

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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**W23a**

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-97-170

Applicant: San Diego Gas & Electric Agent: Tom Acuna

Description: Follow up to an emergency permit to repair and stabilize an existing electrical transmission tower (Tower 270) through installation of sheet piling and a concrete base; fill of 2,290 sq.ft. of wetland habitat and temporary disturbance of 19,419 sq.ft. of wetlands associated with construction of a temporary access road. Also proposed is a mitigation/monitoring program to mitigate project impacts to wetland habitat

Site: Within SDG&E utility easement adjacent to Agua Hedionda Creek, north of Palomar Airport Road, west of El Camino Real, Carlsbad - Agua Hedionda (San Diego County)

Substantive File Documents: City of Carlsbad Certified Agua Hedionda Land Use Plan; Biological Report of Environmental Conditions at the Agua Hedionda Tower Repair Site by Glen Lukos Associates, Inc. dated January 10, 1999, Emergency Permit 6-97-170G

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff has found the proposed development consistent with Coastal Act policies as the impacts to wetland habitat associated with the utility repair and maintenance work are a permitted use pursuant to Section 30233, are unavoidable, have been minimized to the extent feasible, and, adequate mitigation for all unavoidable impacts is proposed. Therefore, staff is recommending approval of the proposed development with conditions which require submittal of a final wetland mitigation and monitoring program, an open

space condition which requires the applicant to maintain the mitigation sites in perpetuity as an undisturbed wetlands habitat area and a condition which requires the applicant to submit all other required state or federal permits.

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-97-170 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Mitigation and Monitoring Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final mitigation and monitoring plan designed by a qualified wetland biologist. Said plan shall be in substantial conformance with the plan submitted with this application, Mitigation Plan for Unavoidable Impacts to Wetlands at the Agua Hedionda Tower Repair Site dated January 10, 1999 by Glen Lukos and Associates, except that such plan shall be revised to include the following:

- a. Submittal, within 30 days of completion of construction (i.e., planting) at the mitigation sites of "as-built" plans and an assessment of the success of construction of each site, in sufficient detail to indicate whether the project has been built as proposed,
- b. Monitoring reports on the extent of coverage, rate of growth and species composition of all created wetland areas shall be submitted to the Executive Director on an annual basis for five years following project completion, beginning one year from the date of submittal of the "as-built" plans,
- c. Specific performance standards designed to assure 90% coverage in a five-year period. The program shall include criteria to be used to determine the quality of the mitigation efforts, which shall include, but not be limited to, survival rates and species composition,
- d. Provisions for remedial efforts that will be undertaken whenever monitoring or other sources of information indicate that the performance standards are not being met, AND
- e. At the end of the five-year period, a more detailed report prepared in conjunction with a qualified wetland biologist shall be submitted to the Executive Director. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful based on the approved performance standards, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Open Space Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur within the proposed mitigation areas as shown in Exhibit #2 except for:

- a. Development pursuant to the approved Final Mitigation and Monitoring Plan required by CDP No. 6-97-170.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the landowner's entire parcel and the open space area. The deed restriction shall run with the land,

binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject site is a 150-ft. wide public utility easement that runs north/south across Agua Hedionda Creek, just east of Agua Hedionda Lagoon in the City of Carlsbad. The easement contains two 230-kV electrical transmission tower lines that provide approximately 30 percent of the electric energy requirements of the San Diego region. Access to the site is provided via existing unimproved Cannon Road to an existing SDG&E utility road. Erosional scour from heavy rains at Tower 270's foundation undermined one of the four tower leg concrete footings and immediate corrective measures were necessary to avoid failure of the tower. The applicant installed through an emergency permit, sheet piling around Tower 270 to limit erosion around its foundation. Specifically, the project includes (1) construction of 20-foot wide, 1,540 foot long temporary access road connecting the tower site with an existing SDG&E utility road; (2) construction of a 9,019 square foot work area, (3) installation of a sheet pile form and concrete base; and (4) removal of the temporary access road and work area, and restoration of the road and work area to their original surface elevations. The applicant also proposes a mitigation plan that includes creation of wetlands, removal of exotic vegetation from existing wetlands, and replanting native vegetation at the site of the temporary road and the work area.

Installation of the access road involved the removal of exotic vegetation and removal of the above ground parts of native trees and shrubs within the 20-foot wide roadway and the pruning of tree or shrubs that overhung the roadway. The vegetation was cleared by hand or with light-duty machinery (i.e, chain saws). Once the vegetation had been cleared, a geotextile fabric was placed over the ground along the entire length of the road alignment to limit damage and erosion to the soil surface and remaining rootstock. The road crossed tributaries of Agua Hedionda Lagoon in several locations. Corrugated metal pipe culverts were installed at the water crossings and medium sized rock was placed around the pipe to create a level crossing, all occurring on top of the geotextile fabric. A

series of steel landing mats were placed over the geotextile fabric to serve as the temporary access road surface.

Following installation of the temporary access road, a level work area of 9,019 square feet was created on which a small crane was situated to drive the sheet piles. Although it was proposed that a front-end loader would be used for preparation of the level work site, the large scale filling of eroded areas was unnecessary. Instead of creating the level work completely around the tower, riprap was placed at the points where erosion was occurring, and the work area was maintained in a "C" shape rather than an "O" shape, thus minimizing the impacts. Previously eroded areas south of the tower were not filled.

The 25-foot tall sheet piles were driven into the ground surface so that the top of each sheet pile is approximately 18-inches from finish elevation. The sheet piles form a 27-foot diameter ring around the tower base. Once installation of the piles was complete, the area outside of the piles was neatly groomed to accommodate the setting of the concrete forms. Atop the sheet piles reinforcing steel bars and ties were placed and concrete formwork installed to create a 12-inch wide two-foot high concrete curb that caps the sheet piles. After removal of the forms, a 5-inch thick concrete slab was placed over the compacted backfill within the concrete curb.

The removal of the landing mats and geotextile fabric followed construction. Any fills placed to prepare the roadbed were removed and the original grades were restored. The total work period, from mobilization to removal of the temporary access road, was 35 days. The work area was also restored. Exotic vegetation was removed from the temporary access road and the work area prior to commencement of construction. Exotic vegetation was also removed from a 30-foot by 690-foot area (20,700 sq. ft.) adjacent to the temporary access road (20,700 sq.ft.). Approximately 1,860 sq.ft. of the temporary work area south of the site was never impacted or cleared of vegetation.

Revegetation of the temporary road and work area commenced on March 5, 1998 after the construction contractor removed all building materials from the site. Willow wattles were installed but were unsuccessful because of the lateness of the season. Arroyo willow and mulefat container stock were installed on December 21, 1998.

Impacts associated with the above project include the permanent fill of approximately 2,290 sq.ft. of wetland habitat that includes the area within the 27-foot radius constructed concrete sealed form. Four vegetation types were located within the permanent impact area: southern willow riparian forest (648 sq.ft.), southern willow scrub (329 sq.ft.), brackish marsh (924 sq.ft.), and wetlands dominated by ruderal species (389 sq.ft.). Temporary impacts associated with the work included the removal of above ground portions of riparian and wetland plants, both native and exotic within the (1) 10,640 sq.ft. area of the temporary access roadway; and (2) 9,019 sq.ft. temporary work area immediately surrounding the tower.

The underlying property owner at the project site is the Kelly Land Company. The applicant has received authorization from the Kelly Land Company to perform the proposed project.

Because of the need to address this concern immediately, the Executive Director issued an emergency permit on January 22, 1998 and, pursuant to the emergency permit, the repair work was done (Ref. CDP #6-97-170-G). This permit is the follow-up permit to that emergency permit. The application for this permit was submitted on December 2, 1997, and remained unfiled pending resource agency approval of the project and selection of mitigation sites. The applicant was directed to submit a revised mitigation plan showing "secured" mitigation sites (i.e., the applicant was having difficulty in finding mitigation sites).

The applicant also proposes a mitigation plan to mitigate the permanent and temporary impacts of the proposed project. The mitigation has already been completed without benefit of a coastal development permit, in an apparent violation of the Coastal Act. The applicant proposes to create a total of 6,210 sq.ft. of brackish marsh and 977 sq.ft. of willow riparian habitat at two offsite mitigation sites. In addition, the applicant asserts that removal of exotic plant species from the area that was the site of the temporary access road and the work area, as well as from a 20,700 sq.ft. area adjacent to the access road, constituted mitigation, in part, for the temporary wetland impacts. The applicant asserts that it removed exotics that were scattered throughout a 38,958 sq. ft area. The applicant also proposes to plant two hundred arroyo willow and fifty mulefat within the 38,958 sq.ft. of temporary impacts in order to create 0.89 acres of southern willow scrub at a 2:1 ratio. All areas are proposed to be maintained and monitored for a five-year period. The offsite mitigation would occur at two different sites. At one site, upland would be converted to brackish marsh. The brackish marsh mitigation area is currently used as a road. This road was consolidated into the northern two-thirds of its existing area, and the southern portion converted to wetland, effectively expanding the existing adjacent salt marsh. This area is owned by the Kelly Land Company, which has given its permission to the applicant to perform the restoration work. The second site would be the willow riparian area which is between an existing riparian corridor and existing homes, near the intersection of El Camino Real and Kelly Drive. This site is owned by a private property owner (Stidolph), which has given his permission to the applicant to perform the restoration work.

The Commission has certified the City of Carlsbad Agua Hedionda Land Use Plan portion of the City's LCP, but has not yet approved an Implementation Plan portion. As such, the City's LCP is not complete and therefore, the standard of review remains Chapter 3 policies of the Coastal Act with the certified LUP used as guidance.

2. No Waiver of Violation. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the

Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Wetland Protection. 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 previously, the project site is located within an existing utility easement west of El Camino Real in the City of Carlsbad. Freshwater enters the site from the northwest

via Agua Hedionda Creek, while saltwater enters the site from Agua Hedionda Lagoon, just west of the site. The project site is also located within the floodplain of Agua Hedionda Creek and, except for the access road, contains Brackish Marsh habitat.

In light of the dramatic loss of wetlands (over 90% loss of historic wetlands in California), and their critical function in the ecosystem, the Coastal Act's mandate to preserve such environmentally sensitive habitats is well founded. The creek in this location supports several wetland and riparian habitats that include brackish marsh and southern willow scrub.

Under the Coastal Act, disturbance and/or filling of wetlands is severely constrained. Coastal Act Section 30233 prohibits the filling of coastal waters and wetlands except under the eight limited circumstances cited above. In addition, the project must be the least environmentally damaging alternative and provide feasible mitigation measures to minimize remaining unavoidable adverse environmental effects.

In this particular case, permanent and temporary fill of wetland habitat is proposed to facilitate the repair of a damaged electric utility tower for incidental public service purposes. Thus, the proposed development is a permitted use under Section 30233 of the Coastal Act.

Once it has been determined that the proposed project is an allowable use under Section 30233 of the Coastal Act, it must also be determined that no other feasible alternative is available that would avoid or lessen the environmental impacts of the development and that mitigation be provided for all unavoidable impacts. Alternatives to the project, in this particular case, are limited. The no project alternative is not feasible because it would result in further damage to the electrical transmission lines and loss of electrical service to the San Diego region. The repair must occur within the existing transmission line alignment. Because the entire area in this location is wetlands, impacts to sensitive habitat cannot be entirely avoided; however, they must be minimized to the extent feasible.

As noted, erosional scour from heavy rains at Tower 270's foundation undermined one of the tower's four footings and immediate corrective measures were necessary to avoid failure of the tower. SDG&E installed sheet piling around Tower 270 to limit erosion around its foundation. As stated, the proposed project resulted in the permanent fill of 2,290 sq. ft. of wetland habitat. Four vegetation types were located within the permanent impact area: southern willow riparian forest (648 sq.ft.), southern willow scrub (329 sq.ft.), brackish marsh (924 sq.ft.), and wetlands dominated by ruderal species (389 sq.ft.). No other permanent impacts are proposed. The permanent impacts were unavoidable as foundation work was necessary within the wetland to stabilize the tower. Additionally, the repair work was the minimum necessary to stabilize the tower (i.e., instead of creating a level work area completely around the tower, riprap was placed at the points where erosion was occurring, and the work area was maintained in a "C" shape rather than an "O" shape).

The temporary disturbance of approximately 19,549 sq. ft. of wetland (containing some exotic vegetation and some wetland plant species) resulted from constructing an access road (10,460 sq.ft.) and construction of a temporary work area immediately surrounding the tower. As noted, installation of the access road required the removal of the above ground parts of trees or shrubs within the 20-foot wide roadway and the pruning of tree or shrubs that overhung the roadway. Once the vegetation had been cleared, a geotextile fabric was placed over the ground along the entire length of the road alignment to limit damage and erosion to the soil surface and remaining rootstock.

Exotic vegetation was also removed from a 30-foot by 690-foot area adjacent to the temporary access road (20,700 sq.ft.). Revegetation of the temporary road and work area began after the contractor removed all building materials from the site. Willow wattles were installed but were unsuccessful because of the lateness of the season. Subsequently, two-hundred arroyo willow and fifty mulefat were installed on December 21, 1998 within the 38,958 sq.ft. of temporary impacts to create 0.89 acres of southern willow scrub at a 2:1 ratio and will be monitored for a period of five years. In addition, 38,958 sq.ft. of exotic plant species were removed from the temporary access road and work site footprints, and in those areas adjacent to those footprints. Also, a 70 sq.ft. temporary impact occurred when a truck destroyed some marsh along the edge of the road. A biologist was available during construction of the project and implementation of the mitigation plan to assure adverse impacts to adjacent sensitive habitat areas were minimized. As such, the impacts to sensitive resources to facilitate the repair and replacement can be considered temporary. All areas will be maintained and monitored for a five-year period. The resource agencies accepted the above temporary and permanent impacts.

Once it is determined that all unavoidable impacts have been minimized, mitigation for impacts must be addressed. Historically, the Commission has required mitigation measures to assure there is no net loss in either acreage or habitat value for any displaced wetlands. The Commission's practice has been to require a 3:1 mitigation ratio for disturbance of riparian habitats and 4:1 mitigation ratio for other wetland impacts, such as saltwater marsh. In other words, a mitigation area for the creation of new wetlands must be established that is three-four times the size of the existing riparian/wetland area to be removed as a result of the project.

The question of establishing an appropriate mitigation ratio is a difficult one. However, the historic precedents for in-kind replacement at a 3:1 and 4:1 ratio for riparian/wetland disturbance is based on several considerations. First, there are extremely poor results to date in terms of wetland creation or restoration. In general, created wetlands, do not function as effectively as naturally occurring wetland systems. There is less plant and species diversity and overall diminished habitat values found in the artificially created wetlands. Therefore, because there is typically less plant establishment and reduced habitat values in artificially-created wetlands, the Commission has required a greater commitment of land in areal extent to try and offset the loss of habitat value.

This has been documented in numerous Commission actions in San Diego County on projects involving unavoidable impacts to both wetland and riparian habitats. These include a project where mitigation for impacts to freshwater marsh habitat in conjunction with improvements by the City of San Diego in Los Penasquitos Canyon were required to be mitigated at a 4:1 ratio (ref. CDP #6-87-611/City of San Diego); mitigation for impacts to riparian habitat in the Tijuana River Valley associated with construction of a sewer outfall was required by the Commission at a ratio of 3:1 (ref. CDP #6-88-277/City of San Diego & IBWC); the Commission required the City of Carlsbad to mitigate for impacts to salt/freshwater marsh at 4:1 and impacts to riparian habitat at a ratio of 3:1 in conjunction with the extension of Cannon Road (ref. CDP #6-89-195/City of Carlsbad); for a residential project which involved riparian habitat disturbance upstream of San Elijo Lagoon, the Commission required mitigation at a 3:1 ratio (ref. CDP #6-90-129/Shelley); and, more recently, in approving a bridge over Encinitas Creek at La Bajada Road in 1994, the Commission required the County of San Diego to mitigate impacts to wetlands at a ratio of 4:1 and riparian habitat at a 3:1 ratio (ref. CDP #6-93-155/County of San Diego).

In this instance, the proposed project involves the permanent fill of 2,290 sq.ft. of wetlands and temporary fill of approximately 19,549 sq. ft. of wetland (containing some exotic plants and some wetland plant species). The applicant has proposed mitigation for such impacts. Based on consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USF&WS), the applicant proposes to create a total of 6,210 sq.ft. of brackish marsh and 977 sq.ft. of willow riparian habitat at two separate mitigation sites within the utility easement and on private property. The willow riparian mitigation site is located along a tributary to Agua Hedionda located northeast of the lagoon. The site is located southeast of the intersection of Kelly Drive and El Camino Real in the City of Carlsbad and is within an existing SDG&E easement. The brackish marsh mitigation site is located partially within an SDG&E easement area. SDG&E has negotiated an easement over the remainder of the mitigation area from the private property owner. To provide protection, the applicant installed a fence around the mitigation area. The underlying property owner at the project site is the Kelly Land Company. Kelly Land Company is also the underlying property owner for the brackish marsh mitigation site, while another private property owner owns the riparian mitigation site.

The applicant has received authorization from both property owners to perform the mitigation. The brackish marsh mitigation site is within the Agua Hedionda Preserve, a 186+ acre upland area to the east of the lagoon which is presently under ownership of the Kelly Land Company but will soon be dedicated in fee to the California Department of Fish and Game.

Although the applicant has installed 6,210 sq.ft. of brackish marsh at the two mitigation sites, only 3,696 sq. ft. of created Brackish Marsh is required to mitigate the 924 sq.ft. of brackish marsh impacts at a 4:1 replacement ratio to consistent with past Commission

precedent. Thus, the project proposes an excess of 2,514 sq.ft. of brackish marsh over and above what the Commission would typically require. However, the applicant is mitigating impacts to riparian vegetation by creation of brackish marsh which is not "in kind" mitigation of impacts as the Commission typically prefers. Impacts to riparian vegetation were required to be mitigated by the resource agencies at a 1:1 ratio which is inconsistent with past Commission precedent of a 3:1 ratio. Instead, the resource agencies required that impacts to 648 sq.ft. of southern willow forest be mitigated at a 2:1 ratio by the creation of 1,296 sq.ft. of brackish marsh and impacts to 329 sq.ft. of southern willow scrub be mitigated by the creation of 329 sq.ft. of brackish marsh.

Temporary impacts associated with the work included the removal of above ground portions of riparian and wetland plants (no grading), both native and exotic, within the (1) 10,640 sq.ft. area of the temporary access roadway; and (2) 9,019 sq.ft. temporary work area immediately surrounding the tower. The resource agencies required that the 19,479 sq.ft. of "various wetland" (the 20-foot wide temporary access road) that were impacted by the above be mitigated by the enhancement of 19,479 sq.ft. of southern willow scrub. The resource agencies required that temporary impacts be mitigated by the exotic removal of 38,958 sq.ft. of exotic plant species from the temporary access road and work site footprints, and in those areas adjacent to those footprints. The applicant is proposing to install two-hundred arroyo willow and fifty mulefat within the 38,958 sq.ft. of temporary impacts to enhance 0.89 acres of southern willow scrub at a 2:1 ratio. The resource agencies only required that 19,479 sq.ft. of southern willow scrub be enhanced so the applicant's riparian mitigation doubled the required mitigation to compensate for temporary impacts. All areas are required to be maintained and monitored for a five-year period. In addition, all areas temporarily filled by the repair project were restored to their pre-impact condition and the applicant removed several large stands of existing non-native pampas grass on the site.

In summary, the impacts and mitigation are as follows:

Southern Willow Forest (SWF)	648 sq.ft. impacted	648 sq.ft SWF created (1:1) 1,296 sq. ft BM created (2:1)
Southern Willow Scrub (SWS)	329 sq.ft. impacted	329 sq.ft SWS created (1:1) 329 sq. ft. BM created (1:1)
Brackish Marsh (BM)	994 sq.ft. impacted	4,046 sq.ft BM created (4:1)
Ruderal Wetland (RW)	389 sq.ft. impacted	389 sq.ft BM created (1:1)
Temp Wetland	19,479 sq.ft. impacted	19,479 sq.ft.SWS enhanced (1:1) 38,958 sq.ft.exotic removed (2:1)

The Commission finds that although the riparian impacts are not being mitigated in kind at the typical 3:1 ratio, such impacts are offset by the project creating an additional 2,514

sq.ft. brackish marsh to compensate for riparian impacts. The resource agencies have accepted this plan because brackish marsh is more representative of the impact area and is less prevalent as a habitat type. The Commission also notes that the applicant enhanced 19,479 sq.ft. of area adjacent to the temporary access road and work footprints through exotic removal and planting of two hundred arroyo willow and fifty mulefat to enhance 0.89 acres of southern willow scrub at a 2:1 ratio (not 1:1 as required by the resource agencies). Based upon the scale of the mitigation, the Commission can accept the applicant's mitigation proposal.

Special Condition #1 requires the applicant to submit a final mitigation a monitoring plan/program in substantial conformance with the submitted plan. It requires the submittal, within 30 days of completion of construction (i.e., planting) at the mitigation sites of an as-built assessment of each of the mitigation sites that includes as-built plans, to determine if the project has been built as proposed. It also requires monitoring reports on the extent of coverage, rate of growth and species composition of all created wetland areas shall be submitted to the Executive Director on an annual basis for five years following project completion.

Special Condition #2 requires the applicant to record an open space deed restriction to maintain the mitigation sites as undisturbed wetland habitat site in perpetuity. The landowners have agreed to the deed restrictions. The condition states that any change in status of the mitigation sites in the future will require further Commission review. Given this condition, the Commission can be assured that the mitigation sites will remain as such and not be subject to development at some point in the future that may be inconsistent with Coastal Act policies.

The applicant has indicated that other permits are being pursued through various state and federal agencies having jurisdiction over the project. Thus, conditions of approval and/or mitigation measures may be required from these agencies in their review. As such, Special Condition #3 has been proposed. This condition requires the applicant to submit any discretionary permits obtained from other agencies. Should any project modifications be required as a result of other permits, the applicant is further advised that an amendment to this permit may be necessary to incorporate said mitigation/changes into the project.

In summary, the proposed unavoidable impacts to wetlands have been found to be an allowable use within a wetland. In addition, based on the above considerations, all unavoidable impacts to sensitive habitats have been minimized and mitigated to the maximum extent feasible. Therefore, the Commission finds the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

4. Public Access. The proposed development is located west of El Camino Real and east of Agua Hedionda Lagoon. In this area of the coast, El Camino Real is the designated first public roadway. As the proposed development will occur between the first public roadway and the sea, a public access finding must be made, pursuant to

Section 30604(c) of the Coastal Act. The proposed development involves the permanent removal and temporary disturbance of wetland habitat to facilitate a repair and maintenance project for electrical transmission lines. The proposed project is to occur on an existing S.D.G & E. easement that crosses Agua Hedionda Creek and will have no affect on the ability of the public to access the coast, consistent with the public access policies of the Coastal Act.

5. 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 project is located within the City of Carlsbad. The City's LCP is divided into several land use plan segments. The segment applicable to the subject development is the Agua Hedionda Land Use Plan Segment. The Commission in August of 1982 certified the Agua Hedionda Land Use Plan. However, the Commission has not yet approved an implementation component. As such, the Agua Hedionda LUP is used as guidance, with the standard of review for development remaining Chapter 3 of the Coastal Act.

In the certified Agua Hedionda LUP, the subject site is designated as Open Space. In addition, two policies within the LUP address the project site. LUP Policies 1.2 and 3.7 list utility transmission and distribution facilities and maintenance of such, as permitted uses within wetland and open spaces areas east of Agua Hedionda Lagoon, provided such development does not adversely impact environmentally sensitive habitat areas and is consistent with Coastal Act policies. As stated above, the proposed development, as conditioned, is consistent with applicable Coastal Act policies. Therefore, the Commission finds the proposed development, as conditioned will not prejudice the City of Carlsbad to obtain a certified local coastal program for the Agua Hedionda Lagoon segment.

6. California Environmental Quality Act (CEQA) Consistency. 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)(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 effects which the activity may have on the environment.

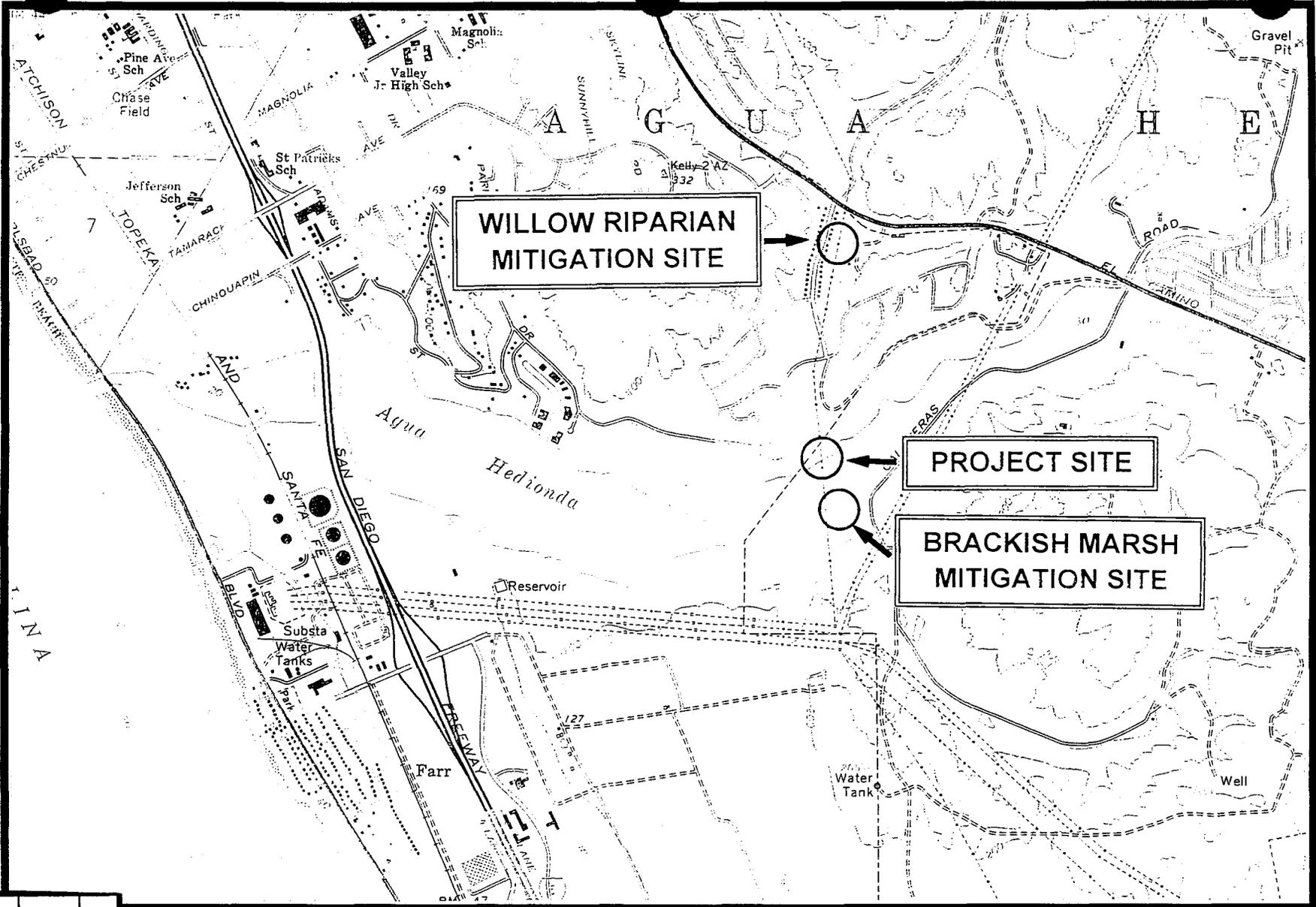
As discussed herein, the proposed project may have significant adverse impacts on the environment. Specifically, wetland resources would be impacted. However, all proposed wetland and riparian impacts to facilitate repair and maintenance of the utility tower are unavoidable and the applicant has proposed mitigation for all impacts, both permanent and temporary. Therefore, the Commission finds that the proposed project, 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.

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.

Adapted from USGS San Luis Rey Quadrangle



NORTH
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 California Coastal Commission	EXHIBIT NO. 1
	APPLICATION NO. 6-97-170
	Location

E Tower 270
 Map with Mitigation Site Locations

GLENN LUKOS ASSOCIATES

EXHIBIT 2

