

## CALIFORNIA COASTAL COMMISSION

## SAN DIEGO COAST AREA

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Staff: GDC-SD  
Staff Report: September 19, 1996  
Hearing Date: October 8-11, 1996

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-96-131

Applicant: Chula Vista  
Bayfront Conservancy Trust

Agent: Dr. Stephen Neudecker

Description: Construct a saltwater supply system for a nature interpretive center, including a 400 square foot pump house, two 1,200 foot intake pipes and one 900 foot discharge pipe; the project includes 200 c.y. of grading.

Lot Area	120,417 sq. ft.
Building Coverage	13,300 sq. ft. (11%)
Pavement Coverage	15,885 sq. ft. (13%)
Landscape Coverage	43,560 sq. ft. (36%)
Unimproved Coverage	47,672 sq. ft. (40%)
Ht abv fin grade	10 feet

Site: Chula Vista Nature Interpretive Center, 1000 Gunpowder Point Drive, Chula Vista, San Diego County. APN 565-010-23.

Substantive File Documents: CCC #6-89-179; Certified City of Chula Vista Local Coastal Program; Final Negative Declaration #IS-89-39, Adopted 8/31/95.

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STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions.

See attached page.

## III. Special Conditions.

The permit is subject to the following conditions:

1. Timing of Work. Prior to initiation of any construction, the applicant shall provide notice to the Executive Director of the date when the project is to commence. Such notice shall be required at least two weeks in advance of the proposed date of implementation and shall be accompanied by a declaration from the U.S. Fish and Wildlife Service stating that the construction activities, on the date proposed, will not cause adverse impacts on the biological productivity of the area. Specifically, the declaration shall include an assessment of the nesting status of any of the rare or endangered fowl species found in the area, including but not limited to the California Least Tern. Said declaration shall be subject to the review and written approval of the Executive Director.

2. Replacement of Eel Grass Beds. Since eel grass is recognized as a valuable marine resource and key food source for certain shorebirds, the applicant shall, prior to issuance of the subject permit, inventory and map existing eel grass beds within the proposed area of construction activity. The applicant shall then indicate, on a detailed site plan, all areas of potential eel grass disturbance, and shall prepare and submit a plan for re-establishment or transplanting of any disturbed eel grass to maintain the population at the pre-project level. The eel grass mitigation plan shall be submitted to, reviewed and approved in writing by the Executive Director, in consultation with the U. S. Fish and Wildlife Service, prior to the issuance of the coastal development permit.

## IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. Proposed is the construction of a new intake system, including a 400 sq. ft. pump house, to provide salt water for aquarium exhibits for the Chula Vista Nature Interpretive Center. A coastal development permit was previously granted for this project in 1989 (CDP #6-89-179). However, since the required special conditions of that permit were not complied with within two years from the date of Commission approval, the permit expired.

The proposed system will consist of two, four-inch plastic intake pipes running from the Center to a small knoll on the southwestern tip of Gunpowder Point. The pipes will follow a drainage swale, constructed in conjunction with the creation of the Interpretive Center, to an existing desilting basin. The proposed pumphouse will be constructed on the small knoll immediately adjacent to the desilting basin. The overall development will require approximately 200 cubic yards of cut to install pipes. The applicant has

identified the deposition site of the excavated soil to be within the Nature Center's property on an existing, unvegetated area. From the pumphouse, the intake pipes will extend across the mudflats westerly of Gunpowder Point to an existing channel marker located in the bay. The pipes will be stabilized with concrete anchors, and two submarine intake structures will be constructed adjacent to the channel marker. A single discharge line will follow the same alignment.

The project is proposed to provide salt water for the exhibits housed in the Interpretive Center. Currently, buffered salt water is purchased from a commercial supplier, with deliveries on a weekly basis. The addition of the salt water system will also allow for the use of the laboratory areas in the Center for research on marine organisms.

The proposed system will be located on Gunpowder Point in the Bayfront area of the City of Chula Vista. While originally planned for hotel and recreational uses in the certified City of Chula Vista Local Coastal Program (LCP), the area is owned by the U.S. Fish and Wildlife Service (USFWS) and is designated as the Sweetwater Marsh National Wildlife Refuge. In order to allow the construction of the intake system, right-of-way has been granted to the City. Right-of-way has also been granted by the U. S. Fish and Wildlife Service and by the San Diego Unified Port District for those areas located on Port District property.

Coastal Commission permit jurisdiction over the proposed project has been established in the following fashion. Although the City of Chula Vista has a fully certified LCP and has been routinely issuing permits for the Bayfront area, consistent with the LCP, a settlement agreement placed that portion of Gunpowder Point proposed for development in this application into the ownership of the USFWS. If the proposal were to be undertaken under the auspices of the USFWS, the project would be considered under the consistency determination process. Since the federal agency has granted the right-of-way to the Bayfront Conservancy Trust (BCT) for it to undertake the development, however, the BCT becomes the applicant and the permit process is the correct procedure to consider the development. For this reason, the Commission becomes the appropriate permit-issuing body in this instance.

2. Environmentally Sensitive Habitat. Section 30240 of the Coastal Act provides that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values" and that "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 such areas, and shall be compatible with the continuance of such habitat areas". In addition, Section 30230 of the Act provides that "marine resources shall be maintained, enhanced, and where feasible, restored."

The site of the proposed development is the southwesterly corner of Gunpowder Point. In past Commission actions, Gunpowder Point has been identified as a site of significant biological sensitivity and interest due to the presence of high interest plant and animal species. In particular, the site borders on mudflat and open water areas utilized by the California Least Tern. In addition, the Belding's Savannah Sparrow is known to utilize the coastal salt marsh areas on the margins of Gunpowder Point, and Gunpowder Point is the site

of the northernmost population of a rare plant species, Frankenia palmeri. Finally, Gunpowder Point is surrounded on three sides by coastal salt marsh habitat areas, the E Street Marsh, Sweetwater Marsh and Vener Pond.

Due to the combination of these significant environmental resources, Gunpowder Point has been identified as a site of significant environmental sensitivity. In its actions on the LCP the Commission did, however, approve structures on the less environmentally sensitive portions of Gunpowder Point, including the Nature Interpretive Center, a high-rise hotel and a drainage swale and sedimentation basin structure to handle drainage from the Interpretive Center.

The proposed structures will be constructed between the existing developed areas of the Nature Interpretive Center and the edge of the open waters of San Diego Bay. The pipelines and the excavation associated with the construction of the pipelines between the Center and the pumphouse will occur within the limits of the existing drainage swale and the desilting basin. The swale and basin do not have any existing resource values associated with them, and no impacts from construction within these areas are anticipated to occur. In fact, by restricting the major portion of the excavation to the existing swale and basin area, any erosion and subsequent sedimentation impacts will be contained, eliminating the potential for impacts to surrounding areas.

The site of the pumphouse will be located on a small knoll above the basin. While the knoll is near the existing Frankenia palmeri habitat area, the pumphouse will be separated from the Frankenia by more than the 100 foot buffer normally associated with projects near wetlands or environmentally sensitive habitat areas and by the knoll itself. That is, the pumphouse will be located on the opposite side of the knoll from the Frankenia area.

After leaving the pumphouse, the pipes will cross a small spit of upland located between the basin and the open water of San Diego Bay. Beyond this area, the pipes will extend across tidal mudflats and muddy bottom of the open waters of the bay. The initial study performed for the negative declaration (IS-89-39) did not indicate the presence of eelgrass or any other high interest plant species in the area to be traversed by the pipes.

Because of the precise siting and design of the proposed salt water intake system, direct impacts to sensitive resources are not anticipated to occur as a result of the project. There is no involvement of sensitive species, such as coastal salt marsh species, Frankenia palmeri, or eelgrass. In addition, due to the absence of impacts to salt marsh areas, no direct impacts to Belding's Savannah Sparrow are anticipated. Similarly, no impacts to any Least Tern nesting areas are anticipated.

The proposed construction does, however, have the potential for indirect impacts to sensitive species. The proximity of rare, endangered or sensitive species, such as coastal salt marsh plants and Frankenia, indicate the potential for indirect impacts to sensitive species through the inappropriate storage of materials or staging of construction equipment and vehicles. To inhibit any indirect impacts the applicant has incorporated within their construction bid document detailed plans identifying the location of all

access corridors and staging areas as being within previously disturbed areas. No disturbance of environmentally sensitive vegetation is proposed.

Although no Least Tern nesting areas will be involved in the proposed construction, the mudflat and open water areas proposed for pipeline construction are typical of the areas Least Terns use for foraging. For this reason, Special Condition #1 has been proposed. This condition would prohibit any construction during the nesting season of the Least Tern. The condition would also require notification of the Commission and the U. S. Fish and Wildlife Service in advance of any work, in order to determine if the construction would involve any other high interest species. The application of this special condition should help to avoid any impacts to such species.

Finally, Special Condition #2 has been proposed to provide suitable mitigation for any unanticipated impacts to eelgrass given the intervening time since the original biological assessment and mapping of the area. This mitigation would take the form of transplantation or re-establishment of eelgrass areas disturbed as a result of the project.

Given these conditions, no significant impacts to the biological productivity of Gunpowder Point are anticipated. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30230 and 30240 of the Act.

3. Public Access. Section 30212 of the Act states, in part that "public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects . . ." However, Section 30212 also states, in part, that access should be provided except where "it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources" or where "adequate access exists nearby . . ."

The subject proposal involves the construction of three pipelines and a pumphouse located between the first coastal roadway and the sea. The precise area of the construction is located in an area that, while itself devoid of sensitive biological resources, is surrounded by areas containing such resources. Inappropriate access in the area of the construction could have impacts to such sensitive resources as Frankenia palmeri, coastal salt marsh species and other species of high scientific interest. In addition, the alignment of the pipelines is located in a drainage swale and sedimentation basin, and the impacts of human activity could result in damage to these structures resulting in other impacts to sensitive resources.

For these reasons, no additional access improvements would appropriately be required in conjunction with this development. Uncontrolled access in this area would be likely to result in impacts to sensitive resources. In addition, the proposed development is located at the site of the Chula Vista Nature Interpretive Center. The Interpretive Center provides appropriate public access to, and educational programs discussing, the sensitive resources of the Gunpowder Point area. In addition to the formal programs and structures associated with the Center, trails with limited access to areas surrounding the proposed project have been constructed for the purpose of conducting guided nature walks. Given these trails and the sensitive nature

of the surrounding resources, the Commission finds that adequate access is available in the surrounding area and that the proposed development is consistent with Section 30212 of the Act.

4. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. As stated above, the proposed development, as conditioned, is consistent with the applicable Chapter 3 policies.

The proposed development site, commonly known as Gunpowder Point, was once under the City's LCP but has since been conveyed and established as part of the U. S. Fish and Wildlife Service's National Refuge System. The area of the proposed construction is located entirely within areas planned for either habitat area or for the existing drainage structures. The proposed development, as conditioned, is consistent with the resource protection policies of the previously applicable LCP and is consistent with Chapter 3 policies of the Coastal Act. The proposal is also fully consistent with the resource interpretation and public education goals of the refuge in support of the Chula Vista Nature Center's operation. Therefore, the Commission finds that the subject development, as conditioned, is consistent with the certified City of Chula Vista LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the environmentally sensitive habitat policies of the Coastal Act. Mitigation measures, including submission of a site assessment from USFWS, eel grass mapping and, if needed, an eel grass mitigation plan will minimize all adverse environmental 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

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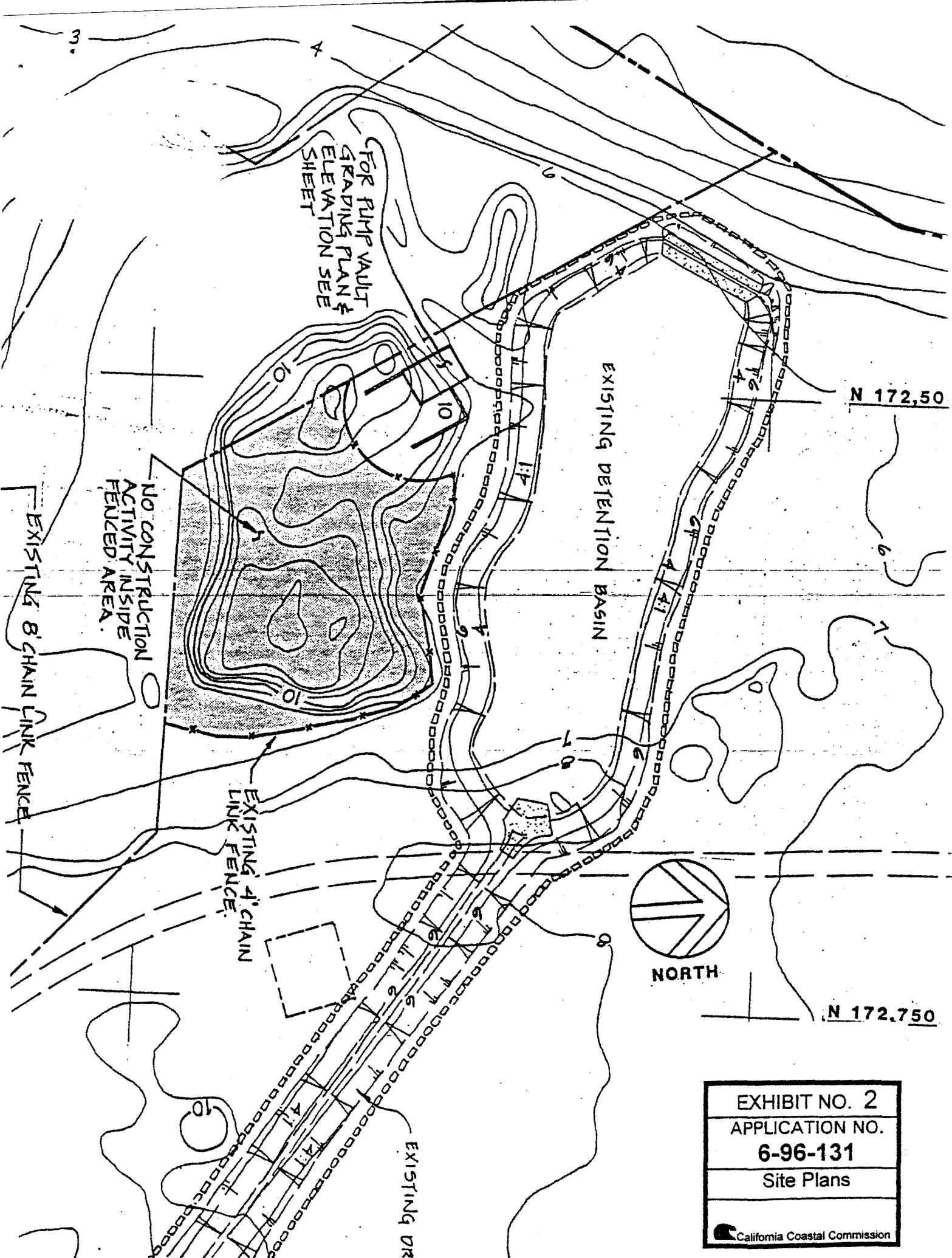


EXHIBIT NO. 2  
APPLICATION NO.  
**6-96-131**  
Site Plans