

CALIFORNIA COASTAL COMMISSION

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49th Day: Waived
Staff: Gary Cannon-SD
Staff Report: January 17, 2008
Hearing Date: February 6-8, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with conditions.

APPEAL NO.: A-6-ENC-07-46

APPLICANT: Warren Scott Architecture (for West Village, Inc.)

PROJECT DESCRIPTION: Expansion of an existing shopping center parking lot that is located adjacent to Escondido Creek. The applicant proposes to remove 19 parking spaces from the east side of the site and add additional asphalt area to an existing landscaped area to accommodate up to 37 parking spaces.

PROJECT LOCATION: 162 S. Rancho Santa Fe Road, Encinitas
APN 259-191-14 and 25

APPELLANTS: Commissioners Patrick Kruer and Sara Wan.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

Staff also recommends that the Commission approve the de novo permit application with several special conditions that include submission of revised final plans documenting the incorporation of pervious surfaces for the parking lot area that lies within the filled floodplain/wetlands area, removal of non-native plants and the planting of native, non-invasive plants in consultation with the Dept. of Fish and Game, an open space restriction over the development site that restricts future development, and adequate BMP's. The primary issues raised by the subject development relate to the LCP policies relating to development within and adjacent to wetlands and floodplains. As conditioned, the proposed project will be consistent with those policies.

The Commission has reviewed numerous development requests at the subject site as identified in permit history, Section 2 below. Among other actions, the Commission has

twice denied requests by the property owner to construct a commercial structure on this same portion of the property because 1) placement of a commercial structure within wetlands and the floodplains is inconsistent with the LCP and 2) after a permitted fill of the wetlands and floodplains had occurred, a request to construct a building on the site constituted piecemeal development within the wetlands and floodplain. After litigation filed by the property owner, the Court of Appeals upheld the Commission's determination that development of a commercial structure within an area previously authorized for a permitted fill of floodplain and wetlands was inconsistent with the resource protection policies of the LCP since it constituted piecemeal development within the wetlands and floodplain.

Standard of Review: Certified Encinitas LCP and the public access and Recreation policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: City of Encinitas Certified LCP; Appeal applications by Commissioners Kruer and Wan dated 4/11/07; City Permit #06-130 CDP; Project Plans by Warren Scott Architecture dated 1/29/07; "Wetlands Mitigation and Restoration Plan for West Village Center" by Dudek and Associates, Inc. dated 8/9/96; "Update Report for the Wetland Mitigation Site Associated With Grading Modifications at the East Edge of the West Village Shopping Center, Encinitas" by Dudek and Associates, Inc. dated 1/28/97; "Final Monitoring Report for the Wetland Mitigation Site Associated With Grading Modifications at the East Edge of the West Village Center, Encinitas" by Dudek and Associates, Inc. dated 5/30/97; CDP Nos. A-6-ENC-96-34, A-6-ENC-96-34-R and A-6-ENC-98-109/West Village, Inc.; *West Village, Inc. v. California Coastal Commission*, No. D035216 at 15 (Cal.App. 4 Dist., Nov. 15, 2006).

I. Appellants Contend That: The City of Encinitas' (City) decision is inconsistent with several provisions of the City's LCP which relate to protection of wetlands and development within the floodplain. The appellants assert that the proposed project would result in piecemeal development in wetlands and the floodplain in that the Commission previously authorized the fill of wetlands and floodplain at this location to address flooding of the commercial center resulting from the installation of a bridge on the adjacent road over Escondido Creek. The appellants assert that the Commission made it clear in a subsequent request by the applicant to construct a building in this location that commercial development is not a permitted use in wetlands or the floodplain and would be piecemeal development. The appellants assert the proposed asphalt parking lot is similarly not a permitted use and would also involve piecemeal development of wetlands and floodplain. In addition, the appellants assert that the applicant has failed to perform required wetlands delineation and failed to evaluate the location of a previously required wetlands mitigation site which is necessary before the City can identify the LCP required 50 ft. buffer between development and wetlands. The appellants also assert that the City failed to require that any wetlands buffer be conserved through a requirement for an open space deed restriction or other device.

II. Local Government Action. The coastal development permit was approved by the City of Encinitas Planning Director on March 13, 2007. Specific conditions were attached which, among other things, require that the parking lot be at least 4 inches of asphalt over 6 inches of class II material, the use of Best Management Practices to control and filter polluted runoff and implementation of grading and drainage controls.

III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission may proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding

must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC -07-46 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-ENC -07-46 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The coastal development permit approved by the City of Encinitas is for the expansion of an existing shopping center parking lot which involves the removal of 19 parking spaces from the east side of the site and installation of asphalt on an existing landscaped area to accommodate up to 37 parking spaces for a net gain of 18 parking spaces. The removal and construction will involve approximately 59 cu. yds.

of grading. The applicant is proposing a vegetated drainage swale along the north side of the site adjacent to the street as required by the City to filter polluted runoff. The applicant is also proposing a wetland buffer of 50 ft. between the parking lot and wetlands, but as identified below, has not performed a wetlands delineation to identify the location of wetlands. The proposed asphalt parking area will occur on a section of the property that the Commission previously approved for the fill of wetlands and floodplain to address flooding problems that resulted from the construction of an adjacent County owned bridge (Ref. A-6-ENC-96-34-R/West Village, Inc.).

The project site lies within a portion of an approximately 9 acre property which contains an existing approximately 62,000 sq. ft. retail/commercial center consisting of eight buildings known as “West Village Commercial Center”. The site comprises two parcels and is located on the south side of Rancho Santa Fe Road, just east of Manchester Avenue in the City of Encinitas. The proposed development is located on the second parcel to the east, between S. Rancho Santa Fe Road and Escondido Creek. Escondido Creek is a stream that flows into the nearby San Elijo Lagoon. Because the development site is located between the sea (Escondido Creek/San Elijo Lagoon) and the first coastal roadway (S. Rancho Santa Fe Road), the project lies within the Commission’s appellate jurisdiction. In addition, the project site lies within 100 ft. of wetlands and a stream which also identifies it as being subject to the Commission’s appellate jurisdiction.

2. Permit History. In 1984 the Commission approved CDP #6-84-368/Fletcher, for the demolition of existing buildings, grading consisting of 28,225 cubic yards of material (including 26,100 cubic yards of imported fill) and street and storm drain improvements on the subject property. The permit was approved with conditions which required the development to be revised to eliminate all grading within the 100-year floodplain and recordation of a waiver of liability, requiring the applicant to acknowledge that the site may be subject to hazard and damage from flooding and to assume the liability from this hazard. The conditions were satisfied and the permit was released.

In September of 1985, the Commission approved CDP#6-85-418/Fletcher, for the construction of an approximately 64,000 sq. ft. commercial center on the site in seven one- and two-story buildings. The permit also included approval of construction of some parking and landscape improvements for the center within the 100-year floodplain. This permit was approved with conditions requiring the submittal of a sign program for the center and recordation of a waiver of liability for the development, again requiring the applicant to acknowledge that the site may be subject to hazard from flooding and to assume the liability from this hazard. Subsequently, the conditions were satisfied and the center was constructed.

Subsequently, in February of 1994, the Commission approved CDP #6-93-155/County of San Diego, for the construction of a new bridge over Escondido Creek (La Bajada Bridge). The bridge was to replace an existing “dip” crossing which frequently flooded during storm events. This permit was approved by the Commission subject to a number of special conditions, which included mitigation for all unavoidable impacts to wetlands. As a result of the bridge construction, Rancho Santa Fe Road adjacent to the site was

elevated. The applicant contended that the bridge construction and elevation of the adjacent roadway had damaged his property by altering on-site drainage in the easternmost parking lot and landscaped area (where the subject development is proposed).

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. In February of 1996, the applicant received approval of a coastal development permit from the City of Encinitas for construction of a 2,000 sq. ft. retail structure and proposed fill to support the structure, describing the project as necessary to protect the existing commercial center from flooding. Because the proposed development was located within 100 feet of wetlands and was located between the sea and first coastal roadway, it was within the Commission's appeal jurisdiction. On March 4, 1996, the City's permit was appealed to the Coastal Commission (Ref. A-6-ENC-96-34). On April 11, 1996, the Commission found that a substantial issue existed with regard to the reason for the appeal. At the de novo hearing on May 7, 1996, the Commission found that the proposed development would constitute unpermitted fill of floodplain and wetlands, inconsistent with the City's LCP and was denied. The Commission's findings were based, in part, on a wetlands study submitted by the applicant (Ref. Wetland Delineation Report by Dudek and Associates dated 5/24/96). The study concluded that a "narrow artificial/emergent wetland" existed on the site covering approximately 240 sq. ft. (0.005 acres) at the base of the fill slope for the bridge. The study also stated that the wetland was of low quality, topographically isolated from the main drainage of Escondido Creek and was being artificially supported from parking area drainage and irrigation runoff from surrounding ornamental landscaping. The 2,000 sq. ft. structure and the associated 1,800 cu. yds. of fill would have filled all of the approximately 240 sq. ft. of wetlands. In addition, the development would have resulted in fill of the 100-year floodplain. The Commission denied the request to construct the 2,000 sq. ft. structure and 1,800 cu. yds. of fill.

On June 3, 1996 the applicant filed a request for reconsideration of the Commission's denial, in part on the grounds that the project was revised to reduce the amount of fill and to eliminate the structure. On August 14, 1996 the Commission approved the revised project. (Ref. A-6-ENC-96-34-R). The approved project included the filling of the 240 sq. ft. of "marginal wetlands" on the subject site. The Commission found that the proposed fill of 750 cubic yards could be permitted under the floodplain policies of the LCP because it was not fill for a permanent structure but was fill to prevent ponding of floodwater and therefore was consistent and compatible with periodic flooding. The Commission also found that the fill was consistent with the wetland protection policies of the LCP (which restrict fill of wetlands to certain limited uses) because it was an incidental public service project associated with the construction of La Bajada Bridge and the unintended drainage problem caused by its construction.

Prior to being filled, the project site was located within the FEMA mapped 100-year floodplain of Escondido Creek, one of the two major creeks which drain into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks

and Recreation Department. The creek in this location supports several native wetland and riparian habitats that include Southern Willow Riparian Scrub, Cismontane Alkali Marsh, and Coastal and Valley Freshwater Marsh. Based on a wetlands delineation prepared for the Army Corps of Engineers (ACOE) in 1996, it was determined at that time that there were approximately 4,610 sq. ft. of wetlands on the subject property. As noted previously, 240 sq. ft. of these wetlands were permitted to be filled pursuant to CDP #A-6-ENC-96-34-R. As a result of the approved fill and grading, the site of the subject parking lot expansion was raised out of the floodplain and in 1997 FEMA issued a new 100 year flood plain map that eliminated the area as being within the floodplain (Ref. Flood Insurance Rate Map Panel 1061 dated revised November 10, 1997).

In 1998, the Commission denied, on appeal, a request by the applicant to construct an approximately 4,400 sq. ft. commercial building on this same section of the property because it determined the request was inconsistent with the Encinitas LCP and constituted an attempt to piecemeal development within wetlands and the floodplain (Ref. A-6-ENC-98-109/West Village). The applicant sued the Commission over its decision to deny the building. The court found in favor of the Commission. This court decision was appealed by the applicant. The Court of Appeals subsequently found that the Commission had acted properly in denying the applicant's attempt to piecemeal development within the wetlands and floodplain. The Court found that "[u]nder these statutory powers, the Commission had the authority to prevent the type of two-step development proposed here, particularly where the property owner obtained the prior permit based on its express representation that it would not seek to build on the fill. The Commission could reasonably conclude that it would undermine the letter and spirit of the Encinitas LCP and the Coastal Act to permit West Village to obtain a coastal development permit in this fashion." (*West Village, Inc. v. California Coastal Commission*, No. D035216 at 15 (Cal.App. 4 Dist., Nov. 15, 2006))

3. Non Compliance with the Certified LCP. The appellants assert that the project as approved by the City is inconsistent with the following LCP policies that relate to wetlands protection and development within the floodplain:

Land Use Policy 8.2: Development within coastal and flood plain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources. . . . No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this Plan. No grading or fill activity other than the minimum necessary to accommodate those uses found safe and compatible shall be allowed. Such grading shall not significantly redirect or impede flood flows or require floodway modifications. Exceptions from these limitations may be made to allow the following:

[. . .]

b. Development of circulation element roads, other necessary public facilities, flood control projects where no feasible method for protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development, and other development which has as its objective the improvement of fish and wildlife habitat.

Resource Management LUP Policy 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted 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 newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. [. . .]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational

uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

[. . .]

Resource Management LUP Policy 10.10: The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks . .

After failing to receive approval for the construction of an approximately 4,400 sq. ft. commercial building on this formerly wetlands/floodplain site, the applicants are now proposing to apply impervious asphalt in this area to accommodate a parking lot. While “open parking” may be permitted within the floodplain as identified in Land Use Policy 8.2 above, a formal asphalt parking lot would not be a permitted use within the wetlands that previously existed on the site. The appellants assert that the request to construct an asphalt parking lot represents an attempt to piecemeal the development within wetlands and the floodplain similar to what was attempted in the request for the approximately 4,400 sq. ft. commercial building. If the applicant had initially proposed to fill the wetlands and floodplain in order to construct an asphalt parking lot to serve a commercial development, the request would have clearly been inconsistent with the LCP provisions that limit wetlands fill to specific uses and activities; incidental public service projects, mineral extraction, restoration and nature study. Therefore, since a developed parking lot that serves a shopping center is not a permitted use within wetlands, the appellants have raised a Substantial Issue in identifying an attempt to piecemeal development in wetlands.

In addition, as cited in Resource Management Policy 10.6 above, if a development falls into one of the permitted uses for fill of wetlands, the applicant is also required to mitigate for the impacts to wetlands. The appellants have also identified that the permit authorizing fill of the wetlands and floodplain on this site in 1996 also included a requirement to mitigate for those impacts (Ref. A-6-ENC-96-34R/West Village). Special Condition #2 of that permit required the applicant to “implement a mitigation and monitoring program” consistent with a specific plan (Ref. “Wetlands Mitigation and Restoration Plan for West Village Center” by Dudek and Associates, Inc. dated 8/9/96) and required that the mitigation be a ratio of 1.5 to 1. Based on a comparison of the proposed parking lot and the required wetlands mitigation plan required by the Commission in 1996, it appears this wetlands mitigation area either is not shown on the plans or has been removed from the site. It also appears that the required mitigation area lies within the proposed 50 ft. buffer. Therefore, the appellants have raised a Substantial

Issue relating to the adequacy of the LCP required wetlands buffer and have identified a potential violation of the conditions of approval of CDP #A-6-ENC-96-34R/West Village.

The appellants also assert that the City failed to require a formal wetlands delineation as required by RM Policy 10.6. This policy requires that the applicant perform a wetlands delineation consistent with the procedure for delineation practiced by U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations. Such a formal delineation requires the identification of any of three criteria; vegetation, soils and hydrology. According to a note that appears on the project plans, the “delineation” only involved the walking of the site by the City’s environmental planner and the project architect. Commission staff contacted the assigned City planner for the subject development and confirmed that a formal wetlands delineation was not performed. As such, the appellants have identified a Substantial Issue in that a formal delineation of wetlands was not performed as required by the LCP. RM Policy 10.6 also requires that the delineation and resource valuation of the site occur before consideration of development can occur. Since this detailed analysis did not occur in advance of the City’s approval of the parking lot, there is no way to verify whether the proposed 50 ft. buffer is adequate. Therefore, on this concern as well, the appellants have raised a Substantial Issue.

Finally, the appellants assert that the City has failed to require that the wetlands buffer be protected by the application of an open space easement or other device as required by the LCP. While the applicant’s project plans identify a 50 ft. area between the proposed parking lot and what they call “wetlands” and includes a note that they shall dedicate that area as an open space easement, the City’s Specific Conditions of approval do not list it as a requirement. Without a Specific Condition, the City’s approval raises a concern that the buffer will not be protected.

In summary, the proposed asphalt parking lot approved by the City is inconsistent with the wetlands and floodplain protection policies of the LCP since it would result in piecemeal development of wetlands and the floodplain and result in the type of development that is not consistent with the allowed uses within wetlands authorized by RM Policy 10.6. In addition, the project is inconsistent with wetlands policies that require a wetlands delineation prior to approval of the development and with the requirement that any necessary buffer be conserved within an open space restricted area. Therefore, the City’s action raises a substantial issue regarding consistency with the requirements of the LCP.

VI. STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-ENC-07-046 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 certified LCP and the public access policies 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.

VII. Standard Conditions.

See attached page.

VIII. Special Conditions.

The permit is subject to the following special conditions:

1. **Revised Final Plans.** **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, revised final plans for the permitted development that have been stamped approved by the City of Encinitas. Said plans shall be in substantial conformance with the plans approved by the City on 3/13/07 (as revised and submitted to the Coastal Commission on 8/17/07), by Scott Warren Architecture, but shall be revised as follows:

- a. All portions of the proposed parking lot that lie east of the existing impervious asphalt lot shall be constructed with a pervious surface to allow continued infiltration through the parking lot.
- b. The pervious pavement on this lot shall be maintained according to manufacturer specifications to allow continued infiltration. A maintenance plan for the pervious pavement specific to the conditions at this site shall be included in the revised plans.

The permittee 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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Landscape Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, a landscaping plan for the wetlands buffer and parking lot that includes the following:

- a. All existing permanent irrigation devices and any other structures such as light fixtures shall be permanently removed (or capped in the case of the irrigation) from within the proposed wetlands buffer.
- b. Revegetation of the wetlands buffer (as well as any area other within the parking lot) so as to remove existing non-native plants and replant with drought-tolerant native, non-invasive plant species that are obtained from local stock, if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- c. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of the parking lot.
- d. A written commitment by the applicant that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- e. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- f. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the 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.

3. Open Space Restriction. No development, as defined in section 30106 of the Coastal Act, shall occur on the subject lot in the area generally described as the portion of the property east of the existing parking lot as depicted on the proposed site plan, and as depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- a. Installation and maintenance of the approved pervious parking areas, solely in the areas approved by this permit, removal of exotic plants and installation/long-term maintenance of native species proposed as part of the approved landscape plan within the proposed wetlands buffer and parking lot.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portions of the subject property affected by this condition, as generally described above and shown on Exhibit #5 attached to the January 17, 2008 staff report.

4. Final Drainage and Polluted Runoff Control Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, revised final drainage and runoff control plans approved by the City of Encinitas, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The design criteria for BMPs shall be based on the recommendations in the latest edition of the California Association of Stormwater Quality Agencies (CASQA) Stormwater Best Management Practices Handbooks. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- a. Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- b. Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains.

- c. Drainage from all parking areas, driveway area, and other impervious surfaces on the proposed development site shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- d. Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
- e. The approved maintenance plan for the pervious parking lot identified in Special Condition #1 above
- f. The plan shall include provisions for maintaining the drainage system, including structural BMPs, and the pervious surface parking lot in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems and pervious surface parking lot over its lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

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

5. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and

restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

VII. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The proposed development involves the expansion of an existing 303 space parking lot of an existing shopping center by removing 19 parking spaces from the east side of the site and installing approximately 5,382 sq. ft. of additional impervious asphalt to accommodate up to 34 parking spaces for a net gain of 15 parking spaces. The applicant had originally proposed up to 37 spaces, but has subsequently revised the project to reduce the size of the parking area so as to provide a greater than 50 ft. wetlands buffer from nearby wetlands and a previously created wetlands mitigation site. The proposed impervious asphalt parking expansion will occur on a section of the property that is currently landscaped where the Commission previously approved the fill of wetlands and floodplain to address flooding problems that resulted from the construction of an adjacent County owned bridge (Ref. A-6-ENC-96-34-R/West Village, Inc.). In 1998 the Commission denied a request by the property owner to construct an approximately 4,400 sq. ft. commercial building on this same section of the property because it determined the request was inconsistent with the Encinitas LCP and constituted an attempt to piecemeal development within wetlands and the floodplain (Ref. A-6-ENC-98-109/West Village). (Please refer to Section 2 of the Substantial Issue portion of this staff report for the complete permit history of the subject site.)

The project site lies within a portion of an approximately 9 acre property which contains an existing approximately 64,000 sq. ft. retail/commercial center consisting of eight buildings known as “West Village Commercial Center”. The site comprises two parcels and is located on the south side of Rancho Santa Fe Road, just east of Manchester Avenue in the City of Encinitas. The proposed development is located on the second parcel to the east, between S. Rancho Santa Fe Road and Escondido Creek. Escondido Creek is the primary stream that flows into the nearby San Elijo Lagoon. Because the development site is located between the sea (Escondido Creek/San Elijo Lagoon) and the first coastal roadway (S. Rancho Santa Fe Road), the project lies within the Commission’s appellate jurisdiction. In addition, the project site lies within 100 ft. of wetlands and a stream which also identifies it as being subject to the Commission’s appellate jurisdiction.

The standard of review is the certified City of Encinitas Local Coastal Program and the public access and recreation policies of the Coastal Act.

2. Environmentally Sensitive Habitat Areas. The City's LCP contains a number of provisions that require protection of wetlands, floodplains and other environmentally sensitive resources. Specifically, the LCP provisions applicable to the subject development include:

Land Use Policy 8.2: Development within coastal and flood plain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources. . . . No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this Plan. No grading or fill activity other than the minimum necessary to accommodate those uses found safe and compatible shall be allowed. Such grading shall not significantly redirect or impede flood flows or require floodway modifications. . . .

Resource Management LUP Policy 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted 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 newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent

activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

[. . .]

Section 30.34.040 (B) (3) (c) of the certified Implementation Plan states:

All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.

In addition, the Resource Management (RM) Element of the Land Use Plan contains the following:

RM GOAL 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

POLICY 10.9: The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

- involve wetland fill or increased sedimentation into wetlands;
- adversely decrease stream flow into the wetlands;
- reduce tidal interchange;
- reduce internal water circulation; or
- adversely affect existing wildlife habitats.

The subject application involves the construction of an impervious asphalt parking lot upland of Escondido Creek. Prior to being filled pursuant to CDP #A-6-ENC-96-34-R/West Village, Inc., the project site was located within the FEMA mapped 100-year floodplain of Escondido Creek, one of the two major creeks which drain into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. The creek in this location supports several native wetland and riparian habitats that include Southern Willow Riparian Scrub, Cismontane Alkali Marsh, and Coastal and Valley Freshwater Marsh. Based on a wetlands delineation prepared for the Army Corps of Engineers (ACOE) in 1996, it was determined at that time that there were approximately 4,610 sq. ft. of wetlands on the overall subject properties.

The proposed impervious asphalt lot will result in approximately 5,382 sq. ft. of impervious paving within the area previously approved for fill of floodplain and the 240 sq. ft. area approved for fill of wetlands. As the Commission has made very clear in its previous denial of development within this same area (Ref. CDP #A-6-ENC-96-34/West Village, Inc. and #A-6-ENC-98-109/West Village), the construction of commercial structures on the wetland and floodplain filled sections of the property would be inconsistent with Resource Protection Policies of the LCP since it would constitute piecemeal development within the floodplain and wetlands. In addition, while “open parking” is a permitted use within floodplains pursuant to Land Use Policy 8.2 as cited above, the fill of floodplains in order to remove the land from within the floodplain in order to construct an impervious asphalt parking lot would not have been a permitted use.

The Commission has reviewed the applicant's request to construct an impervious asphalt parking lot within the filled wetlands and floodplain area and has concluded that such construction would, like previous requests for commercial structures, constitute piecemeal development of wetlands and floodplain. In addition, if the land were converted from an open grassy area to an impervious surfaced parking lot it could result in future requests to construct a structure on the site. While the Commission would have review authority of any future request for a structure on the site, either as an amendment to the subject permit or through the appeal process of a local government decision, the argument for prohibiting a structure on the site would be somewhat weakened once the site has been converted to an impervious surface.

Although an impervious asphalt parking lot would not be consistent with the wetland and floodplain protection policies of the LCP, if the applicant constructed a pervious parking area that would allow continued filtration (e.g. with pavers or grass crete) along with the required 50 ft. wetlands buffer, the development could be found to be consistent with the resource protection policies of the LCP. Use of the open grassy area for informal parking or formal parking such as would occur with a pervious parking lot along with a 50 ft. natural wetlands buffer separating the parking area from Escondido Creek, would allow the site to function as an open natural area similar to what currently exists without adversely affecting environmentally sensitive habitat areas (ESHA). However, not all the proposed parking lot will occur within this undeveloped open area. The applicant is proposing to remove up to 19 existing impervious asphalt parking spaces and install up to 34 new spaces for a net gain of 15 spaces. Therefore, a portion of the work will occur within an existing impervious asphalt lot. The concern with the subject application involves encroachment of the proposed parking into open undeveloped land east of the existing asphalt lot because that portion of the property involved the fill of wetlands and floodplain. Therefore, Special Condition #1 has been attached to assure that the open undeveloped area continues to function as much as possible as a naturally filtering area of land. Special Condition #1 requires the submission of revised plans detailing that all portions of the proposed parking lot east of the existing impervious asphalt lot be constructed with a pervious surface. In addition, the Commission's water quality division has identified that pervious surface parking lots have the potential to convert to an impervious surface over time if not regularly maintained to remove trash, sediments and other contaminants that "clog" the porous nature of the surface. Therefore, since the purpose of the pervious surface is to retain the natural filtering mechanism of the former floodplain/wetlands site to the maximum extent possible, Special Condition #1 also requires that the pervious pavement be maintained according to manufacturer specifications.

In addition, as noted above, the applicant is also proposing a wetlands buffer between the parking lot and the wetlands. Currently the area proposed for the wetlands buffer consists of grass lawn that is routinely irrigated and mowed by the property owner. Commission staff have visited the site and it appears that the grass has extended into the area that was previously created as wetlands or previously contained wetlands habitat. The applicant is not proposing to revegetate either area with native wetland plants. However, the applicant is proposing to remove the sprinklers that currently water the wetlands area and has asserted

that the natural wetlands vegetation should expand back into that area as a result (Ref. Exhibit #6).

In approving the fill of the 240 sq. ft. of wetlands in 1996, the Commission required the creation of wetlands at a rate of 1.5 to 1 (Ref. A-6-ENC-96-34-R/West Village) consistent with the LUP Policy 10.6 requirement that any permitted fill of wetlands be mitigated by the creation of wetlands at a greater than 1:1 rate. At the time, the applicant proposed and the Commission accepted a proposal to create 327 sq. ft. of wetlands just south of the wetlands/floodplain fill area. The applicant's biology report from 1996 asserted that because of its location the created wetlands area would be "self-sufficient over the long-term and will support wetland vegetation easily following initial grading, planting and maintenance program." Based on the recent site visit by Commission staff, the wetlands area created by the applicant in 1996 no longer contains wetland plants and appears to have been replaced with non-native grass. The Commission's conditions of approval for the wetlands fill in 1996 only required implementation of the applicant's proposed mitigation and revegetation plan which did not include long-term maintenance beyond 6 months since it was anticipated the created wetlands would be "self-sufficient." In addition, the Commission at that time did not require a 50 ft. buffer between the created or existing wetlands and the fill area as part of the wetlands/floodplain fill project.

While the applicant is not proposing to restore the previously created wetlands area to wetlands habitat as part of the subject application request, he is proposing the creation of a formal wetlands buffer between the proposed parking lot and the area that was previously identified to be wetlands. While the applicant refers to the buffer as "50 ft. wetlands buffer", it is actually more than 50 ft. wide. For ease of measurement, the applicant has chosen to measure the required 50 ft. minimum buffer from an existing upland fence line rather than from the non-uniform wetlands boundary which extends east of the fence line. Thus, the applicant's wetlands buffer will be greater than 50 ft. in all cases. Although required by the LCP, the applicant did not perform a wetlands delineation for the property as part of the subject development request. However, as previously noted, Commission staff has visited the project site and has determined that the area previously identified for wetlands creation as well as portions of what were delineated as wetlands in 1996 located closest to the proposed development site have been replaced by non-native grasses. Therefore, if the applicant were to perform a wetlands delineation it would likely find the resources are less than what existed in 1996. In this case, the applicant has proposed to create the wetlands buffer based on the 1996 location of wetlands habitat which results in a greater than 50 ft. buffer between the previous wetlands area and the development area. Therefore, if the wetlands creation area or previous natural wetlands area should be restored or recur, the applicant will have created and preserved a wetlands buffer for its protection.

However, in order to protect the wetlands, the wetlands buffer needs to be designed to eliminate invasive species such as the existing grass lawn. Therefore, Special Condition #2 has been attached to require the removal of all non-native species and replanting of the buffer area with native, non-invasive species that, if available, will be obtained from local stock. The condition also requires that any new landscaping within the proposed parking lot also be native, non-invasive. In addition, the condition requires the removal of structures

that lie within the buffer area such as the permanent irrigation lines and light structures. With the removal of non-native grasses and the re-planting with native species in the proposed buffer area along with the applicant's proposal to remove irrigation of the former wetlands area, the former wetlands habitat area may regenerate. At a minimum, the proposed buffer, as conditioned, will improve the overall habitat area adjacent to the wetlands of Escondido Creek. While the Commission had clearly intended the permanent creation of wetlands as mitigation for the fill of wetlands at this location in 1996, the created wetlands area has not been identified as being present today. Resolution of this question will need to be resolved as a separate action by Commission staff since the applicant is not proposing restoration of the wetlands as part of the subject application.

As previously detailed, the Commission has twice denied requests to construct a building on the subject site since approving such would constitute piecemeal development within the floodplain and wetlands. To assure that this area is protected against similar future developments, Special Condition #3 has been attached to require that the proposed development site and wetlands buffer area be protected through the application of an open space restriction that prohibits future development of the site except for the pervious surface parking lot and wetlands buffer and their associated long-term landscape maintenance. In addition, Special Condition #5 has been attached to require the subject conditions of approval be recorded against the property in the form of a deed restriction so that all future owners are aware of the conditions and restrictions on the use of the property.

With these conditions, the Commission can be assured that no additional development will occur on the former wetlands/floodplain area and that the site will continue to function as an open natural filtration system. In addition, as conditioned, the proposal will be consistent with the limited type of developments which are permitted within floodplains in that the pervious parking lot and buffer are uses which are safe and compatible with periodic flooding and inundation (Ref. Land Use Policy 8.2 cited above).

In summary, as conditioned to require the use of a pervious surface for the proposed parking lot on the undeveloped portion of the site along with removal of exotic species and the planting of native species within the parking lot and wetlands buffer area, the proposed development is consistent with the wetlands and floodplain policies of the Certified LCP.

3. Water Quality. Recognizing the value of protecting the water quality of oceans and waterways for residents and visitors alike, the City's LCP requires that preventive measures be taken to protect coastal waters from pollution. The following policies are applicable:

RM Policy 2.1: In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

RM Policy 2.3: To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing

potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .

RM GOAL 14: The City shall stringently control erosion and sedimentation from land use and development to avoid environmental degradation of lagoons and other sensitive biological habitat, preserve public resources and avoid the costs of dealing with repair and sedimentation removal.

RM POLICY 14.3: The City will reduce the rate of sedimentation of the lagoons by requiring procedures for controlling runoff and erosion associated with upland grading and development based on a minimum 10-year, six-hour storm event. The City shall provide regulations for the use of sedimentation basins and the potential transfer of sediment as beach replenishment (if of an acceptable material).

The proposed development will be sited upland and adjacent to Escondido Creek, an environmentally sensitive habitat which is one of the primary tributaries to San Elijo Lagoon, an environmentally sensitive habitat area and regional park. The creek in this location supports several native wetland and riparian habitats that include Southern Willow Riparian Scrub, Cismontane Alkali Marsh, and Coastal and Valley Freshwater Marsh. Due to the proximity of the proposed development to the environmentally sensitive resources and waters of Escondido Creek and the nearby San Elijo Lagoon, the LCP requires that all runoff be effectively reduced or eliminated.

The proposed development involves both impervious and pervious surfaces. Impervious surfaces are associated with impacts to water quality when water runoff from hard surfaces contains pollutants that eventually drain into coastal waters. Parking lots areas such as proposed on the subject site can contain oil, gasoline, brake dust, particles of roofing material and construction matter, chemicals, trash and other contaminants. Filters, catch basins, and vegetated areas can be employed to trap vehicle-generated pollutants and reduce runoff volumes. In this case, the City is requiring a bioswale catch basin along the north side of the development site to catch and filter runoff before it enters into Escondido Creek. In addition, as conditioned to require that all portions of the parking area within the existing undeveloped area be constructed with a pervious surface, that portion of the parking lot has the potential of providing some additional water quality benefit if regularly maintained.

To assure that the water quality protection measures are effective and well maintained, Special Condition #4 has been attached. Special Condition #4 requires the applicant to submit a Best Management Practices (BMPs) Plan for Executive Director approval that incorporates structural and non-structural BMPs to reduce the volume, velocity and pollutant load of stormwater and dry weather flows so as to minimize water quality impacts to nearby Escondido Creek. As proposed and conditioned, the Commission can therefore find the proposed development consistent with the water quality protection policies of the Coastal Act.

4. Public Access. The project site is located along the south side of South Rancho Santa Fe Road, north of Escondido Creek. South Rancho Santa Fe Road at this location is designated as the first public roadway adjacent to Escondido Creek. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act. Section 30212 of the Act is applicable and states, in part:

(a) 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....

The proposed development is located approximately 3 miles east of the coast, public access and recreational opportunities, in the form of hiking trails, do exist in the area providing access along Escondido Creek and into San Elijo Lagoon Ecological Reserve and Regional Park. There are currently no such trails existing or planned for adjacent to the subject site. The proposed development will not impede access to Escondido Creek, San Elijo Lagoon or to any existing trails. Therefore, the proposed development will have no adverse impacts on public access or recreational opportunities consistent with the public access policies of the Coastal Act.

5. Local Coastal Planning. In November of 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (LCP). Subsequently, on May 15, 1995, coastal development permit authority was transferred to the City. The project site is located within the City's permit jurisdiction and, therefore, the standard of review is the City's LCP.

The subject site is zoned and planned for general commercial (GC) and is located within the Special Study Overlay zone and the Scenic/Visual Overlay zone of the City's certified LCP and the proposed development is consistent with that designation and the overlay zones. As conditioned, all potential adverse impacts to nearby ESHA will be mitigated consistent with the requirements of the LCP. Therefore, the Commission finds the approval of the proposed development, as conditioned, will not prejudice the ability of the City of Encinitas to continue to implement its certified LCP.

6. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is 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, as conditioned, is consistent with the policies of the City's LCP relating to protection of ESHA and water quality. In addition, the project is consistent with the public access and recreation policies of the Coastal Act. Mitigation measures including creation of a naturally vegetated wetlands buffer, the conservation of the buffer and pervious parking lot within an open space easement which prohibits future development, and the incorporation of adequate BMP's 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, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the City's LCP and the public access and recreation policies 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.

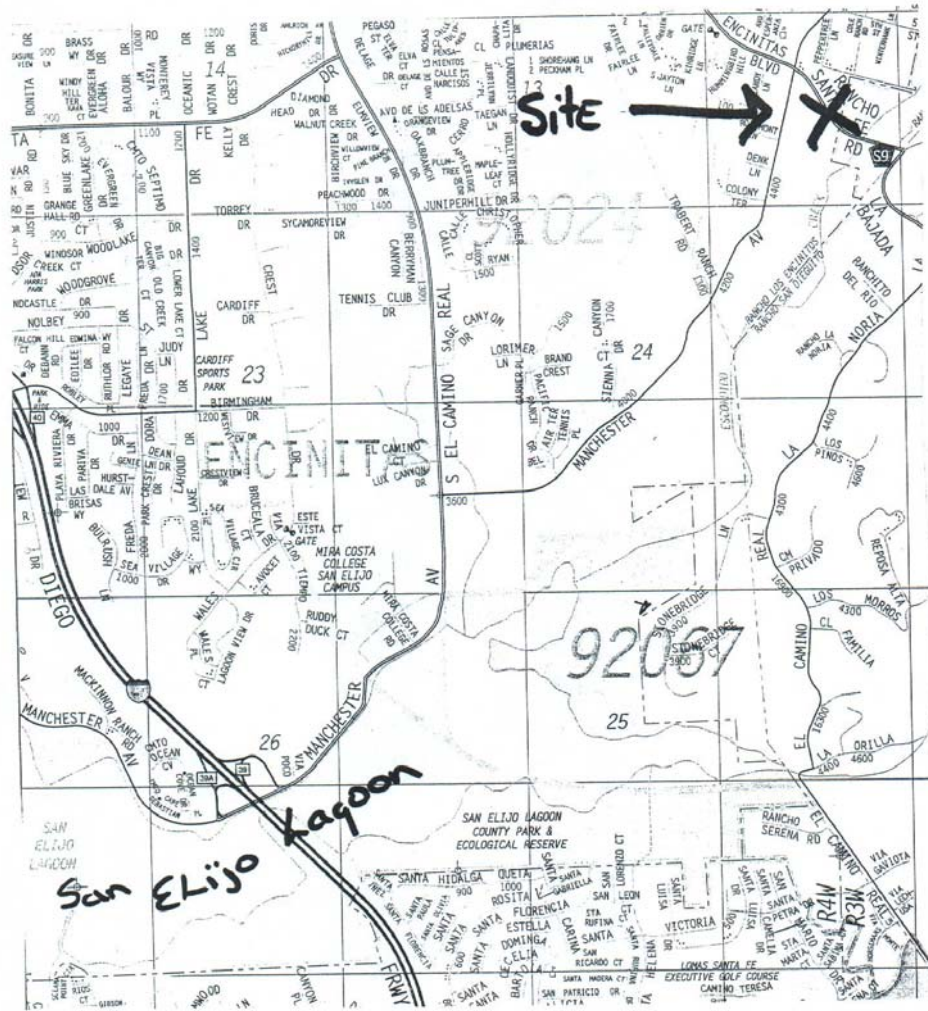
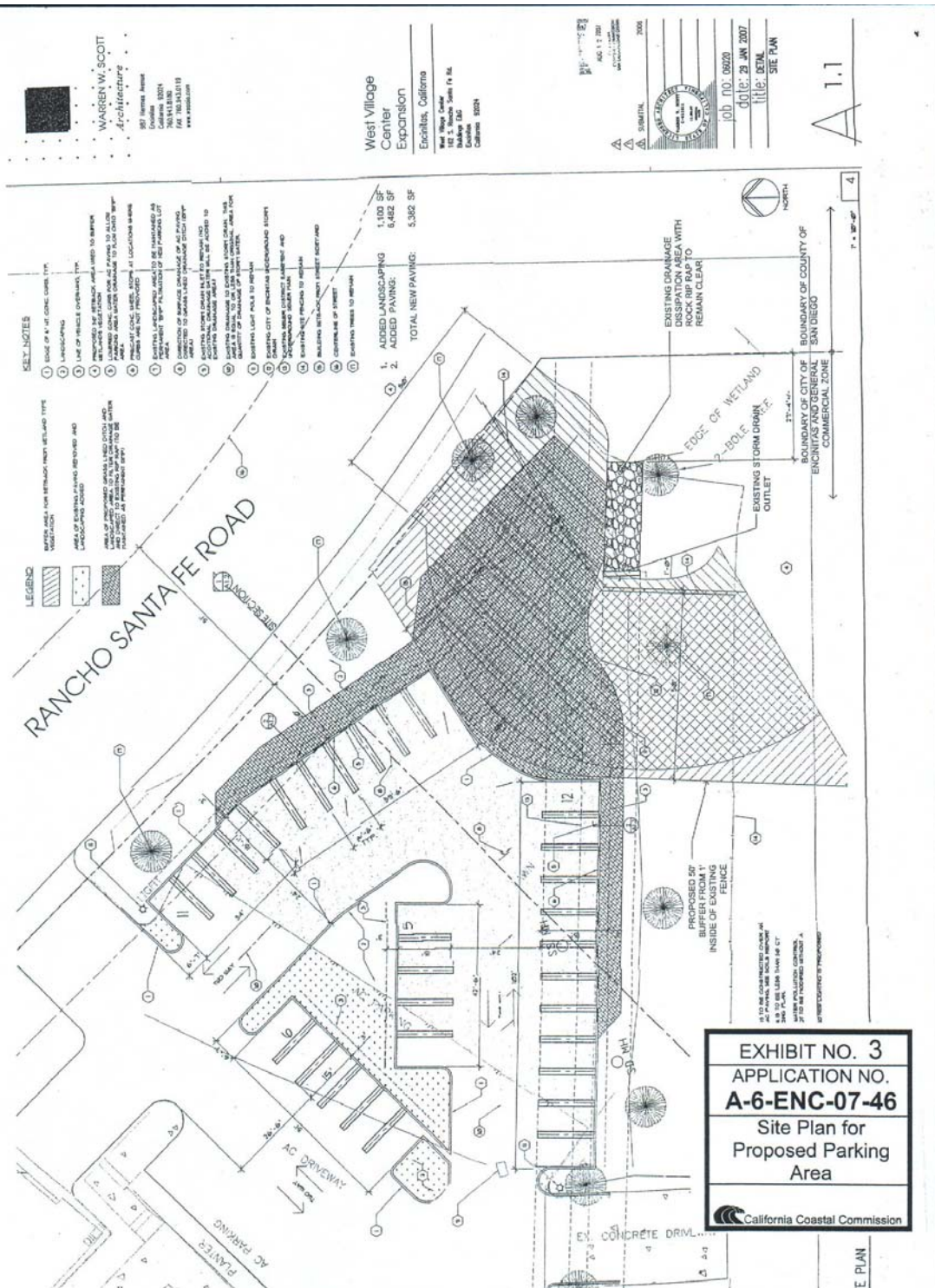
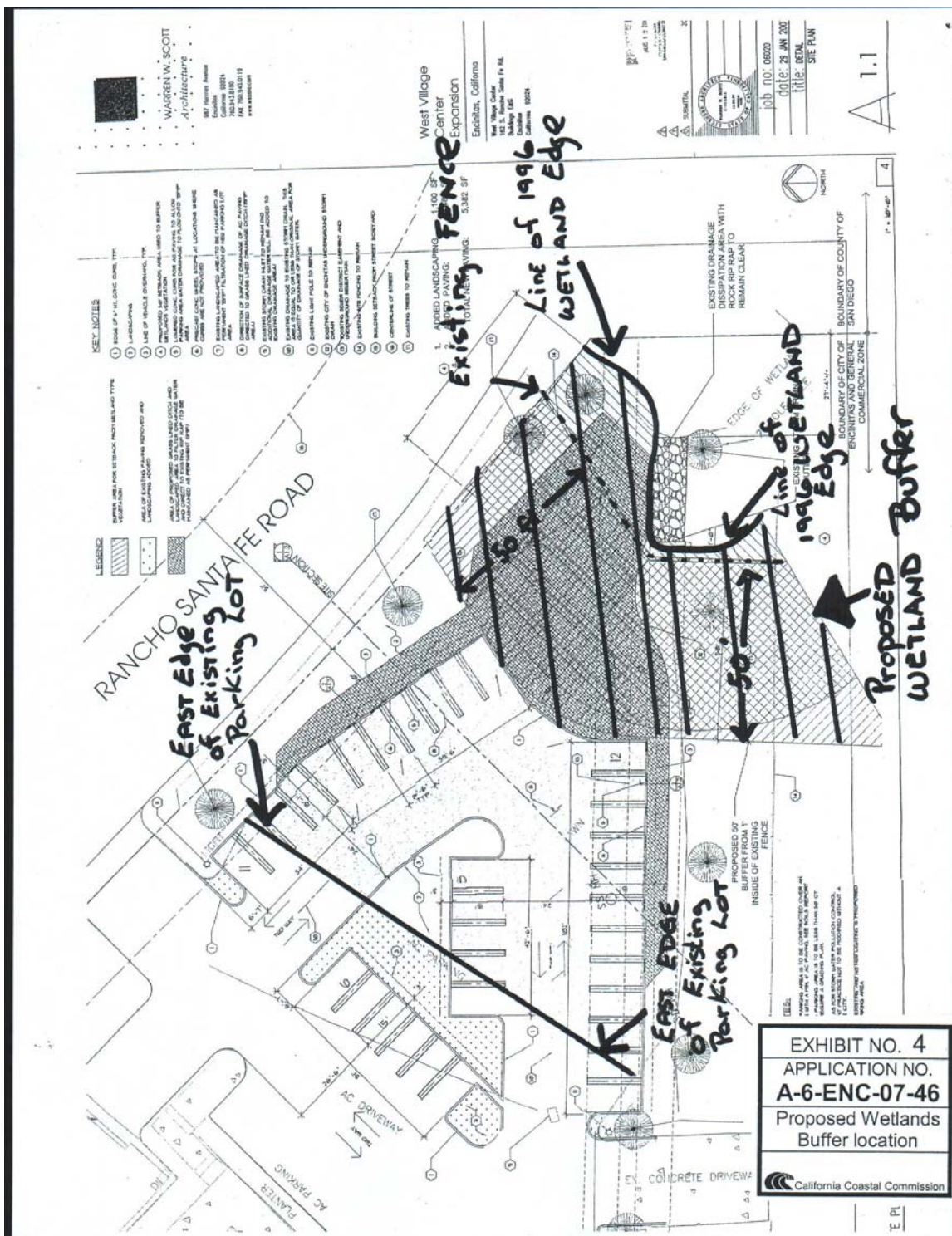
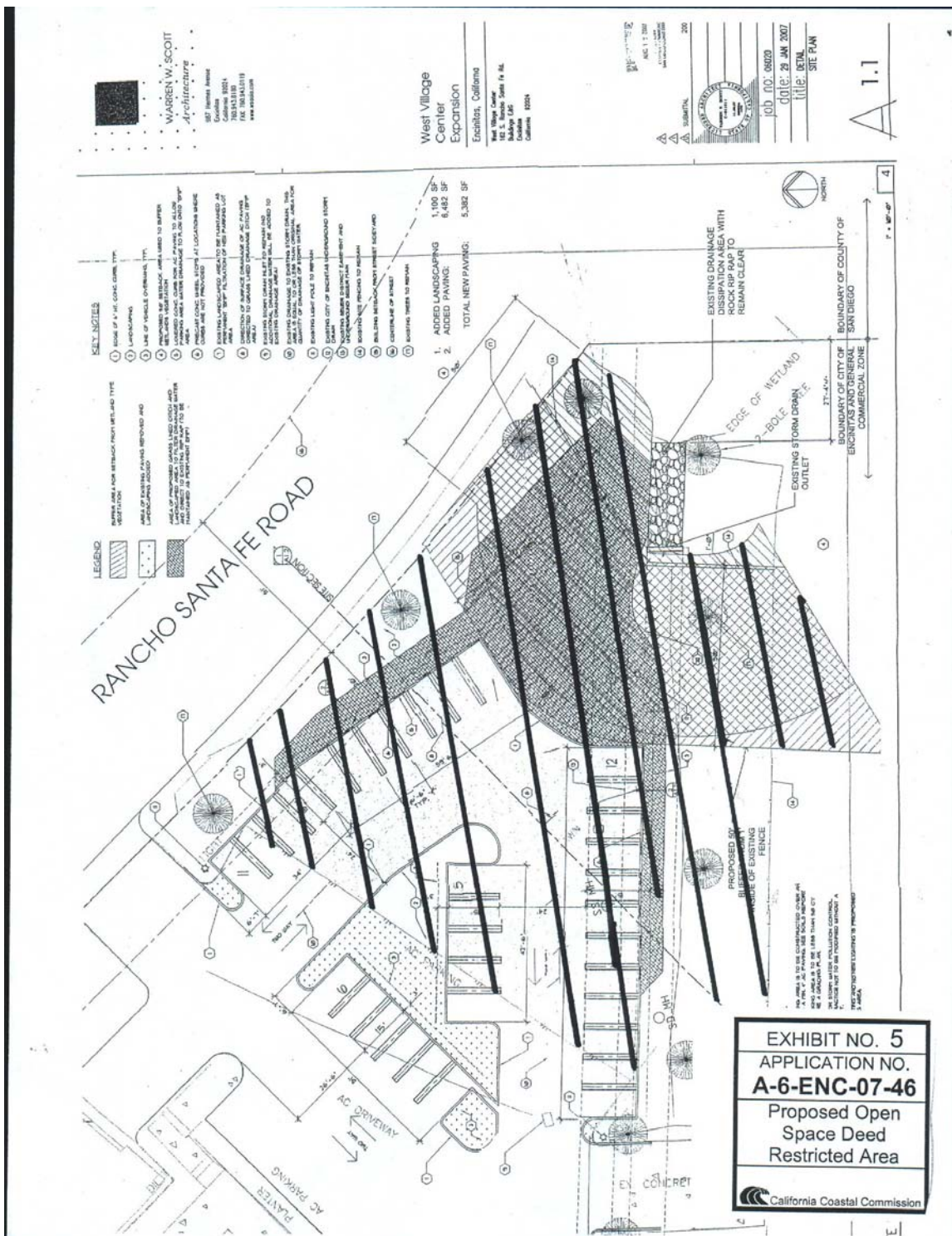


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-07-46
Location Map
California Coastal Commission









3.0.



Warren W. Scott + Architecture

August 31, 2007

Mr. Gary Cannon
 California Coastal Commission
 San Diego Coast District
 7575 Metropolitan Drive, Suite 103
 San Diego, CA 92108-4421

RECEIVED

SEP 04 2007

 CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

Re: Appeal No: A-6-ENC-07-046

Dear Mr. Cannon,

As per your request, this letter is the expansion of the email I sent to you Wednesday, August 28, 2007.

Thank you for meeting us at the site for the proposed parking lot expansion, at 10:30 am, August 17, 2007. I hope this gave a better picture of the proposed project and the surrounding areas.

Since our meeting, I have not heard from you regarding the effort to gain approval for this project. I have reviewed our meeting with the owner, Pete Fletcher. The following are some of his comments and items we discussed at the site that may help resolve the concerns regarding the project and allow this project to achieve final approval:

1. The use of the existing chain link fence at the westerly edge of the wetland vegetation would be an acceptable line to define the 50 foot buffer. The boundary is to start one foot east of the fence to include the fence within the buffer.
2. We would like to keep the 50' buffer as the grassy area being maintained by the center. This would keep a consistent look with the landscaping and better maintain the proper BMP drainage requirements that the City will be requiring. The BMP area requires that it be maintained and cleared on a regular basis.
3. No fence should be provided between the edge of the 50' buffer and the parking area. This would further impede the maintenance of the buffer and BMP area.
4. There is still consideration to provide a recorded "no building" easement for the parking area. How this is defined and to what extent needs to be discussed further.
5. The existing wetland vegetation area east of the existing chain link fence shall be allowed to grow in naturally. Sprinklers that are within or water the area will be removed or redirected. The existing area has never supported a full coverage of wetland type vegetation. Therefore, this area should be considered a transitional area between the existing landscaping and the

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EXHIBIT NO. 6
APPLICATION NO.
A-6-ENC-07-46
Letter From Applicant

 California Coastal Commission

wetland vegetation. With the removal of the sprinklers, the natural wetlands vegetation has typically been expanding into the area. The existing fence provides adequate protection from general access and only an occasional clean up of trash may be necessary. Signage can be added to note no public access or dumping.

6. The City will be held responsible for the maintenance of the storm drain outfall that is within the wetland vegetation area. It is this storm drain outfall that has been generating most of the wetland vegetation in the area.
7. The proposed parking area has been redesigned to be outside of the 50' buffer (a revised drawing was provided at the meeting).
8. Parking surface to be AC paving to match the center. The use of "porous type concrete" is a major grading effort that would have a great affect on the local environment. This type of paving would require up to 2 feet of soils removal, import fill, and the new paving. The long term ability of the concrete to continue to percolate may be in question with the filling of the pours with fine sands and debris over time. The effort does not appear to provide adequate benefits for its use in this case. The extensive BMP area provides a very good protection of run off by the parking area.
9. The extent of the 50' buffer is limited to the property of the West Village Center and not to adjacent properties that are not apart of the center.

Please review these comments for the basis of the approval. If we need to have a meeting to further compare the requirements, please let me know.

Thank you,

Sincerely,



Warren W. Scott, AIA
WSA, Inc
Warren W. Scott + Architecture

Cc: Peter Fetcher, West Village Center