

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

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Staff: WNP-SD
Staff Report: 9/24/98
Hearing Date: 10/13-16/98

REVISED FINDINGS

APPLICATION NO.: 6-96-159

APPLICANT: Steve Cade

Agent: Tom Jones

DESCRIPTION: Two lot subdivision of a 3.66 acre site (Lot 1=1.55 acres; Lot 2=2.11 acres) and construction of a single-story, 5,400 sq.ft. residence on Lot 1 and also a single-story, 5,300 sq.ft. residence on Lot 2. Proposed is the construction of a swimming pool on Lot 1 and a tennis court and swimming pool on Lot 2, vertical fencing along the property lines to the mean high tide line of Agua Hedionda Lagoon, time-lock gates to restrict lateral public access along the lagoon, exotic landscaping and irrigation within the lagoon buffer and upland areas covering both lots, a boat launch ramp, crib wall, fire ring and barbecue. The applicant also proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon (within the buffer), and to construct trail improvements. Also, proposed is a lot line adjustment between Lot 2 and an adjacent parcel to the northeast and street improvements to Adams Street.

SITE LOCATION: 4523 Adams St., Carlsbad, San Diego County. APN 206-200-08

DATE OF COMMISSION ACTION: May 21, 1998COMMISSIONERS ON PREVAILING SIDE: Allen, Armanasco, Flemming, Kehoe, Nava, Pavley, Potter, Reilly, Staffel, Hickox, Wan and Chairman AreiasSUMMARY OF COMMISSION ACTION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action to approve the proposed development. The vacant site has been extensively used by the public for recreational purposes because of its wide, sandy lagoon frontage, about 400 feet. To protect himself from liability concerns and vandalism associated with public use of the site, the applicant has constructed fencing without benefit of a coastal development permit which blocks lateral access along the shoreline. Additionally, the applicant has planted and improved the buffer portion of the site i.e., that portion of the property within 100-feet of the mean high tide line with palm trees, a barbecue, a grassy lawn, benches etc. without benefit of a permit. The applicant has

proposed to take down the fences to allow public use prior to acceptance of the proposed lateral access easement by a public agency or private association, if time-lock gates can be used to limit public access to daytime use. The applicant has also proposed to improve a trail within the easement. The Commission's decision prohibits the proposed time-lock gates and addresses the protection and preservation of public access on the site by requiring an offer to dedicate a lateral access easement to extend 25-feet upland of the mean high tide line to assure the majority of the easement is inland of the water's edge at most times during the day. The Commission's decision also requires that public access signage be installed which notifies visitors of access opportunities on the site, that an existing "No Trespassing" sign be removed, that the existing private landscape improvements which have been installed in the buffer without a permit be removed and replaced with native, drought-tolerant and fire-retardant vegetation suitable for a lagoon environment and that time limits be placed on complying with the conditions to ensure that access opportunities will be restored to this portion of the north shore of Agua Hedionda Lagoon.

Substantive File Documents: Certified Agua Hedionda Land Use Plan; Carlsbad Minor Subdivision Map; and, Carlsbad Hillside Development Permit

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised/Final Parcel Map, Site and Building Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written

approval of the Executive Director, a revised parcel map and revised final site and building plans approved by the City of Carlsbad which incorporate the following:

- a. A revised alignment of the proposed public access easement to extend 25-feet upland of the mean high tide line as shown on the tentative map dated March 21, 1997 which is understood to be ambulatory from day to day to provide lateral access along the entire lagoon frontage width of the property.
- b. Installation of time-lock gates at the east and west property lines at the location of the public access easement is prohibited. The public access easement shall remain open and shall not be blocked with fencing, gates, or other structures. An amendment to this permit or a new coastal development permit shall be required for installation of additional public access improvements.
- c. With the exception of the volleyball court, all existing improvements (barbecue, picnic table on concrete pad, fire ring, lawn, benches, irrigation for lawn) within the required buffer shall not be permitted and shall be removed. Replacement vegetation shall be in accordance with Special Condition #6 of this permit. A boat launch ramp may be permitted pursuant to Special Condition #11.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, and within 90 days of Commission action, the applicant shall record a restriction against the subject property. The restriction shall prohibit any alteration of landforms, erection of structures of any type and removal of vegetation, except as permitted herein, for any purposes in the proposed buffer area as shown on the tentative parcel map dated 1/8/98 (Exhibit 3) and generally described as the area between the mean high tide line and a line to the north ranging from 60-feet on the eastern side of Lot 2 and 100-feet on Lot 1. The sand volleyball court, native drought-resistant vegetation required herein, rip-rap energy dissipater, boat launch ramp, a future public trail with its associated improvements and upland fencing and/or landscaping to demarcate public/private use as approved pursuant to Special Condition #6 of CDP #6-96-159, shall be permitted within the buffer. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Lateral Public Access. Prior to the issuance of the coastal development permit, and within 90 days of Commission action, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline and shall extend 25-feet upland of the mean high tide line as shown on the tentative parcel map for coastal permit dated 1/8/98, which is understood to be ambulatory from day to day.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. It shall be recorded free of prior liens, which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances, which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

4. Public Access Signage. Prior to the issuance of the coastal development permit, and within 90 days of Commission action, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan which has been approved by the City of Carlsbad, which shall incorporate the following:

- a. Signage prohibiting Glass Containers, Alcohol, Dogs or Pollution is allowed consistent with the Carlsbad Municipal Code.
- b. Signage shall be installed on the applicant's site in a location visible from Cove Drive which identifies that vertical public access is available to pedestrians and bicyclists from Cove Drive to the proposed lateral public access easement on the applicant's property. Said plans shall be subject to the review and written approval of the City of Carlsbad and the Executive Director.
- c. The applicant shall remove the "No trespassing" sign located near the eastern boundary of Lot 2.

The signage plan shall be implemented by the applicant in accordance with the approved plan.

5. Enforcement. The applicant shall submit for review and approval of the Executive Director, the following plans within the prescribed time frames to address the removal of existing unauthorized development on the subject site. The approved plans shall be subsequently implemented by the applicant in the identified time frames to avoid further enforcement action.

WITHIN 90 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or such time additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Additionally, the applicant shall complete the following:

- a. Landscaping/Improvement Plans approved pursuant to Special Condition #6 shall be implemented within 30 days of issuance of the permit, such that removal of existing unpermitted landscaping and improvements within the buffer shall occur within 120 days of Commission action; and, revegetation of the buffer, as required herein, shall occur within 120 days of Commission action;
- b. Within 120 days of Commission action:
 - (1) The access signage shall be installed as described in Special Condition #4;
 - (2) The vertical fencing in the public access easement area shall be removed and;
 - (3) The "no trespassing" sign located near the eastern boundary of Lot 2 shall be removed as described in Special Condition #4.

The site shall be subject to a staff inspection upon completion of the above required landscaping and improvements to confirm conformance with the approved plans.

6. Revised Landscape Plan. Prior to the issuance of the coastal development permit and within 90-days of Commission action, the applicant shall submit to the Executive Director for review and written approval, in consultation with the Department of Fish and Game, a revised landscape plan, which has been approved by the City of Carlsbad, which shall incorporate the following:

- a. The existing grass lawn within the required buffer shall be removed and replaced with native, drought-resistant landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features.
- b. Landscaping upland of the buffer shall be designed to mitigate the visual impact of the structures as viewed from the lagoon and public access trail, while preserving views from the homes. The revised landscape plan shall indicate the placement of a minimum of one specimen size tree (24-inch box minimum) for every 10 feet of pad area lagoonward of the proposed building sites and arranged to maximize screening of the structures from views from Aqua Hedionda Lagoon and Interstate 5. A minimum of 20-trees shall be provided lagoonward of the building pad for Lot 1,

and a minimum 13-trees shall be provided lagoonward of the building pad for Lot 2. For the tennis court, a minimum of 6-trees shall be provided on the lagoon side of the court. At maturity the trees shall approximate the height of the roofline of the residences and approximate the height of the fence surrounding the tennis court. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. The plan shall also include the use of species, which do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan. Said trees shall be compatible with the natural character of the surrounding environment (i.e., non-invasive or noxious).

c. A 20-foot landscaped buffer shall be planted on the property along its Adams Street frontage. However, species within the landscaped buffer shall not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views shall be incorporated into the approved plan.

d. Installation of lateral fencing may be permitted across the site in the following alignment: on the western side of the site, fencing may be placed at the inland extent of the buffer. On the eastern side of the site, lateral fencing is allowed at the toe of the slope of the natural landform at the approximate 10-foot elevation to the eastern property line as shown on Exhibit 8. Installation of the permitted fencing must maintain lateral and vertical access to and along the shoreline.

e. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director against the subject property. The restriction shall incorporate the requirements of condition #6 to ensure that specimen-size trees shall be maintained throughout the life of the permitted development.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Drainage/Runoff/Sedimentation Control. Prior to the issuance of the coastal development permit, and within 90 days of Commission action, the applicant shall submit for the review and written approval of the Executive Director, final drainage and runoff control plans for the project designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity

and elevation. Energy dissipating measures at the terminus of any proposed outflow drains shall be constructed. Any vegetation removed to install such measures shall be replanted with native vegetation. The applicant shall also submit a written commitment indicating that all devices shall be installed and maintained by the applicant in accordance with the approved plan.

8. Grading and Erosion Control. Prior to the issuance of the coastal development permit, and within 90 days of Commission action, the applicant shall submit, for the review and written approval of the Executive Director, final grading plans which shall be subsequently implemented and conform to the following requirements:

a. No grading activities shall be allowed during the rainy season (the period from October 1st to March 31st of each year). All disturbed areas will be replanted immediately following grading and prior to the beginning of the rainy season. The applicant shall undertake the development in accordance with the approved grading and erosion control plan. Prior to commencement of any grading activity, the applicant shall submit a grading schedule to the Executive Director.

b. The installation of temporary and permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

c. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

9. Height of Structures/Future Development. This approval limits the height of the residences to no higher than the centerline of Adams Street, which is at elevation 42-ft. Mean Sea, Level. The subject permit is only for the development described in coastal development permit No. 6-96-159. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the area governed by coastal development permit No. 6-96-159. Accordingly, any future improvements to the existing single family residence, which are proposed within the area governed by coastal development permit No. 6-96-159 shall require an amendment to said permit from the California Coastal Commission or from the certified local government.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. . The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area. The deed restriction shall run with the land, binding all successors and assignees, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed

restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. Accordingly, any future development proposals for the site shall require review and approval by the California Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

10. Disposal of Graded Spoils. Prior to the issuance of the coastal development permit, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successor in interest. No stockpiling of exported materials shall be permitted onsite during the rainy season (i.e., October to April of any year).

11. Boat Launch Ramp. Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, plans for a boat launch ramp which have been approved by the Army Corps of Engineers, the California Department of Fish and Game and the City of Carlsbad. The boat launch ramp shall be sited and designed in a manner to maintain lateral and vertical access to the shoreline, not extend into the water and be upland of the mean high tide line.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant proposes a two-lot subdivision of a 3.66 acre site (Lot 1=1.55 acres; Lot 2=2.11 acres) and construction of a single-story, 5,400 sq.ft. residence on Lot 1 and a single-story, 5,300 sq.ft. residence on Lot 2. The residence on Lot 1 is setback at least 140-feet from the mean high tide line; the residence on Lot 2 is setback at least 80-feet from the mean high tide line. Also proposed is the construction of a swimming pool adjacent to the residence on Lot 1 and a tennis court (near the eastern property line) and swimming pool adjacent to the residence on Lot 2, vertical fencing along the property lines to the mean high tide line of Agua Hedionda Lagoon, time-lock gates to restrict lateral public access along the lagoon, exotic landscaping and irrigation within the lagoon buffer and upland areas covering both lots, a boat launch ramp, crib wall, fire ring and barbecue. The applicant also proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon (within the buffer), and to construct trail improvements. Drainage improvements (rip rap energy dissipater) are proposed within the buffer. Also, proposed is a lot line adjustment between Lot 2 and an adjacent parcel to the northeast. Cut grading is proposed at 12,400 cubic yards, fill

grading is proposed at 3,400 cubic yards with 9,000 cubic yards to be exported off-site. Street improvements to Adams Street include paving within the right-of-way.

The site is located south of Adams Street on the north shore of Agua Hedionda Lagoon in Carlsbad. The site is bounded on the west by a vacant lot that was approved by the City of Carlsbad for a minor subdivision map creating 3 units but the project was not built. On the east the site is bounded by a 23-unit condominium complex known as Bristol Cove. The hillside site contains elevations ranging from 0 to 43 feet mean sea level (MSL). Approximately .39 acres of coastal sage scrub is located on a hillside near the site's eastern boundary with the Bristol Cove condominiums.

The applicant has received Minor Parcel Map and Hillside Development approvals from the City of Carlsbad. The site is designated and zoned for residential use in the Agua Hedionda Land Use Plan (Residential Low Medium [0-4 du/ac] and R-1-15,000 zoning).

2. No Waiver of Violation. Although development has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Public Access. Public access along and to the waters of Agua Hedionda Lagoon is very important because of the recreational nature of the lagoon. It is the only lagoon in San Diego County where water sports are permitted, including motor and sail boating, water skiing, wind surfing, jet skiing, etc.,. Additionally, a public trail along the north shore of the lagoon is identified in the certified Agua Hedionda Lagoon Land Use Plan. The following Coastal Act sections are applicable to the proposed project and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 :

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]

(2) adequate access exists nearby....

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan contains a detailed set of public access policies that state, in part:

Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use....

Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development

All accessways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for

access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational area:

- a) All portions of such structures shall be set back from the point nearest any public use area a distance equivalent to twice the height of the structure above finished grade; and
- b) New development shall provide landscaping adequate to minimize visual intrusion upon public use areas.

Policy 7.9

Access Signing

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private developments. Signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area.

Most of the north shore lagoon-fronting lots, between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, are undeveloped between I-5 and Bristol Cove (about 1 mile). The primarily hillside lots contain coastal sage scrub habitat and some contain wetland vegetation. They are also within the public viewshed. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit, if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon with a 10-foot wide trail being provided within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access-related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement. To date, lateral access easements have been required on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035) and the 23-unit Bristol Cove condominium project (CDP #F 1012) which is adjacent to the subject site on the east. Only two sites (L&R and Bristol Cove) have constructed their segment of the public access path called for in the LUP.

On the Bristol Cove site to the east, the lateral access easement was required to extend from the southern boundary line of the parcel to a minimum width of 6 feet on the top of the lagoon bank, which was lined with rip rap at the time. The required easement is shown on the attached exhibit #7, and is approximately 23 feet wide at the eastern end and narrowing to approximately 16 feet at the western end. A ten-foot wide vertical easement was also required at the western end extending south from Cove Drive to the property boundary.

The project site is located between Agua Hedionda Lagoon and Adams Street and contains roughly 404 feet of actual lagoon frontage between both lots. The site has been extensively used by boaters, windsurfers and other recreationists in the past because of its sandy beach portion along the entire frontage and convenient access from Adams Street, the adjacent Cove Drive and from the lagoon itself. Prior to the applicant's installation of the fences, informal vehicular access existed between the hillside portion of the site near Adams Street to the beach portion of the site, which contributed to the public use of the site. Vertical access is available from the existing terminus of Cove Drive, adjacent to the east of the property, to the shoreline. To the west, one lot removed from the subject site, informal vertical access to the shoreline is available at Whitey's Landing, the site of a restaurant/boat club. Entry to the site from the water is easy because of the long sandy beach on both lots. As noted, the adjoining site to the east contains a 23-unit condominium complex that is built near the water's edge and contains one segment of the public trail. Occupants of the complex have used the vacant project site for beach outings and as a convenient shortcut to a local restaurant/bar that is located several hundred yards to the west.

To prevent unrestricted access across the site, two fences were installed in 1996 by the applicant to the water's edge along the east and west property lines. The fences were installed without benefit of a coastal development permit. The fences impede lateral public access that has been historically available across the sandy beach portion of the hillside site. Many people have objected to the fencing-off of the site, particularly those who live in the adjacent Bristol Cove condominiums. The applicant states they were constructed to protect himself from theft, vandalism and liability associated with public use of the site. The applicant states he was unaware that installation of the fences required a coastal development permit and that no discretionary permits were required from the City. The applicant did not check with the Commission's local office in that regard. The Commission's regulations provide that fencing can be exempt from permit requirements if associated with a single-family residence. If a fence is not associated with a residence it is not exempt. Further, if it is associated with a residence but is between the sea and the first coastal road and the Executive Director finds it to be a significant non-attached structure, a permit is required for installation. The fences in this location are significant non-attached structures because they block public access that has been historically available along the north shore of the lagoon and are installed in a location where the Agua Hedionda Lagoon LUP calls for a public trail; thus, a coastal development permit is required for the installation of the fencing.

In its approval of the proposed two-lot parcel map, the City required the applicant to record an offer to dedicate a public access easement and to construct trail improvements within the easement consistent with the policies of the LUP. The City required the removal of the fences within 10 days upon acceptance of the easement by a public agency or private association. To date, neither the City of Carlsbad, the State Lands Commission, the Coastal Conservancy nor the Agua Hedionda Lagoon Foundation has have been willing to accept the offer to dedicate a trail easement. Thus, the fences remain standing and public access remains blocked.

All projects requiring a coastal development permit must be reviewed for consistency with the public access provisions of Chapter 3 of the Coastal Act. Various sections of the Coastal Act, including sections 30210, 30211, and 30214 protect public access to the shoreline. The project presents issues of consistency with the public access policies of the Coastal Act because the applicant seeks to prevent public access via fences and timelock gates across the lagoon frontage of his property even though there is evidence that over the years the property has been used by the public and therefore the potential for implied dedication exists over the property. If the Commission finds that there is substantial evidence that the public has acquired a right of access to the sea across the property and development of the fence will interfere with that access, the proposed project would be inconsistent with Sections 30210 and 30211.

An implied dedication is an easement over real property, which comes into being without the explicit consent of the owner. The doctrine of implied dedication was confirmed in Gion v. City of Santa Cruz (1970) 2 Cal. 3d 29.. The right acquired is also referred to as a "public prescriptive easement". The term recognizes the fact that the use must continue for the length of the "prescriptive period" before an easement comes into being.

The rule that public may acquire rights in property through implied dedication an owner may lose rights in real property that is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long delayed assertion of rights. The rule establishes a statute of limitation, after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that the public has used the land for a period of five years or more as if it were public land, without asking for or receiving permission from the owner, with the actual or presumed knowledge of the owner, without significant objection or bona fide attempts by the owner to prevent or halt the use and the use has been substantial rather than minimal.

In general when evaluating the conformance of a project with 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a

result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with such rights.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision, when it enacted Civil Code Section 1009. Civil code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore, the required five-year period of use need not have occurred prior to March 1972 in order to establish public rights.

Aerial photographs stored in the Commission's San Diego District office taken in 1986 show worn footpaths on upland portions of the site indicating public use. The applicant, residents and daily users of the area have stated that the site was always open and available for public use prior to the applicant's installation of the fences in 1996. At the Commission's hearing on this permit application, several speakers, including the president of the Bristol Cove homeowner's association and president of the Agua Hedionda Lagoon Foundation testified that they had used the site. An adjacent homeowner stated that the City of Carlsbad had issued numerous citations on the subject site regarding the illegal storage of boats and trailers and other recreational equipment on the site. The applicant himself testified that he knew there had been extensive public use of the site, which he corroborated by photographs that were distributed at the hearing and are contained in the project file. Prior to installation of the unpermitted fencing, the applicant had not attempted to prevent public use of the site. Nor did he record a statement granting the public permission to use the site. These people also answered the Commission's questionnaire regarding the public use of the site. Moreover, the applicant has indicated that he has not recorded a public notice, which puts the public on notice of his intent to extinguish the claim of prescriptive rights on the property.

Photographs submitted by the applicant and others show the beach portion of the site being used by large groups of people. The site is known regionally by windsurfers. The statements and aerial photographs demonstrate that such use occurred for a period of over 5 years and that the applicant did not attempt to halt such use until he installed the fences in 1996.

To further determine the extent of historic public use of the site, Commission staff circulated a survey and questionnaire (exhibit 5). The survey asked how, when and where people used the site. Sixty-three (63) people submitted completed questionnaire and declaration statements indicating their use of the property. Of the 63 people who responded, 59 used the lagoonfront on the applicant's property without permission and without interference until the fences were installed in 1996; 49 used the site for more than 5 years, and 42 observed others using the site. The surveys indicated that people used the

site for access to the lagoon and water related recreational activities such as fishing, sunbathing, picnicking, and walking along the water's edge. Fifty-five (55) of the responses came from respondents living within approximately 1 mile of the site. Of those fifty-five, twenty-eight (28) of the responses came from tenants of the adjacent Bristol Cove development. Eight (8) of the responses are from respondents living outside of Carlsbad, mostly windsurfers living in the City of San Diego. The surveys indicate extensive public use of the site.

As shown above, through staff site visits, aerial photographs and the survey conducted by staff, there is substantial evidence that the public has acquired a prescriptive right of access across the site. Through this permit application, the applicant seeks a permit authorizing fences that would block such access. The applicant also proposes to record an offer to dedicate a lateral public access easement along the lagoon front. Because of the questions raised by public use of the site and the potential for the fences to be found inconsistent with the Coastal Act, the applicant has also proposed to allow lateral public access during the daytime prior to a public agency or private association accepting the easement. The applicant is proposing to install time-lock gates in the existing fences near the water's edge along the east and west property lines, which would be, open to the public during the day and would close during the night (from 10 p.m. to 5 a.m.). In this way, public use of the site would be provided, although on a restricted basis, prior to the easement being accepted. Within the easement, the applicant proposes to construct a trail for public use that would incorporate a low fence and landscape barrier on the upland side of the trail to keep public use of the site within the easement. As proposed, the applicant would allow public daytime access across the site prior to the easement being accepted.

The applicant indicates that upon acceptance of the offer to dedicate, all fencing across the easement area would be removed. The applicant proposes to retain the perimeter fencing that defines the east and west property lines to where they would meet the upland extent of the public access easement.

The Commission finds that the applicant's proposal conflicts with the public access policies of the Coastal Act. The aerial photographs, statements at the Commission hearing, and surveys described above provide substantial evidence of a prescriptive right of access. Only a court can determine that use of the site has given rise to a public prescriptive right of public lateral access. However, where there is substantial evidence that such a right exists, as in this case, it would be inconsistent with Coastal Act Sections 30210 and 30211 to allow development that would interfere with such a right.

The Commission finds that the applicant's proposal to maintain fences that block access to the lagoon front and to install electronic timelock gates that would limit access during the daytime would interfere with the public prescriptive right of access across the lagoon. The fences would block access during nighttime hours. They would also discourage access by suggesting that the area is private.

In past actions, the Commission has agreed to limit public access to the shoreline where there have been demonstrable crime problems, particularly in the Mission Beach/Mission Bay area. These limitations have, however, taken the form of limitations on the use of public parking lots. Direct pedestrian access to the beach has not been altered or abridged in those areas, and the fact that nighttime pedestrian access opportunities remain, is seen as a means to offset the adverse effect of the parking lot closures. The State Department of Parks and Recreation uses similar tactics to curb camping on the beach. Carlsbad State Beach parking lots are closed from 11:00 p.m. to 6:00 a.m. but the use of the beach is allowed at all times. No existing State or local ordinances prohibit the use of the beach at night.

The Commission finds that the applicant has not demonstrated that a crime and/or nuisance problem exists that would warrant closing nighttime access in this location. Further, the applicant's goals can be met in a less restrictive manner. Fences that parallel the shore along the inland extent of the access path would provide protection and privacy for the applicant without interfering with any prescriptive right of access. Therefore, the fences are inconsistent with Chapter 3 policies of the Coastal Act and they are not approved. However, the Commission approves lateral fencing parallel to the shoreline at the inland extent of the buffer to protect the applicant on the west side of the site and on the eastern side of the site, lateral fencing at the toe of slope of the natural landform at the approximate 10-foot elevation. The Commission finds that the approved fencing is consistent with the Coastal Act because it will provide privacy and protection for the applicant without interfering with a public prescriptive rights of access.

With respect to the proposed lateral access easement, the exact location of the easement, as proposed, appears to be below the mean high tide line and would be under water part of the time. The LUP provides that the easement be provided landward of the mean high tide line which has been mapped on the tentative parcel map at the +2.0-ft. MSL elevation on the project site. The City required the applicant to dedicate a lateral access easement 25-feet upland of the mean high tide line where feasible; however, the site plan indicates the easement would be provided between the 0 and 2.0-ft. MSL elevations. According to the City of Carlsbad, this area is frequently under water as the tide in the lagoon fluctuates through the day; thus, it would be impassable to the public at times of higher tides, which would have adverse public access impacts. Thus, the Commission is requiring in Special Condition #3 that the easement area be modified so that it is landward of the mean high tide line. The condition ensures that the easement be a minimum width of 25 feet along the entire width of the property which fronts Agua Hedionda Lagoon shoreline and is understood to be ambulatory from day to day. This revision to the access easement would assure lateral access is available within the easement during most tides.

The applicant is also proposing to construct public access trail improvements, consistent with Policy #7.6 of the LUP which calls for both the provision of a public access easement and improvement of the easement area with a trail to accommodate pedestrians and bicycle traffic. Such improvements are to be 10-feet wide and of a surface suitable for pedestrian and bicycle use (asphalt, concrete or fine decomposed granite). The

applicant has submitted a conceptual public access trail plan and has indicated a desire to construct a trail at this time within the easement to clearly delineate the area of public use. However, the specifics of the ultimate trail (alignment, composition materials, etc.) have not yet been determined by the City or another organization that may want to install the trail along the entire north shore.

Special Condition #4 recognizes that either the City of Carlsbad or other appropriate body may assume responsibility for provision of the improvements necessary to provide access along the lagoon's entire north shore in the future when the access easements are accepted and the entire alignment open for public use. Therefore, Special Condition #1 is requiring that the area within the public access easement be left unimproved at this time. The public can therefore use the area in a manner similar to prior to the fencing. However, Special Condition #6 is allowing installation of a low fence or landscape barrier within the buffer inland of the easement to clearly demarcate the area for public use. This will also be protective of the native upland vegetation within the buffer. The condition acknowledges that an amendment or new permit will be required for removal of the fence and installation of any future public access improvements by the applicant, public agency or private association.

Policy 7.9 of the LUP provides that signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area. Currently, a sign located at the end of Cove Drive near the shoreline and the project site's eastern boundary indicates that public access is prohibited on the subject site. This sign was installed by the City prior to the applicant's ownership in response to the site being used for storage of vehicles and other unauthorized uses. However, the sign is in conflict with the above LUP policy and the public prescriptive right of access across the site; therefore, the sign must be removed as identified in Special Condition #5. Signage shall be installed on the applicant's site in a location visible from Cove Drive which identifies that vertical public access to the shoreline is available to pedestrians and bicyclists along Cove Drive to the proposed lateral public access easement on the applicant's property. Vertical access along Cove Drive was secured in the Commission's approval of the adjacent Bristol Cove project (CDP #F-1012).

Policy 7.8 of the LUP provides that a setback from the inland extent of the public access easement be provided equivalent to twice the height of the structures. This policy was included in the LUP so that an adequate setback would be provided between private/public areas to provide a greater sense of privacy for both the property owner and coastal visitors. Proposed building height of the residential structure on Lot 2 is 19 feet; therefore, a 38-foot setback must be provided from the inland extent of the public access easement. Because a minimum 60-foot setback is proposed, the project can be found consistent with the policy.

In light of the substantial evidence of a prescriptive right of public access along the lagoonfront, the Commission finds that the proposed project is consistent with the Coastal Act only as conditioned to prohibit the fencing that blocks such public access. Further, the Commission notes that there may be prescriptive rights over the entire

property, not just the lagoonfront, and the granting of this permit does not constitute a waiver of any such public rights, which may exist on the property. With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

4. Environmentally Sensitive Habitat. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Coastal Act Sections 30231 and 30240 call for the preservation of sensitive habitat areas, including wetlands. Section 30240 provides that environmentally sensitive habitat areas be protected against any significant disruption of habitat values. Agua Hedionda in particular has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act. Section 30233 limits wetland fill to very minor incidental public facilities, restorative measures and nature study and states, in part:

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects...

...(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study ...

In addition, Section 30240 of the Act is applicable and states:

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Pursuant to these policies, policy 3.5 of the certified Agua Hedionda Land Use Plan states:

Policy 3.5

The implementation phase of the LCP shall include specific provisions for assuring protection of wetlands in the design of adjacent new development, including provision of adequate buffer areas, protective fencing, revegetation, etc.

Regarding the protection of the wetland resources from adverse impacts associated with development, Policy 4.4 of the LUP states:

Policy 4.4

Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

- a. Development on existing subdivided lots having all of their area in slopes of 25% or greater shall be permitted, but grading shall be limited to minimal site preparation for pole-type footings.
- b. Driveway/parking areas shall be limited in size and shall be restricted to an area adjacent to the local streets. On-site vegetation shall not be disturbed beyond the minimal area needed to be cleared for the construction process, which shall be clearly delineated on approved site plans.
- c. Development, grading and landform alteration in steep slope areas (25%) shall be restricted. Exceptions may include encroachments by roadway and utilities necessary to reach developable areas. The maximum allowable density may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations.
- d. Use of the Planned Development Ordinance (PD) and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

The project site contains shoreline associated with Agua Hedionda Lagoon. In many past actions the Commission has required a 100-foot buffer between new development and lagoon waters. At the time of submittal of the permit application for the proposed development, there was a small band of wetland vegetation (salicornia) existing near the water's edge approximately 5 feet above the mean high tide line on the eastern end of the property. The representative from the Department of Fish and Game acknowledged that as the wetland boundary at the time and recommended a 100-foot buffer be maintained from that boundary. The wetland boundary was acknowledged to be the mean high tide line on the western end of the property. Since that time the wetland vegetation has been eliminated by the winter tides and storms, but conditions would still exist to allow re-establishment of such vegetation in the future. The buffer provides a distance barrier and

a percolating medium, and reduces the chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon. In addition, buffers provide upland habitat for birds and other species that use wetlands surrounding the lagoon itself. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas.

On the west side of the site the applicant proposes greater than a 100-foot buffer drawn from the mean high tide line to proposed development or grading on Lot 1. However, on the east side of the site the applicant has proposed a 60-foot buffer between the mean high tide line and project development (pool on Lot 2) which is 40 feet less than the width that has been found to protect the lagoon. However, there is a significant change in elevation within this eastern portion of the site (from +5ft. to +22ft. MSL) as the lot slopes quickly up from the beach to the site of the proposed residence. In the past the Commission has permitted buffers less than 100-feet when significant elevation changes exist between development and coastal resources by finding that the topographic change in effect further isolates the resource from the impact and therefore minimizes the adverse effects the project would have on the resource. In this case, the Commission finds that the proposed buffer setback can be accepted because of the significant elevation difference between the resource and new development. The Commission also accepts the proposed minor drainage improvements within the buffer. Special condition #2 requires the applicant to record an open space deed restriction over the above-described area to comply with Section 30240 of the Coastal Act and past Commission precedent.

However, the applicant has installed a number of improvements within the proposed buffer (palm trees, grass lawn, barbecue, fire ring, picnic table on concrete pad) without benefit of a coastal development permit and which are not compatible with uses typically allowed within the buffer. A volley ball court is also present but was constructed before the passage of the Coastal Act and would not be subject to the Commission's review. The applicant states the City of Carlsbad assured him it was permissible to proceed with the landscaping without any local discretionary approvals. Further, the applicant indicates the landscaping should be exempt from Coastal Act provisions because the Commission's regulations consider landscaping as part of a single family development and a single family dwelling was present of the site when the applicant acquired the site. However, the Commission finds the landscaping requires a coastal development permit and is not exempt from permit requirements because it is not landscaping associated with a single family residence.

Under Coastal Act sections 30610(a) and (b) and the Commission's regulations at section 13250 and 13253, improvements to single family residences and other structures are exempt from the requirement to obtain a coastal development permit unless they are identified in section 13250 or 13253. The regulations provide that landscaping shall be considered as part of a single-family residence or other structure. Thus, where landscaping is an accessory to a single family residence or other structure it can qualify as an improvement and thereby be exempt from permit requirements (unless it is of a

type specifically identified in the regulations). Here however, the applicant installed the landscaping, including the palm trees and grassy lawn, within the lagoon buffer on parcel APN #206-200-008 which did not contain a single family residence or other structure at the time the applicant installed the landscaping. The parcel has always been vacant and therefore the installation of landscaping on the lot could not be considered an improvement to an existing residence or structure. Therefore, it is not exempt from permit requirements under Coastal Act section 30610.

The California Department of Fish and Game has reviewed the landscape plan and indicates native, drought-resistant species are preferable in the buffer. However, mostly non-native vegetation, including a grassy lawn and palm trees, is proposed within the buffer. The Commission can accept the palm trees because although not native, they are naturalizing and becoming a part of the Southern California environment. Palm trees water requirements are not excessively high. However, the same cannot be said for the lawn that is planted within the buffer. A lawn is not suitable for a buffer because it requires more water than native drought-resistant upland species like coastal sage scrub and chaparral and many times requires fertilizers, pesticides and herbicides that are harmful to the habitat values of the lagoon. Sometimes lawns are considered invasive and noxious in this setting. Thus, while the Commission can accept the existing palm trees, the Commission finds that elimination of the existing lawn and permanent irrigation system associated with maintaining a lawn within the proposed buffer zone is required. Therefore, the Commission finds a revised site plan is necessary to find conformance with the Coastal Act, which indicates the lawn, will be removed and replaced with native, drought-resistant plants compatible with an upland coastal environment. For the same reason the Commission finds the remaining existing improvements within the buffer, except the volley ball court, must be removed and replaced with native, drought-resistant plants compatible with an upland coastal environment. The removal of the lawn and private recreational improvements serve to mitigate the impacts of the subdivision and subsequent development of the two proposed single family residences on the lagoon environment. Permitting these improvements within the buffer allows it to be used for private recreational purposes and defeats the purpose of the buffer as a development setback that protects habitat, scenic and public access values. Thus, the Commission finds that these existing improvements should be removed to be found consistent with Coastal Act sections 30240 and 30251.

However, the Commission can approve the proposed vegetative barrier and low fencing between the area of public use and the upland portion of the site as they serve as a boundary between private and public use. The Commission finds that the existing improvements within the buffer must be removed within 120 days of Commission action. Therefore, a revegetation plan to replant the buffer must be provided and the coastal development permit issued, within 90 days of Commission action. The site shall be subject to a staff inspection upon completion to confirm that the site has been modified consistent with the approved plans.

Regarding the proposed boat launch, Policy 6.2 of the LUP provides that construction of private launching facilities shall be subject to approval by the U.S. Army Corps of

Engineers, the State Department of Fish and Game, the City of Carlsbad and the Coastal Commission, consistent with Coastal Act policies. Remnants of a pre-existing launch ramp are located on the shoreline near the site's eastern property line. Apparently, the launch was constructed before the passage of the Coastal Act. The Commission finds the applicant shall submit for the review and written approval of the Executive Director, plans for a boat launch ramp which have been approved by the Army Corps of Engineers, the California Department of Fish and Game and the City of Carlsbad to determine possible impacts to eel grass resources within the lagoon. The boat launch ramp shall be sited and designed in a manner to maintain lateral and vertical access to the shoreline, not extend into the water and be upland of the mean high tide line.

Regarding upland resources, the site contains approximately .39 acres of disturbed coastal sage scrub, which includes many California adolphia plants, which are listed as "sensitive" by some wildlife organizations. Located primarily in the eastern portion of the site on a hillside, this habitat would be removed by the proposed development of the site, if not directly, then through the need for brush management. The City and the resource agencies (California Department of Fish and Game and the United States Fish and Wildlife Service) have allowed these impacts to occur provided they are mitigated at a 2:1 ratio in a mitigation bank within the City of Carlsbad but outside of the coastal zone. The LUP requires that impacts to sensitive vegetation in steep slope areas (25%) be restricted through clustering of development away from the resource; the LUP allows some encroachment for utilities and access necessary to reach developable areas.

The agencies found that the proposed impacts on this site, with the offsite mitigation could be found consistent with the Natural Community Conservation Plan standards based on the following: 1)the impact occurs to isolated coastal sage scrub unoccupied by gnatcatchers; 2)the impact is relatively small; 3) the loss of the habitat does not preclude long term conservation planning; and 4) the mitigation site provides coastal resource replacement. The agencies added that the proposed project results in impacts to less than 1 acre of coastal sage scrub and meets other criteria relating to obtaining approval for interim habitat loss permits and thus qualifies to be exempt from the Federal and State interim habitat loss (Special 4[d] Rule) approval process.

The Commission has historically prohibited or limited development on steep (greater than 25% grade) hillsides which contain natural vegetation such as coastal sage scrub or chaparral. This policy has become increasingly important more recently since the California gnatcatcher was listed as an endangered species. Since that time, all areas, regardless of slope, which contain gnatcatcher habitat are considered environmentally sensitive habitat area (ESHA) and subject to the provisions of Section 30240. In this particular case, the resource agencies have reviewed the nature and quality of the coastal sage scrub vegetation on the subject site and determined it does not contain gnatcatchers; it is isolated and disturbed; it is relatively small, i.e., less than one acre in size; and its removal can be mitigated by preservation of good quality gnatcatcher habitat in an off-site mitigation bank in Carlsbad. Therefore, in this particular case, the Commission concurs the vegetation on the subject site is not environmentally sensitive habitat area

and its removal, with mitigation, can occur consistent with Section 30240 of the Coastal Act.

5. Scenic Preservation. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and a major recreational resource, it was the subject of a detailed LCP Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of public views from Adams Street. This street is a designated scenic corridor, which runs along the north shore of the lagoon. The policies of the LUP require that development of the lots, which lie between Adams Street and Agua Hedionda Lagoon, be designed so as to preserve the views from Adams Street.

The policies call for the view preservation to occur through either: (a) the siting of structures at elevations below that of Adams Street adjacent to the property or (b) the preservation of one-third of the width of the parcel as a "view corridor". The preferred method for preserving such views lies in the siting of all (portions of) structures on a site at an elevation, which is below that of the elevation of the adjacent scenic roadway. This would allow passers-by to see over the structure(s) to the lagoon and surrounding areas.

In this case, both residential structures are proposed at an elevation below that of Adams St., and will conform with the view preservation policies of the LUP. The City of Carlsbad's approval of the subdivision includes a specific condition, which requires that future development be constructed so as to be below the level of Adams Street. Special condition #8 addresses the maximum height for proposed and future structures and requires a coastal development permit for all improvements in the future, including those normally exempt from coastal development permit requirements, to assure that public views from Adams Street over the residential structures is preserved at all times. The condition requires a deed restriction to notify the applicant and future owners of this requirement.

Landscaping is also important in minimizing visual impacts. The applicant has submitted a preliminary landscape plan, which includes mostly non-native ornamental trees and shrubs. As noted, the Commission is requiring the applicant to replace the existing lawn within the lagoon buffer with upland, drought-resistant plants that are compatible with the surrounding coastal sage scrub influenced environment. There are many existing palm trees within the buffer and more proposed. Although not native, both the California Department of Fish and Game and the Commission has accepted palm trees and other accent trees as naturalizing vegetation. According to the California Department of Fish and Game, at least two species of palm trees (washintonian and date palm) are considered invasive and thus not appropriate for a lagoon environment. These species are not existing or proposed. The Commission notes the existing and proposed palm trees within the buffer will help mitigate the visual impact of the structures as viewed from the lagoon and public access trail. However, to further mitigate the visual impact of the structures as seen from I-5 and the south shore of the lagoon, additional trees, other than the proposed palm trees, are necessary on the building pad itself as the proposed residences are sited

significantly higher on the site than the trees in the buffer. Thus, the Commission finds special emphasis shall be placed on the use of trees to screen the homes as viewed from the lagoon and I-5, while preserving views from the homes.

The revised landscape plan shall indicate the placement of a minimum of one specimen-size tree (24-inch box minimum), for every 10 feet of south-facing pad area lagoonward of the proposed building sites and arranged to maximize screening of the structures from views from Aqua Hedionda Lagoon and Interstate 5. For Lot 1, 20-trees shall be provided. For Lot 2, 13-trees shall be provided. For the tennis court, 6-trees shall be provided. At maturity the trees shall approximate the height of the roofline of the residences and approximate the height of the fence surrounding the tennis court. The trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. The plan shall also include the use of species, which do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan. Said trees shall be compatible with the natural character of the surrounding environment (i.e., non-invasive or noxious). The plan must be designed in consultation with the Department of Fish and Game and approved by the City of Carlsbad. Additionally, to conform with the LUP, a 20-foot landscaped buffer shall be planted on the property along its Adams Street frontage. Species within the landscaped buffer shall not reach sufficient height to block public views from Adams Street. As conditioned, the Commission finds the project consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda Land Use Plan regarding scenic preservation.

6. Grading/Erosion and Sedimentation. Section 30240 of the Coastal Act calls for the protection of sensitive habitat by, among other means, regulation of development in adjacent areas. Section 30231 protects marine water quality from adverse affects associated with new development. The applicant proposes to subdivide and rough-grade a five-acre+ parcel, located along the north shore of Agua Hedionda Lagoon. Agua Hedionda Lagoon has been identified by the State Department of Fish and Game as one of the 19 highest priority wetland areas for acquisition and, as such, is referenced in Section 30233(c) of the Coastal Act. The adverse impacts of development most often associated with wetland areas are erosion of soils within the watershed and subsequent sediment transport to the wetlands.

The site not only contains slopes in excess of 25% grade but also roughly 12,400 cubic yards of cut grading is proposed with 9,000 cubic yards to be exported off-site. The site plan indicates that a riprap energy dissipater is proposed within the buffer. The applicant has submitted a preliminary drainage plan but it does not include calculations indicating that the drainage improvements are at the appropriate elevation to reduce erosion and concentrated runoff. The amount of runoff and the appropriate location of the discharge point of that runoff is important in assuring that the project has been designed to not exceed existing natural levels of runoff and therefore would not result in additional erosion and sedimentation to the lagoon. It may be necessary to employ retention/sedimentation basins to reach pre-project levels regarding runoff velocities.

Further study is required to make this determination. Thus, the Commission finds that final drainage plans must be submitted.

To protect the downstream resources of the lagoon from the potential of erosion and sedimentation associated with development of the site, Special Condition #7 has been attached to the permit. The special condition requires the applicant to submit final drainage, erosion and sedimentation control plans for the project. The plan shall include measures to control runoff from the site and shall limit all grading activity to the non-rainy season. These requirements are consistent with the certified Agua Hedionda LUP which contains detailed grading provisions. The plan shall be subject to the review and written approval of the Executive Director.

Additionally, Special Condition #10 provides that the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest. No stockpiling of exported materials shall be permitted on-site during the rainy season, i.e., October to April. As conditioned, the Commission finds the project consistent with Section 30240 of the Coastal Act.

7. Local Coastal Planning. Section 30604 (a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Agua Hedionda Land Use Plan (LUP) designates the site for residential development at a maximum density of 4 du/ac. The project is consistent with that designation. As conditioned, the project is also consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua Hedionda Land Use Plan and should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program.

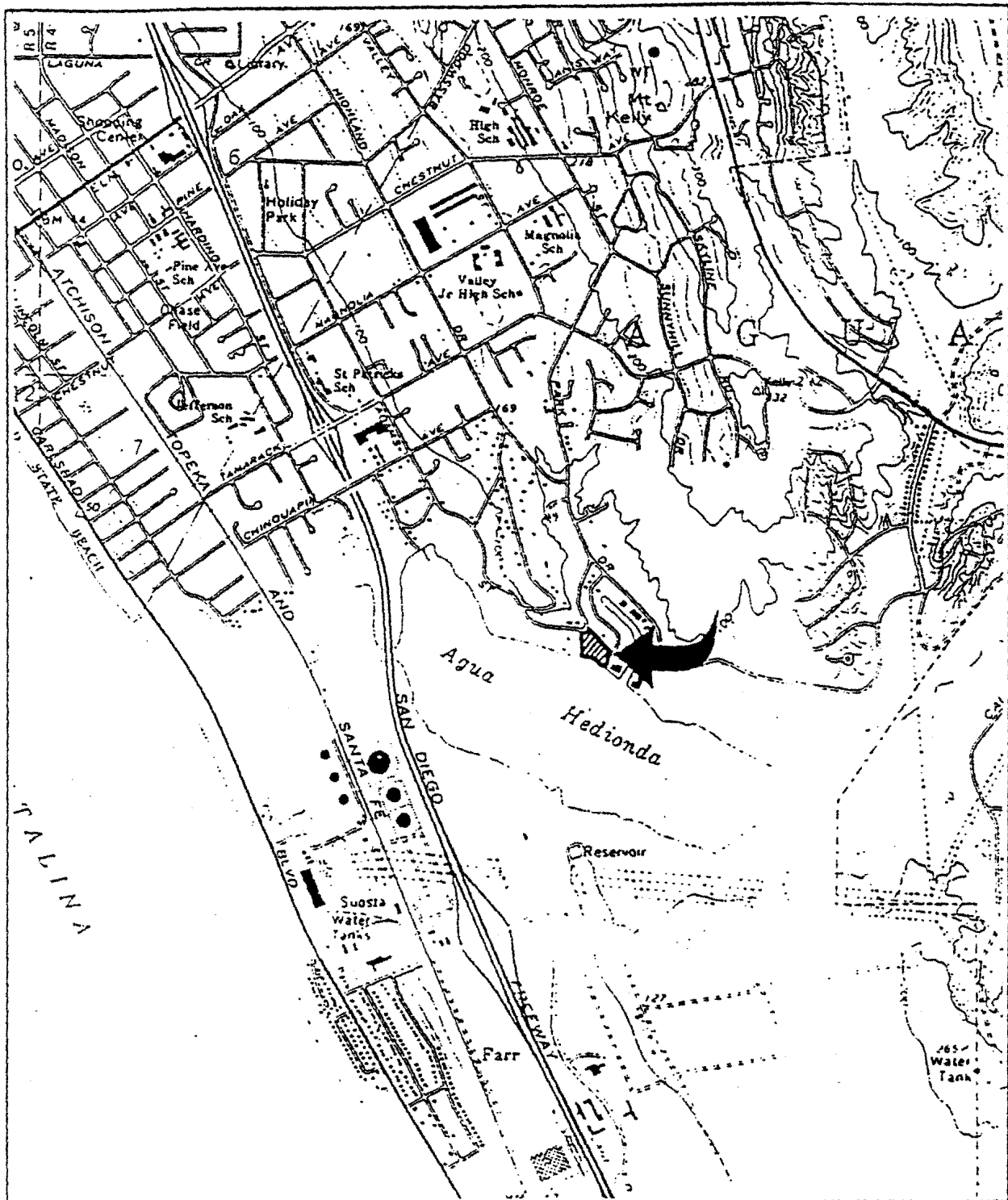
8. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the 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.

The proposed project has been conditioned to be found consistent with the resource, visual and public access protection policies of the Coastal Act. The attached mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially

lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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
 Project Site

EXHIBIT NO. 1

APPLICATION NO.

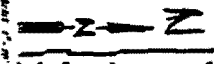
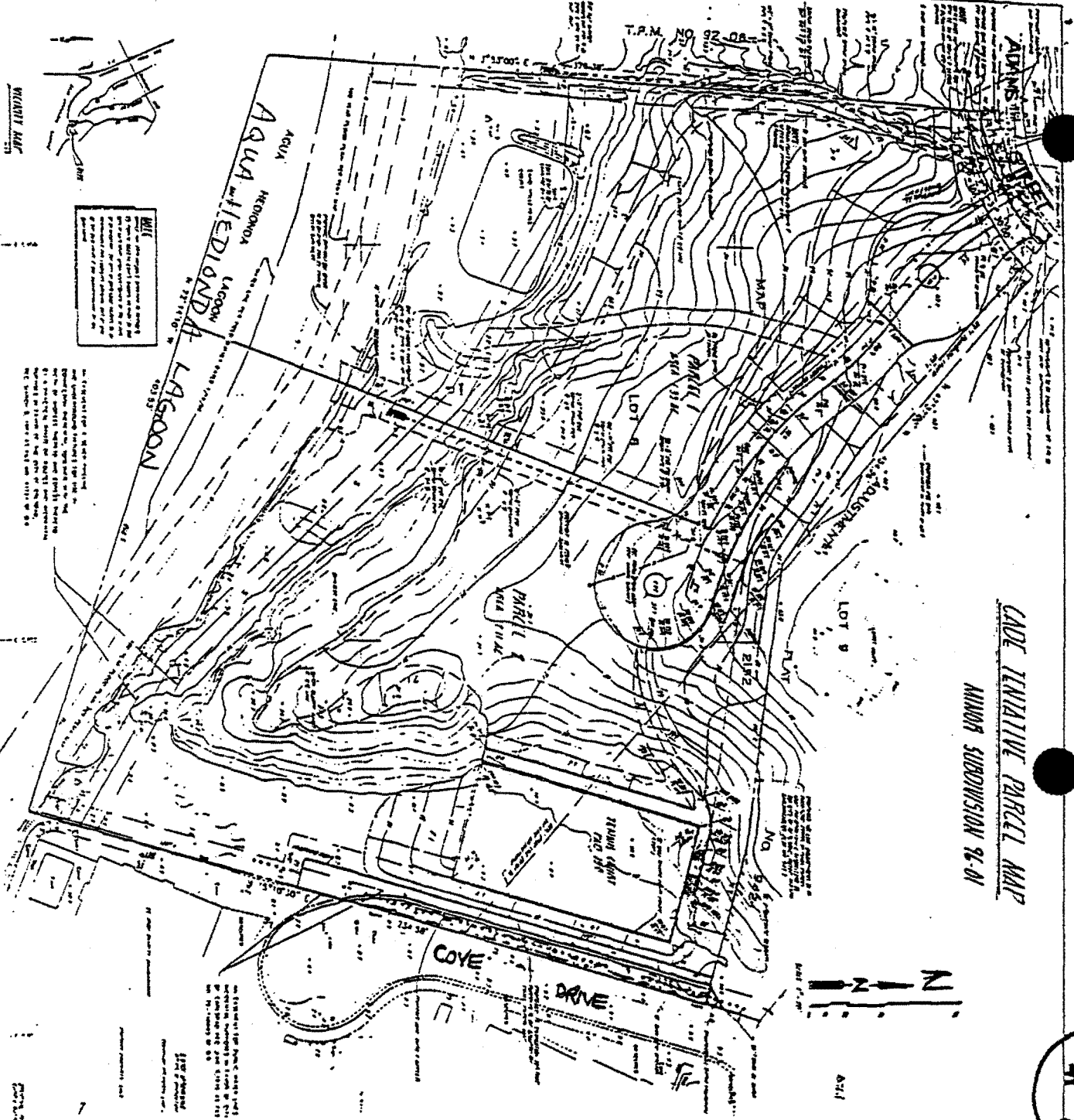
6-96-159

Location Maps

Figure 2. Project Vicinity Map
USGS 7.5' San Luis Rey Quadrangle

 California Coastal Commission

CADRE TENTATIVE PARCEL MAP
MINOR SUBDIVISION 96-01



LEGAL ADVICE

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116148

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DATE RECEIVED

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MISSISSIPPI DE KILL MEY

California Ranches

WEEK 11

11/24/11

1967/18 A' 1233

THE UNIVERSITY OF CHICAGO

25722



EXHIBIT NO. 2
APPLICATION NO
6-96-159
Site Plans

MAP #2

RECEIVED

FEB 20 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COASTAL DISTRICT

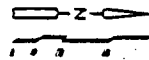
EXHIBIT NO. 3
APPLICATION NO.
6-96-159
Open Space Deed
Restriction

California Coastal Commission

CADRE TENTATIVE PARCEL MAP

COASTAL PERMIT

Open Space



AS SHOWN

1. The above map is a tentative parcel map for the purpose of showing the location and extent of the proposed project. It is not a final map and should not be used for any other purpose.

2. The project is located on the south side of the street, between the street and the property line.

3. The project is a residential development consisting of 10 units.

4. The project is located on a 1.0 acre parcel.

5. The project is located on a 1.0 acre parcel.

6. The project is located on a 1.0 acre parcel.

7. The project is located on a 1.0 acre parcel.

8. The project is located on a 1.0 acre parcel.

9. The project is located on a 1.0 acre parcel.

10. The project is located on a 1.0 acre parcel.

LEGEND

Proposed Project
Proposed Project
Proposed Project
Proposed Project
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Proposed Project

DATE OF PREPARATION

LEGAL DESCRIPTION

DISCUSSION OF PROJECT

ADDITIONAL COMMENTS

LEGAL ACCESS

ADDITIONAL COMMENTS

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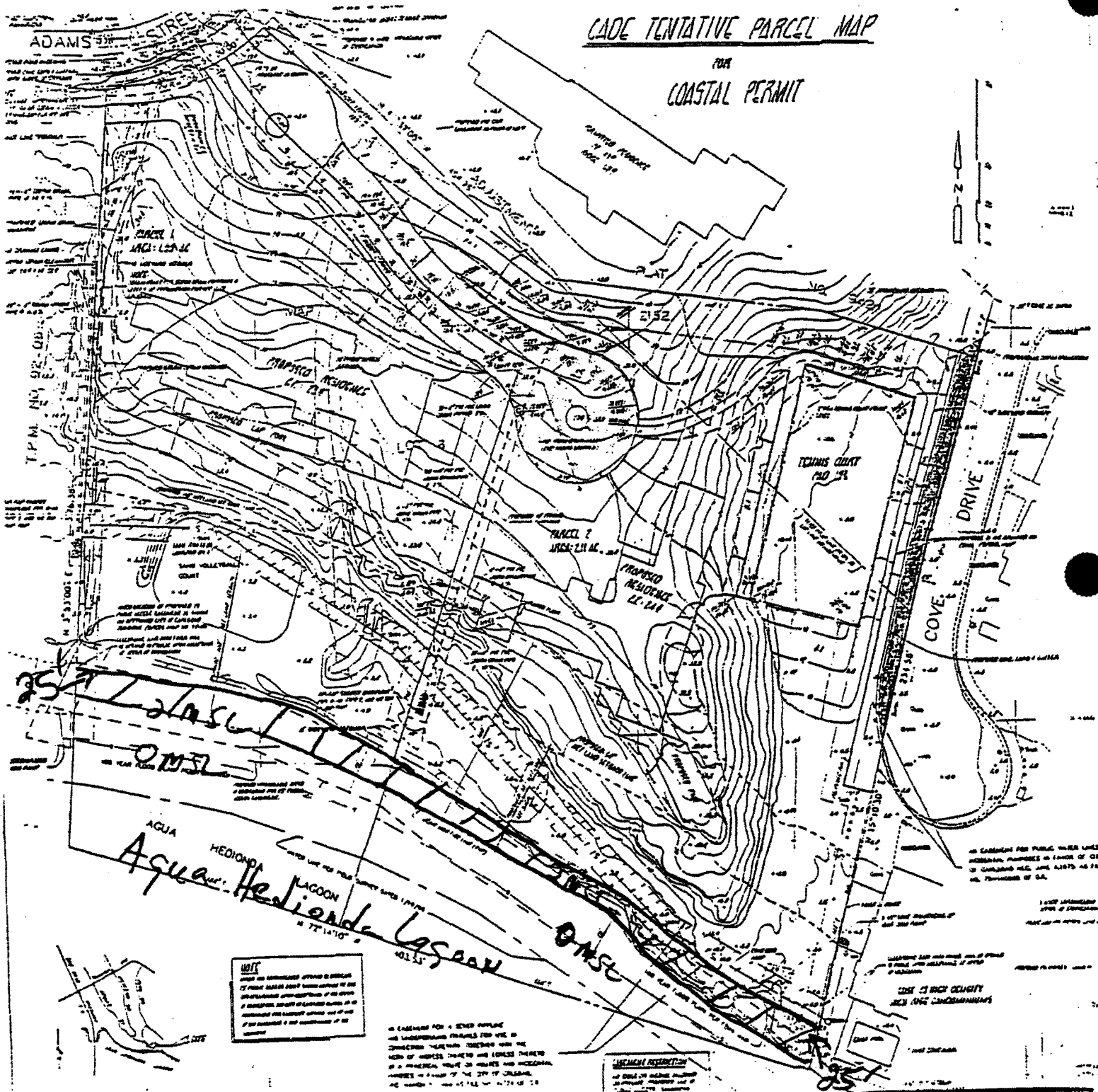
ADDITIONAL COMMENTS

ADDITIONAL COMMENTS

ADDITIONAL COMMENTS

**Easement Area
In Concept Only**

**Ambulatory Public Access
Easement - 25' Upland of
Mean High Tide Line**



NOTES
 1. THE EASEMENT AREA IS SHOWN IN CONCEPT ONLY. IT IS NOT GUARANTEED THAT THE EASEMENT WILL BE GRANTED BY THE CALIFORNIA COASTAL COMMISSION. THE EASEMENT AREA IS SHOWN IN CONCEPT ONLY. IT IS NOT GUARANTEED THAT THE EASEMENT WILL BE GRANTED BY THE CALIFORNIA COASTAL COMMISSION.

IN CASEMENT FOR A SEVERAL PARCELS
 AND UNDERSTANDING PARCELS FOR THE
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EASEMENT RESTRICTIONS
 1. THE EASEMENT AREA IS SHOWN IN CONCEPT ONLY. IT IS NOT GUARANTEED THAT THE EASEMENT WILL BE GRANTED BY THE CALIFORNIA COASTAL COMMISSION. THE EASEMENT AREA IS SHOWN IN CONCEPT ONLY. IT IS NOT GUARANTEED THAT THE EASEMENT WILL BE GRANTED BY THE CALIFORNIA COASTAL COMMISSION.

EXHIBIT NO. 4
APPLICATION NO.
6-96-159
Public Access Easement
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

EXHIBIT NO. 5

APPLICATION NO.

6-96-159

Questionnaire

 California Coastal CommissionTHIS PETITION WAS COMPLETED AND
RETURNED BY 63 INTERESTED PARTIESQUESTIONNAIRE AND DECLARATION FOR NORTH
SHORE OF AGUA HEDIONDA LAGOON NEAR
BRISTOL COVE, CARLSBAD

The State of California is investigating uses made of the above for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. Please direct any questions to Bill Ponder, Coastal Planner, at the above address and telephone number.

Name: _____

Address: _____

Telephone: (work) _____ (home) _____

Occupation: _____

1. Have you personally and openly used any of the property shown on the attached maps? If so, from what date? (state year use began). _____
How many times per year _____ or per month _____ did you use the property during this time period? _____

2. Please describe the areas of the property you have used and/or indicate those areas on attached Map #2 (circle as appropriate): sunbathing, walking, picnicking, access to water, fishing. Other uses (please specify): _____

3. Please describe how you gained access to this area and where you parked your car (such as Cove Drive, Adams Street or Jose's Restaurant, etc.) _____

4. Did you ever ask for and receive permission to use this property? If so, how? _____

5. Did anyone ever interfere in any way with your use of the property? If so, how? _____

6. Have you observed others using this property? If so,:

a) How often were others present there? _____

b) How many people were actually present? _____

c) What areas of the property were they using? _____

d) What uses were they making of these areas? _____

Questionnaire and Declaration
Page 2

7. Do you know the names of other people who have used this area? If so, please list them with their addresses and telephone numbers if known:

8. Do you possess or know of the existence of items such as photographs, notebooks, newspaper clippings, or other records relating to your use of the area or the uses of other people?

If so, please describe the items and list the names of parties or locations where such items can be found: _____

9. Did you make use of this area as you would public property? If necessary, please explain: _____

10. Have you ever observed any "No Trespassing" or equivalent signs, or signs giving permission to use the property? If so, when and where? _____

11. Have you ever observed any fence(s) on the property? If so, please describe such fence(s), location of fence(s), conditions of fence(s), type of fence(s) and approximate date observed. _____

12. Have you ever lived or worked in the Agua Hedionda Lagoon area close to Bristol Cove? _____. If so, when and where? _____

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Signed at: _____ on _____
(City and State) (Date)

(Signature)

Adjacent site to the
East-Bristol Cove

EXHIBIT NO. <i>6</i>
APPLICATION NO. <i>6-96-157</i>
<i>Vertical & Cateral</i>
<i>Access</i> California Coastal Commission

