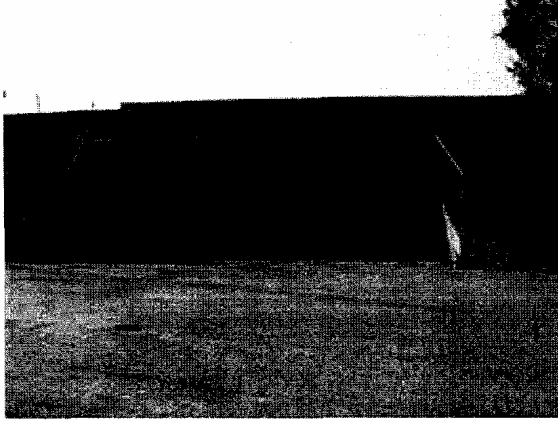
Other Observations

- Installed irrigation downslope College Blvd-it is very wet with a lot of non-natives growing there.
- By detention spillway off College Blvd- old silt fence is still there but down. Is irrigation line still in place here? Tamarisk growing in detention area.
- Creek channel-the concrete channel that runs under College to the creek- the entrance and natural area downslope from College Blvd is full of human feces. This needs to be removed. It is probably from the workers at the adjacent agriculture site.

We appreciate the prompt response to our concerns with increased road kill in this vicinity and hope for remedial actions in the near future to protect the wildlife movement corridor.

Sincerely,

Karen Merrill
Preserve Calavera Tracking Team



Photo# PC1-3 box culverts under Cannon Rd, looking west-northwest



Photo# PC2- old flood wall and fence at Rancho Carlsbad just across (east) from the 3 box culvert under Cannon Rd.



JAN 28 2008

Member Organizations

Agua Hedionda Lagoon Foundation

Batiquitos Lagoon Foundation

Buena Vista Lagoon Foundation

Canyons Network

Cottonwood Creek Conservancy

The Escondido Creek Conservancy

Resources Conservation District of Greater San Diego County

Preserve Calavera

San Elijo Lagoon Conservancy

Mayor and City Council
City of Carlsbad
1200 Carlsbad Village Dr
Carlsbad, CA 92008

January 24, 2008

Re: Carlsbad Drainage Master Plan Update, Final Environmental Impact Report, and Local Coastal Program Amendment

Dear Mayor and City Council:

This letter is written on behalf of the Carlsbad Watershed Network (CWN). CWN is a coalition of organizations whose goal is "To protect, restore and enhance the quality and beneficial uses of water, habitats, and other natural resources of the watersheds of the Carlsbad Hydrologic Unit (CHU) and the adjacent coastal shoreline." The Carlsbad Hydrologic Unit comprises seven watersheds of coastal north San Diego County watercourses -including all of the streams and lagoons in the city of Carlsbad.

We submitted a letter addressing the January 16, 2008 hearing of the Carlsbad Planning Commission, during which the Carlsbad Drainage Master Plan (DMP) Final Environmental Impact Report (FEIR) was approved by the Commission. In that letter, we expressed our disappointment that staff had acted counter to our recommendations of August 2007 that the Plan be amended to: Improve integration with the currently underway Agua Hedionda Watershed Management Plan; improve integration with the Carlsbad Watershed Management Plan; and place more emphasis on the water quality objectives of the plan. In fact, it was stated by staff that because other plans were being developed within the city that integration was not necessary. We continue to believe that this is not in the best interests of the public or the city's natural resources.

We do appreciate that some Planning Commissioners requested more information from staff on the other watershed planning efforts in the City and the advantages to be gained from holistic planning of flood control projects.

Mission: To protect, restore, and enhance the quality and beneficial uses of water, habitats, and natural resources of the watersheds of the Carlsbad Hydrologic Unit and the adjacent coastal shoreline.

www.carlsbadwatershednetwork.org

Received
JAN 28 2008

California Coastal Commission
San Diego Coast Project

EXHIBIT NO. 8
APPLICATION NO.
A-6-CII-08-019
Carlsbad Watershed Network Letter of Opposition
1 of 5
California Coastal Commission

We were, however, extremely disappointed to learn following that hearing that the city of Carlsbad processed a Coastal Development Project (CDP) for dredging the Agua Hedionda and Calavera Creeks immediately following the PC hearing, based on the FEIR approval, but during the open public comment on the issue, due to close on January 24, 2008. This would appear to be a sign that public input is neither desirable nor taken seriously by the City.

The City of Carlsbad adopted a Local Coastal Program (LCP) in 1996, which applies to the approximately 9,700 acres (39 percent) of the city within the Coastal Zone. In many areas, El Camino Real delineates the eastern boundary of the Coastal Zone. In other cases, the Coastal Zone extends further inland, such as in the case of the Agua Hedionda and Calavera Creeks within the Rancho Carlsbad Mobile home park.

The City of Carlsbad's Drainage Master Plan Update includes at least 27 projects that are located within the Coastal Zone. These activities may be subject to a Coastal Development Permit requirement (CDP). Since Carlsbad has an approved LCP, the City acts as the local permitting authority for the issuance of CDPs for projects located within its Coastal Zone, except within areas of deferred certification where the state retains permitting authority. For example, Agua Hedionda Lagoon lies outside of Carlsbad's permitting authority, and projects adjacent to the lagoon would require a CDP from the California Coastal Commission (CCC).

Other projects are likely to have direct or indirect impacts upon resources within the Coastal Zone, and may therefore be within the purview of the CCC to review for compliance with the LCP in the case of an appeal. In addition, the Local Coastal Program for the city of Carlsbad needs to be updated to reflect the DMP projects as well as changes in the language of the LCP to accurately reference the update (largely the substitution of the words "City of Carlsbad Drainage Master Plan" for "Carlsbad master drainage plan").

Finally, the LCP does not now accurately reflect the current regulations regarding stormwater, since it requires only that "All development must include mitigation measures for the control of urban runoff flow rates and velocities, urban pollutants, erosion and sedimentation in accordance with: (1) the requirements of the city's grading ordinance, storm water ordinance, SUSMP, and the "master drainage plan dated 1994" as those plans are certified as part of the city's LCP; (2) the city's jurisdictional urban runoff management program (JURMP) and the San Diego County Hydrology Manual..."; and (3) the additional requirements contained herein." (Section 9)

We strongly suggest that the more current requirements for compliance with the North County Co-permittees Watershed Urban Runoff Management Program (WURMP) now be incorporated into the LCP.

It is understood that the Carlsbad DMP has been developed to address the build-out state anticipated within the city of Carlsbad, as described by the current General Plan. However, the circumstances on the ground continue to change, and especially relevant have been the changes mandated by the SD Regional Water Quality control Board with regard to the handling and discharge of stormwater.

[REDACTED]

the drainage plan would be one component of a stormwater plan that could also include upstream source controls, low-impact development methods, reduced impervious surfaces, daylighting of creeks to improve their water quality and flow characteristics, and the use of floodplains for water retention, energy dissipation, watertable recharge, and non-infrastructure recreational or conservation purposes.

The limited approach of the DMP seems to be leading to a plan that may create more harm and/or fail to take advantage of possible beneficial alternatives to traditional infrastructure development. This general concern is stated here because, clearly, the results of any short-comings of this plan will be focused on the coastal zone.

The DMP FEIR as a whole suffers from vagueness and the use of boilerplate language to justify why there is no mitigation necessary (because impacts are not "significant"), the threshold for "significance" of impacts, and planned mitigation when there is a need. Generally speaking there are references to standards in the City's Habitat Management Plan and Local Coastal Program that are used to justify the assessment that impacts will be mitigated below a level of significance. However, there are no details to support this contention. And in fact, for the two projects that are detailed (the Calavera Creek and Agua Hedionda Creek dredging) there is no mitigation plan in place. Furthermore, impacts that have already been created through the emergency permit (February 2006) to dredge these creeks two years ago still do not have compensatory mitigation established.

The descriptions of the construction of infrastructure projects themselves, on the other hand, are generally detailed to the point where they might not realistically be implemented in the future as currently planned.

AH/Calavera Creek Dredging project

This project should have had its own EIR, since the vagueness inherent in the Program level EIR is not appropriate for these defined projects. While the reader is assured that there will be adequate mitigation provided to reduce all impacts below a level of significance, it is difficult to see how that will actually occur: merely replacing riparian vegetation elsewhere will not do much to reduce the impacts of increased flow into the Agua Hedionda lagoon. Neither will it compensate for the loss of wildlife corridor habitat. This area is designated Link B in the HMP, an area designated as required for connecting Core habitats 4 (AH Lagoon) and 5 (Lake Calavera). The mitigation for loss of this connectivity both during construction and subsequently is completely inadequate. The city of Carlsbad obtained an emergency permit and carried out the work to dredge the Agua Hedionda Creek within the Rancho Carlsbad community almost two years ago. Mitigation for that project does not appear to have been carried out to date. Note that sensitive species habitat in the coastal zone is to be mitigated at a ratio of 4:1. This is not made clear in the FEIR. We strongly urge that in-kind mitigation for that project be carried out within the sub-basin and as close as possible to the immediate vicinity of this location as soon as possible, and that the resulting habitat restoration or other measures to provide wildlife habitat connectivity be analyzed and evaluated as a success prior to permitting the next phase of this project.

We strongly urge that any compensatory mitigation be carried out in such a way as to restore the ecosystem functions lost in the sub-basin where the impact occurs, or at least in the same watershed. We object to mitigation funds being paid to obtain credit in the North County Mitigation Bank, which is outside the city of Carlsbad. There is also no

“mitigation bank” established at Lake Calavera, so such misleading references should be deleted from the DMP. There is also a major concern that the Carlsbad Preserve Management entity and program do not yet exist, so that all the requirements, policies and guidelines referred to as being in the HMP, and which are cited as being the basis for reducing impacts resulting from the DMP to below a level of significance are largely not able to be implemented.

Of particular concern is the continued increasing hardscaping of the Agua Hedionda and Calavera Creeks just above the Agua Hedionda lagoon and the resulting loss of riparian ecosystem functions. Calavera Creek has already been split and 500 cfs put into a pipe. Perhaps a more reasonable approach would have been to have moved the entire creek to that location, away from Rancho Carlsbad, and to have restored as many functions in the new riparian corridor as possible, including the wildlife corridor function.

Project Specific Alternatives Analysis

The alternatives analysis appears too weak to be taken seriously. The preferred project is cited repeatedly as the only one that will achieve the goals of the project, but this may be because the project is so constrained. It certainly appears that implementation of upstream watershed improvements might well reduce the necessity for this massive channelization project. The implementation of the Reduced Impact to Sensitive Habitats and Wetlands Alternative and the 2:1 Slope Alternative in combination would appear quite feasible. It does not appear justifiable to rule out the first alternative merely on the basis that “it may not achieve the level of flood control that would be provided by implementation of the DMP Update.”

Furthermore, the impacts to these creeks and others are described throughout the FEIR as “improvements”. These “improvements”, which include hardscaping the banks, adding gabions, and digging out or widening the creek, may hasten the flow of water into the Agua Hedionda Lagoon, other lagoons, and the Pacific Ocean; however, they detract from the creeks’ abilities to support other beneficial uses. The total impacts to existing natural channels through PLDA projects alone is approximately two miles (AFA, AFB, BRB-U, BQ.) Additional non-PLDA maintenance projects of “enhanced channels” result in additional permanent impacts.

It should also be pointed out that the goal of preventing the flooding of the Rancho Carlsbad property is perhaps an unreasonable one, since it is difficult to see the justification for keeping water off the yards entirely in the rare occasion of a 100-year flood, when most, if not all of the homes themselves are 3-4 feet above the flood level since they are built on raised frameworks. One of the more moderate alternatives, which would do far less environmental damage to wetlands and would cost less would likely be just as effective at keeping floodwaters out of the homes themselves. The LCP would seem to require this approach, or even a more pro-active one of reducing threats to life and property by acquiring the property:

LCP POLICY 4-7 FLOOD HAZARDS: “Development shall continue to be restricted in 100-year floodplain areas. Continuing the policy of zoning 100-year floodplains as open space will permit natural drainage to occur without the need for flood control channels. **No permanent structures or filling shall be permitted in the floodplain and only uses compatible with periodic flooding shall be allowed.** “

If the reasoning behind allowing Rancho Carlsbad to be situated where it is, at the confluence of three creeks in the 100-year floodplain, was that it could be periodically flooded, then it should be allowed to remain there only under those circumstances.

Extraordinary measures to alter the floodplain to save the development from 100-year flooding of only the yards seem unreasonable and contrary to the guidance and intent of the Coastal Commission.

In addition, the fact that the City has removed previous language in the DMP Update including water quality improvements as one of its goals is a great disappointment. In fact, the LCP clearly makes water quality improvement a high priority

Finally, with regard to the repeated reference to the City's Habitat Management Plan as a mitigation instrument for the DMP, it may indeed be that compliance with the HMP is not as easy as it appears in the FEIR. For example, the only drainage projects specifically called out in Appendix B-3 are the AH Creek channel "enhancement", the Cannon Road Drainage channel, and the South Carlsbad Village Storm drain, and together they are anticipated to impact 11-33 acres.

Under Management and Monitoring recommendations (App. F, p. 14) those pertaining to hydrology and flood control, include:

- "Maintain existing natural drainages and watersheds and restore or minimize changes to natural hydrological processes.
- "Use BMPs both within and outside the preserve system to maintain water quality."

In conclusion, we ask that you work with your staff to incorporate more of the opportunities available for protecting our watersheds into the Drainage Master Plan and/or that that plan become integrated with the other fine plans for watershed protection being developed by your city staff and others. In particular, we hope you will take advantage of the information coming out of the Agua Hedionda Watershed Management Plan, which will be released this year. Please also keep us informed of any and all hearings on this matter.

Sincere regards,

Isabelle Kay

On behalf of Carlsbad Watershed Network



City of Carlsbad

Planning Department

EMERGENCY COASTAL DEVELOPMENT PERMIT NOTICE OF DECISION

February 6, 2006

David Hauser
City of Carlsbad
Department of Public Works
1635 Faraday Avenue
Carlsbad, CA 92008


AGUA HEDIONDA AND CALAVERA CREEK CHANNEL DREDGING – EMERGENCY PERMIT (CDP 06-04)

The Planning Director has completed a review of the application for an Emergency Coastal Development Permit for dredging along Agua Hedionda and Calavera Creek channels within and immediately adjacent to the Rancho Carlsbad residential community. The dredging work is required to restore the flood carrying capacity of the Agua Hedionda and Calavera Creek channels to maintain a service essential to the safety of the public.

The dredge work will include removal of approximately 30,000 to 40,000 cubic yards of sediment to restore the channels to their original design conditions. The project includes removal of 0.8 acres of riparian willow forest and 0.03 acres of southern willow scrub. The dredged material will be disposed of at an existing permitted site located at the northwest corner of Cannon Road and College Boulevard outside the Coastal Zone boundary. Only the portion of the dredge work located downstream of the downstream edge of the El Camino Real bridge is located within the Coastal Zone boundary including all the area of vegetation removal.

The project includes two areas within the Coastal Zone for staging of equipment and temporary stockpiling of cleared vegetation. The two areas are located on either side of the channel between the Cannon Road and El Camino Real (ECR) bridges within existing paved and/or gravel surfaced access roads. One staging area is located outside the Coastal Zone boundary on the west side of the Rancho Carlsbad perimeter wall immediately north of El Camino Real. Access to the channel between the ECR and Cannon Road bridges will occur through temporary removal of a 20-foot wide section of the existing rock revetment located on the south side of the channel. Upon completion of the dredge activity, the rock revetment will be restored to its pre-existing condition.

The Planning Director **APPROVES** this request for an Emergency Coastal Development Permit based upon the following:

EXHIBIT NO. 9
APPLICATION NO.
A-6-CII-08-019
Coastal Commission Federal Consistency determination for emergency dredging in 2006
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

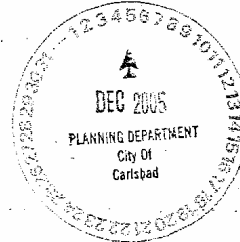
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200



Date: December 1, 2005

JURISDICTION LETTER

Marcela Escobar-Eck, Planning Director
City of Carlsbad
Attn: Scott Donnell
1635 Faraday Ave.
Carlsbad, CA 92008-7314



Project: Agua Hedionda Channel Dredging Project, near intersection of El Camino Real and Cannon Rd., Carlsbad, San Diego County

Coastal Commission file no. (if applicable) NE-110-05

The Coastal Commission staff has received your request to identify Commission jurisdiction for the purposes of processing an individual, nationwide, general or regional permit from the Army Corps of Engineers (Corps). Pursuant to the federal Coastal Zone Management Act (CZMA), the Corps cannot issue a permit for an activity, either in or out of the coastal zone, that affects land and water uses or natural resources of the coastal zone until the applicant has complied with the requirements of Section 307(c)(3)(A) of the CZMA. (16 USC Section 1456[c][3][A].) The applicant can meet these requirements by receiving a Commission concurrence with either (1) a consistency certification prepared by the applicant or (2) a showing that the activity does not affect the coastal zone. Alternatively, the applicant can satisfy these requirements by the issuance of a Commission approved coastal development permit. Since the Commission cannot delegate federal consistency authority to local governments, a coastal development permit issued by a local agency does not replace the requirement for a consistency certification.

The Coastal Commission staff has reviewed the information submitted for the above-referenced project, and has made the following determination:

The Coastal Commission declines to assert federal consistency jurisdiction, due to the fact that: (1) the portion of this project located within the coastal zone has received or will receive a locally issued emergency coastal development permit from the City of Carlsbad and is located within an area where follow-up regular coastal development permits are appealable to the Coastal Commission; and (2) with the opportunity for appeals of follow-up permits, which may include mitigation requirements, an alternative Commission review mechanism is available such that federal consistency review is not needed in order to protect coastal resources.

Sincerely,

Mark Delaplaine
Federal Consistency Staff

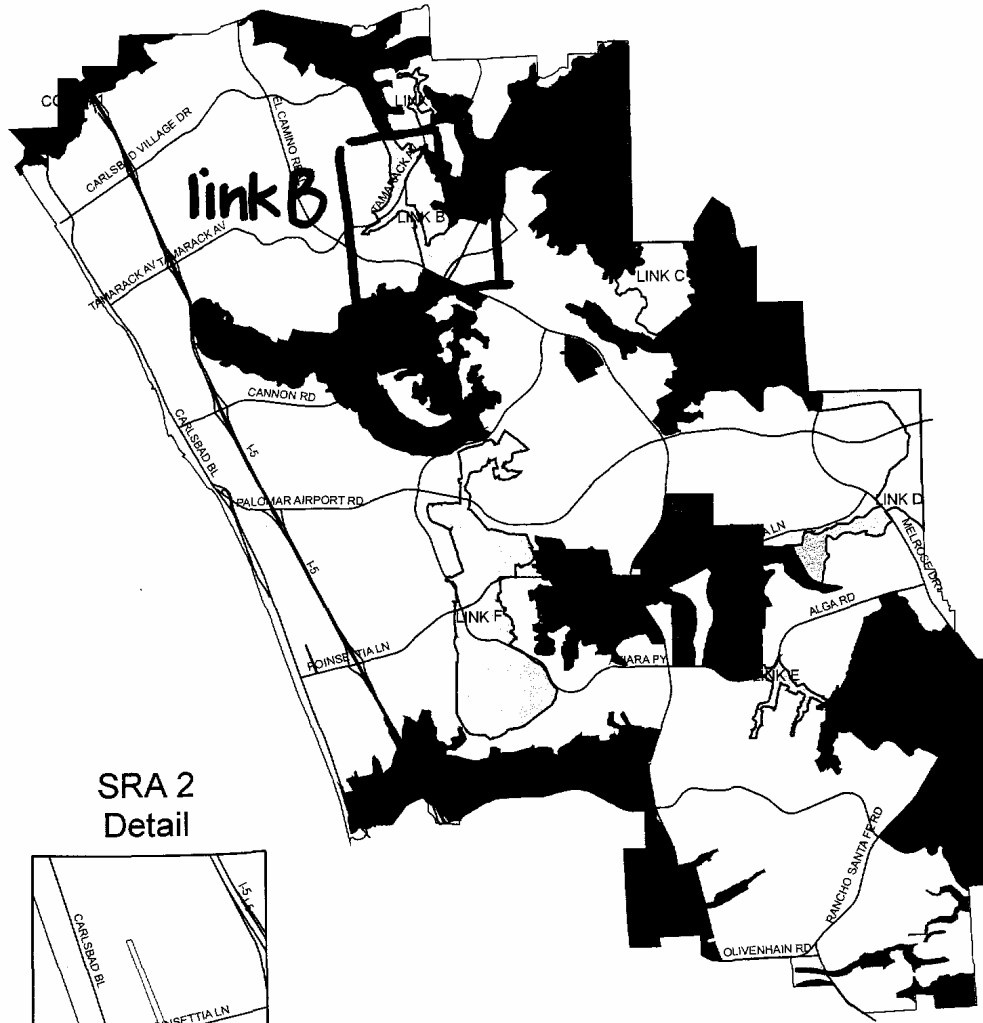






Figure 4
Focus Planning Areas
Generalized Boundaries Only

-  HMP Core
-  Linkages
-  Special Resource Area

Created: 1/27/2006
/cargis2/products/hmp/18_06/fig4_Focus_Planning_Areas



EXHIBIT NO. 10
APPLICATION NO.
A-6-CII-08-019
Wildlife Corridor
 California Coastal Commission