

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W18b

Filed: 3/21/13
180th Day: 9/17/13
Staff: K. Brown-SD
Staff Report: 5/23/13
Hearing Date: 6/12-14/13

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-13-007

Applicant: City of Carlsbad

Agent: Brandon Miles

Location: West side of Carlsbad Boulevard, north of Cannon Road at bridge over the Encina Power Station discharge channel, Agua Hedionda, Carlsbad, San Diego County.

Project Description: Install 21-inch wide, 32-inch high, approximately 150 linear ft. concrete safety railing on bridge over Encina Power Station discharge channel.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project is for the installation of a 21-inch wide, 32-inch high, approximately 150 linear ft. concrete safety railing on the bridge over the Encina Power Station discharge channel. Construction would be contained within the parameters of the City of Carlsbad's right-of-way, on the west side of Carlsbad Boulevard, approximately half a mile north of its intersection with Cannon Road (Exhibit 1). The applicant proposes to install the bridge railing within the sidewalk area directly adjacent to an existing chain link fence (Exhibit 2). The existing chain link fence protects pedestrians and bicyclists from falling into the water below and was originally installed prior to the

6-13-007 (City of Carlsbad)

Coastal Act for security purposes; however, the proposed bridge railing is needed for vehicular safety.

There are no major Coastal Act issues associated with this project; however, in order to minimize potential adverse impacts to visual resources, public access and recreation, and water quality, Commission staff is recommending three special conditions. **Special Condition #1** requires the applicant to submit final plans to ensure their consistency with preliminary plans; **Special Condition #2** requires the applicant to prepare an Interim Erosion Control and Construction Best Management Practices Plan to ensure that potential impacts to water quality are avoided during construction; and **Special Condition #3** requires the preparation of a Staging Area and Public Access Plan to ensure the maintenance of public access during construction.

Commission staff recommends **approval** of coastal development permit application 6-13-007 as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4

II. STANDARD CONDITIONS.....4

III. SPECIAL CONDITIONS.....5

IV. FINDINGS AND DECLARATIONS.....8

 A. PROJECT DESCRIPTION..... 8

 B. VISUAL RESOURCES.....9

 C. PUBLIC ACCESS & RECREATION.....10

 D. WATER QUALITY.....11

 E. LOCAL COASTAL PLANNING12

 F. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....12

EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Aerial Photo
- Exhibit 3 – Project Plans
- Exhibit 4 – Historic Aerials
- Exhibit 5 – Visual Rendering

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-13-007 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 6-13-007 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 first be approved by the City of Carlsbad and be in substantial conformance with the preliminary plans submitted on May 6, 2013 and attached as Exhibit 3.

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. **Interim Erosion Control & Construction BMPs Plan.**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, an Interim Erosion Control and Construction Best Management Practices plan, prepared by a licensed civil engineer or qualified water quality professional. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

1. Erosion Control Plan
 - (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas.
 - (b) Include a narrative describing all temporary run-off and erosion control measures to be used during construction.
 - (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.

- (d) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); temporary drains and swales; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible.
- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction.
- (b) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (c) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (d) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- (e) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (f) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (g) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (h) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (i) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (j) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (k) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (l) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Interim Erosion Control and Construction Best Management Practices plan, shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

3. **Staging Area & Public Access Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the

Executive Director for review and written approval, a detailed plan identifying the location of staging areas and access corridors to the construction site. The plan shall include, at a minimum, the following:

- a) No overnight storage of equipment, construction materials, or excavated materials shall occur within native vegetation areas or public parking spaces. Stockpiles shall be located away from drainage courses, covered at all times and contained with runoff control measures.
- b) Storage and staging areas shall be located in a manner that has the least impact on vehicular and pedestrian traffic.
- c) No work shall occur on weekends or holidays between Memorial Day weekend and Labor Day of any year.
- d) Staging site(s) shall be removed and/or restored immediately following completion of the development.
- e) Public access plan detailing how public access (pedestrian, non-vehicular, etc.) will be maintained during construction.

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

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is for the installation of a 21-inch wide, 32-inch high, approximately 150 linear ft. concrete safety railing over the bridge that spans the Encina Power Station discharge channel. Construction would be contained within the parameters of the City of Carlsbad's right-of-way, on the west side of Carlsbad Boulevard, approximately half a mile north of its intersection with Cannon Road (Exhibit 1). The applicant proposes to install the bridge railing within the existing sidewalk area directly adjacent to the chain link fence (Exhibit 2). The existing chain link fence protects pedestrians and bicyclists from falling into the water below and was originally installed prior to the Coastal Act for security purposes; however, the proposed bridge railing is needed for vehicular safety.

The proposed project site is located on the westernmost portion of Carlsbad Boulevard, on the bridge directly above the Encina Power Station discharge channel, and adjacent to South Carlsbad State Beach and the Encina Power Station. In this location, Carlsbad Boulevard consists of two northbound lanes, two southbound lanes, a landscaped median, a bicycle lane and sidewalk in each direction, parallel parking on the southbound side, and a chain link fence on the westernmost side (Exhibit 2). The proposed project site is within the City of Carlsbad; however it is not part of the City's certified Local Coastal

Program (LCP), because it is located in an area of deferred certification. Therefore, the Coastal Commission retains permit jurisdiction in this area and Chapter Three of the Coastal Act remains the standard of review.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

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 designed to protect views to and along the ocean and scenic coastal areas, to 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...

Partial views of the water within the Encina Power Station discharge channel and the ocean are available from Carlsbad Boulevard; however, an existing, approximately 7-ft. high chain link fence with barbed wire atop partially obstructs views of the water. As evidenced by historic aerials from 1972 and 1977 (refer to Exhibit 4), the subject fence was installed prior to the effective date of the Coastal Act. The chain link fence is located on private property, currently owned by NRG Energy, Inc (operators of the Encina Power Station). According to the applicant, NRG requires the fence to remain in its current configuration, design, and height to prohibit public access into the Encina Power Station for security and liability purposes. No changes are proposed to the fence; as such, it is not addressed as part of this coastal development permit application.

The proposed bridge railing's height (32 inches) is such that it would not be readily visible from the beach and would not block views from people walking on the sidewalk along the proposed project site. The bridge railing would partially block water views from vehicles traveling on Carlsbad Boulevard, however the applicant has redesigned the project in such a manner to minimize view impacts. Vehicles traveling on Carlsbad Boulevard enjoy only passing views of the water due to the narrowness of the channel and the relatively high speed at which they are traveling (posted speed limit of 35 miles per hour). Despite the brevity of these views, they are still a significant coastal resource protected by Section 30251 of the Coastal Act. To ensure that impacts to visual resources are minimized, the applicant worked collaboratively with Commission and Caltrans staff to choose a railing type that is the most visually permeable. The applicant used "Bridge Rails and Barriers: A Reference Guide for Transportation Projects in the Coastal Zone" to identify and modify the project to use the most visually permeable railing - concrete barrier type 80SW modified to delete any handrail or rods (Exhibit 3). **Special Condition #1** is recommended, requiring the applicant to submit final plans to ensure their consistency with preliminary plans. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

C. 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 30213 of the Coastal Act states, in part:

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

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.

The project site is previously disturbed and developed with an existing, concrete sidewalk, and installation of the railing would not encroach beyond the parameter of the existing sidewalk area. This portion of Carlsbad Boulevard has a relatively wide sidewalk that is approximately 11'4" wide. The proposed concrete barrier would be installed directly adjacent to the chain link fence and would result in a 1'9" reduction in the width of the sidewalk for a total sidewalk width of 9'7" for approximately 150 linear feet. Considering the size of the existing sidewalk, this would be a minor encroachment. The resulting sidewalk would still be ADA accessible and wide enough to accommodate public access and recreation opportunities by pedestrians. In addition, there is another sidewalk on the east side of Carlsbad Boulevard to accommodate pedestrian traffic. The applicant considered siting the railing within the road right-of-way; however, this design would have resulted in the loss of several coastal access parking spaces, whereas the proposed project would not result in the loss of any coastal access parking.

Access points from the sidewalk to the sandy beach would be maintained on both the north and south sides of the Encina Power Station discharge channel. Due to the popularity of the adjacent South Carlsbad State Beach, the Commission recommends **Special Condition #3** requiring the preparation, submission, and approval of a Staging Area and Public Access Plan to ensure the maintenance of public access during construction. 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, 30213, and 30214 of the Coastal Act.

D. WATER QUALITY

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 proposed project site is located on the bridge above the Encina Power Station discharge channel which connects Agua Hedionda Lagoon to the Pacific Ocean. Since 1952, when the Encina Power Station was commissioned, the operators of the power plant have regularly maintained the lagoon and dredged the opening to the ocean to sustain a source of seawater to cool the power plant's generators. As a result, today the 388-acre Agua Hedionda Lagoon supports a wide variety of marine-related uses,

including sub- and inter-tidal marine habitat, public access and recreation, power production, aquaculture, fish hatchery, and marine research.¹

The project site is previously disturbed and developed with an existing, concrete sidewalk, and installation of the railing would not encroach beyond the parameter of the existing sidewalk area. Since the railing would be limited to the existing, concrete sidewalk area, there would be no increase in impervious surfaces and would not result in any temporary or permanent impacts to water quality. However, due to the project's site close proximity to the Encina Power Station discharge channel, Agua Hedionda Lagoon, and the Pacific Ocean, **Special Condition #2** is recommended. Special Condition #2 requires the applicant to prepare an Interim Erosion Control and Construction Best Management Practices Plan to ensure that potential impacts to water quality are avoided during construction.

As conditioned, the proposed development will not result in erosion or adverse impacts to water quality, as adequate temporary erosion controls and construction BMPs will be provided. Therefore, the Commissions finds that the development, as conditioned, conforms to Section 30231 of the Coastal Act.

E. LOCAL COASTAL PLANNING

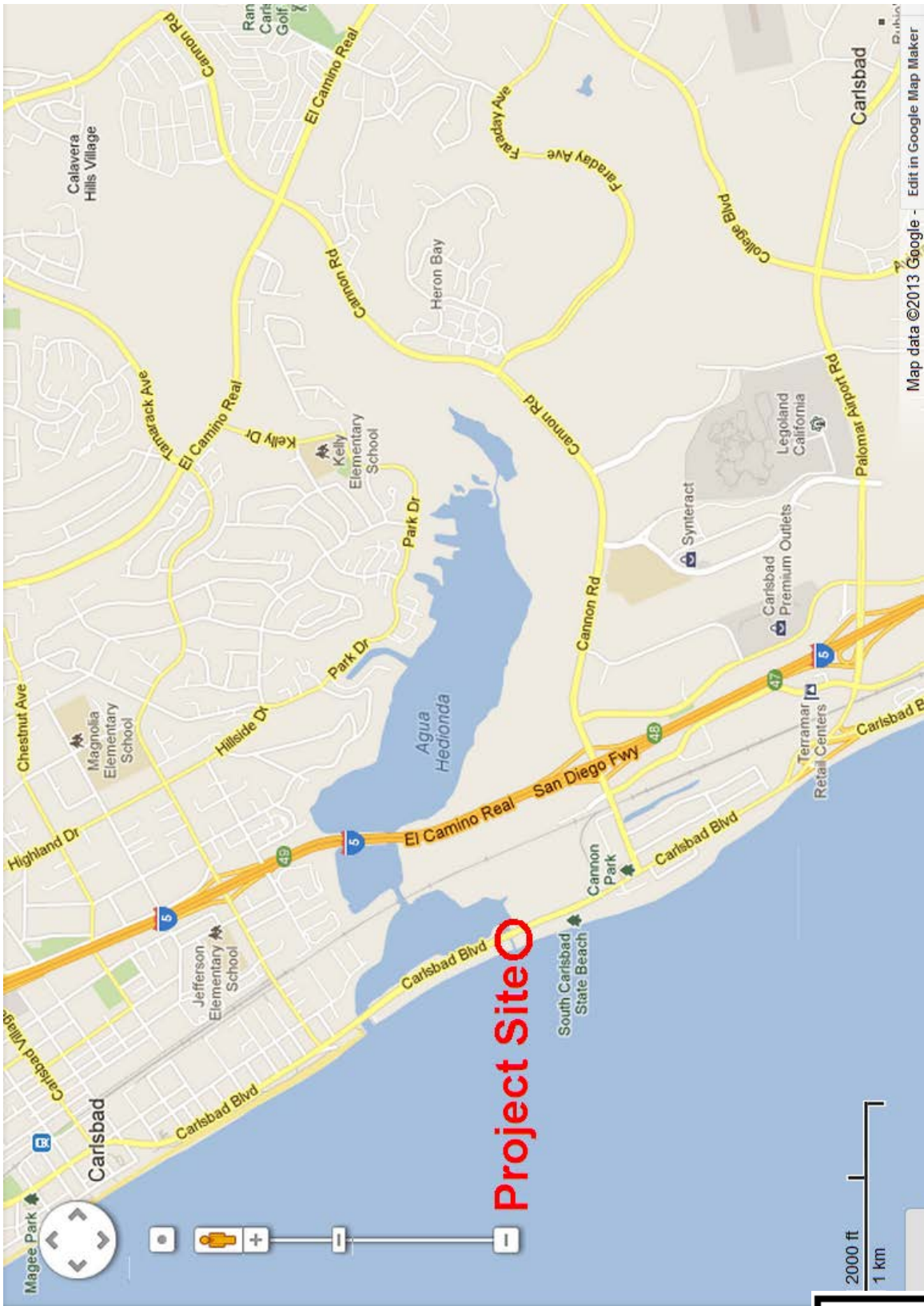
The proposed project is within the City of Carlsbad; however it is not part of the City's certified Local Coastal Program (LCP) because it is located in an area of deferred certification. Therefore, the Coastal Commission retains permit jurisdiction in this area, even though the City of Carlsbad has a certified LCP and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed project is consistent with all applicable Chapter 3 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 3 for this area.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT


Section 13096(a) 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.

¹ *Desalination Plant*. (n.d) retrieved May 9 2013, from The Carlsbad Desalination Project Web Site: <http://carlsbaddesal.com/desalination-plant>

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Special conditions addressing the timing of construction, BMPs during construction, and staging 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 effect 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.




Project Site

EXHIBIT NO. 1
APPLICATION NO.
6-13-007
Vicinity Map
 California Coastal Commission



Google street view of project site, looking westward from Carlsbad Boulevard

EXHIBIT NO. 2
APPLICATION NO.
6-13-007
Aerial Photo
 California Coastal Commission

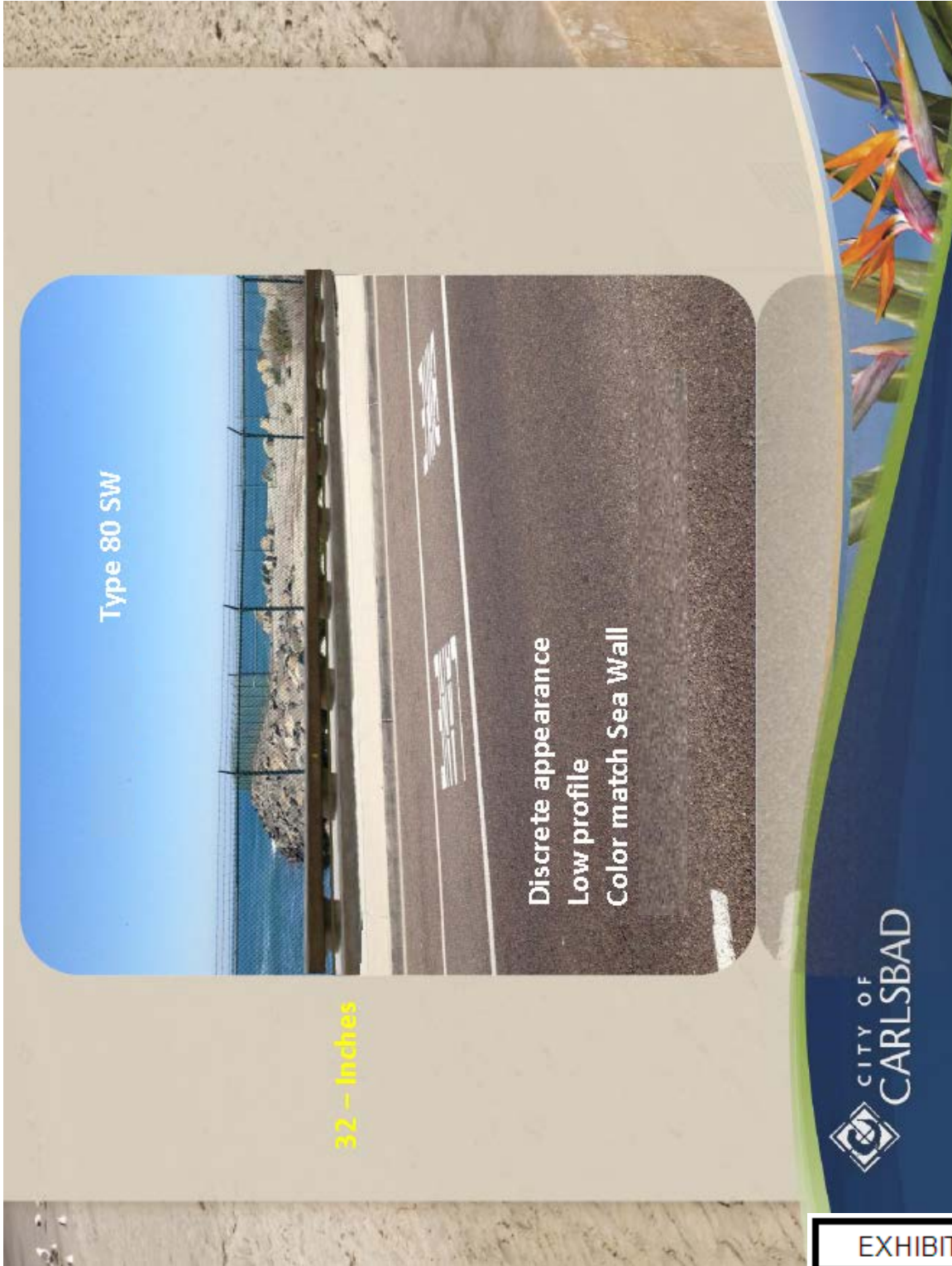


1977 Aerial from California Coastal Records Project



1972 Aerial from California Coastal Records Project

EXHIBIT NO. 4
APPLICATION NO. 6-13-007
Historic Aerials
 California Coastal Commission



Type 80 SW

32 – Inches

Discrete appearance
Low profile
Color match Sea Wall



EXHIBIT NO. 5
APPLICATION NO.
6-13-007
Visual Rendering
 California Coastal Commission