

CALIFORNIA COASTAL COMMISSION

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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 find that the proposed development is inconsistent with the floodplain policies and ordinances of the certified LCP and deny the de novo permit.

A previous Commission action on this site, permitted the placement of 750 cubic yards of fill within the 100-year floodplain to address a drainage problem created by the construction of an adjacent bridge project. The fill resulted in an alteration of the mapped 100-year floodplain (FEMA Flood Insurance Rate Maps) on the subject site. As such, according to recently updated FEMA maps, the project site is no longer located within the 100-year floodplain. However, while the Commission did previously permit a small amount of fill to address a site drainage problem, if the fill had been proposed to support a permanent structure on the site, it would not have been consistent with the City's certified LCP. In fact, the Commission originally denied the applicant's request to place 1,800 cubic yards of fill and a 2,000 square foot building on this site. However, the applicant modified the project to eliminate the proposed building and reduce the amount

of fill to the minimum necessary to correct the drainage problem. As a result, the Commission agreed to reconsider its denial of the project and it subsequently approved the project as revised. In approving the placement of fill, the Commission was able to find it consistent with the certified LCP because the project did not include a structure and was the minimum amount of fill needed to prevent ponding of floodwaters on the site. Although the fill area is no longer within the 100-year floodplain, the applicant is essentially revising the prior permitted project by adding a structure. The staff recommends that the Commission find substantial issue with the City's approval of this revised project, and treat the de novo permit application as an amendment to the prior permitted project. Since the prior permitted project -- fill to correct a drainage problem -- would not be approvable as revised to include a retail/office structure, the staff recommends denial of the application.

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; CDP Nos. A-6-ENC-96-34, A-6-ENC-96-34-R, 6-84-368, 6-85-418, 6-93-155; City of Encinitas Agenda Report dated 8/12/98; Wetland Delineation Report by Dudek and Associates dated 5/24/96.

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 to remain open. The proposed development of this area with an office/retail structure will set an adverse precedent of allowing piecemeal development of the floodplain by first permitting fill for an allowable purpose and subsequently permitting permanent structures that would not have been allowed had they been proposed along with the fill.

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

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-98-109 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, open landscaped area 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 project 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 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.

A portion of the second parcel, which is where the subject building is proposed, was the subject 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. 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 the de novo hearing on May 7, 1996, the Commission found that the proposed development would constitute unpermitted fill of floodplain and wetlands, inconsistent with the City's LCP and was denied. 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, in part on the grounds that the project was revised to reduce the amount of fill and to eliminate the structure. On July 12, 1996 the Commission agreed to reconsider the project (Ref. A-6-ENC-96-34-R).

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 that the proposed fill of 750 cubic yards could be permitted under the floodplain policies of the LCP because it was not fill for a permanent structure but was fill to prevent ponding of floodwater and therefore was consistent and compatible with periodic flooding. The Commission also found that the fill was consistent with the wetland protection policies of the LCP (which restrict fill of wetlands to certain limited uses) because it was intended to protect existing public works improvements located in this area (storm drain, sewer, lights etc.) by correcting a drainage problem created by construction of the nearby La Bajada bridge.

Prior to being filled, the project site was located within the FEMA mapped 100-year 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.

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 the following:

- a. Minimum private development (defined as one dwelling unit per legal parcel under residential zoning, and an equivalent extent of development under non-residential zoning) only upon a finding that strict application thereof would preclude minimal reasonable use of the property.
- b. 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 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 Commission permitted the fill because the applicant explicitly eliminated plans to build a structure and reduced the amount of fill in order to make the project consistent with the above-cited policies. 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 for allowable uses and, subsequently, permitting the filled areas to be developed with permanent structures that are not consistent with periodic flooding. 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. As cited previously, this area was filled to an elevation of approximately three feet above the 100-year floodplain and is, thus, no longer in the FEMA mapped 100-year floodplain. However, the project site could still be subject to flooding. 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. If a building had been proposed with the previous fill, it would have been inconsistent with the above cited LCP policies. These policies only allow structures in the floodplain if they are consistent with periodic flooding. The proposed retail/office structure is not 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.

The Commission finds that the City has in effect allowed the applicant to revise the prior project to include a structure even though the Commission approved the applicant's prior project only because the structure had been eliminated. The applicant should have sought an amendment to the Commission's permit for the fill rather than applying for a new permit with the City. By applying for a new permit, the applicant has revised a prior approved project in a way that results in piecemeal filling of the floodplain inconsistent with the policies of the LCP. Therefore, the Commission finds that the grounds for the project raises a substantial issue 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 approximately 60,000 sq. ft. retail/commercial center (West Village Commercial Center). As noted previously, the proposed structure will be located in a floodplain 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 only for the purpose of correcting a drainage problem, and not to support a permanent structure. 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 4-7) and is hereby incorporated by reference.

2. Floodplain Development As stated above, the Commission approved a prior permit for 750 cy of fill on this site after initially denying the applicant's proposal to place 1,800 cy of fill and a 2,000 sq. ft. structure on the site. The applicant's current proposal to construct a 4,390 sq. ft. structure on the filled area modifies the prior project in a manner that is inconsistent with the City's LCP policies. 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 the following:

- a. Minimum private development (defined as one dwelling unit per legal parcel under residential zoning, and an equivalent extent of development under non-residential zoning) only upon a finding that strict application thereof would preclude minimal reasonable use of the property.
- b. 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 open portion of the commercial center 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, the area was within the 100-year floodplain of Escondido Creek. The Commission found the previous fill to be consistent with LCP policies and ordinances because it only consisted of the minimal amount of fill necessary to protect existing public works improvements located in the area (storm drain, sewer, lights, etc.) as well as the applicant's existing parking area from ponding caused by construction of nearby La Bajada Bridge. The Commission also found the fill consistent with the LCP policies because it did not include a permanent structure.

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 approximately three feet above the elevation associated with the FEMA mapped 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 been used in the past without the threat of ponding caused by the identified on-site drainage problem.

As noted previously, the subject site is no longer within the FEMA mapped 100-year floodplain due to the fill that was permitted by the Coastal Commission. The FEMA Flood Insurance Rate Map has been subsequently amended (dated 11/10/97) to reflect this change. In addition, a letter to Commission staff dated 10/8/98 from the County of San Diego Department of Public Works indicates that the subject site is not located within the area subject to the 100-year floodplain, as confirmed by a ground and field inspection.

The Commission finds that the applicant's proposal to construct a structure in this area is a modification of the prior permitted project and requires an amendment to that prior permit. The Commission further finds that this current application should be treated as a proposal to amend that prior permit. Because the City's LCP policies prohibit fill for permanent structures in the floodplain, the Commission finds that the amendment of the prior permit is inconsistent with the City's certified LCP policies and ordinances regarding floodplain development

In its approval of the 750 cubic yards on which the subject development is proposed, the Commission did not intend for the area to be developed with buildings in the future. 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. Furthermore, the applicant's intent when he proposed to fill the floodplain was to correct a drainage problem caused by the adjacent bridge project. In fact, the Commission approved the prior fill only after the applicant revised the project to eliminate the permanent structure and to reduce the amount of fill to the minimum necessary to correct the drainage problem.

The construction of a building in this location would clearly be inconsistent with the policies of the certified LCP. The proposed building is not 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 modifies the prior approved project in a manner that is inconsistent with the provisions of the City's LCP pertaining to floodplain development.

Furthermore, although the site is no longer located within the FEMA mapped 100-year floodplain due to the permitted fill it may still be subject to flood hazard. This is acknowledged based on a telephone conversation with a representative from FEMA. The FEMA maps are used mostly for insurance purposes. These maps are the legal document that a local government adopts to participate in the floodplain management program. Zones are established from these maps which are used by local government for determining the minimum elevations at which structures may be constructed to avoid construction of buildings below the elevation of the floodplain. Again, if filling of the floodplain occurs, as is the case with the subject site, this does not necessarily mean that the area will not be subject to flooding.

In addition, the Commission finds that to permit a permanent structure in an area that was previously filled only to correct an on-site drainage problem would establish a significant adverse precedent of allowing piecemeal filling of the floodplain inconsistent with the LCP policies. 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 for the geography to handle flood waters, which can lead to potential flood erosion impacts both down- and upstream.

In addition, the prior permit found the wetlands fill to be an allowable use because it was intended to protect public utilities from flood hazard, etc. Construction of a retail/office structure is not an allowable use of a wetland. Thus, the proposed structure makes the revised project inconsistent with the wetland policies of the LCP. With regard to the construction of the proposed kiosk, this aspect of the proposed development alone appears to be consistent with the LCP policies since it is located on the portion of the site that is outside of the 100-year floodplain where the remainder of the existing commercial center is located outside of the area that was previously permitted to be filled. If the structure were to be proposed separately, it would likely be approvable as consistent with the certified LCP.

For all the above reasons, the Commission finds that the proposed development of a one-story, 4,390 sq.ft. office/retail structure is inconsistent with the LCP policies and ordinances protecting floodplain and therefore the proposed development 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 was previously within the FEMA mapped 100-year floodplain and contained wetlands. Even though the site was previously permitted to be filled (which included filling of the wetlands) which resulted in an alteration of the 100-year floodplain, the project site is still an historic floodplain area and may still be subject to hazard from flooding.

As noted in the previous sections of this report, the proposed development which includes construction of an office/retail building on an 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 fact, when the applicant first proposed to construct a building in this location, it was denied by the Commission. Only upon reconsideration and at the applicant's proposal to remove the proposed structure, did the Commission find that it could permit the limited fill in the floodplain to protect existing structures/improvements, consistent with the City's LCP. In other words, the structure in this location would have not been permitted originally due to its inconsistency with the floodplain policies. In addition, if this site were allowed to be developed as proposed, it could set an adverse precedent for filling other important floodplain 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.

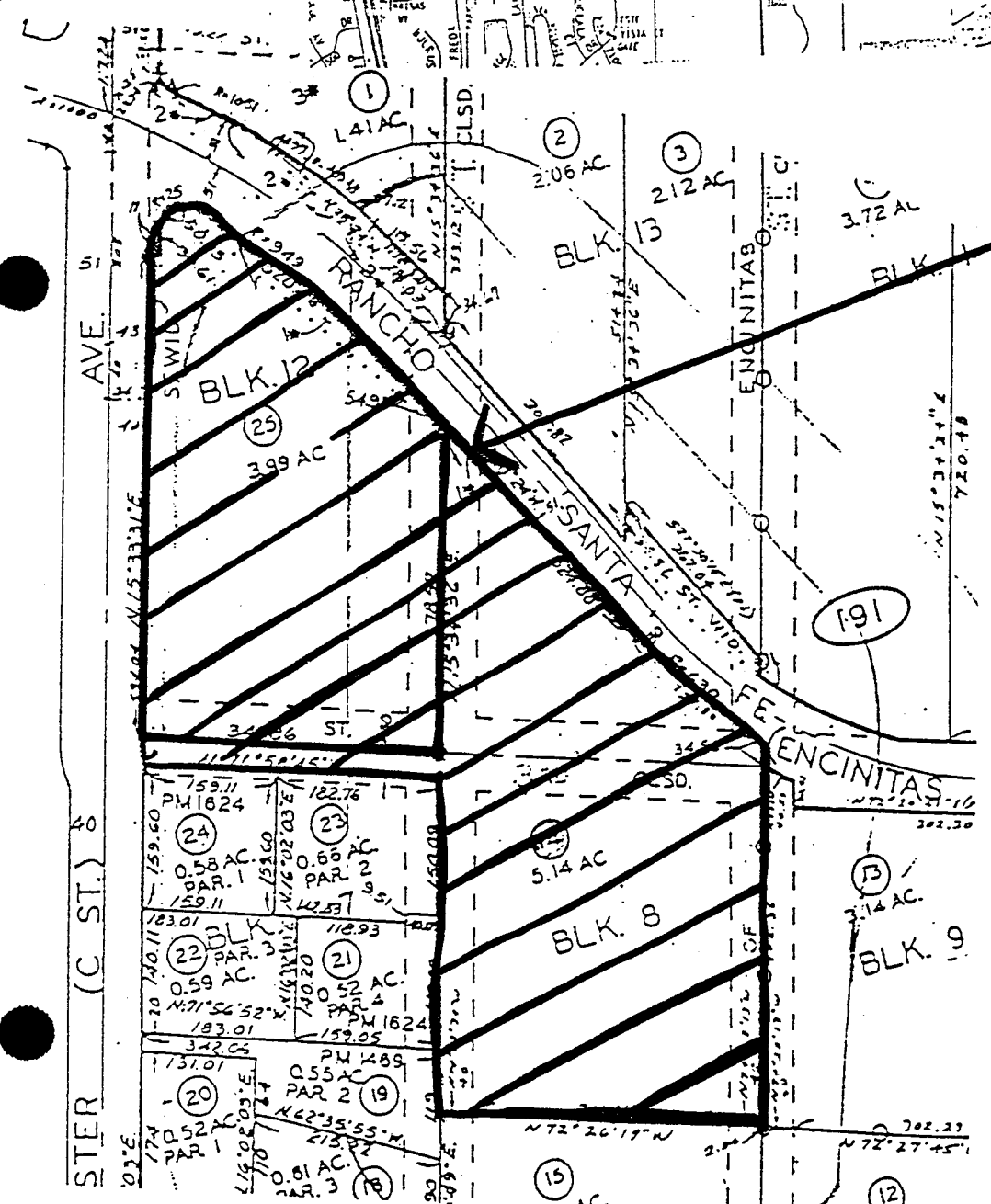
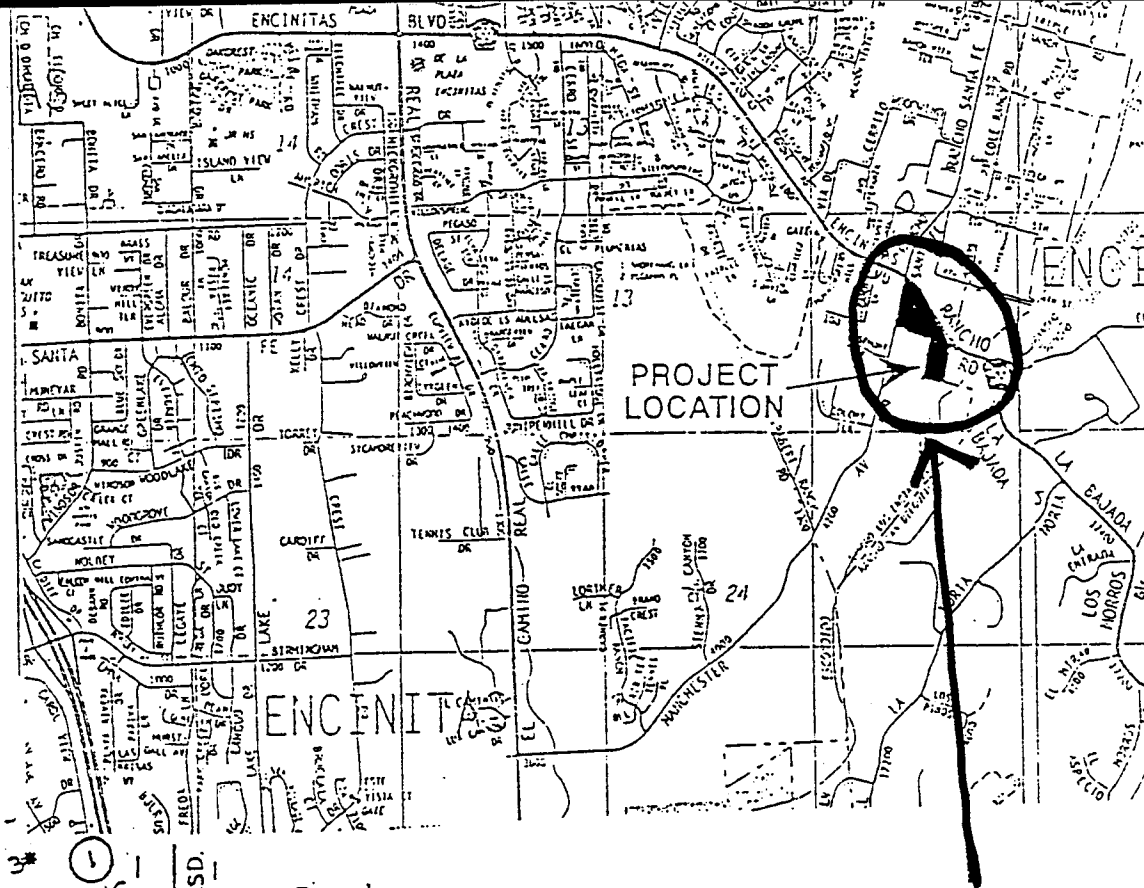
5. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (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 an area that was previously within the mapped floodplain, and subsequently filled, 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 a hazardous area. Such alternatives could include construction of the proposed retail building within the existing parking lot—an area presently outside of 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 a previous floodplain area that was permitted to be filled consistent with the Coastal Act, in order to address flooding problems and to protect existing structures on site, raises a serious policy question with regard to development in the "historic" floodplain. In addition, the proposed development 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.

(A-6-ENC-98-109-R)



Subject Site



EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-98-109
Location Map

California Coastal Commission

Proposed location of kiosk.

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: 52,993
TOTAL EXISTING SITE AREA

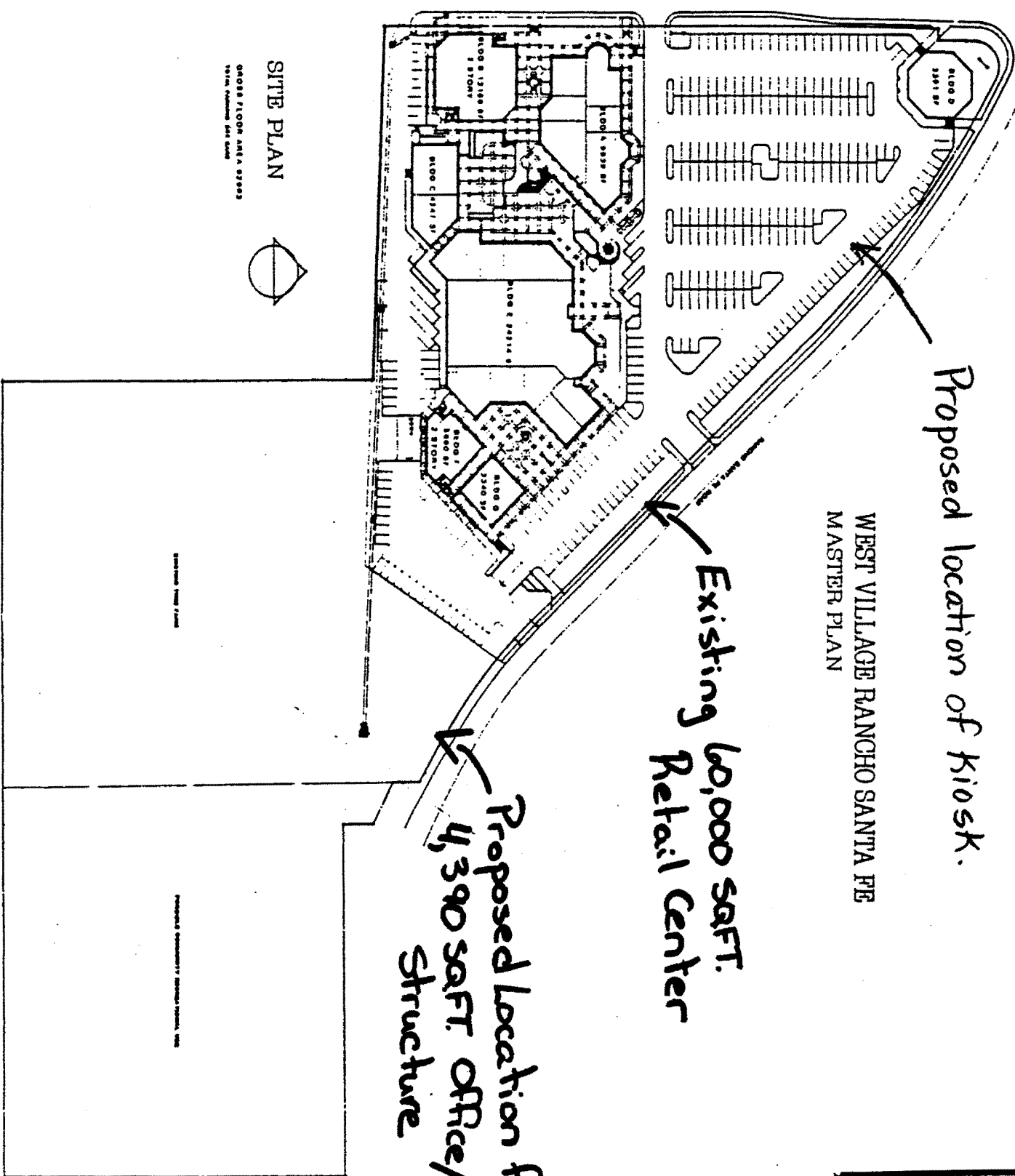
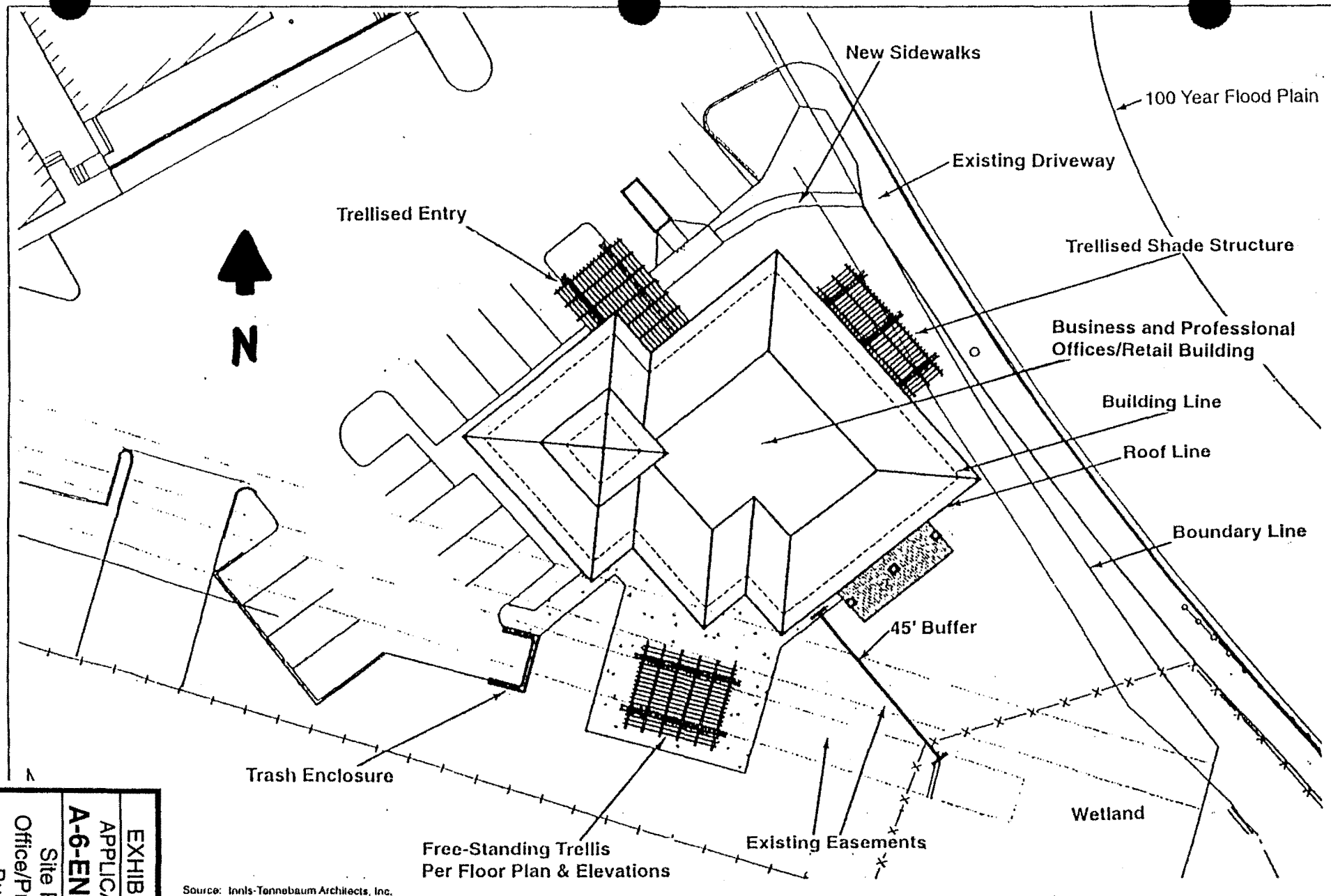


EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-98-109
Site Plan



Source: Innlis-Tonnobaum Architects, Inc.

Proposed Office/Professional Building

WEST VILLAGE CENTER

Figure 3

EXHIBIT NO. 3

APPLICATION NO.

A-6-ENC-98-109

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

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-98-109
Letters of Support
 California Coastal Commission



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

DEPARTMENT OF FISH AND GAME

Natural Community Conservation Planning
4949 Viewridge Avenue
San Diego, CA 92123
(619) 467-4251
FAX 467-4235



September 25, 1998

RECEIVED

SEP 28 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Ms. Anne Fletcher
West Villages, Inc.
162 S. Rancho Santa Fe Road
Suite E-90
Encinitas, CA 92024

Dear Ms. Fletcher:

This letter serves as a follow-up to our July 9, 1998 site visit of the West Village Center (Local Permit 9P-028 DR/CDP/EIA). You requested that the Department review the March 1998 Initial Study prepared by the City of Encinitas for the West Village Center, a development project involving the construction of a 4,390 square foot office/retail building and a 200 square foot kiosk within the existing West Village Commercial Center. The kiosk would be built on existing parking lot and the office/retail building would be placed on an existing pad. After review of the project-related materials, the Department has concurred with the City that there will be no significant impacts to wildlife or habitat from this project. The existing pad has been previously graded and is out of the Escondido Creek floodplain so no additional direct impacts will occur. Indirect impacts (lighting, noise, erosion) have been addressed and the City approvals have included measures to reduce their potential harm to biological resources.

Please feel free to contact me if there are other issues regarding the property. I can be reached at the letterhead address, or by telephone at (619) 467-4201.

Sincerely,

A handwritten signature in black ink that reads "Ronald D. Rempel".

Ronald D. Rempel
Regional Manager, Region 5

cc: Department of Fish and Game
Bill Tippetts

U.S. Fish and Wildlife Service
Ken Berg

Ms. Fletcher
September 25, 1998
Page 2

cc's continued

City of Encinitas
Craig Olson

Coastal Commission
Lee McEchern

William B. Rick

October 9, 1998

RECEIVED
OCT 13 1998

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

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SUBJECT: APPEAL #A-6-ENC 98-109

Commissioners:

The permit applicant, Mr. Peter Fletcher, has asked that I comment on this appeal.

I make these comments after a review of the original permit hearing transcript, City of Encinitas letter of September 28, 1998, and other applicable documents.

Further, my comments are made from my perspective as a sitting commissioner when, on August 14, 1996, the Commission permitted the grading of the subject property so as to remove a portion of Mr. Fletcher's holdings from the 100-year flood area.

It is clear from my examination of the documents and my own personal recollection that the Commission:

1. Approved the importing of 750 cubic yards of fill within the then existing floodplain;
2. Granted this permit knowing the grading would create additional building area; and,
3. Was placing no building restraint on the fill land.

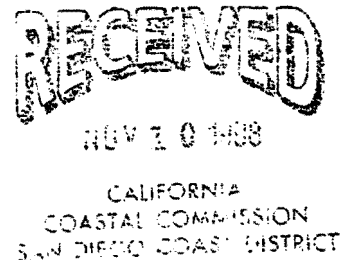
Sincerely,

William B. Rick

cc: Mr. Pete Fletcher

3576 Emerson Street, San Diego, California 92106

Patricia C. Randa
2019 Russell Street
Napa, California 94559
(707)224-8648



September 29, 1998

Members of the California Coastal Commission
California Coastal Commission
San Diego Coast Area
311 Camino del Rio North, Suite 200
San Diego, California 92128-1725

Attn: Chuck Ramm

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

Dear Commissioners and Staff:

Recently, I have been advised that you will be holding the initial consideration of the appeal by the San Elijo Lagoon Conservancy at your October session in Oceanside, California, of the certified City of Encinitas approval of a building application by the applicant, West Village, Inc.

I have thoroughly reviewed the recent appeal, the August 14, 1996 Transcript of the hearing, the findings, as well as, a copy of the earlier permit issued to West Village, Inc. by the Commission when I was a member thereof, at the August 1996 Meeting in Los Angeles, California.

The applicant, West Village, Inc.'s earlier application is highly memorable to me, given that the applicant had taken the unusual step of requesting reconsideration of the application in July, 1996. We granted reconsideration to West Village, Inc. at our July 1996 session because of two issues, a new environmental study, prepared by Dudek and Associates, and an alternative grading plan for the site. The matter was reheard at our August 14, 1996 hearing.

I distinctly recall not being given by staff the approval by Fish & Game and the Army Corps of Engineers stating that this application for fill would not affected the creek nor flood plain. The application simply repaired a problem caused by the highway improvement which caused puddling in the parking lot of the City approved shopping center. Consequently, I was the maker of the motion to approve the applicant's original grading plan, seconded by Commissioner Byron Wear.

It is my understanding from review of the appeal filed by the San Elijo Lagoon Conservancy in August 1998 regarding West Village, Inc.'s subsequent application, that the Conservancy has mistakenly contended that the earlier permit restricted applicant's right to build on the site. This contention, in fact, is not correct. It must be remembered that the application then before us in August 1996 did not include a building, but was for grading purposes only. The 1996 application sought only to repair damage to the site caused by the construction of the San Diego County's public works project, the La Bajada Bridge. It would have been beyond the scope of the application reconsideration that was before the Commission at that time to discuss a building on the site.

I specifically recall that when I made the motion to approve the earlier project, that it was not my intention to include any limitations on the site regarding future development. This intention was consistent with my other actions on the Commission. Future development plans were properly left to the property owner through the local city planning agency should the applicant seek a subsequent application. In the meantime, the applicant would be permitted to grade and fill the property per the conditions stated in the permit that we approved. We understood that either grading plan would create a building pad as mentioned by the Conservancy during their presentation. We also understood that the

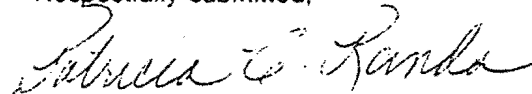
September 29, 1998

height of up to 100 feet of fill would have no impact on the flood plain nor creek. I had absolutely no problem with the application before us, and in fact would have adamantly and effectively opposed any effort to blindly restrict the property's future building plans as a condition of this grading application. That is why I am surprised by the erroneous contention of the Conservancy attempting to change the intent of a previous decision retroactively.

The major item of discussion at our August hearing was the question of which grading plan would be used. The original grading plan or the alternative plan submitted by the applicant as a basis for the July 1996 Request for Reconsideration. I remember, and have confirmed this from the transcript, that Commissioner Wan made an amendment to my motion, substituting the alternative grading plan for the original plan. Ultimately, the matter went to a vote to approve the alternate grading plan as the one to be used by the applicant on the site. If one reviews the permit, one sees that the alternate remedial grading plan by Nasland Engineering dated May 1996 was ultimately selected. The only other special condition placed on the site was that the applicant would implement the mitigation and monitoring program, as detailed in the August 9, 1996 Wetland Mitigation and Revegetation Plan prepared by Dudek and Associates.

Please include this letter as part of the testimony on any hearing that may result from this appeal. I appreciate the opportunity to comment on this matter and to ensure the accuracy of the record during my tenure on the Commission.

Respectfully submitted,

A handwritten signature in cursive script, reading "Patricia C. Randa".

Patricia C. Randa

cc: Peter Douglas

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-2036



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 Elita 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 4370 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. Ranch 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

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. Bascom Santa Fe Rd.
EMERYVILLE, CA 94604

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 8-26-98

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 # 98-028 DR/CDP/EIA

Dear Mr. McKeckren,

The San Elijo Lagoon Conservancy (SELC) is opposed to this project being placed upon the above stated property and would like to add these comments for the appeal record. The SELC 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 SELC 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.

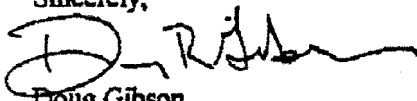
Currently, the LCP has not been modified to list this property as being able to withstand periodic flooding. Therefore, it is still considered floodplain and is inconsistent with the LCP. The applicant has a reasonable use of his property and is looking to expand an already massive shopping center that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

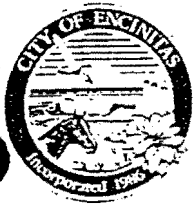
We ask that you please deny this project and send a message that poor development practices will not be the standard. Thank you for this opportunity to supply these comments.

Sincerely,

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

Doug Gibson

Executive Director, SELC



City of
Encinitas

RECEIVED

SEP 29 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

September 28, 1998

Lee McEachern
California Coastal Commission
3111 Camino Del Rio North; Suite 200
San Diego, CA 92108-1725

Re: Staff Report for Coastal Commission Appeal #A-6-ENC-98-109. West Village, Inc. / Pete Fletcher; Design Review and Coastal Development Permit for Property Located at 160 South Rancho Santa Fe Road. City Case No. 98-028 DR/CDP/EIA.

Dear Mr. McEachern:

Thank you for providing a copy of the above referenced staff report to the City of Encinitas. This correspondence is written to correct a statement which appears within the first paragraph on page 8 of that report. The statement reads: "Although this area was filled, it appears that it continues to be within the floodplain and therefore subject to the floodplain policies and ordinances."

Please be advised that the City's Municipal Code (Chapter 30.04) definition of "Floodplain" (enclosed) reads: "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 floodways."

Consistent with this definition, FEMA Map No. 06073C1061 (revised November 10, 1997; enclosed) clearly indicates that the Fletcher property is not located within the area subject to 100-year flood inundation. I have enclosed a memorandum from City Senior Civil Engineer Hans Jensen dated September 11, 1998, which acknowledges this fact. Should you have any questions related to this correspondence, please do not hesitate to contact me by telephoning (760) 633-2713.

Sincerely,

Craig R. Olson
Associate Planner

c: Anne Fletcher
Hans Jensen, Senior Civil Engineer
Bill Weedman, City Planner

EXHIBIT NO. 6

APPLICATION NO.
A-6-ENC-98-109

Letter from City of
Encinitas
w/attachments

Page 1 of 4

California Coastal Commission

TO ANN FLETCHER	FROM CRAI OLSON
CO WEST VILLAGE	CO 90 ENCINITAS
DEPT.	PHONE (760) 633-2713
FAX 436-1503	FAX 633-2818

06-95

MC. CHAPTER 30.04
(DEFINITIONS)

- C. An improved, all-weather road open to motor vehicle traffic in at least one direction;
- D. Not subject to any restrictions on use by the public except during an emergency or for military purposes; and
- E. Connected with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

Whenever no public road can be designated which conforms to all provisions of A. through E. above, and a public road does exist which conforms to all provisions of A. through D. above, the effect of designating the first public road paralleling the sea shall be limited to all parcels between the Pacific Ocean and such other public road; and those parcels immediately adjacent to the sea inland of such other public road. (Ord. 95-04)

FLEET STORAGE shall mean storage or parking of one or more vehicles used regularly in business operations. Excluded from this use type are automotive and equipment; sales/rentals; and the incidental parking of vehicles as an accessory use to a permitted use on the same premise. Typical uses include taxi fleets, mobile catering, truck storage or delivery truck fleets. (Ord. 91-03)

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.

FLOODWAY shall mean the channel of a natural stream or river and portions of the floodplain adjoining the channel which are reasonably required to carry and discharge floodwaters; specifically, areas shown as flood channels on the flood insurance rate map as published by the Federal Emergency Management Agency or the current City maps designating floodways.

FLOOR AREA, BULK shall mean the area per UBC included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area. The floor area bulk of a building or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Bulk floor area excludes: (Ord. 92-21)



CITY OF ENCINITAS MEMORANDUM

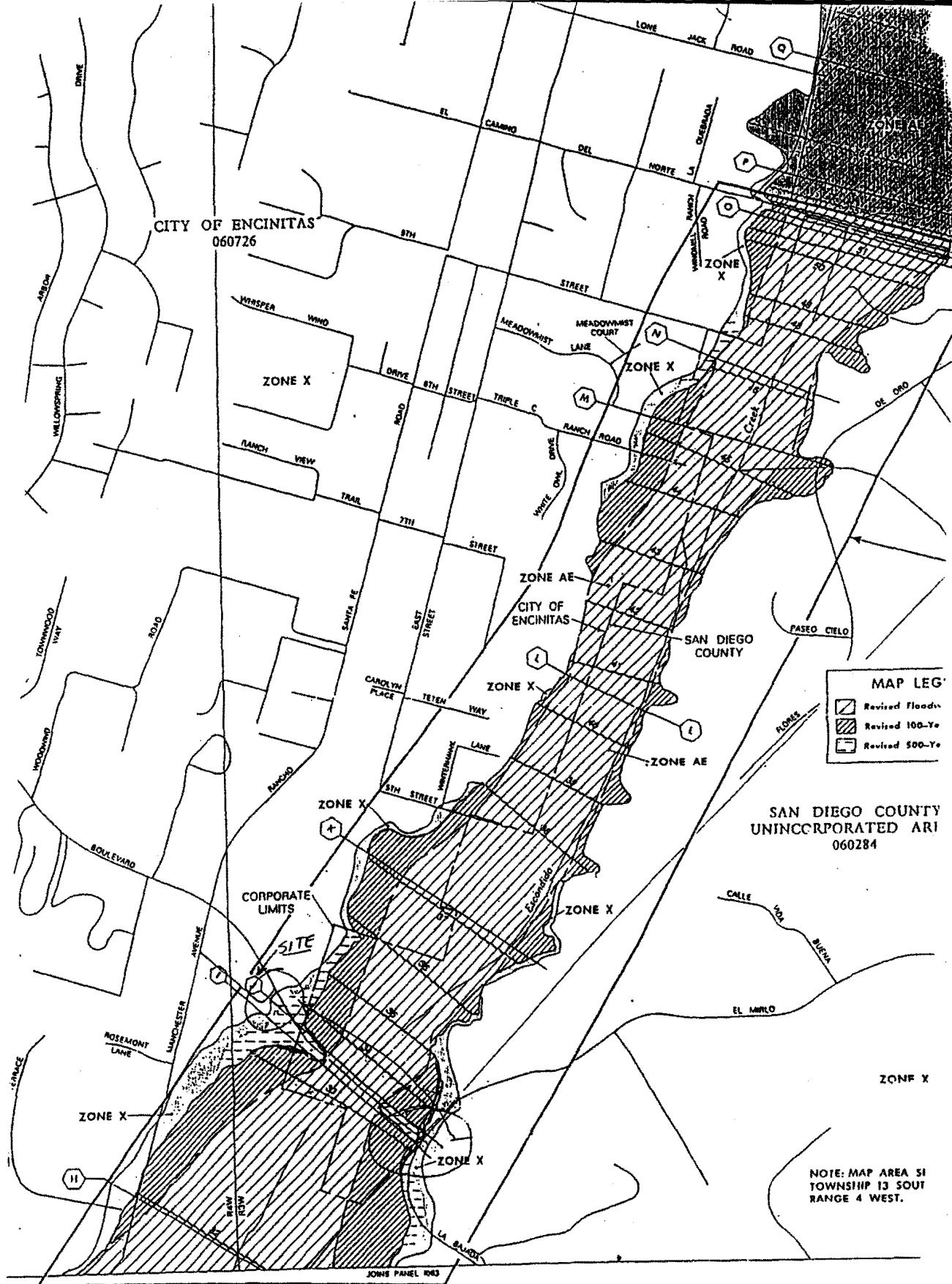
Date: September 11, 1998

FROM: *H.C. Jensen*
Hans Carl Jensen
Senior Civil Engineer

SUBJECT: FEMA Maps

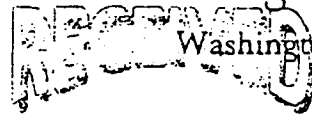
The FEMA maps issued June 19, 1997 by FEMA depict the legal floodplain within the City of Encinitas. The maps have been amended in the area of the La Bahada Bridge by FEMA on November 10, 1997.

Post-It™ brand fax transmittal memo 7671		# of pages » 1
To <i>Ann Fletcher</i>	From <i>H.C. Jensen</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>436-1503</i>	Fax #	





Federal Emergency Management Agency



Washington, D.C. 20472

NOV 10 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

IN REPLY REFER TO:
Case No.: 97-09-1093P

The Honorable Bill Horn
Chairman, San Diego County
Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, California 92101

Community: San Diego County, California
Community No.: 060284
Panels Affected: 06073C1061 F and 1063 F
Effective Date of
This Revision: **NOV 10 1997**

102-I-A-C

Dear Mr. Horn:

This responds to a request that the Federal Emergency Management Agency (FEMA) revise the effective Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for San Diego County, California and Incorporated Areas (the effective FIRM and FIS report for your community), in accordance with Part 65 of the National Flood Insurance Program (NFIP) regulations. In a letter dated August 7, 1997, Mr. Dwight G. Smith, Deputy Director, Department of Public Works, County of San Diego, requested that FEMA revise the FIRM and FIS report to show the effects of a bridge on the La Bajada (Encinitas Boulevard) crossing of Escondido Creek approximately 20,650 feet upstream of the Pacific Ocean.

All data required to complete our review of this request were submitted with letters from Mr. Smith.

We have completed our review of the submitted data and the flood data shown on the effective FIRM and FIS report. We have revised the FIRM and FIS report to modify the elevations and floodplain and floodway boundary delineations of the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood) along Escondido Creek. As a result of the modifications, the base flood elevations (BFEs) for Escondido Creek increased; the width of the Special Flood Hazard Area (SFHA), the area that would be inundated by the base flood, decreased; and the width of the regulatory floodway increased in some areas and decreased in other areas. The modifications are shown on the enclosed annotated copies of FIRM Panel(s) 06073C1061 F and 06073C1063 F, Profile Panel(s) 84P and 85P, and affected portions of the Floodway Data Table. This Letter of Map Revision (LOMR) hereby revises the above-referenced panel(s) of the effective FIRM and the affected portions of the FIS report, both dated June 19, 1997.

Because this revision request also affects the City of Encinitas, a separate LOMR for that community was issued on the same date as this LOMR.

The modifications are effective as of the date shown above. The map panel(s) as listed above and as modified by this letter will be used for all flood insurance policies and renewals issued for your community.

EXHIBIT NO. 7

APPLICATION NO.
A-6-ENC-98-109

Letter from FEMA w/
attachments

Page 1 of 5

California Coastal Commission

The following table is a partial listing of existing and modified BFEs:

Location	Existing BFE (feet)*	Modified BFE (feet)*
2,100 feet downstream of Encinitas Boulevard	31	32
Just upstream of Encinitas Boulevard	33	34
1,300 feet upstream of Encinitas Boulevard	37	37

*Referenced to the National Geodetic Vertical Datum, rounded to the nearest whole foot

Public notification of the proposed modified BFEs will be given in *The San Diego Union-Tribune* on or about December 4 and December 11, 1997. A copy of this notification is enclosed. In addition, a notice of changes will be published in the *Federal Register*. Within 90 days of the second publication in *The San Diego Union-Tribune*, a citizen may request that FEMA reconsider the determination made by this LOMR. Any request for reconsideration must be based on scientific or technical data. All interested parties are on notice that, until the 90-day period elapses, the determination to modify the BFEs presented in this LOMR may itself be modified.

Because this LOMR will not be printed and distributed to primary users, such as local insurance agents and mortgage lenders, your community will serve as a repository for these new data. We encourage you to disseminate the information reflected by this LOMR throughout the community, so that interested persons, such as property owners, local insurance agents, and mortgage lenders, may benefit from the information. We also encourage you to prepare a related article for publication in your community's local newspaper. This article should describe the assistance that officials of your community will give to interested persons by providing these data and interpreting the NFIP maps.

We will not physically revise and republish the FIRM and FIS report for your community to reflect the modifications made by this LOMR at this time. When changes to the previously cited FIRM panel(s) and FIS report warrant physical revision and republication in the future, we will incorporate the modifications made by this LOMR at that time.

The floodway is provided to your community as a tool to regulate floodplain development. Therefore, the floodway modifications described in this LOMR, while acceptable to FEMA, must also be acceptable to your community and adopted by appropriate community action, as specified in Paragraph 60.3(d) of the NFIP regulations.

This LOMR is based on minimum floodplain management criteria established under the NFIP. Your community is responsible for approving all floodplain development, and for ensuring all necessary permits required by Federal or State law have been received. State, county, and community officials, based on knowledge of local conditions and in the interest of safety, may set higher standards for construction in the SFHA. If the State, county, or community has adopted more restrictive or comprehensive floodplain management criteria, these criteria take precedence over the minimum NFIP criteria.

The basis of this LOMR is, in whole or in part, a channel-modification project. NFIP regulations, as cited in Paragraph 60.3(b)(7), require that communities ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. This provision is incorporated into your

community's existing floodplain management regulations. Consequently, the ultimate responsibility for maintenance of the modified channel rests with your community.

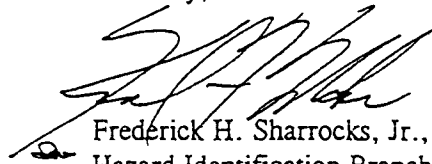
This determination has been made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and is in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65. Pursuant to Section 1361 of the National Flood Insurance Act of 1968, as amended, communities participating in the NFIP are required to adopt and enforce floodplain management regulations that meet or exceed minimum NFIP criteria. These criteria are the minimum and do not supersede any State or local requirements of a more stringent nature. This includes adoption of the effective FIRM to which the regulations apply and the modifications described in this LOMR. Our records show that your community has met this requirement.

A Consultation Coordination Officer (CCO) has been designated to assist your community. The CCO will be the primary liaison between your community and FEMA. For information regarding your CCO, please contact:

Ms. Dorothy M. Lacey
Director, Mitigation Division
Federal Emergency Management Agency, Region IX
The Presidio of San Francisco, Building 105
San Francisco, California 94129-1250
(415) 923-7177

If you have any questions regarding floodplain management regulations for your community or the NFIP in general, please contact the CCO for your community at the telephone number cited above. If you have any technical questions regarding this LOMR, please contact Mr. John Magnotti of our staff in Washington, DC, either by telephone at (202) 646-3932 or by facsimile at (202) 646-4596.

Sincerely,



Frederick H. Sharrocks, Jr., Chief
Hazard Identification Branch
Mitigation Directorate

Enclosure(s)

cc: The Honorable John Davis
Mayor, City of Encinitas

Mr. Douglas M. Isbell ✓
Deputy Director
Department of Public Works
County of San Diego

CHANGES ARE MADE IN DETERMINATIONS OF BASE FLOOD ELEVATIONS FOR THE CITY OF ENCINITAS AND THE UNINCORPORATED AREAS OF SAN DIEGO COUNTY, CALIFORNIA, UNDER THE NATIONAL FLOOD INSURANCE PROGRAM

On June 19, 1997, the Federal Emergency Management Agency identified Special Flood Hazard Areas (SFHAs) in the City of Encinitas and the unincorporated areas of San Diego County, California, through issuance of a Flood Insurance Rate Map (FIRM). The Mitigation Directorate has determined that modification of the elevations of the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood) for certain locations in this community is appropriate. The modified base flood elevations (BFEs) revise the FIRM for the communities.

The changes are being made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

A hydraulic analysis was performed to incorporate a bridge on the La Bajada (Encinitas Boulevard) crossing of Escondido Creek approximately 20,650 feet upstream of the Pacific Ocean and has resulted in a revised delineation of the regulatory floodway, a decrease in SFHA width, and increased BFEs for Escondido Creek. The table below indicates existing and modified BFEs for selected locations along the affected lengths of the flooding source(s) cited above.

Location	Existing BFE (feet)*	Modified BFE (feet)*
2,100 feet downstream of Encinitas Boulevard	31	32
Just upstream of Encinitas Boulevard	33	34
1,300 feet upstream of Encinitas Boulevard	37	37

*National Geodetic Vertical Datum, rounded to nearest whole foot

Under the above-mentioned Acts of 1968 and 1973, the Mitigation Directorate must develop criteria for floodplain management. To participate in the National Flood Insurance Program (NFIP), the community must use the modified BFEs to administer the floodplain management measures of the NFIP. These modified BFEs will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Upon the second publication of notice of these changes in this newspaper, any person has 90 days in which he or she can request, through the Chief Executive Officer of the community, that the Mitigation Directorate reconsider the determination. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data. All interested parties are on notice that until the 90-day period elapses, the Mitigation Directorate's determination to modify the BFEs may itself be changed.

Any person having knowledge or wishing to comment on these changes should immediately notify:

The Honorable John Davis
Mayor, City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024

OR

The Honorable Bill Horn
Chairman, San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, California 92101



County of San Diego

DEPARTMENT OF PUBLIC WORKS

5555 OVERLAND AVE, SAN DIEGO, CALIFORNIA 92123-1295

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

COUNTY ENGINEERING
COUNTY AIRPORTS
COUNTY ROAD COMMISSIONER
TRANSIT SERVICES
COUNTY SURVEYOR
FLOOD CONTROL
WASTEWATER MANAGEMENT

Ralph Man...
COPY

RECEIVED

NOV 19 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

October 8, 1998

Lee McEachern
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Dear Mr. McEachern:

CALIFORNIA COASTAL COMMISSION STAFF REPORT APPEAL #A-6-ENC-98-109

At the request of Mr. Peter T. Fletcher, San Diego County staff met on Wednesday, October 7, 1998, to discuss the Coastal Development Permit for the property located at 160-162 South Rancho Santa Fe Road in the City of Encinitas. A copy of the Staff Report for Coastal Commission Appeal #A-6-ENC-98-109 and a copy of the ALTA/ASCM Land Title Survey / West Village / 160-162 South Rancho Santa Fe Road prepared by Nasland Engineering was provided by Mr. Fletcher.

It was noted that the Coastal Commission report stated on page 8, first paragraph, that "Although this area was filled, it appears that it continues to be within the floodplain and therefore subject to the floodplain policies and ordinances." County staff has reviewed the Title Survey and found that the lines of inundation for the 100-year floodplain as shown on the plan are the same as those shown on the County Flood Plain Map 314-1695, revised to reflect the construction of the La Bajada bridge (Attachment 1) and the FEMA Letter of Map Revision, (LOMR) dated November 10, 1997 (Attachment 2). These lines of inundation clearly show that the Fletcher property is not located within the area subject to the 100-year floodplain.

EXHIBIT NO. 8
APPLICATION NO. A-6-ENC-98-109
Letter from County of San Diego re: revised floodplain maps
Page 1 of 7

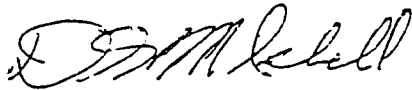
California Coastal Commission

Mr. McEachern
Page 2
October 8, 1998

The San Diego County floodplain map revision is in accordance with the FEMA Flood Insurance Rate Map revision of Panel 06073C1061F. The floodplain and floodway lines were revised in the immediate vicinity of the La Bajada Bridge and were based on a hydraulic study dated May 1997, prepared by Dr. Howard Chang.

If you have any questions regarding the County Flood Plain Map, or the EMA LOMR, please contact Mr. Donald See at (619) 874-4106.

Very truly yours,



DOUGLAS M. ISBELL, County Engineer
Department of Public Works

DMI:DS:adm

cc: Peter T. Fletcher

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER SURFACE ELEVATION			
CROSS SECTION	DISTANCE ¹	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY	WITH FLOODWAY	INCREASE
		(FEET NGVD)						
Escondido Creek (Below Lake Wohlford)								
A	11,025	668	3,065	6.9	13.2	13.2	13.2	0.0
B	12,569	1,290	8,331	2.5	15.1	15.1	15.1	0.0
C	14,054	1,230	6,299	3.3	15.6	15.6	15.6	0.0
D	14,887	1,202	4,902	4.3	16.1	16.1	16.2	0.1
E	16,040	1,065	2,664	7.9	18.6	18.6	18.7	0.1
F	17,729	312	1,750	12.0	28.5	28.5	28.5	0.0
G	18,531	1,211	10,475	2.0	31.9	31.9	32.1	0.2
H	19,456	1,125	8,004	2.6	32.0	32.0	32.2	0.2
I	20,627	400	2,925	7.2	33.2	33.2	33.2	0.0
J	20,672	400	2,942	7.1	33.5	33.5	33.6	0.1
K	21,927	795	4,633	4.5	37.2	37.2	37.4	0.2
L	23,639	548	3,152	6.7	40.4	40.4	40.7	0.3
M	25,313	580	3,569	5.9	45.3	45.3	45.5	0.2
N	25,771	550	2,393	8.8	45.8	45.8	46.1	0.3
O	26,606	977	2,069	10.2	51.5	51.5	51.5	0.0
P	27,378	1,005	5,392	3.9	55.7	55.7	55.8	0.1
Q	28,116	1,163	4,861	4.3	56.5	56.5	56.6	0.1
R	28,780	858	3,536	5.9	57.7	57.7	57.8	0.1
S	29,578	795	3,347	6.3	60.5	60.5	60.6	0.1
T	30,905	254	1,835	11.4	65.3	65.3	65.3	0.0
U	55,660	180	1,796	10.6	367.3	367.3	367.3	0.0
V	58,990	395	1,956	9.7	399.1	399.1	399.1	0.0
W	61,330	152	1,324	14.4	432.2	432.2	432.2	0.0
X	63,130	198	1,420	13.4	464.1	464.1	464.1	0.0
Y	64,805	234	1,527	12.4	503.9	503.9	503.9	0.0
Z	67,980	194	1,685	11.3	544.7	544.7	544.7	0.0

REVISED DATA

¹Feet Above Pacific Ocean

REVISED TO
REFLECT LOMR

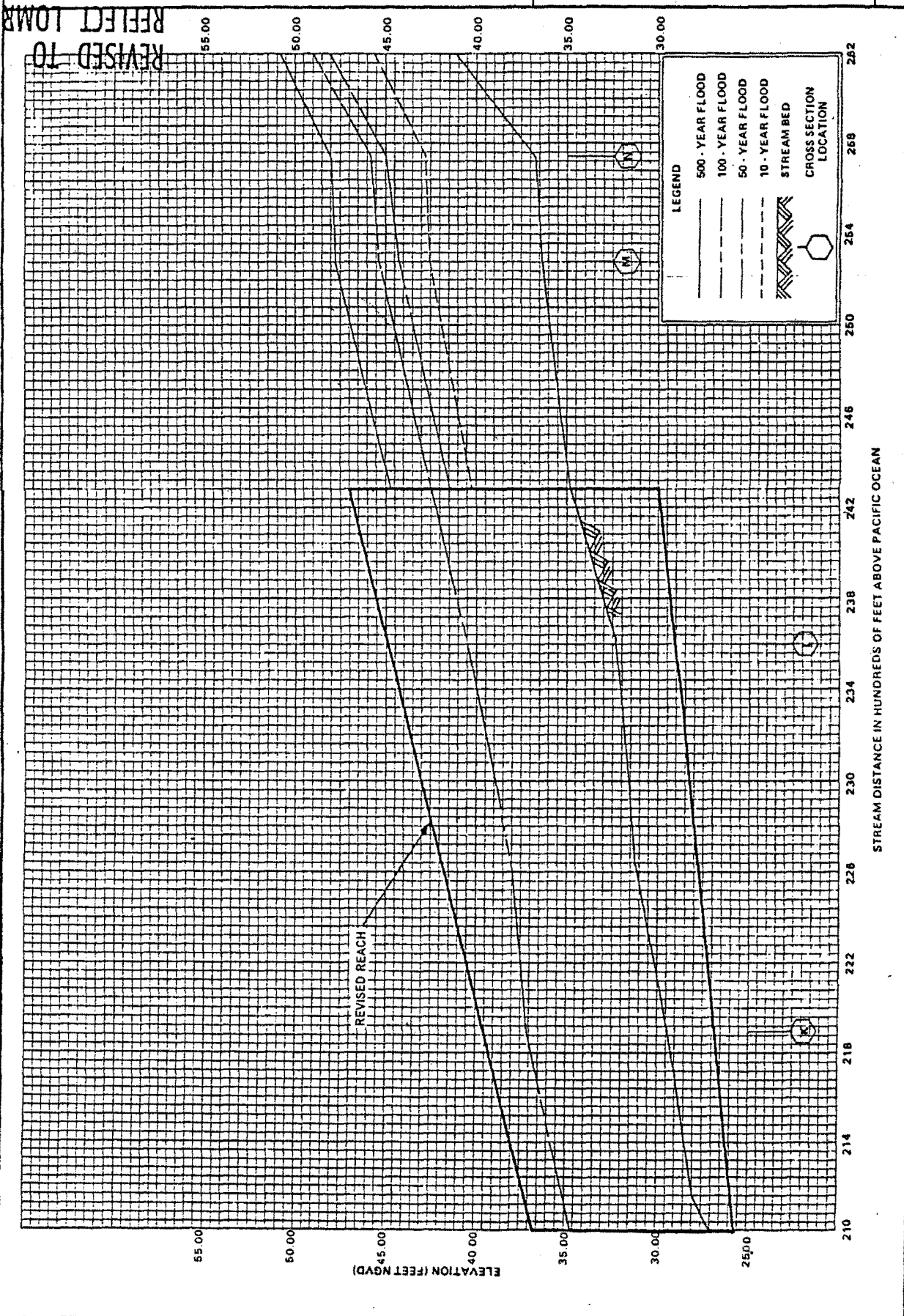
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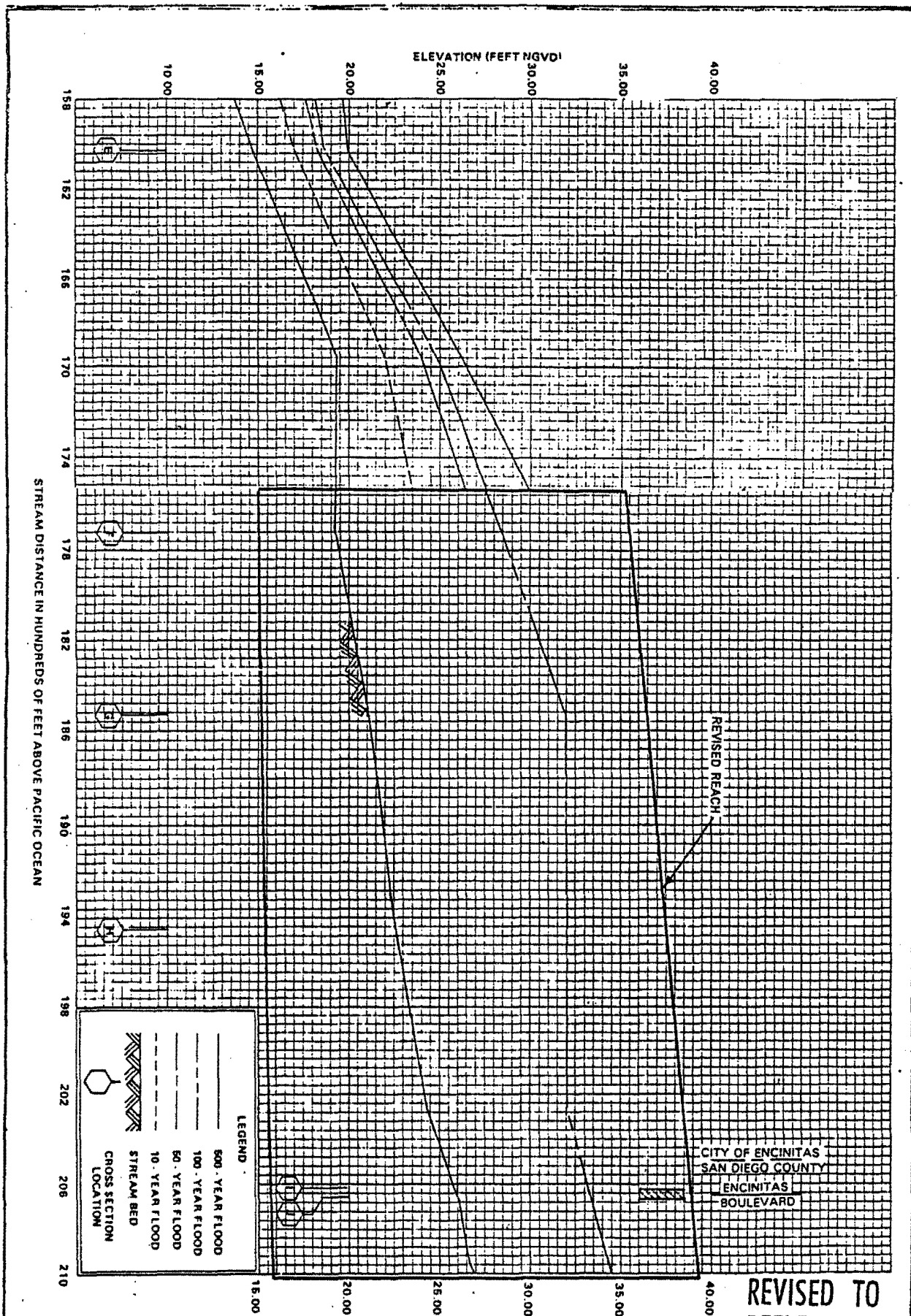
FEDERAL EMERGENCY MANAGEMENT AGENCY

SAN DIEGO COUNTY, CA
AND INCORPORATED AREAS

FLOODWAY DATA DATED NOV 10 1997

ESCONDIDO CREEK (BELOW LAKE WOHLFORD)





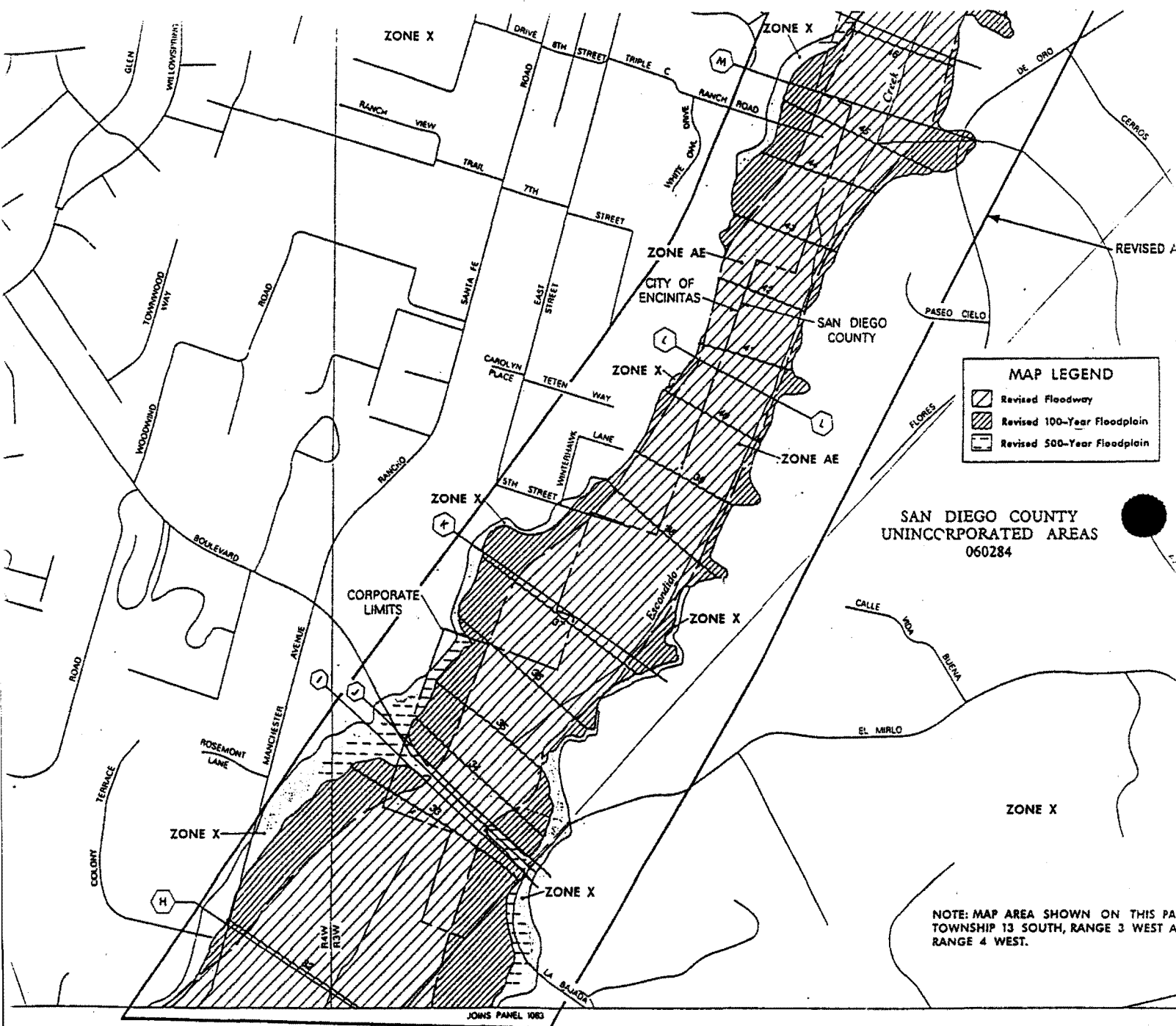
FEDERAL EMERGENCY MANAGEMENT AGENCY

SAN DIEGO COUNTY, CA
AND INCORPORATED AREAS

FLOOD PROFILES

ESCONDIDO CREEK

REVISED TO
REFLECT LOMR
DATED NOV 10 1997



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
 1000 DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 (619) 521-3036

COASTAL DEVELOPMENT PERMIT NO. A-6-ENC-96-34RPage 1 of 2

95-150 DR / CDP / EIA

On August 14, 1996, the California Coastal Commission granted to
West Village Inc./Peter Fletcher
 this permit for the development described below, subject to the attached
 Standard and Special Conditions.

Description: Deposition of approximately 750 cubic yards of fill within the
 100-year floodplain on an approximately 9 acre site containing
 an existing 60,000 sq. ft. commercial center.

PROJECT

LOCATION: 160 South Rancho Santa Fe Road, Encinitas, San Diego County.
 APN 259-191-14, 25

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
 Executive Director
 and

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT
 WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges
 receipt of this permit and agrees to
 abide by all terms and conditions
 thereof.

Sept 12 1996 Peter T. Fletcher PROS.
 Date Signature of Permittee
WEST VILLAGE INC.

EXHIBIT 2

16-9

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Final Grading Plan. Prior to the issuance of the coastal development permit, the applicant shall submit final project grading plans for review and written approval of the Executive Director. Said plans shall first be approved by the City of Encinitas and be in substantial conformance with the submitted alternate remedial grading plan by Nasland Engineering, dated May 31, 1996.
2. Mitigation/Monitoring. The applicant is required to implement a mitigation and monitoring program for wetland impacts as detailed in the Wetland Mitigation and Revegetation Plan for West Village Center prepared by Dudek and Associates, Inc., dated August 9, 1996. Said plan, which is based on the Wetlands Delineation Report for West Village Center by Dudek and Associates, dated May 24, 1996, requires that wetlands impacts be mitigated at a ratio of 1.5 to 1.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

111, CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-4036



West Village Inc.
162 S. Rancho Santa Fe Road, Suite B-70
Encinitas, CA 92024

NOTICE OF ACCEPTANCEDate: September 12, 1996Applicant: West Village Inc.Document or Plans: 1. Final Plans for grading (750 cubic yards) approved by the City of Encinitas.

Submitted in compliance with Special Condition(s) No(s): 1
of Coastal Development Permit No. A-5-ENC-96-31-R

Remaining Special Condition(s): ** None **

Material submitted in compliance with said Special Condition(s) of your development permit has been reviewed by the District Director and found to fulfill the requirements of said condition(s). Your submitted material and a copy of this letter have been made a part of the permanent file.

Sincerely,

Charles Damm
District Director

By: 

(9634R00a.doc)

16-11

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
CARMING DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
PH 619-4026

Date September 11, 1996Application No. A-6-ENC-96-34-2Page 1 of 2NOTICE OF INTENT TO ISSUE PERMIT

On August 14, 1996, the California Coastal Commission approved the application of West Village Inc./Peter Fletcher, subject to the attached standard and special conditions, for the development described below:

Description: Deposition of approximately 750 cubic yards of fill within the 100-year floodplain on an approximately 9 acre site containing an existing 60,000 sq. ft. commercial center.

PROJECT

LOCATION: 160 South Rancho Santa Fe Road, Encinitas, San Diego County.
APN 259-191-14, 25

The permit will be held in the San Diego District Office of the Commission, pending fulfillment of Special Conditions 1. When these conditions have been satisfied, the permit will be issued.

CHARLES DAMM
DISTRICT DIRECTOR
BY

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

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(6299N)

16-13



County of San Diego

STEPHEN THUNBERG
DIRECTOR
(619) 594-2212
FAX: (619) 268-0461
LOCATION CODE 550

DEPARTMENT OF PUBLIC WORKS

5555 OVERLAND AVE, SAN DIEGO, CALIFORNIA 92123-1295

COUNTY ENGINEERING
COUNTY AIRPORTS
COUNTY ROAD COMMISSIONER
TRANSIT SERVICES
COUNTY SURVEYOR
FLOOD CONTROL
WASTEWATER MANAGEMENT

October 8, 1998

Lee McEachern
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Dear Mr. McEachern:

CALIFORNIA COASTAL COMMISSION STAFF REPORT APPEAL #A-6-ENC-98-109

At the request of Mr. Peter T. Fletcher, San Diego County staff met on Wednesday, October 7, 1998, to discuss the Coastal Development Permit for the property located at 160-162 South Rancho Santa Fe Road in the City of Encinitas. A copy of the Staff Report for Coastal Commission Appeal #A-6-ENC-98-109 and a copy of the ALTA/ASCM Land Title Survey / West Village / 160-162 South Rancho Santa Fe Road prepared by Nasland Engineering was provided by Mr. Fletcher.

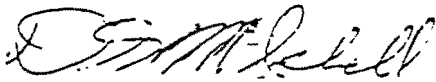
It was noted that the Coastal Commission report stated on page 8, first paragraph, that "Although this area was filled, it appears that it continues to be within the floodplain and therefore subject to the floodplain policies and ordinances." County staff has reviewed the Title Survey and found that the lines of inundation for the 100-year floodplain as shown on the plan are the same as those shown on the County Flood Plain Map 314-1695, revised to reflect the construction of the La Bajada bridge (Attachment 1) and the FEMA Letter of Map Revision, (LOMR) dated November 10, 1997 (Attachment 2). These lines of inundation clearly show that the Fletcher property is not located within the area subject to the 100-year floodplain.

Mr. McEachern
Page 2
October 8, 1998

The San Diego County floodplain map revision is in accordance with the FEMA Flood Insurance Rate Map revision of Panel 06073C1061F. The floodplain and floodway lines were revised in the immediate vicinity of the La Bajada Bridge and were based on a hydraulic study dated May 1997, prepared by Dr. Howard Chang.

If you have any questions regarding the County Flood Plain Map, or the EMA LOMR, please contact Mr. Donald See at (619) 874-4106.

Very truly yours,



DOUGLAS M. ISBELL, County Engineer
Department of Public Works

DMI:DS:adm

cc: Peter T. Fletcher

DEPARTMENT OF FISH AND GAME

Community Conservation Planning
Newridge Avenue
San Diego, CA 92123
619-4251
619-4235



September 25, 1998

Ms. Anne Fletcher
West Villages, Inc.
162 S. Rancho Santa Fe Road
Suite E-90
Encinitas, CA 92024

Dear Ms. Fletcher:

This letter serves as a follow-up to our July 9, 1998 site visit of the West Village Center (Local Permit 9P-028 DR/CDP/EIA). You requested that the Department review the March 1998 Initial Study prepared by the City of Encinitas for the West Village Center, a development project involving the construction of a 4,390 square foot office/retail building and a 200 square foot kiosk within the existing West Village Commercial Center. The kiosk would be built on existing parking lot and the office/retail building would be placed on an existing pad. After review of the project-related materials, the Department has concurred with the City that there will be no significant impacts to wildlife or habitat from this project. The existing pad has been previously graded and is out of the Escondido Creek floodplain so no additional direct impacts will occur. Indirect impacts (lighting, noise, erosion) have been addressed and the City approvals have included measures to reduce their potential harm to biological resources.

Please feel free to contact me if there are other issues regarding the property. I can be reached at the letterhead address, or by telephone at (619) 467-4201.

Sincerely,

Ronald D. Rempel
Regional Manager, Region 5

cc: Department of Fish and Game
Bill Tippers

U.S. Fish and Wildlife Service
Ken Berg

EXHIBIT 4

Ms. Fletcher
September 25, 1998
Page 2

cc's continued

City of Encinitas
Craig Olson

Coastal Commission
Lee McEchem

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.

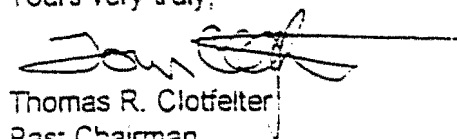
The San Elijo Lagoon Foundation has a policy of not re-challenging a land use decision made during the original hearing process whether we chose to have input or did not choose to contribute.

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

A Non-Profit Educational Foundation Dedicated to the Management and Enhancement of the San Elijo Lagoon as a Coastal Estu
Contributions are Tax Deductible.

EXHIBIT 5

EXHIBIT NO. 4

APPLICATION NO.

A-6-ENC-98-109

Letters of Support

California Coastal Commission



City of
Encinitas

September 28, 1998

Lee McEachern—
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Re: Staff Report for Coastal Commission Appeal #A-6-ENC-98-109. West Village, Inc. / Pete Fletcher: Design Review and Coastal Development Permit for Property Located at 160 South Rancho Santa Fe Road. City Case No. 98-028 DR CDP/EIA.

Dear Mr. McEachern:

Thank you for providing a copy of the above referenced staff report to the City of Encinitas. This correspondence is written to correct a statement which appears within the first paragraph on page 8 of that report. The statement reads: "Although this area was filled, it appears that it continues to be within the floodplain and therefore subject to the floodplain policies and ordinances."

Please be advised that the City's Municipal Code (Chapter 30.04) definition of "Floodplain" (enclosed) reads: "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 floodways."

Consistent with this definition, FEMA Map No. 06073C1061 (revised November 10, 1997; enclosed) clearly indicates that the Fletcher property is not located within the area subject to 100-year flood inundation. I have enclosed a memorandum from City Senior Civil Engineer Hans Jensen dated September 11, 1998, which acknowledges this fact. Should you have any questions related to this correspondence, please do not hesitate to contact me by telephoning (760) 633-2713.

Sincerely,

Craig R. Olson
Associate Planner

c: Anne Fletcher
Hans Jensen, Senior Civil Engineer
Bill Weedman, City Planner

EXHIBIT 6

EST VILLAGE	Ca 90 EN	ITR 3
	Phone (760)	633-2713
56-1503	Ext	633-2818

06-95

MC. CHAPTER 30.04
(DEFINITIONS)

- C. An improved, all-weather road open to motor vehicle traffic in at least one direction;
- D. Not subject to any restrictions on use by the public except during an emergency or for military purposes; and
- E. Connected with other public roads providing a continuous access system, and generally parallels and follows the shoreline of the sea so as to include all portions of the sea where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the sea to extend landward of the generally continuous coastline.

Whenever no public road can be designated which conforms to all provisions of A. through E. above, and a public road does exist which conforms to all provisions of A. through D. above, the effect of designating the first public road paralleling the sea shall be limited to all parcels between the Pacific Ocean and such other public road; and those parcels immediately adjacent to the sea inland of such other public road. (Ord. 95-04)

FLEET STORAGE shall mean storage or parking of one or more vehicles used regularly in business operations. Excluded from this use type are automotive and equipment, sales/rentals; and the incidental parking of vehicles as an accessory use to a permitted use on the same premise. Typical uses include taxi fleets, mobile catering, truck storage or delivery truck fleets. (Ord. 91-03)

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.

FLOODWAY shall mean the channel of a natural stream or river and portions of the floodplain adjoining the channel which are reasonably required to carry and discharge floodwaters; specifically, areas shown as flood channels on the flood insurance rate map as published by the Federal Emergency Management Agency or the current City maps designating floodways.

FLOOR AREA, BULK shall mean the area per USC included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area. The floor area bulk of a building or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. Bulk floor area excludes: (Ord. 92-11)



CITY OF ENCINITAS MEMORANDUM

Date: September 11, 1998

FROM: *H.C. Jensen*
Hans Carl Jensen
Senior Civil Engineer

SUBJECT: FEMA Maps

The FEMA maps issued June 19, 1997 by FEMA depict the legal floodplain within the City of Encinitas. The maps have been amended in the area of the La Baha Bridge by FEMA on November 10, 1997.

Post-it brand fax transmittal memo		# of pages: 1
To: <i>Ann Fletcher</i>	From: <i>H.C. Jensen</i>	
Co:	Co:	
Dept:	Phone:	
Fax: <i>436-1503</i>	Fax:	

CITY OF ENCINITAS
060726

ZONE X

ZONE X

ZONE X

ZONE AE

ZONE X

ZONE AE

ZONE X

ZONE X

ZONE X

ZONE X

MAP LEG

- Revised Flood-
- Revised 100-Yr
- Revised 500-Yr

SAN DIEGO COUNTY
UNINCORPORATED AREA
060234

NOTE: MAP AREA IS
TOWNSHIP 13 SOUTH
RANGE 4 WEST

CHINA PAPER 063

1 reopen their permit --

2 COMMISSIONER RANDA: Mr. Chairman.

3 MR. FLETCHER: -- and delay the bridge.

4 COMMISSIONER RANDA: Mr. Chairman.

5 CHAIR CALCAGNO: Commissioner Wan.

6 COMMISSIONER WAN: Before I proceed, is the public
7 hearing closed? or, is this the --

8 CHAIR CALCAGNO: No. The public hearing -- in
9 fact, we have other people.

10 COMMISSIONER WAN: Okay, then I will wait.

11 CHAIR CALCAGNO: This is questions of the
12 applicant.

13 COMMISSIONER WAN: Then I will wait.

14 CHAIR CALCAGNO: Okay.

15 If there is nothing more from the applicant, we
16 will have Andrew Morrow come up, I believe.

17 MR. MORROW: Thank you, Mr. Chairman.

18 CHAIR CALCAGNO: You might have to come back up
19 for questions, later on.

20 MR. FLETCHER: Would you like us to leave the
21 exhibits here?

22 CHAIR CALCAGNO: You can leave them there.

23 MR. FLETCHER: Yes.

24 MR. MORROW: Thank you, Mr. Chairman,
25 Commissioners, I am Andrew Morrow. I live in Encinitas, and

EXHIBIT 7

1 I am a member of the board of the San Alijo Lagoon
2 Conservancy.

3 San Alijo Lagoon Conservancy, a party of record in
4 this matter, continues to urge the Commission's denial of
5 this project, as now proposed. While we applaud applicant's
6 attempt to at least partially address Conservancy concerns
7 with the reduction in project scope, the project, even as
8 apparently redefined, still involves an import of fill into a
9 coastal wetlands, and into the 100-year flood plain.

10 While it is argued by the applicant that the
11 reduced amount of flood plain fill would have a minimum
12 impact on downstream hydrology, the requirement at issue is
13 simple: the least environmentally sensitive alternative
14 should be selected.

15 It can also be argued that the 750-cubic yards of
16 fill now proposed by applicant, or 75 large truck loads of
17 dirt, hardly constitutes a minor amount of fill.

18 Additionally, applicant would have the Commission
19 approve a grading plan which would still create a building
20 pad within the flood plain, raising the issue of ultimate
21 intent.

22 The Conservancy agrees with the Commission staff's
23 contention that additional alternatives exist which should
24 first be considered.

25 Applicant asserts, but has made no attempt to

1 So, the City of Encinitas recognized this upon our
2 application. They asked us to make an exhibit, which you
3 have, showing the actual area subject to inundation. We had
4 our engineer, Nasland Engineering, do a study, and this is
5 what resulted.

6 None of this area is subject to 100-year
7 inundation, except for a little pocket in here. This is the
8 grass area. This is the 35-foot knoll.

9 As I said, the impact of 100-year floods, will be
10 at slightly over 33 feet, if I am correct.

11 Is that right, Mr. Nasland?

12 MR. NASLAND: Yes.

13 MR. FLETCHER: So, we are talking about a little
14 panhandle in here that is really subject to the flood.

15 COMMISSIONER RANDA: Mr. Chair.

16 MR. FLETCHER: So, I hope that helps.

17 CHAIR CALCAGNO: Okay.

18 COMMISSIONER WEAR: Mr. Chairman.

19 COMMISSIONER RANDA: Can I move for the applicant?

20 CHAIR CALCAGNO: One question, and then --

21 Go ahead and move it, you want to move it.

22 [MOTION]

23 COMMISSIONER RANDA: Thanks.

24 I move that the Commissioner grant the permit for
25 the proposed development, subject to the condition below on

EXHIBIT 8

1 the grounds of development, as conditioned will be in
2 conformity with the adopted City of Encinitas Local Coastal
3 Plan. And, I further grant the applicant's request that the
4 Commission approve the original remedial grading plan,
5 approved by the certified City of Encinitas -- including the
6 special conditions?

7 CHAIR CALCAGNO: Okay, do we --

8 COMMISSIONER RANDA: The special condition No. 2,
9 the permit be subject to the following conditions: (1)
10 mitigation/monitoring, the applicant requests adoption of its
11 submitted wetlands mitigation and monitoring plan, prepared
12 by Dudek and Associates, dated August 9, 1996.

13 CHAIR CALCAGNO: Okay, is there a "second"?

14 COMMISSIONER WEAR: Second.

15 CHAIR CALCAGNO: It has been moved --

16 COMMISSIONER RANDA: Call the question.

17 CHAIR CALCAGNO: -- and seconded.

18 Okay.

19 COMMISSIONER WAN: I would like -- I haven't had a
20 chance to even ask my questions.

21 CHAIR CALCAGNO: Commissioner Wan, you had your
22 hand up before, and I will let you go ahead and ask you
23 question, and then we are going to go for the vote.

24 CHIEF COUNSEL FAUST: Mr. Chairman, before the
25 comment, just so it is clear what the Commission is

1 discussing.

2 Could we have clarification on the motion as to
3 which of the two grading plans is contained within the
4 motion?

5 COMMISSIONER RANDA: The certified City of
6 Encinitas' plan.

7 COMMISSIONER PAVLEY: The May one?

8 COMMISSIONER RANDA: The plan approved by the City
9 of Encinitas, not the alternative remedial grading plan of
10 May 31.

11 COMMISSIONER WAN: Okay, with the 18 --

12 CHIEF COUNSEL FAUST: Okay, not the more recent --

13 COMMISSIONER RANDA: Not the more recent --

14 CHIEF COUNSEL FAUST: -- alternative that was
15 discussed, but rather the earlier one?

16 COMMISSIONER RANDA: Correct.

17 COMMISSIONER GIACOMINI: What do you got? What do
18 you got, when the applicant wants the 700?

19 COMMISSIONER PAVLEY: He said the 700 was fine
20 with them.

21 COMMISSIONER GIACOMINI: Why do you want to add
22 another 1000-cubic yards?

23 COMMISSIONER RANDA: Because, I think the problem
24 has to be fixed, and they had the right idea to begin with,
25 and I think the bridge is the problem.

1 [General Discussion]

2 CHAIR CALCAGNO: Commissioner, is that the motion
3 you had before the floor? That is the --

4 COMMISSIONER RANDA: I would like to hear the
5 applicant on it.

6 CHAIR CALCAGNO: Okay, go ahead, applicant.

7 MR. NASLAND: D.K. Nasland, again.

8 It is my opinion that the original plan is a
9 better solution for the problem we have there,
10 hydrologically, and how it handles the water.

11 We brought the alternate plan because we developed
12 that based upon discussions of what staff was really trying
13 to get to. As we stated, it is acceptable.

14 We feel this is a much better design, than the
15 alternate.

16 COMMISSIONER RANDA: Then, for the better design,
17 is why I am calling the motion.

18 CHAIR CALCAGNO: Okay, there is a motion on the
19 table.

20 Commissioner Wan, you have --

21 COMMISSIONER WAN: I have a series of questions --

22 CHAIR CALCAGNO: -- and we will let you do that,
23 because you had your hand up, and then we are going to have
24 to go for the vote.

25 COMMISSIONER WAN: Okay. I wanted to get back to

1 one of the things. There were a couple of major concerns
2 that still haven't been addressed.

3 One of the principle concerns that I have, with
4 regards to filling in a flood plain, and this in a 100-year
5 flood plain. The applicant knew that. He acknowledged that
6 at the time of his original development. You mentioned the
7 HEC-II study, and that was my concern. I guess I still don't
8 -- and I am asking staff questions, at this point, okay -- I
9 still don't understand, the applicant's engineer is saying
10 that the HEC-II study did, in fact, account for the fill? is
11 that correct? and what the effect -- and what I want to know
12 is whether that accounted for the effect of the fill, either
13 the 700 or the 1800, on downstream, or down flood plain
14 properties? because, that is a concern, is what this is going
15 to do to other properties?

16 DISTRICT DIRECTOR DAMM: The staff's understanding
17 is that the county's study did not take into account the
18 fill.

19 I believe the spokesperson for the applicant's
20 representative, indicated that, with regard to this piece of
21 property, in his opinion, it would have no effect, but my
22 understanding from our staff is that the county's hydrology
23 study did not take into account filling this property.

24 COMMISSIONER RANDA: Can I hear that from the
25 applicant on that?

1 COMMISSIONER HOLANDA: Mr. Chairman, may I?

2 COMMISSIONER WAN: Yes, go ahead.

3 COMMISSIONER HOLANDA: Given that fact, in my
4 opinion, the fill, the project in question, would not be
5 impacted whatsoever. There is no impact on the flood plain,
6 because of the county project, because of the HEC-II study.
7 It took everything into consideration. It is totally
8 irrelevant that that project even exists. There is no impact
9 on the flood plain. Even if it is designated flood plain,
10 what the HEC-II study has validated, it would not impact it.

11 And, that is why I asked that question earlier.
12 If his response was, "They did take the project into
13 consideration."

14 And, if the HEC-II study clearly, and
15 categorically showed that the project did impact, based on
16 the HEC-II study, in other words, it raised the flood way by
17 one or two inches -- I don't know what the limitations are in
18 the county -- then that would have been a significant impact.

19 But, in this case, because of the design
20 parameters of the HEC-II study, it is totally irrelevant.

21 COMMISSIONER WAN: That is why I was asking about
22 it, so I could understand that.

23 COMMISSIONER HOLANDA: Yes.

24 COMMISSIONER WAN: Okay.

25 There are two other questions I have, very

1 specific questions. First of all, the staff's proposal is
2 for -- claims that there are other solutions to the problem,
3 besides fill. Are you confident that the other solutions
4 would -- because this is just a minor -- this is a ponding
5 problem. This isn't a flood plain problem that needs to be
6 corrected here. How are you so certain that what you are
7 proposing will work to solve the ponding problem?

8 DISTRICT DIRECTOR DAMM: The staff would not take
9 the position that we are absolutely certain what will resolve
10 the ponding problem.

11 We have asked for some other ideas, and
12 alternatives, from the applicant. The applicant then
13 submitted the 750-cubic yard grading proposal as an
14 alternative.

15 What we did do is look at the proposal. We looked
16 at the slope that is adjacent to the roadway and the bridge,
17 and our recommendation is to allow the drainage on that
18 eastern parking lot, to be redirected in a way so that it
19 could be contained, and then directed along the toe of that
20 slope, in a concrete ditch, or some type of ditch, similar to
21 what the county did towards the end of the slope, near the
22 creek. And, it appeared to staff that that would work.

23 I think the applicant's engineer takes the
24 position that the slope is too flat, and that that may not
25 work. The bottom line is, we don't have any documentation

1 that it won't work. We have asked for alternatives. We just
2 don't have that.

3 COMMISSIONER WAN: Okay, and then the final
4 question I have has to do with this, whether this is
5 consistent with the Encinitas LCP, or not. You claim it
6 isn't, and the applicant says that it is.

7 Am I right in saying that that has to do with our
8 you define structure? Do you want to go into the ways that
9 you believe this is not consistent, because that is very
10 important here, is whether this is consistent, or not.

11 DISTRICT DIRECTOR DAMM: It would be the staff's
12 position that, obviously, based on our recommendation, that
13 the proposal is not consistent with the certified Local
14 Coastal Program, and it is really for two reasons: one, is
15 there are no structures in the commercial center that are
16 within the 100-year flood plain, that are in danger.

17 If you wish to consider the eastern parking lot as
18 a structure, then that is certainly a matter of
19 interpretation; however, that brings the second point, which
20 is that it was acknowledged when it was approved, that that
21 eastern parking lot may be subject to inundation.

22 So, yes, the drainage may have changed, but the
23 issue, with regards to that eastern parking lot, remains the
24 same: it is in the flood plain, and it is subject to
25 flooding. We, as the staff, would recommend that certain

1 drainage improvements could be made to minimize that
2 flooding, but there was always the acknowledgement that it
3 was within the flood plain.

4 CHAIR CALCAGNO: Okay, that question was answered.

5 I am going to --

6 COMMISSIONER WAN: I am going to put in an
7 amendment?

8 CHAIR CALCAGNO: You are going to put in an
9 amendment?

10 COMMISSIONER WAN: I would like to make an
11 amending motion.

12 CHAIR CALCAGNO: Well, I guess you could do that,
13 go ahead.

14 [MOTION]

15 COMMISSIONER WAN: I am going to amend the motion
16 to approve the project with the 750 -- the alternate grading
17 plan.

18 CHAIR CALCAGNO: Is there a "second"?

19 COMMISSIONER PAVLEY: Second.

20 CHAIR CALCAGNO: Okay, at this point, we are going
21 to go ahead and have roll call on the amendment.

22 COMMISSIONER STAFFEL: Mr. Chair, if I could
23 address this.

24 CHAIR CALCAGNO: Yes.

25 COMMISSIONER STAFFEL: To the applicant, now you

1 came forward today with the altered grading plan. Is that
2 acceptable to you? That is acceptable? The motion on the
3 floor is acceptable to you?

4 Simply, yes or no.

5 COMMISSIONER RANDA: Just simple.

6 MR. FLETCHER: As I stated before --

7 CHAIR CALCAGNO: Microphone, and introduce
8 yourself for the record. And, I think it has been stated by
9 the Commissioner to just answer, yes or no.

10 COMMISSIONER STAFFEL: Is that acceptable?

11 MR. FLETCHER: It really is not acceptable to me.

12 COMMISSIONER RANDA: Fine.

13 MR. FLETCHER: It is a compromise. We are still
14 continuing to be damaged. We still have a -- we have
15 abandoned our property to a drainage ditch.

16 Now, this property has utility. We would like to
17 continue to use it for future parking, for gatherings, for
18 all of the pictures we showed you for.

19 Now, if I have to go out of here with nothing,
20 otherwise, yes, we will take the alternate grading plan, but
21 I beseech you to realize that the amount of money, the amount
22 of time, to do this, let's do it right. The amount of yards
23 we are talking about are minuscule, compared to what has
24 already been put on the site.

25 COMMISSIONER RANDA: Thank you.

1 MR. FLETCHER: Now, that doesn't justify it, but I
2 hope you understand my position.

3 I would like to go home as much as you would, but
4 I do want to go with something that is reasonable.

5 My engineer, the City of Encinitas, after 12
6 months of hearings, 6 public hearings, all supported the
7 original plan.

8 COMMISSIONER RANDA: Thank you.

9 MR. FLETCHER: Now, I leave it in your good hands.

10 CHAIR CALCAGNO: Okay --

11 COMMISSIONER RANDA: You got it, okay?

12 CHAIR CALCAGNO: -- I think you made your point.

13 MR. FLETCHER: I will accept whatever --

14 CHAIR CALCAGNO: Commissioner Pavley, and then
15 Commissioner Wear.

16 COMMISSIONER PAVLEY: Just that I received from
17 the applicant, stating, that either one was acceptable, with
18 no qualifications, and one seemed to be less environmentally
19 damaging, and I certainly would support the alternate
20 remedial grading plan, as recommended by the applicant.

21 CHAIR CALCAGNO: Okay.

22 Commissioner Wear.

23 COMMISSIONER WEAR: Just a procedure item.

24 If the motion fails, we go back to the original
25 motion, is that correct?

1 CHAIR CALCAGNO: Then we go back to the original,
2 yes.

3 COMMISSIONER WEAR: Okay, thank you.

4 CHAIR CALCAGNO: Okay, roll call on the amendment,
5 which is basically supporting the modified plan.

6 SECRETARY GOEHLER: Commissioner Belgard?

7 COMMISSIONER BELGARD: No.

8 SECRETARY GOEHLER: Commissioner Flemming?

9 COMMISSIONER FLEMMING: No.

10 SECRETARY GOEHLER: Commissioner Giacomini?

11 [No Response]

12 Commissioner Pavley?

13 COMMISSIONER PAVLEY: Yes.

14 SECRETARY GOEHLER: Commissioner Randa?

15 COMMISSIONER RANDA: No.

16 SECRETARY GOEHLER: Commissioner Rick?

17 COMMISSIONER RICK: Yes.

18 SECRETARY GOEHLER: Commissioner Staffel?

19 COMMISSIONER STAFFEL: Yes.

20 SECRETARY GOEHLER: Commissioner Steinberg?

21 COMMISSIONER STEINBERG: No.

22 SECRETARY GOEHLER: Commissioner Wan?

23 COMMISSIONER WAN: Yes.

24 COMMISSIONER FLEMMING: Does it put it back -- I
25 don't know. Yes.

1 SECRETARY GOEHLER: Commissioner Wear?

2 COMMISSIONER WEAR: No.

3 SECRETARY GOEHLER: Chairman Calcagno?

4 CHAIR CALCAGNO: Yes.

5 SECRETARY GOEHLER: Six, three -- six, four.

6 CHAIR CALCAGNO: Okay, motion carries, and
7 actually the amendment supersedes the main motion, so as I
8 read it --

9 COMMISSIONER STEINBERG: We didn't vote on it.

10 COMMISSIONER RANDA: No, wait.

11 CHIEF COUNSEL FAUST: Mr. Chairman, you now have
12 the main motion --

13 CHAIR CALCAGNO: As amended.

14 CHIEF COUNSEL FAUST: -- right, as amended, now
15 before you --

16 COMMISSIONER RANDA: Wait, Mr. Chairman --

17 CHIEF COUNSEL FAUST: -- and this would --

18 COMMISSIONER RANDA: -- Mr. Chairman --

19 CHIEF COUNSEL FAUST: -- approve the entire
20 project --

21 COMMISSIONER RANDA: -- point of order.

22 CHIEF COUNSEL FAUST: -- if you approve it.

23 COMMISSIONER RANDA: Was that --

24 CHAIR CALCAGNO: We will let you have that point.

25 COMMISSIONER RANDA: -- vote six in favor of the

1 amendment?

2 CHAIR CALCAGNO: Correct.

3 CHIEF COUNSEL FAUST: Six in favor --

4 COMMISSIONER RANDA: And, that makes the --

5 CHIEF COUNSEL FAUST: -- of the amendment, four --

6 COMMISSIONER RANDA: -- amendment pass?

7 CHIEF COUNSEL FAUST: -- against, that is correct.

8 COMMISSIONER RANDA: Okay.

9 CHAIR CALCAGNO: Now, we are voting on the main
10 motion, as amended.

11 Roll call.

12 SECRETARY GOEHLER: Commissioner Flemming.

13 COMMISSIONER FLEMMING: Yes.

14 SECRETARY GOEHLER: Commissioner Giacomini?

15 [No Response]

16 Commissioner Pavley?

17 COMMISSIONER PAVLEY: Yes.

18 SECRETARY GOEHLER: Commissioner Randa?

19 COMMISSIONER RANDA: Yes.

20 SECRETARY GOEHLER: Commissioner Rick?

21 COMMISSIONER RICK: Yes.

22 SECRETARY GOEHLER: Commissioner Staffel?

23 COMMISSIONER STAFFEL: Yes.

24 SECRETARY GOEHLER: Commissioner Steinberg?

25 COMMISSIONER STEINBERG: Yes.

1 SECRETARY GOEHLER: Commissioner Wan?

2 COMMISSIONER WAN: Yes.

3 SECRETARY GOEHLER: Commissioner Wear?

4 COMMISSIONER WEAR: Yes.

5 SECRETARY GOEHLER: Commissioner Belgard?

6 COMMISSIONER BELGARD: Yes.

7 SECRETARY GOEHLER: Chairman Calcagno?

8 CHAIR CALCAGNO: Yes.

9 SECRETARY GOEHLER: Ten, zero.

10 CHAIR CALCAGNO: Motion carried.

11 DISTRICT DIRECTOR DAMM: That concludes the San
12 Diego items.

13 *

14 *

15 [Whereby the hearing was concluded.]
16
17
18
19
20
21
22
23
24
25

1
2
3 REPORTER CERTIFICATE
4

5 STATE OF CALIFORNIA)
6 COUNTY OF MADERA) ss.
7)
8)

9 I, PRISCILLA PIKE, Hearing Reporter for the State
10 of California, do hereby certify that the foregoing 55
11 pages represent a full, true and correct transcript of the
12 proceedings as reported by me before the California
13 Coastal Commission, August 14, 1996.

14 Dated: July 23, 1998
15

16 
17 PRISCILLA PIKE
18
19
20
21
22
23
24
25



BYRON WEAR

Deputy Mayor
SECOND 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.

EXHIBIT 9

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,

A handwritten signature in dark ink, appearing to read "Byron Wear". The signature is fluid and cursive, with a large initial "B".

BYRON WEAR

Deputy Mayor

BCC: Peter Fletcher

William B. Rick

October 9, 1998

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

SUBJECT: APPEAL #A-6-ENC 98-109

Commissioners:

The permit applicant, Mr. Peter Fletcher, has asked that I comment on this appeal.

I make these comments after a review of the original permit hearing transcript, City of Encinitas letter of September 28, 1998, and other applicable documents.

Further, my comments are made from my perspective as a sitting commissioner when, on August 14, 1996, the Commission permitted the grading of the subject property so as to remove a portion of Mr. Fletcher's holdings from the 100-year flood area.

It is clear from my examination of the documents and my own personal recollection that the Commission:

1. Approved the importing of 750 cubic yards of fill within the then existing floodplain;
2. Granted this permit knowing the grading would create additional building area; and,
3. Was placing no building restraint on the fill land.

Sincerely,

cc: Mr. Pete Fletcher

EXHIBIT 10

3576 Emerson Street, San Diego, California 92106

by
Fax

Patricia C. Randa
2019 Russell Street
Napa, California 94559
(707)224-8648

September 29, 1998

Members of the California Coastal Commission
California Coastal Commission
San Diego Coast Area
311 Camino del Rio North, Suite 200
San Diego, California 92128-1725

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

Dear Commissioners and Staff:

Recently, I have been advised that you will be holding the initial consideration of the appeal by the San Elijo Lagoon Conservancy at your October session in Oceanside, California, of the certified City of Encinitas approval of a building application by the applicant, West Village, Inc.

I have thoroughly reviewed the recent appeal, the August 14, 1996 Transcript of the hearing, the findings, as well as, a copy of the earlier permit issued to West Village, Inc. by the Commission when I was a member thereof, at the August 1996 Meeting in Los Angeles, California.

The applicant, West Village, Inc.'s earlier application is highly memorable to me, given that the applicant had taken the unusual step of requesting reconsideration of the application in July, 1996. We granted reconsideration to West Village, Inc. at our July 1996 session because of two issues, a new environmental study, prepared by Dudek and Associates, and an alternative grading plan for the site. The matter was reheard at our August 14, 1996 hearing.

I distinctly recall not being given by staff the approval by Fish & Game and the Army Corps of Engineers stating that this application for fill would not affected the creek nor flood plain. The application simply repaired a problem caused by the highway improvement which caused puddling in the parking lot of the City approved shopping center. Consequently, I was the maker of the motion to approve the applicant's original grading plan, seconded by Commissioner Byron Wear.

It is my understanding from review of the appeal filed by the San Elijo Lagoon Conservancy in August 1998 regarding West Village, Inc.'s subsequent application, that the Conservancy has mistakenly contended that the earlier permit restricted applicant's right to build on the site. This contention, in fact, is not correct. It must be remembered that the application then before us in August 1996 did not include a building, but was for grading purposes only. The 1996 application sought only to repair damage to the site caused by the construction of the San Diego County's public works project, the La Bajada Bridge. It would have been beyond the scope of the application reconsideration that was before the Commission at that time to discuss a building on the site.

I specifically recall that when I made the motion to approve the earlier project, that it was not my intention to include any limitations on the site regarding future development. This intention was consistent with my other actions on the Commission. Future development plans were properly left to the property owner through the local city planning agency should the applicant seek a subsequent application. In the meantime, the applicant would be permitted to grade and fill the property per the conditions stated in the permit that we approved. We understood that either grading plan would create a building pad as mentioned by the Conservancy during their presentation. We also understood that the

EXHIBIT 11

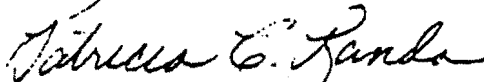
September 29, 1998

height of up to 100 feet of fill would have no impact on the flood plain nor creek. I had absolutely no problem with the application before us, and in fact would have adamantly and effectively opposed any effort to blindly restrict the property's future building plans as a condition of this grading application. That is why I am surprised by the erroneous contention of the Conservancy attempting to change the intent of a previous decision retroactively.

The major item of discussion at our August hearing was the question of which grading plan would be used. The original grading plan or the alternative plan submitted by the applicant as a basis for the July 1996 Request for Reconsideration. I remember, and have confirmed this from the transcript, that Commissioner Wan made an amendment to my motion, substituting the alternative grading plan for the original plan. Ultimately, the matter went to a vote to approve the alternate grading plan as the one to be used by the applicant on the site. If one reviews the permit, one sees that the alternate remedial grading plan by Nasland Engineering dated May 1996 was ultimately selected. The only other special condition placed on the site was that the applicant would implement the mitigation and monitoring program, as detailed in the August 9, 1996 Wetland Mitigation and Revegetation Plan prepared by Dudek and Associates.

Please include this letter as part of the testimony on any hearing that may result from this appeal. I appreciate the opportunity to comment on this matter and to ensure the accuracy of the record during my tenure on the Commission.

Respectfully submitted,


Patricia C. Randa

cc: Peter Douglas

bcc: Pete Fletcher

West Village Inc.

at Rancho Santa Fe

November 18, 1998

RECEIVED

NOV 18 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Members of the Coastal Commission
California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

Re: Appeal No. A-6-ENC-98-109

Dear Commissioners:

The following are Applicant, West Village, Inc.'s, comments in response to staff's recommendation contained in the staff report dated September 18, 1998, as well as to a November 13, 1998 meeting with staff planners Deborah Lee, Deputy Director, and her staff, Lee McEachern and Laurinda Owens, with reference to the above captioned matter to be heard at the December, 1998 meeting of the Commission.

1. Executive Summary

The narrow issue presented by the appeal of the San Elijo Lagoon Conservancy is whether the Encinitas Local Coastal Program (LCP) prohibits the development of property lawfully graded and filled pursuant to LCP Policy 8.2(b). The staff report in effect urges the Commission to adopt a new policy whereby property previously in the flood plain is forever subject to flood plain development restrictions, irrespective of changed conditions resulting in removal of the property from the flood plain including remapping by the Federal Emergency Management Agency (FEMA). This interpretation finds no support in the LCP. Furthermore, should the Commission choose to adopt such a policy, it nevertheless should not retroactively apply the policy to the property subject to this appeal.

Faced with no express LCP prohibition against development of non-flood plain property, the appellant and staff assert that the "intention" of the Commission in granting the August, 1996 permit to applicant necessary to raise a portion of the subject property out of the flood plain was to forever thereafter prohibit any further development of the property. Yet the permit contains no such restriction, nor does the transcript from the hearing support such a position. The Commission's standard practice is to require a deed restriction or open space easement when it intends to prohibit future development on property subject to a permit. Absent such an express restriction, a development prohibition may not be inferred.

In sum, the appeal lacks merit and should be denied.

2. No Substantial Issue Exists.

Applicant does not concede that there exists a substantial issue with respect to the appeal filed by the San Elijo Lagoon Conservancy. In the interest of brevity, due to the similarity of arguments

162 S. Rancho Santa Fe Road, Suite E-90, Encinitas, California 92024, (760) 436-6463

EXHIBIT NO. 9

APPLICATION NO.
A-6-ENC-98-109

Letter from Applicant's
Representative
w/attachments

California Coastal Commission

November 18, 1998

raised by staff with respect to the merits of the project and on the question of substantial issue, Applicant incorporates by reference the following substantive arguments in Applicant's objection to staff's recommendation that substantial issue exists. Applicant requests the opportunity to present its position on this issue to the Commission.

3. **Background.**

Applicant West Village, Inc. operates a neighborhood retail center on property located at the intersection of Manchester and Rancho Santa Fe Road in the incorporated City of Encinitas. During the course of construction of the project, multiple commercial/farm buildings were removed from the now graded proposed building site. (See 1983 photo and current 1998 site plan attached hereto as Exhibit 1.) Encinitas is a certified city with its own Coastal Commission approved Local Coastal Program. In 1994, the County of San Diego constructed the La Bajada Bridge immediately east of applicant's shopping center. This construction resulted in severe drainage problems to the center property, and corrective measures were required.

The Senior Planner for the City of Encinitas, Bill Weedman, suggested to applicant prior to the submission of application for corrective work, that should Applicant, down the road, be interested in building on the site, that the site plan and elevations for the proposed building be submitted at the same time as the proposed grading in order to minimize time and expense both to Applicant and to the city. Applicant proceeded on such suggestion. The City of Encinitas City Council approved the application in 1996, approving both the building and the grading, which at that time consisted of 1800 cubic yards of fill. A local environmental group, the San Elijo Lagoon Conservancy, appealed this prior project to the Coastal Commission after the council approval. The project was presented on its merits in August of 1996 and approved by the Commission. By the time of the August, 1996 hearing, Applicant had already deleted the building from the submittal, due to the delay caused by the appeal, as the tenant in question, Sunshine Gardens Nursery, had decided not to proceed with the project. Applicant, therefore had before the Commission in August, 1996 only the grading project, giving the Commission two alternative grading plans. The grading plan that was ultimately approved provided for approximately 750 cubic yards of fill. No building restrictions were placed on the site by the Commission. Attached hereto as Exhibit 2 is a copy of the 1996 permit issued to Applicant. As of the date of the filing of the instant application, Applicant had complied with all of the terms and conditions of the prior permit. The fill is in place and the property is ready for building construction. At the time of the earlier Commission approval, the building site was partially in the flood plain as defined by the then current flood plain maps of the Federal Emergency Management Agency (hereinafter FEMA). The Local Coastal Program of Encinitas permitted the fill of the site because the damage occurred incidental to a public works project - the La Bajada Bridge. LCP Policy 8.2(b) reads as follows:

"b. Development of circulation element roads, other necessary public facilities, flood control projects where no feasible method for protecting existing public or private

November 18, 1998

structures exists and where such protection is necessary for public safety or to protect existing development, and other development which has as its objective the improvement of fish and wildlife habitat."

It is important to note that the Encinitas Local Coastal Program does not restrict the subsequent use of property filled under Policy 8.2(b).

Subsequently, on or about November 10, 1997, FEMA, with the County of San Diego acting as lead agency, remapped the area surrounding the newly constructed La Bajada Bridge, including Applicant's property. Applicant's building site, formerly partially in the flood plain under the old maps, now has been declassified as flood plain property and is no longer in the flood plain under the new maps.

In 1998, Applicant West Village, Inc. submitted a second application to the City of Encinitas for purposes of construction of an office professional building on the site. The building is entirely consistent with the design and aesthetics of the existing Spanish-style shopping center. The prior coastal Commission permit approved August 14, 1996, on the earlier project, did not condition the prior approval to prohibit the placing of a structure on the site at some future date. The proposed one-story approximately 4390 square foot building was unanimously approved by the Encinitas City Council on or about August 12, 1998.

Helix Environmental Planning, Inc., the City of Encinitas's environmental consultant, has determined that the proposed office building will not propose a significant adverse impact on the environment, and recommended adoption of a mitigated negative declaration. Appellant, the San Elijo Lagoon Conservancy did not comment during the public review period allowed regarding the negative declaration prior to its approval. The subject site has a general plan designation of general commercial and is zoned general commercial, which allows office/professional/retail sales structures as "permitted by right" pursuant to Chapter 30.09 (Zoning Use Matrix). Subsequently, on or about August 28, 1998, the appellant, the San Elijo Lagoon Conservancy, filed the instant appeal with the California Coastal Commission.

4. Applicant's building site is not in the flood plain or subject to flood plain restrictions.

Coastal Staff previously asserted erroneously that Applicant's site was in the flood plain at the time of the September 18, 1998, staff report. Applicant has finally been advised by staff, as of November 13, 1998, that staff now accepts that the site is not in the flood plain. The question of whether the site was in the flood plain has also been independently reviewed. The County of San Diego Deputy Public Works Director, Douglas Isbell, submitted to staff the letter attached as Exhibit 3, to coastal staff on or about October 8, 1998. As stated, the County of San Diego agrees with Applicant that the site is not in the flood plain. The Department of Fish and Game, on or about

November 18, 1998

September 25, 1998, sent to coastal staff the letter attached as Exhibit 4, again advising the coastal staff that Applicant's building site is not in the flood plain. The Fish and Game letter was executed by Ronald D. Rempel, Regional Manager, Region 5. Fish and Game also states that Fish and Game has no environmental concerns regarding the project: "After review of the project related materials, the Department has concurred with the City that there will be no significant impact to wildlife or habitat from the project." After further analysis of this issue, including review of the foregoing evidence, Deputy Director, Deborah Lee, has now conceded that the building site is not in the floodplain.

It should be noted that the organization that actually owns the San Elijo Lagoon River Channel, the San Elijo Lagoon Foundation, the area that the Appellant San Elijo Lagoon Conservancy alleges to be "protecting" has no environmental objections to the application. The Lagoon Foundation, in fact, supports the project. See letter attached hereto as Exhibit 5. It should also be noted that the Applicant is prepared to donate three acres of adjoining property to the State of California Wildlife Conservation Board, upon the positive resolution of this application.

In addition, Senior Engineer Hans Jensen and Associate Planner Craig Olson of the City of Encinitas sent to Coastal Staff the letter attached as Exhibit 6 on or about September, 1998, again advising Coastal Staff that the property is not in the flood plain. They also stated that the Encinitas LCP bases its determination of flood plain on the FEMA maps. Section 30.04 of the Encinitas Municipal Code, Title 30 - Zoning, contains the following definition:

"Flood Plain. Flood plain shall mean the channel and relatively flat area adjoining the channel of a natural stream or river which has been or may be covered by flood water; 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 flood plains." (Emphasis added.)

The letter executed by Craig Olson with enclosures, including the memorandum from Hans Jensen, Senior Engineer, clearly state that the city relies on the FEMA maps of what property is classified as being within the flood plain of the City of Encinitas.

Applicant requests that the Commission rely on the opinion of the experts, i.e., the engineers of the City of Encinitas, the County of San Diego and the State of California, as well as the Applicant's own engineer and accept that Applicant's property is out of the flood plain. as a result of this finding, no flood plain regulations included in the Encinitas LCP are now applicable to the subject's building site.

Coastal staff has, however, continued to argue that because a portion of the property once was in the flood plain, it forever is subject to flood plain restrictions. However, this argument is without merit. Nowhere in the Encinitas Local Coastal Program is there any section which supports such contention. Based upon the 1997 FEMA maps and the definition of floodplain in the Encinitas LCP,

November 18, 1998

Applicant's property is out of the flood plain and is not subject to flood plain restrictions under the Encinitas Local Coastal Program.

5. There were no restrictions against subsequent development placed on the site by the 1996 Coastal Permit.

In the 1996 permit attached hereto as Exhibit 2, there is no language in the permit prohibiting subsequent development on the site. Applicant has spent approximately \$200,000.00 correcting the on site drainage and in preparing the site for a building. Applicant's intent to build on the site was known to the Commission in 1996. Attached hereto as Exhibit 7, is a copy of page 33 and 34 of the August 14, 1996 transcript providing the testimony of Andrew Morrow, who was the representative of the San Elijo Lagoon Conservancy, appellant, who advised the Commission that either grading plan that was before the Commission in 1996 would give Applicant a building site. This is, in fact, the case. It would not have been cost effective for Applicant to do the grading if the property could not be later developed. The Encinitas Local Coastal Program does not contain any provision that provides that property that was formerly in the flood plain at the time it was graded and filled remains flood plain after the Federal Emergency Management Agency remaps the area. Staff planners at the City of Encinitas as well as Applicant have thoroughly reviewed this issue and such authority simply does not exist. Coastal staff however continue to argue, without identification of supporting authority, to the contrary.

The Coastal Commission, in August of 1996 did not restrict future development on the site. Attached hereto are pages 41 through 55 of the August 14, 1996 transcript as Exhibit 8. This excerpt contains discussion by the Commission of the resolution that was ultimately adopted approving the project. As one can observe from a thorough review of the attached, no restrictions are imposed. The only substitution made was from the original grading plan proposed by Applicant to the alternate proposed grading plan, as well as a mitigation monitoring program for the small amount, of 240 sq. ft., of manmade wetlands created by the bridge construction, that were filled. No new fill or grading is being requested by this second application.

Attached hereto as Exhibits 9, 10 and 11 are letters from former Commissioners Byron Wear, William Rick, and Patricia Randa. Former Commissioner Rada was the maker of the original motion for approval of the project. Former Commissioner, San Diego Deputy Mayor Byron Wear, seconded the motion. William Rick was a Commissioner at the time, who contributed his vote to the unanimous vote in favor of the project, is a licensed engineer.

Byron Wear's letter dated September 15, 1998 contains the following language,

"The finding for approval did not include, as is now claimed by the appellant, any future restriction on building on subject site. As a matter of fact, in his testimony, the appellant's representative, Andrew Morrow, pointed out that approval of either grading

November 18, 1998

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."

Former Commissioner William B. Rick, in his letter of October 9, 1998, stated as follows:

"It is clear from my examination of the documents and my own personal recollection that the Commission:

1. Approved the importing of 750 cubic yards of fill within the then existing floodplain;
2. Granted this permit knowing the grading would create additional building area; and,
3. Was placing no building restraint on the fill land."

Patricia Randa, maker of the motion, has written a particularly extensive letter to the current Commission dated September 29, 1998:

"I specifically recall that when I made the motion to approve the earlier project, that it was not my intention to include any limitations on the site regarding future development. This intention was consistent with my other actions on the Commission. Future development plans were properly left to other property owner through the local city planning agency should the Applicant seek a subsequent application. In the meantime, the Applicant would be permitted to grade and fill the property per the conditions stated in the permit that we approved. We understood that either grading plan would create a building pad as mentioned by the Conservancy during their presentation. We also understood that the height of up to 100 feet of fill would have no impact on the flood plain nor creek. I had absolutely no problem with the application before us, and in fact would have adamantly and effectively opposed any effort to blindly restrict the property's future building plans as a condition of this grading application. That is why I am surprised by the erroneous contention of the Conservancy attempting to change the intent of a previous decision retroactively."

As is clear the foregoing three letters of former members of the Commission are consistent with the Applicant's position that Applicant's property was not restricted by the prior Commission approval in 1996.

November 18, 1998

6. Appellant San Elijo Lagoon Conservancy's appeal is in violation of the Encinitas Local Coastal Program.

When the San Elijo Lagoon Conservancy filed its appeal with the California Coastal Commission, the appellant did not notify the Applicant as is required under the Encinitas Local Coastal Program, Encinitas Municipal Code Section 30.80.160 (E). The failure to notify the Applicant of the filing of appeal is ground for dismissal of the appeal. Such paragraph reads as follows:

"E. The appellant shall notify the Applicant, any persons known to be interested in the application and the City of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s) or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Coastal Commission."


Based on the foregoing section, Applicant requests that the appeal be dismissed on procedural grounds.

7. Conclusion.

In sum, the only real issue before this Commission is whether the Applicant's project complies with the Encinitas Local Coastal Program. The staff or the Appellant have not raised any argument or pointed to any section of the Local Coastal Program whereby Applicant's project does not comply. The project is in full compliance with the Encinitas Local Coastal Program. Applicant's project has no environmental impact whatsoever. All staff's allegations applying flood plain regulations to the property are erroneous and inapplicable. Applicant asks that the Commission deny the appeal of the San Elijo Lagoon Conservancy and direct the project application back to the City of Encinitas for permit issuance.

Respectfully submitted,

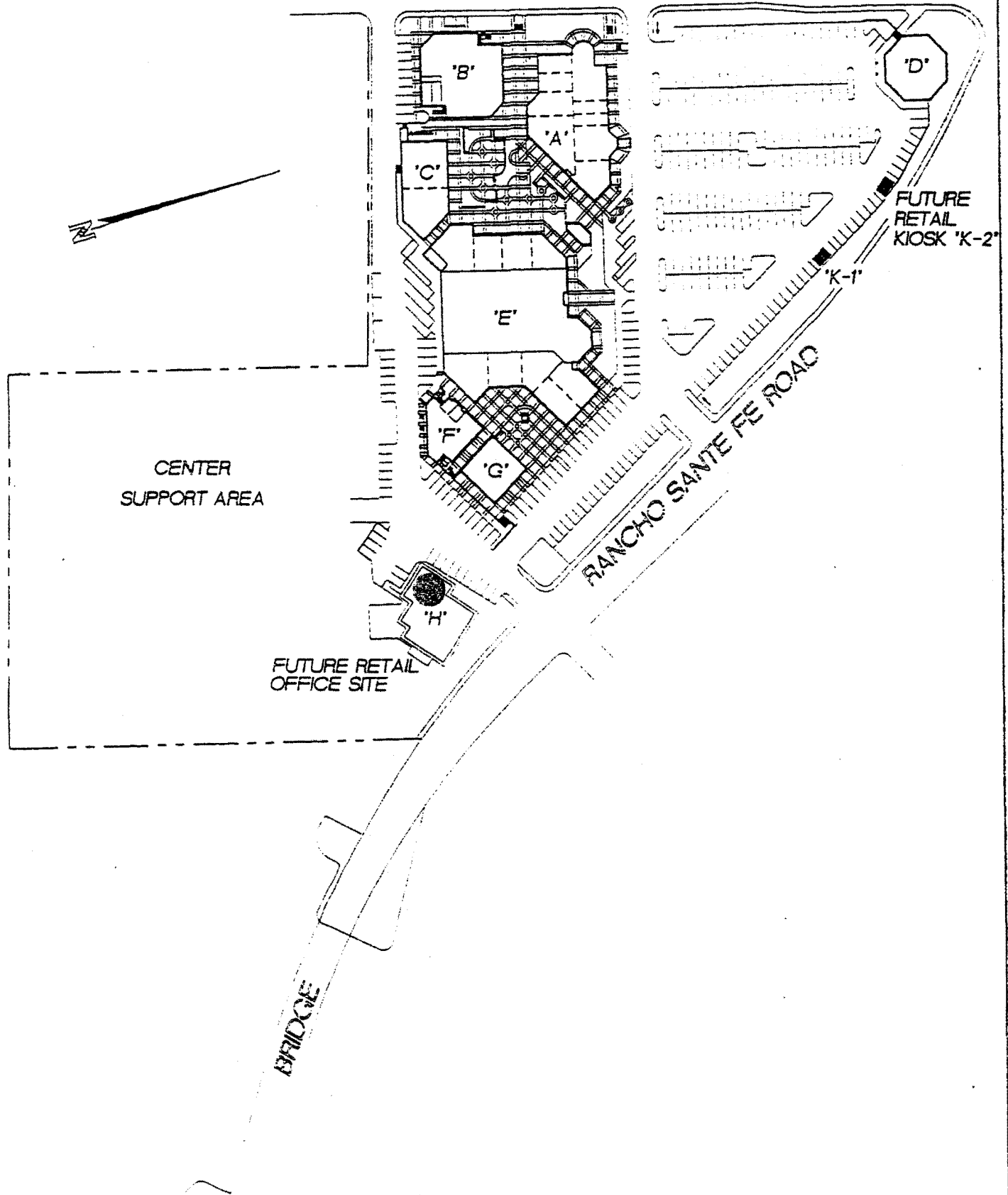
WEST VILLAGE, INC.



Anne Fletcher
Corporate Counsel

EXHIBIT "1"

MANCHESTER AVENUE



NASLAND ENGINEERING

CIVIL ENGINEERING • SURVEYING • LAND PLANNING
4740 Ruffner Street, San Diego, California, 92111 • 619-292-7770

WEST VILLAGE CENTER MASTERPLAN

REVISION	DATE	BY
ORIGINAL	11-23-97	DKN
UPDATE 3/98	13/27/98	DKN



Proposed "H" Building Site

COPY

RECEIVED

AUG 10 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

STATE OF CALIFORNIA
COASTAL COMMISSION

WEST VILLAGE, INC. &
PETER FLETCHER,
CITY OF ENCINITAS,
COUNTY OF SAN DIEGO

Application No. A-6-ENC-96-34-R
Reconsideration

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Friday
July 12, 1996
Agenda Item No. 8.a.

Waterfront Hilton Beach Resort
21100 Pacific Coast Highway
Huntington Beach, California

PRISCILLA PIKE
Court Reporting Services

39672 WHISPERING WAY
OAKHURST, CA 93644

TELEPHONE
(209) 683-87

EXHIBIT NO. 10
APPLICATION NO. A-6-ENC-98-109
Transcript from CCC Meeting 7/12/1996
California Coastal Commission

A P P E A R A N C E S

COMMISSIONERS:

Louis Calcagno, Vice
Rusty Areias
Ray Belgard
Nancy Flemming
Gary Giacomini
Fran Pavley
Patricia Randa
William Rick
Timothy Staffel
Arnold Steinberg
Sara Wan
Byron Wear

Bill Brennan, Transportation & Housing Agency
Victor Holanda, Trade & Commerce Agency
Craig Denisoff, Resources Agency

STAFF:

Peter Douglas, Executive Director
Ralph Faust, Chief Counsel
James Jordan Patterson, Deputy Attorney General
Chuck Damm, District Director
Lee McEachern, Coastal Staff Analyst

-o-o-o-

I N D E X T O S P E A K E R S

STAFF

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Chief Counsel Faust.....7,15,19

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Ann Fletcher, Representing the Applicant.....7,14,16,20

COMMISSIONERS

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Giacomini.....20,24
Rick..... 6
Staffel.....15,22
Wan.....13,18,24
Wear..... 22

ACTION

Motion by Wear..... 23
Vote..... 23

CONCLUSION..... 25

-o-o-o-

1 California Coastal Commission
 2 July 12, 1996
 3 West Village Inc./Peter Fletcher -- Reconsideration of
 4 Application No. A-6-ENC-96-34-R

5 * * * * *

6 CHAIR CALCAGNO: ...next item.

7 DISTRICT DIRECTOR DAMM: Yes, Mr. Chairman, the
 8 next item is the last item on the agenda for the matters from
 9 the San Diego office, and it is Item 8.a. It is a
 10 reconsideration request, and Lee McEachern of our San Diego
 11 office will be doing the presentation.

12 STAFF ANALYST MC EACHERN: Yes, this item involves
 13 a reconsideration request of denial of a permit by the
 14 Commission, replacement of 1800-cubic yards of fill, and
 15 construction of a 2000-square foot of retail structure, on an
 16 approximately 9-acre site, containing an existing 60,000-
 17 square foot commercial center in the City of Encinitas.

18 The Commission denied the project, which was
 19 brought before the Commission on appeal, because of its
 20 inconsistency with several provisions of the city's LCP.

21 Specifically, the Commission found that the 2000-
 22 square foot retail structure, and fill, which would include
 23 fill of wetlands and the 100-year flood plain, were not
 24 permitted uses under the LCP, within the wetland, or the
 25 flood plain. They did not represent the least

1 enviropmentally damaging alternative, and they were not
 2 needed to gain minimal reasonable use for the site, as the
 3 site had already been developed with a 60,000-square foot
 4 retail structure.

5 In addition, the Commission found that there were
 6 other alternatives available to address both the addition of
 7 square footage to the center, and to address the applicant's
 8 concern with on-site drainage, that did not include fill of
 9 the flood plain, or the wetlands.

10 The applicant's reconsideration request includes
 11 several reasons for reconsideration, none of which have been
 12 found by staff to meet the required grounds for
 13 reconsideration, and therefore staff is recommending denial
 14 of the request.

15 The grounds for reconsideration of a permit action
 16 are very narrow, and require the Commission to make a finding
 17 that either there is relevant new information, which in the
 18 exercise of reasonable diligence, could not have been
 19 presented at the original hearing; or, that an error of fact
 20 or law occurred, which has the potential of changing the
 21 initial decision.

22 The applicant's main contention is that they have
 23 had a new wetland study completed for the site, that
 24 concludes that a lesser amount of wetlands would be affected
 25 by the project, than the original wetlands study relied upon

1 by both the Commission and the applicant.

2 However, this is not grounds for reconsideration
3 in that the applicant could have had the new study completed
4 at any time prior to the May 7 hearing, when the Commission
5 denied the application, but they did not submit the new study
6 until after the Commission had denied the project.

7 In addition, although the new study does contain
8 differing information than the original study, it still
9 indicates that wetlands would be impacted by the project,
10 albeit by a lesser amount.

11 In summary, staff does not believe the applicant
12 has presented any relevant new facts or information that
13 could not have been available at the time that this matter
14 was heard by the Commission. In addition, the applicant has
15 not documented any errors of fact or law, but instead cites
16 the same provisions that were addressed and thoroughly
17 examined by the Commission at the time the project was first
18 reviewed.

19 Therefore, staff finds no grounds for
20 reconsideration, and recommends denial.

21 You can refer to your addendum packet for some
22 minor revisions to the staff report, and some changes.

23 This concludes my comments.

24 CHAIR CALCAGNO: Commissioner Rick.

25 COMMISSIONER RICK: Some of us were not here

1 during the hearing, and can we --

2 CHAIR CALCAGNO: The question has been asked, if a
3 Commissioner wasn't present during the hearing, are they
4 still able to participate in the reconsideration?

5 CHIEF COUNSEL FAUST: Through the chair.

6 The answer is, yes, the Commissioner who are
7 present today are eligible to participate in this matter.

8 CHAIR CALCAGNO: Legal counsel, on a
9 reconsideration, what is the proper procedure?

10 CHIEF COUNSEL FAUST: You would hear from the
11 applicant, who in this case is the person seeking the
12 reconsideration. You would, then, hear from any other
13 individual who may be interested, come back to the
14 Commission, and the appropriate motion is to reconsider, vote
15 "Yes", or "No."

16 CHAIR CALCAGNO: And, the only item we are really
17 listening to is to reconsider.

18 CHIEF COUNSEL FAUST: That is correct. If the
19 Commission chooses to reconsider, then it would be set for a
20 future Commission hearing, as a de novo permit item.

21 CHAIR CALCAGNO: Okay, thank you.

22 Peter Fletcher.

23 MR. FLETCHER: Mr Chairman, I am going to waive my
24 testimony and give my time to Ms. Ann Fletcher.

25 MS. FLETCHER: Ladies and gentlemen, members of

the Commission, in your folders, which are being carried over by the staff personnel, you have copies of our prior correspondence of June 3, and July, 1; the new wetlands study; letters of support from Senator Craven, Assemblyman Kaloogian, The Mayor of the City of Encinitas; a copy of Encinitas Zoning Code, Section 30.04; a letter from our project engineer, D.K. Nasland; the text of my presentation, as well; also, which I received this morning, a copy in the green addendum packet, a letter from our local supervisor Pam Slater, it is report of our reconsideration; and a letter of support from Tom Garaby, the director of San Diego County Public Works.

I will be brief in my comments. We are requesting a de novo hearing to be held at the August session. We will not review the merits of our project until that hearing; however, we feel that circumstances call for -- and we would like to utilize the reconsideration procedure, to allow you to review our new modified grading plan, which staff did not mention, and our new wetlands study, without requiring applicant to go through the entire planning process all over again.

As will be clear from the following, applicant does meet the test of Coastal Act 30627(b)(3) which is the section that was discussed, that there is relevant new evidence available which could not have been presented at the

prior hearing, or that an error of fact or law has occurred, which has the potential of altering the initial decision.

For the benefit of the new members of the panel, in 1994, the County of San Diego constructed the La Bajada Bridge across the eastern end of applicant's property, disrupting the service draining pattern at the east end of the center by elevating the road grade as much as 9 feet, and creating a drainage trough through the parking lot, and landscaped area.

At this time, staff and appellant, the San Alijo Lagoon Conservancy -- who I don't believe is here -- are no longer disputing that the drainage has been altered by the construction of the bridge. The issue remaining is how the problem is to be corrected.

First, as to the new wetlands study, the Dudek and Associates study, which you have. This study shows that only 240-square feet of wetlands would be affected, with the original plan, or with our modified plan, as opposed to 4600-square feet, as shown by the earlier studies. To consider it a lesser amount, I think, is somewhat minimizing the impact of the study. This effectively eliminates this issue for all practical purposes, with so little wetland affected.

Coastal Commission staff argues that we should have had this study performed earlier for the City of

1 Encinitas and other planning agencies, Fish and Game, Army
2 Corps of Engineers. The response to this is, "Why?" No
3 other agency opposed the project. In any event, the study
4 now exists, and should at least be reviewed by the
5 Commission, in order to insure that the record is complete,
6 and that this matter is given a fair hearing.

7 Secondly, we have the new alternative plan. We
8 received the May 1, 1996 addendum to the staff report, the
9 day of the last hearing, on the 7th. We were extremely
10 surprised by its contents. This addendum contains, for the
11 first time, an acknowledgement by staff that a drainage
12 problem existed. Prior to that addendum, the 4/18/96 staff
13 report contended that the county-installed drainage swale
14 made ponding no longer a concern.

15 Should we be given the courtesy of a de novo
16 hearing, D.K. Nasland, our project engineer, will be
17 available to discuss our alternative grading plan in detail.

18 Our new plan is a direct follow-up to the
19 suggestion by your staff at the May 7 hearing: the eastern
20 end of the parking lot be regraded, and repaved. Our new
21 plan reduces fill in the flood plain by 60 percent --
22 750-cubic yards of fill, versus 1800; reroutes the on-site
23 drainage back into the existing storm drain; and, deletes the
24 building altogether. This plan was not presented to staff,
25 even in preliminary form, until May 21, after the denial of

1 the project. We have a letter from D.K. Nasland, which is in
2 your folders, which clearly states this fact.

3 As to the Encinitas LCP policies 8.2, and 10.6,
4 copies of which are attached to our June 3 correspondence,
5 Resource Management, 10.6., provides a specific exception
6 which allows filling in the flood plain for restoration
7 purposes.

8 Secondly, land use element 8.2(b) allows for
9 filling in the flood plain, if it is in connection with
10 development of circulation element roads, other necessary
11 public facilities, flood control projects, where no feasible
12 method of protecting public and private structure exist, and
13 where such protection is necessary for public safety, or to
14 protect existing development.

15 As stated in our July 1 correspondence, to
16 narrowly define structures as buildings, is wrong, as too
17 narrow a view of that portion of the Encinitas LCP.

18 Also, in your folders, is that section of the
19 zoning code of the City of Encinitas, which was referred to
20 in staff's addenda for today's hearing, which, however, we
21 provided the complete text. It does not limit structures to
22 buildings, specifically, by the code. We should not be
23 required to have water flowing into the doorways of our
24 tenants retail stores, to allow us to have the drainage
25 problem corrected.

In any event, in the site area, we have two public sewer mains, the underground public water system, private and public storm drain systems, street improvements, curbs, driveways, manholes, gutters, the electrical system for the eastern end of the shopping center, and a major retaining wall with a stairway supporting F&G buildings in the shopping center, exceeding 6-feet in height.

In your folders, you have letters from Assemblyman Kaloogian, Senator Craven, one from the City of Encinitas, Mr. James Bond, who states the following in his letter of support:

"The project, and its environmental impacts, were thoroughly reviewed by the city, and findings were made that the project is consistent with all general plan, and local coastal program policies, as evidenced by City Council Resolution 9616. The project would result in an improved wetlands revegetation area, adjacent to the area of Escondido Creek, which was disturbed by the county's construction of the La Bajada Bridge. Grading is limited to a minimal area of the parcel."

Also, the staff report addendum, dated yesterday, continues to misread the 1984 plan approval. This plan approval -- which we have with us, if you wish to see the

original -- did not eliminate grading in the project site. It limited grading, to removing the then existing buildings, and installing the public storm drain system, both of which did require substantial excavation and fill in this area.

We therefore request that our request for reconsideration be granted, that this matter be set for future hearing.

Thank you.

CHAIR CALCAGNO: Okay.

Do you have a question, Commissioner Wan?

VICE CHAIR WAN: Yes, I have a question.

You say that you have a revised project plan?

MS. FLETCHER: That is correct.

VICE CHAIR WAN: Staff, is that a significant revision? the new project plan? are you familiar with the revision that they are talking about?

DISTRICT DIRECTOR DAMM: Staff is familiar.

We had a meeting with the property owners after you had denied the permit. They brought in a modified proposal, and it is a significant change. It reduces the grading --

VICE CHAIR WAN: Well, then --

DISTRICT DIRECTOR DAMM: -- by one-half --

VICE CHAIR WAN: -- then I have a question, because our reconsideration process is very narrowly defined.

1 You can't reargue this. We have already heard all of the
2 arguments.

3 But, you can reapply, with a new project, and that
4 would automatically come to us for review.

5 MS. FLETCHER: It would also take significant more
6 time and expense.

7 The point is, that this came directly out of a
8 staff's suggestion, out of an addendum we were not privileged
9 to see. Why should we have to go through the entire process
10 again, if this proposal solves the problem, and it is
11 acceptable to everyone?

12 VICE CHAIR WAN: Because that is not the
13 procedure. To go through reconsideration, we would have to
14 reconsider the original project.

15 If you want to change the project, make the change
16 and submit it, and then we can review it, and then we can --
17 that is the procedure. We are limited by law on what we can
18 consider -- reconsider. You can't reargue the whole issues
19 that we dealt with months ago.

20 MS. FLETCHER: There are a variety of reasons to
21 allow reconsideration.

22 One of which is new evidence, and the other one is
23 errors of fact or law. With the combination of all of the
24 factors that we have, there is a simple solution this
25 problem.

1 COMMISSIONER FLEMMING: And, that might be, but I
2 think Sara's point is well made, that at this point, if you
3 have a new project -- we would have to review the old
4 project, if that is what you are requesting.

5 MS. FLETCHER: What we are saying is we have this
6 amended solution.

7 COMMISSIONER STAFFEL: Madam Chair, maybe counsel
8 can respond.

9 Can we -- are we limited -- can we set a de novo
10 hearing for this, or can we not? I think that is the
11 question before us.

12 COMMISSIONER FLEMMING: Yes, that is the question.

13 CHIEF COUNSEL FAUST: Through the Chair.

14 Commissioner Staffel, this may deal with the
15 concern you are suggesting.

16 One thing that the Commission has sometimes done
17 in the past, in a circumstance such as this, is to -- there
18 is normally in your regulations, a requirement that there be
19 a six-month waiting period before a new application is filed.

20 COMMISSIONER FLEMMING: We could waive that.

21 CHIEF COUNSEL FAUST: You can waive that six-month
22 period, and effectively allow them to refile immediately,
23 which would get you to the same place, as granting the
24 reconsideration, but without torturing your procedures.

25 COMMISSIONER STAFFEL: Well, okay, now what does

1 that do, with respect to the local government approvals that
2 have already been granted, with respect to this project? I
3 mean, explain to me, do they have to go back with that, or do
4 they come in? is this a mitigation of the existing approval
5 from the local project that we are now reviewing? how does
6 that --

7 MS. FLETCHER: We would have to go back to the
8 city, again.

9 COMMISSIONER STAFFEL: See, that is my concern.
10 They might have to go back to the local entity, and go
11 through the process again, and I think that is what the
12 concern is, because this comes to us as part of an LCP, you
13 know, area, where a project has been approved, and I think
14 they might have to go through the whole local planning
15 process again.

16 CHIEF COUNSEL FAUST: Through the Chair.

17 Commissioner Staffel, I am not sure -- since I am
18 not as familiar with the details of the project as Mr. Damm
19 -- how significant a change this is, but presumably if it is
20 a significant change in the project, they will need, at some
21 point, at least, to go back to the local government for some
22 amendment, or something, in any event --

23 VICE CHAIR WAN: But, they don't have --

24 CHIEF COUNSEL FAUST: -- but you are right,
25 though, that at this point, if they went back with an

1 entirely new project, it might, because it is a certified
2 LCP, need to go back to the local government.

3 COMMISSIONER STAFFEL: Let me ask this: if this
4 proposal -- I am not familiar with it, because we just got
5 the material today, and I feel totally unprepared to deal
6 with the issue today, and I also was not here in April --
7 but, if this report and this material had been presented to
8 us at the hearing, where this matter was heard, could that
9 have been incorporated as a condition, or an amendment to the
10 existing project, at that point in time? I guess that is the
11 threshold question, because if it could have been, and then
12 probably we could have --

13 CHIEF COUNSEL FAUST: If the material had been
14 presented to you at that time, it would be part of the
15 overall record, which you are considering, and you could have
16 acted upon it in any way that you felt appropriate.

17 COMMISSIONER STAFFEL: Is that with --

18 CHIEF COUNSEL FAUST: You could have incorporated
19 it as a condition, made a decision based upon it, whatever.

20 COMMISSIONER STAFFEL: So, then we could have a de
21 novo -- so, now, you are saying we could, based on that
22 answer, we could set a de novo hearing.

23 MS. FLETCHER: This is a direct follow-up to a
24 suggestion --

25 COMMISSIONER STAFFEL: Based on that answer,

1 because we could have -- if this material, this information,
2 that we are presented, was presented at the time the original
3 project was set forth before this Commission, and we
4 incorporate that as part of the project, as an amendment, as
5 a condition, or whatnot, it could have been approved at that
6 time, and now they have new information which they claim was
7 unavailable at the time this was put forth, because of
8 staff's suggestions, and staff's reports, made at that
9 hearing.

10 I mean, I think, I am getting to the --

11 VICE CHAIR WAN: Tim, could that I say that you
12 are basically getting at the same thing that I am saying, in
13 the sense that, you know, this is -- all they have to do is
14 reapply. They don't have to go back to the local
15 jurisdiction first. They come to us initially.

16 At some point, if they change their project,
17 through us, then they will have to go back, but they will
18 have to do that regardless.

19 COMMISSIONER STAFFEL: I am not sure that that is
20 the answer. They may have to go back to the local entity --

21 VICE CHAIR WAN: First?

22 COMMISSIONER STAFFEL: -- at a minimum, perhaps
23 could we set this matter, and have a response to those
24 questions? And, maybe that could be the first threshold
25 question, whether we have a de novo hearing? whether we can

1 even consider the matter? so, that we can look at the
2 material, which we have just received today, and I have not
3 had a chance, or anyone has not had the chance to look at?
4 maybe we could do that? and, have the threshold question on
5 the de novo hearing, on whether we can even move forward at
6 that time?

7 And, the applicant fully understands that, so that
8 when the hearing is held, we have, in a sense, a bifurcated
9 hearing, and the first part of the hearing is whether we can
10 even proceed? is that possible?

11 CHIEF COUNSEL FAUST: Through the Chair.

12 The way to do that, would be to continue the
13 reconsideration, while you, and the staff, and everyone,
14 evaluated the new information, but still have the
15 reconsideration as the first item for discussion.

16 Once you grant the reconsideration, your
17 regulations then provide that you go onto a de novo hearing
18 on the underlying permit, itself, so that reconsideration is
19 the preliminary question.

20 If you want to save the preliminary question,
21 while you evaluate the material, the way to do that would be
22 to continue the reconsideration matter to your next meeting,
23 for example.

24 COMMISSIONER STAFFEL: And, the staff discussions
25 should center upon if this material had been presented at the

1 original hearing, could it have been incorporated into a
2 revised project, at that point in time -- I don't want to say
3 revised project -- into a mitigation plan at that point in
4 time, which would have allowed that project to go forward, or
5 at least be heard at that point in time, either up or down?

6 Do you understand the thrust of my comment?

7 CHIEF COUNSEL FAUST: I am not sure -- are you
8 asking Mr. Damm, factually? or are you asking me --

9 COMMISSIONER STAFFEL: I am looking at you. I am
10 not asking you, because I think it gets to the question of
11 whether, when this matter was first heard, whether we could
12 have incorporated it -- and, I don't know, because I don't
13 have the material -- and, if we could have, then we could at
14 least consider this, at a future hearing.

15 MS. FLETCHER: I would point out, that granting
16 reconsideration only gives us the opportunity to present --

17 COMMISSIONER GIACOMINI: Mr. Chairman.

18 MS. FLETCHER: --the modified project. It is not
19 an approval today.

20 CHAIR CALCAGNO: Okay.

21 MS. FLETCHER: It is only a procedural matter.

22 CHAIR CALCAGNO: We are going to have to have
23 order.

24 Commissioner Giacomini, and, then Commissioner
25 Wear.

1 COMMISSIONER GIACOMINI: I don't want to have more
2 grandchildren while we are debating this.

3 How long ago was this filed? the first one? how
4 many months ago?

5 MS. FLETCHER: It started back in the city over a
6 year ago.

7 VICE CHAIR WAN: No.

8 COMMISSIONER GIACOMINI: No, no, here. When did
9 we -- because it may be that the six months has passed.

10 MS. FLETCHER: It was approximately March.

11 COMMISSIONER GIACOMINI: What?

12 MS. FLETCHER: Approximately March of this year.

13 COMMISSIONER GIACOMINI: Well, pretty soon you can
14 come in with a brand new application.

15 I agree with Commissioner Staffel, you just gave
16 us all of this. You don't expect us to consider this today?
17 what you want us to do is to agree to have a hearing, right?

18 MS. FLETCHER: Correct.

19 COMMISSIONER GIACOMINI: Okay.

20 MR. FLETCHER: To consider it.

21 COMMISSIONER GIACOMINI: What I mean is, it is all
22 coming out to be the same, if they start -- if you ask for a
23 new hearing. I don't care if we reconsider it, or let them
24 start over again. In other words, it is coming out to be the
25 same thing. They could file a new application and --

1 COMMISSIONER WEAR: But, when could we reconsider
2 it?

3 COMMISSIONER GIACOMINI: In when? In August.
4 [General Discussion.]

5 DISTRICT DIRECTOR DAMM: If I may, the
6 complicating factor here is the City of Encinitas has a fully
7 certified Local Coastal --

8 COMMISSIONER GIACOMINI: Right.

9 DISTRICT DIRECTOR DAMM: -- Program.

10 COMMISSIONER GIACOMINI: Right.

11 DISTRICT DIRECTOR DAMM: The Commission denied the
12 project on appeal --

13 COMMISSIONER GIACOMINI: Right.

14 DISTRICT DIRECTOR DAMM: -- if they go back with a
15 new project, I think the logical course of action is they
16 would apply to the City of Encinitas. I think the applicant
17 has indicated that takes a long period of time.

18 There is the possibility then, they would be
19 appealed again to the Coastal Commission.

20 COMMISSIONER WEAR: Mr. Chairman.

21 COMMISSIONER STAFFEL: Excuse me, Mr. Chair.

22 You said the city denied on appeal. The
23 Commission denied on appeal, the city approved.

24 DISTRICT DIRECTOR DAMM: I am sorry. The city
25 approved, I just --

1 [MOTION]

2 COMMISSIONER WEAR: Mr. Chairman, why don't we
3 just make it real simple, and just move for reconsideration
4 next month?

5 COMMISSIONER STAFFEL: Second.

6 CHAIR CALCAGNO: There has been a motion for
7 reconsider -- well, first of all, let's close it to the
8 floor.

9 Commissioners, action?

10 [No Response]

11 A motion to reconsider, did I hear one?

12 [MOTION]

13 COMMISSIONER WEAR: Motion to reconsider.

14 COMMISSIONER STAFFEL: Second.

15 CHAIR CALCAGNO: It has been moved, and seconded.
16 Is there any further discussion?

17 [No Response]

18 Roll call.

19 SECRETARY GOEHLER: Commissioner Staffel?

20 COMMISSIONER STAFFEL: Yes.

21 SECRETARY GOEHLER: Commissioner Steinberg?

22 COMMISSIONER STEINBERG: Yes.

23 SECRETARY GOEHLER: Commissioner Wan?

24 VICE CHAIR WAN: No.

25 SECRETARY GOEHLER: Commissioner Wear?

1 COMMISSIONER WEAR: Yes.
 2 SECRETARY GOEHLER: Commissioner Areias?
 3 COMMISSIONER AREIAS: No.
 4 SECRETARY GOEHLER: Commissioner Belgard?
 5 COMMISSIONER BELGARD: Yes.
 6 SECRETARY GOEHLER: Commissioner Flemming?
 7 COMMISSIONER FLEMMING: Pass.
 8 SECRETARY GOEHLER: Commissioner Giacomini?
 9 COMMISSIONER GIACOMINI: No.
 10 SECRETARY GOEHLER: Commissioner Pavley?
 11 COMMISSIONER PAVLEY: No.
 12 SECRETARY GOEHLER: Commissioner Randa?
 13 COMMISSIONER RANDA: Yes.
 14 SECRETARY GOEHLER: Commissioner Rick?
 15 COMMISSIONER RICK: Oh, yes.
 16 SECRETARY GOEHLER: Commissioner Flemming?
 17 COMMISSIONER FLEMMING: Chuck, this will allow us
 18 to see the new project, is this correct? in a legal way?
 19 COMMISSIONER GIACOMINI: Start all over again.
 20 DISTRICT DIRECTOR DAMM: If the Commission grants
 21 reconsideration, then the applicant and staff can continue to
 22 negotiate over a modified project, that is correct.
 23 COMMISSIONER FLEMMING: Over the modified project.
 24 VICE CHAIR WAN: With a de novo hearing.
 25 COMMISSIONER FLEMMING: All right, yes.

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1 SECRETARY GOEHLER: Chairman Calcagno?
 2 CHAIR CALCAGNO: Yes.
 3 SECRETARY GOEHLER: Eight, four.
 4 CHAIR CALCAGNO: Motion carried, okay. Move for
 5 reconsideration passes.
 6 Next item.

7 *
 8 *
 9 [Whereby the hearing was concluded.]
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7 PETER FLETCHER,
8 CITY OF ENCINITAS,
9 COUNTY OF SAN DIEGO

Application No. A-6-ENC-96-34-R
Coastal Permit

10
11
12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13
14
15

16
17 Wednesday
18 August 14, 1996
19 Agenda Item No. 18.d.
20
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22

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Los Angeles, California

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EXHIBIT NO. 11

APPLICATION NO
A-6-ENC-98-109

Transcript from CCG
Meeting 8/14/1996

California Coastal Commis

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Rusty Arelas
Ray Belgard
Gary Giacomini
Fran Pavley
Patricia Randa
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Ralph Faust, Chief Counsel
Jamee Jordan Patterson, Deputy Attorney General
Chuck Damm, District Director

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STAFF

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1 California Coastal Commission
 2 August 14, 1996
 3 West Village, Inc./Peter Fletcher -- Coastal Permit
 4 Application No. A-6-96-34-R

5 * * * * *

6 CHAIR CALCAGNO: Next item.

7 DISTRICT DIRECTOR DAMM: Yes, Mr. Chairman, the
 8 next item is Item 18.d. and unlike all of the items you just
 9 heard, there is controversy regarding this item. The
 10 applicant is not in agreement with the staff recommendation,
 11 so staff will take just a few minutes to do the presentation.

12 This particular item involves a project that was
 13 appealed when the City of Encinitas approved a coastal
 14 development permit. It is Appeal A-6-ENC-96-34. This
 15 particular project, as approved by the City of Encinitas was
 16 for some 1800-cubic yards of fill within the 100-year flood
 17 plain of Escondido Creek, and also for the construction of an
 18 approximately 2000-square foot retail structure.

19 The site, itself, is a portion of a 9-acre site
 20 containing an existing 60,000-square foot commercial center.
 21 The commercial center is located at the southeast corner of
 22 Rancho Santa Fe Road, and Manchester Avenue, in the City of
 23 Encinitas, and following page 17 of your staff report, there
 24 are maps showing where this project is located, and you may
 25 want to refer to those maps, and the staff has a couple of

1 slides that we will show in just a minute to help the
 2 Commission, and assist the Commission, with regards to the
 3 site topography, and vegetation that exists.

4 In any event, in the way of background, the
 5 Commission has reviewed this project previously. It was
 6 before the Commission several months back, and at that time,
 7 the Commission denied this particular project. It was
 8 denied, due to concerns related to fill being placed in the
 9 flood plain. There was also some concern with regards to the
 10 existence of wetland vegetation.

11 Subsequently, the applicant filed a request for
 12 reconsideration, and at your hearing last month, the
 13 Commission granted that request for reconsideration. So,
 14 what you have before you today, is once again, the proposal
 15 that you reviewed previously; however, the applicant has
 16 since then modified the project to eliminate the proposed
 17 structure.

18 The applicant has also submitted a modified
 19 grading plan, which reduces the grading to approximately 750-
 20 cubic yards. And, essentially, as I understand it, the
 21 applicant is going to be requesting from you today, that you
 22 approve either one of the grading plans, the original 1800-
 23 cubic yards, or the revised 750-cubic yards alternative.

24 The staff, in reviewing this particular project,
 25 again, we reviewed both the 1800-cubic yard proposal, as well

as the 750-cubic yard proposal, and in doing that we believe that there are still conflicts with the provisions of the certified Local Coastal Program for the City of Encinitas.

The reason we believe there are conflicts is that the certified Local Coastal Program indicates that the only development that should occur within 100-year flood plain areas is development that is compatible with periodic flooding, and does not involve fill.

There is a provision in the certified Local Coastal Program that indicates exceptions can be made to allow fill within the 100-year flood plain where necessary to protect existing structures.

The commercial center that had been built was built pursuant to a coastal development permit that the Coastal Commission issued back in the mid-1980s. As part of that approval, it was required that there be no fill placed within the 100-year flood plain. The entire commercial center is at an elevation that is above the 100-year flood plain. It is not subject to flooding from Escondido Creek.

There is a portion of the parking lot -- and again, if you will refer to the exhibit attached to your staff report, it would be Exhibit No. 4 attached to your staff report. It shows what is referred to as the existing eastern parking lot, and then adjacent to that is shown the project site where the fill is proposed. That eastern

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parking lot, a portion of that is within the 100-year flood plain, and when it was approved, it was acknowledged that it was within the 100-year flood plain. It was also acknowledged that it may be subject to occasional water encroaching up on that portion of the parking lot.

But, none of the structures in the commercial center are within the 100-year flood plain, and that is the point that the staff wants to make, because we really believe that that is the critical factor in this request.

The Local Coastal Program indicates that the only time there can be an exception to allow fill within the 100-year flood plain is to protect existing structures. That portion of the eastern parking lot, as I mentioned, was always acknowledged as being within the 100-year flood plain, and was found to be compatible with periodic flooding. The structures, themselves, are not subject to any flood hazard.

The second point that the staff wants to make is with regards to wetlands. There is a small area of wetland on this property. The proposed fill will impact that wetlands. The applicant is proposing, and the City of Encinitas approved, the project with a mitigation plan to require replacement wetlands; however, the Local Coastal Program indicates that the wetlands, themselves, can only be modified consistent with Coastal Act requirements.

In this instance, with regards to this proposal,

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1 the applicant is indicating they believe that an exception
2 can be made to allow the wetlands to be impacted, because the
3 Coastal Act indicates that wetlands can be modified where it
4 is incidental to a public service use.

5 The County of San Diego recently built a new
6 bridge that crosses Escondido Creek. The applicant has
7 indicated that it is that bridge that has modified drainage
8 in a way that it is impacting their property that is
9 currently within the 100-year flood plain. The staff does
10 not necessarily disagree with that. We don't have a lot of
11 information that supports it, either, but we don't disagree
12 with it, because the bridge is elevated, and it probably has
13 modified the drainage somewhat.

14 But, we believe there are ways to resolve those
15 drainage problems that do not require the 750-cubic yards, or
16 1800-cubic yards of fill. We also believe that there are
17 ways to take care of the drainage problem that can be found
18 consistent with Coastal Act requirements, and LCP
19 requirements regarding wetland impacts.

20 The staff is recommending approval of this
21 project, subject to special conditions. I think the first
22 condition is the one that is of most concern to the
23 applicant. That condition would require the applicant to
24 modify the project to either delete the fill entirely, or to
25 minimize it in a way that it can be considered the minimum

1 necessary to take care of the drainage problem, and also be
2 considered incidental, as far as impacts to wetlands
3 associated with a public service, and that public service is
4 the road, and the bridge, itself.

5 We believe the fill, as currently proposed goes
6 beyond that, that this fill will remove an area from the
7 flood plain entirely, and that the impacts associated with
8 that are not allowed under the certified Local Coastal
9 Program.

10 That would conclude the staff's comments, other
11 than to answer any questions -- oh, I would note, in your
12 addendum packet, there is a letter that we have received from
13 a property owner downstream who has indicated that they have
14 a concern with the project.

15 That concludes our comments.

16 CHAIR CALCAGNO: Is the applicant --
17 Commissioner Giacomini.

18 COMMISSIONER GIACOMINI: Mr. Chairman.

19 Chuck, either I missed it, or you just didn't talk
20 about it: the difference between the application for 1800, as
21 compared to -- what did you say? 700? I mean, I have a
22 different feeling about those two, instinctively, but you
23 didn't seem to dwell on that. I mean, in other words, the
24 lesser one doesn't satiate staff's concerns, then?

25 DISTRICT DIRECTOR DAMM: That is correct. The

1 staff has evaluated both the 1800-cubic yard proposal, which
2 was the original proposal --

3 COMMISSIONER GIACOMINI: Right.

4 DISTRICT DIRECTOR DAMM: -- as well as the
5 alternative proposal of 750-cubic yards. Both proposals
6 involved removing a portion of the historic 100-year flood
7 plain, to an elevation above the flood plain, and both
8 involve wetland --

9 COMMISSIONER GIACOMINI: Okay, thank you.

10 DISTRICT DIRECTOR DAMM: -- fill.

11 COMMISSIONER GIACOMINI: Thank you.

12 CHAIR CALCAGNO: Commissioner Wan.

13 COMMISSIONER WAN: Chuck, has the staff looked at
14 -- or do you have any information about, if you put any -- if
15 there is fill put in the flood plain -- because I am looking
16 at the issue raised here -- fill put in the flood plain, the
17 impacts either downstream? or upstream? are you aware of what
18 those are?

19 DISTRICT DIRECTOR DAMM: At this point in time, we
20 do not have information that was made part of the file to
21 evaluate that.

22 CHAIR CALCAGNO: Mr. Fletcher, you have another
23 easel at your disposal, over at the side, here.

24 MR. FLETCHER: It is broken.

25 CHAIR CALCAGNO: Broken? okay, well, then that

ends that.

Is there any other Commissioner that has any
questions?

[No Response]

Staff?

[No Response]

None?

[No Response]

If none, we are going to open it to the applicant,
Mr. Fletcher -- Ann Fletcher.

MS. FLETCHER: Yes, we decided I am going to give
the prologue.

Afternoon, ladies and gentlemen, for the benefit
of the Commissioners not present at the May hearing on this
project, in 1994, the County of San Diego constructed the La
Bajada Bridge across the eastern end of applicant's property,
disrupting the surface drainage pattern at the east end of
the center by elevating the road grades as much as 9 feet,
and creating a drainage trough through the parking lot, and
landscaped area.

The staff, and the appellant, the San Alijo Lagoon
Conservancy, who have sent a representative, both acknowledge
the drainage problem.

At the last hearing on reconsideration, one of the
major reasons for granting reconsideration was our new

1 alternative grading plan.

2 The plan will be more thoroughly discussed by the
3 developer, Pete Fletcher, and civil engineer, D.K. Nasland.
4 This plan involves only 750-cubic yards of fill, over an
5 approximately 90x90-square foot area, outside of the existing
6 asphalt paving, as a direct follow-up of staff's previous
7 recommendation to us, that the eastern end of the parking lot
8 be regraded and paved to correct the undisputed drainage
9 problem.

10 Our new plan reroutes the on-site drainage back
11 into the existing storm drain. No building is involved in
12 this project. Purely, this project is one of remedial
13 grading.

14 In the area to be regraded is a multitude of
15 infrastructure of the lighting, sewer, and electrical systems
16 for the shopping center, as well as a major retaining wall
17 exceeding 6-feet in height, supporting F&G buildings of the
18 existing shopping center, all require protection from the
19 problem drainage. Pete Fletcher will describe to you,
20 subsequently, the specific location of all of these items, on
21 our exhibits, for purposes of clarity.

22 The staff had suggested, in their May 1 staff
23 report addendum, that the eastern end of the parking lot be
24 regraded and paved to correct the problem. We are in
25 agreement with this basic proposal; however, we disagree as

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1 to the engineering approach to be taken. Our licensed
2 engineer, D.K. Nasland, has developed two grading plans to
3 date, to solve the drainage problem: one requiring 1800-
4 cubic yards of fill, which has been approved by the City of
5 Encinitas; the second, the alternative plan originally
6 proposed by your staff, 750-cubic yards.

7 The one basic point of disagreement is that Mr.
8 Nasland contends this problem cannot be solved without some
9 fill in this area, but we appreciate that staff would prefer
10 no fill under any circumstances, however, legitimate.

11 Mr. Nasland will fully be able to explain the
12 engineering requirements of the corrective work that needs to
13 be performed, and the unworkability of the staff's current
14 position, that this problem can be corrected without fill.

15 What I would like to briefly touch on is that both
16 our grading plans are fully in compliance with the Encinitas
17 Local Coastal Program. This project is specifically the
18 result of the La Bajada Bridge project, a circulation element
19 road.

20 The key sections of the LCP that apply are Land
21 Use Element 8.2, and Resource Management Policy 10.6, both of
22 which you have in your folders I've handed out. Land Use
23 Element 8.2(b) specifically allows for fill in the flood
24 plain if it is in connection with development of circulation
25 element roads, other necessary public facilities, flood

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control projects where no feasible method of protecting existing public or private structures exist, and where such protection is necessary for public safety, or to protect existing development.

Structures, under the Encinitas Zoning Code, are defined in Section 3004 -- which definition I have also provided to you in the folders -- includes the following language, aside from buildings, defining structure as any piece of work artificially built up, or composed of parts joined together in some definite manner, which requires location on or in the ground, or is attached to something having a location on or in the ground. Again, I have provided the full text of 3004 for your review.

Encinitas found that this grading project was necessary to protect the existing commercial center from flood impacts, and was a project clearly associated with the development of a circulation element road.

No one is disputing that the drainage on this property was damaged by the La Bajada Bridge. In the absence of the bridge project, we would not be before you today.

Resource Management Element 10.6 of the LCP permits fill in wetlands for restoration purposes, if proper mitigation measures are provided. The City of Encinitas, and Coastal Commission staff, have found that the 1.5:1 mitigation ratio is sufficient for mitigation on this

project.

Subsequent to the July hearing, Dudek and Associates has completed their companion mitigation plan for the project, based upon the previously submitted Dudek and Associates delineation study. This mitigation plan fully addresses staff's request for mitigation and monitoring program to be prepared for a permit, as issued, and grading commences, regarding this project.

Please note, that only 240-square feet of manmade wetlands are impacted by this project, under either grading plan. You also have copies of the new Dudek study.

I would also wish to point out that this project is five miles from the coast, and at the very edge of the jurisdictional limits of this body.

Applicant, West Village, requests that you either approve the original grading plan, or the alternate grading plan, with the special condition that the wetlands mitigation shall be in accordance with the wetland delineation report for West Village Center, prepared by Dudek and Associates, dated May 24, and the wetland mitigation enhancement plan, also prepared by Dudek and Associates, dated August 9. I have taken the liberty of preparing a proposed resolution for your review and consideration, in the green sheet in your folders.

I would now wish to turn over our presentation to

1 Pete Fletcher. Thank you.

2 MR. FLETCHER: Chairman Calcagno, ladies and
3 gentlemen of the Commission, my name is Pete Fletcher. I am
4 the president of West Village, Inc., the applicant in this
5 matter.

6 On May 7, we appeared before you with a slightly
7 different proposal. At that time, we had extensive pictures
8 of a historical nature, which we have eliminated for this
9 presentation. I think what we have will be more than
10 adequate for the new members, who missed that presentation;
11 however, we do have all of those pictures here, in the event
12 that one of you may wish to review them, they are here.

13 The first exhibit I would like to bring to your
14 attention is this yellow and blue exhibit, which illustrates
15 the Commission's permits issued in the past, in 1984 and '94,
16 limits of that work.

17 What is being passed out to you now are some
18 photographs that I will bring up next in my presentation, but
19 we wanted you to have them. I'll wait a second, until we get
20 all of those in your hands.

21 [Pause in the proceedings.]

22 [Slide Presentation.]

23 Ladies and gentlemen, the yellow area is the 1984
24 grading permit that was issued by your body for West Village.
25 It is this area right in here.

1 This yellow area in here, is the 36-inch storm
2 drain that was laid at grade through here for the public
3 storm drain system, running from the west down into the
4 Escondido Creek to the east.

5 At that time, in 1984, 1850-cubic yards were used
6 in that fill, in this area, within this area right in here,
7 the subject area of this project, which is twice what we are
8 considering today.

9 The blue is the Ranchos County project, the Rancho
10 Santa Fe bridge, which was previously mentioned, which really
11 caused this problem for us. The area was raised at our east
12 driveway here, some 4 feet, and in this area, 9 feet, which
13 created a sandwich effect, between the storm drain -- this
14 public service project here -- the storm drain of '84, the
15 new bridge ramp of '94, and we created an isolated lower
16 pocket here, that is creating a drainage problem from on-site
17 drainage from the west. It flows back, and in this
18 direction, and makes a drainage trough of this whole area.
19 You will see that from some of those photographs.

20 This area, merely, is a part of your county permit
21 that restored the badger property across the way, which is an
22 area that has not been properly discussed here, but it is a
23 large commercial industrial area. Actually, there are some
24 three buildings in here. It has been raised about 18 inches,
25 work that we had hoped the county would perform for us also

on this site, under their permit, but it didn't work out that way.

The county, in doing this, deposited -- and I got this from Mr. Nasland, who will be talking later -- some 4000-cubic yards of fill in the flood plain, just in the area in front of West Village property. What you have got to understand is that this entire bridge area was built across our shopping center property, so we caught the brunt of this thing, and we need your help to get it fixed.

When you compare that 4000 yards that was approved and put in there less than 2 years ago, our 750 on the one plan, and 1800-cubic yards in the other, seems pretty small, particularly when you consider this area is only -- this is the edge of the asphalt -- this is only approximately 90x90 feet in here. It is like a little hole.

This already is at elevation 35, this area here. So, it is mounded. Parted of it is -- the area subject to inundation is 33.6, a good portion of this is already well above that.

This exhibit is an exhibit to show you the structures, that Ms. Fletcher was referring to, that exists within the project area. This area is the project area. This area, here, is the public storm drain system, we were talking about, that goes along the project area.

This is the edge of the asphalt parking lot right

now. And, this is the mound that shows up, the dry area right in here. Our eastern parking lot light, the standard is 20 feet tall, is right at this point. There is another one right here. This is our electric conduit running through the same area.

This is our main water line, the public -- the Santa Fe irrigation water line runs right through this same area. This is our water meter, and our private line, that extends through this parking lot, through here.

This yellow dotted line is the public's sewer line, with a manhole right here, almost in the center of the project area. This area is heavily involved with infrastructure.

At this point -- we can show you better on another plan -- we have a 6-foot wall, and some stairways, all within this project area, all have been impacted by the bridge project.

COMMISSIONER STAFFEL: Mr. Chair, while they change slides, I just have a question --

CHAIR CALCAGNO: Go ahead, ask the question.

COMMISSIONER STAFFEL: -- of the applicant.

I believe the testimony was that you contend that this proposal is, particularly in the grading issue you see there, that the fill there is consistent with the City of Encinitas LCP?

MR. FLETCHER: Yes, sir.

COMMISSIONER STAFFEL: And, staff, our position is -- or the position of staff is that it is not?

DISTRICT DIRECTOR DAMM: That is correct.

COMMISSIONER STAFFEL: Do we have anything from the City of Encinitas, other than -- I know we have in the file their approval, but do we have any letter from them, or anything, with respect to that issue.

MS. FLETCHER: Yes, it appeared at the May hearing in 1994 --

MR. FLETCHER: And, they fully documented the compliance. It has been done over and over, but staff, there is apparently a difference of opinion, and they choose to not accept what we feel is clearly there for this specific purpose.

COMMISSIONER STAFFEL: Staff, we have a copy of the 1984 staff report in our file, was that prior to the certification of the LCP for the City of Encinitas?

DISTRICT DIRECTOR DAMM: Yes, it was.

COMMISSIONER STAFFEL: Thank you.

MS. FLETCHER: The LCP was certified about two weeks after the --

CHAIR CALCAGNO: You are going to have to get that comment on the record, if you want it to be -- introduce your name, please.

MS. FLETCHER: Ann Fletcher.

Our project was submitted to Encinitas two weeks after the Encinitas LCP was certified.

CHAIR CALCAGNO: Thank you.

MR. FLETCHER: Yes, we had originally applied to your San Diego office for an administrative permit, and were rebuffed, so we went onto the City of Encinitas, per their direction, and here we are, at this point.

The next thing I would like to draw your attention to are some photographs that were taken in 1995. We call it group 3, the top photograph shows you the shopping center. The blue dot is about the center of this project area.

This very extensive agricultural, commercial, rental, owned by the Badger family is right across the way. It is half the distance to the Escondido Creek, than where we are. It has been somewhat mischaracterized. We are 350 feet from Escondido Creek. And, I think this is an admission that should not have been made. We are not intruding into a pristine area. We are within the shopping center, existing shopping center area, as it is.

This is a picture showing the problem as the result of this 4-foot increase in our delivery and eastern driveway. This was after one of the first rains last November, and it just, as I say, is using our property as a drainage trough.

1 The bottom one, picture C, shows you the 4-foot
2 increase in elevation. The county installed this new
3 driveway, as part of the bridge ramp. They didn't go in far
4 enough, really. The whole driveway was supposed to have been
5 done by them to avoid this situation.

6 This number 4 is a shot I took within the last
7 month from building F, one of our buildings, showing the
8 project area, or at least part of it. The parking area now
9 drains in a northern direction here, and then it drains,
10 actually, from the street in here, and everything shoots
11 right down to the east, along this mammoth earth mound they
12 have put in here, which is very well illustrated by this
13 right picture, which is not meant to show you volumes of
14 water, but patterns of water flow. This is what our
15 engineers have been dealing with.

16 This is what they told the county in 1992, would
17 happen when we saw the first plans, and they were right on.

18 CHAIR CALCAGNO: We are going to give you just a
19 few more minutes, to conclude here.

20 MR. FLETCHER: All right, that is about all we
21 need, too. We will be concluding in a minute.

22 These are the two plans that we have before you.
23 This is the plan that you saw at the last reconsideration
24 hearing, that utilizes about 750 feet of fill in the, quote,
25 flood plain.

1 This is the original plan that went through six
2 hearings in Encinitas, and is approved. We much prefer this
3 plan, because it does a better job of restoration. It is
4 better engineering. But, I will let Mr. Nasland handle that.

5 At this time, I would like to turn the meeting
6 over to our civil engineer, and he has some more information
7 for you.

8 CHAIR CALCAGNO: Yes, if you can do it sort of
9 speedily, and to the point. I think the Commission has
10 pretty well got a picture of what you are presenting.

11 MR. NASLAND: Thank you. My name is D.K. Nasland.
12 I am a registered civil engineer in the State of California
13 since 1981. I am going to abbreviate what I have to say
14 here.

15 There have been hydrology studies prepared
16 specifically for this site. In 1992, as part of our original
17 design, which is this plan here, we submitted a site-specific
18 hydrology study to the City of Encinitas.

19 In addition, the County of San Diego, in
20 performing their bridge project, commissioned Dr. Howard
21 Chang to prepare a HEC-II study. That HEC-II study does
22 include the area of the project we are proposing, in their
23 study. As part of their HEC-II study, this area shows in an
24 area of non-influence. It shows in an area that any grading
25 activity will not affect the hydrology, or the flood plain

1 elevations, as the result of the grading that goes on in
2 there. That is important to know. Somebody asked the
3 question earlier, "Will this grading that we are proposing
4 affect the flood plains?" According to the HEC-II study, it
5 will not.

6 The staff has acknowledge that there is a drainage
7 problem, and it shows pretty well in the photographs. This
8 one photograph, on B, shows a very large pond. The county,
9 after they realized that they had a problem with a bridge,
10 came and installed 65 feet of a very flat 3-foot swale. The
11 swale has not worked. The swale collects water, and still
12 retains a pond. It is not as extensive, but there still is a
13 pond in that area.

14 Staff's proposal is to extend further into the
15 project, the swale, while the outlet end of it isn't letting
16 the water out, so extending that swale isn't going to improve
17 the conditions that we have on the site, at all.

18 One of the other suggestions was that we just fill
19 the hole. If we filled that hole, as shown by the pond in
20 this photograph, all that is going to happen is that we are
21 going to have a flat pad there, and the water is still being
22 retained on the lower end. What has to happen is that we
23 have to have a positive slope, in order to get drainage,
24 positive drainage, out of this area.

25 Our alternate proposal is shown here, and what we

1 have done is we have brought this parking lot grade up, so
2 that all of the water that does enter from the street, and
3 that does enter from the rest of the project, goes into an
4 improved storm drain here, and we take this down,
5 approximately, to the end of the county-installed storm drain
6 which comes off of the new bridge project.

7 The fill that we show on top of it, is minimum
8 coverage, about a foot of cover on top of the pipe, and then
9 we are carrying that straight across, so that all of the
10 remaining surface drainage just flows out to the same
11 location down here.

12 So, in my opinion, this is a minimum project, that
13 is necessary to solve the drainage problem.

14 COMMISSIONER WAN: Are you saying that the 1800-
15 square foot one is the minimum?

16 MR. NASLAND: No, Ma'am, the 750.

17 COMMISSIONER WAN: Okay, all right, then I am --

18 MR. NASLAND: This is the 1800-square foot one --

19 COMMISSIONER WAN: Okay.

20 MR. NASLAND: -- what the 1800-square foot one
21 does here, you can see the difference, is there is a pad
22 here.

23 What we did is we collected all of the water in
24 this plan, and collected it in a storm drain, and put it out
25 through an energy dissipater here, which is at the outlet of

1 the existing 36-inch pipe. We built a new head wall on the
2 end of that pipe, outletted it through an energy dissipater
3 here, and we have a slope, a 3:1 slope right here. The
4 reason this is drawn back so far was because we wanted to
5 stay away from the flood wave line.

6 This one, we've moved it out to an area where we
7 know we have positive drainage, because we have experienced
8 it now for a couple of seasons, since this bridge has been
9 completed, and we put in the minimum amount of fill that we
10 think -- the minimum of cover, and it is going to be fill in
11 this area, on top of that pipe, in order for the project to
12 drain properly. This is not a pad. This is a slope.

13 COMMISSIONER HOLANDA: Mr. Chairman.

14 CHAIR CALCAGNO: Commissioner Holanda.

15 COMMISSIONER HOLANDA: You made reference to
16 HEC-II. Was the HEC-II accomplished, taking into
17 consideration the project? or without the project?

18 MR. NASLAND: Let me answer that by defining what
19 the HEC-II study covered.

20 The HEC-II study covered an area that was studying
21 specifically the construction of this bridge project.

22 COMMISSIONER HOLANDA: Okay.

23 MR. NASLAND: And, when you are drawing your
24 cross-sections, when you are determining where your flood
25 waters are going to be on a project such as this, you have

1 got a certain area that there is no influence from whatever
2 the elevations are outside of it, because of the velocities
3 of the waters --

4 COMMISSIONER HOLANDA: Right.

5 MR. NASLAND: -- and the amount of flow.

6 From here, which is about where the bridge
7 abutment is -- I don't know whether you can see that -- but,
8 from about here, which is closer to the creek from where our
9 project is, you come out at about a 45-degree angle through
10 here. Everything on this side of that 45 degree angle, is an
11 area of no influence. So, if we built this 100 feet in the
12 air, it would have no influence on the hydrology of the
13 river, according to that HEC-II study.

14 COMMISSIONER HOLANDA: Okay, so, the answer is it
15 was not taken into consideration?

16 MR. NASLAND: My answer is it was taken into
17 affect, because it specifically excluded, because it won't
18 have any influence, it is taken into affect.

19 COMMISSIONER HOLANDA: Okay, but even if the
20 project did not exist, it would not have any influence,
21 whatsoever, on the HEC-II study?

22 MR. NASLAND: Correct.

23 COMMISSIONER HOLANDA: Thank you.

24 CHAIR CALCAGNO: Okay, any other questions?

25 COMMISSIONER STAFFEL: Mr. Chair.

1 CHAIR CALCAGNO: Go ahead, Commissioner.

2 COMMISSIONER STAFFEL: A couple of questions,
3 really.

4 You know, this issue is really coming back to us,
5 and I guess my question is this, and a question for staff, I
6 have been handed a copy of the April 4 letter from the City
7 of Encinitas, which answers many of the issues that are
8 directly in contention with the special conditions that are
9 being set forth, and also missing from, I guess, my file, but
10 I wonder if from the staff's file, I understand, and maybe
11 the applicant can respond to this, but are there materials
12 from the Army Corps of Engineers? and the Department of Fish
13 and Game? do we have letters from them?

14 MR. NASLAND: Yes, we do.

15 COMMISSIONER STAFFEL: Is that in our substantive
16 staff file? I don't see it listed on the staff report?

17 DISTRICT DIRECTOR DAMM: I am not sure about the
18 Army Corps letter, but certainly, the Department of Fish and
19 Game review.

20 COMMISSIONER STAFFEL: Does the Army Corps render
21 an opinion, with respect to this grading issue?

22 MR. NASLAND: The Corps issued a conditional
23 approval, based upon Coastal Commission approval.

24 COMMISSIONER STAFFEL: Okay, and what about Fish
25 and Game?

1 MR. FLETCHER: I think I best can answer this.

2 We have a waiver letter from Fish and Game. They
3 came out and the Fish and Game was concerned about stream bed
4 alteration. We do not come under their jurisdiction;
5 however, just as a precaution, the City of Encinitas had the
6 Fish and Game come out and check the project. That report is
7 clearly in the City of Encinitas' report before you.

8 The Army Corps of Engineers issued their
9 nationwide permit two years ago, February, on this project.

10 In addition, we have a letter from the director of
11 the public works department of the County of San Diego,
12 stating that they are in support of this project. They feel
13 that it will only help the hydrology of the area. We also
14 have -- in fact, I have a copy of that letter before me. The
15 county did hydrologic studies, in order to prepare that
16 letter. They don't send those letters every day.

17 The City of Encinitas ran their own calculations
18 through their engineering department, before approving this
19 project. They offered to make those studies available to
20 your staff. The last time I checked, your staff has never
21 taken them up on this, to go out and look at those studies.
22 But, this has been studied to death.

23 COMMISSIONER STAFFEL: Well, I guess the question
24 I have is, you know, really on the issues, and the special
25 condition issue as set forth. This material is far more

1 relevant, and you know, important to Commissioners like me,
2 on this, then you know, staff reports, and anything else.

3 I guess, from the applicant's standpoint, I fail
4 to understand why that wasn't submitted, or if it was, why it
5 wasn't here. And, from the staff's standpoint, why the
6 subsequent file material, if there was subsequent file
7 material, I mean, this is missing, and it is very --

8 MR. FLETCHER: Mr. Chairman, maybe I can --

9 COMMISSIONER STAFFEL: No, actually, I am asking
10 questions of --

11 MR. FLETCHER: -- answer that. Maybe we erred --

12 COMMISSIONER STAFFEL: -- staff --

13 MR. FLETCHER: -- in not repeating our entire
14 presentation, which was long enough. It contained copies of
15 all of these approvals, and letters of support.

16 I realize now that there are three or four of you
17 who were not here at that time, and but all of that is
18 available. It is well known to your co-chairman.

19 COMMISSIONER DENISOFF: Well, I don't think we are
20 looking at you. We are looking at staff.

21 COMMISSIONER RANDA: Yes.

22 COMMISSIONER DENISOFF: I mean, this should --
23 this was in -- the Fish and Game letter, I know, was in the
24 last packet, though it is not in this one. The City of
25 Encinitas' letter was in the last packet, and it is not in

1 this one. So, we are not looking at the applicant for fault
2 here.

3 COMMISSIONER STAFFEL: I am just trying to say,
4 for today's proceedings, you know, I am looking very narrowly
5 at the special condition issue, which is really, to me, the
6 focus here, and this stuff is enlightening.

7 And, really to me, it is going to get down to an
8 issue: we have a difference of opinion between the City of
9 Encinitas and their LCP, and how our staff feels whether it
10 complies with the LCP. And, let's get right to it, on this
11 grading issue.

12 You also have the Army Corps rendering its
13 opinion, which is relevant, and you know, I guess I just want
14 to get right to that point, quickly.

15 CHAIR CALCAGNO: Okay.

16 Any other questions?

17 Commissioner Pavley.

18 COMMISSIONER PAVLEY: And, you might have answered
19 this -- when the county constructed the bridge, and created
20 the problems on your property, what were their mitigating
21 measures, or solutions to rectifying that problem?

22 MR. FLETCHER: The county offered, on two
23 occasions, to do the remedial grading work, in accordance
24 with the plan that our project engineer, who you have just
25 heard from, prepared.

1 We prepared the first sketch of that in '94. We
2 had two written offers from them to perform this work, but
3 after they received their permit from you folks in '94, they
4 decided they did not want to reopen their permit. Instead,
5 we settled our arguments in litigation with them, and they
6 provided funds for this work that we are proposing --

7 COMMISSIONER PAVLEY: So, you were --

8 MR. FLETCHER: -- and we now hold --

9 COMMISSIONER PAVLEY: -- compensated by the
10 county, for your loss of property?

11 MR. FLETCHER: No, not for loss of property, just
12 for the repair work --

13 COMMISSIONER PAVLEY: Repair work.

14 MR. FLETCHER: -- the remedial grading work.

15 We were very disappointed, and I let them know
16 that when they didn't include it with the work they did for
17 Mr. Badger, across the street. It would have all been taken
18 care of.

19 Now, I have to go, as a private developer, go
20 through the entire environmental permit process. It has been
21 extremely expensive, in your time, and our own, and in our
22 dollars, and the state's dollars. It just is incredible to
23 me that this could have happened.

24 But, it is not because we didn't have it before
25 them all of the time. They just didn't want to have to

1 reopen their permit --

2 COMMISSIONER RANDA: Mr. Chairman.

3 MR. FLETCHER: -- and delay the bridge.

4 COMMISSIONER RANDA: Mr. Chairman.

5 CHAIR CALCAGNO: Commissioner Wan.

6 COMMISSIONER WAN: Before I proceed, is the public
7 hearing closed? or, is this the --

8 CHAIR CALCAGNO: No. The public hearing -- in
9 fact, we have other people.

10 COMMISSIONER WAN: Okay, then I will wait.

11 CHAIR CALCAGNO: This is questions of the
12 applicant.

13 COMMISSIONER WAN: Then I will wait.

14 CHAIR CALCAGNO: Okay.

15 If there is nothing more from the applicant, we
16 will have Andrew Morrow come up, I believe.

17 MR. MORROW: Thank you, Mr. Chairman.

18 CHAIR CALCAGNO: You might have to come back up
19 for questions, later on.

20 MR. FLETCHER: Would you like us to leave the
21 exhibits here?

22 CHAIR CALCAGNO: You can leave them there.

23 MR. FLETCHER: Yes.

24 MR. MORROW: Thank you, Mr. Chairman,
25 Commissioners, I am Andrew Morrow. I live in Encinitas, and

I am a member of the board of the San Alijo Lagoon Conservancy.

San Alijo Lagoon Conservancy, a party of record in this matter, continues to urge the Commission's denial of this project, as now proposed. While we applaud applicant's attempt to at least partially address Conservancy concerns with the reduction in project scope, the project, even as apparently redefined, still involves an import of fill into a coastal wetlands, and into the 100-year flood plain.

While it is argued by the applicant that the reduced amount of flood plain fill would have a minimum impact on downstream hydrology, the requirement at issue is simple: the least environmentally sensitive alternative should be selected.

It can also be argued that the 750-cubic yards of fill now proposed by applicant, or 75 large truck loads of dirt, hardly constitutes a minor amount of fill.

Additionally, applicant would have the Commission approve a grading plan which would still create a building pad within the flood plain, raising the issue of ultimate intent.

The Conservancy agrees with the Commission staff's contention that additional alternatives exist which should first be considered.

Applicant asserts, but has made no attempt to

demonstrate how the potential for flooding and property damage to the existing development at the site has, in fact, been exacerbated in any way by the county's construction of the La Baja Bridge adjacent to the applicant's property.

The possibility of flooding and property damage was previously acknowledged by the applicant, who accepted the risk as a condition of the coastal development permit previously issued.

Applicant faces no added exposure to his buildings, and consequently there should be no sense of urgency or obligation by the Commission to grant applicant's request to compromise the provisions of the Coastal Act, which protects this wetlands resource.

The Conservancy feels that this project should not receive the requested special consideration for relaxation of restrictions against wetlands and flood plain fill, in part, because of its upstream location from the San Alijo Lagoon Ecological Preserve. Any localized, on-site, impacts to the development would be magnified by the cumulative impacts downstream.

There are many additional parcels of privately held land within the flood plain of the Escondido Creek watershed. The Conservancy is fearful that approval of this project as proposed by applicant could lead to a surge in demand for fill and development permits on other private

property holdings along the watershed. The cumulative affect of several minor projects, such as this, would eventually prove catastrophic to the fragile habitat.

Applicant has been fairly treated in this manner. He received just financial compensation for the impact on his existing holdings when the county constructed the bridge. The relatively minor impact of additional sheet flow, and ponding of runoff on his property, as a result of the bridge project, can be addressed in a number of alternative solutions, which do not involve fill and development within the wetlands and flood plain.

Applicant has simply been seeking to realize an economic windfall by affecting a significant improvement to a portion of his property, which he had previously agreed to leave out of his development footprint.

The Conservancy urges the Commission to accept the staff recommendation, which supports approval of the less environmentally sensitive solution to the issue of drainage on the subject property.

Thank you.

CHAIR CALCAGNO: Okay, thank you.

At this time we are going to close it to the floor.

Staff, comments?

DISTRICT DIRECTOR DAMM: Thank you, Mr. Chairman,

just very briefly. because I think the issues have been explained fairly well.

The thing I did fail to mention to the Commission is that the reason for the permit history, with regards to prohibiting fill within 100-year flood plains, as well as strong language in local coastal programs, is that -- at least in the Southern California area -- there has been a very strong tendency to fill in those flood plains.

The staff's position has been -- and the Commission has taken this position as well for many years -- that the flood plains provide much of the remaining value, with regards to habitat, as well as issues related to ground water recharge, and often agricultural resources, and for those reasons the flood plains should not be filled, in order to allow urban development.

The photos that were handed out, I think, show the situation fairly well, in particular this photo, Item 3-A, with the blue dot on it. It shows the area that is proposed to be filled. It clearly is in the 100-year flood plain. It was clearly acknowledged as being in the 100-year flood plain when the commercial center was approved, and the applicant was required to revise the grading plan to avoid grading in the 100-year flood plain.

Again, our recommendation is one of approval. It is approval to allow the applicant to do drainage

improvements, to take care of the sheet flow across what is referred to as the eastern parking lot; however, it is not for approval of putting fill on that open space area, where the applicant was required not to grade and fill when the commercial center was originally approved.

That would conclude our comments.

CHAIR CALCAGNO: Okay, thank you.

At this time, Commissioners, you have questions?

Commissioner Rick.

COMMISSIONER RICK: Thank you, Mr. Chairman.

For the staff, in the processing of this application, did you give any consideration to a mixture of pavers and grass, that some people call it green paving? I would think that the simple solution is to blade the thing out, and put down pavers, and grass, and when it floods, it gets wet, and when it is dry, it is dry.

DISTRICT DIRECTOR DAMM: The staff did not give consideration to that, because that is not what the applicant was proposing.

The applicant was proposing to fill the area, to raise it, out of the 100-year flood plain, in effect. I don't know if that is anything the applicant would desire to do. I don't know that it would resolve the concern they have. You might want to hear from the applicant on that.

CHAIR CALCAGNO: Does the applicant want to answer

the question? or the applicant's engineer.

MR. NASLAND: I am D.K. Nasland.

Commissioner Rick, what we have, shown in Photo 3-B, is a pond, and in order to put -- if we were to come and just basically pave it, either with pavers, or with a graded surface, we would still have to fill in the flood plain, in order to overcome those grades, because what we have is a pond there. It was created by the bridge project.

What the bridge did, was it cut off the exit route of the water from the property. They had some four topographic surveys that they used for their design, and they felt that it was going to work. Based upon the work that we did for our client, we knew that it wouldn't, and we had written the county prior, you know, in their preliminary design projects telling them what was going to happen. They choose to disregard what we had to say.

MR. FLETCHER: I would like to speak to that?

CHAIR CALCAGNO: Okay, go ahead. We will give you the opportunity to.

MR. FLETCHER: We did not put before you the direction of the original flows here before, but this area all drained out to the street, in this direction. There is this large, raised storm drain, which is a block on the south.

All of this, including at the driveway, came out

1 this way. When this was built, it forced all of any drainage
2 that might come from this entire center, all the way up to
3 Manchester Street, to come down and meet an inverted area
4 here, where this 4-foot driveway comes in like this, and all
5 of this water shoots down here.

6 So, they had diverted, which we, as private
7 individuals, we know is illegal. Our drainage forced it back
8 onto the site, and the only way is to even the grades in
9 here, and get this back into the storm drain.

10 Another interesting item I would like to show you
11 right here -- and show the --

12 CHAIR CALCAGNO: Is your question answered,
13 Commissioner Rick? or, do you need --

14 MR. FLETCHER: -- this relates to the question --

15 CHAIR CALCAGNO: -- further explanation?

16 COMMISSIONER RICK: It's okay, let he go on.

17 MR. FLETCHER: -- and I am happy to show it to you.

18 The first meeting that we had with the City of
19 Encinitas, they were concerned about the 100-flood line,
20 because it is the FEMA line, as we know it. That line runs
21 through the back of all of this Badger property, through
22 here, through building G, through building F, and then it
23 turns around and goes up through two houses. It is not a
24 practical, realistic, usable line. It is a 1976 line, that
25 probably was inaccurate in the first place.

1 So, the City of Encinitas recognized this upon our
2 application. They asked us to make an exhibit, which you
3 have, showing the actual area subject to inundation. We had
4 our engineer, Nasland Engineering, do a study, and this is
5 what resulted.

6 None of this area is subject to 100-year
7 inundation, except for a little pocket in here. This is the
8 grass area. This is the 35-foot knoll.

9 As I said, the impact of 100-year floods, will be
10 at slightly over 33 feet, if I am correct.

11 Is that right, Mr. Nasland?

12 MR. NASLAND: Yes.

13 MR. FLETCHER: So, we are talking about a little
14 panhandle in here that is really subject to the flood.

15 COMMISSIONER RANDA: Mr. Chair.

16 MR. FLETCHER: So, I hope that helps.

17 CHAIR CALCAGNO: Okay.

18 COMMISSIONER WEAR: Mr. Chairman.

19 COMMISSIONER RANDA: Can I move for the applicant?

20 CHAIR CALCAGNO: One question, and then --

21 Go ahead and move it, you want to move it.

22 [MOTION]

23 COMMISSIONER RANDA: Thanks.

24 I move that the Commissioner grant the permit for
25 the proposed development, subject to the condition below on

1 the grounds of development, as conditioned will be in
2 conformity with the adopted City of Encinitas Local Coastal
3 Plan. And, I further grant the applicant's request that the
4 Commission approve the original remedial grading plan,
5 approved by the certified City of Encinitas -- including the
6 special conditions?

7 CHAIR CALCAGNO: Okay, do we --

8 COMMISSIONER RANDA: The special condition No. 2,
9 the permit be subject to the following conditions: (1)
10 mitigation/monitoring, the applicant requests adoption of its
11 submitted wetlands mitigation and monitoring plan, prepared
12 by Dudek and Associates, dated August 9, 1996.

13 CHAIR CALCAGNO: Okay, is there a "second"?

14 COMMISSIONER WEAR: Second.

15 CHAIR CALCAGNO: It has been moved --

16 COMMISSIONER RANDA: Call the question.

17 CHAIR CALCAGNO: -- and seconded.

18 Okay.

19 COMMISSIONER WAN: I would like -- I haven't had a
20 chance to even ask my questions.

21 CHAIR CALCAGNO: Commissioner Wan, you had your
22 hand up before, and I will let you go ahead and ask you
23 question, and then we are going to go for the vote.

24 CHIEF COUNSEL FAUST: Mr. Chairman, before the
25 comment, just so it is clear what the Commission is

1 discussing.

2 Could we have clarification on the motion as to
3 which of the two grading plans is contained within the
4 motion?

5 COMMISSIONER RANDA: The certified City of
6 Encinitas' plan.

7 COMMISSIONER PAVLEY: The May one?

8 COMMISSIONER RANDA: The plan approved by the City
9 of Encinitas, not the alternative remedial grading plan of
10 May 31.

11 COMMISSIONER WAN: Okay, with the 18 --

12 CHIEF COUNSEL FAUST: Okay, not the more recent --

13 COMMISSIONER RANDA: Not the more recent --

14 CHIEF COUNSEL FAUST: -- alternative that was
15 discussed, but rather the earlier one?

16 COMMISSIONER RANDA: Correct.

17 COMMISSIONER GIACOMINI: What do you got? What do
18 you got, when the applicant wants the 700?

19 COMMISSIONER PAVLEY: He said the 700 was fine
20 with them.

21 COMMISSIONER GIACOMINI: Why do you want to add
22 another 1000-cubic yards?

23 COMMISSIONER RANDA: Because, I think the problem
24 has to be fixed, and they had the right idea to begin with,
25 and I think the bridge is the problem.

1 [General Discussion]

2 CHAIR CALCAGNO: Commissioner, is that the motion
3 you had before the floor? That is the --

4 COMMISSIONER RANDA: I would like to hear the
5 applicant on it.

6 CHAIR CALCAGNO: Okay, go ahead, applicant.

7 MR. NASLAND: D.K. Nasland, again.

8 It is my opinion that the original plan is a
9 better solution for the problem we have there,
10 hydrologically, and how it handles the water.

11 We brought the alternate plan because we developed
12 that based upon discussions of what staff was really trying
13 to get to. As we stated, it is acceptable.

14 We feel this is a much better design, than the
15 alternate.

16 COMMISSIONER RANDA: Then, for the better design,
17 is why I am calling the motion.

18 CHAIR CALCAGNO: Okay, there is a motion on the
19 table.

20 Commissioner Wan, you have --

21 COMMISSIONER WAN: I have a series of questions --

22 CHAIR CALCAGNO: -- and we will let you do that,
23 because you had your hand up, and then we are going to have
24 to go for the vote.

25 COMMISSIONER WAN: Okay. I wanted to get back to

1 one of the things. There were a couple of major concerns
2 that still haven't been addressed.

3 One of the principle concerns that I have, with
4 regards to filling in a flood plain, and this in a 100-year
5 flood plain. The applicant knew that. He acknowledged that
6 at the time of his original development. You mentioned the
7 HEC-II study, and that was my concern. I guess I still don't
8 -- and I am asking staff questions, at this point, okay -- I
9 still don't understand, the applicant's engineer is saying
10 that the HEC-II study did, in fact, account for the fill? is
11 that correct? and what the effect -- and what I want to know
12 is whether that accounted for the effect of the fill, either
13 the 700 or the 1800, on downstream, or down flood plain
14 properties? because, that is a concern, is what this is going
15 to do to other properties?

16 DISTRICT DIRECTOR DAMM: The staff's understanding
17 is that the county's study did not take into account the
18 fill.

19 I believe the spokesperson for the applicant's
20 representative, indicated that, with regard to this piece of
21 property, in his opinion, it would have no effect, but my
22 understanding from our staff is that the county's hydrology
23 study did not take into account filling this property.

24 COMMISSIONER RANDA: Can I hear that from the
25 applicant on that?

COMMISSIONER HOLANDA: Mr. Chairman, may I?

COMMISSIONER WAN: Yes, go ahead.

COMMISSIONER HOLANDA: Given that fact, in my opinion, the fill, the project in question, would not be impacted whatsoever. There is no impact on the flood plain, because of the county project, because of the HEC-II study. It took everything into consideration. It is totally irrelevant that that project even exists. There is no impact on the flood plain. Even if it is designated flood plain, what the HEC-II study has validated, it would not impact it.

And, that is why I asked that question earlier. If his response was, "They did take the project into consideration."

And, if the HEC-II study clearly, and categorically showed that the project did impact, based on the HEC-II study, in other words, it raised the flood way by one or two inches -- I don't know what the limitations are in the county -- then that would have been a significant impact.

But, in this case, because of the design parameters of the HEC-II study, it is totally irrelevant.

COMMISSIONER WAN: That is why I was asking about it, so I could understand that.

COMMISSIONER HOLANDA: Yes.

COMMISSIONER WAN: Okay.

There are two other questions I have, very

specific questions. First of all, the staff's proposal is for -- claims that there are other solutions to the problem, besides fill. Are you confident that the other solutions would -- because this is just a minor -- this is a ponding problem. This isn't a flood plain problem that needs to be corrected here. How are you so certain that what you are proposing will work to solve the ponding problem?

DISTRICT DIRECTOR DAMM: The staff would not take the position that we are absolutely certain what will resolve the ponding problem.

We have asked for some other ideas, and alternatives, from the applicant. The applicant then submitted the 750-cubic yard grading proposal as an alternative.

What we did do is look at the proposal. We looked at the slope that is adjacent to the roadway and the bridge, and our recommendation is to allow the drainage on that eastern parking lot, to be redirected in a way so that it could be contained, and then directed along the toe of that slope, in a concrete ditch, or some type of ditch, similar to what the county did towards the end of the slope, near the creek. And, it appeared to staff that that would work.

I think the applicant's engineer takes the position that the slope is too flat, and that that may not work. The bottom line is, we don't have any documentation

1 that it won't work. We have asked for alternatives. We just
2 don't have that.

3 COMMISSIONER WAN: Okay, and then the final
4 question I have has to do with this, whether this is
5 consistent with the Encinitas LCP, or not. You claim it
6 isn't, and the applicant says that it is.

7 Am I right in saying that that has to do with our
8 you define structure? Do you want to go into the ways that
9 you believe this is not consistent, because that is very
10 important here, is whether this is consistent, or not.

11 DISTRICT DIRECTOR DAMM: It would be the staff's
12 position that, obviously, based on our recommendation, that
13 the proposal is not consistent with the certified Local
14 Coastal Program, and it is really for two reasons: one, is
15 there are no structures in the commercial center that are
16 within the 100-year flood plain, that are in danger.

17 If you wish to consider the eastern parking lot as
18 a structure, then that is certainly a matter of
19 interpretation; however, that brings the second point, which
20 is that it was acknowledged when it was approved, that that
21 eastern parking lot may be subject to inundation.

22 So, yes, the drainage may have changed, but the
23 issue, with regards to that eastern parking lot, remains the
24 same: it is in the flood plain, and it is subject to
25 flooding. We, as the staff, would recommend that certain

1 drainage improvements could be made to minimize that
2 flooding, but there was always the acknowledgement that it
3 was within the flood plain.

4 CHAIR CALCAGNO: Okay, that question was answered.

5 I am going to --

6 COMMISSIONER WAN: I am going to put in an
7 amendment?

8 CHAIR CALCAGNO: You are going to put in an
9 amendment?

10 COMMISSIONER WAN: I would like to make an
11 amending motion.

12 CHAIR CALCAGNO: Well, I guess you could do that,
13 go ahead.

14 [MOTION]

15 COMMISSIONER WAN: I am going to amend the motion
16 to approve the project with the 750 -- the alternate grading
17 plan.

18 CHAIR CALCAGNO: Is there a "second"?

19 COMMISSIONER PAVLEY: Second.

20 CHAIR CALCAGNO: Okay, at this point, we are going
21 to go ahead and have roll call on the amendment.

22 COMMISSIONER STAFFEL: Mr. Chair, if I could
23 address this.

24 CHAIR CALCAGNO: Yes.

25 COMMISSIONER STAFFEL: To the applicant, now you

1 came forward today with the altered grading plan. Is that
2 acceptable to you? That is acceptable? The motion on the
3 floor is acceptable to you?

4 Simply, yes or no.

5 COMMISSIONER RANDA: Just simple.

6 MR. FLETCHER: As I stated before --

7 CHAIR CALCAGNO: Microphone, and introduce
8 yourself for the record. And, I think it has been stated by
9 the Commissioner to just answer, yes or no.

10 COMMISSIONER STAFFEL: Is that acceptable?

11 MR. FLETCHER: It really is not acceptable to me.

12 COMMISSIONER RANDA: Fine.

13 MR. FLETCHER: It is a compromise. We are still
14 continuing to be damaged. We still have a -- we have
15 abandoned our property to a drainage ditch.

16 Now, this property has utility. We would like to
17 continue to use it for future parking, for gatherings, for
18 all of the pictures we showed you for.

19 Now, if I have to go out of here with nothing,
20 otherwise, yes, we will take the alternate grading plan, but
21 I beseech you to realize that the amount of money, the amount
22 of time, to do this, let's do it right. The amount of yards
23 we are talking about are minuscule, compared to what has
24 already been put on the site.

25 COMMISSIONER RANDA: Thank you.

1 MR. FLETCHER: Now, that doesn't justify it, but I
2 hope you understand my position.

3 I would like to go home as much as you would, but
4 I do want to go with something that is reasonable.

5 My engineer, the City of Encinitas, after 12
6 months of hearings, 6 public hearings, all supported the
7 original plan.

8 COMMISSIONER RANDA: Thank you.

9 MR. FLETCHER: Now, I leave it in your good hands.

10 CHAIR CALCAGNO: Okay --

11 COMMISSIONER RANDA: You got it, okay?

12 CHAIR CALCAGNO: -- I think you made your point.

13 MR. FLETCHER: I will accept whatever --

14 CHAIR CALCAGNO: Commissioner Pavley, and then
15 Commissioner Wear.

16 COMMISSIONER PAVLEY: Just that I received from
17 the applicant, stating, that either one was acceptable, with
18 no qualifications, and one seemed to be less environmentally
19 damaging, and I certainly would support the alternate
20 remedial grading plan, as recommended by the applicant.

21 CHAIR CALCAGNO: Okay.

22 Commissioner Wear.

23 COMMISSIONER WEAR: Just a procedure item.

24 If the motion fails, we go back to the original
25 motion, is that correct?

1 CHAIR CALCAGNO: Then we go back to the original,
2 yes.

3 COMMISSIONER WEAR: Okay, thank you.

4 CHAIR CALCAGNO: Okay, roll call on the amendment,
5 which is basically supporting the modified plan.

6 SECRETARY GOEHLER: Commissioner Belgard?

7 COMMISSIONER BELGARD: No.

8 SECRETARY GOEHLER: Commissioner Flemming?

9 COMMISSIONER FLEMMING: No.

10 SECRETARY GOEHLER: Commissioner Giacomini?

11 [No Response]

12 Commissioner Pavley?

13 COMMISSIONER PAVLEY: Yes.

14 SECRETARY GOEHLER: Commissioner Randa?

15 COMMISSIONER RANDA: No.

16 SECRETARY GOEHLER: Commissioner Rick?

17 COMMISSIONER RICK: Yes.

18 SECRETARY GOEHLER: Commissioner Staffel?

19 COMMISSIONER STAFFEL: Yes.

20 SECRETARY GOEHLER: Commissioner Steinberg?

21 COMMISSIONER STEINBERG: No.

22 SECRETARY GOEHLER: Commissioner Wan?

23 COMMISSIONER WAN: Yes.

24 COMMISSIONER FLEMMING: Does it put it back -- I
25 don't know. Yes.

1 SECRETARY GOEHLER: Commissioner Wear?

2 COMMISSIONER WEAR: No.

3 SECRETARY GOEHLER: Chairman Calcagno?

4 CHAIR CALCAGNO: Yes.

5 SECRETARY GOEHLER: Six, three -- six, four.

6 CHAIR CALCAGNO: Okay, motion carries, and
7 actually the amendment supersedes the main motion, so as I
8 read it --

9 COMMISSIONER STEINBERG: We didn't vote on it.

10 COMMISSIONER RANDA: No, wait.

11 CHIEF COUNSEL FAUST: Mr. Chairman, you now have
12 the main motion --

13 CHAIR CALCAGNO: As amended.

14 CHIEF COUNSEL FAUST: -- right, as amended, now
15 before you --

16 COMMISSIONER RANDA: Wait, Mr. Chairman --

17 CHIEF COUNSEL FAUST: -- and this would --

18 COMMISSIONER RANDA: -- Mr. Chairman --

19 CHIEF COUNSEL FAUST: -- approve the entire
20 project --

21 COMMISSIONER RANDA: -- point of order.

22 CHIEF COUNSEL FAUST: -- if you approve it.

23 COMMISSIONER RANDA: Was that --

24 CHAIR CALCAGNO: We will let you have that point.

25 COMMISSIONER RANDA: -- vote six in favor of the

1 amendment?

2 CHAIR CALCAGNO: Correct.

3 CHIEF COUNSEL FAUST: Six in favor --

4 COMMISSIONER RANDA: And, that makes the --

5 CHIEF COUNSEL FAUST: -- of the amendment, four --

6 COMMISSIONER RANDA: -- amendment pass?

7 CHIEF COUNSEL FAUST: -- against, that is correct.

8 COMMISSIONER RANDA: Okay.

9 CHAIR CALCAGNO: Now, we are voting on the main
10 motion, as amended.

11 Roll call.

12 SECRETARY GOEHLER: Commissioner Flemming.

13 COMMISSIONER FLEMMING: Yes.

14 SECRETARY GOEHLER: Commissioner Giacomini?

15 [No Response]

16 Commissioner Pavley?

17 COMMISSIONER PAVLEY: Yes.

18 SECRETARY GOEHLER: Commissioner Randa?

19 COMMISSIONER RANDA: Yes.

20 SECRETARY GOEHLER: Commissioner Rick?

21 COMMISSIONER RICK: Yes.

22 SECRETARY GOEHLER: Commissioner Staffel?

23 COMMISSIONER STAFFEL: Yes.

24 SECRETARY GOEHLER: Commissioner Steinberg?

25 COMMISSIONER STEINBERG: Yes.

1 SECRETARY GOEHLER: Commissioner Wan?

2 COMMISSIONER WAN: Yes.

3 SECRETARY GOEHLER: Commissioner Wear?

4 COMMISSIONER WEAR: Yes.

5 SECRETARY GOEHLER: Commissioner Belgard?

6 COMMISSIONER BELGARD: Yes.

7 SECRETARY GOEHLER: Chairman Calcagno?

8 CHAIR CALCAGNO: Yes.

9 SECRETARY GOEHLER: Ten, zero.

10 CHAIR CALCAGNO: Motion carried.

11 DISTRICT DIRECTOR DAMM: That concludes the San
12 Diego items.

13 *

14 *

15 [Whereby the hearing was concluded.]