

CALIFORNIA COASTAL COMMISSION

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 Staff: T. Hill - SD
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 Hearing Date: 11/19/21

STAFF REPORT: AMENDMENT

Application No.: 6-93-207-A2

Applicant: North County Transit District

Agent: Tim Pesce, San Diego Association of Governments

Location: Between the North County Transit District (NCTD) right-of-way and Poinsettia Station parking lot, continuing south to Poinsettia Lane in Carlsbad, San Diego County

Original Project Description: Construction of a commuter rail/bus station including a one-story, 560 sq. ft. restroom/utility structure, a 332-space lighted parking lot, bus turnouts, park and ride locations, and two 500-foot by 8-inch above-the-top rail platforms including passenger shelters on 5.83 acres

Proposed Amendment: Add new Special Condition No. 10 to correct and expand the boundaries of the previously recorded environmental easement required by Special Condition No. 1

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

On June 7, 1994, the California Coastal Commission approved Coastal Development Permit (CDP) No. 6-93-207 requested by the North County Transit District (NCTD) to

construct a commuter rail and bus station and associated platform, restroom facility, and parking lot. **Special Condition No. 1** required the applicant to execute an irrevocable offer to dedicate (OTD) to a public agency or private association an easement for habitat restoration, maintenance, open space, and protection over an area designed to capture all of the sensitive habitat (i.e., vernal pools and disturbed wetland) within the project area. However, after the City of Carlsbad accepted the OTD in 2015, the recording of these boundaries was found in the City of Carlsbad's *Current Natural Conditions Report* (2017) to not have captured all of the sensitive habitat within the project area, as required by Special Condition No. 1. The boundary surveying error in the original CDP application was likely caused by poor map quality, which led the easement boundary to exclude portions of sensitive habitat on the project site. NCTD proposes to amend CDP No. 6-93-207 to correct the boundaries of the environmental easement to increase the size of the easement from 2.84 acres to 4.65 acres in order to include the sensitive habitat that had been excluded and to remove those areas that were developed or that did not contain sensitive habitat. See [Exhibit 3](#) for the original boundaries and [Exhibit 4](#) for a comparison between the original and proposed environmental easement boundaries. Finally, [Exhibit 5](#) contains the updated easement boundaries depicted in metes and bounds.

The primary Coastal Act issue of concern with the proposed amendment is the potential for unanticipated and unmitigated adverse impacts to sensitive habitat that would not have been analyzed under the original CDP. However, since the development was initially authorized and the original CDP issued, no disturbance has occurred to the areas of sensitive habitat on the project site that were erroneously excluded from the environmental easement. Additionally, the proposed amendment would result in a net increase in the acreage of sensitive habitat protected by the environmental easement. As such, staff recommends adding **Special Condition No. 10** to require that the boundaries of the environmental easement be increased based on those described in the City of Carlsbad's *Current Natural Conditions Report* (2017), which captures the excluded sensitive habitat within the environmental easement. The other special conditions of the original CDP would remain unchanged and applicable to any future development proposed as an amendment to the original permit.

Commission staff recommends that the Commission **APPROVE** Coastal Development Permit No. 6-93-207-A2, as conditioned. The motion and resolution can be found on **page 4**. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Sensitive Habitat Map](#)

[Exhibit 3 – Original Easement Boundary](#)

[Exhibit 4 – Original and Proposed Easement Boundaries](#)

[Exhibit 5 – Proposed Easement Boundary Metes and Bounds](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-93-207-A2 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. 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 Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit 6-93-207-A2 for the proposed project 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

- 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 applicant 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 applicant 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:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment no. 6-93-207-A2. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment no. 6-93-207-A2 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in ~~strikeout~~/underline format. This will result in one set of adopted special conditions.

1. [Special Condition No. 1 of CDP No. 6-93-207 remains unchanged and in effect]
2. [Special Condition No. 2 of CDP No. 6-93-207 remains unchanged and in effect]
3. [Special Condition No. 3 of CDP No. 6-93-207 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-93-207 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-93-207 remains unchanged and in effect]
6. [Special Condition No. 6 of CDP No. 6-93-207 remains unchanged and in effect]
7. [Special Condition No. 7 of CDP No. 6-93-207 remains unchanged and in effect]
8. [Special Condition No. 8 of CDP No. 6-93-207 remains unchanged and in effect]
9. [Special Condition No. 9 of CDP No. 6-93-207 remains unchanged and in effect]
10. **Expanded Environmental Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT:**
 - a. The applicant shall execute, including obtaining a signature from the City of Carlsbad, and record a document(s) in a form and content acceptable to the Executive Director, amending Recording No. 2015.0317274 to expand the area of the environmental easement according to the "Current Natural Conditions Report for the Poinsettia Station Vernal Pool Preserve (PSVPP) – North County Transit District (NCTD) Parcel" dated July 5, 2018 by the City of Carlsbad, as approximately depicted in [Exhibit 5](#). Excepting the description of the expanded area, the permittee shall continue comply with all uses, restrictions, and requirements for the easement as described by Special Condition 1.

b. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit amendment and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement area. The easement amendment shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.

IV. FINDINGS AND DECLARATIONS

A. Amendment Background and Description

On June 7, 1994, the California Coastal Commission approved Coastal Development Permit (CDP) No. 6-93-207 requested by the North County Transit District (NCTD) to construct a commuter rail and bus station and associated platform, restroom facility, and parking lot. **Special Condition No. 1** required the applicant to execute an irrevocable offer to dedicate (OTD) to a public agency or private association an easement for habitat restoration, maintenance, open space, and protection over an area designed to capture all of the sensitive habitat (i.e., vernal pools and disturbed wetland) within the project area. The easement boundary was required to match the area identified for environmental protection in the report titled, *Vernal Pool Enhancement and Restoration for the Oceanside-San Diego Commuter Rail Station, Poinsettia Lane Station*, completed by Dudek, an environmental consulting firm, in 1994. However, after the OTD was accepted in 2015 by the City of Carlsbad, city staff discovered that the easement boundary as depicted in the 1994 report did not encompass all of the sensitive habitat within the project area, as required by Special Condition 1.

The easement also included some of the station development that had been authorized by CDP No. 6-93-207 and Consistency Certification No. CC-0005-15, which was used under the Coastal Commission's federal consistency authority to approve some of the improvements proposed as part of the amendment to CDP No. 6-93-207 (CDP No. 6-93-207-A1), which was withdrawn. The development authorized by the consistency certification included the extension of the platforms authorized under CDP No. 6-93-207 from 540 ft. to 1000 ft., widening of the platforms by approximately 25 ft., demolition and reconstruction of one of the platforms, slight relocation of the railroad tracks to make room for double-tracking on the site, a pedestrian undercrossing, and a fence between the north and southbound rail lines. The City's updated report titled, *Current Natural Conditions Report for the Poinsettia Station Vernal Pool Preserve (PSVPP) – North County Transit District (NCTD)*, dated 2017, delineates a more accurate easement boundary that corrects the errors in the 1994 report.

Based on the City's 2017 report, NCTD proposes to amend Permit No. 6-93-207 to add approximately 2.02 acres of sensitive habitat to the environmental easement and remove the portions (approximately 0.21 acres) that were developed or did not contain sensitive habitat, resulting in a net increase of 1.81 acres and a total area of 4.65 acres. This would be achieved by adding **Special Condition No. 10** to expand the size of the environmental easement with reference to the 2017 report from the City of Carlsbad, which depicts the corrected easement boundaries.

Chapter 3 policies of the Coastal Act are the standard of review. See [Exhibit 1](#) for the Vicinity Map and Project Location and [Exhibits 4 and 5](#) for Revised Easement Boundaries.

B. Environmentally Sensitive Areas

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.

Vegetation within the project limits includes San Diego button celery (*Eryngium aristulatum var. parishii*), Spreading navarretia (*Navarretia fossalis*), California Orcutt's grass (*Orcuttia californica*), Orcutt's brodiaea (*Brodiaea orcuttii*), nonnative grasses, disturbed habitat, and urban/developed land. Riverside fairy shrimp (*Streptocephalus woottoni*), a federally endangered species, is known to occur within the project area. No construction is proposed in the requested amendment, and there will, therefore, be no new impacts to habitat as a result of the proposed amendment. However, additional unanticipated and unmitigated impacts to sensitive habitat could have occurred as a result of the erroneously delineated easement boundaries when the project, and subsequent improvements authorized via the consistency certification, were constructed.

Since the issuance of CDP No. 6-93-207, only the development approved therein and the development approved under Consistency Certification No. CC-0005-15 have been constructed on the site. Under both CDP No. 6-93-207 and CC-0005-15, full mitigation was required for all impacts to sensitive habitat and in equal measure regardless of whether the habitat occurred within or outside the boundaries of the environmental easement. This means that no construction occurred on sensitive habitat (see [Exhibit 2](#)) as a result of the erroneously delineated environmental easement (as shown on [Exhibit 3](#)) that had not already been approved and fully mitigated as part of the aforementioned CDP and consistency certification. Therefore, there were no unmitigated impacts to sensitive habitat caused by the work permitted by CDP No. 6-93-207 as a result of the erroneously recorded environmental easement boundaries.

All work permitted within the project area that caused habitat impacts was adequately mitigated and no development was authorized in the sensitive habitat area that will be added to the environmental easement via the proposed amendment.

Therefore, staff recommends that **Special Condition No. 10** be added to require that the environmental easement boundaries be expanded to reflect the updated boundaries described in the City of Carlsbad's 2017 *Current Natural Conditions Report for the Poinsettia Station Vernal Pool Preserve (PSVPP) – North County Transit District (NCTD) Parcel*, rather than the boundaries recommended in the 1994 report, *Vernal Pool Enhancement and Restoration for the Oceanside-San Diego Commuter Rail Station, Poinsettia Lane Station*.

In conclusion, the Commissions finds that the proposed amendment, as conditioned, is consistent with Section 30240 of the Coastal Act.

C. 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 3 policies of the Coastal Act. 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.

APPENDIX A – CONDITIONS OF APPROVAL

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, then 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 and 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.

SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

Permit No. 6-93-207

1. **Vernal Pool Habitat Mitigation/Enhancement Plan.** Prior to the issuance of the coastal development permit, the applicant shall submit a final detailed vernal pool mitigation/enhancement plan that incorporates the following.
 - a. Planting plans which identify the mitigation area(s) such that the all identified vernal pool impacts associated with the proposed development (San Diego button celery) as shown on the Vernal Pool Transect Jurisdictional Wetlands Site Plan submitted with the 3/1/94 Dudek Report, are mitigated, in-kind, at a 4:1 ratio. Therefore, the total amount of new jurisdictional wetland which will be created for the proposed 258 sq. ft. of impact is 1,032 sq. ft. or 0.024 acres;
 - b. The applicant shall provide evidence in a form and content acceptable to the Executive Director, to execute an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director, an easement for habitat restoration, habitat maintenance, open space, and

habitat protection over all of the area as identified in the figures for the environmental easement dated 9/93 in the Vernal Pool Enhancement and Restoration for the Oceanside-San Diego Commuter Rail Station, Poinsettia Lane Station” report dated 3/1/94 by Dudek and Associates. The easement shall:

1. Permit the applicant, its agents, and/or the accepting agency to enter the property, create and maintain habitat, revegetate portions of the area, and fence the newly created/revegetated area in order to protect in perpetuity such habitats.
2. Restrict all development, vegetation clearance and grading within the Environmentally Sensitive Habitat open space easement.
3. Permit the Coastal Commission staff to enter and inspect for purposes of determining compliance with Coastal Development Permit #6-93-207.

The easement area shall be described in meets and bounds and shall be in substantial conformance with [Exhibit No. 4](#). The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording;

- c. Planting and rehabilitation plans to enhance the existing vernal pool habitat areas identified within the above described open space/conservation easement, and consistent with the provisions of the proposed Vernal Pool Enhancement and Restoration Plan;
 - d. Plans for the interpretive signage and informational display regarding vernal pool habitats in San Diego County proposed to be constructed on the station platform.
- 2. Monitoring Program for Vernal Pool Mitigation/Enhancement Plan.** Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director in consultation with the Department of Fish and Game, a detailed monitoring program deigned by a qualified wetland biologist acceptable to the Executive Director. Said monitoring program shall provide the following:
- a. Submittal, upon completion of the mitigation/enhancement site(s), of “as built” plans. Said plans shall be in substantial conformance with the submitted plans approved pursuant to Special Condition #1 above and shall also include the installation of permanent fencing surrounding the vernal pool conservation easement.

Avenida Encinas north of Poinsettia Lane. The study shall be conducted for a period of no less than four weeks and shall include both peak and non-peak periods. This study is to document existing parking conditions prior to the use of the proposed facility to be used as a baseline for comparison in conjunction with the monitoring program to determine the impact the proposed facility will have on public parking.

(b) A parking availability study of the proposed parking lots and surrounding streets shall be conducted the first three years of operation of the center. Said study shall include at a minimum monitoring one day a week during peak periods of operation (7:00 a.m. to 7:00 p.m., Monday through Friday).

(c) Results of said monitoring program shall be reported to the Commission at the conclusion of the third year of operation of the center. Within 30 days of opening of the center for use by the public, the applicant shall notify the Executive Director of said opening. At the end of the three-year period, the applicant shall report back to the Commission the results of the monitoring program and, if so directed by the Commission at that time, the applicant shall propose any mitigation measures necessary to assure enhancement of public parking and traffic circulation in this area as an amendment to this permit.

6. **Import of Graded Material.** Prior to the issuance of the coastal development permit, the applicant shall identify the site from which the proposed fill material is to be obtained. If the proposed borrow site is located within the coastal zone, proof of a valid coastal development permit for such export shall be required.
7. **Landscaping Plan/Parking Lot.** Prior to the issuance of the coastal development permit, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features for the proposed parking lot. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible. Special emphasis shall be placed on the treatment of medians and islands in the parking lot by breaking up large paved areas with installation of trees and other plant elements. Said plan shall be submitted to, reviewed and approved in writing by the Executive Director.
8. **Sign Program.** Prior to the issuance of the coastal development permit, the applicant shall submit a comprehensive sign program, documenting that only monument signs, not to exceed eight (8) feet in height, or façade signs are proposed. No tall, free-standing pole or roof signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director.
9. **Improved Access.** Prior to completion of the commuter rail/bus station, the applicant shall submit evidence that a separate coastal development permit has been reviewed and approved by the Coastal Commission for the extension and completion of Avenida Encinas.

Permit No. 6-93-207-A1

[withdrawn – all Special Conditions of CDP No. 6-93-207 remained unchanged and in effect]

Permit No. 6-93-207-A2

1. [Special Condition No. 1 of CDP No. 6-93-207 remains unchanged and in effect]
2. [Special Condition No. 2 of CDP No. 6-93-207 remains unchanged and in effect]
3. [Special Condition No. 3 of CDP No. 6-93-207 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-93-207 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-93-207 remains unchanged and in effect]
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7. [Special Condition No. 7 of CDP No. 6-93-207 remains unchanged and in effect]
8. [Special Condition No. 8 of CDP No. 6-93-207 remains unchanged and in effect]
9. [Special Condition No. 9 of CDP No. 6-93-207 remains unchanged and in effect]

10. Expanded Environmental Easement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT:

a. The applicant shall execute, including obtaining a signature from the City of Carlsbad, and record a document(s) in a form and content acceptable to the Executive Director, amending Recording No. 2015.0317274 to expand the area of the environmental easement according to the “Current Natural Conditions Report for the Poinsettia Station Vernal Pool Preserve (PSVPP) – North County Transit District (NCTD) Parcel” dated July 5, 2018 by the City of Carlsbad, as approximately depicted in [Exhibit 5](#). Excepting the description of the expanded area, the permittee shall continue comply with all uses, restrictions, and requirements for the easement as described by Special Condition 1.

b. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit amendment and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement area. The easement amendment shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.

6-93-207-A2
North County Transit District

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Current Natural Conditions Report for the Poinsettia Station Vernal Pool Preserve (PSVPP) – North County Transit District (NCTD) Parcel (dated July 5, 2018)