

attached which requires the applicants to submit a revised mitigation plan that includes the proposed mitigation at an overall 3:1 ratio but also includes within the plan a greater than 1:1 riparian wetland creation component. Other special conditions require the submission of final plans, permits from other agencies, authorization from the property owner to perform the work and placement of an open space easement over the wetlands mitigation area.

Standard of Review: Certified City of Encinitas LCP.

Substantive File Documents: **SUBSTANTIVE FILE DOCUMENTS:** City of Encinitas Certified LCP; Appeal Applications by Commissioners Krueer and Padilla dated 1/20/06; Appeal Application by Donna Westbrook dated 1/20/06; Case No. 01-239 TM/MUP/DR/EIA/CDP; Case No. 05-135 CDP/EIA; “Berryman Canyon Road, Offsite Stormwater Improvements, Encinitas, Ca” by REC Consultants, Inc. dated 9/2/05; “Wetlands Delineation Report for Stahmer Property, Assessor’s Parcel Number 262-080-06-00, City of Encinitas, California” by Dudek and Associates dated March 9, 2004; “Drainage Report for Berryman Canyon Estates” by Chang Consultants dated June 21, 2005.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-ENC-6-5 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final construction plans for the permitted development that have been approved by the City of Encinitas. Said plans shall be in substantial conformance with the plans submitted by REC Consultants dated received January 26, 2006.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Wetlands Mitigation Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final wetland mitigation plan for all freshwater riparian impacts associated with the proposed project. The final mitigation plan shall be developed in consultation with the California Department of Fish and Game and U.S. Fish & Wildlife Service, be in substantial conformance with the mitigation plan submitted with this application (“Offsite Mitigation Exotic Plant Species Removal Plan” submitted by REC Consultants dated June 2006) except as required to be modified by the conditions of this permit and at a minimum shall include:

- a. Preparation of a detailed site plan of the riparian wetland impact area, clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included.
- b. Preparation of a baseline ecological assessment of the impact area and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at the site, description of the functions of these resources and habitats and the associated values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project.
- c. The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project. Each performance standard shall

state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Sustainability of the attributes shall be a part of every performance standard.

d. All riparian wetlands impacts shall be mitigated by the creation of riparian wetlands at a ratio of greater than one to one (1:1). The mitigation shall occur onsite within and adjacent to Lux Creek unless the applicants in consultation with the resources agencies determine onsite mitigation is infeasible such that another offsite wetlands system must be utilized. Offsite mitigation shall require review and approval of an amendment to this coastal development permit, **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT.**

e. Willows and mulefat shall be installed as container plants or willow sticks rather than seed.

The permittee shall undertake mitigation in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Final Monitoring Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service as appropriate, a final detailed monitoring program designed by a qualified wetland biologist. Said monitoring program shall be in substantial conformance with the approved Mitigation Plan required in Special Condition #2 above and shall at a minimum provide the following:

a. Submittal, upon completion of the mitigation site, of "as built" plans. Description of an as-built assessment to be initiated within 30 days after completion of the mitigation project. This description shall include identification of all attributes to be evaluated, the methods of evaluation, and a timeline for completion of an as-built assessment report. This report shall describe the results of the as-built assessment including a description of how the as-built project differs from the originally planned project.

b. A description of all attributes to be monitored along with the methods and frequency of monitoring. This description shall include a rationale for the types of data collected and how those data will be used. The description shall also clearly state how the monitoring data will contribute to the evaluation of project performance.

c. A description of provisions for augmentation, maintenance, and remediation of the mitigation project, throughout the monitoring period or in perpetuity as appropriate.

- d. Annual reports on the monitoring program shall be submitted to the Executive Director for approval for a period of five years. Each annual report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the mitigation project in relation to the performance standards.
- e. At the end of the five year period, a comprehensive monitoring report prepared in conjunction with a qualified wetland biologist shall be submitted to the Executive Director for review and approval. This comprehensive report shall consider all of the monitoring data collected over the five-year period in evaluating the mitigation project performance. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall undertake monitoring in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Grading/Erosion Control. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final grading and erosion control plans and grading schedule that are in substantial conformance with the plans submitted with this application by REC Consultants, dated January 26, 2006. The plans shall first be approved by the City of Encinitas and shall contain written notes or graphic depictions demonstrating that that all permanent and temporary erosion control measures will be developed and installed prior to or concurrent with any on-site grading activities and include, at a minimum, the following measures:

- a. Placement of a silt fence around the project anywhere there is the potential for runoff. Check dams, sand bags, straw bales and gravel bags shall be installed as required in the City's grading ordinance. Hydroseeding, energy dissipation and a stabilized construction entrance shall be implemented as required. All disturbed areas shall be revegetated after grading.
- b. The site shall be secured daily after grading with geotextiles, mats and fiber rolls; only as much grading as can be secured daily shall be permitted. Concrete, solid waste, sanitary waste and hazardous waste management BMP's shall be used. In addition, all on-site temporary and permanent runoff and erosion control devices shall be installed and in place prior to commencement of construction to minimize soil loss from the construction site.

c. If grading is to occur during the rainy season (October 1st to April 1st) of any year, the applicant shall submit to the Executive Director for review and written approval, a program for monitoring the condition of erosion control devices and the effectiveness of the erosion control program. The monitoring program shall include, at a minimum, monthly reports beginning November 1st of any year continuing to April 1st which shall be submitted to the Executive Director for review and written approval at the end of each month. The reports shall be completed by a licensed engineer and shall describe the status of grading operations and the condition of erosion control devices. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms.

The permittee shall undertake development in accordance with the approved grading plans. Any proposed changes to the approved grading plans shall be reported to the Executive Director. No changes to the grading plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Authorization from Property Owner/Maintenance Easement. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval an easement and maintenance agreement between the property owner(s) and the applicants for installation and maintenance of the proposed drainage facilities. The easement shall also include the wetland areas that are created or restored pursuant to Special Condition # 2 of this permit (“wetland mitigation area”). No development, as defined in section 30106 of the Coastal Act shall occur in the wetland mitigation area except for grading and planting to accomplish proposed mitigation for impacts to environmentally sensitive habitat areas and maintenance of the mitigation area.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the easement. The easement shall include legal descriptions of both the property owner’s entire parcel and open space area. The easement shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally necessary.

6. Other Permits. **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide to the Executive Director, copies of all other required federal, state or local permits for the development. The applicant shall inform the Executive Director of any changes to the development required by any of these other permits. Such changes shall not be incorporated into the project until the

applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed development involves the installation of an approximately 200-ft. long, 30-inch diameter storm drain pipe with concrete energy dissipater and riprap on an existing vacant lot in order to address downstream flooding and erosion within Lux Creek. The proposed storm drain facility will replace an existing concrete drainage swale that has failed onsite leading to erosion within Lux Creek that has damaged the resources of the stream. The proposed storm drain will extend east from Berryman Canyon Road across an approximately 60,113 sq. ft. vacant lot and then outlet at the bottom of the Lux Creek. Lux Creek, a small drainage channel containing riparian wetlands flows north/south and parallel to the east side of the subject site and drains into San Elijo Lagoon which is located approximately ½ mile to the south. Placement of necessary pipe, energy dissipaters and riprap will result in permanent impacts to approximately .014 acres (610 sq. ft.) of riparian wetlands vegetation within Lux Creek. To mitigate the impacts to riparian wetlands, the applicants have proposed to either purchase wetlands creation credit at a mitigation bank located in Carlsbad or to perform restoration within Lux Creek where the impacts will occur through the removal of exotic plants and the revegetation with native species.

One of the significant issues raised during the Substantial Issue hearing involved whether the proposed storm drain was designed to accommodate a neighboring 14-lot subdivision that is being developed adjacent to the west side of the storm drain location or whether it truly was an incidental public service project. Based on a hydrology report prepared by the applicant and submitted to the City prior to the City's action on the adjacent subdivision, the City assumed that all storm water runoff from existing and planned for development could be accommodated by existing surrounding storm drains. The hydrology information prepared for the subdivision was in error in that it only addressed runoff from the proposed subdivision. After approval of the subdivision, the City discovered the error and determined that additional off-site drainage improvements would be necessary to address the existing flooding problem within the watershed. After reviewing several extensive alternatives, the City approved the construction of the subject 200-ft. long storm drain to address the existing flooding and erosion problems within the watershed and required the neighboring 14-lot subdivision developer to construct and finance the project.

Subsequent to the Commission's finding of Substantial Issue, the City of Encinitas has become a co-applicant on the subject permit and the applicants have demonstrated through hydrological information that the proposed design of the storm drain is to address an existing drainage problem that is occurring in this watershed and to accommodate existing planned development identified in the LCP. All runoff from the pending subdivision project will be contained and controlled onsite such that the sizing and location of the proposed 30

inch storm drain has not been done in response to the runoff from the adjacent 14-lot subdivision.

The subject site is surrounded by the Somerford Alzheimer Residential Care Facility to the south, El Camino Real (a major circulation road) to the east, an approximately 7.9 acre vacant site to the east (site of the 14-lot subdivision referenced above) and residential structures located approximately 2 lots to the north. Lux Creek flows north/south and parallel to the west side of El Camino Real. The standard of review for this project is the City's LCP.

2. Protection of Wetlands. The City's LCP contains specific policies regarding the protection of wetlands. Resource Management (RM) Policy 10.6 of the LCP states, in part:

The City shall preserve and protect wetlands within the City's planning area.

[. . .]

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted 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 newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives

which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

[. . .]

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers.

(Section 30.34.04B(3) of the City's Implementation Plan contains similar requirements)

The proposed project involves the installation of an approximately 200 ft.-long, 30-inch diameter storm drain pipe with concrete energy dissipater and riprap on an existing vacant lot. The new storm drain is necessary to replace an existing concrete swale that has failed leading to erosion on the lot and within Lux Creek resulting in damage to wetland resources. The outfall dissipater and riprap will be placed within Lux Creek and directly impact riparian vegetation. The applicants' biological report identifies that approximately .014 acre (610 sq. ft.) of southern willow scrub will be destroyed as a result of the proposed development. The biology report identifies that "[w]etland communities (southern willow scrub) are considered a sensitive and declining resource by several regulatory agencies including ACOE, CDFG and USFWS" (Ref. "Berryman Canyon Road, Offsite Stormwater Improvements, Encinitas, Ca" by REC Consultants, Inc. dated 9/2/05). In addition, the applicant has performed a wetlands delineation of the subject property which details the importance of southern willow scrub:

Riparian habitat, the broader classification which encompasses southern willow scrub and other wetland communities, is considered to be sensitive by both state and federal resource agencies as well as local jurisdictions and private conservation organizations due to serious habitat fragmentation and loss caused primarily by development. It is a rare habitat in southern California where rainfall is low and rivers and streams tend to be small and intermittent. Riparian scrub habitats contain among the greatest diversity of animal species and are considered to be significant for both their ecological function and regulatory implications.

(Ref. "Wetlands Delineation Report for Stahmer Property, Assessor's Parcel Number 262-080-06-00, City of Encinitas, California" by Dudek and Associates dated March 9, 2004.)

To protect wetlands from the adverse impacts associated with new development, the LCP requires that fill of wetlands be avoided. However, if unavoidable, the LCP limits fill of wetlands to four specific uses: incidental public service projects, mineral extraction, restoration purposes and nature study. In addition, if it is a permissible use, RM Policy 10.6 also requires that it be the least environmentally damaging alternative and include feasible mitigation measures to address impacts to the environment and avoid a net loss of wetlands.

The purpose of the proposed project that will result in wetland fill is to construct a storm drain facility to address an existing drainage problem. As noted above, the certified LCP allows wetland fill if it cannot be avoided and is for an incidental public service purpose. In this case, there are inadequate public facilities to handle drainage within the Berryman Canyon watershed and the proposed project will replace the existing inadequate facilities with a new public storm drain pipe and outfall. The proposed project will not result in an increase in capacity. According to the submitted hydrological report which has been reviewed and concurred with by the Commission's engineer, it sized to accommodate existing planned development and is not designed or sized to accommodate the pending adjacent subdivision. All runoff from the proposed subdivision will be controlled and contained onsite of the subdivision to assure that runoff from the subdivision site will not exceed that which currently exists. Therefore, the project can be considered an incidental public service project.

Alternatives.

Although the project is an incidental public service project based on hydrological documentation, RM Policy 10.6 also requires that the project be the least environmentally damaging alternative. The applicants have considered 8 alternatives including the no project alternative. These alternatives generally involve re-routing the existing runoff into existing offsite facilities, enlargement of the existing storm drain and outfall system, and/or construction of large detention basins at various locations. The applicants have carefully identified the other alternatives as infeasible because they involve work on properties they do not own (and the owner is not agreeable to the work), conflict with the alignment of other utilities, involve excessive cost or have direct impacts to other environmentally sensitive habitat areas (ESHA). In addition, these other alternatives would not address the ongoing runoff that occurs across the subject property resulting in erosion and damage to Lux Creek. Finally, the no project alternative would result in continued flooding to existing private development downstream and ongoing erosion and resource damage to Lux Creek. Commission staff has reviewed these alternatives and concurs that the proposed development is the least environmentally damaging alternative. A detailed description of these alternatives is attached as Exhibit #6. (Alternative "D" is the preferred alternative proposed by the applicant.)

Mitigation. As previously described, RM Policy 10.6 of the LCP requires that incidental public service projects be the least environmentally damaging alternative and must include feasible mitigation measures to address adverse impacts to the environment. In addition, RM Policy 10.6 specifically identifies that unavoidable wetlands impacts must be mitigated by the same type lost at a ratio of greater than 1:1 creation. In this case the applicants have documented that approximately .014 acres (610 sq. ft.) of riparian wetlands (southern willow scrub) will be destroyed as a result of the required drainage system.

To address mitigation, the applicants are proposing two alternatives. One involves the purchase of wetlands creation credit from the “McCollum Mitigation Bank” which is located in the City of Carlsbad approximately 10 miles north of the proposed development site. The applicants propose to purchase 0.042 acre of riparian created habitat which represents a ratio of 3:1 mitigation (Ref. Exhibit #7). This rate would be consistent with the LCP requirements, however, the development of the McCollum Mitigation Bank has not been reviewed or approved by the Commission such that it is not known whether it adequately functions as a wetlands creation bank. The site of the McCollum Mitigation Bank lies within an area governed by the City of Carlsbad’s Certified LCP such that the City is responsible for processing any coastal development permit. Since any development located within 100 ft. of wetlands (Encinas Creek) would be subject to appeal to the Commission, if the City eventually processes a coastal development permit for the McCollum Mitigation Bank, the Commission will have an opportunity to review the project for its adequacy in creation of wetlands and/or other habitat. To date, however, that has not occurred. However, the Commission’s staff biologist has reviewed the biological technical report prepared for the McCollum Mitigation Bank (Ref. “Biological Technical Report for the North County Habitat Bank” dated July 2, 2004 by Helix Environmental Planning) and concluded that this mitigation bank should more accurately be described as a wetlands restoration project since the “creation” primarily involves removal of pampas grass and planting of riparian wetlands and not the grading of upland area to facilitate creation of wetlands. In addition, the LCP requires that replacement of wetland should preferably be onsite or adjacent to the impacted area and “within the same wetland system”. The applicants assert that the McCollum Mitigation Bank is within the same “watershed” as defined by the Regional Water Quality Control Board. However, it is not within the same wetland system since the subject wetland system is linked by stream to San Elijo Lagoon on the south side of Encinitas, while the McCollum Mitigation Bank is located approximately 10 miles north along Encinas Creek in the City of Carlsbad and discharges into the Pacific Ocean. Therefore, since the proposed purchase of credit does not appear to involve the purchase of wetlands creation, but instead wetlands restoration, this proposed mitigation alternative does not result in wetlands creation as required by the LCP.

As an alternative to purchasing wetlands credit at the McCollum Mitigation Bank, the applicants have proposed to restore Lux Creek surrounding the proposed impact site through the removal of exotic vegetation and planting of native species at a rate of 3:1. The applicants’ alternative mitigation plan (Ref. Exhibit #8) identifies an area of approximately 1,830 sq. ft. within Lux Creek surrounding the proposed impact area as

containing southern willow scrub, several stands of non-native species including pampas grass, California fan palm, and African umbrella sedge. The applicants' proposal will enhance the existing section of Lux Creek which has experienced erosion due to the existing failed concrete drainage swale. However, although the mitigation proposal will improve the existing condition and is detailed and comparable to restoration/enhancement plans approved by the Commission in the past, the mitigation plan does not include the creation of riparian habitat as required by the LCP. Since the LCP does not make allowance for the size of wetlands impacted or allow for substitute means of mitigating direct impacts to wetlands, the applicants' proposed alternative mitigation is also inconsistent with the requirements of the LCP.

Although the proposed storm drain facility is an incidental public service project and the least environmentally damaging alternative, it is not consistent with the LCP as it relates to creation of wetlands. Therefore, Special Condition #2 has been attached which requires the applicants to submit a revised mitigation plan which has been approved by the Department of Fish and Game (DFG) and U.S. Fish and Wildlife Service that incorporates the creation of wetlands at a rate that is greater than 1:1. While the preference would be that the creation of wetlands be onsite where the impacts occur, the LCP does allow for the creation of wetlands at offsite locations. If the applicant is unable to create wetlands onsite, Special Condition #2 requires the applicant to apply for an amendment to the subject coastal development permit so that the Commission can be assured the offsite location is consistent with the requirements of the LCP or the Coastal Act if located in the Commission's original jurisdiction. In addition, at the suggestion of the Commission's biologist, the applicant's proposal to plant by seed shall be revised to require that willows and mulefat be installed as container plants or willow sticks rather than seed. To assure the success of the mitigation plan, Special Condition #3 requires the submission of a detailed monitoring and reporting plan to evaluate the performance of the mitigation and which requires future maintenance if the performance standards are not met. Since the proposed project will impact Lux Creek, a stream that flows into San Elijo Lagoon, it is likely that DFG will require a streambed alteration agreement that will require additional and/or similar mitigation. Since the ultimate mitigation design may be revised by DFG, Special Condition #7 has been attached to require copies all other government permits that might apply to the subject development. In addition, the condition identifies that any changes resulting from those other permits may require an amendment to the subject permit.

The proposed development will occur on an approximately 60,113 sq. ft. vacant lot that is not owned by the applicants. Although the property owner supported the project at the local government, Special Condition #5 requires that prior to issuance of the permit the subject property owner authorize the proposed development through the placement of a maintenance easement or other device over the area containing the storm drain pipe and outfall device. In addition, RM Policy 10.6 requires that all wetlands associated with development shall be permanently protected through the use of an open space easement or other suitable device. Therefore, Special Condition #5 also requires that the maintenance easement also protect the wetland mitigation areas required pursuant to this permit.

Finally, the installation of the proposed storm drain facility will require grading of the upland area as well as within Lux Creek. To prevent adverse impacts of sediment, Special Condition #4 requires the submission of a final grading and erosion control plan that has been approved by the City of Encinitas. The grading and erosion control plan will assure that sediment resulting from the proposed development will not have adverse impacts to Lux Creek or the downstream resources of San Elijo Lagoon.

In summary, the proposed storm drain project that results in the fill of wetlands is an incidental public service project necessary to address ongoing flooding and erosion problems and to serve existing and planned for development. The project is the least environmentally damaging alternative and, as conditioned, will result in the creation of wetland in excess to what is proposed to be lost so as to result in a net gain of riparian wetlands. Therefore the proposed project, as conditioned, is consistent with RM Policy 10.6.

6. 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 can be made.

In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction, therefore, the standard of review is the City's LCP.

The subject site is zoned and planned for residential development in the City's certified LCP and the proposed development is consistent with the residential zone and plan designation. As an incidental public service project, the proposed development is consistent with the certified LCP and all adverse impacts to riparian wetlands will be mitigated consistent with the requirements of the LCP. Therefore, the Commission finds the approval will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

7. 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 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 that the activity may have on the environment.

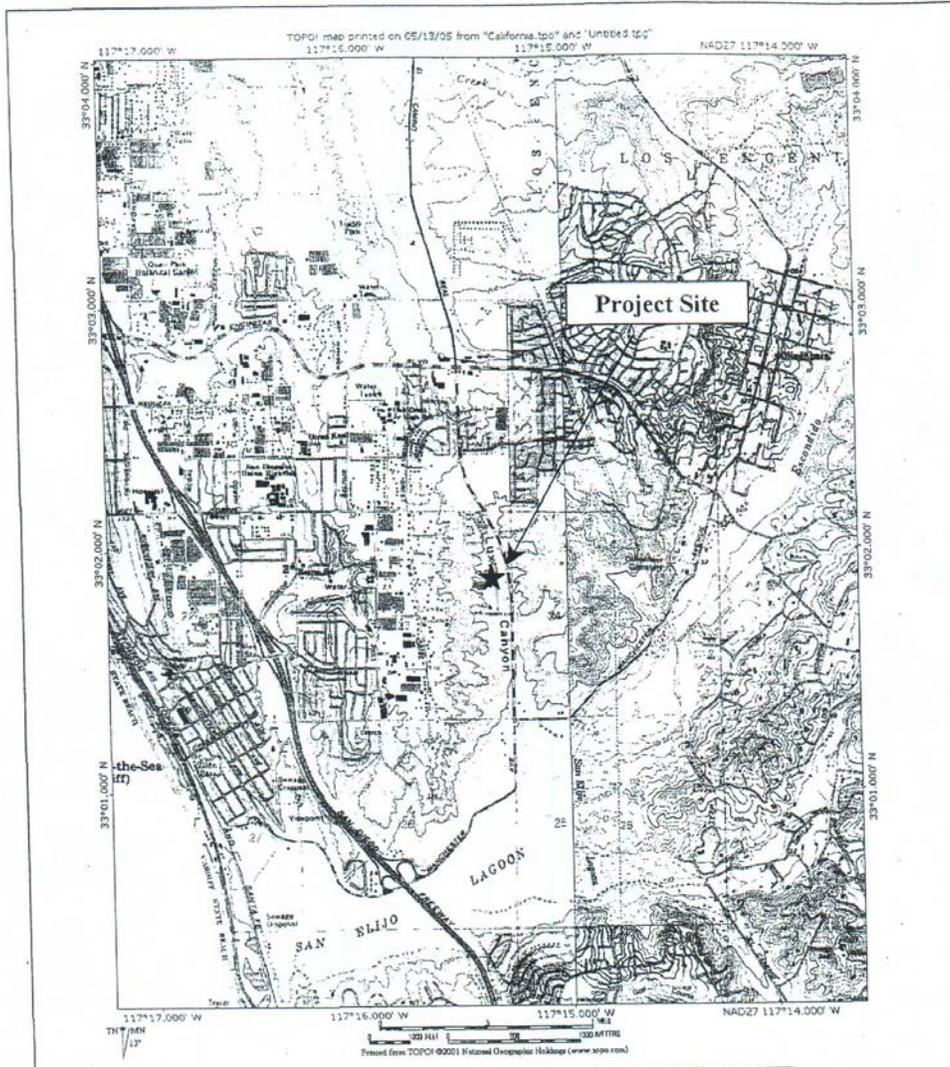
The proposed project has been conditioned in order to be found consistent with the wetland protection policies of the certified Local Coastal Plan. Mitigation measures will

minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

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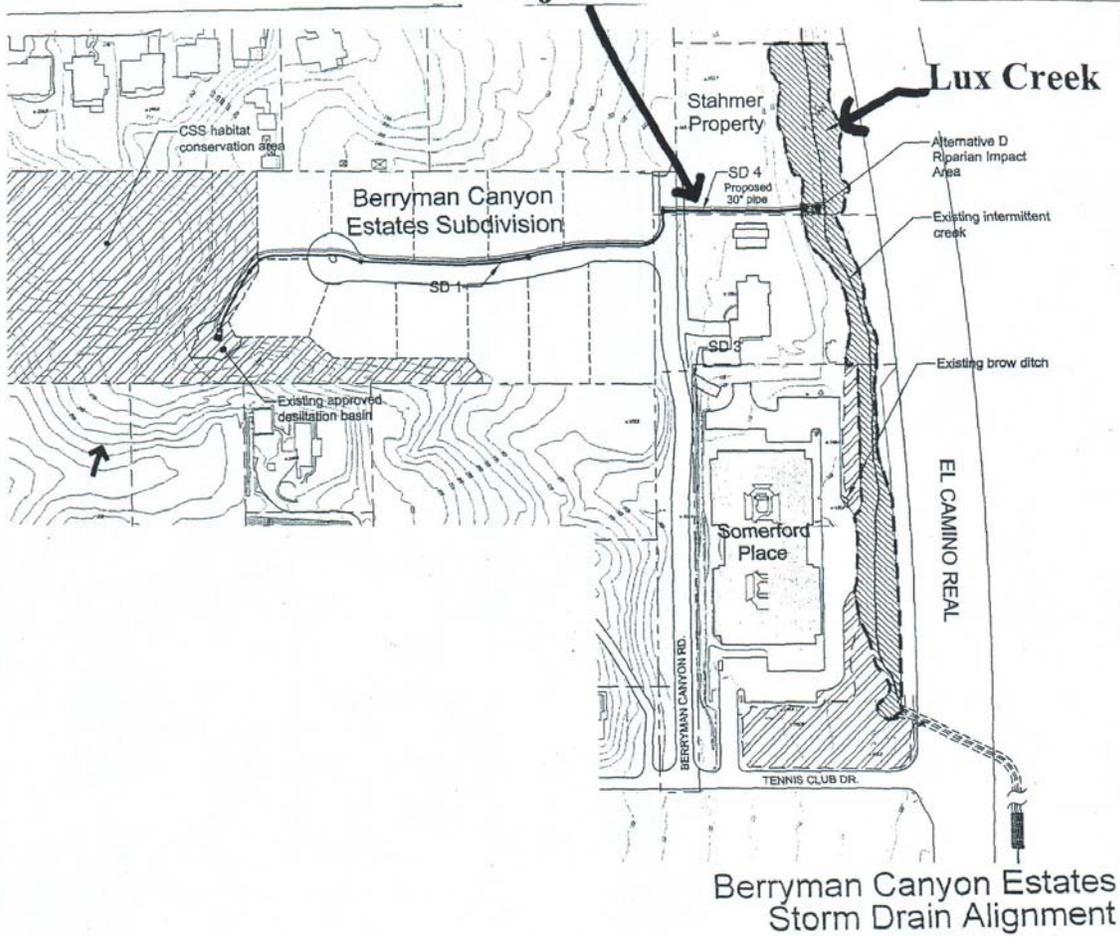
REC
Consultants, Inc.

Vicinity Map
Berryman Canyon

EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-06-005
Vicinity Map

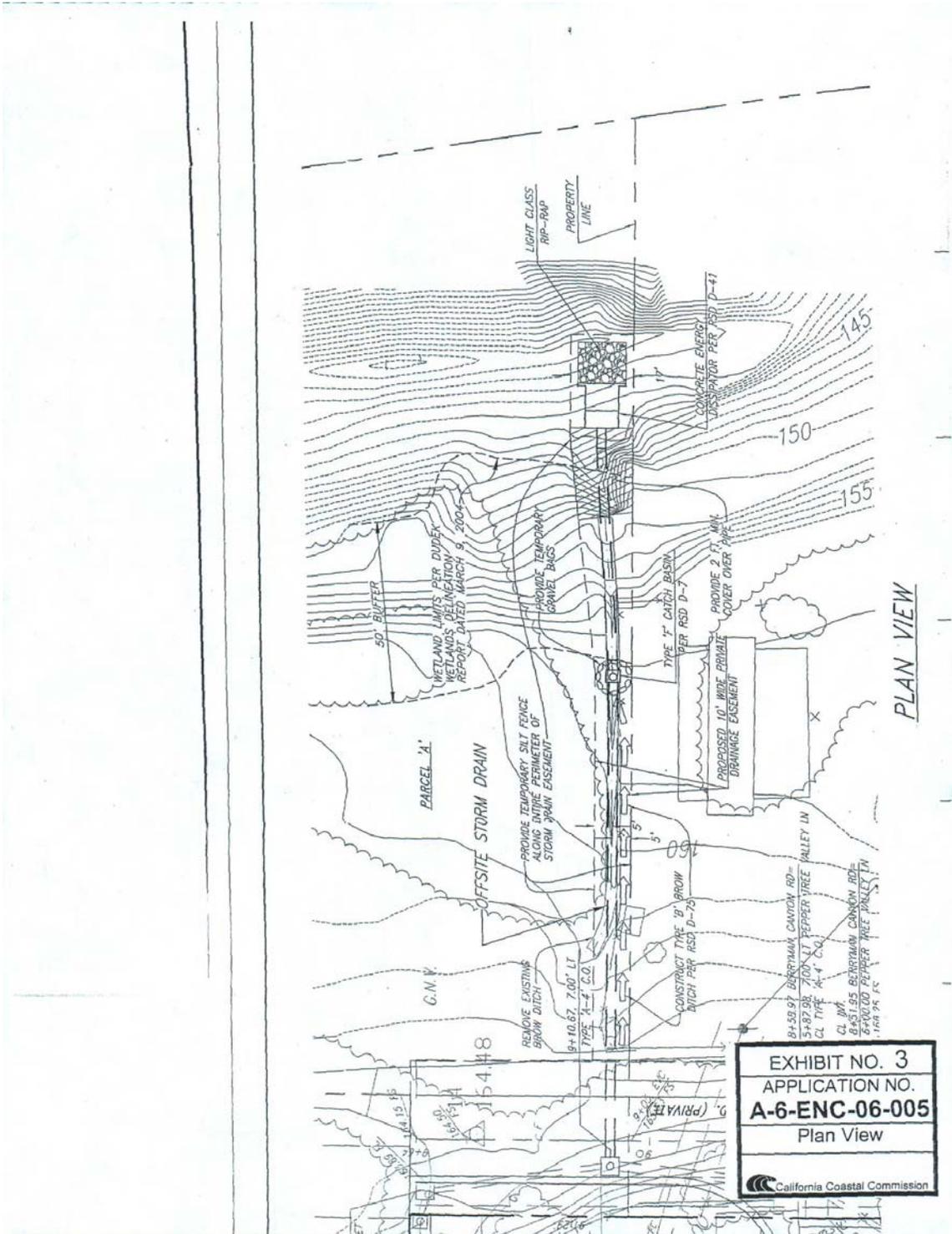
California Coastal Commission

Location of Subject Storm drain



Berryman Canyon Estates Storm Drain Alignment

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-06-005
Location Map
California Coastal Commission



PLAN VIEW

EXHIBIT NO. 3
 APPLICATION NO.
A-6-ENC-06-005
 Plan View

California Coastal Commission

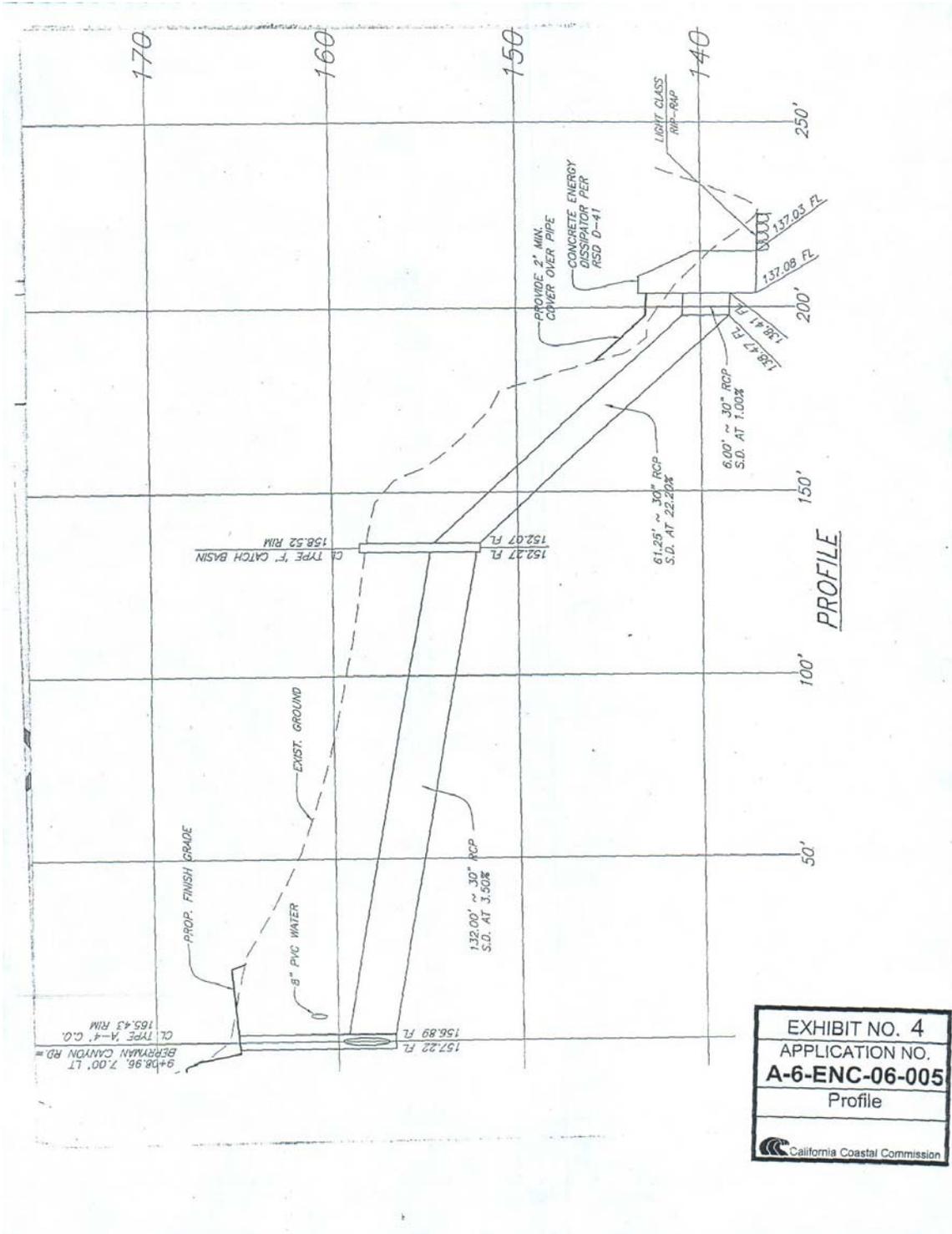


EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-06-005
Profile
California Coastal Commission



City of
Encinitas

RECEIVED

JUN 08 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

June 5, 2006

Mr. Gary Cannon
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

RE: Appeal of City of Encinitas Coastal Development Permit for Improvement of
Berryman Canyon Road Storm Drain Facility and Associated Wetland
Encroachment, A-6-ENC-06-005

Dear Mr. Cannon and California Coastal Commissioners:

On January 20, 2006 the Coastal Commission appealed the proposed 14- lot subdivision at Berryman Canyon Road in the City of Encinitas. The City understands that one of the primary concerns resulting in the appeal of the project was the question of whether the project provides an "incidental public service benefit". The City further understands that a project with an "incidental public service benefit" meets the threshold of acceptable wetland intrusion. Based on this reasoning, the City is concerned with the Coastal Commission's appeal of the Berryman Canyon project and writes this letter to clarify several important points relating to the development.

At issue is the perception that the Berryman Canyon drainage improvement is only necessary because of the proposed residential development project nearby. However, a drainage problem currently exists and is not created by this or other proposed developments in the area. The City has been aware of the flooding problems on Berryman Canyon Road for many years and the damaging impact the flooding has had on the developed properties in the vicinity (such as the Somerford Place Alzheimer's Facility and single family residential properties existing along the developed portion of Berryman Canyon Road). During heavy storm events or multiple days of rain, the lack of adequate drainage facilities results in flooding that threatens property damage and creates an access problem for those developed properties that are only accessible from Berryman Canyon Road. In the event that an emergency vehicle would need to reach those properties during heavy rains, the ability to quickly traverse the flooded dirt road would jeopardize the capabilities of the emergency services and potentially the safety of the residents.

EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-06-005
City Statement
Concerning
Incidental Public Use
Page 1 of 4
California Coastal Commission

In a meeting onsite between City of Encinitas Engineering and Planning staff and Mr. Lee McEachern, the City called attention to the existing eroded wetland where a drainage ditch currently discharges to the wetland. As explained to Mr. McEachern at that time, if the drainage is not improved within the wetland area, the erosion will continue, resulting in further destruction of the wetland and the discharge of additional sediment into Lux Canyon Creek and San Elijo Lagoon.

The construction of a controlled storm drain system stands to benefit the wetland and storm water quality downstream. The City of Encinitas permitted the construction of a storm drain facility a few hundred feet south of the subject project at the Somerford Place Alzheimer's Facility. This new storm drain stopped erosion of the adjacent wetland and allowed the growth of wetland vegetation. Attached photographs A-1 and A-2 depict the potential benefits of a controlled storm drain facility in the wetland. Photograph A-1 shows the existing condition of the storm drain and the current erosion of the wetland at the Berryman Canyon project, while photograph A-2 illustrates the improved drainage at Somerford Place.

Based on an assessment of the damage mitigation that an adequate storm drain system could provide to the wetland adjacent to the Berryman Canyon project, the development has been conditioned by the City to correct the existing drainage problem. Acceptable drainage and street designs are required to ensure the necessary drainage facilities will last for 30 to 100 years and will minimize erosion potential to the wetland. The City feels that the magnitude of the drainage problem warrants correction at this time, despite the fact that the majority of the drainage to be handled by the proposed system originates west and north of the proposed development property and not from properties on Berryman Canyon Road itself.

Because of the public health, safety, and welfare concerns and the need for future professional maintenance of the storm drain system, the City has required the Berryman Canyon developer to dedicate the proposed storm drain system and to grant a public easement over the system to the City of Encinitas. The proposed construction of this public storm drain system to capture and safely conduct runoff from a number of offsite properties further evidences the project's "incidental public service benefit."

The City of Encinitas remains convinced that the proposed drainage facility is the only feasible alternative to address all drainage, flooding, and erosion problems in the area. The public benefits created by the proposed public drainage system are clear and readily apparent. The fact that the developer is financing the construction of the much-needed storm drain improvements should not be considered grounds for rejection of the project, especially since the majority of City-owned public improvements are funded and constructed by developers. In this instance as well as in all cases in which the City requires developers to construct and dedicate public improvements, those developments provide a clear and necessary benefit to the public.

The City of Encinitas appreciates the opportunity to provide this important information and urges the Coastal Commission to consider these issues when deliberating the appeal of the Berryman Canyon project. Please feel free to contact the City to discuss the situation in more detail.

Sincerely,



Masih Maher
Senior Engineer

Cc: Mayor Christy Guerin
Council Member Jerome Stocks
Kerry Miller, City Manager
Peter Cota-Robles, Director of Engineering Department
Patrick Murphy, Director of Planning and Building Department
Brett Ames, McCullough and Ames Development

A-2



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A-1

Berryman Canyon Storm Drain Alignment Alternatives Analysis

Alternative A

Description: This alternative would involve construction of an onsite detention basin within the open space of the Berryman Canyon Estates Subdivision in order to hold run-off so it did not enter the downstream system. This detention basin would be located in the same location as an existing approved desiltation basin but would need to detain runoff from the open space plus the watershed located upstream to the west and south of the subdivision. This basin would need to be increased in size in order to hold up to 35,000 cubic feet of water volume. Thus, the basin area would be increased in size from 0.1 acres in size to approximately 0.5 acres in size. This detention basin would allow for sufficient holding of water in order that it seeped into the ground and thus did not necessitate draining offsite to the open spaces to the east. Water from the single-family lots portion of the subdivision would then be of a volume that it could drain into Storm Drain #1 and then into Storm Drain #2 before entering Lux Canyon through the existing 18" drainage pipe in Somerford Place.

Advantages:

1. This alternative would allow for drainage of the subdivision without any impacts to the riparian habitat in Lux Canyon. Runoff not detained onsite would enter the riparian zone through an existing pipe and outfall which could handle the required volume.
2. No land acquisition costs.
3. No offsite permission required.

Disadvantages:

1. The proposed detention basin in this alternative would impact .45 acres of existing Coastal Sage Scrub which was conditioned for conservation protection through the CDP for Berryman Estates.
2. Relatively high construction costs.
3. The detention basin would have to be maintained annually.
4. This option would necessitate the processing of additional approval entitlements from the City of Encinitas including a Section 4(d) permit for take of gnatcatcher habitat and resulting offsite mitigation.

Alternative B

Description: This alternative would involve the demolition and replacement of the existing 18" storm drain pipe on the Somerford Place property with a new 36" pipe headwall and outfall. This upgrade of pipe size is necessary in order to allow for the necessary volume of runoff from the Berryman Estates including the open spaces to the west and south. No construction of the open space detention basin would occur with this alternative.

Advantages:

1. This option would allow sufficient drain capacity to drain the full watershed including the Berryman Canyon Estates Subdivision. This watershed drainage would drain into Storm Drain #1, then Storm Drain #2 before out-letting through the replaced Somerford Place pipes.
2. No impacts to CSS on the protected Berryman Canyon Estates open space would occur.

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A-6-ENC-06-005
Applicant's Alternative Analysis
Page 1 of 4
 California Coastal Commission

Disadvantages:

1. Approximately .045 acres of protected Coastal Sage Scrub within Lux Canyon would be impacted by the construction of a new 36" pipe headwall and outfall at Lux Canyon which could be needed as a result of the upgraded sized storm drain pipe.
 2. This option would necessitate cooperation (acceptance of drainage, easement, and construction) from the owners of the Somerford Place Alzheimer's Clinic. Somerford Place owners have gone on record as opposing such construction within their facility.
 3. Land acquisition and legal costs would be high, if feasible.
-

Alternative C

Description: This alternative would route all storm water runoff from the watershed including Berryman Canyon Estates into Storm Drain #1. Approximately half of this runoff would flow into Storm Drain #2 and then enter the existing 18" pipe on the Somerford Place property before out-letting into the Lux Canyon as in Alternative A. Due to the fact the Somerford Place storm drains are not of sufficient size to handle all of the drainage, the other half of the runoff would cut off into Storm Drain #3 before out-letting onto surface flow over the existing northern Somerford Place parking lot. This drainage runoff would flow across the surface of the parking lot before entering a small existing brow ditch on the eastern side of the parking lot. This brow ditch then outlets into an area of Coastal Sage Scrub just west of the intermittent creek in the Lux Canyon.

Advantages:

1. This option would allow for the drainage of the watershed and Berryman Canyon Estates Subdivision without requiring a new storm drain construction or replacement.
2. This option would have very low construction costs.
3. This option would result in no impacts to natural habitats or vegetation.

Disadvantages:

1. This option would allow a large amount of water to flow across the parking lot of Somerford Place (an Alzheimer's Clinic) during and after rainfall events. Somerford ownership was approached with this option and was advised by their consultants (lawyers) that slippery and standing water running through the parking lot was incompatible with a facility housing elderly people. Somerford Place owners have gone on record as opposing this option.
-

Alternative D

Description: This alternative involves the replacement of an existing brow ditch with a 30" storm drain pipe on the Stahmer property located directly east of the Berryman Canyon Estates Subdivision. Using this alternative, a majority of the watershed and subdivision would drain into Swale #1, then into Storm Drain #1A and finally into Storm Drain #4 before out-letting into the Lux Canyon. Drainage from a small portion of northern section of the subdivision would drain into Swale #2, then into Storm Drain #1B and finally into Storm Drain #4 before out-letting into the Lux Canyon. The remaining portion of the subdivision and watershed (southeastern corner) will drain via curb and gutter south down Berryman Canyon Road before entering Storm Drain #2 (approximately 90' in length) and then exiting into a small detention basin on the western side of Berryman Canyon Road. From there, the drainage would enter into a 12" storm drain pipe and flow east under Berryman Canyon Road before entering the existing Somerford Place pipes and eventually out-letting into the Lux Canyon.

Advantages:

1. This option would allow for 84% (24 c.f.s.) of the drainage from the watershed to enter an adequately sized single 30" pipe (Storm Drain #4) directly downstream (easterly) from the subdivision. The remaining 16% (5 c.f.s) would continue down Berryman Canyon Road to the existing Somerford pipes.
2. No other improvements on the Somerford property would be required.
3. The offsite landowner (Stahmer) is agreeable to the storm drain on his property.
4. No impacts to CSS on the protected Berryman Canyon Estates open space would occur.

Disadvantages:

1. This option would impact 0.014 acres of riparian vegetation for construction of the headwall and outfall at the edge of Lux Canyon.

Alternative E

Description: This alternative would follow the same route as Alternative D (Storm Drain #4) except that storm runoff would be detained to limit drainage flow at the outfall at Lux Canyon. Also, the downstream (Lux Canyon) end of Storm Drain #4 would be pulled back to the top of the creek bank (instead of extending down to the creek as in Alternative D).

Advantages:

1. No direct impacts to Lux Canyon riparian vegetation would occur.
2. No impacts to CSS on the protected Berryman Canyon Estates open space would occur.
3. No effects on Somerford Place.

Disadvantages:

1. Negative impacts to creek- placing the storm drain outfall at the top of the existing Lux Canyon slope (at the top of a natural approximately 2:1 gradient) would result in erosion in Lux Canyon as drainage increases in velocity as it goes down the slope. According to the hydrologist at the City, even small volumes of runoff will result in intensive erosion as evidenced by the existing highly-eroded circumstances (which presently results from only localized drainage).
2. Negative impacts to vegetation – erosion at end of storm drain would also be expected to negatively impact riparian vegetation in the immediate vicinity of outfall downstream.
3. Extremely high cost for purchase of property for detention basin.

Alternative F

Description: This alternative would route all storm water from the watershed including Berryman Canyon Estates into Storm Drain #5. This storm drain pipe would run the entire length of Berryman Canyon Road south to Tennis Club Drive and then run east toward El Camino Real. The storm drain would then be routed under the entire width of El Camino Real and tie into the existing Lux Canyon Creek culvert, which at this location is positioned on the east side of El Camino Real.

Advantages:

1. This option would be entirely within public right of way.
2. No impacts to CSS or riparian vegetation would occur.

Disadvantages:

1. This option would conflict with numerous existing public utilities under and adjacent to El Camino Real. The effected utilities include a gravity sewer trunk line, a high pressure water distribution line, electrical, gas, cable and TV utilities. Preliminary studies conclude that several of these utilities would have to be re-aligned or otherwise modified to accommodate the storm drain.
2. Extremely high construction costs, including length of storm drain and utility conflict resolution.
3. The City of Encinitas has recommended against this option due to the traffic congestion associated with construction across the width of El Camino Real and the overall problems with utility relocation.

Alternative G

Description: This alternative would involve construction of an onsite detention basin within two of the approved Berryman Canyon Estates single family lots. The two most southeastern lots of the subdivision would be used for this detention basin. The basin would need to detain runoff from the open space plus the watershed located upstream to the west and south of the subdivision. This detention basin would allow for sufficient holding of water in order that it seeped into the ground and thus did not necessitate draining offsite to the open spaces to the east. Water from the single-family lots portion of the subdivision would then be of a volume that it could drain via curb and gutter down Berryman Canyon Road and into Storm Drain #2 and then into the existing 18" and 24" drainage pipes on the Somerford Place property. The proposed (Alternative D) storm drain would not be constructed for this project.

Advantages:

1. This option would allow for drainage of the subdivision without any impacts to the riparian habitat in Lux Canyon.
2. No impacts to CSS on the protected Berryman Canyon Estates open space would occur.

Disadvantages:

1. Although this alternative would theoretically resolve the drainage issue for the Berryman Canyon Estates project, it would NOT resolve the existing drainage issues for the balance of the sub-watershed, and thus would still be needed for existing and proposed development (31 single family homes) and thus must be constructed in the future.
2. No solution to the existing erosion problem on Stahmer property at Lux Canyon.
3. Extremely high cost for loss of property for detention basin.



Civil Engineering · Environmental

Consultants, Inc.

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Phone: 619.232.9200
Fax: 619.232.9210

June 13, 2006

Gary Cannon, Project Manager
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Subject: Berryman Canyon, City of Encinitas
Appeal No. A-6-ENC-06-005 (McCullough Ames)

Dear Mr. Cannon:

REC Consultants, Inc. is providing additional biological consulting services to the applicant, McCullough Ames, for the Berryman Canyon project, specifically regarding the offsite stormwater improvement area. REC Consultants has extensive experience with documenting, restoring / creating, managing and monitoring riparian habitats. All pertinent documents for this project have been reviewed and the following letter discusses the proposed purchase of riparian creation mitigation credit to mitigate for project impacts associated with the offsite stormwater improvements.

As a result of the offsite stormwater improvements, approximately 0.014 acre of southern willow scrub will be impacted. The local jurisdiction and the regulatory agencies typically require mitigation ratios from 1:1 to 3:1 for riparian habitat, based on the quality of the habitat. Because the habitat in this area is relatively high quality, the mitigation ratio was determined to be 3:1. Therefore, a total of 0.042 acre is required to mitigate for the offsite stormwater improvement impacts.

Several options have been considered for mitigation. The biological letter report prepared by REC Consultants, Inc. (September 2, 2005) and the Final Mitigated Negative Declaration issued by the City of Encinitas concluded that three mitigation options could be considered to reduce impacts to below a level of significance:

- 1) Approximately 0.042 acre of wetland habitat will be purchased offsite in a pre-approved mitigation bank;
- 2) Approximately 0.042 acre of wetland habitat creation and / or enhanced lands will be purchased offsite from a private property owner approved by the City of Encinitas; or
- 3) An in-lieu contribution will be made to the ongoing invasive plant removal program within the Carlsbad watershed.

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EXHIBIT NO. 7
APPLICATION NO.
A-6-ENC-06-005
Applicant's Proposed Purchase of Wetlands "Creation" Credit
Page 1 of 11
California Coastal Commission

Gary Cannon
Berryman Canyon
Page 2

Option 3 has been eliminated from consideration because invasive plant removal would not meet the "no net loss" policy.

In a letter addressed to Brett Ames dated June 5, 2006, it was discussed why onsite riparian habitat creation is not a viable option for this project's mitigation. These reasons include:

- 0.042 acre of mitigation is too small and isolated;
- A wetland of this size would have reduced biological value / ecological function;
- The grading required to create mitigation area will entail additional biological impacts to upland habitats;
- The applicant would be unable to find a conservation management entity to provide in perpetuity management of such a small area;
- The cost for in perpetuity management by a conservation management entity would be excessive due to the small size and relative isolation of the area; and
- The Wildlife Agencies are beginning to reject onsite mitigation (creation / enhancement) for projects with small mitigation acreages due to the difficulties securing in perpetuity management.

The June 5, 2006 letter has been included as an attachment for reference.

Therefore, Option 1 has been fully analyzed. The remainder of this letter addresses why the purchase of 0.042 acre of riparian creation mitigation bank credits is the preferred alternative. This purchase is proposed to occur in the McCollum Mitigation Bank. This bank is the preferred option as mitigation for the following reasons:

- 1) The McCollum Mitigation Bank is in the same watershed as the project impacts.
- 2) The riparian habitat within the bank that is being created is the same habitat that is being impacted by the project.
- 3) The purchase of 0.042 acre of riparian creation credit meets the "no net loss" policy and provides a net gain.
- 4) The acreage that is proposed to be purchased within the bank has already been created and is ready to be used for mitigation.

Project and Bank Within the Same Watershed

According to the Regional Water Quality Control Board Basin Plan, the McCollum Mitigation Bank is located in the same watershed as the project: the Carlsbad Watershed.

The Berryman Canyon project is located on Lux Canyon Creek. Lux Canyon Creek feeds the San Elijo Lagoon which is a sub hydrological unit of the Escondido Creek which is the largest hydrologic area in the Carlsbad Watershed.

Gary Cannon
Berryman Canyon
Page 3

For additional information about the Carlsbad Watershed, please see http://www.projectcleanwater.org/html/ws_carlsbad.html. The information provided on this website is printed and attached to this letter as it pertains to the Carlsbad Watershed.

The McCollum Mitigation Bank is bounded by Palomar Airport Road to the north, open space to the west and south, and open space and office buildings to the east. The goal of the bank is to restore wetland and upland habitats along Encinas Creek, which is a hydrologic area within the Carlsbad Watershed. Please see the attached Figures 1 and 2 from the *North County Habitat Bank Prospectus Report*, prepared by Helix, dated September 9, 2005.

Impacted Habitat and Mitigation Bank Habitat Are the Same

The 0.014 acre of southern willow scrub being impacted by the offsite stormwater improvements is the same habitat that is being created within the McCollum Mitigation Bank. Helix's prospectus (biology) report on the mitigation bank details the planting palette for the riparian creation areas within the mitigation bank. The riparian species listed are the same species that occur within the impact area for the Berryman Canyon site. Therefore, the replacement of the impacted wetland shall occur with newly created wetland of the same type lost.

No Net Loss

As determined by the regulatory agencies and the City of Encinitas, the project shall mitigate the unavoidable riparian impact at a 3:1 ratio. This mitigation ratio meets the "no net loss" requirement in the City of Encinitas' LCP and provides a net gain in riparian habitat.

Creation of Habitat Within the Bank Has Already Occurred

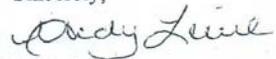
Most of the creation and restoration within the 18.73 acre McCollum Mitigation Bank has been installed. However, this is still an active bank with ongoing work. There is no two year window to wait until the acreage is created or restored. Therefore, the credits being purchased represent areas that have already undergone creation and / or restoration. The habitat value and ecological function already exists within these areas. The bank only sells the habitats that have already been restored or created and are available to provide mitigation.

The development of a large, high quality habitat bank more effectively mitigates for wetland impacts and is more beneficial than smaller and isolated habitat pieces. Larger habitat mitigation banks provide for comprehensive monitoring and long term management. For these reasons, and those provided above, the purchase of 0.042 acre of riparian creation credit in the McCollum Mitigation Bank is the preferred alternative.

Gary Cannon
Berryman Canyon
Page 4

Please contact me if you have any questions. Thank you.

Sincerely,


Hedy Levine

Enclosures

cc: Brett Ames, Applicant



Consultants, Inc.

Civil Engineering · Environmental

2442 Second Avenue
San Diego, CA 92101
Phone: 619.232.9200
Fax: 619.232.9210

June 5, 2006

Brett Ames
McCullough-Ames Development, Inc.
11828 Rancho Bernardo Road, Suite 205
San Diego, CA 92128

Subject: Berryman Canyon, Encinitas, CA

Dear Mr. Ames:

The following letter discusses the project's impacts to southern willow scrub as a result of the offsite stormwater improvements and the proposed mitigation for these impacts. Impacts and mitigation resulting from the offsite stormwater improvements were discussed in a biological technical letter written by REC Consultants, Inc., dated September 2, 2005.

The offsite stormwater improvements impact approximately 0.014 acre of southern willow scrub. Riparian habitats typically require mitigation ratios from 1:1 to 3:1, based on the quality of the habitat. Because the habitat in this area is relatively high quality, the mitigation ratio was determined to be 3:1. The biological letter report and the Final Mitigated Negative Declaration issued by the City of Encinitas concluded that three mitigation options could be considered to reduce impacts to below a level of significance:

- 1) Approximately 0.042 acre of wetland habitat will be purchased offsite in a pre-approved mitigation bank;
- 2) Approximately 0.042 acre of wetland habitat creation and / or enhanced lands will be purchased offsite from a private property owner approved by the City of Encinitas; or
- 3) An in-lieu contribution will be made to the ongoing invasive plant removal program within the Carlsbad watershed.

Approval would also be required from the ACOE and CDFG.

Option 3 was subsequently discarded because invasive plant removal would not meet the "no net loss" policy.

Additional research was conducted on the second option: to enhance / create wetland habitat adjacent to the offsite stormwater improvement area. This would entail grading and destruction of additional upland habitat. While the onsite wetland creation option was fully considered, it is not considered to be a viable option for the following reasons:

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Berryman Canyon

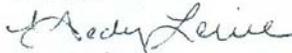
Page 2

- 0.042 acre of mitigation is too small and isolated;
- A wetland of this size would have reduced biological value / ecological function;
- The grading required to create mitigation area will entail additional biological impacts to upland habitats;
- The applicant would be unable to find a conservation management entity to provide in perpetuity management of such a small area;
- The cost for in perpetuity management by a conservation management entity would be excessive due to the small size and relative isolation of the area; and
- The Wildlife Agencies are beginning to reject onsite mitigation (creation / enhancement) for projects with small mitigation acreages due to the difficulties of security in perpetuity management.

Therefore, the purchase of wetland creation mitigation credits in the McCollum mitigation bank in Carlsbad is the preferred option. At this time, wetland creation mitigation credits have been reserved in the McCollum bank. The applicant will be required to purchase either 0.05 acre or possibly 0.10 acre of wetland mitigation credit. We are awaiting a response from the bank as to the smallest purchase increment available. In either case, the mitigation credit purchase amount will be above and beyond the 3:1 mitigation ratio.

Please contact me if you have any questions. Thank you.

Sincerely,



Hedy Levine

project clean water

clean water through local commitment and action

Carlsbad Watershed

Plan Projects Activities

WATERSHED URBAN RUNOFF MANAGEMENT PROGRAM
ANNUAL UPDATE - CARLSBAD HYDROLOGIC UNIT (11/03)

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Hydrologic Unit 904.10 - 904.63

Hydrologic Areas:	Loma Alta 904.1 Buena Vista Creek 904.2 Agua Hedionda 904.3 Encinas 904.4 San Marcos 904.5 Escondido Creek 904.6
Major Water Bodies:	Loma Alta Creek, Buena Vista Creek, Buena Vista Lagoon, Agua Hedionda Creek, Agua Hedionda Lagoon, San Marcos Creek, Batiquitos Lagoon, Escondido Creek, San Elijo Lagoon, and Lake Wolford
CWA 303(d) List:	Pacific Ocean/ Buena Vista, Pacific Ocean/ Escondido Creek, Pacific Ocean/ Loma Alta, and Pacific Ocean/ San Marcos: coliform bacteria, Agua Hedionda Lagoon: coliform bacteria, sedimentation, Buena Vista Lagoon: coliform bacteria, nutrients, sedimentation, Loma Alta Slough: eutrophic, coliform bacteria, San Elijo Lagoon: eutrophic, coliform bacteria, sedimentation
	Surface water quality degradation, beach

Major Impacts:	closures, sedimentation, habitat degradation and loss, invasive species, eutrophication
Constituents of Concern:	Coliform bacteria, nutrients, sediment, trace metals, and toxics
Sources / Activities:	Urban runoff, agricultural runoff, sewage spills, and livestock / domestic animals

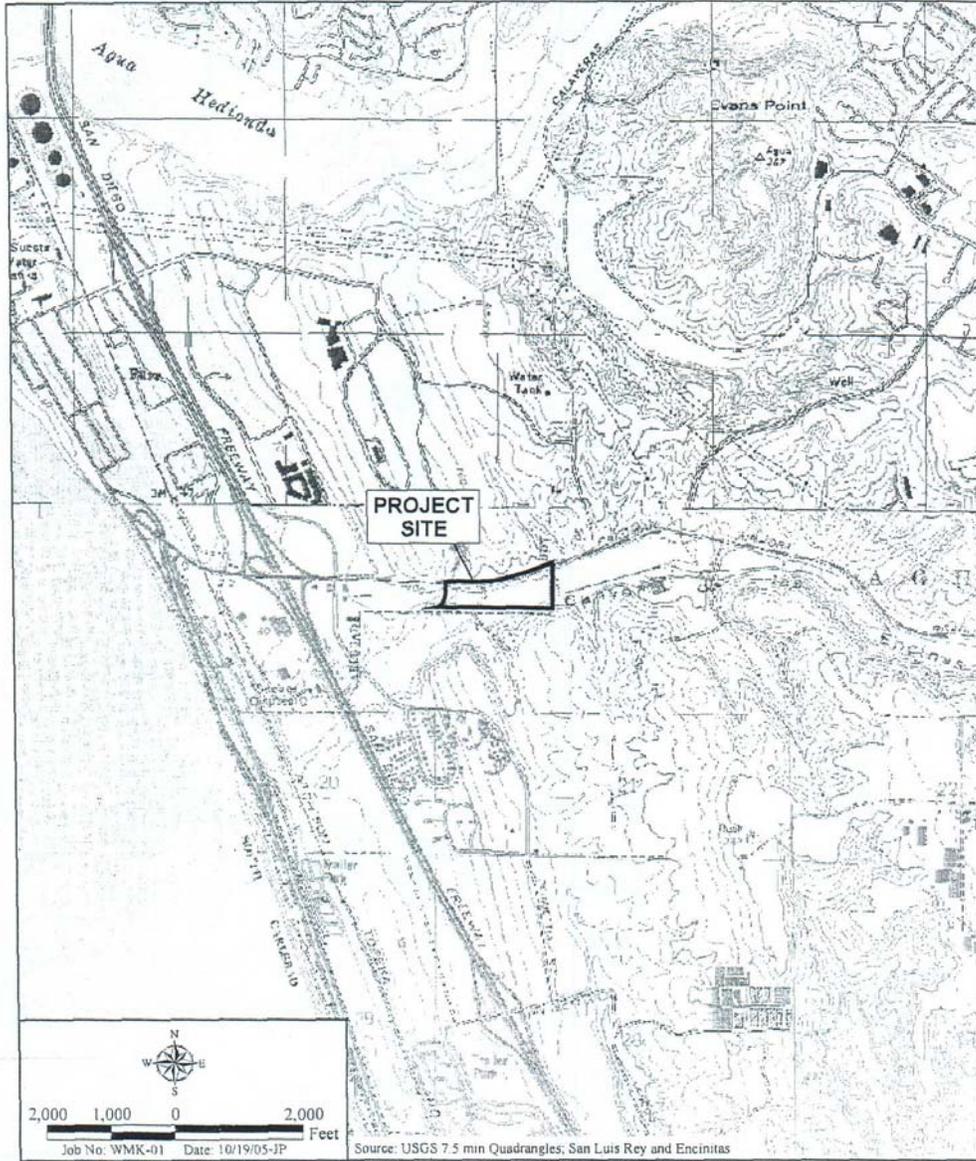
The Carlsbad Hydrologic Unit is approximately 210 square miles in area extending from the headwaters above Lake Wolhford in the east to the Pacific Ocean in the west, and from Vista and Oceanside in the north to Solana Beach, Escondido, and the community of Rancho Santa Fe to the south. The cities of Carlsbad, San Marcos, and Encinitas are entirely within this HU. There are numerous important surface hydrologic features within the Carlsbad HU including four unique coastal lagoons, three major creeks, and two large water storage reservoirs. The HU contains four major, roughly parallel hydrologic areas. From north to south they are the Buena Vista (901.2), the Agua Hedionda (904.3), the Batiquitos (904.5), and the San Elijo (904.6) HAs. Two smaller HAs, the Loma Alta (904.1) and the Canyon de las Encinas (904.4) are also within the Carlsbad HU.

The largest jurisdictions in terms of land area in the Carlsbad HU are the unincorporated San Diego County areas (66 sq. miles), the cities of Carlsbad (39 sq. miles) and San Marcos (24 sq. miles), and an approximately 27 square mile portion of the City of Escondido. The cities of Carlsbad, San Marcos, and Encinitas are located entirely within the HU. Approximately 48% of the Carlsbad HU is urbanized. The dominant land uses are residential (29%), commercial/ industrial (6%), freeways and roads (12%), agriculture (12%), and vacant/ undeveloped (32%).

The Agua Hedionda, Buena Vista, and San Elijo lagoons are experiencing impairments to beneficial uses due to excessive coliform bacteria and sediment loading from upstream sources. These coastal lagoons represent critical regional resources that provide freshwater and estuarine habitats for numerous plant and animal species. Other water bodies in the Carlsbad HU have been identified as impaired on the California 303(d) list for elevated coliform bacteria including several locations in the Pacific Ocean near creek and lagoon outlets.

The population of the Carlsbad HU is approximately 500,000 residents making it the third most densely populated in San Diego County behind the Pueblo San Diego and the Penasquitos HUs. A high percentage of the undeveloped land is in private ownership and the population of the Carlsbad HU is projected to increase to over 700,000 residents by 2015. Effective planning measures will be needed to prevent this rapid development from further degrading water quality in this region of San Diego County.

There are many [beneficial water uses within the Carlsbad Watershed](#) as designated in the State Water Resources Control Board's [San Diego Region Basin Plan](#).



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Project Location Map

JUN 13 2006

NORTH COUNTY HABITAT BANK

HELIX

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Figure 2

JM

June 15, 2006

Mr. Gary Cannon
California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402



RE: Berryman Canyon – Lux Canyon Creek Enhancement Plan

Dear Mr. Cannon:

In response to requests from you and Lee McEachern, I am herewith transmitting a plan prepared by our environmental consultant REC for invasive plant removal and species revegetation in the Lux Canyon Creek. I am providing this enhancement plan as an alternative to the purchase of credits for habitat creation, which has been proposed to satisfy the mitigation requirement for the unavoidable impact to the wetland necessitated by the public storm drain improvement.

I appreciate your continued assistance and guidance as McCullough-Ames Development, Inc., and the City of Encinitas work together to ensure that the proposed public improvement project meets the standards and requirements of the Local Coastal Plan, the California Coastal Commission, and other regulatory agencies. Should you have any questions or need additional information about this or any other issue related to the proposed public storm drain project, please do not hesitate to contact me at (858) 945-6777.

Sincerely,

Brett Ames
Principal
McCullough-Ames Development, Inc.

Enclosures

Cc Lee McEachern

11828 Rancho Bernardo Road • Office 858 675 6400
Suite NW 205 • Facsimile 858 673 6236
San Diego, California 92128 • www.mccullough-ames.com | License NP 714308

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EXHIBIT NO. 8
APPLICATION NO.
A-6-ENC-06-005
Applicant's Alternative Restoration Plan
Page 1 of 12
California Coastal Commission

DRAFT

**BERRYMAN CANYON – OFFSITE MITIGATION
EXOTIC PLAN SPECIES REMOVAL PLAN**

Prepared for:

McCullough Ames Development, Inc.
11828 Rancho Bernardo Road, Suite 205
San Diego, CA 92128

Prepared by:



Consultants, Inc.

2442 Second Avenue
San Diego, California 92101
(619) 232-9200

June 2006

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SAN DIEGO COAST DISTRICT

DRAFT – CONCEPTUAL PLAN

1.0 INTRODUCTION

In September 2005, REC Consultants, Inc. prepared a biological technical letter report addressing offsite stormwater improvements required to support the Berryman Canyon project. The site is located on the Encinitas USGS 7.5' Quad, Range 4 West and Township 13 South (Figures 1 and 2). Topography onsite ranges from approximately 100 to 120 feet above mean sea level (AMSL).

According to REC's biological technical letter report, there are three habitat types onsite: southern willow scrub, ornamental and ruderal / disturbed. The project proposes to directly impact the offsite stormwater ditch by making necessary improvements for a total impact of 0.055 acre to both ornamental and southern willow scrub habitats. Of this total, there is a 0.014 acre impact to the southern willow scrub which must be mitigated at a 3:1 mitigation ratio as determined by the City of Encinitas and the regulatory agencies. Therefore, 0.042 acre of mitigation is required in order to reduce impacts below a level of significance. No mitigation is required for impacts to ornamental or disturbed areas.

The goal of this Exotic Plant Species Removal Plan is to provide guidelines for the removal of trash, debris, and exotic plant species within 0.042 acre or 1,830 square feet of the adjacent riparian habitat within Lux Canyon Creek. Revegetation with native hand-cast seed shall also occur within this area. This plan will improve the value and ecological function of the habitat for the flora and fauna of the area and increase the aesthetic value of the site. The provisions of this plan are conceptual and may change pending review and approval by the City of Encinitas and the California Coastal Commission.

2.0 EXISTING CONDITIONS

The mitigation area is located on an adjacent property to the Berryman Canyon project (APN 262-080-06-00). This 1.3 acre parcel is located west of Calle Ryan and El Camino Real and north of Tennis Club Drive. Dudek and Associates, Inc. performed a wetland delineation report on this property in March of 2004. Although the Dudek report addressed the entire 1.3 acre parcel, this plan only addresses a 0.042 acre or 1,830 square foot area within the Lux Canyon Creek drainage.

The 0.042 acre or 1,830 square foot area selected for the removal of exotic plant species is comprised of southern willow scrub and supports several stands of non-native species including pampas grass (*Cortaderia selloana*) California fan palm (*Washingtonia filifera*), and African umbrella sedge (*Cyperus involucratus*) (Dudek 2004).

2.1 Vegetation Communities

Southern Willow Scrub

This habitat type is characterized by having dense, broadleaf, winter-deciduous riparian thickets dominated by willow species. The southern willow scrub habitat is dominated by arroyo willow (*Salix lasiolepis*) and supports a limited herbaceous understory comprised

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of pampas grass, California fan palm, giant rye grass (*Leymus condensatus*) and African umbrella sedge.

3.0 RESPONSIBILITIES

3.1 Financial Responsibility

The property owner of the Berryman Canyon project will be financially responsible for implementation of this plan, in consultation with the project biologist.

3.2 Maintenance Team

The maintenance team shall consist of a project biologist and a qualified landscape contractor.

Project Biologist

The project biologist is an individual or team with at least two years' experience in upland and wetland weed maintenance. The biologist will be retained prior to the pre-construction meeting and will be responsible for monitoring the maintenance plan in accordance with its specifications. The biologist will perform the following tasks: consult with maintenance staff on any activities that may be disruptive to the maintenance area, monitor qualified maintenance staff, and oversee and perform monitoring and reporting per plan.

Landscape Contractor

The maintenance staff is a team of individuals with at least one year of experience in weed abatement in wetland and upland habitat types common to San Diego County. The maintenance staff will be retained prior to the pre-construction meeting and will be responsible for implementing the maintenance plan in accordance with its specifications. The maintenance staff will perform the following tasks: implement the aggressive weed abatement and trash removal program, revegetate the mitigation area via hand-cast seed mix, update the project biologist regarding all maintenance activities, and reach the selected performance criteria outlined in the plan by the fifth year.

3.3 Notification and Nesting Birds

The City of Encinitas and the California Coastal Commission shall be notified in writing five days prior to commencement of maintenance activities along the drainage. Five days prior to the completion of maintenance activities, all agencies shall again be notified in writing.

During the breeding season (February-September), the project biologist will survey the site for any nesting birds before the quarterly maintenance activities begin. If nesting birds are present, the agencies must be notified immediately to approve maintenance

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activities. Potential avoidance measures such as a 50-foot buffer area around each nesting site within the work area may be enforced to avoid any direct or indirect disturbances during maintenance activities. In addition, techniques during the breeding season will be restricted to hand-weeding and herbicide application.

4.0 Management and Maintenance

This plan incorporates an adaptive management strategy, which will allow the management and monitoring tasks to be changed based on the results of the previous results. An adaptive management strategy will incorporate the latest information on monitoring and evaluation techniques.

The native resources on site should be preserved not only for the aesthetic value that it will provide to the community, but also for the habitat value that the area will provide for all plant and animal species.

4.1 Maintenance

An aggressive weed abatement program will be required in the first year of maintenance. This will involve the initial removal of the invasive plant species and trash from the drainage. Weeding and trash removal activities should be conducted as outlined in the weed control section discussed below. These activities shall be monitored by the project biologist for a minimum of the first two weeding events.

Once the initial work is completed, the work should proceed on a regular basis as outlined below. The focal point of the maintenance program is weed removal from the drainage. Table 1 provides a maintenance schedule for the tasks that should be performed onsite.

If required, all applicable city, state, and/or federal permits will be obtained prior to conducting maintenance activities.

**Table 1
Exotic Plant Species Maintenance Schedule**

Year 1
Primary weeding and trash removal effort, biologist present to assist in plant identification
Quarterly weeding and trash removal maintenance staff only
Quarterly walk through biologist and maintenance staff leader
Year 2
Quarterly weeding and trash removal maintenance staff only
Quarterly walk through biologist and maintenance staff leader
Year 3
Quarterly weeding and trash removal maintenance staff only
Biannual walk through biologist and maintenance staff leader

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Year 4
Quarterly weeding and trash removal maintenance staff only Biannual walk through biologist and maintenance staff leader
Year 5
Quarterly weeding and trash removal maintenance staff only Biannual walk through biologist and maintenance staff leader

The non-native vegetation within the drainage will be removed either by hand, line trimmer, or treated with an appropriate herbicide as determined by the project biologist. Trees and other large non-native species will be cut with a chainsaw and stump sprayed with an appropriate herbicide to ensure that the stumps are removed. The entire enhancement area will be fenced with orange construction and/or silt fence to delineate the area from the adjacent area.

4.2 Revegetation

Revegetation with native species shall be accomplished by broadcasting seed by hand. Once the site has been prepared, the revegetation areas will be hand seeded with locally collected native seed (Table 2). Seed should be applied between December and February. The seed shall be applied in a consistent manner that will cover all bare areas within the revegetation area. The following seed mix is based on the species observed as currently occurring in the drainage.

Table 2
Seed Mix for Southern Willow Scrub Restoration Area

Species*	Pounds/Acre
<i>Salix lasiolepis</i> Arroyo willow	1
<i>Ambrosia psilostachya</i> Western ragweed	3
<i>Baccharis salicifolia</i> Mule fat	0.5
<i>Leymus condensatus</i> Giant ryegrass	10
<i>Baccharis pilularis</i> Coyote brush	1

*If any species are not available, the project biologist shall be consulted for substitution species.

4.3 Weed Control

Weed control will be an important factor in the maintenance of the mitigation area. Exotic weed species are the principle cause of habitat degradation. Monitoring of the

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mitigation area to identify exotic species is crucial. Once exotics are located they will be removed.

An initial effort will be required of the maintenance staff to remove all weeds from the mitigation area within the first year. Once weeds have been removed from the area, the regular maintenance schedule may be implemented.

The removal of the exotic plant species will aid native plant species by eliminating competitors that would compete for space and resources. Native plant species will spread into areas that are cleared of the non-native vegetation. Weeding should be conducted on a quarterly basis until the native habitat has established itself. Following that time, weeding can be conducted biannually. All of the debris from the weeding activities should be disposed of in an approved offsite landfill.

A list of exotic species that may be present onsite and are expected to occur onsite is presented in Table 3. In the event that additional invasive species are encountered, the project biologist shall refine measures to include them.

Table 3
Anticipated Exotic Plant Species

Scientific Name	Common Name
<i>Schinus sp.</i>	Pepper tree
<i>Tamarix sp.</i>	Salt cedar
<i>Foeniculum vulgare</i>	Sweet fennel
<i>Cortaderia selloana</i>	Pampas grass
<i>Arundo donax</i>	Giant reed
<i>Nicotiana glauca</i>	Tree tobacco
<i>Ricinus communis</i>	Castor bean

4.4 Performance Criteria

Weeding activities are expected to achieve a level of success within five years of the implementation of this plan. In the first year, exotic weed cover should be reduced by 50%. In Year 2, the weed cover should be further reduced so that non-native cover is 25% of that of the implementation year. Years 3 through 5 exotic weed cover should be no more than 10% of that in the implementation year. With the aggressive weeding program completed in the first three years, maintenance should follow the standard quarterly schedule and be adjusted to maintain a weed cover of less than 10%.

4.5 Trash Removal

Trash will be removed from the mitigation area in conjunction with weeding efforts. Trash will be considered any manmade material, equipment, or debris that is not serving a function related to the management of the mitigation area. Any hazardous materials will be handled in accordance with local and state regulations.

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5.0 MONITORING

An essential criterion for the management of the mitigation area will be the monitoring program. This program will ensure that the habitats within the mitigation area continue to thrive in a natural setting. The monitoring program will consist of qualitative and quantitative monitoring. The project biologist will conduct the monitoring program. The results of the monitoring program will be used in the management of the mitigation area. The monitoring should be able to measure and describe how the habitats are changing over time. An annual report will be prepared, summarizing the results of the activities over the past year. Qualitative monitoring will occur more frequently than the quantitative monitoring to ensure that problems are caught and corrected rapidly.

5.1 Qualitative and Quantitative Monitoring

Evaluation of plant health and identifying and correcting problem areas is necessary for ensuring successful vegetation establishment and is part of an adaptive management program. The project biologist will review the mitigation area on a quarterly basis for the first year and on a semiannual basis thereafter unless the project biologist determines that an annual visit will be sufficient. The monitoring schedule is listed below.

- Year 1: quarterly (3 qualitative, 1 quantitative)
- Year 2: semiannually (1 qualitative, 1 quantitative)
- Year 3: semiannually (1 qualitative, 1 quantitative)
- Year 4: semiannually (1 qualitative, 1 quantitative)
- Year 5: semiannually (1 qualitative, 1 quantitative)

The biologist will qualitatively examine plant vigor, native and exotic plant germination, and exotic plant encroachment during visits. The project biologist will recommend remedial measures if needed.

Quantitative monitoring will ensue each year in the spring and will include a number of permanent transects within the maintenance area and a reference site to be selected within the drainage. This reference site shall be finalized following approval of this conceptual plan. Each year the project biologist will conduct plant surveys along each transect to measure native and nonnative plant percent cover, density, and diversity. The results will be compared to ensure the performance criteria are met for each specified year. If not, the project biologist will recommend remedial measures to the maintenance staff to achieve the performance criteria within a minimal timeframe.

6.0 REPORTING

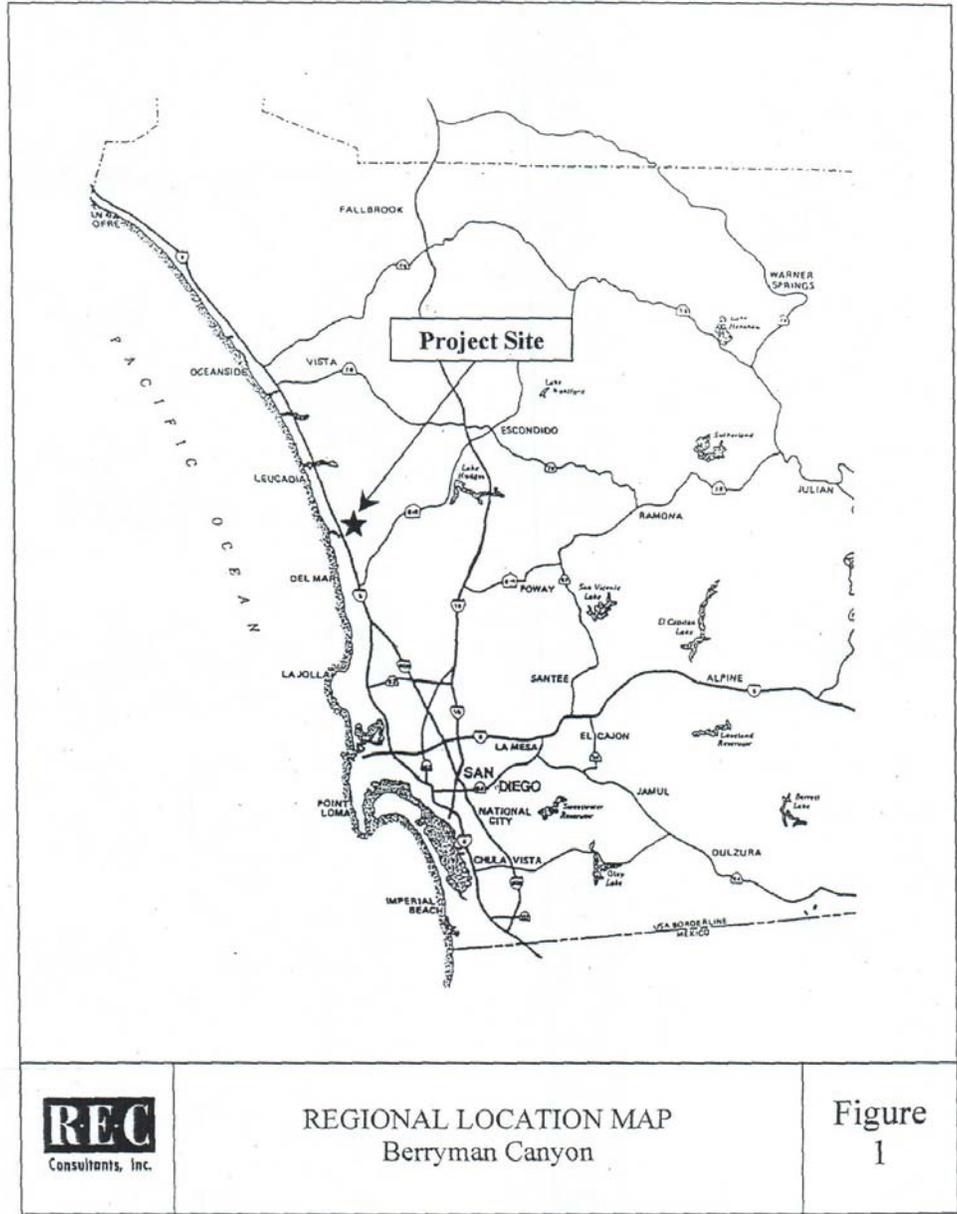
Annual reports, in letter form, shall include the results of the annual monitoring program, information regarding vegetation communities and sensitive species onsite, a description of present and suggested future efforts to remove exotic species and trash, and a review of the effectiveness of these efforts. A list of plant and wildlife species occurring on the site and photographs of the maintenance area will also be provided as appendices.

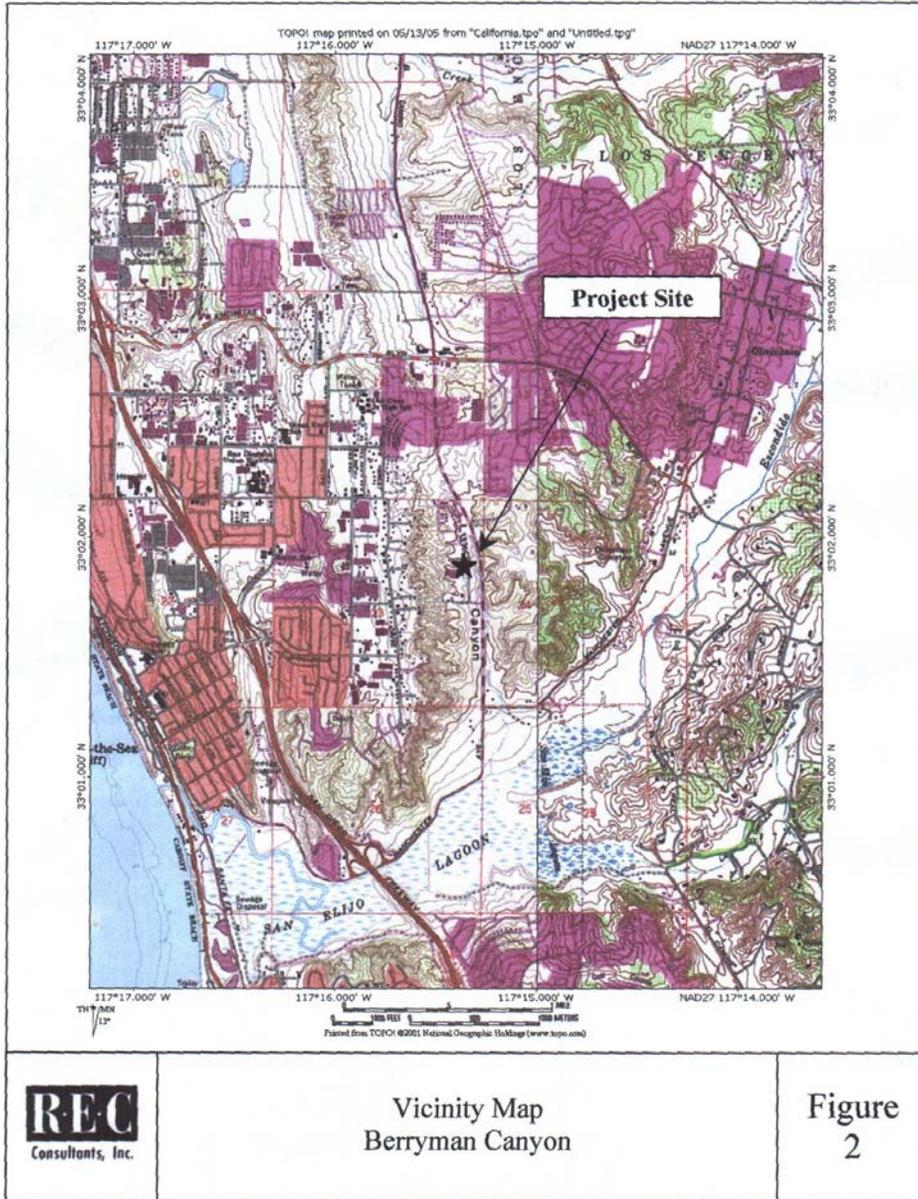
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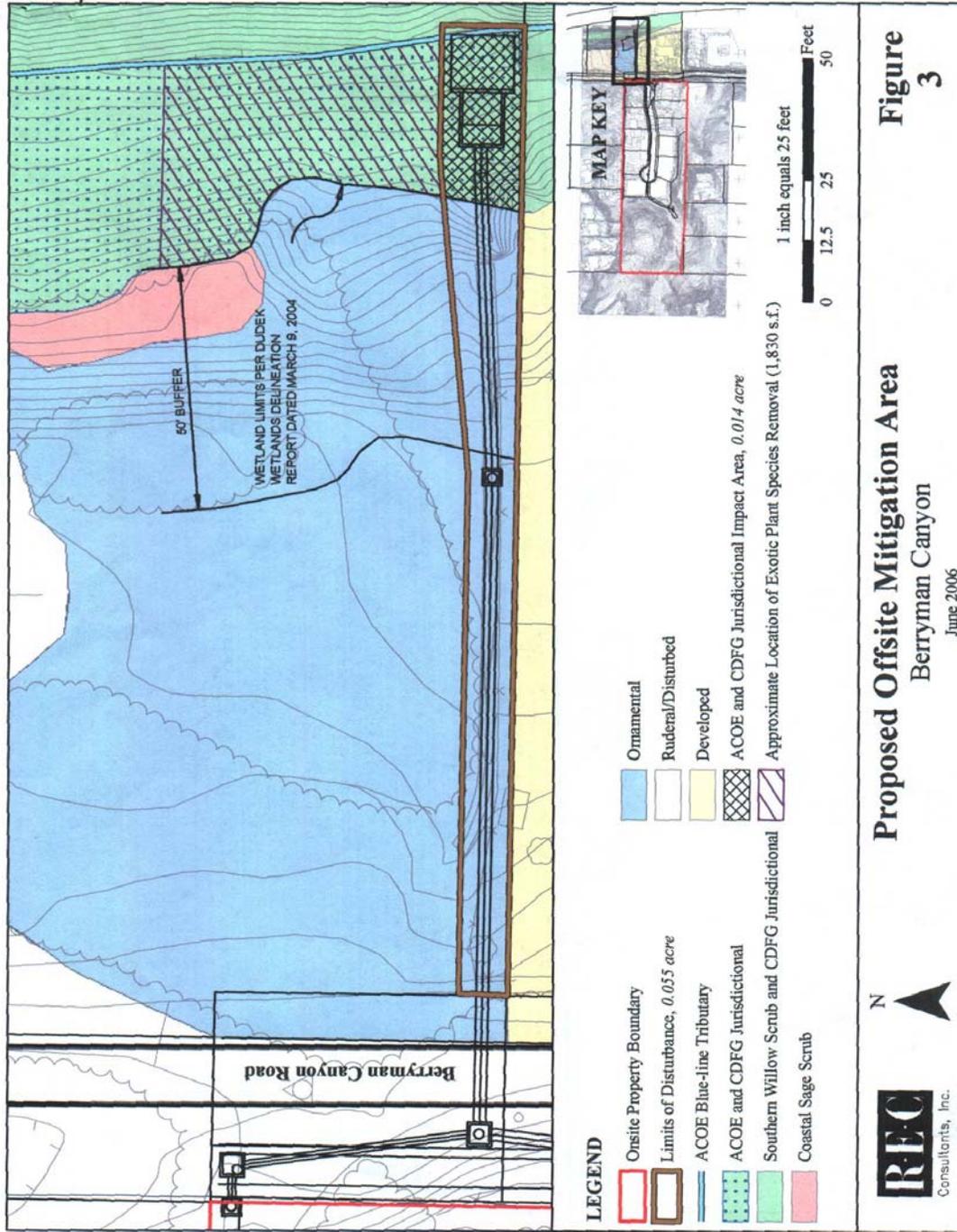
Reports shall be submitted to the City of Encinitas and the California Coastal Commission in September of each maintenance year.

7.0 REFERENCES

Dudek and Associates, Inc. Wetlands Delineation Report for the Stahmer Property.
March 9, 2004.







07/20/06 12:32 760 634 0761

P.02

Date: July 19, 2006

Page 1 of 3 plus attachments

To: California Coastal Commission

Re: Appeal No.: A-6-ENC-06-005 of City of Encinitas approval
of private developer project into the wetlands - Berryman Canyon Estates

Dear Commissioners,

Is the City of Encinitas scamming to help a developer gain final map approval for an LCP prohibited storm drain into the wetlands?

... - that's a little bit too much encroachment coupled with, you know, the taking of point 88 acres of coastal sage for a five acre project. I think it's just, it's just too much.
A Planning Commissioner's comments on the tentative map on July 24, 2003

1. Encinitas requires development projects to infiltrate, filter, and/or treat the required runoff volume or flow prior to discharging to wetlands. The city staff knew years ago that the proposed project drainage plan for the tentative map was inadequate. This is an excerpt from an October 7, 2004 email:¹

During the review process of the original TM for 01-239, it was informally mentioned that the existing storm drain pipe at Somerford Place may not be large enough to accommodate the project drainage, however, the project was not processed or proposed as such. There was no request or plans to document a pipe size increase.

2. The new owner/developer of the property, McCullough-Ames, didn't want any new government review of the tentative map. This is an excerpt from the October 6, 2004 email:²

Since this project was approved knowing additional work had to be done to achieve the map as approved and did not require any further governmental review, then this is what we want to stay with. If the City would find the option of replacing the existing 18" pipes with 36" within substantial conformance and no more government review required, then this would be our first option to pursue.

3. The Encinitas Municipal Code sets a maximum of 10% steep slope encroachment. The city approved 9.97% steep slope encroachment for the development project in 2003.³ The city, by approving this drainage pipe as a separate project for the McCullough-Ames development, is permitting the developer to encroach into steep slope areas another 5.4%.⁴ This is a total of 15.37 % steep slope encroachment and a violation of the municipal code. By piecemealing the development project and the steep slope encroachment amounts, **the city allowed the developer to gain an illegal permit.** If the McCullough-Ames proposed storm drain from the property was

¹ October 7, 2004 E-mail from Diane Langager to Frank@recenv.dcpu

² October 6, 2004 E-mail from Frank Florez to Diane Langager

³ Attachment "B" Resolution No. PC 2003-40 Case No. 01-239 TM/MUP/DR/CDP/EL Condition SCC

⁴ Attachment "C" Resolution No. PC 2005-51 Case No. 05-135 CDR/ET

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JUL 20 2006

CALIFORNIA COASTAL COMMISSION SAN DIEGO OFFICE

EXHIBIT NO. 9
APPLICATION NO.
A-6-ENC-06-005
Letters of Opposition


07/20/06 12:33 X 760 634 0761

P. 03

July 19, 2006

Page 2 of 3 plus attachments

Re: Appeal No.: A-6-ENC-06-005

examined as a modification to the 2003 project the city would have to hold the developer to the maximum 10% steep slope encroachment.

4. In 2003, for the developer MVK, LLC, the city staff allowed lot averaging for the Berry Canyon Estates subdivision. Ten of the eleven lots are substandard sizes for the R-3 zone. The city staff allowed a large (approximately 57 ft. by 70 ft by 10 ft) retention basin on the southwest side of the property which is to be dug into the protected coastal sage open space.⁵ That retention basin is sized for a two year flood.⁶ For the same Berryman Canyon Estates project under McCullough-Ames, at least three hydrology reports by Chang Consultants, plus an addendum, are on file in the City of Encinitas. The hydrology summaries show different numbers for the 100-year combined flow, cfs.⁷

June 7, 2004 Hydrology Report	November 21, 2004 Report	June 21, 2005 Report
27	29	29.2
31	30	30.7

One report has much of the storm water runoff running on the surface to the parking lot of the Somerford property.

5. At the December 15, 2005 Planning Commission there were comments that new development is contingent on the approval of the storm drain into the wetlands. This is from comments from a building applicant and property owner:⁸

Failure to approve this as staff has already recommended, is currently holding up development of quite a few properties in the area. Everything is contingent upon this going through before that subdivision can go through, before the proposed thing that will be - that's in the system here, going from Kent Horner's property and mine, going from two lots to three lots, and the only thing that's holding it up is this storm drain or this pipe that's going to connect here.

6. The city has exceeded its 5% take of coastal sage scrub. To mitigate the destruction of 0.88 acre of coastal sage scrub for the development project in the canyon, the developer bought credits from the county. The mitigation bank is in Oceanside. Now this developer wants to destroy part of the wetlands in this canyon.

⁵ Berryman Canyon Estates subdivision tentative map - July 24, 2003 Map of area

⁶ Conversation with city engineer - Masih Maher

⁷ Reports by Chang Consultants - June 7, 2004, November 21, 2004, and June 21, 2005

⁸ Eugene Quigley on why the Planning Commission should approve the proposed McCullough-Ames storm drain into the wetlands- Planning Commission Dec. 15, 2005

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CALIFORNIA
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SAN DIEGO COAST DISTRICT

07/20/06 12:55 X 700 034 0701

P. 04

July 19, 2006

Page 3 of 3 plus attachments

Re: Appeal No.: A-6-ENC-06-005

Summary

The storm drain into the wetlands CDP approved by the city of Encinitas is an illegal permit.

1. The city staff knew the original development didn't have a design to handle the drainage and that what was proposed as drainage was premised on obtaining an easement from Somerford Place.
2. The city ignored the drainage requirement and granted a CDP for the development project.
3. The city knew that McCullough-Ames didn't want the city to reopen and examine the housing project development.
4. The city knew that the coastal sage take for the development project was bought with credits from the county and in an area of Oceanside.
5. The city knew that the McCullough-Ames development project had reached the maximum 10% for steep slope encroachment.

The city knew all the above but went along with calling the separated storm drain project an "incidental public service benefit" to "help" the developer get final map approval.

This project violates the Encinitas LCP. The Berryman Canyon Estates project exceeds the maximum 10% steep slope encroachment. The CDP for the storm drain granted by the Planning Commission was an illegal permit.

Please deny the CDP.

Thank you.

Donna Westbrook

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JAN 23 2006

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James J. Foral & Deanna Foral
1114 Sycamore View Dr.
Encinitas, CA 92024
760/943-9864

January 20, 2006

Via Fax 1/20/06:
619/767-2384

TO: Coastal Commission, San Diego County
Attn: Gary Cannon

RE: Project Name : Berryman Canyon Storm Drain
Case No. 05-135 CDP

Applicant : McMullough-Ames Development, Inc.

STATEMENT IN SUPPORT OF APPEAL

We are writing to express opposition to the above referenced project. We disagree with the proposed plan to create a private storm drain that will carry untreated runoff from the Berryman Canyon development(s) (spillage containing car oil, pesticides, chemical cleaners, etc.) into the surrounding wetlands. This project does not conform with the Local Coastal Plan. The Local Coastal Plan states that "the City shall preserve and protect wetlands within the City's planning area." This project does not abide by these requirements.

The storm drain will destroy .014 acre of sensitive habitat and cause erosion problems where the vegetation is removed and in eventual drainage areas. A "southern willow scrub habitat" including mature willow trees used by birds for nesting and shelter for other wildlife lies directly in the path of the storm drain. And, if the storm drain is built, the toxic waste from the housing development will be carried directly into Lux Creek and San Elijo Lagoon, poisoning the water supply of our wildlife, while delivering large quantities of fresh water pollution to the lagoon.

Will the County of San Diego monitor the effects of the storm drain and repair & clean up the wetlands when pollution levels become too high? Will this precedent of allowing runoff from a private drain to be dumped into our wetlands enable others to do the same in the future? Who will maintain this private storm drain - a developer with little or no regard for environmental concerns? The residents of Berryman Canyon? The City of Encinitas? San Diego County?

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JAN 20 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

January 19, 2006

To: California Coastal Commission

Subject: Appeal of the Berryman Canyon Estates offsite storm drain outlet into the wetlands
Approved by the Encinitas Planning Commission - December 15, 2005 meeting
Case No. 05-135 CDP/EIA

This storm drain project is circumventing the examination of the tentative map for the development. The tentative map drainage plan of the Berryman Canyon Estates is to the south and to a water quality basin along Berryman Canyon Drive. The drainage system was to cleanse the runoff from the whole project and the water shed above, before the runoff water entered the Alzheimer's storm drain system. One of the comments in the city staff report for the tentative map was if an easement through the Alzheimer's property or suitable alternative is not obtained, the final map will not record.

The proposed storm drain outlet plan into the wetlands is different from the one approved on the tentative map, Case No. 01-239. The grading plans may also change from the approved tentative map plans, but the city staff avoided comment on this issue.

This storm drain outlet into wetlands benefits a proposed housing development that the city planning previously shoe horned into sensitive habitat. The development is still under a tentative map, and the request to change the drainage into wetlands is a major change in the tentative map.

Additionally, there may be impacts on the wetlands adjacent and south of this proposed outlet.

What is left of the wetlands in the Lux Canyon area are precious and should be protected. It isn't happening with the Planning Commission approval of this storm drain project. Invading the wetlands for a proposed development isn't a public service.

Please protect these wetlands by denying the storm drain outlet project, City of Encinitas Case No. 05-135.

Thank you.



Donna Westbrook
806 Oakbranch Dr.
Encinitas, CA 92024

Re: Case No. 05-135 CDP

-2-

January 19, 2006

Our understanding from the storm drain developer is that the storm drain is necessary to control watershed caused mainly by the Berryman Canyon Estates subdivision. We believe there are other less invasive solutions to this problem. Runoff from the Berryman Canyon housing development can and should be self-contained by creating drainage areas in and around the development.

The proposed storm drain has been necessary until now because the land soaks up most of the rain. The storm drain is being proposed because there is too much hardscape in the Berryman Canyon subdivision to allow the rain a place to soak in. A reduction in the density of the project, allowing for larger landscaped areas appears to be essential to making this project work.

The buildable area of Berryman Canyon is zoned R-3. The General Plan and applicable codes specify that this development should contain no more than seven homes. But, because the buildable property is connected to unbuildable wilderness area, the lot area averaging rule was used to raise the density to 11 homes, creating a density of R-4 or R-5. Despite having used up all of its allowable "take" of coastal sage scrub habitat on prior developments, the City has facilitated the sacrifice of an acre of high-quality coastal sage scrub in order to build this development.

In addition, the subdivision does not conform to the established surrounding development which contains homes on lots averaging almost one acre or more each. The majority of residents within the 300-ft. noticing area are opposed to the high density of the Berryman Canyon subdivision for many reasons, including those regarding mud slides and erosion. The density of the development also makes it impossible for fire trucks to access the wilderness area to the west of the development.

We see the storm drain problem as an opportunity for the Coastal Commission to correct the City's prior mistakes in allowing the Berryman Canyon subdivision development to advance this far. The Berryman Canyon subdivision, as proposed, is not a "good fit" for this location.

We do not oppose responsible, law-abiding development. But, this storm drain is only one of many unlawful, irresponsible components of the Berryman Canyon Estates development. We request the Coastal Commission prevent the approval of the developer's permit to construct the storm drain. Thank you for the opportunity to voice our opposition.

Sincerely,



James J. Feral



Deanna Feral

Mar 02 06 03:28p

DeAnna Foral

760 944 6136

p. 1

March 1, 2006

California Coastal Commission
San Diego Area
Attn: Gary Cannon
7575 Metropolitan Dr., Ste 103
San Diego, CA 92108-4421

OPPOSE PROJECT

Via Fax 3/2/06:
619/767-2384

Re: : Storm Drain Project in Berryman Canyon
Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

Gentlemen:

I oppose construction of the proposed storm drain being considered in Berryman Canyon (case number referenced above).

Preserving our wetlands & wilderness areas should be of primary importance. I am the owner of Spec Drafting, an architectural drafting firm. I have lived & worked in this area for 30 years. I do not oppose development, but feel that it should abide by the protection policies of the certified Local Coastal Program & Municipal Code. This project results in the damage & destruction of rare & sensitive wetland habitat and offers little or no mitigation to offset its negative impact. This project does not comply with the LCP and should be disallowed by the Coastal Commission.

Although the neighborhood & subdivision construction site are zoned R-3, the density of the planned Berryman Canyon subdivision is at least twice that of existing development located on Sycamore View Drive -- right next to the subdivision construction site. Other homes in Berryman Canyon are on even larger lots. The drainage problem in Berryman Canyon is mostly due to the excessive amount of hardscape in the planned subdivision. Decreasing the density to 5 or 6 homes (building one line of houses instead of two) would not only help the subdivision conform to the surrounding neighborhood, but allow access to the wilderness area for fire trucks, preserve almost an acre of coastal sage scrub, and help solve the drainage problem by replacing hardscape with landscape.

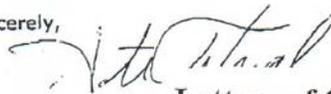
The proposed subdivision is a fire hazard that jeopardizes the adjacent & nearby wetlands, wilderness areas, and existing development. This site requires careful planning to prevent a future disaster. The Coastal Commission should require the Applicant to comply fully with the provisions of the LCP.

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MAR 02 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Sincerely,



Steven Foral

**Letters of Opposition
To Project**

437 Countrywood Lane, Encinitas, CA 92024

James J. Foral & Deanna Foral
1114 Sycamore View Dr.
Encinitas, CA 92024
760/943-9864

February 23, 2006

California Coastal Commission
San Diego Area
Attn: Gary Cannon
7575 Metropolitan Dr., Ste 103
San Diego, CA 92108-4421

Re: : Berryman Canyon Storm Drain Appeal
Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

Dear Sirs:

Enclosed are letters and signatures in support of the above referenced appeal. Although the residents of Cardiff and Encinitas cannot be at the hearing in Monterey on March 7, they wanted you to know that protecting our wetlands and wildlife habitat is very important to them. I spoke with 25 people, and only 3 declined to give their support. More letters may be forwarded to you regarding this matter under separate cover at a later date. I declare under penalty of perjury the foregoing is true and correct.

Please include these enclosures with the hearing file. Thank you.



Deanna Foral

Enc.

MAR 3

27

California Coastal Commission, San Diego Area
 Attn: Gary Cannon
 7575 Metropolitan Dr., Ste 103, San Diego, CA 92108-4421

February 2006

Subject: : Construction of Storm Drain to Spill into Wetlands
 Agenda/Report No. : Tue 20a
 Appeal No. : A-6-ENC-06-005
 Applicant : McCullough-Ames Development, Inc.

We oppose construction of the proposed storm drain at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above. This storm drain will destroy sensitive riparian habitat and spill untreated runoff from a planned subdivision into nearby wetlands - actions prohibited by the certified Local Coastal Program (LCP). Please require Applicant to comply fully with the requirements of the LCP. Thank you.

<u>Name</u>	<u>Signature</u>	<u>City of Residence</u>
CARL HULLE	<i>[Signature]</i>	ENCINITAS
Lisa Koch-Hulle	<i>[Signature]</i>	ENCINITAS
Lydia Sandoval	<i>[Signature]</i>	Encinitas
John A. Pacheco	<i>[Signature]</i>	Encinitas
Linda Sparkuhl	<i>[Signature]</i>	Encinitas
Dave Sparkuhl	<i>[Signature]</i>	Encinitas
LINDA NEUBERT	<i>[Signature]</i>	ENCINITAS
STEVE FORAT	<i>[Signature]</i>	ENCINITAS
GILLIAN FRANCIS	<i>[Signature]</i>	ENCINITAS



California Coastal Commission, San Diego Area
Attn: Gary Cannon
7575 Metropolitan Dr., Ste 103, San Diego, CA 92108-4421

February 2006

Subject: : Construction of Storm Drain to Spoil into Wetlands
Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

We oppose construction of the proposed storm drain at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above. This storm drain will destroy sensitive riparian habitat and spill untreated runoff from a planned subdivision into nearby wetlands - actions prohibited by the certified Local Coastal Program (LCP). Please do not allow this project to proceed. Thank you.

<u>Name</u>	<u>Signature</u>	<u>City of Residence</u>
Deanna Fosal	<i>[Signature]</i>	Encinitas
Carl Hume	<i>[Signature]</i>	"
<i>[Signature]</i>	<i>[Signature]</i>	Cardiff
Joe Flardus	<i>[Signature]</i>	Cardiff
Rosemary Kimbal	<i>[Signature]</i>	Cardiff by the sea
<i>[Signature]</i>	Rich Carter	Cardiff
Alis McCurdy	<i>[Signature]</i>	Cardiff
<i>[Signature]</i>	Reynard Elsin	"
Linda Adams	Linda Adams	Encinitas
<i>[Signature]</i>	<i>[Signature]</i>	Cardiff
Tricia A. Smith	<i>[Signature]</i>	Cardiff

California Coastal Commission, San Diego Area
Attn: Gary Cannon
7575 Metropolitan Dr., Ste 103, San Diego, CA 92108-4421

February 2006

Subject: : Construction of Storm Drain to Spill into Wetlands
Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

We oppose construction of the proposed storm drain at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above. This storm drain will destroy sensitive riparian habitat and spill untreated runoff from a planned subdivision into nearby wetlands - actions prohibited by the certified Local Coastal Program (LCP). Please do not allow this project to proceed. Thank you.

<u>Name</u>	<u>Signature</u>	<u>City of Residence</u>
Manuelita Brown	<i>Manuelita Brown</i>	Encinitas
Gerry Flynn-Polan	<i>Gerry Flynn-Polan</i>	Cardiff, CA
MIKE Polan	<i>MIKE</i>	Cardiff CA
James Foral	<i>James Foral</i>	Encinitas

James J. Foral & Deanna Foral
1114 Sycamore View Dr.
Encinitas, CA 92024
760/943-9864

January 20, 2006

Via Fax 1/20/06:
619/767-2384

TO: Coastal Commission, San Diego County
Attn: Gary Cannon

RE: Project Name : Berryman Canyon Storm Drain
Case No. 05-135 CDP

Applicant : McMullough-Ames Development, Inc.

STATEMENT IN SUPPORT OF APPEAL

We are writing to express opposition to the above referenced project. We disagree with the proposed plan to create a private storm drain that will carry untreated runoff from the Berryman Canyon development(s) (spillage containing car oil, pesticides, chemical cleaners, etc.) into the surrounding wetlands. This project does not conform with the Local Coastal Plan. The Local Coastal Plan states that "the City shall preserve and protect wetlands within the City's planning area." This project does not abide by these requirements.

The storm drain will destroy .014 acre of sensitive habitat and cause erosion problems where the vegetation is removed and in eventual drainage areas. A "southern willow scrub habitat" including mature willow trees used by birds for nesting and shelter for other wildlife lies directly in the path of the storm drain. And, if the storm drain is built, the toxic waste from the housing development will be carried directly into Lux Creek and San Elijo Lagoon, poisoning the water supply of our wildlife, while delivering large quantities of fresh water pollution to the lagoon.

Will the County of San Diego monitor the effects of the storm drain and repair & clean up the wetlands when pollution levels become too high? Will this precedent of allowing runoff from a private drain to be dumped into our wetlands enable others to do the same in the future? Who will maintain this private storm drain - a developer with little or no regard for environmental concerns? The residents of Berryman Canyon? The City of Encinitas? San Diego County?

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Re: Case No. 05-135 CDP

-2-

January 19, 2006

Our understanding from the storm drain developer is that the storm drain is necessary to control watershed caused mainly by the Berryman Canyon Estates subdivision. We believe there are other less invasive solutions to this problem. Runoff from the Berryman Canyon housing development can and should be self-contained by creating drainage areas in and around the development.

The proposed storm drain has been necessary until now because the land soaks up most of the rain. The storm drain is being proposed because there is too much hardscape in the Berryman Canyon subdivision to allow the rain a place to soak in. A reduction in the density of the project, allowing for larger landscaped areas appears to be essential to making this project work.

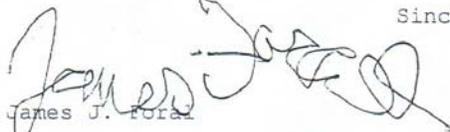
The buildable area of Berryman Canyon is zoned R-3. The General Plan and applicable codes specify that this development should contain no more than seven homes. But, because the buildable property is connected to unbuildable wilderness area, the lot area averaging rule was used to raise the density to 11 homes, creating a density of R-4 or R-5. Despite having used up all of its allowable "take" of coastal sage scrub habitat on prior developments, the City has facilitated the sacrifice of an acre of high-quality coastal sage scrub in order to build this development.

In addition, the subdivision does not conform to the established surrounding development which contains homes on lots averaging almost one acre or more each. The majority of residents within the 300-ft. noticing area are opposed to the high density of the Berryman Canyon subdivision for many reasons, including those regarding mud slides and erosion. The density of the development also makes it impossible for fire trucks to access the wilderness area to the west of the development.

We see the storm drain problem as an opportunity for the Coastal Commission to correct the City's prior mistakes in allowing the Berryman Canyon subdivision development to advance this far. The Berryman Canyon subdivision, as proposed, is not a "good fit" for this location.

We do not oppose responsible, law-abiding development. But, this storm drain is only one of many unlawful, irresponsible components of the Berryman Canyon Estates development. We request the Coastal Commission prevent the approval of the developer's permit to construct the storm drain. Thank you for the opportunity to voice our opposition.

Sincerely,


James J. Foral



Deanna Foral

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James J. Foral & Deanna Foral
1114 Sycamore View Dr.
Encinitas, CA 92024
760/943-9864

February 23, 2006

California Coastal Commission
San Diego Area
7575 Metropolitan Dr., Ste 103
San Diego, CA 92108-4421

Re:
Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

Dear Sirs:

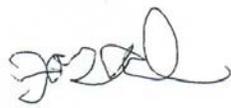
We oppose construction of the proposed storm drain being considered at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above. The storm drain is a necessary component of Applicant's planned subdivision on an adjacent site. Sensitive riparian habitat must be destroyed to build the storm drain. The storm drain is designed to spill untreated runoff from the subdivision directly into nearby wetlands.

The Local Coastal Plan prohibits approval of subdivisions that impact wetlands. We agree with the Findings & Declarations in the Feb. 16, 2006 Staff Report. This matter should be found to be a "substantial issue" that should be heard & decided by the Coastal Commission. Applicant should comply fully with the requirements of the Local Coastal Program. We request the Coastal Commission to deny construction of the Applicant's proposed storm drain.

Thank you.



James J. Foral



Deanna Foral

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February 25, 2006

California Coastal Commission
San Diego Area
7575 Metropolitan Dr., Ste 103
San Diego, CA 92108-4421

Subject:

Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

Dear Sirs:

I oppose construction of the proposed storm drain being considered at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above. The storm drain will negatively impact sensitive riparian habitat and is therefore not in compliance with the certified Local Coastal Program (LCP), which states:

"The City will preserve and protect wetlands within the City's planning area."

This matter is a "substantial issue" that should be heard & decided by the Coastal Commission. Our biological resources have dwindled to a small fraction of what they once were. We need to protect what we have left.

I request the Coastal Commission to require Applicant to comply with the requirements of the LCP.

Thank you.



Linda Neubert
1363 Burgandy Rd.
Leucadia, CA 92024

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February 23, 2006

California Coastal Commission
San Diego Area
7575 Metropolitan Dr., Ste 103
San Diego, CA 92108-4421

Subject:

Agenda/Report No. : Tue 20a
Appeal No. : A-6-ENC-06-005
Applicant : McCullough-Ames Development, Inc.

Dear Sirs:

I oppose construction of the proposed storm drain being considered at 1328 Berryman Canyon Road, Encinitas, San Diego County, California, referenced above.

This matter should be found to be a "substantial issue" that should be heard & decided by the Coastal Commission.

I request the Coastal Commission to deny construction of the Applicant's proposed storm drain.

Thank you.

Cybil Francis
1408 Tennis Club Dr.
Encinitas

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