

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

1 CAMINO DEL RIO NORTH, SUITE 200
DIEGO, CA 92108-1725
(619) 521-8036

W17a



Filed: October 31, 1997
49th Day: December 19, 1997
180th Day: April 29, 1997
Staff: WNP
Staff Report: October 18, 1997
Hearing Date: December 10-12, 1997

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved With Conditions

APPEAL NO.: A-6-CEB-97-123

APPLICANT: Brookfield Carlsbad Inc.

PROJECT LOCATION: Within Aviara Planning Area 28 at south side of Batiquitos Drive, between Golden Star Lane and Melodia Terrace, East Batiquitos Lagoon segment, Carlsbad, San Diego County. APN 216-111-08 & 09; 216-150-18

PROJECT DESCRIPTION: Construction of 61 single family residences on pregraded lots within Aviara Planning Area 28 which was subdivided and graded pursuant to CDP #6-96-43.

APPELLANTS: Lynn Young

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program East Batiquitos Lagoon segment; City of Carlsbad SDP 97-01/CDP 97-14;

STAFF NOTES:

The project which has been approved by the City of Carlsbad and is the subject of this appeal is for construction of 61 single family homes on existing graded lots only. The lots were created and graded pursuant to a previous coastal development permit approved by the Coastal Commission (CDP #6-96-43). That permit was for subdivision of the 44.1 acre property, previously owned by Aviara, into 65 lots including two open space lots and two interior private street lots. The permit also authorized the grading for building pads and installation of street improvements and utilities. Brookfield Homes has purchased only the building and private street lots from Aviara. Aviara has retained ownership of the adjacent open space, parking lots and trail easements. A number of public access improvements were required both on-site and off-site as a condition of approval of the subdivision in order to find the proposed subdivision consistent with the public access and

recreation policies of the Coastal Act. Those on-site improvements include a 25 space off-street public parking lot at the entrance to PA 28 off Batiquitos Drive, a 1/3 mile nature trail through adjacent open space to the west to connect the parking lot to the North Shore Public Access Trail located southwest of the PA boundary and public access signage at these areas. Construction of the public lot and trail improvements is the responsibility of the owner of the adjacent open space, not the project applicant, and is required to be completed prior to occupancy of any residence within PA 28.

Offsite public access improvements include trail improvements from two existing off-site parking lots, reservation of public trail parking within the existing golf course parking lot and public access signage. Improvement to the off-site trail leading from the existing parking lot east PA 28 off Batiquitos Drive has not yet been completed and is required to be installed prior to occupancy of the residential units within PA 28.. Additionally, none of the required public access signage has been installed on PA 28 as required by CDP #6-97-43; however, the subject applicant is not responsible for the installation of the required signage, and that matter will be pursued as a separate enforcement action with the appropriate property owner.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons.

I. Appellant Contends That: The appeal form (reference exhibit 1) states that the appeal "is based on the confirmation and/or clarification of the following items which were to be resolved for Planning Area 28 in order to find the project consistent with the public access and recreation policies of the Coastal Act." The appellant refers to a letter from Coastal Commission staff sent to the City of Carlsbad during City review of the subject project. The letter suggests that in the City approval of the subject permit, it should be clear to future lot owners through deed restriction or CC&R's that the trails in the open space area and the parking lots are required to be open to the public in perpetuity, to guard against any future requests for closure of these facilities to public use. The appellant questions whether it is possible to request that the builder include this information in the State of California Department of Real Estate white papers that the builder is required by law to furnish to every prospective home buyer, so as not to be lost in the bulk of the CC&R's. The appellant also suggests that all homebuyers in PA 28 should be advised that the main entrance to their community will also be used by the general public to get in and out of the 25 car parking lot.

The appellant goes on to further question the status of compliance with all the conditions of approval imposed by the Coastal Commission on the coastal development permit #6-97-43 for subdivision, grading and street and utility improvements within PA 28. Specifically, the appellant has cited the conditions (which were complied with prior to the issuance of the subdivision permit), including those requiring recordation of deed restrictions which have been recorded against the open space and residential lots, restricting for public use the previously identified trail easements and parking lots. The appellant also questions when the trail improvements will be installed. The appellant requests a status on each of the issues to insure that no building permits will issue until each item has been completed by the builder/developer and approved by the Executive Director. In answer, regarding the mentioned trail improvements which have not yet been installed, they are required to be installed prior to occupancy of the residential units in PA 28 by the subdivider, not the subject builder.

Other conditions of approval which are addressed by the appellant and have been complied with by the subdivider prior to the issuance of the subdivision permit include, submittal of a letter of agreement to dedicate land for a Lagoon Information Center in the area immediately westerly of the North Batiquitos Sewer Pump Station in PA 30, if requested in the future by the Department of Fish and Game (DFG); and a letter of agreement to fund construction of a single all-weather bus parking space to the existing and future Lagoon Interpretive Center, if requested in the future by the DFG. The appellant questions if these items are not completed by the builder, who will pay for these improvements and land dedication? In answer, it is the subdivider, not the subject residential builder, who is responsible for such land dedication or construction of the bus parking space. The land on which such improvements would be constructed is not owned by the subject applicant.

Other conditions of approval which are addressed by the appellant include the requirement for a revised landscape/fire suppression plan and a recorded deed restriction to indicate the number and size of trees which must be planted prior to the occupancy of the homes, to screen the residential development from public views. The deed restriction specifies the trees must be maintained in good growing condition for the life of the residence. The appellant questions whether the plan has been approved by the City and the Executive Director. In answer, the plan has been approved by both the City and the Executive Director and the deed restriction recorded by the subdivider prior to the issuance of the subdivision permit. Brookfield Homes will be responsible for planting the screening trees within the private lots prior to the occupancy of the residences in PA 28. One other condition of approval which is addressed by the appellant and has been complied with by the subdivider prior to the issuance of the subdivision permit includes the requirement for a grading and erosion control plan which has been implemented by the subdivider during construction of the streets and residential subdivision.

II. Local Government Action

The subject SDP 97-01 and CDP 97-14 was approved by the City of Carlsbad Planning Commission on August 6, 1997. That decision was appealed to the City Council; however, the Council adopted a resolution to uphold the Planning Commission's decision to approve the site development plan and coastal development permit on October 7, 1997. In regards to the specific grounds for appeal, the City approval contains the following conditions:

10. The Developer shall prepare a detailed landscape and irrigation plan in conformance with the approved Preliminary Landscape Plan and the City's Landscape Manual. The plans shall be submitted to and approval obtained from the Planning Director prior to the approval of the final map, grading permit, or building permit, whichever occurs first. The Developer shall construct and install all landscaping in a healthy and thriving condition, free from weeds, trash, and debris. Said landscaping plans shall include specimen trees and shrubs incorporated into the planting of the internal slopes and those slopes along the southern portion of Planning Area 28 intended to screen and soften public views of the site, to the satisfaction of the Planning Director.....

15. Prior to the issuance of building permits, the Developer shall submit proof of satisfaction of all special conditions from Coastal Development Permit 6-96-43 and 6-96-38 for Aviara Planning Area 28 including, but not limited to, public access disclosure and improvements.

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. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo 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 3 minutes per side to address whether the appeal raises a 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.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" 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. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a YES vote on the following motion:

I move the Commission determine that Appeal No. A-6-CEB-97-123 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.

Findings and Declarations

1. Project Description. The proposed project approved by the City of Carlsbad and the subject of this appeal is for construction of 61 single family homes on existing pregraded lots. The subject site is overlooking and adjacent to Batiquitos Lagoon and has been graded in accordance with the approved grading plan for City of Carlsbad tentative map approval CT 90-31 and coastal development permit #6-96-43. All grading, open space dedication and installation of streets and utilities has occurred through implementation of CDP #6-96-43. That permit was approved by the Coastal Commission and included subdivision of the 44.1 acre property, previously owned by Aviara, into 65 lots including two open space lots and two interior private street lots. Brookfield Homes has purchased only the building and private street lots from Aviara. Aviara has retained ownership of the adjacent open space, parking lots and trail easements. The proposal involves a mix of homes, ranging from 2,985 to 4,145 sq. ft. in area and measuring either 22 feet or 30 feet high. There would be two 22 foot high models and one 30 foot high model, each with optional add-ons such as garages, libraries or bedrooms.

The subject site is surrounded by Cantata, a single family residential development across Batiquitos Drive to the north, a trailhead parking lot (off Batiquitos Drive) and the first hole of the Aviara Golf Course to the east, and natural open space then the Isla Mar single family residential development to the west. The North Shore Public Access Trail is adjacent to the site to the south, then Batiquitos Lagoon.

2. Consistency with Certified Local Coastal Program. The subject site lies within the East Batiquitos Lagoon segment of the City of Carlsbad Local Coastal Program (LCP) and is subject to those land use plan policies and the implementation ordinances contained in the certified Aviara Master Plan. The land use plan policies address preservation of agriculture and scenic resources, protection of environmentally sensitive habitat areas, provision of public access and prevention of geologic instability and erosion. Most of these issues were addressed through approval of the subdivision permit including preservation of steep slopes, grading and erosion control measures, landscaping requirements and public access improvements. There is no encroachment proposed within the adjacent and protected open space areas with the subject permit. Shoreline access issues have been addressed through provision of a public parking lot and access trail to the North Shore Trail which will be discussed in greater detail below. The visual resources have been protected through selective placement of 22 and 30 foot homes consistent with the height limits contained in the certified Master Plan. Landscaping has been required for screening purposes consistent with the Master Plan and the conditions of approval of the subdivision permit. Thus the project is found to be in conformance with the provisions of the certified Local Coastal Program.

3. Consistency with the Public Access and Recreation Policies of the Coastal Act In accordance with Section 30604 (c) of the Coastal Act, development located between the first coastal roadway and the sea, such as the subject site, must contain a specific finding of conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. Additionally, where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act. Therefore, the stated grounds for appeal which include concern regarding the completion and noticing provisions for the public access improvements required in the adjacent open space areas are legitimate grounds for appeal pursuant to Section 30603. However, the Commission finds there is no substantial issue raised by the appeal after review of the status of compliance with the public access requirements of the subdivision permit and for the following reasons.

A number of public access improvements were included within the subdivision approval, both on-site and off-site, in order to find the proposed subdivision consistent with the public access and recreation policies of the Coastal Act. Those on-site improvements include a 25 space off-street public parking lot at the entrance to PA 28 off Batiquitos Drive, a 1/3 mile nature trail through adjacent open space to the west to connect the parking lot to the North Shore Public Access Trail and public access signage. Construction of the public lot and trail improvements is the responsibility of the owner of the adjacent open space (Aviara), not the project applicant, and is required to be completed prior to occupancy of any residence within PA 28. According to the applicant, ultimately the open space and parking lots will be deeded to the Aviara Master Association. The CC&R's for the Master Association will acknowledge the Coastal Commission restrictions and stipulate that the Association is responsible for maintenance of the trail improvements and parking lots. Additionally, deed restrictions have already been recorded against each individual residential lot in PA 28 that indicate that the parking lots and trail easements are restricted for use by the public in perpetuity. This restriction eliminates the need to disclose the access areas in the Department of Real Estate papers as suggested by the appellant.

Offsite public access improvements required by the subdivision permit include trail improvements from two existing off-site parking lots, reservation of public trail parking within the existing golf course parking lot and public access signage. Improvement to the trail leading from the existing parking lot east of PA 28 off Batiquitos Drive has not yet been completed and is required to be installed prior to occupancy of the residential units within PA 28. Additionally, all required public access signage has not yet been installed as required by CDP #6-97-43. These matters must be addressed by Commission staff with the subdivider, Aviara, who is the responsible party. The subject applicant is not

responsible for the installation of the trail or the required signage and does not own the property where these improvements will be located.

Therefore, in conclusion, all conditions of approval of the subdivision permit have either been satisfied or will be satisfied by the permittee (Aviara) prior to occupancy of the residences in PA 28. Therefore, the Commission finds that approval of the proposed project for construction of the homes does not represent any conflicts with the public access and recreation policies of the Coastal Act, and therefore, no substantial issue is raised by the appeal.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

WED 17a

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant

Name, mailing address and telephone number of appellant:

LYNN YOUNG

1331 SAVANNAH LANE

CARLSBAD, CA 92009

Zip

(760) 431-1443

Area Code

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: CITY OF CARLSBAD2. Brief description of development being
appealed: PLANNING AREA 28 SDP 97-01 - CDP 97-14
BELLA LAGO - ~~RELOCATING~~3. Development's location (street address, assessor's parcel
no., cross street, etc.): BATIKUITOS DRIVE - PELICAN
PLANNING AREA 28 - BELLA LAGO

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: ☒ _____

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A6-CRC-97-123

DATE FILED: 10/31/97

DISTRICT: San Diego

49th 12/19/97
180th 4/29/97

1 of 17

EXHIBIT NO. 1
APPLICATION NO.
A-6-CEB-97-123
Appeal Form
California Coastal Commission

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

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

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: OCTOBER 7, 1997

7. Local government's file number (if any): SDP 97-01 / CDP 97-14

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

BROOKFIELD OF CARLSBAD
12865 POINTE DEL MAR - SUITE 200
DEL MAR, CA 92014

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

(1) <u>RADME MIKUTA</u> <u>1319 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>	<u>MR & MRS GILLEY</u> <u>1302 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>
(2) <u>FRANK & TRISH LUBICH</u> <u>1323 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>	<u>MR & MRS MARK STEELE</u> <u>1311 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>
(3) <u>MR & MRS JOHN GREVLICH</u> <u>1327 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>	<u>MR & MRS MIKE STAHL</u> <u>1339 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>
(4) <u>MR & MRS. LEN BERG</u> <u>1335 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>	<u>SUE MURPHY</u> <u>1343 SAVANNAH LANE</u> <u>CARLSBAD, CA 92009</u>

SECTION IV. Reasons Supporting This Appeal

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

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

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

Please see 6 Page Appeal Attached
and letter from Mr. Bill Ponder to
Mr. Mike Grim of City of Carlsbad

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

SECTION V. Certification

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

Signed Mary Lynn Young
Appellant or Agent

Date 10-29-97

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

Signed _____
Appellant

Date _____

OCTOBER 22, 1997

COASTAL COMMISSION APPEAL FOR PA 28

OCT 31 1997

Our Appeal is based on the CONFIRMATION AND/OR CLARIFICATION of the following items which were to be resolved for Planning Area 28 in order to find the project consistent with the public access and recreation policies of the Coastal Act, as specified in the letter of July 15, 1997 from Bill Ponder, Coastal Planner to Mike Grim of the City of Carlsbad.

In the last paragraph of Mr. Ponder's letter he states, "We feel it should be clear to future lot owners through deed restrictions or CC&R's that the trails in the open space area and the parking lots are required to be open to the public in perpetuity, to guard against any future requests for closure of these facilities to public use. In this way, the new owner of the subdivision and subsequent lot owners will be aware of Commission and City requirements on this important site."

IS IT POSSIBLE TO REQUEST THAT THE BUILDER INCLUDE THIS INFORMATION IN THE STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE WHITE PAPERS THAT THE BUILDER IS REQUIRED BY LAW TO FURNISH TO EVERY PROSPECTIVE HOME BUYER? THIS WAY IT WON'T BE "LOST" IN THE MAZE OF PAPERS WHICH INCORPORATE ALL THE CC&R'S FOR AVIARA. ALSO, ALL HOMEBUYERS IN PA 28 SHOULD BE ADVISED THAT THE MAIN ENTRANCE TO THEIR COMMUNITY WILL ALSO BE USED BY THE GENERAL PUBLIC TO GET IN AND OUT OF THE 25 CAR PARKING LOT .

The HEADING on the first page attached to Mr. Ponder's letter is COASTAL DEVELOPMENT PERMIT NO. 6-96-38 - Page 3 of 3. I asked Brian Hunter for copies of pages 1 of 3 and 2 of 3 and he told me the City did not have those pages in their file.

IF THESE PAGES DO EXIST, PLEASE FAX THEM TO US AT 760-603-8383.

On Page 3 of 3 under SPECIAL CONDITIONS: it states, "The permit is subject to the following conditions:"

WE ARE APPEALING TO BE UPDATED ON THE STATUS OF EACH OF THESE ISSUES TO INSURE THAT NO BUILDING PERMITS WILL BE ISSUED UNTIL EACH ITEM HAS BEEN COMPLETED BY THE BUILDER/DEVELOPER AND APPROVED BY THE EXECUTIVE DIRECTOR.

1. "TRAIL ACKNOWLEDGEMENT: " It stated a public access will be constructed in open space of Planning Area 30. The trail is to be constructed as a condition of development of Planning Area #28. "Said acknowledgement shall be submitted to the

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Coastal Commission Appeal

Executive Director for review and written approval prior to the issuance of the coastal development permit."

HAS THE EXECUTIVE DIRECTOR APPROVED THIS?

2. "REVISED LANDSCAPE/FIRE SUPPRESSION PLAN:" This states that, "Prior to the issuance of the coastal development permit, the applicant shall submit a revised landscape/fire suppression plan for Lots 58 & 59 and 85-93, as shown on attached Exhibit #4." (Exhibit #4 was not attached to the copy we received from the City.) "Said plan shall be submitted to, reviewed and approved in writing by the Executive Director prior to the issuance of the coastal development permit.

HAS THE EXECUTIVE DIRECTOR APPROVED THIS?

The next page we received was entitled, COASTAL DEVELOPMENT PERMIT NO. 6-96-38 - PAGE 4 OF ____ (The page 4 of ____ was left blank.).

PLEASE FURNISH US WITH ANY MISSING PAGES.

The next page was entitled, COASTAL DEVELOPMENT PERMIT NO 6-96-43 PAGE 3 OF 7. Do you have copies of Page 1 of 7 and Page 2 of 7?

If these pages do exist, please fax them to us at 760-8383.

Under SPECIAL CONDITIONS: It states, "The Permit is subject to the following conditions:"

1. PROPOSED PUBLIC TRAIL ACCESS EASEMENTS AND PUBLIC FACILITIES. "Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, compliance with the following to implement the applicant's proposed public access program:"

a. PLANNING AREA #28: **HAS THE EXECUTIVE DIRECTOR** received evidence in a form and content acceptable -- restricting for public use the proposed public access parking lot #1, to accommodate 25 autos on the lot at the northwestern corner of Batiquitos Drive?

HAS THIS BEEN COMPLETED?

b. PLANNING AREAS #28 AND #30: **HAS THE EXECUTIVE DIRECTOR RECEIVED EVIDENCE** restricting for public use a 10 foot wide public access easement (Trail No. 1) to provide pedestrian access ? This trail is to extend from the PA

28 parking lot, through Open Space Lots 64 and 106 (PA 28 and 30), to the North Shore Trail. **THIS TRAIL IS ALSO TO INCLUDE BENCHES WHICH ARE TO BE CONSTRUCTED BY THE DEVELOPER. HAS THIS BEEN DONE?**

- c. Has the Executive Director approved this?
- d. Has the Executive Director approved this?
- e. Has the Executive Director approved this?

The next page is entitled, COASTAL DEVELOPMENT PERMIT NO 6-96-43
Page 4 of 7. UNDER SPECIAL CONDITIONS:

- f. "Submittal of a letter of Agreement, signed by the applicant, to dedicate land for a Lagoon Information Center is the area immediately westerly of the North Batiquitos Sewer Pump Station in PA 30, if requested in the future by the Department of Fish and Game.

WHAT IS THE STATUS OF THIS? ONCE BUILDER IS GONE, THIS CAN'T BE DONE. IF THIS IS NOT DONE BY BUILDER, WHO WILL PAY FOR THIS? WILL THE COASTAL COMMISSION BE RESPONSIBLE FOR SUBSIDIZING THIS? WE WANT TO KNOW WHO WILL PAY FOR THIS IF THE BUILDER IS NOT HELD RESPONSIBLE FOR THIS DEDICATION RIGHT NOW.

- g. Submittal of a Letter of Agreement, signed by the applicant, to fund construction of a single all-weather (decomposed granite) bus parking space to serve the existing and future Lagoon Interpretive Center, if requested in the future by the Department of Fish and Game. The developer shall be responsible only for the construction, and shall not be responsible for site acquisition, permits, mitigation or other requirements of installation of the SPACE.

HAS THIS BEEN DONE? IF THIS ISN'T DONE BEFORE BUILDER COMPLETES PROJECT, WHO WILL PAY FOR IT? ALSO, WHO IS RESPONSIBLE FOR SITE ACQUISITION, PERMITS, MITIGATION OR OTHER REQUIREMENTS OF INSTALLATION OF THE SPACE? WE WANT TO KNOW WHO WILL BE RESPONSIBLE FOR PAYING FOR THIS BUS PARKING SPACE IF THE BUILDER IS NOT REQUIRED TO DO SO NOW.

UNDER 2. REVISED TENTATIVE MAP. It states, "Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a revised tentative map in substantial conformance with the

PAGE 4.
COASTAL COMMISSION APPEAL

submitted map, approved by the City of Carlsbad, which indicates the following changes to CT-31 for subdivision of PA 28:

- a. "Provision of a 10 ft wide public access trail easement to provide pedestrian access to the existing Batiquitos Lagoon North Shore Trail. Such access trail shall extend from the PA 28 parking lot etc."

HAS THIS BEEN COMPLETED?

- b. "Provision of a public trail access parking lot #1, to accommodate 25 automobiles, etc."

HAS THIS BEEN COMPLETED?

UNDER ITEM 3. "PUBLIC ACCESS IMPROVEMENT PLANS: Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, public access improvement plans which indicate the following:"

- a. "PLANNING AREA #28. Reconstruction of the access trail between Public Parking Lot #2 (Phase II lot) to design parameters in compliance with handicapped access standards, if feasible.

THIS SHOULD NOT BE IF FEASIBLE. THIS IS A VERY STEEP, SLIPPERY, DANGEROUS SLOPE FOR EVEN ABLE BODIED PEOPLE. WHAT IS THE STATUS OF THIS? IF THE BUILDER DOESN'T PAY FOR THIS NOW, WILL THE COASTAL COMMISSION PAY FOR THIS TO BE DONE IN THE FUTURE? SOMETHING HAS TO BE DONE ABOUT IT NOW BEFORE SOMEONE IS INJURED OR KILLED!

ON PAGE 5 OF 7 OF COASTAL DEVELOPMENT PERMIT NO 6-96-43 UNDER SPECIAL CONDITION #3...

- b. "Planning Areas #28 and #30. Construction of a 5 foot wide improved trail with benches at view areas along the alignment of the access trail in PA 28 and PA 30 to be constructed by the developer.....

WHAT IS THE STATUS OF THIS?

- c. "Planning Area #1. Provision of an additional public access trail (5 foot wide) between the Aviara Golf Clubhouse parking lot and the North Shore Trail....

WHAT IS THE STATUS OF THIS?

- d. "Signage to designate each of the ten parking spaces (including 2 handicapped spaces) within the existing Golf Clubhouse parking lot for public trail parking for the North Shore Trail..."

WHAT IS THE STATUS OF THIS?

UNDER 4. "Public Access Signage Plans.

WHAT IS THE STATUS OF THIS?

UNDER 5. "Grading/Erosion Control..."

a. - b. c. d.

WHAT IS STATUS OF THESE ISSUES?

UNDER 6. "Revised Landscape/Fire Suppression Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a revised landscape/fire suppression plan for Planning Area 28.....

HAS THIS BEEN DONE?- HAS IT BEEN OFFICIALLY APPROVED?

ALSO, "The City of Carlsbad must approve the above revision to the Landscape/Fire Suppression Plan or an amendment to this permit may be required...."

HAS THIS BEEN DONE?

**ALSO, "SAID PLAN SHALL BE SUBMITTED TO, REVIEWED AND
APPROVED IN WRITING BY THE EXECUTIVE DIRECTOR PRIOR TO THE
ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT.**

**HAS THE EXECUTIVE DIRECTOR APPROVED THE REVISED
LANDSCAPE/FIRE SUPPRESSION PLAN IN WRITING?**

- a. "Prior to the issuance of the coastal development permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director. The restriction shall be recorded against the individual lots subject to 1(a) above and shall incorporate the requirements of condition #1(a) above...."

HAS THIS BEEN COMPLETED?

PAGE 6.

COASTAL COMMISSION APPEAL

OUR APPEAL IS BASED ON THE CONFIRMATION AND/OR CLARIFICATION
OF THE COMPLETION OF THE ABOVE ITEMS.

CALIFORNIA COASTAL COMMISSION

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



July 15, 1997

JUL 15 1997

City of Carlsbad
Mike Grim
2075 Las Palmas Drive
Carlsbad, Ca 92008-1725

RE: Coastal Development Permit for Homes on Planning Area 28 within the
Aviara Master Plan

Dear Mr. Grim:

This letter is in regards to the City's upcoming coastal development permit review of the above. As we spoke the other day, we feel the City should incorporate some key provisions of the Coastal Commission's subdivision approval for Planning Area 28 into its upcoming permit approval for the homes on Planning Area 28, in order to find the project consistent with the public access and recreation policies of the Coastal Act. The provisions relate to public access improvements which the Commission found to be necessary components of the subdivision in order to approve the subdivision as a gated community. Examples of conditions of approval used by the Commission in similar situations are attached for your reference.

We feel it should be clear to future lot owners through deed restrictions or CC&R's that the trails in the open space area and the parking lots are required to be open to the public in perpetuity, to guard against any future requests for closure of these facilities to public use. In this way, the new owner of the subdivision and subsequent lot owners will be aware of Commission and City requirements on this important site. If you have any questions or want my review of draft conditions of approval, please call me at the above office.

Sincerely,

Bill Ponder
Coastal Planner

1836A

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Trail Acknowledgement. Prior to the issuance of the coastal development permit, both the co-applicants shall sign and submit a written acknowledgement that an additional public access trail will be constructed within the open space of Planning Area 30, and the trail shall be open to the public in perpetuity. The trail shall be constructed as a condition of development of Planning Area #28. Said acknowledgement shall be submitted to the Executive Director for review and written approval prior to the issuance of the coastal development permit.

2. Revised Landscape/Fire Suppression Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a revised landscape/fire suppression plan for Lots 58 & 59 and 85-93, as shown on attached Exhibit #4. The plan shall indicate the type, size, extent and location of trees to be planted in the rear yards of said lots and be prepared in consultation with the City of Carlsbad Planning and Fire Departments. Regarding these lots, the revised plan shall include the following:

The placement of a minimum of four 15 gallon and five 24 inch box specimen size trees in the rear yards of Lots 58 & 59 and 85-93. Said trees shall be of an evergreen species compatible with the natural character of the adjacent slopes. The trees shall be located so that they soften the views of the structures from Interstate 5, while preserving views from the homes to Interstate 5 and Batiquitos Lagoon. It is not necessary that a tree be located in every rear yard to create the desired screening.

The required trees shall be planted prior to occupancy of the homes and be maintained in good growing condition for the life of the residence.

Said plan shall be submitted to, reviewed and approved in writing by the Executive Director prior to the issuance of the coastal development permit.

The following findings to support the above condition should be added after sentence #6 on Page 4 of the staff report as a new paragraph:

The Master Plan also calls for landscape screening of structures to soften the view of these structures from the lagoon, I-5 and Batiquitos Drive. Despite the above development standards and design guidelines, Lots 58 and 59 and 85-93 will be highly visible from I-5 and the lagoon. In its approval of the subdivision of the site (Coastal Development Permit #6-92-189), the Commission approved a landscaping/fire suppression plan designed to mitigate visual impacts resulting from the finish grading of the site and habitat impacts associated with fuel modification requirements of the Carlsbad fire department. It includes both landscaping and fire suppression provisions to revegetate all manufactured slopes, and stipulates that drought tolerant native plants shall be used to the maximum extent feasible. However, the approved plan does not

SPECIAL CONDITIONS, continued:

include landscaping that would adequately screen the above lots from the freeway and lagoon. For that reason the Commission finds that a revised fire suppression/landscaping plan must be submitted which provides that these lots will be screened with trees to soften public views. The condition requires the placement of a minimum of four 15 gallon and five 24 inch box specimen size trees in the rear yards of Lots 58 & 59 and 85-93. Thus, at least 9 trees must be placed amongst the 11 lots at locations which would break-up the wall effect of development as seen from the freeway. The condition gives the applicant the discretion to cluster the trees i.e., locate possibly three sets of three trees at three locations on these lots or another combination of clustered trees that would achieve the goal of minimizing the visual impact of the houses. Said trees shall be of an evergreen species compatible with the natural character of the adjacent slopes. Evergreens are preferred because they would maintain visual screening throughout the year as opposed to deciduous trees which lose their leaves at some time during the year,

(6038P)

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Proposed Public Trail Access Easements and Public Facilities. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, compliance with the following to implement the applicant's proposed public access program:

- a. Planning Area #28: Evidence of recordation of an offer to dedicate or deed restriction, in a form and content acceptable to the Executive Director, restricting for public use the proposed public access parking lot #1, to accommodate 25 automobiles, on the proposed lot at the northwestern corner of Batiquitos Drive and Nitens Street.
- b. Planning Areas #28 and #30: Evidence of recordation of an offer to dedicate or deed restriction, in a form and content acceptable to the Executive Director, restricting for public use a 10 foot wide public access easement (Trail No. 1) to provide pedestrian access to the existing Batiquitos Lagoon North Shore Trail. Such access trail shall extend from the PA 28 parking lot, through Open Space Lots 64 and 106 (PA 28 and 30), to the North Shore Trail. Such trail shall be open to the public in perpetuity and include benches to be constructed by the developer.
- c. Planning Area #1. Evidence of recordation of an offer to dedicate or deed restriction, in a form and content acceptable to the Executive Director, restricting for public use a 5 foot wide public access easement within the lagoon buffer between the Golf Course property line and the existing North Shore Trail.
- d. Evidence of recordation of a deed restriction, in a form and content acceptable to the Executive Director, restricting for public use ten parking spaces (including 2 handicapped spaces) within the existing Golf Clubhouse parking lot for exclusive use for public trail parking during the hours the North Shore Trail is open to the public, as adopted by the Department of Fish and Game (DFG) and approved by the Coastal Commission. Use of the public area within the Golf Course parking lot shall be subject to the rules and regulations for North Shore Trail usage adopted by the DFG, including, but not limited to specific hours of operation and the prohibition of overnight parking. It is the right of the underlying owner to take steps to enforce these rules, including reporting violations to the DFG, the local Police Department, or private security.
- e. The evidence of recordation of a deed restriction, in form and content acceptable to the Executive Director, to assure the non-exclusive but permanent right of public access across the Golf Clubhouse parking lot, and the associated sidewalk area between the Golf Clubhouse parking lot and the lagoon buffer access referred to in Special Condition No. 1(c).

SPECIAL CONDITIONS, continued:

- f. Submittal of a Letter of Agreement, signed by the applicant, to dedicate land for a Lagoon Information Center in the area immediately westerly of the North Batiquitos Sewer Pump Station in PA 30, if requested in the future by the Department of Fish and Game.
 - g. Submittal of a Letter of Agreement, signed by the applicant, to fund construction of a single all-weather (decomposed granite) bus parking space to serve the existing and future Lagoon Interpretive Center, if requested in the future by the Department of Fish and Game. The developer shall be responsible only for the construction, and shall not be responsible for site acquisition, permits, mitigation or other requirements of installation of the space.
2. Revised Tentative Map. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a revised tentative map in substantial conformance with the submitted map, approved by the City of Carlsbad, which indicates the following changes to CT-31 for subdivision of PA 28:
- a. Provision of a 10 foot wide public access trail easement to provide pedestrian access to the existing Batiquitos Lagoon North Shore Trail. Such access trail shall extend from the PA 28 parking lot, through Open Space Lots 64 and 106 (PA 28 and 30), to the North Shore Trail. Such trail shall be open to the public in perpetuity;
 - b. Provision of a public trail access parking lot #1, to accommodate 25 automobiles, on the proposed lot at the northwestern corner of Batiquitos Drive and Nitens Street, within PA 28;
 - c. Deletion of the outdoor classroom;
 - d. Notes indicating the on-site public access trail and parking improvements shall be installed prior to occupancy of the residential units within PA 28, and shall be open to the public in perpetuity.
3. Public Access Improvement Plans. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, public access improvement plans which indicate the following:
- a. Planning Area #28. Reconstruction of the access trail between Public Parking Lot #2 (Phase II lot) to design parameters in compliance with handicapped access standards, if feasible. The revised design may require an amendment to this coastal development permit. The proposed on-site public access improvements shall be installed prior to occupancy of the residential units within PA 28.

SPECIAL CONDITION, continued:

- b. Planning Areas #28 and #30. Construction of a 5 foot wide improved trail with benches at view areas along the alignment of the access trail in PA 28 and PA 30 to be constructed by the developer prior to occupancy of the residential units within PA 28.
- c. Planning Area #1. Provision of an additional public access trail (5 foot wide) between the Aviara Golf Clubhouse parking lot and the North Shore Trail to be constructed within 6 months of Commission action on this coastal development permit. During the interim period, between Commission action on this permit and 6 months from that date, public access through this proposed trail alignment shall be accommodated to the degree feasible, recognizing that safety considerations may preclude such access during the period of actual construction of the subject gate, trail and signage improvements.
- d. Signage to designate each of the ten parking spaces (including 2 handicapped spaces) within the existing Golf Clubhouse parking lot for public trail parking for the North Shore Trail to be installed within 3 months of Commission action on this coastal development permit.

4. Public Access Signage Plans. Prior to the issuance of the coastal development permit, and within 30 days of Commission action on this permit, the applicant shall submit to the Executive Director for review and written approval in consultation with the Department of Fish and Game, a detailed public access signage plan, to be installed at the entry to all public parking lots and North Shore Trail access trailheads. The signs shall also be installed at the intersections of Poinsettia Lane and Batiquitos Drive, Alga Road and Poinsettia Lane, Alga Road and Batiquitos Drive, and the Kestrel Drive and Alga Road intersection. Additionally, public access signs shall be installed at the No. 1 parking lot and the No. 3 parking lot (Golf Clubhouse) visible from Batiquitos Drive, and at the trailheads leading from the parking lots, and at both ends of the North Shore Trail. Said signage shall read, "Public Parking Lot" and "Public Access to Lagoon Trail - Open to the Public" or similar language. Hours of operation consistent with public hours proposed by the Department of Fish and Game and approved by the Executive Director may be posted. All signs must be erected at the proposed locations within 6 months of the Commission's action on this permit. Said plan shall be approved in writing by the Executive Director in consultation with the Department of Fish and Game.

5. Grading/Erosion Control. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, final site and grading plans approved by the City of Carlsbad which incorporate the following requirements:

- a. All grading activity shall be prohibited between October 1st and April 1st of any year.

SPECIAL CONDITIONS, continued:

b. All permanent runoff and erosion control devices shall be developed and installed prior to October 1.

c. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized prior to October 1. Any proposed temporary erosion control measures, such as interceptor ditches, sandbagging, debris basins, temporary desilting basins and silt traps shall be used in conjunction with plantings to minimize soils loss from the construction site.

d. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms.

6. Revised Landscape/Fire Suppression Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a revised landscape/fire suppression plan for Planning Area 28. The plan shall indicate the type, size, extent and location of trees to be planted on the manufactured slopes of lots 11-15, 17-23 and 56-62 and shall be prepared in consultation with the City of Carlsbad Planning and Fire Departments. The City of Carlsbad must approve the above revision to the Landscape/Fire Suppression Plan or an amendment to this permit may be required. Regarding these lots, the revised plan shall include the following:

The placement of a combination of twenty-three 15 gallon and 24 inch box specimen size trees on the rear slopes of Lots 17 to 23, 11 to 15 and 56 to 62. Said trees shall be of an evergreen species compatible with the natural character of the surrounding environs. The trees shall be located to soften views of the structures from Interstate 5 and the North Shore Trail, while preserving views from the homes to Interstate 5 and Batiquitos Lagoon. No trees shall be required on the development pads.

The required trees shall be planted prior to occupancy of the homes and be maintained in good growing condition for the life of the residence. This tree requirement shall supplement the fire suppression plan/deed restriction approved pursuant to CDP #6-91-46 (Phase II Aviara).

Said plan shall be submitted to, reviewed and approved in writing by the Executive Director prior to the issuance of the coastal development permit.

a. Prior to the issuance of the coastal development permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director. The restriction shall be recorded against the individual lots subject to 1(a) above and shall incorporate the requirements of condition #1(a) above to assure that specimen size trees in substantial conformance with those plans

SPECIAL CONDITIONS, continued:

approved with CDP #6-96-43 are maintained throughout the life of the permitted development. The restriction shall be recorded, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property.

7. Future Development. Construction of single family residences, shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

(6043P)



November 3, 1997

BROOKFIELD
HOMES

Ms. Sherilyn Sarb
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, California 92108-1725

RECEIVED

NOV 12 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: BELLA LAGO

Dear Ms. Sarb;

In response to the questions raised by the Cantata owner in the "appeal", we have reviewed each concern and have tabulated below a brief statement of how each concern has been satisfied. Additionally, we have attached a copy of Coastal Permit No. 6-96-43 and copies of documents evidencing satisfaction of each concern issue.

Concerns:

1. Public use of parking lots and trails are to be preserved by deed restriction. Deed restrictions were recorded over the open space lots in which the facilities are located. In addition, the Aviara Master Association C.C.& Rs. contain language incorporating the Coastal requirements into the C.C.& Rs.

2. Do pages 1 of 3 and 2 of 3 of CDP No. 6-96-38 exist? Yes.

3. Has the Executive Director approved the "Trail Acknowledgment?" Yes, as evidenced by Bill Ponder letter dated 9/24/96

4. Has the Executive Director approved the "Revised Landscape/Fire Suppression Plan"? Yes, as evidenced by Bill Ponder letter of 9/24/96.

5. Has the Executive Director received evidence in a form and content restricting for public use parking lot 1? Yes, as evidenced by Bill Ponder Letter of 9/24/96.

6. Has the trail through open space lots 64 and 106 been constructed? No. The milestone for completion is occupancy of the first home in P.A. 28 as stated in CDP 6-96-43.

7. Has the Developer submitted a letter of agreement to dedicate land for an information center? Yes. A copy is attached.

8. Has the Developer submitted a letter of agreement to fund construction of a single all weather bus parking space at the information center? Yes. A copy is attached.

9. Has a revised tentative map been approved? Yes, as evidenced by Bill Ponder's Letter of 9/24/96.


10. Have provisions for a public trail access parking lot #1 been completed? Yes, as evidenced by Bill Ponder Letter of 9/24/96.

SAN DIEGO/RIVERSIDE
ORANGE COUNTY/LOS ANGELES
SAN FRANCISCO/BAY AREA

Corporate Office
12865 Pointe Del Mar
Suite 200
Del Mar CA 92014
Phone 619.481.8500
Fax 619.481.9375

A-6-C

10F7

EXHIBIT NO. 2
APPLICATION NO.
A-6-CEB-97-123
Response From
Applicant
 California Coastal Commission

11. Has the Executive Director approved the design for access trail at parking lot number 2? Yes, as evidenced by Bill Ponder Letter of 9/24/96.

12. What is the status of the trail between P.A. 28 and P.A. 30? The design is complete and it will be constructed prior to occupancy of the first home as provided in CDP 6-96-43.

13. What is the status of signage? Signage is complete, as evidenced by the attached photo of each sign.

14. What is the issue of grading and erosion? There is no issue. The site is graded, a storm drain system installed, and sand bags are in place. All in accordance with City, Coastal and State requirements.

15. Same as question number 4 above.

16. Has a deed restriction been recorded against individual lots? Yes, as evidenced by Bill Ponder Letter of 9/24/96 and the attached copy of the recorded document.

As you can see, each concern raised has been covered by CPD 6-96-43. All conditions of CPD 6-96-43 have been complied with, except for the construction of the access trail to parking lot No. 1 and the 25 parking spaces in parking lot number 1. These, of course, are not required to be completed until the occupancy of the first home.

We appreciate this opportunity to review each of these concerns with you.

Sincerely,



E. Dale Greed
Vice President Engineering

cc: Steve Doyle
Chris Neils



AVIARA

September 13, 1996

Mr. John W. Anderson
Senior Wildlife Biologist
California Department of Fish and Game
Wildlife Management Division/Region 5
330 Golden Shore, Suite 50
Long Beach, CA 90802

RE: Aviara/Coastal Development Permit No. 6-96-43

Dear Mr. Anderson:

This letter is written in compliance with Special Conditions 1(f) and 1(g) of Coastal Development Permit No. 6-96-43, approved by the California Coastal Commission on July 12, 1996 (the "Permit"), relating to the Aviara master planned community located in Carlsbad, California. Those Special Conditions require Aviara Land Associates Limited partnership, the applicant under the Permit (the "Applicant"), to sign and submit to the Department of Fish and Game, a letter or letters of agreement as described below:

- (a) Submittal of a Letter of Agreement, signed by the Applicant, to dedicate land for a Lagoon Information Center in the area immediately westerly of the North Baniquitos Sewer Pump Station in Aviara Planning Area 30, if requested in the future by the Department of Fish and Game (Special Condition 1(f)); and
- (b) Submittal of a Letter of Agreement, signed by the Applicant, to fund construction of a single all-weather (decomposed granite) bus parking space to serve the existing and future Lagoon Interpretive Center, if requested in the future by the Department of Fish and Game (Special Condition 1(g)). Such condition further states that the developer shall be responsible only for the construction, and shall not be responsible for site acquisition, permits, mitigation or other requirements, of the installation of the space.

Mr. John W. Anderson
September 13, 1996

Page 2

Pursuant to the foregoing, the Applicant hereby agrees as follows:

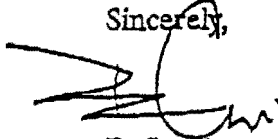
1. If requested in writing by the California Department of Fish and Game (the "Department"), the Applicant shall dedicate to the Department (or to such other governmental agency or entity as the Department directs) that certain real property identified in the attached Exhibit "A" (the "Information Center Property") for purposes of constructing and operating a Lagoon Information Center. Applicant shall make any such dedication by executing and delivering to the Department or other grantee a grant deed conveying Applicant's entire interest in and fee title to the Information Center Property, and Applicant shall thereafter have no further interest therein and no liability for the construction or operation of any improvements thereon.
2. If requested in writing by the Department, the Applicant shall provide to the Department (or to such other governmental agency or entity as the Department directs) adequate funds for the initial construction of a single all-weather (decomposed granite) bus parking space, to serve the above-referenced Lagoon Information Center. Applicant shall be responsible for funding only the initial construction of said parking space, and shall not be responsible for funding subsequent repairs, maintenance or alterations thereto. Applicant shall not be responsible for site acquisition, permits, mitigation or any other requirements, costs or expenses related to the installation or maintenance of said parking space.
3. The Applicant shall have the right to assign its duties and obligations hereunder to any subsequent owner or transferee of the property or properties affected by the foregoing covenants. Upon the Applicant's assignment of such rights and its delivery to the Department of a written assumption of the same by the assignee, the Applicant shall be relieved of all further responsibility for the duties and obligations described in this letter.
4. The Department may exercise its rights under this letter at any time within five (5) years following the Applicant's execution of this letter, after which the obligations of the Applicant hereunder shall automatically terminate and be of no further force or effect.
5. All notices delivered pursuant to this letter shall be sent by United States registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and addressed (i) to the Applicant at the address set

Mr. John W. Anderson
September 13, 1996

Page 3

forth below its signature on this letter, or (ii) to the Department at the address set forth at the beginning of this letter, and any such notice shall be deemed given three days following the date it is mailed, or upon the date personal delivery is actually made.

Sincerely,

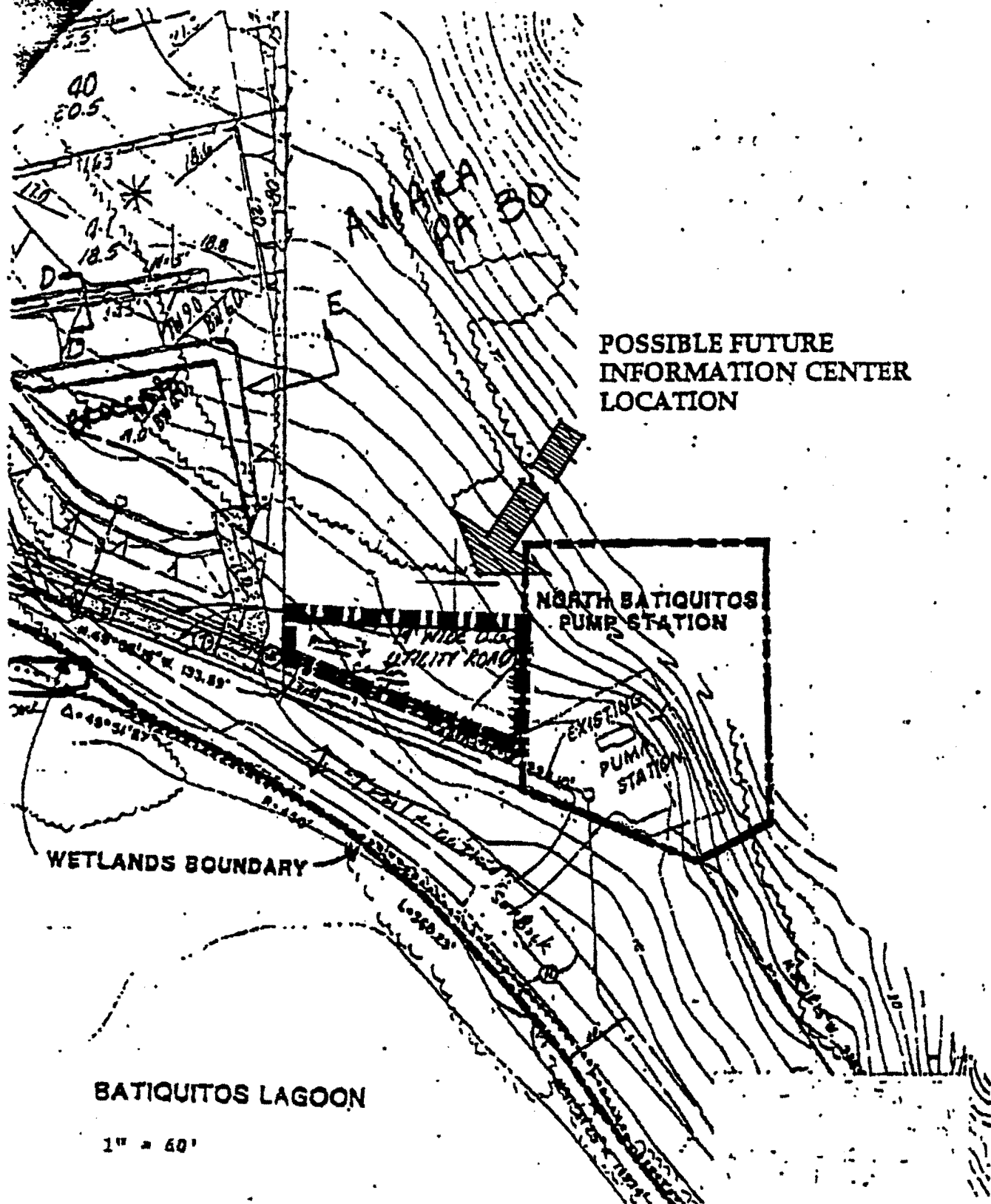


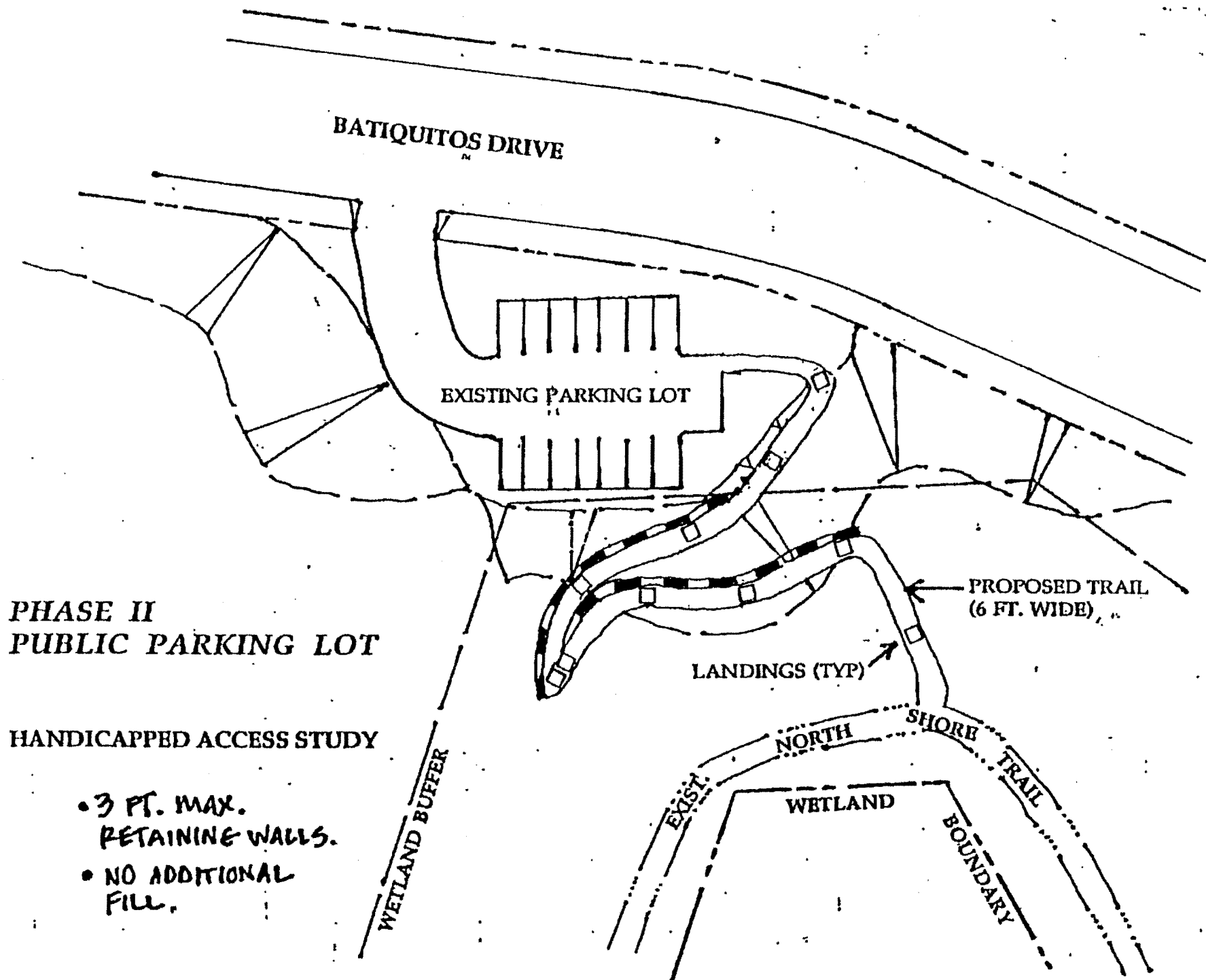
D. L. Clemens
Vice President/General Manager
Aviara Land Associates Limited Partnership

Address: c/o Hillman Properties West, Inc.
2011 Palomar Airport Road, Suite 206
Carlsbad, CA 92009

DLC/er
ltrecomp1212

EXHIBIT A





**PHASE II
PUBLIC PARKING LOT**

HANDICAPPED ACCESS STUDY

- 3 FT. MAX.
RETAINING WALLS.
- NO ADDITIONAL
FILL.

WETLAND BUFFER

EXIST.

NORTH

WETLAND

SHORE TRAIL
BOUNDARY

PROPOSED TRAIL
(6 FT. WIDE)

LANDINGS (TYP)

EXISTING PARKING LOT

BATIQUITOS DRIVE

7 of 7

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

CAMINO DEL RIO NORTH, SUITE 200
DIEGO, CA 92108-1725
(714) 521-8036

RECEIVED

NOV 12 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICTAviara Land Associates
2011 Palomar Airport Road
Carlsbad, California 92009NOTICE OF ACCEPTANCEDate: September 24, 1996Applicant: Aviara Land AssociatesDocument or
Plans: Public Access Easements, Revised Tentative Map, Public Access
Improvement Plans, Public Access Signage Plans, Grading/Erosion Control Plans,
Revised Landscape/Fire Suppression PlansSubmitted in compliance with Special Condition(s) No(s). 1 - 7
of Coastal Development Permit No. 6-96-43Material submitted in compliance with said Special Condition(s) of your
development permit has been reviewed by the District Director and found to
fulfill the requirements of said condition(s). Your submitted material and a
copy of this letter have been made a part of the permanent file.

Sincerely,

Charles Damm
District DirectorBy: Bill Ponder

(5310N)

EXHIBIT NO. 3
APPLICATION NO.
A-6-CEB-97-123
Notice of Acceptance From Staff
California Coastal Commission

1 of 1

A-6-CEB

November 12, 1997

BROOKFIELD
HOMES

Ms. Sherilyn Sarb
California Coastal Commission
3111 Caiman Dell Rio North, Suite 200
San Diego, California 92108-1725

RECEIVED

NOV 13 1997

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: BELLA LAGO

Dear Ms. Sarb:

Thank you for meeting with us today to review compliance with CDP No. 6-96-43. As you can see from the information provided, a substantial amount of work has been done to satisfy the conditions. The only remaining items are the construction of the trails, parking lot and screen trees. Completion of these remaining items is tied to occupancy of the first home.

Also attached to this letter is the additional information you requested. Specifically we have enclosed copies of the following documents:


1. Aviara Master Plan, last revision dated April 11, 1996
2. Third Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Aviara, Recorded September 16, 1991
3. Architectural Floor Plans and Elevation as submitted and approved by the City of Carlsbad.
4. Set of Preliminary Plot Plans for P.A. 28 as submitted and approved by the City of Carlsbad.

Additionally, we wish to clarify the responsibility to complete the remaining work. Brookfield Homes purchased the building and private street lots from Aviara. Aviara retained ownership of the open space lots in which the trails and parking lots are located. Under the sales contract, Aviara is obligated to complete all the facilities within these lots, as well as comply with any conditions of the permit which apply to the open space lots or other areas outside of the purchased lots. Brookfield Homes will be responsible for planting the screening trees within the private lots and completing the private street improvements that serve parking lot number 1. We have worked very closely with Aviara to ensure that the permit conditions have been met within the time frames started.

Ultimately, the open space lots will be deeded to the Aviara Master Association. The Master Association documents acknowledge the Coastal Commission restrictions and stipulate that the Association maintain these public facilities. The Documents are recorded over each lot and are covenants running with the land.

SAN DIEGO/RIVERSIDE
ORANGE COUNTY/LOS ANGELES
SAN FRANCISCO/BAY AREA

Corporate Office
12865 Pointe Del Mar
Suite 200
Del Mar CA 92014
Phone 619.481.8500
Fax 619.481.9375

EXHIBIT NO. 4
APPLICATION NO.
A-6-CEB-97-123
Response From Applicant
 California Coastal Commission

1 of 2

I trust this additional information will aid your understanding of the permit status and division of responsibilities.

Sincerely,



E. Dale Gleed
Vice President Engineering

cc: Steve Doyle
Larry Clement
Chris Neil's

PLANNING
SYSTEMS

LAND USE / COASTAL PLANNING
LANDSCAPE ARCHITECTURE - LA 3900
POLICY AND PROCESSING
ENVIRONMENTAL MITIGATION

November 11, 1997

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

D. L. Clemens
AVIARA LAND ASSOCIATES
2011 Palomar Airport Rd.
Suite 206
Carlsbad, CA 92009

RE: CDP No. 6-96-43
Aviara Planning Area 28

Dear Larry:

You requested that I summarize for you the present status of satisfaction of the Special Conditions of Approval for the above-referenced coastal permit for Planning Area 28. All but two of the Special Conditions have been met and fully completed, as evidenced by the Notice of Acceptance dated September 24, 1996, signed by Bill Ponder. This Notice advises that the materials and documents provided by Aviara were "found to fulfill the requirements of said conditions".

Satisfaction of Special Condition nos. 3a and 3b, and Condition no. 6 are not required until occupancy of the Planning Area 28 homes is imminent. As a result, those conditions have not yet been fully met, but are scheduled for fulfillment within the next couple of months.

Documents and plans necessary to satisfy the Special Conditions were submitted to Bill Ponder on September 19, 1996. The submittal package included the following list of materials. The Notice of Acceptance was provided on September 24, 1996. The specific status of the referenced materials is as follows:

Public Access Deed Restriction (Aviara Land Associates) - A public access deed restriction over the PA 28 public parking lot (*Condition 1a*), and the PA 28/PA 30 public trail (*Condition 1b*) was approved, recorded and accepted by Bill Ponder and John Bowers in September, 1996.

Public Access Deed Restriction (Aviara Resort Associates) - A public access deed restriction over a trail segment at the Golf Clubhouse, through the lagoon buffer (*Condition 1c*), a blanket restriction over the

A-6-CEB-97-123

2111 PALOMAR AIRPORT ROAD • SUITE 100 • CARLSBAD, CA 92009 • (760) 931-0780 • FAX (760) 931-5744

EXHIBIT NO. 5

APPLICATION NO.

A-6-CEB-97-123

Status of Public Access
Improvements

California Coastal Commission

10F 4

D. L. Clemens
November 11, 1997
Page 2

Golf Clubhouse parking lot, including the required ten parking spaces (*Condition 1d*), and a restriction over the Clubhouse sidewalk area between the parking lot and the lagoon buffer (*Condition 1e*) was approved, recorded and accepted by Bill Ponder and John Bowers in September, 1996.

DF&G Letter Agreement - A letter agreement, signed by D. L. Clemens, agreeing to the reservation of land for a Lagoon Information Center (*Condition 1f*), and agreeing to fund construction of a bus parking space if required by DF&G (*Condition 1g*), was accepted by John Anderson (DF&G), and submitted to and approved by Bill Ponder in September, 1996. The Lagoon Information Center has since been constructed and is operational on this site.

Revised Tentative Map - A revised tentative map, found in substantial conformance by the City of Carlsbad, was submitted and approved by Bill Ponder in September, 1996. This revised map included the following modifications;

- Addition of a 10-foot wide trail access easement (*Condition 2a*),
- Addition of the PA 28 public parking lot (*Condition 2b*),
- Deletion of the outdoor classroom (*Condition 2c*), and
- Notes describing the requirement of trail and parking lot improvements prior to occupancy of the future PA 28 units (*Condition 2d*).

Public Access Improvement Plans - A set of Public Access Improvement Plans was submitted and approved by Bill Ponder in September, 1996. These plans included;

- Plans demonstrating revised design to the Phase II access trail in compliance with ADA standards. This plan sheet was approved by Bill Ponder but its construction has not yet been found feasible by DF&G. Aviara Land Associates has indicated they will agree to install this improvement upon feasibility clearance by DF&G, as required by this condition.

D. L. Clemens
November 11, 1997
Page 3

The PA 28 (on-site) parking lot is not required to be constructed until occupancy of PA 28 units is requested. (*Condition 3a*).

- A 5-foot wide improved trail between PA 28 and PA 30 (*Condition 3b*). This trail was rough-installed in October, 1996, and will be completed prior to occupancy of the PA 28 units as required by the condition.
- A 5-foot wide improved trail between the Golf Clubhouse parking lot and the North Shore Trail (*Condition 3c*). This trail was installed in October, 1996, and is presently operational.
- Public access signage at the Golf Clubhouse parking lot (*Condition 3d*). This signage was installed in December, 1996.
- Coastal Public Access Signage Plans including signage at all trailheads, directional off-site signage, and public parking lot signage, including hours of operation (*Condition 4*).

Grading and Erosion Control Plans - Grading and Erosion Control Plans, which include notes as generally described below were reviewed and approved by Bill Ponder in September, 1996:

- All grading activity is prohibited between October 1 and April 1 of any year (*Condition 5a*),
- Erosion control devices must be installed by October 1 (*Condition 5b*),
- All graded areas must be stabilized by October 1 (*Condition 5c*), and
- Temporary erosion control devices must be maintained, and replaced if necessary, by the applicant (*Condition 5d*).

Revised Landscape/Fire Suppression Plans - A set of revised Landscape/Fire Suppression Plans, prepared in consultation with the City of Carlsbad Planning and Fire Departments, were reviewed and

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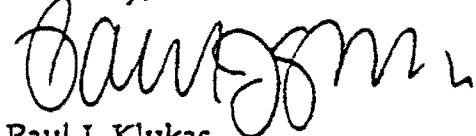
approved by Bill Ponder in September, 1996. These plans indicate the placement of specimen-size trees on the rear slopes of lots described in Condition No. 6. These trees must be planted prior to occupancy of the PA 28 homes (*Condition 6*).

Tree Maintenance Deed Restriction - A deed restriction was approved and recorded against the property which requires owners of lots identified in Condition No. 6 to maintain the specimen size trees in conformance with the revised Landscape and Fire Suppression Plans throughout the life of the permitted development (*Condition 6a*). This deed restriction was approved, recorded and accepted by Bill Ponder and John Bowers in September, 1996.

All of the above information is on file in the Coastal Commission Staff offices, and has been approved as acknowledged by the attached Notice of Acceptance. Confirming copies of all recorded documents have been provided to Mr. Ponder. I would be pleased to discuss the specifics of these items with you or others should it be necessary.

Please call me with any questions.

Sincerely,



Paul J. Klukas
Director of Planning

cc: Pam Whitcomb
Carol Ford

ClemensDocPA28

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