

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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W 27a

Addendum

March 4, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **W27a** Coastal Commission Permit Application
#6-08-123 (Medina and Graham), for the Commission Meeting of March
10-12, 2010

Staff recommends the following changes be made to the above-referenced staff report:

1. Modify the final paragraph on Page 16 as follows:

Section 30251 of the Coastal Act requires that all new development be visually compatible with the character of surrounding areas. The project is located adjacent to a single family home to the east, Adams St. to the north, Agua Hedionda Lagoon to the south, and undeveloped, residentially designated lots to the west. As part of the project proposal, the single existing lot will be subdivided into four (4) lots, three of which will be used for development. The surrounding community is comprised of virtually exclusively single family homes (ref. Exhibit #6). The subdivision would facilitate two homes on one lot, inconsistent with the general trend of the neighborhood. Additionally, the size of the newly subdivided four (4) lots would be much smaller than lots on the surrounding properties, also not in character with the surrounding area. Further, given the additional constraints on the lot, including ESHA, wetlands, steep slopes, and brush management, the...

2. Modify the first paragraph on Page 19 as follows:

The HMP further limits highly constrained sites (defined by having over 80% or more of the lot contain ESHA) to development on no more than 25% of the lot. In this case, the lot is highly constrained, contains steep slopes, sensitive coastal sage scrub vegetation, wetland habitat and gnatcatchers, and is adjacent to both Hardline (Agua Hedionda Lagoon) and standards areas (Lots west of subject site). However, the absolute definition for highly constrained sites is limited to sites containing ESHA on 80% or more of the property. According to the biology reports, 78.7% of the subject site is currently vegetated by ESHA (ref. Table #1). Further, the biological report

includes that the area of disturbed habitat is currently being maintained as a fire suppression zone for the neighboring residence to the east. As such, it is unclear what portion of the subject site would be ESHA if the vegetation wasn't actively removed for brush management. Thus, it is unclear at this time, if the site were left undisturbed, if it would be revegetated with the 10.3% (~~0.014 0.003~~-acres) of CSS necessary to require the development to be limited to 25% of the site. Given this ambiguity, the more conservative approach, defining the site as a highly constrained site, might have been the more appropriate standard of review for the City to have applied.

3. Modify the first paragraph on Page 22 as follows:

The subject site is highly constrained due to the presence of Coastal sage scrub, steep slopes, wetlands and federally protected California gnatcatchers. The project is further constrained by numerous overlaying policies contained in the City's certified LUP. However, the standard of review for the project is the Coastal Act, and as such, consistency with the applicable policies must be found. The Coastal Act limits development that results in impacts to ESHA to those types of developments that are dependent on the resources present on the site. Residential development is not a use that could be found consistent with Section 30240 of the Coastal Act and thus any impacts associated with such a development must be eliminated...

CALIFORNIA COASTAL COMMISSION

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W27a

Filed: February 24, 2010
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Staff: Toni Ross-SD
Staff Report: February 24, 2010
Hearing Date: March 10-12, 2010

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-08-123

Applicant: Dr. Ben and Eunice Medina; Dr. David Graham

Description: The subdivision and development of a 1.08 acre parcel into four lots consisting of two residential lots with a single-family home on each lot (3,000-sq. ft. on Lot 1 and 3,243-sq. ft. on Lot 2), one private driveway lot, and an open space lot, on a lagoon-fronting lot containing sensitive habitat.

Site: 4400 block of Adams Street along the north shore of Agua Hedionda Lagoon, Agua Hedionda, Carlsbad, San Diego County.
APN #206-200-01.

Substantive File Documents: City of Carlsbad's certified Agua Hedionda Land Use Plan; City of Carlsbad's Habitat Management Plan; Preliminary Biological Assessment prepared by Planning Systems, dated May 9, 2007; Addendum #1 to preliminary Biological Assessment prepared by Planning Systems, dated April 21, 2008; Gnatcatcher survey titled Protocol coastal California gnatcatcher survey on Medina property, prepared by Lincer & Associates dated November 22, 2006; Mitigated Negative Declaration and Mitigation and Monitoring report for the Adams St. Subdivision dated February 11, 2008.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the proposed project due to significant inconsistencies with the resource protection policies of the Coastal Act. Primarily the concerns are associated with the subdivision facilitating the construction of two single family residences on a lot containing sensitive habitat, with the newly created lots being substandard. The result of the proposed development would be significant impacts to gnatcatcher occupied coastal sage scrub. The Commission's staff Resource Ecologist has

reviewed the project and has determined that the coastal sage scrub habitat on the subject site is an Environmentally Sensitive Habitat Area (ESHA) that is protected under Section 30240 of the Coastal Act. The proposed development is not consistent with Section 30240 of the Coastal Act as it is not a resource dependent use. Further, as proposed, the project includes various structural improvements implemented in lieu of requiring the standard fuel modification zone of 60 feet. The project did not review or include any review of alternatives, thus the potential for a project that results in fewer impacts to coastal resources was not addressed. The project, as proposed, cannot be found consistent with the Coastal Act.

Standard of Review: Chapter 3 policies of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-08-123 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby **denies** a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. **Detailed Project Description.** The proposed project includes the subdivision of a 1.08-acre lot into four lots, two (2) to be constructed with single family residences, one (1) to be utilized for access to the homes, and one (1) open space lot. The project is located on a 1.08-acre site on the south side of Adams Street along the north shore of

Agua Hedionda Lagoon between Highland Drive and Park Drive in the City of Carlsbad (ref. Exhibit #1).

The site slopes downward from north to south with approximately 78 feet of elevation change between the highest point of the site at Adams St. and the lowest point of the site at the lagoon edge. Slopes range from 5-40% with the steepest portions of the site located nearest to the lagoon. The site is currently undeveloped and contains 0.84 acres of occupied Coastal Sage Scrub (CSS), 0.01 acres of Wetland (Open Water/Rocky Beach), 0.28 acres of Non-Native Grassland, and 0.02 acres of disturbed habitat. Surrounding land uses include Adams Street and single-family development to the north, the Agua Hedionda Lagoon to the south, an existing two-story single-family home to the east, and vacant, naturally vegetated land to the west.

The project includes a subdivision and residential development. Specifically, the parcel will be subdivided into four (4) separate lots. Lot 1 is approximately 0.16 acres (7,081 sq. ft.) in size and will be developed with a two-story, 3,000-sq. ft. custom home. Lot 2 is approximately 0.22 acres (9,756 sq. ft.) in size and will also be developed with a two-story, 3,243-sq. ft. custom home. Lot 3 is approximately 0.60 acres (26,007 sq. ft.) and will remain as open space. Lot 4 is approximately 0.10 acres (4,415 sq. ft.) in size and will be developed as a common area consisting of a driveway and parking areas to serve the two proposed residences. The open space parcel contains sensitive habitat and will be protected by an Open Space Land Use Designation, a deed restriction, and a conservation easement, as required by the Mitigated Negative Declaration and conditioned by the City's approval. However, an 8 foot wide public bicycle/pedestrian trail will be constructed within this Open Space area.

The construction of the homes, driveway, and public accessway will result in 0.27 acres of impacts to Coastal Sage Scrub, which the applicant has proposed to mitigate at a 2:1 ratio (0.54 acres) by providing 0.54 acres of offsite Coastal Sage Scrub creation or acquisition/preservation within the Coastal Zone. The project includes a 100' buffer from wetland habitat and a 20' buffer from upland habitat. The project includes various structural improvements in lieu of providing the standard 60 foot fire suppression/brush management area between the developed and Open Space areas.

While the certified Agua Hedionda Land Use Plan is one of six segments of the City of Carlsbad's LCP, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review, with the certified Agua Hedionda Land Use Plan and Habitat Management Plan, and the Coastal Resource Protection Overlay Zone used as guidance.

2. Protection of Environmentally Sensitive Habitat Areas. The proposed project will result in impacts to biological resources, including coastal sage scrub. The proposed project is located on the north shore of Agua Hedionda Lagoon. The area surrounding the project site includes the lagoon to the south, residential development to the east, vacant land to the west, and Adams St. to the north with steep naturally-vegetated slopes

comprising most of the site. Based on the biological analysis provided by the applicant, four vegetation types occur in the project area, three of which are considered Environmentally Sensitive Habitat Areas (ESHA). These include coastal sage scrub, open water / rock beach, and wetlands. The California gnatcatcher was also identified within the project area. The Commission's staff ecologist has visited the site and reviewed the biological reports for the project and has concluded that the site contains a significant amount of ESHA.

Section 30107.5 of the Coastal Act defines an environmentally sensitive area and states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The project site is located in an area of the City of Carlsbad's deferred certification, and as such, the Coastal Act is the standard of review. That being said, the City of Carlsbad has numerous policies within its Land Use Plan, Habitat Management Plan, Landscape Plan, and Implementation Plan that are applicable. These policies have been included and are used as guidance.

A. Environmentally Sensitive Habitat Areas (ESHA)

1. Coastal Act ESHA Policies

The subject site contains coastal sage scrub habitat extending from the lagoon up the sloping hillsides. Again, the Commission's staff Resource Ecologist has reviewed the proposed project and the various technical reports regarding biological resources and has concluded that the CSS present on the subject site is ESHA. As such, Section 30240 of the Coastal Act applies and states:

Section 30240

(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.

2. City of Carlsbad ESHA Policies.

The City's certified LCP has been broken up into six segments; this project site is located within the Agua Hedionda segment. To date, no Implementation Plan has been certified

for the Agua Hedionda area and as such, the Coastal Act to remains the standard of review. In 2003, the Coastal Commission approved the City of Carlsbad's Habitat Management Plan (HMP) as a component of the City's LUP; however, similar to the Agua Hedionda Plan, no Implementation Plan has been approved for the HMP, and thus, it is also only used as a guidance document. Because the LCP includes a large number of applicable policies, the general policies addressing protection of ESHA are listed below and specific policies are included in appropriate sub-headings below. Again, the provisions of the certified LCP cited throughout the report are used for guidance only.

Agua Hedionda Land Use Plan (LUP) Policies

3. Environmentally Sensitive Habitats, Water, and Marine Resources

3.6 The Implementation phase of the LCP shall include specific provisions for assuring protection of wetlands in the design of adjacent new development, including provision of adequate buffer areas, protective fencing, revegetation, etc.

4. Geologic Hazards

4.4 Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

[...]

b. Development, grading and landform alteration in steep slope areas (25%) shall be restricted. Exceptions may include encroachments by roadway and utilities necessary to reach developable areas. The maximum allowable density shall be calculated on the total lot area, although this may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations.

c. Use of Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

HMP Provisions

Based on existing distribution of vegetation communities and sensitive species, the City's HMP identifies a number of "Core and Linkage" areas throughout the City. The subject site is located within what is identified as the "Core 4 Focused Planning Area" which includes the Agua Hedionda Lagoon area and important linkages east of the lagoon. The HMP identifies that this core and linkage area contains a number of important vegetation communities including salt marsh, freshwater marsh, riparian scrub and coastal sage scrub. Utilizing the identified focused planning areas and existing and proposed development, the HMP sets up a preserve system that includes hardline properties, standards areas, and existing preserve.

a. Hardlines

Certain properties have been designated in the HMP with specific development/conservation footprints, and are known as “hardline” properties. If development is proposed on these sites in a manner that is substantially in conformance with the hardline, the development will be authorized consistent with all other regulatory standards and procedures. The purpose of this process is to ensure that certain areas of onsite habitat will be set aside for permanent preservation, and that the property owners have committed to abide by the established development limitation upon approval of the HMP.

b. Standards Areas

The second category of preserve area in the HMP contains the “standards” areas, for which the HMP contains guidance relative to future habitat preservation and the siting of new development. The standards areas involve specific undeveloped properties within the City that are located in the biological core and linkage areas. These properties are proposed to have conservation goals and standards which would allow at least 25% development of the site, but which provide for minimum conservation of 67% of coastal sage scrub and 75% of gnatcatchers on each site. Several areas have significantly higher standards for greater protection of individual resource areas. Emphasis is placed upon creation of preservation corridors and linkage to the larger MHCP habitat areas. Projects proposed within the standards areas will also require additional consultation with the City and the wildlife agencies to determine whether the project complies with the relevant standards and is consistent with the HMP. Upon receiving approval of their development plans, these property owners will receive “take” authorization from the US Fish and Wildlife Service.

c. Existing Preserve Areas

The third category contains existing preserve lands, such as the City’s three coastal lagoons and associated wetlands, the Dawson Los Monos Reserve, the Carlsbad Highlands Mitigation Bank, and other preserves located within previously-approved development. Approximately 4,450 acres of existing preserve land will be incorporated into the HMP. These areas, which include both private and public land, have already been conserved for their wildlife value through previous development actions, such as mitigation banks and required open space.

Relative to the proposed development, the project is directly north to the Agua Hedionda Lagoon Hardline Preserve area and directly east of a Standards Area (Local Facilities Management Zone #1). Zone #1 is described in the HMP as being almost entirely developed, but containing scattered fragments of natural vegetation, including coastal sage scrub areas that support California gnatcatchers. The HMP further states that much of the remaining vegetation is on the slopes adjoining the lagoon, thus contributing to the biological value of the lagoon watershed. Conservation goals for Zone #1 include the following:

- Conserve the majority of sensitive habitats in or contiguous with biological core areas, including no net loss of wetland habitat, and preserve, coastal sage scrub and maritime succulent scrub adjacent to lagoons. Retain and manage natural habitats adjacent to lagoons to buffer wetland resources from adverse effects...

The HMP further details planning standards for Zone #1 that include the following:

- Avoid removal of maritime succulent scrub and any patches of coastal sage scrub in or contiguous with biological core areas [Agua Hedionda Lagoon]. Preserve at least 50% of coastal sage scrub with preference for avoidance of any areas that contain gnatcatchers. If impacts to native habitats cannot be avoided, mitigate by creation or enhancement of like habitats adjacent to lagoons, or by offsite compensation or restoration within biological core and linkage areas. Maximize the preservation of habitat adjacent to the lagoon.

However, because the project is located in the Coastal Zone, pursuant to the HMP, the project is also required to comply with the additional conservation standards to be applied to properties in the Coastal Zone, including the following:

7-1 Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

7-2 Coastal Sage Scrub

Coastal Sage Scrub is a resource of particular importance to the ecosystems of the Coastal Zone, due in part to the presence of the Coastal California gnatcatcher (Federal Threatened) and other species. Properties containing Coastal Sage Scrub located in the Coastal Zone shall conserve a minimum of 67% of the Coastal Sage Scrub and 75% of the gnatcatchers onsite. Conservation of gnatcatchers shall be determined in consultation with the wildlife agencies.

7-8 No Net Loss of Habitat

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland in the Coastal Zone of Carlsbad

7-9 Upland Habitat Mitigation Requirements

Where impacts to habitats stated in 7-1 are allowed, mitigation shall be provided as follows:

- a. The no net loss standard shall be satisfied as stated in 7-8. Typically this will consist of creation of the habitat type being impacted (or substantial restoration where allowed) at a ratio of at least 1:1 as provided in the HMP.
- b. Onsite preservation is not eligible for mitigation credit in the coastal zone. Onsite or offsite open space preserve areas may be utilized to satisfy the required mitigation for habitat impacts associated with development if the preserve areas are disturbed and suitable for restoration or enhancement, or they are devoid of habitat value and therefore suitable for the 1:1 mitigation component requiring creation or substantial restoration of new habitat. Substantial restoration is restoration that has the effect of qualitatively changing habitat type and may meet the creation requirement if it restored habitat type that was historically present, but has suffered habitat conversion or such extreme degradation that most of the present dominant species are not part of the original vegetation. Substantial restoration contrasts with enhancement activities, which include weeding, or planting within vegetation that retains its historical character, and restoration of disturbed areas to increase the value of existing habitat which may meet other mitigation requirements pursuant to the HMP.
- c. Impacts to Coastal Sage Scrub shall be mitigated at an overall ratio of 2:1, with the creation component satisfying half the total obligation. The remainder of the mitigation obligation shall be satisfied pursuant to the provisions of the HMP.

Coastal Resource Protection Overlay Zone

The subject site is within the City's Coastal Resource Protection Overlay Zone, which contains a policy addressing the preservation of steep slopes and vegetation and states:

- a. *Preservation of Steep Slopes and Vegetation.* Any development proposal that affects steep slopes (twenty-five percent inclination or greater) shall be required to prepare a slope map and analysis for the affected slopes. The slope mapping and analysis shall be prepared during the CEQA environmental review on a project-by-project basis and shall be required as a condition of a coastal development permit.
 1. Outside the Kelly Ranch property, for those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, the following policy language applies:
 - a. Slopes of twenty-five percent grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property and shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed ten percent of the steep slope area over twenty-five percent grade may be permitted [emphasis added]

[...]

- g. **Brush Management.** A fire suppression plan shall be required for all residential development adjacent to designated open space subject to approval by the city fire department. The fire suppression plan shall incorporate a combination of building materials, sufficient structural setbacks from native vegetation and selective thinning designed to assure safety from fire hazard, protection of native habitat, and landscape screening of the residential structures. No portions of brush management Zones 1 and 2 as defined in the city landscape manual shall occur in designated open space areas. Zone 3 may be permitted within designated open space upon written approval of the fire department and only when native fire retardant planting is permitted to replace high and moderate fuel species required to be removed.

Habitat Management Plan's adjacency standards, the most applicable of which states:

F - Preserve Management

5. Adjacency Standards

A. Fire Management: Management Issues

Fire Management between habitable structures and natural habitats must accomplish two objectives: (1) protection of the biological resource, and (2) a satisfactory level of protection for humans and property.

[...]

Fire management for human safety is one of the City's highest priorities. With proper planning, this can be accomplished in a manner that is compatible with conservation of biological resources. Fire management for human hazard reduction involves providing adequate setbacks for new development from conserved habitat areas, educating the public regarding effective fire prevention methods, reducing fuel loads in areas where fire may threaten human safety or existing development, suppressing fires once they have started, and providing access of fire suppression equipment and personnel. [emphasis added]

The City of Carlsbad's Landscape Manual requires fire suppression zones associated with development and states:

F3-Requirements

Design, installation, and modification of existing vegetation shall be in conformance with one of the following “conditions” or as required or modified by the City.

It shall be the responsibility of the applicant to develop a plan which meets the fire protection requirements. Environmental constraints or other restrictions placed upon the development shall not be considered justification for modification or subordination of fire protection standards. The site planning of the development shall satisfy both the fire protection standards and environmental constraints. [Emphasis added]

F3-2 CONDITION B - NATIVE SLOPES-WILDLAND FIRE SUPPRESSION

Pertains to areas where removal of environmentally sensitive native vegetation is restricted within the fire sections.

Section B1 - measured 20’ horizontally from the outlying edge of the structure(s) toward the environmentally restricted area as defined by the City.

1. Removal of “high fuel and moderate hazard species” as listed in Appendix E 1.
2. Planting with ground cover or low growing shrub species (less than 3’ in height) known to have fire retardant qualities or as otherwise required by the City.
3. No trees or shrubs allowed.
4. Irrigated.

Section B2 - measured horizontally 20’ outward from the outlying edge of B1.

1. Removal of “high fuel species” as listed in Appendix E1.
2. Removal by selective pruning of up to 60% of the volume of the “moderate fuel species as listed in Appendix E1.
3. Replanting with naturalizing low fuel species.
4. Trees and large tree form shrubs (e.g. Oaks, Sumac, Toyon) which are being retained shall be pruned to provide clearance equal to three times the height of the surrounding understory plant material or 6’, whichever is higher. Dead and excessively twiggy growth shall also be removed.
5. Irrigated.

Section B3 - measured horizontally 20’ outward from the outlying edge of Section B2. The outer edge of B3 shall extend horizontally to a point at least 60’ from structures.

1. Removal of “high fuel species” as listed in Appendix E1.
2. Removal by selective pruning of up to 40% of the volume of the “moderate fuel species” as listed in Appendix F.1.
3. Trees and large tree form shrubs (e.g. Oaks, Sumac, Toyon) which are being retained shall be pruned to provide clearance equal to three times the height of the

surrounding understory plant material or 6', whichever is higher. Dead and excessively twiggy growth shall also be removed.

4. Non-irrigated.

Section E3-3 - It is the applicant's responsibility to secure agreements with owners of adjacent property to modify offsite wildland fire hazards to the proposed project so that conformance with the fire protection standards is achieved. [Emphasis added]

Agua Hedionda Land Use Plan (LUP) Policies

4.4 c. Use of Planned Development (PD) Ordinance and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

However, the Planned Development Regulations also state:

21.45.020 Applicability

D. If there is a conflict between the regulations of this chapter and any regulations approved as part of the city's certified local coastal program, a redevelopment plan, master plan, or specific plan, the regulations of the local coastal program, redevelopment plan, master plan, or specific plan shall prevail.

B. Habitats Types Found on the Project Site

The following is a description of each of the habitat types found on the project site as reported in the Preliminary Biological Assessment prepared by Planning Systems, dated May 9, 2007:

(1) Coastal Sage Scrub (0.84 acre)

Coastal sage scrub (CSS) is a drought-deciduous community comprised of aromatic shrubs with a diverse understory of annual and perennial herbs, perennial and annual grasses, and grass-like plants. It supports a variety of sensitive plant species, and is the primary habitat of the coastal California gnatcatcher.

On-site, CSS occupies all undisturbed upland areas of the parcel, even at elevations near the lagoon water surface along the southern property line. Dominant species include Coast sage brush (*Artemisia californica*), Flat-top buckwheat (*Eriogonum fasciculatum*), and Black sage (*Salvia melifera*). Sub-dominants include. Sub-dominants include erba santa (*Eriodictyon crassifloium*), and Bush sunflower (*Encelia californica*).

Additionally, two species listed on the California Native Plant Society Inventory of Rare and Endangered plants: 1) Spinethrush (*Adophia californica*) was found

colonizing the slopes just above a flat bench near the lagoon edge, and, 2) Southwestern spiny rush (*Juncas acutus ssp. Leopoldii*) was found on a bluff “bench” just above the lagoon water surface.

(2) Non-Native Grasslands (0.28 acre)

Non-native grassland is characterized by annual grasses such as wild oats, bromes, and others. This vegetation type is not considered a sensitive habitat, but in some locations, it may be a significant resource for raptor foraging. This habitat exists along the eastern property line where brush management activity has occurred over recent years. Non-native species including Perennial mustard (*Hirsfeldai incana*), Yellow-star thistle (*Centaurea melitensis*), and Brome grasses (*Brome sp.*) dominate the brush-managed vegetation. A substantially occurring sub-dominant is the ornamental Sweet alyssum (*Lobularia maritima*). A scattering of re-emerging natives persist though they are subject to regular mowing. Native observed include Bush sunflower (*Encelia californica*), Deerweed (*Lotus scopius*), and Flat-top buckwheat (*Eriogonum fasciculatum*). [Emphasis added]

(3) Open Water / Rock Beach (0.01 acre)

Open waters and/or rocky beach of Agua Hedionda Lagoon occur in the southeastern corner of the property.

(4) Wetlands

The subject property extends down to the open water reaches of Agua Hedionda Lagoon and supports wetland habitat along the terrestrial margin of the lagoon. In 1998 and 2001, Dudek and Associates conducted a wetlands delineation study for the North Agua Hedionda Interceptor Western Segment Sewer Maintenance Project to identify potential “waters of the United States” and jurisdictional wetlands...

[...]

Seth Schulberg, a Planning Systems biologist surveyed the property above the 5 foot contour to determine if any wetland indicators were present. None of the standard wetland indicators (hydric soils, wetland hydrology, or wetland plants) were observed above the 5 foot contour. No incised channels that would constitute non-wetland jurisdictional and non-jurisdictional wetland areas are confined to the area below the 5 foot contour onsite. The proposed project does not encroach or impact this area.

C. Wildlife Found on the Project Site

According to the Preliminary Biological Assessment for the project, a variety of wildlife can be found on the project site including 3 species of butterflies, four species of reptiles, sixteen species of birds, and six mammalian species. Of the wildlife surveyed, one

sensitive species was identified, coastal California gnatcatchers, and due to their state and federal listings as a threatened species, the biological report concluded that an additional survey specifically documenting the presence of gnatcatchers be completed.

In 2006, Lincer and Associates completed a gnatcatcher survey onsite consisting of three separate hour long surveys of the property all within the month of October, 2006. The gnatcatcher survey again noted the presence of gnatcatchers at this project location.

D. Impacts and Proposed Mitigation

Construction of the proposed two single family homes, and private access driveway will result in direct permanent impacts to biological resources on the subject site. The following table details the type and acreage of each habitat impacted by the proposed development:

Table 1

Habitat Type	Total (acres)	Permanent Impacts (acres)
Coastal Sage Scrub	0.84	0.27
Non-Native Grassland	0.28	0.25
Open Water/Rocky Beach	0.01	0.00
Disturbed	0.02	0.02
Total	1.15*	0.54

* Total Project Area = Lot + ROW + Off-site improvements (1.08 + 0.06 + 0.01 = 1.15)

The above described acreages include all direct impacts. While the FEIR broke up impacts into two categories (permanent and temporary), these impacts will all result in the removal of vegetation/habitat and because of this, the Commission does not differentiate the temporary impacts from permanent. However, while the environmental report differentiates between temporary and permanent impacts to CSS, the City's staff report, and thus the mitigation (Table 1 & 2) required includes both temporary and permanent impacts, thus the total mitigation requirements are correct. That being said, the environmental review, biological report, or all other technical documents reviewed by the Commission failed to include an explanation as to how the temporary impacts were calculated. A component of the proposal requires the improvement of an 8' wide pedestrian/bike path at the southern edge of the property. It is unclear how access will be gained through the sensitive habitat to the location of the proposed trail. This lack of information raises concerns as to the accuracy of that estimation. As previously discussed, the project currently maximizes the possible development footprint. Thus, an oversight (i.e. additional access requirements associated with construction of the public

trail) may result in additional and unmitigated impacts to ESHA, thus amplifying the project's inconsistency with the Coastal Act.

Table 2

Habitat Type	Proposed Impacts	Mitigation Ratio	Required Mitigation	Proposed Onsite Preservation
Coastal sage scrub	0.27 acres (32.2%)	2:1	0.54 acres	0.57 acres (67.8%)

To mitigate the project-based impacts, the applicant is proposing a combination of creation, revegetation, restoration and preservation. Consistent with the typically required mitigation for impacts to Coastal sage scrub, the applicant is proposing to mitigate the proposed impacts (0.27 acres) at a 2:1 ratio, with at least 1:1 of that being mitigated through creation to ensure no net loss of habitat (Table 2). The additional 0.27 acres will be mitigated through additional creation, or substantial restoration. While no specific lands have been acquired for the habitat creation or restoration, the applicant has submitted a draft purchase agreement for coastal sage habitat located within the coastal zone with the North County Habitat Mitigation Bank for the 0.27 acres of coastal sage habitat located within the coastal zone, consistent with the no net loss/1:1 creation requirement certified as part of the City's Habitat Management Plan. The mitigation for the remaining 0.27 acres of creation or substantial restoration required has not been identified by the applicant to date.

E. Project Specific Concerns.

1. Project Inconsistency with the Coastal Act

The proposed project is located on a 1.08-acre lot that contains wetlands, occupied coastal sage scrub, and steep slopes and is located directly adjacent to Agua Hedionda Lagoon. The proposed development includes the subdivision of the lot into 4 lots, two (2) to be constructed with two-story single family homes, one (1) constructed with an access driveway; and one (1) to be preserved as open space. The development of the site includes a two-story, 3,000-sq. ft. custom home on Lot 1 and a two-story, 3,243-sq. ft. custom home on Lot 2. The proposed development will result in impacts to 0.27 acres of occupied coastal sage scrub. The project also impacts 0.02 acres of dual criteria slopes. The primary concerns regarding consistency with the Coastal Act include: impacts to Coastal sage scrub, adequate conservation of California gnatcatchers, unspecified temporary impacts, lack of brush management, and development that is more substantial than that which could be considered in character with the surrounding community. Again, the Commission's technical staff have reviewed the biological reports and have been to the site and determined that due to the proximity of the site to the lagoon and because the site contains occupied Coastal sage scrub habitat, these areas constitute ESHA. Therefore, Section 30240 of the Coastal Act applies.

The proposed development results in numerous concerns regarding consistency with Section 30240 of the Coastal Act. Specific concerns include the intensity of development on a lot containing ESHA, the lack of adequate brush management, and the subdivision of a constrained lot into multiple sub-standard lots. As proposed, the development results in impacts to ESHA that are not consistent with the Section 30240 of the Coastal Act.

The principal concern regarding the proposed development is the associated development envelope. The development proposed on the site will encompass 45% of the lot and the removal of 0.27 acres of *occupied* Coastal sage scrub. Traditionally, before approving such a project, the Commission would first seek to eliminate any impacts to ESHA. If, due to site constraints, the elimination of impacts were not feasible, the Commission would then limit development types to only uses dependent on those resources. Residential development is not considered a development type that is “dependent on those resources.” Thus, the proposed impacts to ESHA for residential development are not permitted in that residential development cannot be found consistent with Section 30240 of the Coastal Act *in general*. Moreover, additional *specific* concerns remain regarding consistency of the project’s design with Section 30240. These concerns include that the development footprint approved omits biological buffers or brush management. Again, the City is proposing to allow development on 45% of the lot. As such, approval of the CDP would facilitate a development, and thus, impacts to ESHA, greater than that which can be found consistent with 30240 of the Coastal Act. The coastal development permit must therefore be denied.

Secondary concerns result directly from the proposed development on the site and include lack of brush management and compatibility of the development with the character of the surrounding community.

Section 30253 of the Coastal Act requires that new development be sited to minimize risks to fire hazard. The subject site is dominantly vegetated by Coastal sage scrub, often considered to be a highly flammable vegetation type. Furthermore, the subject site is adjacent to additional undeveloped lots containing the same habitat type, thus the need for fire clearance is likely. Over the past decade, southern California has seen a rise in volatile and uncontrollable wildfires. As a result, the Commission has seen numerous requests for removal of sensitive vegetation, often on land directly adjacent to lagoon waters, in order to create what could be considered as an appropriate wildland/urban interface. Most recently, the Commission’s identified standard distance proposed for fuel modification is typically 100’ from any habitable structure. In this case, the project has been approved with *zero* feet for a fire suppression, or brush management, zone. The Mitigated Negative Declaration associated with the project determined that building and structural improvements in lieu of providing adequate setbacks and fire suppression zones would be sufficient. These improvements include:

- a) No exposed wood through the project, including gates, fences, decks, etc.
- b) Interior fire sprinklers in both residences
- c) Class A roof with no vents on the westerly side of either home
- d) Parking areas and driveways site to allow for adequate fire department access

- e) Elimination of the brush management zones allows for maximum preservation of the biological resources.

It is important to note that the City required and received comments from the Carlsbad Fire Marshall supporting the design improvements in lieu of the traditionally required 60' fire suppression zone. However, the previously stated factors lead to concerns regarding future potential impacts to ESHA associated with brush clearance. First, *brush management activities are currently being undertaken onsite* for the adjacent home to the east within the portion of the lot containing non-native grasses (ref. Exhibit #6). Specifically, the biological report associated with the development describes the Non-Native grassland area as:

Non-native grassland is characterized by annual grasses such as wild oats, bromes, and others. This vegetation type is not considered a sensitive habitat, but in some locations it may be a significant resource for raptor foraging. This habitat exists along the eastern property line where brush management activity has occurred over recent years. Non-native species including Perennial mustard (*Hirsfeldai incana*), Yellow-star thistle (*Centaurea melitensis*), and Brome grasses (*Brome sp.*) dominate the brush-managed vegetation. A substantially occurring sub-dominant is the ornamental Sweet alyssum (*Lobularia maritima*). **A scattering of re-emerging natives persist though they are subject to regular mowing** (emphasis added). Native observed include Bush sunflower (*Encelia californica*), Deerweed (*Lotus scopius*), and Flat-top buckwheat (*Eriogonum fasciculatum*).

Further, while a zero foot brush management area may be acceptable by the fire department now, it seems likely that that may be modified in the future. And, as previously stated, the proposed development already utilizes 45% of the property. Thus, the project and its associated impacts are already too extensive, and, should future brush management activities be required, they would occur within the open space preservation area and result in additional impacts to ESHA. Thus, given the potential need for increased protection, leading to additional impacts to ESHA, a zero foot fire suppression zone cannot be found consistent with sections 30253 and 30240 of the Coastal Act, and shall be denied.

Section 30251 of the Coastal Act requires that all new development be visually compatible with the character of surrounding areas. The project is located adjacent to a single family home to the east, Adams St. to the north, Agua Hedionda Lagoon to the south, and undeveloped, residentially designated lots to the west. As part of the project proposal, the single existing lot will be subdivided into four (4) lots, three of which will be used for development. The surrounding community is comprised of virtually exclusively single family homes (ref. Exhibit #6). The subdivision would facilitate two homes on one lot, inconsistent with the general trend of the neighborhood. Additionally, the size of the new lots would be much smaller than lots on the surrounding properties, also not in character with the surrounding area. Further, given the additional constraints on the lot, including ESHA, wetlands, steep slopes, and brush management, the

subdivision doesn't seem appropriate or in character with the surrounding community and thus cannot be found consistent with Section 30251 of the Coastal Act.

2. Project Inconsistency with the City of Carlsbad's LCP

Again, while the Coastal Act is the standard of review, the City has a number of policies addressing development on sites of this nature. While these are only to be used as guidance, they can also serve to provide an example of how the City is currently using its implementation plan (zoning) to apply its LCP policies. Currently, this segment of Carlsbad does not have a certified Implementation Plan (IP), however, should the City come forward with a proposed IP at some point in the future, the Commission will be knowledgeable on the issues associated with the City's current interpretation of its uncertified IP and can address any concerns at that time. Therefore, included in the review, are applicable City LCP policies, and uncertified zoning policies, in order to review and outline how the City's approval is inconsistent with its certified LCP. Applicable policies are found in the Agua Hedionda Segment of the City's Land Use Plan, the Habitat Management Plan, and the Implementation Plan and are listed in Section 2.A.2 of this staff report.

The project is located on a 1.08-acre lot that contains wetlands, occupied coastal sage scrub, and steep slopes and is located directly adjacent to Agua Hedionda Lagoon. The proposed development will result in impacts to 0.27 acres of occupied coastal sage scrub. The project also impacts 0.02 acres of dual criteria slopes. Similar concerns regarding the consistency of the proposed project with Section 30240 of the Coastal Act are also raised with respect to its consistency with the City's LCP. Again, the primary concerns being; impacts to Coastal sage scrub and steep slopes containing sensitive habitat (defined as dual criteria slopes by the City), adequate conservation of California gnatcatchers, unspecified temporary impacts, and general overdevelopment of the lot. The main component of the City's certified LCP that is applicable at this site is the Habitat Management Plan.

The subject site is located in area identified by the HMP as a development area, and, as such, does not have specific development standards; however, the HMP vegetation maps failed to identify this lot as containing any Coastal sage scrub (Figure 17 of the HMP). It is unclear at this time how this oversight occurred. When the Commission reviewed the HMP for consistency with the Coastal Act, many of the known sensitive areas, or areas with high habitat value, were given specific standards for development. This parcel was not included in these *standards* areas, perhaps because it had not been properly identified as containing Coastal sage scrub. However, in the absence of specific development standards, the HMP still provides general development standards for parcels located within the coastal zone. Therefore, the applicable HMP policies require the preservation of 67% of the CSS on the site and 75% of gnatcatcher populations on site.

The proposed project will result in impacts to 33% of the CSS found onsite (.027 acres), which is the maximum allowed under the HMP. As explained below, the proposed project does not, however, address the required protection of gnatcatchers on site. The

biological report and the Environmental Impact Report identify the property as a site that is **occupied by California gnatcatchers**. The California gnatcatcher is federally listed as a threatened species. The biological report indicated that a focused gnatcatcher survey should be completed for the site. The focused gnatcatcher survey consisted of three surveys of the site on October, 2006 and determined:

During one of the three surveys (October 20, 2006), I observed 3 coastal California gnatcatchers on, and next to, the site (figure 3); two adults (unknown sexes due to the plumage at this time of the year) and one bird of the year, based on behavior and appearance). They were observed briefly foraging in the middle of the site and along the shoreline, in a somewhat open area.

The fact that these birds were only observed once during my three surveys of the site and adjacent habitat suggests that they are spending a substantial amount of time off the subject site, probably on the adjacent undeveloped lots that still support CSS.

However, the Commission's staff ecologists reviewed this gnatcatcher survey, and responded:

In Oct (sic) gnatcatchers are not territorial and range fairly widely...still occupied CSS and still ESHA.

The City's HMP requires the preservation of 75% of gnatcatchers onsite; however, the City appears to have disregarded this requirement, given the applicants' biologist's conclusion that the gnatcatchers are spending a substantial amount of time off the subject site. The City defined the site as occupied CSS, yet it included no discussion as to how the preservation of 75% of the gnatcatchers was being accomplished. Furthermore, there have been no additional surveys conducted during the time of year when gnatcatchers exhibit territorial behavior, thus, the number of gnatcatchers present onsite has not been determined, nor the appropriate mitigation designated. Therefore, the impacts to gnatcatchers (and lack of mitigation) cannot be found consistent with the City's HMP.

As detailed above, the project reaches the absolute maximum permissible impacts to CSS (33% or 0.27 acres), of which approximately 0.01 acres were classified as temporary impacts. However, there is nothing specific as to how the extent of temporary impacts were determined. As previously stated, the Coastal Commission doesn't consider removal of vegetation to be temporary impacts. The project includes the construction of an 8' pedestrian/bicycle accessway just inland of the lagoon edge on the westernmost portion of the lot. However, the project fails to determine how access to this portion of the lot associated with the construction of the trail will be gained. In order to grade the trail, access will almost certainly have to be provided through the site (and any ESHA) or through wetlands. Thus, without an exhaustive review of all impacts to ESHA, including access and other activities not directly related to construction of the homes, it is unclear how much ESHA will be impacted by the proposed project, but it will likely be more than the 0.27 acres identified.

The HMP further limits highly constrained sites (defined by having over 80% or more of the lot contain ESHA) to development on no more than 25% of the lot. In this case, the lot is highly constrained, contains steep slopes, sensitive coastal sage scrub vegetation, wetland habitat and gnatcatchers, and is adjacent to both Hardline (Agua Hedionda Lagoon) and standards areas (Lots west of subject site). However, the absolute definition for highly constrained sites is limited to sites containing ESHA on 80% or more of the property. According to the biology reports, 78.7% of the subject site is currently vegetated by ESHA (ref. Table #1). Further, the biological report includes that the area of disturbed habitat is currently being maintained as a fire suppression zone for the neighboring residence to the east. As such, it is unclear what portion of the subject site would be ESHA if the vegetation wasn't actively removed for brush management. Thus, it is unclear at this time, if the site were left undisturbed, if it would be revegetated with the 0.3% (0.003 acres) of CSS necessary to require the development to be limited to 25% of the site. Given this ambiguity, the more conservative approach, defining the site as a highly constrained site, might have been the more appropriate standard of review for the City to have applied.

Second, the City approved the project with no brush management (defined by the City as a fire suppression zone). The City's HMP and Landscape Manual have requirements for fuel suppression zones which can be generally defined by three zones (Zone 1, Zone 2, and Zone 3), each zone being twenty feet in width, measured from the edge of the development to the edge of preserved habitat, and each zone having different levels of fuel suppression activities. Zone 1 is the most severe following to Zone 3 being the least severe. As previously described, the project has proposed a zero foot fire suppression zone, and has instead proposed a number of improvements to the structural design of the homes in lieu of providing a physical fire suppression barrier. This design has received an endorsement by the City's Fire Marshall. However, given that brush management activities are currently taking place to protect the adjacent structure, as well as future unknown changes to climate, authorizing a home directly adjacent to sensitive habitat that is generally considered to be highly-flammable may be shortsighted. Once a home is built with these greatly reduced, or non-existent fire suppression zones, the standards for fire protection may change, leaving the Commission and/or the City in the position of either prohibiting fire suppression in required open space areas, potentially putting homes at risk, or allowing the destruction of ESHA. This scenario is likely at the subject site, given that the project will already occupy the maximum lands possible, so any future fire suppression activities would be at the cost of the sensitive habitat, which, through the City's conditions of approval, would be protected by a conservation easement and is designated as Open Space. Given the many uncertainties associated with future fire suppression requirements, and that any expansion of the non-existent fire suppression zone would adversely affect ESHA, the Commission cannot find a zero foot wide fire suppression zone to be consistent with the City's applicable policies pertaining to brush management, or fire suppression zones.

Lastly, the proposal includes subdividing an existing lot on a site currently zoned as Residential (R-1-15,000), which requires a 15,000 square foot minimum lot size.

However, the City approved a subdivision resulting in lots much less than 15,000 square feet through the City's Planned Development Ordinance.

The primary concern associated with the project is that the construction footprint will result in significant impacts to ESHA. Part of this concern stems directly from the approval of the subdivision. While subdivisions are often approved on lands containing sensitive resources to separate the open space from the development, this subdivision includes three (3) developable lots, two of which will be developed with single family residences, and one (1) with a the private driveway. The City's staff report approving the development states:

A Planned Development Permit (PUD) is proposed in order to cluster development on the site. The 1.08-acre site is constrained by both topography and environmentally sensitive habitat. Furthermore, the site is located directly adjacent the Agua Hedionda Lagoon, which the HMP recognizes as a Hardline Preserve Area. The combined constraints would preclude standard development of the site under the R-1-15,000 Zone. The clustered design is proposed because one of the main purposes of the Planned Development Regulation is to allow for the clustering of development when impacts to environmentally and topographically constrained land would preclude the full development of a site as a standard single-family subdivision.
[emphasis added]

However, what the City failed to include in its analysis is that the Planned Development Regulations do not allow for the subdivision of parcels into sub-standard lots, if the subdivision will result in a conflict between the regulations of that chapter and any regulations approved as part of the city's certified local coastal program. As explained above, that would be the case here because the proposed project is inconsistent with the LCP's habitat protection policies. Regulation 21.45.020 states:

If there is a conflict between the regulations of this chapter and any regulations approved as part of the city's certified local coastal program, a redevelopment plan, master plan, or specific plan, the regulations of the local coastal program, redevelopment plan, master plan, or specific plan shall prevail.

Furthermore, the City's staff report suggests that prohibiting the subdivision of the lot would preclude "standard development". However, the proposed development is to subdivide one lot on Adams Street to propose two (2) single family residences. The adjacent lots located east of the subject site are all developed with one (1) single family residence per lot. Thus, it could be asserted that *standard development* would include the subdivision of the lot into only two (2) parcels, one facilitating some kind of single family development, one preserving the sensitive habitat as open space. As proposed, the project results in sub-standard lots and significant impacts to ESHA. The proposed development maximizes the development footprint, to the point of inconsistency with the City's policies regarding Planned Developments and the Coastal Act.

F. Alternatives

The City of Carlsbad is the lead agency for purposes of CEQA analysis for this project. Because the City certified a Mitigated Negative Declaration for this project, no alternatives were required as part of its analysis.

The proposed development, however, cannot be found consistent with the Coastal Act and as such, the applicants should consider alternative developments that could have fewer adverse environmental impacts. For example, as previously suggested, a single home alternative would not require the approval of a sub-standard sized lot, would not preclude standard development, and could potentially eliminate or significantly decrease impacts to ESHA. This alternative therefore appears to have fewer environmental impacts than the proposed project. The City has expressed some concerns that this alternative is not likely, as, based on its General Plan; the lot could be developed with up to 3 units. Any development on-site, however, must be consistent with the Coastal Act, and given that the proposed two home alternative is inconsistent with the Coastal Act, it seems unlikely that a three home alternative would be consistent with the Coastal Act. Thus, a one home alternative might be found to be environmentally superior to the proposed project.

Another alternative is a two-home alternative in a configuration other than that proposed by this project. The construction of a two home alternative might be consistent with the Coastal Act, if alternative designs could eliminate/minimize impacts to ESHA; either through smaller development envelopes or more concentrated clustering of the homes.

There may also be other environmentally superior alternatives, but the applicant has not included any alternate development proposals in its application. The Commission is not in a position to suggest alternatives or to redesign the development to be consistent with the Coastal Act. Therefore, because there is the potential for alternatives that may decrease the impacts to sensitive resources, ensuring a project that is consistent with the Coastal Act, the project, as proposed, must be denied.

F. Conclusion

In conclusion, the proposed development is located in an area overlaid by numerous development standards. Because the site is located in an area of deferred certification, the standard of review remains the Coastal Act. In addition, however, the Commission frequently considers the City's LCP policies as guidance when reviewing projects in areas that are not fully certified because the City's LCP has numerous *specific and qualitative* standards for development. Thus, review of the project for LCP consistency can provide the Commission with more tangible standards for it to use to assess the project's impacts. Further, this type of analysis provides an opportunity to review how the City is currently implementing its currently uncertified IP for this land use segment. In this case, the impacts to ESHA associated with the proposed development are both quantitatively and qualitatively inconsistent with both Coastal Act Section 30240 and the City's HMP.

The subject site is highly constrained due to the presence of Coastal sage scrub, steep slopes, wetlands and federally protected California gnatcatchers. The project is further constrained by numerous overlaying policies contained in the City's certified LUP. However, the standard of review for the project is the Coastal Act, and as such, consistency with the applicable policies must be found. The Coastal Act limits development that results in impacts to ESHA to those types of developments that are dependent on the resources present on the site. Residential development is a use that could be found consistent with Section 30240 of the Coastal Act and thus any impacts associated with such a development must be eliminated. When regarding the City of Carlsbad policies, the City approved the subdivision of this lot into two substandard lots and allowed the removal of 33% of the onsite occupied Coastal sage scrub, when there are serious concerns as to whether additional CSS will in fact be impacted by the project. In addition, the project fails to adequately address the preservation of gnatcatchers, the identification and inclusion of impacts associated with previous brush management activities or impacts associated with construction access impacts, and a zero fire suppression zone. Lastly, there appears to be feasible alternatives that would eliminate or significantly reduce impacts to ESHA. Therefore, the project cannot be found consistent with the Coastal Act and shall be denied.

3. Visual Resources. Section 30251 of the Coastal Act, a few policies of the City's Agua Hedionda Land Use Plan (LUP), and the City's Scenic Preservation Overlay Zone (IP) address protection of scenic resources within this region and the Coastal Zone and state, in part:

Section 30251

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

LUP Policy 8.1

Park Avenue, Adams Avenue [Street] and Carlsbad Boulevard are designated as scenic roadways. Development adjacent to these roads shall maintain a minimum 20' landscaped buffer between the street and the parking areas. Required landscaped setbacks may include sidewalks and bikeways, but shall not include parking areas. Parking areas shall be screened from the street utilizing vegetation, tree forms, and berms, as appropriate.

LUP Policy 8.3

Development located adjacent to scenic roadways, or located between the road and shoreline, shall be regulated as follows:

- a) Where a significant elevation difference (e.g. 35 feet) exists between the shoreline and the first parallel public road, as in the case of Hedionda Point and Snug Harbor, no portion of a structure in the intervening area shall be permitted to exceed the elevation of the roadway.

[...]

- c) On all property adjoining the shoreline, permitted development shall be designed to “step down” in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas; and
- d) Any development proposed to be located on or near a significant landform (e.g., Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraces or pole foundations and variation of roof lines to complement the topography.

LUP Policy 8.4

All new development in the plan area shall be subject to the provisions of the Carlsbad Scenic Preservation Overlay

IP Policy 21.40.135

Within the coastal zone, existing public views and panoramas shall be maintained. Through individualized review process, sites considered for development shall be conditioned so as to not obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitation and see-through construction techniques should be employed. Shoreline development shall be built in clusters to leave open areas around them to permit more frequent views of the shoreline...

The proposed project is located along the north shore of Agua Hedionda Lagoon and within the area defined as “Hedionda Point” above. Views of the project site are available to motorists traveling along northbound Interstate 5 (I-5). As required, the project includes an elevation below that of Adams St., including stepping down the buildings in their design. Both of these design features result in minimizing coastal view impacts from Adams St. across the site, to the lagoon, and ultimately the ocean. However, as previously stated, the project site, and thus the proposed development, will also be visible while travelling northbound in Interstate 5. It is unclear at this time whether or not the homes will be colored and include sufficient landscaping in order to allow for them to “blend in” with the natural environment. While a conspicuously colored exterior, or lack of landscaping may result in additional concerns related to public views, the project is being denied because of its inconsistency with Section 30240 of the

Coastal Act, and thus the landscaping and coloring of the home may be further addressed when an acceptable project is proposed.

4. Public Access. The following public access policies are applicable to the proposed development and state, in part:

Section 30210

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

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(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, or, ...

Section 30230

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

Finally, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with the approval of any development to be located between the first public roadway and the sea, indicating that the development is in conformity with the public access and public recreation policies of Chapter 3.

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan, which is used as guidance, contains a detailed set of public access policies and state:

Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6 (in part)

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

Pursuant to these sections of the Act, the City's certified Habitat Management Plan contains a policy regarding recreational trails located within buffers and states:

Policy 7-11 (in part)

[...]

No development, grading, or alteration, including clearing of vegetation, shall occur in the buffer area, except for:

[...]

- b. Recreational trails and public **pathways within the first 15 feet of the buffer closest to the development**, provided that construction of the trail or pathway and its proposed use is consistent with the preservation goals for the adjacent habitat, and that appropriate measures are taken for physical separation from sensitive areas. [emphasis added]

As proposed, the project would include a 25' wide dedicated lateral access easement beginning at the mean high tide line (MHTL) landward, as well as an 8' wide improved pedestrian/bicycle trail, consistent with the above cited provisions of the certified Agua

Hedionda Land Use Plan. The construction of the trail in its proposed location will, however, result in impacts to CSS and steep slopes.

Lateral access is of significant importance at this location because there is currently no public access available along this site and the lagoon, excluding times of extreme low tides. The City's LUP has a policy, Policy 7.6, which specifically addresses this need and requires any proposed development in this area to include a public access trail. The intent of the Commission certified LUP Policy No. 7.6 is to provide an uninterrupted trail for the public to gain access along the north shore of Agua Hedionda Lagoon.

The location of the proposed trail is positioned to tie into an existing public access easement on the site directly to the east. However, no improved public access trail has been constructed on that site to date. In fact, most of the north shore lagoon-fronting lots between Agua Hedionda Lagoon and Adams Street, are still undeveloped, and thus contain no public access *trails*. To date, lateral access offers to dedicate easements have been recorded on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035), a 23-unit Bristol Cove condominium project (CDP #F 1012), Cade (#6-96-159), Huber (#6-98-14) and Gallagher (#6-00-80). Three sites (L&R, Bristol Cove, Cade) were identified as having constructed their segment of the public access path called for in the LUP. However, none of these sites contain sensitive upland habitat. The remaining undeveloped lots west of the subject site also contain sensitive habitat and if improved by a public trail, may also result in impacts to ESHA including CSS and wetlands which may be inconsistent with Chapters 30240 and 30230 of the Coastal Act. Thus, while the City's Policy 7.6 does promote public access through the construction of a public trail consistent with numerous policies of the Coastal Act, to do so could create inconsistencies with Section 30240 of the Coastal Act and, as such, the construction of a trail at this time, does not appear to be feasible, although some form of lateral access easement allowing passive recreational use could be considered on this site.

Additionally, the location of the trail is within the required wetland buffer, nearest to the wetland habitat, inconsistent with Policy 7-11 of the City's HMP, which requires the buffer to be located within the first 15 feet closest to the development and thus as far away from the sensitive resources as possible. In this case, the trail is located within this buffer area nearest to the wetlands. The Commission also traditionally requires trails to be located in the upper portion of a buffer, nearest to development. Thus, the location of the trail with respect to its proximity to wetlands is also not consistent with Sections 30240 or 30230 of the Coastal Act.

These inconsistencies (impacts to ESHA and provision of adequate buffers) should be rectified when the City develops an implementation plan for the Agua Hedionda Lagoon Segment. Until that time, impacts to sensitive habitat including CSS, dual criteria slopes, and wetlands associated with the construction of a public access trail cannot be found consistent with the Coastal Act and must be denied.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

The Agua Hedionda Land Use Plan (LUP) has been certified by the Commission but no implementing ordinances have been submitted by the City for this plan segment. Thus, the standard of review for this application are the Chapter 3 policies of the Coastal Act. Section 30240 of the Coastal Act requires that identified ESHAs be protected from significant disruption of habitat values. The proposed development will not protect existing ESHA from significant disruption, inconsistent with Section 30240. Furthermore, the project is being proposed concurrent with the City's proposed Land Use change through a Local Coastal Program (LCP) amendment. Both components, i.e. the Coastal Development Permit and LCP amendment, are being denied. Therefore, the Commission finds that the subject proposal would prejudice the ability of the City of Carlsbad to obtain a fully certified LCP for the Agua Hedionda Lagoon segment and is thus denied for this reason as well.

6. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Carlsbad is the lead agency for this project, with respect to CEQA compliance. The City certified a Mitigated Negative Declaration for the project.

The proposed project, however, even as mitigated by the City, will result in significant adverse impacts to biologically sensitive habitat that are inconsistent with Coastal Act requirements. Specifically, the California gnatcatcher occupied coastal sage scrub habitat that will be impacted by the proposed development is considered an ESHA. As an ESHA, it is protected under Section 30240 of the Coastal Act and, therefore, the proposed development is inconsistent with this policy. In addition, there are feasible alternatives available which would substantially lessen any significant adverse impact which the project would have on the environment. Such measures could include reducing the development from two homes to one home. Such an alternative would eliminate or significantly reduce impacts to ESHA. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and must be denied.

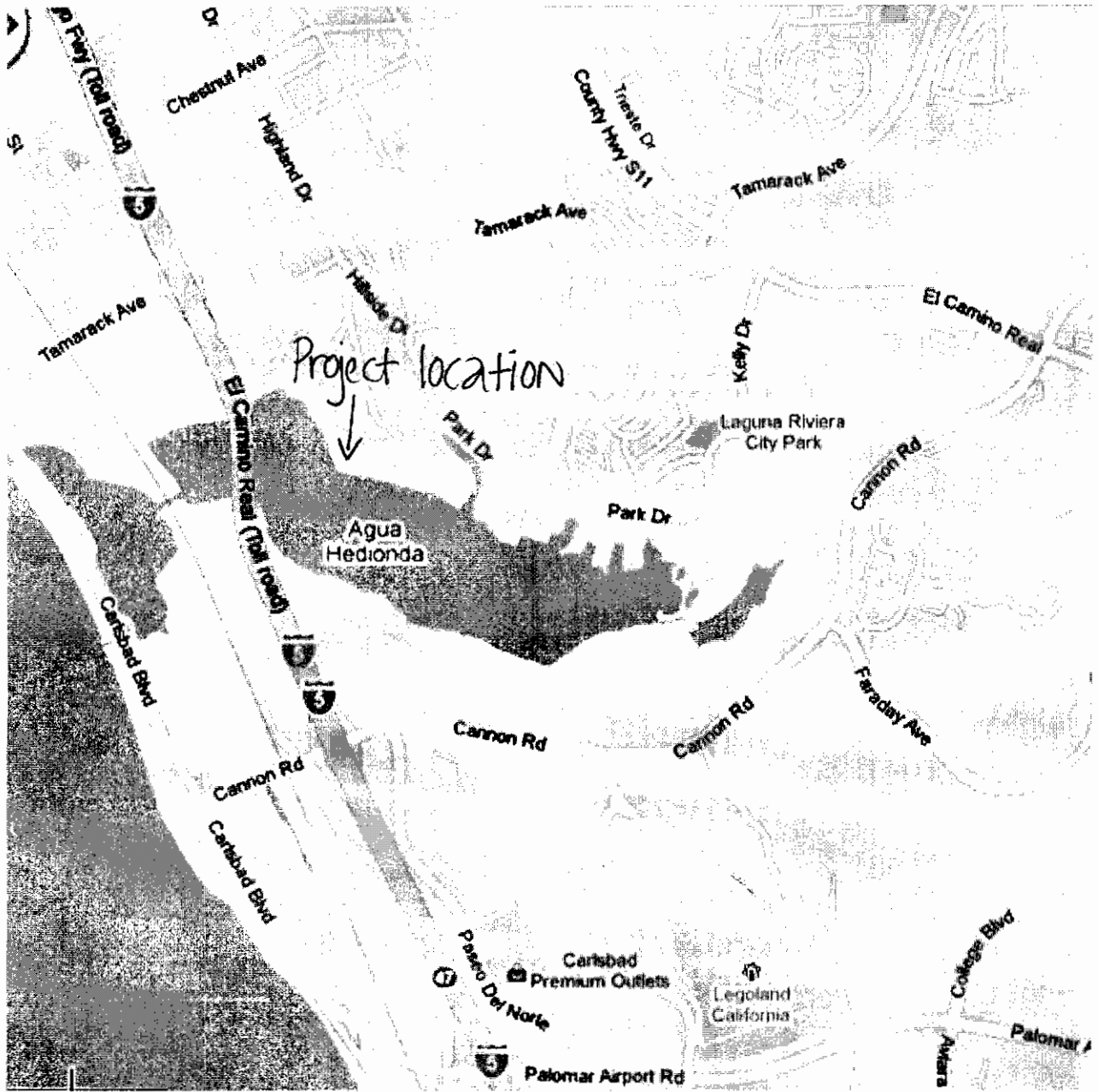

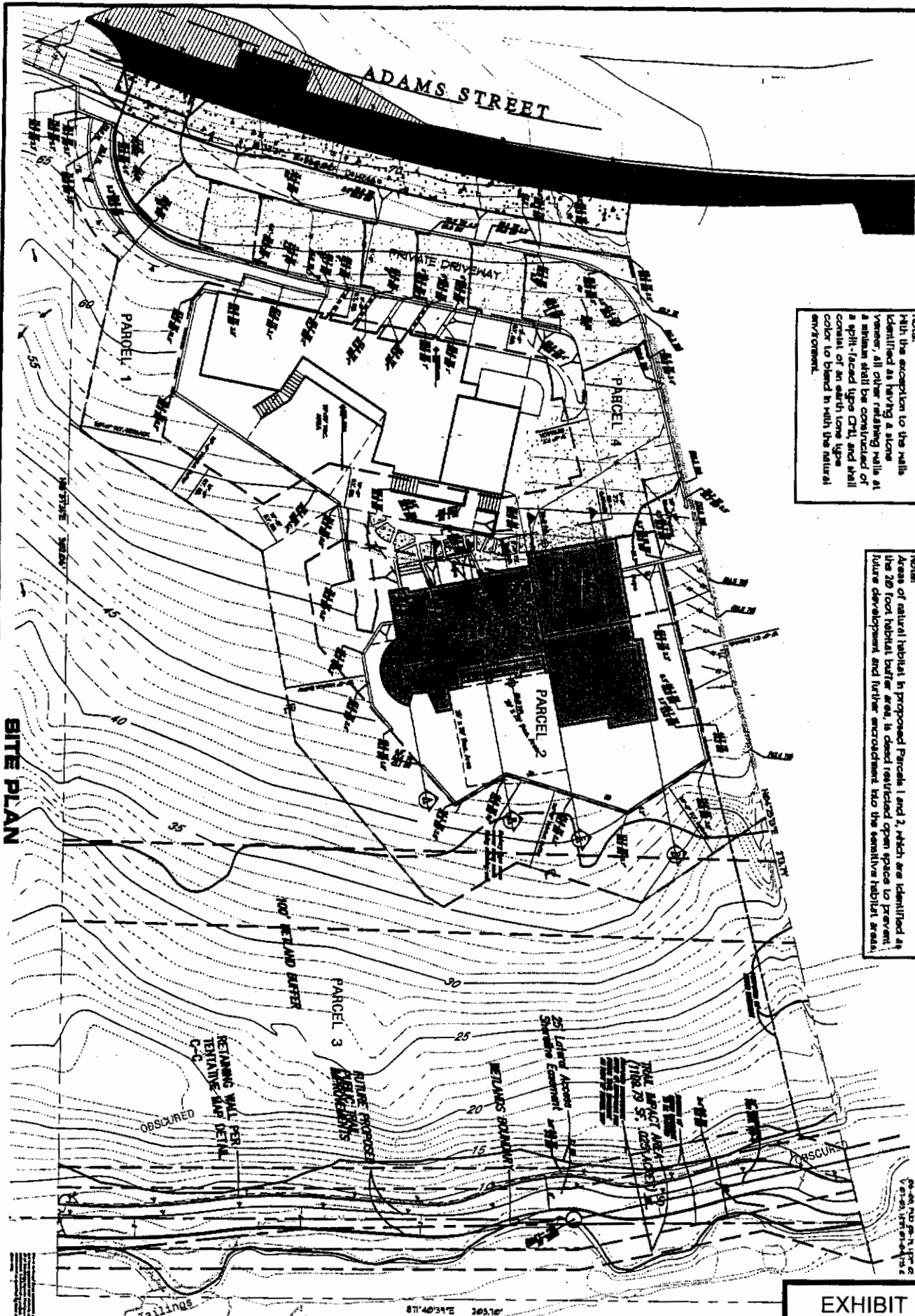


EXHIBIT NO. 1
APPLICATION NO.
6-08-123
Location Map



California Coastal Commission

2/



Note:
With the exception to the walls identified as having a stone veneer, all other retaining walls at a minimum shall be constructed of a split-faced type CRTU, and shall consist of an earth tone type color to blend in with the natural environment.

Note:
Areas of natural habitat in proposed Parcels 1 and 2, which are identified as the 20' foot habitat buffer area, is closed restricted open space to prevent future development and further encroachment into the sensitive habitat areas.

SITE PLAN

C-1

MEDINA RESIDENCE
ADAMS STREET LOTS 5 & 6

ARCHITECTURE



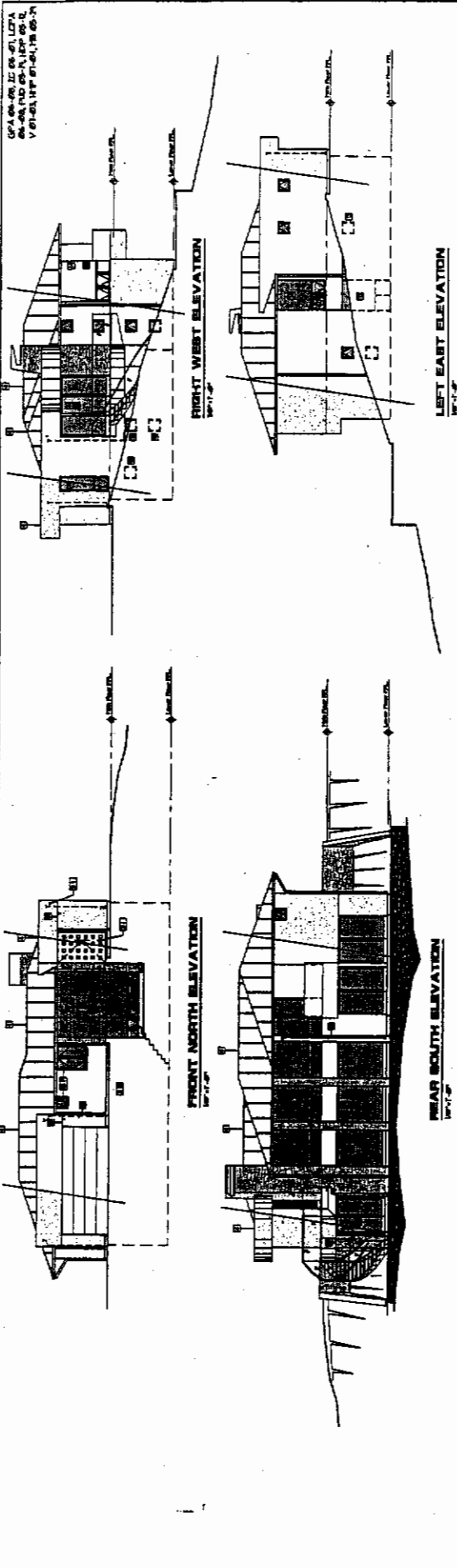
SEERY GROUP INC.

2721 Palms Way, Ste. G-1
Culver City, CA 90230
1-781-44-9501

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EXHIBIT NO. 2
APPLICATION NO.
6-08-123
Site Plan



POLICY 44 REQUIREMENTS

The City of San Diego, California, has adopted the following requirements for the development of residential projects in the City of San Diego. These requirements are intended to ensure that the development of residential projects in the City of San Diego is consistent with the City's general plan and the City's policies regarding the development of residential projects in the City of San Diego.

1. The project shall be consistent with the City's general plan and the City's policies regarding the development of residential projects in the City of San Diego.

2. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

3. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

4. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

5. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

6. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

7. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

8. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

9. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

10. The project shall be consistent with the City's policies regarding the development of residential projects in the City of San Diego.

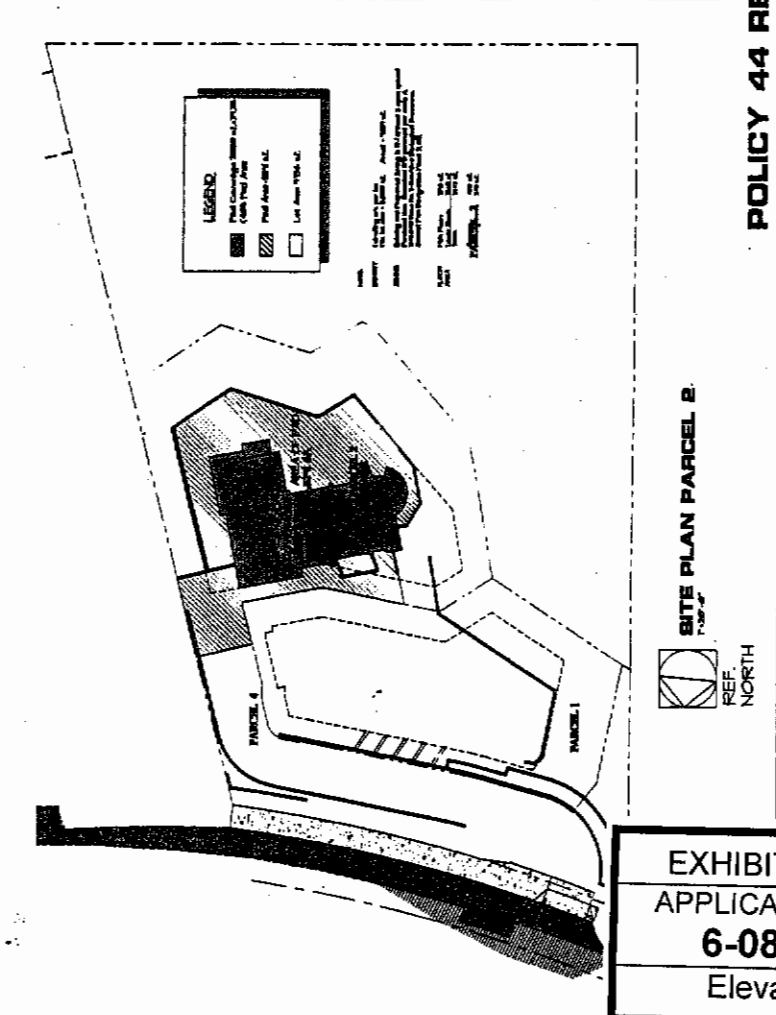


TABLE A-CORNER BLENDING

Corner blending shall be required for all buildings on the corner of a street intersection. The following table sets forth the requirements for corner blending.

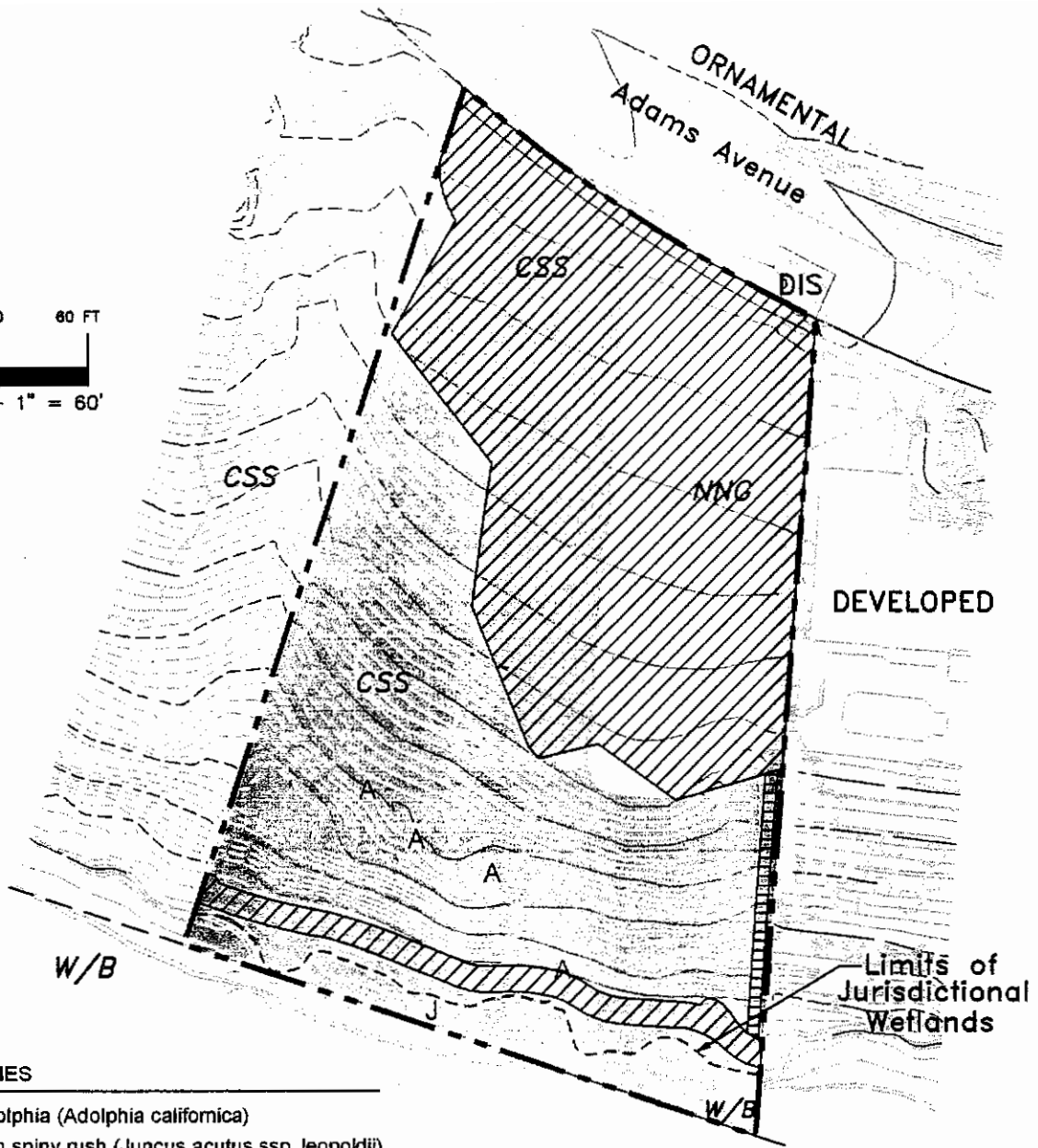
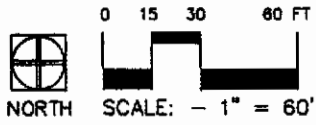
Building Type	Minimum Height	Minimum Width
Single-Family Residential	10 feet	10 feet
Multi-Family Residential	12 feet	12 feet
Commercial	15 feet	15 feet
Industrial	20 feet	20 feet

SITE PLAN PARCEL B

REF. NORTH

EXHIBIT NO. 3
APPLICATION NO.
6-08-123
Elevations

California Coastal Commission



SENSITIVE SPECIES

- A California adolphia (*Adolphia californica*)
- J Southwestern spiny rush (*Juncus acutus* ssp. *leopoldii*)

IMPACTS ASSESSMENT					HMP		undisturbed		
sym.	abbrev.	plant community type	acres	permanent impacts	temporary impacts	mitigation ratio	mitigation required	preserve acres	remaining mitigation
	CSS	COASTAL SAGE SCRUB	0.84	0.26	0.01	2:1**	0.54	0.57	0.54
	NNG	ANNUAL GRASSLAND	0.28	0.25	0.00	0.5:1*	0.25	0.03	0.25*
	W/B	OPEN WATER/BEACH	0.01	0.00	0.00	---	0.00	0.01	0.00
	DIS	DISTURBED	0.02	0.02	0.00	fee***	fee	0.00	fee
TOTAL			1.15	0.53	0.01		0.79	0.61	0.79

* Annual Grassland mitigation a per acre fee
 ** CSS assumed to be occupied, so a 2:1 mitigation ratio is used
 *** Disturbed Lands mitigation a per acre fee

EXISTING VEGETATION AND IMPACTS MAP
 APN #206-200-01
 CARLSBAD, CALIFORNIA

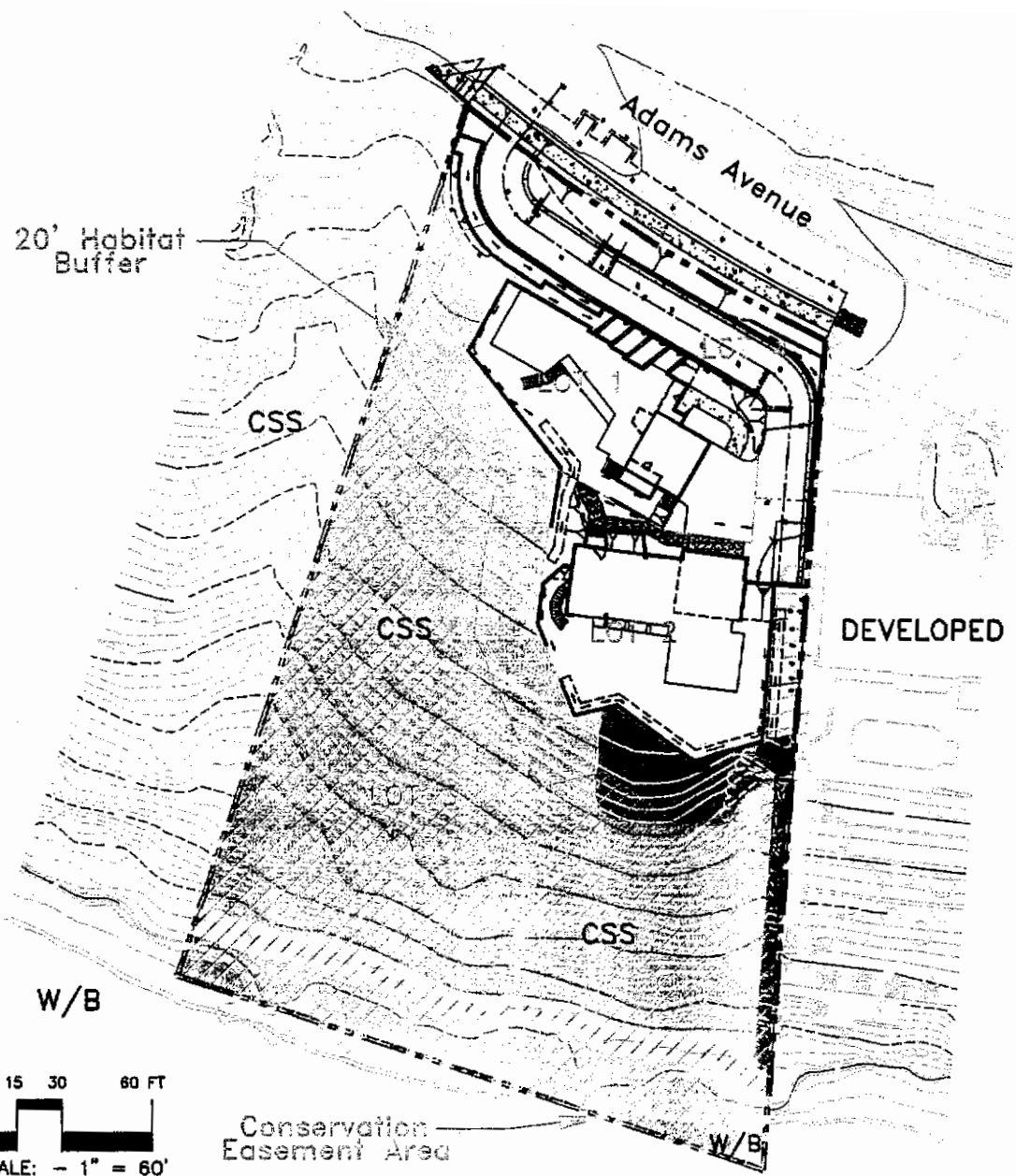
EXHIBIT NO. 4

APPLICATION NO.
6-08-123

Habitat Present

Page 1 of 3

California Coastal Commission



MITIGATION							
sym.	abbrev.	plant community type	Mitigation Required	Post-Development	CSS Revegetation	Post-Development Totals	Conservation Easement Area
	CSS	COASTAL SAGE SCRUB	0.54	0.57	0.04**	0.61	0.58
	NNG	ANNUAL GRASSLAND	0.25*	0.00	--	0.00	0.00
	W/B	OPEN WATER/BEACH	0.00	0.01	--	0.01	0.01
	DIS	DISTURBED	fee	0.00	--	0.00	0.00
	DEV	DEVELOPED	fee	0.53	--	0.53	0.00
TOTAL			0.79	1.11	0.04**	1.15	0.59

* Annual Grassland mitigation a per acre fee

** Volunteered revegetation is proposed to create higher value habitat.

POST-DEVELOPMENT HABITATS


APN #206-200-01
CARLSBAD, CALIFORNIA

EXHIBIT NO. 5
APPLICATION NO.
6-08-123
Building Envelope

California Coastal Commission

Surrounding Community Character



EXHIBIT NO. 6
APPLICATION NO. 6-08-123
Aerial
 California Coastal Commission