

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8038



Filed: 8/28/98
49th Day: 10/16/98
180th Day: 2/24/98
Staff: LRO-SD
Staff Report: 9/18/98
Hearing Date: 10/13-16/98

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-98-109

APPLICANT: West Village Center (Attn: Mr. Peter Fletcher)

PROJECT DESCRIPTION: Construction of a one-story, approximately 29 ft. high, 4,390 sq.ft. office/retail structure and a 200 sq.ft. kiosk on a 9 acre site containing an existing approximately 60,000 sq.ft. commercial center.

PROJECT LOCATION: 160-162 South Rancho Santa Fe Rd., Encinitas (San Diego County) APNs 259-191-25, 259-191-32

APPELLANTS: San Elijo Lagoon Conservancy, Attn: Doug Gibson

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission deny the de novo permit due its inconsistency with the certified LUP pertaining to floodplain development.

I. Appellants Contend That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to floodplain development. Specifically, the subject area where the proposed structure is proposed to be located is a floodplain area that was previously permitted to be filled in order to address on site drainage concerns caused by an adjacent bridge project. The area was proposed to remain open. The proposed development of this area with an office/retail structure will set an adverse precedent in the watershed by permitting filling in the floodplain and then subsequently permitting the filled areas to be developed with permanent structures that are not consistent with periodic flooding.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); City of Encinitas Resolution Nos. 98-33 approving a Design Review Permit and Coastal Development Permit; CCC #A-6-ENC-96-34; A-6-ENC-96-34-R; 6-84-368; City of Encinitas Agenda Report dated 8/12/98; Wetland Delineation Report by Dudek and Associates dated 5/24/96.

II. Local Government Action.

The Coastal Development Permit was approved by the Planning Commission on 5/28/98. Several special conditions were attached which address permit expiration, trash bin enclosures, overall design of building materials, parking lot layout, signage and building and fire conditions.

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 SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-ENC-98-161 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/Permit History. Proposed is the construction of a one-story, approximately 29 ft. high, 4,390 sq.ft. office/retail structure and a 200 sq.ft. kiosk within an existing retail/commercial center. The proposed building would be situated on a previously graded, landscaped pad at the east end of the shopping center. The kiosk structure would replace three existing parking stalls toward the northern end of the commercial center. The subject site lies within a portion of an approximately 9 acre property which contains an existing 60,000 sq.ft. retail/commercial center consisting of eight buildings and known as "West Village Commercial Center". The site comprises two parcels and is located on the south side of Rancho Santa Fe Road, just east of Manchester Avenue in the City of Encinitas. The existing commercial center currently occupies one parcel in its entirety and a portion of the second parcel.

The remaining area of the second parcel, which is where the subject building is proposed, is the site of a previous permit (A-6-ENC-96-34-A-R) where deposition of approximately 750 cy. of fill within the 100-year floodplain was permitted to address drainage concerns on a portion of the eastern parking lot. This second parcel contains both the landscaped area that was filled in the previous permit and wetlands/pasture land.

Surrounding uses include vacant land and Escondido Creek to the south and east, an elementary school, school offices and a convenience store to the north and the commercial center and Manchester Avenue to the west.

In 1984 the Commission approved CDP #6-84-368/Fletcher, for the demolition of existing buildings, grading consisting of 28,225 cubic yards of material (including 26,100 cubic yards of imported fill) and street and storm drain improvements on the subject property. The permit was approved with conditions which required the development to be revised to eliminate all grading within the 100-year floodplain and recordation of a waiver of liability, requiring the applicant to acknowledge that the site may be subject to hazard and damage from flooding and to assume the liability from this hazard. The conditions were satisfied and the permit was released.

Then, in September of 1985, the Commission approved CDP#6-85-418/Fletcher for the construction of an approximately 62,250 sq.ft. commercial center on the site in seven one- and two-story buildings. The permit also included approval of construction of some parking and landscape improvements for the center within the 100-year floodplain. This permit was approved with conditions requiring the submittal of a sign program for the center and recordation of a waiver of liability for the development, again requiring the applicant to acknowledge that the site may be subject to hazard from flooding and to assume the liability from this hazard. Subsequently, the conditions were satisfied, the permit was released and the center was constructed.

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

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. In May of 1995, the applicant sought approval of a coastal development permit from the City of Encinitas for construction of a 2,000 sq. ft. retail structure and proposed fill to support the structure, describing the project as necessary to protect the existing commercial center from flooding. At that time, Commission staff provided written comments to the City outlining specific LCP consistency concerns raised by the proposed development. The proposed development was originally approved by the City's Olivenhain Community Advisory Board (CAB) on September 5, 1995 and that decision was appealed to the City of Encinitas Planning Commission and subsequently to the City Council. The City Council approved the development on February 14, 1996, finding the project to be an incidental public service project and consistent with Land Use Element Policy 8.2 in that the project "is necessary to protect the existing commercial center from flood impacts due to the location of the 100-year floodplain...."

Because the proposed development was located within 100 feet of wetlands, it was within the Commission's appeal jurisdiction. On March 4, 1996, the City's permit was appealed to the Coastal Commission (Ref. A-6-ENC-96-34). On April 11, 1996, the Commission found that a substantial issue existed with regard to the reason for the appeal. At its de novo hearing on May 7, 1996, the Commission found that the proposed development would constitute unpermitted fill of floodplain and wetlands and was therefore inconsistent with the City's LCP. The Commission's findings were based, in part, on a wetlands study submitted by the applicant (Ref. Wetland Delineation Report by Dudek and Associates dated 5/24/96). The study concluded that a "narrow artificial/emergent wetland" existed on the site covering approximately 240 sq.ft. (0.005 acres) at the base of the fill slope for the bridge. The study also stated that the wetland was of low quality, topographically isolated from the main drainage of Escondido Creek and was being artificially supported from parking area drainage and irrigation runoff from surrounding ornamental landscaping. The proposed 2,000 sq.ft. structure would have filled all of the approximately 240 sq.ft. of wetlands.

In addition, the Commission found that the project was inconsistent with the LCP policy that restricts development in a floodplain to that which is safe and compatible with flooding. The Commission determined that the proposed fill and structure were not safe and compatible with periodic flooding. For those reasons, the Commission denied a permit for the project. On June 3, 1996 the applicant filed a request for reconsideration of the Commission's denial, citing new information that could change the Commission's original decision. On July 12, 1996 the Commission agreed to reconsider the project (Ref. A-6-ENC-96-34-R).

After the Commission agreed to hold a reconsideration hearing, the applicant revised the proposed project to delete the proposed 2,000 sq. ft. retail structure and reduce the amount of fill from approximately 1,900 cubic yards to 750 cubic yards. The Commission approved the revised project on August 14, 1996. The approved project included the filling of the 240 sq.ft. of "marginal wetlands" on the subject site. The Commission found in its action on the previous permit that the proposed fill of 750 cubic

yards could be permitted because it was consistent and compatible with the associated flood hazard since it consisted only of fill, as opposed to the construction of a structure, and that it would help to protect existing public works improvements located in this area (storm drain, sewer, lights etc.). In addition, the Commission found the fill to be acceptable because the area would remain as it had occurred in the past (an open grassy area).

The project site is within the floodplain of Escondido Creek, one of the two major creeks which drain into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. The creek in this location supports several native wetland and riparian habitats that include Southern Willow Riparian Scrub, Cismontane Alkali Marsh, and Coastal and Valley Freshwater Marsh. Based on a wetlands delineation prepared for the Army Corps of Engineers (ACOE) in 1996, it was determined at that time that there were approximately 4,610 sq.ft. of wetlands on the subject property. As noted previously, 240 sq.ft. of these wetlands were permitted to be filled pursuant to CDP #A-6-ENC-96-34-R.

Subsequently, the applicant complied with conditions, received the permit and implemented the development. The applicant now proposes to place a one-story, 4,390 sq.ft. office professional/retail structure in the location of the site that has been filled pursuant to the previous permit, as described above. The City has approved the project based on its finding that the floodplain policies do not apply because the filled area is outside the floodplain. According to the City staff report, the previously approved fill and grading raised the site out of the floodplain, as evidenced by the new FEMA mapping (Flood Insurance Rate Map Panel 1061 dated revised November 10, 1997). The City's decision on this development has now been appealed to the Commission.

Because the proposal is an appeal of a local decision, the standard of review is the certified LCP. In addition, because the development is located between the first public road and the sea, the public access and recreation policies of the Coastal Act are also applicable.

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

[...] No development shall occur in the 100-year floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this plan. No grading or fill activity other than the minimum necessary to accommodate those

uses found safe and compatible shall be allowed. [...] Exceptions from these limitations may be made to allow minimum private development (defined as one dwelling unit per legal parcel under residential zoning, and an equivalent extent of development under non-residential zoning) only upon a finding that strict application thereof would preclude minimal reasonable use of the property. Exceptions may also be made for development of circulation element roads, other necessary public facilities, flood control projects where no feasible method for protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development, [...] [Emphasis added]

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

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

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

The area where the proposed structure is proposed to be located is an area that was previously permitted to be filled in order to address on-site drainage concerns caused by an adjacent bridge project. The area was proposed to remain open. The appellant contends that the City's approval of development of this area with a permanent structure will set an adverse precedent in the watershed by permitting filling in the floodplain and subsequently permitting the filled areas to be developed with permanent structures that are not consistent with periodic flooding. In review of the appellant's contentions, the Commission finds that the appeal raises a substantial issue as to the project's conformity with the LCP policy and ordinances relative to floodplain development. As noted above, the LCP states that only development consistent with periodic flooding shall be permitted within the 100-year floodplain, such as stables, plant nurseries, some limited parking, open space and some agriculture uses. The portion of the commercial center

where the proposed retail/office structure is proposed is the area which was filled pursuant to the previous Commission permit. Although this area was filled, it appears that it continues to be within the floodplain and therefore subject to the floodplain policies and ordinances. While the Commission's action on the previous permit did not specifically restrict future development of this area, the findings for approval were based on the fact that this area would remain an open grassy area. Specifically, the findings stated, in part:

...The proposed fill can also be found consistent with the above cited LCP policies and ordinances as it is compatible with the associated flood hazard, it will remain as an open grassy area (which is similar to the agriculture and open space uses that are listed as accepted in the floodplain) and, the fill is not proposed to accommodate a structure or even a public improvement, but only to correct on-site drainage.

While the Commission did allow some fill in this area through the previous permit, the fill was to address on-site drainage concerns caused by the construction of the La Bajada Bridge and not to raise the area out of the floodplain to create a building pad for future development. The above cited LCP policies only allow structures in a floodplain if they are consistent with periodic flooding. The proposed retail/office structure does not appear to be a use consistent with periodic flooding.

Floodplains are an important part of many ecosystems as they are often associated with environmentally sensitive resource areas such as lagoons, estuaries, rivers and coastal streambeds. Development (construction of structures, grading, filling, etc.) within a floodplain not only presents a danger to proposed structures, but also can impact downstream resources through increased sedimentation. As such, development in the floodplain is severely restricted in the City's LCP. Therefore, for the reasons stated above, 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.:

1. Project Description. As previously cited in the findings for substantial issue of this staff report, proposed is the construction of a 4,390 sq.ft. office/retail sales structure

and a 200 sq.ft. kiosk on 9 acre parcel containing an existing retail/commercial center (West Village Commercial Center). As noted previously, the proposed structure will be located in an area of the site that was permitted to be filled with 750 cubic yards of fill material pursuant to CDP #A-6-ENC-96-34-R. The remainder of the project description/project history is discussed in full detail in the findings on Substantial Issue section of this report (reference pages 3-5 and is hereby incorporated by reference).

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

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

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

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

- a. The development is capable of withstanding periodic flooding, and does not require construction of flood protective works,...
- b. Existing environmentally sensitive habitat areas will not be significantly adversely affected.
- c. The development will not result in a net reduction of existing riparian habitat areas within the floodplain.

- d. The design of the development incorporates the findings and recommendations of a site specific area watershed hydrologic study...
- e. There will be no significant adverse water quality impacts to downstream wetlands, lagoons and other environmentally sensitive habitat areas.

The proposed office/retail structure is proposed to be located in an undeveloped area that does not contain any buildings, but is comprised of various utility and landscape improvements and an area that had been previously identified as wetlands. When the Commission approved CDP #A-6-ENC-96-34-R, which permitted the deposition of 750 cubic yards of fill in this area, it found that the area was within the 100-year floodplain of Escondido Creek. The Commission found the fill consistent with LUP Policy 8.2 in part, due to the fact that the development was considered consistent and compatible with the flood hazard because it only consisted of fill—as opposed to the construction of a structure. In addition, the proposed fill material would protect existing public works improvements located in the area (storm drain, sewer, lights, etc.). Furthermore, the landscaped area of the site would continue to function as open space (i.e., open grassy area). Finally, the Commission also found that the applicant had minimized the amount of fill by reducing the proposed amount from 1,900 cy. to 750 cy.

The Commission's finding that the 750 cy. of fill was within the 100-year floodplain of Escondido Creek was based upon the County of San Diego Floodplain Maps and exhibits provided by the applicant. These maps depict the floodplain on the basis of elevations. The term floodplain is defined in the City's LCP as follows:

Floodplain shall mean the channel and the relatively flat area adjoining the channel of a natural stream or river which has been or may be covered by floodwater; specifically, those areas shown as subject to inundation on the flood insurance rate maps published by the Federal Emergency Management Agency or the current City maps designating floodplains.

The deposition of the fill raised a portion of the landscaped area above the elevation associated with the 100-year floodplain, with the remaining area sloping gradually to the east. In this way, the applicant was able to address the on-site drainage problem and to continue to use this area in the same way it had always been used without the threat of ponding caused by the identified on-site drainage problem. As stated previously, no buildings were proposed or permitted in the previous action.

The applicant's proposal at this time to construct a structure in this area is subject to the City's certified LCP policies and ordinances regarding floodplain development for several reasons. First, although the City does not regard this area to be within the floodplain any longer due to the permitted fill that occurred, the surrounding area is still within the "floodplain area". Second, to permit the construction of a building in an area that was previously filled to address on-site drainage concerns could result in a

significant adverse precedent which could result in the piecemeal filling of other properties in the floodplain which could then subsequently be developed at a later time, as well. The deposition of fill and subsequent development with permanent structures in the floodplain on an incremental basis, can cumulatively constrict the floodplain and limit the ability of the geography to handle flood waters, which can lead to potential flood erosion impacts both down- and upstream.

Third, in its approval of the 750 cy on which the proposed development will be placed, the Commission did not intend to remove the area from the floodplain. In its findings for approval of the fill A-6-ENC-96-34 (Revised Findings dated 10/21/96) the Commission stated:

...Based on information presented by the applicant, placement of the 750 cubic yards of fill in this area is the minimal necessary to affect positive drainage for this area. As such, in this particular case, the Commission finds that placement of the proposed small amount of fill (750 cubic yards) within the floodplain will help to protect existing public utility improvements, allow use of the center and landscaped area to continue without the threat of flood, and not adversely impact up- or downstream resources. The proposed fill can also be found consistent with the above cited LCP policies and ordinances as it is compatible with the associated flood hazard, it will remain as an open grassy area (which is similar to the agriculture and open space uses that are listed as accepted in the floodplain) and, the fill is not proposed to accommodate a structure or even a public improvement, but only to correct on-site drainage." [Emphasis added]

Thus, the Commission intended to approve a use consistent with the floodplain policies; a use that was compatible with periodic flooding and that would provide some protection for existing structures. The Commission did not intend to change the floodplain nature of the area or to exclude it from future application of floodplain policies and ordinances. The Commission did not specifically condition the previous project to prohibit further construction of structures on the filled floodplain area of the site in part because they intended that the LCP floodplain policies that prohibit structures in the floodplain would continued to apply. Furthermore, the applicant's intent when he proposed to fill the floodplain was to correct a drainage problem caused by the adjacent bridge project. Therefore, the floodplain policies of the LCP continue to apply to this area.

The construction of a building in this location would clearly be inconsistent with the policies of the certified LCP. These policies prohibit development in a floodplain except for uses that are safe and compatible with periodic flooding. The proposed structure is not safe and compatible with periodic flooding. Even if the proposed structure were an allowable use under the policies of the certified Land Use Plan, it is not allowed under the standards of the City's Implementing Ordinances. Specifically, Section 30.34.040(b)(2) of the City's Implementing Ordinances only allows permanent structures and/or fill for permanent structures if the applicant can demonstrate, among other things, that the development is capable of withstanding periodic flooding. The applicant has not

demonstrated that that the proposed 4,390 sq.ft. office/retail structure is capable of withstanding periodic flooding. Thus, the proposed development is inconsistent with the provisions of the City's LCP pertaining to floodplain development and therefore, must be denied.

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

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

4. 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 subject site is zoned and planned for general commercial and rural residential uses in the City's certified LCP. The proposed structure is proposed on a portion of the site designated for general commercial development and is consistent with that designation. However, the subject site is also located within the Special Study Overlay Zone which is used to indicate those areas where development standards may be more stringent to minimize adverse impacts from development. In addition, the proposed development is subject to the Floodplain Overlay Zone. This is applied to areas within the Special Study Overlay Zone where site-specific analysis of the characteristics of a site indicate the presence of a flood channel, floodplain or wetlands. The subject site has been identified to be within the 100-year floodplain and to contain wetlands. Even though the site was previously permitted to be filled which included filling of the wetlands, the project area is still within the floodplain area and contains wetlands at its southern end.

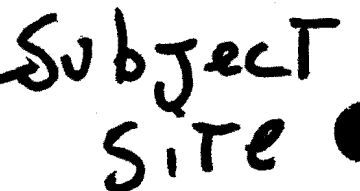
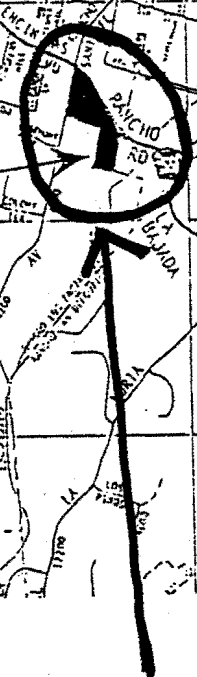
As noted in the previous sections of this report, the proposed development which includes construction of an office/retail building on a area that previously filled within the 100-year floodplain is inconsistent with several policies of the City's certified LUP as well as with the provisions of the Floodplain Overlay Zone. The proposed structure is not a permitted use within the 100-year floodplain and is not necessary to protect existing

development nor is it the least environmentally damaging alternative. In addition, if this site were allowed to be developed as proposed, it could set an adverse precedent for filling other important wetland areas within the City, and then later allowing development to occur on such sites. As such, the Commission finds the proposed development must be denied.

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

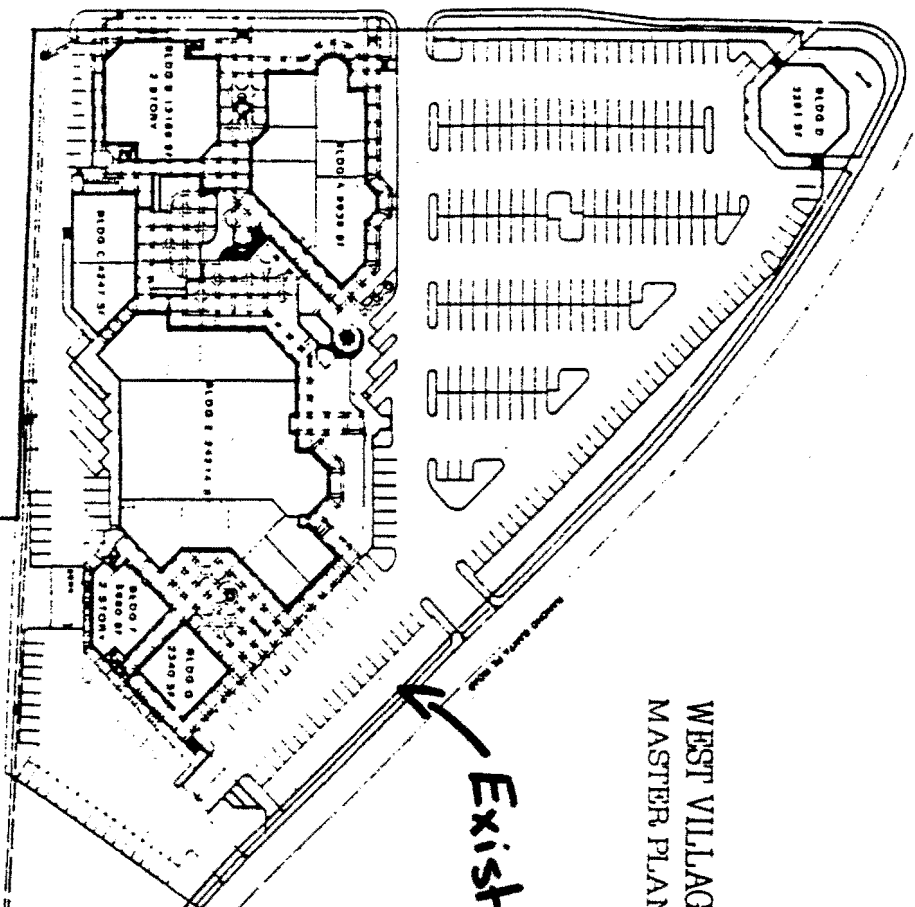
As stated previously, the development as proposed would result in impacts to coastal resources in the form of development in the floodplain which could adversely impact downstream coastal resources. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include the no project alternative which would allow the existing commercial center to operate as it always has, with some parking, landscaping and sidewalks in the easternmost portion of the site, subject to possible inundation in a major storm event. In addition, there are other development alternatives available to add square footage to the center that do not include construction of structures within the 100-year floodplain. Such alternatives could include construction of the proposed retail building within the existing parking lot (outside the 100-year floodplain). Such a proposal would eliminate some existing parking, however, according to a parking analysis submitted by the applicant in the previous permit, the center provides more parking than is required by current LCP standards. In addition, the proposed structure could also potentially be added as an addition to one of the existing single-story buildings on the site.

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



California Coastal Commission

WEST VILLAGE RANCHO SANTA FE
MASTER PLAN



Existing 60,000 SFT.
Retail Center

Proposed location for
4,390 SFT. Office/Retail
Structure

SITE PLAN

GROSS FLOOR AREA 52993
100% Parking 345 Spaces



EXISTING TRAIL

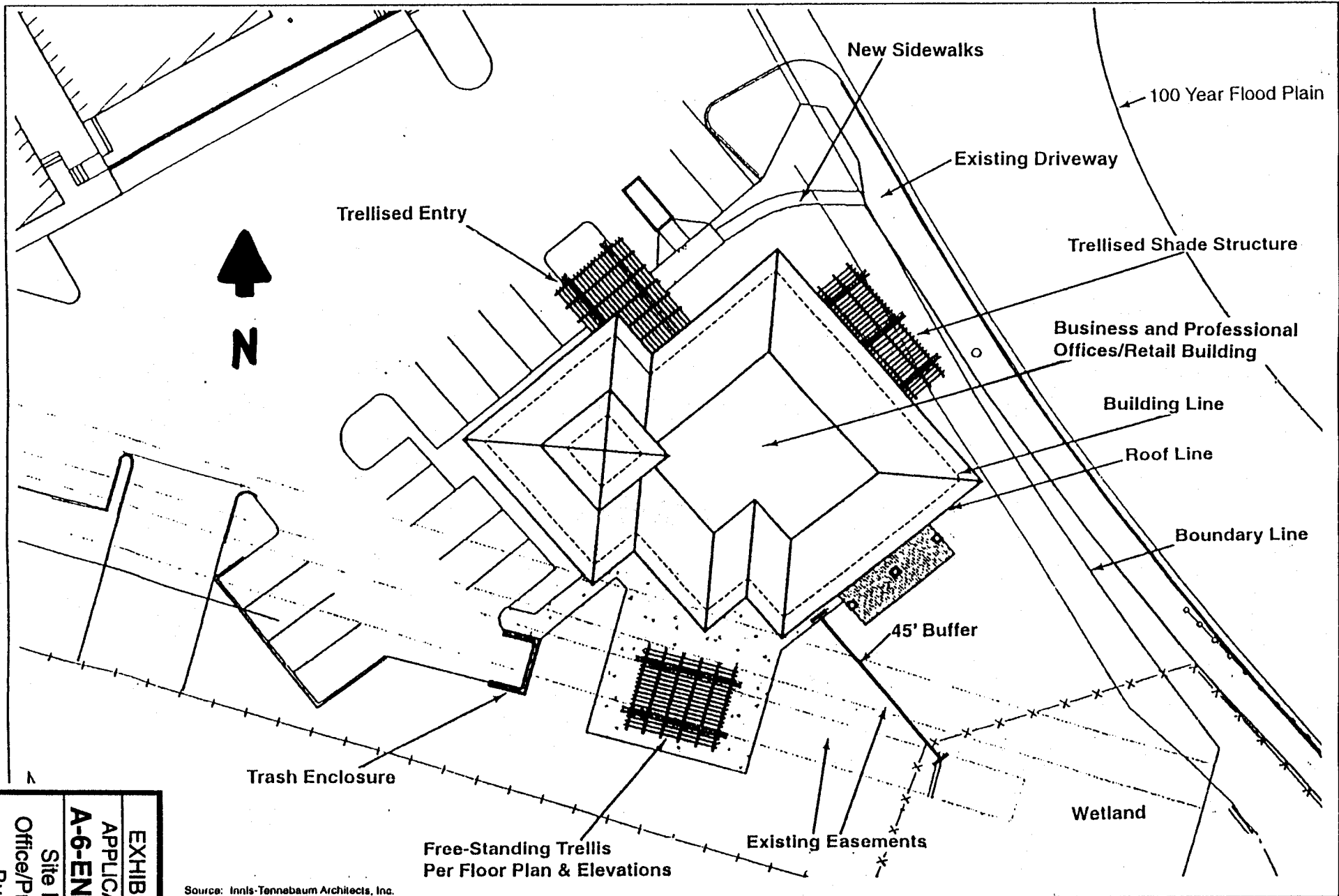
PROPOSED TRAIL

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-98-109
Site Plan

INNIS - TENNEBAUM ARCHITECTS
654 INDIA STREET, DOCK B, SAN DIEGO, CALIFORNIA 92101
23-07108

CONSULTANT

California Coastal Commission



Proposed Office/Professional Building
 WEST VILLAGE CENTER

Figure 3

EXHIBIT NO. 3
APPLICATION NO.
A-6-ENC-98-10
Site Plan for Office/Professional Building

SAN ELIJO LAGOON FOUNDATION

P.O. BOX 1001, SOLANA BEACH, CALIFORNIA 92075

SEP 10 1998

September 9, 1998

Rusty Arejas
Chairman, California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, Ca 92108-1725

Re: Coastal Commission Appeal
A-6-ENC-98-109
Local Permit 98-028-DR/CDE/EIA
West Village, Encinitas CA

The San Elijo Lagoon Foundation owns the River mouth to the sea, five parcels totaling 9 acres at the westerly end of the 885 acre San Elijo Lagoon Park.

The Foundation represents the original political success in converting an approved 600 home subdivision in the lagoon to the present open space park.

Land use battles were at the heart of our efforts. There would have been no lagoon park without compromise.

The San Elijo Lagoon Foundation has a policy of not re-challenging a land use decision made during the original hearing process whether we chose to have input or did not choose to contribute.

The present case in point is the West Village or Harvest Ranch application for an improvement.

The Coastal Commission issued a grading permit in 1996. **The San Elijo Foundation did not challenge.** The basic commitment by the developer was to contribute open space acreage to the San Elijo Park (Gift to Wildlife Cons. Board.)

The Board of the San Elijo Foundation has no objection to the West Village proposal. Three acres of mitigation land in Escondido Creek is to be deeded to WCB when permits are approved. We applaud this "compromise" and the additional lagoon park acreage.

Yours very truly,


Thomas R. Clotfelter
Past Chairman

Cc: Pete Fletcher
Eric Lodge
Scott Englehorn



BYRON WEAR
Deputy Mayor
SECOND DISTRICT

RECEIVED

SEP 18 1998
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

September 15, 1998

All California Coastal Commissioners
California Coastal Commission
San Diego Coast Area
3111 Camino del Rio North, Suite 200
San Diego, CA. 92108-1725

Re: Appeal #A-6-ENC 98-109

Dear Commissioners:

It is my understanding that the Commission intends to review the appeal filed by the San Elijo Lagoon Conservancy regarding the City of Encinitas' approval of a building construction application by West Village Shopping Center in Encinitas.


As a Coastal Commissioner at the time, I clearly recall that the earlier grading application approved by the Commission on August 14, 1996 was a reconsideration item. The applicant had provided us with an updated and substantially changed Environmental Study as well as an alternative grading plan to consider along with the original grading plan, to restore the property after damage caused by the construction of La Bajada Bridge, a County of San Diego public works project.

I have a copy of the official reporter's transcript of proceedings for the subject Agenda Item No. 18D, the findings, the appeal, as well as a copy of the permit issued to the applicant. These documents clearly confirm my intent and understanding in seconding the motion made by Commissioner Randa to approve the project with the conditions as spelled out in the transcript and permit as issued. The findings for approval did not include, as is now claimed by the appellant, any future restriction on building on the subject site. As a matter of fact, in his testimony, the appellant's representative, Andrew Morrow, pointed out that approval of either grading plan would create a building pad. For the time being, it was understood that based upon the application then before us, the regraded area would continue to be used as a paved parking lot and open space. However, our action did not preclude a subsequent application allowing a building on the site. Any future application, such as you now have before you, should be looked at on its own merits.

In addition, the selection of which grading plan was to be included in the motion to approve, was made by an amendment to the motion by Commissioner Wan. The record again confirms that, other than selecting which grading plan would be used in the approval, no additional conditions or restrictions were attached to this approval other than as stated in the permit.

Thank you for permitting me to help clarify the circumstances surrounding the approval of the earlier grading application in 1996.

Sincerely,


BYRON WEAR
Deputy Mayor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1721
(619) 521-8036



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

San Elija Lagoon Conservancy
P.O. Box 230634
Encinitas, CA 92023 (760) 436-3944
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed: Request to construct a 4390 sq ft office professional/retail sales structure and a 200 sq ft kiosk.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 160-162 S. Bonita Santa Fe Road

4. Description of decision being appealed:

☒ Approval; no special conditions: _____
☒ 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: A-6-ENC-98-109

DATE FILED: 8/28/98

DISTRICT: San Diego

07/86
RECEIVED
AUG 28 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST I

EXHIBIT NO. 5
APPLICATION NO. A-6-ENC-98-109
Appeal Form w/attachment
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: August 12, 1978

7. Local government's file number (if any): 98-028 DR/CDP/EIA

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

West Village, Inc. / PETER FLETCHER
S. RANCHO SANTA FE RD.
SAN JUAN, CA 92074

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) _____

(2) _____

(3) _____

(4) _____

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.)

See Attached Sheet

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 Doug R. Gibson
Appellant or Agent

Date 8-24-98

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

Signed _____
Appellant

Date _____

0016F



SAN ELIJO LAGOON CONSERVANCY

Preserving And Enhancing San Elijo Lagoon

August 28, 1998

California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, Ca. 92108
Attn: Mr. Le McKeckren

RECEIVED

AUG 28 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Fletcher, Case # 98-023 DR/CDP/EIA

Dear Mr. McKeckren,

The San Elijo Lagoon Conservancy (SELCO) is opposed to this project being placed upon the above stated property and would like to add these comments for the appeal record. The SELCO has opposed this project through the local city Planning Commission and the City Council. Since this property is within the boundaries of the coastal zone we have appeal rights to the California Coastal Commission. Because the history of the site we would like to first start with some background history from the Commission hearings that occurred in April, July, and August of 1996.

The initial project (95-150 DR/CDP/EIA, APN: 259-191-14) that the City of Encinitas approved was to allow fill of the 100 year flood plain, destroy wetlands, and to construct a retail nursery on site. This was opposed by the SELCO at the Commission hearings and eventually denied by the Commission. The applicant then applied for a reconsideration when the Pringle appointments had control of the Commission and the project was approved.

During the initial Commission hearings the applicant stated that the only reason the project was needed was to alleviate flooding that was a result of the construction of the La Bajada bridge. The construction of the bridge caused a shift in surface water flow and flooded a portion of the applicant's property that was in the 100 year flood plain. The initial plans had a retail nursery on the new pad that was to be constructed to alleviate this flooding. The applicant stated that the only reason that a building was shown, was because the City of Encinitas had suggested that he place one there. This is because his approved project would raise him out of the flood plain and allow a developable pad.

P.O. BOX 230634 • ENCINITAS • CALIFORNIA 92023-0634
(760) 436-3944

PRINTED ON RECYCLED PAPER

The Commission's denial was due to many factors relating to this project. First, there were wetlands that were going to be destroyed due to the filling of the area. Second, filling in the 100 year flood plain was not consistent with the LCP or the General Plan. The root problem was flooding and filling in the area was the only proposed plan by the applicant. Commission Staff and the SELC disagreed with the applicant stating that the drainage problem could be controlled by other (less damaging) means. The Commission agreed and denied the permit.

The applicant's request for a reconsideration was approved by the Commission. The amount of fill was reduced and the building was removed from the plans. The project was completed which brings us up to date.

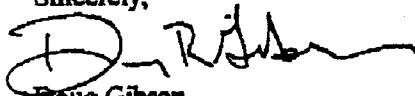
Currently, the LCP has not been modified to list this property as being able to withstand periodic flooding. Therefore, it is still considered floodplain and is inconsistent with the LCP. The applicant has a reasonable use of his property and is looking to expand an already massive shopping center that is currently for sale.

The Commission was led to believe that this area would remain an open grassy area and that development was not going to take place. This piecemeal approach to development is destroying the not only the environment, but the process in which permitting is allowed. This project will set a precedent up and down the watershed that you can get a permit to fill your land due to flooding and then comeback later to develop it.

We manage the lagoon on a watershed basis and it's getting harder and harder to control this style of development. The San Elijo Lagoon is listed as a 303d impaired waterbody for sediment and nutrients. If the floodplain continues to be filled and developed the lagoon will suffer.

We ask that you please deny this project and send a message that poor development practices will not be the standard. Thank you for this opportunity to supply these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Gibson', written over a horizontal line.

Doug Gibson
Executive Director, SELC