

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

RECORD PACKET COPY



Filed: October 13, 1998
49th Day: December 1, 1998
180th Day: April 11, 1999
Staff: GDC-SD
Staff Report: November 19, 1998
Hearing Date: December 8-10, 1998

STAFF REPORT AND RECOMMENDATION ON APPEAL

th 76

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-98-129

APPLICANT: Brandywine Development

PROJECT DESCRIPTION: Subdivision of 16 acres into 31 single-family residential lots, one open space lot and one remainder lot, to include demolition of several existing structures, grading, drainage and street improvements resulting in fill of .31 acre riparian and freshwater marsh habitat. On-site mitigation is proposed for the wetland impacts.

PROJECT LOCATION: South of Santa Fe Drive between Rubenstein Avenue and Starlight Drive, Encinitas, San Diego County. APN(s) 260-082-19, 20; 260-650-02, 05, 06 and 07

APPELLANTS: California Coastal Commissioners Sara Wan and Andrea Tuttle

STAFF NOTES:

The public hearing for the subject appeal was opened at the November 5, 1998 Commission meeting and continued to the December 8-10, 1998 Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission deny the application at the de novo hearing because the project is inconsistent with several provisions of the City's LCP pertaining to the protection of wetlands. The proposed residential subdivision will fill approximately .31 acre of wetlands. The City's LCP strictly limits the fill of wetlands within the Coastal Zone. The proposed development is not a permitted use in wetlands pursuant to the certified LCP and other alternatives exist to avoid the need to fill wetlands.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications; City of Encinitas Agenda Report for CDP 97-283 dated 9/10/98; City of Encinitas Resolution Nos. 98-52, CDP 97-283 and revised CDP 97-283 received 10/21/98, TM 89-229; Wetland Mitigation and Monitoring Plan by Dudec and Associates, Inc. dated September 4, 1997 and updated July 20, 1998; Extended Initial Study TM 89-229 for Eikel/Funaki Subdivision dated January 1991; Coastal Development Permit Nos: A-6-ENC-6-34/Fletcher; A-6-ENC-97-70 Kirkorowicz

I. Appellants Contend That:

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to allowable uses within a wetland, appropriate level of mitigation for wetland impacts, size and extent of required buffers, and the lack of alternative analysis.

II. Local Government Action.

The Coastal Development Permit was approved by the Encinitas Planning Commission on 9/10/98. Several special conditions were attached which address mitigation for proposed wetland impacts, enforcement of original tentative map conditions and expiration date, and traffic control measures.

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-98-129 raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

Findings and Declarations.

1. Project Description. The proposed development involves the subdivision of 6 legal lots, totalling 16 acres, into 31 single-family residential lots, one open space lot and one remainder lot and including grading, drainage and private street improvements resulting in fill of .31 acre riparian and freshwater marsh habitat. The applicant proposes to mitigate the wetland impacts through creation on-site of .45 acre of southern willow scrub and enhancement of .83 acre southern willow scrub habitat. Site preparation for the proposed development will involve between 36,000 to 56,000 cubic yards of grading and will involve the demolition of an existing duplex, single-family residence and several greenhouses. No residential development is proposed at this time.

The project site is located on the south side of Santa Fe Drive between Rubenstein Avenue and Starlight Drive in the City of Encinitas. Surrounding uses include single-family residences and greenhouses. Access to the proposed subdivision will be through the extension of Warwick Avenue on the southeast and the creation of a new street via Rubenstein Drive on the west. Two single-family residences on Rubenstein Drive will be demolished to create access for the new private street. Most of the proposed development site is currently used for the production of cut-flowers utilizing covered greenhouses and open fields. A small drainage known as Rossini Creek runs north to south through approximately the middle of the subject property. The drainage has been delineated as riparian and freshwater wetland by both the Army Corps of Engineers (ACOE) and the California Dept. of Fish and Game (DFG).

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

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

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

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

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

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

In review of the project by the City, it was determined that wetlands, as defined in the LCP, are present on the site and that the proposed development would permanently fill

approximately .31 acres of wetlands. As cited, the fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. These include nature study, restoration projects, incidental public service projects and mineral extraction. The City's findings for approval of the coastal development permit include a determination that the proposed .31 acre of wetlands fill is a permitted use under the above cited LCP policies and ordinances because it is an 'incidental public service project'. Specifically, the City found that "the uncontrolled nature of the drainage across the site has resulted in erosion which in turn causes damage to the adjoining property and siltation damage to the higher quality habitat on-site". As such, the City found that the drainage should be channelized to address this problem. However, an "incidental public service project" has generally been limited to temporary impacts of resources such as the burying of cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines. The Commission has determined that limited expansion of existing roads and bridges necessary to maintain existing traffic capacity, when no other alternative exists, may also be permitted. However, in this case, the redirection of a .31 acre wetland channel through an underground pipe, in order to accommodate a 31 lot residential subdivision including roads, grading and drainage, does not constitute an incidental public service project and as such, is not a permitted use under the City's LCP.

The appellants also contend that aside from not being a permitted use within a wetland, the proposed project is not the least environmentally damaging alternative, as also required by LCP policies and ordinances. Specifically, the proposed project will fill approximately .31 acres of wetlands to accommodate the proposed subdivision. The City, in its review and approval of the project did not adequately review other alternatives that would avoid or reduce the need for wetland fill.

Another contention of the appellants is that even if the permanent fill of wetlands was found to be a permitted use, the City's required mitigation for wetland impacts is not appropriate. The certified LCP states that when wetland impacts are unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost at a ratio determined by the regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than 1:1. The proposed fill of .31 acre of wetland area includes .05 acre of southern willow scrub, .06 acre of freshwater marsh and .20 acre of "disturbed wetland channel". The City's approved mitigation plan for the .31 acre of wetland fill provides for the creation on-site of .45 acre of southern willow scrub. The created wetland area would, therefore, involve a mitigation rate of 1.5:1. However the standard of the LCP is that it be of the same type lost. The City's approval only included mitigation of the same type lost for southern willow scrub. No creation is proposed for the freshwater marsh or disturbed wetland channel, inconsistent with the above cited LCP provisions.

Finally, the City's decision did not include provisions for appropriate wetland buffers. The above cited LCP policies and ordinances require that a minimum 50 foot buffer be established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Dept. of Fish and Game concurs. The City's LCP limits uses in buffers to minor passive recreational and improvements deemed

necessary to protect the habitat. All such improvements, however, are to be located in the upper half of the buffer, as feasible. The City's decision permits a 25-foot buffer consisting of graded and re-vegetated manufactured slopes. However, the buffer will not function as a true buffer which should remain natural and undeveloped so as to minimize the effects of erosion and sedimentation and to allow for a transitional habitat zone between wetlands and uplands. Therefore, an actual unimproved buffer is not proposed between the wetland and the developed areas.

In summary, the proposed development is inconsistent with the City's LCP pertaining to protection of wetland resources in that the proposed 31 lot residential subdivision and associated improvements is not a permitted use within a wetland, does not provide adequate mitigation for unavoidable wetland impacts, is not the least environmentally damaging alternative and does not provide adequate wetland buffers. The proposed development is not only inconsistent with the City's LCP but, because wetlands are a significant resource, the City's action of approving a nonallowable fill of wetland would establish an adverse precedent for future developments. For these reasons, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified local Coastal Program.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the adopted Local Coastal Program, and will have significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The proposed development involves the subdivision of 6 legal lots, totalling 16 acres, into 31 single-family residential lots, one open space lot and one remainder lot to include grading, drainage and private street improvements resulting in fill of .31 acre riparian and freshwater marsh habitat. The applicant proposes to mitigate the wetland impacts through creation on-site of .45 acre of southern willow scrub and enhancement of .83 acre southern willow scrub habitat. Site preparation for the proposed development will involve between 36,000 to 56,000 cubic yards of grading and will involve the demolition of an existing duplex, single-family residence and several greenhouses.

The project site is located on the south side of Santa Fe Drive between Rubenstein Avenue and Starlight Drive in the City of Encinitas. Surrounding uses include single-family residences and greenhouses. Access to the proposed subdivision will be through the extension of Warwick Avenue on the southeast and the creation of a new street via Rubenstein Drive on the west. A duplex and single-family home on Rubenstein Drive will be demolished to create access for the new private street. Most of the proposed development site is currently used for the production of cut-flowers utilizing covered greenhouses and open fields. A small drainage known as Rossini Creek runs north to south through approximately the middle of the subject property. The drainage has been delineated as riparian and freshwater wetland by both the Army Corps of Engineers (ACOE) and the California Dept. of Fish and Game (F&G).

2. Wetlands. Due to the dramatic loss of wetlands (over 90% loss of historic wetlands in California) and their critical function in the ecosystem, and in response to Section 30233 of the Coastal Act, the City's LCP contains very detailed policies and ordinances relative to wetlands protection. The following LCP provisions are relevant to the subject development: Resource Management Policy 10.6 of the certified LUP states, in part:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

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

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the

exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve wetland intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetlands on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

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

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language:

- a) Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally-damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:
 - 1. Nature study, aquaculture, or similar resource dependent activities.
 - 2. Restoration purposes.
 - 3. Incidental public service projects.
 - 4. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

The 16 acre project site consists of greenhouses and open fields (crops). Rossini Creek, a small drainage, runs north to south through approximately the middle of the subject site. All drainage immediately upstream and approximately one-half mile downstream is channelized with storm drains. However, the open creek on the subject site has been delineated as riparian and freshwater marsh by both the Army Corps of Engineers (ACOE) and the California Department of Fish and Game (DFG). The creek ultimately drains into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by DFG and the San Diego County Parks and Recreation Department.

Based on review of the wetland and mitigation plan prepared for the site for the City's review, Commission staff has determined that wetlands, as defined in the LCP, are present on the site and the proposed development will permanently fill approximately .31 acres of these wetlands. The wetlands fill will occur as a result of the construction of a private street and residential lots. While the wetland area that will be impacted is described as disturbed and low quality, neither Section 30233 of the Coastal Act nor the policies and ordinances of the City's LCP differentiate between low quality and high quality wetlands; all wetlands are provided the same protection.

As stated in the previous section of this report, fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. These include nature study, restoration projects, incidental public service projects and mineral extraction. The City's findings for approval of the coastal development permit included a determination that the proposed fill of .31 acres of wetlands is an incidental public service project. Specifically, the City found that "the uncontrolled nature of the drainage across the site has resulted in erosion which in turn causes damage to the adjoining property and siltation damage to the higher quality habitat on-site". As such, the City found that the drainage should be channelized to address this problem. However, in the past, the Commission has interpreted an "incidental public service project" to mean a public service project that has only temporary impacts of resources, such as the burying of cables and pipes, inspection of piers, and maintenance on existing intake and outfall lines. The Commission has determined that limited expansion of existing roads and bridges necessary to maintain existing traffic capacity, when no other alternative exists, may also be permitted. The proposed development will fill wetlands permanently to accommodate residential development. Further, in order for a fill to be considered an incidental public services project, it must be determined that the project both serves a public purpose and is temporary or "incidental" to the identified public service purpose. The Commission finds that in this case, wetlands would be filled to accommodate future residential development. Therefore, the proposed fill does not qualify as any of the permitted uses within a wetland pursuant to the City's LCP.

Because the wetland fill to accommodate the proposed subdivision is not permitted under the City's LCP, the project should be redesigned to avoid the wetland fill altogether. The LCP policies and ordinances require that the project be the least environmentally damaging alternative. The City in its review and approval of the project did not

adequately review other alternatives that would avoid or reduce the need for wetland fill. If redesigned, the applicant would still have sufficient developable areas on which to construct building pads and street improvements without impacts to wetlands, consistent with the LCP.

Furthermore, even if the proposed wetland fill could be permitted, the City's LCP requires that mitigation for unavoidable wetland impacts occur through creation of new wetlands of the same type (emphasis added), at a ratio determined by the regulatory agencies with authority over wetland resources, but in any case greater than a 1:1 ratio. The proposed mitigation program does not meet the required LCP standards. Historically, when the Commission has found unavoidable impacts to wetlands to be acceptable, it has always been based on an acceptable mitigation plan. The proposed fill of .31 acre of wetland area includes impacts to .05 acre of southern willow scrub, .06 acre of freshwater marsh and .20 acre of "disturbed wetland channel". The City's approval only provides for in-kind creation habitat for southern willow scrub impacts. Impacts to freshwater marsh and disturbed wetland are mitigated through enhancement of existing southern willow scrub habitat, inconsistent with the LCP policies. As such, the proposed mitigation plan for impacts to wetlands is inconsistent with LCP policies.

In addition, the City's decision did not include provisions for appropriate wetland buffers. The City's LCP policies and ordinances require that a minimum 50 foot buffer be established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Dept. of Fish and Game concurs. The City's LCP limits uses in buffers to minor passive recreational and improvements deemed necessary to protect the habitat. All such improvements, however, are to be located in the upper half of the buffer, as feasible. The City's decision permits a 25-foot buffer consisting of graded and re-vegetated manufactured slopes. However, the buffer will not function as a true buffer that remains natural and undeveloped so as to minimize the effects of erosion and sedimentation and to allow for a transitional habitat zone between wetlands and uplands. Therefore, an actual unimproved buffer is not proposed between the wetland and the developed areas.

In summary, the fill of wetlands to accommodate a residential subdivision is not permitted pursuant to the City's certified LCP and other alternatives to avoid the fill of wetlands have not been adequately reviewed. In addition, even if wetland impacts were found to be acceptable, the proposed mitigation for impacts and the proposed buffer areas are inconsistent with LCP policies. Since the proposed project is a large subdivision, and there are likely to be many alternatives for redesigning the project, the Commission finds that the project should be redesigned by the applicant, not by the Commission in a conditional approval. Therefore, because as proposed the project is inconsistent with the LCP, the Commission finds the proposed development must be denied.

5. Channelization. The proposed development involves the channelization of an existing drainage area known as Rossini Creek. The applicant proposes to divert the drainage into a storm drain to accommodate the construction of a private road and

residential lots. The City of Encinitas' LCP limits the channelization within a floodway. Policy 8.2 on page LU-19 of the LUP states that:

Development within coastal and floodplain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources. Within the floodway, channelization, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to necessary water supply projects, 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, and other development where the primary function is the improvement of fish and wildlife habitat. . .

The LCP policies, therefore, limits the channelization of the subject drainage area to water supply projects or flood control projects to protect existing development or fish and wildlife, where no other feasible method exists. Therefore, the proposed development which involves the channelization of existing drainage area in order to construct a private road and residential subdivision is not consistent with Policy 8-2 of the City's LCP.

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

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The City of Encinitas Planning Commission approved the subject development on September 10, 1998. Because the development is located within 100 ft. of wetlands, it falls within the Commission's appeals jurisdiction. On October 13, 1998, the development approval was appealed to the Coastal Commission. The standard of review is the policies and ordinances of the certified LCP.

The subject site is zoned and planned for residential development in the City's certified LCP. The majority of the site is zoned R-3 permitting up to a maximum of 3 dwelling units per acre. Two of the subject parcels are zoned R-8 permitting up to a maximum of 8 dwelling units per acre. The proposed development conforms to mid-range density of 2.5 dwelling units per acre and is, therefore, consistent with the residential zone and plan designation. As noted previously, the proposed development which includes the fill of wetlands is inconsistent with several policies of the City's certified LCP. The proposed fill of wetlands is not a permitted use pursuant to the certified LCP and other alternatives to avoid wetland fill have not been adequately explored. As such, the Commission finds that the proposed development must be denied.

7. California Environmental Quality Act. 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 discussed herein, the proposed development would result in adverse impacts to coastal resources in that fill of wetlands has not been avoided. There are feasible alternatives available which would substantially lessen any significant adverse impacts which the proposal may have on the environment while still allowing for minimal private development. These alternatives include revising the project to avoid wetland impacts or continuing the agricultural uses that currently occur on the site. Therefore, as currently proposed, the Commission finds the proposed project is not the least environmentally-damaging feasible alternative, and therefore is inconsistent with CEQA.

(A-6-ENC-98-129 Brandywine stfrpt)

Site

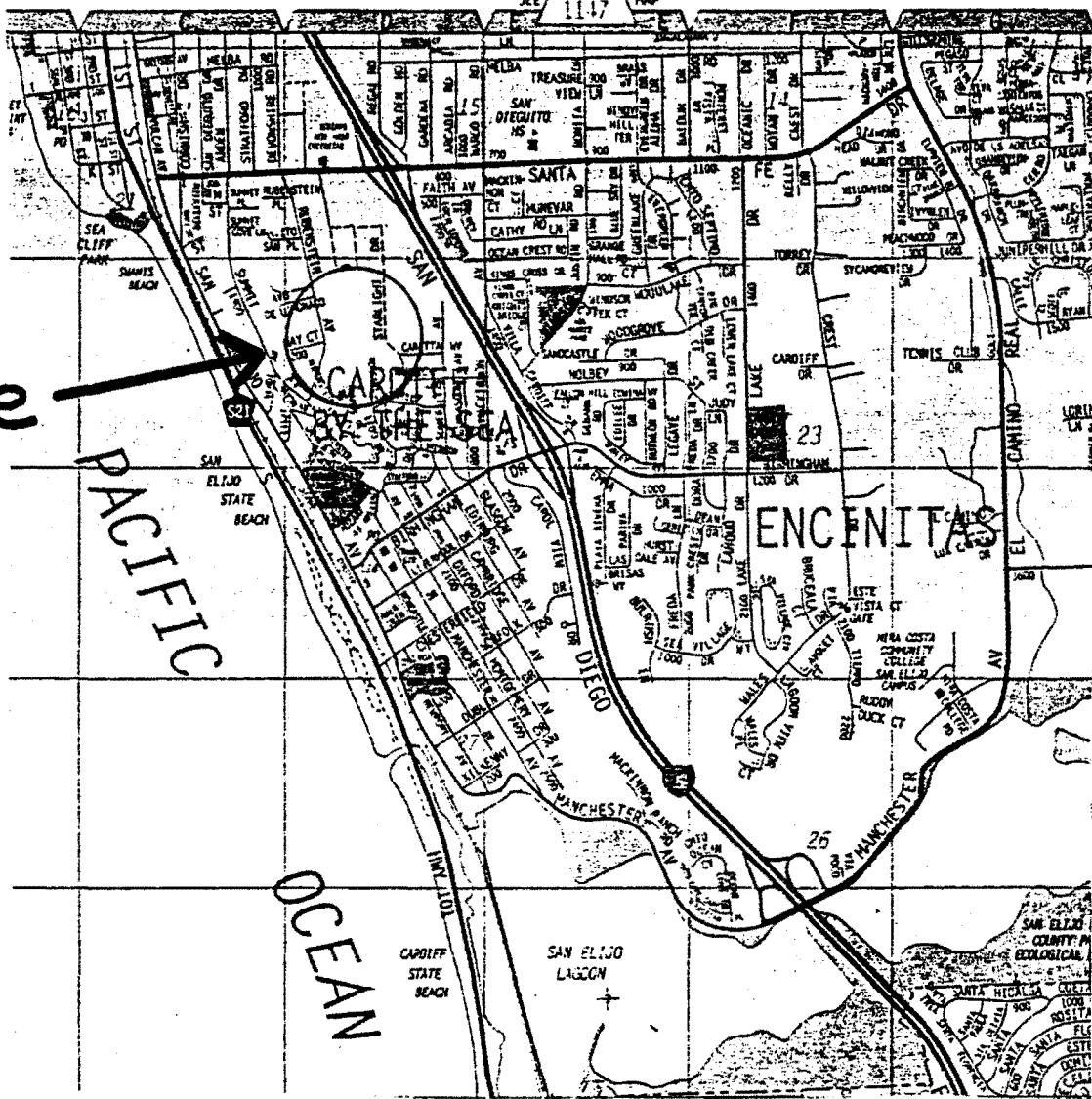


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-98-129

Vicinity Map

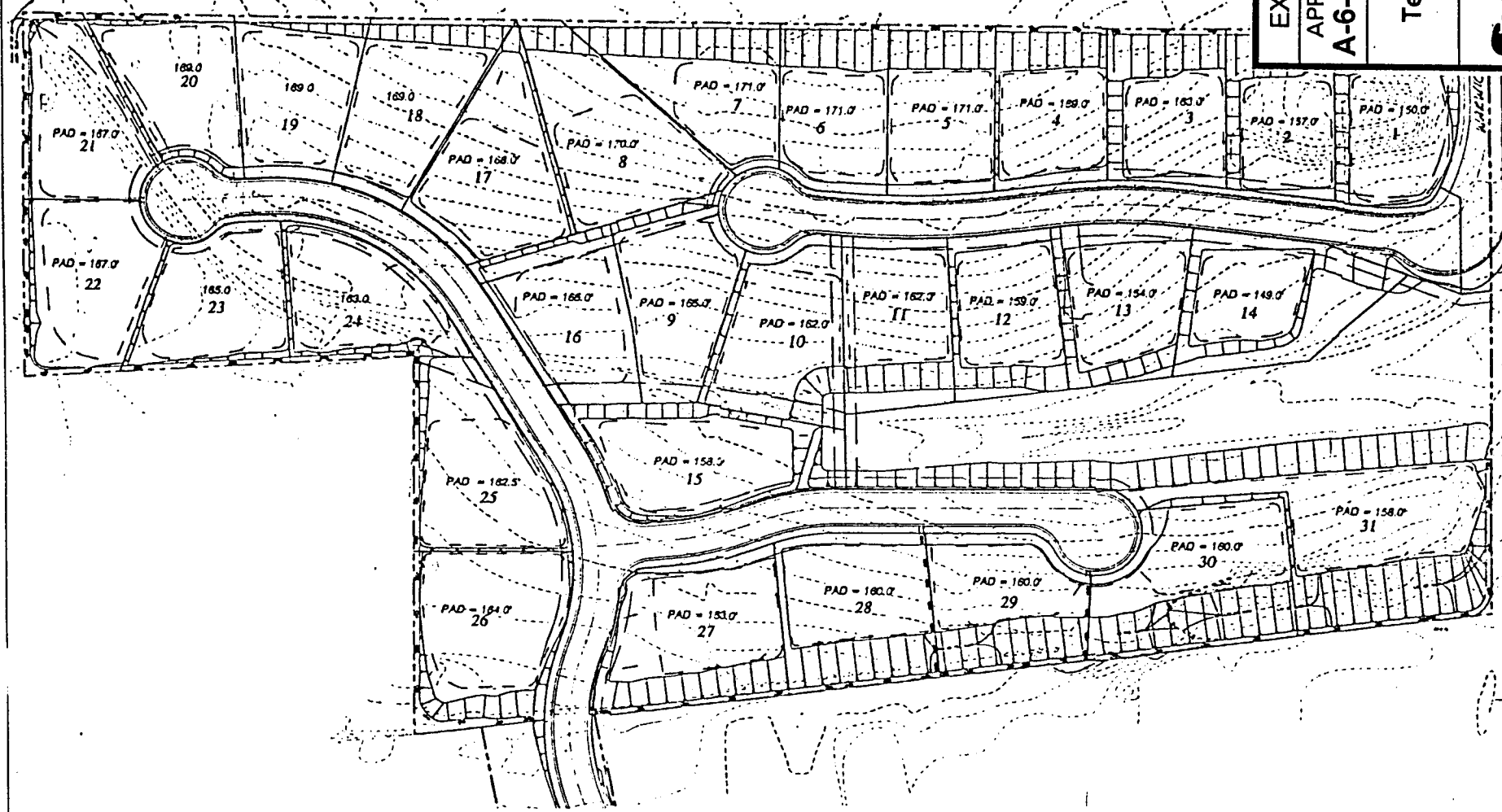


EXHIBIT NO. 2



APPLICATION NO.

A-6-ENC-98-129

Tentative Map

California Coastal Commission

PROPOSED MITIGATION AREAS:

-  Wetland Creation
-  Wetland Enhancement

 Proposed Limits of Grading

VEGETATION TYPES:

- DW** Disturbed Wetland*
- ET** Exotic Trees
- FWM** Freshwater Marsh*
- ORN** Ornamental Planting
- RUD** Ruderal
- SMX** Southern Mixed Chaparral
- SWS** Southern Willow Scrub*
- DEV** Developed Land

NOTE: A lower case 'd' in front of a vegetation type indicates that it is disturbed.

* CDFG/ACOE Wetland

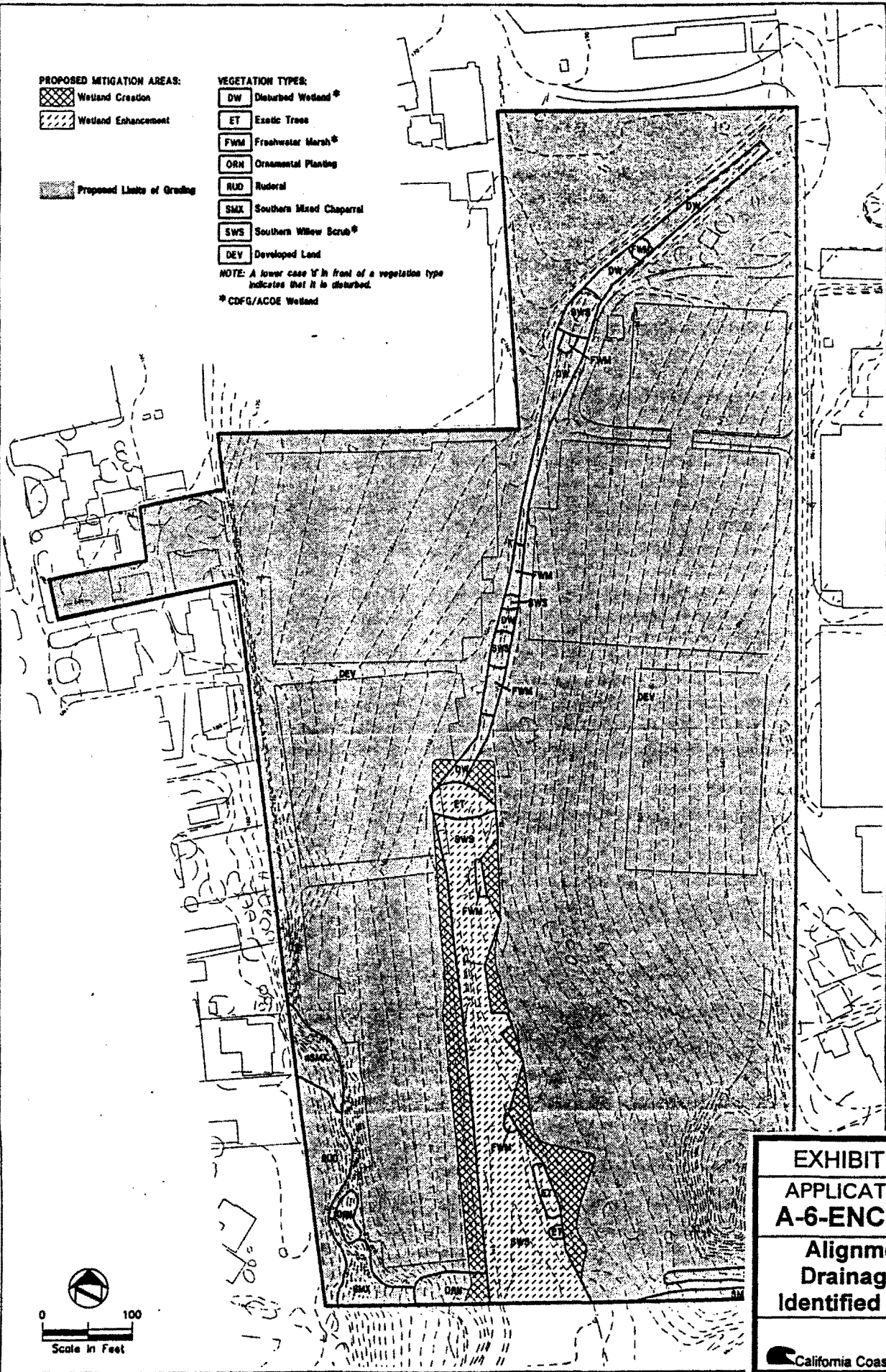


EXHIBIT NO. 3
APPLICATION NO.
A-6-ENC-98-129
Alignment of
Drainage with
Identified Impacts

 California Coastal Commission