

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th11a

Addendum

January 6, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th11a**, Coastal Commission Permit Application
#F9010-A3 (All Creatures), for the Commission Meeting of January 13,
2011.

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

1. On Page 1 of the staff report, the "Proposed Amendment" description shall be revised as follows:

Proposed Amendment: Amend the existing development permit to remove the requirement to have an open space easement over the ~~Delete Special Condition No. 1 requiring an irrevocable offer to dedicate an open space easement located on a~~ currently undeveloped portion of the 1.38 acre site.

2. Beginning on Page 1 and continuing onto Page 2 of the staff report, the "Summary of Staff's Preliminary Recommendation" section shall be revised as follows:

Staff is recommending approval of the proposed amendment with several special conditions. Previous Commission actions have included both an open space easement and a deed restriction on a portion of the subject site to provide protection of the 100 year floodplain associated with the San Dieguito River (ref. CDP Nos. F-9010 & 6-82-519). Since the time the open space easement was required, the site has been legally modified several times, including grading and improvements (driveways, parking, landscaping, etc) within the easement area. These permitted activities have resulted in a change to the location of the floodplain. As such, the applicant is requesting with this application that the open space easement be lifted. However, the applicant's request would result in the removal of the entire open space easement on the property and, ~~As some portions of the site that are still within the 100 year floodplain,~~ Therefore, staff is recommending that the applicant record a new open space easement over the portions of the property that are still within the 100 year floodplain and that after proper recordation of this new easement, the applicant may extinguish the open space easement required by Special Condition #1 of the original permit. the request

~~for the open space easement be approved, but only if, a new open space easement over that portion of the site that is still located within the 100 year flood plain is recorded. With this condition, the remaining areas of the site still within the floodplain will therefore still be protected by recordation of the new an open space easement.~~

3. Beginning on Page 2 and continuing onto Page 3 of the staff report, Special Condition #1 shall be revised and the paragraphs reordered as follows:

1. **Open Space Easement**

~~**A B-PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably dedicating to the City of San Diego an open space easement for the purpose of protection from hazards. Such easement shall be located in the portion of the subject lot that is below the existing +18.79 foot Mean Sea Level elevational contour as shown in Exhibit #3. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The legal description and graphic depiction of the easement area shall be prepared by a licensed surveyor. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.~~

~~**B. The easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest of being conveyed. This easement shall run with the land in favor of the People of the State of California, binding all successors and assignees.**~~

~~**C A.** No development, as defined in section 30106 of the Coastal Act shall occur in the portion of the subject lot that is below the existing +18.79 foot Mean Sea Level elevational contour, as shown in Exhibit #3, except for ~~the purpose of~~ installing, erecting, constructing, planting and maintaining solely the following thereof:~~

1. Grass, flowers, shrubs, tress, and irrigation and other landscaping appurtenances;
2. Fences and retaining and other walls heretofore or hereafter approved by the City of San Diego;
3. recreational facilities provided the same shall not include any building;
4. Utility distribution facilities provided the same (except for transformer boxes and similar equipment not erected on poles, derricks or similar supports) are installed under-ground;
5. Surfaces and underground drainage facilities'
6. Driveways, private streets, sidewalks, paths, and steps;
7. Directional signs; and
8. Outdoor lighting facilities

D. After the Executive Director has verified that the applicant has complied with the requirements of recordation of the easement required in Subsections A through and CB of this condition, the Applicant may execute and record a document in a form and content acceptable to the Executive Director, extinguishing the easement created through the recordation of the “Irrevocable Offer to Dedicate an Easement for Open Space,” (OTD) recorded as instrument number 80-232672, in the official records of San Diego County and acceptance of the OTD by the City of San Diego on the face of Subdivision Final Map No. 10603, recorded as instrument number 83-059030 1992-0693609 on February 24, 1983 October 30, 1992 in the official records of San Diego County.

4. Because the proposed amendment is only to modify an existing open space easement and no development is proposed, Special Condition Nos. 2 and 4 are not necessary and therefore, shall be removed in their entirety.

5. On Page 10 of the staff report, the second and third paragraphs shall be revised as follows:

As noted previously, there is no sensitive habitat on the site; the 100 year floodplain is the primary coastal resource protected by the open space easement. As the 100 year floodplain boundary has now changed due to previously permitted development, the Commission finds that the open space easement on the site can be lifted, but only for the portion of the site that now is elevated outside the 100 year floodplain. The remaining areas of the site which are still located within the 100 year floodplain still warrant protection with the open space easement. Therefore, a special condition has been included, Special Condition #1, to modify the applicant’s proposal by limiting removal of the easement to lands outside the floodplain. The Commission’s engineer has interpreted the current floodplain to remain at the +18.79’ MSL, and as such, Special Condition #1 allows for the applicant to extinguish the original open space easement, but only after a new easement has been properly recorded over all lands below the +18.79’ MSL contour. requires a new easement be recorded over all lands below the +18.79’ MSL contour. After the new easement has been recorded, this condition allows the applicant to extinguish the original open space easement.

~~Three additional special conditions have been incorporated and are also necessary to find the project consistent with the applicable policies of the Coastal Act. Section 30253 requires that new develop minimize risks to life and property in areas of high geologic, flood, and fire hazard. In this case, allowing a new and modified the open space easement 1) does not include any proposed development and, 2) is conditioned to continue to protect the 100 year floodplain. That being said, the site may still be subject to flood hazards and; as such, Special Condition #2 requires the applicant to assume the liability from such hazards by waiving any claim of liability on the part of the Commission or its successors in interest. In order to ensure that future owners of this property are aware of these hazards and the applicant’s agreement to assume the risks of developing in a hazardous area, Special Condition #4 requires the applicant to record a deed restriction imposing the conditions of this permit as conditions, covenants and restrictions on the use and enjoyment of the property. Lastly, Tthe subject amendment only proposes modification to special condition #1 of the original~~

coastal development permit F9010. As such, Special Condition #3 clarifies that all terms and conditions of Coastal Development Permit No. F9010 as amended that were not specifically modified by this amendment shall remain in full force and effect.

6. The attached listing of the special conditions from the original permit approval shall be added as Exhibit #8 to the staff report.

F9010 - All Creatures
Original Conditions of Approval

1. Prior to transmittal of the permit, the permittee shall record the following restriction against the subject property:

Permittee agrees to irrevocably offer to dedicate to a public agency or private association approved by the Executive Director, of the San Diego Coast Regional Commission or its successors in interest, an open space easement on that portion of the permittee's property shown on Revised Exhibit A, attached.

This easement shall be free of prior liens and encumbrances except for tax liens. The irrevocable offer shall be binding on the permittee's successors in interest and any subsequent purchases of any portion of the real property.

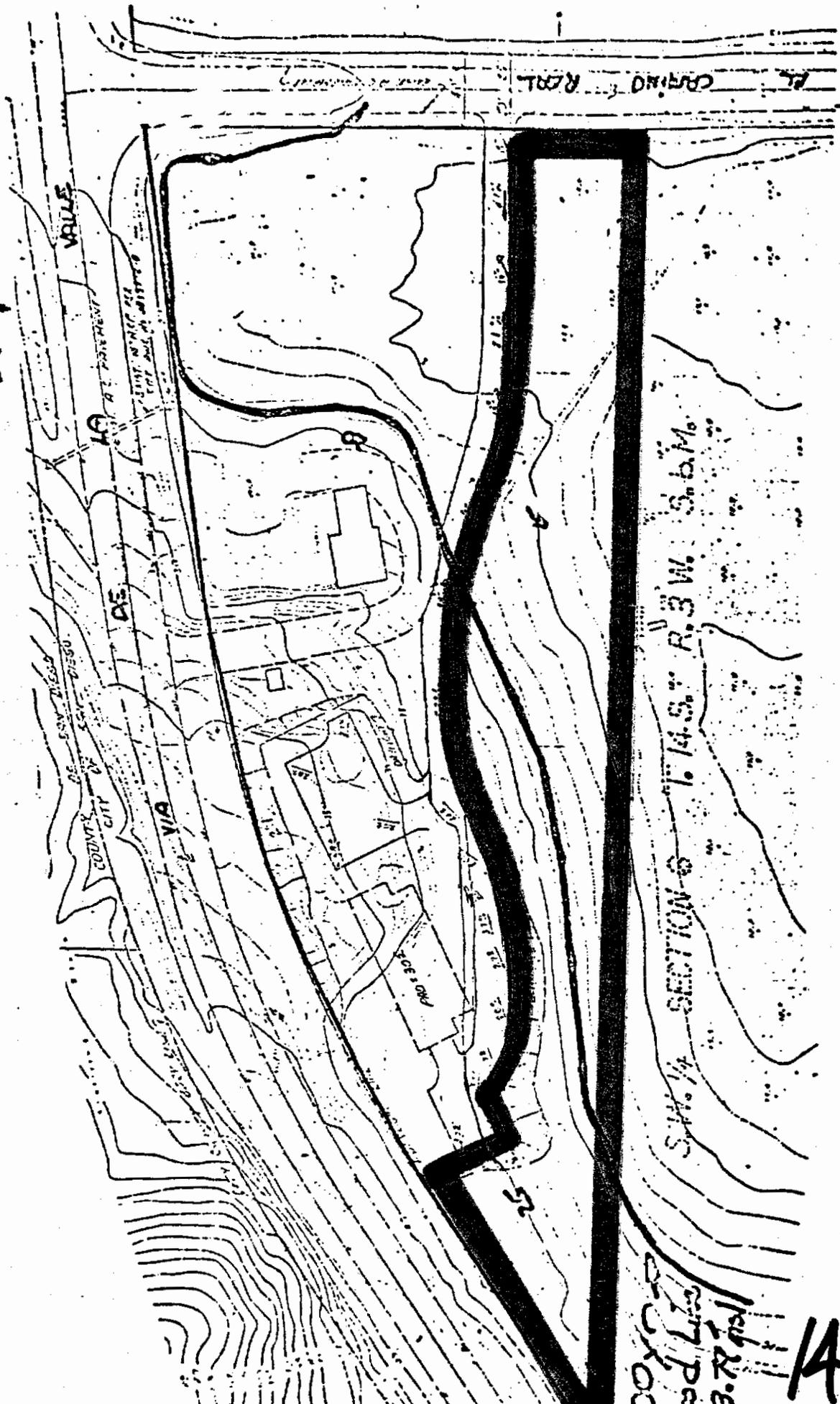
Evidence of recordation of this restriction shall be submitted to and acknowledged in writing by the Executive Director prior to transmittal of the permit.

2. a. All grading activities for the proposed building, access road, future building pads, utilities and installation of erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.

b. All areas disturbed by grading, shall be planted prior to October 1 with temporary or permanent (in case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.

B

NA



REVISED EXHIBIT A - Open Space Easement to be offered.

A

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Th11a

Filed: April 20, 2010
180th Day: October 17, 2010
Length of Extension: 90 Days
Final Date for
Commission Action: January 15, 2010
Staff: TRoss-SD
Staff Report: December 20, 2010
Hearing Date: January 12-14, 2010

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F9010-A3

Applicant: Michael Mulvany, All Creatures Hospital Agent: Julia Leppert

Original

Description: Construction of a 3,040 sq. ft. veterinary clinic on a former farm equipment storage lot.

Proposed

Amendment: Delete Special Condition No. 1 requiring an irrevocable offer to dedicate an open space easement located on a currently undeveloped portion of the 1.38 acre site.

Site: 3665 Via de la Valle, North City, San Diego, San Diego County. APN #302-210-52.

Substantive File Documents: Coastal Development Permit Nos. F-9010, F-9372, 6-82-519, City of San Diego Local Coastal Program

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed amendment with several special conditions. Previous Commission actions have included both an open space easement and a deed restriction on a portion of the subject site to provide protection of the 100 year floodplain associated with the San Dieguito River (ref. CDP Nos. F-9010 & 6-82-519). Since the time the open space easement was required, the site has been legally modified several times, including grading and improvements (driveways, parking, landscaping, etc) within the easement area. These permitted activities have resulted in a change to the location of the floodplain. As such, the applicant is requesting with this application that the open space easement be lifted. However, the applicant's request would result in the removal of the entire open space easement on the property. As some portions of the site

are still within the 100 year floodplain, staff is recommending the request for the open space easement be approved, but only if, a new open space easement over that portion of the site that is still located *within* the 100 year flood plain is recorded. With this condition, the remaining areas of the site still within the floodplain will still be protected by an open space easement.

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 the proposed amendment to Coastal Development Permit No. F9010 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

The permit is subject to the following conditions:

1. **Open Space Easement**

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the portion of the subject lot that is below the existing +18.79 foot Mean Sea

Level elevational contour, as shown in Exhibit #3, except for the purpose of installing, erecting, constructing, planting and maintaining thereof:

1. Grass, flowers, shrubs, tress, and irrigation and other landscaping appurtenances;
2. Fences and retaining and other walls heretofore or hereafter approved by the City of San Diego;
3. recreational facilities provided the same shall not include any building;
4. Utility distribution facilities provided the same (except for transformer boxes and similar equipment not erected on poles, derricks or similar supports) are installed under-ground;
5. Surfaces and underground drainage facilities'
6. Driveways, private streets, sidewalks, paths, and steps;
7. Directional signs; and
8. Outdoor lighting facilities

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT

PERMIT, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably dedicating to the City of San Diego an open space easement for the purpose of protection from hazards. Such easement shall be located in the portion of the subject lot that is below the existing +18.79 foot Mean Sea Level elevational contour as shown in Exhibit #3. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.

- C. After recordation of the easement required in Subsections A and B of this condition, the Applicant may execute and record a document in a form and content acceptable to the Executive Director, extinguishing the easement created through the recordation of the "Irrevocable Offer to Dedicate an Easement for Open Space," (OTD) recorded as instrument number 80-232672, in the official records of San Diego County and acceptance of the OTD by the City of San Diego on the face of Final Map No. 10603, recorded as instrument number 1992-0693609 on October 30, 1992 in the official records of San Diego County.

2. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against

any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Prior Conditions of Approval. All other terms and conditions of Coastal Development Permit No. F9010 as amended, not specifically modified herein, shall remain in full force and effect.

4. 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 landowner has executed and recorded 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 (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and 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 applicant’s entire parcel or parcels. 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.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description.

The proposed project includes the removal of an open space easement on a 1.38 acre lot currently developed with a 3,330 sq. ft. animal hospital, upstairs residence, and ancillary amenities, including parking spaces, storage, and an access driveway. The project site is located on the south west corner of the intersection of Via de la Valle and El Camino Real, and immediately west of Mary’s Tack and Feed (ref. Exhibit #2) in the City of San Diego. The project site is also located just north of the San Dieguito River. The Del Mar Horse Park Equestrian Center is located in between the subject site and the San Dieguito River. As clarification, while the original permit approved the construction of a 3,040 sq. ft. veterinary office, through prior Commission action, the project has been amended to allow a 5,310 sq. ft. structure. However, currently the site is developed with a 3,330 sq. ft. animal hospital and a 1,520 sq. ft. single family residence (totaling 4,850 sq. ft). The subject site’s complete permit history is discussed in greater detail below.

On August 14, 2009, the applicant submitted an application to the City of San Diego to abandon an open space easement as well as a natural open space easement recorded on

the subject site. These easements currently encumber over 50% of the property (ref. Exhibit #3, 6, 7). The general open space easement was required by the Commission when it approved the original construction of the veterinary hospital. This easement was accepted by the City. In addition, the City required a similarly located “natural” open space easement associated with the recordation of the subdivision map when the property was subdivided (see site history below). The City also accepted that easement but has indicated that it would be willing to abandon the two easements if the Commission determines that the abandonment of the easement required by the Commission is consistent with the Coastal Act. Therefore, the applicant is requesting with this amendment the removal of the Commission-required open space easement in its entirety. Currently, there is no expansion of the facility included with this amendment request, but the applicant’s agent has indicated that expansion of the veterinary hospital is the desired outcome of the proposed amendment. Any future development proposal will require additional review by the Commission. Additionally, there is an existing deed restriction required by the Commission which has been recorded and which is not being modified with the proposed amendment. As such, any necessary modification to the deed restriction will also require the approval of the Commission.

This site is in the North City Future Urbanizing Area (NCFUA). The Commission certified a framework plan for this area in the mid-1990’s, with the understanding that permit authority would not transfer to the City of San Diego until a specific subarea plan was certified for each of the identified subareas. The framework plan gave general guidance, but was mostly intended to establish the open space areas and circulation patterns; the subarea plans would give the planning detail typically found in an LCP Land Use Plan. No subarea plan has yet been submitted or approved by the Commission for the area subject to this review. As such, the subject site is located in an area of deferred certification, where the Coastal Commission retains permit jurisdiction. The Chapter 3 polices of the Coastal Act are the legal standard of review.

2. Site History.

In 1979, the property was vacant and unimproved. It was formerly used for farm equipment storage. The City of San Diego approved (via conditional use permit C-16186) the construction of 3,330 square foot veterinary hospital with a 1,520 square foot single-family dwelling on top of the hospital. In 1980, the Coastal Commission approved Coastal Development Permit No. F9010, allowing development of a 3,040 square foot veterinary hospital. Special Condition No. 1 of the CDP required the permittee to irrevocably offer to dedicate to a public agency or private association an open space easement on a portion of the property. Originally, the staff recommended that this open space easement was to be on the portion of the property below the 18.79 foot mean sea level (MSL) contour line corresponding at that time with the 100 year floodplain boundary. Staff’s intent was to reduce impacts to the floodplain by reserving the areas of the property within the floodplain as open space. The applicant proposed a different area, to be dedicated as open space (ref. Exhibit #6) which did not include all of the land below the 18.79’ MSL. Instead, the applicant proposed including additional lands beyond the

18.79 MSL contour on the western portion of the property, and a minimized portion of the eastern side of the property. The Commission approved the project with the applicant's proposed boundary line. All special conditions associated with CDP No. F9010 were satisfied and the permit released.

On September 19, 1980, the Commission approved an amendment to CDP F9010 to allow a revision to the grading plan and a revision to the building plans to allow a second story two bedroom residential addition and an extension of the allowable grading time to November 1, 1980 (ref. CDP #F9010-A1). On April 1, 1981, the Commission reviewed and approved an additional amendment that included minor exterior architectural changes, increased square footage to approximately 5,310 sq. ft., and to construct a detached garage. This application was approved as a minor amendment (ref. CDP #F9010-A2). An additional four proposals were submitted during October 1981, which again modified the amount of grading allowed, the additional construction of a low retaining wall, and modified the dates for when grading was permitted, and a reduction in square footage, all of which were found consistent with the original permit approval. In January, 1982, the applicant submitted a request to allow the construction of paving over DG base within the designated open space area between a retaining wall and the entry drive for parking purposes on top of existing grade. The commission approved this request (ref. CDP #6-82-519).

The final application associated with the subject site was approved on December 1, 1982. This proposal included the subdivision of the then 2.94 acre parcel into 2 parcels: Lot 1 (1.4 acres/subject site) and Lot 2 (1.2 acres). Also proposed was construction of an approximately 8,000 sq. ft. commercial retail building and 50 space parking area on Lot 2 with the remaining .34 acres of the site reserved for street improvements along El Camino Real and Via de la Valle. The proposed permit facilitated the relocation of Mary's Tack and Feed through demolition of the then-existing structure located on the north side of Via de la Valle and construction of a new structure south of Via de la Valle.

As discussed previously, the remaining undeveloped land was encumbered by an open space easement. Additionally, associated with the approval of CDP 6-82-519, Special Condition No. 1 required the applicant to record a deed restriction against the property which stated:

- a) No further subdivision of the property shall occur without the approval of the California Coastal Commission or its successor-in-interest.
- b) No further development of that portion of the property designated as open space on grading plan No. 19029-1-D (Dated August 14, 1980), beyond that approved by permit no. 6-82-519, and previously issued permits, shall occur without approval of the Commission or its successor-in-interest

The final result being two parcels developed with the All Creatures Animal Hospital on Lot 1 (the subject site), and Mary's Tack and Feed on Lot 2, with the remainder of the

sites encumbered by both an open space easement and a general deed restriction for the purpose of protecting of the 100 year floodplain.

3. Biological Resources/Flood Plain Development. The following Coastal Act policies, related to biological resources and development in the flood plain, are pertinent to the proposed project and state, in part:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, 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...

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240

... (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.

Section 30253.

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

As previously discussed, the original construction of the All Creatures Hospital, and the associated open space easement/offer to dedicate was approved by the Commission in 1980. At the time, Commission staff was recommending approval of the proposed development with only the access road permitted to be located within the 100 year floodplain (below elevation +18.79' MSL), and specifically, Commission staff was recommending an irrevocable offer to dedicate all lands below the +18.79' elevation contour as open space. This special condition would have required some redesign of the proposed building, as portions of the hospital were proposed to be located within the floodplain. At the Commission hearing, the Commission approved the development as proposed by the applicant and required the open space easement to follow the proposed line of development, allowing for some development within the 100 year floodplain. Since that time, various other improvements have been permitted within the open space easement at this location, including an additional parking lot, retaining walls, grading, etc. Thus, while the open space easement was recorded, the City and Commission have approved various improvements over the years that have modified the floodplain.

Finally, the subject site was subdivided and the second lot was subsequently developed with a commercial structure (Mary's Tack and Feed) that included fill of a portion of the previously identified floodplain (ref. CDP No. 6-82-519). A deed restriction limiting future development was required with this permit pertaining to both parcels. Currently, the two properties have separate owners and operate independently. Thus, currently, the subject site (solely the All Creatures Animal Hospital) is encumbered by both an open space easement, which was accepted by the City, and a general deed restriction covering all of the remaining undeveloped lands.

The subject amendment proposes the complete removal of the open space easement that was required with previous Coastal Development Permit No. F9010. Special Condition #1 of that permit required the following:

1. Prior to transmittal of the permit, the permittee shall record the following restriction again the subject property:

Permittee agrees to irrevocably offer to dedicate to a public agency or private association approved by the Executive Director, of the San Diego Coast Regional Commission or its successor in interest, an open space easement on that portion of the permittee's property shown on Revised Exhibit A, attached. This easement

shall be free of prior liens and encumbrances except for tax liens. The irrevocable offer shall be binding on the permittee's successors in interest and any subsequent purchases of any portion of the real property.

The applicant has indicated that the removal of the open space easement has been proposed because, at some point, it may desire to expand the existing veterinary hospital footprint, and the City of San Diego has indicated that it will not release its interest in the open space easement (it holds the open space easement) or review any proposed development unless the hospital first obtains the Coastal Commission's approval to remove the open space easement.

The intent/purpose of the open space easement at the time of development was to provide protection to the 100 year flood plain. Specifically, the staff report for CDP No. F9010 stated "[t]o insure those portion of the site within the floodplain (below 100 year floodline), remain, as open space, Special Condition #1 was added requiring dedication of those portions of the site...." Generally speaking, permanent structures and fill are prohibited in the floodplain as they would be subject to flood hazard leading to the need for protection or channelization. In addition, flood flows are directed around fill and structures, causing possible flooding impacts on adjacent and up- and downstream properties. Typically, the only structures allowed in a floodplain are temporary ones that can be easily moved in the threat of flood, or open facilities that would not result in redirected flood flows.

It is important to note that development already exists between the subject property and the San Dieguito River. The Del Mar Horse Park Equestrian Center is located almost entirely within the San Dieguito River Valley, and includes a number of temporary and permanent structures. This property has undergone a number of changes over the years, some permitted and some not. In aerial photographs dating back to 1981-1982, there do not appear to be any structures on the site at all. In 2004, the Commission approved a coastal development permit (ref. CDP No. 6-04-029) that authorized the majority of unpermitted development on that site after-the-fact. In that staff report, the site was described as including nineteen stall structures, twelve training and show rings, one covered arena, one grass show arena with covered seating (grandstand), two judges stands, two restrooms, one horse ring, three trailers (or groups of trailers), four parking areas, the access road, a water tank, and six small, unidentified structures, that could be additional trailers (ref. Exhibit #2). As such, while the project site subject to this review is located within the 100 year floodplain, no biological buffers are necessary because development exists between the subject site and any sensitive habitat associated with the San Dieguito River. The project can therefore be found consistent with sections 30231 and 30240 of the Coastal Act.

In this case, while no development is proposed at this time, removal of the open space easement in its entirety would facilitate the subsequent expansion of the animal hospital into the 100 year floodplain, inconsistent with numerous Coastal Act policies. That being said, while all of the remaining undeveloped land on the subject site is protected by the

open space easement, not all of the undeveloped land is still within the 100 year floodplain. As noted above, previous permitted grading and other construction activities have *relocated* the +18.79' MSL elevation on the site, thus adjusting the 100 year floodplain boundary. The Commission's staff engineer has reviewed the project and plans and concurs that the floodplain has been modified and that the +18.79' MSL elevational contour depicted on the engineered plan by the applicant (ref. Exhibit #3) represents the 100 year floodplain for the subject site. The intent of CDP F9010, Special Condition #1 was to protect the floodplain. There are, however, currently lands within the easement area that are no longer located within the floodplain, so development of these lands would not result in channelization or redirection of flood flows, and thus such development would not be expected to have adverse impacts to coastal resources. Development outside of the 100 year floodplain can be found consistent with the Coastal Act.

As noted previously, there is no sensitive habitat on the site; the 100 year floodplain is the primary coastal resource protected by the open space easement. As the 100 year floodplain boundary has now changed due to previously permitted development, the Commission finds that the open space easement on the site can be lifted, but only for the portion of the site that now is elevated outside the 100 year floodplain. The remaining areas of the site which are still located within the 100 year floodplain still warrant protection with the open space easement. Therefore, a special condition has been included, Special Condition #1, to modify the applicant's proposal by limiting removal of the easement to lands outside the floodplain. The Commission's engineer has interpreted the current floodplain to remain at the +18.79' MSL, and as such, Special Condition #1 requires a new easement be recorded over all lands below the +18.79' MSL contour. After the new easement has been recorded, this condition allows the applicant to extinguish the original open space easement.

Three additional special conditions have been incorporated and are also necessary to find the project consistent with the applicable policies of the Coastal Act. Section 30253 requires that new develop minimize risks to life and property in areas of high geologic, flood, and fire hazard. In this case, allowing a new and modified the open space easement 1) does not include any proposed development and, 2) is conditioned to continue to protect the 100 year floodplain. That being said, the site may still be subject to flood hazards and; as such, Special Condition #2 requires the applicant to assume the liability from such hazards by waiving any claim of liability on the part of the Commission or its successors in interest. In order to ensure that future owners of this property are aware of these hazards and the applicant's agreement to assume the risks of developing in a hazardous area, Special Condition #4 requires the applicant to record a deed restriction imposing the conditions of this permit as conditions, covenants and restrictions on the use and enjoyment of the property. Lastly, the subject amendment only proposes modification to special condition #1 of the original coastal development permit F9010. As such, Special Condition #3 clarifies that all terms and conditions of Coastal Development Permit No. F9010 as amended that were not specifically modified by this amendment shall remain in full force and effect.

In conclusion, as proposed, the removal of the open space easement in its entirety would not provide adequate protection to the 100 year floodplain, and thus is not consistent with the Coastal Act. However, as conditioned, only those portions of the open space easement located *outside* the floodplain shall be removed (through removal and recordation of a modified open space easement), thereby adequately protecting the 100 year floodplain. Additionally, while the project is located close to the San Dieguito River, currently a number of structures, and other development associated with the Del Mar Horse Park are located between the river and the subject site, and thus no biological buffer is necessary. The project, as conditioned, can therefore be found consistent with all applicable policies of the Coastal Act.

4. **Public Access.** The proposed project is located close to San Dieguito River, and San Dieguito Lagoon and, as such, potential impacts to public access must be identified. The Coastal Act has numerous policies protecting the public's right to the coast and state:

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 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, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213

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

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access

depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

[...]

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The proposed project is comprised solely of removal and subsequent relocation of an existing open space easement and will not interrupt public access. The project is located nearly one mile inland of the shoreline and is not expected to have any adverse impact on the ability of the public to access the shoreline. Additionally, while the project is located adjacent to the future location of the Coast to Crest Trail, the subject site does not contain any public trails and will not affect the future alignment of the Coast to Crest Trail. The Coast to Crest trail is a public access trail extending from the ocean at Del Mar to the San Dieguito River's source on Volcan Mountain, just north of Julian. Therefore, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities and can be found consistent with the applicable policies of the Coastal Act.

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 can be made.

The subject site is located within the North City Future Urbanizing Area, which does not have a certified LUP, such that Chapter 3 of the Coastal Act is the legal standard of review. As demonstrated in the preceding findings, the Commission has found the proposed development, as conditioned, consistent with all applicable policies of the Coastal Act and thus this approval will not prejudice the ability of the City of San Diego to complete the planning process for this area, extend the coverage of its LCP to cover the subject site, and continue implementation of its certified LCP.

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including a condition addressing the protection of the floodplain through a new and revised open space easement 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 is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.



EXHIBIT NO. 1
APPLICATION NO.
F9010-A3
Location Map

California Coastal Commission



Earth

Satellite

Map

More...

Traffic

Via De La Valle

El Camino Real

El Camino Real

El C

Via De La Valle

All Creatures Hospital

Mary's Tack and Feed

Via De La Valle

9426

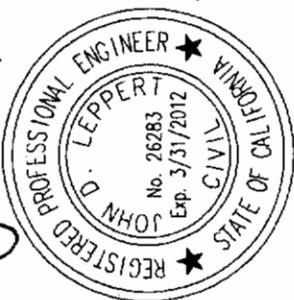
HWY 56

Via Del Canon

200 ft

CERTIFIED BY:
 LEPPERT ENGINEERING CORPORATION
 5190 GOVERNOR DRIVE, SUITE 205
 SAN DIEGO, CA 92122

John D. Leppert
 JOHN D. LEPPERT, RCE 26283 EXP. 3/31/2012



DATE 12/21/10

EXP. 3/31/2012

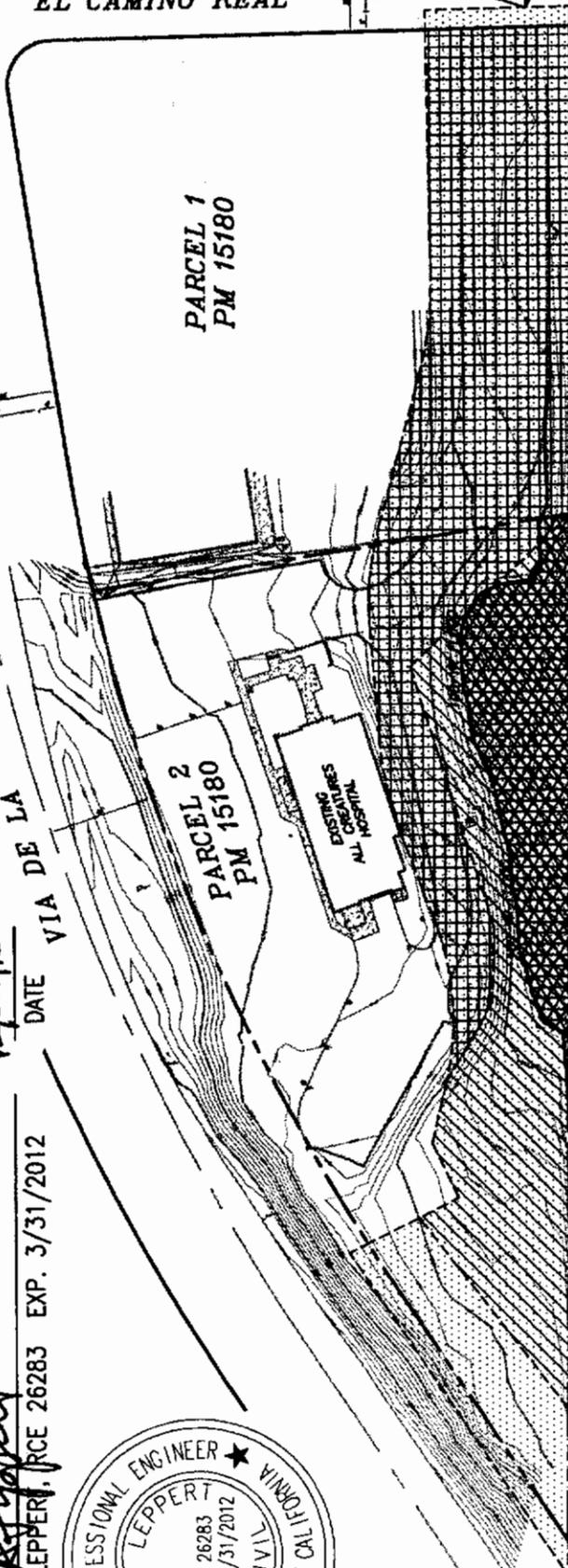
VIA DE LA

PARCEL 1
 PM 15180

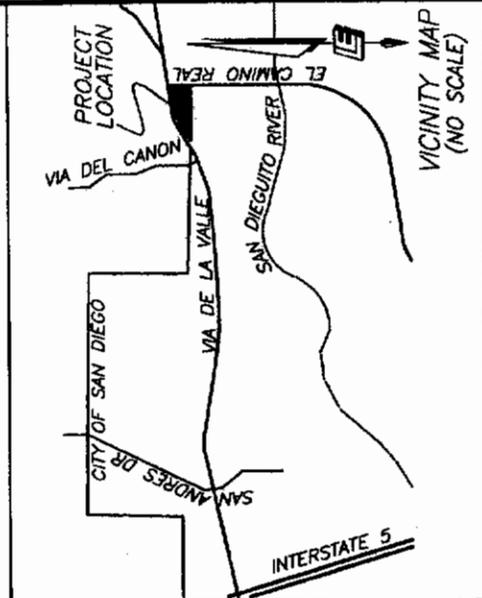
PARCEL 2
 PM 15180

EXISTING
 CREATURES
 ALL-HOSPITAL

EL CAMINO REAL



SCALE: 1" = 100'



LEGEND

PROPERTY BOUNDARY

EXISTING 18.79' CONTOUR

EXISTING OPEN SPACE EASEMENT
 GRANTED PER MAP NO. 10603
 AREA = 23,381.49 SF (0.537 AC)

EXISTING NATURAL OPEN SPACE EASEMENT
 GRANTED PER MAP NO. 10603
 AREA = 18,757.34 SF (0.431 AC)

EXISTING IRREVOCABLE OFFER TO DEDICATE
 AS OPEN SPACE PER 80-232672
 AREA = 48,593.36 SF (1.116 AC)

PROPOSED OPEN SPACE EASEMENT TO BE
 GRANTED PER SEPARATE EASEMENT AGREEMENT
 AREA = 7,525.53 SF (0.173 AC)

F 9010-A-3

Exhibit #3

STATE OF CALIFORNIA-CALIFORNIA COASTAL COMMISSION

RECEIVED

EDMUND G. BROWN, JR., Governor

SAN DIEGO COAST REGIONAL COMMISSION

6154 MISSION GORGE ROAD, SUITE 220

SAN DIEGO, CALIFORNIA 92120-TEL. (714) 280-6932

JUL 24 1980

CALIF. COASTAL COMMISSION
SAN DIEGO REGIONTim Cohelan
ChairmanRoger Hedgec
Vice ChairmanHarriet Alle
Representative to the
California Coastal CoTom Crandall
Executive DirectorDEVELOPMENT PERMIT

DATE OF COMMISSION ACTION: June 6, 1980

CONTROL NO.: F9010

APPLICANT: La Bajada, Ltd.
227 N. El Camino Real
Encinitas, CA 92024AGENT: William A. Smith, AIA
2911 Fourth Ave.
San Diego, CA 92103

PROJECT LOCATION: The southwest corner of the intersection of Via de la Valle and El Camino Real, San Diego (APN 302-09-13).

You are hereby granted a coastal development permit. This permit is issued after a duly public hearing before the San Diego Coast Regional Commission and after the Regional Commission found that the proposed development is in conformity with the provisions of California Coastal Act of 1976 including the following:

1. That the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30200).
2. That the permitted development will not prejudice the ability of any affected local government to prepare a local coastal program that is in conformity with Chapter of the California Coastal Act of 1976.
3. That if the development is located between the nearest public road and the sea shoreline of any body of water located within the coastal zone, that the development in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976 (Public Resources Code, Sections 30210 - 30224).
4. That there are no feasible alternatives or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

This permit is limited to development described below and set forth in material on file the Regional Commission, and subject to the terms, conditions, and provisions hereinafter stated:

- A. DEVELOPMENT: Construction of a 3,040 sq. ft. veterinary clinic on a former farm equipment storage lot.

Lot area	approx.	2.7	acre
Building coverage		.07	acre (3%)
Paved area coverage		.29	acre (11%)
Landscape coverage		2.34	acre (86%)
Parking		10	
Zoning		A-1	
General plan		Ag	
Hgt. abv. avg. fin. grade:		18'	

EXHIBIT NO. 4

APPLICATION NO.

F9010-A3

Original Coastal
Development Permit

Page 1 of 3

B. TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project as approved by the Regional Commission.
2. That the applicant agrees to notify the Regional Commission (or State Commission if there is no Regional Commission) of any changes in the project.
3. That the applicant will meet all the local code requirements and ordinances and obtain all necessary permits from State and Federal Agencies.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Commission.
5. That the applicant agrees that the Commission staff may make site inspections of the project during construction and upon completion.

1. Prior to transmittal of the permit, the permittee shall record the following restriction against the subject property:

Permittee agrees to irrevocably offer to dedicate to a public agency or private association approved by the Executive Director, of the San Diego Coast Regional Commission or its successor in interest, an open space easement on that portion of the permittee's property. Shown on Revised Exhibit "A", attached.

This easement shall be free of prior liens and encumbrances except for tax liens. The irrevocable offer shall be binding on the permittee's successors in interest and any subsequent purchases of any portion of the real property.

Evidence of recordation of this restriction shall be submitted to and acknowledged in writing by the Executive Director prior to transmittal of the permit.

2. a. All grading activities for the proposed building, access road, future building pads, utilities and installation of erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.
- b. All areas disturbed by grading, shall be planted prior to October 1 with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.

Terms and conditions are to run with the land. These terms and conditions shall be perpetual, and it is the intention of the parties to bind all future owners and possessors the subject property to said terms and conditions.

Development Permit; F 9010
Page 3 of 3

STANDARD PROVISIONS:

1. STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit under penalties established by California Coastal Act of 1976.
2. TIMELY DEVELOPMENT AND COMPLETION: Permittee shall commence development within _____ years following final approval of the project by the San Diego Coast Regional Commission. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
3. REQUEST FOR EXTENSIONS: Permittee may request an extension of time for the commencement of construction provided the request is applied for prior to expiration of the permit.
4. ASSIGNABILITY OF PERMIT: This permit is not assignable unless the permittee's obligations under the permit are assumed by assignee in writing within one year and a copy of the required assumption agreement delivered to the Regional Commission or State Commission if there is no Regional Commission.
5. APPEAL: Unless appealed to the State Commission within ten (10) working days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
6. DISCLAIMER: The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any questions on this permit, please contact the staff of the Regional Commission.

Very truly yours,

Tom Crandall

Tom Crandall
Executive Director

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Contact No.: F9010

Signature of Permittee

La Bajada, Ltd. by John M. Monk, general partner

7/24/80
Date

NA

VALLE

LA R. PARLEMENT
SANT ANTONIO DE
CITY AND DISTRICT

LA

DE

VIA

CODVEX DE SAN DIEGO
CITY

DE SAN DIEGO

CRIND RPT

SW 1/4 SECTION 8 T. 14 S. R. 3 W. S. 6 M.

100YD
1/200
18.7.81

REVISED EXHIBIT A - Open Space Easement to be offered.

EXHIBIT NO. 6
APPLICATION NO.
F9010-A3
Open Space Easement, For CDP F9010 as Approved by Commission
California Coastal Commission

RETURN TO:

JOHN M. MONK, INC. 1622
227 N. EL CAMINO REAL, SUITE 201
ENCINITAS, CA. 92024

FILED PAGE NO. 007600116
BOOK 2000
RECORDED REQUEST OF
John M. Monk, Inc.
JUL 24 10 39 AM '80
OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
VERA L. LYLE
RECORDER \$5.00

IRREVOCABLE OFFER TO DEDICATE
AN EASEMENT FOR OPEN SPACE

I, the undersigned, hereby irrevocably offer to dedicate to the City of San Diego, a Municipal Corporation, an easement for open space in the real property as described on Exhibit "A" attached hereto and incorporated herein by reference. No part of said easement area shall be used except for the purpose of installing, erecting, constructing, planting and maintaining thereon: (1) grass, flowers, shrubs, trees and irrigation and other landscaping appurtenances; (2) fences and retaining and other walls heretofore or hereafter approved by the City of San Diego; (3) recreational facilities provided the same shall not include any building; (4) utility distribution facilities provided the same (except for transformer boxes and similar equipment not erected on poles, derricks or similar supports) are installed underground; (5) surface and underground drainage facilities; (6) driveways, private streets, sidewalks, paths, and steps; (7) directional signs; and (8) outdoor lighting facilities.

Signature on file


John A. Recht

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS.

On July 23, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared John A. Recht, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.



Signature on file

Notary Public in and for said

No. 232672

EXHIBIT NO. 7
APPLICATION NO. F9010-A3
Irrevocable Offer to Dedicate

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6 TOWNSHIP 14 SOUTH, RANGE 3 WEST SAN BERNADINO MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AN OPEN SPACE EASEMENT

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF ROAD SURVEY 567 AS FILED IN THE OFFICE OF THE COUNTY ENGINEER OF SAN DIEGO AND THE SOUTHERLY LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6.

Thence westerly along said southerly line North $89^{\circ} 32' 45''$ West a distance of 20.00 feet to the TRUE POINT OF BEGINNING of the boundary to be described said point being on the westerly right of way line of said road survey 567.

Thence North $0^{\circ} 58' 15''$ West along said West line a distance of 67.62 feet:

Thence North $89^{\circ} 01' 45''$ East a distance of 120.00 feet to the beginning of a tangent curve concave northerly having a radius of 162 feet:

Thence westerly along said curve thru a central angle of $16^{\circ} 16' 15''$ for an arc distance of 46.00 feet:

Thence North $74^{\circ} 42' 00''$ West a distance of 72.00 feet to the beginning of a tangent curve concave southerly having a radius of 138 feet:

Thence westerly along said curve thru a central angle of $19^{\circ} 41' 00''$ for an arc distance of 47.53 feet:

Thence South $85^{\circ} 34' 00''$ West a distance of 49.89 feet to the beginning of a tangent 170 foot radius curve concave southerly:

Thence westerly along said curve thru a central angle of $17^{\circ} 06' 00''$ for an arc distance of 50.74 feet:

Thence South $69^{\circ} 29' 00''$ West a distance of 36.66 feet to the beginning of a tangent 125.00 foot radius curve concave northerly:

1624

Thence westerly along said curve thru a central angle of 35° 18' 12" for an arc distance of 77.02 feet:

Thence North 76° 13' 48" West a distance of 28.20 feet:

Thence South 63° 56' 00" West a distance of 28.00 feet:

Thence North 26° 04' 00" West a distance of 56.50 feet to a point on the southerly line of road survey 443:

Thence along said South line South 55° 59' 04" West a distance of 174.01 feet to the beginning of a non tangent, 2040 foot radius curve concave northerly a radial line to said point bears South 33° 58' 12" East thence westerly along said curve thru a central angle of 0° 09' 22" for an arc distance of 5.56 feet to the intersection with the southerly line of the North East 1/4 of the South West 1/4 of said section 6, thence along said southerly line South 89° 32' 45" East a distance 718.12 to THE TRUE POINT OF BEGINNING of the boundary described.

(Contains 1.115 acres)

No. 232672
50.

1625

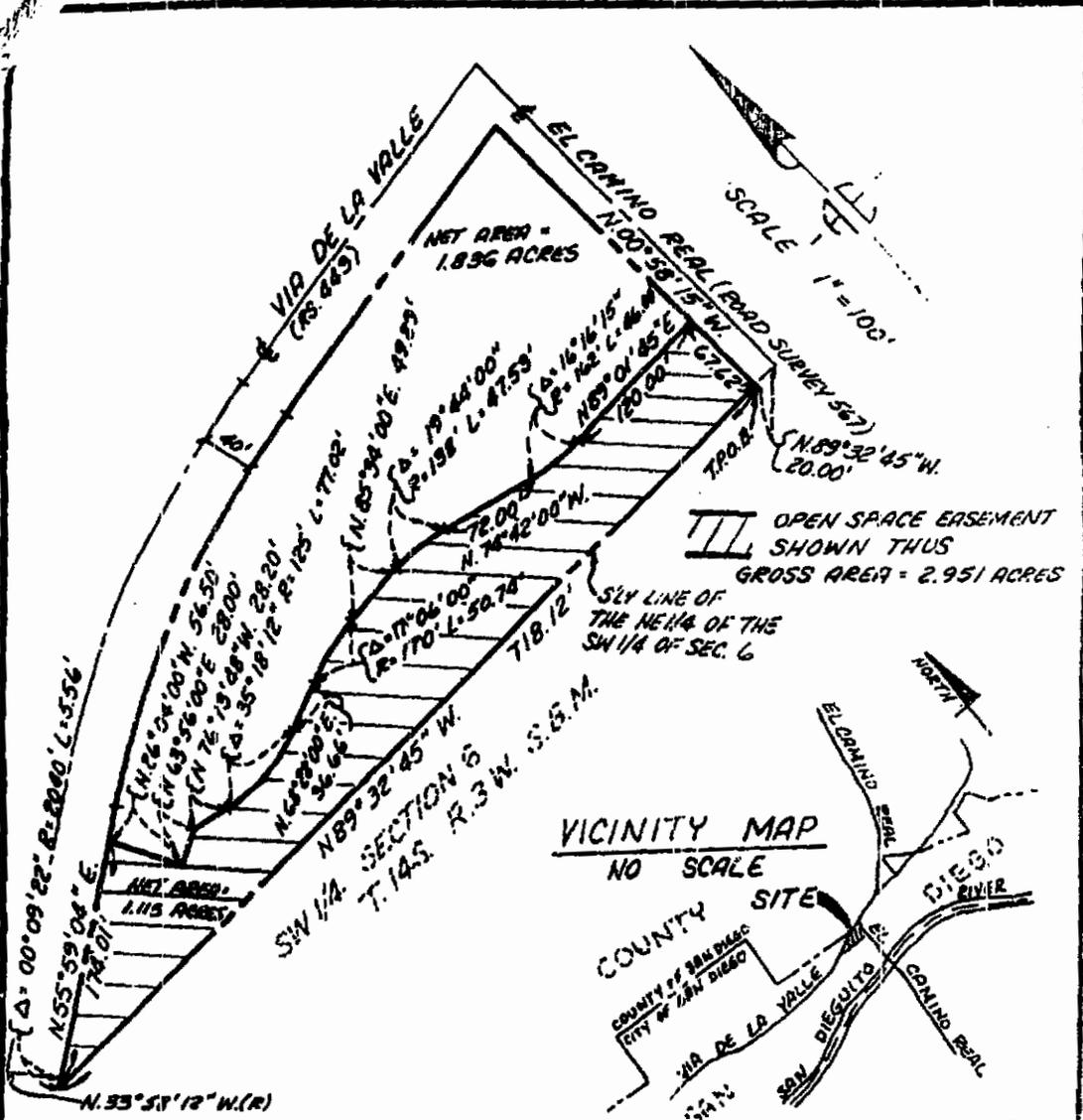


EXHIBIT "A"
OPEN SPACE EASEMENT

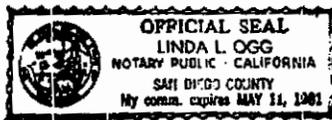
FOR
 PORTION OF THE NE 1/4 OF THE SW 1/4 OF SEC. 6,
 T. 14S., R. 3 W., S. 65. N., IN THE COUNTY OF SAN DIEGO,
 STATE OF CALIFORNIA

ASSOCIATED ENGINEERS
 3904 Ganton Street
 San Diego, California 92110
 Phone: 224-2467

Drawn: <i>[Signature]</i>	Date: 2/12/80
Approved:	Dwg. No. 1418-L-7
Date:	

Page 3 of 3
 within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.



Signature on file

Notary Public in and for said s

No 232672

(2418) Open Space
 12 July 80

EXHIBIT "A"
 Page 1 of 3