

CALIFORNIA COASTAL COMMISSION

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

Filed: 6/3/96
 49th Day: 7/22/96
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 Staff: LJM-SD
 Staff Report: 6/19/96
 Hearing Date: 7/9-12/96

STAFF REPORT: REQUEST FOR RECONSIDERATION

F8a

Application No.: A-6-ENC-96-34-R

Applicant: West Village Inc./Peter Fletcher

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

Description: Request for reconsideration of denial of a permit for the 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.

Commission Action and Date: On April 11, 1996, the Commission found, on appeal, that the project as approved by the City of Encinitas, raised a substantial issue with respect to its conformity with the certified Local Coastal Program (LCP). Then, on May 7, 1996, the Commission denied the application to construct the 2,000 sq. ft. retail structure.

PROCEDURAL NOTE

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial of an application. (14 CA. Admin. Code 13109.2)

The regulations state further that the grounds for reconsideration of a permit action shall be provided in Coastal Act Section 30727 which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission votes for the reconsideration, the de novo hearing would be scheduled at a subsequent Commission hearing.

APPLICANT'S CONTENTION:

In the letter attached dated June 3, 1996, the applicant contends that the Commission should reconsider its action because: 1) the applicant's consultant has conducted a new delineation of the wetlands on the site that presents different information than the study previously relied on by the applicant and Commission staff; 2) the applicant did not receive a copy of the staff report addendum until the day of the Commission hearing and therefore, did not have sufficient time to review it and respond to its contents; 3) denial of the application leaves the applicant no options except to submit a new application for an alternative means to address the on-site drainage concerns; 4) the City's LCP contains exceptions to the prohibition on fill of floodplain and wetlands that are applicable to the proposed project.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been documented. Specifically, a new wetlands study could have been conducted at any time prior to the hearing and, the new study that was completed does not indicate that no wetlands are present; the alternatives presented by staff in the staff report addendum were discussed prior to the hearing with the applicant's engineering consultant; and, the applicant made all the same arguments regarding alternatives and LCP consistency at the May 7, 1996 hearing.

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Denial

The Commission hereby denies the request for reconsideration of the proposed development on the grounds that no new relevant evidence has been presented that could not have been presented at the hearing nor has there been an error of fact or law with the potential of altering the Commission's initial decision.

II. Findings and Declarations.

1. History. The applicant is requesting that the Commission reconsider its denial of the applicant's request to fill wetlands and floodplain and construct a 2,000 sq. ft. retail structure on an approximately 9 acre site containing an existing approximately 60,000 sq. ft. commercial center. 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. The permit also included approval of construction of some parking and landscape improvements for the center within the 100-year floodplain. This permit was approved with conditions requiring the submittal of a sign program for the center and recordation of a waiver of liability for the development, again requiring the applicant to acknowledge that the site may be subject to hazard from flooding and to assume the liability from this hazard. Subsequently, the conditions were satisfied, the permit was released and the center was constructed.

Subsequently, in February of 1994, the Commission approved CDP #6-93-155/County of San Diego for construction of a new bridge over Escondido Creek (La Bajada Bridge). The bridge was to replace an existing "dip" crossing which frequently flooded during storm events. This permit was approved by the Commission subject to a number of special conditions, which included mitigation for all unavoidable impacts to wetlands. To accommodate construction of the bridge and its approach, the eastern-most portion of the site subject to this appeal, was needed, and obtained by the County utilizing its power of eminent domain. As a result of the bridge construction, Rancho Santa Fe Road adjacent to the site was elevated. The applicant contends that the bridge construction has "damaged" his property by altering on-site drainage in the easternmost parking lot and landscape area (where the subject development is proposed) which has led to site drainage from the eastern parking lot to be directed east to the landscaped area, instead of to the existing catch basin for the parking lot. This redirection of a portion of the parking lot drainage has led to some ponding of water in a low spot of the landscaped/floodplain area of the site. It is because of this concern that the applicant contends that the proposed project is necessary to protect the existing commercial center from flood damage caused by the road project.

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. In May of 1995, the applicant sought approval of a coastal development permit from the City of Encinitas for construction of a 2,000 sq. ft. commercial center, with approximately 1,900 cubic yards of fill, describing it as necessary to protect the existing commercial center from flooding. At that time, Commission staff provided written comments to the City outlining specific LCP consistency

concerns raised by the proposed development (see attached Exhibit #2). The proposed development was originally approved by the City's Olivenhain Community Advisory Board (CAB) on September 5, 1995 and that decision was appealed to the City of Encinitas Planning Commission and subsequently to the City Council. The City Council approved the development on February 14, 1996, finding the project consistent with the LCP as an incidental public service project necessary to protect existing development (the existing commercial center).

Because the subject development is located within 100 feet of a wetlands, it falls within the Commission's appeals jurisdiction. On March 4, 1996, the development approval of the City was appealed to the Coastal Commission who, at their April 11, 1996 meeting, found that a substantial issue exists with regard to the reason for the appeal and recommended a de novo hearing be scheduled. At the May 7, 1996, de novo hearing, the Commission denied the permit request, finding that the project was inconsistent with the certified LCP.

2. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit #1 attached) contends that there is relevant new evidence that was not available at the time of the hearing on the matter and that errors of fact or law occurred which have the potential of altering the Commission's decision on this permit. Specifically, the applicant's first contention is that a new wetlands study for the project site has been prepared by the applicant's consultant, which was not available at the May 7, 1996 hearing and that the new study contains different information than then the study previously relied on by the applicant and the Commission. The original wetland study for the site presented by the applicant and relied upon by both the City of Encinitas and the Commission in their review of the project was never disputed by the applicant nor by any of the other permitting/regulatory agencies (i.e., California Department of Fish and Game, Army Corps of Engineers, etc.) that reviewed the project. If the findings of the original wetland study were unacceptable, the applicant could have had a new study prepared at any time during the permit process. However, no new study was submitted by the applicant until after the project was denied by the Commission. The project was appealed to the Commission on March 3, 1996 and the project did not go to hearing until April 9, 1996 (substantial issue) and May 7, 1996 (de novo hearing). As such, there was ample time during this time frame for the applicant to have a new wetlands study completed and submitted for review prior to the May 7, 1996 hearing. The fact that a new study has now been prepared which contains differing information/conclusions than the original study relied upon by the applicant and the Commission, is not grounds for reconsideration. In addition, although the new wetlands study presented by the applicant does indicate a lesser area of wetlands would be affected by the project, the fact remains that wetlands would still be impacted by the project. Because wetlands would still be impacted by the project, the same LCP policies would also apply. Thus, even though the new delineation provides different information than the original study, the proposed development would still require the fill of wetlands and therefore, the study is not relevant information that could potentially change the Commission's decision on the project.

The applicant's second contention is that Commission staff prepared an addendum to the original staff report that outlined some potential alternatives to the project, but that the addendum report was not made available to the applicant until the day of the hearing, thereby not allowing the applicant sufficient time to review and respond to the information presented. The staff report addendum contained information describing in greater detail the on-site drainage concern raised by the applicant as well as some possible alternatives to address the on-site drainage concern that did not include fill of the floodplain or wetlands. Because LCP policies require any proposed development pertaining to "flood control" to be the least environmentally damaging alternative, the applicant should have already considered alternatives to the project. In addition, Commission staff had reviewed the potential alternatives cited in the staff report addendum with the applicant's engineering consultant as well as with the City Engineering Department at least one week prior to the May 7, 1996 hearing. Thus, while it is true the applicant did not receive the staff report addendum until the day of the hearing, its contents had already been discussed with the applicant's consultant. Additionally, while Commission staff make every effort possible to make available written staff report addendum materials to the applicant as early as possible before the hearing on the matter, sometimes it is not possible until the day of the hearing. Also, Commission regulations do not require that staff report addenda be distributed to applicants or the public before the hearing on the matter. As such, this contention does not represent an error of fact or law.

The third contention presented by the applicant is that because there is a drainage problem on the site that has been caused by the construction of the adjacent La Bajada Bridge, by denying the applicants permit request without allowing additional review of less environmentally damaging alternatives, the applicant is left without a remedy to the drainage problem other than to apply for a new permit. While the Commission does acknowledge the applicant's concern with on-site drainage, the applicant contention that they have not been afforded the opportunity to review other less environmentally damaging alternatives has no basis. The applicant has been aware of the Commission's concern with the proposed project as early May of 1995 and these concerns were transmitted to the applicant and the City in writing on July 11, 1995 (ref. Exhibit #2 attached). The applicant has subsequently met with Commission staff on several occasions to discuss the project at which time it was suggested that there may be other less environmentally damaging alternatives to address the drainage concern that do not include floodplain or wetland fill. In addition, the applicant testified at the May 7, 1996 Commission hearing that the proposed project did constitute the least environmentally damaging alternative and that no other reasonable alternatives were available. However, while the Commission did deny the proposed fill and structure in the floodplain/wetlands, this does not preclude other valid uses of the property. The LCP does provide for some uses which are compatible with periodic flooding. In addition, as stated above there are other means to address the on-site drainage concerns that do not include fill of floodplain or wetlands that have already been discussed with the applicant. In any event, none of this is new information and therefore, the Commission finds that there are no grounds for reconsideration based upon the above contentions.

The applicant's fourth contention is that while the Commission determined that the City of Encinitas Local Coastal Program (LCP) prohibits projects involving fill of the floodplain and wetlands, the LCP does in fact contain applicable exceptions which would permit the project as originally proposed. Again, this contention does not represent an error of fact or law. The staff report for denial of the project contained very detailed findings which analyzed the applicable LCP policies related to floodplains and wetlands. The Commission's conclusion was that the LCP exceptions to floodplain and wetland fill policies cited by the applicant did not apply to the proposed project. In addition, in the applicant's letter responding to the staff's recommendation on both the substantial issue determination and the de novo hearing, the same LCP policy provisions were cited and taken into consideration by the Commission. In other words, the applicant's contention does not cite any new LCP provisions that have not already been reviewed nor claim that the Commission overlooked any provision, but instead simply disagrees with the application of the LCP provisions by the Commission.

In summary, the applicant has not presented any relevant new facts or information that could not have been available at the time this matter was heard by the Commission. Although a new wetlands delineation was prepared, it could have been prepared before the hearing and the information it contains is not relevant because it still finds that wetlands would be impacted by the proposed development. In addition, the applicant has not documented any errors of law, but instead just cites the same provisions that have already been addressed and thoroughly examined by the Commission. As such, the Commission finds that pursuant to Section 30627 of the Coastal Act, no grounds for reconsideration exist and therefore, the request is denied.

(1157A)

West Village Inc.

at Rancho Santa Fe

June 3, 1996

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Peter M. Douglas (via Federal Express)
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Mr. Charles Daum (Hand Delivered)
District Director
California Coastal Commission
3111 Camino Del Rio, North
Suite 200
San Diego, California 92108-1725

Re: Appeal #A-6-Enc-6-34
Request for Reconsideration

Dear Mr. Douglas and Mr. Daum:

Pursuant to my conversation of 5/21/96 with Mr. Daum, we are delivering a duplicate original of our request for reconsideration to the San Diego office to his attention. We request reconsideration of the May 7, 1996 decision to deny issuance of a Coastal Development Permit on the above matter, pursuant to Public Resources Code sections 30626, 30627 and Article 18 of the Coastal Commission Administrative Regulations, on grounds including but not limited to the following:

1. Applicant has subsequently received a new wetlands study prepared by Dudek & Associates, which study was not available at the May 7, 1996 hearing, containing findings that would eliminate staff concern regarding the alleged impact to wetlands caused by the project as originally proposed, and will shed further light on the true nature of the project area as well as damage caused to West Village Center by the recently completed Rancho Santa Fe Road Bridge. In fact, said study shows (at page 10 section 6.1.1) that only .005 acre of manmade wetlands would be affected by the project (240 sq. ft.) as previously submitted. Please note that this same firm, Dudek & Associates, performed the mitigation aspect of the adjacent La Bajada Bridge project for the County of San Diego. (See page 2 section 3.0 of report.) This report also states (on page 1, paragraph 2 and page 9, paragraph 2) that the "wetland" swale (drainage area) over the northern edge of the site was artificially created by the county La Bajada Bridge project.

162 South Rancho Santa Fe Road, Suite B-70, Encinitas, California 92024, (6

EXHIBIT NO. 1
APPLICATION NO. A-6-ENC-96-34-R
REQUEST FOR RECONSIDERATION
California Coastal Commission

June 3, 1996

2. In addition, at the suggestion of the staff and members of the Commission at the May 7, 1996 hearing, the applicant with its engineer has explored the options presented in the May 1, 1996 addenda to the staff report. As this report was not copied or made available to the applicant or to its consultants prior to the day of the May 7, 1996 hearing, such review could not have been accomplished prior to the hearing.

Applicant now, in addition to its current grading plan, requests review of what could be a less environmentally damaging alternative grading plan for reconsideration, which greatly reduces required fill in the floodplain to 750 cubic yards, and eliminates the building from the project altogether. This newly available plan will, if approved, permit remedial grading to occur on a limited basis rectifying the drainage problem caused by the La Bajada Bridge project, and would make moot staff concerns regarding shopping center expansion in this application and almost entirely eliminate impact to jurisdictional wetlands. See Dudek & Associates report enclosed.

3. All parties, including the appellant and Coastal Commission Staff, as shown by the record of the May 7, 1996 hearing, have acknowledged the drainage problem as undisputed, caused specifically as a consequence of the construction of the La Bajada Bridge project under the permit issued by you in 1994. The May 7, 1996 decision denying the issuance of a permit without a specific requirement allowing additional staff review of less environmentally damaging alternatives within this application process leaves the applicant without a remedy to address this problem short of a new application. Reconsideration at this time would allow the alternative grading plan as well as the other additional new evidence to be reviewed by the Commission to allow for minimum expenditure of time and effort by all concerned.
4. With respect to Land Use Element Policy 8.2 of the Encinitas LCP, the Commission determined that the Encinitas LCP prohibited projects involving fill on the flood plain. In fact, there are applicable exceptions under paragraph 8.2 (b) which would permit the project as originally proposed as well as the new reduced alternate grading plan to rectify the damage to applicant's property. Paragraph 8.2 (b) reads as follows:

"Development of circulation element roads, other necessary public facilities, flood control projects

June 3, 1996

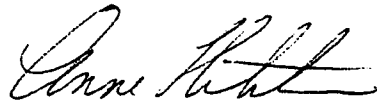
where no feasible method for protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development, and other development which has as its objective the improvement of fish and wildlife habitat."

Further, it should be noted that the Resource Management Element Policy 10.6 of the Encinitas LCP, subsection (c) permits remedial grading projects such as the one at issue be performed for restoration purposes. For the purposes of convenience by the Commission and staff alike, copies of 8.2 and 10.6 are attached hereto.

Enclosed accompanying this instant request are copies of the Dudek & Associates report and the modified grading plan with June 3, 1996 cover letter from Nasland Engineering. Applicant reserves the right to add to these additional submittals. Applicant wishes the courtesy in connection with the scheduling of the hearing on Reconsideration be timed in such a manner as to allow complete preservation of applicant's rights, and also sufficient time to allow applicant to work with staff in a productive manner to rectify the problems caused by the La Bajada Bridge project, preferably during the July, 1996 meeting of the Commission. Applicant also reserves the right to supplement this request for reconsideration.

Thank you for your anticipated courtesy.

Sincerely,



Anne Fletcher
Corporate Counsel

AF:jm

Enclosures

CALIFORNIA COASTAL COMMISSION

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



July 11, 1995

City of Encinitas
 505 South Vulcan Avenue
 Encinitas, CA 92024
 Attn: Craig Olson

Re: Proposed Development at 160 - 162 Rancho Santa Fe Road, Encinitas (Encinitas Permit #95-150 DR/CDP/EIA)

Dear Mr. Olson:

Commission staff has reviewed the information you provided pertaining to the construction of a 2,000 sq. ft. retail structure at the site of an existing commercial center at the above cited address in Encinitas. Based on our review, the following comments are provided. To begin with, the subject site is located within the Coastal Zone and as such requires issuance of a coastal development permit by the City. In addition, because the proposed development is located within 100 feet of wetlands (based on the draft Post-Certification Maps), the City's decision on the coastal permit is appealable to the Commission.

As stated, the project involves the construction of a 2,000 sq. ft. retail structure at the site of an existing commercial center. The structure is to be located in an undeveloped portion of the site, within the 100 year floodplain of Escondido Creek. To prepare the site for development to accommodate the structure, approximately 1,800 cubic yards of fill is proposed. In addition, based on a biological study of the project site prepared for the Army Corps of Engineers, the project will directly impact approximately 4,600 sq. ft. of wetlands (cismontane alkali marsh).

Specific to the project's consistency with the certified LCP, a number of concerns are raised. Policy 8.2 on Page LU-19 of the City's Land Use Plan/General Plan states that within the 100-year floodplain, only those uses consistent with periodic flooding are permitted, such as stables, some forms of agricultural and open space preservation. In addition, this policy states that no grading or fill activity other than the minimal necessary to accommodate those permitted uses found to be safe and compatible with periodic flooding shall be allowed and, that such grading shall in no way impede flows or require floodway modifications. Based on the information received, placement of fill and

EXHIBIT NO. 2
APPLICATION NO. A-6-ENC-96-34-12
STAFF COMMENT Letter
California Coastal Commission

Craig Olson
July 11, 1995
Page 2

construction of the proposed retail structure within the 100-year floodplain is clearly not consistent with this policy.

Section 30.34.040(b)(2) of the City's Implementation Plan/Municipal Code also pertains to floodplain development. This section states that fill or permanent structures shall only be allowed if, among other things, existing environmentally sensitive habitat areas will not be adversely affected and the development incorporates the findings of a site specific hydrological study. The information submitted to this office did not contain a hydrological study for the site. In addition, as noted above, the project will permanently displace approximately 4,600 sq. ft. of wetlands. As such, the development is not consistent with this section of the City's LCP.

Further, Policy 10.6 on Page RM-18/19 of the City's certified Land Use Plan and Section 30.34.040(B)(3)(a) of the City's Implementation Plan/Municipal Code states that within the Coastal Zone, the filling of wetlands shall be limited to projects/activities involving nature study, restoration purposes, incidental public service projects and mineral extraction. Based on this provision, the proposed development of a 2,000 sq. ft. retail structure and 1,800 cubic yards of fill is not a permitted use within a wetland.

In addition, even if the proposed development could be found a permitted use within a wetland, Policy 10.6 on Page RM-18/19 of the certified LUP also states that "wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable projects or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through 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 impacts so as to result in a net gain." The proposed mitigation plan for the project only includes replacement at a 1:1 ratio.

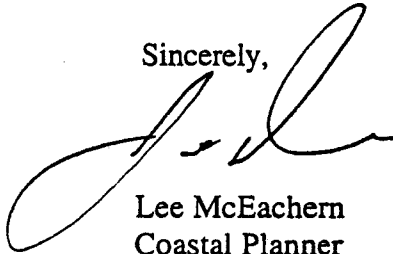
In addition, in 1984 and 1985, the Commission approved two coastal development permits for grading and development of a 62,250 sq. ft. commercial center on the site (ref. CDP Nos. 6-84-368/Fletcher and 6-85-418/Fletcher). As a condition of approval, the Commission required the project to be revised to delete all grading within the 100-year floodplain (except for installation of storm drain improvements). As such, as early as 1984/85, the applicant was aware of the Commission's concern related to development within the floodplain on this site. In addition, Commission staff has met with the applicant on several occasions to discuss the project and raised similar concerns as noted above.

In summary, based on our review of the information available, it does not appear that the proposed development can be found consistent with the City's certified LCP, nor with Chapter 3 policies of the Coastal Act. Again, thank you for the opportunity to comment

Craig Olson
July 11, 1995
Page 3

on this project early in the planning process. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee McEachern', written in a cursive style.

Lee McEachern
Coastal Planner

cc: Peter Fletcher
Bill Weedman

(Fletcher.doc)

CALIFORNIA COASTAL COMMISSION

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

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Staff: LJM-SD
Staff Report: 4/18/96
Hearing Date: 5/7-10/96



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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

SEE SUBSEQUENT PAGE 12
FOR COMMISSION ACTION

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

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

STAFF NOTES:

On April 11, 1996, the Commission found that substantial issue exists with respect to the grounds on which the subject appeal was filed. The subject report is the staff recommendation on the de novo hearing.

SUMMARY OF STAFF'S PRELIMINARY RECOMMENDATION:

Staff is recommending that the proposed project be denied because it is inconsistent with several provisions of the City's LCP pertaining to floodplain development and protection of wetlands in that the proposed 2,000 sq. ft. retail structure and approximately 1,800 cubic yards of fill are not permitted uses within a wetland or 100-year floodplain, do not constitute the least environmentally damaging alternative, are not necessary to achieve minimal reasonable use of the site and are not necessary to protect existing structures. In addition, there are other development alternatives available to increase the square footage of the existing commercial center that do not include floodplain fill or fill of wetlands.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Application; City of Encinitas Resolution Nos. 96-16,

EXHIBIT NO. 3
APPLICATION NO. A-6-ENC-96-34
Orig. STAFF Report
California Coastal Commission

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; City of Encinitas Agenda Reports for Community Advisory Board (CAB), Planning Commission and City Council meetings dated July 25, 1995, September 5, 1995, November 30, 1995 and February 14, 1996; Coastal Development Permit Nos. 6-84-368/Fletcher, 6-85-418/Fletcher and 6-93-155/County of San Diego.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the adopted Local Coastal Program, and will have significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. FINDINGS AND DECLARATIONS.

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. The permit also included approval of construction of some parking and landscape improvements for the center within the 100-year floodplain. This permit was approved with conditions requiring the submittal of a sign program for the center and recordation of a waiver of liability for the development, again requiring the applicant to acknowledge that the site may be subject to hazard from flooding and to assume the liability from this hazard. Subsequently, the conditions were satisfied, the permit was released and the center was constructed.

Subsequently, in February of 1994, the Commission approved CDP #6-93-155/County of San Diego for construction of a new bridge over Escondido Creek (La Bajada Bridge). The bridge was to replace an existing "dip" crossing which frequently flooded during storm events. This permit was approved by the Commission subject to a number of special conditions, which included mitigation for all unavoidable impacts to wetlands. To accommodate construction of the bridge and its approach, the eastern-most portion of the site subject to this appeal, was needed, and obtained by the County utilizing its power of eminent domain. The applicant contends that construction of the bridge and its approach, which raised the road elevation adjacent to the subject site, has subjected the site to damage from flooding and the proposed fill and 2,000 sq. ft. building are necessary to protect the existing commercial center from flooding caused by the bridge construction.

2. Floodplain Development. Because of the potential for adverse impacts on both down- and upstream areas and habitats, fill of floodplains is severely limited in the City's LCP. Policy 8.2 on Page LU-19 of the City's certified LUP pertains to floodplain development within the City and 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 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.

As stated, the proposed 2,000 sq. ft. retail structure is to occur on an approximately 9 acre site that contains an existing approximately 60,000 sq. ft. commercial center. The structure is proposed in the eastern-most portion of the site, which currently is undeveloped containing landscape improvements (lawn, trees and irrigation) and an area identified as wetlands. According to County of San Diego Floodplain Maps and exhibits provided by the applicant, the proposed fill to accommodate the 2,000 sq. ft. retail structure will occur entirely within the 100-year floodplain of Escondido Creek.

As noted previously, in 1994 the Commission approved the construction of the "La Bajada" Bridge over Escondido Creek on Rancho Santa Fe Road (ref. CDP #6-93-155) adjacent to the subject site. In order to accommodate the new bridge and its approach, a portion of the site subject adjacent to Rancho Santa Fe Road was needed, and obtained by the County of San Diego utilizing its power of eminent domain. As a result of the bridge construction, Rancho Santa Fe Road adjacent to the site was elevated. The applicant contends that the bridge project construction has "damaged" his property by causing some retention of storm water to occur in a low spot within the landscaped/wetland area of the site. The applicant also contends that the proposed project is necessary to protect the existing commercial center from increased flood impacts caused by the construction of the bridge.

While sheetflow drainage from the fill slope associated with the bridge may incrementally add to the overall amount of storm water on the subject site, this in and of itself, has not increased the flood potential for the site. In fact, according to an exhibit provided by the applicant, the 100-year

floodplain area has been somewhat reduced on the subject site since construction of the bridge and 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.

The deposition of fill within the 100-year floodplain can constrict the floodplain and limit the ability of the geography to handle flood waters, which can then lead to potential flood and erosion impacts both down- and upstream. As such, the above-cited LCP provisions clearly limit development within the 100-year floodplain. The LCP does allow for some exceptions to this restriction for, among other things, flood control projects to protect existing structures. The applicant contends that it is this exception that authorizes the proposed development as consistent with the City's LCP. Thus, the applicant does not assert that the fill and construction of a retail structure is a use consistent with periodic flooding. Instead, the applicant asserts that fill and construction of the retail structure is necessary to protect other existing structures from flooding caused by the construction of the adjacent La Bajada Bridge.

However, in this particular case, the Commission finds that the proposed fill is not needed to protect existing structures, but only to create a building pad to accommodate the proposed retail structure. Based on the exhibits contained within the file, no permanent existing structures or buildings are subject to 100-year flood inundation. A flood potential for the portion of the parking lot and landscape improvements has always existed on the eastern-most portion of the site. However, the landscape and parking area were permitted by the Commission in this location when it approved construction of the existing retail center as uses consistent with periodic flooding. Thus, they do not need to be protected and the applicant was required to acknowledge such as a condition of the commercial center permit in 1985. As such, the proposed development is not a flood control project necessary to protect existing structures.

In addition, there are engineering solutions available to address the applicant's concerns with the increased potential for ponding on the site that do not include fill of the floodplain. In fact, in talking with the County Engineering staff, it was stated that a means to address the site drainage concerns raised by the applicant has already been installed. On existing right-of-way, at the base of the fill slope for the bridge, the County Department of Public Works has installed a small drainage swale to allow the drainage from the applicant's site to flow southeast to Escondido Creek. As such, according to the County Engineering staff, ponding on the applicants site is no longer a concern.

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. The applicant does not claim that the proposed 2,000 sq. ft. retail structure is consistent with periodic flooding. Clearly, the retail structure is not a use consistent with periodic flooding. In addition, the proposed structure is

not similar to the type of uses the LCP cites as examples of development that are consistent with periodic flooding. Each of these uses allows the land to continue to contain and absorb flood waters. The proposed fill and construction of the retail structure would not allow this to occur, but would actually reduce the floodplain area in this location which could, in fact, result in potential flooding and damage of other up- and downstream properties. Therefore, the fill and construction of the 2,000 sq. ft. retail structure is not consistent with periodic flooding.

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.

The proposed project also raises Implementation Plan inconsistencies. Specifically, the City's Floodplain Ordinance only permits permanent structures and fill within the 100-year floodplain if: (1) the structure has been found to be consistent with the LUP, (2) the design of the development incorporates the findings and recommendations of a site specific hydrologic study and, (3) the development has been found to be capable of withstanding periodic flooding so as to not require the construction of flood protective works. In this particular case, even if the proposed project could be found to be consistent with the LUP, the other two requirements of the implementing ordinance have not been satisfied. Specifically, in review of the City's file, no site specific hydrologic study was included for the proposed project. Although no hydrologic analysis was submitted for the project, a letter from the applicant to the City of Encinitas stated that the applicant's engineer used the hydrologic analysis performed by the County of San Diego for the La Bajada Bridge project to find that the project would not adversely affect up or downstream areas. However, in talking with the County Engineering staff, it was stated that the La Bajada Bridge project hydrologic analysis did not consider fill of the subject site as proposed with this project and its effects on up and downstream resources. As such, the project is inconsistent with the City's Implementation Plan in that a site specific hydrological analysis was not prepared for the proposed development to determine its effects, if any, on both up- and downstream areas and resources.

In addition, the Floodplain Ordinance also only allows floodplain development when existing environmentally sensitive areas will not be significantly adversely affected. The area of the subject site where the proposed development is to occur has been delineated as wetlands and therefore, is

considered an environmentally sensitive area. The subject area, although currently landscaped, has been determined to be wetlands pursuant to the definition of such utilized by the Army Corps of Engineers, and are also consistent with the definition of wetlands contained in the Coastal Act. In the case of the subject development, 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 the proposed 2,000 sq. ft. retail structure and 1,800 cubic yards of fill is inconsistent with the provisions of the City's LCP pertaining to floodplain development and therefore, must be denied.

3. Wetlands. In light of the dramatic loss of wetlands (over 90% loss of historic wetlands in California) and their critical function in the ecosystem, and in response to Section 30233 of the Coastal Act, the City's LCP contains very detailed policies and ordinances relative to wetlands protection. The following LCP provisions are the most applicable to the subject development: 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.

As stated previously, the project site is located within the floodplain of Escondido Creek, one of the two major creeks which drain into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. The creek in this location supports several native wetland and riparian habitats that include Southern Willow Riparian Scrub, Cismontane Alkali Marsh, and Coastal and Valley Freshwater Marsh.

Based on review of the wetlands delineation prepared for the Army Corps of Engineers (ACOE), Commission staff has determined that wetlands, as defined in the LCP (cismontane alkali marsh), are present on the site and that the proposed 2,000 sq. ft. retail structure and approximately 1,800 cubic yards of grading to accommodate it, would permanently fill approximately 4,600 sq. ft. of these wetlands. While the vegetation area that will be impacted by the proposed development consists mostly of non-native grass species that are irrigated and mowed as a lawn on a regular basis, the area has been delineated as wetlands. In other words, although wetland plant species are not prevalent, the wetland delineation (for the ACOE) did find the site to have the proper hydrology and soils necessary to classify it as a wetland. In addition, this area is also consistent with the definition of wetlands contained in both the City's LCP and the Coastal Act. Additionally, aside from having value as habitat, wetlands within the 100-year floodplain are useful in other ways. They can also provide limited flood protection (in that the vegetation can help to reduce flood velocities) as well as help to control sedimentation. As such, although the wetlands impacted by the project may be of a low function and value currently (according to the biologist who prepared

the mitigation plan for the applicant), they still provide an important function. In addition, neither Section 30233 of the Coastal Act nor the City's LCP differentiate between low quality and high quality wetlands; all wetlands are provided the same protection.

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, as discussed in the previous section, the 100-year floodplain area on the site has actually been 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 noted previously, filling of the 100-year floodplain can constrict the floodplain and limit the ability of the land to absorb and contain flood waters. This can lead to potential flooding and erosion impacts to areas both up- and downstream. 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 and, if approved, would be an adverse precedent for development within a wetland and floodplain.

Even if the proposed retail structure was a permitted use within a wetland, the proposed project is not the least environmentally damaging alternative, as 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 9 acre 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.

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. These include the no project alternative which would leave the site as it currently exists. Another alternative would be to construct the proposed 2,000 sq. ft. retail structure on a different area of the site, such as the existing parking lot (outside of the 100-year floodplain). This would be feasible, even if it involved the elimination of some parking spaces because the applicant has submitted a parking analysis for the center which documents that the center currently contains more parking than is required under current LCP standards. Specifically, based on the parking analysis submitted by the applicant, the existing commercial center currently has 52 parking spaces more than is required by current LCP standards. Finally, another feasible alternative would be to construct a second-story addition to one of the existing structures on the site, thereby increasing the center square footage, while avoiding wetland and floodplain fill. 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.

In addition, even if the proposed development could be found a permitted use within wetlands, the City's LCP requires mitigation for wetland impacts to occur through creation of new wetlands of the same type, at a ratio determined by regulatory agencies with authority over wetland resources. The ratio must be greater than one acre provided for each acre impacted so as to result in a net gain. Although the City, in their approval of the project, required mitigation for wetland impacts to occur at a ratio of 1.5:1, the proposed mitigation plan for the project only includes replacement at a 1:1 ratio. As such, the proposed mitigation is inconsistent with LCP policies related to required mitigation.

In summary, the proposed development 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, proposed mitigation for impacts are not at a ratio of greater than 1:1. In addition, development in this same area was eliminated in a prior Commission issued coastal development permit. Although according the applicant's biologist the wetlands affected by the proposed development are not of high quality and currently function as a landscaped area, they are still wetlands and are afforded protection in the City's LCP. Thus, the Commission finds that the proposed development, which will fill approximately 4,600 sq. ft. of wetlands, is inconsistent with the City of Encinitas certified Local Coastal Program related to protection of wetlands and therefore, must be denied.

4. Public Access. The project site is located adjacent to and south of Rancho Santa Fe Road, which in this area of the City delineates the Coastal Zone boundary, as well as the first public roadway. As the proposed development will occur between the first public roadway and the sea, pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreational policies of the Coastal Act.

While the proposed development is located several miles inland of the coast, public access and recreational opportunities, in the form of hiking trails, do exist in the area, providing access along Encinitas Creek and into the San Elijo Lagoon Ecological Reserve and Regional Park, southwest of the subject site. There are currently no such trails existing or planned on or adjacent to the subject site. The development will not impede access to the lagoon or to any public trails. Therefore, construction of the proposed 2,000 sq. ft. retail center would have no adverse impacts on public access or recreational opportunities, consistent with the public access policies of the LCP and 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 cannot be made.

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The proposed development was originally approved by the City's Olivenhain Community Advisory Board (CAB) on September 5, 1995 and that decision was appealed to the City of Encinitas Planning Commission and subsequently to the City Council. The City Council approved the development on February 14, 1996. Because the subject development is located within 100 feet of a wetlands, it falls within the Commission's appeals jurisdiction. On March 4, 1996, the development approval of the City was appealed to the Coastal Commission who, at their April 11, 1996 meeting, found that a substantial issue exists with regard to the reason for the appeal and recommended a de novo hearing be scheduled. The subject report is for the de novo hearing.

The subject site, is zoned and planned for general commercial and rural residential development in the City's certified LCP. The subject 2,000 sq. ft. retail structure is proposed on a portion of the site designated for general commercial development and is consistent with that designation. However, the subject site is also located within the Special Study Overlay Zone which is used to indicate those areas where development standards may be more stringent to minimize adverse impacts from development. In addition, the proposed development is subject to the Floodplain Overlay Zone. This is applied to areas within the Special Study Overlay Zone where site-specific analysis of the characteristics of a site indicate the presence of a flood channel, floodplain or wetland. The subject site has been identified to be within the 100-year floodplain and impact wetlands.

As noted in the previous sections of this report, the proposed development which includes both fill of the 100-year floodplain and wetlands is inconsistent with several policies of the City's certified LUP as well as with the provisions of the Floodplain Overlay Zone. The proposed 2,000 sq. ft. retail structure is not a permitted use with the 100-year floodplain or wetlands, is not necessary to protect existing development and is not the least environmentally damaging alternative. In addition, if fill of this wetland area were to be permitted, it could set an adverse precedent for fill of other wetland areas within the City, which cumulatively, could lead to loss of important habitat for any of the threatened and endangered species that are found in and around Escondido Creek and San Elijo Lagoon. As such, the Commission finds the proposed development must be denied.

6. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

As previously stated, the proposed development will result in impacts to coastal resources in the form of adverse impacts to wetlands and inappropriate fill within the 100-year floodplain. There are feasible alternatives available which would substantially lessen any significant adverse impacts which the proposal will have on the environment.

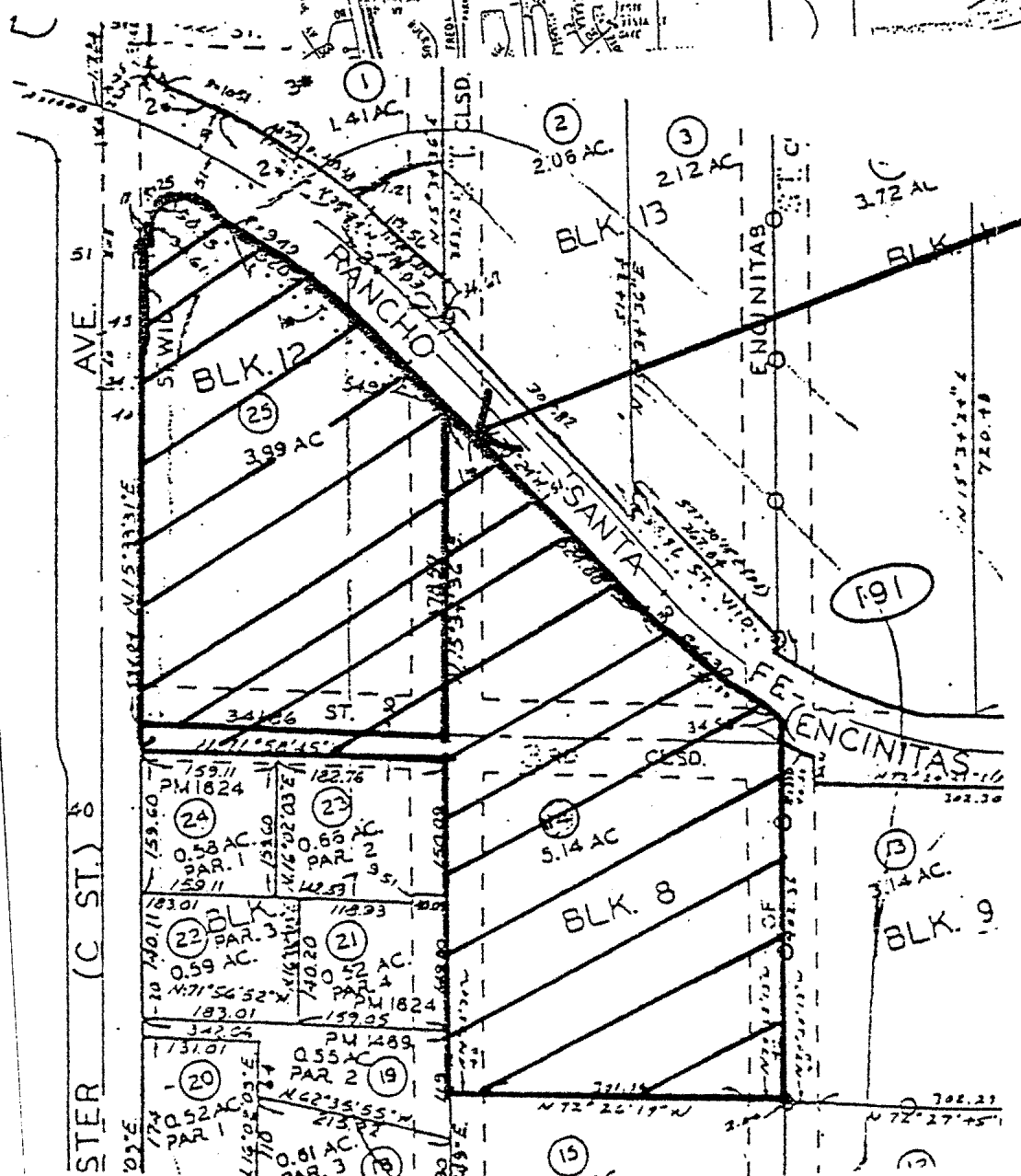
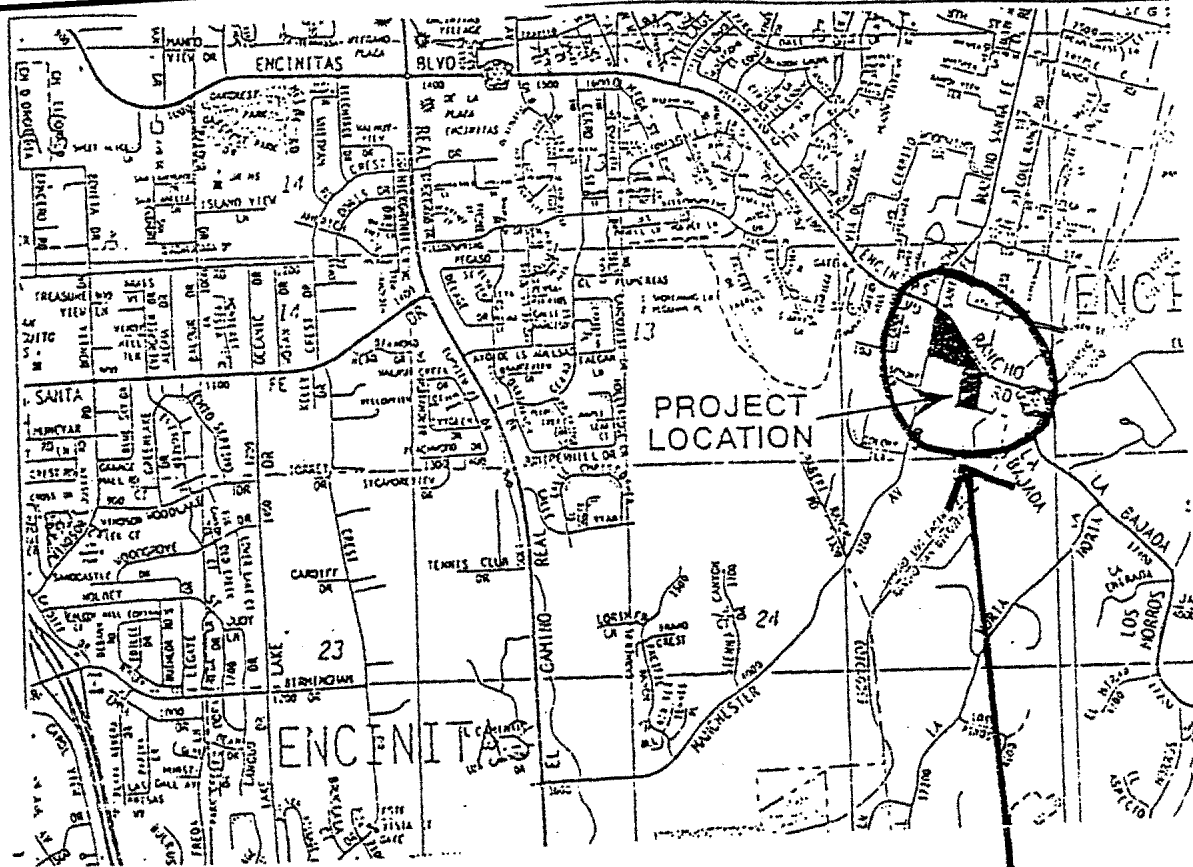
These feasible alternatives include the no project alternative which would allow the existing commercial center to operate as it always has, with some parking, landscaping and sidewalks in the eastern-most portion of the site, subject to possible inundation in a 100-year storm event. In addition, there are other development alternatives available to add square footage to the center that do not include fill within the 100-year floodplain or impacts to wetlands. Such alternatives could include construction of the proposed 2,000 sq. ft. retail building within the existing parking lot (outside the 100-year floodplain). Such a proposal would eliminate some existing parking, however, according to a parking analysis submitted by the applicant, the center currently provides more parking than is required by current LCP standards. In addition, 2,000 sq. ft. of retail area could also potentially be added as an addition to one of the existing single-story buildings on the site.

As currently proposed, the subject development, which proposes fill within the 100-year floodplain and impacts to wetlands is not the least environmentally damaging alternative and cannot be found consistent with the requirements of the City of Encinitas LCP, nor with the requirements of the Coastal Act to conform to CEQA. Thus, the proposed project must be denied.

COMMISSION ACTION ON MAY 07 1996

(1025A)

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



Subject Site

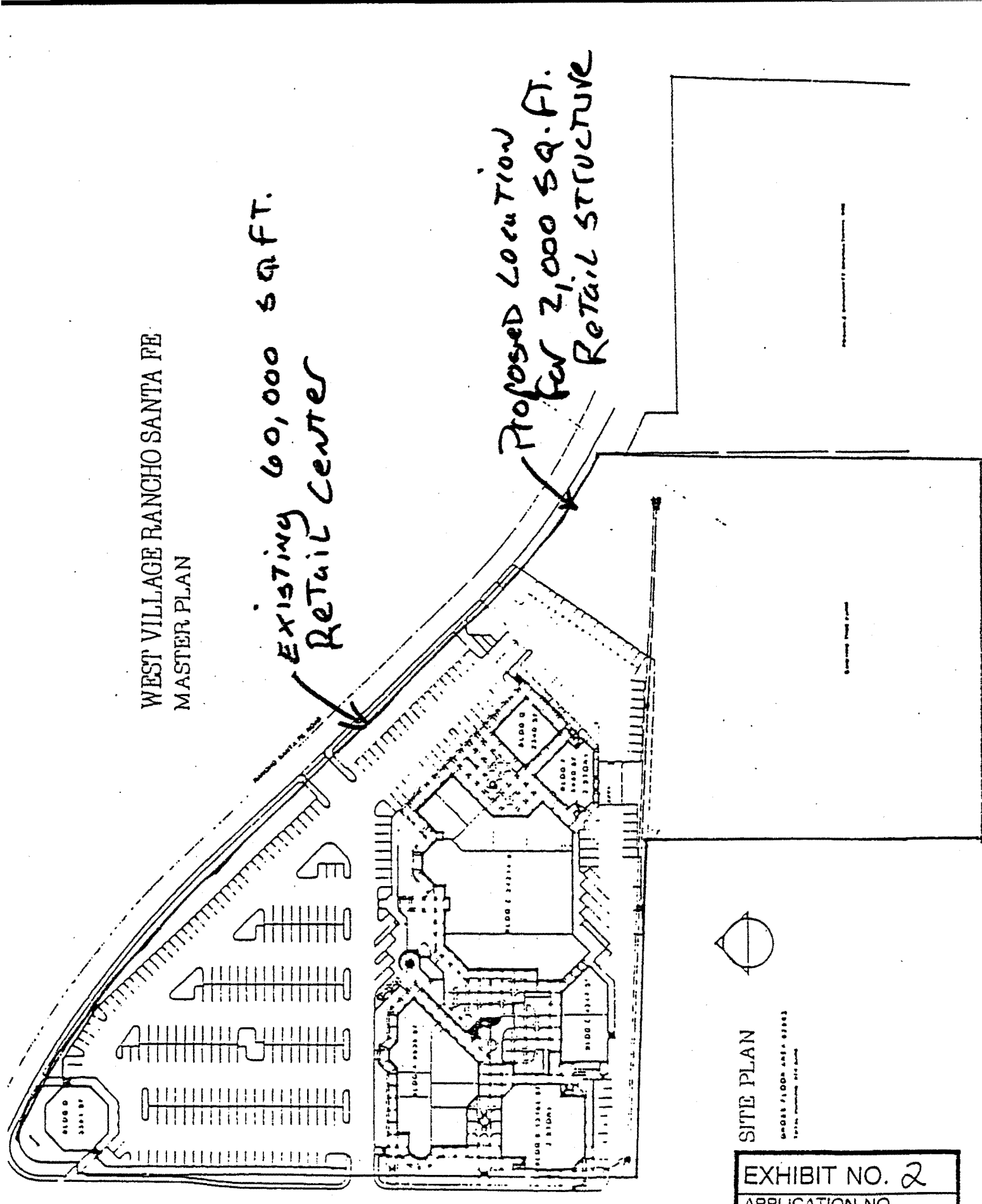


EXHIBIT NO. 1
APPLICATION NO. 16-ENC-96-34
Location MAP
California Coastal Commission

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

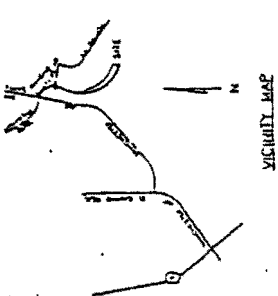
SCALE: 1/8" = 1'-0" (SEE SHEET 9100-3)
DATE: FEBRUARY 1974

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

WARREN W. SCOTT
 Architecture
 1400 West 10th Street
 Santa Ana, CA 92704
 Telephone: (714) 533-1100
 Fax: (714) 533-1117

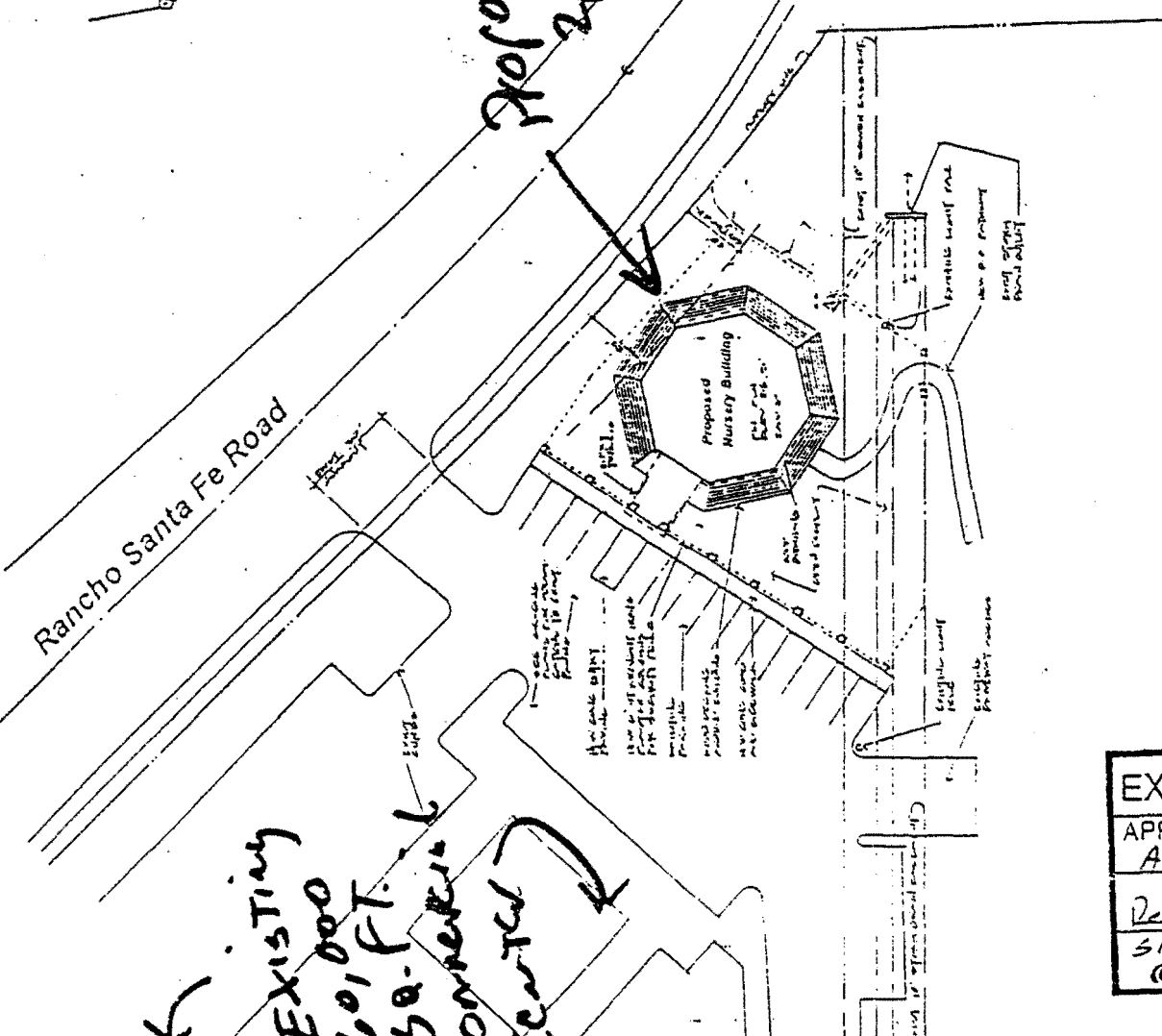
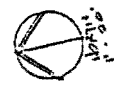
Retail
 Nursery
 Pad Building
 West Village Shopping Center
 801 S. MacArthur Blvd. #100
 Anaheim, CA 92804
 (714) 533-1100

	JOB NO: 95072 DATE: 4.22.75 TITLE: SITE PLAN
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**PROPOSED
 24,000 SQ. FT.
 RETAIL
 STRUCTURE**

1. Proposed building is to be located
 adjacent to existing
 2. and adjacent to the existing
 infrastructure



**Existing
 601,000
 sq. ft.
 connected
 Center**

EXHIBIT NO. 3
APPLICATION NO. A10-ENC-90-34
RETAIL STRUCTURE SITE PLAN
California Coastal Commission

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State of California

California Coastal Commission
San Diego District

M E M O R A N D U M

TO: Commissioners and DATE: 5/1/96
Interested Persons

FROM: Staff FILE NO: A-6-ENC-96-34

SUBJECT: Revisions to Staff Report and Recommendation on
Appeal Dated April 18, 1996

Commission staff recommends the following revisions to the above cited staff report:

On Page 4 of the staff report, the last two sentences of the third paragraph shall be replaced with the following:

As a result of the bridge construction, Rancho Santa Fe Road adjacent to the site was elevated. The applicant contends that the bridge construction has "damaged" his property by altering on-site drainage in the easternmost parking lot and landscape area (where the subject development is proposed) which has led to site drainage from the eastern parking lot to be directed east to the landscaped area, instead of to the existing catch basin for the parking lot. This redirection of a portion of the parking lot drainage has led to some ponding of water in a low spot of the landscaped/floodplain area of the site. It is because of this concern that the applicant contends that the proposed project is necessary to protect the existing commercial center from flood damage caused by the road project.

Prior to the bridge construction, the elevation of the easternmost portion of the site was very close to the elevation of the road. As such, any drainage on the landscaped area would typically flow off-site onto the road. In addition, the easternmost driveway was also at a similar elevation, with site drainage being directed either onto Rancho Santa Fe Road or into the existing storm drain outlet in the parking lot. While the Commission does not argue that on-site drainage has been affected by the bridge construction, such redirection of on-site drainage does not threaten any existing structures within the commercial center and there are other means of addressing this concern that do not require floodplain fill.

On Page 5 of the staff report, the following should be added to the end of the first incomplete paragraph:

In addition, while it is true existing on-site drainage of a portion of the easternmost parking lot was altered, such redirection of drainage does not threaten any of the existing structures within the center. Some site drainage is now flowing onto a landscape area within the 100-year floodplain, rather than being directed to a storm drain. There is no increased flood threat to the existing commercial center structures.

On Page 5 of the staff report, the following shall be added to the end of the third complete paragraph:

While the Commission acknowledges that this solution only addresses the ponding of water in the landscaped area, there are other means available to address site drainage in the easternmost parking lot that do not include floodplain fill. Such alternatives could be to re-grade and re-surface the parking area so that drainage of the lot is again directed into the existing storm drain and not onto the landscaped area. Another option could be to install a drainage swale along the base of the fill slope in the landscape area to direct the drainage from the parking lot towards drainage improvements to the east. As such, because there are other options available to address the on-site drainage concerns that do not include fill of the floodplain, the Commission cannot find the proposed fill for a building pad to accommodate a 2,000 sq. ft. retail structure to be the least environmentally damaging alternative.

On Page 8 of the staff report, the first sentence of the third complete paragraph shall be revised as follows:

Based on review of the wetlands delineation prepared for the Army Corps of Engineers (ACOE), which identified the area as cismontane alkali marsh, Commission staff has determined that wetlands, as defined in the LCP ~~(cismontane/alkali/marsh)~~, are present on the site and that the proposed 2,000 sq. ft. retail structure and approximately 1,800 cubic yards of grading to accommodate it, would permanently fill approximately 4,600 sq. ft. of these wetlands.

On Page 12 of the staff report, the following shall be added to the end of the fourth complete paragraph:

In addition, there are other engineering alternatives to address the on-site drainage concerns that would eliminate the need to

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fill the floodplain or wetlands. These include re-grading and re-paving the easternmost parking lot to again direct drainage of this lot to the existing storm drain or installing a drainage swale at the base of the fill slope of the bridge to direct drainage from the parking lot across the landscaped area to existing facilities to the east.

(3317M)



Howard Kaloogian ASSEMBLYMAN, SEVENTY-FOURTH DISTRICT

(Pronounced "Cah-lū-ghee-an")

CALIFORNIA LEGISLATURE, STATE CAPITOL, SACRAMENTO, CA 95814 (916) 445-2390 FAX (916) 324-9991

June 13, 1996

Mr. Louis Calcagno, Acting Chairman
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105-2219

RE: West Village Inc.; Appeal No. A-6-ENC-96-34

Dear Chairman Calcagno and Commissioners:

It has come to my attention that a Coastal Development Permit for a remedial grading project by West Village Inc. was denied by the Coastal Commission at its May 7th hearing in Long Beach. Following a meeting with your San Diego district staff, the applicant has suggested a modification of the proposed project and has requested the Commission's reconsideration.

As the Representative for the 74th Assembly District, which includes the project in question, and following an on-site inspection by my staff, I am writing in support of the request for reconsideration by West Village Inc.

By way of background, the proposed remedial project results from grading that occurred during the construction of the La Bajada bridge, a portion of which significantly impacted the preexisting drainage on the West Village Center property. The applicant's proposed remedial project was approved by the City of Encinitas, Department of Fish and Game, and the Army Corps of Engineers. In addition, the County of San Diego supports this project.

Since the Commission's denial of this project, West Village Inc. has suggested an alternative proposal which reduces the required-fill in this area from 1800 to 750 cubic yards. In addition, a new wetlands study prepared by Dudek & Associates substantiates that any alleged impact on wetlands resulting from the original proposal would affect only .005 of an acre of manmade wetlands under the modified proposal.

In closing, this remedial grading project simply restores necessary proper drainage due to the construction of the La Bajada Bridge and, in my estimation, is certainly worthy of your reconsideration. Thank you for the opportunity to bring this matter to your attention.

Respectfully,

HOWARD KALOOGIAN
Assemblyman, 74th District

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cc: Peter Douglas, Executive Director

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EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-96-34-R
Letter of Support
For Reconsideration
California Coastal Commission

