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CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-159

Applicant: Steven Cade

Agent: Robert Jackson/Tom Jones

Description: Two lot subdivision of a 3.66 acre site (Lot 1=1.55 acres; Lot 2=2.11 acres). Construction of a single-story, 5,400 sq.ft. residence on Lot 1 and also a single-story, 5,300 sq.ft. residence on Lot 2. Proposed is the construction of a swimming pool on Lot 1 and a tennis court and swimming pool on Lot 2, vertical fencing along the property lines to the mean high tide line of Agua Hedionda Lagoon, time-lock gates to restrict lateral public access along the lagoon, exotic landscaping and irrigation within the lagoon buffer and upland areas covering both lots, a boat launch ramp, crib wall, fire ring and barbecue. The applicant also proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon (within the buffer), and to construct trail improvements. Also, proposed is a lot line adjustment between Lot 2 and an adjacent parcel to the northeast and street improvements to Adams Street. Cut grading is proposed at 12,400 cubic yards, fill grading is proposed at 3,400 cubic yards with 9,000 cubic yards to be exported off-site. Landscaping, fencing, and hardscape improvements within the buffer have occurred without a coastal development permit.

Lot Area	159,429 sq.ft. (3.66 acres combined)
Building Area	12,442 sq.ft.
Paved Area	23,958 sq.ft.
Landscaped Area	96,829 sq.ft.
Unimproved Area	26,429 sq.ft.
Zoning	R-1-15,000
Plan Designation	Residential Low Medium-0-4 du/ac
Ht. Above Fin.Grade	19 ft.

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

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

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing a 2-lot parcel map and residential construction on the north shore of Agua Hedionda Lagoon in Carlsbad. Staff is recommending approval of the project with a number of special conditions designed to

address existing and expected impacts to public access and biological resources. The vacant site has been extensively used by the public for recreational purposes because of its wide, sandy lagoon frontage, about 400 feet. To protect himself from liability concerns and vandalism associated with public use of the site, the applicant has constructed fencing without benefit of a coastal development permit which blocks lateral access along the shoreline. Additionally, the applicant has planted and improved the buffer portion of the site i.e., that portion of the property within 100-feet of the mean high tide line with palm trees, a barbecue, a grassy lawn, benches etc. without benefit of a permit. The applicant has proposed to take down the fences to allow public use prior to acceptance of the proposed lateral access easement by a public agency or private association, if time-lock gates can be used to limit public access to daytime use. The applicant has also proposed to improve a trail within the easement. The recommended conditions address the protection and preservation of public access on the site through an offer to dedicate a lateral access easement, but require a revised alignment of the easement to extend 25-feet upland of the mean high tide line, to assure the majority of the easement is inland of the water's edge at most times during the day. Staff recommends the time-lock gates be permitted on a temporary basis, until the access easement is accepted by a public agency or private association, but the fences and gates must be removed from across the access easement once that acceptance occurs. The conditions require that public access signage be installed which notifies visitors of access opportunities on the site and that an existing "No trespassing" sign be removed. Regarding improvements and landscaping within the buffer, in order to preserve the buffer as upland habitat supportive of wetland species and to provide a physical and psychological buffer between public and private use of the site, staff is recommending that the existing private landscape improvements which have been installed in the buffer without a permit, be removed and replaced with native, drought tolerant and fire retardant vegetation suitable for a lagoon environment. The wetland buffer would be preserved as open space and the access easement left unimproved at this time. The conditions also require a revised landscaping plan for the upland, developable portion of the site, which mitigates the visual impact of the proposed structures from public views, and that the height of the residences, and any future development, be restricted to be no higher than the centerline of the adjacent first coastal road on the lagoon's north shore consistent with the policy in the Aqua Hedionda Land Use Plan. Other conditions require submittal of grading, drainage and erosion control plans to address project impacts to water quality and marine resources, and that the applicant identify the location for the disposal of graded spoils.

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act

of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised/final Parcel Map, Site and Building Plans. Prior to the issuance of the coastal development permit and within 30 days of Commission action, the applicant shall submit for the review and written approval of the Executive Director, a revised parcel map and revised final site and building plans approved by the City of Carlsbad which incorporate the following:

a. A revised alignment of the proposed public access easement to extend 25-feet upland of the mean high tide line which is understood to be ambulatory from day to day to provide lateral access along the entire lagoon frontage width of the property.

b. Installation of time-lock gates at the east and west property lines at the location of the public access easement. Upon acceptance of the public access easement by a public agency or private association acceptable to the Executive Director, the time-lock gates and all perimeter fencing located within the public access easement shall be removed so that the easement shall be open to unrestricted lateral access. An amendment to this permit or a new coastal development permit shall be required for removal of the time-lock gates and installation of additional public access improvements.

c. With the exception of the volleyball court, the existing improvements (barbecue, fire ring, irrigation for lawn) and proposed improvements (crib wall and boat launch ramp) within the required buffer shall not be permitted. Replacement vegetation shall be in accordance with Special Condition #6 of this permit. The area within the public access easement shall be unimproved.

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

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, and within 30 days of Commission action, the applicant shall record a restriction against the subject property. The restriction

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

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

3. Lateral Public Access. Prior to the issuance of the coastal development permit, and within 30 days of Commission action, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline and shall extend 25-feet upland of the mean high tide line as shown on the tentative parcel map for coastal permit dated 1/8/98, which is understood to be ambulatory from day to day.

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

4. Public Access Signage. Prior to the issuance of the coastal development permit, and within 30 days of Commission action, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan which has been approved by the City of Carlsbad, which shall incorporate the following:

- a. Signage on the time-lock gates shall indicate public use is permitted between 5:00 a.m. and 10:00 p.m. daily and that language prohibiting Glass Containers, Alcohol, Dogs or Pollution is allowed consistent with the Carlsbad Municipal Code.

b. Signage shall be installed on the applicant's site in a location visible from the intersection of Adams Street and Cove Drive which identifies that public access to and along the shoreline is available to pedestrians and bicyclists from Adams Street. Said plans shall be subject to the review and written approval of the City of Carlsbad and the Executive Director.

c. Upon installation of the time lock gates, the applicant shall remove the "No trespassing" sign located near the eastern boundary of Lot 2.

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

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

a. Landscaping/Improvement Plans shall be submitted within 30 days of Commission action, as required herein, such that removal of existing unpermitted landscaping and improvements within the buffer shall occur within 60 days of Commission action; and, revegetation of the buffer, as required herein, shall occur within 90 days of Commission action;

b. Final site plan and access signage plan, as required herein, shall be submitted within 30 days of Commission action, such that the time-lock gates and access signage shall be installed, and "no trespassing" sign removed within 60 days of Commission action;

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

6. Revised Landscape Plan. Prior to the issuance of the coastal development permit and within 30-days of Commission action, the applicant shall submit to the Executive Director for review and written approval, in consultation with the Department of Fish and Game, a revised landscape plan, which has been approved by the City of Carlsbad, which shall incorporate the following:

a. The existing grass lawn within the required buffer shall be removed and replaced with native, drought-resistant landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features.

b. Landscaping upland of the buffer shall be designed to mitigate the visual impact of the structures as viewed from the lagoon and public access trail, while preserving views from the homes. The revised landscape plan shall indicate the placement of a minimum of one specimen

size tree (24-inch box minimum) for every 10 feet of pad area lagoonward of the proposed building sites and arranged to maximize screening of the structures from views from Aqua Hedionda Lagoon and Interstate 5. A minimum of 20-trees shall be provided lagoonward of the building pad for Lot 1, and a minimum 13-trees shall be provided lagoonward of the building pad for Lot 2. For the tennis court, a minimum of 6-trees shall be provided on the lagoon side of the court. At maturity the trees shall approximate the height of the roofline of the residences and approximate the height of the fence surrounding the tennis court. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. The plan shall also include the use of species which do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan. Said trees shall be compatible with the natural character of the surrounding environment (i.e., non-invasive or noxious).

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

e. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director against the subject property. The restriction shall incorporate the requirements of condition #5 to ensure that specimen-size trees shall be maintained throughout the life of the permitted development.

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

7. Drainage/Runoff/Sedimentation Control. Prior to the issuance of the coastal development permit, and within 30 days of Commission action, the applicant shall submit for the review and written approval of the Executive Director, final drainage and runoff control plans for the project designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity and elevation. Energy dissipating measures at the terminus of any proposed outflow drains shall be constructed. Any vegetation removed to install such measures shall be replanted with native vegetation. The applicant shall also submit a written commitment indicating that all devices shall be installed and maintained by the applicant in accordance with the approved plan.

8. Grading and Erosion Control. Prior to the issuance of the coastal development permit, and within 30 days of Commission action, the applicant shall submit, for the review and written approval of the Executive Director, final grading plans which shall be subsequently implemented and conform to the following requirements:

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

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

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

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

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal-Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. All other development proposals for the site shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant proposes a two-lot subdivision of a 3.66 acre site (Lot 1=1.55 acres; Lot 2=2.11 acres) and construction of a single-story, 5,400 sq.ft. residence on Lot 1 and a single-story, 5,300 sq.ft. residence on Lot 2. The residence on Lot 1 is setback at least 140-feet from the mean high tide line; the residence on Lot 2 is setback at least 80-feet from the mean high tide line. Also proposed is the construction of a swimming pool adjacent to the residence on Lot 1 and a tennis court (near the eastern property line) and swimming pool adjacent to the residence on Lot 2, vertical fencing along the property lines to the mean high tide line of Agua Hedionda Lagoon, time-lock gates to restrict lateral public access along the lagoon, exotic landscaping and irrigation within the lagoon buffer and upland areas covering both lots, a boat launch ramp, crib wall, fire ring and barbecue. The applicant also proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon (within the buffer), and to construct trail improvements. Drainage improvements (rip rap energy dissipator) are proposed within the buffer. Also, proposed is a lot line adjustment between Lot 2 and an adjacent parcel to the northeast. Cut grading is proposed at 12,400 cubic yards, fill grading is proposed at 3,400 cubic yards with 9,000 cubic yards to be exported off-site. Street improvements to Adams Street include paving within the right-of-way.

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

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

2. No Waiver of Violation. Although development has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal

action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

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

Section 30210

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

Section 30211

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

Section 30212 of the Coastal Act states in part:

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

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

(2) adequate access exists nearby....

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan contains a detailed set of public access policies. Policy #7.6 states, in part;

Policy 7.6

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

Policy 7.1

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

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

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

Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development

All accessways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational area:

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

7.9 Access Signing

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

Most of the north shore lagoon-fronting lots, between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, are undeveloped between I-5 and Bristol Cove (about 1 mile). The primarily hillside lots contain coastal sage scrub habitat and some contain wetland vegetation. They are also within the public viewshed. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a

coastal development permit, if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon with a 10-foot wide trail being provided within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement. To date, lateral access easements have been required on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035) and the 23-unit Bristol Cove condominium project (CDP #F 1012) which is adjacent to the subject site on the east. Only two sites (L&R and Bristol Cove) have constructed their segment of the public access path called for in the LUP.

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

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

finds it to be a significant non-attached structure, a permit is required for installation. The fences in this location are significant non-attached structures because they block public access that has been historically available along the north shore of the lagoon and are installed in a location where the Agua Hedionda Lagoon LUP calls for a public trail; thus, a coastal development permit is required for the installation of the fencing.

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

To determine the extent of historic public use of the site, staff has circulated a survey and questionnaire (exhibit 5). The survey asked how, when and where people used the site. Sixty-three (63) questionnaire and declaration statements have been collected which document some of the public use of the site. Fifty-five (55) of the responses came from respondents living within approximately 1 mile of the site. Of those fifty-five, twenty-eight (28) of the responses came from tenants of the adjacent Bristol Cove development that have used the lagoon frontage of the site to access Jose's restaurant and boat club as well as using the site for recreational purposes (i.e. volleyball, windsurfing, parties, etc.) prior to the applicant installing the fences. Eight (8) of the responses are from respondents living outside of Carlsbad, mostly windsurfers. The surveys indicate extensive public use of the site.

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

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

The Commission finds that the applicant's proposal resolves the project's potential conflicts with the public access policies of the Coastal Act. The surveys document that there is extensive public use of the site. It is not clear whether a court would find that use of the site has given rise to a public prescriptive right of public lateral access. However, if there is a prescriptive right of public lateral access, the fences are clearly inconsistent with Coastal Act policies that provide that development shall not interfere with rights of access that have been acquired through use. The Commission finds that given the applicant's proposal to fence the property until the public access easement is accepted by a public agency, and install time-lock gates that allow for public lateral access during the daytime, the Commission does not need to determine whether there is substantial evidence of a prescriptive right of access. The daytime access will provide adequate access to the lagoon until such time as the entire trail easement is acquired and the trail improved for public use. In past actions, the Commission has denied time-lock gates that barred nighttime access to beaches (CDP #6-92-132), but in those actions the gates precluded valid nighttime beach recreation that is not available on the lagoon (campfires, grunion runs). In addition, in those cases, there were not issues regarding the right of public access.

In past actions in other areas, the Commission has agreed to limit access where there have been demonstrable crime problems, particularly in the Mission Beach/Mission Bay area. These limitations have, however, taken the form of limitations on the use of public parking lots. Direct pedestrian access to the beach has not been altered or abridged in those areas, and the fact that night-time pedestrian access opportunities remain, is seen as a means to off-set the adverse effect of the parking lot closures.

The State Department of Parks and Recreation uses similar tactics to curb camping on the beach. Carlsbad State Beach parking lots are closed from 11:00 p.m. to 6:00 a.m. but the use of the beach is allowed at all times. No existing State or local ordinances prohibit the use of the beach at night.

The Commission finds that interim time-lock gates on the applicant's property might generally be found inconsistent with the Coastal Act based on the above; however, because visual access is not restricted by the gates and other access opportunities are available nearby where the public can access the shoreline of this area in the evening hours, the Commission can accept the proposal on a temporary basis to resolve the conflict. Further, there are no evening recreational activities that would be precluded (grunion runs only occur on ocean beaches and campfires are not allowed on Agua Hedionda Lagoon). The Commission also notes the applicant's proposal would also provide immediate public access prior to acceptance of the access easement. Thus, the Commission can accept this part of the applicant's proposal.

The applicant also proposes the operation standards used by the City of Carlsbad to regulate public access on the subject site. That is, the public access easement would be closed from sunset-to-sunrise which the City defines as 10:00 p.m. to 5:00 a.m. Additionally, signage for the time-lock gates would state: "No Glass Containers, Alcohol, Dogs or Pollution" or similar

language. These measures are consistent with the Carlsbad Municipal Code and can be accepted.

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

The applicant is also proposing to construct public access trail improvements, consistent with Policy #7.6 of the LUP which calls for both the provision of a public access easement and improvement of the easement area with a trail to accommodate pedestrians and bicycle traffic. Such improvements are to be 10-foot wide and of a surface suitable for pedestrian and bicycle use (asphalt, concrete or fine decomposed granite). The applicant has submitted a conceptual public access trail plan and has indicated a desire to construct a trail at this time within the easement to clearly delineate the area of public use. However, the specifics of the ultimate trail (alignment, composition materials, etc.) have not yet been determined by the City or another organization who may want to install the trail along the entire north shore.

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

Policy 7.9 of the LUP provides that signs or other devices on public or private property which might deter use of public access areas shall be

prohibited within the Agua Hedionda Plan area. Currently, a sign located at the end of Cove Drive near the shoreline and the project site's eastern boundary indicates that public access is prohibited on the subject site. This sign was installed by the City prior to the applicant's ownership in response to the site being used for storage of vehicles and other unauthorized uses. However, the sign is in conflict with the above LUP policy and the applicant's intention to allow public use of the site; therefore, the sign must be removed as identified in Special Condition #5. The applicant shall install public access signage on the applicant's site near at the intersection of Adams Street and Cove Drive to notify the public of access opportunities along the shoreline.

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

The Commission finds the above public access requirements necessary to assure the availability of public access consistent with the Chapter 3 policies of the Coastal Act. With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

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

Section 30233

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

...(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its

report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study ...

Section 30240

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

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

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

Policy 3.5

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

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

Policy 4.4

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

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

- c. Use of the Planned Development Ordinance (PD) and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

The project site contains shoreline associated with Agua Hedionda Lagoon. In many past actions the Commission has required a 100-foot buffer between new development and lagoon waters. The buffer provides a distance barrier and a percolating medium, and reduces the chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon. In addition, buffers provide upland habitat for birds and other species that use wetlands surrounding the lagoon itself. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas.

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

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

Section 13250 of the Commission's administrative regulations provides that for purposes of determining whether a coastal development permit is required for improvements to existing single family residences, both landscaping and fences shall be considered as part of the structure. The applicant recognizes that he installed the landscaping, including the palm trees and grassy lawn, within the lagoon buffer on parcel APN #206-200-008 prior to selling parcel APN #206-200-009, which is the site of the single family residence that was previously under the applicant's ownership. APN #206-200-009 does not contain any lagoon frontage nor does it contain any part of the lagoon buffer where the Commission is taking exception to the installation of the fencing and the non-native vegetation. That is, the entire lagoon frontage is contained within APN #206-200-008 which has always been a vacant parcel and as such Section 13250 would not apply.

The California Department of Fish and Game has reviewed the landscape plan and indicates native, drought-resistant species are preferable in the buffer. However, mostly non-native vegetation, including a grassy lawn and palm trees, are proposed within the buffer. The Commission can accept the palm trees because although not native, they are naturalizing and becoming a part of the Southern California environment. Palm trees water requirements are not excessively high. However, the same cannot be said for the lawn that is planted within the buffer. A lawn is not suitable for a buffer because it requires more water than native drought-resistant upland species like coastal sage scrub and chaparral and many times requires fertilizers, pesticides and herbicides that are harmful to the habitat values of the lagoon. Sometimes lawns are considered invasive and noxious in this setting. Thus, while the Commission can accept the existing palm trees, the Commission finds that elimination of the existing lawn within the proposed buffer zone is required. Therefore, the Commission finds a revised site plan is necessary to find conformance with the Coastal Act which indicates the lawn will be removed and replaced with native, drought-resistant plants compatible with an upland coastal environment. For the same reason the Commission finds the remaining existing improvements within the buffer, except the volley ball court, must be removed and replaced with native, drought-resistant plants compatible with an upland coastal environment.

However, the Commission can approve the proposed vegetative barrier and low fencing between the area of public use and the upland portion of the site as they serve as a boundary between private and public use. The Commission finds that the existing improvements within the buffer must be removed within 60 days of Commission action. Therefore, a revegetation plan to replant the buffer must be provided within 30 days of Commission action. Said plan shall be implemented within 90 days of Commission action. The site shall be subject to a staff inspection upon completion to confirm that the site has been modified consistent with the approved plans.

Regarding the proposed boat launch, Policy 6.2 of the LUP provides that construction of private launching facilities shall be subject to approval by the U.S. Army Corps of Engineers, the State Department of Fish and Game, the City of Carlsbad and the Coastal Commission, consistent with Coastal Act policies. Remnants of a pre-existing launch ramp are located on the shoreline

near the site's eastern property line. Apparently, the launch was constructed before the passage of the Coastal Act. However, any upgrades or reconstruction of the ramp must be reviewed by the resource agencies prior to Commission approval to determine possible impacts to eel grass resources within the lagoon. Thus, an amendment to this permit or a new coastal development permit is required to approve the boat launch.

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

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

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

5. Scenic Preservation. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and a major

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

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

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

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

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

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

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

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

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

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

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

8. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned to be found consistent with the resource, visual and public access protection policies of the Coastal Act. The attached mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

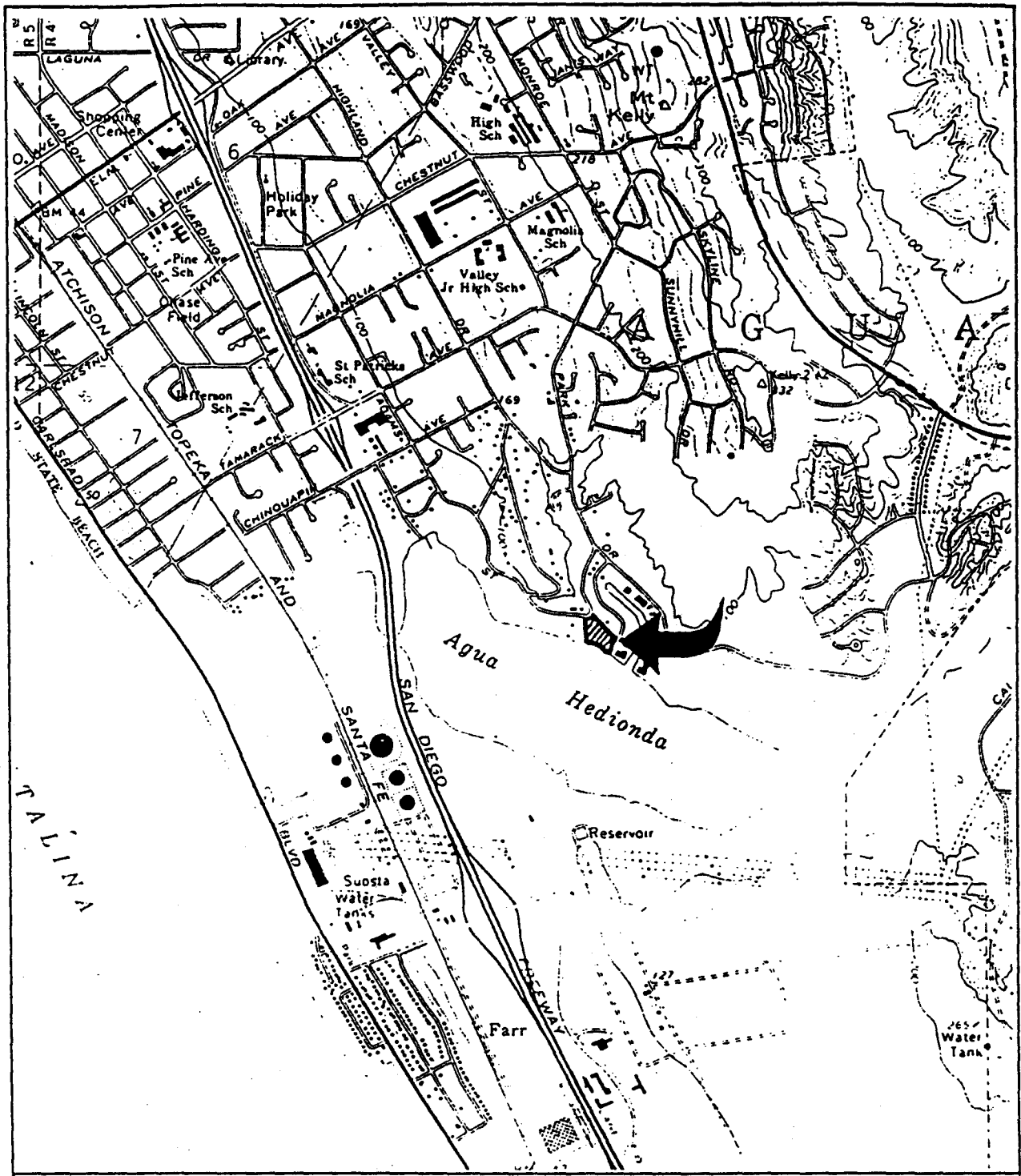
STANDARD CONDITIONS:

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.

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PSBS # T0161-2



Legend


 Project Site

EXHIBIT NO. 1

APPLICATION NO.

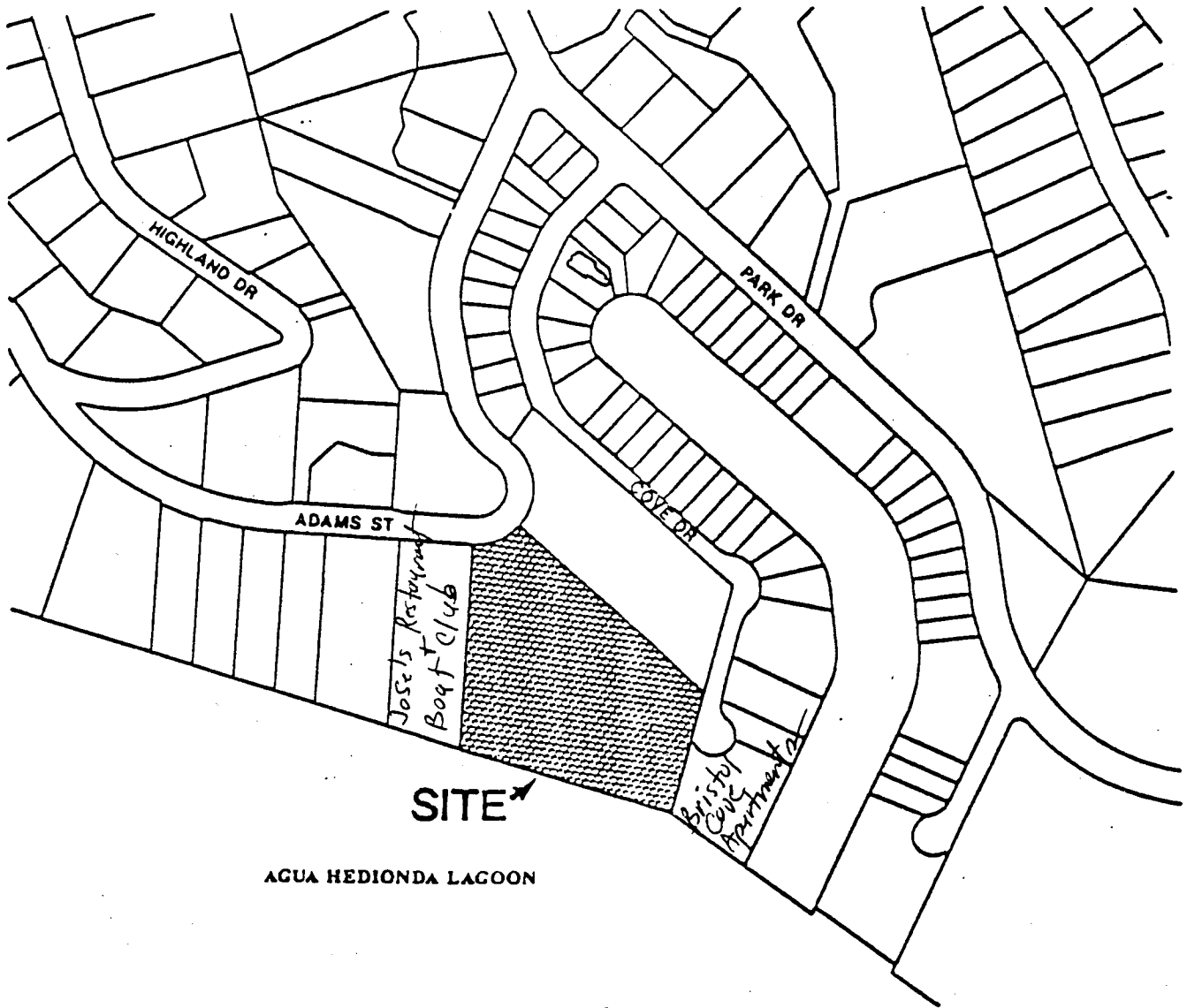
6-96-159

Location Maps

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

 California Coastal Commission

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AGUA HEDIONDA LAGOON



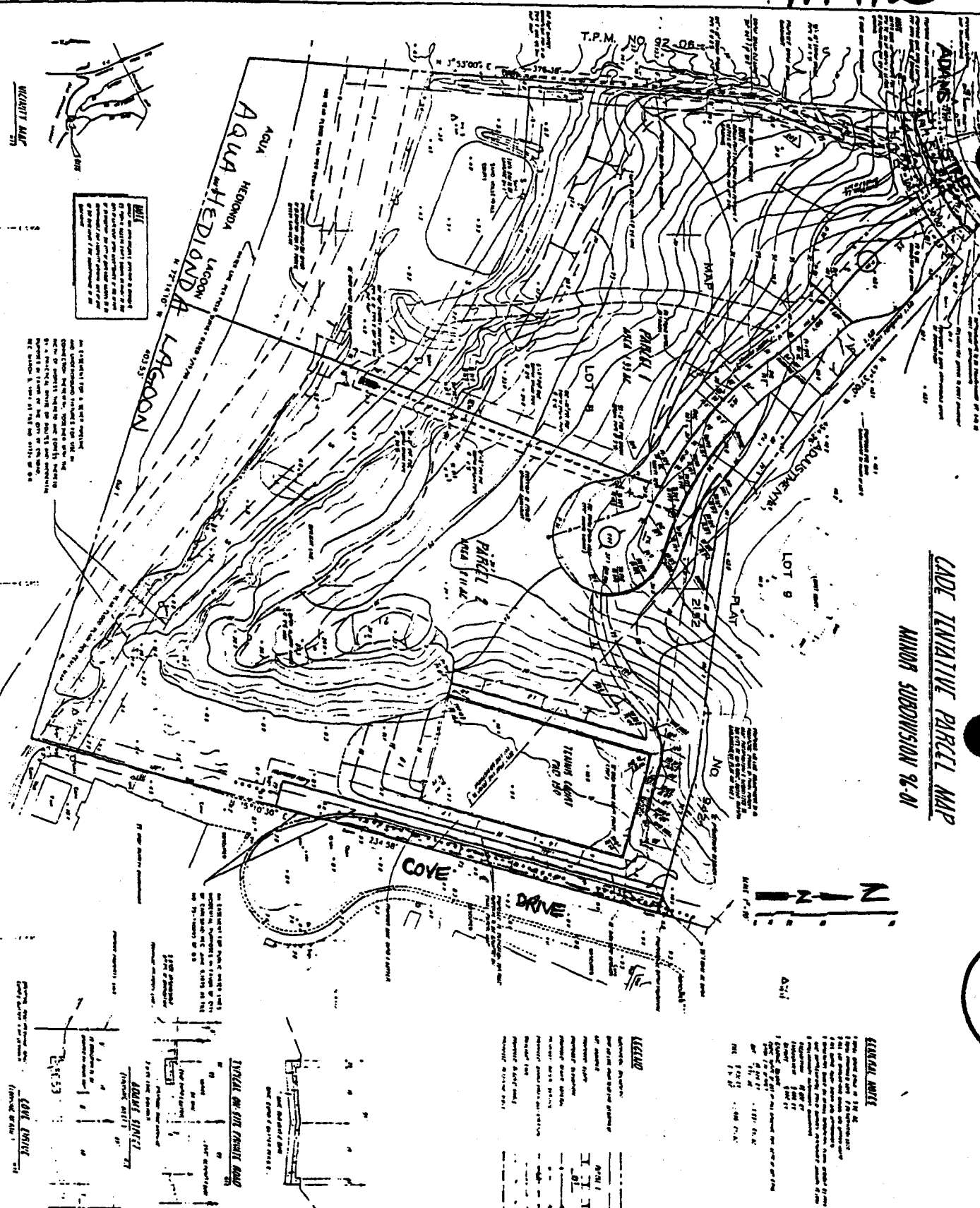
CADE TENTATIVE PARCEL MAP

HDP 96-10/MS 96-01

6-96-159
MAP #1
Location

TH 112

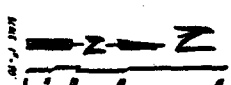
CADRE TENTATIVE PARCEL MAP
MINOR SUBDIVISION 96-01



NEIGHBOR MAP

NOTE
This map is intended to show the location of the proposed parcels and is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels.

no liability for a later finding of an error in the map. The map is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels.



GENERAL NOTE
This map is intended to show the location of the proposed parcels and is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels. It is not intended to show the location of the proposed parcels.

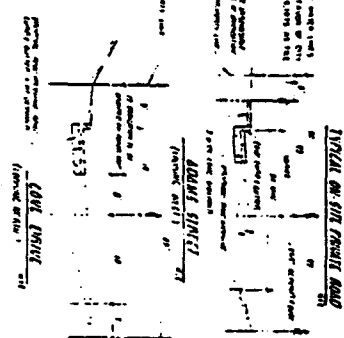


EXHIBIT NO. 2
APPLICATION NO.
6-96-159
Site Plans

California Coastal Commission

MAP #2



LEGEND
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LEGAL NOTES
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ASSESSMENT DISTRICT
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ADJACENT CENSUS
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LEGAL NOTES
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ASSESSMENT DISTRICT
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ADJACENT CENSUS
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VICINITY MAP

NOTICE

THE CALIFORNIA COASTAL COMMISSION HAS REVIEWED THE APPLICATION FOR A COASTAL PERMIT FOR THE PROPOSED CONSTRUCTION OF A RESIDENTIAL DEVELOPMENT ON THE TRACT DESCRIBED IN THE ATTACHED MAP. THE COMMISSION HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

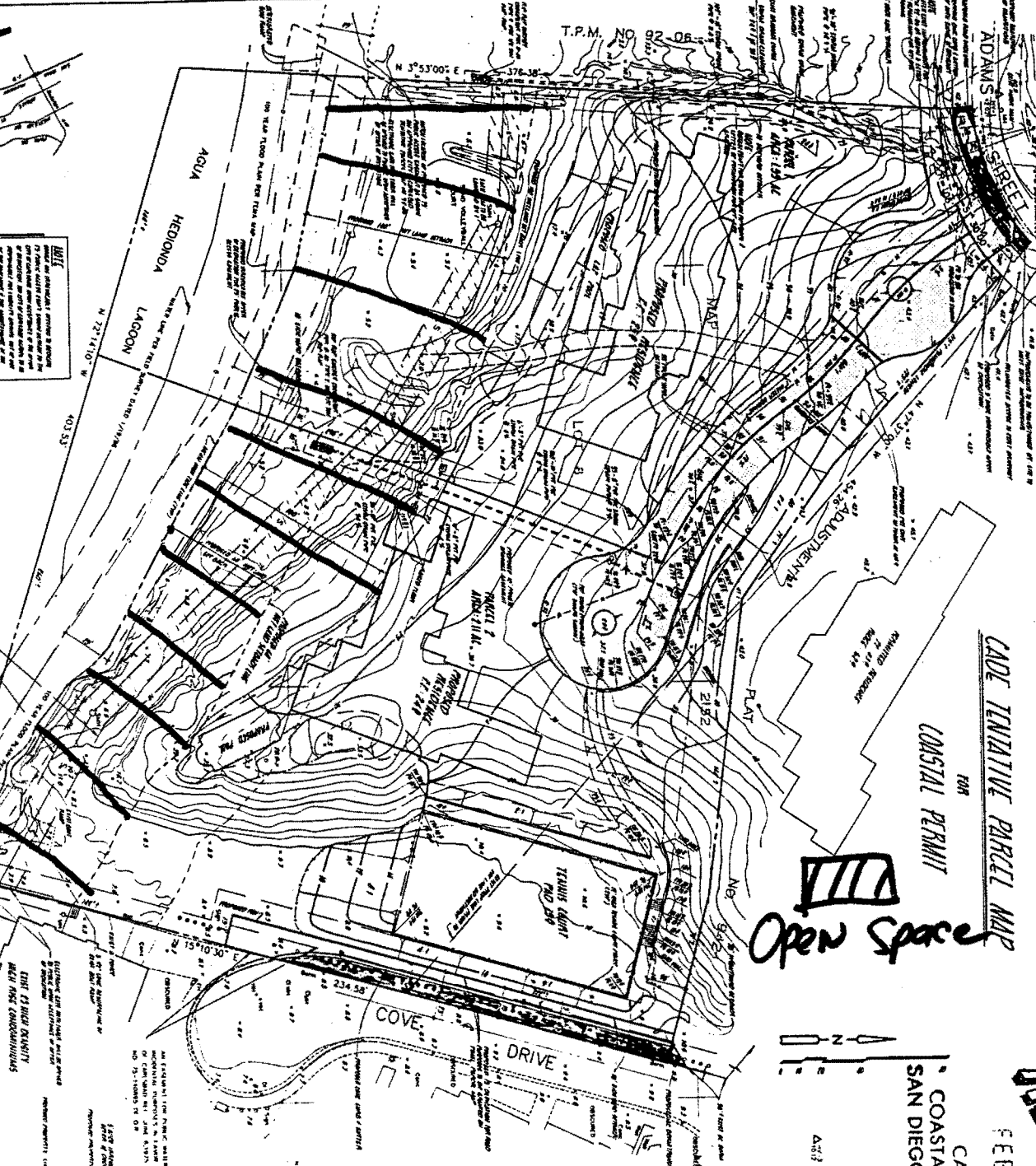
AN EXISTING 100' WIDE RIGHT-OF-WAY FOR THE TRACT DESCRIBED IN THE ATTACHED MAP IS SHOWN ON THE MAP. THE COMMISSION HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

GENERAL RESTRICTIONS

NO PART OF THE TRACT DESCRIBED IN THE ATTACHED MAP SHALL BE USED FOR ANY PURPOSE OTHER THAN THAT AUTHORIZED BY THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

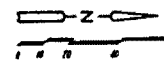
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CADE TENTATIVE PARCEL MAP FOR COSTAL PERMIT

Open Space



CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COASTAL DISTRICT

FEB 20 1998

RECEIVED

LEGEND

PROPOSED DEVELOPMENT

EXISTING DEVELOPMENT

EXISTING ROADS

EXISTING UTILITIES

EXISTING EASEMENTS

EXISTING ENCUMBRANCES

EXISTING RIGHTS

EXISTING INTERESTS

EXISTING RIGHTS OF WAY

EXISTING RIGHTS OF EASEMENT

EXISTING RIGHTS OF ACCESS

EXISTING RIGHTS OF ESCAPE

EXISTING RIGHTS OF REDEMPTION

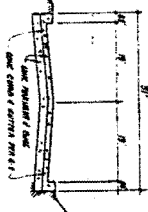
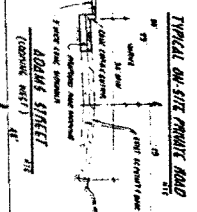
EXISTING RIGHTS OF REVERSION

EXISTING RIGHTS OF RESCUE

EXISTING RIGHTS OF REDEMPTION

EXISTING RIGHTS OF REVERSION

EXISTING RIGHTS OF RESCUE



LEGAL ACCESS

THE CALIFORNIA COASTAL COMMISSION HAS REVIEWED THE APPLICATION FOR A COASTAL PERMIT FOR THE PROPOSED CONSTRUCTION OF A RESIDENTIAL DEVELOPMENT ON THE TRACT DESCRIBED IN THE ATTACHED MAP. THE COMMISSION HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

LEGAL DESCRIPTION

THE TRACT DESCRIBED IN THE ATTACHED MAP IS DESCRIBED AS FOLLOWS: [Detailed legal description of the tract]

ASSIGNMENT OF RIGHTS

THE TRACT DESCRIBED IN THE ATTACHED MAP IS ASSIGNED TO THE CALIFORNIA COASTAL COMMISSION FOR THE PURPOSES OF THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

LEGAL ACCESS

THE CALIFORNIA COASTAL COMMISSION HAS REVIEWED THE APPLICATION FOR A COASTAL PERMIT FOR THE PROPOSED CONSTRUCTION OF A RESIDENTIAL DEVELOPMENT ON THE TRACT DESCRIBED IN THE ATTACHED MAP. THE COMMISSION HAS DETERMINED THAT THE PROPOSED DEVELOPMENT IS IN ACCORDANCE WITH THE CALIFORNIA COASTAL ZONING ACT AND THE CALIFORNIA COASTAL COMMISSION ACT.

EXHIBIT NO. 3

APPLICATION NO. 6-96-159

Open Space Deed Restriction

California Coastal Commission



REGISTERED PROFESSIONAL ENGINEER

[Signature]

REGISTERED PROFESSIONAL ENGINEER

[Signature]

REGISTERED PROFESSIONAL ENGINEER

[Signature]

REGISTERED PROFESSIONAL ENGINEER

[Signature]

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REGISTERED PROFESSIONAL ENGINEER


[Signature]

REGISTERED PROFESSIONAL ENGINEER

[Signature]

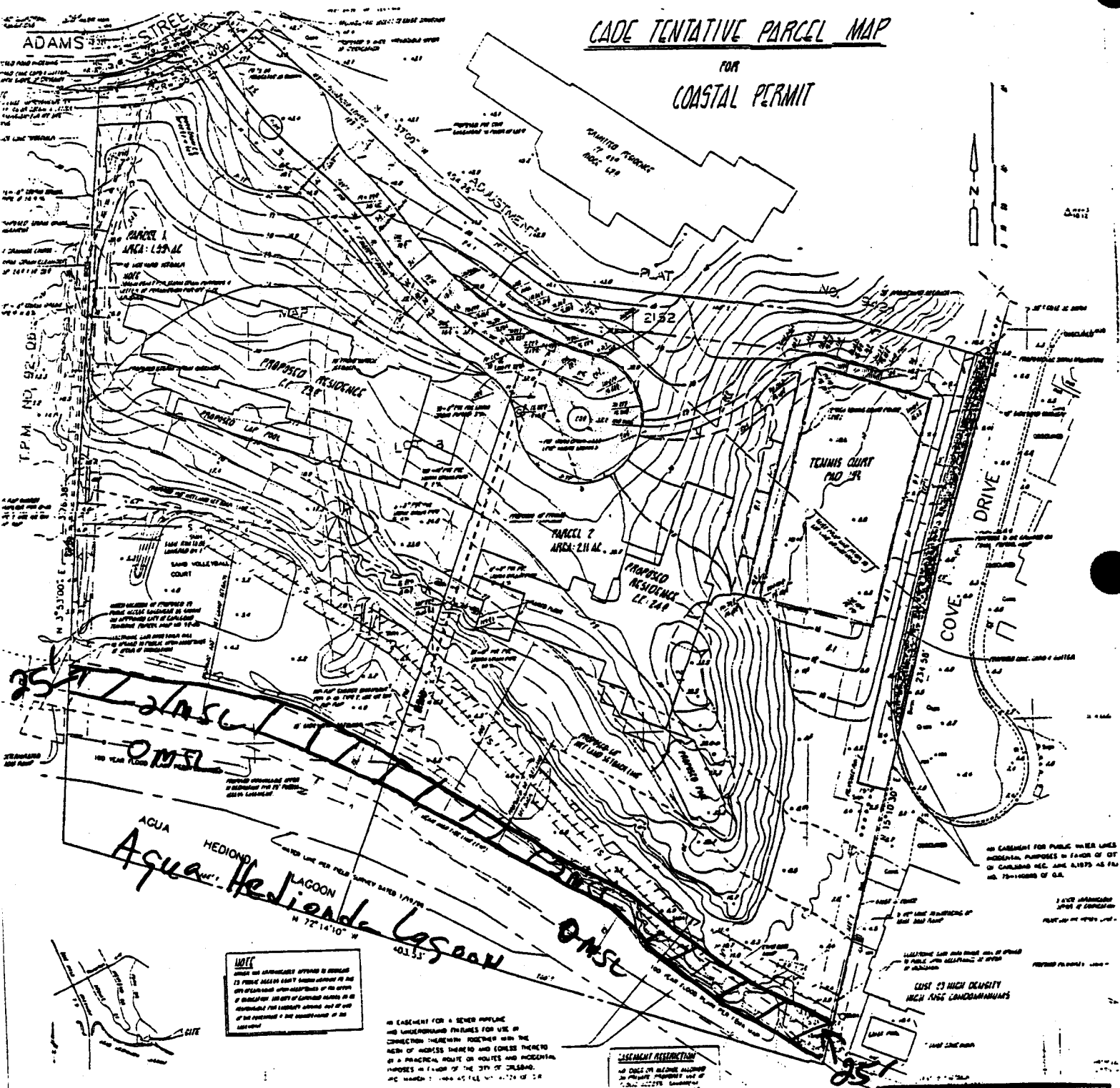
REGISTERED PROFESSIONAL ENGINEER

[Signature]


 Easement Area
 In Concept Only

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


CADE TENTATIVE PARCEL MAP
 FOR
 COASTAL PERMIT



NOTES
 1. THE EASEMENT AREA IS SHOWN IN SHADING.
 2. THE EASEMENT AREA IS SHOWN IN SHADING.
 3. THE EASEMENT AREA IS SHOWN IN SHADING.
 4. THE EASEMENT AREA IS SHOWN IN SHADING.

AN EASEMENT FOR A SEWER PIPELINE
 AND UNDERPASSAGE FRAMES FOR USE IN
 CONNECTION THEREWITH TOGETHER WITH THE
 AREA OF ACCESS THEREIN AND EGRESS THEREIN
 AS A PRACTICAL MATTER OF NECESSITY AND INCIDENT
 HERETO IN FAVOR OF THE CITY OF CARLSBAD.
 REC. NUMBER: 1986-05-16-01-0172 OF 24


EASEMENT RESTRICTIONS
 NO EASEMENT SHALL BE GRANTED
 TO ANY OTHER PARTY AND NO
 PART THEREOF SHALL BE CONVEYED
 TO ANY OTHER PARTY.

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

Th 11a

CALIFORNIA COASTAL COMMISSION

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

EXHIBIT NO. 5
APPLICATION NO. 6-96-159
Questionnaire




THIS PETITION WAS COMPLETED AND
RETURNED BY 63 INTERESTED PARTIES

QUESTIONNAIRE AND DECLARATION FOR NORTH
SHORE OF AGUA HEDIONDA LAGOON NEAR
BRISTOL COVE, CARLSBAD

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

Name: _____

Address: _____

Telephone: (work) _____ (home) _____

Occupation: _____

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

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

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

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

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

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

a) How often were others present there? _____

b) How many people were actually present? _____

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

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

Questionnaire and Declaration
Page 2

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

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

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

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

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

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

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

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

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

(Signature)

PP

Bristol Cove Property Owners Association

c/o CHAMPS/The Kelly Group

5731 Palmer Way - Suite C1

Carlsbad, CA 92008-7247

760/603-0501 • FAX 760/603-0505

April 9, 1998

RECEIVED

APR 10 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Bill Ponder, California Coastal Commission
San Diego Coast Area
3111 Camino Del Rio North, Ste. 200
San Diego, CA 92108-1725

Dear Mr. Ponder:

**RE: Historic Public Use of Property Along the
North Shore of Agua Hedionda Lagoon - 4529 Adams Avenue, Carlsbad, CA**

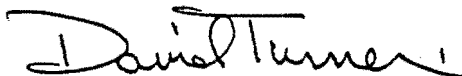
We understand that the Coastal Commission is contemplating a hearing on the above mentioned property in Sacramento next month. I write on behalf of Bristol Cove Property Owners Association, which is comprised of nearly 300 hundred residences and is the immediate adjacent neighbor to the aforementioned property.

Firstly, we wish to express our strong objection to the planned venue. A hearing in Sacramento would deny nearly 500 residents the opportunity for public comment.

We would also like to reiterate our long standing position on the subject of public beach access to the Agua Hedionda Lagoon.

It is our sincere hope that the commission will give serious consideration to calendaring this matter for a meeting more convenient to our residents. As you know, our Association assisted the Coastal Commission's earlier efforts at distributing questionnaires concerning this property and several dozen of our members provided public comment. To deny public comment at this stage would be unthinkable.

Sincerely,



David Turner, President
Board of Directors

cc: Debra Lee
Chuck Damm

mg

6-96-159

th Ma

APR-14-1998 17:30

CITY OF CARLSBAD

760 720 9461 P.02/04



City of Carlsbad

Office of the City Council

VIA FAX TRANSMITTAL**Total: 3 Pages**

April 15, 1998

Bill Ponder
Coastal Planner
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108

RE: STEVE CADE'S PROPERTY AND PROPOSED DEVELOPMENT

Dear Mr. Ponder:

This letter is in support of Mr. Cade's proposal to develop a piece of property bordering Agua Hedionda Lagoon in Carlsbad. I would like to begin by stating that during the many years I have known Mr. Cade, I have always found him to be a person who is both extremely community and environmentally minded.

I have been familiar with this particular piece of property since 1965. I have not only lived in Bristol Cove, but have worked at Foxy's Landing. This property has been in very poor condition for many years. It has only been in recent years, since Mr. Cade's ownership, that someone has taken real pride in its maintenance and upkeep. Mr. Cade has shown me the recent correspondence with your office and also his proposals in regard to access. I find those proposals to be quite reasonable.

I strongly urge your support of this project.

Sincerely,

MATT HALL
Council Member

mhs

Attachment



6-96-159

Th 11a 4/14/98

To Mr. Bill Ponder

TO CALIFORNIA COASTAL COMMISSION

RE: QUESTIONNAIRE + DECLARATION FOR NORTH SHORE
OF AGUA HEDIONA LAGOON NEAR BRISTOL COVE, CARLSBAD

FROM ED WHITNEY

COMMENTS I RESIDED ON THIS PROPERTY FROM MAY 82 TO OCT 97.
I WAS HIRED BY THE FORMER LAND OWNER TO ATTEND TO
ANY PROBLEMS THAT WOULD OCCUR ON THE LAND. TRESPASSING,
UNAUTHORIZED PARKING OF VEHICLES, TRAILERS & BOATS WAS
AN ONGOING PROBLEM UNTIL THE CITY CITED IT + CLEARED
OF THE LOWER LOTS. BARRICADES WERE INSTALLED. THIS
STOPPED VEHICLES FROM ENTERING THE LOT. HOWEVER UNAUTHORIZED
FOOT TRAFFIC STILL OCCURED. THIS WOULD OCCASIONALLY LEAD
TO VANDALISM + THEFTS. THE MOST NOTE WORTHY INCIDENT
WAS THE BURNING OF MY RECREATION VEHICLE AT THE
BEACH SIDE OF THE PROPERTY EARLY 1990'S. PICNIC TABLES
I USED TO KEEP THERE WERE ALSO VANDALIZED + EVENTUALLY
DESTROYED.

FIREWORKS SET OFF BY BRISTOL COVE RESIDENTS HAVE
CAUGHT THE YARD ON FIRE SEVERAL TIMES ALSO.

STEVE CADB, THE NEW LANDLORD, INSTALLED A CHAIN
LINK FENCE + GATE AROUND ENTIRE LOT. THIS ONE SINGLE
ACT MADE A MONUMENTAL DIFFERENCE IN THE AMOUNT
OF PROBLEMS THAT OCCURED ON THE PROPERTY. THERE'S
WOULD STILL BE AN OCCASIONAL ACT OF VIOLENCE

6-96-159

4/14/98

(2)

COMMITTED TOWARDS PROPERTY ON TRESPASS BUT NO
WHERE THE LEVEL IT WAS AD WITH OUT THE FENCE.
THE LOSS OF GARDENING EQUIPMENT (CHAIN SAW - WEED
EATER) THE MOST RECENT THEFTS. WAS THE RESULT OF
A PLANNED BURGLARY. WHERE AS MOST OF THE PROBLEMS
WOULD OCCUR BECAUSE THERE WAS NO CONTROL OVER
THE PROPERTY - NO FENCE, SIGNS ONLY DETER
HONEST PEOPLE!

THANK YOU FOR YOUR TIME

Ed Whitney

(760) 510-9030

4/14/98

th 11a

James A. Courtney1861 Southview Drive Carlsbad, CA
760 729-7710 Fax 760 729-7710

April 13, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino del Rio North Suite 200
San Diego, CA 92108**RECEIVED**

APR 14 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Ponder:

Recently I was asked to complete the attached questionnaire and to also comment on the development of the "Cade" property on Adams Street in the City of Carlsbad.

I have been a resident of the City of Carlsbad for more than twenty years. I have been co-owner of "Whitey's Landing" (the property to the west of Mr. Cade's property) for more than ten years.

First let me address the questionnaire. I'm curious as to why your office never sent the questionnaire to me or anyone else I know that owns property on the lagoon. The questionnaire appears to be designed to solicit information in an attempt to somehow establish a public right to trespass on a citizen's private property. The way the questions are worded it appears that you are trying to determine if the public has frequently used this property.

As you know, the lagoon is owned by SDG&E, and is private property. The southerly property line of our property is approximately 40 feet out into the water. SDG&E has leased the lagoon to the City of Carlsbad for recreation uses and the City has established various public access points. Except for the numerous accesses that have been dedicated and provided for public access to the lagoon, and the right of way for the railroad and I-5, all the property around the lagoon is privately owned. At each of the public access points the City has posted signs informing the public that the property, adjacent to the public access, is Private Property and No Trespassing.

We have owned "Whitey's Landing" for more than 10 years and, except for the tenant of the previous property owner, and the current property owner, (Mr. Cade and his family), I don't recall ever seeing anyone use the beach on the subject property during the day, even on weekends. I have seen residents of the condos to the east of Mr. Cades property trespass on his property as well as mine to "walk" their dogs. Also, two or three times each year during the summer we have to call the police to disperse trespassers who are drinking and smoking marijuana at night on our property as well as the subject property. I do know that we have suffered vandalism and damage to our property over the years, and Mr. Cade has experienced numerous (and very costly) incidents of vandalism and theft since he purchased the property.

0-96-159

To summarize, the only people I know of that use this beach are:

A few residents of the Bristol Cove Condos who cut across Mr. Cade's property to walk to Jose's Baja Grill, (on our property),

Those residents of the Bristol Cove Condos who trespass and allow their dogs to defecate all over the place and never clean it up, and

People who trespass late evenings and into the night with beach parties.

To my knowledge, the public has never had access to, nor have I ever seen any such public use on the aforementioned property.

As to the subject of Mr. Cade's development plans for the subject property, We wholeheartedly support and endorse it. We are very familiar with the site development plan and we think it will be a very attractive addition to the neighborhood. We are looking forward to the timely completion of the project.

We highly commend Mr. Cade for the fantastic job he has done in cleaning up and beautifying his beach area. It has been a tremendous improvement not only for the aesthetics, but also to the preservation and enhancement of the beach environment on his property.

Thank you for your attention and consideration in this matter, and we very strongly urge you and staff to recommend of approval of this very fine project and allow it to proceed.

Sincerely yours,

James A. Courtney

th 11a

April 11, 1998

Bill Ponder
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, Ca. 92108
619 521-8036 FAX 619 521-9672

Re: Cade Family Development, Adams St. @ Aqua Hedionda
Lagoon, Carlsbad

Dear Mr. Ponder,

My name is Denise Denn. I am a homeowner on Adams St. in the lagoon area of Carlsbad. In fact, I am the neighbor directly across the street from the project proposed by the Cade family. I have been a teacher in the Carlsbad School District for 19 years. My husband and I have owned property along Adams St. since 1987.

The Cade property has been occupied over the years by a tenant, Ed Whitney, who lived on the entire parcel, was basically a caretaker, and stored much of his own equipment around the property. At the time of purchase by the Cade's, the property was in an extremely run down condition, i.e. there was broken bottles, glass, rusty pipes, tires, and plastic containers strewn throughout the property. The "beach" area, above the high tide line, consisted of rocks, glass and broken bottles. Also known to myself is the long history of high density overrun on this property by the people who inhabit the area known as Bristol Cove. This has included boats, trailers, cars, and trucks, either stored or abandoned on the property and later forcibly removed by the City of Carlsbad. My family has accessed the property many times, initially with the permission of Ed Whitney, and later as friends and guests of the Cade Family. During all these years, the beach areas have been clearly marked as private property on signs posted by the City of Carlsbad.

Recently, the Cades allowed us to leave small boats on the beach frontage. They were chained up and locked. During the night, somebody, presumably from Bristol Cove cuts the chains and stole the small craft.

6-96-159

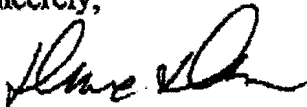
Bill Ponder, p. 2

Based on the nature of your position on this property, several of the people of Bristol Cove have taken the position that all lagoon area property is public domain. They are pushy and forceful about it. This is not only incorrect but frightening. At the same time, there is no attempt made to allow lagoon access through any of the Bristol Cove properties.

Yes, I feel very strongly that private property rights in the lagoon area need to be respected. Access to frontage walkways needs to be monitored. Rules to define hours of access, pets, alcohol, etc. need to be established.

If you have any questions regarding this matter, please contact me at 760 434-0406.

Sincerely,



Denise Denn
4470 Adams St.
Carlsbad, Ca. 92008

Thila

April 20, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino del Rio North
Suite 200
San Diego, Ca. 92108

RECEIVED

APR 20 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Ponder:

I would like to express my personal comments and opinion to you regarding your current evaluation and upcoming decision on a coastal building permit for the property owned by Mr. Steven Cade on the Agua Hedionda Lagoon in Carlsbad, Ca.

As a long time Carlsbad resident and community participant, I have been knowledgeable about the growth and changes within this city for many years.

After evaluating the proposed building plans for the property in question and relating them to the current surroundings and dwellings, it is my opinion that this project is a benefit to the city, the local inhabitants and the environment.

The building proposal is low density and will certainly adhere to the natural surroundings as well, if not substantially better then prior approved high density dwellings in the immediate neighborhood.

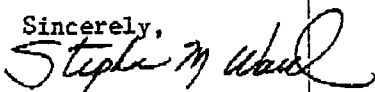
In regards to the issue of a free traffic zone to pedestrians or casual strollers, I believe this should be a non-issue. The property in question abuts a very beautiful and desirable scenic portion of a private water reserve. The lagoon was developed and is very stringently controlled for private specific use. The residual, "windfall" benefits that result from the property having a body of water are unique and limited. Should individuals seek use of the water of this reserve, they must contact the controllers of the lagoon and receive specific permission for activities of any type. The rules are stringent, specific, and extremely limiting to all activities.

Individual property owners that agree to purchase, or reside next to this reserve must agree to the rules of the reserve. They cannot choose to develop their own set of rules and activities for the water or shore. It is incumbent upon any governing body or individual planners to determine value to the general public within the scope of the property or properties in question. This subject property is completely private, is advertised as such, and very aggressively guarded and patrolled as private.

The issue of access to any portion of the subject property or the adjoining parcels should be a mute point. The focus should and must be conformity to the natural beauty of the grounds, to the zoning of the city, and to the interest of the immediate property owners within a reasonable distance to the property.

I appreciate your review of my opinions and comments. I look forward to the progression and completion of the "Cade" plan and project. I believe other similar plans by other fortunate property owners in this immediate area will serve to enhance, beautify, and place the use of the land at its highest and best level.

Sincerely,



Stephen M. Ward

096-159

Th 112

Message via Fax & U.S. Mail
Fax 619-521-9672

RECEIVED

APR 15 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

April 13, 1998

Mr. Bill Ponder, Coastal Planner
California Coastal Commission, San Diego Office
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108

Re: Mr. Cade's property and proposed development in Carlsbad, CA

Dear Mr. Ponder:

I have filled out your survey. Overall, this survey appears to me that it is biased in nature. You appear to ask all the questions that attempt to solicit opposition to a very nice development that many in Carlsbad will benefit from. You ask no questions about the damage and vandalism that has occurred for many years on the property at the hands of some of the people living in Bristol Cove. You ask nothing about the police reports, the drug raids, the illegal acts occurring on the private property (by people living in Bristol Cove), the illegal boat launchings (without the owners permission), the liability risks from the dangerous rocks (slippery and sharp), potential drowning, the multitude of City of Carlsbad Code enforcements, the letters sent to the previous property owner forcing him to secure the property, haul away the abandoned boats, trailers, vehicles (stored by people living in Bristol Cove), and the reasons for why the City of Carlsbad posted "No Trespassing" on the property line between Bristol Cove and Mr. Cade's property. What I am trying to communicate to you is that there is a very "ugly" history of tremendous pollution and property damage caused by people living in Bristol Cove when they illegally came onto the subject property. Three years ago Mr. Cade purchased the property. He spent thousands of dollars cleaning up the property and making a property appearance that most of Carlsbad is proud to be able to say it is now a real asset. Mr. Cade has set the standard for properly maintaining property and the hope is that others will follow his example. You seem bent on a mission to tear down the good that has occurred. We are lucky to have had Mr. Cade purchase this property and be such a "great community leader" in Carlsbad. You can certainly find a small group of people who do not respect "Private Property Rights" but you must realize this is a "minority" of the local population. Your survey was sent out only to people who will write to you negative comments. I only received a copy of your questionnaire from a friend of a friend. I know Mr. Cade and the good he does in our community and I must tell you that your survey was worded in a grossly unfair manner and it was sent to a very selective group of opponents. Those people you sent the survey to do not represent the "mainstream" of Carlsbad.

My understanding is that Mr. Cade has offered an access easement across his private property to the City of Carlsbad. It is up to the City of Carlsbad or some other reliable agency to accept this Offer of Dedication. According to the Agua Hedionda Land Use Plan and also the Coastal Act this easement shall not be opened to the Public until some entity takes over for liability and maintenance of the easement. There is significant exposure to liability on this stretch of property and the private property owner needs to be immune from this liability (and the threat of liability that would require legal expenditures to defend "an action" against the private property owner). The slippery and sharp rocks on the property (near Bristol Cove condos) pose a huge liability

6-96-159

risk. I and others I know have slipped on those rocks and an accident is waiting to happen there. The bigger liability loss would come from a drowning on this private property.

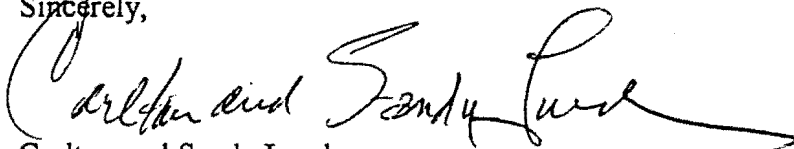
Furthermore, there are a number of people living in the adjacent high-density condos (Bristol Cove) who are very careless to the environment. They pollute and cause property damage with a careless attitude. Mr. Cade has made an "extremely positive statement by his actions" for cleaning up the pollution and maintaining the property. When this Offer of Dedication is accepted the public entity taking over responsibility needs to ensure the property is effectively maintained and kept clean. We do not want to see the environmental pollution recur.

Beyond the notes above, I understand that Mr. Cade has graciously offered to "open his private property for public usage prior to some agency accepting the Offer of Dedication." This is an extraordinary proposal by a private property owner and you should be very careful not to overlook the value of this proposal. This type of proposal further exemplifies the type of person Mr. Cade is in our community. He has indicated that he is only requesting a few minor controls to limit vandalism, heavy partying at night (public nuisance for the other homes in this area) and night-time theft. His request for a curfew at night (when intoxicated people from Bristol Cove condos have historically caused tremendous damage to the property and made huge amounts of noise and commotion that would be difficult to sleep through). Curfews are common and there is no reason people need to be walking on his private property at night. He has also asked for the same few city codes that exist on all local City of Carlsbad beaches to be enforced on his private property.

Mr. Cade has made a very generous offer and compromise. This proposal by a private property owner is profound. This "temporary solution" will exist until the time a permanent solution is made when some public entity accepts the recorded "Offer of Dedication" that now exists. For a private property owner to allow the public to cross his private property is an extraordinary proposal that should not be minimized or overlooked. I request that you take full advantage of this opportunity and recognize that Mr. Cade is merely asking for minimal restrictions that have factual and "common sense" backing.

Please accept Mr. Cade's proposal as has been presented to your office.

Sincerely,



Carlton and Sandy Lund
4779 Brookwood Court
Carlsbad, C92008

(760)
Tel: 431-3338

Th 11a

April 14, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, Ca. 92108

RECEIVED

APR 16 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Coastal Permit Application 6-96-159
Steven and Maureen Cade
Adams St. & Agua Hedionda Lagoon, Carlsbad

Dear Mr. Ponder

As a resident and property owner along Adams St. and Agua Hedionda Lagoon, I feel it important to voice an opinion regarding the permit application of the Cade Family listed above. I am aware of a questionnaire being circulated by your office regarding past use of the Cade property, which I will attempt to address here.

It is common knowledge the Cade property was extremely run down when they purchased it. It had suffered from years of neglect and an outflow of trash, debris, trespassing, and illegally stored vehicles coming from the Bristol Cove development. In the 1970's and 1980's the City of Carlsbad and the Coastal Commission had approved extremely high density condominium and apartment units on the lagoon front in the Bristol Cove area. Since this development has insufficient parking, boat and trailer storage, or boat access areas to the lagoon, much of the excesses have spilled over to the Cade property. This with much distraction to the previous owner. The City of Carlsbad sited boat storage and abandoned vehicles, and forced the Bristol Cove residents to remove these from the previous owner's property. Additionally they required the owner to secure the property against trespass, as it was not zoned for storage, parking, or any of the other illegal activities which were going on.

The property had always been clearly marked as private--no trespassing. It was equally clear that people passing through the property, most notably from Bristol Cove to Jose's Restaurant, were trespassing on private property.

Since purchasing the property Steve Cade has simply followed good judgement and the law by securing his property against trespass, and cleaned up the property to make it safe for his family. In terms of conforming with the rest of the Carlsbad coastal area for property with water frontage, he has conformed exactly. All of the areas of Ocean Ave. and Terra Mar which have direct ocean frontage and open land are fenced, as is the Cade property. Many of the areas which allow beach access have gates on timers or gates which are keyed for private use only.

There is an extreme unfairness which parallels the attempt by the Bristol Cove group to usurp use of the Cade property because of their own problem with over density. In all the other areas of the city there is no precedent for it.

6-96-159

April 14, 1998

Calif. Coast Commission, p. 2

Over the past several years, dating to 1987, I have observed no use of the beach areas of the Cade property other than obviously unauthorized trespass. Ed Whitney, the previous tenant has had a few of his own guests on the beach, as have the Cade's subsequently. I have personally witnessed and reported several acts of vandalism and robbery by persons inhabiting (or guests of) the Bristol Cove development. At no time has the property been seen as generally open for public use. I totally support the position of Mr. Cade, his work to clean up his property and make it attractive, and his plan as presented for development.

Sincerely,



Thomas E. Jones
4529 Adams St.
Carlsbad, Ca. 92008
760 720-1858

CLARENCE H. SCHLEHUBER
ATTORNEY AT LAW
2720 JEFFERSON STREET
CARLSBAD, CALIFORNIA 92008
TELEPHONE (760) 729-2327
FACSIMILE (760) 434-7653

RECEIVED

APR 17 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

April 17, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino Del Rio North, Suite #200
San Diego, Ca 92108

Re: Coastal Permit #6-96-159/Steve Cade/Adams St., Carlsbad

Dear Mr. Ponder,

Recently, some of the residents of Adams Street in Carlsbad asked me to review the application of Steven Cade for a subdivision map on Adams Street in Carlsbad. They were concerned about the abuse by a few people who in the past have used the paths of the lagoon for all night parties, and acts of vandalism. I was a member of the Carlsbad planning Committee for thirteen years and have reviewed many maps during this time period.

At first glance it is easy to see this is a quality development. It is my understanding that the coastal commission is requesting and receiving a shoreline easement in addition to an access easement. On speaking with the applicant, he indicated that the staff is requesting unlimited hours of access on the shoreline easement and that he has offered as a compromise timing gates. Since we already have timing gates throughout the city on access to our beaches a precedent has been set. Mr. Cade deserves the same privileges that we have extended to all of our beach residents.

In light of both the U. S. Supreme Court decision and California Supreme Court decision, which have balanced the equities for the landowner, I would hope the staff and commission will accept the compromise and approved this project.

Very Truly Yours,


Clarence H. Schlehuber

cc: js

6-96-159

Coastal Commission
San Diego District Office
311 Camino Del Oro
San Diego, Ca. 92108

APR 15 1998
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Th 11a

Plan! Plan! Save our childrens and
grandchildrens legacy. is the irreplaceable
beach frontage at Ocean's Pier where our
recreational facilities have served so
many thousands for many years. The
The amphitheatre community beach center
will be bulldozed and a multi-story hotel
hotel will replace it and will only benefit
the Manchester Developers.

This is a godhardy project that a handful
of people (namely City Council) foisted on our
community without a vote by the people. I
am a property owner in Oceanside and did not
receive notice of this project.

Thousands of families and children
have been served by this recreational
area through sports programs and varied
programs which has prepared them for
their future life. We owe it to our
children to stop this "give away" of our
beach frontage!

Sincerely,
Hazel Tekewald
3023 Alexander Ave.
San Marcos, Ca.

92069

6-96-159

4/11/98

Th 11a

From the desk of:
Rick & Kris Rosenquist

1845 McCauley Lane, Carlsbad, CA 92008 (760) 729-0639

fax #: 1-619-521-9672

April 17, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

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APR 20 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Mr. Ponder:

Recently, my wife and I have become aware of a questionnaire that you have sent out to people in the general area of the Agua Hedionda Lagoon. After reviewing the questionnaire it appears to me that you attempting to gather information in an attempt to take a portion of private property and make it public domain without any regard to the owner of the property, in this case Mr. Steven Cade.

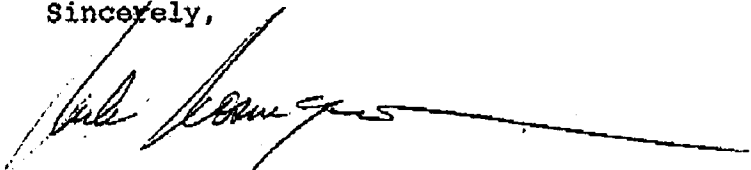
I am concerned with this possible action for the following reasons:

1. The property in question belongs to Mr. Cade. It is his private property. Private property should only be visited by others when permission is granted.
2. Mr. Cade has already voluntarily offered to extend easement rights to others. He did not have to do this but in a spirit of compromise he made this generous offer. I do not believe that any further action on your part is necessary or appropriate. Please remember again this is private property.
3. My understanding is that Mr. Cade made this generous offer prior to the offer of dedication was accepted.
4. The area in question has been a particular problem due to vandalism. If you question the Carlsbad Police Department you will find that this is true. Because of this I believe that Mr. Cade has every right to be concerned with the security of his investment/property. With this in mind again the compromise he has suggested is incredibly generous.
5. Mr. Cade is an asset to our community. He has spent an enormous amount of time involved in our school district, a local church, as well as many sports teams. He is great supporter of the community and is highly respected. His character only lends more support to the project he is involved with and adds value to the property he has become involved in.

It is concerning to me that a citizen that purchases a piece of property (in this case the property of a lifetime) could actually lose the right to determine who and when a "trespasser" could "visit" a owner's private property.

Because Mr. Cade has made every effort to compromise to help all people concerned with this building project and because of the history of illegal activities that have been associated in the general area of this project, I respectfully request that you lend your full support to Mr. Cade's Coastal Application as it has currently been described.

Sincerely,



Rick and Kris Rosenquist
1845 McCauley Lane
Carlsbad, CA 92008

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APR 16 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Michael J. Pfankuch
3532 Donna Drive
Carlsbad, CA 92008

April 15, 1998

Mr. Bill Ponder
California Coastal Commission
3111 Camino del Rio North Suite 200
San Diego, CA 92108

Dear Mr. Ponder:

I fully support having a fence on a person's own property to elude ~~vagrants~~, illegal aliens, and the drinking Parties (all of witch have occurred on this beach.) Before rebuilding the fence.

There were a number of fires, broken glass, trash and beer cans, which my family and I had to deal with on the beach that is mentioned. We had many times been vandalized by people pouring out paint cans and fire that caused damage to our property.

It has always been accessible by family boaters that needed to stop for a picnic lunch. (However I rarely have seen it used.)

Most boaters on the lagoon use the public areas on the South side of the lagoon, not only does Mr. Cade have barriers but Bristol Cove has the same fenced off areas in there own development, that everyone respects and I don't complain about use of the Cove or Docks.

Please notify me when your office sends out any questionnaires to property owners on the lagoon, as I sure would like to be included in what takes place on my, or any adjacent properties privately owned.

Sincerely yours,

Michael J. Pfankuch

6-96-159