

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



# W15c

Filed: 2/01/11  
49th Day: 3/22/11  
180th Day: 7/31/11  
Staff: M.Ahrens-SD  
Staff Report: 5/27/11  
Hearing Date: 6/15-17/11

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-11-009

Applicant: City of San Diego Utilities Department Agent: Dirk Smith

Description: After-the-fact approval of an emergency underground pipeline repair project in the Torrey Pines State Reserve (Los Penasquitos Lagoon).

Site: South of Carmel Valley Rd. between Portofino Dr. and Caminito  
Pointe Del Mar, Torrey Pines, San Diego, San Diego County.

---

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

The proposed project consists of the after the fact approval for emergency repair activities necessitated by the rupture of a 24 inch water main pipe on October 22, 2010. The subject site is located in an upland region of the Los Penasquitos Lagoon area and supports a habitat dominated by Riparian Scrub vegetation. The initial rupture and the associated repair activities, which included excavation, backfill, and compaction of the surrounding ground area, cumulatively resulted in direct impacts to .008 acres of Southern Willow Scrub habitat and .026 acres of Riparian Scrub habitat. In addition to revegetating the impacted area, the applicant is proposing to mitigate for the impacts at a 3:1 ratio, consistent with the requirements of the San Diego Land Development Code Biology Guidelines. Specifically, the applicant proposes to perform .068 acres of enhancement mitigation through the purchase of credits at the El Rancho Penasquitos mitigation bank, as well as .034 acres of creation mitigation through the purchase of credits at the Los Penasquitos North mitigation bank. To ensure protection of biological resources Staff is recommending Special Condition #1 to ensure that the required mitigation is satisfied at a 3:1 ratio and is fulfilled consistent with the proposed mitigation plan submitted by the applicant. The proposed project, as conditioned, will not result in impacts to public access, nor will it expand the existing capacity of the on site utility infrastructure.

Standard of Review: Chapter 3 of the Coastal Act.

---

Substantive File Documents: Department of Fish and Game Notification of Emergency Work Report received 1/1/11, City of San Diego Public Utilities Memorandum dated 4/28/11, City of San Diego Public Utilities Department Impact Project Mitigation Report dated 4/28/11, Mitigation Site Usage Report dated 3/18/11, Helix Biological Letter Report dated 12/3/10.

---

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-10-009 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Wetland Mitigation. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval

of the Executive Director, a final mitigation plan to compensate for all proposed impacts to existing wetlands. The mitigation plan shall, at a minimum, include:

- a. Information documenting that the proposed Los Penasquitos North and El Rancho Penasquitos Mitigation Banks are appropriate mitigation sites for coastal Southern Willow Scrub and Riparian Scrub habitat, that a functional and accurate accounting system is established for the bank, and that the bank contains ecologically functional and biologically productive wetland habitat.
- b. Evidence that the required mitigation has been withdrawn and accounted for in each of the proposed mitigation banks as follows:
  - i. Creation mitigation will consist of .026 acres of Riparian Scrub habitat and .008 acres of Southern Willow Scrub habitat (with a total of .034 acres of combined creation mitigation) to be satisfied through the purchase of credits at the Los Penasquitos North mitigation bank.
  - ii. Enhancement mitigation will consist of .052 acres of Riparian Scrub habitat and .016 acres of Southern Willow Scrub habitat (with a total of .068 acres of combined enhancement mitigation) to be satisfied through the purchase of credits at the El Rancho Penasquitos mitigation bank.

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

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. This project details the emergency repair work performed to address the rupture of a 24-inch water main within the upland area of the Los Penasquitos Lagoon in Torrey Pines State Natural Reserve that occurred on October 22, 2010. The subject water main split open within an upland habitat area of the Los Penasquitos Lagoon approximately 1,000 feet from Caminito Pointe Del Mar. The necessary emergency repair work occurred in an approximately .053 acre area dominated by southern willow scrub and riparian habitat. The subject site also contains large portions of disturbed bare ground and an existing utility easement access road partially paved with gravel.

The City notified Commission Staff of the break and the need to do emergency repairs on October 22, 2010 by telephone and followed up with an email on October 29, 2010; providing details of the break, necessary repairs and impacts. The emergency work consisted of excavation, repairs to the broken pipe, and backfill. Specifically, the

emergency crew first placed gravel around the work area and pumped water from the hole created by the pipe break. Careful excavation of soil using a small back hoe was performed in order to determine the exact location of the pipe break and all excavated spoils were placed adjacent to the work area. On October 23, a metal band was placed around the break but was later determined to be insufficient to contain the leak and further repair work was not completed until October 28. On October 28<sup>th</sup>, the water main leak was successfully remediated and backfill of the area was fully completed by the following day. By November 5<sup>th</sup>, the subject impact area had been leveled, compacted, and bounded with straw wattles to ensure that any remaining loose soil would not erode into the surrounding habitat areas. Impacts to on site habitat occurred within a mostly upland area of the Los Penasquitos lagoon where Southern Willow scrub transitions into Riparian scrub and slopes downward, eventually merging with the main wetlands and channels of the central lagoon area.

The City is requesting after-the-fact approval of the above-described repairs. Repair of the water pipe resulted in impacts to sensitive habitats including Southern Willow Scrub and Riparian Scrub habitat. Large equipment was used to make the pipe repairs and to subsequently restore the topography of the work area. Overall the water main break and associated emergency repair work resulted in impacts to .013 acres of Southern willow scrub and .026 acres of Riparian scrub habitat.

The City of San Diego has submitted a detailed mitigation plan addressing all impacts to sensitive vegetation communities. Onsite in kind restoration of the impacted area is proposed as a component of this permit application, but will not be included towards the required mitigation as it is likely that this utility corridor and adjacent habitat areas could be subject to further water main breaks.

The City has a certified LCP and the project site is within the Torrey Pines LUP segment of the LCP. However, the project is within an area of the Commission's retained permit jurisdiction. Thus, Chapter 3 policies of the Coastal Act are the standard of review with the certified LCP used as guidance.

2. Biological Resources. The following Coast Act policies are applicable to the proposed development and state, in part:

#### Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff...

### Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

### Section 30240

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

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

### Section 30251

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.

The subject 1,600 sq. ft. area of impact is situated upland from the immediate Los Penasquitos lagoon wetland habitats. As such the site supports small thickets of Southern Willow Scrub and widespread clusters of Riparian Scrub vegetation, but contains no alkaline or freshwater marsh habitat. Other portions of the subject site consist of disturbed bare ground and non-native habitat, as well as a gravel paved utility easement road that provides access to the site from Carmel Valley Rd., a paved two lane road.

The water main break that occurred on October 22, 2011 and the associated emergency repair work resulted in a relatively small amount of permanent impacts to Southern Willow Scrub and Riparian Scrub habitat. To assure impacts were minimized, the City had a biological monitor on-site during the emergency repair work. Direct permanent impacts to sensitive on site vegetation communities resulted from repair activities, vegetation removal, grading, and soil compaction. Cumulatively, the emergency work directly impacted .026 acres of Riparian Scrub and .008 acres of Southern Willow Scrub. Riparian scrub forms the dominant on site habitat, while Southern willow scrub occupies a more limited area of the subject upland lagoon region.

As cited above, under the Coastal Act, fill and/or dredging of wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill and dredging of coastal waters and wetlands. These are:

- 1) That the project is limited to one of the stated allowable uses;
- 2) That the project has no feasible less environmentally damaging alternative; and,
- 3) That adequate mitigation measures have been provided to minimize adverse environmental effects.

In this particular case, the proposed development, with the special conditions attached hereto, meets the above requirements. The sole purpose of the project is to maintain and repair one of the City's major water mains, which services a significant portion of the residential communities in the northern part of the City. These activities qualify as serving incidental public service purposes, as they will repair existing infrastructure, but not increase capacity. Incidental public service projects are allowed in wetlands under Section 30233(a)(4). There is no way to access the location of the water main break and do the necessary repairs without impacting some existing wetland habitat, although the project has been designed to minimize any impacts that cannot be avoided to the degree possible.

The applicant is proposing to mitigate for these direct impacts at a ratio of 3:1 for both habitat types, consistent with the mandates of the City's Land Development Code

Biology Guidelines. The applicant will perform mitigation at a 1:1 ratio for creation to assure a no net loss and at a 2:1 ratio for enhancement in order to cumulatively satisfy the 3:1 mitigation ratio requirement. As such, the proposed mitigation consists of .053 acres of Riparian Scrub enhancement mitigation and .016 acres of Southern Willow Scrub enhancement mitigation, as well as .026 acres of Riparian Scrub creation mitigation and .008 acres of Southern Willow Scrub creation mitigation.

Due to the location of the existing water pipeline and associated utility easement across the site, the applicant has indicated that on site enhancement/creation mitigation and associated monitoring would be infeasible, as they cannot ensure preservation in perpetuity of habitats above pipeline infrastructure. However, the applicant is proposing to restore all on site direct impact areas with low growing native riparian scrub species. Seeding the entire direct impact area (.053 acre) with a native seed mix will function to reduce future erosion of existing disturbed areas and will aid in the re-growth of existing sensitive habitats on site. The proposed on site restoration will not be included towards the required mitigation and will not be subject to maintenance or monitoring condition due to the existing on site utility infrastructure and access easement. The applicant proposes to fulfill the required .034 acres of creation mitigation through the purchase of credits at the Los Penasquitos North mitigation bank, as it is the closest site in relation to the impact area able to satisfy all City creation mitigation requirements. To satisfy the required .068 acres of enhancement mitigation, the applicant proposes to purchase credits at the El Rancho Penasquitos mitigation bank. The applicant has submitted evidence detailing that there are adequate enhancement and creation mitigation credits remaining at both proposed mitigation banks in order to fully satisfy all required mitigation associated with this project.

The biology guidelines of the City's Land Development Code (which the Commission is using for guidance) stipulate that if on-site mitigation for unavoidable wetland impacts is infeasible, mitigation should occur within the same watershed and also within the Coastal Zone. The proposed creation mitigation will occur at the Los Penasquitos North mitigation bank, which is located within the coastal zone and within the same watershed as the project site, consistent with the directives of the City's LDC Biology Guidelines. However, the proposed location of the enhancement mitigation, the El Rancho Penasquitos mitigation bank, is situated within the same watershed as the area of impact but is located outside of the Coastal Zone.

This proposed enhancement mitigation site is only partially consistent with the City's biology guidelines, however, the applicant has submitted documents demonstrating that no other site exists closer to the area of impact or within the coastal zone where they could adequately satisfy the required enhancement mitigation. Performing enhancement mitigation and monitoring adjacent to the subject site or in the immediate coastal Los Penasquitos Lagoon area is considered infeasible by the City's Public Utilities Department, as it would require a more significant use of funds to set up a monitoring and management plan in an area where no mitigation bank and monitoring system is currently established. While, the required enhancement mitigation could potentially be performed closer to the impact site or within a different coastal area of the Los

Penasquitos Lagoon, it would involve a limited (.068 acre) area of habitat that could potentially be more isolated from the most biologically productive regions of the subject Lagoon. Additionally, due to the limited amount of appropriate enhancement mitigation in close proximity to the direct impact area and the minimal amount of mitigation required as part of this project, the Department of State Parks and Recreation and the Los Penasquitos Lagoon foundation have confirmed, in this particular case, that they are not opposed to the proposed enhancement mitigation at the El Rancho Penasquitos Mitigation Bank, even though it is located approximately 4,500 linear ft. east of the Coastal Zone boundary. The proposed enhancement mitigation will involve the purchase of credits from an established mitigation bank, for which, the applicant is required, per Special Condition #1, to submit evidence documenting that the bank contains ecologically functional and biologically productive wetland habitat. As such, staff has determined that the proposed enhancement mitigation can be found consistent with the biological resource Chapter 3 policies of the Coastal act.

Special Condition # 1 is recommended to ensure that the required mitigation is satisfied in a manner consistent with the proposed mitigation plan and will involve the purchase of .034 acres worth of creation mitigation credits from North Penasquitos mitigation bank as well as the purchase of .068 acres worth of enhancement mitigation from the El Rancho Penasquitos Mitigation Bank. The proposed mitigation will satisfy the 3:1 mitigation ratio required for the impacts to Southern Willow scrub and Riparian Scrub habitat.

In conclusion, the proposed emergency water line repair project is an incidental public service project permitted under Section 30233 and all unavoidable impacts to wetlands have been minimized to the extent feasible and adequate mitigation for unavoidable impacts are provided. As conditioned, the project will mitigate for all impacts to sensitive resources, utilizing the appropriate mitigation ratios. The project will not result in erosion or adverse impacts to water quality. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

3. Public Access/ Recreation. The following Chapter 3 polices of the Coastal Act are applicable to the proposed development, and state

#### 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.

#### 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal



resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

### 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

### 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.
- [...]

### 30252

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 project is located within an upland area of the Los Penasquitos Lagoon and Torrey Pines State Reserve boundaries. While various walking and hiking trails exist throughout the Torrey Pines State Reserve area, none of these public access paths transect or run in close proximity to the subject site. Additionally, no public parking is provided on the subject site or anywhere within the immediate vicinity of the site or its access road. All construction activities and worker parking is contained on site and does not result in a reduction of available public parking in the nearby area. As such, no impacts to public access will result from the subject emergency repair operations or proposed on site

habitat restoration, consistent with the Chapter 3 public access policies of the Coastal Act.

4. Local Coastal Planning. The City has a certified LCP and the project site is within the Torrey Pines LUP segment of the LCP. However, the subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Torrey Pines community.

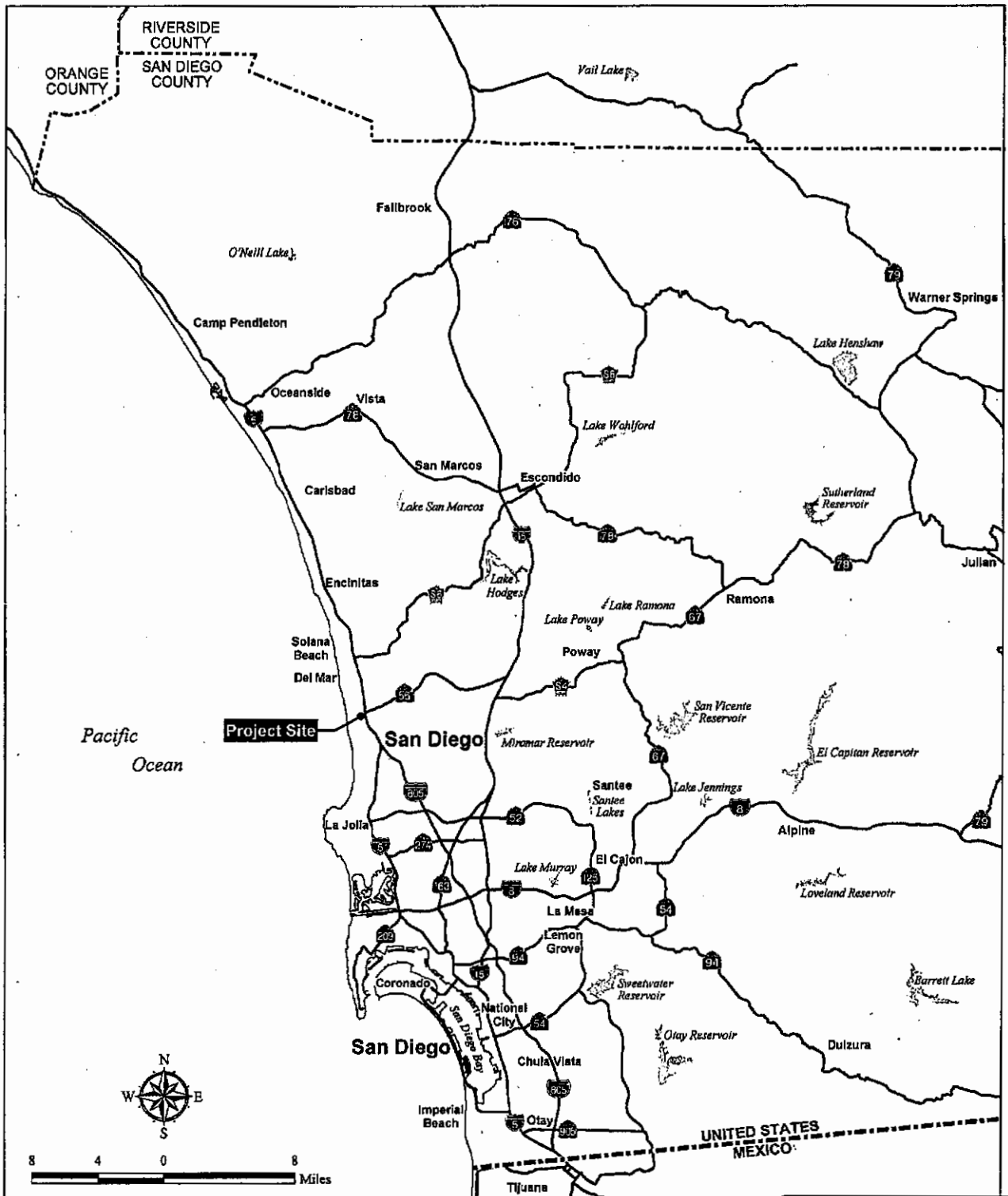
5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing mitigation for impacts to wetlands will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

#### STANDARD CONDITIONS:

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

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



\\Am018\SDS\10.11 Carmel Valley Road Map\BIO\Final Monitoring Report\Fig1\_Regional Locat-JP

2711 CARMEL VALLEY ROAD EMERGENCY WATER

**HELIX**  
Environmental Planning

EXHIBIT NO. 1

APPLICATION NO.

6-11-009

Location Map

 California Coastal Commission



City of San Diego  
Metropolitan Wastewater Department  
Impact Project Mitigation Report



**Carmel Valley Rd Emergency Water Break**

**El Rancho (Penasquitos Enhancement) Mitigation**

Mitigation Location	Mitigation Type	Mitigation Habitat Type	Acres	Description
Off-site in watershed	Wetland Enhance	RS	0.052	
Off-site in watershed	Wetland Enhance	SWS	0.016	
Total Mitigation within this mitigation project		0.068 acres		

**Los Penasquitos North Mitigation**

Mitigation Location	Mitigation Type	Mitigation Habitat Type	Acres	Description
Off-site in watershed	Wetland Creation	RS	0.026	
Off-site in watershed	Wetland Creation	SWS	0.008	
Total Mitigation within this mitigation project		0.034 acres		
Total Mitigation Acres for Project:		0.102 acres		

EXHIBIT NO. 2

APPLICATION NO.

**6-11-009**

Proposed Mitigation



California Coastal Commission

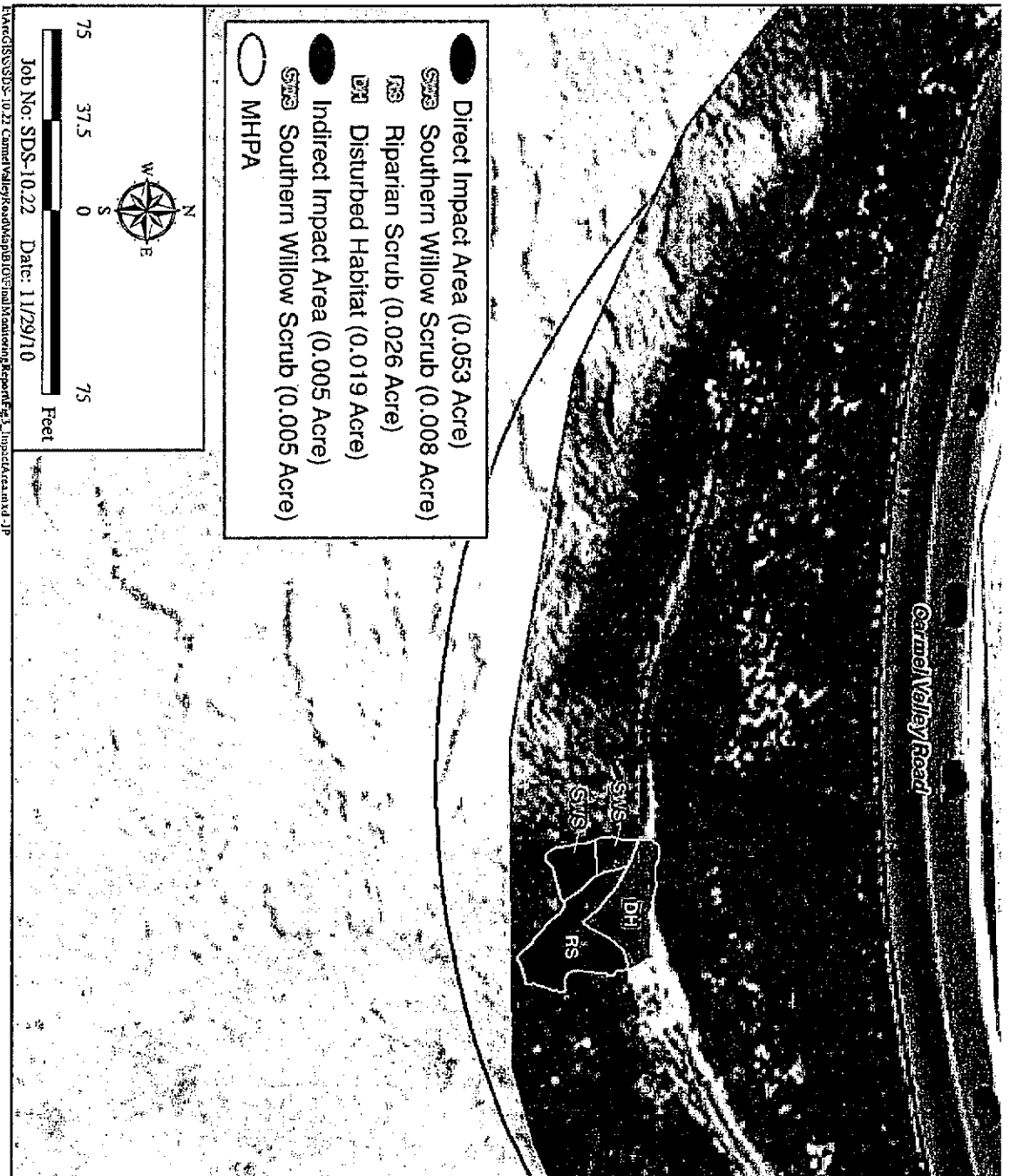


EXHIBIT NO. 3

APPLICATION NO.

6-11-009

Impact Area Map