

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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 Long Beach, CA 90802-4302
 (2) 590-5071

RECORD PACKET COPY

Filed: October 3, 2000
 49th Day: November 21, 2000
 180th Day: April 1, 2001
 Staff: ALK-LB *ALK*
 Staff Report: November 16, 2000
 Hearing Date: December 12-15, 2000
 Commission Action:

Item Mon 8r**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO: 5-00-274

APPLICANT: El Morro Investment Company, Inc.

AGENT: Jack DeCamp

PROJECT LOCATION: 8811 N. Coast Highway, Crystal Cove State Park,
Laguna Beach (County of Orange)

PROJECT DESCRIPTION: Removal of a 550-gallon underground fuel tank located in a
maintenance yard serving the El Morro Mobile Home Park.

LOCAL APPROVALS RECEIVED: Notice of Exemption from California Department of Parks
and Recreation; Orange County Health Care Agency Plan Check Approval # PM 00-041; and
Orange County Fire Authority Special Activity Permit.

SUBSTANTIVE FILE DOCUMENTS: Crystal Cove State Park Public Works Plan, 1982 and
California Code of Regulations Title 23.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to remove an abandoned underground fuel tank located at a maintenance yard within the El Morro Mobile Home Park in Crystal Cove State Park. The major issues addressed by this staff report include assurance that soil contamination from hazardous materials has not occurred; proper disposal of the fuel tank; and preservation of potential archaeological resources.

Staff recommends that the Commission **APPROVE** the permit subject to three (3) special conditions requiring the applicant to: 1) submit final approval from the Orange County Health Care Agency; 2) identify an approved recycling/disposal site for the tank; and 3) provide a certified archaeologist to monitor all excavation activities.

STAFF RECOMMENDATION:

Staff recommends that the Commission APPROVE the permit application with conditions.

MOTION:

I move that the Commission approve CDP #5-00-274 pursuant to the staff recommendation.

Staff recommends a YES vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

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. **Interpretation** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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. Final Orange County Health Care Agency Approval

Upon completion of the project, the applicant shall provide to the Executive Director evidence that the Orange County Health Care Agency has reviewed and approved the final tank removal and site remediation procedures. The applicant shall inform the Executive Director of any changes to the project required by the Orange County Health Care Agency. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

2. Location of Fuel Tank Recycling Site

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the recycling site for the removed fuel tank. Disposal shall occur at the approved recycling site.

3. Archaeological Resource Management and Protection

A. The applicant shall have a State Department of Parks and Recreation-certified or County-certified archaeological field observer, working under the direction of a State Department of Parks and Recreation-certified or County-certified archaeologist, on-site to monitor all excavation activities.

B. If an area of cultural deposits is discovered during the course of the project:

(1) All development activities shall cease and shall not recommence except as provided in subsection (C) hereof; and

(2) Within 90 days after the date of discovery of such deposits, the applicant shall provide evidence to the Executive Director of execution and recordation of a lease restriction, in a form and content acceptable to the Executive Director, stating that, in order to protect archaeological resources, development can only be undertaken consistent with the provisions of the Public Works Plan for Crystal Cove State Park dated 1982 and supplementary archeological plans thereto approved by the Executive Director.

The lease 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 lease restriction shall not be removed or changed without an amendment to this coastal development permit (5-00-274) approved by the Coastal Commission.

C. An applicant seeking to recommence development following discovery of cultural deposits shall submit a supplementary archaeological plan for the review and approval of the Executive Director.

- (1) If the Executive Director approves the supplementary archaeological plan and determines that the supplementary archaeological plan's recommended changes to the proposed development or mitigation measures are de minimus in nature and scope, development may recommence after the Executive Director receives evidence of recordation of the lease restriction required above.
- (2) If the Executive Director approves the supplementary archaeological plan but determines that the changes therein are not de minimus, development may not recommence until after an amendment to this permit is approved by the Commission and the Executive Director receives evidence of recordation of the lease restriction required above.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Location and Description

The subject site is located at 8811 N. Coast Highway in the City of Laguna Beach, Orange County. The property is located at the El Morro Village Mobile Home Park within Crystal Cove State Park. The project site is located in a maintenance yard on the inland side of Pacific Coast Highway, approximately 200' from the northernmost boundary of the mobile home park (Exhibits 1 and 2). The site is currently developed with a workshop used for service activities associated with the mobile home park.

The applicant, who manages the mobile home park through an agreement with the State Department of Parks and Recreation, proposes to remove an abandoned 550-gallon underground fuel tank and restore the site to prior conditions. It is unknown how long the tank has been buried there or how long it has been inactive, but it is assumed that all subsurface soil in the project area is clean and the contents of the tank are automotive fuels, waste oils, or similar liquids.

Removal or upgrade of the tank has been ordered by the State Water Quality Control Board under California Code of Regulations Title 23. As part of the regulation, all underground fuel tanks were required to be removed or upgraded by December 22, 1998. The County of Orange has been granted authority for enforcement of this regulation. In December 1999, the County initiated legal action against the El Morro Investment Company for failure to remove the fuel tank.

The scope of services prepared by the applicant's contractor states that the proposed tank removal involves the following:

- Excavate and expose the tank (approximately 18" of excavation required around perimeter)
- Monitor area for volatile petroleum vapors per AQMD Rule 1166
- De-gas the tank down to a safe level of vapor/air mixture in accordance with fire safety procedures and AQMD rule 1149.
- Pressure wash interior of the tank and haul away the rinsate to an approved recycler.

- Excavate for and remove the tank. Dry-ice and/or otherwise purge the interior of the tank to reduce combustible vapors to a safe level, in accordance with governing safety regulations.
- Remove existing product, vapor and vent piping to the perimeter of the tank excavation.
- Transport the tank to an approved facility and dispose of same by complete destruction to scrap metal.
- Sample the soil and submit the samples for analyses to a State certified environmental lab. The analyses will be as prescribed by the governing regulatory agencies.
- Backfill the tank excavation with the originally excavated soil and complemented with imported materials. Backfill to be tamped and compacted. The excavation will be backfilled to match existing grade. Resurfacing is not included.
- Leave the site in a workmanlike manner.
- Compile final closure report.

According to State Parks staff, the project has been deemed exempt from CEQA requirements so long as an archaeological monitor is present during all excavation activities (see Notice of Exemption, Exhibit 3). An archaeological monitoring condition has been incorporated into the current staff report, as discussed in Section D (Archaeological Resources).

B. STANDARD OF REVIEW AND CONSISTENCY WITH THE CRYSTAL COVE PUBLIC WORKS PLAN

The Crystal Cove Public Works Plan (PWP) was approved by the Commission with conditions on May 20, 1982. Conditions were met in August 26, 1982. The PWP includes the Crystal Cove State Park General Plan, the On-Site Maintenance Plan and the Crystal Cove State Park Historic District Plan. Section 30605 of the Coastal Act establishes the standard of review. The first threshold question is whether the specific project is contained in the PWP. If it is, then the Commission's review is limited to the imposition of conditions. The Commission can not deny a project which it previously certified as part of the PWP; however, the Commission can regulate the manner in which the project is carried out to bring it into conformance with the PWP. Therefore, the first question is whether this project is contained in the Certified Public Works Plan.

The Land Use and Facilities Element of the Certified PWP General Plan addresses the mobile home park as follows:

...the El Morro Mobile Home Park is located around the mouth of the Moro Creek. In lieu of relocation rights, the state has arranged 20-year leases for the current tenants. Removal of the mobile home park will occur after the leases expire...

After the mobile home park is removed, day-use activity areas and picnic facilities will be located along both sides of Moro Creek, in Moro Canyon.

The leases have been extended and are set to expire on December 31, 2004. Until such time, the existing mobile homes are an allowable use at the subject site. As such, the maintenance yard is also an allowable use. However, the PWP does not specifically address the removal of abandoned fuel tanks or hazardous materials associated with the mobile home development. In that respect, the proposed project is a form of development not specifically allowed under the PWP.

Additionally, the project is not being proposed by a public agency as specified by Section 30605, but is instead being proposed by a private entity—the El Morro Village Mobile Home Park operator. Furthermore, the removal of an abandoned fuel tank cannot be considered a “public works” project as defined by Section 30114 because the tank was installed by the tenant without official approval by the State Parks Department. As such, the policies contained in the Crystal Cove Public Works Plan regarding public works do not apply to the current project. Therefore, the Commission must use the Coastal Act as the standard of review and the PWP as guidance where applicable.

The proposed development may involve potential impacts to cultural resources since it includes subsurface activity. The Coastal Act requires reasonable mitigation measures to be imposed “*where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer.*” In addition, the General Plan of the certified PWP includes a discussion and policies regarding the management and protection of cultural resources. The management of cultural resources is governed by Sections 5019.74, 5097.5 and 5097.9 of the Public Resources Code.

Numerous archaeological sites have been identified throughout Crystal Cove State Park. The PWP contains specific recommendations for cultural resources identified by geographic area. The policies of the PWP call for the use of proper archaeological methods and agreed upon disposition of resources where cultural resources are likely to be found. The State Department of Parks and Recreation issued an approval requiring that an archaeological monitor be present during excavation activities (Exhibit 3). As such, the Commission is imposing Special Condition 3, which requires the implementation of specific archaeological preservation and management measures. Therefore, as discussed in Section D (Archaeological Resources), the proposed project is consistent with the Coastal Act, as well as the cultural resources management and protection policies of the certified Public Works Plan for Crystal Cove State Park.

C. CHAPTER THREE POLICY ANALYSIS

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The proposed development is the removal of an abandoned fuel tank. According to the contractor’s scope of work, a minimal amount of excavation (18”) around the perimeter of the 550-gallon tank will occur. After tank removal and contamination tests are complete, then if further excavation is needed, it will be done in accordance with Orange County Health Care Agency standards. Any soil contaminated by the release of hazardous materials stored in the tank is planned for disposal and remediation.

The applicant has submitted evidence that the proposed removal and possible remediation have been reviewed and preliminarily approved by the Orange County Health Care Agency (OCHCA), the local agency responsible for monitoring fuel tank removals in Orange County (Exhibit 4). In addition, the applicant must submit a copy of the closure report documenting the procedure of disposal and remediation of the site which will be submitted to the OCHCA.

Evidence of final review and approval of the disposal and remediation will not be available until test results are submitted to OCHCA. The evidence of final review and approval of the removal by OCHCA must be submitted in order to assure that effective containment and cleanup facilities and procedures have been implemented. Therefore, the Commission imposes Special Condition 1, which requires the applicant to submit evidence that the OCHCA has reviewed and approved the final removal and remediation procedures. The applicant shall inform the Executive Director of any changes to the project required by the Orange County Health Care Agency. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

As stated in the contractor's scope of work, prior to removal of the tank, the equipment will be rinsed and the rinsate will be transported for recycling to a hazardous waste facility by an authorized hazardous waste transport company. However, the applicant has yet to identify an approved recycling/disposal facility. As such, the Commission imposes Special Condition 2, which requires the applicant to identify in writing the location of an approved facility prior to issuance of the coastal development permit.

As conditioned to provide evidence that the site is adequately remediated according to OCHCA standards and to ensure that the rinsate will be taken to an approved recycling facility, the Commission finds the proposed development is consistent with Section 30232 of the Coastal Act.

D. ARCHAEOLOGICAL RESOURCES

Section 30116 of the Coastal Act states, in pertinent part,

"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity.

"Sensitive coastal resource areas" include the following:

(d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.

Section 30244 states, in pertinent part,

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The proposed development will occur at a maintenance yard within the El Morro Village Mobile Home Park in Crystal Cove State Park. A workshop exists approximately 50 feet southwest of the fuel tank site. The nearest mobile home is located approximately 150 feet southwest. The site was originally graded during construction of the mobile home park and is currently used for service and maintenance activities associated with the park.

Although previously developed, the site is located in an area that has been identified by the State Department of Parks and Recreation as a potential archaeological site. In the Notice of Exemption (Exhibit 3), State Parks staff requires that an archaeological monitor be present during all excavation activities.

To ensure that the proposed project does not affect archaeological resources, the Commission finds it necessary to impose Special Condition 3. Special Condition 3 requires the applicant to have a certified archaeological field observer monitor proposed excavation activities to minimize any potential adverse effects to archaeological resources. This condition will ensure that excavation of the underground fuel tank will not result in adverse effects to potential cultural and historic resources located at the subject site. As conditioned, the Commission finds that the proposed project is consistent with Section 30244 of the Coastal Act.

E. 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.

The proposed project is located within a State Park. The project has been conditioned to require confirmation from the Orange County Health Care Agency that the site has been properly remediated. The project has also been conditioned to ensure safe disposal of the tank and archaeological monitoring. As conditioned, the proposed project has been found consistent with the Chapter Three policies of the Coastal Act.

As conditioned, no feasible alternatives or feasible mitigation measures are known which would substantially lessen any identified significant effect 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.

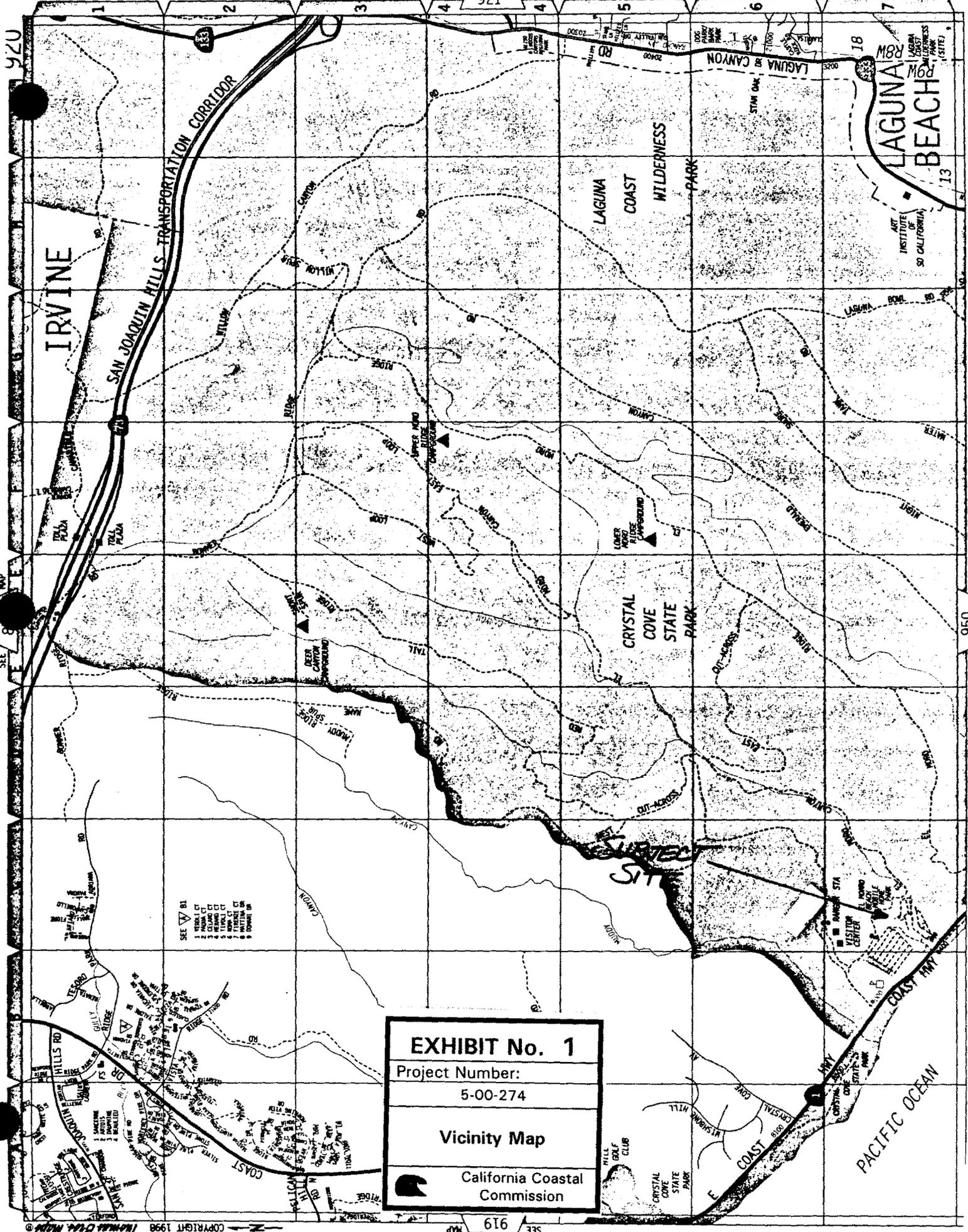
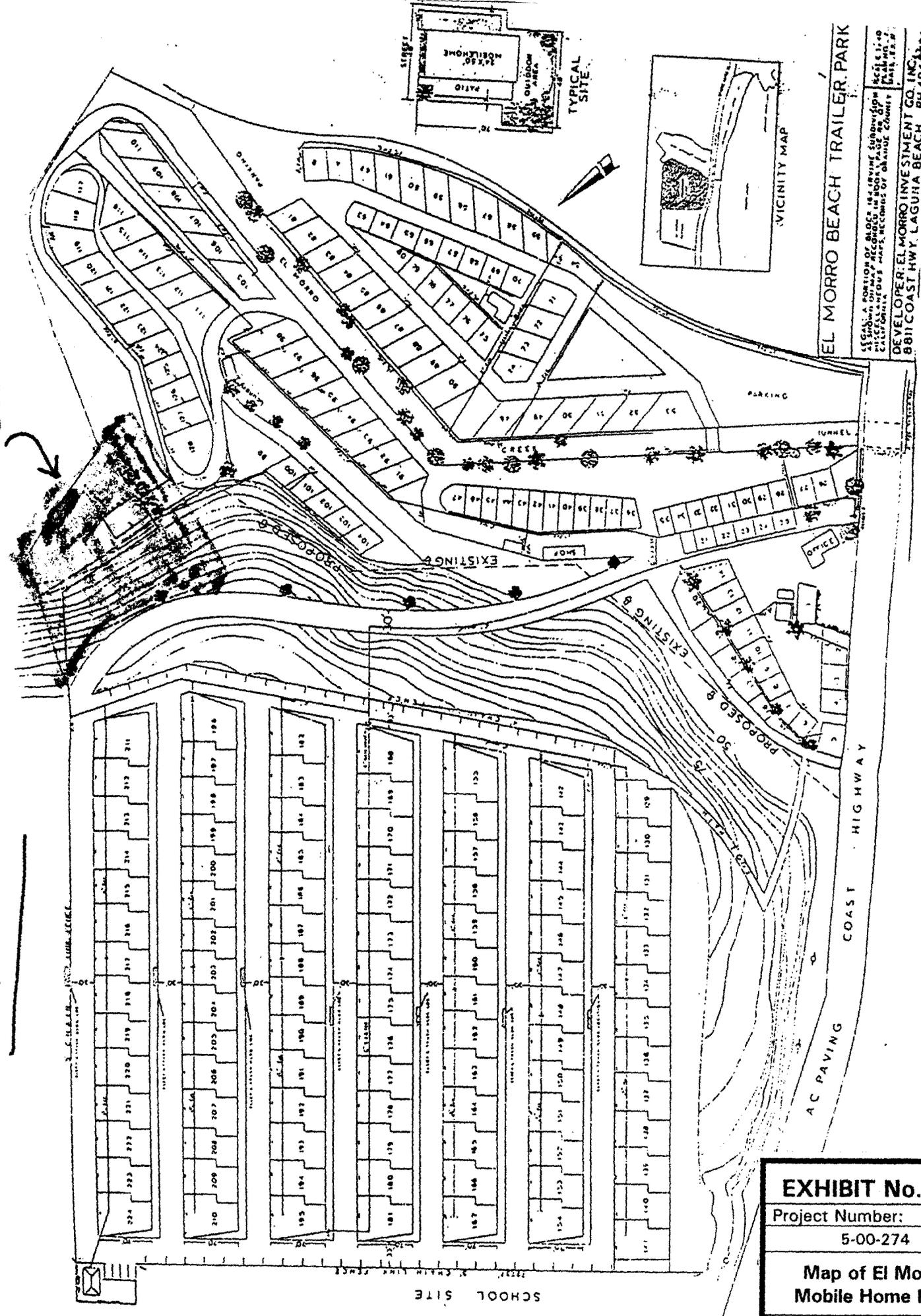


EXHIBIT No. 1
Project Number: 5-00-274
Vicinity Map
California Coastal Commission

- SEE B1
- 1 WATER
 - 2 ROAD
 - 3 RAILROAD
 - 4 POWER LINE
 - 5 FENCE
 - 6 DITCH
 - 7 BOUNDARY
 - 8 ELEVATION
 - 9 SPOT ELEVATION
 - 10 DRAINAGE

10/1/00
Exhibit A

See Exhibit D



EL MORRO BEACH TRAILER PARK

SECTION 14, TOWNSHIP 14N, RANGE 14E, COUNTY OF SAN DIEGO, CALIFORNIA

DEVELOPER: EL MORRO INVESTMENT CO., INC.
8811 COAST HWY., LAGUNA BEACH, CA 92653

EXHIBIT No. 2a
Project Number: 5-00-274
Map of El Morro Mobile Home Park
California Coastal Commission

See exhibit "C"
for more detail

CRYSTAL COVE STATE PARK
LAND

Exhibit B

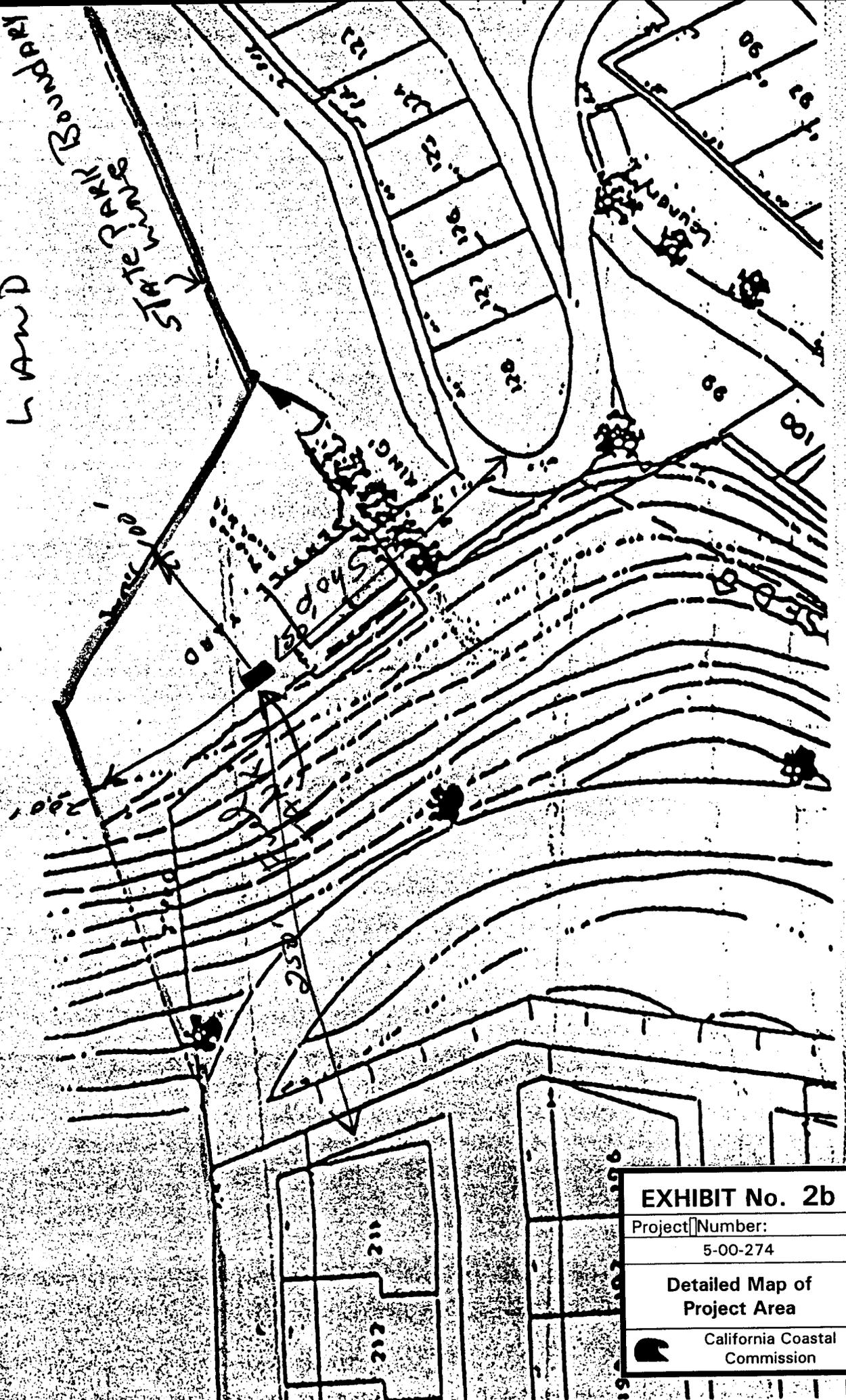
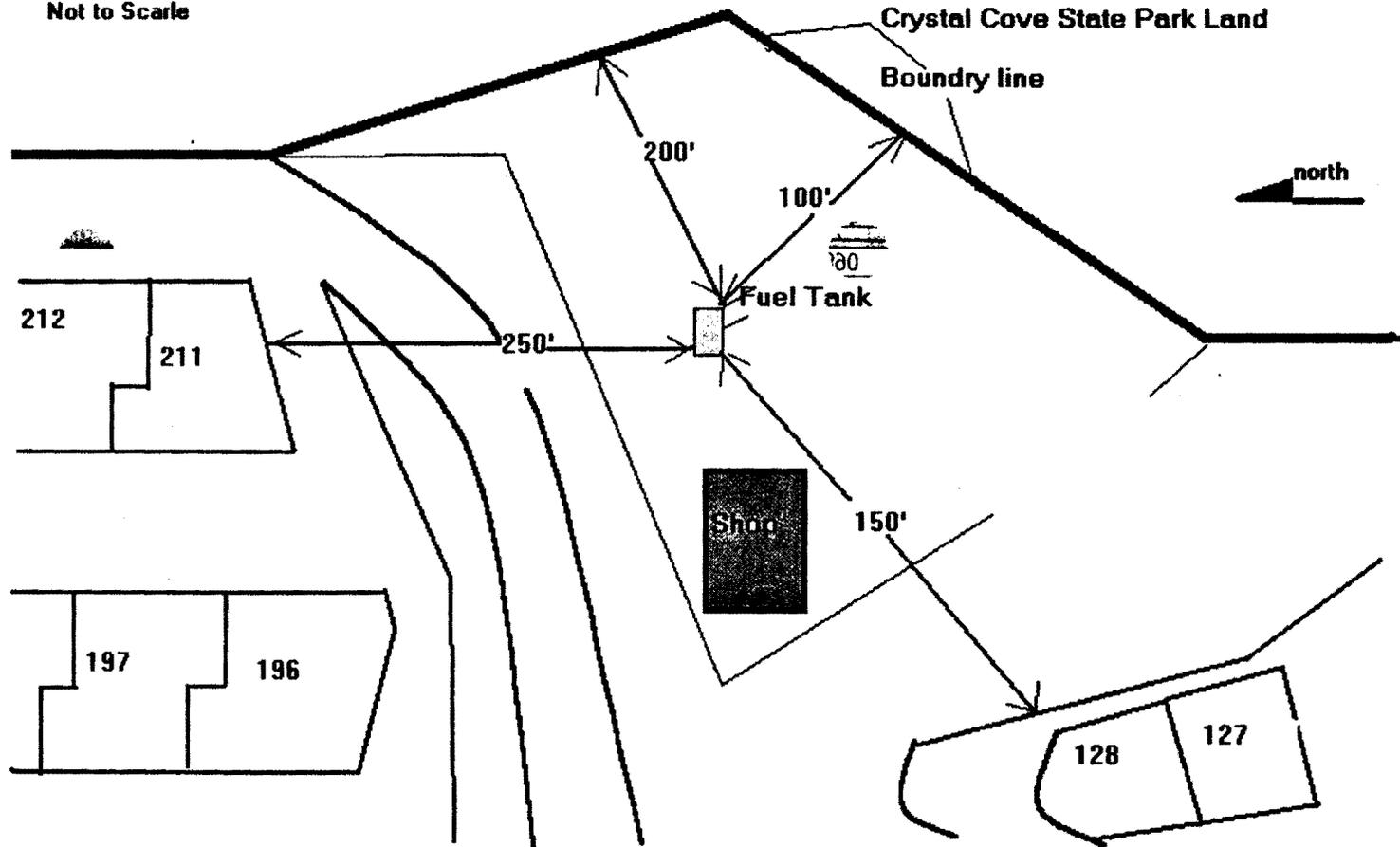


EXHIBIT No. 2b
Project Number: 5-00-274
Detailed Map of Project Area
 California Coastal Commission

Exhibit "C"

Not to Scale



As stated in the contractors scope of work, a minimal amount of excavation (18") around the perimeter of the Tank will initially be executed. After tank removal and contamination test are complete, then if further excavation is needed, it will be done according to Health Dept. standards.

	EXHIBIT NO. 2c
	Project Number: 5-00-274
	Site Plan (provided by applicant)
California Coastal Commission	

RECEIVED
AUG 11 2000

**CALIFORNIA
COASTAL COMMISSION**

State of California
Department of Parks and Recreation

NOTICE OF EXEMPTION

TO: Office of Planning and Research
1400 Tenth Street, Room 222
P.O. Box 3044
Sacramento, CA 95812-3044

FROM: Department of Parks and Recreation
1416 Ninth Street
P.O. Box 942896
Sacramento, CA 94296-0001

PROJECT TITLE: El Moro Fuel Tank Removal (00/01-OC-04)

LOCATION: Crystal Cove State Park

CITY: COUNTY: Orange

DESCRIPTION OF THE PROJECT:

Project consists of removal of a 500-gallon underground fuel tank located in the maintenance yard of the El Moro Village Trailer Park at Crystal Cove SP. An archaeologist will ensure avoidance of significant impacts to cultural resources. No potential for significant impacts to the environment is anticipated.

PUBLIC AGENCY APPROVING THE PROJECT: Department of Parks and Recreation

NAME OF DIVISION CARRYING OUT THE PROJECT: Park Stewardship: Orange Coast District

EXEMPT STATUS:

- Ministerial (Section 15268)
- Declared Emergency (Section 15269(a))
- Emergency Project (Section 15269(b) and (c))
- Statutory Exemption (Section:)
- Categorical Exemption**
Class: 1 Section: 15301

CONTACT: Marla Mealey, Environmental Coordinator

TELEPHONE: (619) 220-5329

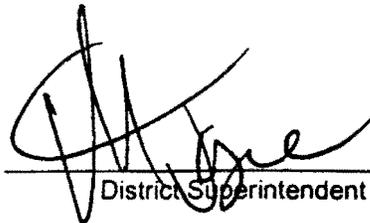

District Superintendent

EXHIBIT No. 3
Project Number: 5-00-274
Notice of Exemption from State Dept. of Parks and Recreation California Coastal Commission

5-00-274

ORANGE COUNTY HEALTH CARE AGENCY
ENVIRONMENTAL HEALTH DIVISION
HEALTH SERVICE ORDER

163072

Date 6-28-00 Initials hl
 Client Name El Morro Valley
 Address 811 N Pacific Coast
LB Ph.# _____
 Paid By AMI ADINI
 Address 4657 Hollywood Blvd
L.A. 90027 Ph.# 912-4073
 Please circle the respective service code(s)

RECEIVED
JUL 11 2000

CALIFORNIA
COASTAL COMMISSION

- 01 CEQ/HSF (Acct/Bat# _____) \$ _____
- 02 CEO Plan Check/Foods (PC# _____) \$ _____
- 03 CEO Plan Check/Pools (PC# _____) \$ _____
- 04 Food Vehicles Cat _____ \$ _____
Decal No(s) _____
- 05 CEO/Court Restitution/Judgement \$ _____
Name _____
Case# _____
- 06 Hotels/Motels (Acct/Bat# _____) \$ _____
- 07 Massage Parlor (Acct/Bat# _____) \$ _____
- 08 Noise \$ _____
- 09 Liquid Waste Hauler \$ _____
- 10 Farm Labor Camp Registration \$ _____
- 11 Land Use \$ _____
- 12 Hazardous Waste (Acct/Bat# _____) \$ _____
- 13 Hazardous Waste Fines \$ _____
- 14 Hazardous Waste Restitution/Judgement \$ _____
Name _____
Case# _____
- 15 Hazardous Waste Clean-up \$ _____
- 16 Infectious Waste (Acct/Bat# _____) \$ _____
- 17 UST/HSF (Acct/Bat# _____) \$ _____
- 18 UST Plan Check (PC# PM 00-041) \$ 187-
- 19 UST State Surcharge \$ _____
- 20 UST Restitution/Judgement \$ _____
Name _____
Case# _____
- 21 Wells (Const _____ Recon _____ Destr _____) \$ _____
Water _____ Cath _____ Init. Monit. _____
Add Monit. #Wells _____
Driller _____
Consultant _____
- 22 Backflow/Cross Connection \$ _____
Client(s) _____
- 23 Small Water Systems \$ _____
- 24 Copies of Records \$ _____
- 25 Tax (Refer to Cost of Copies) \$ _____
- OTHER _____ \$ _____

PAID BY CHECK NO: 34678

9272-9 1630

PAID

EXHIBIT No. 4
 Project Number:
5-00-274
 OC Health Care Agency
 Plan Check Receipt
 California Coastal
 Commission