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CALIFORNIA COASTAL COMMISSION

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Staff: LJM-SD
Staff Report: 9/17/97
Hearing Date: 10/7-10/97



STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

RECORD PACKET COPY

DECISION: Approval with Conditions

APPEAL NO.: A-6-ENC-97-70

APPLICANT: Christopher and Gregory Kirkorowicz

PROJECT LOCATION: 5242 Manchester Avenue, Encinitas, San Diego County.
APN 259-201-03, 04

PROJECT DESCRIPTION: Placement of approximately 8,700 cubic yards of fill within the 100-year floodplain to create a building pad for a private stable facility impacting approximately .44 areas of wetland habitat on 21.47 acre site. Also proposed is the construction of a 1,728 sq. ft. stable facility to accommodate 39 horses.

APPELLANTS: San Elijo Lagoon Conservancy and Coastal Commissioners Rusty Areias, Sara Wan and Christine Kehoe

SUBSTANTIVE FILE DOCUMENTS: Appeal applications dated 6/2/97; Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Resolution Nos. 97-02 & 97-46; Extended Initial Assessment Case No. 94-140DR/FP/CDP/EIA for Kirkorowicz Private Equestrian Stables by Craig R. Lorenz & Associates dated August 1996; Wetland Habitat Mitigation, Maintenance & Monitoring Plan for the Kirkorowicz Stables Project by Dudek and Associates dated August 9, 1996; Biological Resources Survey Report for the Kirkorowicz Stables Project by Vincent N. Scheidt dated July 1996.

SUMMARY OF STAFF RECOMMENDATION:

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

I. APPELLANT'S CONTENTIONS.

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to allowable uses within a wetland and the 100-year floodplain, required mitigation for wetland impacts, the protection of required buffers with open space easements and grading within the floodplain during the winter rainy season.

II. LOCAL GOVERNMENT ACTION.

The coastal development permit was approved, with conditions, by the City of Encinitas Planning Commission on January 9, 1997. The decision of the Planning Commission was subsequently appealed by the San Elijo Lagoon Conservancy to the City Council. On May 14, 1997, the City Council upheld the Planning Commission decision and approved the project with numerous standard and special conditions that addressed, in part: site development and grading, landscaping, exterior lighting, the number of horses permitted on the site, mitigation and monitoring for wetland impacts and the storage and disposal of manure/shavings.

III. APPEAL PROCEDURES.

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

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

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

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

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

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

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

MOTION. Staff recommends a NO vote on the following motion

I move that the Commission determine that Appeal No. A-6-ENC-97-70 raises No Substantial Issue with respect to the grounds on which the appeal has been filed.

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

V. FINDINGS ON SUBSTANTIAL ISSUE.

1. Project Description. The proposed development involves the construction of an approximately 1,728 sq. ft. private enclosed stable facility on an a 21.47 acre site that currently contains a number of open corrals and fences. The stable and surrounding pad area are proposed to accommodate and board up to a maximum of 39 horses. The structure is proposed to be located within the 100-year floodplain of Escondido Creek in the northwestern portion of the site along Manchester Avenue. To prepare the site for development to accommodate the stable facility, approximately 8,700 cubic yards of fill is proposed. Based on the biological study of the site prepared for the applicant, the City of Encinitas determined that the project will require fill of approximately .44 acres of wetlands described as remnant salt marsh habitat.

The project site is located on the east side of Manchester Avenue, a short distance south of Encinitas Boulevard/Rancho Santa Fe Road in the Olivenhain community of the City of Encinitas. The site is bounded by Manchester Avenue and residential development to the west, single-family residential development to the north and south and vacant land and Escondido Creek to the east.

2. Wetlands. The appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to permitted uses within wetlands, appropriate mitigation standards for wetland impacts and the need for wetland buffers. The City's LCP includes several provisions pertaining to the protection of wetlands. The following are the most applicable to the subject appeal. Policy 10.6 on Page RM-18/19 of the certified LUP states:

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

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve 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. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding area of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible. All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

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

In review of the project by the City, it was determined that wetlands, as defined in the LCP, are present on the site and that the proposed 8,700 cubic yards of fill (with a footprint of approximately 1.32 acres) to create the building pad area (approximately .62 acres) for the private stable facility would permanently fill approximately .44 acres of wetlands (remnant saltmarsh habitat). As cited, the 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 8,700 cubic yards of fill to accommodate a 1,728 sq. ft. private stable facility 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 because the site has been "historically" used for the grazing and boarding of large animals, and because the project does not change that use, that the project is not a "newly permitted use or activity" and therefore Policy 10.6 of the City's certified LUP does not apply relative to permitted uses within a wetland. However, the City's finding on historic use of the site is not entirely accurate. Although it is possible that the site has been used for free grazing of large animals, there is no evidence that boarding of such has been a historic use because the fences and corral structures that exist on the site were all constructed since the applicant purchased the property in 1989, none of which have been authorized pursuant to a coastal development permit. Thus, use of the site for boarding of animals does appear to be a new use. Furthermore, even if boarding horses were a historic use of the site, Policy 10.6 applies to all development, regardless of whether development constitutes new use of a site or facilitation of an existing use. Under Policy 10.6, fill of wetlands is prohibited except for the four identified purposes. The placement of 8,700 cubic yards of fill and the construction of enclosed stable facilities within the floodplain that eliminates .44 acres of wetland habitat is not one of the identified allowable uses.

The appellants also contend that aside from not being one of the permitted uses within a wetland cited in the City's LCP, the proposed project is not the least environmentally damaging alternative, as also required by LCP policies and ordinances. Specifically, the proposed project will fill approximately .44 acres of wetlands to accommodate the private stable facility. The City, in its review and approval of the project did not adequately review other alternatives that would avoid or reduce the need for wetland fill.

Another contention of the appellants is that even if the permanent fill of wetlands was found to be a permitted use, the City's required mitigation ratio for wetland impacts is too low and does not involve creation of new habitat. The certified LCP states that when wetland impacts are 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 the regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than 1:1. The City's approval of the project only included mitigation for wetland impacts at a ratio of 1:1 along with enhancement (removal of non-native species) of an adjacent wetland area. In addition, the City's file does not include written statements from the California Department of Fish and Game (DFG) relative to required mitigation ratios. Additionally, the mitigation plan approved by the City does not include creation of new wetland of the same type impacted as remnant salt marsh is the habitat that is to be impacted and the mitigation plan calls for replacement with riparian habitat. Also, the mitigation plan does not involve the creation of new habitat; it only involves the removal of fill/sedimentation within a designated area of the site and an allowance for it to naturally revegetate on its own. As such, the proposed development is inconsistent with the LCP policies relative to mitigation requirements.

Finally, the City's decision did not include the provision of wetland buffers. The above cited LUP policies and ordinances require that a minimum wetland buffer of 50 feet for riparian areas and 100 feet for wetlands be provided. While a buffer from the proposed development itself may not be appropriate since livestock can continue to open graze on the site, such a buffer is appropriate surrounding the proposed mitigation site.

In summary, the proposed development is inconsistent with the City's LCP pertaining to protection of wetland resources in that it is not a permitted use within a wetland, does not provide adequate mitigation for unavoidable wetland impacts, is not the least environmentally damaging alternative and does not provide necessary wetland buffers. For these reasons, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified local Coastal Program.

3. Floodplain Development. The appellants also contend that the City's decision is inconsistent with provisions of the City's LCP regarding permitted development/allowable uses within the 100-year floodplain as well as drainage and downstream water quality issues. Specifically, Policy 8.2 on Page LU-19 of the City's certified LUP states, in part:

[...] No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this Plan. No grading or fill activity other than the minimal necessary to accommodate those uses found safe and compatible shall be allowed. Such grading shall not significantly redirect and impede flood flows or require floodway modifications. Exceptions from these limitations may be made to allow the following:

a. 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 a minimum use of the property.

[...]

These exceptions shall be allowed only to the extent that no other feasible alternatives exist and minimum disruption to the natural floodplain environment is made. [...]

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, including, but not limited to, artificial flood channels, revetments, and levees. Flood protective works may be permitted to protect new or existing roads which are identified in the Circulation Element.

b. Existing environmentally sensitive habitat areas will not be significantly adversely affected.

c. The development will not result in a net reduction of existing riparian habitat areas within the floodplain.

d. The design of the development incorporates the findings and recommendations of both a site specific area watershed hydrologic study in order that the development assures that there will be no increase in the peak runoff rate from the fully developed site as compared to the discharge that would be expected from the existing undeveloped site as a result of the most intense rainfall expected once every ten years during a

six-hour period; and neither significantly increases nor contributes to downstream bank erosion and sedimentation of wetlands, lagoons and other environmentally sensitive habitat areas.

e. There will be no significant adverse water quality impacts to downstream wetlands, lagoons and other environmentally sensitive habitat areas.

Finally, Policy 14.5 on Page RM-27 of the City's certified LUP addresses limitations on grading during the rainy months and states:

To minimize erosion and allow sedimentation control systems to work, no grading or vegetation removal shall be allowed to occur during the wet season, October 1 - April 15, without all systems and devices per an approved erosion control plan and program being in place. During other times of the year such systems shall be provided and operative as required by a comprehensive City erosion control ordinance. No grading shall occur during the rainy season within the Special Study Overlay area, or in areas upland of sensitive areas including lagoons, floodplains, riparian or wetland habitat areas, unless by site specific determination, the grading would not be occurring on sensitive slopes, in floodplain areas or upland of floodplains, where sedimentation might occur in other sensitive habitat areas. Then, if grading is determined to be allowable, all necessary erosion control devices, including sedimentation basins, must be in place and shall be monitored and maintained throughout the grading period.

In review of the appellant's contentions, the Commission finds that the City's approval is inconsistent with the LCP policies relative to floodplain development. As noted above, the LUP policy does allow an exception to the floodplain limitations to permit minimum private development. In approving the development, the City found that the proposed floodplain fill was acceptable to accommodate "minimal private development" on the site similar to the residential building pads to the north of subject site. First, it is not clear that the proposed development is necessary to accommodate minimal private development. The proposed stable will be used to house horses for a fee. Further, existing corrals and fences on the site may be considered minimal private development. Second, even if a stable used to board horses for a fee is private development, the amount and extent of the proposed fill is not the minimum necessary. Based on exhibits contained in the City file, the footprint of the proposed fill appears to be much more substantial than that of the residential development to the north.

The City's approval is also inconsistent with Policy 14.5 of the certified LUP. As stated above, this policy prohibits grading to occur during the winter rainy season without approved erosion control measures in place and operating. However, this policy also specifically prohibits grading during the rainy season in floodplain areas, regardless of erosion control measures. While the City's approval of the project did include the requirement for detailed erosion control measures, no limitation on rainy season grading was included, inconsistent with the certified LCP.

The City's approval of the subject development also raises Implementation Plan inconsistencies. Specifically, the City's Floodplain Ordinance only allows floodplain development when existing environmentally sensitive habitat areas will not be significantly adversely affected. The appellants note that a portion of the site is environmentally sensitive, being adjacent to Escondido Creek and upstream from the San Elijo Lagoon and Ecological Reserve. In the case of the subject development approved by the City, to accommodate the 1,725 sq. ft. enclosed stable structures, approximately 8,700 cubic yards of fill is required within the 100-year floodplain which will permanently fill approximately .44 acres of wetlands habitat. As such, the proposed project will adversely affect an environmentally sensitive habitat area, inconsistent with the City's LCP pertaining to floodplain development.

In summary, the proposed development approved by the City of Encinitas is inconsistent with several provisions of the certified LCP in that the proposed enclosed stable and fill is not a permitted use within a wetland, does not provide adequate mitigation for wetland impacts, is not the least environmentally damaging alternative, involves fill beyond the minimal necessary to support minimal private development and does not limit grading to non-winter months. Therefore, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified Local Coastal Program.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

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

The Commission finds and declares as follows:

1. Project Description. The proposed development involves the construction of an approximately 1,728 sq. ft. private stable facility on an a 21.47 acre site that currently contains a number of open corrals and fences. The stable and surrounding pad area are proposed to accommodate and board up to a maximum of 39 horses. The structure is proposed to be located within the 100-year floodplain of Escondido Creek in the northwestern portion of the site along Manchester Avenue. To prepare the site for development to accommodate the stable facility, approximately 8,700 cubic yards of fill is proposed. Based on the biological study of the site prepared for the applicant, the City of Encinitas determined that the project will require fill of approximately .44 acres of wetlands.

The project site is located on the east side of Manchester Avenue, a short distance south of Encinitas Boulevard/Rancho Santa Fe Road in the Olivenhain community of the City of Encinitas. The site is bounded by Manchester Avenue and residential development to the west, single-family residential development to the north and south and vacant land and Escondido Creek to the east.

2. Inconsistencies With the Certified LCP. As stated, the proposed development involves the placement of fill on an irregularly shaped approximately 21 acre site that is located entirely within the 100-year floodplain of Escondido Creek in the City of Encinitas. The fill, which is proposed to be placed in the northwestern most portion of the site, adjacent to Manchester Avenue, is proposed to accommodate an enclosed stable facility that can accommodate and board up to 39 horses.

The applicant asserts that the site has been used to board and graze large animals (horses and cows) since before the Coastal Act. The only structures currently on the site are fences and numerous corrals. It appears these were constructed after 1989. Within the Rural Residential Zone, which is applied to the subject site by the City's certified Local Coastal Program, private stables for the boarding of horses and/or other large animals are permitted by right so long as the number of animals on the site do not exceed the maximum allowed (two animals per acre). The applicant asserts that enclosed stables are needed to house animals safely during flood events.

As noted in the previous section of this report, the City's LCP is very restrictive relative to fill of floodplain areas. Specifically, Policy 8.2 on Page LU-19 of the certified LUP states, in part:

No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies if this Plan. No grading or fill activity other than the minimal necessary to accommodate those uses found safe and compatible shall be allowed. Such grading shall not significantly redirect and impede flood flows or require floodway modifications. Exceptions from these limitations may be made to allow the following:

- a. 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 a minimum use of the property.

In review of the subject development, the proposed enclosed stable facility is not a structure that by itself, could be considered a safe and compatible use within the 100-year floodplain. Typically, stable facilities that could be

found compatible with periodic flooding would be open corral type structures that do not impede or redirect flood flows such as those that currently exist on the site. However, as noted above, the LUP also includes allowances for exceptions to the above cited floodplain limitations if it is found that strict application would preclude minimum private development.

In the case of the proposed development, the entire site is located within the 100-year floodplain. As such, to accommodate any development, fill of the floodplain is necessary to assure such development is safe from flooding. Although the above cited LUP policy specifically defines minimal private development as a single-family residence (under residential zoning), in this particular case, the Commission finds that because fill of the floodplain would be necessary for safe development of a single-family residence, that a fill pad of similar size to accommodate the proposed enclosed stable facility would also be acceptable. In other words, because floodplain fill is necessary in either case, it makes no difference whether a residence or a stable facility is constructed on the pad relative to allowing minimal private development. As such, some fill to accommodate a private stable facility would constitute minimal private development on the site relative to floodplain development.

While the placement of fill in the 100-year floodplain and construction of a private stable facility could be found acceptable under the City's certified LUP floodplain policies, the proposed development is inconsistent with the floodplain policies because it proposes greater fill than needed for a minimum private stable. As proposed, the approximately 8,700 cubic yards of fill, with a footprint of approximately 1.32 acres, is not necessary to accommodate minimum private development. In order to find fill of the floodplain acceptable under the above cited exception, the LCP requires that only the fill necessary to accommodate minimal private development be approved. The City found that the proposed fill pad was acceptable because it is similar in size to the existing fill pad for the adjacent single-family residence to the north. However, based on submitted site plans, Commission staff has determined that the proposed fill pad is much larger than the fill pad for the existing adjacent residence to the north. Based on that comparison, the proposed fill is not the minimum necessary to achieve minimal private development.

As stated previously, the project site is located entirely 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, remnant salt marsh, and coastal and Valley Freshwater Marsh.

Based on review of the biological survey prepared for the site for the City's environmental review, Commission staff has determined that wetlands, as defined in the LCP (remnant salt marsh), are present on the site and the proposed development will permanently fill approximately .44 acres of these

wetlands. While the vegetation area that will be impacted is described as disturbed and low quality, the area has been delineated as wetlands by the biological consultant. 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 stated in the previous section of this report, 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 and enclosed stable facility do not qualify as any of the permitted uses within a wetland pursuant to the City's LCP. Because the the wetland fill to accommodate the proposed development is not permitted under the City's LCP, the project should be redesigned to avoid the wetland fill altogether. In this way the applicant would still have a pad area on which to construct the proposed enclosed stable facility and impacts to wetlands would be avoided, consistent with the LCP. In its review of the development, the City determined that in order to provide safe access to the site, fill of wetlands was necessary.

Although the subject site is comprised of approximately 21 acres, access to the site is only available from Manchester Avenue along the northwest corner of the site (ref. Exhibit #3 attached). In addition, the site only has approximately 250 ft. of street frontage on Manchester Avenue from which site access can be obtained. The City determined that due to the horizontal curve along Manchester Avenue and the obstruction of visibility by the dirt embankment on the northwest side of Manchester Avenue (across from the project site), that only one access driveway could be permitted on this site and that it must be located along the southern end of the proposed fill area where the property fronts Manchester Avenue. According to the City Engineer, this is the only location on the site which allows for clear and safe stopping sight distance (minimum 300 ft.) for cars and trucks entering and exiting the site. The problem lies in that this is the area of the site where wetlands have been identified. As such, it is to accommodate the driveway to access the remainder of the fill area that triggers the need for the proposed wetland fill.

However, even if the proposed wetland fill could be permitted, the City's LCP requires that mitigation for unavoidable wetland impacts occur through creation of new wetlands of the same type, at a ratio determined by the regulatory agencies with authority over wetland resources, but in any case greater than a 1:1 ratio. As noted above, the proposed development will impact approximately .44 acres of wetlands. According to the biological analysis prepared for the site, the vegetation impacted includes, among others, Salt grass, and Frankenia. These wetland species indicate the presence of a remnant salt marsh habitat. However, the mitigation plan approved by the City for the proposed wetland impacts involves riparian habitat. As such, the proposed mitigation does not involve the same habitat as that which would be impacted, inconsistent with the City's LCP.

Historically, when the Commission has found unavoidable impacts to wetlands to be acceptable, it has always been based on an acceptable mitigation plan that, among other things, identifies where the mitigation is to occur (preferably on-site) and that it can be preserved in perpetuity. However, in the case of the subject development, the applicant has not presented an acceptable mitigation plan and, because the plan does not address the same habitat as that impacted, it is unknown if in-kind mitigation can even be provided. Without such a plan, the Commission cannot find that unavoidable impacts to wetlands have been mitigated.

In summary, while limited floodplain fill could be allowed on the applicant's site to allow minimal private development, the proposed development exceeds minimal private development. In addition, the applicant has not adequately demonstrated that wetland impacts are allowable or have been minimized to the maximum extent feasible and the proposed mitigation plan for wetland impacts is not consistent with the LCP requirements. Therefore, the Commission finds that the proposed development is inconsistent with the certified City of Encinitas Local Coastal Program and must be denied.

3. Public Access. The project site is located just 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 road 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 recreational policies of the Coastal Act.

While the proposed development is located well inland of the coast, public access and recreational opportunities, in the form of hiking and equestrian trails, do exist in the area, providing access along Escondido Creek and into San Elijo Lagoon Ecological Reserve and Regional Park. There are currently no such trails existing or planned on the subject site. The development will not impede access to the lagoon or to any public trails. Therefore, the proposed development would have no adverse impacts on public access or recreational opportunities, consistent with the public access policies of the LCP and the Coastal Act.

3. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding 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 of Encinitas Planning Commission and subsequently appealed to the City Council. The City Council approved the development on May 14, 1997. Because the subject development is located within 100 ft. of a wetlands, it falls within the Commission's appeals

jurisdiction. On June 2, 1997, the development approval was appealed to the Coastal Commission.

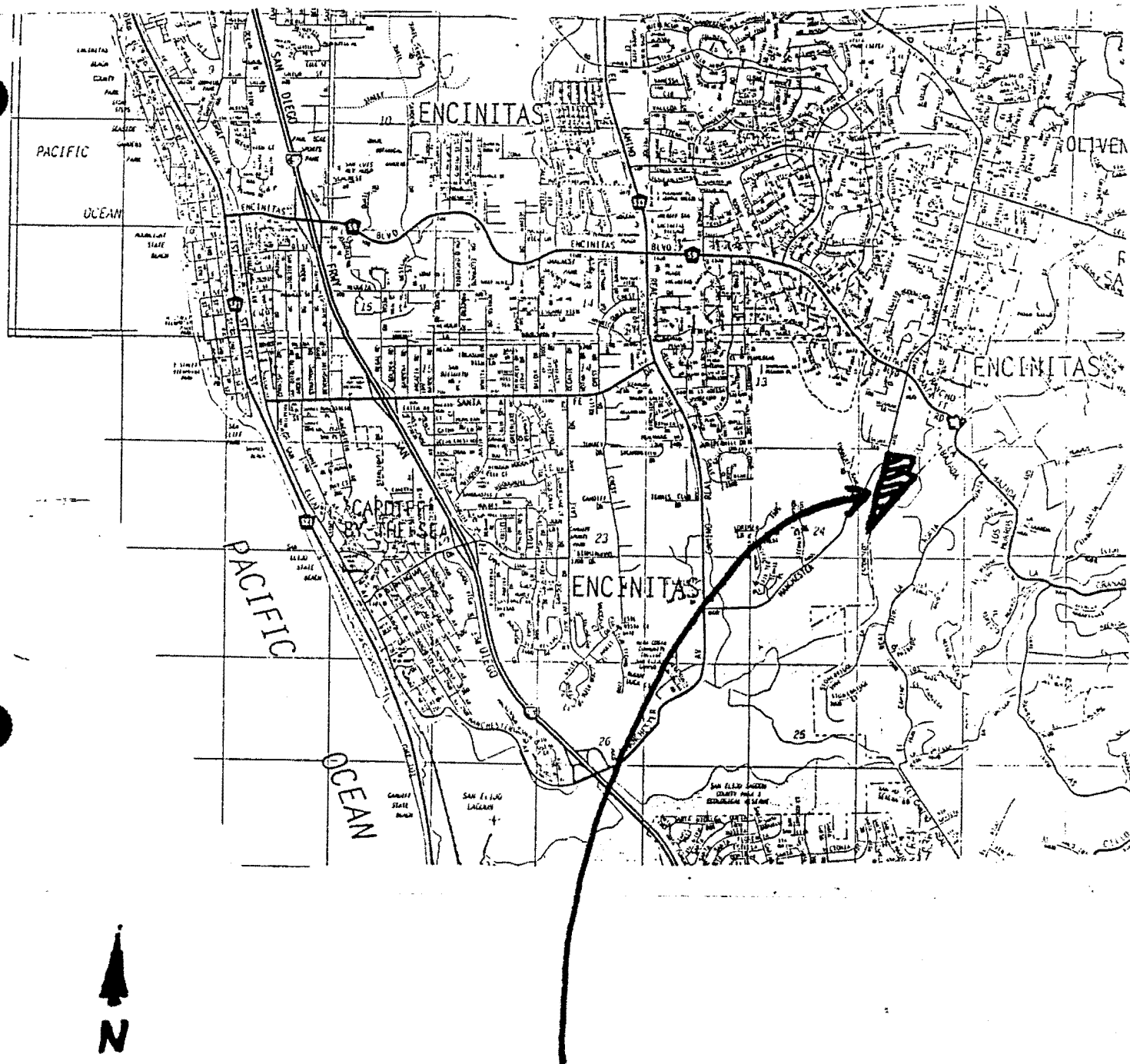
The subject site is zoned and planned for rural residential development in the City's certified LCP. The proposed development is consistent with the rural residential zone and plan designation. The subject site is also located within the Special Study Overlay Zone which is used to indicate those areas 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 Special Study Overlay Zone where site-specific analysis of the characteristics of the site indicate the presence of a flood channel, floodplain or wetland. The subject site has been identified to be entirely within the 100-year floodplain and impact wetlands. Approval of the project by the City did include very detailed conditions addressing erosion control, manure disposal and protection of downstream water quality.

As noted previously, the proposed development which includes both fill of the 100-year floodplain and wetlands is inconsistent with several policies of the City's certified LCP. While the need to fill the floodplain in this particular case to provide minimal private development has been found to be acceptable, the proposed amount of fill is not the minimum necessary. In addition, the fill of the wetlands is not a permitted use pursuant to the certified LCP. Finally, even if the wetland impacts could be found acceptable, the proposal does not include an acceptable mitigation program. As such, the Commission finds that the proposed development must be denied.

5. Consistency With the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 impacts which the activity may have on the environment.

As previously stated, the proposed development would result in adverse impacts to coastal resources in that fill of the floodplain and wetlands has not been minimized and appropriate mitigation for wetland impacts has not been included. There are feasible alternatives available which would substantially lessen any significant adverse impacts which the proposal may have on the environment while still allowing for minimal private development. These feasible alternatives include redesigning the project to reduce the amount of floodplain fill and minimize, to the maximum extent feasible, wetland fill and provide appropriate mitigation for any remaining unavoidable impacts. Therefore, as currently proposed, the Commission finds the proposed project is not the least environmentally damaging feasible alternative, and therefore is inconsistent with CEQA.

(7070R)



PROJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
A6-ENC-97-70
Location Map

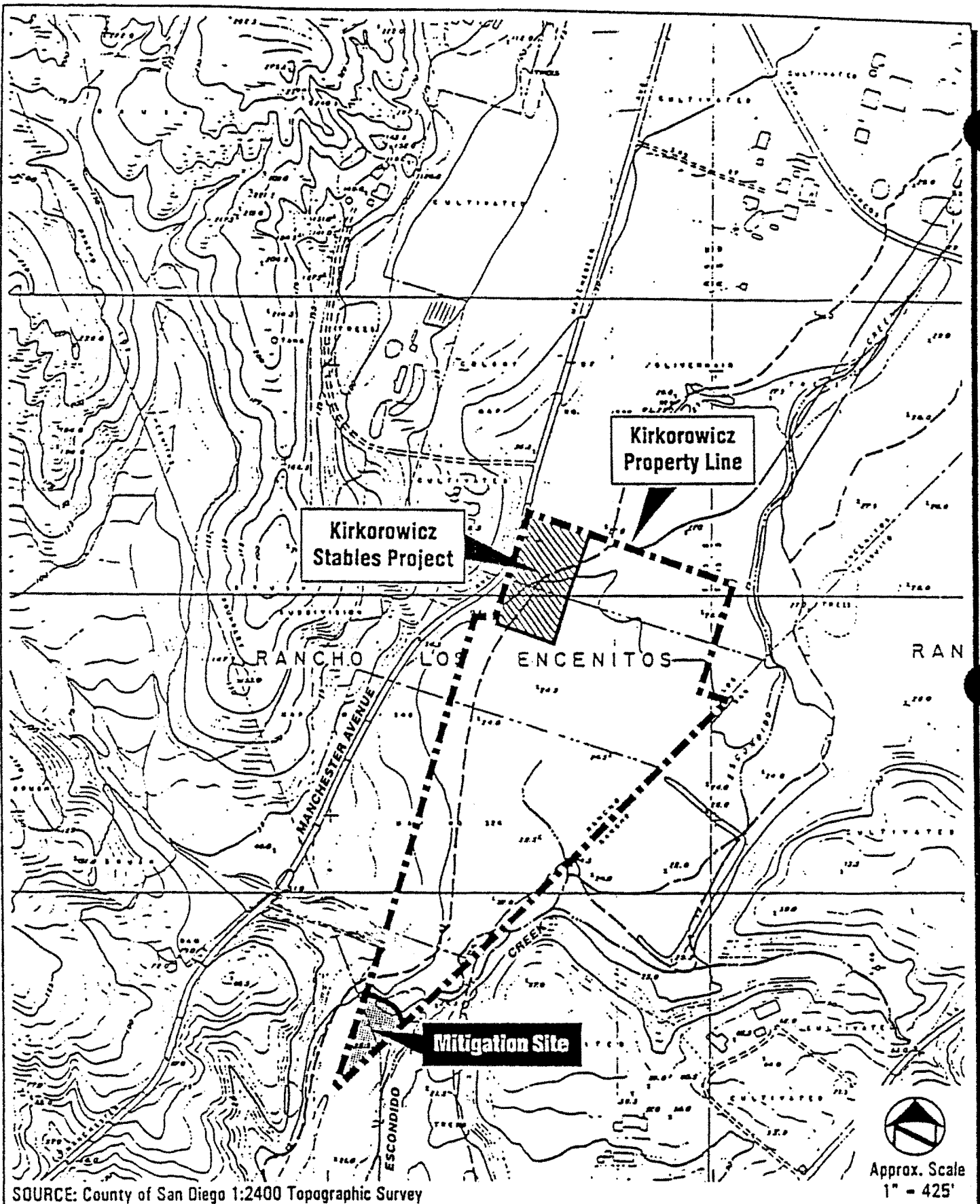


EXHIBIT NO. 2
APPLICATION NO.
A6-ENC-97-70
Overall Site Plan

PARCEL

GRADING → FILL 87
AREA 114 JURIS. WETLAND

JURISDICTIONAL
WETLAND LINE



EXHIBIT NO. 3
APPLICATION NO. A6-ENC-97-70
Fill Area Site Plan As Approved By City
California Coastal Commission



MANCHESTER AVENUE

PARCE

JURISDICTIONAL
WETLAND LINE

AREA N. JURIS.
WETLANDS

EXHIBIT NO. 4

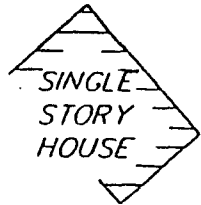
APPLICATION NO.

A6-ENC-97-7

Fill Area Site Plan No.

Revised By Applicant

California Coastal Commission



EX LINED DITCH

PROPOSED 12'x12' STABLES

REMOVE
EX. BLDG

RELOCATE
EX. FENCE

OVERHANG

WETLAND
IMPACT
AREA

30' FY SETBACK LINE

PP

GUY
ESMT

1%

PP

OHL

W

W

R/W

MANCHESTER AVENUE

18"x44' CMP

ACCESS
DRIVE

MH

3551 Fortuna Ranch Road
Encinitas, CA 92024
August 18, 1997

Mr. Lee J. Mc Eachern
Coastal Planner
State of California
California Coastal Commission
San Diego District
3111 Camino del Rio North, Suite 200
San Diego, CA 92108-1725

RE: Application #A-6-ENC-97-070

Dear Mr. Mc Eachern,

On July 29, 1997, County of San Diego Engineer Mr. John Cousino inspected the area called "narrows". This is the same area where proposed mitigations, that is enhancement of existing wetlands and creation of new wetlands, are to take place.


Based upon the comments by Mr. Cousino, and upon the follow-up letter (see Exhibit 1), it is apparent that the proposed mitigations make sense from both a hydrological perspective and from the biological perspective.

Sincerely,



Christopher Kirkorowicz

Enclosure: Exhibit 1

EXHIBIT NO. 5
APPLICATION NO. A6-ENC-97-70
Letters From Applicant
Page 1 of 25
 California Coastal Commission



County of San Diego

DEPARTMENT OF PUBLIC WORKS

5555 OVERLAND AVE, SAN DIEGO, CALIFORNIA 92123-1295

DIRECTOR
(619) 694-2212
FAX: (619) 268-0461
LOCATION CODE 550

COUNTY ENGINEER
COUNTY AIRPORTS
COUNTY ROAD COMMISSION
TRANSIT SERVICE
COUNTY SURVEYOR
FLOOD CONTROL
WASTEWATER MANAGEMENT
SOLID WASTE

August 11, 1997

Mr. Chris Kirkorowicz
3551 Fortuna Ranch Rd.
Encinitas, CA 92024

RECEIVED

AUG 19 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Kirkorowicz:

MEETING OF JULY 31, 1997

On July 31, 1997, John Cousino of the Construction Engineering Section met with you at your Manchester Avenue property. The purpose of the meeting was to review the reasons for deposition of sand on your property in the Escondido Creek and to explore possible solutions to improve the flow of flood waters.

A significant amount of dead wood was observed on the property within the stream bed including several eucalyptus and willow trees growing in the stream bed. The remnants of an old fence was also observed with the fence posts nearly buried in the sand.

Removal of the dead wood and some or all of the eucalyptus trees would improve the flow characteristics of the river and would minimize the deposition of sand. Willows are native to the San Diego area and they do not seriously impede the flow of flood water.

If you need further assistance please call John Cousino at 694-3168.

Very truly yours,

by *John Cousino*

DAVID S. SOLOMON
Deputy Director

DSS:JRC:ts

kirkltr97.jrc

RECEIVED

AUG 07 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

August 5, 1997

Lee J. McEachern, Coastal Planner
California Coastal Commission
San Diego Coast Area
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Re: Commission Appeal No. A-6-ENC-97-070

Dear Mr. McEachern,

I wish to point out that the proposed site fits policy 10.6d even without relying on the differentiation between the "newly permitted uses and activities" and existing uses and activities.

The Local Coastal Plan and the Coastal Act have as their priority marine habitat that is much wetter than the area of the proposed fill.

Please note the following:

1. Wetlands definition as contained in the Coastal Act and Local Coastal Plan lists: "salt water marshes, fresh water marshes, open or closed brackish water marshes, swamps, mudflats and fens." Ex.1, Ex.2

The area in question has some wetlands characteristics, namely the presence of facultative vegetation. But it certainly bears no resemblance to, let's say, fresh water marshes. (In fact, it likely does not even meet U.S. Army Corps of Engineers criteria. Ex. 3)

2. The definition of "fill" as contained in the Coastal Act and the Local Coastal Plan describes it as "placed in a submerged area". Ex. 4, Ex. 5. The area in question is submerged only a few days per year. The rest of the time it is certainly not submerged.

So the 10.6d must be interpreted and applied in the context of existing reality. While 10.6d exempts aquaculture from the restrictions placed on fill, the site in question is much too dry for aquaculture.

According to the Coastal Act and the Local Coastal Plan, aquaculture is to be treated exactly the same way as agriculture: "Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit issuing decisions governed by this title." Ex.6, Ex. 7

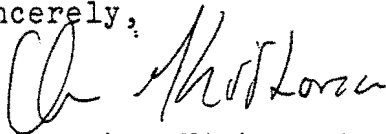
If this exemption applies to aquaculture, then it also applies to other aspects of agriculture. The reason why aquaculture was listed has no doubt to do with the wet marine environment that the Coastal Act emphasizes. Yet, on the property in question aquaculture is certainly not appropriate. In fact, aquaculture

would be an absolutely wrong utilization of the unique resources that this property offers.

The "resource" on this property is the lush green pasture. Therefore, the keeping of large grazing animals (horses and cattle) is clearly resource dependent. Ex. 8

The keeping of large grazing animals on this property goes back at least 50 years. Ex. 9, Ex. 10. Ex. 11. Prior to this, it was in crop production. But it became evident even back then that grazing is the best use.

Sincerely,



Christopher Kirkorowicz
3551 Fortuna Ranch Road
Encinitas, CA 92024
756-2739

area, area of special scenic significance, and any land where logging activities could adversely effect public recreation area or the biological productivity of any wetland, estuary, or stream especially valuable because of its role in a coastal ecosystem.

Section 30119.

"State university" means the University of California and the California State University.

(Amended by Ch. 143, Stats. 1983.)

Section 30120.

"Treatment works" shall have the same meaning as set forth in the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and any other federal act which amends or supplements the Federal Water Pollution Control Act.

Section 30121.

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30122.

"Zoning ordinance" means an ordinance authorized by Section 65850 of the Government Code or, in the case of a charter city, a similar ordinance enacted pursuant to the authority of its charter.

(Added by Ch. 919, Stats. 1979.)

ex 1

. TRANSIENT HABITATION UNIT Shall mean living quarters intended exclusively for occupation by transient persons. A transient habitation may include a hotel or motel room or suite of rooms, a cabin or campground space. (Ord. 91-03)

. TRANSITIONAL HOUSING - This use is designed to be transitional to more permanent housing for homeless individuals and families, once they have had an opportunity to solve their employment, transportation, child care, and other problems related to homelessness. Social service programs, child care, and similar support services for the resident households may also be provided as part of a transitional housing facility. Transitional Housing facilities should specifically be limited in terms of the length of time they are available to individual households (e.g., 180 days) to make room for other homeless households. Parking standards would be established by preparing a parking study through the use permit process. (Ord. 92-17)

. USE shall mean the purpose for which land or a building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.

. WETLANDS: Pursuant to Section 30121 of the Public Resources Code as amended, "wetlands" shall mean lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. (Ord. 95-04)

. WHOLESALE shall mean the selling of any type of goods for purpose of resale.

. YARD shall mean any open space on the same lot with a building or dwelling which open space is unoccupied and unobstructed except for the projections permitted by this Code.

. YARD, FRONT shall mean a space between the front yard setback and the front line or future street line, and extending the full width of the lot.

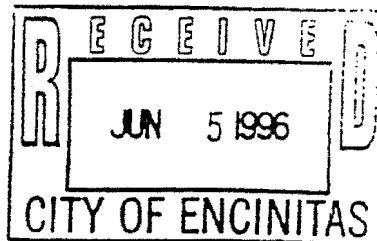
. YARD, REAR shall mean a space between the rear yard setback and the rear lot line, extending the full width of the lot.

. YARD, SIDE shall mean a space extending from the front yard, or from the front yard lot line where no front yard is required by this Code, to the rear yard or rear lot line.

. ZONING CODE AND/OR ORDINANCE shall mean the zoning regulations of the City of Encinitas.

4 June 1996

Mr. Christopher Kirkorowicz
3551 Fortuna Ranch Road
Encinitas, California 92024



296000-30

Subject: *Site visit to Kirkorowicz Property on Manchester Avenue, March 1996.*

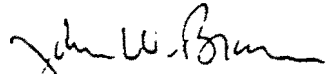
To whom it may concern:

At the request of Mr. Christopher Kirkorowicz, I visited his property located on the south side of Manchester Avenue near the edge of Escondido Creek, City of Encinitas, San Diego County, California. The site visit was conducted in March 1996. The site supports a small wooden structure and several corrals (occupied by horses) at the edge of the floodplain of Escondido Creek. The purpose of the visit was to discuss potential wetland issues associated with the future development of the site and to examine the results of an "experiment" conducted by Mr. Kirkorowicz.

Mr. Kirkorowicz had excavated a series of holes, approximately 24 inches deep, along the edge of one of his corrals, extending along a slight elevational gradient from the northern portion of the property (near Manchester Avenue) toward the lowest (in the direction of Escondido Creek). Despite recent spring rainfall, the water level was below 16 inches in each of the holes. If the U.S. Army Corp of Engineers Manual standards for determining jurisdictional wetlands are applied, the observations on Mr. Kirkorowicz's property suggest that wetland hydrology is absent from this portion of the site.

If you have any questions regard my site visit of the contents of this letter, please feel free to contact me at (619) 942-5147.

Very truly yours,
Dudek & Associates, Inc.



John W. Brown, Ph.D
Senior Biologist

ex 3

4-112

7 of 25

Section 30108.1.

"Federal coastal act" means the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), as amended.

(Added by Ch. 1173, Stats. 1981.)

Section 30108.2.

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Section 30108.4.

"Implementing actions" means the ordinances, regulations, or programs which implement either the provisions of the certified local coastal program or the policies of this division and which are submitted pursuant to Section 30502.

Section 30108.5.

"Land use plan" means the relevant portion of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions.

Section 30108.55.

"Local coastal element" is that portion of a general plan applicable to the coastal zone which may be prepared by local government pursuant to this division, or any additional elements of the local government's general plan prepared pursuant to Section 65303 of the Government Code, as the local government deems appropriate.

(Amended by Ch. 1009, Stats. 1984)

Section 30108.6.

"Local coastal program" means a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.

(Amended by Ch. 919, Stats. 1979.)

Section 30109.

"Local government" means any chartered or general law city, chartered or general law county, or any city and county.

Section 30109.5.

Repealed by Ch. 1331, Stats. 1976.

FAMILY shall mean an individual or two (2) or more persons related by blood, marriage or adoption, or a group including unrelated individuals bearing the generic character of and living together as a relatively permanent bona fide housekeeping unit sharing such needs as cooking facilities. Family shall also mean the persons living together in a licensed "residential facility" as that term is defined in California Health & Safety Code Section 1502(2)(1), which services six (6) or fewer persons, including the licensee, the members of the licensee's family, and persons employed as facility staff.

FAMILY CARE HOME shall mean a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer elderly, mentally disordered or otherwise handicapped persons or dependent and neglected children and providing such care and service on a 24-hour-a-day basis. No facility shall qualify as a family care home if it is operated in such manner that facilities, activities, or events thereon are shared by more than six elderly, mentally disordered or otherwise handicapped persons or dependent and neglected children.

FAMILY DAY CARE HOME shall mean a home which regularly provides care, protection, and supervision of 12 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and includes the following:

"Large Family Day Care Home" shall mean a home which provides family day care to 7 to 12 children, inclusive, including children under the age of 10 years who reside at the home, as defined above; (Ord. 92-28)

"Small Family Day Care Home" shall mean a home which provides family day care to 6 or fewer children, inclusive, including children under the age of 10 years who reside at the home, as defined above. (Ord. 92-28)

→ FILL: Pursuant to Section 30108.2 of the Public Resources Code as amended, "fill" means earth or any material or substance, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area. (Ord. 95-04)

FIRST PUBLIC ROAD PARALLELING THE SEA: Pursuant to Section 13577(i) of Title 14 of the California Code of Regulations as amended, the "first public road paralleling the sea" shall mean that road nearest the sea, as defined in this Chapter which is: (Ord. 95-04)

- A. Lawfully open and suitable for uninterrupted use by the public;
- B. Maintained by a public agency;

ex 5

9 of 25

Section 30100.

Unless the context otherwise requires, the definitions in this chapter govern the interpretation of this division.

Section 30100.2

"Aquaculture" means a form of agriculture that is devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and fresh water. Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit issuing decisions governed by this division.

(Added by Ch. 1486, Stats. 1982.)

Section 30100.5

"Coastal County" means a county or city and county which lies, in whole or in part, within the coastal zone.

Section 30101.

"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

Section 30101.3.

"Coastal-related development" means any use that is dependent on a coastal-dependent development or use.

(Added by Ch. 1090, Stats., 1979.)

Section 30101.5.

"Coastal development permit" means a permit for any development within the coastal zone that is required pursuant to subdivision (a) of Section 30600.

Section 30102.

"Coastal plan" means the California Coastal Zone Conservation Plan prepared and adopted by the California Coastal Zone Conservation Commission and submitted to the Governor and the Legislature on December 1, 1975, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000).

Section 30103.

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational

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B. Coastal Zone developments approved by the City not included within paragraph (A) of this Section that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

C. Any Coastal Zone development which constitutes a major public works project or a major energy facility. The phrase "major public works project or a major energy facility" as used in Public Resources Code Sec. 30603(a)(5) in these regulations shall mean any proposed public works project, as defined by Sec. 13012 of the Coastal Commission Regulations (Title 14, California Administrative Code, Division 5.5) and Public Resources Code Section 30114, or energy facility, as defined by Section 13012 of the Coastal Commission Regulations and Public Resources Code Sec. 30107.

→ AQUACULTURE: Pursuant to Public Resources Code Section 30100.2 as amended, "aquaculture" shall mean a form of agriculture that is devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and fresh water. Aquaculture products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit issuing decisions governed by this title. (Ord. 95-04)

ARCADES shall mean a place of business where five (5) or more electronic or electrical coin operated games are operated for compensation.

AUTOMOBILE SERVICE STATION shall mean a lot or portion of a lot used for the servicing of motor vehicles. Such servicing may include sale of motor fuel and oils, lubrication, incidental car washing, waxing and polishing, sales and service of tires, tubes, batteries, and service of auto accessories. Such servicing shall not include tire recapping, sale or rebuilding of engines, battery manufacturing or rebuilding, radiator repair or steam cleaning, body repair, painting or upholstery, or installation of auto glass.

AUTOMOBILE WRECKING: The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled or wrecked vehicles or their parts. The presence on any lot or parcel of land of 5 or more motor vehicles which for a period exceeding 30 days have not been capable of operating under their own power, and from which parts have been or are to be removed for reuse or sale shall constitute prima facie evidence of an automobile wrecking yard.

ex 7



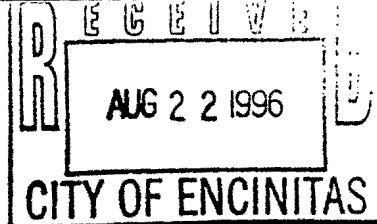
BARBARA B. CHARLES

P.O. BOX 288004

SAN DIEGO, CA 92128-0991

619.679.2725

619. 679.9025 (FAX)



August 16, 1996

Mr. Craig Olson
Associate Planner
City of Encinitas
505 South Vulcan Ave.
Encinitas, CA 92024

Dear Mr. Olson:

I am writing to you on behalf of the Pegasus Foundation, a non-profit organization which rescues and rehabilitates slaughter bound horses. We totally support Chris Kirkorowicz in his efforts to do likewise.

Further, although not engineers, we support his proposed construction of a pad and stables on his property to provide better accommodations for the horses that are kept there. This property does have one drawback - the possibility of flooding. If this situation can be resolved, the property would be ideal for keeping horses. A rich pasture with soft level ground is a rare commodity in the North County. The proposal to raise the level of a portion of the land and reduce the chances of flooding should result in a safer and better operation.

We hope that you can accommodate Chris Kirkorowics in his desire to resolve his flooding problem so he may have the facility he needs to continue his admirable work.

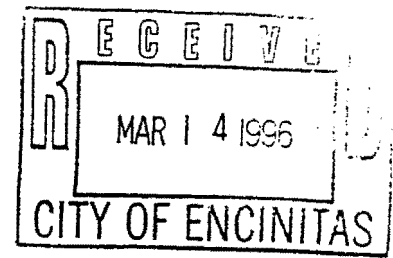
Sincerely,

Barbara B. Charles

Barbara B. Charles
President

ex 8

12 of 25



March 13, 1996

City of Encinitas
c/o Craig Olson
505 South Vulcan
Encinitas, CA 92024

Dear Mr. Olson,

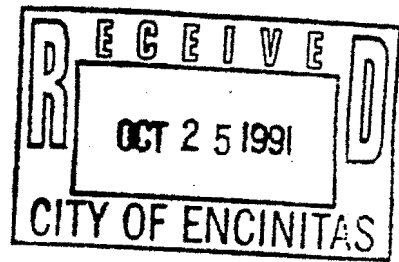
The pasture where Mr. Kirkorowicz keeps cattle and horses is well known to me. It has been farmed and grazed as long as I can remember. Not so long ago, hundreds of farm animals that belonged to me and my family were grazing there.

I am pleased that Mr. Kirkorowicz continues the rural tradition. What he proposes for his property, namely a pad with shelters for animals, makes good sense. The whole thing is well located, well designed and fits the property very well.

Sincerely,

Mary Ann Wiegand Wood

Mary Ann Wiegand Wood
3744 Manchester
Encinitas, CA 92024



Linda Niles
Planning Department
City of Encinitas
527 Encinitas Blvd.
Encinitas, CA 92024

September 26, 1991

Dear Ms. Niles,

I have lived for 15 years on Manchester Avenue and my property encompasses 240 feet of Escondido Creek. I am familiar with the valley, and I am familiar with the adjacent property up the stream, currently owned by Mr. Kirkorowicz.

In the past the entire valley was used for grazing and so was the property owned by Mr. Kirkorowicz. Mr. Kirkorowicz's property is one of the few areas where grazing operation continues. The property was always fenced off to keep animals from escaping and wandering onto adjacent properties and onto the road.

There was no public access through this property in any form as the property perimeter was always fenced. There was no public trail along the creek due to peripheral fencing and internal fences.

Fences across so-called Sand Creek (where rainwater from Trabert Canyon flows in a culvert under Manchester Avenue and eventually goes into Escondido Creek) are most susceptible to flood damage, but the integrity of the fences was maintained as a must to maintain the grazing operation. Damages to the peripheral fences were repaired, and, in addition, there was the internal fencing on either side of Sand Creek to keep the cattle and horses in and trespassers out.

Sincerely,

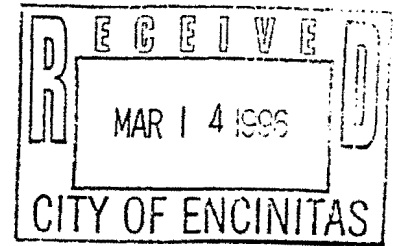
Bill Buffinger
4004 Manchester Avenue
Encinitas, CA 92024
753-6801

ex 10

14 of 25

February 8, 1996

City of Encinitas
C/O Craig Olsen - Planning Dept.
5005 S. Vulcan Ave
Encinitas CA 92024



Since 1973 I have enjoyed the "Country Life style". The valley below my home has always had horses and cattle. I can even remember a time when Mr. Herman Wiegand would ride up and down the valley herding his cattle.

I have never encountered problems with people who keep horses and cattle in this area. However I have had plenty of problems with trespassers, walking on my property without permission, or uninvited hikers who ignore property lines and signs that state "NO TRESPASSING". They steal from me, they have shoot at my windows, they have cut down my trees and they leave their trash as gifts or perhaps payment for they use of my property.

I have also had a problem with the County of San Diego. They shut down the land fill on the other side of Manchester Ave., leaving a mess with the sand that plugs up the creek. Then they do nothing to take care off it.

The City of Escondido spilling sewage into the creek, this is a problem to be concerned with.

The Sewer line running next to creek that has been improperly maintained. Trucks continue to tear up the *sewer easement*. This is another issue that should be addressed.

These are issue that effect not just my property, but the entire creek, the entire Lagoon. People who really care about the creek and Lagoon should worry about these issues. Rather they concern them selves with Mr Kirkorowicz little project.

Mr Kirkorowicz plans to put three small structures on a raised pad next to Manchester Ave. Which will have no additional impact on the area. The combined area of these structures is smaller than a single family home. The area that he wants to raise would be no different than the way other properties adjacent to his that have been developed, however they have single family homes placed on them. Leave Mr Kirkorowicz be, go solve some real problem. Let him utilize his land the way more of us should.

Sincerely,

Tom Robison
4030 Manchester Ave
Encinitas CA 92024

ex 11
15 4-25

Christopher Kirkorowicz
3551 Fortuna Ranch
Encinitas, CA 92024

RECEIVED

AUG 26 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

August 25, 1997

Lee J. McEachern
Coastal Planner
State of California Coastal Commission
San Diego District
3111 Camino del Rio North, Suite 200
San Diego, CA 92108-1725

RE: Application Number A-6-ENC-97-070

Dear Mr. McEachern:

During our July 30 meeting, you have indicated that the basic approach that the Coastal Commission staff might take in evaluating the project will be guided by the letter and spirit of Article 4 of the Coastal Act titled "MARINE ENVIRONMENT."

However, the property in question fits Article 5 of the Coastal Act, entitled LAND RESOURCES, much better:

- 1) Term MARINE refers specifically to the "sea." Therefore it is not synonymous with "aquatic." The Coastal Act clarifies definition of "sea" to include areas that are also subject to tidal action. But that is where it ends.
- 2) Area in question is an agricultural land, so it fits very well into the Article 5. Keeping of large grazing animals and utilizing of the abundant pasture is the crux of the land use, and that will not change by placement of a pad.

Further, the vegetation that can be effected by the proposed pad does not represent a remnant of "marine environment" that has been somehow altered or degraded by human activity.

In fact, it is the human activity that is responsible for presence of the vegetation in the area of the proposed pad.

- 1) Historically, Escondido Creek was a seasonal creek [Exhibit 1 & Exhibit 2]. Wetlands vegetation consisted primarily of riparian woodland along the creek bed.

As Escondido Creek became a year-around creek, due to urban and agricultural runoffs, the wetland vegetation spread out.

- 2) On the property in question, the changes in water flow pattern are even more dramatic.

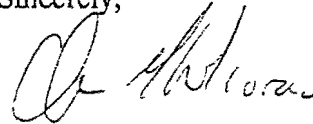
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For a number of years there was an unauthorized, and illegal, diversion of water from the main channel of the Escondido Creek into a ditch that went close to Manchester Avenue and therefore right to the area of the proposed pad. This was achieved through building of a dam across Escondido Creek, raising water behind the dam and redirecting the water into the ditch. As a result, the flow in the main channel would stop [or be greatly diminished]. This dam was constructed without knowledge or permission of the property owner on whose land the dam was built. In summer of 1996 I located a dam built from sand bags [it sounded like a waterfall] and removed it. Subsequently, I was told by the property owner that another dam, made of wood, was also found and removed.

In June 1997, the main channel of Escondido Creek stopped flowing and water appeared in the ditch. I located a dam made of wood which I removed. Subsequently, the dam was rebuilt several times using a variety of materials. All the rebuilding was done in spite of clear objections and prohibiting of the property owner.

It is my belief that finally the dam is gone for good.

Sincerely,



Christopher Kirkorowicz

P.S. I have contacted several senior staff members in the City of Encinitas, including Senior Civil Engineer, Mr. Hans Jensen; City Planner, Mr. Bill Weedman and Senior Planner, Mr. Gary Barberio. They all stated that in their opinion such diversion of water is illegal.

I have contacted County of San Diego Deputy Director of Engineering, Mr. David Solomon and Mr. John Cousino of the Engineering Section. They also stated that such diversion of water is illegal.

Back in 1996, I was told by Fish and Gam that such diversion is very illegal.

San Joaquin Creek

San Joaquin County

1900

San Joaquin County, California



21

vs. 50,000,000 MPN in raw sewage.

Freshwater Discharges

→ With the increase in population and subsequent increase in the need for fresh water, Escondido Creek has changed from being historically ephemeral to being a perennial stream system. This has contributed to the changing of San Elijo's East Basin from being predominantly tidal influenced to resembling more of a freshwater marsh.

While freshwater discharge is not directly a water quality issue, the influx of freshwater to this area does have an impact on water quality and beneficial uses (four of the six listed for the lagoon). While the increase of water does provide more opportunities for soil erosion and runoff of contaminants, it also provides a dilution factor in keeping the concentration of contaminants down.

It is important to remember that any decrease in freshwater discharges in the Escondido Creek watershed needs to be accompanied or preceded by a decrease in nutrients.

→ The increased amount of freshwater flow in the watershed has enhanced the riparian habitat along the creek and surrounding areas. This freshwater has also impacted the lagoon, primarily by decreasing the normal salinity gradient which results in the loss of microhabitats and a decline in species diversity. Eighty percent of estuarine productivity occurs in the intertidal salt marsh; altering the salt marsh affects both freshwater and marine systems. Salt marsh habitats are of special concern with California Department of Fish and Game, U.S. Fish and Wildlife Service, EPA, and interest groups.

→ The degradation of cordgrass, pickleweed, salt marsh algal mat, and salt grass habitats have resulted in the disruption of the food chain, impacting threatened and endangered species such as the clapper rail, Belding's savannah sparrow, salt marsh skipper, least tern, tiger beetle, and snowy plover. The species that have adapted to lower salinities are populations of younger animals with early maturity and prolonged spawning periods.

Freshwater marsh plants such as cattails, tules and rushes have become established in the lagoon. These plants are difficult to eradicate because once rooted they can tolerate a wide range of salinity gradients.

The less saline water also increases mosquito, gnat, and midge populations which alters the food chain and are annoying to nearby residents and visitors.

The degradation of the estuarine system impacts bivalve and fish populations in both the lagoon and ocean. These species are of importance to sport and commercial fishermen.

EVALUATION OF THE SAN DIEGUITO, SAN ELIJO,
AND SAN PASQUAL HYDROLOGIC SUBAREAS
FOR RECLAIMED WATER USE,
SAN DIEGO COUNTY,
CALIFORNIA

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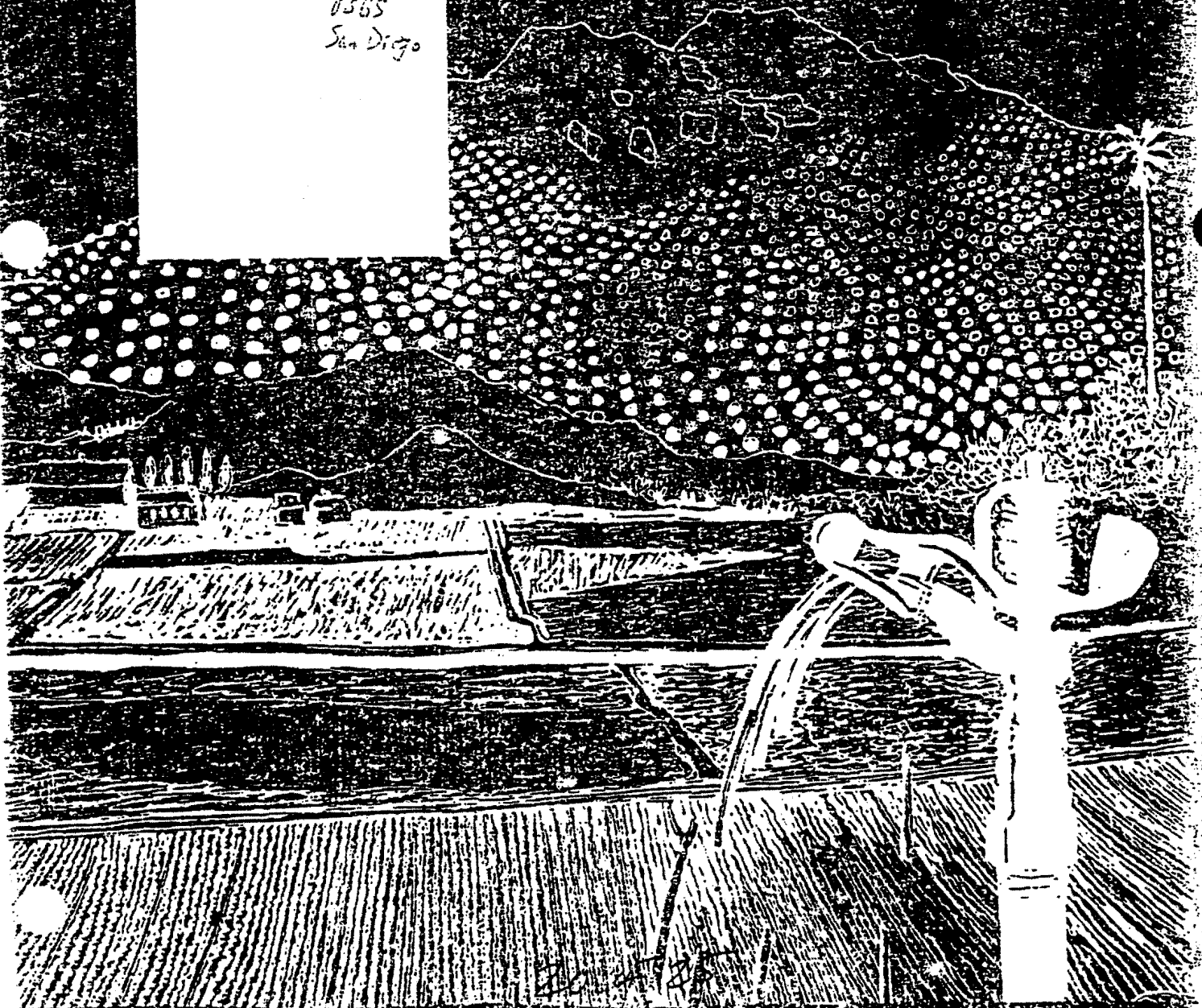
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San Diego, CA 92123

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EX #2

Geology

Like the San Dieguito subarea, the San Elijo hydrologic subarea has two distinct physiographic zones: Peninsular Range Province and Pacific Coastal Plain (fig. 17). Geologic formations within each physiographic zone are discussed in the "Geology" section of the San Dieguito hydrologic subarea. The primary differences between the two subareas are the relative exposure of each formation, and the greater percentage of quartz diorite in the Santiago Peak Volcanics of the San Elijo subarea.

In the San Elijo subarea, the Pacific Coastal Plain is incised by the alluvium-filled San Elijo Valley. Alluvial fill trends northeasterly from the Pacific Ocean to the Peninsular Range Province and averages less than 0.5 mile in width. A smaller alluvial valley, La Orilla Canyon, branches off from the main valley and runs in an easterly direction. In many areas the valley fill is bounded by terraced remnants of an older alluvial valley.

Soils

Soils are similar in the uplands of the San Elijo and San Dieguito subareas (fig. 18), and have been discussed in the "Soils" section of the San Dieguito subarea. Thick, saline soils of the Salinas-Corralitos association have developed over alluvial fill in the San Elijo Valley. Infiltration rates range from 0.6 to 2.0 in/h for Chino soils, which comprise the bulk of the valley floor, and are greater than 20 in/h for Tujunga soils at the head of the San Elijo Valley. The primary limitations for application of reclaimed water to these soils are a high water table, at land surface much of the year, and the effect saline soils might have on the quality of infiltrating water.

Surface Water

Streamflow Characteristics

Surface drainage in the San Elijo hydrologic subarea is through Escondido Creek. Escondido Creek drains 80 mi² of largely agricultural and urban watershed. Flow is regulated at Lake Wohlford above the city of Escondido (fig. 19). In recent years Escondido Creek has become a perennial stream with summertime flow being primarily irrigation return, and prior to 1973, wastewater discharge from the Hale Avenue Wastewater Treatment Plant in Escondido. Median annual discharge in Escondido Creek, as measured at Olivenhain, is 3,550 acre-ft (table 5). Maximum annual discharge was 22,300 acre-ft during water year 1978. Most of this water leaves the San Elijo hydrologic subarea and enters the Pacific Ocean.

Christopher Kirkorowicz
3551 Fortuna Ranch
Encinitas, CA 92024

September 15, 1997

Lee J. McEachern
Coastal Planner
State of California Coastal Commission
San Diego District
3111 Camino del Rio North, Suite 200
San Diego, CA 92108-1725

RECEIVED

SEP 16 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Application Number A-6-ENC-97-070

Dear Mr. McEachern:

During our September 15 conversation, you have indicated that there can be a problem with the proposed mitigation, namely the proposed mitigation would create riparian willow habitat, quite different from the vegetation in the area of impact.

As a basis of the concern, you pointed to the L.C.P. Policy 10.6 which refers to "creation of the new wetlands of the type lost." The Policy 10.6 mentions 2 types of wetlands, the riparian wetlands and salt water wetlands. So logical conclusion is that salt water wetlands cannot be traded for riparian wetlands, and vice versa.

I do not imagine that area elevated 25 feet above sea level can be considered a "salt water wetland," specially that it is the fresh water flowing down Escondido Creek that maintains the wetland vegetation. Please note that the area of impact is sandwiched between high value riparian area [with bulrushes and cattails] and the upland area. The corresponding boundaries closely correlate with the differences in elevation. The high value riparian vegetation is primarily located at the elevation of 23 feet. The upland vegetation is at 26 feet and up. The boundary between delineated wetlands and uplands falls right between 25 feet and 26 feet. Exhibit I A & B

I do agree that the proposed willows habitat bears little resemblance to the impact area. That however only serves to underline the gain in the habitat value. Trading in transitional, masic area and getting in return high value riparian woodland is the type of trading that 10.6 certainly encourages [and requires].

If the proposed mitigation included the same type of plant material, or the area of impact, it would mean planting a whole lot of weedy species. Or perhaps more appropriate, would be planting consistent with the vegetation under the electric fences, where impacts of grazing animals are minimal. If you recall, that area is overgrown with upland species like buckwheat.

I find it ironic, that if the proposed pad was at elevation of 23 feet, in the area where cattails and bulrushes grown, then the proposed mitigation would be okay. But since the pad is planned for elevation above 24 feet, where land is quite drier, and the habitat value is lower, the entire project is put in jeopardy.

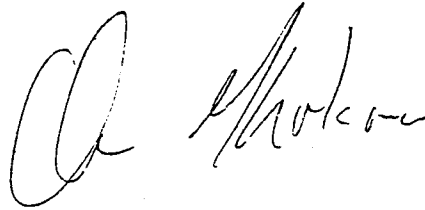
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I do believe that the mitigation project as prepared by Dudek & Associates is very appropriate.

- 1) It is located in the same area as the proposed impact site.
- 2) It establishes critical willow habitat.
- 3) It widens a bottleneck in M.H.C.P. plan.
- 4) It removes highly invasive plant species [eucalyptus, bush acacia, etc.].

One way to resolve this dilemma is to have Coastal Commission biologist [the one who reviewed the mitigation, etc.] visit the site and evaluate first hand the area of proposed impact.

If, however, Coastal commission still finds it unacceptable, it is possible to request off-site mitigations as stated in 10.6 L.C.P.



PARCEL

AREA IN JURIS. } = 15,300 ft²
WETLANDS } 0.35 Ac.

JURISDICTIONAL
WETLAND LINE

25
15
77

SINGLE
STORY
HOUSE

EX LINED DITCH

PROPOSED 12'x12' STABLES

REMOVE
EX. BLDS

RELOCATE
EX. FENCE

OVERHANG

30' FY SETBACK LINE

PP

GLY
ESMT

R/W

1%

PP

OHL

W

30

18"x44' CMP

28.5 IE

A/C
D/W

MH

MH

(N 15°33'02" E 359.87, DD)

MANCHESTER

R/W

