

CALIFORNIA COASTAL COMMISSION

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



Filed: January 19, 1999
49th Day: March 9, 1999
180th Day: Extended
Date of Extension: May 14, 1999
Length of Extension: 90 Days
Final Date for Commission Action: August 12, 1999
Staff: SFR-LB
Staff Report: July 22, 1999
Hearing Date: August 10-13, 1999
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-027

APPLICANT: Robert and Rita Skora **AGENT:** None

PROJECT LOCATION: 501 West Avenida De Los Lobos Marinos, City of San Clemente, Orange County

PROJECT DESCRIPTION: Removal of a failed railroad tie retaining device and installation of a new two tier board and revetment system. The first tier will be 35' long. The second tier will be 50' long. Both tiers will each be approximately 2' above grade.

LOCAL APPROVALS RECEIVED: City of San Clemente approval in concept dated December 21, 1998.

SUBSTANTIVE FILE DOCUMENTS: Limited Geotechnical Assessment of As Constructed Pipe and Board Revetment System on Canyon Terrain of 401 West Calle de Los Lobos Marinos, San Clemente, California by William Munson dated March 16, 1999. City of San Clemente Certified Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION:

This permit application is an after-the-fact permit for a constructed pipe and board revetment system in a coastal canyon. Commission staff recommends that the Commission approve the proposed project with 3 special conditions. These special conditions relate to: a future improvements deed restriction, submission and implementation of a landscaping plan, and compliance with the special conditions.

The City of San Clemente does not have a certified Local Coastal Program (LCP). Accordingly, the Commission will review this application for consistency with Chapter 3 of the Coastal Act. The City of San Clemente certified Land Use Plan (LUP) designates coastal canyons such as Los Marinos Canyon as environmentally sensitive habitat areas (ESHA). Though designated as ESHAs these canyons have

been significantly degraded by adjacent urban development to the point that some portions do not actually possess significant habitat value. The project site is located in such an area. Consistent with Section 30240 of the Coastal Act, the certified LUP mandates that development occurring in the coastal canyons and adjacent to the coastal canyons enhance habitat values of the coastal canyons. Consequently, the major Coastal Act issue raised by the two tier pipe and board revetment system is its consistency with Section 30240 of the Coastal Act and its ability to enhance Los Marineros Canyon as an environmentally sensitive habitat area.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

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

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

III. SPECIAL CONDITIONS

1. Future Development Deed Restriction

A. This permit is only for the development described in coastal development permit No. 5-99-027. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the entire parcel as generally depicted in Exhibit 6. Accordingly, any future improvements, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), which are proposed within the parcel shall require an amendment to Permit No. 5-99-027 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Landscape Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a plan for landscaping to enhance the habitat values of Lobos Marinos Canyon. The plan shall be prepared by a licensed landscape architect and shall apply to the area generally depicted in Exhibit 7.

1. The plan shall demonstrate that:

- (a) all vegetation planted on the restoration area will consist of native, drought-tolerant plants,**
- (b) all non-native plants in the restoration area shall be eradicated.**
- (b) all planting will be completed within sixty (60) days of issuance of this permit,**
- (c) No permanent irrigation system shall be allowed within the property. Temporary above ground irrigation to allow the establishment of the plantings is allowed.**
- (d) all required plantings will be maintained in good growing conditions through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and**

2. The plan shall include, at a minimum, the following components:

- (a) a map showing the type, size, and location of all plant materials that will be on the developed site, topography of the developed site, and all other landscape features, and,**
- (b) a schedule for installation of plants.**

B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to

this coastal development permit unless the Executive Director determines that no amendment is required.

3. CONDITION COMPLIANCE

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the condition hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. **Project Description and Location**

The applicant proposes to remove a failed railroad tie revetment and construct a new two tier pipe and board revetment system for purposes of minimizing erosion and to resolve surficial terrain instability problems (Exhibits 3 through 5). The first tier will be 35' long. The second tier will be 50' long. Both tiers will each be approximately 2' above grade. According to the applicant, the two tier board and revetment system replaced a failed fifty foot long by four foot high railroad tie retaining structure. According to the applicant, the railroad tie retaining structure was built circa 1970 and failed as a result of ground saturation by the heavy El Niño rainstorms of February 1998. The failed railroad tie retaining structure was removed in December 1998 and replaced by the two tier pipe and board revetment

The proposed project will be occurring in Los Marinos Canyon one of the seven coastal canyons designated in the certified Land Use Plan of the City of San Clemente as an ESHA. The project location is just to the rear of the property located at 501 West Avenida de Los Lobos Marinos. Though the property is located to the rear of 501 Avenida de Los Lobos Marinos, the address of the property owner is 401 Avenida de Los Lobos Marinos (Exhibits 1 and 2)

B. **Environmentally Sensitive Habitat**

The proposed development is located in Lobos Marinos Canyon, one of seven coastal canyons designated as ESHAs in the City of San Clemente's certified LUP. Though the canyon is designated as an ESHA in the certified LUP, for the reasons discussed below, the project site itself is not an ESHA as defined in Section

30107.5 of the Coastal Act due to the lack of native vegetation. Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30107.5 states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The City of San Clemente certified Land Use Plan recognizes that the coastal canyons contain important natural habitat. Though the coastal canyons contain natural habitat, the land use plan notes that the coastal canyons represent remnants of what was once a much larger habitat zone. As with the other canyons Lobos Marinos Canyon is rimmed by residences. Consequently the habitat quality of the this canyon has been affected by adjacent urban development. The vegetation in this coastal canyon is a mixture of native coastal sage chaparral plants and introduced non-native plants and trees. No rare or endangered plants or animals have been reported to exist within this coastal canyon.

Though the overall habitat quality of the coastal canyons has been adversely impacted by adjacent urban development, the City of San Clemente has policies in its certified Land Use Plan to promote habitat restoration of the coastal canyons. Policy XV.1 of the City's certified LUP encourages activities which improve the natural biological value, integrity and corridor function of coastal canyons through vegetation restoration and the control of alien plants and animals. Policy XV.2 is a repeat of Section 30240 of the Coastal Act.

Based on the project's location (in a coastal canyon designated as an ESHA), Coastal Commission and Department of Fish and Game staff conducted a site visit (Exhibit 8) to evaluate habitat values at the project site and to determine if the project had an adverse impact on the existing habitat within Lobos Marinos Canyon. Commission staff observed that the project site itself is highly disturbed in that it has been cleared and planted with non-native plants. The project site can be characterized as an artificially leveled terrace on the slope of Lobos Marinos Canyon. Vegetation in the immediate proximity of the board and pipe revetment

consisted of non-native grasses and herbaceous weedy plants. Though there are no public views of the project site, Commission staff notes that the non-native vegetation which has grown back camouflages the existing pipe and board revetment system. Furthermore, just to south of the project site there exists an artificially leveled area containing mature avocado trees and a railroad tie retaining structure. However, as one moves down slope from the project site towards the base of the canyon there is increasing natural habitat. Accordingly, the Commission finds that the project is proposed within a non-native habitat area adjacent to rather than within the natural habitat area.

In summarizing the site visit the Department of Fish and Game (Exhibit 8) notes that the canyon overall warrants its status as an ESHA since it supports viable native habitat. Relative to the impact of the pipe and board revetment on the biological values, the report concluded that the replacement of the railroad tie retaining wall was not a significant impact when viewed in light of the site's reported previous condition. The report goes on to note, that if the project site is left in its current condition, it would contribute to the progressive loss of native habitat. The Department consequently recommends that the site be re-vegetated with appropriate native plants to assure that the habitat values of Lobos Marinos Canyon are enhanced.

Consistent with Section 30240 regarding development adjacent to environmentally sensitive habitat areas and the requirements of the City's certified land use plan the Commission finds it necessary to impose special conditions which will enhance the biological habitat values of Lobos Marinos Canyon. First, the Commission is imposing a special condition to require a future improvements deed restriction for the area depicted in Exhibit 6 to assure that future development in the this particular portion of Lobos Marinos Canyon can be adequately evaluated to promote habitat values. Next the Commission is imposing a special condition to require that the project area, generally depicted in Exhibit 7, be planted with native vegetation. This will be accomplished through the submission of a landscaping plan prepared by a licensed landscape architect which shall show the area as planted with native vegetation and that all non-native vegetation be removed. Temporary irrigation necessary for establishing the plantings will be allowed. Both the future improvements deed restriction and the landscaping plan shall be subject to the review and approval of the Executive Director.

The proposed development will restore a degraded habitat area through the planting of native vegetation which will restore and enhance the functionality of the habitat at the project site. The Commission has conditioned the applicant for a future improvements deed restriction and to develop and implement a landscaping plan composed of native vegetation. Therefore, the Commission finds that the project, as conditioned, is consistent with section 30240(b) of the Coastal Act.

C. Land Use Plan

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the IP portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. As conditioned, the proposed development is consistent with the of Chapter 3 of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

D. Unpermitted Development

Development has occurred on site without the benefit of a coastal development permit. This development does not qualify as an exempt form of development under Section 13250 of the California Code of Regulations since it involves the removal of vegetation, removal of a structure, and grading within a coastal canyon which has been designated as an ESHA in the City's certified LUP. Section 13250(b)(2) states that any significant alteration of landforms including removal or placement of vegetation in an area designated by resolution of the Commission as significant natural habitat requires a permit. In approving the City's certified LUP the Commission found the coastal canyons as meeting this criteria. The unpermitted development consists of the removal of an existing railroad tie retaining structure and the construction of a two tier pipe and board revetment system. The first tier will be 35' long. The second tier will be 50' long. Both tiers will each be approximately 2' above grade. According to the applicant, the two tier board and revetment system replaced a failed fifty foot long by four foot high railroad tie retaining structure. According to the applicant, the railroad tie retaining structure was built circa 1970 and failed as a result of ground saturation by the heavy El Niño rainstorms of February 1998. The failed railroad tie retaining structure was removed in December 1998 and replaced by the two tier pipe and board revetment

The applicant has submitted an application to obtain a coastal development permit after-the-fact. To assure that the proposed special condition 1 and 2 are complied

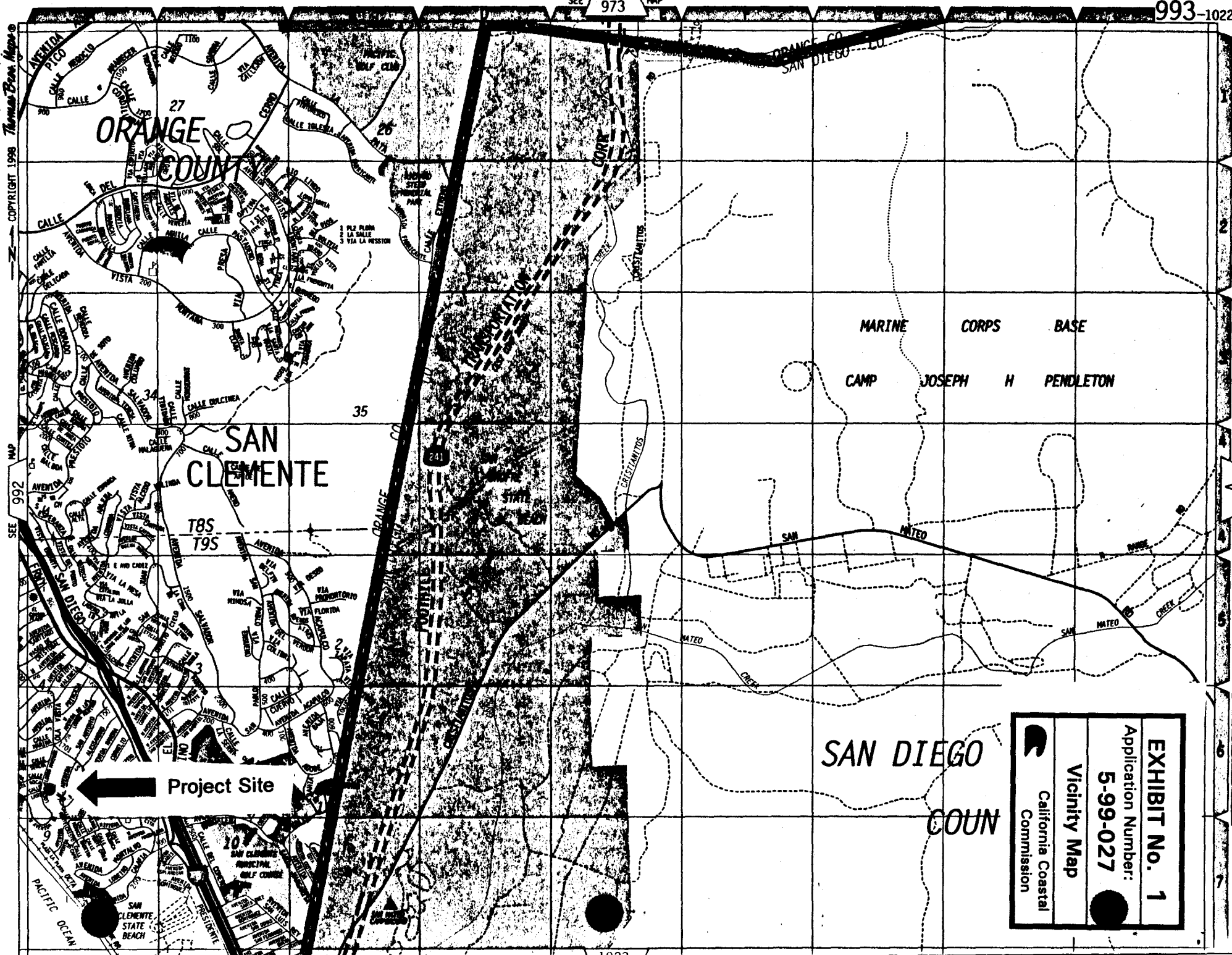
within a timely manner the Commission is imposing a special condition to require that all prior to issuance special conditions be met within ninety (90) days of Commission action.

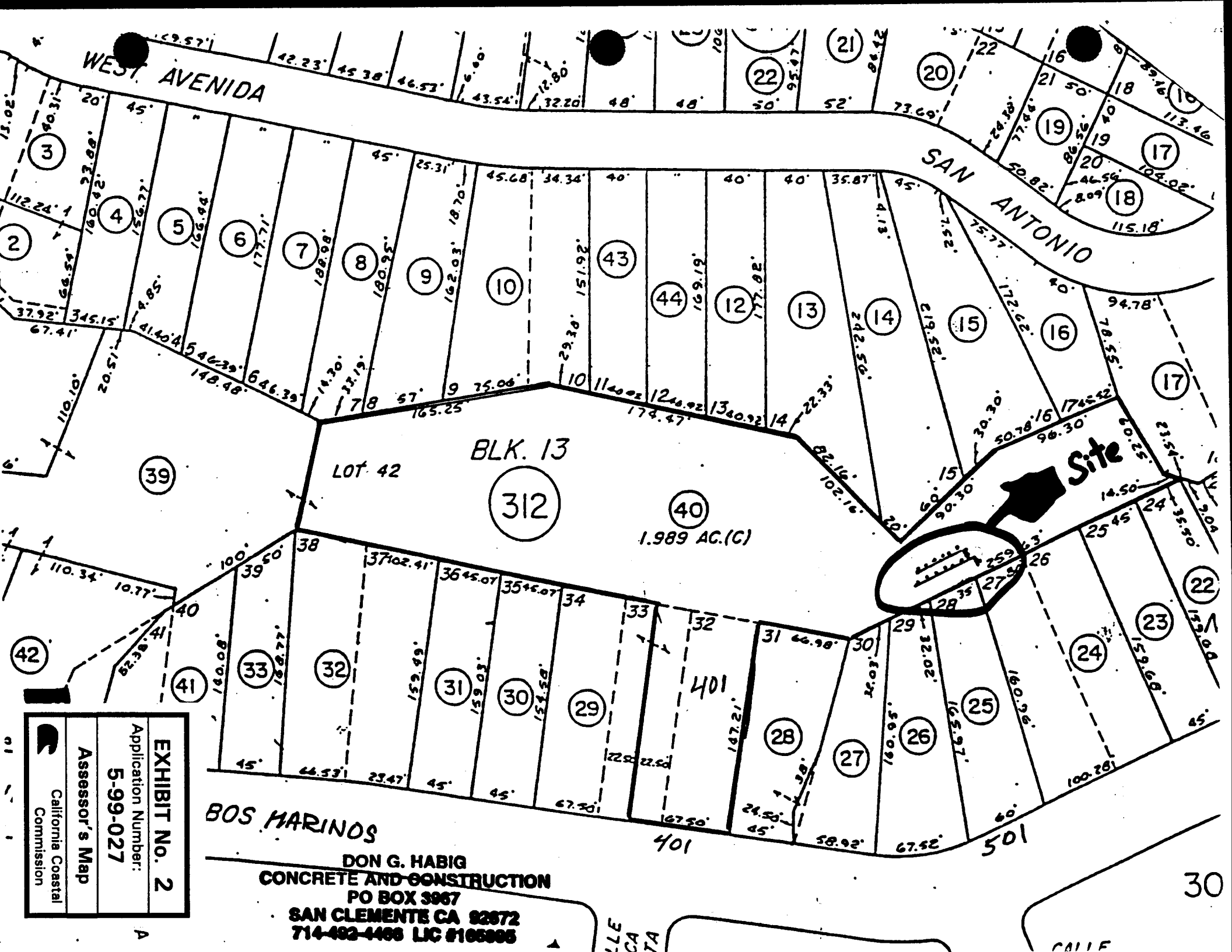
Although development has taken place prior to the submittal of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

E. California Environmental Quality Act

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

The project is located in a coastal canyon designated as environmentally sensitive habitat. The proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal resources and has been conditioned to: develop and implement a landscaping plan consisting of native vegetation, to record a future improvements deed restriction, and to fulfill the prior to issuance requirements within ninety days of Commission action. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



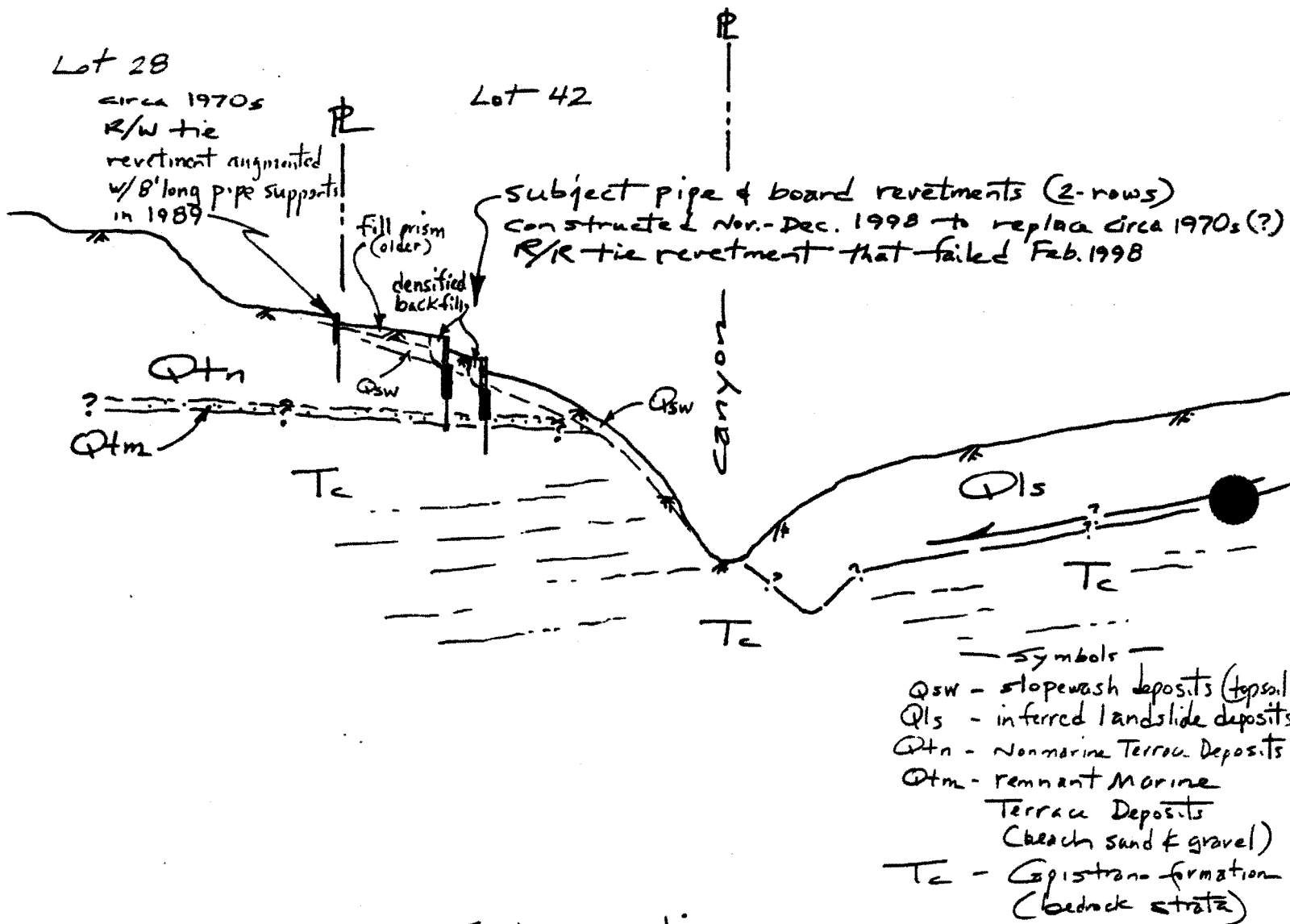


DATE: 3-12-99

PROJECT NAME: Don Habig Concrete & Construction

LOT 42 TRACT 852
Block 13

PROJECT ADDRESS: 401 West Avenida de Los Lobos Marinos
San Clemente, CA



Schematic Geotechnical Section

NOTE: All surface & subsurface relationships are estimated

Scale: 1" = 20' (h=v)

☒ ATTACHMENT TO ☒ REPORT ☐ MEMORANDUM DATED 3/12/99

EXHIBIT No. 3

Application Number:

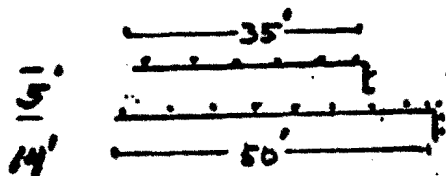
5-99-027

Plan View

California Coastal
Commission

18 Via C.
San Clemente, CA 92672

LOT
42



LOT
28

WOOD REVETMENT TO
REPLACE FAILED RAILROAD
TIE RETAINER.

COMPACTED SOIL

PLANT
DRAUGHT
RESISTENT
PLANTS
AND
GROUND
COVER

2X12" TREAT
LUMBER BOL
TO POSTS

CONCRETE
COLLAR
4' DEEP

TO
CANYON

2" PIPE
10' LONG POSTS

WOOD REVETMENT
DESIGN

DON G. HABIG
CONCRETE AND CONSTRUCTION
PO BOX 3967
SAN CLEMENTE CA 92672
714-492-4466 LIC #165895

501

AVE DE LOS LOBOS MARINOS

EXHIBIT No. 4

Application Number:

5-99-027

Plan View

California Coastal
Commission

DATE: 3-12-99

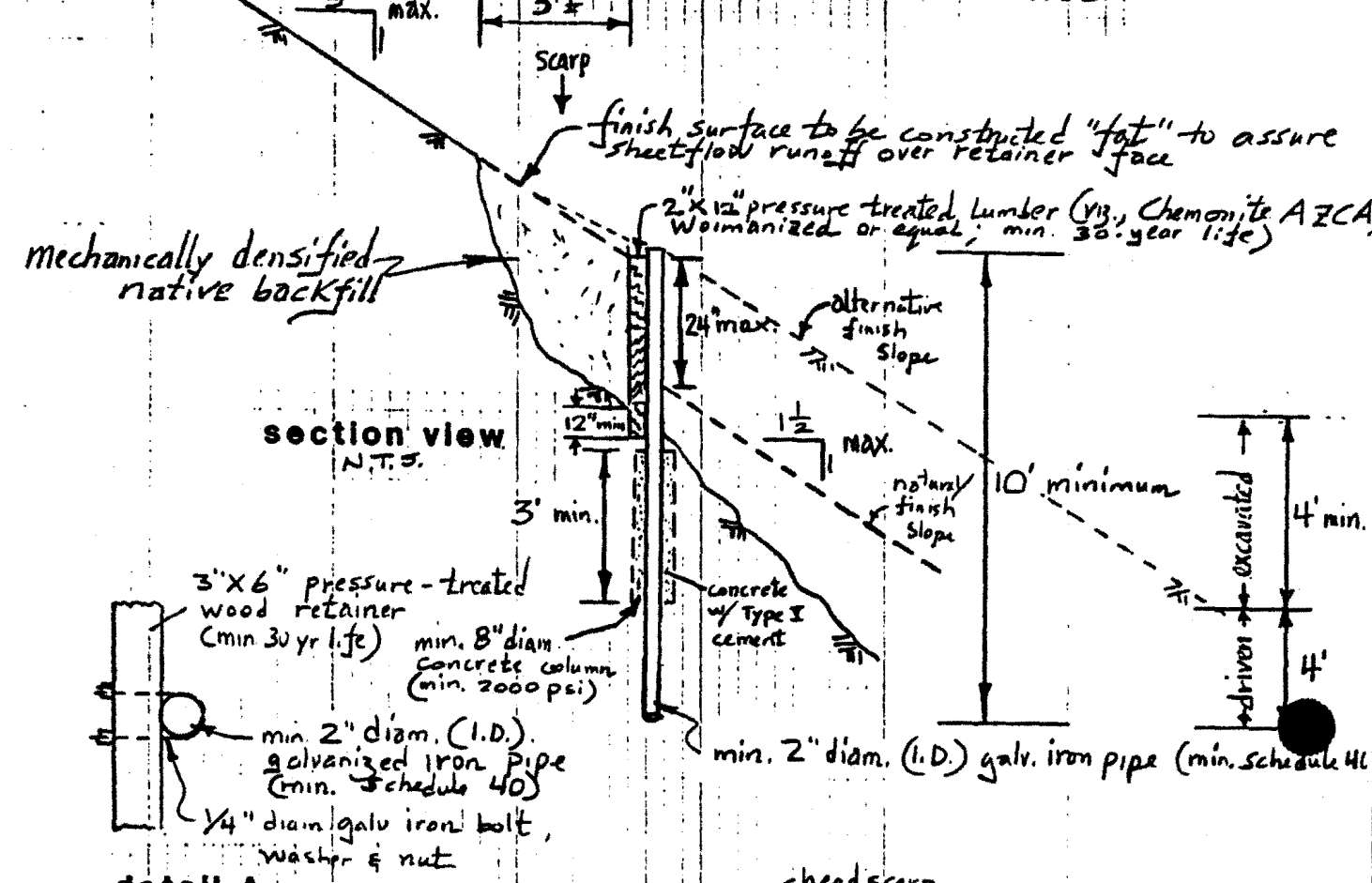
PAGE 1 OF 1

PROJECT NAME:

TRACT

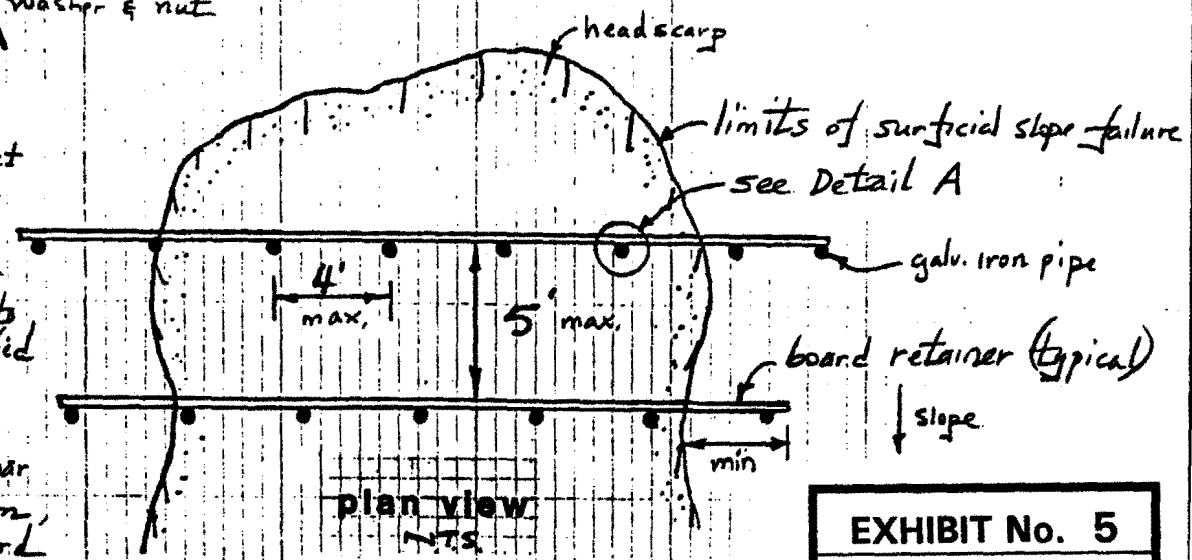
PROJECT ADDRESS:

SURFICIAL SLOPE FAILURE MITIGATION METHOD



detail A
N.T.S.

- Notes:
- Top row to be max. 5-foot horiz. from scarp and/or top of slope
 - All backfill soil & other "worked" soil on slope to be mechanically densified to firm prior to landscape planting
 - For alternative planar finish slope condition, min. 3 ft. high board retainer, etc., may be constructed below grade w/ top of board retainer flush w/ slope surface.



SCHEMATIC DETAIL

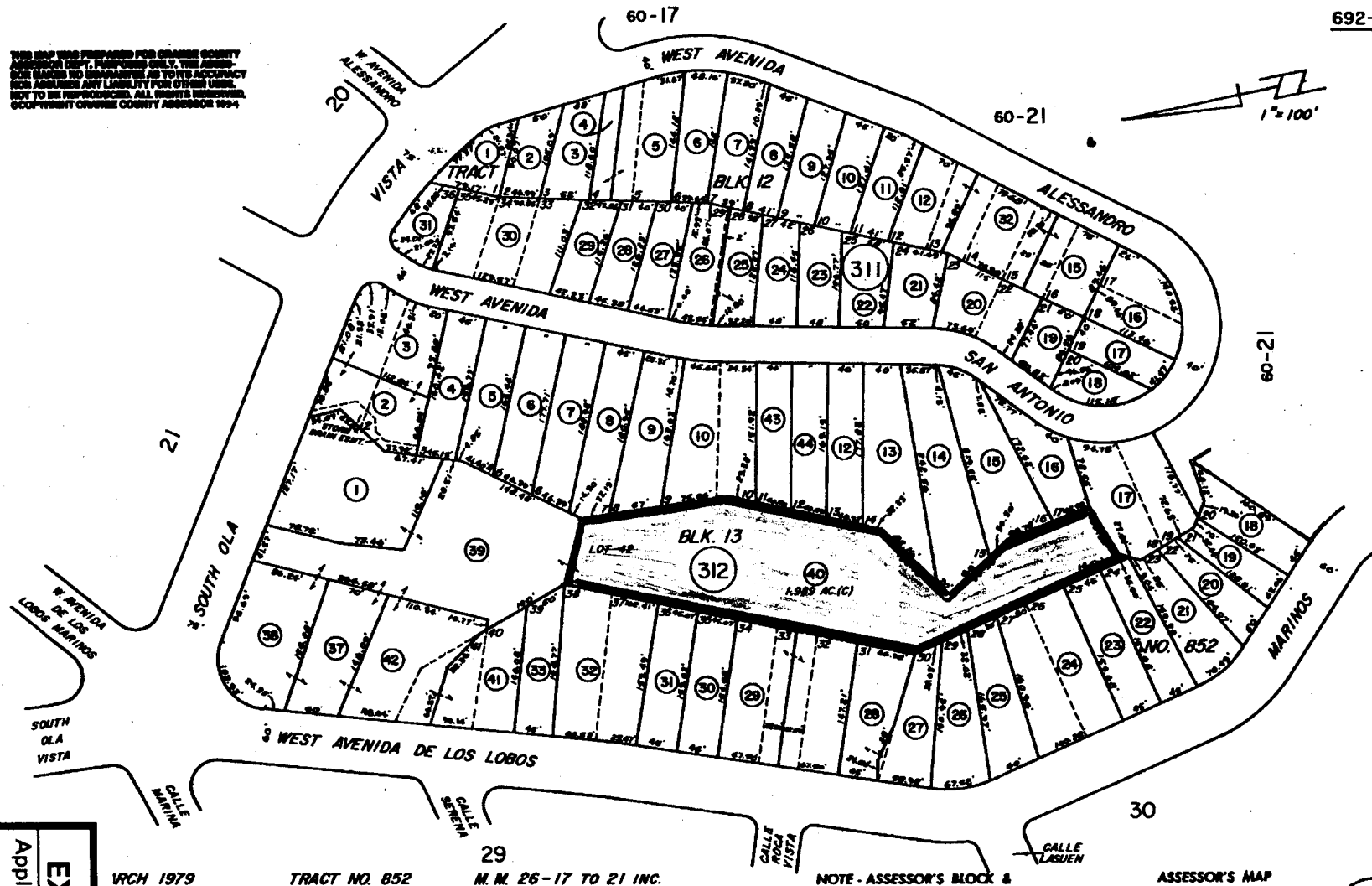
PIPE & BOARD REVETMENT SYSTEM

not to scale

EXHIBIT No. 5	
Application Number: 5-99-027	
Plan View	
California Coastal Commission	

THIS MAP WAS PREPARED FOR ORANGE COUNTY
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692-31



NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

ASSESSOR'S MAP
BOOK 692 PAGE 31
COUNTY OF ORANGE

VRCH 1979

TRACT NO. 852

29
M. M. 26-17 TO 21 INC.

EXHIBIT No. 6

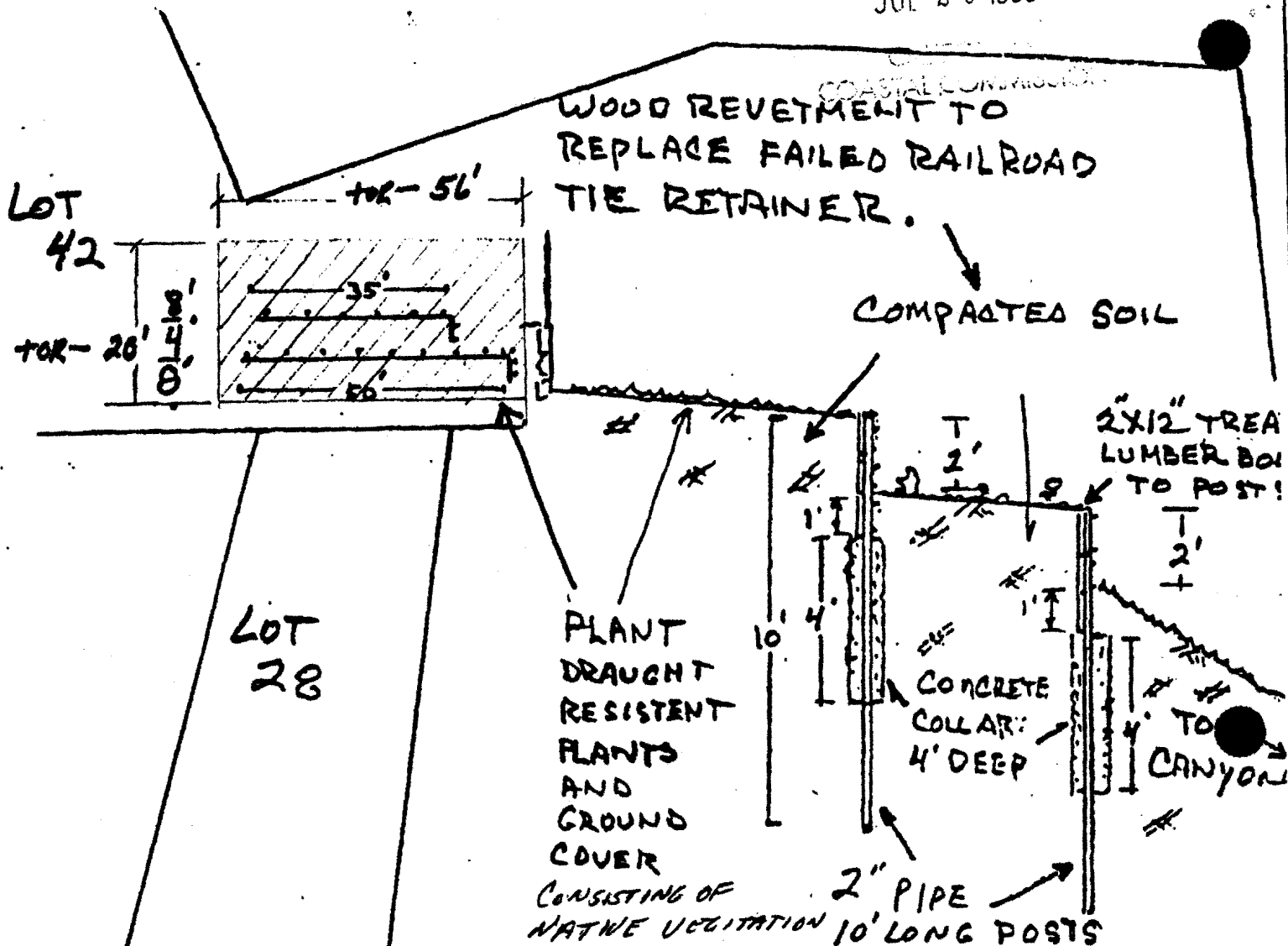
Application Number:

5-99-027

Area of Future
Improvements Deed
Restriction

California Coastal
Commission

JUL 20 1999



WOOD REVETMENT DESIGN

DON G. HABIG
CONCRETE AND CONSTRUCTION
PO BOX 3967
SAN CLEMENTE CA 92672
714-492-4466 LIC #165895


501
AVE DE LOS LOBOS MARINOS

EXHIBIT No. 7
Application Number: 5-99-027
Restoration Area
California Coastal Commission

M e m o r a n d u m

To : Steven Rynas
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

From : Department of Fish and Game
Bill Tippetts

EXHIBIT No. 8
Application Number: 5-99-027
Fish and Game Memo
 California Coastal Commission

Subject: Unauthorized slope Stabilization Project at 401 Avenida de los Lobos Marinus

At your request, I participated in a site review on July 2, 1999, of the unauthorized slope stabilization action at the above address. Also in attendance were Mr. and Ms. Bob Skora (property owners who purchased the property within the past two years) and their contractor, Mr. Don Habig. The Skora's property includes a canyon open space that is surrounded by other homes. The Department of Fish and Game was requested to evaluate the area because the activity occurred in a canyon that is identified as an Environmentally Sensitive Habitat Area (ESHA). The Department's input on the biological sensitivity and value of the project site and ESHA will be used in preparing the Coastal Commission staff report and recommendation regarding approval or denial of the activity.

The ESHA consists of an isolated canyon and stream drainage that support primarily native plants. A mix of coastal sage scrub, chaparral and riparian plant communities dominate the vegetation, but non-native landscape species surround the natural area and have invaded portions of it. In addition, portions of the ESHA appear to have been planted with fruit trees over the past 20 years (based on discussions with the Mr. Habig and on the size of some of the trees). Also, even though the backyards of the surrounding homes provide adequate fuel management protection from the natural area, additional clearing appears to have been routinely conducted around the perimeter of the ESHA. Runoff from the surrounding homes appears to support a small stream flow. Several native bird species were observed onsite (scrub jay, bushtit, thrasher, hummingbirds) and the owners reported that Monarch butterflies roost in the eucalyptus trees within the canyon.

According to the owner and contractor, the activity consisted of removing a failing railroad tie retaining wall (about 25 feet long and four feet high), regrading the area, installing two pipe and board retaining walls (about 25 feet by 2-3 feet), and backfilling the site. A pile of old ties from the original wall was stacked adjacent to the site. The new retaining walls are fully installed and appear to have been placed with minor disturbance beyond the footprint of the original retaining wall. Adjacent to this site is an artificially leveled and fruit tree-planted area that was created by a retaining wall. Non-native grasses and herbaceous weedy plants have regrown over the old and recent fill areas. The owner claimed that he did not realize that the recent activity required a coastal development permit until he was contacted by Coastal Commission staff. Although the activity is near the stream, it does not appear to require a stream bed alteration agreement from the Department.

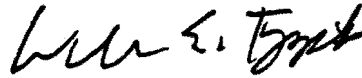
This canyon supports viable native habitat and warrants its ESHA status, despite prior actions that have cleared and planted non-native plants within portions of the ESHA. The recent retaining wall construction does not constitute a major impact to the canyon, but there is insufficient information to determine whether it was warranted to slow a slope failure. However, this site is part of the ESHA and should be revegetated with native plants

Mr. Steven Rynas
July 8, 1999
Page 2

(e.g., California sagebrush, *Artemisia californica*; giant wild rye, *Leymus condensatus*; lemonadeberry, *Rhus integrifolia*; toyon, *Heteromeles arbutifolia*) after the weedy non-natives are removed. Similar replantings within the cleared areas along the margin of the stream bed would also be helpful to reduce erosion potential. This may necessitate the removal of some of the fruit trees.

In summary, it is my opinion, as a Department biologist, that the recent retaining wall replacement was not a major significant impact when viewed in light of the site's reported, previous condition. Removing the walls and recontouring the site would return this portion of the slope to a more natural state, but the benefits of doing this are not great. However, its current condition contributes to the progressive loss of native habitat in the ESHA. If the new retaining walls are allowed to remain, I recommend that this site be revegetated with appropriate native plants. As a broader issue, the continued clearing of other portions should be evaluated for conformance with allowable activities in the ESHA.

Please contact me if you have any questions regarding this response to the site review.



William E. Tippetts
Habitat Conservation Supervisor

rynas.bt