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STATE OF CALIFORNIA -- THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-01-099

APPLICANT: CA Department of Parks & Recreation, Channel Coast District, Attn: Richard Rojas, District Superintendent

AGENT: Virginia Gardner, Resource Ecologist & Jeff Ahlstrom, Engineer

PROJECT LOCATION: 2211 Harbor Blvd, McGrath State Beach, Oxnard (Ventura Co.)

PROJECT DESCRIPTION: Proposal to construct an approximately 220 ft. long portion of a 1081 ft. long, 3 ft. high, 22 ft. wide earthen levee along an existing road, adjacent to an existing campground area, approximately 10 ft. from the Santa Clara River Estuary Natural Preserve to protect an existing State Park campground area from flooding including: 2,770 cu. yds. imported fill and 1,040 cu. yds. exported excavated earth material; three storm drains with concrete headwalls and flap gates to allow drainage, and two ramps (one at each end) to serve as pedestrian access onto the levee; revegetation of the earthen levee with native plant species; removal of deteriorating pavement from road; and habitat restoration for the Natural Preserve salt and freshwater marsh areas. The Commission's jurisdiction and the City of Oxnard's jurisdiction bisects the proposed levee. The subject permit application is only for the small portion of a larger levee construction project located in the Commission's retained jurisdiction. The City of Oxnard will issue a separate coastal development permit for that portion of the development within the City's Local Coastal Program jurisdiction.

SUBSTANTIVE FILE DOCUMENTS: Boundary Determination No. 21-2000, California Coastal Commission, August 25, 2000; McGrath State Beach Wetlands Delineation Report Ventura County, CA Dept. of Parks and Recreation, August, 2001; Final Mitigated Negative Declaration, CA Dept. of Parks and Recreation, July 5, 2001.

Summary of Staff Recommendation

Staff recommends ***approval*** of the proposed project with **eight (8) special conditions** regarding (1) wetland mitigation plan, (2) assumption of risk, (3) erosion control, (4) construction responsibilities, (5) construction timing, (6) removal of excess excavation material and debris, (7) required approvals, and (8) future abandonment, levee removal and wetland restoration.

I. Staff Recommendation

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-01-099 pursuant to the staff recommendation.***

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 on which the Commission voted on the application. 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 term or 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. Wetland Mitigation and Restoration Plan

The applicant shall create in kind wetland habitat at a 4:1 mitigation ratio or greater for area of wetland filled/lost as a result of the development approved under Coastal Development Permit No. 4-01-099.

A. *Prior to the issuance of the coastal development permit*, the applicant shall submit, for the review and approval of the Executive Director, a wetland mitigation and restoration plan prepared by a qualified biologist or resource specialist including, but not limited to, the following criteria:

1) A written ecological assessment of both the adversely affected wetland area and the mitigation area.

2) Statement of goals, objectives and performance standards.

3) Proposed mitigation project description and plans including site plan; topography survey; profiles; and section views of the project illustrating how the project fits into the surrounding landscape, how the project area will appear immediately subsequent to construction, and how the project area will appear once the goals are realized.

4) Engineering plans to include: 1. Existing and proposed ground elevation contours; 2. Location and size of all equipment and stockpile sites to be used; 3. Location and size of buffers; 4. Cut & fill locations and quantities; and 5. Location, design and specifications of any other structures necessary to carry out proposed project.

5) Soil engineering specifications for activity affecting soils on site: methods for conserving and stockpiling topsoil; methods for preventing soil erosion during construction; and detailed description of biological and engineering characteristics of soil to be used as fill on site.

6) Vegetation specifications providing information on removal methods for exotic species, salvage of existing vegetation, revegetation methods and vegetation maintenance. The plan shall include details regarding the types, sizes, and location of plants to be placed within the mitigation area(s). No heavy mechanized equipment may be present in the natural preserve/wetland area at any time.

7) Detailed operation and maintenance plan for any necessary water control structures, if applicable.

8) Implementation schedule addressing resources for and timing of construction and monitoring.

9) The applicant shall comply with all requirements of the approved plan.

B. Monitoring

The applicant shall retain a qualified biologist, or other resource specialist to monitor the wetland creation for a period of five (5) years minimum. An annual monitoring report on the mitigation area shall be submitted for the review and approval of the Executive Director for each of the five years. If replacement plantings are required, the applicant shall submit, for the review and approval of the Executive Director, a replacement planting program, prepared by a qualified biologist, or other resource specialist, which specifies replacement plant locations, size, planting specifications, and a monitoring program to ensure that the replacement planting program is successful. The vegetation planted and the wetland created pursuant to the approved plan shall not, at any time, be damaged, destroyed, or removed by the applicant.

2. Assumption of Risk, Waiver of Liability and Indemnity

Prior to issuance of a Coastal Development Permit, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, which states that the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and flooding; (ii) to assume the risks to the applicant, the public and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Erosion Control Plan

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an erosion control plan designed by a licensed engineer or other qualified specialist. The plans shall provide the following:

(1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

(2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site until removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

(3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

4. Construction Responsibilities

It shall be the applicant's responsibility to assure that the following occurs during project construction: a) that all grading shall be properly covered, sand-bagged, and ditched to prevent runoff and siltation; b) that measures to control erosion shall be implemented at the end of each day's work, c) that temporary netting, fiber rolls and/or sand bags shall be placed around the perimeter of the construction zones as delineated in the erosion control plan prepared pursuant to Special Condition No. Three above; d) that construction sites shall be secured and excavations shall be covered at the end of each working day; and e) that excavation work shall be restricted to the staging areas delineated on the erosion plan prepared pursuant to Special Condition No. Three.

5. Construction Timing

Construction activity shall be restricted during the breeding season of the Belding's savannah sparrow, a state listed endangered species, from February 1 through August 30.

6. Removal of Excess Excavation Material & Debris

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material and debris from the project site. Excess excavated materials and debris shall be deposited at an approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive such material.

7. Required Approvals

By acceptance of this permit, the applicant agrees to obtain all other necessary State or Federal permits that may be necessary for all aspects of the proposed project (including the California Department of Fish and Game, United States Fish and Wildlife, Regional Water Quality Control Board, and the U.S. Army Corps of Engineers).

8. Future Abandonment, Removal of Levee and Restoration of Wetland

In the event that the campground, which shall be protected by the proposed development is relocated such that any portion of the proposed project is abandoned (not used for a period of more than one year's time), the applicant shall be required to submit a coastal development permit application within 120 days of such abandonment to remove the levee from the project site and restore the impacted wetland area.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

Proposed Project

The applicant is proposing to construct an approximately 220 ft. long portion of a 1081 ft. long, 3 ft. high, 22 ft. wide earthen levee along an existing road, adjacent to an existing campground area, approximately 10 ft. from the Santa Clara River Estuary Natural Preserve to protect an existing State Park campground area from flooding including: 2,770 cu. yds. imported fill and 1,040 cu. yds. exported excavated earth material; three storm drains with concrete headwalls and flap gates to allow drainage, and two ramps (one at each end) to serve as pedestrian access onto the levee; revegetation of the earthen levee with native plant species; removal of deteriorating pavement from road; and habitat restoration for the Natural Preserve salt and freshwater marsh areas (Exhibit 6 & 7). The Commission's jurisdiction and the City of Oxnard's jurisdiction bisects the proposed levee (Exhibit 4). The subject permit application is only for the small portion of a larger levee construction project located in the Commission's retained jurisdiction. The City of Oxnard will issue a separate coastal development permit for that portion of the development within the City's Local Coastal Program jurisdiction.

The subject property is a irregularly shaped parcel encompassing over 294 acres (Exhibit 2). The parcel is located on the west side of Harbor Blvd in the City of Oxnard, Ventura County (Exhibit 1). It is bordered on the west by the ocean and on the north by the Santa Clara River (Exhibit 1 & 3). The property is owned by the California Department of Parks and Recreation ("State Parks") and is known as McGrath State Beach. Access to the park is via a driveway from Harbor Blvd, which leads to a day use parking area or the campgrounds on site. The property is currently developed with existing campgrounds including 174 campsites, restroom facilities and other associated structures, a park entrance kiosk, and four State Parks employee mobile home residences. The proposed levee will serve to protect the existing campgrounds from seasonal flooding. The remainder of the site is composed of environmentally sensitive habitat areas including coastal waters and wetland, riparian, and coastal dune habitats (see Exhibit 3), which are designated as Sensitive Habitat Areas in the City of Oxnard Land Use Plan.

The project site is located adjacent to a healthy wetland habitat area within the Santa Clara River Estuary Natural Preserve. The natural preserve encompasses a coastal lagoon, riparian forest within a floodplain, formerly diked wetlands, coastal sand dunes, and a barrier beach at the river mouth (Exhibit 5). An existing dirt road with remnants of pavement lies between and borders the natural preserve to the north and the campgrounds to the south. The levee will be located along the perimeter road adjacent to the campground and across the road from the preserve. The location of the proposed levee is characterized as a degraded wetland area due to previous development of the existing campground area.

The proposed project is the least environmentally damaging alternative to protect the existing recreational use. The proposed project will also serve to protect and enhance the natural preserve area.

Background

The Santa Clara River Estuary lies at the mouth of the Santa Clara River, which drains about 2,000 sq. mi. of watershed in the Transverse Range of southern California. Flows in the river are highly variable, which is characteristic of southern California streams, and sediment loads are high despite upstream sand and gravel mining. Average daily discharges as measured at Montalvo (approx. 3 mi. upstream) range from virtually no flow for several days in the summer months to winter flood peaks of well over 100,000 cu. ft./sec. Historically the estuary encompassed about 870 acres with a braided tributary channel system averaging about 5,000 ft. wide. In recent years, agricultural use, and then urban development has reduced the estuary to about 230 acres and levees have restricted the river to a single channel approximately 800 ft. wide just upstream from the Harbor Blvd bridge.

Major flood events occurred in 1938, 1940, 1955, 1962, 1965, 1969, 1970, 1980, 1992, 1995, and 1998. With the increase in development on the historic floodplain and estuary, the high sediment loads and broad migrating channel have resulted in increasingly severe damage to developed areas. The main flow of the river has been directed against the south side of the river causing erosion for over 20 years, culminating most recently with the partial wash out of an existing levee in February of 1998.

A significant input to the lagoon in addition to the natural flows is treated effluent discharged directly into the lagoon from the City of Ventura Eastside Wastewater Treatment Plant. Other inputs include local agricultural runoff and wave overwash. Since the treatment plant expansion in 1976, however, effluent discharges represent the greatest continuous input averaging about 8.5 million gallons per day. Since the expansion of the treatment plant, the existing levee has served to protect the campground from rising lagoon waters and a physical barrier is critical to sustain the existing recreational opportunities at McGrath State Beach.

The property was acquired by State Parks in 1961 from the McGrath family. The previously existing levee was constructed as part of a reclamation effort for agricultural lands in the 1950s prior to State Parks acquisition of the property. The levee formerly extended 850 feet from the Harbor Blvd Bridge toward the ocean along the southern boundary of the Santa Clara River. Subsequently, the campgrounds were developed by 1964 and the levee served to protect them from rising waters during periods of lagoon impoundment, which usually occurs in the late summer to early fall. During heavy storms in February 1998, the previously existing levee was partially destroyed. The storm washed out approximately 250 feet of the seaward end of the levee. The levee, in its current state, allows flooding of the campgrounds during periods of high water, thus temporarily adversely impacting the recreational facilities. In 1999 State Parks submitted an application to the Commission to replace the levee as close as feasible to its former location in an effort to maintain protection from flooding in the campground area. Staff found that the proposed project would adversely impact the sensitive wetland habitat area and as it was not an allowable use for fill in a wetland, suggested that a less damaging alternative would be to relocate the levee to the edge of the campground along the existing perimeter road so as avoid adverse impacts to the wetland. State Parks withdrew the application and resubmitted the current application incorporating staff's suggestions into the project. Upon request, the applicant submitted a Wetlands Delineation Report prepared by State Parks, which indicates that the current proposed location for the levee is also a wetland area. The report identified the area as a non-tidal seasonally flooded wetland. Staff notes that the wetland habitat in this area is highly disturbed due to the existing recreational use but currently supports

wetland vegetation species. The report concluded that the proposed levee will result in the filling of 0.4 total acres of wetland area.

Jurisdiction

The proposed project site is located on Harbor Blvd at McGrath State Beach in the City of Oxnard in an area which lies entirely within the coastal zone. The City of Oxnard ("City") has a certified LCP. In areas within the coastal zone with a certified LCP, the Commission retains jurisdiction over tidelands, submerged lands, and lands subject to the public trust. The proposed project lies partially within the Commission's retained jurisdiction. Boundary Determination No. 21-2000 dated August 25, 2000 prepared by the Commission's mapping division showed that the proposed project site is split between the City and Commission jurisdictions (Exhibit 4). The boundary determination indicates that an approximately 220 linear ft. portion of the northern end of the levee lies within the Commission's retained jurisdiction area. Therefore, the Coastal Act is applied as the standard of review to assess the portion of the project within the Commission's jurisdiction and the City shall analyze the portion in their local jurisdiction using the City's certified LCP policies and issue a separate coastal development permit.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

> ***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 30213 states:

> ***Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.***

Coastal Act sections 30210 mandates that maximum public access and recreational opportunities be provided, consistent with the need to protect public safety, private property and natural resources, and that development not interfere with the public's right to access the coast. All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act.

The proposed project, as described above in detail, is to construct an approximately 220 ft. long portion of a 1081 ft. long, 3 ft. high, 22 ft. wide earthen levee along an existing road, adjacent to an existing campground area, approximately 10 ft. from the Santa Clara River Estuary Natural Preserve to protect an existing low-cost public recreational use area from flooding including: 2,770 cu. yds. imported fill and 1,040 cu. yds. exported excavated earth material; three storm drains with concrete headwalls and flap gates to allow drainage, and two ramps (one at each end) to serve as pedestrian access onto the levee; revegetation of the earthen levee with native plant species; removal of deteriorating pavement from road; and habitat restoration for the Natural Preserve salt and freshwater marsh areas.

In the case of the proposed project, the primary purpose of the project is to carry out the provisions of Section 30213 by protecting existing lower cost visitor and recreational facilities at McGrath State Beach. The existing campgrounds are extensively used by visitors of both local, regional, national, and international origin. The proposed levee and associated enhancements will preserve coastal recreational opportunities for visitors and provide public access to the coast while protecting natural resource areas from overuse. The purpose of the levee is to protect the existing lower cost public recreational use from flooding. The levee is also designed to provide public access on top of the levee with two ramps, one at each end, to allow passive recreation such as walking and bird watching, which enhances recreational opportunities at the natural preserve, yet prevents visitor-related impacts on sensitive habitat.

Disturbance to visitors utilizing the campgrounds will be minimized by restricting construction activity to daylight hours and timing construction and hence, the closure of a section of the campground that will be impacted during construction, to avoid the peak recreational use periods. Information will be provided for visitors to describe the project and any temporary impacts on recreational facilities.

Therefore, the Commission finds that the project, as proposed, is consistent with §30210 and §30213 of the Coastal Act.

C. Sensitive Resources

Wetlands

The proposed project is located within a wetland area. Wetlands are defined in Section 30121 of the Coastal Act as follows:

> ***'Wetland' means lands within the coastal zone which 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.***

The Commission regulations provide a more explicit definition of wetlands. Section 13577(b) of Title 14 of the California Code of Regulations defines wetlands as follows:

> ***Wetlands are lands 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, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep water habitats.***

The above definition requires the presence of one of three common wetland attributes of hydrology, hydrophytic vegetation, or hydric soils. It should be noted that this definition is more inclusive than those of other agencies, such as Army Corps of Engineers, which requires a site to exhibit all three of those attributes to be considered a wetland.

The applicant submitted a Wetlands Delineation Report prepared by Brenda McMillan, Associate Resource Ecologist, State Parks. The report identified the area as a non-tidal

seasonally flooded wetland. The delineation report concluded that the proposed levee lies entirely within a wetland and would result in the filling of 0.4 acres of wetland area (including the portion of the levee in the City's jurisdiction) (Exhibit 5).

In addition, Section 30233 of the Coastal Act specifically addresses the allowable uses for placement of fill in Wetlands. Section 30233 (a) states, in relevant part, that:

> ***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 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; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.***
>
> ***(4) In open coastal waters, other then 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.***

As previously described, the proposed development involves an approximately 220 ft. long portion of a 1081 ft. long, 3 ft. high, 22 ft. wide earthen levee along an existing road, adjacent to an existing campground area, approximately 10 ft. from the Santa Clara River Estuary Natural Preserve to protect an existing low-cost public recreational use area from flooding including: 2,770 cu. yds. imported fill and 1,040 cu. yds. exported excavated earth material; three storm drains with concrete headwalls and flap gates to allow drainage, and two ramps (one at each end) to serve as pedestrian access onto the levee; revegetation of the earthen levee with native plant species; removal of deteriorating pavement from road; and habitat restoration for the Natural Preserve salt and freshwater marsh areas.

The above policies set forth a number of limitations on which projects may be allowed in wetland areas. For analysis purposes, the limitations can be categorized into three tests:

1. The purpose of the project is limited to one of eight allowable uses
2. The project has no feasible less environmentally damaging alternative; and
3. Adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

1. Allowable Use for Fill

The first general limitation set forth by the above mentioned policies is that only proposed fill for specific limited uses is allowable. The proposed project is not consistent with Section 30233 as a flood control project does not qualify as one of those eight explicit allowable uses under Section 30233(a). Therefore, the project does not meet the requirement of the first test. The Commission finds that the project is inconsistent with §30233(a) (See additional discussion regarding Coastal Act consistency and policy conflict in Section D).

2. No Feasible Less Environmentally Damaging Alternative

Section 30233 allows fill in a wetland only where there is no feasible less environmentally damaging alternative to the proposed project. Alternatives to the project as proposed must be considered prior to finding that a project satisfies this provision of Section 30233. Potential project alternatives, which were considered in the environmental documents prepared for the levee project include a) the no project alternative, b) alternative no. 1, a proposal to replace the levee close to its original location, c) alternative no. 2, in a location parallel to its original location, but further landward, and d) alternative no. 3, the proposed project. For the reasons discussed below, the Commission finds that there is no identified feasible less environmentally damaging alternative to the proposed project.

a) No Project Alternative

The No Project Alternative would allow the levee to remain in its present location and partially washed out condition. During periods that the lagoon is impounded lagoon waters could move into the formerly diked wetland and subsequently into the campground area. This periodic event would render several campsites unusable for public visitors over long periods of time throughout the year and thus, result in negative impacts to coastal recreation resources. In addition, the current system of informal trails through the wetland are damaging to sensitive habitat. As such, this alternative is inconsistent with Section 30210 and 30213 of the Coastal Act.

b) Alternative No. 1: Original Location

This alternative would replace the levee in close proximity to its original location (Exhibit 9). It would be setback from the river channel while staying as close as possible to the bank in order to minimize impacts to the wetland area adjacent to the river by reducing the area of disturbance. However, this alternative levee location would result in fill in a sensitive, undisturbed wetland habitat area and natural preserve. It would also serve to disrupt contiguous wetland habitat. It would have significant adverse effects on a sensitive habitat area sustaining resident and migratory sensitive species. This alternative was the originally proposed location, however, this alternative has much greater adverse impacts on wetland

habitat than the proposed project. Staff suggested that there was a feasible less environmentally damaging alternative.

c) Alternative No. 2: Landward Location

This alternative places the levee further landward from the river channel than the alternative above, parallel to the perimeter road along the border of the campground area. In this location, the levee results in a larger fill footprint located in a sensitive, undisturbed wetland habitat area and natural preserve (Exhibit 9). The location of this alternative would essentially divide the existing contiguous wetland habitat into two smaller sections. The levee could be revegetated, but would support upland vegetation species, not "in kind" vegetation for habitat loss. This option is the most environmentally damaging because of its impacts on wetland habitat and the lack of benefits offered by other alternatives.

d) Alternative No. 3: The Proposed Project

The proposed project is the only alternative located within disturbed wetland habitat. This alternative proposes to restore existing trails to reduce impacts in the sensitive wetland area and introduce non-intrusive public access in the natural preserve area along the top of the levee while protecting the recreational use. This location results in a larger footprint than alternatives 1 or 2, however, the levee lies along an existing road across from the natural preserve, which reduces impacts to the natural preserve area during construction and prevents the disruption of functionally healthy contiguous wetland habitat. Thus, the Commission finds that there is no less environmentally damaging alternative than the proposed project.

3. Adequate Mitigation

The third limitation imposed on projects proposing fill in a wetland set forth by section 30233 requires that adequate mitigation measures to minimize adverse impacts of the proposed project on habitat values shall be provided. It is critical that proposed development projects in a wetland include a mitigation plan, which when enacted will result in no net loss of wetland area or function.

As noted above, the entire project involves placement of fill in 0.4 acres of wetland area in order to create an earthen levee to protect the existing campgrounds, thereby eliminating the habitat value of this wetland. The applicant incorporated mitigation measures in their proposal which include the removal of existing deteriorating pavement in the existing perimeter road, revegetation of the levee with native plant species (Exhibit 7), and removal of exotic vegetation from the wetland area (Exhibit 8).

The proposed levee offers benefits to the sensitive resources on site. For example, the levee introduces a buffer area between the sensitive resource area and the campgrounds, which serves to protect the natural resource area. It acts as a natural barrier to control entry of domestic animals or humans into the wetland area while allowing passive recreation along the levee, such as bird watching and walking. Moreover, the buffer prevents pollution of the wetland from the adjacent recreational use. In addition, **Special Condition No. One** requires that the applicant develop a wetland mitigation and restoration plan to mitigate for the loss of wetland area due to the project. In past permit actions, the Commission has found that in order to assure the success of wetland mitigation and to mitigate for the loss of wetland during the period of time it takes for the wetland habitat to be established, it is appropriate to require a 4:1

mitigation ratio to create in kind wetland habitat as specified in Special Condition No. One. Therefore, the Commission finds that, as conditioned, the project will provide adequate mitigation measures to minimize adverse impacts on habitat values and no net loss of wetland area or function will occur as a result as required by the third test of §30233.

Sensitive Species

Regarding biological marine 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 and 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.***

Regarding biological land resources, Section 30240(b) states:

> ***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 McGrath State Beach area provides essential habitat for numerous rare, threatened and endangered species, including resident and migratory state and federally listed vertebrate and invertebrate species. Recent fish surveys have identified the arroyo chub, striped mullet, topsmelt, and tidewater goby. Tidewater goby is a federally listed endangered species and arroyo chub is a California Dept. of Fish and Game species of special concern. In addition, the Santa Clara River is known to support a remnant run of the federally listed endangered southern California steelhead. Numerous bird species also occur in the preserve including Belding's Savannah sparrow, a federal and state listed endangered species, which forages and nests in coastal marshes. This species is threatened with extinction due to extensive loss of salt marsh habitat and human disturbance. The Western least bittern forages and nests in the freshwater areas of the marsh. The long-billed curlew and white faced ibis are other sensitive species that occur in the wetland. The coastal sand dunes are potential habitat for the silvery legless lizard, a state & federal listed species of concern.

A variety of exotic vegetation species exist within the wetland and riparian areas, such as, myoporum (*Myoporum laetum*), giant reed (*Arundo donax*), and tamarisk (*Tamarix* spp.) (Exhibit 8). These plant species are known to be invasive and destructive to wetland habitat due to rapid colonization and competition, dewatering of wetland soils, and in the case of tamarisk, concentration of salts in the soil. Restoration measures will consist of eradication of wax myrtle (myoporum), which exists along the margins of the wetland and has encroached into the wetland. Areas exposed by removal of myoporum will be revegetated with appropriate native marsh species. Freshwater species will be primarily composed of willow to provide replacement habitat for avian species that use the myoporum for cover and resting. Special Condition No. One includes a provision requiring details regarding the removal methods and prohibiting heavy mechanized equipment in the wetland area.

The project is proposed to be constructed in late fall to early winter to minimize impacts to biological resources and recreation. Construction access will be limited to the day use parking

lot, developed campground, and existing paved roads. All construction areas will be fenced prior to commencement of construction. Silt fencing will be placed along the perimeter of the natural preserve area to prevent adverse effects on the wetland. Containment plans will be provided by the contractor to address potential leakage. To ensure that construction activities do not adversely impact sensitive species, **Special Condition Nos. Three, Four, Five, Six, and Seven** require conservative construction measures that speak to the potential impacts of construction on the wetland area. Once the levee is constructed and revegetated, it will also serve as visual screening for wetland species that are sensitive to human impacts and could potentially provide habitat for transitional species. Another benefit of the proposed project to sensitive plant and animal species is the evaluation of the informal trails that transverse the wetland and subsequent elimination or relocation outside the preserve to prevent continued habitat degradation.

Due to the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with §30230 and §30240 of the Coastal Act.

D. Coastal Act Policy Conflict

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. This section provides that:

> ***The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.***

Conflict

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that there exists a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to deny the project based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

In this case, as described above, the proposed project is inconsistent with the wetland protection policies of the Coastal Act because it is not an allowable wetland fill activity as identified by Section 30233(a)(1-8). However, to deny the project based on this inconsistency with Section 30233(a)(1-8) would result in significant adverse impacts inconsistent with Coastal Act recreation policies, specifically Section 30213. The purpose of the proposed project is to protect the existing lower cost public recreational use on site from flooding and thus prevent adverse impacts on coastal recreation. As such the project is consistent with Section 30213 of the Coastal Act. Without the project, significant adverse effects on lower cost recreational facilities will occur.

If the Commission were to deny the project based on its nonconformity to the wetland fill provisions of Section 30233, the campgrounds would suffer inundation and ponding during high water periods rendering the recreational facilities inaccessible to the public during such periods, thus resulting in adverse impacts on the existing lower cost recreational use and directly contradicting Section 30213, which mandates protection of said use. Therefore, the no project alternative would have unavoidable significant adverse impacts on coastal resources. The two remaining project alternatives presented above would also conflict with Section 30233 as both require an even larger amount of fill than the current proposal, in an undisturbed wetland area.

The proposed levee project involves fill in a degraded wetland area that has been previously disturbed by the existing recreational facilities, nevertheless, fill in a wetland for the purpose of the proposed project is inconsistent with the wetland policies of the Coastal Act. However, this project will preserve an existing lower cost recreational use and thus, coastal access and recreational benefits to the public. The project will also serve to enhance visual resources and habitat values of the wetland areas on site. Therefore, the Commission finds that the proposed project creates a conflict among Coastal Act policies.

Resolution

After establishing a conflict among Coastal Act policies, Section 30007.5 mandates that the Commission resolve the conflict in a manner that is on balance most protective of coastal resources. In this case the proposed levee would result in the fill of approximately 0.4 acres of wetland total including the portion in the City's jurisdiction. The critical factors in the Commission's assessment of the conflict resolution are that the recreational use is a pre-coastal, existing, ongoing and unique visitor serving use of the land. In addition, the proposed project will result in improvements to the wetland area on site through the removal of invasive plant species, revegetation of native wetland species, and removal of pavement from a disturbed portion of the delineated wetland area. Furthermore, through Special Condition No. One, the project will result in the creation of 4:1 in kind wetland habitat as mitigation for impacted wetland area.

Therefore, the Commission concludes that impacts on coastal resources from not constructing the project would be more significant than the project's impact on wetland habitat. Therefore, the Commission finds that approving the project is, on balance, most protective of coastal resources.

This finding is in part based on the assumption that the wetland habitat enhancement and creation measures are carried out as intended and continually managed and maintained in perpetuity. Therefore, the Commission imposes eight special conditions on the project to ensure that any adverse impacts from the project are attenuated and mitigated.

Special Condition No. One requires 4:1 in kind creation of wetland habitat in order to mitigate for the loss of habitat due to the placement of fill. Special Condition Nos. Three, Four, Five and Six ensure that construction of the proposed levee is carried out in a responsible manner so as not to adversely impact the sensitive resources on site. Special Condition No. Seven requires the applicant to obtain all other necessary State or Federal permits that may be necessary for all aspects of the proposed project to ensure that all impacts from the project are reviewed by the responsible agencies. Special condition No. Eight mandates that in the case that the existing campgrounds are ever altered in such a way as to alleviate the need for protection from

flooding, the applicant shall apply for a coastal development permit within 120 days of such relocation or abandonment to remove the levee and restore the impacted wetland area.

The Commission finds that without Special Conditions Nos. One and Three Through Eight the proposed project could not be approved pursuant to Section 30007.5 of the Coastal Act.

E. Water Quality

The Commission recognizes that the proposed development in a wetland area has the potential to adversely impact coastal water quality through the placement of fill, removal of native vegetation, erosion, and sedimentation.

Section 30231 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, minimizing alteration of natural streams.***

Sedimentation directly affects wetland ecology by increasing water turbidity. Turbidity reduces the penetration of sunlight needed by aquatic vegetation, which translates to negative effects on plant establishment and overall productivity, which in turn impacts aquatic species that depend on such vegetation for food and cover. In addition, aquatic animals are affected by turbidity in the following ways: reduced visibility for visual predators, such as birds and mammals; and inhibited feeding effectiveness for benthic filter feeding organisms. The proposed project, which is described in detail in previous sections, could potentially have adverse impacts to water quality during the construction period as the project site is adjacent to a functionally healthy wetland area, which is inundated with high waters periodically throughout the year and flood waters reach the proposed project area at times, thus debris or sediment could enter the water if not properly contained and managed. Therefore, **Special Condition Nos. Three and Four** require that specific erosion control plans be designed and responsible construction activities be implemented to avoid impacts from the construction of the levee on coastal water quality. As such, the Commission finds that, as conditioned, the proposed project is consistent with §30231 of the Coastal Act.

F. Visual Resources

Section **30251** of the Coastal Act states that:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan***

prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

Section 30251 of the Coastal Act requires public views to and along the ocean and scenic coastal areas to be considered and protected when creating new development. As previously discussed, the proposed project entails the construction of a 1081 ft. long, 3 ft. high, 22 ft. wide earthen levee along an existing road, adjacent to an existing campground area, approximately 10 ft. from the Santa Clara River Estuary Natural Preserve to protect an existing low-cost public recreational use area from flooding including: 2,770 cu. yds. imported fill and 1,040 cu. yds. exported excavated earth material; three storm drains with concrete headwalls and flap gates to allow drainage, and two ramps (one at each end) to serve as pedestrian access onto the levee; revegetation of the earthen levee with native plant species; removal of deteriorating pavement from road; and habitat restoration for the Natural Preserve salt and freshwater marsh areas.

The proposed development rises a minimal 3 ft. above existing grade, and therefore, does not obstruct public views along the coast. Moreover, the proposed levee along with the revegetation of the levee with native plant species will enhance the visual resources as the current plant community in that area consists of disturbed wetland vegetation and non-native, invasive plant species. Following the construction of the proposed project, the levee will be revegetated with native wetland and upland habitat species and non-native species will be removed. Finally, the project provides visual enhancement for visitors by providing access along the top of the levee, which allows people to capture views of the natural preserve area and associated wildlife while keeping them out of sensitive habitat areas, thus enhancing public viewing opportunities and protecting sensitive resources at McGrath State Beach.

Therefore, the Commission finds that the project, as proposed, will not adversely impact public views to or along the coast and is consistent with §30251 of the Coastal Act.

G. Hazards

The proposed development is located in a wetland in an area surrounded by coastal waters, which are environments generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to these areas include storm waves, surges, erosion, and flooding.

Section 30253 of the Coastal Act states in pertinent part that new development shall:

> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
>
> ***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic and flood hazard.

The proposed levee project site is located adjacent to a visitor serving recreational facility in a wetland area subject to unusual hazard from erosion and flooding and therefore, poses an

inherent risk to development. The project had been designed by a licensed engineer. The levee height is a minimal 3 feet above existing grade, 10 feet wide along the top, and 22 feet wide at the toe with a 2:1 slope gradient. The levee will be constructed of imported clay fill material and reinforced with a soil, cement, and bentonite slurry cut-off wall running down the center of the entire 1081 ft. length. No use of rock is proposed. The base will be excavated to a depth of 1 ft. with a trench excavated to a depth of 2 ft. for the cut-off wall. The base soil will be compacted with imported material placed on top. Three storm drains with concrete headwalls and flap gates will provide drainage.

Although, the project is designed to minimize the likelihood of impacts flooding and erosion hazards, the Commission notes that there remains a potential risk to life and property and, as such, finds that the proposed new development can only be approved if the applicant assumes the liability from those risks as required by **Special Condition No. Two**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards that exist on the site and, which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same. Moreover, through acceptance of Special Condition No. Two, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

Therefore, The Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

H. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application 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 Environmentally 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 that the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

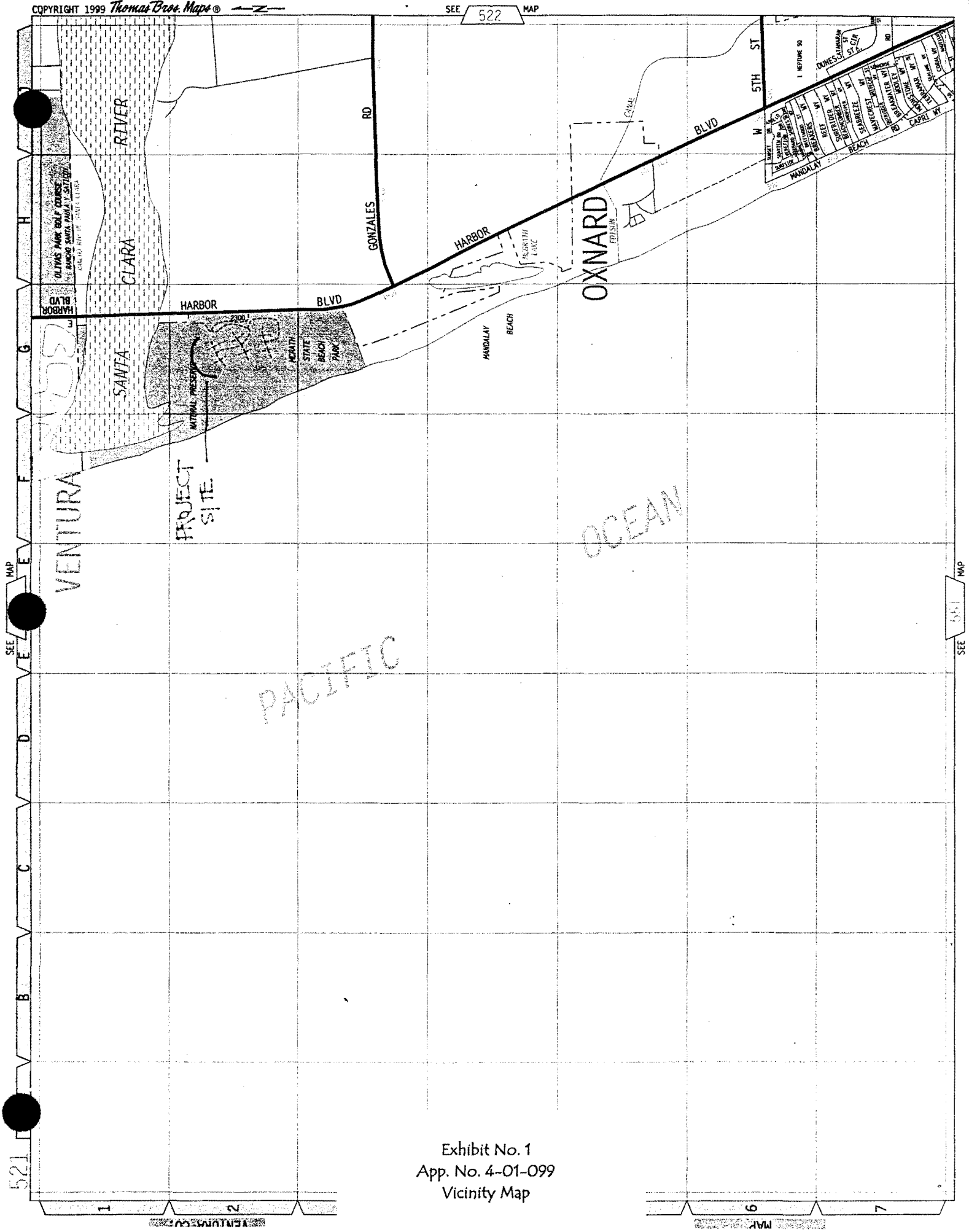


Exhibit No. 1
App. No. 4-01-099
Vicinity Map

SCALE IN 1/16 OF AN INCH

REO MOBILEHOMES

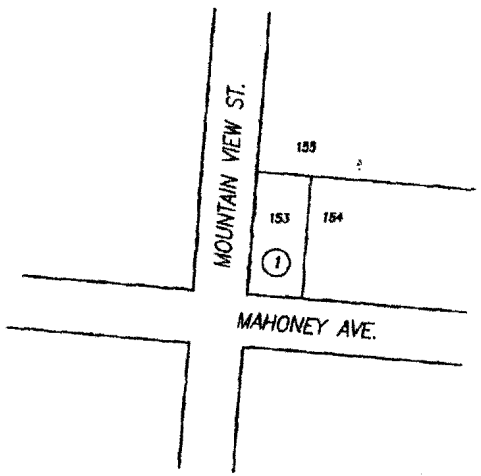
902–32

Exhibit No. 2
App. No. 4-01-099
Parcel Map

Tax Rate Area
91084

OUNTAIN VIEW ST., OAK VIEW
\.P.N. 061–0–041–105

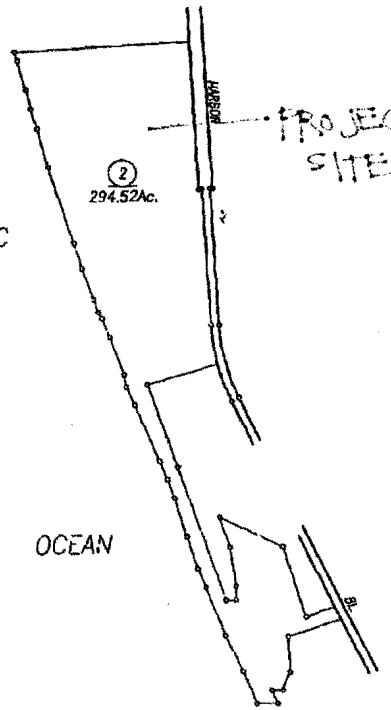
1" = 100'



2211 D HARBOR BL., OXNARD
A.P.N. 138–0–080–065

Tax Rate Area
03105

1" = 1600



NOTE: ASSESSOR PARCELS SHOWN ON THIS PAGE DO NOT NECESSARILY CONSTITUTE LEGAL LOTS. CHECK WITH COUNTY SURVEYOR'S OFFICE OR PLANNING DIVISION TO VERIFY.

Ventura County Assessor's Map.

Assessor's Block Numbers Shown in Elipses.
Assessor's Parcel Numbers Shown in Circles.
Assessor's Mineral Numbers Shown in Squares.

DRAWN	SHN	REVISED	2-5-1996
REDRAWN		CREATED	2-5-1996
MARED	PLOTTED	EFFECTIVE	96-97 ROLL
Compiled By Ventura County Assessor's Office			

AUG 01 1996

Exhibit No. 3
App. No. 4-01-099
Aerial Photo

SITE PLAN

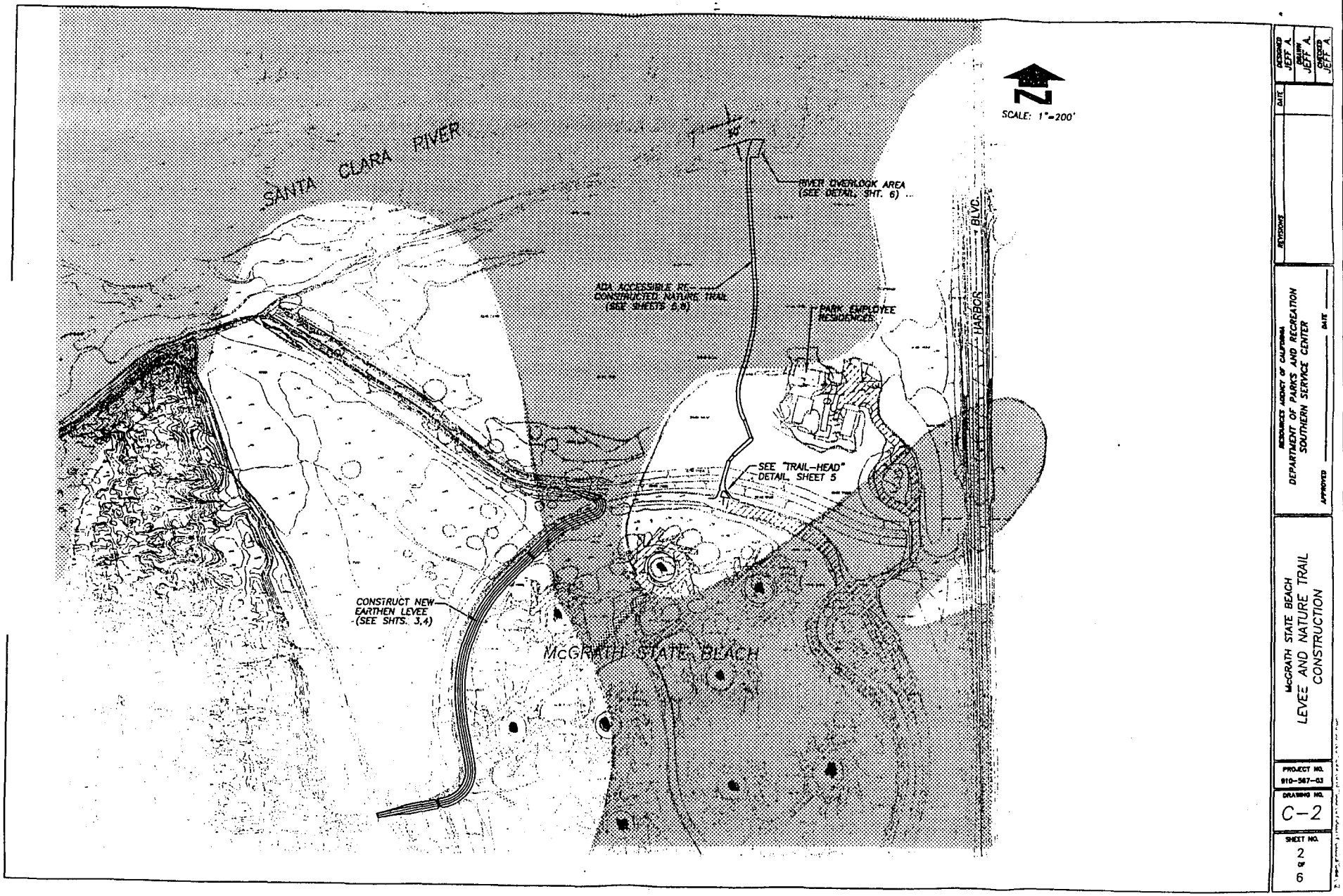


Exhibit No. 4
App. No. 4-01-099
Jurisdiction Boundary Determination

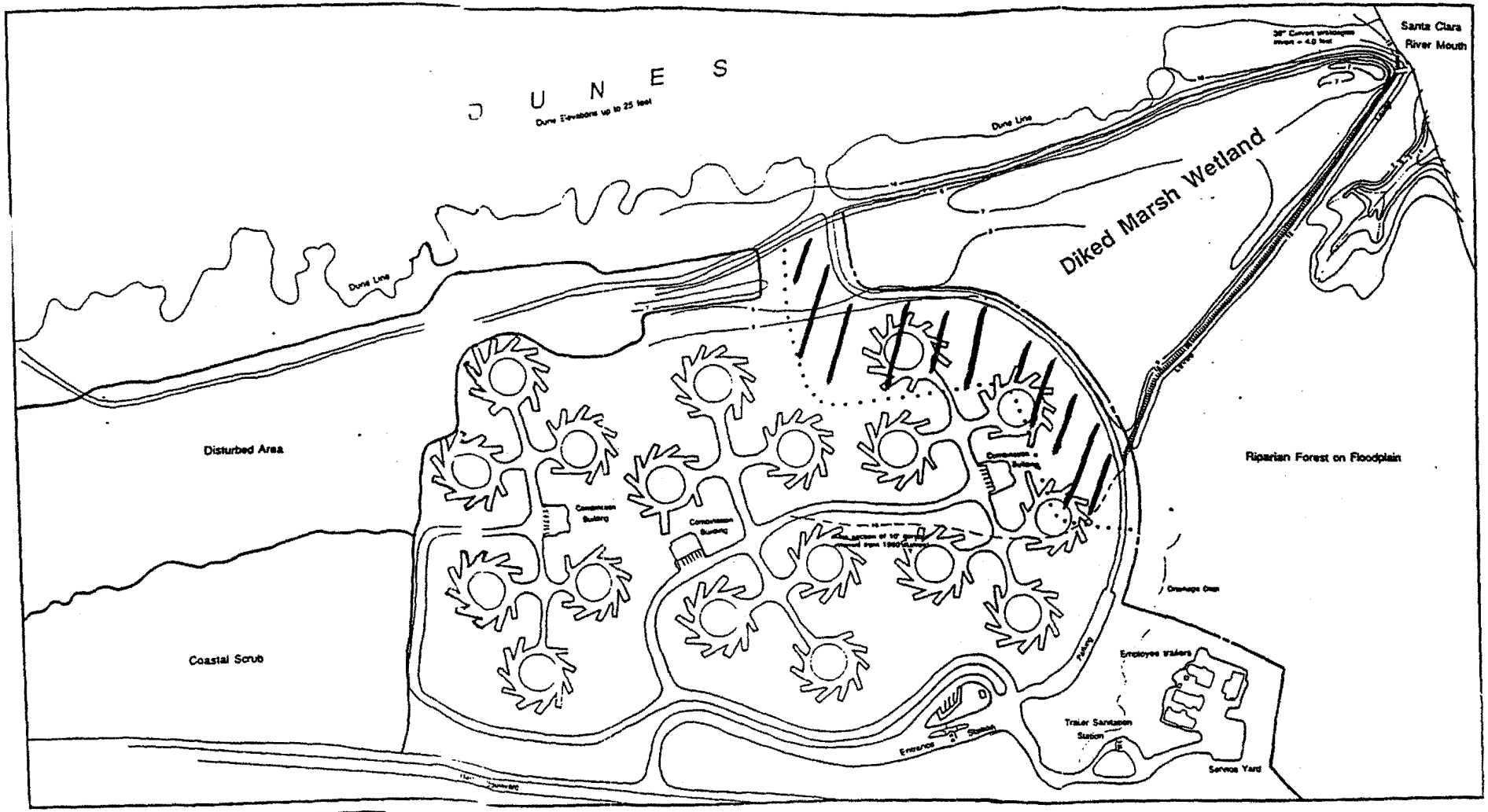
BD # 21-2000
APN 138-085-065
City of Oxnard

Coastal Commission Jurisdiction

City of Oxnard Jurisdiction

Exhibit 2

Exhibit No. 5
App. No. 4-01-099
Wetland Boundary



ENHANCEMENT AND FACILITIES PLAN

PORTION OF LEVEE IN COMMISSION JURISDICTION

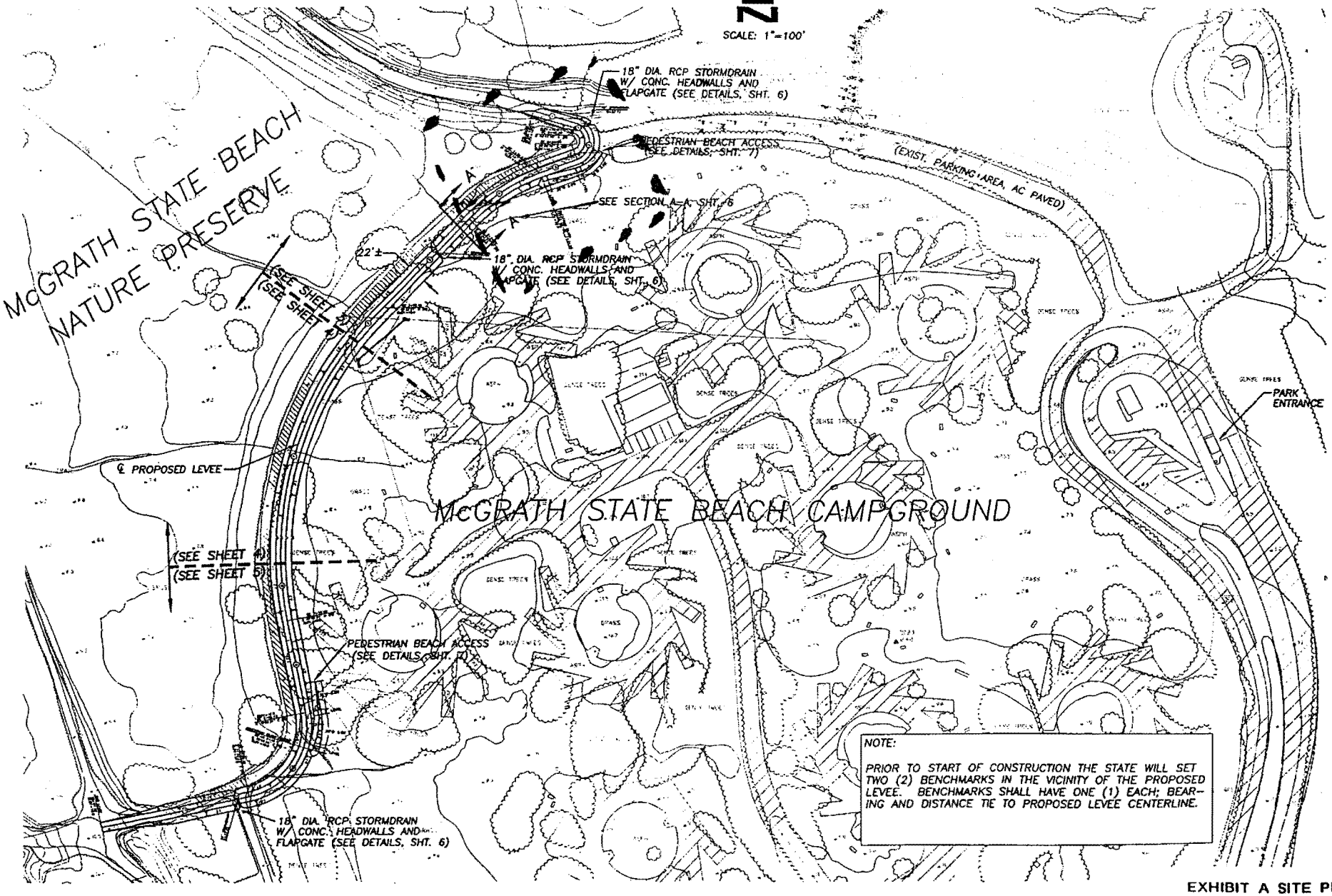


EXHIBIT A SITE PLAN

Exhibit No. 6
App. No. 4-01-099
Site Plan

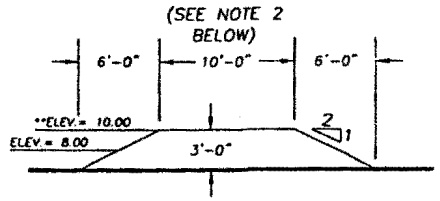
McGRATH STATE BEACH CAMPGROUND
LEVEE REVEGETATION PLAN

PLANTING LEGEND

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PLANTING METHOD
	UPLAND SPECIES- PLANT @ 8' ELEV. AND HIGHER**		
	Atriplex lentiformis ssp. breweri	Brewer's saltbush	Seeds*
	Baccharis pilularis	Coyote bush	Seeds*
	Baccharis salicifolia	Mulefat	Cuttings
	Salix lasiolepis	Willow	Cuttings
	LOWLAND SPECIES- PLANT @ 8' ELEV. AND LOWER***		
	Anemopsis californica	Yerba manza	Propagules
	Baccharis douglasii	Saltmarsh baccharis	Seeds*
	Juncus acutus ssp. leopoldii	Spiny rush	Propagules
	Potentilla asneria ssp. pacifica	Potentilla	Propagules
	Jaumea carnosa	Fleshy jaumea	Propagules
	Salicornia virginica	Pickleweed	Propagules
	Distychlis spicata	Saltgrass	Propagules
	Leymus triticoides	Alkalai ryegrass	Seeds*/Propagules

* SEEDS SHALL BE APPLIED AT THE RATE OF 30 POUNDS PER ACRE.

NOTE 1- EACH SYMBOL INDICATES EITHER 5 CUTTINGS INSTALLED AT 2 FOOT CENTERS OR 5 ONE GALLON CONTAINERS INSTALLED AT 3 FOOT CENTERS.



**TYPICAL LEVEE SECTION NTS

NOTE 2- THIS AREA SHALL BE PLANTED EXCLUSIVELY W/ DISTYCHLIS SPICATA AND LEYMUS TRITICOIDES.

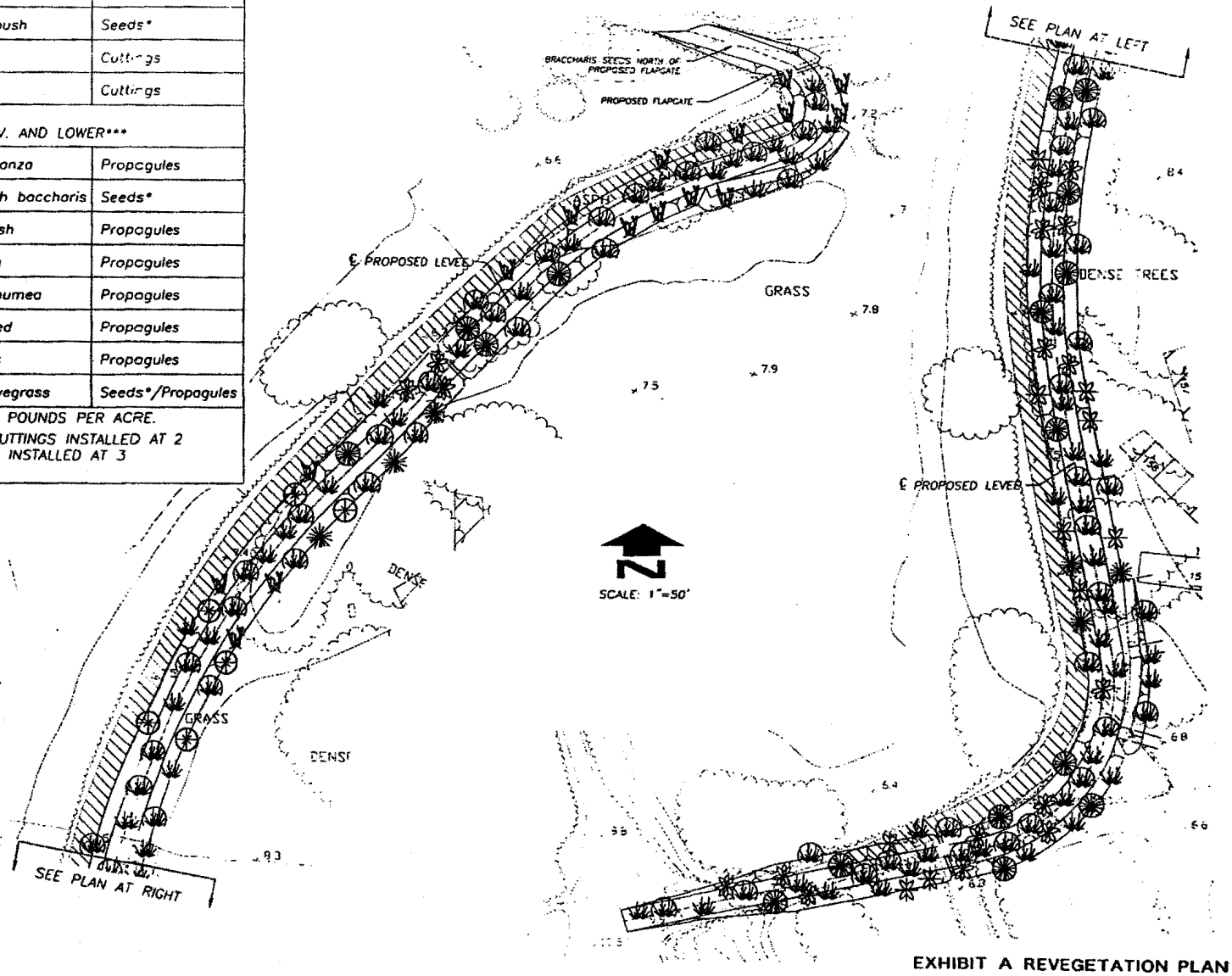


EXHIBIT A REVEGETATION PLAN

Exhibit No. 7
App. No. 4-01-099
Levee Revegetation Plan

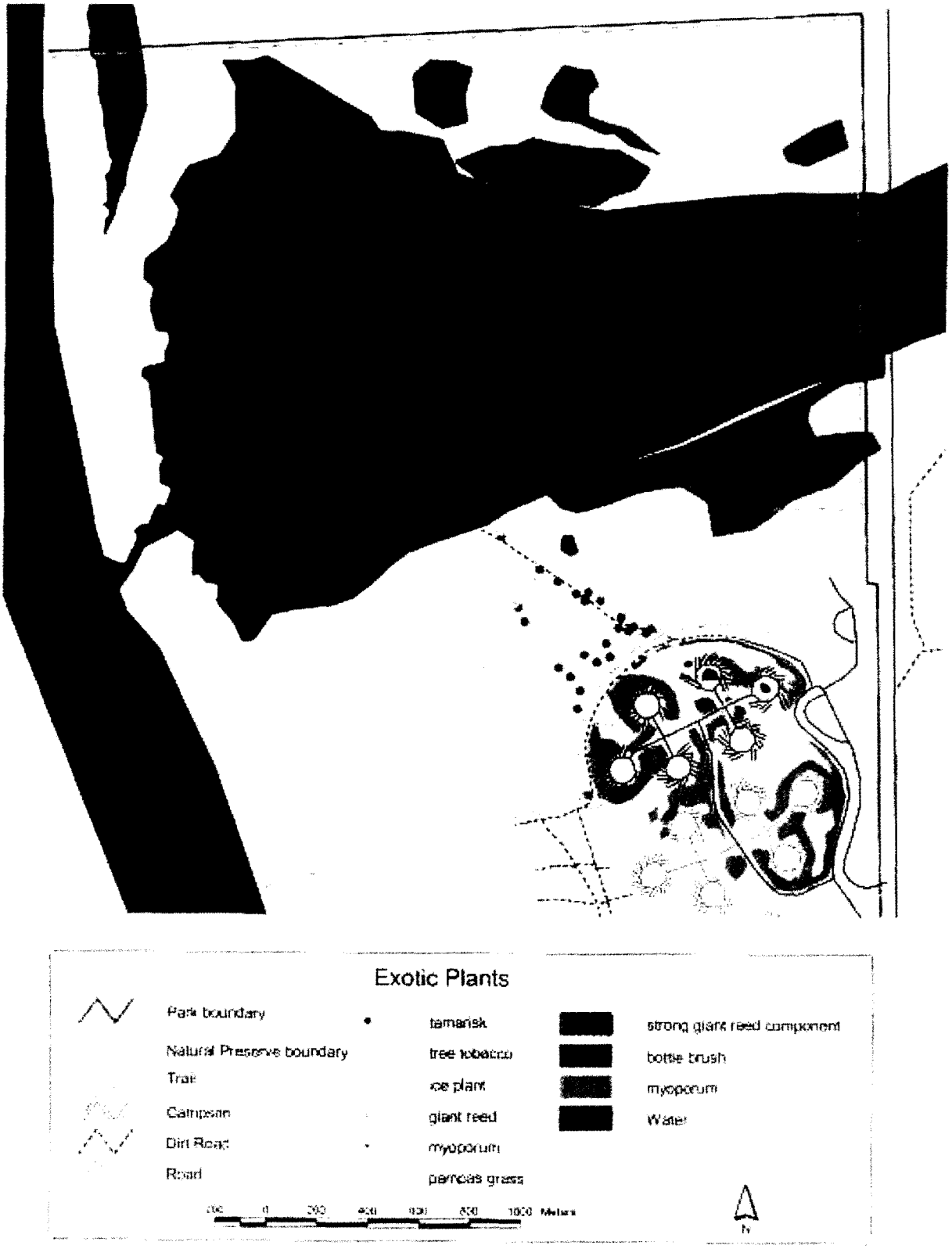
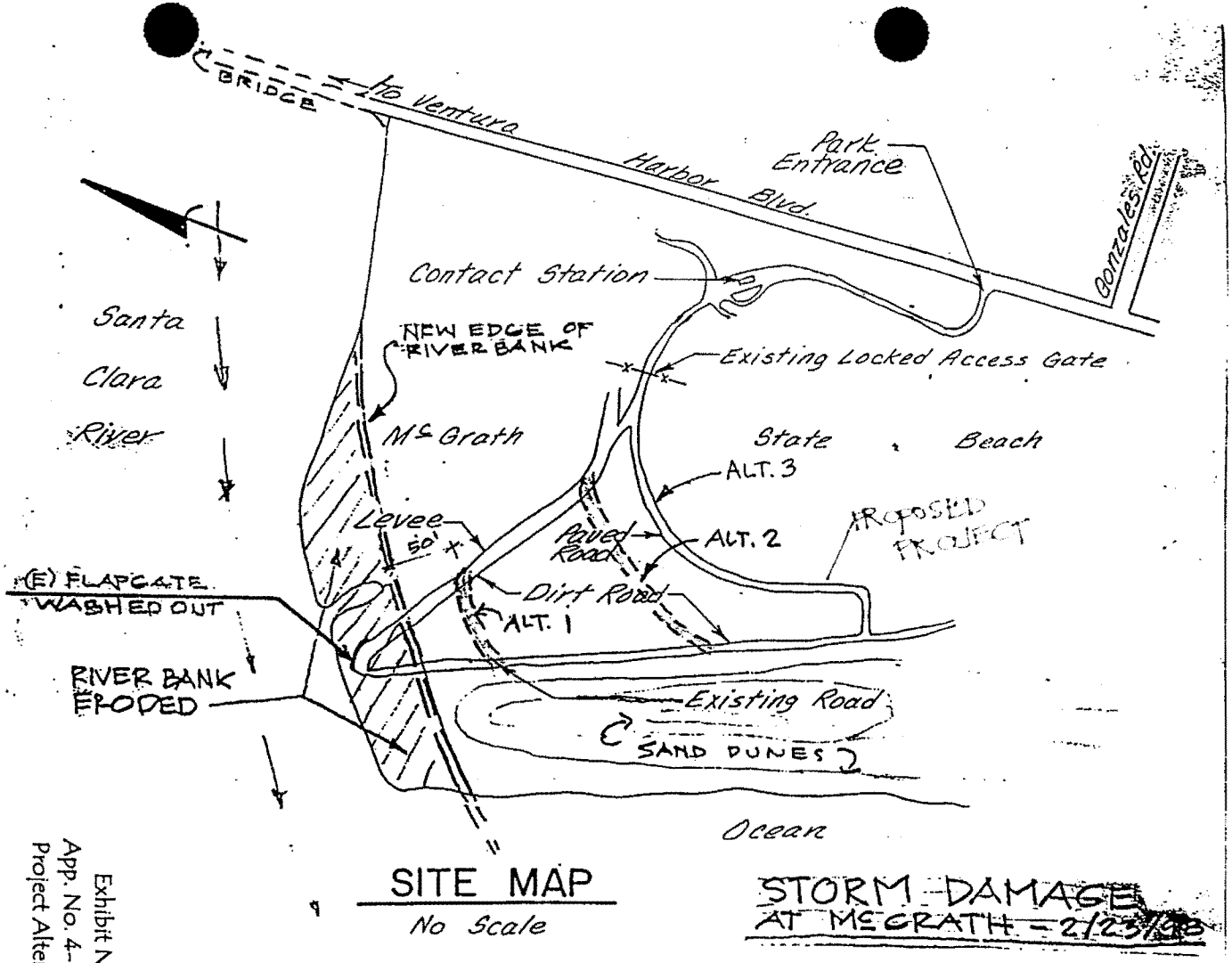


Exhibit No. 8
App. No. 4-01-099
Existing Exotic Vegetation Map



SITE MAP

No Scale

STORM DAMAGE AT MCGRATH - 2/23/98

PROPOSED PROJECT

1. NO PROJECT
2. ALTERNATE LOCATION 1 (PROPOSED IN 1999 ND)
3. ALT LOCATION 2
4. ALT. LOCATION 3 (PREFERRED ALTERNATIVE)

Exhibit No. 9
App. No. 4-01-099
Project Alternatives

RESOURCES AGENCY OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
McGRATH STATE BEACH

EXHIBIT B - PROJECT ALTERN