

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Date Filed: 5/30/02
49th Day: Waived
180th Day: 11/26/02
Date of extension request: 7/19/02
Length of extension: 90 days
Final Date of Comm. Action: 10/17/02
Staff: WNP-SD
Staff Report: 9/25/02
Hearing Date: 10/8-11/02

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-01-167

Applicant: San Diego Gas & Electric Company and Cabrillo Power I, LLC

Description: Proposed is a lot line adjustment affecting 11 lots that cover approximately 673 acres that include Agua Hedionda Lagoon, the Encina Power Plant and vicinity. Also proposed is after-the-fact approval for previous, unpermitted lot line adjustments that occurred between 1973 and 1998.

Site: East and West of Interstate 5, near Agua Hedionda Lagoon, Carlsbad (San Diego County) APN 206-070-11, 206-070-12, 210-010-24, 210-010-26, 210-010-37, 210-010-39, 210-010-40, 211-010-24, 211-010-26

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the permit with special conditions. The proposed development reconfigures lots encompassing 673 acres of land and water in and near Agua Hedionda Lagoon, including the entire lagoon itself. The primary issues raised by the development relate to protection of habitat resources and public access. Staff is recommending after-the-fact approval of the previous, unpermitted lot line adjustments and approval of the current proposed lot line adjustment with special conditions addressing open space conservation of sensitive resources within the areas affected by the lot line adjustments and preservation of existing public access. As conditioned, the proposed development is consistent with all applicable Chapter 3 policies of the coastal Act.

Due to Permit Streamlining Act requirements, the Commission must act on this application at the October 2002 hearing.

Substantive File Documents: Certified Agua Hedionda Land Use Plan; CCC files #6-97-83, #6-93-113, Carlsbad draft Habitat Management Plan (HMP), Certificate of Compliance Adjustment Plats for Parcels 1-11

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

1. MOTION: *I move that the Commission approve Coastal Development Permit No. 6-01-167 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. Conservation Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur on the delineated wetland, riparian, upland native habitat areas and steep slopes as described and generally depicted in Exhibit #5. Maintenance of overhead and underground utility areas are permitted within the restricted areas.

PRIOR TO 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 restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcel(s). 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 Commission amendment to this coastal development permit.

2. Lagoon Conservation Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur within Agua Hedionda Lagoon (proposed Lot 9 [All Water Lot] and the water portions of proposed Lots 1, 3 and 10 as depicted in Exhibit #3 except for the following development, if approved as an amendment to this coastal development permit or through a separate coastal development permit: dredging associated with operation of the power plant; maintenance of existing utility lines; caulerpa taxifolia eradication efforts; recreational activities in the lagoon including boating, swimming, and fishing; maintenance of equipment within the lagoon associated with the Hubbs Sea World Fish Hatchery; maintenance of the aqua culture facility in the outer lagoon; maintenance of the YMCA Aquatic Park in the middle lagoon; and other very minor incidental public facilities, restorative measures, or nature study.

PRIOR TO 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 restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcel(s). 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 Commission amendment to this coastal development permit.

3. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of itself and its successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Site History. Proposed is a lot line adjustment affecting 11 lots that cover approximately 673 acres under the applicants' ownership within and near Agua Hedionda Lagoon in Carlsbad (ref. Exhibit Nos. 2 & 3). The lot line adjustment adjusts the boundaries of parcels owned by SDG&E and Cabrillo Power that either contain the Encina power plant, or are in the immediate vicinity of the plant or Agua Hedionda Lagoon. The lot line adjustment is necessary because a federal antitrust

settlement and a California Public Utilities Commission Order relating to electric utility deregulation require SDG&E to divest its generating assets and require lots containing SDG&E-owned non-generating assets to be segregated from other lots that contain electricity generating assets. Also proposed is after-the-fact approval of unpermitted lot line adjustments that occurred between 1973 and 1998.

Prior to the passage of the 1972 Coastal Initiative ("Proposition 20"), SDG&E owned ten¹ lots in and immediately adjacent to Agua Hedionda Lagoon (ref. Exhibit #6 - 1972 map). Between 1973 and 1998, SDG&E recorded seven certificates of compliance without benefit of a coastal development permit. Most of these certificates of compliance did not significantly alter the pre-Proposition 20 configuration of the lots. The two most significant unpermitted lot line adjustments occurred during the 1990s. In 1995, SDG&E redrew some of the lot lines in the eastern portion of the property. The trapezoidal lot immediately west of the easternmost lot (ref. Exhibit #6 - the "Doc Kelly (Torrens)" lot), was essentially shifted to the southeastern corner of the property (ref. "Parcel B 98-125300" on Exhibit #2). The pre-1995 trapezoidal lot consisted primarily of open lagoon and wetlands. The post-1995 lot ("Parcel B" on Exhibit #2) consists of disturbed upland habitat immediately adjacent to Cannon Road. In 1998, SDG&E recorded a lot line adjustment with a neighboring property owner so that Cannon Road became the southeasterly border of Parcel B.

The proposed new lot line adjustment would separate the SDG&E maintenance yard from the Encina Power Plant and adjust parcel boundaries. According to the applicant, prior to the dredging of the lagoon in 1954 by SDG&E, the existing lot lines demarcated parcels comprised of land. However, when the lagoon was created for the purpose of providing cooling water for the SDG&E power plant, water areas were introduced in the form of the three water basins that comprise Agua Hedionda Lagoon. As a result, some parcels now include both land and water areas. Essentially, the proposal segregates generating from non-generating assets and differentiates land areas and lagoon areas into different parcels to more closely conform to the configuration of the Agua Hedionda Lagoon. The applicants indicate two parcels would be reconfigured so that the power plant and the SDG&E maintenance yard are located on separate lots, based on the California Public Utilities Commission mandated sale of the power plant property. The plant operators (Cabrillo Power) will own Parcels 3 through 7; SDG&E will retain ownership of the remaining parcels (1, 2, and 8 through 11). Parcel 9 (the inner lagoon) will be conveyed to Cabrillo upon approval of the project. The City of Carlsbad has issued unconditional Certificates of Compliance evidencing its administrative approval of the lot line adjustment.

According to the vegetation survey/slope analysis, the project site contains approximately 6.3 acres of riparian areas (scrub, woodland) and 11.0 acres of wetlands (marsh, estuarine, freshwater - the survey did not indicate whether any sensitive or rare species are present); approximately 260 acres of open water comprising Agua Hedionda Lagoon; approximately 29 acres are "dual criteria" slopes which are naturally vegetated (coastal

¹ In 1982, SDG&E acquired an eleventh parcel on the northwesterly shore of the lagoon, immediately west of the railroad right of way. It appears on Exhibit 2 as parcel 82-175943.

sage scrub) steep slopes (over 25% grade); approximately 157.2 acres of agriculture; 24.1 acres of native grassland. The rest of the property is described as Disturbed (8.1 acres), Urban Disturbed (150.5 acres) and Coastal Sage Scrub on non steep slopes (under 25% grade, 31.9 acres)

Agua Hedionda is one of six segments of the City of Carlsbad's LCP. The City has a certified LUP for this area; however, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review with the certified LUP used as guidance.

2. Wetlands/Sensitive Biological Resources/Visual Resources. The following Chapter 3 policies of the Coastal Act apply to the subject proposal and state, in part:

Section 30233 of the Coastal Act states, in part:

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
 - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
 - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

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

(7) Restoration purposes.

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

(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....

In addition, Section 30240 of the Coastal Act states:

(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.

Also, Section 30251 of the Coastal Act states in part:

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...

Additionally, the following policies are taken from the certified Agua Hedionda Lagoon LUP:

- 1.7 The area designated "Community Park" shall be zoned open space (OS).
Uses in this area shall be regulated by the open space zone and shall be sited so that there are no significant adverse impacts on agricultural lands, wildlife habitats and environmentally sensitive areas

2.7 Utility transmission and distribution facilities shall be allowed in wetland areas, provided that maintenance and construction of such improvements does not adversely impact environmentally sensitive areas and is consistent with Coastal Act policies.

4.4(b) Development, grading and landform alteration in steep slope areas (25%) shall be restricted. Exceptions may include encroachments by roadway and utilities necessary to reach developable areas. The maximum allowable density shall be calculated on the total lot area, although this may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations

Agua Hedionda is one of the lagoons identified by DFG as referenced in Section 30233(c) of the Coastal Act. Section 30233(c) allows alterations to specified coastal lagoons, including Agua Hedionda, only for very minor incidental public facilities, restorative measures, and nature study. As such, it is afforded greater protection than other similar areas in that allowable uses in the lagoon are significantly restricted. As such, the Commission is concerned with the proposed lot line adjustment and the potential for impacts to sensitive coastal resources resulting from the newly configured lots. According to the applicant, the lot line adjustment will not trigger any further development of the parcels, or change the density or intensity of land or water use. The proposal is just to facilitate the change of ownership relating to the sale of the power plant. Section 30106 of the Coastal Act defines "development" to mean "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act . . . and any other division of land, including lot splits." The proposed lot line adjustment is a division of land that would significantly reconfigure lots that include and border Agua Hedionda Lagoon. The land and water areas affected by the lot line adjustment include significant recreational and ecological resources. The proposed lot line adjustment, by affecting the location and distribution of potential future development, could have significant impacts on resources protected by the Coastal Act. The proposed lot line adjustment is therefore development and requires a coastal development permit. *See La Fe, Inc. v. Los Angeles County* (1999) 73 Cal. App. 4th 231.

In particular, the proposed lot line adjustment reconfigures lots that contain significant open water, wetland, riparian and sensitive native upland habitats (ref. Exhibit #5 showing proposed new lot configuration and distribution of habitat types on the property). For example, Parcel 9 of the reconfigured lots would consist entirely of open lagoon area, Parcel 3 would consist primarily of open lagoon area, portions of Parcels 1 and 10 would include open lagoon, and a significant portion of Parcel 10 would contain large areas of undisturbed native habitat. The applicant indicates that current zoning limits the kinds of development that can occur on the portion of the site that contains the majority of the biologically sensitive resources. This area contains the approximately 100-acre Hubb Park and 250 acres encumbered by power transmission lines. The applicant notes that the majority of this property is zoned as open space and as such the resources would be protected from inappropriate development through application of the

current open space zone. The applicant also indicates any proposed development activity subsequent to the lot line adjustment would be subject to a coastal development permit and would provide the Commission with an opportunity to ensure consistency with the Act and to protect coastal resources based on a specific proposal. The applicant also points out that LUP policy 2.7 provides that utility transmission and distribution facilities are allowed in wetland areas if sited and designed consistent with Coastal Act policies. The LUP is only used as guidance at this time and Chapter 3 policies are the standard of review with this application.

While the applicant indicates such resources would be protected under the current open space zoning applied to such areas, the Commission notes that the open space zone permits a number of uses such as playfields and athletic fields, golf courses; recreational campgrounds; stables and riding academies, public; swimming pools; tennis courts and other related cultural, entertainment and recreational activities and facilities. In addition, the Commission has not certified the current local zoning in this area and the zoning could be changed without Commission review. In several permit decisions regarding subdivisions and other divisions of land such as lot line adjustments, the Commission has imposed restrictions on future development in sensitive areas of the new or reconfigured lots (ref. CDP Nos. A-6-ENC-98-129/Brandywine; 6-99-78/Karp; 6-00-98/Kelly). It is important to impose such restrictions at the time the land is divided or reconfigured in order to assure that potential future owners receive notice of the restrictions that will apply to development of the lots. Absent such restrictions, future developers may assert an entitlement to more development than can be accommodated on the reconfigured lots consistent with the resource protection policies of Chapter 3 of the Coastal Act.

As noted, the property (Parcel 10) contains Hubb Park, portions of which are identified in the draft Carlsbad Habitat Management Plan (HMP) (December, 1999 with addendum) as a "hardline" open space area. The Carlsbad HMP is being prepared to satisfy the requirements of a federal Habitat Conservation Plan (HCP), and as a subarea plan of the regional Multiple Habitat Conservation Plan (MHCP). The MHCP study area involves approximately 186 square miles in northwestern San Diego County. This area includes the coastal cities of Carlsbad, Encinitas, Solana Beach and Oceanside, as well as the inland cities of Vista and San Marcos and several independent special districts. The participating local governments and other entities will implement their portions of the MHCP through individual subarea plans such as the Carlsbad HMP. Once approved, the MHCP and its subarea plans will replace interim restrictions placed by the U.S. Fish and Wildlife Services (USFWS) and the California Department of Fish and Game (CDFG) on impacts to coastal sage scrub and gnatcatchers within that geographical area, and will allow the incidental take of the gnatcatcher and other covered species as specified in the plan.

The Carlsbad HMP and the MHCP will meet criteria for the California Department of Fish and Game's (CDFG) Natural Communities Conservation Planning process (NCCP). The objectives of the southern California NCCP program include identification and protection of habitat in sufficient amounts and distributions to enable long-term conservation of the coastal sage community and the California gnatcatcher, as well as

other sensitive habitat types. Generally, the purpose of the HCP and NCCP processes is to preserve natural habitat by identifying and implementing an interlinked natural communities preserve system. Through these processes, the resource agencies are pursuing a long-range approach to habitat management and preserve creation over the more traditional mitigation approach to habitat impacts. Consistent with the intent of the HMP, the sensitive resources identified within Hub Park will be protected as open space through this permit action.

The draft HMP identifies that portions of Hub Park (eastern portion of property) have large concentrations of high quality native vegetation that is linked to other areas with concentrations of high quality native habitat. Critical vegetation communities include saltmarsh, freshwater marsh and riparian scrub. Major areas of coastal sage scrub are also present, as are small patches of grassland, southern maritime chaparral, southern mixed chaparral and coastal sage scrub/chaparral. Critical populations of saltmarsh, skipper butterfly, light-footed clapper rail, western snowy plover, California least tern and Belding's Savannah sparrow occur in the estuarine habitats associated with Agua Hedionda Lagoon. This coastal wetland is also critical for American peregrine falcon and California brown pelican. Finally, a major population of wart-stemmed ceanothus is associated with southern maritime chaparral east of the lagoon. Each of the above are identified as being either endangered, threatened, or rare by several of the resource agencies. The eastern portion of the property and the steep slopes adjacent to the lagoon contain habitat that is especially valuable because it provides habitat to some of the above species. It is therefore environmentally sensitive area as defined by Section 30107.5 and is protected by Section 30240.

Special Condition #1 requires that the wetland, riparian, grassland and coastal sage scrub areas be deed restricted as open space (ref. Exhibit #5). As noted, both steep and natural upland habitat areas are slated for open space protection in the draft HMP as a "Hard Line" area. Such areas are also protected under the Coastal Act. Pursuant to Section 30240 of the Coastal Act, coastal sage scrub in non-steep areas constitutes Environmentally Sensitive Habitat (ESHA) as it provides habitat for sensitive plants and animals, particularly when located near areas like coastal lagoons. ESHA is protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas. The non-steep coastal sage scrub contained onsite meets the criteria for ESHA because it is the only buffer left between subsequent development and the south shore of the lagoon and it connects to other large concentrations of high quality native vegetation.

Besides being worthy of protection because of their habitat value, steep slopes (greater than 25% grade) are identified for protection in Policy 4-4(b) of the certified Agua Hedionda LUP. Such areas provide slope stability and erosion control. These slopes rising from the shore of the lagoon are also highly scenic as viewed from I-5, a designated Scenic Highway, and as such are protected under Section 30251 of the Coastal Act.

Portions of the upland open space area contain utility areas, which are overhead and underground utility areas originating at the Encina power plant. While the LUP identifies that utility transmission and distribution facilities are permitted within open space restricted areas, maintenance and construction of such improvements must not adversely impact identified resources. Impacts associated with maintaining utility areas include removal of sensitive vegetation to reach areas in need of service or repair. Such impacts must be permitted through the coastal development permit process.

The proposed lot line adjustment also reconfigures the water areas associated with Agua Hedionda Lagoon. Proposed Lot 9 is an "all water" lot within the inner basin. Proposed Lot 3 contains most of the middle and outer basins of the Lagoon.² The applicant indicates the lagoon would be primarily located on these two lots because the lagoon provides water for operation of the power plant and changes in the level of the lagoon associated with power plant operations can affect the entire lagoon. In CDP #6-97-83, the Commission found that dredging of the inner basin was necessary to provide an adequate tidal prism to cool the power plant's generators. An all-water lot would provide reasonable economic use of Lots 3 and 9 because of the use of the water for operation of the power plant. Thus, the Commission does not object to the reconfigured lot. However, the power plant may one day cease operation. In order to forestall potential future claims that the Commission must allow fill of the lagoon in order to allow viable economic use of the property even though that use may be inconsistent with Section 30233, Special Condition #2 requires the applicant to record a deed restriction limiting future development in the lagoon to maintain already existing uses and other minor incidental public facilities, restorative measures, and nature study, consistent with Section 30233(c).

Appropriate current uses include: use of water for recreational activities, dredging for plant operations, caulerpa taxifolia eradication efforts, and maintenance of existing utility lines, recreational facilities, and aquaculture facilities. Only as conditioned can the Commission be assured that the proposed lot line adjustment will not lead to development within the Lagoon that is inconsistent with Section 30233.

The only unpermitted lot line adjustment that raises any issues regarding conformity with Sections 30233 and 30240 is the 1995 lot line adjustment that shifted a lot that was located in an open-water and wetland area in the northeastern portion of the property to the southeasterly upland portion of the property. That lot line adjustment resulted in a lot configuration that is preferable from a Coastal Act perspective. The pre-1995 lot consisted entirely of habitat types in which development is severely restricted pursuant to Sections 30233 and 30240. The post-1995 lot is located in a disturbed upland area adjacent to a public road. It is thus a preferable location for any future physical development to occur. The proposed after-the-fact lot line adjustments that occurred between 1973 and 1998 are therefore consistent with Sections 30233 and 30240.

² The Interstate 5 right-of-way separates Lot 3 from Lot 9.

In summary, the Commission finds that as restricted, the reconfigured lots provide reasonable economic use for the applicants while also protecting sensitive resources on the site from adverse impacts associated with potential future development that would be facilitated by this lot line adjustment. Although a portion of the property is being reserved as open space, it is for the protection of sensitive coastal resources and approximately 335 developable acres remain within the project site. Therefore, there is ample area on each newly reconfigured lot to allow reasonable development. Much of the developable acreage east of I-5 is currently being used for agricultural purposes. Additionally, much of the proposed open space in the eastern portion of the project area is identified as "Hard Line" open space within the City's draft HMP and is expected to be reserved as open space when the HMP is adopted. Additionally, as required, scenic resources and public views will be protected and buffers protecting the south shore of the lagoon from subsequent development will be established. As conditioned, the Commission finds the proposed lot line adjustment consistent with the resource protection policies of the Coastal Act.

3. Public Access. Public access along and to the waters of Agua Hedionda Lagoon is very important because of the recreational nature of the lagoon. It is the only lagoon in San Diego County where water sports are permitted, including motor and sail boating, water skiing, wind surfing, jet skiing, etc. Additionally, a public trail is identified along the north shore of the lagoon in the certified Agua Hedionda Lagoon Land Use Plan. The following Coastal Act sections are applicable to the proposed project and state, in part:

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.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]

(2) adequate access exists nearby....

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30604 (c)

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

Public access to, and along the coast, is a basic requirement of the Coastal Act. Access is generally referred to as lateral (along the shoreline or bluff tops) and vertical (access from a public road or easement to the shoreline). Accessways may consist of bike trails, hiking trails, viewpoints, stairs, parking areas, public transit and relevant support facilities.

The public's rights of access to the water areas can partially be provided for by existing utility easements and leasehold interests (i.e., sewer, water) held by the city. The Agua Hedionda Land Use plan calls for additional vertical and lateral access ways to be acquired either through agreements with the property owners or as condition of approval for development.

The following is taken from the access section of the LUP:

There are factors which limit the desirability of unrestricted access to the lagoon. Along the south shore, the slope conditions are such that attempts to provide usable access to the water's edge could only be accomplished through extensive grading with its potentially detrimental impacts, and would also be disruptive to the agricultural activities along this bluff. It is therefore proposed that public access to the south shore will be limited to viewing areas and pocket beaches that do not interfere with agricultural production or impact environmentally sensitive areas. The wildlife preserve proposed for the easterly portion of the lagoon and the adjacent mudflats should also be protected from management/maintenance activities.

The public beach area at the mouth of the lagoon currently provides parking and limited support facilities. Informal pedestrian access is provided at the south end of the beach area, through SDG&E property. Dirt walking trails exist along much of the north shore area. The most heavily used appears to be the shoreline area between the YMCA on the middle lagoon, and the beach/fishing areas on the outer lagoon.

Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. However, the project site contains a portion of the proposed public trail approved by the Commission in CDP #6-93-113 that leads along the north shore of Agua Hedionda lagoon within the outer and middle basins. No changes would occur to this trail as a result of the proposed project.

While the LUP does not identify that a trail system or boat launch facility is proposed on the south shore of the lagoon, a pedestrian trail leading to a public viewpoint is identified on the 45-acre parcel located on the south shore immediately east of the freeway (new parcel 8). The reconfigured lots will not preclude the future development of the trail/viewpoint. The pocket beaches referenced in the LUP will be reserved as open space through this permit action. The Commission's approval of the lot line adjustment does not abrogate any public rights that may exist regarding access to the Lagoon. Special Condition #3 provides that the applicant's acceptance of this permit serves as an acknowledgement that the issuance of this permit does not waive any public rights that may exist.

Proposed Parcel 3 also includes lands that were formerly identified as lot F/P 6700 (2.87 acres). This land has been used and is identified in the LUP as a fishing spot for the public to be maintained as a public activity area. Vehicular access to this area has been blocked off while not interfering with pedestrian access as illegal dumping was occurring in the lagoon which adversely affects power plant operations. The public can access the fishing area from the public parking lot at Tamarack Avenue and walking on the sidewalk on the inland side of Carlsbad Blvd. The fishing area can also be reached from the north shore trail along the lagoon by way of the sidewalk. The proposed lot line adjustment will not affect public access to the fishing area. Thus, the Commission finds proposed parcel 3 will continue to be maintained as a public activity area. The previous lot line adjustments that occurred between 1973 and 1998 did not affect public access to the Lagoon. As conditioned, the Commission finds the proposed development is consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

4. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicant is requesting after-the-fact approval for unpermitted lot line adjustments that occurred between 1973 and 1998. Although the unpermitted lot line adjustments did take place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. Local Coastal Planning. Section 30604 (a) 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, with the inclusion of all special conditions.

The Agua Hedionda Land Use Plan (LUP) designates the bulk of the site as Open Space and Utility and approximately 45 acres for Travel Services, which is a visitor serving land use designation. As conditioned, the project is also consistent with the habitat preservation and public access policies of the certified Agua Hedionda Land Use Plan and with the corresponding Chapter 3 policies of the Coastal Act. Therefore, approval of the development, as conditioned herein, will not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

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

The proposed project, as conditioned, is consistent with the resource and public access protection policies of the Coastal Act. The attached mitigation measures, which impose deed restrictions that limit future development in the lagoon, wetlands, riparian corridors, native upland habitat areas and associated buffer areas, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

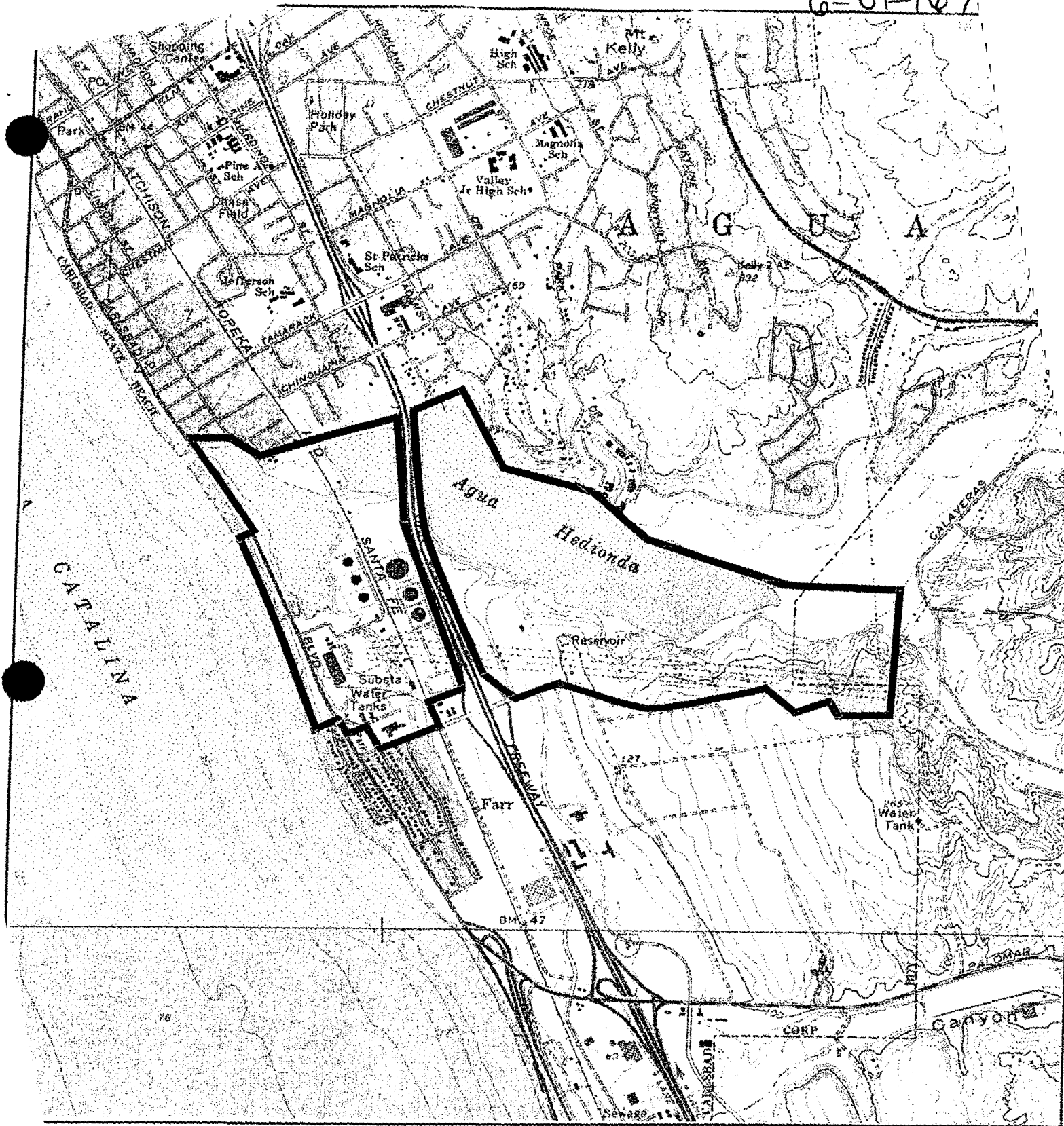
STANDARD CONDITIONS:

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.



6-01-167



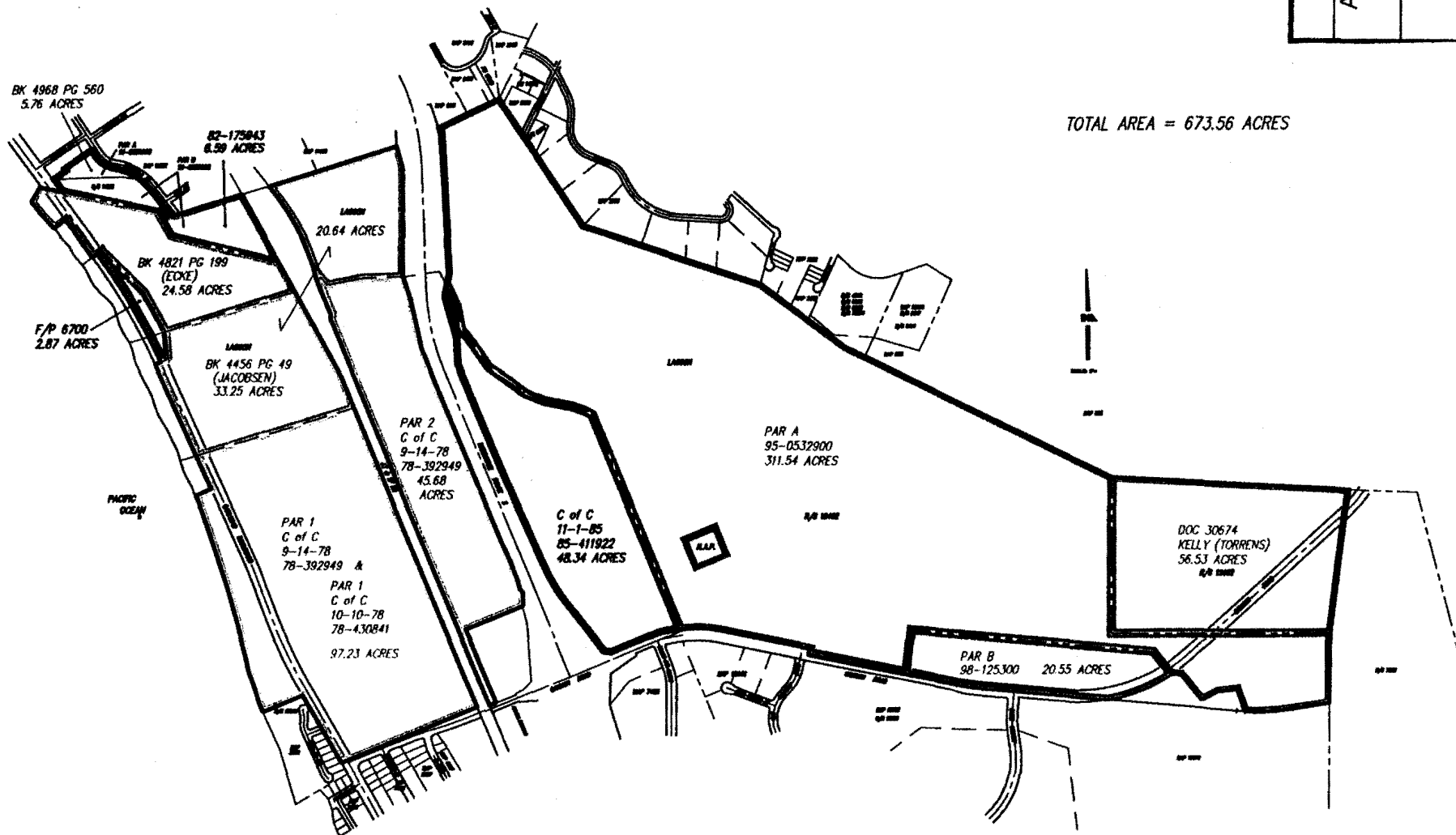
CINITY MAP

S 7.5' San Luis Rey

EXHIBIT NO. 1
APPLICATION NO.
6-01-167
Location Map
California Coastal Commi-

NOLTE Coastal Commission Exhibit			
Existing & Final Parcel			
Encina Power Plant			
DWG NAME: COASTALEX.DWG			
PATH: N:\SDGE\SD670046\			
DATE: 08/17/02	TIME: 12:44 p.m.	SCALE: none	
XREFS: ALTA-EP, ALTA-FP, Stamp			
DESIGNER: LAP	PROJ. MGR: RCP	JOB NO. SD3032	
SHEET 1	OF 1	SHEETS	

EXHIBIT NO. 2
APPLICATION NO.
6-01-167
Existing Parcel Configuration
California Coastal Commission



DATE: 8/17/02	TIME: 12:44 PM
SCALE: NONE	Y. H. 1/4"
DESIGNER: LAP	PROJ. MGR: RCP
PATH: J:\SDGE\SD670046\	
DRAWING NAME: ALTA-EP-2002	
PLOTING YEH: JY	
DESIGNER: LAP PROJ. MGR: RCP	

CAUTION

The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or use of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.

NO.	BY	DATE	REVISION

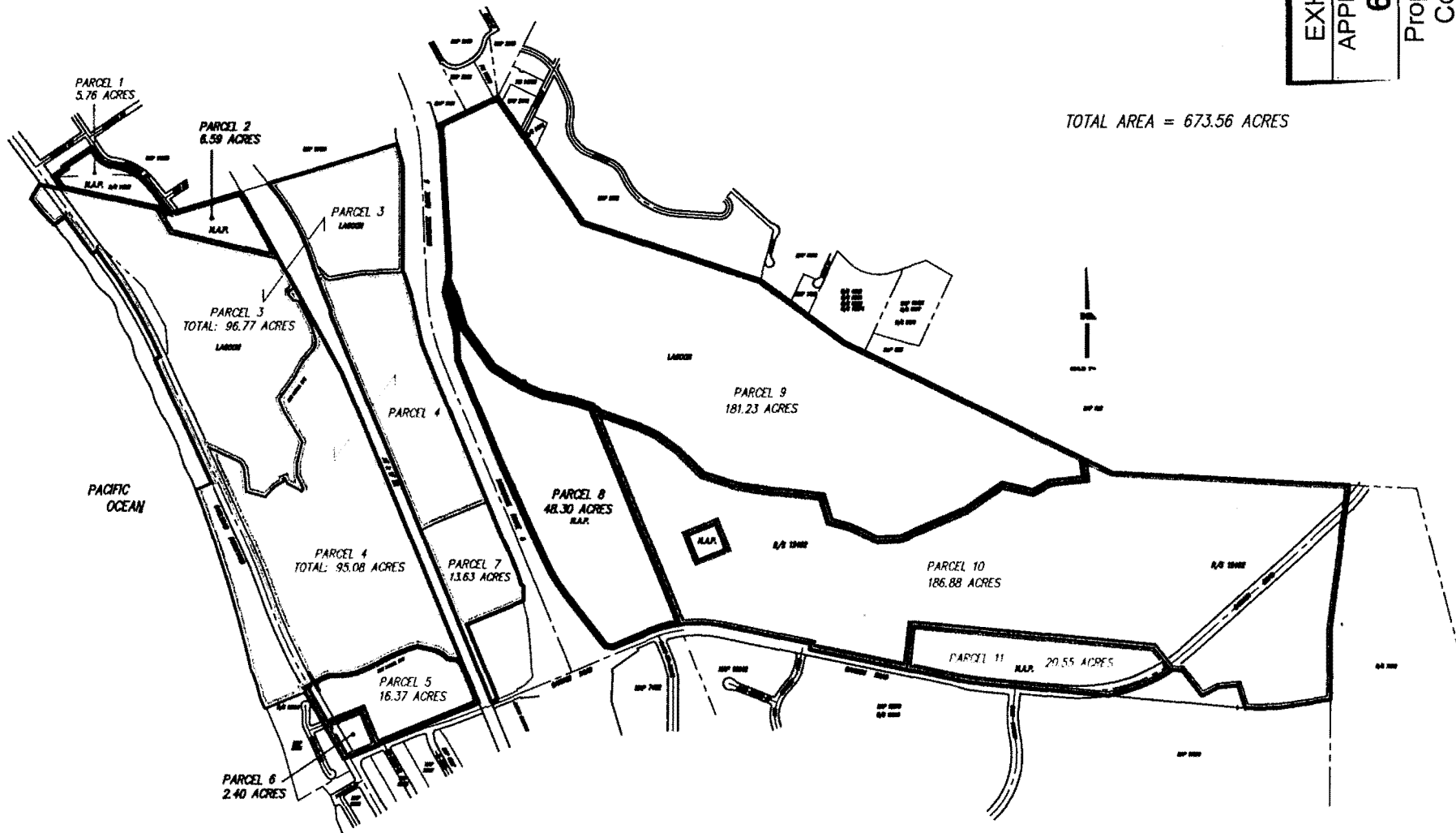


NOLTE and ASSOCIATES, Inc.
Engineers / Planners / Surveyors

5469 Kearny Villa Road, Suite 306, San Diego, CA 92123

EXISTING PARCELS
ENCINA POWER PLANT
CARLSBAD, CA

SHEET
1
OF 1 SHEET
DATE: 8/17/02



DATE 01/13/01 TIME 10:00 AM
SCALE 1" = 100' N. 1/4 1/4
SERVICES 001 SERVICE 001
PATH 001 001 001 001 001 001
DRAWING NAME ALTA-ENCINA
PLOTING VIEW PL
DESIGNER JAL PROJ MGR

CAUTION:
The engineer preparing these plans will not be responsible for, or liable for, unauthorized changes to or use of these plans. All changes to the plans must be in writing and must be approved by the preparer of these plans.

NO.	BY	DATE	REVISION

NOLTE and ASSOCIATES, Inc.
Engineers / Planners / Surveyors
5469 Kearny Villa Road, Suite 308, San Diego, CA 92123

FINAL PARCEL CONFIGURATION
ENCINA POWER PLANT
CARLSBAD, CA

SHEET
1
OF 1
JOB NO.
801000

6-01-167


Attachment #2(B) To Section II
Chart Of Size Of Lots – Existing And Proposed

Existing

LOT DESCRIPTION	SIZE OF LOT (ACRES)
Bk 4968, pg 560	5.76
Bk 4821, pg 199	24.58
F/P 6700	2.87
Bk 4456, pg 49	33.25
	20.64
Document recorded 82-175943	6.59
Parcel 1 C of C 9-14-78, 78-392949 & Parcel 1 of C of C 10-10-78, 78-430841	97.23
Parcel 2 C of C, 9-14-78, 78-392949	45.68
Parcel A document 95-0532900	311.54
C of C 11-1-85, 85-411922	48.34
Parcel B document 98-125300	20.55
Document 3064 Kelly (Torrens)	56.53
Total	673.56

Proposed

LOT DESCRIPTION	SIZE OF LOT (ACRES)
Parcel 1	5.76
Parcel 2	6.59
Parcel 3	96.77
Parcel 4	95.08
Parcel 5	16.37
Parcel 6	2.40
Parcel 7	13.63
Parcel 8	48.30
Parcel 9	181.23
Parcel 10	186.77
Parcel 11	20.55
Total	673.45

EXHIBIT NO. 4
APPLICATION NO.
6-01-167
Parcel Sizes
 California Coastal Commission

ENGINITAS CONFIGURATION PRIOR TO 1972

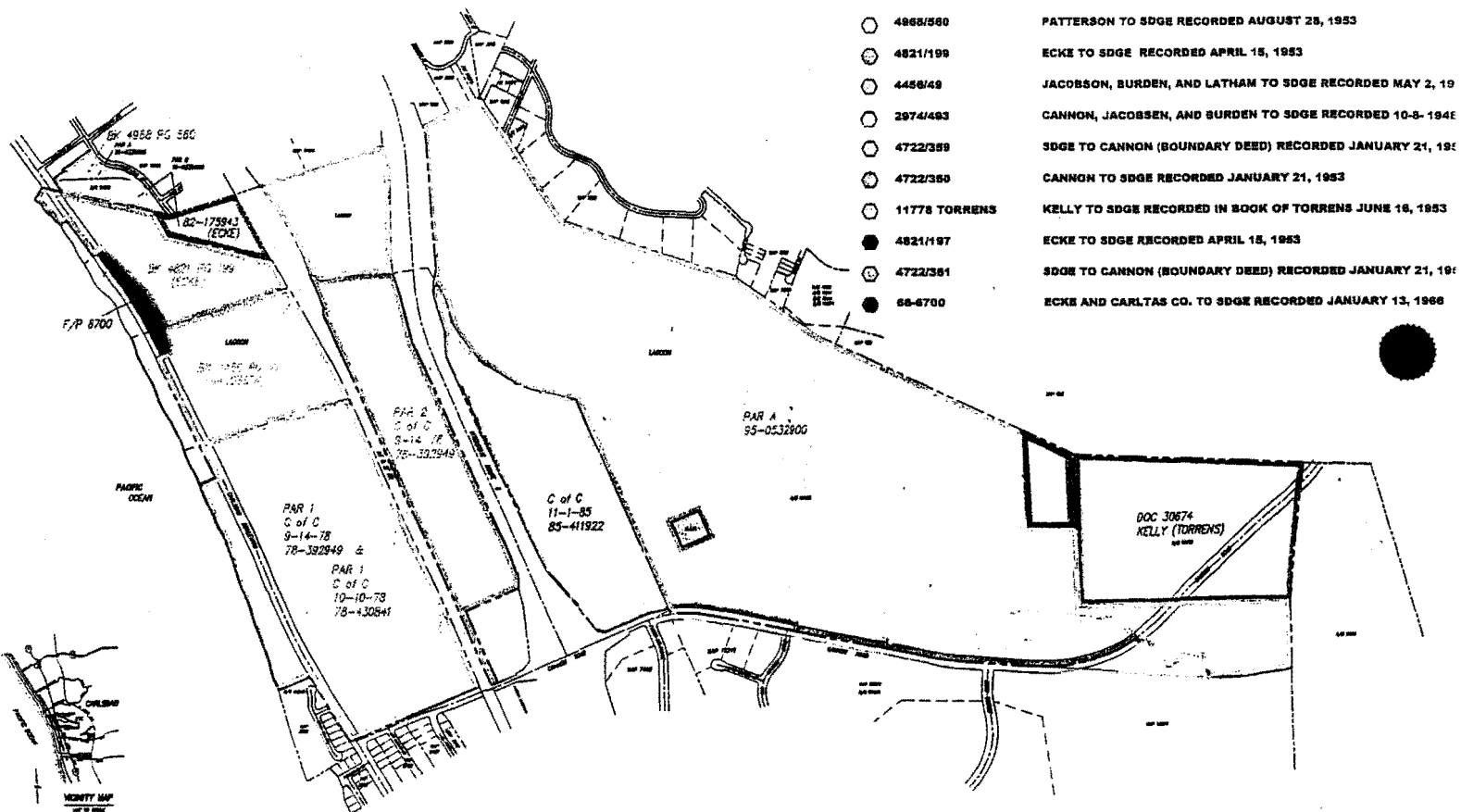


EXHIBIT NO. 6
APPLICATION NO.
6-01-167
1972 Map

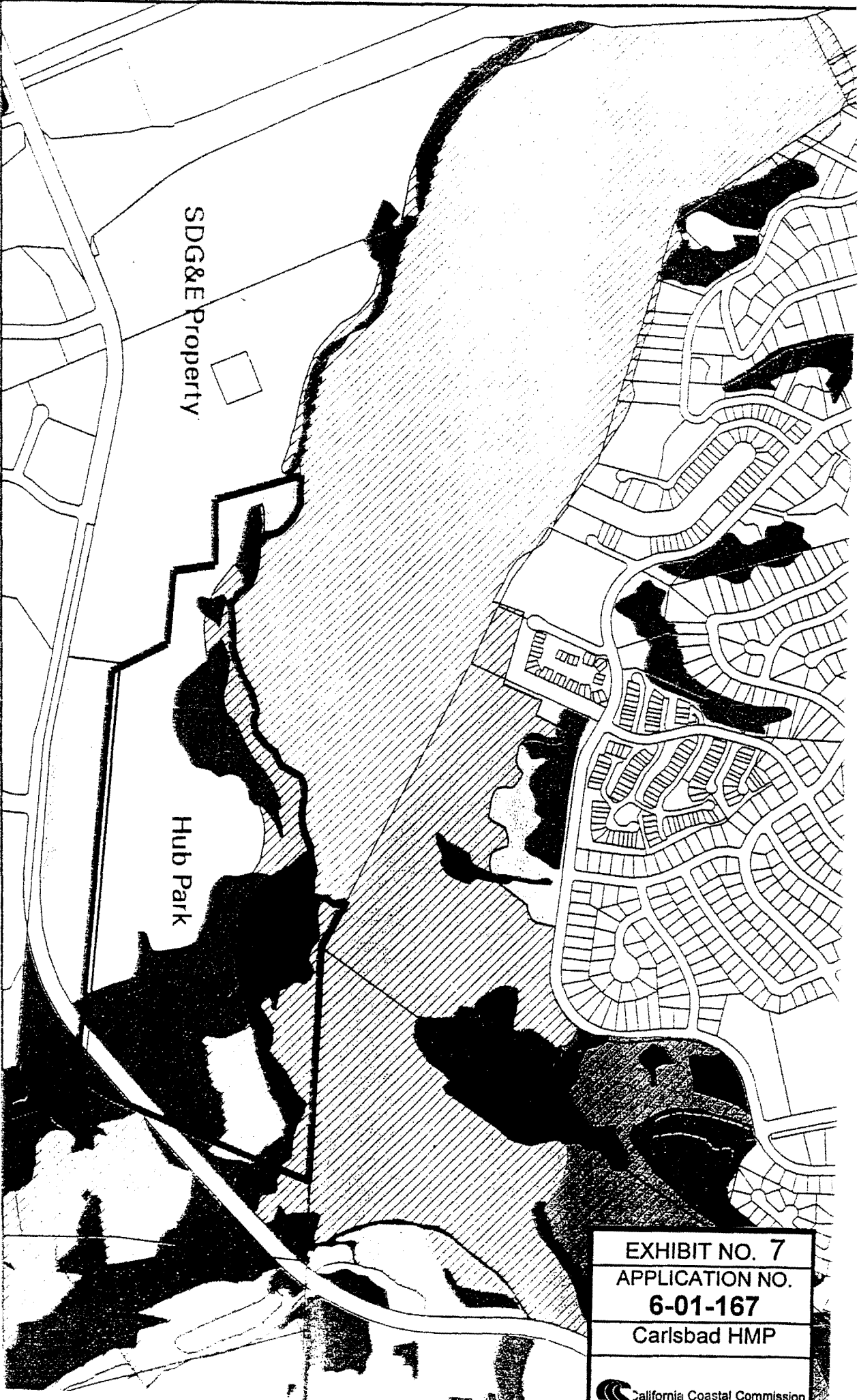


Figure 17
Hub Park and SDG&E Property



EXHIBIT NO. 7
APPLICATION NO.
6-01-167
Carlsbad HMP

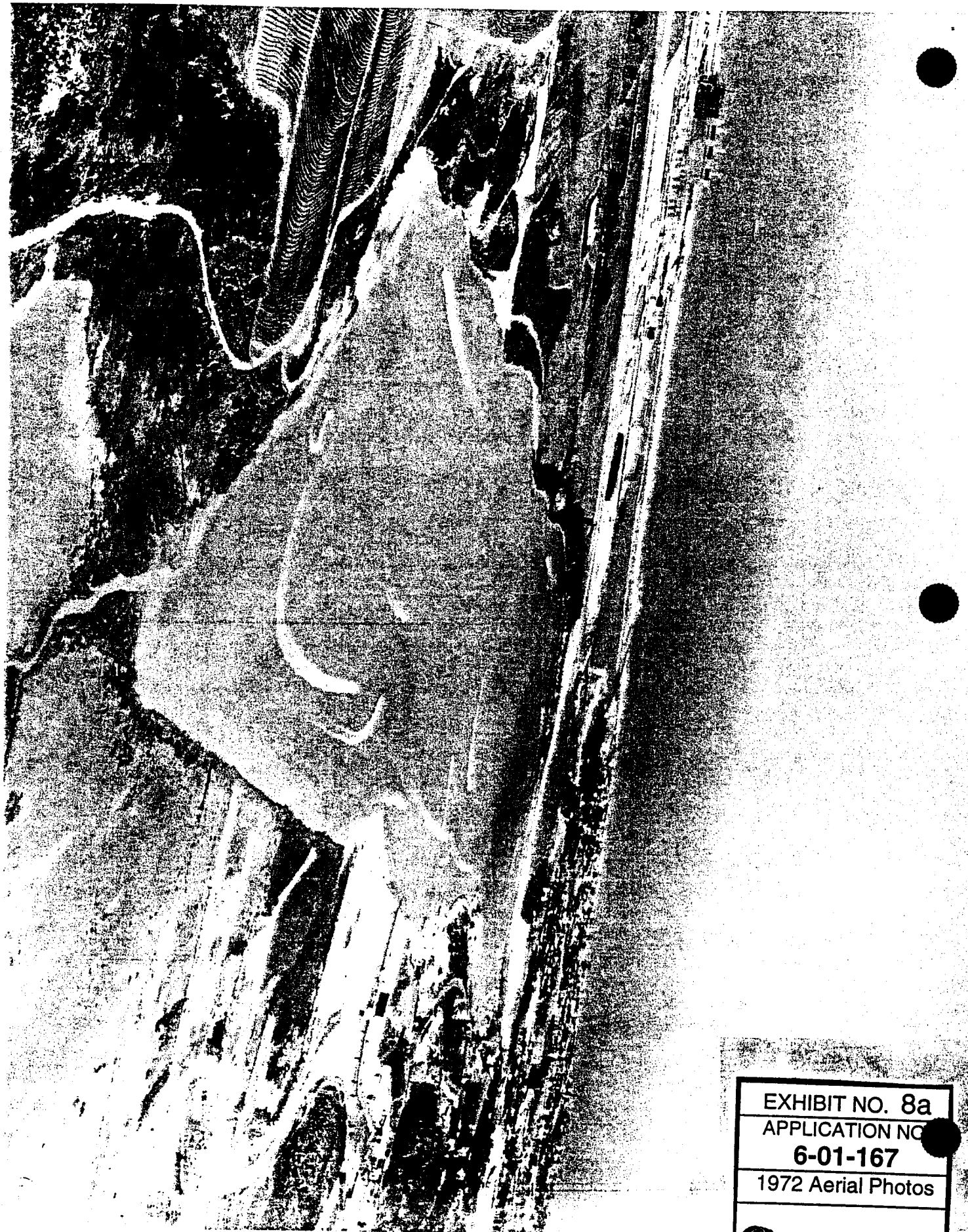


EXHIBIT NO. 8a

APPLICATION NO.

6-01-167

1972 Aerial Photos

 California Coastal Commission




EXHIBIT NO. 8b
APPLICATION NO.
6-01-167
1972 Aerial Photos



BOSTON
BRUSSELS
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NORTHERN VIRGINIA
ORANGE COUNTY
PARIS
SAN DIEGO NORTH COUNTY
SAN FRANCISCO
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

September 17, 2002

RECEIVED

SEP 17 2002

Chris Pederson, Esq.
California Coastal Commission
45 Freemont Street, Suite 2000
San Francisco, California 94105

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: California Coastal Commission Permit Application 6-01-167
for Lot Line Adjustment

Dear Chris:

This letter serves as a follow up to our conversation regarding the application by San Diego Gas & Electric Company ("SDG&E") and co-applicant Cabrillo Power I, LLC ("Cabrillo") for California Coastal Commission ("Coastal") approval of a lot line adjustment affecting approximately 673 acres in Carlsbad, California. As you know, the lot line adjustment is required in connection with the sale of the power plant from SDG&E to Cabrillo. That sale was required to comply with court orders concerning the 1998 merger of Enova Corporation (parent of SDG&E) and Pacific Enterprises (parent of Southern California Gas Company). SDG&E did effect the sale to Cabrillo in compliance with the California Public Utilities Code pursuant to proceedings at the California Public Utilities Commission ("CPUC"). A copy of the various court orders and CPUC decisions was sent to you on August 20, 2002, but please let us know if you need additional information on those items.

You advised us that in connection with recommending approval of the lot line adjustment, you need to reference all lot line adjustments affecting the relevant parcels going back to 1973, the year the Coastal Act came into effect. You had also asked that we assist you in matching the legal descriptions on the vesting deed to the current parcel maps. Because there have been several lot line adjustments since the execution of the vesting deed, the legal description on the vesting deed does not match the parcel maps. However, the enclosed certificates of compliance accurately detail the historic boundary changes to the Encina parcels after 1973, and the maps illustrate their current configuration.

I have enclosed seven certificates of compliance, which memorialize all of the lot line adjustments made to the Encina parcels going back to 1973. Prior to 1999, our reading of the relevant law was that lot line adjustments did not constitute a "development" under the Coastal Act and therefore Coastal approval was not required. The California Supreme Court seemed to confirm that position in 1998, when it left undisturbed a court of appeal determination that a lot line adjustment is not a "development" for purposes of the Coastal Act. *Landgate, Inc. v. Coastal Commission*, 17 Cal. 4th 1006 (1998) *rev'g in part* 52 Cal. App. 4th 784 (1997).

Chris Pederson, Esq.
September 17, 2002
Page 2

However, more recently, one court of appeal held that Coastal does have jurisdiction to require a Coastal Development Permit for lot line adjustments. *La Fe, Inc. v. Los Angeles County*, 73 Cal. App. 4th 231 (1999) ("*La Fe*"). As soon as that case left open the possibility that Coastal approval for lot line adjustments was required, SDG&E submitted its next lot line adjustment to Coastal for approval, and that is the lot line adjustment now pending.

Prior to 1999, since the law seemed to indicate that it was not required, SDG&E did not apply for a permit from Coastal when it made lot line adjustments to the Encina property. However, during that time we applied to Coastal for permits for all projects required by law, including those listed in Schedule A. SDG&E has never attempted to evade Coastal jurisdiction where the law was clear that Coastal approval was required and would have applied for Coastal approval of these previous lot line adjustments had the relevant law not indicated that it was not required. As the enclosed Certificates of Compliance demonstrate, the previous lot line adjustments have been in complete compliance with the Coastal Act. Those prior lot line adjustments, like proposed lot line adjustment, did not change the density or intensity of the use of the Encina property or in any other way allow action inconsistent with the policies or intent of the Coastal Act.

Because the *La Fe* court has clarified that it is required for lot line adjustments, we are submitting the lot line adjustments of the Encina property since 1973 as well as current proposed lot line adjustment for Coastal approval. Please feel free to call me at (619) 238-3008 if you have any questions or comments concerning our application or if I can be of any further assistance.

Very truly yours,



Donna Jones
of LATHAM & WATKINS

Enclosures

cc: Lee McEachern, San Diego Office, California Coastal Commission, w/enclosures ✓
Bill Ponder, San Diego Office, California Coastal Commission, w/enclosures
Ruth Love, SDG&E, w/enclosures
David Lloyd, Cabrillo, w/enclosures
Ron Rouse, Esq., w/enclosures