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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: 08-10-98
49th Day: 09-28-98
180th Day: 02-06-99
Staff: RMR-LB *RMR*
Staff Report: September 18, 1998
Hearing Date: October 13-16, 1998
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-259

APPLICANT: Irvine Ranch Water District

AGENT: ASL Consulting

PROJECT LOCATION: Bonita Creek, Newport Beach, Orange County

PROJECT DESCRIPTION: Installation of approximately 1,000 linear feet of a 30 inch wide sewer line and abandon an existing 27 inch/30 inch trunk sewer. Approximately 200 feet of the new sewer line will cross Bonita Creek below grade. Grading consists of 1300 cubic yards of excavation, most of which will be used to fill the trench. The sewer line to be abandoned will be left in place and filled with cement.

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Final Negative Declaration for Improvement of Bonita Creek Sewer Crossing, California Department of Fish and Game Streambed Alteration Agreement, Draft Report on: Bonita Creek Biological Surveys by Harmsworth Associated dated July 1998, Regional Water Quality Control Board review dated 8-26-98

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development with special conditions regarding construction responsibility and debris removal, provision of a revegetation/landscape plan, mitigation and monitoring plan, and conformance with Fish and Game 1601-1603 Streambed Alteration Agreement.

STAFF RECOMMENDATION:

The Staff recommends that the Commission adopt the following resolution:

The Commission hereby grants subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Condition

1. Construction Responsibilities and Debris Removal

All staging areas for equipment and materials shall be located outside the stream channel and banks. All construction materials shall be removed from the stream channel and banks area after the completion of construction.

2. Landscape/Revegetation Plan

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, a landscaping and revegetation plan. This plan shall include the following elements and shall be implemented as approved by the Executive Director:

a. List of Native Plants

The applicant shall supply a list of native plants to be placed in all of the stream channel and banks disturbed by construction. The plants to be placed in the stream channel shall consist entirely of native, riparian plants common to Bonita Creek, as identified in the Bonita Creek Biological Survey prepared by Harmsworth Associates in July 1998. The plants on the channel banks shall be a mix of riparian and upland plants consistent with the existing plant palette. No non-native plants shall be planted in the stream channel or channel banks.

b. Construction Zone

The applicant shall provide a site plan showing the existing stream and vegetation (native and non-native) in relation to the construction trench.

c. Detailed Revegetation Map

The applicant shall provide a detailed revegetation plan indicating the type, location, quantity and size of plants to be installed. Any invasive, non-indigenous plants within and immediately adjacent (within five (5) feet) to the construction zone area shall be removed and replaced with native riparian plants.

d. Salvage of Native Plants and Soil

The applicant shall, wherever possible, remove existing native riparian plants from the stream channel prior to construction and set them aside to be re-planted once the construction is complete. All non-native riparian and upland plants in the construction zone shall be removed and replaced with native plants.

In addition, the applicant shall remove the top soil layer and keep it separate for placement as top soil once the project is complete. If the top soil is not salvaged and replaced, the applicant shall conduct soil tests prior to the placement of plants to ensure that the soil regime is adequate for native riparian plants.

3. Mitigation and Monitoring

Prior to the issuance of a coastal development permit the applicant shall submit, for the

review and approval of the Executive Director, a mitigation and monitoring plan that includes the following components and shall be implemented as approved by the Executive Director :

a. Timing of Construction

Project construction shall not occur within the avian breeding season, between the months of March 15 and July 15. Any mitigation monitoring taking place during that prohibited time period shall be conducted by a biologist and shall minimize disruption to existing birds.

b. Project Oversight

A project biologist shall be on site during excavation and grading and revegetation in order to monitor and minimize the potential impacts from construction on native vegetation. Existing native vegetation outside the construction limits shall be flagged and construction personnel shall be instructed to avoid flagged areas.

c. Project Monitoring

Upland and riparian plant revegetation shall have a success criteria of 80% survival the first year and shall attain 75% cover within 3 years. If the survival and cover requirements are not met the applicant is responsible for replacement planting to achieve these goals. Replacement plants shall be monitored for three years following planting.

d. Monitoring Reports

The applicant shall supply mitigation and monitoring reports yearly (by September 1) for three years after planting. The applicant shall include information on the success criteria, number of plants planted, number of plants replaced, lists of plants used, and an assessment of plant coverage. If the plan is less than successful, the report should include recommendations for action to identify and remedy the situation.

3. Fish and Game Conditions

The permittee shall undertake development in conformance with the conditions of approval for the Department of Fish and Game's "Agreement Regarding Proposed Stream or Lake Alteration" (5-200-98). No changes to the approved development shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines no amendment is required.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed development consists of the installation of 1,000 linear feet of a 30 inch wide sewer line and the abandonment of an existing 27 inch/30 inch trunk sewer. Grading consists of 1,300

cubic yards of cut, most of which will be used to fill the excavated trench. Approximately 180 feet of the new sewer line will cross Bonita Creek underground. The abandoned sewer line will be filled with cement and abandoned in place. The proposed development is located in and along Bonita Creek. The project site is bounded by University Drive on the northwest, Bonita Creek Park on the southwest, and the San Joaquin Hills Transportation Corridor on the east. Bonita Creek converges with San Diego Creek just east of where San Diego Creek empties into Upper Newport Bay.

The Irvine Ranch Water District is proposing this project because construction of the San Joaquin Hills Transportation Corridor at this location altered the upstream, inland alignment of Bonita Creek. The flow path of Bonita Creek now follows the alignment of the existing sewer line. The applicant notes that the flow line change increases the possibility of sewage spills into the creek or storm water infiltration of the sewer line during storms. The project is proposed to protect the sewer line and existing biological resources from that eventuality by eliminating manholes in the stream path and by removing the existing north south 640 feet of sewer line from the stream path and constructing a new 660 foot sewer line above the stream path and banks.

The proposed development involves the construction of a new sewer line and the abandonment of the existing alignment. The proposed development involves two alignments. First, there is the existing and new east-west alignment which runs through the flowline of Bonita Creek. Second there is the existing north south sewer alignment which runs down in the margins of the stream path and the proposed north-south sewer alignment which is completely out of the stream path on the top of a slope adjacent to Bonita Creek Park. The segment which involves excavation in the stream is the east-west sewer line. The existing and proposed sewer alignments are shown on Exhibits 2 and 3.

Existing Sewer Alignment

The existing alignment runs 240 feet east and west perpendicular to and through the creek and then runs 640 feet parallel to or within the stream channel at approximately contour elevation 16. Approximately 220 feet of the existing east-west alignment runs through the stream path. The existing sewer line is buried from 6 to 15 feet below surface grade.

Proposed Sewer Alignment

The proposed alignment involves installing a new sewer line 30 to 60 feet north (closer to University Ave.) of the existing alignment and running a new north-south sewer parallel to the stream path 80 feet west of the existing 640 foot long sewer line. The total length of the new east-west alignment from the manhole at the top of slope adjacent to University Drive to the new manhole connection at approximately elevation 25 feet is 340 feet. The new north-south sewer line, which runs parallel to but 80 feet west of the existing sewer line, is 660 feet long.

The new east-west sewer line begins at the top of slope adjacent to the University Drive bridge over Bonita Creek at contour elevation 25. From there the new sewer line drops 80 linear feet to contour elevation 14.73 and then travels 200 feet to elevation 15.99. The new sewer alignment then runs another 60 feet to contour elevation 25 feet at Bonita Creek Park. The portion of the

new 340 linear feet east west sewer lines which traverses Bonita Creek is approximately from contour elevation 14.73 to 15.99 or 200 linear feet.

Two-hundred (200) feet of the new sewer line would be placed in the creek path from 6 to 15 feet underground, however, the 660 foot long north-south sewer line parallel to Bonita Creek would be installed above the stream channel, from contour elevation 15-20 to approximately contour elevation 25-30.

B. Water Quality

Section 30231 of the Coastal Act pertain to the maintenance and restoration of the biological productivity and quality of coastal waters.

Section 30231 of the Coastal Act states:

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

1. Biological Resources

Bonita Creek runs perpendicular to San Diego Creek. Bonita Creek does not directly outlet into Upper Newport Bay, but converges with San Diego Creek just east of San Diego Creek's entry into Upper Newport Bay (see Exhibit 6). Upper Newport Bay is owned by the California Department of Fish and Game and is designated as a State Ecological Reserve. Upper Newport Bay is an integral part of the Pacific Flyway and provides habitat for 158 species of birds, including the endangered Belding's Savannah Sparrow, the Light-Footed Clapper Rail and the California Least Tern.

Bonita Creek upstream of the project site has been disturbed first by the construction of Newport Coast Drive and then by the construction of the San Joaquin Hills transportation corridor (see Exhibits 6 and 7). As was stated in the staff report for the Transportation Corridor (CC-63-92/ 5-92-232):

The purpose of the Enhancement project is to restore riparian values to the extent feasible to the riparian system, including adverse impacts from portions of the SJHTC that are located outside the coastal zone, and improve wildlife movement between San Diego Creek, which is within the coastal zone, and natural areas upstream outside the coastal zone.

Within the coastal zone itself, the SJHTC will require the temporary disturbance of 6,200 sq. ft. of riparian habitat due to the need for utility relocation; this area will be restored upon completion of construction.

Therefore, Bonita Creek is important for bird habitat as well as providing connectivity between San Diego Creek/Upper Newport Bay and natural inland areas of the San Joaquin Hills. The SJHTC also provided mitigation for lost coastal sage scrub resources by planting the slopes of the Bonita Creek channel with coastal sage scrub.

A biological report was prepared by Harmsworth Associates in July 1998. The survey found that Bonita Creek at the project location is a willow-dominated wetlands. The dominant willow was black willow (*Salix gooddingii*). Other native plants found on site were mulefat (*Baccharis salicifolia*), Fremont cottonwoods (*Populus fremontii*) and other native and non-native riparian plants. No endangered plants or candidate plant species were found at the site.

Mitigation and Monitoring Measures

The Fish and Game Streambed Alteration Agreement (see Exhibit 6) specifies that the applicant shall impact not more than 7,000 square feet of habitat and that this area be replanted with native vegetation upon completion of the project. The Agreement does not specify any specific mitigation ratio, just that the impacted area be replanted. The creek area contains a mixture of native and non-native plants. The special conditions of this staff report require that the applicant reserve both native plants and top soil and that all non-natives in the construction zone be removed. The special conditions of this staff report also includes plant revegetation success and cover criteria. At completion of the three-year monitoring plan the area disturbed by construction will have a requirement for 75% cover with native plants.

The special conditions of this staff report and of the Fish and Game Streambed Alteration Agreement are designed to mitigate adverse impacts to biological resources during and following construction of the new sewer line. Measures to protect existing resources include the presence of a biologist during construction to monitor the work, flagging native plant resource areas which are not to be impacted, and requiring that no work be done during the avian breeding season (March 15-July 15). The special conditions also require compliance with the Fish and Game Streambed Alteration Agreement, the submittal of a landscape/revegetation plan composed entirely of native riparian and coastal sage plants, removal of any construction debris following project completion, saving native plants and top soil for future use, requirements for revegetation plan survival and plant coverage, and provision of monitoring reports.

As conditioned, the Commission finds that the proposed development is consistent with the biological resource protection requirements of Section 30231 of the Coastal Act.

2. Water Quality

Bonita Creek converges with San Diego Creek which feeds into the Upper Newport Bay Ecological Reserve. The applicant states that there is the potential for sewage spills in Bonita Creek. If a sewage spill were to occur in Bonita Creek it would not only affect water quality in Bonita Creek but in San Diego Creek and the Upper Newport Bay as well.

During construction of the San Joaquin Hills Transportation Corridor the flow line of Bonita Creek was altered. The existing segment of the 27-30 inch Irvine Ranch Water District (IRWD) sewer line running parallel with Bonita Creek then became subject to creek flows. This, in turn, led to the possibility of sewer spills and water infiltration into the sewer system. There is at least one manhole in the current alignment of the sewer system located in the flow line of Bonita Creek.

In order to prevent possible sewage spills with its attendant consequences for wildlife, the IRWD is proposing to abandon the portion of the sewer line which runs parallel to and within the flow line to outside the flow line and construct a new sewer line. The existing sewer line is between 6 and 15 feet below grade. The new sewer lines will be constructed a minimum of 6 feet below grade.

The proposed development is beneficial to water quality for several reasons. First, the longest 640 foot north south sewer line and manholes would be completely removed from the stream path. The new alignment is 10 feet higher in elevation and up to 80 feet west of the existing alignment. Second, the existing alignment of the 240 foot east-west alignment which traverses the stream path would be moved northward closer to the bridge. This means that approximately 80 linear feet of the proposed sewer line would be located in the slope supporting the bridge and not in the stream path. Finally, the removal of manholes in the stream path eliminates the possibility of sewage leakage into the stream and the possibility of storm water flow into the sewer system.

In addition, the special conditions of this staff report and the Department of Fish and Game Streambed Alteration Agreement provide for site protection during construction and revegetation with native plants post-construction. Mitigation measures include the provision of a revegetation plan, monitoring plan and provision of annual reports.

Existing sewer lines which run a minimum of six feet under the surface will be filled with grout and abandoned. Ideally, the applicant would remove the existing sewer lines. However, removal of them would create significant disruption to the biological resources in Bonita Creek. Leaving the pipes in place may also lead to future site contamination from remnant sewage in the pipeline. Filling the pipes with concrete would prevent cave-in and contamination of the environment.

The Commission finds, therefore, that the proposed development is protective of coastal resources and is consistent with the water quality resource policies of the Coastal Act.

C. Streambed Alteration

Section 30236 of the Coastal Act states:

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

developments where the primary function is the improvement of fish and wildlife habitat.

The proposed development involves two alignments. First, there is the existing and new east-west alignment which runs through the flowline of Bonita Creek. Second there is the existing north south sewer alignment which runs down in the margins of the stream path and the proposed north-south sewer alignment which is completely out of the stream path on the top of a slope adjacent to Bonita Creek Park. The segment which involves excavation in the stream is the east-west sewer line.

The applicant is proposing to excavate an eight foot wide trench through the stream path for the new east-west sewer alignment. The new east-west sewer line begins at the top of slope adjacent to the University Drive bridge over Bonita Creek at contour elevation 25. From there the new sewer line drops 80 linear feet to contour elevation 14.73 and then travels 200 feet to elevation 15.99. The new sewer alignment then runs another 60 feet to contour elevation 25 feet at Bonita Creek Park. The portion of the new 340 linear feet east west sewer lines which traverses Bonita Creek is approximately from contour elevation 14.73 to 15.99 or 180 linear feet.

As was mentioned in the project description section of this staff report, the upper reaches of Bonita Creek were significantly altered during the construction of Newport Coast Drive and the San Joaquin Hills Transportation Corridor. Only approximately .6 acres of the San Joaquin Hills Transportation Corridor project involving Bonita Creek occurred in the coastal zone. As mitigation for impacts to riparian/wetland resources of Bonita Creek, the SJHTC conducted a large scale native plant revegetation program. Part of the construction involved the relocation of water and utility lines.

The current project is a sewer line relocation project designed to minimize the possibility of sewage spills into Bonita Creek. Both of the existing east-west and north-south sewer alignments will be abandoned. The existing sewer alignment through Bonita Creek involves digging an eight foot wide trench a minimum of six feet deep, installing the 30 inch in diameter sewer line, backfilling the trench and revegetating the area. This does constitute a temporary disruption to Bonita Creek but, as mitigated, does not involve significant impacts to the stream channel ecosystem. Therefore, the Commission finds that the proposed development is consistent with Section 30236 of the Coastal Act.

E. Local Coastal Program

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

The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the ability of the City of Newport Beach to prepare a Local Coastal Program [Implementation Plan] that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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 resource protection policies of the Coastal Act. Mitigation measures; special conditions regarding removal of construction debris, compliance with Fish and Game Streambed Alteration Agreement 5-200-98, submittal of a landscape/revegetation plan, and submittal of a revegetation mitigation and monitoring plan, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, 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 effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

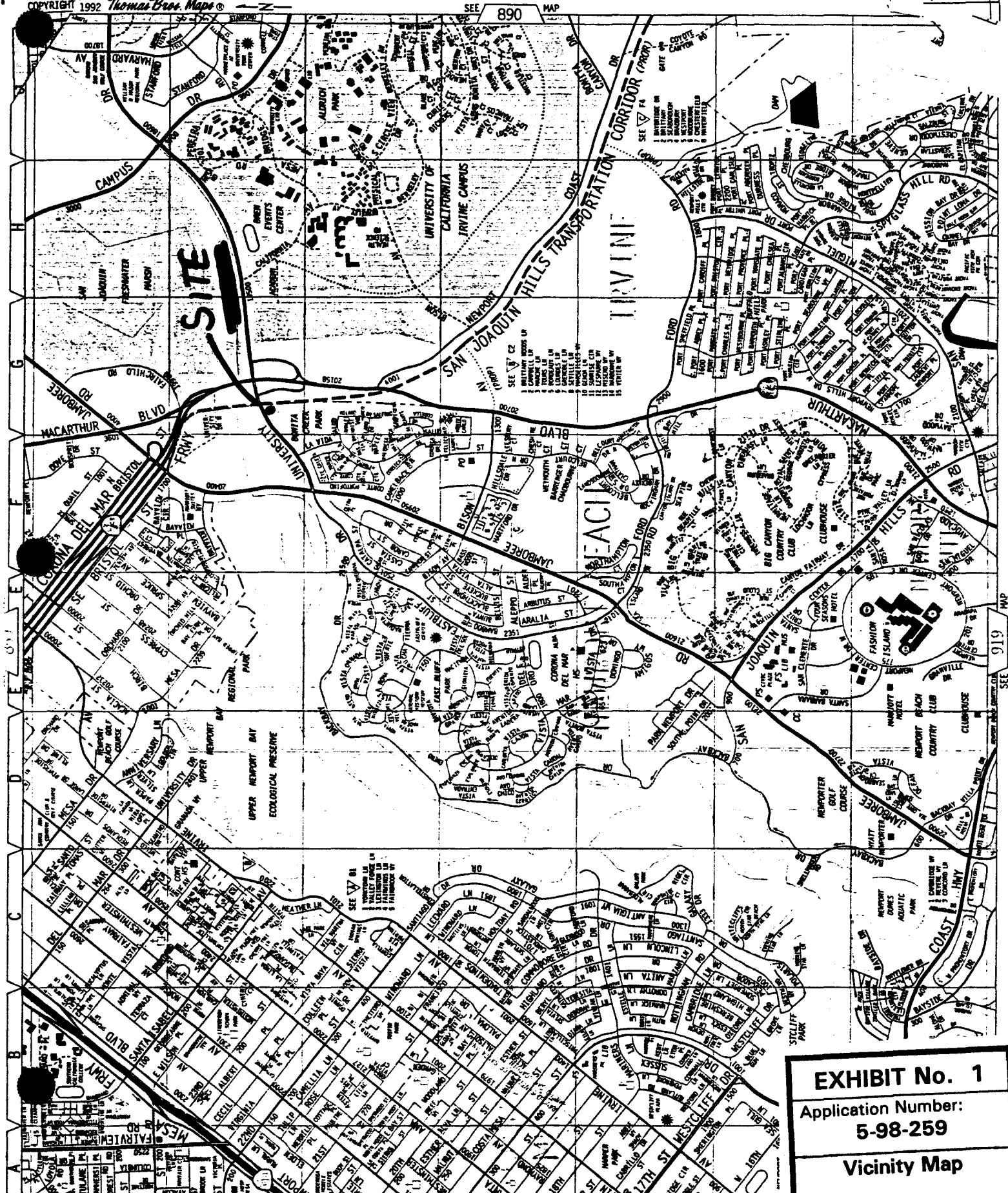


EXHIBIT No. 1

Application Number:
5-98-259

Vicinity Map

California Coastal
Commission

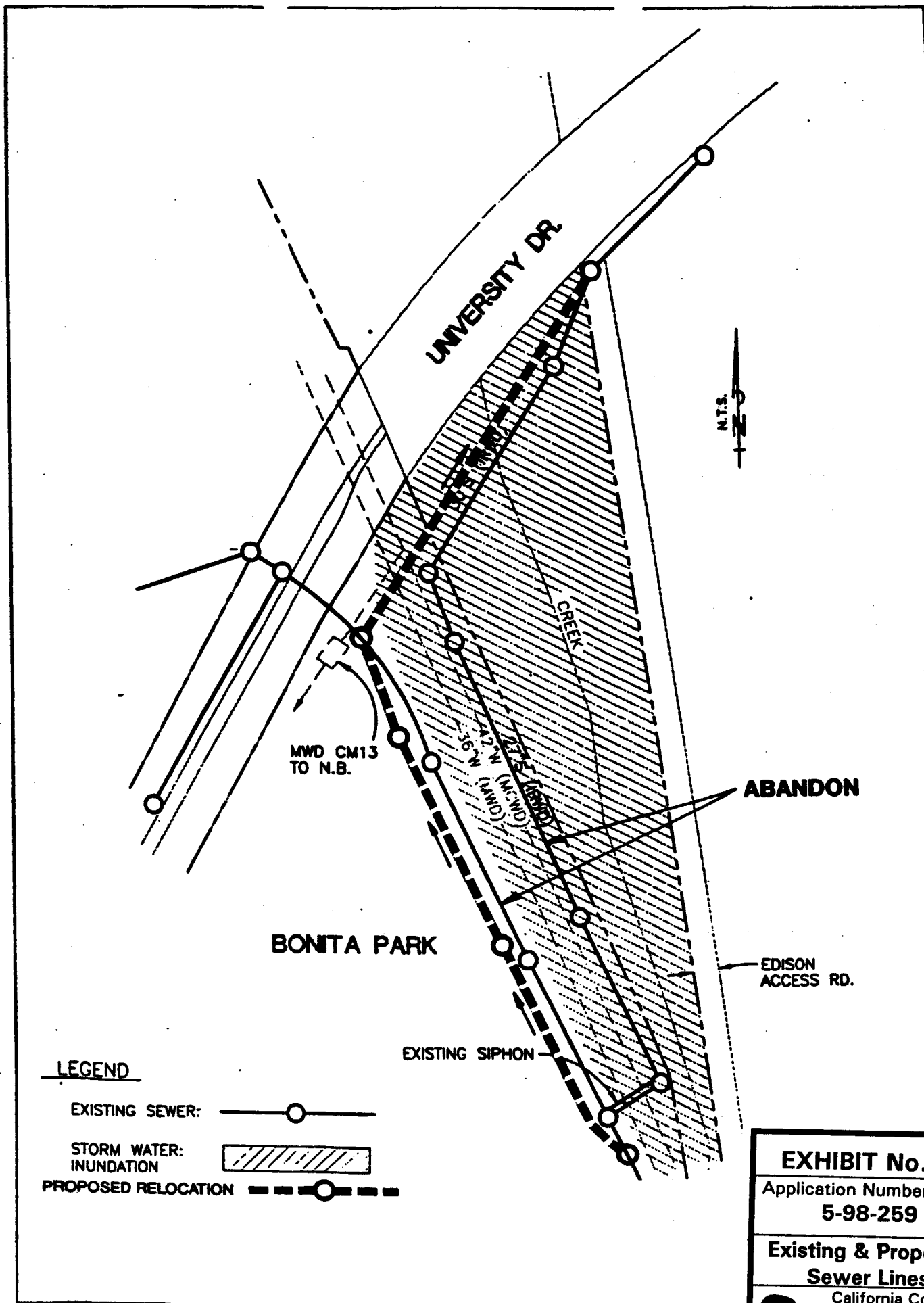


EXHIBIT No. 3

Application Number:

5-98-259

Existing & Proposed
Sewer Lines

California Coastal
Commission



Peter M. Rooney
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Santa Ana Region

Internet Address: <http://www.swrcb.ca.gov>
3737 Main Street, Suite 500, Riverside, California 92501-3339
Phone (909) 782-4130 • FAX (909) 781-6288



Pete Wilson
Governor

August 26, 1998

Dr. Soon Kim
Project Manager
Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, CA 92618

WAIVER OF WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR THE PROPOSED BONITA CREEK PARK TRUNK SEWER RELOCATION, NEWPORT BEACH, ORANGE COUNTY (NO ACOE REFERENCE NUMBER)

Dear Dr. Kim:

On July 1, 1998, we received a transmittal dated June 23, 1998 from your agent, ASL Consulting Engineers, for the above-referenced project. Additional materials were transmitted on August 13, 1998. We received all requested materials for a complete application as of August 14, 1998.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project described below will not violate State water quality standards:

- | | |
|-----------------------------|---|
| 1. Project description: | Irvine Ranch Water District (IRWD) is proposing to relocate an existing 27 - 30 inch trunk sewer in the Bonita Creek channel. Bonita Creek was recently realigned due to construction of the San Joaquin Hills Corridor. As a result, Bonita Creek's flow path follows the alignment of the existing sewer which poses a risk for sewage spills and/or stormwater infiltration. The existing trunk sewer will be abandoned. Relocation of 920 linear feet of the trunk line will be take place out of the creek flow path and consist of excavation, placement of a concrete double barrel sewer siphon, backfill and compaction of previously excavated soil, and replacement of vegetation. |
| 2. Receiving water: | Bonita Creek |
| 3. Fill area: | wetlands: 0.16 acres of temporary impacts |
| 4. Dredge volume: | 1300 cubic yards |
| 5. Federal permit: | NWP 12 and NWP 33 |
| 6. Compensatory mitigation: | restored: 0.16 acres of riparian habitat |

There is vegetation in the project area. The proposed project is not expected to impact state- or federally-listed endangered or threatened species or their critical habitat.

The proposed activities are authorized under Nationwide 12 and Nationwide 33 permits from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have also filed for a

California Environmental Protection Agency



EXHIBIT No. 4

Application Number:
5-98-259

RWQCB Letter

 **California Coastal
Commission**

Dr. Soon Kim
Irvine Ranch Water District
August 28, 1998

page 2

Streambed Alteration Agreement from the California Department of Fish and Game and applied for a Coastal Development Permit with the California Coastal Commission. A Negative Declaration was certified for this project on August 10, 1998.

Resolution No. 96-9 (copy enclosed) provides that waste discharge requirements for certain types of discharges are waived provided that criteria and conditions specified in the Resolution are met. Provided that the criteria and conditions for Projects Which Impact Wetlands and/or Riparian Habitats specified on page 2, Minor Stream Channel Alterations specified on page 3 (of Attachment "A" to the Resolution) and the general conditions specified on page 4 are met, waste discharge requirements are waived for this project.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This is equivalent to waiver of water quality certification. We anticipate no further action on your application, however, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

Should there be any questions, please contact Hope Smythe at (909) 782-4483.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

Attachment

cc (w/ attachment)

✓ ASL Consulting Engineers, Robert J. Ohlund, P.E.

cc (w/out attachment):

U.S. Environmental Protection Agency, Wetlands and Sediment Management Section -
Daniel Meer (W-3-3)

U.S. Army Corps of Engineers - Eric Stein

U.S. Fish and Wildlife Service - Martin Kenney

State Water Resources Control Board, OCC - Tad Cobb

State Water Resources Control Board, DWQ-Nonpoint Source Certification and Loans Unit -

William R. Campbell, Chief

California Department of Fish and Game, San Diego - Tim Dillingham

California Coastal Commission - Meg Vaughn

FILE:HAS;IRWD2401.DOC

Paper

Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

CALIFORNIA DEPARTMENT OF FISH AND GAME

330 Golden Shore, Suite 50
Long Beach, California 90802

Notification No. 5-200-98Page 1 of 4**AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Soon Kim, of Irvine Ranch Water District, 15600 Sand Canyon Ave., Irvine, CA 92618; (714) 453-5300; (714) 727-7099 State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 18th day of May, 1998, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): Bonita Creek, tributary to San Diego Creek, Orange County, California, Section Irvine Rancho, Township 6S, Range 9W.

WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within Bonita Creek, tributary to San Diego Creek, specifically identified as follows: birds: least Bell's vireo, willow flycatcher, great egret, green heron, snowy egret, red-tailed hawk, turkey vulture, killdeer, Anna's hummingbird, downy woodpecker, Nuttall's woodpecker, common yellowthroat, song sparrow, blue grosbeak, California towhee; riparian vegetation which provides habitat for those species: willows, cattails; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

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

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

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

This Agreement becomes effective the date of Department's signature and terminates January 31, 1999 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

EXHIBIT No. 5Application Number:
5-98-259**F&G Agreement**California Coastal
Commission

Page 2 of 4

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-200-88

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The Operator proposes to alter the streambed to realign Bonita Creek Park Trunk Sewer, encase it in concrete, and restore the earthen streambed back on top of the pipe, impacting 7000 ft² of stream (350' x 20'). The project is located adjacent to the San Joaquin Hills Transportation Corridor and Bonita Creek Park, south of University Drive, in the City of Irvine.
3. The agreed work includes activities associated with No. 2 above. The project area is located in Bonita Creek, tributary to San Diego Creek, in Orange County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including "Draft Report on: Bonita Creek Biological Surveys", prepared by Harmsworth Associates, and dated July, 1998, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 7000 ft² of stream. All impacts are temporary. The Operator shall minimize the corridor width to the greatest extent possible. The Operator shall minimize impacts to vegetation to the greatest extent possible (e.g. trim vegetation for equipment access in certain locations; leave the roots in place where grading/digging is not needed).
5. The Operator shall have a qualified biologist monitor the project to ensure avoidance and minimization to the greatest extent possible, compliance with the Conditions of this Agreement, and to ensure restoration of the project work site.
6. The stream's low flow channel, bed and banks shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems. Then this area shall be revegetated with native vegetation. It is recommended the Operator salvage plant material to be impacted at the site, such as willow and mulefat, for use in the revegetation.
7. All mitigation shall be installed no later than March 31, 1999. All planting shall be done between October 1 and March 31 to take advantage of the winter rainy season. The Operator shall submit a letter with photo documentation that the restoration and planting with native species has occurred no later than March 31, 1999. Thereafter, a letter report shall be submitted to the Department by Jan. 1 for 3 years after planting. This letter shall include the site success with % cover of native species, site recommendations and photo documentation.
8. The Operator shall not work within the stream from March 1 to August 15 to avoid direct and indirect impacts to nesting birds.
9. No direct or indirect impacts to least Bell's vireo or willow flycatcher shall occur.
10. No equipment shall be operated in ponded or flowing areas.
11. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.

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STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-200-98

12. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

13. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

14. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.

15. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.

16. Staging/storage areas for equipment and materials shall be located outside of the stream.

17. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.

18. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 3 years after planting.

19. Access to the work site shall be via existing roads and access ramps.

20. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

21. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.

22. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

23. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

24. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

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25. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.

26. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 330 Golden Shore, Suite 50, Long Beach, CA 90802, Attn: ES.

27. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

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

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

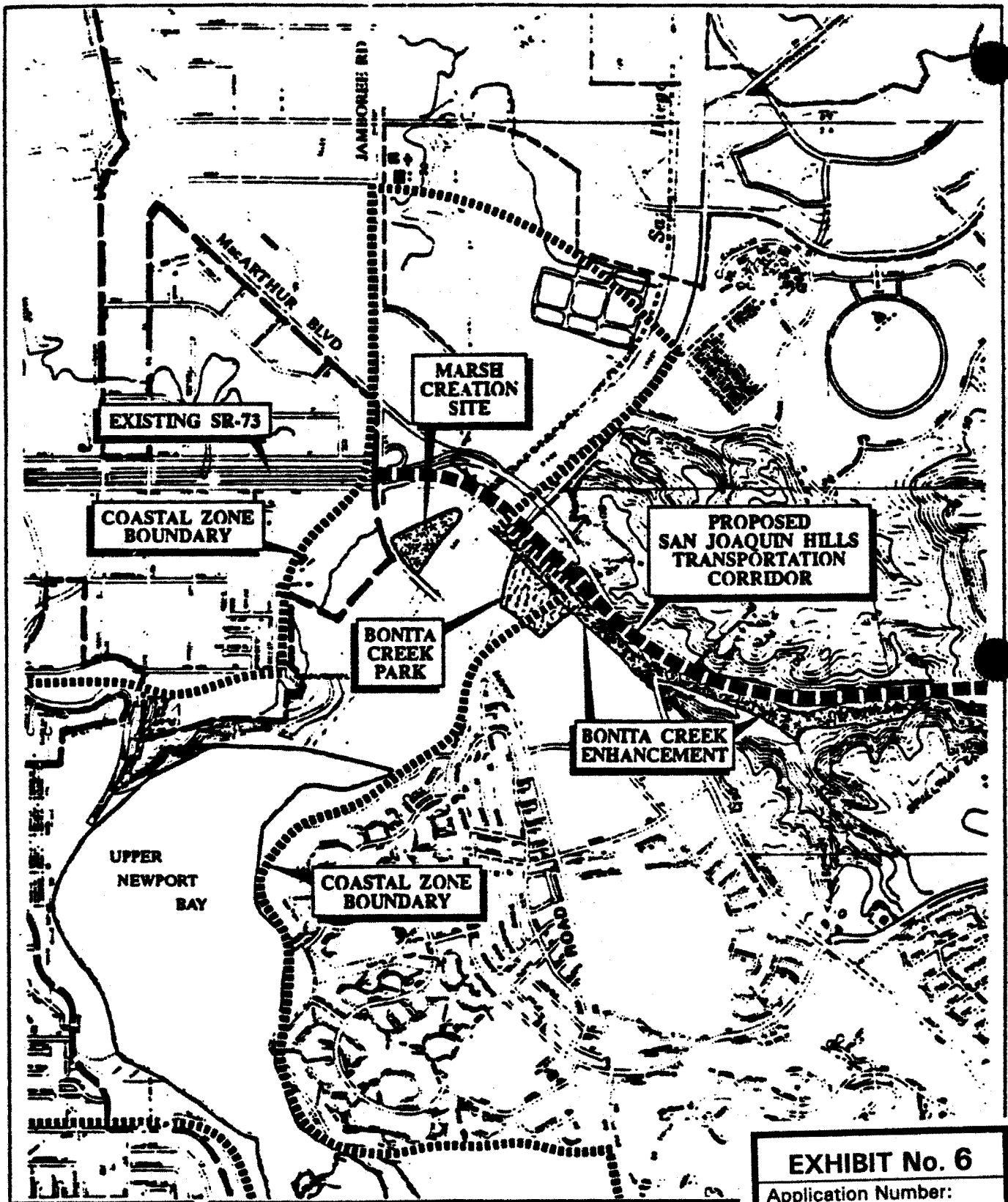
29. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond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

CONCURRENCE

(Operator's name)

California Dept. of Fish and Game

(signature)_____
(date)_____
(signature)_____
(date)_____
(title)Environmental Specialist III
(title)



9/9/92



LSA

Scale in Feet



EXHIBIT No. 6

Application Number:

5-98-259

Enhancement Area

SJHTC

California Coastal
Commission

Vicinity Map

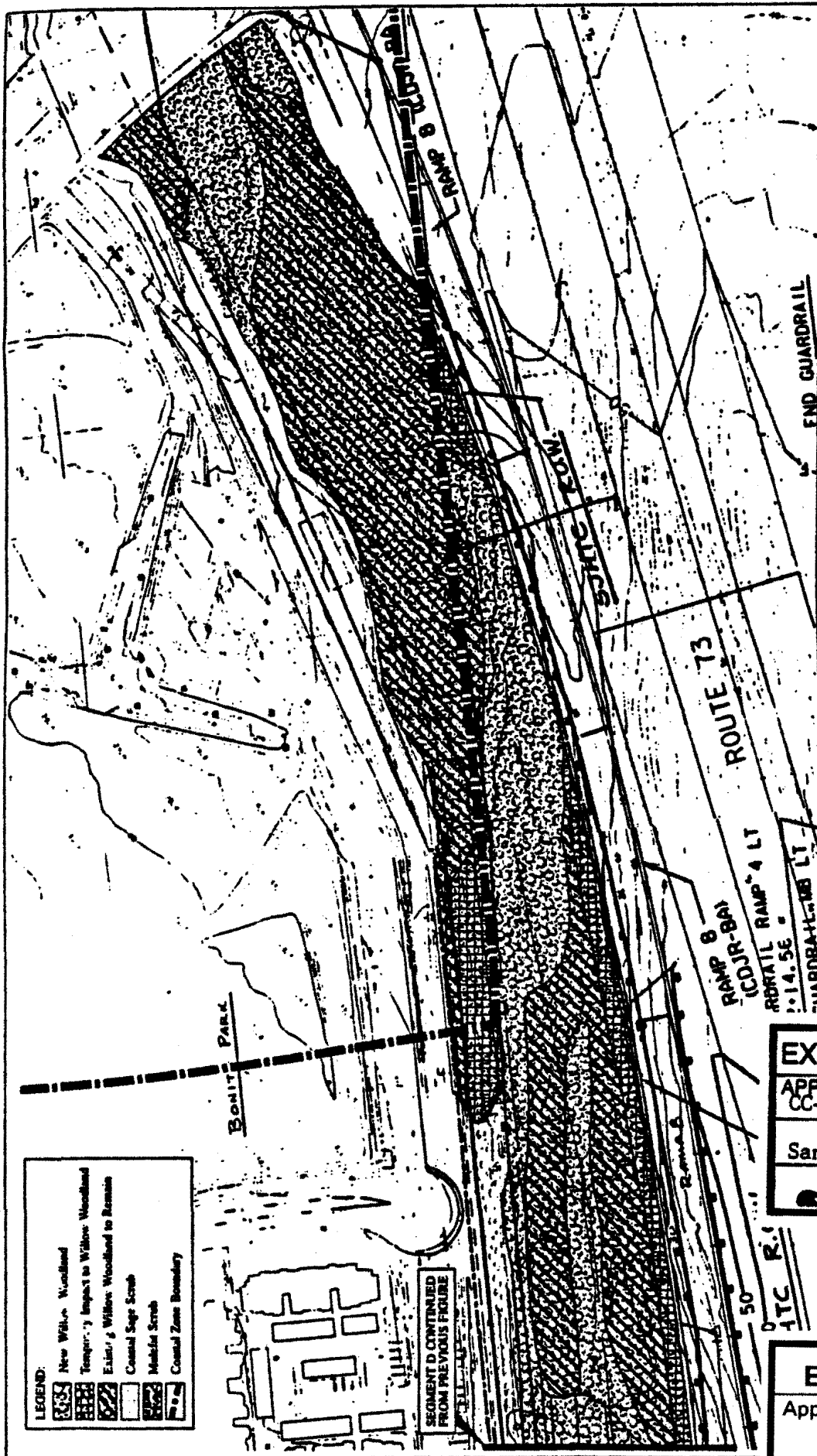


Figure 4-4(Cont.)

Segment D
Plan View: Bonita Creek Restoration and Enhancement

EXHIBIT NO. 15

APPLICATION NO.
CC-63-92/5-92-232

San Joaquin Hills

California Coastal Commission

EXHIBIT No. 7

Application Number:
5-98-259

Bonita Creek
Vegetation Map

California Coastal
Commission

