

CALIFORNIA COASTAL COMMISSION

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 Staff: TH-LB JH
 Staff Report: 9/22/99
 Hearing Date: 10/12-15/99
 Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Orange

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-IRC-99-301

APPLICANT: Irvine Community Development Company

AGENT: Carol Hoffman, The Irvine Company
 M. Andriette Culbertson

PROJECT LOCATION: Southern Coastal Orange County, North of PCH, West of Crystal Cove State Park and East of the City of Newport Beach, Irvine Coast (Newport Coast), Orange County

PROJECT DESCRIPTION: Appeal of County of Orange approval of Seventh Amendment to the Master Coastal Development Permit to establish mass grading and backbone infrastructure for future development in Newport Coast Planning Areas 4A, 4B, 5, 6, 12C, 12E and 12G (Phase IV-3/IV-4. Approval of Vesting Tentative Tract Map 15447.

APPELLANTS: Coastal Commissioners Pedro Nava and Sara Wan

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: Pursuant to Section 30603(b)(1) of the Coastal Act the locally approved development does not conform to the County of Orange Newport Coast (Irvine Coast) certified Local Coastal Program (LCP). More specifically, the locally approved coastal development permit (1) does not conform to the environmentally sensitive habitat area (ESHA) policies of the certified LCP by allowing the elimination of a drainage course in Planning Area (PA) 5 for residential development and the filling of drainage courses and wetlands for residential, recreational, private road and

drainage facility purposes in Planning Areas 4A, 4B, 6 and 12C; (2) approves development outside of the LCP area (within the adjacent Crystal Cove State Park which has a certified Public Works Plan); and (3) unilaterally deletes the Commission's appeal jurisdiction areas to allow for grading of USGS "Blue line" drainage courses within residential, open space and recreation planning areas (Exhibit 7). The motion to carry out the staff recommendation is on page 2.

Further, staff recommends that the Commission direct the staff to appeal local permit PA 98-0187 for the construction of a private recreation facility in Planning Area (PA) 12C. PA 98-0187 prematurely approves development that would utilize the infrastructure that is the subject of this appeal. The notice of final local action received by the Commission from the local government for the construction of this facility incorrectly indicated that this related permit was not appealable.

Finally, staff recommends that the Commission continue the de novo hearing to a future Commission meeting in order to allow additional information to be submitted by the project applicant and reviewed by Commission staff. The required additional information includes a wetland delineation of all on-site wetlands based on Coastal Act wetland criteria, information on the biology of all of the drainage courses that are proposed to be eliminated and/or modified, and an analysis of alternatives to the proposed project that would avoid the elimination and/or modification of wetlands and streams designated as environmentally sensitive habitat areas (ESHA) in the certified LCP. The additional information is necessary for Commission staff to analyze the project and make a recommendation for the de novo stage of the appeal.

SUBSTANTIVE FILE DOCUMENTS:

1. Record for Local Coastal Development Permit No. PA 97-0152.
2. County of Orange Newport Coast Certified Local Coastal Program.
3. County of Orange Coastal Permit No. PA 98-0187

STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the conformity of the project approved by the County with the policies of the Newport Coast (Irvine Coast) certified Local Coastal Program, pursuant to Public Resources Code Section 30625(b)(2).

MOTION: Staff recommends a **NO** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-IRC-99-301 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

FINDINGS AND DECLARATIONS

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No. PA 97-0152, approved by the County of Orange Planning Commission on July 21, 1998, has been appealed by two Coastal Commissioners on the grounds that the approved project does not conform to the requirements of the Certified LCP. The appellants contend that the proposed development does not conform to the requirements of the certified LCP in regards to the following issues:

Approval of Development Outside of the Boundaries of the LCP

The appellants contend that the County's permit approves development outside of the LCP area. Specifically, development is approved in the adjacent Crystal Cove State Park which is publicly owned by the Department of Parks and Recreation and governed by a certified Public Works Plan. The County does not have the authority to issue a local coastal development permit for development in the State Park. Approval of development outside the certified LCP area is inconsistent with the authority delegated to the County under the LCP. Therefore, the coastal permit approved by the County raises a substantial issue of consistency with the certified LCP.

Removal of the Commission's Appeal Jurisdiction from Certain Areas

The County's approval purports to delete the Commission's appeal jurisdiction in several planning areas. The certified LCP establishes the appeal jurisdiction of the Commission consistent with the Coastal Act. The local government can not unilaterally modify the Commission's appeal jurisdiction because the Commission's appeal jurisdiction is statutorily prescribed. The statute defines this appeal jurisdiction, in part, based on the existing physical characteristics of the land. The County's approval treats the Commission's appeal jurisdiction as being affected before a physical change has legally occurred on the ground. Therefore, the purported removal of the Commission's appeal jurisdiction through this permit action by the local government is inconsistent with the Coastal Act and raises a substantial issue of consistency with the provisions of the certified LCP regarding appeal procedures.

Elimination of a designated ESHA (drainage course) in PA 5

The certified LCP specifically lists the Planning Areas in which Category "D" ESHAs can be modified or eliminated. The LCP policy which allows for some Category "D" ESHAs to be modified does not allow for the ESHA in Planning Area (PA) 5 to be modified or eliminated. Therefore the County's permit which allows for the total elimination of the Category "D" ESHA in PA 5 raises a substantial issue of consistency with the certified LCP.

Modification and/or Elimination of designated ESHA (wetlands and drainage courses)

The County's approval allows the modification or elimination of wetlands and USGS "Blue-line" streams which are designated Category "A" "B" and "D" ESHAs in Planning Area (PA) 4A, 5, 6 and 12C. As stated above, the LCP does not allow the modification of the ESHA in PA 5 at all. The LCP also designates wetlands as ESHA and does not allow development in any wetlands. Further, the LCP requires that, except for the ESHA B located in Planning Area 4A, the natural drainage courses in Category "A" an "B" ESHAs will be preserved in their existing state. The permit approved by the County approves development (a detention basin and a private road) within a Category "A" ESHA in PA 12C. The permit also approves wetlands to be filled for the construction of the detention basin and for residential development in PA 4A. Therefore, the permit approved by the County raises a substantial issue of consistency with the ESHA protection policies of the LCP.

Finally, the County's interpretation of its ESHA policies also raises a substantial issue given the Appellate Court decision in *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493. The *Bolsa Chica* decision involved the Coastal Commission's approval of a local coastal program amendment that authorized development within wetlands and environmentally sensitive habitat areas. The Court of Appeal held that the Commission acted improperly in approving residential development and the expansion of a road in parts of the proposed development site that included an environmentally sensitive habitat area and wetlands. Because the County has also interpreted its policies to allow residential development within environmentally sensitive habitat areas and wetlands, the appeal raises issues of statewide significance.

II. LOCAL GOVERNMENT ACTION

On July 21, 1998 the Orange County Planning Commission held a public hearing and conditionally approved coastal permit application PA 97-0152 of the Irvine Community Development Company. At the conclusion of the public hearing, the Planning Commission approved the permit application with the 55 special conditions recommended by the planning staff, except for a modification to special condition 11 concerning paleontological resources, and the deletion of special condition 37 dealing with the submittal of hazardous materials to the fire chief. (Exhibit 6).

The Planning Commission 's July 21, 1998 approval of the coastal permit was appealable to the Board of Supervisors within 15 calendar days. On July 30, 1998 Mr. Barbour, representing Crystal Cove Partners, the concessionaires for the future development of the Crystal Cove State Park Historic District, appealed the Planning Commission's action to the Board. However, on August 31st, Mr. Barbour withdrew the appeal after meeting with the applicant and the County planning staff. (Exhibit 4). According to the County's record, no other appeals were filed.

III. COASTAL COMMISSIONER APPEAL

The local coastal development permit approved by the County is appealable to the Coastal Commission pursuant to 30603(a)(2) of the Coastal Act because it involves development within

100 feet of streams and wetlands. Pursuant to the certified LCP and the Commission's post certification regulations, a local government's action that is appealable to the Commission is not considered effective until the Commission receives a proper final action notice, establishes the required 10 working day appeal period, and the appeal period runs without an appeal being filed. (See 14CCR Sections 13572 and 13111 and LCP sections 7-9-118.6(h)). If an appeal is filed, the locally issued permit is not final until after the Commission's final action on the appeal. According to the post certification records of the district office, the County did not forward the notice of final action within 7 calendar days as required by the certified LCP.

On July 27, 1999 staff received correspondence from a member of the public, including a July 22 Los Angeles Times article concerning the pending Army Corp of Engineers permit to modify and/or eliminate streams within the subject appeal area. The correspondence received by Commission staff questioned whether the Commission had jurisdiction over this activity. In response to the public inquiry, staff contacted the County of Orange to determine if they had issued a coastal permit including such activity. The Orange County planner indicated that the fill had been approved in conjunction with their July 1998 approval of application 97-0152, also known as the seventh amendment to the master coastal development permit for the Newport Coast Area.

When Commission staff researched the district post-certification records, staff learned that a Notice of Public Meeting concerning EIR 569 had been received on May 12, 1998 and a Notice of Public Hearing on July 15, 1998 had been received concerning the coastal permit application PA 97-0152. However, no other notices of County action had been received. Staff requested that the County send the notice of final action. Upon receipt of the Notice of Final Decision on August 5, 1999, staff opened the 10 working day appeal period as required by the certified LCP. On August 12, 1999 Commissioners Wan and Nava appealed the County's approval of the subject permit, within 10 working days of receipt of the Notice of Final Decision.

The applicant and their representative have stated that the subject appeal is not proper and assert that staff had previously received effective notice of the County's approval of permit PA 97-0152. They cite the fact that staff had received (1) the notice of the EIR; (2) the pending hearing notice; and (3) the Notice of Final Decision for a subsequent permit PA 98-0187 that approved development that would utilize the infrastructure that is the subject of this appeal.

Section 7-9-118.6(h) of the County's LCP specifically states that a local approval is not effective until after the 10 working day appeal period to the Commission has expired. As reflected in section 7-9-118.6(h)(2)(a) of the County's LCP, the 10 working day appeal period to the Commission does not commence until after the Commission receives a valid notice of final location action (See Exhibit 8).

Accordingly, with regard to the notice of EIR and the pending hearing notice, neither notice constitutes the notice of final local government action required by the County's certified LCP and the Commission's post certification regulations. With regards to the receipt by the Commission of the notice of final action for a subsequent permit which approved development that would utilize

the infrastructure that is the subject of this appeal, the reference to the approval of the subject appeal contained within this subsequent permit also does not constitute the required notice of final local action for the subject appeal. Moreover, the notice of final local action for this subsequent permit does not itself constitute a valid notice of final local action because the notice failed to identify that the development was appealable to the Commission. (See further discussion of this issue in Section VI below.)

The Commission finds that the information cited by the applicant does not constitute the required submittal of the notice of final action that must be received by Commission staff in order to establish the required appeal period for all appealable development. Therefore, the Commission finds that the appeal period on PA 97-0152 did not commence until the Commission received notice of final local action on August 5, 1999. Consequently, the Commission finds that the appeal by Commissioners Wan and Nava was timely filed on August 12, 1999, within 10 working days of receipt by the Commission of the final local action notice.

IV. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Also, developments approved by the local government that are located within 100 feet of any wetland, estuary, or stream may be appealed. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by its location being within 100 feet of a stream or wetland.

Section 30603 of the Coastal Act states:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100

feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. The de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

V. SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

Coastal permit PA 97-0152 is the seventh amendment to the master coastal development permit for the Newport Coast (formerly Irvine Coast) Planned Community. The permit covers approx. 980 acres and includes minor boundary adjustments between the planning areas, mass grading (17,800,000 cubic yards of cut and 17,320,000 cubic yards of fill), and backbone infrastructure (drainage facilities, utilities, roads, etc.) for future residential, private recreation and public and private open space uses in Planning Areas (PA) 4A, 4B, 5, 6, 12C, 12 E and 12G. The development is also known as Phase IV-3 and IV-4 of the LCP area (See Exhibit 2).

Approval of Vesting Tentative Tract Map (VTTM) 15447 is also included. VTTM 15447 approved the subdivision of the area into large parcels for financing and/or sale or lease to builders (or in the case of the Conservation areas 12E and 12G, dedication to a public agency) to be further subdivided to ultimately build 635 detached single family homes on 581.5 gross acres (PA 4A, 4B, 5 and 6); the construction of a 32 acre private recreation facility on the 100 acre PA 12C site; and dedication as Conservation open space of 298.5 acres (PA 12E and 12G). The residential development closest to Pacific Coast Highway (PA 4A and 4B) is Medium density (3.5 to 6.5 du/a), in the upper areas (PA 5) Medium Low density (2 to 3.5 du/a) and Low density (up to 2du/a) in PA 6.

The permit also approved off-site development of grading and the construction of a private road into Crystal Cove State Park and the export of 480,000 cubic yards of cut material to Planning Area 3B of the LCP area.

B. LCP Area Description

The Newport Coast (formerly Irvine Coast) Local Coastal Program area is comprised of 9,493 acres in southwestern unincorporated Orange County (see Exhibit 1). If the land that is now part of Crystal Cove State Park (which has its own certified Public Works Plan) is also considered the Newport Coast area would extend from the 3 and one-half mile shoreline of the Pacific Ocean to the ridge of the San Joaquin Hills. The more gentler sloping Pelican Hill and Wishbone Hill areas are in the northwestern portion of the LCP area. These ridges and hillsides contain three major canyons, Buck Gully, Los Trancos and Muddy Canyon. On the eastern end of the LCP area are Moro Canyon and Emerald Canyon (see Exhibit 3). Extensive coastal sage scrub covers most of the area and portions of the LCP area are within the Natural Communities Conservation Planning (NCCP) program.

The land uses of the 9,493 LCP area (including the 2,807 acre Crystal Cove State Park) include 277 acres designated tourist commercial; 1,873 acres designated low, medium-low, medium and high density residential land use; and 7,343 acres of open space (recreation and conservation) land use. Included within the open space designation is 455 acres of golf course use (two 18 hole courses), private passive and active parks and publicly dedicated passive recreation open

space areas. The LCP allows for a total maximum of 2,600 residential units, 2,150 resort/overnight accommodations and 2.66 million square feet of commercial development.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The grounds for an appeal identified in Public Resources Code section 30603 are limited to whether the development conforms to the standards in the certified LCP and to the public access policies of the Coastal Act.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP and
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

Staff is recommending that the Commission find Substantial Issue exists for the reasons set forth below.

D. Substantial Issue Analysis

As stated in Section III of this report, a local Coastal Development Permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellants contend that the County's approval of the proposed project does not conform to the requirements of the certified LCP (See Section I). Staff is recommending that the Commission concur that the locally approved project does not conform to the certified LCP and find that a substantial issue does exist with respect to the grounds on which the appeal has been filed.

1. Development Approved Outside of the LCP Area (Crystal Cove State Park)

Although the project description of the coastal permit approved by the local government states that the proposed development is located in Planning Areas PA 4A, 4B, 5, 6, 12C, 12E and 12G, a careful reading of the staff report and associated EIR indicates that development has also been authorized within Crystal Cove State Park. Finding #19 of the local approval states that the approved development "... permits all off-site grading and remedial grading in Crystal Cove State Park (PA 17); provides an access road partially in Crystal Cove State Park leading to a future recreation facility in PA 12C; ... provides a pedestrian/emergency access tunnel and trails under Pacific Coast Highway and within Crystal Cove State Park Property; ..." (Exhibit 5). Additionally, Figure 3.1.1 (Master Development Plan) for EIR 569 which describes the development associated with this permit identifies off-site grading and a road in Crystal Cove State Park.

Crystal Cove State Park, however, is outside of the jurisdiction of the Newport Coast LCP and therefore the County does not have authority to issue a local coastal development permit for development in the State Park. Only the Department of Parks and Recreation and the Coastal Commission, pursuant to the Public Works Plan provisions of the Coastal Act, can approve development within Crystal Cove State Park. The Newport Coast LCP specifically recognizes that the Public Works Plan provisions of the Coastal Act rather than the provisions of the certified LCP apply to Planning Area 17. The Newport Coast LCP (page II-7.3) states for Planning Area 17 that: "*Crystal Cove State Park's "Public Works Plan" has already been certified by the Coastal Commission for Recreation PA 17 and, accordingly, is not part of this LCP*". Therefore, the appeal of the County's approval raises a substantial issue of consistency of the local approval with the certified LCP.

2. Removal of the Commission's Appeal Jurisdiction

Section 30603(a)(2) of the Coastal Act establishes that after certification of its local coastal program, the Commission's appeal jurisdiction is limited, in part, to development within 100 feet of any wetland or stream. At the time the Commission certified the Newport Coastal Program, the appeal areas were generally depicted in Exhibit Y of the LCP which showed stream courses throughout the LCP area and the adjacent Crystal Cove State Park (PA 17). The exhibit also illustrates that the area within 100 feet of the stream courses is appealable to the Coastal Commission. Exhibit Y is found in Exhibit 7 of this staff report.

Finding 19 of the local approval specifically states that the approval "deletes Appeal Jurisdiction Areas to allow for grading of USGS 'Blue-Line' Drainage Courses within Residential, Open Space, and Recreation Planning Areas". The County's findings are unclear as to why such changes are being made to the Commission's Appeal Jurisdiction.

According to the local coastal permit, grading in Planning Areas (PA) 4A, 4B, 5, 6, 12E, and 12C will result in fill of the existing drainage courses within those Planning Areas. However, even if a local coastal permit allows the fill of stream courses, potentially removing the basis for future appeals of the surrounding area, it is premature for a local government to treat the Commission's appeal jurisdiction as being affected until after the physical change on the ground has legally occurred. That is, consistent with the definition of the Commission's appeal jurisdiction contained in section 7-9-118.6(i) of the County's LCP, the Commission will continue to exercise appeal jurisdiction within 100 feet of a stream unless and until the stream is physically eliminated pursuant to a local government permit which has become legally effective.

Pursuant to section 7-9-118.6(h) of the County's LCP a local approval is not effective until after the 10 working day appeal period to the Commission has expired (see Exhibit 8). As reflected in section 7-9-118.6(h) of the County's LCP, the 10 working day appeal period to the Commission does not commence until after the Commission receives a valid notice of final local action (see Exhibit 8). Because this local action has been appealed to the Commission, the filling of stream courses may never become effectively authorized. The determination of whether a development is appealable shall be made by the local government at the time the application for development within coastal zone is submitted. Pursuant to section 30603 of the Coastal Act and the definition of the Commission's appeal jurisdiction contained in section 7-9-118.6(i) of the County's LCP, this determination must be made based on the existing physical characteristics on the ground. Disputes regarding whether a development is appealable are ultimately resolved by the Commission.

Because the local government action treats the Commission's appeal's jurisdiction as being affected before a physical change has legally occurred on the ground, the local government's action in modifying the Commission's appeal Jurisdiction, as indicated in the changes to Exhibit Y, is inconsistent with the above-referenced provisions of the certified LCP regarding procedures for appeals to the Commission. The Commission therefore finds that the appeal of the County's approval raises a substantial issue of consistency of the local approval with the certified LCP.

3. Development Within Environmentally Sensitive Habitat Areas (ESHAs)

The local government's approval of the subject coastal permit allows the modification of or elimination of stream courses that are designated Environmentally Sensitive Habitat Areas (ESHAs) in the LCP. The modification or elimination of the stream courses is authorized for residential development purposes, for drainage facilities, private roads and for a future private recreational facility. As detailed below, some of the development within the ESHAs is clearly inconsistent with the Resource Conservation and Management Policies of the LCP.

The LCP defines ESHAs as follows: *"For purposes of Section 30107.5 of the Coastal Act, natural drainage courses designated . . . on the USGS 7-minute series map, Laguna Beach Quadrangle, . . . (hereafter referred to as "USGS Drainage Courses), coastal waters, wetlands, and estuaries are classified as "Environmentally Sensitive Habitat Areas" (ESHA's)." The LCP further classifies ESHAs as Category "A", "B", "C", or "D" and depicts them on Exhibit H (see Exhibit 13). Category "C" is the coastal waters along the seaward side Pacific Coast Highway which are designated both a Marine Life Refuge and an Area of Special Biological Significance. The LCP classifies the USGS Drainage Courses as Category A, B or D based on their habitat value. This classification was based on a biological inventory done at the time of the original Land Use Plan certification more than 18 years ago. Although wetlands are defined as ESHA, the LCP ESHA Map, Exhibit H shows only the USGS Drainage Courses and does not indicate the location of existing wetlands.*

Planning Areas 4A, 4B, 5, 6, 12C and 12E all contain environmentally sensitive habitat areas (ESHA) as defined by Section I-3, Resource Conservation and Management Policies. Planning Area 4A contains a Category "B" drainage and two Category "D" drainages; PA 4B and PA 6 contain a small portion of Category "D" drainages; a Category "D" drainage runs the entire length (from north to south) of PA 5; PA 12C is also bisected by a Category "A" drainage and contains a second Category "D" drainage and PA 12E is bisected by a drainage course which is classified as Category "A" in some areas and Category B in others. Planning Area 4A also contains approx. 0.05 acres of isolated wetlands and PA12C development will impact additional wetlands as discussed by the applicant in their response to comments on the pre-construction notice to the Army Corp of Engineers 404 application (see Exhibit 11). The local government's coastal development permit findings do not mention the presence of or permit fill of any wetlands in any Planning Areas.

a. Fill of Category A ESHA Inconsistent with LCP

The subject coastal development permit as approved by the local government would allow fill in the Category "A" ESHA stream course in PA 12C for the construction of a road to support private recreational use and a detention basin proposed to handle

storm water runoff from both developed and natural areas. This is in direct contradiction to the certified LCP which affords the highest protection to Category "A" and "B" ESHAs.

The findings and policies of the LCP concerning allowable uses in ESHAs are very specific. Page I-2.3 of the LCP states that Category "A" USGS Drainage Courses contain the most significant habitat areas and are subject to the most protection and are thus located entirely within Planning Areas which have a Recreation or Conservation land use designation. Although Category "B" ESHAs support less riparian vegetation than Category "A" streams and contain water only when it rains, the LCP also seeks to preserve these USGS Drainage Courses.

The LCP does not allow development within the stream courses of any Category A ESHA's or within the stream courses of any Category B ESHAs, with one exception. Policy D. 1 on page I-3.9 of the LCP states:

**D. CATEGORY "A" & "B" ENVIRONMENTALLY SENSITIVE HABITAT
AREA POLICIES**

1. Except for the ESHA B located in Planning Area 4A, the natural drainage courses and natural springs will be preserved in their existing state. All development permitted in Category A and B ESHA's shall be set back a minimum of 50 feet from the edge of the riparian habitat except as provided for in the following subsections. If compliance with the setback standards precludes proposed development which is found to be sited in the least environmentally damaging and feasible location, then the setback distance may be reduced accordingly.

The full text of the above policy and the subsections containing the exceptions are provided in Exhibit 10. The exceptions referred to in the above policy allow deviations from the minimum 50 foot set back from the edge of the riparian vegetation for roads, trail crossings, drainage and erosion control and related facilities and for habitat enhancement and/or fire control, but only when the permitted development is otherwise authorized consistent with the above policy. As specified in the above policy, except for the ESHA "B" located in Planning Area 4A, the natural drainage courses in Category "A" and "B" ESHAs are to be preserved in their existing state. This interpretation of the above policy and its exceptions is supported by the Development Policies of the LCP and the LCP maps. Policy E.10 of the Transportation/Circulation Policies, page I-4.24 states that, *"Roadway design will generally reflect a rural rather than urban character. Where feasible, precise roadway*

alignments shall preserve the natural topography and avoid environmentally sensitive areas". Additionally, LCP Map Exhibit S is the Backbone Drainage Concept (see Exhibit 9). No drainage facilities are located within the stream courses of any Category "A" or "B" ESHAs consistent with ESHA Policy D.1 cited above. Exhibit S of the LCP shows a detention basin in Planning Area 12C but it is not located within the USGS drainage course.

The local coastal permit approves a detention basin and a road to serve private recreational use in the Category A ESHA within PA12C. The approval of a road and a detention basin within a Category A ESHA is inconsistent with the above-identified policies and maps of the certified LCP. Therefore the Commission finds that the appeal of the local government action raises a substantial issue of consistency with the ESHA policies of the certified LCP.

b. Fill of Category D ESHA in PA 5 Inconsistent With LCP

As stated above, the LCP contains specific policies as to which ESHAs can be modified or eliminated. Although Category "D" ESHAs are considered to be the least productive habitat areas due to the general absence of associated riparian vegetation, they are nonetheless USGS Drainage Courses and are protected as designated ESHAs. Even without riparian vegetation, drainage courses serve a valuable function in natural communities, including the deposition of sediment to the coast to aid in beach nourishment. Accordingly, the LCP does not allow for the wholesale elimination of all USGS drainages that are classified as Category "D" ESHAs. There are Category "D" ESHA's that are preserved in Recreation or Conservation areas just as Category "A" ESHAs. Category "D" ESHAs that are preserved in Recreation or Conservation areas include those in PA 12A, Los Trancos Canyon Conservation Planning Area and in Crystal Cove State Park adjacent to the Muddy Canyon Conservation Area 12E.

Likewise, not all Category "D" ESHAs within development Planning Areas are allowed to be modified or eliminated. Policies F. 1, 2, and 3 of the Resource Conservation and Management Policies of the LCP, page I-3.22, regulate Category "D" ESHA impacts (see Exhibit 12).

Policy F.1 allows all Category D drainage courses only within PA 10A to be modified. However, Policy F.2 specifically calls out those Planning Areas where all vegetation and drainage courses may be modified or eliminated. The Category "D" ESHA in Planning Area 5 is not one of those listed. The Commission notes that the Category "D" ESHA in PA5 is a significant feature (See Exhibit 13). The USGS drainage course runs the entire length of the planning area from north to south.

The property owner has argued that the fact that Policy F. 2 on page I-3.22 does not allow the elimination of the drainage course and vegetation in PA 5 is a typographical error. The Commission disagrees with this contention based on the fact that the LCP Resource

Conservation and Management Policies specifically lists Planning Areas that are to be excepted from its restrictions. For example, Policy D.1 specifically allows for the modification of the Category "B" ESHA in PA 4A. Similarly, if the LCP had intended that all Category "D" ESHA's in Residential Planning Areas be allowed to be eliminated, a policy such as Policy F. 1 which allows the fill of all drainages in Planning Area 10A would have been certified.

The locally issued coastal permit allows for the elimination of the Category "D" USGS Drainage Course in PA 5. The LCP policy which allows certain Category "D" drainages to be filled does not include the PA 5 USGS blue line stream. Therefore, the Commission finds that the appeal raises a substantial issue with regard to the ESHA protection policies of the certified LCP.

c. The fill of Wetlands Inconsistent With the LCP

The locally issued permit approves the fill of 0.05 acres of isolated wetlands in PA 4A for the purpose of residential development. Further, the local permit approves the fill of 0.13 acres of wetlands in PA 12C in conjunction with the detention basin and a private road. The local government's findings do not mention the presence of or the basis for the fill of these wetlands. The stated purpose of the road is to provide residents of the future homes in PA 4A and 4B access to the private recreation facility in PA 12C. The detention basin would regulate storm water runoff from both planned developed areas and natural areas.

The applicants contend that the scattered wetlands in PA 4A are exempt from the Commission's appeal jurisdiction under Section 13577(b)(2) of the Commission's regulation. Section 13577(b)(2) provides that wetlands subject to the Commission's appeal jurisdiction do not include:

"...wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and there is no evidence [...] showing that wetland habitat predated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands."

In support of their contention, the applicants have submitted aerials documenting that the wetlands did not predate their agricultural operations. However, the applicant's evidence also documents that the agricultural operations ceased in 1995. Despite the cessation of the agricultural operations, the wetlands remain viable. The Commission finds that the exemption provided in 13577(b)(2) does not apply to wetlands that currently exist independent of and disassociated from preexisting agricultural activities. The Commission also notes that the wetland fill at issue would support residential, not agricultural activities.

Given that the wetlands are within the scope of the Commission's appellate review, the Commission goes on to assess the consistency of the wetland fill with the certified LCP. As explained above, the LCP defines wetlands as an environmentally sensitive habitat area (ESHA) even though they were not designated on the ESHA Map, Exhibit H. However, the LCP does not contain specific policies authorizing development within the wetlands. It is possible that the LCP omits wetland specific policies because the wetlands at issue in the current appeal did not exist at the time the LCP was certified. Because there are no LCP policies specifically authorizing the fill of the wetlands permitted by the local approval, the Commission finds that the fill of wetlands as approved in the local permit raises a substantial issue of consistency with the certified LCP.

That the wetland fill raises a substantial issue of consistency with the certified LCP is also supported by the Appellate Court decision in *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493. The *Bolsa Chica* decision involved the Coastal Commission's approval of a local coastal program amendment that authorized development within wetlands and environmentally sensitive habitat areas. The Court of Appeal held that the Commission acted improperly in approving residential development and the expansion of a road in parts of the proposed development site that included an environmentally sensitive habitat area and wetlands. Given the existence of newly discovered wetlands and the omission of LCP policies that specifically govern permissible wetland fill, the Commission finds that the County's LCP must be interpreted in light of the *Bolsa Chica* decision. Because the County has interpreted its policies to allow residential development within wetlands, an environmentally sensitive habitat area, and the County's interpretation is not supported by findings which explain the basis for such fill, the Commission finds that the appeal raises a substantial issue of consistency with the certified LCP.

4. Estoppel and Justifiable Reliance

The applicants contend that the Commission should reject the appeal based on principles of estoppel and justifiable reliance. Specifically, the applicants contend that (1) the LCP specifically authorized a balance of development and preservation which represents a final decision with respect to the application of Coastal Act policies to the subject appeal; (2) the public benefits extended by Irvine in reliance on the LCP is an implied promise that approval of private development would not be withheld; (3) the County's approval of the development agreement constitutes an express promise that Newport Coast would not be subjected to new rules and interpretations.

The Commission rejects the applicant's contentions and finds that the appeal raises substantial issue. With regards to the applicant's first contention, the LCP does not represent a final decision on the ability of the applicant to undertake development within the Newport Coast. The LCP expressly acknowledges that a coastal

development permit must first be obtained. Coastal development permit review is clearly an exercise of discretionary authority. Moreover, even if the LCP could constitute the final decision on the permissibility of development, as demonstrated above, the proposed project raises substantial issues of consistency with the certified LCP.

With regards to the applicant's second contention, the fact that the applicant has dedicated open space and created wetland habitat in other planning areas, even if voluntarily in advance of LCP requirements, does not guarantee that development will be approved in the Planning Areas at issue in the subject appeal. The LCP itself precludes the acceptance of any offers to dedicate until after grading and building permits issue. The LCP Dedication Program Requirements and Procedures are contained in Exhibit 14 of this staff report. In addition, the LCP only allows acceptance of proportional dedications if the landowner is not able to undertake development for 10 years (see Exhibit 14). Therefore, given that the LCP provisions are contingent, the applicant can not justifiably rely on LCP provisions that expressly limit acceptance of dedications to advance the argument that approval of development would not be withheld.

Lastly, the existence of a development agreement between the County and the developer does not eliminate or alter the requirement that all development within the Newport Coast area must be consistent with the certified LCP. As demonstrated above, the proposed project raises issues of consistency with the certified LCP.

VI. Commission Direction of Staff to Appeal of Local Permit PA 98-0187 (Muddy Canyon Recreation Center)

Subsequent to the County's July 21, 1998 approval of the subject seventh amendment to master coastal development permit (PA 97-0152), the County approved coastal permit application PA 98-0187 for the construction of a private recreation facility in PA 12C. Local coastal permit PA 98-0187 approved the Muddy Canyon Recreation Center on 32 acres of the 98 acre planning area including equestrian facilities with stable for up to 50 horses, play field and a multi-use area, swimming pool complex, four lighted tennis courts, a covered picnic area, trails, parking for 84 cars, and a caretaker's residence. The permit also approved an additional 50,000 cubic yards of grading to establish final pad elevations and the internal road system.

The infrastructure development in PA 12C approved by the County and the subject of this appeal includes the following: mass grading of 32 acres of the 98 acre planning area including the construction of any necessary retaining walls, backbone infrastructure, including a detention basin in a wetland area adjacent to Muddy Canyon, a 32 foot wide collector road (with sidewalk) and public and private trails. Other approved development which affects the development of PA 12C is the off-site

construction of a private road in Crystal Cove State Park (PA 17) which provides access to the private recreation facility and the adjacent Crystal Cove State Park for the future residents of adjacent PA 4A and 4B and PA 3A and 3B. The Planning Area 12C contains both a Category "A" and Category "D" ESHA as well as wetlands. The permit approved by the County authorizes the fill of wetlands and a Category "A" ESHA for the construction of the detention basin and private road. PA 12C is one of the planning areas at issue in the subject appeal. The infrastructure to support the private recreation facility is also the subject of this appeal.

Staff is recommending that the Commission direct the staff to appeal local coastal permit PA 98-0187 for the Muddy Canyon Recreation Center in PA 12C. If the Commission finds that the subject appeal raises substantial issue as is being recommended, then the applicant would not have an approved coastal permit to undertake the substantial mass grading of the site, minor boundary adjustment, or to construct the road or utility connections necessary for the recreation facility as designed. Therefore approval of any subsequent development in PA 12C prior to final action on the underlying infrastructure permit PA 97-0152 which is the subject of this appeal, is premature.

The Commission also has a legal basis on which to direct staff to appeal local permit PA 98-0187. On March 29, 1999 the County of Orange filed a Notice of Final Decision for coastal permit PA 98-0187 for the approval of a private recreation facility in PA 12C for Irvine Community Development Company. The Notice of Final Decision indicated that the approved development was not appealable to the Coastal Commission (Exhibit 15). This determination of the appeal jurisdiction is incorrect as all development within 100 feet of a wetlands or a stream, regardless of the stream's ESHA designation, is appealable to the Commission pursuant to section 30603(a)(2) of the Coastal Act and section 7-9-118.6(i) of the certified LCP.

The findings of the local government approval do not indicate the basis for its incorrect determination that the permit is not appealable to the Commission. Perhaps the determination was based on the fact that the local government's action on the underlying permit which approved the infrastructure for the recreation facility also improperly deleted the Commission's appeal jurisdiction from this and other areas included in the local government's action on PA 97-0152. However, as explained above, unless and until a stream or wetland is physically eliminated through a valid coastal permit, all development within 100 feet of the stream or wetland is appealable to the Commission.

Because the local government's Notice of Final Decision for permit 98-0187 improperly identified appealable development as nonappealable, the Commission has still not received a valid Notice of Final Local Action. Therefore, the local government action on

the permit is appealable to the Commission for the reasons stated above and detailed in Section III of this staff report. As stated above, permit PA 98-0187 can not become effective until a proper notice is received and the Commission's 10 working day appeal period is established and runs without an appeal being filed, or if an appeal is filed, until the Commission's final action on the appeal.

Therefore, the Commission directs the staff to send a Notice of Deficient Notice to the local government. Upon receipt of a proper notice of final local action indicating that the permit action is appealable to the Commission, staff will seek an appeal of the action from two Commissioners. Through the appeal process, the Commission will be able to evaluate the impacts of the proposed fill of the on-site wetlands consistent with the action the Commission takes on the subject appeal .

ADDITIONAL INFORMATION NEEDED FOR DE NOVO ACTION

Since the Commission's appeal of the County's approval, the applicant and Commission staff have had several meetings. The applicant has provided staff with a significant amount of additional information regarding the resources of the site, arguments regarding the applicant's claim that the subject appeal is untimely, and arguments that the Commission should reject the appeal based on the application of estoppel and justifiable reliance.

Staff has not had adequate time to review the submitted information to determine if it is adequate or whether additional information and/or clarification is needed. The de novo staff recommendation can not be prepared until staff has had time to review the submitted information to determine if it is adequate.

In addition, on September 24, 1999, the day this staff report was prepared, the applicant submitted a biological evaluation of the ESHAs in Planning Areas 4A, 4B, 5, 6 and 12B. It is unclear as to why a biological evaluation of PA 12B was provided since the appealed local permit did not approve development in this Planning Area. However, the appealed permit did approve development in PA 12C where there is both a Category "A" and "D" ESHA and wetlands that will be impacted but the biological evaluation does not address this planning area. The de novo action can not be considered until this information is provided to staff and staff has sufficient time to review it.

Further, before the Commission can consider the de novo action on this permit additional information must be submitted to Commission staff for the preparation of the de novo recommendation. In addition to an accurate assessment of the existing resources for Planning Area 12C, an alternatives analysis which includes avoidance of all impacts to ESHA resources must also be provided.

Finally, Staff also notes that the applicant has proposed additional development not considered by the County in its approval of the subject permit. This development must be included by the applicant within an amended permit application that will be utilized for purposes of any de novo hearing on the proposed project.

A5-IRC-99-301staffreport.final

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



August 11, 1999

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Commission Form D)

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Pedro Nava, Commissioner
200 Oceangate, 10th floor
Long Beach, CA. 90802

Section II. Decision Being Appealed

1. Name of local/port government: County of Orange

2. Brief description of development being appealed: Site grading for purposes of future residential development and infrastructure improvements
SEE ATTACHED

3. Development's location (street address, assessor's parcel no., cross street, etc.): Newport Coast Local Coastal Program Area

4. Description of decision being appealed:
a. Approval; no special conditions: _____
b. Approval with special conditions: XXX
c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-IRC-99-301
DATE FILED: 8/12/99
DISTRICT: _____

**A5-IRC-99-301
EXHIBIT A**

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

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

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

6. Date of local government's decision: July 21, 1998

7. Local government's file number (if any): PA-97-0152

Section III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Irvine Community Development Company
550 Newport Center Drive
Newport beach, CA 92660

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

(1) _____

(2) _____

(3) _____

(4) _____

Section IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal

information sheet for assistance in completing this section, which continues on the next page.

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

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

See Attached Memo

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

Section V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 8/12/99

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

FILE COPY

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



August 11, 1999

APPEAL FROM COASTAL PERMIT DECISION OF
LOCAL GOVERNMENT
(Commission Form D)

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

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Chairman, Sara Wan

200 Oceangate, 10th floor

Long Beach, CA. 90802

Section II. Decision Being Appealed

1. Name of local/port government: County of Orange

2. Brief description of development being appealed: Site grading for purposes
of future residential development and infrastructure improvements

SEE ATTACHED

3. Development's location (street address, assessor's parcel no., cross street,
etc.): Newport Coast Local Coastal Program Area

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: _____XXX_____

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: AS-IRC-99-301

DATE FILED: 8/12/99

DISTRICT: _____

information sheet for assistance in completing this section, which continues on the next page.

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

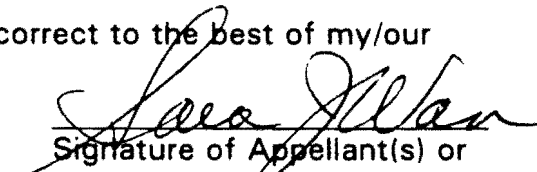
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached Memo

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

Section V. Certification

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


Signature of Appellant(s) or
Authorized Agent

Date 8/12/99

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**MEMORANDUM**

August 11, 1999

**COMMISSIONER APPEAL OF COUNTY OF ORANGE CDP PA 97-0152 IN THE
NEWPORT COAST LCP AREA**

The County of Orange through CDP PA-97-0152 (Irvine Company) would allow the fill of approximately 2.78 acres of jurisdictional waters of the United States based on U.S. Army Corps of Engineers wetland criteria. The proposed project would also allow the conversion of currently undeveloped natural areas to residential use based on Section 30007.5 of the Coastal Act. The permit also apparently authorizes the removal of the Commission's appeal jurisdiction in certain areas prior to the actual fill of the affected streambeds. Furthermore, the project apparently authorizes ancillary development within Crystal Cove State Park which has a certified Public Works Plan. The proposed development cited by PA-97-0152 is within the Newport Coast Local Coastal Program area. The proposed development components under this permit cited above are inconsistent with the County of Orange's certified Local Coastal Program for the following reasons.

1. Use of Section 30007.5 of the Coastal Act (Balancing Clause)

Both the Newport Coast LCP and CDP PA-97-0152 (the permit subject to this appeal) used Section 30007.5 of the Coastal Act. Section 30007.5 of the Coastal Act states that when conflicts between one or more policies occur, that the conflicts be resolved in a manner which on balance is most protective of significant coastal resources. The Newport Coast LCP states: *"The Land Use Plan recognizes that the preservation of these particular resources and the Open Space Dedication Programs are more protective of coastal resources than the protection of more isolated and relatively less significant habitat areas within designated residential and commercial development areas."* (Page I-2.2). Consequently the Resource Conservation and Management Policies of the LUP allow the streambed fill to the Category "B" ESHA located in Planning Area 4A (Page I-3.19) and the modification or elimination of Category "D" ESHAs (streambeds) in Planning Areas 4A, 4B, 6, 12A, 12C, and 12E. Additionally, even though the LUP states that Category "A" ESHAs (streambeds) *"will be preserved in their existing state."* (Page I-3.19) a series of exemptions are allowed for purposes of constructing new roads, trails, and drainage and erosion control facilities.

The proposed development would result the conversion of Planning Areas 5,6, 4A, 4B from natural areas to residential land uses. According to available information,

this will result in an unstated quantity of fill of streams and wetlands (the 2.78 acres fill of jurisdictional waters is a total figure, a subtotal is not available), and unstated impacts to coastal sage brush habitat (including the California gnatcatcher). The permit states that these adverse impacts are to be mitigated through the Irvine Company's participation in the NCCP program (Special Conditions #21 and #23). The Newport Coast LCP acknowledges that consistent with Section 30007.5 of the Coastal Act that development is balanced since it allows residential and commercial development in conjunction with the dedication of large continuous open space areas which the LCP considers a superior means to guarantee preservation of coastal resources. Consistent with these concepts Planning Areas 12A, 12C, and 12E are to be preserved as open space while Planning Areas 4A, 4B, 5, and 6 were designated for future residential development.

Chapter 3 of the Newport LCP contains the Land Use Resource Conservation and Management Polices. Section F (Page I-3.22) states that the following Category "D" Environmentally Sensitive Habitat Areas which are USGS Drainage Courses (deeply eroded courses which have little or no riparian value) are allowed to be filled for residential development: 4A, 4B, and 6. The Newport Coast LCP goes on to state that *"The Open Space and Dedication Program and Riparian Habitat Creation Program will mitigate any habitat values lost as a result of such drainage course modification or elimination"*. (Page I-3.22)

The Newport Coast LCP clearly contemplated mitigation for the adverse impacts of residential development on the environment through the dedication of open space areas and the re-location and re-creation of the adversely impacted resources. However, the recent Bolsa Chica ruling issued by the Superior Court of the State of California found that environmentally sensitive habitat areas were to be protected in place and could not be re-created in new areas. Based on the ramification of this court ruling, this permit would allow development which is not consistent with Sections 30233 and 30240 of the Coastal Act since it would not protect environmentally sensitive habitat areas such as streambeds and coastal sage habitat in place. Therefore, based on the direction provided by the Superior Court in the Bolsa Chica decision, this permit should be appealed.

2. Removal of the Commission's Appeal Jurisdiction

Section 30603 of the Coastal Act establishes that after certification of its local coastal program the Commission's appeal jurisdiction is limited, in part, to development within 100 feet of any wetland or stream or within a sensitive coastal resource areas. The grounds for an appeal are that the development being appealed is not consistent with the certified LCP or the public access policies of the Coastal Act.

At the time the Commission certified the Newport Coastal Program, the appeal areas were depicted in Exhibit Y of the LCP which showed appealable stream

courses in Planning Areas 17(Crystal Cove State Park), 12B, 12C, 6, 5, 4A, and 4B.

According to the project description, this permit will approve grading in Planning Areas 12C, 5, 6, 4A, and 4B which will result in the fill of the stream courses. Consequently, these areas will no longer be appealable to the Commission as shown in a revised Exhibit Y. Though the grading of Planning Areas 12C, 6, 5, 4A, and 4B is consistent with the LCP, the removal of the streambeds in Planning Areas 12B and 17 (Crystal Cove State Park) from the Commission's appeal jurisdiction as shown in the revised Exhibit Y appears inconsistent with the LCP as no development resulting in the fill of the streams for Planning Area 12B and 17 (Crystal Cove State Park) was approved by the County under this permit. Therefore, it would be premature to remove these streams from the Commission's appeal jurisdiction. Moreover, the narrative associated with the revised Exhibit Y did not make known whether the elimination of the stream appeal areas for Planning Areas 12B and 17 (Crystal Cove State Park) was the result of a prior County permit which allowed the fill of the streambeds or if it would result from unstated development occurring in Planning Areas 12B and 17 (Crystal Cove State Park). In addition, proposed modifications to the Commission's appeal jurisdiction should be submitted to the Commission for action since the Commission is responsible for maintaining the post certification maps which show the appeal areas. Due to the lack of clarity in describing the elimination of appealable areas, the County's permit can not be found consistent with the Newport Coast LCP and the permit should be appealed.

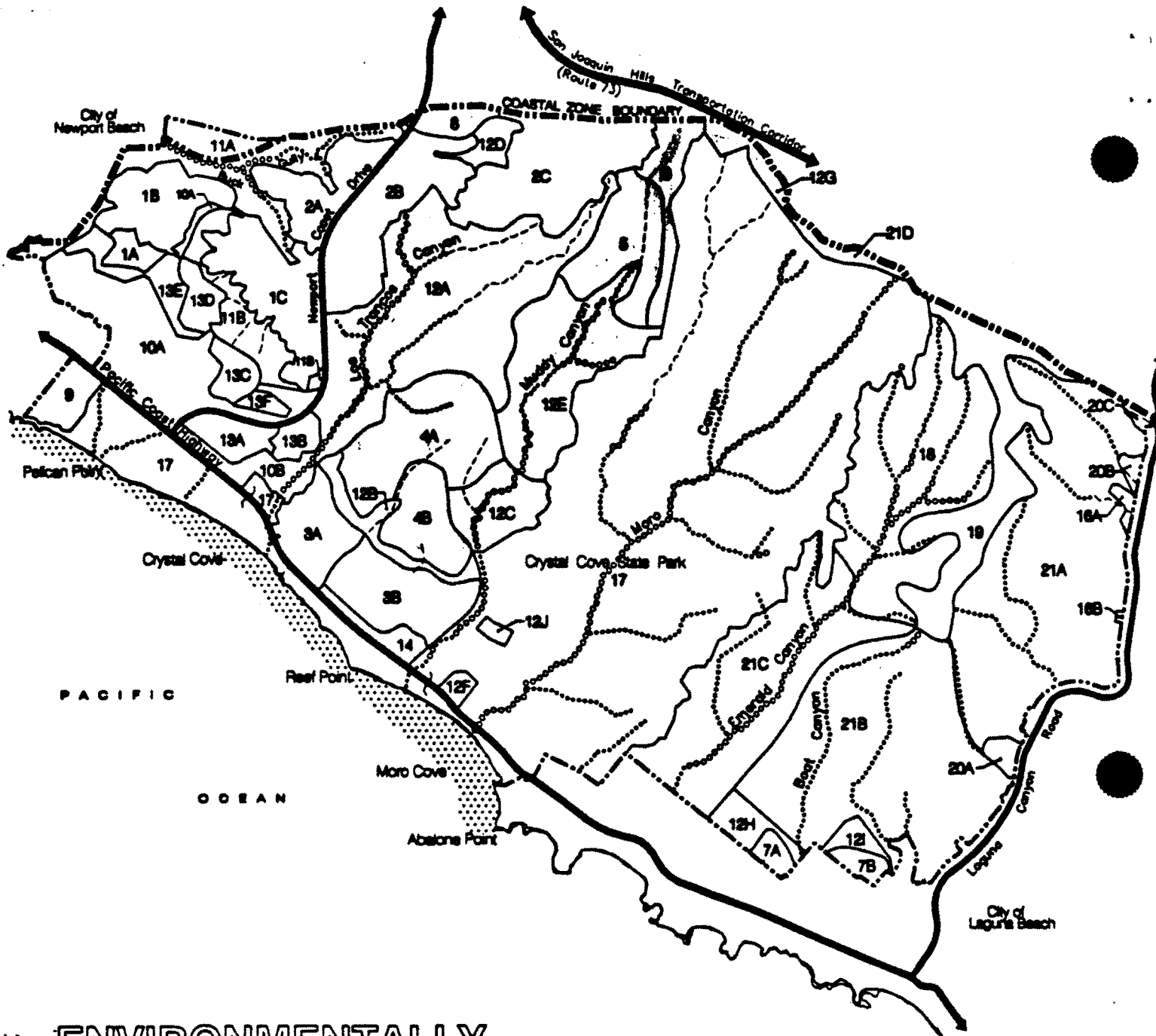
3. Development Within Crystal Cove State Park

The project description for this permit is unclear. The project description appears to limit its development approval to Planning Areas 4A, 4B, 5, 6, 12C, 12E, and 12G. However, in Finding #19 of the permit, the County of Orange found that the proposed development "... *permits all off-site grading and remedial grading in Crystal Cove State Park (PA 17); provides an access road partially in Crystal Cove State Park leading to a future recreation facility in PA 12C; ... provides a pedestrian/emergency access tunnel and trails under Pacific Coast Highway and within Crystal Cove State Park Property; ...*" Figure 3.1.1 (Master Development Plan) for EIR 569 which describes the development associated with this permit identifies off-site grading and a road in Crystal Cove State Park. However, development which is apparently occurring in Crystal Cove State Park can not be approved by the County of Orange under this permit. The Newport Coast LCP (page II-7.3) states for Planning Area 17 that: "*Crystal Cove State Park's "Public Works Plan" has already been certified by the Coastal Commission for Recreation PA 17 and, accordingly, is not part of this LCP*". Consequently, this permit is inconsistent with the Newport Coast LCP since the County can not approve proposed development under a CDP within Crystal Cove State Park and the permit should be appealed.

3. Environmentally Sensitive Habitat Area Policies

Planning Areas 5 and 6 contain Category "D" drainage as depicted in Exhibit H. Section F (Page I-3.22) of the Newport Coast LCP specifically identifies the Category "D" drainages that will be eliminated through the proposed development. Planning Area 6 is listed, but Planning Area 5 is not. The permit subject to this appeal identifies Planning Area 5 as one of the areas where grading is to take place and revised Exhibit Y (Showing a revised Commission appeal area) depicts the elimination of the streams within Planning Area 5. Consequently, the elimination of the Category "D" drainage in Planning Area 5 is not consistent with the Newport Coast LCP and also raises question about the filling of wetlands for uses not enumerated under Section 30233 of the Coastal Act pursuant to the Bolsa Chica decision..

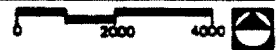
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ENVIRONMENTALLY SENSITIVE HABITAT AREAS - Second Amendment

The Newport Coast Local Coastal Program

Exhibit H

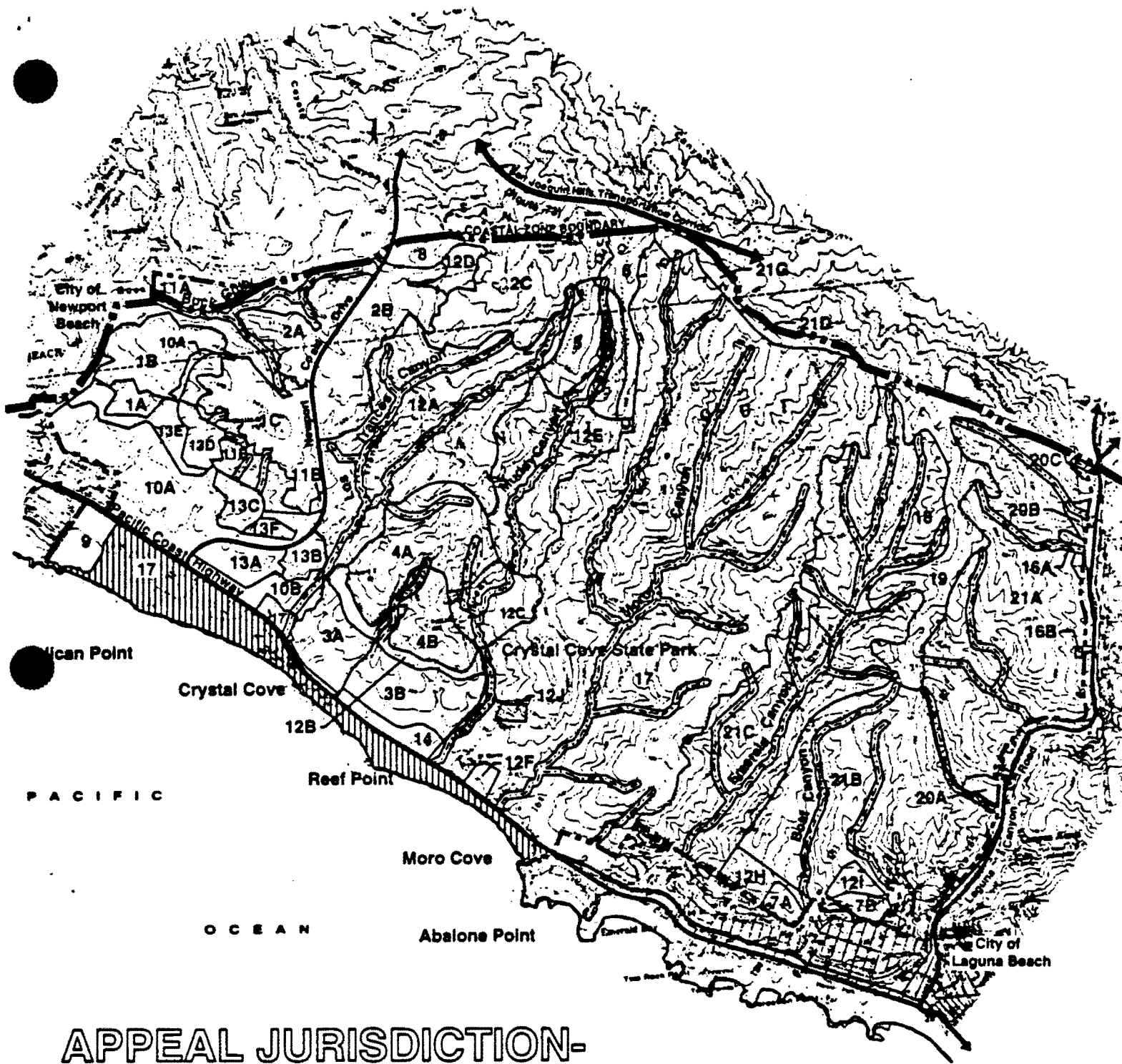


December 3, 1998

LEGEND

- CATEGORY A - DRAINAGE COURSE/RIPARIAN VEGETATION
- CATEGORY B - DRAINAGE COURSE
- CATEGORY C - COASTAL WATERS
- CATEGORY D - DRAINAGE COURSE
- COASTAL ZONE BOUNDARY
- PLANNED COMMUNITY BOUNDARY
- PLANNING AREA BOUNDARY
- PLANNING AREA

Note: Category D ESHAs have been deleted in areas with previously approved Coastal Development Permits as permitted by land use policies and mitigated by the Riparian Habitat Creation Program.



APPEAL JURISDICTION- Second Amendment

The Newport Coast Local Coastal Program

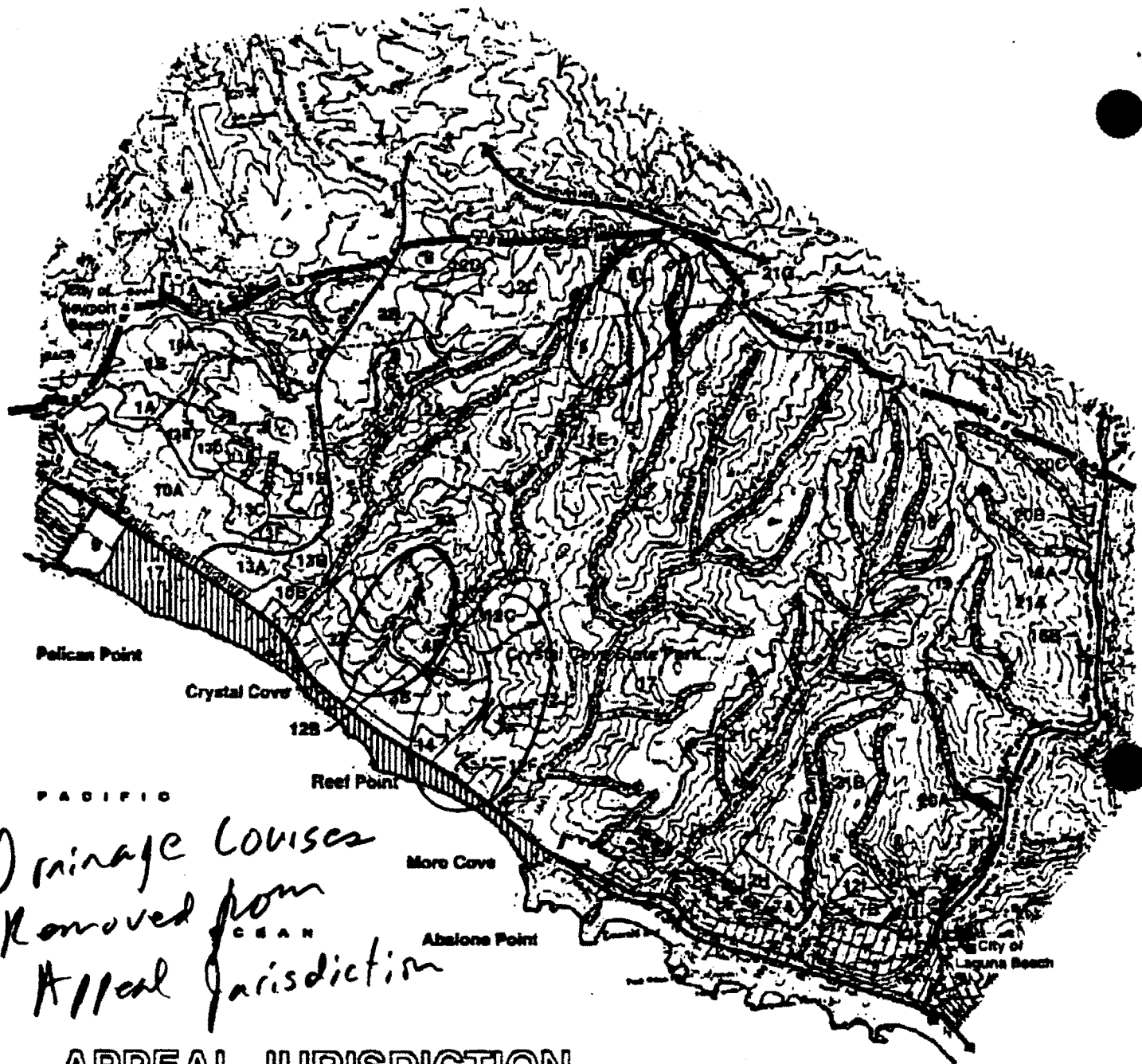
Exhibit Y



LEGEND

- LANDS WITHIN 100 FT. OF U.S.G.S. DRAINAGE COURSES
- LANDS BETWEEN THE SEA AND PACIFIC COAST HIGHWAY
- COASTAL ZONE BOUNDARY
- PLANNED COMMUNITY BOUNDARY
- PLANNING AREA BOUNDARY
- PLANNING AREA

*Exhibit Y From
The LCP*









**APPEAL JURISDICTION-
Second Amendment (Proposed)**

The Newport Coast Local Coastal Program

Exhibit Y

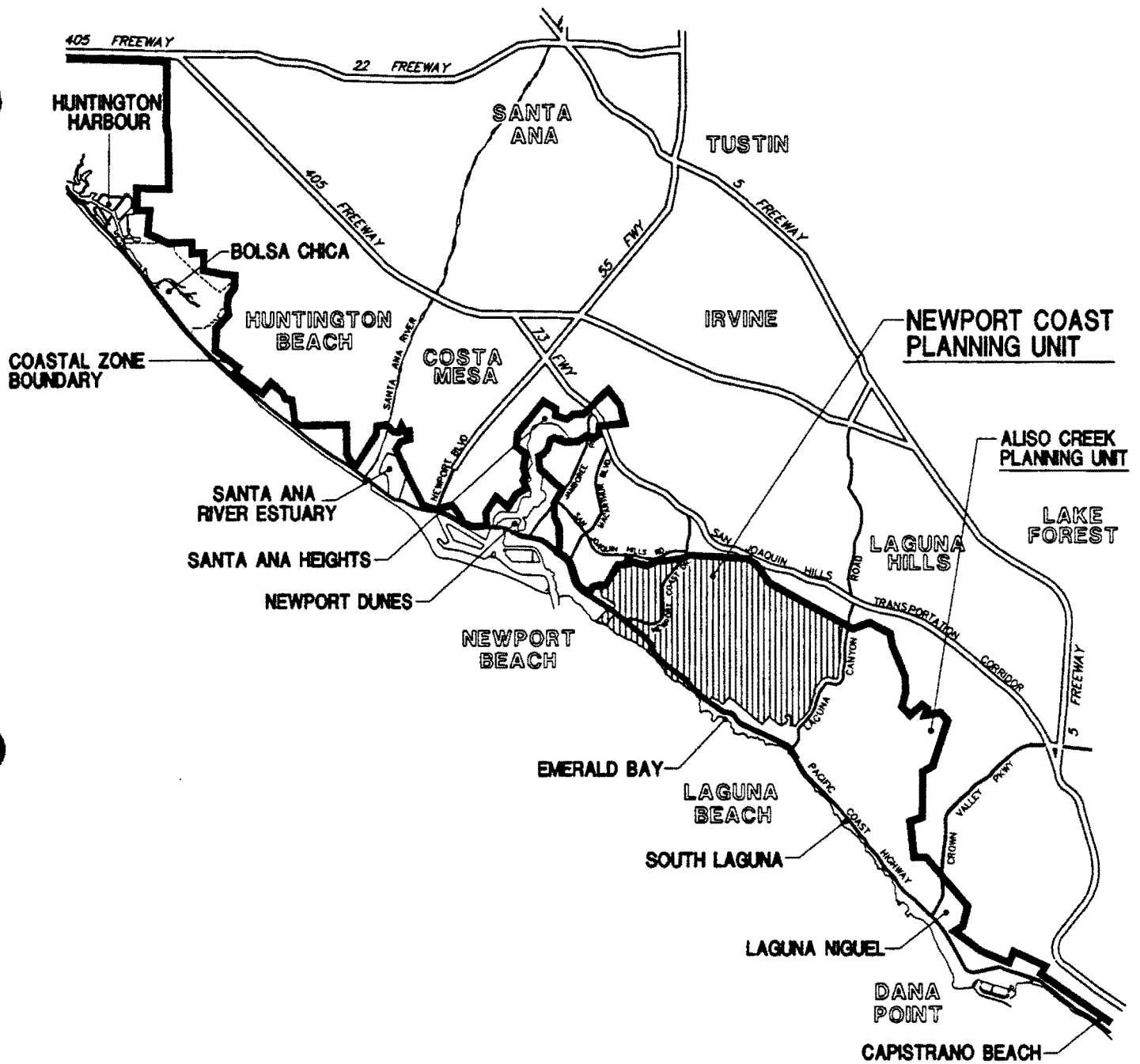


LEGEND

-  LANDS WITHIN 100 FT. OF U.S.G.S. DRAINAGE COURSES
-  LANDS BETWEEN THE SEA AND PACIFIC COAST HIGHWAY
-  COASTAL ZONE BOUNDARY
-  PLANNED COMMUNITY BOUNDARY
-  PLANNING AREA BOUNDARY
-  PLANNING AREA

Revised

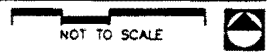
Exhibit Y Appeal Revision



LOCATION MAP - Second Amendment

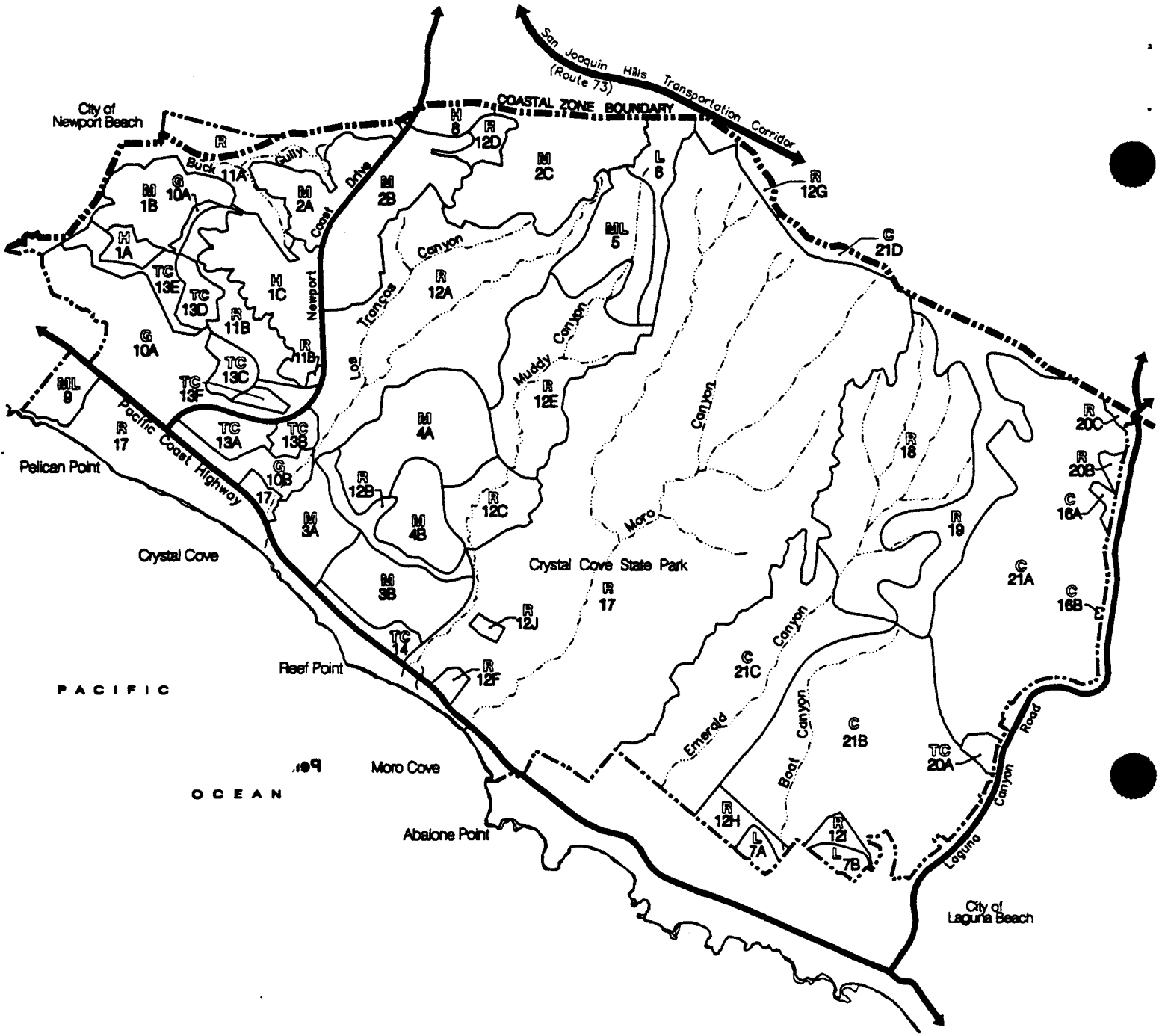
The Newport Coast Local Coastal Program

Exhibit A



JULY 18, 1998

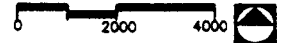
*A5-IRC-99-301
EXHIBIT 1*



LAND USE PLAN - Second Amendment

The Newport Coast Local Coastal Program

Exhibit F

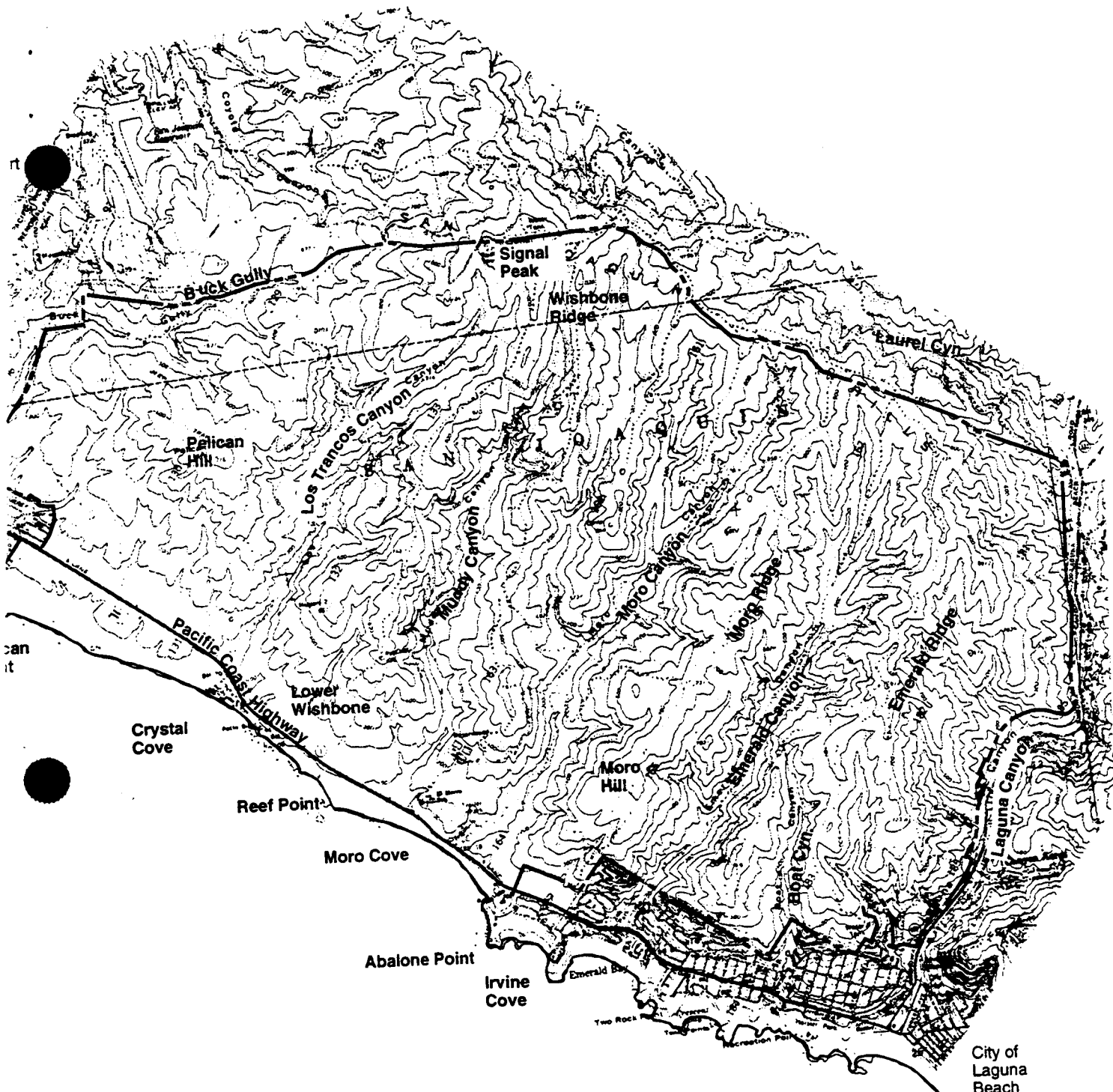


JULY 16, 1995

LEGEND

- | | |
|--|----------------------------|
| LOW DENSITY RESIDENTIAL (0-2) | LAND USE DESIGNATION |
| MEDIUM-LOW DENSITY RESIDENTIAL (2-3.5) | PLANNING AREA |
| MEDIUM DENSITY RESIDENTIAL (3.5-6.5) | COASTAL ZONE BOUNDARY |
| HIGH DENSITY RESIDENTIAL (6.5-18) | PLANNED COMMUNITY BOUNDARY |
| GOLF COURSE | PLANNING AREA BOUNDARY |
| TOURIST COMMERCIAL | |
| RECREATION | |
| CONSERVATION | |

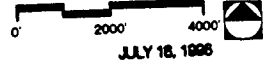
A5-1RC-99-301
EXHIBIT 2



NATURAL TOPOGRAPHIC FEATURES- Second Amendment

The Newport Coast Local Coastal Program

Exhibit B



LEGEND

PLANNED COMMUNITY BOUNDARY

AS-IRC-99-301
EXHIBIT 3

Grant A. Barbour
Resort Design Group
24 Valley Circle
Mill Valley, CA 94941
(415) 389-5420
(415) 389-1906

July 30, 1998

Chuck Shoemaker
Orange County Planning Appeals Department
300 N. Flower Street
P. O. Box 4048
Santa Ana, CA 92702-4048

By fax: (714) 834-6132

Dear Mr. Shoemaker:

Resort Design Group and the Crystal Cove Preservation Partners hereby appeal the decisions and approvals of the Orange County Planning Commission for the Irvine Community Development Company's Newport Coast Planned Community Project heard on July 21, 1998. This appeal includes, but is not limited to, certification of EIR No. 569, planning application PA 97-0152, the Seventh Amendment to the Master Coastal Development Permit, the Phase IV-3/IV-4 Master CDP, and Tentative Tract Map No. 15447.

A check in the amount of \$760 is being sent to you in a separate letter.

Please let me know immediately if there is anything else we need to do to perfect our appeal of this matter.

Very truly yours,


Grant A. Barbour

A5-IRC-99-301
EXHIBIT 4

**Grant A. Barbour
Resort Design Group
24 Valley Circle
Mill Valley, CA 94941
Voice: (415) 389-5420
Fax: (415) 389-1906**

August 14, 1998

Romi Archer
Orange County Planning & Development Services Department
300 N Flower Street
P. O. Box 4048
Santa Ana, CA 92702-4048

By fax: (714) 834-2771

Dear Romi:

The following letter is in response to Mr. Shoemaker's request that we provide a more detailed analysis of the reasons we have appealed the decision of the planning commission regarding the Irvine Company's Newport Coast Planned Community project, Phases IV-3 and 4 ("NCPC"). Our reasons for the appeal relate to the hydrology impacts we believe the project will have on the downstream Crystal Cove property. As set forth below, we do not believe the project conforms to the applicable County, State, or federal hydrology or wastewater requirements.

Hydrology

As stated in Draft EIR 569, the 9 x 10 arch culvert under PCH and the outlet channel that drains runoff from the Los Trancos Canyon currently lacks sufficient capacity to contain the pre- or post-development flows. The capacity of the tunnel and channel were recently reduced as the result of the widening of PCH a few years ago. The outlet channel below the culvert has washed out twice in the past few years. (The EIR incorrectly states that the channel is lined).

Prior to the washout, visitors were able to park their cars at the State Park parking lot, walk through the tunnel, and access the Historic District and beach via a trail along the channel. That access is no longer available. Because parking is extremely limited in the Historic District, it is crucial to provide convenient public parking outside the District with easy access to the beach. Failure to provide a convenient trail to the beach will result in increased attempts by the public to drive through and park in the Historic District and/or attempts by the public to cross PCH without using the tunnel.

EX 4, p2

Ms. Romi Archer
August 14, 1998
Page 3

Nuisance Flows

State Park employees and Crystal Cove residents have informed me that prior to development of the hillsides above Crystal Cove, little or no water flowed through the culvert under the PCH during the dry months. However, following the installation of the golf course, a steady trickle of muddy, essentially stagnant, nuisance water has run through the culvert. This has created a sediment and aesthetic problem in the culvert, making travel from the parking lot to the beach impossible or at least unpleasant.

Irvine's response to my questions regarding nuisance flows was that "the project will not contribute any significant additional dry weather nuisance flows to the existing culvert." However, no evidence was given to support this conclusion.

The only evidence provided by Irvine relates to a water quality monitoring program that Irvine was required to conduct for the first five years of the operation of the Pelican Hill Golf Club. The EIR states that the results of this study showed that water quality would not be affected by the NCCP project. I have requested a copy of this study from the County but have not yet received it. However, it appears that the sampling locations of the monitoring program were located in the surf zone. I think it is obvious that the effects of urban runoff can be reduced to insignificance if the effects are measured after they have reached the surf zone. But the LCP requires that the program monitor the runoff entering the ocean as well as the riparian corridors.

Again, common sense tells us that 630 homes built on a hillside will produce urban runoff that will negatively affect the associated riparian areas. The LCP requires that the developer use both structural and non-structural measures to control predictable urban runoff. In its responses to my comments to the EIR, Irvine states that it will, in the future, specify the structural measures it will implement to deal with the runoff. However, we feel that Irvine should provide current assurances that this existing problem will be dealt with in a responsible manner.

Please let me know if the foregoing does not sufficiently outline the reasons for the appeal we have filed in this matter.

Thank you for your assistance.

Very truly yours,


Grant A. Barbour

EX. 4, p. 3


IRVINE COMMUNITY DEVELOPMENT COMPANY

August 5, 1998

Mr. Grant A. Barbour
Resort Design Group
24 Valley Circle
Mill Valley, CA 94941

Re: Newport Coast EIR 569/MCDP - 7th Amendment

Dear Grant:

This letter is in response to your letter dated July 30, 1998. As you might imagine, Irvine Community Development Company is dismayed that the Resort Design Group has chosen to appeal the EIR and MCDP for Phases IV-3 and IV-4 of the Newport Coast development. We have worked hard to keep the California Department of Parks and Recreation (CDPR) informed of our development plans and believe there is some misunderstandings on the part of the Resort Design Group, particularly related to the hydrology of the project. In any case, we look forward to our meeting with the CDPR and County on August 26, 1998 and we hope that we can respond to your concerns during that meeting. Our goal has always been to be a good neighbor to Crystal Cove State Park.

In response to your request, I have enclosed copies of the following documents for your review prior to the meeting on the 26th:

- (1) 1995-96 Report on Water Quality Monitoring Program at Pelican Hill Golf Club (Rivertech, Inc. and Dr. Richard Ford) (Note: Please note that this document was prepared to address the States' concern over potential impacts from the golf course on the Marina Reserve).
- (2) Environmental Awareness Education Materials - These documents are given to every homeowner at the close of escrow. They respond to many of the non-structural Best Management Practices in the County's DAMP.

The third document that you requested, entitled, "The Inland and Subtidal Monitoring Report". (Rivertech Inc. July 1997) I do not have a copy of. Jill Wilson at LSA has requested that Romi Archer at the County check their files and, if possible, forward a copy to you.

550 Newport Center Drive, P.O. Box 5370, Newport Beach, California 92658-5370 (949) 720-2000
A subsidiary of The Irvine Company

RECEIVED TIME AUG. 5. 1:11PM

PRINT TIME AUG. 5. 1:12PM

EX. 4, p. 4



**Grant A. Barbour
Resort Design Group
24 Valley Circle
Mill Valley, CA 94941
Voice: (415) 389-5420
Fax: (415) 389-1906**

August 31, 1998

Romi Archer
Orange County Planning & Development Services Department
300 N. Flower Street
P. O. Box 4048
Santa Ana, CA 92702-4048

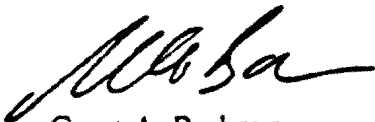
By fax: (714) 834-2771

Dear Romi:

This will confirm that Resort Design Group is hereby withdrawing its appeal of the Irvine Company's Newport Coast Planned Community project, Phases IV-3 and 4. Thank you for all of your help in setting up the meeting last Wednesday. The meeting was instrumental in clarifying the issues and fostering further dialog among the parties. Please call me should you have any further questions.

Again, thank you for all of your help in this matter.

Very truly yours,



Grant A. Barbour

cc: Roberta Marshall
Mike Freed

EX. 4, P.

14. The Master CDP Third Amendment (CD 900703001P) incorporated into the Newport Coast Master CDP document a refinement to the boundary between Newport Coast Planning Areas 1C-2 and 11B and the text of Newport Coast Master CDP, Section 5.4 (Utility Systems), the Subsection titled "Southern California Edison" to replace a portion of an existing overhead 66,000 volt (66 kV) transmission line with an underground system.

15. As required by the 1988 certified Newport Coast LCP, any revision to the PC Development Map and Statistical Table shall be considered by the Planning Commission at a public hearing. Said hearing for a proposed Technical Addendum to the Master CDP shall occur prior to or concurrent with the final action taken by the County on the Coastal Development Permit, Site Development Permit, and/or Tentative Subdivision Map necessitating the proposed revision.

16. The Master CDP - Fourth Amendment (PA 94-0149) established boundary lines between Planning Areas 2C and 12A, 2C and 12D, 2C and 6; updated the Planned Community Development Map and Statistical Table contained within The Newport Coast Master Coastal Development Permit; expanded the Master CDP boundary to include a portion of PA 6; modified the alignment of Vista Ridge Road; and included an emergency utility access road into Los Trancos Canyon (PA 12A).

17. The Master CDP - Fifth Amendment (PA 970076) established the final boundary line between Planning Areas 2C and 12A, 2C and 12D, 2C and 2B; updated the Planned Community Development Map and Statistical Table contained within the Newport Coast Master Coastal Development Permit; re-established Vista Ridge Road as a public street with the alignment approved in the Master CDP - First Amendment (CD 89-26P); provided a community collector through the western portion of Planning Area 2C; established an additional community collector through the eastern portion of Planning Area 2C.

18. The Master CDP - Sixth Amendment provided a community collector ("B" Street) for access from Crystal Cove Drive and Reef Point Drive through northern and central portions of PAs 3A-2 and 3B; established an additional community collector ("C" Street), providing access from Crystal Cove Drive and Reef Point Drive to the southern portion of PAs 3A-2 and 3B; reconfigured development area boundaries within PAs 3A-2 and 3B to incorporate mass grading and future construction-level site planning; and constructed landscape improvements adjacent to Pacific Coast Highway within the County's Scenic Highway Setback area.

19. This Master CDP - Seventh Amendment reconfigures Planning Area boundaries to incorporate mass grading and future construction-level site planning; provides infrastructure in the extension of Reef Point Drive; provides a utility bench for infrastructure connections through Los Trancos Canyon between PA 5 in the north and PA 4 in the south; establishes a Conceptual Fuel Modification Program for Development Areas located adjacent to areas of natural open space; deletes Appeal Jurisdiction areas to allow for grading of USGS "Blue-Line" Drainage Courses within Residential, Open Space, and Recreation Planning Areas; permits all off-site grading and remedial grading in Crystal Cove State Park (PA 17); provides an access road partially in Crystal Cove State Park leading to a future recreation

facility in PA 12C; relocates a portion of the 66 kV SCE electrical transmission lines and access roads within Los Trancos and Muddy Canyons, including maintenance of existing access roads for emergency access and maintenance purposes; provides riding and hiking trail connections and related facilities within the project boundaries to existing trails in Los Trancos and Muddy Canyons (PAs 12A and 12E) and Crystal Cove State Park (PA 17); provides a pedestrian/emergency access tunnel and trails under Pacific Coast Highway and within Crystal Cove State Park property; and provides roads, retaining walls, etc. in support of future development in PAs 4A, 4B, 5, 6, 12B, 12C, 12E and 12G.

20. Aesthetics and the protection of sensitive visual resources within the Newport Coast are addressed in the LCP. The LCP, Exhibit C, identified the following four visually significant resources visible from PCH: Los Trancos Canyon, Lower Wishbone, Moro Hill, and the Pacific Ocean. The Lower Wishbone area is included in the site. According to the LCP, the ocean is the dominant visual resource in all cases and will not be affected by the project. In addition, the Open Space Dedication Program of the LCP protects views of other areas defined as "Visually Significant Lands".

21. Development within Planning Areas 4A, 4B, 5, 6, 12B, 12C, 12E and 12G is consistent with LCP Special Use Open Space policies in that an offer of dedication for Planning Area 12A has been made to the County of Orange in a form approved by the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management (LCP I-3-A-2b [page 1-3.5]).

22. Pursuant to Section 711.4 of the California Fish and Game Code, there is no evidence that this project will have any potential for adverse effects on wildlife resources.

23. The proposed project maintains the ability to promote an effective subregional Natural Communities Conservation Planning (NCCP) Program and will not have a significant unmitigated impact upon Coastal Sage Scrub habitat.

24. Development within PAs 4A, 4B, 5, 6, 12B, 12C, 12E and 12G related to drainage and infrastructure construction will modify category "D" ESHAs. The design of the proposed project complies with LCP ESHA Policies Sections I-2-A-2d and I-3-F in that development is permitted to modify or eliminate vegetation and drainage courses in category "D" ESHAs, which have little or no riparian habitat value; and all development impacts will be mitigated by the Open Space Dedication and Riparian Habitat Creation Programs (LCP Section I-2-d).

25. The proposed project is consistent with LCP Section I-B-3 in that future residential areas have been located contiguous with and in close proximity to existing developed areas able to accommodate it. Additionally, development will be located on ridges away from the sensitive habitat areas in canyon bottoms.

ATTACHMENT A-2 -- CONDITIONS OF APPROVAL

PLANNING COMMISSION RESOLUTION NO. 98-09

PLANNING APPLICATION 970152 FOR

MASTER CDP - SEVENTH AMENDMENT
NEWPORT COAST PLANNED COMMUNITY

1. CP NA NA BASIC
This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2. CP NA NA BASIC
This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3. CP NA NA BASIC
Except as otherwise provided herein, this permit is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Director of Planning for approval. If the Director of Planning determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4. CP NA NA BASIC
Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Board of Supervisors.

5. CP NA NA BASIC
Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit or, in the alternative, the relinquishment of such permit. Applicant will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve applicant of his obligations under this condition.

6. CP NA NA BASIC/OBLIGATIONS
Pursuant to Government Code Section 66020, the applicant is informed that the 90-day period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

A5-IRC-99-301
EXHIBIT 6

7. CP CP NA SPECIAL
All drainage and grading shall be consistent with the provisions of the Newport Coast Planned Community/Local Coastal Program and the Master Coastal Development Permit.

ARCHAEO/PALEO

8. HP HP G ARCHAEO PREGRADING SALVAGE
Prior to issuance of a grading permit, the project applicant shall provide written evidence to the Manager, Subdivision and Grading, that a County-certified archaeologist has been retained to conduct salvage excavation of the archaeological resources in the permit area. Excavated finds shall be offered to the County of Orange, or designee, on a first refusal basis. Applicant may retain said finds if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates a desire to study and/or display them at this time, in which case items shall be donated to the County, or designee. A final report incorporating the results of the salvage operation and grading observation shall be submitted to and approved by the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management, prior to any grading.

9. HP HP G ARCHAEO OBS & SALVAGE
Prior to the issuance of a grading permit, the project applicant shall provide written evidence to the Manager, Subdivision and Grading, that a County-certified archaeologist has been retained, shall be present at the pregrading conference, shall establish procedures for archaeological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate. If additional or unexpected archaeological features are discovered, the archaeologist shall report such findings to the project developer and to the Manager, Public Facilities and Resources Department / Harbors, Beaches and Park - Program Management. If the archaeological resources are found to be significant, the archaeological observer shall determine appropriate actions, in cooperation with the project developer, for exploration and/or salvage. Prior to the issuance of a precise grading permit, the archaeologist shall submit a follow-up report to the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management, which shall include the period of inspection, an analysis of any artifacts found and the present repository of the artifacts. Excavated finds shall be offered to the County of Orange, or designee, on a first refusal basis. Applicant may retain said finds if written assurance is provided that they will be properly preserved in Orange County, unless said finds are of special significance, or a museum in Orange County indicates a desire to study and/or display them at this time, in which case items shall be donated to the County, or designee. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management.

10. HP HP G

PALEO OBS & SALVAGE

Prior to the issuance of any grading permit, the project applicant shall provide written evidence to the Manager, Subdivision and Grading, that a County-certified paleontologist has been retained to observe grading activities and salvage and catalogue fossils as necessary. The paleontologist shall be present at the pre-grading conference, shall establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the project developer, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If major paleontological resources are discovered, the paleontologist shall determine appropriate actions, in cooperation with the project developer, which ensure proper exploration and/or salvage. Excavated finds shall be offered to the County of Orange, or its designee, on a first-refusal basis. The paleontologist shall submit a follow-up report for approval by the Manager, Harbors, Beaches and Parks, which shall include the period of inspection, a catalogue and analysis of the fossils found, and present repository of the fossils. These actions, as well as final mitigation and disposition of the resources, shall be subject to approval by the Manager, Harbors, Beaches and Parks.

11. HP HP G

PALEO SURVEY

Prior to the issuance of any grading permit, the project applicant shall provide written evidence to the Manager, Subdivision and Grading, that a County-certified paleontologist has been retained by the applicant to complete a literature and records search for recorded sites and previous surveys. In addition, a field survey shall be conducted by a County-certified paleontologist unless the entire proposed project site has been documented as previously surveyed in a manner which meets the approval of the Manager, Harbors, Beaches and Parks. A report of the literature and records search and field survey shall be submitted to and approved by the Manager, Harbors, Beaches and Parks. Future mitigation shall depend upon the recommendations of the report.

DRAINAGE

12. SG SG RG

DRAINAGE STUDY

Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only) or prior to the issuance of any grading permits, whichever comes first, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading:

- A. A drainage study of the subdivision including diversions, off-site areas that drain onto and/or through the subdivision, and justification of any diversions; and
- B. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and

C. Detailed drainage studies indicating how the tract map grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff which may be expected from all storms up to and including the theoretical 100-year flood.

13. SG SG RG

DRAINAGE IMPROV

A. Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), or prior to the issuance of any grading permits, whichever comes first, the applicant shall in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and
- 3) Dedicate the associated easements to the County of Orange, if determined necessary.

B. Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), said improvements shall be constructed in a manner meeting the approval of the Manager, Construction.

14. SG SG RG

DRAINAGE OFFSITE

Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the Manager, Subdivision and Grading, a letter of consent, in a form approved by the Manager, Subdivision and Grading, suitable for recording, shall be obtained from the upstream and/or downstream property owners permitting drainage diversions and/or unnatural concentrations.

15. SG SG R

MPD PARTICIPTN

Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), the subdivider shall participate in the applicable Master Plan of Drainage in a manner meeting the approval of the Manager, Subdivision and Grading, including payment of fees and the construction of the necessary facilities.

16. SG SG U

EASMT SUBORD

Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), the subdivider shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the County of Orange or the Orange County Flood Control District, unless such easements are expressly made subordinate to the easements to be offered for dedication to the County. Prior to the granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the Manager, Subdivision and Grading, for review and approval.

ENVIRONMENTAL HEALTH

17. EH SG R SEWER LINES
Prior to the recordation of each final map, sewer lines, connections, and structures shall be of the type, and shown on the plans in the location as specified in the "Guidelines Requiring Separation Between Water Mains and Sanitary Sewers, Orange County Health Department 1980," in a manner meeting the approval of the Manager, Subdivision and Grading.
18. EH SG G VECTOR CONTROL
Prior to the issuance of any preliminary grading permits, the subdivider shall provide evidence to the Manager, Subdivision and Grading that the Vector Control District has surveyed the site to determine if vector control measures are necessary. If warranted, the developer shall conduct such measures in a manner meeting the approval of the Manager, Subdivision and Grading.
19. SG SG G CONSTRUCTION NOTES
Prior to issuance of a grading permit, the project proponent shall submit to the Manager, Subdivision and Grading, for approval, a written list of instructions to be carried out by the construction manager specifying measures to minimize emissions by heavy equipment, which include but are not limited to: maintenance of all construction vehicles and equipment in accordance with manufacturer's specifications, connection to existing electrical facilities near the project, use of electrically powered equipment, avoidance of allowing equipment to idle for extended periods of time and avoidance of causing unnecessary delays of traffic along on-site access roads as a result of heavy equipment blocking traffic.

ENVIRONMENTAL PLANNING

20. EP EP NA NOTICE OF DETERMINATION
Pursuant to Section 711.4 of the Fish and Game Code, the applicant shall comply with the requirements of AB 3158, prior to the filing of the Notice of Determination for the project, in a manner meeting the approval of the Manager, Environmental and Project Planning Division.

ENVIRONMENTAL RESOURCES

21. EP SG G SPECIAL
In order to mitigate the project's impacts on the California gnatcatcher (and other coastal sage scrub oriented species), the project applicant, The Irvine Company, will continue its participation in the NCCP program until the Orange County Central/Coastal Subregion (Subregion) program is fully developed and implemented. This participation will include any project specific mitigation requirements that may be identified in the implementation mechanism. Any project phases that are developed prior to the implementation phase of the Subregion NCCP must be found consistent with NCCP Process Guidelines as described under Impact 8.11 - NCCP Consistency, i.e., through the development of a comprehensive Interim Habitat Loss Mitigation Plan (IHLMP). In the event

that the implementation phase does not come about, alternative mitigation for the project's impacts to coastal sage scrub resources must be considered through additional environmental documentation.

22. EP SG G NCCP
In accordance with the provisions of the adopted NCCP/HCP, no grading or fuel modification will be allowed within areas designated as Reserve except as provided for under the specific take authorizations contained in the 10a Permit (i.e., The Irvine Company has a maximum two acres authorization within the Reserve System).

Prior to approval of grading permits, the current NCCP/HCP Reserve Boundary shall be plotted on the grading plan, to ensure that no grading occurs within the Reserve and to assist with monitoring compliance with this requirement as be verified during plan check by the Manager, PDS/Subdivision and Grading Services.

23. CP EP G COASTAL SAGE SCRUB
A. As required by participation in the Natural Community Conservation Planning/Coastal Sage Scrub (NCCP) agreement signed by the County on May 1, 1992, prior to the issuance of any grading permit, the project applicant shall provide an accounting summary in acres, or portions thereof, of coastal sage scrub scheduled to be impacted by removal through grading meeting the approval of the Manager, Current Planning.
B. Notwithstanding the tentative map, no grading will occur within the Natural Community Conservation Plan (NCCP) enrolled area except as in a manner meeting the approval of the Manager, Current Planning.

24. EP SG G NCCP
Prior to the commencement of grading operations or other activities involving significant soil disturbance, all areas of CSS habitat to be avoided under the provisions of the NCCP/HCP shall be identified with temporary fencing or other markers clearly visible to construction personnel. This fencing will be clearly marked on all grading plans. Additionally, prior to the commencement of grading operations or other activities involving disturbance of CSS, a survey will be conducted to locate gnatcatchers and cactus wrens within 100 feet of the outer extent of projected soil disturbance activities, and the locations of any such species shall be clearly marked and identified on the construction/grading plans. This RPA will meet the approval of the Manager, PDS/Resource Planning, prior to issuance of grading permits.

25. ER SG G NCCP
A monitoring biologist, acceptable to US Fish and Wildlife Service/California Department of Fish and Game (USFWS/CDFG), will be on site during any clearing of CSS. The landowner or relevant public agency/utility will advise USFWS/CDFG at least seven (7) calendar days (and preferably fourteen [14] calendar days) prior to the clearing of any habitat occupied by Identified Species to allow USFWS/CDFG to work with the monitoring biologist in connection with bird

flushing/capture activities. The monitoring biologist will flush Identified Species (avian or other mobile Identified Species) from occupied habitat areas immediately prior to brush clearing and earthmoving activities. If birds cannot be flushed, they will be captured in mist nets, if feasible, and relocated to areas of the site to be protected or to the NCCP/HCP Reserve System. It will be the responsibility of the monitoring biologist to assure that identified bird species are not directly impacted by brush clearing and earthmoving equipment in a manner that also allows for construction activities on a timely basis. This RPA will meet the approval of the Manager, PDS/Resource Planning, prior to issuance of grading permits.

26. EP SG G NCCP
Following the completion of initial grading/earth movement activities, all areas of CSS habitat to be avoided by construction equipment and personnel will be marked with temporary fencing other appropriate markers clearly visible to construction personnel. No construction access, parking, or storage of equipment or materials will be permitted within such marked areas. This RPA will meet the approval of the Manager, PDS/Resource Planning, prior to issuance of grading permits.

In areas bordering the NCCP Reserve System or Special Linkage/Special Management areas containing significant CSS identified in the NCCP/HCP for protection, vehicle transportation routes between cut-and-fill locations will be restricted to a minimum number during construction consistent with project construction requirements. Waste dirt or rubble will not be deposited on adjacent CSS identified in the NCCP/HCP for protection. Preconstruction meetings involving the monitoring biologist, construction supervisors, and equipment operators will be conducted and documented to ensure maximum practicable adherence to these measures. This RPA will meet the approval of the Manager, PDS/Resource Planning, prior to issuance of grading permits.

CSS identified in the NCCP/HCP for protection and located within the likely dust drift radius of construction areas shall be periodically sprayed with water to reduce accumulated dust on the leaves, as recommended by the monitoring biologist. This RPA will meet the approval of the Manager, PDS/Resource Planning, prior to issuance of grading permits.

27. EP EP U NCCP BOUNDARY
Prior to the issuance of certificates of use and occupancy, the subdivider shall provide precise digital linework adjusting the Center Coastal Sub-regional NCCP/HCP Reserve boundary to ensure no net loss of the adopted reserve acreage total in a manner meeting the approval of the Administrator/Planning and Zoning.
28. SG SG G NPDES PERMIT
Prior to the issuance of any grading permits, the applicant shall submit evidence to the Manager, Subdivision and Grading, that the applicant has obtained coverage under the NPDES statewide General Stormwater Permit form the State Water Resources Control Board.

FIRE

29. F F R WATER IMPV PLANS
Prior to the recordation of the final tract map, water improvement plans shall be submitted to and approved by the Fire Chief for adequate fire protection and financial security posted for the installation. The adequacy and reliability of water system design, location of valves, and the distribution of fire hydrants will be evaluated and approved by the Fire Chief.
30. F F R SPECIAL FIRE PROTECTION AREA NOTIF
Prior to the recordation of any final tract map, the subdivider shall place a note on the map meeting the approval of the Fire Chief that the property is in a special fire protection area and must meet all requirements for development within the area or file for an exclusion with the Fire Chief.
31. F F SR FIRE ACCESS
Prior to the recordation of a subdivision map, the applicant shall obtain approval of the Fire Chief of all fire protection access easements and shall dedicate them to the County. The CC&Rs shall contain provisions which prohibit obstructions within the fire protection access easement. The approval of the Fire Chief is required for any modifications such as speed bumps, control gates or other changes in within said easement. The gradient for Fire Department access roads shall not exceed 10 percent. This may be increased to a maximum of 15 percent when all structures served by the access road are protected by automatic fire sprinkler systems.
32. F F G STREET MARKINGS
Prior to issuance of grading permits, the applicant shall submit and obtain approval from the Fire Chief for street improvement plans with fire lanes shown. The plans shall indicate the locations of red curbing and signage. A drawing of the proposed signage with the height, stroke and color of lettering and the contrasting background color shall be submitted to and approved by the Fire Chief.
33. F F GBU FUEL MODIFICATION
- A. Prior to the issuance of a preliminary grading permit, the applicant shall obtain approval of the Fire Chief, in consultation with the Managers, Environmental and Project Planning Services, Current Planning Services and Subdivision and Grading Services of a conceptual fuel modification plan and program.
 - B. Prior to the issuance of any precise grading permit, the applicant shall obtain the approval of the Fire Chief, in consultation with the Managers, Environmental and Project Planning Services, Current Planning Services, and Subdivision and Grading Services of a precise fuel modification plan and program. The plan shall indicate the proposed means of achieving an acceptable level of risk to structures by vegetation.

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Page 8

34. F F G

STREET PLANS

Prior to the issuance of any grading permits, the applicant shall submit and obtain approval of preliminary plans for all streets and courts, public or private, from the Fire Chief in consultation with the Manager, Subdivision and Grading. The plans shall include the plan view, sectional view, and indicate the width of the street or court measured flow line to flow line. All proposed fire apparatus turnarounds shall be clearly marked when a dead-end street exceeds 150 feet or when other conditions require it. The minimum width of required fire apparatus access roads shall not be less than 28 feet.

35. F F R

STREET WIDTHS

As specified in the OCFA Guidelines, the minimum width of required fire apparatus access roads serving no more than 3 dwellings and not exceeding 150 feet in length shall not be less than 24 feet in width. Fire apparatus turnarounds shall be provided in accordance with OCFA guidelines. All access roads less than 36 feet in width shall be posed as fire lanes in accordance with OCFA Guidelines for Fire Lanes.

Street widths less than the required width approved on vesting tentative maps prior to the effective date of the latest OCFA Special Fire Protection Areas requirements (March 1996) will be evaluated base in the number of homes services, the number and location of access roads approved and the nature of the wildland interface (OCFA Guidelines).

36. F F G

ACCESS GATES

Prior to the issuance of any grading permits, the applicant shall submit and obtain the Fire Chief's approval for the construction of any gate across required Fire Authority access roads/drives. Contact the Orange County Fire Authority Plan Review Section at (714) 744-0403 for a copy of the "Guidelines for Fire Authority Emergency Access".

37. F F R

FIRE HYDRANTS

Prior to the recordation of any subdivision map, the applicant shall submit to the Fire Chief evidence of the on-site fire hydrant system, and indicate whether it is public or private. If the system is private, the system shall be reviewed and approved by the Fire Chief prior to issuance of building permits. Provisions shall be made by the applicant for the repair and maintenance of the system, in a manner meeting the approval of the Fire Chief (OCFA Standard Condition FP2).

GRADING

38. SG SG G

GEOLOGY RPT

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading for approval. The report shall include the information and be in a form as required by the Grading Manual.

39. SG SG G

GRADING DEVIATION

Prior to issuance of any grading permits, if the applicant submits a grading plan and the Manager, Subdivision and Grading, determines that it shows a significant deviation from the grading on the approved tentative tract map, specifically with regard to slope heights, slope ratios, and pad elevations and configuration, the plan shall be reviewed by the Subdivision Committee for a finding of substantial conformance. Failure to achieve such a finding will require processing a revised tentative tract map; or, if a final tract map has been recorded, a new tentative tract map or a Site Development Permit application per Orange County Zoning Code Section 7-9-139 and 7-9-150.

40. SG SG GR

GRADING

Prior to the recordation of the first final tract map or issuance of the first grading permit for projects located immediately adjacent to or including portions of regional parks, significant open space corridors, or other environmentally sensitive areas, the project proponent shall provide evidence acceptable to the Manager, Subdivision and Grading, in consultation with the Manager, Public Facilities and Resources Department/Harbors, Beaches and Parks - Program Management, that graded areas will be compatible with natural land characteristics of the adjacent areas. Treatment to achieve the desired effect shall include:

- A. Smooth and gradual transition between graded slopes and existing grades using variable slopes ratios (2:1-4:1); and
- B. Contour grading such as the rounding and contouring of plane edges and the varying of height and inclination of manufactured slopes to produce a more natural appearing earthwork.
- C. Urban Edge Treatment/Landscaping Plan(s) for all graded areas adjacent to open space; and
- D. Preservation of visual opportunities from hillsides by providing for panoramic views from selected locations such as view corridors and sensitive landscape placement.
- E. In order to reduce impacts on nearby sensitive receptors, the following fugitive dust control measures shall be implemented by the developer during or after grading:
 - 1) A vegetative ground cover shall be established within 30 days after active construction operations have ceased; and ground cover must be of sufficient density to expose less than 30 percent of unstabilized ground within 90 days of planting and at all times thereafter (SCAQMD rule 403, Table 2 [3C], amended July 9, 1993.
 - 2) All active portions of the construction site shall be watered to prevent excessive amounts of dust.
 - 3) On-site vehicle speed shall be limited to 15 mph.

- 4) All on-site roads shall be paved as soon as feasible, watered periodically, or chemically stabilized.
- 5) All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering, with complete coverage, shall occur at least twice daily, preferably in the late morning and after work is done for the day.
- 6) All clearing, grading, earth moving, or excavation activities shall cease during periods of high winds (i.e., greater than 25 mph averaged over one hour) or during Stage 1 or Stage 2 episodes.
- 7) All material transported off site shall be either sufficiently or securely covered to prevent excessive amounts of dust.
- 8) The area disturbed by clearing, grading, earth moving, or excavation operations shall be minimized at all times. (South Coast Air Quality Management District, CEQA Air Quality Handbook, 1993 and subsequent updates).

41. SG SG G

CONST NOISE

- A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Subdivision and Grading, that:
 - 1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
 - 2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
 - 3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.
- B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of grading plans, will be considered as adequate evidence of compliance with this condition.
- C. Prior to issuance of any grading permits, the proposed project construction activities shall adhere to the specifications of the County of Orange Codified Ordinance, Division 6 (Noise Control), meeting the approval of the Manager, PDSD/Subdivision and Grading.

42. SG SG R SCENIC PRESERVATION EASEMENT
Prior to the recordation of applicable final tract maps, the subdivider shall dedicate to the County of Orange or its designee a scenic preservation easement over the open space and fuel modification areas adjacent to Crystal Cove State Park and Los Trancos Canyon, in a manner meeting the approval of the Manager, Public Facilities and Resources Department/Harbors, Beaches and Parks - Program Management & Coordination. Maintenance, upkeep and liability for said easement area shall remain the responsibility of the subdivider or his assigns and successors (i.e., Homeowners' Association) or current underlying owner(s) of said easement area and shall not be included in said dedication offer. The subdivider shall not grant any easement over any property subject to said easement, including utility easements, unless such easements are made subordinate to said easement offer in a manner meeting the approval of the Manager, Public Facilities and Resources Department/Harbors, Beaches and Parks - Program Management & Coordination. Any utility easements shall be subject to the approval of the Manager, Public Facilities and Resources Department/Harbors, Beaches and Parks/Program Management & Coordination. Limitations and restrictions for said easement shall be recorded by separate document concurrent with the recordation of the subject map in a manner meeting the approval of the Manager, Public Facilities and Resources Department/Harbors, Beaches and Parks - Program Management & Coordination.
43. EP SG R LNDSCP
Prior to the recordation of each applicable final tract/parcel map, open space PA 12B shall be reserved for granting in fee to a homeowner's association who shall be responsible for maintenance and upkeep.
44. HP HP R OPEN SPC
Prior to the recordation of any [adjacent or applicable] map or when determined applicable by the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management, the subdivider shall survey and monument all lots dedicated for regional open space purposes, and stake the property line of the dedication area(s) with durable, long-lasting, high visibility markers at all angle points and line of sight obstructions to the satisfaction of the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management.
45. HP SG R PUB INT LNSCP
Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), a landscape plan shall be required for all slopes created in conjunction with construction of roadways and shall be landscaped and equipped for irrigation and improved in accordance with the following:
- HP SG R PRELM LNSCP PLN
A. Preliminary Plan - Prior to the recordation of an applicable final tract map, an agreement shall be entered into and financial security posted guaranteeing landscape improvements and the maintenance thereof based on a preliminary landscape plan showing major plant material and uses, with a cost estimate of the landscape improvements. The preliminary plan and cost estimates shall be reviewed and approved by the Manager, Subdivision

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page 12

and Grading, in consultation with the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management. Said plan shall take into account the previously approved landscape plan for Newport Coast Planned Community, the Standard Plans for landscape areas, adopted plant palette guides, applicable scenic and specific plan requirements, Water Conservation Measures contained in Board Resolution 90-487 (Water Conservation Measures), and Board Resolution 90-1341 (Water Conservation Implementation Plan).

HP SG B

DTAL LNSCP PLN

- B. Detailed Plan - Prior to the issuance of any building permits(s), a detailed landscape plan shall be submitted to and approved by the Manager, Subdivision and Grading, in consultation with the Manager, Public Facilities and Resources Department / Harbors, Beaches and Parks - Program Management. Detailed plans shall show the detailed irrigation and landscaping design.

HP CBI U

LNDSKP INSTALL

- C. Installation Certification - Prior to the issuance of final certificates of use and occupancy and the release of the financial security guaranteeing the landscape improvements, said improvements shall be installed and shall be certified by a licensed landscape architect or licensed landscape contractor, as required, as having been installed in accordance with the approved detailed plans. Said certification, including an irrigation management report for each landscape irrigation system, and any other required implementation report determined applicable, shall be furnished in writing to the Manager, Construction Division, and the Manager, Building Inspection Division, prior to the issuance of any certificates of use and occupancy.

46. SG SG G

RIPPABILITY

Prior to issuance of a grading permit, in locations where harder earth and rock materials are noted and difficult ripping may be encountered, a geophysical survey shall be required to identify areas requiring blasting. Any necessary blasting will be done utilizing COSHA and County standards regarding acceptable levels of associated shaking. The survey shall meet the approval of the Manager, Subdivision and Grading.

47. SG SG G

RIPPABILITY

Prior to issuance of a grading permit, the applicant shall indicate on the grading plans the location of proposed oversized placement. The geotechnical review report for the grading plan should include the specific details for placement of oversized materials in a manner meeting the approval of the Manager, Subdivision and Grading.

48. SG SG G

SPECIAL

Prior to the issuance of any grading permits, a revegetation plan shall be submitted to and approved by the Manager, Subdivision and Grading. This plan will provide for revegetation of all graded and cut and fill areas where structures or improvements are not constructed within a two year period. The

revegetation will be composed of drought adaptive plant materials, including but not limited to California buckwheat, coyote bush or native grasses. If native species are not used, non-invasive, drought tolerant species will be used. If irrigation is required, drip systems shall be installed where feasible.

49. SG SG G SPECIAL
Prior to issuance of a grading permit and pursuant to the recommendation by GTE, a joint trench for both telephone and cable lines will be constructed to reduce the number of individual lines crossing the project site and to facilitate future access to the lines.

TRAFFIC

50. SG SG G SIGHT DISTANCE
Prior to the issuance of any grading permits, adequate sight distance shall be provided at all street intersections per Standard Plan 1117, in a manner meeting the approval of the Manager, Subdivision and Grading. This includes any necessary revisions to the plan such as removing slopes or other encroachments from the limited use area.

51. SG SG R ASSESS DIST
Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), the subdivider shall prepare any required improvement plans and shall identify on the plans the limits of all the facilities which the subdivider intends to fund through a Mello-Roos Community Facilities District (CFD) or Assessment District (AD) bond program. In addition, the improvement plans shall identify the specific CFD or AD under which the improvements will be funded, in a manner meeting the approval of the Manager, Subdivision and Grading.

52. SG SG R ASSESS DIST FRM
Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only) within the boundaries of an assessment district, the subdivider shall fill out, sign and submit the required application form for the division of land and assessment, and pay the required fee, in a manner meeting the approval of the Manager, Subdivision and Grading.

53. SG SG R PVT ST NOTIF
Prior to the recordation of a subdivision map (except maps for financing and conveyance purposes only), a note shall be placed on the map that states:

"The private streets constructed within this map shall be owned, operated and maintained by the developer, successors or assigns. The County of Orange shall have no responsibility therefore unless pursuant to appropriate sections of the Streets and Highways Code of the State of California, the said private streets have been accepted into the County Road System by appropriate resolution of the Orange County Board of Supervisors."

54. SG SG R

OPEN SPACE DEDICATION

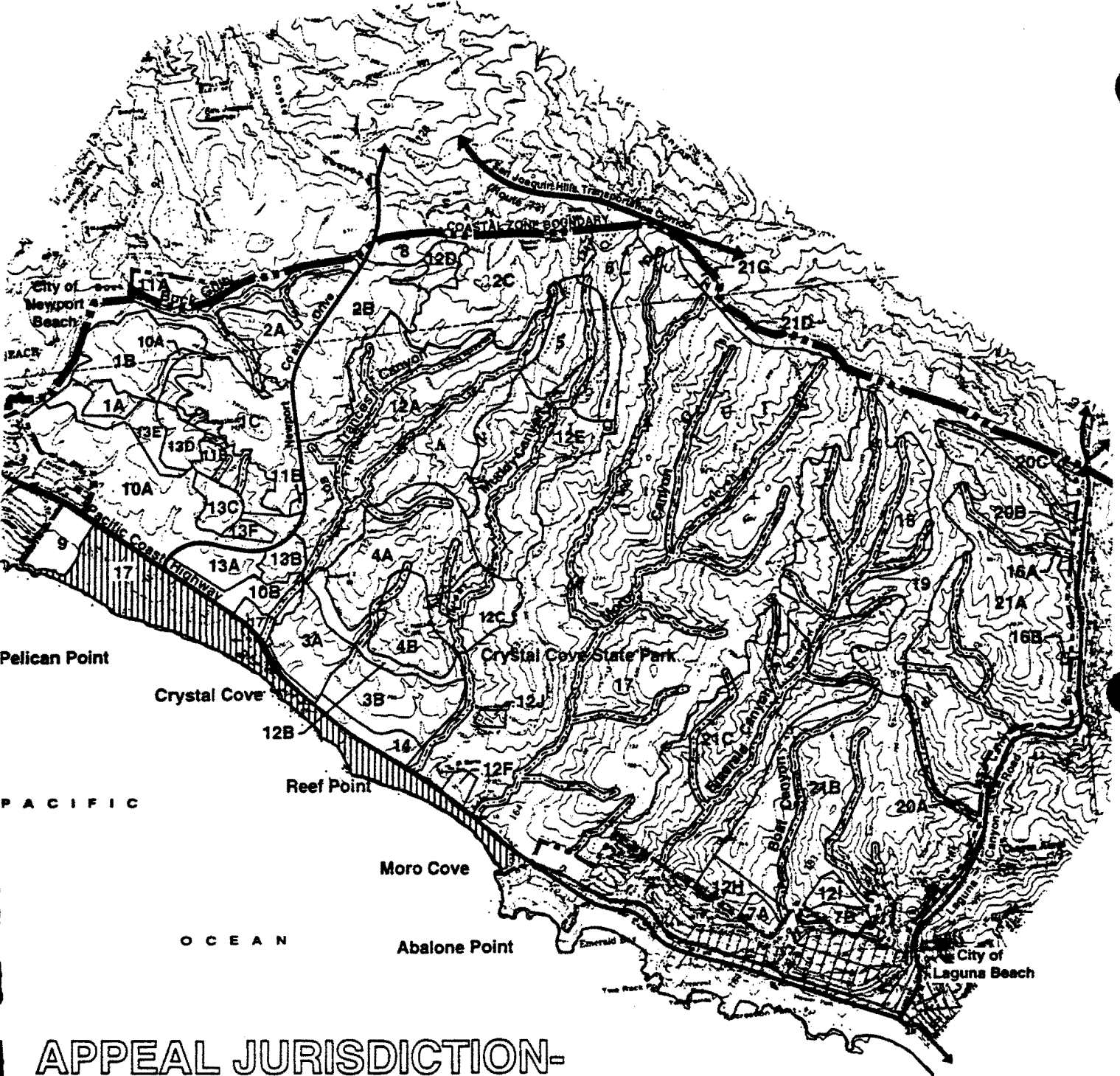
The applicant shall dedicate PA 12E (Muddy Canyon) and any other applicable open space lots to become part of regional recreational facilities, in compliance with the following conditions:

- A. Prior to the recordation of an applicable subdivision map, the subdivider shall make an irrevocable offer of dedication in fee to the County of Orange, or its designee, of PA 12E and any applicable open space lot to become part of the regional park, for regional park purposes in a form approved by the Manager, Program Management and Coordination, suitable for recording. Said offer shall be free and clear of money and all other encumbrances, liens, leases, fees, easements (recorded and unrecorded), assessments, and unpaid taxes, except those meeting the approval of the Manager, PFRD/HBP Program Management and Coordination. Until such time as the offer is accepted by the County or its designee, the subdivider or assigns and successors shall be responsible for maintenance and upkeep of the above referenced lots.
- B. Prior to recordation of an applicable subdivision map, the subdivider shall survey and monument all lots dedicated for regional park purposes, and take the property line of the dedication area(s) with durable, long lasting, high visibility markers at all angle points and line of sight obstructions to the satisfaction of the Manager, PFRD/HBP Regional Park Operations.

55. CP CP B

SPECIAL

Prior to issuance of any building permits for construction in Planning Areas 4A, 4B, 5, 6, or 12C a separate Coastal Development Permit will be required.









APPEAL JURISDICTION- Second Amendment

The Newport Coast Local Coastal Program

Exhibit Y



LEGEND

-  LANDS WITHIN 100 FT. OF U.S.G.S. DRAINAGE COURSES
-  LANDS BETWEEN THE SEA AND PACIFIC COAST HIGHWAY
-  COASTAL ZONE BOUNDARY
-  PLANNED COMMUNITY BOUNDARY
-  PLANNING AREA BOUNDARY
-  PLANNING AREA

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EXHIBIT 7

same use as the destroyed structure, does not exceed the floor area, height or bulk of the destroyed structure by more than 10 percent, and is sited in the same location on the same building site as the destroyed structure.

- (g) Development projects on tidelands, submerged lands or on public trustlands, whether filled or unfilled, when such projects are permitted pursuant to a coastal development permit issued by the Coastal Commission.
- (h) Projects normally requiring a coastal development permit but which are undertaken by a public agency, public utility or person performing a public service as emergency measures to protect life and property from imminent danger or to restore, repair or maintain public works, utilities and services during and immediately following a natural disaster or serious accident; provided the Director, EMA, and the Executive Director of the Coastal Commission are notified within three days after the disaster or discovery of the danger regarding the type and location of the emergency measures to be performed. This exemption does not apply to the erection, construction or placement of any structure with an estimated cost or market value in excess of \$25,000 in a permanent location.
- (i) Ongoing routine repair and maintenance activities of local governments, state agencies and public utilities (such as railroads) involving shoreline works protecting transportation roadways, as specified in Board of Supervisors; Resolution No. 82-1917, adopted on December 22, 1982.

Sec. 7-9-118.6. Coastal development permit procedures.

- (a) Approving authority and appellate body.

Each coastal development permit application shall be processed in compliance with the requirements for use permits per section 7-9-150 unless otherwise stated herein. Normally, the approving authority for coastal development permits shall be the Zoning Administrator and the Planning Commission the appellate body. However, as provided for by section 7-9-150, when the Director, EMA, determines that the public interest would be better served, the Director may forward the application to the Planning Commission for action. In such cases, the Board of Supervisors shall serve as the appellate body.

- (b) Application requirements.

Each application for a coastal development permit shall be filed in the form and number prescribed by the Director, EMA, and shall be accompanied by:

- (1) Payment of fee set by resolution of the Board of Supervisors.
- (2) A location map showing the area to be developed in relation to nearby lots, streets, highways and major natural features such as the ocean, beaches, wetlands and other major landforms.
- (3) A plan, drawn to scale, in sufficient detail to indicate compliance with the certified Local Coastal Program.

(4) Any additional information determined by the Director, EMA, to be necessary for evaluation of the proposed development.

(c) Referral of application.

It shall be the duty of the Director, EMA, to: 1) forward applications for comment to other reviewing officials and/or agencies as may be required by Local Coastal Program policies, and 2) forward each application for a coastal development permit, together with his recommendation thereon, to the approving authority for action.

Any person may submit written comments on an application for a coastal development permit at any time prior to the close of the applicable public hearing. Written comments shall be submitted to the Director, EMA, who shall forward them to the approving authority.

(d) Public notice.

(1) A notice shall be mailed or delivered by the Director, EMA, at least ten calendar days before the public hearing on coastal development permit applications to the following people and agencies:

- a. Applicant.
- b. All persons owning property within 300 feet from the exterior boundaries of the premises to which the application pertains.
- c. All persons residing on a building site within 100 feet from the exterior boundaries of the premises to which the application pertains.
- d. The Coastal Commission.
- e. Any board or committee as provided in the certified LCP.
- f. Public agencies which, in the judgment of the Director, EMA, may have an interest in the project.
- g. All persons who have submitted a written request for public notice of all coastal development permit applications or who have submitted a written request for public notice for any development of the subject property, and who have submitted self-addressed, stamped envelopes.

(2) Contents of notice.

- a. A statement that the development is within the Coastal Zone.
- b. The date of filing of the application and the name of the applicant.
- c. The number assigned to the application.

- d. A brief description of the development and its proposed location.
 - e. The date, time and place at which the application will be heard by the local approving authority.
 - f. A brief description of the general procedure for the conduct of the hearing and possible actions.
 - g. The system for County and Coastal Commission appeals.
 - h. The fee for filing appeals.
- (3) If a hearing on a coastal development permit is continued to a time which has not been stated in the initial notice or stated at the public hearing, notice of the continued hearing shall be provided in the same manner and within the same time limits as required in subsections "(1)" and "(2)" above.

(e) Findings.

A coastal development permit application may be approved only after the approving authority has made the findings required in section 7-9-150 and below:

- (1) Specific factual findings that the proposed development project conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.
- (2) In addition to the findings required for a variance by section 7-9-150, the following finding shall also be made: "Approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan."

(f) Appeals to the appellate body.

The approving authority's decision regarding any coastal development permit application may be appealed in compliance with the provisions of section 7-9-150. Any person may submit written comments on a coastal development permit at any time prior to the close of the applicable public hearing. Written comments shall be submitted to the Director, EMA, who shall forward them to the appellate body.

(g) Notice of final County decision.

Within seven calendar days of (A) the appellate body decision or (B) the expiration of the 15 calendar day appeal period to the appellate body, a notice of it shall be sent by first class mail to the following:

- (1) The applicant.
- (2) All persons who have submitted a written request for notification action on this specific permit and who have submitted self-addressed, stamped envelopes.
- (3) The Coastal Commission district office.
- (4) Any board or committee as provided by the certified LCP.

The notice shall include conditions of approval and written findings. For decisions on developments which are appealable to the Coastal Commission, the notice shall include procedures for appeal of the County decision on the coastal development permit to the Coastal Commission. (Coastal Act/30333, 30620; 14. Cal Code of Regulations/13571(a)).

(h) Final County decision.

The County's decision on the coastal development permit application shall be considered final when both the following occur:

- (1) All findings required by section 7-9-118.6(e) have been adopted.
- (2) All rights to appeals before the appellate body have been exhausted.

However, the County's final decision shall not become effective if either of the following occur:

- a. The notice of final County action does not meet the requirements of section "(g)" above.
- b. An appeal is filed with the Coastal Commission prior to expiration of the Coastal Commission appeal period.

When either of the circumstances above occur, the Executive Director of the Coastal Commission shall, within five (5) calendar days of receiving the notice of final local government action, notify the County that the effective date of the County action has been suspended.

(i) Appeals to the Coastal Commission.

(1) Appealable developments.

A decision regarding a coastal development permit application for any of the following projects may be appealed to the Coastal Commission. Any such development may be appealed directly to the Coastal Commission without exhausting the appeal procedures to the appellate body provided such appeal complies with the adopted regulations of the Coastal Commission.

- a. Development projects approved by the County located within any appealable area, as follows:

1. All area between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance;
2. All areas not included in paragraph "1" above that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream and all areas within 300 feet, both seaward and landward, of the top of the seaward face of any coastal bluff;
3. All areas not included within paragraphs "1" or "2" above that are located in a sensitive coastal resource area.

- b. Any development project approved by the County that is not designated as the "principal permitted use" as defined in section 7-9-118.3;
- c. Any development project which constitutes a major public works project or a major energy facility.

(2) Appeal procedures.

- a. An appeal of a decision may be filed by the applicant, by an aggrieved person, or by any two members of the Coastal Commission.
- b. An appeal of a decision shall be filed before the expiration of the ten working day appeal period. The ten working day appeal period begins the day following receipt by the Coastal Commission of the County's Notice of Final Action which meets the requirements of section "(g)" above.

(j) Failure to act-notice.

(1) Notification by applicant.

If the County has failed to act on an application within the time limit set forth in Government Code Sections 65950-65957.1, thereby approving the development by operation of law, the person claiming a right to proceed pursuant to Government Code Sections 65950-65957.1 shall notify, in writing, the County and the Coastal Commission of his or her claim that the development has been approved by operation of law. Such notice shall specify the application which is claimed to be deemed approved.

(2) Notification by County.

If it is determined by the Director, EMA, that the time limits established pursuant to Government Code Sections 65950 through 65957.1 have expired, and the notice required by law has occurred, the Director shall, within seven (7) calendar days of such determination, notify the Coastal Commission and any persons or group entitled to receive notice pursuant to section 7-9-118.6 (d) above that the application has been approved by operation of law pursuant to Government Code Sections 65950-65957.1 and, if applicable, that the application may be appealed to the Coastal Commission pursuant to section 7-9-118.6 (i) above. This section shall apply equally to a determination by the County that the development has been approved by operation of law and to a judicial determination that the development has been approved by operation of law.

Sec. 7-9-118.7. Enforcement provisions.

The purpose of this section is to provide regulations and procedures which will ensure compliance with the California Coastal Act and with the requirements of all certified Local Coastal Programs and the provisions of this District.

(a) Violations.

Notwithstanding the provisions of section 7-9-154.3, the following provisions are applicable within the CD District.

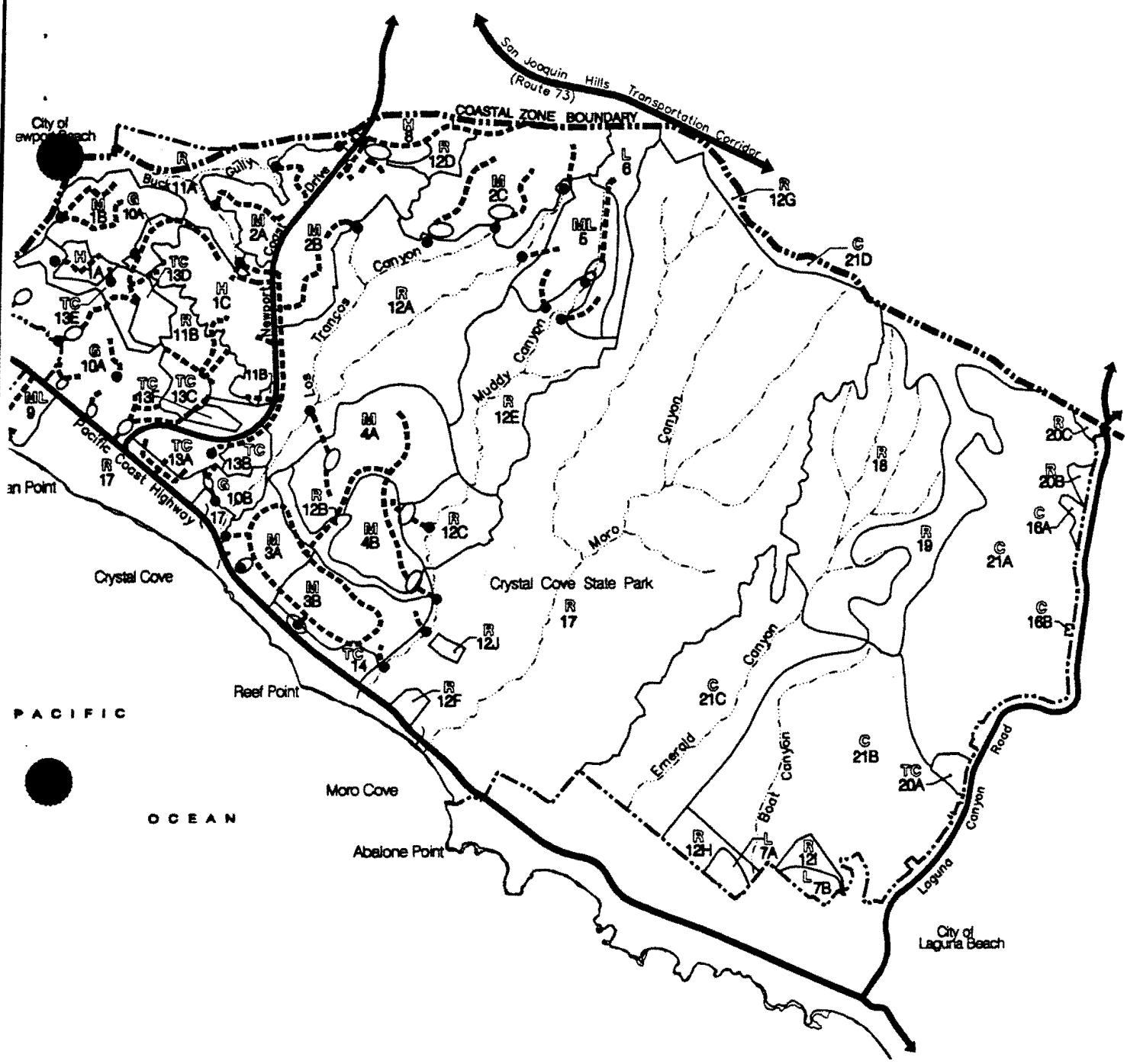
A violation of a certified Local Coastal Program may be prosecuted by the County of Orange in the name of the people of the State of California, or may be redressed by civil action. Any person who violates any provision of the LCP shall be subject to a civil fine of not to exceed ten thousand dollars (\$10,000). In addition to any other penalties, any person who intentionally and knowingly performs any development in violation of the LCP shall be subject to a civil fine of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000) per day for each day in which such violation occurs.

(b) Revocations.

Failure of any person to abide by and faithfully comply with any and all conditions that may be attached to the approval of a permit issued pursuant to the provisions of this District shall constitute grounds for the revocation of said permit.

The failure of any coastal development permit application to be processed in compliance with the requirements and procedures of this District shall constitute grounds for revocation for any permit approved resultant to such noncompliance.

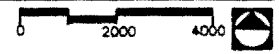
*Exhibit 8
page 6*



BACKBONE DRAINAGE CONCEPT - Second Amendment

The Newport Coast Local Coastal Program

Exhibit S



JULY 16, 1998

- LEGEND**
- STORM DRAIN
 - ENERGY DISSIPATORS
 - DETENTION BASINS
 - COASTAL ZONE BOUNDARY
 - PLANNED COMMUNITY BOUNDARY
 - PLANNING AREA BOUNDARY
 - 21A PLANNING AREA

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EXHIBIT 9

This is a graphic representation of a planning/engineering concept. Final design solutions and precise locations for these facilities will be proposed and reviewed as part of subsequent plan approvals.

- 7) 8) Landform alterations are allowed in PA 12A, PA 12B, PA 12C, and PA 12D and PA 12E to the extent required to accommodate realignment and construction of local collector roads, San Joaquin Hills Road, and/or the San Joaquin Hills Transportation Corridor and recreational facilities, as provided in a final Coastal Development Permit for any such road projects.
- 8) 9) Residential lot lines from adjoining properties may extend into PA 12B, PA 12C, and PA 12D, but not into PA 12A, or PA 12E, PA 12H or PA 12I.

D. CATEGORY "A" & "B" ENVIRONMENTALLY SENSITIVE HABITAT AREA POLICIES

The following policies apply to Category A and B ESHA's only, as delineated on Exhibit H.

1. Except for the ESHA B located in Planning Area 4A, the natural drainage courses and natural springs will be preserved in their existing state. All development permitted in Category A and B ESHA's shall be set back a minimum of 50 feet from the edge of the riparian habitat except as provided for in the following subsections. If compliance with the setback standards precludes proposed development which is found to be sited in the least environmentally damaging and feasible location, then the setback distance may be reduced accordingly.
 - a. Where existing access roads and trails cross streams, where emergency roads are required by State or County fire officials, and/or where access roads are required to serve residential units and recreational facilities in Muddy Canyon, the drainage course may be modified to allow the construction and maintenance of existing or new road or trail crossings. Such modification shall be the least physical alteration required to maintain an existing road or to construct a new road or trail, and shall be undertaken, to the extent feasible, in areas involving the least adverse impact to stream and riparian habitat values.
 - b. Where drainage and erosion control and related facilities are needed for new development and/or to protect the drainage course, the drainage course may be modified to allow construction of such facilities. Modification shall be limited to the least physical alteration required to construct and maintain such facilities, and shall be undertaken, to the extent

feasible, in areas involving the least adverse impact to the drainage course. Where feasible, drainage and erosion control and related facilities will be located outside the drainage course.

- c. Where the construction of ~~Pelican Hill Road and Sand Canyon Avenue*~~ requires filling or other modification of drainage courses substantially as shown in Exhibit L and N, drainage courses may be modified.
- d. Where the construction of local collectors, ~~connecting to Sand Canyon Avenue* and/or San Joaquin Hills Road and/or utility service/emergency access roads~~ requires filling or other modifications of drainage courses in PA 6, PA 12C, and/or the upper portion of PA 12A and where the alignment is shown to be the least environmentally damaging feasible alternative, drainage courses may be modified.
- e. Where access roads and trails exist or where new emergency roads are required by State or County fire officials, vegetation may be removed in the maintenance or construction of such roads and trails. Any required vegetation removal will be minimized.
- f. To the extent necessary, existing riparian vegetation may be thinned or selectively removed when required for habitat enhancement and/or fire control. Existing vegetation which is not classified as riparian may also be removed.
- g. Where drainage and erosion control and related facilities are needed to implement the Master Drainage and Runoff Management Plan and related programs, vegetation may be removed in the construction and maintenance of such facilities. Vegetation removal will be limited to the least required to construct and maintain such facilities and shall be undertaken, to the extent feasible, in areas involving the least adverse impact to riparian vegetation. Where feasible, drainage and erosion control and related facilities will be located outside areas containing riparian vegetation.

* Sand Canyon Avenue was deleted pursuant to Board of Supervisor's Resolution No. 95-561 approved on August 1, 1995.

A5-IRC-99-301

EXHIBIT 10 p.2

8/6/99
LSA.

RESPONSE TO COMMENTS ON PCN NO. 980071600-YJC - CRYSTAL COVE PROJECT - MUDDY AND LOS TRANCOS CANYON WATER-SHEDS

U.S. FISH AND WILDLIFE SERVICE (USFWS) COMMENTS

AUG 06 1999

USFWS No. 1

CENTRAL AND COASTAL SUBREGION

A nationwide permit for the proposed project is entirely consistent with guidance from Corps Headquarters, which states that the 500 foot limit for Nationwide Permit No. 26 does not apply where impacts are otherwise minimal, e.g., for ephemeral drainages.

The 460 linear feet of impacts to the intermittent, primary Muddy Canyon drainage course are, in fact, primarily water dependent. The majority of the impacts in this area are due to the required footprint for a detention basin dam that is necessary to keep peak flood flows within ten percent of the existing condition in Crystal Cove State Park. A small road crossing, which is necessary to access the recreation area, is designed to coincide with the dam, thus minimizing impacts.

The project impacts should be considered minimal at several levels: 1) within the context of the Newport Coast Phase IV-3 and IV-4 planning areas; 2) within the context of the Newport Coast Planned Community; and 3) within the larger regional context.

The impacts to wetland habitats are minimal by any standards. These include 0.1 acre total for the three seasonal wetland areas that were inadvertently created by prior geotechnical exploration, and 0.13 acre for the detention dam. This can be compared to a total of 3.12 acres of wetland that will be preserved within the delineated portion of the study area, all of which is in the primary Muddy Canyon drainage course.

The impacts to ephemeral drainages within the project area are also minimal, with consideration of the total area, habitat value, and relative length. The impacts to ephemeral drainages are 2.49 acres, compared to 3.48 acres delineated within the preserved areas. The habitat value of these drainages is derived primarily from the chaparral, coastal sage scrub, and to a lesser extent the grassland habitats that occupy them. The chaparral and scrub habitats, in particular, are specifically addressed in the Natural Community Conservation Plan and Habitat Conservation Plan for the Central and Coastal Subregion of Orange County (NCCP/HCP), which provides for preservation of 37,000 acres of habitat. The adaptive management component of the NCCP/HCP will serve to further enhance the value of these preserved open spaces. The proposed project is specifically approved under the original NCCP/HCP and a subsequent amendment, which further concentrated development and increased the utility of open space connections.

The total length of impacted drainages may seem to be a large number when considered alone. However, this is not a particularly meaningful measure of impacts, when considered within the context of the project setting. Due to the steepness of the terrain, there is a relatively high concentration of such drainages per unit of land area, compared with many other projects. Nevertheless, further examination of this measure within the context of the surrounding area is useful. The project will impact approximately 37,550 feet compared to 57,060 feet in the preserved area of the project boundaries. Sixty-one percent (22,890 feet) of the total impacts are to drainage courses that are two feet or less in



AS-IRC-99-301
EXHIBIT II

width. Nearly 60 percent of the drainages wider than two feet are in the preserved portion of the delineated area.

The above analysis of the relative amounts of on-site impacts does not consider the entire extent of riparian preservation that has taken place within the entire Newport Coast Planned Community. For example, the main drainage course of Los Trancos Canyon was not included in the delineation for this project because it is outside the planning area boundaries. Due to the importance placed on drainage courses by the Coastal Commission, Los Trancos, Muddy Canyon, and the other major drainage courses, as well as most of the tributary ephemeral drainages, have been preserved through the prior planning and open space designations for this master planned community. The attached History of the Newport Coast Open Space and Riparian Preservation Program demonstrates that the proposed project impacts are a small percentage of the total riparian and ephemeral drainage resources in the Newport Coast Planned Community. In order to further define this context, LSA Associates, Inc. (LSA) has estimated the total linear footage of jurisdictional drainages in the Newport Coast from topographic maps, using the delineated area for the project as a guide to interpretation of these maps. The total estimated length of drainage courses originally existing in the Newport Coast is over 665,000 feet. Thus, the project would impact approximately six percent of the total length of drainages, and 79 percent of these drainages have been permanently preserved as part of the nearly 75 percent of the open space land in the Newport Coast.

It should be noted that California Coastal Commission (which stridently protects wetland and riparian resources) and the USFWS have specifically approved amendments to plans for the project area. These amended plans increased the value and utility of the open space preservation areas and specifically recognized the development areas in the proposed project.

In the larger, regional context the project impacts are even more minimal. With the exception of the detention basin/road crossing, the project development area is entirely within upland habitat that was considered by the USFWS and many other agencies in the EIS for the NCCP/HCP. The types of ephemeral drainages that are present within the project area occur throughout upland areas in the Subregion, wherever there is steep topography that causes the formation of narrow, defined drainage channels in these upland areas. The existence and function of these channels cannot be effectively separated from their surrounding uplands, and the proposed project area was specifically approved for development by the USFWS, with respect to the upland habitat impacts. In addition, there are areas preserved by the project that are not in the NCCP Reserve, e.g., the area just north of the proposed Muddy Canyon detention basin.

USFWS No. 2

As noted in this comment, the western spadefoot is addressed in the NCCP/HCP, and the USFWS concluded that the species is adequately protected by the plan that specifically approves development in the proposed project area. There is virtually no potential habitat for the southwestern pond turtle in the proposed development areas, and it is not known to occur elsewhere within the Newport Coast. The other species mentioned in the comment are of lesser sensitivity and could occur anywhere in the Newport Coast, including the large, permanent open space areas and preserved riparian corridors. They are most likely to occur in the intermittent and perennial drainage courses that have been almost entirely preserved within the Newport Coast Planned Community.

USFWS No. 3

The mitigation strategy for impacts to ephemeral drainages is admittedly and necessarily out of kind. These small drainage courses are a result of the runoff from the relatively steep slopes in the project area, and are integrally associated with the immediately adjacent micro-watersheds. Such features cannot be recreated in preserved open space, because these open spaces already support a full complement of similar drainages. As implied in EPA Comment No. 3, the only conceivable "in-kind" mitigation is preservation/restoration of similar habitat. While the Newport Coast Planned Community area effectively preserves over 75 percent of the ephemeral drainages and nearly all of the intermittent/perennial drainages, the applicant has also proposed off-site, out of kind mitigation in the San Joaquin Marsh for the ephemeral drainages. Although the resources functions are significantly different from the impact areas, the habitat values of this truly aquatic system are very high, and the result of this mitigation approach is no net loss of aquatic resource acreage under Corps jurisdiction. In addition to the mitigation that has already been proposed, the applicant has agreed to enhance the preserved portions of the on-site drainages by installing additional riparian vegetation wherever proposed drainage structures outlet into preserved drainage courses. This will enhance the function and values of the preserved drainage courses.

USFWS No. 4

As noted above, most of the jurisdictional waters in the Newport Coast area have been preserved, as designated in the Local Coastal Program and the NCCP/HCP, and the impacts of the proposed project should be considered minimal in light of the extensive preservation. Strict, in-kind mitigation for impacts of this type is not feasible; however, the mitigation that is offered provides high value aquatic resources and no net loss of jurisdictional area.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

EPA No. 1

Please refer to USFWS Response No. 1 for a description of the preservation of the major drainage courses, as well as large headwaters areas, in the Newport Coast Planned Community. The elimination of virtually all natural functions within the project development area is readily acknowledged, since these functions are directly linked to the upland areas that have been planned for development. However, the functions and values of drainage courses in the preserved areas, both in the Phase IV area and elsewhere in the Newport Coast, will remain. Virtually all of the high value, first order drainages, and much of the watershed areas for these drainages (including second and third order drainages) are preserved in the approximately 75 percent of the Newport Coast LCP area that is open space. Important upland habitat in the Newport Coast is also preserved as a result of both the Newport Coast LCP and the NCCP/HCP.

EPA No. 2

Protection of the water quality and drainage function was an important goal of the Newport Coast LCP. One of the LCP requirements is the 1989 *Refined Master Drainage and Runoff Management*

Plan (RMDRMP), which established engineering design criteria for runoff management policies in the LCP for the Newport Coast Planned Community (NCPC). Development of each project within the NCPC is guided by implementation of the RMDRMP requirements. Runoff management objectives include maintenance of: peak flood discharge rates, urban runoff water quality, beach sand replenishment, and erosion and/or sedimentation of canyons and downstream drainage facilities.

EPA No. 3

As noted in this comment, it can be difficult to create a stream. This is particularly true for the type of ephemeral drainages that would be impacted by the project, since these are an integral part of the land that has already been approved for development by the California Coastal Commission, the County of Orange, and the USFWS, after many years of planning. The only feasible mitigation measures for the loss of ephemeral drainages are the preservation of existing drainages, as suggested by EPA (which still results in a net loss of jurisdictional waters), and out of kind compensation. The previous planning for the NCPC preserves over 75 percent of the length and area of drainages within the NCPC, resulting in a preservation to development ratio of 3:1, which exceeds the 2:1 ratio recommended by EPA. In addition, the applicant has proposed a 1:1 *replacement* ratio with high value, albeit out of kind, aquatic resources in the San Joaquin Marsh. Finally, the applicant has agreed to enhance the preserved portions of the on-site drainages by installing additional riparian vegetation wherever proposed drainage structures outlet into preserved drainage courses. This will enhance the function and values of the preserved drainage courses.

The applicant has proposed to implement on-site mitigation for the loss of the 0.23 acres of wetland habitat. This will include creating seasonally wet depressions in the open space areas (at a 3:1 ratio) as well as increasing the amount of wetland vegetation upstream of the detention basin and around outlet structures.



United States Department of the Interior
 Fish and Wildlife Service
 Ecological Services
 Carlsbad Fish and Wildlife Office
 2730 Loker Avenue West
 Carlsbad, California 92008

RECEIVED
 JUN 09 1999
 REGULATORY B



JUN 04 1999

Colonel John P. Carroll
 District Engineer
 U.S. Army Corps of Engineers, Los Angeles I
 P.O. Box 532711
 Los Angeles, California 90053-2325

Attn: Jae Chung

OPTIONAL FORM NO. 17-001

FAX TRANSMITTAL

To: Art Henrybaum From: Jae Chung # of pages: 6

Dept./Agency: _____ Phone #: _____

Fax #: _____ Fax #: _____

NSN 7540-01-917-7300 5098-101 GENERAL SERVICES ADMINISTRATION

Re: Pre-Construction Notification No. 980071600-YJC, Muddy Canyon Creek and parts of Los Trancos Canyon Creek, north of Laguna Beach, Orange County, California.

Dear Colonel Carroll:

We have reviewed Pre-Construction Notification (PCN) No. 980071600-YJC received on May 13, 1999, for fill of jurisdictional waters and wetlands within Muddy Canyon Creek and parts of Los Trancos Canyon Creek in coastal Orange County. We have spoken to Jae Chung of your staff regarding the proposed action. These comments have been prepared under the authority, and in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401 as amended, 16 U.S.C. 661 et seq.) and other authorities mandating Department of the Interior concern for fish, wildlife, plants and other environmental values.

The proposed project involves fill of 2.73 acres of jurisdictional waters along 29,540 linear feet of ephemeral stream courses and 460 linear feet of intermittent stream courses within Muddy Canyon Creek and parts of Los Trancos Canyon Creek, and fill of 0.05 acre of seasonal depressional wetlands in coastal Orange County. The purpose of the fill is to enable the development of up to 635 single family residential units and a 24-acre private recreation facility (EIR 569, Newport Coast Phase IV-3 and IV-4).

USFWS
 1

We object to the use of Nationwide Permit No. 26 for the permitting of this action because it will result in greater than minimal adverse effects to the environment, and use of the nationwide permit without an alternatives analysis would be contrary to the public interest. We urge you to exercise discretionary authority to elevate this to an individual permit and require an alternative analysis for this non-water dependent project. Nationwide Permit No. 26 was intended to permit discharges of dredged or fill material into headwaters and isolated waters of no more than 3 acres and not more than 500 linear feet of the streambed. Though this PCN falls within the acreage limitation, the linear impact to waters exceeds 600-fold the impacts typically allowed under this

EX. 11 p. 5

nationwide permit. Such a large deviation from the linear impact restrictions has been justified on the basis that these impacts are to ephemeral waters.

However, 460 feet of the linear impacts are to intermittent waters. Based on regional provisions, if this proposal were to impact 40 more linear feet of intermittent waters, it would require an individual permit. Given the extensive area to be impacted by this proposal, we are interested in the data and field determinations that were used to make the determination regarding the linear impact to intermittent waters. Regardless, the remaining 29,540 linear feet of ephemeral waters, a distance greater than 5 miles, easily possess important functions and values that are commensurate with, if not well in excess of, those found within 500 feet of intermittent waters, and justify from a cumulative standpoint consideration as an individual permit. These jurisdictional waters are of regional importance. Los Trancos and Muddy Canyons are two of the last remaining relatively unaltered drainages within the coastal range of Orange County.

USFWS #1

Among the functions and values possessed by these ephemeral drainages are their function as important habitat for a variety of sensitive reptile and amphibian species, important refuge habitat for a range of species including birds, mammals, amphibians and reptiles, function for wildlife and seed dispersal, flood attenuation, sediment generation and downstream sediment and nutrient transport, along with shallow groundwater recharge that may supply springs along the coastal bluff. Examples of sensitive species that have the potential to use these areas on a transient and/or permanent basis include the spadefoot toad, coast range newt, California legless lizard, two-striped garter snake, loggerhead shrike, southwestern pond turtle and neo-tropical migratory birds. The spadefoot toad, in particular, is known from the on-site seasonal wetlands, and likely utilizes on-site ephemeral and intermittent drainages as well. While impacts to the spadefoot toad were addressed in the Central/Coastal Orange County NCCP/HCP, impacts to the other species listed above and jurisdictional waters were not addressed. Moreover, our consideration of the toad relies on the proper application of the nationwide permit program by the Corps to ensure this species is adequately conserved so as to preclude its need for listing.

USFWS #2

The proposed mitigation strategy for these extensive impacts to ephemeral waters is entirely out-of-kind, and no supporting documentation has been provided that demonstrates how the proposed mitigation will compensate for the functions and values that will be lost. We have been involved in discussions regarding the proposed San Joaquin Marsh mitigation area and still have concerns regarding the creation of a highly regulated lacustrine fringe wetland that will be subject to annual maintenance, public usage, and artificial hydrology as compensation for out-of-kind natural functions and values. The Irvine Ranch Water District is the present owner of the proposed mitigation area, and has initiated a notice of preparation regarding the diversion of San Diego Creek waters along with releases of reclaimed water from Sand Canyon Reservoir into this area. The relationship of this proposal to the mitigation proposal, and issues regarding water quality impacts and the potential for bioaccumulation of toxic substances, remain unresolved.

USFWS #3

The lack of proposed in-kind mitigation and cumulative extent of jurisdictional waters losses within the last relatively unaltered drainages within coastal Orange County support our

USFWS #4

06/05/1995 10:35
NO. 003 003
Colonel John P. Carroll

3

determination that this project is of more than minimal adverse effect to the environment. As a result, we recommend that this project be processed as an individual permit.

Should you not process this project as an individual permit, we request that alternative mitigation be utilized, or due to the out-of-kind proposal, that compensatory ratios of 4:1 within the San Joaquin Marsh be used for impacts to ephemeral waters. We recommend prior to acceptance of the on-site creation of seasonal wetlands, that soil tests be performed to determine the ability of the proposed wetland creation site to support seasonal wetlands. Impacts to the seasonal wetlands should be compensated by on-site creation of habitat at a ratio of 2:1.

Please notify this office of your intentions with respect to the above recommendations. Thank you for the opportunity to comment on this PCN. If you have any questions regarding these comments or your responsibilities under the Endangered Species Act, please contact William Miller of my staff at (760) 431-9440.

Sincerely,



Jim A. Bartel
Assistant Field Supervisor

cc: Terri Dickerson, CDFG
Rebecca Tuden, EPA

EX. 11, P. 7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

JUN 04 1999

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL

of pages 5

To	From
Jae Chung	NW80
Dist. Agency	Phone #
US ACE	415/744-1164
Fax #	Fax #
213/452-4196	415/744-1078
NSN 7540-01-511-7000 5029-101 GENERAL SERVICES ADMINISTRATION	

Colonel Robert L. Davis, District Engineer
 US Army Corps of Engineers
 P.O. Box 2711
 Los Angeles, CA 90053-2356

Attention: Jae Chung

RE: Preconstruction Notification (PCN) No. 980071600-YJC, dated May 13, 1999, Irvine
 Community Development Center, Muddy Canyon Creek, Orange County,
 California

Dear Colonel Davis:

The Environmental Protection Agency (EPA) has reviewed the above referenced PCN (No. 980071600-YJC) regarding the Irvine Community Development Center's (applicant's) proposal to fill approximately 2.78 acres of jurisdictional waters of the U.S. (waters) for the purpose of developing a residential facility, private recreational areas, and associated arterials. The proposed project will fill 30,000 linear feet of ephemeral drainage (approximately 6.0 miles of stream). These comments have been prepared under the authority of, and in accordance with the provisions of the Federal Guidelines (40 CFR 230) promulgated under Section 404(b)(1) of the Clean Water Act.

We do not believe that the applicant has clearly demonstrated that the proposed project will have minimal adverse effects and, therefore does not qualify for a nationwide permit. We recommend that you use your discretion and re-notice this project as an individual permit with an appropriate alternatives analysis. We are concerned about the loss of hydrogeomorphic and biological functions associated with the 6.0 miles of ephemeral drainages in the project site. Finally, the proposed mitigation is insufficient to compensate for the impacts to aquatic resources.

Project Description

The proposed development project, known as Crystal Cove, is a 980-acre site with a rolling hill and valley topography. This project site is upstream of an extensive wilderness area in Orange County. The area also contains 18 archeological sites. The applicant proposes extensive filling and grading over 681 acres of the site with direct impacts to 2.73 acres of waters of the United States including 0.05 acres of seasonal wetlands and approximately 6.0 miles of linear stream channel. The applicant proposes to mitigate a portion of the impacts on-site and a portion at the San Joaquin Marsh Mitigation Bank at an undetermined ratio. Off-site, indirect impacts that would occur to these drainages downstream of the project site have not been calculated.

EX. 11, p. 8

EPA has the following concerns with the project:

Adverse Impacts are More than Minimal: First, NWP 26 requires that the project impact no more than 500 linear feet of U.S. waters. The proposed project will impact over 30,000 linear feet, clearly over the threshold for use of NWP 26.

We are concerned that the proposed project does not meet the minimization of adverse individual and cumulative impacts criteria required for authorization under the Nationwide Permit (NWP) program. The proposal to fill over 6.0 miles of creeks will completely eliminate all of the functions provided by the aquatic resources on the site such as surface water storage, energy dissipation, nutrient cycling, retention of particulates, maintenance of characteristic plant and animal community, ground water recharge and habitat interspersation and connectivity.

In Southern California, the lower order headwaters streams are typically narrow, linear, aquatic features and are predominantly intermittent or ephemeral. The various hydrological, biogeochemical, and plant and habitat functions performed by these tributaries are essential to maintaining the integrity of watersheds in this arid region. For instance, the capacity of lower order streams to store surface water, dissipate the energy of flows, and retain materials, benefits downstream reaches by reducing peak flows, and sediment delivery, improving water quality and maintaining characteristic channel dynamics. Intact headwaters streams are also important sources for the export of organic carbon which supports aquatic food webs and biogeochemical processes in downstream reaches. The plant communities that are characteristic of the various types of first order streams provide habitat and micro climatic conditions designed to support the completion of life histories of plants and animals. The proposal to fill over 6.0 miles of creek channels would completely eliminate all of the functions provided by the aquatic resources on the site. We are concerned that the proposed project will result in an unacceptable loss or degradation of riverine ecosystem functions and contribute to significant cumulative impacts to waters of the United States.

Insufficient Information: We are concerned about the potential cumulative impacts to the water quality and physical integrity of the downstream watersheds that would result from the elimination or reduction of their headwaters. Until all the project related impacts are clearly quantified and described, we can not fully evaluate the effects of the proposed project on the aquatic ecosystem and are unable to make a reasonable judgement as to whether the proposed discharge will comply with the Guidelines (40 CFR 230.12). Further analysis of the potential cumulative impacts of this proposed project on the hydrologic, biogeochemical and hydrogeomorphic functions of the downstream watershed are needed (40 CFR 230.11 (g)(2)).

Mitigation: The proposed mitigation fails to compensate for impacts to the aquatic resources' acreage and functions. As described above, these first order streams perform many hydrologic, biologic and biogeochemical functions. There has been no mitigation proposed for the loss of over 6.0 miles of stream bed. Since it is extremely difficult to create a stream, we recommend a minimum preservation/restoration of a similar habitat and linear feet at a 2:1 ratio.

Furthermore, EPA has not approved of the San Joaquin Marsh Mitigation Bank and are concerned that mitigation at that site will not replace the functions of the existing wetlands. We recommend the applicant provide on-site mitigation for the loss of wetlands.

EPA # 1

EPA # 2

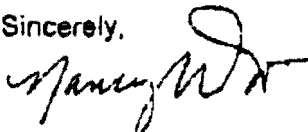
EPA # 3

Recommendation

In conclusion, we object to issuance of this permit and recommend that you exert your discretionary authority and require an individual permit for this project. This recommendation is based on 1) failure to meet the conditions required for authorization under NWP 28; 2) significant direct and cumulative adverse impacts to the watershed; and 3) inadequate mitigation.

Please contact Rebecca Tuden of my staff at (415) 744-1987 if you have any questions regarding this letter.

Sincerely,



Nancy Woo Chief
Wetlands Regulatory Office

cc. USFWS, Carlsbad, Miller
CDFG, Long Beach
RWQCB, Santa Ana
SWRCB (Balaguer), Sacramento
Applicant

entering the ocean as well as the riparian corridors¹. Copies of the results of the monitoring program shall be forwarded to the Regional Water Quality Control Board and the County of Orange on a regular basis for their review to determine whether corrective action is required pursuant to the authority of said agencies.

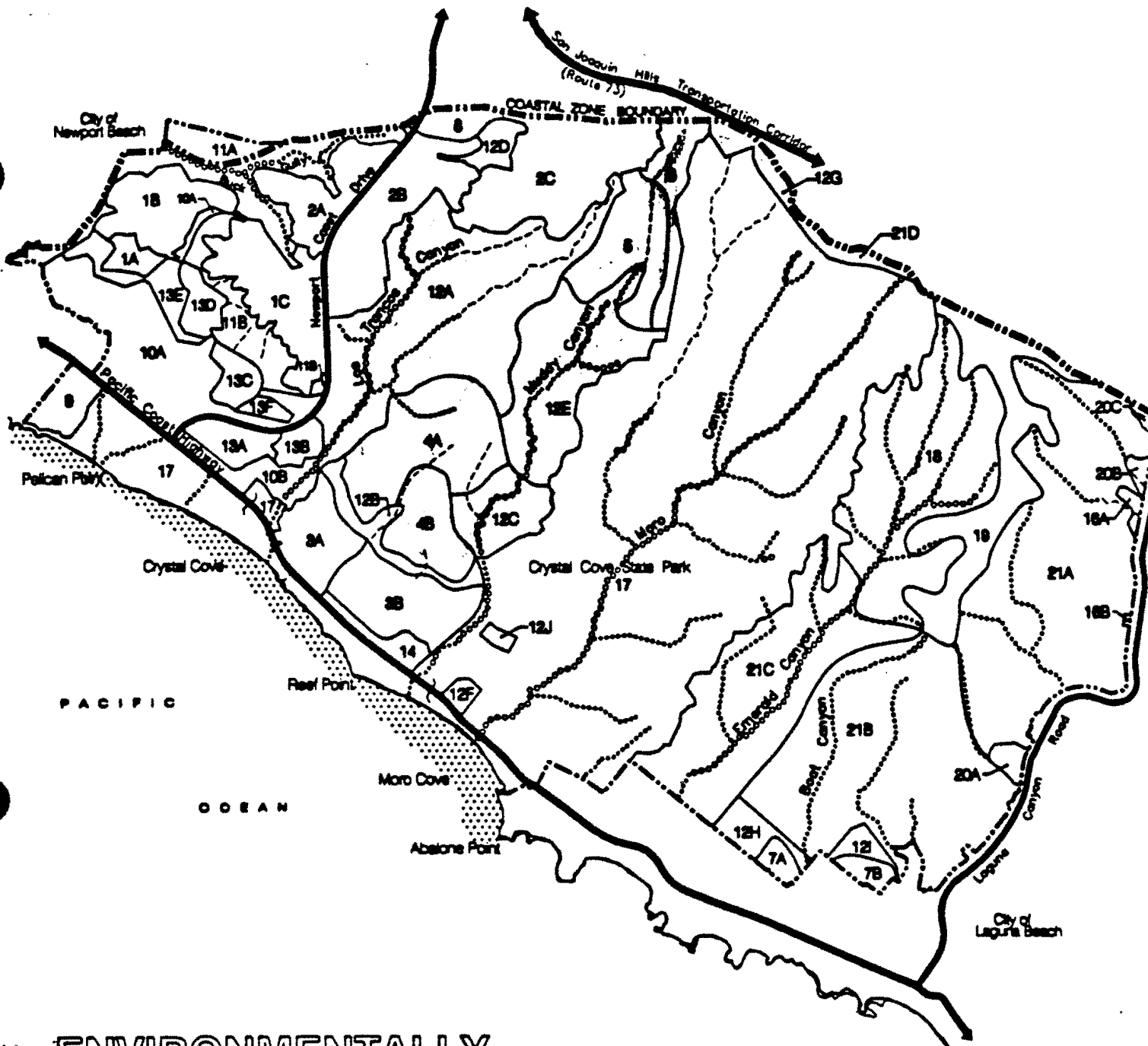
Use and application of chemicals on the golf course and other landscape areas shall be limited to those approved by State, County, and Federal agencies. The landowner shall be responsible for notifying tenants and/or prospective initial purchasers of this requirement.

F. CATEGORY "D" ENVIRONMENTALLY SENSITIVE HABITAT AREA POLICIES

1. PA 10A: All drainage courses will be modified. The Riparian Habitat Creation Program will mitigate any habitat values lost as a result of drainage course modification.
2. PA 1A, PA 1B, PA 1C, PA 2A, PA 2B, PA 2C, PA 3A, PA 3B, PA 4A, PA 4B, PA 6, PA 8, PA 9, PA 10A, PA 10B, PA 11A, PA 12A, PA 12B, PA 12C, PA 12D, PA 12E, PA 12F, PA 12G, PA 12H, PA 12I, PA 12J, PA 13A, PA 13B, PA 13C, PA 13D, PA 13E, PA 13F, PA 14, PA 16A, PA 16B, PA 20A, PA 20B, and PA 20C: Vegetation and drainage courses will be modified or eliminated by development. The Open Space Dedication Programs and Riparian Habitat Creation Program will mitigate any habitat values lost as a result of such drainage course modification or elimination.
3. Construction of Pelican Hill Road, Newport Coast Drive, Sand Canyon Avenue,² local collectors, and San Joaquin Hills Transportation Corridor will modify or eliminate vegetation and drainage courses.

¹ The five-year Water Quality Monitoring Program began in 1991. To date, the monitoring results indicated no adverse water quality impacts on local marine waters.

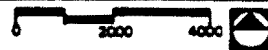
² Sand Canyon Avenue was deleted pursuant to Board of Supervisor's Resolution No. 95-561 approved on August 1, 1995.



ENVIRONMENTALLY SENSITIVE HABITAT AREAS - Second Amendment









The Newport Coast Local Coastal Program

Exhibit H



December 3, 1998

LEGEND

-  CATEGORY A - DRAINAGE COURSE/RIPARIAN VEGETATION
-  CATEGORY B - DRAINAGE COURSE
-  CATEGORY C - COASTAL WATERS
-  CATEGORY D - DRAINAGE COURSE
-  COASTAL ZONE BOUNDARY
-  PLANNED COMMUNITY BOUNDARY
-  PLANNING AREA BOUNDARY
-  PLANNING AREA

Note: Category D ESHAs have been deleted in areas with previously approved Coastal Development Permits as permitted by land use policies and mitigated by the Riparian Habitat Creation Program.

A5-IRC-99-301 EXHIBIT 13

CHAPTER 3

RESOURCE CONSERVATION AND MANAGEMENT POLICIES

This Chapter sets forth policies for the conservation and management of resources within The IrvineNewport Coast Planned Community. Policies are organized in the following sequence:

- A phased dedication program for 2,666 acres of public "wilderness" open space and interim management policies during program implementation;
- A dedication program for approximately 4,451,176 acres of public "special use" open space;
- Recreation/open space management policies for The Irvine Coast Wilderness Regional Park, as well as for other open space/passive recreation areas within the community;
- Policies related to the four different types of Environmental Sensitive Habitat Areas (ESHA's) within The IrvineNewport Coast;
- Specific programs for the protection of cultural (archaeological and paleontological) resources; and
- Policies to protect resources from erosion, sedimentation, and runoff, and to guide grading and the treatment of the interface edge between development and open space, including fuel modification programs required for fire safety.

A. DEDICATION PROGRAM REQUIREMENTS AND PROCEDURES

1. WILDERNESS OPEN SPACE

The landowner shall dedicate Planning Areas PA 18, PA 19, PA 21A, PA 21B, PA 21C, and PA 21D to the County of Orange as development of residential and commercial areas occurs, in accordance with the following policies and procedures.¹

¹ Irrevocable Offer of Dedication recorded November 10, 1988.

a. **Lands to be Dedicated:**

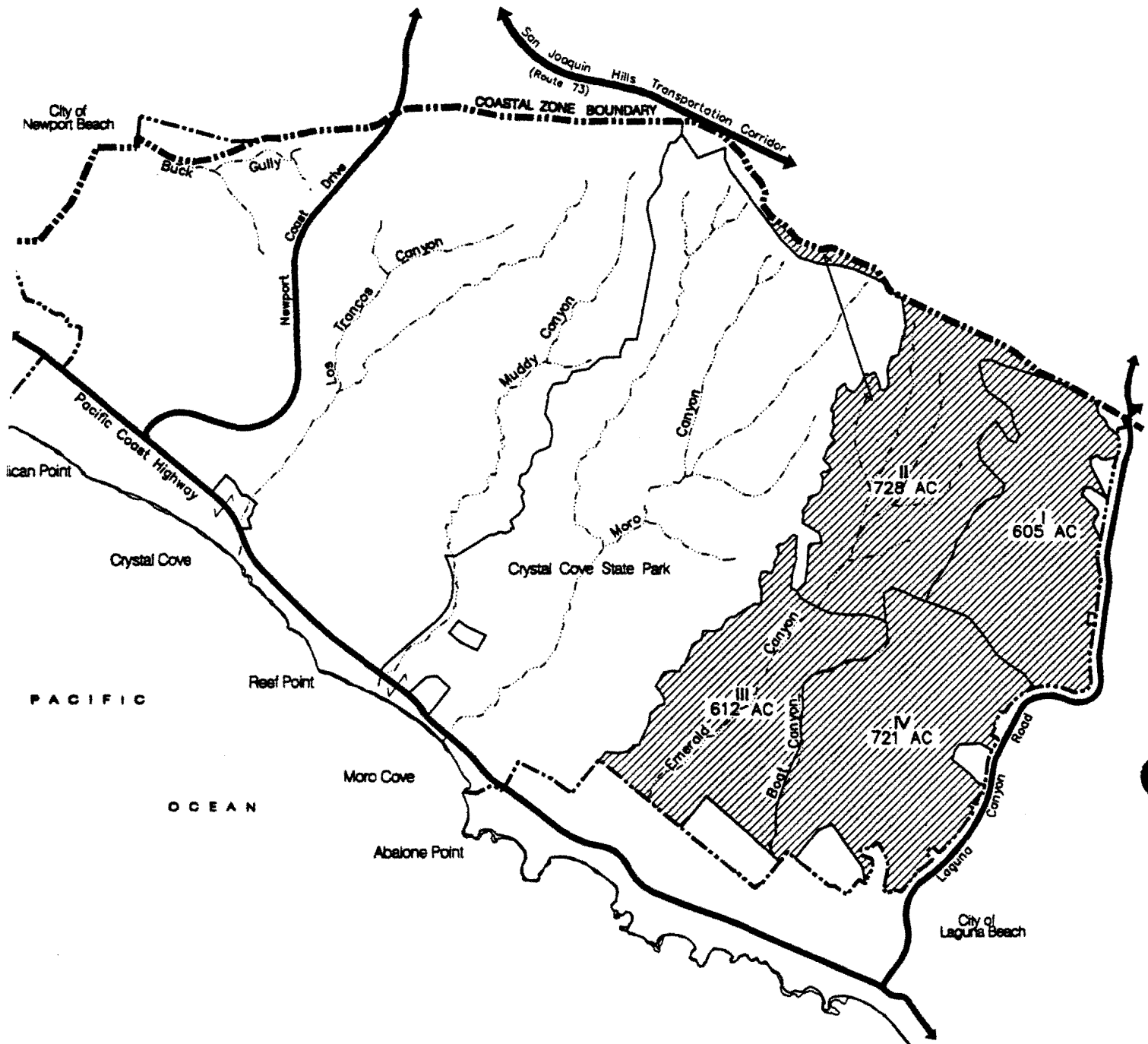
The Dedication Area includes approximately 2,666 acres in Planning Areas PA 18, PA 19, PA 21A, PA 21B, PA 21C, and PA 21D. In order to facilitate resource management, public access and acceptance by the County of portions of the dedication in phases, the Dedication Area has been divided into four Management Units. Acceptance by Designated Offerees of Management Units shall occur in numerical sequence as shown on Exhibit I. "Designated Offerees" are those agencies and organizations described in Subsection b-3) below.

In order to accommodate open space management objectives and the topographic characteristics of the Dedication Area, minor adjustments to the boundaries of the Management Units may be made by agreement of the landowner, the County, and the Coastal Commission and shall be treated as a minor amendment to this Plan at the direction of the Executive Director of the Commission.

b. **Procedures for Conveyance of Title:**

1) **Recordation of the Offer**

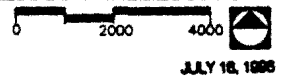
- a) **Timing of Recordation:** No later than ten (10) working days following the later of the following two events (1) the expiration of all statutes of limitation applicable to a legal challenge to certification of the LCP and the approval of a Development Agreement or "other mechanism" (as described below) by the County and the landowner, without any legal challenge having been filed, and (2) the date when both the foregoing certification and approval have become effective, the landowner shall record an Offer of Dedication for a term of thirty (30) years for the entire 2,666-acre Dedication Area. The term "or other mechanism" means that if County or landowner determines not to enter into a Development Agreement, then an "other mechanism" providing equivalent assurances of certainty of development will be entered into between the County and landowner as a condition precedent to the recording of the offer; upon entering into such an



WILDERNESS DEDICATION AREA - Second Amendment




The Newport Coast Local Coastal Program

Exhibit I



JULY 18, 1988

LEGEND

-  MANAGEMENT UNIT AND SEQUENCE NUMBER
-  COASTAL ZONE BOUNDARY
-  PLANNED COMMUNITY BOUNDARY

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DIVISION OF PLANNING

agreement (i.e., "other mechanism"), County and landowner shall jointly publish a public notice that the 10 working days time period for recording the offer has commenced. Notwithstanding the first sentence of this paragraph, the landowner may, at its sole discretion proceed to record the Offer at any time earlier than provided in this paragraph.

- b) Effect of Legal Challenge: In the event of a legal challenge to the certification of the LCP and/or the validity of a Development Agreement or "other mechanism," the landowner is obligated to record the offer only at such time as the earlier of either of the following occurs: (1) the landowner proceeds to commence development (as defined in the Coastal Act of 1976) in the Plan area pursuant to a Coastal Development Permit or (2) the County succeeds in obtaining a final court ruling, not subject to further judicial review, affirming the validity of the approval challenged in the litigation, thereby enabling the landowner to proceed with development on the basis of the LCP as approved and certified by the Coastal Commission.
- c) Recorded Offer as Pre-Condition to Development: The County will not provide final authorization to proceed with development pursuant to any Coastal Development Permit in the Plan area prior to recordation of the Offer (e.g., a subdivision map or final grading permits may be approved conditioned upon recordation of the Offer).

2) Timing of Acceptance of Dedication Offer

The Offer of Dedication will provide that the title for each Management Unit shall be automatically conveyed upon acceptance, as specified in Section "a)" above and in Section "b)(3)" below, as follows:

- a) Management Unit I may be accepted only after the issuance of the first grading permit authorizing (initial) grading in any residential, commercial, or golf course planning areas (as identified in Exhibit E) other than for a Coastal Development

Permit providing for the construction of ~~Pelican Hill Road~~ Newport Coast Drive;
and

b) One remaining Management Unit may be accepted only in numerical sequence and only as follows for each of the development increments listed below:

- (1) Ninety days following issuance of building permits for a cumulative total of 1,000 primary residential dwelling units;
- (2) Ninety days following issuance of building permits for a cumulative total of 2,000 primary residential dwelling units; and
- (3) Ninety days following issuance of building permits for (a) a cumulative total of 1,500 overnight ~~resort~~ accommodations (as defined in LUP Subsection 4-A-1-a and 4-A-2-a and in accordance with the intensity formula specified in LUP Subsection 4-A-1-b-4) or (b) a cumulative total of 80 percent of the 2.66 million square feet of development allowed in PA 13 (pursuant to LUP Chapter 4-A-1-b), whichever first occurs.

3) Designated Offerees

At such time as any Management Units may be accepted as provided in Subsection b-2)-a) or b-2)-b) above, the County of Orange, acting on its own behalf or through its designee(s), will have three (3) years to accept the Offer of such Management Unit(s), after which time the State of California either through the California Department of Parks and Recreation or the California Coastal Conservancy will have three (3) years to accept the Offer of Dedication. If the aforementioned public agencies have not accepted the Offer as specified, the Trust for Public Land or the National Audubon Society will have one (1) year to accept the Offer of Dedication. If none of these public or non-profit entities has accepted title to the Management Unit(s) within these timeframes, the Executive Director of the California Coastal Commission, following consultation with the County, shall be entitled to nominate, no later than ninety (90)

days thereafter, another non-profit entity as a Designated Offeree; the alternative non-profit entity nominated by the Executive Director may become a Designated Offeree only if determined to be mutually acceptable to the Coastal Commission, the County, and the landowner, and shall thereafter be required to accept the Offer(s) within six (6) months of the landowner's determination of acceptability. In the event that the Executive Director of the California Coastal Commission designates such alternative non-profit entity, none of the aforementioned parties shall unreasonably withhold approval of that entity, provided that it has the demonstrated financial capacity and management experience to undertake management of the dedication area in question. If, pursuant to the foregoing procedures, none of the public or non-profit entities has accepted said Offer(s) within these timeframes, the landowner will regain full title and unencumbered use of the offered land constituting the Management Unit(s) subject to LCP land use designations; provided that the landowner may seek an LCP amendment regarding future use(s) of these lands.

4) **Effects of Legal Action Preventing Development and Proportional Dedication**

- a) Acceptance Conditioned on Vesting: Acceptance of the four Management Units identified in the Offer of Dedication pursuant to Subsection b)-2) above, will be qualified by the requirement that the conveyance of title shall not occur if the landowner is prevented from vesting the right to develop the cumulative residential dwelling unit/overnight/resort accommodation levels as specified in Subsection b)-2) above by operation of federal, State or local law, or by any court decision rescinding, blocking or otherwise adversely affecting the landowner's governmental entitlement to develop said units. At any time that the landowner is subsequently entitled to proceed with development in the manner specified in the approved LCP, all dedication requirements and provisions shall be automatically reinstated provided that the term of the Offer has not been exceeded.
- b) Development Halted for Ten (10) Years: Notwithstanding the last sentence of Subsection a) above, if the landowner is prevented from proceeding with development (i.e., legally unable to undertake development for the reasons

Water of
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identified in Subsection a) above) for an uninterrupted period of ten (10) years, the right to accept shall be suspended as it applies to the Management Unit(s) correlated with the type of development so halted (e.g., if the entitlement to develop overnight/resort accommodations has been halted for ten (10) years, the right of the Designated Offeree(s) to accept the Management Unit correlated with that development shall automatically be suspended). In such event, the right to undertake that type of development pursuant to the LCP shall likewise be suspended unless and until the landowner is legally authorized to proceed with that type of development previously halted. If the right to undertake any development pursuant to the LCP is halted as provided herein for a period of ten (10) years in any fifteen (15) year time period, the landowner shall have the right to terminate the Offer of Dedication and, in that event, the right to develop under the LCP shall automatically be suspended.

- c) Proportional Dedication: If the landowner has not been able to undertake the aforementioned development for a period of ten (10) years, the Designated Offeree(s) may only accept a proportional dedication in accordance with the following ratio:

Proportional Dedication — For each unit for which the landowner has received a certificate of occupancy, the Designated Offeree(s) may accept dedications in ratios of .76 acre for each such residential unit and .31 acre for each visitor accommodation unit or per each 1400 sq. ft. increment of the 2.66 million sq. ft. intensity allowed in PA 13 (whichever intensity level is achieved first).

Dedication areas accepted pursuant to the above proportional dedication requirement shall be located in accordance with the Management Unit sequencing identified on Exhibit I, with the precise location of the acreage to be contiguous with a previously accepted dedication area and/or adjacent to publicly owned park/open space land, and as specified by the accepting Designated Offeree(s) following consultation with the landowner.

- d) Management Unit I Reversion: In the event that the landowner is prevented, as specified in Subsection 4)-a) above, from completing (i.e., receiving certificates of use and occupancy for) the first one thousand (1,000) primary residential dwelling units, title to any lands accepted the by the Designated Offeree(s) in Management Unit I in excess of the Proportional Dedication ratio as applied to completed units shall revert to the landowner within six (6) months of the occurrence of the specified legal impediments to development.

5) Dedication Commitments — Effect of Landowner Delay in Development

- a) Areas Graded but Not Completed: For any development area that has been graded and remained unimproved (i.e., without streets, infrastructure, and permanent drainage systems) for a period of five (5) years following the commencement of grading, the Designated Offeree(s) may accept a dedication area in accordance with the proportional dedication formula in Subsection 4)-c) above, with the application of the formula based on the number of development units specified/authorized in the Coastal Development Permit which served as the governmental authorization for the grading activity. This provision shall not apply where the delay in vesting development rights on the land area in question has occurred as a result of the operation of federal, State or local law, or by any court decision rescinding, blocking, or otherwise adversely affecting the landowner's governmental entitlement to develop the specified units on said land area.
- b) Fifteen (15) Year Deadline for Completing All Dedications: All dedication increments that have not been eligible for acceptance pursuant to the provisions of Subsection 2) above may be accepted fifteen (15) years after the recording of the Offer of Dedication. Provided, however, that in the event the landowner is prevented from proceeding with development (i.e., unable to proceed voluntarily) by operation of federal, State, or local law, or by any court decision rescinding, blocking, or otherwise adversely affecting the landowner's governmental entitlement to develop, the fifteen (15) year timeframe for completing all acceptances of dedication increments shall be extended by a time period equal to

the amount of time the right to proceed with development has been suspended. This provision extending the fifteen (15) year time period shall not apply where the development project has been halted by a final, non-appealable court decision based upon the failure of the development project to comply with the certified LCP and/or CEQA. In the event the landowner becomes subject to a federal, State or local law, or any court decision which limits the allowable number of building permits which may be approved or issued each year (or within a given time period), the fifteen (15) year time frame for completing all acceptances of dedication increments shall be extended by a time period equal to the amount of time necessary for the landowner to obtain the maximum allowed building permits per year to complete the total development by the LCP; if the foregoing extension of the fifteen (15) year time period would exceed the term of the Offer, the landowner may either extend the term of the Offer or allow the Offer and any remaining entitlement at that time pursuant to the LCP to expire.

6) Acceptance of Dedication Increments

The acceptance of dedication increments shall be conditioned on a requirement that the dedication lands may be used only for purposes consistent with land uses allowed in the certified LCP and may be conveyed subsequent to the initial acceptance only to other Designated Offerees.

7) Dedication Area Access

Access to the dedication areas prior to any acceptance shall be limited to the County or other Designated Offeree (in the event that County's acceptance period for a particular Management Unit(s) has expired), its employees, licensees, representatives, and independent contractors acting within the scope of their employment by the County or other Designated Offeree solely for the purposes of surveying, mapping and planning activities related to future management of the dedication areas. Any such access shall be subject to landowner entry permit requirements regarding personal liability and personal security.

8) Property Description

A detailed property description for each Management Unit shall be set forth in the Offer of Dedication.

2. SPECIAL USE OPEN SPACE

The landowner shall dedicate Planning Areas PA 11A, PA 12A, and PA 12E, PA 12H and PA 12I to the County of Orange and PA 12G to the California Department of Parks and Recreation or the County of Orange as development of abutting residential areas occurs. The landowner shall receive local park credit for not less than five (5) acres of special use open space dedication. Area(s) designated as special use park shall be made separate parcels suitable for transfer to any succeeding city or local park operating agency in accordance with the following policies and procedures.

- a. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 1A, PA 1B, or PA 2A, the landowner shall record an Offer of Dedication for PA 11A¹.
- b. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 1C, PA 2B, PA 2C, PA 5, PA 4A, or PA 3A, the landowner shall record an Offer of Dedication for PA 12A¹.
- c. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 4A, PA 4B, PA 5, or PA 6, the landowner shall record an Offer of Dedication for PA 12E.
- d. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 7A, the landowner shall record an Offer of Dedication for PA 12H.

¹ Planning Areas PA 11A (Buck Gully) and PA 12A (Los Trancos Canyon) have been irrevocably offered to the County of Orange for dedication.

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d-e. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 7B, the landowner shall record an Offer of Dedication for PA 12I.

e-f. Prior to or concurrent with the recordation of the first final development map, other than a large-lot subdivision in PA 6, the landowner shall record an Offer of Dedication for PA 12G to the California Department of Parks and Recreation or the County of Orange which includes rights for both agencies to access their respective park properties¹.

f-g. The above offers shall be irrevocable continuing offers of dedication to the County of Orange or its designee for park purposes in a form approved by the Manager, EMA-Harbors, Beaches and Parks/Program Planning Division, suitable for recording fee title. The offers shall be free and clear of money and all other encumbrances, liens, leases, fees, easements (recorded and unrecorded), assessments and unpaid taxes in a manner meeting the approval of the Manager, EMA Harbors, Beaches and Parks Program Planning Division. The offers shall be in a form that can be accepted for transfer of fee title at any time by the County.

g-h. Notwithstanding the above procedures, offers of dedication may be made in a Parcel A and Parcel B sequence. Parcel A shall contain, to the greatest extent possible, the area to be included in the dedication and shall be offered for dedication at the time specified in Subsection a, b, and c above. The boundaries of Parcel A shall be determined through a review of the physical characteristics of the total planning area required for dedication excluding only those areas where the boundary for public open space cannot feasibly be determined until final development maps are processed. The boundaries of Parcel B shall be refined and offered for dedication upon the recordation of subsequent final maps for planning areas abutting the area to be dedicated. When appropriate, areas containing urban edge treatments, fuel modification areas, roads, manufactured slopes, and similar uses may be offered for dedication as scenic easements.

¹ Planning Area 12G may be offered for dedication to the California Department of Parks and Reception as part of a future agreement to offset any acreage reductions within Crystal Cove State Park used to expand the facilities at El Morro Elementary School.



County of Orange

Planning & Development Services Department

RECEIVED
South Coast Region

MAR 29 1999

CALIFORNIA
COASTAL COMMISSION

THOMAS B. MATHEWS
DIRECTOR

300 N. FLOWER ST.
THIRD FLOOR
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

TELEPHONE:
(714) 834-4643
FAX # 834-2771

DATE: March 26, 1999

NOTICE OF FINAL DECISION

On March 10, 1999 the Orange County Planning Commission took action to Conditionally Approve **Planning Application PA 98-0187 for Coastal Development Permit** by Irvine Community Development Company, 550 Newport Center Drive, Newport Beach CA. 92660. The approved proposal was the development and operation of the Muddy Canyon Recreation Center in Planning Area 12C of the Newport Coast Planned Community. This center will be owned and operated by the homeowners in the Newport Coast Phase IV development area (Planning Areas 3A, 3B, 4A and 4B). The project site is located north of Pacific Coast Highway, east of Newport Coast Drive and adjacent to Crystal Cove State Park. Assessors Parcel Number: 120-143-02

- AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.
- THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED WITHIN THE LOCAL APPEAL PERIOD.

County contact: William V. Melton, Project Manager
P&DSD/Site Planning Section
P. O. Box 4048, Santa Ana, CA 92702-4048

This project is in the coastal zone and (is/ is not) an "appealable development" subject to Coastal Commission appeal procedures.

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission, South Coast Area Office, 200 Oceangate, 10th Floor, Long Beach, CA. 90802-4302, or call (562) 590-5071.

MAIL TO:

California Coastal Commission

Attachments

A5-IRC-99-301
EXHIBIT 15

