

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

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Staff: GDC-SD
Staff Report: September 27, 2001
Hearing Date: October 12, 2001

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-01-16

Applicant: Solana Beach Towne Centre Investments, L.P.

Description: Lot line adjustment involving four existing lots and construction of two office buildings totalling approximately 119,576 sq. ft., 712 parking spaces in surface lots and a one-level subterranean parking structure, landscaping, drainage improvements and stream enhancement on an approximately 9.82 acre site containing 2 office buildings (totalling 93,480 sq. ft.), 338 surface parking spaces and landscaping.

	Existing	Proposed	Total
Lot Area	427,800 sq. ft.	427,800 sq. ft.	427,800 sq. ft.
Building Coverage	40,000 sq. ft. (9 %)	58,200 sq. ft.	98,200 sq. ft. (23 %)
Pavement Coverage	123,800 sq. ft. (29 %)	66,000 sq. ft.	189,800 sq. ft. (44 %)
Landscape Coverage	44,600 sq. ft. (11 %)	65,100 sq. ft.	109,700 sq. ft. (26 %)
Unimproved Area	219,400 sq. ft. (51 %)	(-189,300 sq. ft.)	30,100 sq. ft. (7 %)
Parking Spaces	338	374	712
Zoning	Office Professional		
Plan Designation	Office Professional		
Ht abv fin grade	30 ½ ft.	45 ft.	

Site: 380-462 Stevens Avenue and 622-689 San Roldofo, Solana Beach, San Diego County. APN(s) 263-421-16, 17 and 298-112-31 and 32

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending denial of the proposed development. The proposal involves the significant expansion of an existing office complex that includes fill of a small isolated wetland area and the significant alteration of an existing open stream that crosses the property in order to accommodate the development. The proposed stream alterations to accommodate the proposed development are inconsistent with the wetland and stream resource protection policies of the Coastal Act. Feasible alternatives appear to be available that allow for development

of the commercial buildings that avoids the need to alter the existing open channel. However, the applicant has been unwilling to examine those alternatives. Therefore, staff is recommending denial of the proposed development.

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; Final EIR of the Proposed Solana Beach Town Centre Theatre/Office Project by RECON dated June 15, 1999; Wetland Delineation letter to John Chamberlain from Gerry Scheid (RECON) dated January 18, 1999; Wetland Delineation for the Proposed Solana Beach Towne Centre Development by RECON dated February 28, 2001; Development Review Permit/Lot Line Adjustment/Structure Development Permit #17-97-27; Dept. Fish and Game Streambed Alteration Agreement Notification #5-045-00; Draft EIR for the Santa Fe Christian Schools Master Plans by RECON dated March 21, 2001; CDP Nos. 6-83-34 and 6-84-436/Lomas Santa Fe Dev., 6-99-24 and 6-99-24-A1/McMahon Dev.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-01-16 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a NO vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed development involves after-the-fact lot line adjustments of four existing lots, construction of two, three-story office buildings totalling approximately 119,576 sq. ft, approximately 87,000 cu. yds. of grading, parking lots (including surface and subterranean), landscaping and drainage improvements on an approximately 9.82 acre site. The site currently contains two office buildings which total approximately 93,480 sq. ft., surface parking lots and landscaping. The applicant has indicated that the existing site contains 338 surface parking spaces and the proposed development will result in a total of 712 parking spaces on the project site.

The site is located on the east side of Stevens Avenue between San Rodolfo and Academy Drive, approximately ¼ mile west of Interstate 5 in the City of Solana Beach. Stevens Creek (which is identified as a blue-line stream on a 1924 reprint of a 1904 USGS Map), runs north/south through the eastern side of property, eventually flowing into San Dieguito Lagoon. Stevens Creek at this location is an approximately 660 ft-long, 90 ft.-wide open channel containing minimal vegetation. The applicant proposes to fill approximately one-half of the onsite portion of Stevens Creek and enhance the remaining open areas of the stream with vegetation and drainage improvements.

The Commission has previously approved two developments on the subject site. In 1983 the Commission approved CDP #6-83-34 for the existing office building on the northwest corner of the site (southeast corner of Stevens Avenue and San Rodolfo). In 1984 the Commission approved CDP #6-84-436 for the existing office building located at the southwest corner of the site (northeast corner of Stevens Avenue and Academy Drive). In both cases the applicants were not proposing impacts to Stevens Creek located on the eastern portion of the site and the Commission did not identify any adverse impacts to Stevens Creek from the developments.

The project site is located within an area that was previously covered by the County of San Diego's Local Coastal Program (LCP). However, the County LCP was never effectively certified and therefore is used as guidance with Chapter 3 Policies of the Coastal Act used as the standard of review. In addition, the City of Solana Beach, which incorporated in 1986, does not have a Local Coastal Program.

2. Wetlands/Streambed Alteration. Section 30233 of the Coastal Act states, in part:

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

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

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

(3) In wetland areas only, entrance channels for new or expanded boating facilities....

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

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

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

(7) Restoration purposes.

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

In addition, Section 30231 of the 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.

In addition, Section 30236 of the 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.

Stevens Creek, an historic stream that has been altered by urban development, runs north/south through the eastern side of property. The majority of Stevens Creek from Interstate 5, southwest to San Dieguito Lagoon is filled and channelized with only a small

portion within the subject site and to the south remaining as an open channel. Because of historic urban development, the above-ground portion of Stevens Creek today commences on the northeast corner of the subject development site. Stevens Creek within the subject site consists of open channel area approximately 660 feet-long and 90 feet-wide that is mostly dry throughout the year except during and following storm events such as seen in the attached Exhibit #6. Some ponding does occur, however, at the north end of the stream where the upstream storm drains connect to the site. Low flow and urban runoff during the dry season is diverted at the upstream end of the open channel by a 36-inch pipe that directs low flows from within the channel to a concrete apron on the north side of Academy Drive which is the southern border of the subject site. Runoff from this pipe (and storm water runoff from the open channel) is then directed through pipes under Academy Drive to the open channel area south of Academy Drive.

Because low flow and dry season urban runoff is diverted to bypass this section of Stevens Creek, vegetation throughout most of the stream is limited to what the applicant's biologist describes as "non-native grasses and weeds." However, the biologist has identified "a few hydrophytic plants occur near the inlet culvert on the north side of the property." The applicant's biologist further notes that "[t]he herbaceous vegetation and open nature of the channel do provide some limited water quality benefits." In addition, the City of Solana Beach has periodically mowed this section of Stevens Creek as a flood control measure thus eliminating the opportunity for plant maturation.

The subject development site is approximately 9.82 acres and currently contains two existing office buildings with landscaping and parking lots. The proposed development involves fill of approximately one-half of the onsite portion of Stevens Creek in order to accommodate portions of two office buildings including subterranean parking, parking lots and drainage improvements. The applicant also proposes to enhance the remaining open portions of Stevens Creek by redirecting upstream runoff that currently is diverted around Stevens Creek and revegetating the open areas with native species in order to improve water quality. The redirection of upstream runoff will occur through the installation of two 78" pipes to be placed under a proposed parking lot at the north end of the stream in order to provide runoff into the remaining open sections of Stevens Creek. While the majority of Stevens Creek within the subject site does not contain wetlands, a portion of the proposed development at the north end of the channel will involve fill of the area the applicant's biologist describes as containing hydrophytic plants.

Because of the degraded and altered nature of Stevens Creek, the applicant asserts that Stevens Creek is not a stream and, therefore, Section 30236 of the Coastal Act is not applicable. The applicant contends that the natural alignment of Stevens Creek is actually west of its present location and that the existing channel is a man-made drainage facility which their biologist describes as "composed of shallow sediments over rip-rap that support mainly low growing herbaceous plant species such as grasses and weeds." However, their biologist has identified that "[a]n ordinary high water mark is evident in the central portion of the channel marking the limits of the non-wetland jurisdictional area of the U.S. Army Corps and the lateral extent of the streambed under CDFG

jurisdiction.” In addition, the biology report concludes that Stevens Creek at the subject site contains a “state streambed”:

Although the channel is man-made and no federal or state wetlands are within the Stevens Creek flood control channel, the channel is a federal non-wetland jurisdictional water and state streambed. Therefore the applicant must apply for a 404 permit from the USACE, a 401 Water Quality Certification from the Regional Water Quality Control Board, and a 1603 Streambed Alteration Agreement from CDFG. (“Wetlands Delineation for the Proposed Solana Beach Towne Centre Development” by RECON, dated February 28, 2001)

In addition, the Department of Fish and Game (DFG) has approved a Streambed Alteration Agreement, signed by the applicant, for those portions of the proposed development that impact Stevens Creek (ref. Exhibit #4). The Agreement identifies the subject site as “Stevens Creek, a tributary to San Dieguito River” and requires that the impacts be mitigated through the offsite purchase of a .5 acre of riparian habitat restoration area within the San Dieguito River Park.

The Commission’s ecologist/wetlands coordinator has previously researched Stevens Creek in connection with a development south of the subject site and concluded that Stevens Creek is a stream:

What is now called Steven’s Creek shows up as a blue-line stream on the 1924 reprint of a 1904, 1:250,000 scale USGS map. The area was surveyed in 1891 and 1898-1902. Given San Diego’s Mediterranean climate and the tiny water shed, this creek was probably a seasonal stream, wet in the winter and spring and dry the rest of the year. It probably supported some riparian vegetation – plants with deep roots that could tolerate the annual dry season. It probably did not have significant perennial wetland vegetation in the herbaceous layer, but may have supported some annual wetland species during the rainy season. (ref. CDP No. 6-99-24 and 6-99-24-A/McMahon Dev.)

At a minimum, Stevens Creek within the subject property meets the definition of a stream because it consists of a streambed with banks and conveys water. Section 13577(a) of the Commission’s Code of Regulations provides some direction at determining the extent of streams. While pertinent primarily to the question of appeals jurisdiction boundaries, the section provides a description for a “bank of a stream”:

The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream.

Stevens Creek at this location is approximately 90 feet wide with a lower streambed that conveys water and banks on either side which separates the streambed from upland areas and confines water to within the bed. Therefore, the Commission concludes that, while

Stevens Creek may contain limited resources at this time, probably due to the water diversion and regular mowing/maintenance by the City of Solana Beach, it is nonetheless a stream and subject to the resource protection policies of the Coastal Act.

The applicant relies on two different provisions of Section 13577(a) to argue that Stevens Creek is not a stream within the meaning of the Coastal Act. Section 13577 provides:

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. . . . For purposes of this section, channelized streams not having significant habitat value should not be considered.

The applicant contends that because Stevens Creek is not depicted on the most recent USGS topographic maps as a blue line stream, it is not a stream. Section 13577(a), however, acknowledges that USGS topographic maps do not depict all streams by describing how to map streams identified *either* on a USGS map *or* in a local coastal program. Because Solana Beach does not yet have an LCP, Stevens Creek is not identified in an LCP, but it is not thereby deprived of protection under the Coastal Act. Section 13577(a) primarily addresses how various geographic features should be mapped for the purpose of delineating the bounds of the Commission's original and appellate jurisdiction once a local government has a certified LCP. As explained above, the Department of Fish and Game, the Commission in previous action on a nearby property, and the applicant's own biologist have identified Stevens Creek as a stream. The fact that it does not appear on recent USGS maps does not change Stevens Creek's status as a stream within the meaning of the Coastal Act.

The applicant, relying on the last sentence of Section 13577(a), also argues that Stevens Creek is not a stream because it is channelized and lacks significant habitat value. Although the course and banks of Stevens Creek have been altered over the years, it is not a concrete-lined culvert devoid of habitat value. In addition, because of periodic unauthorized removal of vegetation, much of the vegetation within Stevens Creek has not been afforded an opportunity to grow or mature. However, as explained below, the upper portion of the stream on the property supports wetland vegetation. In addition, the Department of Fish and Game Streambed Alteration Agreement which the applicant has signed indicates that DFG determined that the proposed development "may substantially adversely affect" a range of birds, mammals, amphibians, and insects associated with wetland habitat in the stream (see Exhibit #4). Because Stevens Creek has significant habitat value, it does not fall within the exception established by the last sentence of Section 13577(a).

As cited previously, Section 30236 of the Coastal Act prohibits the channelization and other substantial alteration of rivers and streams except under three limited

circumstances: 1) water supply projects; 2) flood control projects to protect existing structures and; 3) developments whose function is to improve fish and wildlife habitats. None of these circumstances are present in this case. The applicant proposes to fill approximately one-half of that portion of Stevens Creek that lies within the subject site in order to accommodate two office buildings totalling approximately 119,576 sq. ft. and parking lots. While the applicant proposes to enhance the remaining open portion of Stevens Creek with drainage improvements and native plantings, the function of the overall proposed development is the construction of the commercial buildings and associated improvements, not the improvement of fish and wildlife habitat. Therefore, the proposed development is not one of the permitted uses within streams as identified in Section 30236 of the Act and must be denied.

The applicant also asserts that Stevens Creek does not contain wetlands. A wetlands delineation that was performed for the subject site identifies the lack of hydric soils, hydrophytic vegetation and hydrology, at least at the two points studied within the streambed (see attached Exhibit #5). As previously described, upstream runoff is diverted at the north end through a 36-inch underground pipe such that Stevens Creek within the subject property only receives runoff during the rainy season or, potentially, from landscape irrigation runoff from upland parking lots. Therefore, for most of the extent of the existing open channel, including the two points studied, Stevens Creek does not appear to contain wetlands. However, as noted earlier, the delineation report also identifies that:

A few hydrophytic vegetation plants occur near the outlet pipe on the north side of the property, but the shallow soils over the rip-rap do not exhibit hydric indicators and wetland hydrology indicators are lacking.

Although underlined with rip-rap, the north end of Stevens Creek within the applicant's property is a wetland under the Coastal Act. The Coastal Act defines the term "wetland" as "... lands within the coastal zone that may be covered periodically or permanently, with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens." Section 13577 of the Commission's Code of Regulations provides:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes

The north end of the stream on the subject site meets this Coastal Act definition because there is a regular source of water and wetland vegetation (hydrophytes). The Commission's ecologist/wetlands coordinator visited the site about two years ago and observed the northern end of the channel from outside the chain link fence. At that time there was standing water present and vegetation that appeared from a distance to be cattails. He has also examined recent photographs of the northern end of the channel taken through the fence. There currently appear to be cattails and umbrella sedge growing in that area. Cattails are an obligate wetland species and most species of

umbrella sedge are Facultative Wetland or Obligate wetland species. However, the applicant has failed to accurately map or detail the plants located around the northern inlet and has simply identified them as "a few hydrophytic plants". In addition, the applicant asserts, and Commission staff has previously confirmed, that the City of Solana Beach has historically mowed and removed vegetation within Stevens Creek in order to control downstream flooding. The City has recently been advised by Commission staff that removal of wetlands vegetation within Stevens Creek for flood control purposes requires a coastal development permit. The City was unaware of this requirement and has agreed to not mow or remove vegetation within Stevens Creek without first determining whether such activity requires Coastal Commission approval. If in the future the City needs to remove vegetation from within the stream for flood control purposes (a permissible use), it is likely the Commission would require mitigation for any impacts to wetlands or riparian habitat. Mitigation could potentially involve removal of non-native or exotic vegetation along with plantings of riparian/wetlands vegetation. Therefore, while it is unlikely that wetlands vegetation will occur throughout most of Stevens Creek within the subject property because of upstream diversion of low flow and urban runoff, the area at the north end is likely to recover or be enhanced beyond the level identified in the applicant's wetland delineation.

The applicant proposes to fill the area containing wetlands and construct a parking lot. In addition, three 78" pipes are proposed to be placed under the parking area to redirect upstream runoff that currently bypasses most of Stevens Creek within the subject site to provide runoff into the remaining open sections of Stevens Creek. Section 30233 of the Act limits the fill or dredging of wetlands to eight enumerated uses. Dredging and fill of wetlands to accommodate a parking lot for a commercial development is not one of the eight allowable uses permitted under Section 30233 of the Act. Further, although the applicant's biological assessment describes the area as containing "[a] few hydrophytic vegetation plants", Section 30233 the Coastal Act does not distinguish between degraded and pristine wetlands; it applies to all wetlands. Thus, the development proposal is not consistent with Section 30233 of the Act and must be denied.

The proposed development also involves an after-the-fact lot line adjustment involving four lots. The lot line adjustments were recorded in approximately July of 2000 without benefit of a coastal development permit. The lot line adjustments occurred in preparation for the proposed commercial development. Although the lot line adjustments do not increase the number of lots over what previously existed, the proposed lot line adjustments have the potential to adversely affect Stevens Creek. The previous lot line configuration involved one large lot containing an office building along with most of the overall site's parking spaces and three smaller lots on the northern side of the site, one of which contains an office building. The effect of the proposed after-the-fact lot line adjustment will be to place each existing office building on an individual lot, place most of the available surface parking areas into a single lot and leave one lot vacant (four lots total).

However, the lot line adjustment will also result in the loss of onsite parking for the existing approximately 50,313 sq. ft. office building located on the south side of the

subject site. Currently the lot containing the approximately 50,313 sq. ft. building also contains the building's required 168 parking spaces (along with the majority of off-site parking spaces for the other existing office building located on the northwest corner of the subject site). The City of Solana Beach Zoning Ordinance requires 1 parking space per 300 sq. ft. of office use for structures in excess of 40,000 sq. ft. The Commission's Regional Interpretative Guidelines used prior to certification of an LCP also requires 1 parking space per 300 sq. ft. of office space. In approving the existing office buildings on the subject site (CDF No. 6-83-34 and 6-84-436/Lomas Santa Fe Dev.), the Commission required 1 parking space be provided for 300 sq. ft. of office use. Following the proposed lot line adjustment, only approximately 11 parking spaces will remain on the reconfigured lot. Because the newly reconfigured lot would be fully occupied by the existing office building, approximately 11 parking spaces and required setbacks and driveway access areas, the only new parking that could be created on the lot to accommodate the existing office building itself would involve development into Stevens Creek which, as noted above, would be inconsistent with Section 30236 of the Coastal Act.

While the applicant has not provided the Commission alternatives to the proposed development, it is likely that feasible alternatives exist which would not require substantial alterations of Stevens Creek. These alternatives may include the continued use of the site with the existing development or development of additional structure(s) or smaller structures outside of Stevens Creek with development of subterranean parking or a parking structure also located outside of Stevens Creek. However, because the applicant has not provided information regarding alternatives to the proposed development, the Commission cannot fully evaluate the potential alternatives.

In summary, the proposed lot line adjustment, construction of two office buildings totalling approximately 119,576 sq. ft., parking lots and drainage improvements involve direct impacts to Stevens Creek and the wetlands it contains. In addition, there are feasible alternatives available that would allow development of the office buildings while avoiding fill of the stream or wetlands. Thus, the subject request does not represent the least environmentally damaging alternative. Therefore, the proposed substantial alteration of the stream and fill of wetlands is inconsistent with Section 30233 and 30236 of the Coastal Act and must be denied.

3. No Waiver of Violation. The proposed boundary adjustments involving the subject four lots has already occurred without the necessary coastal development permit(s). The Commission notes that although development may have taken place prior to the submission of this permit request, consideration of the request by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Commission action upon the permit does not constitute a waiver of any legal action with regard to the alleged violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Public Access/Traffic. Section 30250(a) of the Coastal Act states, in part, that:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. . .

In addition, Section 30252 states, in part, that:

The location and amount of new development should maintain and enhance public access to the coast . . .

The subject development site is located approximately one block south of Lomas Santa Fe Drive, approximately $\frac{1}{4}$ mile from the intersection of Interstate 5 and Lomas Santa Fe Drive and approximately $\frac{3}{4}$ inland mile from the shoreline. Lomas Santa Fe is the only major east/west coastal access route that leads directly to the shoreline within Solana Beach. As such, traffic congestion on this roadway and the I-5/Lomas Santa Fe Drive intersection has the potential to affect public access to the coast. The traffic study of 1999 cited in the EIR for the subject development, describes Lomas Santa Fe Drive and portions of Stevens Avenue (which borders the west side of the development site) as currently operating at a Level of Service (LOS) D and E which, the EIR suggests, "may be operating below the City's goal of LOS D during peak hours" (page 5.2-3, EIR for Proposed Solana Beach Towne Centre Theatre/Office Project). Objective 1.0 of the City's Circulation Element identifies the goals for streets and roadways as follows:

Maintain a minimum LOS C at all intersections during non-peak hours and LOS D (volume/capacity ratio of 0.90 or less) at all intersections during peak hours and LOS D for I-5 as an element of the Regional Transportation Plan (RTP) to ensure that traffic delays are kept to a minimum.

Therefore, the EIR suggests that the road conditions in 1999 were below the minimum goals of the City's Circulation Element. In addition, an application for a coastal development permit has recently been submitted to the Commission for redevelopment of an existing approximately 15.65 acre private secondary school that is located on the east side of the subject development site (CDP Application #6-01-146/Santa Fe Christian School) which includes updated traffic information. The EIR submitted with the secondary school application includes an updated traffic analysis (dated March 1, 2001) which indicates that the LOS for surrounding roadways has worsened since the traffic analysis performed for the subject development (Draft EIR for the Santa Fe Christian Schools Master Plans, by RECON, dated March 21, 2001). Stevens Avenue which connects the subject development site to Lomas Santa Fe, the primary coastal access roadway for Solana Beach, is currently cited as operating at LOS E, which is well below the minimum standard of LOS C or, at peak, LOS D. In addition, the EIR indicates that the LOS for Interstate 5 at Lomas Santa Fe is at F. Therefore, the existing conditions are inadequate to meet the minimum standards cited in the City's Circulation Element.

As noted above, Section 30250(a) of the Act requires that new development be located in areas with adequate public services such that it will not have adverse effects on coastal resources. While the subject development is proposed in an already developed area, based upon review of two EIR's, it appears that the Lomas Santa Fe/I-5 interchange and parts of Lomas Santa Fe Drive and Stevens Avenue are not currently meeting acceptable traffic standards. What this means is that these road segments and intersections are highly congested which results in traffic delays. The City is currently planning and seeking funding for improvements to the I-5/Lomas Santa Fe Drive interchange in order to alleviate this congestion. Thus, traffic congestion is occurring that also affects the ability of the public to access the beach west of the I-5/Lomas Santa Fe Drive intersection. The traffic analysis performed in 1999 for the subject development does not clearly identify whether the proposed development will result in a change in the LOS for the surrounding roadways. However, the City has required the applicant to perform post-development traffic analysis to determine if mitigation is required. In addition, the EIR performed for a neighboring proposed development (Santa Fe Christian School) indicates that existing conditions have already exceeded minimum LOS D for peak hours. Therefore, the proposed development may result in a change in the existing LOS or, at worst, will add to congestion on streets and roadways that are already operating at levels below the City's traffic standards. Because, Lomas Santa Fe Drive is the primary access corridor for public access to the shoreline in Solana Beach, this increase in traffic will have an adverse effect on the public's ability to access the beach. As previously identified, there are feasible alternatives to the proposed development including constructing smaller structures or continuing to use the site as currently exists. Another alternative would be to wait until the improvements to the I-5/Lomas Santa Fe Drive interchange are completed before commencing further development on the subject site. In addition, to mitigate any adverse effect on traffic, any future development could include strategies to expand the use of public transit or vanpools to encourage the use of alternative transportation. Based on the above, the Commission finds that the proposed development will have adverse impacts on public access by increasing traffic congestion on an already impacted coastal access route and must be denied.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

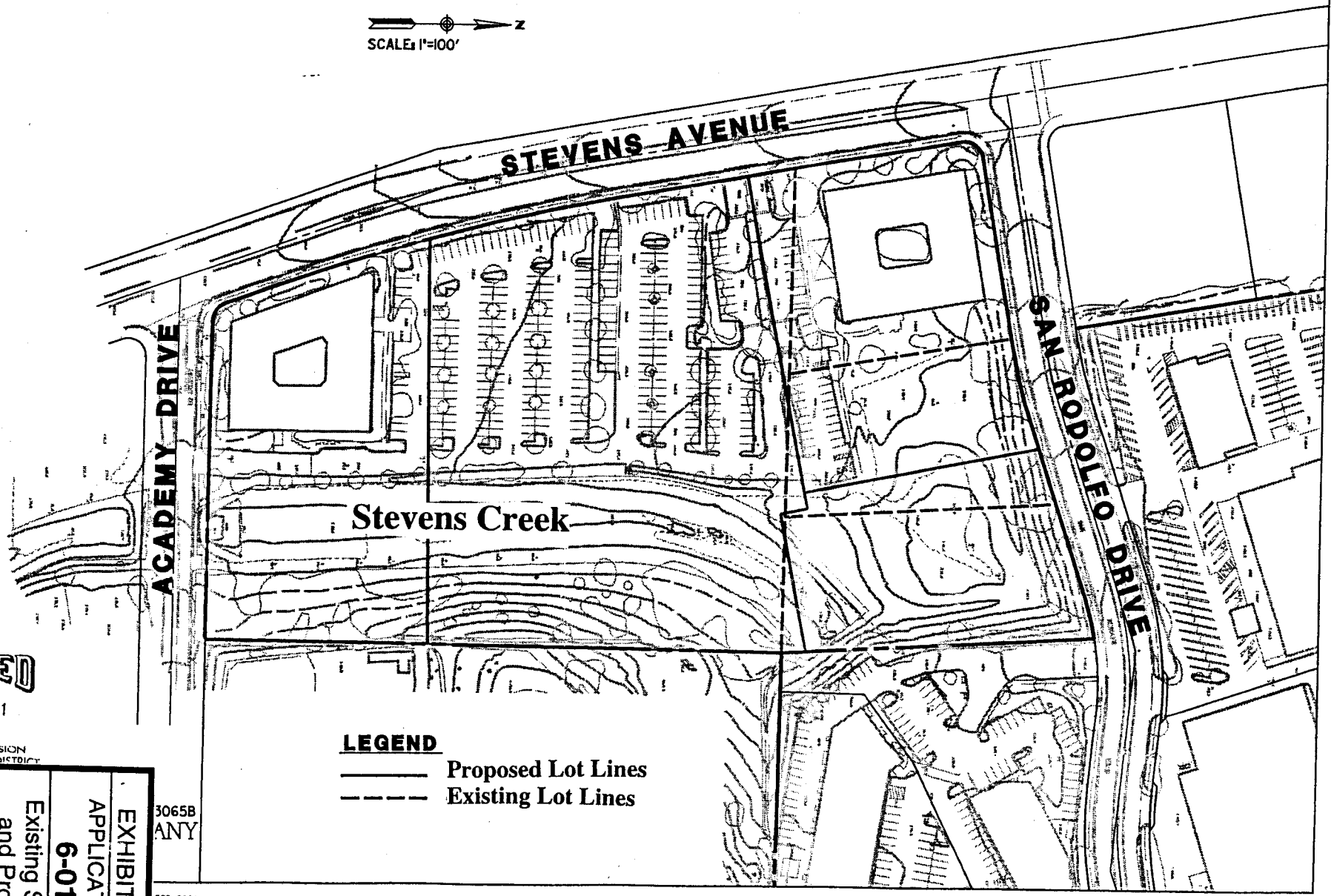
The subject site is designated and zoned Office Professional by the City of Solana Beach General Plan and Zoning Ordinance. The subject development is consistent with this designation. However, the proposed development would result in direct impacts to stream and wetland resources which would be inconsistent with applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds the proposed development could prejudice the ability of the City of Solana Beach to prepare a certifiable local coastal program and, thus, must be denied.

6. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit 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.

As stated previously, and incorporated herein by reference, the development as proposed would result in impacts to the stream through the construction of two office buildings and parking lots. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include continuing with the existing uses on the site, configuring new development of the site to avoid impacts to Stevens Creek and/or reducing the size of new development to avoid these impacts along with waiting until roadway/traffic improvements occur. These alternatives would eliminate all direct impacts to the stream and wetland resources and avoid the adverse effects on public access. The proposed development, therefore, is not the least environmentally damaging alternative. Approval of the proposed development would thus be inconsistent with CEQA.

SOLANA BEACH CORPORATE CENTER

SCALE: 1"=100'



RECEIVED

MAR 09 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

LEGEND

- Proposed Lot Lines
- - - Existing Lot Lines



FEBRUARY 2001

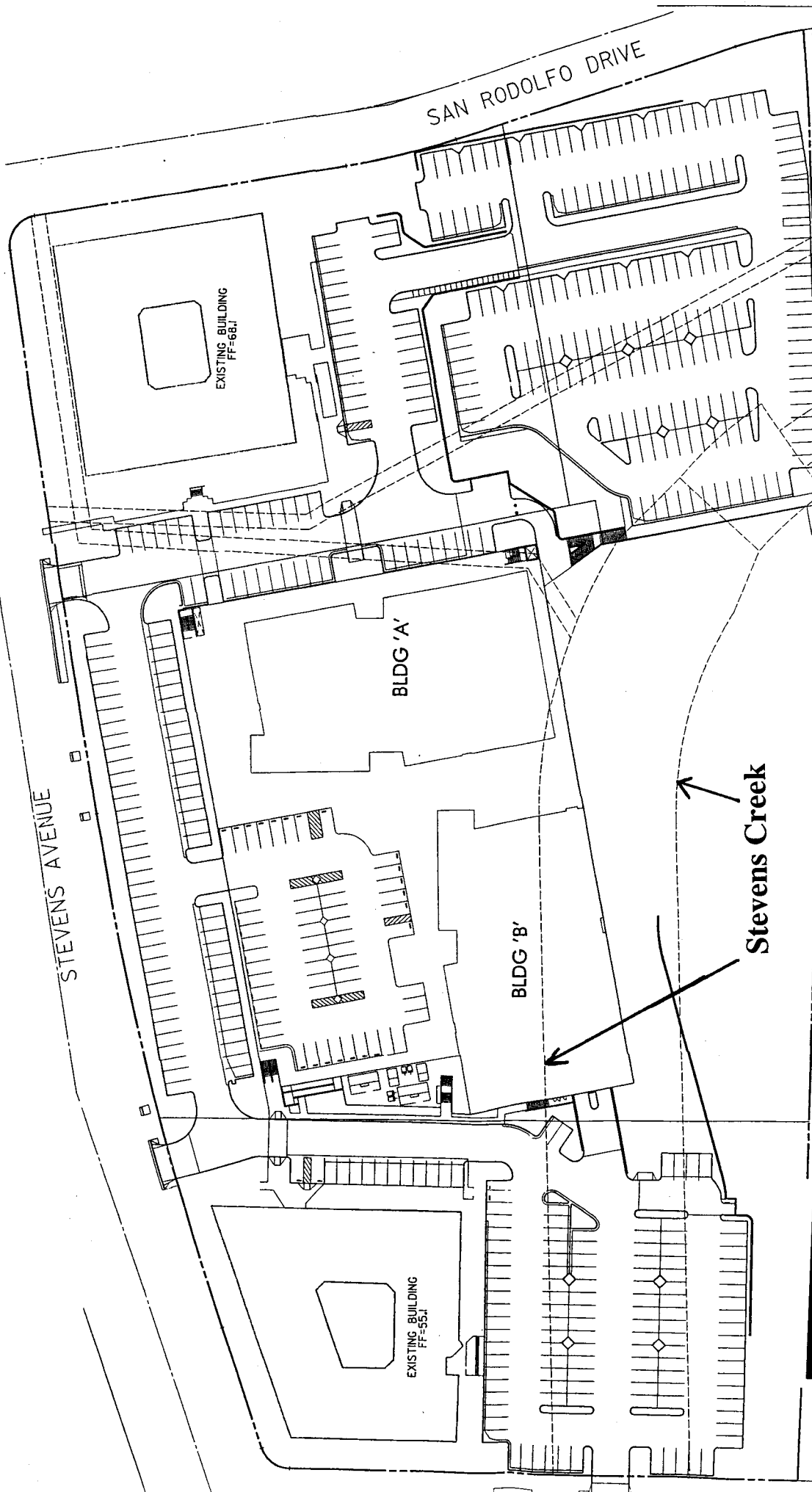
San Diego Coastal Commission

EXHIBIT NO. 2
APPLICATION NO.
6-01-16
Existing Site Plan and Proposed Boundary Adjustment


3065B
ANY

FEB-2001

14-27



N↑

EXHIBIT NO. 3
APPLICATION NO.
6-01-16
Proposed Site Plan
 California Coastal Commission

CALIFORNIA DEPARTMENT OF FISH AND GAME

4949 Viewridge Avenue
San Diego, California 92123

Notification No. 5-045-00

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 Mr. John Chamberlain of American Assets, Inc., State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1603 of California Fish and Game Code, the Operator, on the 17th day of February, 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): Stevens Creek, tributary to the San Dieguito River, San Diego County, California, Section 2 & 35 Township 14S & 13S Range 4W.

WHEREAS, the Department (represented by Tamara Spear through a site visit on the 5th day of June, 2000) has determined that such operations may substantially adversely affect those existing fish and wildlife resources within Stevens Creek, tributary to the San Dieguito River, specifically identified as follows: **Birds:** American crow (*Corvus brachyrhynchos*), American kestrel (*Falco sparverius*), Anna's hummingbird (*Calypte anna*), black phoebe (*Sayornis nigricans*), bushtit (*Psaltiriparus minimus*), common yellow throat (*Geothlypis trichas*), European starling (*Sturnus vulgaris*), gull (*Larus* sp.), house finch (*Carpodacus mexicanus*), Mourning dove (*Zenaida macroura*), song sparrow (*Melospiza melodia*), yellow-rumped warbler (*Dendroica coronata*); **Mammals:** Botta's pocket gopher (*Thomomys bottae*), ground squirrel (*Spermophilus beecheyi*); **Amphibians:** Pacific chorus frog (*Psuedacris regilla*); **Insects:** Earthworm, grass spider (*Agelenopsis* sp.), snails. These plants and wildlife are associated with disturbed wetland habitat.

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 September 30, 2002 for project construction only. This Agreement shall remain in effect

EXHIBIT NO. 4
APPLICATION NO.
6-01-16
DFG Streambed Alteration Agreement

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER 5-045-2

for that time necessary to satisfy the terms/conditions of this Agreement.

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 of Stevens Creek to accommodate the redevelopment of an existing 10.1 acre site and an adjacent 0.8 acre portion of the Solana Beach Towne Centre impacting 0.17 acres of streambed. Redevelopment will include two office buildings, retail and restaurant uses, and a parking structure. Two existing office buildings on the site will remain. The project also includes the creation of 0.51 acres of vegetated streambed on-site to satisfy water quality mitigation requirements. The project is located east of Stevens Avenue and north of Academy Drive in the City of Solana Beach.
3. The agreed work includes activities associated with No. 2 above. The project area is located in **Stevens Creek, San Diego County**. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including a Biological Analysis of Solana Beach Towne Center Project, dated February 26, 1998; a draft Environmental Impact Report for the proposed Solana Beach Towne Centre Theatre/Office Project, dated March 1, 1999; a Final Environmental Impact Report dated June 15, 1999, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.17 acres of streambed comprised of sediment over rip rap, supporting mostly non-native grasses and weedy species. Of these impacts, 0.11 are permanent and 0.06 are temporary and shall be mitigated at a 2:1 ratio off-site. Mitigation shall include the purchase of 0.5 acres of riparian habitat restoration at the San Dieguito River Park. The restoration shall be implemented within one year of signing this agreement. The Operator shall also supply a letter from the San Dieguito River Park verifying the terms and purchase of the mitigation within 30 days of signing this agreement.
5. The Operator shall submit a final plant palette for 0.51 acres of revegetation occurring on-site. The Operator shall receive Department approval prior to project initiation/impacts. Revegetation shall use only native species.

All revegetation shall be installed no later than October 31, 2002.
6. The Operator shall not remove vegetation within the stream from March 15 to September 1 to avoid impacts to nesting birds.
7. No equipment shall be operated in ponded or flowing areas.
8. 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.
9. Installation of bridges, culverts, or other structures shall be such that water flow is not

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER 5-045-00

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.

10. 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.

11. 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.

12. 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.

13. Staging/storage areas for equipment and materials shall be located outside of the stream.

14. 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.

15. 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.

16. All planting shall be done between October 1 and March 31 to take advantage of the winter rainy season.

17. Access to the work site shall be via existing roads and access ramps.

18. Spoil sites shall not be located within a stream, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

19. 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.

20. 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.

21. 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.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER 5-045-00

22. 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.

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

24. 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: Tamara A. Spear

25. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. **It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator.** The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

26. The Department reserves the right to suspend or cancel this Agreement 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.

27. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

28. 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 the above address. If the Operator fails to request the extension prior to the agreement's termination, then the


STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER 5-045-00

Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement are a violation of Fish and Game Code Section 1600 et. seq. The Operator may request one extension of this agreement.


CONCURRENCE

(John Chamberlain)

California Dept. of Fish and Game

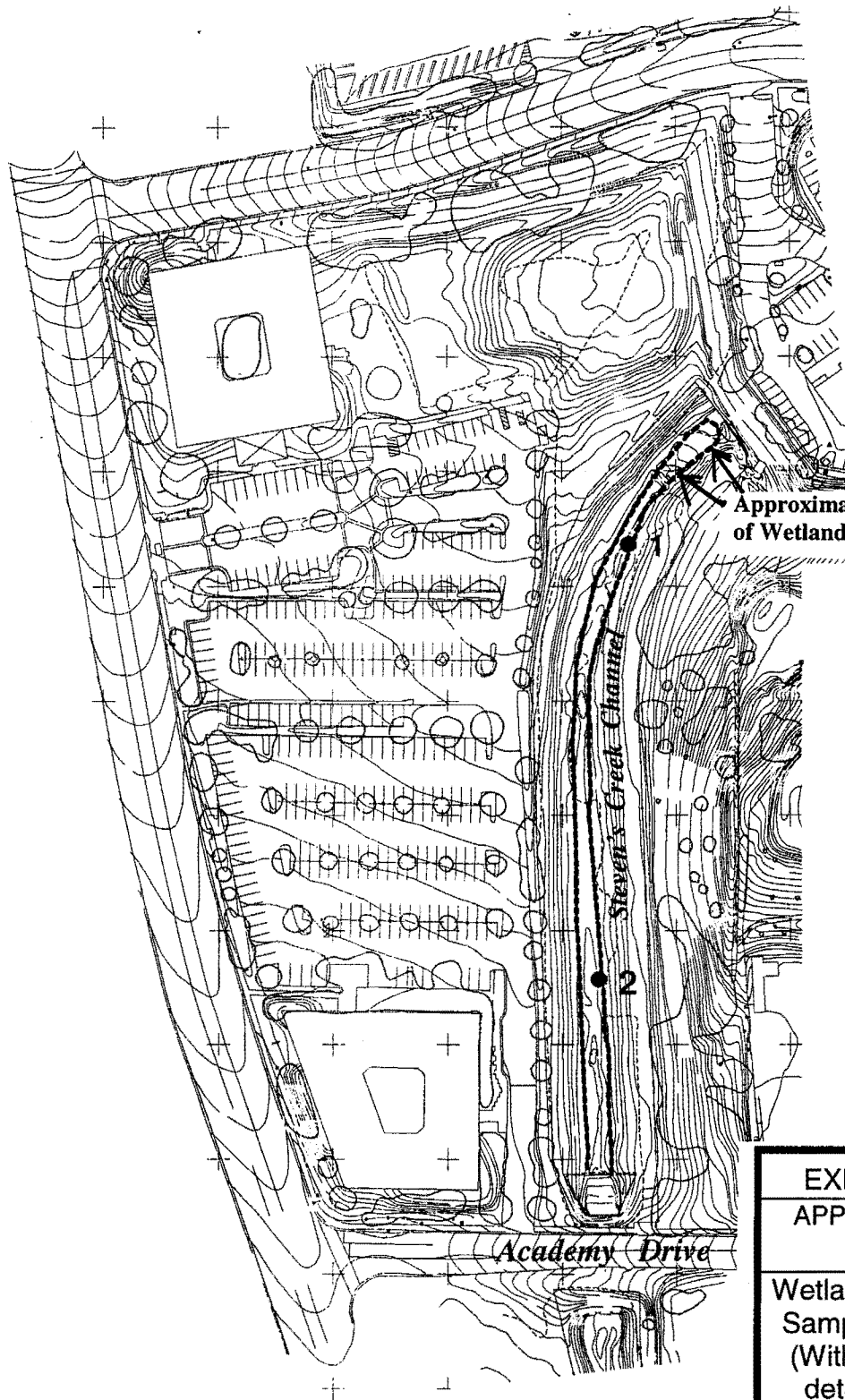
 12/27/00
(signature) (date)

CEO
(title)

 01/03/01
(signature) (date)

C.F. Raysbrook, Regional Manager
(title)

Prepared by: Tamara Spear, ES III




Approximate Location
of Wetlands/Hydrophytic Plants

EXHIBIT NO. 5

APPLICATION NO.

6-01-16

Wetlands Delineation
Sampling Locations
(With Comm. Staff
determination of
Approx. Location of
Wetlands)

 California Coastal Commission

RECON




0 Feet 150

- Sample Point
- Non-wetland Jurisdictional Waters Boundary

**Location of Non-wetland
Jurisdictional Waters**



View 7- From Academy Drive north to
proposed parking garage site

EXHIBIT NO. 6
APPLICATION NO.
6-01-16
Photo from 1999 EIR of Stevens Creek taken from Academy Drive looking north
 California Coastal Commission

