

CALIFORNIA COASTAL COMMISSION

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**W-6.a**

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Staff:	SMH, JIL—SF
Staff Report:	September 25, 1998
Hearing Date:	October 14, 1998
Item Number:	W-6.a

**PERMIT AMENDMENT
STAFF RECOMMENDATION**

APPLICANT: Southern California Edison Company (Edison) on behalf of Edison, San Diego Gas and Electric Company, and the Cities of Anaheim and Riverside, as Owners of San Onofre Nuclear Generating Station (SONGS) Units 2 and 3

PERMIT NO: 6-81-330-A3 (formerly 183-73)

PROJECT DESCRIPTION: Request to amend permit mitigation conditions to adjust the schedule for the Wetland Restoration project (Special Condition A) to accommodate completion of the CEQA/NEPA environmental review.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

Synopsis

In April 1997, the Commission approved amendments to the mitigation conditions in Southern California Edison Company's coastal development permit for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. The conditions originally were adopted by the Commission in 1991 to mitigate the adverse impacts of the power plant on the marine environment. In 1993, the Commission added a requirement for the permittee to partially fund construction of an experimental fish hatchery.

CONDITION A: WETLAND MITIGATION

Section 2.1: Final Restoration Plan

Within ~~12 months~~ 60 days following the ~~Commission's approval of a site selection and preliminary restoration plan, San Dieguito River Valley Park Joint Power Authority's certification of an Environmental Impact Report and the U.S. Fish and Wildlife Service's record of decision adopting an Environmental Impact Statement,~~ the permittee shall submit a final restoration plan, along with CEQA and NEPA documentation ~~generated in connection with local or other state agency approvals,~~ to the Executive Director of the Coastal Commission for review and approval. The final restoration plan shall substantially conform to the ~~approved preliminary restoration plan as originally submitted or as amended by the Commission pursuant to a request by the permittee approved by the Commission on November 5, 1997.~~ If the CEQA/NEPA review concludes that an alternative plan that meets the conditions set forth in Condition A Section 1.3 (minimum standards) and Section 1.4 (objectives) is the environmentally superior alternative, then the permittee may submit a final plan that meets these conditions and that reflects the outcome of the CEQA/NEPA review process. The final restoration plan shall include, but not be limited to the following elements:

- a. Detailed review of existing physical, biological, and hydrological conditions; ownership, land use and regulation.
- b. Evaluation of site-specific and regional restoration goals and compatibility with the goal of mitigating for SONGS impacts to fish.
- c. Identification of site opportunities and constraints.
- d. Schematic restoration design, including:
 1. Proposed cut and fill, water control structures, control measures for stormwater, buffers and transition areas, management and maintenance requirements.
 2. Planting Program, including removal of exotic species, sources of plants and or seeds (local, if possible), protection of existing salt marsh plants, methods for preserving top soil and augmenting soils with nitrogen and other necessary soil amendments before planting, timing of planting, plans for irrigation until established, and location of planting and elevations on the topographic drawings.
 3. Proposed habitat types (including approximate size and location).
 4. Assessment of significant impacts of design (especially on existing habitat values) and net habitat benefits.
 5. Location, alignment and specifications for public access facilities, if feasible.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

Project Background

The San Onofre Nuclear Generating Station (SONGS) is located in north San Diego County (see Exhibit 1). SONGS Unit 1 began operation in 1968 and stopped operating in the early 1990s. Construction of SONGS Units 2 and 3 began in 1974 and was completed in 1981. Operation of Units 2 and 3 began in 1983 and 1984, respectively.

The permit for construction of SONGS Units 2 and 3 was approved in 1974 amidst considerable debate concerning the potential adverse effects SONGS would have on the marine environment. To address these issues, a condition of the permit required (1) studying the impacts of the operation of Units 2 and 3 on the marine environment offshore from San Onofre, and (2) mitigation of any adverse impacts. An independent Marine Review Committee (MRC) was established to predict, and later to measure, the effects of SONGS Units 2 and 3 on the marine environment.

As a result of the impact studies, in 1991 the Coastal Commission added new conditions requiring the permittee to implement a mitigation program to: (1) create or substantially restore at least 150 acres of Southern California wetlands, as compensatory mitigation for Bight-wide fish losses; (2) install fish behavioral barrier devices at the power plant as avoidance mitigation for losses of local midwater fish; and (3) construct a 300-acre artificial reef, as compensatory mitigation for adverse impacts to the San Onofre Kelp community. The permit conditions also required the permittee to provide the funds necessary for Commission staff oversight and independent monitoring of the wetland and artificial reef mitigation elements.

In a separate action, the San Diego Regional Water Quality Control Board, which issues and administers the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit for SONGS, reviewed compliance with NPDES permit conditions and concluded there were no NPDES permit violations. Earth Island Institute intervened and filed action in Federal District Court, alleging violations of the Clean Water Act. The case was settled, requiring SONGS owners to, among other things, undertake restoration of additional wetland acreage near or adjacent to the San Dieguito wetlands, which the Commission had previously approved as the restoration site for the permit mitigation program.

In 1993, the Commission added a requirement for the permittee to partially fund (\$1.2 million) construction of an experimental white seabass hatchery. Due to its experimental nature, the Commission did not assign mitigation credit to this requirement.

After work on implementation of the mitigation conditions was stalled due to technical difficulties and the permittee's changing interpretations of its permit obligations, the permittee submitted amendment requests in 1995 and 1996. The

1993 settlement with Earth Island Institute in order to include that restoration effort in the CEQA/NEPA review.

The permittee has committed to providing the detailed information requested by the JPA/USFWS in August for the project alternatives and hydrology and inlet maintenance issues no later than November 1, 1998 and the final geological report by December 1, 1998. Meeting these deadlines is essential to completing the CEQA/NEPA process within the timeframe set by the lead agencies. To the extent that the lead agencies may make requests of the permittee for additional materials, this timeframe may be delayed.

The permittee will submit the final wetland restoration plan to the Commission within 60 days of completion of the EIR/EIS process. Separating the Commission's actions on the final plan and the coastal development permit application will simplify the process in two ways. First, obtaining Commission approval of the final restoration plan before seeking the necessary approvals and/or permits from other agencies will clarify that it is the Commission-approved plan that is before the other agencies. Second, the permittee will be able to submit to the Commission a complete coastal development permit application for construction of the wetland restoration project which incorporates the provisions of local and other agency approvals and/or permits.

Consistency with Coastal Act

In its 1991 adoption of conditions to the 1974 coastal development permit for SONGS Units 2 and 3, the Commission found the required compensatory mitigation, monitoring, and remediation program to be a minimum package. The Commission found that full implementation of the minimum package was the only way that the permittee could mitigate the adverse impacts other than through making extensive changes to the structure of SONGS. The Commission found that only with the mitigation package would the construction and operation be consistent with the Coastal Act. The Commission reiterated these findings and the importance of the mitigation package in its 1997 permit amendment action. The Commission's April 9, 1997 action also makes clear that the permittee is expected to promptly carry out the permit mitigation conditions.

Units 2 and 3 have been in operation for over 15 years and the public resources lost as a result have not been offset by the permittee. The Commission and the permittee have been subjected to extensive criticism for delays in carrying out the required mitigation measures. Although the schedule for the wetland restoration project has slipped since the Commission's April 1997 action, the delays do not stem, as in the past, from disagreements over the interpretation of the permit conditions nor do they result from the permittee's reluctance to carry out its responsibilities. Rather, it is the careful, thorough analyses for this complex project that has extended the planning process.

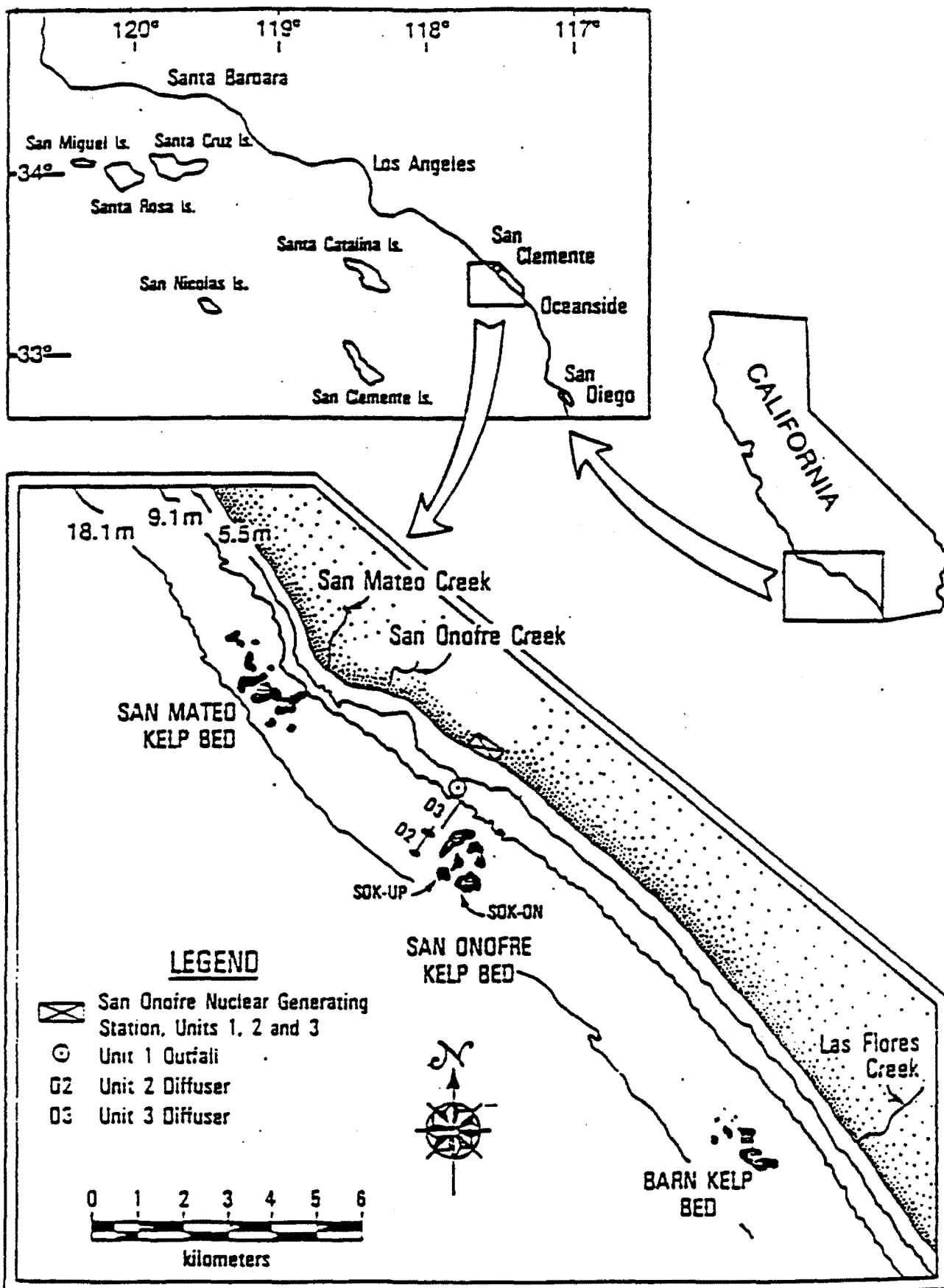


EXHIBIT NO. 1

Map of San Onofre Area

APPENDIX B — STANDARD CONDITIONS

CDP NO. 6-81-330-A3

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 this permit is reported to the Commission. 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 in the application for permit, subject to any special conditions 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.

September 15, 1998

Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
SEP 16 1998
CALIFORNIA
COASTAL COMMISSION

**Subject: Application for Amendment to Coastal Development Permit
No. 6-81-330 (Formerly No. 183-73) For San Onofre Nuclear
Generating Station (SONGS)**

Dear Mr. Douglas:

As you know, since Coastal Commission approval of the preliminary restoration plan for San Dieguito Lagoon in November, 1997, SONGS owners have been undertaking a number of required technical studies and collaborating with your staff on peer review of these studies. In addition, we have been supporting the San Dieguito River Valley Park Joint Powers Authority (JPA) and the U.S. Fish and Wildlife Service (USFWS) in their environmental assessment of the San Dieguito Wetlands Restoration Project as required under both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). For various reasons, this environmental assessment process, over which SONGS owners have no control, will not be completed prior to November 4, 1998, the time SONGS owners must submit a final restoration plan to the Commission as required by the SONGS Coastal Permit. Your staff has informed us that the final restoration plan should reflect the outcome of the environmental review process. Therefore, at the suggestion of your staff, we have prepared the enclosed application for amendments to Section 2.1 of the SONGS permit. We have discussed the proposed amendments with your staff and believe the staff is in general agreement with them. Therefore, we are now forwarding the amendment application to you for Commission consideration.

The proposed amendment sets forth a schedule with milestones which would require SONGS owners to file a final restoration plan with the Commission by October 23, 1999. Then, upon Commission approval of the final plan and upon obtaining all necessary agency approvals and/or permits, to file an application for coastal development permit with the Commission by March 15, 2000. The proposed amendments, for the most part, reflect the schedule for the

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governmental agencies), the SONGS owners propose amendments which would:

1. require the applicant to submit a final restoration plan for Commission approval within 60 days after the final EIR/EIS is certified,
2. require the applicant to obtain other necessary agency approvals to proceed with the project, and
3. submit a coastal development permit application to the Commission within 60 days of receiving all agency approvals and/or permits.

Notwithstanding events which are outside of the applicants' control, the proposed amendments reflect a schedule which the SONGS owners believe is achievable.

II. BACKGROUND

The Coastal Commission approved, as revised, conditions to Permit 6-81-330-A on April 9, 1997, and reaffirmed its June 11, 1992, determination that the San Dieguito River Valley meets the minimum standards and best meets the objectives of Condition A of the Permit. On September 30, 1997, SCE submitted a preliminary plan to the Commission for the San Dieguito Wetlands Restoration Project. In response to an October 22, 1997, Commission staff report on this plan, SCE submitted a revised plan to the Commission on November 3, 1997, and the Commission approved this revised plan on November 5, 1997.

Since November 5, 1997, SCE, on behalf of the SONGS owners, has collaborated with the Commission staff to complete peer reviews of various technical studies related to the preliminary plan, and has supported the JPA and USFWS effort to undertake an environmental assessment of the proposed project as required by the California Environmental Quality Act and the federal National Environmental Policy Act (CEQA/NEPA). Much work had to be undertaken in preparation for the environmental assessment of the proposed project (Preliminary Plan) and alternatives identified by the JPA and USFWS. The JPA and USFWS released a notice of preparation of the joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on June 1, 1998, and a public scoping meeting was held on June 15, 1998. The JPA/USFWS currently anticipate the CEQA/NEPA process to be completed by August 23, 1999.

Commission approval of the final restoration plan should be received before applying for other agency approvals, so that the plan as actually approved by the Commission will be in front of these agencies, not a plan that is subject to Commission modification. Then, agency approvals (such as

Authority's certification of an Environmental Impact Report and the U.S. Fish and Wildlife Service record of decision adopting an Environmental Impact Statement, the permittee shall submit a final restoration plan, along with the CEQA documentation generated in connection with local or other state agency approvals, to the Executive Director of the Coastal Commission for review and approval. The final restoration plan shall substantially conform to the approved preliminary restoration plan as originally submitted. If the CEQA/NEPA review concludes that an alternative plan which meets the conditions set forth in Section 1.3 (minimum standards) and Section 1.4 (objectives) should be implemented, the permittee shall submit a final plan which reflects the outcome of the CEQA/NEPA review process or as amended by the Commission pursuant to a request by the permittee. The final restoration plan shall include, but not be limited to the following elements:

Subsections 2.1 a. through d. – No proposed amendments

The final plan shall be prepared in accordance with the schedule set forth below. The Executive Director may for good cause authorize changes in the deadlines shown in the schedule below provided such changes will not result in an extension of the deadline for submitting the final restoration plan by greater than three months. The Permittee is not responsible for delays in meeting the schedule to the extent those delays are outside the Permittee's control.

Final Wetland Restoration Plan Schedule

<u>Milestone</u>	<u>Due Date</u>
1. <u>Draft EIR/EIS circulated for public review</u> <u>(Environmental review process not within permittee's control).</u>	<u>3/26/99</u>
2. <u>Final EIR/EIS Certification & Record of Decision</u> <u>(Environmental review process not within permittee's control)</u>	<u>8/23/99</u>
3. <u>Submit Final Restoration Plan</u>	<u>10/23/99</u>
4. <u>Completion of other agency approvals</u> <u>(assumes Commission action on Final Restoration Plan</u> <u>within 60 days of submittal)</u>	<u>1/15/00</u>
5. <u>Submit CDP application</u> <u>(assumes all other agency approvals are obtained)</u>	<u>3/15/00</u>