

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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Hearing Date: February 5-7, 2003

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-153

Applicant: California Department of
Transportation

Agent: Bruce April

Description: Construction of a northbound auxiliary lane north of the Del Mar Heights Road overcrossing to the San Dieguito River bridge, connecting to existing auxiliary lanes at either end. Additional proposed improvements include a paved shoulder, guardrail replacement, installation of drainage facilities, import of 173,000 cu.yds. of fill and restoration of slope and salt marsh degraded by failed drainages.

Site: Along I-5, from 1.1 km north of Del Mar Heights Road to 1.0 km south of Via de la Valle, North City, San Diego, San Diego County.

Substantive File Documents: Certified City of San Diego LCP; Natural Environment Study (dated October, 2002); Endangered Species Consultation Biological Assessment (dated September, 2002)

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending denial of the permit application, due to inconsistency with Section 30240 of the Coastal Act. The project would permanently impact an area of coastal sage scrub habitat occupied by a nesting pair of California Gnatcatchers. The project would also remove approximately 114 individual Del Mar Mesa sand asters, a species of plant listed by the California Native Plant Society as rare, threatened or endangered. Although some project components would have a beneficial effect on biological resources and water quality, the project overall would significantly disrupt Environmentally Sensitive Habitat Areas (ESHA), inconsistent with Section 30240 of the Coastal 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. 6-02-153 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Caltrans is proposing to connect two existing segments of auxiliary lane in the area of the San Dieguito River Valley, by constructing a new segment of auxiliary lane on the eastern side of northbound Interstate 5 (I-5). South of Del Mar Heights Road a highway widening project has been underway for about ten years; some components are still under construction, but the highway in this area averages five regular travel lanes heading north through Carmel Valley, plus one HOV lane. The highway widening project ends just north of the Del Mar Heights over crossing, where the two most right hand lanes end as drivers make their way down a long slope to the river valley. At the bridge over the San Dieguito River, one of those lanes picks back up to provide more maneuverability at the Via de la Valle off-ramp.

In the future, Caltrans hopes to extend the widening project to the north. However, at present, the highway at the subject location, and for many miles northward, consists of four regular travel lanes in each direction, with auxiliary and/or "exit only" lanes present at the busiest interchanges. The reduction from six lanes to four just north of Del Mar Heights Road occurs within an area of freeway already experiencing heavy congestion and frequent traffic delays. Coupled with cars jostling to get off on Via de la Valle, Caltrans perceives this as a potential public safety hazard. Completing the auxiliary lane

all across the river valley would lessen the potential hazard by providing additional space to better accommodate lane changes.

In addition to construction of the auxiliary lane itself, the proposed development includes several other components. Since the existing highway runs along the top edge of a manufactured slope, 173,000 cu.yds. of fill would be imported to build up the slope and provide flat area for the new 11.8 foot lane, a new 11.8 foot shoulder, recovery area and guardrails. The applicant proposes to construct a bio-filtration swale adjacent to the proposed improvements to treat and transport all highway runoff in this area to an intact drain north of three failed drains. These failed drains have deposited sediments in a brackish marsh wetland at the foot of the freeway slope, causing habitat degradation. As part of the project, Caltrans proposes to remove the accumulated sediments and broken pieces of drain materials. It also proposes construction of an off-site mitigation area and planting of the new freeway slope.

The proposed development is located in the San Dieguito River Valley. The river valley itself is almost all open space east of I-5, and consists of wetlands and agricultural fields. From here, the river valley extends east (inland) approximately fifty miles to the river's source and represents a significant urban greenbelt. The surrounding hillsides contain large areas of coastal sage scrub and related native upland habitats. West of I-5, the valley includes the Del Mar Fairgrounds, railroad tracks, and Highway 101, along with some residential development and public works facilities inland of the river banks

The City of San Diego has a fully-certified LCP and issues its own coastal development permits for most of its coastal areas. However, the lagoon, and river valley area that is the subject of this permit are located within Subarea II of the North City Future Urbanizing Area (NCFUA), one of the few remaining areas of deferred certification in the City of San Diego. Thus, the Commission retains permit jurisdiction over this particular site at this time and the Chapter 3 policies of the Coastal Act are the legal standard of review, with the City's certified LCP used as guidance.

2. Environmentally Sensitive Habitat Areas (ESHA). The following Coastal Act policies address the two types of ESHA found on the subject site and potential subject to impact by the proposed development, coastal sage scrub and brackish marsh, and state in part:

Section 30233.

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

... (7) Restoration purposes.

... (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. ...

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 proposed development will have a net beneficial effect on the brackish marsh wetlands, but a detrimental effect on coastal sage scrub (CSS), a sensitive upland plant community. A brackish marsh wetland has formed at the base of the existing freeway slope, and is apparently supported to some degree by agricultural and residential runoff from nearby properties, as well as highway runoff. In recent years, the wetland has been degraded by an influx of sediments caused by failure of three existing storm drains, intended to address highway runoff, on the slope above. The drain failures have also resulted in fragments of concrete materials resting on the side slope and in the marsh. Caltrans proposes to remove the deposited materials, along with any exotic vegetation, do some replanting and then allow the marsh to restore itself. New drainage structures, consisting of a bioswale and detention basin, will redirect future runoff into an existing, functioning drainage outlet.

The proposed development involves the removal of sediments and concrete from the wetlands of San Dieguito Lagoon and will result in a temporary impact to 0.26 acres of the existing marsh. Under the Coastal Act, dredging of lagoons and/or open coastal waters is severely constrained. To be allowable under Section 30233, the proposed development must be one of the listed permitted uses. In this case, this component of the overall project is proposed for restoration purposes, but is not a prerequisite activity for building the auxiliary lane. Either project component could go forward independent of the other. However, the subject project component, must also be found to be the least environmentally damaging feasible alternative, incorporate feasible mitigation measures for any associated adverse impacts and either maintain or enhance the functional capacity of the wetland system.

To date, no specific environmental problems have been documented arising from degradation of this portion of brackish marsh, which is very localized. Three beldings savannah sparrow territories occur further east within the brackish marsh, but the closest is more than 250 feet distant from the nearest proposed grading activity. Another listed avian species, light-footed clapper rail, also occurs in the brackish marsh east of I-5, but is located much further from the site of any construction activities. No other listed

species were found within the nearby brackish marsh wetlands, or are believed to be dependent upon the wetland for survival. However, this area of brackish marsh is within the overall planning area for the San Dieguito Lagoon Restoration Plan. Removal of the sediments and concrete, together with a number of nearby restoration activities in the larger plan, will enhance the likelihood of this area being used by increasing numbers of birds and other wildlife. However, there will be minor, temporary impacts to the wetlands in order to remove the sediments, etc.; these total to 0.26 acres split between the marsh areas below the three failed drainage structures.

The applicant has reviewed a number of structural alternatives to the auxiliary lane construction, which will be discussed in greater detail in the following paragraphs. However, the only apparent options related to drainage and the brackish marsh itself are to remove the sediments/debris or leave them in the wetlands. The proposed drainage swale for runoff from the new and existing I-5 lanes is proposed further up the slope, such that no wetland impacts result from its installation. Once in place, however, the new facility will prevent additional erosion from entering the marsh. Thus, the restoration aspect of the subject proposal is completely independent from the road widening, and has been included by the applicant simply because they will have work crews in the immediate area doing the lane widening component. Removing the materials, even with the small, temporary impact, is preferable to leaving them there.

Thus, the proposed temporary wetland impacts are for restoration purposes, an allowed use pursuant to Section 30233 of the Act. In addition, this is a relatively small-scale, low-tech component without any real alternatives other than doing nothing. While doing nothing might not result in any further sedimentation, neither would it allow restoration of wetland habitat to occur in those areas covered by fill. Caltrans has identified a mitigation area on the west side of I-5, that includes approximately 0.42 acres of existing marsh. This area would be protected in perpetuity, along with an additional 0.58 acre transitional area which would be constructed just upland from the marsh and planted with a combination of marsh, riparian and upland species. Moreover, the area where the temporary impacts would occur through the sediment and debris removal operation would also be replanted, thus expanding the area of functioning marsh habitat on-site. Therefore, the Commission finds this portion of the proposed project consistent with Section 30233 of the Act, but must otherwise deny the permit application for reasons discussed below.

Creation of the new auxiliary lane and drainage swale will result in direct and permanent impacts to CSS habitat on the freeway slope that is occupied by a nesting pair of California gnatcatchers. The subject site is comprised of a manufactured slope formed when I-5 was first constructed through this area. At that time, the applicant planted the slope with CSS vegetation, which has flourished in some locations, and has supported a pair of gnatcatchers over the past several breeding seasons. While the habitat is somewhat degraded on the freeway slope, it supports gnatcatchers, includes a rare plant species (the Del Mar Mesa sand aster), and is contiguous with a large area of high quality CSS on the slope to the south.

The particular clump of CSS where the gnatcatchers have nested is high on the freeway slope, and would be impacted with any attempt to widen the freeway to the east in this area. The applicant analyzed and rejected the following alternatives before selecting the subject proposal: 1) elevated HOV lanes – this would allow the regular travel lanes to expand to the freeway interior, rather than to the outside; however, costs are approximately \$2.5 billion and the time needed to construct this alternative is prohibitive; 2) restripe existing pavement – this could be viable and relatively inexpensive, except that it has already been done here to the extent that all existing lanes are substandard in width now; not enough room exists to create an auxiliary lane without significantly expanding the size of the adjacent roadbed; such an expansion would result in the same adverse impacts to CSS vegetation; 3) retaining wall – this would reduce the overall footprint of fill; however, because of the exact location of the gnatcatcher nest, a retaining wall would have the same negative impact on the threatened bird; moreover, a wall in this location could be highly visible from other areas of the future restoration plan and park area, and would thus create a negative visual impact; and 4) finally, the no-build alternative would have no direct impacts on the gnatcatcher or several other listed species in the general area but would do nothing to address problems of traffic and safety.

Gnatcatcher nesting has been documented on this site at least twice in the last three seasons, both in 2000 and 2002. As proposed, or with the retaining wall alternative, the construction of an auxiliary lane in this area would fill the areas of slope where the nesting has occurred. Some patches of CSS existing to the north, south and east would remain, and the applicant intends to replant the approximately 15.44 acres of new slope with CSS. However, Caltrans does not want this considered mitigation, since its long-range plans call for additional road widening through the San Dieguito River Valley in the future. If this occurs, any viable habitat on this slope could conceivably be disturbed over and over again, removing any ability for it to ever function as useable nesting habitat for the gnatcatcher or any other listed species.

In addition, there are approximately 114 individual Del Mar Mesa sand aster plants, a species listed as rare, threatened or endangered by the California Native Plant Society. These occur within the construction footprint, but lower on the slope than the gnatcatcher nest location and closer to the marsh. The applicant proposes salvaging both plants and seed and relocating these to the identified mitigation area west of I-5, where some individuals of the species currently exist.

The applicant has proposed a comprehensive mitigation package to address unavoidable adverse impacts to CSS, the gnatcatcher and the sand aster. The plant species would be mitigated on an approximately 15-acre site west of I-5. This is a sloping site, with 0.42 acres of salt marsh at the lowest level and some scattered CSS on the upper portion. The mitigation program would remove all exotics, create a narrow 0.58 acre transition area between marsh and uplands and plant CSS over approximately 12 acres of the total site. It is hoped by the applicant that the provision of this new CSS habitat would attract the gnatcatcher pair across the freeway to this new location. The site is within, and consistent with, the overall San Dieguito Lagoon Restoration Plan area overseen by the

San Dieguito River Park Joint Powers Authority, which has given its verbal approval for the proposed mitigation program to be carried out on this site.

Nonetheless, the Commission's staff ecologist has reviewed the proposal and has determined that the CSS habitat on the freeway slope proposed to be impacted by the proposed auxiliary lane is ESHA, as the slope supports CSS adjacent to wetlands with nesting gnatcatchers and a rare plant species (Del Mar Mesa sand aster). In addition, the CSS slope is contiguous with a much more significant and thriving CSS area on the slopes just south of the project site. Thus, even though the CSS is somewhat degraded, it is considered ESHA based on important ecosystem functions (upland/wetland transition, connection to adjacent CSS on natural hillsides and support of rare and threatened species).

In summary, the Commission finds that the proposed construction activities are inconsistent with Section 30240 of the Coastal Act. The existing CSS on the highway slope constitutes ESHA and supports the nesting activities of a listed species. The cited Coastal Act policy states that "only uses dependent on those resources shall be allowed within those areas." Construction of an auxiliary lane is not a use dependent upon CSS habitat. The proposed development would have significant adverse impacts on the quality and quantity of ESHA in this location. A nesting pair of California gnatcatchers would be dislocated from their historic nesting site on the freeway slope east of I-5. There is no guarantee that the pair will make a new home at the proposed mitigation site. Moreover, there is no guarantee that the 114 individual Del Mar Mesa sand asters will successfully relocate to the new site and thrive in that location. For these reasons, the Commission finds it necessary to deny the proposed project

3. Traffic Circulation/Public Access. Numerous Coastal Act policies address public access, all with the intent of providing, protecting, and enhancing coastal access. Those most applicable 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,

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,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected

I-5 is the primary north-south coastal access route in San Diego County, with virtually every interchange providing a means to reach the shoreline. It is also the most direct commuter route between San Diego, Los Angeles and Orange County, and experiences heavy traffic congestion during peak hours daily. The applicant proposes to connect two existing segments of an auxiliary lane, such that it will be continuous from Del Mar Heights Road to Via de la Valle. It will not change, increase or enhance any existing through lane, but may relieve an identified "weaving" problem at this particular site.

The applicant has not demonstrated a significant need for the proposed development. No evidence has been presented to indicate that the vehicular accident rate between the two interchanges exceeds the norm, or that more citations are given in this location. A description of the current traffic situation describes this segment of freeway as operating at Level of Service (LOS) F in peak hours, due to the high levels of traffic at these times exceeding maximum highway capacity. The proposed auxiliary lane would promote a slightly better level of public safety by providing additional maneuvering space for people getting on northbound I-5 at Del Mar Heights Road or exiting at Via de la Valle. However, this would have little or no impact on through traffic, as the number of through lanes remains the same as currently exists

Through traffic would continue to operate at LOS F during peak hours, with heavy congestion and frequent stops. In this area, traffic speed averages 20-30 miles per hour during traffic peaks, as compared to the 65-70 miles per hour speed that the freeway was designed for. A solution to this problem is far beyond the scope of the proposed development, which will not make the situation any worse. The Coastal Act concerns itself with public access to beaches and recreational sites, not with general traffic circulation. Fortunately, morning recreational peaks do not coincide with commuter peaks, although there is some overlap in the afternoon.

Since Via de la Valle provides access to the beaches of Del Mar and Solana Beach, as well as to both villages and the Del Mar Fairgrounds, the proposed development may have a slight positive effect on public access. However, the level of relief provided in the proposed development does not outweigh the significant adverse impact the proposal would have on listed species and their habitats.

4. Water Quality. The following Coastal Act policy is most applicable to the proposed development:

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 auxiliary lane will add approximately twelve feet of impermeable surface along the eastern edge of existing I-5 for a distance of approximately one mile. Any increase in impermeable surfaces will increase the rate of runoff, although the actual increase with this project is fairly minimal. The proposed project includes drainage improvements that would enhance the quality of runoff entering San Dieguito River and Lagoon, portions of which are adjacent to I-5. Currently, runoff from the road runs primarily through three drainage structures that have failed and one functioning drainage outlet. The functioning outlet is the furthest north and thus closest to the river/lagoon. The applicant proposes to install a vegetated bioswale and detention basin, designed to capture all runoff that would otherwise flow through the failed drainages, and redirect the flows to the one functioning outlet. These facilities would detain runoff, allowing sediments to settle out and some water to percolate into the soil, and would also filter many pollutants from the runoff.

With these facilities, runoff ultimately reaching the lagoon/river would be cleaner and lower in both volume and speed than at present. However, since runoff from four drainages will be combined into one drainage only, that particular outlet will see a significant increase in flow. Therefore, the applicant proposes a small riprap apron at the remaining outlet to dissipate the runoff and reduce erosion. In addition, the applicant proposes to remove sediments and debris from the failed drains that are currently filling portions of brackish marsh. Since the sediments contain highway runoff, they are likely high in hydrocarbons and other pollutants. Removing this material will not only allow the wetlands to recover, but will also result in cleaner resources.

In summary, the increase in impermeable surfaces resulting from the additional paved lane is offset by the drainage and runoff improvements proposed in the development. Thus, from a water quality perspective alone, the proposed development would be neutral or slightly beneficial. Any benefit, however, is outweighed by the significance of impacts on ESHA that supports a listed avian species and a rare plant. Although the Commission could likely find the proposal consistent with Section 30231 of the Act, it cannot find it consistent with Section 30240. Therefore, the proposal must be denied.

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, such a finding cannot be made.

Although the City of San Diego has a fully-certified LCP and issues its own permits in most areas, the subject site is within an area of deferred certification. It is located within Subarea II of the NCFUA, which includes the major undeveloped portions of San Diego north of the existing urban core. In 1993, the Coastal Commission approved the elements of the NCFUA Framework Plan addressing open space and circulation. However, the more detailed planning for future development of the area was to be done through the approval of subarea plans. The NCFUA was divided into five subareas; all or portions of three of the subareas are within the coastal zone: Subarea II, Subarea III and Subarea V. Subareas III and V now have certified land use plans, and are under the City's coastal permit jurisdiction.

The San Dieguito Lagoon Enhancement Plan will serve as the subarea plan for Subarea II, where the subject development is proposed. Since that plan is not fully complete, or acted upon by the Coastal Commission, permit authority remains with the Commission at this time and Chapter 3 is the legal standard of review; the LCP is used for guidance purposes only. Although the proposed development does not directly conflict with the San Dieguito Lagoon Enhancement Plan in its current draft state, the prior findings have demonstrated that the proposal is inconsistent with the biological resource protection policies of the Coastal act, primarily with Section 30240. Therefore, the Commission finds that approval of the proposed development at this time could potentially prejudice future planning efforts for the river valley. For all the reasons given previously, the Commission denies the proposed development.

6. Consistency with the California Environmental Quality Act (CEQA). As previously stated, the proposed development will result in impacts to coastal sage scrub habitat and listed species, which will result in unmitigable environmental impacts. Furthermore, the only feasible alternative would be the no-project alternative. Although this will not address Caltrans' traffic and safety concerns, neither will it make the situation any worse. The Commission therefore finds that there is a feasible alternative available which would substantially lessen the significant adverse impacts which the proposed development may have on the environment of the coastal zone.



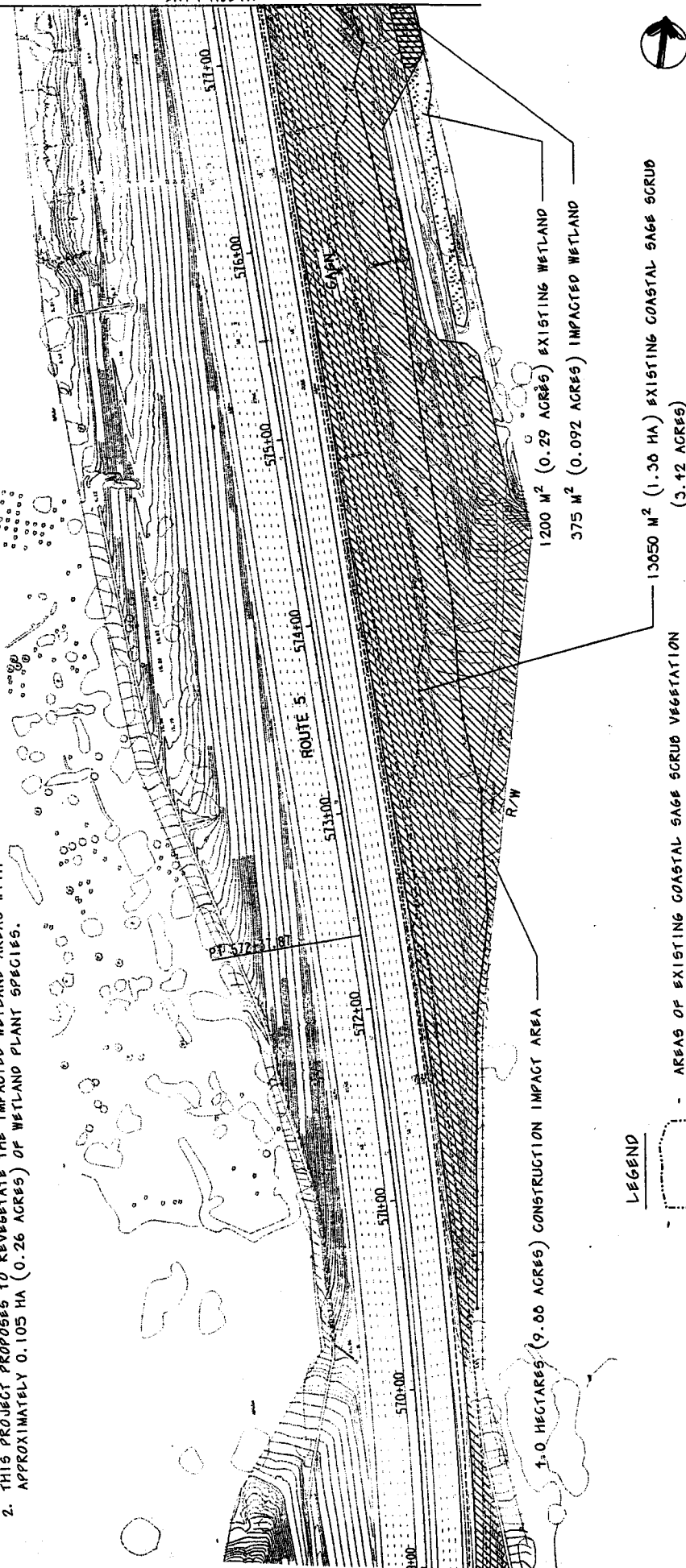
EXHIBIT NO. 1
APPLICATION NO
6-02-153
Location Map

California Coastal Commission

MATCH LINE



- NOTES:
1. THIS PROJECT PROPOSES TO REVEGETATE THE CONSTRUCTION IMPACT AREAS WITH APPROXIMATELY 6.25 HA (15.44 ACRES) OF COASTAL SAGE SCRUB PLANT SPECIES.
 2. THIS PROJECT PROPOSES TO REVEGETATE THE IMPACTED WETLAND AREAS WITH APPROXIMATELY 0.105 HA (0.26 ACRES) OF WETLAND PLANT SPECIES.



1.0 HECTARES (2.47 ACRES) CONSTRUCTION IMPACT AREA

1200 M² (0.29 ACRES) EXISTING WETLAND

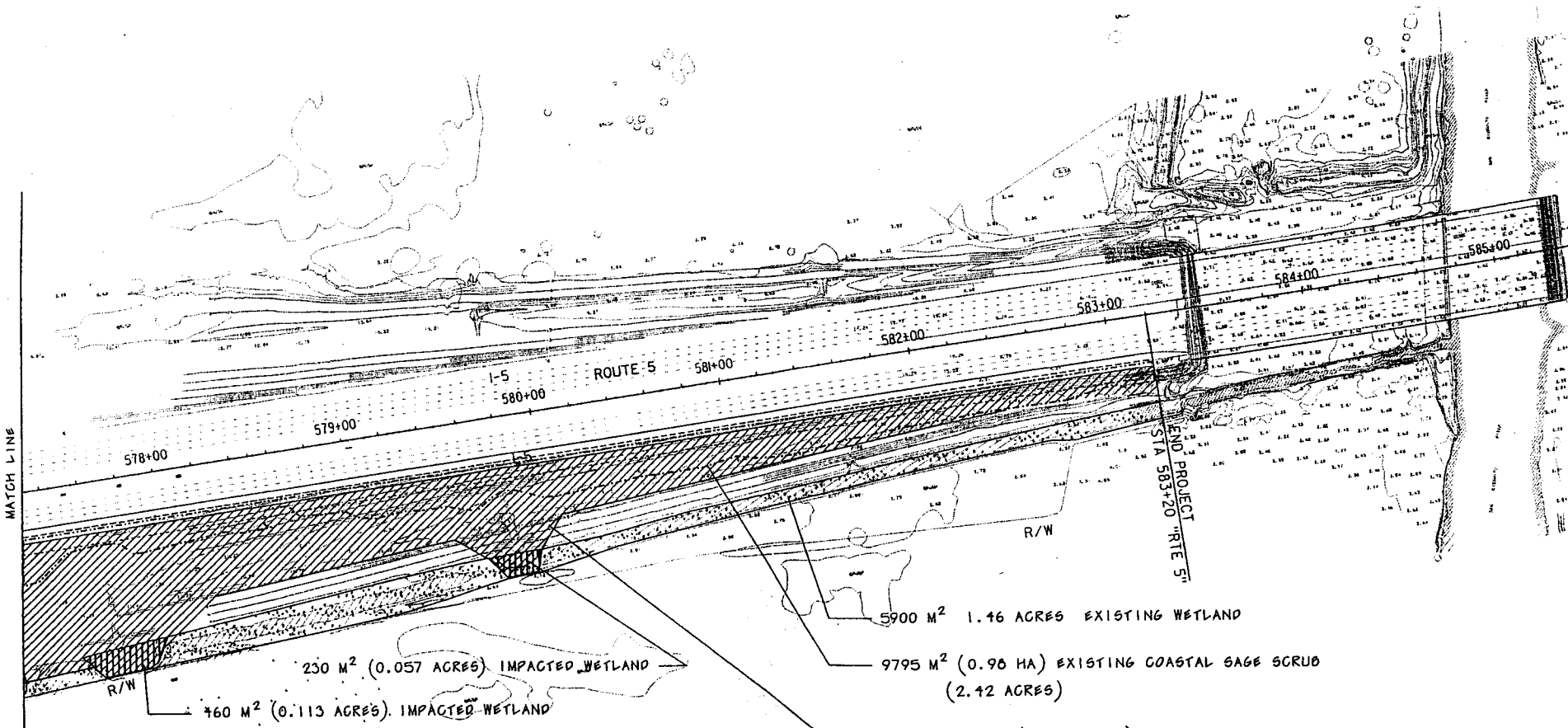
375 M² (0.092 ACRES) IMPACTED WETLAND

13050 M² (1.36 HA) EXISTING COASTAL SAGE SCRUB
(3.42 ACRES)

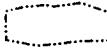
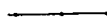



LEGEND

- - - AREAS OF EXISTING COASTAL SAGE SCRUB VEGETATION
- - - PROPOSED GUT/FILL LIMITS
- - - PROPOSED CONSTRUCTION IMPACT AREA
- - - EXISTING WETLAND AREA
- - - PROPOSED IMPACTED WETLAND AREA

EXHIBIT NO. 2
 APPLICATION NO
 6-02-153
 Site Plan/Veg.
 southern half
 California Coastal Commission



LEGEND


-  - AREAS OF EXISTING COASTAL SAGE SCRUB VEGETATION
-  - PROPOSED CUT/FILL LIMITS
-  - PROPOSED CONSTRUCTION IMPACT AREA
-  - EXISTING WETLAND AREA
-  - PROPOSED IMPACTED WETLAND AREA

230 M² (0.057 ACRES) IMPACTED WETLAND
 460 M² (0.113 ACRES) IMPACTED WETLAND

5900 M² 1.46 ACRES EXISTING WETLAND

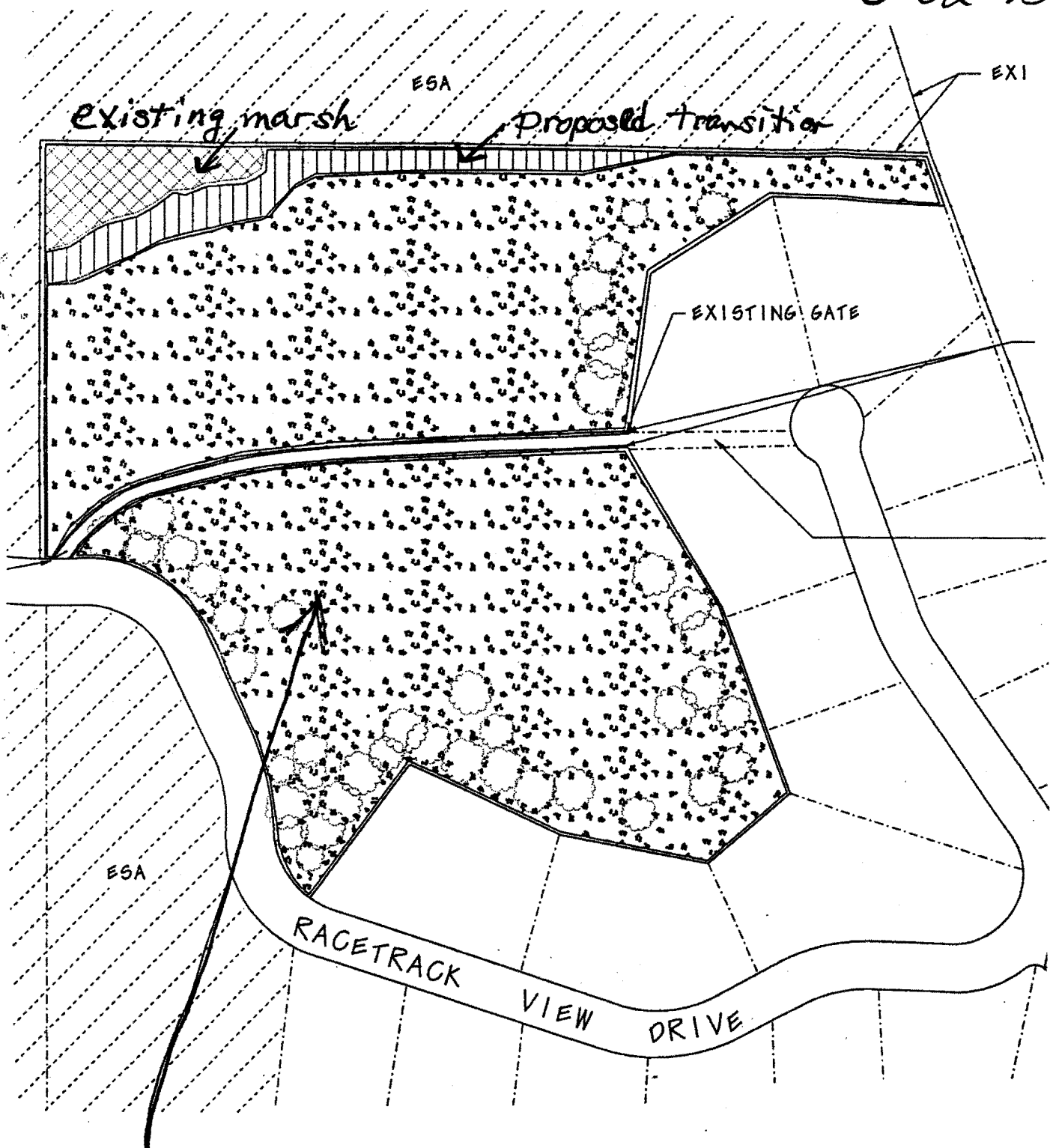
9795 M² (0.98 HA) EXISTING COASTAL SAGE SCRUB
 (2.42 ACRES)

2.33 HECTARES (5.75 ACRES) CONSTRUCTION IMPACT AREA

 California Coastal Commission	northern half
	Site Plan/Map
	APPLICATION NO. 6-02-153
	EXHIBIT NO. 3

6-02-153

6-02-153



Proposed
CSS



NO SCALE

EXHIBIT NO. 4
APPLICATION NO.
6-02-153
Proposed Mitigation Plan
California Coastal Commission