

**CALIFORNIA COASTAL COMMISSION**

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**W 4a**

Filed: January 25, 2010  
49th Day: March 15, 2010  
180th Day: July 24, 2010  
Staff: Fernie Sy-LB  
Staff Report: May 19, 2010  
Hearing Date: June 9-11, 2010  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-06-111**APPLICANTS** Mesa Consolidated Water District (MCWD)**PROJECT LOCATION:** Eastern terminus of Bayview Way near the 73 Freeway, City of Newport Beach, County of Orange**PROJECT DESCRIPTION:** Request for permanent authorization of development undertaken under an emergency coastal development permit to repair a leak from an existing 42-inch steel water main. The project also involved the removal of non-native species and mitigation by planting *Mulefat* and *Mexican Elderberry*.**LOCAL APPROVALS RECEIVED:** City of Newport Beach Approval-In-Concept (No. 1889-2009) dated December 2, 2009.**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is requesting permanent authorization of development undertaken under an emergency coastal development permit to repair a leak from an existing 42-inch water main. The repair has already been completed and also involved the removal of existing non-native vegetation at the repair site, as well as mitigation in form of *Mulefat* and *Mexican Elderberry* plantings. The primary issue addressed in this staff report is the conformance of the proposed development with the habitat policies of the Coastal Act.

Staff is recommending **APPROVAL** of the proposed project with **ONE (1) SPECIAL CONDITION** regarding submittal of a Revised Restoration and Monitoring Plan.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

**SUBSTANTIVE FILE DOCUMENTS:** CDP No. 5-06-111-[MCWD]; Letters from Richard A. Hamilton dated March 14 and 17, 2006; Letter from Commission staff to MCWD dated June 16, 2006; Letter and information from MCWD to Commission staff received January 25, 2010; *Riparian Habitat Restoration Plan* prepared by Mesa Consolidated Water District received January 25, 2010; information from MCWD was received on March 3, 2010; information from MCWD was received on May 6, 2010; and information from MCWD was received on May 10, 2010.

## **LIST OF EXHIBITS**

1. Vicinity Map
  2. Site Plan
  3. Criteria for Revised Restoration and Monitoring Plan
- 

## **STAFF RECOMMENDATION:**

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

## **MOTION:**

*I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

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. REVISED RESTORATION AND MONITORING PLAN**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, a Revised Restoration and Monitoring Plan. The revised plan shall be prepared by a biologist or licensed landscape architect, with expertise in habitat restoration. The plan shall be prepared in consultation with and if possible approved by the California Department of Fish and Game (CDF&G), prior to being submitted to the Executive Director for review and approval. The plan shall be prepared consistent with the guidance found in Exhibit #3 of this staff report dated May 19, 2010 for CDP NO. 5-06-111.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

The Commission hereby finds and declares:

#### **A. PROJECT LOCATION AND DESCRIPTION**

The project site is located in a riparian habitat area at the eastern terminus of Bayview Way near the 73 Freeway and near San Diego Creek in the City of Newport Beach, Orange County (Exhibits #1-2). To the north and west of the project site is a car dealership (Fletcher Jones Mercedes Benz). To the east of the project site is the 73 Freeway. To the south of the project site is San Diego Creek. The nearest public coastal access to San Diego Creek is available along University Drive, which is further south of the project site on the other side of San Diego Creek.

The applicant is requesting permanent authorization of development undertaken under an emergency coastal development permit to repair of a leak from an existing 42-inch steel water main by replacing a 6'-6" long section of the pipe (Exhibit #2). In order to create an access path to enable the contractor to move machinery into the area where the repairs were needed, the applicant removed non-native species including *Castor Bean*, *Pampas Grass*, *Brazilian peppertree*, *Fennel*, *Milk Thistle* and *Artichoke Thistle* and an approximate 2,000 square foot area of *Giant Reed (Arundo Donax)*. Also, some trimming of *Arroyo Willow* took place. The applicant proposed mitigation for these temporary impact areas by planting *Mulefat (Baccharis salicifolia)* and *Mexican Elderberry (Sambucus mexicana)*. The water main repair was completed in May 2006. The

removal of non-natives took place Winter 2006, Spring/Early Summer of 2007 and Spring 2008. Planting took place Winter 2008/2009 and has been growing successful so far.

The emergency permit indicated that 1 of 2 repair options would be chosen. Option No.1 consisted of use of a vacuum truck that can be situated along the existing trail that runs east/west approximately 80 to 100-feet north of the location of the pipeline leak. This option would have resulted in minor impacts to surrounding vegetation. Some *Arroyo Willow* branches would have been trimmed. If this option proved to be infeasible, Option No. 2 consisted of clearing an approximate 2,000 square foot area of *Giant Reed (Arundo Donax)* to create an access path in order to enable the contractor to move machinery into the area where the repairs were needed. This option also required trimming of some *Arroyo Willows*, but to a greater extent. Neither option required removal of any *Arroyo Willows*.

Option No. 2 was chosen and additional non-native vegetation at the project site and near the site (*Castor Bean, Pampas Grass, Brazilian peppertree, Fennel, Milk Thistle and Artichoke Thistle*) was also removed besides *Giant Reed (Arundo Donax)*. Trimming of some *Arroyo Willows* also took place as anticipated.

The applicant had proposed mitigation for these temporary impacts by revegetating with *Mulefat* and *Cat-Tails*. Mitigation did take place, but instead of *Cat-Tails*, *Mexican Elderberry* was planted along with *Mulefat*. Further discussion of the impacted non-native vegetation and the mitigation can be found in the *Riparian Habitat Restoration Plan* prepared by Mesa Consolidated Water District received January 25, 2010. The planting has been completed and the vegetation has grown successfully.

The Commission staff biologist has also reviewed information provided regarding growth of the vegetation post planting and agrees that the vegetation seems to be growing and doing well so far. However, the *Riparian Habitat Restoration Plan* lacks many details or does not provide typical information that is commonly included in such restoration plans. For example, the success criteria allows noxious invasive species to account for not more than 5% of all vegetative cover. Typically, no noxious invasive species are allowed. Also, this plan does not require a monitoring report to be completed 5 years after the planting has been completed. The lacking information deals with monitoring and performance criteria. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit a Revised Restoration and Monitoring Plan. This plan shall contain a more thorough and complete section regarding monitoring and performance criteria.

The California Department of Fish and Game (CDF&G) and Fish and Wildlife Services (F&WS) have approved the project.

## **B. HABITAT**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

## **C. LOCAL COASTAL PROGRAM (LCP)**

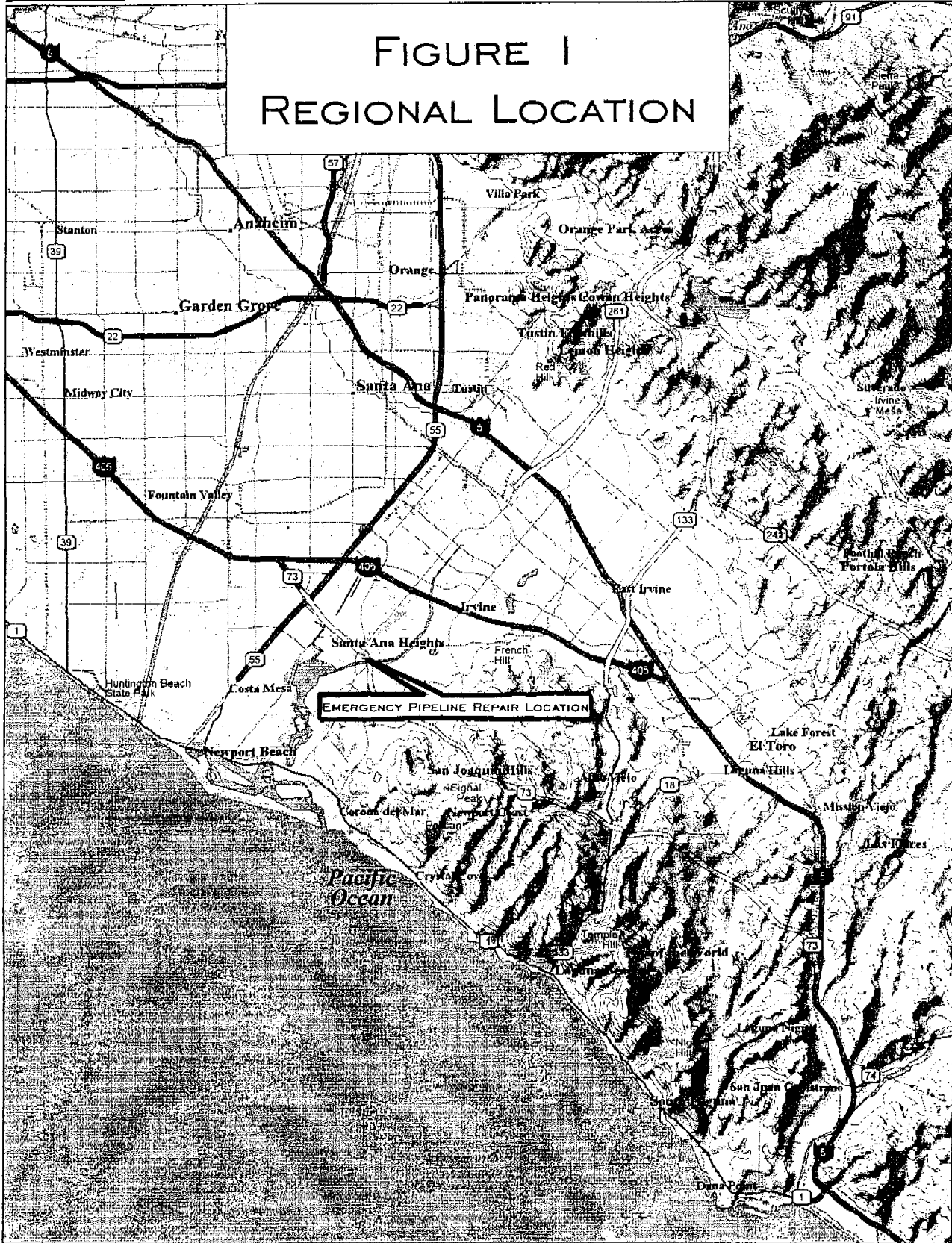
The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

**D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's administrative 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).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

# FIGURE 1 REGIONAL LOCATION



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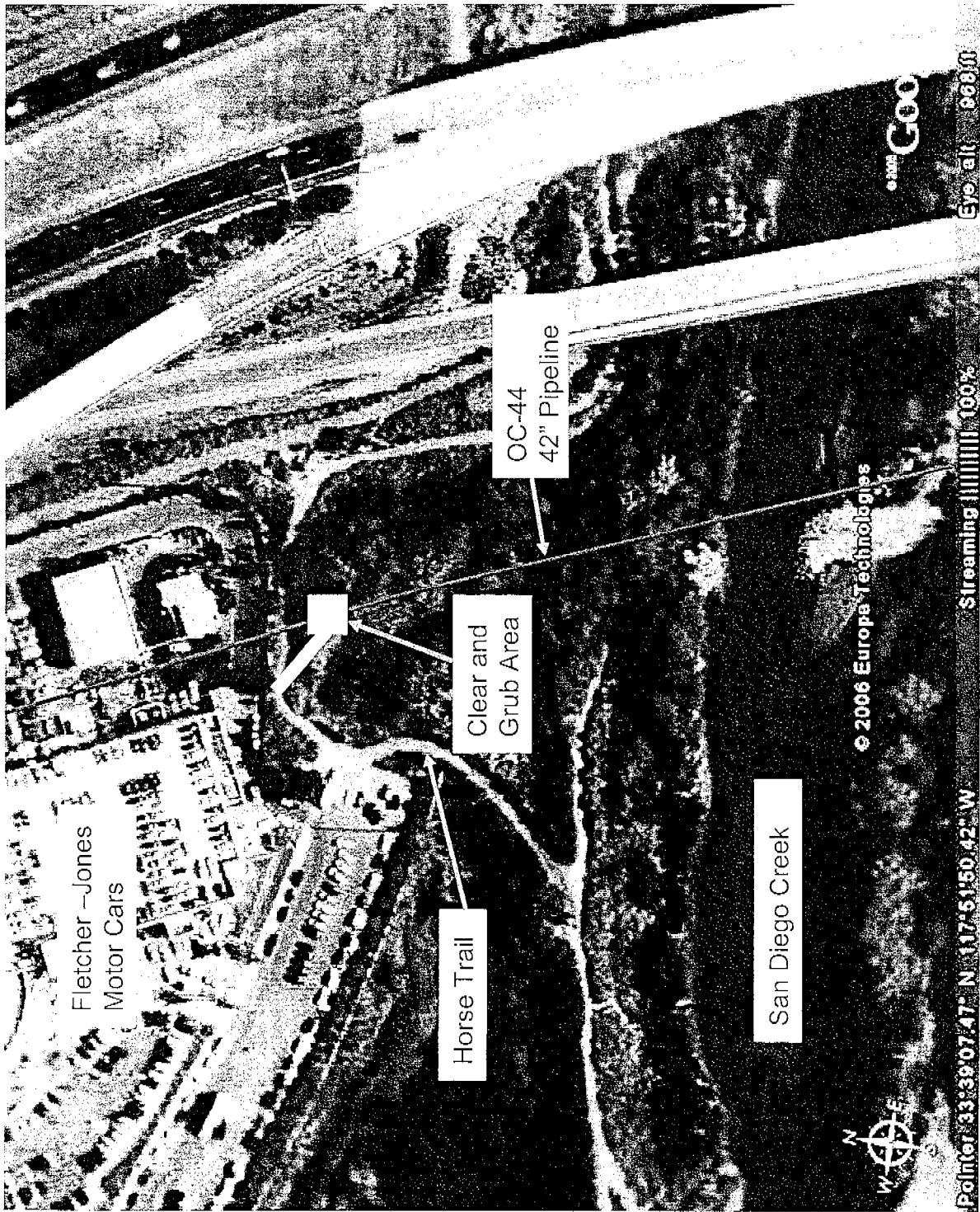


**COASTAL COMMISSION** (12.9° E)



Data Zoom 10-0

EXHIBIT # 1  
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COSTAL COMMISSION

EXHIBIT # 2  
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73 FRWY

42' WATER MAIN

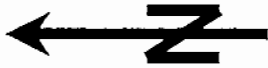
LEAK AREA

HORSE TRAIL

20'x 60' ACCESS  
PER CA FGD  
AND USFWS  
REQUIREMENTS

FLETCHER JONES  
MOTORCARS

BAYVIEW WY



SAN DIEGO  
CREEK

JAMBOREE RD

COASTAL COMMISSION

EXHIBIT # 2  
PAGE 2 OF 2



# **Criteria for Revised Restoration and Monitoring Plan CDP No. 5-06-111-[MCWD]**

## **Monitoring**

There are two basic purposes for a monitoring plan. The first is to provide data that will guide the restoration and enable an adaptive management plan that will increase the likelihood of the restoration being a success. The second is to provide the data that will allow regulatory agencies to determine if there has been compliance with the terms and conditions of the permit. The permit applicant is responsible for the success of the restoration, so the requirements for interim monitoring are generally less stringent than the requirements for final monitoring to assess "success."

## **Interim Monitoring Plan**

An interim monitoring plan should include maintenance and remediation activities, interim performance goals, assessment methods, and schedule. In general, monitoring should be monthly until plants are established and quarterly thereafter. Weeding should be frequent, with a "zero tolerance" policy throughout the monitoring period. Photographs should be taken from fixed points on fixed azimuths during each monitoring period. Quantitative monitoring should take place once a year.

## **Final Monitoring Plan**

Final monitoring is intended to determine whether the restoration has been successful. In order to help insure that the restoration is self-sustaining, final monitoring for success should take place after at least 3 years with no remediation or maintenance activities other than weeding. The plan should include a statement to that effect. The final monitoring plan will include specific ecological performance or "success" criteria that relate logically to the restoration goals. Generally, these criteria will include standards for species diversity of both perennial and annual plants, vegetative cover, and approximate dispersion patterns of major species. Success criteria should insure that the major structure-producing species that characterize the habitat are present and that there is an appropriate diversity of species in each vegetation layer. In some cases, habitat elements necessary for particular wildlife species may be specified. Wetlands should have hydrological criteria.

## **Basis for Selection of Performance Criteria**

The basis for the selection of each performance criterion should be explained. Commonly, performance criteria take the form of "85% vegetative cover at the end of 5 years" without explanation. For some habitat types, this is too high, and for others it is too low. There must be some empirical basis for the selection of each performance criterion.

## **Types of Performance Criteria**

Where there is sufficient information to provide a strong scientific rationale, the performance criteria may be absolute or fixed (e.g., a specified percentage ground cover or relative diversity of species, or a specified average height for a species). Alternatively, relative performance criteria may be specified. Relative criteria are those that require a comparison of the restoration site with appropriate reference sites. In the case of relative performance criteria, the rationale for the selection of reference sites should be described. These sites must be selected and identified in the Restoration and Monitoring Plan. In addition, a preliminary field sample should be taken and the results

# **Criteria for Revised Restoration and Monitoring Plan CDP No. 5-06-111-[MCWD]**

included in the plan. Large projects should always incorporate the use of reference sites.

## **Procedure for Judging Success**

Regardless of whether performance criteria are absolute or relative, the comparison procedure, and the basis for judging differences to be significant should be specified. In other words, how does one know if the success criteria are achieved? Small projects could potentially be evaluated using a census based on direct examination or on analysis of an aerial photograph. The evaluation of larger projects will require inferences based on sampling. If the comparison requires a statistical test (e.g., a one-sample or two-sample t-test), the test should be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted.

## **Formal Sampling Design**

The design of the field sampling program should relate logically to the performance criteria and chosen methods of comparison. The sampling design and the sampling methods should be described in sufficient detail to enable an independent scientist to duplicate it. If the sampling methods have not been proven in the field, they must be tested and the results demonstrating their feasibility included in the plan. Developing field methods should precede the preparation of a Restoration and Monitoring Plan. The development of field methods should not be part of the Plan. Monitoring plans based on untested field methods are not acceptable.

## **Sample Size**

The estimated sample size for final performance monitoring should be based on a statistical power analysis conducted using data from the preliminary sampling. The results of the preliminary sample and the power analysis should be included in the plan. Generally, there should be sufficient replication to provide 90% power at an alpha of 0.10 to detect a difference that is biologically significant.

## **Final Report**

A final monitoring report should be submitted for the review and approval of the Executive Director of the Coastal Commission at the end of the monitoring period. The final report should be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site has achieved the goals and success criteria set forth in the approved Restoration and Monitoring Plan.

## **Provision for Possible Further Action**

If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised restoration program shall be processed as an amendment to the coastal development permit unless the Executive Director determines that no permit amendment is required.