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CALIFORNIA COASTAL COMMISSION

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Staff Report:	12/15/00
Hearing Date:	1/11-14/00
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT**AMENDMENT****APPLICATION No.: 5-95-219 A2****APPLICANT: Fletcher Jones Motorcars****AGENT: Emmet Berkery****PROJECT LOCATION:** Vacant property bounded by MacArthur Blvd., San Diego Creek, and S.R. 73 off-ramp to University Drive; Newport Beach, Orange County.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of an automobile dealership comprised of indoor showroom/outdoor display, service, parts, and sales areas, related offices, indoor food establishment, signage, and parking structure. A total of 576 parking spaces would be provided. 0.2 acres of off-site riparian habitat creation and an off-site coastal sage scrub enhancement/restoration project in the mouth of Big Canyon is proposed. Also proposed is the construction of the northern half of Bayview Way adjacent to the site between Jamboree and the on-site wetland.

DESCRIPTION OF AMENDMENT: Construction of a new 230 – 240 space off-site parking lot, an access road, and replacement of an existing riding and hiking trail. The access drive is proposed to be 22 feet wide with a 4.5 foot wide, concrete sidewalk. Also proposed is a retaining wall at the back of the sidewalk, varying in height from three to six feet. A second retaining wall is proposed to be built between the access road and the adjacent wetland. Removal of non-native/noxious/invasive species from the area between the proposed access road and the adjacent wetland is also proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends denial of the proposed project because it is inconsistent with Sections 30230, 30231, 30236 and 30240 of the Coastal Act. First, Section 30236 allows stream alteration only for water supply projects, flood control projects, or fish and wildlife habitat improvements. A portion of the proposed access road would be constructed below the Ordinary High Water Mark (OHWM), placing it within the stream (San Diego Creek). The proposed off-site parking lot cannot be accessed by any other route. Private vehicular access does not constitute one of the uses allowed under Section 30236. Therefore, the proposed stream alteration is not permissible consistent with Section 30236. Second, Section 30240 requires that environmentally sensitive habitat areas (ESHAs) be protected from significant disruption of habitat values and that development adjacent to ESHA prevent impacts that would degrade the ESHA. The proposed project is located in and adjacent to San Diego Creek, which flows into Upper Newport Bay approximately three quarters of a mile downstream. The project is also located adjacent to a wetland on the

auto dealership site. Upper Newport Bay is an Ecological Reserve. Both San Diego Creek and the Upper Newport Bay Ecological Reserve are designated as ESHA in the City's certified Land Use Plan. San Diego Creek and the wetland on the dealership site would be significantly disrupted by the proposed placement of the access road, inconsistent with Section 30240. Third, the proposed access road within the creek would not maintain marine resources nor maintain biological productivity and the quality of streams and wetlands as required by Sections 30230 and 30231 of the Coastal Act. Finally, feasible alternatives to the proposed off-site parking lot exist. The applicant does not own the site of the proposed off-site parking lot. Consequently, and in view of an existing employee shuttle service, the applicant could seek off-site parking arrangements for employees and inventory storage at a location that does not require encroachment into the stream or adverse impacts to the ESHA. In addition, the on-site inventory storage could be reduced to allow additional parking on-site.

STAFF NOTE: This item was originally scheduled for the November 1999 Commission hearing. At the request of the applicant it was postponed. The Permit Streamlining Act requires permit applications to be heard within 180 days of the date the application is filed complete. The 180th day for this item is February 13, 2000. The Commission's February hearing runs the 15 through the 18, which means that the last day for the Commission to act on this item is at the January 2000 hearing. However, the applicant has signed an Agreement for Extension of Time for Decision on Coastal Development Permit form which extends the date the Commission must act until March 10, 2000. The March hearing does not occur until March 14 – 17, 2000, therefore the final date for the Commission to act under the Agreement for Extension of Time would be at the February 15 – 18, 2000 hearing.

The Commission may choose to postpone this item to the February hearing. The applicant has requested that the item be postponed in order to prepare a response to the staff recommendation. Attached as Exhibit L is a copy of the signed Agreement for Extension of Time for Decision on Coastal Development Permit form.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 590-99; City of Newport Beach Use Permit No. 3565 Amended approved by the Planning Commission; Negative Declaration, SCH # 98081001.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit 5-95-215 (City of Newport Beach/Fletcher Jones Motorcars); City of Newport Beach certified Land Use Plan; California Department of Fish and Game Streambed Alteration Agreement No. 5-145-99; California Regional Water Quality Control Board Waiver of Water Quality Certification (ACOE Reference No. 199915684-DLC).

STAFF RECOMMENDATION:

The staff recommends that the Commission make the following motion and adopt the following resolution:

I. Denial - Motion and Resolution.

Motion:

"I move that the Commission approve Coastal Development Permit Amendment 5-95-219 A2 subject to conditions."

Staff Recommendation of Denial:

Staff recommends a **NO** vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby **DENIES** a coastal development permit amendment for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, the development would 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 because there are alternatives available which would reduce significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

Staff has determined that the proposed amendment would be a material change to the project previously approved. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

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IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. AMENDED PROJECT DESCRIPTION AND LOCATION

The applicant is proposing to construct a 230 to 240 space off-site parking lot, access road, and retaining walls. The applicant has indicated that the proposed parking lot will be used for employee parking and is not intended to be used for inventory storage. The parking lot is proposed to be constructed of asphalt concrete on base material, concrete curbs and/or gutters, parking space striping, fencing and security lighting, and storm drain improvements. A portion of the proposed access drive alignment is currently being used as a riding and hiking trail so the applicant is proposing to reconstruct the trail adjacent to the access drive to reconnect with the existing trails.

A portion of the proposed access road, trail and retaining wall would be located below the Ordinary High Water Mark (OHWM) of the adjacent San Diego Creek (see exhibit G). The proposed access road is subject to flooding during periods of heavy stormwater flow. In addition, the proposed access road is located adjacent to the freshwater marsh wetland on the automobile dealership site which is subject to a conservation easement dedicated to the U.S. Fish and Wildlife Service. Portions of the proposed access road were previously paved as part of the existing trail. However, the paved portions are covered over with at least a foot of sand and sediment. The proposed access road would substantially increase the width of the previously paved area.

The access road is proposed to be two lanes and 22 feet wide with a 4.5 foot wide pedestrian sidewalk adjacent to it. Also proposed adjacent to the access road, but on the San Diego Creek side, is the reconstructed riding and hiking trail, which is proposed to vary between 8 and 12 feet in width.

The existing storm drain outlet is proposed to be modified as part of the proposed project. The existing headwall will be removed and the storm drain will be extended approximately five to ten feet channelward and a new headwall will be constructed. This work is proposed within the existing rip rap area. No change to the drainage area tributary to the existing storm drain system is proposed. This work is necessitated by the construction of the access road and relocation of the riding and hiking trail. The proposed storm drain outlet will be located below the ordinary high water mark.

Also proposed by the applicant is the removal of noxious/invasive/non-native vegetation in the area generally bounded by the proposed access road and the limits of the freshwater marsh wetland (see exhibit F). The species to be removed include: castor bean, pampas grass, giant reed, tree tobacco, tamarisk, and ice plant.

The location of the proposed off-site parking lot was once a portion of a road known as University Drive North. However, in the mid 1980's when the Corona del Mar Freeway was extended, the University Drive North system was abandoned as a vehicular roadway and Caltrans used the area as a maintenance facility. The site was later used as a construction staging area during construction of the San Joaquin Hills Toll Road (mid 1990's). The proposed access road was not a part of the University Drive North roadway.

The subject site is owned by Caltrans, except for a small portion which is owned by the County of Orange Flood Control District/Public Facilities and Resources Department (see exhibit H). Both Caltrans and the County have submitted letters stating they are aware of the proposed project and do not object (see exhibits J & K). Caltrans plans to negotiate a Rental Agreement with the applicant for the use of the property. The rental agreement would be prepared once the project receives final approvals. The County of Orange is currently in the process of determining the appropriate instrument for the proposed encroachment into the right-of-way (e.g. license agreement, lease, permit, etc.).

B. Description of Previously Approved Project

On November 16, 1995 the Commission approved coastal development permit 5-95-219 (City of Newport Beach and Fletcher Jones Motorcars). The approval allowed construction of an automobile dealership on a 9.63 acre triangular shaped piece of vacant land, comprised of three separate parcels. The subject site is located easterly of the intersection of Jamboree Road and Bayview Way and is bounded by Jamboree Road to the northwest, the existing Route 73 freeway and the San Joaquin Hills Transportation Corridor to the northeast, and San Diego Creek to the south. The automobile dealership as approved includes three buildings set into the raised portion of the subject site. The main building contains the indoor showroom, sales area, parts warehouse, service/repair area, related office/employee areas, an 1,800 square foot restaurant, and a small third floor security office. The main building is comprised of 142,030 square feet of enclosed area and 21,460 square feet of deck area and covered outdoor "canopy" display/service/car delivery area. The two story main building is topped by a 63,500 square foot roof deck garage and a small third story security office area. The two story portion of the building is 30 feet high; the three story portion is 41 feet high as measured from the centerline of the frontage road.

The additional two approved buildings are located at the rear of the property (along the Route 73 Freeway) and contain a car wash and related facilities. One of the buildings is one story, 14 feet high, and 1,440 square feet. The second building is two stories, 24 feet high and 10,444 square feet.

The project was approved with a total of 576 on-site parking spaces: 443 spaces for service use, 86 for employee use, and 47 for customer use.

The original project was approved subject to eleven special conditions. The special conditions required:

1. Submittal of an approved interim Habitat Loss Mitigation Plan to address the loss of 2.1 acres of isolated, fragmented on-site coastal sage scrub by the creation/restoration of 4.3 acres of coastal sage scrub connected to other coastal sage scrub areas at the mouth of Big Canyon adjacent to the Upper Newport Bay Ecological Reserve.
2. Evidence that an offer to dedicate a conservation easement to the United States Fish and Wildlife Service has been executed as proposed by the applicant across the coastal sage scrub restoration/creation site at Big Canyon.
3. Protection of the on-site wetlands by recordation of a deed restriction providing that the on-site freshwater marsh be restricted to habitat restoration, habitat enhancement, habitat maintenance, habitat protection, open space, and

view preservation uses only; and that the landowner agrees to cooperate with the parties responsible for the maintenance of both the on-site freshwater marsh wetland and the adjacent saltwater marsh wetland. The City's mitigation measures regarding wetland protection, were also incorporated into this special condition.

4. Submittal of a revised plan, approved by the California Department of Fish and Game for the creation of 0.2 acres of riparian habitat in Upper Newport Bay or the mouth of Big Canyon. This condition was required to off set the loss of 0.08 acres of on-site mulefat scrub. The on-site mulefat was found not to function as riparian habitat but as upland scrub.

5. Conformance to the Geotechnical Consultant's recommendations.

6. Incorporation of the City's mitigation measures necessary to minimize adverse impacts to water quality.

7. Incorporation of the City's mitigation measures addressing protection of cultural resources and the requirement that the applicant agree to consult with the State Historic Preservation Office and the State Native American Heritage Commission in the event that cultural resources are found on-site to develop an appropriate mitigation plan.

8. Incorporation of the City's mitigation measures to minimize adverse visual impacts and adverse impacts to on-site and adjacent natural areas due to project lighting. Also, submittal of lighting plans which reflect the City's mitigation measures.

9. Incorporation of the City's mitigation measures to minimize adverse impacts on adjacent natural areas due to noise.

10. Submittal of evidence of the applicant's legal ability to undertake the on-site and off-site development.

11. Notice from the Executive Director to the U.S. Fish and Wildlife Service that a coastal development permit will be issued on or before December 15, 1995 (provided all other conditions are met) requesting any comments or concerns of the Service be submitted by December 15, 1995.

The special conditions of the permit were met and part one of the permit was issued on January 23, 1996 and part two of the permit was issued on March 20, 1996. Part one of the permit allowed grading only on parcels 1 and 2. Part two of the permit allowed the remainder of the approved development to commence.

The major issues of the original permit were protection and preservation of the on-site and adjacent environmentally sensitive habitat areas (the on-site fresh water marsh wetland and the adjacent saltwater marsh wetland, San Diego Creek, and Upper Newport Bay), as well as the proposed coastal sage scrub habitat creation/restoration at the mouth of Big Canyon adjacent to Upper Newport Bay Ecological Reserve.

C. Stream Alteration and Disruption of Environmentally Sensitive Habitats

Section 30236 of the Coastal Act states:

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

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.

Portions of the proposed project are proposed to be located below the Ordinary High Water Mark (OHWM), placing those portions of the project within the streambed (see exhibit G). These portions include: a portion of the access road including the sidewalk and trail, portions of the masonry block retaining wall, and relocation and reconstruction of the storm drain outlet and headwall. The remainder of the access road portion of the proposed project is located adjacent to San Diego Creek and the freshwater marsh wetland on the Fletcher Jones Motorcars dealership site.

The proposed project would result in substantial alteration of San Diego Creek. It involves construction of a 22 foot wide access road, 4.5 foot sidewalk and an 8 to 12 foot wide trail, construction of a masonry block retaining wall, and relocation and construction of a stormdrain outlet and new headwall within the stream.

Section 30236 of the Coastal Act allows substantial alterations of streams only for three specified uses: (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. The development proposed is intended to provide access to a proposed parking lot serving a private commercial development. Private vehicular access is not one of the specifically enumerated uses identified in Section 30236 for which a stream may be altered.

Alteration of streams can have direct and/or cumulative impacts. Alteration of streams can result in the following impacts: alteration of natural drainageways; increased runoff and decreased infiltration (thus lowering the watertable and affecting ground water storage); increased sedimentation and degradation of water quality due to erosion and siltation in streams or wetlands; visual degradation; habitat disturbance; and reduction of biologic

productivity. Coastal Act Section 30236 limits stream alterations in order to avoid these impacts.

The applicant states it is proposing the parking lot project due to inadequate on site parking for the previously approved auto dealership. However at the time the original project was approved, the Commission found the proposed project to have excess parking by 230 spaces (346 expected demand based on the Commission's adopted guidelines versus 576 spaces provided). In addition, the EIR prepared for the original project found that "the project will be required to meet City parking codes, and will have sufficient on-site parking. Therefore, there is no impact." The auto dealership also meets the City's parking requirements. Although the original project was approved by the Commission with 576 parking spaces, the applicant's current parking study shows only 522 on-site spaces. This represents a shortfall of 54 spaces. The applicant attributes this shortfall to constraints encountered during construction.

The applicant has indicated that the increase in the number of spaces needed to adequately serve the existing development is due to the increased volume of business arising from the increased visibility of the new location, the desirability of the new state-of-the-art facility, the scenic views from the site, and Fletcher Jones Motorcars reputation for service. As a result of the increase in the volume of business, the dealership has hired 50 new employees. In addition, the applicant has indicated that currently 209 inventory cars are stored on-site.

The major adverse impacts of the proposed off-site parking location are due to the access road which is proposed partially within the creek and immediately adjacent to the freshwater marsh wetland. The location of the proposed access road cannot be moved to avoid the impacts for the following reasons: 1) the City's requirements for a minimum width of the access drive (22-24 feet) and 4-5 feet for a sidewalk width, 2) the County's requirement for a minimum clear width of 10.5 feet trail width, 3) the need for some additional width to accommodate construction, and 4) the relatively small and confined space available. In addition, access to the proposed parking lot site cannot be taken from other avenues. Extension of Bayview Way would require significant encroachment into the freshwater marsh wetland and so is not a preferred alternative. Access from the University Drive off-ramp would not be allowed by Caltrans. It is a vehicle code violation to take access off a freeway ramp. MacArthur Boulevard is a major arterial controlled by the City of Irvine. Access for the proposed project from MacArthur would not be considered safe and it is not expected that the City of Irvine would grant it.

However, if additional spaces are indeed necessary to serve the approved development, there are alternatives to the proposed off-site parking lot's location, which can only be accessed by a road that substantially alters San Diego Creek. First, a feasible alternative to the proposed off-site location can be pursued. The applicant does not own the location of the proposed off-site parking lot. Thus, the additional off-site parking spaces can be provided at another off-site location. Currently the applicant provides shuttle service from the temporary off-site location in the Marriott parking structure. Shuttle service is therefore

feasible as a part of an off-site parking plan. Second, another feasible alternative would be to reduce the amount of on-site inventory storage to accommodate additional employee parking. The applicant has indicated that to park all employees on-site would require re-designating 160 on-site spaces from their existing use for staging of service vehicles, and/or inventory storage. Inventory cars could easily be stored off-site. The applicant has indicated that currently 209 inventory cars are stored on-site. If this number is reduced by 160 spaces, the applicant could still store 149 inventory cars on-site. Therefore, feasible alternatives exist that would eliminate the adverse impacts resulting from constructing portions of a roadway within the stream.

The Commission finds that the nature and scope of the proposed development would be a substantial alteration to San Diego Creek for a non-allowable use. Therefore, the Commission finds that the proposed project cannot be found consistent with Section 30236 of the Coastal Act and must be denied.

Furthermore, Section 30240(a) of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected against any significant disruption of habitat values. Section 30240(b) requires that development adjacent to an environmentally sensitive habitat area be sited and designed to prevent impacts which would significantly degrade those areas, and be compatible with the continuance of those habitat areas.

The City's certified Land Use Plan identifies San Diego Creek as an environmentally sensitive habitat area (ESHA) and states:

San Diego Creek. This 59-acre area, located between Jamboree Road and MacArthur Boulevard, an alluvial lowland, was used as irrigated farmland until the severe flooding of 1969. In the early 1980's, the site was used for disposal of dredge spoils from Upper Newport Bay. There is riparian habitat on both sides of the San Diego Creek which supports associated birds and wildlife.

The City's certified Land Use Plan also identifies the Upper Newport Bay Ecological Reserve as ESHA and states, in part:

This 741-acre site generally includes all of the upper Newport Bay north of "Coney Island" and west of Jamboree Boulevard.

The Reserve has been identified by the State Coastal Commission, State Department of Fish and Game, U.S. Fish and Wildlife Service, and Southern California Association of Governments as a unique and valuable State resource. The upper bay is an integral part of the Pacific Flyway, and the saltwater marsh, bay waters, and uplands of upper Newport Bay provide habitat for 158 species of birds, of which 81 species are wading or water-associated birds. Rare or endangered birds utilizing the Reserve include the California Black Rail, which nests in pickleweed, sedges, saltgrass, and bulrush; Belding's Savannah Sparrow, which nests in pickleweed; Light-Footed Clapper Rail, which nests in pickleweed and cordgrass; California Least Tern, which lays its eggs in the sand; and California Brown Pelican, which occasionally visits the upper bay for purposes of resting and

feeding. Also present in the Reserve are 18 species on the Audubon Blue List, a list of birds not considered rare or endangered, but which are showing evidence of non-cyclic population declines or range contractions. Over 60 species of fish and over 1,000 species of marine invertebrates have been reported in the bay.

Further, there are many other significant environmentally sensitive habitat areas in the project vicinity. Some of the significant ESHAs in the area include the Transportation Corridor Agency's wetland mitigation site, the Bonita Creek Riparian Corridor, and the San Joaquin Freshwater Marsh. All of these ESHAs are less than a mile from the subject site (see exhibit I). The proximity of these ESHAs add to the overall habitat value of the general area. In addition, past studies (such as the EIR prepared for San Joaquin Marsh Enhancement Plan, and the Circulation and Open Space Agreement EIR) have identified the San Diego Creek area as a significant wildlife corridor which allows wildlife movement between Upper Newport Bay and inland habitat areas. As a wildlife corridor, San Diego Creek serves a valuable habitat purpose. As a wildlife corridor the creek constitutes an ESHA. As such 30240(a) prohibits development that would disturb the ESHA and limits development within ESHA to uses dependent on the ESHA.

Portions of the proposed development encroach into the stream. The size and placement of the proposed development would result in a significant disruption to the ESHA, inconsistent with Section 30240(a). Further, the proposed private vehicular access road is not a use dependent on the ESHA. Consequently the proposed use is inconsistent with Section 30240(a).

In addition, Section 30240(b) requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and that development be compatible with its continuance. Portions of the proposed development are not located directly in the streambed but are adjacent to it.

In addition to the San Diego Creek ESHA, the proposed access road is adjacent to the freshwater marsh wetland on the Fletcher Jones site. The freshwater marsh wetland was protected by a conservation easement under the original permit for the automobile dealership.

Development adjacent to the stream and wetland must be consistent with the requirements of 30240(b). In addition, placement of the proposed development within and adjacent to the stream would encroach into the wildlife corridor area. Generally the Commission requires that development be set back from a wetland to provide a buffer area. Development too close to a wetland can have adverse impacts. Activity, light and noise resulting from development directly adjacent to wetlands can inhibit wildlife use of the wetland. The proposed access road will immediately abut the wetland, separated only by the proposed retaining wall. No buffer is proposed to be provided. There is no room to require a buffer as a condition. The proposed development adjacent to the stream and wetland would degrade the value of both.

Finally, there are feasible alternatives to the proposed project including use of an off-site parking lot in a different location or reducing the number of on-site parking spaces used for inventory parking in order to allow all employee parking to be accommodated on-site. Either of these two alternatives or a combination of the two would allow additional parking to serve the commercial development that would not create adverse impacts on the ESHAs.

The proposed development is not minor in nature. As discussed above the proposed project would result in substantial disturbance within and adjacent to the ESHAs. The Commission finds that the proposed development would constitute a significant disruption of the habitat values, inconsistent with Section 30240 of the Coastal Act, and therefore must be denied.

D. Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

A Storm Water Pollution Prevention Plan (SWPPP) has been prepared for the proposed project. The SWPPP includes management practices aimed at reducing adverse impacts to the waters of San Diego Creek and Upper Newport Bay. Some of the management practices contained in the SWPPP include minimizing the use of landscaping fertilizers, not overwatering, prohibition of on-site refueling of vehicles, collecting and disposing of trash properly, site sweeping, immediate clean-up of spills, maintenance of all on-site water inlets so they are clean and free of dirt and debris, installation of erosion control devices during grading, and controlling dust by watering. These measures are typical practices required for projects such as parking lots where adverse impacts due to storm water runoff must be minimized.

However, portions of the proposed project are located below the Ordinary High Water Mark (OHWM) and would be subject to flooding. Portions of the access road would be flooded during heavy storms. During storm events oil, gas, and tire residue on the surface of the roadway would be unavoidably flushed directly into the creek and Upper Newport Bay unfiltered. Introduction of these pollutants into the sensitive waters of the creek and

bay would not maintain the biological productivity and water quality of streams and wetlands as required by Section 30231 of the Coastal Act. In addition, placement of the access road below the OHWM is not most protective of marine resources as required by Section 30230 of the Coastal Act. Moreover, these adverse impacts could be avoided by use of an off-site parking lot in a different location than that proposed, or by reducing the amount of on-site inventory storage to allow additional on-site parking. Therefore the Commission finds that the proposed project will have adverse impacts on water quality and is not most protective of marine resources inconsistent with Sections 30230 and 30231 of the Coastal Act and must be denied.

E. LOCAL COASTAL PROGRAM

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 Newport Beach on May 19, 1982. As proposed the project is inconsistent with Section 30236 of the Coastal Act which limits alterations to streams. In addition, as proposed the project is inconsistent with Section 30240 of the Coastal Act which precludes significant disruption of sensitive habitats. The proposed project is also inconsistent with Sections 30230 and 30231 of the Coastal Act which require that marine resources be protected and that biological productivity and the quality streams and wetlands be maintained. The Commission, therefore, finds that the proposed project will not be consistent with the Chapter 3 policies of the Coastal Act and will prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

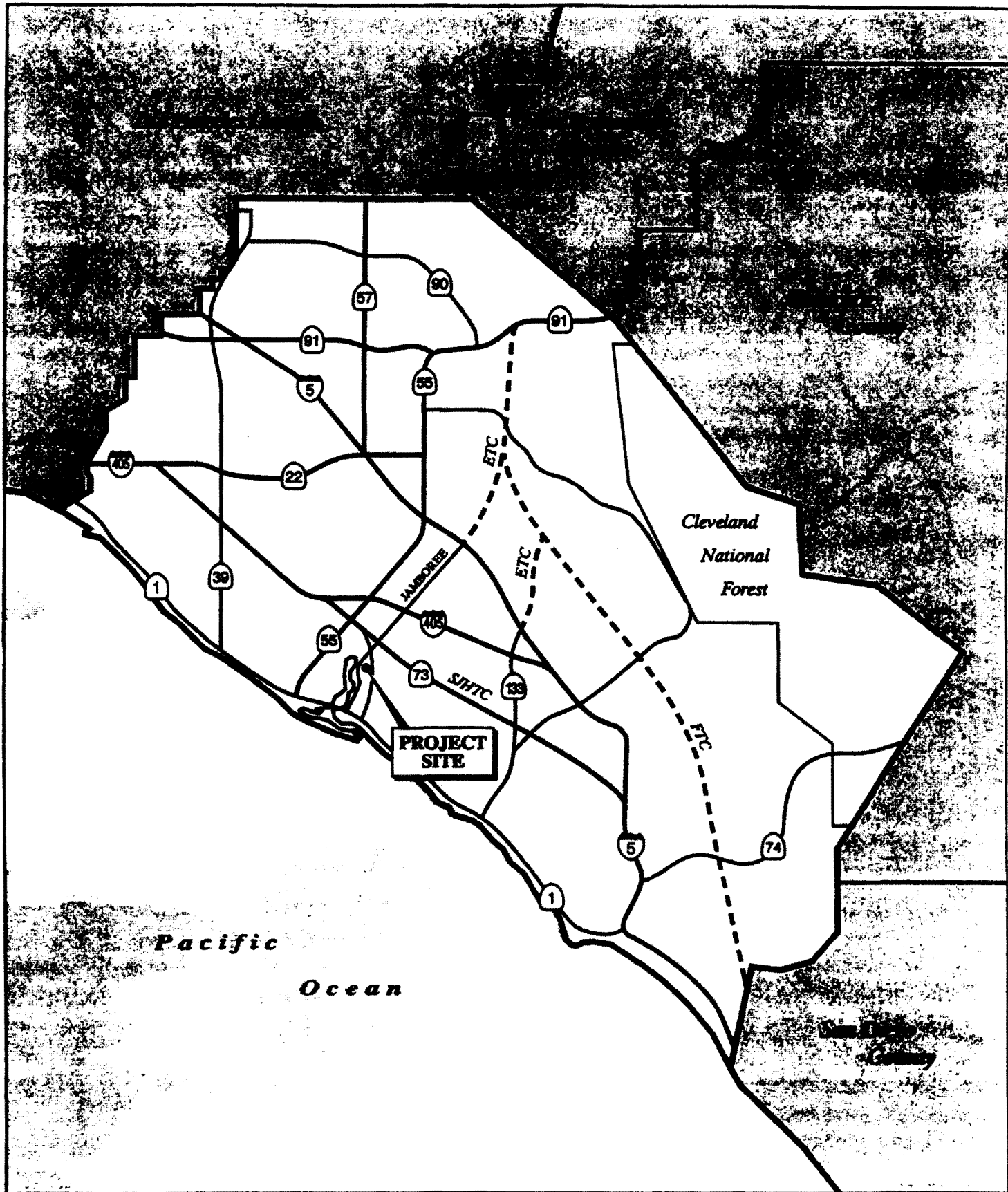
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's 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.

Previous sections of these findings contain documentation of the significant adverse impacts of the proposed development. Specifically, the significant adverse impact resulting from the proposed project is substantial alteration of a stream for a non-allowable use and significant disruption of an environmentally sensitive habitat area. In addition, the proposed project will not maintain and enhance marine resources and will not maintain the biological productivity and water quality of wetlands and streams. Feasible alternatives exist that eliminate the need for the project. The feasible alternatives are 1) use of a different off-site parking location that does not require encroachment into the stream or the adverse impacts on ESHA, or 2) reducing the on-site inventory storage to accommodate

additional employee parking; or 3) a combination of both. Therefore, there are feasible alternatives available which would substantially lessen any significant adverse impact which the activity would have on the environment. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.

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6/18/98(CNB832)

Figure 1

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Exhibit A

LSA

Scale in Miles
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Regional Location
Fletcher Jones Parking Lot

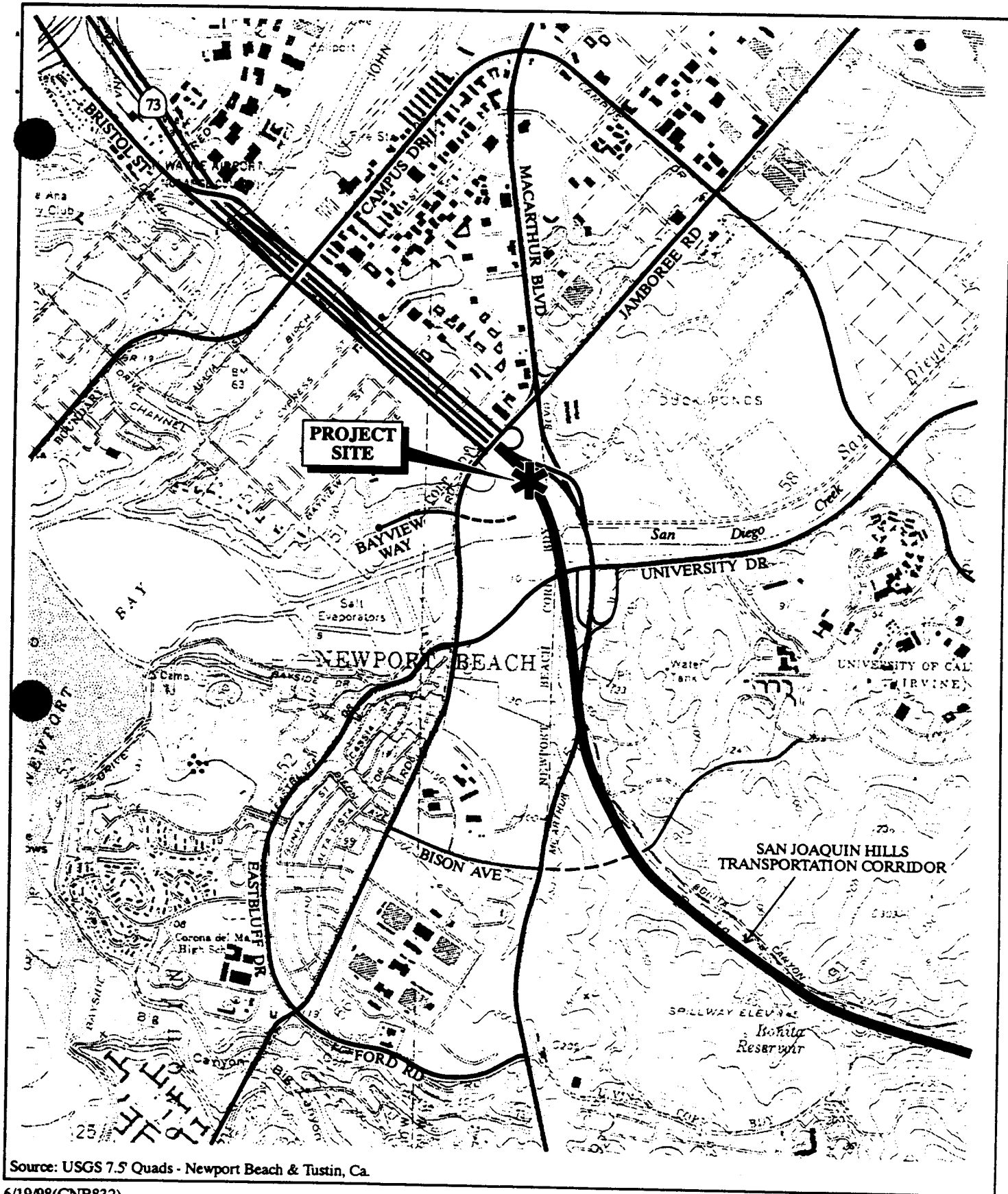
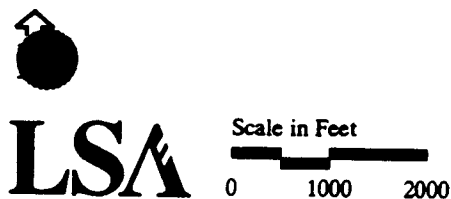


Figure 2



5-95-219A2

Exhibit B

Project Vicinity
Fletcher Jones Parking Lot

CALIFORNIA
COASTAL COMMISSION

● 1997年12月1日

REPORTS OF THE U. S. COMMISSION ON THE ORGANIZATION AND ADMINISTRATION OF THE FEDERAL JUDICIAL BRANCH, 1960-61, 1961-62, 1962-63, 1963-64, 1964-65, 1965-66, 1966-67, 1967-68, 1968-69, 1969-70, 1970-71, 1971-72, 1972-73, 1973-74, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24, 2024-25, 2025-26, 2026-27, 2027-28, 2028-29, 2029-30, 2030-31, 2031-32, 2032-33, 2033-34, 2034-35, 2035-36, 2036-37, 2037-38, 2038-39, 2039-40, 2040-41, 2041-42, 2042-43, 2043-44, 2044-45, 2045-46, 2046-47, 2047-48, 2048-49, 2049-50, 2050-51, 2051-52, 2052-53, 2053-54, 2054-55, 2055-56, 2056-57, 2057-58, 2058-59, 2059-60, 2060-61, 2061-62, 2062-63, 2063-64, 2064-65, 2065-66, 2066-67, 2067-68, 2068-69, 2069-70, 2070-71, 2071-72, 2072-73, 2073-74, 2074-75, 2075-76, 2076-77, 2077-78, 2078-79, 2079-80, 2080-81, 2081-82, 2082-83, 2083-84, 2084-85, 2085-86, 2086-87, 2087-88, 2088-89, 2089-90, 2090-91, 2091-92, 2092-93, 2093-94, 2094-95, 2095-96, 2096-97, 2097-98, 2098-99, 2099-00, 2100-01, 2101-02, 2102-03, 2103-04, 2104-05, 2105-06, 2106-07, 2107-08, 2108-09, 2109-10, 2110-11, 2111-12, 2112-13, 2113-14, 2114-15, 2115-16, 2116-17, 2117-18, 2118-19, 2119-20, 2120-21, 2121-22, 2122-23, 2123-24, 2124-25, 2125-26, 2126-27, 2127-28, 2128-29, 2129-30, 2130-31, 2131-32, 2132-33, 2133-34, 2134-35, 2135-36, 2136-37, 2137-38, 2138-39, 2139-40, 2140-41, 2141-42, 2142-43, 2143-44, 2144-45, 2145-46, 2146-47, 2147-48, 2148-49, 2149-50, 2150-51, 2151-52, 2152-53, 2153-54, 2154-55, 2155-56, 2156-57, 2157-58, 2158-59, 2159-60, 2160-61, 2161-62, 2162-63, 2163-64, 2164-65, 2165-66, 2166-67, 2167-68, 2168-69, 2169-70, 2170-71, 2171-72, 2172-73, 2173-74, 2174-75, 2175-76, 2176-77, 2177-78, 2178-79, 2179-80, 2180-81, 2181-82, 2182-83, 2183-84, 2184-85, 2185-86, 2186-87, 2187-88, 2188-89, 2189-90, 2190-91, 2191-92, 2192-93, 2193-94, 2194-95, 2195-96, 2196-97, 2197-98, 2198-99, 2199-00, 2200-01, 2201-02, 2202-03, 2203-04, 2204-05, 2205-06, 2206-07, 2207-08, 2208-09, 2209-10, 2210-11, 2211-12, 2212-13, 2213-14, 2214-15, 2215-16, 2216-17, 2217-18, 2218-19, 2219-20, 2220-21, 2221-22, 2222-23, 2223-24, 2224-25, 2225-26, 2226-27, 2227-28, 2228-29, 2229-30, 2230-31, 2231-32, 2232-33, 2233-34, 2234-35, 2235-36, 2236-37, 2237-38, 2238-39, 2239-40, 2240-41, 2241-42, 2242-43, 2243-44, 2244-45, 2245-46, 2246-47, 2247-48, 2248-49, 2249-50, 2250-51, 2251-52, 2252-53, 2253-54, 2254-55, 2255-56, 2256-57, 2257-58, 2258-59, 2259-60, 2260-61, 2261-62, 2262-63, 2263-64, 2264-65, 2265-66, 2266-67, 2267-68, 2268-69, 2269-70, 2270-71, 2271-72, 2272-73, 2273-74, 2274-75, 2275-76, 2276-77, 2277-78, 2278-79, 2279-80, 2280-81, 2281-82, 2282-83, 2283-84, 2284-85, 2285-86, 2286-87, 2287-88, 2288-89, 2289-90, 2290-91, 2291-92, 2292-93, 2293-94, 2294-95, 2295-96, 2296-97, 2297-98, 2298-99, 2299-00, 2300-01, 2301-02, 2302-03, 2303-04, 2304-05, 2305-06, 2306-07, 2307-08, 2308-09, 2309-10, 2310-11, 2311-12, 2312-13, 2313-14, 2314-15, 2315-16, 2316-17, 2317-18, 2318-19, 2319-20, 2320-21, 2321-22, 2322-23, 2323-24, 2324-25, 2325-26, 2326-27, 2327-28, 2328-29, 2329-30, 2330-31, 2331-32, 2332-33, 2333-34, 2334-35, 2335-36, 2336-37, 2337-38, 2338-39, 2339-40, 2340-41, 2341-42, 2342-43, 2343-44, 2344-45, 2345-46, 2346-47, 2347-48, 2348-49, 2349-50, 2350-51, 2351-52, 2352-53, 2353-54, 2354-55, 2355-56, 2356-57, 2357-58, 2358-59, 2359-60, 2360-61, 2361-62, 2362-63, 2363-64, 2364-65, 2365-66, 2366-67, 2367-68, 2368-69, 2369-70, 2370-71, 2371-72, 2372-73, 2373-74, 2374-75, 2375-76, 2376-77, 2377-78, 2378-79, 2379-80, 2380-81, 2381-82, 2382-83, 2383-84, 2384-85, 2385-86, 2386-87, 2387-88, 2388-89, 2389-90, 2390-91, 2391-92, 2392-93, 2393-94, 2394-95, 2395-96, 2396-97, 2397-98, 2398-99, 2399-00, 2400-01, 2401-02, 2402-03, 2403-04, 2404-05, 2405-06, 2406-07, 2407-08, 2408-09, 2409-10, 2410-11, 2411-12,

THE

FLETCHER JONES MOTORCARS
OFF-SITE EMPLOYEES' PARKING LOT
3300 JAMBOREE ROAD
CITY OF NEWPORT BEACH, CALIFORNIA

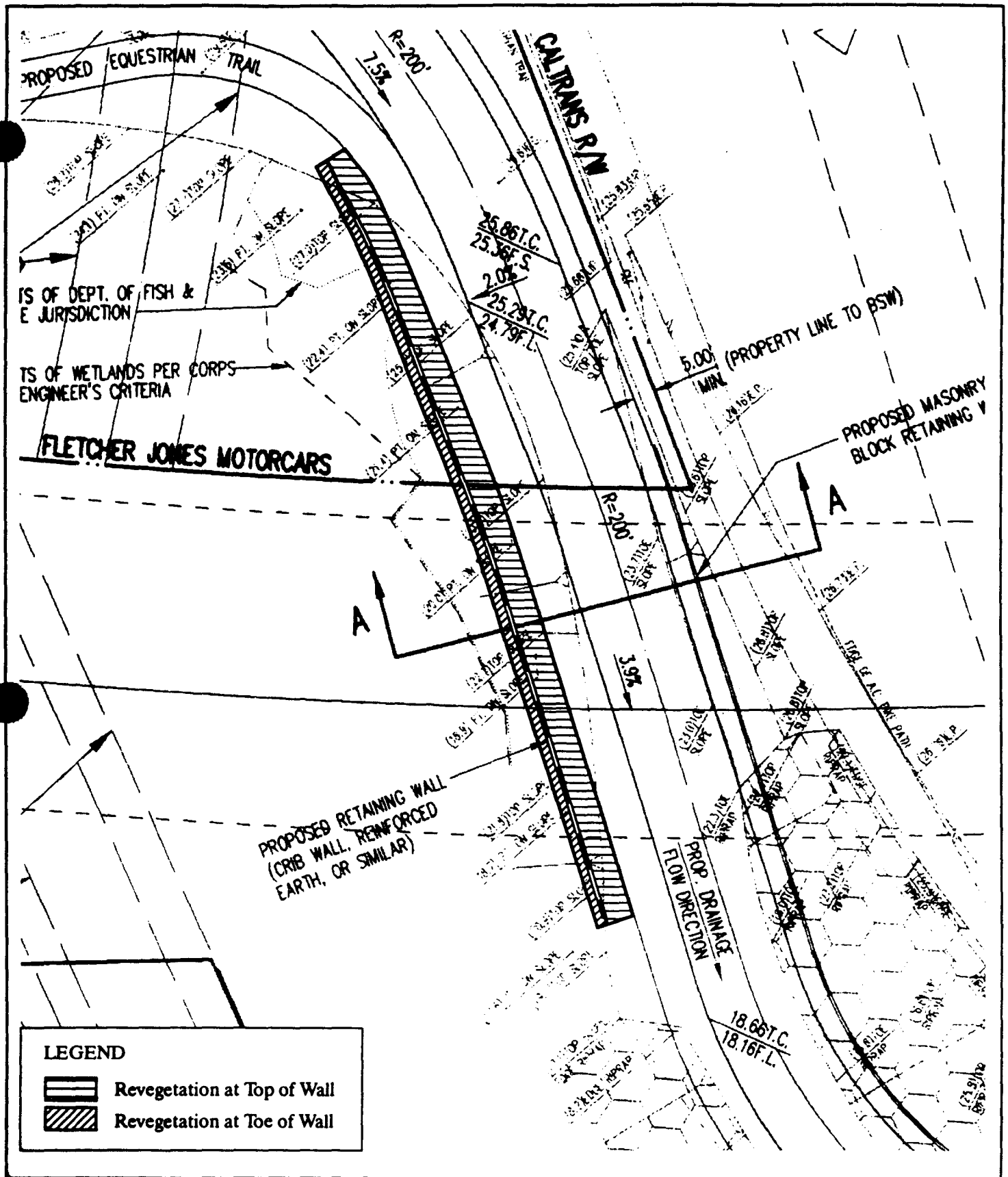
0001 11 218000M RUBENZ M B 1531 V

STUDIOS, 10000 W. 10TH AVE., SUITE 100, DENVER, CO 80202

Site Plan

5-95-217
A2

Exhibit C



4/25/99(FJN930)

Figure 1a

REVEGETATION EXHIBIT

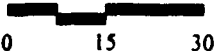
5-95-219A2

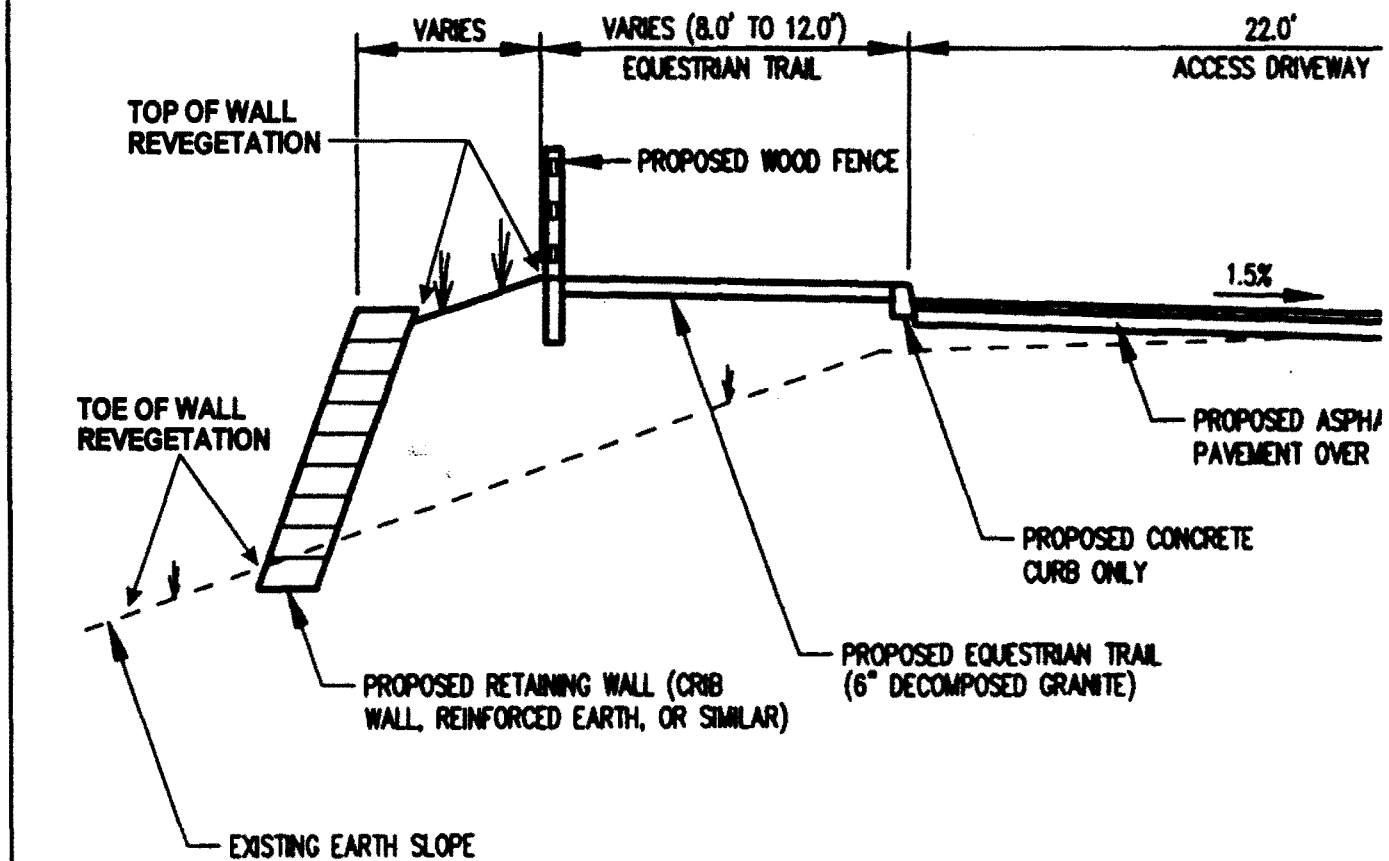
Exhibit D

Fletcher Jones Access Road

LSA

Scale in Feet





4/23/99(FJN930)

Figure 1b

LSA

Scale in Feet
0 3 6

5-95-219A2

Exhibit E

Section A - A

Exh: L: 4



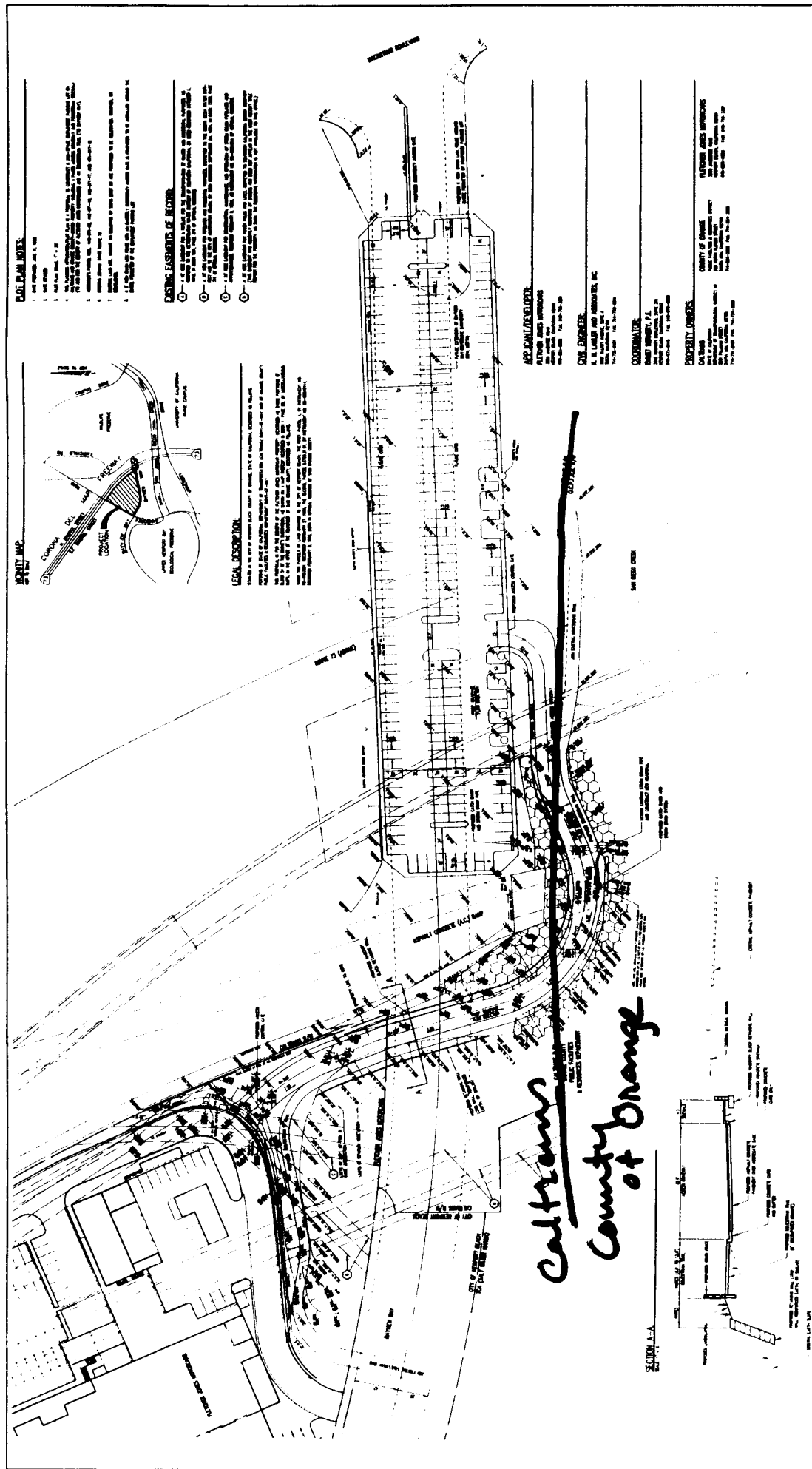


Figure 3

5-95-219A2
Ownership
Exhibit H

RECEIVED
South Coast Region
MAY 25 1999
CALIFORNIA
COASTAL COMMISSION

Subject Site & Nearby ESHAs

5-95-219 A2



EXHIBIT
I

DEPARTMENT OF TRANSPORTATION**SOUTHERN RIGHT OF WAY REGION**

District 12 R/W Field Office
2501 Pullman Street Bldg. "C"
Santa Ana, California 92705



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South Coast Region

APR 12 1999

CALIFORNIA
COASTAL COMMISSION

5-95-219A7

April 2, 1999

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Attn: Mr. Stephen Rynas, AICP
Supervisor, Regulation and Planning
(Orange County Area)

Subject: Fletcher Jones Motorcars Application for a Material Amendment to Coastal Development
Permit 5-95-219.

Dear Mr. Rynas:

Please be advised Caltrans is aware of and takes no exception to the subject Material Amendment application by Fletcher Jones Motorcars for an employee parking lot on Caltrans owned property beneath the State Route 73 (Corona del Mar Freeway/San Joaquin Hills Tollway) bridges spanning San Diego Creek and the future extension of Bayview Way (also known as University Drive North).

The property on which the parking lot and appurtenances are proposed to be located is owned by Caltrans (excluding a small portion which is within County of Orange right-of-way) and was originally acquired by Caltrans from the Irvine Company in the late 1960's for the then-planned Corona del Mar Freeway. The area on which the parking lot is proposed to be located is encumbered by the future extension of Bayview Way from its current terminus approximately 600 feet easterly of Jamboree Road adjacent to the Fletcher Jones Motorcars dealership easterly to MacArthur Boulevard. This roadway extension would be built in conjunction with the addition of high occupancy vehicle (HOV) lanes to the San Joaquin Hills Tollway and would serve as a direct on-ramp/off-ramp connection to the HOV lanes. Currently, Caltrans and the Transportation Corridor Agencies (TCA) do not anticipate the need for HOV lanes for some period of time, perhaps ten (10) years or more. Consequently, Caltrans is willing to negotiate a Rental Agreement with Fletcher Jones Motorcars to allow them to construct and use the parking lot in the interim.

*Caltrans Letter**5-95-219A2*

Los Angeles Field Office
120 South Spring Street
Los Angeles, CA 90012-3606
Phone: (213) 897-1861 Fax: (213) 897-1962

Southern R/W Region
21073 Pathfinder, Suite 100
Diamond Bar, CA 91765
Phone: (909) 468-1500 Fax: (909) 468-1501
TDD: (800) 735-2929

San Bernardino Field Office
464 W. 4th Street, 12th floor
San Bernardino, CA 92401-1400
Phone: (909) 383-6211 Fax: (909) 383-6877

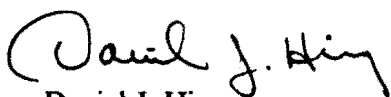
Exhibit J

Mr. Stephen Rynas
April 2, 1999
Page Two

Please be advised the approval of a Rental Agreement will not preclude the right of Caltrans and/or TCA to construct the extension of Bayview Way at some future date.

If you have any question please do not hesitate to call me at (949) 724-2415.

Sincerely,



Daniel J. Hing,
R/W Airspace/Telecommunication Development
Manager for Districts 8 and 12

cc: David Patler, Caltrans
Emmet Berkery, Fletcher Jones Motorcars
Gene Foster, TCA

5-95-219 A2

Exhibit J₂



County of Orange

Public Facilities & Resources Department

John W. Sibley, Director

March 31, 1999

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Attention: Mr. Stephen Rynas, AICP
Supervisor, Regulation and Planning (Orange County Area)

Subject: Fletcher Jones Motorcars Application for a Material Amendment to
Coastal Development Permit 5-95-219

Dear Mr. Rynas,

Please be advised that the Orange County Flood Control District/County of Orange (Public Facilities and Resources Department) is aware of and takes no exception to the subject Material amendment application by Fletcher Jones Motorcars for an employee parking lot and access drive. While the parking lot and most of the access drive are located outside Orange County Flood Control District/County right-of-way, a portion of the proposed access drive is located within District right-of-way, specifically within an area beneath the S.R. 73 Off-ramp Bridge spanning an existing County riding and hiking trail and District's San Diego Creek Channel. The proposed parking lot access road will require the realignment and reconstruction of the riding and hiking trail.

County/District staff has met with representatives from Fletcher Jones Motorcars and is currently in the process of determining the appropriate instrument for this encroachment into the District right-of-way (e.g. license agreement, lease, permit, etc.).

While the County/District takes no exception to the application, it will be necessary for Fletcher Jones Motorcars to have plans prepared for submittal to and

County of Orange Letter

LOCATION:
300 N. FLOWER ST
SANTA ANA, CALIFORNIA

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

TELEPHONE:
(714) 834-2300
FAX # 834-5188

5-95-219 A2

Exhibit K

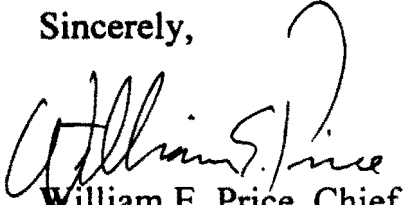
5-95-219-A2
Our File #05-101 (San Diego Creek Channel)
RECEIVED
South Coast Region

APR 12 1999

CALIFORNIA
COASTAL COMMISSION

review by County staff and to comply with any and all conditions deemed necessary by County staff. If you have any question you may contact the undersigned at (714) 834-2571 or e-mail address pricew@pfrd.co.orange.ca.us and I will see that your questions are directed to the appropriate County staff for reply.

Sincerely,


William E. Price, Chief
County of Orange
PFRD/Real Property

cc: Mr. Emmet Berkery, P.E.
3345 Newport Bl., Suite 215
Newport Beach, CA 92663

Jim Miller, Chief
PFRD/Design-Flood

Jeff Dickman, Chief
PFRD/HBP-Program Mgt. & Coord.

5-95-219 A2

Exhibit K₂

CALIFORNIA COASTAL COMMISSION

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

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DEC 10 1999

GRAY DAVIS, Governor

CALIFORNIA
COASTAL COMMISSION**AGREEMENT FOR EXTENSION OF TIME
FOR DECISION ON COASTAL DEVELOPMENT PERMIT**

Pursuant to Government Code Section 85957, the applicant, or applicant's representative and Coastal Commission staff hereby agree that the time limits for a decision on permit application # 5-95-219 A2 established by Government Code Section 85952 shall be extended by 90 days (extension request ordinarily to be 90 days, and in no event more than 90 days, from the date of the later of the two signatures below; total period for Commission action not to exceed 270 days).

Applicant Signature

-or-

Emmet Berkery
Authorized Representative Signature

Emmet Berkery P.E. - Project Consultant

December 9, 1999

Date

Meg Vaughn
CCC Staff Name (Print)Meg Vaughn
CCC Staff (Signature)12/10/99

Date

5-95-219 A2

Exhibit
L

