

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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521-8036

## RECORD PACKET COPY

**Wed 9a**

Filed: 6/24/99  
49th Day: Waived  
180th Day: 12/24/99  
Date of Extension Request: 11/10/99  
Length of Extension 90 Days  
Final Date for  
Commission Action 2/10/00  
Staff: WNP-SD  
Staff Report: 12/16/99  
Hearing Date: 1/11-14/00

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-97-11-A2

Applicant: City of Carlsbad

Agent: Sheri Howard

**Original**

**Description:** Completion of Reach I of Cannon Road to construct a 450-foot long bridge over Macario Canyon from its west rim to its east rim with two bridge abutments and four piers, requiring approximately 265,000 cubic yards of fill. Construction of Reach 2 from the east rim of Macario Canyon to El Camino Real, about 1.54 miles as a major arterial (104-ft. right-of-way). Construction of a 130 foot long bridge over Agua Hedionda Creek at El Camino Real with two abutments and two piers. Also proposed is a mitigation plan to mitigate project impacts to riparian habitat and brackish marsh.

**Proposed**

**Amendment:** After-the-fact request to revise approved mitigation plan to delete a 0.44-acre mitigation site on the Evans Point site and replace its area within three other sites located near Agua Hedionda Lagoon and Macario Canyon.

**Site:** Easterly extension of Cannon Road, east of Interstate 5 and south of Agua Hedionda Lagoon, Carlsbad, San Diego County.

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**STAFF NOTES:****Summary of Staff's Preliminary Recommendation:**

Staff is recommending that the Commission deny the proposed amendment request as the applicant has not provided adequate information to demonstrate that the newly proposed mitigation sites will involve creation of new wetlands, as required to mitigate for wetland

impacts in the original permit approval, versus restoration or enhancement of existing wetlands. In addition, the City has not provided requested information to adequately document that two of the proposed mitigation sites are newly created wetland sites and not mitigation sites that were previously required by another coastal development permit and as such would be "double counted".

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Substantive File Documents: City of Carlsbad Certified Agua Hedionda Segment Land Use Plan; CDP #6-97-10; CDP #6-97-11, CDP #6-97-11-A1; Wetland Mitigation for Cannon Road Reaches 1 & 2 by BEC, dated January 28, 1998

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**PRELIMINARY STAFF RECOMMENDATION:**

- I. **MOTION:** I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-97-11-A2 for the development as proposed by the applicant.

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby denies the proposed amendment to the coastal development permit for the proposed development on the ground that the development as amended will not conform to the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program that conforms to the provisions of Chapter 3 of the Coastal Act. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Detailed Amendment Description and History.** On October 8, 1997 the Commission approved the construction of Phase I of Reach I of Cannon Road running from the west rim of Macario Canyon to Lego Drive, about .6 of a mile (CDP #6-97-10). The roadway was approved as a four-lane major arterial, with a 102-foot wide right of way. On February 4, 1998 the Commission approved the completion of Reach I of Cannon Road to construct a 450 foot long bridge over Macario Canyon from its west rim

to its east rim requiring approximately 265,000 cubic yards of fill. At the same time, the Commission approved the construction of Reach 2 from the east rim of Macario Canyon to El Camino Real, about 1.54 miles (CDP #6-97-11).

The construction of the bridge required fill of wetlands. The Commission approved these impacts in part because the City proposed to mitigate the impacts of the fill through a restoration plan. The City's restoration plan involved a combination of wetland creation and wetland restoration/enhancement at a number of different areas that together totaled 6.34 acres. The areas were identified as Sites A-D. Site A is a 4.10-acre site upland of Macario Canyon and Agua Hedionda Lagoon. The City's plan provided for riparian wetland creation at this site. Site B is a 0.44-acre site on Evans Point adjacent to El Camino Real. The plan provided for creation of 0.44 acres of new wetland by conversion of upland at this site. Sites C and D, totaling 1.80 acres, are located within the 180-acre Agua Hedionda Preserve. Site C is 1.30 acres and Site D is 0.5 acres. The plans provided for restoration/enhancement of these sites.

The Commission found that the proposed mitigation was necessary in order for it to find the proposed development consistent with Chapter 3 policies of the Coastal Act. Thus, the permit included a condition (Special Condition #1) that required that, prior to issuance of the permit, the City submit a final mitigation plan that identified each of these four mitigation sites and that demonstrated that new wetlands would be created at Sites A and B, with restoration at Sites C and D. The City submitted the final mitigation plan, and the Executive Director approved the plan and issued the permit. Development of the approved bridge has commenced and impacts to wetlands have occurred.

In 1998, after the Executive Director had approved the final mitigation plan and issued the permit, the City determined that the proposed 0.44-acre mitigation site on Evans Point was not a suitable mitigation site because of engineering concerns. Thus, the permittee proposes to revise the approved mitigation plan to delete the 0.44-acres of wetland creation at the Evans Point site and replace it by expanding the wetlands creation/restoration work at the three other mitigation sites described in the plan (i.e., Sites A, C, and D). The additional restoration work at these three sites would total 0.44 acres. (ref Exhibit #1 attached). The City has already undertaken the restoration work at these three sites without benefit of a coastal development permit, in an apparent violation of the Coastal Act.

Cannon Road is located south of Agua Hedionda Lagoon between I-5 and El Camino Real in Carlsbad. Cannon Road is within the Agua Hedionda Lagoon LCP segment. While the LUP was certified in 1982, no implementing ordinances have been done for this segment and it remains subject to the Commission's permit review. The standard of review is Chapter 3 policies of the Coastal Act with the certified Agua Hedionda Lagoon LUP used as guidance.

2. No Waiver of Violation. Although the approved mitigation plan has already been revised, and the proposed wetland restoration work has already been undertaken prior to submission of this permit amendment application, consideration of the

application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. The Commission's action on this amendment application 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. Environmentally Sensitive Habitat Areas. Section 30231 of the Act is applicable and states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, 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.

Finally, Section 30240 of the Act is applicable and states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such 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 such areas, and shall be compatible with the continuance of such habitat areas.

The project area is located along the south shore of Agua Hedionda Lagoon, near the riparian resources of Macario Canyon and its unnamed stream, and near Agua Hedionda Creek. Coastal Act Sections 30231, 30233 and 30240 call for the preservation of sensitive habitat areas, including wetlands. In the area near the Cannon Road alignment there are several sensitive plants and animals communities including coastal sage scrub and wetland and riparian resources which provide habitat for federally-listed endangered species (least bell's vireo, California Gnatcatcher). Agua Hedionda Lagoon, in particular, has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act.

CDP #6-97-11 which included impacts to wetlands (found to be a permitted use under Section 30233 of the Coastal Act) was approved by the Commission with an extensive mitigation program to mitigate project impacts to freshwater marsh, saltwater marsh and riparian vegetation mostly associated with the bridge crossings of Macario Canyon and Agua Hedionda Creek. Approximately 6.34 acres of mitigation was approved to occur at the following sites: the 4.10 acre site upland of Macario Canyon (Site A), the .44 acre site on Evans Point adjacent to El Camino Real (Site B) and on two sites totaling 1.80 acres within the 180-acre Agua Hedionda Preserve (Sites C and D) as identified in consultation with the California Department of Fish and Game.

However, after Cannon Road construction began and impacts to wetlands occurred, further review of the 0.44-acre mitigation site near Evans Point revealed that it had engineering limitations which would prevent the installation of the required 0.44 acres of mitigation acreage. The City concluded after additional analysis that it would instead add

small acreage additions to each of the other sites proposed herein to compensate for the loss of 0.44 acres.

Specifically, Site A, which is located in Macario Canyon, would be expanded into the 100-foot buffer zone along its eastern edge to accommodate an additional 0.25 acres of mitigation. Site A was approved as creation and the proposed .25 addition to Site A is proposed as creation. The buffer is between the existing mitigation site and a golf course. The City states that this 0.25 acres consists of wetlands that were created by grading and planting a 10-foot wide by 1,089-foot strip of former agricultural land along the disturbed upslope of the larger southern mitigation area located in Macario Canyon. Thus, the overall width of the buffer strip in this area will be reduced to 90 feet in width. A willow riparian woodland is proposed in the proposed expanded mitigation site, including container plants and hydroseeding. According to the Commission's biologist, the reduced buffer can be accepted based on the fact that a significant buffer remains between the resources of Macario Canyon and the golf course; additionally, the reduced buffer has been accepted by the resource agencies who also found that no adverse impacts would occur to the identified resources in Macario Canyon. The proposed revision to this mitigation site is acceptable as it involves the creation of new wetlands from uplands.

However, the proposed revisions to Sites C and D are not acceptable. Site C, which is located near the northwest corner of the intersection of El Camino Real and Cannon Road, is proposed to be revised to include an additional 0.15 acres of wetlands mitigation area. According to the City, this 0.15 acres of mitigation would consist of: (1) grading of filled, disturbed and ruderal upland to create additional wetland area, (2) saltmarsh container and seed plant palettes to enhance existing wetlands in the area, (3) riparian mitigation and (4) removal of pampas grass within 100-feet of the mitigation site edge. The City has not identified the exact acreage of each of these four types of work in the new 0.15 acres of mitigation. For Site D, which is located on the south side of Park Drive as it intersects with Kelly Drive, the City proposes to add .04 acres of wetlands mitigation. According to the City, it will be treated similarly to Site C in that grading of filled, disturbed ruderal upland has occurred to create additional wetland area. This area also contains an existing wetland which would be enhanced by saltmarsh container and seed plant palettes. Riparian mitigation would also occur as well as removal of pampas grass within 100-feet of the mitigation site edge. The City has not provided however, specific information for these two sites documenting whether the amount of created wetland complies with the requirement to provide 0.44 acres.

As noted above, the City has previously provided 1.8 acres of mitigation on Sites C and D to comply with permit requirements required in 6-97-11. With this request the City is proposing an additional 0.19 acres of mitigation on these two sites to make up for a portion of the 0.44 acre mitigation site that was required in 6-97-11 but subsequently deemed unfeasible. However, the City has not provided plans or other information to demonstrate that the proposed revised mitigation sites will involve the "creation" of wetlands in the required amount through the conversion of existing uplands to wetlands.

While the proposed revisions to Site A can be found to be acceptable because it involves creation, this is not the case with Sites C and D.

In addition, staff is concerned these sites may have been "double counted" for purposes of providing mitigation area. In 1985 the sites were proposed to be restored as mitigation for impacts associated with the Kelly Ranch project (CDP #6-84-617), a large residential project near the lagoon. That project included grading for Cannon Road. The permit approving the Kelly Ranch project approved the proposed mitigation plan and apparently the mitigation at these two sites was completed. Those mitigation sites were created in the late 1980s and found adequate by the Department of Fish and Game. Mitigation associated with Cannon Road impacts approved in 6-97-11 is separate and independent from Cannon Road impacts addressed in 6-84-617 as new and different Cannon Road impacts were proposed to be mitigated in the later permit. It is possible that the mitigation plan accepted for CDP #6-97-11 may have allowed for restoration of the two sites (Sites C and D) that were already accepted mitigation sites for CDP #6-84-617. Review of Commission records have not be able to conclude if the sites were infact required mitigation sites to meet mitigation requirements for wetland impacts associated with CDP #6-84-617.

The City has not documented and explained why these sites are now proposed as mitigation sites for 6-97-11-A2 and if the required mitigation occurred. While the City has provided plans (see attached Exhibit Nos. 3 and 4) for the proposed revised mitigation site, the plans are unclear whether grading occurred to create the mitigation sites or only enhancement of the sites has occurred. The City indicates the sites were graded to create wetlands but also indicates no formal grading plan was done to document the effort. Because the sites may have been previously graded to create wetlands as mitigation for impacts associated with CDP 6-84-617, it is difficult to determine from the plans even whether any grading occurred to create the larger 1.8 sites let alone whether an additional 0.19 acres of grading occurred to create the mitigation area requested in this amendment request.

The plans submitted with the amendment request most clearly indicate enhancement was done and not creation. As indicated, in CDP 6-97-11 the Commission required that mitigation for project impacts at the Evans Point Site (Site B) include the creation of .44 acres of new wetlands to mitigate the identified impacts and not restoration or enhancement which is simply the replanting of an area or eradication of invasive species. Wetland creation is important in that it represents actual conversion of uplands to wetland and in that sense is creating wetland that does not presently exist. It is estimated that over 90% of historical wetlands have been filled in Southern California. Enhancement and restoration are working with existing wetlands and in that sense does not add additional wetland area. Because the fill of wetlands for the bridge represented permanent impacts to wetlands, the Commission found it was important the these impacts be adequately mitigated through wetland creation. Commission staff has repeatedly asked the City to provide better plans and explanation but the City has not responded. Without such plans and explanation, staff cannot find that the impacts have been mitigated consistent with the Commission's previous approval. The Commission finds

that the subject permit amendment is inconsistent with the Commission's previous action and Section 30233 of the Act, as adequate mitigation for wetlands impacts has not been provided, and therefore, must be denied.

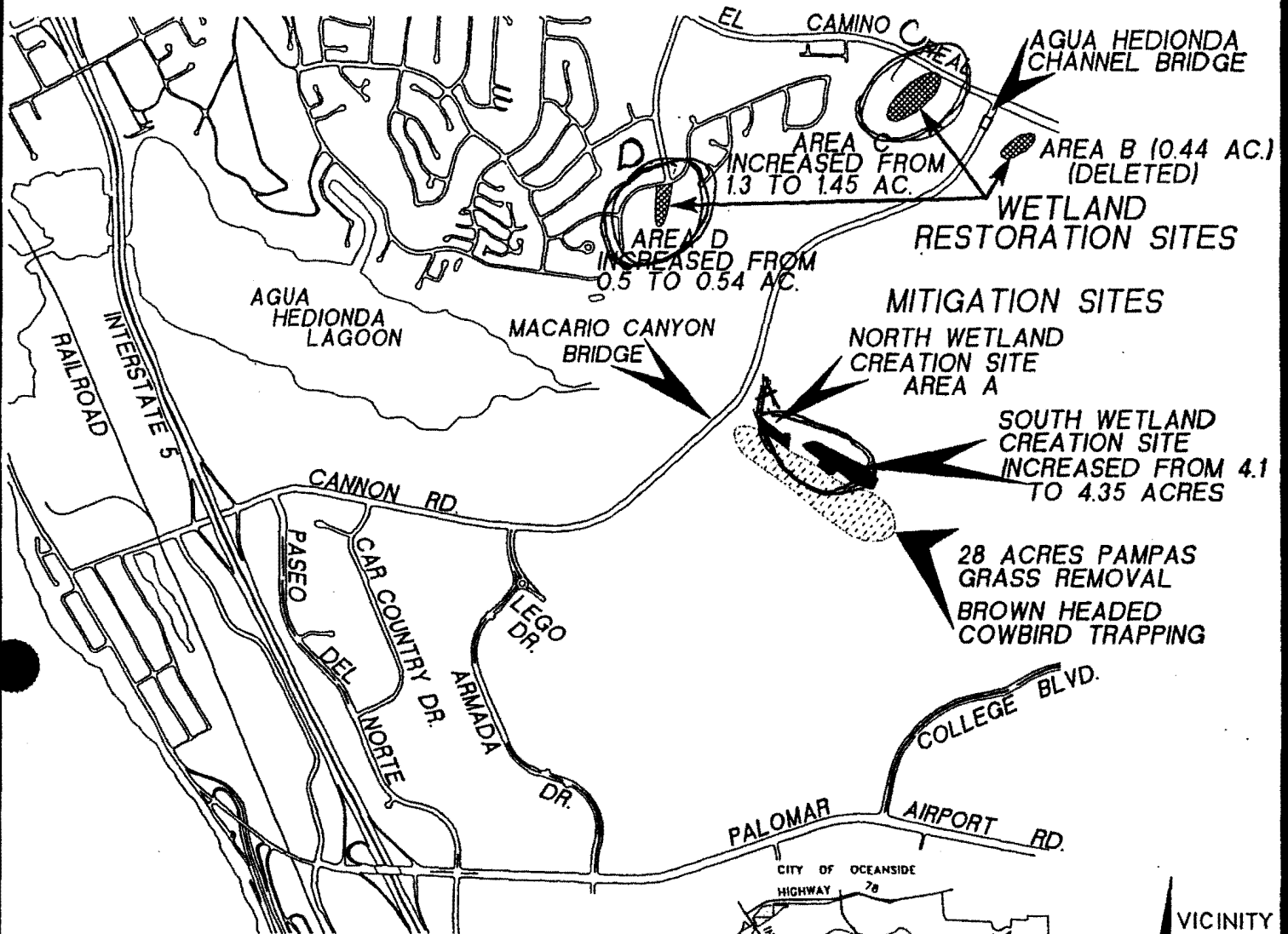
4. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the 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 effect, which the activity may have on the environment.

The proposed project has been found to be inconsistent with the resource protection policies of the Coastal Act. The City has failed to adequately demonstrate that Sites C and D can be expanded to provide wetland creation and that these sites were not previously used as mitigation sites for another project. As proposed, the Commission is unable to determine if mitigation measures will minimize all adverse environmental impacts. Because the City has failed to provide plans and information to document the proposed mitigation sites will involve creation of new wetlands, the Commission is unable to determine if the proposal is acceptable. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact, which the activity may have on the environment. These alternatives include that the City provide the necessary information or find another mitigation site to mitigate project impacts. Therefore, the Commission finds that adequate information has not been provided to demonstrate that the proposed project is the least environmentally damaging feasible alternative and thus, cannot find the proposal consistent with the requirements of the Coastal Act to conform to CEQA.



W9a

# LOCATION MAP



MITIGATION SITE SUMMARY

AREA	PREVIOUS ACREAGE	REVISED ACREAGE
A	4.1	4.35
B	0.44	0
C	1.3	1.45
D	0.5	0.54

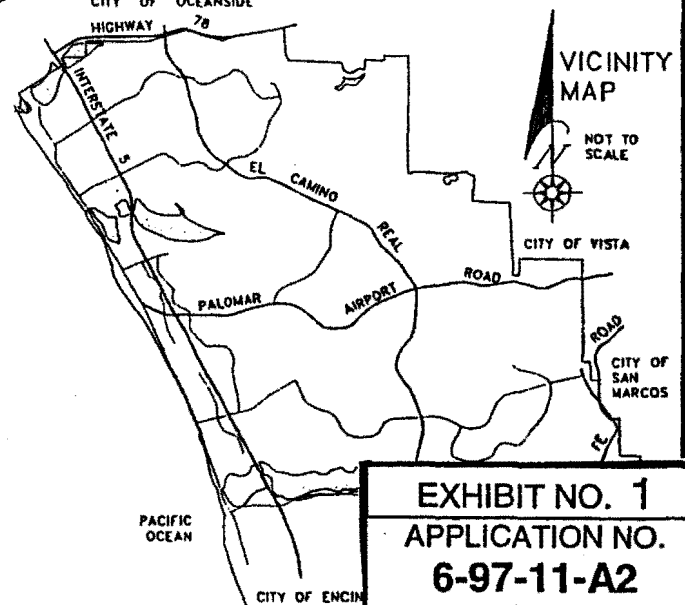


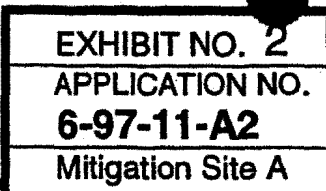
EXHIBIT NO. 1  
APPLICATION NO.  
6-97-11-A2

PROJECT NAME

CANNON ROAD WEST  
CITY PROJECT NO. 3184  
MITIGATION SITES

PRO  
NU

Mitigation sites







**GFL Landscape Architecture**  
Landscape Architecture  
Land Planning

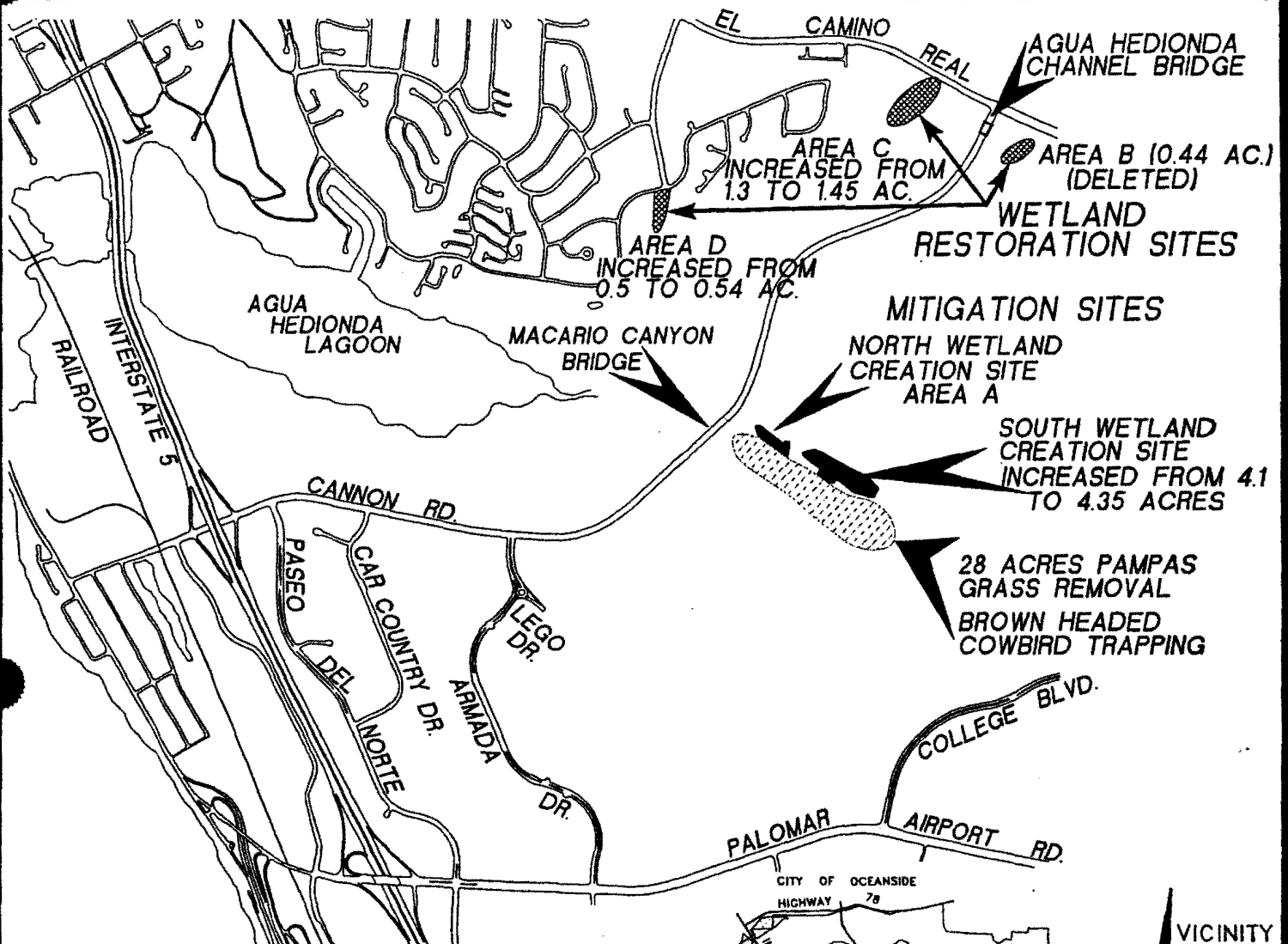
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CARD 25-502

EXHIBIT NO. 4
APPLICATION NO.
6-97-11-A2
Mitigation Site D
California Coastal Commission

# LOCATION MAP



MITIGATION SITE SUMMARY

AREA	PREVIOUS ACREAGE	REVISED ACREAGE
A	4.1	4.35
B	0.44	0
C	1.3	1.45
D	0.5	0.54

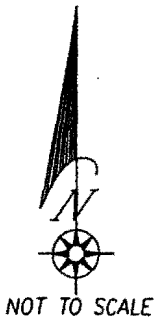
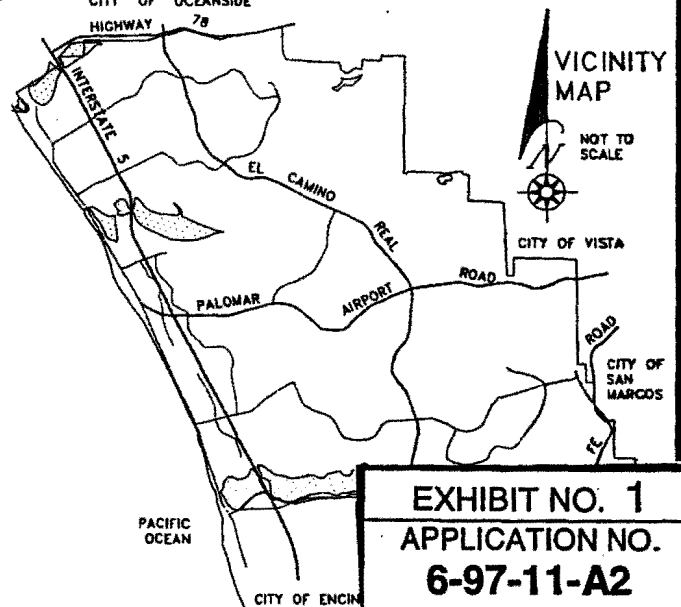


EXHIBIT NO. 1  
APPLICATION NO.  
**6-97-11-A2**

PROJECT NAME

CANNON ROAD WEST  
CITY PROJECT NO. 3184  
MITIGATION SITES

PRO  
NU

Mitigation sites

