

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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27-4863

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4/21/99


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April 21, 1999

TO: Commissioners and Interested Persons

FROM: Tami Grove, Deputy Director
Charles Lester, District Manager
Rick Hyman, Coastal Program Analyst

RECORD PACKET COPY

SUBJECT: **MONTEREY COUNTY: LOCAL COASTAL PROGRAM MAJOR AMENDMENT NO. 1-99.** For public hearing and Commission action at its meeting of May 13, 1999 at Flamingo Resort Hotel in Santa Rosa.

SUMMARY OF STAFF REPORT**DESCRIPTION OF AMENDMENT REQUEST**

Monterey County is proposing to amend the Land Use and Implementation portions of its Local Coastal Program to allow wetland fill of .05 acres at the corner of Highway One and Carmel Valley Road at the edge of the coastal zone in Monterey County, to facilitate construction of an additional right-turn lane. To approve the project under the amendment the following criteria would need to be satisfied:

- there is no reasonable alternative,
- public safety and welfare require the project,
- impacts are avoided and minimized,
- unavoidable impacts are mitigated,
- no critical habitat values are significantly disrupted,
- there are no adverse effect on the long-term survival of a species,
- compensatory mitigation is established off-site;
- mitigation is designed to accommodate, where possible, a 50-foot setback for intermittent streams, a 100-setback for perennial streams, and a 150 foot wetland setback.

This amendment was filed on April 12, 1999. The standard of review for a Land Use Plan is consistency with the Coastal Act, and the standard for an Implementation Plan amendment is that it must be consistent with and adequate to carry out the policies of the certified Coastal Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **approve** the proposed amendments as submitted by the County for the reasons given in this report. The proposed amendment is consistent with

Section 30233a(5) of the Coastal Act which allows wetland fill for incidental public works projects, provided that there are no feasible alternatives and that mitigation is included.

SUMMARY OF ISSUES AND COMMENTS

County and CALTRANS public hearings elicited substantial public comments on this proposed amendment. Several people supported the proposal. Proponents of the Hatton Canyon freeway preferred that solution to traffic problems rather than the highway widening that the proposed amendment would facilitate. One party does not believe the wetland fill is consistent with the Coastal Act's resource protection policies.

ADDITIONAL INFORMATION

For further information about this report or the amendment process, please contact Rick Hyman or Charles Lester, Coastal Commission, 725 Front Street, Suite 300, Santa Cruz, CA 95060; Tel. (831) 427-4863.

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I. STAFF RECOMMENDATION

MOTIONS AND RESOLUTIONS

A. APPROVAL OF LAND USE PLAN AMENDMENT #1-99

MOTION A:

*"I move that the Commission **approve** Major Amendment #1-99 to the Carmel Area Land Use Plan segment of the Monterey County Local Coastal Program as submitted by the County."*

Staff recommends a "YES" vote which would result in **approval** of this amendment as submitted. An affirmative vote by a majority of the appointed commissioners is needed to pass the motion.

RESOLUTION A:

The Commission hereby **approves** Major Amendment #1-99 to the Carmel Area Land Use Plan segment of the Monterey County local coastal program, as submitted for the specific reasons discussed in the recommended findings on the grounds that, as submitted, the amendment and the LUP as thereby amended meet the requirements of the Coastal Act. Approval will not have significant adverse environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

B. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT #1-99

MOTION B:

"I move that the Commission reject Major Amendment #1-99 to the Monterey County Local Coastal Program Implementation Plan as submitted by the County."

Staff recommends a "NO" vote which would result in **approval** of this amendment as submitted. Only an affirmative (yes) vote on the motion by a majority of the Commissioners present can pass the motion thereby rejecting the amendment (otherwise the amendment is approved as submitted).

RESOLUTION B:

The Commission hereby certifies Major Amendment #1-99 to the Implementation Plan of the Monterey County local coastal program, on the grounds that the amendment conforms with and is adequate to carry out the certified Land Use Plan; and approval of the amendment will not cause significant adverse environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

II. RECOMMENDED FINDINGS

The Commission finds and declares:

A. LAND USE PLAN AMENDMENT:

The proposed amendment would add the following text to *Carmel Area Land Use Plan* policy 2.3.1. Riparian1:

As a exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and

welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or affect the long-term survival of a species. Compensatory mitigation shall be established off-site. Mitigation shall be designed to accommodate, where possible, a 50-foot setback for intermittent streams, and a 100-foot setback for perennial streams.

Almost identical text would be added to policy 2.3.4.Wetland.1 except that it would specify a 150 foot wetland setback in the mitigation area (see Attachment A).

The test of approval is the Coastal Act. Section 30233 of the Coastal Act provides in part:

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

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

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

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(b) ...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division. (emphasis added)

Also, applicable is Section 30231:

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

To these ends the *Carmel Area Land Use Plan* has strict policies preventing fill in wetlands and requiring 100 foot buffers around them. It currently only allows for small-scale, resource-dependent uses in wetlands. Riparian corridors are similarly protected. Thus, the County is proposing the amendment to allow a needed highway project that potentially does not meet the existing *Plan* policies.

The area in question is a drainage swale at the edge of the coastal zone, running parallel to and below the inland edge of Highway One above Carmel Valley Road (see Attachments 2 and 3). There is a culvert under Carmel Valley Road and the drainage swale continues on its southerly side, eventually connecting to the main stream through Hatton Canyon to the east. Because the highway fill was placed across the normal flow of runoff from this hillside, water concentrates along the toe of the fill slope. The resultant moist conditions support the growth of willows and other species that would be ordinarily found in a natural riparian habitat area.

A biotic survey was performed in this area anticipated to be affected by the highway project that this amendment is designed to facilitate. Some parts of this drainage ditch in the area anticipated to be altered by the highway project meets the U.S. Army Corps of Engineers criteria for wetlands (soils, hydrology, and vegetation). Additional area (which is being defined as "other waters" of the United States) may also meet the Coastal Commission's and County's wetland definition (using the U.S. Fish and Wildlife Service's classification of Wetlands and Deep Water Habitats of the United States). The amount of wetland anticipated to be impacted is only .051 acres (2,315 square feet) in the Coastal Zone. An additional 8,700 square feet of associated riparian woodland habitat in the coastal zone may also be impacted. It should be noted that these determinations are not affected by the likelihood that the affected wetlands are entirely the product of highway construction, and the resultant alteration of natural hillside drainage patterns.

Coastal Act policy 30233 allows wetland fill only for limited uses (including incidental public services), and only where no feasible less damaging alternatives exist, and adequate mitigation is provided. Since the *Carmel Area Land Use Plan* governs the issuance of coastal permits, any criteria it contains for allowing wetland fill must be no less rigorous than these Coastal Act criteria. Because the amendment is being proposed to facilitate a specific project, it is also useful to know whether such a project can potentially meet these criteria.

The proposed amendment adequately meets these criteria. First, the amendment would allow an additional right-turn lane at an intersection where two roads (Highway One and Carmel Valley Road) already exist. The improvement is minor in the context of the overall amount of road development; it is not for a new road. It will relieve severe a traffic bottleneck but will not change road capacity overall. Thus, the wetland fill that the amendment would allow is for an incidental public service, consistent with part a(5) of Section 30233 and will be limited to relatively minor operational improvements for this portion of Highway One.

Second, the amendment requires a finding that there are no other reasonable alternatives to the project. If a reasonable alternative is found during the permit analysis, then the amendment would not allow for wetland fill, consistent with 30233(a). For example, at a regional level this analysis could compare this project to a project on another alignment such as the "Hatton Canyon Parkway". The Commission is already aware of the proposed Hatton Canyon Parkway, which could obviate the need for improvements to Highway One and its intersections if it was found to be a reasonable alternative. Most recently, though, the funding for that project has been eliminated by the Transportation Authority of Monterey County. It should also be noted that the project facilitated by this amendment is not, by itself, an alternative to the Hatton Canyon Parkway, but rather, is part of an original package of twelve operational improvements along Highway One to provide short-term traffic relief.

Also consistent with 30233(a), the amendment requires that mitigation measures be employed in several ways. These include avoidance of impacts, minimizing impacts, mitigation of unavoidable impacts, no significant disruption of habitat values and long-term species survival, compensatory mitigation for the wetland fill off-site, and setbacks from streams. The options are sufficient to result in adequate mitigation. Since the amendment would only allow one additional lane and since the area of potential impact is a narrow drainageway, the potential impact is not great. Given the right-of-way available in the immediate area, there should be

room to include some on-site mitigation such as rechannelling the drainage and replanting new roadway fill with native vegetation. And given CALTRANS property interests in the vicinity, including the nearby Hatton Canyon corridor and the intended mitigation bank restoration area at the Carmel River Lagoon, there should be adequate area in which to undertake the required compensatory creation of replacement wetland for any that is filled by the permitted project. Also, this amendment does not affect other already certified policies that will be applicable to the turn lane project, such as 2.3.3.5, which requires field surveys by qualified agency personnel and inclusion of mitigation measures to ensure habitat protection.

Overall, therefore, the proposed language meets the three Section 30233(a) tests. The amendment may be approved because the *Carmel Area Land Use Plan*, as amended, will remain consistent with the Coastal Act.

Finally, the Commission notes that the County has conceptually approved a coastal development permit for the additional turn lane in conjunction with approving this amendment. After this Commission action on the amendment, the County must act to finally approve this amendment and put it into effect and also to give its final approval to the coastal permit. As a major public works project*, the coastal permit could be appealed to the Coastal Commission (whether approved or denied by the County). At that time, the Commission would examine whether the County's action on the project was consistent with the criteria established in this amendment. Assuming the County's action was to approve the project, these considerations would include whether there were any feasible alternatives and if not, whether there was adequate mitigation. These findings note that potentially these criteria can be met. However, the Commission's action on this amendment does not in any way imply approval of the specific proposed project because the Commission is not yet reviewing how the project (as may be conditioned by the County) satisfies the criteria of the amended land use plan. Furthermore, any use of the Carmel River Lagoon mitigation bank as compensatory mitigation for this project would have to satisfy condition #7 of coastal permit # 3-96-033 issued by the Commission for that banking project (see Attachment D).

B. IMPLEMENTATION PLAN AMENDMENT

The proposed implementation plan amendment would add similar language to that proposed for the land use plan amendment to the following Code Sections: 20.146.040; 20.146.040.B1; 20.146.040.B2; and 20.146.040C.2 (see Attachment A). These sections implement the land use plan policies proposed for amendment. Other sections, addressing habitat protection, such as 20.146.040.B6 requiring consultation with the Department of Fish and Game, as well as incorporation as permit conditions the recommendations of the Department of Fish and Game, would not be altered by this amendment and would be applied to the subject project. Thus, the implementation plan amendment can be approved because, the plan as amended will remain consistent with and adequate to carry out the certified land use plan, as amended.

* Note: Although incidental for purposes of Coastal Act Section 30233, Section 13012 of the Commission's regulations defines a "major public work" as projects costing more than \$100,000 (slightly more when adjusted for inflation). This project would cost approx. \$500,000.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission's review and development process for Local Coastal Programs and amendments to them has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does utilize any environmental information that the local government has developed. In this case the County approved a Negative Declaration for the amendment. Approval of the amendment complies with the California Environmental Quality Act. As discussed above, it will not have significant environmental effects for which feasible alternatives or mitigation measures have not been employed. As noted, the amendment builds in the consideration of feasible alternatives and mitigation measures in any future project approval.

**MONTEREY COUNTY: LOCAL COASTAL PROGRAM MAJOR AMENDMENT
NO. 1-99**

ATTACHMENT A

FULL TEXT OF PROPOSED AMENDMENTS

Proposed additions in bold

Attachment "A"

RECOMMENDED AMENDMENTS TO THE CARMEL AREA LAND USE PLAN AND COASTAL IMPLEMENTATION PLAN.

The proposed wording for the amendments to the Carmel Area Land Use Plan and Coastal Implementation Plan are highlighted.

Recommended Amendment to the *Carmel Area Land Use Plan*:

Section 2.3.4 Riparian Corridors and Other Terrestrial Wildlife Habitats (Specific Policy)

1. **Except as provided herein**, riparian plant communities shall be protected by establishing setbacks consisting of a 150-foot open space buffer zone on each side of the bank of perennial streams and 50 feet on each side of the bank of intermittent streams, or the extent of riparian vegetation, whichever is greater. No new development, including structural flood control projects, shall be allowed within the riparian corridor. However, improvements to existing dikes and levees shall be allowed if riparian vegetation damage can be minimized and at least an equivalent amount and quality of replacement vegetation is planted. In addition, exceptions may be made for carefully sited recreational trails. The setback requirement may be modified if it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation. Riparian vegetation is an association of plant species which typically grows adjacent to freshwater courses and needs or tolerates a higher level of soil moisture than dryer upland vegetation. **As an exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or affect the long term survival of a species. Compensatory mitigation shall be established off-site. Mitigation shall be designed to accommodate, where possible, a 50-foot setback for intermittent streams, and a 100-foot setback for perennial streams.**

Section 2.3.4 Wetland and Marine Habitats (Specific Policy)

1. **Except as provided herein**, a setback of 100 feet from the edge of all coastal wetlands shall be provided and maintained in open space use. No new development shall be allowed in this setback area. The edge of wetlands shall be pursuant to policy 2.3.3.5, based on the wetlands definition in policy 2.3.3.1 and using the U.S. Fish and Wildlife Service's classification of Wetlands and Deep Water Habitats of the United States. **As an exception, an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or affect the long term survival of a species. Compensatory mitigation shall be established off-site. Mitigation shall be designed to accommodate, where possible, a 150-foot setback for coastal wetlands.**

Recommended Amendment for the *Monterey County Coastal Implementation Plan*:

Section 20.146.040 Environmentally Sensitive Habitats Development Standards

Except as provided herein, the intent of this section is to provide development standards to protect the environmentally sensitive habitats of the Carmel Coastal Segment. These areas are unique, limited and fragile resources of statewide significance, important to the enrichment of present and future generations of County residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored. All categories of land use, both public and private, shall be subordinate to the protection of these critical areas. **As an exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or result in a significant effect on the long term survival of a species.**

B. General Development Standards

1. **Except as provided herein**, only small-scale development necessary to support resource-dependent uses may be located in

environmentally sensitive habitat areas if they can not be feasibly located elsewhere. As an exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or result in a significant effect on the long term survival of a species.

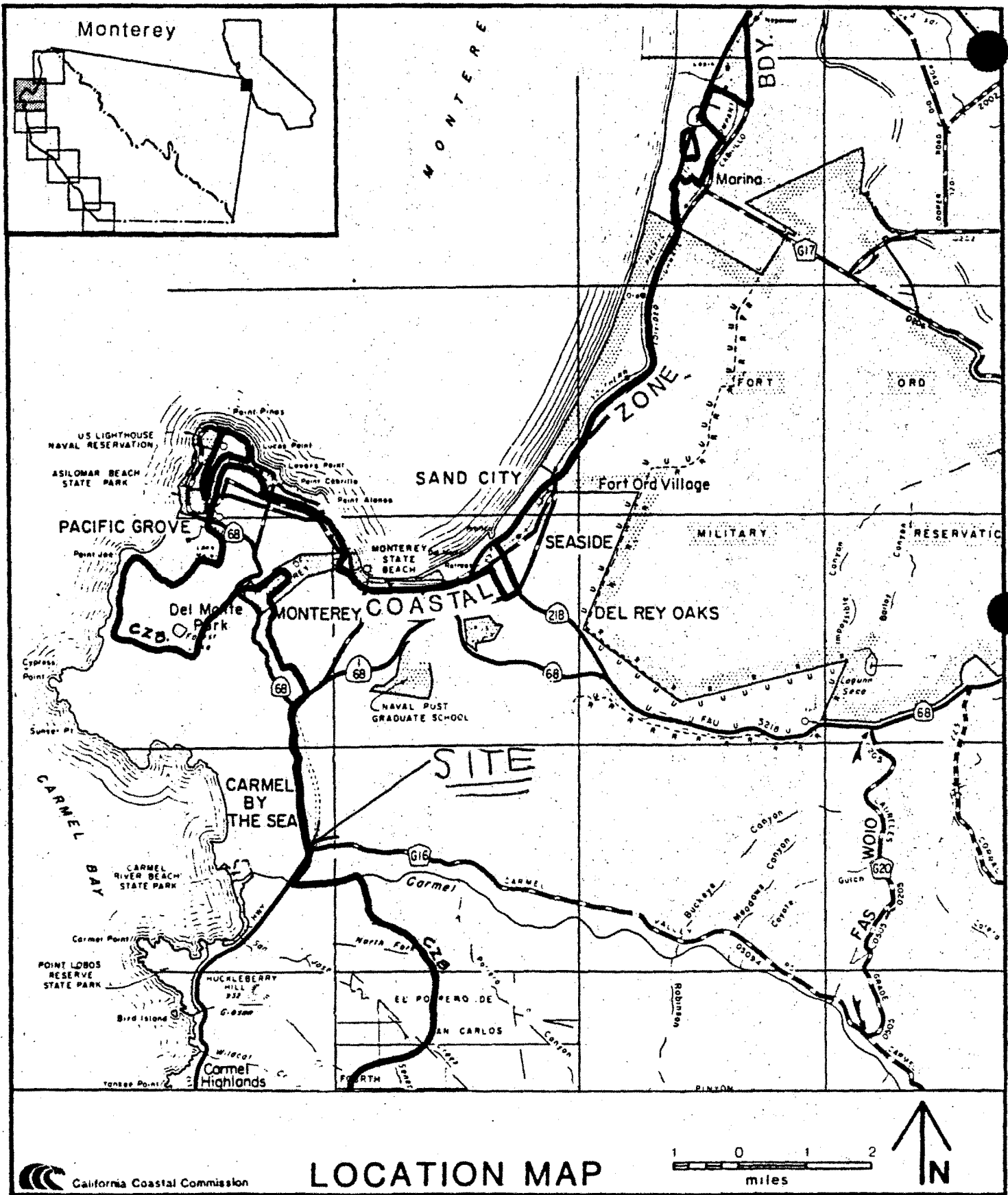
2. **Except as provided herein, only resource-dependent uses, including nature education and research, hunting, fishing and aquaculture, shall be allowed within environmentally sensitive habitats. Findings must be made with appropriate supporting data that such uses will not cause significant disruption of habitat values. As an exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that the impacts will not result in a significant disruption of critical habitat values or result in a significant effect on the long term survival of a species.**

C. Specific Development Standards

2. Riparian Corridors and Other Terrestrial Wildlife Habitats

d. **Except as provided herein, no new development, including structural flood control projects, shall be allowed within the riparian corridor. Improvements to existing dikes and levees are allowed if riparian vegetation damage can be minimized and at least an equivalent amount and quality of replacement vegetation is planted. Exceptions may be made for carefully sited recreational trails. As an exception, the construction of an additional right-turn lane from Carmel Valley Road onto northbound Highway 1 shall be allowed if it can be demonstrated that there is no reasonable alternative, public safety and welfare require the project, all reasonable measures have been taken to avoid and minimize impacts, all reasonable measures have been taken to mitigate unavoidable impacts, and it can be demonstrated that**





the impacts will not result in a significant disruption of critical habitat values or result in a significant effect on the long term survival of a species.




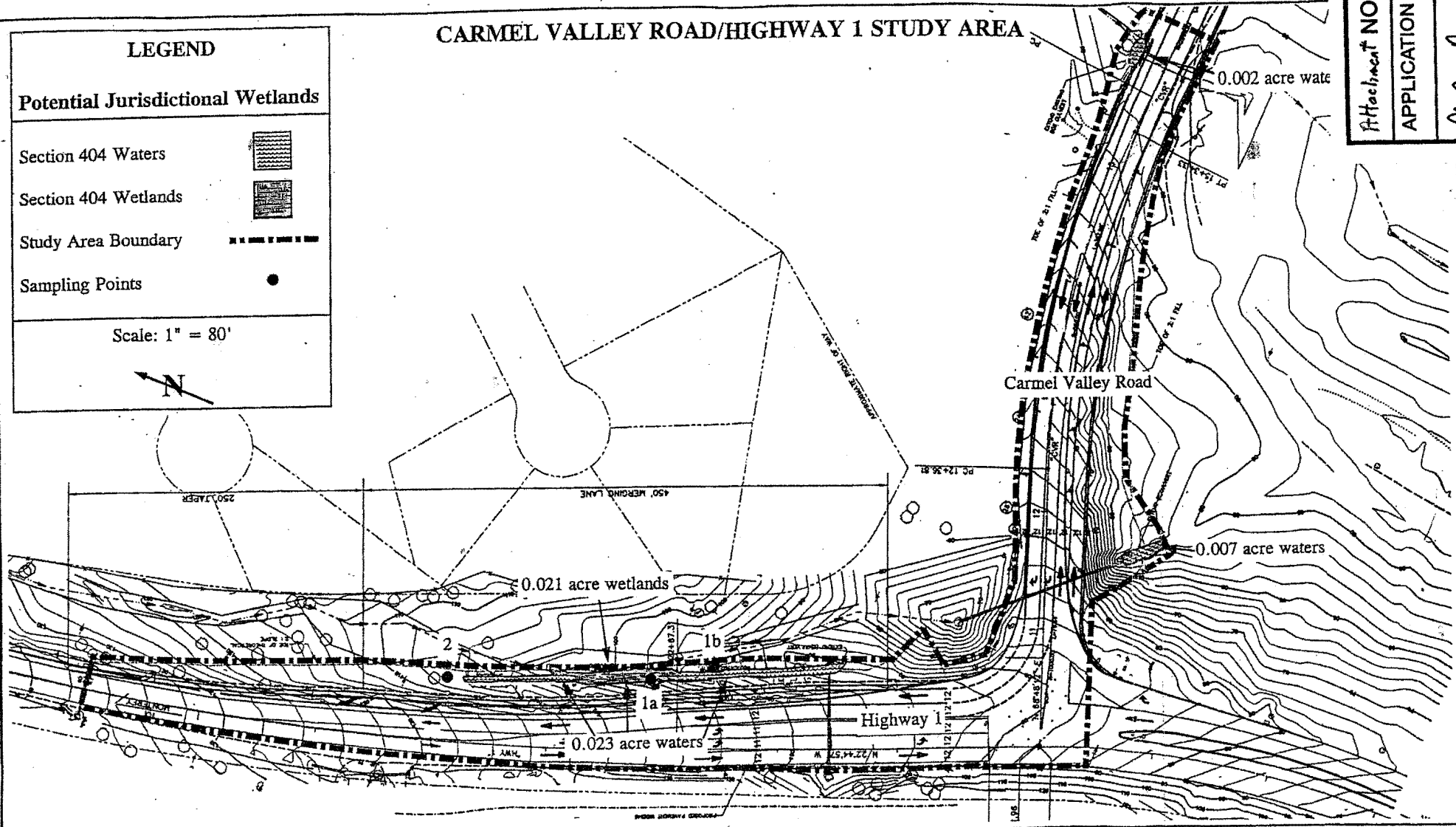
CARMEL VALLEY ROAD/HIGHWAY 1 STUDY AREA

LEGEND

Potential Jurisdictional Wetlands

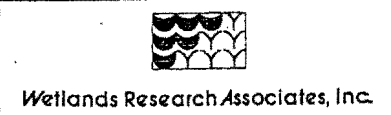
- Section 404 Waters 
- Section 404 Wetlands 
- Study Area Boundary 
- Sampling Points 

Scale: 1" = 80'

Attachment NO. C
 APPLICATION NO.
 MoCo. Amend. #1-99
 Wetland map






Figure 2. Sampling Point Locations and Potential Wetland Boundaries

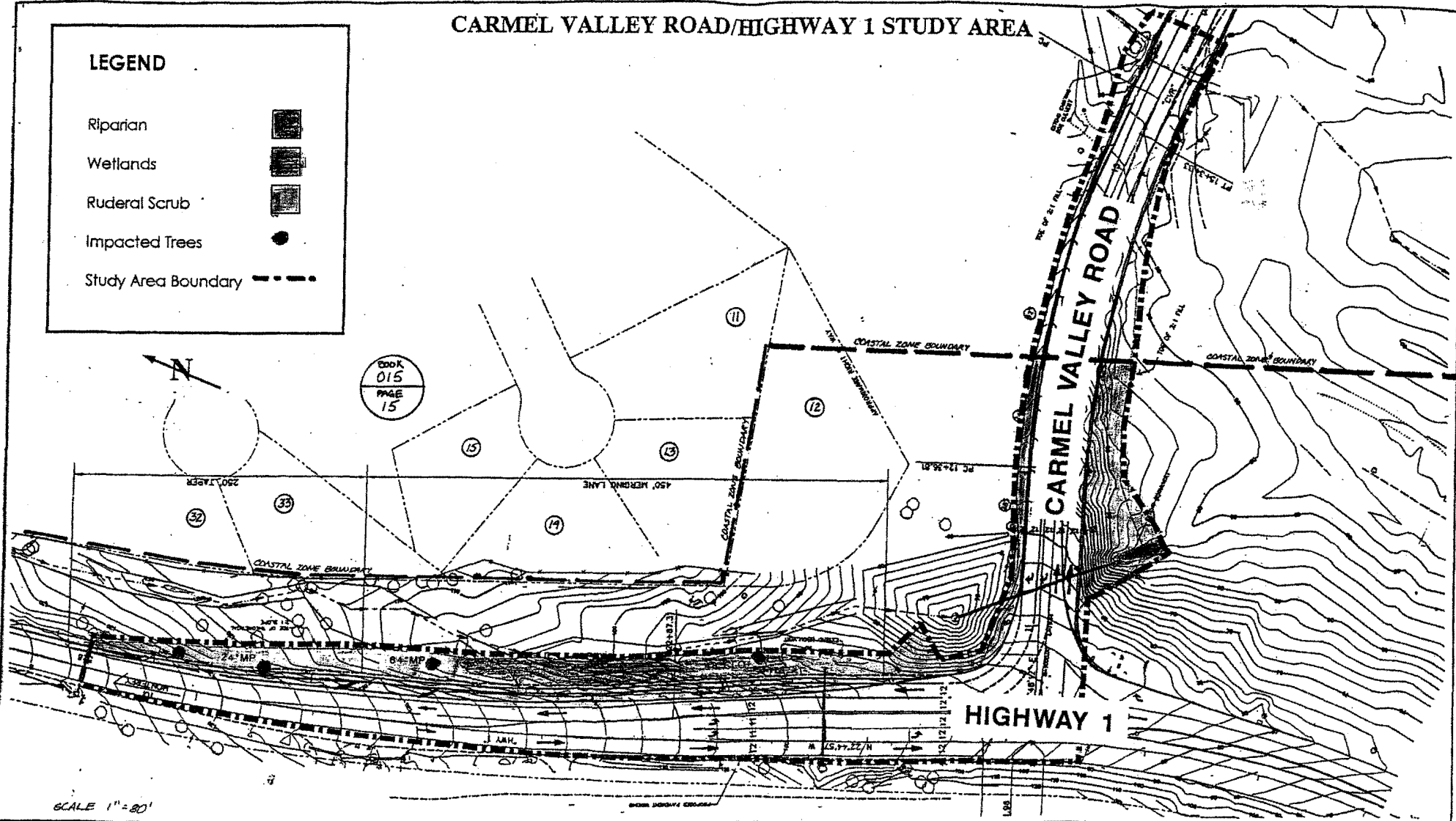


Att. C cont
MoCo #1-99

CARMEL VALLEY ROAD/HIGHWAY 1 STUDY AREA

LEGEND

- Riparian 
- Wetlands 
- Ruderal Scrub 
- Impacted Trees 
- Study Area Boundary 



Botanical Map

APPLICANT
California Department
of Transportation

- replanting in accordance with the submitted phasing plan;
- installing and irrigating restoration plantings for up to five years or until they become established, whichever is first;
- maintaining mitigation planting areas by annual (or more frequent) inspection for and eradication of, invasive exotic vegetation (e.g., pampas grass, broom, German ivy, Kikuyu grass, etc.);
- providing, and conforming to, a schedule for the above steps.

6. Monitoring Program

PRIOR TO COMMENCEMENT OF CLEARING OR GRADING, the permittee shall submit for review and approval by the Executive Director the final performance monitoring criteria, methodology, and schedule. At a minimum there shall be: (a) the "time-zero" report including as-built drawings, produced immediately after project completion and (b) three annual reports, the first due one year from the date of the required submittal of the "time-zero" report. An environmental monitor, contracted with and paid for by the permittee or other responsible agency (or qualified CALTRANS personnel), and acceptable to the Executive Director, shall be responsible for submitting the monitoring reports and ensuring conformance with these permit requirements. This condition can be superseded by a future action of the Coastal Commission (e.g., a subsequent permit) allowing alternative monitoring and maintenance responsibility for the site and without the necessity to amend this permit.

7. Proposed Carmel River Mitigation Bank (CRMB)

This permit allows the habitat restoration work needed for the proposed Carmel River Mitigation Bank; but, a future, separate action by the Commission will be required to authorize signature of the CRMB agreement document or to use the CRMB for off-site mitigation credits for any particular project elsewhere within the Commission's jurisdiction. The applicant is advised that no specific mitigation ratios are herein applied to the proposed "Mitigation Bank" site. They will be determined through future Coastal Commission action based on consideration of the habitat quality and quantity of both the impacted and mitigation areas.

Any such request for future Coastal Commission action shall be submitted to the Executive Director for determination of the appropriate type of review. Such a request shall be accompanied by:

- a final mitigation agreement which conforms with the federal guidelines for mitigation banks (*Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, Federal Register Notice; March 6, 1995*); which embodies the concepts of conformance with Coastal Act Section 30233a and avoidance of wetland impacts, like-for-like mitigation, no credits for existing wetlands, and no double counting of credits; and, which also specifies permanent maintenance responsibilities;
- a final Carmel River Lagoon Enhancement Plan or equivalent that includes breaching criteria for the River mouth (see condition #8).

Attachment NO. D
APPLICATION NO.
Mo Co Amend # 1-99
condition of cdp 3-96-33