

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	<b>6-14-0516</b>
<b>Applicant:</b>	<b>Plastino II, LP</b>
<b>Agent:</b>	Walt Crampton
<b>Location:</b>	2533 South Coast Highway 101, on the western bank of the San Elijo Lagoon inlet, Encinitas, San Diego County (APN: 261-161-22)
<b>Project Description:</b>	Temporary placement of 35, 4,000-lb. sandbags filled with beach quality sand at a 1.7:1 slope and backfill slope with approximately one cu. yd. of 3/8 in. crushed rock for a five-year period. The fill footprint will extend approximately 34 ft. from the corner of the existing office building and range from 22 to 43 feet wide.
<b>Staff Recommendation:</b>	Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project is in response to ongoing natural erosion of the slope adjacent to the San Elijo Lagoon inlet and the northeastern corner of an existing office building. The applicant contends that the rate of slope erosion has escalated recently, but is unable to document how quickly the erosion has taken place. Staff notes that this application was originally received as an emergency application on December 19, 2013. The applicant proposes to stabilize the slope

by temporarily placing 35 (4,000+/- lb.) sandbags filled with beach quality sand at a 1.7:1 slope and backfill slope with approximately one cu. yd. of 3/8 in. crushed rock, on the bank of the lagoon to protect the portion of the existing office building's foundation adjacent to the lagoon that is being undermined by the erosion of the channel bank. The fill footprint would extend approximately 34 ft. from the corner of the building and range from 22 to 43 ft. wide. The applicant proposes to keep the sand bags in place for five years. The end of the estimated timeframe coincides with the construction of a lagoon-wide restoration project for San Elijo Lagoon currently under development by the San Elijo Lagoon Conservancy that would result in the integrated stabilization of the entire lagoon inlet. The San Elijo Lagoon Conservancy is in support of the proposed temporary stabilization project at the subject site and will be implementing the proposed habitat mitigation associated with it.

In order to minimize potential adverse impacts to the sensitive open water and wetland habitat of the San Elijo Lagoon, Commission staff is recommending nine special conditions. **Special Condition #1** requires the applicant to submit revised final plans that include the removal of all existing unpermitted concrete riprap and construction debris from the project footprint; **Special Condition #2** requires the applicant to prepare a Final Habitat Mitigation and Monitoring Plan that includes 0.025 acres of wetland creation and 0.108 acres of restoration to mitigate the temporary impacts to open water wetlands; **Special Condition #3** authorizes the development on a temporary basis only; **Special Condition #4** does not allow construction during the bird nesting season; **Special Condition #5** requires final plans indicating the location of access corridors to the construction site and staging area in order to ensure public access is maintained; **Special Condition #6** requires that the sand utilized in the sandbags be similar to the existing sand grain size envelope at adjacent beaches; **Special Condition #7** requires the applicant to maintain the sandbags and remove any debris deposited in the water as a result of construction or failure of the sandbags; **Special Condition #8** requires the applicant to coordinate with the San Elijo Lagoon Conservancy on their larger restoration project; and **Special Condition #9** is an assumption of risk, waiver of liability and indemnity.

Therefore, Commission staff recommends **approval** of coastal development permit application 6-14-0516, as conditioned.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>4</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>4</b>
<b>III.SPECIAL CONDITIONS .....</b>	<b>5</b>
<b>IV.FINDINGS AND DECLARATIONS.....</b>	<b>9</b>
A. PROJECT DESCRIPTION & HISTORY .....	9
B. HAZARDS AND BIOLOGICAL RESOURCES .....	9
C. WATER QUALITY .....	15
D. VISUAL RESOURCES.....	16
E. PUBLIC ACCESS .....	17
F. LOCAL COASTAL PLANNING .....	18
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT .....	18

## APPENDICES

[Appendix A – Substantive File Documents](#)

## EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Project Impacts](#)

[Exhibit 5 – Mitigation Map](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit 6-14-0516 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves Coastal Development Permit 6-14-0516 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

This permit is granted subject to the following standard conditions:

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

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, revised final plans for the proposed slope stabilization project that are in substantial conformance with the plans received April 11, 2014 prepared by TerraCosta. Said plans shall be revised to include the following:

A. All existing unpermitted concrete riprap and construction debris shall be removed from the footprint of the proposed project prior to placement of gravel or sandbags. Removal of unpermitted concrete riprap and construction debris shall be documented through photographs of the worksite and submitted to the San Diego District Office. Photographs of the worksite shall also be taken following construction and submitted to the San Diego District Office.

B. The color of the sandbags permitted herein shall be restricted to earth tones consistent with the color of the substrate at the project site, which may include shades of brown, green, and gray. The use of white, light shades and bright tones are prohibited.

The permittee shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Final Habitat Mitigation and Monitoring Plan.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a Final Habitat Mitigation and Monitoring Plan that is in substantial conformance with the plan received June 3, 2014 prepared by Doug Gibson. Said plan shall include, but not necessarily be limited to, the following:

1. A detailed site plan of the wetland impact area that substantially conforms with the plan submitted to the Commission on April 25, 2014. The final plan must delineate all impact areas (such as on a map that shows elevations, surrounding landforms, etc.), the types of impact (both permanent and temporary), and the exact acreage of each impact so identified.

2. The baseline ecological assessment of the wetland area submitted on July 15, 2014.
  3. A detailed final site plan of the mitigation site that substantially conforms with the site plan submitted to the Commission on June 3, 2014 as shown generally on Exhibit 5.
  4. A discussion of how the subject mitigation will interface with the San Elijo Lagoon Conservancy's restoration project.
  5. Within 90 days of completion of construction, the subject mitigation and restoration work shall commence.
  6. A site preparation and planting plan for each vegetation community to be restored or enhanced. The site preparation may include removal of non-native and invasive vegetation. The planting plan shall include plant palettes for both seeds and container plants (locally collected native wetland plant species).
  7. If needed, irrigation methods that mimic natural rainfall patterns, except where dry season irrigation is necessary to prevent plant death or damage.
  8. Provisions for removing all temporary irrigation after performance standards have been achieved.
  9. The following performance standards for the mitigation site: 90% coverage of native plants appropriate to the habitat in five years.
  10. The final design and construction methods that will be used to ensure the mitigation site achieves the defined performance standards.
  11. A provision that final monitoring for success shall take place no sooner than three years following the end of all remediation and monitoring activities (including irrigation), other than weeding.
  12. Provisions for submittal, within 30 days of completion of initial restoration work, of "as built" plans demonstrating that the wetland mitigation site has been established in accordance with the approved design and construction methods.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **3. Permit Term.**

- A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of five (5) years, commencing upon the date of Commission approval, after which time the authorization for continuation

and/or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of the sandbags and gravel will require either the issuance of a new coastal development permit or an amendment to this coastal development permit.

- B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to retain the sandbags and gravel prior to the date that authorization for the development expires, the applicant shall remove the sandbags and gravel. Prior to removal of the development, the applicant shall contact the Commission's San Diego District Office to determine whether permits are necessary, and shall subsequently apply for a coastal development permit for the required removal.
  - C. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.
4. **Timing of Construction.** To avoid potential impacts to breeding activities of the California Least Tern, Western Snowy Plover, and other bird species associated with the adjacent sensitive open water and wetland habitat, construction will not be permitted during the bird nesting season, between February 15<sup>th</sup> and September 15<sup>th</sup> of any year, unless authorized in writing by the United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife and provided to the Executive Director for review and approval. If work is allowed during the bird nesting season, a bird monitor shall be on site while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.
5. **Staging Area and Access Corridors.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging area. The final plans shall indicate that:
- a. During construction, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time. Construction equipment shall not be washed in or adjacent to the lagoon.
  - b. All vehicular use shall be from the top of slope. No vehicles shall be allowed beyond the top of slope.
  - c. Construction access corridors shall be located in a manner that has the least impact on public access.
  - d. Work shall be performed during daylight hours only.

- e. A copy of this coastal development permit shall be kept on-site at all times during construction.
- f. The applicant shall remove all construction materials and equipment from the staging site and restore the staging site to its prior-to-construction condition immediately following completion of the development.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 6. **Sand Grain Size.** The sandbags shall be filled with beach quality sand that mimics the existing sand grain size envelopes from adjacent beaches. The majority of the sand used in the sandbags must consist of grain sizes between 'fine sand' and 'medium sand' (0.074 mm to 2.0 mm) in diameter. However, up to 10% of the total sandbag volume may be 'course sand,' greater than 2.0 mm in diameter, and up to 10% of the total sandbag volume may be 'fines' less than 0.074 mm in diameter.
- 7. **Future Maintenance and Debris Removal.** The permittee shall remove all debris deposited in the water as a result of construction of the slope stabilization project. The permittee shall also remove all debris deposited in the water as a result of failure or damage of the sandbags. In addition, the permittee shall maintain the permitted sandbags in their approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the sandbags shall include maintaining its color and integrity. Any change in the design of the project or future additions/reinforcement of the slope stabilization project beyond minor repairs or other exempt maintenance as defined in Section 13252 of the California Code of Regulations, will require a coastal development permit. However, in all cases, if, after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Commission's San Diego office to determine whether permits are necessary, and shall subsequently apply for a coastal development permit for the required maintenance.
- 8. **Coordination with San Elijo Lagoon Conservancy.** By acceptance of this permit, the applicant agrees to support the San Elijo Lagoon Conservancy's future efforts to restore the San Elijo Lagoon and acknowledges that the approval of the proposed slope stabilization project is temporary and will not prejudice or influence any future design alternatives of the San Elijo Lagoon Conservancy's restoration project.
- 9. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and



employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION & HISTORY**

The proposed project is in response to ongoing natural erosion of the slope bordering the San Elijo Lagoon inlet and adjacent to the northeastern corner of an existing office building. The applicant contends that the rate of slope erosion has escalated recently, but is unable to document how quickly the erosion has taken place. Staff notes that this application was originally received as an emergency application on December 19, 2013. The applicant proposes to stabilize the slope by temporarily placing 35 (4,000+/- lb.) sandbags filled with beach quality sand at a 1.7:1 slope and backfill slope with approximately one cu. yd. of 3/8 in. crushed rock, on the bank of the lagoon adjacent to the portion of the office building's foundation being undermined. The fill footprint would extend approximately 34 ft. from the corner of the building and range from 22 to 43 ft. wide. The applicant's property line extends approximately 15 ft. from the northeast corner of the building, thus the proposed sand bags will encroach approximately 15-20 ft. onto lagoon property. The applicant proposes to keep the sand bags in place for five years. The end of the authorized timeframe coincides with the construction of a lagoon-wide restoration project for San Elijo Lagoon currently under development by the San Elijo Lagoon Conservancy that would result in an integrated stabilization of the entire lagoon inlet.

No impacts to native vegetation are expected, as the area proposed for the project footprint is currently vegetated primarily with an invasive plant species (acacia). However, the proposed sand bags will result in 796 sq. ft. of fill below the mean high water line and 299 sq. ft. of fill above the mean high water line for a total of 1,095 sq. ft., or 0.025 acres, of impacts to open water wetlands. The applicant proposes to mitigate these impacts to open water at a ratio of 1:1 for wetland creation (0.025 acres) and 4:1 for invasive plant removal (0.108 acres) (Exhibit 5). The San Elijo Lagoon Conservancy is in support of the proposed project and will be designing and implementing the proposed habitat mitigation.

The subject site is located within the City of Encinitas (San Diego County) on the eastern side of Coast Highway 101 and within and adjacent to the San Elijo Lagoon near the North Cardiff State Beach parking lot ([Exhibit 1](#)). The proposed development is located within the Commission's area of original permit jurisdiction and as such, the standard of review is the Chapter 3 policies of the Coastal Act, with the City of Encinitas's Local Coastal Program used as guidance.

### **B. HAZARDS AND BIOLOGICAL RESOURCES**

The proposed sandbag placement area and the proposed restoration area are located within and adjacent to the San Elijo Lagoon Ecological Reserve. The reserve is a native habitat area and regional park that is managed jointly by the California Department of Fish and Wildlife and the

San Diego County Parks and Recreation Department. The reserve contains diverse habitat including six plant communities: coastal strand, salt marsh, brackish/freshwater marsh, riparian scrub, coastal sage scrub and mixed chaparral. At least five State or Federally-listed threatened or endangered birds make use of the reserve's habitat including the California least tern, the California gnatcatcher, the light-footed clapper rail, the Belding's savannah sparrow and the western snowy plover. As such, any development in close proximity to these resources must be sensitively designed to avoid adverse impacts.

### Hazards

Section 30235 describes the circumstances where filling of wetlands can be permitted when required to protect an existing structure in danger from erosion:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. [...]*

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 provides, in applicable part:

*New development shall do all of the following:*

*(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" methods designed to forestall erosion may also alter natural landforms and natural shoreline processes. Thus, with the exception of new coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The Coastal Act provides these limitations because, as discussed below, shoreline protective structures can have a negative impact on coastal resources.

Under Coastal Act Section 30235, shoreline protective structures may be approved if: (1) there is an existing structure in danger from erosion; (2) shoreline construction that alters natural shoreline processes is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply. Even where a shoreline protective device is determined to be necessary and designed in a manner

protective of shoreline sand supply, the structure will often result in significant adverse impacts to coastal resources.

#### Existing Structure in Danger from Erosion

In this particular case, temporary impacts to open water wetland habitat are proposed in order to protect an existing office building. The placement involves the temporary placement of 35 (4,000+/- lb.) sand bags filled with beach quality sand, backfilled with approximately one cubic yard of 3/8 in. crushed rock, on the western bank of the San Elijo Lagoon inlet adjacent to the northeastern corner of the existing office building. The sand bags will be placed at a 1.7:1 slope and the fill footprint will extend approximately 34 ft. out from the corner of the building and range from 22 to 43 feet wide. Coastal Commission staff performed a technical review of the existing structure and determined that the building foundation is in significant risk of being undermined. The proposed slope stabilization would not only protect the existing structure but also the lagoon from potential impacts from the unstable building.

#### Shoreline Construction Will Not Adversely Impact Natural Shoreline Processes

The development will stabilize the existing channel slope that is currently subject to ongoing erosion. Although not yet formally submitted for Coastal Commission approval, the San Elijo Lagoon Conservancy is developing a lagoon-wide restoration project; a component of this project will address alternatives for a more permanent solution to stabilize the lagoon inlet in the context of the larger restoration efforts. Hence, the proposed sand bag placement is a temporary project to serve as an interim slope stabilization measure and is limited to five years as part of **Special Condition #3**. While the proposed project inherently alters natural shoreline processes because it changes the way in which the shoreline interacts with tidal flows, the placement of sandbags in this particular case will not adversely impact the local shoreline sand supply at the lagoon mouth and adjacent beach due to the following: 1) the project is temporary in nature and limited to five years; 2) the project has been designed to use the minimum number of sandbags necessary to protect the structure; and 3) the existing concrete riprap and construction debris within the project footprint will be removed prior to the placement of sandbags to minimize the development encroachment into the channel. Thus, there is no need to require mitigation for shoreline sand supply. Therefore, the proposed development constitutes shoreline protection of an existing structure in danger from erosion that alters natural shoreline processes and shall be permitted under Section 30235 of the Coastal Act.

#### Wetland Fill

Under Section 30233, an applicant may fill wetlands for a proposed development in very limited circumstances. Section 30233 of the Coastal Act states:

*(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:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 304ll, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities. [...]*

The proposed shoreline protection project does not constitute allowable fill under Section 30233 of the Coastal Act because it does not fall within one of the delineated circumstances in that section. Notwithstanding this inconsistency, Section 30235 of the Coastal Act requires approval of fill if it is associated with a shoreline protection project that meets the criteria in section 30235. In this case, the project meets the criteria in Section 30235 of the Coastal Act. Even though the fill is allowed outside of the enumerated circumstances, under the authority provided under Section 30235 of the Coastal Act, the fill of wetlands is only allowed “*where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.*” Thus, for the fill of wetlands to be approvable, there must be findings made that there is no feasible less environmentally damaging alternative and that the project will provide feasible mitigation measures to minimize adverse environmental effects from the fill.

Alternatives to the project, in this particular case, are limited. The no project alternative is not feasible because it would result in continued failure of the inlet channel bank adjacent to the existing structure resulting from increased erosion and eventually would undermine the stability of the existing office building. On the other hand, a more permanent alternative might prejudice or unduly influence the future design alternatives of the San Elijo Lagoon Conservancy's restoration project that is expected to be submitted to the Commission for review and approval within five years. Because the area to be covered by sandbags will impact open water within a wetland, impacts to sensitive habitat cannot be entirely avoided; however, they must be minimized to the extent feasible.

The applicant has coordinated with the San Elijo Lagoon Conservancy on the design of the proposed stabilization project, including the associated mitigation. Because the San Elijo Lagoon Conservancy provided direction and confirmation on the type and scope of work to be performed by the applicant, the Commission finds that this proposal represents the feasible alternative that lessens the adverse impacts to wetlands because impacts will be minimized to the maximum extent practicable, based on the circumstances.

Once it is determined there are no feasible less environmentally damaging alternatives, mitigation for adverse impacts on the environment must be addressed. Historically, the Commission has required mitigation measures to assure there is no net loss in either acreage or habitat value for any displaced wetlands. The Commission's practice has been to require a 3:1 mitigation ratio for disturbance of riparian habitats and 4:1 mitigation ratio for other wetland impacts. In other words, a mitigation area for the creation of new wetlands must be established that is three to four times the size of the existing riparian/wetland area to be removed as a result of the project. The Commission typically applies mitigation ratios to habitat impacts based on the type of habitat being impacted, the relative permanence of impacts, and the quality of the habitat affected. The Commission is also concerned with the level of protection afforded the mitigation habitat following mitigation.

In this case, although no impacts to native wetland vegetation are expected, the proposed sand bags will result in 796 sq. ft. of fill below the mean high water line and 299 sq. ft. of fill above the mean high water line for a total of 1,095 sq. ft., or 0.025 acres, of impacts to open water within tidal wetlands ([Exhibit 4](#)). The applicant proposes to restore the wetland habitat area impacted by the placement of sandbags and crushed rock backfill that will result over the project's five-year period. The applicant proposes to mitigate the impacts to open water at a ratio of 4:1 for invasive plant removal (0.108 acres) and 1:1 for wetland creation (0.025 acres) ([Exhibit 5](#)). **Special Condition #2** requires the applicant to submit a Final Habitat Mitigation and Monitoring Plan with provisions to mitigate the semi-permanent impacts associated with the five-year sandbag placement.

### Upland Habitat Impacts

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas.*

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

Coastal Act Section 30240 calls for the preservation of environmentally sensitive habitat areas and protection against significant disruption of habitat values. While the placement of sandbags and crushed rock backfill would also impact upland habitat adjacent to an environmentally sensitive habitat area, all of the plant species within the project footprint are non-native and/or invasive. The project, as proposed, is the least environmentally damaging alternative and provides feasible mitigation measures to minimize remaining unavoidable adverse environmental effects to native habitat. The proposed mitigation plan has been reviewed and found acceptable ([Exhibit 5](#)). **Special Condition #2** requires a final Habitat Mitigation and Monitoring Plan to be submitted prior to issuance of the coastal development permit, with implementation of the mitigation work beginning within 90 days of completion of construction.

Restoration at the mitigation site will be achieved by removing invasive exotic species and by revegetating the area with native species which are consistent with the desired native habitat. Monitoring for restoration success is proposed to occur over a five year period and will include qualitative monitoring, based upon visual quadrat sampling analysis, photographic monitoring and mortality counts. If during monitoring, dead native plants or the spread of invasive plants within the restoration area is detected, any dead native plants will be replaced and any invasive plants will be removed. If the mitigation site has not met the performance criteria outlined in the Habitat Mitigation and Monitoring Plan at the termination of the five-year maintenance and monitoring period, the maintenance and monitoring obligations will continue until the performance criteria is met. Early release (prior to the five-year maintenance and monitoring period) may occur at the discretion of the Executive Director of the Commission and other applicable regulatory agencies. Following the five year monitoring period, the San Elijo Lagoon Conservancy has agreed to take over maintenance of the restoration area and will incorporate the area into the surrounding open space preserve and manage it as permanent open space in perpetuity. Due to the fact that the restoration area is already publicly owned and conserved as open space, typical special conditions requiring conservation of open space are not required.

The proposed slope stabilization would not provide perching opportunities for raptors that might affect potential nesting success for California Least Terns and Western Snowy Plovers. Construction for the proposed project is restricted to occur outside of the nesting season for the California Least Tern and Western Snowy Plover as part of **Special Condition #4**, and construction equipment must be kept on the top of the slope and stored away from any areas subject to wave and tidal activity, as required by **Special Condition #5**. The San Elijo Lagoon Conservancy has reviewed the proposal and concurs that the mitigation plan is acceptable because the impacts associated with the sandbag and rock placement will be adequately mitigated.

In summary, the proposed project has been found to be an allowable use within a wetland, minimizes adverse impacts to wetlands, and the mitigation of impacts to open water wetlands has been found acceptable under the Coastal Act. In addition, based on the above considerations, all impacts to native habitats have been minimized and mitigated to the maximum extent feasible. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Section 30235, 30233, and 30240 of the Coastal Act.

## C. 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 30232 of the Coastal Act states:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and clean up facilities and procedures shall be provided for accidental spills that do occur.*

Due to the project's location within and adjacent to open waters in the San Elijo Lagoon, the project has been designed and conditioned to avoid adverse impacts to water quality. **Special Condition #4** requires final plans that include designated access corridors and staging areas, as well as best management practices, to avoid exposing construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. The applicant proposes to use 'beach quality sand' which must be free of contaminants and chemical hazards and not possess characteristics that would adversely affect water quality, including temperature, dissolved oxygen, or pH. **Special Condition #6** requires the sandbags to be filled with beach quality sand that is compatible with the existing sand grain size envelopes (between 0.0742 and

2.0 mm in diameter) from adjacent beaches in case there is any failure of the sandbags or to allow for potential disposal of the sandbags on adjacent beaches in the future. In addition, the applicant proposes that all vehicular use needed for the lagoon slope stabilization project be from the top of slope with no vehicles allowed beyond the top of slope in the sensitive habitat area. The proposed project will result in improvements to water quality through the native habitat restoration. In addition, the project will reduce ongoing slope erosion and avoid any changes to the lagoon channel hydrology. Thus, water quality will not be adversely affected as part of the proposed project.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with policies 30230, 30231, and 30232 of the Coastal Act.

#### **D. VISUAL RESOURCES**

Section 30251 of the Coastal Act states:

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

The proposed development involves the placement of 35, 4,000-pound sandbags and crushed rock backfill in and adjacent to open water habitat within the San Elijo Lagoon Ecological Reserve and also proposes restoration of 0.133 acres of salt marsh habitat, including 0.025 acres of wetland creation and 0.108 acres of removal of invasive *Limonium ramosissimum*. The slope stabilization will not be visible from Coast Highway 101 and only partially visible from the adjacent railroad tracks. Commission staff has reviewed the proposed restoration plan, which was developed in consultation with the San Elijo Lagoon Conservancy, and concurs that it will enhance the visual resources of the area by restoring the native habitat area adjacent to the highway. Replacing invasive vegetation with native vegetation is consistent with Section 30251 of the Coastal Act. The slope stabilization and the restoration project will, therefore, enhance the visual quality of the area by ensuring that the project site is fully restored with native wetland vegetation. Additionally, **Special Condition #1** requires the removal of existing debris and riprap that is currently negatively impacting the visual quality of the lagoon and also requires that sandbags be colored with earth tones to match the surrounding natural character that surrounds the subject site.

The proposed development, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.



## E. PUBLIC ACCESS

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with ... the protection of fragile coastal resources, (2) adequate access exists nearby...*

*(b) For purposes of this section, "new development" does not include:*

*[...]*

*(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure...*

Section 30604(c) of the Coastal Act states:

*(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200)...*

The project area is adjacent to Coast Highway 101 and the only formal access through the area is via the four lane highway and the bicycle lanes on either side. Public access to the beach exists off site, west of the project area, and will not be impacted. The applicant estimates that the proposed slope stabilization project will take approximately two days to complete. However, to ensure that potential adverse impacts to public access and recreation are avoided, **Special Condition #5** requires the applicant to submit final plans indicating the location of access corridors to the construction site and staging area.

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30211, 30212, and 30604(c) of the Coastal Act.

## **F. LOCAL COASTAL PLANNING**

The proposed project is within the City of Encinitas; however it is not part of the City's certified Local Coastal Program (LCP) because it is located in an area of original jurisdiction. Therefore, the Coastal Commission retains permanent permit authority in this area and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed project is consistent with all applicable Chapter 3 policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

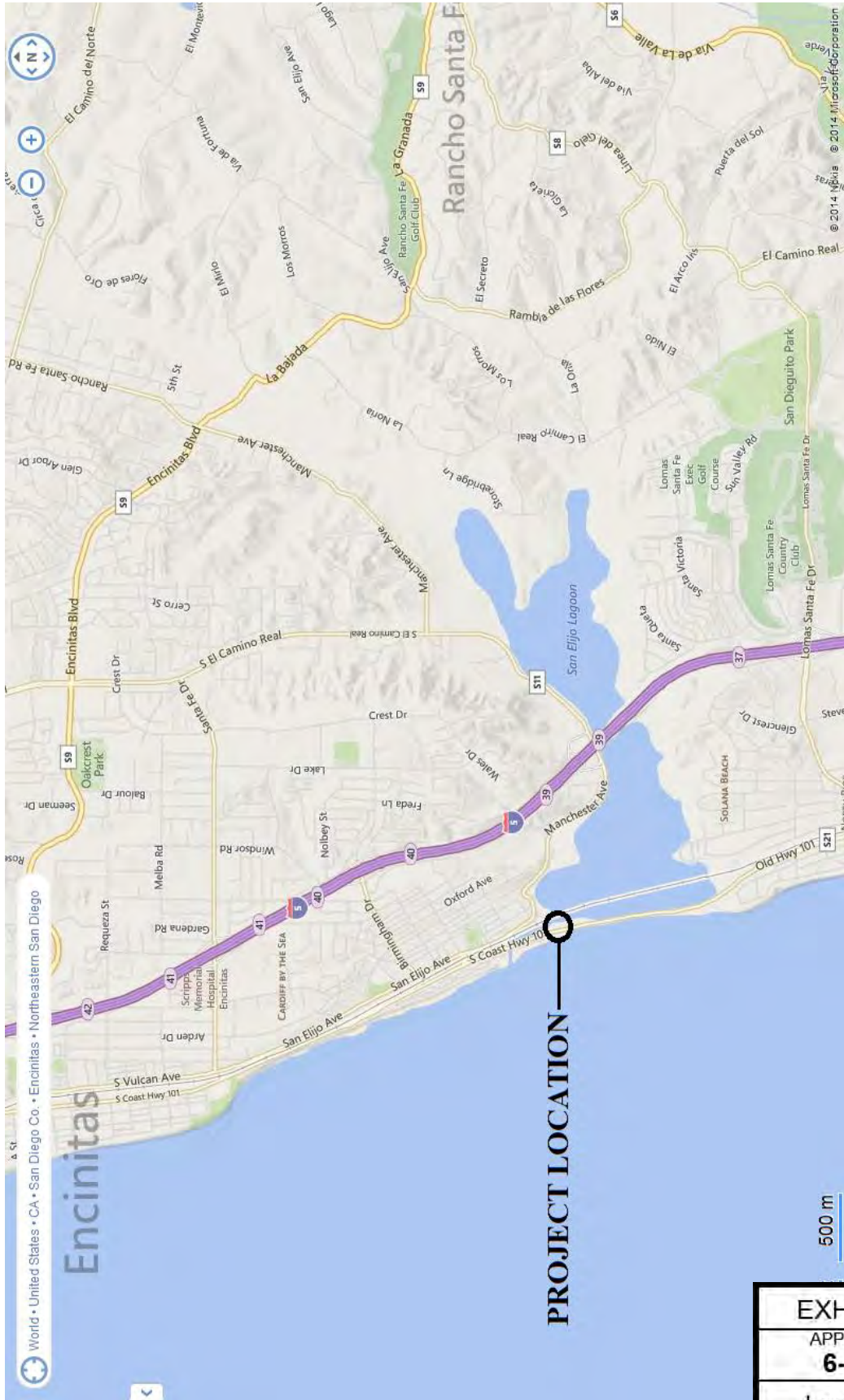
## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 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 is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit No. 6-83-021; City of Encinitas Certified Local Coastal Program



PROJECT LOCATION

EXHIBIT NO. 1

APPLICATION NO.  
**6-14-0516**

Location Map



California Coastal Commission



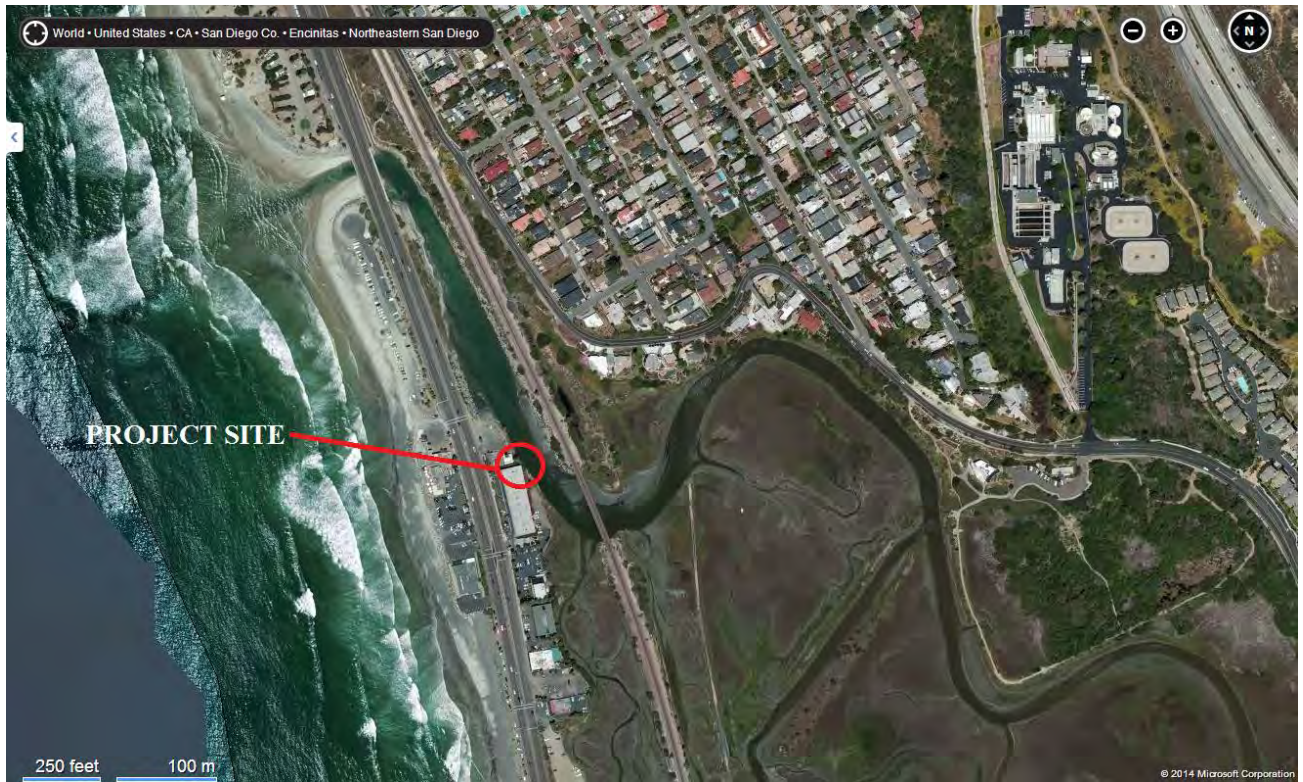


EXHIBIT NO. 2

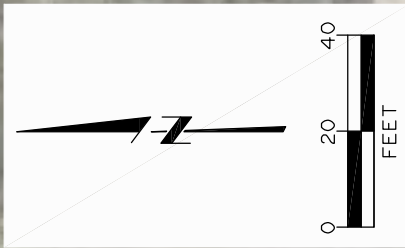
APPLICATION NO.  
**6-14-0516**

Aerial Photo



California Coastal Commission





SAN ELIJO LAGOON

MEAN HIGH HIGH TIDE  
LINE @ 6.97' NAVD88

LIMITS OF SUBMERGED  
GEOBAG REVETMENT

APPROXIMATE  
EL. +1  
(WATER LINE)

MEAN HIGH HIGH TIDE  
LINE @ 6.97' NAVD88

LIMITS OF EXPOSED  
GEOBAG REVETMENT

THE PLASTINO  
BUILDING

50'



**SOURCE:** GOOGLE INC., APRIL 2014  
GOOGLE EARTH SOFTWARE

**TerraCosta**



Consulting Group

TERRACOSTA CONSULTING GROUP  
ENGINEERS AND GEOLOGISTS  
3890 MURPHY CANYON ROAD, SUITE 200  
SAN DIEGO, CA 92123 (858) 573-6900

FIGURE NUMBER  
**3**

PROJECT NAME  
THE PLASTINO BUILDING

PROJECT NUMBER  
2839

## SITE PLAN

EXHIBIT NO. 3

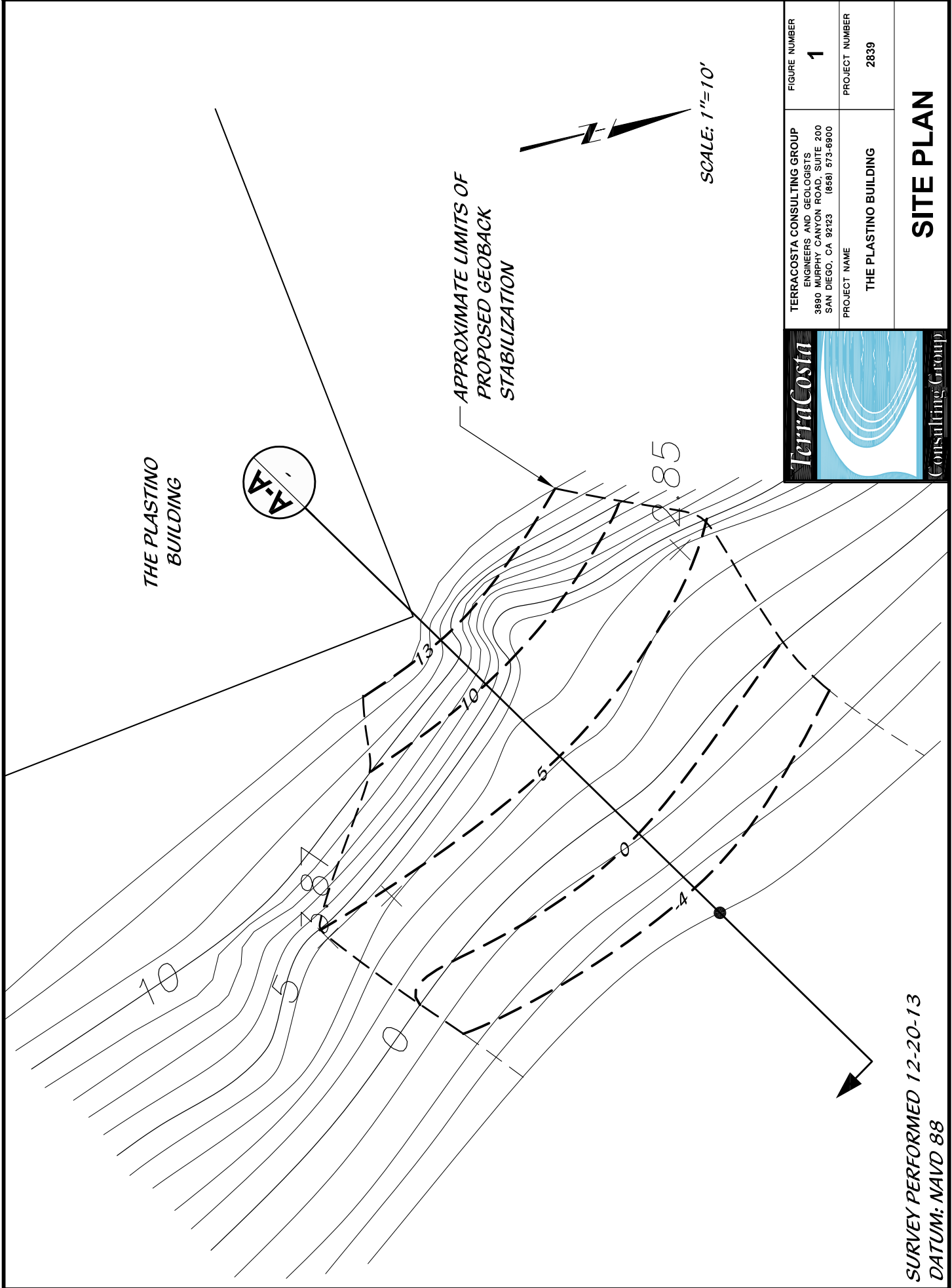
APPLICATION NO.  
**6-14-0516**

Project Plans

Page 1 of 3

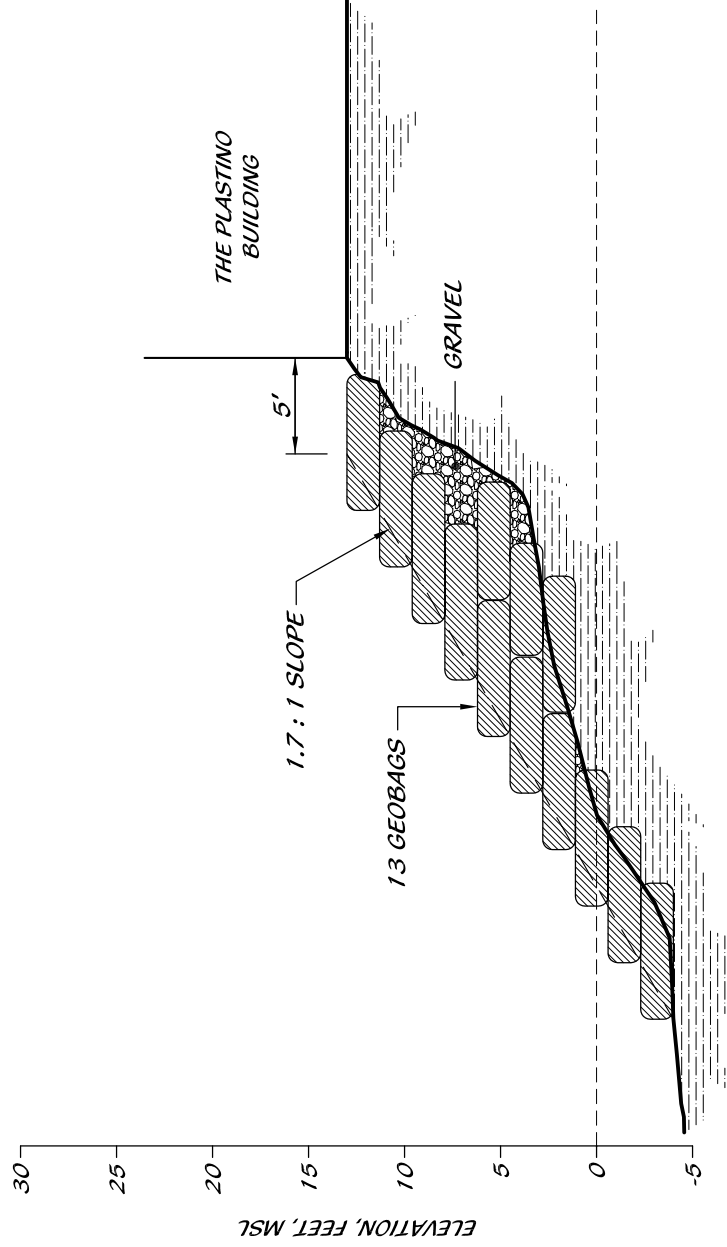


California Coastal Commission



TERRACOSTA CONSULTING GROUP ENGINEERS AND GEOLOGISTS 3890 MURPHY CANYON ROAD, SUITE 200 SAN DIEGO, CA 92123 (858) 573-6900	FIGURE NUMBER <b>1</b>
PROJECT NAME THE PLASTINO BUILDING	PROJECT NUMBER 2839
<b>SITE PLAN</b>	

SURVEY PERFORMED 12-20-13  
DATUM: NAVD 88



### CROSS SECTION A-A'

SCALE: 1"=5' (HORIZ. & VERT.)



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ENGINEERS AND GEOLOGISTS  
3890 MURPHY CANYON ROAD, SUITE 200  
SAN DIEGO, CA 92123 (858) 573-6900

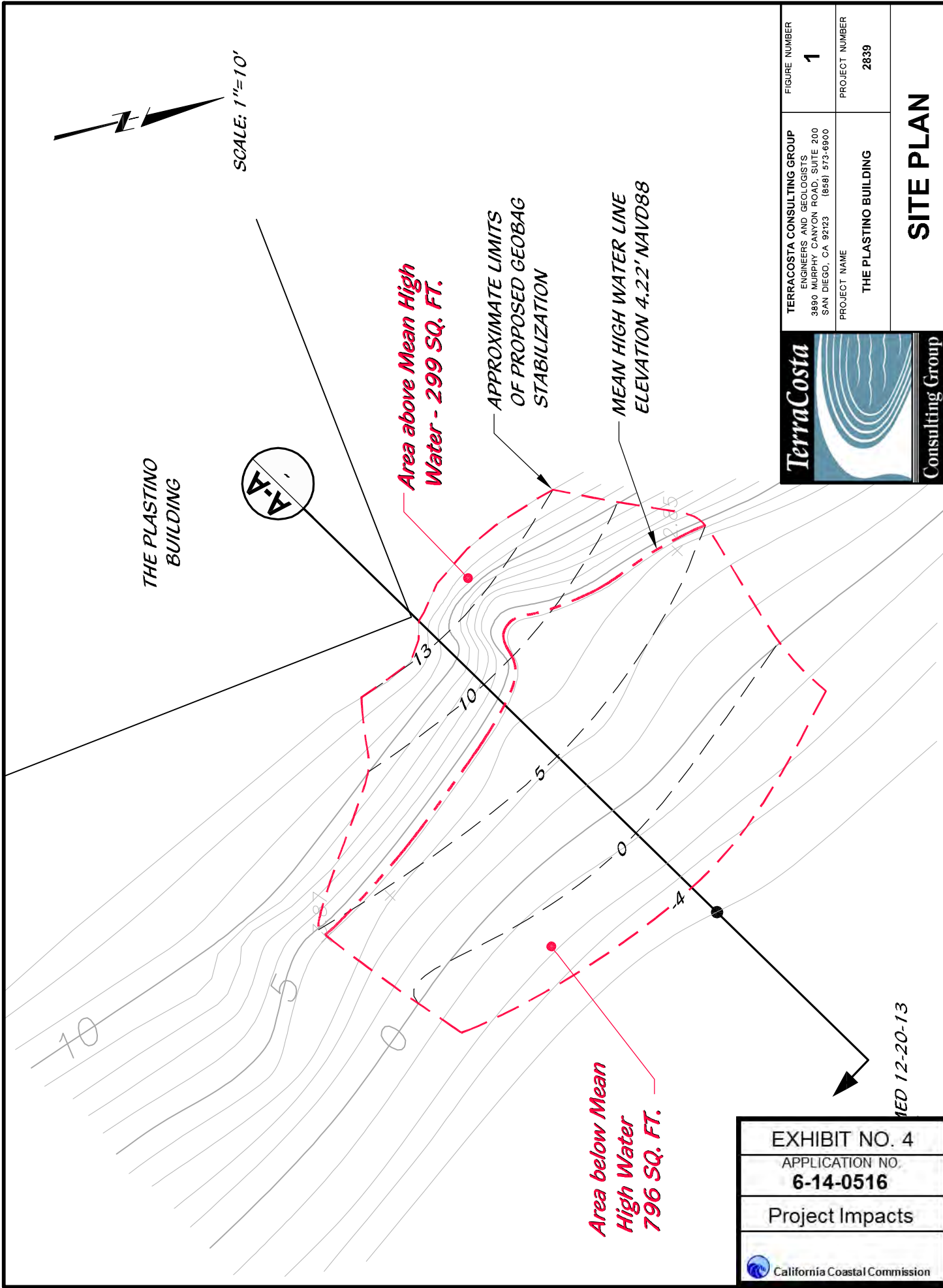
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PROJECT NAME  
THE PLASTINO BUILDING

PROJECT NUMBER  
2839

## CROSS SECTION A-A'

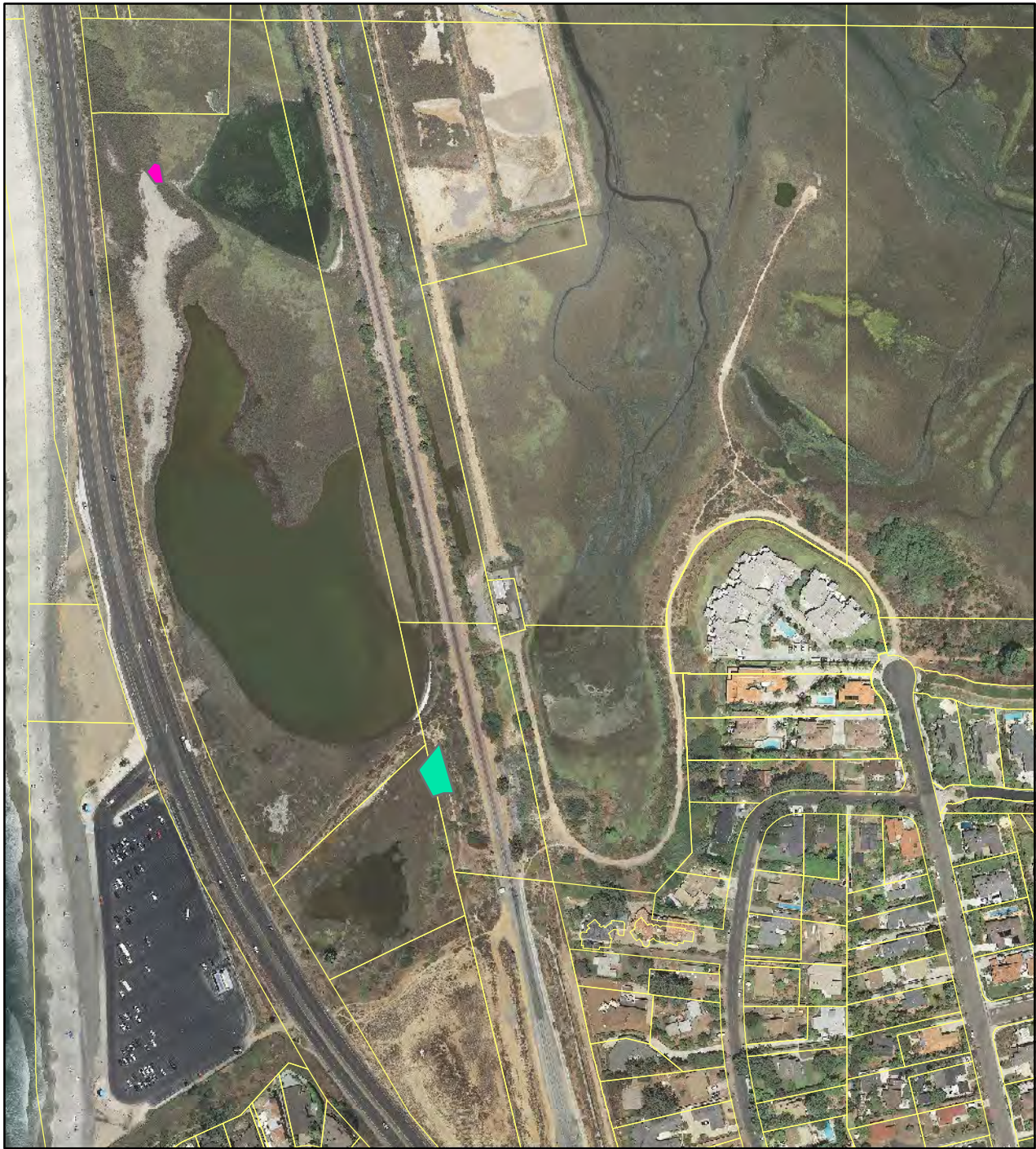




TERRACOSTA CONSULTING GROUP ENGINEERS AND GEOLOGISTS 3890 MURPHY CANYON ROAD, SUITE 200 SAN DIEGO, CA 92123 (858) 573-6900	FIGURE NUMBER <b>1</b>
PROJECT NAME THE PLASTINO BUILDING	PROJECT NUMBER 2839
<b>SITE PLAN</b>	


EXHIBIT NO. 4
APPLICATION NO. <b>6-14-0516</b>
Project Impacts
California Coastal Commission

# Plastino Mitigation Area



400 200 0 400 Feet

 0.108 Acres of *Limonium ramosissimum*

 0.025 Acres of wetland creation

The area consists of salt marsh habitat that is currently being invaded by the invasive plant *Limonium ramosissimum*. This aggressive invasive has the potential to spread to the entire lagoon if left on its own. Control is critical because it's a difficult species to treat and it grows into the mid-marsh habitat.

The area where wetland creation will be conducted is currently dominated by the invasive *Arundo donax*. This plant will be removed and revegetated with saltmarsh plants.

EXHIBIT NO. 5
APPLICATION NO. <b>6-14-0516</b>
Mitigation Map
 California Coastal Commission