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Coastal Development Permit No.:	**4-08-096**
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Staff:	M. Delaplaine

STAFF REPORT: REGULAR CALENDAR
COMBINED COASTAL DEVELOPMENT PERMIT APPLICATION AND CONSISTENCY CERTIFICATION

CDP APPLICATION NO. 4-08-096 **CONSISTENCY CERTIFICATION:** CC-012-09

APPLICANT: **City of Santa Barbara, Dept. of Public Works (with Santa Barbara County as a Co-applicant)**

AGENTS: Thomas Conti and Michael Berman, City of Santa Barbara, and Tom Fayram, Santa Barbara County

PROJECT DESCRIPTION: Construction of Lower Mission Creek Flood-Control Project (Exhibits 3-4)

PROJECT LOCATION: Lower Mission Creek, City of Santa Barbara (Exhibits 1-2)

MOTION & RESOLUTION: **Page 5**

Substantive File Documents: See Appendix B, p. 32

SUMMARY OF STAFF RECOMMENDATION:

The staff is recommending **APPROVAL**, with **Seven (7) Conditions,** and **CONCURRENCE,** as so conditioned, with a combined coastal development permit ("CDP") application and consistency certification submitted by the City of Santa Barbara ("City")[1] for implementation of the Mission Creek Flood Control Project, to improve flood protection on Lower Mission Creek in the City of Santa Barbara. The Commission has previously reviewed and found this project consistent with the Coastal Act in several iterations: first and primarily as a federal consistency matter, but also in part as a CDP

[1] Note: Santa Barbara County has agreed to be a co-applicant, as it is the County which performs maintenance of the creek channel. However, most references to the applicant in this report will be to the "City" of Santa Barbara.

matter. The purpose of this CDP and consistency certification is to transfer the responsibilities for implementation of the project from the federal government to the local government (i.e., from the U.S. Army Corps of Engineers ("Corps") to the City). [2]

The two actions (consistency and CDP review) are needed because the project is located both within and inland of the coastal zone, and because the Commission does not have an administrative procedure for converting a Commission concurrence with a federal agency's Consistency Determination into a concurrence with a Consistency Certification authorizing a local agency to conduct the work. During its previous reviews the Commission understood that the City would eventually be the primary implementing agency. Accordingly, since the Corps has ceased funding the project, to formalize the Commission's review of the City's role, the City has submitted the subject CDP application and consistency certification for its assumption of implementation for the project. The City has also, as it has consistently (albeit, informally) to date, agreed to comply with all previous requirements the Commission has adopted as necessary for the project.

The Commission's previous reviews commenced with the Corps' submittal of "phased" consistency determinations (No. CD-117-99 and CD-046-06 – see the footnote on page 13 for an explanation of the "phased" consistency review process). In those reviews the Commission adopted conditions, which the Corps agreed to implement. Those conditions are being carried through to the subject CDP/consistency certification, and the City has also agreed to comply with them. These conditions address the need to continue to: (a) clarify the terms of the Tidewater Goby Management Plan; (b) clarify future review procedures and monitoring responsibilities for the project as a whole; (c) memorialize agreements to avoid artificial lagoon breaching; and (d) provide an appropriate lagoon buffer zone.

In separate but integrally related CDP matters: (1) the Commission has also approved (with conditions) City implementation of portions of the project, in connection with a CDP for the Cabrillo Bridge replacement (CDP 4-07-134); and (2) the City has approved a coastal development permit (that was not appealed) for the portion of the project within its coastal development permitting jurisdiction (i.e., from Chapala St. to Highway 101)(City CDP2008-00012). Both of these actions included mitigation and monitoring measures (Exhibits 5-6) that are being incorporated into the subject submittals and the Commission's conditions.

The subject CDP and consistency certification also reflect several relatively minor modifications and refinements to the project since the Commission's previous federal consistency review, consisting primarily of:

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[2] Aside from those components associated with the Cabrillo Blvd. Bridge replacement, which the Commission has already authorized the City to implement, in CDP 4-07-134.

1) replacing the originally-proposed “fish ribs” with “grout lines” on the sides of the channel (both “fish ribs” and “grout lines” are the spaces designed to provide refuge for tidewater gobies during high stream velocity conditions);

2) vegetating the south side of the lagoon;

3) relocating the oxbow bypass (near Hwy. 101 and the Union Pacific rail corridor) 10 ft. closer to the Moreton fig tree; and

4) refining the Ortega Street Bridge Replacement (located outside the coastal zone) to alter the channel alignment slightly and retain a residence that was originally slated for removal.

The Commission has already endorsed the first of these changes through its approval with conditions of the City’s CDP application for the Cabrillo Bridge replacement (CDP 4-07-134). The second and fourth of these changes are improvements from a habitat perspective, and which the Commission staff will have the continuing opportunity to review when they are finalized. The third change appears benign, and the City’s request includes an analysis showing that this relocation of the oxbow slightly to the east will not affect the Moreton fig tree (and includes additional monitoring commitments to assure protection of the tree). None of these changes alters the fundamental consistency of the project (as conditioned) with the Coastal Act. In its most recent consistency review (CD-046-06), the Commission found that:

> *… the original flood control project was necessary for flood-control purposes, was the least damaging feasible alternative, included feasible mitigation and, with the mitigation and proposed design, would, as conditioned, protect stream resources, water quality, and environmentally sensitive habitat (including federally listed threatened species - steelhead trout and tidewater goby), scenic views, and archaeological resources.*
>
> *…*
>
> *Five conditions are necessary to assure consistency with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act, due to the need to: a) avoid misunderstandings over the terms of the Tidewater Goby Management Plan (because several differing drafts had been circulated prior to the Commission’s scheduled public hearing); b) clarify future review procedures and monitoring responsibilities; c) memorialize agreements between the Corps, the Commission staff, and the City over avoiding lagoon breaching, planning and implementing an appropriate lagoon buffer zone based on the applicable Coastal Act policies (and including coordination with interested parties); and d) clarify creekside riparian monitoring responsibilities. With the measures included in the revised design,*

> *monitoring, maintenance, mitigation, and adaptive management plans, and the on-going review of water quality plans and maintenance dredging, as well as any future project modifications, and as conditioned, the project would protect stream resources, water quality, environmentally sensitive habitat (including steelhead trout and tidewater goby), scenic views, and would therefore be consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act.*

These findings remain applicable, and the minor modifications contained in the current proposal are also consistent with the same Coastal Act policies. Conditions are still needed to transfer management responsibilities from the Corps to the City. Accordingly, the Special Conditions on this permit are similar to those the Commission previously adopted for the Corps and City Cabrillo Bridge projects, with two additional conditions to: (1) reflect the mitigation and monitoring requirements from the more recent City and National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) Biological Opinions (Exhibits 6-7), and (2) require a liability waiver. The standard of review for the portion of the project subject to a coastal development permit is the Chapter 3 policies of the Coastal Act, with the City's certified local coastal program serving as guidance. The standard of review for the portion of the project subject to consistency review is also Chapter 3 of the Coastal Act. As conditioned, the project is consistent with the Stream Alteration, Water Quality, Wetlands, ESHA, View Protection, and Hazards Policies (Sections 30236, 30231, 30233, 30240, 30251, and 30253) of the Coastal Act.

LIST OF EXHIBITS

Exhibit 1. **Project Area (with 1a showing Coastal Zone and CCC Original Permit Jurisdiction)**
Exhibit 2. **Project Plans**
Exhibit 3. **Detailed Project Plans**
Exhibit 4. **Ortega St. Bridge Replacement**
Exhibit 5. **CCC Conditions, Cabrillo Bridge Replacement, CDP 4-07-134**
Exhibit 6. **City Conditions, CDP-2008-00012**
Exhibit 7. **NMFS 7 USFWS Conditions, Cabrillo Bridge Replacement, Biological Opinions 2007-08982 and 1-8-07-F-63**
Exhibit 8. **CCC Findings, Corps of Engineers, CD-046-06**
Exhibit 9. **Original Project Description, from Corps CD-117-99**

I. STAFF RECOMMENDATION

MOTION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT

The staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the permit application with special conditions.

MOTION

I move that the Commission **approve** Coastal Development Permit Application No. 4-08-096 subject to the conditions set forth in the staff recommendation.

The staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby **approves** coastal development permit 4-08-096 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

MOTION AND RESOLUTION FOR CONSISTENCY CERTIFICATION

MOTION

I move that the Commission **conditionally concur** with the City of Santa Barbara's consistency certification CC-012-09 that, if modified in accordance with the following conditions, the project described therein would be consistent with the enforceable policies of the California Coastal Management Program (CCMP) and would be conducted in a manner consistent with that program.

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in the certification, as conditioned, and adoption of the following resolution

and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

The Commission hereby **conditionally concurs** with the consistency certification by the City of Santa Barbara on the grounds that, if modified in accordance with the following condition, the project described therein would be consistent with the enforceable policies of the CCMP and would be conducted in a manner consistent with that program.

II. STANDARD CONDITIONS

See Appendix A, p. 32.

III. SPECIAL CONDITIONS

1. Tidewater Goby Management Plan and other Lagoon Management Plans. The Management Actions and other commitments contained in the Tidewater Goby Management Plan – Lower Mission Creek Flood Control Project, dated April 2005, shall be binding on the City of Santa Barbara, except as provided below. Any changes to the management plan or other actions inconsistent with the Management Actions in the Tidewater Goby Management Plan shall not be implemented unless the Coastal Commission has authorized any such changes or actions through the federal consistency and/or coastal development permit review process (i.e., as an amendment to this cdp and/or a modification to this consistency certification). Any future management plans or projects involving the Mission Creek Lagoon or, to the extent the Laguna Channel is addressed in the Tidewater Goby Management Plan, involving the Laguna Channel estuary, shall be coordinated with the Tidewater Goby Management Plan.

2. Lagoon Breaching Prohibition. The City (and County) shall not breach the lagoon, unless there is an imminent threat to public health and safety, and, in that event, only after the Executive Director: (a) agrees with the City's (or County's) determination that there is an imminent threat to public health and safety, reviews; (b) has determined that all feasible measures have been incorporated to minimize threats to tidewater gobies; and (c) has authorized any such breaching.

3. Lagoon Buffer. In conjunction with the Tidewater Goby Management Plan, the City shall establish a 20-50 foot wide buffer zone along both sides of the creek/lagoon that extends 150-200 feet downstream of the ends of the existing wing walls at the downstream side of the Cabrillo Boulevard bridge. This buffer plan shall include clarification as to its effects and relationship to the existing bike path and periodic

development such as dredging operations within this area. Prior to commencement of construction of the flood control project the City shall submit the final Tidewater Goby and Lagoon Management Plans (including buffers) to the Executive Director for his review and approval based on his determination that they continue to remain consistent with standards articulated in the draft Plans the Commission previously found consistent with the Coastal Act (in CD-046-06), and with the Commission's findings in that action. The Executive Director will only consider activities which are consistent with the Coastal Act and will involve all known interested parties prior to approving the final plan.

4. <u>Landscaping Requirements Adjacent to Mission Creek.</u> Prior to commencement of construction of any portion of the flood control project, the City will provide, for the review and approval of the Executive Director, a detailed monitoring plan for the native landscaping to be provided outside the creek bank edges. The detailed plan shall specify performance and success criteria and what incentives are being provided to encourage private landowners to plant and maintain native, non-invasive, trees and shrubs, and shall provide for use of local stock wherever possible. The plan shall comply with all the measures contained in Special Conditions 13 and 14 of CDP 4-07-134, which include:

Habitat Enhancement and Revegetation Monitoring Program

A. Prior to the issuance of the coastal development permit, the City shall submit, for the review and approval of the Executive Director, a final Habitat Restoration, Enhancement, Monitoring, and Management Program for restoration of the creek banks upstream and downstream of the Cabrillo Bridge. This program shall be prepared by a qualified biologist or environmental resource specialist and shall include, but not be limited to, the following:

1. *Onsite habitat enhancement shall include, at a minimum, the removal of any and all invasive plant species on the site and revegetation of all disturbed areas with appropriate native species of local genetic stock, including areas where invasive and non-native plants were removed;*
2. *Indication as to the location, type, and height of any temporary fencing that will be used for restoration. The plans shall also indicate when this fencing is to be removed.*
3. *Indication on plans that invasive plant species shall be removed from all development and restoration areas for the life of the project.*
4. *Indication on plans that herbicides shall not be used within the creek habitat. Target non-native or invasive species shall be removed by hand.*
5. *Indication on plans that rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.*

6. *A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, a biological survey, a description and map showing the area and distribution of existing vegetation types, and a map showing the distribution and abundance of any sensitive species.*
7. *A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.*
8. *Documentation of performance standards, which provide a mechanism for making adjustments to the mitigation site when it is determined, through monitoring, or other means that the restoration techniques are not working.*
9. *Documentation of the necessary management and maintenance requirements, and provisions for timely remediation should the need arise.*
10. *A planting palette (seed mix and container plants), planting design, source of plant material, and plant installation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.*
11. *Sufficient technical detail on the restoration design including, at a minimum, a planting program including a description of planned site preparation, method and location of exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques.*
12. *A plan for documenting and reporting the physical and biological "as built" condition of the site within 30 days of completion of the initial restoration activities. The report shall describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution.*
13. *Documentation that the project will continue to function as viable native habitats, as applicable, over the long term.*

14. *A Monitoring Program to monitor the Restoration and Enhancement. Said monitoring program shall set forth the guidelines, criteria and performance standards by which the success of the enhancement and restoration shall be determined. The monitoring programs shall include but not be limited to the following:*

    (a) Interim and Final Success Criteria. Interim and final success criteria shall include, as appropriate: species diversity, total ground cover of vegetation, vegetative cover of dominant species and definition of dominants, wildlife usage, hydrology, and presence and abundance of sensitive species or other individual "target" species.

    (b) Interim Monitoring Reports. The City shall submit, for the review and approval of the Executive Director, on an annual basis, for a period of five (5) years, a written monitoring report, prepared by a monitoring resource specialist indicating the progress and relative success or failure of the enhancement on the site. This report shall also include further recommendations and requirements for additional enhancement/ restoration activities in order for the project to meet the criteria and performance standards. This report shall also include photographs taken from predesignated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the enhancement/restoration project in relation to the interim performance standards and final success criteria.

    (c) Final Report. At the end of the five-year period, a final detailed report on the restoration shall be submitted for the review and approval of the Executive Director. If this report indicates that the enhancement/ restoration project has, in part, or in whole, been unsuccessful, based on the performance standards specified in the restoration plan, the applicant(s) shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental program shall be processed as an amendment to this coastal development permit.

    (d) Monitoring Period and Mid-Course Corrections. During the five-year monitoring period, all artificial inputs (e.g., irrigation, soil amendments, plantings) shall be removed except for the purposes of providing mid-course corrections or maintenance to insure the survival of the enhancement/restoration site. If these inputs are required beyond the first two years, then the monitoring program shall be extended for every additional year that such inputs are required, so that the success and

sustainability of the enhancement/restoration is insured. The enhancement/restoration site shall not be considered successful until it is able to survive without artificial inputs.

B. *The City shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no new amendment or permit is legally required.*

Herbicide Use

Herbicide use shall be restricted to the use of Glyphosate Aquamaster™ (previously Rodeo™) herbicide for the elimination of non-native and invasive vegetation located within upland and transitional areas of the project site for purposes of habitat restoration only. No use of any herbicide shall occur during the rainy season (November 1 – March 31) unless otherwise allowed by the Executive Director for good cause. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.

The plan shall also provide for increasing the incentives for landowners in the event monitoring shows that success criteria are not being met. The City or County shall assume all monitoring responsibilities for the life of the project.

5. <u>Water Quality, Sediment Testing, Erosion Control, and Habitat Monitoring Plans.</u> Prior to commencement of construction of any portion of the flood control project, the City shall submit, for the review and approval of the Executive Director, all water quality, sediment and beach compatibility testing, erosion control, and stormwater protection plans. The plans shall comply with the measures in Conditions 7 and 8 of CDP-07-134, which require:

Protection of Water Quality

It shall be the applicant's responsibility to ensure that the following occurs during project operations:

A. *In order to minimize impacts to Mission Creek from storm water runoff associated with Cabrillo Boulevard, the City shall install filtration basket inserts within the catch basins at the Cabrillo Bridge.*

B. *The work area shall be flagged to identify limits of construction and identify natural areas that are off limits to construction traffic.*

C. *No construction materials, debris, or waste shall be stored on the beach or where it may be subject to erosion and dispersion. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris that may be discharged into coastal waters. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.*

D. *No equipment shall be stored in the project area, including designated staging and/or stockpile areas, except during active project operations.*

E. *Only areas essential for construction shall be cleared.*

F. *Construction equipment shall not be cleaned on the beach or in the beach parking lots.*

G. *Stockpiled materials shall be located as far from stream areas on the designated site(s) as feasible and in no event shall materials be stockpiled closer than 30 ft. in distance from the top edge of a stream bank.*

H. *All debris and other construction materials shall be cleared from Mission Creek prior to reintroduction of stream flows and tidal action to the channel following removal of the cofferdams and sheet piles.*

Erosion Control Plans

Prior to commencement of development, the City shall submit two (2) sets of final erosion control plans, prepared by a qualified engineer, for review and approval by the Executive Director. The plans shall be consistent with all measures required pursuant to Special Condition Seven (7). The plans shall also incorporate the following criteria:

(1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

(2) The final erosion control plans shall specify the location and design of erosion control measures to be implemented during the rainy season (November 1 – May 1). The City shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps),

temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. Straw bales shall not be approved. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment shall be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

(3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

(4) Storm drain inlets shall be protected from sediment-laden waters by the use of inlet protection devices such as gravel bag barriers, filter fabric fences, block and gravel filters, and excavated inlet sediment traps.

6. <u>Incorporation of Conditions From Other Permits and Entitlements, Monitoring Plans, and Annual Reporting.</u> The City shall comply with the conditions of City permit CDP-2008-00012 (Exhibit 6), and the NMFS and USFWS Biological Opinions (2007-08982 and 1-8-07-F-63, respectively) (Exhibit 7). Any changes to the project, including any modifications to any of those permit conditions, unless specifically modified in Conditions 1-5 above, shall trigger the need for the City to notify the Commission staff, and if the staff deems it necessary, an amendment to this coastal development permit and/or re-review of the consistency certification. A copy of all monitoring reports required under these conditions, including all annual monitoring plans for tidewater goby and steelhead habitat monitoring submitted to the Fish and Wildlife Service and National Marine Fisheries Service, shall be submitted to the Commission staff for its review in a timely manner once they are completed. The City shall comply with all previously-imposed seasonal restrictions, including but not limited to: (a) no work in the creek from November 1 through March 31; (2) pile driving limited to September 1 to December 1 (unless the Executive Director authorizes a one month extension); (3) work in the creek limited based on City Condition (H)(32) (see Exhibit 6, p. 14); and (4) no work in the estuary from December 1 to June 1. The City shall also provide annual reports to the Commission staff describing the status of all project

components, and its progress in implementing all of these mitigation measures (including its compliance with the Commission's conditions on CDP-4-07-134 (Cabrillo Bridge Replacement)).

7. <u>Assumption of Risk</u>. By acceptance of this permit, the City acknowledges and agrees (i) that the site may be subject to hazards from flooding and erosion; (ii) to assume the risks to the City and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

Prior to issuance of the Coastal Development Permit, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS

A. BACKGROUND

Mission Creek has flooded, often severely, at least 20 times since 1900, and the flood control project was designed to increase the channel's capacity from 1500 cubic feet per second (cfs), to 3400 cfs, and to provide an approximately 20-year storm level of protection (current capacity provides 5-year protection). In a two-part "phased" review (under the Coastal Zone Management Act),[3] the Commission concurred with consistency determinations submitted by the U.S. Army Corps of Engineers (Corps) for the lower Mission Creek Flood Control Project. On August 9, 2001, the Commission

[3] 15 CFR §930.36 (d) provides: *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information *(e.g.,* planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

conditionally concurred with the Corps' consistency determination for Phase I of the flood control project (CD-117-99), and on August 11, 2006, the Commission conditionally concurred with the Corps' consistency determination for Phase II (CD-046-06).

Throughout its reviews the Commission was aware that the City and/or the County of Santa Barbara would ultimately assume the responsibility for constructing and maintaining many of the project's components, and at this point, the Corps is no longer the implementing agency. Because the City needs a Corps (Section 404) permit for its work within the stream, and in order to maintain the Commission's continuing ability to enforce agreements the Commission previously had with the Corps (which the City had informally agreed to during the Commission's reviews), the Commission staff informed the City that to enable itself to legally implement the project, the City should apply for the subject coastal development permit (CDP) for the portion of the project in the Commission's original permit jurisdiction, and submit a consistency certification for the remainder of the project.

The Commission has already authorized City implementation of a portion of the flood control project, the component that was included within the City's previous CDP application for the Cabrillo Street Bridge replacement. The Commission approved that CDP with conditions on April 9, 2008 (CDP No. 4-07-134). Finally, the City has approved a coastal development permit (that was not appealed) for the portion of the project within its coastal development permitting jurisdiction (i.e., from Chapala St. to Highway 101)(City CDP2008-00012). That permit included Conditions assuring, among other things, that the City would comply with all prior Commission requirements adopted through its reviews of the Corps' consistency determinations. Additional City requirements on that City permit are incorporated in Condition 6 and attached as Exhibit 6.

B. PROJECT DESCRIPTION

The City proposes to assume responsibility for implementing the Lower Mission Creek flood-control project, which consists of: (1) increasing the channel capacity from 1500 cu. ft. per second to 3400 cubic feet per second (cfs), thereby providing an approximately a 20-year storm level of protection; (2) replacing four bridges along the study reach; (3) installing a new culvert bypassing the oxbow below Highway 101 ("oxbow bypass") (the oxbow would be left in place as a low-flow channel); (4) planting of native riparian species along sloped banks stabilized by riprap and creation of additional riparian habitat by enlarging planted slopes in areas where the Corps must purchase property adjacent to the stream; (5) reconstructing creek banks using either a vertical wall or a combination vertical wall and riprap sideslope (combination vertical wall/riprap sideslope would consist of vertical wall for the bottom half, with ungrouted riprap for the upper half, and with native riparian vegetation planted within the riprap); (6) maintaining existing natural stream bottom, and restoring concrete lined stream

bottom to natural conditions (except immediately underneath bridges and through the oxbow); (7) installing fish habitat improvements; and (8) sediment disposal (location to be determined in consultation with Commission staff and pending test results).

The project is described in greater detail on pages 4-5 of the Commission's findings on Consistency CD-046-06 (Exhibit 8) and in its finding on CD-117-99 (Project Description excerpt, Exhibit 9). The City proposes several refinements and modifications made since that Commission review, consisting of:

1) replacing the originally-proposed "fish ribs" with grout lines on the sides of the channel; (both grout lines and fish ribs are the spaces designed to provide refuge for tidewater gobies during high stream velocity conditions);
2) vegetating the south side of the lagoon; and
3) relocating the oxbow bypass (near Hwy. 101 and the Union Pacific rail corridor) 10 ft. closer to the Moreton fig tree; and
4) refining the Ortega Street Bridge Replacement (located outside the coastal zone) to alter the channel alignment slightly to accommodate the roots of Sycamore trees downstream of the bridge, and retaining a residence that was originally slated for removal.

The City's most recent plans are attached as Exhibits 2-4. Exhibit 1a shows the location of the Commission's original jurisdiction – development in this area is the portion of the project that is the subject of CDP 4-08-096; the remainder of the project is the subject of CC-012-09.

C. APPLICANT'S CONSISTENCY CERTIFICATION

The City of Santa Barbara has certified that the proposed activity complies with the federally approved California Coastal Management Program (CCMP) and will be conducted in a manner consistent with such program.

D. PROCEDURES

1. <u>Combined Procedures</u>. A coastal development permit from the Commission is needed for the portion of the project within the Commission's original permit jurisdiction (Exhibit 1a). A consistency certification is required for remainder of the project, including portions outside (landward of) the coastal zone boundary.[4] To facilitate Commission review of these items, both the coastal development permit application and the consistency certification will be heard at the same time. The

[4] Note – A Commission-issued CDP is "deemed" to satisfy any federal consistency requirements; the subject consistency certification is needed in addition to the subject CDP to cover areas outside the Commission's original (CDP) jurisdiction (including the area in the City's CDP jurisdiction, as locally issued CDP's are *not* deemed to satisfy federal consistency requirements).

Commission staff recommends approval of the coastal development permit application and concurrence with the consistency certification, both actions with the same conditions.

2. <u>Conditional Concurrences</u>. Section 15 CFR § 930.4 of the Federal Consistency regulations provides, in part, that:

> *(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a . . . Federal agency's approval under Subparts D, E, F or I of this part, would allow the State agency to concur with the Federal action. If instead a State agency issues a conditional concurrence:*
>
> > *(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and*
> >
> > *(2) The Federal agency (for Subpart C), applicant (for Subparts D and I), person (for Subpart E) or applicant agency (for Subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and*
> >
> > *(3) The Federal agency (for Subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.*
>
> *(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.*

E. ALTERATION OF COASTAL WATERS AND SENSITIVE HABITATS

The Coastal Act provides:

> **Section 30236.** *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*
>
> **Section 30233**
>
> *(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 [eight specified uses]: …*
>
> **Section 30240**
>
> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

As discussed in its findings on the two consistency determinations submitted by the Corps for this flood control project (the findings from CD-117-99 and CD-046-06), the Commission has twice found that the flood control project was an allowable use for stream alteration and fill,[5] was the least environmentally damaging feasible alternative, included adequate monitoring and mitigation, and would benefit the stream resources by widening of the

[5] As the Commission noted in CD-117-99, while flood-control facilities are not defined as an allowable use under Section 30233(a), Section 30236 of the Coastal Act allows for alteration of streams for flood-control purposes, provided that it meets all the requirements of that section. Citing the legal principle that "Giving precedence to the more particular provisions of section 30236 over the more general provisions of sections 30233(a) and 30240(a) is in accord with generally applicable principles of California law. See, e.g., Civil Code § 3534 ('Particular expressions qualify those which are general.')" the Commission determined that Section 30236 clearly anticipates dredging, diking, and filling of coastal waters for flood-control purposes and is a more specific policy than Section 30233(a) or 30240(a) and clearly shows legislative intent to allow alteration of streams for flood-control purposes.

stream and estuary and removal of artificial hard bottom in the estuary and stream. Exhibit 8 contains the most recent set of these findings (CD-046-06), is attached as Exhibit 8, and is incorporated here by reference. In that review the Commission further found:

> *In compliance with the above commitments and Commission conditions, the Corps has convened the experts needed to analyze the biological, hydrological, water quality, and other specific design and has submitted the results of these more refined analyses, in the form of a tidewater goby management plan, a flood control channel maintenance, a refined pilot channel design, and landscaping plans.*
>
> *The pilot channel design plan is based on input from technical experts at the Corps, City, County, University of California, NOAA Fisheries, as well as input from environmental organizations (EDC and Santa Barbara Channel Keeper). The refined plan includes: (1) unlined stream bottom (except under existing bridges); (2) wider openings at four bridges; (3) widened stream sections, including (a) 2,200 ft. of widening from Canon Perdido to Haley St. (from 25 ft. to 42 ft), 1000 ft. from Haley St. to Highway 101 (25 ft. to 50 ft.), and 1,100 ft. from Yanonali St to the Beach (27 ft. to 60 ft.); (4) removal of existing concrete bottom; (5) installation of riprap lining to protect bridges from scour due to increased widths; (6) construction of a pilot channel lined with gravel/cobbles designed to concentrate flows and maintain temperatures beneficial for fish year-round; (7) placement of clusters of boulders as rock energy dissipaters; (8) installation of fish ledges and fish baffles to provide fish protection and resting areas (particularly for steelhead); (9) consideration of measures to reduce the extent of riprap; and (10) an adaptive management program …*
>
> *The … County's adaptive Channel Maintenance Plan [which was part of the Corps' submittal, noted that] … the County will be performing the maintenance activities. This plan includes inspection and adoption of methods to protect fish enhancement features of the project, minimizing effects of vegetation removal and channel desilting, minimizing use of herbicides (and continuation of the original "no use of herbicides in the coastal zone" feature), re-creating pilot channels where needed, and removal of non-native vegetation ….*
>
> *The tidewater goby management plan … discusses the result of the tidewater goby genetic … and notes the importance of Mission Creek as one of the primary regional "source" estuaries (i.e., for repopulation to other estuaries) for tidewater gobies in southern Santa Barbara County, due to its relatively large size and long history of goby occupation, larger tidal reach, and longer upstream accessibility. The management plan also notes fish habitat improvements (e.g., baffles, ledges, slower velocities along the perimeter of the lagoon) discussed above will also benefit gobies, which are poor swimmers and need refuge during high flow events. The plan notes that, as discussed above, limited construction (primarily repair of*

damaged channel walls) would occur within the estuary itself. The plan contains [adequate] measures … to protect gobies ….

…

In order to find the proposed project consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act, the Commission finds that several conditions are necessary due to the need to: (a) avoid misunderstandings over the terms of the Tidewater Goby Management Plan (in part because several differing drafts had been circulated prior to the Commission's scheduled public hearing); (b) clarify future review procedures and monitoring responsibilities; (c) memorialize agreements between the Corps, the Commission staff, and the City over avoiding lagoon breaching, planning and implementing an appropriate lagoon buffer zone based on the applicable Coastal Act policies and including coordination with interested parties; and (d) clarify creekside riparian monitoring responsibilities.

To address these concerns, the conditions on pages 7-8 [pp. 9-10 of this report] *are intended to: (a) clarify which version of the Tidewater Goby Management Plan is the agreed-upon plan; (b) clarify that any changes to the plan will necessitate further Commission review; (c) clarify that any Laguna Channel plans are coordinated with the Tidewater Goby Management Plan; (d) clarify that artificial lagoon breaching is prohibited (except under emergencies, and even then only with Commission authorization); (e) reflect an agreement to amend the lagoon buffer provisions of the Tidewater Goby Management Plan to provide for a 20-50 ft. buffer on both sides of the lagoon; (f) provide for submittal of the final management plan (including buffers) to the Commission staff for its review and concurrence, which review will involve all known interested parties, and which will only consider activities which are consistent with the Coastal Act (including the habitat, wetland and stream alteration policies, and public access and recreation policies, and, if any conflicts should occur, the conflict resolution provisions of Section 30007.5 of the Coastal Act); (g) provide for Commission staff review of the riparian landscaping plan outside the creekbed, including plans and ongoing monitoring responsibilities; and (h) provide for Commission staff review of the water quality plans and monitoring.*

With the measures included in the revised design, monitoring, maintenance, mitigation, and adaptive management plans, and the on-going review of water quality plans and maintenance dredging, as well as any future project modifications, and as conditioned, the Commission finds the project would protect stream resources, water quality, environmentally sensitive habitat (including steelhead trout and tidewater goby), scenic views, and would therefore be consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act.

The Commission reiterates these findings and incorporates by reference the remainder of those findings (contained in Exhibit 8). Additional support for these conclusions can be found in pp. 22-33 in the Commission's findings on CDP-4-07-134. In that action, the Commission further found:

> *Although the Mission Creek watershed is not pristine, the drainage as a whole provides habitat for important sensitive aquatic resources and qualifies as environmentally sensitive habitat area. Invertebrates collected from the estuary include epibenthic crustaceans and insects. Tidewater goby, prickly sculpin, staghorn sculpen, topsmelt, striped mulled, and partially armored stickleback have been found in the lagoon. Two federally listed endangered species occur in Mission Creek lagoon, the tidewater goby (as a year-round resident) and southern steelhead (during upstream and downstream migration periods. While southwestern pond turtles and red-legged frogs have historically occurred in Mission Creek, suitable habitat for these species is not present in the project area.*
>
> *The lagoon and its margins are used for resting and feeding by numerous species of migratory and resident birds, including waterfowl, diving and wading fishers, and shorebirds. Common species include western gull, ring-billed gull, Herman's gull, California brown pelican, pied-billed grebe, American coot, mallard, common loon, great egret, snowy egret, among others. Many other species are commonly observed using the lagoon, including great blue heron. Bird use of the lagoon varies from month to month. Spring is a season of relatively low bird diversity and abundance. In early June, seabird use of the lagoon and beach area increases. The late summer and fall migrations bring a large number of shorebird species into the Santa Barbara area that remain in the area until the spring migration in mid-March.*
>
> *Four federally or state listed threatened or endangered species of birds have historically been found in the area of Mission Creek, including the western snowy plover, California brown pelican, California least tern, and peregrine falcon. However, suitable habitat for western snowy plover does not exist in or around the project area and they are not expected to be found in the project area. Additionally, five other bird species that are state species-of-special-concern have historically been found in Mission Creek. These included California gull, long-billed curlew, double-crested cormorant, elegant tern, and black skimmer.*
>
> *…*
>
> *The project would also involve the reconstruction and restoration of portions of Mission Creek and Lagoon between State Street and the Pacific Ocean in the City of Santa Barbara. Specifically, the project involves removal of the existing wooden vertical retaining walls and ornamental vegetation upstream of the*

Cabrillo Bridge. These walls would be replaced with concrete retaining walls in the same location as the existing walls. Additionally, native riparian vegetation would be planted on either side of the creek to improve cover over the creek and aquatic habitats in the creek. Downstream of the bridge, the sack-crete retaining walls extending approximately 130 feet southeast of the bridge would be removed. The west and east banks of the creek estuary would be laid back. On both sides a rock revetment covered in a vegetated geogrid and planted with native coastal dune scrub would be placed at the top of the slopes. The newly created additional estuary and transition habitat would be planted with emergent wetlands, transitional wetlands, and riparian scrub.

In total, the [Cabrillo Bridge] project will result in the creation of approximately 9,299 square feet of new wetland and riparian areas in the project area. Additionally, there will be a net increase in open estuarine water habitat due to the change from two rows of piles to one row of piles in the estuary as a result of the bridge replacement. However, while the old piles would be removed as part of the project, the new piles will have to be driven in new locations currently providing open estuarine habitat. This constitutes fill of coastal waters according to Section 30233 of the Coastal Act. No other permanent fill of coastal waters or wetlands is proposed as part of the project.

While the project will result in a new increase in coastal wetlands and estuarine habitat, construction of the project will temporarily impact a 650-foot section of channel from just above the State Street bridge to downstream of the Cabrillo Bridge. As described in Section IV-A, the project will involve partial to full dewatering and diversion of the creek using sheet piles, cofferdams, and flumes for periods up to 9 months in duration. Installation of cofferdams for dewatering during construction would temporarily impact 0.88 acres of the emergent wetlands located upstream of the State Street Bridge. Additionally, construction activities, including pile driving, grading, dewatering, etc could lead to disruption of habitat for aquatic species such as the tidewater goby, steelhead trout and for avian species that could be present in the project area. The project would, therefore, result in the substantial alteration of Mission Creek pursuant to Section 30236 of the Coastal Act and has the potential to impact sensitive biological resources protected under Section 30240 of the Coastal Act.

Allowable Uses

As discussed above, the project will include the filling of coastal waters to install piles for the new bridge and reconstruction of the banks of Mission Creek Estuary. Section 30233 of the Coastal Act identifies seven allowable uses for the dredging diking and filling of coastal waters. According to Section 30233(a) filling of coastal waters can be allowed for, among other purposes, incidental public service and restoration purposes. The proposed project involves the

replacement of a public road and bridge that provide public access and emergency public access routes for the City of Santa Barbara. The bridge will not be expanded or widened into the creek channel and, in fact, the project would reduce the overall fill of the Mission Creek Estuary by replacing two rows of piles with one row of piles. The project would also involve the restoration of 9,299 square feet of new wetland and riparian areas in the Mission Creek Estuary as discussed above. The project, therefore, meets the definition of allowable uses for fill of coastal waters as defined by Section 30233.

The project would also involve a substantial alteration of Mission Creek, a coastal stream. Section 30236 of the Coastal Act allows for such alterations of coastal streams for flood-control purposes, provided that the alternative "incorporate[s] the best mitigation measures feasible,' that no feasible alternatives exist for protecting existing structures in the floodplain, and that such flood protection is necessary for public safety or to protect existing development. As discussed above in Section IV-B, the existing overall capacity of the Mission Creek system is 1,500 cfs and provides only a five-year level of flood protection. Accordingly, the areas surrounding lower Mission Creek have repeatedly flooded. According to studies conducted by the Army Corps of Engineers (Draft Feasibility Study, 1999), records show that the area has suffered at least 20 considerable floods since 1900. These floods have negatively impacted the health and safety of residents of Santa Barbara and damaged several existing structures along the creek. As discussed in Section IV-B, the Commission has approved the Lower Mission Creek Flood Control Project proposed by the Army Corps. This project involves the reconstruction of lower Mission Creek down to the State Street Bridge and will improve the capacity to 3,400 cfs and a 20-year level of flood protection. The subject project will further improve the hydraulic conveyance of Mission Creek through the use of two spans on the new Cabrillo Boulevard Bridge instead of the existing three spans. This would improve the flood capacity under the bridge from 3,400 cfs without any freeboard to 3,400 cfs with one foot of freeboard space from the bottom of the bridge to the water surface. Therefore, the Commission finds that the proposed project is for flood-control purposes and is necessary to protect existing development. The project, therefore, meets the "allowable uses" requirements of Section 30236.

Finally, Section 30240 prevents the Commission from approving uses within an environmentally sensitive habitat area unless the use is dependent on the sensitive resource. While the proposed project will provide restoration benefits to the Mission Creek Estuary, the new bridge and flood control facility are not "dependent" on wetland and estuarine environmentally sensitive habitat areas. However, Sections 30233 and 30236 of the Coastal Act specifically allow for fill of coastal waters and alteration of streams for incidental public services and flood-control purposes, provided that all the requirements of those sections are met. Section 30233 and 30236 are more specific policies than Section 30240 and

clearly anticipate dredging, diking, and filling of coastal waters for incidental public uses and flood-control purposes in sensitive wetland and creek habitats. They are therefore the controlling provisions when a wetland or a stream is also an ESHA. Bolsa Chica Land Trust v. Superior Court (1999), 71 Cal. App. 4th 493, 514-515. In other words, Sections 30233 and 30236 of the Coastal Act, in fact, require the Commission to approve incidental public uses and flood-control facilities in certain circumstances, even though such activities do not comply with the resource-dependent tests of 30240(a) of the Coastal Act.

Other Feasible Less Environmentally Damaging Alternatives

…

In conclusion, the Commission finds that the proposed project is the least damaging feasible alternative to provide flood control for existing structures and replace the structurally deficient Cabrillo Boulevard Bridge.

Mitigation Measures and Avoidance of Significant Disruption.

Section 30240 of the Coastal Act requires that the project avoid significant disruption to the sensitive resources. Additionally, Sections 30233 and 30236 require that where fill or alterations of coastal waters is allowed, feasible mitigation measures should be implemented to minimize adverse environmental effects. The City, in their approval of the final mitigated negative declaration for the project and a coastal development permit for the portion of the project in their jurisdiction, required several conditions and mitigation measures related to the protection of sensitive habitats, wetlands, and coastal waters (Exhibits 1 and 2). These measures including timing of construction activities to minimize disturbance to habitats, erosion control measures, revegetation, and the proposed dewatering and fish relocation measures described in previous sections. Special Conditions One (1) and Two (2) incorporate, by reference, all of the mitigation measures required in Final mitigated Negative Declaration No. MST2004-00878 and all conditions of approval contained in City Council Resolution No. 029-07 as special conditions of the subject permit. Erosion control, construction staging, and water quality measures are discussed in more detail in Section IV-D below.

Tidewater Goby, Southern Steelhead Trout, and Other Aquatic Resources

Pile driving … is proposed to occur from October 1 to December 1, in order to avoid the downstream and upstream steelhead migration periods and the spawning period for the tidewater goby. Special Condition Four (4), therefore, prohibits any pile driving activities from December 1 to October 1, unless approved by the Executive Director.

… Prior to any dewatering all fish species would be captured and relocated from the construction area. A flume 3-6 feet in width would allow the creek to flow through the dewatered work area. According to the City's biologists, URS Corporation, and Dr. Camm Swift, adequate velocities for the tidewater goby range from 1.2 feet per second (ftps) to 2 ftps. The flow velocities inside the flume during dewatering will vary from 0 to 7 ftps. The project biologist, however, would regulate flows and conditions in the flume to the extent feasible to provide for optimal flow conditions in the flume for goby. Additionally, natural sediment will be placed on the bottom of the flume and occasional cobbles to slow down flows and simulate natural conditions for any aquatic species present. …

Special Condition Four (4), therefore, requires the City to prohibit full dewatering of the creek from November 1 through March 31 and requires the City to monitor tidewater goby in order to install cofferdams prior to spawning season in May through July.

In addition to the above-mentioned measures, the City has proposed a tidewater goby and aquatic species management plan. This plan recommends measures for protection of aquatic species, including monitoring of the creek prior to construction, biologist monitoring of all in creek operations, recovery and relocation of fish species, and post-project monitoring. Special Condition Five (5) requires the City to submit, for the review and approval of the Executive Director, a final version of this plan that shall be prepared by a qualified biologist and implemented during project construction.

Commission staff notes that as part of the Lower Mission Creek Flood Control Project (See Section IV-B, Background), the Commission approved The Tidewater Goby Management Plan for Mission Creek (URS Corporation 2005). This plan outlines management measures, creek and estuary design guidelines, and construction procedures that should be implemented for any work conducted in the Mission Creek estuary. The proposed project is consistent with all of the recommended protection measures outlined in the 2005 Tidewater Goby Management Plan with two exceptions. The first exception is regarding the recommendations for the alignment of Mission Creek and Laguna Channel

lagoons. Originally, the approved Tidewater Goby Management Plan suggested that during construction in either Mission Creek or Laguna Channel, the Mission Creek and Laguna Channel lagoons should be maintained as separate in order to minimize impacts to both lagoons. However, since that time, the plan has been amended to include a recommendation that the City should try to maintain a configuration on the beach so that the two lagoons are merged. This configuration apparently provides better habitat for the tidewater goby and steelhead. The merged lagoon configuration was approved by the Commission in 2006 as part of the City's Sediment Management Plan (CDP 4-05-155). The City's biologists have determined, therefore, that if the lagoons are merged at the time of construction, maintaining this alignment would constitute the least amount of impact to the estuary. Similarly, if the lagoons are separated at the time of construction, they would be maintained as separate in order to avoid the construction activities associated with creating a new configuration.

The second exception is regarding the recommendation for the use of "ribs" as fish refugia with Mission Creek. Tidewater gobies are poor swimmers in fast moving water. During storm events, they find refuge in backwater areas where flow velocities are reduced. The Tidewater Goby Management Plan requires that design elements be incorporated within the creek to provide areas of refuge for gobies during high flow events. These design elements include 8-foot-tall "ribs" to be constructed on the concrete walls, fish ledges, and fish baffles. The City proposes to construct fish baffles along the creek bottom adjacent to the walls as part of the Cabrillo Bridge project. However, instead of constructing "ribs" as described in the Tidewater Goby Management Plan, the City is proposing to provide this refugia within the grout spaces of the faux sandstone retaining walls. This design element would include the construction of two-inch-deep vertical and horizontal grout lines within the retaining walls that would extend from the ordinary high water line to the bottom of the formed wall, for approximately 8 feet in vertical length. The horizontal grout spaces would be filled with grout for a few inches every 10 feet, which would create eddies and slower moving water behind the grout barriers. Tidewater gobies would be able to seek refuge from currents created by increased flows in the creek as a result of proposed upstream improvements associated with the Lower Mission Creek Flood Control Project. The City, in collaboration with Santa Barbara Channel Keepers and the Urban Creeks Council have determined that the revised design element would be more effective in providing fish refugia for gobies in Mission Creek than the "ribs" that were recommended in the Tidewater Goby Management Plan.

As stated above, the proposed project, with the exception of the two recommendations described above, is consistent with all of the recommended protection measures outlined in the 2005 Tidewater Goby Management Plan. The plan recommends that no more than one half of the estuary be dewatered at

> *any time. As previously noted, the proposed project would involve the dewatering of a maximum of 1/3 of the estuary at any given time. The plan also requires a 10-foot wide zone of native shrubs to be established on the top of the concrete wing walls immediately below the bike path portion of Cabrillo Bridge. The proposed project would result in the installation of the 10-foot-wide buffer of native vegetation along the wing walls of the bridge for approximately 100 to 130 feet downstream of the Cabrillo Bridge. The proposed design of the banks of the estuary within the project area is consistent with these design guidelines.*
>
> *…*
>
> *Due to the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with 30233, 30236, and 30240 of the Coastal Act.*

As discussed above, the Commission notes that while the City has refined and slightly modified the project as presently proposed, these changes do not alter the fundamental consistency of the project (as conditioned) with the applicable Coastal Act policies. The modifications and refinements consist of:

1) replacing the originally-proposed “fish ribs” with grout lines on the sides of the channel; (these are the spaces designed to provide refuge for tidewater gobies during high stream velocity conditions);

2) vegetating the south side of the lagoon;

3) relocating the oxbow bypass (near Hwy. 101 and the Union Pacific rail corridor) 10 ft. closer to the Moreton fig tree; and

4) refining the Ortega Street Bridge Replacement (located outside the coastal zone) to alter the channel alignment slightly to accommodate the roots of Sycamore trees downstream of the bridge, and retaining a residence that was originally slated for removal.

Concerning the first of these changes, replacing the originally-proposed “fish ribs” with grout lines on the sides of the channel, the Commission has already found it consistent with the Coastal Act in its review of the City’s Cabrillo Bridge replacement (CDP 4-07-134), which are hereby incorporated by reference (and summarized above).

The second change, vegetation around the lagoon, would be an improvement from a habitat perspective, and the Commission staff will have the continuing opportunity to review the final plans before they are finalized and implemented.

Concerning the third change, relocating the oxbow bypass (near Hwy. 101 and the Union Pacific rail corridor) 10 ft. closer to the Moreton fig tree, the City has included in its submittal an analysis showing the relocation of the oxbow slightly to the east will not affect the Moreton fig tree.[6] The City's submittal includes commitments for additional monitoring to assure protection of the tree, and these are contained in Exhibit 6, are incorporated into Condition 6, and the City will provide the Commissions staff with the monitoring reports.

Concerning the fourth change, which is located outside the coastal zone, the City has refined the Ortega Street Bridge Replacement component. The bridge location and channel alignment has changed slightly to accommodate the roots of Sycamore trees downstream of the bridge, and a residence on the north side of the bridge that was originally slated for removal no longer needs to be removed. This modification will allow more landscaping to be provided on the west side of Mission Creek and Sycamore trees can be better protected. In addition, as this component is still in the review process, the Commission staff will have the opportunity to review the final designs and plans before they are finalized and implemented.

Finally, and also post-dating the Commission's previous consistency and CDP reviews, the City has included its formal consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Biological Opinions 1-8-07-F-63 and 2007-08982, respectively), prepared for the Cabrillo Bridge Replacement portion of the project. The City has agreed to implement the terms and conditions of these Opinions, which are attached as Exhibit 7 and incorporated into Condition 6.

With the measures included in the revised design, monitoring, maintenance, mitigation, and adaptive management plans, and the on-going review of water quality plans and maintenance dredging, as well as any future project modifications, and as conditioned, the Commission finds the project would protect stream resources, water quality, and environmentally sensitive habitat (including steelhead trout and tidewater goby), and would therefore be consistent with the stream alteration, wetlands, and ESHA policies (Sections 30236, 30233(a), and 30240, respectively) of the Coastal Act collectively.

F. WATER QUALITY

Section 30231 of the Coastal Act provides:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground*

[6] *Arborist Report on Impact to Moreton Bay Fig Tree,* Dan Condon Arborist Consulting, December 19, 2007

> *water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In its previous review (CD-046-06), the Commission found:

> *The proposed flood-control facility provides the Corps with an opportunity to restore water quality resources in Mission Creek by incorporating appropriate measures or technologies into the project design to reduce non-point source pollution. The reconstruction of the flood-control facility, including the replacement of bridges, installation of a culvert under Highway 101, and construction of floodwalls, provide the Corps with an opportunity to design the facility to incorporate measures into the project in order to reduce non-point source pollution. …*
>
> *Measures to protect water quality in the original project included: (1) no vegetation removal or herbicide use in the coastal zone; (2) use of silt curtains and mosaic vegetation removal where such activities occur inland of the coastal zone boundary; (3) coordinating the construction of the flood-control facility with the water quality efforts within the City of Santa Barbara, so that, if necessary and advantageous, the City could construct measures to control appropriate non-point source pollution concurrent with the project; and (4) preparation of a storm water pollution prevention plan (SWPPP) to minimize water quality impacts from the construction of the flood-control facility, to be subject to further Commission consistency review (both the SWPPP and the maintenance plan). Final water quality plans have not been included in this second phase of the submittal; thus, the Corps will still need to provide these details for Commission review and concurrence prior to any construction. The Commission reiterates its previous water quality conclusion* [from CD-117-99] *that, with the opportunity to review the final SWPPP/water quality plans, … the project is consistent with the water quality policy (Section 30231) of the Coastal Act.*

The Commission reiterates its previous water quality conclusion that, as conditioned, with the opportunity to review the final SWPPP/water quality plans prior to construction, and water quality monitoring reports, the project contains sufficient measures to protect water quality and is consistent with the water quality policy (Section 30231) of the Coastal Act.

G. SAND SUPPLY

Section 30233(d) of the Coastal Act provides for the use of suitable material removed from coastal streams to be used for beach replenishment purposes. This section provides that:

> *Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm*

> *runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

In its previous review (CD-046-06) the Commission concluded that:

> *With the commitments for phased consistency review and use of suitable material for beach replenishment purposes, the Commission finds that the proposed project is consistent with the sand supply policies of the Coastal Act." This information is still unavailable; thus, like the water quality issue discussion contained in the previous section, sediment analysis and beach replenishment options will need to be reviewed at a later phase when the information becomes available. The Commission reiterates its previous sand supply conclusion that, with the opportunity to review the final sediment test results and disposal proposals, the project is consistent with the sand supply policy (Section 30233(d)) of the Coastal Act.*

As noted above, the project includes the potential for placement of material excavated from the creek on area beaches, but only if it is clean and of a suitable grain size. Under Condition 5, the City will test, and submit test results to the Executive Director for review and approval, prior to any such disposal. The Commission reiterates its previous conclusion and finds that, as conditioned, with the opportunity to review the final sediment test results and any disposal proposals, the project is consistent with the sand supply policy (Section 30233(d)) of the Coastal Act.

H. VISUAL RESOURCES

Section 30251 of the Coastal Act provides, in part, that:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas….*

The Commission previously found (CD-046-06):

> *The Corps's submittal includes several measures providing both habitat benefits, as described above, as well as aesthetic improvements. The landscaping proposal … provides for planting, monitoring, and maintaining native riparian habitat within the creek, planting riparian habitat within Corps'- and City-controlled areas adjacent to the creek banks, providing incentives for private landowners to plant additional riparian habitat adjacent to the creek banks, monitoring the landscaping plans to*

> *assure they meet identified success criteria, removing concrete from the creek bottom (except under four bridges), and the above-discussed designs for floodwalls that, to the degree possible, mimic a natural creek bank. With the measures included in the revised design, monitoring, maintenance plans, and as conditioned, the Commission finds that the project would improve scenic public views and be consistent with the visual resource protection policy (Section 30251) of the Coastal Act.*

The Commission reiterates this conclusion and finds that, as conditioned, with the landscaping, monitoring, and continuing review provisions, the project is consistent with the visual resource protection policy (Section 30251) of the Coastal Act.

I. GEOLOGIC HAZARDS

Section 30253 of the Coastal Act states, in part:

> *New development shall:*
> *(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
> *(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30253 of the Coastal Act mandates that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard. Although the proposed development is intended as a flood control project and will serve to reduce the potential for flooding of developed areas, some inherent remains for any flood control projects, and the project was not designed to accommodate all foreseeable flood events. The Coastal Act recognizes that certain types of development, such as the proposed project, may involve some risk. As such, the Commission finds that due to the unforeseen possibility of storm waves, surges, erosion, seismicity, and flooding, the applicant shall assume these risks as a condition of approval. Therefore, Special Condition Seven (7) requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253.

J. CEQA

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require a) avoidance, protection, and improvements to sensitive habitat; b) use of suitable materials; c) limiting the activity to as to not disrupt breeding and foraging of endangered and sensitive species; d) aesthetic improvements; and e) public safety improvements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

APPENDIX A: STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

APPENDIX B: SUBSTANTIVE FILE DOCUMENTS

1. City of Santa Barbara Coastal Development Permit No. CDP-2008-00012, Mission Creek Flood Control Project.

2. Coastal Commission CDP No. 4-07-134, City of Santa Barbara, Replacement of Cabrillo Bridge over Mission Creek, Santa Barbara.

3. Consistency Determination CD-046-06, Army Corps, Mission Creek Flood Control Project.

4. Consistency Determination CD-117-99, Army Corps, Mission Creek Flood Control Project.

5. Landscape Plan, Lower Mission Creek Flood Control Project, U.S. Army Corps of Engineers and City of Santa Barbara, April 2006.

6. Genetics of *Eucyclogobius newberryi* in Mission Creek Santa Barbara: a regional metapopulation analysis using mitochondrial control region sequence and microsatellites. Prepared for Army Corps of Engineers 8/19/05, D. K. Jacobs, K. D. Louie, D. A. Earl, C. Bard, C.Vila & C.C. Swift, Department of Ecology & Evolution, UCLA.

7. Santa Barbara County Streams – Lower Mission Creek, Feasibility Study Hydraulic Technical Appendix, Sedimentation Engineering, Army Corps of Engineers November 1999.

8. Final Environmental Impact Statement/Environmental Impact Report and Feasibility Study for Lower Mission Creek Flood Control Project, Santa Barbara, California, September 2000.

9. Biological Assessments, Lower Mission Creek Flood Control Project, Santa Barbara, California, December 1999.

10. Draft Fish and Wildlife Coordination Act Report, Lower Mission Creek Flood Control Project, Santa Barbara, California, U.S. Fish and Wildlife Service, September 1999.

11. Biological Opinion for the Lower Mission Creek Flood Control Project, Santa Barbara, County California, National Marine Fisheries Service, August 2, 2000.

12. Biological Opinion for the Lower Mission Creek Flood Control Project, Santa Barbara, County California, U.S. Fish and Wildlife Service, June 1, 2001.

13. U.S. Fish and Wildlife Service Biological Conference Opinion 1-8-07-F-63, Cabrillo Bridge Replacement, June 25,2008.

14. National Marine Fisheries Service (NMFS) Biological Opinion 2007-08982, Cabrillo Bridge Replacement, December 28, 2007.

15. Arborist Report on Impact to Moreton Bay Fig Tree, Dan Condon Arborist Consulting, December 19, 2007.

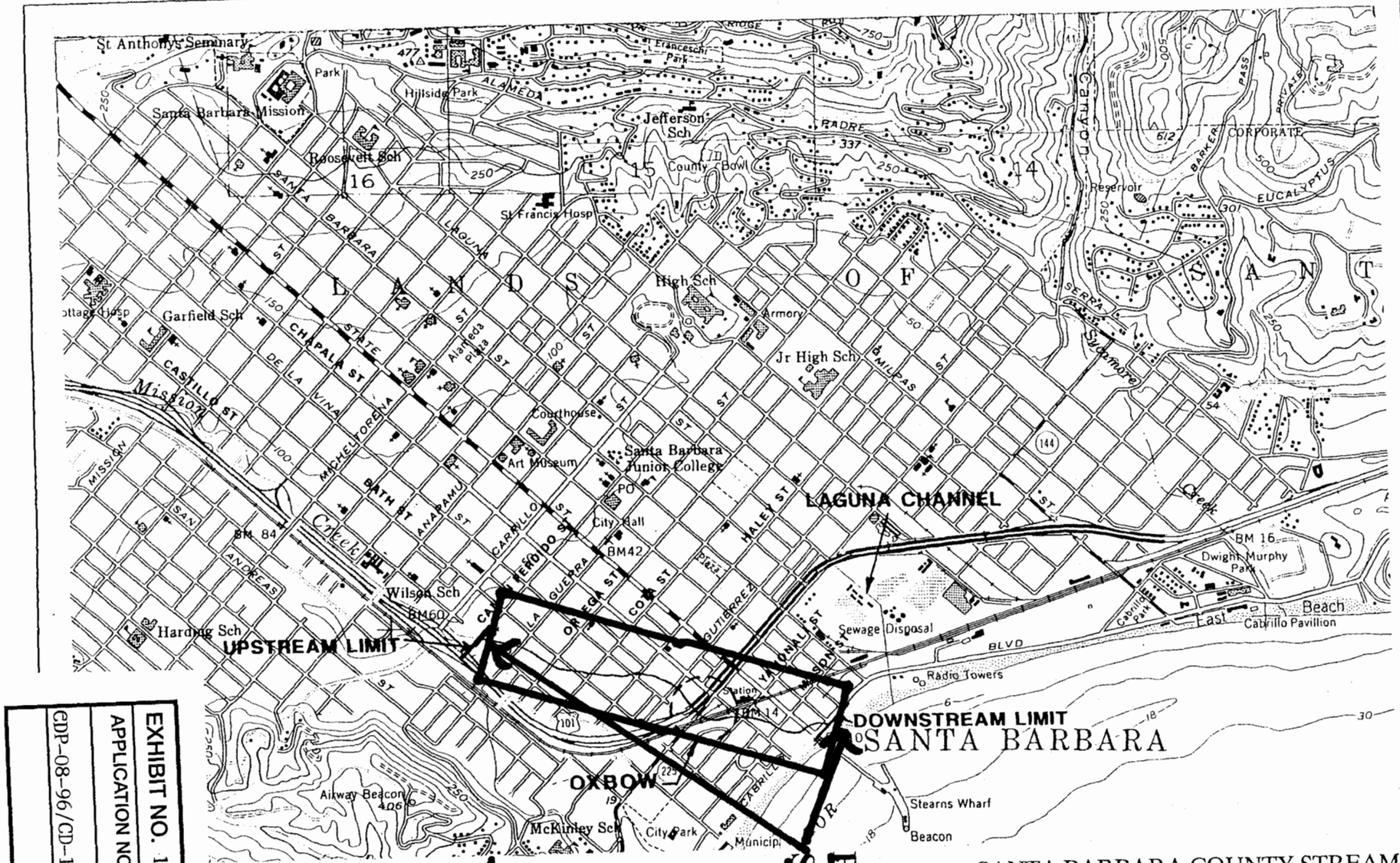


EXHIBIT NO. 1
APPLICATION NO.
CDP-08-96/CD-12-09

,000, Santa Barbara, California

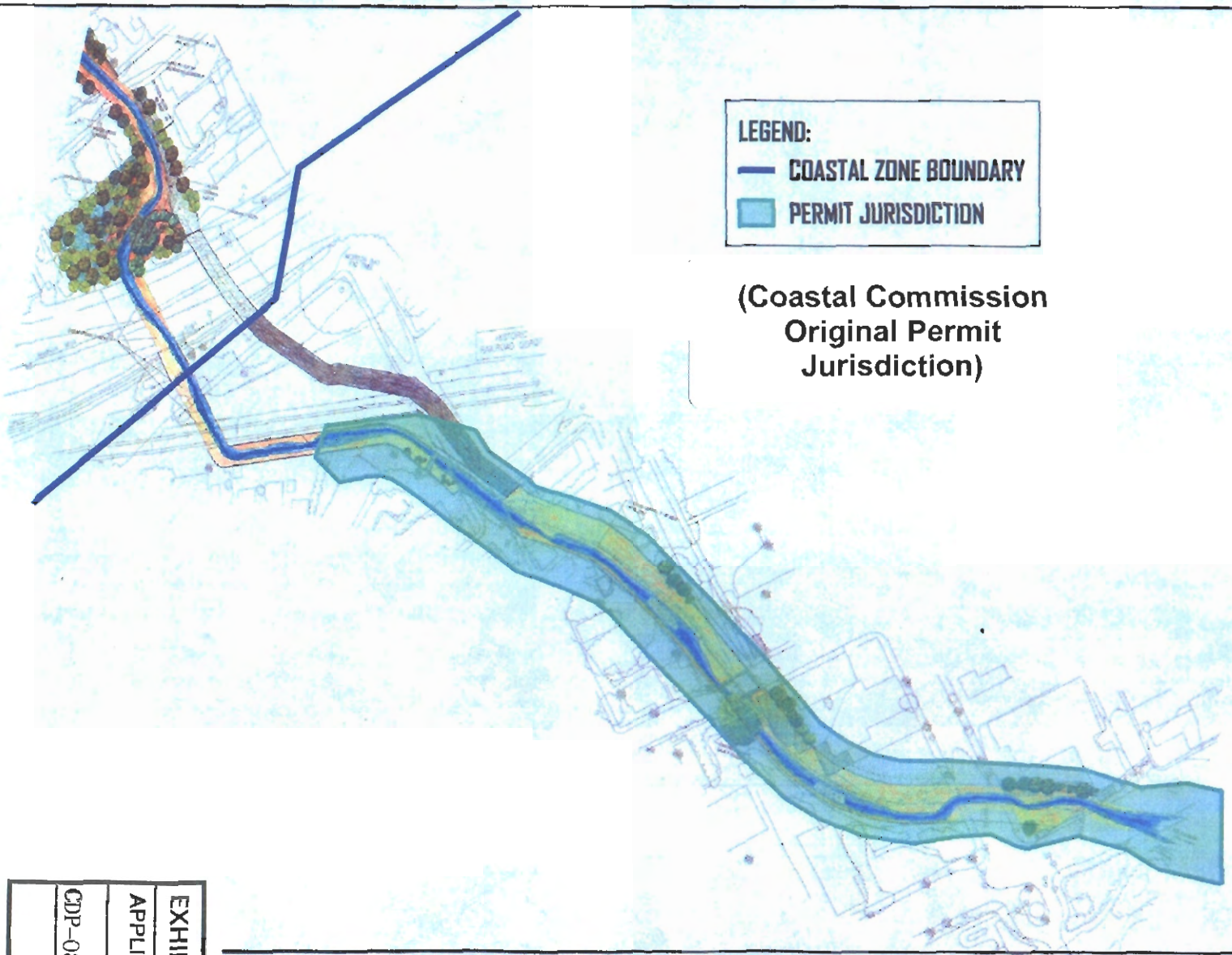
EXHIBIT NO. 1
APPLICATION NO. 17-99

California Coastal

SANTA BARBARA COUNTY STREAMS
LOWER MISSION CREEK

LOCATION MAP

Exhibit 2



Approximate Boundaries
For illustrative purposes

LOWER MISSION CREEK FLOOD CONTROL PROJECT

OVERALL PROJECT IMPROVEMENT LIMITS

Drawn By: Date: –

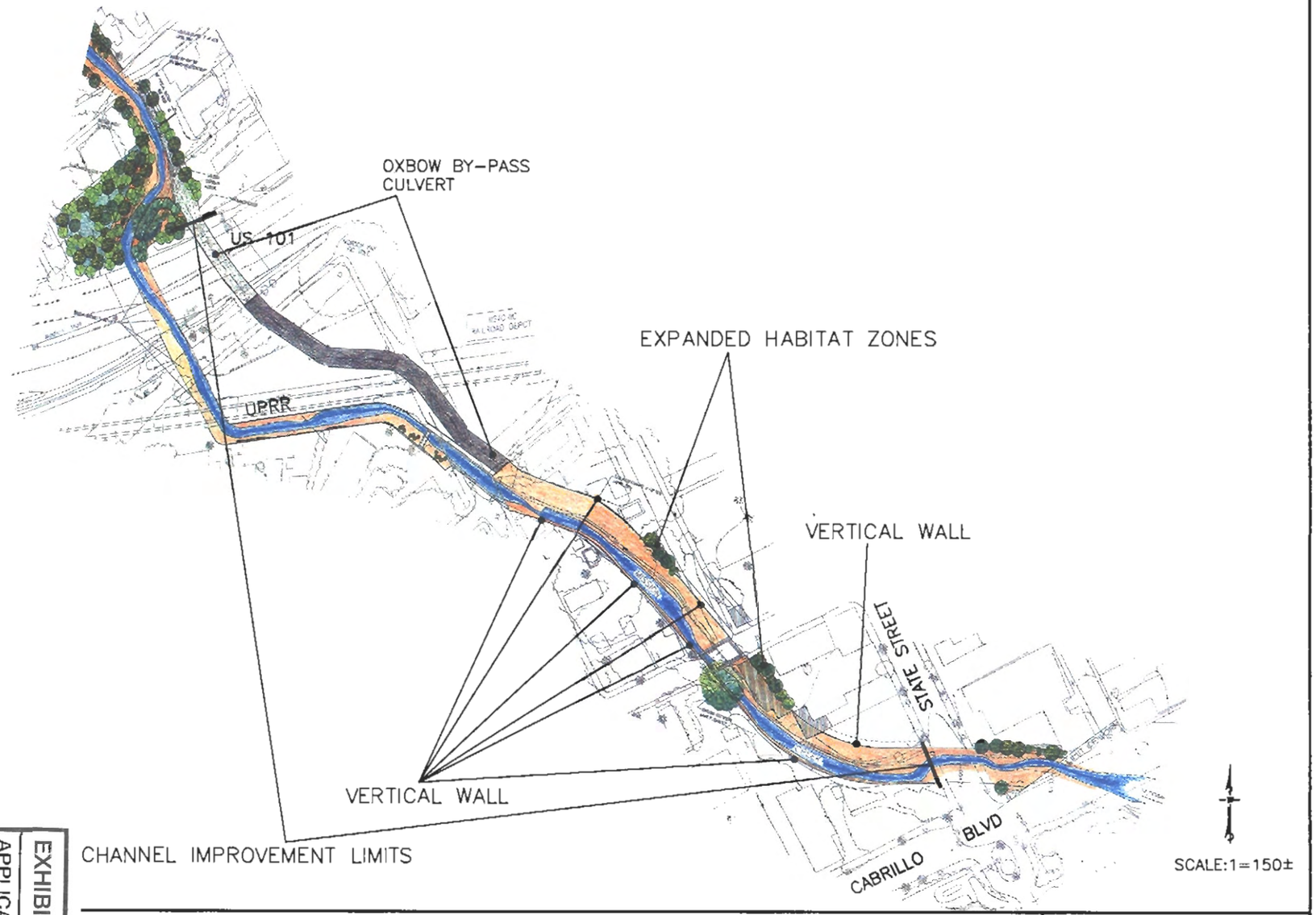
FIGURE 1

EXHIBIT NO. 1, p.2

APPLICATION NO.

CDP-08-96/CD-12-09

EXHIBIT NO. 2
APPLICATION NO.
CDP-08-96/CD-12-09



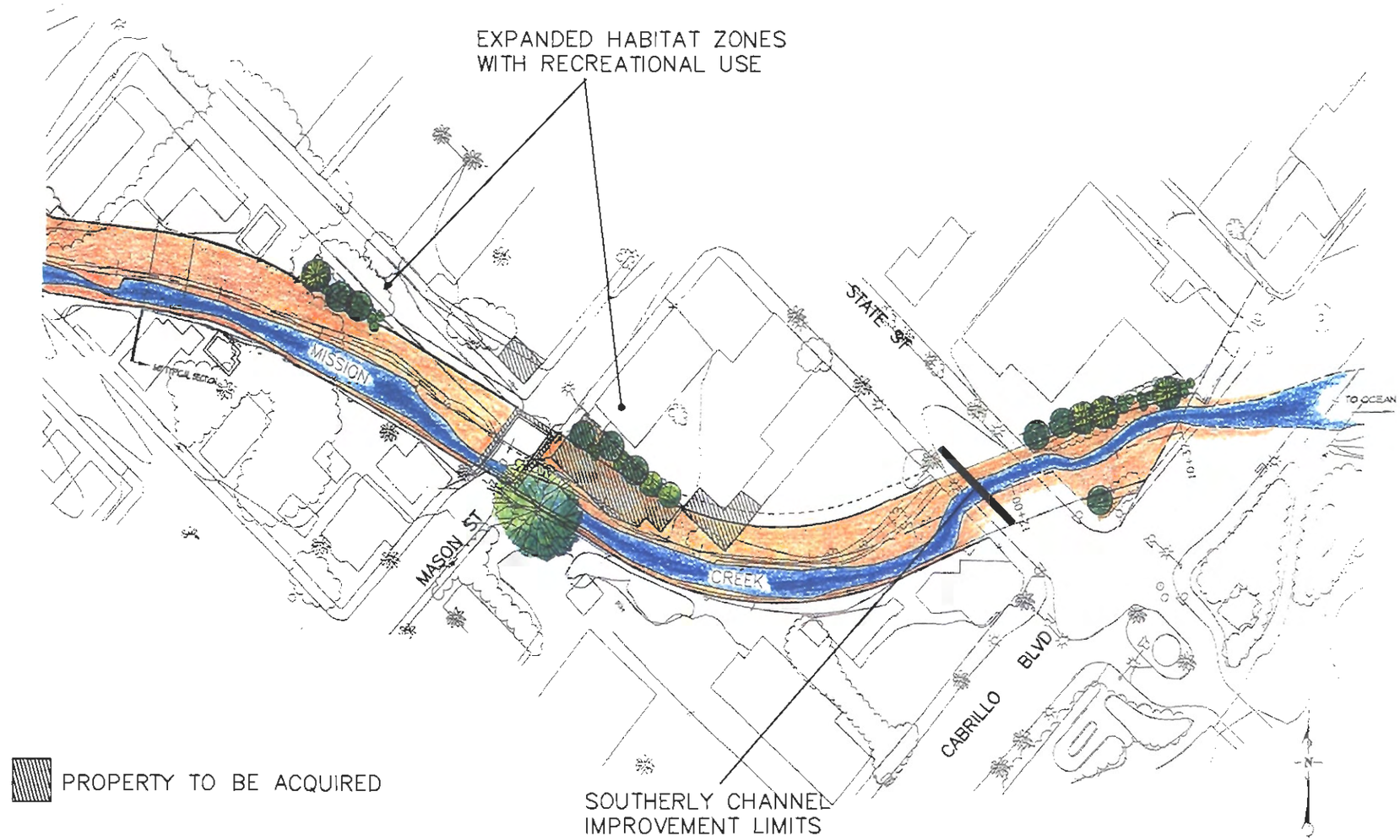
LOWER MISSION CREEK FLOOD CONTROL PROJECT

CHANNEL IMPROVEMENT LIMITS
AND
BANK TREATMENT LOCATIONS

Drawn By:	Date:
	–

FIGURE 2

EXHIBIT NO. 3
APPLICATION NO.
CDP-08-96/CD-12-09

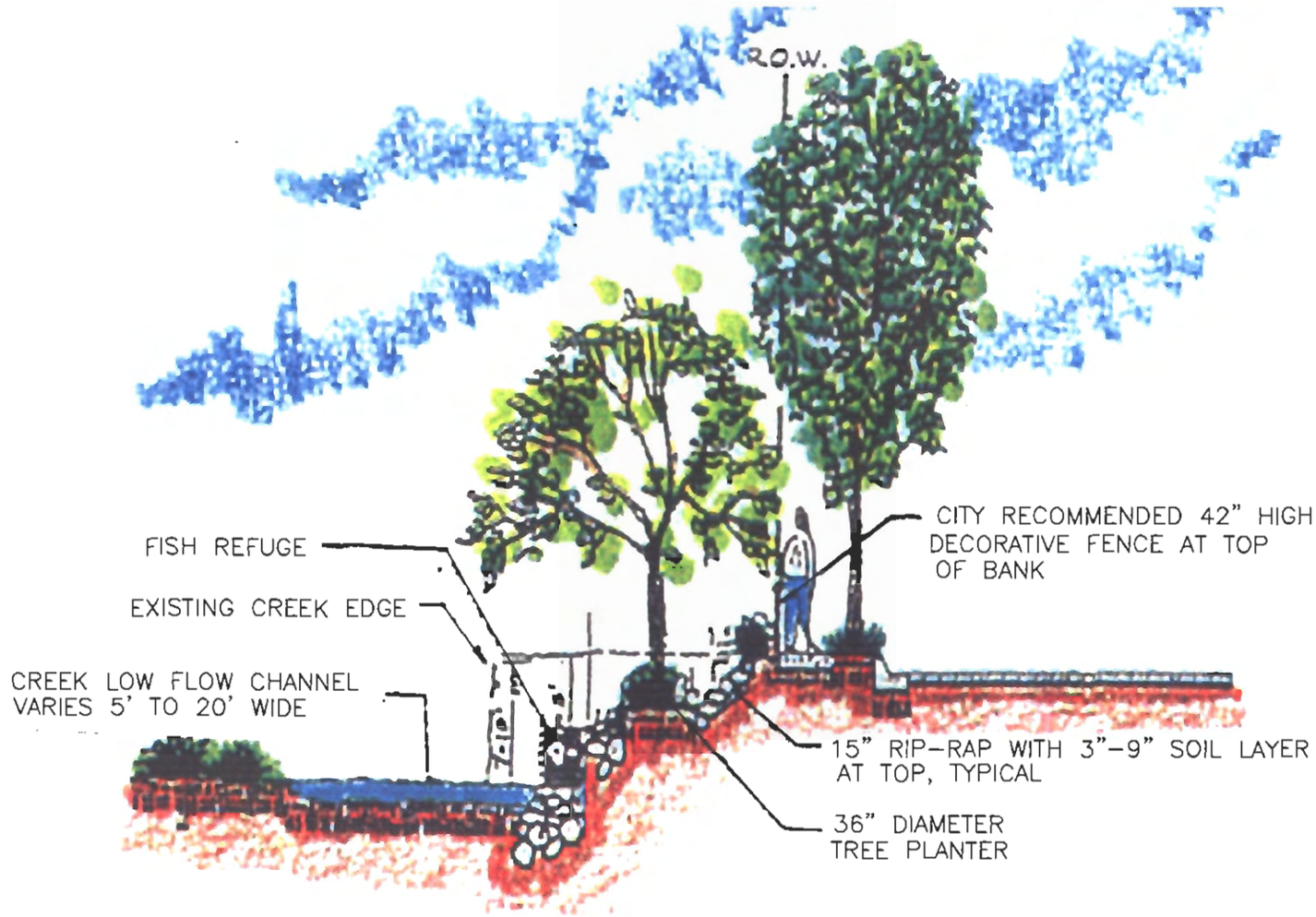


LOWER MISSION CREEK FLOOD CONTROL PROJECT

PROPERTY ACQUISITION PARCELS
AND
EXPANDED HABITAT ZONES

Drawn By:	Date:
	–

FIGURE 3



LOWER MISSION CREEK FLOOD CONTROL PROJECT

EXPANDED HABITAT ZONE PREFERRED OPTION

Drawn By:	Date:
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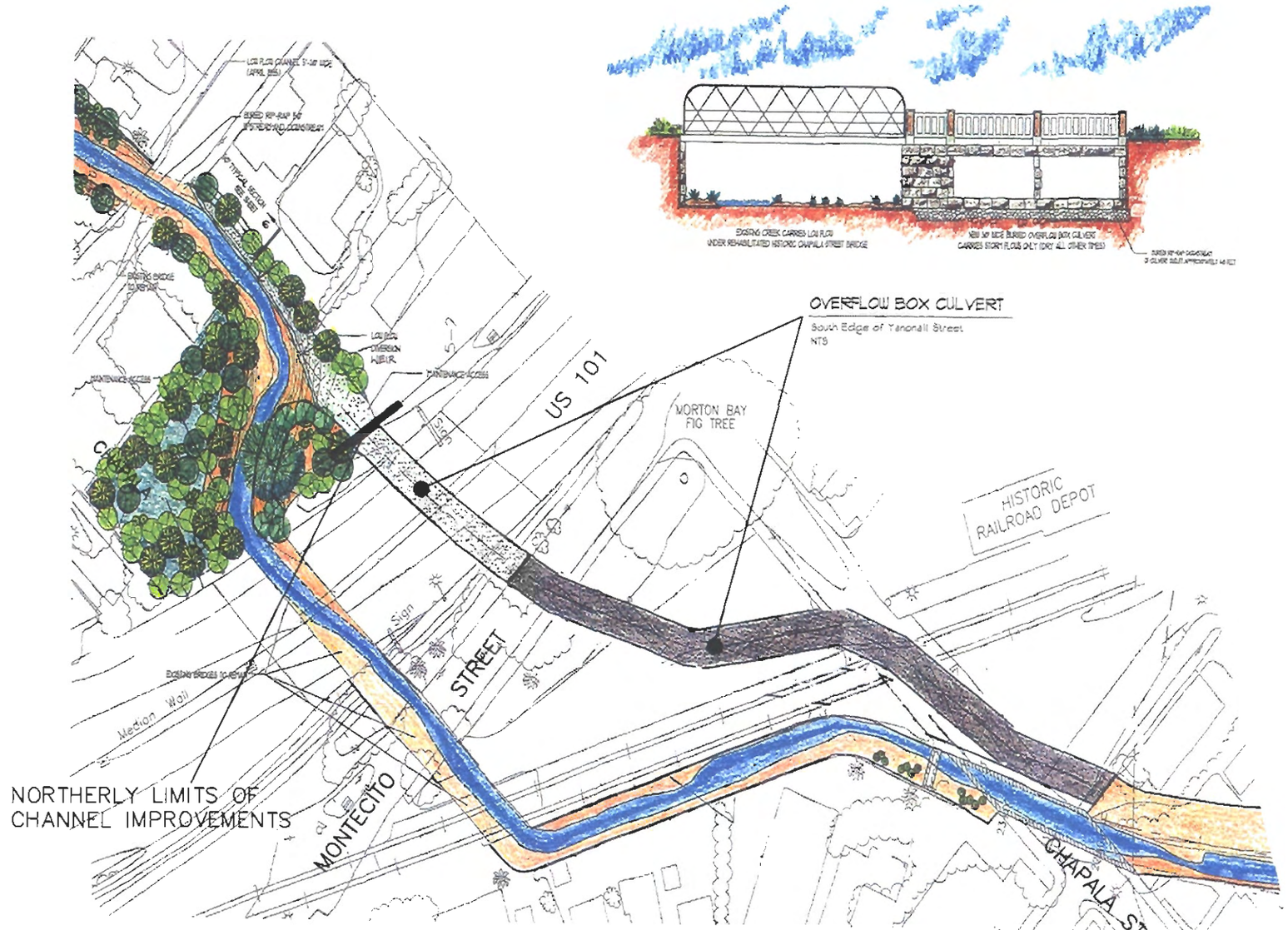
FIGURE 4



LOWER MISSION CREEK FLOOD CONTROL PROJECT

OXBOW BY-PASS CULVERT

Drawn By:	Date:
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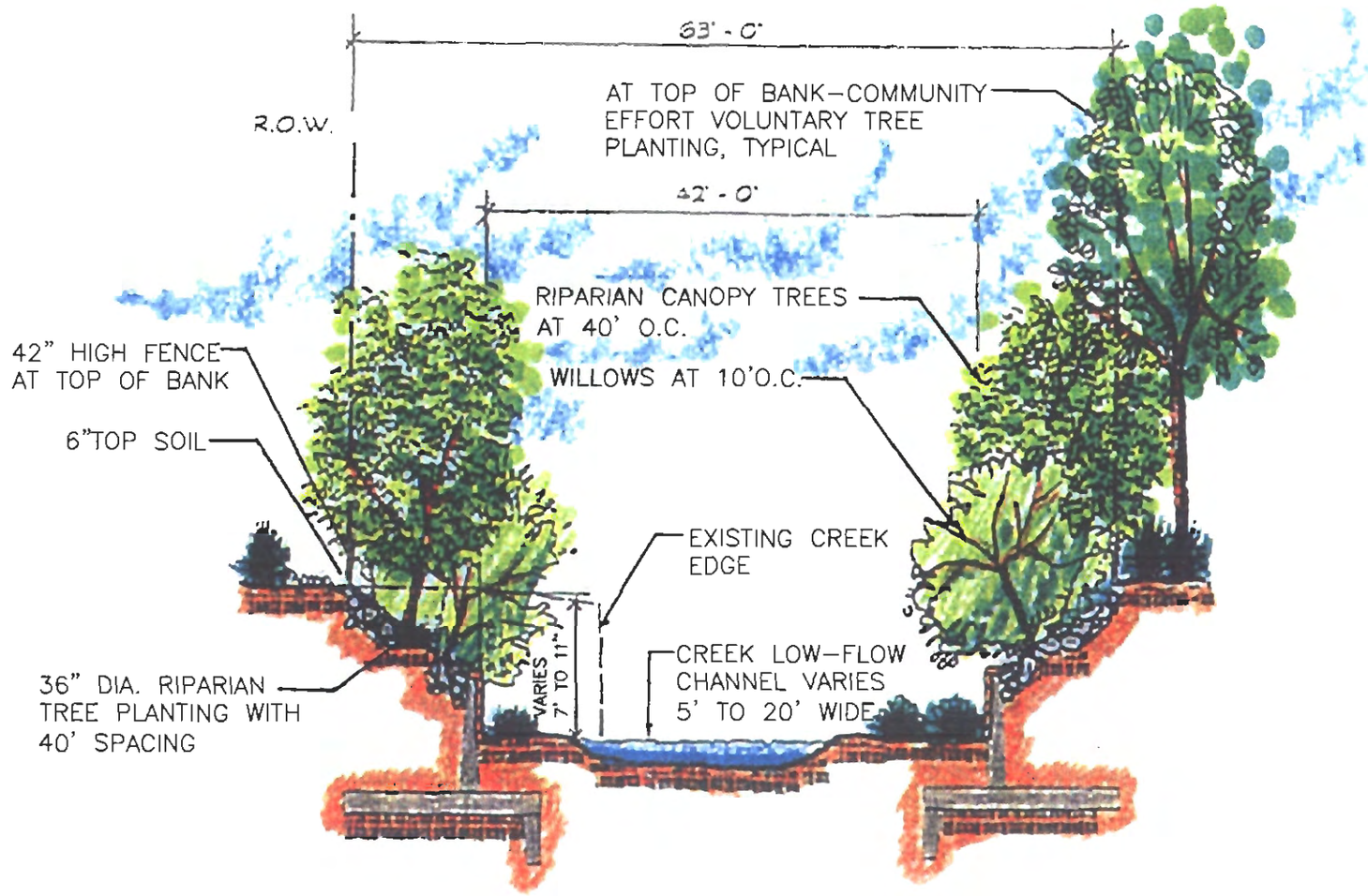
FIGURE 5

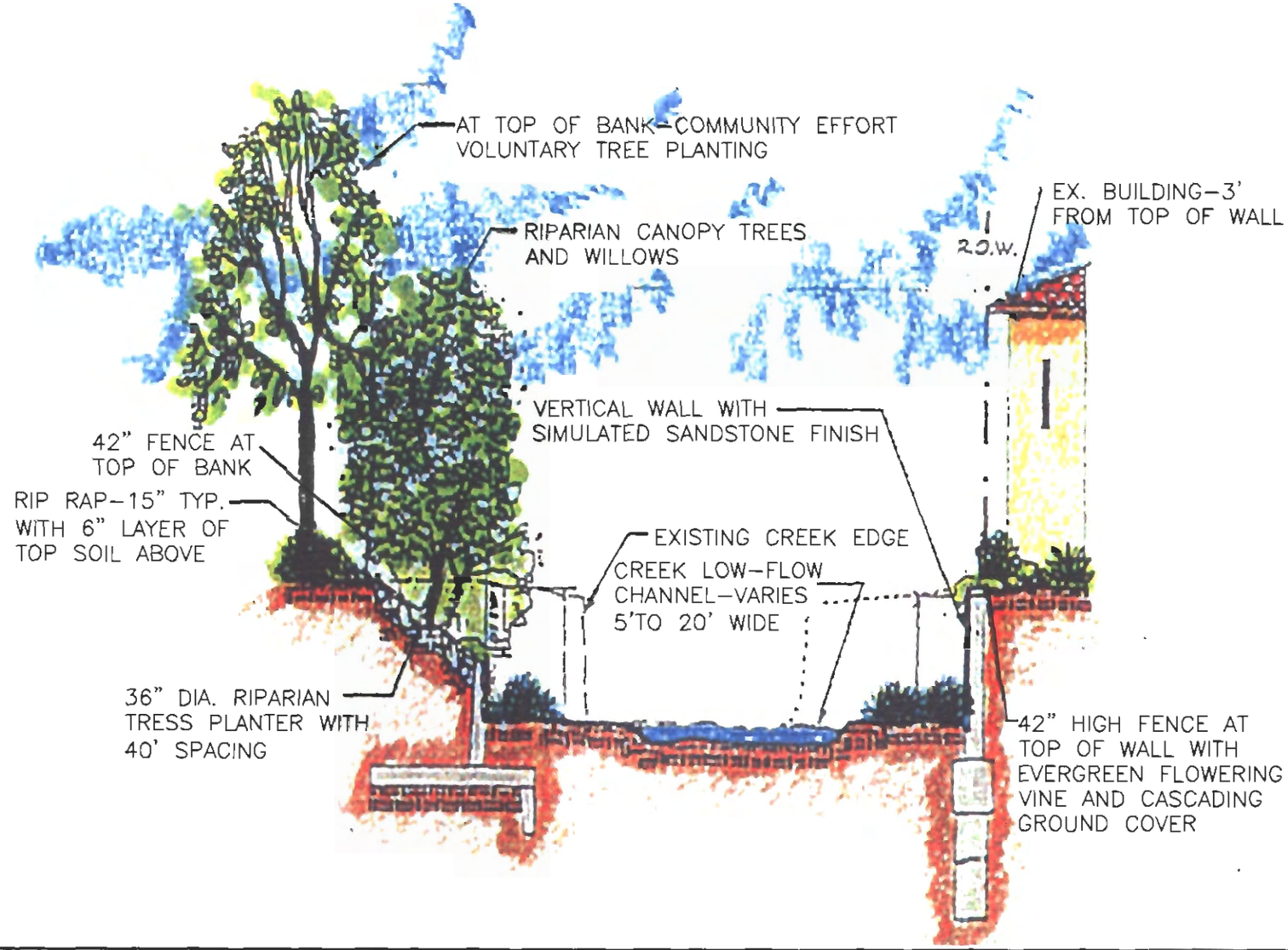


LOWER MISSION CREEK FLOOD CONTROL PROJECT

VEGETATED SIDE SLOPE

Drawn By:	Date: _

FIGURE 6



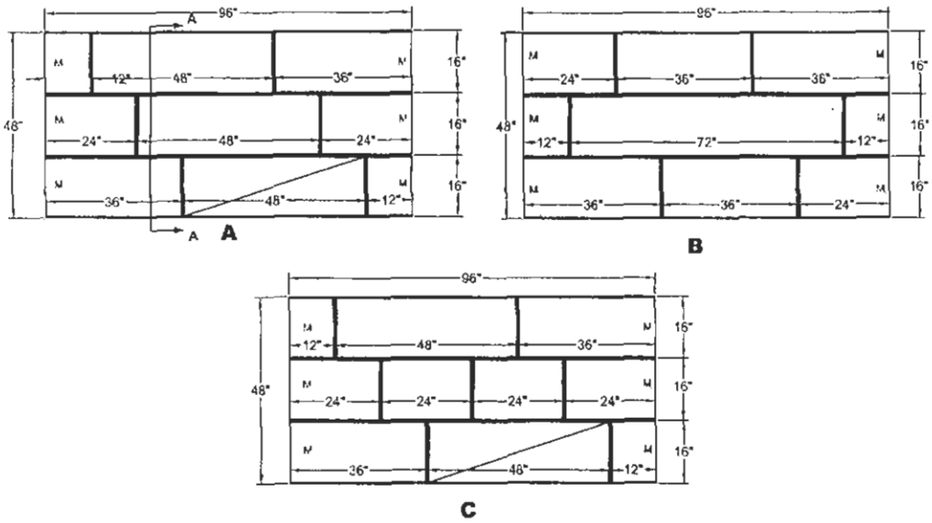
LOWER MISSION CREEK FLOOD CONTROL PROJECT

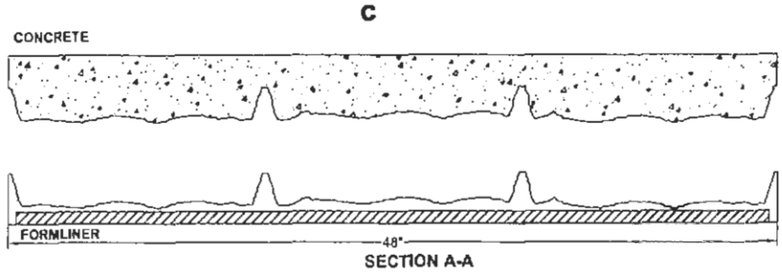
VEGETATED SIDE SLOPE AND VERTICAL WALL SECTION

Drawn By:

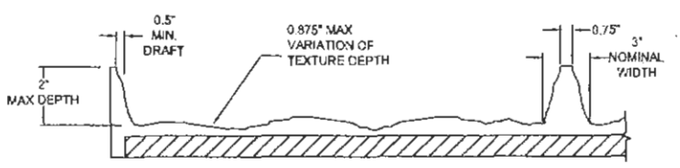
Date:

FIGURE 7





SECTION A-A



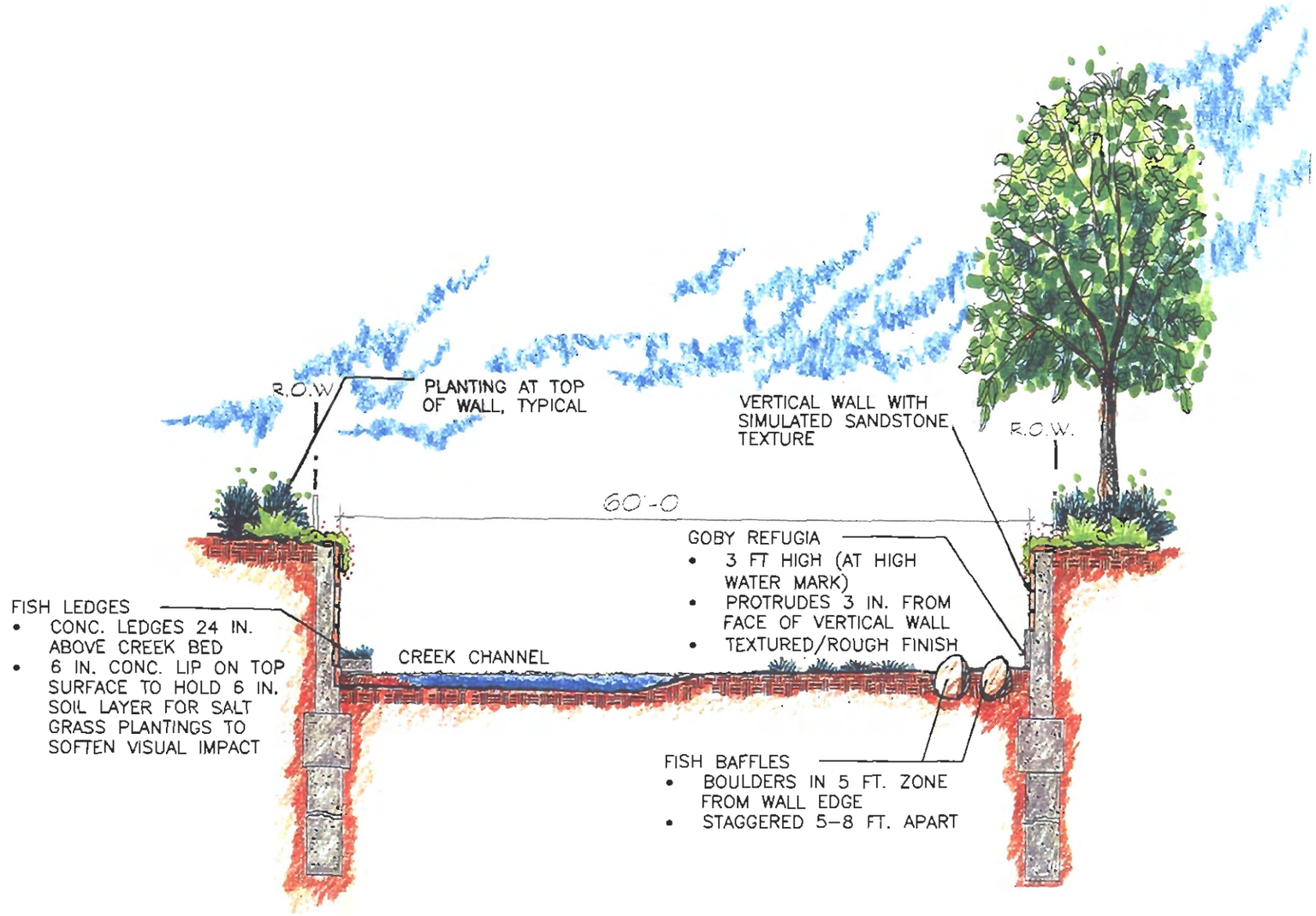
FORMLINER DETAIL

LOWER MISSION CREEK FLOOD CONTROL PROJECT

FAUX SANDSTONE
GOBY REFUGIA

Drawn By:	Date:

FIGURE 8

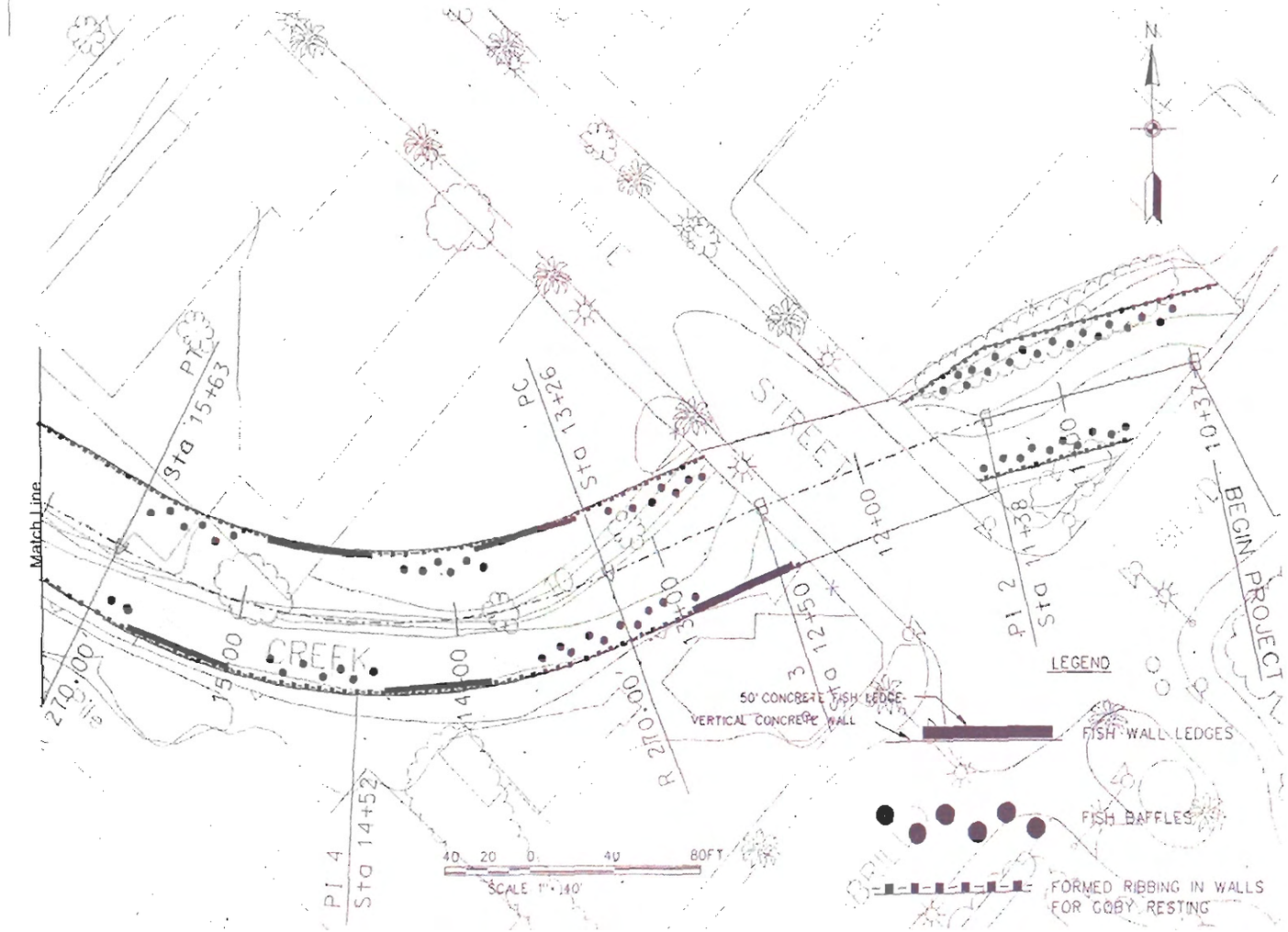


LOWER MISSION CREEK FLOOD CONTROL PROJECT

FISH LEDGES AND GOBY REFUGIA

Drawn By:	Date:
	–

FIGURE 9

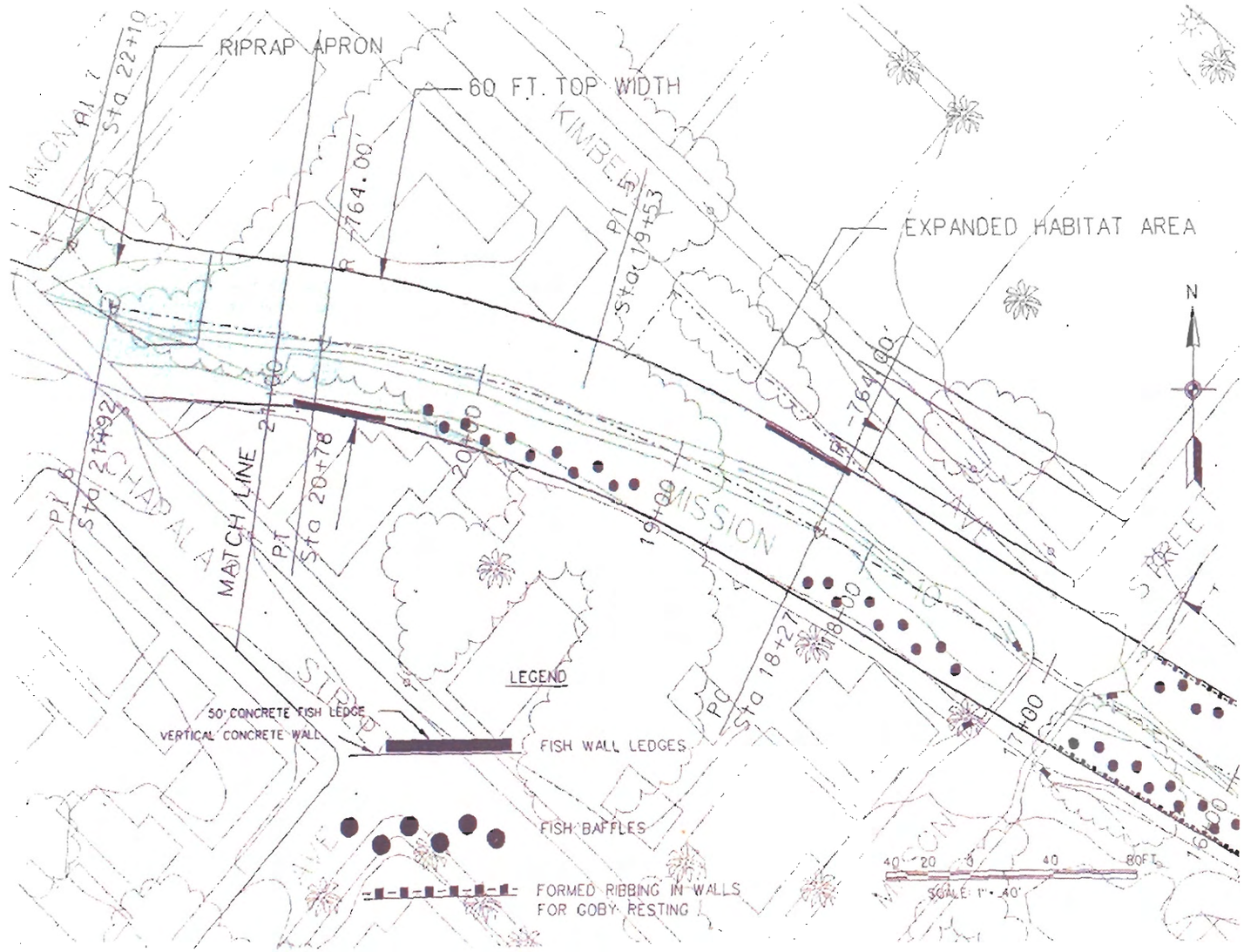


LOWER MISSION CREEK FLOOD CONTROL PROJECT

FISH LEDGES AND GOBY REFUGIA LOCATIONS

Drawn By:	Date:
	–

FIGURE 10



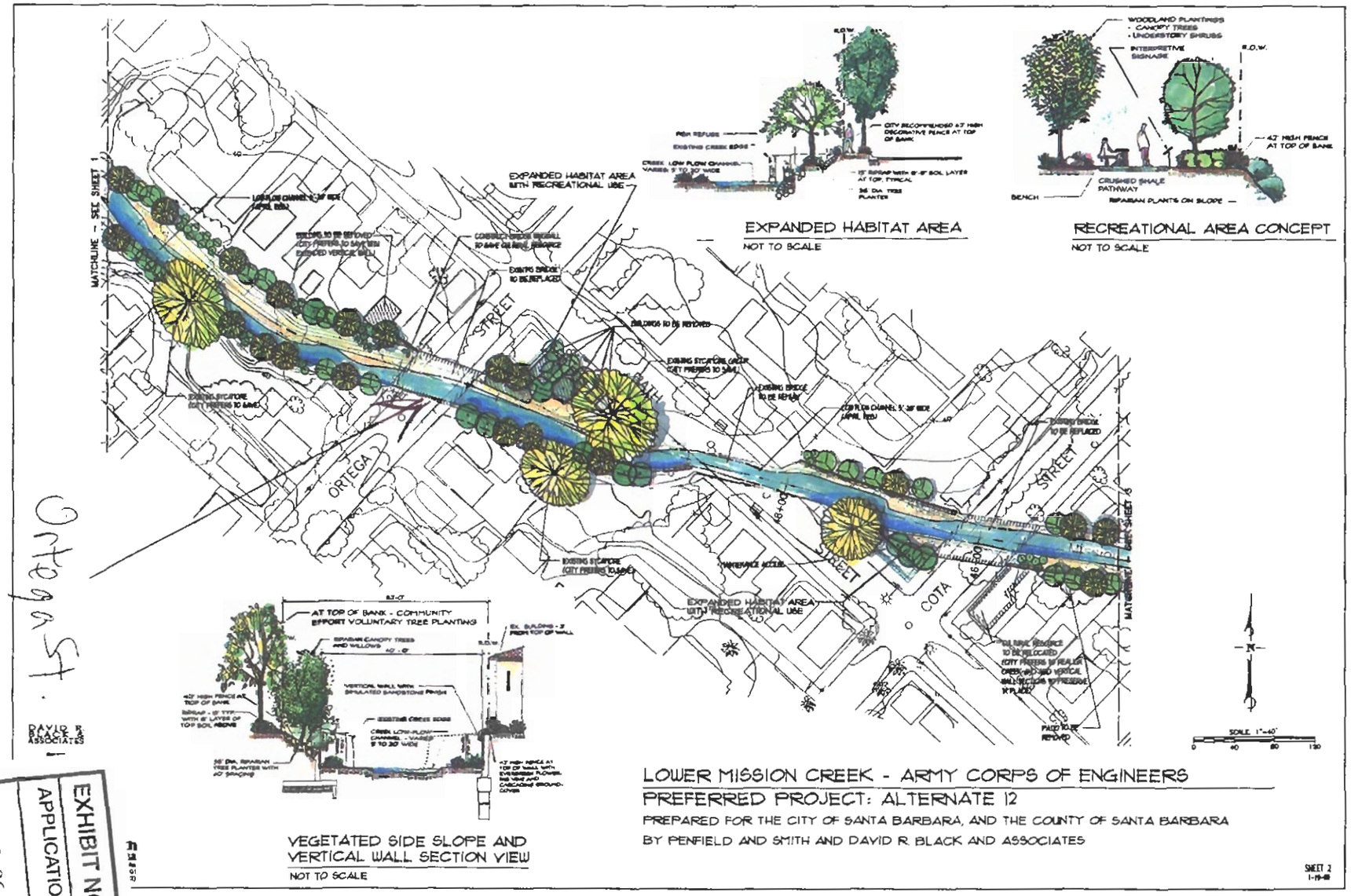
LOWER MISSION CREEK FLOOD CONTROL PROJECT

FISH LEDGES AND GOBY REFUGIA LOCATIONS

Drawn By:

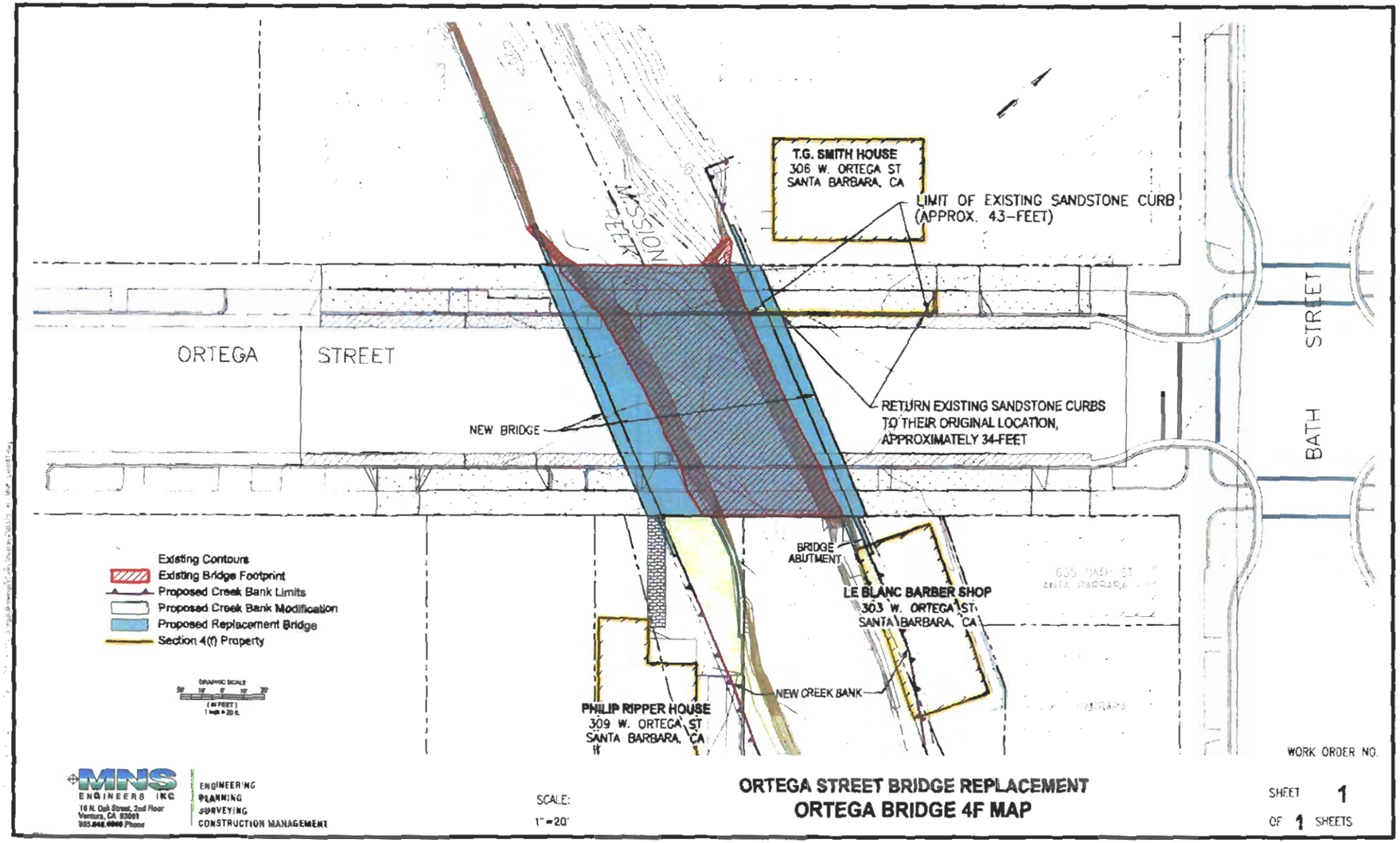
Date:

FIGURE 11



Ortega St.

EXHIBIT NO. 4
APPLICATION NO.
CDP-08-96/CD-12-09



Ortega Bridge 4(f) Properties

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

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. This permit is not valid and development shall not commence until copies of the permit, signed by the permitee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permitee to bind all future owners and possessors of the subject properties to the terms and conditions.

III. SPECIAL CONDITIONS

1. Compliance with City of Santa Barbara Conditions of Approval

All conditions of approval contained in the City of Santa Barbara Planning Commission's Resolution No. 029-07 **(Exhibit 1)** applicable to the proposed project are hereby incorporated as special conditions of the subject permit unless specifically modified by any additional special conditions set forth herein.

EXHIBIT NO. 5
APPLICATION NO.
CDP-08-96/CD-12-09
4-07-134 Cabrillo Bridge-CCC Conditions

2. Compliance with Approved Mitigation Measures

All mitigation measures required in Final Mitigated Negative Declaration No. MST2004-00878 approved by the city Council in Resolution No. 029-07 applicable to the proposed project **(Exhibit 2)** are hereby incorporated by reference as special conditions of the subject permit unless specifically modified by any additional special conditions set forth herein.

3. Other Federal, State, or Local Approvals

Prior to commencement of development, the applicant shall submit, for the review and approval of the Executive Director, either evidence of final required approvals or evidence that no approval is needed from the Army Corps of Engineers (ACOE), Regional Water Quality Control Board (RWQCB), California Department of Fish and Game, State Historic Preservation Office (if needed), United States Fish and Wildlife Service, and the National Marine Fisheries Service.

4. Timing of Operations

a. Except for installation of sheet piles for partial dewatering and diversion for pile installation, abutment construction, and bank protection, construction work in the channel and on the banks of Mission creek and lagoon, including construction of cofferdams, shall not occur during the period from November 1 through March 31, unless authorized by the Executive Director. This schedule shall be subject to revision, if authorized by the Executive Director, dependent on weather conditions and monitoring for spawning of tidewater goby. Installation of cofferdams and full dewatering and diversion of Mission creek shall not begin until forecasts from the National Weather Service provide reasonable assurance that the winter rainfall has ended. Installation of cofferdams and full dewatering and diversion of the creek shall not occur during the tidewater goby spawning season, as indicated through the tidewater goby monitoring required in Special Condition Five (5).

b. Pile driving shall occur during September 1 to December 1 in order to avoid the adult steelhead migration period and avian nesting/breeding season. The ending date may be moved to as late as December 31 if the lagoon remains closed by its own forces and if authorized by the Executive Director.

5. Tidewater Goby and Aquatic Species Management Plan

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a final plan for the protection of tidewater goby. The plan shall include the following elements:

1. Pre-construction monitoring surveys for tidewater goby shall be implemented at the upstream, downstream, and mid-lagoon bridge areas, one year prior to construction. These surveys shall include one pre-spawn survey and one post-spawn survey. Pre-construction surveys shall be conducted by a biologist approved to handle

tidewater gobies under a Section 10a1a recovery permit to determine the general abundance of tidewater gobies.

2. At least four (4) weeks prior to commencement of any onset of work, the City shall submit the name and qualifications of a tidewater goby biologist or specialist, for the review and approval of the Executive Director. The applicant shall retain the services of the qualified biologist(s) or environmental resource specialist(s) to develop and implement the Tidewater Goby Protection Plan and to monitor project operations.
3. The authorized biologist retained by the City shall conduct a training session for all construction personnel prior to the onset of work. The training shall include a description of the tidewater goby and its habitat; the specific measures that are being implemented to protect the tidewater goby during construction; and the project limits.
4. The authorized biologist shall complete initial surveys for tidewater gobies within the project area one week prior to the onset of work.
5. The authorized biologist and a crew working under his/her direction shall clear all fish, including tidewater gobies, from the area to be dewatered prior to construction.
6. The authorized biologist shall inspect the dewatered areas and construction site regularly to detect whether any tidewater gobies or other fish are passing through the cofferdam and investigate whether tidewater goby protection measures are being implemented.
7. The qualified biologist shall be present when the cofferdams are removed and the construction area refilled with water to relocate any fish present in the construction area before completion of removal operations and to ensure successful reintroduction of aquatic habitat in the construction area.
8. Following construction, the authorized biologist shall complete post-construction surveys for tidewater gobies in Mission Creek.
9. The qualified biologist shall prepare a post-project monitoring report documenting the efforts to protect the goby, the results, and recommendation for future projects involving similar procedures. In the event that monitoring shows a significant decrease in the goby population that cannot be readily explained by natural factors or is clearly linked to the Project, the authorized biologist, in consultation with the USFWS and other experts, shall recommend a course of action to address the problem.

6. <u>Biological Surveys and Construction Monitoring</u>

A. The City shall retain the services of a qualified biologist(s) or environmental resource specialist(s) to conduct surveys for sensitive wildlife species and raptors and to monitor project operations. At least two (2) weeks prior to commencement of any project operations, the City shall submit the name and qualifications of the biologist or specialist, for the review and approval of the Executive Director. The

City shall ensure that all project construction and operations shall be carried out consistent with the following:

1. The environmental resource specialist shall conduct a survey of all areas within 500 feet of the project site to determine presence and behavior of sensitive wildlife species and raptors, no more than 7 days prior to any project operations including construction, grading, excavation, vegetation eradication and removal, hauling, and maintenance activities.
2. In the event that any sensitive wildlife species or raptors exhibit reproductive or nesting behavior, the environmental specialist shall immediately notify the City, the Executive Director and local resource agencies in writing. The City shall immediately cease development activities upon receipt of such notice. Project activities shall resume only upon written approval of the Executive Director.
3. In the event that any sensitive wildlife species are present in the project area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the environmental resource specialist shall either: (1) initiate a salvage and relocation program prior to any excavation/maintenance activities to move sensitive species by hand to safe locations elsewhere along the project reach or (2) as appropriate, implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The City shall also immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Game, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.

B. The environmental resource specialist shall be present during all construction, grading, excavation, vegetation eradication and removal, hauling, and maintenance activities. The environmental resource specialist shall require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. The environmental resource specialist(s) shall immediately notify the Executive Director if activities outside of the scope of notice of coastal development permit 4-07-134 occur. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicants shall be required to submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit or a new coastal development permit.

7. <u>Protection of Water Quality</u>

It shall be the applicant's responsibility to ensure that the following occurs during project operations:

A. In order to minimize impacts to Mission Creek from storm water runoff associated with Cabrillo Boulevard, the City shall install filtration basket inserts within the catch basins at the Cabrillo Bridge.

B. The work area shall be flagged to identify limits of construction and identify natural areas that are off limits to construction traffic.

C. No construction materials, debris, or waste shall be stored on the beach or where it may be subject to erosion and dispersion. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris that may be discharged into coastal waters. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours. Debris shall be disposed at a debris disposal site outside of the coastal zone or at a location within the coastal zone authorized to receive such material.

D. No equipment shall be stored in the project area, including designated staging and/or stockpile areas, except during active project operations.

E. Only areas essential for construction shall be cleared.

F. Construction equipment shall not be cleaned on the beach or in the beach parking lots.

G. Stockpiled materials shall be located as far from stream areas on the designated site(s) as feasible and in no event shall materials be stockpiled closer than 30 ft. in distance from the top edge of a stream bank.

H. All debris and other construction materials shall be cleared from Mission Creek prior to reintroduction of stream flows and tidal action to the channel following removal of the cofferdams and sheet piles.

8. <u>Erosion Control Plans</u>

Prior to commencement of development, the City shall submit two (2) sets of final erosion control plans, prepared by a qualified engineer, for review and approval by the Executive Director. The plans shall be consistent with all measures required pursuant to Special Condition Seven (7). The plans shall also incorporate the following criteria:

(1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

(2) The final erosion control plans shall specify the location and design of erosion control measures to be implemented during the rainy season (November 1 – May 1). The City shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with

geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. Straw bales shall not be approved. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment shall be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

(3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

(4) Storm drain inlets shall be protected from sediment-laden waters by the use of inlet protection devices such as gravel bag barriers, filter fabric fences, block and gravel filters, and excavated inlet sediment traps.

9. Plans Conforming to Geologic Recommendation

All recommendations contained in the applicable geotechnical reports submitted for Coastal Development Permit 4-07-134, shall be incorporated into all final design and construction plans, including foundation, grading and drainage. All final plans must be reviewed and approved by the City engineer and verified as incorporating the applicable recommendations of the geotechnical reports. Prior to the commencement of development the City shall submit, for review and approval by the Executive Director, evidence of the City engineer's review and approval of all final project plans

10. Assumption of Risk

By acceptance of this permit, the City acknowledges and agrees (i) that the site may be subject to hazards from erosion, wave action, tidal action, earth movement, and flooding; (ii) to assume the risks to the City and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

11. Removal of Excess Excavated Material

A. Permanent stockpiling of material on site shall not be allowed. Sediment shall be retained at the designated temporary stockpile areas for dewatering, up to approximately three months, until removed to an appropriate approved disposal location either outside the coastal zone or to a site within the coastal zone permitted to receive such fill.

B. Prior to the issuance of the Coastal Development Permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

12. Final Project Plans

A. Prior to the issuance of the coastal development permit, the City shall submit, for the review and approval of the Executive Director, two (2) sets of final project plans, including site plans, elevations, grading plans, restoration/landscaping plans, dewatering plan, and other plans required by the special conditions of this permit. The final project plans shall be in substantial conformance with those plans submitted by the City in October 2007 and January 2008.

B. The City shall undertake development in accordance with the approved final plans. No changes to the approved final plans shall occur without a Commission approved amendment to the coastal development permit or new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

13. Habitat Enhancement and Revegetation Monitoring Program

A. Prior to the issuance of the coastal development permit, the City shall submit, for the review and approval of the Executive Director, a final Habitat Restoration, Enhancement, Monitoring, and Management Program for restoration of the creek banks upstream and downstream of the Cabrillo Bridge. This program shall be prepared by a qualified biologist or environmental resource specialist and shall include, but not be limited to, the following:

1. Onsite habitat enhancement shall include, at a minimum, the removal of any and all invasive plant species on the site and revegetation of all disturbed areas with appropriate native species of local genetic stock, including areas where invasive and non-native plants were removed;
2. Indication as to the location, type, and height of any temporary fencing that will be used for restoration. The plans shall also indicate when this fencing is to be removed.
3. Indication on plans that invasive plant species shall be removed from all development and restoration areas for the life of the project.

4. Indication on plans that herbicides shall not be used within the creek habitat. Target non-native or invasive species shall be removed by hand.
5. Indication on plans that rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
6. A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, including, a biological survey, a description and map showing the area and distribution of existing vegetation types, and a map showing the distribution and abundance of any sensitive species.
7. A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
8. Documentation of performance standards, which provide a mechanism for making adjustments to the mitigation site when it is determined, through monitoring, or other means that the restoration techniques are not working.
9. Documentation of the necessary management and maintenance requirements, and provisions for timely remediation should the need arise.
10. A planting palette (seed mix and container plants), planting design, source of plant material, and plant installation. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
11. Sufficient technical detail on the restoration design including, at a minimum, a planting program including a description of planned site preparation, method and location of exotic species removal, timing of planting, plant locations and elevations on the baseline map, and maintenance timing and techniques.
12. A plan for documenting and reporting the physical and biological "as built" condition of the site within 30 days of completion of the initial restoration activities. The report shall describe the field implementation of the approved restoration program in narrative and photographs, and report any problems in the implementation and their resolution.
13. Documentation that the project will continue to function as viable native habitats, as applicable, over the long term.

14. A Monitoring Program to monitor the Restoration and Enhancement. Said monitoring program shall set forth the guidelines, criteria and performance standards by which the success of the enhancement and restoration shall be determined. The monitoring programs shall include but not be limited to the following:

    (a) Interim and Final Success Criteria. Interim and final success criteria shall include, as appropriate: species diversity, total ground cover of vegetation, vegetative cover of dominant species and definition of dominants, wildlife usage, hydrology, and presence and abundance of sensitive species or other individual "target" species.

    (b) Interim Monitoring Reports. The City shall submit, for the review and approval of the Executive Director, on an annual basis, for a period of five (5) years, a written monitoring report, prepared by a monitoring resource specialist indicating the progress and relative success or failure of the enhancement on the site. This report shall also include further recommendations and requirements for additional enhancement/ restoration activities in order for the project to meet the criteria and performance standards. This report shall also include photographs taken from predesignated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the enhancement/restoration project in relation to the interim performance standards and final success criteria.

    (c) Final Report. At the end of the five-year period, a final detailed report on the restoration shall be submitted for the review and approval of the Executive Director. If this report indicates that the enhancement/ restoration project has, in part, or in whole, been unsuccessful, based on the performance standards specified in the restoration plan, the applicant(s) shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental program shall be processed as an amendment to this coastal development permit.

    (d) Monitoring Period and Mid-Course Corrections. During the five-year monitoring period, all artificial inputs (e.g., irrigation, soil amendments, plantings) shall be removed except for the purposes of providing mid-course corrections or maintenance to insure the survival of the enhancement/restoration site. If these inputs are required beyond the first two years, then the monitoring program shall be extended for every additional year that such inputs are required, so that the success and sustainability of the enhancement/restoration is insured. The enhancement/restoration site shall not be considered successful until it is able to survive without artificial inputs.

B. The City shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no new amendment or permit is legally required.

14. <u>Herbicide Use</u>

Herbicide use shall be restricted to the use of Glyphosate Aquamaster™ (previously Rodeo™) herbicide for the elimination of non-native and invasive vegetation located within upland and transitional areas of the project site for purposes of habitat restoration only. No use of any herbicide shall occur during the rainy season (November 1 – March 31) unless otherwise allowed by the Executive Director for good cause. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The City of Santa Barbara Public Works Department is proposing to replace the structurally deficient Cabrillo Bridge over Mission Creek in the City of Santa Barbara **(Exhibit 3)**. According to engineering analysis, the existing bridge has deteriorated and is not expected to be able to safely carry the amount and weight of future traffic unless it is replaced. The project would also improve the hydraulic conveyance of Mission Creek and involve the reconstruction and restoration of portions of Mission Creek and Lagoon between State Street and the Pacific Ocean in the City of Santa Barbara.

The project area includes areas under the jurisdiction of the City of Santa Barbara Land Use Plan (generally from the center of Cabrillo Bridge north) and areas designated as the retained jurisdiction of the Coastal Commission (generally from the center of Cabrillo Bridge south). The subject coastal development permit is for that portion of the project in the retained jurisdiction of the Commission. This includes the majority of the bridge area and that portion of Mission Creek and Lagoon extending approximately 150 feet south or downstream of the bridge **(Exhibit 4)**. On July 12, 2007 the City of Santa Barbara approved a mitigated negative declaration on the whole project and a coastal development permit (MST2004-00878; CDP2007-00001) for that portion of the project north of Cabrillo Boulevard within the City's LCP appealable area. The conditions of approval can be found in Exhibit 1. The notice of final action for the permit (4-SBC-07-202) was received by the Commission on July 26, 2007 and no appeal was filed with the Commission within the allowable appeal period that ended August 9, 2007.

2. Site Plans

3. Correspondence received in opposition to the project:

   a. Erik and Alex Funke, Santa Barbara

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

I. Approved the subject application making the following findings and determinations:

1. The project is consistent with the policies of the California Coastal Act.
2. The project is consistent with all applicable policies of the City's Local Coastal Plan, all applicable implementing guidelines, and all applicable provisions of the Code.
3. The project is consistent with the Chapter 3 (commencing with Section 30200) Policies of the Coastal Act regarding public access and public recreation.

II. Said approval is subject to the following conditions:

A. **Project Description.** The development of the Real Property approved by the Planning Commission on September 18, 2008 is limited to the improvements shown on the plans (Figures 1-10 attached to the Project Description in the EIS/EIR Addendum) signed by the chairman of the Planning Commission on said date and on file at the City of Santa Barbara. This project would result in the construction of an oxbow bypass culvert between the northern edge of U.S. Highway 101 and Chapala Street, widening of Mission Creek south of the bypass by up to a maximum of 60 feet, and construction of vertical banks, and vertical banks with vegetated slopes in expanded riparian habitat areas in two areas where existing structures would be removed. The oxbow bypass would not be connected to Mission Creek north of Highway 101 as part of this permit. The Mason Street bridge would be replaced. Total material to be excavated is estimated to be 21,000 cubic yards. The project includes construction of fish ledges, use of grout lines in sandstone walls for tidewater goby hideouts, and use of boulder clusters to improve fish habitat. Revegetation of a portion of the lagoon south of Cabrillo Boulevard, installation of riparian vegetation above the creek banks, and maintenance of the facility is also proposed. Due to the scope of this project, this approval shall be valid as long as the work commences within ten (10) years from the date of approval of the Coastal Development permit approved by the Coastal Commission for the portion of the project located within the Coastal Commission's original jurisdiction.

B. **Coastal Commission Determination.** The applicant shall implement all of the Conditions of Approval of the Federal Coastal Consistency Determination (CCD). Each recommendation from the studies required by the CCD shall be implemented.

C. **Landscape Plans.** The Applicant shall comply with the Landscape/Restoration Plans as approved by the Historic Landmarks Commission (HLC). Such pl modified unless prior written approval is obtained from the HLC. The the Real Property shall be provided and maintained in accord landscape/restoration plan.

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City Conditions

D. **Mitigation Timing.** Mitigation applicable to each phase of construction shall be completed or initiated as applicable during that phase of construction.

E. **Design Review.** The following items are subject to the review and approval of the Historic Landmarks Commission (HLC). HLC shall not grant preliminary approval of the project until the following conditions have been satisfied.

1. **Tree Removal and Replacement.** All trees removed, except fruit trees and street trees approved for removal without replacement by the Parks Department shall be replaced on-site on a one-for-one basis with a native species propagated from seeds or seedlings collected from within the Lower Mission Creek corridor, to the maximum extent feasible.

2. **Moreton Bay Fig Tree Protection Measures.** The landscape plan(s) and grading plan(s) shall include the following tree protection measures:

   a. **Arborist's Report.** Include a note on the plans that recommendations/conditions contained in the arborist's report prepared by Dan Condon Arboricultural Consulting, dated December 19, 2007, shall be implemented.

   b. **Arborist Monitoring.** An arborist with knowledge of root systems of large ornamentals shall monitor bypass culvert construction to minimize impacts to the Moreton Bay Fig Tree. [BIO-14]

   c. **Root Protection:** Any Moreton Bay Fig Tree root over 2 inches in diameter that must be cut during excavation shall be cleanly severed using a sharp hand cutting tool. [BIO-15]

   d. **Construction Buffer:** Install a construction fence as near as possible to the limit of the excavation trench on the Moreton Bay Fig Tree buffer side. No parking or storage of construction equipment would be allowed in the buffer area. **[BIO-18]**

   e. **Tree Protection Excavation:** All excavation on the channel near the Moreton Bay Fig Tree shall be made from the side of the culvert opposite from the Moreton Bay Fig Tree. [BIO-19]

   f. **Tree Protection Mulching:** Prior to the initiation of culvert construction, remove all turf grass between the edge of the excavation trench and the drip line of the Moreton Bay Fig Tree and mulch the entire area with two-inch deep composted organic mulch to be approved by the City Arborist. [BIO-20]

3. **Tree Protection Measures.** The landscape plan (and grading plan) shall include the following tree protection measures for other trees in the project area:

   a. **Landscaping Under Trees.** Landscaping under the tree(s) shall be compatible with the preservation of the tree(s).

b. **Oak and Sycamore Tree Protection Measures.** The following provisions shall apply to existing oak and sycamore trees in the project area:

(1) Landscaping provided under the oak and sycamore trees shall be compatible with preservation of the trees as determined by the HLC. No irrigation system shall be installed under the dripline of any oak tree.

(2) Oak trees greater than four inches (4") in diameter at four feet (4') above grade removed as a result of the project shall be replaced at a three to one (3:1) ratio, at a minimum five (5) gallon size, from Lower Mission Creek watershed stock, to the maximum extent feasible.

4. **Crime Analyst Plan Review.** The Developer shall meet with the City Police Department Crime Analyst prior to Preliminary Approval to determine how lighting, locking mechanisms, egress, and fencing with special emphasis on culvert and expanded habitat access can be designed and installed to reduce the potential number of calls for police service resulting from unauthorized use of the Real Property.

5. **Screened Check Valve/Backflow.** The check valve or anti-backflow devices for irrigation systems shall be provided in a location screened from public view.

6. **Bank Planting**. Upper creek banks shall be planted with native vegetation. [AES-1]

7. **Vertical Walls/Fences.** Plant vines along the vertical walls to minimize visual impacts; cover concrete with natural color and texture. If fencing is installed in the project design for safety purposes, plant vines along fencing to minimize impacts. Upgraded fence materials shall be used in areas visible or accessible to the public. [AES-2]

8. **Concrete Treatment.** Aesthetic treatment, including the use of colored concrete and/or pouring concrete in forms that would mimic existing sandstone walls or natural vertical creek banks, shall be incorporated into project plans to minimize project-related impacts. [AES-3]

9. **Bridge Design.** Mason Street Bridge shall be designed to retain an appearance appropriate to the character of the neighborhood in which it is located. Design of the bridge shall be reviewed and approved by the Historic Landmarks Commission. [AES-4]

F. **Community Development Requirements Prior to Building or Public Works Permit Application/Issuance.** The following shall be finalized prior to, and/or submitted with, the application for any Building or Public Works permit:

1. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified representative for the Applicant, subject to approval of the contract and the representative by the Planning Division, to act as the Project Environmental Coordinator (PEC). The PEC shall be responsible for assuring full compliance with the provisions of the Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval to the City. The contract shall include the following, at a minimum:

   a. The frequency and/or schedule of the monitoring of the mitigation measures.

   b. A method for monitoring the mitigation measures.

   c. A list of reporting procedures, including the responsible party, and frequency.

   d. A list of other monitors to be hired, if applicable, and their qualifications.

   e. Submittal of biweekly reports during demolition, excavation, grading and footing installation and biweekly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department.

   f. The PEC shall have authority over all other monitors/specialists, the contractor, and all construction personnel for those actions that relate to the items listed in the MMRP and conditions of approval, including the authority to stop work, if necessary, to achieve compliance with mitigation measures.

2. **Neighborhood Notification Prior to Construction.** At least twenty (20) days prior to commencement of construction, the contractor shall provide written notice to all property Applicants, businesses, and residents within 300 feet of the project area. The notice shall contain a description of the project, the construction schedule, including days and hours of construction, the name and phone number of the Project Environmental Coordinator (PEC) and Contractor(s), site rules and Conditions of Approval pertaining to construction activities and any additional information that will assist the Building Inspectors, Police Officers and the public in addressing problems that may arise during construction. The language of the notice and the mailing list shall be reviewed and approved by the Planning Division prior to being distributed. An affidavit signed by the person(s) who compiled the mailing list shall be submitted to the Planning Division.

3. **Contractor and Subcontractor Notification.** The Applicant shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a copy of the notice to the Planning Division.

4. **Traffic Control Plan.** A traffic control plan shall be submitted, as specified in the City of Santa Barbara Traffic Control Guidelines. Traffic Control Plans are subject to approval by the Transportation Manager.

5. **Archaeological Monitoring Contract.** Submit to the Planning Division a contract with an archaeologist from the most current City Qualified Archaeologists List for monitoring during all ground-disturbing activities associated with the project, including, but not limited to, grading, excavation, trenching vegetation or paving removal and ground clearance near archaeological sites CA-SBA-27 and SBA-28. The contract shall be subject to the review and approval of the Planning Division.

   The archaeologist's monitoring contract shall include the following provisions: If cultural resources are encountered or suspected, work shall be halted or redirected by the archaeologist immediately and the Planning Division shall be notified. The archaeologist shall assess the nature, extent and significance of any discoveries and develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List, preparation of further site studies and/or mitigation.

   If the discovery consists of possible human remains, the Applicant shall contact the Santa Barbara County Coroner immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. The Applicant shall retain a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization.

   If the discovery consists of possible prehistoric or Native American artifacts or materials, the Applicant shall retain a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Planning Division grants authorization. (CR-2)

6. **Park Commission Tree Removal Approval.** Submit to the Planning Division verification of approval from the Park Commission for the removal of trees with a trunk diameter greater than four (4) inches at a point twenty-four (24) inches above the ground) in the front yard setback.

7. **Arborist's Monitoring.** Submit to the Planning Division an executed contract with a qualified arborist for monitoring of all work within the dripline of all native trees and within 30 feet of the dripline of the Moreton Bay Fig Tree at

Chapala Street and Montecito Street. The contract shall include a schedule for the arborist's presence during grading and construction activities, and is subject to the review and approval of the Planning Division.

8. **Letter of Commitment for Pre-Construction Conference.** The Applicant shall submit to the Planning Division a letter of commitment that states that, prior to disturbing any part of the project site for any reason and after the Building and/or Public Works permit has been issued, the General Contractor shall schedule a conference to review site conditions, construction schedule, construction conditions, and environmental monitoring requirements. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, the assigned Building Inspector, the Planning Division, the Applicant, the Archaeologist, the Arborist, the Landscape Architect, the Biologist, the Geologist, the Project Engineer, the Project Environmental Coordinator, the Contractor and each subcontractor.

9. **Biology.** A signed contract shall be submitted for the following:

   a. **Biological Monitor.** A qualified biologist (knowledgeable of steelhead and tidewater goby) shall monitor project construction in the water. Monitoring shall be performed at least twice per week beginning when any construction activity is initiated in or above the creek water and occurring every other week until construction in or above the creek water is completed. [BIO-4]

   b. **Invasive Plants.** Invasive weeds (principally giant reed, castor bean, salt cedar, and sweet fennel) shall be removed at least twice a year for the first two years and annually for the next three years following final acceptance of contractor contract completion for each phase of the project. [BIO-10]

   c. **Native Tree Plantings.** Any native trees removed shall be replaced. Any replacement trees which die within the first five years shall be removed and replaced by the same species from 1-gallon stock. The applicant shall maintain the planted vegetation for the life of the project. Said replacement trees shall be propagated from local genetic stock, primarily in lower Mission Creek. [BIO-11]

   d. **Growth Monitoring.** The growth rates of the trees and shrubs planted as a part of this project shall be monitored biannually for five years or until vegetation has been established. If the plants do not meet pre-determined growth and survival rates, actions shall be taken to improve growing conditions such as fertilization, increased irrigation and replanting. Achieve 90% success of the planted vegetation at the end of five years of planting, and ensure that vegetation survival rate is equivalent. If 90% success of the planted vegetation is not achieved after five years, the applicant shall ensure achievement of 90% success of the planted

vegetation. For the first year after completion of construction, the stream bank corridors and habitat expansion zones shall be monitored every three months. At each monitoring period, a monitoring report shall be prepared and a final report shall be prepared at the end of the five year period. Said reports shall be submitted to the Santa Barbara City Community Development Department and the Santa Barbara County Flood Control and Water Conservation District. Monitoring of planted vegetation shall be conducted at least twice a year for a minimum of five years. [BIO-12]

e. **Native vegetation.** At the time contract is awarded, contractor shall initiate propagation of native plant materials collected from the area of the Lower Mission Creek Flood Control project, to the maximum extent feasible. Said material shall be used in each phase of construction. Native plant materials removed from the project area shall be used in project revegetation, to the maximum extent feasible.

10. **15 West Mason Street.** Prior to removal of the building at 15 West Mason Street, full Historic American Building Survey (HABS) recordation, including a photographic study of the structure to the neighborhood and a short history of the building that places it in its historic and architectural context, is required prior to issuance of a demolition permit. [CR-3]

11. **134 Chapala.** If the structure at 134 Chapala is to be removed, complete full HABS documentation, including a photographic study of the relationship of the structure to the neighborhood, and a short history of the building that places it in its historical and architectural context prior to the issuance of a demolition permit. [CR-4]

12. **Waterfront Neighborhood.** Submit the already completed study regarding eligibility of the Waterfront Neighborhood to the City Planning Division. [CR-6] Note that the study has already been completed.

13. **Property Acquisition.** The applicant shall purchase the property interest and provide compensation to the Applicant and tenants and/or property would be relocated as required by State and Federal law. [LU-1]

G. **Permit Requirements.** The Public Works Permit shall require the following measures to be included as requirements in the construction contracts and reproduced on the drawings.

1. **Design Review Requirements.** Plans shall show all design, landscape and tree protection elements, as approved by the Historic Landmarks Commission, outlined in Section C. above.

2. **Prepare a Structural Crack Survey and Video Reconnaissance**. At least twenty (20) days prior to the issuance of a Public Works Permit, Applicant shall notify owners and occupants of structures within 100 feet of the project site

property lines of the opportunity to participate in a structural crack survey and video reconnaissance of their property. Prior to the issuance of a demolition permit, Applicant shall prepare a structural crack survey and video reconnaissance of the property of those owners or occupants who express a desire to participate in the survey. The purpose of the survey shall be to document the existing condition of neighboring structures within 100 feet of the project site property line. After each major phase of project development (demolition, grading, and construction), a follow-up structural crack survey and video reconnaissance of the property of those owners and occupants who have elected to participate in the survey. Prior to issuance of Final Acceptance, Applicant shall meet with the owners and occupants who have elected to participate in the survey to determine whether any structural damage has occurred due to demolition, grading or construction at the project site.

3. **Design.** Implement a design which causes no constriction to the creek bed, and hence no increase of water velocity compared to existing conditions. [BIO-5]

4. **Flow Conditions.** Create flow conditions conducive to the passage of steelhead through the length of the project on Mission Creek. [BIO-6]

5. **Fish Refuges.** Provide permanent refuges appropriate to Tidewater Goby and Steelhead. Restore an important measure of natural heterogeneity in flow characteristics to the riverine portion of the streambed through the creation of boulder fields. Use placement of ledges, grout lines in cast walls, mid-stream boulder clusters, and natural bottom to promote higher quality of in stream habitat, especially during steelhead migration. [BIO-7]

6. **Habitat.** Use strategic placement of boulder clusters on the creek bed as energy dissipaters as determined by a qualified biologist and hydrologist. **[BIO-8]**

7. **Vegetation Establishment**. A temporary, above ground irrigation system shall be installed and maintained for five years to ensure that planted vegetation is established. [BIO-9]

8. **Revegetation Plan.** A final revegetation plan shall be prepared by a qualified biologist that includes the above-stated mitigation measures, indicates how plants and seeds would be collected and grown for the project, and defines success criteria and monitoring in more detail. BIO-13

9. **Potter Hotel Footbridge.** Extend the box culvert downstream of the Chapala Street Bridge as currently designed. [CR-5]

10. **Recreation.** Areas that provide limited passive recreation shall be created where real estate is available. [REC-1]

11. **Fencing/Access.** Provide safety fencing for the public and locations for emergency access. [SAF-1]

12. **Conditions on Plans/Signatures.** The final Planning Commission Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., submitted to Public Works Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Applicant		Date
Contractor	Date	License No.
Architect	Date	License No.
Engineer	Date	License No.

H. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Applicant and/or Contractor for the duration of the project construction. Community Development Department staff shall review the plans and specifications to assure that they are incorporated into the bid documents, such that potential contractors will be aware of the following requirements prior to submitting a bid for the contract.

1. **Pollution Prevention.** Construction equipment shall be kept in proper working condition and inspected for leaks and drips on a daily basis prior to commencement of work. The construction contractor shall develop and implement a spill prevention and remediation plan and workers shall be instructed as to its requirements. Construction supervisors and workers shall be instructed to be alert for indications of equipment-related contamination such as stains and odors. Construction supervisors and workers shall be instructed to respond immediately with appropriate actions as detailed in the spill prevention and remediation plan if indications of equipment-related contamination are noted. No refueling or oil change shall occur in the creek bed. [HAZ-1]

2. **Unanticipated Archaeological Resources Contractor Notification.** Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts associated with past human occupation. If such archaeological resources are encountered or suspected, work shall be halted immediately, the City

Environmental Analyst shall be notified and the applicant shall retain an archaeologist from the most current City Qualified Archaeologists List. The latter shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, which may include, but are not limited to, redirection of grading and/or excavation activities, consultation and/or monitoring with a Barbareño Chumash representative from the most current City qualified Barbareño Chumash Site Monitors List, etc.

If the discovery consists of possible human remains, the Santa Barbara County Coroner shall be contacted immediately. If the Coroner determines that the remains are Native American, the Coroner shall contact the California Native American Heritage Commission. A Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization.

If the discovery consists of possible prehistoric or Native American artifacts or materials, a Barbareño Chumash representative from the most current City Qualified Barbareño Chumash Site Monitors List shall be retained to monitor all further subsurface disturbance in the area of the find. Work in the area may only proceed after the Environmental Analyst grants authorization. [CR-1]

3. **Tree Protection Buffer:** Install a construction fence as near as possible to the limit of the excavation trench on the Moreton Bay Fig Tree buffer side. No parking or storage of construction equipment shall be allowed in the buffer area. [BIO-18]

4. **Tree Protection Excavation:** All excavation on the channel near the Moreton Bay Fig Tree shall be made from the side of the culvert opposite from the Moreton Bay Fig Tree. [BIO-19]

5. **Tree Protection Mulching:** Prior to the initiation of culvert construction, remove all turf grass between the edge of the excavation trench and the and the drip line of the Moreton Bay Fig Tree and mulch the entire area with two-inch deep composted organic mulch to be approved by the City Arborist. [BIO-20]

6. **Hazardous Materials Contamination.** Prior to construction, borings and soil samples shall be taken at potentially critical areas and analyzed at a qualified laboratory for likely contaminants. If concentrations are detected at or above action levels, remediation action shall be implemented in accordance with federal, state, and county procedures. [HAZ-2]

7. **Sediment Samples.** Prior to the commencement of excavation activities, samples of creek sediments shall be taken to the depth of planned excavation and the same suite of analyses used to characterize the shallow sediments would be used to analyze the deep sediments. In the event actionable concentrations of

contaminants are detected by the analyses, the applicant shall develop a plan to identify the extent of contamination. A plan shall then be developed and implemented to comply with applicable laws and regulations related to the identified contamination so that excavation activities do not result in releases of actionable levels of hazardous materials to the environment. [HAZ-3]

8. **Construction-Related Truck Trips**. Construction-related truck trips that will pass through capacity constrained intersections or peak hour level of service problem areas (as designated in the City's Master Environmental Assessment, p. 99) shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.), unless approved by the Public Works Director. The purpose of this condition is to help reduce truck traffic on adjacent streets and roadways.

9. **Haul Routes.** The haul route(s) for all construction-related trucks, three tons or more, entering or exiting the staging area or access points, shall be approved by the Public Works Director.

10. **Traffic Control Plan.** All elements of the approved Traffic Control Plan shall be carried out by the Contractor.

11. **Construction Parking/Storage/Staging.** Construction parking and storage shall be provided as follows:

    a. During construction, free parking spaces for construction workers and construction shall be provided at the staging area or in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.

    b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits without extensions may be issued for the life of the project.

12. **Storage**. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Pubic Works Director.

13. **Dust Control.** Water the excavation site, storage piles and unpaved roads twice each day of construction - once in the morning and at the end of the construction day; and cover material transported in haul trucks. [AQ-1]

14. **Speed.** Limit vehicle speeds to 15 mph maximums within the construction site and maintenance areas. [AQ-2]

15. **Wind Erosion.** Cease grading and earth movement when wind speeds exceed 15 mph, or as directed by SBCAPCD. Storage piles shall be covered to minimize fugitive dust. [AQ-3]

16. **Construction Dust Control. Tarping.** Trucks transporting fill material to and from the site shall be covered from the point of origin.

17. **Construction Dust Control – Gravel Pads.** Gravel pads shall be installed at all access points to prevent tracking of mud on to public roads.

18. **Construction Dust Control – Stockpiling.** If importation, exportation and stockpiling of fill material are involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.

19. **Construction Dust Control – Disturbed Area Treatment.** After clearing, grading, earth moving or excavation is completed, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:

    a. Seeding and watering until grass cover is grown;

    b. Spreading soil binders;

    c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind;

    d. Other methods approved in advance by the Air Pollution Control District.

20. **Construction Dust Control – Paving.** All roadways, driveways, sidewalks, etc., should be paved as soon as possible. Additionally, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

21. **Construction Dust Control – PEC.** The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when construction work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for map recordation and land use clearance for finish grading for the structure.

22. **Diesel Engines.** Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) shall be utilized wherever feasible.

23. **Engine Size.** The engine size of construction equipment shall be the minimum practical size.

24. **Amount of Equipment.** The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time.

25. **Equipment Maintenance.** Construction equipment shall be maintained in tune per the manufacturer's specifications.

26. **Engine Timing.** Construction equipment operating onsite shall be equipped with two to four degree engine timing retard or pre-combustion chamber engines.

27. **Catalytic Converters.** Catalytic converters shall be installed on gasoline-powered equipment, if feasible.

28. **Certified Pollution Controls.** Diesel catalytic converters, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California shall be installed, if available.

29. **Electric Equipment.** Diesel powered equipment should be replaced by electric equipment whenever feasible.

30. **Limited Idling.** Idling of heavy-duty diesel trucks during loading and unloading shall be limited to five minutes; auxiliary power units should be used whenever possible.

31. **Equipment.** To avoid impacts to aquatic resources, no construction equipment shall be operated within the channel and stream bottom between December 1st and March 30th or whenever significant water flows (defined as more than ½" for April and May and more than 1" from June through November) pass down Mission Creek. [BIO-1]

32. **Construction Dates.** To avoid impact to steelhead trout and tidewater goby, which are federally listed species, construction shall be restricted to dates between June I and December 1st if water flow in the CALTRANS Channel [upstream of Yanonali Street within Mission Creek] is more than 1/2 inch deep. If no continuous surface water flow (defined as more than ½" for April and May and more than 1" from June through November) exists in the CALTRANS Channel after April 15th, construction could occur from then until December 1st. Downstream of Yanonali Street, all construction in Mission Creek shall be performed after June 1, provided no significant stream flows are occurring in Mission Creek. [BIO-2]

33. **Construction in the Channel.** No construction shall occur in the flowing water. If water is present during construction, the water shall be diverted by construction of a low flow channel or installation of a pipe as follows:

    a. No construction work is allowed in water in the estuary from December 1 to June 1st

    b. Divide a suitable length of the estuary down the middle with an impermeable barrier, such as sheet piling. The length should be as long as practicable to minimize repetition of this divide and dry procedure for making temporary construction enclosures. A lateral coffer dam in mid-

stream shall not be acceptable because of increased turbidity and fine sediments that would be conveyed downstream to the coastal lagoon.

c. Dam half the estuary at the upper end with sheet piling or equal

d. A qualified biologist shall walk downstream in a zigzag pattern to herd as many fish as possible from the incipient enclosure

e. Dam the lower end of the enclosure with sheet piling or equal immediately.

f. Fish biologists shall seine the entire contained half thoroughly to remove any gobies and other large organisms to the wet side of the construction enclosure.

g. Fish biologists shall monitor the drying enclosure and seine it thoroughly at least twice a week.

h. When construction on one side has been completed, the downstream wall of the enclosure shall be removed first, followed by the upstream end.

i. The above steps shall be repeated for the opposite bank construction. [BIO-3]

34. **Construction Hours**. Construction (including preparation for construction work) is prohibited Monday through Friday before 7:00 a.m. and after 7:00 p.m., and all day on Saturdays, Sundays and holidays observed by the City of Santa Barbara, as shown below:

New Year's Day	January 1st*
Martin Luther King's Birthday	3rd Monday in January
Presidents' Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th*
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Following Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	December 25th*

*When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.

When, based on required construction type or other appropriate reasons, it is necessary to do work outside the allowed construction hours, contractor shall contact the Chief of Building and Safety to request a waiver from the above construction hours, using the procedure outlined in Santa Barbara Municipal Code §9.16.015 Construction Work at Night. Contractor shall notify all residents within 300 feet of the parcel of intent to carry out night construction a minimum of 48 hours prior to said construction. Said notification shall include

what the work includes, the reason for the work, the duration of the proposed work and a contact number. [N-1]

35. **Truck Traffic.** Truck traffic shall be limited to designated truck routes, as determined in cooperation with City Transportation Staff. Truck transport shall be permitted between 7 a.m. and 7 p.m., Monday through Saturday and by Condition 8 above that limits construction traffic in impacted intersections during peak traffic times. [N-2]

36. **City Noise Ordinance.** The selected construction contractor shall follow the noise ordinance established by the City of Santa Barbara. [N-3]

37. **Notification.** Property owners and tenants within the project area shall be notified a minimum of 20 days prior to project construction in their area. **[N-4]**

38. **Equipment.** Any equipment that must be operated during nighttime hours must be individually reviewed and treated with enclosures, barriers, silencers or other techniques as required to reduce the noise at any residential property line to 50 dBA. [N-5]

39. **Silencers.** All equipment used in the project shall be equipped with factory standard or better silencing features in proper working condition. [N-6]

40. **Workers.** Worker hearing conservation requirements shall be incorporated into contract documents and implemented. [N-7]

41. **Minimizing Noise Due to Pile Installation**. In order to minimize the amount of noise and vibration generated by pile installation, the preferred method shall be to use push and twist pile installation techniques. However, should pile driving be necessary, the following shall be required:

    a. **Public Exclusion.** If CISS piles are driven with a hammer, members of the public shall be kept out of the 120 dB peak noise level area. The public exclusion area is estimated to be 50 feet from the pile insertion location unless reduced by a three or four sided noise barrier reviewed and approved for adequacy by the noise consultant and the City. If a noise barrier is used, the noise consultant shall specify the reduced estimated distance from the pile insertion that would exceed the 120 dB contour wherein the public would be excluded during pile driving. The public exclusion area shall be clearly demarcated and signed as follows: "WARNING NOISE HAZARD AHEAD, you are advised to avoid the area, use ear protection or stay in this area for less than 30 minutes."

    b. **Barriers.** If CISS piles are inserted, within the area between 50 and 100 feet of the pile insertion point, noise barriers shall be installed that are 8-10 feet high. The barrier design shall be reviewed and approved for adequacy by the noise consultant and the City, and be installed only if the private landowner or business operator consents. In addition, the contactor shall install signs, clearly visible to the public, on all area

roadways approximately 150 feet from the construction area that say "WARNING NOISE HAZARD AHEAD, you are advised to avoid the area, use ear protection or stay in this area for less than 30 minutes." [N-8]

42. **Access/Detours.** No access to residences or commercial establishments shall be eliminated. Appropriate detours and traffic control officers would be provided to direct traffic to alternative routes. Alternative routes, including bicycle routes, shall be coordinated with the City of Santa Barbara, Transportation Division. [TRAN-1]

43. **Safety.** During construction, traffic control officers shall be provided at affected intersections to divert traffic to minimize accidents. [TRAN-2]

44. **Notification** Notify residents and commercial owners of proposed construction in their area at least 20 days before initiation of construction in the vicinity of their neighborhood to advise them of location, time and duration of construction. [TRAN-3]

45. **Damage.** Identify damage caused by construction vehicles and repair damaged facilities. Identify responsible agency or individuals to repair the damaged roads and assure that repair work is completed. [TRAN-4]

46. **Equipment amount, size and speed.** Limit the number and size of vehicles and reduce speed limits. [TRAN-5]

47. **Phases.** Perform project construction in sections as proposed. [TRAN-6]

48. **Notification.** Provide notification to affected landowners prior to disruption of utilities. [UTIL-1]

49. **Dewatering.** The creek channel upstream of construction activity shall be dammed temporarily to prevent water from entering the reach under construction. A diversion pipe shall be installed in the creek to convey any creek water around the construction area for discharge downstream of the construction activity. [WQ-1]

50. **Leaks.** The selected contractor shall develop and implement a spill prevention and remediation plan. [WQ-2]

51. **Time of Construction.** No construction or sediment removal shall occur anywhere within the project area between December 1 and April 15. Construction upstream from the estuary could be accomplished between April 15 and November 30, provided that no continuous surface flow exists. Water flowing deeper than an inch through the CALTRANS Channel (above Yanonali Street) between April 15 and June 1 would require temporary cessation of construction activities in the streambed. [WQ-3]

52. **Turbidity.** Measures to reduce turbidity during the construction of the project and periodic future maintenance shall include installation of pipe, as needed, as

well as creation of low-flow channels around construction and debris removal operations to divert water flow and avoid mixing of loose dust particles into creek flow. Details of these mitigation measures are:

a. Pipe culverts shall be placed in the low flow stream where the stream must be crossed on a regular basis. No work shall be allowed in the flowing water except as absolutely necessary (as determined by the Flood Control District and concerned resource agencies).

b. Construction of temporary low-flow channels within the creek during debris removal operations shall be required to minimize turbidity and provide habitat for aquatic species. The low-flow channel shall be constructed around and away from debris removal operations. Project biologists shall develop criteria for the low-flow channels.

c. Conditions identified in the federal and state permits (Section 404 permit and Section 401 Water Quality Certification and 1601/1603 Streambed Alteration Agreement) shall be followed during construction and future maintenance as applicable. [WQ-4]

53. **Discharges During Maintenance:** • No discharge of oil or spill of contaminated material shall be allowed within the creek bed. [WQ-5]

I. **Maintenance:** The following shall apply to future maintenance of the creek:

1. **Routine Maintenance.** All routine maintenance shall be carried out as follows:

a. Routine maintenance shall be accomplished between August 1st and October 31st. A front end loader or road grader working together with dump trucks (10 cubic yards) would be used for the bulk of sediment and vegetation removal.

b. A pair of silt curtain fences (straw bales) shall be set across the low flow channel not more than 100 yards downstream of the work area; the fences shall be approximately 10 yards apart.

c. Any trout present shall be captured by techniques dictated by National Marine Fisheries Service and California Department of Fish and Game and relocated promptly to a suitable refuge. A written report describing in detail any such relocation shall be submitted to National Marine Fisheries Service.

d. Mechanized equipment shall enter the creek immediately adjacent to the oxbow. A front end loader would scoop all materials directly from the channel to trucks waiting above adjacent to the railroad lines.

e. Sediments and vegetation shall be removed when channel capacity has been reduced by more that 15%. The full width of 33 feet would be cleaned of obstructive materials in the oxbow bypass and would continue to follow current practices. If storm events do not reduce conveyance

more than 15%, then the next maintenance cycle shall involve only mowing of vegetation.

f. During those maintenance cycles when the County determines silt removal has become necessary, all plants and deposits would be removed. As the final step during maintenance, the pilot channel would be rebuilt following the path where the natural channel had gradually come into being, or where the pilot channel was if hydraulic processes have not already shifted and reshaped it. A swath half the channel width shall then be mowed or brushed to suppress the growth of potentially large perennials, first along one side as seems convenient for an arbitrary distance (approx. 250 feet), then switching to the opposite bank for another arbitrary distance, while still allowing for the growth of herbaceous perennials and annuals. The pilot channel would not be disturbed.

g. If sediment removal is not needed the next year, then the other half of the channel shall be mowed and brushed. The pilot channel shall not be disturbed.

h. If storm events of the next winter rains leave enough sediment to warrant their removal, then during the following summer the full width of that section of the creek shall be groomed to remove obstructing sediments and plants. The pilot channel shall be rebuilt where a natural channel had gradually come into being, or where the pilot channel was if hydraulic processes have not already shifted and reshaped it. [BIO-16]

2. **Fish Habitat Maintenance:** Boulder clusters shall be maintained as follows:

a. Sediments shall be removed from among boulder clusters and large rocks of the side baffles only as needed to prevent them from being covered completely.

b. If necessary, sediments shall be dug from the downstream side of boulders with a backhoe equipped with a 3 foot bucket, then dragged toward the center of the creek to be combined with streambed sediments being removed as described previously.

c. Any individual boulders that might have been dislodged mechanically or displaced by currents would be pushed back into a suitable vacant spot in the baffle and reset.

d. Any propagules of giant reed or salt cedar that have taken root shall be eliminated. A combination of foliar application of glyphosate or digging out rhyzomes with hand tools could be employed. Application of herbicides shall be very limited, confined to only those small locations where the most persistent and aggressive weedy plants begin to reinvade the creek bottom.

e. The remaining growth shall be cut back using a brush hog, or similar mowing attachment passed a couple feet over the tops of the rocks. The intent is to cut down woody species before they attain much height or stem expansion, but not to eradicate low-growing herbaceous plants that offer negligible friction to water currents. [BIO-17]

NOTICE OF APPROVAL TIME LIMIT:

This Coastal Development Permit shall be valid as long as the work commences within ten (10) years from the date of approval of the Coastal Development Permit by the Coastal Commission for the portion of the project located within the Coastal Commission's original jurisdiction.

This motion was passed and adopted on the 18th day of September, 2008 by the Planning Commission of the city of Santa Barbara, by the following vote:

AYES: 6 NOES: 0 ABSTAIN: 0 ABSENT: 2 (Bartlett, Jostes)

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.

Julie Rodriguez, Planning Commission Secretary

October 16, 2008
Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.

action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary and must be undertaken by the Caltrans for the exemption in section 7(o)(2) to apply. The Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If the Caltrans (1) fails to assume and implement the terms and conditions or (2) fails to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Caltrans must report the progress of the action and its impact on the species to NMFS as specified in the incidental take statement (50 CFR §402.14(i)(3)).

A. Amount or Extent of Take

NMFS anticipates the proposed action that will occur in Mission Creek, Santa Barbara County, California, will result in the incidental take of steelhead during capture and relocation activities. NMFS anticipates that no more than 50 steelhead will be captured or collected each year (no more than 100 total), and no more than 3% percent of the total number of steelhead that are captured or collected will be injured or killed as a result of the proposed action.

B. Effect of Take

In the Biological Opinion, NMFS concluded that the anticipated level of take associated with the proposed action is not likely to result in jeopardy to the Southern California ESU of steelhead.

C. Reasonable and Prudent Measures

NMFS believes that the following reasonable and prudent measures are necessary and appropriate to minimize and monitor incidental take of steelhead:

1. The project fisheries biologist will minimize potential impacts to steelhead during onsite project implementation.

2. Implement effective sediment and turbidity control measures.

3. Prevent stream contamination from concrete.

4. Notify NMFS of the work timetable and prepare a monitoring report.

D. Terms and Conditions

In order to be exempt from any prohibitions of section 9 of the ESA, the Caltrans must ensure that the City complies with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary:

NMFS Conditions 2007-08982

EXHIBIT NO. 7
APPLICATION NO.
CDP-08-96/CD-12-09
NMFS / FWS Conditions

1. The following terms and conditions implement reasonable and prudent measure No. 1.

A. The biological monitor shall oversee and/or help implement the water diversion, and shall isolate the work area upstream of the diversion with block netting of mesh size 0.5-inches or less. The biological monitor will also survey the diversion area of the creek for steelhead (including beneath boulders) before diversion takes place, and at least 5 times during the dewatering process and after the diversion is in to make sure no steelhead are stranded in the diversion area before any construction work begins. The biologist shall capture steelhead in the isolated wetted work areas, and then relocate steelhead to a suitable instream location (pool habitat with boulder refuge areas) upstream of the workspace. The biologist shall note the number of steelhead observed in the affected area, the number of steelhead relocated, and the date and time of the collection and relocation. One or more of the following methods shall be used to capture steelhead : seine, dip net, throw net, minnow trap, hand. Electrofishing is prohibited.

B. The biological monitor shall continuously monitor construction activities, instream habitat, and performance of sediment control/detention devices for the purpose of identifying and reconciling any condition that could adversely affect steelhead or their habitat. The biologist shall be empowered to halt work activity and to recommend measures for avoiding adverse effects to steelhead and their habitat. The biological monitor shall contact NMFS (Matt McGoogan, 562-980-4026) immediately for further guidance if any unanticipated problem, which could have an adverse effect on steelhead or critical habitat, occurs.

C. The biologist shall contact NMFS (Matt McGoogan, 562-980-4026) immediately if one or more steelhead are found dead or injured. The purpose of the contact shall be to review the activities resulting in take and to determine if additional protective measures are required, and to discuss procedures to be used to handle or dispose of any dead steelhead. Subsequent notification must also be made in writing to NMFS' Office of Enforcement (telephone: 562-980-4050; 501 W. Ocean Blvd., Suite 4400A, Long Beach, California 90802) within five days of noting dead or injured steelhead. The written notification shall include the date, time, and location of the carcass or injured specimen, a color photograph, cause of injury or death, and name and affiliation of the person who found the specimen.

2. The following terms and conditions implement reasonable and prudent measure No. 2.

A. Sediment collected in erosion control or sediment detention devices (siltation curtains, sandbags, hay bales, etc.) shall be disposed of off-site and will not be allowed to reenter the creek channel.

B. When de-watering of the creek or excavated portions of the creek is necessary, either a pump shall remove water to an upland disposal site, or a siltation basin and/or filtering system shall be used to collect and then return clear water to the creek or ocean, for the purpose of avoiding input of sediment/water slurry into the creek or ocean. Any pump or

filtering system intake shall be fitted with juvenile fish exclusion screens or netting (no larger that 0.25-inch), or similar devices that accomplishes the same purpose.

3. The following terms and conditions implements reasonable and prudent measure No. 3.

A. Any new concrete surfaces that could be exposed to rain or runoff into the stream environment should be isolated from contamination with the stream channel. Caltrans or and City contractors should observe 5-7 day extended forecast weather reports. No fresh concrete shall be utilized for construction in such areas if any rain is forecast to occur within four days.

4. The following terms and condition implements reasonable and prudent measure No. 4.

A. The biological monitor and/or Caltrans shall notify NMFS when the proposed action will take place 5 days prior to the beginning of construction work so NMFS may periodically observe project construction and other activities. These observations may help in devising ways to reduce adverse impacts to steelhead and their habitat for this project and for future projects of similar nature.

B. The biological monitor shall provide a written monitoring report to NMFS within 30 working days following completion of the proposed action. The report shall include the number and size of any and all steelhead relocated, injured or killed during the project action or fish relocation; a description of any problem encountered during the project or when implementing terms and conditions; any effect of the project action on steelhead that was not previously considered; and, photographs of the road crossing and vicinity after project action is complete. The biological monitor shall also provide NMFS with a monitoring report of the revegetation plan after the conclusion of construction and revegetation activities. Reports are to be sent to Matt McGoogan, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, California 90802-4213.

IX. REINITIATION OF CONSULTATION

This concludes formal consultation on the actions outlined in the project proposal. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this opinion, (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, formal consultation shall be reinitiated immediately.

For the tidewater goby, the quantification of take by harassment and mortality is difficult to detect due to the species' small size, aquatic habitat, and annual life history. All of these factors make it difficult to detect where tidewater gobies are present and if any have been affected by an action. For actions covered by this consultation, some harassment and mortality could be directly observed from those captured during translocation efforts; however, mortality from other sources would be difficult to observe. Tidewater gobies may be taken only within the defined boundaries of the work area.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of the tidewater goby:

1. The FHWA and Caltrans must ensure that the level of incidental take that occurs during project implementation is commensurate with the analysis contained in this biological opinion.

2. Biologists must be authorized by the Service before they survey for, capture, and move tidewater gobies from the construction area.

The Service's evaluation of the effects of the proposed action includes consideration of the measures to minimize the adverse effects of the proposed action on the tidewater goby. Any subsequent changes in these measures may constitute a modification of the proposed action and may warrant re-initiation of formal consultation, as specified at 50 CFR 402.16. The above reasonable and prudent measures are intended to supplement the protective measures that were proposed by Caltrans and the City as part of the proposed action.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, Caltrans must ensure that the following terms and conditions, which implement the reasonable and prudent measures described above, are implemented:

1. The following term and condition implements reasonable and prudent measure 1:

   Because we are unable to determine with certainty the number of individual tidewater gobies that may be injured or killed, Caltrans and/or the City must notify the Service if more than five individuals are killed or injured. We will then review the project activities to determine if additional protective measures are needed. The cause of death or injury must be determined by a Service-approved biologist. Project activities may continue during this review period, provided that all the terms and conditions of this biological opinion have been, and continue to be, implemented.

FWS
Conditions
1-8-07-F-63

2. The following term and condition implements reasonable and prudent measure 2:

Caltrans and/or the City must request our approval of any biologists they wish to survey for, capture, or relocate tidewater gobies pursuant to this biological opinion. Such requests must be in writing, and be received by the Ventura Fish and Wildlife Office at least 30 days prior to any such activities being conducted. Please be advised that possession of a 10(a)(1)(A) permit for the covered species does not substitute for the implementation of this measure. A section 10(a)(1)(A) recovery permit is limited to any act otherwise prohibited by section 9 of the Act for scientific purposes or to enhance the propagation or survival of the affected species. Authorization of Service-approved biologists is valid for this project only.

REPORTING REQUIREMENTS

Caltrans and/or the City must provide a written report to the Service within 90 days following completion of the proposed project. The report must document the age class (if possible) and number of tidewater gobies relocated from the action area, the date and time of relocation, and a description of relocation sites. The report must also state the number of tidewater gobies killed or injured, and describe the circumstances of the injuries or mortalities if known. The report must contain a brief discussion of any problems encountered in implementing minimization measures, results of biological surveys and sighting records, and any other pertinent information. We encourage you to submit recommendations regarding modification or addition of measures that would maintain or improve protection of the tidewater goby while simplifying compliance with the Act.

DISPOSITION OF DEAD OR INJURED SPECIMENS

Upon locating a dead or injured tidewater goby, initial notification must be made in writing to the Service's Division of Law Enforcement in Torrance, California (370 Amapola Avenue, Suite 114, Torrance, California 90501) and by telephone and writing to the Ventura Fish and Wildlife Office in Ventura, California, (2493 Portola Road, Suite B, Ventura, California 93003, (805) 644-1766) within 3 working days of the finding. The report must include the date, time, location of the carcass, a photograph, cause of death if known, and any other pertinent information.

Care must be taken in handling dead specimens to preserve biological material in the best possible state for later analysis. Should any injured tidewater gobies survive, the Service must be contacted regarding their final disposition. The remains of tidewater gobies must be placed with the Santa Barbara Natural History Museum (Contact: Paul Collins, Santa Barbara Natural History Museum, Vertebrate Zoology Department, 2559 Puesta Del Sol, Santa Barbara, California 93460, 805-682-4711 ext.321).

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to use their authorities to further the purposes

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

F 5 a

ADOPTED FINDINGS

ON CONSISTENCY DETERMINATION

Consistency Determination No.	**CD-046-06**
Staff:	MPD-SF
File Date:	6/9/0226
60th Day:	8/8/2006
75th Day:	8/23/2006
Commission Vote:	8/11/2006
Hearing on Findings:	10/15/2006

FEDERAL AGENCY: **U. S. Army Corps of Engineers**

DEVELOPMENT LOCATION: Lower Mission Creek, Santa Barbara (Exhibit 1)

DEVELOPMENT DESCRIPTION: Phase II of Lower Mission Creek flood-control improvements: tidewater goby, flood control channel maintenance, pilot channel design, and landscaping plans (Exhibits 2-9)

PREVAILING COMMISSIONERS: Commissioners Achadjian, Burke, Clark, Neely, Reilly, Vargas, and Chairman Caldwell

SUBSTANTIVE FILE DOCUMENTS: See page 16.

EXHIBIT NO. 8
APPLICATION NO.
CDP-08-96/CD-12-09
CCC Findings

EXECUTIVE SUMMARY

On August 9, 2001, the Commission conditionally concurred with the U. S. Army Corps of Engineers' (Corps') consistency determination for a flood control project to improve flood protection on Mission Creek, in the City of Santa Barbara (CD-117-99). The flood control project was located both within and inland of the coastal zone and consisted of: (1) increasing

the channel capacity to 3400 cubic feet per second (cfs), thereby providing an approximately a 20-year storm level of protection; (2) replacing four bridges along the study reach; (3) installing a new culvert bypassing the oxbow below Highway 101 ("oxbow bypass") (the oxbow would be left in place as a low-flow channel); (4) planting of native riparian species along sloped banks stabilized by riprap and creation of additional riparian habitat by enlarging planted slopes in areas where the Corps must purchase property adjacent to the stream; (5) creek banks consisting of either a vertical wall or a combination vertical wall and riprap sideslope (combination vertical wall/riprap sideslope would consist of vertical wall for the bottom half, with ungrouted riprap for the upper half, and with native riparian vegetation planted within the riprap); (6) maintaining existing natural stream bottom, and restoring concrete lined stream bottom to natural conditions (except immediately underneath bridges and through the oxbow); and (7) fish habitat improvements.

As originally proposed, mitigation measures included: (1) creation of riparian habitat on the banks of the stream; (2) widening the estuary; (3) construction of a pilot channel functioning as a low flow channel for the entire creek above the estuary; (4) instream features improving fish habitat; and (5) seasonal limitations on construction and maintenance activities. The Commission conditioned its concurrence to require the Corps to: (1) prepare and submit to the Commission plans for (a) the pilot channel, (b) maintenance and adaptive-management activities, and (c) landscaping with native riparian vegetation adjacent to the vertical floodwalls in the coastal zone; and (2) accelerate the goby portion of the comprehensive estuary management plan and incorporate relevant recommendations of that portion of the plan into the proposed project. In addition, the Corps agreed to participate in the development of a comprehensive management plan for the estuary and submit a consistency determination for that plan. The Commission found the original flood control project was necessary for flood-control purposes, was the least damaging feasible alternative, included feasible mitigation and, with the mitigation and proposed design, would, as conditioned, protect stream resources, water quality, and environmentally sensitive habitat (including federally listed threatened species - steelhead trout and tidewater goby), scenic views, and archaeological resources.

Under the "phased review" federal consistency procedures,[1] the Corps has submitted a consistency determination for this second phase of the project, consisting of four plans (tidewater goby management, flood control channel maintenance, pilot channel design, and landscaping plans). For this phase, the Corps has submitted the following plans:

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[1] 15 CFR §930.36 (d) provides: *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information *(e.g.,* planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

1. Tidewater Goby Management Plan – Lower Mission Creek Flood Control Project, April 2005.

2. Channel Design Recommendations – Lower Mission Creek Flood Control Project, June 2005.

3. Lower Mission Creek Flood Control Project Adaptive Channel Maintenance Plan. Santa Barbara County Flood Control District. June 2005 (This is contained as Appendix C in #2 above).

4. Genetics of *Eucyclogobius newberryi* in Mission Creek Santa Barbara: a regional metapopulation analysis using mitochondrial control region sequence and microsatellites, August 19, 2005. (Supplement to the Tidewater Goby Management Plan).

5. Landscaping Plan, May 2006.

6. Santa Barbara County Streams – Lower Mission Creek, Feasibility Study, Hydraulic Technical Appendix, Sedimentation Engineering, November 1999.

In preparing these plans, the Corps convened the experts needed to analyze the biological, hydrological, water quality, and other specific design issues raised. The pilot channel design plan is based on input from technical experts at the Corps, City, County, University of California, NOAA Fisheries, as well as input from environmental organizations (EDC and Santa Barbara Channel Keeper). The refined plan maximizes feasible fish enhancement features, minimizes (to the extent feasible) artificial walls and stream bottom, includes a pilot channel lined with gravel/cobbles designed to concentrate flows and maintain temperatures beneficial for fish year-round, and provides for continued monitoring and adaptive management, including continuing consultation with the City, County, NOAA Fisheries, and other members of the Channel Design Working Group to monitor and modify the project, if warranted.

The Corps has also included the County's adaptive Channel Maintenance Plan, as the County will be performing the maintenance activities. This plan includes inspection and adoption of methods to protect fish enhancement features of the project, minimizing effects of vegetation removal and channel desilting, minimizing use of herbicides (and continuation of the original "no use of herbicides in the coastal zone" feature), re-creating pilot channels where needed, and removal of non-native vegetation.

The tidewater goby management plan discusses the result of the tidewater goby genetic studies conducted since the Commission's original review, notes the importance of Mission Creek as one of the primary regional "source" estuaries, notes that fish habitat improvements (e.g., baffles, ledges, slower velocities along the perimeter of the lagoon) discussed above will also

benefit gobies, notes that only very limited construction would occur within the estuary itself, contains measures addressing and minimizing impacts from construction impacts on the goby, and provides for continuing goby monitoring.

Measures to protect water quality (including preparation of a storm water pollution prevention plan (SWPPP)), and sediment testing to determine the suitability of maintenance dredging for beach nourishment, have not yet been finalized. Thus, the Corps will still need to provide these details for Commission review and concurrence prior to any construction or maintenance dredging.

Five conditions are necessary to assure consistency with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act, due to the need to: a) avoid misunderstandings over the terms of the Tidewater Goby Management Plan (because several differing drafts had been circulated prior to the Commission's scheduled public hearing); b) clarify future review procedures and monitoring responsibilities; c) memorialize agreements between the Corps, the Commission staff, and the City over avoiding lagoon breaching, planning and implementing an appropriate lagoon buffer zone based on the applicable Coastal Act policies (and including coordination with interested parties); and d) clarify creekside riparian monitoring responsibilities. With the measures included in the revised design, monitoring, maintenance, mitigation, and adaptive management plans, and the on-going review of water quality plans and maintenance dredging, as well as any future project modifications, and as conditioned, the project would protect stream resources, water quality, environmentally sensitive habitat (including steelhead trout and tidewater goby), scenic views, and would therefore be consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description. The Corps has submitted four plans comprising the second phase of its previously-concurred-with Lower Mission Creek flood-control improvement project (CD-117-99). The overall flood control project is described on pages 4-8 of the attached Commission Findings for CD-117-99 (Exhibit 10). The four plans that are the subject of this consistency determination and are intended to satisfy the four conditions below consist of: (1) a tidewater goby management plan; (2) a flood control channel maintenance plan; (3) a refined pilot channel design; and (4) a landscaping plan. The Commission's conditions of concurrence provided:

> **1.** ***Tidewater Goby Studies, Management Plan and Recommendations:*** *The Corps of Engineers with input from interested biological experts shall conduct Tidewater Goby studies and develop a Management Plan for Tidewater Gobies in the Mission Creek Estuary that evaluates project specific impacts and includes recommendations to minimize those effects. . The Corps shall implement all feasible short- and long-term recommendations in the plan to mitigate impacts associated with the project or intended to lessen project-specific or cumulative impacts to Tidewater Gobies. The Corps shall also make recommendations regarding whether or not to proceed with a Tidewater Goby genetic study to help assess project impacts*

related to potential extirpation and recolonization. In addition, the Corps shall make recommendations regarding allowing the Mission Creek and Laguna Creek estuaries to merge under natural conditions (or as recommended by the team of biologists) in order to benefit Tidewater Gobies. The results of the tidewater goby Management studies and recommendations shall be submitted to the Commission as part of the consistency determination for the design phase review of the Lower Mission Creek Flood Control Project.

2. ***Maintenance Plan:*** *The Corps shall develop a new adaptive creek maintenance plan that includes hand clearing and that minimizes the use of herbicides and heavy equipment. The Maintenance Plan shall be submitted to the Commission as part of the consistency determination for the design phase review of the Lower Mission Creek Flood-Control Project.*

3. ***Pilot Channel Design:*** *The Corps shall develop a new pilot channel configuration for the Lower Mission Creek Flood Control Project. The Corps shall consider, as design alternatives, all feasible suggestions and recommendations on the pilot channel's physical characteristics (e.g., dimensions, morphology, sinuosity, substrate, etc.) received from the Environmental Defense Center, Dr. Ann Riley, Dr. Ed Keller, Dr. Scott Cooper, Dr. Camm Swift, Dr. Kevin Lafferty, National Marine Fisheries Service, and the City and County of Santa Barbara. The new configuration shall be developed with the goal of promoting effective and efficient transport of sediment through the creek, minimizing streambed erosion and sedimentation impacts and related creek maintenance impacts associated with the project, and protecting aquatic habitat. The pilot channel design shall be submitted to the Commission as part of the consistency determination for the design phase review of the Lower Mission Creek Flood Control Project.*

4. ***Landscaping Plan****: The Corps shall develop a new Landscaping Plan that includes native landscaping along all reaches of the project length on both sides of the creek including segments adjacent to vertical floodwalls where vegetated rip-rap banks are not proposed. The Plan shall include provisions for planting on private property to ensure a continuous riparian corridor wherever space physically permits. The Landscaping plan shall be submitted to the Commission as part of the Lower Mission Creek Flood Control Project.*

II. Federal Agency's Consistency Determination. The Corps of Engineers has determined the project consistent to the maximum extent practicable with the California Coastal Management Program.

III. Staff Recommendation.

The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission conditionally concur with consistency determination CD-046-06 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

RESOLUTION TO CONDITIONALLY CONCUR WITH CONSISTENCY DETERMINATION:

The Commission hereby conditionally concurs with the consistency determination CD-046-06 by the Corps of Engineers on the grounds that, if modified as described in the Commission's conditional concurrence, the project would be consistent with the enforceable policies of the CCMP, provided that the Corps of Engineers satisfies the condition specified below pursuant to 15 CFR §930.4.

Conditions:

1. **Lagoon Management Plan.** The Management Actions and other commitments contained in the Tidewater Goby Management Plan – Lower Mission Creek Flood Control Project, dated April 2005, shall be binding on the Corps of Engineers and on any future agencies implementing the management plan, except as provided below. Any changes to the management plan or other actions inconsistent with the Management Actions in the Tidewater Goby Management Plan shall not be implemented unless the Coastal Commission has authorized any such changes or actions through the federal consistency review and/or coastal development permit review process. Any future Corps or agency management plans or projects involving the Mission Creek Lagoon or, to the extent the Laguna Channel is addressed in the Tidewater Goby Management Plan, involving the Laguna Channel estuary shall be coordinated with the Tidewater Goby Management Plan.

2. **Lagoon Breaching Prohibition**. As provided in Management Action 13 A in the above-referenced plan, the Corps of Engineers, the City of Santa Barbara and the County of Santa Barbara shall not breach the lagoon, and to the extent practicable, the Corps shall assure that the City and the County will not artificially breach the lagoon (unless there is an imminent threat to public health and safety, and, in that event, only after the Coastal Commission has reviewed and authorized any such breaching).

3. **Lagoon Buffer.** As provided in Management Action 13 C in the above-referenced plan (also contained in Exhibit 8 of this staff report), the Corps of Engineers (and any future agencies implementing the management plan) shall modify the second sentence as follows: "In addition, the City will establish a 20-50 foot wide buffer zone along

both sides of the lagoon that extends 150-200 feet downstream of the ends of the existing wing walls at the downstream side of the Cabrillo Boulevard bridge (Figure 5 of the above-referenced plan)." Prior to commencement of construction of the flood control project the Corps shall submit the final management plan (including buffers) to the Commission staff for its review and concurrence. The Commission staff will only consider activities which are consistent with the Coastal Act and will involve all known interested parties prior to concurring with the final plan.

4. Landscaping Commitments Adjacent to Mission Creek. Prior to commencement of construction of any portion of the flood control project, the Corps will provide a detailed monitoring plan for the native landscaping to be provided outside the creek bank edges, for Commission staff review and concurrence. The detailed plan shall specify performance and success criteria acceptable to the Coastal Commission, shall specify what incentives are being provided to encourage private landowners to plant and maintain native, non-invasive, trees and shrubs, shall provide for use of local stock wherever possible, shall establish performance and success criteria, shall provide for increasing the incentives in the event monitoring shows that success criteria are not being met, and shall provide that, in the event the Corps is no longer conducting the monitoring, the City or County shall assume all monitoring responsibilities for the life of the project.

5. Water Quality and Habitat Monitoring Plans. Prior to commencement of construction of any portion of the flood control project, the Corps will submit to the Commission staff, for its review and concurrence, all water quality and stormwater protection plans. In addition, all annual monitoring plans for tidewater gobies and steelhead habitat monitoring submitted to the Fish and Wildlife Service and National Marine Fisheries Service shall also be submitted to the Commission staff for its review.

IV. Applicable Legal Authorities.

Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

> *(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.*

A. Conditional Concurrences.

15 CFR § 930.4 provides, in part, that:

> *(a) Federal agencies, ... agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State*

agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart...

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] *project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and ...*

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

15 CFR § 930.34 (d) and (e) elaborate, providing that:

(d) ... At the end of the ... [statutory time] period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the ''consistent to the maximum extent practicable'' standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

B. <u>Consistent to the Maximum Extent Practicable.</u>

Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term ''consistent to the maximum extent practicable'' means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of Federal projects is that the activity must be "consistent to the maximum extent practicable" (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is "*prohibited [by] existing Federal law applicable to the Federal agency's operations*" (15 C.F.R. § 930.32). the Corps of Engineers did not provide any documentation to support a maximum extent practicable argument in its consistency determination. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

V. Findings and Declarations:

The Commission finds and declares as follows:

A. Stream Alteration and Environmentally Sensitive Habitat. The Coastal Act provides:

> **Section 30236.** *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*
>
> **Section 30233**
>
> *(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* [eight specified uses]*: ...*
>
> ***Section 30240***
>
> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

As discussed in its findings on the original consistency determination for this flood control project (Exhibit 10)(hereby incorporated by reference), the Commission found that the flood control project was an allowable use for stream alteration and fill, was the least environmentally damaging feasible alternative, included adequate monitoring and mitigation,

and would benefit the stream resources by widening of the stream and estuary and removal of artificial hard bottom in the estuary and stream. The Commission conditioned its concurrence to address any remain impacts to stream resources (see pages 4-5 above for condition language). Aside from these conditions, during the Commission's original review, the Corps had also incorporated a number changes into the project, as follows:

1. Pursuant to section 930.36(d) of the regulations that implement the CZMA, the Corps will submit to the Commission one or more additional consistency determinations for future phases of the project and the maintenance thereof. In the future consistency determination(s), the Corps will 1) describe the specific characteristics of the design, and 2) consider all design-related issues including design of the pilot channel, adaptive management plan, and maintenance plan.

2. The Corps will convene a team of biologists with expertise on the tidewater goby. The team will consider issues related to the management of the tidewater goby within Mission Creek. Among other issues, the team will discuss the need for a study of tidewater goby genetics. If there are regional benefits and the team recommends proceeding with the study, the team will define the scope, parameters and protocols to be followed.

3. The Corps will perform additional hydraulic analyses to investigate the feasibility and effectiveness of raising the State Street and Cabrillo Boulevard Bridges independently or together. The Corps will submit to the Commission and EDC [the Environmental Defense Center] results of these analyses.

4. The Corps will compile the adaptive management and maintenance plan into a single document and will present the document to the Commission upon completion. In that plan, the Corps will clarify the methods for maintenance (e.g., herbicide and heavy equipment vs. hand clearing of vegetation).

5. The Corps will submit to the Commission as part of a consistency determination for a future phase of this project 1) a final design for the pilot channel, and 2) analysis that supports the Corps' final design choice. This analysis will reflect the fact that the current (feasibility level) characteristics and functions are not necessarily appropriate to optimal fluvial behavior for sediment transport and conveyance through Lower Mission Creek.

6. The Corps will participate with the City of Santa Barbara in the development of a management plan for the Mission Creek estuary, which will include an analysis of tidewater goby habitat as part of the overall plan along with water quality, flood control concerns, aesthetics, safety, and recreational opportunities. The Corps will submit to the Commission a consistency determination for this comprehensive management plan.

7. The Corps will accelerate the goby portion of the comprehensive estuary management plan as part of the proposed flood-control project. This goby plan will consider, among other issues, the commingling of the Laguna Channel and Mission Creek at the estuary. To the extent feasible, the Corps will implement recommendations from the plan that are associated with the flood-control project.

In compliance with the above commitments and Commission conditions, the Corps has convened the experts needed to analyze the biological, hydrological, water quality, and other specific design and has submitted the results of these more refined analyses, in the form of a tidewater goby management plan, a flood control channel maintenance, a refined pilot channel design, and landscaping plans. The pilot channel design plan is based on input from technical experts at the Corps, City, County, University of California, NOAA Fisheries, as well as input from environmental organizations (EDC and Santa Barbara Channel Keeper). The refined plan includes: (1) unlined stream bottom (except under existing bridges); (2) wider openings at four bridges; (3) widened stream sections, including (a) 2,200 ft. of widening from Canon Perdido to Haley St. (from 25 ft. to 42 ft), 1000 ft. from Haley St. to Highway 101 (25 ft. to 50 ft.), and 1,100 ft. from Yanonali St to the Beach (27 ft. to 60 ft.); (4) removal of existing concrete bottom; (5) installation of riprap lining to protect bridges from scour due to increased widths; (6) construction of a pilot channel lined with gravel/cobbles designed to concentrate flows and maintain temperatures beneficial for fish year-round; (7) placement of clusters of boulders as rock energy dissipaters; (8) installation of fish ledges and fish baffles to provide fish protection and resting areas (particularly for steelhead); (9) consideration of measures to reduce the extent of riprap; and (10) an adaptive management program including consultation with the City, County, NOAA Fisheries, and other members of the Channel Design Working Group to monitor and modify the project, if warranted, including adding or removing weirs, modifying the size of instream boulders, placing additional boulders to encourage formation of a more stable and deeper low flow channel and series of pools. (See Exhibit 7 for further recommendations, details and mitigation measures the Corps has agreed to implement.)

The Corps' submittal also includes the County's adaptive Channel Maintenance Plan, as the County will be performing the maintenance activities. This plan includes inspection and adoption of methods to protect fish enhancement features of the project, minimizing effects of vegetation removal and channel desilting, minimizing use of herbicides (and continuation of the original "no use of herbicides in the coastal zone" feature), re-creating pilot channels where needed, and removal of non-native vegetation (see Exhibit 9 for further details and mitigation measures).

The tidewater goby management plan, which is a combined City, County, and Corps proposal, discusses the result of the tidewater goby genetic studies conducted since the Commission's original review and notes the importance of Mission Creek as one of the primary regional "source" estuaries (i.e., for repopulation to other estuaries) for tidewater gobies in southern Santa Barbara County, due to its relatively large size and long history of goby occupation, larger tidal reach, and longer upstream accessibility. The management plan also notes fish habitat improvements (e.g., baffles, ledges, slower velocities along the perimeter of the lagoon) discussed above will also benefit gobies, which are poor swimmers and need refuge during high flow events. The plan notes that, as discussed above, limited construction (primarily repair of damaged channel walls) would occur within the estuary itself. The plan contains measures addressing construction impacts on the goby and proposes the following measures to protect gobies:

(1) limit construction in the estuary to avoid the peak spawning season (i.e., limit construction to June 15-Dec. 15);
(2) separate construction areas from the estuary using cofferdams and leave at least half the estuary (upstream of Cabrillo Blvd.) watered at all times;
(3) remove gobies using seine netting supervised by a qualified biologist and replace them in undisturbed portions of the estuary;
(4) conduct pre- and post-constriction goby monitoring;
(5) float intake pumps to the maximum extent possible to minimize effects on gobies;
(6) use 1/8 inch or smaller mesh size for intake pump and frequently monitor mesh; and
(7) provide annual reports to the U.S. Fish and Wildlife Service analyzing effects on gobies and recommending any needed modifications.

The Plan also reflects the Corps' agreement to implement the recommendations from its "goby genetics" study, including: (a) assuring no construction will occur in Arroyo Burro during construction at Mission Creek (Arroyo Burro is located upcoast (and west) of Mission Creek and is one of the other regionally critical goby habitat areas); (b) maintaining Mission Creek and Laguna Channels as separate channels during construction; and (c) creating a small artificial lagoon "a modest distance down the beach" and populating it with gobies "until well after construction is complete."

Exhibit 8 provides a complete list of the tidewater goby Management Objectives, Management Actions for the Design Phase, Construction Phase, and Post-construction Phase, Other Actions/Lagoon Management, including limiting estuary breeching, allowing the Mission Creek and Laguna Channel lagoons to merge, planting stabilizing native vegetation, and placement of interpretive signs, monitoring and developing plans for enhancing tidewater goby recolonization after any "extirpation" events, and, finally, a Monitoring and Adaptive Management Program.

In order to find the proposed project consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act, the Commission finds that several conditions are necessary due to the need to: (a) avoid misunderstandings over the terms of the Tidewater Goby Management Plan (in part because several differing drafts had been circulated prior to the Commission's scheduled public hearing); (b) clarify future review procedures and monitoring responsibilities; (c) memorialize agreements between the Corps, the Commission staff, and the City over avoiding lagoon breaching, planning and implementing an appropriate lagoon buffer zone based on the applicable Coastal Act policies and including coordination with interested parties; and (d) clarify creekside riparian monitoring responsibilities.

To address these concerns, the conditions on pages 7-8 are intended to: (a) clarify which version of the Tidewater Goby Management Plan is the agreed-upon plan; (b) clarify that any changes to the plan will necessitate further Commission review; (c) clarify that any Laguna Channel plans are coordinated with the Tidewater Goby Management Plan; (d) clarify that artificial lagoon breaching is prohibited (except under emergencies, and even then only with Commission authorization); (e) reflect an agreement to amend the lagoon buffer provisions of

the Tidewater Goby Management Plan to provide for a 20-50 ft. buffer on *both* sides of the lagoon; (f) provide for submittal of the final management plan (including buffers) to the Commission staff for its review and concurrence, which review will involve all known interested parties, and which will only consider activities which are consistent with the Coastal Act (including the habitat, wetland and stream alteration policies, and public access and recreation policies, and, if any conflicts should occur, the conflict resolution provisions of Section 30007.5 of the Coastal Act); (g) provide for Commission staff review of the riparian landscaping plan outside the creekbed, including plans and ongoing monitoring responsibilities; and (h) provide for Commission staff review of the water quality plans and monitoring.

With the measures included in the revised design, monitoring, maintenance, mitigation, and adaptive management plans, and the on-going review of water quality plans and maintenance dredging, as well as any future project modifications, and as conditioned, the Commission finds the project would protect stream resources, water quality, environmentally sensitive habitat (including steelhead trout and tidewater goby), scenic views, and would therefore be consistent with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act.

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B. <u>Water Quality</u>. Section 30231 of the Coastal Act provides:

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

In its original review the Commission found:

The proposed flood-control facility provides the Corps with an opportunity to restore water quality resources in Mission Creek by incorporating appropriate measures or technologies into the project design to reduce non-point source pollution. The reconstruction of the flood-control facility, including the replacement of bridges, installation of a culvert under Highway 101, and construction of floodwalls, provide the Corps with an opportunity to design the facility to incorporate measures into the project in order to reduce non-point source pollution. Section 30231 of the Coastal Act requires the restoration of water quality resources where feasible. However, based on discussions with water quality experts within the Commission staff and Santa Barbara County, it is undesirable to install non-point source pollution treatment devices at the storm drain outfall into the flood-control channel because

> *that location makes maintenance of the treatment device more problematic.*[2] *It seems preferable to place the treatment devices away from the creek where it is more accessible for maintenance purposes. In addition, the City of Santa Barbara is applying for a Phase II Stormwater NPDES to address non-point source pollution and the City has other programs to address water quality. Finally, the Corps has agreed that prior to construction it will coordinate with the City's water quality staff to determine if any of the activities proposed by the City could be coordinated with the flood-control project. With these measures, the project is consistent with the water quality policies of the Coastal Act.*
>
> *In conclusion, the Commission finds that the proposed project will not significantly affect water quality resources of the coastal zone. Specifically, the project provides for water quality protection measures for construction and maintenance of the flood-control channel. Additionally, the Corps will coordinate its construction activities with the City's non-point source pollution program to avoid redundant construction efforts and increasing construction efficiency. Therefore, the Commission finds that the proposed project is consistent with the water quality policies of the CCMP.*

Measures to protect water quality in the original project included: (1) no vegetation removal or herbicide use in the coastal zone; (2) use of silt curtains and mosaic vegetation removal where such activities occur inland of the coastal zone boundary; (3) coordinating the construction of the flood-control facility with the water quality efforts within the City of Santa Barbara, so that, if necessary and advantageous, the City could construct measures to control appropriate non-point source pollution concurrent with the project; and (4) preparation of a storm water pollution prevention plan (SWPPP) to minimize water quality impacts from the construction of the flood-control facility, to be subject to further Commission consistency review (both the SWPPP and the maintenance plan). Final water quality plans have not been included in this second phase of the submittal; thus, the Corps will still need to provide these details for Commission review and concurrence prior to any construction. The Commission reiterates its previous water quality conclusion that, with the opportunity to review the final SWPPP/water quality plans, the five conditions are necessary to assure consistency with Sections 30236, 30231, 30233, 30240, and 30251 of the Coastal Act the project is consistent with the water quality policy (Section 30231) of the Coastal Act.

C. <u>Sand Supply.</u> Section 30233(d) of the Coastal Act provides for the use of suitable material removed from coastal streams to be used for beach replenishment purposes. This section provides that:

> *Erosion control and flood control facilities constructed on water courses can impede the movement of sediment and nutrients which would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable*

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[2] Personal Communication, Santa Barbara County, 3/29/01. [footnote in original]

> *provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for such purposes are the method of placement, time of year of placement, and sensitivity of the placement area.*

In its original review the Commission noted that maintenance activities including removal of sediment from the stream should be tested prior to excavation to determine if it is suitable for beach disposal. The Commission noted that the final EIS for the proposed project did not include an evaluation of the suitability of this material for beach replenishment. Without this information, the Commission was unable to determine if sediment disposal activities would adversely affect coastal resources, but since the Corps agreed to provide this information at a later phase, like the water quality plans, the Commission determined the proper procedures were in place to enable beach replenishment where appropriate. The Commission therefore concluded that "With the commitments for phased consistency review and use of suitable material for beach replenishment purposes, the Commission finds that the proposed project is consistent with the sand supply policies of the Coastal Act." This information is still unavailable; thus, like the water quality issue discussion contained in the previous section, sediment analysis and beach replenishment options will need to be reviewed at a later phase when the information becomes available. The Commission reiterates its previous sand supply conclusion that, with the opportunity to review the final sediment test results and disposal proposals, the project is consistent with the sand supply policy (Section 30233(d)) of the Coastal Act.

D. <u>Visual Resources</u>. Section 30251 of the Coastal Act provides, in part, that:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas....*

The Commission previously found:

> *As stated above, most of the Creek within the coastal zone will be developed with vertical walls and will not appear as a natural stream. However, most of the stream within the coastal zone (approximately 85%) is already developed with some manmade structures. The remaining portion of the stream within the coastal zone still has some natural appearance. The proposed project will change that appearance of the entire stream within the coastal zone to a channelized hardened stream. Despite this change in character, the Corps believes that the project will improve the visual character of the creek. This conclusion is based on several factors: 1) the project will remove trash and debris from the creek and project fences will make it more difficult to dispose of trash in the stream; 2) the project will remove buildings that are immediately adjacent to the creek (in some cases the walls of the buildings are the banks of the stream); 3) removal of several different types of existing bank treatments that have already adversely affected the stream's visual quality; and 4) the floodwalls will be constructed out of sandstone which will be more*

> *aesthetically pleasing than the current bank treatments and the project will include planting of vegetation that will also improve the visual quality of the stream. Finally, through the PED consistency review, the Commission will be able to ensure that the final design will protect and improve visual resources. Therefore, the Commission finds that the proposed project is consistent with the view protection policies of the Coastal Act.*

The Corps's submittal includes several measures providing both habitat benefits, as described above, as well as aesthetic improvements. The landscaping proposal (Exhibits 5-6) provides for planting, monitoring, and maintaining native riparian habitat within the creek, planting riparian habitat within Corps'- and City-controlled areas adjacent to the creek banks, providing incentives for private landowners to plant additional riparian habitat adjacent to the creek banks, monitoring the landscaping plans to assure they meet identified success criteria, removing concrete from the creek bottom (except under four bridges), and the above-discussed designs for floodwalls that, to the degree possible, mimic a natural creek bank. With the measures included in the revised design, monitoring, maintenance plans, and as conditioned, the Commission finds that the project would improve scenic public views and be consistent with the visual resource protection policy (Section 30251) of the Coastal Act.

VI. <u>Substantive File Documents:</u>

1. Consistency Determination CD-117-99, Army Corps, Mission Creek Flood Control Project.

2. Landscape Plan, Lower Mission Creek Flood Control Project, U.S. Army Corps of Engineers and City of Santa Barbara, April 2006.

3. Genetics of *Eucyclogobius newberryi* in Mission Creek Santa Barbara: a regional metapopulation analysis using mitochondrial control region sequence and microsatellites. Prepared for Army Corps of Engineers 8/19/05, D. K. Jacobs, K. D. Louie, D. A. Earl, C. Bard, C.Vila & C.C. Swift, Department of Ecology & Evolution, UCLA.

4. Santa Barbara County Streams – Lower Mission Creek, Feasibility Study Hydraulic Technical Appendix, Sedimentation Engineering, Army Corps of Engineers November 1999.

5. Final Environmental Impact Statement/Environmental Impact Report and Feasibility Study for Lower Mission Creek Flood Control Project, Santa Barbara, California, September 2000.

6. Biological Assessments, Lower Mission Creek Flood Control Project, Santa Barbara, California, December 1999.

7. Draft Fish and Wildlife Coordination Act Report, Lower Mission Creek Flood Control Project, Santa Barbara, California, U.S. Fish and Wildlife Service, September 1999.

8. Biological Opinion for the Lower Mission Creek Flood Control Project, Santa Barbara, County California, National Marine Fisheries Service, August 2, 2000.

9. Biological Opinion for the Lower Mission Creek Flood Control Project, Santa Barbara, County California, U.S. Fish and Wildlife Service, June 1, 2001.

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STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

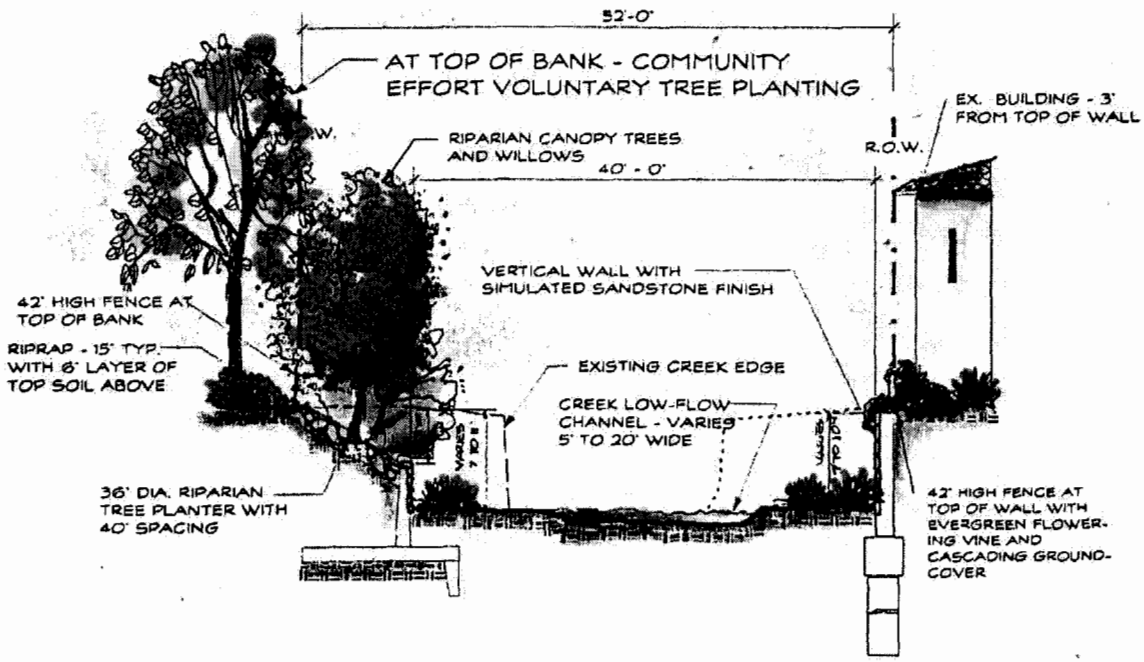
The Corps proposes to develop a flood-control facility on Mission Creek in Santa Barbara with a capacity of 3,400 cfs (existing capacity is 1,500 cfs) and will thereby provide approximately a 20-year storm level of protection. Four bridges along the study reach will be replaced. Additionally, the project includes a new culvert bypassing the oxbow upstream of Highway 101 ("oxbow bypass"). The culvert will cross the highway, Montecito Street, and the railroad tracks before rejoining the creek upstream of the Chapala Street Bridge. The culvert will be covered only across Montecito Street down to its confluence at Chapala Street Bridge, which will consist of two concrete boxes (12 ft x 10.5 ft). The open portion of the culvert beginning upstream of Highway 101 will be a 25-foot-rectangular concrete channel. The open channel will be approximately 200 linear feet, while the concrete box culvert will be approximately 350 feet in length. The oxbow will be left in place as a low flow channel.

The project includes planting of native riparian species along sloped banks stabilized by riprap, creation of 0.6 acres of riparian habitat adjacent to the oxbow, and enlargement of sloped planting areas. Land acquisitions will provide for the widening of the creek and creation of habitat expansion zones at several locations (as many as six) along Lower Mission Creek. The habitat expansion zones will be planted with trees native to coastal California. Species planted may include western sycamore (*Platanus racemosa*), cottonwood (*Populus fremontii*), coast live oak (*Quercus agrifolia*), California laurel (*Umbellularia califo*[illegible] myrtle (*Myrica california*), hollyleaf cherry (*Prunus ilicifolia*), and white [illegible] (*Alnus rhombifolia*).

EXHIBIT NO. 9
APPLICATION NO.
CDP-08-96/CD-12-09

The creek banks will consist of either a vertical wall or a combination vertical wall and riprap sideslope. The combination bank treatment will consist of vertical wall for the bottom half, while ungrouted riprap (15 inches thick) at a 1.5:1 (Vertical to Height ratio) slope will form the upper half. The height of the vertical wall in this combination design will vary along the entire length of the project area. Riprap will be overlain on a layer of native rock and soil, with topsoil distributed through the interstices of the riprap, and covered with 9 inches of prepared topsoil. Concrete pipes of varying sizes (up to a maximum three feet in diameter) will be placed in between the riprap to allow planting of native trees and vegetation. Several species of riparian trees, including western sycamore, cottonwood, and coast live oak will be planted from one gallon nursery stock into cylindrical planters embedded within the riprap and spaced 40 feet apart.

Rendering of short floodwalls with vegetated riprap[1]



VEGETATED SIDE SLOPE AND VERTICAL WALL SECTION VIEW

NOT TO SCALE

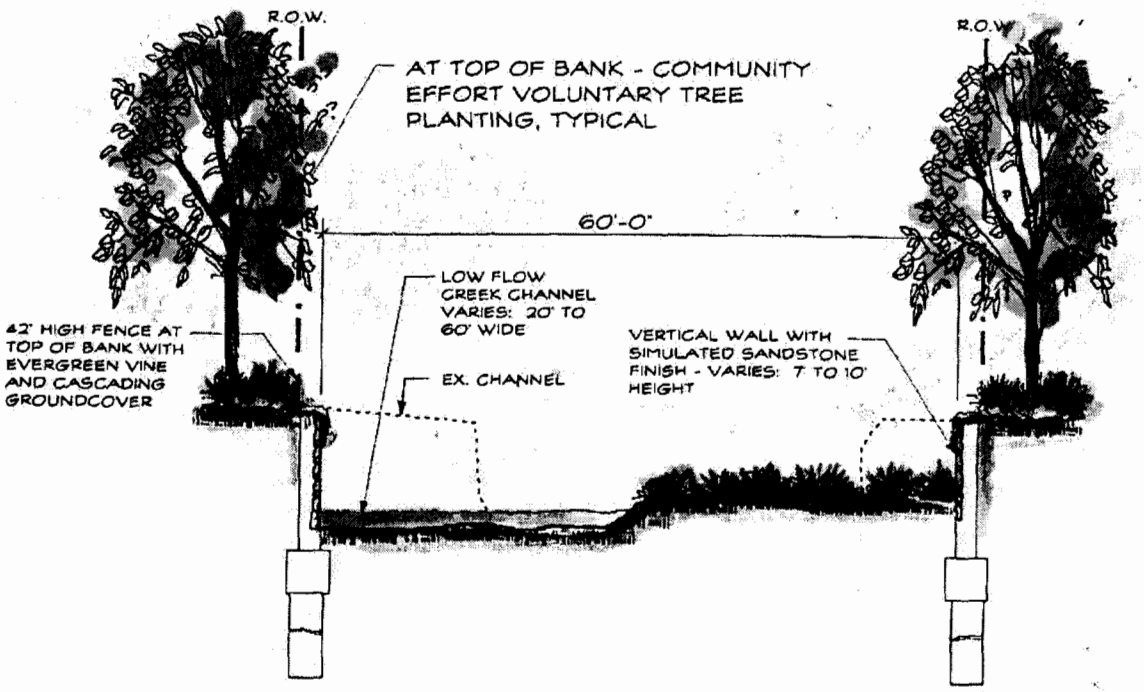
Willow branches will be placed into prepared soil below the riprap in dense rows with the expectation that approximately 20% will sprout vegetatively and find their way through gaps in the riprap. Other native understory species, including

[1] City of Santa Barbara, Letter Dated 2/22/00

arroyo willow (*Salix lasiolepis*), Mexican elderberry (*Sambucus mexicana*), and coyote brush (*Baccharis pilularis*), will be seeded into the topsoil, or set out from liner stock.

Combination riprap and vertical wall will be the dominant bank treatment upstream of Highway 101, except in two short reaches just upstream of Haley-De la Vina Bridge and De la Guerra Bridge. Below Highway 101, the combination riprap and vertical wall will be applied along the southeast bank, starting from midpoint between Chapala Bridge and Mason Bridge down to midpoint between Mason Bridge and State Bridge and between the State Street bridge and the Cabrillo Street Bridge. In total, about 4,275 feet of Mission Creek will be finished with this combination design. However, most of the stream banks in the coastal zone will consist of vertical walls.

Rendering of Vertical Flood walls[2]



VERTICAL WALL ON PIER FOOTING
TYPICAL SECTION

NOT TO SCALE

Existing natural stream bottom will be maintained and stream bottom that is now concrete lined will be restored to natural conditions, except for immediately

[2] City of Santa Barbara, Letter Dated 2/22/00

underneath bridges and through the oxbow. Restoration to natural bottom will necessitate excavation and removal of one to four feet of streambed in the reach between De la Guerra Street bridge and Ortega Street Bridge, one to three feet of streambed between Ortega Street Bridge and Bath Street Bridge, two to three feet of streambed between Cota Street Bridge and Haley-De la Vina Bridge, and two to four feet of streambed between Haley-De la Vina Bridge and Gutierrez Street Bridge. In the reach between Chapala Street Bridge and State Street Bridge, there will be excavation and/or fill of one foot of streambed. In the final reach of Lower Mission Creek from State Street Bridge to Cabrillo Boulevard Bridge, the streambed will be cleared of leftover footings from earlier structures. There will be no flood-control improvements in the Mission Creek lagoon, south of Cabrillo Boulevard. Additionally, the project will include measures to improve fish habitat within the stream. These measures include placement of boulder clusters as energy dissipaters and provide some heterogeneity to the stream. Additionally, the project includes construction of a low-flow channel inland of the coastal zone, fish ledges and baffles and Goby refugia (hideouts) constructed along the flood-control walls.

Finally, the proposed project provides for annual maintenance of the flood-control facility. The maintenance activities include removal of sediment and vegetation from the streambed inland of the coastal zone, inspection and repairing, as needed, the channel wall, overflow culvert and weir structure, monitoring and repairing the vegetated rip rap areas and habitat expansion zones, and repairing interior drainage structures (storm drains). The vegetation removal will occur in a mosaic pattern that requires removal of vegetation from half the stream with the other half being cleared in the following year. Thus, the removal of vegetation from any one part of the stream will occur every other year. This consistency determination does not include vegetation or sediment removal in the coastal zone as part of the maintenance program.

At the hearing for this project, the Corps incorporated the following changes into the project:

1. Pursuant to section 930.36(d) of the regulations that implement the CZMA, the Corps will submit to the Commission one or more additional consistency determinations for future phases of the project and the maintenance thereof. In the future consistency determination(s), the Corps will 1) describe the specific characteristics of the design, and 2) consider all design-related issues including design of the pilot channel, adaptive management plan, and maintenance plan.

2. The Corps will convene a team of biologists with expertise on the tidewater goby. The team will consider issues related to the management of the tidewater goby within Mission Creek. Among other issues, the team will discuss the need for a study of tidewater goby genetics. If there are regional

benefits and the team recommends proceeding with the study, the team will define the scope, parameters and protocols to be followed.

3. The Corps will perform additional hydraulic analyses to investigate the feasibility and effectiveness of raising the State Street and Cabrillo Boulevard Bridges independently or together. The Corps will submit to the Commission and EDC results of these analyses.

4. The Corps will compile the adaptive management and maintenance plan into a single document and will present the document to the Commission upon completion. In that plan, the Corps will clarify the methods for maintenance (e.g., herbicide and heavy equipment vs. hand clearing of vegetation).

5. The Corps will submit to the Commission as part of a consistency determination for a future phase of this project 1) a final design for the pilot channel, and 2) analysis that supports the Corps' final design choice. This analysis will reflect the fact that the current (feasibility level) characteristics and functions are not necessarily appropriate to optimal fluvial behavior for sediment transport and conveyance through Lower Mission Creek.

6. The Corps will participate with the City of Santa Barbara in the development of a management plan for the Mission Creek estuary, which will include an analysis of tidewater goby habitat as part of the overall plan along with water quality, flood control concerns, aesthetics, safety, and recreational opportunities. The Corps will submit to the Commission a consistency determination for this comprehensive management plan.

7. The Corps will accelerate the goby portion of the comprehensive estuary management plan as part of the proposed flood-control project. This goby plan will consider, among other issues, the commingling of the Laguna Channel and Mission Creek at the estuary. To the extent feasible, the Corps will implement recommendations from the plan that are associated with the flood-control project.

II. Status of Local Coastal Program.

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The Commission has partially incorporated the City of Santa Barbara LCP into the CCMP.

III. Federal Agency's Consistency Determination.