

**CALIFORNIA COASTAL COMMISSION**

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

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Staff: Liliana Roman-LB  
Staff Report: May 29, 2007  
Hearing Date: June 13-15, 2007  
Commission Action:

**TH 17a****STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-06-093

**APPLICANT:** County of Orange, Resources and Development Management Department, Attn: Nardy Drew, Project Manager

**AGENT:**

**PROJECT LOCATION:** Dana Point and San Clemente Boundary, Prima Cañada Deshecha Channel (M01) outlet at Poche Beach

**PROJECT DESCRIPTION:** Construction of a 1,120 square foot ultraviolet light oxidation water disinfection facility at Poche Beach to collect, filter, and disinfect urban runoff water from the Prima Deshecha Cañada flood control channel (M01) and discharge about 97% of it back at the mouth of the M01 channel prior to reaching the ocean (3% backwash discharged to sewer). The facility includes a rubber dam, wet well, pump, filters, media filtration tanks, water conveyance PVC pipes (i.e., suction pump inlet supply line, backwash line, and discharge line), electrical supply and two parking spaces for maintenance personnel.

**LOCAL APPROVALS RECEIVED:** City of Dana Point Approval in Concept dated May 9, 2006, City of San Clemente Approval in Concept dated February 17, 2006, License agreement between OCTA and Orange County dated September 2, 2003, Regional Water Quality Board Section 401 Water Quality Certification, CA Department of Fish and Game Streambed Alteration Agreement (pending), US Army Corps of Engineers Nationwide Permits NW07, NW18 and NW07 (pending CCC permit)

**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified LUP; City of Dana Point Certified LCP, CDP 5-04-308(Orange County), CDP 5-02-031(Orange County)

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**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the proposed development subject to ten (10) special conditions, which require 1) Storage of construction materials, mechanized equipment and removal of construction debris; 2) Submittal of final plans; 3) Provision for PVC pipe attached to residential bulkhead; 4) Timing of construction; 5) Staging area for construction; 6) Water quality monitoring report; 7) UV treatment facility monitoring report; 8) Assumption of risk, waiver of liability and indemnity; 9) No future shoreline protective device; 10) Future improvements return to the Commission. The primary issues associated with this development are public access and water quality.

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**LIST OF EXHIBITS:**

1. Location Map
2. Assessors Parcel Map
3. Aerial Photograph of Project Area
4. Project Plans
5. Alternative Project Plans

**PROCEDURAL NOTE – Standard of Review:**

The proposed development includes elements within the City of San Clemente (an uncertified jurisdiction) and portions within the City of Dana Point (a certified jurisdiction). The portion of the project within the uncertified jurisdiction of San Clemente is also located within an area subject to the public trust and is therefore within the Commission's original permit jurisdiction under Coastal Act Section 30519(b). The standard of review for this portion of the project is therefore the Chapter 3 policies of the Coastal Act. The proposed development is also occurring within a certified area under the Dana Point Local Coastal Program, however, where the City would typically have jurisdiction over this permit. Section 30601.3 of the Coastal Act provides the necessary guidelines regarding review of a coastal development permit application, processing criteria, and standard of review for such cases in which a proposed project requires a coastal development permit from both a local government with a certified local coastal program and the Commission. The standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3(a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.

The proposed development is a water treatment facility that crosses the boundary of the Commission's original jurisdiction into areas where the Dana Point LCP is effective. Typically, development located within a certified area requires a coastal development permit from the certified local government. However, in this case, the proposed development that is located in the Commission's original jurisdiction is physically integrated with the portion of the proposed development that is outside the area of original jurisdiction (i.e. in the City's permit jurisdiction). Pursuant to Section 9.69.030 of the implementation program of the City's certified LCP, the Commission shall be the responsible agency for issuance of any Coastal Development permit for the entire development if the development is physically integrated and lies partially within the

Commission's original jurisdiction and partially within the City's permit jurisdiction. In such cases the City of Dana Point's LCP specifies that the standard of review is Chapter 3 of the Coastal Act. The City of Dana Point has provided written concurrence to the Commission regarding the Commission's processing of this coastal development permit for the entire project.

## **I. STAFF RECOMMENDATION:**

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 5-06-093 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 Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## **II. STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

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

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- (d) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

#### **2. Submittal of Final Plans**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final project plans to the Executive Director for review and approval. The plan shall substantially conform with the preliminary plans and shall include the Commission recommended treated water discharge outfall, including but not limited to the following changes:
- 1) After the water is diverted for treatment, it shall be conveyed via an 8" diameter PVC pipe along the northern concrete channel wall and discharge back into the channel at a point prior to the beginning of the adjacent wooden residential bulkhead as depicted on Exhibit 5, page 4.
  - 2) The height limit of all treatment facility structures including protective fencing shall not exceed the height of the existing highway guardrail over the channel which is approximately 3-4 feet above grade of Coast Hwy. A refined grid survey to determine precise site elevations in relation to the existing guard rail shall be submitted to insure that the facility elements remain at, or below, the level of the guard rail.
  - 3) A Visual Treatment Plan for the proposed UV treatment facility demonstrating that the structures will be painted with earth tones compatible with adjacent sandy beach; that white and black tones will not be used and that the color will be maintained throughout the life of the structure.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Provision for the Installation of a PVC Pipe Attached to Residential Bulkhead**

- A. The installation of an 8" diameter PVC pipe attached to the residential bulkhead from the conditioned water discharge location along the northern concrete channel wall to the end of the adjacent residential bulkhead as depicted on Exhibit 5, page 5, shall be permitted to accommodate a potential future project permit amendment request to modify the project's water discharge location.
- B. Said pipe shall not be used for a new water outfall location during the life of the project without first receiving an amendment to this permit.
- C. If not used within five (5) years of installation, the pipe shall be removed and disposed of outside the coastal zone.

4. **Timing of Construction**

- A. Construction activities authorized pursuant to Coastal Development Permit No. 5-06-093 shall not obstruct public access to Poche beach during the peak use season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Construction shall take place during the off-peak season to the maximum extent possible. In the event that a lane closure on Coast Hwy or closure of the pedestrian walkway is required for construction purposes, such a closure shall only be permitted during non-holiday, mid-week periods to avoid beach access impacts.

**5. Staging Area for Construction**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to public access, to beach areas or to sensitive habitat areas.
1. The plan shall demonstrate that:
    - (a) Construction equipment or activity shall not occur outside the staging or storage area
    - (b) Public parking areas shall not be used for staging or storage of equipment
    - (c) Beach areas and habitat areas shall not be used as staging or storage areas
    - (d) The staging and storage area for construction of the project shall not obstruct vertical or lateral access to the beach.
  2. The plan shall include, at a minimum, the following components:
    - (a) A site plan that depicts:
      - (1) Limits of the staging area(s)
      - (2) Construction corridor(s)
      - (3) Construction site
      - (4) Location of construction fencing and temporary job trailers, if any
- B. 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 a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**6. Water Quality Monitoring Plan**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Monitoring Plan (WQMP) to measure the effectiveness of the Ultra Violet Light Treatment Facility, water quality in the scour pond and results of discharges of water from the scour pond to the ocean waters at Poche Beach. The WQMP shall provide detailed information on the methods used, including sample collection methods at each of the locations noted below. The WQMP shall be in substantial conformance with the following requirements:

- (a) Monitoring locations must include the following locations:
  - (i) Just upstream of the flow diversion within the channel (influent);
  - (ii) Treatment facility discharge pipe outlet (effluent);
  - (iii) Receiving water approximately halfway between the effluent discharge location and the seaward extent of the wooden bulkhead (pond receiving water);
  - (iv) Within flowing water at the location where the pond/creek breaches the sand berm and flows directly to the surf zone. Samples from this location must be taken from water traveling out of the pond/creek toward the ocean, not from ocean tide water entering the pond/creek area.
  - (v) In the ocean waters within 25 yards of the mouth of Poche Creek and at ankle depth. Information on the pond water level, state of the tide, and whether the pond is actively discharging to the ocean at the time of sampling shall be reported.
- (b) Water quality data must be obtained by grab samples at the following frequencies and reported for the following constituents for a period of no less than one year (365 days):
  - (i) Flow (cfs or gpm): Flow must be measured at the treatment facility discharge pipe outlet and weekly flow rates reported. Flow rate at the time of sampling shall be reported.
  - (ii) Total Coliform, Fecal Coliform and Enterococcus (MPN or CFU /100ml): Bacteria monitoring must be conducted three times per week for the first two months, two times per week for the next four months, then once per week for the remainder of the year.
- (c) If the applicant chooses to apply for a permit amendment to change the discharge location, it must submit evidence that indicates a persistent failure of AB 411 standards in the ocean is due to discharge from the scour pond.

**B.** 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 a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**7. Treatment Facility Monitoring Reports**

The permittee shall provide the Commission with copies of internal treatment facility maintenance reports providing data regarding the frequency of required maintenance, type of maintenance (routine or major), analysis of changes to the facility that would reduce maintenance requirements, etc., or such reports created for other permitting or funding agencies as they are produced.

**8. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**9. No Future Shoreline Protective Device**

- A(1) By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-06-093 including, but not limited to, fences, pipelines, media tanks, and other ultra violet treatment equipment in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including fences, pipelines, media tanks, and other ultra violet treatment equipment if any government agency has ordered that the structures are not to be utilized due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.



## **10. Future Improvements**

This permit is only for the development described in Coastal Development Permit No. 5-06-093. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit No. 5-06-093. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-04-308 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### **A. Project Description and Location**

The applicant proposes to construct a 1,120 square foot filtration and UV light disinfection treatment system to treat storm and urban runoff from the 4,404 acre Prima Deshecha Cañada watershed drainage channel (M01) to the Pacific Ocean at Poche Beach. Poche Beach is a relatively small public beach at the border of Dana Point and San Clemente (at the intersection of Coast Hwy and Camino Capistrano), located between privately owned beach areas located upcoast (Beach Road residential community) and downcoast (Capistrano Shores Mobile Home Park) of the site. The M01 channel crosses Coast Hwy and the Orange County Transit Authority (OCTA) railroad tracks via an underground culvert. Water flowing from the concrete culvert discharges onto the sandy beach, where a small pond forms (referred to herein as the 'scour pond') behind a natural sand berm that is created by shifting sand and wave action (Exhibit 3). This pooled water discharges to the surf zone through breaches in the sand berm created either by heavy storm flows and wave action or manually by County maintenance crews. The proposed treatment facility would be located within the OCTA rail right of way adjacent to Coast Hwy, on a pad carved into the slope of the roadbed between the railroad tracks and road, and adjacent to the M01 channel. The treatment system would be built in the City of Dana Point and the water outlet into Poche Beach in the City of San Clemente.

The structures associated with the facility include an inflatable rubber dam, wet well, media filtration tanks, backwash surge tank, water conveyance lines (i.e., suction pump inlet supply line, backwash line, and discharge line) and protective fencing. Project plans are provided as Exhibit 4. The inflatable rubber dam will prevent seawater from flowing into the treatment system and will act to direct water into the wet well. A 10-ft. by 10-ft. wet well will be adjacent to the channel wall. Water will be pumped from the wet well to four 8-ft high and 8-ft diameter media filtration tanks then through the UV light bulbs. A 5,000

gallon backwash surge tank is required to avoid overwhelming the sanitary sewer system. All equipment will be contained either within the channel or on an adjacent 1,120 square foot concrete pad. The project includes 1,100 cubic yards of cut between Coast Hwy and the railroad track for site pad preparation adjacent to the concrete channel vertical wall. As proposed, the treated water would be conveyed in an 8-inch diameter PVC discharge pipe from the tail end of the UV device along the channel, attached to an adjacent bulkhead (that runs perpendicular to the shoreline and protects a residence upcoast of this public beach) and extended, partially buried in the sand, 50 feet from the end of the bulkhead onto the beach supported by two concrete piles (with no additional improvements for wave attack protection).

Safe access across the railroad track to Poche Beach is provided by a stairway that leads to a walkway that passes under the tracks, and is attached to the inside wall of the M01 channel. The project requires modification to this existing pedestrian access stairway (constructed according to CDP 5-04-308) for proper placement of the inflatable rubber dam. Additionally, the project requires the removal of a remnant concrete support of an OCTA railroad bridge in the channel. The removal was approved under CDP 5-04-308, however, due to funding constraints the remnant concrete support was not demolished during construction of that project.

The site will include two parking spaces on-site for maintenance personnel parking only. The facility is designed as a stand alone facility and will not have any permanent on-site employees. Bi-weekly maintenance consisting of removing algae and trash from several layers of screens in the wet well and ensuring that all UV light bulbs are functioning is expected.

The proposed project would collect, filter and disinfect urban storm and dry weather runoff from the M01 flood control channel before it outfalls onto Poche Beach on a year round basis. The treatment facility would automatically shut down (including deflation of rubber dam) when an upstream level sensor detects high water depths in the channel, or would be shut down manually if a rainstorm is anticipated to allow for full flood control conveyance. The project would process a peak flow of 800 gallons per minute (GPM) of mostly urban and some groundwater runoff. The main objective of the project is to reduce bacteria levels from surface water runoff at Poche Beach to prevent beach water bacteria concentrations rising to levels that would require environmental health beach postings under California law (AB 411). The proposed treatment is directed at fecal indicator bacteria. Secondary benefits of the project include reduction of suspended solids, turbidity, oil, grease, nutrients and heavy metals in the water trapped by media filters prior to discharge. Once treated, 90-97% of the water will be discharged at the end of the channel onto Poche Beach. The remaining 3-10% would be discharged to the sewer as filter backwash.

Significant bacteria levels have been found in the channel which move downstream to its outlet at Poche Beach. As a result, Poche Beach has been identified as an “impaired body of water” due to high bacteria levels at the surf zone that regularly require beach postings for public health risk. The project is an interim treatment system BMP to improve water

quality at Poche Beach and the adjacent coastline while other mandated pollutant source control measures are evaluated, funded and implemented in the Prima Deshecha Cañada watershed.

### Permit History

In May 2005, the Commission granted Coastal Development Permit 5-04-308 to the County of Orange for the modification to the Poche Beach pedestrian access way inside the M01 flood control channel under El Camino Real that provides access from the inland (east) side of the street to the beach and construction of a new walkway and stairs to connect the street-grade signalized crosswalk across El Camino Real with a re-constructed catwalk on the seaward (west) side of El Camino Real leading to the public beach under the existing OCTA railroad tracks.

In August 2003, a waiver of coastal development permit requirements (5-03-252-W) was granted to the County to install an ultraviolet disinfection system within the M01 flood control channel for water quality enhancement purposes. This project was implemented but not fully developed due to equipment malfunctions.

In July 2003, the Commission granted Coastal Development Permit 5-02-031 to the County of Orange for implementation of an ocean outlet maintenance program at 7 ocean outlet locations throughout Orange County, including Poche Beach. Maintenance activities approved for Poche Beach under 5-02-031 consist of re-establishing the outlet flow perpendicular to the shoreline for flood control purposes twice a year during the off-peak use season and restoring public access to the beach area (due to flooding of the pedestrian walkway within the concrete channel) when necessary. In preparation for the summer recreational season, the sand berm built up by wave action restricting the free flow of water from the outlet is removed in the late spring. The sand removed from in front of the pond is spread out on Poche Beach above the high tide line. Then once again, in preparation for the rainy season, the outlet is inspected at the end of summer and the outlet flow restored if necessary.

In June 2001, the Executive Director issued an emergency coastal development permit (5-01-214-G) to the County of Orange to dredge approximately 20 cubic yards of sand to create an approximately 30 foot long by 3 foot deep channel extending from the concrete lined spillway to the Pacific Ocean. No permanent structures were proposed.

In May 1980, the South Coast Regional Commission approved Coastal Development Permit P-79-4642 to subdivide a 1.4 acre beach-front parcel into 2 residential lots and a third open space “beach” lot. The third open space “beach” lot was dedicated to the County of Orange and became what is now known as Poche Beach. A deed restriction limits use of the “beach” lot to recreation, beach access and open-space uses.

### **B. Public Access**

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

The proposed project will be located on the northwest corner of Coast Hwy and Camino Capistrano at the northern most boundary of Poche Beach. Poche Beach is frequented by local residents of adjacent residential developments such as the nearby San Clemente Shorecliffs Homeowners Association who operate a Beach Club on Poche Beach approximately 50 feet from the proposed project site. A surfing school also frequently uses this beach and brings students from a variety of locales to this beach. There are no public recreational facilities at the beach (i.e., volleyball nets, restrooms, concession stands) or public parking lot. Public parking is available along Camino Capistrano. The nearby area does not have commercial beach establishments, such as retail shops, food stands and beach related rental shops, however, there is a commercial center with a supermarket and a gas station with convenience store a block away on the inland side of El Camino Real.

#### Proposed Treated Water Outfall – Possible Horizontal Beach Access Impacts

As proposed, the project would discharge treated water via a rigid PVC pipe attached to an adjacent wooden bulkhead (which protects existing residences) then extending an extra 50 feet onto the beach supported by two concrete piles. It is the applicant's intent to release the treated flows such that they are conveyed directly to the ocean and do not run back toward the existing scour pond as the applicant has expressed concerns that if the treated water is returned to scour pond bacteria re-growth may reoccur in the pond and the water will be re-contaminated before it flows into the ocean. These concerns are further discussed in Section C.

However, the proposed 8" diameter PVC pipe on the beach would divide Poche Beach between the portion of the beach that is wide and sandy beach and the portion of the

beach fronted with private single-family residences (Exhibit #3). Placing the pipe 50 feet beyond the bulkhead would increase adverse impacts upon access as the pipe could potentially serve as a visual barrier to beachgoers by dividing the public beach between the “open” beach and the portion of the beach in front of private residences, giving this portion of the beach the appearance of a “private” beach. Additionally, the pipe may be a potential trip hazard to beachgoers.

In response to Commission staff concerns regarding potential horizontal access impacts posed by the placement of the pipe 50 feet out onto the beach, the applicant provided an analysis of four other alternatives not analyzed in the project’s EIR as described below:

*Alternative A1 – The applicant’s preferred alternative.* An 8” diameter rigid PVC discharge pipe would convey the treated runoff water from the UV treatment facility along the existing concrete channel and wood residential bulkhead to a point 50 feet beyond the end of the bulkhead. Two concrete piles would support the rigid pipe beyond the existing bulkhead. There would be a potential for the pipeline and piles to be exposed by large storm flows and/or large ocean waves. No additional erosion protection measures are proposed with this option. See Exhibit 5, page 1.

*Alternative A2 – Flexible buried pipe.* An 8” diameter rigid PVC discharge pipe would convey the treated runoff water from the UV treatment facility along the existing concrete channel and wood residential bulkhead where a flexible pipe would be attached to the PVC pipe and would extend 50 feet beyond the bulkhead. The flexible pipe would be buried with several inches of sand to discourage tampering and prevent tripping of beach-goers. A heli-coil type anchor would be installed into the sand at the end of the flexible pipe to hold the pipe in place. No additional erosion protection measures are proposed with this option. The flexible pipe would be removed from the beach area during large storm flows. See Exhibit 5, page 2.

*Alternative C – Discharge at the end of the bulkhead.* An 8” diameter rigid PVC discharge pipe would convey the treated runoff water from the UV treatment facility along the existing concrete channel and wood residential bulkhead and discharge at the end of the bulkhead. See Exhibit 5, page 3.

*Alternative D - The discharge outlet located at the channel after the diversion.* After the treatment, water would be conveyed in an 8” diameter rigid PVC pipe along the existing concrete channel wall and would discharge at the end of the channel before the adjacent wooden bulkhead. See Exhibit 5, page 4.

Alternative D is the project alternative most consistent with Section 30211 as the treated water would be discharged back into the concrete channel thereby mimicking natural/existing conditions and would not interfere with horizontal public access to the beach.

To ensure compliance with Section 30211 of the Coastal Act, the Commission imposes **Special Condition (2)** requiring the submittal of final plans indicating that the treated

water will outfall back into the channel after diversion avoiding potential access issues created by a new pipe ocean outfall.

The applicant has previously indicated agreement to Special Condition (2) but requests allowance to build the project as bid and awarded to the contractor with the 8" diameter PVC pipeline attached to the residential bulkhead. This would facilitate any possible future changes to the water outfall location should the applicant deem a permit amendment is necessary due to continued bacteria levels exceeding State requirements at Poche Beach. This pipeline would be attached to an existing residential bulkhead and would not interfere with public access at this location. **Special Condition (3)** therefore allows for the installation of the pipe and specifies the need for a permit amendment for actual use of the pipe for a new water outfall. The condition further requires the removal of the pipeline if the new outfall is not deemed necessary within five (5) years after its installation.

#### Beach Access via Pedestrian Stairway and Walkway

Bicycle access to the area is available via a designated bicycle lane along Coast Hwy (which continues as El Camino Real southbound into San Clemente). Public access to Poche Beach is via a concrete pedestrian stairway at the Coast Hwy/Camino Capistrano intersection leading to a walkway braced along the south side of the M01 channel that traverses underneath the railroad tracks to the sandy beach (Exhibit #4). Adequate signage indicating beach access is located at the intersection and the top of the stairs. Construction of the UV treatment facility would be performed on the railroad right-of-way area already fenced off from public access. Construction work would be visible but would not interrupt public access to the beach.

However, the project requires a slight reconfiguration of the existing stairway leading to the pedestrian walkway to accommodate the necessary location for the inflatable dam. During project construction public access to the pedestrian stair and walkway will only be disrupted for 48 hours (estimated) during the installation of the inflatable dam, for public safety purposes.

The Commission, therefore finds that, as conditioned, the proposed project will be consistent with Section 30210, 30211, 30221 of the Coastal Act.

#### Parking and Traffic Impacts during Construction

Traffic at the PCH/Capistrano intersection may be impacted during construction activities as a portion of the work will require temporary closures of the outside travel lane of Coast Hwy during site excavation, construction of the concrete retaining wall and installation of media tanks. A traffic management plan, identifying traffic construction impacts and proposed mitigation on Coast Hwy, will be implemented during construction. An off-street temporary construction worker parking area and staging area will also need to be identified prior to the start of construction to ensure public beach parking in the area will not be adversely impacted.

Special Condition #2 requires that the applicant adhere to the final plans approved by the Executive Director, including a traffic management plan and parking plan proposed by the applicant. With implementation of these plans, the parking and traffic impacts potentially caused by this development will be mitigated, therefore, as conditioned, this development is consistent with the public access policies of the Coastal Act.

**C. Marine Resources and Water Quality**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states in part:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233 of the Coastal Act states in part:

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

*(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

Abandoned urban runoff in the Prima Deshecha Cañada watershed originates from irrigation from residential consumers and the nearby Shorecliffs Golf Course. The Prima Deshecha Cañada (M01) drainage channel outlets to the Pacific Ocean at Poche Beach. Storm and abandoned urban runoff from this 4,404 acre watershed is subject to high levels of nutrient and pollutants; significant levels of fecal coliform have been found in the channel and, at the surf zone frequently exceed State standards. Poche Beach is

frequently posted by the Orange County Health Care Agency for bacteria counts exceeding the State standards. In their 1994 Basin Plan, the San Diego Regional Water Quality Control Board (RWQCB), identified the Prima Deshecha Cañada as a hydrologic unit with beneficial uses including AGR (agriculture), WARM (warm freshwater habitat), WILD (wildlife habitat), REC2 (non-contact recreation) and REC1 (water contact recreation). As required by the RWQCB, the County and Cities are mandated to eliminate the sources of runoff contamination to the maximum extent practicable. This project is proposed as a near term measure to alleviate the contaminated water at Poche while other long-term RWQCB and County mandated pollutant source control measures are evaluated, funded and implemented in the watershed. A similar project was attempted in 2003 with UV treatment equipment inside the M01 drainage channel (upstream of Coast Hwy) to address elevated bacteria levels; however this project was ineffective and short lived due to equipment malfunctions.

At the outfall of the Prima Deshecha Cañada (M01) drainage channel to the Pacific Ocean at Poche Beach, a scour pond forms where urban runoff from the 4,404 acre Prima Deshecha Cañada watershed water collects prior to reaching the Pacific Ocean. During high tide, wave action builds up a sand berm higher than the elevation of sand at the end of the residential bulkhead. The scour pond is located adjacent to the bulkhead and is several feet lower still. The pond is fed by the flow coming down the channel and from ocean wave run-up. The pond water breaches the sand berm and slowly drains out when the tide recedes and the pond water elevation rises. The tide cycle continues this process.

A wetlands delineation based on the Coastal Commission definition of a wetland was performed as part of the project biological assessment in 2003. Based on hydrology, the entire 0.132 acre survey area was determined to be a wetland using the single criterion method.

The scour pond has a sandy bottom and consists of open water, but does not support vegetation or fish. The Poche Beach area is a coastal habitat that primarily supports seagulls, but may also be utilized by other shorebirds and waterfowl. According to Fish and Wildlife, six species classified as federally threatened or endangered (i.e., tidewater goby, southern steelhead, brown pelican, least tern, Western snowy plover and Pacific pocket mouse) are known to occur or potentially occur within the project area. Field investigation included observing plant species, observing wildlife and seining the scour pond for fish species. However, none of these species were found to occur within a 3-mile radius of Poche Beach. Wildlife species observed included the California gull, Heermann's gull, western gull, spotted sandpipers and rock doves.

The project includes installation of a dam obstructing the major water source to the pond, essentially causing diking of the wetland. The action is permitted under Section 30233(a)(4) of the Coastal Act, only if there is no feasible less environmentally damaging alternative and where feasible mitigation measures are provided to minimize environmental impacts if the project purpose qualifies as an incidental public service.



As the water is only temporarily diverted to the UV treatment to remove bacteria, the treatment itself can be considered an allowable use under Section 30233 as an incidental public service. However, as proposed, an 8" diameter rigid PVC discharge pipe would convey the treated runoff water from the UV treatment facility along the existing channel wall, then along the residential bulkhead and discharged at a point 50 feet beyond the end of the bulkhead at the surf zone; this would bypass the scour pond and effectively remove the water source of the wetland. Additionally, the 8" diameter rigid PVC pipe would require two, 16" diameter concrete piles in the sandy beach for support necessitating a minimal amount of dredging. Feasible mitigation for the loss of wetlands was not identified.

The applicant's intention is to avoid re-growth of bacteria in the pond by discharging the treated water directly into the surf zone, instead of the pond. Although the scour pond that forms at the M01 outlet does not provide habitat for any sensitive plant or wildlife species, it does provide habitat for wildlife. Section 30233 of the Coastal Act only allows impacts to wetlands for an incidental public service purpose when there is no feasible, less environmentally damaging alternative available. In addition, whatever impact is allowed, must be minimized, and those unavoidable impacts must be mitigated. Thus, to the maximum extent feasible, the project should avoid loss of the wetland. While the concern about bacterial re-growth is possible, there has been no conclusive demonstration at this point that such re-growth will occur in the pond at the subject site. In fact, the Commission presently has reason at this stage to believe that such re-growth will not occur at this site given factors described below. Thus, there is presently no factual basis to justify substantial modification to the existing wetland hydrology, especially when other treated water outfall alternatives exist that are less environmentally damaging such as Alternative D. Discharging the treated water at end of the channel and back into the pond/wetland would mimic the existing condition and thereby not cause any physical change to the hydrology of the pond and no net loss of wetlands. Additionally, Alternative D would be the least environmentally damaging alternative as it would not require any dredging for the placement of piles on the beach.

The applicant is concerned that with implementation of Alternative D, re-growth of bacteria may occur within the scour pond to an extent that would threaten the REC-1 objective at the beach. This concern may be decreased by actions taken under CDP #5-02-031 that permits the applicant to remove sand material that over time forms a berm across the pond, thereby providing an influx of ocean water and decreasing the amount of time the treated freshwater would remain in the pond. Currently, CDP #5-02-031 only permits breaching of the sand berm twice a year; the applicant has submitted an amendment to this permit to allow more frequent breaching of the sand berm that will be considered by the Commission separately.

Additionally, studies regarding the sources of bacteria in the watershed conducted by the County indicate that the majority of bacteria in the channel originates in the upper portions of the watershed and that re-growth of bacteria in the pond is generally not a significant threat.

**Special Condition (6)** requires an extensive water quality monitoring program for the pond for a year (365 days). The applicant may choose to continue to monitor for a longer period of time if deemed necessary. Should the applicant choose to apply for a permit amendment to change the discharge location due to persistent failure of AB 411 standards in the ocean, such monitoring may be required as evidence that the standard failures are due specifically to discharge from the scour pond. At that time, the Commission may consider other outfall alternatives and/or other alternatives that address the persistent failure to meet AB 411 standards. The applicant will need to develop a complete range of alternatives. The Commission acknowledges that such alternatives may include more significant alteration of the wetland hydrology than is being presently authorized. However, if the applicant is able to demonstrate through conclusive data and analysis that such alteration is the least environmentally damaging one, and appropriate mitigation is provided, such additional alteration may be approvable under Section 30233(a)(4). At this stage, however, without actual operation and testing of the system which demonstrates the applicant's concern regarding bacterial re-growth, the Commission is not able to make a finding that such extensive alteration to the wetland hydrology is the least environmentally damaging one.

As conditioned, the Commission finds that the development conforms with Sections 30230, 30231, and 30233 of the Coastal Act regarding marine resources and water quality.

Additionally, the proposed work will be occurring in a location where there is a potential for discharge of polluted runoff from the project site into coastal waters during the construction period. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To address these concerns, the applicant will not stockpile material during project construction. To further reduce the potential for construction related impacts on water quality, the Commission imposes **Special Conditions (1)** requiring the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and the disposal of construction debris outside the coastal zone. As conditioned, the Commission finds that the development conforms with Section 30231 of the Coastal Act regarding water quality.

#### **E. Visual Impacts**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

To the South of the M01 Channel is the Shorecliffs Beach Club on Poche Beach and further beyond is a mobile home park, to the North there are single family residences, to the East across Coast Hwy is a gas station and to the West is Poche Beach and the Pacific Ocean. Public views to and along the beach and ocean are available from Coast Hwy. The proposed project would be constructed within this view corridor, and would be particularly visible from vehicles, pedestrians and cyclists traveling southbound on Coast Hwy.

In order to minimize negative visual impacts, the entire UV treatment facility would be constructed at, or below, the level of the top of an adjacent guardrail on the coastal side of Coast Hwy, between Coast Hwy and the railroad right-of-way. The existing ground at the guardrail is at an elevation of 21.25 feet. The guardrail is approximately 3-4 feet tall, giving it an elevation of 24.2 to 25.2 feet. The structures within the proposed facility will vary in height with four 8-foot high media filtration tanks and a maximum height of 9-feet for the surge tank. These structures, however, will not adversely impact public views of the ocean as they will be located below the proposed 7 foot tall retaining wall, on a pad carved into the slope of the roadbed between the railroad tracks and road (Exhibit 4, Page 10). Additionally, protective fencing for the facility will also be sufficiently below grade (i.e. below the height of the existing guard rail) for minimal view impacts. As proposed, the project conforms to Section 30251 of the Coastal Act. However, as the maximum height proposed is critical to the projects' conformance with the Coastal Act policy, the Commission memorializes the requirement in Special Condition (2) requiring the proposed structures not extend more than 3 feet above the Coast Hwy road surface; the same height as the existing highway guardrail over the channel

Public views to the ocean traveling southbound on Coast Hwy or westbound from Camino Capistrano will not be adversely impacted. Furthermore, the proposed facility structures and/or fencing as proposed and as conditioned will be painted a neutral color to help minimize any visual impact. As proposed the project will be sited and designed to protect views to and along the ocean and scenic coastal areas. The Commission, therefore, finds that the proposed project is consistent with Section 30251 of the Coastal Act.

#### **F. Recreation**

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The objective of the project is to reduce the number of beach postings/beach closures due to elevated bacteria levels in the water, thereby protecting coastal areas suited for recreational activities. The Commission finds that the proposed development, as conditioned, is in conformity with Sections 30220 through 30224 of the Coastal Act regarding the protection and promotion of public recreational opportunities.

#### **G. Hazards**

Development adjacent to the ocean is inherently hazardous. Development which may require a shoreline protective device in the future cannot be allowed due to the adverse

impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned (**Special Condition 8, 9 and 10**) to prohibit construction of future shoreline protective devices; and assumption of risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

#### **H. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP), which conforms with Chapter 3 policies of the Coastal Act.

The development that is the subject of this permit is located within multiple jurisdictions, including the cities of Dana Point and San Clemente. The Commission certified the LCP for the City of Dana Point in 1989. The Commission certified the Land Use Plan for the City of San Clemente in 1988, and certified an amendment in 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. Therefore, the Commission retains permit issuance authority for the City of San Clemente.

The Commission finds the proposed development consistent with the policies in the certified Land Use Plan for San Clemente and with the City of Dana Point Local Coastal Program. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

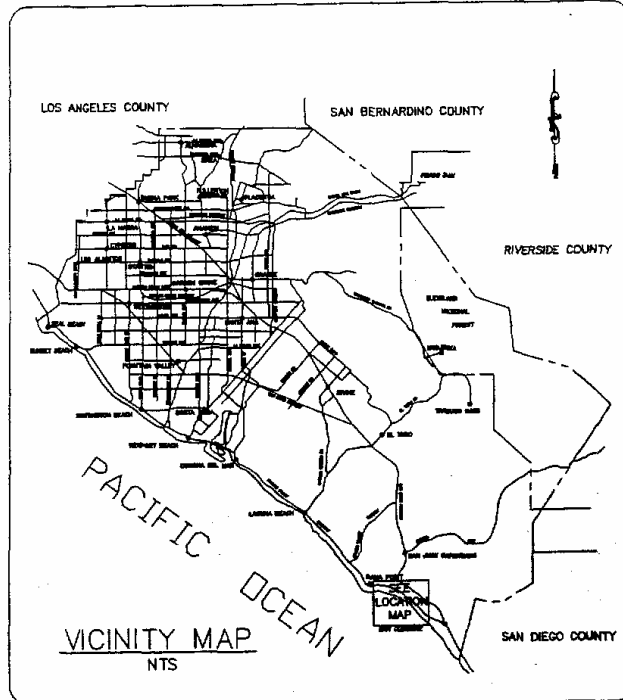
#### **I. Consistency with the California Environmental Quality Act (CEQA)**

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

The County of Orange is the lead agency for purposes of CEQA compliance. A Mitigated Negative Declaration was prepared for this project in 2002 pursuant to the provisions of CEQA. Mitigation measures included a measure to minimize any additional impacts to the

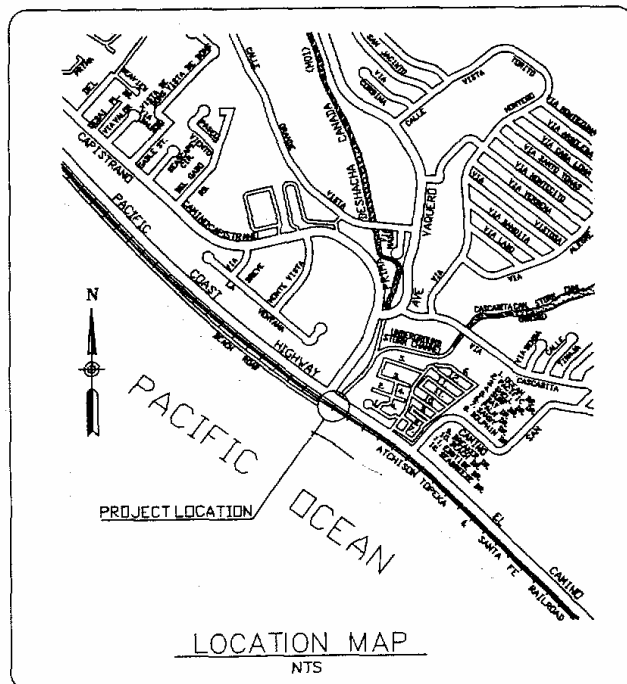
public vistas (i.e., prior to approval of plans, a refined grid survey to determine precise site elevations in relation to the existing guard rail would be required to insure that the facility elements remain at, or below, the level of the guard rail); a measure requiring a construction worker parking plan; and a measure to ensure the proper easements and encroachments are obtained from local agencies plus providing OCTA the right to direct the removal of the facility at any time. Mitigation measures for air quality, water quality, hydrology, recreation, or biological resources were not deemed necessary.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area (i.e., sewer and electric). The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project has been found consistent with the public access, water quality, and habitat protection policies of the Coastal Act. Mitigation measures to minimize adverse effects include: special conditions related to submittal of revised final plans, submittal of a water quality monitoring plan; staging and timing of construction, construction-related best management practices (BMPs) and special conditions prohibiting future shoreline protective devices and for future improvements to return to the Commission for review. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



**COASTAL COMMISSION**

EXHIBIT # 1  
PAGE 1 OF 1



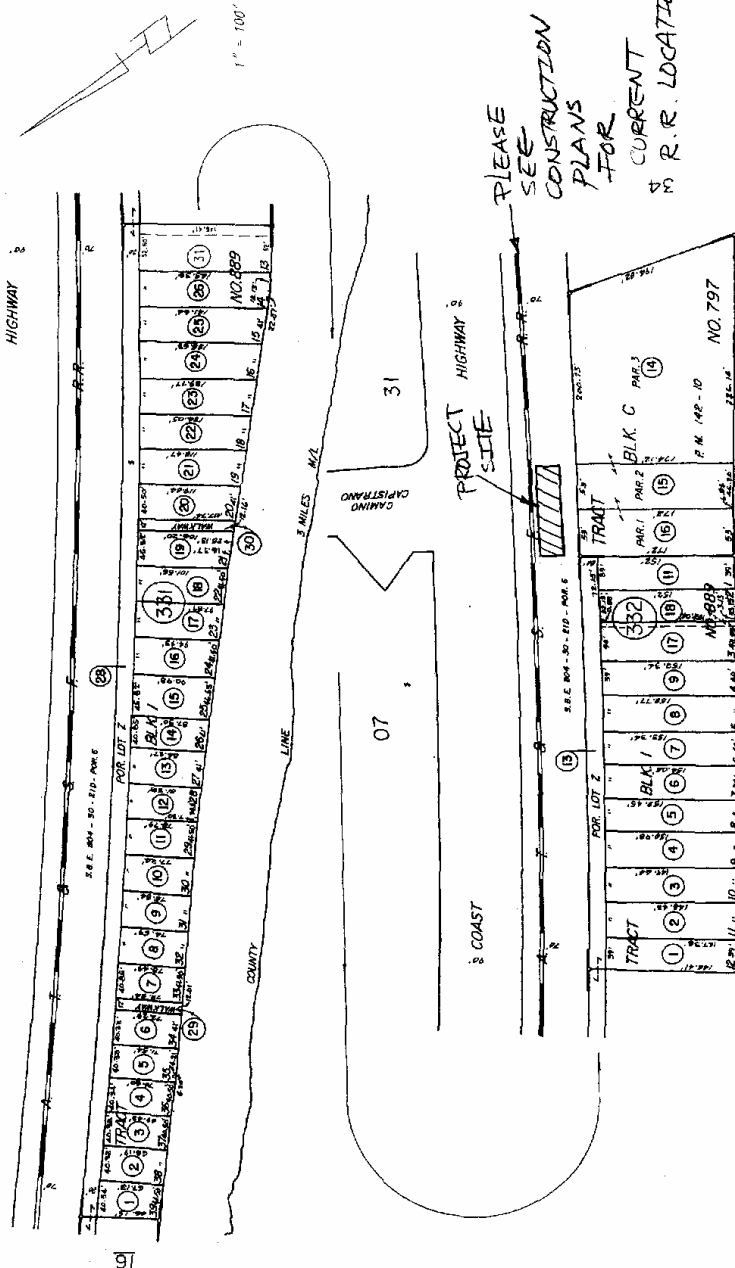
**EXHIBIT 1**

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COAST



COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1

ASSESSOR'S MAP  
BOOK 691 PAGE 33  
COUNTY OF ORANGE

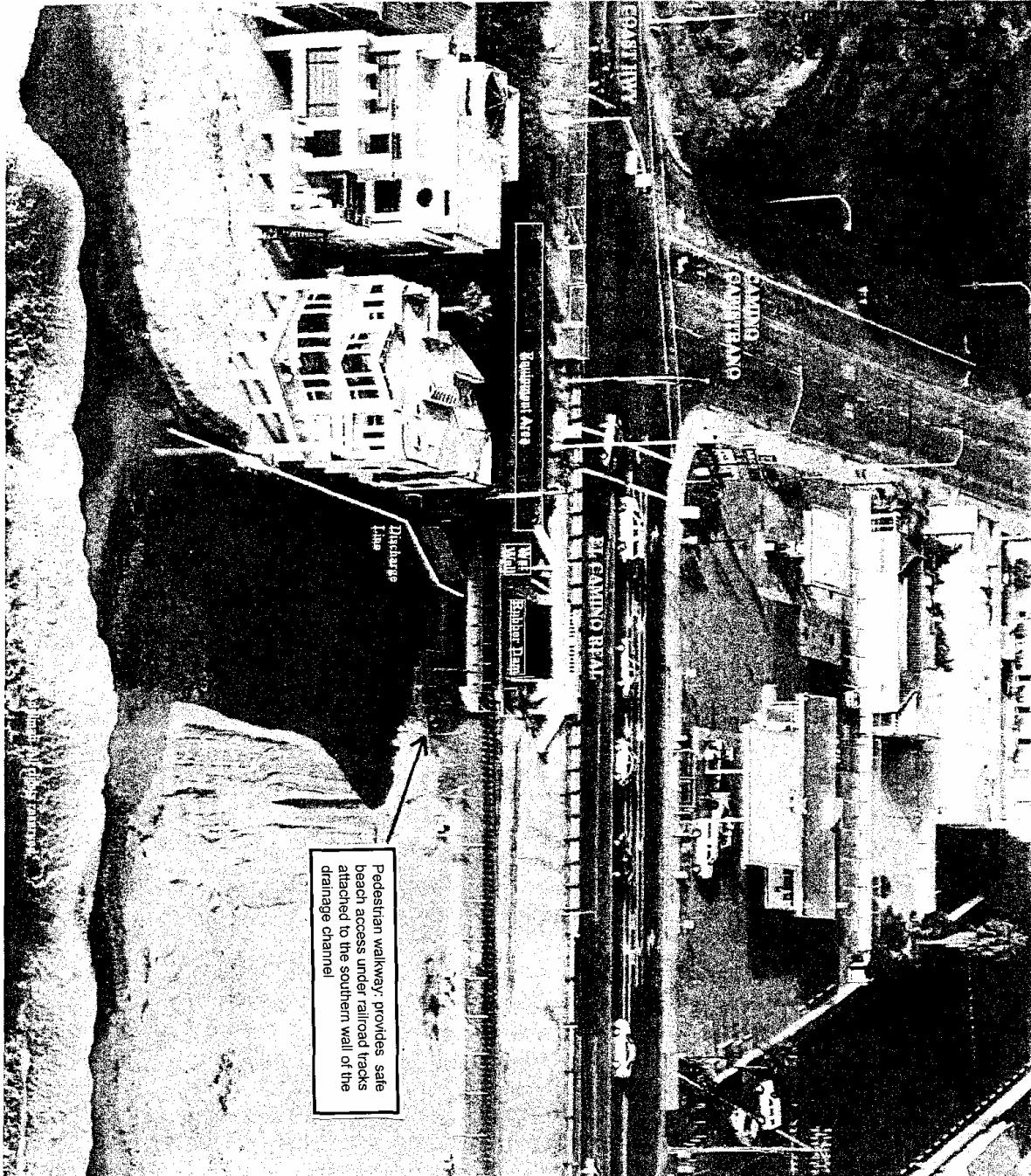
NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

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TRACT NO. 889 M.M. 27-17  
PARCEL MAP P.M. 142-10

MARCH 1979

MARCH 1979

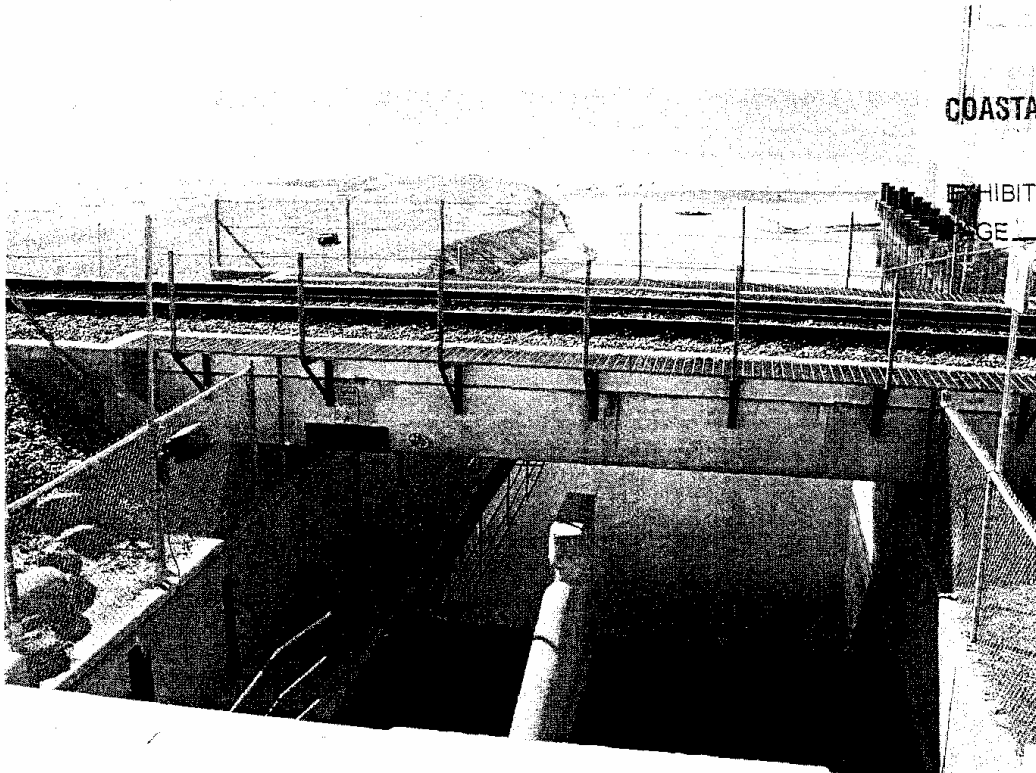
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**COASTAL COMMISSION**

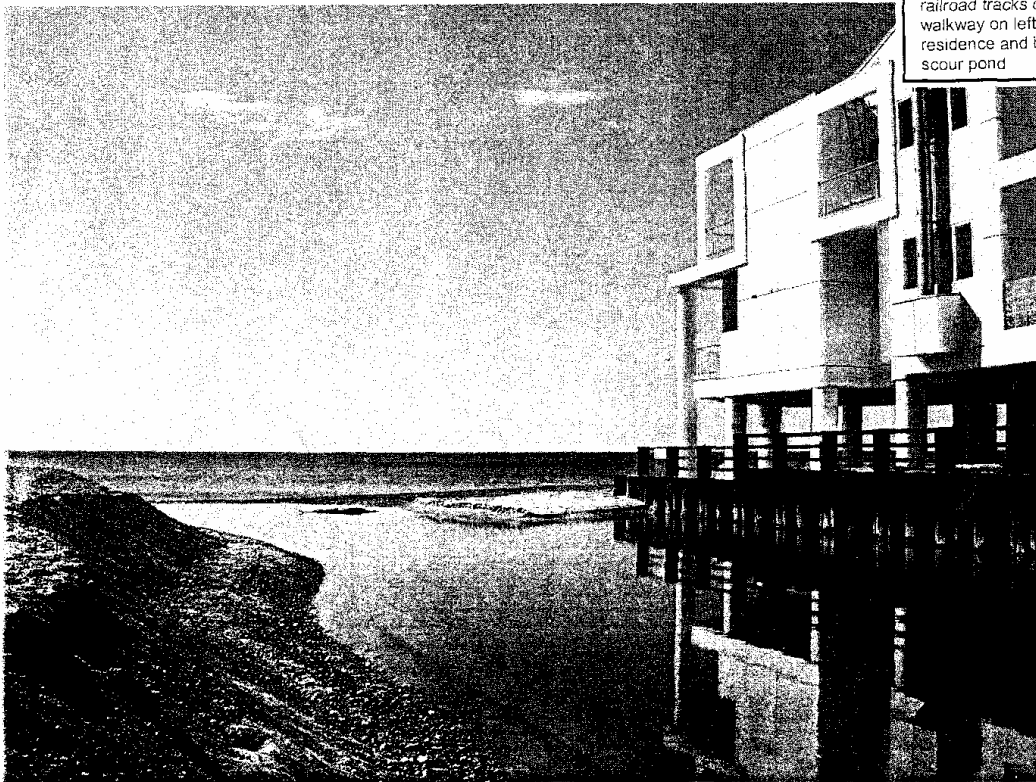


COASTAL COMMISSION

EXHIBIT # 3  
PAGE 2 OF 2



Prima Deshecha Cañada (M01)  
Channel outlet at Poche Beach:  
railroad tracks overhead, pedestrian  
walkway on left side of channel and  
residence and bulkhead on right of  
scour pond



## PLAN

ORANGE COUNTY  
RESOURCES & DEVELOPMENT  
MANAGEMENT DEPARTMENT

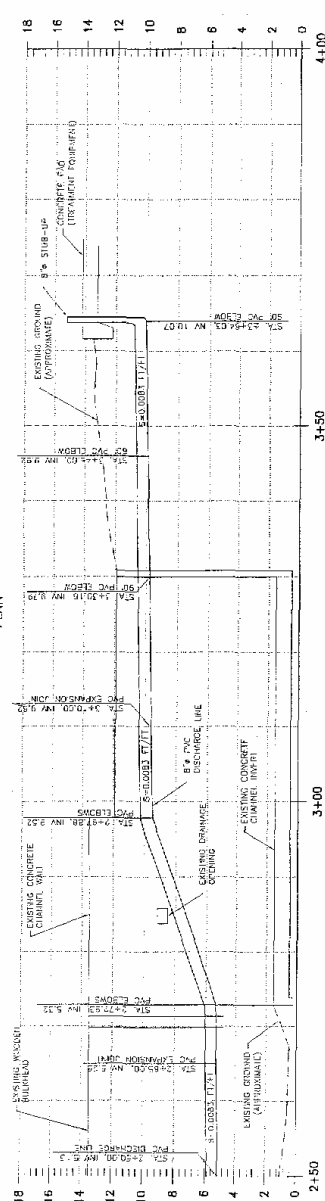
FOGIE, BEACH MODULAR  
TREATMENT SYSTEM


PLAN

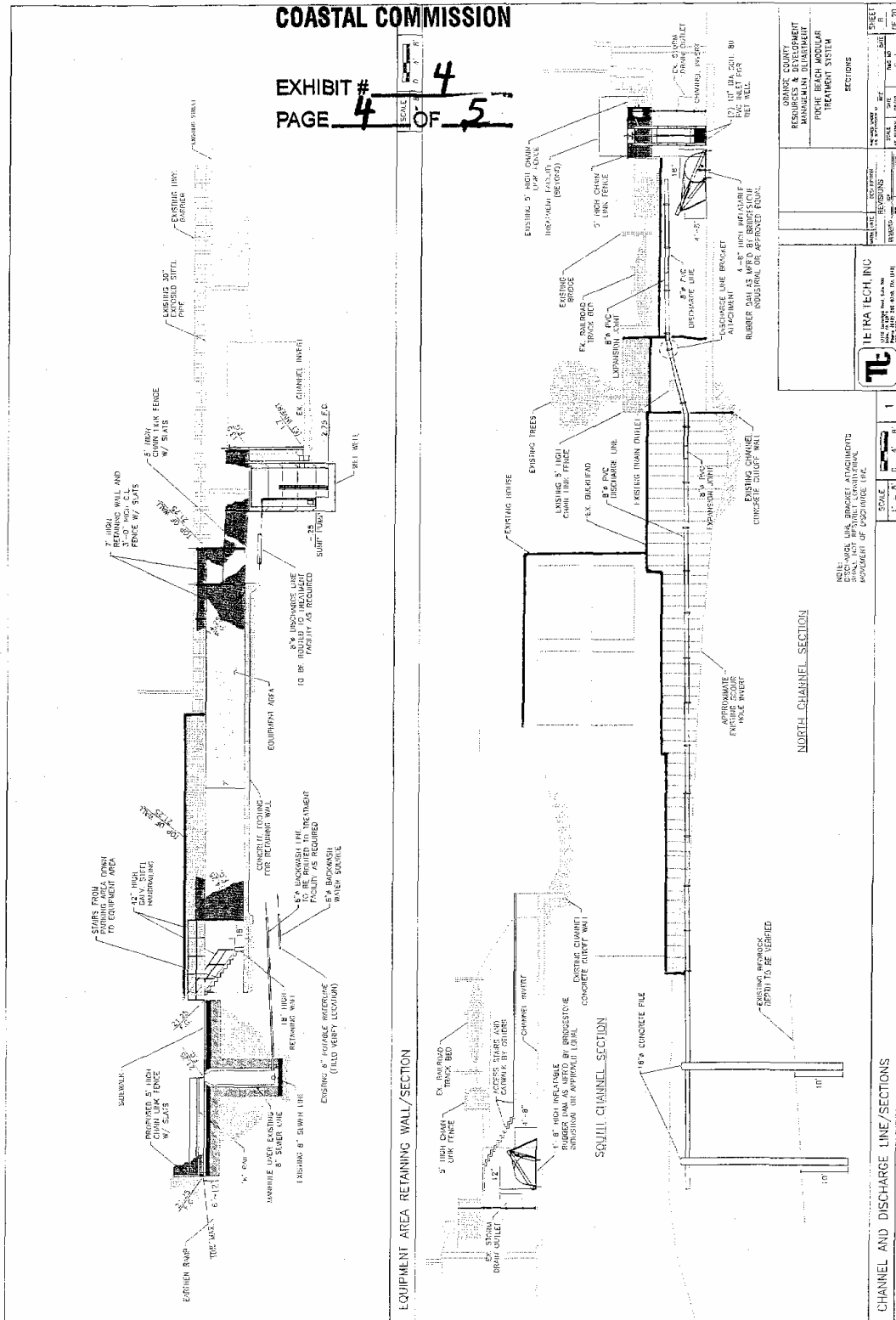
SHEET 5 OF 20

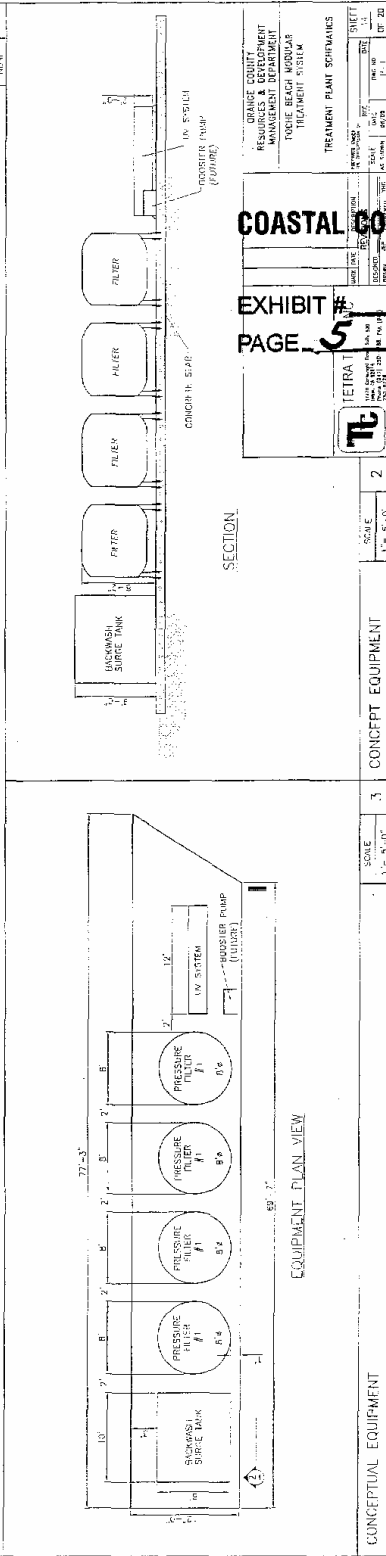


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**TETRA TECH INC.**  
 1175 Grange Road, Suite 200  
 St. Louis, MO 63103-2446 (314) 591-1500  
 FAX (314) 591-1501  
 E-MAIL: [info@tetra-tech.com](mailto:info@tetra-tech.com)  
 WWW: [www.tetra-tech.com](http://www.tetra-tech.com)





### Proposed Alternative A1

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 5

