

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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 SAN DIEGO, CA 92108-4421
 (619) 767-2370

**Th 9a**

Filed: June 27, 2007
 49th Day: August 15, 2007
 180th Day: December 24, 2007
 Staff: Ellen Lirley-SD
 Staff Report: January 15, 2008
 Hearing Date: February 6-8, 2008

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-07-073

Applicant: City of San Diego, Water Department Agent: Gregory Cross

Description: Fill eroded area below storm drain outlet with 3.5 cu.yds. of rock, including placement of filter fabric, and remove invasive species in area.

Site: Northern side slope of Lopez Canyon, south of Panoramic Lane (Los Penasquitos Canyon Preserve), North City (Mira Mesa community), San Diego, San Diego County. APN #311-020-15

Substantive File Documents: Certified Mira Mesa Community Plan (land use plan) and City of San Diego Implementation Plan

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposal, with a special condition, as the project will repair a slope damaged both by a water pipeline break and from storm runoff, thus maintaining/improving water quality both in the Los Penasquitos Canyon Preserve and the downstream Los Penasquitos Lagoon. The primary issues raised by the proposed development relate to protection of ESHA and water quality as the development will occur on a canyon slope that drains to Lopez Creek and ultimately to Los Penasquitos Lagoon. The project will not directly impact ESHA, but is located within a generally sensitive area. A special condition addresses the timing of construction, the location of staging and storage areas, maintenance activities, potential impacts on public access, and requires compliance with the Regional Board's certification action.

Standard of Review: Chapter 3 policies of the Coastal Act

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-070-073 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.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Staging Areas/Construction Timing. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval detailed plans incorporated into the construction bid documents for the location of staging areas and of access corridors to the construction sites. The plans shall include, at a minimum, the following:

- a. No storage of equipment or construction materials shall occur within wetlands, streambed, or native vegetation areas or on any public trail.
- b. Storage and staging areas shall be located in a manner that has the least impact on pedestrian and bicycle traffic along the public trail system of Los Penasquitos Canyon Preserve.

- c. Unless authorized in writing by the California Department of Fish and Game (DFG) or the U.S. Fish & Wildlife Service (Service), no work shall occur during the breeding seasons of any threatened or endangered avian species nesting in the vicinity, including the Least Bell's Vireo, whose breeding season extends generally from March 15th to September 15th.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. Staging site(s) shall be removed and/or restored immediately following completion of the development.
- e. The applicant shall conduct all aspects of the project in strict compliance with the Regional Water Quality Control Board's Certification Action #WPC:07C-049:woodd, dated November 30, 2007, and attached as Exhibit #2.

The permittee shall undertake the development 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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The City of San Diego proposes to fill an eroded area below a storm drain outlet located on a south-facing slope, south of Panoramic Lane in the Mira Mesa community of the North City LUP segment of the City's certified LCP. The current project will include deposition of approximately 3.5 cu.yds. of 12"-18" backing rock, including placement of filter fabric, in the eroded hole, and removal of approximately 75-85 specimens of tree tobacco, an invasive species occurring nearby within the ephemeral drainage channel. The project will occur within the Lopez Canyon portion of the Los Penasquitos Canyon Preserve.

Ground access to the area with mechanical equipment or vehicles would be extremely difficult, as it would have to be taken either down the hillsides from Lopez Ridge, located above the site, or through the streambed and up the hillsides from below. Therefore, ground crews will access the site on foot, and no mechanical equipment, other than hand-carried tools, will be used on the ground. The rock will be delivered by helicopter, and the cut tree tobacco removed the same way. The ground crews will place the filter fabric and rock into the eroded gully/hole, remove the tree tobacco, then stack the tree tobacco at the filled area for removal by helicopter. This methodology was both proposed by the City and required by the Regional Water Quality Control Board (Regional Board) in their recent certification, attached to this report as Exhibit #2.

Initially, the proposed project was quite different, as the City was responding primarily to a water line break that resulted in significant erosion on the slope (causing the gully/hole)

and deposition of sediments in Lopez Creek. The City proposed two check dams upstream of the eroded hole, as well as backfilling the hole with rock. However, the pipe has since been repaired, so surface runoff is the only erosion factor now, and that hasn't been significant in the past. The existing storm drain outfall has adequate rock to dissipate the occasional flows, and the drainage channel below the outfall has not been significantly eroded, if at all, prior to the pipeline break. Thus, San Diego staff, the Commission's staff engineer, and the Regional Board all thought the proposal included too much structural improvement, and believed a simpler repair would be adequate. The City scaled back the project to what is currently proposed.

The Mira Mesa Community Plan/LCP Land Use Plan (LUP) is a certified document; however, the Los Penasquitos Canyon Preserve (located partially within Mira Mesa) remains an area of deferred certification. The City had prepared a land use plan for the Preserve many years ago, but never submitted it to the Commission for certification. Therefore, Chapter 3 of the Coastal Act is the legal standard of review with the Mira Mesa LUP and the old, uncertified Preserve Master Plan used only as guidance.

2. Biological Resources/Water Quality. The following Coastal Act policies related to biological resources and water quality are most applicable to the proposed development, and state, in part:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, ... , controlling runoff,

Section 30240

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

The primary purpose of the proposed development is to repair slope damages caused by an uphill water line break. The break also resulted in discharge of 532,702 gallons of potable water and sediments into Lopez Creek. Sedimentation is the main reason that the downstream Los Penasquitos Lagoon has been identified as an impaired water body, and the proposed project is designed to repair the eroded slope (pipe is already repaired) thus reducing the amount of sediments reaching the lagoon.

Lopez Creek consists mostly of cobble washed down from upstream construction projects, but has some riparian vegetation as well. The side slopes of the canyon contain Coastal Sage Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, both native and non-native grasses, and exotic/invasive vegetation. The project area is

vegetated with patchy non-native grasses and exotic vegetation, but more sensitive habitats, including ESHA, are located in surrounding areas. In addition, Lopez Canyon as a whole is home to sensitive birds, rodents, amphibians, and mammals, who use the open space both for foraging and breeding purposes.

The project will not directly impact ESHA or any sensitive animal species, but is located within a generally sensitive ecosystem. As explained previously, the project site could not be reached with mechanical equipment or vehicles without impacting sensitive habitat, as no park or utility roads exist in this area, such that a new road would have to be cut. Therefore, the City plans to access the site only on foot, with all materials transported back and forth by helicopter. A special condition addressing the timing of construction and the location of staging and storage areas is attached (Special Condition #1). It also requires strict compliance with the Regional Board's certification action, and permission from the California Department of Fish & game or the U.S. Fish and Wildlife Service to conduct the repair work if there are breeding birds in the area.

In the Regional Board's review of this project, it was determined that mitigation was required for the illegal discharge of materials into Lopez Creek during the pipeline break. Since the sediments and potable water had disbursed, and thus could not be removed from the creek, a different form of mitigation was required. The ephemeral drainage channel has been invaded by tree tobacco, so the regional Board determined that removal of that invasive plant would be suitable mitigation. Thus, the City has added the removal of invasive species to the project by changing the project description. Because the tree tobacco will be cut off, leaving the root system in place, the removal of this scattered vegetation will not exacerbate any existing erosion problems in this drainage.

In summary, the proposed project, as conditioned, will have no adverse impacts on existing sensitive resources, and will improve/maintain the quality of waters leaving the Los Penasquitos Canyon Preserve and entering Los Penasquitos Lagoon. However, the previously-described special condition is necessary to ensure that the repair work is conducted in an appropriate manner. With this condition, the Commission finds the proposed development consistent with the cited Coastal Act policies.

3. Public Access. The following public access Chapter 3 policies are most applicable to the proposed development and state, in part:

Section 30210

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

Section 30213

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

Los Penasquitos Canyon Preserve is an open space and recreational area located within and between several of the urbanized communities of northern San Diego. It runs from just east of I-5 eastward, through and beyond the coastal zone, extending all the way to I-15, several miles inland. The Preserve consists of both Los Penasquitos and Lopez canyons, along with their streams and side slopes. Most of the Preserve is in public ownership, although some of the canyon side slopes may still be in private ownership; both the City of San Diego and the County of San Diego own portions of the Preserve within the coastal zone.

The Preserve is regionally popular, and includes an extensive system of hiking, biking, and equestrian trails on both the north and south sides of Penasquitos Creek, and utility access roads, that are also used as trails, as well as a planned trail along Lopez Creek. Because so much cobble has been deposited in Lopez Creek, providing a formal trail in this area would be a problem. Some people do still hike in Lopez Canyon, walking on the cobbles, but the majority of visitors prefer to hike in Penasquitos Canyon, along existing maintained trails. There are no formal or improved trails anywhere near the project site, so no impacts to public access are anticipated. Moreover, Special Condition #1 requires that staging and storage areas not impact any public trails. Therefore, the Commission finds the proposed development, as conditioned, consistent with the cited Coastal Act policies.

4. Visual Resources. Section 30251 of the Coastal Act addresses the preservation and enhancement of visual resources, and states, in part:

Section 30251

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

The Preserve provides visual relief from the surrounding industrial and residential areas by providing an open space green belt. Public views to, and throughout, the Preserve are significant resources requiring protection under the Coastal Act. However, the proposed project will not significantly alter the Preserve's visual amenities. The repair site is very small, and the repair activity is short-term. All proposed repairs, as well as the invasives removal, will be at, or below grade, and thus not visible from any distance. Although similar repair work often consists of backfilling the eroded areas with dirt, or, if rock is

used, covering it with dirt (and potentially revegetating the area in either case), this method would not be successful in this location. The canyon slope in this location is too steep to maintain dirt, and any new dirt used here would likely wash out into Lopez Creek in the next storm. This seemed so likely that the Regional Board determined that rock would better stabilize the slope to prevent future erosion, and did not want dirt used for the proposed repair work. Therefore, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act.

5. Local Coastal Planning. The City of San Diego has a fully certified LCP and issues coastal development permits (CDPs) throughout most of its coastal zone area. However, there are a few remaining areas of deferred certification where the planning process is not complete; these areas remain under the Coastal Commission's jurisdiction, with Chapter 3 of the Coastal Act being the legal standard of review. The Los Penasquitos Canyon Preserve is an area of deferred certification, as no land use planning document for the Preserve has been certified by the Commission.

The only other permit required for this project is the Regional Board certification, which has already occurred. The preceding findings have found the proposal, as conditioned, consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposal, as conditioned, will not prejudice the City's ability to prepare a certifiable LUP for the Los Penasquitos Canyon Preserve or to continue implementation of its LCP elsewhere.

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

The proposed repair activity and invasives removal has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including a condition addressing protection of biological resources, water quality and public access, 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 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.

6-07-073



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Arnold Schwarzenegger
Governor

Action on Request for Clean Water Act Section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: SR#2956551 – Panoramic Lane, San Diego, CA
(File No. 07C-049)
Attn: Mr. Paul Schlitt

APPLICANT: City of San Diego, Water Department
Water Operations
2797 Caminito Chollas, MS 43
San Diego, CA 92105-5097
Attn: Mr. Paul Schlitt

WDID	9000001654
CIWQS:	
Place	651320
Reg. Measure	326274
Party	8711
Person	382007

ACTION:

- Order for Low Impact Certification
- Order for Denial of Certification
- Order for Technically-conditioned Certification
- Waiver of Waste Discharge Requirements

STANDARD CONDITIONS:

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

EXHIBIT NO. 2
APPLICATION NO.
6-07-073
RWQCB certification
5 pages
California Coastal Commission

City of San Diego
SR#2956551 - Panoramic Lane

File No 07C-049

3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the City of San Diego shall satisfy the following:

A. GENERAL CONDITIONS

1. The City of San Diego shall, at all times, fully comply with the plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification. The conditions within this certification shall supersede conflicting provisions within such plans submitted prior to the certification action.
2. The City of San Diego shall maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.
3. Prior to the start of the project, the City of San Diego shall educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and best management practices.
4. The City of San Diego shall permit the San Diego Regional Water Quality Control Board (SDRWQCB) or its authorized representative at all times, upon presentation of credentials:
 - a) Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b) Access to copy any records required to be kept under the terms and conditions of this certification.
 - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this certification.
5. The City of San Diego shall notify the SDRWQCB within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional BMPs or other measures that will be implemented to prevent future discharges.
6. The City of San Diego shall, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reached a waters of the U.S. and/or State.

7. This Certification is not transferable to any person except after notice to the Executive Officer of the SDRWQCB. The City of San Diego shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new owner containing a specific date for the transfer of this Certification's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgement that the existing owner is liable for compliance and violations up to the transfer date and that the new owner is liable from the transfer date on.
8. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
9. In response to a suspected violation of any condition of this certification, the SDRWQCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SDRWQCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
10. In response to any violation of the conditions of this certification, the SDRWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
11. The City of San Diego shall avoid and minimize impacts to the project site and surrounding environmentally sensitive lands by:
 - a) Staging the backing rock off site;
 - b) Airlifting the backing rock to the gully-repair site via helicopter;
 - c) Airlifting cut tree tobacco off site for disposal via helicopter;
 - d) Using hand tools and no vehicles or machinery on site;
 - e) Conducting construction activity when storm water is absent; and
 - f) Having a biologist on site to oversee all work activities for the duration of the project.

City of San Diego
SR#2956551 – Panoramic Lane

File No 07C-049

B. REPORTING

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All applications, reports, or information submitted to the Regional Board shall be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. The City of San Diego shall submit reports required under this certification, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; File No 07C-049
9174 Sky Park Court, Suite 100
San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On June 5, 2007, receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Deborah Woodward
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
(858) 637-5586
dwoodward@waterboards.ca.gov

City of San Diego
SR#2956551 - Panoramic Lane

File No 07C-049

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Concrete Flood Control Channel Maintenance and Cleaning (File No. 07C-068) will comply with the applicable provisions of sections 301 ("Effluent Limitations"); 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) No. 17. Please note that this waiver is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



John H. Roberts
Executive Officer
Regional Water Quality Control Board

30 Nov 2007
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map
 5. Plan for Gully Repair

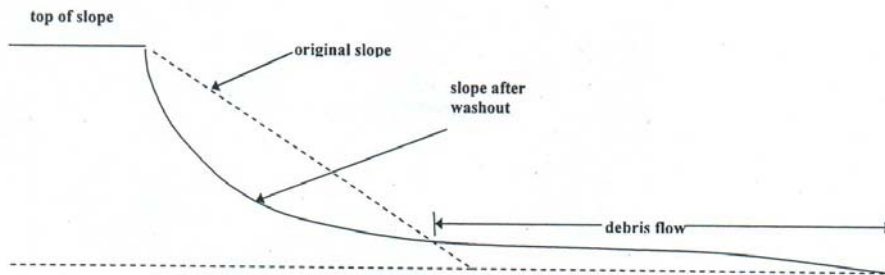
6-07-073

Biological Resource Report and Impact Assessment associated with an 8-inch diameter water main break at 5417 Panoramic Lane, San Diego, CA

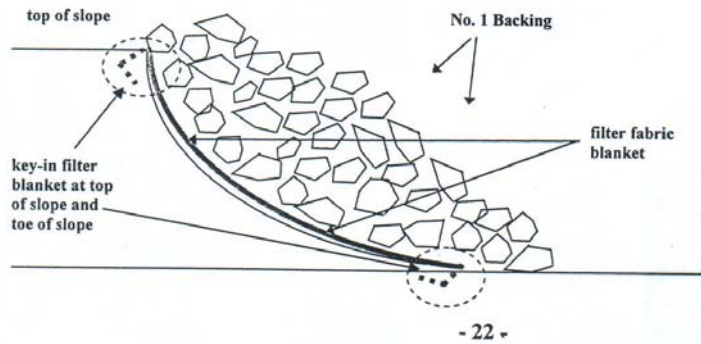
Figure 17. Repair proposal of erode channel at southern end of channel prior to draining into Lopez Creek



EXISTING CONDITION



PROPOSED SOLUTION



- 22 -

EXHIBIT NO. 3
APPLICATION NO.
6-07-073
Cross-Sections
California Coastal Commission