

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

TELEPHONE AND TDD (415) 904-5200



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Staff Report and Recommendation on Consistency Determination

Consistency Determination

No. CD-035-97

Staff: TNP-SF

File Date: 3/17/97

45th Day: 5/1/97

60th Day: 5/16/97

Extended to: 8/18/97

Commission Meeting: 8/13/97

Federal Agency: U.S. Navy

Development Location: Wilson Cove, San Clemente Island, Los Angeles County (Exhibits 1 and 2).

Development Description: Construction of bachelor enlisted quarters, dining hall, and associated support facilities (Exhibit 3).

Executive Summary

On March 17, 1997, the Commission received a consistency determination from the Navy for construction of bachelor enlisted quarters and associated support facilities near Wilson Cove on San Clemente Island. The project is adjacent to a developed area. The construction of the facilities is necessary due to the deteriorating condition of the existing structures. The Navy has stated that rehabilitation of the structures is not economically feasible.

The island provides habitat for the island night lizard, a federally listed threatened species. The species occurs at the project site. Because the project potentially impacts a listed species, the Navy has commenced "Section 7" consultation with the U.S. Fish and Wildlife Service. However, its consultation has not yet resulted in any agreed upon mitigation measures to protect the island night lizard. Therefore, the project, as proposed, may negatively impact this threatened species. The staff is recommending that the Commission object to the project at this time, based on insufficient information with which to find the project consistent with Section

30240 of the CCMP. To remedy this information deficiency, the Navy needs to submit a final mitigation plan with its consistency determination, demonstrating that impacts to the island night lizard have been avoided or mitigated.

The project is consistent with the other policies of the Coastal Act. The project will not be visible from any publicly accessible ocean areas. Therefore, the project is consistent with the view protection policy (Section 30251) of the Coastal Act. The project also will not adversely affect water quality and is consistent with Section 30231 of the Coastal Act.

Staff Summary and Recommendation:

I. Staff Summary

A. **Project Description:** The Navy proposes to construct 38 two-story units for enlisted bachelor quarters, a new dining hall, and associated support facilities to replace inadequate and deteriorated facilities that are no longer in compliance with applicable Navy codes and standards for housing. The Navy states that renovating the existing barracks is not economically feasible. Associated support facilities include access roads, parking, landscaping, and connections to utilities. An existing dining hall will also be demolished. The project will not increase the population on the island.

The project site encompasses approximately 9.6 acres of disturbed area. A decayed cement catchment slab covers much of the project site. The site is bordered by South Wilson Cove Road to the north, existing barracks to the east, and unimproved land to the south and west (see Exhibit 2). The shoreline is approximately 2,000 feet to the east. The Navy will remove the existing catchment basin and pulverize it for use in the proposed road beds. The Navy will import dirt from a borrow pit located southeast of the construction site for use in the project.

B. **Status of Local Coastal Program:** The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal program (LCP) of the affected area. If the LCP has been certified by the Commission and incorporated into the California Coastal Management Program (CCMP), it can provide guidance in applying Chapter 3 policies in light of local circumstances. If the LCP has not been incorporated into the CCMP, it cannot be used to guide the Commission's decision, but it can be used as background information. The Commission has not certified the LCP for the County of Los Angeles.

C. **Federal Agency's Consistency Determination:** The U.S. Navy has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

D. Applicable Legal Authorities: Section 307 of the Coastal Zone Management Act provides in part:

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

The informational requirements of the federal consistency regulations (15 CFR Part 930) provide:

Section 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

Section 930.42 State Agency disagreement.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see Section 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.

E. Practicability: The federal consistency regulations provide:

Section 930.32 Consistent to the maximum extent practicable.

(a) The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

Since no issue of practicability has been raised by the Navy, the standard before the Commission is full consistency with the CCMP. The Navy has not attempted to assert in this case that compliance with the CCMP is prohibited based upon the requirements of existing law applicable to its operations.

II. Staff Recommendation:

Staff recommends that the Commission adopt the following motion:

MOTION:

I move that the Commission *concur* with the Navy's consistency determination.

The staff recommends a **NO** vote on this motion. A majority vote in the negative will result in adopted of the following resolution:

OBJECTION

The Commission hereby *objects* to the consistency determination made by the Navy for the proposed project, finding that the project does not contain sufficient information to enable the Commission to determine whether the project is consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program.

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Environmentally Sensitive Habitat:

Section 30240 of the Coastal Act provides for the protection of sensitive habitat areas. This section states, in part:

(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.

Although the project is in a disturbed area, the island night lizard, a federally listed threatened species, occurs at the project site. The Commission usually considers federally and state listed threatened and endangered species to constitute environmentally sensitive habitat areas for the purposes of review under Section 30240. The night lizard utilizes rocky habitat, which is found on at least one portion of the site. Construction of the project will remove habitat for the night lizard and may directly "take" some individuals. Because the lizard is a threatened species, any loss of habitat can lead to a significant disruption of habitat and jeopardize the species' survival.

The Navy states in its consistency determination that "Section 7 consultation has been initiated to set up a mitigation plan." However, the U.S. Fish and Wildlife Service has not yet completed its Section 7 consultation. Therefore, the Navy has not yet developed a mitigation plan to address impacts to sensitive resources. Without being able to review the measures proposed as mitigation for impacts to the island night lizard, the Commission does not have sufficient information to determine whether the project is consistent with Section 30240 of the Coastal Act.

B. Marine Environment: Section 30231 of the Coastal Act states:

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, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In its consistency determination, the Navy states that the proposed project will lead to a slight increase in waste water discharge. However, because the increase in waste water is minimal, it is not expected to have a significant impact on the marine resources of the area.

Runoff from the construction site also has the potential to negatively affect the marine resources of the area. As part of the project, the Navy requires its contractors to obtain an NPDES permit from the Regional Water Quality Control Board prior to construction; through its review, the Board will ensure that runoff from construction activities will not adversely affect downstream waters and that adequate erosion control measures will be in place prior to construction. The Navy is unable to submit a plan for water runoff prior to Commission action on the project; however, the Navy has agreed to submit the NPDES permit and runoff control

measures to the Commission staff for its review prior to commencement of construction to assure that runoff impacts will be minimized and coastal waters protected. Therefore, unlike the previously discussed issue, where the fate of a threatened species may be at stake, the Commission believes the runoff issues are unlikely to raise significant habitat or resource concerns and can appropriately be delegated to its staff. With the commitment to submit the NPDES permit for Commission staff review, the Commission finds the project consistent with Section 30231 of the Coastal Act.

C. Visual Resources: Section 30251 of the Coastal Act states:

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 proposed project is located approximately 2,000 feet from the shoreline and is behind a prominent ridge. The project is adjacent to a site that is developed with existing barracks and other military structures. The Navy will limit building heights to a maximum of eight meters (approximately 26 feet). The island is entirely owned by the U.S. Navy and existing Navy policy requires that the public maintain a distance of at least 300 yards away from the island's shoreline. Due to the distance of the project from public areas and the topography of the site, the proposed project will not be visible from, or degrade the visual quality of, the area as seen from the ocean. Therefore, the Commission finds the project will not adversely affect public views and is consistent with Section 30250 of the Act.

D. Public Access: Sections 30210 through 30212 of the Coastal Act require public access opportunities to and along the coast to be protected and maximized, consistent with public safety, resource constraints, and military security needs. Section 30212 states, in part:

(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.

The project is on a military base, where the Navy prohibits public access based on military security needs. The Commission has traditionally determined that legitimate military security needs in situations where public access burdens are not generated by proposed activities means that no additional public access needs to be provided in order to find the project consistent with Coastal Act policies on access. This project will not generate any burdens on public access opportunities. Therefore, the Commission finds the project consistent with the public access policies of the Coastal Act.

E. Measures to Bring the Project into Conformance with the CCMP: Section 930.42(b) of the regulations implementing the CZMA provides, in part, that:

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see Section 930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.

As described above, the Commission has insufficient information to fully determine the impacts from the project on the island night lizard. To resolve this information deficiency and enable the Commission to find the proposed project consistent with Section 30240 of the Coastal Act, the Navy must either complete an adequate mitigation plan to address the impacts from the project on this species or completely avoid the species.

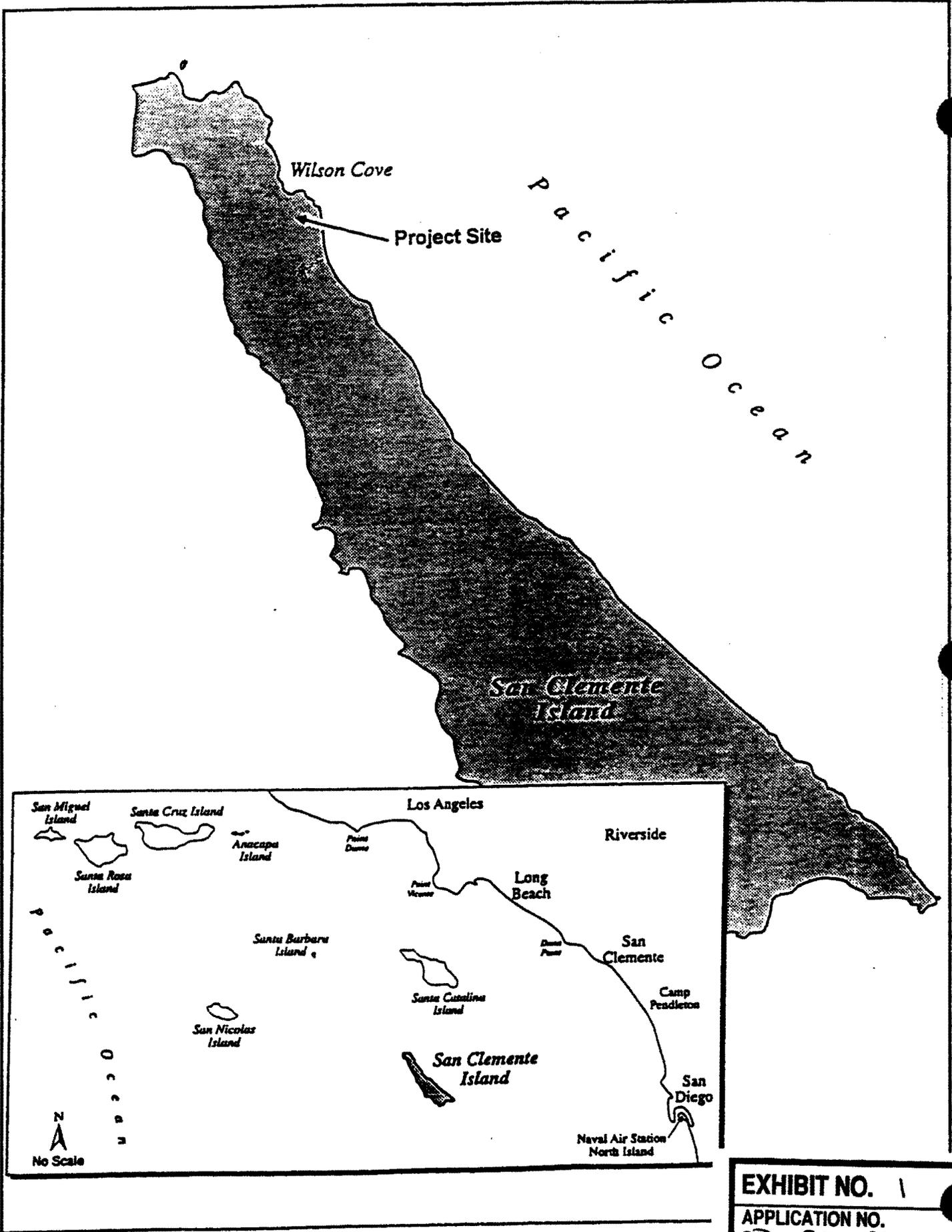


Figure 1. Regional location map.

EXHIBIT NO.	1
APPLICATION NO.	CD-35-97

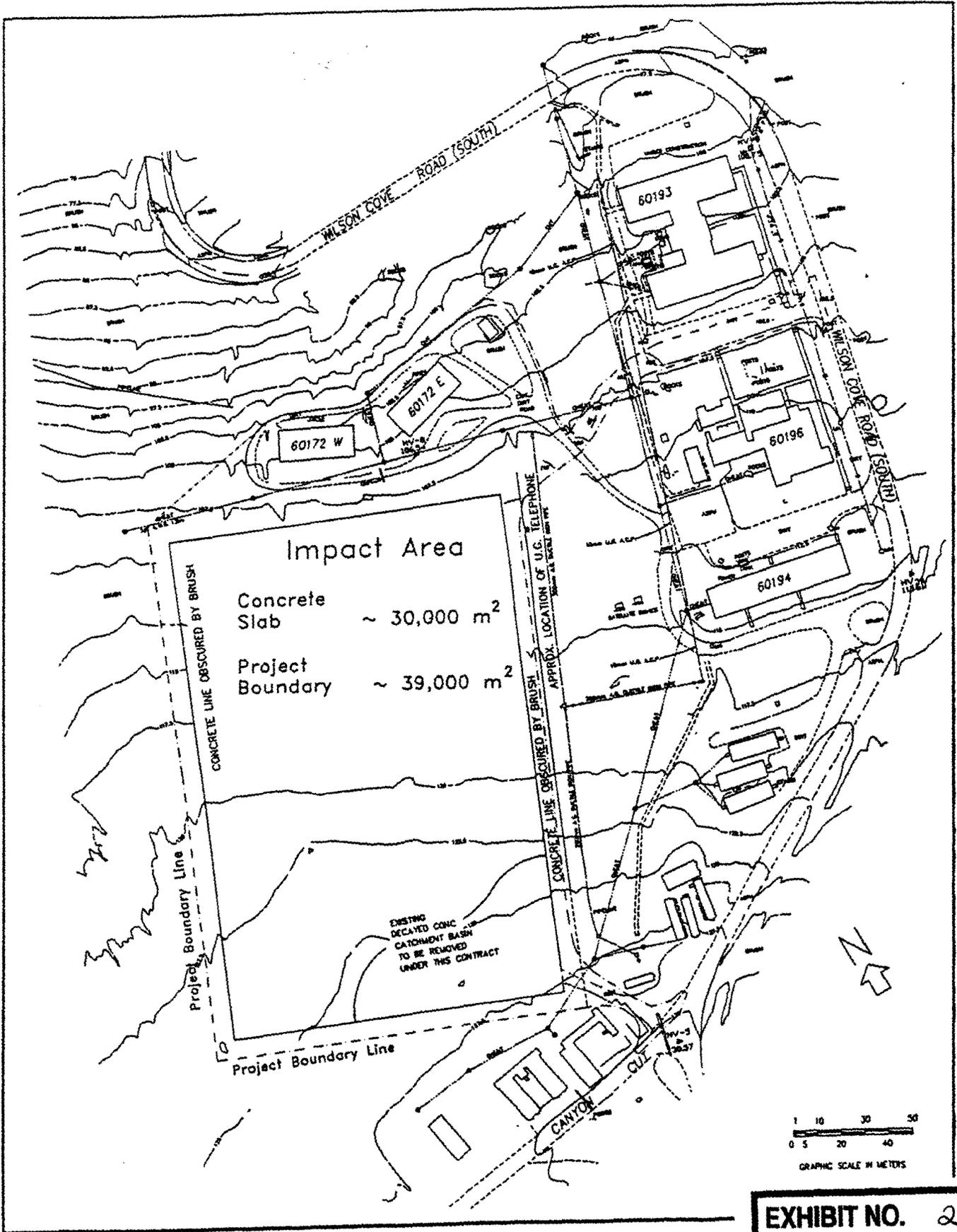


Figure 2. Proposed Site Location

EXHIBIT NO.	2
APPLICATION NO.	CD-35-97

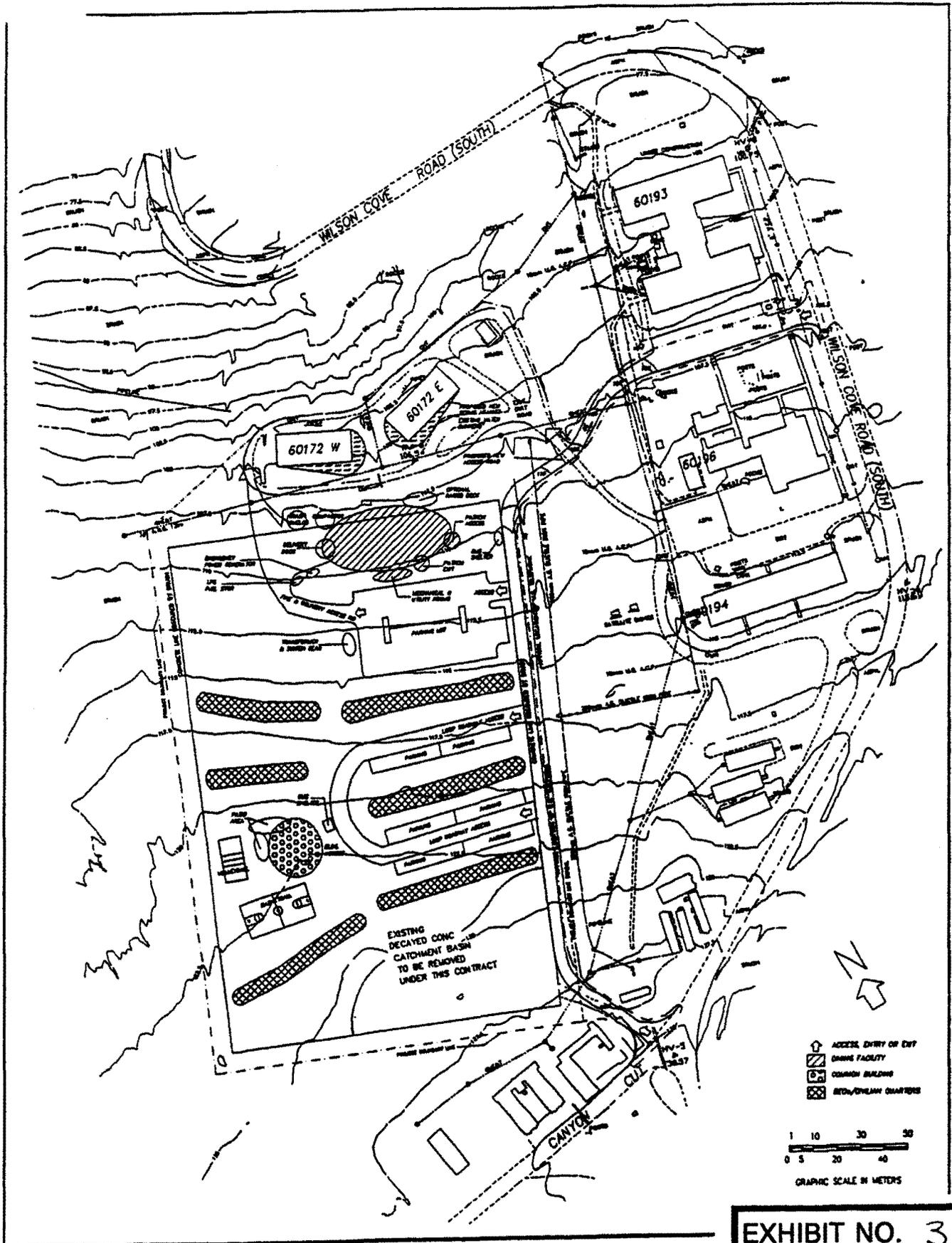


Figure 3. Proposed Site Layout

EXHIBIT NO. 3
APPLICATION NO. CD-35-97
California Coastal Commission