

CALIFORNIA COASTAL COMMISSION

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Staff: EL-SD
 Staff Report: October 12, 1999
 Hearing Date: November 2-5, 1999

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-90-219-A7

Applicant: City of Carlsbad/
 California Department of
 Fish and Game

Agent: Tim Dillingham

Original

Description: Restoration/enhancement of Batiquitos Lagoon to create tidal marine habitat, including the following specific actions: up to 3.7 million cubic yards of dredging to reconfigure the lagoon to restore tidal flows and aid in maintaining an open lagoon mouth; disposal of suitable dredged materials on Encinas Creek Beach; construction of new inlet jetties at the mouth of the lagoon to create a permanently open lagoon mouth; demolition and reconstruction of southbound lanes of Carlsbad Blvd.; erosion-protection improvements to the Carlsbad Blvd., AT & SF Railway and Interstate Highway 5 bridges; creation of up to five California least tern nesting sites.

Proposed Amendment: Remove approximately 100,000 cu.yds. of beach quality sand from the western and central basins of Batiquitos Lagoon and place approximately 5,000 cubic yards on each of two existing least tern nesting sites located in the western basin of the lagoon, and place the remainder of the sand on the beach north and south of the ocean entrance to the lagoon.

Site: Batiquitos Lagoon, between the ocean and El Camino Real, Carlsbad, San Diego County.

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed amendment with conditions to allow dredge of up to 65,000 cubic yards of lagoon bottom (sand) within the outer and central basins of Batiquitos Lagoon. The attached conditions of approval require final plans which indicate the lagoon has been dredged consistent with the "as built" plans that were approved in the Batiquitos Lagoon Enhancement Plan, that placement of sand on area beaches shall occur outside of the summer season (Memorial Day through Labor Day) when beach attendance is at its lowest, that dredging can only occur between September

15 and February 15 to avoid potential impacts to the California least tern and western snowy plover breeding period, and that all other terms and conditions of the original approval of Coastal Development Permit #6-90-219 not specifically modified herein, shall remain in full force and effect. As conditioned, all potential adverse impacts on coastal resources are addressed to assure consistency of the development with Chapter 3 policies of the Coastal Act.

Substantive File Documents: City of Carlsbad Certified East Batiquitos Lagoon/Hunt Properties segment Batiquitos Lagoon Enhancement Project Final EIR/EIS (City of Carlsbad and U.S. Army Corps of Engineers); Batiquitos Lagoon Enhancement Project Draft Preliminary Design Report (February, 1988)

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development, as amended, 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. Special Conditions.

The permit is subject to the following conditions:

1. Timing of Dredging and Beach Deposition. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, final plans which incorporate the following:

- a. Public Access/Timing. Placement of sand on Carlsbad State Beach shall occur outside of the summer season (Memorial Day through Labor Day) when beach attendance is at its lowest.
- b. Sensitive Species/Timing. To avoid potential impacts to the California least tern and western snowy plover breeding period, dredging can only occur up to February 15, 2000.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive

Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. As-Built Plans. Within 60 days of the dredging of the lagoon, final dredging, beach sand deposition plans and eelgrass mapping plans shall be submitted which indicate:

- a. The lagoon has been dredged consistent with the "as built" plans, dated 11/18/94 by the City of Carlsbad, that were approved in the Batiquitos Lagoon Enhancement Plan.
- b. Carlsbad State Beach has been nourished consistent with the preliminary beach profiles submitted with the application.
- c. Post-dredge mapping of existing eelgrass beds in the project area shall verify that no eelgrass beds were adversely affected by the proposed dredging. If any eelgrass impacts occur outside the limits of dredging, revegetation shall occur at a ratio of 1.2 square feet of mitigation area for each square foot of area impacted.

3. Term of Permit/Amount of Dredging. This coastal development permit authorizes a one time only dredging during the 1999/2000 winter season and disposal of up to 65,000 cu.yds. of material as approved herein.

4. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-90-219, as amended, not specifically modified herein, including the required monitoring reports, shall remain in full force and effect.

5. Other Permits. Prior to the commencement of construction, the applicant shall submit copies of all other required state or federal discretionary permits for the proposed project. Any mitigation measures or other changes for the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Purpose/History. The applicant proposes to dredge approximately 100,000 cu.yds. of beach quality sand from the western and central basins of Batiquitos Lagoon and place approximately 5,000 cubic yards on each of two least tern nesting sites located in the western basin of the lagoon. The remainder of the sand would be placed on the beach adjoining the ocean entrance to the lagoon. Since the

time of the application, it has been determined that only 55,000 cu.yds. of dredged sand can be accommodated at the two identified beach disposal sites. Moreover, the applicant has determined that funding is only available for a total of 65,000 cu.yds. of dredging, including the 10,000 cu.yds. being placed on the two least tern nesting sites. Thus, although the original proposal was for 100,000 cu.yds. of dredging, the final project will only be for 65,000 cu.yds. Special Condition #3 addresses this issue and clarifies that the approved development will accommodate only 65,000 cu.yds. of dredging.

The purpose of the project is to maintain the tidal lagoon opening and restore the intended tidal prism. The applicant proposes to complete the project outside the California least tern/Western snowy plover nesting season (February 15 – September 15) as two of the four disposal sites are nesting sites for the endangered avian species. Moreover, the entire lagoon area is used for foraging by these and other sensitive species throughout the nesting season. All staging areas are proposed within the perimeters of the project itself and the dredge methodology is the same as that approved in last year's maintenance project (CDP #6-90-219-A6).

In the original permit, the Commission approved the restoration of Batiquitos Lagoon, the basic program being the restoration of a marine habitat regime in the lagoon. In order to create and maintain this marine habitat type, a permanently open lagoon mouth was required. The creation of the open mouth restored continuous tidal action and the former marine ecosystem, without significant adverse impacts to established habitat values within the project limits. In addition, the permanently open lagoon mouth helps to control the sediment load remaining in the lagoon and aids in flood control.

Although the City of Carlsbad has a certified local coastal program, the current maintenance dredging project is being processed as an amendment to the original, Commission-issued coastal development permit. For the dredging and least tern site disposal portions of the project, which take place within Batiquitos Lagoon, the project is within the Commission's original jurisdiction and the standard of review is Chapter 3 policies of the Coastal Act. For the disposal of up to 55,000 cu.yds. of sand on Carlsbad State Beach, above the mean high tide line, the standard of review is the City's LCP.

2. Sensitive Resources. Sections 30230, 30231 and 30233 of the Coastal Act apply to the proposal and state in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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.

Section 30233

(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.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30233 requires that dredging of open coastal waters shall only be permitted when there is no feasible less environmentally-damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental effects, and where such dredging is one of the permitted uses cited. In the case of the subject amendment, the Commission found that the Batiquitos Lagoon Enhancement Plan represented a restoration project for the lagoon and was consistent with Section 30233. Because the proposed maintenance dredging is necessary to assure the continued success of the restoration of Batiquitos Lagoon, it can also be found a permitted use under Section 30233 and is proposed as the least environmentally damaging alternative. With respect to the proposed dredging of the lagoon in this amendment, no new impacts will occur to sensitive habitat areas covered by the restoration plan.

As noted, a number of endangered bird species reside and overwinter in the lagoon. According to the applicant, the majority of species which use the staging areas and discharge sites have immediately adjacent sites for loafing and feeding, and because of the timing of the project, no birds are expected to require the sites for nesting. Mammals are only found on site for foraging purposes and also have adjoining sites for that purpose. Vegetation on the two nesting sites has been recently controlled and the habitat for reptiles is now outside the area slated for sand placement. A portion of Special Condition #1 addresses the timing of construction to assure that impacts to avian species do not occur.

The basins of Batiquitos Lagoon also contain some eelgrass beds, a protected resource under Section 30240 of the Coastal Act; eelgrass provides habitat for many fish and invertebrates. The current eelgrass population was planted as an experiment at the time of the initial restoration efforts and has since flourished in some areas. However, eelgrass was not naturally present in the lagoon in the recent past prior to the restoration project.

Although existing eelgrass beds have been mapped by the applicant and no impacts are anticipated, should unanticipated impacts occur during dredging, mitigation must occur. The Commission finds in Special Condition #2 that post-dredge mapping shall be submitted within 60 days of dredging to assure that no eel grass beds in the project area were adversely affected by the proposed dredging. If any eelgrass impacts occur outside the limits of dredging, revegetation must be carried out at a ratio of 1.2 square feet of mitigation area for each square foot of area impacted.

In summary, the proposed amendment is necessary to restore tidal prism to Batiquitos Lagoon to assure success of previously approved restoration efforts. The proposed dredging is a permitted use under Section 30233 of the Coastal Act and as conditioned, no adverse impacts to sensitive coastal resources is anticipated. Therefore, the Commission finds the proposed amendment, as conditioned, is consistent with Section 30230, 30231 and 30233 of the Coastal Act.

3. Beach Replenishment/Public Access. Many policies of the Coastal Act address public access. The following are most applicable to the proposed development and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30233(b)

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

In addition, Section 30604(c) of the Act requires that a specific access finding be made in conjunction with any development located between the nearest public road and the sea to assure conformance with the public access recreation policies of the Coastal Act. Moreover, the two designated beach deposition areas at Carlsbad State Beach are subject to the City's LCP. A portion of Policy 4-1(c) of the certified City of Carlsbad Mello II Land Use Plan states: "Projects which create dredge spoils shall be required to deposit such spoils on the beaches if the material is suitable for sand replenishment."

The subject proposal involves dredging the outer and central basins of Batiquitos lagoon, including placement of dredged spoils on the adjacent Carlsbad State Beach. There are several provisions of the Coastal Act, which are applicable to the proposed project, which encourage use of suitable material to supply the region's littoral zones with sand. Such deposition of beach quality material on the region's shoreline will create and protect coastal recreational areas for use by the general public, consistent with the cited Coastal Act policies. The above language in Section 30233 clearly suggests the benefit of restoring the region's beaches through use of material that would otherwise reach the shoreline, but for man's intervention by development and flood control projects. Therefore, the Commission finds when dredge material is compatible with and suitable for use as beach sand along the region's shoreline, it should be transported to the shoreline for such use, consistent with the public access and recreation policies of the Act.

The San Diego Association of Governments (SANDAG) has adopted the Shoreline Preservation Strategy (Strategy) for the San Diego region and is currently working on techniques towards its implementation. The shoreline is recognized as a valuable asset to the environment and economy of the San Diego region and the State. It is also considered a resource of national significance. The Strategy identifies that beaches in the San Diego area have been steadily eroding for the past decade, and increasing beach loss and property damage have been projected for the future. The Strategy also emphasizes beach replenishment to preserve and enhance the environmental quality, recreational capacity, and property protection benefits of the region's shoreline. Additional sand on the region's beaches will increase the amount of available recreational area for public use, and decrease the rate of beach erosion, thereby reducing pressure to construct shoreline protective devices, which can adversely affect both the visual quality of scenic coastal areas and shoreline sand supply.

Providing as much sandy beach area as possible for use by the public is consistent with the intent of Sections 30210 and 30212.5 which require that public access and recreational opportunities be maximized in order to protect individual resource areas

from overuse. Providing additional recreational area, through placement of sand along a useable shoreline, will result in less crowding at other sites which may be overutilized by the public due to the availability of sand. Providing additional useable beach area can also enhance the provision of lower cost visitor and public recreational facilities. When it is feasible for dredge projects which involve excavation of large volumes of beach suitable material to deposit the dredged material on the region's beaches, thus expanding usable beach area, such activity is consistent with Sections 30213 and 30220 of the Act.

The proposed inner lagoon dredged material has been tested for grain size, total organic carbon, bulk sediment chemistry and compliance with State water quality standards. Results indicate that all material proposed for beach discharge is an acceptable grain size, consistent with the 'receiver' beach and does not contain any contaminants at levels of concern or that would exceed State water quality standards. Additionally, the California Department of Parks and Recreation requires that sand used for beach nourishment shall be of a quality for public beach use. The site of the proposed sand deposition is part of Carlsbad State Beach, which is owned by the California Department of Parks and Recreation. Consequently, the project must receive approval of this portion of the project from the Parks and Recreation Department. The Department requires that sands used for beach nourishment shall consist of materials with average compositions of less than 7% material finer than a #200 sieve, with no greater average composition of greater than 15% material finer than a #200 sieve during any 24-hour period. Special Condition #5 requires that all other required state or federal discretionary permits for the proposed project be incorporated into the project. This includes review by the Army Corps of Engineers for the dredging portion of the project and the California Department of Parks and Recreation, which owns and manages the two beach disposal sites. Any mitigation measures or other changes for the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit

Batiquitos lagoon has been heavily impacted by sediment generated by development that has occurred upstream in the lagoon's watershed and from sand entering the lagoon through its ocean entrance. Studies have estimated that, even with the permanent lagoon mouth opening, sediment will continue to build up in the lagoon. Regarding the maintenance dredging of the west and central basins, ongoing monitoring identifies that the primary maintenance activity is the need for dredging of sand deposits accumulated from beach sand transported into the system and limited scour occurring at flow constriction points. Last year, the Commission approved 50,000 cu.yds. of maintenance dredging. However, due to weather and breeding season constraints, the applicant was only able to do about half that much, making the current proposal for additional maintenance dredging even more critical. The dredged sand would be placed on the nearby beaches south of the south ocean entrance jetty for a distance of approximately 1,500 feet with an average width of 150 feet and north of the north jetty for a distance of 700 feet with an average width of 150 feet. All sand would be placed above the mean high tide line. Special Condition #1 also requires placement of sand on area beaches shall occur outside of the summer season (Memorial Day through Labor Day) when beach attendance is at its lowest.

The applicant is currently proposing a single dredge cycle, although correspondence from other concerned agencies indicate an interest in obtaining a multi-year dredging approval. Thus, the applicant may propose more than one dredge cycle in a future permit application. However, since a multi-year permit has not been sought to date and is not under review at this time, Special Condition #3 notifies the applicant that this approval is limited to the winter 1999/2000 dredge cycle only. Future dredge and beach deposition will require review and approval by the Commission through a separate coastal development permit. Also, Special Condition #4 requires that all other terms and conditions of the original approval of Coastal Development Permit #6-90-219 not specifically modified herein, shall remain in full force and effect.

In summary, the Commission finds the project is necessary maintenance dredging. The above conditions are proposed to insure that the subject amendment will be consistent with the required restoration plan and the Coastal Act. Conditions address the timing of construction, both to maximize public access to area beaches and recreational sites and to protect sensitive species nesting. The deposition of dredged materials on nearby beaches will enhance the public's recreational experience and is consistent with Coastal Act and Carlsbad LCP mandates. Special Condition #1 also requires that to avoid potential impacts to the California least tern and western snowy plover breeding period, dredging can only occur up to February 15. Special Condition #2 requires that within 60 days of the dredging of the lagoon, final dredging plans shall be submitted which indicate the lagoon has been dredged consistent with the "as built" plans that were approved in the Batiquitos Lagoon Enhancement Plan. In this way the Commission can be assured that the proposed dredging will not occur in areas where wetland restoration or endangered species protection is occurring. Additionally, final beach sand deposition plans shall be submitted which indicate Carlsbad State Beach has been nourished consistent with the preliminary beach profiles submitted with the application. In this way the Commission can be assured that the proposed beach nourishment will occur where it will have the greatest recreational benefit to the public. Therefore, the Commission finds that the subject amendment, as conditioned, is consistent with the cited public access and recreation policies of the Act and the cited LCP policy addressing beach replenishment.

4. Local Coastal Planning. Section 30604 (a) 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 for the proposed development, with the inclusion of the attached conditions.

The Commission approved CDP #6-90-219 for enhancement of Batiquitos Lagoon. A critical key to success of the approved enhancement plan is to maintain an open lagoon mouth and specified tidal prism. Beach sands and sediments have accumulated within the west and central basins which now threaten the enhancement efforts due to the reduction in the tidal prism. Approval of the proposed project to remove these sediments/sands and place them on the beach is consistent with previous Commission

action on the original project and with the City's LCP which is applicable to the two beach deposition sites. Therefore, approval of the proposed amendment, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and the resource protection, beach replenishment and public access policies of the certified Carlsbad LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The proposed amendment has been conditioned to be found consistent with the resource protection and recreation policies of the Coastal Act and the Carlsbad LCP. Mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, 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.

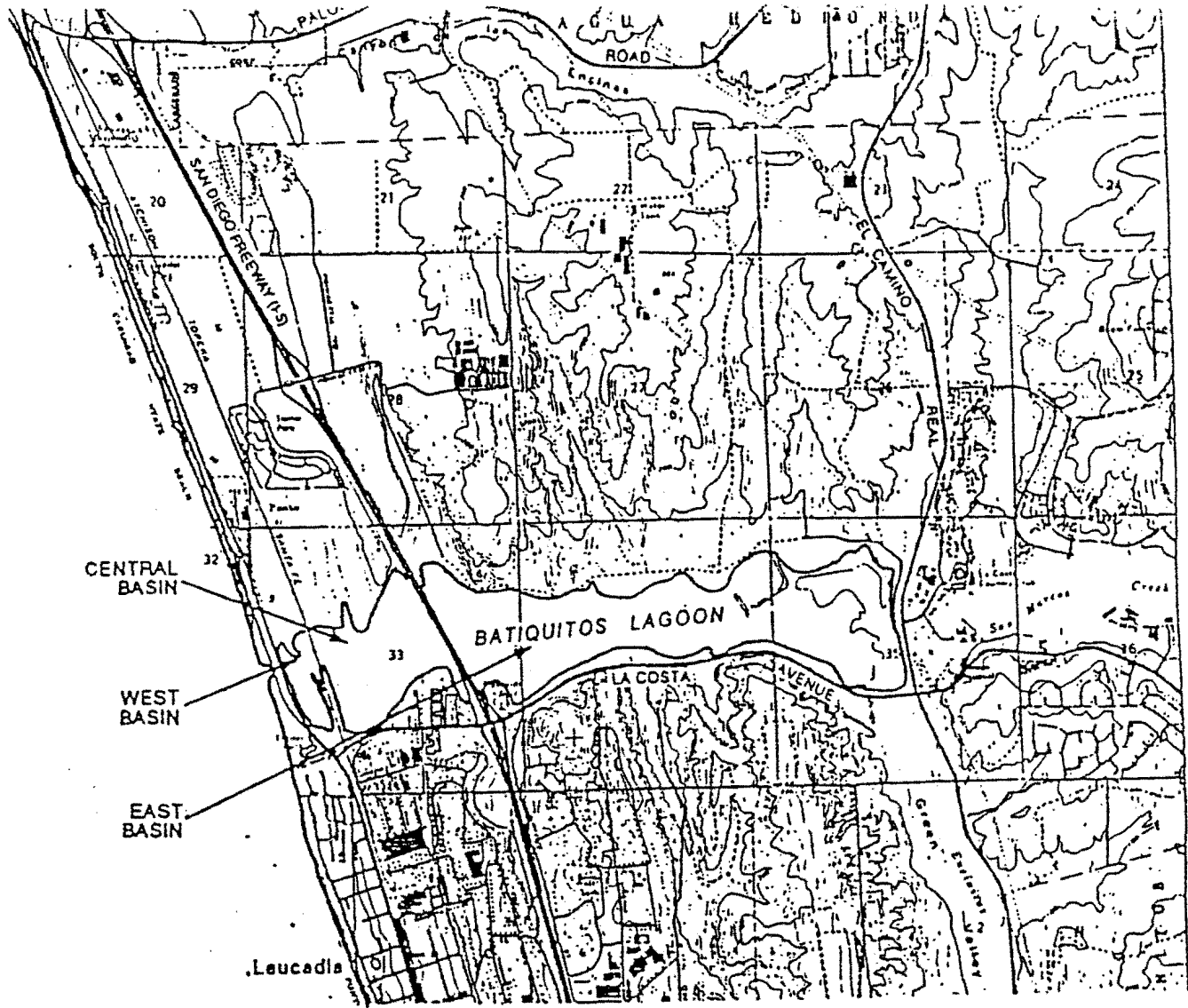



EXHIBIT NO. 1
APPLICATION NO.
6-90-219-1
Location Map
 California Coastal Commission



EXHIBIT NO. 2
APPLICATION NO.
6-90-219-A7
Site Plan

