

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY DETERMINATION

Consistency Determination No.	CD-035-09
Staff:	KHH-SF
File Date:	7/10/09
60th Day:	9/8/09
75th Day:	9/23/09
Commission Meeting:	8/13/09

FEDERAL AGENCY: National Oceanic and Atmospheric Administration (NOAA)

PROJECT
LOCATION:

La Jolla Shores Drive and Shellback Way, University of California San Diego (UCSD)/Scripps Institute of Oceanography (SIO) Campus, La Jolla, San Diego (Exhibits 1 & 2)

PROJECT
DESCRIPTION:

Construction and operation of a new five-level, 124,000 square foot building for NOAA's Southwest Fisheries Science Center on a 3.3 acre undeveloped parcel on the USCD/SIO campus (Exhibits 3, 4 & 5). This project includes the removal of 127,000 cubic yards of material and the addition of 202 parking spaces.

SUBSTANTIVE
FILE DOCUMENTS:

See page 19.

Staff Recommendation:

Conditional Concurrence. Motion and conditions are on pages 6-7.

EXECUTIVE SUMMARY

NOAA has submitted a consistency determination for the construction and operation of a new building for the NOAA Southwest Fisheries Science Center (SWFSC) on the UCSD/SIO campus in La Jolla. The Center is currently housed in four buildings located at the edge of a 180 ft. high eroding coastal bluff. The potential for catastrophic failure of the bluff poses an immediate threat to two of the SWFSC buildings. NOAA proposes to relocate the SWFSC to a new 124,000 square foot building on 3.3 acres of currently undeveloped land located across La

Jolla Shores Drive from the existing facility. NOAA investigated several alternatives to the proposed site, including bluff stabilization, redevelopment of the current site, and off-site redevelopment, and relocation, and decided that relocating to the proposed site was the preferred alternative. The new facility would be designed and constructed to obtain Leadership in Energy and Environmental Design (L.E.E.D.) Silver Status, and would contain space for offices, laboratories and support functions, and 202 underground parking stalls.

The project is a predominantly coastal-related research facility, and one whose research will assist the Commission's ability to better protect marine and other coastal resources. The SWFSC conducts marine research in the Pacific Ocean and the Antarctic and is one of the leading research centers studying cetaceans, whales and dolphins. The proposed project is therefore appropriately considered coastal related, which, under Section 30255 of the Coastal Act, means it "should be accommodated within reasonable proximity to the coastal-dependent uses [it] support[s]." Over the past 40 years, the SWFSC has developed an important partnership with UCSD/SIO, sharing staff, faculty, students and research facilities and equipment. Maintaining this collaboration was one of the principal factors driving site selection for the new SWFSC facility.

In reviewing this project, the following areas of potential concern were identified: (1) protection of environmentally sensitive resources, (2) protection of public access, (3) scenic view protection, (4) minimizing energy consumption/vehicle miles traveled and (5) protection of archeological resources. NOAA has addressed each of these issues. First, as proposed by NOAA, habitat impacts (removal of non-gnatcatcher occupied coastal sage scrub) would be mitigated through 2:1 preservation/restoration to removal in accordance with UCSD's Reserve Program (described in its 2004 Long Range Development Plan (LRDP)). The Commission does not find "preservation" of existing protected habitat to be adequate mitigation under Section 30250(a) of the Coastal Act (the CSS on the proposed site is isolated and not occupied by gnatcatchers and thus Commission biologists determined it was not an environmentally sensitive habitat area as described in Section 30107.5 of Coastal Act). To find this project consistent with section 30250(a) of the Coastal Act, NOAA would need to ensure that mitigation efforts involve the significant restoration or enhancement of disturbed habitat. The Commission is therefore conditioning this concurrence to include the following condition, which, if agreed to by NOAA, would allow the proposed project to be found consistent with Section 30250(a) of the Coastal Act.

Condition 1: Habitat Mitigation. NOAA will ensure that the 2:1 (preservation/restoration:removal) mitigation proposed for the removal of 1.71 acres of Diegan coastal sage scrub (CSS) from the project site results in the substantial restoration or enhancement of disturbed CSS habitat within the UCSD Ecological Reserve. No credit shall be earned for preservation of existing reserve areas. NOAA will submit a restoration plan to the Commission's Executive Director for review and concurrence prior to the commencement of these activities.

Second, with respect to traffic concerns, NOAA agreed to limit its construction schedule to weekdays and to develop a series of traffic management plans for the construction and operation phases of the project. With these measures, this project is consistent with the public

access and traffic policies (Sections 30210, 30214, and 30252) of the Coastal Act. Third, the building design NOAA proposes will not encroach on the existing scenic views of the ocean or other scenic coastal areas from La Jolla Shores Drive and is therefore consistent with the view protection policy (Section 30251) of the Coastal Act. Fourth, NOAA plans to minimize energy consumption and vehicle miles traveled, thus lowering greenhouse gas emissions, using a combination of factors. The proposed project is designed to meet L.E.E.D. Silver status, which will incorporate several energy-saving features into the construction and operation of the new facility. NOAA has also committed to minimize emissions of greenhouse gases from vehicles during both the construction and operation phases of the proposed project through the implementation of Transportation Demand Management system and a SmartWay Truck efficiency plan. With the incorporation of these mitigation measures, this project is consistent with the energy minimization policy (Section 30253(d)) of the Coastal Act. Finally, NOAA has made a commitment that if archeological resources are discovered at the proposed site, they will be properly cataloged and recovered, rendering this project consistent with the archaeological protection policy (Section 30244) of the Coastal Act.

I. STAFF SUMMARY

A. Project Description. NOAA proposes the construction and operation of a new 124,000 sq. ft. building for its SWFSC on the UCSD/SIO campus in La Jolla, San Diego. The existing SWFSC is located at the top of a 180 foot bluff, with three of the four buildings within 25 feet of the edge (Exhibit 3). Wave and tidal action forces have eroded the base of the cliff, resulting in the retreat of the cliff face, and bluff top and bluff face erosion have exacerbated the bluff instability. The slope has been substantially weakened by these natural processes, and NOAA states that catastrophic failure is a real and immediate concern. NOAA initially contemplated bluff protection measures to stabilize the bluff; however the Commission staff urged NOAA to consider abandoning rather than armoring the bluff. After exploring other alternatives (see next section), NOAA determined that constructing a new more inland facility was indeed the most viable option for the SWFSC.

The proposed site is on 3.3 acres of undeveloped land across La Jolla Shores Drive from the existing SWFSC location. It is bound to the west, north and east by La Jolla Shores Drive and on the south by the Keck Center for Oceanic Atmospheric Research and a UCSD parking lot (see Exhibit 3). This area is currently designated for academic uses under the UCSD 2004 Long Range Development Plan (LRDP).¹ The project is fully funded for construction and operation from the American Recovery and Reinvestment Act of 2009.

The SWFSC conducts research related to fisheries and marine mammals throughout the Eastern Pacific Ocean and Antarctic waters. The purpose of this research is to aid the protection and management of marine resources. According to NOAA, the existing SWFSC contains “*offices for scientists and management staff, laboratories, seawater aquaria, a library, conference rooms, mechanical and electronic workshops, and extensive computer and data communication facilities.*” Aided by its location on the SIO campus, SWFSC has

¹ The UCSD 2004 LRDP has not been certified by the Commission.

maintained an important collaborative relationship with UCSD/SIO for more than 40 years, including sharing research facilities and equipment, staff, students and faculty.

The University of California (UC) proposes to facilitate the development of the new Science Center by leasing the 3.3-acre proposed project site to NOAA for the construction and operation of the replacement facility. As part of the CEQA documentation, UC identified the following project objectives:

- *Provide for a new SWFSC facility in the USCD SIO neighborhood in proximity to other buildings that share programmatic relationships with SWFSC, thereby promoting the interaction and collaboration among SIO and SWFSC researchers and graduate students*
- *Provide a new facility with access to a seawater infrastructure system that minimizes environmental disturbances*
- *Foster continued collaboration between SIO and SWFSC by providing expansion space for future program growth*
- *Expand on-site parking opportunities for SWFSC in order to minimize parking impacts off-site on City streets and in other UCSD parking lots*

Although not part of this consistency determination, as a part of the leasing agreement between NOAA and UC, NOAA has committed to demolishing two of the four buildings (the seawardmost two buildings) in the existing SWFSC complex. Building demolition and site restoration, also fully funded through the American Recovery and Reinvestment Act of 2009, is expected to occur no earlier than Spring 2012 and no later than 2017. The remaining buildings will be turned over to SIO for possible future occupancy. The demolition phase of the project will be submitted as a separate NOAA consistency determination.

In the first stage of this proposed project, scheduled to start in September 2009, NOAA would clear and grade the new site. The grading would involve removal of 127,000 cu. yds. of material, which would be transported by truck to an offsite location. Once the site is cleared and graded, NOAA proposes to construct a five level 124,000 sq. ft. building partially underground and built into the hillside (Exhibits 4 & 5). Construction would begin in fall 2009. The building is designed to house approximately 300 staff members. All occupants of the current SWFSC would relocate to the new building in 2011, with the exception of the Inter-American Tropical Tuna Commission (IATTC), which will remain at the existing SWFSC until 2017 and then relocate to the new building. The new building would contain space for offices, laboratories and support functions, provide 202 underground parking stalls, and be designed and constructed to meet U.S. Green Building Council in Leadership in Environmental and Energy Design (LEED) Silver status.

The new SWFSC would include aquaria tanks and a 550,000 gallon acoustic calibration test tank (ACTT) to test and calibrate research equipment. After initially filling the tanks, seawater would be supplied to the SWFSC at an average rate of 50 gallons per minute by connecting the aquaria tanks and the ACCT to SIO's existing seawater distribution system. Seawater will be returned to SIO for discharge into the ocean unless it has come into contact with non-native

species or is chemically treated. In this case, seawater will be discharged to the City of San Diego Metropolitan Wastewater Department for treatment.

B. Project History and Alternatives Analysis. Over the past decade NOAA and the Commission staff have had several discussions concerning potential solutions needed to address the numerous geologic hazards contributing to bluff instability beneath and seaward of the existing SWFSC, which include bluff erosion at the toe, blufftop erosion, earthquakes, landsliding, erosion from upland water runoff and infiltration, and sea level rise. NOAA initially contemplated armoring-type bluff protection measures to stabilize the bluff (see Alternative 1 below); however the Commission staff urged NOAA to consider abandoning rather than armoring the bluff. On August 30, 2007, the Commission staff administratively concurred with a NOAA negative determination for the installation of a temporary measure, a dewatering well underneath the existing SWFSC (ND-055-07). In that review, the Commission staff noted that NOAA was aware that the proposed dewatering would not eliminate the risks to the structure from the multiple existing threats; rather, the dewatering was intended as a stopgap measure to guard against water intrusion from water pipe leaks or ruptures that could exacerbate erosion. NOAA continued to consider and pursue non-structural alternatives, and more recently NOAA and UCSD worked together to arrive at the preferred alternative, as well as to identify and analyze several alternatives to the proposed project. A brief analysis of each of the non-preferred alternatives follows:

1. Bluff Stabilization: NOAA explored the possibility of stabilizing the bluff adjacent to the existing SWFSC buildings. The conceptual design included the installation of two shotcrete walls bolted into the bedrock to stabilize the upper and lower bluffs. The upper and lower walls would have been 430 and 540 ft. in length, respectively. The lower bluff would also have been armored with a 540 ft. long rock revetment to protect against wave action. This alternative would have allowed NOAA to continue to use Buildings B and C, but would not have allowed for future expansion.

This alternative would have caused considerable adverse environmental impacts. The walls would have been quite large, and, although designed to minimize visual contrast with the existing bluff, would have negatively impacted the visual aesthetic of the cliff face. In addition, installation of the rock revetment would have modified the physical processes occurring at the base of the bluff and the near coastal environment, affecting both the sand supply and on-going research being conducted by the UC Natural Reserve. As a result, UC, the land owner of the bluff face, was opposed to this alternative and would not lease NOAA the land necessary to implement it. For these reasons, NOAA determined this alternative to be infeasible.

2. On-site redevelopment: NOAA investigated redeveloping the current 2.48-acre site. NOAA studied two options: 1) removing all current buildings and building a new center; and 2) retaining one or two of the current buildings and building a new structure to supplement this space. This alternative would have required all new and existing buildings to be set back from the bluff 40-60 ft. The resulting footprint would have supported a facility with 63,500 – 90,500 sq. ft. of space, with up to 77 parking places. Environmental impacts from construction activities would have been less than the proposed alternative because the excavation phase

would have been significantly smaller in scope. However, because of the setback requirement and the limited land available, NOAA rejected this alternative because it would not have met the square footage and parking space requirements of the SWFSC.

3. On- and near-site redevelopment: NOAA also considered leasing an undeveloped 0.45 acre parcel of land adjacent to the current site to add to the existing site. With the addition of this land, NOAA could have built a 100,000 sq. ft. structure with up to 95 parking spaces. NOAA also deemed this facility as insufficient to meet future SWFSC growth requirements. Environmental impacts would have been slightly less than the proposed action due to reduced excavation. However, the UCSD 2004 LRDP designates the undeveloped parcel for Park use and a meander path, which clearly conflicts with any plans to use the site for a new SWFSC facility. Thus, NOAA rejected this alternative as well.

4. Off-site Development: NOAA considered adding capacity for the SWFSC at two different locations close to the existing site. However, the amount of space available at each site, even when combined with usable space at the existing site, would have been insufficient to meet SWFSC future needs. In addition, splitting operations between two locations would have been inefficient. As a result, NOAA also rejected this alternative.

5. Relocation: NOAA examined several alternatives that involved relocating the SWFSC outside the UCSD/SIO campus. However, NOAA rejected these alternatives because they would have hampered collaboration with SIO.

C. Federal Agency's Consistency Determination. NOAA has determined that the project is consistent to the maximum extent practicable with the California Coastal Management Program.

II. STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following motion:

MOTION: **I move that the Commission conditionally concur with consistency determination CD-035-09 that the project described therein, if modified in accordance with the condition below, is fully consistent, and thus is consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).**

STAFF RECOMMENDATION:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO CONDITIONALLY CONCUR WITH CONSISTENCY DETERMINATION:

The Commission hereby **conditionally concurs** with the consistency determination CD-035-09 by the National Oceanic and Atmospheric Administration on the grounds that, if modified as described in the Commission's conditional concurrence, the project would be consistent with the enforceable policies of the CCMP.

Condition:

1. **Habitat Mitigation:** NOAA will ensure that the 2:1 (preservation/restoration:removal) mitigation proposed for the removal of 1.71 acres of Diegan coastal sage scrub (CSS) from the project site results in the substantial restoration or enhancement of disturbed CSS habitat within the UCSD Ecological Reserve. No credit shall be earned for preservation of existing reserve areas. NOAA will submit a restoration plan to the Commission's Executive Director for review and concurrence prior to the commencement of these activities.

III. Applicable Legal Authorities. Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

A. Conditional Concurrences. 15 CFR § 930.4 provides, in part, that:

(a) Federal agencies, ... agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart...

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and ...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

15 CFR § 930.34 (d) and (e) elaborate, providing that:

(d) ... At the end of the ... [statutory time] period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

B. Consistent to the Maximum Extent Practicable. Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of Federal activities is that the activity must be "consistent to the maximum extent practicable" (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is "*prohibited [by] existing Federal law applicable to the Federal agency's operations*" (15 C.F.R. § 930.32). NOAA did not provide any documentation to support a maximum extent practicable argument in its consistency determination. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

IV. FINDINGS AND DECLARATIONS:

The Commission finds and declares as follows²:

A. Coastal-Related Land Use Priorities.

Coastal dependent development is one of the highest priorities of the Coastal Act. Section 30255 provides that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

The proposed NOAA laboratory is a predominantly coastal- related research facility. Research at the proposed NOAA laboratory will focus on the coastal environment, providing valuable information on fisheries, marine mammals and the ocean environment, and aid in efforts to manage, conserve, and benefit from those resources. The specific focus of the SWFSC is marine biological, economic and oceanographic research on regional resources in the Pacific Ocean and the Antarctic. It operates a world renowned research program on cetaceans, whales and dolphins and maintains an impressive fish stock assessment capability. In addition to its own research activities, the SWFSC oversees laboratories in both Pacific Grove and Santa Cruz. Furthermore, the SWFSC has cultivated a strong collaborative relationship with UCSD/SIO and the proposed project's proximity to UCSD/SIO lends further support for siting the project in this location. Finally, the proposed SWFSC laboratory is consistent with the use designations laid out in the UCSD LRDP. For these reasons, and because the proposed site is within reasonable proximity to the coast, the Commission finds this project to be consistent with the land use priorities outlined in sections 30255 of the Coastal Act.

B. Environmentally Sensitive Resources

Section 30240 of the Coastal Act provides:

(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

²These findings also hereby incorporate by reference Section I of the staff report in which these findings appear, which section is entitled "Staff Summary."

significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250(a) of the Coastal Act provides, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The most significant habitat at this site that will be affected by this project is Diegan coastal sage scrub (CSS), considered a sensitive vegetation community by the U.S. Fish and Wildlife Service and the California Department of Fish and Game (CDFG). The proposed project would involve the removal of 1.7 acres of intact and disturbed Diegan coastal sage scrub, 0.37 acres of eucalyptus woodland, and 0.49 acres of urbanized vegetation. This action will affect approximately 1-1.3% of the existing 133.1 acres of DCSS on the UCSD campus.

The Commission's determination as to whether any particular CSS habitat constitutes ESHA has historically been made on a site-specific basis. For example, in four cases comparable to this situation, the Commission has determined isolated areas of CSS not to be ESHA. In the first case, Appeal No. A-6-ENC-07-54, the Commission found No Substantial Issue raised by an appeal of the City of Encinitas conditional approval to subdivide two lots partially vegetated by CSS into four residential lots. In this finding, the Commission found, based in its staff biologist's advice that a 0.11 acre area of CSS was not considered ESHA because this area "*is a small remnant patch that is isolated and occurs within a disturbed area... In addition, no evidence has been found that the small patches serve as habitat for the California gnatcatcher, an endangered species.*" Although not ESHA, the Commission nevertheless found that "*it is important to assure impacts to this habitat are minimized.*" Thus, the Commission agreed with the City's required mitigation for this impact.

The second case consisted of a CDP for a City of San Diego, 1.8 mile segment of the Bayshore Bikeway between 13th St. and Main St. in San Diego (CDP No. 6-07-79). In its findings, the Commission agreed with its staff biologist that a small area of CSS did not qualify as ESHA, thereby enabling the Commission to find the bikeway consistent with Section 30240, once additional conditions (described below) were added. The Commission found:

The project would temporarily impact 0.01 acres and permanently impact 1.35 acres of disturbed coastal sage scrub. However, the Commission's ecologists have reviewed the project and determined that while this habitat is valuable, in this particular case, these impacts would not constitute an impact to environmentally sensitive habitat (ESHA). The coastal sage scrub community along the old railroad exists because a 10 to 15' artificial berm was built around 1888 within a wetland to support railroad tracks. An assortment of upland plants, described in the EIR as disturbed coastal sage scrub, colonized the raised edges of the artificial berm and now this area is dominated by

cholla cactus interspersed with several other species including goldenbush, California everlasting, broom baccaris and prickly pear. In addition, oddly, mulefat, riparian species, is also found in this community. Stands of pure cholla cactus also characterize this disturbed coastal sage scrub habitat. Nevertheless, while not rising to the level of ESHA, the native vegetation still maintains some biological productivity and support for the adjacent wildlife refuge, including the provision of refuge habitat for light footed clapper rails during high tide and flooding, and should not be disrupted without adequate mitigation.

The City had proposed to mitigate the loss of CSS either through “*on-site creation of new CSS at a 1:1 creation/loss ratio, or through contribution to a CSS habitat acquisition fund, or that some combination of creation and credit could occur.*” The Commission found the City’s proposed mitigation plan unacceptable because: 1) off-site mitigation through an acquisition fund was unacceptable where “*sufficient and appropriate*” area for on-site mitigation was available, and 2) the City’s habitat creation plan, which consisted of planting cholla cactus, could not be considered creation of a functioning CSS habitat. Although the Commission typically requires habitat creation, not restoration, as mitigation for impacts to existing sensitive vegetation, due to the “*sensitive nature of the project area, and the numerous sensitive species currently present on this site, restoration of a native plant community on-site would have more biological significance than trying to create (or purchase) native habitat elsewhere.*” Thus, the Commission included a special condition in the permit that required:

“...that the applicant mitigate and monitor for the permanent loss of 1.35 acres of CSS habitat by restoring existing ruderal areas to CSS at a 2:1 restoration/disturbance ratio. As conditioned, 2.7 acres of existing ruderal area would be restored to CSS by removing exotic vegetation and planting a high-quality mix of CSS species either on the sides of the berms on which the bike path is located or within the wildlife refuge. The mitigation ratio reflects the fact that the required mitigation is restoration, not creation.”

With the inclusion of this condition, the Commission found the impacts to the CSS community to be adequately mitigated and the project consistent with the resource protection policies of the Coastal Act. It should be noted that, in that case, the on-site mitigation requirement made more sense biologically, as it was contiguous with existing CSS habitat.

The third case involves the construction and operation of a research building on the UCSD campus (CDP 6-08-096). As with the subject project, the proposed building site was a vacant lot that included a patch of CSS. In that case, the Commission found that the area of CSS:

...was considered too small (0.09 acres) and isolated from other areas of Diegan coastal sage scrub (off-site) to be considered ESHA. The Diegan coastal sage scrub on site is highly disturbed and surrounded by non-native, invasive vegetation. There were no sensitive species found to have colonized the site.

In the last case, the Commission approved an amendment to a permit for the City of Solana Beach (No. 6-03-54-A1) to extend the northbound (NB) auxiliary lane and realign the Via de la

Valle NB diamond on-ramp to accommodate the extension of the NB auxiliary lane as part of improvements to the Lomas Santa Fe/Interstate 5 (I-5) Interchange. The amendment and the original project required the removal of 2.16 acres (2.05 from the original project, 0.11 from the amendment) of CSS to address significant traffic concerns at the interchange and surrounding roadways. The Commission found that because the CSS habitat was “*isolated, highly degraded and not occupied by gnatcatchers or other sensitive species,*” the habitat was not considered ESHA and the Commission accepted the CSS mitigation proposed by Caltrans (revegetation of the entire 2.2 acre cut slope with CSS). The Commission did require submittal of the final mitigation plan to the Executive Director for review and approval.

Similar to the projects discussed above, the Commission’s biological staff reviewed NOAA’s proposal and determined that the CSS habitat on the proposed site should not be considered ESHA. Biological surveys indicate that most of the CSS within the proposed site is degraded, with only a few intact patches. The proposed site is in an urbanized area. The CSS habitat is isolated from other areas of intact habitat and is not part of a wildlife movement corridor. In addition, although CSS is often habitat for the coastal California gnatcatcher, a threatened species under the Federal Endangered Species Act, detailed biological surveys, conducted in 2006 and 2008, failed to find evidence of California gnatcatchers at this site. For these reasons, the Commission’s staff biologist concluded that this area of CSS should not be considered ESHA.

Although the CSS on the proposed site is not considered ESHA, it still retains biological value, and the Commission has generally sought to ensure that impacts to this sort of habitat would be mitigated (see Section 30250(a) of the Coastal Act). To this end, NOAA proposes to preserve/restore CSS vegetation in a 2:1 ratio at Skeleton Canyon, part of the “Ecological Reserve” in the UCSD Park identified in the UCSD 2004 Long Range Development Plan (LRDP). Because 1.71 acres of vegetation would be removed, NOAA would be responsible for preserving/restoring 3.42 acres. As discussed in its consistency determination, NOAA proposes to facilitate this mitigation through “*a one-time proportional payment to UCSD to fund maintenance and monitoring activities associated with the UCSD mitigation bank.*”

However, the Commission does not find “maintenance and monitoring” to constitute adequate mitigation for the removal of sensitive CSS habitat. Although not ESHA, this habitat still retains biological value, and NOAA must appropriately compensate for its loss by ensuring that the net regional extent of CSS habitat is increased and improved. This approach is consistent with past Commission findings and actions and with the City of San Diego certified LCP, which, although not strictly applicable to the UCSD/SIO campus, had formally been incorporated into the California Coastal Management Program and thus provides guidance for Commission interpretation and application of Chapter 3 policies in this area. The LCP requires mitigation for all CSS habitat, which is classified as a Tier II upland habitat (the uncertified UCSD 2004 LRDP also requires mitigation for all CSS habitat). Further, the Biology Guidelines included as part of the LCP state that “Mitigation will consist of actions that either compensate for impacts by replacing or providing substitute habitats, or rectify the impact by restoring the affected habitats.” NOAA’s proposed mitigation consists of funds paid to UCSD for the upkeep of existing preserved habitat. This mitigation does not replace or provide new habitat or

significantly restore affected habitats. Thus, it is clear that according to the City of San Diego LCP, “maintenance and monitoring” of existing protected habitat is not sufficient mitigation for the removal of CSS habitat.

The Commission agrees with this determination and is therefore unable to find the project as proposed consistent with Section 30250(a) of the Coastal Act. In order to be consistent with Section 30250(a) of the Coastal Act and the certified San Diego LCP, NOAA needs to amend its mitigation plan to ensure that mitigation measures for the proposed project result in the substantial restoration or enhancement of disturbed CSS habitat.

In addition to CSS impacts, NOAA also considered impacts to wildlife from construction and operation of the new facility. As discussed above, because CSS can provide habitat for the coastal California gnatcatcher, NOAA will conduct additional surveys at the site prior to site construction. If gnatcatchers are discovered on the site, NOAA would delay removal of vegetation until after the February 1 through August 31 breeding season. In addition, if gnatcatchers are observed not on the site, but within 500 feet of the site, NOAA would limit construction noise so as not to exceed 60 A-weighted decibels per hour during the breeding season. In addition to gnatcatchers, raptors are a sensitive species that could be affected by this project. Raptors, protected under the Migratory Bird Treaty Act and California Fish and Game Code Section 3503.5, are known to nest in tall eucalyptus trees like those found at the proposed site. To prevent disturbance to nesting raptors, a biologist will survey trees prior to construction and will have the authority to require the contractor to postpone activities if an active nest is found.

Conclusion

The Commission finds the project consistent with Sections 30240 of the Coastal Act, because the project site itself does not contain ESHA. The Commission also finds that if modified to include the following condition, the proposed project would also be consistent with Section 30250(a) of the Coastal Act and the certified San Diego LCP, and that, as conditioned, it would include sufficient mitigation measures to assure that the net regional extent of CSS habitat would be increased and improved, and that wildlife habitat resources would be protected.

Condition 1: Habitat Mitigation. NOAA will ensure that the 2:1 (preservation/restoration:removal) mitigation proposed for the removal of 1.71 acres of Diegan coastal sage scrub (CSS) from the project site results in the substantial restoration or enhancement of disturbed CSS habitat within the UCSD Ecological Reserve. No credit shall be earned for preservation of existing reserve areas. NOAA will submit a restoration plan to the Commission’s Executive Director for review and concurrence prior to the commencement of these activities.

C. Public Access and Recreation.

The Coastal Act provides for the preservation and maximization of public access and recreation, as follows:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Section 30252 provides:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The proposed project is expected to increase traffic on La Jolla Shores Drive during both construction and operation of the facility. Because La Jolla Shores Drive is a major coastal access route, increased traffic congestion on this road has the potential to raise public access concerns. The more significant traffic issues are those related to construction, as the operation of the project would not significantly increase traffic demand compared to NOAA's current use of the existing SWFSC. The most intense traffic impacts will occur during site preparation. Grading of the site is expected to take about five months and will require the removal of approximately 127,000 cubic yards of soil. If tandem trucks are used, this will generate about 12,700 round trips at a rate of 928 average daily trips (ADT). Building construction activities, expected to last a little over 2 years, will generate between 296-360 ADT. In addition, construction workers will be ferried in vans or small shuttle buses between the staging areas and the construction site, generating 10-20 round trips per day.

Operation of the new facility will also introduce new traffic flows, generating an estimated 992 gross ADT. This figure was generated by LLG, Inc., a company hired by NOAA to perform traffic analyses, based on a worst-case scenario where all vehicle trips are considered new trips. However, if this figure is offset by the loss of vehicle trips expected when the two seaward-most buildings are demolished, the net trip generation is 672 ADT. NOAA used these figures in a traffic analysis in the vicinity of the proposed site that considered the current and future effect of this project as well as other planned development in the area. The net trip ADT was applied to roadways out of the project's immediate area, and gross trip ADT was applied to roadways in the local project vicinity. Traffic counts were conducted during the peak AM and PM hours. Summer time counts were approximately 10% higher than the academic year counts, and thus, the summer counts were used in the traffic analysis. This analysis found that all nearby road segments and intersections will operate at a Level of Service (LOS) of D or better, which is considered acceptable by the City of San Diego's *Significance in Determination Thresholds* report from January of 2007. In most scenarios, including the proposed project in an analysis of future traffic conditions does not alter the current or projected 2030 LOS, and thus, NOAA determined that project-related traffic impacts would be insignificant. The only significant road segment of concern is La Jolla Shores Drive between North Torrey Pines Rd. and La Jolla Parkway, which is projected to operate at LOS E or F with or without the addition of project traffic. On this stretch of road, the proposed project would increase the change in volume to capacity ratio on this segment by 0.8-0.9%. NOAA compared this increase to the City of San Diego significance criteria (where the threshold for significance is 2%) and determined that the impact would be insignificant. The Commission finds that this level of increase, combined with the mitigation discussed below, would not significantly adversely affect public access and recreation. In addition, the Commission notes that, as discussed in Section III.A. above, the project is a high priority use, and under Section 30254 of the Coastal Act, which addresses reserving capacity where public services are limited:

Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

NOAA has included mitigation measures to further minimize impacts to public access and recreation. NOAA has agreed to prohibit truck trips on weekends and holidays, the period of peak recreational use. In addition, the site excavation contractor will prepare and submit a traffic control plan to the City of San Diego Traffic Control Permit Center in conjunction with its application for a haul permit. NOAA states:

The approved haul permit will include a traffic control plan which would address lane and/or road closures, emergency access and egress, efficient traffic circulation, and use of flaggers to control traffic and avoid conflicts for both vehicles and pedestrians. The plan would include recommendations, such as signage, detours, and temporary traffic controls. The plan would prohibit construction vehicles from using Downwind

Way or the north-south oriented section of Shellback Way (which passes in front of the Keck Center, Nierenberg Hall, Speiss Hall, and associated service yards.

Further, NOAA will address traffic concerns related to operation of the new facility through the development of a Transportation Demand Management System (TDMS). The purpose of the TDMS is to identify alternatives to single-occupancy vehicle travel, such as public transit, vanpools and bicycling, and assist SWFSC staff in implementing those alternatives. NOAA has agreed to submit the traffic control plan and the TDMS plan to the Commission's Executive Director for review and approval prior to the commencement of construction and occupancy, respectively.

This project will also have beneficial impacts on coastal access and recreation. The new SWFSC will have 172 additional parking spaces, reducing the amount of overflow parking on local streets, and thus increasing parking availability for coastal visitors. Additionally, the planned demolition of Buildings B and C of the existing SWFSC, although not included in this consistency determination, will remove a possible hazard to the beach below the existing site. The proposed project will not affect existing coastal access points.

Based on the commitments made by NOAA, including a commitment that the traffic control/reduction plans will be submitted to the Commission's Executive Director for review and approval, the Commission concludes that the proposed project is consistent with Sections 30210, 30214, 30252, and 30254 of the Coastal Act.

D. Scenic Public View Protection.

Section 30251 of the Coastal Act provides for the protection of scenic public views as follows:

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.

La Jolla Shores Drive is designated as a state scenic route that provides panoramic views of the coast. This stretch of scenic roadway is laid out roughly in a horseshoe shape, bounding the east, north, and west sides of the proposed site. An existing berm adjacent to the portion of La Jolla Shores Dr. bounds the north and northeast sides of the site that blocks some views of the coast from the northern and north-eastern sections of the site. Views from the eastern, north-western and western portions of the road are unobstructed.

The building proposed by NOAA is designed to maintain ocean views and function as a positive addition to the La Jolla Shores Dr. viewshed (see Exhibit 6 for "before" and "after"

views from La Jolla Shores Drive). NOAA states that “the building would be constructed into the hillside and the roof would be lower in elevation than La Jolla Shores Dr. as it curves around the northern and eastern borders of the preferred site.” To accomplish this lowering, NOAA proposes fairly extensive grading (approximately 127,000 cu. yds.). While Section 30251 requires minimization of natural landform alteration as a means to reduce adverse visual effects, the Commission agrees with NOAA that because the grading would result in a building height with much less public view blockage than if the grading were not included, on an overall basis, the proposed design would minimize view impacts and be most compatible with the character of the surrounding area. In addition, although not included in the subject consistency determination, the ultimate removal of the two seawardmost existing buildings will further open up and improve scenic public views to and from the shoreline.

The landscaping plan proposed by NOAA (see Exhibit 7) also raises concern to the extent landscaping itself may block ocean views. The originally proposed plan included planting several Torrey pines on the south-eastern portion of the lot. Once these trees mature, they would likely block the view that the building design purports to protect. In light of these concerns, NOAA submitted a revised landscaping plan (see Exhibit 8) that substantially decreases the number of Torrey pines planned for the south-eastern portion of the site to ensure ocean views are maintained. The revised plan includes planting three trees in this portion of the lot that NOAA recommends to frame the view from the public right of way.

NOAA also designed the building to be compatible with the surrounding landscape. The building would be constructed of light-colored stone and glass and the roof would be planted with vegetation to help it blend into the hillside. NOAA would also comply with all policies in the UCSD 2004 LRDP regarding exterior design, exterior lighting, and landscaping. In conclusion, because the new SWFSC building is designed to protect ocean views and be compatible with the character of the surrounding area, the Commission finds that this project is consistent with the scenic public view protection policy (Section 30251) of the Coastal Act.

E. Energy Consumption/Vehicle Miles Traveled.

In an effort to decrease the consumption of natural resources and reduce emissions of greenhouse gases (GHG), the Coastal Act includes policies requiring that new development minimize energy consumption and vehicle miles traveled throughout the life of the project. Section 30253(d) of the Coastal Act provides:

New development shall ... (d) Minimize energy consumption and vehicle miles traveled.

Although the construction and operation of the new SWFSC center will undoubtedly contribute GHG emissions to the atmosphere, NOAA has committed to mitigation measures designed to reduce impacts from this project. The substantial amount of traffic anticipated during both the construction and operation periods as well as energy consumed by the building itself has the potential to contribute significantly to overall GHG emissions. However, NOAA promises to ensure that GHG emissions are less than significant by employing a series of energy saving and travel reduction measures. In fact, the new SWFSC is designed and will be constructed to obtain LEED silver status, thus minimizing energy and natural resource use during both

construction and operation of the building. The design includes the following green building features:

- Partial green roof planted with native vegetation
- Shading of windows
- Windows with low emissivity glass
- Light-colored exterior
- Daylighting of work spaces
- Bicycle parking and showers for staff use
- Photovoltaic solar panels
- High-efficiency lighting
- Natural ventilation and ceiling fans
- Roof insulation of R30 or greater
- Water-conserving plumbing fixtures
- Retention of storm water on-site
- Native landscaping
- Green building materials with recycled content and/or renewable source
- Indoor furnishings that minimize off-gassing of chemicals

To address vehicle emission concerns, NOAA will develop and implement a TDMS, as detailed earlier in Section B, to reduce the number of single occupancy vehicle trips. In addition to these measures, NOAA states that:

Contractors will be required to submit the SmartWay Truck Efficiency plan detailing the contractor SmartWay Truck Efficiency and anti-idling practices proposed to reduce the amount and effects of Green House Gas (GHG) emissions during the construction period. These practices include retrofitting heavy duty trucks (trucks/trailers) and vehicles used during construction with the best available "SmartWay Transport" and/or California Air Resources Board (CARB) approved technology.

NOAA has agreed to submit the SmartWay Truck Efficiency plan to the Commission's Executive Director for review and concurrence prior to the commencement of construction. In light of these planned mitigation measures, NOAA has concluded that the GHG emissions from construction and/or operation of the new SWFSC "would not individually or cumulatively cause a significant change in the global climate, and would not hinder the ability of the State of California to achieve the goal of reducing GHG emissions pursuant to State of California Global Warming Solutions Act of 2006 (AB 32)." The Commission agrees with this conclusion and thus, with NOAA's commitment to submit the SmartWay plan to the Commission's Executive Director, finds the project to be consistent with Section 30253(d) of the Coastal Act.

F. Archeological Resources.

Section 30244 of the Coastal Act provides for the protection of archeological resources, stating:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

NOAA hired a contractor, ASM Affiliates, to conduct a Phase I Cultural Survey of the proposed and existing sites. This survey included a records search at the National Register Information System (NRIS) and the South Coastal Information Center (SCIC). In addition, ASM affiliates submitted a Sacred Lands search request to the Native American Heritage Commission. This investigation revealed several cultural sites in the vicinity, the closest of which, SDI-525, is located across Torrey Pines Road. Further, during field investigations, one 100 square meter archeological site, CA-DI-18610, was found on the northern part of the proposed site. Without further evaluation, it is not possible to determine whether CA-DI-18610 is eligible for inclusion on the National or California Register of Historic Places.

Although construction of the proposed SWFSC facility has the potential to harm artifacts found at site CA-DI-18610, NOAA has committed to mitigating any potential adverse impacts by developing a treatment plan for the site to be submitted to the California State Historic Preservation Officer (SHPO) and by conducting testing of the archeological site. If the site is recommended as eligible for the National or California Registers, NOAA would fund data recovery at the site (complying with PRC 5097.98 should human remains be found) as well as permanent curation at the San Diego Archeological Center. NOAA has also agreed that a Native American monitor should be on-site during all ground-disturbing activities. With these mitigation measures in place, NOAA determined that the impact to the site would be insignificant. The Commission finds that, with these measures, the project would be consistent with the archeological resources policy (Section 30244) of the Coastal Act.

V. SUBSTANTIVE FILE DOCUMENTS

1. National Oceanic and Atmospheric Administration. Consistency Determination CD-035-09, NOAA La Jolla Laboratory Replacement Project.
2. National Oceanic and Atmospheric Administration and University of California, San Diego. Final EIS/EIR, Replacement of National Oceanic and Atmospheric Administration, National Marine Fisheries Service Southwest Fisheries Science Center. April 2009.
3. Negative Determination ND-055-07 (NOAA, SWFSC Dewatering).

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PROJECT SITE

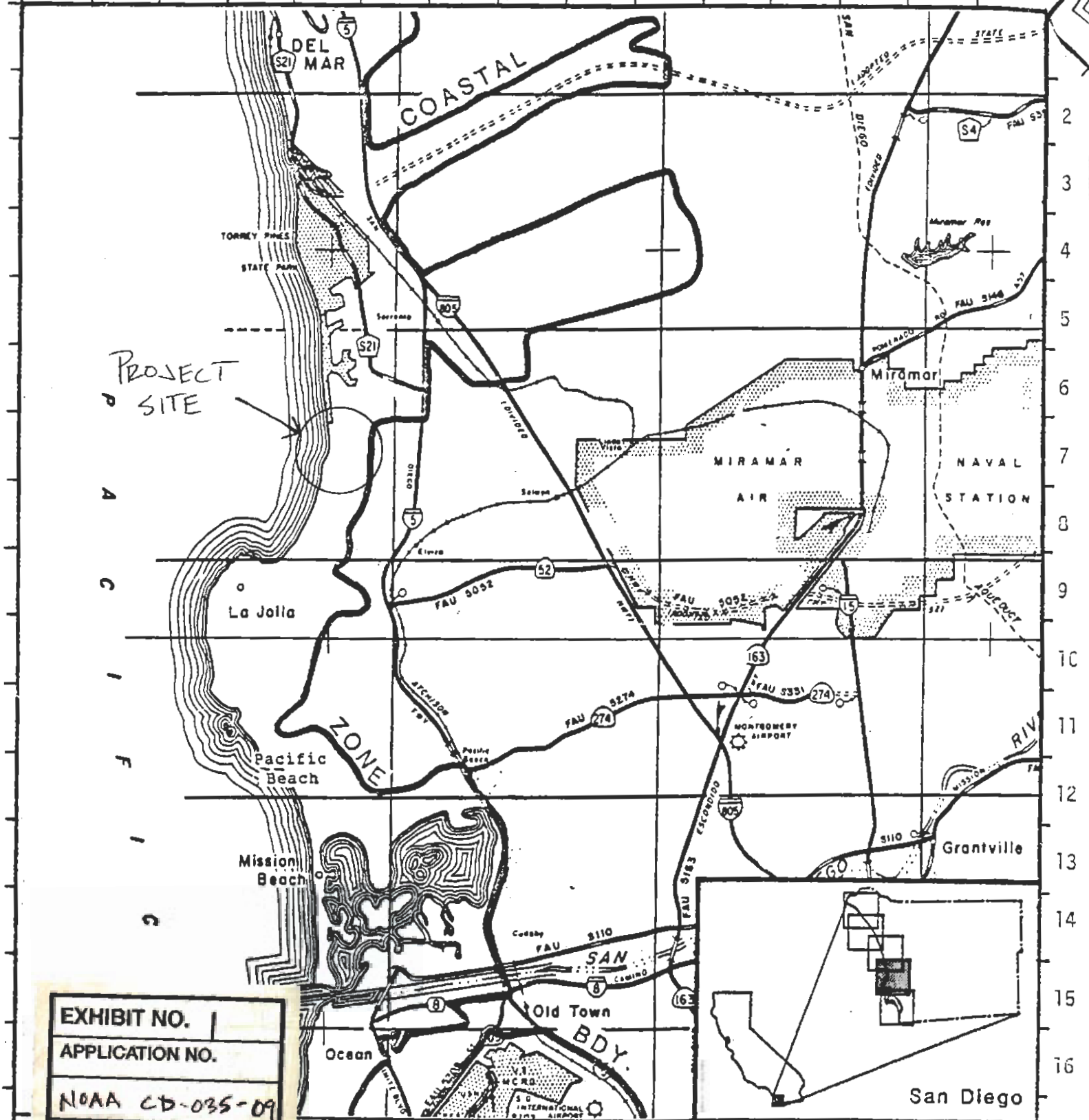


EXHIBIT NO.	
APPLICATION NO.	
NOAA CD-035-09	

LOCATION MAP



California Coastal Commission

County of San Diego

Sheet 4 of 5

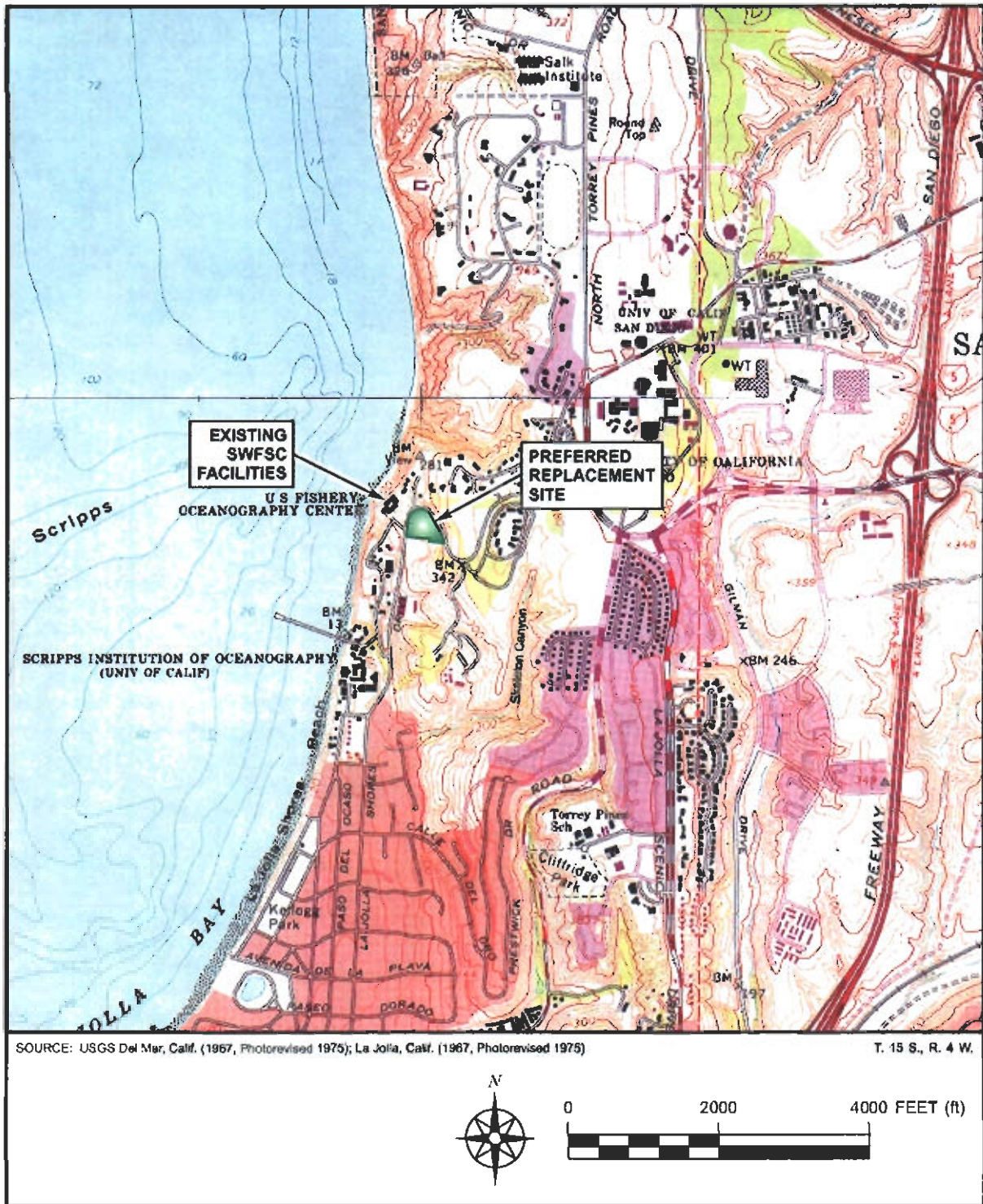


EXHIBIT NO. 2
APPLICATION NO.
NOAA CD-035-09

EXISTING SWFSC AND PREFERRED SITE FOR REPLACEMENT OF SWFSC



FIGURE 3 SIMULATION OF PROPOSED SWFSC FACILITY IN AERIAL VIEW

EXHIBIT NO. 3

APPLICATION NO.

HOAA CD-035-09

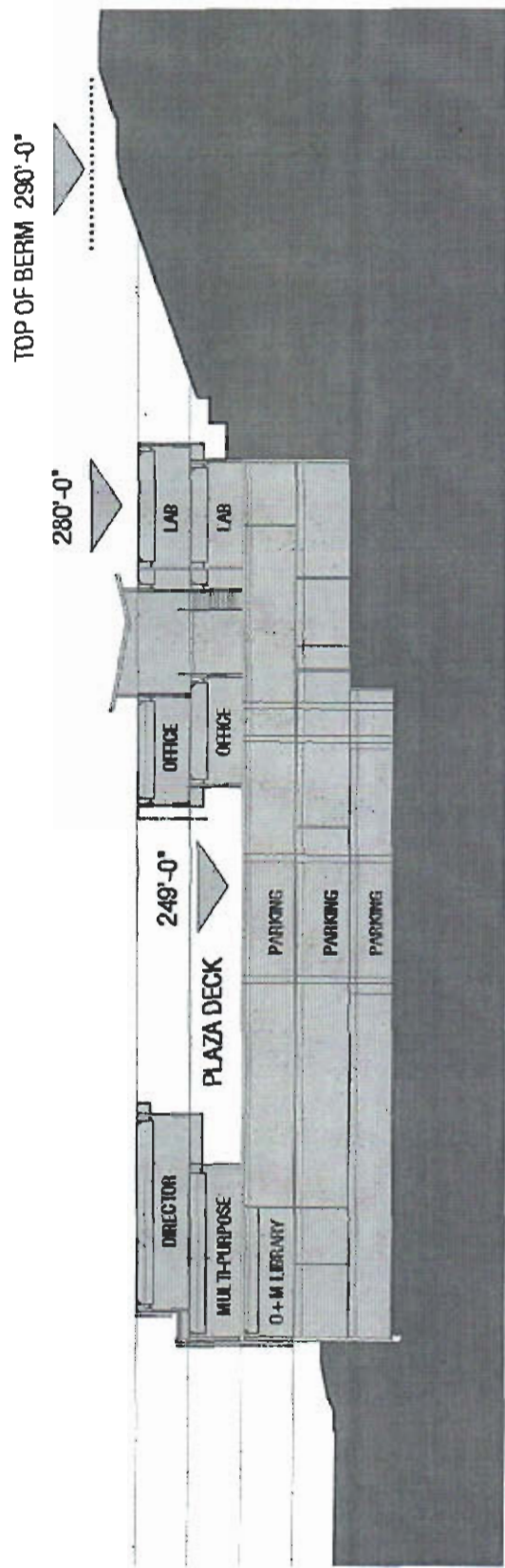
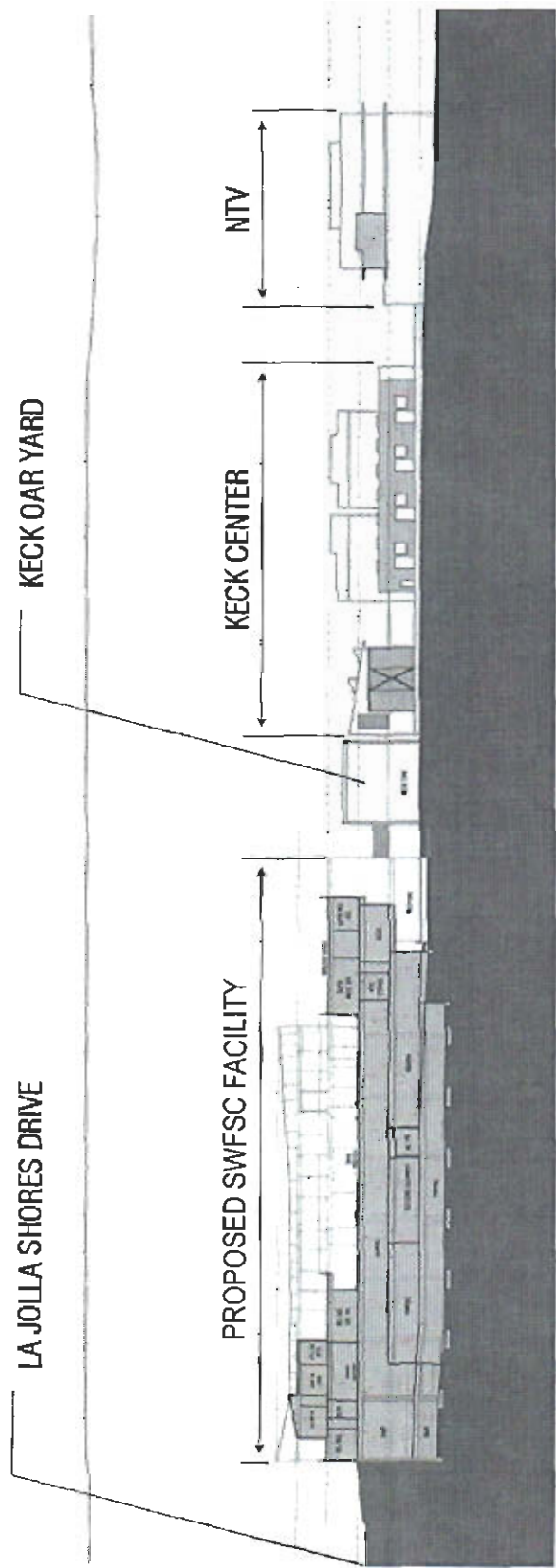


FIGURE 4 BUILDING SECTION OF PROPOSED SWFSC FACILITY (EAST-WEST)

EXHIBIT NO. 4
APPLICATION NO.
NOAA CD-035-09



Source: Dellavé, Wilcox, Rodriguez, Barker Architects (June 2008)

FIGURE 5 BUILDING SECTION OF PROPOSED SWFSC FACILITY AND VICINITY (NORTH-SOUTH)

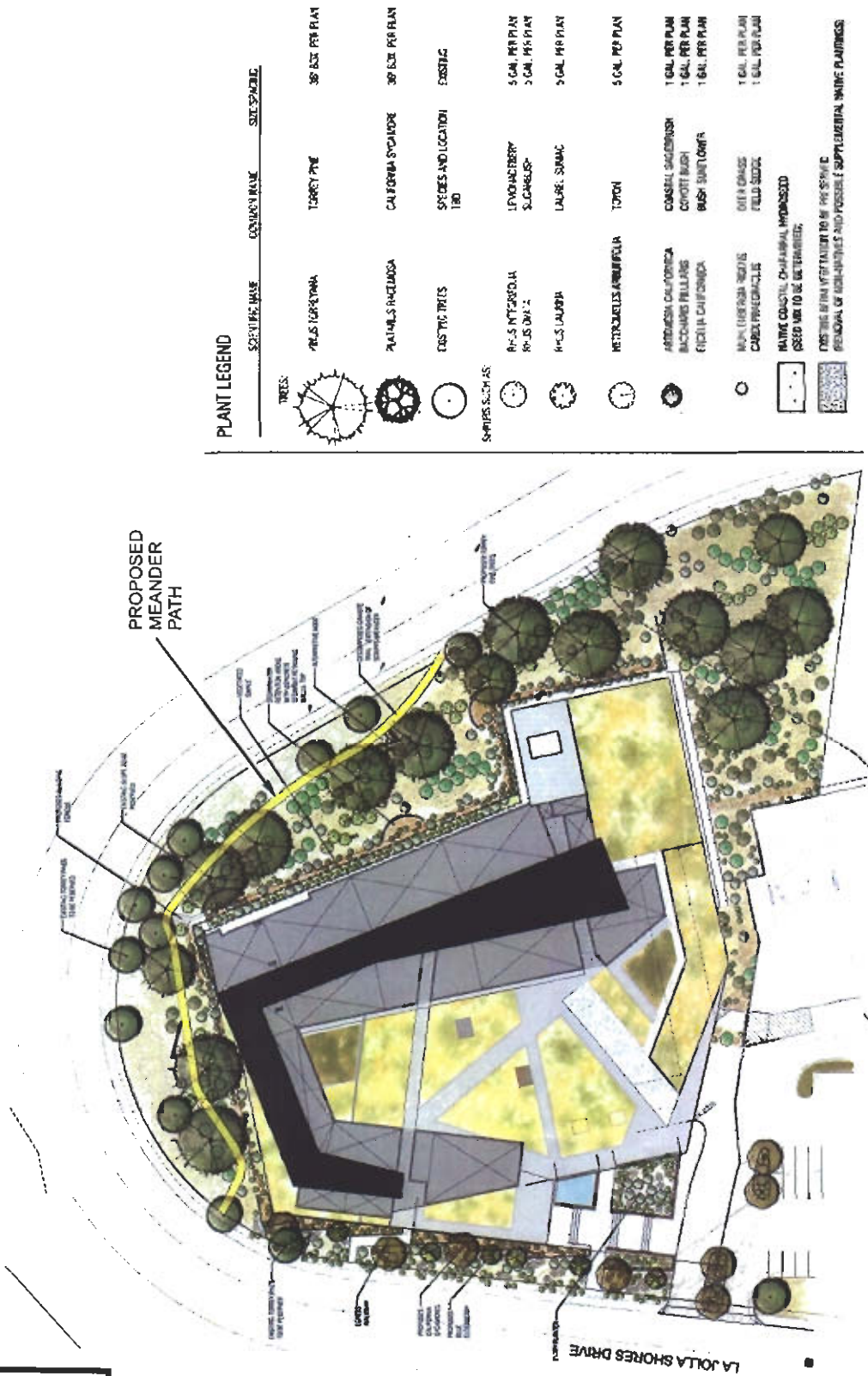
EXHIBIT NO. 5
APPLICATION NO.
NOAA CD-035-09



Source: Delshaw, Wilkie, Rodriguez, Barker Architects (June 2008)

BEFORE AND AFTER VIEWS (LOOKING WEST) FROM LA JOLLA SHORES DRIVE EAST OF THE PREFERRED SITE

EXHIBIT NO. 6
APPLICATION NO.
NOAA CD-035-09



Source: DeJawie, Wilkes, Rodrigues, Barker Architects (June 2008)

FIGURE 8 LANDSCAPE AND DRAINAGE DESIGN OF THE PROPOSED SWFSC FACILITY (Page 1 of 2)

EXHIBIT NO. 7
 APPLICATION NO.
 NOAA CD-035-09

PLANTING LEGEND

1	CECILE	CECILE	CECILE	CECILE	CECILE
2	TRITARIUM	TRITARIUM	TRITARIUM	TRITARIUM	TRITARIUM
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4	PHILADELPHIA	PHILADELPHIA	PHILADELPHIA	PHILADELPHIA	PHILADELPHIA
5	CECILE	CECILE	CECILE	CECILE	CECILE
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NOTES:
 1. SEE SHEET NO. L-300 FOR
 DIMENSIONS AND DETAILS

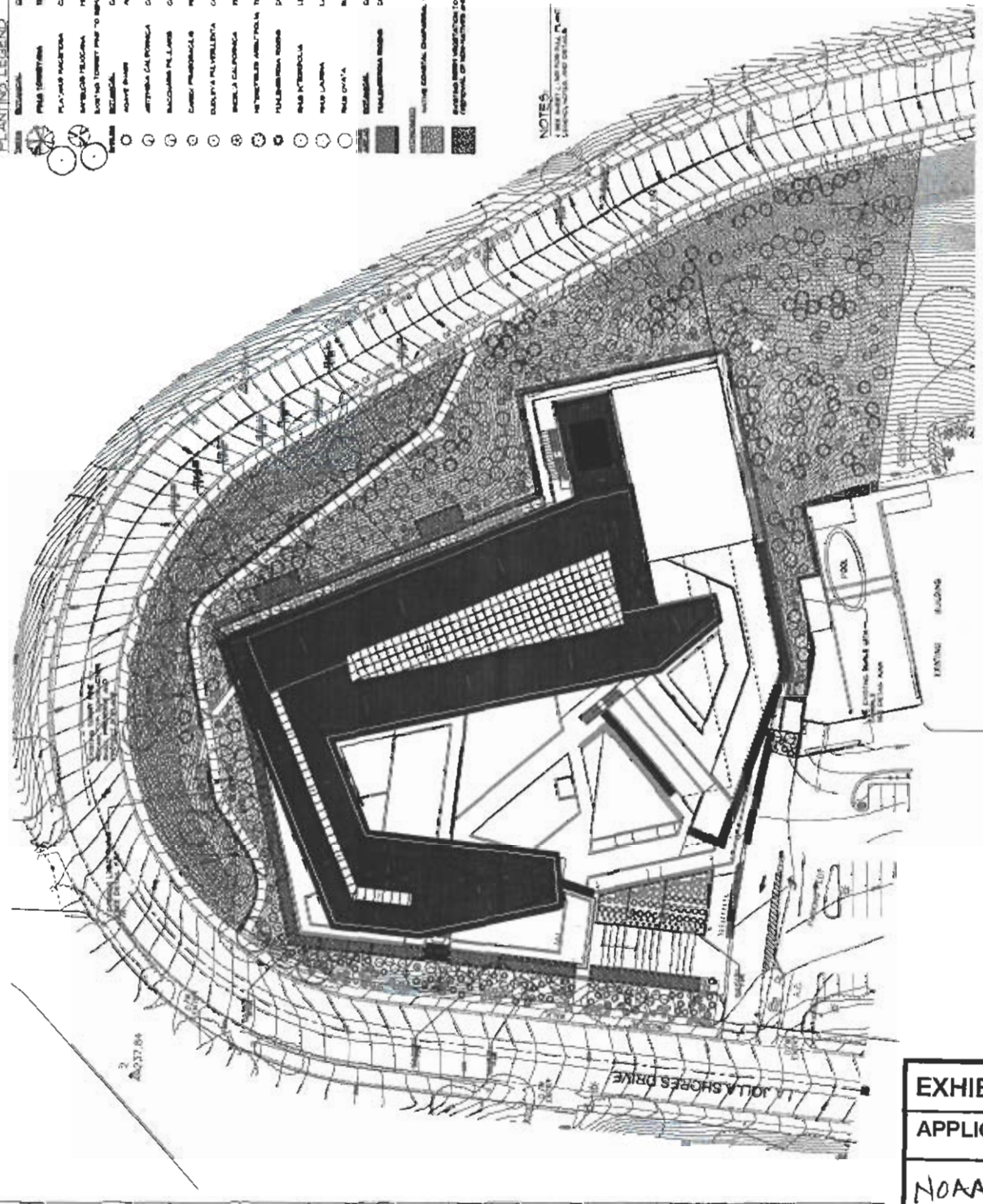


EXHIBIT NO. 8
APPLICATION NO.
NOAA CD-035-09

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 Consolidation
 Project

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PLANTING PLAN
 L-300

DATE: 04/17/09

SCALE: AS SHOWN