

LOCATION OF PROJECT (See instructions.)

Street Address See Cover Letter, at Page One

County San Diego City Carlsbad

Assessor's Parcel Number(s) 223-50-68; 223-050-70; 223-60-31; 223-060-32

Hydrologic Unit, Area, and Subarea 904.51

Provide latitude and longitude for the proposed project.

Latitude 33 04'56" North Longitude 117 13'50" West (Center Reading)

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

DIRECTIONS TO PROJECT SITE (See instructions.)

See Cover Letter Page One, Section II Project Location

OWNERSHIP

Does the applicant own the project site? Yes No

If the project site is not owned by the applicant, provide the name(s), address(es), and phone number(s) for the property owner(s) as well as evidence that the applicant has the necessary approvals to construct the project at this location.

Does the applicant plan on selling all or a portion of the site after receiving the necessary approvals?
 Yes No

Does the applicant plan on selling all or a portion of the site prior to starting construction?
 Yes No

If yes, provide the name(s), address(es), and phone number(s) of the future land owner(s).

Does the applicant plan on transferring the certification after receiving the necessary approvals and/or prior to starting construction?

Yes No

If yes, provide the name(s), address(es), and phone number(s) of the future transferee(s).

AFFECTED WATER BODY(IES) (See instructions.)

List all affected water body(ies).

Four unnamed streambeds that flow into Encinitas Creek. Encinitas Creek flows in to Batiquitos Lagoon and then to the Pacific Ocean

List water velocities and shear for the 2, 5, 10, 50, and 100 storm water elevations for each water body.

Appendix G of the attached Draft EIR contains the Hydrology Study (Diskette).

Are any of the water body(ies) considered isolated per SWANCC or Rapanos? Yes No

NEED FOR PROJECT (See instructions.)

The project purpose is to provide a residential commercial and office center to fulfill the daily shopping needs of existing and future residents to minimize local vehicular trips, provide affordable housing units in compliance with the City code, and confirm to the City's Growth Management Program and the HCP/OSMP.

DESCRIPTION OF ACTIVITY (See instructions.)

The specific activity requiring a federal Clean Water Act Section 404 permit is the filling of approximately 0.41 acres of waters of the United States of which 0.08 acre are jurisdictional wetlands.

Has any portion of the work been initiated? Yes No

If yes, describe the initiated work and explain why it was initiated prior to obtaining a permit; indicate whether any enforcement action has been taken against the project.

AVOIDANCE OF IMPACTS (See instructions.)

See additional pages titled Avoidance of Impacts as this space is not large enough to accommodate the analysis.

MINIMIZATION OF IMPACTS (See instructions.)

See additional pages title Minimization of Impacts as this space is not large enough to accommodate the analysis.

PROTECTION OF WATER QUALITY – CONSTRUCTION (See instructions.)

As indicated in the attached Draft Environmental Impact Report Mitigation Measure WQ-1 at page 5.7-22, the applicant is required to prepare a Storm Water Pollution Prevention Program in compliance with the City of Carlsbad Standard Urban Stormwater Mitigation Plan which will have the following Best Management Practices:

- Silt fence;
- fiber rolls, or gravel bag berms;
- check dams;
- street sweeping;
- storm drain inlet protection;
- stabilized construction entrance/exit,;
- hydroseed, soil binders, or straw mulch;
- stockpile management;
- spill prevention and control, and;
- concrete waste management.

A complete description of all pre-and post water quality measures can be found in Appendix H "Storm Water Management Plans" of the enclosed Draft EIR (diskette).

PROTECTION OF WATER QUALITY – POST-CONSTRUCTION (See instructions.)

Post-construction BMPs are addressed in the Draft EIR Mitigation Measure WQ-2a at page 5-7.23 and are as follows:

inlet basin labeling;
filtering bioretention units;
previous pavement;
vegetated swales; and
detention/infiltration basins.

A complete description of all pre-and post water quality measures can be found in Appendix H "Storm Water Management Plans" of the enclosed Draft EIR (diskette).

PROTECTION OF WATER QUALITY – IMPAIRED WATER BODY(IES). (See instructions.)

Are any of the water body(ies) within the project area, including impacted and preserved water body(ies), list as impaired on the Clean Water Act Section 303(d) list?

Yes No

Are any of the water body(ies) within the project area a tributary to a Clean Water Act Section 303(d) water body(ies)?

Yes No

Are any of the water body(ies) within the project area the subject of an adopted Total Maximum Daily Load (TMDL)?

Yes No

If yes, provide a detailed description of the actions that will be taken to ensure that the project does not contribute additional pollutants to the water body(ies). Include a discussion of the pollutants causing the impairment, potential sources of pollutants, and construction and post-construction BMPs.

STATE OR FEDERALLY THREATENED OR ENDANGERED SPECIES IMPACTED BY THIS PROJECT (See instructions.)

Are any state or federally threatened or endangered species potentially impacted by this project?

Yes No

If yes, provide a list of the potentially impacted species (with common name). California gnatcatcher. Also see cover letter at Page 4, Section VII for a list of all endangered and sensitive species.

FILL AND DREDGE INFORMATION (See instructions.)

Water Body Type	Permanent Impact		Temporary Impact	
	Acres	Linear Feet	Acres	Linear Feet
ACOE Jurisdictional Wetland	0.41	3,037	0	0
Streambed	0.44	3,981	0	0

Lake/Reservoir				
Ocean/Estuary/Bay				
Isolated Water (per SWANCC or Rapanos)				
CDFG Jurisdiction Only				

Provide the latitude and longitude for the proposed impacts.

Latitude 33 94'56" north Longitude 117 13'50" West (Center Reading)

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Does the project involve dredging? Yes No

If yes, provide the required information (See Instructions.)

Encinitas Creek is included on the 2006 California 303(d) List of Impaired Waterbodies. It is listed for phosphorus. Phosphorus is a nutrient; excess phosphorus is a concern because it stimulates the growth of algae. Excessive algal growth, death, and decay can severely deplete oxygen supplies in water, endangering fish and other forms of aquatic life.

According to the Draft EIR the implementation of WQ-1 and WQ-2 (see above) will reduce this potential impact to a level of less than significant (D EIR at Page 5.7-21).

Provide the latitude and longitude of the proposed dredging area.

Latitude _____ Longitude _____ (Center Reading)

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude same as project above

DELINEATION INFORMATION (See instructions.)

Has the delineation been verified by the U.S. Army Corps? Yes No

If yes, provide the date of verification. Pending

Does the wetland delineation include the Arid West Region supplement? Yes No

Provide the name, title, and affiliation of the person delineating the extent of Waters of the U.S. Also provide the date(s) of the wetland delineation.

Glenn Lukos Associates, attached delineation report.

3. OTHER LICENSES/PERMITS/AGREEMENTS
OTHER APPROVALS (See instructions.)

Agency	Contact (Include phone number, email)	License/Permit/Agreement	File Number	Date Applied	Status

Does the project require a Federal Energy Regulatory Commission (FERC) license or amendment to a FERC license?

Yes No

4. COMPENSATORY MITIGATION

Is compensatory mitigation proposed? Yes No

(See instructions for definitions.)

Water body Type/Plant Community Type	Establishment (Acres, Linear Feet)	Restoration (Acres, Linear Feet)	Enhancement (Acres, Linear Feet)	Preservation (Acres, Linear Feet)
North County Bank				

How many acres or linear feet of mitigation area are considered waters of the U.S.?

What is the range of depths to groundwater across the proposed mitigation area?

Is the mitigation site owned by the applicant? Yes No

If no, provide the name(s), address(es), and phone number(s) of the land owner and evidence (e.g., agreements, contracts, etc.) that the applicant has the necessary approvals to implement mitigation at this location. If the land is to be purchased, provide the expected date that the purchase will be complete.

As part of this proposed project, the applicant has purchased 1.26 credits from the North County Habitat Mitigation Bank, which represents over a 3:1 ratio for impacts to waters of the U. S.

Provide the location of the Compensatory Mitigation.

Street Address _____

County _____ City _____

Assessor's Parcel Number(s) _____

Hydrologic Unit, Area, and Subarea _____

Latitude _____ Longitude _____ (Center Reading)

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

Latitude _____ Longitude _____

MITIGATION BANK/IN-LIEU FEE PROGRAM (If proposed, See instructions.)

Mitigation Bank/In-Lieu Fee Name: North County Habitat Mitigation Bank

Name of Mitigation Bank/In-Lieu Fee Operator: Mike McCollum/Barry Jones

Office Address of Operator/Phone Number: _____

Mitigation Bank/In-Lieu Fee Location: Latitude: _____ Longitude: _____

County: San Diego City: Carlsbad

Mitigation Bank/In-Lieu Fee Water Body type(s): _____

Mitigation Area (acres or linear feet) and cost (dollar): _____

5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Document Type/Title: La Costa Town Square Draft EIR

Lead Agency and Contact Information (name, address, phone number):

Name City of Carlsbad/Planning Department Attn: Van Lynch

Address 1635 Faraday Avenue, Carlsbad, CA 92008-7314

Phone Number (760) 602-4613

State Clearinghouse Number: SCH 2003041159

Has the document been certified/approved and/or has a Notice of Exemption been filed?

Yes No

(If yes, include a copy of the certification. If no, provide the expected approval date and document type.)

June 2009

Is this project considered an "emergency" pursuant to CEQA? Yes No

*Note: Section 401 certification will not be granted without a certified CEQA document.

6. ADDITIONAL INFORMATION

PAST/FUTURE IMPACTS AND CUMULATIVE IMPACTS (See instructions.)

The applicant has not had any impacts within the receiving body of water within the last five years and has no future plans for the next five years within the receiving water body.

7. APPLICATION FEE

FILING FEE

A fee deposit of \$640.00 is required to be submitted with this application. Additional fees, based on the extent of impacts, may be due. A fee schedule and calculator can be found at: http://www.waterboards.ca.gov/water_issues/programs/cwa401/

Is check payable to the "State Water Resources Control Board" attached? Yes No

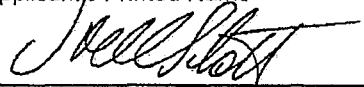
Check No. _____ Amount \$640.00

8. SIGNATURE

I hereby certify under penalty of perjury that the information provided in this application and in any attachments are true and accurate to the best of my knowledge. I further certify that I possess the necessary authority to undertake work described in this application.

Dietmar Schott
Applicant's Printed Name

MANAGER
Title


Applicant's Signature

4/16/09
Date

(This **must** be signed by the applicant, not the authorized agent)

Attach the appropriate fee and any additional documents and submit this application to:

California Regional Water Quality Control Board, San Diego
Attn: 401 Water Quality Certification
9174 Sky Park Court, Suite 100
San Diego, CA 92123

AVOIDANCE ALTERNATIVE

Alternative One: No Action [Exhibit 1]

This Alternative would allow for minimal development around the existing jurisdictional drainages preserving all waters of the U. S. currently on site. This alternative would require three span bridges costing approximately \$4,145,060, the commercial area and the office area would remain the same as the proposed project, and the 64 units of residential development would remain. This alternative would require changes in the internal roadway system thereby causing changes in the City approved land use plan requiring the applicant to resubmit the plan causing additional entitlement expense, and loss of 54 of the 64, or a loss of 16 percent of the residential units. The vegetation loss is reduced by about one-third, while there would be no impacts to jurisdictional waters of the U. S. This project would not be economically feasible due to the increase in costs caused by the construction of the span bridges, combined with the overall decrease in development. This project does not meet the project purpose or the City of Carlsbad's general plan and growth management criteria. Therefore, this alternative was eliminated from further consideration.

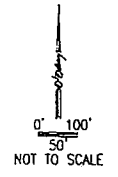
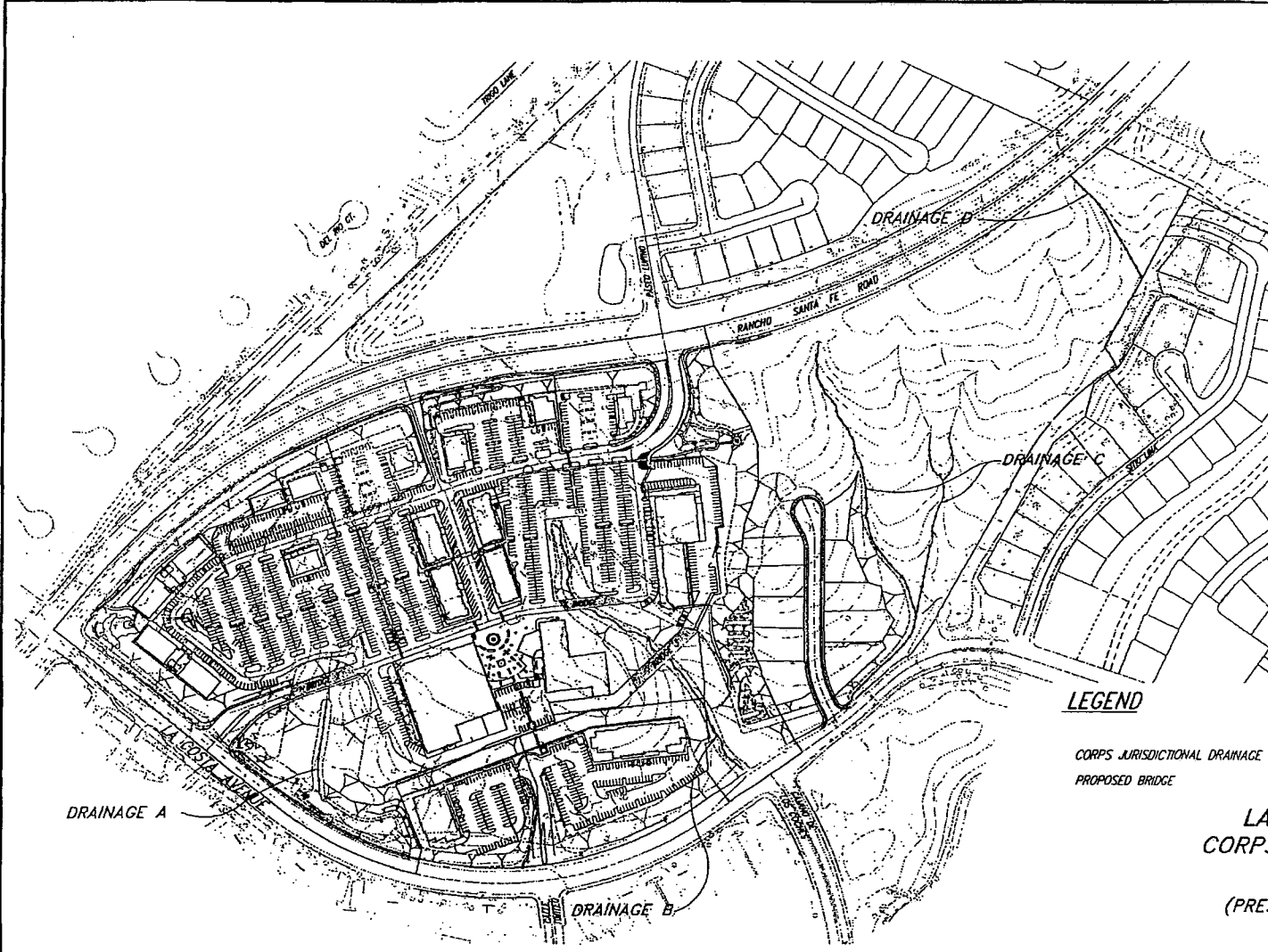
MINIMIZATION ALTERNATIVES

Alternative Two: Preserve Drainage B [Exhibit 2]

This Alternative would Preserve Drainage B. Drainage B is located in the center of the project footprint just south of the man-made water quality basin as depicted in Exhibit 2 and would preserve 0.06 of jurisdictional waters of which 0.02 is jurisdictional wetland. Preservation of Drainage B would require one span bridge at a cost of approximately \$1,009,010, the commercial area is reduced by 37,225 square feet and the office area remains the same as the proposed project, the 64-residential units remain the same as the proposed project, this alternative would require changes in the internal roadway system thereby causing changes in the City approved land use plan requiring the applicant to resubmit the plan causing additional entitlement expense, and a loss of 13 percent of the commercial area. This alternative would have approximately the same vegetation impacts as the proposed project. Additionally, this project would not meet the project purpose as it would increase the cost due to the span bridges and re-submittal of the land use plan, loss of 13 percent of the commercial area due to internal roadway design due to the preservation of Drainage B. Therefore, this project was eliminated from further consideration.

Alternative Three: Preserve Drainage C and its Tributaries [Exhibit 3]

This Alternative would preserve Drainage C and its tributaries as depicted in Exhibit 3 located just east of Drainage B and west of Drainage D. Preservation of Drainage C and its tributaries would preserve 0.18 of waters of the United States of which 0.06 is jurisdictional wetlands. This alternative would require changes in the internal single family roadway system requiring the applicant to resubmit the plans to the City for additional review adding to the cost of entitlements. It and would cause the loss of approximately 45 percent of single family residential units, while retaining the same commercial, and office space. Impacts to existing vegetation would be by less than 25%. Overall this project has a loss of 45 percent of the single family homes and combined with the additional costs of amending the current specific plan would render this alternative as economically infeasible.



USE	PROPOSED PROJECT	ALTERNATIVE 1
RESIDENTIAL	64 UNITS	11 UNITS
COMMERCIAL	284,400 SF	234,128 SF
OFFICE	55,000 SF	55,000 SF

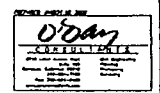
BRIDGES	AREA	COST @ \$230/SF
BRIDGE #1	4,387 SF	\$1,009,010
BRIDGE #2	6,090 SF	\$1,400,700
BRIDGE #3	7,545 SF	\$1,735,350

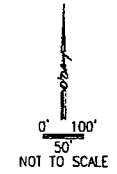
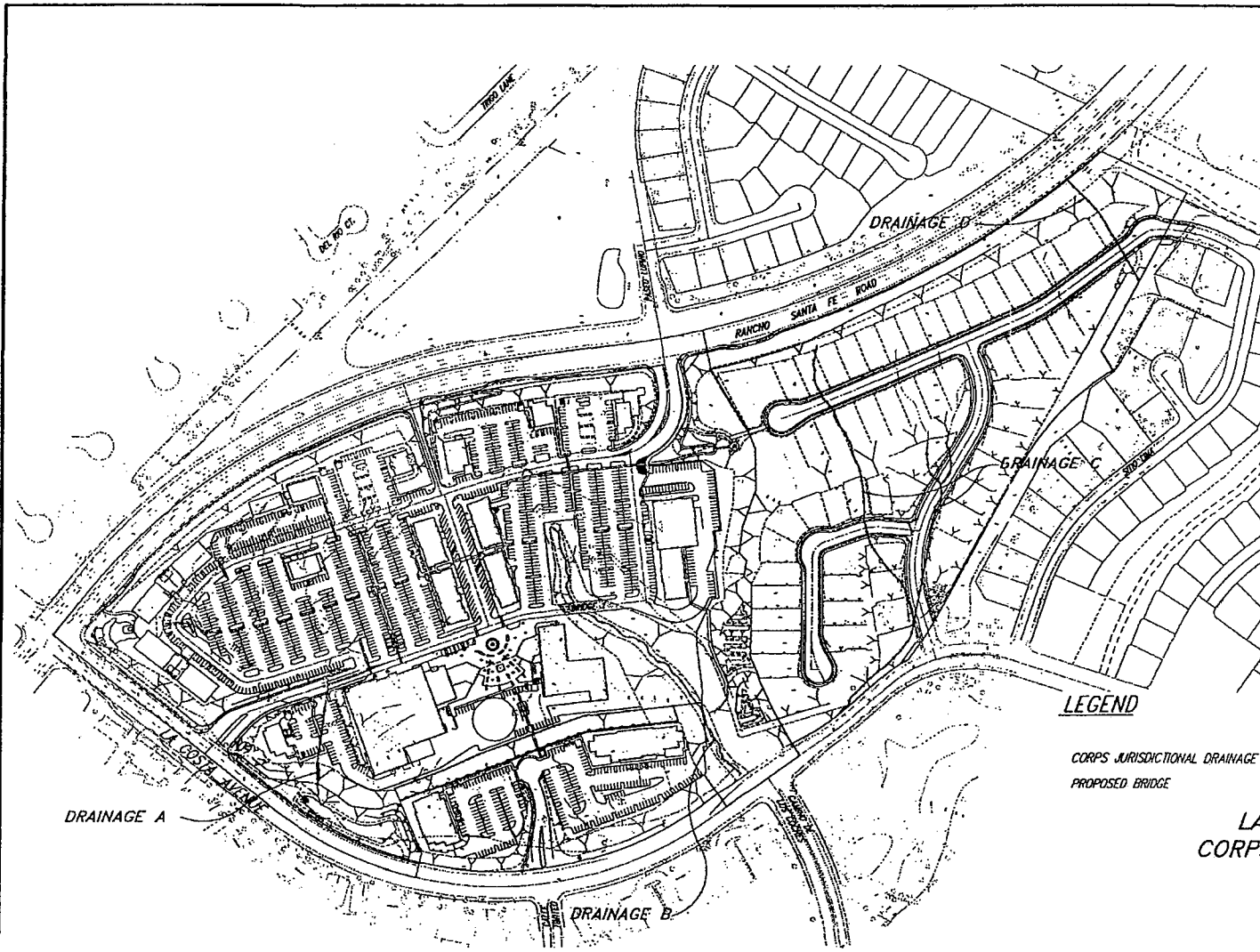
LEGEND

CORPS JURISDICTIONAL DRAINAGE COURSE
 PROPOSED BRIDGE



**LA COSTA TOWN SQUARE
 CORPS JURISDICTIONAL IMPACTS
 ALTERNATIVE No. 1
 (PRESERVE DRAINAGES A, B, C & D)**





USE	PROPOSED PROJECT	ALTERNATIVE 2
RESIDENTIAL	64 UNITS	64 UNITS
COMMERCIAL	284,400 SF	247,175 SF
OFFICE	55,000 SF	55,000 SF

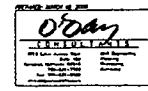
BRIDGES	AREA	COST @ \$230/SF
BRIDGE #1	4,387 SF	\$1,009,010

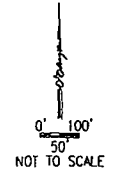
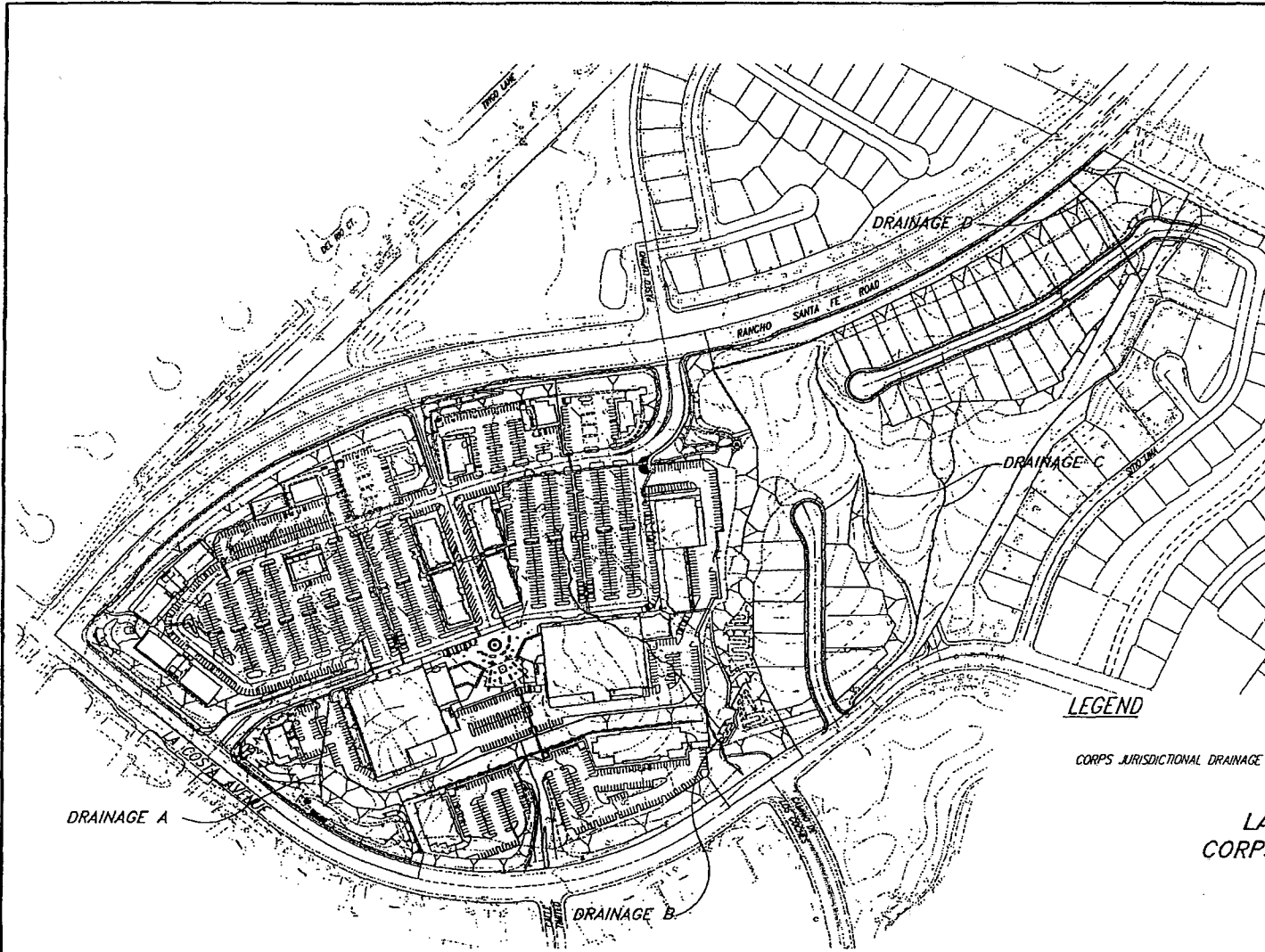
LEGEND

CORPS JURISDICTIONAL DRAINAGE COURSE
 PROPOSED BRIDGE



**LA COSTA TOWN SQUARE
 CORPS JURISDICTIONAL IMPACTS
 ALTERNATIVE No. 2
 (PRESERVE DRAINAGE B)**



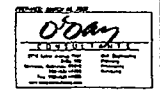


USE	PROPOSED PROJECT	ALTERNATIVE 3
RESIDENTIAL	64 UNITS	35 UNITS
COMMERCIAL	284,400 SF	284,400 SF
OFFICE	55,000 SF	55,000 SF

LEGEND

CORPS JURISDICTIONAL DRAINAGE COURSE

**LA COSTA TOWN SQUARE
CORPS JURISDICTIONAL IMPACTS
ALTERNATIVE No. 3
(PRESERVE DRAINAGE C)**



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EXHIBIT B

EXHIBIT B



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

July 8, 2009

Certified Mail – Return Receipt Requested
Article Number: 7008 1140 0002 8455 9909

Mr. Dietmar Schott
La Costa Town Square, LLC
Aspen San Diego
9799 Balboa Avenue
Suite 270
San Diego, CA 92123-1538

In reply refer to:
738553:mporter

Dear Mr. Schott:

**SUBJECT: DENIAL OF WATER QUALITY CERTIFICATION
LA COSTA TOWN SQUARE PROJECT
APPLICATION 09C-043**

The California Regional Water Quality Control Board, San Diego Region (Regional Board), has completed comprehensive evaluations of your application for Water Quality Certification and Waste Discharge Requirements for the proposed La Costa Town Square Project, 09C-043. The proposed project is the development of 83-acres into a 284,400-ft² shopping center, two office buildings totaling 55,000-ft², 64 single-family detached residential units, and 128 condominium units. The proposed project is located east of and adjacent to the intersection of La Costa Avenue and Rancho Santa Fe Road in the City of Carlsbad.

The construction of these facilities would impact:

- a) 0.41-acre (3,037-linear feet) of waters of the U.S., of which 0.08-acre are wetland waters of the U.S., and
- b) 0.44-acre of waters of the State, of which 0.21-acre are riparian areas and 3,981-linear feet of streambed.

The proposed mitigation consists of the purchases of mitigation credits at the North County Habitat Bank within the Carlsbad Hydrologic Unit (904.51). Mitigation credits were purchased on May 29, 2007 and January 7, 2008. Mitigation acreages deducted from the North County Habitat Bank ledger consists of the following:

- 0.27-acre of Army Corps of Engineers wetland creation/restoration credits,
- 0.41-acre of California Department of Fish and Game wetland creation/restoration credits, and
- 0.015-acre of California Department of Fish and Game riparian enhancement credits.

California Environmental Protection Agency

On June 8 and 9, 2009, and the following week, voice mails, E-mails, and telephone conversations occurred between Regional Board staff and your consultant (Glenn Lukos Associates). The purpose of those communications were to convey the Regional Board's position regarding the inadequacy of the proposed mitigation and lack of avoidance and/or minimization of project impacts to waters of the State. Glenn Lukos Associates confirmed that avoidance and/or minimization could not be practiced and that mitigation had already been purchased one to two years earlier - before applications were submitted to the regulatory and resource agencies for permits.

The project, as proposed, is not consistent with California Water Quality Standards and has failed to demonstrate that water quality standards will be protected over the life of the project. The project would result in significant, long-term, and unmitigated adverse impacts to water quality by permanently impacting (filling) 3,981-linear feet of ephemeral/intermittent streambeds as waters of the State. Therefore your application is being denied for the following reasons:

1. La Costa Town Square, LLC / Aspen San Diego has not provided appropriate mitigation for the permanent impacts. The proposed mitigation is the purchase of credits of a polygon of wetlands (Southern willow scrub). The proposed mitigation is out-of-kind. Appropriate mitigation would be creation of at least 3,981-linear feet of ephemeral/intermittent streambed on site or elsewhere in the Carlsbad watershed. Other developers in the San Diego Region have proposed onsite, ephemeral/intermittent streambed mitigation to receive Water Quality Certifications for their proposed development projects. The Regional Boards are required to protect the chemical, biological, and physical integrity of *all* waters of the State pursuant to the Porter-Cologne Water Quality Control Act and their respective Basin Plans. The proposed out-of-kind mitigation does not protect the chemical, biological, and physical integrity of the site's first order, arid, ephemeral/intermittent streams. Arid ephemeral and intermittent streams have beneficial uses, services (values), and functions that are unique to them and cannot be replicated in a Southern willow scrub wetland (the proposed mitigation). Some examples of beneficial uses, services, and functions of these streams include ground water recharge, first order oxidative biogeochemical transformation and cycling, nutrient export, mineral export, vegetation detritus export, and arid habitat for arid plants and animals.
2. Additionally, the proposed project does not show avoidance or minimization of impacts to waters of the State and U.S. This is contrary to the accepted practice of developers (and others) who typically avoid and minimize the impacts to lessen the need for mitigation. Instead, you have elected to propose mitigation with no proposed avoidance or minimization. This is contrary to operating policies of and the mitigation guidelines published by the U.S. Army Corps of Engineers, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and other agencies including the Regional Boards and State Water Resources Control Board.

The services and functions of arid ephemeral and intermittent streams have been understood in academic and governmental circles. The most recent paper on the value of arid ephemeral and intermittent streams was published in November 2008 by the US EPA. It is titled, The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest, and located on the internet at <http://www.epa.gov/esd/land-sci/pdf/EPHEMERAL%20STREAMS%20REPORT%20Final%20508-Kepner.pdf>.

The Regional Board is issuing this Denial of Certification in accordance with Title 23 California Code of Regulations (CCR) section 3837 as the proposed project will not protect water quality standards over the life of the project. Therefore this matter is not subject to further review by the Regional Board. Appeal of this denial may be made within 30 days of its issuance in accordance with 23 CCR sections 3867 – 3869 to the State Water Resources Control Board.

You may elect to reapply for Clean Water Act section 401 Water Quality Certification and Waste Discharge Requirements with a different project that proposes appropriate impact avoidance/minimization and mitigation.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Mike Porter, Engineering Geologist, at (858) 467-2726 or mporter@waterboards.ca.gov.

Respectfully,


JOHN H. ROBERTUS
Executive Officer

JHR:cc:mgp

Via email: Stateboard401@waterboards.ca.gov
R9-WTR8-Mailbox@epa.gov
tspear@dfg.ca.gov

CC: Ms. Therese O'Rourke
U.S. Army Corps of Engineers, Regulatory Branch
San Diego Field Office
6010 Hidden Valley Rd, Suite 105
Carlsbad, California 92011

Ms. Michelle Mattson
U.S. Army Corps of Engineers, Regulatory Branch
San Diego Field Office
6010 Hidden Valley Rd, Suite 105
Carlsbad, California 92011

Ms. Darlene A. Shelley
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630

Place ID	738553
WDID	9 000001769
Reg. Measure	366364
Party ID	509175

EXHIBIT C

EXHIBIT C

EXHIBIT D

EXHIBIT D



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

Certified Mail – Return Receipt Requested
Article Number: 7008 1140 0002 8455 9688

June 9, 2009

Darlene Shelley
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630

In reply refer to:
366364: mporter

Dear Ms. Shelley:

The California Regional Water Quality Control Board, San Diego Region (Regional Board), received your application for Water Quality Certification for the **La Costa Town Square Project** on April 22, 2009, and it was assigned file number **09C-043**. Further information to clarify, amplify, correct, or otherwise supplement the complete application may be requested following receipt of this notification.

Pursuant to 23 CCR § 3856, your application has been deemed:

- COMPLETE for procedural reasons.

Even though this application is complete, substantial additional information will be required for Certification.

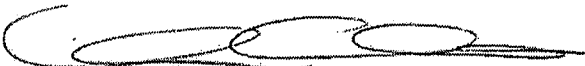
- Total impacts are unclear. Please submit a detailed map, not a representational drawing, showing impacts to RWQCB jurisdictional resources.
 - Please re-submit a table showing the breakdown of impacts by habitat type. The information in the application form is inconsistent with information submitted in the cover letter and the jurisdictional delineation. Specifically, please identify the acreage and linear feet of impacted waters of the U.S. and the acreage and linear feet of impacted waters of the State.
- "Exhibit 4," referenced on page 2 of the cover letter, was not included in the permit package.
- Please submit a list of all permits or approvals being sought as well as contact information for the agency(ies) providing approval.

While a deposit of \$640.00 is required for an application to be considered complete, the entire fee must be paid prior to the Regional Board taking a certification action. **Note: Total application fee is \$26,118.00, \$640.00 was paid, \$25,478.00 is owed. Please see attached Dredge and Fill Calculator.**

The Regional Board will be taking an action on this application within 60 days from May 22, 2009. The action may be in the form of a Certification, denial (with or without prejudice), or request for further information to clarify, amplify, correct, or otherwise supplement the complete application.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Mike Porter at (858) 467-2726 or mporter@waterboards.ca.gov.

Respectfully,



Chiara Clemente
Senior Environmental Scientist
Regional Water Quality Control Board

CC: Dietmar Schott
La Costa Town Square, LLC
8799 Balboa Avenue, Suite 270
San Diego, CA 92123

Tech Staff Info & Use	
File No.	09C-043
WDID	9000001933
Reg. Measure ID	366364
Place ID	738553
Party ID	509175
Person ID	509176

Contents of A Complete Application

23 CCR §3856. Contents of A Complete Application.

A complete application shall include all of the following information items:

- (a) The name, address, and telephone number of:
 - (1) the applicant, and
 - (2) the applicant's agent (if agent is submitting the application)
- (b) A full, technically accurate description, including the purpose and final goal, of the entire activity.
- (c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the :
 - (1) federal agency;
 - (2) type (e.g., individual license, regional general permit, nationwide permit, etc.);
 - (3) license/permit number(s) (e.g., nationwide permit number), if applicable; and
 - (4) file number(s) assigned by the federal agency(ies), if available.
- (d) Complete copies of either:
 - (1) the application(s) for federal license(s)/permit(s) being sought for the activity, or,
 - (2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or,
 - (3) if no federal notifications are issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.

If no application, notification, correspondence or other documentation must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the application shall include a written statement to this effect.

- (e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft documentation is available, a list of all remaining agency regulatory approvals being sought shall be included.

If the federal licenses or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment to a FERC license meeting the requirements of Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.

- (f) A copy of any draft or final CEQA document(s), if available, prepared for the activity. Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action.
- (g) The correct fee deposit, as identified in Section 3833 of this Chapter.
- (h) A complete project description includes:
- (1) Name(s) of any receiving water body(ies) that may receive a discharge.
 - (2) Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).
 - (3) Location of the activity area in latitude and longitude, in township/range, or clearly indicated on a published map of suitable detail, quality, and scale to allow the certifying agency to easily identify the area and water body(ies) receiving any discharge.
 - (4) For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the United States that may be adversely impacted temporarily or permanently by a discharge or by dredging. The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and (for channels, shorelines, riparian corridors, and other linear habitat) linear feet, except that dredging estimates shall be reported in cubic yards.
 - (5) The total estimated quantity (in acres and, where appropriate, linear feet) of waters of the United States, by type (see Subsection (h)(2) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.
 - (6) A description and conceptual plan of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.
 - (7) The total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the United States.
 - (8) A brief list/description, including estimated adverse impacts of any projects implemented by the applicant within the last five years or planned

for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purposes of this item, the water body extends to a named source or stream segment identified in the relevant basin plan.

Adopted from the U.S. Army Corps of Engineers, Los Angeles District's Special Public Notice, MITIGATION GUIDELINES AND MONITORING REQUIREMENTS, dated January 27, 2003.

In expansion of the definition of Contents of A Complete Application (h)(6) above, the plan must include, but not be limited to, the following:

- a. A site map showing the location of the mitigation area in relationship to the impact area.
- b. A map showing existing resources within and adjacent to the mitigation area.
- c. A figure showing the proposed plant layout and plant palette.
- d. A discussion of beneficial uses (as described in the Basin Plan) that will be lost or impacted through project implementation, and how the proposed mitigation will compensate for these losses/impacts.
- e. A discussion of maintenance and monitoring activities and duration.
- f. A conceptual mitigation plan prepared to the Army Corps of Engineers guidelines may be submitted in lieu of the above items for an application to be considered complete. However, for a certification action to be taken, all of the information in items 1-5 must be provided to the Regional Board.

EXHIBIT E

EXHIBIT E

LETTER OF TRANSMITTAL

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 0620-2CEQA

TO: Mike Porter

FROM: Darlene A. Shelley

DATE: June 22, 2009

SUBJECT: La Costa Town Square, Carlsbad, San Diego County, CA

Enclosed is a diskette I said I would send to you regarding the above mentioned project in my e-mail to you of June 19, 2009.

- The diskette contains the following information:
- Final Jurisdictional Delineation Report; contains all tables, impacts, vegetation and required forms;
- Delineation Graphic
- Draft Environmental Assessment/Alternatives Analysis (404(b)(1) Guidelines requirement and associated graphics.

The information contained in these documents should provide you with the information you requested in your letter of June 9, 2009 and you e-mail of June 9, 2009.

Enclosure: One

s:/0620-20.lot.doc

29 Orchard
Telephone: (949) 837-0404

▪ Lake Forest

▪ California 92630-8300
Facsimile: (949) 837-5834

From: Darlene Shelley [mailto:dshelley@wetlandpermitting.com]
Sent: Friday, June 19, 2009 2:11 PM
To: 'Mike Porter'
Subject: FW: La Costa Town Square, application 09C-043

Forgot the Exhibit - Sorry

Darlene A. Shelley
Glenn Lukos Associates
949/837-0404 ext. 24

From: Darlene Shelley [mailto:dshelley@wetlandpermitting.com]
Sent: Friday, June 19, 2009 2:10 PM
To: 'Mike Porter'
Cc: 'maxstewart1@yahoo.com'; 'Pat O'Day'
Subject: RE: La Costa Town Square, application 09C-043

Mike:

The application package contains a short version of the alternatives analysis provided to the Corps. I will forward you a copy of the draft EA/Alternatives Analysis the first of next week. I also noted in your letter that Exhibit 4 is not in your package. I have attached a copy of the delineation map for your file. Additionally, Page 3 of the cover letter provides a breakdown by drainage of impacts to waters of the U.S. The attached exhibit will assist you in identifying each drainage.

As you mentioned in your letter of June 9th, the project does not avoid impacts to waters of the U. S. We did attempt to avoid and if possible minimize, however, the project could not be accomplished in another fashion given the topography of the parcel. Therefore, once you review the table from Page 3 of the cover letter with the attached exhibit you will be able to identify the impacts clearly.

I will also forward you a diskette containing the delineation report and a copy of the amendment that resulted from our site visit with the Corps in December 2008. There was only one minor change, but it did not change the impacts. We are awaiting our preliminary verification from the Corps as they already verified verbally onsite in December 2008.

The delineation report should provide you with all of the drainage breakdown by drainage that you are requesting.

You also ask for agency contacts - Tamara Spear from CDFG has our application package. As to the Corps, our original regulator has transferred to San Francisco and I have been told that Michelle Mattson has replaced her. However Michelle is out on medical leave and I have requested that she be replaced. I will provide you with a contact person as soon as I am informed by Dave

8/7/2009

Castanon.

Thank You and have a pleasant weekend.

Darlene A. Shelley
Glenn Lukos Associates
949/837-0404 ext. 24

From: Mike Porter [mailto:MPorter@waterboards.ca.gov]
Sent: Tuesday, June 09, 2009 11:24 AM
To: dshelley@wetlandpermitting.com
Cc: tspear@dfg.ca.gov; michelle.l.mattson@usace.army.mil; Therese SPL Oroureke; Chiara Clemente
Subject: La Costa Town Square, application 09C-043

June 9, 2009

Hi, Darlene.

I just received the 401 Application package yesterday; however, the package was received by the receptionist on April 22, 2008. The Application is complete and you will shortly receive a letter stating the same. I reviewed the application package and here are concerns that I noticed right away:

Avoidance -

It does not appear that the applicant has attempted to avoid impacts Waters of the U.S. and State. Is that the case?

Minimization -

It does not appear that applicant has attempted to minimize impacts to Waters of the U.S. and State. Is that also the case?

Mitigation -

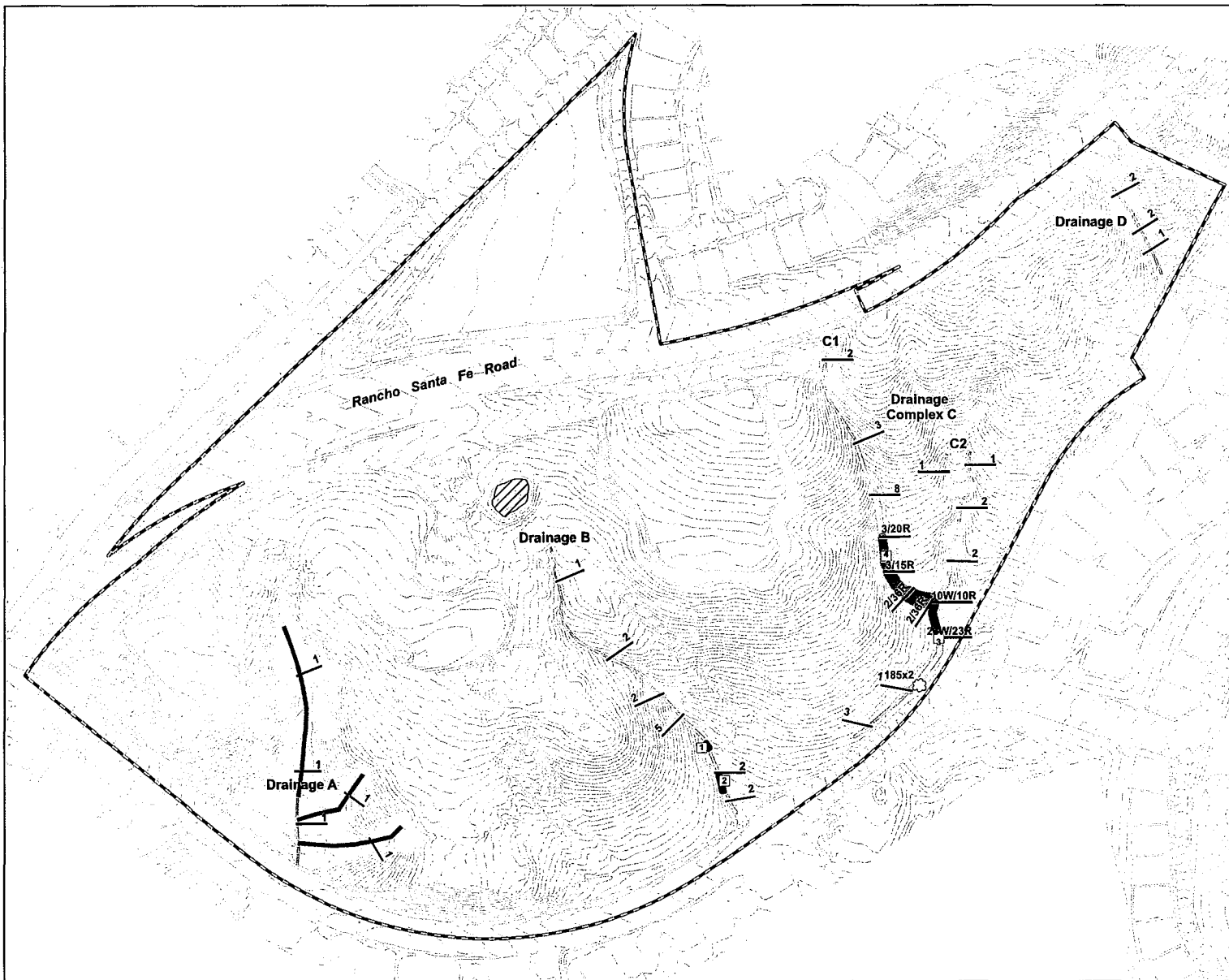
Proposed mitigation is the purchase (1.26-acres) of wetland mitigation credits (0.41-acre was deducted) from the North County Habitat Bank. The impacts are mostly to upland, ephemeral streams (3) totaling 3981-ft. The proposed mitigation is out-of-kind. Under Porter-Cologne, we are charged with protecting the chemical, biologic, and **physical** integrity of Waters of the State. A polygon of Southern willow scrub does not adequately mitigate for the chemical and physical impacts to nearly 3/4 of a mile of three streambeds. Is there any way that these streams can be re-created onsite or nearby? Developers in Region 9 have been re-creating streams onsite for mitigation.

I have not yet looked at the Storm Water Management Plan.

Respectfully,

Mike Porter
Engineering Geologist
Central Watershed Unit
San Diego RWQCB
858-467-2726
mporter@waterboards.ca.gov

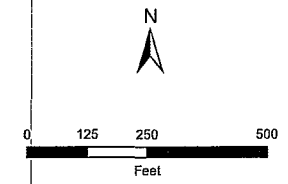
8/7/2009



Legend

- Project Boundary
- CDFG Jurisdiction Only
- Potential Corps Non-RPW and CDFG Jurisdictional Feature*
- CDFG Riparian Habitat
- Areas Exhibiting Wetland Characteristics
- Man Made Water Quality Basin
- CDFG Riparian Habitat
- Data Pit Location

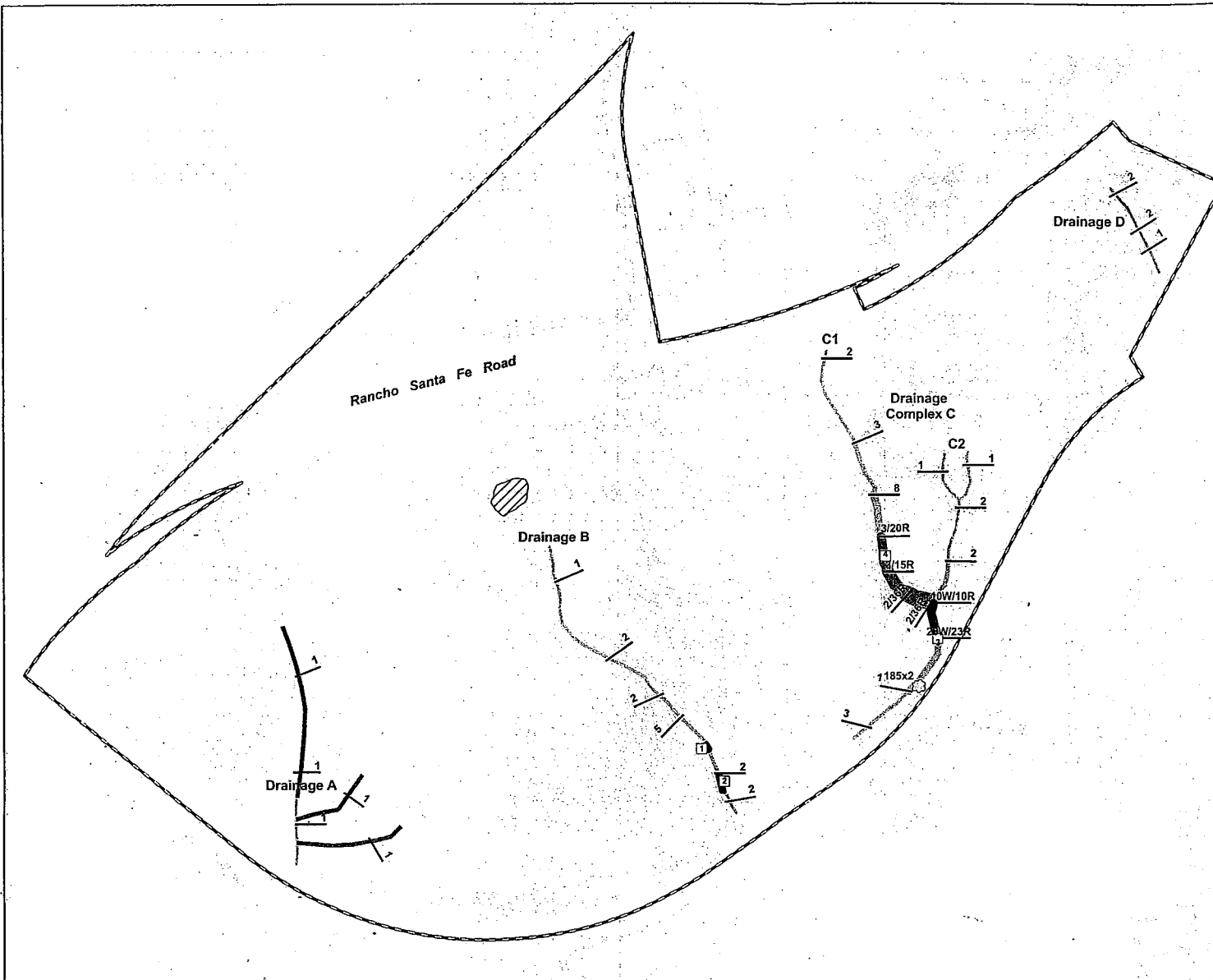
*Potential Corps Jurisdiction Pursuant to United States Supreme Court Decision Rapanos vs. United States and Carabel vs. Army Corps of Engineers



LA COSTA TOWN CENTER
 Jurisdictional Delineation Map

GLENN LUKOS ASSOCIATES

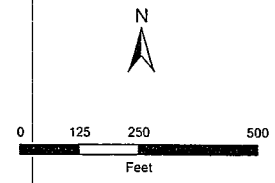
Exhibit 3



Legend

- Project Boundary
- CDFG Jurisdiction Only
- Potential Corps Non-RPW and CDFG Jurisdictional Feature*
- CDFG Riparian Habitat
- Areas Exhibiting Wetland Characteristics
- Man Made Water Quality Basin
- CDFG Riparian Habitat
- Data Pit Location

*Potential Corps Jurisdiction Pursuant to United States Supreme Court Decision *Rapanos vs. United States and Carabell vs. Army Corps of Engineers*



LA COSTA TOWN CENTER
 Jurisdictional Delineation Map
GLENN LUKOS ASSOCIATES
 Exhibit 3