

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
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Staff: LJM-SD
Staff Report: 5/15/97
Hearing Date: 6/10-13/97STAFF REPORT: CONSENT CALENDAR

Application No.: 6-97-22

Applicant: San Diego Gas & Electric Agent: Mark Chomyn

Description: Repair an existing dirt utility access road to include placement of approximately 30 cubic yards of rock fill in creek to create wet crossing and realignment of 15 ft. by 120 ft.-long section of access road. Also proposed is mitigation for removal of four (4) trees.

Site: Within the Los Penasquitos Canyon Preserve, west of Black Mountain Road and south of Park Village Drive, North City, San Diego, San Diego County. APN 309-031-08

Substantive File Documents: Certified City of San Diego Local Coastal Program (LCP) North City Segment; Department of Fish and Game Streambed Alteration Agreement No. 5-059-97 dated March 20, 1997; Mitigation and Monitoring Measures for Carson Crossing in Los Penasquitos Preserve dated March 19, 1997.

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. Mitigation/Monitoring. The permittee shall implement the Mitigation and Monitoring Program dated March 19, 1997, proposed by the applicant and accepted by the California Department of Fish and Game as part of the Streambed Alteration Agreement No. 5-059-97 for the proposed development that includes the following:

- a. Removal of three (3) Sycamore (*Platanus racemosa*) trees shall be mitigated by replanting with similar species or *Populus fremontii*, utilizing minimum 1 gallon containers, in the vicinity of the proposed project. Replanting shall occur at a ratio of 10:1 and plantings shall be spaced no closer than 20 feet on center.
- b. Removal of one (1) Oak (*Quercus agrifolia*) tree shall be mitigated by replanting with similar species in the vicinity of the proposed project. The replacement plantings will consist of seedlings-of-the-year harvested immediately adjacent to the site. Replanting shall occur at a ratio of 10:1 and plantings shall be spaced no closer than 20 feet on center.
- c. All planting will occur between October 1 and March 1 and be hand watered as necessary through the establishment period.
- d. All plantings shall have a minimum 80% survival rate for the first year and 100% survival thereafter. All replacement *Platanus racemosa* shall reach a minimum height of 5 ft. at 3 years and 9 ft. at 5 years. All replacement *Populus fremontii* shall reach a minimum height of 7 ft. in 3 years and 12 ft. in 5 years. All replacement *Quercus agrifolia* shall reach a minimum height of 1.5 ft. in 3 years and 4 ft. in 5 years.
- e. Monitoring of survival and height of mitigation plantings shall occur on a yearly basis with data reported to the Executive Director, for review and written approval, on a yearly basis.
- f. The applicant shall be responsible for replacement planting and/or other corrective measures (as determined by the California Department of Fish and Game in consultation with the Executive Director) to achieve the minimum survival and growth requirements for a 5 year period commencing from the date of initial planting.

The permittee shall undertake the development in accordance with the approved mitigation plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No change to the plan shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The proposed development involves the repair of an existing unpaved utility transmission line access road. Recently, a creek which flows through the floor of Penasquitos Canyon, altered its direction, inundating a portion of an existing dirt utility access road. As such, to maintain the necessary utility access, the applicant is proposing to realign a portion of the access road and "abandon" the existing portion that is inundated. The realigned segment will be constructed adjacent to and west of the existing inundated road and will be approximately 15 ft. wide by 120 ft. long. In addition, to provide a seasonal wet crossing of the creek for utility service vehicles, the applicant is proposing to place approximately 30 cubic yards of rock within the creek. Additionally, because realignment of the access road requires removal of four trees (3 Sycamore and 1 Oak), the applicant is proposing mitigation (and monitoring) which includes replanting at a replacement ratio of 10:1.

The proposed development will occur within an existing San Diego Gas & Electric utility easement which crosses the Los Penasquitos Canyon Preserve in a north/south direction. The easement contains two 230-kV, one 69-kV and one 12-kV electric transmission lines that are mounted on both wooden poles and metal lattice towers. The project site is the existing access road used by utility maintenance crews to provide necessary service/repairs to these electric transmission lines. The surrounding area consists of a densely vegetated riparian woodland, cattails and freshwater marsh habitat and grassland.

While the proposed project is located well inland from the coast, it is still within the Coastal Zone (the Coastal Zone boundary in this location extends approximately 5 miles inland encompassing a good portion of Los Penasquitos Canyon). The proposed development, although a "repair project" requires a coastal development permit because the proposed repair work will occur within an existing environmentally sensitive habitat area.

The Commission has certified the City of San Diego Local Coastal Program (LCP). However, the proposed development will occur within an area where certification has been deferred. As such, the standard of review is Chapter 3 policies of the Coastal Act.

2. Environmentally Sensitive Habitat Areas. 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, the proposed project involves repair of an existing unpaved utility access road within the Los Penasquitos Canyon Preserve in the City of San Diego. The entire repair site is located within the floodplain of Penasquitos Creek, which flows from east to west through the canyon floor. The creek in this location and the surrounding area supports riparian habitat including oak and willow dominant woodlands, cattails and freshwater marsh.

The proposed repair involves both removal of wetland vegetation and the placement of gravel rock within an existing creek. Under the Coastal Act, disturbance of wetlands is severely constrained. Coastal Act Section 30233 prohibits the filling of wetlands except under the eight limited circumstances cited above. Additionally, this Coastal Act Section requires that the project also represent the least environmentally damaging alternative and provide feasible mitigation measures to minimize remaining unavoidable adverse environmental impacts.

Section 30236 of the Coastal Act regulates the channelization or substantial alteration of rivers and streams. However, even though the proposed repair project involves the placement of approximately 30 cubic yards of fill within an existing creek, in this particular case, the fill does not channelize nor substantially alter the creek. The creek in this location is narrow (approximately 40 ft.) and currently is about two feet deep. The applicant is proposing to place a small amount of coarse rock fill (approximately 30 cubic yards) on the soft bottom of the creek to provide a bed for vehicles to cross. In this way culverting and/or bridging the creek, which could involve significant adverse environmentally impacts, is not necessary. In addition, the applicant has stated that placement of the rock will not alter the creek hydrology as flows will not be impeded. As such, the proposed project is not the type of development addressed by Section 30236.

In the case of the proposed development, impacts to wetlands are proposed to facilitate repair of an existing utility access road 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 impacts are both incidental and for public service purposes. The wetland impacts would result from realignment of the existing utility access road, which is needed to enable service and maintenance crews to access and repair (when and if necessary) existing electrical transmission lines, to assure continued electrical service to the public. Since the impacts are needed by a public utility to assure continued safe transmission of electricity, the impacts are clearly for a public service purpose.

In order for the impacts to be incidental, they must be temporary and/or incidental or secondary to the pre-existing public service purpose. As stated above, while the project will result in impacts to wetland habitat, such impacts are necessary to facilitate repair of an existing utility access road. Therefore, the impacts can be considered incidental to the primary purpose of repair of an existing utility access road.

Once it has been determined that the proposed project is an allowable use under Section 30233 of the Act, it must be determined that no other feasible alternative is available that would lessen or avoid the environmental impacts of the development and that mitigation be provided for all remaining unavoidable impacts. Alternatives to the project, in this particular case, are limited. The no project alternative is not feasible because without the access road, service and maintenance crews would not be able to access the electrical transmission lines in a timely manner to perform regular service which, in the case of an emergency, could result in the loss of electrical service to the customers these lines serve. In addition, park rangers for the regional preserve also have stated that they, from time to time, utilize the access road, which again, in the case of an emergency, can significantly cut down response time.

Relative to the proposed realignment, the applicant has indicated that there are no other less environmentally damaging alternatives within the vicinity.

The existing access road is currently inundated and has become the flow path of the creek. As such, in order to "reclaim" it, the creek flow would have to be artificially manipulated, which could involve significant environmental impacts. Relative to other alignments for the access road, the applicant has indicated that other alignments, including utilizing the existing adjacent pedestrian/bicycle path, would involve far greater impacts to wetland vegetation and habitats.

The proposed fill and realignment have also been minimally designed in order to reduce potential impacts. The proposed realigned access road will be 15 ft. wide and 120 ft. long, the minimum length necessary to bypass the existing inundated access road segment. After bypassing the inundated section, the realigned access road will again connect with the existing access road. In addition, and as stated previously, the placement of the 30 cubic yards of rock along the creek bottom will not have an adverse effect on the creek hydrology as flood flows will not be impeded.

However, in order to accommodate the proposed realigned access road, four (4) existing trees will need to be removed (3 mature Sycamore trees and 1 small Oak). The access road will then be created by blading the top six inches of soil and vegetation (Mugwort and Bermudagrass). While the creation of the realigned access road will remove four trees, approximately six inches of top soil and non-native vegetation within a wetland, no other wetland vegetation will be impacted. In addition, the realigned access road segment will not permanently displace any wetland soils, as it will remain a dirt road and its ability to function as a wetland will not be significantly altered. Although its ability to sustain wetland vegetation could be impaired because of vehicles driving on it, this is no change from what existed previously in that vehicles also drove on the previous access road. Additionally, the placement of 30 cubic yards of rock along the bottom of the creek will not impact wetland habitat as no wetland or other plant species occur in the creek at the proposed crossing and the small amount of rock will not significantly alter the ability of this area to function as a wetland. As such, the only permanent impacts to wetland habitat will involve the removal of the four trees.

Historically, the Commission has required mitigation measures to assure there is no net loss in either acreage or habitat value for any impacted wetlands. As one means to assure a no net loss of acreage of habitat, once the new access road alignment is completed, the applicant is proposing to "abandon" the inundated access road segment. In addition, because the proposed repair project will involve the permanent removal of four existing trees within the wetland area, the applicant has proposed mitigation for this impact. Based upon a mitigation and monitoring program accepted by the California Department of Fish and Game in Streambed Alteration Agreement No. 5-059-97, the applicant has proposed to replant trees of similar species within the vicinity of the project at a ratio of 10:1. In addition, the applicant has proposed performance criteria and monitoring for a 5 year period from the date of planting. The applicant has also committed to be responsible for replacement planting and/or corrective measures to assure success for the proposed mitigation. Special Condition #1 has been proposed to formalize the

applicants proposed mitigation program. In addition, the condition notifies the applicant that the mitigation must occur consistent with the proposed mitigation and that any changes must first be reported to the Executive Director to determine if an amendment to the permit is necessary.

Typically, when habitat mitigation is proposed/required, the Commission has also required that the mitigation site be preserved in perpetuity through recordation of an open space easement. However, in this particular case, such an easement is not necessary as the proposed mitigation area is located within an existing regional preserve.

In summary, the proposed repair of an existing utility access road involves impacts to wetland vegetation and fill within an existing creek. As discussed above, the impacts have been found to be unavoidable and a permitted use under Section 30233 of the Coastal Act. In addition, the unavoidable impacts have been minimized and mitigated to the maximum extent feasible. Therefore, the Commission finds the proposed development, as conditioned, consistent with Section 30233 of the Coastal Act.

3. 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 City of San Diego has received approval from the Commission of its LCP. The proposed development will occur within the area generally governed by the North City Land Use Plan. However, until a specific plan is developed and approved by the Commission, the area of the Los Penasquitos Canyon Preserve Regional Park will remain in deferred certification. Therefore, Chapter 3 policies of the Coastal Act are the required standard of review.

As discussed above, the subject development with the proposed mitigation is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development, as conditioned, should not prejudice the ability of the City of San Diego to complete its planning for this area or continue to implement its certified LCP.

4. California Environmental Quality Act (CEQA). 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.

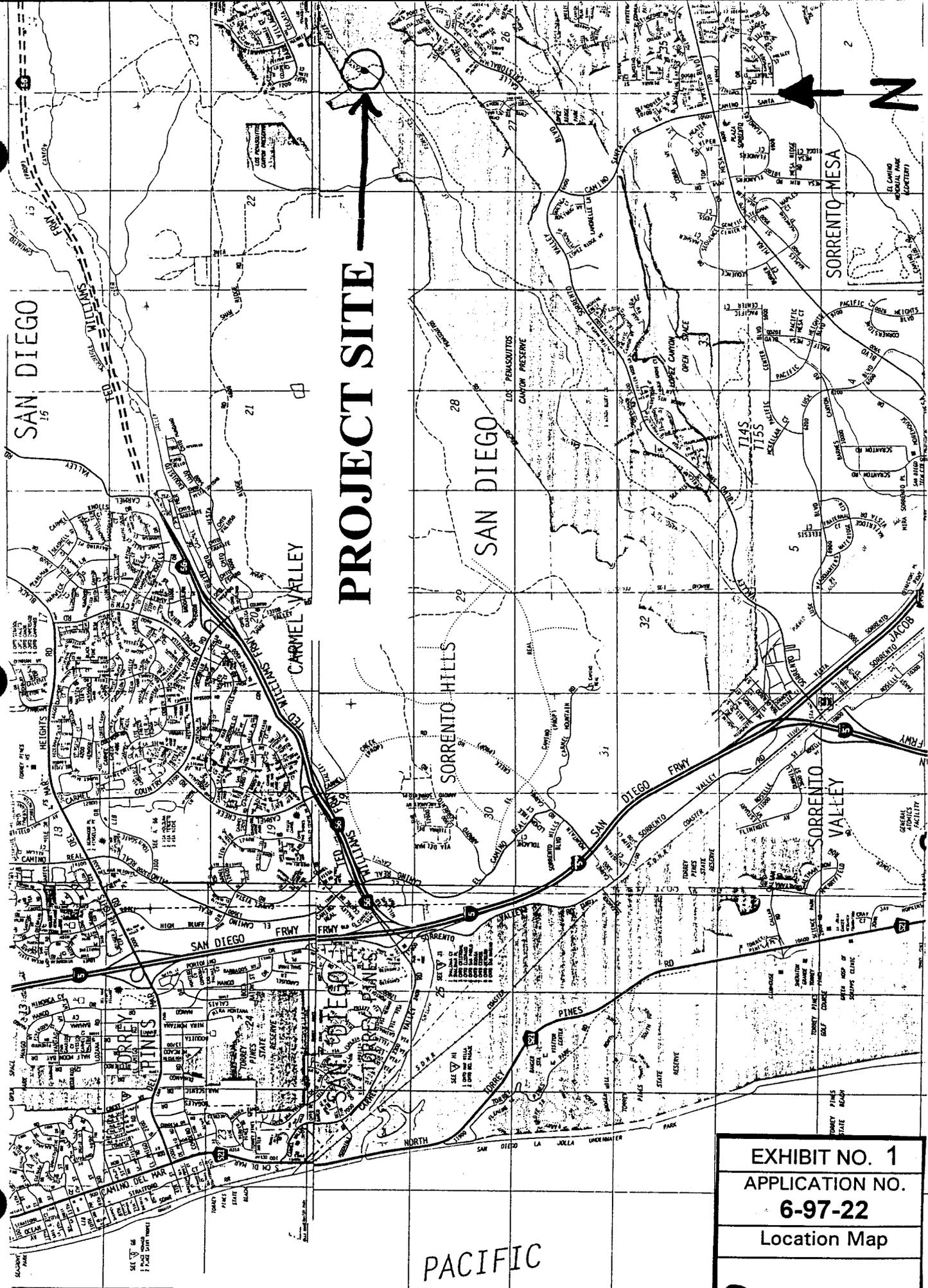
As discussed herein, the subject repair project, with the proposed mitigation to address removal of four trees within an environmentally sensitive habitat

area, will not cause significant adverse impacts to the environment. As discussed above, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the proposed activity may have on the environment. Therefore, the Commission finds the proposed project, as conditioned, 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.

(7022R)



PROJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
6-97-22
Location Map

EXISTING CONDITIONS ALIGNMENT OF RELATED ROAD

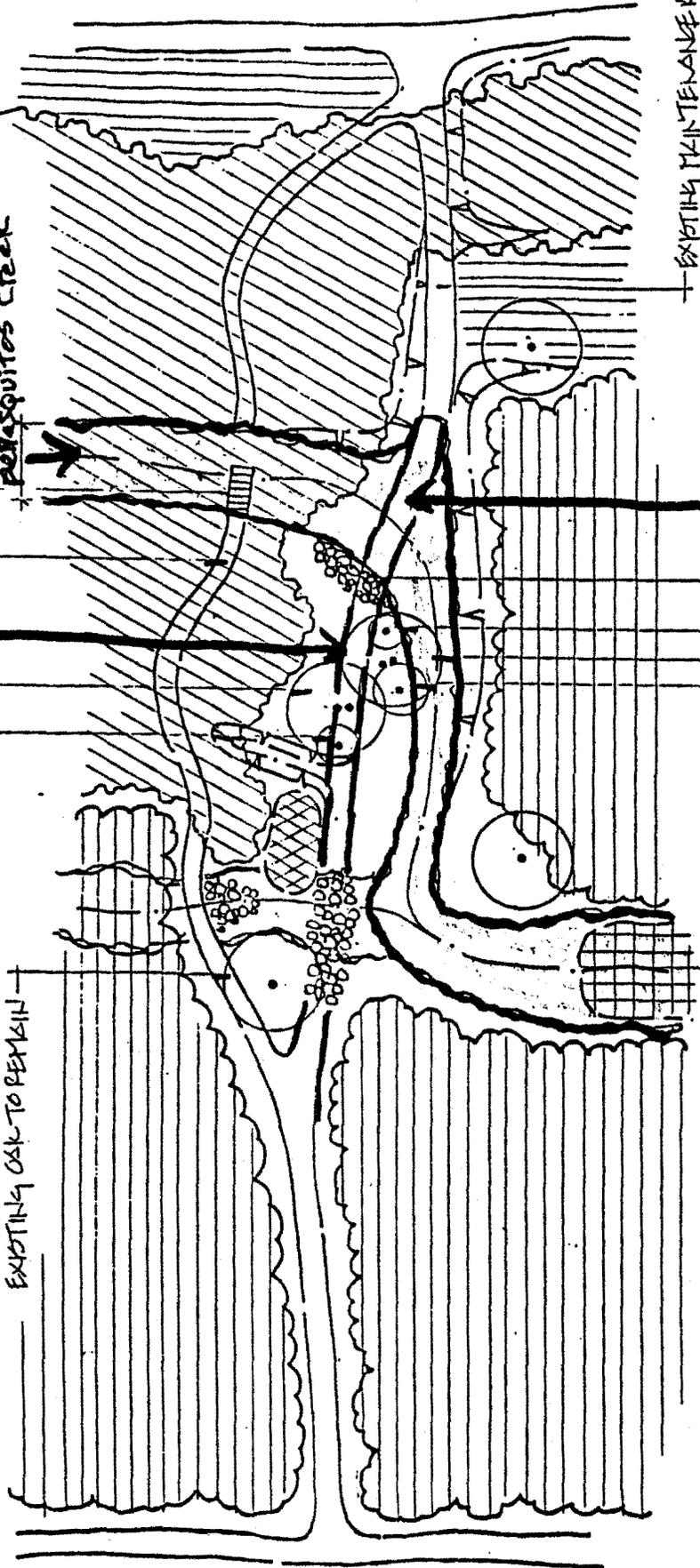
North
1" = 40'

EXISTING Sycamore TO BE REMOVED
EXISTING Oak TO BE REMOVED

EXISTING Oak TO REMAIN

EXISTING PEDESTRIAN/BICYCLE PATH
EXISTING PEDESTRIAN BRIDGE
PERSQUITES Creek

EXISTING MAINTENANCE ROAD
Proposed crossing
EXISTING GRAVEL - TYPICAL
EXISTING Oak TO REMAIN
EXISTING Sycamore TO REMAIN
EXISTING Oak TO REMAIN



-  RIPARIAN WOODLAND (OAK DOMINANT)
-  RIPARIAN WOODLAND (WILLOW DOMINANT)
-  GRASSLAND
-  CATTLE FRESH WATER MARSH
-  MUDFLATS

EXHIBIT NO. 2
APPLICATION NO.
6-97-22
Site Plan
California Coastal Commission