CALIFORNIA COASTAL COMMISSION

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Commission Action:	

W 21c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-09-225

APPLICANT: Orange County Public Works

AGENT: Nardy Kahn, Orange County Public Works
James Volz, Orange County Public Works

PROJECT LOCATION: Huntington Beach and Talbert flood control channels, between Beach Boulevard and Hamilton Avenue, Huntington Beach, Orange County

PROJECT DESCRIPTION: **R**epairs and additions to existing cathodic protection system in Huntington Beach and Talbert flood control channels. Work within the channels includes placement of a total of 110 new sacrificial anodes each with a footprint of 8 inches by 7 feet, resulting in fill within the tidally influenced channels. Work is also proposed within the adjacent maintenance roads.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending the Commission **approve** the proposed project subject to four special conditions which are necessary to assure that the project conforms with Section 30233 of the Coastal Act regarding protection of marine habitat; with Section 30236 regarding streambed channelization projects; and with Sections 30230 and 30231 regarding protection of marine resources and water quality. To offset the wetland/stream fill impacts, the County is requesting that the Commission accept the County's use of mitigation credits it still has available in a mitigation bank that was established in conjunction with a prior habitat restoration project at Talbert Marsh in the late 1980s. Commission staff found this request to be consistent with the intent of the mitigation bank and an "Eight Party Agreement" to which the Executive Director was a signatory. Special Condition No. 1 requires the applicant to submit written evidence that all signatories to the "Eight Party Agreement" which established the Talbert Marsh mitigation bank be notified of the deduction to the mitigation bank and of its updated balance; Special Condition No. 2 requires pre- and post-construction eelgrass surveys; Special Condition No. 3 requires a pre-commencement of construction caulerpa taxilfolia survey; and, Special Condition No. 4 notifies the applicant of construction practices and debris removal responsibilities.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 5-89-283 (Orange County EMA); Coastal Development Permit 5-87-432 (Huntington Beach Wetlands Conservancy); Consistency Certification CC 23-86 (Caltrans); "Eight Party Agreement (Agreement No. D87-241) dated 8/5/88" regarding Talbert Marsh mitigation bank; Biological Technical Report, Huntington Beach Channel (DO1) & Talbert Channel (DO2), Cathodic Protection Project, prepared by URS, dated October 2009; Eelgrass (Zoestera Marina) and Other Aquatic Resources Surveys for the Cathodic Protection Project, prepared by URS, dated October 13, 2009.

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-09-225 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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. Mitigation: Deduction from Mitigation Bank

Prior to issuance of the Coastal Development permit, the applicant shall submit, for the review and approval of the Executive Director, written evidence that each of the signatories to the "Eight Party Agreement (Agreement No. D87-241) dated 8/5/88 (attached as exhibit D to this staff report), have been notified of the deduction of 0.012 acres from the Talbert Marsh mitigation bank for the subject cathodic protection project. The notification shall include the revised, updated mitigation bank balance which will be 2.338 acres. Based on the Eight Party Agreement, said balance must be used by August 5, 2018 at which date any remainder balance will be forfeited.

2. Eelgrass Survey

A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (Zoestera marina) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the

National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. **Post Construction Eelgrass Survey**. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. **Pre-construction *Caulerpa Taxilfolia* Survey**

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicants shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxilfolia*. The survey shall include a visual examination of the substrate.

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicants shall submit the survey:

i. for the review and approval of the Executive Director; and

ii. to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.

D. If *Caulerpa taxilfolia* is found within the project or buffer areas, the applicants shall not proceed with the project until 1) the applicants provide evidence to the Executive Director that all *C. taxilfolia* discovered within the project area and all C. taxilfolia discovered within the buffer area have been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicants have revised the project to avoid any contact with *C. taxilfolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. <u>Construction Responsibilities and Debris Removal</u>

The permittee shall comply with the following construction related requirements:

A. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.

B. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.

C. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

D. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

E. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.

F. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.

G. Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

H. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

I. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

J. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

K. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.

L. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

M. The discharge of any hazardous materials into any receiving waters shall be prohibited.

N. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

O. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

P. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to repair and add to the existing cathodic protection system (description of cathodic protection system below) within the Huntington Beach (DO1) and Talbert (DO2) flood control channels. Both Huntington Beach and Talbert channels have steel sheet pile, vertical walls. The steel sheet pile channel walls were installed by Orange County Flood Control District in 1990 pursuant to Coastal Development Permit No. 5-89-283. The existing cathodic protection (proposed for repair and enhancement) was installed at the time of the steel sheet pile construction. The flood control channels were originally constructed in 1958 and were designed to contain 65% of the expected 25 year flood. The 1990 installation of the steel sheet piles was conducted as part of the Flood Control District's upgrade to meet the 100 year flood standard for the Talbert Valley drainage system. The Talbert Valley Channel System provides flood protection to an area of approximately 13.3 square miles in the cities of Huntington Beach and Fountain Valley.

Talbert flood control channel ends at Brookhurst Street where it feeds into the restored Talbert Marsh wetlands. Huntington Beach channel ends at its confluence with Talbert Channel. Both Talbert and Huntington Beach channels extend well inland of the coastal zone. Cathodic protection repair work in both channels is proposed to extend inland of the coastal zone. However, coastal development permit jurisdiction is limited to that portion of the project that lies within the coastal zone. The project falls within the boundaries of the City of Huntington Beach. Huntington Beach has a certified Local Coastal Program. However, both channels are tidally influenced for their entire lengths within the coastal zone. Pursuant to Coastal Act Section 30519(b), development review authority for "development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone" remains with the Coastal Commission. Staff consulted with the Commission's mapping department who have indicated that the Commission's jurisdiction extends to the right-of-way. Therefore, the standard of review for the subject coastal development permit application is the Chapter 3 policies of the Coastal Act with the City's LCP as guidance.

Huntington Beach Channel (DO1)

The existing cathodic protection system within Huntington Beach channel is a sacrificial anode system. The sacrificial anodes are designed to corrode instead of the steel sheet piles. The aluminum anodes lie upon the soft bottom of the channel and are connected to the steel sheet piles via a wire/cable, and due to the galvanic difference between the aluminum (sacrificial anodes) and the steel (sheet piles), the aluminum anodes will corrode before corrosion occurs in the sheet pile steel. This occurs on a molecular level over a long period of time. Over the design life of the anodes, on average 20 years, the volume of the anodes will decrease due to corrosion. Thus, the anode "sacrifices" itself to

preserve the sheet pile steel. No external power is required. Regarding decomposition of the anodes, the applicant states: "It appears that as the sacrificial anodes decompose they will shed small amounts of aluminum ions into the downstream water course; however, there is no toxicity associated with this release of aluminum ions." The existing sacrificial anode cathodic protection in Huntington Beach channel is proposed to remain in place. No changes are proposed to the existing sacrificial anodes within Huntington Beach Channel.

The work that is proposed on the Huntington Beach channel (DO1) includes installation of additional electrical continuity. Installation of additional electrical continuity consists of six inch long steel rods welded onto the side of the steel sheet piles on the landside at 90% of the sheet pile joints along this channel segment. Also proposed on the Huntington Beach channel is replacement of the steel piles caps. Within the coastal zone, this work will occur from Magnolia Street to just inland of Hamilton Avenue. This work will be conducted from the landside. No work within the water is proposed within the Huntington Beach channel within the coastal zone.

The Huntington Beach flood control channel borders Brookhurst Marsh and Magnolia Marsh. Both of these marshes are currently undergoing restoration pursuant to coastal development permit 5-08-061 (Huntington Beach Wetlands Conservancy). As indicated above, no development is proposed within the channel in the areas adjacent to the restoration areas.

Talbert Channel (DO2)

The existing cathodic protection system within the Talbert channel is a dual or hybrid system consisting of both a sacrificial anode system and an impressed current system, with impressed current anodes on the land side of the steel sheet piles, and sacrificial anodes on the water side. Configurations for the two cathodic protection systems are different. Impressed current cathodic protection systems use an external power source to transfer current into the structure being protected. The land side impressed current cathodic protection (ICCP) system uses a shallow anode well (10 inches diameter, 49 feet deep) on the landside of the sheet piles, which requires an external power supply in the form of oil-cooled rectifiers. A rectifier is an electrical device that converts alternating current (AC) to a lower voltage direct current (DC). With pure electricity, current flows back and forth in a conductor with no net flow in any direction. The rectified DC current flows only in one direction.

The ICCP system, with its external power supply, needs continual maintenance and monitoring. The existing ICCP system in the Talbert channel has been subjected to vandalism and theft, and is not providing the level of cathodic protection needed. Due to these issues, the applicant has proposed the replacement of the ICCP system with a sacrificial anode system. This includes extending the sacrificial anode system to areas currently only protected by the ICCP system and also adding additional sacrificial anodes in areas where both systems are currently installed. All existing portions of the impressed

current cathodic protection system are proposed to be removed. The proposed removal work consists of removing existing anode junction boxes, removal of adjacent anode grounded vent pipe boxes, removal of existing oil-cooled rectifier and removal of existing power meters. All removal work will occur on the landside of the channel within the adjacent flood control district's maintenance road. Also proposed on the Talbert channel is replacement of the steel piles caps, which will occur on the landside of the channel.

The work proposed within the waterside of the Talbert channel (DO2) includes placement of 110 sacrificial anodes, each 8 inches (0.67 feet) by 7 feet, which will rest on the soft bottom of the flood control channel. The placement of the anodes will result in fill of coastal waters. The area of impact due to the fill is: 110 x 7 feet x 0.67 feet = 515.9 square feet or 0.012 acre. The applicant has proposed to mitigate this impact by deducting from a mitigation bank created in Talbert Marsh at the time restoration occurred there in the late 1980s (5-87-432, Huntington Beach Wetlands Conservancy). The mitigation bank is recognized in an action referred to as the "Eight Party Agreement," of which the Coastal Commission is one of eight signatories.

B. Wetlands & Stream Alteration

Section 30233 of the Coastal Act states, in pertinent 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:

…

(6) Incidental public service purposes …

…

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

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

The proposed development involves fill totaling 0.012 acre within Talbert flood control channel. The tidally influenced flood control channel constitutes open coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling or dredging in open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project.

Section 30236 of the Coastal Act states:

> *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

The existing flood control channels were originally constructed in 1958. They were upgraded to steel sheet pile vertical wall channels in 1990 pursuant to coastal development permit 5-89-283. The channelization was previously established. In any case, the project must be reviewed for conformance with Section 30236 of the Coastal Act. In order to be consistent with Section 30236 of the Coastal Act, the channelized stream project must be one of the three allowable uses and must provide the best mitigation measures feasible.

The Biological Technical Report prepared for the proposed project by URS, dated 10/09 identifies the channel habitat as "open water." The Report describes open water as follows:

> *"Open water includes reservoirs, lakes, ponds, channels, and rivers or streambeds that contain water throughout the year. In coastal locales, open water habitats intersperse with more traditional estuarine and marine habitats. The open water within the study area is shallow, tidally influenced saltwater – mixing with freshwater in the upstream portions of the study area. Tidal mud flats occur within the open waters in DO2 from Adams Avenue southward to Banning Avenue. These tidal flats are non-vegetated muddy habitats – within the open water that are generally exposed at lower tides and inundated during higher tides. These locales within the study area appear to be composed of fine grained sediment particles. Tidal flats are usually dominated by stands of diatoms and mats of filamentous blue-green and green algae. Marine subtidal estuarine habitat also occurs within the open water in DO1 and DO2."*

The proposed project involves maintaining the existing channels by providing on-going protection for the steel sheet piles. Without some method to protect the steel, the channel walls would require replacement much more frequently, resulting in far greater disturbance to habitat within the channels. In any case, maintaining the existing channelization is necessary for public safety and to protect existing development. As described below, mitigation to offset impacts to the soft bottom of the channel is proposed.

1) Allowable Use

The proposed project involves repair of the cathodic protection system of the existing flood control channels. The system itself was established in 1958 and upgraded in 1990. The proposed repairs to the existing system represent a use that is incidental to the existing flood control system. The flood control system provides a public use in that it protects the general public as well as public and private property from flooding. Thus, the proposed development is both incidental and serves a public service purpose. Thus, as an incidental public service use the project constitutes an allowable use under Coastal Act Section 30233. Therefore, the proposed development is consistent with Section 30233 of the Coastal Act with regard to uses allowed within coastal waters.

In addition, as a repair and maintenance project for an existing flood control project which is necessary for public safety and to protect existing development, the proposed development is an allowable use under Coastal Act Section 30236.

2) Alternatives

Alternatives to the proposed project that were considered include: installation of an impressed current cathodic protection (ICCP) system throughout the project; installation of sacrificial anode cathodic protection on the land side of the channel; and the no project alternative. Following is a discussion of the alternatives considered.

Use of an impressed current cathodic protection system would avoid fill within coastal waters, as it would be installed on the landside of the channel. The portion of the existing cathodic protection system proposed to be replaced is an impressed current cathodic protection system. However, this system requires an external power supply and needs continual maintenance and monitoring. In the case of the subject project, the external, landward portions of the ICCP system have been the subject of theft and vandalism, which has precluded the necessary level of channel protection. Thus it has already been demonstrated with the existing system that an ICCP system cannot achieve the level of channel protection necessary. Therefore, this alternative will not achieve the project goal of protecting the channel and has been dismissed.

Another alternative considered was installing a sacrificial anode cathodic protection system with the anodes placed on the land side of the channel. Zinc, rather than aluminum, anodes would be required if the anodes were placed on the landside of the sheet pile channel wall. The quantity of zinc required would be three to four times the amount needed if aluminum was used on the water side. The applicant estimates this would require approximately 100 tons of zinc. Zinc in large concentrations is toxic and is often a pollutant of concern in the County's flood control channels. In addition, although the zinc would be on the land side of the sheet pile, it is possible for the zinc to be transported to the channel through groundwater movement.

Furthermore, excavation to install the zinc anodes on the landside is not feasible. The zinc anodes would need to be attached to the steel sheet pile wall at a depth below the maintenance road of about 14 feet. In addition, to allow the necessary room for a welder to attach the anodes, a distance of about 8 to 10 feet from the sheet pile would be required. The maintenance road is only 15 feet wide. There would be insufficient room to accommodate necessary excavation equipment and to temporarily stockpile the excavated material.

Moreover, new zinc anodes on the landside of the sheet pile would not function properly with the aluminum anodes that already exist and are proposed to remain on the waterside of the sheet pile wall. Zinc and aluminum anodes corrode at different rates – the zinc more rapidly. The applicant indicates that it is much preferred, if not required, to use the same metals for anodes to ensure uniform corrosion rates. This could be resolved by replacing the existing waterside aluminum anodes with new zinc anodes, which would cause similar ecological disturbance to the proposed project and the new zinc anodes would be larger than the existing aluminum anodes. And in any case, the zinc is a much less desirable metal as it can be toxic and is a pollutant of concern. For all the reasons described above, this alternative was rejected as more environmentally damaging.

The no project alternative would result in the corrosion of the existing steel sheet piles which would ultimately cause the channel walls to fail and increase the risk of flooding damage to people and property as well as create greater adverse impacts to the open coastal water soft bottom habitat within the channel. Thus, this alternative too was rejected as more environmentally damaging.

The proposed alternative, the placement of 110 aluminum sacrificial anodes within the channel, will result in 0.012 acre of soft bottom impacts. However, as described above, this alternative represents the least environmentally damaging feasible alternative capable of achieving the necessary flood protection goals. Therefore, the Commission finds the proposed alternative meets the requirements of Section 30233 that the least environmentally damaging feasible alternative be employed. In addition, the Commission finds that the proposed alternative meets the requirements of Section 30236 which requires that necessary flood control projects are allowable only if there is no other method of flood protection available.

3) Mitigation

Section 30233 of the Coastal Act requires that projects resulting in fill of open coastal waters include feasible mitigation measures to minimize adverse environmental effects. Section 30236 of the Coastal Act requires that stream channelizations incorporate the best mitigation measures feasible. The proposed project will result in 0.012 acre of fill of soft bottom habitat due to placement of the anodes on the channel bottom. Typically, the Commission has found that mitigation for such impacts should occur at ratios of either 4:1 or 3:1 (mitigation to impact). In addition, the Commission typically requires that mitigation be as near as possible to the area of impact and that the mitigation habitat be the same

type of habitat. In order to provide mitigation for project impacts, the applicant has proposed to deduct the necessary mitigation from the balance of the Talbert Marsh mitigation bank.

In the late 1980s, a number of interrelated and overlapping projects were undertaken within the project vicinity. These projects included the U.S. Army Corps of Engineers Santa Ana River Mainstem project, the widening of Pacific Coast Highway (including construction of a new bridge over the Santa Ana river) from Brookhurst Street in Huntington Beach to Highland Avenue in Newport Beach (5-87-995 & Consistency Certification 23-86, Caltrans), the Talbert Valley flood control channel system upgrade (5-89-283, Orange County EMA) and the restoration of Talbert Marsh (5-87-432, Huntington Beach Wetlands Conservancy) in Huntington Beach adjacent to the Santa Ana River.

In conjunction with these projects, and specifically with the restoration of Talbert Marsh, the County Flood Control District and the Coastal Commission, along with six other signatories, entered into an agreement (known as the "Eight Party Agreement, Agreement No. D87-241, see exhibit D) establishing a mitigation bank in the restored Talbert Marsh. The Eight Party Agreement states: "*Whereas, the need to coordinate the Caltrans Project and Flood Control Project without delay of the Caltrans Project suggests the need for a mitigation bank whereby Flood District's mitigation earned from the participation in the Wetlands Restoration Plan can be reserved until funds are available for future flood control improvements in the Talbert Valley; …* ". The Eight Party Agreement established a total of 3.85 acres of wetland credit for the Orange County Flood Control District. Use of the wetland mitigation credit was limited to Talbert Valley Channel projects, mitigation for impacts of similar habitat, subject to case by case review of future flood control projects, and limited to 30 years from the date of execution of the agreement (8/5/88).

Under the terms of the agreement, the flood control district was required to maintain accurate records of use of the mitigation credits and to notify all signatories to the agreement in writing every time such credits are used. Since the establishment of the Talbert Marsh mitigation bank, the County has deducted from it twice (see exhibits E and F). On May 6, 1992, the County notified the Commission of a deduction of 1.2 acres from the mitigation bank for a Talbert Valley Channel system flood control project. The mitigation balance then became 2.65 acres. On December 2, 1999 the County again notified the Commission of a deduction 0.3 acres to offset impacts resulting from flood control improvements within the Fountain Valley Channel (DO 5). This deduction brought the mitigation bank balance to 2.35 acres. These are the only known deductions to the mitigation bank. The County asserts these are the only deductions that have occurred and inquiries to the Huntington Beach Wetlands Conservatory, California Department of Fish and Game, and at the Coastal Commission's offices do not reveal any additional deductions. Therefore, the Commission concurs with the County's assertion of 2.35 acres of available mitigation credit in the mitigation bank at this time.

The proposed project will have a total impact area of 0.012 acres. Typically a larger area of mitigation is required compared to the area of impact. Often the mitigation ratio required

is 4:1 or 3:1 (area of mitigation to area of impact), depending on the specifics of the project. The larger mitigation area is typically necessary to compensate for the potential that a wetlands creation or restoration project might not be successful, and to compensate for wetland acreage and functional capacity lost during the interim time of establishment and maturation of the mitigation area. However, in the case of the exiting mitigation bank, created during the restoration of Talbert Marsh, the mitigation area within the mitigation bank has long been established. The Talbert Marsh restoration project was approved by the Commission in 1987 and was established soon thereafter. The mitigation bank area was created as part of the overall Talbert Marsh restoration. Thus, the off-setting mitigation to be applied to the currently proposed cathodic protection project has been established, functioning habitat for more than ten years. Therefore, neither interim habitat loss nor uncertainty regarding habitat establishment and function are issues in this case. Therefore the Commission finds the appropriate mitigation ratio in this case is 1:1 (area of mitigation to area of impact).

The area of impact, as identified above, is 0.012 acres. Thus, the area of mitigation required is also 0.012 acres. The balance available in the mitigation bank is 2.35 acres. The mitigation bank includes ample mitigation acres to offset the proposed project's impacts. If 0.012 acres is deducted from the mitigation bank balance of 2.35, the resulting new mitigation credits available in the Talbert Marsh mitigation bank will be 2.338 acres.

The type of habitat that was created to establish the mitigation bank is as follows: 3.12 acres earned through the removal of the south levee and adjoining bike trail at the Talbert Marsh, 0.55 acres earned by the Flood District's construction of a new outlet channel and partial payment to the Coastal Conservancy, and 0.18 acres earned by virtue of payment to the Coastal Conservancy. The area of impact will affect soft bottom habitat. The mitigation bank includes soft bottom habitat. Thus, the Commission finds that the habitat of the area of impact (soft bottom) is similar to the habitat created in the mitigation bank, consistent with the Commission's typical mitigation requirements and with the requirements of the Eight Party Agreement. The location of the mitigation is also very near to the area of impact (see exhibit C). Thus, the proposed use of the mitigation bank is acceptable in that it is like for like habitat, it is within the area of impact, and the mitigation ratio is appropriate.

In order to assure that the deduction from the mitigation bank established pursuant to the "Eight Party Agreement (Agreement No. D87-241)," dated 8/5/88, is recorded and an accurate mitigation balance is maintained for all signatories to the agreement, a special condition is imposed that requires the applicant (Orange County Flood Control District) to send written notice to each of the signatories of the use of and deduction from the Talbert Marsh mitigation bank. This is also a requirement of the Eight Party Agreement as well. As conditioned, the Commission finds that the proposed project will provide adequate mitigation as required by Sections 30233 and 30236 of the Coastal Act.

Eelgrass

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fishes. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) live within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fishes – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivouous seabirds that seek baitfish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates to primary nutrients by bacteria.

The site has been surveyed for eelgrass. Eelgrass does exist within both channels near their downstream termini. However, the project as proposed limits anode placement and installation to areas located upstream of the eelgrass and so no eelgrass impacts are anticipated. However, eelgrass surveys are valid for a limited period of time (until the next growing season). If construction does not occur within the time period during which the survey is valid, subsequent surveys will be required. Therefore, a special condition is imposed which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

Caulerpa Taxilfolia

In 1999, a non-native and invasive aquatic plant species, Caulerpa taxilfolia, was discovered in parts of Huntington Harbour (Emergency Coastal Development Permits 5-00-403-G and 5-00-463-G). Caulerpa taxilfolia is a type of seaweed which has been identified as a threat to California's coastal marine environment because it has the ability to displace native aquatic plant species and habitats. Information available from the National Marine Fisheries Service indicates that Caulerpa taxilfolia can grow in large monotypic stands within which no native aquatic plant species can co-exist. Therefore, native seaweeds, seagrasses, and kelp forests can be displaced by the invasive Caulerpa taxilfolia. This displacement of native aquatic plant species can adversely impact marine biodiversity with associated impacts upon fishing, recreational diving, and tourism. Caulerpa taxilfolia is known to grow on rock, sand, or mud substrates in both shallow and deep water areas. Since eelgrass grows within the project vicinity, Caulerpa taxilfolia, if present, could displace eelgrass in the channels.

Although a Biological Technical Report (URS, 10/2009) and an eelgrass survey were prepared for the proposed project, no Caulerpa taxilfolia specific survey was conducted. It is possible that the Biological Technical Report does not mention Caulerpa taxilfolia because none was found within the project area. In any case, even if a Caulerpa Taxilfolia survey had been conducted, it would have expired by now.

If present in the project area, Caulerpa taxilfolia could possibly be dispersed through construction of the proposed project. Work within the flood control channels could cause pieces of the plant to break off and settle elsewhere, where it can regenerate. By causing dispersal of Caulerpa taxilfolia, the proposed project could have adverse impacts upon marine life, especially sensitive eelgrass habitat. In order to assure that the proposed project does not cause the dispersal of Caulerpa taxilfolia, the Commission imposes a special condition which requires the applicant, prior to commencement of development, to survey the project area for the presence of Caulerpa taxilfolia. If Caulerpa taxilfolia is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the Caulerpa taxilfolia, unless the Executive Director determines that no amendment or new permit is required.

E. 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. Uses 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:

> *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 30230 of the Coastal Act requires that marine resources be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts.

The proposed project includes measures to help assure protection of coastal waters and marine resources. Most of the work proposed will occur on the landward side of the project. The anodes will be placed in the channel via use of a truck mounted crane operating from the adjacent maintenance road. Actual work within the channel will consist of one welder accessing the channel by ladder who will position the anode in place. The anodes will be placed on the earthen bottoms of the channels no more than two feet from the vertical steel channel walls. Other equipment in the channel will be a standard welder's torch to weld cables from the anode to the existing vertical steel sheetpile walls. Positioning and welding of each anode will require a maximum temporary work area of 10 feet by 6 feet. However, this temporary work area is not expected to be necessary most of the time as many of the anodes will be placed by divers during high tide with minimal temporary impact to the soft-bottom channel substrate. In addition, all project activities will be conducted pursuant to appropriate Best Management Practices (BMPs) mandated by the Regional Water Quality Control Board's Plan for the Santa Ana Basin (Basin Plan). The Basin Plan and requisite BMPs will be incorporated into the project to address the potential impacts associated with anode installation activities. The proposed project will also include instruction to all personnel to avoid and minimize impacts to water quality and to take care to capture any debris/sediment that may enter the channels when construction activities are conducted.

In order to assure that all impacts to water quality are minimized, a special condition is imposed to specify the construction phase requirements to avoid adverse impacts on marine resources. Therefore, as conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act with regard to maintaining and enhancing the biological productivity and the water quality.

F. Public Access and Recreation

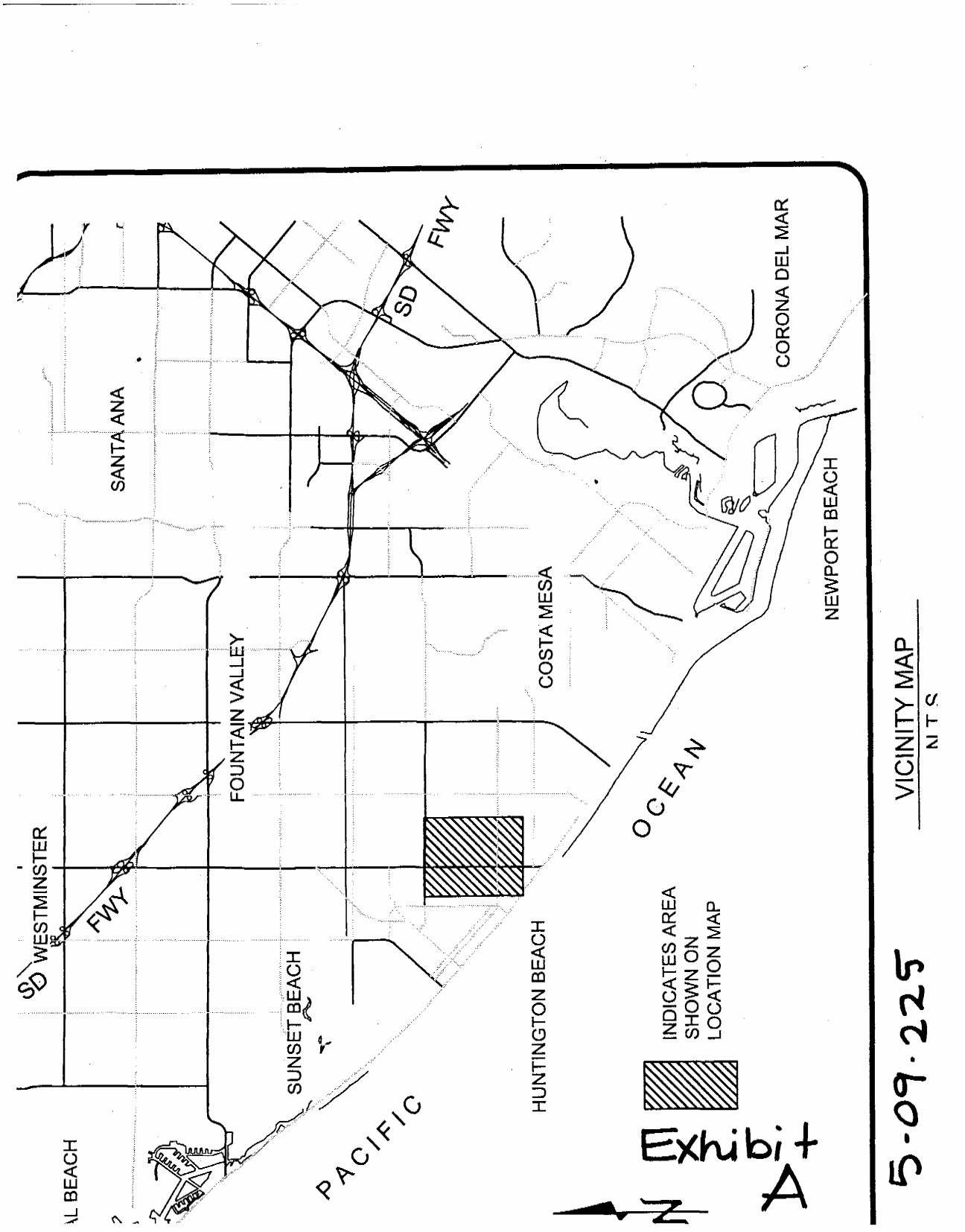
Public access is not provided along the flood control channels maintenance roads. Access to the maintenance roads is controlled by locked gates at each road crossing, which prevents public vehicle, bicycle and pedestrian traffic. Within the project area, arterial crossings are at the same elevation as the maintenance roads. The County has indicated that public access along the channel maintenance roads is not possible at this time because there is not sufficient right of way to construct an undercrossing at each intersection and installation of crosswalks at each intersection is also not feasible due to the high speeds on the arterial roadways. Furthermore, the proposed project, repair of an existing maintenance system, will have no impact on existing public access. The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

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.

For the proposed project, the County of Orange is the lead agency for CEQA purposes. The County issued a Notice of Exemption for the project. The County's Notice of Exemption includes the following "Reasons why the project is exempt: Replacement of the existing CP systems and the addition of new CP systems within DO1 and DO2 is a Class 2 exemption and is consistent with Section 15302, Replacement or Reconstruction of the CEQA Guidelines, which allows for the replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. The replacement and installation of new CP systems does not involve expansion of the existing channel capacities and is consistent with the requirements of this exemption."

The proposed project, as conditioned, has been found consistent with the marine resources and habitat protection, water quality, and public access policies of the Coastal Act. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.


SANTA ANA
SD FWY
CORONA DEL MAR
NEWPORT BEACH
COSTA MESA
FOUNTAIN VALLEY
SD WESTMINSTER FWY
OCEAN
SUNSET BEACH
HUNTINGTON BEACH
PACIFIC
INDICATES AREA SHOWN ON LOCATION MAP
VICINITY MAP
NTS
Exhibit A
5-09-225

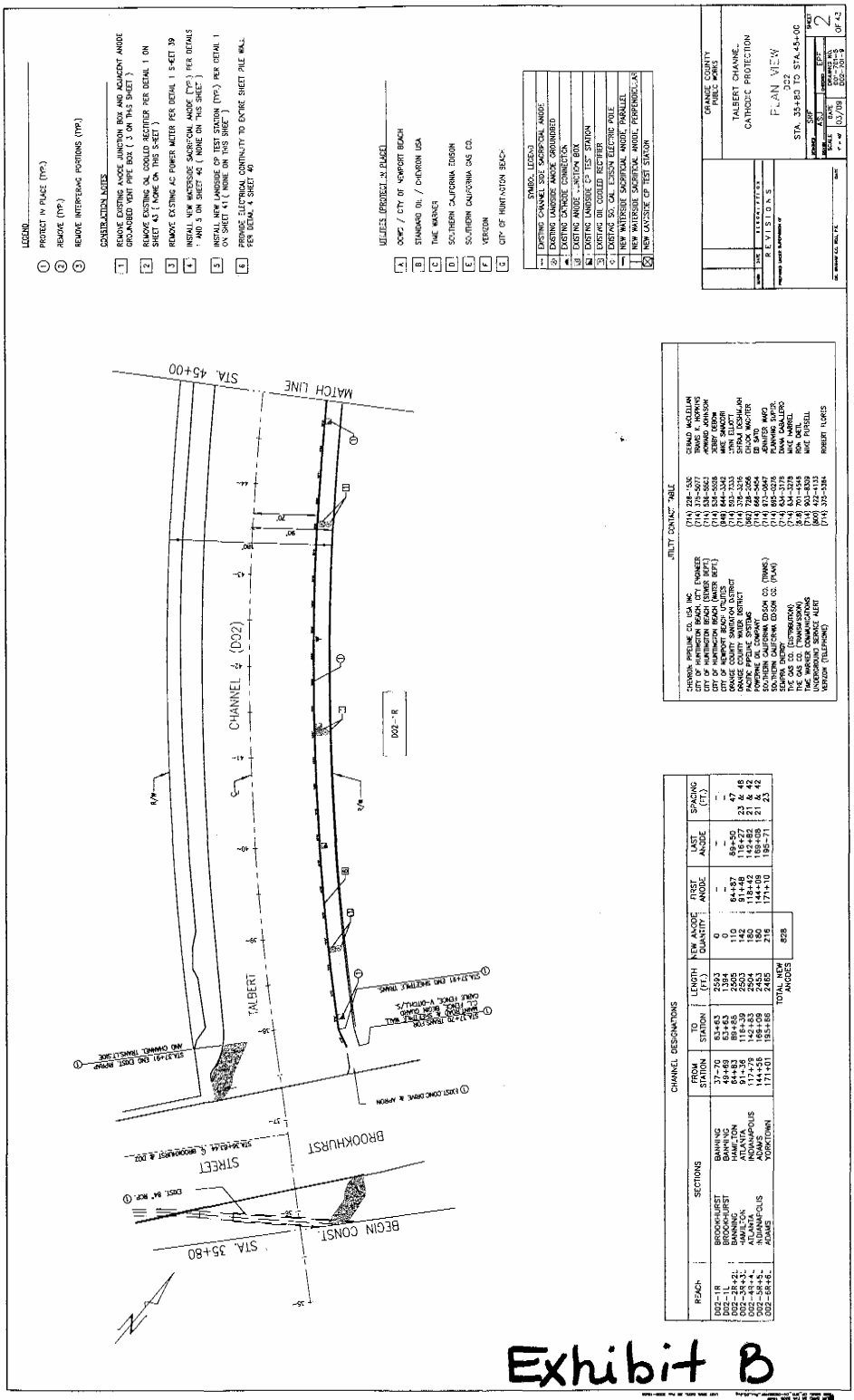
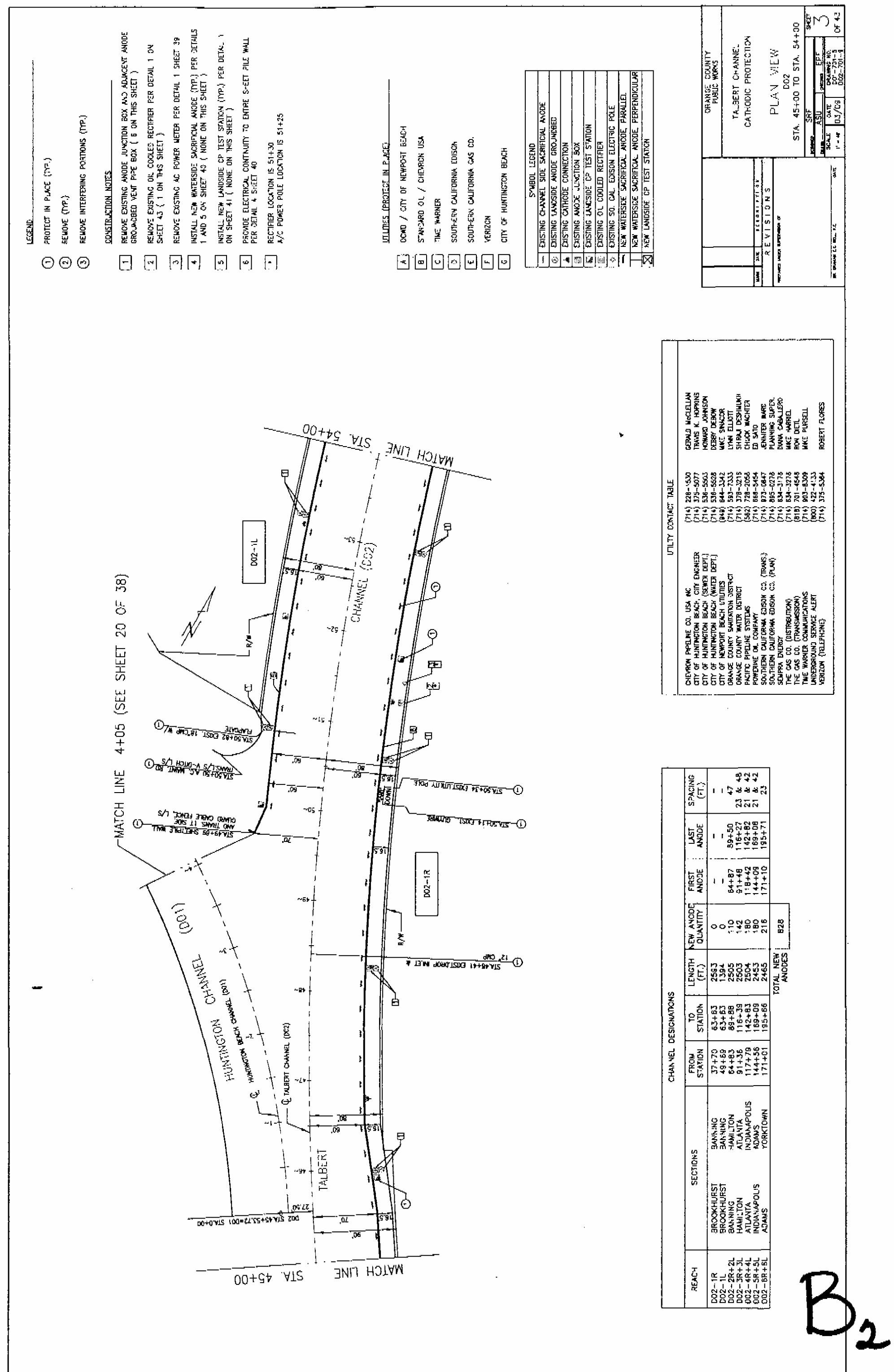
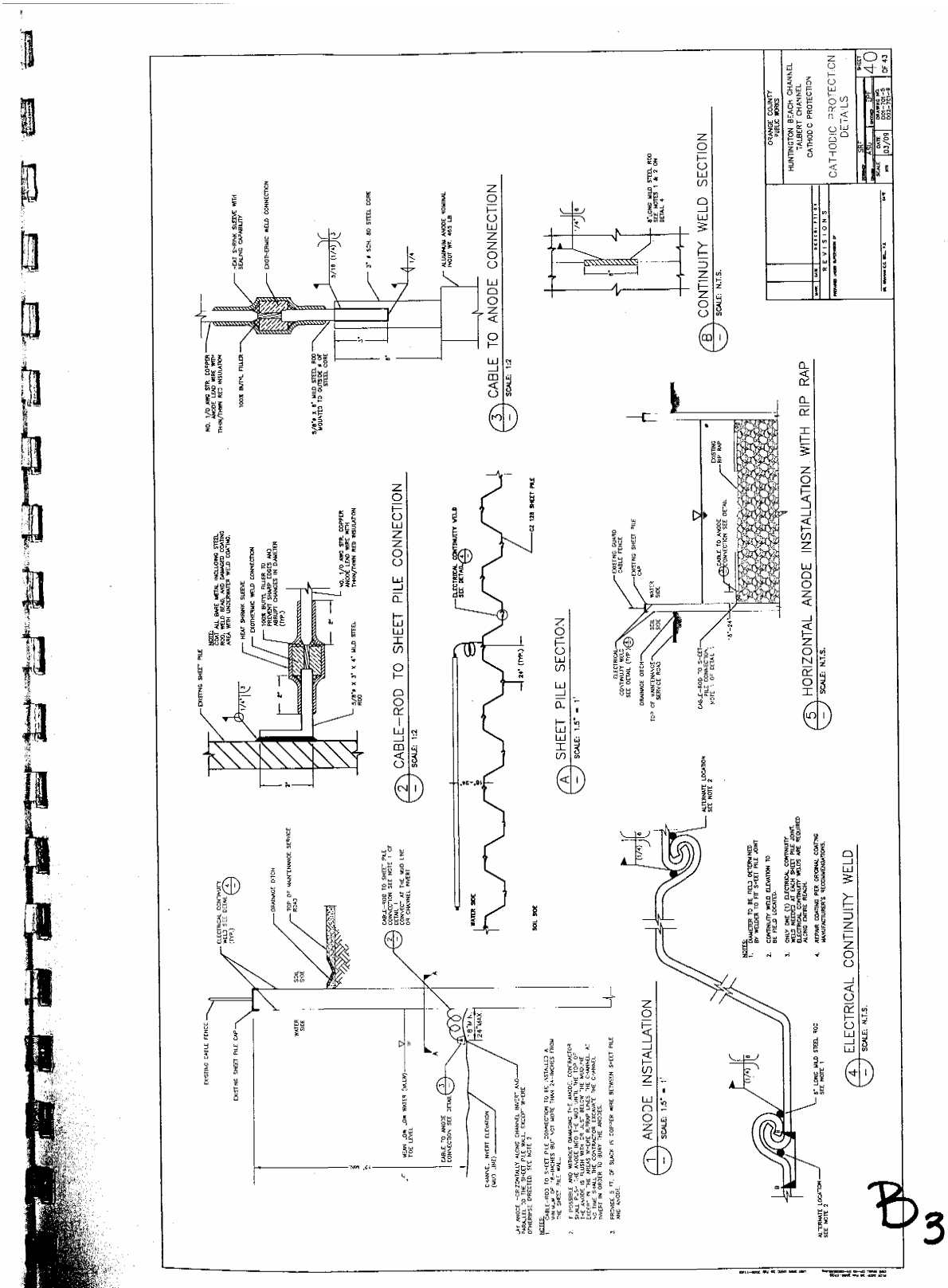
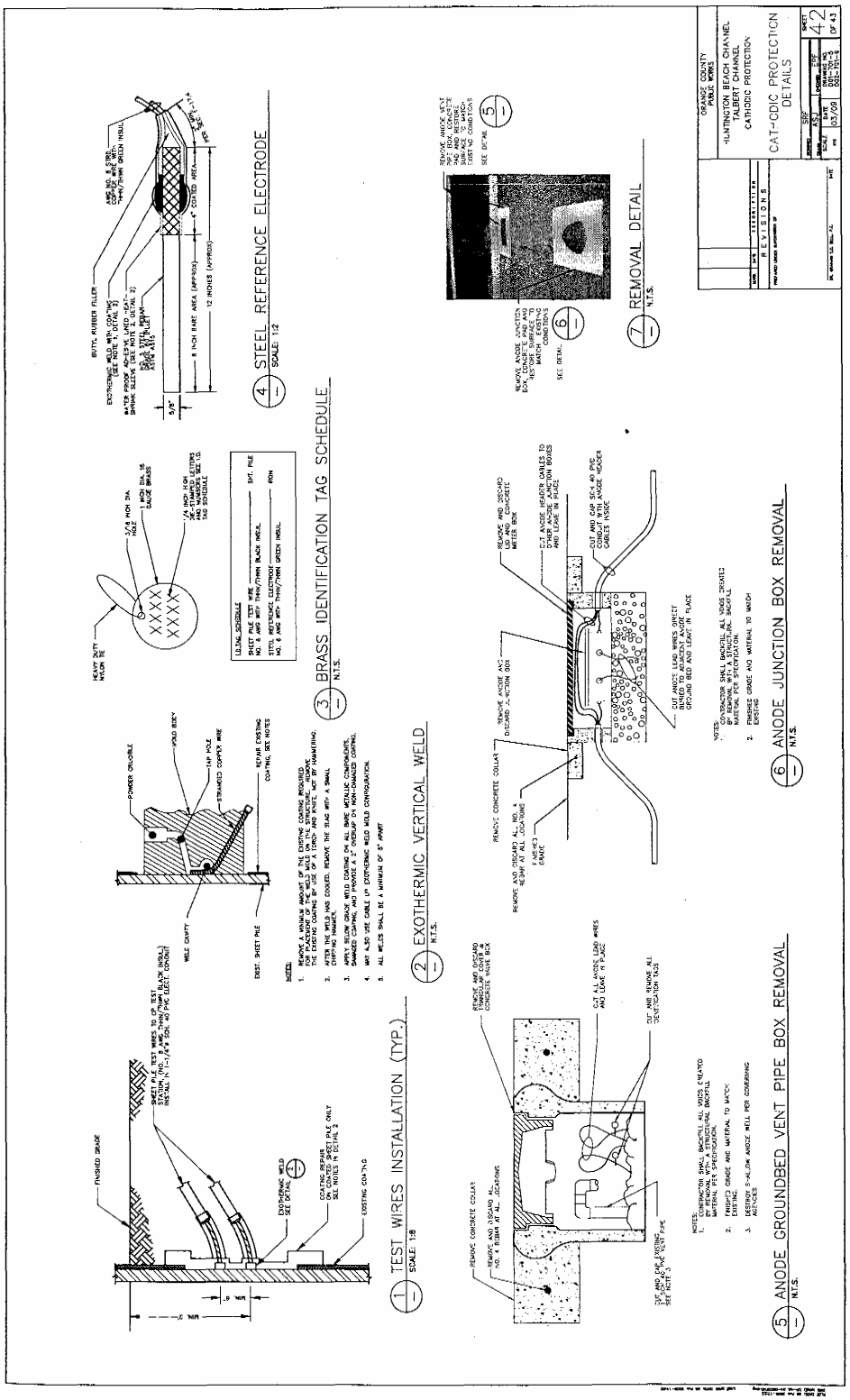


Exhibit B
page 1 of 4

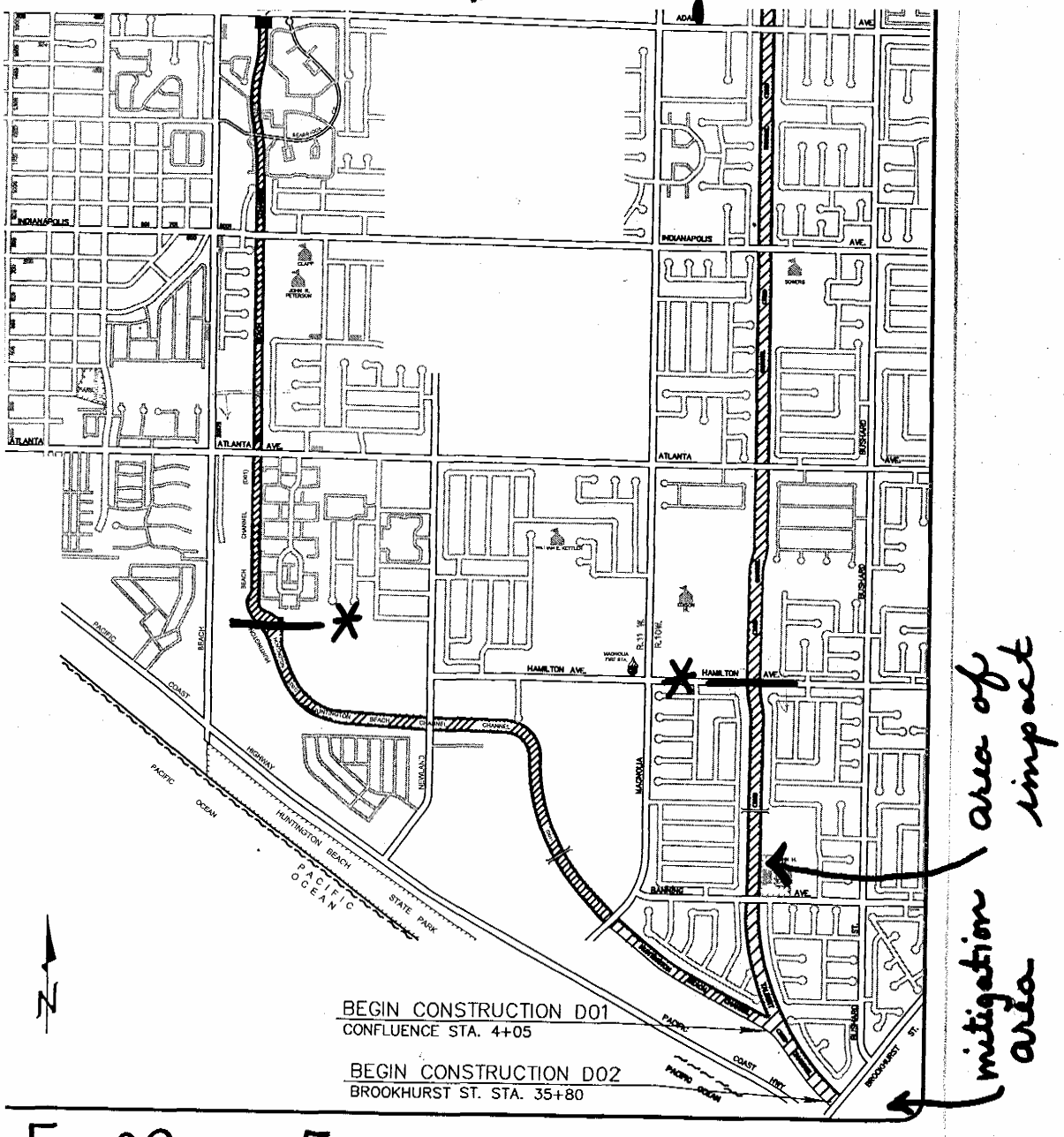
5-09-225
Project Plans (sampling)


MATCH LINE 4+05 (SEE SHEET 20 OF 38)
MATCH LINE
STA. 54+00
MATCH LINE
STA 45+00
HUNTINGTON CHANNEL (D01)
CHANNEL (D02)
TALBERT
D02-1L
D02-1R
UTILITY CONTACT TABLE
CHANNEL DESIGNATIONS
ORANGE COUNTY PUBLIC WORKS
TALBERT CHANNEL CATHODIC PROTECTION
PLAN VIEW
D02
STA. 45+00 TO STA. 54+00
B2


1 ANODE INSTALLATION
SCALE: 1.5" = 1'
2 CABLE-ROD TO SHEET PILE CONNECTION
SCALE: 1:2
3 CABLE TO ANODE CONNECTION
SCALE: 1:2
4 ELECTRICAL CONTINUITY WELD
SCALE: N.T.S.
A SHEET PILE SECTION
SCALE: 1.5" = 1'
B CONTINUITY WELD SECTION
SCALE: N.T.S.
5 HORIZONTAL ANODE INSTALLATION WITH RIP RAP
SCALE: N.T.S.
CATHODIC PROTECTION DETAILS
HUNTINGTON BEACH CHANNEL
TALBERT CHANNEL
CATHODIC PROTECTION
ORANGE COUNTY PUBLIC WORKS
B3


1 TEST WIRES INSTALLATION (TYP.)
SCALE: 1:8
2 EXOTHERMIC VERTICAL WELD
N.T.S.
3 BRASS IDENTIFICATION TAG SCHEDULE
N.T.S.
4 STEEL REFERENCE ELECTRODE
SCALE: 1:2
5 ANODE GROUNDBED VENT PIPE BOX REMOVAL
N.T.S.
6 ANODE JUNCTION BOX REMOVAL
N.T.S.
7 REMOVAL DETAIL
N.T.S.
ORANGE COUNTY PUBLIC WORKS
HUNTINGTON BEACH CHANNEL TALBERT CHANNEL
CATHODIC PROTECTION
CAT-ODIC PROTECTION DETAILS
REVISIONS
SHEET 42 OF 43

B4



5-09-225 LOCATION MAP N.T.S. Exhibit C

ORIGINAL
CLERK OF THE BOARD
ORANGE COUNTY

Agreement No. D87-241

Revised 8/5/88

AGREEMENT

This AGREEMENT is made and entered into BY AND BETWEEN:

The ORANGE COUNTY FLOOD CONTROL DISTRICT. a political subdivision of the State of California, hereinafter referred to as "FLOOD DISTRICT",

AND

The HUNTINGTON BEACH WETLANDS CONSERVANCY, a California Nonprofit Corporation, hereinafter referred to as "WETLANDS CONSERVANCY",

AND

The STATE COASTAL CONSERVANCY, an agency of the State of California, hereinafter referred to as "COASTAL CONSERVANCY",

AND

UNITED STATES OF AMERICA, acting through the FISH AND WILDLIFE SERVICE, UNITED STATES DEPARTMENT OF THE INTERIOR, hereinafter referred to as "FWS",

AND

The DEPARTMENT OF FISH AND GAME, an agency of the State of California, hereinafter referred to as "CDFG",

AND

The CALIFORNIA COASTAL COMMISSION, an agency of the State of California, hereinafter referred to as "COASTAL COMMISSION",

AND

The CITY OF HUNTINGTON BEACH, hereinafter referred to as "CITY",

AND

The COUNTY SANITATION DISTRICTS of ORANGE COUNTY, hereinafter referred to as "SANITATION DISTRICTS".

Eight Party Agreement

1

5-09-225
Exhibit D

WITNESSETH

WHEREAS, FLOOD DISTRICT's Talbert Valley Channel System provides flood protection to an area of approximately 13.3 square miles in the cities of Huntington Beach and Fountain Valley; and

WHEREAS, FLOOD DISTRICT intends to improve the Talbert Valley Channel System to provide capacity for a 100-year discharge as set forth in Alternate "F-2" of the Project Report for Talbert Valley Channels (February, 1985) and as discussed in FLOOD DISTRICT's Environmental Impact Report No. 445, approved by the Orange County Board of Supervisors, and as generally described in Exhibit A (the "Flood Control Project"); and

WHEREAS, the cost of the Flood Control Project far exceeds FLOOD DISTRICT's current ability to fund, and, consequently, flood improvements may be phased over twenty or more years; and

WHEREAS, it is necessary for FLOOD DISTRICT to construct a new ocean outlet for the Talbert Valley Channel system to accommodate the Santa Ana River Mainstem Project as set forth in The Water Resources Development Act of 1986 (United States Public Law 99-662); and

WHEREAS, FLOOD DISTRICT wishes to construct a new Talbert Channel ocean outlet as an early item of work and subsequently will proceed with inland improvements to Talbert and Huntington Beach Channels (two of the main channels of the Talbert Valley Channel system) as funding allows; and

WHEREAS, construction of the Flood Control Project may result in the permanent loss of wetland habitat; and

WHEREAS, COASTAL CONSERVANCY is the owner of a 15.2-acre parcel of degraded wetlands located easterly of Brookhurst Street and northerly of Pacific Coast Highway within the corporate limits of the CITY and within the Coastal Zone (the "Conservancy Parcel"); and

WHEREAS, FLOOD DISTRICT is the owner of fee rights over a three acre parcel that is part of the existing Talbert Valley Channel System (the "Flood District Parcel"); and

WHEREAS, FLOOD DISTRICT is the owner of easement rights over two parcels, constituting 5.7 acres, that are owned in fee by SANITATION DISTRICTS (the "Sanitation District Parcels"); and

WHEREAS, WETLANDS CONSERVANCY has prepared a plan for the enhancement of the Conservancy Parcel, the Flood District Parcel, and the Sanitation District Parcel, a combined total of approximately 23.9 acres, to create wildlife habitat by restoring tidal influence, restoring dunes, maintaining and monitoring the completed project, and other actions as described in the Huntington Beach Wetlands Restoration Plan (hereinafter referred to as "Wetlands Restoration Plan"), a copy

of which is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, pursuant to the California Public Resources Code Section 31000 et seq., COASTAL CONSERVANCY is authorized to undertake projects for the enhancement of resource areas in the Coastal Zone of the State of California; and

WHEREAS, on April 24, 1987, the COASTAL CONSERVANCY approved the Wetlands Restoration Plan, adopted a Negative Declaration therefor, authorized a $331,000 grant to WETLANDS CONSERVANCY to fund implementation of a portion of the Wetlands Restoration Plan, and agreed to convey title to the Conservancy Parcel to WETLANDS CONSERVANCY upon completion of the Phase I construction work described in the Wetland Restoration Plan; and

WHEREAS, COASTAL COMMISSION conceptually approved the Wetlands Restoration Plan, pursuant to Public Resources Code Section 31258, on June 12, 1987; and

WHEREAS, the Wetlands Restoration Plan precludes the need for FLOOD DISTRICT's planned flood control improvements between Pacific Coast Highway and Brookhurst Street as described in Exhibit A; and

WHEREAS, SANITATION DISTRICTS wish to facilitate the Flood Control Project and have agreed to convey an easement over the Sanitation District Parcels to WETLANDS CONSERVANCY; and

WHEREAS, SANITATION DISTRICTS desire to be assured that future improvements to their clarifier plant adjacent to the Wetlands Restoration Plan area will be compatible with the Wetlands Restoration Plan; and

WHEREAS, FLOOD DISTRICT has by separate agreement with WETLANDS CONSERVANCY, attached hereto as Exhibit C and incorporated herein by this reference, agreed to convey an easement over the Flood District Parcel to WETLANDS CONSERVANCY, and, to fund the removal of the south levee of the Talbert Channel between Brookhurst Street and Pacific Coast Highway, the excavation of a pilot channel between Brookhurst and Pacific Coast Highway, and an inlet/outlet at Brookhurst Street and at Pacific Coast Highway as described in the Wetlands Restoration Plan, and estimated by WETLANDS CONSERVANCY engineer to cost approximately $600,000, conditional upon an agreement for mitigation credits; and

WHEREAS, FLOOD DISTRICT's portions of the Wetlands Restoration Plan are not separable but must be done as part of a single project to implement the Wetlands Restoration Plan; and

WHEREAS, the State of California Department of Transportation (hereinafter referred to as "CalTrans") intends to widen Pacific Coast Highway to six lanes (the "CalTrans Project") and has entered into a separate agreement with COASTAL CONSERVANCY et al. to mitigate dune and

least tern impacts resulting from the CalTrans Project by funding restoration on the Conservancy Parcel; and

WHEREAS, the need to coordinate the CalTrans Project and Flood Control Project without delay of the CalTrans Project suggests the need for a mitigation bank whereby FLOOD DISTRICT's mitigation earned from the participation in the Wetlands Restoration Plan can be reserved until funds are available for future flood control improvements in the Talbert Valley; and

WHEREAS, implementation of the Wetland Restoration Plan will create new wetlands in excess of CalTrans' mitigation needs; and

WHEREAS, the FWS and the CDFG have as their primary mandate the conservation, protection, and enhancement of fish and migratory birds and their habitat, including the planning of biological loss avoidance and compensation; and

WHEREAS, the parties concur that offsetting habitat losses through the creation of new or enhanced habitat as close to the location of these losses as possible will best ensure that the habitat losses will be compensated.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. WETLANDS CONSERVANCY shall be the lead agency to implement the Wetlands Restoration Plan, including planning and construction, management, operation and maintenance, and monitoring throughout the term of this Agreement. The implementation shall be carried out in accordance with the Wetlands Restoration Plan and pursuant to terms and conditions of the COASTAL CONSERVANCY grant to WETLANDS CONSERVANCY.

2. WETLANDS CONSERVANCY shall be responsible for obtaining all permits and approvals necessary for construction. FWS, CDFG, COASTAL COMMISSION, FLOOD DISTRICT, SANITATION DISTRICTS and CITY shall support the WETLANDS CONSERVANCY's efforts in securing such permits and approvals.

3. WETLANDS CONSERVANCY shall, in consultation with DFG and FWS, schedule and conduct construction so as not to incur significant habitat loss or degradation and so as not to adversely impact any state or federal endangered species including the California Least Tern.

4. FWS, COASTAL COMMISSION, CDFG and CITY agree to modification of the Conservancy Parcel, Sanitation District Parcels, and Flood District Parcels as described in the Wetlands Restoration Plan, including construction and management activities consistent therewith.

5. COASTAL CONSERVANCY shall convey fee title to the Conservancy Parcel to WETLANDS CONSERVANCY for management, operation and maintenance, upon completion of the Phase I construction work described in the Wetlands Restoration Plan.

D4

6. SANITATION DISTRICTS shall convey to WETLANDS CONSERVANCY upon completion of the Phase I construction work, a conservation easement in the form shown in Exhibit D.

7. FLOOD DISTRICT shall convey an easement over the Flood District Parcel to WETLANDS CONSERVANCY upon completion of the construction work described in the Wetlands Restoration Plan, as further described in Exhibit C. The easement shall be conveyed to WETLANDS CONSERVANCY by a deed in the form shown in Exhibit E. 8WETLANDS CONSERVANCY shall manage the Conservancy Parcel, the Flood District Parcel, and the Sanitation District Parcels, in accordance with the Wetlands Restoration Plan, upon the transfer of title from COASTAL CONSERVANCY and the granting of easements from FLOOD DISTRICT and SANITATION DISTRICTS.

9. SANITATION DISTRICTS future activities on its adjacent property and on the conservation easement described in Exhibit D are agreed by all parties to be compatible with the Wetlands Restoration Plan. These activities consist of the following: remodeling and enlargement of the District's clarifier; installation of a landscape buffer; temporary construction use for clarifier construction; use of the top of the north berm of the Talbert Flood Channel on the easement area for access for service vehicles; the maintenance of an existing or replacement fence on the easement; the right to use the easement for temporary construction purposes; and the Sanitation Districts' rehabilitation and/or enlargement of its ocean discharge facilities. These uses are depicted on Exhibit F, attached hereto and incorporated herein by this reference. This agreement does not relieve the Sanitation Districts from the obligation of obtaining all required permits for its projects, but does constitute a waiver by the parties hereto of any objection to the siting of the clarifier project so long as such siting is consistent with Exhibit F.

10. Following transfer of fee interest in Conservancy Parcel and easements over Sanitation District Parcels and the Flood District Parcels to the WETLANDS CONSERVANCY, FLOOD DISTRICT shall undertake maintenance activities on these parcels when required to maintain the flood control capacity and the integrity of the perimeter only to the extent necessary to protect the public health and safety. Prior to conducting any maintenance activities on the parcels described above, except during an emergency, FLOOD DISTRICT shall submit a maintenance plan to WETLANDS CONSERVANCY for its approval and include in such plan reasonable measures to protect the wetlands. Any maintenance activities that could affect the Flood District Parcel, the Sanitation District Parcels and the Conservancy Parcel simultaneously shall be phased over two seasons and separated be at least 9 months so as to allow habitat rejuvenation of the first phase prior to initiation of a second phase. WETLANDS CONSERVANCY agrees to review FLOOD DISTRICT'S plan within thirty days and to not unreasonably withhold its approval

D5

or add unreasonable conditions. FLOOD DISTRICT acknowledges that its maintenance activity on the parcel may be subject to regulation by CITY, COASTAL COMMISSION, CDFG, FWS and the Army Corps of Engineers.

11. The mitigation credit earned by FLOOD DISTRICT participation in the WETLANDS RESTORATION PLAN as described herein shall consist of a total of 3.85 acres of wetland credit in excess of CalTrans' mitigation as described below:

a. 3.12 acres earned through the removal of the south levee and adjoining bike trail;

b. .55 acres earned by virtue of FLOOD DISTRICT's construction of a new outlet channel and partial repayment to COASTAL CONSERVANCY; and

c. .18 acre earned by virtue of payment to the COASTAL CONSERVANCY.

12. The above described mitigation credits may be reserved by FLOOD DISTRICT for future use subject to the following conditions:

a. The mitigation credits may only be used for the Talbert Valley Channels projects.

b. The mitigation credits may only be used for the mitigation of similar habitat, as determined by the applicable regulatory agencies.

c. Such credit shall be subject to review on a case-by-case basis for each permit application and mitigation needs of that phase. It is mutually understood that the credits stipulated herein are derived from the Wetlands Restoration Plan and therefore are not necessarily the same as the mitigation that may be needed for FLOOD DISTRICT's projects.

d. If the mitigation credits are not used within 30 years from the date of execution of this Agreement, they shall expire. In no case shall the mitigation credits be used to compensate for the loss of more than 3.85 acres of wetland which may result from implementation of the Talbert Valley Channel projects.

13. FLOOD CONTROL DISTRICT shall pay all costs necessary to fulfill its mitigation obligation to the COASTAL CONSERVANCY within sixty (60) days of the effective date of this Agreement. These costs are described in Exhibit G and total $12,208.

14. It is acknowledged that portions of the Wetlands Restoration Plan may not precisely reflect the actual on-site conditions. In the event that on-site conditions diverge from those anticipated in the Wetlands Restoration Plan, WETLANDS CONSERVANCY may modify the work to

account for those changed conditions subject to the approval of FLOOD DISTRICT, COASTAL COMMISSION, DFG, FWS and COASTAL CONSERVANCY. In the event that approved amendments to the Wetlands Restoration Plan effect a change in the number of mitigation credits, these credits accruing to FLOOD CONTROL DISTRICT shall be recalculated.

15. Upon approval of use of mitigation credits as described above, the FLOOD DISTRICT agrees to maintain accurate records on the use of the mitigation credits and to notify all signatories to this agreement in writing every time such credits are used.

16. This Agreement is binding only if all required permits and approvals are received by WETLANDS CONSERVANCY by December 30, 1988.

17. This Agreement fulfills the requirements of paragraph 12 of the Agreement between FLOOD DISTRICT and WETLANDS CONSERVANCY (Exhibit C).

18. This Agreement shall be in full force and effect from the last date on which all participants have signified agreement by signature of their designated representative. The term of this Agreement shall be from said effective date throughout the life of the Flood Control Project, unless earlier rescinded by written consent of all parties. For purposes of this Agreement, "the life of the Flood Control Project" is understood to mean and refer to the period during which the Flood Control Project is constructed and used for flood protection purposes. This Agreement may be amended by written agreement of all parties.

19. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

D7

The STATE COASTAL CONSERVANCY
The Resources Agency of California

BY: _____ Date: 8/5/88
Peter Brenell, Executive Officer

The HUNTINGTON BEACH WETLANDS CONSERVANCY
A California Nonprofit Corporation

BY: _____ Date: 8/14/88
Bill Wiesman, Chairman

The CITY OF HUNTINGTON BEACH

BY: _____ Date: _____
John Erskine, Mayor

The FISH AND WILDLIFE SERVICE
U.S. Department of Interior

BY: _____ Date: _____
Richard J. Mychak, Regional Director,
Region I

The DEPARTMENT OF FISH AND GAME
The Resources Agency of California

BY: _____ Date: _____
Pete Bontadelli, Director

The STATE COASTAL COMMISSION
The Resources Agency of California

BY: _____ Date: 11/23/88
Peter Douglas, Executive Director

D 8/8

COUNTY OF ORANGE

ENVIRONMENTAL MANAGEMENT AGENCY
PUBLIC WORKS

MICHAEL M. RUAN
DIRECTOR, EM

WILLIAM L. ZAU
DIRECTOR OF PUBLIC WORK

LOCATION
12 CIVIC CENTER PLAZ
SANTA ANA, CALIFORNI

MAILING ADDRESS
P.O. BOX 404
SANTA ANA, CA 92702-404

TELEPHONE
(714) 834-230
FAX # 834-287

Mr. Peter Douglas, Executive Director
California State Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

ATTENTION: James R. Raives, Coastal Program Analyst

SUBJECT: Huntington Beach Wetlands 8-Party Agreement (Agreement No. D87-241)

Dear Mr. Douglas:

Paragraph number 15 of the subject agreement states:

> Upon approval of use of mitigation credits as described above, the FLOOD DISTRICT agrees to maintain accurate records on the use of the mitigation credits and to notify all signatories to this agreement in writing every time such credits are used.

The United States Environmental Protection Agency, United States Army Corps of Engineers, Regulatory Branch, and the United States Fish and Wildlife Service have requested the Orange County Flood Control District to deduct a total of 1.2 acres of mitigation credit (0.7 acres salt marsh and 0.5 acres fresh water habitat) from the 3.85 acres of mitigation credit, banked in the subject agreement, for the proposed Talbert Valley Channel system flood control project.

Total amount of mitigation credits remaining is 2.65 acres.

This letter shall act as fulfillment of paragraph no. 15 of the subject agreement. If you or your staff have any questions or require further information, please call Kenneth E. Smith, Chief, Flood Control Design at (714)834-2319.

Very truly yours,

W. L. Zaun
Director of Public Works

PMJ:wps05011992
cc: Calif. Coastal Commission
Huntington Beach Wetlands Conservancy
U. S. Fish and Wildlife Service
City of Huntington Beach
Calif. Dept of Fish and Game
Calif. State Coastal Conservancy

5-09-225
Exhibit E

COUNTY OF ORANGE
PUBLIC FACILITIES & RESOURCES DEPARTMENT

Vicki L. Wilson, Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2319
Fax: (714) 834-6796

December 2, 1999

Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: Huntington Beach Wetlands 8-Party Agreement (Agreement D87-241) and the Fountain Valley Repair Project

Gentlemen:

On August 5, 1988 the California Coastal Commission, State Coastal Conservancy, Orange County Flood Control District, Huntington Beach Wetlands Conservancy, U.S. Fish and Wildlife Service (acting on behalf of the Federal Government), California Department of Fish and Game, City of Huntington Beach, and the County Sanitation Districts of Orange County entered into Agreement D87-241 (commonly referred to as the 8-party Agreement) for the disposition of Talbert Marsh area or Huntington Beach Wetlands. As part of the Agreement, the Orange County Flood Control District was acknowledged to have banked 3.85 acres of wetland mitigation credits for use on mitigating flood control improvements within the Talbert Valley watershed.

Paragraph Number 15 of the subject Agreement states:

> *Upon approval of the use of mitigation credits as described above, the FLOOD DISTRICT agrees to maintain accurate records on the use of the mitigation credits and to notify all signatories to this Agreement in writing every time such credits are used.*

On July 21, 1999, the U.S. Army Corps of Engineers, Regulatory Branch of the Los Angeles District issued a Section 404 permit to the Orange County Flood Control District for repairs to the Fountain Valley Channel (Facility No. D05) from Ellis Avenue to Euclid Avenue. As part of the Section 404 permit (Permit No. 199915896-YJC), the Corps has requested that 0.3 acres of wetlands mitigation be deducted from the bank to offset impacts to wetlands as part of the subject repair project.

Previously, 1.2 acres of mitigation had been deducted from the bank, therefore, with the subject project the current balance shall stand at: 3.85acres - 1.2 acres - 0.3 acres = **2.35 acres.**

This letter shall act as fulfillment of paragraph no. 15 of the subject Agreement. If you or your staff have any questions or require further information, please call Phil Jones, Senior Civil Engineer at (714)834-2599.

Very truly yours,

J. A. Miller

J. A. Miller, Chief
Flood Control Design

PMJ:word/D/Projects/Fountain Valley Channel/8-party Agmt Acct.doc

Cc: Dale Dillon

5-09-225
Exhibit F