

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
 3111 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 521-8036



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REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-95-127-G

Applicant: San Diego Gas & Electric Agent: Stella Holland

Description: Permanent fill of approximately 25 sq. ft. of wetland habitat and temporary fill of approximately 6,600 sq. ft. of wetland habitat to facilitate removal and replacement of an existing damaged lattice tower (Tower No. 70) carrying 230 kV electric transmission lines. Also proposed is mitigation/restoration for all wetland impacts.

Site: Within S.D.G. & E. utility easement adjacent to Agua Hedionda Creek, north of Palomar Airport Road, west of El Camino Real, Carlsbad, San Diego County. APN 208-020-28, 207-101-12

Substantive File Documents: City of Carlsbad Certified Agua Hedionda Land Use Plan; Biological Report of Environmental Conditions at the Agua Hedionda Tower Repair Site by Pacific Southwest Biological Services, Inc. dated July 10, 1995 and revised July 26, 1995; Mitigation Plan for Unavoidable Impacts to Wetlands at the Agua Hedionda Tower Repair Site by Pacific Southwest Biological Services, Inc. dated August 29, 1995.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff has found the proposed development consistent with Coastal Act policies as the impacts to wetland habitat associated with the utility repair and maintenance work are a permitted use pursuant to Section 30233, are unavoidable, have been minimized to the extent feasible, and, adequate mitigation for all unavoidable impacts is proposed. Therefore, staff is recommending approval of the proposed development with conditions which require submittal of a final wetland mitigation and monitoring program and a condition which requires the applicant to submit all other required state or federal permits.

PRELIMINARY 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. Final Wetland Mitigation Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a final wetland mitigation plan for all wetland impacts associated with the proposed project (25 sq. ft. of permanent impacts and 6,600 sq. ft. of temporary impacts). The plan shall be developed in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service and shall include:

- a. Preparation of a detailed site plan of the wetland impact area, clearly delineating all areas of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included.
- b. All mitigation shall be on-site, within the existing utility easement. For each square foot of permanent wetland impacts associated with the utility tower repair and maintenance (25 sq. ft. of Brackish Marsh) there shall be four new square feet of brackish marsh created. Thus, there shall be 100 sq. ft. of brackish marsh created. In addition, creation of the brackish marsh shall occur in a manner that assures at least 90% vegetation coverage in five years. Further, all identified temporarily fill areas associated with the repair and maintenance work (approximately 6,600 sq. ft. of Brackish Marsh) shall be restored. Said restoration of temporary fill areas shall include at a minimum, removal of all non-native species and replanting with Brackish Marsh species.

2. Signed Agreement. Prior to the issuance of the coastal development permit, an agreement signed by the applicant shall be submitted to the Executive Director for review and written approval, stating that the proposed mitigation/restoration will be completed in accordance with the plan approved by the Executive Director (Special Condition #1 above) within 30 days of Commission action on this permit and that the mitigation site will be maintained, in perpetuity, as an undisturbed wetlands habitat area. In addition, the agreement shall state that the mitigation site is not necessary for utility access in the future and that any change in the status of the mitigation site in the future shall require additional review by the Commission as an amendment to this permit or as a new coastal development permit.

3. Final Monitoring Program. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director in consultation with the Department of Fish and Game, a final detailed monitoring program designed by a qualified wetland biologist acceptable to the Executive Director. Said monitoring program shall be in substantial conformance with the Mitigation Plan for Unavoidable Impacts to Wetlands at the Agua Hedionda Tower Repair Site dated August 29, 1995 and shall provide the following:

a. Submittal, upon completion of the mitigation site, of "as built" plans. Said plans shall be in substantial conformance with the submitted plans approved pursuant to Special Condition #1 above.

b. Monitoring reports on the extent of coverage, rate of growth and species composition of all created wetland areas shall be submitted to the Executive Director on an annual basis for five years following project completion.

c. The monitoring program shall include provisions for augmentation and maintenance of the mitigation efforts, including specific performance standards, designed to assure 90% coverage in a five year period. The program shall include criteria to be used to determine the quality of the mitigation efforts, which shall include, but not be limited to, survival rates and species composition.

d. At the end of the five year period, a more detailed report prepared in conjunction with a qualified wetlands biologist, shall be submitted to the Executive Director. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful based on the approved performance standards, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

4. Other Permits. Prior to the issuance of a coastal development permit, the applicant shall submit to the Executive Director for review and

written approval, copies of all other required state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves the permanent fill of approximately 25 sq. ft. of wetland habitat (Brackish Marsh) and temporary fill of approximately 6,600 sq. ft. of wetland habitat (Brackish Marsh) to facilitate removal and replacement of an existing damaged lattice tower (Tower No. 70) carrying 230-kV electric transmission lines. The applicant also proposes mitigation for wetland impacts that includes 4:1 on-site creation of habitat (in-kind) for permanent wetland impacts, restoration of all wetland areas that are temporarily disturbed by the project and removal of several large stands of non-native pampas grass on the site.

The subject site is a 150 ft. wide public utility easement that runs north/south across Agua Hedionda Creek, just east of Agua Hedionda Lagoon in the City of Carlsbad. The easement contains two 230-kV electrical transmission tower lines which provide approximately 30 percent of the electric energy requirements of the San Diego region. Access to the site is provided via an existing dirt/crushed rock surfaced road off of El Camino Real. With the heavy rains of last winter, a small tributary creek adjacent to one of the existing lattice towers carrying the electric transmission lines (Tower No. 70) filled with water creating a channel which is now approximately 20 feet wide and 12 feet deep. With erosion of the soils surrounding the channel, the two easterly foundations for Tower No. 70 became exposed. These concrete foundations are approximately 30 inches in diameter and were originally installed to a depth of 13 feet below grade. With the scour from the newly created channel, these two easterly foundations are now only embedded one-foot, two-inches into the ground. The loss of this supporting soil has caused settlement of the foundations and a slight listing of the tower body to the east.

Because of the need to address this concern immediately, the Executive Director issued an emergency permit on September 8, 1995 and, pursuant to this emergency permit, the new tower has now been installed and the old damaged tower has been removed. This permit is the follow-up permit to that emergency permit. As a permanent solution to the problem, the applicant proposes to install a new steel pole structure approximately 180 feet south of the existing damaged tower and then remove the damaged tower altogether. In order to accommodate the foundation for the new pole structure, 25 sq. ft. of wetland habitat will be permanently filled. In addition, in order to facilitate removal of the old tower and construction of the new pole structure (construction equipment and materials will be placed around the area),

approximately 6,600 sq. ft. of wetland habitat will be temporarily disturbed. Pursuant to Section II(B)(2)(b) of the Commission adopted Interpretive Guidelines On Exclusions From Permit Requirements, such a repair and maintenance project is exempt from coastal development permit requirements. However, the removal/disturbance of the wetland vegetation (greater than 500 sq. ft.) is not exempt, and is thus the project proposed for review before the Commission.

The Commission has certified the City of Carlsbad Agua Hedionda Land Use Plan portion of the City's LCP, but has not yet approved an Implementation Plan portion. As such, the City's LCP is not complete and therefore, the standard of review remains Chapter 3 policies of the Coastal Act with the certified LUP used as guidance.

2. Wetland Protection. Section 30233 of the Coastal Act is applicable and states, in part:

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

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

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

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

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

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

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

(7) Restoration purposes.

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

[...]

As stated previously, the project site is located within an existing utility easement west of El Camino Real in the City of Carlsbad. Freshwater enters the site from the northwest via Agua Hedionda Creek, while saltwater enters the site from Agua Hedionda Lagoon, just west of the site. The entire repair site is also located within the floodplain of Agua Hedionda Creek and, except for the access road, contains Brackish Marsh habitat.

In light of the dramatic loss of wetlands (over 90% loss of historic wetlands in California), and their critical function in the ecosystem, the Coastal Act's mandate to preserve such environmentally sensitive habitats is well founded. The creek in this location supports several wetland and riparian habitats that include Brackish Marsh and Southern Willow Scrub.

Under the Coastal Act, disturbance and/or filling of wetlands is severely constrained. Coastal Act Section 30233 prohibits the filling of coastal waters and wetlands except under the eight limited circumstances cited above. In addition, the project must be the least environmentally damaging alternative and provide feasible mitigation measures to minimize remaining unavoidable adverse environmental effects.

In this particular case, permanent and temporary impacts to wetland habitat are proposed to facilitate the repair and replacement of a damaged electric utility tower for incidental public service purposes. As such, to find that the proposed development is an allowable use under Section 30233(a)(5) of the Act, the Commission must determine that the proposed wetland fill is both incidental and for public service purpose. The permanent wetland fill would result from placement of an 8-ft. diameter concrete foundation to support the replacement utility pole, which is needed to assure continued electrical service to the public. Since the fill is needed by a public utility to continue safe transmission of electricity, the fill is clearly for a public service purpose.

In order for the fill to be incidental, the impacts must be temporary and/or incidental or secondary to the pre-existing public service purpose. As stated above, the project will result in both temporary and permanent impacts to wetlands. However, such impacts are necessary to facilitate repair and replacement of an existing damaged tower carrying electric transmission lines. Therefore, the fill can be considered temporary and incidental to the primary purpose of repair of an existing electric utility tower.

Once it is has been determined that the proposed project is an allowable use under Section 30233 of the Coastal Act, it must also be determined that no other feasible alternative is available that would avoid or lessen the environmental impacts of the development and that mitigation be provided for all unavoidable impacts. Alternatives to the project, in this particular case, are limited. The no project alternative is not feasible because it would result in further damage to the electrical transmission lines and loss of electrical service to the San Diego region. The repair/replacement must occur within the existing transmission line alignment. The applicant has indicated that rather than repair the existing damaged tower in place, which could result in much more substantial adverse impacts to sensitive resources, they have instead proposed to construct a new single steel pole approximately 180 ft. south of the damaged tower and then remove the damaged tower. Because the entire area in this location, with the exception of the dirt/crushed rock surfaced access road, is wetlands, impacts to sensitive habitat cannot be entirely avoided; however, they have been minimized to the extent feasible.

As stated, the installation of the new pole foundation will result in the permanent wetland loss (25 sq. ft.). No other permanent impacts are proposed. The temporary disturbance of approximately 6,600 sq. ft. of wetlands will result from widening of the existing access road to support a 200-ton crane needed to remove the existing tower, for maneuvering construction equipment, and to create a laydown area for construction of the new pole. The applicant has indicated that the approximately 6,600 sq. ft. area is the minimum area necessary to accommodate the necessary work. In addition, the applicant has proposed to have a biologist stake out the work area and have the biologist available during construction of the project and implementation of the mitigation plan to assure adverse impacts to adjacent sensitive habitat areas are minimized.

Although approximately 6,600 sq. ft. of wetland area will be filled by the repair and maintenance work, the impact will only be temporary. The applicant has proposed to remove existing representative brackish marsh species within the impacted area and then install a silt fence along the perimeter of the work area. Geotextile matting will then be placed over the area to minimize excavated material from entering the adjacent sensitive areas and to facilitate restoration of the temporarily disturbed areas. Then, crushed rock will be placed over the matting up to the grade of the existing access road to stabilize the enlarged working area. All soil removed from augering the foundation hole will be placed immediately into dump trucks and removed from the site. When the work is completed, the rock, matting and silt fence and any other debris will be removed from the site. In this way, although the surface of the wetland will be disturbed by the placement of the matting and crushed rock, the soils and hydrology will remain unchanged and it is expected that the area can then be successfully revegetated. As such, the impacts to sensitive resources to facilitate the repair and replacement can be considered temporary.

Historically, the Commission has required mitigation measures to assure there is no net loss in either acreage or habitat value for any displaced wetlands.

The Commission's practice therefore, has been to require a 3:1 mitigation ratio for disturbance of riparian habitats and 4:1 mitigation ratio for other wetland impacts, such as saltwater marsh. In other words, a mitigation area for the creation of new wetlands must be established that is three/four times the size of the existing riparian/wetland area to be removed as a result of the project.

The question of establishing an appropriate mitigation ratio is a difficult one. However, the historic precedents for in-kind replacement at a 3:1 and 4:1 ratio for riparian/wetland disturbance is based on several considerations. First, there are extremely poor results to date in terms of wetland creation or restoration. In general, created wetlands, do not function as effectively as naturally occurring wetland systems. There is less plant and species diversity and overall diminished habitat values found in the artificially-created wetlands. Therefore, because there is typically less plant establishment and reduced habitat values in artificially-created wetlands, the Commission has required a greater commitment of land in areal extent to try and offset the loss of habitat value.

This has been documented in numerous Commission actions in San Diego County on projects involving unavoidable impacts to both wetland and riparian habitats. These include a project where mitigation for impacts to freshwater marsh habitat in conjunction with improvements by the City of San Diego in Los Penasquitos Canyon were required to be mitigated at a 4:1 ratio (ref. CDP #6-87-611/City of San Diego); mitigation for impacts to riparian habitat in the Tijuana River Valley associated with construction of a sewer outfall was required by the Commission at a ratio of 3:1 (ref. CDP #6-88-277/City of San Diego & IBWC); the Commission required the City of Carlsbad to mitigate for impacts to salt/freshwater marsh at 4:1 and impacts to riparian habitat at a ratio of 3:1 in conjunction with the extension of Cannon Road (ref. CDP #6-89-195/City of Carlsbad); for a residential project which involved riparian habitat disturbance upstream of San Elijo Lagoon, the Commission required mitigation at a 3:1 ratio (ref. CDP #6-90-129/Shelley); and, most recently, in approving a bridge over Encinitas Creek at La Bajada Road in 1994, the Commission required the County of San Diego to mitigate impacts to wetlands at a ratio of 4:1 and riparian habitat at a 3:1 ratio (ref. CDP #6-93-155/County of San Diego).

In this instance, the proposed project will involve the permanent fill of 25 sq. ft. of wetlands and temporary fill of approximately 6,600 sq. ft. of wetland habitat. The applicant has proposed mitigation for such impacts. Based on consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USF&WS), the applicant has proposed to create 100 sq. ft. of new Brackish Marsh on-site, within the utility easement, resulting in a 4:1 replacement ratio which is consistent with past Commission precedent. To provide protection, the applicant has proposed to install a steel fence (with vinyl coating) around the mitigation area. In addition, all areas temporarily filled by the repair project are proposed to be restored to their pre-impact condition and the applicant will remove several large stands of existing non-native pampas grass on the site. Special Condition #1 has been proposed to require submittal by the applicant



of final mitigation plans for the project, as proposed by the applicant, that delineate all wetland impacts and provide for mitigation of such at a 4:1 ratio for permanent impacts and full restoration of temporarily filled areas within the existing utility easement as proposed by the applicant. In addition, because the proposed mitigation site and restoration area are located within an existing utility easement that cannot be further encumbered, Special Condition #2 requires the applicant to submit a signed statement agreeing to complete the mitigation within 30 days of Commission action on this permit and to maintain the site as an undisturbed wetland habitat site in perpetuity. The condition further states that any change in status of the mitigation site in the future will require further Commission review. Given this condition, the Commission can be assured that the mitigation site will remain as such and not be subject to development at some point in the future that may be inconsistent with Coastal Act policies.

Furthermore, given the overall lack of success in wetland restoration efforts to date, it is critical that a detailed monitoring program be designed and implemented. The applicant has submitted a monitoring program for the proposed mitigation/restoration. To be assured that the final monitoring program meets all Commission requirements, Special Condition #3 has been proposed. This condition requires a final monitoring program be submitted which includes "as built" plans of the completed mitigation, annual monitoring reports for a five year period, and a final report detailing the overall success or failure of the mitigation and what additional work may be necessary to assure success of the mitigation effort.

The applicant has indicated that other permits are being pursued through various state and federal agencies having jurisdiction over the project. Thus, conditions of approval and/or mitigation measures may be required from these agencies in their review. As such, Special Condition #4 has been proposed. This condition requires the applicant to submit any discretionary permits obtained from other agencies. Should any project modifications be required as a result of other permits, the applicant is further advised that an amendment to this permit may be necessary to incorporate said mitigation/changes into the project.

In summary, the proposed unavoidable impacts to wetlands have been found to be an allowable use within a wetland. In addition, based on the above considerations, all unavoidable impacts to sensitive habitats have been minimized and mitigated to the maximum extent feasible. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

3. Public Access. The proposed development is located west of El Camino Real east of Agua Hedionda Lagoon. In this area of the coast, El Camino Real is the designated first public roadway. As the proposed development will occur between the first public roadway and the sea, a public access finding must be made, pursuant to Section 30604(c) of the Coastal Act. The proposed development involves the permanent removal and temporary disturbance of wetland habitat to facilitate a repair and maintenance project for electrical transmission lines. The proposed project is to occur on an existing S.D.G &

E. easement that crosses Agua Hedionda Creek and will have no affect on the ability of the public to access the coast, consistent with the public access policies of the Coastal 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. In this case, such a finding can be made.

The project is located within the City of Carlsbad. The City's LCP is divided into several land use plan segments. The segment applicable to the subject development is the Agua Hedionda Land Use Plan Segment. The Agua Hedionda Land Use Plan was certified by the Commission in August of 1982. However, the Commission has not yet approved an implementation component. As such, the Agua Hedionda LUP is used as guidance, with the standard of review for development remaining Chapter 3 of the Coastal Act.

In the certified Agua Hedionda LUP, the subject site is designated as Open Space. In addition, two policies within the LUP address the project site. LUP Policies 1.2 and 3.7 list utility transmission and distribution facilities and maintenance of such, as permitted uses within wetland and open spaces areas east of Agua Hedionda Lagoon, provided such development does not adversely impact environmentally sensitive habitat areas and is consistent with Coastal Act policies. As stated above, the proposed development, as conditioned, is consistent with applicable Coastal Act policies. Therefore, the Commission finds the proposed development, as conditioned will not prejudice the City of Carlsbad to obtain a certified local coastal program.

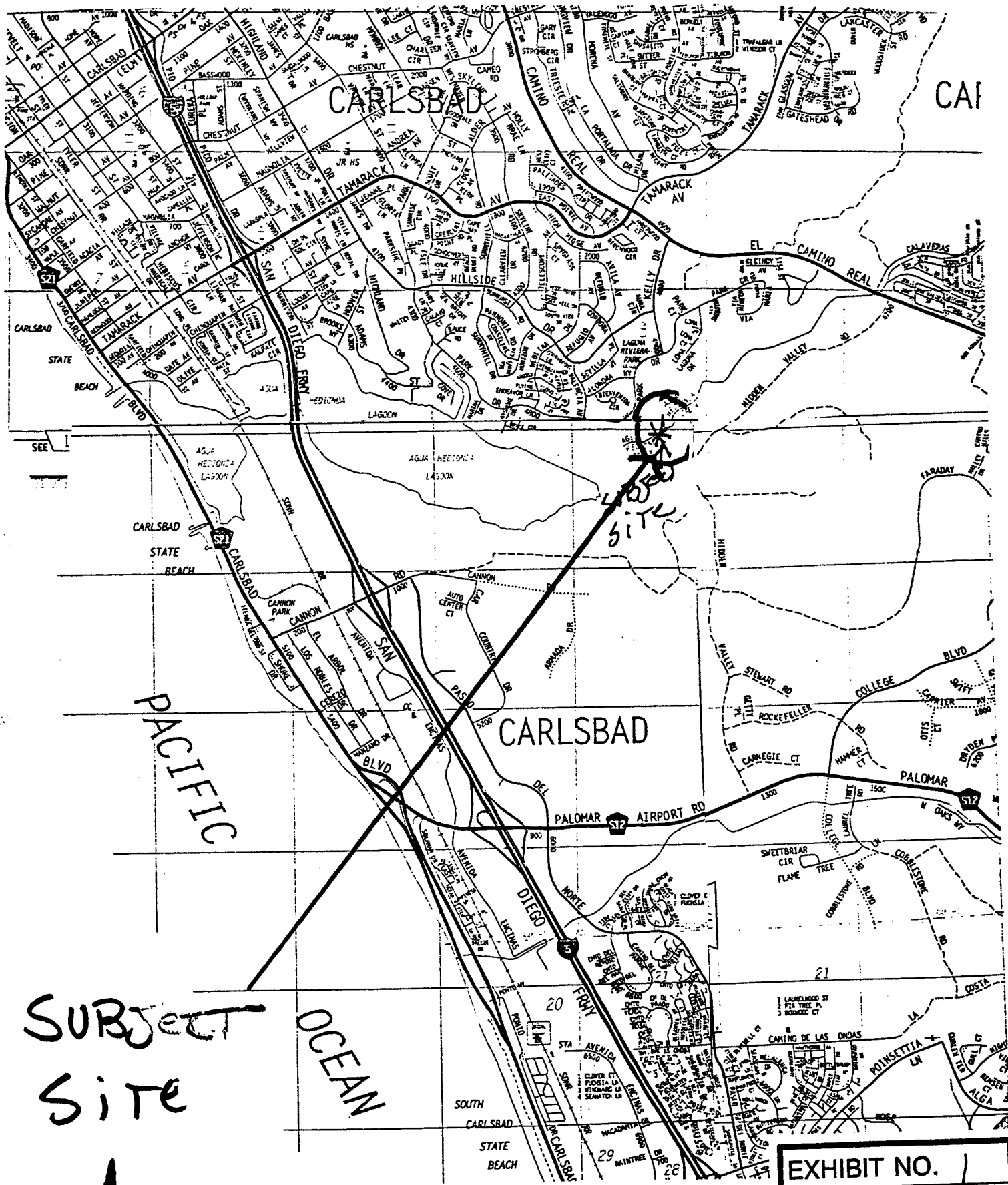
5. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the 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.

As discussed herein, the proposed project may have significant adverse impacts on the environment. Specifically, wetland resources would be impacted. However, all proposed wetland impacts to facilitate repair and maintenance of the utility tower are unavoidable and the applicant has proposed mitigation for all impacts, both permanent and temporary. 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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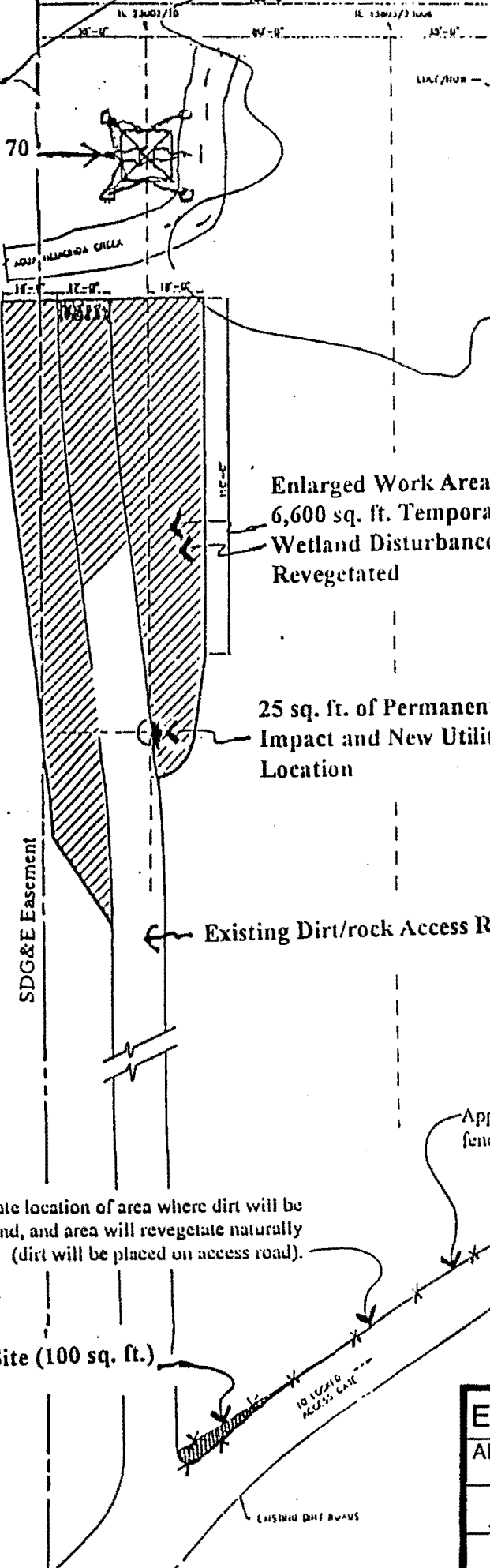
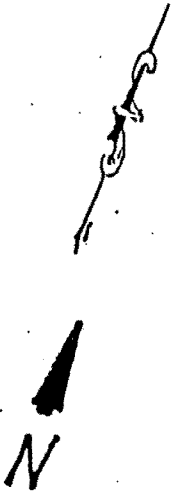


SUBJECT  
SITE



EXHIBIT NO. 1
APPLICATION NO. 0-95-122-6
Vinity Map
California Coastal Commission

Existing Tower 70  
to be Removed



Enlarged Work Area. Area of  
6,600 sq. ft. Temporary  
Wetland Disturbance to be  
Revegetated

25 sq. ft. of Permanent Wetland  
Impact and New Utility Pole  
Location

Existing Dirt/rock Access Road

Approximate limit of temporary  
fencing to protect wetland habitat.

Approximate location of area where dirt will be  
raked out of wetland, and area will revegetate naturally  
(dirt will be placed on access road).

Wetland Mitigation Site (100 sq. ft.)

EXHIBIT "A"

EXHIBIT NO. 2
APPLICATION NO. 6-95-127-6
Site Plan
California Coastal Commission