

**CALIFORNIA COASTAL COMMISSION**

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



Filed: June 17, 2005  
49th Day: August 5, 2005  
180th Day: December 14, 2005  
Staff: ALB-LB *AB*  
Staff Report: July 27, 2005  
Hearing Date: August 9-12, 2005  
Commission Action:

RECORD PACKET COPY

Tu 15c

**STAFF REPORT: MATERIAL AMENDMENT****AMENDMENT NUMBER:** 5-03-322-A1**APPLICANT:** City of San Clemente**AGENT:** Jim Pechous, Senior Planner**PROJECT LOCATION:** Within the OCTA right-of-way inland of the railroad tracks at Mariposa Point, San Clemente, Orange County

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Construction of a multi-use trail consisting of lateral and vertical access improvements, including formal railroad crossings, barriers to prevent unauthorized crossings, lateral pedestrian bridges, and native landscaping located along the shoreline within the Orange County Transportation Authority (OCTA) right-of-way from North Beach to Calafia State Park.

**DESCRIPTION OF AMENDMENT:** Request to allow temporary wetland impacts associated with construction of the San Clemente Railroad Corridor Pedestrian Beach Trail, and modification of the trail design to include an 80-foot extension of the Mariposa Point boardwalk outside of any wetland areas. The project also involves replanting of salt grass to mitigate for temporary wetland impacts.

**SUMMARY OF STAFF RECOMMENDATION:**

The project involves an amendment request to 1) modify Special Condition 10 of the original permit, which prohibited any impacts to wetlands and drainages, to allow temporary fill of an approximately 400 foot long by 2 foot wide salt grass swale for construction of an access road; and 2) raise and extend the boardwalk along Mariposa Point an additional 80 feet in length and 2 feet in height to traverse sloughage at the base of the bluff while meeting ADA requirements and avoiding utility lines. The boardwalk extension will not impact any wetland areas.

To mitigate for the temporary impacts to the salt grass swale, the City proposes a complete resodding of the approximately 800 square foot swale with salt grass flats during the first wet season following removal of the temporary construction fill.

Staff recommends that the Commission, after a public hearing, **approve an amendment to Coastal Development Permit 5-03-322** to allow temporary wetland impacts and an 80-foot long extension of the boardwalk outside of any wetland areas, at Mariposa Point, subject to four (4) special conditions. The conditions would require 1) retention of the special conditions of the underlying permit not affected by the current action; 2) modification of Special Condition 10 of the underlying permit to allow a temporary wetland impact associated with the current amendment request; 3) pre- and post-project wetland surveys and establishment of mitigation ratios; and 4) conformance with the wetland mitigation and monitoring plan.

The proposed wetland fill would be inconsistent with Section 30233 of the Coastal Act, as fill for a new public trail is not listed as an allowable use. However, Section 30210 requires the

provision of maximum public access. Therefore, approval of the amendment is possible by application of the balancing provisions of Section 30007.5, which allows the Commission to resolve conflicts in a manner most protective of significant coastal resources.

The City of San Clemente has a certified Land Use Plan, but no Implementation Plan. As such, the Commission retains permit authority. The standard of review is Chapter 3 of the Coastal Act.

At the time of this staff report, the applicant has indicated acceptance of all conditions of approval recommended by staff.

---

**PROCEDURAL NOTE:**

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

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

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

The current proposal is a material change to the underlying permit. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

**SUBSTANTIVE FILE DOCUMENTS:**

City of San Clemente Certified Land Use Plan (LUP); Biological Constraints Analysis for San Clemente Rail Trail prepared by Merkel & Associates, Inc. dated January 31, 2002; Jurisdictional Wetland Delineation for the San Clemente Rail Trail Project prepared by Merkel & Associates, Inc. dated September 17, 2002; Correspondence from Merkel & Associates dated January 19, 2005 and June 14, 2005.

**LIST OF EXHIBITS:**

1. San Clemente Beach Trail Map
2. Mariposa Boardwalk Location Map
3. Project Plans

**I. MOTION AND RESOLUTION:**

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

**Motion:** *I move that the Commission approve Coastal Development Permit Amendment No. 5-03-322-A1 pursuant to the staff recommendation.*

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

**Resolution to Approve Permit Amendment No. 5-03-322-A1:**

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

**II. STANDARD CONDITIONS:**

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

III. SPECIAL CONDITIONS:

1. Prior Conditions

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-03-322 remain in effect. All standard and special conditions previously imposed under CDP 5-03-322 apply equally to the amendment.

2. Avoidance of Drainages and Wetlands

Special Condition 10 (A) (1) of the underlying permit shall be supplemented as follows. New language is shown in **bold, underline, italics**.

A. The permittees shall comply with the following drainage and wetlands avoidance requirements:

1. The on-site drainages and wetlands shall not be impacted by the project. All plans and specifications for the project shall indicate that impacts to the drainages and wetlands shall be avoided and that no impact to the drainages and wetlands is authorized by the California Coastal Commission. **Notwithstanding the foregoing, temporary impacts to the salt grass swale at Mariposa Point necessary for trail construction is authorized if carried out consistent with Special Condition 3 of Permit Amendment 5-03-322-A1 and all other provisions of the underlying permit, and project plans and specifications may indicate as much.**

3. Add a new Special Condition 13, as follows:

13. Survey and Mitigation Ratios

The condition of the wetland vegetation in the area of the project covered by amendment 5-03-322-A1 shall be documented prior to construction activities. The extent of impacts to the vegetation shall be assessed and documented after completion of the project and removal of all fill. Temporary wetland impacts shall be revegetated at a 1:1 ratio, as specified in Special Condition 4 of amendment 5-03-322-A1. If the post construction survey identifies that permanent wetland impacts have occurred, the applicant must submit a permit amendment application to address the identified impacts and implement the mitigation program approved in that amendment. Any identified permanent wetland impacts shall be mitigated by creation or significant restoration of wetland habitat at a ratio of 4:1. Nothing in this condition authorizes permanent wetland impacts.

4. Add a new Special Condition 14, as follows:

14. Wetland Mitigation and Monitoring for Temporary Impacts

A. To mitigate for temporary construction impacts to the salt grass swale at Mariposa Point, the City shall carry out the action plan prepared by Merkel & Associates dated June 14, 2005, which includes the following measures:

1. A complete resodding of the 800 square foot swale with salt grass flats shall be performed during the first wet season (October through March) following

removal of the temporary construction fill. The fill shall be removed no later than 30 days after completion of the trail segment necessitating the wetland fill. Resodding shall occur in all areas where salt grass is not vigorously recovering by the time of planting (i.e. with equivalent or better shoot density and coverage than pre-impact conditions).

2. A rapid assessment monitoring report shall be prepared three (3) months after initial planting to verify salt grass establishment and submitted to the Executive Director for review and approval. This report shall include documentation of the aerial extent of salt grass habitat both by field measurement and photographs. In the event that 300 square feet of salt grass is not established, a second planting effort shall be undertaken.

- B. If the measures required in Subsection A, above, are unsuccessful in reestablishing the salt grass swale habitat, the City shall submit an amendment request suggesting additional remediation or other mitigation, provided the failure is not due to maintenance disturbance caused by the railroad operator, and implement the mitigation/remediation program approved in that amendment.

## V. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

### A. Project Location, Background, and Amendment Description

#### Location

The approved San Clemente Pedestrian Beach Trail extends from North Beach to Calafia State Park along the shoreline within the OCTA right-of-way (Exhibit 1). The site of the proposed amendment is the Mariposa Point segment of the trail, located north of the Municipal Pier between the toe of the coastal bluff and the railroad tracks (Exhibit 2).

#### Background

In April 2004, the Commission approved CDP #5-03-322 allowing the City of San Clemente and the Orange County Transportation Authority (OCTA)<sup>1</sup> to construct a multi-use trail along the shoreline from North Beach to Calafia State Park within the railroad right-of-way. The trail consists of lateral and vertical access improvements, including formal railroad crossings, barriers to prevent unauthorized crossings, lateral pedestrian bridges, and native landscaping.

At Mariposa Point, the site of the proposed amendment, an 8' wide elevated wooden walkway (boardwalk) supported by caissons was approved along an approximately 975' long stretch of the trail. The elevated walkway was proposed for safety considerations as the trail in this particular area curves around a narrow point and gets very close to the railroad track. The walkway design addressed the safety concerns at this point by separating pedestrians from the tracks as much as possible. To accomplish this, the trail had to be sited as close to the toe of the bluff as possible. The utilization of an elevated walkway supported by caissons minimizes any grading of the toe of bluff. In addition to the elevated walkway, new pre-fabricated wooden bridges were approved to span existing drainage courses along the lateral trail. Minor grading was approved for site preparation and drainage improvements. The project was not intended to require any modifications to the drainage course or result in the fill of coastal waters.

---

<sup>1</sup> OCTA declined to be a co-applicant in the current amendment request, but supports the City's efforts.

During the development of construction plans for the Mariposa Boardwalk portion of the trail, the City's design team determined that on site conditions prohibited the construction of the elevated walkway without temporary impacts to an existing salt grass swale. As originally proposed and approved, all wetlands and drainages, including the swale at Mariposa Point, were to be avoided. As described in the staff report:

*"The plans identify multiple vernal basins and sensitive areas within the project area. The Jurisdictional Wetland Delineation prepared by Merkel & Associates, Inc. states that two wetland microhabitats were found within the study area. These are located at the base of the slope adjacent to the Mariposa access ramp and immediately north of the Corto Lane pedestrian crossing. The areas are described as Emergent Wetlands, which represent "unusually low quality habitats." The Mariposa wetland is approximately 400 feet in length and varies from about 1.5 to 2.5 feet in width. The Corto Lane wetland is approximately 90 feet in length and varies from 3 to 12 feet in width. Each is a seasonal wetland fed by urban run-off.*

*Neither of the Emergent Wetland areas will be impacted by the proposed project. The applicants have modified the project design to avoid these areas. At Mariposa, the proposed elevated boardwalk will be sited around the wetland area to avoid caisson placement in or near the wetland..."*

To ensure that wetlands were avoided in conformance with the plans submitted, the Commission imposed Special Condition 10. This condition required that impacts to the drainages and wetlands be avoided and required buffers around these areas.

The permit was granted on April 23, 2004; however, the project has yet to be initiated pending final construction design, completion of "prior to commencement of construction" conditions and the award of contracts.

#### Proposed Amendment Description

Through the proposed amendment, the City requests to 1) modify Special Condition 10 of the original permit, which prohibited any impacts to wetlands and drainages, to allow temporary fill of an approximately 400 foot long by 2 foot wide salt grass swale for trail construction activities; and 2) raise and extend the boardwalk along Mariposa Point an additional 80 feet in length and 2 feet in height to traverse sloughage at the base of the bluff while meeting ADA requirements and avoiding utility lines (Exhibit 3). The proposed boardwalk extension will not impact any wetland areas.

The underlying permit prohibits any impacts to wetlands, as specified in Special Condition 10. The City proposes to amend that condition to allow wetland impacts at Mariposa Point in order to provide a maximum 12'6" wide temporary construction access road. The project will result in the fill of an approximately 800 square foot salt grass swale. According to the City, a temporary access road is necessary to accommodate construction equipment and vehicles that will be used to construct the Mariposa Point boardwalk, including a drilling rig, 60-ton crane, and transport trucks. Fourteen (14) 36" diameter caissons are to be drilled to support the new boardwalk. Staging and access for drilling equipment is required, as well as the ability to remove spoils created by the drilling operation.

Construction of the temporary access road will involve the placement of geotextile fabric and a class II base and/or gravel within the vacant right-of-way between the railroad tracks and the toe of slope. Where necessary to traverse a drainage course, the City will construct a temporary beam/timber/plate work platform. The access road must be sited inland of the

railroad tracks, as there is no usable land seaward of the tracks. In this location, the tracks are protected by rip-rap and the beach is often submerged.

After construction of the Mariposa Point boardwalk is completed, all fill will be removed and restoration of the wetland area will occur in accordance with an action plan prepared by the City's biological consultant, Merkel & Associates. The plan includes: complete resodding of the 800 square foot swale with salt grass flats during the first wet season (October through March) following removal of the temporary construction fill; preparation of a rapid assessment monitoring report three (3) months after initial planting to verify salt grass establishment; and a second planting if necessary. No further plantings are proposed. In the event that railroad maintenance activities (including application of herbicide) occur which impact the restoration areas prior to the monitoring period, no subsequent actions are proposed to be taken. Construction of the temporary road is anticipated to take 6-10 months.

The amendment also involves an 80-foot long extension of the trail outside of the wetland area. The extension is proposed to address concerns raised after several minor landslides occurred in the Mariposa Point area during the 2004-2005 winter season. As described by the City, "...large amounts of soil material slumped or sloughed in the coastal bluff areas between El Portal beach access to the north and Mariposa beach access to the south." A geotechnical report indicated that upwards of four (4) feet of slough occurred and recommended that the boardwalk be designed with a minimum four-foot freeboard in reasonable consideration of future events. Rather than remove the slough material, the City decided to raise the boardwalk design by two (2) feet to provide the recommended clearance. In order to meet ADA constraints, an additional boardwalk section was added, extending the overall length of the boardwalk to approximately 1055 feet from 975 feet.

#### Alternatives

The applicant considered project alternatives that would avoid wetland fill, including accessing the site from the beach, the railroad or utilizing a helicopter. These alternatives are outlined below.

*Beach Access:* The City explored the possibility of placing geogrid tracks along the beach to access the Mariposa Point construction site. Geogrids would be installed above the mean high tide line (MHTL) from the Marine Headquarters north to Mariposa Point. However, this option was determined to disrupt public access in an area of limited sandy beach. The railroad is protected by rip rap and the beach around Mariposa Point is often submerged. Once the equipment was brought to the point of project construction, there would be little space on the beach for staging and tidal fluctuations would affect the allowable construction window. Also, no equipment could be stored on the beach. The beach sand elevation is between 5 and 10 feet above sea level and the boardwalk caissons are to be installed at a drilling elevation of 25 to 30 feet. Approximately 80 feet separates the caissons from the potential staging area. The City concluded the "overall result is that no equipment is large enough to span the clearances required even if other regulatory hurdles could be met."

*Rail Access:* The City also explored the option of rail mounted drilling, crane and transport of bridge sections. The City design team proposed to stage equipment and bridge sections (pre-fabricated off-site) along the railroad approximately 4 miles south of the site and then transporting it by rail vehicles. The option was determined to minimize impacts to the emergent wetlands, but would not eliminate all of the impacts due to onsite staging of the transported materials, equipment and spoils resulting from construction. Also, the railroad operator expressed an unfavorable view of the option due to the fact that 36 trains a day operate in this corridor. According to the City, the minimum construction window required to move equipment,

mobilize and drill and caisson is approximately 8 hours. Even if SCRRA were to approve construction during any extended window of time, the project schedule would need to be extended by months due to the limited interval of the access.

*Helicopter Access:* Lastly, the City explored the possibility of bridge sections being placed by helicopter, providing that the caisson construction methods were solved by other means. However, horizontal distance (<100 feet) between the blufftop homes and the bridge locations preclude use of helicopters as a method of construction.

*No Project:* If the elevated walkway were not constructed as previously approved, pedestrians would be forced to walk between the railroad tracks and the toe of the bluff along a very narrow trail section. Safety would be compromised and the public access goals of the overall trail project would not be met.

## **B. Public Access**

Section 30210 of the Coastal Act states:

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

Section 30212(a)(2) of the Coastal Act states:

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) adequate access exists nearby*

Section 30213 states, in pertinent part.

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

The City of San Clemente certified LUP, which serves as guidance in this area, also contains various coastal access policies pertaining to the currently proposed project, including the following:

*Policy IX.1 Improvements to beach facilities and beach access points which are administered by the City of San Clemente shall specifically be intended to provide for the maintenance and enhancement of maximum public use of the beach and ocean.*

*Policy IX.7 The City shall promote not only increased access to the shoreline, but increased safety of access. Improved access for the handicapped shall be provided at least one of the primary access points administered by the City.*

Section 30604(c) of the Coastal Act requires that permit applications for projects between the nearest public road and the shoreline of any body of water within the coastal zone shall include



a public access and recreation finding. The proposed development is located between the sea and the first public road. In San Clemente, the railroad tracks separate the community from the shoreline. Lateral access to the Pacific Ocean and sandy beach is available immediately seaward of the railroad tracks. As described previously, the Commission approved CDP 5-03-322 in April 2004 for construction of a multi-use trail along the shoreline from North Beach to Calafia State Park. The current amendment request affects lateral access approved at Mariposa Point.

The Mariposa Point area was identified during the creation of the trail plan as the number one safety concern for the entire San Clemente railroad corridor. Due to the topographic features along this segment, the trail becomes narrow as it rounds the point and the pedestrians' line of sight is greatly impaired. Steep coastal bluffs exist inland of the tracks, limiting the width of potential lateral access. The project approved by the Commission calls for an elevated walkway that will allow pedestrians to more safely travel around this pinch point.

The proposed amendment would allow the following two changes to the City's previously approved plan for the Mariposa Point trail segment: 1) temporary wetland impacts associated with placement of a maximum 12'6" wide temporary construction access road within a salt grass swale inland of the railroad tracks, and 2) 80-foot long extension of the trail outside of the wetland area. The temporary access road is necessary to accommodate construction vehicles and equipment that will be used to install the caissons and transport the bridge sections. (Wetland impacts are discussed in the following section.)

The extension is proposed to address concerns raised after several minor landslides occurred in the Mariposa Point area during the 2004-2005 winter season which left large amounts of soil material sloughed at the toe of the bluff. In order to traverse the material without disturbing the stability the bluff, the City decided to raise the boardwalk design by two (2) feet to provide the recommended clearance. In order to meet ADA constraints, an additional boardwalk section was added, extending the overall length of the boardwalk to approximately 1055 feet from 975 feet. The extension will not impact any wetland areas and will not adversely impact public access in the subject area.

The proposed changes are intended to improve the accessibility of the area and safety of the public along the Mariposa Point segment of the trail. The trail will be used by both tourists and local residents as a means of reaching the beach and as a transportation conduit between the northern and central parts of the City. The proposed amendment will allow trail users to travel laterally along an elevated walkway, thereby providing safe access around Mariposa Point. The Commission finds the proposed amendment consistent with the public access and recreation policies of the Coastal Act, as well as the coastal access policies of the certified LUP.

### **C. Biological Resources**

Section 30108.2 of the Coastal Act states:

*"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*

Section 30121 of the Coastal Act states:

*"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*

Section 30233 (a) of the Coastal Act states,

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

The City of San Clemente certified LUP, which serves as guidance in this area, also contains a wetland protection policy pertaining to the currently proposed project, which states :

**Policy XIV.3** *The diking, filling or dredging of open coastal water, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of the California Coastal Act and the City of San Clemente Coastal Element, where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- *In open coastal waters, for new or expanded boating facilities and/or the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- *Mineral extraction on City beaches shall be prohibited except for sand restorative purposes.*
- *Restoration purposes.*
- *Nature study, aquaculture, or similar resource dependent activities.*

As stated previously, two wetland microhabitats were found within the study area of the San Clemente Pedestrian Beach Trail. According to the *Jurisdictional Wetland Delineation* prepared by Merkel & Associates, Inc. one of these areas is a salt grass swale located at the base of the slope adjacent to the Mariposa access ramp and immediately north of the Corto Lane pedestrian crossing. The area is described as Emergent Wetlands, which represent “*unusually low quality habitats.*” The Mariposa wetland is approximately 400 feet in length and varies from about 1.5 to 2.5 feet in width. The site is a seasonal wetland fed by urban run-off. The Mariposa wetland is the subject of the current amendment. No impacts are proposed to the second wetland area.

As originally proposed and approved, access and staging for construction of the elevated walkway at Mariposa Point was to be sited around the emergent wetland area. However, the applicant now intends to construct a maximum 12’6” wide temporary access road within the wetland area in order to provide access for a drilling rig, 60-ton crane, and transport trucks. Road construction will require the placement of geotextile fabric and a class II base and/or gravel within the toe of slope area for a period of 6-10 months. A temporary platform will also be required to traverse a drainage course along the trail. The proposed project constitutes fill of a wetland, inconsistent with Section 30233 of the Coastal Act.

The Commission typically applies the following three tests to determine if a project is consistent with Section 30233 of the Coastal Act. For a project involving wetland fill to be consistent with Section 30233, it must be the case that: a) the purpose of the project is limited to one of eight allowable uses; b) the project has no feasible less environmentally damaging alternative; and c) adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

#### Allowable Use

Fill of a wetland is limited to eight allowable uses, as enumerated above. The project involves the placement of gravel and geogrid within a salt marsh swale to create a temporary access road that will be used to construct an elevated walkway at Mariposa Point. The fill will be removed upon project completion. The project is inconsistent with Section 30233, as creation of a new public accessway is not listed as one of the allowable uses to fill a wetland. Also, although the fill is considered temporary, it cannot be considered an “incidental public service” due, at a minimum, to the nature and duration of the work.

### Less Damaging Alternative

Various alternatives were considered that would avoid wetlands impacts, as discussed in Section A. These include attempting to construct the boardwalk from the beach, from the railroad, or using a helicopter. However, these alternatives were deemed infeasible and the proposed amendment was determined to be the only option able to accomplish the public access goals of the coastal trail project. The 'no project' alternative was also dismissed because it would not achieve the goal of providing safe public access in the subject area.

### Adequate Mitigation

Although the project cannot be found consistent with the prohibitions on fill contained in Section 30233 of the Coastal Act, the applicant is proposing measures that are in keeping with the requirements of Section 30233. For instance, the applicant is proposing that the fill be temporary and that the area will be restored upon completion of the project, as described below. That element of the applicant's proposal is consistent with the requirements of Section 30233 to ensure that "...feasible mitigation measures have been provided to minimize adverse environmental effects...".

After construction is completed, the temporary fill will be removed and the site will be replanted at a 1:1 ratio. (This approach is consistent with the Commission's action in 6-02-152, which allowed 1:1 mitigation for wetland impacts associated with NCTD railroad repairs.) Restoration of the wetland area will occur in accordance with an action plan prepared by the City's biological consultant, Merkel & Associates. The plan includes: complete resodding of the 800 square foot swale with salt grass flats during the first wet season (October through March) following removal of the temporary construction fill; preparation of a rapid assessment monitoring report three (3) months after initial planting to verify salt grass establishment; and a second planting if necessary. No further plantings are proposed by the applicant. In the event that railroad maintenance activities (including application of herbicide) occur which impact the restoration areas prior to the monitoring period, the applicant does not intend to take any subsequent actions. All of the work is occurring within the OCTA right of way, within a previously disturbed area. The site is subject to ongoing railroad maintenance activities such as gravel replacement for the railroad track bed, herbicide use and vegetation trimming. Such maintenance is required to maintain the railroad corridor free of obstructions/hazards and will continue to occur after completion of the current project. As such, the proposed temporary road construction will not create a new or permanent impact in a previously undisturbed area.

The City's biological consultant has indicated that the development of a traditional monitoring and contingency restoration program would be *"quite costly and uncertain for reasons beyond the project applicant's control."* Maintenance conducted by the railroad operators is of particular concern. As described by the consultant, *"regular vegetation maintenance along the railroad includes herbicide applications that extend through the salt grass swale. As a result, at any given time, vegetation in this area may be sprayed by the railroad resulting in a dieback of the vegetation within the swale (see attached photographs). While these impacts occur intermittently, they typically do not result in a permanent loss of the salt grass, which tends to recover between treatment events. However, they do put any progressive recovery milestones established for this project at risk."* Due to the unique circumstances at the subject site, the proposed action plan is intended to adequately address the anticipated wetlands impacts.

The Commission's biologist has reviewed the proposed action plan and offered a minor modification. Specifically, he recommended that the City return to the Commission with additional remediation or other mitigation in the event that a second planting is unsuccessful in reestablishing the salt grass habitat, assuming the failure is unrelated to railroad maintenance. No further changes were identified.

To ensure that the applicant minimizes impacts to wetlands and carries out mitigation in conformance with the plan submitted, the Commission imposes Special Conditions 3 and 4. Special Condition 3 requires the applicant to first conduct a survey to determine the extent of wetland impacts. A "Before/After" survey is required to document the condition of the wetland vegetation prior to and after completion of the temporary road construction activities. The extent of impacts to the vegetation will be assessed and documented after completion of the project and removal of the temporary road. If wetland plants are killed by crushing and/or are uprooted, then revegetation is required at a 1:1 ratio. If the post construction survey identifies that permanent wetland impacts have occurred (such as a boardwalk realignment that results in wetland encroachment), a permit amendment is required in order to address the identified impacts and implement a mitigation program. No permanent encroachment is anticipated or allowed by this amendment.

Special Condition 4 requires compliance with the action plan prepared by the City's biological consultant, which includes: complete resodding of the 800 square foot swale with salt grass flats during the first wet season (October through March) following removal of the temporary construction fill; preparation of a rapid assessment monitoring report three (3) months after initial planting to verify salt grass establishment; and a second planting if necessary. If a second planting is unsuccessful in reestablishing the salt grass habitat for reasons other than railroad maintenance, the applicant shall return to the Commission for an amendment for additional remediation or other mitigation. In addition, all provisions of Special Condition 10 of the original permit (as amended), requiring avoidance of wetlands and establishment of buffers, remain in effect.

#### Conclusion

Although the applicant is proposing mitigation measures, and the Commission can condition the project to include requirements that improve the project's consistency with Section 30233 of the Coastal Act, such measures can't and don't address fill prohibitions contained in Section 30233. As such, the Commission finds the proposed amendment inconsistent with Section 30233 of the Coastal Act. The proposed project violates the prohibitions on wetland fill contained in Section 30233 and the certified LUP, while presenting the only feasible means of adhering to Section 30210 and promoting its requirement for maximum public access. As such, a conflict exists between Coastal Act policies. Conflict resolution will be addressed in the following section.

#### **D. Balancing**

The standard of review for the Commission's decision on a permit application is whether the project is consistent with the policies of Chapter 3 of the Coastal Act. In general, a proposal must be consistent with all relevant policies in order to be approved. Put differently, consistency with each individual policy is a necessary, but not sufficient, condition for approval of a proposal. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies). However, the Legislature also recognized that conflicts can occur among those policies, as specified in Section 30007.5. It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved "in a manner which on balance is the most protective of significant coastal resources." That approach is generally referred to as the "balancing approach to conflict resolution." Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

In order to identify a conflict, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the *status quo*. The reason that denial of a project can result in coastal zone effects that are inconsistent with a Chapter 3 policy is that some of the Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources and access, such as sections 30210 ("maximum access . . . and recreational opportunities shall be provided . . ."), 30220 ("Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses"), and 30230 ("Marine resources shall be maintained, enhanced, and where feasible, restored").

For a project to provide the sort of benefits that would render denial of the project inconsistent with Chapter 3, those benefits cannot be ones that the project proponent is already being required to provide pursuant to another agency's directive under another body of law. In other words, if the benefits are about to be provided independently of the Commission's action on the proposed project, the project proponent cannot seek approval of an otherwise-unapprovable project on the basis that the project would produce those benefits. In essence, the project proponent does not get credit for resource enhancements that it is already being compelled to provide. The benefits of the project have to result from the primary purpose of the project, rather than being an ancillary or tangential addition.

A project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the project *without* violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all of the relevant Chapter 3 policies, then the proposed project does not create a true conflict among Chapter 3 policies.

The current amendment creates a conflict between Coastal Act policies. The proposed project violates Section 30233, which prohibits fill of coastal waters for unallowable uses. However, the project is also subject to the affirmative mandate of Section 30210, which requires the provision of maximum public access. In this case, denial of the project due to inconsistency with 30233 would render the project inconsistent with Section 30210. Construction of the boardwalk at Mariposa Point cannot occur without impacts to the adjacent wetlands. An alternatives analysis has proven that the only way to construct the boardwalk in its previously approved alignment is to place a temporary access road along the inland side of the railroad, thereby impacting the existing salt marsh swale. There are no alternative trail alignments that would accomplish the essential purpose of the project without violating a Chapter 3 policy. The only alternative trail alignments would either be located seaward of the railroad track on the sandy beach or further up the bluff face on the inland side. A trail alignment on the seaward side would require a protective device, which would be inconsistent with 30253. To construct the boardwalk along the bluff face would also be inconsistent with 30253 and 30251, and would not necessarily resolve the construction accessibility difficulties. As such, there are no less environmentally damaging means to construct the proposed boardwalk. Without the construction of the boardwalk (i.e. the 'no project' alternative), there will be no linkage in the lateral accessway, with attendant significant adverse impacts upon public access.

In this case, temporary impacts to a wetland are deemed necessary and acceptable in order to provide public access in a critical area along the San Clemente shoreline. Furthermore, upon completion of the project, both public access, and a restored wetland with enhanced protection

against trampling from pedestrians, will be provided. By approving the proposed amendment with conditions, the conflict has been resolved in a manner which on balance is the most protective of significant coastal resources, including public access.

**E. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As such, the Commission retains permit issuance authority.

The proposed development is consistent with most of the policies contained in the certified Land Use Plan, violating only the wetland protection policy. As discussed herein, approval of the amendment is only possible by application of the balancing provisions of Section 30007.5 of the Coastal Act, which allows the Commission to resolve conflicts in a manner most protective of significant coastal resources. Approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

**F. Consistency with the California Environmental Quality Act (CEQA)**

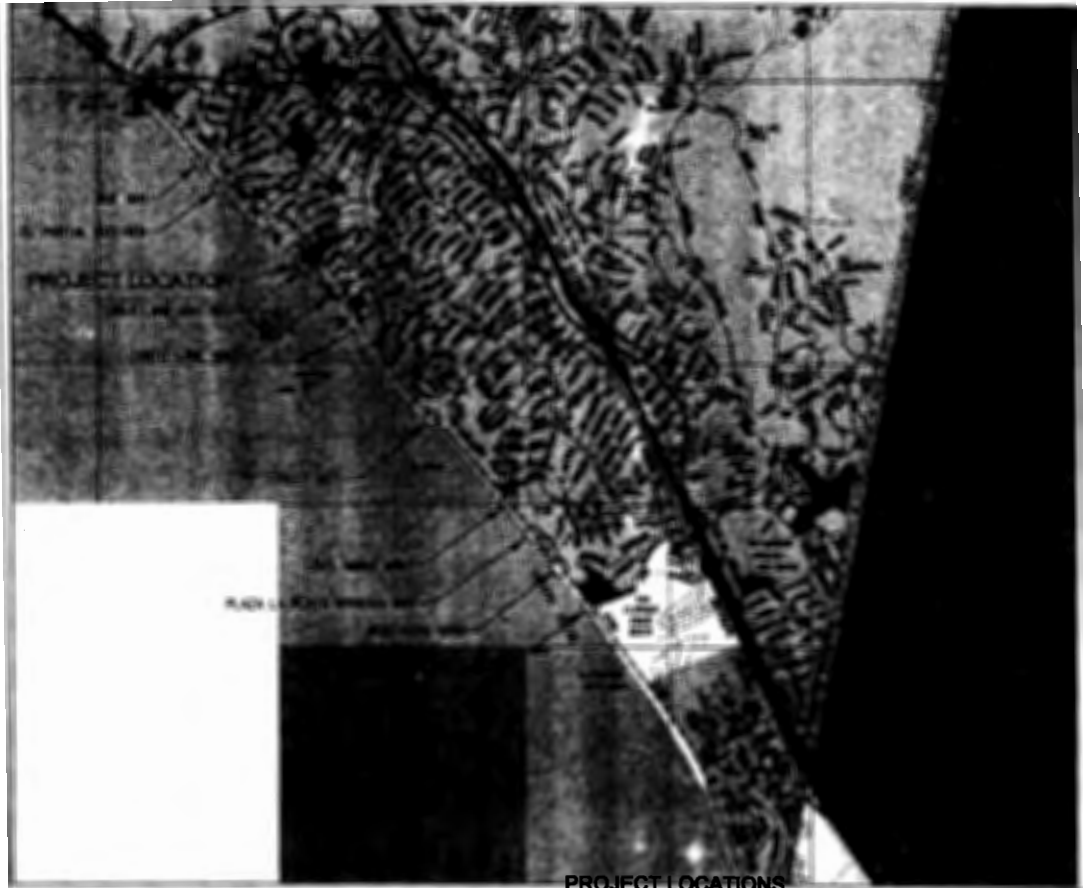
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental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

The proposed project has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require 1) retention of the special conditions of the underlying permit not affected by the current action; 2) modification of Special Condition 10 of the underlying permit to allow a temporary wetland impact associated with the current amendment request; 3) pre- and post-project wetland surveys and establishment of mitigation ratios; and 4) conformance with the wetland mitigation and monitoring plan.

No further alternatives, or mitigation measures, beyond those imposed by this permit amendment, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



VICINITY MAP  
NTS



PROJECT LOCATIONS  
NTS

GRADE CROSSING	PROPOSED CROSSING NUMBER
DUE COURT	101 OR-204.00-D
EL PORTAL	101 OR-204.10-D
EL PORTAL UNDERCROSSING	101 OR-204.11-BD
LINDA LANE UNDERCROSSING	101 OR-204.49-BD
LINDA LANE	101 OR-204.54-D
REEFGATE WEST (CORTO LANE)	101 OR-204.60-D
"T" STREET	101 OR-205.20-D
LOST WINDS	101 OR-205.60-D
PLAZA LA PLAYA (RIVIERA)	101 OR-205.80-BX (EXISTING CROSSING NUMBER)
MONTALVO UNDERCROSSING	101 OR-205.90-BD
CORTEZ PARK	101 OR-206.000 (EXISTING CROSSING NUMBER)

# EXHIBIT A-1

PROJECT NO. 08-322-91  
 CONTRACT NO. 08-322-91  
 SHEET NO. 1  
 DATE JULY 18, 2003

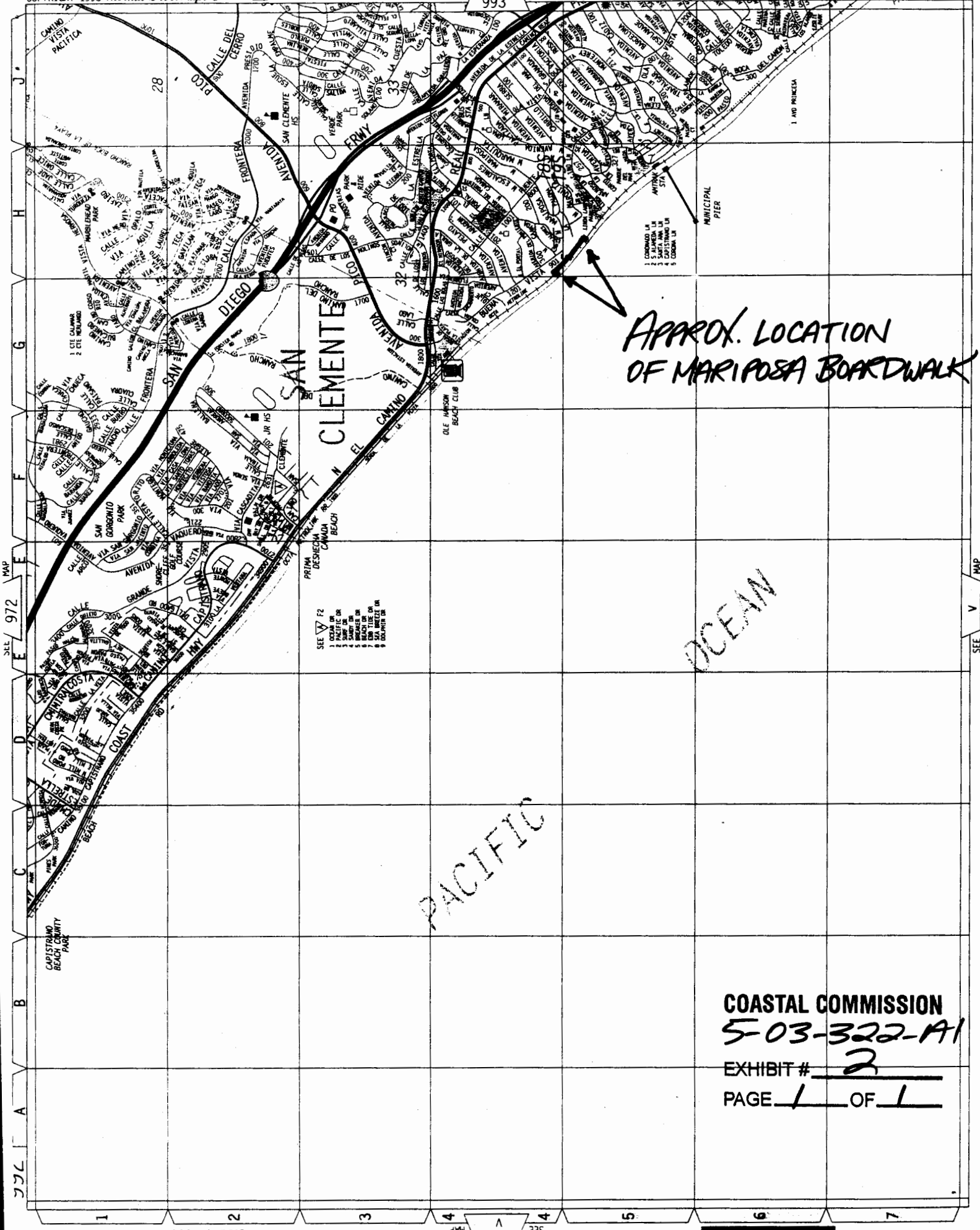
EXHIBIT # 1  
 08-322-91  
 COASTAL COMMISSION  
 PAGE 1 OF 1

REV	DATE	DESCRIPTION	APP

DESIGNED BY AC	  <b>CITY OF SAN CLEMENTE</b> 725 TOWN & COUNTRY ROAD - SUITE 300 ORANGE, CA 92668
DRAWN BY AC	
CHECKED BY MAC	
IN CHARGE CSA	
DATE JULY 18, 2003	

<b>METROLINK COMMUTER RAIL SYSTEM</b> <b>ORANGE SUBDIVISION</b> <b>SAN CLEMENTE TRAIL</b> <b>MP 204.00 TO MP 206.00</b>		CONTRACT NO. DRAWING NO. REVISION SHEET NO. SCALE <b>AS SHOWN</b>
--	--	--



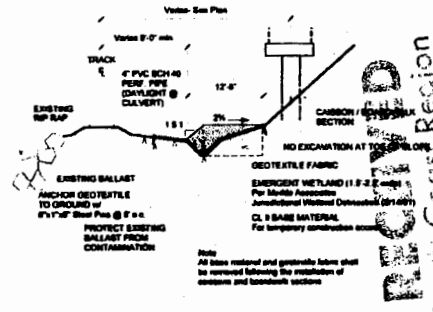
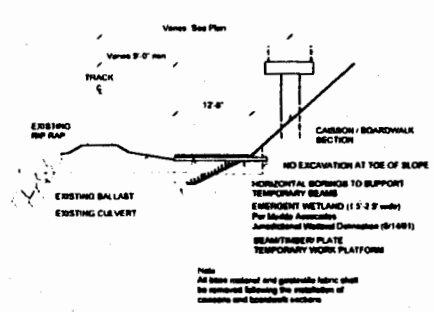
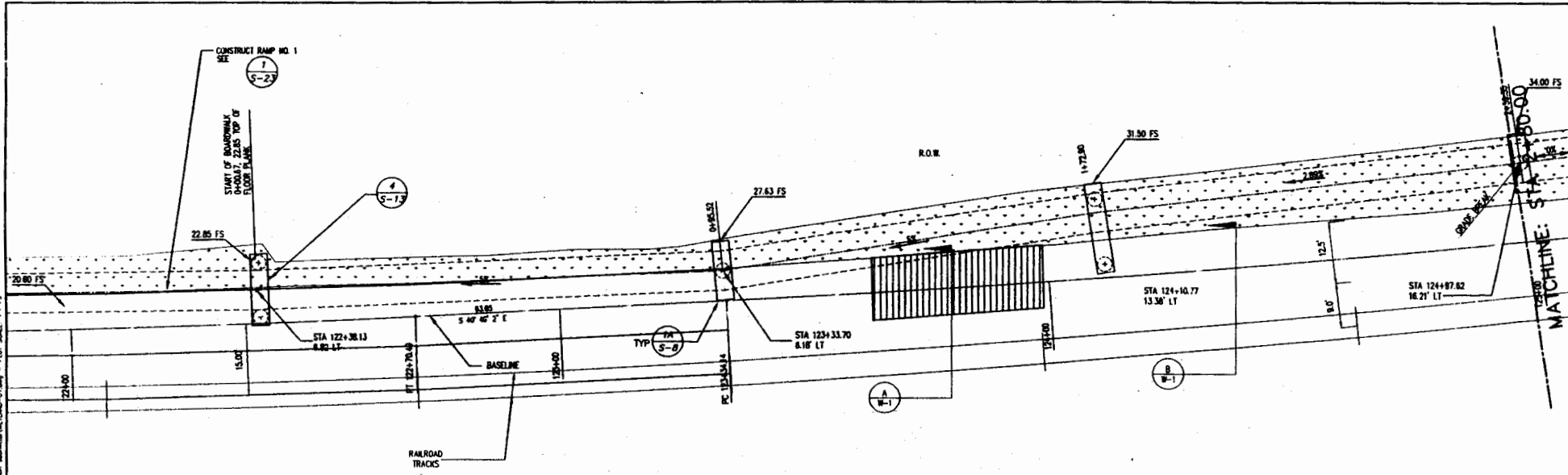


APPROX. LOCATION  
OF MARIPOSA BOARDWALK

- SEE F2
- 1 COLLEGE OR
  - 2 PACIFIC OR
  - 3 CHURCH OR
  - 4 SWIMMING POOL
  - 5 SWIMMER OR
  - 6 GOLF COURSE OR
  - 7 GOLF LINKS OR
  - 8 SPA, BARBEQUE OR
  - 9 OCEANVIEW OR

PACIFIC OCEAN

COASTAL COMMISSION  
5-03-322-A1  
EXHIBIT # 2  
PAGE 1 OF 1



UPLAND HYDROSEED MIX SPECIES	COMMON NAME	PURE LIVE SEED LBS/ACRE
ARTEMISIA CALIFORNICA	CALIFORNIA SAGE BRUSH	0.1
CAMBESSIA CHEIRANTHIFOLIA	BEACH EVENING PRIMROSE	1.0
ENCINIA CALIFORNICA	CALIFORNIA ENCELIA	1.0
ERIOGONUM FASCICULATUM FOLIOLOSUM	COASTAL BUCKWHEAT	0.2
ERIOGONUM PARVIFOLIUM	BEACH CLIFF BUCKWHEAT	1.0
ERIOPHYLLUM CONFERTIFLORUM	GOLDEN YARROW	1.0
ESCHSCHOLZIA CALIFORNICA	CALIFORNIA POPPY	1.5
HORDEUM INTERCEDENS	SORTAL BARLEY	3.0
ISOCOMA MENZIESII MENZIESII	GOLDEN BUSH	1.0
LASTHENIA CALIFORNICA	DWARF GOLDFIELDS	0.5
LIBONUM CALIFORNICUM	WESTERN MARSH-ROSEMARY	0.5
LOTUS SCOPARIUS	DEERWEED	4.0
MIRABILIS AURANTIACUS AURANTIACUS	STICKY MONKEYFLOWER	0.1
MIRABILIS CALIFORNICA	CALIFORNIA WISHBONE BUSH	0.1
NASSELLA PULCHRA	PURPLE NEEDLE GRASS	5.0
PLANTAGO ERRECTA	PLANTAIN	4.0
SALVIA MELLIFERA	BLACK SAGE	1.5
VULPIA MICROSTACHYS	SMALL FESCUE	5.0
		30.5

RESTORATION OF WETLAND DISTICHIS SPICATA / SALT GRASS FROM PLATTED STOLENS

FOLLOWING REMOVAL OF TEMPORARY ACCESS ROAD (DURING WET SEASON) THERE IS APPROXIMATELY 1332 SF OF AREA TO BE PLANTED PER THE JURISDICTIONAL WETLAND DELINEATION (81401).

TEMPORARY ACCESS ROAD CLASS II BASE OVER GEOTEXTILE FABRIC

JUN 17 2005

CALIFORNIA COASTAL COMMISSION

San Clemente Region

MARIPOSA BOARDWALK- Temporary Construction Access Platform Condition at Culvert  
San Clemente Rail Corridor Pedestrian Trail  
Project No. 11418 Federal Project No. STPLER 5274 (008)

MARIPOSA BOARDWALK- Temporary Construction Access San Clemente Rail Corridor Pedestrian Trail  
Project No. 11418 Federal Project No. STPLER 5274 (008)

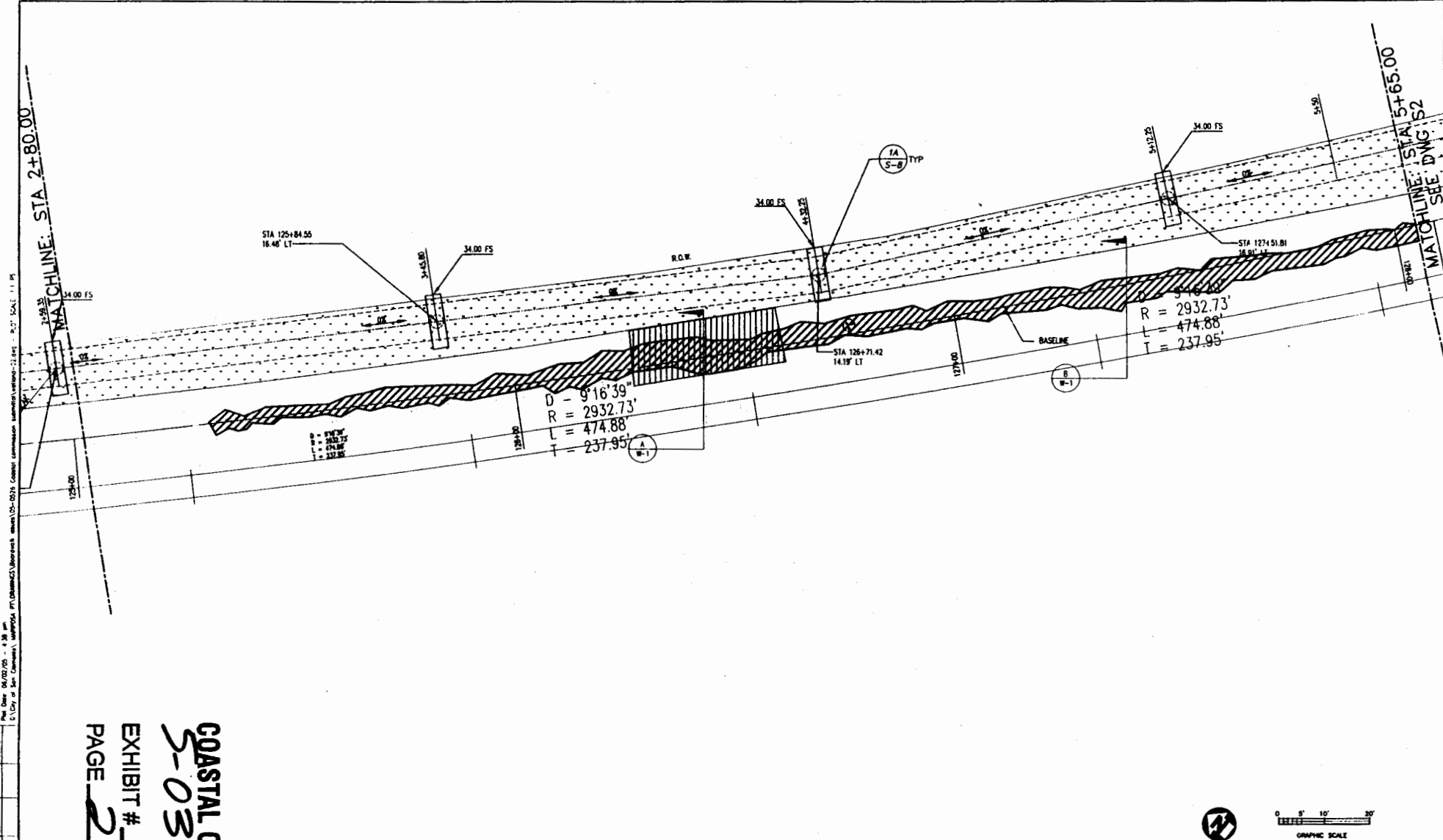
DATE	DESCRIPTION

COASTAL COMMISSION  
EXHIBIT # 508-32-41  
PAGE 1 OF 5

DESIGNED BY	CTM
DRAWN BY	ML
CHECKED BY	WB
IN CHARGE	WB
DATE	JUNE 8, 2003

785 YORK & COUNTRY RD. SUITE 209  
ORANGE, CA 92668

SCRR RAIL CORRIDOR PEDESTRIAN BEACH TRAIL		CONTRACT NO.
CITY OF SAN CLEMENTE PROJECT NO. 11410 FEDERAL PROJECT NO. STPLER 5274 (008)		DRAWING NO. W-1
WETLANDS PLAN - SHEET 1		REVISION SHEET NO. 01 OF 04
SCALE 1"=10'		SCALE



Proj. Date: 06/02/05 - 4:38 pm  
 C:\City of San Clemente\scrra\05-0276 Coastal Commission\Information\22.dwg - PLOT SCALE: 1:10

PROJECT NO.	05-0276
CONTRACT NO.	05-0276
DATE	06/02/05
SCALE	1"=10'

COASTAL COMMISSION  
 EXHIBIT # 3  
 5-03-522-11  
 PAGE 2 OF 5

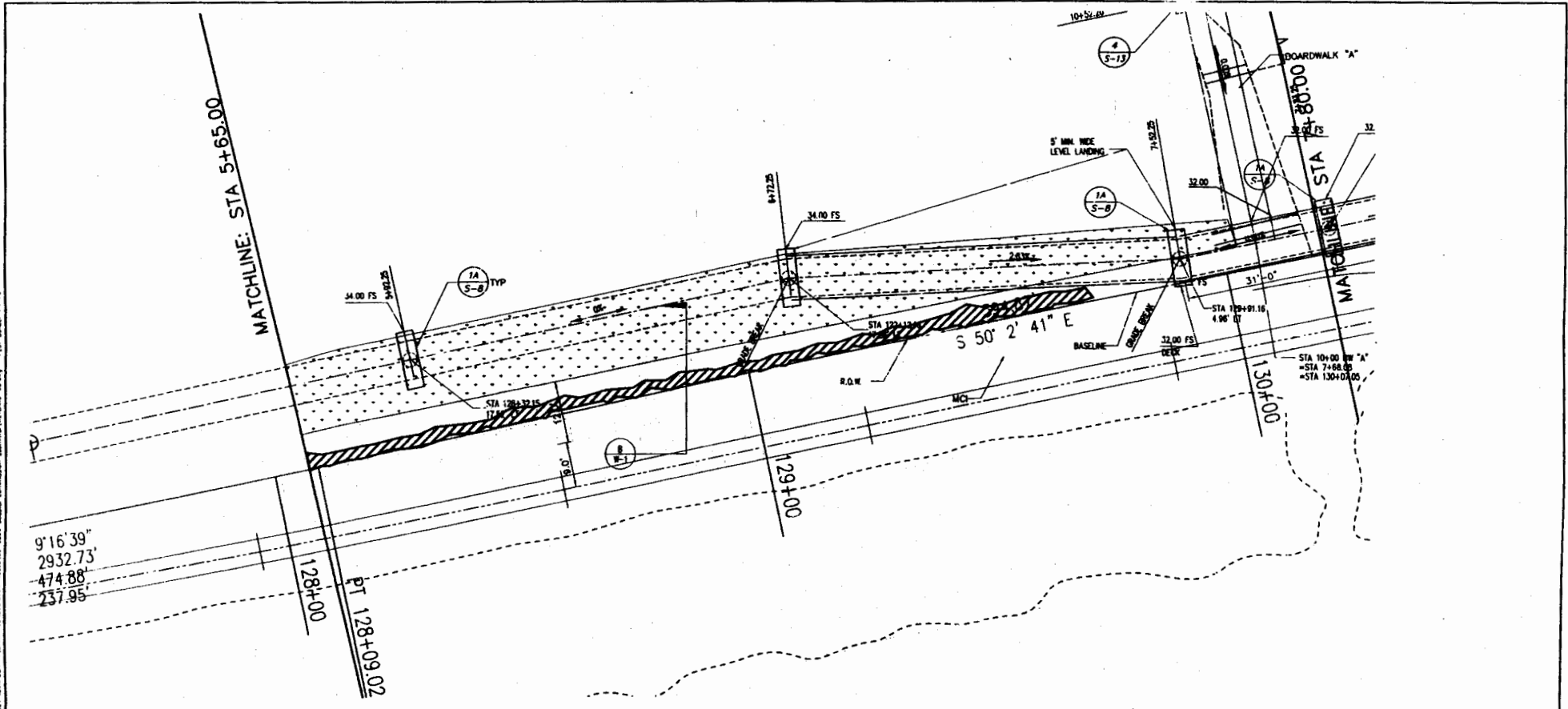
DESIGNED BY	CSH
DRAWN BY	MSL
CHECKED BY	MSB
IN CHARGE	MSB
DATE	JUNE 4, 2005

J. L. PETERSON 755 JOHN & COUNTRY RD. SUITE 200 GRANITE, CA 92648  
 (714) 835-8888



SCRR RAIL CORRIDOR PEDESTRIAN BEACH TRAIL  
 CITY OF SAN CLEMENTE PROJECT NO. 11410  
 FEDERAL PROJECT NO. STPLER 5274 (008)  
 WETLAND PLAN - SHEET 2

CONTRACT NO.	
DRAWING NO.	W-2
REVISION	
SHEET NO.	02 OF 04
SCALE	1"=10'



9'16'39"  
2932.73  
474.88  
237.95

COASTAL COMMISSION  
EXHIBIT # 5  
PAGE 3 OF 5  
5-03-322-1A1

Plot Date: 06/02/04 - 4:30 pm  
 C:\p\p\San Clemente\SCRRRA\03\Wetlands\03\Wetlands.mxd (0-500) Coastal Commission\submitting\Wetlands-03.dwg - PLOT SCALE: 1:1"

PROJECT NO.	11410
DATE	11/11/03
DESIGNER	CA
DRAWN BY	MM
CHECKED BY	MM
IN CHARGE	MM
DATE	JUNE 4, 2003

REV.	DATE	DESCRIPTION	APP.

DESIGNED BY: CMM  
 DRAWN BY: MM  
 CHECKED BY: MM  
 IN CHARGE: MM  
 DATE: JUNE 4, 2003

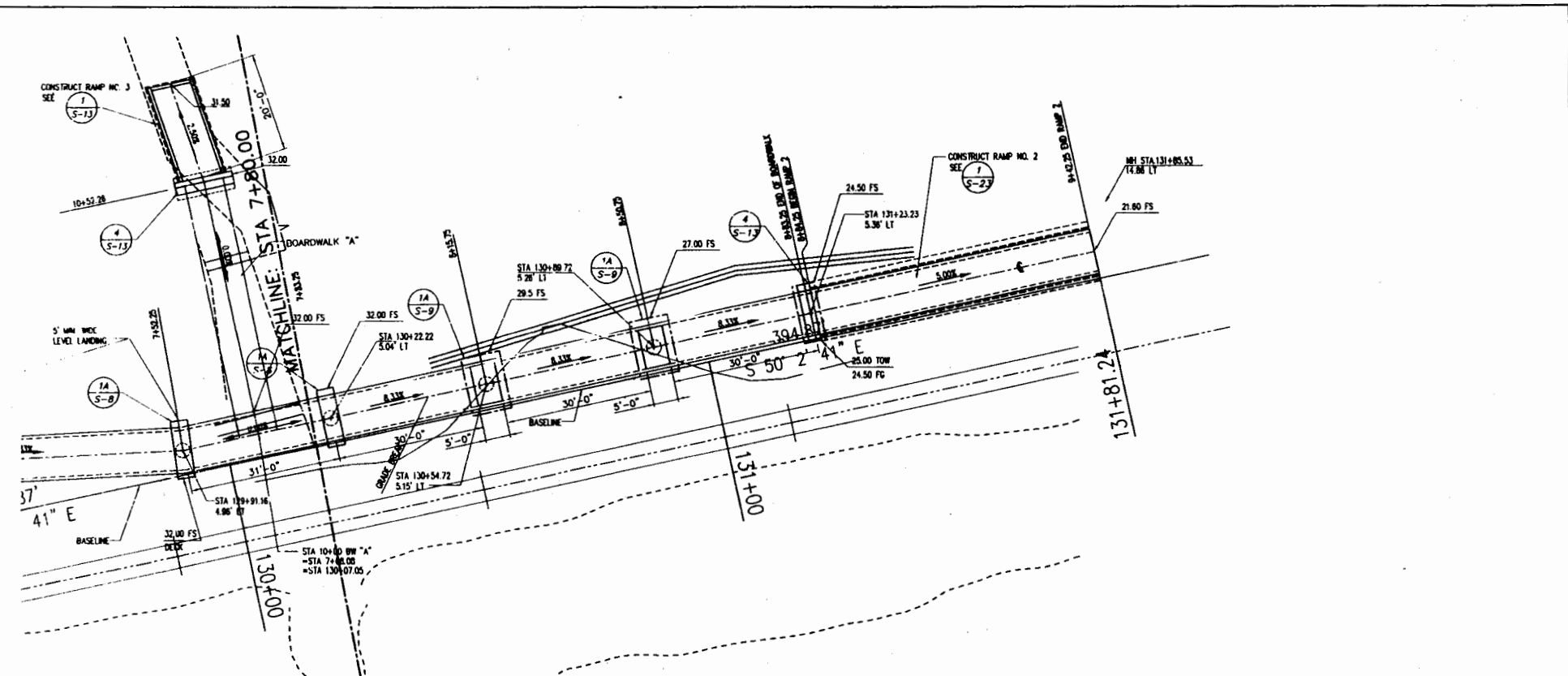
**JL** JENNIFER L. JENNIFERSON 725 VISTA & COUNTRY BL.  
 SUITE 300  
 ORANGE, CA 92668  
 (714) 952-1111



SCRRRA RAIL CORRIDOR PEDESTRIAN BEACH TRAIL CITY OF SAN CLEMENTE PROJECT NO. 11410 FEDERAL PROJECT NO. STPLER 5274 (008)	CONTRACT NO. DRAWING NO. <b>W-3</b> REVISION SHEET NO. 03 OF 04 SCALE 1"=10'
<b>WETLANDS PLAN - SHEET 3</b>	



Rev. Date 09/02/05 - 4:40 PM  
 S:\City of San Clemente\Information Systems\GIS\Projects\SCRRRA\SCRRRA\Wetlands\Wetlands\Wetlands Plan\Wetlands Plan.dwg - PLOT SCALE: 1:1"

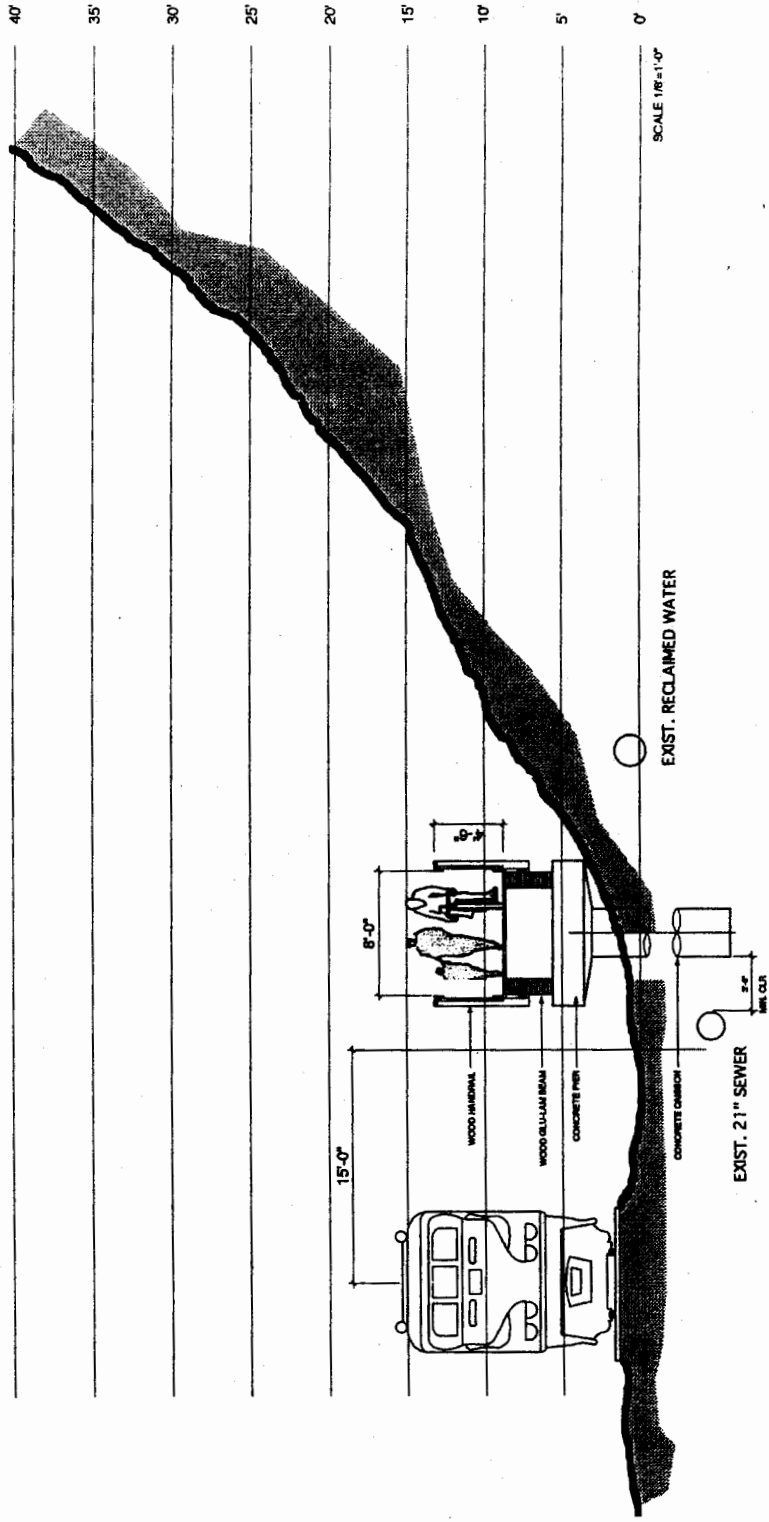


COASTAL COMMISSION  
 EXHIBIT # 5-03-502-11  
 PAGE 4 OF 5

PROJECT LOCATION	DATE	BY
13111	09/02/05	W/REK
SCALE		
1"=10'		

DESIGNED BY DRAWN BY CHECKED BY IN CHARGE DATE	C/M MAA WBS WBS JUNE 6, 2005				SCRRRA RAIL CORRIDOR PEDESTRIAN BEACH TRAIL CITY OF SAN CLEMENTE PROJECT NO. 11410 FEDERAL PROJECT NO. STPLER 5274 (008)		CONTRACT NO. DRAWING NO. W-4
					WETLANDS PLAN - SHEET 4		REVISION SHEET NO. 04 OF 04
					SCALE 1"=10'		SHEET NO. 04 OF 04
					REV. DATE DESCRIPTION APP		





COASTAL COMMISSION  
 5-03-300-A1  
 EXHIBIT # 3  
 PAGE 5 OF 5

MARIPOSA BOARDWALK SECTION (8'0" WIDE)