

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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(2) 590-5071

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Filed: July 20, 2000  
49th Day: September 7, 2000  
180th Day: January 16, 2001  
Staff: KFS-LB ~~AS~~  
Staff Report: August 24, 2000  
Hearing Date: September 12-15, 2000  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-00-292

**APPLICANT:** South Coast Water District, Attn: Michael Dunbar

**PROJECT LOCATION:** In the public right-of-way on Pacific Coast Highway and within and between Del Obispo Street and Doheny Park Road, City of Dana Point, Orange County.

**PROJECT DESCRIPTION:** Installation of an approximately 2,800 foot long 12-inch water pipeline.

**SUMMARY OF STAFF RECOMMENDATION:**

The major issues of this staff report are potential temporary construction related impacts upon San Juan Creek due to the need to enter the creek to attach the water pipeline on the San Juan Creek Bridge and construction related impacts upon water quality, public access, and sensitive habitat and species. Staff recommends **APPROVAL** of the proposed development subject to seven special conditions which 1) require the applicant to avoid impacts upon riparian and wetland vegetation; 2) require the applicant to restore the creek bottom to the pre-project condition; 3) require the applicant to conform construction related BMP's; 4) require identification of a debris disposal site; 5) require the applicant to avoid construction between March 1 and September 15; 6) require the applicant to use signage to identify detours when public access routes are obstructed; and 7) require the applicant to construct the project in phases which allow for maximum public access along Pacific Coast Highway and the San Juan Creek Bikeway during the construction period.

**LOCAL APPROVALS RECEIVED:** City of Dana Point Approval-in-concept dated July 19, 2000; California Department of Transportation Encroachment Permit 1299-NUL-0739; California Department of Fish and Game Streambed Alteration Agreement 5-011-00.

**SUBSTANTIVE FILE DOCUMENTS:** City of Dana Point Certified Local Coastal Program; *Initial Study and Negative Declaration for the Proposed Master Plan Improvements Phase 1 Pacific Coast Highway 12-Inch Water Main* dated February 2000 prepared for the South Coast Water District by Michael Brandman Associates of Tustin, California; *Report of Geotechnical Investigation, Master Plan Improvements, Phase 1, Pacific Coast Highway 12-Inch Water Main Project, City of Dana Point* by Goffman, McCormick & Urban, Inc. of Rancho Santa Margarita, California.

PROCEDURAL NOTE – Standard of Review:

The proposed development is occurring in San Juan Creek and within Pacific Coast Highway in the City of Dana Point. The proposed development is occurring within a certified area under the Dana Point Local Coastal Program. However, since the proposed development is partially located within San Juan Creek (an area subject to the public trust), it is within the Commission's original permit jurisdiction under Coastal Act Section 30519(b) and must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The policies of the certified Dana Point LCP may be used for guidance.

The proposed development is a continuous water pipeline that crosses the boundary of the Commission's original jurisdiction into areas where the Dana Point LCP is effective. Typically, development located within a certified area requires a coastal development permit from the certified local government. However, in this case, the proposed development that is located in the Commission's original jurisdiction is physically integrated with the portion of the proposed development that is outside the area of original jurisdiction (i.e. in the City's permit jurisdiction). Pursuant to Section 9.69.030 of the implementation program of the City's certified LCP, the Commission shall be the responsible agency for issuance of any Coastal Development permit for the entire development if the development is physically integrated and lies partially within the Commission's original jurisdiction and partially within the City's permit jurisdiction.

**I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL.**

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

**MOTION**

*I move that the Commission approve CDP #5-00-292 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**

**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, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies 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. AVOIDANCE OF IMPACTS UPON RIPARIAN AND WETLAND VEGETATION

The applicant shall avoid disturbance to or removal of riparian and wetland vegetation present in the project area. Any changes to the proposed project which would result in disturbance or removal of riparian or wetland vegetation shall be reported to the Executive Director. No disturbance or removal of riparian or wetland vegetation shall occur without obtaining an amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment of new coastal development permit is required.

### 2. STREAMBED ALTERATION

The applicant shall restore the creek bottom to the pre-project condition upon completion of the proposed project.

3. **STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND  
REMOVAL OF CONSTRUCTION DEBRIS**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to creek flows, erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to sensitive habitat areas, during construction, to include the following, at minimum: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and San Juan Creek and the Pacific Ocean; a pre-construction meeting to review procedural and BMP guidelines;
- (d) BMP's shall be used to avoid sedimentation impacts from dewatering discharges including but not limited to the use of sedimentation tanks or similar devices;
- (e) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged to coastal waters. Debris shall be disposed at the debris disposal site identified pursuant to Special Condition 4.

4. **LOCATION OF DEBRIS DISPOSAL SITE**

**PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

5. **TIMING OF CONSTRUCTION**

To avoid adverse impacts on Mexican free-tailed bats (*Tadarida brasiliensis*) and big brown bats (*Eptesicus fuscus*), construction shall not occur between March 1 to September 15<sup>th</sup> of any year during which the proposed project is constructed.

6. **TEMPORARY PUBLIC ACCESS SIGNAGE**

During any construction which requires the obstruction of a road or trail used for public access, the applicant shall provide temporary signage, placed in conspicuous locations, which identify alternative public access routes which bypass the temporarily closed portions of the road or trail.

**7. PHASING OF CONSTRUCTION – PUBLIC ACCESS**

The applicant shall implement the proposed project in phases which allow for maximum public access along Pacific Coast Highway and the San Juan Creek Bikeway while at the same time ensuring safe public use of Pacific Coast Highway and the San Juan Creek Bikeway.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION AND LOCATION**

The South Coast Water District is proposing to install a 12-inch water pipeline within the public right-of-way on Pacific Coast Highway and within and between Del Obispo Street and Doheny Park Road, in the City of Dana Point. The proposed water line will cross San Juan Creek using the existing San Juan Creek Bridge (Caltrans Bridge Structure No. 55-15Y) (Exhibit 1 and 2).

The proposed development will include installation of a 12-inch diameter ductile iron pipe approximately 4 feet below the road surface. The development will include excavation of a trench within the public right-of-way, placement of the pipe and associated appurtenances, recompaction of soil and replacement of the paving. When crossing San Juan Creek, the proposed pipeline will be installed within existing open support girders underneath the bridge deck. The pipe will be attached to the girders with brackets.

In order to install the proposed pipeline under the San Juan Creek Bridge, construction equipment must temporarily enter San Juan Creek. Construction vehicles will temporarily disturb 0.46 acres of un-vegetated creek bottom during the pipeline installation.

The proposed 12-inch diameter water pipeline will provide water service to the Dana Point and Capistrano Beach service areas. Water service to these areas is presently provided by separate 10-inch and 12-inch water lines. The existing 10-inch line is located 10 feet below the road surface which makes repairs to the line time consuming and difficult. The existing 12-inch line is the sole water line to the existing Double Tree Hotel, which is located on Pacific Coast Highway between Doheny Park Road and Camino Las Ramblas. The proposed 12-inch water line will replace the existing 10-inch water line and connect the now-separate Dana Point and Capistrano Beach service areas (Exhibit 3). Connection of the two service areas will provide greater water reliability, larger fire-flow capacity, and increase water circulation in the system resulting in better water quality in the service areas.

The proposed work is expected to take approximately three (3) months to construct and is proposed to begin after September 15, 2000.

**B. MARINE AND BIOLOGICAL RESOURCES**

**1. Streambed Alteration**

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.*

The proposed project includes placement of a 12-inch water pipeline underneath the deck of the San Juan Creek Bridge. Heavy equipment must enter San Juan Creek in order to attach the pipeline to the bridge. The work area within the creek is 0.46 acres and includes the areas immediately adjacent to and under the bridge. San Juan Creek is approximately 420 feet wide in the project location with a soft bottom and flood control levies on each side of the river. The applicant describes San Juan Creek as "a sandy-bottomed wash containing meandering perennial flow and several patches of cattails." San Juan Creek discharges to the Pacific Ocean approximately 600 feet south of the subject site.

According to the applicant, water flows in San Juan Creek meander across the sandy bottom, and do not typically cover the entire creek bed during the project period (September through December). In most cases, the applicant will be able to avoid the meandering creek waters during construction. However, since the creek waters are able to meander freely within the creek bed, it may be necessary to temporarily redirect the creek flows away from work areas if the creek meanders through the work area. The applicant is proposing to dike or use sand bags to perform the temporary redirection. Upon completion of the proposed work, all equipment and sand bags will be removed from the creek bed and the creek bed will be restored to the pre-project condition. There is no proposed permanent impact upon the creek.

In addition to avoiding meandering creek waters (where feasible), the applicant is proposing to avoid riparian and wetland vegetation present within the creek bed and bank. By avoiding impacts upon riparian and wetland vegetation, the applicant is avoiding any adverse impacts, such as erosion, that would occur if riparian or wetland vegetation were disturbed. In this way the applicant is proposing to avoid erosion impacts that would cause substantial alterations to San Juan Creek. Since avoidance of riparian and wetland vegetation is necessary to ensure there are no substantial alterations of the stream, the Commission imposes Special Condition 1 which requires the applicant to avoid impacts upon riparian and wetland vegetation.

The proposed redirection of creek water, if necessary, will be temporary. If any redirection is necessary and disturbance to the creek bottom occurs, the applicant is proposing to restore the creek bottom to the pre-project condition. If the creek bottom were not restored to the pre-project condition, the disturbed area could become a conduit for erosion, resulting in potential water quality impacts and substantial alteration to the stream. Therefore, the Commission imposes Special Condition 2 which requires the applicant to restore the creek bottom to the pre-project condition upon completion of the proposed project.

As conditioned, the Commission finds the proposed development is consistent with Section 30236 of the Coastal Act.

## **2. Marine and Upland Resources**

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 and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30240(b) of the Coastal Act states:

*(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.*

The proposed development will require driving heavy equipment into the San Juan Creek bed in order to attach the proposed water pipeline to the San Juan Creek bridge. In order to stage equipment and materials storage and to access the creek bed, the applicant may need to enter Doheny State Beach, a popular park and recreation area adjacent and seaward of the San Juan Creek Bridge.

The San Juan Creek bed provides habitat for a variety of waterfowl and birds including the great blue heron (*Ardea herodias*), mallard (*Anas platyhychos*), cattle egret (*Bubulcus ibis*), and the northern rough-winged swallow (*Stelgidopteryz serripennis*). In addition, the bridge supports a maternal colony of Mexican free-tailed bats (*Tadarida brasiliensis*) and big brown bats (*Eptesicus fuscus*) from March to mid-September.

In order to avoid impacts to sensitive species, particularly the maternal bat colony which resides on the bridge, the applicant is proposing to avoid construction activity between March 1 and September 15 of any year during which the project is constructed. Since the bat colony migrates south during the winter months construction during this period would not adversely impact the bats.

The applicant has obtained a Streambed Alteration Agreement (#5-011-00) from the California Department of Fish and Game (Exhibit 4) for the proposed project. The California Department of Fish and Game has determined that avoidance of construction between March 1 and September 15 will avoid impacts to the maternal bat colony. In order to assure that the proposed development does not degrade Doheny State Park by disturbing the sensitive bat colony, the Commission imposes Special Condition 5 which requires the applicant to avoid construction between March 1 and September 15 of any year during which the project is constructed.

As conditioned, the Commission finds the proposed development is consistent with Section 30230 and 30240(b) of the Coastal Act.

**C. WATER QUALITY**

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.*

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into streams and coastal waters via rain would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged to coastal waters may cause turbidity which can shade and reduce the productivity of marine vegetation and foraging avian and marine species ability to see food in the water column. In addition, preliminary geotechnical investigations indicate that groundwater occurs at a depth of 3 to 8 feet beneath Pacific Coast Highway. Accordingly, the proposed project will require dewatering for the portion of the project occurring in the improved roadway. Discharges of sediment laden water from dewatering activities can also cause turbidity. In order to avoid adverse construction-related impacts upon marine resources, Special Condition 3 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

In addition, the proposed project will require the disposal of construction debris. The applicant has not identified the location of the debris disposal site. Disposal of construction debris in an inappropriate location would cause adverse impacts upon water quality. Therefore, the Commission imposes Special Condition 4 which requires that prior to issuance of a coastal development permit, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

Only as conditioned for appropriate storage of construction materials and equipment and identification of a debris disposal site does the Commission find that the proposed development is consistent with Section 30231 of the Coastal Act.

**D. PUBLIC ACCESS**

**1. First Public Roadway and Maximum Access**

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the first public road and the sea include a specific finding regarding the conformity of the proposed development with the public access and recreation policies of Chapter 3 of the Coastal Act. Portions of the proposed development are located between the first public road and the sea.

Section 30210 of the Coastal Act requires that maximum public access and recreation opportunities be provided. Section 30210 states as follows:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 of the Coastal Act states, in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(2) adequate access exists nearby.*

Pacific Coast Highway is a major transportation arterial which provides the primary means of access to coastal recreational areas in Dana Point and nearby San Clemente. In addition, the San Juan Creek Bikeway, a Class I (paved off-road) bikeway exists along the west side of San Juan Creek (Exhibit 2). This bikeway extends from the City of San Juan Capistrano to Doheny State Beach. The bikeway passes under the San Juan Creek Bridge in the area where the proposed project will occur.

The proposed work is expected to take approximately 3 months to construct and is proposed to only occur between September 15<sup>th</sup> and March 1<sup>st</sup>. Construction activity related to the proposed project will require the temporary closure of vehicle and pedestrian travel lanes. However, the applicant is proposing that one traffic through lane will remain open in each direction along Pacific Coast Highway from Camino Las Ramblas to Del Obispo Street at all times. In addition, one crosswalk, bike lane, and sidewalk will remain open at all times in this same area. However, temporary closure of Pacific Coast Highway between Camino Las Ramblas and Doheny Park Road (i.e. over the San Juan Creek Bridge) will be required on occasion for safety purposes. During these closure periods, a detour via Stonehill Drive will be identified with signage.

In addition, during construction of the proposed water pipeline on the San Juan Creek Bridge, access to the San Juan Creek Bikeway will be temporarily interrupted. However, the applicant is proposing to utilize flagmen or other personnel to keep the bikeway open at all times.

The heaviest public access use period occurs between Memorial Day and Labor Day weekends (i.e. between late May and early September). As proposed, access impacts will be further minimized by implementing the project between September 15<sup>th</sup> and March 1<sup>st</sup>, outside the heaviest use period.

The proposed project results in the temporary closure of Pacific Coast Highway (over San Juan Creek bridge), a road providing public access to coastal areas in Dana Point and San Clemente. The proposed project will not result in long term closure of any portion of Pacific Coast Highway. However, closure of Pacific Coast Highway even temporarily would have adverse impacts upon public access unless the measures proposed by the applicant are implemented. Therefore, the Commission imposes Special Conditions 6 and 7. Special Condition 6 requires that during any construction which requires the obstruction of a road or trail used for public access, the applicant shall provide temporary signage, placed in conspicuous locations, which identify alternative public access routes which bypass the temporarily closed portions of the road or trail. Special Condition 7 requires that the applicant shall implement the proposed project in phases which allow for maximum public access along Pacific Coast Highway and the San Juan Creek Bikeway while at the same time ensuring safe public use of Pacific Coast Highway and the San Juan Creek Bikeway.

Only as conditioned does the Commission find the proposed development is consistent with Section 30210 and 30212 of the Coastal Act.

## 2. Growth Inducement

Section 30254 of the Coastal Act states, in relevant part:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division...*

The proposed 12-inch diameter water pipeline will provide water service to the Dana Point and Capistrano Beach service areas (Exhibit 3). Water service to these areas is presently provided by separate 10-inch and 12-inch water lines. The existing 10-inch line is located 10 feet below the road surface which makes repairs to the line time consuming and difficult. The existing 12-inch line is the sole water line to the existing Double Tree Hotel, which is located on Pacific Coast Highway between Doheny Park Road and Camino Las Ramblas. The proposed 12-inch water line will replace the existing 10-inch water line and connect the now-separate Dana Point and Capistrano Beach service areas. The proposed water pipeline is not being proposed to provide increased capacity for additional development. The service area is presently urbanized. Rather, connection of the two service areas will provide greater water reliability, larger fire-flow capacity, and increase water circulation in the system resulting in better water quality in the service areas. Therefore, the Commission finds the proposed development will not be growth-inducing and is consistent with Section 30254 of the Coastal Act.

## E. LOCAL COASTAL PROGRAM

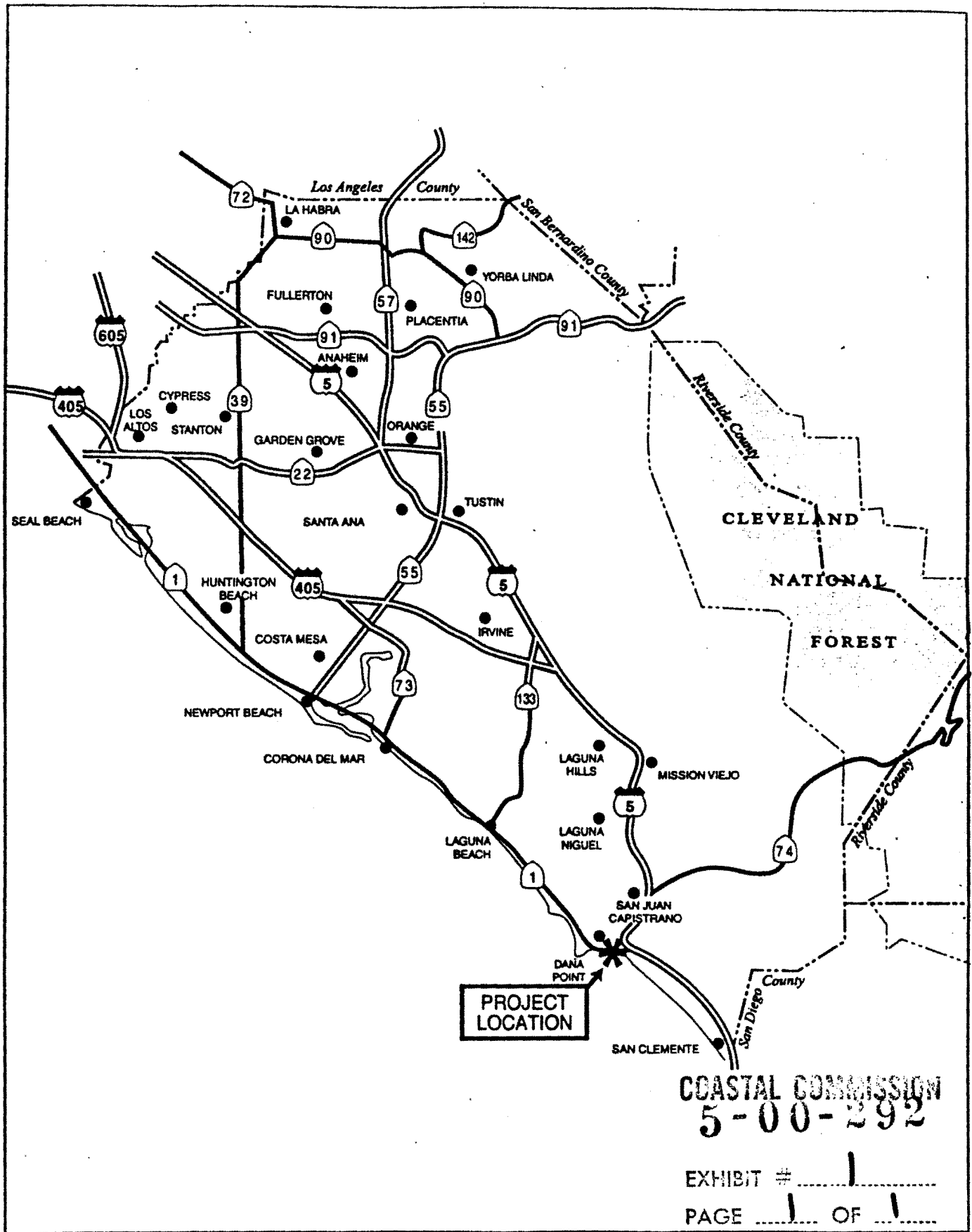
The proposed development is occurring in San Juan Creek and within Pacific Coast Highway in the City of Dana Point. The proposed development is occurring within a certified area

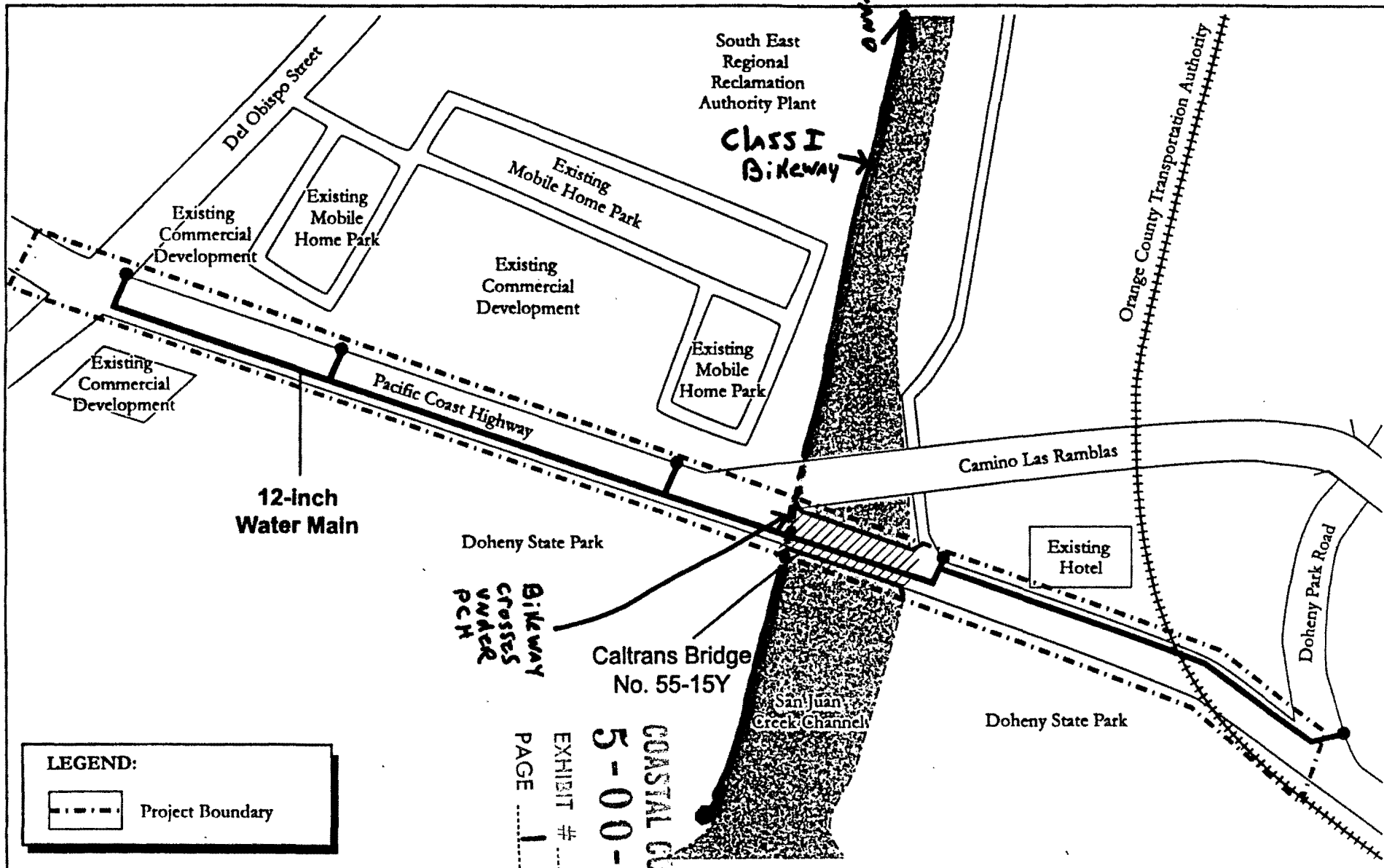
under the Dana Point Local Coastal Program. However, since the proposed development is partially located within San Juan Creek (an area subject to the public trust), it is within the Commission's original permit jurisdiction under Coastal Act Section 30519(b) and must be evaluated for consistency with the Chapter 3 policies of the Coastal Act. The policies of the certified Dana Point LCP may be used for guidance.

**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.

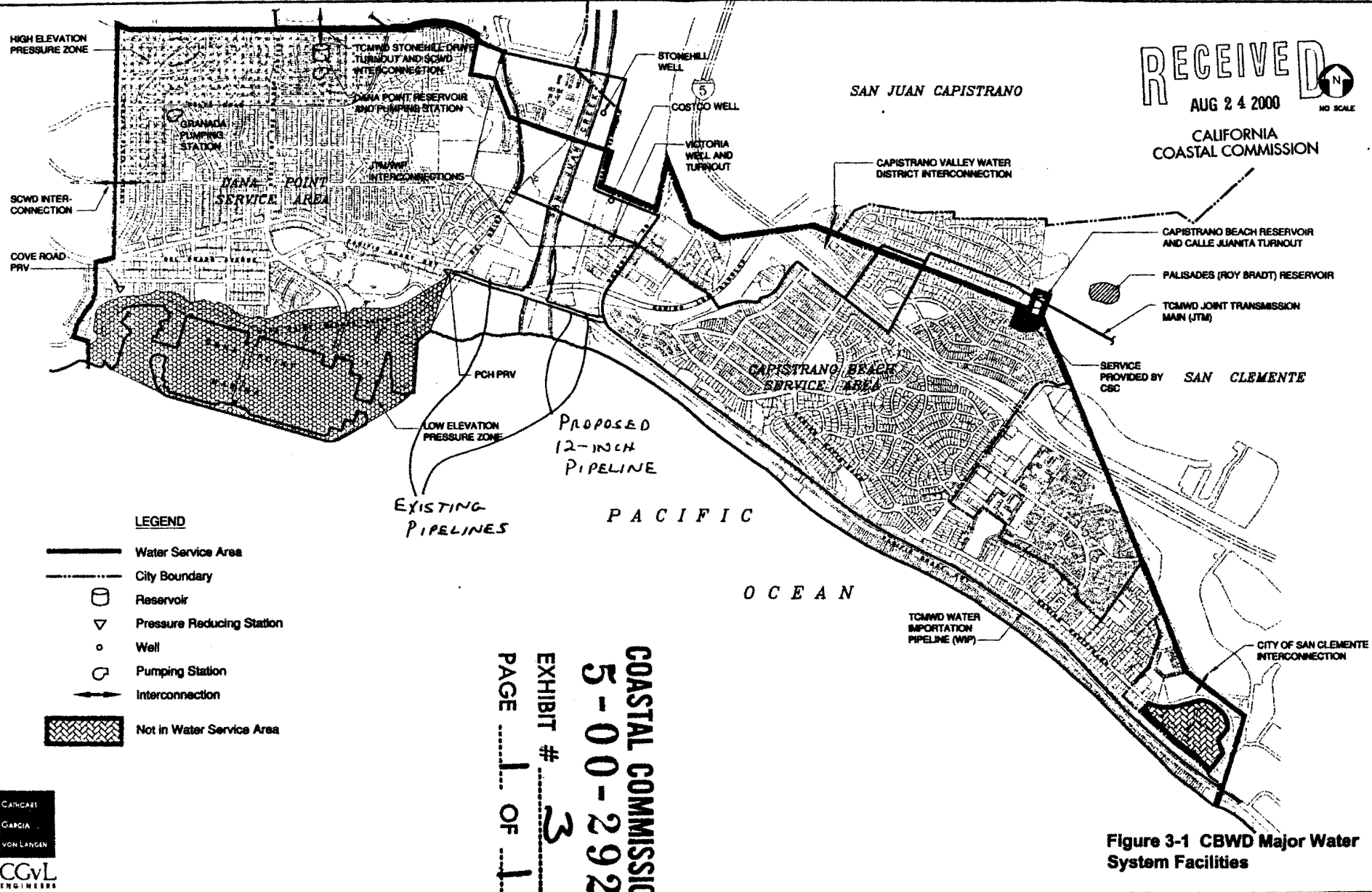
The proposed project has been conditioned for consistency with the marine resource protection policies of Section 30230 of the Coastal Act. Mitigation measures, in the form of special conditions require 1) the applicant to avoid impacts upon riparian and wetland vegetation; 2) the applicant to restore the creek bottom to the pre-project condition ; 3) the applicant to conform construction related BMP's; 4) identification of a debris disposal site; 5) the applicant to avoid construction between March 1 and September 15; 6) the applicant to use signage to identify detours when public access routes are obstructed; and 7) the applicant to construct the project in phases which allow for maximum public access along Pacific Coast Highway and the San Juan Creek Bikeway during the construction period. 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 will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.





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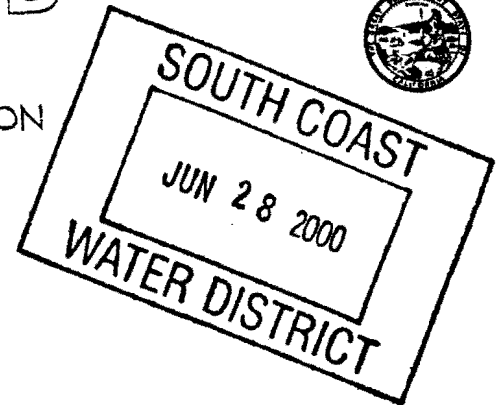
## DEPARTMENT OF FISH AND GAME

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CALIFORNIA  
COASTAL COMMISSION

June 23, 2000



South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
(858) 467-4201  
FAX (858) 467-4235

South Coast Water District  
Attn: Mike Dunbar  
P.O. Box 30205  
Laguna Niguel, CA 92607-0205

Dear Mr. Dunbar:

Enclosed is Streambed Alteration Agreement #5-011-00 that authorizes work on the Old San Juan Creek Bridge project impacting San Juan Creek in Orange County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Determination (NOD) on the project on 06/26/2000. Under CEQA regulations, the project has a 30-day statute of limitations on court challenges of the Department's approval under CEQA.

The Department believes that the project fully meets the requirements of the Fish and Game Code and CEQA. However, if court challenges on the NOD are received during the 30-day period, then an additional review or even modification of the project may be required. If no comments are received during the 30-day period, then any subsequent comments need not be responded to. This information is provided to you so that if you choose to undertake the project prior to the close of the 30-day period, you do so with the knowledge that additional actions may be required based on the results of any court challenges that are filed during that period.

Please contact Terri Dickerson at (949) 363-7538 if you have any questions regarding the Streambed Alteration Agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "C.F. Raysbrook".

C.F. Raysbrook  
Regional Manager

Enclosure

cc: Terri Dickerson

COASTAL COMMISSION

5-00-292

EXHIBIT # 4  
PAGE 1 OF 5

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

4949 Viewridge Avenue  
San Diego, California 92123

March 24, 2000

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-011-00

Page 1 of 5

**AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the **Department**, and South Coast Water District, represented by: Mr. Mike Dunbar, P.O. Box 30205, Laguna Niguel, CA 92607-0205; (949) 499-4555, State of California, hereinafter called the **Operator**, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 10th day of January, 2000, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): San Juan Creek, tributary to the Pacific Ocean, Orange County, California, Thomas Guide: 972 A6.

WHEREAS, the Department has determined that such construction may substantially adversely affect those existing fish and wildlife resources within **San Juan Creek**, specifically identified as follows: reptiles: southwestern pond turtle, western fence lizard; birds: songbirds, snowy egret, mallard, other waterfowl, Cooper's hawk, red-tailed hawk, northern harrier, other raptors; mammals: raccoon, desert cottontail; Mexican free tail bat, big brown bat; Riparian Vegetation which provides habitat for those species; Cattails; and all other fish and wildlife resources, including that riparian vegetation which provides habitat for such species, in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates October 31, 2001 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement. Any provisions of the agreement may be amended at any time provided such amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original agreement and are subject to all previously negotiated provisions.

**COASTAL COMMISSION**

**5-00-292**

EXHIBIT # 4

PAGE 2 OF 5

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The Operator proposes to alter the streambed to attach a 12-inch diameter ductile iron pipe (DIP) under the old San Juan Creek Bridge (CalTrans Bridge Structure No. 55-15Y) which would be supported by the existing concrete bridge girders, and use a one way in-out access by work vehicles within the San Juan Creek, impacting 0.46 acre of stream. In addition, outside of the stream, a 12-inch diameter polyvinyl chloride (PVC) pipe will be placed underground, beginning at the intersection of Del Obispo Street and extending southeast on PCH, and terminating at the intersection of Doheny Park Road and Coast Highway
3. The agreed work includes activities associated with No. 2 above. The project area is located in **San Juan Creek, a tributary to the Pacific Ocean in Orange County**. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.46 acre of work area (all unvegetated stream) in the San Juan Creek for the installation of the 12-inch diameter DIP under the bridge. All work area impacts are temporary.
5. The Operator shall place the ductile iron pipe beneath the old San Juan Creek Bridge so not to disturb or block access for the Maternity Bat Colony (Mexican Free Tail and Big Brown).
6. The Operator shall not conduct construction activities from March 1 to September 15 to avoid any disturbance to the Maternity Bat Colony. All construction shall occur in the winter months, after the bats migration south.
7. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
8. One vehicle may be driven in wet portions, but not ponded or flowing areas, of the stream to accomplish the work authorized by this Agreement. This work is only authorized when the vehicle is completely clean of petroleum residue and water levels are below the gear boxes of the equipment in use or lubricants and fuels are sealed such that inundation by water shall not result in leaks.
9. Vehicles may be driven on the stream bed to traverse the distance to the work site from the access point, and in the immediate vicinity (within 50 feet) of the work area, and only as necessary to accomplish authorized work.
10. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.
11. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.
12. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

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13. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
14. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
15. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.
16. Staging/storage areas for equipment and materials shall be located outside of the stream.
17. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
18. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
19. Access to the work site shall be via existing roads and access ramps.
20. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
21. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
22. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
23. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
24. Permanent structures shall be designed, constructed and maintained such that they do not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish that impedes their upstream or downstream movement. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the Operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.

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25. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's Region 5 Office at 4949 Viewridge Avenue, San Diego, California 92123. If the Operator fails to request the extension prior to the agreement's termination then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement is a violation of Fish and Game Code Section 1600 et. seq.

26. The Operator shall **provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work** and must be presented to any Department personnel, or personnel from another agency upon demand.

27. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

28. The Operator shall notify the Department, **in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities.** Notification shall be sent to the Department at 4949 Viewridge Avenue, San Diego, CA 92123, Attn: ES. SAA# 5-011-00.

29. The Department reserves the right to suspend or cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of this Agreement, or for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

CONCURRENCE

Operator

California Dept. of Fish and Game

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Michael P. Dunbar 3/28/00  
(signature) (date)

C.F. Raysbrook 06/26/2000  
(signature) (date)

M.P. Dunbar, GEN MGR  
Print Name and Title

C.F. Raysbrook, Regional Manager  
Name and Title

Streambed Alteration Agreement Prepared By: Stephanie A. Seapin, Scientific Aide and Terri Dickerson, Environmental Specialist III

