

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON APPEAL (RECONSIDERATION)

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

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

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: Deposition of up to 1,800 cubic yards of fill within the 100-year floodplain on an approximately 9 acre site containing an existing 60,000 sq. ft. commercial center.

APPELLANTS: San Elijo Lagoon Conservancy/Gregory Dennis

STAFF NOTES:

On April 11, 1996, the Commission found that a substantial issue exists with regard to the grounds on which the appeal was filed and a de novo hearing was scheduled. At the May 7, 1996, de novo hearing, the Commission denied the permit request, finding the project inconsistent with the certified LCP. On June 3, 1996, the applicant requested a reconsideration of the Commission's denial of the coastal development permit on the grounds that an error of fact or law had occurred and new information, in the form of new project alternatives, was available that had the potential to alter the Commission's decision on the project. The Commission considered the request for reconsideration on July 12, 1996 and granted the applicant's request for reconsideration of its decision to deny the coastal development permit. Therefore, a de novo review of the project on appeal has thus been scheduled for the August 14-16, 1996 Commission hearing. The matter of substantial issue has already been established pursuant to the Commission's April 11, 1996 action and is not being reconsidered.

The project that was originally approved by the City of Encinitas and subsequently appealed to the Coastal Commission was for the construction of a 2,000 sq. ft. retail structure and approximately 1,800 cubic yards of fill within the 100-year floodplain. The Commission's decision to reconsider the denial was based in part upon the applicant's interest in analyzing and reviewing alternatives to the project that had been suggested by Commission

staff, but that the applicant had not yet had adequate time to consider. As such, since the Commission's decision to reconsider the denial of the project, the applicant has deleted the building from the proposed project and is requesting approval of either the original remedial grading plan or the alternate grading plan as presented to the Commission at the July 12 hearing, allowing up to 1,800 cubic yards of fill within the 100-year floodplain. The staff recommendation is for approval of a revised alternative, which addresses the on-site drainage concern, but does not allow fill in the floodplain.

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed development with a condition which requires the applicant to submit revised plans for the project that would allow resurfacing of the existing eastern asphalt parking lot to direct drainage to storm drain facilities, but would eliminate any fill within the 100-year floodplain. The condition also allows for the installation of a concrete lined drainage swale within the floodplain to collect drainage from the adjacent roadway slope and parking lot and direct such drainage offsite towards the creek. In addition, because a small area of wetlands will be impacted, conditions also require the submittal of mitigation/monitoring plans which require all wetland impacts to be quantified and mitigated, on-site, at a ratio of 1.5:1 and monitored and maintained for a three-year period. Given these conditions, the on-site drainage concerns raised by the applicant can be addressed without deposition of fill within the 100-year floodplain.

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; 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; Wetland Delineation Report for West Village Center dated May 24, 1996 by Dudek & Associates, Inc.; Rancho Santa Fe Road Bridge at Escondido Creek Remedial Grading Plan by Nasland Engineering dated stamped received June 5, 1996.

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 the development, as conditioned, will be in conformity with the adopted Local Coastal Program, 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 conditions:

1. Revised Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, revised plans for the project. Said plans shall be approved by the City of Encinitas and the County of San Diego and include the following:

a. Elimination of all proposed fill and drain pipe within the 100-year floodplain in the area east of the existing asphalt parking lot.

b. Resurfacing of the existing eastern asphalt parking lot to allow for a portion of the parking lot drainage to be directed to existing catch basin facilities.

c. Installation of a small concrete lined drainage swale at the base of the Rancho Santa Fe Road/La Bajada Bridge fill slope within the landscaped area, extending from the eastern parking lot towards the creek to the east. Said drainage swale shall be minimally designed such that surface drainage from the adjacent fill slope is collected and appropriately discharged and impacts to wetlands are minimized.

2. Mitigation/Monitoring. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a final wetland mitigation plan for all wetland impacts associated with the proposed project. The plan shall be developed in consultation with the California Department of Fish and Game and shall include:

a. Preparation of a detailed site plan of the approved project, clearly delineating all areas of wetland impact (based on the Conceptual Mitigation Plan for the Fletcher Property by Sweetwater Environmental Biologists, Inc. dated November 4, 1994 and the Wetland Delineation Report For West Village Center by Dudek & Associates, Inc dated May 24, 1996), and identification of the exact type and acreage of identified impacts. In addition, a detailed site and planting plan of the mitigation site shall also be included.

b. All mitigation shall be occur on the disturbed area of the site, as described in the Conceptual Mitigation Plan for the Fletcher Property by Sweetwater Environmental Biologists, Inc. dated November 4, 1994. For each square foot of wetland impacts associated with the installation of the drainage swale, there shall be one and one-half (1.5) square feet of wetland habitat created. The newly created wetland area shall consist of wetland species similar to the other wetland areas on the site.

3. Monitoring Program. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, in consultation with the Department of Fish and Game, a monitoring program designed by a qualified wetland biologist acceptable to the Executive Director. Said monitoring program shall provide the following:

a. Submittal, upon completion of the mitigation site, of "as-built" plans. Said plans shall be in substantial conformance with the submitted plans approved pursuant to Special Condition #2 above.

b. Monitoring reports on the extent coverage, rate of growth and species composition of all created wetland areas shall be submitted to the Executive Director on an annual basis for three years following project completion.

c. The monitoring program shall include provisions for augmentation and maintenance of the mitigation efforts, including specific performance standards, designed to assure 90% coverage in a three year period. The program shall include criteria to be used to determine the quality of the mitigation efforts, which shall include, but not be limited to, survival rates and species composition.

d. At the end of the three year period, a more detailed report prepared in conjunction with a qualified wetlands biologist, shall be submitted to the Executive Director. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful based on the approved performance standards, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The proposed development involves the deposition of up to 1,800 cubic yards of fill within the 100-year floodplain on an approximately 9 acre site that contains an existing approximately 60,000 sq. ft. commercial center. The fill is proposed to be placed within the 100-year floodplain of Escondido Creek in an area of the commercial center site that does not contain any existing buildings, but which contains landscaping (bermuda grass and other non-native plant species) and wetlands. The applicant has indicated that the fill is necessary to address on-site drainage concerns.

The 9 acre project site, which is comprised of two parcels, is located on the south side of Rancho Santa Fe Road, just east of Manchester Avenue in the City of Encinitas. The existing approximately 60,000 sq. ft. commercial center currently occupies one parcel in its entirety and a portion of the second parcel. The remaining area of the second parcel contains the landscaped area where the fill is proposed and wetlands/pasture land. 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 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 and damage from flooding and to assume the liability from this hazard. The conditions were satisfied and the permit was released (ref. Exhibit #3 attached).

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 the construction of a new bridge over Escondido Creek (La Bajada Bridge). The bridge was to replace an existing "dip" crossing which frequently flooded during storm events. This permit was approved by the Commission subject to a number of special conditions, which included mitigation for all unavoidable impacts to wetlands. 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 landscaped 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. retail structure, with approximately 1,800 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. 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 to be an incidental public service project and consistent with Land Use Element Policy 8.2 in that the project "is necessary to protect the existing commercial center from flood impacts due to the location of the 100-year floodplain...."

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 de novo hearing took place on May 7, 1996, at which the Commission denied the project because of its inconsistency with several provisions of the City's LCP. On June 3, 1996 the applicant filed a request for reconsideration of the Commission's denial of the project stating that new information was now available that has the potential of changing the Commission's original decision. The hearing on reconsideration occurred on July 12, 1996 at which time the Commission agreed to reconsider the project.

Since the reconsideration hearing, the applicant has revised the project to delete the proposed 2,000 sq. ft. retail structure. As such, the development at this time only involves the placement fill within the floodplain. The applicant has proposed two grading options: the original remedial grading plan (1,800 cubic yards) or the alternate grading plan as presented to the Commission at the July 12 hearing (750 cubic yards). Because the proposal is an appeal of a local decision, the standard of review is the certified LCP.

2. Floodplain Development. Because of its potential for adverse impacts on both down- and up-stream 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, [...] Emphasis added

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 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.

The proposed fill is to occur on an approximately 9 acre site that contains an existing approximately 60,000 sq. ft. commercial center. The fill is proposed in the eastern-most portion of the site, which is currently an undeveloped area that does not contain any buildings, but is comprised of landscape improvements and an area identified as wetlands. According to the County of San Diego Floodplain Maps and exhibits provided by the applicant, the proposed fill 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 subject site 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 construction has "damaged" his property by altering on-site drainage in the easternmost parking lot and landscaped area (where the subject development is proposed) which has led to some additional site drainage from the eastern parking lot to be directed east to the landscaped area, instead of to existing catch basins for the parking lot and onto Rancho Santa Fe Road. 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 ponding that the applicant contends that the proposed fill is necessary to protect the existing commercial center from flood damage caused by the adjacent road project.

Prior to the bridge construction, the elevation of the easternmost portion of the site was very close to that of the adjacent road. As such, most drainage which would collect 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 from the parking lot being directed either onto Rancho Santa Fe Road, into the existing catch basin for the parking lot or onto the landscaped area to the east. 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 drainage concern that do not require floodplain fill.

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 the construction of the bridge. In addition, the only portion of the site that is subject to potential 100-year inundation (before and after the bridge project) is a small portion of the eastern parking lot for the commercial center and the landscaped/wetland area where the proposed fill is proposed. Additionally, while it is true that existing on-site drainage of a portion of the easternmost parking lot was altered, such redirection of drainage does not threaten any portion of the existing commercial center. Some site drainage is now flowing onto the landscaped area within the 100-year floodplain rather than being directed to a catch basin or flowing onto Rancho Santa Fe Road. The "damage" that the applicant contends is nothing other than ponding of water within a landscaped area within the 100-year floodplain. There is no increased flood threat to the existing commercial center.

The applicant contends that the ponding in the landscaped area has affected use of the center in that this area has been used for informal gatherings, outdoor art exhibits, landing hot air balloons, etc. With ponding at this area occurring during storm events, the applicant contends that use of this area for such events is diminished. However, when looking at the types of outdoor uses described by the applicant, these uses are most likely not going to occur during a rain storm anyway. As such, the idea that some ponding of water on this landscaped area has reduced the use of this area, thus damaging the applicant is somewhat questionable. In fact, in 1984 when the Commission approved grading of the site to accommodate the commercial center, the applicant was required to revise the plans to eliminate grading in this area and record an acknowledgment that the site was subject to hazard from flooding. Thus, even before the center was constructed, the applicant was aware that this landscaped area may be subject to flooding and as such, not be "useable" year round.

The applicant has proposed, as a means of addressing the on-site drainage concern, deposition of 1,800 cubic yards of fill which would raise the entire landscaped area out of the 100-year floodplain. The original proposal approved by the City of Encinitas included the fill and construction of a 2,000 sq. ft. retail structure. However, the applicant has subsequently revised the proposal to eliminate the 2,000 sq. ft. building. As such, only the fill is proposed at this time. The applicant has also recently submitted for review, an alternative grading plan that would reduce the amount of fill to approximately 750 cubic yards. This alternative plan still proposes fill within the entire landscaped area, but only raises a portion of the landscape area next to the parking lot out of the 100-year floodplain, with the remaining area sloped to the east. Both alternatives involve fill and reconfiguration of the 100-year floodplain.

The deposition of fill within the 100-year floodplain on an incremental basis, such as that proposed, can, cumulatively, constrict the floodplain and limit the ability of the geography to handle flood waters, which can 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 and the City found that it is this exception that authorizes the proposed development as consistent with the City's LCP. In other words, the applicant asserts that the proposed fill 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. 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. 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.

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 fill within the 100-year floodplain if: (1) it 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 project is not consistent with the implementing ordinances. 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, 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, the County of San Diego Public Works Department has already installed a partial means to address the site drainage concerns raised by the applicant. 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. However, because this drainage swale does not collect all runoff from the fill slope for the bridge, Special Condition #1 has been proposed. This condition requires submittal of revised project plans which eliminate all proposed floodplain fill, but allow resurfacing of the asphalt parking lot to better direct drainage to existing facilities. This condition also allows the installation of a concrete drainage swale, to tie into the existing County installed swale, that would run from the edge of the eastern parking lot east along the base of the fill slope. In this way, "nuisance" drainage from the fill slope associated with the road can be collected and directed appropriately and the ponding area will be afforded better drainage to the east.

In summary, the proposed development is inconsistent with the City's LCP pertaining to floodplain development in that it is not necessary to protect existing structures, includes substantial grading within the floodplain, the design does not incorporate the findings of a site specific hydrologic study and, there are other means to address the on-site drainage concern raised by the applicant that do not include floodplain fill. As conditioned to

eliminate the proposed floodplain fill and install a small drainage swale instead, the Commission finds the approved project to be the minimum necessary to accommodate those uses of the floodplain property that are compatible with periodic flooding, while addressing the on-site drainage concerns raised by the applicant. The development, as conditioned, can be found consistent with all applicable provisions of the City's LCP pertaining to floodplain development.

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 of 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.

The applicant has submitted two wetlands studies for the site: The first, which was utilized by the City in their review of the project, was prepared for the Army Corps of Engineers and determined that wetlands, as defined in the LCP (cismontane alkali marsh), are present on the site. Based on this study, the proposed fill (both alternatives) would fill approximately 4,600 sq. ft. of wetlands. The second study also indicates wetlands as being present on the site, although a lesser amount than the original study. Based on review of this study, a portion of the site where the fill is proposed contains wetlands. Based on this study, the proposed fill (both the 1,800 cubic yard and 750 cubic yard alternatives) would permanently fill approximately 240 sq. ft. of wetlands. At this time, the new wetlands delineation has not yet undergone review by the California Department of Fish and Game or any of the other resource agencies. 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 did find a portion of 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 delineation 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 fill does 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 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 fill 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 fill 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 up to approximately 4,600 sq. ft. of wetlands. There is another alternative available to address the applicant's on-site drainage concerns caused by the construction of the bridge that does not include floodplain fill and, that would have minimal impacts on wetlands. Specifically, as discussed in the previous section, the installation of a small concrete lined drainage swale along the entire base of the fill slope for the bridge would collect drainage from the slope and direct it to the east towards the creek. This alternative would also allow the area were water ponds to drain better. As such, the proposed development is not consistent with the City's LCP in that it is not the least environmentally damaging alternative, and impacts to wetlands can be reduced through other site development alternatives.

However, with Special Condition #1, the project can be brought into conformance with LCP policies. As stated in the previous section, this

condition requires the elimination of all floodplain fill and permits the resurfacing of the existing parking lot and the installation of a small concrete lined drainage swale along the base of the fill slope for the bridge. Although installation of the drainage swale would impact wetlands, the amount of impact would be less than with the proposed fill.

In addition, the installation of the drainage swale can be found as a permitted use within a wetland under the City's LCP. Prior to construction of the bridge, the drainage from the road did not flow onto the site in this location. However, since the road was elevated to construct the bridge, the runoff from the fill slope now flows onto the landscaped area of the site (drainage from the road itself is now collected and directed through storm drain improvements). As such, the swale proposed in Special Condition #1 would address drainage from the bridge slope. In order for the installation of the swale and fill of the wetland to be incidental, the Commission must find the impacts to be temporary and/or incidental or secondary to the pre-existing public service purpose. Because the swale is necessary to address drainage concerns caused by the installation of the public bridge, it can be considered an incidental public service project as it is directly related to bridge.

Because installation of the swale would involve less impacts to wetlands and not involve fill within the floodplain and the no project alternative would not address the on-site drainage concern raised by the applicant, the alternative proposed under Special Condition #1 is found to be the least environmentally damaging alternative. However, the City's LCP requires mitigation for wetland impacts to occur through creation of new in-kind wetlands, 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. As such, the City, in their approval of the project, required mitigation for wetland impacts to occur at a ratio of 1.5:1.

The Commission finds such a ratio, in this particular case, to be adequate and, according to the applicant and the City, is based on input from the California Department of Fish and Game. Special Condition #2 has been proposed to require the applicant to delineate and quantify the exact wetland acreage impacted by the installation of the drainage swale and to provide a wetland mitigation plan that includes on-site mitigation at a ratio of 1.5:1. Furthermore, given the overall lack of success in wetland restoration efforts to date, it is critical that a detailed monitoring program be designed and implemented. Pursuant to Special Condition #3, the Commission is requiring submittal of monitoring program, to include "as-built" plans for the mitigation site, a three year reporting commitment, and annual performance standards be met.

In summary, the proposed fill is inconsistent with several provisions of the certified LCP in that it is not a permitted use within a wetland and is not the least environmentally damaging alternative. However, as conditioned to eliminate the proposed fill and allow installation of a small drainage swale, the applicant's site drainage concerns can be addressed, impacts to wetlands

will be reduced to the maximum extent feasible and the development can be found to be the least environmentally damaging alternative. Based on the above discussion, installation of the small drainage swale has been found to be a permitted use within the wetland (as an incidental public service project) pursuant to the City's LCP, provided adequate mitigation is included. Therefore, the Commission finds the proposed development, as conditioned, is consistent with the City of Encinitas certified Local Coastal Program related to protection of wetlands.

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 (San Elijo Lagoon in this case), pursuant to Section 30.80.090 of the City's LCP, a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

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 project 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 can be made.

The subject site is zoned and planned for general commercial and rural residential uses in the City's certified LCP. The fill is proposed on a portion of the site designated for general commercial uses. The proposed project 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 wetlands. The subject site has been identified to be within the 100-year floodplain and to contain wetlands.

As discussed in the previous sections, the development, as proposed, includes both fill within the 100-year floodplain and fill of wetlands and is inconsistent with several provisions of the City's LCP. However, as conditioned herein to eliminate the proposed fill and implement a revised

project to address the on-site drainage concerns raised by the applicant, the project can be found consistent with the certified LCP.

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.

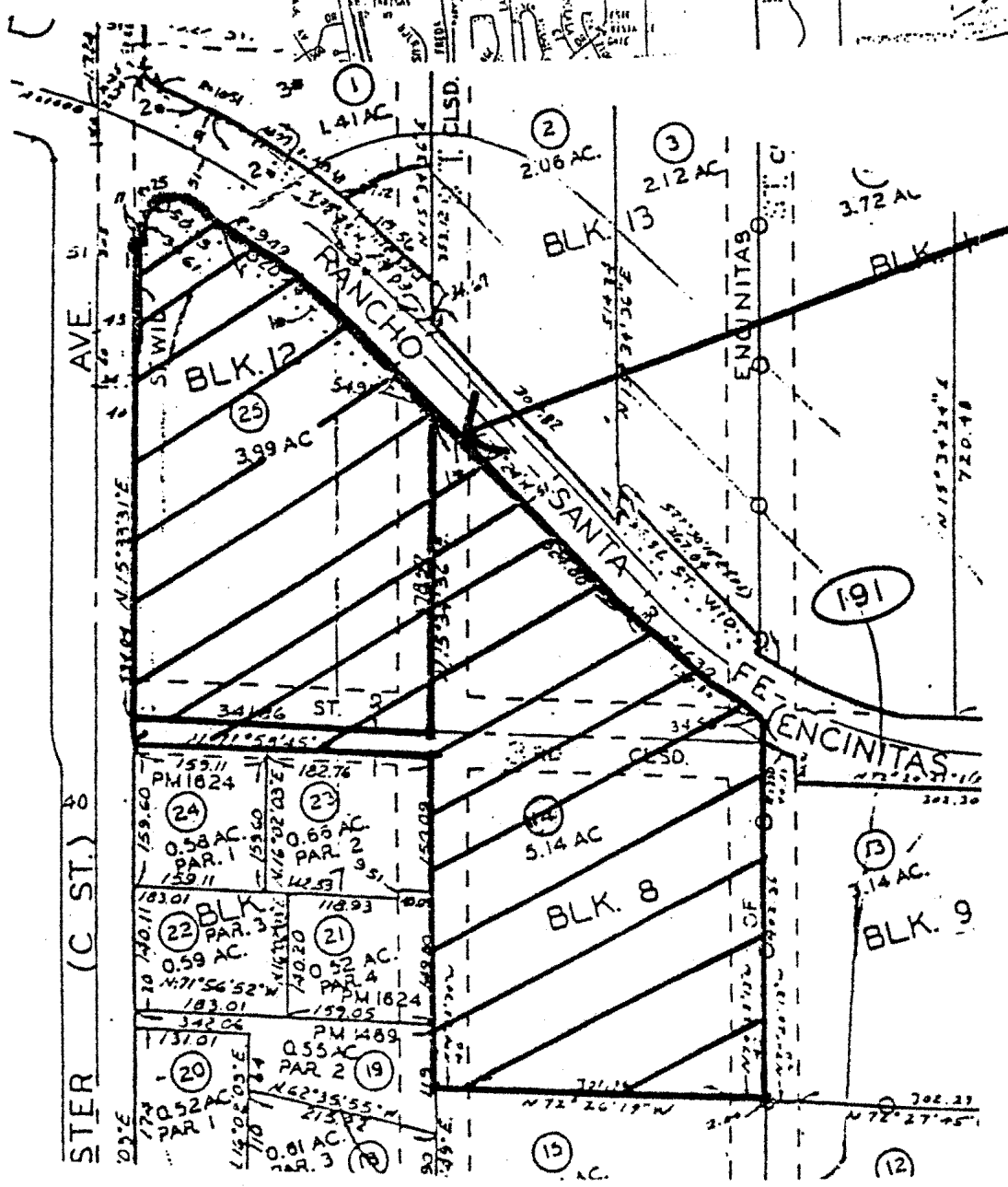
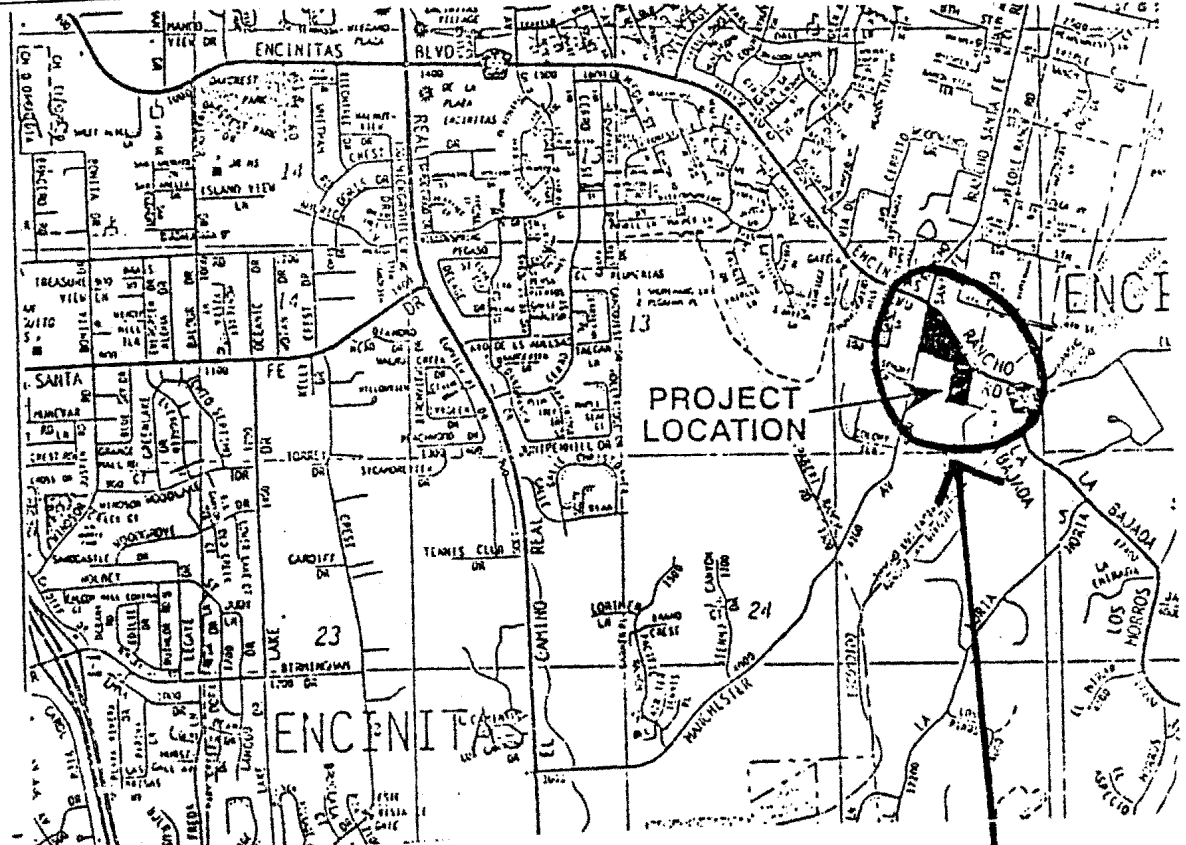
As stated previously, the development as proposed would result in impacts to coastal resources in the form of floodplain fill and impacts to sensitive resources. The project has been conditioned to minimize all adverse environmental impacts and to be found consistent with the certified LCP. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to eliminate and/or mitigate all identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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.

(1238A)



Subject Site

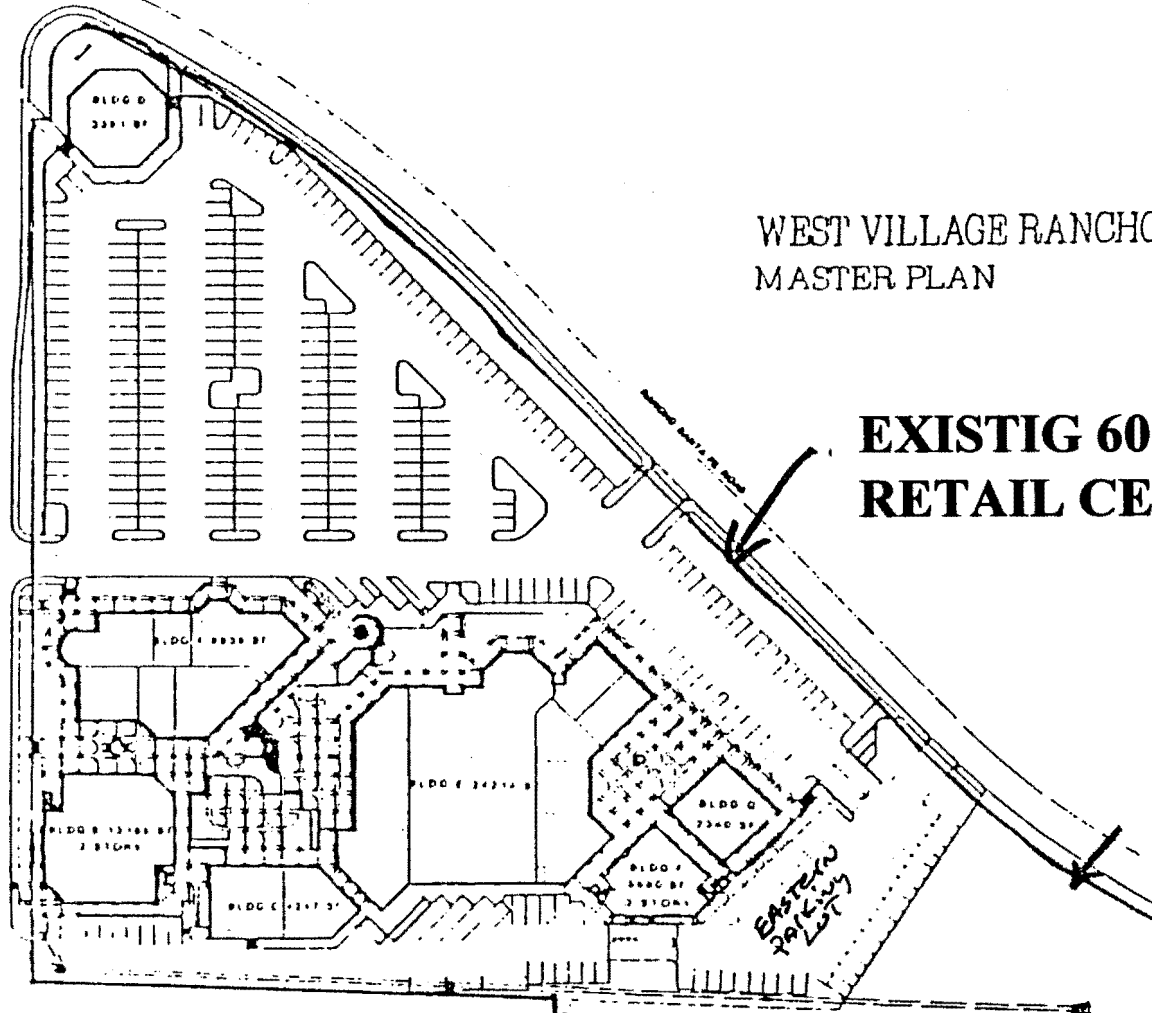


EXHIBIT NO. 1
APPLICATION NO.
No-ENC-96-34R
LOCATION MAP
California Coastal Commission

WEST VILLAGE RANCHO SANTA FE
MASTER PLAN

**EXISTING 60,000 SQ. FT.
RETAIL CENTER**

**PROPOSED LOCATION
OF FILL**



SITE PLAN

DATE: FLOOR AREA: 82883

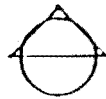


EXHIBIT NO. 2
APPLICATION NO. AG-ENC-96-344
SITE Plan
California Coastal Commission

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 DAY: August 27, 1984
180th DAY: 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 dual), 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



EXHIBIT NO. 9
APPLICATION NO. AG-ENC-96-34-R
1984 permit for grading
California Coastal Commission

1 OF 7

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 portions of the site where development is proposed have existing agricultural and storage buildings, although the buildings are proposed to be removed. Some of the existing buildings and some of the area to be graded is located within the 100-year floodplain of Escondido Creek. The proposed project will involve fill of one to six feet in depth over the site with up to six feet of fill within the floodplain.

2. Consistency with Coastal Act Policies. The most applicable Coastal Act policies for this project are Sections 30250(a), 30251, 30240 and 30253(1). The proposed project is consistent with Sections 30250(a) and 30251 in that the project will be located in an existing developing area and the site is being prepared for eventual uses which will be consistent with surrounding development. The project also will result in minimal landform alteration (except as noted below).

The only aspect of the project which is not consistent with Coastal Act policies and requires special conditions in order to produce consistency is the grading and fill activity within the floodplain. Such activity has the potential of significant impacts on habitat and hydrology in that fill may eliminate habitat and result in increased flood flows and sedimentation by the removal of area which can act as flood water holding areas during high storm flows. The Commission finds that floodplain fill can result in situations which do not protect environmentally sensitive habitat areas and do not minimize risks to life or property. Only as conditioned can the Commission find that the proposed development is consistent with Coastal Act Sections 30240 and 30253(1).

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.

The County of San Diego's San Dieguito Land Use Plan (LUP) has been certified by the Commission. The implementing ordinances have been submitted for Commission review. The LUP policies state that:

"The County will prohibit any development or other significant disruption of the Encinitas Creek and Escondido Creek riparian habitat"

"The County will preserve the function of Batiquitos and San Elijo Lagoons and their immediately adjacent uplands as a viable wetland ecosystem and habitat for resident and migratory wildlife by prohibiting actions which:

1. Involve wetland fill or increase sedimentation into wetlands
2. Adversely decrease stream flow into the wetlands
3. Reduce tidal interchange
4. Reduce internal water circulation, or
5. Adversely affect existing wildlife habitats

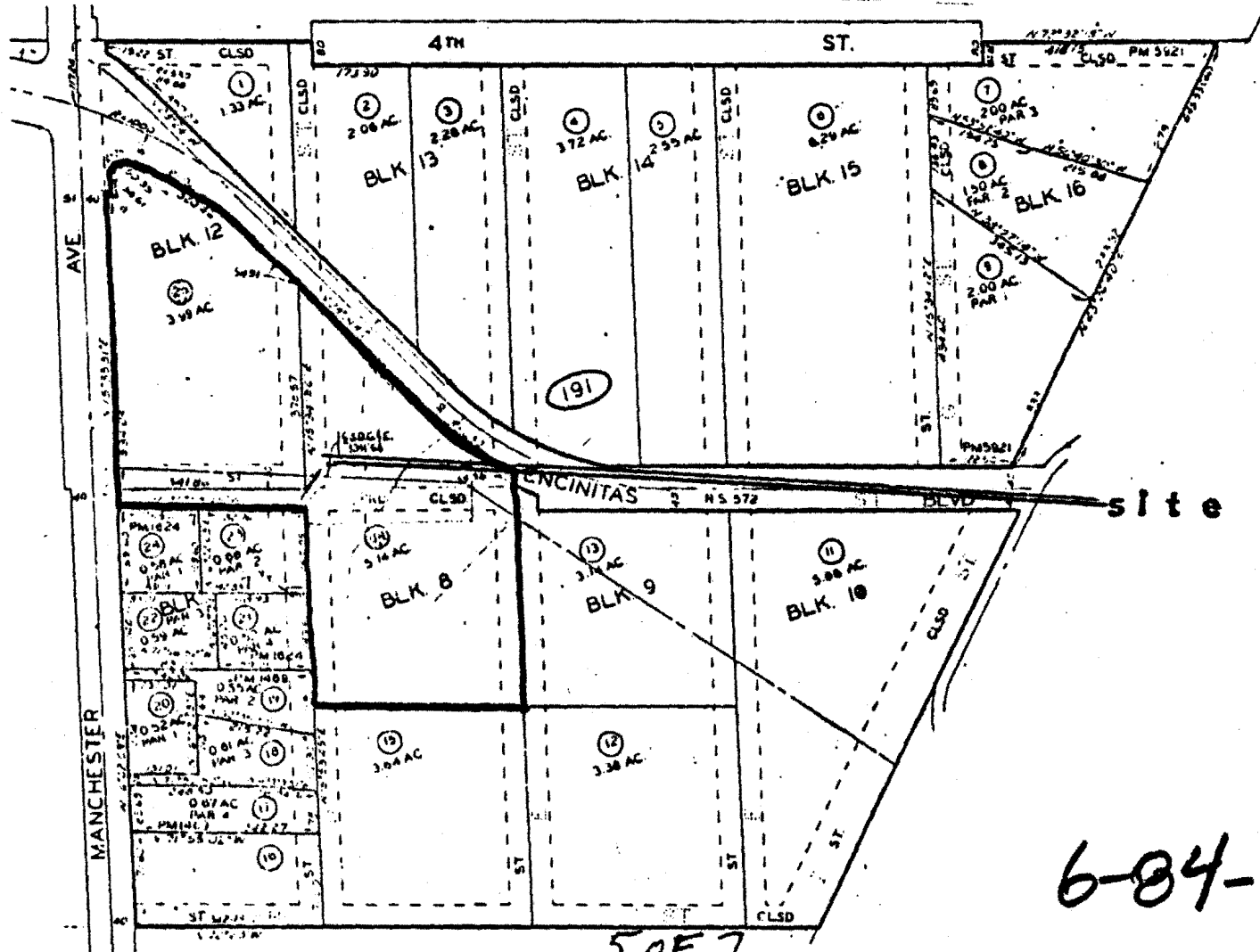
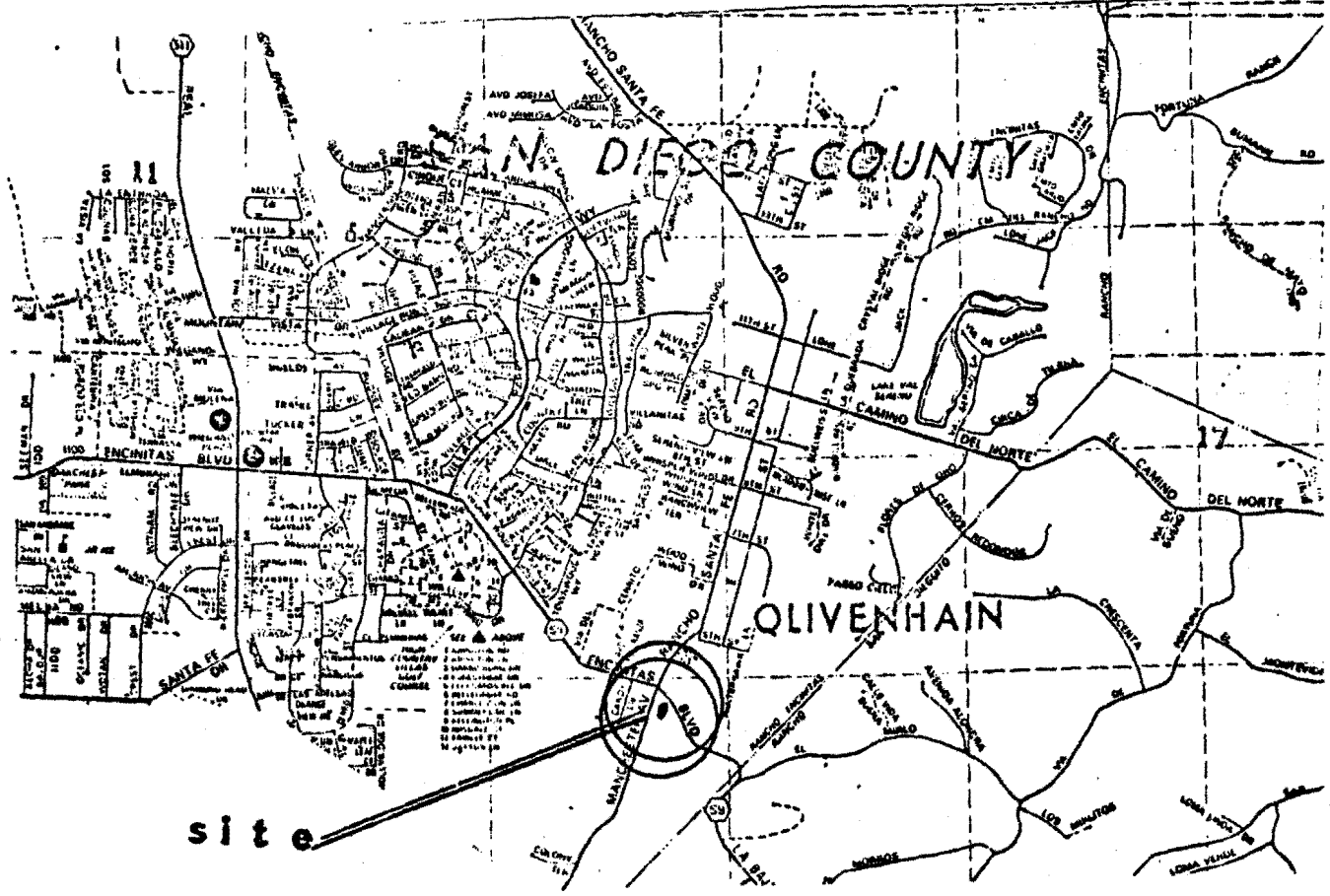
and by encouraging public acquisition of privately held portions of the lagoons and surrounding recreation-suitable areas."

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.

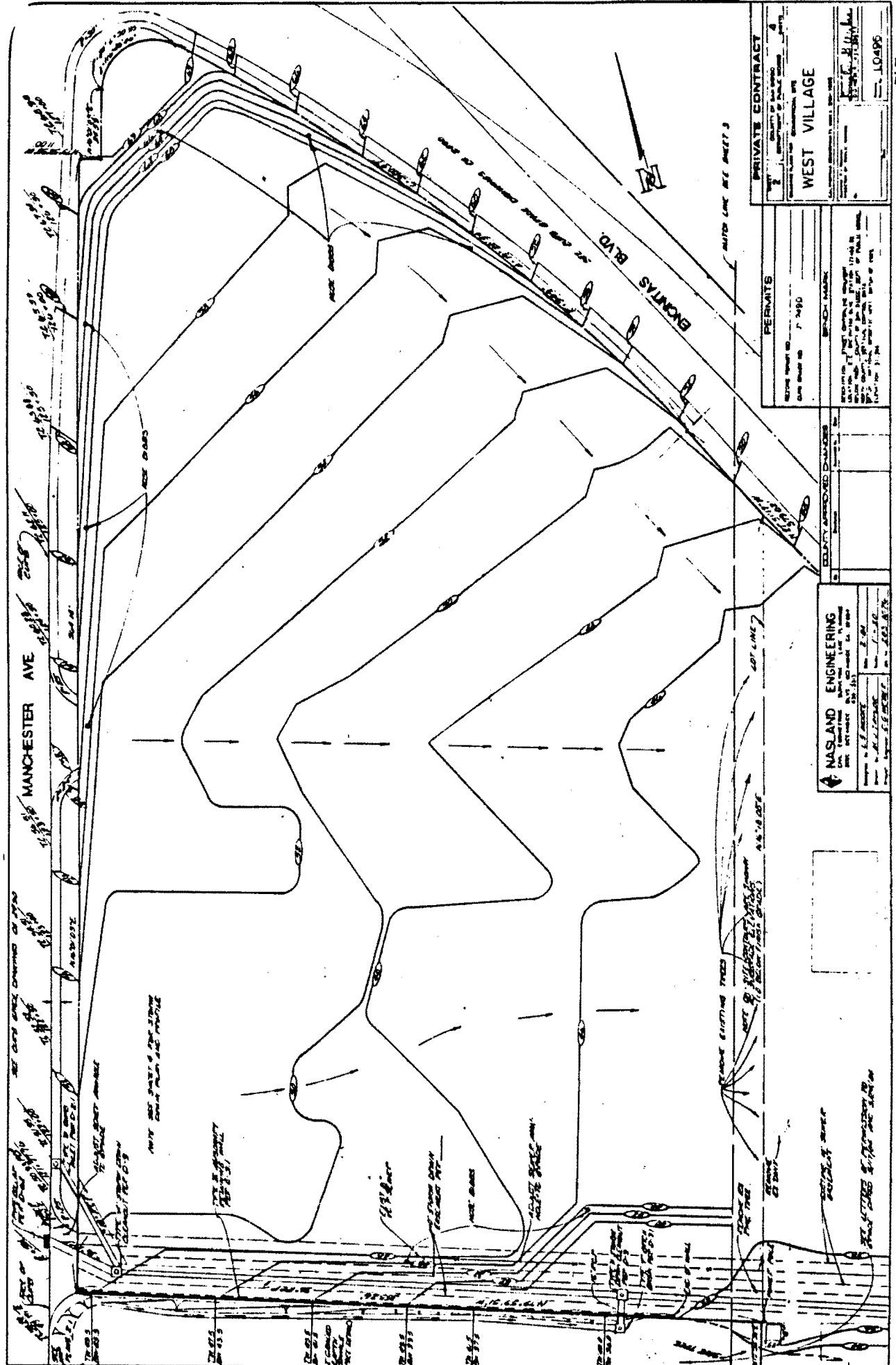
The proposed project, as conditioned, would be consistent with the LUP policies as it would eliminate development within the 100-year floodplain and any potential impacts on habitat or hydrology. Approval of the proposed project would not prejudice the County's LCP preparation abilities.

STANDARD CONDITIONS:

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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.



6-84-368



PRIVATE CONTRACT

WEST VILLAGE

LOT NO. 10495

PLUM

PERMITS

PERMIT NO. 7-1490

DATE ISSUED 10/1/50

BRAND-NAMER

REVISIONS: 1. 10/1/50 - AS SHOWN ON PERMITS. 2. 10/1/50 - AS SHOWN ON PERMITS. 3. 10/1/50 - AS SHOWN ON PERMITS.

UTILITY APPROVED DRAWINGS

DATE: 10/1/50

BY: [Signature]

NASLAND ENGINEERING

INCORPORATED

1000 10th St. S.W.

SEATTLE 5, WASH.

TEL. 522-1111

TELETYPE 522-1111

POST OFFICE BOX 1000

SEATTLE 5, WASH.

REGISTERED PROFESSIONAL ENGINEERS

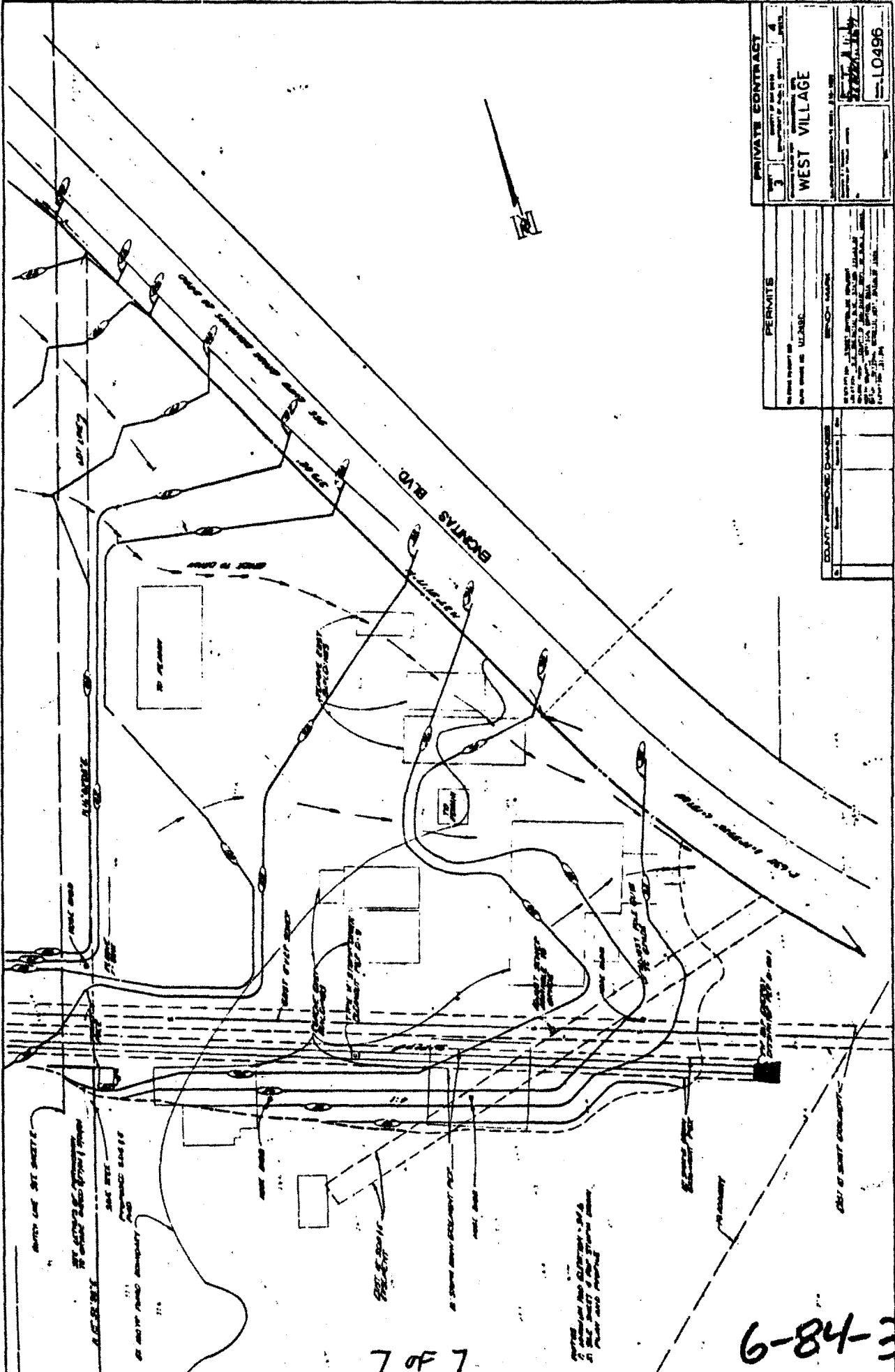
STATE OF WASHINGTON

NO. 1000

EXPIRES 12/31/51

OUT 7

6-84-368



PRIVATE CONTRACT	
1	2
WEST VILLAGE	
10496	

PERMITS	RECORD DRAWING
NO OTHER PERMITS NEEDED	NO OTHER PERMITS NEEDED
DATE ISSUED: 08/15/84	DATE ISSUED: 08/15/84
BY: [Signature]	BY: [Signature]

COUNTY COMMISSIONER	APPROVED

6-84-368



R.C.S. 97

Rancho Santa Fe Road

La Bajada Bridge

Bridge Fill Slope

Project Site

Existing Eastern Parking Lot

Existing Commercial Center

12" SOGG & EASTMENT-00
85-016351, DATED 1-17

TYPE 18 HEADWALL
PER STD. DWG. D-32

12" 197' RCP @ 0.09%

EXISTING SEWER MAINLINE
F.P. 11-08880...
F.G. 34.4

SAWDOT-MAKE
SMOOTH TRANSITION

GR. 31.5
I.E. 31.5
amp. BASIN

Alternative Grading Plan

(Approx. 750 cubic yards)

EXHIBIT NO. 5
APPLICATION NO. PG-ENC-96-34-R
A.T. Grading Plan
California Coastal Commission