

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: May 1, 2007
49th Day: June 19, 2007
180th Day: October 28, 2007
Staff: Liliana Roman-LB
Staff Report: May 22, 2007
Hearing Date: June 13-15, 2007
Commission Action:

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

APPLICATION NUMBER: 5-07-152

APPLICANTS: City of San Clemente, Villa Marquita Series LLC and Daniel Moore

AGENT: City of San Clemente

PROJECT LOCATION: 211 and 215 West Marquita, San Clemente (Orange County)

PROJECT DESCRIPTION: Replace existing 12" diameter corrugated metal storm drain that is corroded and crushed beyond the ability to rehabilitate with a new 12" diameter HDPE pipeline extending approximately 85 feet from the catch basin at the curb of West Marquita to a junction structure on the top of the canyon slope then descending down to the bottom of Marquita Canyon and connecting to the underground County of Orange Marquita Storm Channel. Approximately 5-10 feet of existing pipe will be removed to connect to the existing manhole at the top of the slope. The remainder of the existing storm drain pipe will be slurry filled and abandoned in place to avoid undermining the existing building foundation. The slope will be re-filled and re-vegetated.

LOCAL APPROVALS RECEIVED: City of San Clemente Approval in Concept, dated March 21, 2007.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, *Lawson & Associates Geotechnical Consulting, Inc. April 19, 2007 letter, Lawson & Associates Geotechnical Consulting, Inc. May 17, 2007 letter, CDP 5-06-120 file*

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of the proposed project with four (4) special conditions, which require 1) submittal of final plans conforming with geotechnical recommendations; 2) submittal of a re-vegetation plan with OCFA approval; 3) submittal of a nesting bird survey and 4) compliance with construction-related best management practices (BMPs). The primary issues associated with this development are canyon habitat enhancement and water quality.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Canyon and Coastal Access Points Maps
4. Project Plans

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-07-152 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. Final Design and Construction Plans Conforming to Geotechnical Recommendations

- A. All final design and construction plans, including but not limited to slope re-fill, shall be in substantial conformance with the preliminary plans and consistent with all recommendations from Lawson & Associates Geotechnical Consulting, Inc. in correspondence dated April 19, 2007 and May 17, 2007 approved by the Commission for the project site and supplementary recommendations from on-site qualified soil and geotechnical professionals that are within the scope of the written recommendations. WITHIN 30 DAYS OF PROJECT COMPLETION the applicant shall submit for the review and approval of the Executive Director final as-built plans which demonstrate that the final project is in substantial conformance with the preliminary plans.
- B. If during excavation and/or construction, the soil and geotechnical professional finds that work required for the canyon slope re-facing substantially deviates from the amount of work originally reported to the Commission in the preliminary plans, the proposed changes shall be reported to the Executive Director. No changes to the approved preliminary plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Re-vegetation Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a re-vegetation plan prepared by an appropriately licensed professional which demonstrates the following:
 - (a) All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes;
 - (b) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping/vegetation affected by construction activities that doesn't meet all of the requirements in this special condition shall be removed;
 - (c) Re-vegetated areas shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing

native plant areas, all re-vegetation adjacent to and within the canyon shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Locally native stock shall be used where possible. Invasive, non-native plant species that tend to supplant native species shall not be used;

- (d) All planting will be completed within 60 days after completion of construction;
- (f) No permanent in-ground irrigation systems shall be installed in the canyon. Temporary above ground irrigation is allowed to establish plantings.
- (g) All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the re-vegetation plan.
- (h) Review and approval of the final re-vegetation plan by the Orange County Fire Authority.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

3. Breeding Bird Survey

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, a plan for a Breeding Bird Survey conducted by a qualified biologist immediately prior to and during construction of the proposed improvements, which shall substantially conform to the following requirements:

1. A qualified biologist, with experience in conducting bird surveys, shall conduct bird surveys 30 days prior to construction to detect any protected native birds in the habitat to be disturbed and any other such habitat within 500 feet of the construction area. The last survey should be conducted 3 days prior to the initiation of clearance/construction.
2. If a protected native bird is found during the survey, the applicant shall delay all clearance/construction disturbance activities in suitable nesting habitat or within 500 feet of nesting habitat until August 31 or continue the surveys in order to locate any nests. If an active nest is located, clearing/construction within 500 feet of the nest(s) shall be postponed until the nest(s) is vacated and juveniles have fledged and there is no evidence of further nesting attempts. Limits of construction to avoid a nest shall be established in the field with flagging and stakes or construction fencing. Construction personnel shall be instructed on the sensitivity of the area. The project biologist shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to protection of native birds.

3. In addition, a qualified biologist shall conduct a site survey for any active raptor nests two weeks prior to any construction. If an active raptor nest(s) is located, then no construction work shall be conducted within a 500 foot radius from the nest until the young have fledged and are independent of the adults.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

4. 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 the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project; debris shall be disposed of outside the coastal zone, as proposed by the applicant.
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

Surface water collected on the 200 block of West Marquita in the City of San Clemente, Orange County (Exhibits 1 & 2) flows into a currently deficient storm drain through a catch basin on the south side of the street and continues approximately 150 feet to join a larger underground Orange County storm channel at the bottom of Marquita Canyon. The storm drain pipe alignment is within a residential subdivision at 211 and 215 West Marquita on the south side and within the right-of-way of West Marquita then continues southerly across the residential lots between the two residential buildings and descends down into Marquita Canyon (aka Palizada Canyon in the City of San Clemente Certified Land Use Plan). The site transitions from relatively flat lots on the canyon top to steeply sloping terrain (between 1:1 or steeper) descending down to the bottom of Marquita Canyon. The City has designated all coastal canyons, including the Marquita/Palizada Canyon as environmentally sensitive habitat areas (ESHA), as depicted in Exhibit 3. Surrounding development consists of a mix of single-family and multiple-family residential residences. 211 (23 units) and 215 West Marquita (3 units) are immediately east and west of the storm drain pipe.

The City of San Clemente proposes to replace in its entirety the existing 12” diameter corrugated metal storm drain that is corroded and crushed beyond the ability to rehabilitate with a new 12” diameter High Density Polyethylene (HDPE) pipeline to extend approximately 85 feet from the catch basin at the curb of West Marquita to a junction manhole on the top of the canyon slope then descend to the bottom of Marquita Canyon and finally connect to the underground County of Orange Marquita Storm Channel. Approximately 5-10 feet of existing pipe will be removed to connect to the existing junction manhole at the top of the slope. The remainder of the storm drain will be slurry filled and abandoned in place to avoid undermining the existing building foundation. Approximately 18 cubic yards of cut for trenching is proposed, the same material will be used for fill and slope resurfacing. Areas within the canyon bottom and slope disturbed by construction activities will be re-vegetated. The proposed project does not qualify for an exemption from permit requirements for repair and maintenance activities due to its location within a coastal canyon.

B. HABITAT

The City has designated all coastal canyons, including the Marquita/Palizada Canyon as environmentally sensitive habitat areas (ESHA) as coastal canyons act as open space and are potential wildlife habitat, as well as potential corridors for native fauna. However, decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis. The canyon portion that is part of the 211 and 215 West Marquita property lots is degraded due to the presence of non-native plant species. Within the canyon, the site is dominated by non-native plant and grass species with intermixed native big saltbush, lemonade berry and toyon. No portion of the site contains resources that rise to the level of ESHA.

Marquita Canyon has been modified to the point that the drainage channel once present in the canyon bottom no longer has a defined bed and bank within the project area. A stream flow that may have once flowed down the canyon is now collected in the underground Marquita Storm Drain Channel beneath the floor of the canyon. Linda Lane Park, a City maintained park with grass fields and picnic benches is located within Marquita Canyon at its western end. Wildlife species such as coyotes, skunks, raccoons, and opossums may use the canyon areas for movement, but the project site is not likely to be considered a significant wildlife movement corridor on a regional basis and the proposed project will not impact the migration of wildlife species. The proposed project has the potential to impede localized movement of migratory birds during the construction period. To further ensure the protection of potential canyon habitat, **Special Condition (3)** requires a nesting bird survey plan prior to the commencement of construction.

As the San Clemente certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons, to improve the habitat value of the canyon and to prevent potential erosion, the applicant will be required to submit a re-vegetation plan demonstrating that only plant species native to coastal Orange County and appropriate to the habitat type will be used in their restoration efforts on the canyon slope and canyon bottom. Local native stock should be used if possible. Plants in the re-vegetation plan should be drought tolerant to minimize the use of water. Existing non-native plants located within the backyards of the residences that are outside of the canyon and not disturbed by the proposed development may be retained.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Additionally, as the project is located in a canyon, the final landscaping plans must be submitted to the Orange County Fire Authority (OCFA) for their review and approval. **Special Condition (2)** specifies the re-vegetation requirements.

Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240 of the Coastal Act.

C. DEVELOPMENT

Development on slopes such as those found on canyons is inherently dangerous. To minimize risks to life and property the development has been conditioned to: require conformance with geotechnical recommendations and for a re-vegetation plan to ensure further slope stability.

Lawson & Associates Geotechnical Consulting, Inc. (LGC) conducted a visual observation and probing to determine existing site conditions and found evident slope scour within the descending backyard slope at 211 West Marquita that appears to be the result of water escaping from the highly deteriorated storm drain and concluded that the immediate replacement of the storm drain pipe and related slope re-surfacing will prevent further scouring. LGC recommends using the trenching spoils from the project to refill the slope; no new fill material is deemed necessary. The project requires approximately 18 cubic yards of grading for trenching activities and slope re-fill.

The City would normally pursue this type of project through its regular engineering and bid process that would include detailed project plans. However, the City was only recently made aware of the severely degraded condition of the existing storm drain pipe. The City is requesting expedited consideration of this project in an effort to complete the work prior to the upcoming winter rainy season. The City has provided preliminary plans as the exact placement of the pipeline will be field engineered. Upon storm drain completion, the City will produce as-built plans based on survey work during the construction and provide those to the Commission. The new line will be installed to “best fit” the canyon slope avoiding the removal of existing trees and roots and provide a minimum of three feet vertical cover to the storm drain.

The property owners at 211 and 215 West Marquita are co-applicants on the coastal development permit application with the City of San Clemente and have additionally agreed with the City to dedicate additional easements for the final placement of the storm drain based on the final as-built plans.

Due to access constraints from the street side of the property, construction access will be from Linda Lane Park through Marquita Canyon to the rear slope of the property via City easements.

Special Condition (1) requires the applicant produce final design and construction plans, including but not limited to slope re-fill in substantial conformance with the preliminary plans and consistent with all recommendations from Lawson & Associates Geotechnical Consulting, Inc. in correspondence dated April 19, 2007 and May 17, 2007 and supplementary recommendations from on-site qualified soil and geotechnical professionals that are within the scope of the written recommendations.

As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 regarding the minimization of adverse impacts of development in hazardous locations and Section 30254 regarding public works facilities.

D. WATER QUALITY

The property is approximately 1,200 feet from the Pacific Ocean. The condition of the eroded slope and exposure of the buried and unconnected inlet into the Orange County Floor Control District Marquita Channel at the bottom of Marquita Canyon is contributing sediment to the lower canyon reaches and Pacific Ocean. Sediment can be detrimental to marine life as it increases turbidity of the receiving waters. Sediment particles also transport pollutants that attach to their surfaces including hydrocarbons and nutrients.

The geotechnical investigation concluded the immediate replacement of the storm drain pipe and related slope restoration will prevent further slope scouring and thereby prevent further sediment loss to the lower canyon reaches and ultimately the Pacific Ocean. Additionally, expediting the project in an effort to complete the work prior to the upcoming winter rainy season will further avoid impact to the quality of coastal waters due to the deteriorated storm drain conditions.

Special Condition (4) requires the applicant implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system during excavation and project construction thereby minimizing the effect of construction on the marine environment. As such, no new structural BMPs are proposed as part of this project. After construction, the applicant will be required to restore the site and re-vegetate any disturbed areas.

Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. PUBLIC ACCESS

The project site is located approximately 1,200 feet from the beach. Public access to the beach is available at Linda Lane Park to the southwest. The subject site is located in a residential neighborhood that can be used for access but isn't identified as a primary access route to the beach in the City's certified Land Use Plan. Therefore, construction of the proposed project will not adversely affect the public's ability to access the coast and/or to use the coast and nearby recreational facilities. As proposed, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

F. LOCAL COASTAL PROGRAM

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area.

Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

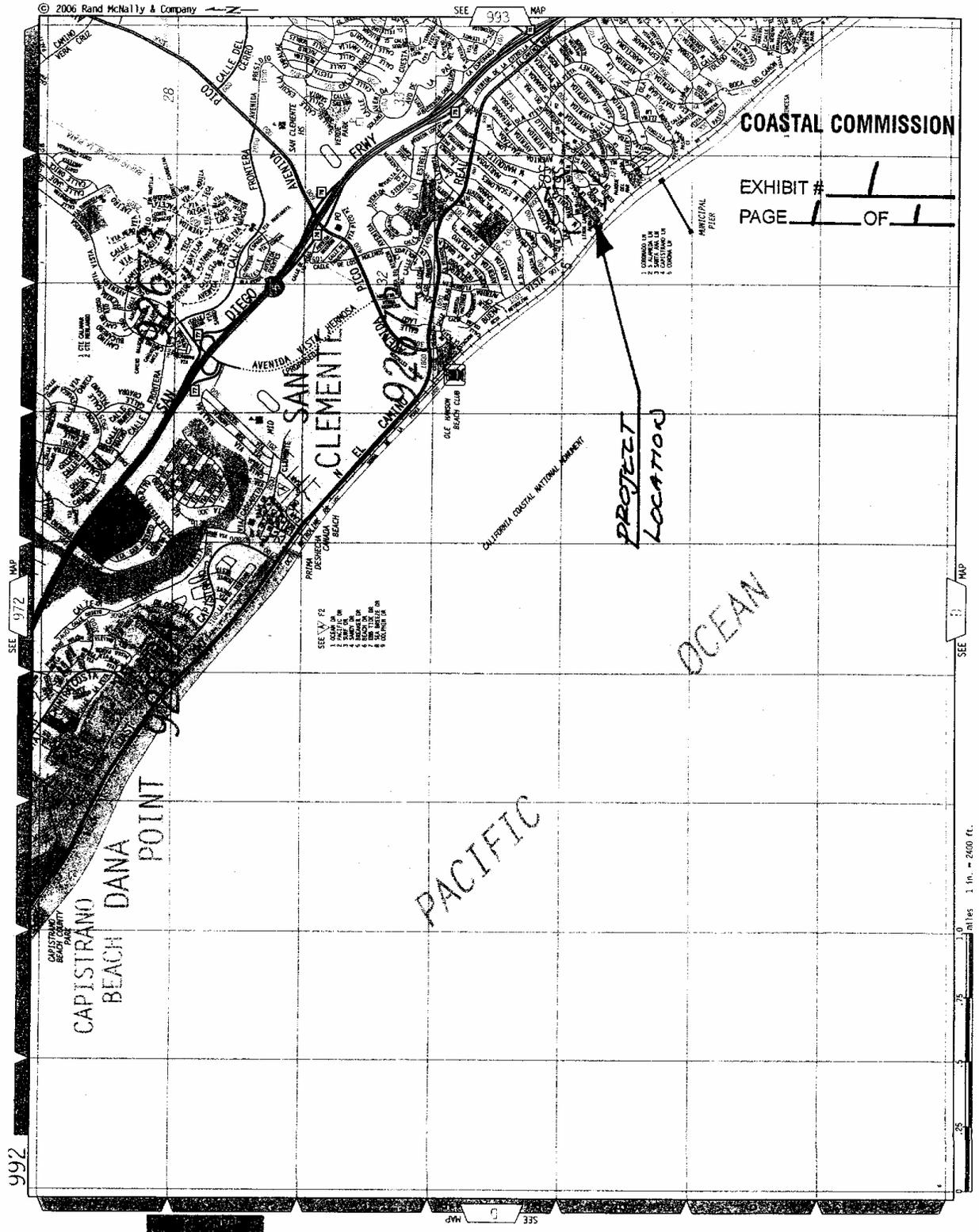
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's 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 City of San Clemente Planning Division is the lead agency for California Environmental Quality Act (CEQA) purposes. On March 21, 2007, the City deemed the proposed project Categorically Exempt pursuant to CEQA Guidelines Section 15301 and 15302 as the project consists of work conducted to existing public works facilities. Mitigation measures were not required with approval of this CEQA document. The Coastal Commission adopts additional mitigation measures, found below, to ensure that the proposed project will conform with the requirements of the Coastal Act.

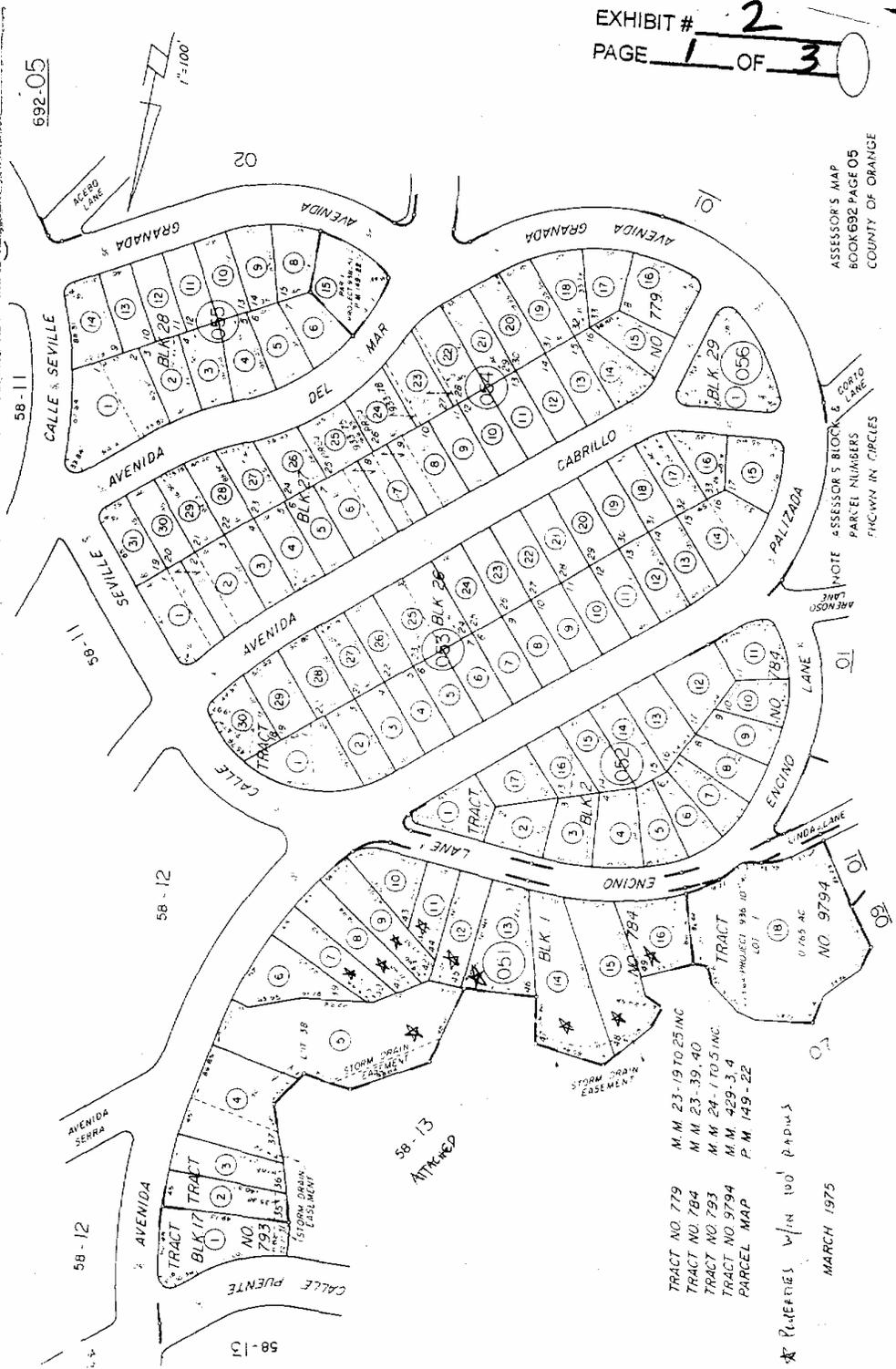
The proposed replacement of existing public works infrastructure is located in a coastal canyon of an urban area. The infrastructure is necessary to serve the surrounding residential development. As conditioned, the proposed project is consistent with the water quality and habitat protective policies of the Coastal Act. Mitigation measures include: special conditions related to submittal of landscape plans, a nesting bird survey and requiring construction-related best management practices (BMPs).

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available 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 impacts, 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 # 2
 PAGE 1 OF 3



ASSESSOR'S MAP
 BOOK 692 PAGE 05
 COUNTY OF ORANGE

NOTE
 ASSESSOR'S BLOCK & TRACT NUMBERS
 FIGURES IN CIRCLES

- TRACT NO. 779 M.M. 23-19 TO 25 INC.
- TRACT NO. 784 M.M. 23-39, 40
- TRACT NO. 793 M.M. 24-1 TO 5 INC.
- TRACT NO. 9794 M.M. 429-3, 4
- PARCEL MAP P.M. 149-22

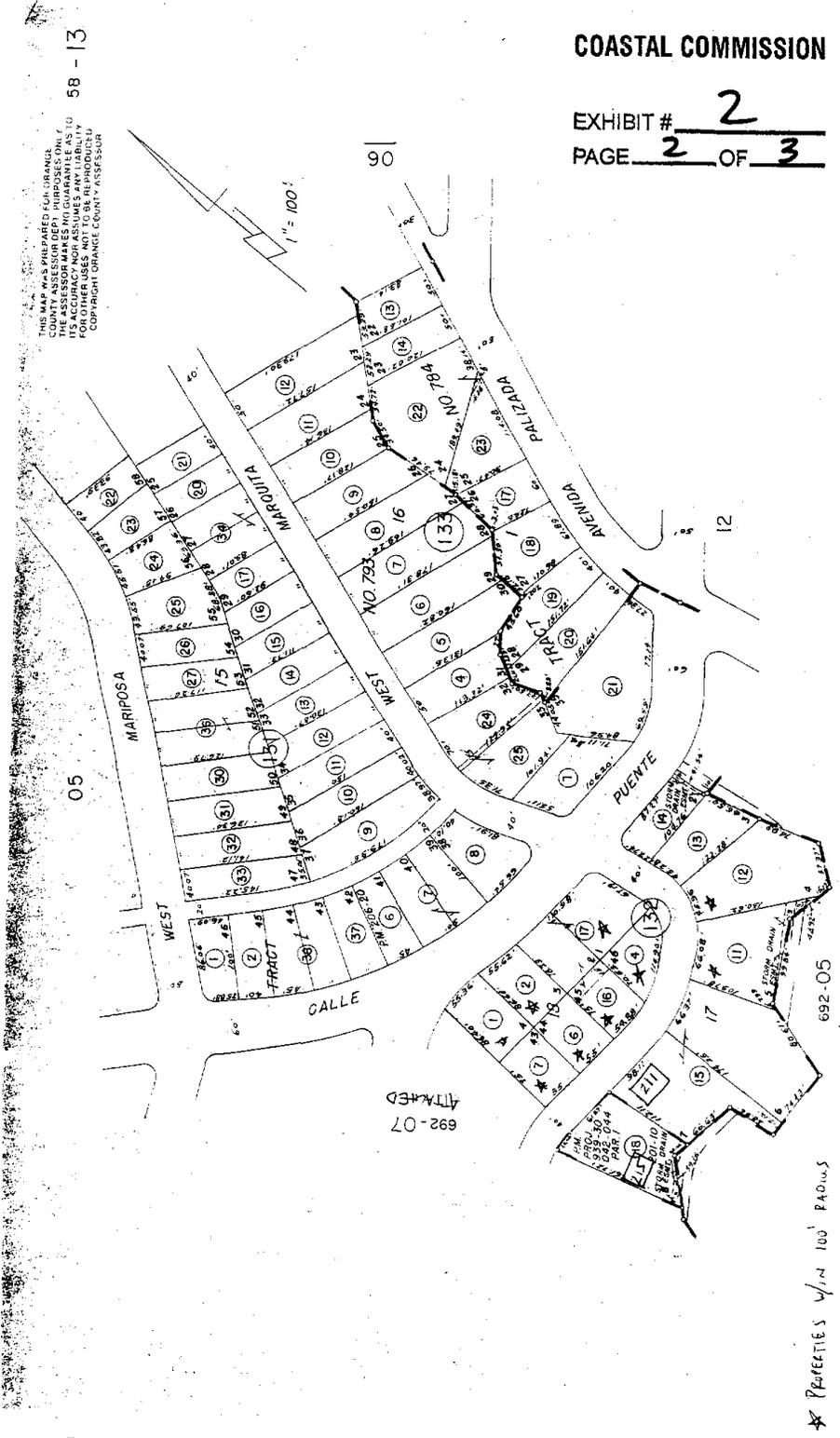
* PLATIFIED IN 100 PAGES
 MARCH 1975

58 - 13

COASTAL COMMISSION

EXHIBIT # 2
 PAGE 2 OF 3

THIS MAP WAS PREPARED FOR THE
 COUNTY ASSESSOR DEPT. PURPOSES ONLY.
 THE ASSESSOR MAKES NO GUARANTEE AS TO
 THE ACCURACY OF THE INFORMATION
 FOR OTHER USES. NOT TO BE REPRODUCED
 WITHOUT THE WRITTEN PERMISSION OF THE
 COUNTY OF ORANGE COUNTY ASSESSOR



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

M.M. 24-1-5
 M.M. 23-39-40
 P.M. 201-10

TR. NO. 793
 TR. NO. 794
 PARCEL MAP

MARCH 1950

* PROPERTIES $\frac{1}{4}$ IN 100' RADII

ASSESSOR'S MAP
 BOOK 58 PAGE 13
 COUNTY OF ORANGE

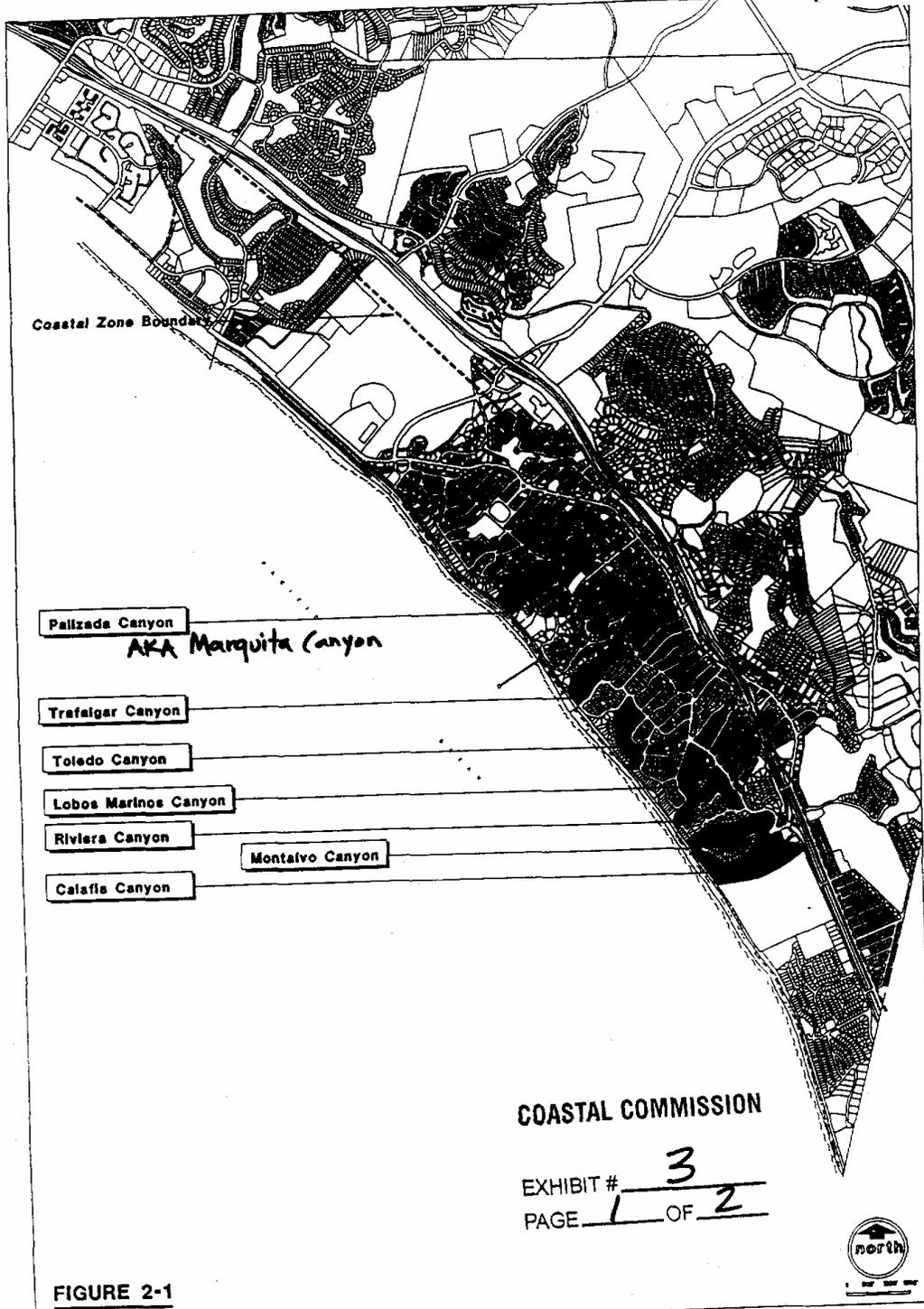


FIGURE 2-1



CITY OF SAN CLEMENTE
COASTAL CANYONS/ ENVIRONMENTALLY SENSITIVE HABITAT AREAS

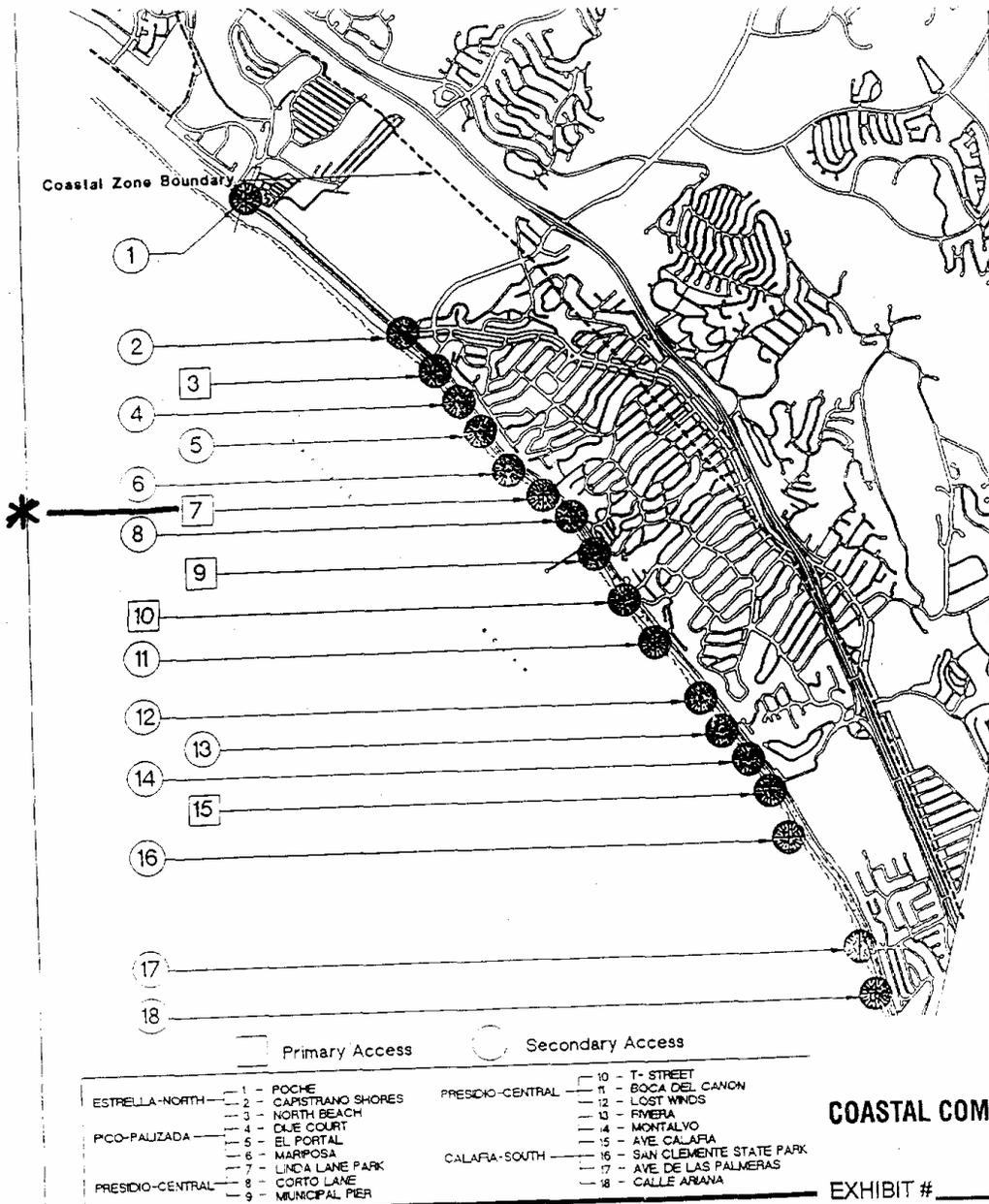


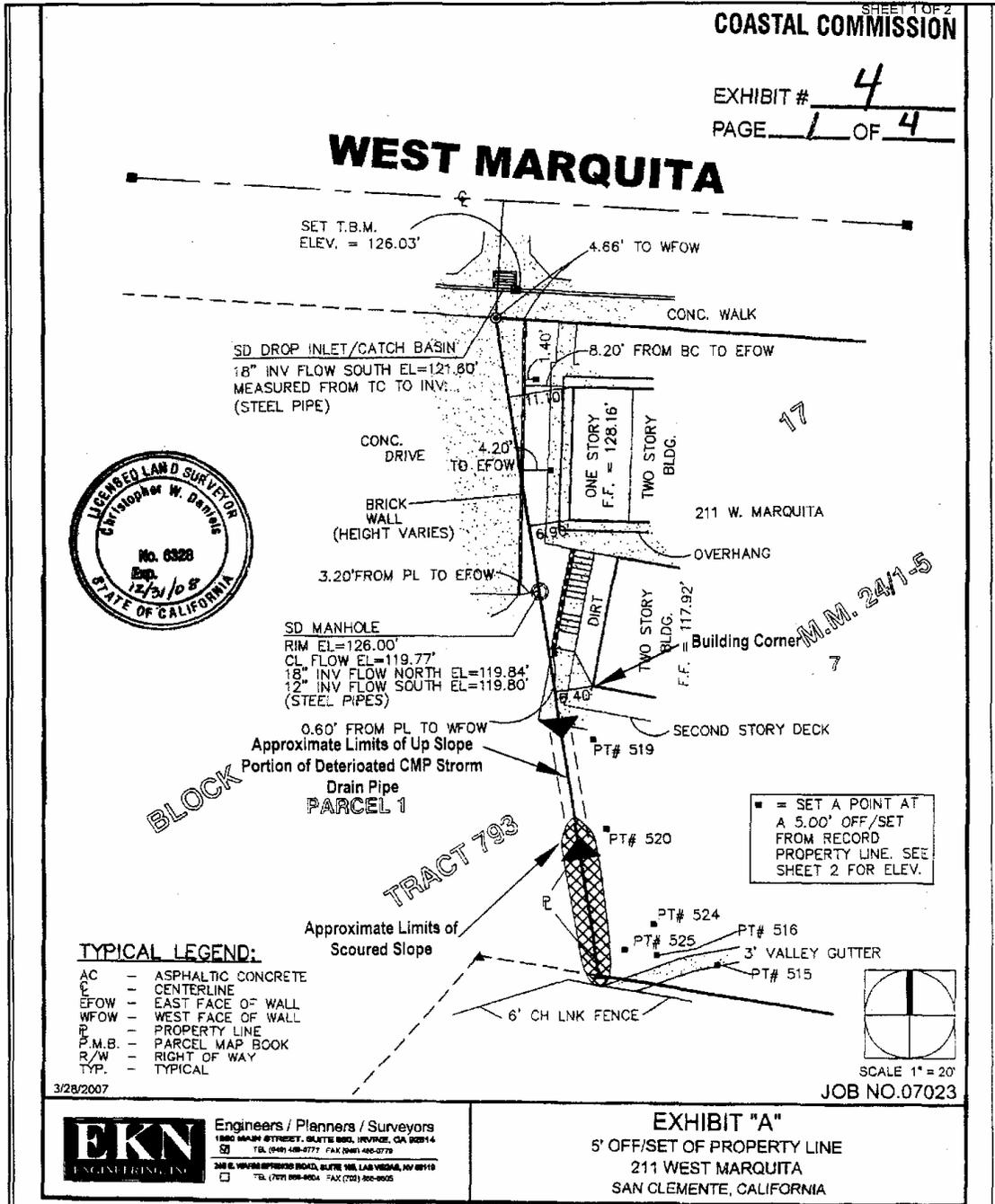
FIGURE 2-5

COASTAL COMMISSION

EXHIBIT # 3
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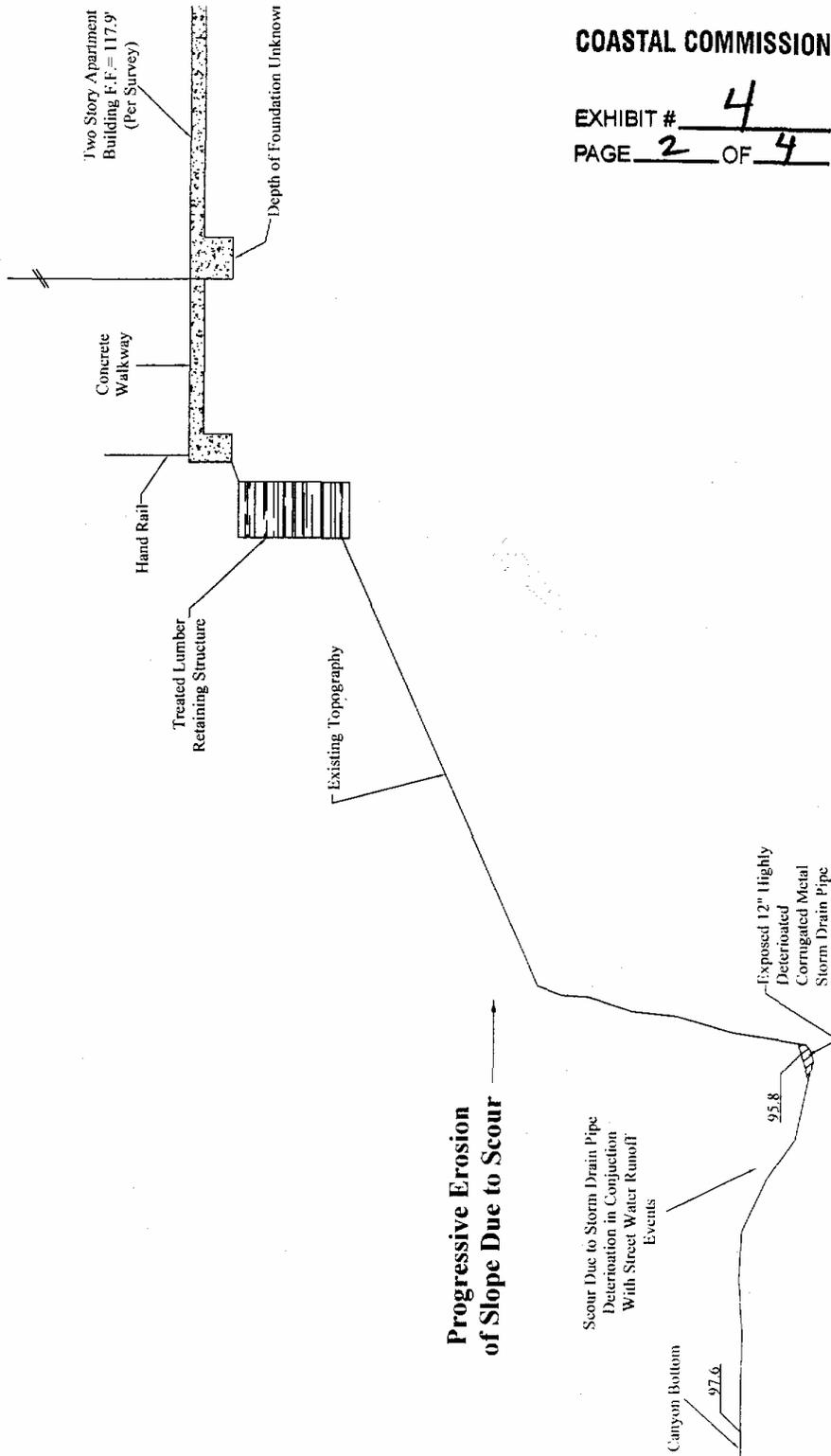
CITY OF SAN CLEMENTE
 COASTAL ACCESS POINTS





| | | | |
|------------|--------------------------------------|--------------|-----------------------------|
| LGC | FIGURE 1 Site Location Map | PROJECT NAME | 211 W. Marquita Storm Drain |
| | | PROJECT NO. | 071037-01 |
| | | ENG. / GEOL. | SDH |
| | | SCALE | 1" = 20' |
| | | DATE | April 2007 |

**CROSS-SECTIONAL SCHEMATIC OF EXISTING CONDITION
 BACKYARD SLOPE 211 W. MARQUITA, SAN CLEMENTE, CA**



COASTAL COMMISSION

EXHIBIT # 4
 PAGE 2 OF 4

| | |
|--------------|-----------------------------|
| PROJECT NAME | 211 W. Marquita Storm Drain |
| PROJECT NO. | 077037-01 |
| ENG. / GEOL. | SDH |
| SCALE | 1" = 5' |
| DATE | April 2007 |

**FIGURE 2
 Schematic Cross-Section**



COASTAL COMMISSION

EXHIBIT # 4
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