

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4402
 767-2370



Filed: December 4, 2000
 49th Day: January 22, 2001
 180th Day: June 2, 2001
 Date of Extension Request: May 18, 2001
 Length of Extension: 90 Days
 Final Date for Commission
 Action: August 16, 2001
 Staff: EL-SD
 Staff Report: July 17, 2001
 Hearing Date: August 6-10, 2001

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-140

Applicant: San Diego Gas and Electric

Agent: Donald E. Haines

Description: Replacement of a damaged wooden utility pole in the San Dieguito Lagoon with a new pole adjacent to the existing pole site. Work has already been completed pursuant to Emergency Permit #6-00-140-G. The project results in 1.77 sq.ft. of permanent salt marsh impacts and 913 sq.ft. of temporary salt marsh impacts, and the applicant proposes 1,830 sq.ft. of enhancement/mitigation (exotics removal and revegetation with natives).

Zoning	Floodway
Plan Designation	Floodway
Ht abv fin grade	60 feet

Site: Pole Number Z90293 on Tieline 666 adjacent to Racetrack View Drive, east of Jimmy Durante Boulevard, Del Mar, San Diego County.
 APN 299-201-07

Substantive File Documents: Certified City of Del Mar LCP Land Use Plan and draft Implementation Plan; Streambed Alteration Permit #5-243-00

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

Staff recommends approval of this application to retain development authorized pursuant to Emergency Permit #6-00-140-G. The applicant performed mitigation for the 1.77 sq.ft. of permanent wetland impact by plugging the hole where the damaged pole was removed with the soil and vegetation excavated for the new pole. In addition, the

California Department of Fish and Game (CDFG) has required additional mitigation for temporary impacts, in the form of removal of non-native vegetation and replanting with natives, in their approval of Streambed Alteration Agreement #5-243-00. Special Condition #1 requires submittal of a mitigation and monitoring program consistent with that agreement requiring 1,830 sq.ft. of wetland enhancement. Special Condition #2 requires submittal of the U.S. Army Corps of Engineers (ACOE) permit; copies of other required permits were submitted with the application. The Commission must act on this permit application in August, as no more time extensions are allowed under the Permit Streamlining Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-00-140 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. Mitigation and Monitoring Program. WITHIN THIRTY DAYS OF COMMISSION ACTION ON THIS PERMIT, the applicant shall submit to the Executive Director for review and written approval, a written agreement to perform mitigation and monitoring consistent with the requirements of the California Department of Fish and Game under Streambed Alteration Agreement #5-243-00. Prior to the commencement of enhancement/mitigation activities for project impacts, the applicant shall submit a copy of the adopted mitigation and monitoring program to the Executive Director, and shall subsequently submit copies of all monitoring reports and plans for any required remediation activities in the event of mitigation failure.

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

2. Other Permits. WITHIN THIRTY DAYS OF COMMISSION ACTION ON THIS PERMIT, the permittee shall provide to the Executive Director a copy of the permit approved by the U.S. Army Corps of Engineers, for the development herein approved. Any mitigation measures or other changes to the project required through this permit shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing to retain construction approved under Emergency Permit #6-00-140-G as permanent development. The development consisted of replacement of an existing damaged utility pole with a new pole. Both the existing and new poles are 60 feet in height and 18" in diameter. The new pole was installed adjacent to the existing one, the utility lines were transferred to the new pole, then the old pole was removed. Also proposed is approximately 1,830 sq.ft. of mitigation to address the temporary and permanent wetland impacts of the development.

Although this is a repair and maintenance activity, it was not exempt under Section 13252 of the California Code of Regulations, or pursuant to the Interpretive Guideline on Exclusions from Permit Requirements, since the activity occurred within wetlands (salt marsh). The project site is geographically located within the City of Del Mar, which does not have a certified Local Coastal Program, but is also on tidelands within the lagoon. For both reasons, permit jurisdiction remains with the Commission and Chapter 3 of the Coastal Act is the standard of review.

2. Environmentally Sensitive Habitat Areas (ESHA). The subject proposal involves the replacement of an existing utility pole within the wetlands of San Dieguito Lagoon, west of I-5. Also proposed is mitigation and monitoring for the 1.77 sq.ft. of permanent salt marsh impact and 913 sq.ft. of temporary salt marsh impact resulting from the project. The surrounding area consists of salt marsh vegetation. The following Coastal Act policy is most applicable to the proposed development, and states, in part:

Section 30233.

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

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

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

In this particular case, the proposed development meets the above requirements. The project represents an incidental public service activity to replace a damaged power pole and maintain electrical service to the area. Such activities are allowed in wetlands under Section 30233(a)(5). Moreover, the methods employed assure that, although the project site is wetlands, only minor (1.77 sq.ft.) permanent impacts to wetland vegetation occur. The repair work has already occurred pursuant to Emergency Permit #6-00-140-G and permits were also received from the U.S. Army Corps of Engineers (ACOE), the Regional Water Quality Control Board (RWQCB) and the California Department of Fish and Game (CDFG). The CDFG permit required mitigation, at a 2:1 ratio, for both permanent and temporary impacts, and suggested that enhancement in the form of removal of exotic vegetation would likely be appropriate considering the amount and nature of impacts.

The only permanent impact to wetlands was from the new 18" diameter pole, resulting in a 1.77 sq.ft. impact to salt marsh vegetation. However, there is no existing maintenance road in the area, so the repair workers had to access the site through salt marsh vegetation. Prior to issuance of the emergency permit, the applicant estimated temporary impacts could be as high as 913 sq.ft., but outlined a methodology to minimize this as much as possible. No machinery was brought into the wetlands; the workers conducted all repairs on foot, and the new pole was brought in and dropped into place by helicopter. Plywood sheets were placed on top of the wetland vegetation to create an access path and work platform. The 18" plug of wetland vegetation removed to install the new pole was preserved in burlap during the operation, then used to cap the hole where the old pole was removed. A final tally of impacts demonstrated a permanent impact of 1.77 sq.ft. and a temporary impact of 506 sq.ft.

The applicant performed 1:1 mitigation for the permanent impact by inserting the vegetation removed from the site of the new pole into the hole left by removal of the damaged pole. To assure that the vegetative plug regenerates successfully, the site is being monitored quarterly for one year. In addition, the plywood sheets were immediately removed from the wetlands upon project completion and the construction site has been restored to pre-project conditions. To date, the applicant has been unsuccessful in attempts to meet with a representative of the CDFG to develop a plan for the remainder of the mitigation required by that agency.

The Commission finds that, because of the nature and minimal scope of wetland impacts incurred in the permitted repair/maintenance operation, the proposed mitigation is both appropriate and adequate. Both the area of temporary impact, and the 18" hole created by removal of the damaged pole have already fully recovered. Special Condition #1 requires the applicant, within thirty days of Commission action, to submit a written commitment to perform mitigation activities consisting of 1,830 sq.ft. of salt marsh enhancement, which is also consistent with CDFG requirements. The condition further requires submittal of the enhancement/mitigation plan prior to conducting the enhancement and submittal of any subsequent monitoring reports. Should any remediation activities be required in the future, the condition also provides that plans for such activities be submitted to the Executive Director.

In summary, the proposed repair and maintenance activities are a permitted use in wetlands under the Coastal Act and the project is proposed to avoid all permanent impacts except the 1.77 sq.ft. surface area of the 18" diameter pole; this impact is unavoidable and is being mitigated. All temporary impacts are also mitigated. Under these parameters, the proposal is consistent with Section 30233 of the Act. Moreover, the actual work occurred previously under an emergency authorization; a recent site visit demonstrated that the area is fully recovered and no signs of the repair work remain. Therefore, the Commission finds that, as proposed by the applicant and conditioned herein, the development is fully consistent with the cited resource protection policies of the Coastal Act.

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

Section 30231.

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

The proposed repair and maintenance activity is not anticipated to have any adverse impacts on the water quality of San Dieguito Lagoon. The proposal involves the removal of an 18' diameter utility pole and its replacement with the same. The site is a portion of the San Dieguito Lagoon salt marsh wetlands. The original and replacement sites are very small and adjacent to each other, such that the pole replacement will not affect drainage patterns in the area. Furthermore, no increase in the amount of impermeable surfaces will occur as a result of the proposed project. Therefore, the Commission finds the proposed development, as conditioned to address other concerns, consistent with Section 30231 of the Act.

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

Section 30251

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

The project site is within a primarily publicly-owned natural open space area, the San Dieguito Lagoon, which consists of a mixture of salt and freshwater marshes and associated upland areas. The subject site itself is north of San Dieguito Road/Racetrack View Drive and consists of salt marsh vegetation. The entire lagoon is visually appealing although there are a number of power poles throughout the lagoon system. However, the removal of one 60' tall, 18" diameter pole and its replacement with another 60' tall, 18" diameter pole will not have adverse visual impacts because it will not significantly modify the overall appearance of the area. The repair activity did not remove large areas of vegetation, but rather a single, 18' diameter vegetative plug, which was then replanted in the hole left by removal of the damaged pole. Therefore, the Commission finds the proposal, as conditioned to address other concerns, consistent with Section 30251 of the Act.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as proposed and conditioned, such a finding can be made.

The site is designated Floodway in the certified City of Del Mar Land Use Plan, and is zoned Floodway within the Lagoon Overlay Zone. These designations allow open space and passive recreational uses, with no structural improvements permitted other than those required for infrastructure purposes (i.e., power poles, buried utility lines, etc.). Although the Commission has certified an Implementation Plan for the City, the approval included suggested modifications that were not adopted by the City within six months of the Commission's approval. Therefore, the Commission's certification has lapsed and the City's LCP is not effectively certified at this time.

The repair and maintenance activities did not require any discretionary approvals from the City of Del Mar, but did require permits from other state and federal resource agencies (CDFG, ACOE and RWQCB). For the Commission, the standard of review is

Chapter 3 of the Coastal Act, since the City's LCP has not been effectively certified to date, and because the project area consists of tidelands which will remain in Coastal Commission permit jurisdiction even after effective certification. As proposed and conditioned, the Commission has found the repair activities conducted pursuant to an emergency permit fully consistent with the applicable Chapter 3 policies of the Coastal Act, and thus approves retention of the repairs as permanent facilities. Therefore, the Commission finds that approval of the proposed development, as conditioned herein, will not prejudice the ability of the City of Del Mar to complete its LCP certification process.

6. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As discussed herein, the proposed development will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the water quality, biology and visual resource policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

6-00-140

Site

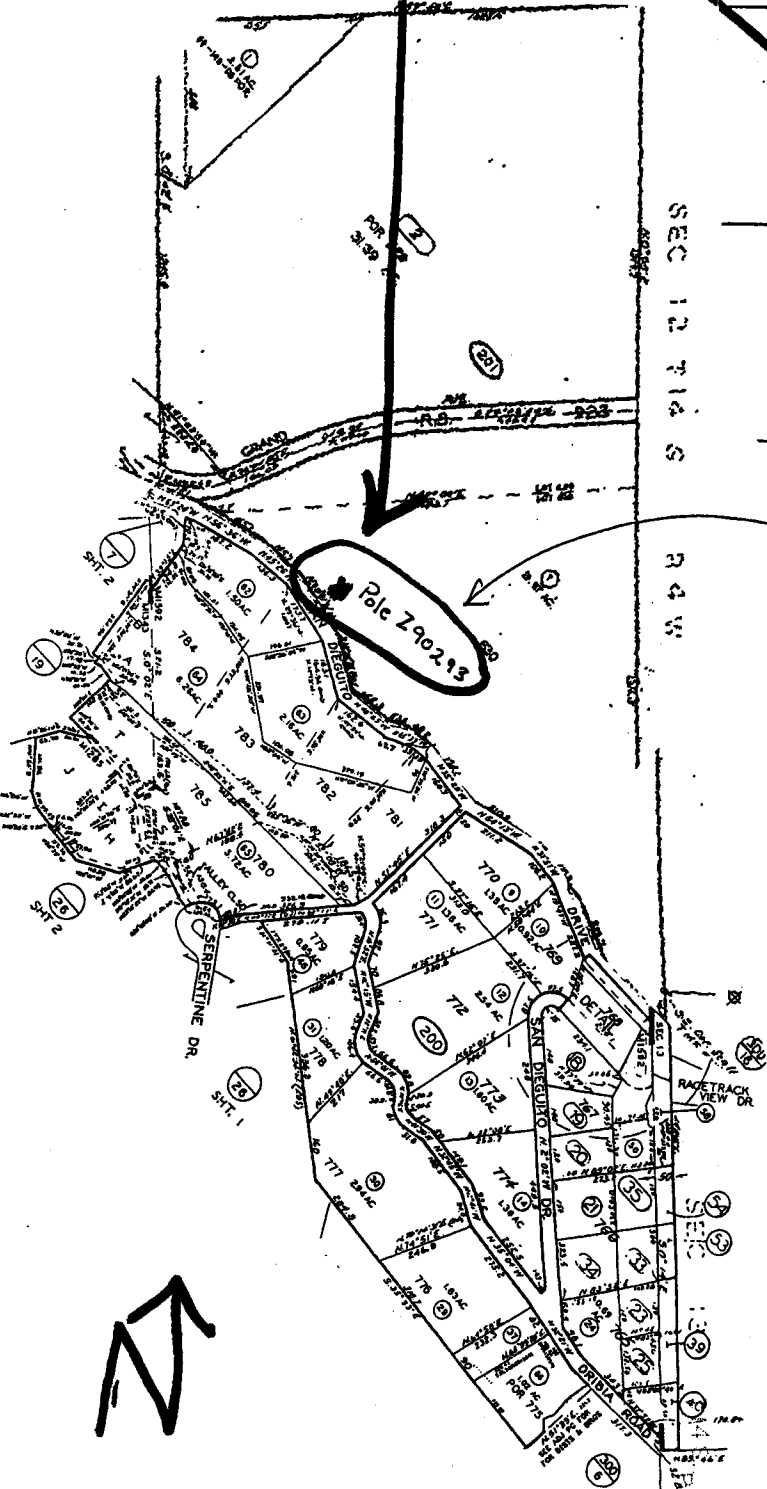
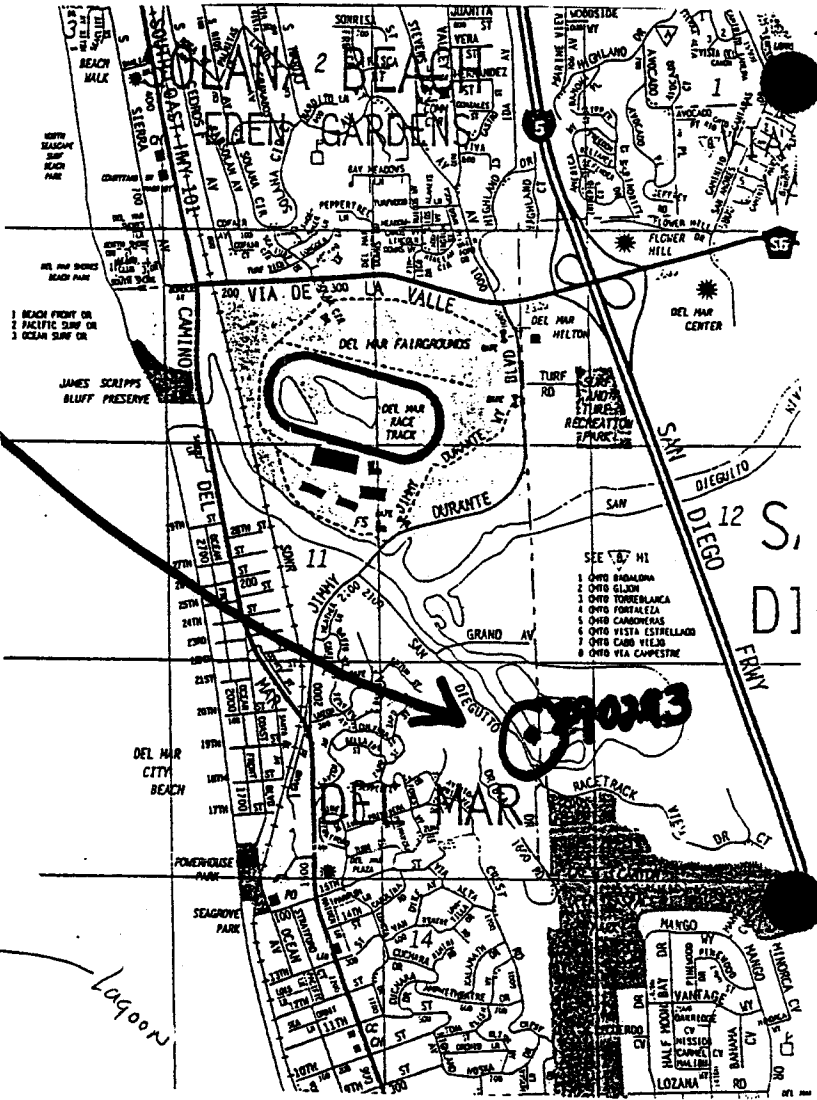
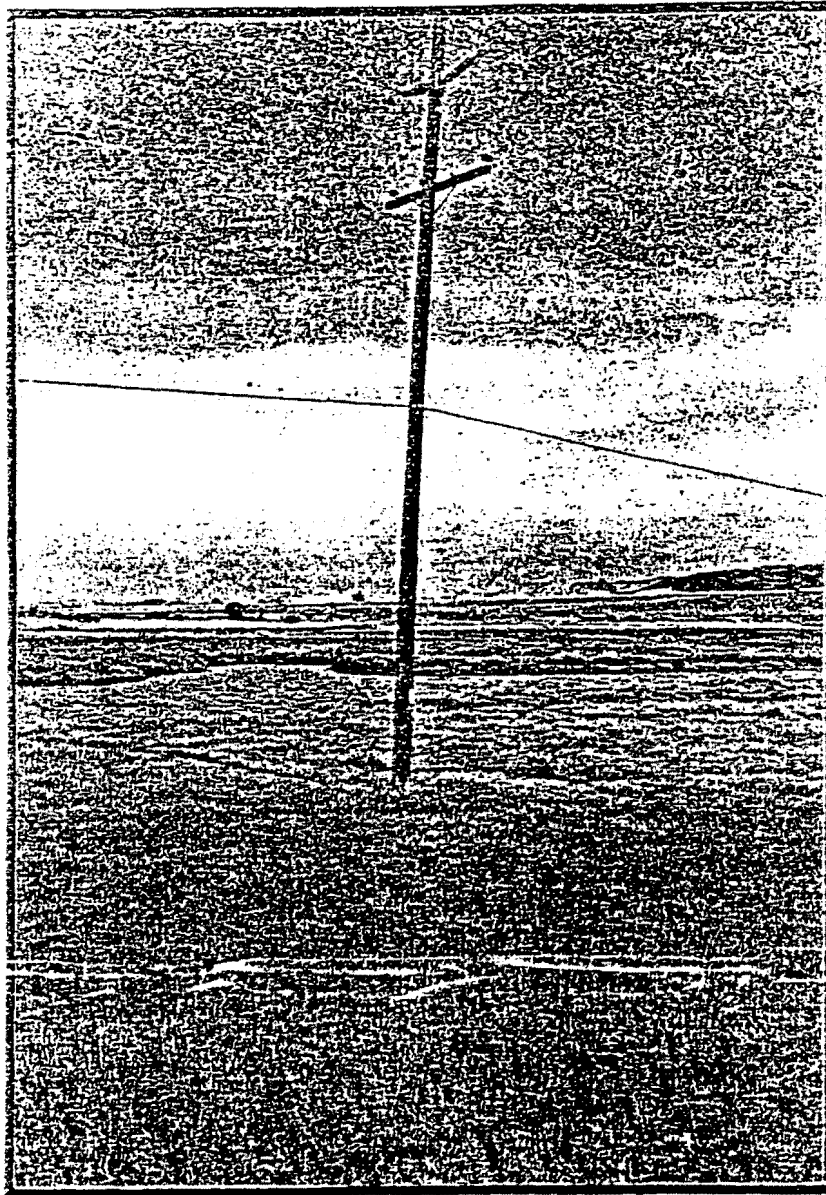


EXHIBIT NO. 1
 APPLICATION NO.
 6-00-140
 Vicinity Maps

6-00-140



PHOTOGRAPH 1

Pole Z92093, Looking East from Race-track View Road (Distance approx. 100') at San Dieguito Lagoon. Surrounding Habitat is Saltmarsh

EXHIBIT NO. 2
APPLICATION NO. 6-00-140
Site Photo <i>Damaged/Leaning</i> Pole <i>o</i>
 California Coastal Commission

RECEIVED

OCT 30 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

October 27, 2000

Ms. Ellen Lirley
Land Planner
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Ms. Lirley:

Enclosed is a permanent permit application for a Coastal Development Permit for San Diego Gas & Electric (SDG&E) to replace a wooden utility pole in the San Dieguito Lagoon (Figures 1 and 2). The old existing single wooden pole (Z90293) was split and leaning in a dangerous manner that threatened the safety and reliability of the entire tie line (Photograph 1). The project was completed September 22, 2000, after an emergency Coastal Development Permit (6-00-140-G) was issued.

The project removed a single wooden pole (Z90293) and installed a replacement pole, close to the same location (Figures 1 and 2). The previous pole was cut just below soil surface with the stub remaining in place and covered with the vegetation plug removed for installation of the new pole. The permanent impacts were limited to the area of the ground displaced by the new pole (approximately 1.77 square feet, i.e., assuming a diameter of 18 inches). Temporary impacts were limited to a radius of approximately 7 feet around the pole (approximately 154 square feet) and an area of 5 feet in width from Racetrack View Road to the pole site (approximately 70 feet in length for a total of 350 square feet) as there is no access road to this pole site. Total impacts amounted to approximately 506 square feet.

To avoid and minimize impacts to wetlands the following measures were taken:

- An on-site meeting was given by a qualified biologist to all construction staff associated with the project. Areas of special sensitivity (i.e., the salt marsh vegetation), rules for use of the access path and rules for work areas were identified.
- Work was conducted outside the bird breeding season (September 1 through March 14).
- Impacts to the southern coastal salt marsh were avoided to the extent practicable. All equipment staging areas were located on the dirt turnouts along Racetrack View Road where feasible. Because there was no current access (i.e., spur road) to the pole location, the access route chosen was approved by the biological monitor and one that minimizes impacts to the salt marsh.

EXHIBIT NO. 3
APPLICATION NO. 6-00-140
Methodology for Repair
California Coastal Commission

Done 1 of 7

- October 27, 2000 The construction area was restored to its pre-construction contours.
- A professional biologist monitored all pole replacement activities, including the helicopter drop in.

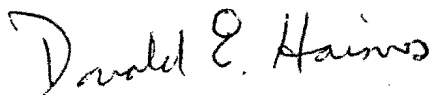
To minimize the disturbance to vegetation and wildlife caused by installing a new pole, the following conditions were met:

- The workers placed plywood sheets (for weight distribution) in the path to the proposed pole location.
- All activities were performed from the plywood surfaces.
- When digging the new hole, a plug of the salt marsh vegetation approximately 18 inches thick was removed and placed in burlap to keep it moist.
- All dirt that was removed from the new pole hole was placed on plastic sheeting and replaced in the new hole. The remaining dirt was used to fill the old (existing) hole.
- After the new pole was placed and the transmission wires transferred to the new pole, the old pole was cut off at its base and the remaining pole was cut into pieces and carried out of the marsh habitat by hand.
- The remaining hole was filled with dirt removed from the new hole and the vegetative plug placed on top. The new plug will be monitored for the next year at three-month intervals to evaluate the success of its regeneration. If the plug dies, it will be replaced and monitored for an additional year.

SDG&E was issued a 1600 Streambed Alteration Agreement (#5-243-00) by the California Department of Fish and Game (CDFG), an Army Corps of Engineers Nationwide Permit #12, and a 401 State Water Quality Certification (File No. 00C-099) with the Regional Water Quality Control Board (RWQCB). Pursuant to the requirements of the California Environmental Quality Act (CEQA), the CDFG filed a Notice of Exemption (NOE) on the project on October 10, 2000.

If you have any questions regarding the project, please call (619) 696-2412.

Sincerely,



Donald E. Haines
Senior Land Planner, Sempra Energy

