

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036

Filed: 3/4/96  
49th Day: 4/22/96  
180th Day: 8/31/96  
Staff: LJM-SD  
Staff Report: 3/20/96  
Hearing Date: 4/9-12/96



STAFF REPORT: APPEAL  
SUBSTANTIAL ISSUE

Th 10a

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-96-34

APPLICANT: West Village Inc./Peter Fletcher

PROJECT LOCATION: 160 South Rancho Santa Fe Road, Encinitas, San Diego County.  
APN 259-191-14, 25

PROJECT DESCRIPTION: Construction of a 2,000 sq. ft. retail structure on an approximately 9 acre site containing an existing approximately 60,000 sq. ft. commercial center with site grading to include approximately 1,800 cubic yards of fill and direct impact to approximately 4,600 sq. ft. of wetlands.

APPELLANTS: San Elijo Lagoon Conservancy/Gregory Dennis

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Application; City of Encinitas Resolution Nos. 96-16, PC-95-34, OL-95-06; Environmental Initial Study Case No. 95-150 DR/CDP/EIA for West Village Center by Helix Environmental Planning, Inc. dated July 28, 1995; Conceptual Mitigation Plan for the Fletcher Property by Sweetwater Environmental Biologists, Inc. dated November 4, 1994; Coastal Development Permit Nos. 6-84-368/Fletcher, 6-85-418/Fletcher and 6-93-155/County of San Diego.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project involves fill within the 100-year floodplain and fill of wetlands (cismontane alkali marsh) to accommodate an additional retail building on a 9 acre site containing a 60,000 sq. ft. commercial center. Due to the timing of the appeal application and submittal of the City's file to Commission staff, as well as the need to coordinate with the Commission's legal and technical staff, staff is recommending the Commission consider only the substantial issue determination at this time. If after the substantial issue determination a de novo hearing is required, it will be scheduled for the following Commission hearing in May, 1996.

Staff recommends the Commission open the public hearing and determine that a substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons:

I. APPELLANT'S CONTENTIONS. The appellant contends that the City's decision is inconsistent with several provisions of the City's LCP related to allowable uses within the 100-year floodplain, preservation of and allowable uses within a wetland and required mitigation for wetland impacts (see Appeal Application attached).

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II. LOCAL GOVERNMENT ACTION. The coastal development permit was approved, with conditions, by the City's Olivenhain Community Advisory Board (CAB) on September 5, 1995. That decision was appealed by the San Elijo Lagoon Conservancy to the City of Encinitas Planning Commission. The Planning Commission upheld the CAB decision on November 30, 1995. The decision of the Planning Commission was then appealed by the San Elijo Lagoon Conservancy to the City Council. On February 14, 1996, the City Council upheld the Planning Commission decision and approved the project with 31 standard and special conditions that addressed, in part: site development, landscaping, exterior lighting, fire fees, site grading, drainage, building permits and mitigation monitoring and reporting.

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III. APPEAL PROCEDURES.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county. (Coastal Act Sec. 30603(a))

For development approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance, the grounds for an appeal to the Coastal Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or public access policies set forth in this division.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue", and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and

opponents will have three minutes per side to address whether the appeal raises substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified local coastal program and the public access and recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the substantial issue portion of the appeal hearing are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

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#### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to PRC Section 30603.

MOTION. Staff recommends a NO vote on the following motion"

I move that the Commission determine that Appeal No. A6-ENC-96-34 raises No substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

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#### V. FINDINGS ON SUBSTANTIAL ISSUE.

1. Project Description/History. The proposed development involves the construction of a 2,000 sq. ft. retail structure on an approximately 9 acre site that contains an existing approximately 60,000 sq. ft. commercial center. The structure is proposed to be located within the 100-year floodplain of Escondido Creek in an undeveloped area of the commercial center site which contains landscaping (bermuda grass and other non-native plant species) and wetlands (cismontane alkali marsh). To prepare the site for development to accommodate the structure, approximately 1,800 cubic yards of fill is proposed. Based on a biological study of the site prepared for the Army Corps of Engineers, the project will require fill of approximately 4,600 sq. ft. of wetlands (cismontane alkali marsh).

The project site is located on the south side of Rancho Santa Fe Road, just east of Manchester Avenue in the City of Encinitas. Surrounding uses include vacant land and Escondido Creek to the south and east, an elementary school, school offices and a convenience store to the north and the commercial center and Manchester Avenue to the west.

In 1984, the Commission approved CDP #6-84-368/Fletcher, for the demolition of existing buildings, grading consisting of approximately 28,225 cubic yards of

material (including 26,100 cubic yards of imported fill) and street and storm drain improvements on this site. The permit was approved with conditions which required the development to be revised to eliminate all grading within the 100-year floodplain and recordation of a waiver of liability, requiring the applicant to acknowledge that the site may be subject to hazard from flooding and to assume the liability from this hazard. The conditions were satisfied and the permit was released.

Then, in September of 1985, the Commission approved CDP #6-85-418/Fletcher for the construction of an approximately 62,250 sq. ft. commercial center on the site in seven one- and two-story buildings. This permit was approved with conditions requiring the submittal of a sign program for the center and recordation of a waiver of liability for the development. Subsequently, the conditions were satisfied, the permit was released and the center was constructed.

2. Floodplain Development. The appellant contends that the City's decision is inconsistent with provisions of the City's LCP regarding permitted development/allowable uses within the 100-year floodplain. Specifically, Policy 8.2 on Page LU-19 of the City's certified LUP states, in part:

[...] No development shall occur in the 100-year floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this plan. No grading or fill activity other than the minimum necessary to accommodate those uses found safe and compatible shall be allowed. [...] Exceptions from these limitations may be made to allow minimum private development (defined as one dwelling unit per legal parcel under residential zoning, and an equivalent extent of development under non-residential zoning) only upon a finding that strict application thereof would preclude minimal reasonable use of the property. Exceptions may also be made for development of circulation element roads, other necessary public facilities, flood control projects where no feasible method for protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development, [...]

In addition, Section 30.34.040(b)(2) of the City's Implementation Plan also pertains to floodplain development and states, in part:

Within the 100-year floodplain, permanent structures and/or fill for permanent structures, roads and other public improvements consistent with the Land Use Element will only be allowed if the applicant can demonstrate the following:

- a. The development is capable of withstanding periodic flooding, and does not require the construction of flood protective works,...

- b. Existing environmentally sensitive habitat areas will not be significantly adversely affected.
- c. The development will not result in a net reduction of existing riparian habitat areas within the floodplain.
- d. The design of the development incorporates the findings and recommendations of both a site specific area watershed hydrologic study...
- e. There will be no significant adverse water quality impacts to downstream wetlands, lagoons and other environmentally sensitive habitat areas.

In review of the appellant's contentions, the Commission finds that the City's approval of the project is inconsistent with LCP policy and ordinances relative to floodplain development. To begin with, as noted above, the LCP states that only development consistent with periodic flooding shall be permitted within the 100-year floodplain, such as stables, plant nurseries, some limited parking, open space and some agricultural uses. According to exhibits contained in the City file and other floodplain maps of the area, the proposed single-story, 2,000 sq. ft. retail structure will be located entirely within the 100-year floodplain of Escondido Creek. However, the City's approval does not contain findings that the proposed retail structure is compatible with periodic flooding. In addition, a 2,000 sq. ft. retail structure is not consistent with the type of uses the LCP cites as allowable within the 100-year floodplain.

The project also proposes substantial grading within the floodplain consisting of approximately 1,800 cubic yards of fill. The LCP policy above also states that no grading or fill shall be allowed, except for the minimum necessary to accommodate safe and compatible uses. Because the proposed retail structure has not specifically been found by the City to be a safe and compatible use within the floodplain, the proposed 1,800 cubic yards of fill to accommodate the retail structure, is also inconsistent with the LCP.

The City's LCP Policy cited above also states that exceptions to the floodplain limitations, to allow "minimal private development" may be made "only upon a finding that strict application thereof would preclude minimal reasonable use of the property...." In the case of the subject site, the applicant has already obtained approval for and constructed an approximately 60,000 sq. ft. commercial retail center, parking and landscaping. As noted in a previous section of this report, in review of the original approval of grading for the existing commercial center, the Commission required the applicant to revise the project to eliminate all grading within the 100-year floodplain. As such, as early as 1984, the applicant was aware of the constraints of the site and, has already attained substantial use of the site through construction of the existing 60,000 sq. ft. retail center. As such, an exception to the LCP floodplain restrictions to allow minimal reasonable use of the site is not a valid argument.

In addition, the LCP Policy cited above also states that exceptions to the floodplain restrictions may be made for, among other things, flood control projects to protect existing structures. However, the proposed fill in this particular case is not needed to protect existing structures, but to create a building pad to accommodate the proposed retail structure.

The proposed project also raises Implementation Plan inconsistencies. Specifically, and as noted above, the City's Floodplain Ordinance only permits permanent structures and fill within the 100-year floodplain which have been found to be consistent with the LUP and when the design of the development incorporates the findings and recommendations of a site specific hydrologic study and, the development has been found to be capable of withstanding periodic flooding so as to not require the construction of flood protective works. In review of the City's file, no site specific hydrological study was included for the proposed project, inconsistent with the City's LCP pertaining to floodplain development. In addition, the City's approval did not contain a finding that the proposed structure was capable of withstanding periodic flooding such that it would not need flood protection itself.

In addition, the Floodplain Ordinance also only allows floodplain development when existing environmentally sensitive areas will not be significantly adversely affected. The appellant notes that the subject site is environmentally sensitive, being adjacent to Escondido Creek and upstream from the San Elijo Lagoon and Ecological Reserve. In the case of the subject development approved by the City, to accommodate the 2,000 sq. ft. retail center, approximately 1,800 cubic yards of fill is required which will permanently fill approximately 4,600 sq. ft. of wetlands (cismontane alkali marsh). As such, the proposed project will adversely affect an environmentally sensitive area, inconsistent with the City's LCP pertaining to floodplain development.

In summary, the proposed development is inconsistent with the City's LCP pertaining to floodplain development in that it is not a permitted use within the 100-year floodplain, is not necessary to protect existing structures, includes substantial grading beyond the minimal necessary to support the project, the design does not incorporate the findings of a site specific hydrologic study and, the project adversely impacts an environmentally sensitive area. For these reasons, the Commission finds that a substantial issues exists with respect to the projects consistency with the City's certified Local Coastal Program.

3. Wetlands. The appellant contends that approval of the project by the City is inconsistent with provisions of the City's LCP pertaining to protection of wetlands and appropriate mitigation standards for any permitted wetland fill. The appellant also contends that the City incorrectly relied upon an inaccurate document from the California Department of Fish and Game to determine wetland mitigation requirements.

The City's LCP includes a number of provisions pertaining to protection of wetlands. The following are the most applicable to the subject appeal. Policy 10.6 on Page RM-18/19 of the certified LUP states, in part:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

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

[...]

Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve wetland intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. [...]

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language as above, limiting wetland fill to projects involving nature study, restoration, incidental public services and mineral extraction.

In review of the project by the City, it was determined that wetlands, as defined in the LCP (cismontane alkali marsh), were present on the site and that the proposed 2,000 sq. ft. retail structure and grading to accommodate it would permanently fill approximately 4,600 sq. ft. of wetlands. As cited

above, fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. These include nature study, restoration projects, incidental public service projects and mineral extraction. The proposed 2,000 sq. ft. retail structure and 1,800 cubic yards of fill do not qualify as any of the permitted uses within a wetland pursuant to the City's LCP. The City's findings for approval of the project state that the retail project is considered an incidental public service project because it serves to protect existing development (the existing 60,000 sq. ft. retail center) from 100-year flood inundation caused by the recently completed La Bajada Bridge project (ref. CDP #6-93-155/County of San Diego) which raised a portion of the road adjacent to the subject site. The City's findings state that the bridge project has increased the potential for 100-year flood impacts on the site and as such, the retail structure is necessary to protect the existing center from the increased potential for flooding. However, based on an exhibit in the City's file, the 100-year floodplain area has been somewhat reduced on the subject site since construction of the bridge. In addition, the only portion of the site that is subject to 100-year inundation (before and after the bridge project) is a small portion of the eastern parking lot for the existing commercial center and the landscaped/wetland area where the proposed retail structure is proposed. Based on the exhibits contained within the file, no permanent existing structures or buildings would be subject to 100-year flood inundation. Additionally, a flood hazard potential has always existed on the eastern most portion of the site and as such, the Commission in approving the construction of the retail center in 1984/85, required the applicant revise the project to eliminate grading within the floodplain and to record a waiver of liability acknowledging the site was subject to flood hazard. As such, the City's finding that the proposed retail structure can be considered an incidental public service project because it provides flood protection to the existing commercial center is not based on fact.

Aside from not being one of the permitted uses within a wetland cited in the City's LCP, based on the Commission's review, the proposed project is not the least environmentally damaging alternative, as also required by LCP policies and ordinances. Specifically, the proposed project will fill approximately 4,600 sq. ft. of wetlands to accommodate the retail structure. The proposed project is to be constructed on the eastern-most portion of a site which currently contains an existing approximately 60,000 sq. ft. retail center, parking, landscape improvements and wetlands. As noted previously, the proposed 2,000 sq. ft. retail structure is not required to allow minimal reasonable use of the site and the area where the retail structure is proposed to be constructed is within the 100-year floodplain. This area of the site was specifically excluded from development by the Commission in its original approval for construction of the center because of its potential for environmental impacts. The same potential environmental impacts still exist. In addition, there are other site development alternatives available to add square footage to the existing center that do not include floodplain fill nor fill of wetlands. Additionally, the environmental initial study from which the City adopted a mitigated negative declaration was inaccurate. It stated that the proposed retail center and fill would not occur within the 100-year floodplain of Escondido Creek. However, other documents clearly indicate that the entire project will occur within the 100-year floodplain. As such, the



proposed development is not consistent with the City's LCP in that it is not the least environmentally damaging alternative, as impacts to wetlands can be avoided through other site development alternatives.

Another contention of the appellant is that if the destruction of wetlands is to be allowed, the City's required mitigation for wetlands impacts is too low. The City's approval of the project included mitigation for wetland impacts at a ratio of 1.5:1. While the City's LCP states that all unavoidable wetland impacts need to be mitigated a ratio of greater than 1:1, it also states that such a ratio needs to be determined by regulatory agencies with authority over wetland resources. The City's file does not include written statements from either the U.S. Fish and Wildlife Service (USF&WS) or the California Department of Fish and Game (DFG) relative to required mitigation ratios. The file does contain a letter from the Army Corps of Engineers granting conditional approval of the fill. In addition, there is a letter from DFG addressing permit requirements, but it does not address required mitigation. Although the appellant also contends that the City incorrectly relied upon incorrect information in determining wetland mitigation ratios, the cited document from DFG only addresses whether the project requires 1603 Streambed Alteration review and does not specifically address mitigation requirements.

In summary, the proposed development approved by the City of Encinitas is inconsistent with several provisions of the certified LCP in that the proposed retail structure and fill is not a permitted use within a wetland, is not the least environmentally damaging alternative and, mitigation for impacts did not incorporate regulatory agency input. In addition, development in this same area was eliminated in a prior Commission issued coastal development permit. Finally, the development involves fill of wetlands, which is strictly regulated by the Coastal Act and the City's LCP. Therefore, the Commission finds that that a substantial issue exists with respect to the projects consistency with the City's certified Local Coastal Program.

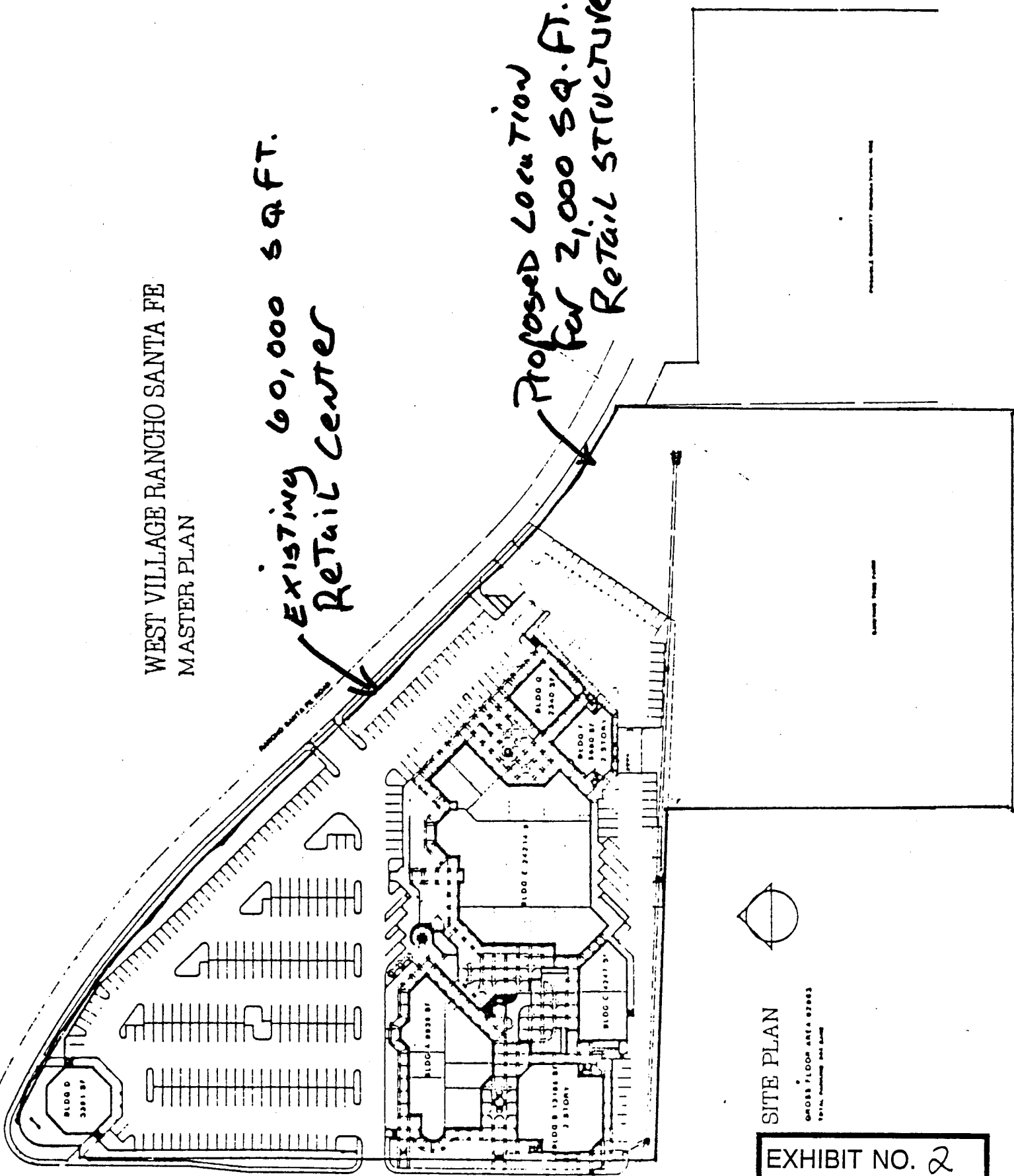
(6034R)



WEST VILLAGE RANCHO SANTA FE  
MASTER PLAN

Existing 60,000 SQ. FT.  
Retail Center

Proposed Location  
for 21,000 SQ. FT.  
Retail Structure



SITE PLAN

GROSS FLOOR AREA 97683  
1974, INCLUDING 2442 SHELTER

EXHIBIT NO. 2
APPLICATION NO. AG-ENC-96-34
Site Plan
California Coastal Commission



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8034

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

RECEIVED

MAR 04 1996



CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

San Diego Lagoon Conservancy  
P.O. Box 272634  
Encinitas CA 92024 (619) 436-3544  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas

2. Brief description of development being appealed: West Village Plaza expansion - retail development of 160-162 Ranch Santa Fe Rd. Filling of wetlands + floodplain

3. Development's location (street address, assessor's parcel no., cross street, etc.): 160-162 Ranch Santa Fe Rd. Encinitas CA 92024

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions:  \_\_\_\_\_
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: AG-ENC-96-34

DATE FILED: 3/4/96

DISTRICT: San Diego

EXHIBIT NO. 4
APPLICATION NO. AG-ENC-96-34
Appeal Application
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator      c.  Planning Commission  
b.  City Council/Board of Supervisors      d.  Other \_\_\_\_\_

6. Date of local government's decision: Feb. 14, 1996

7. Local government's file number (if any): 95-150 DR/CDP/EDA,  
APN: 259-191-14

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

West Village Center  
Pete Fletcher  
166 Rancho Santa Fe Rd., Brent Hills, CA 92024

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
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(2) \_\_\_\_\_  
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SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The project violates the city's LCP by destroying wet lands, and by filling floodplain area beyond what is permitted by the LCP, among other reasons.

Please see accompanying letter.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed Gregory A. Dennis  
Appellant or Agent

Date March 1, 1996

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_



# SAN ELIJO LAGOON CONSERVANCY

*Preserving And Enhancing San Elijo Lagoon*

RECEIVED

MAR 04 1996

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

March 1, 1996

California Coastal Commission  
3111 Camino del Rio Norte  
Suite 200  
San Diego, Ca. 92108

**Re: Fletcher appeal of Encinitas, Ca. Case # 25-150 DR/CDP/EIA, APN: 259-191-14**

Gentlepersons:

This letter outlines the reasons for an appeal filed today by the San Elijo Lagoon Conservancy (SELCO) of the City of Encinitas' approval of an application from West Village Plaza for proposed development at 16-162 Rancho Santa Fe Rd., Encinitas.

We base our appeal on the following reasons:

1. The Commission decision violates provisions of the City's LCP regarding allowable uses within the 100-year floodplain. Policy 8.2 clearly states that the only acceptable development within the floodplain "must be limited, designed to minimize hazards associated with development in these areas and to preserve area resources." The same policy states "No grading or fill activity other than the minimum necessary to accommodate those uses found safe and compatible shall be allowed." Yet the applicant proposes to put 1,800 cubic yards of fill on the site -- not to protect his property, but to create a permanent retail use. The applicant's plans to place 1,800 cubic yards of fill on the site clearly exceed "the minimum necessary," thereby violating the General Plan. This site is very environmentally sensitive, next to Escondido Creek and just upstream from the San Elijo Lagoon Ecological Reserve. Both the city's General Plan and Local Coastal Plan are clear in committing the city to giving high priority to protecting these resources.

2. The project approval violates provisions of the City's General Plan regarding protection of wetlands. Policy 10.6 states "The City shall preserve and protect wetlands within the City's planning area." This decision fails to meet that standard. The same city policy explicitly prohibits "wetland intrusion or impact" when a non-intrusive approach is available, as it is in this case. Furthermore, Policy 10.6 explicitly prohibits wetland



mitigation if wetland destruction can be avoided, as it can in this case. The project also fails to meet any one of the four standards that would allow wetlands destruction.

3. If destruction of wetlands is to be allowed, the wetlands mitigation standard applied by the city is too low. Governmental entities apply wetland mitigation ratios higher than 1:1, because wetland mitigation is such an uncertain science. In many well documented cases, wetland mitigation projects that begin at ratios of 3:1 or 4:1 result in significantly less wetland, because the replacement projects often do not work anywhere near 100 percent. We note that the city General Plan requires mitigation to achieve a net gain in wetlands acreage. To achieve this goal, a higher ration should be required than 1.5:1. It is for this reason, for example, that the required mitigation on the nearby La Bajada bridge was 4:1.

4. In setting an inadequate mitigation standard, the city incorrectly relied upon an inaccurate document from the California Department of Fish and Game. The document was cited to justify a retail project. Yet the document itself, dated 11/9/95, describes the applicant's project as "repair of damage to east section of West Village Center." The proposed project in fact goes much further than that. It would destroy wetlands, improperly fill the floodplain, and establish an unpermitted retail use.

5. The Commission's decision ignores the City's role as the regulatory body within the Coastal Zone. As stated in a July 11, 1995 letter to the City from Coastal Commission staff, in approving the West Village Center, the Coastal Commission made it clear that any further development upon the site would be inappropriate with the Coastal Act. With adoption of the LCP, it falls to the City to enforce this policy. Yet the City has failed to provide such enforcement, and, in its low mitigation requirements, actually sets an even more lax standard for projects within the Coastal Zone and adjacent to environmentally sensitive habitat.

Thank you for your consideration. We look forward to the opportunity to explain these concerns in greater detail at an appeal hearing.

Sincerely,

GREGORY DENNIS  
Executive Director

# West Village Inc.

at Rancho Santa Fe

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MAR 10 1996  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

10.20

March 19, 1996

HAND DELIVERED

California Coastal Commission  
Suite 200  
3111 Camino del Rio North  
San Diego, CA 92108-1725

Re: San Elijo Lagoon Conservancy Appeal of  
West Village, Inc.  
Local Permit Case No. 95-150 DR/CDP/EIA  
APN 259-191-14 Appeal No. A6-ENC-96-34

Dear Members of the Commission:

We have received the notification of appeal, dated March 4, 1996, of our approved permit decision from the City of Encinitas. Having read the Appellant's reasons for their appeal in Section IV, and, as stated in their attached letter, dated March 1, 1996, we wish to provide you with our considered response as follows:

Section IV - Reasons for Appeal. This project does not, as charged by Appellant, "violate the City's LCP by destroying wetlands; and by filling flood plain beyond what is permitted by the LCP." All filling and grading of these isolated, man-made and non-functional wetlands of approximately 4600 square feet and adjacent flood plain is permitted under the policies and provisions of the Encinitas LCP as clearly shown and documented in the City's record of review, and findings at all hearing levels, (the Olivenhain Community Advisory Board, the Planning Commission and the City Council). (See specific LPC and general plan policies listed below). Our further response to charges listed within the March 1, 1996 Appellant letter are as follows in numerical order:

1. "The Commission Decision violates provisions of the LCP regarding allowable uses within the 100-year flood plain, and
2. The project approval violates provisions of the City's general plan regarding protection of wetlands.

The Appellant has appealed all three decisions of the City of Encinitas hearing bodies (the Community Advisory Board, Planning Commission and City Council); presenting unsubstantiated charges and quoting bits and pieces of the LCP and general plan policies

162 South Rancho Santa Fe Road, Suite B-70, Encinitas, California 92024, (619) 436

1 of 22

EXHIBIT NO. 5
APPLICATION NO. A6-ENC-96-34
Applicant's Response TO Appeal
California Coastal Commission

out of proper context. We refer you to the complete policy statements contained in the records and findings provided you by the City of Encinitas. Policy 8.2 and 8.10 of the land use element of the City's general plan and LCP and resource management element Policy 10.6 of the City's general plan and LCP were carefully reviewed and fully complied with in making these decisions. See in particular the staff report prepared for the November 30, 1995 Planning Commission Hearing, which includes the Olivenhain staff reports for July 25, 1995 and September 5, 1995. Appellant also charges in reason No. 1 that we are attempting "To create a permanent retail use" implying that the area in question was never the subject of prior commercial development, while in reality, the project area has been continuously used and zoned for general commercial purposes since 1989 and during the prior 100 years was similarly used and developed with retail and industrial buildings.

Appellant also maintains, "This site is very environmentally sensitive, next to Escondido Creek, and just upstream from the San Elijo Lagoon Ecological Reserve." The truth is, the site supported nine commercial building before they were removed under a Coastal Permit in 1984 and 1985. Since then, under the West Village Center Redevelopment, the site has contained the public storm drain system, two sewer mains, portions of West Village Center's parking lot and lighting system and was landscaped with bermuda grass and irrigated by an automatic sprinkler system. In addition, the site is not "next to Escondido Creek." The established stream-bed is approximately 400 ft. to the east! West Village Center is several miles upstream from the San Elijo Reserve not "just upstream." It should be noted that the Applicant planted the bermuda grass that the Appellant is now calling wetlands.

3. "If destruction of wetlands is to be allowed, the wetlands mitigation standard applied by the City is too low". and 4. "City relied upon an inaccurate document from the California Department of Fish and Game. Here again, the Appellant offers no substantiation, or scientific study for their purported charges. The need to mitigate the loss of 4610 square feet of man-made, non-functional and isolated wetlands was reviewed by qualified field biologists for the Army Corps of Engineers, the County of San Diego and the Department of Fish and Game. The 1.5 to 1 mitigation approved by the City of Encinitas exceeds by 50% what was required by the U.S. Army Corps. of Engineers in issuing their permit. The local field biologists for the California Department of Fish and Game, who visited the site at the request of the City of Encinitas has confirmed the 1.5 to 1 ratio as appropriate for this project given the marginal quality of the wetlands resource.

4. "The Commission's decision ignores the City's role as the regulatory body within the Coastal Zone. Again, the Appellant

misstates the facts. A careful reading of the July 11, 1995 letter to the City from your staff, does not" make it clear that any further development upon the site would be inappropriate with the Coastal Act." In addition, there is absolutely no such suggestion in either of our 1984 or 1985 Coastal permits or findings. The reference to the subject site was that since it was not then zoned general commercial and no development plan was prepared, any further fillings of the flood plain would be "premature" at that time. (See attached permits and findings for 1984/1985).

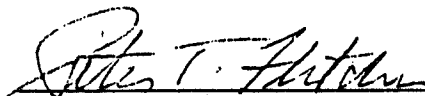
In April of last year, almost one year ago, West Village, Inc. requested an administrative permit from your San Diego Office to permit us to repair and restore our property damaged by the recently completed County of San Diego Bridge Project, which was approved and permitted by your Commission in 1994. We were advised by your staff to seek a regular permit from Encinitas or request the County to amend their bridge permit and perform this work. The County has paid for or actually provided all necessary restoration work to all other private property adjacent to the bridge project. We have received funds from the County to perform our work through a condemnation proceeding in connection with the bridge project at West Village. Ours was the only developed property under Coastal jurisdiction involved in the County's Rancho Santa Fe Road Bridge Project. In fact, if the subject property were on the other side of Rancho Santa Fe Road, upon which it fronts, it would be outside of the Coastal Commission's jurisdiction entirely.

Based on the foregoing, clearly there is no substantial issue to be reviewed and this appeal should be rejected pursuant to California Public Resources Code Section 30625. This has been a long, and expensive experience for us in attempting to remedy the damage done to us and to seek approval for the project in accordance with standard discretionary review by the City. We hope it is now over and you will allow us to proceed to obtain our LCP permit from the City of Encinitas to repair our property by denying this latest appeal by the San Elijo Lagoon Conservancy.

Thank you for your kind consideration.

Sincerely,

West Village, Inc.



Peter T. Fletcher  
President

PTF:ed  
Enclosure

California Coastal Commission  
San Diego District  
6154 Mission Gorge Road, Suite 220  
San Diego, California 92120  
(619) 280-6992  
ATSS 636-5868

COASTAL DEVELOPMENT PERMIT NO.

6-84-368

Page 1 of 3

On August 23, 1984, The California Coastal Commission granted to  
Peter T. Fletcher

this permit for the development described below, subject to the attached  
Standard and Special conditions.

Application No.: 6-84-368

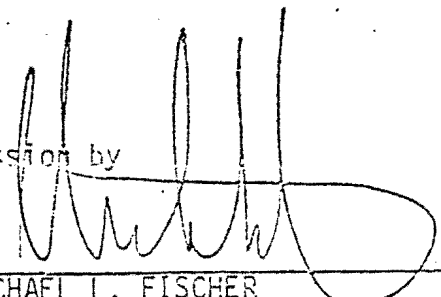
Applicant: Peter T. Fletcher

Description: Demolition of existing buildings. Construction of street im-  
provements on El Camino Real and Encinitas Blvd. Grading of  
site (including 26,100 cubic yards of imported fill) totaling  
approximately 28,225 cubic yards. Construction of underground  
storm drain.

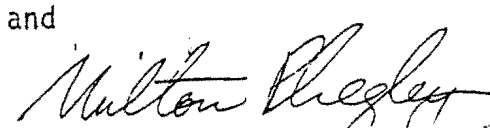
Lot area	9.13 acres
Zoning	C-32, RR2, A-70
Plan designation	Neighborhood Commercial, Residential (2 du), Impact Sensitive Area

Site: Southeast corner of Encinitas Boulevard and Manchester Avenue,  
Encinitas, San Diego County. APN 259-191-25; 259-191-14

Issued on behalf of the California Coastal Commission by



MICHAEL L. FISCHER  
Executive Director  
and

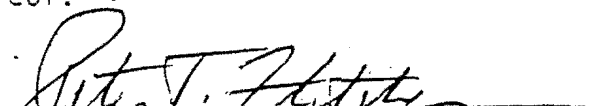


**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS  
AND UNTIL A COPY OF THE PERMIT WITH THE  
SIGNED ACKNOWLEDGEMENT HAS BEEN RE-  
TURNED TO THE COMMISSION OFFICE.**

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of  
this permit and agrees to abide by all terms and  
conditions thereof.

4-26-84  
Date

  
Signature of Permittee



STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Floodplain Development. Prior to the transmittal of a coastal development permit for this project, the applicant shall submit a revised site and grading plan for review and acceptance in writing by the Executive Director. Said revised plan shall show the deletion of all grading within the 100-year floodplain shown on the applicant's submitted grading plan. Activity within the 100-year floodplain will be limited to removal of existing buildings and installation of storm drain.

Special Conditions (continued)

2. Waiver of Liability. Prior to transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording, free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from flooding and the applicants assume the liability from these hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards, and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of flooding.

California Coastal Commission  
SAN DIEGO COAST DISTRICT  
6154 Mission Gorge Road, Suite 220  
San Diego, CA 92120  
(714) 280-6992

FILED: July 9, 1984  
49th - Y: August 27, 1984  
180th JAY: January 6, 1985  
STAFF: MP:am  
STAFF REPORT: August 13, 1984  
HEARING DATE: August 21-24, 1984

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-84-368

Applicant: Peter T. Fletcher

Description: Demolition of existing buildings. Construction of street improvements on El Camino Real and Encinitas Blvd. Grading of site (including 26,100 cubic yards of imported fill) totaling approximately 28,225 cubic yards. Construction of underground storm drain.

Lot area	9.13 acres
Zoning	C-32, RR2, A-70
Plan designation	Neighborhood Commercial, Residential (2 dua), Impact Sensitive Area

Site: Southeast corner of Encinitas Boulevard and Manchester Avenue, Encinitas, San Diego County. APN 259-191-25; 259-191-14

Substantive File Documents: County of San Diego San Dieguito Land Use Plan (conditionally certified); San Dieguito Implementing Ordinances (draft)

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed project with special conditions to assure consistency with the floodplain development and habitat protection.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development

COMMISSION ACTION ON AUG. 23 1984

- Approved as Recommended
- Denied as Recommended
- Approved with Changes
- Denied
- Other





will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions.

See page 4.

## III. Special Conditions.

The permit is subject to the following conditions:

1. Floodplain Development. Prior to the transmittal of a coastal development permit for this project, the applicant shall submit a revised site and grading plan for review and acceptance in writing by the Executive Director. Said revised plan shall show the deletion of all grading within the 100-year floodplain shown on the applicant's submitted grading plan. Activity within the 100-year floodplain will be limited to removal of existing buildings and installation of storm drain.

2. Waiver of Liability. Prior to transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording, free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from flooding and the applicants assume the liability from these hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards, and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of flooding.

## IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Proposed Project. The applicant proposes to remove existing structures and grade a site for future development. Manchester Avenue and Encinitas Boulevard will be improved as part of this site preparation and a storm drain and energy dissipator will be installed to drain Manchester Avenue to the east.

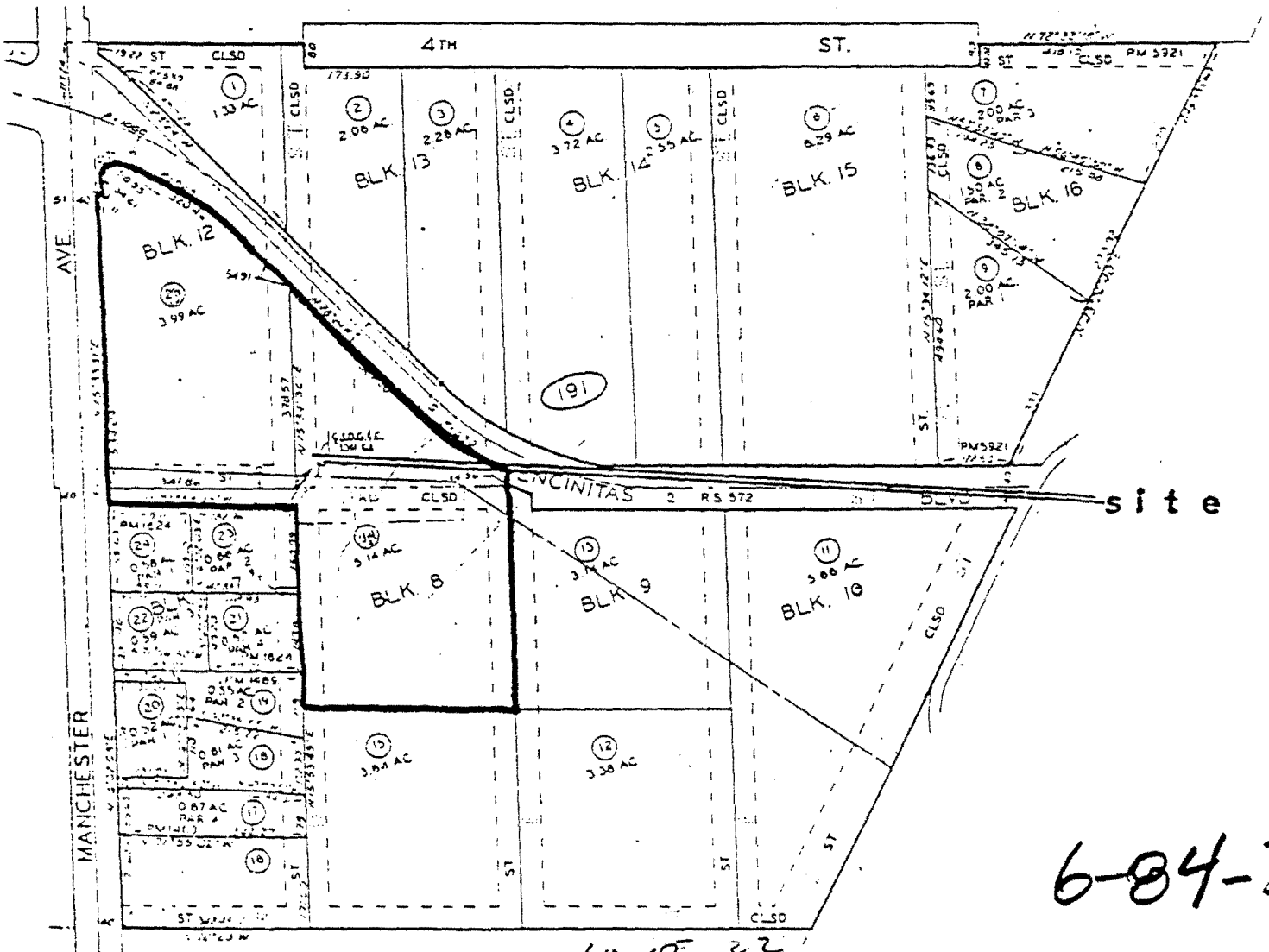
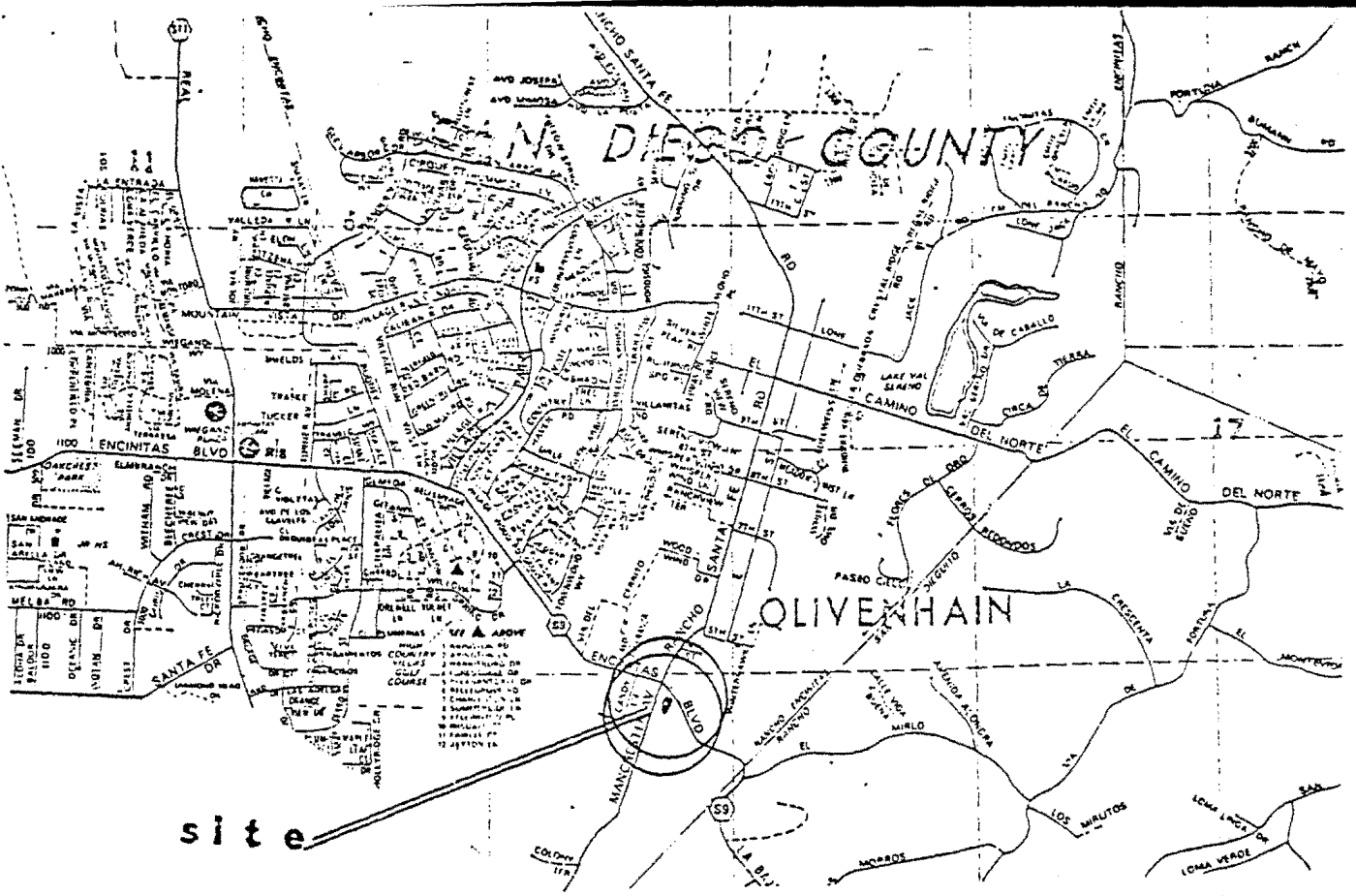
The project site is located in a developing neighborhood commercial and residential area at the eastern boundary of the coastal zone. Office and commercial development exists to the west and northwest with residential development to the south and southwest; and, agriculture-related uses to the north. The southwestern and eastern portions of the project site are part of Escondido Creek which also forms a portion of the extreme eastern basin of San Elijo Lagoon. Portions of the project site contain significant riparian vegetation and wetland habitat although development is not proposed for those areas.

The draft implementing ordinances are generally consistent with the LUP policies; and, would require discretionary review for any activity within the Impact Sensitive area (floodplain and an upland 100-foot area). Activity which would not be allowed would be any involving wetland fill, increased sedimentation, decrease of stream flow, or impacts on habitat or scenic values. Within the Impact Sensitive area, very low density (one dwelling unit per 4, 8 or 20 acres) would be allowed based upon a site plan review to ascertain and minimize impacts. The presently proposed fill and grading in the floodplain is not associated with any specific development proposal and is found to be premature.

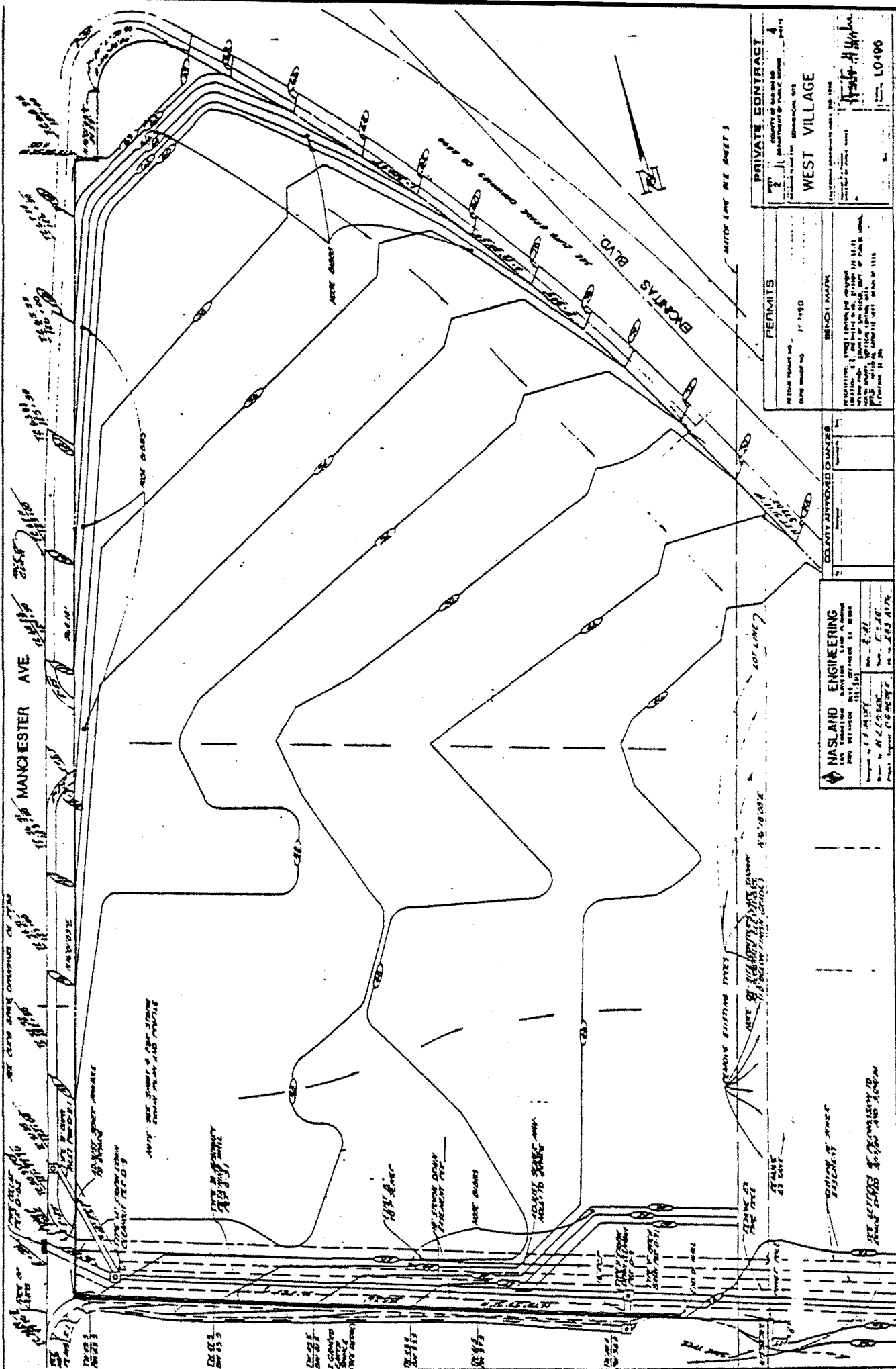
The proposed project, as conditioned, would be consistent with the LUP policies as it would eliminate development within the 100-year floodplain and any potential impacts on habitat or hydrology. Approval of the proposed project would not prejudice the County's LCP preparation abilities.

#### STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



6-84-36



**PRIVATE CONTRACT**  
 COUNTY OF HAMILTON  
 DISTRICT OF PUBLIC WORKS  
 PROJECT NO. 10-1000  
**WEST VILLAGE**  
 CONTRACT NO. 10-1000  
 CONTRACT VALUE \$1,000,000.00  
 CONTRACTOR: [Name]

**PERMITS**  
 PERMIT NO. 1-1490  
 ISSUE DATE: 1-14-90  
 EXPIRES: 1-14-91  
 PROJECT: [Name]

**COUNTY APPROVED DIMENSIONS**  
 [Table with dimensions and notes]

**HASLAND ENGINEERING**  
 1000 [Address]  
 [City, State, Zip]  
 [Phone Number]  
 [Fax Number]

6-E  
36





## CALIFORNIA COASTAL COMMISSION

COASTAL DEVELOPMENT PERMIT NO. 6-85-418

SAN DIEGO COAST DISTRICT

Page 1 of 3

1333 CAMINO DEL RIO SOUTH, SUITE 125

SAN DIEGO, CA 92108-3520

(619) 297-9740



On September 27, 1985, the California Coastal Commission granted to Peter T. Fletcher this permit for the development described below, subject to the attached Standard and Special Conditions.

Description: Construction of neighborhood commercial center containing approximately 62,250 gross square feet of space in seven one- and two-story buildings.

Lot Area	9 acres (392,040 sq. ft.)
Building Coverage	53,617 sq. ft. (14%)
Pavement Coverage	116,444 sq. ft. (30%)
Landscape Coverage	50,946 sq. ft. (13%)
Unimproved Area	171,033 sq. ft. (43%)
Parking Spaces	332
Zoning	C32, S86, A70
Plan Designation	Neighborhood Commercial and Impact Sensitive
Ht abv fin grade	35 feet

Site: Southeast corner of Rancho Santa Fe Road and Manchester Avenue, Encinitas, San Diego County. APN 259-191-14 and -25.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive Director  
and

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

## ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

12-19-85  
Date

Peter T. Fletcher  
Signature of Permittee

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Signs. Prior to the transmittal of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director a detailed sign plan for the subject development proposal in substantial conformance with the Commission's Regionwide Interpretive Guidelines on signs.



SPECIAL CONDITIONS - continued:

2. Applicant's Assumption of Risk. Prior to the transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens, except for tax liens, that binds the applicants and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from flooding, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards, as a consequence of approval of the project; and (c) the applicants understand that construction in the face of such known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of flooding.

(5418P)

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT  
1333 CAMINO DEL RIO SOUTH, SUITE 125  
SAN DIEGO, CA 92108-3520  
(619) 297-9740

Filed: August 12, 1985  
49th Day: September 30, 1985  
180th Day: February 9, 1986  
Staff: PW-SD-C  
Staff Report: September 10, 1985  
Hearing Date: September 25-27, 1985



STAFF REPORT: CONSENT CALENDAR - *hand as RC*

Application No.: 6-85-418

Applicant: Peter T. Fletcher

Description: Construction of neighborhood commercial center containing approximately 62,250 gross square feet of space in seven one- and two-story buildings.

Lot Area	9 acres (392,040 sq. ft.)
Building Coverage	53,617 sq. ft. (14%)
Pavement Coverage	116,444 sq. ft. (30%)
Landscape Coverage	50,946 sq. ft. (13%)
Unimproved Area	171,033 sq. ft. (43%)
Parking Spaces	332
Zoning	C32, S86, A70
Plan Designation	Neighborhood Commercial and Impact Sensitive
Ht abv fin grade	35 feet

Site: Southeast corner of Rancho Santa Fe Road and Manchester Avenue, Encinitas, San Diego County. APN 259-191-14 and -25.

Substantive File Documents: Certified County of San Diego San Dieguito LCP Land Use Plan  
Certified (with suggested modifications) San Dieguito LCP Implementing Ordinances  
CCC #6-84-368

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to

COMMISSION ACTION ON SEP. 27 1985

- Approved as Recommended  
 Denied as Recommended  
 Approved with Changes  
 Denied

12 of 22

the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Signs. Prior to the transmittal of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director a detailed sign plan for the subject development proposal in substantial conformance with the Commission's Regionwide Interpretive Guidelines on signs.

2. Applicant's Assumption of Risk. Prior to the transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens, except for tax liens, that binds the applicants and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from flooding, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards, as a consequence of approval of the project; and (c) the applicants understand that construction in the face of such known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of flooding.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description And History. Proposed is the demolition of an existing metal storage shed and produce stand and the construction of an approximately 62,000 square foot shopping center on a previously graded nine acre site. The proposed structures will be both one- and two-story, and will be a maximum of 35 feet high. About 51,000 square feet of the total nine acres will be landscaped (about 13%). A total of 322 parking spaces will be provided to serve the proposed development.

The site of the proposed development was graded and received other site improvements, including two storm drains, under CCC Permit #6-84-368. This permit was issued subject to special conditions regarding a limitation on grading or other forms of development within the 100-year floodplain and the Commission's usual assumption of risk requirements for the applicant. These conditions were satisfied prior to the transmittal of the permit.

The project site is located in an area that has been planned by the County of San Diego for Neighborhood Commercial and Impact Sensitive uses, and has been zoned C32, S86 and A70. The site is bordered on the west by an office/commercial development, on the south and east by vacant land, and on the north by vacant land and a non-conforming trucking facility. The floodway which drains into San Elijo Lagoon passes beyond the southeast corner of the subject property.

2. Consistency with Chapter 3 Policies of the Coastal Act. Section 30233 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard. The subject development proposal involves the construction of a commercial center very near to the boundary of the 100-year flood plain. Based upon FEMA mapping, a portion of the project's parking and landscaping will be located within the floodplain, but not in the floodway itself. Although the paving will alter the character of the floodplain, the area involved is small, devoid of any sensitive habitat and isolated within a backwater flooding area.

The remainder of the project, that is the commercial structures themselves, will be at least 100 feet away from the limits of the 100-year floodplain. Additionally, the building pads for these structures have been raised during the grading authorized under Permit 6-84-368. However, even though the structures are located on raised pads and are completely outside the floodplain, the Commission cannot guarantee that there will be no risk associated with flooding experienced by the applicant, future owners or the general public. For this reason, the special condition requiring the recordation of an applicant's assumption of risk has been proposed, requiring the applicant to acknowledge this potential factor. Therefore, the Commission finds that the subject proposal is consistent with Section 30253 of the Act.

Section 30251 of the Act requires that the scenic and visual qualities of coastal areas be maintained. One method of maintaining the visual qualities of an area is to control the proliferation of on- and off-premises signs. For this reason, special condition #1 has been proposed. At the time of this writing, the details of the applicant's sign plan have not been finalized. The special condition would require that a sign program involving relatively small monument signs and facade signs be employed, preserving the semi-rural nature of the area. Therefore, the Commission finds that the subject development proposal is consistent with Section 30251 of the Coastal Act.

3. 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.

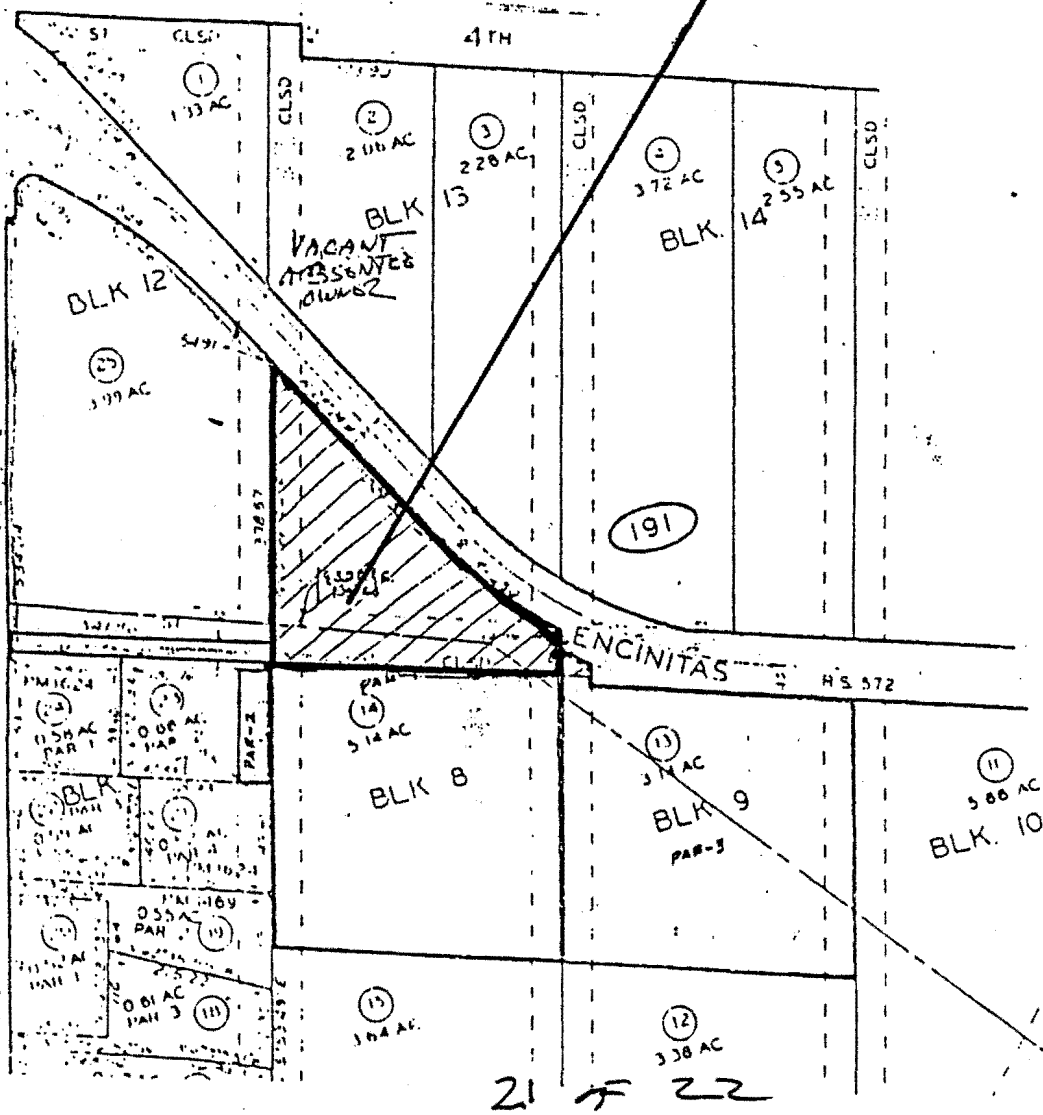
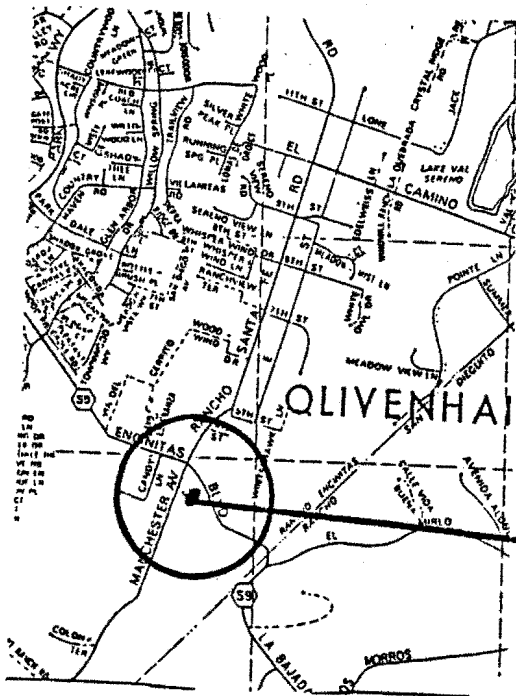
In this case, such a finding can be made. As stated above, the subject development proposal is consistent with the applicable policies of Chapter 3 of the Coastal Act. In addition, the proposed commercial development is to be located on those portions of the site that are both zoned and planned for

commercial uses, with the exception of the parking and landscaping at the easternmost portions of the property. These areas are designated "Impact Sensitive," but the uses proposed for these areas are allowed under the Impact Sensitive zoning classification.

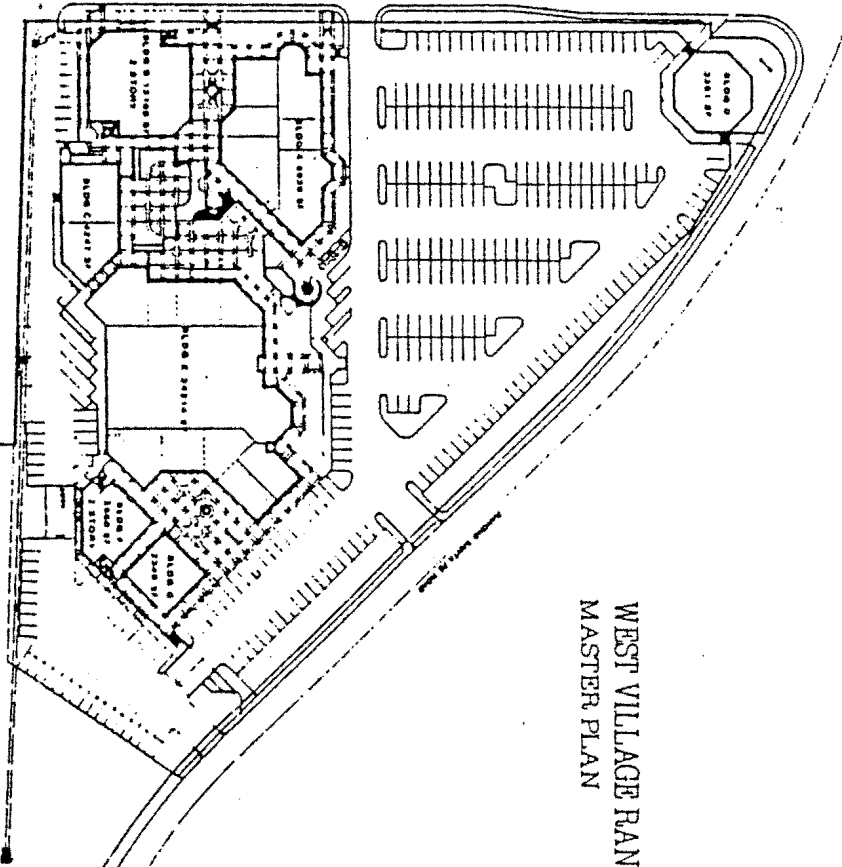
The project site is also located within the County of San Diego's Coastal Resource Protection (CRP) overlay zone. The effect of this zone is to preserve natural vegetation and landforms, particularly on slopes in excess of 25%. The site is flat, and have been previously graded. All vegetation has been removed. Therefore, the policies of the CRP zone are not applicable to the subject proposal. Given that the proposal is consistent with the plan and zone classifications attached to the project site by the County of San Diego, the Commission finds that the subject proposal will not prejudice the ability of the County of San Diego to prepare a certifiable Local Coastal Program for the San Dieguito communities.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
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4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



6-85-418



SITE PLAN

GROUP FLOOR PLAN, 2000  
 SCALE: 1/8" = 1'-0"  
 DATE: 12/10/08

WEST VILLAGE RANCHO SANTA FE  
 MASTER PLAN

6-85-418

	<b>INNIS - TENNEBAUM ARCHITECTS</b> <small>84 INDIA STREET, DOCK B, SAN DIEGO, CALIFORNIA 92101</small> <small>12-0-0108</small>	CONSULTANT	PROJECT NUMBER	REVISIONS BY DATE
		WEST VILLAGE	DRAWN BY DATE DRAWN	

