CALIFORNIA COASTAL COMMISSION
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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-05-045

Applicant: City of Carlsbad Agent: Mark Biskup

Description: Proposed is improvements to an existing sewer line (approx. 3,800 linear ft.) located along the north shore of Agua Hedionda Lagoon to include: 1) construction of a 10 ft. wide sewer maintenance access road; 2) construction of shoreline protection wall (approx. 1,800 linear ft.); 3) relocation of 600 ft. of sewer pipe and construction of two residential lateral connections; 4) rehabilitation/repair of existing manholes; and 5) development of public access trail.

Site: The western segment of the North Agua Hedionda Interceptor (NAHI) located along the north shore of Agua Hedionda Lagoon between Cove Drive and Hoover Street, Agua Hedionda, Carlsbad, San Diego County.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the proposed project. While the City has documented that the existing sewer line is in need of some repairs and maintenance, the proposed development will result in direct impacts to wetlands and to over one (1) acre of coastal sage scrub habitat located directly adjacent to the lagoon that is also occupied by California gnatcatchers. The Commission's staff Resource Ecologist has reviewed the project and has determined that the coastal sage scrub habitat on the subject site is an Environmentally Sensitive Habitat Area (ESHA) that is protected under Section 30240 of

the Coastal Act. In addition, the City has not adequately documented that there is an existing threat to the sewer pipe and staff believes there are alternatives available that would reduce or avoid entirely impacts to ESHA and wetlands.

While staff agrees it is best to have access to necessary infrastructure, in the case of the proposed development, the existing sewer pipe is located directly along the shoreline of Agua Hedionda Lagoon. The pipeline alignment includes many sensitive coastal resources including steep slopes, sandy beach areas, wetlands, native upland habitats and protected wildlife. Thus, the existing sewer pipe is located in a very sensitive location. Rather than pursue a capital improvement project to maintain, fortify and perpetuate this pipe in such a sensitive location (resulting in significant permanent impacts to ESHA), the City should look at other measures to relocate the pipe to a more suitable and less sensitive alignment. If it is determined that repairs to the pipe and manholes are necessary before such other more substantial relocation efforts can be accomplished, then necessary repairs should be completed on a one-time only basis. While these repairs would result in impacts to sensitive resources, the impacts would be temporary and could be minimized to avoid significant disruption of ESHA.

Standard of Review: Chapter 3 policies of the Coastal Act.

Substantive File Documents: Certified City of Carlsbad Agua Hedionda Land Use Plan; Environmental Impact Report and Technical Appendices for the North Agua Hedionda Interceptor Western Segment dated October 2004 by Dudek & Associates (SCH #2003051076); Final Addendum to the Environmental Impact Report for the North Agua Hedionda Interceptor Western Segment dated December 2004 by Dudek & Associates; Habitat Management Plan for Natural Communities in the City of Carlsbad dated December 1999 with addendum.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 6-05-45 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **denies** a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves repairs/improvements to an existing sewer line (the North Agua Hedionda Lagoon Interceptor – NAHI) that runs along the north shore of Agua Hedionda Lagoon in the City of Carlsbad. The project includes construction of a 10 ft. wide sewer maintenance access road, construction of an approximately 1,800 ft long shoreline protection wall, relocation of 600 ft. of sewer pipe and construction of two residential lateral connections, repairs to several existing manholes and construction of a public access trail.

The project site is located along the north shore of Agua Hedionda Lagoon extending from Cove Drive, west to the Foxes Lift Station (just east of Interstate 5). The sewer alignment follows along the shoreline. The eastern most portion of the project site (from manhole #19 to manhole #24) is bordered by several residential structures and a private boat club/launch. Most of the remainder of the project site borders steep naturally vegetated slopes (from manhole #10 – manhole #18). The vegetation on the slopes consists primarily of coastal sage scrub habitat which extends to the shoreline. The shoreline itself includes sandy beach areas, intertidal rocky areas, mudflats and salt marsh habitats. Currently, a public access trail extends along the shoreline from Cove Drive, west to the private boat club/launch (approximately 560 ft.). The segment of the shoreline extending from just west of the boat club west approximately 1,000 feet is relatively inaccessible due to the steep hillsides and narrow beach. At approximately manhole #10, the shoreline is accessed by an informal path that leads from Hoover Street and along the shoreline until the landform makes continued lateral access difficult and subject to the tides.

Each of the project components is described in detail below:

a. Sewer Maintenance Access Road

The western segment of the NAHI sewer pipeline is approximately 3,800 lineal feet (generally between manhole nos. 8-24 – ref. Exhibit Nos 3 & 4). Of this, approximately

1,600 lineal feet requires construction of an access road as 14 manholes within this area are no longer accessible for maintenance and emergency response. Thus, in order to complete necessary repairs and allow for future maintenance and repairs, permanent access is required. The proposed alignment of the access road will follow the centerline of the sewer pipeline directly adjacent to the lagoon and will be 10 ft. in width and constructed of decomposed granite (DG), with the exception of an approximately 150 ft. section located east of manhole #19 where the alignment is currently paved. A 2 ft. wide biolfiltration, grassy swale will be constructed on the inland side of the access road. Three crib walls, totaling 552 ft. in length and ranging in height from 1-1/2 to 6 ft. high will be constructed on the inland side of the access road to minimize slope impacts. In addition, a 230 ft. long paved road to access the pipeline will be constructed extending from the terminus of Hoover Street, south to the proposed DG access road along the sewer pipe alignment.

b. Public Access Trail

The proposed sewer maintenance access road will also serve as a part of a regional trail system planned for the north shore of Agua Hedionda Lagoon and be open for public use. While gates will be installed at either end of the sewer maintenance road, these gates are only proposed to limit vehicular access and would allow for public pedestrian access. Trail amenities will include public access signage, trashcans and pet waste disposal facilities. The trail will extend from Hoover Street at the western end of the project site and then follow the sewer maintenance road to the east to approximately manhole #19 (ref. Exhibit #8).

c. Shoreline Protection Wall

The proposed shoreline protection wall will be constructed along the shoreline of the lagoon adjacent to and south of the proposed sewer access road. The wall will extend approximately 1,800 lineal ft. between manhole numbers 10 to 19. The height of the wall will vary and range from 1 ft to approximately 5 ½ ft above the beach surface. Wall construction will be a drilled pier foundation consisting of 24-inch diameter piers set approximately 5 ft. to 30 ft. below the existing shoreline elevation and spaced 6 to 8 ft. on center with concrete in between. The seawall will be located on the seaward side and a constant offset from the centerline of the existing sewer pipe alignment. The face of the wall will be colored and textured to better resemble the surrounding natural bluffs adjacent to the lagoon shoreline. A cable railing anchored into the wall is proposed along the top of the wall wherever the wall height exceeds 30 inches above the shoreline (ref. Exhibit Nos. 4 & 5).

d. Sewer Pipeline Improvements

The project includes relocation of two portions of the existing sewer pipe to allow permanent access/maintenance without disrupting existing land uses. Currently, manhole #20 and approximately 70 ft. of sewer pipeline are located within a private volleyball court, which was constructed on top of the existing sewer easement. The project

proposes to relocate the 70 ft. segment of pipe and abandon manhole #20 and construct a new section of pipe and a new manhole (#1) outside of the volleyball court, approximately 8 ft. to the south towards the lagoon. Also, at the end of Cove Drive, approximately 240 ft. of sewer pipe and two manholes (Nos. 22 and 24) are currently located within a private driveway, which was constructed over the existing sewer easement. The project proposes to construct a new sewer pipe and two manholes (Nos. 2 and 3) just east of the existing alignment.

Also proposed is the construction of two residential sewer laterals (within existing sewer easement) that would provide sewer service to two residential lots located north of the sewer easement and just west of manhole #19. Both lots are currently undeveloped. However, one of the lots has received approval for construction of a single-family residence (ref. CDP #6-04-161/Steward).

e. Repairs to Manholes

The existing sewer manholes along the project alignment are in need of repairs/maintenance. Based on recent inspections, 21 manholes were found to be in poor condition with deteriorated interior concrete walls, exposed surfaces and subject to infiltration from groundwater and sediment. As part of the proposed project, the manholes will be rehabilitated by installing slip-linings and/or concrete patching of deteriorated concrete.

The NAHI is a 24-inch diameter sewer pipe that was constructed in 1965. It runs west from the intersection of Cannon Road and El Camino Real (located approximately 3 miles east of the project site) within Carlsbad City streets and along the north shore of the lagoon to the "Foxes" Lift Station located just east of Interstate 5 (ref. Exhibit #3). The proposed project involves only the western (3,800 lineal ft.) segment of the NAHI extending from Cove Drive to just west of the Foxes Lift Station. Currently, it is estimated that the NAHI coveys approximately 1 ½ million gallons of sewage each day (1.5 MGD) with peak flows as high as 3 MGD. When originally constructed, the western segment of the NAHI included an unimproved access road for most of its length as well as riprap along the shoreline to protect the pipe and access road. Over the years, the access road has all but disappeared due to lack of use, growth of vegetation and wave, water and wind driven erosion of the adjacent shoreline. Currently, several manholes are exposed to the lagoon tides as the originally installed riprap has not been maintained. Only small remnants of the riprap remain visible along the shore. While the sewer pipe itself has been found to be in generally good condition, the City has indicated that the limited accessibility has prevented cleaning and inspection of portions of the pipeline. Thus, the purpose of the proposed project is to construct an improved access road to allow for future routine maintenance and emergency repairs and to provide improved shoreline stabilization to eliminate the potential for further undermining and erosion of the pipe. Implementation of the proposed project would also serve to provide a public access trail along the northern portion of the lagoon.

Agua Hedionda is one of six segments of the City of Carlsbad's LCP. While most of the city's coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Land Use Plan used as guidance.

2. <u>Protection of Environmentally Sensitive Habitat Areas</u>. The proposed project will result in impacts to biological resources, including coastal sage scrub and wetlands. The proposed project is located along the north shore of Agua Hedionda Lagoon. The area surrounding the project site includes the lagoon to the south, residential development and a private boat club/launch in the eastern-most portion, with steep naturally-vegetated slopes comprising the rest of the area. Based on the biological analysis provided by the applicant, six native plant communities or habitat types occur in the project area. These include open water, intertidal mudflat, intertidal rocky beach, southern coastal salt marsh, southern willow scrub and coastal sage scrub. In addition, one sensitive plant species, the southwestern spiny rush and two sensitive wildlife species, the California gnatcatcher and salt marsh skipper occur within the project area.

A. <u>Habitats Types Found on the Project Site</u>

The following is a description of each of the habitat types found on the project site:

(1) Coastal Sage Scrub

Coastal sage scrub (CSS) is a native plant community composed of a variety of soft, low, aromatic shrubs that is characterized by special adaptation to fire and low soil moisture. CSS is recognized as a sensitive plant community by local, state, and federal resource agencies. It supports a rich diversity of sensitive plants and animals and it is estimated that it has been reduced by 85-90% of its historic coverage throughout southern California.

According to the Biological Resources Technical Report (BRTR) prepared for the project, coastal sage scrub is the most common upland plant habitat found along the project corridor. The coastal sage scrub habitat extends landward from the lagoon and its associated wetlands. The habitat type is dominated by California sagebrush, black sage, California encelia (*Encelia californica*), flat-top buckwheat, coyote brush (*Baccharis pilularis*), lemonadeberry and laurel sumac.

The site also contains five areas of disturbed CSS that contain lemonadeberry, laurel sumac, black sage (*Salvia mellifera*) as well as several non-native species including pampas grass, hottentot-fig (*Carpobrotus edulis*), curly dock (*Rumex crispus*), horehound (*Marrubium vulgare*) and slender wild oat (*Avena barbata*). According to the BRTR, the disturbed CSS on site supports 20 – 50 % cover by CSS indicator species and although disturbed, provides similar function as the non-disturbed variety and is, therefore, considered sensitive.

(2) Intertidal Mudflat

Intertidal mudflat areas include all the sandy shore located within the normal tidal range. This area contains minimal vegetation aside from algae but is used for foraging by shorebirds. This habitat occupies the majority of the intertidal zone along the project site.

(3) Intertidal Rocky Beach

The rocky intertidal areas of the project site consist of exposed bedrock and some riprap (probably the remnant from the protection associated with the original construction of the sewer line in 1965). The subject site contains two rocky intertidal areas; one near the middle of the project (approximately 200 ft. in length) and a smaller area (approximately 50 ft. in length) near the eastern end of the project. All the rocky interdial habitat within the project is unvegetated.

(4) Southern Coastal Salt Marsh

Southern coastal salt marsh occurs in bays, lagoons and estuaries receiving marine tidal influence. Vegetation composition varies with tidal influence and period of inundation with the greatest diversity of species occurring with the least tidal influence. Typical species include alkali weed (*Cressa truxillensis*), salt grass, salty Susan (*Jaumea carnosa*), salt cedar (*Monanthochloe littoralis*), pickleweed (*Salicornia* spp.), California cordgrass (*Spartina foliosa*) and California sea-blite (*Suaeda californica*). According to the California Coastal Conservancy, coastal salt marsh habitat has been reduced by 80% statewide.

The project site contains coastal salt marsh in areas adjacent to the sandy or rocky shoreline. Patches of coastal salt marsh are present in several areas of the project site. Typical species identified include salt grass, common pickleweed, salty Susan, spiny rush and saltbush (*Atriplex* spp.). The project site also includes several areas of disturbed coastal salt marsh. These areas support salt grass and other indicator species including several non-native species. According to the Biological Resources Technical Report, although disturbed, these small patches provide similar functions as non-disturbed salt marsh and, therefore, are considered sensitive.

(5) Disturbed Southern Willow Scrub

Southern willow scrub is described as a dense, broad-leafed, winter deciduous riparian thicket dominated by several species of willow (*Salix* spp.), with scattered emergent Fremont's cottonwood (*Populus fremontii*) and western sycamore (*Platanus racemosa*). Disturbed southern willow scrub occurs in an area at the far western end of the project site, near the Foxes Lift Station. The area supports a canopy of mature arroyo willow (*Salix lasiolepis*) with an under story dominated by exotic invasive species. According to the Biological Resources Technical Report, despite the presence of the native species,

this habitat community retains wetland functions and values and is, therefore, considered sensitive.

(6) Open Water

This habitat type relates to the lagoon area beyond the shoreline which permanently contains water and does not contain emergent vegetation. This habitat type is present along the southwestern and southern borders of the project.

B. Wildlife Found on the Project Site

According to the Final Environmental Impact Report (FEIR) for the project, a variety of wildlife are present on the project site. The coastal sage scrub onsite provides habitat for a variety of birds, including the house finch (*Carpodacus mexicanus*), Anna's hummingbird (*Calypte anna*), California towhee (*Pipilo crissalis*), bushtit (*Psaltriparus minimus*), American crow (*Corvus brachyrhynchos*) and the coastal California gnatcatcher (*Polioptila californica*). The coastal salt marsh and intertidal areas also provide habitat for many birds, including the great blue heron (*Ardea herodias*), killdeer (*Charadrius vociferous*) and the American coot (*Fulica Americana*). Reptiles expected to be present on the site include the side-blotched lizard (*Uta stansburiana*), western fenced lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis melanoleucus*) and red-diamonded rattlesnake (*Crotalus rubber*). Mammals include brush rabbit (*Sylvilagus bachmani*), California pocket mouse (*Chaetodipus californicus*) and striped skunk (*Mephitis mephitis*). Eight species of butterfly were recorded on the project site, including cabbage butterfly (*Pieris rapae*), west coast lady (*Vanessa annabella*), pygmy blue (*Brephidium exile*), fiery skipper (*Hylephila phyleus*), salt marsh skipper (*Panoquina errans*), and buckeye (*Junonia coenia*).

According to the FEIR, two sensitive species of wildlife have been recorded on the project site, the coastal California gnatcatcher and the salt marsh skipper. Two pairs of California gnatcatchers were observed in the on-site coastal sage scrub habitat and 16 individual salt marsh skippers were observed in seven different locations on the project site. The California gnatcatcher is listed by the U.S. Fish and Wildlife Service (USFWS) as threatened. The salt marsh skipper, while not listed, is considered locally sensitive.

C. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas be protected against any significant disruption of habitat values, and only use dependent on those resources shall be allowed within those areas. On the project site, at least one habitat, the coastal sage scrub (CSS), is an environmentally sensitive habitat area (ESHA).

Section 30107.5 of the Coastal Act defines an environmentally sensitive area and states:

> "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The subject site contains coastal sage scrub habitat extending from the lagoon up the sloping hillsides from just east of Hoover Street, east for approximately 1,400 ft. In addition, several stands of disturbed CSS are scattered through the project site. According to the FEIR, two pairs of California gnatcatchers have been observed on the project site. It is fairly universally accepted among specialists that CSS is easily degraded and in fact has been destroyed by development over large areas of the state.[1] About 2.5% of California's land area was once occupied by CSS. In 1981, it was estimated that 85% to 90% of the habitat type has been destroyed state-wide and, in 1991, it was estimated that San Diego, Orange and Riverside counties has lost 66% of their CSS.[2] Current losses are higher and losses in the coastal zone have undoubtedly been much higher. Compared to its natural distribution and abundance, CSS is in decline and it is in decline because it has been destroyed by human activities. Besides being in decline, CSS provides important ecological functions. It can be home to some 375 species of plants, many of which are local endemics. About half the species found in CSS are also found in chaparral after a fire, but disappear from that habitat after about 7 years. Nearly 100 species of rare plants and animals are associated with CSS habitats.[3] In addition, CSS is often the natural upland habitat adjacent to wetlands such as coastal salt marsh (as is the case for the subject site), and is important to species that require both habitat types to complete their life cycle. Even degraded CSS may provide essential habitat for species that require both CSS and saltmarsh to complete their life cycles.

Relative to designating the on-site CSS as ESHA, the Commission's staff Resource Ecologist has reviewed the proposed project and the various technical reports regarding biological resources and has concluded that the CSS present on the subject site is ESHA. It should be noted that he has also concluded that regardless of the presence of the California gnatcatchers on the subject site, for many of the above-cited reasons, the on-site CSS would still be considered ESHA. The Commission, therefore, finds that the CSS on this site is ESHA and is protected under Section 30240 of the Coastal Act.

D. Impacts and Proposed Mitigation

Construction of the proposed access road, seawall and sewer line improvements will result in direct permanent impacts to biological resources on the subject site. These impacts result from grading for the road (and a construction easement corridor), the

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[1] Mooney, H.A. 1977. Southern Coastal Scrub. Pages 471-489 in M.G. Barbour and J. Major, eds. Terrestrial Vegetation of California. Davis, U.C. Press; Westman, etc

[2] Westman, W.E. 1981. Factors influencing the distribution of species of California coastal sage scrub. Ecology 62:439-455; Michael Brandman Assoc. 1991. A rangewide assessment of the California gnatcatcher. A report to the Building industry Association of Southern California cited by J.E. O'Leary, et al. 1994, below.

[3] O'Leary, J.F., et al. 1994. Bibliographies on coastal sage scrub and other related malascophyllous shrublands of Mediterranean-type climates. California Wildlife Conservation Bulletin No. 10.

footprint of the proposed road, upland cribwalls and the shoreline protection wall. The following table details the type and acreage of each habitat impacted by the proposed development:

Habitat Type	**Permanent Impacts**	**Temporary Impacts**	**Total**
Intertidal Mudflat	0.04 acres	0.09 acres	0.13 acres
Intertidal Rocky Beach	<0.01 acres	0.01 acres	<0.01 acres
Southern Coastal Salt Marsh	0.10 acres	0.10 acres	0.20 acres
Disturbed Southern Coastal Salt Marsh	0.00 acres	<0.01 acres	<0.01 acres
Coastal Sage Scrub	0.30 acres	0.74	1.04 acres
Disturbed Coastal Sage Scrub	0.00 acres	<0.01 acres	<0.01 acres

The above described acreages include all direct impacts. While the FEIR has broken out impacts into several categories (permanent and temporary), these impacts will all result in the removal of vegetation/habitat and the Commission does not differentiate the temporary impacts from permanent. The Commission's staff Resource Ecologist. Dr. John Dixon, has reviewed the proposed project including the Biological Resources Technical Report prepared for the project and has concluded that all the proposed impacts should be considered permanent. Specifically he states:

> In my opinion, all the impacts are permanent. The fact that they propose to restore habitat within the same footprint where they are destroying it does not make it "temporary." To me, the critical question is "Does the activity remove habitat and result in the death of most or all of the individuals present?" If the answer is YES, then it is a permanent impact…a temporary impact is one that stresses the habitat and individuals, but does not remove them.

Because the proposed development will result in removal of the habitat, albeit for a short period of time in some areas, all the above-described impacts are considered permanent. In addition, implementation of the proposed project will result in the permanent loss of habitat that is occupied by two pairs of California gnatcatchers.

To mitigate the above-described impacts, the applicant is proposing a combination of creation, revegetation, restoration and preservation. For permanent wetland impacts (as defined by the applicant and detailed in the table above), the applicant is proposing to create new habitat within Agua Hedionda Lagoon, at a ratio of 4:1. For temporary wetland impacts (as defined by the applicant and detailed in the table above), the applicant is proposing to restore the impacted area at a 1:1 ratio with like habitat.

For permanent CSS impacts (as defined by the applicant and detailed in the table above), the applicant is proposing mitigation at a 2:1 ratio consisting of at least 1:1 creation

within Agua Hedionda Lagoon and either habitat preservation offsite (outside the Coastal Zone) or additional habitat creation within Agua Hedionda Lagoon at a ratio of 1:1. For temporary CSS impacts (as defined by the applicant and detailed in the table above), the applicant is proposing to restore the impacted area at a ratio of 1:1. In addition, for the permanent loss of coastal sage scrub habitat occupied by California gnatcatchers, the applicant is proposing to deduct credits at a 1:1 ratio from the Lake Calavera mitigation bank which is located outside of the Coastal Zone.

E. Carlsbad Habitat Management Plan

(1) History

In 1993, the coastal California gnatcatcher was listed as threatened under the federal Endangered Species Act (ESA))**,** 16 U.S.C. § 1531 *et seq*. The coastal California gnatcatcher is found primarily in coastal sage scrub habitat in southern California. Based upon scientific estimates, coastal sage scrub habitat in San Diego County has been reduced by more than 70% of its original coverage. Fewer than 900 gnatcatcher pairs likely remain in the county; however, San Diego County currently supports the largest gnatcatcher population in California and presents the most significant opportunity for large-scale preservation of the species. This listing has had a significant effect on future public and private development in areas containing gnatcatcher habitat. In order to proceed, development in areas with gnatcatchers would have to completely avoid "take" or else receive federal authorization. Several other species have been listed under the federal or state ESA since 1993; currently, approximately 25 species that are listed, or proposed for listing, occur in or are associated with habitat located in Carlsbad.

The Carlsbad HMP and the Multiple Habitat Conservation Program (MHCP) were developed to meet criteria for the California Department of Fish and Game's (CDFG) Natural Communities Conservation Planning process (NCCP), which was initiated in southern California in 1991 and of the federal Endangered Species Act (ESA). In the initial phases of the NCCP coastal sage scrub (CSS) program, guidelines for process and conservation of CSS were developed, and the USFWS adopted a special rule regarding the gnatcatcher pursuant to Section 4(d) of the federal ESA**,** 16 U.S.C. § 1533(d). *See* 50 C.F.R. § 17.41(b), 58 Fed. Reg. 65088 (Dec. 10, 1993). This special rule exempts take of gnatcatchers during the interim period prior to approval of plans under the NCCP program, provided the take is consistent with NCCP process and conservation guidelines. In connection with the NCCP's program for CSS and the 4(d) rule, through an informal regional agreement, interim impacts in the San Diego region have been capped at 5% of the existing habitat within each jurisdiction participating in the NCCP program.

In 1992, the City signed an NCCP agreement with the California Resources Agency to develop the Habitat Management Plan (HMP) as part of the City's General Plan. The 1992 agreement enrolled the City in the NCCP program as an "Ongoing Multi-Species Plan" as defined in the NCCP process guidelines. The agreement was supplemented in 1993 to clarify that the HMP is a subarea plan of the San Diego County MHCP.

The City developed the HMP to meet the requirements of a habitat conservation plan pursuant to section 10(a)(2)(A) of the Endangered Species Act [16 USC §1539(a)(2)(A)]. The Carlsbad HMP is intended to satisfy the requirements of a federal HCP, and to function as a subarea plan of the regional MHCP under the NCCP. The MHCP study area involves approximately 186 square miles in northwestern San Diego County. This area includes the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the Carlsbad HMP. Once approved, the MHCP and its subarea plans will replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and will allow the incidental take of the gnatcatcher and other covered species as specified in the plan. Although the HMP is a subarea plan of the MHCP, it will receive its own federal take permit and is not subject to finalization of the MHCP in order to be approved.

In 2003, the Coastal Commission approved an LCP amendment, with suggested modifications for the City (ref. City of Carlsbad LCPA 1-03) which incorporated the HMP into three of the City's LCP Land Use Plan segments (Mello I, Mello II and Agua Hedionda).

(2) HMP Provisions

Based on existing distribution of vegetation communities and sensitive species, the City's HMP identifies a number of "Core and Linkage" areas throughout the City. The subject site is located within what is identified as the "Core 4 Focused Planning Area" which includes the Agua Hedionda Lagoon area and important linkages east of the lagoon. The HMP identifies that this core and linkage area contains a number of important vegetation communities including salt marsh, freshwater marsh, riparian scrub and coastal sage scrub. Utilizing the identified focused planning areas and existing and proposed development, the HMP sets up a preserve system that includes hardline properties, standards areas, and existing preserve.

a. Hardlines

Certain properties have been designated in the HMP with specific development/ conservation footprints, and are known as "hardline" properties. If development is proposed on these sites in a manner that is substantially in conformance with the hardline, the development will be authorized consistent with all other regulatory standards and procedures. The purpose of this process is to ensure that certain areas of onsite habitat will be set aside for permanent preservation, and that the property owners have committed to abide by the established development limitation upon approval of the HMP.

b. Standards Areas

The second category of preserve area in the HMP contains the "standards" areas, for which the HMP contains guidance relative to future habitat preservation and the siting of new development. The standards areas involve specific undeveloped properties within the City that are located in the biological core and linkage areas. These properties are proposed to have conservation goals and standards which would allow at least 25% development of the site, but which provide for minimum conservation of 67% of coastal sage scrub and 75% of gnatcatchers on each site. Several areas have significantly higher standards for greater protection of individual resource areas. Emphasis is placed upon creation of preservation corridors and linkage to the larger MHCP habitat areas. Projects proposed within the standards areas will also require additional consultation with the City and the wildlife agencies to determine whether the project complies with the relevant standards and is consistent with the HMP. Upon receiving approval of their development plans, these property owners will receive take authorization.

c. Existing Preserve Areas

The third category contains existing preserve lands, such as the City's three coastal lagoons and associated wetlands, the Dawson Los Monos Reserve, the Carlsbad Highlands Mitigation Bank, and other preserves located within previously-approved development. These areas, which include both private and public land, have already been conserved for their wildlife value through previous development actions, such as mitigation banks and required open space.

The applicant has indicated that in approving the HMP, the Coastal Commission acknowledged that the HMP would allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it is most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed species.

The applicant further indicates that the HMP specifically contemplated the proposed project. The applicant indicates that Appendix B of the HMP (ref. Exhibit #7 attached) lists specific City projects that are covered by the HMP and, while the exact amount of impacts which would result from the listed projects were not known (at the time of adoption of the HMP), the projects are covered by the HMP. However, the Commission does not agree with this interpretation. While the proposed project is listed as one of the projects in this appendix, Appendix B of the HMP is titled "City Projects Covered By Proposed City-Land Mitigation Bank" . Appendix B further states that "[t]his section contains a list of City projects in addition to the Municipal Golf Course which would be eligible to use a City mitigation bank at Lake Calavera." No where in the Appendix or anywhere else in the HMP does it state that all the City projects listed in this Appendix are permitted. Clearly, this Appendix was included in the HMP to identify City projects that could use the City mitigation bank at Lake Calavera, not to approve a multitude of future City projects where impacts to sensitive resources were not even known.

Relative to the proposed development, the project falls within both the Agua Hedionda Lagoon Hardline Preserve area and an identified standards area (Local Facilities Management Zone #1). Zone #1 is described in the HMP as being almost entirely developed, but containing scattered fragments of natural vegetation, including coastal sage scrub areas that support California gnatcatchers. The HMP further states that much of the remaining vegetation is on the slopes adjoining the lagoon, thus contributing to the biological value of the lagoon watershed. Conservation goals for Zone #1 include the following:

- Conserve the majority of sensitive habitats in or contiguous with biological core areas, including no net loss of wetland habitat, and preserve, coastal sage scrub and maritime succulent scrub adjacent to lagoons. Retain and manage natural habitats adjacent to lagoons to buffer wetland resources from adverse effects…

The HMP further details planning standards for Zone #1 that include the following:

- Avoid removal of maritime succulent scrub and any patches of coastal sage scrub in or contiguous with biological core areas [Agua Hedionda Lagoon]. Preserve at least 50% of coastal sage scrub with preference for avoidance of any areas that contain gnatcatchers. If impacts to native habitats cannot be avoided, mitigate by creation or enhancement of like habitats adjacent to lagoons, or by offsite compensation or restoration within biological core and linkage areas. Maximize the preservation of habitat adjacent to the lagoon.

As detailed above, the proposed project will result in impacts to over 1 acre of coastal sage scrub located directly adjacent to Agua Hedionda Lagoon. The site where the proposed impacts to ESHA will occur is identified as a Standards Area in the HMP and is comprised of 6 or 7 residentially zoned lots that are highly constrained containing steep slopes, sensitive coastal sage scrub vegetation, wetland habitat and gnatcatchers.

In addition to complying with the standards in the HMP, potential future residential development of these sites must be consistent with Section 30250 of the Coastal Act which requires that "new development be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects either individually or cumulatively, on coastal resources."

In order to maximize preservation of contiguous coastal sage scrub habitat and minimize disruption to gnatcatchers on these sites, the HMP/LCP requires development to be clustered on the least sensitive, disturbed portion of the property and as close as possible to existing services (i.e. roads, sewer, etc.). Application of these standards would suggest that development requiring new sewer extensions to serve each individual lot on the south side of Adams Street would be inconsistent with the intent of these policies/standards, and would cumulatively result in removal of all habitat value of the properties along the north shore of the lagoon in this area.

In addition, highly constrained properties are subject to a maximum developable area of 25% of the site which, again, should be clustered near services and located on the least sensitive portion of the site. Informal pedestrian access to the lagoon across several of the residential parcels, including the sites adjacent to the pedestrian access at Hoover Street, have resulted in disturbed areas where any potential future residential buildout should occur. Such residential development could potentially be served by infrastructure improvements that are different than those contemplated by the proposed project and which are used as a basis to reject several alternatives, including relocation of the sewer line, discussed below.

In addition, while the HMP has been incorporated into the City's LCP, relative to the proposed development, the Coastal Commission has yet to review and approve implementing ordinances for the Agua Hedionda Lagoon LUP segment (where the proposed development is located) and, thus, this area remains in deferred certification with Chapter 3 policies of the Coastal Act as the standard of review and the certified LUP/HMP used as guidance.

F. Alternatives

In addition to mitigation measures, the FEIR for the project also considered four (4) alternatives to the project. These alternatives include:

1. No Project Alternative
2. Sand Replenishment Alternative
3. Segmented Road Alternative
4. Pump Station/Forcemain Alternative

The "No Project" Alternative would leave the sewer pipe as is and City crews would attempt to conduct maintenance to those manholes that are accessible. However, some of the manholes currently requiring maintenance would not be accessible and thus, would not be maintained. In addition, the sewer pipe will continue to be subject to wave action and erosion along the shoreline eventually leading to eventual (not known when) undermining of portions of the pipe and possible failure of the pipe resulting in a sewage spill into Agua Hedionda Lagoon. While this alternative would have no impacts, it was dismissed by the applicant because it failed to fulfill any of the project objectives.

The "Sand Replenishment" Alternative includes construction of the permanent access road similar to the proposed project. However, rather than construct the approximately 1,600 ft.-long shoreline protection wall, this alternative includes reconstruction of the shoreline slope and placement of sand along the shore (including future replenishment as necessary). The main benefit of this alternative is it eliminates the need for a hardened shoreline protection structure and its resultant impacts on visual resources and shoreline sand supply. However, this alternative was dismissed by the applicant because it would result in greater impacts to wetlands and would result in greater overall costs than the

proposed project. In addition, this alternative would still have the same impacts to sensitive upland habitat due to construction of the access road.

The "Segmented Road" Alternative involves the construction of four separate roads spurs from Adams Street to access the sewer line instead of the proposed access road that follows the sewer alignment. However, this alternative was dismissed by the City as it would result in greater impacts to sensitive upland habitat areas, greater visual impacts due to four paved roads down the hillside, would not provide the public access road along the shoreline and would result in much greater project costs.

The last alternative analyzed in the FEIR, the "Pump Station/Force Main" alternative, avoids all impacts to CSS and gnatcatchers and results in only .05 acres of impacts to wetlands. The Pump Station/Forcemain Alternative would result in abandonment of the gravity sewer pipe located along the lagoon shoreline and then placement of a new pipe along an alternative route primarily within existing roadways and other developed or disturbed areas. This alternative would require the installation of a new pump station as the realigned pipe would not convey sewage by gravity. According to the FEIR, this alternative would fulfill the project objectives, avoid significant impacts to biological resources and is feasible. Specifically, the FEIR concluded that this alternative would not result in significant unmitigable impacts to visual resources, sensitive biological resources, cultural resources or to geology and soils. However, this alternative was dismissed by the applicant because it would result in some additional impacts (as compared to the proposed project) to air quality (due to greater consumption of energy required to pump sewage), hazardous waste (due to transportation and storage of chemicals needed for the pump station), land use (adjacent residential development may be affected by pump station) and noise (from operation of the pumps) that were not previously identified.

Subsequent to the FEIR, based on discussions with Commission staff, the City prepared additional information relative to alternatives (ref. Exhibit #9). Relative to the "Pump Station/Force Main" alternative, the City provided additional information to demonstrate that this alternative is infeasible despite the conclusion of the FEIR that it would be feasible. If the existing sewer line is abandoned and a new line is placed within Adams Street, the City has indicated that up to 13 individual properties (8 are undeveloped and 5 are developed) located on the south side of Adams Street would need to construct private facilities to pump sewage up to the street (as gravity feed would no longer be feasible). The City indicates that such private pumps are known to have a high failure rate as individual owners tend not to perform the high level of maintenance necessary to maintain the pumps and the City cannot perform the maintenance. The City also indicates that this alternative would require the installation of a new pump station in a densely populated area that would not be supported by surrounding neighbors and would require a significant investment to minimize the potential for spills and avoid operational impacts (noise, odor, etc.). In addition, the City indicates that this alternative would still require a one-time access for the length of the pipe to clean and plug existing manholes which would result in temporary impacts to both upland and wetland habitat. This alternative would also result in the elimination of the public access road along the

shoreline. Finally, the City indicates that this alternative would cost greater than 2 times as much as the proposed project ($12 million vs $5.1 million). Thus, the City has indicated that this alternative is not feasible.

However, while the Commission agrees that the "Pump Station/Force Main" alternative will cost more than the proposed project, the Commission has further reviewed this alternative and does not agree it is infeasible. Relative to the concern raised by the City regarding the need for private sewer pumps with this alternative, the Commission notes that 8 of the 13 properties potentially affected are undeveloped. Of those eight, five are owned by the same family and those properties are the most constrained from a resource standpoint containing mostly steep slopes and sensitive upland habitat. Thus, potential buildout of these properties should be looked at comprehensively to identify and protect sensitive resources. Whatever development is proposed in the future, pursuant to the City's HMP, should be clustered in the least sensitive areas of the site, while preserving the majority of the on-site sensitive resources. Under this scenario, there will likely be less than 13 private pumps necessary. In addition, while this alternative would require that a new pump station be constructed, the Commission does not agree it needs to be constructed in the parking lot of a densely populated condominium development as indicated by the City. There are other areas more removed from residential development where a pump station could be located. While the City, at the direction of Commission staff, did look at placing a pump station on a site further to the west, for the same reasons cited above, the City dismissed this as an appropriate site (ref. Exhibit #6).

The City also evaluated another alternative. This alternative involves the construction of a temporary seasonal access road to be constructed each time access was needed. However this alternative was also dismissed as infeasible due to habitat impacts, costs, failure to provide protection for the pipe and because it would not provide necessary access 24 hours/day, 7 days a week.

Based on the above, the applicant contends that the proposed project is the least environmentally damaging feasible alternative as it will provide permanent access for maintenance and repairs and provide maximum protection to the existing sewer pipe, both of which will help to eliminate/reduce potential sewage spills. The proposed alternative will cost less than other alternatives that reduce or eliminate impacts and will also provide an added benefit of providing public access along the proposed maintenance road upland of the shoreline.

In addition to those identified above, the Commission notes that other alternatives may be feasible that would significantly reduce or eliminate impacts to sensitive resources. One such alternative would be to eliminate the proposed shoreline protection wall and permanent access on top of the existing sewer pipe and then use sand replenishment or other non-structural means to stabilize and protect the pipe.

In addition, if utilized, sand replenishment could act as a temporary platform for access by maintenance crews to do necessary repairs to existing manholes. Each year (or what ever appropriate time period) that additional sand placement is completed, maintenance

crews could again access the pipeline using the sand as a platform. However, if the sand replenishment alternative would result in greater impacts to wetlands than allowable under the Coastal Act, rebuilding of the back beach area adjacent to the exposed portions of the sewer line is a possible alternative that would achieve the necessary stabilization and reduce impacts to wetlands. Either alternative should be more fully considered to eliminate impacts to ESHA and beach access associated with placement of a 1,600 ft.-long seawall on the lagoon side of the sewer line. These alternatives would have the added benefit of providing more beach area for use by the public as opposed to the seawall which will reduce beach area available for public use over the long-term.

Another alternative would be to complete a one-time only access to perform necessary repairs and maintenance that does not include grading a 10 ft, wide road such that impacts to ESHA are reduced to the maximum extent feasible. Such an alternative could be accomplished by utilizing equipment that is available in other San Diego County jurisdictions to minimize impacts. For example, the City of San Diego has purchased "low impact maintenance vehicles" equipped with rubber tires and/or treads for use in sensitive areas that are smaller, narrower and lighter than typical maintenance vehicles. According to City of San Diego representatives, this equipment results in a smaller impact footprint, or, frequently, no impact at all. While it is recognized that some impacts to existing habitat will have to occur in the near-term to repair manholes and clean-out the sewer line, based on the above, it appears this could be accomplished with far less impacts and less "structural " improvements.

Based on the above discussion, the Commission finds that there are other feasible alternatives available that eliminate or reduce impacts to sensitive coastal resources. While the Commission agrees the optimum condition is to have continuous, unobstructed access to necessary infrastructure, in the case of the proposed development, the existing sewer pipe which is inaccessible and is located directly along an undeveloped portion of the shoreline of Agua Hedionda Lagoon that has not had access for maintenance for many years, and there has been no spills recorded. The infrastructure needs for buildout of this area are currently unknown. The Commission finds, in this particular case, the optimum condition for maintenance access should not be expected because it would perpetuate retention of sewer improvements within ESHA that could possibly be relocated to serve future development in the area. The existing pipeline alignment includes many sensitive coastal resources including steep slopes, sandy beach areas, wetlands, native upland habitats and protected wildlife. Thus, the existing sewer pipe is located in an inappropriate location. Rather than pursue a capital improvement project to maintain and perpetuate this pipe in an inappropriate location (resulting in significant permanent impacts to ESHA), the Commission finds that the City should look at other measures to relocate the pipe to a more appropriate and less sensitive alignment. In the interim, one-time impacts to provide the necessary maintenance and stabilization of the pipeline are preferred and capable of being implemented in a manner consistent with Coastal Act requirements.

G. Coastal Act Consistency

The project site contains various sensitive and valuable habitat areas including wetlands and coastal sage scrub. Based on the above discussion, it is clear the project will result in significant adverse impacts to onsite sensitive biological resources. As impacts are proposed both to wetland and upland habitats, each are discussed separately below.

(1) Wetlands

Section 30233 of the Coastal Act addresses the protection of wetlands and states, in part:

Section 30233

(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:

(l) 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.

[…]

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of

> the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the l9 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study….
>
> […]

Several wetland delineations have been performed for the project site by the applicant's biological consultants. Based on these surveys, several wetland habitat types have been identified on the project site including open water, intertidal mudflat, intertidal rocky beach, southern coastal salt marsh, disturbed southern coastal salt marsh and disturbed southern willow scrub. The Commission's staff Resource Ecologist has reviewed the delineations and has concluded they were performed correctly and are acceptable. As noted previously, the proposed project will result in direct permanent impacts to approximately .34 acres of on-site wetlands. To find the project consistent with Section 30233 of the Coastal Act, the Commission must find that: 1) the project is one of the above cited allowable uses; 2) there are no feasible less environmentally damaging alternatives; and, 3) adequate mitigation measures have been provided.

1. Allowable Use

The purpose of the proposed project that will result in wetland fill is to construct a maintenance road and provide protection for an existing public sewer pipe. As noted above, Section 30233 of the Act allows wetland fill if it is for an incidental public service purpose. In this case, the existing sewer pipe provides a public service. The proposed project will not result in any increase in capacity of the existing sewer pipe; its purpose is to protect, access and maintain the existing pipe, which is incidental to the main purpose of the pipe which is to convey sewage. Therefore, the project can be considered an incidental public service project, which is a permitted use under Section 30233(a)(5).

However, as cited above, Section 30233(c) is applicable to the proposed development as Agua Hedionda Lagoon is one the l9 coastal wetlands identified in the report entitled "Acquisition Priorities for the Coastal Wetlands of California". As such, any diking, filling, or dredging in existing estuaries and wetlands shall be limited to very minor incidental public facilities, restorative measures or nature study. While, as discussed above, the Commission has determined that proposed sewer repair/maintenance project, which does not include any expansion or any increase in capacity, is an allowable use as an incidental public service project under either Section 30233(a)(5), there is a question as to whether the proposed project would qualify as a "very minor" project. Recently, the Commission addressed this issue in its approval, under Federal Consistency Review, of a project for replacement of an existing railroad bridge that spans Agua Hedionda Lagoon (ref. CC-055-05, NCTD Bridge Replacement). In its decision, the Commission found that the project met the definition of a "very minor" project in that is was a limited expansion of an existing transportation facility that was necessary to maintain existing capacity. In the case of the proposed project, the Commission finds this is not the case.

The project goes beyond just repair and maintenance of an existing public facility in that it includes substantial grading, construction of a 10 ft. wide access road, drainage facilities and the installation of an 1,800 ft. long seawall that results in the fill of wetlands. Thus, while the project can be considered an allowable use as an incidental public service project under Section 30233(a)(5), in this particular case, the Commission finds that the project is not an allowable use as a very minor incidental public facility under Section 30233(c) of the Coastal Act.

2. Feasible Alternatives

Once the proposed wetland fill is found to be a permitted use, it must then be determined that there are no other feasible less environmentally damaging alternatives. As noted previously, the applicant has identified four project alternatives. Aside from the No Project Alternative, one of the identified alternatives would involve significantly less impacts to wetlands. The Pump Station/Forcemain Alternative would abandon most of the sewer pipe that exists along the Agua Hedionda Lagoon shoreline and replace it within existing roads and developed/disturbed areas. While the proposed project will result in impacts to approximately 0.35 acres of wetlands, the Pump Station/Forcemain Alternative identified in the FEIR would result in approximately 0.05 acres of wetland impacts. This represents a significant reduction. Again as noted above, while not chosen as the proposed project alternative by the City, this alternative is feasible. Thus, there is a feasible less environmentally damaging alternative available. In addition, Commission staff has identified other smaller scale projects that address the immediate need for sewer pipe repairs and stabilization and that reduce long-term impacts, but do not achieve all the objectives of the proposed project.

3. Adequate Mitigation

If the proposed wetland fill were an allowable use and the project found to be the least environmentally damaging alternative, adequate mitigation for proposed impacts must still be provided. However, adequate mitigation for wetland impacts is not proposed. Typically, the Commission has required that approved and unavoidable impacts to wetlands be mitigated at a ratio of not less than 4:1 creation of new wetland habitat. For the proposed project, identified permanent wetland impacts are proposed to be mitigated at a 4:1 ratio. However, the project also includes “temporary” impacts to wetlands which are proposed to be mitigated at a 1:1 ratio by restoration of the impacted area. As discussed previously, the proposed project has been reviewed by the Commission’s staff Resource Ecologist. Based on his review, he has determined that all proposed wetland impacts are permanent. As such, to assure no net loss of habitat, mitigation for such impacts must include creation of new habitat at a minimum 4:1 ratio (a 1:1 credit for restoration of the impacted area is acceptable towards the 4:1 requirement). Thus, adequate mitigation is not proposed.

In summary, the proposed project will impact wetlands. While the proposed project can be considered a permitted use in wetlands under Section 30233(a)(5) of the Coastal Act (incidental public service project), it does not qualify as a very minor project under

Section 30233(c) of the Coastal act. In addition, the proposed project does not represent the least environmentally damaging alternative nor is adequate mitigation proposed. Therefore, the proposed project is inconsistent with Section 30233 of the Coastal Act.

(2) Upland Habitat

Section 30240 of the Coastal Act addresses protection of sensitive upland habitat areas and states:

Section 30240

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

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

As noted previously, the subject site contains coastal sage scrub (CSS) habitat that is also occupied by two pairs of California gnatcatchers. The proposed project will result in direct impacts to 1.04 acres of CSS. According to the FEIR for the project, the "temporary and permanent loss of a total of up to 1.04 acres of habitat that is potentially occupied by two pairs of federally-listed threatened coastal California gnatcatchers is considered significant. In addition, the potential for the project construction to directly impact coastal California gnatcatcher individuals is significant." The Commission's staff Resource Ecologist has reviewed the Biological Resources Technical Report prepared for the project and has concluded that on-site CSS is ESHA and thus protected from significant disruption of habitat values pursuant to Section 30240(a) of the Act cited above. Thus, the proposed project is clearly not consistent with this policy. The CSS on the site and the two pairs of California gnatcatchers would not be protected against any significant disruption of habitat values. Rather, CSS habitat will be destroyed as a result of the proposed development. Further, uses within the ESHA would not be restricted to those which are dependent on the resources. The proposed access road, cribwalls and other infrastructure will be located within the areas determined to be ESHA. These uses are not resource dependent.

Additionally, as cited above, Section 30240(b) of the Coastal Act requires that development in areas adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade those areas, and is compatible with the continuance of the habitat areas. The proposed development is not consistent with this policy. In this case, the applicant is proposing to eliminate ESHA. Thus, the ESHA is not protected.

Typically, to ensure compliance with Section 30240 of the Coastal Act, development (aside from resource dependent uses) must be sited outside of any designated ESHA.

Further, development adjacent to ESHA must provide a setback or buffer between the ESHA and the development of an adequate size to prevent impacts that would degrade the resources. As noted previously, the proposed project will be sited within ESHA and the applicant is proposing mitigation (on and off-site restoration, creation and preservation) for impacts to ESHA.

However, Section 30240 of the Coastal Act does not provide for mitigation in lieu of protection of ESHA. A Court of Appeal decision [Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493, 83 Cal Rptr. 2d 850 (1999)] speaks to the issue of mitigating the removal of ESHA through development by "creating" new habitat areas elsewhere. This case was regarding a Commission action approving a Local Coastal Program (LCP) for the Bolsa Chica area in Orange County. The Commission determined that a eucalyptus grove that serves as roosting habitat for raptors qualified as ESHA within the meaning of 30107.5 of the Coastal Act. The Commission found that residential development was permissible within the ESHA under Section 30240 because the eucalyptus grove was found to be in decline and because the LCP required an alternate raptor habitat be developed in a different area.

In the decision, the Court held the following:

> The Coastal Act does not permit destruction of an environmentally sensitive habitat area [ESHA] simply because the destruction is mitigated offsite. At the very least, there must be some showing that the destruction is needed to serve some other environmental or economic interest recognized by the act. 83 Cal.Rptr. 2d at 853.

The court further stated:

> [T]he language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits carefully controlling the manner uses in the area around the ESHA are developed. 83 Cal.Rptr. 2d at 858.

Thus, absent a showing that adverse impacts to ESHA are necessary to accomplish some other overriding Chapter 3 objective, the requirements of Section 30240 of the Coastal Act cannot be met by destroying, removing or significantly disrupting an ESHA and attempting to create or restore commensurate habitat elsewhere. Approximately 1.04 acres of California gnatcatcher occupied CSS on the project site will be destroyed by the proposed project. In order to protect these resource, the grading and the installation of an access road, cribwalls and shoreline protection for the existing sewer pipe could not occur within the habitat. There are however, policies of the Coastal Act that allow the construction of shoreline protection for existing structures that are subject to threat

(Section 30235), that protect marine resources from adverse effects from among other things, waste water discharges (Section 30231), and that provide for maximum public access to the shoreline (Sections 30210 and 30212). Section 30200(b) provides that where the Commission identifies a conflict between Chapter 3 policies, the Commission is to utilize Section 30007.5 to resolve the conflict. Thus, the Commission must look at these policies and determine if the proposed project and its impacts to ESHA are necessary to meet some other Chapter 3 policy that would override the objectives of Section 30240.

As noted, the proposed project has essentially two main objectives: to provide protection from wave caused erosion to the existing sewer pipe that runs along the north shore of the lagoon and to provide access to all areas of the sewer line for necessary current and future maintenance. A secondary, but integral component of the project would be the provision of public access along the sewer line maintenance road. Relative to the proposed shoreline protection, the applicant is proposing the construction of an approximately 1,800 ft. long seawall to "avert further undermining and/or erosion…" of the existing sewer line along the Agua Hedionda Lagoon shoreline. The Commission's staff Coastal Engineer has reviewed the proposed project and has determined that the applicant has not adequately documented the need for shoreline protection.

Section 30235 of the Coastal Act pertains to the construction of shoreline protection structures and allows for the construction of shoreline protective devices to protect existing structures that are in danger from erosion. For the subject development, while there is a documented concern relative to erosion, as noted above, the applicant has not documented an imminent threat to the sewer line such that the Commission is required to approve the shoreline protection under Section 30235 of the Act.

Related to the need for protection, the City has indicated that the proposed shoreline protection and access road are necessary to avert a major sewage spill should the sewer line be damaged by wave action and erosion. Because the sewer pipe is located directly adjacent to the lagoon, a sewage spill could result in significant adverse impacts on the lagoon and its various sensitive coastal resources. Thus, the applicant suggests there is an overriding need to impact ESHA to avoid a spill which would be inconsistent with Section 30231 of the Coastal Act. While the Commission agrees a major sewage spill next to the lagoon in this location would probably result in significant adverse impacts on the lagoon environment, as noted above, the applicant has not documented an imminent threat to the pipe at this time. In addition, Commission staff has researched the history of the pipe and contacted staff of the Regional Water Quality Control Board and have determined that there has not been any documented breaks in the pipe nor any direct order to complete repairs. In addition, the FEIR for the project indicates that the "pipeline has been found generally to be in good condition; however, limited accessibility to manholes has prevented the cleaning and inspection of portions of the pipeline." Thus, the applicant has not documented that the pipeline is in danger of breaking nor that there is an imminent threat that would result in a sewage spill impacting the biological productivity of coastal waters.

Lastly, a secondary feature of the proposed project is to provide a means for the public to access the lagoon shoreline along the proposed maintenance access road. This would result in improved public access to areas that are currently not accessible due to the topography of the shoreline and existing vegetation. However, currently, public access easements along the lagoon shoreline are achieved on a lot-by-lot basis as individual development proposals are approved by the Coastal Commission. To date, several lots (mostly in the eastern portion of the project site) have been developed and public access easements recorded.

Due to the sensitive nature of the upland vegetation on the currently undeveloped portion of the site, it is likely the only acceptable form of public access in this segment of the lagoon would be through the existing informal trails that have developed from historic public use down to the pocket beach areas from Adams and Hoover Streets, and along the shoreline when tides are low enough. In addition, public access may persist in areas that are disturbed through a lesser project alternative. Such impacts may be unavoidable and would be far less than those proposed with this project.

While the Commission understands and agrees that installation of the public access road would significantly enhance public access along portions of the lagoon shoreline, such access does not override the provisions of Section 30240 of the Act such that impacts to ESHA can occur. Since there is no showing that there is a conflict between Chapter 3 policies and there is no overriding Chapter 3 objective which can only be implemented through the proposed project's destruction of California gnatcatcher occupied coastal sage scrub habitat, the proposed project cannot be approved as submitted. In addition, as noted previously, there are feasible alternatives to the proposed project that will reduce or eliminate impacts to ESHA. Therefore, the Commission finds that the proposed project which will result in impacts to ESHA is not consistent with Section 30240 of the Coastal Act and the project is denied.

3. Visual Resources. Section 30251 of the Coastal Act addresses protection of scenic resources within the Coastal Zone and states, in part:

Section 30251

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

The proposed project is located along the north shore of Agua Hedionda Lagoon. The project site is for the most part undeveloped and consists mostly of naturally vegetated slopes extending to the shoreline, with some residential development and a private boat club/launch located in the eastern portion of the site. Views of the project site are available to motorists traveling along northbound Interstate 5 (I-5). Construction of the

repairs to the existing manholes will not be visible from offsite locations. However, the proposed access road (and associated grading), 1,800 ft.-long shoreline protection wall and approximately 550 lineal ft. of cribwalls inland of the access road will be visible from the lagoon, its shoreline and Interstate 5 to the west.

Relative to the access road, except for the small section that extends south from Hoover Street, the proposed 10 ft. wide access road will be constructed of decomposed granite and will not result in a prominent visual feature from offsite locations. However, the portion of the access road that extends south from Hoover Street will be paved for approximately 200 ft. As it will be paved and extend down the existing hillside, it will be visible from off-site locations. However, it will appear as a logical extension of Hoover Street and does not include lighting or other features that will make it stand out. Therefore, it should not result in a significant visual impact.

The portion of the project site where the crib walls and shoreline protection wall are proposed is mostly undeveloped consisting of naturally vegetated slopes, small erosional escarpments and small sandy/rocky beach areas. Residential development occurs to the east and west of this undeveloped segment and to the north beyond Adams Street along the ridgeline. Given the natural backdrop, the proposed cribwalls and shoreline protection wall will be highly visible from offsite locations. In addition, as noted above, in order to construct the proposed access road, grading of the steep natural hillside is proposed. All proposed manufactured slopes will be restricted to a maximum 2:1 slope and will be revegetated with native plants. To limit the amount of grading, the project proposes three separate crib walls (82 ft., 219 ft. & 251 ft. long) that range in height from 1 ft. to almost 6 ft. in height. While the crib walls by themselves would represent a significant visual impact given the natural surrounding hillsides, the City has proposed to seed and plant native plants in the open areas of the cribwalls such that eventually the cribwalls will be covered and screened by native vegetation, thereby reducing the visual impacts.

The applicant is also proposing to construct an approximately 1,800 ft. long shoreline protection wall that will extend above the shoreline from 1 ft. to 5 ½ ft. To mitigate the visual impacts of the proposed seawall, the applicant proposes to color and texture the seawall. The visual treatment proposed is similar to the visual treatment approved by the Commission in recent years for seawalls along the San Diego County shoreline. While the proposed surface treatment has been used in other areas along the San Diego County shoreline to reduce visual impacts of shoreline protection, this is the first such protection or treatment in this area. In addition, given the natural surroundings, the proposed shoreline protection, maintenance road and cribwall wall be a significant departure from the natural character of the area. Therefore, the Commission finds that the proposed project will result in significant impacts on scenic visual resources and potential visual impacts associated with the proposed development have not been reduced to the maximum extent feasible. Therefore, the project cannot be found consistent with Section 30251 of the Coastal Act.

4. Shoreline Protection/Hazards. The proposed project includes shoreline protection to protect the existing sewer pipeline. Thus, Section 30235 of the Coastal is applicable and states in part:

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in connection with construction of new development. A shoreline protective device proposed in those situations is likely to be inconsistent with various other Coastal Act policies.

Relative to the proposed shoreline protection, the applicant is proposing the construction of an approximately 1,800 ft. long seawall to protect the existing sewer line along the Agua Hedionda Lagoon shoreline. The seawall will be located on the seaward side and a constant offset from the centerline of the existing sewer pipe alignment. The wall will consist of 24-inch diameter drilled piers set approximately 5 to 30 ft. below exiting grade and spaced 6- to 8-ft on center, with the space between the piers to be filled with structural concrete. The face of the wall will be sculpted and colored to mimic the adjacent natural bluffs. A cable railing will be installed on top of the wall anywhere the height of the wall exceeds 30 inches.

The FEIR for the project includes both a geologic analysis and wave uprush study for the project site. Based on these studies, it was estimated that the shoreline along the project site is eroding at a rate of approximately 0.4 ft. per year. While this rate may seem high, especially given the shoreline is along an enclosed lagoon not subject to normal coastal wave action, according to the FEIR, shoreline erosion along the subject site is mostly due to wind-driven wave action which at times can be significant. In addition, erosion also occurs from waves generated by recreational boats used in the lagoon.

The Commission's staff Coastal Engineer has reviewed the proposed project and technical reports and has determined that the applicant has not adequately documented the need for shoreline protection. While she agrees that the erosion rates provided by the applicant seem "reasonable", she also asserts that the provided material does not explain the project need very well. She states:

> The erosion rates seem reasonable given that there is boat traffic in the lagoon and it's exposed to generated wind waves. The need is mostly out of concern that the sewer line will be exposed if erosion continues. There is no information about how long before portions of the line are actually exposed, estimates about how much line needs to be exposed before it could be undermined and compromised structurally. So, the need seems to boil down to the perception of concern and the need for a better access road.

Section 30235 of the Coastal Act pertains to the construction of shoreline protection structures and allows for the construction of shoreline protective devices to protect existing structures that are in danger from erosion. For the subject development, while there is a documented concern relative to erosion, as noted above, the applicant has not documented an imminent threat to the sewer line such that shoreline protection would be warranted under Section 30235 of the Act.

In addition, as noted above, Section 30235 of the Coastal Act requires that the shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235, such as the formation and retention of sandy beaches, are altered by construction of a seawall. While the subject site is located along a lagoon shoreline and along the ocean itself, the hillsides along the shoreline functions similar to that of a coastal bluff. Bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing wearing away of the lower bluff material, undercutting and/or cave formation, enlargement and eventual collapse; saturation of the bluff soil from ground water causing the bluff to slough off; and natural bluff deterioration. When a seawall is constructed on the beach at the toe of the bluff, it directly impedes some or all of these natural processes.

The shoreline along the project site where the seawall is proposed is comprised of small stretches of beach areas (both sandy and rocky), pocket beaches and escarpments backed by steep vegetated hillsides. Many of the small beach areas are only accessible during low tide periods. As noted above, the shoreline fronting the project site is estimated to erode at 0.4 ft. per year. With construction of the proposed seawall, shoreline erosion behind the wall will cease, while shoreline erosion in front of or seaward of the wall will continue. Based on the geotechnical report prepared for the project, it is estimated that over time, the beach at this location will erode approximately 1.7 ft vertically. Thus, with construction of the proposed seawall, the beach areas seaward of the seawall, over time, will be gone due to continued erosion and the loss of sand supplied to the beach from the erosion of the steep hillside area.

In order to mitigate for this loss and impacts on shoreline sand supply, the Commission has required in other similar projects that the applicant pay a mitigation fee in lieu of placement of sand on the beach. However, in this particular case, as discussed above, the Commission finds that the applicant has not justified the need for the proposed shoreline

protection, inconsistent with Section 30235 of the Coastal Act and the project is denied. It should be noted that one of the alternatives identified by the Commission would be to not construct the proposed seawall and instead utilize sand replenishment to protect the sewer pipe and to facilitate access for necessary maintenance and repairs, or other non-structural means to stabilize the eroded areas. Targeted fill of eroded areas along the back beach could likely provide protection similar to that provided by the previous riprap and would stabilize the pipeline to the degree necessary to avoid breakage and sewage spill in the lagoon.

5. Water Quality Protection. Section 30231 of the Coastal Act address protection of water quality and states:

Section 30231

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.

Agua Hedionda Lagoon is comprised of approximately 230 acres of water surface and extends approximately 1.7 miles inland from the coast. It is the only lagoon in San Diego County where water sports are permitted, including motor and sail boating, kayaking, water skiing, wind surfing, jet skiing, etc. In addition, the lagoon and its watershed include substantial wetland areas. Thus, protection of lagoon water quality is very important.

The proposed development involves work to provide shoreline protection and provide access for maintenance for an existing sewer line that runs along the north shore of Agua Hedionda Lagoon in Carlsbad to prevent future failure and potential sewage spills in the lagoon. Aside from the overall goal of the project to avoid a sewage spill into the lagoon, the City includes a number of pre- and post-construction measures to reduce the potential for impacts to the water quality of Agua Hedionda Lagoon.

Currently, runoff from most of the undeveloped portions of the project site sheet flows directly into the lagoon. As proposed, the project will include a 10 ft. wide access road (decomposed granite) that follows the sewer pipe alignment, with an approximately 2 ft. wide grassy bio-filtration swale located on the inland side of the road. The access road will include a 2% slope towards the swale. After completion of the project, runoff from both the road and the undeveloped hillsides will be directed into the grassy swale, then through pipes under the road and into the lagoon. According to the City, this type of swale will be effective in removing 65% of suspended sediment when properly maintained. During construction, the project includes necessary Best Management

Practices (BMPs) to minimize impacts from construction related activities including controls on stockpile of materials, use of hay bales, sand bags, etc., at the toe of slopes and the use of silt curtains to protect sensitive areas.

While the proposed project does include both pre- and post-construction measures to assure the water quality of the lagoon is protected as required in Section 30231 cited above, the Commission finds that the project, as proposed, is not consistent with the other resource protection policies of the Coastal Act. Again, one purpose of the proposed project is to reduce or eliminate the potential for sewage spills resulting from the existing sewer pipe. However, the City has not provided documentation to support that the sewer line is currently threatened or that a sewage spill is imminent. In addition, there are alternatives available that would result in far fewer impacts that would either leave this area in a more natural state, or relocate the sewer line away from the lagoon to a more appropriate location. Therefore, the Commission finds the proposed development must be denied.

6. Public Access. The following Public access policies are applicable to the proposed development and state, in part:

Section 30210

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 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(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, or, …

Section 30213

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

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan contains a detailed set of public access policies.

Po1icy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Po1icy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Po1icy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Po1icy 7.6 (in part)

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use. […]

Most of the north shore lagoon-fronting lots between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, from 1-5 to Bristol Cove (about 1 mile), are still undeveloped. As such, the majority of the public access path called for in the certified Agua Hedionda LUP has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line.

To date, lateral access offers to dedicate easements have been recorded on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035), a 23-unit Bristol Cove condominium project (CDP #F 1012), Cade (#6-96-159), Huber (#6-98-14) and Gallagher (#6-00-80). Three sites (L&R, Bristol Cove, Cade) were identified as having constructed their segment of the public access path called for in the LUP.

While the main purpose of the proposed project is provide an access road for repairs and maintenance of the existing sewer line, the project has a secondary benefit – it includes a public access trail. The proposed sewer maintenance access road would also serve as a part of a regional trail system planned for the north shore of Agua Hedionda Lagoon and be open for public use. Gates are proposed at either end of the sewer maintenance road, but only to limit vehicular access. Trail amenities would include public access signage, trash cans and pet waste disposal facilities. The trail would be 10 ft. wide and extend from Hoover Street and then follow the sewer maintenance road east to approximately manhole #19.

Construction of the proposed public access trail will greatly improve public access in this area. As noted previously, due to the steep slopes and vegetation, most of the small beach areas and pocket beaches that front the project site are not accessible, except at low tides. Installation of the public access trail will allow the public access along the shoreline at any time and will be a great public benefit. Thus, the construction of the proposed public access trail by itself is consistent with the above cited policies of the Coastal Act.

However, there are still concerns raised by the proposed trail. To protect the existing sewer pipe from wave erosion and secondarily, the public access trail, the project includes the installation of an 1,800 ft. long shoreline protection wall on the lagoon side of the pipe/trail. The seawall will vary in height, extending above the shoreline between 1 ft. to 5 ½ ft. Anywhere the wall extends over 30 inches above the shoreline, a cable safety railing will be installed on top of the wall. Because of the low height of the many parts of the wall, the project does not include any stairs or other means of directly accessing the shoreline from the public access trail. Thus, once on the access path, the only way to access the shoreline and pocket beaches is to "hop" down the wall where it is low enough to accommodate such an effort. However, as noted in a previous section of this report (ref. Shoreline Protection/Hazards), with installation of the seawall, over time the beach in front of the seawall will disappear due to continued erosion. Based on the geotechnical report prepared for the project, it is estimated that over time, the beach at this location will erode approximately 1.7 ft vertically. This will result in the need to install a safety railing on top of the entire seawall, as the entire exposed portion of the seawall will be greater than 30 inches. With the minimal height of the seawall greater than 30 inches high and a safety railing on top, it will be difficult for the public to access the shoreline from the trail. In addition, as also noted previously, with the estimated 1.7 ft. of downward erosion, after construction of the seawall, the beach areas in front of the seawall will eventually disappear so there will not be a beach to access.

Aside from the public access impacts noted above, the project will also result in impacts to recreational users of the lagoon. Currently kayakers and other small non motorized boats are able to access the small pocket beaches located along the project site from the lagoon to rest and enjoy the beaches. However, with construction of the seawall and the resulting loss of the beach in front of the seawall, these users will no longer be able to access these areas from the lagoon.

In summary, while the project does include significant public access improvements in the form of an improved trail along the lagoon shoreline, the project will also result in impacts to public access due to construction of the proposed seawall. The Commission finds that the impacts to access resulting from the proposed project outweigh the benefits of the proposed public access trail. It should be noted that over time, public access easements along the shoreline may be obtained as property owners come forward to develop their properties, or it may be determined that formalized public access in this location is not appropriate due to the sensitivity of the resources. Therefore, the Commission finds the proposed project is not consistent with the public access and recreation policies of the Coastal Act and the project is denied.

7. Growth Inducement. Section 30250 of the Coastal Act is applicable and states, in part:

Section 30250

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

Given that the proposed development involves improvements to existing sewer pipes, the question arises to whether the project is growth inducing. To be found consistent with Section 30250(a) of the Coastal Act, the Commission must find that the project is being proposed to serve existing development, or that if it would accommodate new development, such development must be at planned and approved densities. In this case, the project involves repairs and improvements to an existing sewer pipeline for the protection of water quality and existing sewer service. The project does not include any expansion of the pipe (other than to allow two residential sewer laterals from adjacent residential lots). Therefore, the proposed improvements to the sewer system should not have a significant overall inducement to growth within the coastal zone, and the development is consistent with section 30250(a) of the Coastal Act.

8. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local

Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

The Agua Hedionda Land Use Plan (LUP) has been certified by the Commission but no implementing ordinances have been submitted by the City for this plan segment. Thus, the standard of review for this application is Chapter 3 policies of the Coastal Act. Section 30240 of the Coastal Act requires that identified ESHAs be protected from significant disruption of habitat values. The proposed development will not protect existing ESHA from significant disruption, inconsistent with Section 30240. In addition, the project, which includes the fill of wetlands, is not an allowable use under Section 30233(c) of the Coastal Act. Therefore, the Commission finds that the subject proposal would prejudice the ability of the City of Carlsbad to obtain a certified LCP for the Agua Hedionda Lagoon segment and is thus denied.

9. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 will result in significant adverse impacts to biologically sensitive habitat. Specifically, the California gnatcatcher occupied coastal sage scrub habitat that will be destroyed by the proposed development is considered an ESHA. As an ESHA, it is protected under Section 30240 of the Coastal Act and, therefore, the proposed development is inconsistent with this policy. In addition, there are feasible alternatives available which would substantially lessen any significant adverse impact which the project would have on the environment. Such measures include abandoning the existing sewer pipe along the lagoon shoreline and placing a new line within roads and other existing developed areas or implementing a one-time repair to portions of the sewer pipe that are damaged and/or in need of repair. Such alternatives would eliminate or significantly reduce impacts to ESHA. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and must be denied.

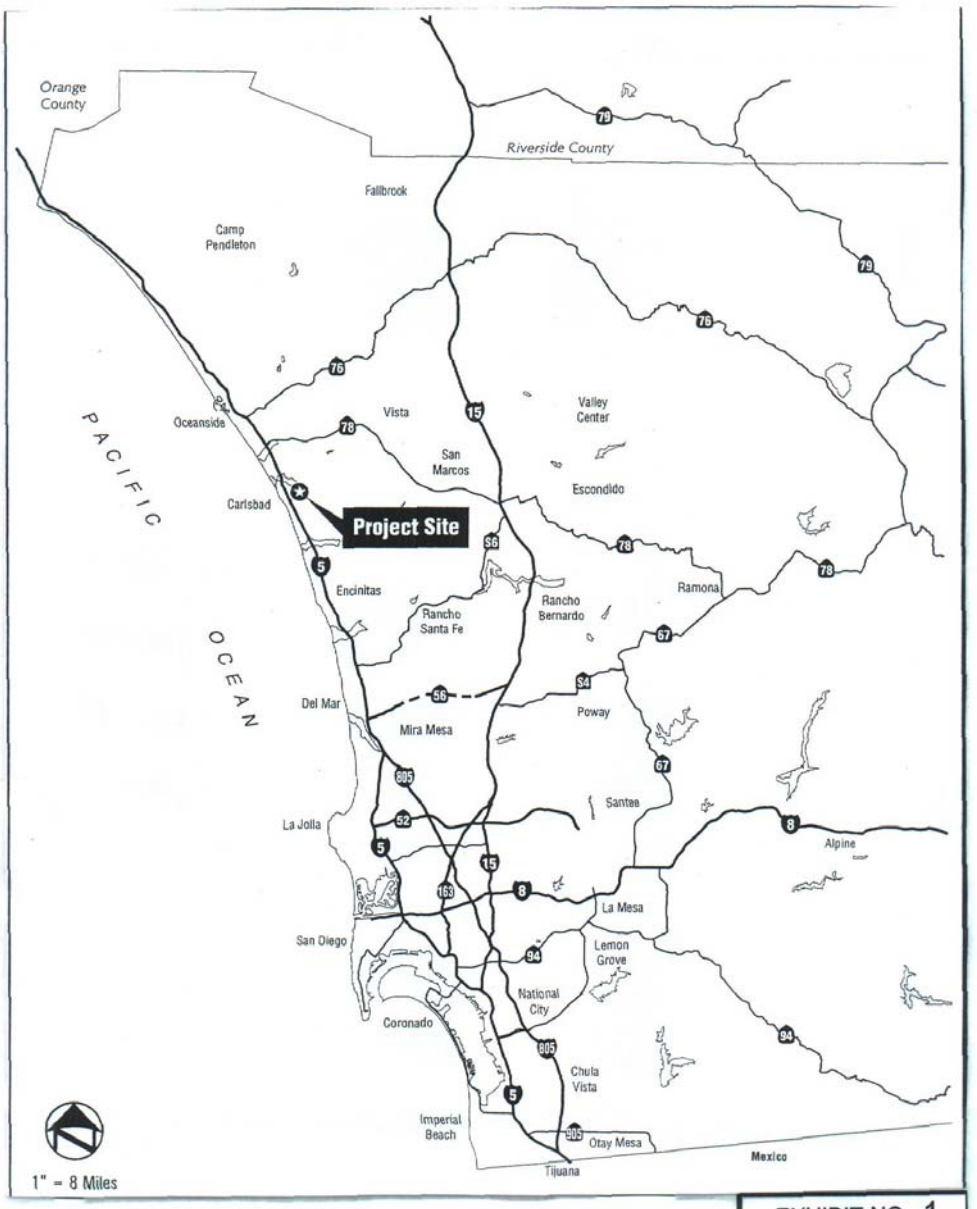


EXHIBIT NO. 1
APPLICATION NO.
6-05-045
Regional Map
California Coastal Commission

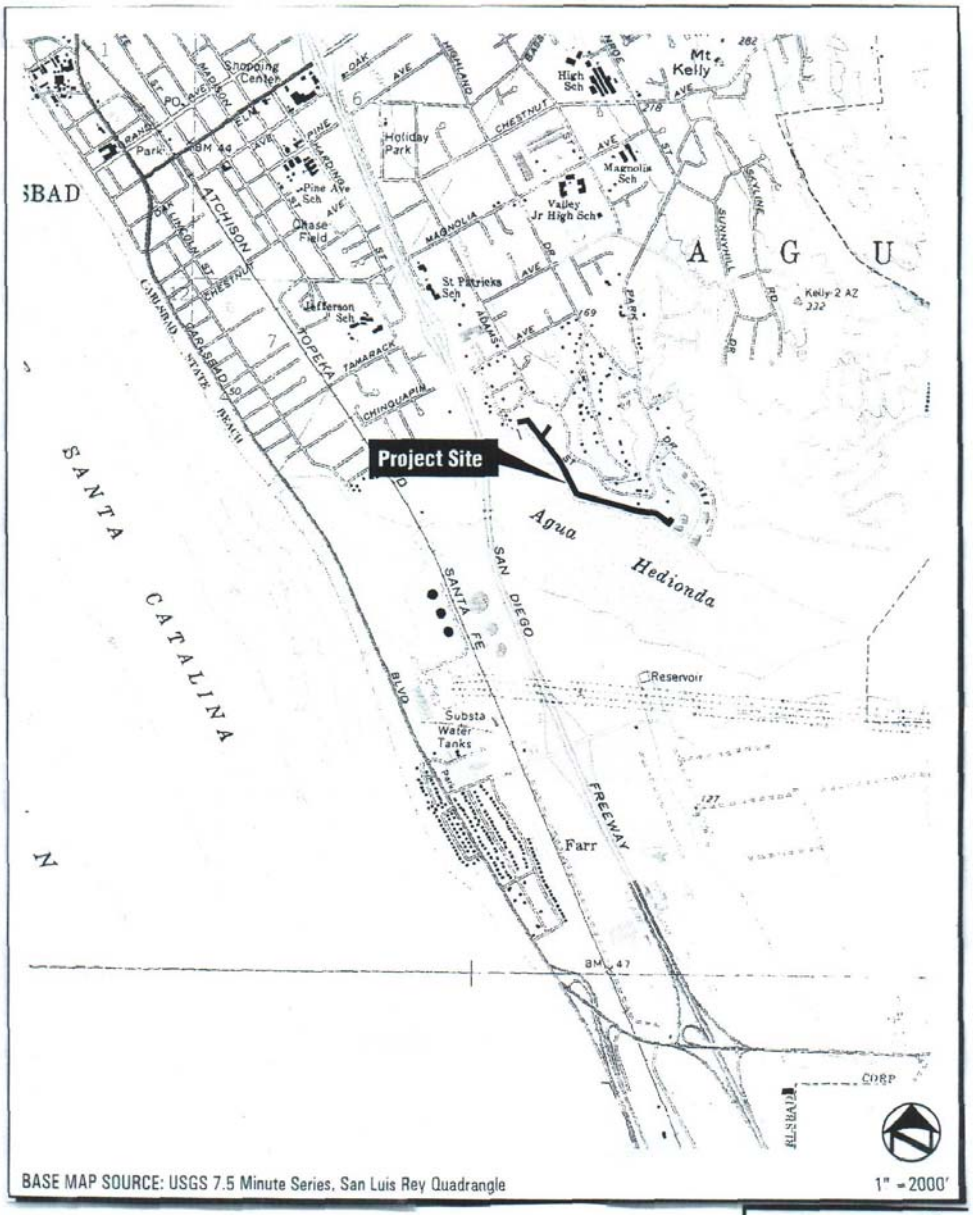


EXHIBIT NO. 2
APPLICATION NO.
6-05-045
Location Map
California Coastal Commission


FIGURE 1
North Agua Hedionda Interceptor Western Segment - Staff Report
Aerial Photograph with Sewer Line & Manhole Numbers
Sewer System
0
350
Scale in Feet
AIRPHOTO USA, FEB. 2005
EXHIBIT NO. 3
APPLICATION NO.
6-05-045
Aerial Photo of Project Site
California Coastal Commission
HOOVER ST
INTERSTATE 5
Foxes Lift Station
Jose's Boat Launch
MH 25
MH 24
MH23A
MH23
NEW MH3
NEW MH2
MH 22
MH 21
MH 20
NEW MH 1
MH 19
MH 18
MH 17
MH 16
MH 15
MH 14
MH13
MH12
MH11
MH10A
MH10
MH9A
MH9
MH8A
MH8
MH7

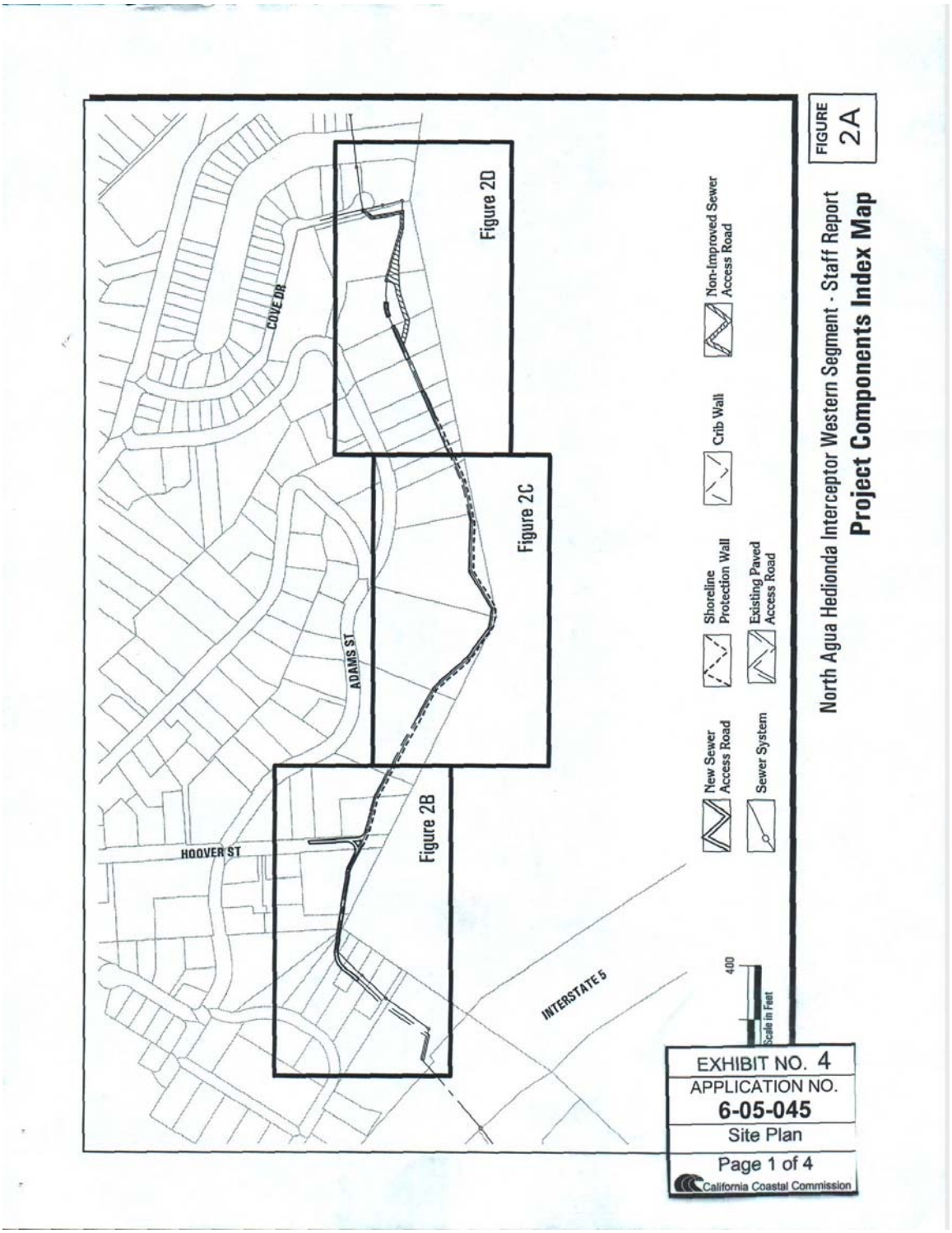


FIGURE 2A
North Agua Hedionda Interceptor Western Segment - Staff Report
Project Components Index Map
Figure 2D
Figure 2C
Figure 2B
COVE DR
ADAMS ST
HOOVER ST
INTERSTATE 5
New Sewer Access Road
Sewer System
Shoreline Protection Wall
Existing Paved Access Road
Crib Wall
Non-Improved Sewer Access Road
400
Scale in Feet
EXHIBIT NO. 4
APPLICATION NO.
6-05-045
Site Plan
Page 1 of 4
California Coastal Commission

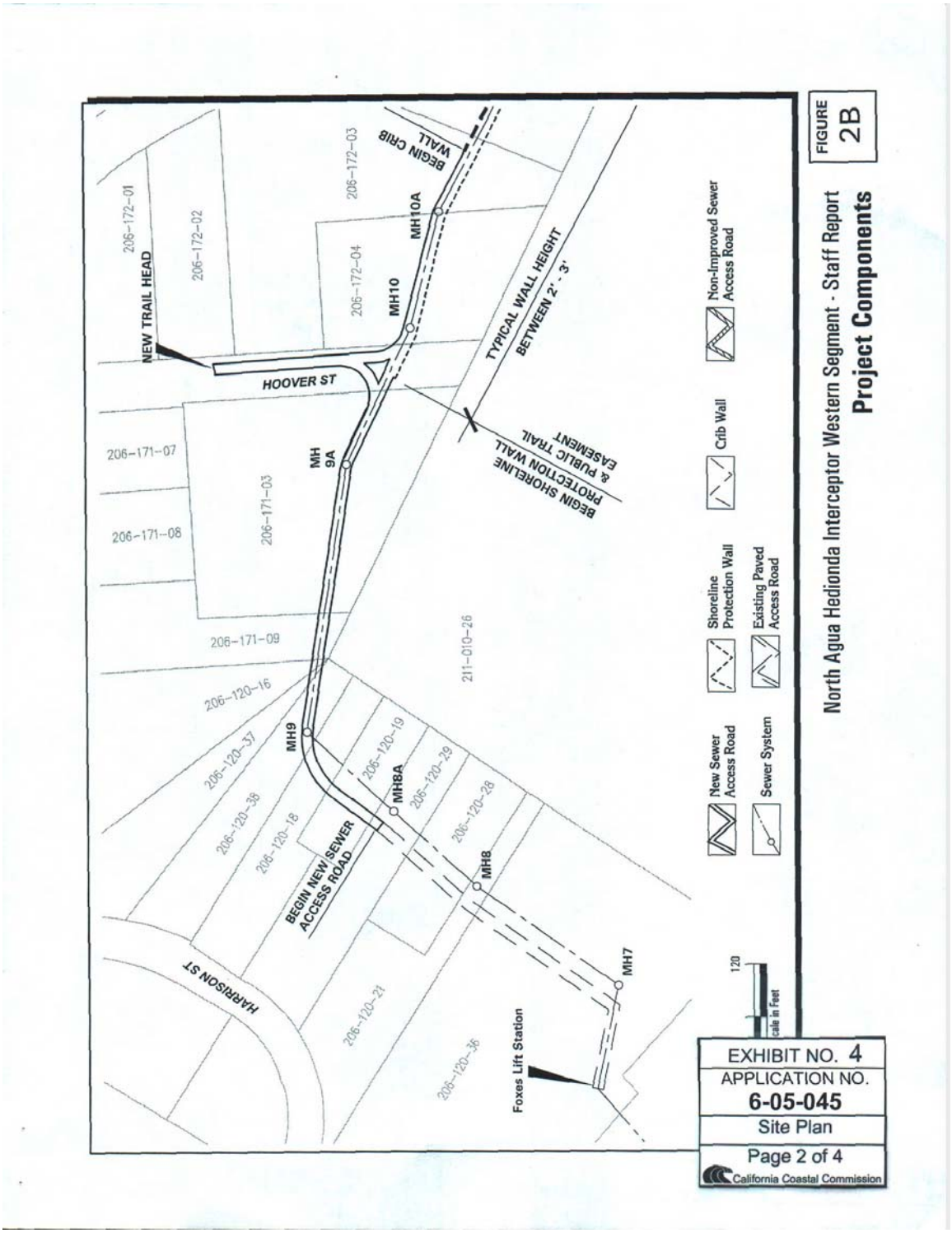


FIGURE 2B
North Agua Hedionda Interceptor Western Segment - Staff Report
Project Components
NEW TRAIL HEAD
HOOVER ST
BEGIN CRIB WALL
MH10A
MH10
MH 9A
MH9
MH8A
MH8
MH7
TYPICAL WALL HEIGHT BETWEEN 2' - 3'
BEGIN SHORELINE PROTECTION WALL & PUBLIC TRAIL EASEMENT
BEGIN NEW SEWER ACCESS ROAD
HARRISON ST
Foxes Lift Station
206-172-01
206-172-02
206-172-03
206-172-04
206-171-07
206-171-03
206-171-08
206-171-09
206-120-16
206-120-37
206-120-36
206-120-18
206-120-19
206-120-29
206-120-28
206-120-21
206-120-36
211-010-26
Non-Improved Sewer Access Road
Crib Wall
Shoreline Protection Wall
Existing Paved Access Road
New Sewer Access Road
Sewer System
120
Scale in Feet
EXHIBIT NO. 4
APPLICATION NO.
6-05-045
Site Plan
Page 2 of 4
California Coastal Commission

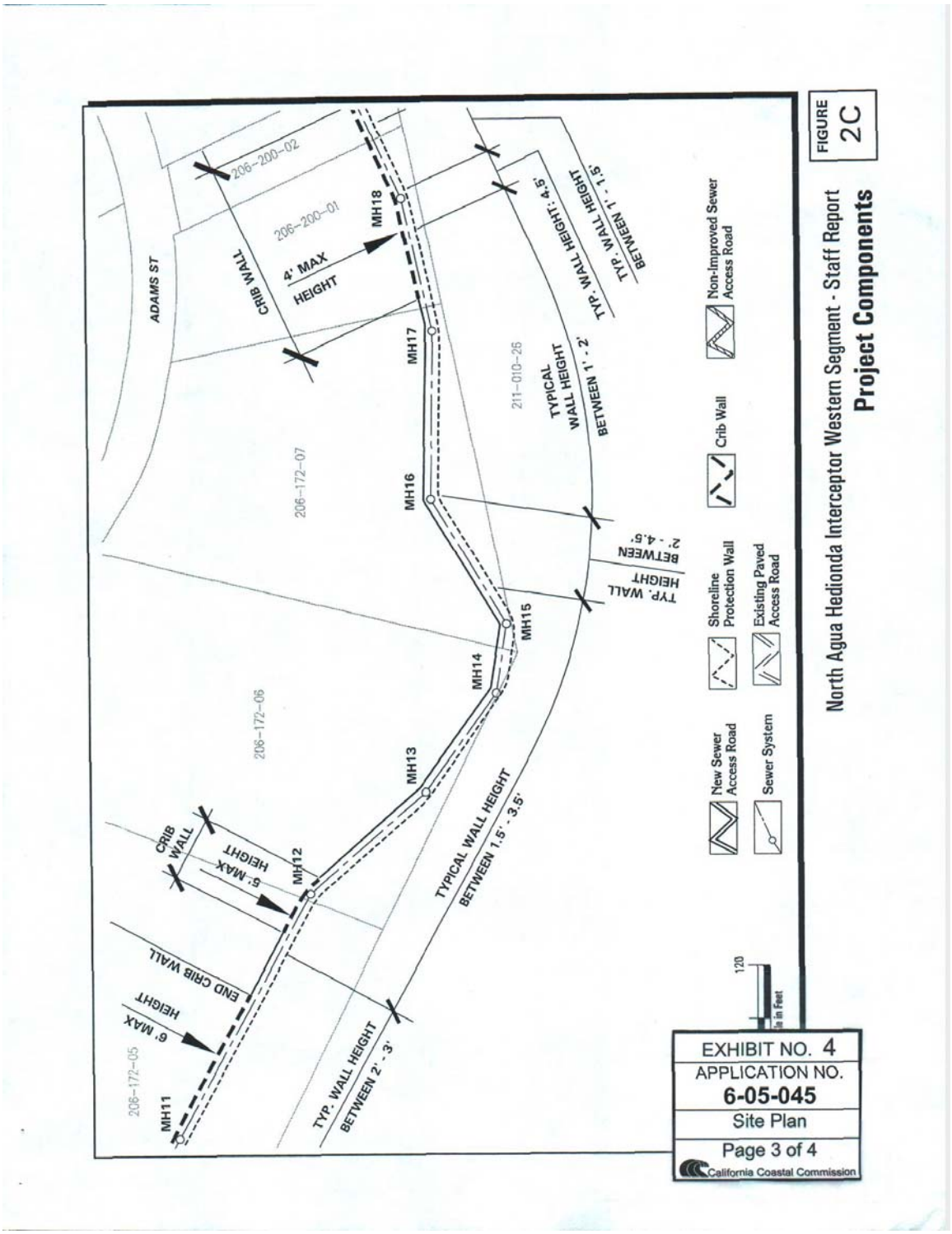


FIGURE 2C
North Agua Hedionda Interceptor Western Segment - Staff Report
Project Components
ADAMS ST
206-200-02
206-200-01
206-172-07
206-172-06
206-172-05
211-010-26
CRIB WALL
4' MAX HEIGHT
MH18
MH17
MH16
MH15
MH14
MH13
MH12
MH11
TYP. WALL HEIGHT: 4.5'
TYP. WALL HEIGHT BETWEEN 1' - 1.5'
TYPICAL WALL HEIGHT BETWEEN 1' - 2'
TYP. WALL HEIGHT BETWEEN 2' - 4.5'
CRIB WALL
5' MAX HEIGHT
TYPICAL WALL HEIGHT BETWEEN 1.5' - 3.5'
END CRIB WALL
6' MAX HEIGHT
TYP. WALL HEIGHT BETWEEN 2' - 3'
Non-Improved Sewer Access Road
Crib Wall
Shoreline Protection Wall
Existing Paved Access Road
New Sewer Access Road
Sewer System
120
Feet
EXHIBIT NO. 4
APPLICATION NO.
6-05-045
Site Plan
Page 3 of 4
California Coastal Commission

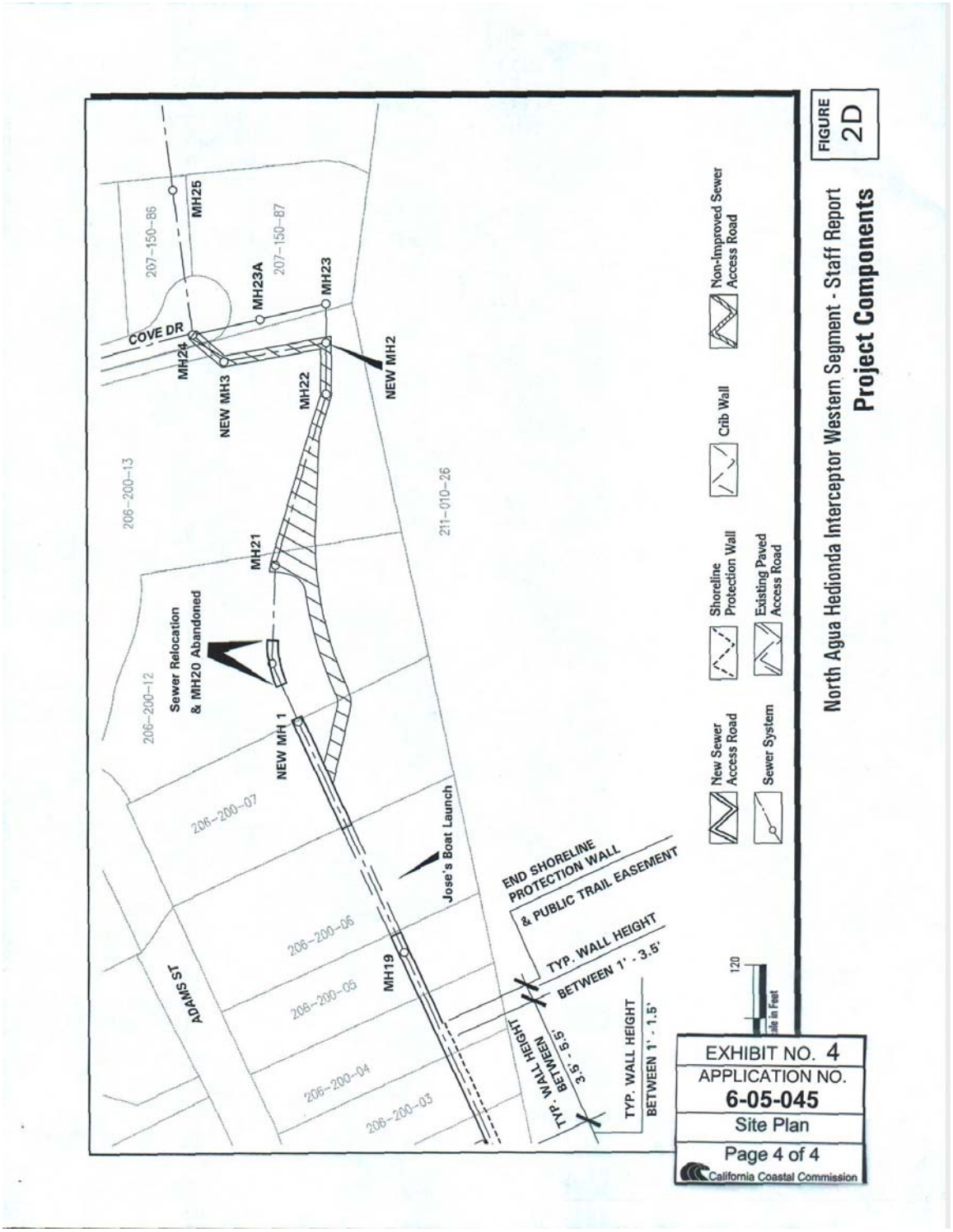


FIGURE 2D
North Agua Hedionda Interceptor Western Segment - Staff Report
Project Components
MH25
MH23A
MH23
COVE DR
MH24
NEW MH3
MH22
NEW MH2
MH21
Sewer Relocation & MH20 Abandoned
NEW MH 1
Jose's Boat Launch
MH19
ADAMS ST
207-150-86
207-150-87
206-200-13
206-200-12
206-200-07
206-200-06
206-200-05
206-200-04
206-200-03
211-010-26
END SHORELINE PROTECTION WALL & PUBLIC TRAIL EASEMENT
TYP. WALL HEIGHT BETWEEN 1' - 3.5'
TYP. WALL HEIGHT BETWEEN 3.5' - 5.5'
TYP. WALL HEIGHT BETWEEN 1' - 1.5'
Non-Improved Sewer Access Road
Crib Wall
Shoreline Protection Wall
Existing Paved Access Road
New Sewer Access Road
Sewer System
120
Feet
EXHIBIT NO. 4
APPLICATION NO.
6-05-045
Site Plan
Page 4 of 4
California Coastal Commission

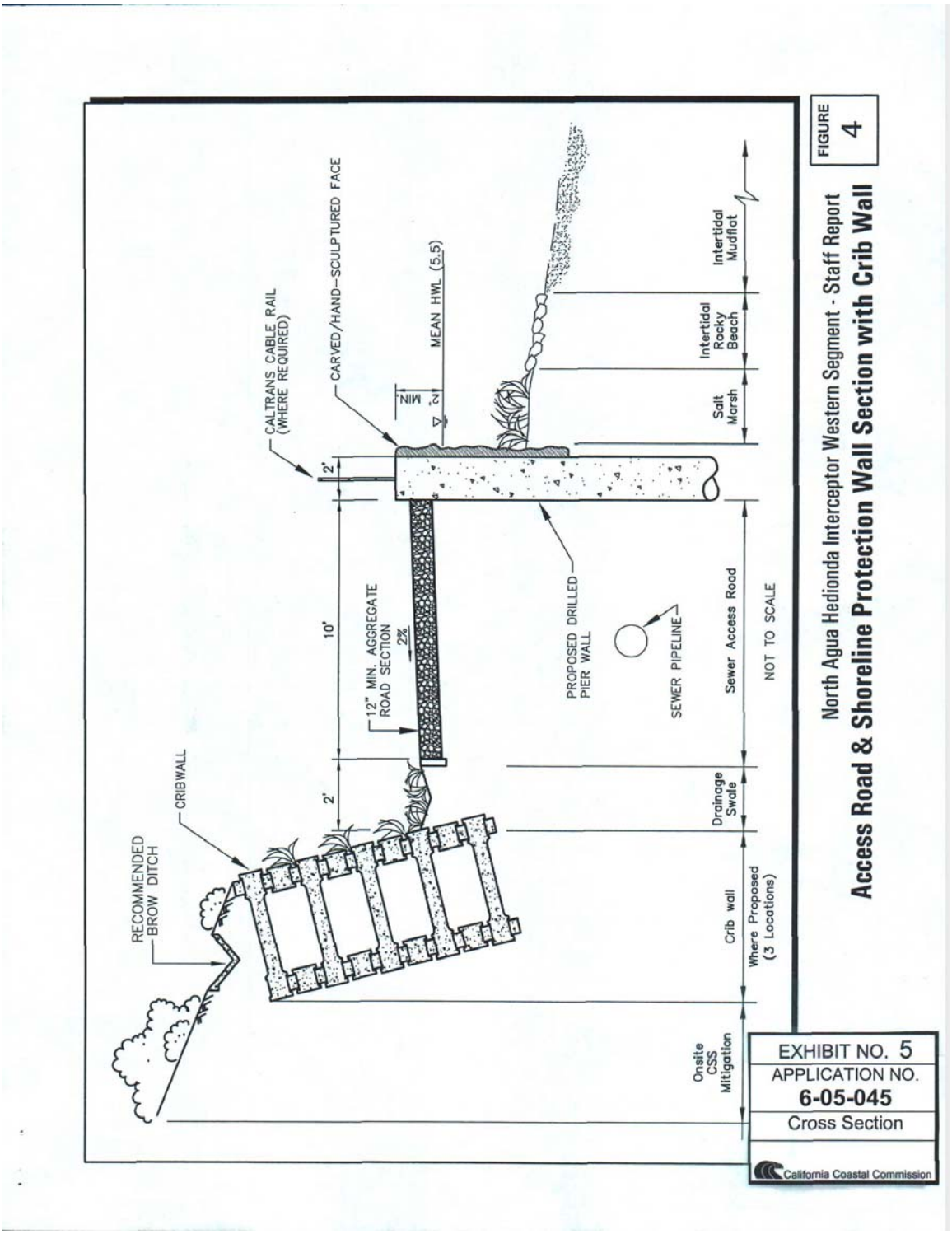
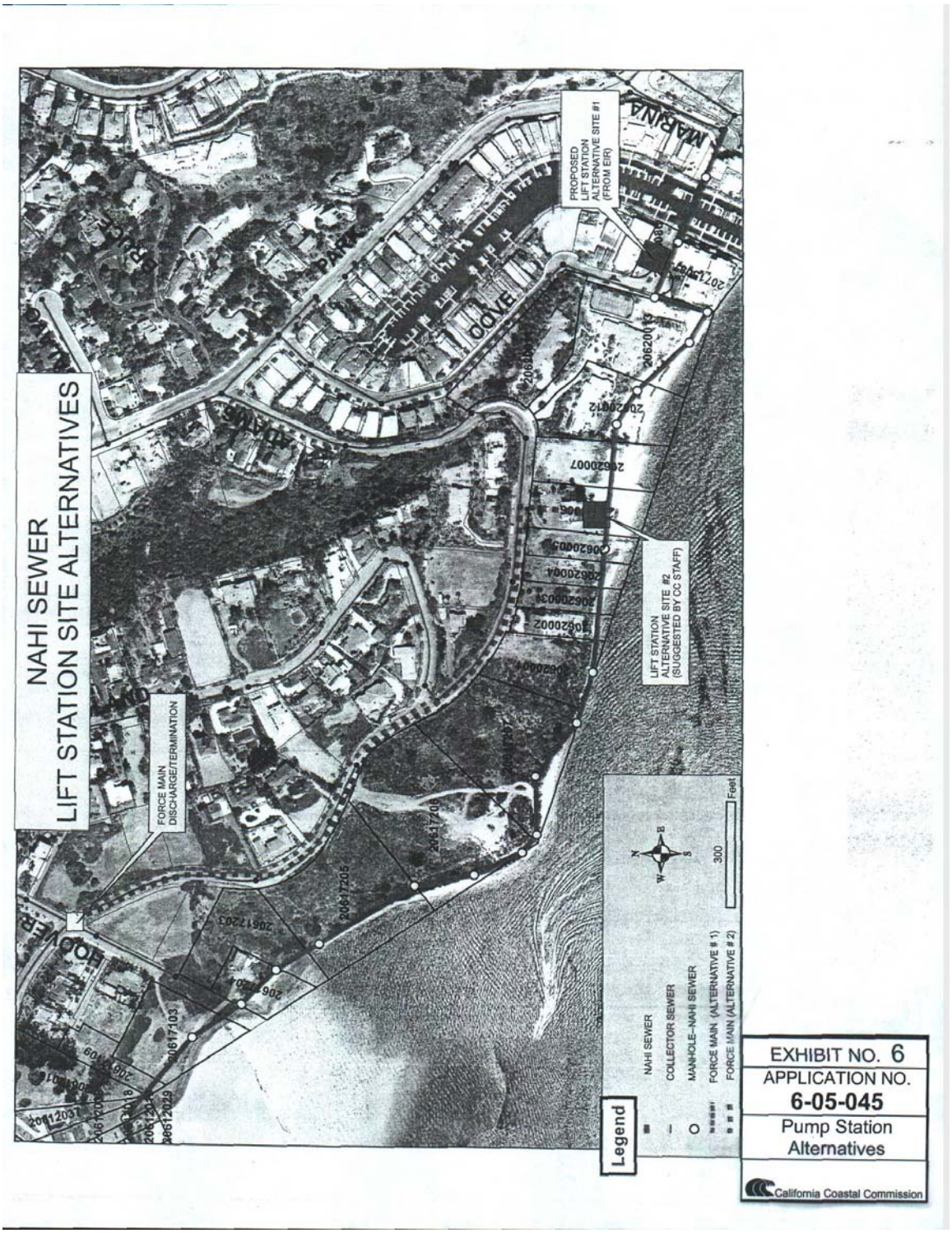


FIGURE 4
North Agua Hedionda Interceptor Western Segment - Staff Report
Access Road & Shoreline Protection Wall Section with Crib Wall
NOT TO SCALE
CALTRANS CABLE RAIL (WHERE REQUIRED)
CARVED/HAND-SCULPTURED FACE
MEAN HWL (5.5)
MIN. 2'
2'
10'
12" MIN. AGGREGATE ROAD SECTION
2%
2'
CRIBWALL
RECOMMENDED BROW DITCH
PROPOSED DRILLED PIER WALL
SEWER PIPELINE
Intertidal Mudflat
Intertidal Rocky Beach
Salt Marsh
Sewer Access Road
Drainage Swale
Crib wall
Where Proposed (3 Locations)
Onsite CSS Mitigation
EXHIBIT NO. 5
APPLICATION NO.
6-05-045
Cross Section
California Coastal Commission


NAHI SEWER
LIFT STATION SITE ALTERNATIVES
FORCE MAIN DISCHARGE/TERMINATION
PROPOSED LIFT STATION ALTERNATIVE SITE #1 (FROM EIR)
LIFT STATION ALTERNATIVE SITE #2 (SUGGESTED BY CC STAFF)
MARINA
COVE
PARK
Legend
NAHI SEWER
COLLECTOR SEWER
MANHOLE--NAHI SEWER
FORCE MAIN (ALTERNATIVE # 1)
FORCE MAIN (ALTERNATIVE # 2)
300
Feet
EXHIBIT NO. 6
APPLICATION NO.
6-05-045
Pump Station Alternatives
California Coastal Commission

Appendix

B

City Projects Covered By Proposed City-Land Mitigation Bank

This section contains a list of City projects in addition to the Municipal Golf Course which would be eilgible to use a City mitigation bank at Lake Calavera.

CITY PROJECTS COVERED BY PROPOSED CITY-LANDS MITIGATION BANK

PROJECT	ESTIMATED IMPACTS (ACRES)[1]
DRAINAGE PROJECTS **Future projects needed to complete the Master Drainage and Storm Water Quality Management Plan inclusive of, but not limited to, the following projects:**	11-33
Agua Hedionda Creek Channel Enhancement	
Cannon Road Drainage Channel and Basin - El Camino Real to College Boulevard	
South Carlsbad Village Storm Drain	
PARK FACILITIES **Future projects needed to complete the Parks and Recreation Element of the General Plan inclusive of, but not limited to, the following projects:**	
Business Park Recreational Facility	
Cannon Lake Park	1-3
Hosp Grove/Buena Vista Lagoon II	1-10
Lake Calavera Recreational Uses	0-100
Larwin Park	1-7
Leo Carrillo Park	2-10
Municipal Golf Course	40-200
NE Quadrant 15 acre Park Site Development	
NW Quadrant 7-Acre Site	0
NW Quadrant Community Center	0
Veterans Memorial Park	8-25
Zone 19 Park	3-9
OTHER FACILITIES	
Future City Hall	
Fire Station #3 Relocation	
Village Transit Station Specialty Retail	
SEWER PROJECTS **Future projects needed to complete the Sewer Master Plan inclusive of, but not limited to, the following projects:**	
Agua Hedionda Lift Station	0-1
Buena Vista Creek Trunk Sewers	
Buena Vista Forcemain Parallel	
Buena Vista Lift Station	0
Carrillo Ranch Village "R" Sewer	
Chinquapin Lift Station Relocation	
Encina Acquisition	
Forest Gravity Line	0-2
Forest Sewer Pipeline	

1. Where a blank space exists, the estimated impact acreage is unknown at this time

SEWER PROJECTS, continued	
La Golondrina Sewer	
Roesch Property Sewer	
Sewer Line Replacement	0
South Agua Hedionda Interceptor Sewer	
Vancouver Lift Station	0-2
Vista/Carlsbad Interceptor Sewer	
Vista/Carlsbad Trunk Line	0
SEWER OPERATIONS AND MAINTENANCE	
Batiquitos Forcemain	
North Agua Hedionda Interceptor Sewer	
North Batiquitos Interceptor Sewer	
Sewer Pipeline Along San Diego Northern Railroad Right-of-Way	
Vista-Carlsbad Interceptor Sewer Along Highway 78	
STREET PROJECTS **Future projects needed to complete the Circulation Element of the General Plan inclusive, but not limited to, the following projects:**	
Adams Street - Harrison to Park Drive	
Avenida Encinas Widening - Palomar Airport Road to Volvo Dealership	
Aviara Parkway - Cobblestone to Plum Tree Road	
Cannon Road, Reach 1	11
Cannon Road, Reaches 2-4	17
Carlsbad Boulevard Bridge Replacement over San Diego Northern Railway Line	
Carlsbad Boulevard Realignment - Manzano to Batiquitos Bridge	4-9
Carlsbad Boulevard Widening from State Street to Oceanside City Limits	
Carlsbad Village Drive - Tamarack to College	
Carlsbad Village Drive -Pontiac to Victoria	3-5
Coastal Rail Trail	
College Boulevard - Lake Boulevard to El Camino Real	
El Camino Real at Camino Vida Roble	0
El Camino Real at Cannon Road	1-3
El Camino Real at Carlsbad Village Drive	0
El Camino Real Widening to 6 Lane Arterial - Standards at Various Locations from North City Limits to South City Limits	
El Camino Real Widening-S. Chestnut and S. Alga	1-3
El Fuerte Street - Poinsettia Lane to Faraday Avenue	
Faraday Avenue - Orion Street to Melrose Drive	
Faraday to Koll Property	5-30
La Costa Avenue - Camino de los Coches to Melrose Drive	
La Costa Avenue/I-5 to El Camino Real	1
Marron Road - Avenida de Anita to College Boulevard	
Melrose Drive - Palomar Airport Road to Vista City Limits	
Melrose Drive - Rancho Santa Fe to Encinitas City Limits	
Palomar Airport Road at College Boulevard	0
Palomar Airport Road @ El Camino Real grade separation	

EXHIBIT NO. 7
APPLICATION NO.
6-05-045
HMP/Appendix B
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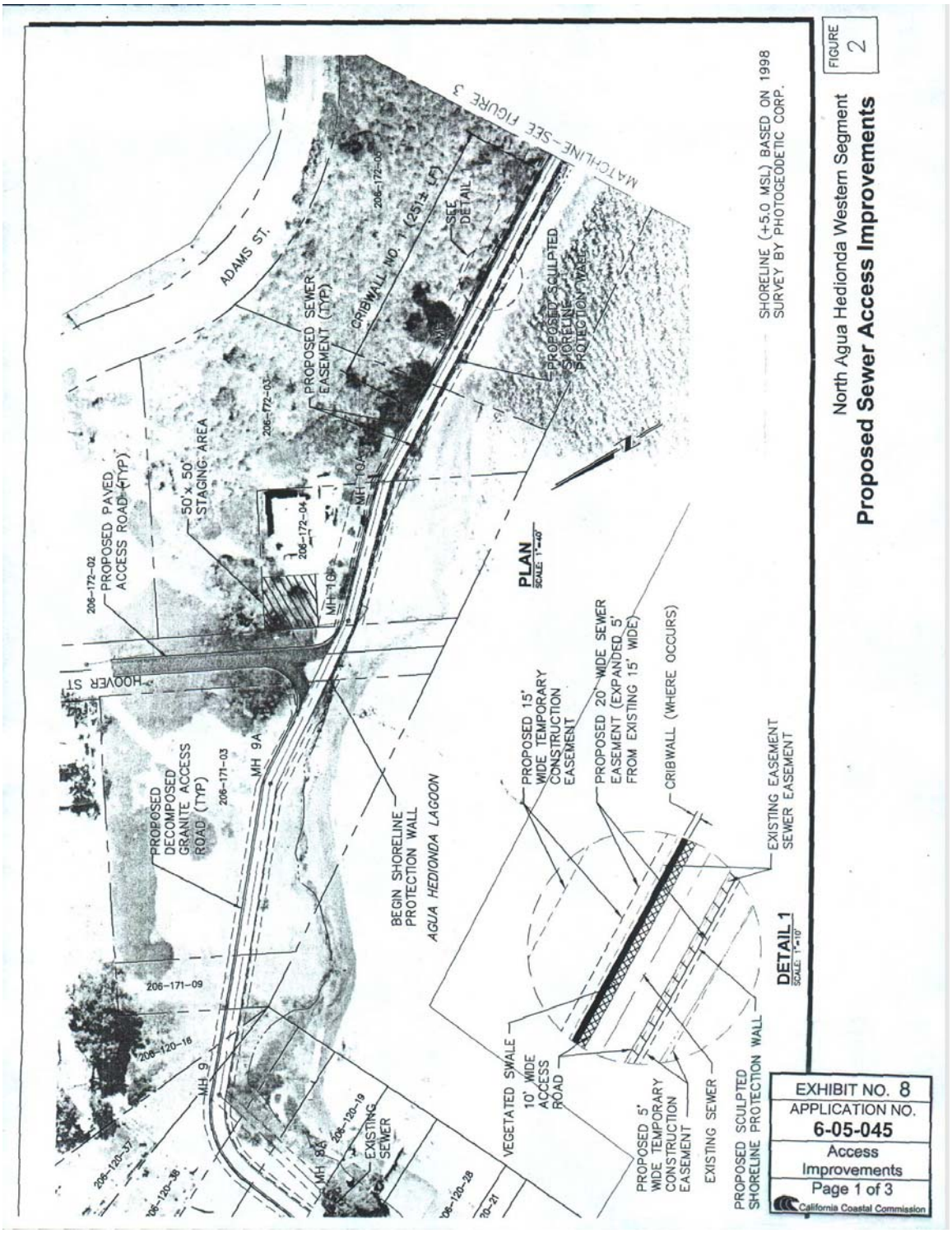
FIGURE 2
North Agua Hedionda Western Segment
Proposed Sewer Access Improvements
SHORELINE (+5.0 MSL) BASED ON 1998 SURVEY BY PHOTOGEODETIC CORP.
MATCHLINE - SEE FIGURE 3
ADAMS ST.
HOOVER ST.
PROPOSED PAVED ACCESS ROAD (TYP)
206-172-02
50' x 50' STAGING AREA
206-172-03
206-172-04
PROPOSED SEWER EASEMENT (TYP)
CRIBWALL NO. 1 (251± L.F.)
SEE DETAIL
PROPOSED SCULPTED SHORELINE PROTECTION WALL
MH 10A
MH 10
PLAN
SCALE 1"=40'
PROPOSED DECOMPOSED GRANITE ACCESS ROAD (TYP)
206-171-03
MH 9A
206-171-09
206-120-16
MH 9
206-120-37
206-120-38
206-120-19
EXISTING SEWER
MH 8A
206-120-28
206-120-21
BEGIN SHORELINE PROTECTION WALL
AGUA HEDIONDA LAGOON
PROPOSED 15' WIDE TEMPORARY CONSTRUCTION EASEMENT
PROPOSED 20' WIDE SEWER EASEMENT (EXPANDED 5' FROM EXISTING 15' WIDE)
CRIBWALL (WHERE OCCURS)
EXISTING EASEMENT SEWER EASEMENT
DETAIL 1
SCALE 1"=10'
VEGETATED SWALE
10' WIDE ACCESS ROAD
PROPOSED 5' WIDE TEMPORARY CONSTRUCTION EASEMENT
EXISTING SEWER
PROPOSED SCULPTED SHORELINE PROTECTION WALL
EXHIBIT NO. 8
APPLICATION NO.
6-05-045
Access Improvements
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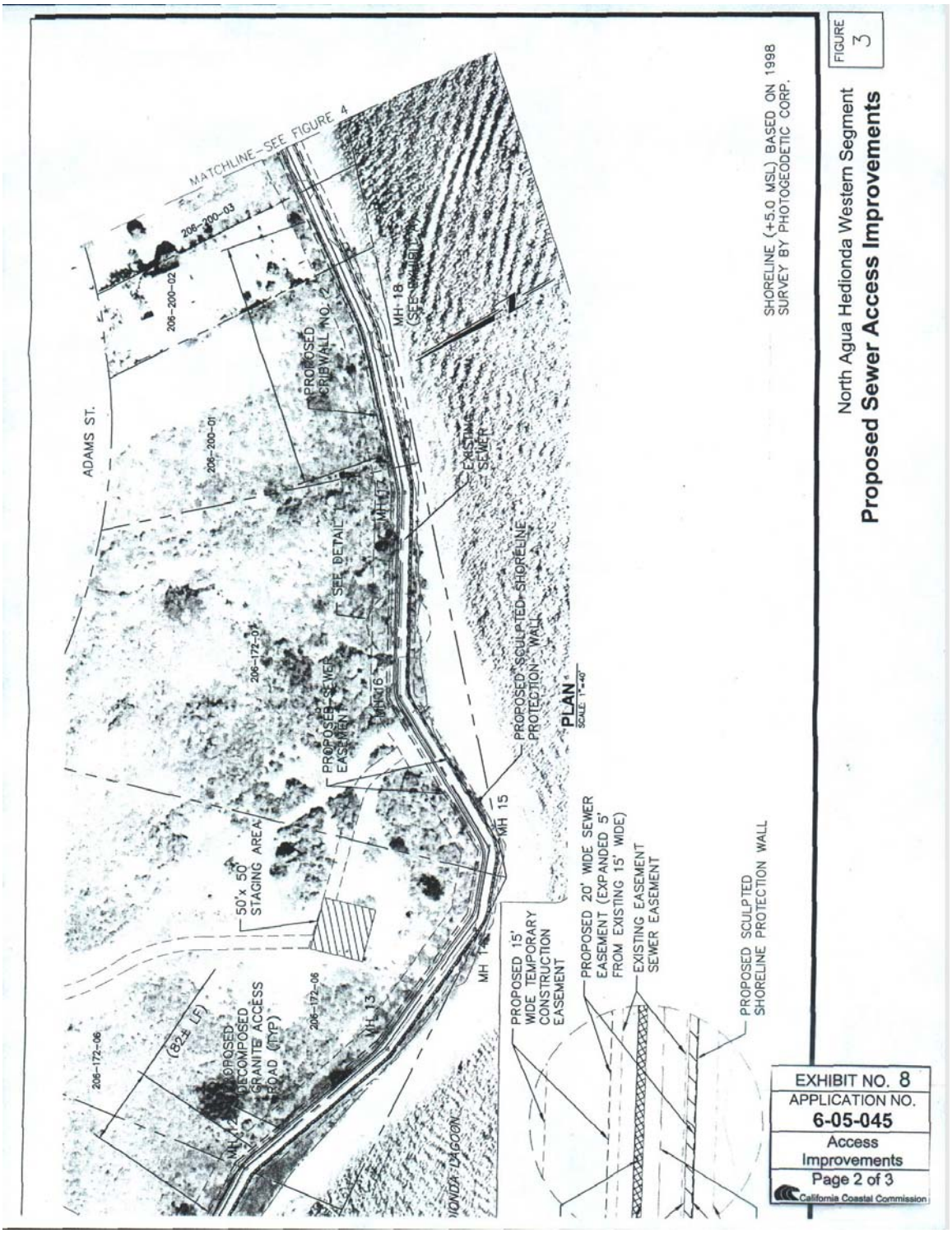
MATCHLINE - SEE FIGURE 4
ADAMS ST.
206-200-03
206-200-02
206-200-01
206-172-07
206-172-06
PROPOSED CRIBWALL NO. 2
MH-18 (SEE PROFILE)
EXISTING SEWER
SEE DETAIL
MH 17
MH 16
PROPOSED SEWER EASEMENT
50'x 50' STAGING AREA
MH 15
MH 14
MH 13
(82± LF)
PROPOSED DECOMPOSED GRANITE ACCESS ROAD (TYP.)
PROPOSED SCULPTED SHORELINE PROTECTION WALL
PLAN
SCALE: 1"=40'
PROPOSED 15' WIDE TEMPORARY CONSTRUCTION EASEMENT
PROPOSED 20' WIDE SEWER EASEMENT (EXPANDED 5' FROM EXISTING 15' WIDE)
EXISTING EASEMENT SEWER EASEMENT
PROPOSED SCULPTED SHORELINE PROTECTION WALL
SHORELINE (+5.0 MSL) BASED ON 1998 SURVEY BY PHOTOGEODETIC CORP.
North Agua Hedionda Western Segment
Proposed Sewer Access Improvements
FIGURE 3
EXHIBIT NO. 8
APPLICATION NO.
6-05-045
Access Improvements
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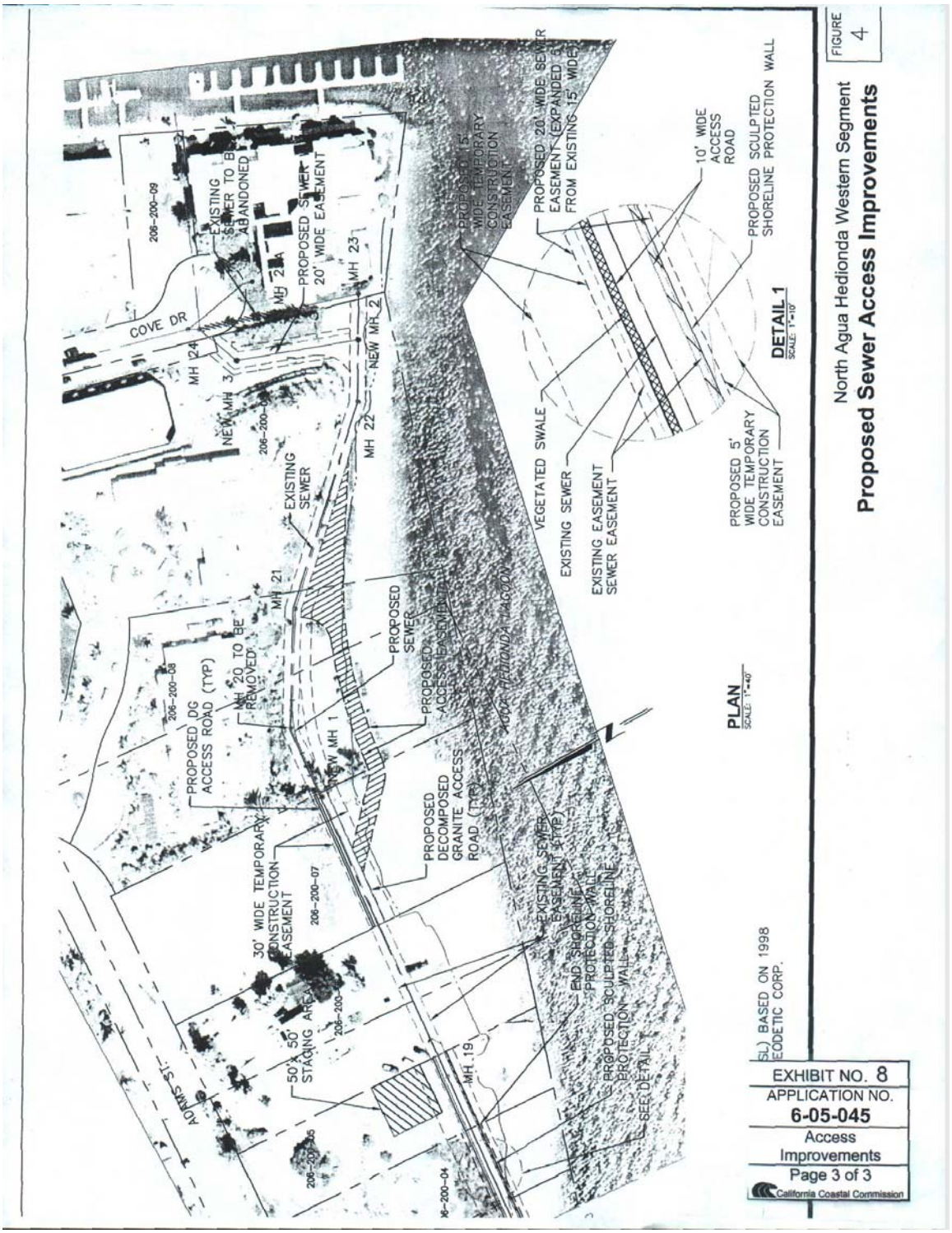
FIGURE 4
North Agua Hedionda Western Segment
Proposed Sewer Access Improvements
PLAN
SCALE: 1"=40'
DETAIL 1
SCALE: 1"=10'
COVE DR
ADAMS ST
EXISTING SEWER TO BE ABANDONED
PROPOSED SEWER 20' WIDE EASEMENT
NEW MH 3
NEW MH 2
MH 21
MH 22
MH 23
MH 24
MH 19
MH 20 TO BE REMOVED
NEW MH 1
EXISTING SEWER
PROPOSED SEWER
PROPOSED ACCESS EASEMENT
PROPOSED DG ACCESS ROAD (TYP)
PROPOSED DECOMPOSED GRANITE ACCESS ROAD (TYP)
30' WIDE TEMPORARY CONSTRUCTION EASEMENT
50' X 50' STAGING AREA
206-200-09
206-200-08
206-200-07
206-200-06
206-200-05
206-200-04
LAGOON
EXISTING SEWER EASEMENT (TYP)
END SHORELINE PROTECTION WALL
PROPOSED SCULPTED SHORELINE PROTECTION WALL
SEE DETAIL
PROPOSED 15' WIDE TEMPORARY CONSTRUCTION EASEMENT
PROPOSED 20' WIDE SEWER EASEMENT (EXPANDED 5' FROM EXISTING 15' WIDE)
10' WIDE ACCESS ROAD
PROPOSED SCULPTED SHORELINE PROTECTION WALL
VEGETATED SWALE
EXISTING SEWER
EXISTING EASEMENT SEWER EASEMENT
PROPOSED 5' WIDE TEMPORARY CONSTRUCTION EASEMENT
SL) BASED ON 1998
EODETIC CORP.
EXHIBIT NO. 8
APPLICATION NO.
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Access Improvements
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