

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Hearing Date: November 13-17, 2000

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-143

Applicant: City of San Diego Metropolitan
Wastewater DepartmentAgent: Marcos Gallegos
Sonja Olsen

Description: Enhancement of an existing stream corridor through removal of approximately 210 existing Eucalyptus trees and other exotic vegetation, and replanting of the area with approximately 500 mule fat and willow cuttings, to facilitate the re-establishment of a native riparian community.

Lot Area	Approximately 2.2 acres
Zoning	Agriculture
Plan Designation	Los Penasquitos Canyon Preserve

Site: Within Los Penasquitos Canyon Preserve, east of Interstate 5 at Sorrento Valley Boulevard, North City, San Diego, San Diego County.
APN 311-022-01

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the enhancement program with special conditions addressing nesting seasons of sensitive species, requiring the addition of the Coastal Commission as an agency to receive monitoring reports, and requiring copies of all other state and federal permits. The primary issue raised by this project is whether or not the eucalyptus trees are ESHA in this particular case, and, if so, whether their removal represents a significant disruption in habitat values. It has been determined that these trees are not ESHA in this location and their removal will enhance this stream corridor. Secondary concerns are the potential visual impacts of the removal of this number of trees and potential impacts of project implementation on listed species. These issues are addressed and resolved in the proposal and special conditions.

Substantive File Documents: Certified North City LCP Land Use Plan; Los Penasquitos Canyon Preserve Master Plan (Draft EIR – dated 7/1/1992); Mitigation Plan for Eucalyptus Trees Removal at Los Penasquitos Canyon Preserve, dated 9/20/2000

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-00-143 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and 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 either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) 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. Timing of Construction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final construction schedule, which shall be incorporated into construction bid documents. The schedule shall specify that work may not occur between March 15 and September 15 of any year to protect the nesting seasons of listed

avian species unless specifically authorized by the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (Service).

2. Revised/Final Monitoring Plan/Program. 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 enhancement and monitoring plan designed by a qualified wetland biologist and acceptable to the U.S. Army Corps of Engineers (ACOE), U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG). Said program shall be in substantial conformance with the plan identified as *Mitigation Plan for Eucalyptus Trees Removal at Los Penasquitos Canyon Preserve* dated September 20, 2000, but shall be revised to include the following:

- a. addition of the Executive Director of the Coastal Commission, as a recipient of all monitoring reports and other notifications (specifically with respect to Sections 6.B. and 7.A. of the plan).

The permittee shall undertake enhancement and monitoring in accordance with the approved program. Any proposed changes to the approved program 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.

3. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits, such as a permit from the U.S. Army Corps of Engineers, 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 shall 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. The City of San Diego is proposing to enhance an approximately 2.2 acre area of existing riparian corridor along Penasquitos Creek within the Los Penasquitos Canyon Preserve. From the City's perspective, this is a required mitigation program for impacts incurred with previous public works projects. However, those projects are all located outside the coastal zone so, from the Commission's perspective, this is being reviewed simply as an enhancement program. The major components of this effort are the removal of an estimated 210 eucalyptus trees, the removal of other non-native vegetation and replanting the area with willow, mule fat and cottonwood cuttings. The eucalyptus trees range in size from saplings to large mature specimens and are interspersed with native riparian vegetation along the streamcourse. The eucalyptus trees are not the only significant trees in this area as the main character of

the area is a densely vegetated riparian corridor with willows, cottonwoods and sycamores.

The project would kill all the eucalyptus trees within the identified site boundaries and remove most of them from the Preserve. However, the largest trees would be left as snags to provide perching habitat for raptors and nesting/larder sites for woodpeckers. The trees will be cut down with chainsaws, leaving stumps no higher than one foot; the stumps will then be treated with a herbicide. The project will require labor crews of approximately ten people, and measures are proposed to protect the adjacent native vegetation during the operation. Because there are trees to be removed from both banks of the creek, a temporary bridge will be constructed from the trees cut on the southern side of the creek to allow access to the trees on the northern side. All downed trees will be carried to a processing area (nearby, but outside the riparian corridor), chipped or cut for firewood, and left in the existing paved public parking lot off Sorrento Valley Boulevard for the public to take. No new roads to the site need to be created, since there is an existing maintenance road just south of the site, and the workers will move into the actual habitat area on foot. The bridge will be removed, along with all other construction debris, when the tree removal portion of the project is complete and no impacts to sensitive or significant habitat will occur.

Approximately 565 willow, mule fat and cottonwood cuttings will then be planted throughout the removal area. The cuttings will be taken from the surrounding willow woodland to ensure compatibility with local conditions. No more than 10% of any source plant will be harvested and no cuttings will be installed within 8 feet of any existing mature willow. Signage will be placed along all nearby trails, advising that habitat restoration is in progress. The site will be monitored for five years, with active removal of newly-sprouted eucalyptus trees and replacement of any riparian cuttings which fail to thrive.

Los Penasquitos Canyon Preserve is an area of deferred certification, where the Coastal Commission retains permit jurisdiction. Although a draft master plan for the park has been prepared, it has not completed local review or been submitted to the Coastal Commission for certification as part of the City's LCP. Thus, Chapter 3 of the Coastal Act is the standard of review for the proposed development.

2. Environmentally Sensitive Habitat Areas (ESHA). The following Coastal Act policies are most applicable to the proposed development, and state, in part:

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.

Section 30240

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

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The subject proposal involves the enhancement of an existing stretch of riparian corridor in Los Penasquitos Canyon Preserve. This area has become overgrown with eucalyptus trees, which appear to be outcompeting the native riparian species of willow, mule fat and cottonwoods, along with a few sycamores. Moreover, the nature of eucalyptus trees

prevents the normal understory growth present in fully-functioning riparian habitats. The overall project site is approximately 2.2 acres, but the eucalyptus trees are scattered throughout the area and are mixed in with the native vegetation that includes willows, mule fat, cottonwoods and sycamores. The applicant has designed an enhancement program which will remove approximately 210 eucalyptus trees from the overall site without damaging the surrounding native species. No vehicles will be brought into the riparian growth, and felled trees will be carried out by hand and processed off-site on nearby unvegetated uplands. After removal of the eucalyptus trees and any other non-native plants, the City proposes to plant/install approximately 565 cuttings from nearby willow, mule fat and cottonwood trees to hasten infilling of the area with appropriate riparian vegetation.

As cited above, under the Coastal Act, disturbance and/or fill of wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill of coastal waters and wetlands. These are:

- 1) That the project is limited to one of the eight stated allowable uses;
- 2) That the project has no feasible less environmentally damaging alternative; and,
- 3) That adequate mitigation measures have been provided to minimize adverse environmental effects.

In this particular case, the proposed development, with the special conditions attached hereto, meets the above requirements. The sole purpose of the project is to enhance existing wetlands through the removal of non-native vegetation. Restoration work is allowed in wetlands under Section 30233(a)(7). Moreover, the methods to be employed will assure that, although the projects site is wetlands, no impacts to wetland vegetation or fill of wetland areas will occur. The resource agencies support the project, since it will result in increases to the function of riparian areas and because it serves as required mitigation for projects outside the Commission's jurisdiction which nonetheless required approvals from other agencies.

The most significant issue under the Coastal Act is determining whether or not the eucalyptus trees are Environmentally Sensitive Habitat Areas (ESHA) within the meaning of Section 30240 of the Act. Groves of eucalyptus trees have been determined to be ESHA in some areas of California, because they provide perching habitat for raptors and nesting habitat for some other birds. Where the eucalyptus trees have been found to represent ESHA, it has generally been because they exist as a significant grove of major vegetation in an area without other tall trees to serve the same function. In concurrence with resource agency representatives, the Commission finds that the eucalyptus trees proposed for removal in Los Penasquitos Canyon Preserve are not ESHA, because they are not a unique habitat in this location. They exist as individual trees, not as a solid grove or even several groves, and are completely interspersed with many native riparian specimens. The largest eucalyptus trees will be left as snags which will then provide habitat for certain birds. More importantly, however, there are many native cottonwoods and sycamores which can and do serve the same perching and nesting

function as the eucalyptus trees in this area. Thus, while the snags are being left as an enhancement feature, they currently do not function as necessary nesting or perching habitat.

Since the eucalyptus trees proposed for removal are not ESHA, and since there is no fill of wetlands or removal of native vegetation associated with this enhancement proposal, the Commission finds the project generally consistent with the cited Coastal Act policies. There are, however, three recommended special conditions attached to assure implementation of the enhancement program will be carried out as proposed and to provide the Commission with feedback on enhancement success or failure. Because of sensitive bird species within and adjacent to the site, the applicant does not propose to work between March 15 and September 15. A preliminary schedule would have work begin in November, 2000 and be completed before March 15, 2001. However, various things ranging from weather to funding could cause unforeseen delays in project implementation. Therefore, Special Condition #1 requires a detailed construction schedule which assures that no activities will occur on the site between March 15 and September 15 of any year unless approved in writing by CDFG and the Service.

The monitoring program included with the enhancement plan calls for five years of monitoring to assure success of the enhancement efforts. The program appears to cover all typical concerns and provides for removal of eucalyptus sprouts and replanting of failed riparian cuttings throughout the term of monitoring. It also provides for additional monitoring and augmentation if the performance criteria is not met after five years. However, although annual reports, and a more detailed final report, are required to be filed with a number of interested agencies, the Coastal Commission was not included on the list. Special Condition #2 requires that the Coastal Commission be added to the list of agencies and thus receive copies of all monitoring reports.

Finally, other state and federal permits may be required for this development. Some form of approval will be required from the U.S. Army Corps of Engineers, and it is possible that the California Department of Fish and Game and the Regional Water Quality Control Board may need to review the plans. Special Condition #3 provides that copies of any permits required by other agencies be submitted to the Commission, and advises that, should these approvals modify the proposed project, additional action by the Coastal Commission may be required.

In summary, the proposed riparian enhancement plan is consistent with the mandates of the Coastal Act that provide for the preservation and enhancement of coastal wetlands, including riparian corridors. The non-native vegetation being removed (eucalyptus trees for the most part) is not ESHA that would require protection under Section 30240 of the Act because there are ample mature native trees throughout the project site that can fulfill the same habitat functions without having detrimental effects on riparian growth. In addition, the project will be implemented in a manner that will not result in significant disruption of surrounding ESHA. Also, the three special conditions are not required to modify or augment the project itself, but only to memorialize breeding season limitations, assure that the Commission receives all monitoring reports generated for this project and

provide the Commission with evidence of the actions of other agencies which could modify the project herein approved. As conditioned, the Commission finds the proposed riparian enhancement consistent with Sections 30233 and 30240 of the Coastal Act.

3. Marine Resources/Water Quality. The following Coastal Act policy is most applicable to the proposed development and states:

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.

The proposed enhancement project is not anticipated to have any adverse impacts on the water quality of Penasquitos Creek or the downstream Los Penasquitos Lagoon. The proposal involves the removal of non-native vegetation and its replacement with riparian species. The entire site is an unimproved portion of a public park, and no changes to permeable surfaces will occur as a result of the proposed project. Therefore, the Commission finds the proposed development, as conditioned to address other concerns, consistent with Section 30231 of the Act.

4. Visual Resources. The following policy of the Coastal Act addresses visual resources, and states:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The project site is within a public open space park, the Los Penasquitos Canyon Preserve. It is primarily a linear park, running east west along the canyons of Penasquitos Creek and Lopez Creek. There is improved trails and maintenance roads, which are used by pedestrian, equestrian and bicycle traffic, as well as park ranger vehicles. The subject site itself is north of the main trail up Penasquitos Canyon and consists of a riparian corridor surrounding Penasquitos Creek. Although major vegetation, in the form of large

shrubs and trees, is absent in much of the park, it is a prominent feature of the streamcourses themselves and the primary indicator of a nearby water source.

The entire parkland is visually appealing and there is a justifiable concern over whether the removal of approximately 210 trees will significantly affect the ambiance of the park. The Commission finds this will not be the case in the subject enhancement program. Although some mature eucalyptus trees will be removed, many of the trees are only saplings and, as such, do not form a significant component of the park's vegetation from a visual perspective. Moreover, several of the largest eucalyptus trees will be retained as snags and will continue to contribute to the overall "forested" image of the streamcourse. Also, 565 new riparian plants, in the form of willow, mule fat and cottonwood cuttings will be planted to replace the removed trees. Although these will require time to reach the height of the trees they are replacing, they will assure that the ground remains vegetated uniformly without unsightly bare patches. However, the most significant reason why the removal of approximately 210 trees will not have adverse visual impacts is because the existing trees are fully interspersed with native trees that will remain. The project will not remove large areas of vegetation from a single location, but rather individual trees from within an existing vegetated corridor. Therefore, the Commission finds the proposal, as conditioned to address other concerns, consistent with Section 30251 of the 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, as conditioned, such a finding can be made.

Los Penasquitos Canyon Preserve is a publicly-owned, open space area, dedicated for both resource protection and public recreation. Although the City has prepared a draft master plan for the preserve, this has neither undergone full public review at the local level nor been submitted to the Coastal Commission for certification as part of the City's LCP. Thus, the Los Penasquitos Canyon Preserve remains an area of deferred certification, where the Commission retains coastal development permit authority and Chapter 3 is the standard of review. Nonetheless, the proposed enhancement plan is consistent with the goals of the draft master plan. As discussed in previous findings, the proposal, as conditioned, is also fully consistent with Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, with the attached conditions, should not prejudice the ability of the City to complete a certifiable plan for the preserve and continue implementation of its LCP in other areas of the City.

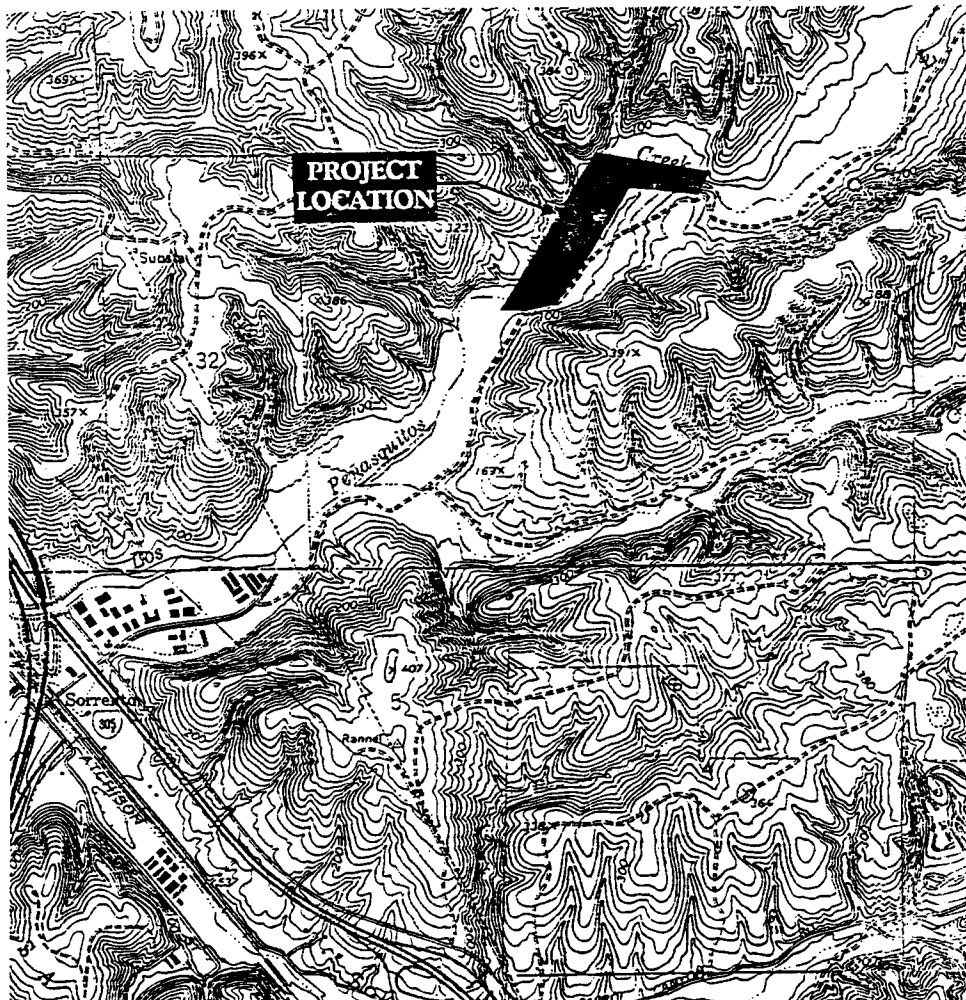
6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental 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.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the biological resources, water quality, and visual resource policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project 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 Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.

 California Coastal Commission

6-00-143

Eucalyptus to be removed*
(approximately 2.22 acres)

Processing Area
Access Route

*canopy contains numerous saplings



Locations of Exotics to be Removed



EXHIBIT NO.
APPLICATION NO.
6-00-143
Site Plan