CALIFORNIA COASTAL COMMISSION
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Filed:	September 24, 2004
49th Day:	November 12, 2004
180th Day:	March 23, 2005
Staff:	DL-SD
Staff Report:	December 16, 2004
Hearing Date:	January 12-14, 2005

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-112

Applicant: U.S. Fish and Wildlife Service
South Bay Salt Works

Agent: Mendel Stewart

Description: Reconfigure a small portion of the salt works within the South San Diego Bay including filling the northern two-thirds and deepening the southern third of Pond 43 to accommodate magnesium chloride processing, instead of the existing crystallizing function. Add new access road extension.

Site: San Diego Bay Wildlife Refuge, 1470 Bay Boulevard, Chula Vista, San Diego County. APN 621-010-06, 621-020-05.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed project with special conditions requiring identification of the import site for the proposed fill. The ponds which are currently being used for magnesium chloride processing are privately owned and will shortly be unavailable to the South Bay Salt Works. Because many of the existing salt ponds currently provide high tide refuge for shorebirds and rafting, loafing, and brine invertebrate foraging opportunities for a variety of avian species, the proposed project will relocate the magnesium chloride processing to an existing pond located within the refuge, to ensure the salt works will continue operating and providing benefits to wildlife. The proposed changes to the salt work ponds will occur only to ponds that do not currently provide any benefit to wildlife and do not have any habitat value.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 6-04-112 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. 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. Import of Fill Materials. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location from which the fill materials will be imported. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

2. 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 (such as U.S. Army Corps of Engineers, Regional Water Quality Control Board and the California Department of Fish and Game) for the development authorized by CDP #6-04-112. 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. The South Bay Salt Works currently operates a solar salt processing facility on the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge (NWR). Many of the salt ponds currently provide high tide refuge for shorebirds and rafting, loafing, and brine invertebrate foraging opportunities for a variety of avian species. Three separate entities currently control the land on which the salt works operates: the US Fish and Wildlife Service, which manages most of the ponds as a National Wildlife Refuge under a lease from the California State Lands Commission; the San Diego County Regional Airport Authority, which obtained the land from the Unified Port of San Diego in January 2003, and the Charles Company, a private entity that recently purchased Ponds 50-54 from H.G. Fenton Company.

The salt works are located in the southernmost portion of San Diego Bay, adjacent to the cities of Chula Vista, San Diego, and Imperial Beach (see Exhibit #1). The current facility consists of a series of diked ponds that are designed to facilitate the concentration and ultimate precipitation of salts from bay water, and produces approximately 60,000 to 80,000 tons of common salt (sodium chloride) annually.

The South Bay Salt Works currently leases Ponds 50-54 from the Charles Company. These are separated from the other ponds by the railroad right-of-way, are currently used as crystallization and magnesium chloride ponds. Magnesium chloride is the last byproduct of a solar salt operation, and currently accumulates in the bittern ponds (50-54). This product is then sold for industrial uses, which avoids the need to discharge any brine from the salt operation into the bay. However, the lease for this land expires in December 2004, and is not being renewed. Once the lease expires, the South Bay Salt Works can no longer use Ponds 50-54. Therefore, the magnesium chloride component of the salt making process must be relocated for the salt works to continue operating, and thus, to continue providing benefits to wildlife. Thus, the proposed project would relocate the functions of Ponds 50-54 from the privately owned land to property located within the National Wildlife Refuge (see Exhibit #2).

The project would result in alterations to three existing salt ponds, 43, 47, and 48, at the Salt Works. Pond 43 would be converted from its existing function as a crystallizer pond to a magnesium chloride pond, by filling the northern two-thirds of the pond (approximately 2.7 acres) to create a level pad area for the magnesium chloride loadout system and a truck scale facility. Additional facilities that could be relocated to the filled portion of the pond include a 4,000 sq.ft. fenced bag inventory storage area and a gasoline/diesel dispenser with an appropriate containment area (see Exhibit #3).

The southern third of the pond (approximately 1.27 acres), would be excavated to increase the pond's depth by approximately 3 feet to accommodate magnesium chloride storage. The excavation would generate approximately 4,000 cy of material that would be used to partially fill the northern portion of the pond. Because the import site for the

remaining material has not yet been identified, Special Condition #1 requires that the location be identified and permitted where necessary. To remove the magnesium chloride for commercial transport, a truck loadout consisting of an overhead pipe, pump, and meter to be housed within a small shed, would be installed adjacent to the storage pond. The shed that would house the pump and meter would not exceed 10 feet in height and the height of the loadout system would be approximately 20 feet (see Exhibit #6).

The Charles Company also owns the access route to the southern end of the salt works. The applicant has indicated that this route is important, as it is the only route available year-round to the southern portion of the Refuge. The northern access route is subject to closure annually between March and September to protect nesting seabirds. In addition to providing access for Refuge management, the southern route also provides access to an existing pump and tide gates that are essential to the continued operation of the salt works.

Therefore, at crystallizer Ponds 47 and 48, a new service road would be created on a newly created levee to provide access to the south side of the salt ponds. There is an existing accessway that currently ends at Pond 47. This access route would be extended into Ponds 47 and 48 for a distance of 600 feet, connecting to the existing railroad right-of-way near the southwestern end of Pond 48 (see Exhibit #5). The width of the service road would be 30 feet, creating a new surface area of 18,000 square feet and requiring approximately 7,680 cy of fill. In addition, the existing levee between Ponds 47 and 48 would be reinforced with four feet of fill (approximately 1,621 cy yards), to provide a better separation barrier between the two ponds (see Exhibit #7).

The City of Chula Vista has a certified LCP and issues coastal development permits within its jurisdiction. However, the subject site is located within a federal wildlife refuge, which is not subject to local permit review by the City of Chula Vista. Because there is no certified LCP for this area, the standard of review for this development is Chapter 3 policies of the Coastal Act.

2. Site History. The historical information submitted by the USFWS states that the Otay Salt Works was founded in 1871 by Shaffer & Stone on 60 acres of land near La Punta. In 1882, E. E. and J. E. Shaffer bought out Stone's interest, and by 1888, they were producing 500 tons of salt a year. In 1902, Western Salt Works took over the Otay Salt Works operations. Based on a 1913 map of the Western Salt Company, they had 876.64 acres devoted to ponds with 50 pond divisions created and with all but three ponds completely diked. The Otay River had been channelized and a lane dredged out to the open bay through the diked salt works. Additional land at the southern end of the bay was purchased and levees were built to expand the salt works operation to include more than 1,350 acres. By 1915, the Salt Works installed a narrow gauge rail line at the plant, with permanent track placed on the levees and portable track extending into the ponds.

The January 1916 collapse of the lower Otay Dam and the sudden release of floodwaters into the Otay River caused extensive damage to the South Bay communities and the Western Salt Works operation, and the site needed to be rebuilt. A Western Salt

Company map of August 1916 shows that reconstruction was nearly complete. The existing layout of ponds along the southern-most portion and next to the salt works warehouse still reflect the 1916 configuration. As part of the improvements after the 1916 flood, a new channel was created along the eastern side of the salt works as a secondary diversion for water over-flowing the Otay River channel. Today, the channel has been narrowed and curves around the pond structures. In April 1922, the bank foreclosed on its loan and sold the salt works to Henry G. Fenton. Mr. Fenton continued to run the plant successfully for another 29 years. By the end of 1926, the Western Salt Company was producing eight percent of California's salt and ten percent by 1932. The Western Salt Company produces salt primarily for industrial uses such as water softeners, textile dying, pickling, road de-icing, hide processing, and other chemical applications.

In 1940, Western Salt leased submerged lands from the California State Lands Commission in the South Bay to increase production capabilities. This permitted the development of the large ponds on the northern edge of the salt works (Ponds 11, 12, 14, and 15). Operation of the salt works continued until 1999, at which time, H. G. Fenton Company, the parent company of Western Salt Company, sold approximately 800 acres of the salt works to the Unified Port of San Diego (Port). The Port conveyed most of this land, as well as an additional 600 acres of leasehold interest in the bay that was also acquired from Fenton, to the State Lands Commission for inclusion in the South San Diego Bay Unit of the San Diego Bay NWR. The Port retained the property on which the salt processing plant is located, as well as Pond 40 and the northern portion of Pond 42 and Fenton retained ownership of Ponds 50-54. (The Port's interest has since been transferred to the Airport Authority). A new salt company was formed by a group of former employees of Western Salt. This new company, South Bay Salt Works, currently operates on the Refuge in accordance with a Refuge Special Use Permit.

3. Biological Resources. The applicable Coastal Act policies are cited below, and state 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.

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:

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

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

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

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

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

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

(7) Restoration purposes.

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

Information submitted by the USFWS indicates that Pond 43 appears to have been high marsh prior to construction of the salt works in the late 1800s. Pond 43 was most likely created by removing vegetation, construction a levee around the area, and filling it with bay water via a pump. Because the ponds were apparently dug from wetlands, they can be considered historical wetlands.

The USFWS performed a biological review of the current status of the salt works. The ponds that would be affected by this proposal (Pond 43, 47, and 48) are all crystallizer ponds with salinities ranging from 310 to 356 ppt. It is within these ponds that precipitation of sodium chloride (salt) currently occurs. Once the salt has precipitated out, the ponds are drained and the salt is removed from the crystallizer ponds with heavy

equipment such as front-end loaders. Due to the extreme salinities in these ponds, little in the way of direct habitat support is provided for wildlife species. During a year-round avian survey of the salt works by the Service in 1993/1994, the species diversity and total abundance observed within these ponds were extremely low. Roosting was the primary bird activity noted. In Pond 43, a total of 54 individuals (including 37 killdeer reported in one day) were recorded over the entire year of surveys. Species diversity at this pond was the lowest of all areas surveyed with only three species, marbled godwit, American avocet, and killdeer, observed. Species diversity and total abundance were also low in Ponds 47 and 48, with 14 species and 127 individuals (including 60 American avocets recorded in one day) observed over the one-year course of the survey.

It is within the primary and secondary ponds of the salt works that large numbers of avian species are supported. During the 1993/1994 avian surveys of the salt ponds, 94 species were identified and approximately 522,550 birds were recorded. The hypersaline conditions in some of the ponds support an abundance of brine invertebrates, including brine shrimp and brine flies, which provide prey for thousands of migratory birds traveling along the Pacific Flyway. Several listed species also occur within the salt works including the Federal endangered California least tern and California brown pelican, the Federal threatened western snowy plover, and the State endangered Belding's savannah sparrow. None of these species utilize Ponds 43, 47, or 48, and the proposed project is not expected to have any adverse biological impact.

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

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

In this particular case, the proposed development meets the above requirements. The project is for the purpose of continuing mineral extraction (salt) on the site. The particular ponds in question are not environmentally sensitive areas, although, as noted above, some of the other ponds do support wildlife and would be considered environmentally sensitive. The effected ponds are currently used for salt crystallizing, and changing their function will not adversely impact water quality. The proposed project is not expected to have any adverse biological or environmentally damaging effects, thus, no mitigation is required. The no-project alternative would result in the discontinuation of the salt works. The Commission's staff ecologist has reviewed the project and determined that continuing the uses at the salt ponds are of great importance to migratory birds, and that the loss of the ecological functions of the lower salinity ponds would be a very significant impact. The US Army Corps of Engineers has indicated a preliminary intent to issue a 404 Permit for the project without requiring any mitigation. The State Lands Commission has reviewed the project and determined that the proposed

action is consistent with the Service's lease allowing the Service to "implement necessary wildlife management actions to maintain and enhance wildlife habitat and populations..." Special Condition #2 requires the applicant to submit copies of any approvals or permits from other agencies.

In summary, the proposed project can be found consistent with Section 30233 of the Act. No direct or indirect impacts to sensitive habitat will result from the project, and the project will preserve the existing beneficial environmental functions of the salt works. Therefore, the Commission finds the proposal consistent with the cited Coastal Act policies.

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

Section 30251

> The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The project includes the construction of several structures on the proposed filled pad at Pond 43. There would be a low-scale, drive-on truck scale, a 180 sq.ft. weigh master office trailer (most likely a sea container), that would not exceed 9 feet in height, a 4,000 sq.ft. fenced bag inventory storage area and relocation of an existing gasoline/diesel tank with an appropriate containment area. The fencing would not exceed 6 feet in height. To remove the magnesium chloride for commercial transport, a truck loadout, consisting of an overhead pipe, pump, and meter to be housed within a small shed, would be installed adjacent to the storage pond. The shed that would house the pump and meter would not exceed 10 feet in height, and the height of the loadout system piping (not a solid structure), would be approximately 20 feet high.

Both the existing and the proposed sites are functioning industrial operations consisting almost entirely of flat open ponds sprinkled with occasional, individual pieces of industrial equipment. The proposed structures are roughly the same size, bulk and height, and serve the same functions as those currently located on Ponds 50-54. The proposed facilities are the minimum necessary in order to continue operations at the salt works. Neither the existing nor the proposed structures will be visible from Interstate 5. The project would result in the construction of new structures on the bayward side of the railroad right-of-way, and thus would have some increased impacts on views from the railroad. The future proposed bayshore bikeway may be constructed on the levee above the salt ponds, but exactly where is not known at this time. It is likely that the proposed structures would be at a lower elevation, but still visible from that bikeway. However, the small, low profile structures are fairly small in terms of mass, and would not represent a substantial view blockage from any location. In addition, the structures have all been

designed to be portable, as several of the alternatives currently being reviewed for the long-term future of the Salt Works and the Refuge involve the eventual removal of the Salt Works.

The proposed project will have a very limited effect on the visual quality of the area, and will not change the visual character of the surrounding area. Therefore, the proposed project will not have an adverse impact on scenic or visual quality.

5. Public Access. Many policies of the Coastal Act address the provision, protection and enhancement of public access opportunities, particularly access to and along the shoreline. In the subject inland area, the following policies are most applicable, and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213

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

Section 30223

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

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Because there is a commercial operation occurring within the salt ponds, public access is not currently permitted into the Ponds, although a public street does extend along a portion of the ponds (Bay Boulevard). The Refuge conducts periodic guided tours of the salt works that currently use the existing private dirt road that extends along the eastern boundary of Ponds 50 - 54. Once the lease expires, the tour route would be changed to

include the new access road proposed through Ponds 47 and 48. The Bayshore Bikeway is proposed to extend from Main Street west along the existing railroad right-of-way, which is outside the Refuge boundary. The draft Comprehensive Conservation Plan/EIS for the future use of the salt works includes a proposal for an interpretive trail around Pond 28. No trail is proposed in the vicinity of Ponds 43, 47, or 48. In one alternative addressed in the CCP, Pond 44 is proposed as a seabird nesting site, therefore, public access in this area is not recommended in the Plan. The CCP includes several management alternatives for the South San Diego Bay Unit, each with a different degree of public access onto the Refuge. Visual and auditory access into the Refuge through various observation points is an important component of several alternatives. Other alternatives would provide various opportunities for physical access onto the Refuge in addition to proposed observation areas. The proposed project will not adversely affect public access or preclude any future public access opportunities in the area where it is determined to be appropriate and safe. Therefore, the proposed project will is consistent with the public access and public recreation policies of the Coastal Act.

6. Local Coastal Planning. The City of Chula Vista has a certified LCP and issues coastal development permits within its jurisdiction. However, as discussed above, the subject site is located within a federal wildlife refuge, which is not subject to local permit review by the City of Chula Vista. Although the project is subject to the Commission's Federal Consistency Review Process, the Commission's act of granting a coastal development permit to the applicant functions under the California Coastal Management Program as the equivalent of a concurrence under the Coastal Zone Management Act. Because there is no certified LCP for this area, the standard of review for this development is Chapter 3 policies of the Coastal Act. Based on the above discussion, the Commission finds that the proposed development, as conditioned, is consistent with all applicable Chapter 3 policies of the Coastal Act and no adverse impacts to coastal resources are anticipated.

7. 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 the import of fill 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 is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

(Document3)

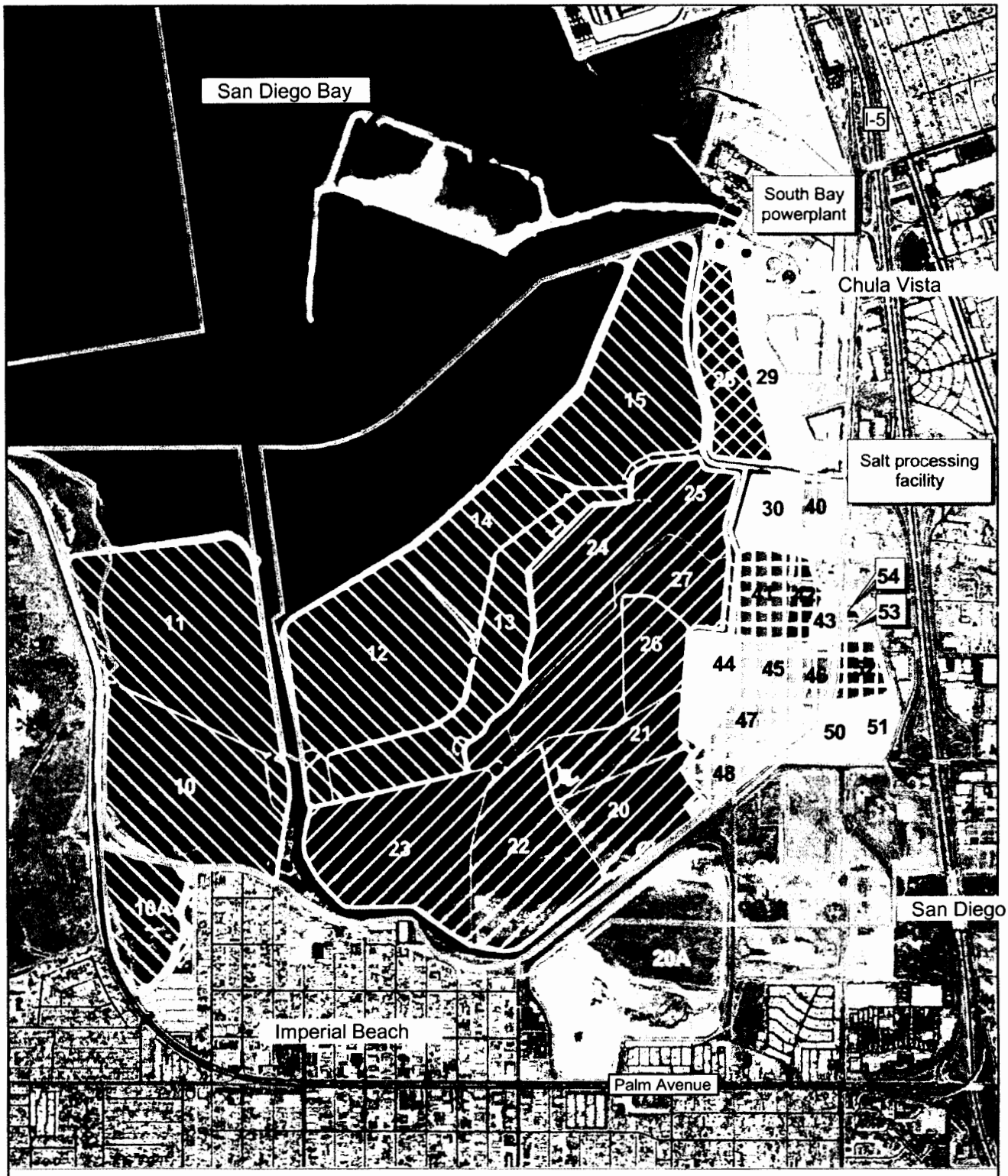

Figure 1 Salt Ponds of the South Bay Salt Works

Primary ponds | Pickling ponds | Refuge management boundary

Secondary ponds | Crystallizer ponds

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Source: USFWS, USGS (1 m imagery, year 2002)

Carls /stem/stacey/ssdt

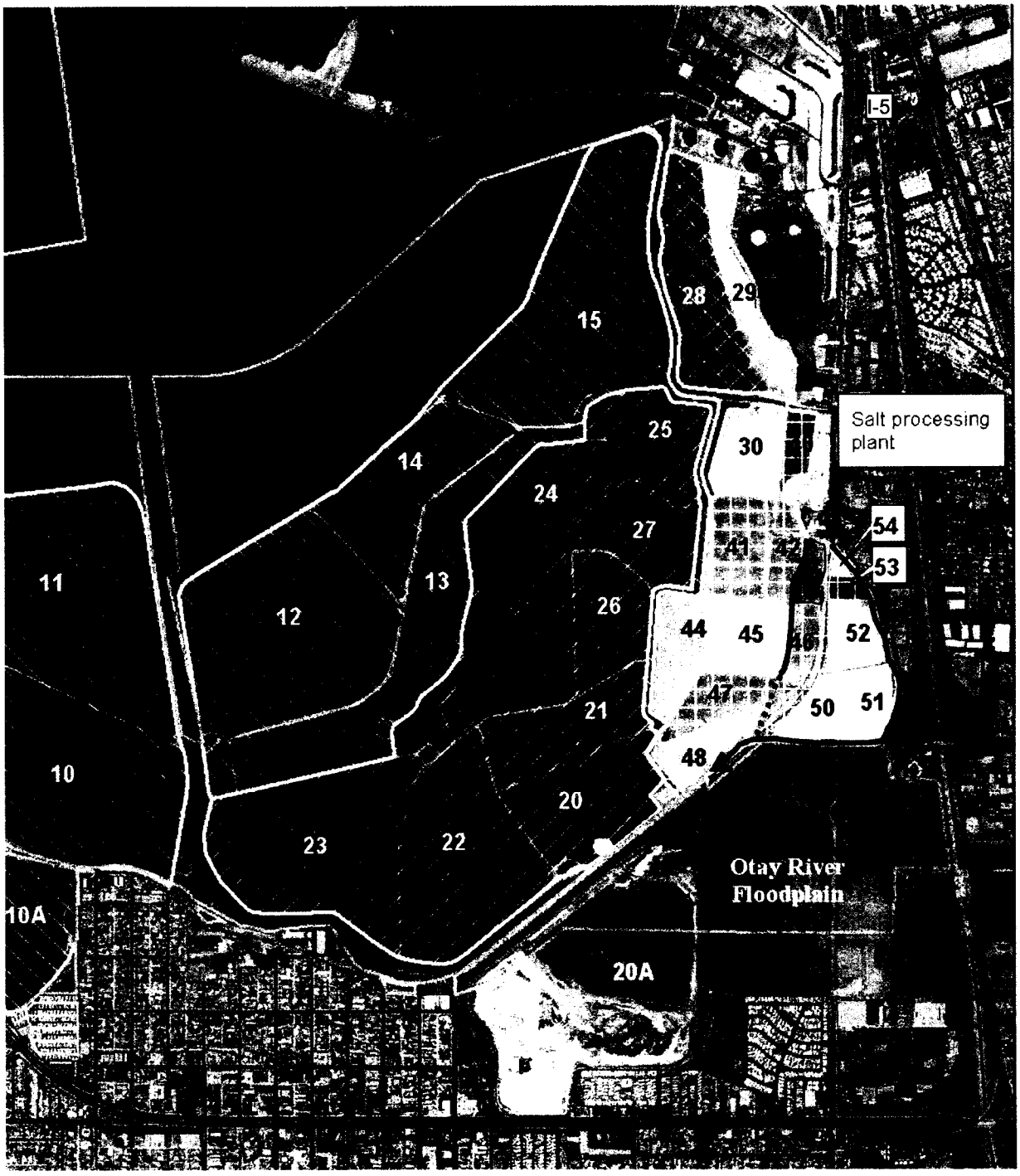
EXHIBIT NO. 1

6-04-112

Location Map

California Coastal Commission

Figure 3 – Proposed Actions at the Salt Works



Existing Maintenance Path

Proposed Extension of Existing Maintenance Path to Create a New Access Road

Currently Used Access Road

Portion of Pond to be filled

Portion of Pd

EXHIBIT NO. 2

6-04-112

Cut & Fill Area

California Coastal Commission

Figure 4A
Pond 43 Site Plan – Option A
Complete Fill

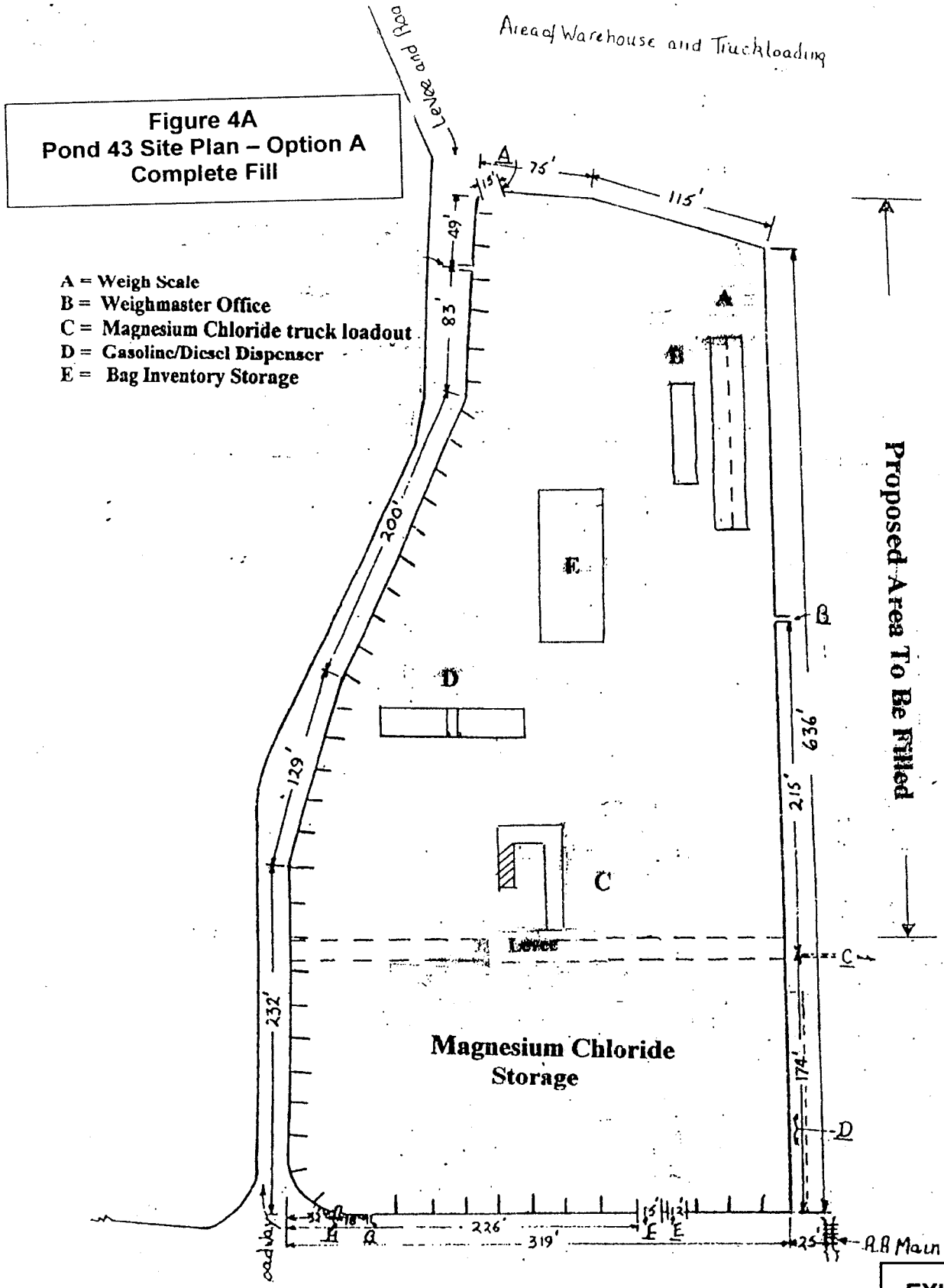
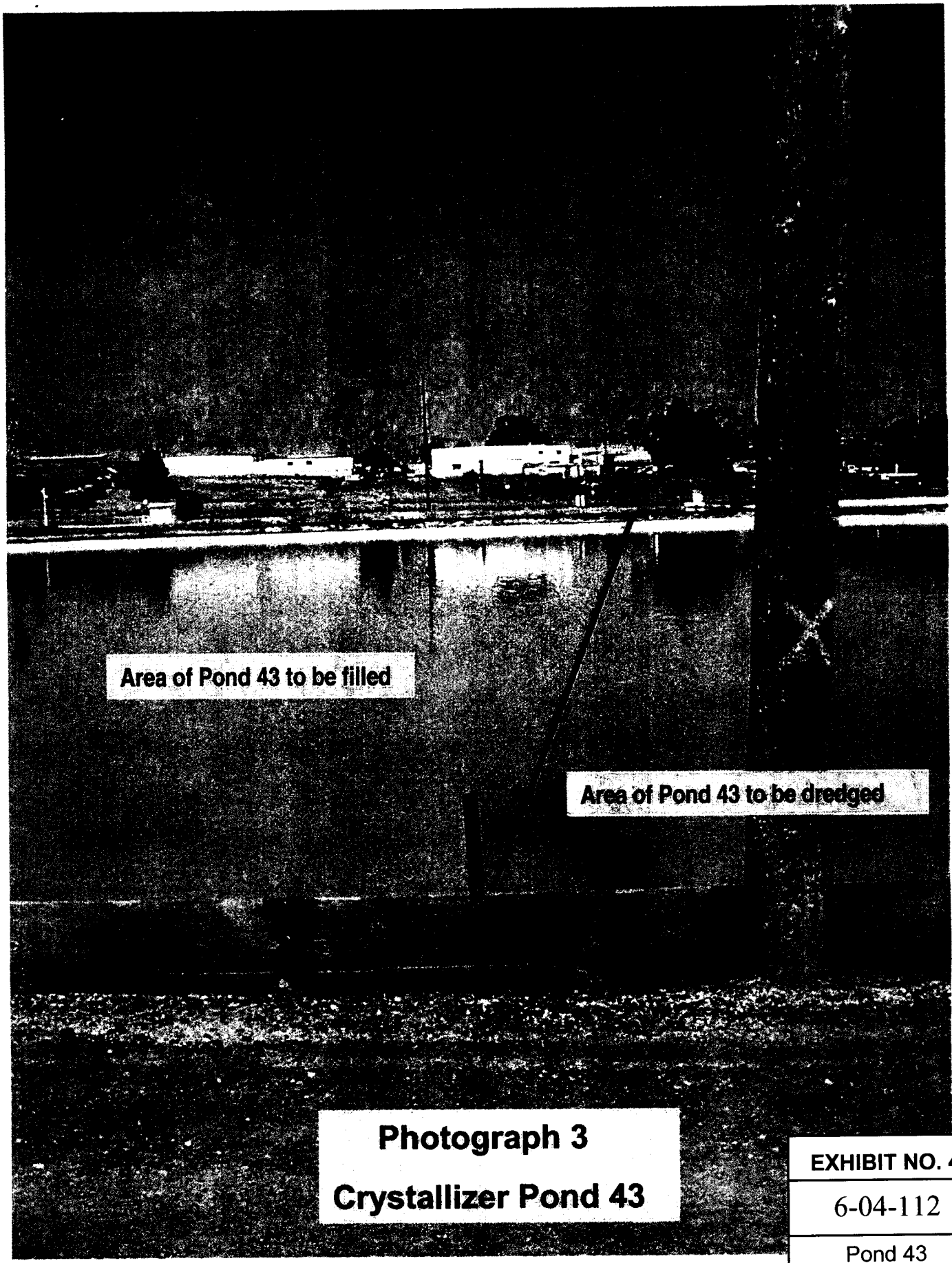


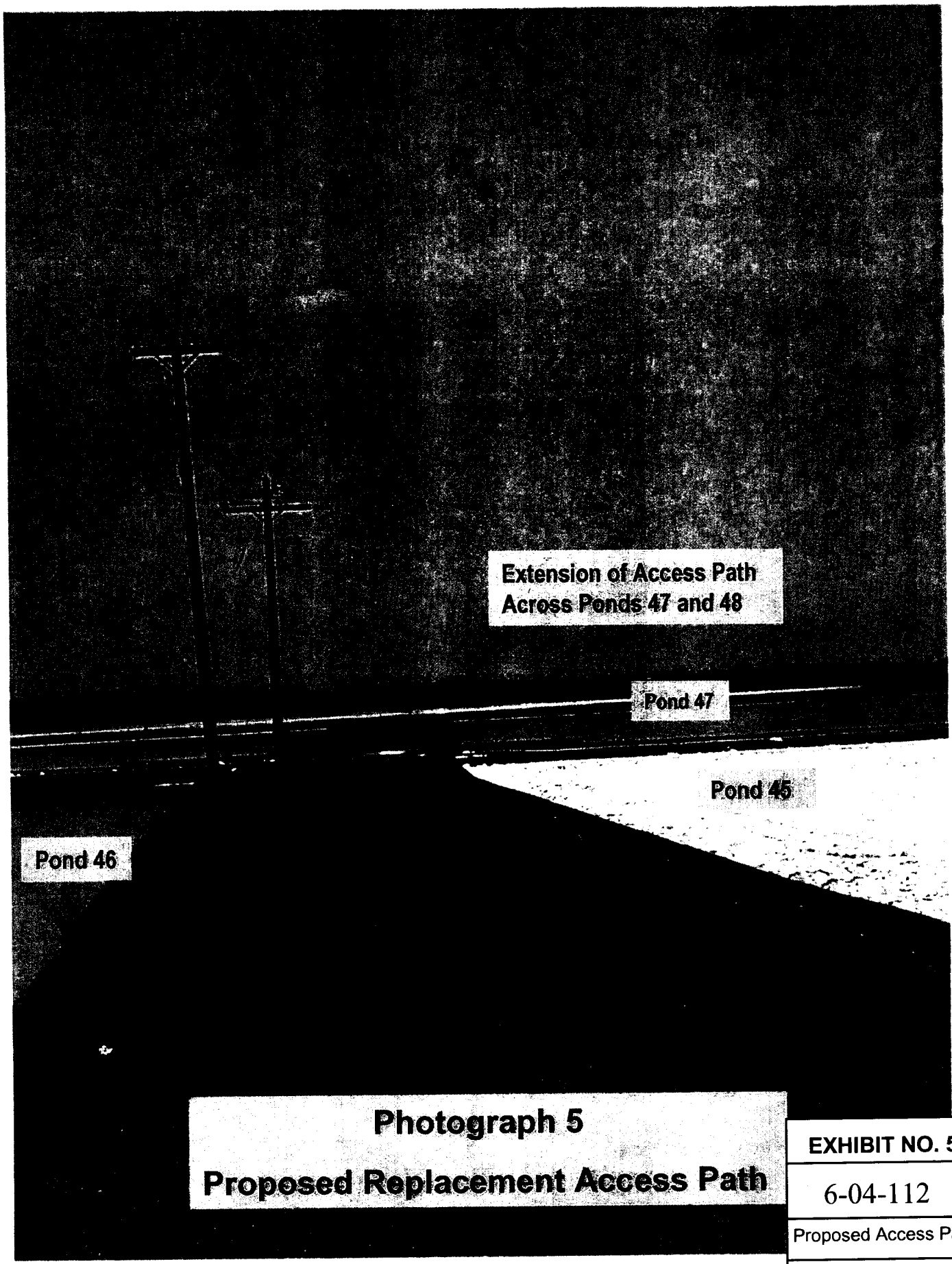
EXHIBIT NO. 3
6-04-112
Site Plan Pond 43
California Coastal Commission



Photograph 3

Crystallizer Pond 43

EXHIBIT NO. 4
6-04-112
Pond 43
California Coastal Commission



Photograph 5

Proposed Replacement Access Path

EXHIBIT NO. 5

6-04-112

Proposed Access Path

California Coastal Commission

Photograph 4.
Magnesium Chloride Loadout System

EXHIBIT NO. 6

6-04-112

Loadout System

California Coastal Commission

Photograph 6

Levee to be Reinforce between Ponds 47 and 48

EXHIBIT NO. 7

6-04-112

Levee Reinforcement

California Coastal Commission