

CALIFORNIA COASTAL COMMISSION

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Staff: K. Brown-SD
Staff Report: 9/19/13
Hearing Date: 10/11/13

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-13-0228

Applicant: City of Carlsbad Utilities Department

Agent: Pam Drew

Location: North shore of Agua Hedionda Lagoon, Carlsbad, San Diego County (APNs 208-020-4300, 206-200-1200, 207-101-3100, 206-200-0700, 206-200-0500, 206-171-0300, 206-120-2900, 207-334-0500, 208-020-4400, 206-172-0600, 206-120-2100, 206-120-3800)

Project Description: Conduct ongoing trimming of native vegetation around wastewater manholes to allow access for visual inspection, maintenance, and cleaning

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The City of Carlsbad Utilities Department proposes to implement a “Sewer Manhole Maintenance Program,” to consist of ongoing trimming of native vegetation surrounding sewer manholes to allow access for visual inspection, maintenance, and cleaning. Trimming will be minor in nature and includes trimming back tree branches that overhang the manholes and

reducing the height of vegetation within the work area in order to attain access. To avoid habitat impacts, no root removal, grubbing, or grading is proposed. The proposed project is located within the City of Carlsbad which has a certified Local Coastal Program (LCP); however the implementation program for the Agua Hedionda segment has yet to be certified. Therefore, the Coastal Commission retains permit jurisdiction in this area and Chapter Three of the Coastal Act remains the standard of review, with the certified Agua Hedionda Land Use Plan (LUP) as guidance.

There are no major Coastal Act issues associated with this project; however, due to the project site's proximity to Agua Hedionda Lagoon, there is the potential to adversely impact sensitive coastal resources associated with the lagoon. Therefore, Commission staff is recommending: **Special Condition #1** that requires the submission and approval of final plans; **Special Condition #2** that limits the permit term to five (5) years and requires vegetation mapping at the end of the five-year permit term to ensure no permanent impacts to native vegetation have occurred; **Special Condition #3** requiring a qualified biologist to be onsite should any work be necessary during the bird nesting season; and **Special Condition #4** requiring certain project operations and maintenance responsibilities to ensure that potential adverse impacts to biological resources and water quality are avoided. With the proposed conditions, potential impacts on sensitive coastal resources will be avoided.

Commission staff recommends **approval** of coastal development permit application 6-13-0228, as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS	5
IV. FINDINGS AND DECLARATIONS	6
A. PROJECT DESCRIPTION	6
B. BIOLOGICAL RESOURCES.....	7
C. WATER QUALITY	9
D. PUBLIC ACCESS & RECREATION	10
E. LOCAL COASTAL PLANNING	11
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT	11

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Aerial Map

Exhibit 3 – Index Map

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit 6-13-0228 subject to the conditions set forth in the staff recommendation.*

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

Resolution:

The Commission hereby approves Coastal Development Permit 6-13-0228 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

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special 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 development. Said plans shall be in substantial conformance with the preliminary plans submitted on May 6, 2013.

The applicant 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. **Permit Term.**

A. This coastal development permit authorizes development on a temporary basis only.

The development is authorized for a period of five (5) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-13-0228, after which time the authorization for continuation and/or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, any vegetation trimming within the project area will require either the issuance of a new coastal development permit or an amendment to this coastal development permit.

B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue the vegetation trimming program prior to the date that authorization for the development expires, the City shall cease all vegetation trimming activities.

C. At the end of the five-year permit term, the applicant shall map the vegetation communities within the project area and submit the final vegetation mapping to the Executive Director for review and written approval, to assure no permanent impacts to native vegetation have occurred. If any permanent impacts have occurred, the applicant shall be required to apply for an amendment to this coastal development permit.

D. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

3. Sensitive Species Surveys.

To avoid potential impacts to breeding activities of the California gnatcatcher, migratory songbirds, and other bird species associated with the adjacent sensitive open water, wetland, riparian, and coastal sage scrub habitat, work shall be avoided during the bird nesting season, between February 15th and September 15th of any year, unless authorized in writing by the California Department of Fish and Game (DFG) and the U.S. Fish & Wildlife Service (Service). If work is allowed during the nesting season of such species, a bird monitor shall be onsite while work occurs, and any work will stop or move if the monitor finds that such species are being negatively affected by construction.

4. Timing, Operations and Maintenance Responsibilities. It shall be the applicant's responsibility to ensure that the following occurs during all project operations:

- (1) Maintenance crews shall be trained in native habitat identification and the parameters of the maintenance program, with emphasis on trimming of vegetation to allow for recovery as opposed to complete removal and/or grubbing.
- (2) Prior to conducting any native vegetation trimming within any Hardline Preserves, the City will provide advance notice to the Preserve Manager via email. A hard copy of the notifying email shall be maintained in possession of any crews during trimming and maintenance activities.
- (3) No construction equipment shall be stored in the project area, except during active project operations.
- (4) All vegetation trimming shall occur within City easements. If any maintenance activities must be conducted outside of City easement limits, then the City shall obtain permission from the land owner prior to beginning any such work.
- (5) The proposed project shall not interfere with public access on adjacent trails in any manner.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is for the implementation of a "Sewer Manhole Maintenance Program" (hereinafter referred to as "program"), to consist of ongoing trimming of native vegetation surrounding sewer manholes to allow pedestrian and/or vehicular access for visual inspection and cleaning. Trimming will be minor in nature and include trimming back tree branches that overhang the manholes and reducing the height of vegetation within the work area to allow for inspection and maintenance. To avoid and minimize habitat impacts, no root removal, grubbing, or grading is proposed as part of the program.

The proposed project is located along the north shore of Agua Hedionda Lagoon within the City of Carlsbad (Exhibit 1). The sewer manholes included in the project are within the City of Carlsbad's sewer easements and all vegetation trimming is proposed to be completed within the impact areas, as shown in Exhibit 3. A majority of the project is located in areas that have been previously disturbed and/or developed where no impacts are anticipated; however, portions of the project are located within or adjacent to the following vegetation communities: coastal sage scrub, salt marsh, saltgrass, and southern willow scrub. In addition, there are several dirt trails adjacent to the proposed project site that offer public access along Agua Hedionda Lagoon.

The proposed project is located within the City of Carlsbad which has a certified LCP; however the implementation program for the Agua Hedionda segment has yet to be certified. Therefore, the Coastal Commission retains permit jurisdiction in this area and Chapter Three of the Coastal Act remains the standard of review, with the certified Agua Hedionda Land Use Plan as guidance.

B. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The City of Carlsbad is a member of the North County Multiple Habitat Conservation Plan (MHCP) and has adopted a Habitat Management Plan (HMP), which is a subarea plan under the MHCP. The HMP is a citywide program with the purpose of preserving the diversity of species and habitats, as well as sensitive biological resources while allowing for development that is consistent with City plans. The objectives of the HMP are to develop a plan that conserves the range of vegetation types with the focus on rare habitat and species; conserve areas capable of supporting covered species, in perpetuity; and maintains functional wildlife corridors and habitat linkages.

Based on proposed development and biological resources, the HMP designates both hard- and soft-line Focus Planning Areas (FPAs). Hard-line areas require 100% conservation and soft-line areas require specific conservation standards to be implemented during development review. Portions of the proposed project are within an existing FPA, while four of the manholes are located within a proposed standards area. Thus, as part of the program, the applicant proposes to

provide advance notice to the Preserve Manager prior to conducting any trimming of native vegetation within any Hardline Preserves.

Maintenance and operation of wastewater pipelines requires access to manholes for visual inspection and cleaning. Cleaning is conducted using vacuum pump sewer trucks. However, not all manholes need to be accessed by vehicles. The applicant has provided access requirements for each manhole in or adjacent to native vegetation communities. Access falls into two categories, pedestrian and vehicular. In either case, trimming of native vegetation may be required for safe access to open manholes for inspection and/or cleaning. In some cases, no trimming of native vegetation is required. The proposed maintenance of sewer manholes will not result in any permanent impacts to native vegetation or environmentally sensitive habitat areas (ESHA).

As mentioned previously, the majority of the proposed project is located in areas that have been previously disturbed, developed, or consist of bare ground, all of which are anticipated to result in no adverse impacts to habitat; however, portions of the project are located within or adjacent to native vegetation that is considered ESHA. Approximately 402 sq. ft. of coastal sage scrub; 25 sq. ft. of southern willow scrub; 15 sq. ft. of salt grass; and less than 1 sq. ft. of salt marsh have been mapped as within the project area (Exhibit 3). However, to avoid and minimize habitat impacts, the applicant will not conduct maintenance activities that would likely result in a significant disruption of habitat value, and thus inconsistent with section 30240 of the Coastal Act, such as root removal, grubbing, or grading because those activities have a high likelihood of preventing recovery of sensitive vegetation and thus would constitute a significant disruption of habitat value. Additionally, most of these manholes will be accessed by foot to limit impacts. As such, any impacts to the aforementioned vegetation communities will be temporary in nature. Further, given the lack of root removal, grubbing or grading, the trimmed vegetation is anticipated to recover naturally following trimming. **Special Condition #2** limits the initial permit term to five (5) years and requires the applicant to map the vegetation communities within the project area at the end of the five-year permit term and compare against the submitted plans (refer to Exhibit 3) to ensure that there are no permanent impacts to native vegetation. As no permanent impacts to wetlands and native vegetation are proposed or authorized by the subject coastal development permit, if any permanent impacts have occurred, the applicant shall be required to apply for an amendment to the permit. **Special Condition #4** also requires maintenance crews to be trained in native habitat identification, as well as the parameters of the maintenance program, to ensure native vegetation is only trimmed and not removed.

To avoid potential adverse impacts to breeding activities of the California gnatcatcher, migratory songbirds, and other bird species associated with the adjacent sensitive open water, wetland, riparian, and coastal sage scrub habitat, the applicant proposes to avoid trimming of native vegetation during the bird nesting season, between February 15th and September 15th of any year. However, Commission staff recommends **Special Condition #3** requiring a qualified biologist to be onsite should any work be necessary during nesting season. According to the applicant, all work will take place outside the bird nesting season unless an unforeseen issue or emergency arises that requires immediate attention. As conditioned, the proposed development will not have any impacts to environmentally sensitive habitat areas or biological resources. Therefore,

the Commission finds that the development, as conditioned, conforms to Section 30240 the Coastal Act.

C. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The majority of the manholes proposed as part of this project were constructed prior to the effective date of the Coastal Act. Only six of the 48 total manholes were constructed after the effective date of the Coastal Act (refer to CDP #6-07-092) and a maintenance program was not authorized by the associated coastal development permit. Therefore, the proposed program is necessary to allow visual inspection, maintenance, and cleaning to avoid potential adverse impacts to water quality that would result from an improperly maintained system.

According to the applicant, the ongoing regular maintenance of the manholes and below-ground sewer interceptor line activities (i.e., general condition inspection, minor repair, video pipeline inspection, pipeline cleaning) is necessary in order to ensure the wastewater infrastructure does not fail, which would result in an adverse impact to water quality within the adjacent Agua Hedionda Lagoon. According to the applicant, the proposed program will decrease the likelihood that sewage will discharge from the manholes by maintaining a clear pipeline that is free of any obstructions. The proposed project will effectively comply with current State regulations established to eliminate sanitary sewer overflow and discharge, ultimately protecting any adjacent waters from potential pollution.

As conditioned, the proposed development will not result in erosion or adverse impacts to water quality. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act.

D. PUBLIC ACCESS & RECREATION

Section 30210 of the Coastal Act states:

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 30212(a) of the Coastal Act states:

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. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214 of the Coastal Act states, in part:

- (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.*
 - (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

In addition, the certified Agua Hedionda Land Use Plan contains public access policies. Policy 7.6 states, in part:

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use...

The proposed project is not anticipated to result in any adverse impacts to public access or recreation. Although there are several dirt trails located within the City's sewer easements that offer access along Agua Hedionda Lagoon, the applicant has confirmed that neither trimming nor inspection of manholes will result in the closure of any of these trails. In addition, **Special Condition #4** requires the applicant to maintain public access on adjacent trails during all project operations. As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30210, 30212, and 30214 of the Coastal Act.

E. LOCAL COASTAL PLANNING

The proposed project is within the City of Carlsbad; however, it is not part of the City's certified LCP because it is located in an area of deferred certification. Therefore, the Coastal Commission retains permit jurisdiction in this area, even though the City of Carlsbad has a certified LCP and the Chapter Three policies of the Coastal Act remain the legal standard of review. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of Carlsbad to prepare a Local Coastal Program that is in conformity with the provisions of Chapter Three for this area.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 Three policies of the Coastal Act. Mitigation measures, including special conditions addressing the protection of biological resources and water quality will minimize all potentially 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

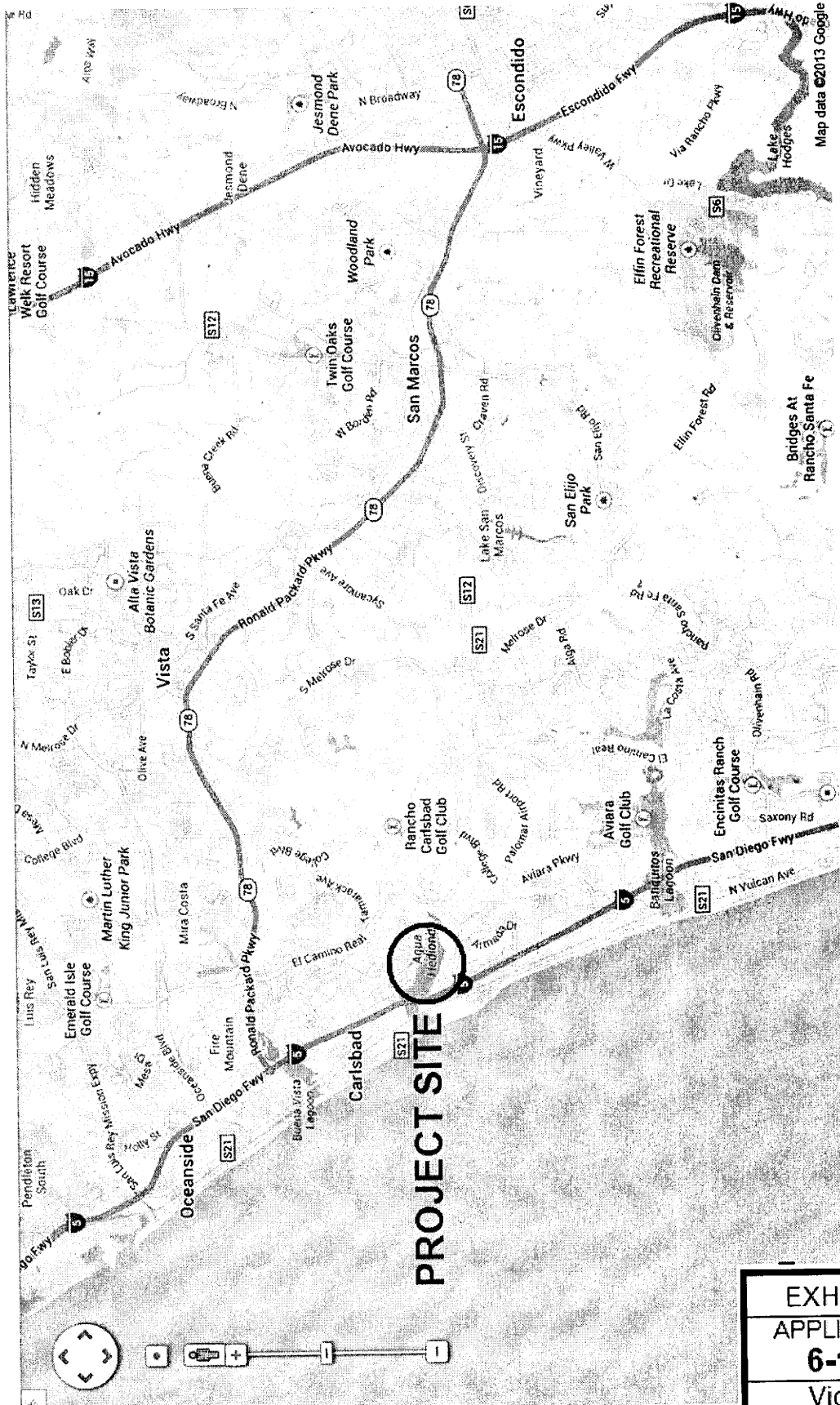
6-13-0228 (City of Carlsbad Utilities Department)

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.

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APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit No. 6-07-092: Coastal Development Permit No. 07-13 (Resolution No. 6464)



PROJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
6-13-0228
Vicinity Map
 California Coastal Commission

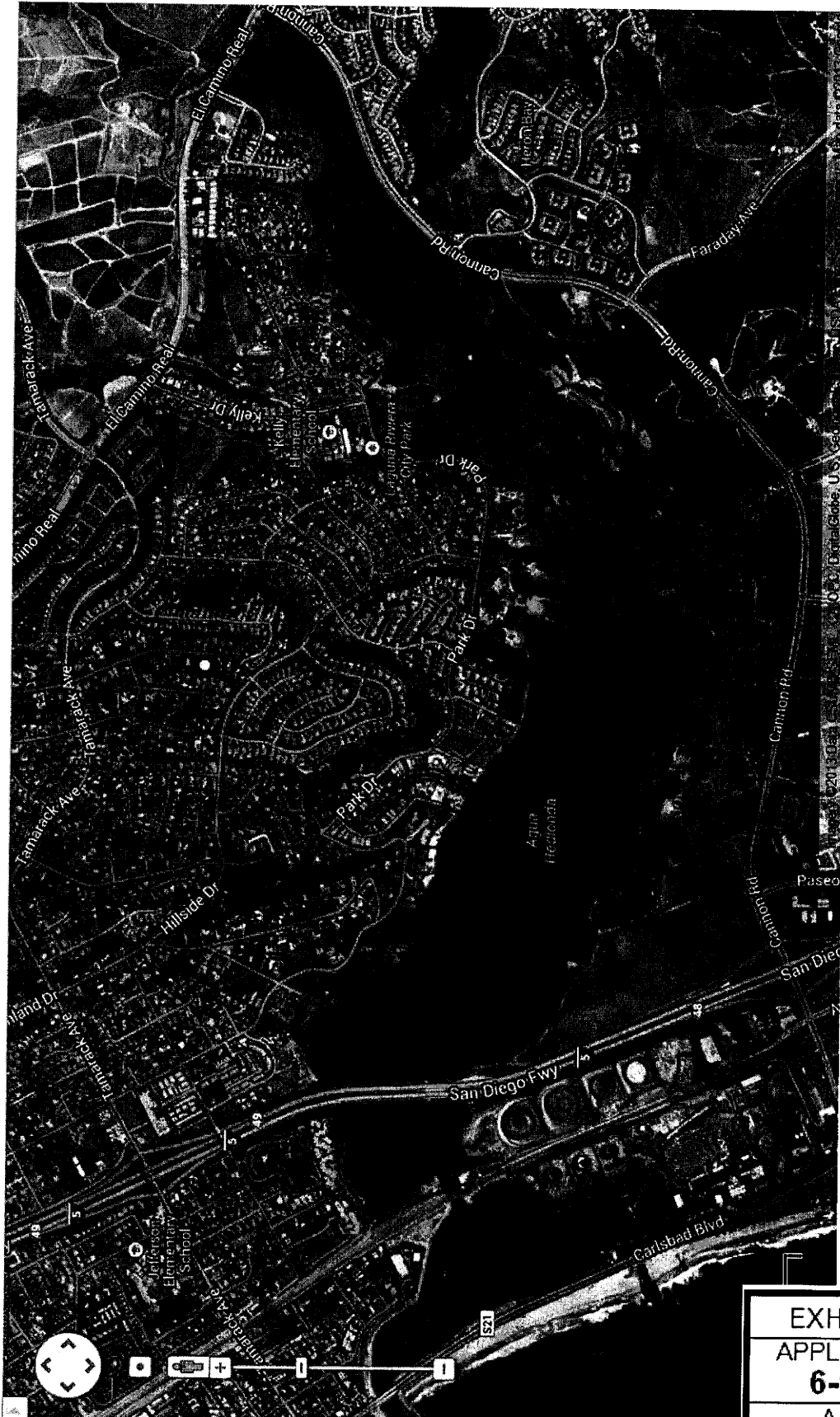


EXHIBIT NO. 2
APPLICATION NO.
6-13-0228
Aerial Map
 California Coastal Commission

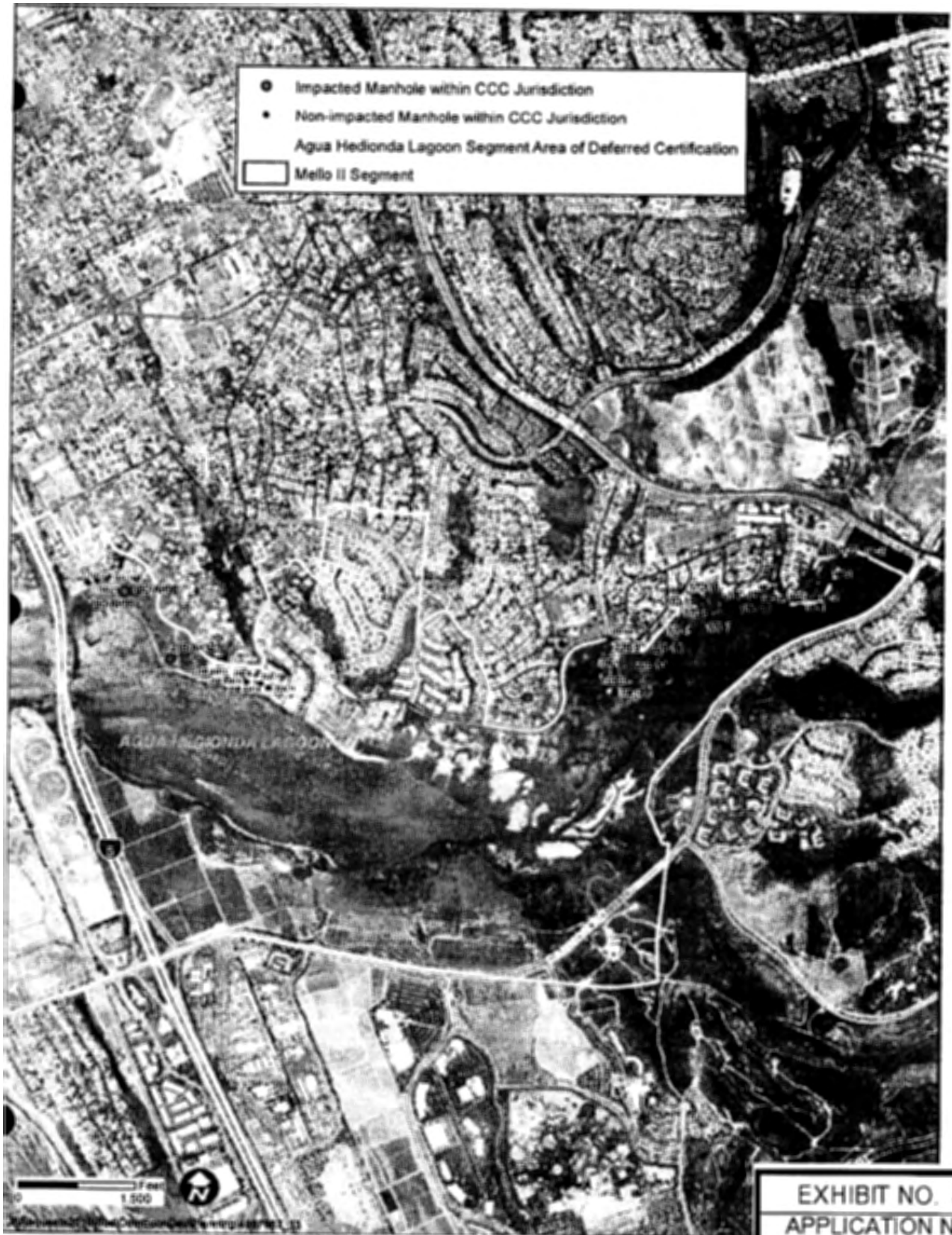


EXHIBIT NO. 3
APPLICATION NO.
6-13-0228
Index Map

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