

CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-118

Applicant: City of San Diego, Metropolitan Wastewater Department Agent: Marco Gallegos

Description: Creation of 3.6 acres of riparian habitat, 0.2 acres of freshwater marsh, and 0.7 acres of upland habitat on 9.6 acres within the floodplain and upland area of Penasquitos Creek. The project is proposed as a mitigation program for past and future department projects for cleaning and maintenance of a number of sewer facilities located in various canyons citywide. The proposed project features include removal of berms and exotic vegetation, grading to remove prior fill and create appropriate wetland elevations, installation of temporary irrigation system, planting wetland and upland species, and relocating an existing public trail from within the proposed wetland area to its perimeter. The proposed project also includes a five-year monitoring and reporting program and provisions for remedial action if needed.

Site: Within Los Penasquitos Canyon, approximately 0.75 miles northeast of the intersection of I-805 and Sorrento Valley Road, North City, San Diego, San Diego County. APN #310-050-14

Substantive File Documents: Certified City of San Diego North City Land Use Plan and Implementing Ordinances; *Conceptual Wetland Creation Plan, Los Penasquitos Canyon Preserve, San Diego, California*, dated January, 2004; CCC Files #6-98-127-A1, 6-99-101, and 6-04-082.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed wetlands creation program, with special conditions requiring final plans, copies of other agency permits, and applying seasonal restrictions. Issues raised by the development include possible impacts on existing

habitat areas or on nesting birds, visual impacts of construction, and impacts on public access. All issues are resolved through project design and recommended special conditions. The mitigation and monitoring program has been reviewed by the staff ecologist, whose only concerns require minor modification of the performance monitoring as reflected in Special Condition #1.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-04-118 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Mitigation Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, a final mitigation and monitoring program for the permitted development. Said program shall be in substantial conformance with the

Conceptual Wetland Creation Plan, Los Penasquitos Canyon Preserve, San Diego, California, dated January, 2004, except as revised below, and shall comply with all conditions of this coastal development permit.

- Final performance monitoring shall take place after at least 3 years without remediation or maintenance activities other than weeding.
- Final performance monitoring shall be conducted with sufficient replication to detect a difference of 10 percent absolute cover using a one-sample t-test with statistical power of 90 percent at an alpha of 0.10. The final monitoring plan shall contain an estimate of the necessary replication based on a statistical power analysis using an estimate of the sample variance obtained by sampling an appropriate reference area in the vicinity of the project site.

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

2. Construction Access/Staging Area/Project Timing. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit plans showing the locations, both on- and off-site, which will be used as staging and storage areas for materials and equipment during the construction phase of this project. The staging/storage plan shall be subject to review and written approval of the Executive Director. Use of environmentally sensitive wetland and upland habitat areas for the temporary storage of equipment or materials shall not be permitted. The plan shall also incorporate any seasonal and erosion control restrictions imposed in the other resource agency permits (U.S. Army Corps of Engineers [ACOE], California Department of Fish and Game [CDFG], and Regional Water Quality Control Board [RWQCB]). These restrictions typically address installation and maintenance of construction BMPs, protection of the existing El Cuervo and El Cuervo Norte mitigation sites to the south and west of the subject site, and protection of breeding avian species in or near the project site.

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

3. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for review and written approval of the Executive Director, copies of all other required local, state or federal discretionary permits for the development herein approved, including permits for road/trail realignment required by

the U.S. Army Corps of Engineers (ACOE) and the California Department of Fish and Game (CDFG). Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development 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. The subject development proposes to create a mitigation bank for past and future Metropolitan Wastewater Department projects, both coastal zone and non-coastal zone. The proposed site is in western Los Penasquitos Canyon Preserve. Although the majority of the site is disturbed and contains ruderal vegetation, there are also patches of sensitive wetland habitats, including freshwater marsh, mulefat scrub and southern willow scrub, and upland habitats of coastal sage scrub and isocoma scrub. All wetlands habitats will be avoided by the proposed project, which includes the removal of two berms and fill associated with past agricultural uses, and removal of exotic vegetation. Subsequent to grading the site to appropriate wetland elevations, the area will be planted with appropriate wetland species and a temporary irrigation system installed. The project also includes a five-year monitoring and maintenance program, with scheduled reports to all resource agencies. Finally, there is an existing public trail which currently crosses through the middle of the proposed wetlands. This trail will be relocated to the perimeter of the site and widened to serve as a park maintenance and access road as well.

There are several advantages to the proposed location: 1. all mitigation would occur within the coastal zone, where resources have been most severely depleted; 2. the site is already public land and is within a dedicated resource preserve; 3. restoration of this site is cited as a high priority in the draft 1996 Los Penasquitos Canyon Preserve Natural Resource Management Plan; and 4. there is a high potential for success at this site, as it is located within an historic streambed and adjacent to an existing riparian mitigation site now in its monitoring phase (CDP #6-99-101) and a second mitigation site currently being developed (CDP #6-98-127-A1). The amended project would result in total creation of 3.8 acres of new riparian and freshwater marsh wetlands, and creation of 0.7 acres of coastal sage scrub habitat. The coastal sage is proposed as mitigation for project impacts on 0.7 acres of isocoma scrub, which is a precursor to the coastal sage scrub community but less valuable as habitat.

Although the City of San Diego has a fully certified LCP, a few areas of deferred certification remain, including the entire Los Penasquitos Canyon Preserve. A draft master plan for the preserve was prepared, but was put on hold while the City developed its Multiple Species Conservation Plan (MSCP). The preserve is included in the delineated Multiple Habitat Planning Area (MHPA), but no documentation was

forwarded to the Coastal Commission for review and certification. Thus, the preserve remains within the Commission's permit jurisdiction, and Chapter 3 policies are the legal standard of review. Policies of certified land use plans for surrounding communities are used as guidance where appropriate.

2. Environmentally Sensitive Habitats/Biological Resources. The following Chapter 3 policy of the Coastal Act is applicable, and states:

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 overall 9.6 acre site contains a number of sensitive wetland and upland habitats, as well as large areas of ruderal vegetation and non-native grasslands. The proposed mitigation program will not result in direct impacts to any wetland habitats or existing coastal sage scrub. All such areas will be fenced/flagged and avoided completely during project construction. However, several patches of isocoma scrub occur within the area where wetlands will be created, and direct impacts on 0.7 acres of this vegetation community will occur. Although isocoma scrub is a forerunner of coastal sage scrub, it does not serve the same habitat functions or host listed species such as the California gnatcatcher and is thus, not considered an environmentally sensitive habitat area (ESHA). The 0.7 acres of impacted isocoma scrub will be mitigated by the creation/restoration of 0.7 acres of coastal sage scrub on existed disturbed upland areas of the site. Thus, the impacted area will be mitigated with a higher quality, more advanced habitat which has higher resource value and function, and does host listed species.

Due to the aging nature of most of the City's sewer lines, and the inaccessibility of those portions of the system located in steep areas and rough terrain, cleaning and maintenance is long overdue in many areas. The City developed a Canyon a Month Program to address this need, and has been conducting cleaning activities at several locations throughout the City, both in and out of the coastal zone. There is also additional work yet to be done in many areas. These activities have, and will, result in small impacts on various sensitive habitats. The City has chosen to address all impacts through creation of a single mitigation site in the Los Penasquitos Canyon Preserve. In a general sense, one large mitigation site stands a much higher chance of success than would numerous fragmented sites. Moreover, previous findings have identified why this particular site will likely succeed, especially with respect to existing habitat and other mitigation sites being immediately adjacent.

The Commission's staff ecologist has visited the original El Cuervo site, across Penasquitos Creek from the subject site, and is familiar with the general area and its potential for restoration. He reviewed the mitigation programs for both El Cuervo and El Cuervo Norte, and found them to be acceptable. He has also reviewed the plan for the subject site and, with the addition of two items in the performance monitoring portion of the plan, finds the plan fully acceptable. The proposed mitigation program is very similar to the others, in that it deals with the same mix of habitat types and values, and is subject to the same hydrological influences. In addition, the proposed success criteria and monitoring program are consistent with the earlier mitigation plans, which both the staff ecologist and the Commission itself found acceptable.

While the applicant has indicated that the submitted mitigation program is in final form, it is still titled "conceptual." Moreover, the staff ecologist is modifying the performance monitoring slightly. Therefore, Special Condition #1 requires submittal of the final program, which is in substantial conformance with the conceptual one submitted with the application and includes the additions requested by the staff ecologist. Special Condition #2 requires a plan identifying all proposed staging and storage areas and access corridors; it further requires that all conditions of the other resource agency permits be adhered to, especially with respect to project timing. Typically, the Commission requires that any mitigation area be preserved in perpetuity as open space. This is not being required for the subject permit because the property is already publicly owned, and is dedicated as resource-based parkland that can never be sold or traded for any other purpose. Thus, it is assured the mitigation site will remain in public ownership in perpetuity. Finally, Special Condition #3 requires submittal of all other resource agency permits prior to the commencement of construction, and warns that any significant changes to the program through other agency actions may require an amendment to this permit.

In summary, the proposed development addresses mitigation requirements for various impacts of the Canyon a Month sewer-cleaning and maintenance program, which is a city-wide project that is approximately 90% complete. The City certified an EIR for the project, that established a "checklist" to determine permit requirements for those projects in the coastal zone, taking into consideration special equipment the City purchased for this project and the application of avoidance techniques wherever possible. In many cases, repair and maintenance provisions apply and exempt the projects from CDP requirements. However, where impacts to sensitive resources would occur, exemptions may not apply, and the City has, or will, process individual CDPs for those sites. The Commission finds the proposed mitigation program significantly exceeds the compensation required for the one project identified so far in its permit jurisdiction. The project will create new wetland and upland habitats, consistent with Section 30240. Therefore, the Commission finds the proposal, as conditioned, consistent with the cited LCP policy of the Coastal Act.

3. Water Quality. The following Coastal Act policy is most applicable to water quality issues, and states in part:

Section 30231.

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

The mitigation site is located in the western portion of the Los Penasquitos Canyon Preserve. The Preserve is an area of deferred certification; therefore Chapter 3 of the Coastal Act is the standard of review. This is a public resource-based park system, and exists in a semi-natural state. Other than a few historic structures, such as the El Cuervo adobe located southwest of the proposed mitigation site, and some maintenance roads and pedestrian trails, there are no improvements in the preserve. However, agricultural activities which took place in the middle part of the last century have extensively altered landforms and redirected Los Penasquitos Creek through the placement of berms that served to channelize the stream into a single flow. The historic flow pattern in the canyon included many interconnected (braided) streams that spread flood flows throughout the entire floodplain.

The proposed wetland creation/restoration is not anticipated to have any adverse impacts on existing water quality. All surfaces will continue to be permeable, including the relocated public and park access road. Since the road is primarily used by pedestrians only used occasionally by park vehicles for maintenance purposes, it should not contribute any significant amounts of pollutants to the watershed and, in any case, the uses will not increase over what already occurs on the existing road. Moreover, the increase in the amount of wetlands will enhance the filtering function of this area, which ultimately drains into Los Penasquitos Lagoon.

However, adverse impacts could result from the construction phase of the development, since the removal of fill and recontouring of the site will result in temporarily exposed soils. The applicant is proposing a number of temporary erosion control Best Management Practices (BMPs); these measures will minimize, if not eliminate, any potential adverse impacts from project construction on the water quality of the adjacent streams and downstream Los Penasquitos Lagoon. The Commission finds that, as conditioned, the development is consistent with Section 30231 of the Act.

4. Public Access. The most applicable Chapter 3 policies 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 30213.

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. ...

Los Penasquitos Canyon Preserve is within the designated MHPA preserve. There are a number of unimproved road/trails running through the preserve, some within, or in close proximity to, the project site. These are used by County Parks personnel, the City's Metropolitan Wastewater Department, San Diego Gas & Electric and the public, with the entire area being fully accessible. The preserve is a popular location for mountain biking and horseback riding, and is also well used by hikers. The most heavily used trail is located on the south side of Los Penasquitos Creek, outside of, but nearby, the subject mitigation site; use of this road will not be affected by the proposed project. The existing dirt trail which currently crosses through the middle of the subject mitigation site will be removed, restored to wetlands, and temporarily fenced with split-log railing while the wetland plants establish. Although this will somewhat limit access in this exact location, a new road/trail will be constructed along the northern perimeter of the site. This will be in disturbed uplands and will not result in impacts to any existing sensitive habitats. A perimeter trail provides the most appropriate public access, both because the new habitats need several years without human encroachment to successfully reach maturity and because having the trail on higher ground provides better views overall.

Access to this general area will likely be constrained and at least intermittently unavailable during construction, and the applicant proposes to post signs and install low split-rail fencing to alert the public to stay out of the revegetation areas of the project to protect the newly created and existing habitats. The Commission finds the temporary

impacts on public access acceptable, since the finished project will increase coastal resources and thus provide a more enjoyable recreational experience for the public. Therefore, the Commission finds the proposed amendment, as conditioned, consistent with the cited public access and recreation policies of Chapter 3 of the Coastal Act.

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

This project is creation of wetlands as mitigation for the impacts of the City's Canyon a Month sewer project. The site is located in Los Penasquitos Canyon Preserve, which is a publicly owned, open space area, dedicated for both resource protection and public recreation. Although the City has prepared a draft master plan for the preserve, this has neither undergone full public review at the local level nor been submitted to the Coastal Commission for certification as part of the City's LCP. In fact, this planning effort was abandoned in favor of the City's MSCP, which is now in effect but is not part of the certified LCP. Thus, the Los Penasquitos Canyon Preserve remains an area of deferred certification, where the Commission retains coastal development permit authority and Chapter 3 is the legal standard of review.

The proposed mitigation/restoration plan is fully consistent with the draft master plan, and is indeed a priority project under that plan. As discussed in previous findings, the proposal, as conditioned, is also fully consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, with the attached conditions, should not prejudice the ability of the City to complete a certifiable plan for the preserve and continue implementation of its LCP in other areas of the City.

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.

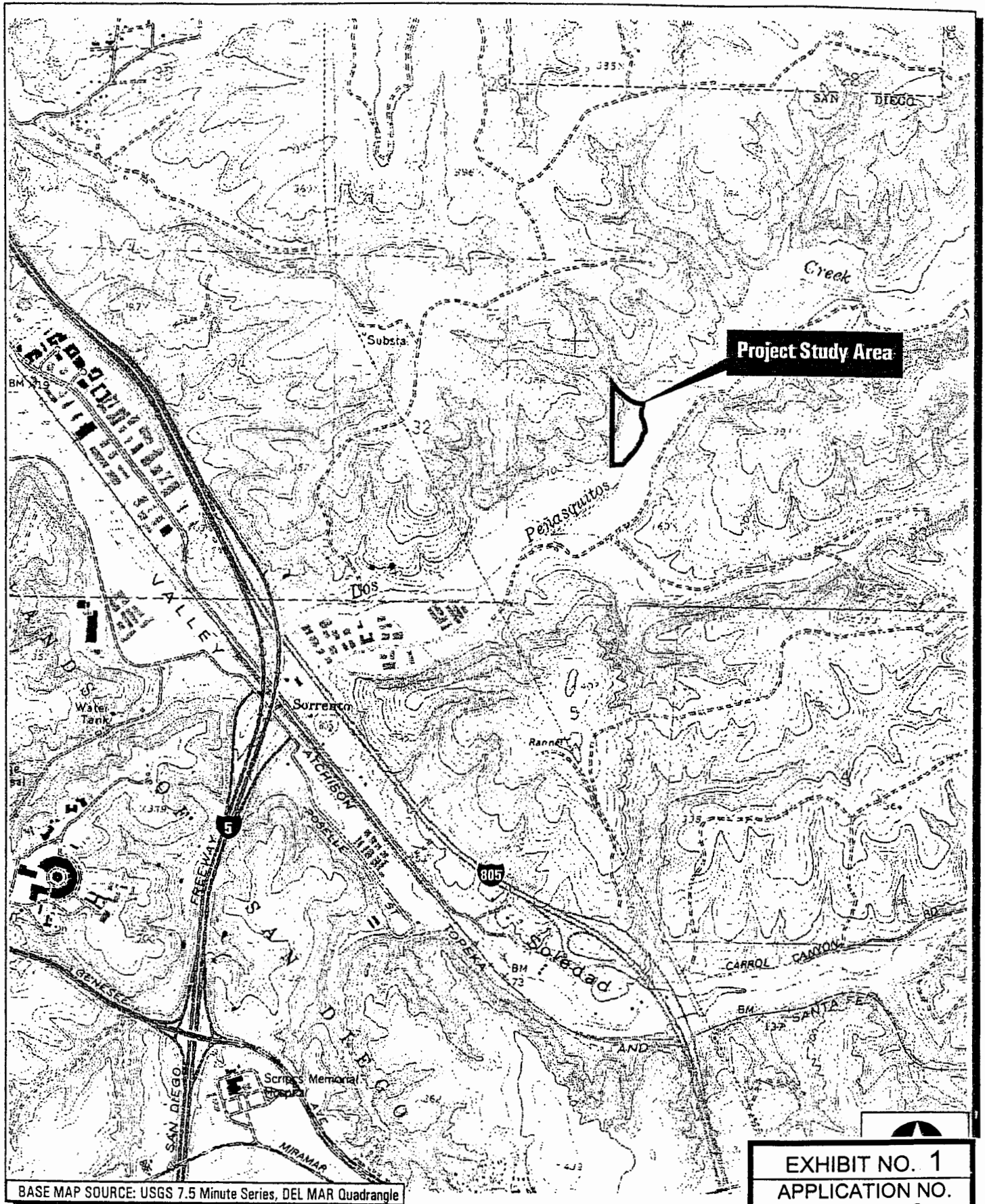
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. This staff report responds to all public comments that have been received as of the date of this staff report. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing sensitive habitats and construction requirements 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.

6-04-118



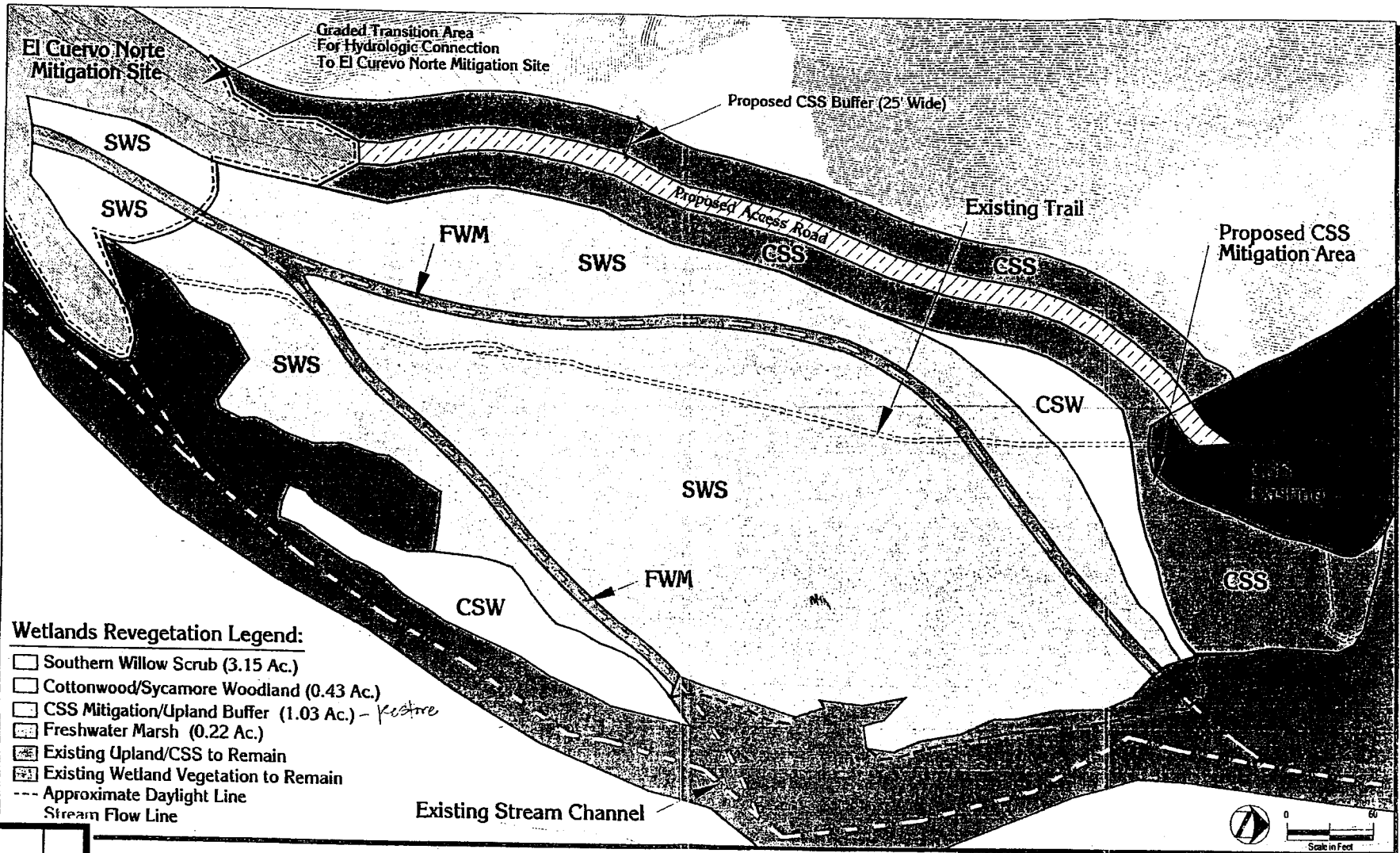
BASE MAP SOURCE: USGS 7.5 Minute Series, DEL MAR Quadrangle

EXHIBIT NO. 1
APPLICATION NO.
6-04-118
Location Map

Engineering and Capital Projects Conceptual Wetland

Vic


California Coastal Commission



Engineering and Capital Projects Wetland Creation Area
 Conceptual Habitat Layout

FIGURE
 5

6-04-118


 EXHIBIT NO. 2
 APPLICATION NO.
6-04-118
 Site Plan

6-04-118



Existing willow vegetation

Proposed Wetland Creation Area

Limit of Work for El Cuervo Mitigation Site: planted 2003

Penasquitos Creek

Limit of Work for El Cuervo Norte Mitigation Site: "Installation in 2003"

Existing Access Road for City Sewer Line

Sorrento Valley Blvd

El Cuervo Adobe

Lopez Canyon/Creek

EXHIBIT NO. 3
APPLICATION NO.
6-04-118
<i>Site in relation to others</i>
California Coastal Commission

