

CALIFORNIA COASTAL COMMISSION

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Filed: March 29, 2001
 49th Day: May 17, 2001
 180th Day: September 25, 2001
 Staff: FSY-LB
 Staff Report: May 24, 2001
 Hearing Date: June 12-15, 2001
 Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NUMBER: 5-88-716-A1

APPLICANT: City of Costa Mesa, Engineering Division, Fariba Fazeli

AGENT: None

PROJECT LOCATION: Canyon Community Park, 1065 Sea Bluff Drive,
 Costa Mesa, County of Orange

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 34.4 acre nature park with pedestrian trails, native plant materials, children's play area, irrigation system, maintenance/security bridge, access road and parking lot. The permit was originally approved in October of 1988 with a Special Condition concerning grading and drainage plans to protect the adjacent wetlands during construction. In July of 1990, the Special Condition was satisfied and the permit was issued but was not activated.

DESCRIPTION OF PROPOSED AMENDMENT: Construction of an earthen berm, approximately 300 feet long, 10 feet wide and 2 feet high parallel to the existing drainage channel. There will be an import of approximately 120 cubic yards of fill material for the berm construction and the entire berm will be hydroseeded with a native plant mixture.

SUMMARY OF STAFF RECOMMENDATION:

The major issue of this staff report is the potential impact of the proposed project on the adjacent wetland and water quality impacts during construction. Staff recommends that the Commission **APPROVE** the proposed amendment with five (5) Special Conditions relating to: 1) Prior conditions, 2) Assumption of risk agreement, 3) Hydroseed with 100% native vegetation appropriate to the area, 4) Placement of hay bales between the berm and the wetland until hydroseeded vegetation on the berm has become established, and 5) Storage of construction materials, mechanized equipment and removal of construction debris.

LOCAL APPROVALS RECEIVED: Categorical Exemption dated July 11, 2000, City of Costa Mesa Development Services.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 5-79-5843 (City of Costa Mesa), 5-88-716 (City of Costa Mesa) and 5-88-716E (City of Costa Mesa); Letters of approval from: 1) U S Army Corps of Engineers dated November 30, 2000, 2) Regional Water Quality Control Board (RWQCB) dated December 18, 2000 and 3) Department of Fish and Game dated February 5, 2001; *Flood Damage Investigation* by Javon Consulting

Company dated December 31, 1997; Settlement Agreement and Release dated April 28, 2000; letter from Jon Allen, Staff Ecologist for the California Coastal Commission, dated May 22, 2001; and letter from Ernesto Munoz, City of Costa Mesa Assistant Civil Engineer, dated May 22, 2001.

PROCEDURAL NOTE

A. Coastal Development Permit Amendments

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

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

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

The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

Staff recommends that the Commission make the following motion and adopt the following resolution to APPROVE the amendment application with special conditions.

MOTION

I move that the Commission approve CDP Amendment #5-88-716-A1 pursuant to the staff recommendation.

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

RESOLUTION OF APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** the amendment to Coastal Development Permit 5-88-716, subject to the conditions below, for the proposed development on the grounds that the development as amended and subject to conditions would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit amendment will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit amendment must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Prior Conditions

Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-88-716 remain in effect.

2. Assumption of Risk, Waiver of Liability and Indemnify Agreement

- (A) By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm events, flooding, and erosion; (ii) to assume the risks to the applicant 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 defiance of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- (B) Prior to any conveyance of the property that is the subject of this coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (A) of this condition. The restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
- (C) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

3. Landscaping Plan

- (A) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a landscaping plan which demonstrates the following:
 - (a) The berm will be hydroseeded with 100% native vegetation appropriate to the area;
 - (b) All plantings shall provide 90 percent coverage within the 90 days and shall be repeated if necessary to provide such coverage;
 - (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- (B) The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- (C) Five years from the date of issuance of Coastal Development Permit No. 5-88-716-A1 the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring

report shall include photographic documentation of plant species and plant coverage.

4. **Placement of Hay Bales**

- (A) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of revised project plans that demonstrate conformance with the following:
- (a) Placement of hay bales between the berm and the wetland area until hydroseeded vegetation on the berm has become established.
- (B) The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

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

- (A) No construction materials, debris, or waste shall be placed or stored where it may enter the adjacent wetland area or open storm drain channel;
- (B) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (C) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters (including the adjacent existing wetland area) during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters (including the adjacent wetland) and a pre-construction meeting to review procedural and BMP guidelines;
- (D) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. **PROJECT HISTORY AND DESCRIPTION**

The City of Costa Mesa acquired the 33-acre site for Canyon Park in 1977. The site is located in the southeast corner of Costa Mesa. The park is generally bounded by Arbor Street and 19th Street to the south, Talbert Regional Park and the Santa Ana River to the west, Monrovia Avenue

and Placentia Avenue to the east and Victoria Street, Canyon Drive and Sea Bluff Drive to the north (Exhibits No. #1-2). The park is surrounded by residential development on all four sides. The site was formerly a sand and gravel borrow site.

On October 10, 1979, the Coastal Commission approved Coastal Development Permit P-79-5843 (City of Costa Mesa) for remedial grading and reconstruction of a northwest 9.07 acre portion of park including reconstruction and flood control of eroded slopes; soil stabilization and landscaping; and storm drain extension southeast of Canyon Drive and Sea Bluff Drive. This project was needed to address problems that arose from the clogging of the storage pond and the channels from the siltation from the drainage system. This problem presented a hazardous erosion and flooding problem to the adjacent streets and intersections and surrounding residential development.

On October 11, 1988, the Coastal Commission approved Coastal Development Permit 5-88-716 (City of Costa Mesa) for construction of a 34.4 acre nature park with pedestrian trails, native plant materials, children's play area, irrigation system, maintenance/security bridge, access road and parking lot. A Special Condition concerning grading and drainage plans to protect the adjacent wetlands during the construction period was imposed.

On December 14, 1990, the Coastal Commission approved Coastal Development Permit 5-88-716E for a one-year extension of the permit. In July of 1990, the Special Condition was satisfied and the permit was issued but was not activated.

The proposed project arose from a complaint filed by Candace M. Cunningham (the "Plaintiff") on January 22, 1999 in Superior Court against the City of Costa Mesa (the "Defendant"). The "Plaintiff" sought to recover monetary damages due to flooding from heavy rains that caused the overflow of an existing drainage channel in the northwest portion of Canyon Park and damage to the adjacent residential development known as "Seabluff Canyon Village" on December 6, 1997. The Plaintiff and Defendant entered into a settlement agreement to resolve the matter (Exhibit #3). The Plaintiff received monetary compensation and the settlement agreement also required that repair work take place at Canyon Community Park in order to prevent the possibility of future flooding to Seabluff Canyon Village.

Seabluff Canyon Village was developed in 1978 with 82 units and was constructed on a down hill portion of Canyon Drive. Canyon Community Park is located to the east, adjacent to the development. The drainage channel that overflowed is one of two located in the park and extends from Canyon Drive to Seabluff Canyon Village (Exhibit #4). The second channel is located in a different area of the park and is not within the immediate project area. The majority of the drainage in this area is directed into a west flowing natural channel, which exits into a storm drain beneath the Seabluff Canyon Village to the west. This natural open channel begins at the northeastern section of the park and is directed southerly into a section of the open channel which is lined with concrete and rip rap along the southern boundary of the Seabluff Canyon Village development and outlets into a flood control channel. A small section of the park and channel form a wetland habitat area. Intense storms, such as the one that occurred on December 6, 1997, cause water from a section of the channel where there is wetland habitat, to overflow and sheetflow west toward Seabluff Canyon Village.

The proposed project will take place in the northwest portion of the park and consist of construction of an earthen berm between the existing wetland and an existing dirt path including 1) importing approximately 120 cubic yards of fill material for berm construction and 2) hydroseeding

the entire earthen berm (Exhibit #4). The new berm will be 300 feet long, 10 feet wide and 2 feet high and will be placed in an area that is predominantly occupied by non-native turfgrass. The construction of the proposed berm will **not** require any excavation and will not require removal of trees or other existing vegetation. A dense brush area, approximately 50 feet wide at its' nearest point, separates the proposed berm from the channel area where existing wetland habitat is located. The proposed berm will roughly parallel the section of the channel where there is wetland habitat. The new earthen berm will also be constructed outside wetland habitat limits. Also, the southeastern end of the berm will be perpendicular to the channel. The proposed project is intended to contain the runoff within the natural drainage path and prevent it from overflowing during intense storm events resembling that, which occurred on December 6, 1997.

B. HAZARDS

Section 30253 of the Coastal Act states, in part:

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, geologic 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.

On December 6, 1997, a severe storm took place and caused flooding to residential units located at Seabluff Canyon Village. The flooding was caused by the overflow of one of the two channels, which has a section occupied by wetland habitat, located at the northwest portion of Canyon Park.

A complaint was filed against the City in response to the flooding of Seabluff Canyon Village. The Plaintiff and Defendant (City of Costa Mesa) agreed to a settlement to resolve the problem. The Plaintiff received monetary compensation and the settlement agreement also required that the City perform repair work at Canyon Community Park that would prevent the possibility of future flooding to the adjacent development (Seabluff Canyon Village).

A report (Exhibit #5) was done by the Javon Consulting Company requested by the Seabluff Canyon Village Homeowners Association that recommended construction of a concrete swale with catch basins in order to prevent future flooding of Seabluff Canyon Village. The City of Costa Mesa reviewed this recommendation and determined that this approach would not be feasible. In a letter (Exhibit #6) dated May 22, 2001 by Ernesto Munoz, Assistant City Engineer, states the following: "The City of Costa Mesa reviewed the recommendation and noted that there was insufficient grade for a storm drain line in this area. In addition, the concrete swales would have to be wider than the existing gravel [dirt] path. However, most importantly, the construction of a storm drain or a swale would result in the removal of vegetation and trees."

The City determined that the proposed 300 feet long, 2 feet high, 10 feet wide berm will be the better and least environmentally damaging alternative. This earthen berm will contain runoff that may overflow during intense storm events, such as the event that took place on December 6, 1997. According to the City, the berm will considerably reduce the possibility of flooding during a 100-year storm and it will increase the capacity of the existing channel by approximately 50%.

The applicant has chosen to implement the project to alleviate risks from flooding. Once constructed, the berm is expected to considerably reduce the flooding risk, but cannot totally eliminate the flood hazard. Therefore, the Commission imposes Special Condition No. 2, for an assumption-of-risk agreement. In this way, the applicant must assume the risks of development and is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that any future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30240 of the Coastal Act states, in part:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Commission's Staff Ecologist has reviewed the proposed project and determined that the impact of the project on the riparian habitat is not significant (Exhibit #7). He states that: "*The proposed berm will be roughly parallel a disturbed stream habitat at a distance approximately 50-100 ft. from the stream edge and outside of the wetland habitat...The project footprint will not overlap into the riparian wetland area. Consequently, the project is consistent with Section 30240 (b) which requires that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade habitat values.*"

The proposed berm will be constructed adjacent to an existing wetland and no direct impacts or filling of any wetlands are proposed. A distance of approximately 50 feet at its' nearest point separates the proposed berm from the channel area, which has wetland habitat. The proposed berm will not require any removal of significant vegetation or trees or excavation. The project will not disturb the habitat and biological resources and will blend in well with the surrounding existing vegetation. The vegetation and bushes located adjacent to the proposed berm will be protected in-place and kept intact.

The park consists of native and non-native vegetation. Native trees such as *Sycamores* and *Willows* are located at the project site. Also, non-native *Eucalyptus*, *Mulberry* and *Palm* trees are also located at the project site. The area where the proposed berm will be placed is mainly occupied by non-native turfgrass.

The U.S. Army Corps of Engineers (USACOE) was contacted in reference to the proposed project (Exhibit #8). The USACOE stated that the project would not discharge dredged or fill material into a water of the United States or an adjacent wetland. Therefore, the project is not subject to their

jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required. They do recommend though that hay bales be placed between the berm and the wetland until the hydroseeded vegetation on the berm has been sufficiently established.

The Santa Ana Regional Water Quality Control Board (RWQCB) was also contacted in reference to the proposed project (Exhibit #9). The RWQCB determined that since the project does not require a Section 404 permit from the USACOE, it will not need a Water Quality Certification under CWA Section 401 permit from the RWQCB. The RWQCB also recommended placement of hay bales between the wetland and berm until the vegetation has become established.

In addition, the Department of Fish and Game was also contacted in reference to the proposed project (Exhibit #10). They determined that that the project will not need notification under Section 1600 *et seq.* of the Fish and Game Code and will not extensively affect the existing resources if the following conditions are met: 1) project should avoid impacts to native trees and shrubs, 2) retention measures such as fencing should be used to prevent the placement of fill on the base of any trees located within the footprint of the berm, 3) existing trails or disturbed areas should be used to provide construction access and 4) native plant species compatible with the adjacent wetlands should be used as much as feasible in the planting palette.

To minimize the potential for the introduction of non-native invasive species, Special Condition No. 3 requires that the earthen berm be hydroseeded with 100% native vegetation appropriate to the area. To protect the wetlands, water quality and hydroseeded vegetation, Special Condition No. 4 requires that there be placement of hay bales between the berm and the wetland area until the hydroseeded vegetation on the berm has become established. Through these Special Conditions the Commission finds that the project is consistent with Section 30240 of the Coastal Act.

D. CONSTRUCTION IMPACTS ON WATER QUALITY

Section 30230 of the Coastal Act states, in part:

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

Section 30231 of the Coastal Act states, in part:

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.

As discussed previously, the applicant is proposing to construct a berm adjacent to an existing wetland area. The open channel drains to the Talbert Marsh. Construction will include import of approximately 120 cubic yards for the 300 feet long, 10 feet wide and 2 feet high earthen berm.

Storage or placement of construction materials, debris, or waste in a location adjacent to an existing wetland and open channel which may be discharged into the coastal waters via rain carried by the storm water system would result in adverse impacts upon the marine environment reducing the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged to coastal waters may cause turbidity, which can shade and reduce the productivity of eelgrass beds and foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources and to protect the biological productivity of the riparian wetland habitat during the construction process, Special Condition No. 5 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Only as conditioned for appropriate storage of construction materials and equipment and the use of hay bales to prevent sediment flow into the wetlands does the Commission find that the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

The City of Costa Mesa has not made an LCP submittal to the Commission. The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development as conditioned would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter Three policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

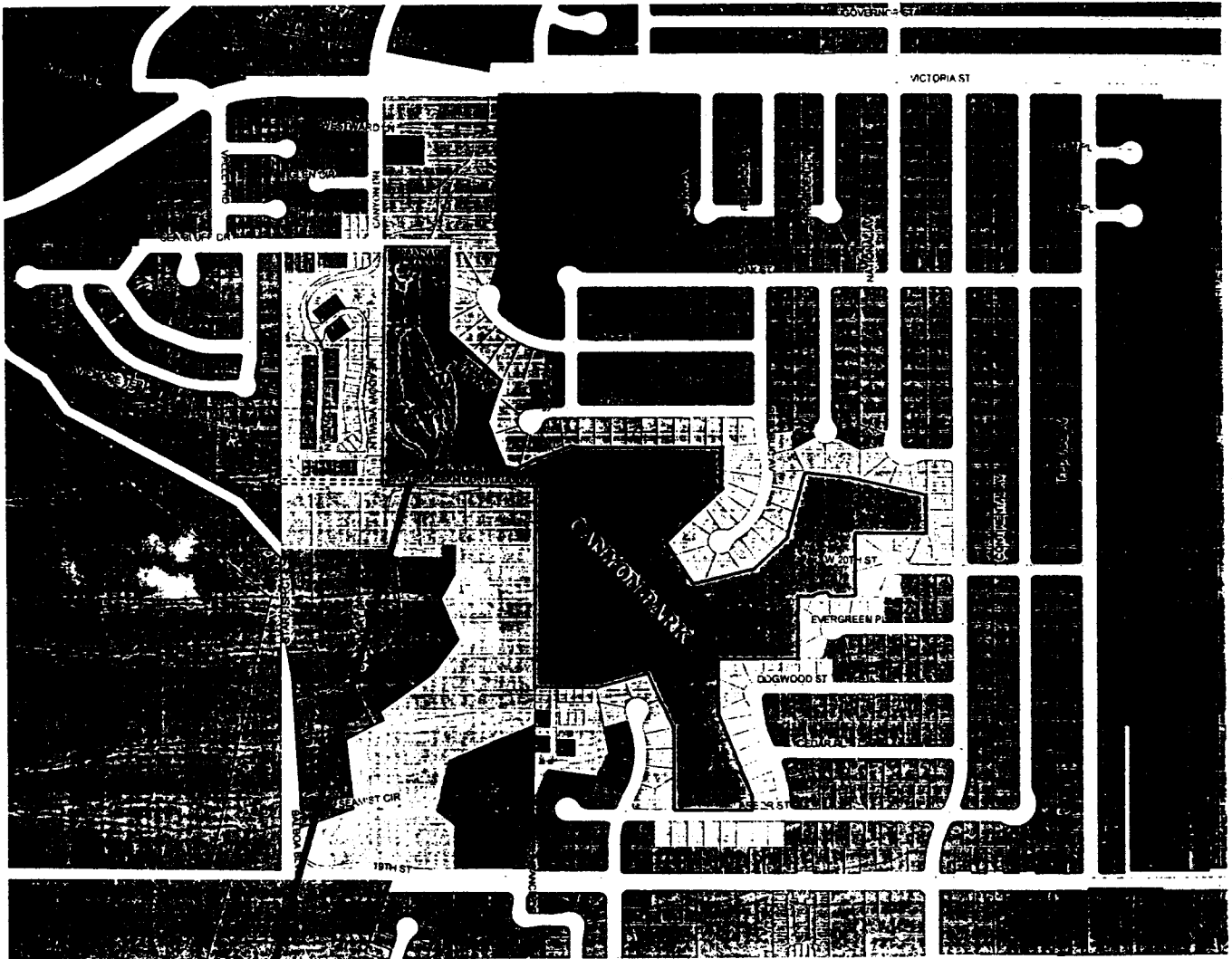
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

The proposed project is located in an urban area. As conditioned, the proposed project has been found consistent with the hazard, environmental sensitive habitat areas and protection of marine resources policies of Chapter Three of the Coastal Act. Mitigation measures requiring conformance with prior conditions, assumption of risk agreement, hydroseeding with 100% native vegetation appropriate to the area, placement of hay bales between the berm and the wetland until hydroseeded vegetation on the berm has become established and storage of construction

materials, mechanized equipment and removal of construction debris will minimize any significant adverse effects that the activity may have on the environment.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned is consistent with CEQA and the policies of the Coastal Act.

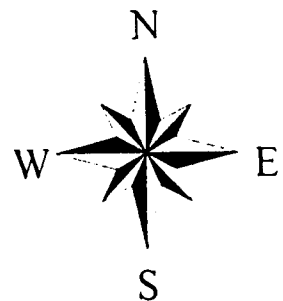
Canyon Park



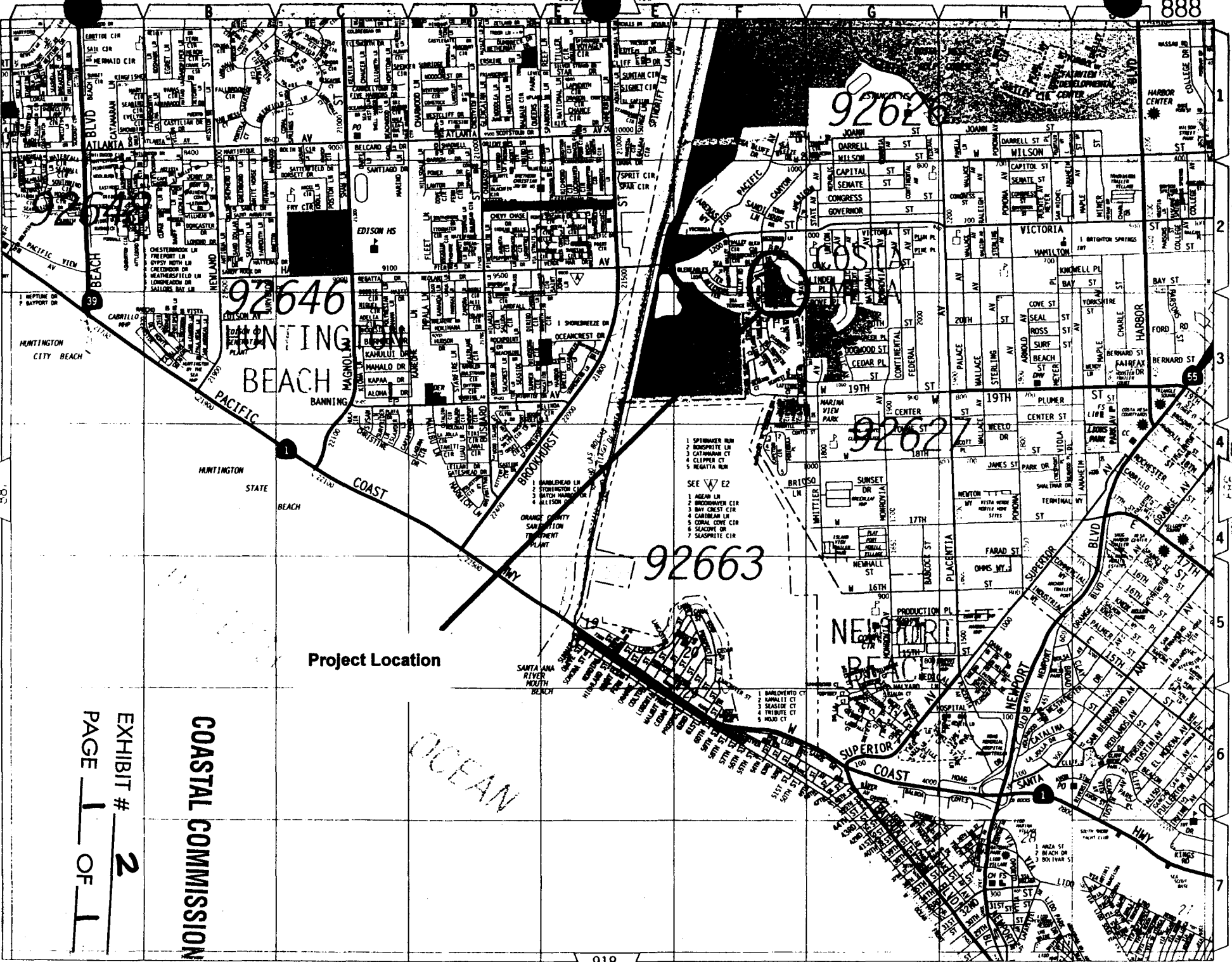
Project Location

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EXHIBIT # 1
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N.T.S.



92646
 HUNTING BEACH

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92672

Project Location

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EXHIBIT # 2
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SEE E2

- 1 AGEAN LN
- 2 BROADWAY CIR
- 3 BAY CREST CIR
- 4 CARIBBEAN LN
- 5 CORAL COVE CIR
- 6 SEACRE DR
- 7 SEASPRITE CIR

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made and entered into this 28 day of April, 2000, by and between CANDACE M. CUNNINGHAM (the "Plaintiff"), and CITY OF COSTA MESA (the "Defendant").

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RECITALS

A. On or about January 22, 1999, the Plaintiff filed a complaint (the "Complaint") against the Defendant in the Superior Court of the State of California, Orange County, Harbor Justice Center, Court Action No. 99HL00332 which Complaint arose out of certain alleged negligent acts or omissions by the Defendant. In the Complaint, the Plaintiff sought to recover monetary damages as a result of that certain flooding that occurred on December 6, 1997.

B. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which are the subject or might have been the subject of the Complaint, upon the terms and conditions set forth herein.

AGREEMENT

The parties hereto hereby agree as follows:

1. **Release and Discharge**

In consideration of the payments and work called for herein, the Plaintiff hereby completely releases and forever discharges the Defendant, and its past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and

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EXHIBIT # 3
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successors in interest, and assigns all other persons, firms, or corporations with whom any of the former have been, are now or may hereafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensation or punitive damages, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way growing out of, or which are the subject of the Complaint (and all related to pleadings) including, without limitation, any and all known or unknown for property damage, bodily and personal injuries to Plaintiff, or any future wrongful death claim of Plaintiff's representatives, which have resulted or may result from the alleged acts or omissions of the Defendant. This release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendant and the Insurer, their assigns and successors, save only the executory provisions of this Settlement Agreement. The Plaintiff agrees to defend, indemnify and hold the Defendant and the Insurer harmless from and against all such claims, demands, obligations, actions, causes of action, damages, costs and expenses.

It is understood and agreed by the Plaintiff that the facts with respect to which the foregoing Release is given may hereafter turn out to be other than or different from the facts in that connection now known to be or believed by the Plaintiff to be true, and the Plaintiff expressly assumes the risk of the facts turning out to be different than they now so appear, and agree that the foregoing

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Release shall be, in all respects, effective and not subject to termination or rescission by any such different in facts and the Plaintiff hereby expressly waives any and all rights the Plaintiff has or may have under California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release which if known by him must have materially affected his settlement with the debtor."

It is understood and agreed that this settlement is a compromise of doubtful and disputed claims, and that the releases made herein are not to be construed as an admission or admissions of liability on the part of the Defendant, and that the Defendant denies liability thereof and intends merely to avoid litigation and to buy its peace. The Plaintiff agrees that she will forever refrain and forebear from commencing, instituting or prosecuting any lawsuit, action or other proceeding against the Defendant based on, arising out of or in any way connected with the subject matter of this Release.

2. Payments

In consideration of the release set forth above, the Defendant hereby agrees to pay to Plaintiff the sum of Seven Thousand Dollars (\$7,000.00).

3. Work

The Defendant will request a budget appropriation in the Capital Improvement Budget for the upcoming fiscal year to perform repair work at Canyon Community Park. The Defendant plans to perform grading, construct an

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earthen swale, and modify the existing asphalt concrete path within Canyon Park to minimize the risk of future flooding to adjacent developments. The Defendant will use its best efforts to complete this repair work by December 1, 2000, pending City Council approval.

4. No Assignment of Claim

The Plaintiff represents and warrants to this Defendant that the Plaintiff has not heretofore assigned or transferred or purported to assign or transfer to any person, firm, corporation, associate or entity any of the rights, claims, warranties, demands, debts, obligations, liabilities, action, damages, costs, expenses and other claims whatsoever and Plaintiff agrees to indemnify and hold harmless the Defendant against, without limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, actions, damages, costs, expenses and other claims, including attorneys fees, arising out of or connected with any such assignment or transfer or purported assignment or transfer.

5. Representation by Counsel

The Plaintiff acknowledges that she has been represented by counsel of her own choice in connection with the preparation and execution of this Settlement Agreement. The Plaintiff acknowledges and represents that she has read this Settlement Agreement in full and understands and voluntarily consents and agrees to each and every provision contained herein.

6 Attorney's Fees

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with the Complaint, this Settlement

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Agreement and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters.

7. Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Plaintiff and the Defendant with regard to the matters set forth in it and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. The Plaintiff further declares and represents that no promise, inducement or agreement not herein expressed has been made to the Plaintiff.

8. Warranty of Capacity to Execute Agreement

The Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement; except as otherwise set forth herein and that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

9. Delivery of Dismissal with Prejudice

Concurrently with the execution of this Settlement Agreement, counsel for the Plaintiff has delivered to counsel for the Defendant an executed Dismissal with Prejudice of the Civil action described in Recital A above. The Plaintiff has authorized Plaintiff's attorneys to execute this Dismissal on her behalf and

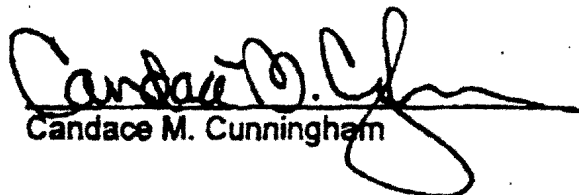
COASTAL COMMISSION

hereby authorizes counsel for the Defendant to file said Dismissal with the Court and enter it as a matter of record.

10. Effectiveness

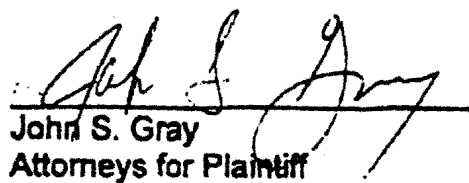
This Settlement Agreement shall become effective immediately following execution by all of the parties.

Executed at Costa Mesa, California, this 28 day of April, 2000.

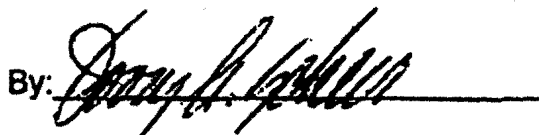

Candace M. Cunningham

APPROVED AS TO FORM:

LAW OFFICES OF JOHN S. GRAY


John S. Gray
Attorneys for Plaintiff

CITY OF COSTA MESA

By: 

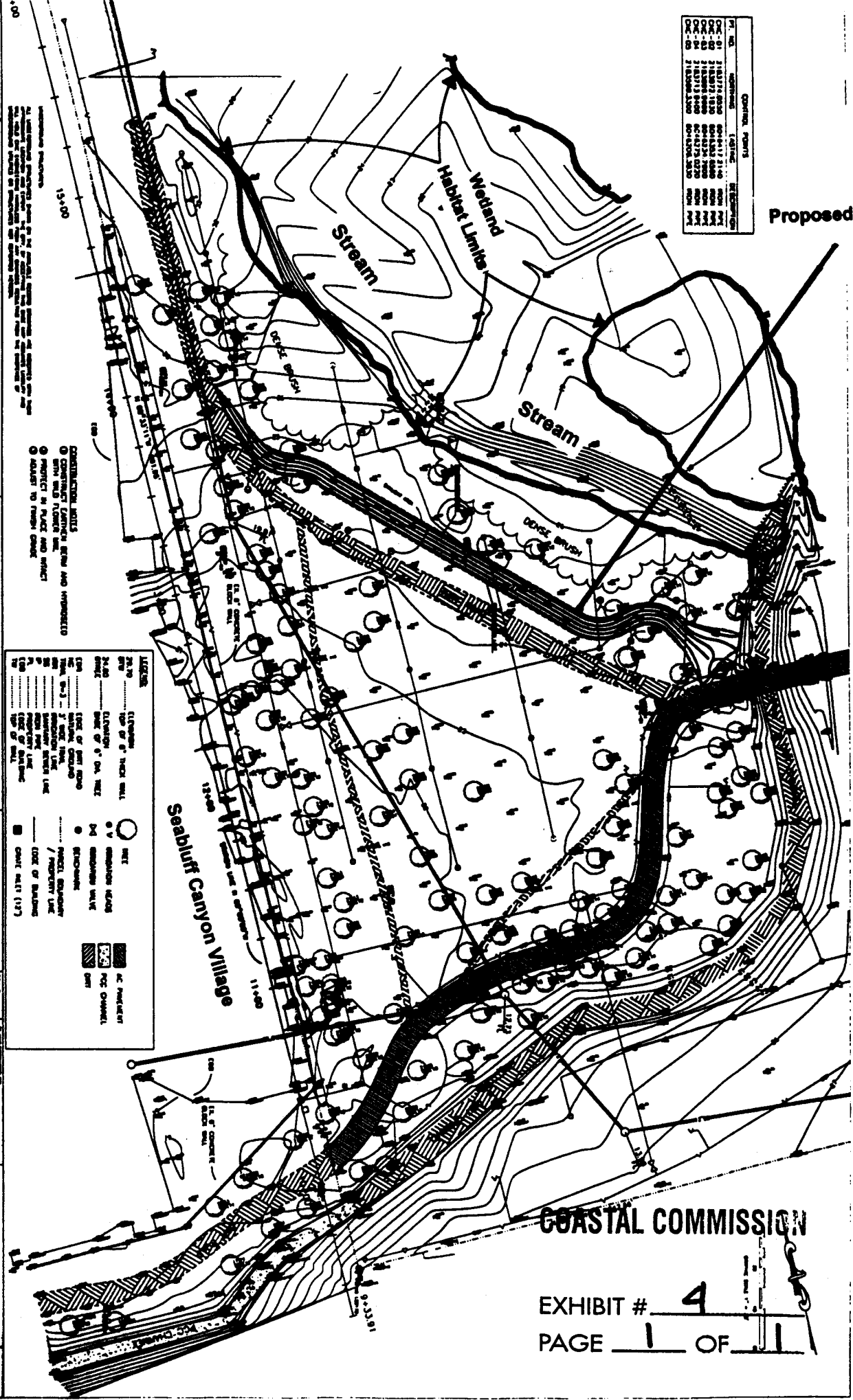
1833111

COASTAL COMMISSION

EXHIBIT # 3
PAGE 6 OF 6

PT. NO.	ELEVATION	DATE	BY
OC-01	218372.0000	08/04/17	JL
OC-02	218372.1820	08/04/17	JL
OC-03	218372.3640	08/04/17	JL
OC-04	218372.5460	08/04/17	JL
OC-05	218372.7280	08/04/17	JL
OC-06	218372.9100	08/04/17	JL
OC-07	218373.0920	08/04/17	JL
OC-08	218373.2740	08/04/17	JL
OC-09	218373.4560	08/04/17	JL
OC-10	218373.6380	08/04/17	JL

Proposed Berm



- CONSTRUCTION NOTES
- 1. CONSTRUCT EARTH BERM AND HYDROLOGIC
 - 2. WITH WILD FLOWER MIX.
 - 3. PROTECT IN PLACE AND MAINT.
 - 4. ADAPT TO FRESH CREEK.

LEGEND

1. ELEVATION	2. TOP OF 3" THICK WALL	3. SET
4. ELEVATION	5. V. ELEVATION MARK	6. V. ELEVATION MARK
7. ELEVATION	8. ELEVATION MARK	9. ELEVATION MARK
10. ELEVATION	11. ELEVATION MARK	12. ELEVATION MARK
13. ELEVATION	14. ELEVATION MARK	15. ELEVATION MARK
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64. ELEVATION	65. ELEVATION MARK	66. ELEVATION MARK
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94. ELEVATION	95. ELEVATION MARK	96. ELEVATION MARK
97. ELEVATION	98. ELEVATION MARK	99. ELEVATION MARK
100. ELEVATION	101. ELEVATION MARK	102. ELEVATION MARK

APPROVED FOR THE CITY OF COSTA MESA

AMNC

CITY OF COSTA MESA
BY THE CITY CLERK

CANYON COASTAL PARK

DATE: 08/04/17

2

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1

RECEIVED

OCT 20 2000

222 Pineview • Irvine, CA 92620
Tel: (714) 432-8308
Pager: (714) 707-7067

CALIFORNIA
COASTAL COMMISSION

(ISAAC) MEHRDAD TABAR

EDUCATION, LICENSING & CERTIFICATION

- M.S. degree in Transportation Engineering, 1980**
Polytechnic Institute of New York
- B.S. degree in Civil Engineering, 1978**
Polytechnic Institute of New York
- Registered Professional Civil Engineer #37433**
- California Contractors License #463295**
(Engineering "A", Buildings "B", & Plumbing "C-36")
- Certificate of Design & Fabrication**
Light Gauge Steel Trusses, 1995
Orange Coast College
- Lifetime Teaching Credential - Engineering Instructor**
California Community Colleges
- California Real Estate License #01044999**
- Certified Traffic Accident Investigator**

PROFESSIONAL EXPERIENCE

- 1993-present PROJECT ENGINEER & CONSTRUCTION SUPERVISOR**
Javon Consulting & Construction Company, Costa Mesa, CA
- 1990 - 1993 PROJECT MANAGER**
Jevon Construction Company, Inc., Los Angeles, CA
- 1984 - 1990 GENERAL MANAGER**
Tabar Construction Company, Woodland Hills, CA
- 1980 - 1984 CIVIL ENGINEER I, PUBLIC WORKS INSPECTOR**
City of Manhattan Beach, CA
- 1978-1980 CIVIL ENGINEER & BRIDGE INSPECTOR**
Steinman & Birdsall Consulting Engineers, New York, NY

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 5

DAVON CONSULTING COMPANY

P.O.Box 16683 Irvine, CA. 92713

TEL: (714)432-6308
PGR: (714)707-7067

FLOOD DAMAGE INVESTIGATION
Seabluff Canyon Village Homeowners Association

December 31, 1997

Board of Directors
c/o Cheryl Kepler,
Chairperson Seabluff Canyon Emergency Committee
2046 Meadow View Lane
Costa Mesa, CA. 92627

Dear Board Members:

As requested attached is a report of flood damage investigation, which I have prepared for the entire community. based on information obtained and investigation performed by me. It is recommended that the City of Costa Mesa should reimburse the effected Homeowners and also preventive measures are recommended for future storm.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Mehrdad Fabar
R.C.E. 37433



COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 5

BACKGROUND

The Seabluff Canyon Village Homeowners Association was developed in 1978, with 82 P.U.D. (Planned Unit Development), see Exhibit "A". This development was constructed on a down hill portion of Canyon Drive with Conditional Use Permit or dedicating portion of land to the City of Costa Mesa. This development is located in Westerly section of City adjacent to the Canyon Park.

The development is being divided into two levels known as Lower and Upper levels, per Exhibit "B". A natural man made Flood Channel is located on the Easterly portion of development.

SCOPE

The scope of this report is to evaluate the cause of flood damage to many units which took place on December 6, 1997.

The Lower level of development has sustained a great amount of damage due to flooding caused by over flowing of existing channel. It was determined that a survey of existing Park's Ground needed to be conducted in order to evaluate the slope for direction of water flow.

DISCUSSION

This development was affected severely by the recent rain on December 6, 1997. A partial list of home owners who were affected is tabulated in Exhibit "C".

The storm drain system which was built for this community is sufficient to carry and dispose of rain water during stormy season to the existing channel located at South side of development. The City of Costa Mesa, during a park Renovation Project, has performed Grading work adjacent to lower level units, where drainage slope is toward the development rather than away from it and also re routed the existing channel at start point to a newer location with connection of two storm drain pipes from Seabluff and Victoria into it (see Exhibit "D"). Also a crushed gravel drain system of approximately 16" wide was constructed (per resident's request) to direct the water toward two catch basins of approximately 10"X10" with drain pipes terminating at the channel as shown in Exhibit "E".

COASTAL COMMISSION

EXHIBIT # 5
PAGE 3 OF 5

During the heavy rains of December 6, 1997 the rain water from the park flowed into the residents' back yards, through the houses, garages, and ultimately to the street toward the existing catch basin, which over flowed. Subsequently, the residents had to break the existing fence block wall to relieve the water accumulation of approximately 36" (see Exhibit "F").

Due to these observations, I have conducted a survey of the park at the lower level portion of the development and have tabulated the results in Exhibit "G". These results indicate that existing grade of the park is not sufficient since it has been graded toward the rear yard of the residents next to that portion of the park. As it can be seen through the pictures, the newly constructed French Drain Gravel Path (as was repeatedly requested by the homeowners) could substantially relieve the flood only if it was constructed as a concrete Swale with Catch Basins and 18" Storm Drain Pipe leading to the Channel.

Also the maintenance of the park has contributed to this flooding situation, through non removal of shrubs at the bed or side of the channel and leaving tree branches inside of the channel.

CONCLUSION

Based on information which has been obtained and developed through this report, following are the summary of recommendations:

1. City of Costa Mesa should reimburse the home owners for damages sustained per each individual's repair cost.
2. A concrete swale with catch basins and storm drain line should be installed instead of the gravel path, leading into the channel.
3. The channel should be maintained on a regular basis, and debris need to be removed more often.
4. All shrubs and vegetation should be removed immediately prior to future storm.
5. The units which are located at upper level should remove any obstruction and clean the drain catch basin.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 4 OF 5

6. The unit at corner of Seabluff and Canyon Drive where there was accumulation of rain water should be graded to a higher level in order for rain water to flow toward the street, possibly with a drain pipe and catch basin.
7. The units along the bed side of water flow which were damaged should also be reimbursed through the City of Costa Mesa since the rain water from the park caused the damage to their houses.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 5 OF 5



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

May 22, 2001

Mr. Fernie Sy
California Coastal Commission
South Coast Area Office
200 Oceangate, #1000
Long Beach, CA 90802-4302

Dear Mr. Sy:

I would like to take this opportunity to clarify why the City is utilizing an earthen berm in lieu of a swale as recommended in the report prepared by Javon Consulting Company.

The report prepared by Javon Consulting Company recommended the construction of a concrete swale with catch basins. The City of Costa Mesa reviewed the recommendation and noted that there was insufficient grade for a storm drain line in this area. In addition, the concrete swales would have to be wider than the existing gravel path. However, most importantly, the construction of a storm drain or a swale would result in the removal of vegetation and trees. We felt that this was detrimental to preserving the park's natural habitat and selected the alternate to construct an earthen berm. The proposed earthen berm would be constructed to protect homes located on the westerly side of the Community Canyon Park from floodwaters originated from the wetlands and stream located easterly of the berm. The proposed alignment of the earthen berm does not require any removal of vegetation and existing trees. It will considerably reduce the potential for overflowing storm water from the existing channel during a 100-year storm and it will increase the capacity of the existing channel by approximately 50 percent. The City is planning to hydroseed the earthen berm with wild flower mix to protect its integrity. As recommended by U.S. Army of Corps of Engineers (USACOE), the City will place hay bales between the berm and the wetland until hydroseeded vegetation on the berm has become established.

I hope this is a satisfactory explanation of the utilization of an earthen berm for this project. Should you need additional information, please feel free to contact Fariba Fazeli at (714) 754-5378.

Sincerely

Ernesto A. Munoz, P.E.
Assistant City Engineer



c: William J. Morris, Director of Public Services
Fariba Fazeli, Senior Engineer

PHONE: (714) 754-9343 FAX: (714) 794-8028 TDD: (714) 754-5244
www.ci.costa-mesa.ca.us

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 841-0142

**MEMORANDUM****TO:** Fernie Sy**FROM:** Jon Allen, Staff Ecologist**SUBJECT:** Canyon Community Park Berm Construction**Date:** May 22, 2001

This project is to construct an earthen berm 300 ft long, 10 ft. wide and 2 ft. high along a narrow riparian habitat in Canyon Community Park by the City of Costa Mesa. The proposed berm will be roughly parallel to a disturbed stream habitat at a distance of approximately 50-100 ft. from the stream edge and outside the boundary of the wetland habitat. A site-visit on May 3, 2001 was made and the habitat was determined to be a highly disturbed urban park, much of which is a mowed grass playfield behind a row of private homes. The stream and surrounding shoreline could be characterized as a disturbed riparian habitat having a mixture of native trees, e.g. sycamores and willows, and non-native palm trees, Eucalyptus and mulberry. There are also oaks planted in the park area along the berm but outside of the riparian area. The riparian area is subject to seasonal flooding during the rainy season and is seasonally dry during the summer. The purpose of the berm is to prevent a recurrence of the flooding of the homes from the riparian habitat overflow that occurred during the heavy rains in December of 1997.

In my professional judgement the impacts of the project on the riparian habitat are not significant for the following reasons:

1. The proposed berm will be placed on an area of the park predominately occupied by non-native turfgrass, which contains minimal habitat value due to the absence of native vegetation. Though the berm will cover the existing turf, the berm will be replanted with native vegetation that will enhance habitat values.
2. The project footprint will not overlap into the riparian wetland area. Consequently the project is consistent with Section 30240(b) which requires that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade habitat values.
3. The riparian area is disturbed to the point that it cannot be classified as ESHA.

In balance the project will have more positive benefits than negative ones and is the least damaging feasible environmental alternative under the Coastal Act. Some examples of these benefits are:

COASTAL COMMISSION

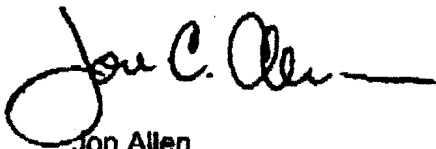
EXHIBIT # 7
PAGE 1 OF 2

1. There is a safety issue with regard to flooding based on the December 1997 overflow from the riparian area into the homes near the stream. This project would enhance the protection of these homes without having an adverse effect on the riparian habitat at the site.
2. The planting of native vegetation along the proposed berm will increase the native plant habitat at the site and constitutes an improvement over the existing non-native turf grass which is now planted in the area where the berm will be located.
3. The stream feeds into Talbert Marsh and the existing flow needs to be maintained without further major disturbance.
4. The alternative to the earthen berm would be a concrete wall that would be a less desirable environmental method of controlling the stream flow.

If anything could be added to this project in the way of improvement, it might be adding some larger perennial native species of plants to the hydroseeding of the proposed berm. A higher than 50% native seed mixture could be used. In addition, larger perennials could be planted along the berm. For example arroyo willow, *Salix lasiolepis*, mulefat, *Baccharis salicifolia*, and narrowleaf willow *Salix exigua* could be planted along the berm both to the benefit of soil holding capacity and native plant restoration. This would also help to prevent washing out of the berm in the event of a high flood year like 1997 and would improve the native plant community component of the project.

If you would like to review this project further or have questions please give me a call or email, and I will be glad to discuss it.

Regards,



Jon Allen
Staff Ecologist



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

November 30, 2000

RECEIVED

DEC 06 2000

ENGINEERING

REPLY TO
ATTENTION OF

Office of the Chief
Regulatory Branch

Fariba Fazeli
Public Services/Engineering Division
City of Costa Mesa
P.O. Box 1200
Costa Mesa, California 92628-1200

Dear Ms. Fazeli:

Reference is made to your letter (No. 200100117-YJC) dated November 30, 2000 regarding your proposal to construct a 300 foot long, 10 foot wide earthen berm in Canyon Community Park, Costa Mesa, Orange County, California. The berm will be constructed to protect homes on the westerly side of the park from flooding originating from the wetlands and stream on the easterly side of the constructed berm. The berms will be hydroseeded to minimize runoff of materials into the stream and wetland on the easterly side.

Based on the information furnished in your letter and the field visit on November 29, 2000 with Ve Tran of your staff, we have determined that your proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. The berm will be placed in a grassy recreational area adjacent to willow scrub and will impact ornamental grasses and shrubs, wild radish, and dandelions. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required from our office. Although this activity is outside our jurisdiction, we would recommend that hay bales be placed between the berm and the wetland until hydroseeded vegetation on the berm has sufficiently established.

The receipt of your letter is appreciated. If you have any questions, please contact Jae Chung of my staff at (213) 452-3292.

Sincerely,

Mark Durham
Chief, South Coast Section
Regulatory Branch

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 1



California Regional Water Quality Control Board

Santa Ana Region



Winston Hickox,
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
3737 Main Street, Suite 500, Riverside, California 92501-3339
Phone (909) 782-4130 E FAX (909) 781-6288

Gray Davis
Governor

December 18, 2000

RECEIVED

DEC 20 2000

ENGINEERING

Ms. Fariba Fazeli
Public Services/Engineering Division
City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200

PROPOSED CANYON COMMUNITY PARK FLOOD PROTECTION PROJECT, CITY OF COSTA MESA, ORANGE COUNTY

Dear Ms. Fazeli:

You have requested a 401 certification action from the Santa Ana Regional Board for the above-identified project. The project proposes to construct a 300-foot long, 10-foot wide earthen berm in Canyon Community Park, Costa Mesa. The berm would be constructed to protect homes located on the westerly side of the Community Park from floodwaters originating from the wetlands and stream located easterly of the berm.

You have submitted a copy of a letter from the U.S. Army of Corps of Engineers (USACOE) requiring that the berm(s) be hydroseeded. The USACOE also recommends that hay bales be placed between the berm and the wetland until hydroseeded vegetation on the berm has become established. We have determined that if the USACOE requirements are adhered to, pollutant runoff, including sediment, into the stream and wetland from this project should not adversely impact water quality.

The USACOE has indicated that your project does not require a Clean Water Act (CWA) Section 404 permit. Therefore, the project will not need Water Quality Certification under CWA Section 401 from the Regional Board. However, should the USACOE later determine that the project requires a 404 permit, it will be necessary to obtain Section 401 Certification from this Board. Should you have any questions, please contact me at (909) 782-4468.

Sincerely,

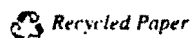
Wanda K. Smith
Chief, Coastal Waters Planning Section

cc: California Coastal Commission, Long Beach
Army Corps of Engineers - Mark Durham

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1

California Environmental Protection Agency



DEPARTMENT OF FISH AND GAME

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



RECEIVED
FEB 05 2001
ENGINEERING

February 5, 2001

Fariba Fazeli
Department of Public Services--Engineering Division
City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200

**Comments on the Canyon Community Park Flood Protection Project
(Amendment to Coastal Development Permit 5-88-716-A1)
City of Costa Mesa, Orange County**

Dear Ms. Fazeli:

The Department of Fish and Game (Department) has reviewed the above-referenced project for potential impacts to biological resources. Our evaluation of the project is based on documents received by our office and a field visit by Department biologists on January 31, 2001.

The project is located in Canyon Community Park in the City of Costa Mesa. The project proposes the placement of an earthen berm along the western bank of an unnamed tributary to the Santa Ana River for flood control purposes. The berm will measure approximately 300-feet in length, 10-feet in width, and two feet in height. Approximately 145 cubic yards of fill will be used and will be hydroseeded with a wildflower mix to reduce erosion and runoff.

We have determined that the project, as proposed, will not require notification under Section 1600 *et seq.* of the Fish and Game Code and will not significantly affect existing resources if the following conditions are met:

- 1) The project alignment should avoid impacts to existing native trees and shrubs. Appropriate fencing or other earth retention measures should be used to prevent the placement of fill on the base of trees that occur within the footprint of the berm. Existing trails or disturbed areas should be used to provide access.
- 2) We recommend native plant species be used in the planting palette as much as feasible. Species that may be detrimental to the survivability of the native wetland vegetation should be excluded from the plant palette. The California Exotic Pest Plant Council (CalEPPC) compiles a regional list of invasive species and this list should be consulted in determining a suitable planting palette. A complete list can be obtained by contacting CalEPPC at 31872 Joshua Drive, #25D, Trabuco Canyon, CA 92679-3112 or at www.calippc.org

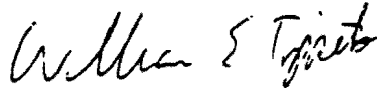
COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 2

Fariba Fazeli
February 5, 2001
Page 2

We appreciate the opportunity to offer comment on your project. Questions and comments concerning this letter should be directed to Warren Wong of the Department at (858) 467-4249.

Sincerely,



William E. Tippetts
Habitat Conservation Supervisor

COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 2