STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, *Governor*

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-127

Applicant: City of San Diego Agent: Frank Belock

Description: Construction of the middle segment of State Route 56 to complete an east-west freeway connection between I-5 and I-15, with approximately 7,000 linear feet of the highway in the coastal zone (approximately 5,200 linear feet in the Coastal Commission's jurisdiction and subject to this permit). The project includes approximately 200,000 cu.yds. of grading in the coastal zone (approximately 175,000 cu.yds. in the Coastal Commission's jurisdiction and subject to this permit) and construction of four travel lanes, bicycle lanes and a bridge at the future interchange at Camino Santa Fe. The project also includes installation of two Continuous Deflective Separation Units on existing State Route 56 West and creation of 1.5 acres of riparian wetlands in McGonigle Canyon as mitigation for project impacts to 0.427 acres of existing southern willow scrub.

Site: Beginning approximately 1/3 mile east of the east end of existing State Route 56, extending east approximately 1 mile through Subarea III of the Future Urbanizing Area of North City, San Diego, San Diego County.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed freeway link, which completes a connection between Interstate 5 (I-5) and Interstate 15 (I-15). Although the proposed alignment for State Route (SR) 56 within the coastal zone will result in permanent impacts to 0.427 acres of riparian wetlands, and approximately two acres of various sensitive upland habitats, on balance the project is most protective of coastal resources, since it will result in improved water quality as compared to existing conditions. The project also has positive benefits in the areas of providing safe wildlife corridors, clustering future development north of the proposed alignment leaving a large contiguous area of open

space south of the alignment, and facilitating future mass/alternative transit and access from inland communities to the beach. Moreover, all unavoidable project impacts are being mitigated and the proposal represents the least environmentally damaging alternative consistent with Coastal Act policies.

Staff recommends a number of special conditions designed to assure adequate and appropriate mitigation for all project impacts and provision of water quality improvements. As conditioned, the project will include erosion control and drainage measures for the proposed middle segment of SR-56. As proposed, the project will also include retrofitting the existing western segment of SR-56 with additional drainage improvements. In addition, the conditions require monitoring of the installed drainage devices and identification and implementation of remediation measures if standards established by the Regional Water Quality Control Board (RWQCB) for sediment or pollutant loads are exceeded.

This project was initially brought before the Commission in March, but the City requested a 90-day extension of time to continue working with staff on the condition language. Since that time, Commission staff has had numerous meetings and contacts with the City of San Diego and Caltrans to refine the special conditions that had been recommended in March, 2000. Resultant changes to several of the special conditions in no way reduce the level of protection required in this permit. However, changes have been made to address procedural requirements of Caltrans and to replace some forms of BMPs with other types that will achieve the same purpose. Since the applicant has not yet prepared construction plans, the Commission is the first state agency to formally review the recommended temporary and permanent erosion control measures and other water quality improvements. However, none of the recommended requirements of this permit should be inconsistent with, or in conflict with, the standards and requirements of other agencies, such as the Regional Water Quality Control Board.

First, Caltrans objected to a requirement that it identify temporary erosion control measures and project staging areas prior to issuance of the permit. Caltrans stated that these tasks are normally handled by the selected contractor, who is better able to determine the best erosion control measures and needed staging areas in the field. Under Caltrans required bidding process, the permit must be approved and issued before the project can go out to bid. To accommodate this concern, recommended Special Conditions #4 and #7 have been revised to require identification of the temporary erosion control measures and staging areas prior to the start of construction, rather than prior to issuance of the permit. The applicant must still acknowledge, prior to issuance of the permit, that staging areas cannot be located in sensitive areas.

In addition, recommended Special Condition #5 has been modified from the prior staff recommendation. With respect to specific permanent BMPs addressing water quality protection, the previously-recommended requirements for a grassy swale in the median and a detention basin at or near the western end of the project have been removed. Based on the submitted concept plan for a section of SR 56 (Exhibit #4), it appeared the entire median would be paved. However, the actual proposal is to only pave the center 5 feet of

a 75-foot median to provide a low flow channel; the remaining 70 feet are proposed to be vegetated. Moreover, where site gradients are less than 2%, permeable gravel will be used in place of concrete, and the majority of the highway is designed to drain to the outside, rather than to the median. In addition, staff has revised the special condition such that the requirement for a detention basin has been eliminated as it is not necessary. There is an existing detention basin just ¼ mile to the west of the recommended location for a new detention basin; the existing basin was sized and designed to accommodate both runoff from the entire alignment of SR 56 and from a significant amount of planned urban development outside the coastal zone. However, the applicant is required to retain peak flow rates consistent with the existing detention facility and to monitor the quality of effluent before it enters the existing basin.

Also since this item was last scheduled for Commission review, a formal coastal zone boundary delineation was completed. Based on that delineation, slightly less of SR 56 is located within the coastal zone than was previously cited. This staff report has been updated to reflect the correct numbers with respect to linear feet and grading amounts in the coastal zone. However, updated information is not yet available for biological impacts. Thus, this report contains the same amount of identified impacts as the previous report contained, but it should be noted that these numbers will likely be slightly reduced once the final calculations are prepared. This will not change the overall mitigation program for the full development, since total impacts remain the same. There is just less impact within the coastal zone boundary.

Substantive File Documents: Certified City of San Diego Land Use Plans: North City LCP Land Use Plan Addendum, Carmel Valley Neighborhood 8 Community Plan, North City Future Urbanizing Area Framework Plan and Pacific Highlands Ranch Draft Subarea Plan (SDLCPA #3-98); Certified City of San Diego Implementation Plan; Final Environmental Impact Report (LDR No. 95-0099); CCC Files #6-90-123 and #1-98-103

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. MOTION: ***I move that the Commission approve Coastal Development Permit No. 6-98-127 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. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the construction of those portions of the middle segment of State Route 56 located within the Coastal Commission's coastal development permit jurisdiction. The plans shall incorporate the following information:

a. A site plan(s) showing the entire alignment within the coastal zone, with the coastal zone boundary clearly delineated;

b. Grading plans for the entire alignment within the coastal zone, with existing and proposed contours clearly delineated;

c. Elevations of all interchanges and under/over-crossings in the coastal zone;

d. Descriptions and exhibits of all proposed landscaping improvements within the coastal zone, as further detailed in Special Condition #6; and

e. Descriptions and exhibits showing the placement and composition of all proposed permanent drainage facilities, as further detailed in Special Condition #5.

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. Revised/Final Mitigation and 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 those portions of the plan identified as *Conceptual Habitat Restoration and Monitoring Program for Wetlands Mitigation Associated with the State Route 56 Construction Project* (KEA Environmental, Inc., October 14, 1999) applicable to the Lower McGonigle Canyon mitigation area only, but shall be revised to include the following:

a. A detailed planting plan for the Lower McGonigle Canyon mitigation site (identified in Exhibit #7), similar in content and design to the plan depicted in Figure 10 of the above-referenced document. The plan shall consist of in-kind riparian mitigation at a ratio of 3:1 (i.e., three acres created for every acre impacted within the coastal zone).

b. A detailed narrative description of the Lower McGonigle Canyon mitigation project, similar to Sections C and D of the above-referenced document.

c. Submittal, within six weeks of completion of construction (i.e., planting) at the mitigation site, of an as-built assessment of the mitigation project that includes as-built plans, to determine if the project has been built as approved.

d. Submittal of annual monitoring reports to the Executive Director of the Coastal Commission, as well as any other required recipients.

The permittee shall undertake mitigation and monitoring in accordance with the approved program prior to, or concurrent with, the occurrence of the subject wetland impacts. 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. Open Space Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur within the Lower McGonigle Canyon wetland mitigation site consisting of restored wetlands and a minimum 50-foot wetland buffer between wetland and upland habitats, as shown in the approved plan required by Special Condition #2 above, except for restoration, monitoring and maintenance activities conducted in accordance with the approved mitigation and monitoring program.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant 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 applicant'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.

4. Grading/Erosion Control. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicants shall submit to the Executive Director for review and written approval, final erosion control plans that have been approved by the City of San Diego and Caltrans. The approved plans shall be subject to the following requirements and include the following components:

a. During construction, erosion on the site shall be controlled to avoid adverse impacts to adjacent properties, public roadways and Los Penasquitos Lagoon.

b. The following temporary erosion control measures shall be used during construction activity: a combination of temporary measures (e.g., geo-fabric blankets, spray tackifiers, silt fences, fiber rolls, straw mulch, hay bales, gravel bags), as appropriate, during each phase of site preparation, grading and project construction.

c. Following construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties, public roadways and Los Penasquitos Lagoon.

d. A copy of the Storm Water Pollution Prevention Plan (SWPPP), prepared as a requirement for development under Caltrans individual NPDES permit, which specifies BMPs appropriate for use during each phase of site preparation, grading and project construction, and procedures for their installation, based on soil loss calculations. The submitted calculations will account for factors such as soil conditions, hydrology (drainage flows), topography, slope gradients, vegetation cover and groundwater elevations.

e. A site plan showing the location of all temporary erosion control measures. Such site plan may acknowledge that minor adjustments in the location of temporary erosion control measures may occur if necessary to protect downstream resources.

f. A site plan showing the location of all permanent erosion control measures.

g. A schedule for installation and maintenance of the permanent erosion control measures.

h. A plan to mobilize crews, equipment, and staging areas for BMP installation during each phase of site preparation, grading and project construction, with timing of deployment based on the forecast percentage of rainfall occurrence. The plan

shall also address provisions for delivery of erosion prevention/control materials, or access to onsite supplies, including unit costs and specifications for adequate storage capabilities.

i. A plan for landscaping, which shall be installed on all cut and fill slopes prior to November 15th of each year utilizing either temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

j. Limitations on grading activities during the rainy season, from November 15 to March 31 of each year, wherein grading may only occur in increments as determined by the City Engineer and in conformance with the updated Land Development Code of the City of San Diego, effective January 1, 2000. Prior to commencement of any grading activity, the permittee shall submit a grading schedule to the Executive Director. Any variation from the schedule shall be promptly reported to the Executive Director.

k. A requirement that all permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season.

The permittee shall undertake development in accordance with the approved grading and erosion control plans. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. To facilitate this determination, the third-party contractor designated by Caltrans shall evaluate the implementation of SWPPP measures for compliance with this coastal development permit, and copies of all periodic reports shall be submitted to the Executive Director for review.

5. Drainage and Polluted Runoff Control Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and written approval of the Executive Director, a final drainage and polluted runoff control plan for existing and proposed SR 56, designed to minimize the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be incorporated into construction bid documents and reviewed and approved by the consulting engineer to ensure the plan is in conformance with the engineer's recommendations. The plan shall be subject to the following requirements, and shall include the following components:

a. Post-development peak runoff rate and average volume from the Carmel Valley Resource Enhancement Plan (CVREP) detention facility to Carmel Creek/Los Penasquitos Lagoon shall be maintained at levels similar to existing conditions.

b. Permanent structural or non-structural treatment control best management practices (BMPs) effective at removing and/or mitigating pollutants of concern, specifically, petroleum hydrocarbons, heavy metals, sediment and particulates (for example bioswales or continuous deflection separators fitted with sorbent pads) shall be incorporated into final plans, to treat the drainage from the proposed highway segment located within the coastal zone.

c. Opportunities for directing runoff from impervious roadway to permeable areas for infiltration or biofiltration purposes shall be maximized where geotechnical or hydrological constraints would not otherwise prohibit such use.

d. Permeable crushed gravel shall be used as an alternative to the proposed concrete material, to form the low flow channel proposed for the middle five feet of the center median, on all portions of the proposed segment where slopes are of a grade less than 2%. All portions of the median outside the center five feet shall be vegetated.

e. All selected structural BMPs for volumetric control (e.g., detention and infiltration basins) and flow-based control (e.g., biofilters and media filters) shall be designed and constructed in accordance with the sizing and design criteria contained in the California Storm Water Best Management Practices Handbook (Municipal) (1993) and/or comparable Caltrans criteria, appropriate for the San Diego region. The final BMP design standard shall be to reduce pollutants in stormwater to the maximum extent practicable (MEP). MEP should represent the point of diminishing return for BMP implementation. If, based on such considerations and specifications, with respect to site characteristics, a required BMP is determined by a qualified engineer with appropriate expertise to be infeasible, and will therefore result in changes to the approved plan, a Commission-approved amendment will be required, unless the Executive Director determines that no such amendment is required.

f. A BMP maintenance agreement which states that by acceptance of this coastal development permit, the applicant/owner or successor in interest agrees to be solely responsible for regular maintenance including inspection and regular cleaning of all approved BMPs to ensure their effectiveness prior to and during each rainy season from November 15 through March 31 of each year, for the life of the project. Debris and other water pollutants contained in BMP filters or devices must be contained and disposed of in a proper manner on a regular basis. All BMP traps/separators and/or filters must be cleaned prior to the start of the winter storm season, no later than October 15th each year. Documentation of inspection and maintenance activity is required in the annual monitoring and BMP status report, required by component 5g below.

g. As proposed by the applicant, a comprehensive receiving water quality monitoring program shall be implemented beginning in the Fall of 2000. Sampling locations and conditions shall be consistent with the specifications of the proposed State Route 56 Monitoring plan (Exhibit #11). Samples shall be analyzed for all constituents included in Table 1 of the State Route 56 Monitoring Plan. However,

the plan as proposed shall be modified to reflect that monitoring shall be conducted for a period of five years following final completion of the project. In addition, a BMP efficiency study designed to assess the efficacy of selected permanent BMPs required by 5.b. of this permit shall be undertaken. Evaluation and criteria for assessment of BMP efficacy shall be modeled after that used by Caltrans in BMP retrofit pilot plan studies conducted on BMPs implemented elsewhere in the state. The results of the monitoring plan, BMP assessment, and documentation of inspection and maintenance activities shall be compiled in the form of an Annual Monitoring and BMP Status Report, referred to hereafter as the "Status Report." The Status Report shall be submitted to the Coastal Commission, prior to June 1st of each year, for a period of five years following final project completion. A complete Status Report shall consist of the following three components:

1. The sampling data and analysis of results from the previous year's monitoring efforts. Analysis shall serve to characterize water quality in the receiving waters, and evaluate results against receiving water quality objectives established by the Regional Water Quality Control Board (RWQCB), and in comparison to baseline data from monitoring efforts conducted in previous years associated with the CVREP.

2. BMP efficiency study results for selected permanent BMPs implemented per Special Condition 5.b. of this permit.

3. Documentation of inspection and maintenance activities associated with permanent BMPs. Specific information shall include: date, location and brief description of activity performed.

The Status Report shall be signed by the Caltrans District 11 Director, or the Director's designee in the stormwater compliance program, prior to annual submittal to the Commission.

h. A list of, and a commitment to implement, potential remediation measures in the event runoff from the project site or downstream sampling points exceeds criteria pollutant thresholds regulated by the RWQCB at this time, or for which standards are developed during the 5-year term of this monitoring program. Corrective actions for exceedances should be provided immediately wherever possible, with considerations for worker safety. Where exceedances cannot be corrected immediately, the next annual report shall identify specific remediation measures appropriate to the circumstances and provide a schedule for their implementation.

i. A detailed site plan that shows the size and location of all storm drain inlets, size and location of all structural and non-structural BMPs, detention/desilting facilities and all locations where testing/monitoring will occur. In addition, the program, and associated site plan, shall identify the locations along existing State Route 56 where the applicant is proposing installation of Continuous Deflective Separation Units as a retrofit water quality improvement.

The permittee shall undertake the development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No change to the plan shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

6. Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a detailed final landscape plan approved by the City of San Diego and Caltrans indicating the type, size, extent and location of all plant materials, including the specific species to be planted in all areas of the median except the center five feet, where a low-flow channel is proposed, any proposed temporary irrigation system and other landscape features. The plan shall be incorporated into construction bid documents and reviewed in consultation with the resource agencies identified below and shall include the following specific features:

a. Only drought tolerant, non-invasive native plant materials acceptable to the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (Service) and U.S. Army Corps of Engineers (Corps) shall be utilized, except in the western-most portion of the alignment where SR 56 will be adjacent to existing residential uses on both the north and south sides of the highway, where drought tolerant, non-invasive native or exotic plant materials shall be permitted;

b. Only temporary irrigation for plant establishment shall be permitted, except in the area described in 6.a. above, where permanent irrigation shall be permitted. Reclaimed water shall be used for irrigation to the maximum extent possible, when available;

c. A written commitment shall be made that all planted materials shall be maintained in good growing condition;

d. Use of fertilizers and pesticides which may enter surface runoff or leach into groundwater shall be avoided altogether, where possible, and otherwise minimized to the extent feasible; and

e. Permanent landscaping shall be installed concurrent with, or within sixty days following, completion of highway construction.

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

7. Construction Staging and Storage Areas. The permittee shall not use any area containing wetlands or sensitive upland plant species (i.e., coastal sage scrub, etc.) to

stage or store construction equipment or materials. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement incorporating the above requirement.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall submit plans showing the locations, both on- and off-site, which will be used as staging and storage areas for materials and equipment during the construction phase of this project. The staging/storage plan shall be subject to review and written approval of the Executive Director. The plan shall demonstrate that no area containing wetlands or sensitive upland plant species (i.e., coastal sage scrub, etc.) is proposed to stage or store construction equipment or materials.

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

8. Other Permits. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, copies of all other required local, 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 shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

9. Future Development. The subject permit is for the construction of four travel lanes and associated improvements only. The construction of additional travel lanes or other improvements within the reserved median in the future will require review by the Coastal Commission as an amendment to this permit. The first priority for use of the reserved median area should be for mass transit or HOV lanes, rather than additional mixed-use lanes. If additional mixed-use lanes are ultimately proposed for the center median, the amendment application should include a thorough analysis of transit alternatives and support why such improvements are not proposed or needed.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The City of San Diego is proposing construction of the middle segment of State Route 56 (SR-56), a major east-west freeway connector between Interstate 5 (I-5) and Interstate 15 (I-15). The total proposed middle segment is approximately 5 miles long, with about 1.25 miles (approximately 7,000 linear feet) of the alignment in the coastal zone. Of the 1.25 miles in the coastal zone, approximately 1 mile (approximately 5,200 linear feet) is in an area of deferred certification (the North City Future Urbanizing Area), where the Coastal Commission

retains permit authority and the standard of review is Chapter 3 of the Coastal Act. The Commission recently certified City of San Diego Local Coastal Program Amendment #3-98, which included a land use plan for Subarea III of the Future Urbanizing Area. The proposed freeway alignment is within Subarea III. However, the LCP amendment has not yet been effectively certified. Therefore, development within Subarea III remains within the Commission's jurisdiction. The land use plan for Subarea III indicates that some wetland impacts would occur in conjunction with the extension of SR-56 through the community. The remaining approximately ¼ mile of the middle segment of SR-56 is in the City's permit jurisdiction, in Neighborhood 8 of the Carmel Valley Community Plan. The City has already issued a coastal development permit for this portion of the proposed road.

A portion of the eastern segment of SR-56, which is not in the coastal zone, trends westward from I-15 and has been in place for some time. Likewise, the western segment, which is entirely within the coastal zone, was constructed several years ago pursuant to Coastal Development Permit #6-90-123. The existing western segment extends for approximately two miles eastward from I-5, roughly along the historic alignment of Carmel Valley Road. The existing western segment ends within the City's permit jurisdiction, and it is the westernmost portion of the proposed middle segment which the City has recently approved under its permit authority.

As proposed, the portion of SR-56 addressed in this application is situated along the northern extent of the coastal zone boundary such that in places only a part of the full width of the proposed freeway is actually in the coastal zone. Exhibit #2 delineates the various jurisdictional boundaries and depicts those portions of the proposal which are actually within the Commission's permit jurisdiction.

The City is proposing to grade the entire proposed width of the freeway alignment (approximately 150 feet for most of the alignment, greater where grade separations are required for bridges, interchanges, etc.), but only construct four travel lanes (two eastbound, two westbound) at this time. These travel lanes will be located along the outer portion of the graded right-of-way, in conjunction with required shoulders, etc. The center median area (approx. 75 feet in width) will be retained for future expansion as the need arises. At present, the applicant's typical concept plan (depicting approximately one third of a mile of the proposed alignment) indicates the median will be improved with a concrete drainage channel; in recent discussions, the applicant has indicated that only the center 5 feet will be concrete, with the remainder vegetated. Depending on circumstances, the median is to be improved in the future with light rail transit, HOV lanes or additional mixed-use lanes. Special Condition #9 makes it clear that only four through travel lanes, and associated highway improvements, are approved at this time. Future expansion into the reserved median will require additional review by the Coastal Commission as an amendment to this permit. At that time, priority should be given to mass transit improvements. If additional mixed-use lanes are ultimately proposed for the center median, the amendment application should include a thorough analysis of transit alternatives and support why such improvements are not proposed or needed.

At this time, full construction drawings for the highway improvements have not been prepared. Large scale (approx. 1" = 500') site plans showing the full coastal zone road alignment and grading footprint have been submitted and are attached as Exhibits #2 and #3. In addition, a typical detailed plan of an approximately one-third mile portion of the proposed highway has been submitted as an example demonstrating the level of detail to be included in the final drawings. Special Condition #1 requires submittal of final, detailed plans for the entire portion of the alignment addressed in this permit. The final plans are to include site plans, grading plans, elevations of interchanges and over/under crossings, erosion control plans, drainage plans and landscaping plans. The final three types of plans are addressed in greater detail in separate special conditions and in subsequent findings.

2. Environmentally Sensitive Habitats/Biological Resources. The proposed middle segment of SR-56 will result in impacts to several wetland and upland habitats, including impacts to riparian corridors, freshwater marshes, vernal pools, and coastal sage and chaparral communities. Most of these impacts occur outside the coastal zone. However, the proposed development will result in permanent impacts to 0.427 acres of riparian vegetation (southern willow scrub) and to approximately 1.5 acres of sensitive upland habitats within the coastal zone. The applicable Coastal Act policies are cited below, and state in part:

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 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 project is located primarily in undeveloped areas of the northern portion of the City of San Diego, although it will be adjacent to existing residential uses at the western end. The surrounding areas, particularly those located north of the proposed highway alignment and thus outside the coastal zone, are designated in the Subarea III land use plan for development with a variety of uses in the future. However, at present, most of the land consists of undeveloped sloping terrain, steep in places, and several canyons, some of which include seasonal or permanent streams.

The proposed project raises issues under all the above-cited Coastal Act policies. Both during construction and by the increase in impermeable surfaces after construction, the proposed development will generate a high volume of runoff that will cause erosion, which in turn will lead to adverse impacts on downstream and adjacent biological resources. The project includes a number of temporary and permanent erosion control and drainage improvements intended to mitigate the impacts of construction and operation. These issues are more significantly related to water quality, and will be addressed in greater detail in a subsequent section of these findings. This finding will address the project's direct and permanent impacts on biological resources, including both wetlands and uplands.

The proposed project's impacts to wetlands will occur to an isolated drainage containing southern willow scrub riparian wetlands near the western end of the proposed middle segment. The existing western segment of SR-56, approved by the Coastal Commission ten years ago in Coastal Development Permit #6-90-123, was constructed in close proximity (contiguous in places) to the previously-existing east/west trending Carmel Valley Road. Carmel Creek flows in a westerly direction south of both Carmel Valley Road and existing SR 56, eventually emptying into Los Penasquitos Lagoon. In the area of the proposed middle segment, Carmel Valley Road veers away from the proposed SR-56 alignment and trends to the northeast, whereas Carmel Creek continues to flow from the east. A minor tributary to Carmel Creek, in the form of a three-foot-wide streambed and grove of riparian vegetation, follows alongside that northeasterly-trending section of Carmel Valley Road. The stream does not flow year-round, and was dry during a recent site visit; the existing riparian vegetation, though somewhat sparse, grows over and into the streambed as well as on its banks such that the entire drainage area is a wetland. The Commission's staff ecologist has visited the site and concluded it is correctly identified as a wetland. The intermittent stream and grove of riparian vegetation is surrounded by paved roads on three sides, consisting of Carmel Valley Road to the west and north, as it curves, and a private driveway leading to existing and permitted residential, commercial and agricultural uses to the south, and by open grasslands to the east. The proposed middle segment of SR-56 will cross over existing Carmel Valley Road; the proposed cross-over will result in impacts to 0.427 acres of the above-described riparian corridor within the coastal zone through the placement of fill to support the highway.

Under Section 30233 of 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 does not meet the above requirements in that it is not a permitted use pursuant to Section 30233. The proposed road alignment does, however, represent the least environmentally damaging alternative. The City and the public have reviewed many different alignments of the proposed middle segment of SR-56. The original EIR analyzed four potential alignments in significant detail and several others to lesser degree; as a result of public review of that document, six additional potential alignments were identified and also analyzed in a subsequent final EIR, with specific attention given to the central alignment and three variations of the northern alignment. Various alignments identified different quantities of impact to various resources, but all the alignments had some level of impacts to every identified resource. Most of the differences between the amount of impacts occur outside the coastal zone and affect upland habitats, areas where the highway will cross other riparian corridors and vernal pool habitat near the far eastern end of the proposed middle segment. Exhibits #9 and #10 delineate several of the many alignments analyzed over the past several years. The exhibits, especially Exhibit #10, are difficult to read, but are presented to support this narrative and demonstrate the wide range of options considered by the City and the public before it was determined that the proposed alternative was the least environmentally damaging overall.

The proposed alignment, which is a combination of the "Modified Northern F" alignment on the western part and the "Northern" alignment on the eastern part, represents the least total amount of impacts on wetlands, although it does include greater impacts on some upland habitats than some of the other reviewed alignments. Overall, however, it is preferred since it will create a distinct boundary between future urban development, which will be located north of SR 56, and open space areas south of the proposed highway, rather than significantly encroaching upon and fragmenting existing open space/habitat areas. All other identified alternatives would fragment open space areas to greater degree than the preferred alignment.

For the proposed, preferred alignment, the only coastal zone wetland impact is near the western end of the proposed highway. That impact is common to all alternatives for two reasons: 1) any alignment near the western end is fixed by existing adjacent residential development and the existing western segment of SR 56, and 2) any east-west trending highway alignment must cross the north-south trending Carmel Valley Road and adjacent tributary creek where the riparian vegetation exists.

In addition, full mitigation is proposed for all identified impacts, both to wetlands and uplands. Impacts to 0.427 acre of southern willow scrub are proposed to be mitigated at a 3:1 ratio through the creation of 1.5 acres of new riparian habitat at the western end of McGonigle Canyon. While the chosen mitigation site is not immediately adjacent to the exact area of impact, it is located nearby the highway alignment of SR-56, upstream and within the same watershed, and within the coastal zone (see Exhibit #7). The applicant submitted a draft mitigation program addressing project impacts. The program is not final yet for coastal zone impacts, but it is complete for impacts occurring further east outside the coastal zone, where highway construction is already underway. The goals, performance standards, implementation methods and monitoring requirements for these impacts are consistent with programs the Commission has reviewed and approved for other projects in the past. The plan identifies responsible parties and requires annual reports throughout the monitoring period. Thus, Special Condition #2 requires the applicant to submit a final mitigation plan for all project impacts to wetlands within the coastal zone, that is in substantial conformance with the content and design of the submitted plan, but augmented to include specific maps and narrative addressing the coastal zone impacts. The condition stipulates the mitigation will occur at a 3:1 ratio and the selected site is within the coastal zone.

Three other special conditions also address the project in relation to biological resource protection. Special Condition #3 requires that the mitigation area be preserved in perpetuity as open space. Special Condition #7 further protects both wetlands and uplands by providing that required construction staging and storage areas may not be located within any environmentally-sensitive habitat areas. Finally, Special Condition #8 requires submittal of all other required state and federal permits for the subject development. The City has applied to the ACOE and CDFG for permits, and has received authorization to proceed with construction of the eastern portions of the highway located well outside the coastal zone. Most of the impacts to federal jurisdiction lands occur to vernal pools located in the eastern part of the middle segment outside the coastal zone; the ACOE has issued a permit for just that portion, which allows the applicant to begin construction at the eastern end of the middle segment, proceeding towards the west.

Although the applicant is proposing the least-environmentally damaging project alternative, and has proposed appropriate and adequate mitigation for all unavoidable impacts, the proposed development, construction of a freeway segment, is not one of the eight allowed uses in wetlands pursuant to Section 30233 of the Coastal Act. The proposed project represents a major east-west highway linkage between two existing segments of SR-56 and ultimately between I-5 and I-15. It has been identified in regional and community planning documents for more than two decades, and only a small portion of the middle segment occurs within the Coastal Commission's jurisdiction (approximately 1 mile out of 5 miles total). However, although wetland impacts have been avoided to the extent feasible, and full mitigation is proposed, 0.427 acres of existing riparian habitat (southern willow scrub) will still be permanently impacted by the construction of the proposed new highway segment. This development is not consistent with Section 30233 of the Coastal Act, which does not allow fill of wetlands for new

roadways. However, as described in more detail below, the Commission finds that there is a conflict between the provisions of Section 30233 and other Coastal Act policies and that the proposed development, on balance, provides a greater benefit to coastal resources than is provided by existing conditions.

As previously identified, the proposed development will also impact sensitive upland plant communities, namely coastal sage and chaparral. Within the coastal zone, impacts will occur to 1.34 acres of Diegan coastal sage scrub and coyote bush scrub combined and to 0.18 acres of scrub oak chaparral. In addition, the project will impact more than ½ acre (0.64 acre) of non-native grasslands within the coastal zone. Coastal sage scrub, coyote bush scrub and scrub oak chaparral are considered sensitive upland plants because, in some areas, they provide habitat for threatened or endangered species such as the gnatcatcher. However, in this case, the 1.52 acres containing these plants do not qualify as Environmentally Sensitive Habitat Area (ESHA) within the meaning of Section 30240 of the Act. The areas in question are small fragmented patches of native vegetation interspersed with non-natives, and are located along the outer fringes of undeveloped lands nearby areas approved for future urban development. The resource agencies have accepted the development of these areas during their review and designation of appropriate Multi-Habitat Planning Area (MHPA) lands, primarily because the proposed, preferred highway alignment skirts the northern edge of the MHPA, preserving large contiguous areas of high quality upland habitat. The MHPA consists of an interconnected regional system of open space preserves including those lands determined to contain the highest value habitats. Given the location, fragmentation and disturbed quality of the areas that will be affected by the proposed development, the Coastal Commission concludes that they are not ESHA.

However, because these areas do contain sensitive plant species, the applicant proposes to mitigate the loss of these plants, along with significantly greater impacts to these and other upland habitats occurring outside the coastal zone (well over 200 acres of impact total) through acquisition and/or restoration of private lands within the delineated MHPA. Acquisition will retire development rights on these properties and all acquired mitigation areas will be placed in dedicated open space or encumbered with a conservation easement or a covenant of easement.

The City's new Land Development Code (LDC) established mitigation ratios for various upland habitats, based on whether the impacts and the mitigation occur inside or outside the MHPA. Although the LDC was not effective in the coastal zone at the time the City issued its coastal development permit for the westernmost portion of the middle segment of SR 56, it became effective in the coastal zone on January 1st of this year. The Commission has certified this document as consistent with the City's certified land use plans and thus with the Coastal Act. The Coastal Act is the standard of review for Commission-issued permits. The Commission does not have any pre-established or historic mitigation ratios for these types of upland habitats, and the LDC parameters, which have been accepted by the California Department of Fish and Game and the U.S. Fish and Wildlife Service pursuant to their approval of the Multiple Species Conservation Plan, provide a reasonable program for mitigation.

Within the Coastal Commission's jurisdiction, impacts to coastal sage and chaparral habitats will occur outside the MHPA and impacts to non-native grasslands occur both within and outside the MHPA. These areas are not ESHA within the meaning of Section 30240 of the Coastal Act. The proposed upland mitigation, which consists of acquisition of lands within the MHPA preserve, is fully consistent with the LDC parameters/ratios and has been accepted by the other resource agencies. Therefore, the Commission finds that upland impacts, which do not occur in ESHA, are appropriately and adequately mitigated and the project can be found consistent with Section 30240 in this regard.

Several aspects of proposed SR 56 will benefit biological resources. Proposed SR 56 will include overcrossings of two major canyons (Gonzalez and McGonigle) which are now traversed by at-grade roads, some paved and some unpaved. Once the subject road segment is constructed, the need for these roads to provide a connection between I-5 and I-15 will be eliminated, and it is expected that actual use of these roads will sharply decline. The canyons provide corridors for wildlife movement between Los Penasquitos Canyon Preserve and the San Dieguito River Valley, and ultimately with habitat areas further east, and likewise all the way west to Los Penasquitos and San Dieguito Lagoons. Due to the significant development which has occurred in the northeastern part of San Diego, these roads, included the unpaved ones, are heavily traveled to save time and distance in reaching I-5 and communities to the west. This has resulted in much death and injury to wildlife attempting to cross these streets to move between habitat areas fragmented by the current informal road system. The project will provide a significant benefit to wildlife by crossing these canyons with bridges and thus allowing free movement of wildlife underneath. Although this benefit occurs primarily outside the coastal zone, the improved wildlife corridors connect to resources within the coastal zone, primarily Los Penasquitos Canyon and Lagoon and San Dieguito Lagoon. Thus, the project provides additional mitigation for the overall impacts of the project on upland habitats, both in and outside the coastal zone.

In summary, the proposed middle segment of SR 56 will result in impacts to wetland and upland habitats, both within and outside the coastal zone. Within the coastal zone, the project will impact 0.427 acres of riparian wetlands and approximately one and a half acres of upland habitats. The project includes mitigation for all these impacts, and the Commission finds the impacts to upland habitats, as mitigated, consistent with the intent of Coastal Act policies. However, the Commission cannot find the proposed wetland impacts consistent with Section 30233 of the Coastal Act.

3. Water Quality. The project site is well inland of I-5, but the proposed roadway will be located within the Los Penasquitos Lagoon watershed. Portions of the road will also be adjacent to Carmel Creek and/or to other creeks or streams which ultimately feed into the lagoon. Potential runoff both during and post-construction raises concerns over the degradation of water quality. Such runoff can carry significant amounts of both sediments and urban pollutants and deposit these materials in downstream sensitive receiving waters. The following Coastal Act policy is most applicable to this issue:

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.

In California, the Regional Water Quality Control Boards (RWQCB) are generally responsible for administering the water pollution control permit programs set up under the state Porter-Cologne Water Quality Act and the federal Clean Water Act. Locally, the *Water Quality Control Plan for the San Diego Basin* has established water quality objectives necessary for achieving its identified beneficial uses for surface waters. Both the City of San Diego and Caltrans have National Pollutant Discharge Elimination System (NPDES) permits under which they construct and operate development. These permits require that all discharges to surface waters meet the standards established in the *Water Quality Control Plan for the San Diego Basin*; the NPDES permits identify the Best Management Practices (BMPs) that can be used to meet these standards.

The proposed freeway segment will result in an increase in impermeable surfaces and thus increase the amount and velocity of stormwater runoff. Use of the coastal zone portions of the freeway for an anticipated 100,000 average daily trips within the first few years (and increasing steadily thereafter) will result in the deposition of a significant amount of vehicular pollutants (oils, fuels, tire residue, etc.) along the road which will become part of the stormwater runoff. In addition, the construction activities will result in an increased likelihood of sedimentation to downstream resources. Grading in the coastal zone will create approximately 7,000 linear feet of freeway, approximately 150 feet in width, resulting in a large area of temporarily exposed soil. Of this total, approximately 5,200 linear feet of freeway are in the Coastal Commission's jurisdiction and addressed in this permit; the remainder was already permitted by the City in its area of permit jurisdiction. Moreover, the construction equipment itself will produce much the same vehicular-related pollutants as will the future freeway traffic.

Downstream resources include Carmel Creek, the Carmel Valley Resource Enhancement Program (CVREP) area and Los Penasquitos Lagoon, which has been declared an impaired water body due to sedimentation from upstream developments. When the western segment of SR-56 was constructed a few years ago, CVREP was the mitigation component for the entire I-5/SR-56 project. It was intended primarily to allow 100-year flood flows in Carmel Creek at non-erosive velocities and establish a healthy riparian corridor through the valley. In addition to flood control function, the CVREP was designed to trap sediment, thereby reducing sediment loads in the creek and ultimately Los Penasquitos Lagoon. CVREP consists of a significantly widened channel for historic Carmel Creek (ranging from 100 to 300 feet in width), a series of drop structures along

the streambed, a detention basin at the western end of the improvements and an intense riparian revegetation program; it occupies the area of Carmel Valley between I-5 on the west and Carmel Country Road on the east. CVREP has been in place now for several years, and the detention basin at its western end has been cleaned out once, at the behest of the RWQCB; approximately 5,000 cu.yds. of sediments were removed.

The Commission finds that while sediment is a primary pollutant of concern in this watershed, other pollutants such as petroleum hydrocarbons and heavy metals are associated with highway runoff. These pollutants can have adverse impacts on coastal resources when cumulative. Although there is no formal testing program for these pollutants, a representative of the California Department of Parks and Recreation, which owns and manages the lagoon, stated that oil slicks are often visible in the upper lagoon areas adjacent to I-5, and just downstream of existing SR 56, after storm events. Therefore, in order to minimize the potential for adverse impacts on coastal resources as a result of stormwater runoff from the proposed development, Special Condition #5 requires the applicant to incorporate BMPs designed to treat, mitigate or remove pollutants of concern, specifically petroleum hydrocarbons, heavy metals, sediment and other particulates, in stormwater runoff from the proposed highway segment located in the coastal zone. The Commission finds that the incorporation of treatment control BMPs will serve to pre-treat stormwater runoff prior to entering the CVREP facility. The CVREP facility will then provide further mitigation for polluted runoff by settling out sediment. In addition, the CVREP contains vegetation which serves to filter runoff through biological uptake of some contaminants.

In this particular case, the middle segment of SR-56 will be constructed and operated under the Caltrans statewide NPDES permit. According to correspondence from the applicant, the City is responsible for constructing the eastern portion of the middle segment, outside the coastal zone. Caltrans will construct the western portion, including all areas within the coastal zone; this portion of the overall construction is not anticipated to begin for at least another year. The City of San Diego, as the applicant for the western portion, is required, under the terms of the Caltrans NPDES permit, to fully mitigate all water quality impacts directly attributable to the construction and operation of the middle segment of SR-56. Thus, the applicant is proposing a wide range of temporary and permanent erosion control devices and strategies intended to assure that runoff leaves the site at non-erosive velocities and in as clean a condition as at present.

Caltrans submitted a list and descriptions of the temporary and permanent BMPs they suggest for the middle segment of SR 56. The submitted material describes under what circumstances Caltrans would typically apply which BMP. It also provides the BMP's limitations, design guidance and expected maintenance requirements. Temporary (construction) BMPs proposed include silt fences, fiber rolls, check dams, sand/gravel bags, soil stabilization and temporary detention basins. The applicant also proposes to schedule construction activities in conjunction with installation of the proposed temporary BMPs. To date, no temporary erosion control plans incorporating these measures have been prepared for the proposed highway segment to demonstrate how these BMPs are typically deployed on the ground, and the final deployment of said

devices is generally left to the discretion of the contractor, who can better place, and possibly adjust, the devices based on actual conditions in the field during construction. Special Condition #4 requires submittal of a final erosion control plan prior to the start of any construction activity, that will clearly delineate all proposed temporary BMPs, provide for mobilization of personnel in the event of a major storm or other unforeseen circumstances and provide for planting of all slopes prior to November 15th of each year construction activities are ongoing.

With respect to permanent drainage facilities, the applicant is proposing to construct concrete ditches at the toe of fill slopes (which will be at a 1:3 slope angle on average) and bioswales at the top of cut slopes (which will be at a 1:2 slope angle on average), as needed/required. Pipe culverts under the new freeway segment will facilitate existing natural drainage patterns, and velocity dissipaters and flared culvert end sections will be installed at culvert entrances and exits. Slopes on both sides of the freeway will be planted, and an asphalt dike along the edge of pavement will direct roadway runoff away from the slopes. Permanent soil stabilization will be installed on slopes under the bridge deck over Gonzalez Creek, where shading prohibits plant growth. Also, the applicant proposes a paved low flow channel within the center five feet of the reserved, 75-foot wide median. The remainder of the median will be vegetated. Caltrans has submitted a drawing of a portion of the coastal zone alignment, as an example to demonstrate the typical placement and types of permanent drainage facilities to be installed within the middle segment of SR 56 (see Exhibit #4).

Staff has analyzed the proposed BMPs, particularly the permanent drainage facilities, and has identified concerns with the adequacy and appropriateness of some of the proposed structural improvements. Specific permanent BMPs proposed to date are designed primarily to control sediments, not remove hydrocarbons and other pollutants associated with automobiles. Both the applicant and Caltrans maintain that sedimentation, not contaminants, is the primary water quality problem identified in the Los Penasquitos watershed. Los Penasquitos Lagoon is identified by the RWQCB as an impaired water body; the City advises this is due to sediments, not pollutants. However, the City has indicated there is no current program to test for various forms of contaminants, either in the lagoon itself or upstream within CVREP.

With this in mind, it appears the proposed BMP program can be augmented, or various components replaced with other improvements, to address both sediments and the pollutants that can be expected in anticipated runoff from the proposed highway segment. Special Condition #5 addresses the proposed permanent project BMPs for the middle segment of SR 56. It requires submittal of a final BMP program that includes several components, including the following features: 1) devices to remove oil and grease; 2) vegetated cover over 70 feet of the 75-foot median; there will be a paved low flow channel down the center 5 feet of the reserved 75-foot median, but the use of permeable gravel is required where gradients are less than 2%; 3) monitoring of the BMPs to determine their efficacy; and 4) a water sampling and testing component with annual reporting requirements.

With respect to the oil/grease separators, there are a number of different products and methods available to achieve this BMP. In fact, the applicant has proposed one type of equipment as a retrofit measure for the existing western portion of SR 56. The applicant is proposing to install two Continuous Deflective Separation Units (CDS units), one at SR 56 and Carmel Creek Road and one at SR 56 and El Camino Real. The underground units create a vortex of water which deflects contaminants into a sump, where they are retained for later removal. The units are designed to handle 100% of the runoff in the tributary area, capture 95% of the gross pollutants and remove coarse sediments. They are designed to treat a one-year, 24-hour storm event and, as proposed, will require clean-out when the units are 85% full or when floating debris is 12 inches deep.

With respect to the median treatment, the Commission finds improving the 5-foot center of the median with gravel where gradients are less than 2% and pavement where gradients exceed 2% is acceptable in order to provide a low flow channel to facilitate drainage, recognizing that most highway runoff is directed to the outside of the highway rather than into the median. Moreover, vegetating the remaining 70 feet will allow most of the expected stormwater to percolate into the ground. It will also serve to reduce the overall velocity of water and will filter out pollutants of concern from whatever highway runoff actually enters the median. The vegetated area will also provide visual relief. Special Condition #6 (Landscaping) requires the applicant, among other things, to identify the species to be used for the required vegetative strip and to use only drought-tolerant, non-invasive plants. The use of such plants will minimize nuisance flows resulting from irrigation and reduce the need for excessive fertilizer and pesticides.

The Commission recognizes that the City proposes the wide center median to reserve adequate area for future highway expansion. Thus, it is possible the vegetation may be removed through some future amendment action approving light-rail transit or additional travel lanes in this location. At that time, the applicant would need to demonstrate how this particular pollution control function was being replaced in the context of an expanded highway. The provision of this vegetated area in most of the center median is only one component in a wide array of runoff and pollution control facilities. As technological advances occur, other BMPs may be discovered/invented which will adequately serve this function as part of an expanded freeway. However, the Commission finds that the potential that this particular BMP may not be in existence for the full life of the project does not diminish its value at this time.

The two CDS units proposed by the City as a retrofit to existing SR 56 are considered here as an example of one type of oil/grease filtering BMP. These specific units are relatively small in size, since they must be fit into an existing system where available space is a constraint. This should not be a limiting factor in the case of the new middle segment of SR 56, where the proposed alignment is surrounded by undeveloped open land. Whether the applicant proposes this same type of unit to comply with Special Condition #5, or selects a different type of device, the chosen BMPs must meet the performance parameters of the special condition.

In addition, there is an existing detention basin at the eastern end of the CVREP mitigation area. This detention basin was sized and designed to accommodate all flows generated by SR 56, as well as flows generated by future buildout of this portion of the City of San Diego. The areas north of proposed SR 56, part of Subarea 3 of the North City Future Urbanizing Area (Pacific Highlands Ranch), will be developed with residential and commercial uses and several schools. Nearly all the development area of Pacific Highlands Ranch is outside the coastal zone, and thus outside the purview of the Commission. However, opponents of the highway project have raised the issue that this future development will have significant adverse impacts on the resources of the coastal zone, since all runoff from this vast development area will eventually reach coastal streams and lagoons. Development of this area is dependent on having a viable circulation system in place, and the proposed middle segment of SR 56 will complete a major link in that system. Therefore, the Commission finds it entirely appropriate that downstream resources be protected by all possible means, and further finds that the existing CVREP detention basin serves this purpose.

In summary, the Commission finds that the proposed development will have significant adverse effects on downstream water quality. This will occur both because of the construction impacts of grading and massive landform alteration, and through the increase in impervious surfaces which will modify existing drainage patterns and increase the amount and velocity of runoff. Therefore, the Commission finds that Special Conditions #4, #5 and #6, which mitigate these adverse impacts as described above, are necessary in order to find the proposed development consistent with the water quality protection policies of Chapter 3. In combination, these conditions will assure that site runoff is appropriately treated and discharged to protect the quality of downstream waters, which include Carmel Creek, the CVREP mitigation area and Los Penasquitos Lagoon. In addition, the applicant is proposing to retrofit existing SR 56 (west end) with two CDS units which will improve water quality. Only as conditioned can the Commission find the proposed highway construction, and subsequent highway operation, consistent with the cited policies of the Coastal Act.

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

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 designed to protect views to and along the ocean and scenic coastal areas, to 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....

The project site is well removed from the shoreline and is not located within any designated public park or recreation area. However, the portions of the proposed middle segment of SR 56 within the coastal zone will be located primarily in currently

undeveloped lands consisting of rolling hills and canyons, streams (some seasonal) and both native and non-native vegetation. The westernmost part of the proposed highway, addressed in a previous City-issued permit, will be located adjacent to existing residential development, but the highway segment addressed herein is located mostly in currently open countryside. However, the approved future land uses north of much of the proposed highway (out of the coastal zone) will consist of a mix of residential, commercial and institutional (school) uses. The area will build out over time, which will gradually change the visual character of the area from open land to urban development. South of the proposed highway, most of the land will remain in open space.

The proposed highway segment itself will not be especially prominent, since it will be built primarily on the ground surface, with the exception of grade separations necessary at the interchanges and bridges over canyons. The applicant proposes to landscape the right-of-way on both sides of the proposed highway. The configuration of the coastal zone boundary in this area trends mainly east-west, since it is intended to include as much of the Los Penasquitos Lagoon watershed through Carmel Valley as the five-mile inland limitation will allow. Because of this, most of the right-of-way north of the proposed highway, and even some portions of the highway itself, are not in the coastal zone. Thus, the Commission has no ability to dictate the types of landscaping or irrigation applied to those areas. Because this area will be built out with urban uses in the future, Caltrans has expressed an intent to use ornamental landscaping north of the road. The Commission has several concerns with this approach as inappropriate species composition, irrigation systems, fertilizers and pesticides could affect downstream resources in the coastal zone. Therefore, the Commission suggests the use of drought-tolerant, non-invasive species, which will reduce the need for irrigation, fertilizer and pesticides. Excess water can result in nuisance flows and exacerbate runoff, while residue from fertilizers and pesticides will enter runoff and eventually flow into the coastal zone, threatening downstream resources.

In contrast, the right-of-way area south of the proposed highway is within the coastal zone. Thus, the Commission has the ability to address landscaping improvements in this location, and has done so in Special Condition #6. This condition was addressed briefly in the previous finding on water quality, in relation to the choice of vegetation to be used in the center median. Since the areas south of the road in the coastal zone, except where residential development already exists, will remain in an undeveloped condition, Caltrans has expressed an intent to use native vegetation consistent with the surrounding vegetative communities. However, no landscaping plan has been prepared to date reflecting this intent. Special Condition #6 requires submittal of a final landscaping plan for all the areas of right-of-way, including the area north of the proposed highway covered by the subject permit.

The plan required in the condition must do the following: 1) it must utilize drought tolerant, non-invasive native plant materials acceptable to the CDFG, the Service and the Corps; 2) it must allow only temporary irrigation for plant establishment; 3) it must include a written commitment to maintain all planted materials in good growing condition; 4) and it must avoid or minimize the use of fertilizers and pesticides.

Exceptions to both the selection of species and use of permanent irrigation is allowed at the western end of the alignment, where residential development exists in close proximity to the proposed alignment, both north and south of the road. Although no source of reclaimed water exists in the area at this time, the special condition, and Caltrans own policies, require its use whenever it becomes available. Finally, the condition also provides that permanent landscaping must be installed concurrent with, or within sixty days following, completion of highway construction. As conditioned, the Commission finds the proposed middle segment of SR 56 consistent with the visual resource policies of the Coastal Act. The special condition also enhances the project's consistency with biological resource and water quality policies of the Act by controlling the types of vegetation installed adjacent to sensitive resources and minimizing use of fertilizers and pesticides that could enter nearby water bodies.

5. Public Access/Traffic Circulation. Many policies of the Coastal Act address the provision, protection and enhancement of public access opportunities, particularly access to and along the shoreline. In the subject inland area, the following policy is most applicable:

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.

The proposed middle segment of SR 56 will complete a partially built, east-west trending highway connecting two north-south trending highways, namely an inland freeway (I-15) and a coastal freeway (I-5). It will provide the only connection between these two freeways between SRs 52 and 78, which are located approximately seven miles to the south and eighteen miles to the north of the proposed SR 56 at its western end (I-5). Currently, the western segment of SR 56, extending from I-5 approximately two miles inland through Carmel Valley, is completed (pursuant to coastal development permit #6-90-123), as is a small eastern portion extending west from I-15 (outside the coastal zone) for about two miles. Moreover, the City has already begun construction of the easternmost part of the proposed middle segment, which is also well out of the coastal zone.

In recent years, the communities located along the I-15 corridor, in the northeastern portion of the City of San Diego, have seen intense growth. For the most part, these are bedroom communities, with neighborhood commercial facilities intended only to serve the immediate area. However, SR 56 has been identified as a critical part of the regional traffic system for decades, and is not a recent response to growth. Historic regional employment and shopping centers are located in many other areas, including downtown San Diego, Mission Valley, Sorrento Valley, Kearney Mesa and the Golden Triangle/Torrey Pines Mesa area. In addition, the major regional public recreational

facilities (all county beaches and Mission Bay Park) are located a significant distance to the west. Thus, residents in the northeastern part of San Diego generally commute daily, both for work and recreation. The primary purpose of the highway connection is to alleviate traffic on other portions of the regional circulation system and neighborhood streets, particularly during peak commuter hours. Although not specifically designed to enhance public access to the coast, the completion of SR 56 will certainly reduce required travel times from these rapidly-developing inland communities to the shorelines of Del Mar and Torrey Pines. Therefore, the Commission finds the proposed highway segment consistent with Section 30210 of the Act.

6. Conflict between Coastal Act Policies. Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. This section provides that:

> The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner that on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

A. Conflict. In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act exists. The fact that a project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to deny the project based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

In this case, as described above, the proposed project is inconsistent with the wetland protection policies of the Coastal Act because the proposed fill of 0.427 acres of riparian wetlands is not an allowable wetland fill activity as identified by Section 30233(a)(1)-(8). However, to deny the project based on this inconsistency with Section 30233(a)(1)-(8) would result in significant adverse impacts inconsistent with the water quality provisions of Section 30231. A major component of the proposed project is to improve water quality on the existing portion of SR 56 by retrofitting the facility with two CDS units, which have been described previously. These are designed to filter out both sediments and pollutants from the road runoff and will pretreat the discharge before it enters the CVREP mitigation site. The units are proposed just east of the SR 56 interchanges at El Camino Real and Carmel Creek Road. Exhibits #5 and #6 show the proposed locations and the units' design.

Proposed SR 56, existing SR 56 and CVREP are all located upstream of Los Penasquitos Lagoon, which empties into the Pacific Ocean between Torrey Pines State Beach and the beaches of Del Mar. In addition to providing a variety of wetland habitats (riparian as

well as freshwater, brackish and salt marshes) utilized by avian and mammal species, the lagoon also serves as nursery area for juvenile fish. Moreover, it provides some public recreation opportunities as people play and swim at the lagoon's mouth; in particular, families with small children tend to gather here, since the waters are shallow, warm and absent large waves. Storm events often result in posting of the area with signs warning people to avoid water contact, due to dangerous levels of contaminants. Los Penasquitos Lagoon is also identified as an impaired water body due to sediments. Installation of the two proposed CDS units will result in a reduction of both sediments and urban pollutants eventually reaching the lagoon and lagoon mouth, thus enhancing the area for both wildlife and human use.

If the Commission were to deny the project based on the project's inconsistencies with the wetland fill provisions of Section 30233(a)(1)-(8), the water quality impacts from pollutants and sediments would not be reduced. The proposed CDS units will only be installed in conjunction with construction of the proposed highway segment; the City is not otherwise legally required to install then. As discussed previously, there is no feasible alternative alignment of the middle portion of SR 56 that would avoid the 0.427 acres of impacts to coastal zone wetlands other than the "no project" alternative. This alternative is not feasible because the current populations living in the northern part of San Diego, and significant additional growth expected in this area, make this segment a highway linkage without which there will be significant loss of mobility, increased congestion and travel time, greater air emissions and increased noise pollution on local streets. Except for a few small, infill-type projects, these areas of intense residential and commercial growth are all located outside the coastal zone, and thus not subject to any oversight by the Coastal Commission. In addition, all possible alternative alignments would result in greater environmental impacts overall than the proposed, environmentally-preferred alternative.

With respect to the project's wetland impacts in the coastal zone, these would be identical and unavoidable for all possible alignments, since they occur at the western end of the project where the alignment is fixed by existing surrounding development. Thus, selecting any alternative alignment would not avoid the conflict with Section 30233(a)(1)-(8) and deny the project altogether would result in a conflict with Section 30231, since the CDS units retrofitting existing SR 56 would not be installed.

The proposed project includes wetland fill that is inconsistent with the wetland policies of the Coastal Act. However, this project will provide water quality benefits that will improve the biological productivity and the quality of coastal waters. Without the project, sediments and pollutants from the existing SR 56 will continue to enter Carmel Creek, CVREP and Los Penasquitos Lagoon at current levels, resulting in degradation of water quality resources and public access in a manner inconsistent with the Coastal Act. Therefore, the Commission finds that the proposed project creates a conflict among Coastal Act policies.

B. Conflict Resolution. After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance

most protective of coastal resources. In this case, the proposed project would result in the fill of 0.427 acres of isolated southern willow scrub riparian wetlands. A road accessing residential, commercial and agricultural uses separates the subject riparian habitat area from Carmel Creek, whose main riparian corridor occurs further west. In the specific location where this small, seasonal tributary stream crosses under the road and connects with Carmel Creek, there is little or no vegetation of any kind, due to the presence of residential development, drainage improvements which partially channelized Carmel Creek and a small golf course. Thus, although the roughly half-acre of southern willow scrub is correctly identified as a wetland, there is some doubt that it provides much viable wildlife habitat, since it does not connect to any larger habitat area. It also appears to have a very limited water source, consisting mainly of runoff from surrounding roads.

There are important factors in the Commission's use of the conflict resolution provisions of Section 30007.5 that, in this particular case, create a unique situation. SR 56 as a whole has been identified as a critical transportation facility in regional planning documents since before the Coastal Act was passed and the Coastal Commission created. It is also identified in several documents certified by the Coastal Commission, including the North City Local Coastal Program Land Use Plan Addendum, the Carmel Valley Neighborhood 8 Community Plan, the North City Future Urbanizing Area Framework Plan and the Pacific Highlands Ranch Subarea Plan. The proposed middle segment of SR 56 will connect two existing segments of a major regional transportation linkage, the western segment having been constructed under Coastal Development Permit #6-90-123 and the eastern segment being located outside the coastal zone. Most of the proposed highway segment is located outside the coastal zone. This includes not only the more than three miles of the alignment east of the coastal zone's inland extent, but also portions of the proposed highway where the coastal zone boundary bisects the road in a linear fashion, as depicted on Exhibits #2 and #3. Moreover, most of the development this linkage will serve is located in inland areas, rather than in the coastal zone, such that the Commission has no ability to address growth limitations or alternative development patterns that could have reduced or eliminated the need for SR 56. If this project did not represent completion of a partially-constructed highway that has been identified in formal planning documents for decades, and that has also been endorsed by the Commission in several prior LCP and permit actions, the Commission could not permit the wetland fill through the use of Section 30007.5, and would accept that ongoing water quality concerns would remain.

However, the proposed project will improve water quality through the applicant's proposal to retrofit the existing western segment of SR 56 through the installation of two CDS units. The applicant has chosen to place these in the two locations they feel will provide the most benefit, although additional discharge points along existing SR 56 will not be similarly improved. The applicant maintains the two proposed BMPs are a reasonable improvement commensurate with the project's level of biological impact. The Commission concurs in this instance, and finds that the benefits of these water quality improvements would be substantial. They are designed to handle 100% of the runoff in the tributary area and will capture 95% of gross pollutants, in addition to removing small coarse sediment and pretreating the discharge before it enters the CVREP

mitigation area. The reduction in contaminants will enhance the use of downstream resources by wildlife and humans. In addition, the applicant will provide a new monitoring program, including monitoring the discharge points from the two CDS units, monitoring water quality at two locations within the CVREP mitigation area, and monitoring the discharge point where CVREP empties into Los Penasquitos Lagoon.

In addition, the proposed project includes the creation of riparian wetlands as mitigation for the project's impacts. The mitigation site is located in McGonigle Canyon, in an area identified in the City's Multiple Species Conservation Plan MHPA system. It will be part of a much larger open space complex which connects with Los Penasquitos and San Dieguito Lagoons, as well as large habitat areas to the east. Thus, the mitigation site is likely to provide more viable habitat than currently exists in the isolated wetland area to be impacted. The Commission therefore finds that the proposed project would have significant resource benefits.

In addition, the major regional public recreational facilities (all county beaches and Mission Bay Park) are located a significant distance to the west of the rapidly expanding population in the northeastern portion of San Diego. Thus, residents in these communities generally commute daily, both for work and recreation. The completion of this east-west highway connector, identified in many regional planning documents for decades, will enhance public access to the coast by reducing required travel times from these developing inland communities to the shorelines of Del Mar and Torrey Pines. Without construction of the middle segment of SR 56, the mandate of Section 30210 of the Coastal Act to maximize public access to the coast will not be fully realized.

In resolving the identified Coastal Act conflict, the Commission finds that the impacts on coastal resources from not constructing the project will be more significant than the project's wetland habitat impacts. Therefore, the Commission finds that approving the project is, on balance, most protective of coastal resources.

This finding that approving the project is most protective of coastal resources is based, in part, on the assumption that the water pollution control facilities to be constructed will be continually managed and maintained in the designed manner in the future. It is also based on an assumption that the wetland mitigation site will be constructed as proposed and maintained in perpetuity. Should either the constructed water pollution control facilities not be managed and maintained as designed, or the mitigation site not be implemented as proposed, the benefits of the water quality improvement project would not be realized to an extent that would outweigh the loss of nearly half an acre of wetland habitat. Therefore, the Commission attaches several special conditions to ensure that the desired result is achieved; these have been discussed in detail in the previous findings addressing biological resources and water quality. The Commission finds that without the special conditions, the proposed project could not be approved pursuant to Section 30007.5 of the Coastal Act.

7. 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 only as discussed above and with the inclusion of the attached special conditions.

The portion of SR 56 addressed in this permit is located in the North City Future Urbanizing Area (FUA), which is an area of deferred certification in the City of San Diego's LCP. The Commission certified a Framework Plan for the FUA several years ago; this plan identified that the area was divided into five subareas, and future planning would occur through the development, and certification, of subarea plans. Only at this stage would the City request that permit jurisdiction be transferred from the Commission to the City. The proposed road segment, which is identified in many previous planning documents including the Framework Plan, is also identified as an integral component of the circulation element in the Pacific Highlands Ranch Subarea Plan (Subarea III of the FUA), certified with suggested modifications by the Commission approximately one year ago. Final, effective certification has not occurred to date and permit jurisdiction has not transferred. Moreover, the subject application was deemed filed in September, 1999, such that the Commission would continue to process the permit in any event, unless the City wished to withdraw the subject application and process its own coastal development permit for the proposed development.

Although Chapter 3 of the Coastal Act is the standard of review for this project, the proposal is consistent with the Commission's past actions on both the Framework Plan and the more recent subarea plan. In addition, as discussed above and with the inclusion of special conditions, the project has been found consistent with all cited policies of the Coastal Act. Therefore, approval of the development, as conditioned, will not prejudice the City's ability to complete the LCP process for this area.

8. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the permit, as conditioned by any conditions of approval, 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, as conditioned, will not cause significant adverse impacts to the environment. Specifically, as conditioned, the project has been found consistent with the biological resources, water quality, visual resources and public access 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. 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.

6-98-127

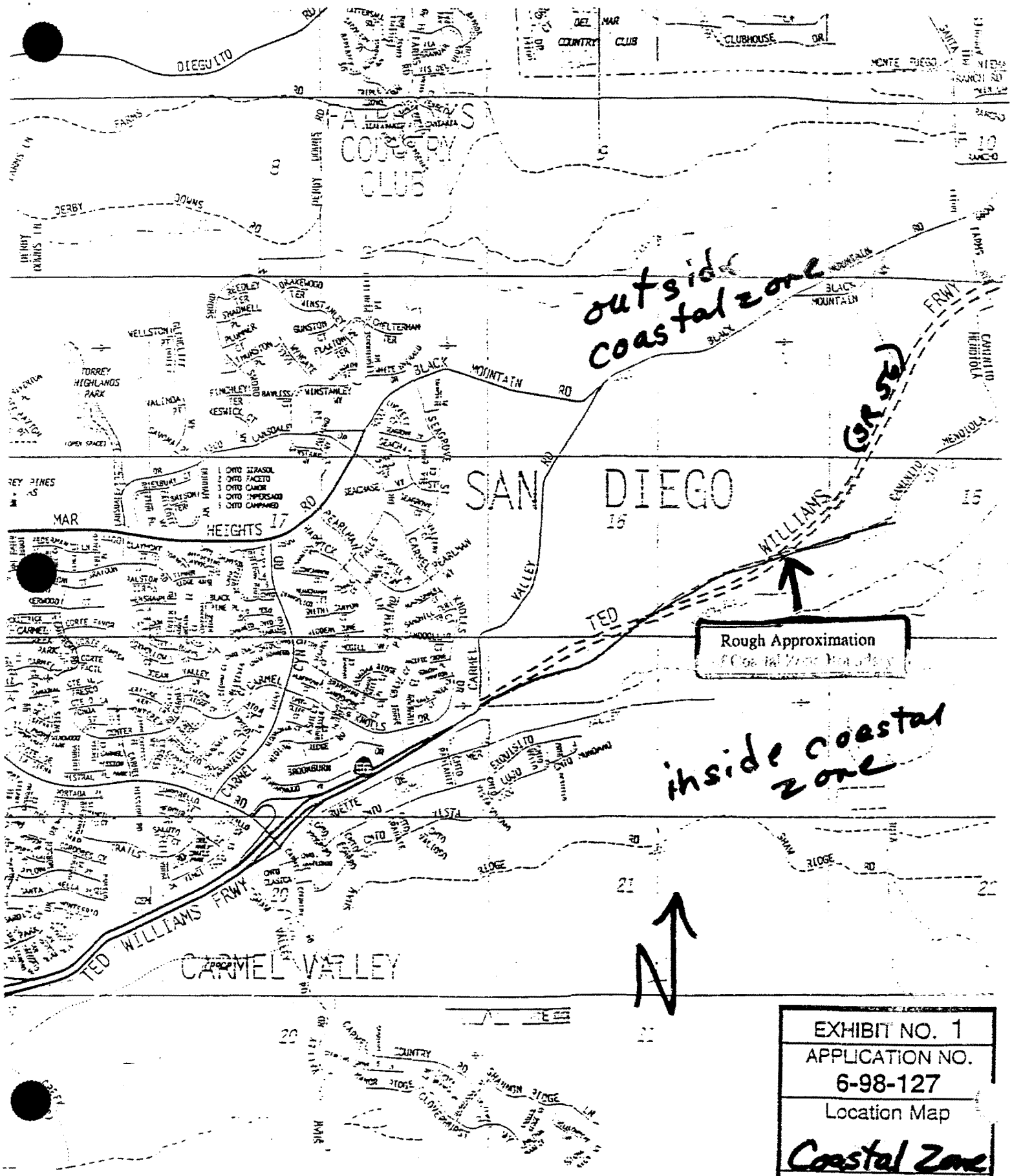


EXHIBIT NO. 1
APPLICATION NO.
6-98-127
Location Map
Coastal Zone Portion
California Coastal Commission

6-98-127

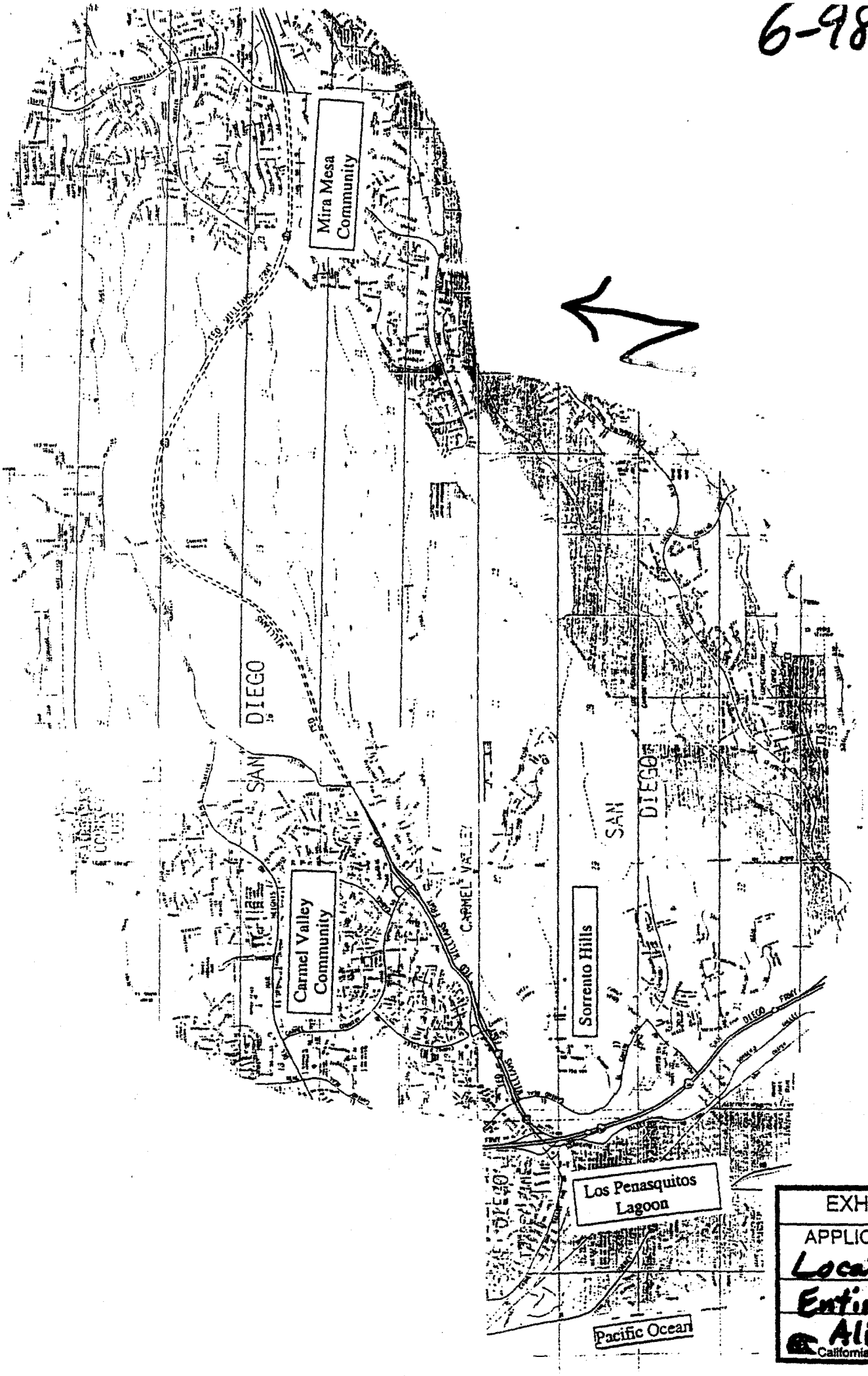


EXHIBIT NO. 1
APPLICATION NO.
Location Map
Entire SR56
Alignment
California Coastal Commission

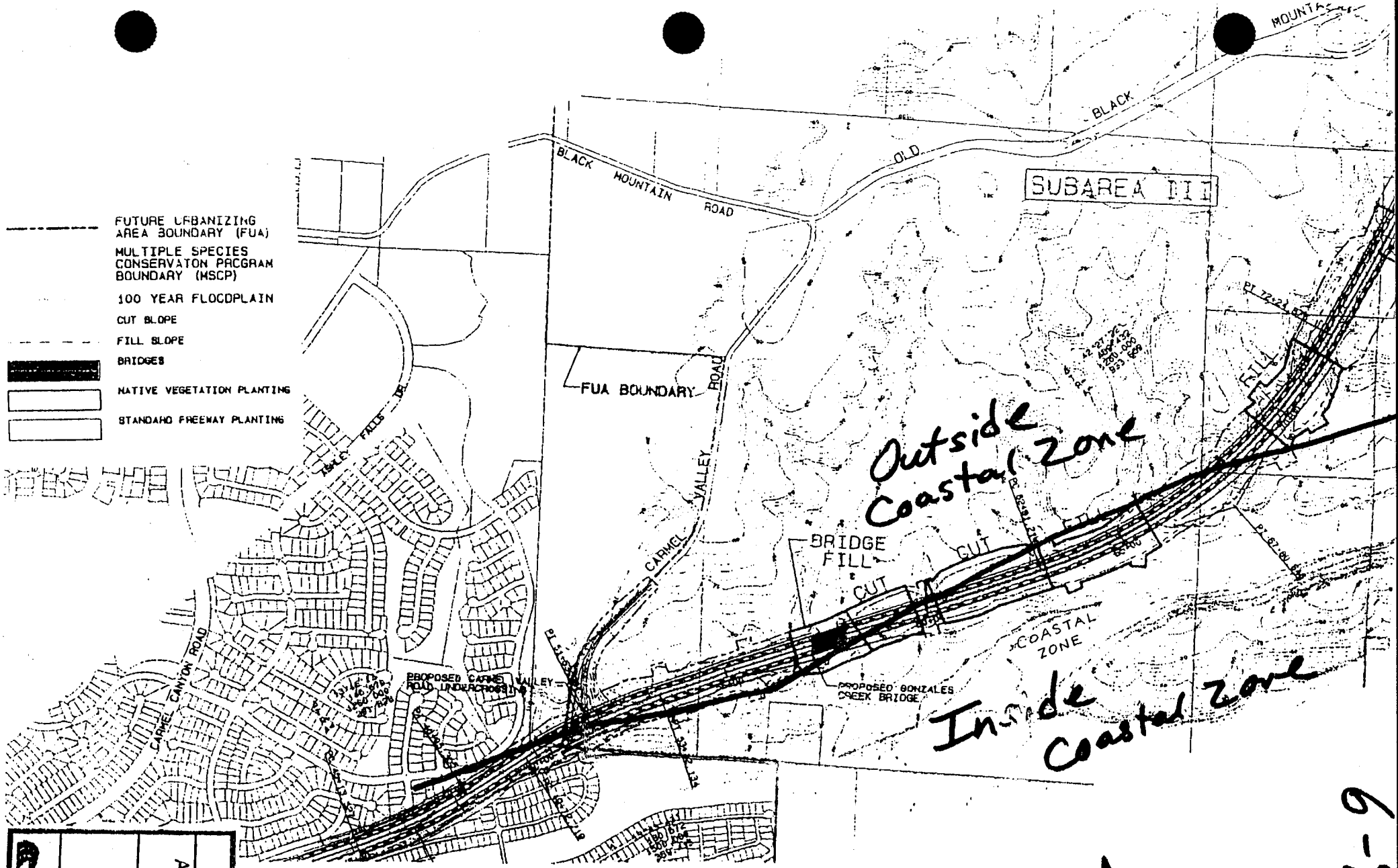


EXHIBIT NO. 2
APPLICATION NO.
6-98-127
Site Plan with Coastal Zone Boundaries
(approx)
California Coastal Commission

6-98-127

EXHIBIT NO. 3
APPLICATION NO.
6-98-127
Grading Footpr
with Coa

6-98-127

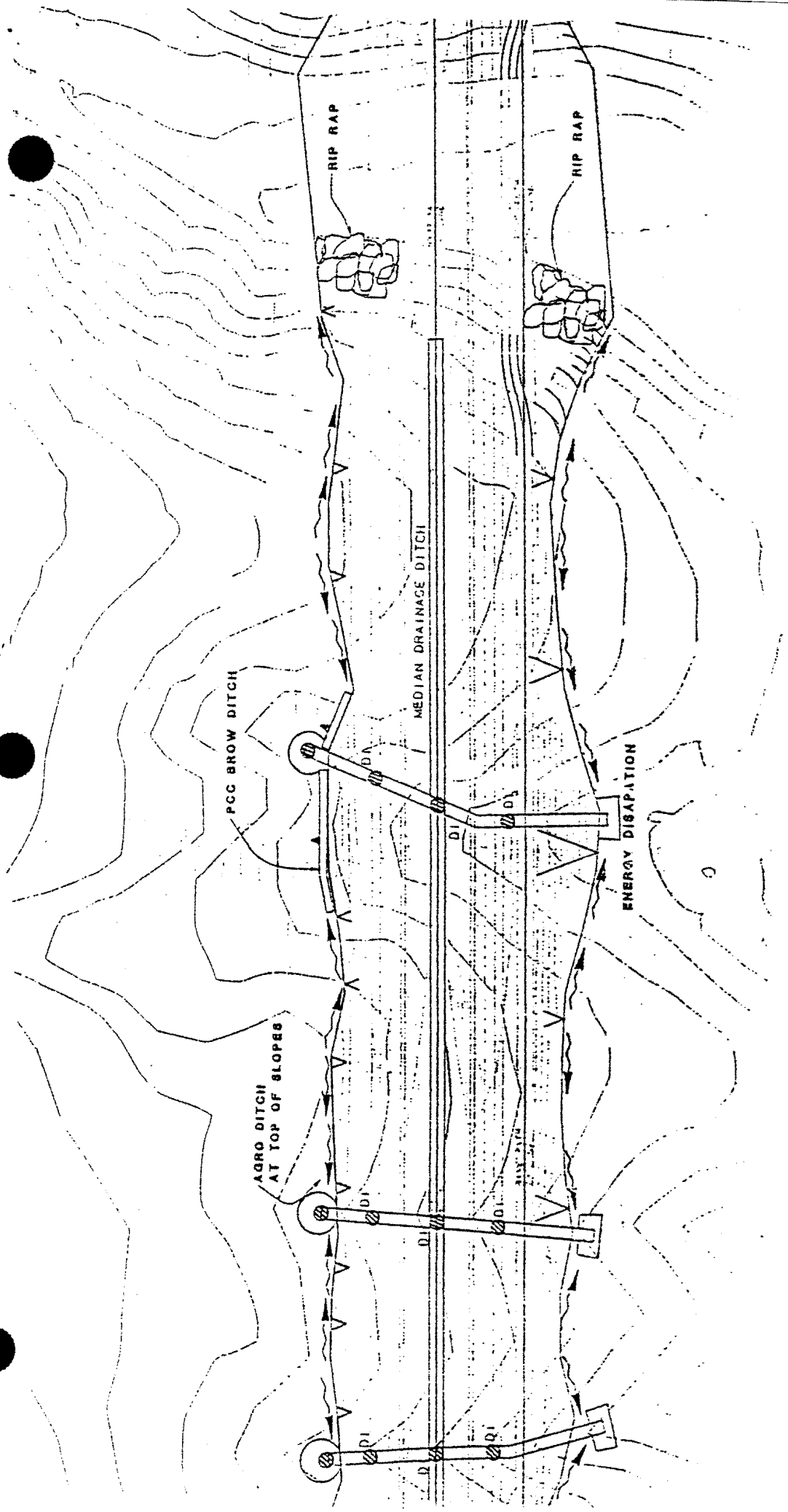


EXHIBIT NO. 4

APPLICATION NO.
6-98-127

Typical Road Portion with Drainage Facilities

California Coastal Commission

6-98-127

Figure 1 Cross-section of a Continuous Deflective Separation Unit

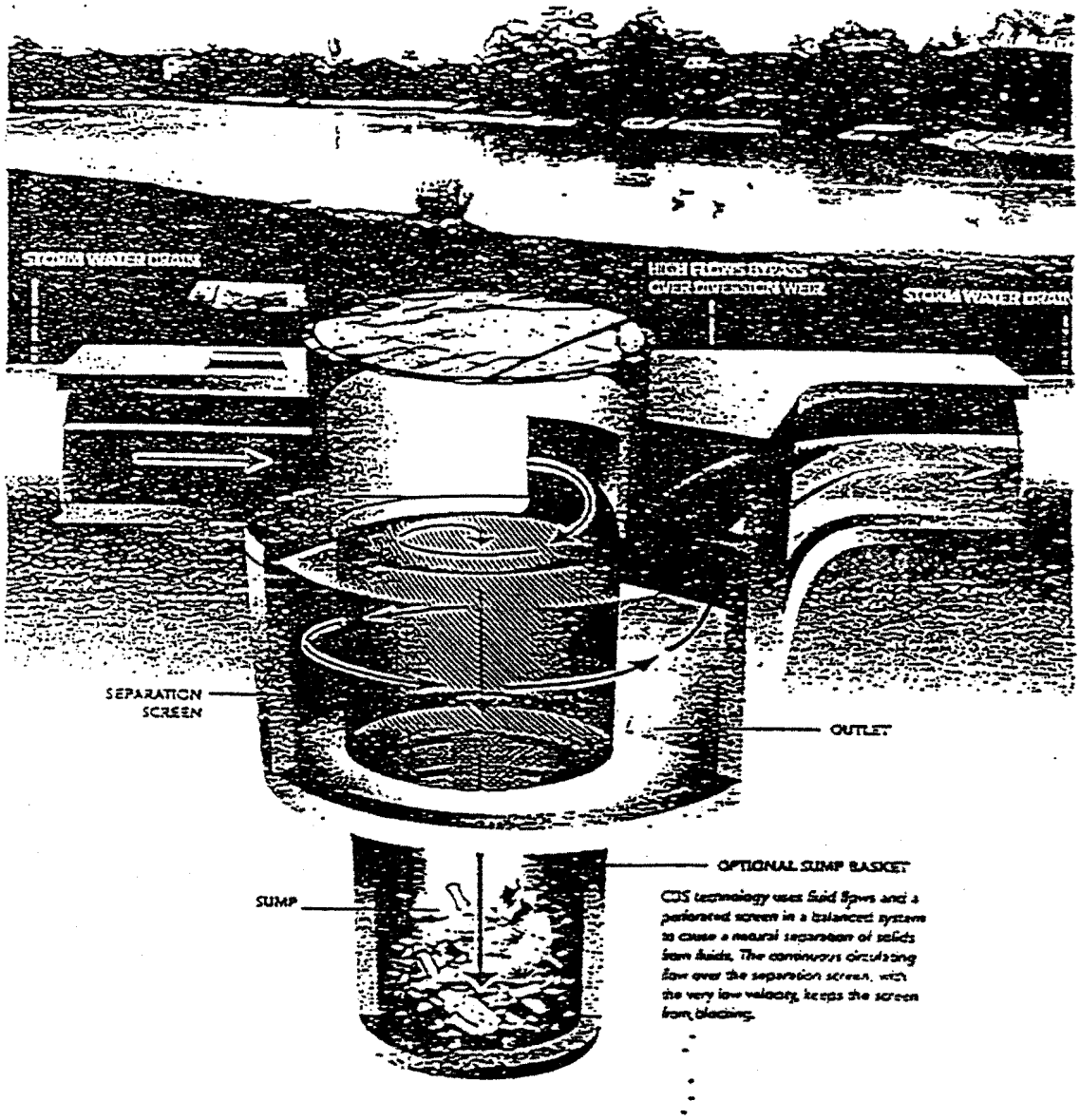


EXHIBIT NO. 5
APPLICATION NO.
6-98-127
CDS Unit

California Coastal Commission

6-98-127

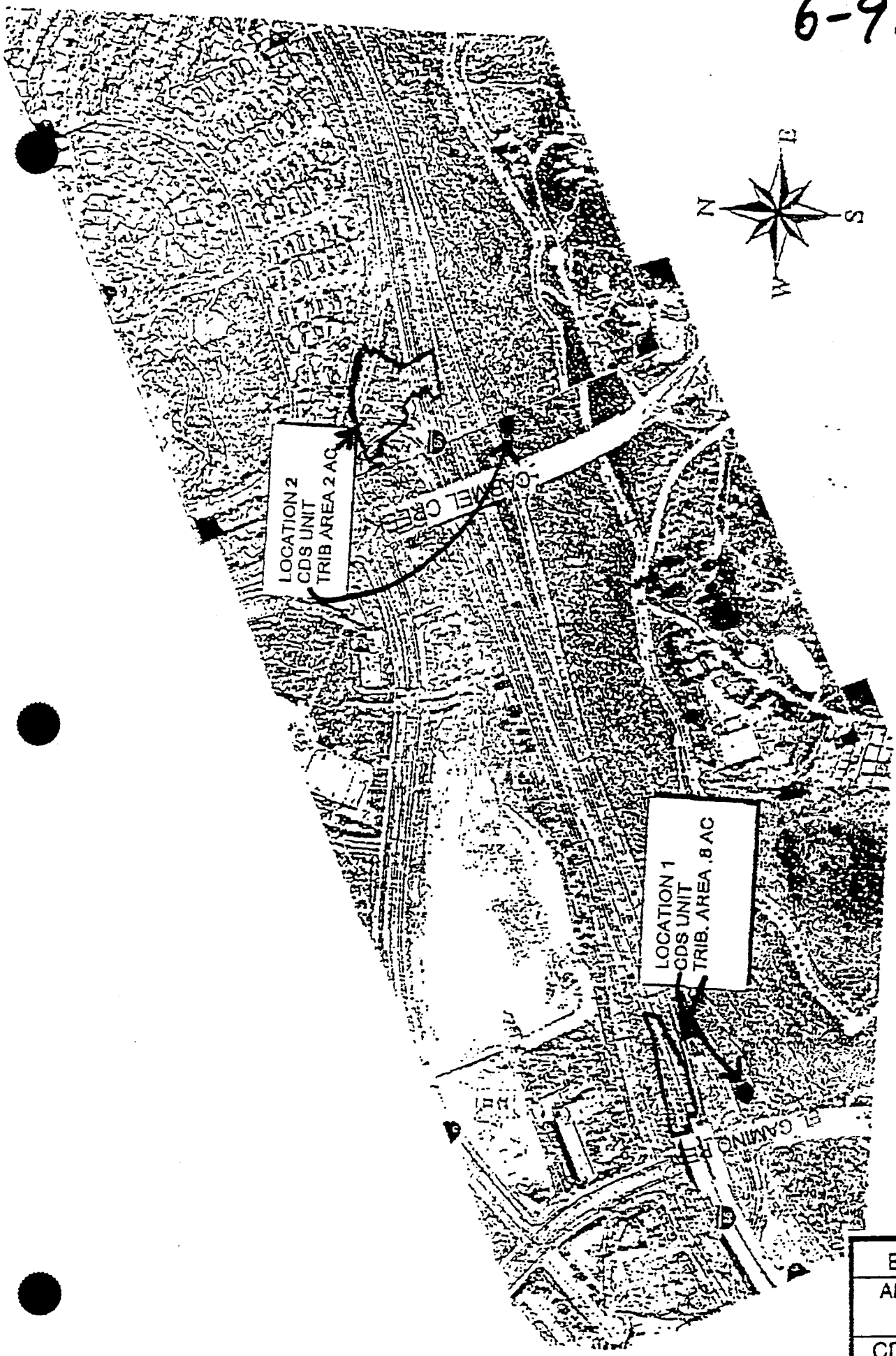


EXHIBIT NO. 6
APPLICATION NO.
6-98-127
CDS Locations and Tributary Areas
California Coastal Commission

6-98-127

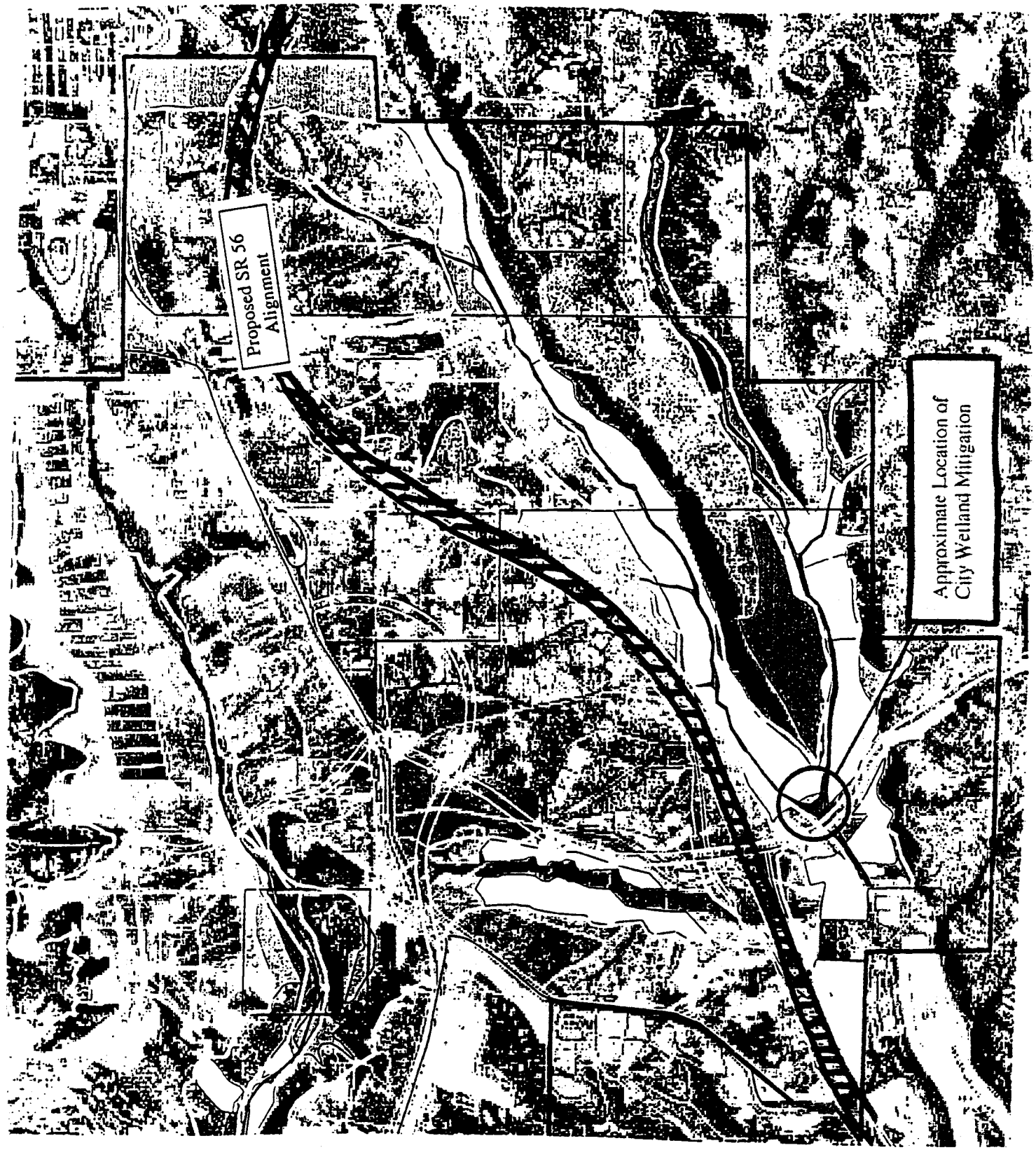
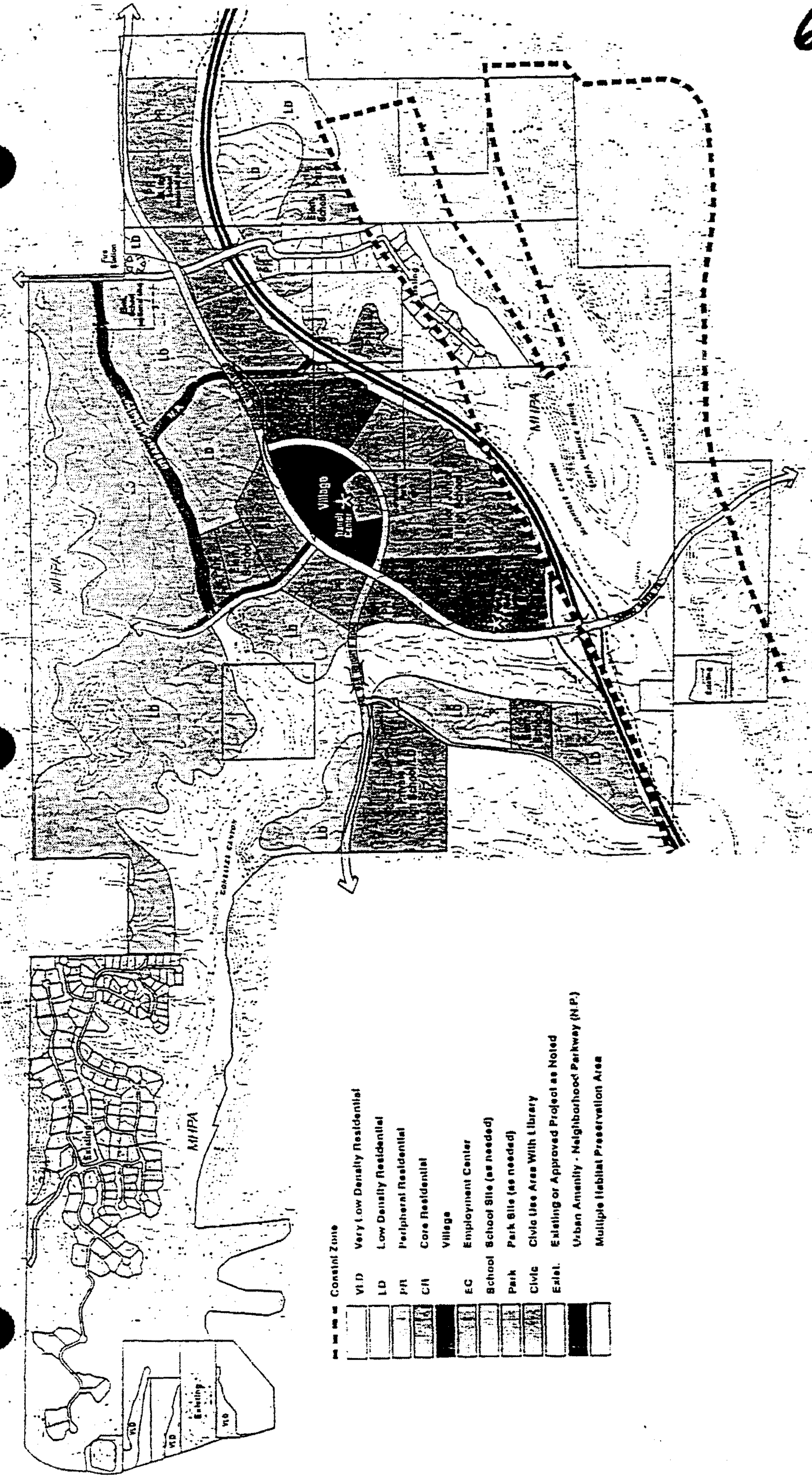


EXHIBIT NO. 7
APPLICATION NO.
6-98-127
Wetland Mit. Site
California Coastal Commission

6-98-127



N

EXHIBIT NO. 8

APPLICATION NO. 6-98-127

Subarea III LUP

California Coastal Commission

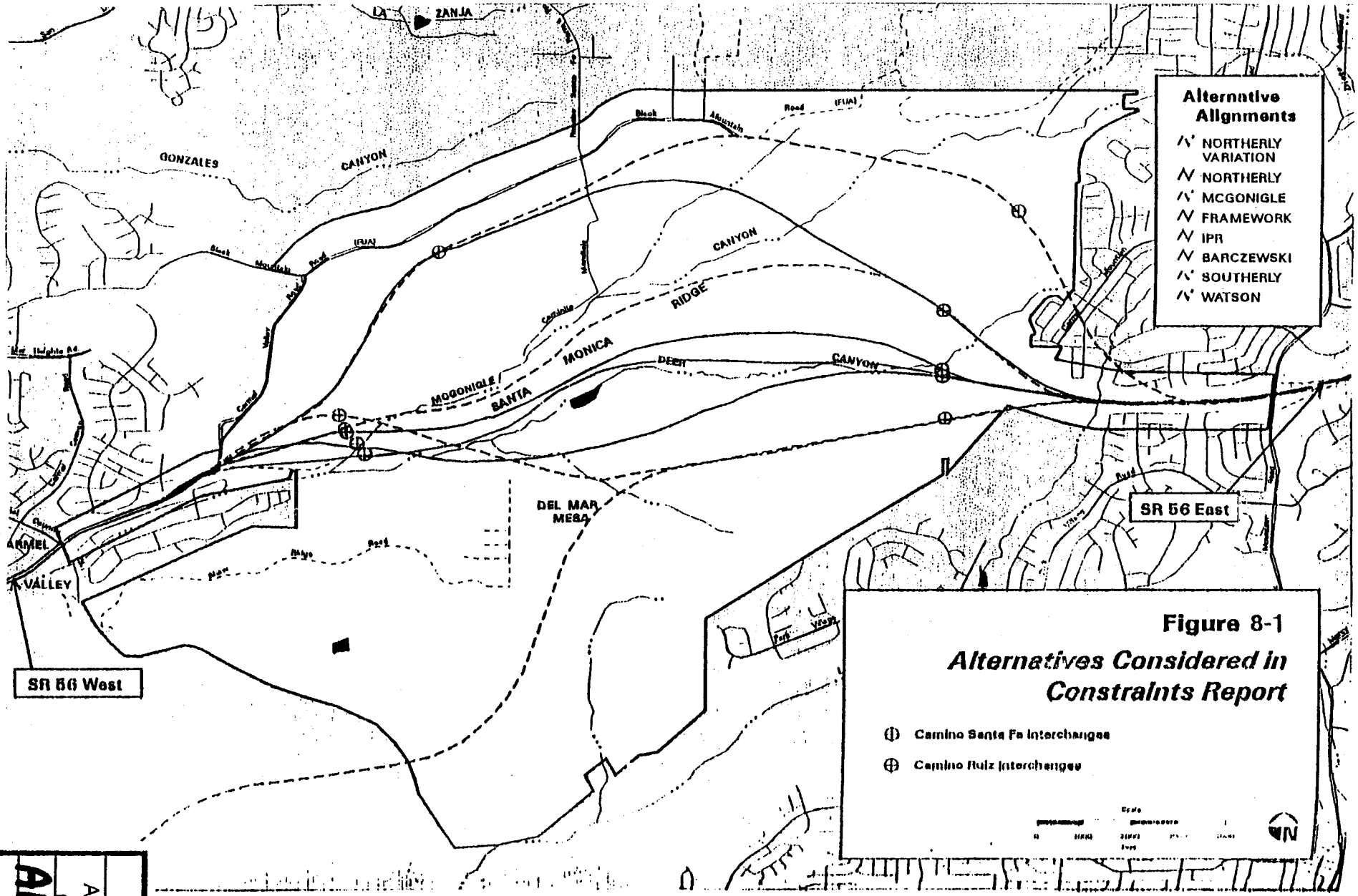
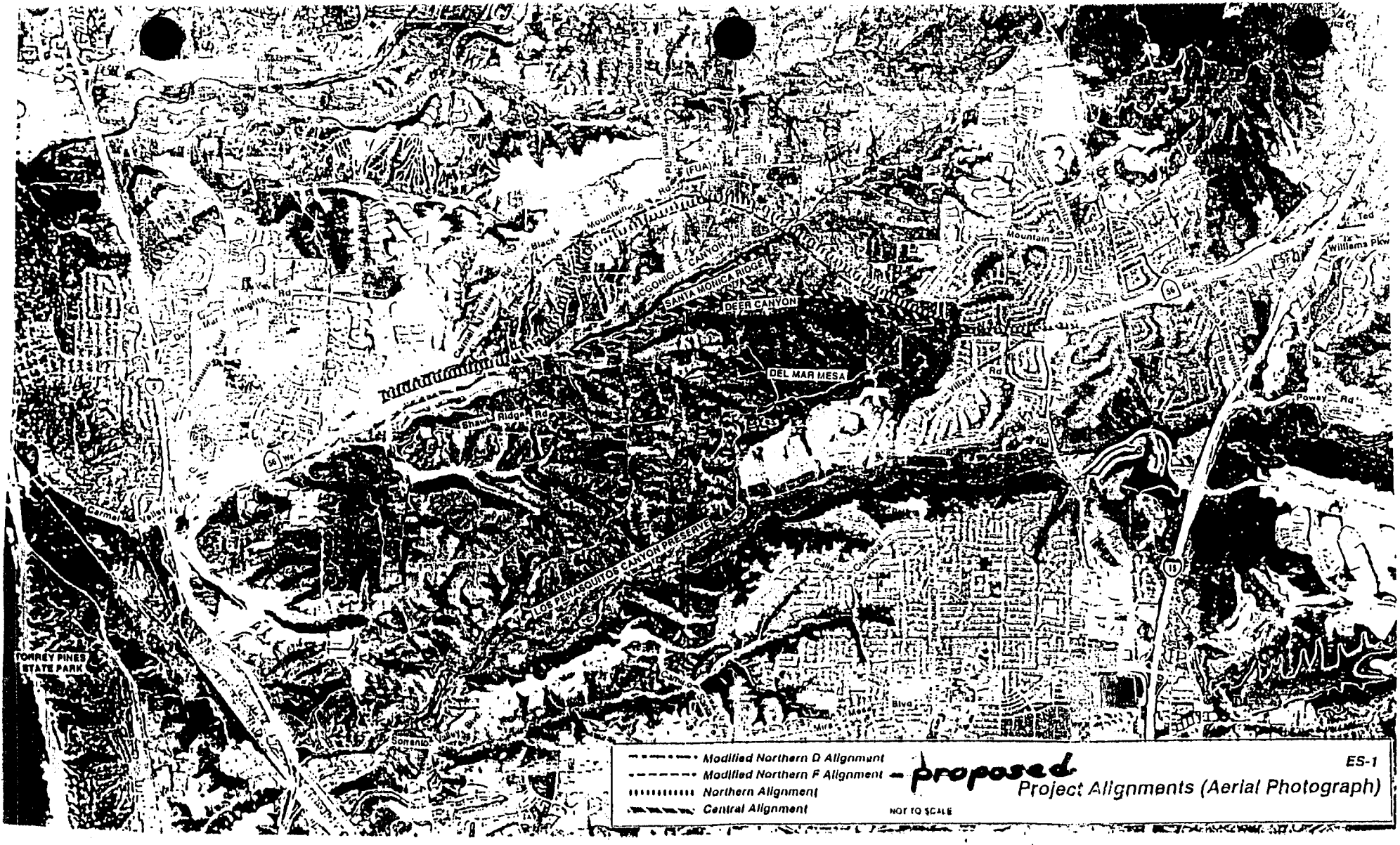


Figure 8-1

Alternatives Considered in Constraints Report

EXHIBIT NO. 9
APPLICATION NO. 6-98-127
Alternatives in 1st EIR
California Coastal Commission

6-98-127



ES-1

proposed

Project Alignments (Aerial Photograph)

N

6-98-127

EXHIBIT NO. 11

APPLICATION NO. 6-98-127

Alternatives in 2nd E/R

California Coastal Commission

6-98-127

State Route 56 Monitoring Plan

Introduction

The City of San Diego is planning to extend State Route 56 (SR56) through portions of the coastal zone in San Diego County. The California Department of Transportation (Caltrans) will construct and maintain the western portion of the project for the City, including all areas within the Coastal Zone.

Since highway and urban runoff can contribute to the impairment of receiving waters, structural best management practices (BMPs) are being required by the Coastal Commission to mitigate runoff from the proposed extension of this highway. In addition, structural BMPs will be placed on the existing westerly portion. Because of the lack of site-specific information about the pollutant removal efficiency of the proposed technology, the Commission has requested that the City and Caltrans perform an evaluation of their pollutant removal ability. Further, Caltrans has agreed to perform an assessment of the impacts of highway construction and operation in portions of the Los Penasquitos Lagoon watershed within the Coastal Zone for the City.

The receiving waters for runoff from the existing and middle portions of SR56 include Carmel Valley Creek and Los Penasquitos Lagoon. Water quality objectives are contained in the Basin Plan for these waterbodies based on their designated beneficial uses. These uses and the relevant objectives are shown in Table 1.

Table 1 Basin Plan Objectives for SR56 Receiving Waters

Constituent	Basin Plan Objectives	
	Camel Valley Creek[1]	Los Penasquitos Lagoon[2]
Copper, Total	0.039 mg/L[3]	0.012 mg/L
Lead, Total	0.33 mg/L[3]	0.008 mg/L
Zinc, Total	0.30 mg/L[3]	0.08 mg/L
Phosphorus, Total	0.1 mg/L[4]	0.1 mg/L[4]
Ortho-phosphate	No biostimulatory substances in concentrations that promote nuisance aquatic growth.	No biostimulatory substances in concentrations that promote nuisance aquatic growth.
Nitrate + Nitrite	Same as above	Same as above
Total Kjelhahl Nitrogen	Same as above	Same as above
Oil & grease	No visible film or coating	No visible film or coating
Sediment (total suspended solids)	No alteration in load or discharge that adversely affects beneficial uses	No alteration in load or discharge that adversely affects beneficial uses

EXHIBIT NO. 1
APPLICATION NO. 6-98-127
Proposed W.Q. Monitoring
California Coastal Commission

1 Beneficial uses of Carmel Valley Creek include AGR, COLD, IND, REC-1 (potential), REC-2, and WILD.
2 Beneficial uses for Los Penasquitos Lagoon include BIOL, EST, MAR, MIGR, RARE, REC-1, REC-2, WARM, and WILD.
3 Based on receiving water hardness of 300 mg/L for freshwater.
4 Established as a goal in lieu of an objective.

Receiving Water Assessment

A critical component of the proposed study is to evaluate the impact of highway construction and operation on the lagoon and creek. Grab samples will be collected four times annually at the following locations: two sites within the existing CVREP, the point west of I-5 where the CVREP discharges to the Lagoon, and at a site immediately downstream of the area impacted by the proposed middle portion of SR56. The exact locations of these monitoring sites will be selected in conjunction with the RWQCB and Coastal Commission based on factors such as access, safety, etc.

Two of the proposed grab samples will be collected during wet weather conditions, while the other two samples will be collected during dry weather to provide an assessment of ambient conditions. Sampling will begin during the fall of 2000 and continue for two years beyond completion and final stabilization of SR56. Based on the constituents of concern in the Los Penasquitos Lagoon watershed, samples will be analyzed for the constituents listed in Table 1.

BMP Assessment

Caltrans currently plans to install two Continuous Deflective Separation (CDS) units on the existing portion of SR56. Sorbent material will be inserted in these units to reduce discharges of oil & grease from the highway surface. The following paragraphs summarize the state of knowledge about these control measures as well as current evaluation programs in Southern California.

The CDS units were developed originally in Australia to prevent the discharge of trash and debris in stormwater runoff. Significant reduction of sediment and associated constituents has also been reported. Of the proprietary treatment systems currently on the market, these have one of the more extensive testing and installation histories. In addition to testing in U.S. Universities (Stenstrom et al, 1998; Swartz and Wells, 1999), Caltrans will install and monitor two of these devices in Los Angeles County. The Caltrans monitoring program for these units will involve sampling during the 2000-2001 and 2001-2002 wet seasons. Samples will be analyzed for a variety of conventional constituents including solids, nutrients, metals and hydrocarbons. In addition, observations will be made of the amount of litter and debris removed from the devices. These data will be available before the construction of SR56 begins.

The most important element of this proposed program will be to confirm that the mass removal of constituents of concern by the CDS units are similar those observed during the Caltrans BMP Retrofit Study. The performance of one of the CDS units will be evaluated using a mass balance approach, which will rely upon quantifying the amount of material captured and retained in the device. Monitoring of the CDS unit will commence by the fall of 2002 and continue through the following two wet seasons. A rain gauge in the vicinity will be used to establish precipitation depths so that the annual runoff through these devices can be calculated. Trash, debris, sediment, and used sorbent will be removed from the devices periodically based on maintenance requirements observed in the Caltrans BMP Pilot Program. The material removed from the monitored unit will be weighed to determine the reduction in the discharge of litter and sediment to the receiving water. In addition, the litter and debris removed during one of the collection visits will be inventoried to determine the source of the litter. This will help target future educational efforts. Before disposal, samples of the sediment will be analyzed for the constituents listed in Table 1.

Data Reporting

An annual report will be prepared describing the results of the monitoring effort. For the CDS units, reductions in the pollutant loads to the receiving waters will be based on the amount of material removed from the monitored unit. The efficiency of the device (i.e., percent reduction) for the conventional pollutants can be estimated from known highway runoff quality in the area. The annual reports will contain the analytical results from the grab sampling effort. At the conclusion of the study, a statistical analysis of the grab sample data from the receiving waters will be performed to determine if there are significant differences in quality before, during and after construction.

References

Stenstrom, M.K. and S. Lau, 1998, Oil and Grease Removal by Floating Sorbent in a CDS Device, Civil Engineering Dept., UCLA.

Swartz, T.S., and S.A. Wells, 1999, Stormwater Particle Removal Using a Cross-Flow Filtration and Sedimentation Device, Portland State University, presented to the American Filter Society Conference.

Thursday, December 02, 1999

RECEIVED
DEC 0 2 1999
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Cc: Ellen Lirley 619-521-8672
Coastal Commission
Original emailed to Councilman Harry Mathis, CalTran and District Attorney for San Diego

Dear Concerned Citizens and Government Officials:

The Union-Tribune reported 3-1/2+ years delay of Freeway SR-56 requires urgent attention to the dangerous road conditions developing on the dirt road portion of Black Mountain Road which is 100ft from the completed multi-million dollar bridge near the future Camino Ruiz Ruiz Interchange. This 2 lane dirt road is being used for both public and private interests without the commercial developers maintaining the previous and existing conditions. The cause for alarm is the narrowed dirt crossing which has steep embankments, no guard rails, narrowing to 1 lane due to unstable edges undercut by nearby grading for the new bridge, the removal of trees and ground cover holding the hillside up, surface ruts and protrusions caused by large earth moving equipment using this portion of road for access and the high traffic in both directions. This situation is serious, dangerous and a foreseeable deadly accident site. We need to protect our citizens and keep the only direct road connecting Rancho Penesquitos and Carmel Valley. If the city is not going to maintain this road and the plan was approved for development then the city must immediately legally notify the developers responsible for the environmental impact of the land moving and removal process which has directly impacted the road and it's users.

I propose the following solutions, but urge swift resolution of this public hazard and continues to maintain the public easement and right of way.

1. Have the real estate developers repair and maintain the road during the course of development per the cities plan.

2. Detouring traffic from the dirt road onto the finished road East of the new bridge.

Access already exists, but is blockaded on the east by cement barricades on the dirt shoulder and construction gates on the west. These construction gates could be moved back past the east side of the bridge to facilitate

public access to the easement.

3. Move the construction gates to the east of the bridge and give access to dirt portion of construction road which safely mirrors dirt bridge problem.

Respectfully,

Martin J. Sloane, misloane@utm.net
(858) 538-0152
Best-Fit Financials, bestfit@utm.net
(858) 763-0233
14350 Dalhousie Road
San Diego, CA 92129-4334

LETTER OF CONCERN

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Office (619) 299-1743
Conservation (619) 299-1741
Fax (619) 299-1742
Voice Mail (619) 299-1744

San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

RECEIVED
MAR 0 9 2000
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Hon. Sara Wan, Chair
California Coastal Commission
March 8, 2000
RE: ITEM WED. 7A, STATE ROUTE 56

Dear Chairman Wan and Commissioners:

The San Diego Sierra Club has had a long involvement with this project. Most recently, the Club was a key participant in the successful negotiation of the environmentally preferable northern alignment for this very difficult project. As indicated by the staff report, total significant environmental impacts will amount to in excess of 200 acres. Coastal Zone issues and mitigation, however, were not addressed by the Club in its past considerations. Nor were key construction or mitigation details part of the deliberation process. Today, we find we must ask for denial of the project for lack of adequate submittals. The applicants are asking us to bet on the come that they will ultimately do the right thing. While your staff has valiantly tried to fill with void with Special Conditions, we believe the necessary balancing between Sections 30231 and 30233 requires additional documentation. Please consider the following points.

1. PERMIT STREAMLINING ACT: While we understand that time is of the essence for the applicant, and that the limits of the Permit Streamlining Act have been reached, what information is available to the Commission that the City has actually acquired the land necessary for the approved alignment? If the City has not yet purchased the alignment, what is the time crunch?

2. INADEQUATE INFORMATION SUBMITTED BY APPLICANT FOR COMMISSION AND PUBLIC REVIEW: Because of heavy public and community involvement in this project, as well as its controversial nature, we believe the City has a duty to submit complete documents to the Commission. While the staff would condition the project on submittal of this information "prior to issuance of a Coastal Development Permit," we believe the City, as any other applicant, should provide the public and the Commission with details of such critical factors as the mitigation/monitoring plan, grading/erosion control, drainage and polluted runoff control plan, landscaping, road construction, construction staging and storage areas, etc, prior to Commission approval. A "conceptual mitigation plan" and "typical" sketches are inadequate.

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LETTERS OF OBJECTION

SIERRA CLUB
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San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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STATE ROUTE 56, WED. 7A
PAGE 2
MARCH 8, 2000

3. BMP'S AND INADEQUATE MITIGATION/MONITORING PLAN OR PROGRAM: While the staff report, p. 4, allocates responsibility for mitigation and monitoring to the permittee, additional information on p. 18 indicates that the City does no monitoring on a routine or regular basis; that the Carmel Valley Resource Enhancement Program area (CVREP) has been cleaned out (5000 cu. yds. of sediment) only once, and that at the behest of the RWQCB. As stated by City staff in Mitigated Negative Declaration 98-0677 for a pipeline project also in this watershed, "No system is currently in place for the City to conduct periodic site inspections on a permanent basis, after all the necessary permits and approvals have been obtained. Projects conditioned with permanent maintenance requirements...would be subject to the City's Code Enforcement Department, if notified by an interested member of the public, private entity, or other public agency."

4. BEST MANAGEMENT PRACTICES (BMP's): No Commission approval should be granted prior to submittal of temporary erosion control plans which identify specific BMP and their actual on the ground deployment. Further, staff states the proposed permanent devices remove only sediment, not pollutants associated with automobiles. Where is the test data to support the City's and Caltrans' statement that "sedimentation, not contaminants, is the primary water quality problem identified in the Los Penasquitos watershed?" How can they make this claim, when they acknowledge there is no current program to test for contaminants, either in the Lagoon or upstream within CVREP?

5. BALANCING AND OFF-SITE MITIGATION: We can support staff's balancing of conflicting Coastal Act sections in regard to wetland impact mitigation. Given the identified project benefits, the isolated, degraded nature of the identified wetland, and the proposed mitigation within McGonigle Canyon in the Coastal Zone through wetlands creation, we could even support staff's conclusion. But the factual question is whether the application adequately addresses the water quality provisions of Section 30231 so as to support a finding that the BMP's and "typical" retrofitting CDS's are adequate to balance the prohibition in Section 30233(a)(1)-(8) against wetland fill activity. We cannot reach that conclusion without additional documentation.

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Regarding off-site mitigation for sensitive upland habitat impacts, we question the continued loss of already severely impacted upland habitat by allowing development in exchange for acquisition of unidentified private lands in the MHPA. If these lands are allowed to be developed simply because they are not currently considered ESHA's by the Commission, because the resource agencies have accepted the development of these areas during their MHPA review, and because such mitigation is "fully consistent with the Land Development Code parameters/ratios," how can various coastal communities retain upland habitats that have community value beyond ESHA status?

6. CUMULATIVE IMPACTS: There are currently in the pipeline other San Diego projects which raise the same issues regarding road creation and wetlands impacts. Of particular concern is the reopening of Sorrento Valley Road and its potential widening. The reopening has already been approved by the City of San Diego, prior to the issuance of the Environmental Impact Report. The Sierra Club's concern with past, current, and future projects of which we are aware underlines the fact that our approval of this particular off-site wetlands mitigation plan will in no way preclude different recommendations on other projects.

SUMMARY:

In conclusion, we request the Commission to deny the project as submitted, pending adequate documentation by the City and Caltrans of significant project details currently not available for review. This project must be done correctly. The public and the Commission have the right to expect the City to provide the level of detail and certainty that will allow us to go forward in full support of the project. Thank you for your consideration.

Joanne H. Pearson, Co-Chair
San Diego Sierra Club Coastal Committee

Joanne H. Pearson

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7 March 2000

Commissioners
Ellen Lirley, Staff
California Coastal Commission
45 Freemont St., Suite 2000
San Francisco, CA 94105-2219

RE: Application No.6-98-127, page 12
Agenda No. 7-A

Dear Commissioners Dresser, McClain-Hill, Woolley, Wan, Nava, Reilly, Daniels, Estoiano, Potter, Kehoe, Dettloff and Ms. Lirley:

We have carefully reviewed the "Staff Report and Preliminary Recommendation" recommending issuance of Development Permits 6-98-127 for the middle section of SR-56.

We strongly disagree with staff's recommendation, and respectfully request the Commission to require a study quantifying the siltation which the project would generate into the Los Penasquitos Lagoon watershed.

Los Penasquitos Lagoon, one of California's last remaining coastal wetlands, is classified as an "impaired" water body under the Federal Clean Water Act, and is also on the State of California's Section 303(d) list. This was not disclosed in the Public Notice, FEIR or its technical appendices, nor in the City of San Diego's responses to public comment.

The Lagoon is home to four federally endangered bird species: the Belding's Savannah Sparrow, the Brown Pelican, the California Least Tern and the Light-Footed Clapper Rail. The viability of the Lagoon is critical to the ultimate survival of these endangered species. Sediment loading has an intense negative impact on the Lagoon's long term viability.

The sedimentation problems resulting from SR-56 are exacerbated by the approval in 1998 of Pacific Highlands Ranch, a 5,400-unit housing development directly contiguous to the Lagoon, and Black Mountain Ranch, a 4,200-unit housing development, which also drains into the Lagoon. The FEIR for the Pacific Highlands project estimates 14,000,000 cubic yards of grading will be required - further adding to the siltation problem caused by SR-56.

- over -

It seems clear to us that before issuing its permit, the Commission should be absolutely certain that the SR-56 project will not doom the Lagoon and the endangered species contained within.

We also believe that the recent Bolsa Chica decision was intended to address both direct and indirect impacts of projects such as SR-56, Pacific Highlands Ranch and Black Mountain Ranch on sensitive water bodies within the Commission's jurisdiction. In the event the Commission issues a permit for SR-56 without requiring a thorough study of siltation into the Lagoon caused by SR-56 and these projects, there should be no doubt on the Commission's part that litigation will be the result.

I am enclosing a memorandum prepared by our attorneys last September for the U.S. Army Corps of Engineers covering the issues raised above.

Should members of the Commission or staff wish to discuss these issues prior to your hearing, please feel free to contact me.

Thank you for your consideration.

Yours truly,

Leigh C. Crueger

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San Diegans for Responsible
Freeway Planning

enc.

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

September 17, 1999

VIA FACSIMILE
AND U. S. MAIL

U. S. Army Corps of Engineers
Los Angeles District
Regulatory Branch, San Diego Field Office
16885 West Bernardo Drive, Suite 300A
San Diego, CA 92127

Attn: CESPL-CO-R-9720014-DZ

Re: Public Notice/Application No. 97-20014-DZ; State Route 56 Middle Section Project ("Public Notice")

Dear Sir/Madam:

Our office represents several dozen concerned citizens residing in the vicinity of the SR56 Project Area. We appreciate the opportunity to provide these comments and respectfully request that all public notices regarding this Project be forwarded to the above address. The decision of the Army Corps of Engineers ("Corps") whether to issue the above referenced permit must be based on an evaluation of the probable impact of the State Route 56 Project ("Project"), including cumulative impacts, of the proposed road in the public interest. In weighing this decision, the benefit that may be reasonably expected to accrue from the construction of the road must be balanced against its reasonably foreseeable detriments. Accordingly, it is imperative that the Corps look to both the impacts of the road and the actual benefits which would arise therefrom. Additionally, it is imperative that the Corps consider the Project in its entirety, and not just the localized portions which are located in wetland areas.

This comment letter contends that the Public Notice is deficient by failing to address the entire scope of the Project, failing to identify the Area of Potential Effect, understating the Project impacts, and unjustifiably relying upon an environmental document which the Corps had no involvement in preparing. Additionally, the biological opinion prepared by the U.S. Fish & Wildlife Services ("FWS") and relied upon by the Corps fails to address the entire scope of the Project and ignores potential impacts to endangered and threatened species other than the San Diego fairy shrimp.

A. The Benefit of the Project

State Route 56 is a proposed freeway which will traverse 5.5 miles of largely undeveloped land between I-5 at Carmel Valley Road, and I-15 at Ted Williams Parkway. Although touted as the remedy for *existing* traffic congestion on I-15 and a number of east-west arterials, the road would perform that role only poorly, and is actually being constructed to serve development of the North City Future Urbanizing Area ("NCFUA") between I-5 and I-15. This area, when built out, will include more than 14,000 new residences and become home to some 35,000 people, nearly all of whom will rely on SR56 to get where they are going. When the Project and the FUA are built out, traffic analyses of this traffic "solution" indicate that motorists will have on ramp queues over an hour to get on the freeways in some locations and traffic levels of service ("LOS") will not be measurably improved. Accordingly, the actual benefit of the Project should be scrutinized and quantified by the Corps prior to rendering a decision on the balancing of the public interest of the Project.

B. The Public Notice understates the Scope of Project

The Public Notice for the proposed 404 permit for the SR56 Project ("Public Notice") does not clearly state the scope of the SR56 Project under review by the Corps. The Biological opinion on the Project suffers from the same deficiency. The wetland impacts arising from the Project are dispersed throughout the alignment of the Project. As a result, analysis of the areas affected by the proposed fill activities are factually inseparable from the environmental impacts from the SR56 Project as a whole. *Stewart v. Potts* (S.D. Tx. 1998) 996 F.Supp. 668. The road is being constructed in an undeveloped area, much of which is natural open space containing habitat for threatened and endangered species. Adjustments to the alignment and road specifications in any particular direction to minimize wetland impacts would increase impacts in other locations. As a result, the nature and extent of the wetland impacts are so interrelated and functionally interdependent that the entire SR56 Project should be within the jurisdiction of the Corps, and therefore the mandate of NEPA. *Id.* The Corps' analysis must be expanded to include the impacts arising from the Project in its entirety.

C. The Public Notice Fails to State the Area of Potential Effect

The Public Notice fails to designated the Area of Potential Effect ("APE"). Without designating the APE prior to release of the document for public review, the public has no way of determining and commenting on the Corps proposed scope of review for the Project, and is required to guess at the Corps' scope of review. The Public Notice period should be either reinitiated or extended for 30 days after the Corps has released a clear statement of the Project's APE.

Even given the lack of disclosure of the Corps' APE, it is clear from the Public Notice that the indirect effects from the SR56 Project have not yet been considered by the Corps or by the FWS in its biological opinion for the Project. As discussed in more detail below, the SR56 Project will have substantial indirect impacts to water quality adjacent to the Project and downstream from the Project in Los Penasquitos Lagoon The APE should include areas of direct and indirect effects within the watershed and cumulative effects downstream arising from the Project. *Riverside Irrigation District v. Andrews* (10th Cir. 1985) 758 F.2d 508.

D. The Public Notice Underestimates the Scope of Fill Arising From the Project

The Public Notice proposes that the total fill required by the Project includes 4.38 acres of riparian wetlands, 0.045 acre of vernal pools, and 1.134 acres of Waters of the United States. This estimate of impact ignores that SR56 lies within the watershed of Los Penasquitos Lagoon and will contribute substantial sediment loads into the lagoon. The Public Notice also fails to measure or calculate the amount of sediment that will be transported to the lagoon as a result of the Project and as a result of other past, present and future Projects. Without quantitative data regarding the Project's sediment load into the lagoon's watershed, the Corps cannot fully quantify the amount of fill in the nation's waters arising from this Project.

Sedimentation impacts from Projects are considered within the Corps jurisdiction. Situations where substantial movement of soils in the vicinity of wetlands accelerates erosion into the waters of the U.S. by gravity flow is considered a fill activity. *Sierra Club v. Alston Construction Co.* (5th Cir. 1980) 620 F.2d 41. This is so even where the activity is nothing more than the collection of rock and materials on upland areas. *Id.* at 45; *see also EPA v. National Crushed Stone Ass'n* (1980) 449 U.S. 64; *United States v. Earth Sciences, Inc.* (10th Cir. 1979) 599 F.2d 368; *United States v. McCleskey* (E.D. Va. Aug 3, 1989) No. 89-54-N.[1] The City's EIR admits that the Project will increase sediment loads into Los Penasquitos Lagoon. Unfortunately, the sedimentation impacts from the Project were not quantified during the EIR process. As a result, the volume of fill arising from the runoff created by the Project has not yet been estimated and is not proposed to be included in the scope the Corps review. The amount of fill arising from the sediment loads created by the Project should be quantified and included in the Corps' permit decision. Once this number is obtained, the Corps should recommend mitigation measures to avoid or minimize this impact on the downstream wetlands.

[1] Additionally, in the only correspondence from the Corps to the City regarding this Project — a one-page letter — the Corps informed the City that actions requiring a 404 permit include allowing runoff to re-enter a water of the United States.

E. EIS Determination--The Corps Proposes to Improperly Adopt The City's EIR Without Additional Environmental Review

The Corps proposes to adopt the Final Environmental Impact Report ("EIR") as the complete Federal environmental review for this Project under the National Environmental Policy Act ("NEPA"). Such reliance violates the scope and intent of NEPA. While the NEPA and CEQA encourage avoidance of duplication of environmental review, there are qualifications for this goal.

Active involvement in the EIR process is crucial to the Federal agency's ability to rely upon the EIR for later permitting approvals or federal actions. Section 1506.2 of the NEPA regulations requires that Federal agencies must "cooperate with State and local agencies to the fullest extent possible to reduce the duplication between the NEPA and State and local procedures." Except where the federal involvement in a Project is only funding, such cooperation is required to include, to the fullest extent possible, joint planning processes, joint environmental research and studies, joint public hearings and joint environmental assessments. 40 C.F.R. § 1506.2. When section 1506.2 is read in connection with *Sierra Club v. United States Army Corps of Engineers* (2d Cir. 1983) 701 F.2d 1011, Federal agencies are prohibited from simply accepting documents prepared by State or local agencies, even if those documents otherwise meet all the requirements of NEPA. 42 U.S.C. § 4332(2)(D). Many other courts have disfavored Federal agencies' reliance on documents that the federal agency had little role in preparing. *Sierra Club v. United States Army Corps of Engineers* (2d Cir 1983) 701 F.2d 1011, 1037-1039; *Greene County v. FPC* (2d Cir. 1972) 455 F.2d 412, 418-420; *Northside Tenants' Rights Coalition v. Volpe* (E.D. Wis. 1972) 346 F.Supp. 244

The Corps was completely absent throughout the FEIR process for the SR56 Project.[2] The Corps never provided written comments to the draft EIR and had no hand in preparing the document. There were no joint studies or environmental assessments conducted between the Corps and the City. As a result, the Corps has exercised no independent judgment regarding the efficacy of the document and the scope of environmental review. The Corps cannot blindly accept the FEIR as adequate to address the impacts associated with its permitting action. Instead, the Corps should conduct an Environmental Impact Statement to address the impacts of its permitting decision and the impacts from the Project which were left unaddressed in the CEQA process. Upon such a review, the Corps will find that the SR56 Project as a whole, and the multiple discharges of fill into navigable waters and Waters of the United States create a major action significantly affecting the human environment.

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[2]The only correspondence from the Corps in the EIR's administrative record is a one-page letter informing the City that a 404 permit would be required for the Project.

In addition, because the Corps was not involved in the City's EIR process, it must exercise independent analysis of the Projects impacts and cannot blindly rely on the conclusions rendered by the City in its EIR. The EIR prepared for the SR-56 Project fails to address impacts to key resources; neglects to conduct basic and fundamental analyses; makes analytical assumptions that cannot be supported by the record and tend to understate impacts; fails to apply the prescribed "significance" determination criteria; defers evaluation of important impact categories; and employs vague, unproven and inadequate mitigation measures in an attempt to "reduce" impacts from significant to insignificant. In short, the EIR's conclusions, as well as the Findings of Fact adopted by the City, are not supported by substantial evidence in the record. As such, any reliance on the CEQA documentation by the Corps is unwarranted.

Moreover, the City's EIR fails to identify sedimentation impacts. Federal courts, when adjudicating logging road Projects challenged under NEPA, have required full analysis and quantification of the Projects' sediment impacts to water quality and biotic resources. *See, e.g., Blue Mountain Biodiversity Project v. Blackwood* (9th Cir. 1998) 161 F.3d 1208, 1213-1214. In absence of data regarding sediment load and corresponding impact on nearby river and its trout population, the lead agency could not satisfy NEPA's "hard look" requirement. *Id.* The role of sedimentation impacts is one area of NEPA analysis that is more stringent than CEQA requirements. Reliance solely on the City's EIR as the environmental review for this Project would cause the Corps to overlook the significant impacts arising from sedimentation runoff. In order to satisfy the hard look requirement of NEPA sedimentation impacts should be quantified and analyzed in terms of direct and indirect impacts.

F. The Public Notice Fails to analyze all of the Water Quality Impacts arising from the Project.

In addition to consideration of sedimentation runoff from the Project considered as "fill" under the 404 permit program, the Corps must assess the water quality impacts arising from permitting action. This assessment should include both consideration of the water quality impacts through the NEPA process and compliance with the State water quality standards through the section 401 water quality certification process. Section 401 of the CWA requires that the discharger obtain from the State regional water quality control board a certification that the discharge will comply with "applicable effluent limitations and water quality standards." 33 U.S.C. § 1341; 33 C.F.R. §§ 320.3(a), 320.4(d) and 325(b)(1). Both of these analyses must include analysis of potential sedimentation in the watersheds of vernal pools adjacent to the Project or consideration of the special regulatory status of the downstream water body-Los Penasquitos Lagoon.

Los Penasquitos Lagoon is one of the few remaining coastal wetlands in California. It consists of approximately 630 acres and is located west of I-5, just south of Carmel Valley Road.

Thousands of acres in the lagoon's watershed have been graded and paved in the last twenty years, causing the tidal channels to fill with silt, virtually eliminating the tidal prism necessary to keep the mouth of the lagoon open. In addition, as the rate of upland erosion has intensified, the resulting sediment load into the lagoon has damaged pre-existing salt marsh, allowing it to be overtaken by freshwater plant species. The *future* health of the lagoon is also in question because significant portions of the lagoon's watershed are slated for intense residential, commercial and civic development over the next two decades. Such development will increase storm runoff and sediment loading into the lagoon.

(1) The Permit Fails to Disclose that Los Penasquitos Lagoon is a State and Federally Listed "Impaired" Water Body

Although SR56 and its corresponding "impact area" are located entirely within the Los Penasquitos Lagoon watershed and will drain into the lagoon itself, the Corps Public Notice ignores this impact. Further, the Project EIR's "Hydrology/Water Quality" section, which the Corps apparently relies upon for impacts analysis, includes only a half-page description of the lagoon. The EIR acknowledges that the lagoon suffers from "two major and interrelated problems: sedimentation and lack of tidal flow." The EIR also states that due to grading and paving activities in the upland watershed, "[t]he tidal channels have filled substantially; the rate of erosion has increased; and salt marsh is being smothered and changed to riparian forest or upland habitat."

Omitted from the Public Notice and the EIR's description is any reference to the lagoon's status as an "impaired" water body under the federal Clean Water Act. 33 U.S.C. § 1313(d).[3] Clean Water Act section 305 requires all states to investigate the water bodies (e.g., lakes, rivers, streams, lagoons, estuaries, coastal waters, bays, harbors, etc.) within their jurisdiction for compliance with established water quality standards. 33 U.S.C. § 1315(b)(1). Under Clean Water Act section 303(d), water bodies which, despite the implementation of Best Management Practices ("BMPs") and other standard controls, do not to comply with these standards are designated as "impaired" and then placed on a the state's "Section 303(d) List." 40 C.F.R. § 130.7(b)(1).[4] That list is then reviewed and either approved or disapproved by U.S. EPA. 33 U.S.C. § 1313(d)(2). Once on the 303(d) list, the water body becomes subject to very strict

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[3]Note that "impaired water bodies" are sometimes referred to as "water quality limited segments" or "WQLS." *See American Canoe Assoc., Inc., et al. v. U.S. EPA (Browner)* (E.D. Va. 1998) 30 F.Supp.2d 908. However, for consistency and clarity, the term "impaired" water body will be used exclusively in this comment letter.

[4]A finding of "impairment" under the Clean Water Act is roughly analogous to a finding of "non-attainment" under the Clean Air Act. Both designations are pollutant-specific and require aggressive remediation approaches to correct the identified problem.

regulations devised especially to address its particular problem. *Alaska Center for the Environment v. Browner* (9th Cir. 1994) 20 F.3d 981, 982-983. These regulations — usually referred to as Total Maximum Daily Loads or "TMDLs" — are measures of last resort to improve water quality in the river, lake, lagoon or stream in question. *Id.*

In 1996, the Regional Water Quality Control Board ("Regional Board"), designated Los Penasquitos Lagoon as "impaired," having determined that the lagoon, despite implementation of technology- based controls *and* best management practices, could *not* meet established water quality standards for sediment. *See* 40 C.F.R. § 130.7(b)(1); *Sierra Club v. Hankinson* (N.D. Ga. 1996) 939 F.Supp. 865, 872. The Regional Board also found that at least one of the lagoon's "beneficial uses," as assigned in the Regional Board's adopted *Basin Plan*, was being negatively affected by the sediment loading. In 1998, the Regional Board once again listed Los Penasquitos Lagoon as "impaired" due to sediment. However, none of these facts is mentioned in the Public Notice, the EIR or its technical appendices, or in the City's responses to public comments.

As an officially designated "impaired" water body for sediment, Los Penasquitos Lagoon should receive heightened attention and more intense study in the Public Notice's assessment of Project-related water quality impacts. However, it did not. Moreover, this analysis also did not occur in the EIR. In fact, the EIR's entire discussion regarding the Project's water quality impacts to Los Penasquitos Lagoon consumes only one paragraph, consisting of the following three sentences:

> "As shown on Table 4.1-1 in the Geology/Soils section, the Modified Northern D Alignment would encroach into 134.0 (expressway) and 223.9 (freeway) acres of severely erodible soils, while the Modified Northern F Alignment would impact 129.1 (expressway) and 211.6 (freeway acres), respectively. Vegetation removal and grading associated with either alternative would render these areas vulnerable to erosion during rainy periods. *This, in turn, could generate large quantities of sediment deposition into downstream water bodies, including the CVREP area and Los Penasquitos Lagoon.*" (*Emphasis added.*)

Neither the Public Notice, the EIR, nor either of their technical appendices attempt to quantify the amount of sediment that will be transported into the lagoon during construction of the Project or the various alternatives. Worse still, neither the permit, the EIR nor either of their technical appendices attempt to measure: (1) the amount of *post-construction* storm water runoff to be expected from the Project and its alternatives; or (2) the amount of *post-construction* sediment to be carried by that runoff into Los Penasquitos Lagoon. As a result, no one knows, or has even bothered to estimate, the Project's total contribution to the sediment load annually received by the lagoon. The permit also fails to assess quantitatively the Project's anticipated

sediment load in conjunction with sediment from all past, present and future Projects in the lagoon's watershed — a clear violation of the Corps' requirement to evaluate cumulative impacts. Finally, the U.S. EPA recently emphasized the importance of quantification of sediment loads for projects upstream from am impaired water body. Recommendations of the EPA's Federal Advisory Committee, charged with recommending improvements to the 303(d) program, include a requirement for projects to quantify any pollutant loadings into an impaired water body. In addition, in developing total maximum daily loads ("TMDLs") for the impaired water body, the EPA will require estimation of future loadings. The purpose of the TMDL program is to set a ceiling on the amount of criteria pollutant loading that is allowed to enter the impaired water body. In some cases, the EPA proposes that states will allocate pollutant loading leaving no room for future growth within the water body's watershed. This analysis is not possible unless projects such as the SR56 project quantify the sediment loading from the project.

(2) The Project's "Hydrology/Water Quality Mitigation Measures are Inadequate

The Corps does not propose any mitigation for impacts arising from sedimentation in the creekbeds or into the vernal pools adjacent to the Project. Instead, despite the absolute lack of any technical or quantitative data regarding the Project's sediment impacts on the lagoon, the Corps relies on the EIR which nevertheless concludes that "downstream sedimentation" impacts would be "reduced to below a level of significance for both alternative alignments via similar mitigation measures proposed for the original Northern and Central alignments, as specified in Volume I." However, these mitigation measures are inadequate for the following reasons:

First, and most broadly, without technical data as to the sediment yield from the Project and elsewhere in the lagoon's watershed, it is impossible to determine whether the proposed mitigation measures will actually reduce sediment flows into the lagoon to acceptable levels. Without quantification of sedimentation impacts, the Corps cannot conclude that the discharge will comply with "applicable effluent limitations and water quality standards."

Second, one of these mitigation measures — known as "Hydro-1"— simply requires that the City conduct a "phased Hydrologic/Hydraulic Investigation" to be reviewed and approved by the City's own Public Works Manager and Environmental Review Manager and by Caltrans — the road's co-sponsor. This is exactly the kind of technical study that should be conducted before the Project is proposed and included in the EIR, but was not. The effect of Hydro-1 is to defer the required technical analysis until *after* Project adoption, and then to place in the hands of unelected City staff members the critical task of determining whether the Project's sedimentation impacts on the lagoon are "significant." NEPA and the 404 permitting process require that impacts be assessed for significance before a Project is approved so that reasonable alternatives and mitigation measures may be required.

Third, the mitigation measures proposed in the EIR completely ignore the lagoon's status as a designated "impaired" water body, and consist of the same kind of technological controls and BMPs that both the Regional Board and U.S. EPA have already concluded are ineffective at protecting the lagoon from ruinous sediment loads. 40 C.F.R. § 130.7(b)(1); *Sierra Club v. Hankinson, supra*, 939 F.Supp. at 870.

(3) The Corps has Evidence in the Record that the Project will have a Significant Unmitigated Impact on the Lagoon

Worse, there is substantial evidence in the record that the Project — both alone and together with other Projects in the watershed — will greatly exacerbate the lagoon's ongoing sedimentation problem, and will frustrate efforts to remove the lagoon from the state's Section 303(d) list.

For example, the EIR admits that, geologically speaking, the Project impact area is dominated by "severely" erodible soils, as determined by the Soils Conservation Service ("SCS") of the USDA.[5] According to SCS, most of the Los Penasquitos Lagoon watershed consists of soils that are "moderately" to "severely" erodible. The EIR then acknowledges that the Project will directly disturb up to 223.9 acres of these "severely" erodible soils, and that such disturbance includes the removal of existing vegetation — the only thing capable of anchoring erosion-prone soils during a storm event. Note also that construction of SR56 will require tremendous amounts of grading — more than 3 million cubic yards of cut and more than 2.4 million cubic yards of fill. This loosened dirt then becomes fodder for siltation during storms.

Once the freeway is built, additional problems will emerge — namely, increased volumes of runoff. Because it will be 5.5 miles long, 200 feet wide, and impermeable, the road will generate substantial runoff at increased velocities, dramatically enhancing the carrying power of the storm water. This enables the water to transport more and heavier sediment to the lagoon than otherwise would have been the case.

The mechanics of this process are well known to hydrologists: upon sheeting off the paved surface of the freeway, the storm water will gain speed and gather sediment, turning muddy. It will then enter the various tributary drainages which flow into McGonigle Canyon and thence into Carmel Valley Creek. Here, the siltation problem will compound, for McGonigle Canyon and Carmel Valley Creek are bedded with alluvial deposits which are extremely susceptible to scouring during storm events, particularly those which result in high runoff velocities. Such

[5] Information on this impact is derived from the EIR, since the Corps permit and biological opinion fail to address these impacts at all.

scouring loosens the alluvial materials and sends them downstream toward Los Penasquitos Lagoon, along with the rest of the sediment carried in the storm water.

But these are only the *Project-specific* sedimentation impacts; the *cumulative* sedimentation impacts will be substantially worse, because SR56 opens much of the lagoon's watershed to accelerated future development, bringing with it a profound increase in impermeable surfaces. For example, the Growth Inducement section of the EIR states that SR56 "would remove a constraint to development . . . and would enable development of additional dwelling units in Carmel Valley and Rancho Penasquitos. . . ." Specifically, the road Project would allow implementation of the City's Framework Plan, which contemplates development of 14,780 dwelling units and associated commercial and civic structures in the NCFUA, much of which is located within the Los Penasquitos Lagoon watershed.

In light of this evidence showing a strong potential for significant, unmitigable sediment impacts to an already impaired water body — and in the absence of any credible evidence to the contrary — no reasonable person could conclude that the Project would have an insignificant impact on the lagoon. Nevertheless, this is the conclusion drawn in the EIR and apparently proposed to be adopted by the Corps.

G. The Permit Fails to Analyze Adequately Project Impacts On the Biotic Communities Within Los Penasquitos Lagoon

Adverse water quality impacts to Los Penasquitos Lagoon have distinct biological repercussions as well. The lagoon is more than a sink for silt and detritus washed down from the upland watershed. It constitutes a rich but fragile ecosystem, and provides essential habitat for a wide range of plants and animals that have trouble surviving in other locales.[5] Although recent degradation of the lagoon has, at least temporarily, driven off the endangered Light-footed Clapper Rail which used to feed among the cordgrass salt marshes, the lagoon is still home to the Belding's Savannah Sparrow — a small bird that is on the state endangered list. Like the Clapper-rail, the Belding's Savannah Sparrow builds its nest just inches above the water's surface and is therefore highly vulnerable to large inflows of water from upland areas; the sparrow is also threatened by continued loss of its salt-dependent pickleweed habitat. Another endangered bird, the Brown Pelican, also frequents the lagoon for rest and forage. Finally, the lagoon provides nesting area for a small number of endangered California Least Terns.

Beneath the water, numerous marine and estuarine species live within the relative tidal calm of the lagoon. Halibut, for example, use the lagoon as a nursery for newly-hatched fry who would otherwise be eaten by predators in the open sea. The lagoon's viability as a functioning

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[5]Special status plant species include the Salt Marsh Daisy.

ecosystem is largely dependent on the continued health and abundance of the benthic fauna (mollusks, clams, worms) which inhabit the sediment at the bottom of the lagoon. These small, sediment-dwelling animals are the fundamental link in the lagoon's food web. When the benthic community is damaged, all life in the lagoon suffers.

As alluded to above, sediment loading from upstream is perhaps the most serious threat to the lagoon; it raises water levels, increases turbidity, reduces oxygen in the water, chokes off tidal influx and buries existing benthic fauna. However, sediment is not the only problem in the lagoon caused by upland development. Increased freshwater flows — due largely to the introduction of impermeable surfaces upstream — have also taken their toll on the lagoon's estuarine habitat. Freshwater flows are damaging because they reduce the saline content of the water, causing rare and vital salt marsh habitat (cordgrass, pickleweed) to be depleted and overrun by freshwater species (e.g., cattails, rushes).

The 404 permit Public Notice does not address the impacts of the Project on these resources. Worse, the permit cannot rely on the EIR for such analysis. The City never bothered to investigate the Project's individual or cumulative impacts on the unique biotic communities that dwell within and depend upon the lagoon. In fact, the Public Notice and the EIR's Biological Resources section do not even inventory the many sensitive plant and animal species found in the lagoon. Consequently, the Public Notice proposes no analysis of the Project's negative impacts on: (1) salt marsh, which is already receding at alarming rates; (2) the endangered Light-footed Clapper-Rail; (3) the endangered Belding's Savannah Sparrow; (4) the endangered Brown Pelican; or (5) the endangered Lest Tern. For example, no one measured the extent to which water levels in the lagoon would rise as a result of SR-56 and other proposed Projects within the lagoon's watershed. Thus, no one assessed what damage might be done to the nests of the Belding Savannah Sparrow, which are typically constructed just inches above the water's surface and may be drowned when the water rises. Potential loss of salt-dependent cordgrass, salt marsh daisy, and pickleweed also went unstudied.

In addition, because no one calculated the amount of Project-related sediment to be received by the lagoon, no one evaluated — or had the means to evaluate — the Project's impacts to existing benthic communities. The absence of quantitative sediment data also prevented the EIR from analyzing the Project's adverse contribution to reduced tidal influx and corresponding fish kills in the lagoon. This analysis must be conducted prior to granting the 404 permit or granting the 401 water quality certification.

H. The EIR Fails to Analyze Whether Project Impacts to Los Penasquitos Lagoon Create Inconsistencies With the Regional Water Quality Control Board's *Basin Plan*

The lagoon is also protected under the Regional Water Quality Control Board's *Basin Plan*, which assigns to each water body in the region certain defined "beneficial uses." No fewer

than *eight* beneficial uses are assigned to Los Penasquitos Lagoon: (1) Contact Water Recreation (REC 1); (2) Non-Contact Water Recreation (REC 2); (3) Preservation of Biological Habitats of Special Significance (BIOL); (4) Estuarine Habitat (EST); (5) Wildlife Habitat (WILD); (6) Rare, Threatened and Endangered Species (RARE); (7) Marine Habitat (MAR); and (8) Shellfish Harvesting (SHELL). The Basin Plan recognizes that sediment loading has an intense negative impact on these beneficial uses. The permit and the EIR, however, never mention the Regional Board's *Basin Plan* or its anti-degradation policies. These impacts must be address as part of the § 404 permit and § 401 water quality certification process.

I. The Section 7 Biological Opinion for the Corps Permit is Inadequate to Ensure That the Impacts Arising From This Project Will Not Jeopardize the Continued Existence of Federally Listed Endangered and Threatened Species

Section 7 of the Endangered Species Act ("ESA") requires the Corps to consult with the FWS to ensure that the agency action "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species." 16 U.S.C. § 1536 (a)(2). When conducting the consultation, the Corps and the FWS are required to consider the Action in its entirety throughout the Action Area. In this instance, the Action which the agencies must consult upon is the issuance of the 404 permit, including the requisite certification that state water quality standards will not be adversely affected by the Project. The Action Area upon which the agencies must consult includes all areas to be affected *directly or indirectly* by the Federal action and not merely the immediate area involved in the action. 50 C.F.R. § 402.02.

The scope of review by the Biological Opinion is disturbingly constrained and the Corps should submit a new request to expand the scope of the Biological Opinion. The Biological Opinion focuses almost exclusively only on the impacts to vernal pools species and even there, the Biological opinion fails to consider impacts to the pool's watershed or sedimentation impacts to the remaining pools. The Biological Opinion fails to discuss the direct and indirect and cumulative impacts to riparian habitats and the species they support.[7] The document contains only a dismissive statement regarding the 35.6 acres of impact to the California gnatcatcher, stating summarily that the Project is consistent with the City's Multiple Species Conservation Program. There is no statement regarding how this finding was made, nor the level of analysis used to reach this conclusion.

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[7]The constrained scope of review may have been due to the extraordinarily short period of review of the 404 request for a Biological Opinion. The request was received by the FWS on July 12, 1999, and the Biological Opinion was issued on July 20, 1999.

Additionally, the Biological Opinion fails to discuss impacts to Los Penasquitos Lagoon despite the fact that Los Penasquitos Lagoon is: (i) home to the endangered Belding's Savannah Sparrow and Light-footed Clapper Rail, or (ii) utilized by the endangered Brown Pelican as a rest stop and feeding area. Moreover, the biological opinion fails to evaluate the Project's individual and cumulative impacts on the Belding's Savannah Sparrow, the Light-footed Clapper Rail, the Brown Pelican and/or the other plants and animals found in the lagoon. These effects include flood damage to nests, suffocation of benthic fauna, and conversion of salt marsh to fresh water vegetation all arising from the increased runoff and sedimentation from the SR56 Project.

J. Public Hearing Request

In light of the myriad of serious concerns regarding the impacts from the SR56 and the lack of previous environmental review addressing these issues, we respectfully request that the Corps hold a public hearing to assist in scoping the issues and resolution of these issues for this Project.

Very truly yours,

for
THEODORE J. GRISWOLD

TJG/se

cc: Mr. Greig Peters, RWQCB
Ms. Elizabeth Goldman, U.S. EPA
Ms. Susan Wynn, USFWS
Mr. Leigh Crueger

SAN DIEGANS FOR RESPONSIBLE FREEWAY PLANNING

c/o L. Crueger
P. O. Box 3448
Rancho Santa Fe, CA 92067
(858) 756-4880

4 January 2000

Ms. Ellen Lirley, Coastal Planner
California Coastal Commission
San Diego Coast District Office
3111 Camino Del Rio North
San Diego, CA 92108

Dear Ms. Lirley:

Enclosed is a letter to the California Department of Transportation from the U.S. Fish & Wildlife Service dated October 5, 1994 concerning SR-56.

Please note its comment on page 2: "Based on the high value and rarity of vernal pool habitat and the species it harbors, the Service strongly recommends (underlining mine) that any alignments impacting vernal pools be dropped from continued evaluation in the EIR."

In its report on vernal pools dated January 16, 1998 (p. 4, "Impacts"), KEA Environmental, the City's environmental consultant, states, "Vernal pool habitat would be directly impacted (underlining mine) by all four alignment alternatives."

The final alignment selected impacts vernal pools including San Diego Fairy Shrimp, a federally endangered species.

The resolution for this problem was to have been a 3:1 mitigation ratio on land which I understand has been identified. However, with Bolsa Chica as precedent, there is no doubt in my mind that if the Commission issues a permit for SR-56, the immediate result would be the filing of a lawsuit.

As you know, our group also believes a thorough study and quantification of the siltation of Las Penasquitos Lagoon, an "impacted" water body under Section 305 of the Clean Water Act, should be conducted before the Commission issues permits for SR-56 and for Pacific Highlands Ranch.

We appreciate your consideration of our concerns.

Sincerely yours,

Leigh C. Crueger

Leigh C. Crueger

enc.

VERNAL POOLS
+ SAN DIEGO FAIRY SHRIMP

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

October 5, 1994

Tim Vasquez
California Department of Transportation
District 11
Environmental Analysis Branch MS D-6
P.O. Box 85406
San Diego, CA 92186-5406

Re: Final Environmental Constraints Report for State Route 56

Dear Mr. Vasquez:

The Fish and Wildlife Service (Service) has reviewed the Final Environmental Constraints Report (Report) for eight alternatives to the middle segment of proposed State Route 56 in San Diego County, California. As requested, the Service is providing the California Department of Transportation (Caltrans) with the following comments and recommendations on the biological impact of the proposed alternatives, based on our knowledge of sensitive and declining habitat types and species in San Diego County.

The Service has responsibilities under the Clean Water Act and the Endangered Species Act of 1973, as amended (Act). Our mandates require that we provide comments on any public notice issued for a Federal permit or license affecting the Nation's waters, in particular, Army Corps of Engineers (Corps) permits pursuant to section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899. The Service is responsible for the administration and enforcement of the Endangered Species Act, including listing and recovery of endangered species, 10(a) permit issuance and consultation with Federal agencies for actions which may affect federally listed endangered species. Section 9 of the Act additionally prohibits the "take" (e.g. harm, harassment, pursue, injure, kill) of federally listed fish and wildlife species. "Harm" is further defined as an act which may result in significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns including breeding, feeding or sheltering (50 CFR 17.3). "Take" can only be permitted pursuant to the pertinent language and provisions in section 7 and section 10(a). One of the provisions under which a take permit can be issued is that the proposed action is not likely to jeopardize the continued existence of the species. When a species becomes listed, the take provisions apply upon the effective date of listing in the Final Rule published in the Federal Register.

Under section 4(d) of the Act, a special rule for the federally threatened California gnatcatcher (Polioptila californica californica; gnatcatcher) was published in December, 1993 (CFR 58:236), specifying conditions under which take of gnatcatchers would not be in violation of section 9. These conditions involve generation of long-term conservation plans which would be developed by local governments under guidelines provided through the State's Natural

Community Conservation Program (NCCP), and subject to approval by California Department of Fish and Game (CDFG) and the Service. The Multiple Species Conservation Plan (MSCP) is a large-scale conservation program for southern coastal San Diego County that is intended to serve as a subregional plan under NCCP. The Service commends Caltrans for including in the Report an analysis of project consistency with MSCP. If the final project does not conflict with conservation planning efforts under MSCP, the project will be likely to qualify for the gnatcatcher 4(d) take exemption.

As described in the Report, the proposed project would involve construction of a four-lane freeway running 17 miles from Interstate 5 to State Route 67 in San Diego County. Eight alternative alignments are currently being considered for the project. The purpose of the subject Report is to identify environmental constraints associated with each alternative and to refine the number of alignments for continued evaluation in an Environmental Impact Report (EIR).

The Service concurs with the Report that the Watson, Southerly, and Barczewski alignments are "fatally flawed" with respect to biological impacts. As stated in the Report, these three alignments impact a vernal pool complex on Del Mar Mesa. Vernal pool habitat, one of California's most endangered plant communities, has historically been reduced by 97%. Due to the level of destruction of vernal pool habitat the Service has found it necessary to list as endangered four local vernal pool plant species: Loma Alta mesa mint (Pogogyne nudiuscula), Del Mar mesa mint (P. abrahamsii), California orcutt grass (Orcuttia californica), and San Diego coyote thistle (Eryngium aristulatum). Additionally, the Riverside fairy shrimp (Streptocephalus woottoni) has been listed as endangered and the San Diego fairy shrimp (Brachinecta sandiegensis) has been proposed for federal listing. Four of the listed plant species occur in pools on Del Mar Mesa, and the vernal pool complex to be impacted by the proposed alignments contains at least one of these species, San Diego coyote thistle. It is unclear from the Report whether surveys have been sufficient to detect the presence of additional listed or proposed species, such as San Diego or Riverside fairy shrimp, but these species potentially occur within the subject pools. The Report states that it would be possible to redesign the Barczewski alignment with retaining walls to avoid impacts to the vernal pools and their watersheds. This alignment would still present significant biological problems, however, as discussed below. Based on the high value and rarity of vernal pool habitat and the species it harbors, the Service strongly recommends that any alignments impacting vernal pools be dropped from continued evaluation in the EIR.

The Service also concurs with the Report that the McConigle Alignment is "fatally flawed" in that it would result in removal of 11.6 acres of wetland, encroachment on McConigle Canyon over a length of approximately 2 miles, and impacts to parcels that have been dedicated in perpetuity as natural open space. McConigle Canyon is identified on MSCP maps as supporting high quality habitat from a multiple species perspective and forming a critical linkage between the Del Mar Mesa area, to the west, and Black Mountain, to the east. The McConigle alignment would be expected to severely diminish the biological functioning of this canyon in terms of providing this critical connectivity.

Mr. Vasquez

The Service recommends that the McConigle alignment be dropped from further evaluation in the EIR.

The Framework, IPR, and Barczewski alignments dissect a block of habitat, around Deer Canyon, rated by MSCP as high and very high quality from a multiple species perspective. The MSCP core biological resource map shows this habitat as forming a core that is contiguous with Del Mar Mesa and connected to Black Mountain via McConigle Canyon. The fragmentation effects expected to result from any of these three alternatives are expected to significantly diminish the viability of this high quality core habitat area. The Service strongly discourages the adoption of these alignments since they would conflict with regional conservation planning efforts.

As stated in the Report, the Northerly Variation alignment is the most preferable and the Northerly alignment is second most preferable in terms of biological impacts. These alignments run north of the major blocks of habitat in the project area, and would have fewer fragmentation effects than the other alignments. Our primary concern regarding those two alignments involves the crossing of McConigle Canyon. Another concern, as identified in the Report, is the crossing of the northerly alignments over the wildlife corridor running between Gonzales and McConigle Canyons. Specific measures to facilitate wildlife movement along those corridors, across the proposed alignments, should be described in the EIR.

In summary, the Service strongly recommends that Caltrans eliminate the McConigle, Southerly, Watson and Barczewski alignments from further consideration in the EIR, based on impacts to vernal pools, other wetlands, and critical habitat connections. We also discourage adoption of the Framework and IPR alternatives based on their impacts to a core biological resource area and their conflicts with regional planning efforts. Based on information provided in the report, maps provided through regional conservation planning efforts, and our knowledge of the project area the Service concurs with Caltrans that the Northerly and Northerly Variation alignments provide the least biologically damaging alternatives.

The Service remains willing to work with Caltrans to help ensure that biologically infeasible alternatives are eliminated early in the planning process, and that project impacts are adequately mitigated. We recommend that avoidance and minimization of biological impacts be utilized to the maximum extent practicable, and that remaining impacts be mitigated to a level below significance through compensation measures. If you have any questions, please contact Ellen Berryman of this office at (619) 431-9440.

Sincerely,

Gail G. Kobetich
Field Supervisor

ø1-6-HC-94-404
cc: Bill Tippets, CDFG

FROM
FINAL
SR-56
EIR
VOLUME IV

KEA Environmental

1420 Kettner Boulevard
Suite 620
San Diego, CA 92101

619-233-1454
Fax-233-0952

January 16, 1998

Mr. Scott Vurbeff
City of San Diego Development Services Department
1222 First Avenue, 5th Floor
San Diego, CA 92101

SUBJECT: **Focused Vernal Pool Survey for State Route 56**

Dear Mr. Vurbeff:

KEA Environmental Inc., (KEA) and Sweetwater Environmental Biologists (SEB) conducted a focused survey for vernal pools on May 5, 1997 as part of on-going biological studies for the State Route 56 (SR-56) project. Prior to the May 1997 focused survey, biological surveys for the SR-56 project had been conducted by SEB (1993 and 1996). The previous surveys led to the detection of vernal pools in Subarea IV, both north and south of Deer Canyon which were reported in the draft EIR for State Route 56. A public comment on the draft EIR (December 1996) was submitted by the Southwest Center for Biological Diversity (SCBD) who surveyed the eastern end of the alignments. Their survey on March 2, 1997 revealed three additional vernal pools just south and west of existing residential development in Rancho Peñasquitos. One of the pools detected by SCBD was reported to support San Diego fairy shrimp (*Branchinecta sandiegoensis*) and San Diego button-celery (*Eryngium aristulatum* var. *parishii*): these species are listed as endangered by the U.S. Fish and Wildlife Service (USFWS). An additional comment on the draft EIR recommended the evaluation of additional alternative alignments. Based on these comments, KEA and SEB conducted the focused survey for vernal pools to evaluate all suitable areas in the eastern portion of the project area that coincided with the Central and Northern alignments, plus the two new modified northern alignments. Surveys for fairy shrimp, in accordance with USFWS protocol, have been initiated and will continue through the 1998 wet season. This letter report presents the findings to date of the focused surveys for vernal pools, anticipated impacts, and conceptual mitigation. Preliminary results from focused fairy shrimp surveys are incorporated herein; however, the impacts and necessary mitigation may need to be modified once the fairy shrimp surveys have been completed.

METHODS

In early April, SEB biologist Larry Sward conducted a reconnaissance survey of the vernal pools reported by SCBD. On May 5, 1997 KEA biologists Paula Jacks and Lyndon Quon, and Larry Sward conducted the focused survey of all suitable vernal pool areas in the eastern portion of the project area, south and east of the crossing of Carmel Mountain Road, and in the area near the Camino Ruiz Interchange (Exhibit 1). The surveys included a directed search throughout the mesas in these areas that focused on all openings in the surrounding native scrub habitat. A 1 inch = 200 feet color aerial photograph taken during the wet season (February 1995) was used to help identify

potential vernal pools in the area. The long and short axis of each pool basin detected was recorded with a Global Positioning System (GPS); these data points were used to map the location and calculate the area of each basin. Notes were collected in the field on the floral composition of each pool, the presence of visible invertebrates, the amount and type of disturbance, general information on the watershed surrounding each basin, and other features. The GPS data were subsequently plotted onto 1 inch = 100 feet topographic maps. Watersheds surrounding each basin, or cluster of basins were drawn in the office based on the topographic mapping and notes taken in the field. The watershed for the basins located in the dirt road bed were effectively delineated by the bermed edges of the road. The area of each basin and watersheds, where relevant, were calculated based on the GPS data and hand-drawn mapping.

Based on the proximity of the alternative alignments, and a discussion with USFWS (September 23, 1997 with Susan Wynn), surveys for fairy shrimp focused on the basins south and east of the crossing of Carmel Mountain Road. On October 24, 1997, USFWS permitted KEA biologist Chris Wilcox conducted dry season sampling for fairy shrimp at four of the seven basins in this area (dry season sub-sampling conducted per USFWS). There had been no appreciable rain prior to this date, and the pool basins at the site were still dry. All soil was collected from the top 1 cm across a 10 cm x 10 cm area at 10 points spread across the pool. The basic design was to use two perpendicular transects and sample at evenly distributed locations along these transects to ensure coverage of the entire basin. This procedure was modified for irregularly shaped pools and pools with deep portions. In these instances some of the sample points that would have fallen near the edge of the pool were reallocated to areas that needed additional sampling. After collection, 50 cc of the soil was passed through a series of sieves and all particles under 350 μ and over 125 μ were collected. A subsample of this was taken and examined under the microscope for Branchiopod cysts. The remaining portion of the soil was placed in a narrow-mouth plastic container along with 100 ml of water and agitated. After allowing an hour for the clay particles to settle and the cysts to rise to the water surface, the top layer of water was siphoned off and passed through a paper filter. The material on the filter was then examined for cysts.

The first wet season sampling was conducted on December 16, 1997. The soil in the surrounding areas was moist, but not saturated. All four pools sampled during the dry season contained water on that date and had for the previous two weeks. The other three basins in this area did not hold water on the date of the first wet season sampling. Aquatic invertebrates were sampled using a 13 cm x20 cm fine mesh aquarium net. Where possible the net was pulled through the water for 0.5 meter in three separate portions of the pool. For each net sweep the net was kept against the pool bottom to maximize the volume of water swept. After each sweep the net contents were examined. If fairy shrimp were present the males were collected and placed in alcohol in a 50 ml vial. Data were taken on the age and reproductive condition of the females captured; however, animals were not collected. General observations on the pool condition such as water clarity, presence of filamentous algae, macrophytes, Ph, sediment oxygenation, and temperature were record Dissolved oxygen was not recorded as all of the pools were very small (less than 3 meters in length and were well mixed by the wind. Due to these factors, the dissolved oxygen would be at or near

saturation, in the range of 10 to 12 ppm. After the sampling was completed, all of the male fairy shrimp collected were identified using the key written by D. Belk.

FINDINGS

A total of 15 basins were identified during the May 1997 survey. Eight of the basins are located in the previously mapped vernal pool area north of the future SR-56/Camino Ruiz interchange; the remaining seven are located in the eastern portion of the study area (Exhibit 2). The basins range in area from 72.00 to 680.45 square feet, the largest being basin #10, located in the vicinity of the proposed SR-56/Camino Ruiz interchange (Table 1). The basins mapped were delineated on the basis of floral species distributions and topographic features. Eleven of the basins supported vernal pool indicator species. The remaining four basins that did not support vernal pool indicator species contained plant species associated with vernal pools and other wetlands, or showed evidence of ponding, i.e., algal mat or presence of ostracods (Table 1). Vernal pool indicator species are those listed by Zedler (1987, Table 6A) and described as plants that occur within pool basins and that are largely restricted to vernal pools within coastal California. Vernal pool associates are those listed by Zedler (1987, Tables 6B and 6C) and described as plants often found in vernal pools but that are as common or more common in other habitats. For example, grass poly (*Lythrum hyssopifolia*) is a European native (Hickman 1993) species common in vernal pools and other moist places that has been reconsidered by Zedler as a vernal pool associate (Zedler, personal communication, 1996).

The following vernal pool indicator species were detected in those basins that supported indicator species: aquatic pygmy-weed (*Crassula aquatica*), water-starwort (*Callitriche marginata*), or woolly marbles (*Psilocarphus brevissimus*). The total cover of these plants was relatively low. In fact, among the three basins that occurred in the road bed in the eastern portion of the project area, only basin #3 held woolly marbles and only two individuals of this plant species were detected at the upper edge of the basin. Vernal pool #10 displayed the greatest floral diversity of vernal pool indicators and associate species among those surveyed (Table 1). This basin, which spanned over 100 feet in length, appears to be the remnant of a trench that was created in this area; this trench is approximately 20 inches deep and was saturated at the time of the May floral survey. Pool #10 supported water-starwort, Howell's quillwort (*Isoetes howellii*) and over ten large specimens of San Diego button-celery. San Diego button-celery was easily detectable in this basin; therefore, it is assumed that if it were present in other basins it would have been detectable during the focused surveys. Based on this assumption, San Diego button-celery is not believed to occur in the other basins that were surveyed. In general, the pools near the SR-56/Camino Ruiz interchange are deeper and appear less disturbed than others, except for the historical trenching that probably formed pool #10. The seven basins in the eastern portion of the study area are relatively shallow and are more disturbed, undoubtedly due to the proximity of the residences and construction associated with that development.

The seven basins in the eastern portion of the study area are the focus of the fairy shrimp sampling (per USFWS). No fairy shrimp cysts were detected in any of the dry sediment samples taken. Fairy shrimp were found in pools #3 and #5 during the first wet season sampling. In pool #3 one adult

male was found, it was identified as a San Diego fairy shrimp. No females were found. The pool was relatively small and it had developed a modest aquatic invertebrate community containing chironomid worms, water beetles, and fairy shrimp. Due to the small size of the pool, sampling was kept to a minimum to reduce the impact to the population; therefore, although only one male shrimp was found during surveying, additional individuals may have gone undetected. Pool #5 contained a large number of shrimp. Sampling recovered four male fairy shrimp, nine females with cysts, and one adult female without cysts. All of the males were collected and identified as San Diego fairy shrimp. The population in pool #5 appears to be healthy and reproductive. In addition to fairy shrimp this pool had an abundant and diverse aquatic invertebrate community, including primarily ostracods and chironomids. None of the pools sampled had filamentous algae, and all of them had a light algal film on the water surface. Descriptions of the pools during the first wet season sampling are given in Table 2. Assuming the persistence of ponding water, all seven of the basins in the eastern portion of the study area will continue to be surveyed for fairy shrimp throughout the 1998 wet season.

REGULATORY SETTING AND SIGNIFICANCE OF THE FINDINGS

Vernal pool habitat is regulated by the U.S. Army Corps of Engineers (ACOE) and the U.S. Fish and Wildlife Service (USFWS). Proposed impacts to this habitat would mandate the processing of a 404 permit with the ACOE which would be reviewed by USFWS, among other agencies. San Diego butterfly is listed as endangered by USFWS. In addition, San Diego fairy shrimp has been detected in two of the basins. Additional San Diego fairy shrimp, and possibly Riverside fairy shrimp, both of which are listed as endangered by the USFWS may be detected as the wet season sampling is completed. Proposed impacts to any of these species would be evaluated as part of the ACOE 404 permit and would require that the ACOE conduct a formal consultation with the USFWS in accordance with Section 7 of the Endangered Species Act.

IMPACTS

The assessment of impacts is based on the maximum grading limits for the ultimate freeway configuration for all four alternative alignments (Exhibit 1). Vernal pool habitat would be directly impacted by all four alignment alternatives. The Central Alignment and the Modified Northern D and F alignments would each impact the same four basins and each would cumulatively affect a total of 0.03 acre (1,192.15 square feet) of vernal pool basin area (Table 3). The Northern Alignment would impact three separate basins that cumulatively would affect a total of 0.01 acre (568.45 square feet) of vernal pool basin area. No sensitive vernal pool plant species would be impacted by the alternative alignments. To date, San Diego fairy shrimp have been detected in basins #3 and #5. These basins would be impacted by all but the Northern Alignment (Table 3 and Exhibit 2). Fairy shrimp may be detected in additional basins as the 1998 wet season sampling continues. Any impact to vernal pool habitat would be significant.

Construction activities within the watershed of any vernal pool would be considered an indirect impact to any vernal pool basin associated with the watershed. Based on calculations of the ultimate

freeway configuration, all four alignment alternatives would impact vernal pool watersheds (Table 3). The Central Alignment would impact 0.15 acre (6,735.74 square feet) within three different watersheds. The Northern Alignment would impact three watersheds by a total of 0.19 acre (8,337.65 square feet). Impacts to two vernal pool watersheds associated with the Modified Northern D Alignment would consist of 0.14 acre (6,032.37 square feet). The Modified Northern F Alignment would impact 0.11 acre (4,735.24 square feet) over three vernal pool watersheds. These impacts would directly affect portions of watersheds. Minor encroachment into a watershed, such as is depicted for watershed B in Exhibit 2, may be able to be designed in a manner that the vernal pool basin within the watershed is not compromised. However, impacts to a significant portion of the watershed would likely result in significant indirect impacts to the basin(s) within the watershed.

MITIGATION

Direct impacts to vernal pools shall be reduced to below a level of significance through offsite acquisition of vernal pool habitat at a 2:1 ratio based on the city's Draft Biological Guidelines for Environmentally Sensitive Lands (ESL) regulations, to the satisfaction of the City Environmental Review Manager, Caltrans, USFWS, ACOE, and CDFG. This ratio may be negotiable for indirect impacts. The negotiated ratio multiplied by the combined area of the vernal pool basin and watershed impacted would determine the area needed for mitigation. The number of pools to be acquired for mitigation will depend on the size of the mitigation pools. The location of the offsite vernal pool mitigation land shall be determined based on the availability of such lands at the time a final alignment has been selected by the City Council, in consultation with the resource agencies.

Indirect impacts to vernal pool basins (i.e., most direct impacts to vernal pool watersheds) may be mitigated through implementation of a monitoring program per the City's vernal pool management guidelines. This would include monitoring these indirectly affected pools for several years to determine the level of continued pool function. If the multi-year monitoring program were to determine compromised pool functions, additional mitigation would be required at a later time. It would be economically more efficient, however, to immediately assume compromised function of these pools and mitigate indirect impacts similar to proposed mitigation for direct impacts prior to the actual construction impact.

Sincerely,

Paula M. Jacks

Paula Jacks
Senior Biologist/Project Manager

encls: Exhibits 1 and 2
Tables 1, 2, and 3

Table 2. Water Chemistry and Physical Measurements Recorded on December 16, 1997 for Vernal Pools Associated with the State Route 56 Alignment Alternatives

Pool Number	3	4	5	7
Turbidity	high	low	low	high
Ph	6.5	6.5	6.5	7.4
maximum depth	4 cm	2 cm	5 cm	6 cm
pool width	0.3 m	0.3 m	2 m	2 m
pool length	1 m	0.5 m	3 m	3 m
water temperature	20 oC	19 oC	21 oC	18 oC
Sediment Oxygenation	aerobic	aerobic	aerobic	aerobic

Table 3. Vernal Pool Basin and Watershed Impacts Associated with the State Route 56 Alignment Alternatives

Alignment	Basins Directly Affected	Basin Impact (Sq. Ft.)	Basin Impact (Acres)	Watersheds Affected	Watershed Impact (Sq. Ft.)	Watershed Impact (Acres)
Central	2, 3, 4 and 5	1,192.15	0.03	A, B, and C	6,735.74	0.15
Northern	2, 4, and 6	568.45	0.01	A, B, and C	8,337.65	0.19
Modified Northern D	2, 3, 4, and 5	1,192.15	0.03	A and C	6,032.37	0.14
Modified Northern F	2, 3, 4 and 5	1,192.15	0.03	A, B, and C	4,735.24	0.11

Table 1. Results of the May 1997 Vernal Pool Survey for State Route 56

Pool Id #	Basin Area Sq. Ft.	Watershed I.D.	Watershed Area	Vernal Pool Indicator Species	Vernal Pool Associate Species	Disturbance Level and Type	Comments
South and East of the Crossing of Carmel Mountain Road							
1	519.32	A	9,246.54	*Crassula aquatica*	*Juncus* [illegible] *Lythrum hyssopifolia*	Moderate: Trash	algal mat
2	72.00	A	9,246.54	*Psilocarphus brevissimus*	*Juncus bufonius*	Low: Trash	shallow, algal mat
3	357.54	----	----	*Psilocarphus brevissimus*	*Juncus bufonius, Polypogon monspeliensis*	High: Road, & Vehicle Tracks	ostrocods, two (2) Psilocarphus on "bank" of basin
4	323.07	----	----	-----	-----	High: Road, & Vehicle Tracks	deepest road depression, algal chips
5	439.54	----	----	-----	*Juncus bufonius*	High: Road, & Vehicle Tracks	ostrocods, scant Juncus on "bank" of basin
6	238.71	C	6,848.60	*Psilocarphus brevissimus*	*Juncus bufonius, Polypogon monspeliensis*	Low: Trail	shallow pool in a deer trail
7	183.87	B	13,357.44	-----	*Juncus bufonius, Lythrum hyssopifolia, Polypogon monspeliensis*	Moderate	
North of the Crossing							
8	344.89	----	----	-----	*Juncus bufonius, Lythrum hyssopifolia, Polypogon monspeliensis*	Low: Trash	ostrocods, algal mat
9	445.24	D	2,959.16	*Crassula aquatica*	*Juncus bufonius, Lythrum hyssopifolia, Polypogon monspeliensis, Rumex crispus*	Low: Vehicle Tracks & Berm	about 18 inches deep, appears to be scooped out, algal mat, ostrocods
10	680.45	E	3,252.11	*Callitriche marginata, Eryngium aristulatum, Isoetes howellii*	*Eleocharis macrostachya, Polypogon monspeliensis*	Low: Vehicle Tracks & Human Disturbance	ostrocods, algal mat
11	247.4	F	6,292.24	*Callitriche marginata*	*Polypogon monspeliensis*	Low	very shallow, algal mat
12	247.59	F	6,292.24	*Callitriche marginata*	*Eleocharis macrostachya, Juncus bufonius*	Low	
13	111.97	F	6,292.24	*Crassula aquatica*	-----	Low	very shallow, algal mat, higher elevation than #12, cobbly
14	152.32	F	6,292.24	*Crassula aquatica*	-----	Low	very shallow, algal mat, higher elevation than #12, cobbly
15	530.76	F	6,292.24	*Callitriche marginata*	*Polypogon monspeliensis*	Low: Unidentified Human Disturbance	algal mat, cobbly

SAN DIEGANS FOR RESPONSIBLE FREEWAY PLANNING

c/o L. Crueger
P.O. Box 3448
Rancho Santa Fe, CA 92067
(858) 756-4880

30 December 1999

Ms. Ellen Lirley
Coastal Planner
California Coastal Commission
San Diego Coast District Office
3111 Camino Del Rio North
San Diego, CA 92108

Dear Ms. Lirley:

Enclosed is a copy of a letter published in today's edition of the San Diego Union Tribune covering the issues raised in my letter to you of December 27.

Our group believes it is essential that prior to issuing its permits the Commission require a study of the impacts of siltation resulting from both SR-56 and Pacific Highlands Ranch on federally endangered species within the Commission's area of jurisdiction.

We appreciate your consideration of our concerns.

Sincerely yours,

Leigh C. Crueger

Leigh C. Crueger

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UNION TRIBUNE
12/30/99

Letters to the Editor

The San Diego Union-Tribune welcomes letters to the editor. To be considered for publication, a letter must include a daytime phone number and, if faxed or mailed, be signed. It may be sent to Letters Editor, *The San Diego Union-Tribune*, Post Office Box 120191, San Diego, CA 92112-0191, faxed to (619) 293-1440 or e-mailed to letters@uniontrib.com. Letters may be edited. Letters submitted may be used in print or in digital form in any publication or service offered by the Union-Tribune Publishing Co.

Route 56 completion entails environmental risks

Re: "A stunning court decision perils Route 56 completion" (Opinion, Dec. 24):

Lisa Ross condemns the Bolsa Chica court decision which prohibited a landowner from eradicating a "diseased" grove of eucalyptus trees to build a housing project in Orange County. She correctly notes the decision imperils the completion of state Route 56.

But SR-56 would destroy much more than a few diseased trees. Its environmental impact report acknowledges that its completion would destroy a number of vernal pools which contain San Diego Fairy Shrimp, a federally endangered species.

Siltation caused by the freeway also would imperil Los Peñasquitos Lagoon, designated as an "impaired" water body under Section 305 of the Clean Water Act. The lagoon is home to four federally endangered birds, the Belding's Savannah Sparrow, the Light-footed Clapper Rail, the California Least Tern and the Brown Pelican.

Before issuing permits for the road, the California Coastal Commission and the U.S. Army Corps of Engineers should require the siltation problem to be analyzed and quantified.

The same holds true for the permits required for developing Pacific Highlands Ranch. The EIR says 14 million cubic yards of grading is needed for the 5,000 houses planned. The resulting siltation might eliminate Los Peñasquitos Lagoon as a viable habitat for these endangered species.

LEIGH C. CRUEGER
San Diegans for
Responsible Freeway Planning

SAN DIEGANS FOR RESPONSIBLE FREEWAY PLANNING
c/o L. Crueger
P.O. Box 3448, Rancho Santa Fe, CA 92067

27 December 1999

Ms. Ellen Lirley
Coastal Planner
California Coastal Commission
San Diego Coast District Office
3111 Camino Del Rio North
San Diego, CA 92108

Dear Ms. Lirley:

Our organization is deeply concerned about the effects of siltation on Los Penasquitos Lagoon (an "impaired" water body under Section 305 of the federal Clean Water Act) that would result from construction of SR-56 and Pacific Highlands Ranch.

Although you maintain that very few of Pacific Highlands' 5,400 houses will be within the Commission's direct jurisdiction. the reality is that the projected 14,000,000 cubic yards of grading will have a serious indirect impact on Los Penasquitos Lagoon. As you no doubt are aware, the Lagoon is home to four federally endangered bird species.

We recommend that the issue of siltation in this already "impaired" water body be analyzed and quantified before a final permit is issued.

Our attorneys have already filed a brief with the U.S. Army Corps of Engineers concerning this matter. We are reviewing the issues carefully as a preliminary to filing a federal action under the Endangered Species Act, and/or an action based on the State Court's Bolsa Chica decision.

Thank you for your consideration.

Sincerely yours,

Leigh C. Crueger

Leigh C. Crueger

2) Issue

Would implementation of the plan result in a substantial change in topography or ground surface relief features?

Impacts

a) Subarea Plan 1

Development of Pacific Highlands Ranch pursuant to Plan 1 would substantially alter the existing landform. The undisturbed character of the site north of McGonigle Canyon would be replaced by the development of approximately 1,100 acres (41 percent) of the project site and require grading on the numerous mesa top areas and tributary drainages. With the exception of the MSCP north-south wildlife corridor and the steep slopes along the northern boundary, the project site north of McGonigle Canyon would be graded to accommodate the proposed land uses. In the southern portion of the site, McGonigle/Deer Canyons and Santa Monica Ridge would be retained as MSCP open space. Figure 4E-4 illustrates the conceptual grading plan proposed under Plan 1 for Pacific Highlands Ranch. The proposed concept grading plan for Plan 1 incorporates the grading plans associated with SR-56 Alignment "E." Grading for the freeway through Pacific Highlands Ranch would disturb approximately 150 acres of the site.

Overall, the total earthwork quantity for the entire subarea under Plan 1 would be approximately 14,000,000 cubic yards of excavation and fill, which would be balanced over the entire site. The amount of earthwork to implement the proposed grading concept would require approximately 11,200 cubic yards per graded acre, and the maximum depth of cut would be approximately 30 feet and the maximum depth of fill would be approximately 50 feet.

Development of the various land uses throughout the project site would require numerous manufactured slopes greater than 30 feet in height, with a maximum height of approximately 75 feet. Figure 4E-3 shows these slopes under Plan 1.

b) Subarea Plan 2

In a similar fashion, development of Pacific Highlands Ranch pursuant to Plan 2 would also substantially alter the existing landform. Figure 4E-5 illustrates the grading concept proposed under Plan 2 for Pacific Highlands Ranch. As with Plan 1 above, the proposed concept grading plan for Plan 2 incorporates the grading plans associated with SR-56. Grading for the freeway through Pacific Highlands Ranch under Plan 2 would disturb approximately 150 acres.

Overall, the total earthwork quantity for the entire subarea under Plan 2 would be nearly identical to the cubic yards of excavation and fill discussed above for Plan 1. Development of the various land uses throughout the project site under Plan 2 would also require numerous manufactured slopes greater than 30 feet in height, with a maximum height of 50 feet.

c) Carmel Valley Neighborhood 10 Precise Plan

As noted in the Project Description (see Figures 3-5 and 3-6), another component of the proposed MHPA boundary adjustment includes encroachment into previously designated open space within the Neighborhood 10 Precise Plan. As described in the previous EIRs for Neighborhood 10 (City of San Diego 1993 and 1997), landform alteration impacts were identified as significant. Filling of this small tributary canyon within the central portion of Neighborhood 10 (approximately 8.1 acres) to create a pad area for 22-24 additional single-family units would create additional landform alteration impacts.

Significance of Impacts

a) Subarea Plan 1 and Plan 2

Both grading concepts associated with the proposed land use scenarios would require substantial alteration of the topography to develop and access the site. The amount of earthwork anticipated under both Subarea Plans would substantially exceed the City's significance threshold for grading impacts of 2,000 cubic yards per graded acre. The filling of drainages and grading of the broad mesa areas would represent alterations to the existing topography and are considered to be significant direct and cumulative landform alteration impacts.

b) Carmel Valley Neighborhood 10 Precise Plan

The additional area of grading (canyon fill and associated manufactured slope) within Neighborhood 10 would represent a significant landform alteration impact.

Mitigation, Monitoring, and Reporting

a) Subarea Plan 1 and Plan 2

Specific mitigation measures which would be required at the future tentative map stage include that prior to issuance of a grading permit, Development Services shall review the grading plans for consistency with the subarea plan guidelines. These measures include using slope rounding and blending techniques where manufactured slopes meet natural slopes, varying slope gradient and width, and contouring edges to achieve a more natural appearance. Implementation of these measures would reduce the landform alteration