

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 1000 Ocean Gate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071

Filed: April 9, 2003
 49th Day: May 28, 2003
 Staff: ALB-LB *ALB*
 Staff Report: April 17, 2003
 Hearing Date: May 6-9, 2003
 Commission Action:



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STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Orange

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-NPC-03-141

APPLICANT: California Department of Transportation (Caltrans)

AGENT: Chris Flynn

PROJECT LOCATION: Within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) between Los Trancos Creek and Muddy Creek in the Crystal Cove area of the Newport Coast Planned Community, Orange County

PROJECT DESCRIPTION: Appeal of County of Orange approval of construction of stormwater drainage improvements, including new pipes, inlets and the creation of biofiltration swales adjacent to Pacific Coast Highway.

APPELLANTS: Orange County Coastkeeper, Coastal Commissioners Toni Iseman and Sara Wan

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after a public hearing, determine that a substantial issue exists with respect to the grounds on which the appeals have been filed for the following reason: Pursuant to Section 30603(b)(1) of the Coastal Act, the locally approved development does not conform to the County of Orange Newport Coast certified Local Coastal Program (LCP). More specifically, the locally approved coastal development permit does not conform to the environmentally sensitive habitat area (ESHA) policies of the certified LCP, as it would allow untreated runoff from Pacific Coast Highway to enter the Crystal Cove Area of Special Biological Significance (ASBS). In addition, the locally approved permit does not conform to the Chapter 3 public access policies of the Coastal Act due to the fact that polluted runoff entering the ocean potentially results in beach closures, thereby adversely affecting the public's ability to access and utilize coastal resources.

At this time, all that is before the Commission is the question of whether the appeals raise a substantial issue. If the Commission determines that a substantial issue exists, a de novo hearing will be held at a subsequent meeting.

SUBSTANTIVE FILE DOCUMENTS:

1. Record for Local Coastal Development Permit No. PA02-0112.
2. County of Orange Newport Coast Certified Local Coastal Program.

EXHIBITS:

1. Vicinity Map
2. Site Plan
3. Appeal filed by Orange County Coastkeeper
4. Appeal filed by Commissioners Iseman and Wan
5. Notice of Final Decision (Staff Report and Minutes) for PA02-212
6. Letter from RWQCB dated September 27, 2002

APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Also, developments approved by the local government that are located within 100 feet of any wetland, estuary, or stream may be appealed. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by its location being within 100 feet of a stream or wetland.

Section 30603 of the Coastal Act states:

(a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*

- (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of*

any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The grounds for appeal of an approved local Coastal Development Permit in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have the opportunity to address whether the appeal raises a substantial issue. The Commission Chair will determine the length of time available for testimony. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

I. **STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE:**

A. **MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE**

The staff recommends that the Commission make the following motion and adopt the following resolution:

Motion: *I move that the Commission determine that Appeal No. A-5-NPC-03-141 raises **NO** Substantial Issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution to Find Substantial Issue:

The Commission hereby finds that Appeal No. **A-5-NPC-03-141** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. **FINDINGS AND DECLARATIONS**

A. **APPELLANTS' CONTENTIONS**

Local Coastal Development Permit No. PA02-0112, approved by the County of Orange Planning Commission on March 13, 2003, has been appealed by two Coastal Commissioners and Orange County Coastkeeper on the grounds that the approved project does not conform to the requirements of the certified LCP and the public access policies of the Coastal Act. The appellants contend that the proposed development does not conform to the requirements of the certified LCP and the public access policies of the Coastal Act in regards to the following issues:

Orange County Coastkeeper

The OC Coastkeeper's appeal (see Exhibit 3) contends that the County's approval of the project is inconsistent with the Newport Coast LCP, the public access policies of the Coastal Act and Coastal Act Sections 30230 and 30231, which address the marine

environment. The citations to Sections 30230 and 30231 do not constitute valid grounds for appeal because those policies were not incorporated into the certified LCP and are not considered public access policies. However, Coastkeeper accurately cites public access policies as valid grounds for appeal.

Section 30230 states,

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

Section 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, and minimizing alteration of natural streams.

The OC Coastkeeper appeal states that the Caltrans proposal "violates the CCA in that it fails to conform with the certified Local Coastal Program and public recreation policies of the Act by allowing unmitigated discharge of roadway pollutants to discharge to the beach and ocean and Crystal Cove." The appeal maintains that the redirection of storm flow will not improve water quality, as discharges will go directly to the beach and ocean with little or no treatment. As stated in their appeal, the Caltrans project "merely exchanges a number of existing smaller volume discharge points located on the bluffs above Crystal Cove to the two currently proposed larger volume discharge points located at Los Trancos and Muddy Creek." OC Coastkeeper contends that the applicant (Caltrans) has not submitted any evidence that the project will provide effective treatment for heavy metals, motor oil, and petroleum hydrocarbons. In addition, the appellant states that 50% of the discharge will receive no treatment prior to discharge. The appeal states, *Caltrans has proposed no water quality monitoring of its discharges to Los Trancos Creek or Muddy Creek in order to ensure that pollutants are not discharged to the beach and ocean.* Lastly, the appeal points out that Los Trancos Creek has recently been added to the State Water Board's 303d list of impaired water bodies. Though their citation to Sections 30230 and 30231 of the Coastal Act is not valid grounds for appeal, their citation to the public access policies are valid grounds, as the discharges noted above could have an adverse impact on public access to the beach.

Commissioners Iseman and Wan

The Commissioners' appeal (see Exhibit 4) contends that the County's approval of the project does not demonstrate consistency with the resource protection policies of the certified Newport Coast LCP and the public access policies of the Coastal Act as they relate to water quality.¹

The proposed development involves drainage and runoff control modifications that will affect runoff entering Los Trancos Creek and Muddy Creek prior to entering the ocean. According to the appeal, an inadequate drainage and runoff control system could result in potential adverse impacts on the public's access and recreational opportunities. Polluted runoff entering the ocean can result in beach closures, thereby adversely affecting the public's ability to access and utilize coastal resources. As identified in the appeal, the LCP Resource Conservation and Management Policy E designates the off-shore coastal waters of the Newport Coast area as ESHA Category "C" due to its diverse marine life and kelp beds and recognizes its designation as a Marine Life Refuge by the Department of Fish and Game (DFG) and an Area of Special Biological Significance (ASBS) by the Water Resources Control Board.

According to the County's Planning and Development Services report, the proposed drainage improvements are intended to comply with the Regional Water Quality Control Board's Cease and Desist Order 00-87, which requires the elimination of direct discharge into the Crystal Cove ASBS. The project proposes to eliminate existing stormwater drainage facilities that discharge directly from PCH through Crystal Cove State Park to the ocean, and to redirect stormwater flow to Muddy Creek and Los Trancos Creek via new biofiltration swales created on the inland side of PCH. The County's staff report indicates that the bioswales will remove pollutants from highway runoff prior to conveying the water to the storm drain system at Los Trancos Creek and Muddy Creek. However, the appeal points out that the County's staff report does not include information regarding the volume of runoff that is expected to enter the swales or the ability of the bioswales to capture and treat the various types of pollutants anticipated. Specific calculations must be provided to evaluate the amount and type of runoff and pollutants entering the swales and the ability of the bioswales to treat that runoff. Information regarding bioswale sizing criteria, soil characteristics and proposed vegetation type should be included.

The appellants assert that not all of the runoff from this segment of Pacific Coast Highway will be treated as part of the proposed project. It is unclear what percentage of road runoff will be treated. Information must be provided which depicts runoff direction and calculates the percentage of surface runoff to be captured and treated in the proposed bioswales.

¹ Pursuant to Section 30604(b) of the Coastal Act, the Commission's standard of review for the proposed development is the certified Local Coastal Program. However, the proposed project is also subject to the Chapter 3 public access policies of the Coastal Act due to development impacts occurring seaward of Pacific Coast Highway, the first public road.

The appeal indicates that no monitoring is proposed or required as part of the County approved project. The Irvine Community Development Company (ICDC) operates a monitoring station near Los Trancos Creek to monitor runoff from Planning Area 3A of the Newport Coast Planned Community (required as a condition of approval of Commission issued permit #A-5-IRC-99-301). The ICDC has expressed concern that the redirection of PCH runoff resulting from the proposed project will affect the sampling results at the Los Trancos monitoring station. As such, the ICDC may request to relocate the monitoring station upstream. If relocation occurs, there will be no monitoring of runoff entering Los Trancos Creek from PCH. Monitoring is necessary to detect and demonstrate if and where exceedances of applicable water quality objectives are occurring.

Lastly, the appeal asserts that there is no information regarding cleaning and maintenance of the drainage facilities, particularly the bioswales. Although infiltration is anticipated, some pollutants and debris may collect within the swale areas. An on-going cleaning and maintenance program must be developed to assure that pollutants are not discharged into the creeks, and ultimately the ocean.

Therefore, for the reason stated above, the appellants concludes that the project approved by the County raises a substantial issue of consistency with the ESHA protection policies of the certified LCP and the public access policies of the Coastal Act.

III. LOCAL GOVERNMENT ACTION

On March 13, 2003, the Orange County Zoning Administrator held a public hearing and conditionally approved coastal permit application PA 02-0112 of Caltrans. The meeting was continued from a March 6, 2003 hearing to allow County staff time to evaluate revised plan submitted by Caltrans on March 4, 2003. The revisions dealt with the Caltrans discovery of a high-pressure gas line within the PCH right-of-way that required relocation of a propose drainpipe. At the conclusion of the public hearing, the Zoning Administrator approved the permit application with 16 special conditions recommended by the planning staff (Exhibit 5).

The Zoning Administrator's March 13, 2003 approval of the coastal development permit was appealable to the Planning Commission within 15 calendar days. According to the County's record, no appeals were filed.

IV. SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

The California Department of Transportation (Caltrans) was granted a permit by the County of Orange for drainage improvements within the right-of-way along both sides of Pacific Coast Highway (PCH). The project includes abandonment of existing storm drain facilities that drain directly to Crystal Cove State Park and construction of new storm drain

facilities that collect and convey runoff to Los Trancos Creek and Muddy Creek. The project includes the installation of new inlets and 600mm (1.97 ft.) drainage pipes along both sides of the roadway and the creation of bioswales along the northeast (inland) side of PCH. A "bioswale" is described by the applicant as a 2.4 meter (7.9 feet) wide *"shallow, grass lined, flat bottomed channel that conveys storm water at moderate slopes to allow pollutant removal from highway storm water runoff."* The bioswales are proposed for areas between Muddy Creek and Reef Point Drive, between Reef Point Drive and Crystal Heights Drive, and between Crystal Heights Drive and Los Trancos Creek. No bioswales are to be constructed on the seaward side of PCH. Curb openings will be constructed at 50 meter (164 foot) intervals and each bioswale will be a minimum 30 meters (98.4 feet) in length. A native seed mix will be used in the bioswale areas.

B. Area Description

The Newport Coast Local Coastal Program area is comprised of 9,493 acres in southwestern Orange County (see Exhibit 1). If the land that is part of Crystal Cove State Park (which has its own certified Public Works Plan) were also considered part of the Newport Coast area, it would extend from the 3 ½ mile shoreline of the Pacific Ocean to the ridge of the San Joaquin Hills. Pacific Coast Highway runs along the southwestern perimeter of the Newport Coast area. The site of the proposed Caltrans improvements is an approximately mile long stretch along the Pacific Coast Highway right-of-way between Los Trancos Creek and Muddy Creek (see Exhibit 2).

C. Factors to be Considered in Substantial Issue Analysis

Section 30625 of the Coastal Act states that the Commission shall hear an appeal of a local government action unless it finds that no substantial issue exists with respect to the grounds on which the appeal has been filed. The grounds for an appeal identified in Public Resources Code section 30603 are limited to whether the development conforms to the standards in the certified LCP and to the public access policies of the Coastal Act.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appellant raises no significant questions". In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

Staff is recommending that the Commission find Substantial Issue exists for the reasons set forth below.

D. Substantial Issue Analysis

As stated in Section III of this report, a local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, the appellants contend that the County's approval of the proposed project does not conform to the requirements of the certified LCP (See Section I) and the public access policies of the Coastal Act. As approved, the project affects significant coastal resources, holds precedential value for future interpretations of the local LCP, and raises an issue of statewide significance. Staff is recommending that the Commission concur that the approved project does not conform to the certified LCP and the public access policies of the Coastal Act and find that a substantial issue does exist with respect to the grounds on which the appeal has been filed. Those grounds are outlined below.

1. Effectiveness of Treatment

The application submitted by the applicant and reviewed by the County of Orange contains no specific information regarding how various pollutants will be treated. The County's staff report indicates that the proposed bioswales will remove pollutants from highway runoff prior to conveying the water to the storm drain system at Los Trancos Creek and Muddy Creek. However, the report does not include information regarding the volume of runoff that is expected to enter the swales, the anticipated detention time, or the ability of the bioswales to capture and treat the various types of pollutants anticipated. Specific calculations must be provided to evaluate the amount and type of runoff and pollutants entering the swales and the ability of the bioswales to treat that runoff. Information regarding bioswale sizing criteria, soil characteristics and proposed vegetation type should be included. Therefore, one cannot conclude that the objective of improving water quality has been met.

2. Quantity of Runoff Treated

Based on information in the administrative record, it is unclear what amount of stormwater and non-stormwater runoff will be treated in the biofiltration swales. The appellants assert that between 50% and 75% of runoff from this segment of Pacific Coast Highway will not be treated as part of the approved project. The discharge of untreated runoff to the ocean via Los Trancos Creek and Muddy Creek could have an adverse impact in coastal resources. Information must be provided which depicts runoff direction and calculates the percentage of stormwater and non-stormwater runoff to be captured and treated in the proposed bioswales.

3. Maintenance

The approved project will result in the collection and conveyance of polluted runoff in newly created drainage facilities, including multiple inlets and bioswales. However, there is no information in the record regarding cleaning and maintenance of the drainage facilities, particularly the bioswales. Although infiltration is anticipated, some pollutants and debris may collect and pond within the swale areas. An on-going cleaning and maintenance program must be developed to assure that pollutants are removed and are not discharged into the creeks, and ultimately the ocean.

4. Monitoring

No monitoring is proposed or required as part of the approved project. The Irvine Community Development Company (ICDC) operates a monitoring station near Los Trancos Creek to monitor runoff from Planning Area 3A of the Newport Coast Planned Community (required as a condition of approval of Commission issued permit #A-5-IRC-99-301). The ICDC has expressed concern that the redirection of PCH runoff resulting from the proposed project will affect the sampling results at the Los Trancos monitoring station. As such, the ICDC may request to relocate the monitoring station upstream. If relocation occurs, there will be no monitoring of runoff entering Los Trancos Creek from PCH. Monitoring is necessary to detect and demonstrate if and where exceedances of applicable water quality objectives are occurring.

5. Conformance with CDO

The project was proposed in response to Cease and Desist Order 00-87 issued by the Regional Water Quality Control Board on November 16, 2000. The CDO requires the elimination of direct discharge into the Crystal Cove ASBS. In a letter dated September 27, 2002 (see Exhibit 6), the Regional Board states that *"it appears that the Caltrans Action Plan, submitted on May 14, 2002, when fully implemented in accordance with the schedule specified in the CDO will satisfy the requirements set forth in the CDO."* However, the Water Board letter lists components of the Action, which seem to differ from the currently proposed project.

The Water Board letter indicates that Caltrans' discharge point to Los Trancos Creek will be upstream of the 'low flow diversion' structure which currently diverts non-storm water flows from Los Trancos Creek to a nearby trunk line for Orange County Sanitation District for treatment and disposal. Nowhere in the County's administrative record does it indicate that low flows will be diverted. In addition, the letter states *"the majority of low flows (non-storm water discharges) leaving Pacific Coast Highway in this area will be directed to a 'biofiltration swale' prior to discharge to Los Trancos and Muddy Canyon Creeks."* However, it is unclear how the Water Board determined that a "majority" would be directed to the bioswales. Based on the written information and project plans included in the County's record, there is no way to determine the precise quantity of runoff entering the bioswales.

Although the project will eliminate existing stormwater drainage facilities that discharge directly from PCH through Crystal Cove State Park to the ocean, untreated runoff will continue to enter the Crystal Cove ASBS via Muddy Creek and Los Trancos Creek. Therefore, based on the information provided in the record, it is unclear how the proposed project will prevent adverse water quality impacts to the ASBS. Contamination of a state beach raises issues of regional and statewide significance and is potentially precedent setting. As such, approval of the project raises a substantial issue of consistency with the resource protection policies of the certified LCP and the public access policies of the Coastal Act.

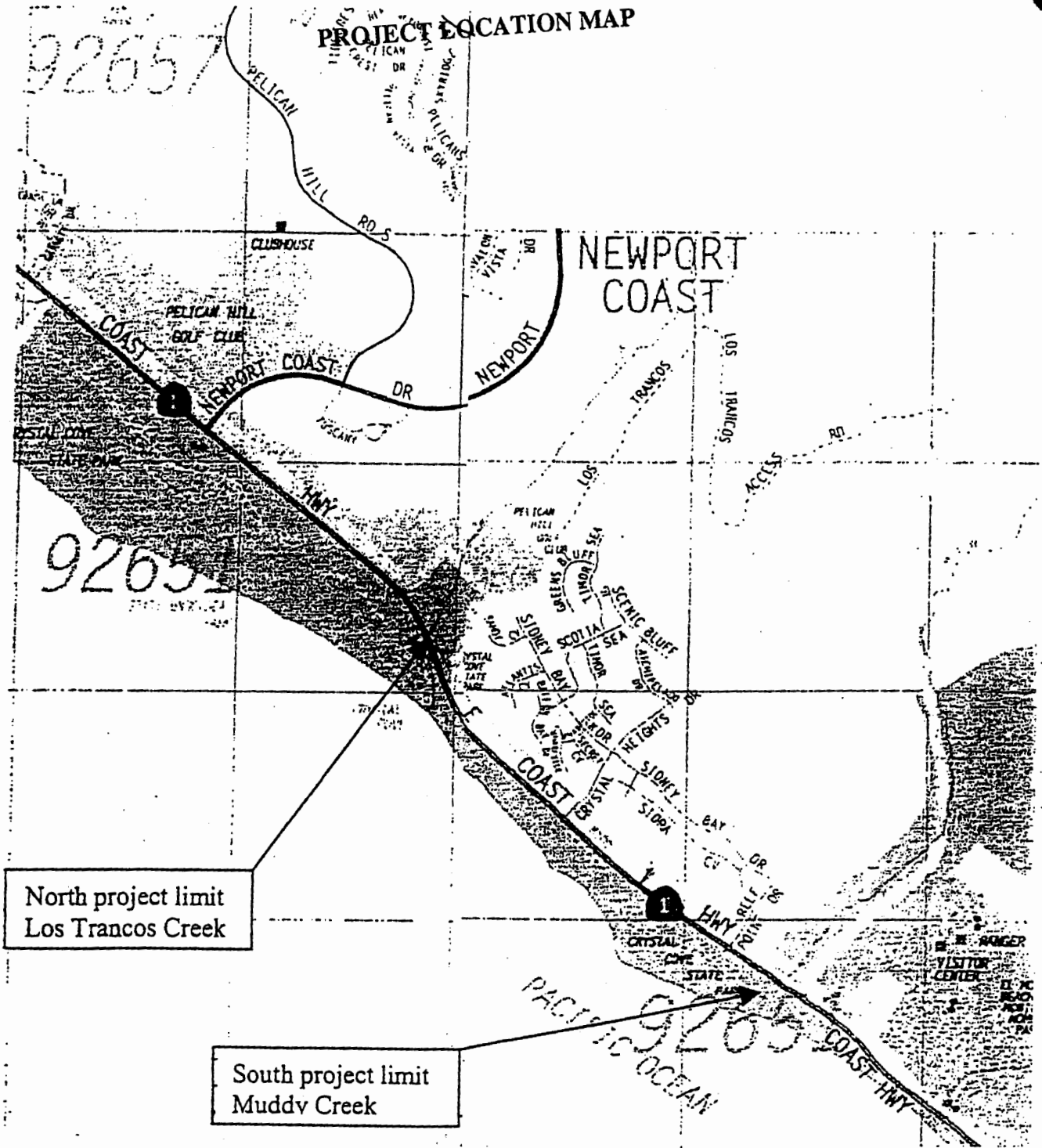
ADDITIONAL INFORMATION NEEDED FOR DE NOVO ACTION

Since the appeal of the County's approval, the applicant and Commission staff have had several phone conversations. The applicant has not provided staff with any additional information as of the writing of this staff report.

Before the Commission can consider the de novo action on this permit, additional information must be submitted to Commission staff for the preparation of the de novo recommendation. Information should address the items discussed above.

LOCATION MAP

PROJECT LOCATION MAP



North project limit
Los Trancos Creek

South project limit
Muddy Creek

COASTAL COMMISSION
A-5-NPC-03-141

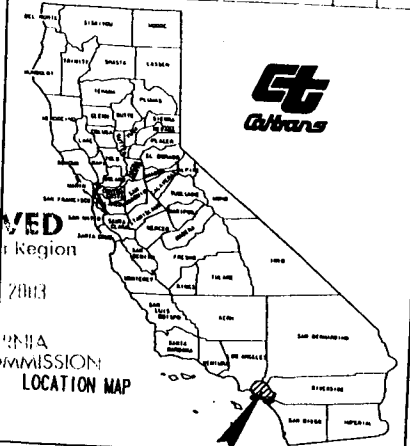
EXHIBIT # 1
PAGE 1 OF 1

INDEX OF SHEETS

STATE OF CALIFORNIA
 DEPARTMENT OF TRANSPORTATION
 PROJECT PLANS FOR CONSTRUCTION ON
 STATE HIGHWAY
 IN ORANGE COUNTY
 NEAR LAGUNA BEACH FROM 1.03 KM SOUTH
 TO 0.68 KM NORTH OF CRYSTAL HEIGHTS DRIVE

To be supplemented by Standard Plans dated July, 1999

DIST	COUNTY	ROUTE	KILOMETER POST TOTAL PROJECT	SHEET NO	TOTAL SHEETS
12	Oran	1	19.8 / 21.6		

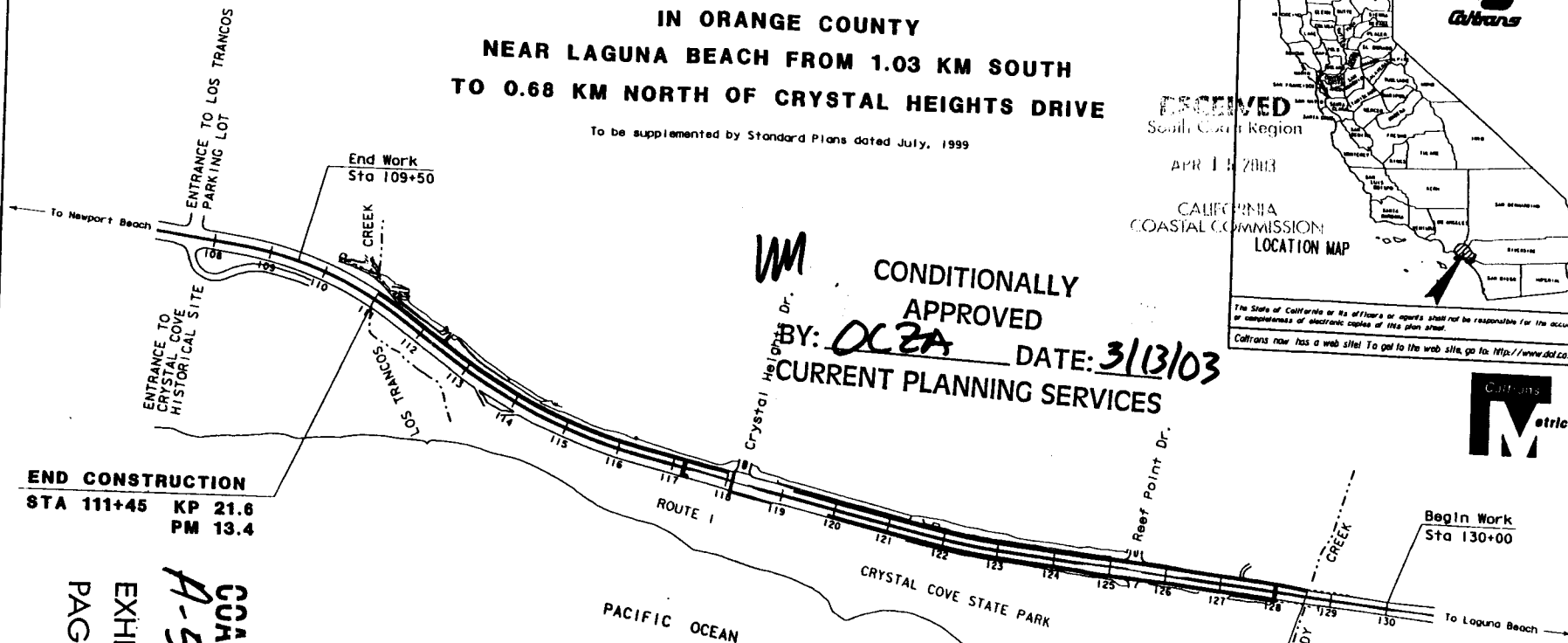


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 South Coast Region
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CALIFORNIA
 COASTAL COMMISSION
 LOCATION MAP

The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.
 Caltrans now has a web site! To get to the web site, go to: <http://www.dtd.ca.gov>

WM
 CONDITIONALLY
 APPROVED
 BY: OC2A DATE: 3/13/03
 CURRENT PLANNING SERVICES



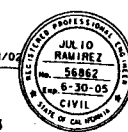
END CONSTRUCTION
 STA 111+45 KP 21.6
 PM 13.4

BEGIN CONSTRUCTION
 STA 128+56 KP 19.8
 PM 12.3

Begin Work
 Sta 130+00

COASTAL COMMISSION
 EXHIBIT # 2
 A-5-NPC-03-41
 PAGE 1 OF 1

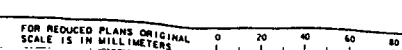
Project Engineer: Julio Ramirez 12/4/02
 Date: 12/4/02
 Registered Civil Engineer
 No. 58962
 Exp. 6-30-05
 CIVIL
 STATE OF CALIFORNIA
 February 15, 2003
 Plans Approval Date



PA02-0112

PROJECT NUMBER	DIST.	PROJECT NUMBER	DATE
J. RAMIREZ	N.	YOUSEF1	

The Contractor shall possess Class (or classes) of license as specified in the "Notice to Contractors".



NO SCALE

Contract No. OC3804

DATE ADDED: 11/19/03
 08-29-02

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
(Commission Form D)

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

ORANGE COUNTY COASTKEEPER
441 OLD NEWPORT BLVD. SUITE 103
NEWPORT BEACH CA 92663 (949) 723-5424
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: COUNTY OF ORANGE

2. Brief description of development being appealed: Construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in Newport Coast LCP between Los Trancos Creek & Muddy Creek. Response to Cease & Desist ORDER issued by Regional Water Quality Control Board

3. Development's location (street address, assessor's parcel no., cross street, etc.): NEWPORT COAST LCP; PACIFIC COAST Highway between Los Trancos and Muddy Creeks

APN: pages 120-28, 29, 30, 477-03, 12, 13, 21, 22; 489-03

4. Description of decision being appealed:

- a. Approval; no special conditions: X
b. Approval with special conditions:
c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-NPC-03-141

DATE FILED: 4-9-03

DISTRICT: South Coast/Long Beach

H5: 4/88

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APR 9 2003
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A-5-NPC-03-141
EXHIBIT # 3
PAGE 1 OF 9

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: MARCH 13, 2003

7. Local government's file number (if any): PA02-0112

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

STATE OF CALIFORNIA, DEPT OF TRANSPORTATION
Attn: Chris Flynn 3337 Michelson Drive, Suite 580
IRVINE, CA. 92618-8894

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Michelle Lyman, Senior Counsel
ORANGE County COASTKEEPER
441 OLD NEWPORT BLVD, Suite 103
NEWPORT BEACH, CA 92663
- (2) GARRY BROWN, EXECUTIVE DIRECTOR
ORANGE County COASTKEEPER
441 OLD NEWPORT BLVD 103 NEWPORT BEACH, CA 92663
- (3) CALIFORNIA COASTKEEPER ALLIANCE
2515 Wilshire Blvd. SANTA MONICA CA 90403
Attn: Michelle Lyman
- (4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.) NEWPORT COAST LCP

Project is inconsistent with Coastal Act Sections 30230 and 30231. Project is Caltrans response to a Cease and Desist Order issued for discharging polluted runoff directly into an AREA OF SPECIAL Biological Significance (ASBS). Caltrans has submitted no evidence the project will provide effective treatment for heavy metals, motor oil, petroleum hydrocarbons. 50% of discharge will receive no treatment. Caltrans proposes no monitoring. Los Trancos Creek has been adopted of State's 303d list of impaired waterways.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Sherry Brown ORANGE COUNTY
Signature of Appellant(s) or Coastkeeper
Authorized Agent

Date April 8, 2003

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____



County of Orange
Planning & Development Services Department

LARRY M. LEAMAN
INTERIM DIRECTOR

300 N FLOWER ST.
THIRD FLOOR
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

NOTICE OF FINAL DECISION

DATE: March 31, 2003

Coastal Development Permit No.: Planning Application PA02-0112

Date of County Action: 3-13-03 **Action:** Conditionally Approved by the Zoning Administrator

Applicant/Address: State of California, Department of Transportation, ATTN: Chris Flynn, 3337 Michelson Drive, Suite 380, Irvine, CA 92612-3894

Project Description/Location: Construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Crystal Cove area of the Newport Coast Planned Community between Los Trancos Creek and Muddy Creek.

Assessors Parcel Number: located on pages 120-28, 29, 30; 477-03, 12, 13, 21, 22; 489-03

AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.

THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED WITHIN THE LOCAL APPEAL PERIOD ENDING MARCH 28, 2003

County contact: William V. Melton, Project Manager
P&DSD/Site Planning Section
P. O. Box 4048, Santa Ana, CA 92702-4048

This project is in the coastal zone and is an "appealable development" subject to Coastal Commission appeal procedures.

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission, South Coast Area Office, 200 OceanGate, 10th Floor, Long Beach, CA. 90802-4302, or call (562) 590-5071.

MAIL TO: California Coastal Commission (including Findings, Conditions, staff report and minutes)
Applicant
Michelle Lyman for California Coastkeeper

4/9

March 12, 2003

Chad G. Brown, Chief
Site Planning & Consistency
Planning & Development Services Department
County of Orange
300 N. Flower St., 3rd Floor
Santa Ana, CA 92703

Re: *Orange County Coastkeeper and California Coastkeeper Alliance's Opposition to Issuance of Coastal Development Permit to State of California, Department of Transportation (Caltrans), Planning Application PA02-0112*

Dear Mr. Brown:

INTRODUCTION

Pursuant to the request of the Zoning Administrator on March 6, 2003, the Orange County Coastkeeper and California Coastkeeper Alliance ("Keepers") herein provide the basis for their opposition to issuance of a Coastal Development Permit to Caltrans, Planning Application PA02-0112. The Keepers have four primary areas concern which are as follows:

- (1) Despite the change in discharge locations from the bluffs above Crystal Cove to Los Trancos and Muddy Creeks, Caltran's proposed storm-water and non storm-water discharge plan, if implemented, will continue to result in the direct discharge of pollutants to the beach and waters of Crystal Cove which has been designated by the State of California as an Area of Special Biological Significance ("ASBS"). The point of proposed discharge of highway runoff to Los Trancos Creek and Muddy Creek is in such close proximity to the beach and ocean at Crystal Cove that such discharges will continue to be direct discharges to an ASBS.
- (2) Caltrans has submitted *no evidence* that the proposed bioswales will provide *effective treatment* for pollutants of concern (including, but not limited to, *heavy metals, motor oil and petroleum hydrocarbons*).
- (3) 50% of Caltran's discharges to Muddy Creek will receive *no treatment*. No bioswales or alternative treatment measures are proposed for highway runoff from the ocean side of Pacific Coast Highway which will be discharged to Muddy Creek.
- (4) Caltrans has proposed *no water quality monitoring* of its discharges to Los Trancos Creek or Muddy Creek in order to ensure that pollutants are not discharged to the beach and ocean.

5/9

DISCUSSION

Caltran's Planning Application PA02-0112 for Coastal Development Permit currently set for public hearing March 15, 2003 before the Orange County Zoning Administrator proposes the direct discharge of pollutants to Crystal Cove, an ASBS, in violation of the California Coastal Act ("CCA"), the Ocean Plan, the California Water Code ("WC"), the federal Clean Water Act ("CWA") and the California Fish & Game Code ("FGC"). Despite the proposed change in discharge locations from the bluffs above Crystal Cove to Los Trancos Creek and Muddy Creek, discharges will still go directly to the beach and ocean at Crystal Cove.

In addition, the Keepers disagree with the conclusion of the Santa Ana Regional Board ("the Board") in its September 27, 2002 letter to Caltrans wherein the Board expressed the view that when fully implemented the Caltrans plan will satisfy the terms of the Board's previously issued Cease and Desist Order ("CDO") No. 00-37 dated November 16, 2000 which ordered Caltrans to cease and desist from "discharging or threatening to discharge wastes directly to Crystal Cove, part of the Irvine Coast Area of Special Biological Significance". The plan which Caltrans seeks the Zoning Administrator to approve merely exchanges a number of existing smaller volume discharge points located on the bluffs above Crystal Cove to the two currently proposed larger volume discharge points located at Los Trancos Creek and Muddy Creek. The two currently proposed discharge locations, while located on the opposite side of Pacific Coast Highway ("PCH") from Crystal Cove State Beach, simply flow back under PCH and discharge directly to the beach and ocean at Crystal Cove. Given the increased volume of waste which will be directed to the two proposed discharge locations, the net result will be the same - the direct discharge of pollutants to the beach and ocean at Crystal Cove. The proximity and direct connection of the two proposed discharge points to Crystal Cove will continue to violate the Regional Board's CDO and the Ocean Plan's prohibition against direct discharges of waste to an ASBS.

In addition to the proximity and connection of the proposed discharge locations to the beach and ocean, it is the Keepers' position that Caltrans has proposed insufficient treatment for expected discharges to Los Trancos and Muddy Creeks. Discharges will almost exclusively consist of storm water runoff from the entire length of PCH between Los Trancos and Muddy Creeks. Caltran's plan, which relies on gravity flow, will result in approximately half of the discharge from this section of PCH to be discharged to Los Trancos Creek and the other half to be discharged to Muddy Creek. It is certain that this storm water runoff will contain pollutants or "wastes", including, but not limited to, metals, oil, petroleum hydrocarbons, tire waste and other automotive related waste as well as dirt and other contaminants which will adhere to the road during the dry season. Given the length of the dry season in this area (annual average rainfall equivalent to North Africa and long periods with no rainfall whatsoever), these pollutants will build up on PCH and, then, during the first storm event of the season and during storm events which occur thereafter, will result in the discharge of these roadway pollutants to Los Trancos and Muddy Creeks and the beach and ocean at Crystal Cove.

6/9

page three (Caltrans/Crystal Cove)

Caltrans plan purports to include the redirection of storm water flow for water quality treatment into bioswales prior to discharge to Los Trancos and Muddy Creeks. A careful review of Caltran's "treatment" proposals reveals flaws sufficient to warrant rejection of the entire plan by the Zoning Administrator. Caltrans has not conducted nor has it provided the County with any studies, models, or any other evidence to show that the proposed bioswales will effectively treat and contain the pollutants sure to be present in the storm water runoff from PCH.

Caltrans has not conducted any study as to expected volume or flow from storm events to the bioswales or whether the 7'6" bioswale strips are capable of handling the volume and flow demand of a storm event. In our view, it is just as likely that these small "bioswale" strips will be overwhelmed during a storm event and most of the flow will go straight to Los Trancos and Muddy Creeks. Bioswale treatment is most effective if runoff is released gradually to the area of vegetation and allowed time to soak into the ground and surrounding vegetation. Caltrans has not proposed to contain the runoff from a storm event and therefore a slow and gradual release to bioswale areas cannot be accomplished. Additionally, Caltrans has not conducted a study as to whether the plants which will grow from the proposed native seed mix have the ability to absorb the pollutants of concern, let alone survive a storm event with or without pollutants in the runoff. The fact that a separate set of regulations requires Caltrans to utilize native plants is no justification for relying on these plants as the sole source of treatment for pollutants in their storm water runoff. Many other reliable methods of treatment are available to Caltrans, but Caltrans has simply chosen to rely on "bioswales" without any supporting evidence that they will work.

Of even greater concern to the Keepers is the fact that 50% of the discharges from PCH to Muddy Creek will receive no treatment whatsoever under Caltran's proposal. Caltran's states the position that because there is no room for bioswales on the ocean side of PCH which discharges to Muddy Creek, Caltrans is unable to conduct treatment of its discharges. This position is unreasonable and unlawful. Other parties subject to the Board's CDO have implemented measures to ensure that untreated pollutants are not discharged to these creeks leading to the beach and ocean at Crystal Cove through the use of retention basins, monitoring and other measures. Given the pollutants of concern which will be contained in Caltran's runoff, Caltrans should be held to the same or a higher standard than schools and residential developments. Caltrans may not lawfully discharge untreated storm water to Muddy Creek and Crystal Cove and, therefore, the Zoning Administrator should not approve Caltran's proposed plan.

Given the failure of Caltrans to prove that its proposed bioswale treatment will be effective in removing pollutants prior to discharge and its failure to provide any treatment for 50% of the Muddy Creek discharges, water quality monitoring is imperative to approval of this plan. The Keepers believe that Caltrans is legally required to treat the pollutants in its runoff, but additionally, is required to conduct water quality monitoring at the "end of the pipe" (the point where discharges from PCH enter Los Trancos and Muddy Creeks) to ensure that water quality standards are met (no pollutants discharged to an ASBS per the Ocean Plan). Water Quality monitoring is the only way to know whether pollutants have been effectively treated or are being

7/9

page four (Caltrans/Crystal Cove)

discharged. Caltrans has proposed no water quality monitoring and, for this reason, the Zoning Administrator should reject Caltrans permit application.

Caltrans proposal also violates a myriad of environmental laws and statutes. Caltrans argues that its proposal complies with its statewide storm water permit, satisfies the Board's CDO, constitutes an improvement of prior discharge practices and, therefore, should be approved by the Zoning Administrator. The Keepers have stated their position above that the terms of the CDO will not be satisfied if Caltrans is allowed to implement this plan (direct discharges and threatened discharges of wastes to an ASBS will continue to occur). And, whether the proposal constitutes an improvement over prior practices is irrelevant. What is relevant is whether Caltrans's proposal for storm water discharges from PCH to Los Trancos and Muddy Creeks satisfies applicable state and federal water quality laws. The Keepers submit that Caltrans's proposed storm water discharge plan if implemented will violate a myriad of such laws.

Caltrans seeks to justify its proposed plan by stating that it complies with the Best Management Practices ("BMPs") requirement of its statewide storm water discharge permit issued by the State Water Resources Control Board ("State Board"). First of all, the Keepers do not agree that the Caltrans proposal constitutes BMPs. Given the nature of the pollutants that will be contained in the discharges and the discharge locations (which are directly connected to the beach and ocean of an ASBS), Caltrans proposal for limited treatment of 75% of the discharges and no treatment for 25% of the discharges, no retention of runoff and no water quality monitoring does not even satisfy the BMP requirement of its statewide permit.

Furthermore, it is the position of the Keepers that the BMP legal standard does not apply to these discharges given that they flow directly to an ASBS. The Keepers believe that the CWA and the WC require that water quality standards be met for the discharges at these locations and that mere adherence to the BMP standard will not satisfy the requirements of the law. The Keepers believe that upon review by the court, the statewide permit will be found in violation of the CWA as applied to ASBSs and waterways which discharge directly to them such as Los Trancos and Muddy Creeks. The goal of the CWA and the WC is to restore and maintain the integrity of the nation's waters. In this instance, we are talking about waters upon which a special value and a special legal standard have been placed: zero discharge of pollutants to an ASBS. This standard is in complete conflict with the lesser BMP standard generally applicable to other areas in the state.

Caltrans proposal also violates the CCA in that it fails to conform with the certified Local Coastal Program and public recreation policies of the Act by allowing unmitigated discharge of roadway pollutants to discharge to the beach and ocean at Crystal Cove. Additionally, the proposal if implemented will also violate F&G section 5650 which prohibits the deposit of material deleterious to fish, plant or animal life, or a petroleum product, where it may pass into waters of the state. If implemented, the Caltrans plan will in fact result in the deposit of such material where it may, or will in fact, enter waters of the state.

8/9

page five (Caltrans/Crystal Cove)

CONCLUSION

The Application for Coastal Development Permit submitted by Caltrans for approval by the County Zoning Administrator is legally as well as environmentally unacceptable. Crystal Cove, an ASBS, is a precious resource of Orange County. As such, it should not be viewed by the Zoning Administrator in the same light, nor held to the same standards, as a storm drain project proposing to discharge roadway runoff to some remote inland waterway. While Caltrans has proposed moving its storm water discharges to the opposite side of PCH, these discharges will still flow directly to Crystal Cove with insufficient or no treatment and no water quality monitoring. For the foregoing reasons, the Keepers respectfully request that the Zoning Administrator deny Caltrans application PA02-0112.

Sincerely,


Michelle Lyman, Esq.

On behalf of Orange County Coastkeeper
and the California Coastkeeper Alliance

cc. Garry Brown, Director Orange County Coastkeeper
Brian Machovina, Director California Coastkeeper Alliance
William R. Melton, Project Manager, Planning & Development Services
Praveen Gupta, Branch Chief, Environmental Planning, Caltrans

9/9

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners Iseman and Wan
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: County of Orange
2. Brief description of development being appealed: Construction of stormwater drainage improvements, including the creation of biofiltration swales adjacent to Pacific Coast Highway.
3. Development's location (street address, assessor's parcel no., cross street, etc.): Within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Crystal Cove area of the Newport Coast Planned Community between Los Trancos Creek and Muddy Creek, Orange County
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-NPC-03-141

DATE FILED: April 15, 2003

DISTRICT: South Coast

COASTAL COMMISSION
A-5-NPC-03-141
EXHIBIT # 4
PAGE 1 OF 6

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: XX
 - b. City Council/Board of Supervisors: _____
 - c. Planning Commission: _____
 - d. Other: _____
6. Date of local government's decision: March 13, 2003
7. Local government's file number: Coastal Development Permit No. PA02-0112

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
- State of California, Department of Transportation
Attn.: Chris Flynn
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. Michelle Lyman
Orange County CoastKeeper
441 Old Newport Blvd., Suite 103
Newport Beach, CA 92663
 - b. _____

2/6

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

On March 13, 2003, the County of Orange Zoning Administrator approved Coastal Development Permit PA02-0112 for "*construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Newport Coast area between Los Trancos Creek and Muddy Creek.*" The County's approval of the project does not demonstrate consistency with the resource protection policies of the certified Newport Coast LCP and the public access policies of the Coastal Act as they relate to water quality. Pursuant to Section 30604(b) of the Coastal Act, the Commission's standard of review for the proposed development is the certified Local Coastal Program. However, the proposed project is also subject to the Chapter 3 public access policies of the Coastal Act due to development impacts occurring seaward of Pacific Coast Highway, the first public road. The proposed development involves drainage and runoff control modifications that will affect runoff entering Los Trancos Creek and Muddy Creek prior to entering the ocean. An inadequate drainage and runoff control system could result in potential adverse impacts on the public's access and recreational opportunities. Polluted runoff entering the ocean can result in beach closures, thereby adversely affecting the public's ability to access and utilize coastal resources. The LCP Resource Conservation and Management Policy E designates the off-shore coastal waters as ESHA Category "C" due to its diverse marine life and kelp beds and recognizes its designation as a Marine Life Refuge by the Department of Fish and Game (DFG) and an Area of Special Biological Significance (ASBS) by the Water Resources Control Board.

According to the County's Planning and Development Services report, the proposed drainage improvements are intended to comply with the Regional Water Quality Control Board's Cease and Desist Order 00-87, which requires the elimination of direct discharge into the Crystal Cove ASBS. The project proposes to eliminate existing stormwater drainage facilities that discharge directly from PCH through Crystal Cove State Park to the ocean, and to redirect stormwater flow to Muddy Creek and Los Trancos Creek via new biofiltration swales created on the inland side of PCH. The "bioswales" are described as 7.6 feet wide "*shallow, grass lined, flat bottomed channel that conveys storm water at moderate slopes to allow pollutant removal from highway storm water runoff.*" The County's staff report indicates that the bioswales will remove pollutants from highway runoff prior to conveying the water to the storm drain system at Los Trancos Creek and Muddy Creek. However, the report does not include information regarding the volume of runoff that is expected to enter the swales or the ability of the bioswales to capture and treat the various types of pollutants anticipated. Specific calculations must be provided to

Local Coastal Development Permit PA02-0112
PCH at Crystal Cove
Newport Coast
Page 4

evaluate the amount and type of runoff and pollutants entering the swales and the ability of the bioswales to treat that runoff. Information regarding bioswale sizing criteria, soil characteristics and proposed vegetation type should be included.

Not all of the runoff from this segment of Pacific Coast Highway will be treated as part of the proposed project. It is unclear what percentage of road runoff will be treated. Information must be provided which depicts runoff direction and calculates the percentage of surface runoff to be captured and treated in the proposed bioswales.

There is no monitoring proposed or required as part of the project. The Irvine Community Development Company (ICDC) operates a monitoring station near Los Trancos Creek to monitor runoff from Planning Area 3A of the Newport Coast Planned Community. The ICDC has expressed concern that the redirection of PCH runoff resulting from the proposed project will affect the sampling results at the Los Trancos monitoring station. As such, the ICDC may request to relocate the monitoring station upstream. If relocation occurs, there will be no monitoring of runoff entering Los Trancos Creek from PCH. Monitoring is necessary to detect and demonstrate if and where exceedances of applicable water quality objectives are occurring.

Lastly, there is no information regarding cleaning and maintenance of the drainage facilities, particularly the bioswales. Although infiltration is anticipated, some pollutants and debris may collect within the swale areas. An on-going cleaning and maintenance program must be developed to assure that pollutants are not discharged into the creeks, and ultimately the ocean.

The County's findings and conditions for approval of Coastal Development Permit PA02-0112 do not provide sufficient information to determine whether the project as approved is consistent with the certified LCP or the public access policies of the Coastal Act. Once an appeal of the project is filed, the County will forward the entire project file. The County's project file may include information such as detailed project plans, drainage calculations, and maintenance information which will clarify whether the proposed project is consistent with the resource protection policies of the LCP and the public access policies of the Coastal Act. Based on the current level of information, the development cannot be found to conform to the certified Local Coastal Program and the public access policies of the Coastal Act and must be appealed.

NOTE: The above description need not be a complete or exhaustive statement of your reasons of appeal. However, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

4/6

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Toni Jensen*
Appellant or Agent

Date: *4/15/03*

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Sara J. Wain*
Appellant or Agent

Date: 4/15/03

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____



County of Orange
Planning & Development Services Department

LARRY M. LEAMAN
 INTERIM DIRECTOR

300 N. FLOWER ST.
 THIRD FLOOR
 SANTA ANA, CALIFORNIA

MAILING ADDRESS:
 P.O. BOX 4048
 SANTA ANA, CA 92702-4048

RECEIVED
 South Coast Region

NOTICE OF FINAL DECISION

DATE: March 31, 2003

Coastal Development Permit No.: Planning Application PA02-0112

Date of County Action: 3-13-03 **Action:** Conditionally Approved by the Zoning Administrator

Applicant/Address: State of California, Department of Transportation, ATTN: Chris Flynn, 3337 Michelson Drive, Suite 380, Irvine, CA 92612-8894

Project Description/Location: Construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Crystal Cove area of the Newport Coast Planned Community between Los Trancos Creek and Muddy Creek.

Assessors Parcel Number: located on pages 120-28, 29, 30; 477-03, 12, 13, 21, 22; 489-03

AN APPEAL OF THIS PROJECT WAS ACTED ON AS STATED ABOVE.

THE COUNTY'S ACTION ON THE ABOVE PROJECT WAS NOT APPEALED WITHIN THE LOCAL APPEAL PERIOD ENDING MARCH 28, 2003

County contact: William V. Melton, Project Manager
 P&DSD/Site Planning Section
 P. O. Box 4048, Santa Ana, CA 92702-4048

This project is in the coastal zone and is an "appealable development" subject to Coastal Commission appeal procedures.

Approval of an "appealable development" may be appealed to the California Coastal Commission within 10 working days after the Coastal Commission receives this Notice. Appeals must be in writing and in accordance with the California Code of Regulation Section 13111. For additional information write to the California Coastal Commission, South Coast Area Office, 200 Oceangate, 10th Floor, Long Beach, CA. 90802-4302, or call (562) 590-5071.

MAIL TO: California Coastal Commission (including: Findings, Conditions, staff report and minutes)
 Applicant
 Michelle Lyman for California Coastkeeper

COASTAL COMMISSION
A-5-NPC-03-141
 EXHIBIT # 5
 PAGE 1 OF 30

MINUTES

ORANGE COUNTY ZONING ADMINISTRATOR HEARING – March 13, 2003

TAPE NO. ZAC131

TIME 2:00 P.M.

ITEM 1.: Public Hearing – Planning Application No. PA02-0112 for Coastal Development Permit, CEQA, Negative Declaration No. PA020112, of State of California, Department of Transportation,

The Zoning Administrator introduced the project.

Planner IV Melton gave a brief update. He stated that this project was continued from March 6, 2003 because Cal Trans submitted new information and staff did not have sufficient time to review the information and staff requested a one week continuance. He stated that the revised plans were required because of the discovery of a high-pressure gas line. He said the revised plans were in substantial compliance with the original submitted plans. Mr. Melton stated that the proposed project is for the construction of stormwater drainage improvements within the right-of-way on both sides of Pacific Coast highway between Los Trancos Creek and Muddy Creek. Mr. Melton noted that Conditions 7, 8, 9, 11 and 16 have been correct since the March 6th 2003 public hearing to reflect Manager, Environmental Planning Service Division as the approving authority for the condition.

He stated that staff received a fax from the Orange County Coastkeeper and California Coastkeeper Alliance's at 11:00 am this morning. He stated that in the fax they discuss four (4) points of concern. He discussed the four concerns raised by the Orange County Coastkeeper and California Coastkeeper Alliance's. He said the Coastkeeper recommend that the Zoning Administrator deny the request. He noted the letter from the Regional Quality Board in Exhibit 2 of the March 6 report indicating that the Caltrans project should address the Cease and Desist order that they previously issued. Mr. Melton stated that the applicant has addressed the issues and that staff's recommendation is for approval as was indicated in the March 6, 2003 hearing.

2:07 P.M.: The Zoning Administrator opened the pubic hearing.

Michelle Lyman, attorney, representing Orange County Coastkeeper and California Coastkeeper Alliance's, submitted her comments into the record. (See Attachment #1)

Mr. Buzas said the letter would be in the records.

Hector Salesimo, representing the applicant, clarified the bio-swell and noted that approval has been received from the Regional Water Quality Board. He noted that Caltrans is the only agency that has permits. He noted that Cal Trans does not do monitoring. Mr. Salesimo stated that they have met the cease and decese order.

2:15 P.M.: No one else wishing to be heard, the Zoning Administrator closed the public hearing.

Mr. Melton stated that Ms. Lyman would be mailed a copy of the Notice of Final Decision sent to the Coastal Commission after the County's 15-day appeal period has ended.

Action: 2:15 P.M.: The Zoning Administrator approved Planning Application No. PA02-0112 with 12 Findings and 16 Conditions as recommended in the Current Planning Services Division report, dated March 13, 2003.

John B. Buzas
Zoning Administrator

wvm

Item #1

RECEIVED

MAR 12 2003

EMA/LUPD

11:00 AM

March 12, 2003

Chad G. Brown, Chief
Site Planning & Consistency
Planning & Development Services Department
County of Orange
300 N. Flower St., 3rd Floor
Santa Ana, CA 92703

Re: *Orange County Coastkeeper and California Coastkeeper Alliance's Opposition to Issuance of Coastal Development Permit to State of California, Department of Transportation (Caltrans), Planning Application PA02-0112*

Dear Mr. Brown:

INTRODUCTION

Pursuant to the request of the Zoning Administrator on March 6, 2003, the Orange County Coastkeeper and California Coastkeeper Alliance ("Keepers") herein provide the basis for their opposition to issuance of a Coastal Development Permit to Caltrans, Planning Application PA02-0112. The Keepers have four primary areas concern which are as follows:

- (1) Despite the change in discharge locations from the bluffs above Crystal Cove to Los Trancos and Muddy Creeks, Caltran's proposed storm-water and non storm-water discharge plan, if implemented, will continue to result in the direct discharge of pollutants to the beach and waters of Crystal Cove which has been designated by the State of California as an Area of Special Biological Significance ("ASBS"). The point of proposed discharge of highway runoff to Los Trancos Creek and Muddy Creek is in such close proximity to the beach and ocean at Crystal Cove that such discharges will continue to be direct discharges to an ASBS.
- (2) Caltrans has submitted *no evidence* that the proposed bioswales will provide *effective treatment* for pollutants of concern (including, but not limited to, *heavy metals, motor oil and petroleum hydrocarbons*).
- (3) 50% of Caltran's discharges to Muddy Creek will receive *no treatment*. No bioswales or alternative treatment measures are proposed for highway runoff from the ocean side of Pacific Coast Highway which will be discharged to Muddy Creek.
- (4) Caltrans has proposed *no water quality monitoring* of its discharges to Los Trancos Creek or Muddy Creek in order to ensure that pollutants are not discharged to the beach and ocean.

4/30

page two (Caltrans/Crystal Cove)

DISCUSSION

Caltran's Planning Application PA02-0112 for Coastal Development Permit currently set for public hearing March 13, 2003 before the Orange County Zoning Administrator proposes the direct discharge of pollutants to Crystal Cove, an ASBS, in violation of the California Coastal Act ("CCA"), the Ocean Plan, the California Water Code ("WC"), the federal Clean Water Act ("CWA") and the California Fish & Game Code ("FGC"). Despite the proposed change in discharge locations from the bluffs above Crystal Cove to Los Trancos Creek and Muddy Creek, discharges will still go directly to the beach and ocean at Crystal Cove.

In addition, the Keepers disagree with the conclusion of the Santa Ana Regional Board ("the Board") in its September 27, 2002 letter to Caltrans wherein the Board expressed the view that when fully implemented the Caltrans plan will satisfy the terms of the Board's previously issued Cease and Desist Order ("CDO") No. 00-87 dated November 16, 2000 which ordered Caltrans to cease and desist from "discharging or threatening to discharge wastes directly to Crystal Cove, part of the Irvine Coast Area of Special Biological Significance". The plan which Caltrans seeks the Zoning Administrator to approve merely exchanges a number of existing smaller volume discharge points located on the bluffs above Crystal Cove to the two currently proposed larger volume discharge points located at Los Trancos Creek and Muddy Creek. The two currently proposed discharge locations, while located on the opposite side of Pacific Coast Highway ("PCH") from Crystal Cove State Beach, simply flow back under PCH and discharge directly to the beach and ocean at Crystal Cove. Given the increased volume of waste which will be directed to the two proposed discharge locations, the net result will be the same - the direct discharge of pollutants to the beach and ocean at Crystal Cove. The proximity and direct connection of the two proposed discharge points to Crystal Cove will continue to violate the Regional Board's CDO and the Ocean Plan's prohibition against direct discharges of waste to an ASBS.

In addition to the proximity and connection of the proposed discharge locations to the beach and ocean, it is the Keepers' position that Caltrans has proposed insufficient treatment for expected discharges to Los Trancos and Muddy Creeks. Discharges will almost exclusively consist of storm water runoff from the entire length of PCH between Los Trancos and Muddy Creeks. Caltran's plan, which relies on gravity flow, will result in approximately half of the discharge from this section of PCH to be discharged to Los Trancos Creek and the other half to be discharged to Muddy Creek. It is certain that this storm water runoff will contain pollutants or "wastes", including, but not limited to, metals, oil, petroleum hydrocarbons, tire waste and other automotive related waste as well as dirt and other contaminants which will adhere to the road during the dry season. Given the length of the dry season in this area (annual average rainfall equivalent to North Africa and long periods with no rainfall whatsoever), these pollutants will build up on PCH and, then, during the first storm event of the season and during storm events which occur thereafter, will result in the discharge of these roadway pollutants to Los Trancos and Muddy Creeks and the beach and ocean at Crystal Cove.

5/30

page three (Caltrans/Crystal Cove)

Caltrans plan purports to include the redirection of storm water flow for water quality treatment into bioswales prior to discharge to Los Trancos and Muddy Creeks. A careful review of Caltran's "treatment" proposals reveals flaws sufficient to warrant rejection of the entire plan by the Zoning Administrator. Caltrans has not conducted nor has it provided the County with any studies, models, or any other evidence to show that the proposed bioswales will effectively treat and contain the pollutants sure to be present in the storm water runoff from PCH.

Caltrans has not conducted any study as to expected volume or flow from storm events to the bioswales or whether the 7'6" bioswale strips are capable of handling the volume and flow demand of a storm event. In our view, it is just as likely that these small "bioswale" strips will be overwhelmed during a storm event and most of the flow will go straight to Los Trancos and Muddy Creeks. Bioswale treatment is most effective if runoff is released gradually to the area of vegetation and allowed time to soak into the ground and surrounding vegetation. Caltrans has not proposed to contain the runoff from a storm event and therefore a slow and gradual release to bioswale areas cannot be accomplished. Additionally, Caltrans has not conducted a study as to whether the plants which will grow from the proposed native seed mix have the ability to absorb the pollutants of concern, let alone survive a storm event with or without pollutants in the runoff. The fact that a separate set of regulations requires Caltrans to utilize native plants is no justification for relying on these plants as the sole source of treatment for pollutants in their storm water runoff. Many other reliable methods of treatment are available to Caltrans, but Caltrans has simply chosen to rely on "bioswales" without any supporting evidence that they will work.

Of even greater concern to the Keepers is the fact that 50% of the discharges from PCH to Muddy Creek will receive no treatment whatsoever under Caltran's proposal. Caltran's states the position that because there is no room for bioswales on the ocean side of PCH which discharges to Muddy Creek, Caltrans is unable to conduct treatment of its discharges. This position is unreasonable and unlawful. Other parties subject to the Board's CDO have implemented measures to ensure that untreated pollutants are not discharged to these creeks leading to the beach and ocean at Crystal Cove through the use of retention basins, monitoring and other measures. Given the pollutants of concern which will be contained in Caltran's runoff, Caltrans should be held to the same or a higher standard than schools and residential developments. Caltrans may not lawfully discharge untreated storm water to Muddy Creek and Crystal Cove and, therefore, the Zoning Administrator should not approve Caltran's proposed plan.

Given the failure of Caltrans to prove that its proposed bioswale treatment will be effective in removing pollutants prior to discharge and its failure to provide any treatment for 50% of the Muddy Creek discharges, water quality monitoring is imperative to approval of this plan. The Keepers believe that Caltrans is legally required to treat the pollutants in its runoff, but additionally, is required to conduct water quality monitoring at the "end of the pipe" (the point where discharges from PCH enter Los Trancos and Muddy Creeks) to ensure that water quality standards are met (no pollutants discharged to an ASBS per the Ocean Plan). Water Quality monitoring is the only way to know whether pollutants have been effectively treated or are being

6/30

page four (Caltrans/Crystal Cove)

discharged. Caltrans has proposed no water quality monitoring and, for this reason, the Zoning Administrator should reject Caltrans permit application.

Caltrans proposal also violates a myriad of environmental laws and statutes. Caltrans argues that its proposal complies with its statewide storm water permit, satisfies the Board's CDO, constitutes an improvement of prior discharge practices and, therefore, should be approved by the Zoning Administrator. The Keepers have stated their position above that the terms of the CDO will not be satisfied if Caltrans is allowed to implement this plan (direct discharges and threatened discharges of wastes to an ASBS will continue to occur). And, whether the proposal constitutes an improvement over prior practices is irrelevant. What is relevant is whether Caltrans's proposal for storm water discharges from PCH to Los Trancos and Muddy Creeks satisfies applicable state and federal water quality laws. The Keepers submit that Caltrans's proposed storm water discharge plan if implemented will violate a myriad of such laws.

Caltrans seeks to justify its proposed plan by stating that it complies with the Best Management Practices ("BMPs") requirement of its statewide storm water discharge permit issued by the State Water Resources Control Board ("State Board"). First of all, the Keepers do not agree that the Caltrans proposal constitutes BMPs. Given the nature of the pollutants that will be contained in the discharges and the discharge locations (which are directly connected to the beach and ocean of an ASBS), Caltrans proposal for limited treatment of 75% of the discharges and no treatment for 25% of the discharges, no retention of runoff and no water quality monitoring does not even satisfy the BMP requirement of its statewide permit.

Furthermore, it is the position of the Keepers that the BMP legal standard does not apply to these discharges given that they flow directly to an ASBS. The Keepers believe that the CWA and the WC require that water quality standards be met for the discharges at these locations and that mere adherence to the BMP standard will not satisfy the requirements of the law. The Keepers believe that upon review by the court, the statewide permit will be found in violation of the CWA as applied to ASBSs and waterways which discharge directly to them such as Los Trancos and Muddy Creeks. The goal of the CWA and the WC is to restore and maintain the integrity of the nations waters. In this instance, we are talking about waters upon which a special value and a special legal standard have been placed; zero discharge of pollutants to an ASBS. This standard is in complete conflict with the lesser BMP standard generally applicable to other areas in the state.

Caltrans proposal also violates the CCA in that it fails to conform with the certified Local Coastal Program and public recreation policies of the Act by allowing unmitigated discharge of roadway pollutants to discharge to the beach and ocean at Crystal Cove. Additionally, the proposal if implemented will also violate F&G section 5650 which prohibits the deposit of material deleterious to fish, plant or animal life, or a petroleum product, where it may pass into waters of the state. If implemented, the Caltrans plan will in fact result in the deposit of such material where it may, or will in fact, enter waters of the state.

page five (Caltrans/Crystal Cove)

CONCLUSION

The Application for Coastal Development Permit submitted by Caltrans for approval by the County Zoning Administrator is legally as well as environmentally unacceptable. Crystal Cove, an ASBS, is a precious resource of Orange County. As such, it should not be viewed by the Zoning Administrator in the same light, nor held to the same standards, as a storm drain project proposing to discharge roadway runoff to some remote inland waterway. While Caltrans has proposed moving its storm water discharges to the opposite side of PCH, these discharges will still flow directly to Crystal Cove with insufficient or no treatment and no water quality monitoring. For the foregoing reasons, the Keepers respectfully request that the Zoning Administrator deny Caltrans application PA02-0112.

Sincerely,


Michelle Lyman, Esq.

On behalf of Orange County Coastkeeper
and the California Coastkeeper Alliance

cc. Garry Brown, Director Orange County Coastkeeper
Brian Machovina, Director California Coastkeeper Alliance
William R. Melton, Project Manager, Planning & Development Services
Praveen Gupta, Branch Chief, Environmental Planning, Caltrans

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PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: March 13, 2003 (Continued from March 6, 2003)

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02-0112 for Coastal Development Permit

PROPOSAL: Construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Newport Coast area between Los Trancos Creek and Muddy Creek.

LOCATION: The proposal is located in the Newport Coast Planned Community and is generally located between a point 0.7 of a mile southeasterly of Newport Coast Drive to 400 feet southeasterly of Reef Point Drive (see photo on page 2). Fifth Supervisorial District.

APPLICANT: State of California, Department of Transportation (Caltrans)

STAFF CONTACT: William V. Melton, Project Manager
Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA02-0112 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

This proposal was continued from the March 6, 2003 hearing to allow staff adequate time to evaluate revised plans submitted by Caltrans on March 4, 2003. The revisions dealt with the Caltrans discovery of a high-pressure gas line in the PCH right-of-way that required the location of storm drainpipe on the ocean side of PCH to be altered. Staff has reviewed the revised plans and determined that the revised plans are in substantial compliance with the original plans submitted that were recommended for approval.

Additionally, it was noted that the approving authority listed in Appendix A, Recommended Conditions of Approval numbers 7, 8, 9, 10, 11 and 16 need to be revised to reflect the current division name. In the condition numbers stated: *Manager, Zoning Administrator & Resources* was changed to *Manager, Environmental Planning Services Division*. The revised Recommended Conditions of Approval along with the Findings (which remain the same) are included with this report. Staff recommendation remains the same as from the March 6, 2003 report and is as follows.

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RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA02-0112 for Coastal Development Permit subject to the attached Findings and revised Conditions of Approval.

Respectfully submitted



Chad G. Brown, Chief
CPSD/Site Planning Section

WVM

Folder: C:\My Documents\Newport Coast\PA02-0112 Staff 3-13Caltrans.doc

APPENDICES:

- A. Recommended Findings (unchanged from CPSD Report dated March 6, 2003)
- B. Recommended Conditions of Approval (as revised from CPSD Report dated March 6, 2003)

EXHIBIT:

1. Revised Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.

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Appendix A Findings PA020112

- | | | |
|---|-------------------------------------|--------------------------|
| 1 | GENERAL PLAN | PA020112 |
| That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law. | | |
| 2 | ZONING | PA020112 (Custom) |
| That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code and the Newport Coast Planned Community/Local Coastal Plan regulations applicable to the property. | | |
| 3 | COMPATIBILITY | PA020112 |
| That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity. | | |
| 4 | GENERAL WELFARE | PA020112 |
| That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare. | | |
| 5 | PUBLIC FACILITIES | PA020112 |
| That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.). | | |
| 6 | COASTAL DEVELOPMENT PERMIT 1 | PA020112 |
| That the development project proposed by the application conforms with the certified Local Coastal Program. | | |
| 7 | COASTAL DEVELOPMENT PERMIT 2 | PA020112 |
| That the project conforms with the public access and public recreation policies of the California Coastal Act. | | |
| 8 | COASTAL DEVELOPMENT PERMIT 3 | PA020112 |
| That the approval of this application will result in no modification to the requirements of the certified land use plan. | | |
| 9 | COASTAL DEVELOPMENT PERMIT 4 | PA020112 |
| That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan. | | |
| 10 | NEGATIVE DECLARATION | PA020112 (Custom) |
| That in accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines | | |



Appendix B Conditions of Approval PA020112

1 CP CP NA BASIC/ZONING REG PA020112

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA020112

This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA020112

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA020112

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA020112

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

6 CP CP NA BASIC/APPEAL EXACTIONS PA020112

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 HP HP G ARCHAEO SURVEY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Environmental Planning Services Division evidence that a County-certified archaeologist has been retained by the applicant to complete a literature and records search for recorded sites and previous surveys. In addition, a field survey shall be conducted by a County-certified archaeologist unless the entire

proposed project site has been documented as previously surveyed in a manner which meets the approval of the Manager, Harbors, Beaches and Parks/Program Planning Division. A report of the literature and records search and the field survey shall be submitted to and approved by the Manager, Harbors, Beaches and Parks/Program Planning Division. Mitigation measures may be required depending upon the recommendations of this report. (Mitigation Measure #12)

8 HP HP G PALEO SURVEY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Environmental Planning Services Division evidence that a County-certified paleontologist has been retained by the applicant to complete a literature and records search for recorded sites and previous surveys. In addition, a field survey shall be conducted by a County-certified paleontologist unless the entire proposed project site has been documented as previously surveyed in a manner which meets the approval of the Manager, Harbors, Beaches and Parks/Program Planning Division. A report of the literature and records search and field survey shall be submitted to and approved by the Manager, Harbors, Beaches and Parks/Program Planning Division. (Revised) (Mitigation Measure #13)

9 SG SG G DRAINAGE IMPROVEMENTS PA020112 (Custom)

A. Prior to any construction activities, the applicant shall provide the Manager, Environmental Planning Services Division evidence that the applicant has in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and

B. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Construction. (Revised) (Mitigation Measure #3)

10 CP CP G COASTAL SAGE SCRUB PA020112 (Custom)

Prior to any activity that involves the removal/disturbance of Coastal Sage Scrub (CSS) habitat, including clearing, grubbing, mowing, discing, trenching grading, fuel modification, or any other construction-related activity which ever occurs first, the applicant in consultation with Manager, Environmental Planning Services Division, or his designee, shall obtain an approved 4(d) Permit and/or other written authorization from the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG).

The 4(d) Permit application shall include:

Surveys which should be conducted within the California gnatcatcher-breeding season (February 15th through August 30th). A minimum of three (3) survey site visits at least a week, apart are required to determine presence/absence of the gnatcatcher. Survey information will then be used by County Resources Planning Staff to prepare the 4(d) permit letter request for the applicant for submittal to the USFWS and California Department of Fish and Game for their review and approval (It should be noted that the USFWS is in the process of evaluating the existing 4(d) take authorization process).

14/30

The surveys should also include vegetation mapping and description of CSS within the project site in accordance with the County Habitat Classification System and estimate of the total loss of CSS resulting from grading and other construction related activities and fuel modification requirements. (Revised) (Mitigation Measure #11)

11 CP CP G GRADING CONSISTENCY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Environmental Planning Services Division detailed grading plans further defining the extent of earthwork requirements for the project. (Revised) (Mitigation Measure#2)

12 BP BP G CONSTRUCTION NOISE PA020112 (Custom)

A. Prior to any construction activities, the project proponent shall produce evidence acceptable to the Manager, Building Permits Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings. (Mitigation Measure #9)

13 SG SG G SIGHT DISTANCE PA020112 (Custom)

Prior to any construction activities, adequate sight distance shall be provided to all intersections per Standard Plan 1117 and at all driveways in a manner meeting the approval of the Manager, Subdivision and Grading Services. This includes any necessary revisions to the plan to remove slopes or other encroachments from the Limited Use Area. (Mitigation Measure #8)

14 SG SG GB POLLUTANT RUNOFF PA020112 (Custom)

Prior to any construction activities, the applicant shall submit and obtain approval from Manager, Subdivision and Grading, of a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. This WQMP shall identify, at a minimum, the routine, structural and non-structural measures specified in the Countywide NPDES Drainage Area Management Plan (DAMP) Appendix G. The WQMP shall detail s implementation of BMPs whenever they are applicable to a project, specify the long term maintenance responsibilities (specifying the developer, parcel owner, maintenance association, lessee, etc.), and, shall reference the location(s) of structural BMPs. (Mitigation Measure #4)

15 SC SG G NPDES PERMIT PA020112 (Custom)

Prior to any construction activities, the applicant shall submit evidence to the Manager, Subdivision and Grading, that the applicant has obtained coverage under the NPDES statewide General Construction Activity Stormwater Permit from the State Water Resources Control Board. (Mitigation Measure #6)

16 EP EP G BIOLOGICAL SURVEYS PA020112 (Custom)

Prior to any construction activities, the applicant is required to submit a biological surveys on vegetative resources contained within the project site as well as those that may be impacte

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development of the project off-site shall be mapped by a qualified biologist in accordance with Orange County Habitat Classification System to the Manager, Environmental Planning Services Division for review and approval. The various habitat types and subtypes shall be mapped on a topographic base map; and Sensitive Species, all sensitive (listed state and federal) plant and animal species observed and/or predicted to occur shall be identified and mapped. Presence/absence of California gnatcatcher surveys shall be performed by a qualified biologist with a valid 10(a)(1)(A) Permit issued by the USFWS. (Revised) (Mitigation Measure #10)

16/30

MINUTES

ORANGE COUNTY ZONING ADMINISTRATOR HEARING – March 6, 2003

TAPE NO. ZAC130

TIME: 2:00 P.M.

ITEM 1.: Public Hearing – Planning Application No. PA02-0112 for Coastal Development Permit, CEQA, Negative Declaration No. PA020112, of State of California, Department of Transportation.

The Zoning Administrator introduced the project.

Planner IV Melton gave a brief staff presentation. He stated that the project site is located in the Newport Coast area between Los Trancos Creek and Muddy Creek. He stated that the modifications proposed to the facilities are to comply with a Cease and Desist Order. He pointed out the location of Trancos Creek and Muddy Creek on the exhibit. He noted that the existing drainage facilities between Los Trancos Creek and Muddy Creek are maintained by The Irvine Company. Mr. Melton stated that the proposal is to eliminate existing stormwater drainage facilities located between Muddy Creek and Los Tancos Creek that discharge directly from PCH through Crystal Cove State Park to the ocean; and, redirect stormwater flow to Muddy Creek and Los Trancos Creek through the installation of a bio-swale for water quality treatment. He pointed out the locations of the bioswales and noted that new stormwater inlets and additional stormwater drainage pipes are also included in this proposal.

Senior Planner Brown discussed a monitoring system near Los Trancos Creek that was of a concern to The Irvine Company. He noted that The Irvine Company can replace the existing monitoring system without altering their approved coastal plan. He discussed a wet well at the Los Trancos Creek facility. He discussed minimal nuisance flow and stated that no irrigation is proposed with this project.

Mr. Melton stated that the California Department of Transportation submitted revised plan with the relocation of an underground drainpipe to avoid conflicts with an existing high-pressure natural gas line. He stated that staff has not had sufficient time to review the proposed modification and is requesting a one week continuance.

Mr. Melton stated that the County does not normally act on State projects on State owned property. He noted that the State is not exempt for the provisions of the Coastal Act and is subject to the requirement of obtaining a Coastal Development Permit prior to any construction. He stated that the Coastal Commission rejected the application and stated that the County should be the issuing authority. He noted that this project is appealable to the Coastal Commission in addition to the County appeal.

Mr. Melton stated that conditions of approval Nos. 8, 9, 19, 11, and 16 will be modified by March 13, 2003 to reflect the replacement of Manager, Zoning Administrator and Resources to *Manager, Environmental Planning Service Division*.

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2:13 P.M.: The Zoning Administrator opened the public hearing.

Michelle Lyman, Attorney, representing California Coast Keeper Alliance, stated that she was aware of the staff's request for a continuance. She stated that it was her understanding that she had to present her concerns at the Zoning Administrator hearing in order to present her concerns at the Coastal Commission. She stated that she would return to the next public hearing with a list of her concerns.

Praveen Gupta, representing the State of California, Department of Transportation stated that he was agreeable to a one-week continuance.

Mr. Buzas stated that if Ms. Lyman discussed her concerns with Mr. Gupta maybe some of the issues could be resolved before next week.

2:17 P.M.: No one else wishing to be heard, the Zoning Administrator closed the public hearing.

Action: 2:17 P.M.: The Zoning Administrator continued Planning Application No. PA02-0112 to March 13, 2003 as recommended in the Current Planning Services Division memo, dated March 6, 2003.

2:17 P.M.: The Zoning Administrator adjourned the public hearing.

John B. Buzas
Zoning Administrator

wvm

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ITEM #1



County of Orange

MEMO

DATE: March 6, 2003
TO: Orange County Zoning Administrator
FROM: Planning and Development Services Department / Current Planning Services Division
SUBJECT: PUBLIC HEARING on Planning Application PA 02-0112 for Coastal Development Permit

Planning Application PA 02-0112 is a Coastal Development Permit submitted by State of California, Department of Transportation for construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Newport Coast Planned Community between Los Trancos Creek and Muddy Creek. This application is scheduled for a Public Hearing on March 6, 2003.

On March 4, 2003 the applicant, California Department of Transportation, submitted revised plans for the subject application. The revisions include the relocation of an underground drain pipe to avoid conflicts with an existing high pressure natural gas line. The drain pipe location was originally located within the existing pavement area of Pacific Coast Highway. The location proposed within the recently submitted revised plans is adjacent to the pavement within the right-of-way. This includes trenching outside the of the southbound lane curb, to a width of approximately 5 ft. maximum for installation of the lateral drainage pipe.

Due to the late submittal of these revisions, staff must evaluate the proposed modified plans to ensure that the environmental documentation is adequate to include this change, due to the relocation of the lateral drain pipe to a location adjacent to the pavement. Staff must also evaluate the modified plans for consistency with the Findings offered in the O.C. Zoning Administrator staff report dated March 6, 2003.

RECOMMENDED ACTION (REVISED):

- A) Receive staff report and public testimony; and
- B) Continue Public Hearing to March 13, 2003 to allow staff adequate time to evaluate the revised plans for consistency with project plans distributed to the Zoning Administrator.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chad Brown".

Chad Brown, Chief
Site Planning and Consistency Section

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PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: March 6, 2003

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02-0112 for Coastal Development Permit

PROPOSAL: Construction of stormwater drainage improvements within the right-of-way on both sides of State Route 1 (Pacific Coast Highway) in the Newport Coast area between Los Trancos Creek and Muddy Creek.

LOCATION: The proposal is located in the Newport Coast Planned Community and is generally located between a point 0.7 of a mile southeasterly of Newport Coast Drive to 400 feet southeasterly of Reef Point Drive (see photo on page 2). Fifth Supervisorial District.

APPLICANT: State of California, Department of Transportation (Caltrans)

STAFF CONTACT: William V. Melton, Project Manager
Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA02-0112 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

State Route 1, also known as Pacific Coast Highway (PCH), was originally built in 1931. In 1992 the highway was reconstructed under permit by the County of Orange in anticipation of the Newport Coast Planned Community development on the northeast side of the highway by The Irvine Company. The California Department of Transportation maintains existing drainage facilities along both sides of PCH between Los Trancos Creek and Muddy Creek. These facilities discharge storm water and non-storm water to the bluffs immediately above an area determined by the State of California as an Area Special Biological Significance (ASBS), and directly to the beach in the Crystal Cove State Park. The project area is within the Newport Coast PC/LCP and is known as Crystal Heights.

The project proposes to eliminate existing stormwater water drainage facilities located between Muddy Creek and Los Trancos Creek that discharge directly from PCH through Crystal Cove State to the ocean; and, redirect this stormwater flow to Muddy Creek and Los Trancos Creek through the installation of 7.6 feet wide grassy *bio-swales* for water quality treatment to portions of the inland side of PCH in the project area. A biofiltration swale is a shallow, grass lined, flat bottomed channel that conveys storm water at moderate slopes to allow pollutant removal from highway storm water runoff. The removal of these

pollutants from highway runoff using a biofiltration swale, occurs through grass blades or other vegetation, sedimentation and infiltration into the soil.

These bioswales are proposed for areas between Muddy Creek and Reef Point Drive, between Reef Point Drive and Crystal Heights Drive, and between Crystal Heights Drive and Los Trancos Creek. New stormwater inlets and additional stormwater drainage pipes are also included with this proposal. All proposed trenching, fill, paving and grading for the grassy swales occur within previously graded PCH shoulder areas and the highway right-of-way.

The modifications proposed to the drainage facilities are proposed in order to comply with a Cease and Desist Order issued by the State of California Regional Water Quality Board (CRWQB), Santa Ana Region. The Cease and Desist Order No.00-87, issued on November 16, 2000, requires that direct discharges of waste to the Irvine Coast Area of ASBS shall cease by November 2003. A Project Study Report for this proposal was approved by the CRWQB on 9-7-01 and is included with this staff report as Exhibit 2.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site and to all occupants of homes within 100 feet of the site. Additionally, a notice was mailed to the Coastal Commission and numerous organization and groups who expressed an interest in receiving such notices. A Notice of Hearing was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to five County Divisions. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions.

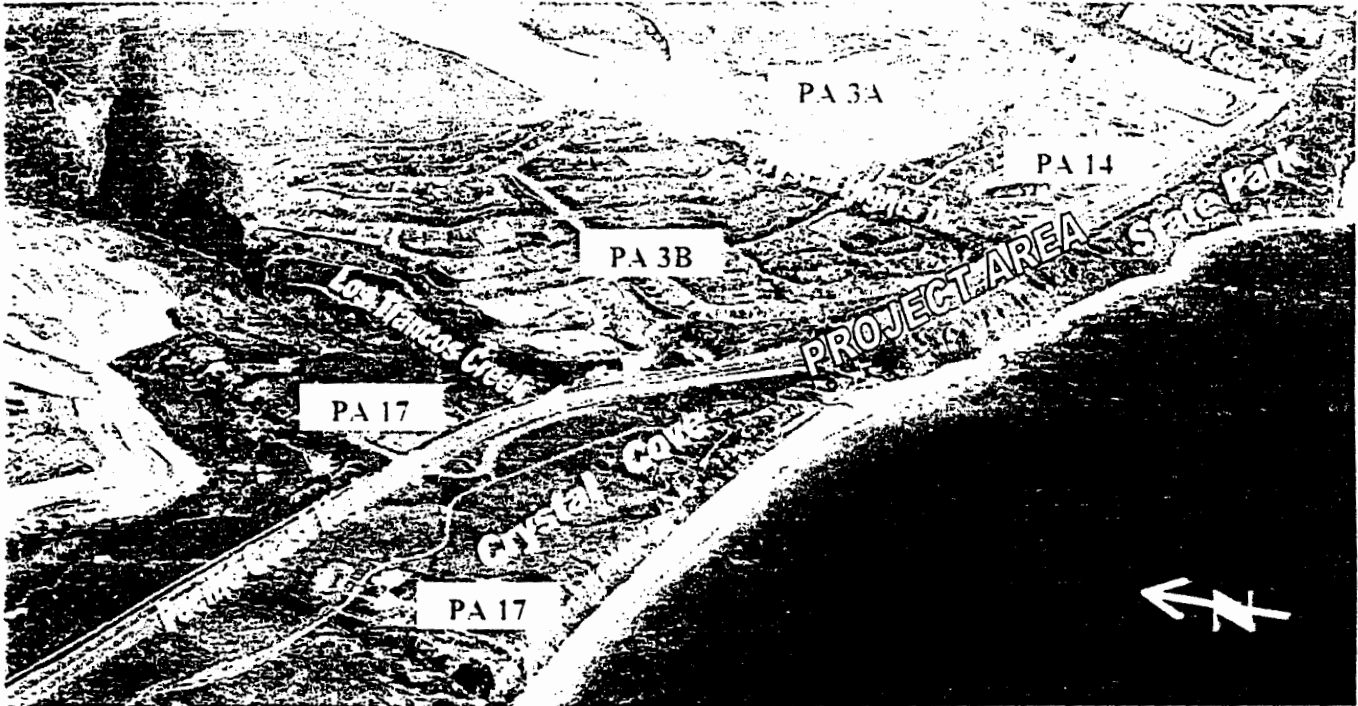
CEQA COMPLIANCE:

Negative Declaration No. PA020112 (Exhibit 3) has been prepared for this proposal. It was posted for public review on January 28, 2003 and became final on February 28, 2003. Prior to project approval, this ND must be found adequate to satisfy the requirements of CEQA by the Zoning Administrator. Appendix A contains the required CEQA Finding.

SURROUNDING LAND USE: (all within the Newport Coast PC/LCP)

Direction	Planning Area	Land Use Designation	Existing Land Use
Project Site	NA	State of California	Pacific Coast Highway
North	3B 14	Medium and High Density Residential Retail	Residential Retail & retention basin
South	17	Recreation	Crystal Cove State Park

East	17	Recreation	Crystal Cove State Park
West	17	Recreation	Crystal Cove State Park



DISCUSSION/ANALYSIS:

The County does not normally act on State projects on State owned property. However, the State is not exempt for the provisions of the Coastal Act and is subject to the requirement of obtaining a Coastal Development Permit prior to any construction. When Caltrans first approached the County about processing a Coastal Development Permit for this proposal, Planning staff felt that since this was a State project in a State right-of-way that the Coastal Commission should be the permitting authority to issue a Coastal Development Permit. The applicant applied to the Coastal Commission for a Coastal Development Permit but the Coastal Commission rejected the application. The Coastal Commission reasoned that since the project was within the certified Newport Coast Local Coastal Program, that the County would be the issuing authority. Additionally, the proposal is defined as an appealable development and is therefore appealable to the Coastal Commission in addition to the County appeal procedures.

The project is in relation to the water quality improvement required in the Newport Coast Master Coastal Development Permit – Seventh Amendment covering Planning Areas 20, 3, 4, 5 and 14 as approved under issued Coastal Commission Coastal Development Permit No. A-5-IRC-99-001. The adjacent El Morro School to the south was also issued a separate cease and desist order to address water quality and

water run-off into the state park. Both Newport Coast and the school district have satisfied water quality issues by providing treatment and deleting direct run-off into the State Park and then the ocean. Both projects included a combination of bio-swales and detention basins. Exhibit 6 is a water retention basin/bio-swale constructed by the Irvine Company between Planning Area 14 (Promenade commercial center) and PCH. Caltrans proposes the similar type of water quality measures on the inland side of PCH between Lost Trancos Creek and Muddy Creek as shown in Exhibit 6, but to a smaller scale. Only the shallow lower bio-swale portion will be used designed within the Pacific Coast Highway right-of-way.

To ensure a high confidence of pollutant removal, the length of each biofiltration swale will have a minimum length of 90 feet. Curb openings 5 ½ inches x 36 inches will be constructed at 160 feet interval to provide first flush of *storm water runoff* to enter the biofiltration swale. As the storm water is conveyed through the biofiltration swale and pollutant removal has occurred, the filtered storm water would then be intercepted through inlets and returned back to the storm drain system. A native seed mix will be specified to ensure that the vegetation placed in the biofiltration swale allows effective filtration, is drought tolerant, and has low maintenance. Staff has reviewed the seed mix proposed. The use of pesticides or herbicides will be in compliance with the current Storm Water Management Plan (SWMP). For an in-depth project description, please refer to the "Project Report" presented as Exhibit 3.

The Regional Water Quality Board has reviewed the proposed project. The California Regional Water Quality Board, in a letter to Caltrans Dist. 12 dated September 27, 2002, indicated that the water quality improvements proposed to eliminate direct discharge into Crystal Cove appear to satisfy the requirements of the Cease and Desist Order No. 00-87. Their letter is included with this report as Exhibit 2.

The Irvine Community Development Company (ICDC) brought up one issue or concern on the project. Their concern was an ICDC storm water monitoring station for drainage areas of Planning Area 3A of the Newport Coast Planned Community located near Los Trancos Creek and if the Caltrans project would impact the sampling results. If the ICDC monitoring station was impacted by storm water flows from PCH that could present a need to relocate the monitor. If the monitor was moved it could result in ICDC having to amend its previously approved Crystal Cove Storm Water Quality Monitoring Program and other approvals. The ICDC submitted a letter to the Coastal Commission addressing these points. Staff does not have information as to the response for the Coastal Commission. It will fall upon the Coastal Commission to determine the status of the ICDC water monitoring station if the proposed Caltrans project significantly affects the readings from residential runoff at the ICDC monitoring station.

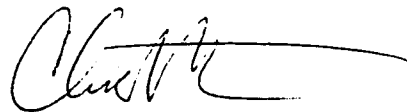
Staff did not receive any negative comments on the proposal during the time between the mailing of the hearing notice and the preparation of this report. With the elimination of direct discharge of storm water into Crystal Cove, this proposal along with water quality improvements projects completed by the Irvine Company and the El Morro School site will greatly enhance the water quality discharges into the Pacific Ocean. Staff supports the proposal as planned and recommends the Zoning Administrator approve the Caltrans proposal as shown in the Recommended Action.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA02-0112 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted



Chad G. Brown, Chief
CPSD/Site Planning Section

WVM

Folder: C:\My Documents\Newport Coast\PA02-0112 Staff Caltrans.doc

APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

1. Applicant's Letter of Explanation and supplemental information
2. Letter to Caltrans Dist. 12 from California Regional Water Quality Board dated 9-27-02
3. Caltrans Project Study Report
4. Irvine Community Development Company letter dated September 20, 2002.
5. Environmental Documentation
6. Irvine Company detention basin photo and other Site Photos
7. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.

24/30



Appendix A Findings PA020112

-
- | | | |
|---|-------------------------------------|--------------------------|
| 1 | GENERAL PLAN | PA020112 |
| That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law. | | |
| <hr/> | | |
| 2 | ZONING | PA020112 (Custom) |
| That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code and the Newport Coast Planned Community/Local Coastal Plan regulations applicable to the property. | | |
| <hr/> | | |
| 3 | COMPATIBILITY | PA020112 |
| That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity. | | |
| <hr/> | | |
| 4 | GENERAL WELFARE | PA020112 |
| That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare. | | |
| <hr/> | | |
| 5 | PUBLIC FACILITIES | PA020112 |
| That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.). | | |
| <hr/> | | |
| 6 | COASTAL DEVELOPMENT PERMIT 1 | PA020112 |
| That the development project proposed by the application conforms with the certified Local Coastal Program. | | |
| <hr/> | | |
| 7 | COASTAL DEVELOPMENT PERMIT 2 | PA020112 |
| That the project conforms with the public access and public recreation policies of the California Coastal Act. | | |
| <hr/> | | |
| 8 | COASTAL DEVELOPMENT PERMIT 3 | PA020112 |
| That the approval of this application will result in no modification to the requirements of the certified land use plan. | | |
| <hr/> | | |
| 9 | COASTAL DEVELOPMENT PERMIT 4 | PA020112 |
| That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan. | | |
| <hr/> | | |
| 10 | NEGATIVE DECLARATION | PA020112 (Custom) |
| That in accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines | | |

25/30

Section 15074, Negative Declaration No. PA020112, which reflects the independent judgment of the lead agency, satisfies the requirements of CEQA and is approved for the proposed project based upon the following findings:

- a. The Negative Declaration and Comments on the Negative Declaration received during the public review process were considered and the Negative Declaration was found adequate in addressing the impacts related to the project; and
- b. There is no substantial evidence that the project, with the implementation of the mitigation measures, if any, which are included in the Negative Declaration, will have a significant effect on the environment; and
- c. Pursuant to Public Resources Code Section 21081.6, the Mitigation Monitoring and Reporting Program is adopted.

11

FISH & GAME - EXEMPT

PA020112

That pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.

12

NCCP NOT SIGNIFICANT

PA020112

That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.

26/30



Appendix B Conditions of Approval PA020112

1 CP CP NA BASIC/ZONING REG PA020112

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA020112

This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA020112

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA020112

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA020112

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

6 CP CP NA BASIC/APPEAL EXACTIONS PA020112

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 HP HP G ARCHAEO SURVEY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Zoning Administrator & Resources evidence that a County-certified archaeologist has been retained by the applicant to complete a literature and records search for recorded sites and previous surveys. In addition, a field survey shall be conducted by a County-certified archaeologist unless the entire proposed

27/30

project site has been documented as previously surveyed in a manner which meets the approval of the Manager, Harbors, Beaches and Parks/Program Planning Division. A report of the literature and records search and the field survey shall be submitted to and approved by the Manager, Harbors, Beaches and Parks/Program Planning Division. Mitigation measures may be required depending upon the recommendations of this report. (Mitigation Measure #12)

8 HP HP G PALEO SURVEY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Zoning Administrator & Resources evidence that a County-certified paleontologist has been retained by the applicant to complete a literature and records search for recorded sites and previous surveys. In addition, a field survey shall be conducted by a County-certified paleontologist unless the entire proposed project site has been documented as previously surveyed in a manner which meets the approval of the Manager, Harbors, Beaches and Parks/Program Planning Division. A report of the literature and records search and field survey shall be submitted to and approved by the Manager, Harbors, Beaches and Parks/Program Planning Division. (Mitigation Measure #13)

9 SG SG G DRAINAGE IMPROVEMENTS PA020112 (Custom)

A. Prior to any construction activities, the applicant shall provide the Manager, Zoning Administrator & Resources evidence that the applicant has in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and

B. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Construction. (Mitigation Measure #3)

10 CP CP G COASTAL SAGE SCRUB PA020112 (Custom)

Prior to any activity that involves the removal/disturbance of Coastal Sage Scrub (CSS) habitat, including clearing, grubbing, mowing, discing, trenching grading, fuel modification, or any other construction-related activity which ever occurs first, the applicant in consultation with Administrator, Planning and Zoning or his designee, shall obtain an approved 4(d) Permit and/or other written authorization from the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG).

The 4(d) Permit application shall include:

Surveys which should be conducted within the California gnatcatcher-breeding season (February 15th through August 30th). A minimum of three (3) survey site visits at least a week, apart are required to determine presence/absence of the gnatcatcher. Survey information will then be used by County Resources Planning Staff to prepare the 4(d) permit letter request for the applicant for submittal to the USFWS and California Department of Fish and Game for their review and approval (It should be noted that the USFWS is in the process of evaluating the existing 4(d) take authorization process).

The surveys should also include vegetation mapping and description of CSS within the project

28/30

site in accordance with the County Habitat Classification System and estimate of the total loss of CSS resulting from grading and other construction related activities and fuel modification requirements. (Mitigation Measure #11)

11 CP CP G GRADING CONSISTENCY PA020112 (Custom)

Prior to any construction activities, the applicant shall provide the Manager, Zoning Administrator & Resources detailed grading plans further defining the extent of earthwork requirements for the project. (Mitigation Measure #2)

12 BP BP G CONSTRUCTION NOISE PA020112 (Custom)

A. Prior to any construction activities, the project proponent shall produce evidence acceptable to the Manager, Building Permit s Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings. (Mitigation Measure #9)

13 SG SG G SIGHT DISTANCE PA020112 (Custom)

Prior to any construction activities, adequate sight distance shall be provided to all intersections per Standard Plan 1117 and at all driveways in a manner meeting the approval of the Manager, Subdivision and Grading Services. This includes any necessary revisions to the plan to remove slopes or other encroachments from the Limited Use Area. (Mitigation Measure #8)

14 SG SG GB POLLUTANT RUNOFF PA020112 (Custom)

Prior to any construction activities, the applicant shall submit and obtain approval from Manager, Subdivision and Grading, of a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. This WQMP shall identify, at a minimum, the routine, structural and non-structural measures specified in the Countywide NPDES Drainage Area Management Plan (DAMP) Appendix G. The WQMP shall detail s implementation of BMPs whenever they are applicable to a project, specify the long term maintenance responsibilities (specifying the developer, parcel owner, maintenance association, lessee, etc.), and, shall reference the location(s) of structural BMPs. (Mitigation Measure #4)

15 SG SG G NPDES PERMIT PA020112 (Custom)

Prior to any construction activities, the applicant shall submit evidence to the Manager, Subdivision and Grading, that the applicant has obtained coverage under the NPDES statewide General Construction Activity Stormwater Permit from the State Water Resources Control Board. (Mitigation Measure #6)

16 EP EP G BIOLOGICAL SURVEYS PA020112 (Custom)

Prior to any construction activities, the applicant is required to submit a biological surveys on all vegetative resources contained within the project site as well as those that may be impacted by development of the project off-site shall be mapped by a qualified biologist in accordance with

29/30

Orange County Habitat Classification System to the Manager, Zoning Administrator & Resources for review and approval. The various habitat types and subtypes shall be mapped on a topographic base map; and Sensitive Species, all sensitive (listed state and federal) plant and animal species observed and/or predicted to occur shall be identified and mapped. Presence/absence of California gnatcatcher surveys shall be performed by a qualified biologist with a valid 10(a)(1)(A) Permit issued by the USFWS. (Mitigation Measure #10)

30/30



California Regional Water Quality Santa Ana Region

Auston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

RECEIVED
South Coast Region

APR 15 2003

September 27, 2002

Cindy Quon, District Director
Caltrans District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612

CALIFORNIA
COASTAL COMMISSION

Cease and Desist Order No. 00-87 for Direct Discharges to Crystal Cove, Orange County

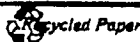
Dear Ms. Quon:

On November 16, 2000, the Regional Board adopted Cease and Desist Order (CDO) No. 00-87 that required The Irvine Company, the California Department of Transportation (Caltrans), and the California Department of Parks and Recreation to cease and desist from discharging or threatening to discharge wastes directly to Crystal Cove, part of the Irvine Coast Area of Special Biological Significance. The State Water Resources Control Board amended this CDO by Order No WQ-2001-08. In response to this CDO, on May 14, 2002, Caltrans submitted Caltrans' Plan of Action to eliminate all direct discharges from its properties and facilities into Crystal Cove.

We have completed our review of Caltrans' Plan of Action. Based on our understanding of the plan, all direct discharges of surface runoff from Caltrans-owned storm drain systems will be eliminated from the Crystal Cove area south of Los Trancos Creek and north of Muddy Canyon Creek. Further, it is our understanding that the majority of low flows (non-storm water discharges) leaving Pacific Coast Highway in this area, will be directed to a "biofiltration swale" prior to discharge to Los Trancos and Muddy Canyon Creeks. Finally it is our understanding that Caltrans' discharge point to Los Trancos Creek will be upstream of the "low flow diversion" structure which currently diverts non-storm water flows from Los Trancos Creek to a nearby trunk line for Orange County Sanitation District for treatment and disposal.

Based on the above, it appears that the Caltrans' Action Plan, submitted on May 14, 2002, when fully implemented in accordance with the schedule specified in the CDO will satisfy the requirements set forth in the CDO.

California Environmental Protection Agency



COASTAL COMMISSION
A-5-NPC-03-141

EXHIBIT # 6
PAGE 1 OF 2

Ms. Quon

-2-

September 27, 2002

If you have any questions, you may call Mark Smythe at (909) 782-4998, Bob Whitaker at (909) 782-4993 or myself at (909) 782- 3284.

Sincerely,

K. J. Thibeault

for

Gerard J. Thibeault
Executive Officer

- cc: Grace Piña-Garrett - California Department of Transportation, District 12
- Roberta Rand Marshall - The Irvine Company
- Richard Rozzelle - California Department of Parks and Recreation
- Jorge Leon - State Water Resources Control Board, Office of the Chief Counsel
- Garry Brown - Orange County Coast Keeper
- Bob Caustin - Defend the Bay

California Environmental Protection Agency



EX. 6
2/2