

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

767-2370



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Staff: EL-SD
Staff Report: July 14, 2003
Hearing Date: August 6-8, 2003

REVISED CONDITIONS AND FINDINGS

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)

Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on February 5, 2003. In its action, the Commission approved the proposed auxiliary lane with conditions including, among other things, wetlands and uplands mitigation programs with monitoring for five years, and provision of construction and post-construction BMPs.

The staff report has been revised as follows: The previously recommended denial resolution is replaced with the approval with conditions resolution, and eight special conditions are added to the permit, beginning on Page 2. The previous findings recommended denial based on perceived impacts to ESHA, that would have been inconsistent with Section 30240 of the Coastal Act. Nesting gnatcatchers and a rare plant species occupy a portion of the manufactured freeway slope that is proposed for disturbance. However, the Commission determined that this slope area was not ESHA, because the habitat is degraded and exists in this location primarily because Caltrans planted it for slope protection when this segment of I-5 was constructed in the late 1960's, prior to the Coastal Act. The Commission thus found that the proposed impacts

could be allowed with appropriate mitigation. The findings have been adjusted accordingly, with the primary revisions to Section 2 (Environmentally Sensitive Habitat Areas (ESHA) and Section 3 (Traffic Circulation/Public Access) , beginning on Page 10.

Date of Commission Action: February 5, 2003

Commissioners on Prevailing Side: Burke, Desser, Hart, Iseman, Kruer, Nava, Peters, Potter, Woolley, and Chairman Reilly

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on February 5, 2003 concerning approval of Coastal Development Permit No. 6-02-153*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 5, 2003 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *Coastal Development Permit No. 6-02-153* on the ground that the findings support the Commission's decision made on February 5, 2003 and accurately reflect the reasons for it.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval final plans for the permitted development that are in substantial conformance with the undated Caltrans plans titled *I-5 Aux Lane Project*, received in the San Diego Coastal Commission office on October 30, 2002, with the application package.

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

2. Coastal Sage/Del Mar Mesa Sand Aster Mitigation Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final detailed coastal sage mitigation plan to the Executive Director for review and written approval. The plan shall be developed in consultation with the California Department of Fish and Game(CDFG) and the U.S. Fish and Wildlife Service (Service), and shall include the following:

- a. A detailed site plan of the impact area that substantially conforms to the *Biological Assessment*, dated September, 2002, and the *Natural Environment Study*, dated October, 2002. The final plan must delineate all impact areas, the types of impact (both permanent and temporary), and the exact acreage of each identified impact.
- b. The Biological Assessment, dated September, 2002.
- c. A detailed plan for the transplantation of the 114 Del Mar Mesa Sand Aster plants, identifying locations and methodology.
- d. A detailed plan for the mitigation site within the San Dieguito Lagoon and a description of how the site will be secured (e.g., dedication, easement, etc.).
- e. The following goals, objectives, and performance standards for the mitigation site:
 1. Creation of a minimum 2:1 in-kind mitigation for all Coastal Sage Scrub impacts (permanent and temporary).
 2. The coastal sage scrub at the mitigation site should be similar to nearby, relatively undisturbed stands of CSS in both species composition and ground cover in 5 years.
 3. Planting of the new slopes adjacent to the site of the auxiliary lane shall occur within 30 days of completion of construction.
- f. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards.

- g. Provisions for submittal, within 30 days of completion of initial restoration work, of "as built" plans demonstrating that the mitigation site has been established in accordance with the approved design and construction methods

The permittee shall undertake development in accordance with the approved mitigation plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Wetlands Restoration. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final detailed wetlands restoration plan to the Executive Director for review and written approval. The plan shall be developed in consultation with the California Department of Fish and Game(CDFG) and the U.S. Fish and Wildlife Service (Service), and shall include the following:

- a. A detailed site plan of the temporary impact area that substantially conforms to the *Biological Assessment*, dated September, 2002, and the *Natural Environment Study*, dated October, 2002.
- b. A detailed plan for the restoration activities and a description of how the site will be secured (e.g., dedication, easement, etc.).
- c. The following goals, objectives, and performance standards for the restoration area:
 - 1. Restoration of a minimum 1:1 in function and aerial extent of all impacted marsh areas.
 - 2. The restoration site should be similar to nearby, undisturbed marsh areas in both species composition and ground cover in 5 years.
 - 3. Planting of the site of impact within 30 days of completion of sediment and exotic removal, unless directed otherwise by CDFG and the Service for seasonal avian breeding considerations. In such a case, planting will occur within 30 days of the end of the breeding season.
- d. Provisions for submittal, within 30 days of completion of initial restoration work, of "as built" plans demonstrating that the mitigation site has been established in accordance with the approved design and construction methods

The permittee shall undertake development in accordance with the approved restoration plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Final Monitoring Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final detailed monitoring program for monitoring of the coastal sage mitigation and wetland restoration sites for review and written approval of the Executive Director. The applicant shall develop the program in consultation with the U.S. Department of Fish and Game and the U.S. Fish and Wildlife Service as appropriate. The monitoring program shall, at a minimum, include the following:

- a. Provisions for monitoring the survival and success of all transplanted Del Mar Mesa Sand Asters.
- b. Provisions for monitoring the survival and success of all wetland restoration areas.
- c. Provisions for monitoring the revegetation of all coastal sage mitigation sites.
- d. Provisions assessing the initial biological and ecological status of the "as built" mitigation and restoration sites within 30 days of establishment of the mitigation and restoration sites in accordance with the approved plans. The assessment shall include an analysis of the performance standards that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
- e. Provisions to ensure that remediation will occur within 60 days of a determination by the permittee or the Executive Director that monitoring results indicate that the mitigation or restoration sites do not meet the goals, objectives, and performance standards identified in the approved programs.
- f. Provisions for monitoring and remediation of the mitigation and restoration sites in accordance with the approved final mitigation and restoration programs for a period of five years, commencing upon submittal of the "as built" analysis.
- g. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, with the first annual report due one year after submission of the "as-built" analysis. Each report shall also include a "Performance Evaluation" section evaluating the status of the mitigation and restoration projects in relation to the performance standards.
- h. Provisions for submission of final monitoring reports to the Executive Director at the end of the five-year reporting period. The final reports must be prepared in consultation with a qualified biologist. The reports must evaluate whether the mitigation and restoration sites conform with the goals, objectives, and

performance standards set forth in the approved final mitigation and restoration programs.

If the final reports indicate that the mitigation and/or restoration project has not met all approved performance standards, the applicant shall submit a revised or supplemental program to compensate for those portions of the original program which did not meet the approved performance standards. The revised program(s) shall be processed as amendments to this coastal development permit, unless the Executive Director determines that no amendments are legally required.

The permittee shall monitor and remediate the mitigation and restoration sites in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No change to the program shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no amendment is legally required.

5. Maintenance of Water Quality. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final detailed water quality program for review and written approval of the Executive Director. The applicant shall develop the program in consultation with the Regional Water Quality Control Board (RWQCB). The program shall consist of the following:

- a. The applicant shall submit final grading plans for the entire alignment, with existing and proposed contours clearly delineated.
- b. The applicant shall submit a Best Management Practices (BMP) Program addressing post-construction BMPs. This program shall include, but is not limited to, final drainage plans delineating the detention basin, bioswale and outlet facilities, and calculations/evidence that the facilities are designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- c. The applicant shall submit a Best Management Practices (BMP) Program addressing construction BMPs. This program shall include, but is not limited to, the following:
 1. Machinery or construction materials not essential for the proposed project shall not be allowed in the lagoon.
 2. Debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
 3. Discharge of any hazardous materials into the lagoon shall be prohibited.

4. The applicant shall immediately retrieve and properly dispose of any materials that fall into the lagoon waters or wetlands.
5. The BMP program shall include a detailed plan for clean-up of accidental spill of petroleum-based products, cement, or other construction related pollutants. The plan shall be retained on-site with the contractor or engineer throughout construction. It shall include, but not be limited to, use of absorbent pads.

The permittee shall undertake development in accordance with the approved final BMP program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved BMP program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Landscaping/Planting Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final landscaping plan for planting the new, approximately 15.44 acres of highway slopes for the review and written approval of the Executive Director. The plan shall include the following:

- a. A maintenance plan for the planted area that shall describe the herbicide, pesticide and fertilizer practices as well as list the chemical pesticides and fertilizers that will be employed on site. Said chemicals shall not be toxic to fish or wildlife or persistent in the environment. Herbicides and pesticides, if used at all, shall be applied by hand application or by other means that will prevent leakage, percolation, or aerial drift into adjacent lagoon, wetland and upland areas;
- b. A plan showing the type, size, extent and location of all plant materials used.
- c. Only species typical of coastal sage habitats shall be utilized, such that the slopes will be compatible with surrounding natural and manmade areas.
- d. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of the construction project;
- e. All required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new drought-tolerant native or non-invasive plant materials to ensure continued compliance with landscape requirements; and
- f. Five years from the date of issuance of the coastal development permit, the applicant shall submit a landscape monitoring report for review and written approval of the Executive Director. The report shall be prepared by a licensed Landscape Architect or qualified Resource Specialist, and certify that the on-site landscaping is in conformance with the landscape/planting plan approved

pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved planting plans. Any proposed changes to the approved planting plans shall be reported to the Executive Director. No changes to the planting plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Seasonal Restrictions. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final construction schedule for the approximately two-year construction period for the review and written approval of the Executive Director. The plan shall include the following prohibitions:

- a. Construction activities, including removal of vegetation, shall not occur within the California gnatcatcher breeding season (February 15 – August 31) of any year without the concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.
- b. Construction activities shall not occur during the approximately 20-day annual fair or on weekends during the racing season.

8. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development authorized by CDP #6-02-153. The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

IV. 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 and concrete rubble 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. Special Condition #1 requires submittal of final plans for all proposed improvements.

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 vegetation communities found on the subject site and potentially 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 identified 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. Thus, adequate mitigation would be provided. Therefore, the Commission finds this portion of the proposed project consistent with Section 30233 of the Act.

Creation of the new auxiliary lane and drainage swale will result in direct and permanent impacts to degraded CSS habitat on the freeway slope. The subject site is comprised of a manufactured slope formed when I-5 was first constructed through this area in the mid 1960's, and is located within the I-5 right of way. At that time, the applicant planted the slope with CSS vegetation as an erosion control measure. The slope was not intended to remain intact over the long term, as future widening of the freeway has been planned for many years. The habitat has flourished in some locations, and is degraded in other areas, with the actual project site being somewhat degraded.

The Commission acknowledges that the plants that Caltrans installed for erosion control on the manufactured slope associated with I-5 north of Del Mar Heights Road have developed into a stand of vegetation that is now accurately described as degraded coastal sage scrub (CSS) and that this habitat was used by a nesting pair of California gnatcatchers. Under other circumstances, the Commission has found that degraded CSS that supports nesting gnatcatchers is ESHA, because the habitat was especially valuable due to its role in the ecosystem. However, in the present instance, the Commission finds that the habitat cannot reasonably be considered part of the ecosystem because it was created for the sole purpose of supporting a highway, is located within the highway right of way, and, at the time of construction, there was an expectation that the slope would be altered or destroyed in the future in order to accommodate the needs for highway maintenance or increased highway capacity. Furthermore, the slope was planted with native vegetation primarily for erosion control as opposed to native habitat creation and the creation of this habitat has not been used as mitigation for any environmental impacts. Therefore, the Commission finds that the manufactured slope that supports the roadbed for Highway 5 does not meet the definition of Environmentally Sensitive Habitat Area under the Coastal Act because it is not rare and is not part of the ecosystem.

Gnatcatcher nesting has been documented on this site twice in the past. 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. Special Condition #6 addresses the revegetation of this area. 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 repeatedly, removing any ability for it to ever function as useable nesting habitat for the gnatcatcher or any other listed species.

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 low on the slope close to the existing 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 impacts to CSS on the highway manufactured slope as well as 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 (JPA), which has given its verbal approval for the proposed mitigation program to be carried out on this site.

Special Conditions #2, 3 and 4 address mitigation for the permitted wetland and upland impacts. They identify appropriate vegetation, include performance criteria, and detail the monitoring phase of the program. Special Condition #6 outlines the planting program for the new freeway slopes, and Special Condition #7 establishes a construction schedule to protect adjacent sensitive species, especially gnatcatchers. Finally, Special Condition #8 requires submittal of copies of all permits required by other state and federal wildlife and regulatory agencies. If those final approvals differ from, or conflict with, this permit, a permit amendment may be required.

In summary, the Commission finds that the proposed construction activities are consistent with Sections 30233 and 30240 of the Coastal Act. The proposed temporary impacts to wetlands are for restoration purposes, have been minimized to the maximum extent feasible and adequate mitigation is provided. In addition, the existing, degraded CSS on the manufactured highway slope is not ESHA, and is not part of the natural ecosystem of the San Dieguito River Valley. The applicant proposes mitigation at a ratio of 2:1 for impacts to the disturbed CSS and gnatcatcher, and proposes transplantation of the sensitive plant species. The chosen mitigation site already has both CSS and Del Mar Mesa sand asters on the site, making it likely that the site will be successful. After completion of the planting and monitoring phase of mitigation, the site will be dedicated to the JPA and will be maintained by that entity in perpetuity. The proposed development would not have significant adverse impacts on the quality and quantity of delineated ESHA in the San Dieguito River Valley, as this delineation does not include the existing manufactured highway slopes along I-5. Therefore, as conditioned, the Commission finds the proposal consistent with the biological resource policies of the Coastal Act.

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 safety problem at this particular site, and a higher-than-average accident rate.

In public testimony, the applicant has demonstrated a significant need for the proposed development for public safety purposes. A third of all commuters in this corridor either enter or exit the freeway along this stretch. Moreover, a California Highway Patrol officer testified that the accident rate along this stretch has increased from approximately 10 incidents per month to about 150 incidents a month in recent years. 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 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 the overall amount of traffic, as the number of through

lanes remains the same as currently exists, and the LOS will remain at "F" during peak hours.

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, although it will make entering and exiting easier than at present. 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 positive effect on public access to these identified destination points.

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, more likely, beneficial. Special Condition #5 addresses water quality, and provides that the applicant submit a final BMP program produced in consultation with the Regional Water Quality Control Board. As conditioned, the Commission finds the proposal consistent with Section 30231 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, 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 Restoration 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. The proposed development does not conflict with the draft restoration plan, nor with the San Dieguito Lagoon Enhancement Plan, which addressed only areas west of I-5, and was approved by the Commission in the early 1980's. Therefore, the Commission finds that approval of the proposed development, with the attached special conditions, will not prejudice future planning efforts for the river valley or the City's ability to implement its certified LCP.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as

conditioned, 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.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing mitigation and monitoring programs, BMP plans, landscaping plans, seasonal construction restrictions and permits from other regulatory agencies, 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 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.

6-02-153

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SEE 1188 MAP

EXHIBIT NO. 1

APPLICATION NO.

6-02-153

Location Map

California Coastal Commission

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.

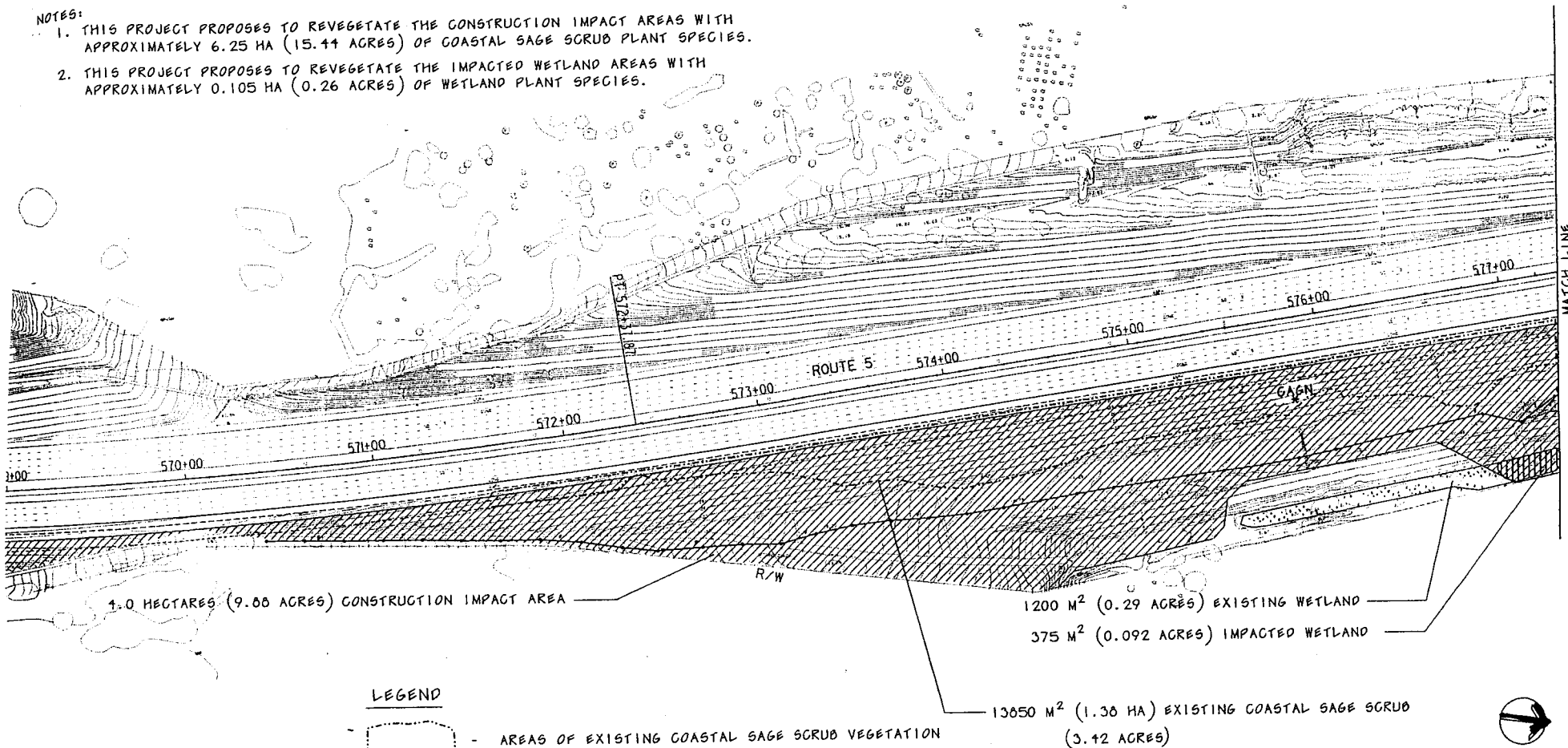


EXHIBIT NO. 2
APPLICATION NO.
6-02-153
Site Plan/Veg.
Southern half
California Coastal Commission

6-02-153

MATCH LINE

578+00

579+00

580+00

ROUTE 5

581+00

582+00

583+00

584+00

585+00

END PROJECT STA 583+20 "RTE 5"

R/W

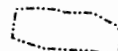
R/W

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

5900 M² 1.16 ACRES EXISTING WETLAND
9795 M² (0.98 HA) EXISTING COASTAL SAGE SCRUB
(2.12 ACRES)

2.33 HECTARES (5.75 ACRES) CONSTRUCTION IMPACT AREA

LEGEND



AREAS OF EXISTING COASTAL SAGE SCRUB VEGETATION



PROPOSED CUT/FILL LIMITS



PROPOSED CONSTRUCTION IMPACT AREA



EXISTING WETLAND AREA



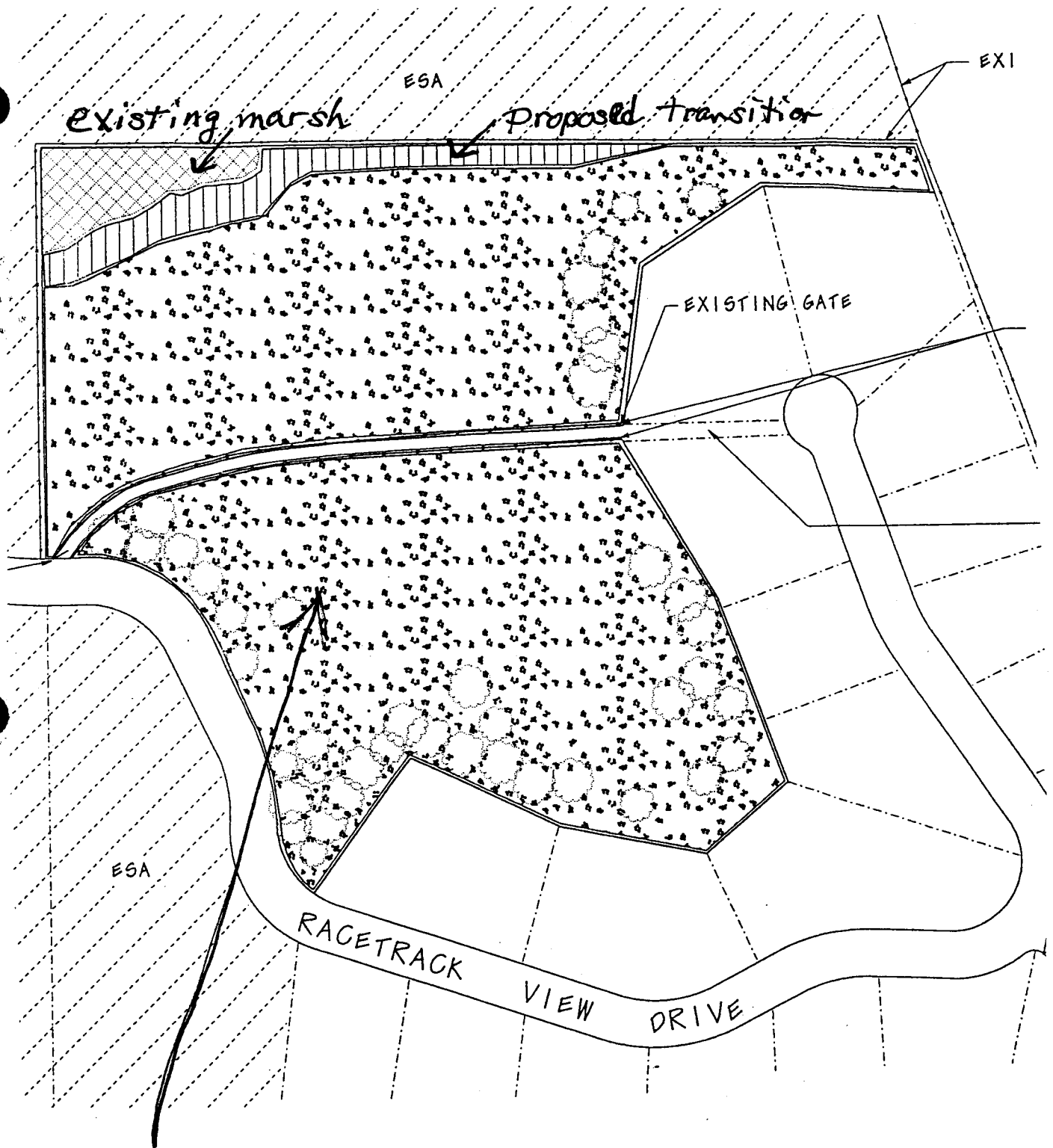
PROPOSED IMPACTED WETLAND AREA

EXHIBIT NO. 3
APPLICATION NO.
6-02-153
Site Plan/Veg
northern half



6-02-153

6-02-153



Proposed
CSS



NO SCALE

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

