

CALIFORNIA COASTAL COMMISSION45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
JOHN AND TOD (415) 904-5200**RECORD PACKET COPY****M 12d**Staff Report and Recommendation on Consistency Determination

Consistency Determination

No. CD-46-98

Staff: TNP-SF

File Date: 4/6/98

45th Day: 5/21/98

60th Day: 6/5/98

Extended to: 6/12/98

Commission Meeting: 6/8/98

Federal Agency: U.S. Fish and Wildlife ServiceDevelopment Location: Proposed boundary for San Diego National Wildlife Refuge, located within the cities of Imperial Beach, Chula Vista, Coronado, National City, and San Diego, San Diego County (Exhibit 1).Development Description: Designation of boundary for the South San Diego Bay Unit of the San Diego National Wildlife Refuge (Exhibits 2 and 3).Executive Summary

On April 6, 1998, the Commission received a consistency determination from the U.S. Fish and Wildlife Service for the designation of a wildlife refuge boundary in the southern San Diego Bay area. The proposed boundary encompasses approximately 4,700 acres within the cities of Imperial Beach, Chula Vista, Coronado, National City, and San Diego. The refuge will protect eelgrass, mudflat/intertidal habitat, saltmarsh, salt ponds, dunes, and riparian lands, and numerous species that rely on these habitats. Much of the habitat along the San Diego Bay has been significantly degraded or completely eliminated due to urban development. The proposed refuge boundary is the first step in assuring the protection of the remaining habitat areas.

While designation of the boundary does not immediately guarantee protection of the area, it is a necessary first step in developing a wildlife refuge. Once the boundary for the refuge is established, the U.S. Fish and Wildlife Service can negotiate agreements and/or sales of land with current landowners. No owner is obligated to work with the Service; lands not added to the wildlife refuge through voluntary sale to the Fish and Wildlife Service or through voluntary agreements with the Service would continue to be managed by their owners. Establishment of the refuge will strongly support the sensitive habitat and marine environment policies of the Coastal Act.

Designation of the boundary itself will not affect any existing land uses, and will not change any existing public access or recreation opportunities. The project is consistent with all applicable policies of the Coastal Act.

Staff Summary and Recommendation:

I. Staff Summary

A. **Project Description:** The U.S. Fish and Wildlife Service proposes to establish a National Wildlife Refuge (NWR) in the southern portion of San Diego Bay, within the cities of Imperial Beach, Chula Vista, Coronado, National City, and San Diego (Exhibit 1). The proposed project defines the boundary for the refuge; designation of the boundary itself does not alter any current land uses or activities on property within the proposed refuge area. The Fish and Wildlife Service has no authority on lands, even within the boundary area, unless and until a property owner willingly enters into an agreement with the Service. Lands not added to the NWR would continue to be managed by their owners; no land owner within the boundary area is obligated to negotiate with or sell to the Service. However, until the boundary for the refuge is defined, the Fish and Wildlife Service has no authority to acquire land or negotiate agreements with landowners on behalf of the National Wildlife Refuge System. Therefore, designation of the boundary is the first step in establishing a wildlife refuge to protect sensitive coastal species and habitats. The Fish and Wildlife Service has analyzed several alternatives for the refuge boundary; the proposed alternative encompasses approximately 4,700 acres of submerged lands, eelgrass, mudflat/intertidal area, saltmarsh, salt ponds, beaches, dunes, riparian lands, and fallow agricultural land (Exhibits 2 and 3). These habitats have been significantly degraded or eliminated from the San Diego area due to past development in the area. Management of the area as a refuge will protect crucial habitat for many coastal species, including a number of species listed under the Endangered Species Act.

This consistency determination only seeks authorization for the designation of the boundary; specific proposals for land management and/or any changes in recreational opportunities will require further Commission review and action for consistency with the California Coastal Management Program.

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 certified the LCPs for the affected jurisdictions. Imperial Beach's, Coronado's, National City's, and the City of San Diego's LCPs have been incorporated into the CCMP. Chula Vista's and San Diego County's LCPs have not been incorporated into the CCMP.

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

II. Staff Recommendation:

Staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission *concur* with the U.S. Fish and Wildlife Service's consistency determination.

The staff recommends a **YES** vote on this motion. A majority vote of the prevailing commissioners in the affirmative will result in adoption of the following resolution and findings:

Concurrence:

The Commission hereby *concurs* with the consistency determination made by the U.S. Fish and Wildlife Service for the proposed project, finding that the project is consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

III. Findings and Declarations:

The Commission finds and declares as follows:

A. Environmentally Sensitive Habitat and Marine Environment:

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.

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.

The Coastal Act strongly supports the protection of sensitive habitats and species, and marine resources. Designation of the south San Diego Bay as a National Wildlife Refuge (NWR) is a strong first step in protecting numerous sensitive habitats and the marine environment. As stated in the draft environmental assessment:

In the past 70 years, urban development and navigational projects have greatly altered or eliminated the natural habitats of San Diego Bay. Ninety to one hundred percent of the shallow submerged lands, intertidal/mudflats, and salt marshes have been eliminated in the north and central Bay areas. About 65 percent of the South Bay's original shallow submerged lands and 39 percent of its original intertidal/mudflats remain; only small remnants of salt marsh still exist.

...

Nearly all of San Diego's shallow water, eelgrass, mudflats and salt marshes -- crucial habitat for many species of birds and invertebrates -- have been eliminated except in the South Bay area (pg. 3).

While designation of the refuge boundary does not automatically assure protection of the resources, the designation allows the Fish and Wildlife Service to negotiate agreements and/or acquisition of lands in the refuge boundary which they would manage to protect, enhance, or restore habitats. The proposed refuge area provides a vital link in the Pacific Flyway for numerous species of birds, including the California least tern, light-footed clapper rail, and the western snowy plover. Due to the significant loss of habitat in the past, this remaining area is increasingly more important to preserve.

As stated in the draft environmental assessment for the proposed project, without the refuge designation and future management:

[h]abitat for the listed plant and animals would be protected by actions of other agencies or through non-refuge agreements between the Service and landowners.... [H]abitat protection would continue for an unknown length of time, at an unknown level, and be conducted by a variety of agencies operation under a variety of missions not necessarily related to wildlife protection or recovery of federally listed species. The quality of habitat and opportunity for species to thrive that exist today is not expected to remain at current levels and is expects to incrementally deteriorate (pg. 56).

Management of the area as a NWR would maintain or increase the value of the entire south bay as habitat for wintering waterfowl, migrating shorebirds, and nesting seabirds. Significant amounts of native habitat have been lost, which has led to the decline of several native species that are now federally listed as threatened or endangered. South San Diego Bay is part of the remaining habitat that supports a number of threatened and endangered species. The Commission concludes that designation of the refuge strongly supports and is consistent with Sections 30240 and 30231 of the Coastal Act.

B. Recreation and 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 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Sections 30220, 30221, 30222, and 30224 also protect recreational opportunities along the coast, including boating. Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

The proposed project area currently supports a number of coastal access and recreational opportunities, including a number of public fishing piers, boat ramps, wildlife observation points and a bikepath. The Bay itself is a popular boating area year-round. While designation of the refuge boundaries itself will *not* affect any existing recreational opportunities, the project has the long-term potential to affect access to and along the Bay in several ways.

The U.S. Fish and Wildlife Service has indicated in its draft environmental assessment that additional management of boating activities may be desirable to protect the species the refuge is intended to support. Possibilities range from enforcement of existing regulations of boating activities (i.e., speed limits) to a possible seasonal restriction on boating in some area of the bay. However, prior to any proposed changes to existing boating opportunities, the Fish and Wildlife Service will need to develop

specific management proposals and will need the concurrence of the existing trustee agencies (i.e., the Port District, State Lands Commission, and/or the Coast Guard). In addition, any proposal to change existing boating activities will require review and action under the federal consistency provisions of the Coastal Zone Management Act. This additional review will help ensure protection of the species in the refuge while addressing recreational needs in south San Diego Bay. Designation of the refuge boundary itself will not affect existing boating activities. Existing marinas are not included in the proposed boundary and the maintenance/use of existing navigational channels will not be affected. Thus, any proposed changes, including new access opportunities compatible with the refuge, will need additional concurrence from the landowner and Commission review under the Coastal Zone Management Act.

With the need for additional review of proposals that directly change existing access opportunities, the impacts to recreation opportunities can be minimized while the area as a whole is protected. Establishment of a wildlife refuge could add to the opportunities for coastal recreational by supporting recreational activities that are compatible with the refuge. Therefore, the Commission concludes that the proposed designation of the refuge boundaries is consistent with the overall public access and recreation policies of the Coastal Act.

C. Agriculture

Section 30241 of the Coastal Act requires protection of prime agriculture lands. Section 30241 states:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

30242 of the Coastal Act states:

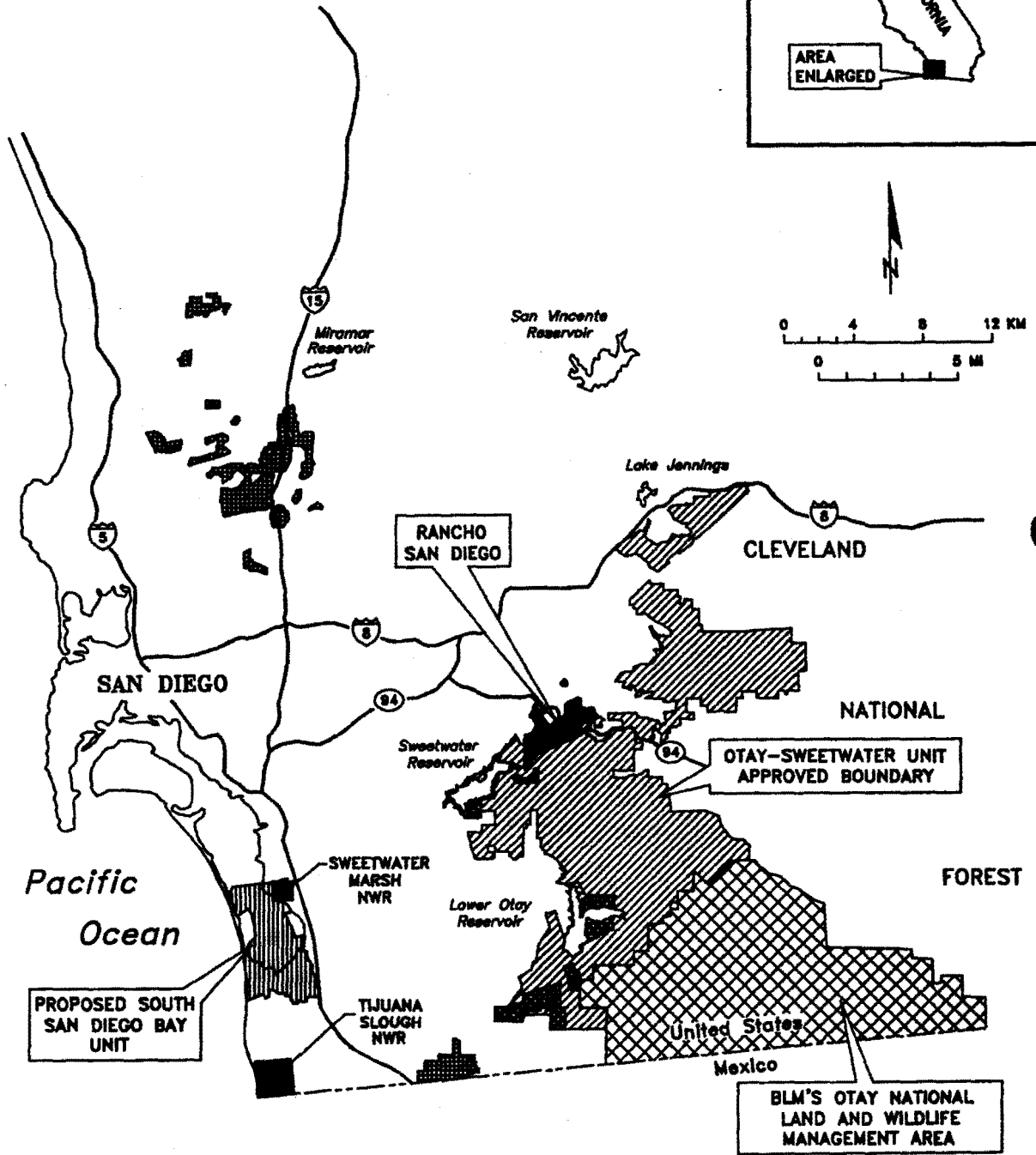
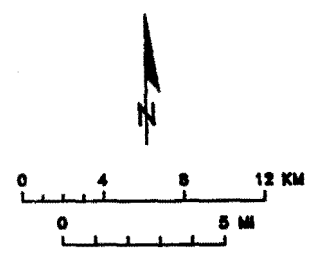
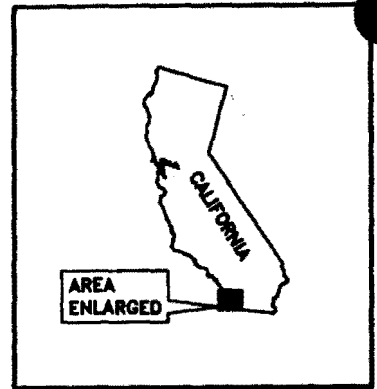
All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

The proposed refuge boundary includes 146 acres of fallow agricultural land; soils are classified as prime farm land. The area consists of former wetlands that were converted to agricultural use. Agricultural use was discontinued in 1986. Inclusion of the land into the refuge boundary will not prevent future use of the land for agriculture. However, the location of the land may make returning the land to agricultural production difficult due to its urban setting. Since designation of the boundary does not preclude or inhibit agriculture use, the proposed project is consistent with Sections 30241 and 30242 of the Coastal Act.

MAP 1

LEGEND

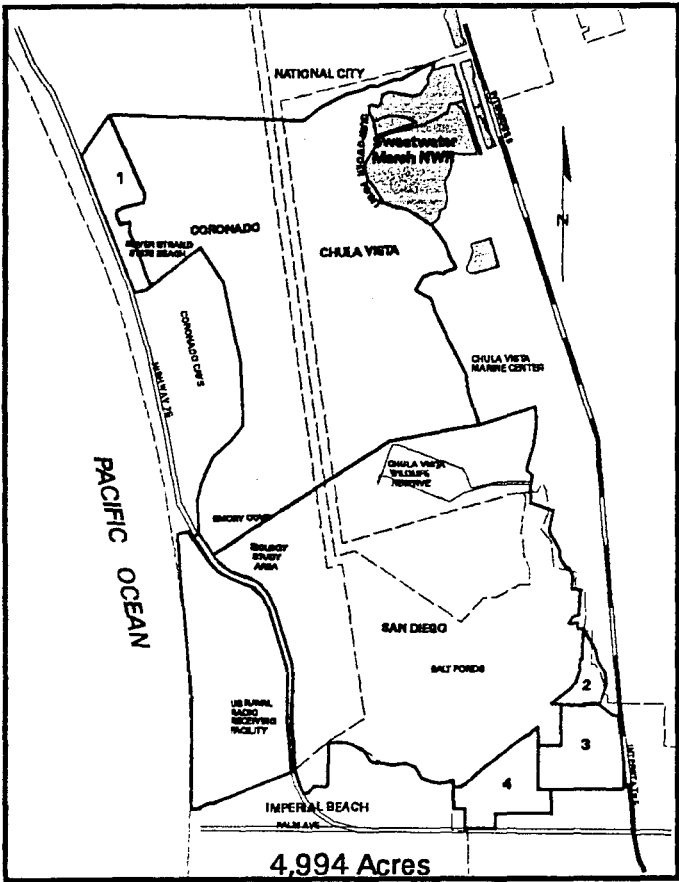
VERNAL POOLS
STEWARDSHIP PROJECT
APPROVED BOUNDARY



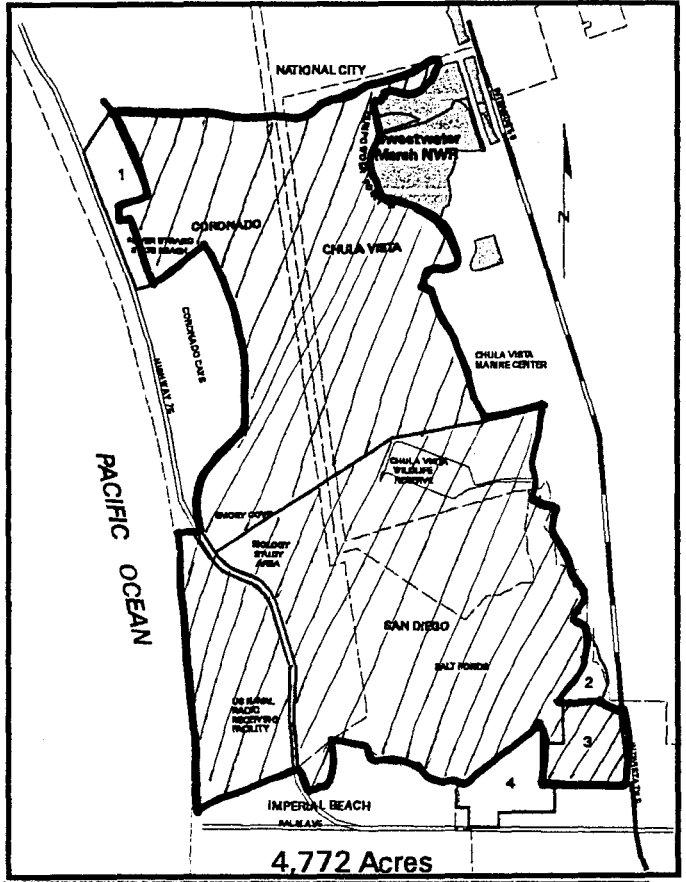
Project location, proposed South San Diego Bay Unit, San Diego National Wildlife Refuge

EXHIBIT NO. 1
APPLICATION NO.
CD - 46 - 98
California Coastal Commission


MAP 3. BOUNDARY ALTERNATIVES, PROPOSED SOUTH SAN DIEGO BAY UNIT



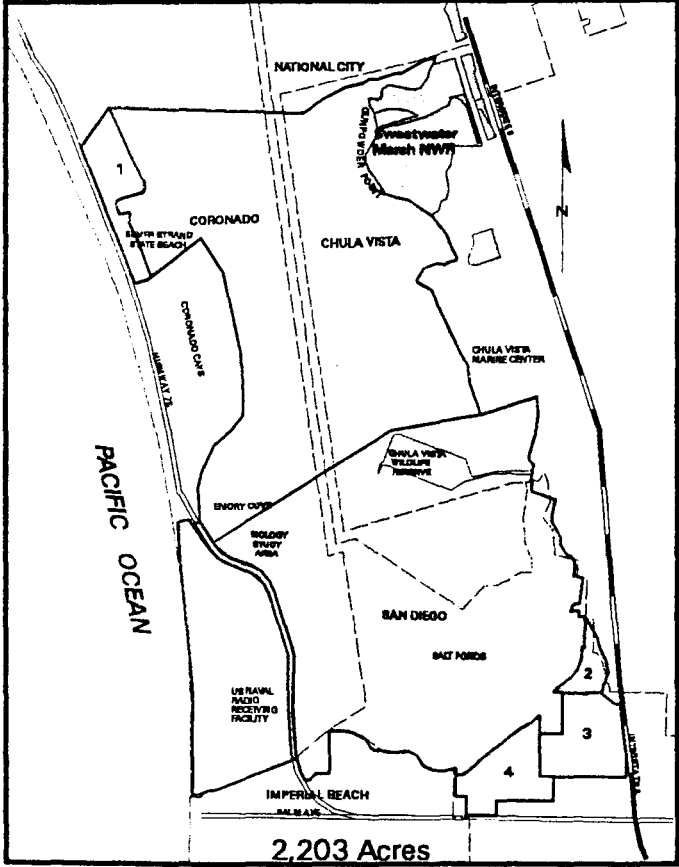
4,994 Acres
Alternative A



4,772 Acres

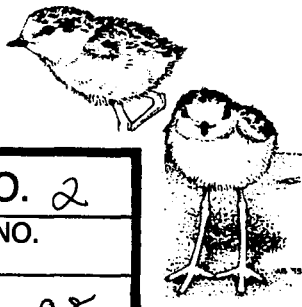
PROPOSED REFUGE BOUNDARY 

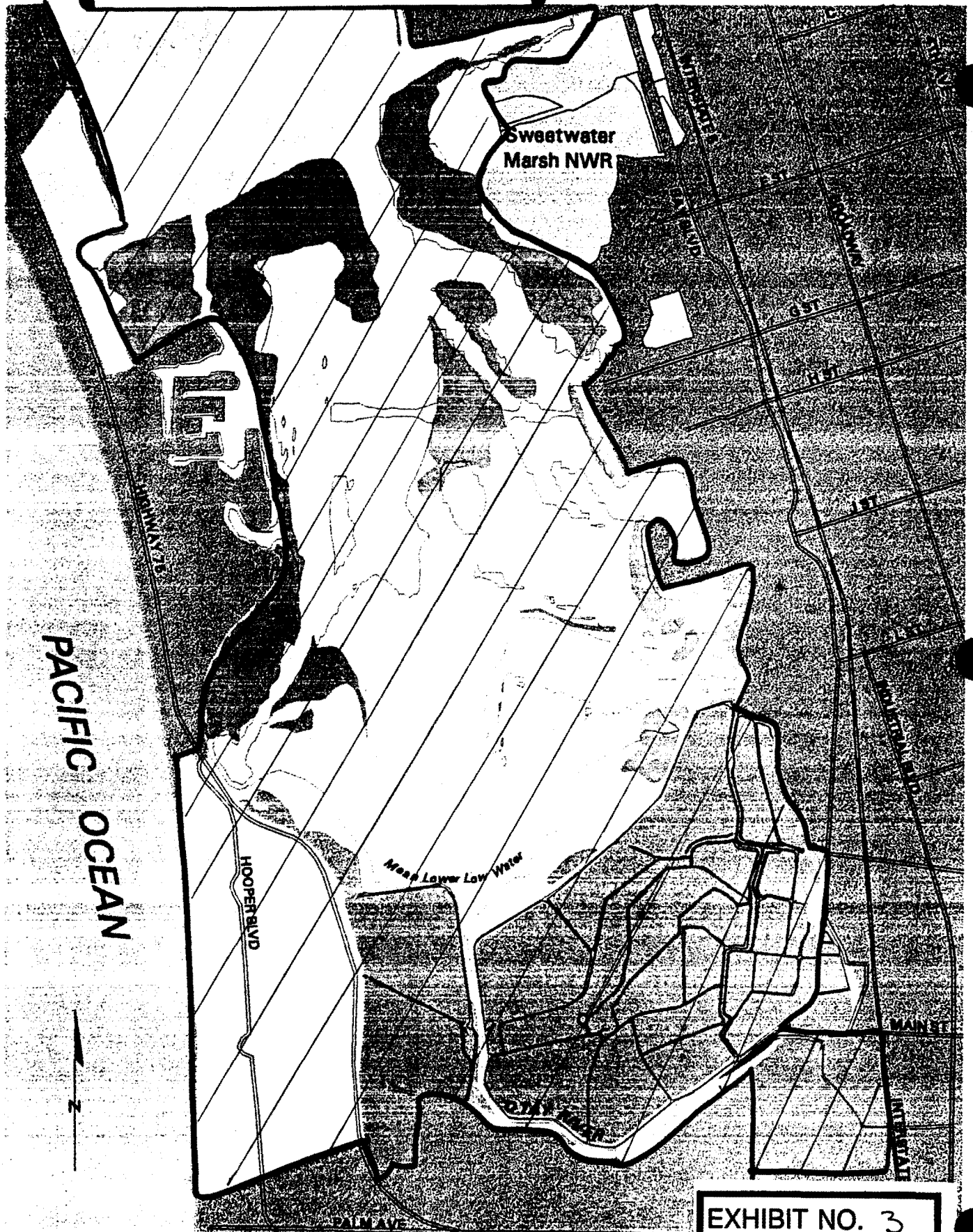
- 1 Silver Strand State Beach
- 2 Area Two
- 3 MKEG / Fenton Parcel
- 4 Pond 20



2,203 Acres
Alternative C

EXHIBIT NO. 2
APPLICATION NO.
CD - 46 - 98





PACIFIC OCEAN

Sweetwater Marsh NWR

JET

HOOPER BLVD

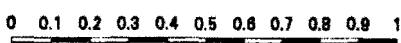
Mean Lower Low Water

PAIN AVE

MAIN ST

INTERSTATE

- Submerged Land
- Mudflat
- Salt Ponds
- Beaches, Dunes & Created Lar
- Eelgrass
- Salt Marsh
- Riparian
- Fallow Agricultural Land



Miles

EXHIBIT NO. 3

APPLICATION NO.

CD-46-98

California Coastal Commission