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CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-14

Applicant: Gene Huber

Description: Construction of a 4,100 sq.ft., 30-foot high, two-story single family residence with an attached 890 sq.ft. garage and lap pool on a vacant .5 acre hillside site on the north shore of Agua Hedionda Lagoon in Carlsbad. Cut grading is proposed at 656 cubic yards, fill grading is proposed at 418 cubic yards with 238 cubic yards to be exported off-site to use for the widening of Adams Street on the two adjacent lots under the applicant's ownership. The applicant also proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon.

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| Lot Area | 21,253 sq.ft. |
| Building Area | 3,564 sq.ft. (17%) |
| Paved Area | 1,440 sq.ft. (6%) |
| Landscaped Area | 5,871 sq.ft. (28%) |
| Unimproved Area | 10,378 sq.ft. (49%) |
| Zoning | R-1-15,000 |
| Plan Designation | Residential Low Medium-0-4 du/ac |
| Ht. Above Fin. Grade | 30 ft. |

Site: 4485 Adams St., Carlsbad, San Diego County. APN 206-200-04

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

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing a single family residence on a vacant hillside lot on the north shore of Agua Hedionda Lagoon in Carlsbad. Because the lot contains coastal sage scrub, considered as environmentally sensitive habitat, and the public has used the lot for informal access along the north shore, 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 conditions require submittal of final plans which require the proposed lateral access easement extend 25-foot upland of the mean high tide line to provide adequate public access, recordation of the easement and that public access signage be installed which notifies visitors of access opportunities on the site. To address biological impacts of the

project, the conditions require revegetation of the proposed 100-foot buffer upland from the mean high tide line with native, drought-resistant plants compatible with the lagoon environment, that the buffer be reserved as open space because of its habitat value to shorebirds, that a revised landscaping plan be implemented which mitigates the visual impact of the proposed structures from public views, that the height of the residences be restricted to be no higher than the centerline of the adjacent first coastal road on the lagoon's north shore with a deed restriction to assure future improvements require a coastal development permit, and that submittal of grading, drainage and erosion control plans be required to address project impacts to water quality and marine resources.

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 Site Plan/Building Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval in writing of the Executive Director, revised final site and building plans approved by the City of Carlsbad which incorporate the following:

a. Provision of the proposed access easement to provide lateral access along the entire lagoon frontage width of the property to extend 25-foot upland of the mean high tide line, which is understood to be ambulatory from day to day, as shown on the submitted topographic map dated March, 1997.

b. Provision of a 100-foot buffer along the entire lagoon frontage width of the property measured 100-foot upland (northward) from the mean high tide line as shown on the topographic map dated, March 1997. No grading or structures shall be permitted within the buffer with the exception of drainage improvements and landscaping permitted pursuant to Special Condition #4 and Special Condition #6.

c. No improvements within the area subject to the public access easement shall be permitted. Public access trail improvements shall be determined in the future and require an amendment to this permit or a separate coastal development permit.

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. Lateral Public Access. Prior to the issuance of the coastal development permit, 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-foot upland of the mean high tide line which is understood to be ambulatory from day to day as shown on the topographic map dated March, 1997.

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.

3. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, 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 in concept on Exhibit 3 and the topographic map dated March, 1997 and generally described as the area between the mean high tide line and a line extending 100-foot upland (northward). Native drought-resistant vegetation, drainage improvements, and a future public trail with its associated improvements, including upland fencing and/or landscaping to demarcate public/private use, 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.

4. Revised Landscape Plan. Prior to the issuance of the coastal development permit, 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 plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. The required 100-foot buffer shall be planted with native, drought-resistant, fire-retardent landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game.

b. A fuel management plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features within the area 60 ft. from the proposed residence shall be prepared in accordance with the City's brush management requirements. The 60-foot brush management zone consists of three 20-foot zones. Removal of all invasive, non-native exotic plant species and all high fuel plant species shall be done after identification and flagging by a qualified biologist. To reduce the potential for erosion and off-site sedimentation, no grubbing (removal of roots below the soil surface) shall occur on slopes with gradients of 2:1 or greater.

All areas within the 60 ft. from the proposed residence where vegetation is removed shall be replanted with native, fire-resistant plant species (utilizing a combination of seeding and container plants) compatible with the surrounding native coastal sage scrub vegetation. All areas planted shall be stabilized with geotextile fabric and temporarily irrigated with drip irrigation.

The area within 60 ft. of the proposed residence shall be monitored annually and maintained as needed to assure the elimination of all invasive and non-native exotic plant species and the regrowth of native fire resistant plantings. Any dead or unhealthy plants shall be replaced.

c. 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 property along the south-facing portion of the lot and arranged to maximize screening of the structures from views from Agua Hedionda Lagoon and Interstate 5. A minimum of 8-trees shall be provided lagoonward of the building pad for proposed residence. 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. Said landscaping shall be designed to mitigate the visual impact of the structure as viewed from the lagoon and public access trail, while preserving views from the home.

d. A 20-foot landscaped buffer shall be planted along Adams Street. 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 record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the above requirements. The restriction shall provide that landscaping shall be implemented in accordance with plans approved pursuant to Special Condition #4 of CDP #6-98-014. The document shall run with the land for the life of the structures approved in this permit, 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.

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.

5. Public Access Signage. Prior to the issuance of the coastal development permit, 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 may include language prohibiting Glass Containers, Alcohol, Dogs or Pollution consistent with the Carlsbad Municipal Code.

b. Signage will be installed on the applicant's property near the entry drive of the adjacent Jose's restaurant to notify coastal visitors of access opportunities to and along the shoreline 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.

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

6. Drainage/Runoff/Sedimentation Control. Prior to the issuance of the coastal development permit, 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 shall 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.

7. Grading and Erosion Control. Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, final grading plans which shall 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. Prior to commencement of any grading activity, the permittee 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.

8. 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 60-ft. Mean Sea Level. The subject permit is only for the development described in coastal development permit No. 6-98-14. 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. 6-98-14. Accordingly, any future improvements to the existing single family residence, which are proposed within the area governed by coastal development permit No. 6-98-14 shall require an amendment to permit No. 6-98-14 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.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant proposes the construction of a 4,100 sq.ft., 30-foot high, two-story single family residence with an attached

890 sq.ft. garage and lap pool on a vacant .5 acre hillside site on the north shore of Agua Hedionda Lagoon in Carlsbad. Cut grading is proposed at 656 cubic yards, fill grading is proposed at 418 cubic yards with 238 cubic yards to be exported off-site to use for the widening of Adams Street on the two adjacent lots under the applicant's ownership. The applicant also proposes a 100-foot buffer between proposed development and elevation 2.0 ft. Mean Sea Level, identified as the mean high tide line, and as shown on the topographic map dated March, 1997. The applicant proposes to record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon within the buffer, extending upland of the mean high tide line.

The site is located south of Adams Street on the north shore of Agua Hedionda Lagoon in Carlsbad. The hillside site is the middle parcel of three parcels under the applicant's ownership totaling 1.43 acres. Approximately 25% of the site contains steep slopes that are defined as slopes greater than 25% grade. Approximately 0.6 acres of coastal sage scrub is located on the three contiguous parcels under the applicant's ownership. The site is 75-feet east of an existing single family residence and 75-feet west of a restaurant/boat club known as "Whitey's Landing".

The site is designated Residential Low Medium (0-4 du/ac) and zoned R-1-15000 in the certified Agua Hedionda Land Use Plan. The applicant has received Hillside Development Permit approval from the City of Carlsbad.

2. 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. 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 7.1

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

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

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

Policy 7.6 (in part)

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

Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development

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

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

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). Many of the primarily hillside lots contain coastal sage scrub on the hillsides and wetland vegetation near the water's edge. 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 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) which is adjacent to the subject site on the west and a 23-unit Bristol Cove condominium project (CDP #F 1012). Only two sites (L&R, 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 75 feet of actual shoreline frontage. The hillside site has been extensively used by hikers in flatter areas near the water's edge. The LUP requires that a lateral public access easement at least 25 feet in width be provided landward of the mean high tide line and that a trail be built within the easement. However, in its hillside development permit approval, the City did not require an access easement or trail improvements within the easement. The City indicates they believed the Coastal Commission would impose the LUP requirement in its coastal development permit approval. The Agua Hedionda Lagoon LCP remains the last uncertified area within the City of Carlsbad's Local Coastal Program; therefore, the proposed project is within the Commission's jurisdiction. The applicant has proposed to offer to dedicate the public access easement with the application.

There is some evidence that the public has historically used the applicant's property for lateral access along the lagoon. The public may have a prescriptive right of lateral access across this site. In addition, the construction of a home along the lagoon raises issues of consistency with Coastal Act policies protecting public access to and along the shoreline (which includes the shoreline of coastal lagoons). However, the applicant's proposal to provide unrestricted lateral public access resolves these issues in a manner consistent with past Commission action on adjacent properties.

To ensure the applicant's proposal is implemented, Special Condition #2 requires the applicant to record an offer to dedicate a public access easement over the area of the property located upland of the mean high tide line of the

lagoon. The easement area shall be for lateral public access and passive recreational use along the lagoon shoreline and shall extend upland 25-feet from the mean high tide line which is understood to be ambulatory from day to day.

Special Condition #1 recognizes that either the City of Carlsbad or other appropriate agency 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 open space deed restriction allows for potential public improvements in the future. An amendment to this permit or a new coastal development permit shall be required for installation of any public access improvements when the ultimate design and alignment of the entire trail is determined by the accepting agency or private association.

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, consistent with Coastal Act section 30214(a)(4). The proposed building height of the residence is 30-feet; therefore, a 60-foot setback should be provided between the residence and the easement. Because the inland extent of the access easement will vary from day-to-day (it is ambulatory) it is difficult to identify just where the inland extent of the easement would be at any given time. The Commission finds that for purposes of determining an adequate setback, the mean high tide line at elevation 2.0-ft. MSL can be accepted as the seaward extent of the easement. Given that, for purposes of identifying a setback, the inland extent of the easement would be 25-feet upland of the 2.0-ft. elevation. The proposed residence is setback approximately 90-feet from that point; therefore, the project can be found consistent with the above identified LUP policy.

Because the applicant is proposing to dedicate a lateral public access easement, and proposes a 100-foot buffer setback which provides both visual resource and habitat protection, the Commission finds the project is consistent with the Chapter 3 policies of the Coastal Act. The special conditions attached are to ensure the project is implemented as proposed.

4. Environmentally Sensitive Habitat/Wetlands. 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. 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 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.

Section 30240 provides that environmentally sensitive habitat areas be protected against any significant disruption of habitat values. Pursuant to these policies, the certified Agua Hedionda Land Use Plan contains a policy regarding preservation of Agua Hedionda's upland areas.

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 is a lagoon-fronting hillside lot which contains coastal sage scrub habitat. The hillside site is the middle parcel of three parcels under the applicant's ownership totaling 1.43 acres. Approximately 0.6 acres of coastal sage scrub is located on the three contiguous parcels under the applicant's ownership. Approximately 25% of the subject site of this application contains steep slopes which are defined as slopes greater than 25% grade. About 75% of the steep slopes would be graded to construct the proposed improvements, including the residence, widening of Adams Street, the driveway and the pool. The majority of these slopes contain coastal sage scrub. The majority of the remainder of the coastal sage scrub on the three parcels under the applicant's ownership would be removed through brush clearance for fire prevention.

Development on the project site is constrained by the presence of coastal sage scrub, the site's location adjacent to the lagoon and the site's location in a public viewshed. Coastal Act policies 30230 and 30231, which provide for protection of coastal lagoons, support a requirement that development on this site be setback 100-feet from the water's edge to ensure that the lagoon environment will not be adversely affected. The scenic policies of the Coastal Act and the LUP require that no development exceed the centerline of Adams Street to ensure that the public viewshed will not be adversely affected. These policies support locating the house down the slope and away from the street. The applicant has proposed that development be clustered within the middle section of the site. Although this would be consistent with protection of the lagoon water quality and the public viewshed, this is where the bulk of the coastal sage scrub on steep slopes is located. The Commission has found coastal sage scrub to be environmentally sensitive habitat area under Section 30240 because of its habitat value to a number of sensitive plants and animals. Additionally, the LUP restricts development on steep slopes, which are those greater than 25% grade, because of the sensitivity of the lagoon environs to soil erodibility and sedimentation. The LUP requires that impacts to sensitive vegetation in steep slope areas (greater than 25% slope) be reduced by clustering development; the LUP allows some encroachment for utilities and access necessary to reach developable areas. Thus, the developability of this hillside lot is highly constrained.

In its Hillside Review the City allowed the home to remain in the middle of the site and required that impacts to coastal sage scrub be mitigated at a 2:1 ratio in a mitigation bank within the City of Carlsbad but outside of the coastal zone. The resource agencies also allowed the impacts to coastal sage scrub if mitigated at a 2:1 ratio in a mitigation bank. The agencies found that the offsite mitigation could be found consistent with the Natural Community Conservation Plan (NCCP) 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 previously found that because the NCCP program includes goals for protection of significant environmentally sensitive habitat areas, the goals of the NCCP and the Coastal Act (Section 30240) are mutually compatible.

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. In addition, removal of the coastal sage scrub will allow for locating the home in the middle of the site which would provide consistency with the scenic resource and water quality protection policies of the Coastal Act. 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 the Chapter 3 policies of the Coastal Act.

Pursuant to Section 30240 of the Coastal Act, the Commission has in the past required a 100-foot buffer between new development and the water's edge of a coastal lagoon. Historically, the Commission requires that buffer areas remain undeveloped to provide physical space between development and environmentally sensitive areas like Agua Hedionda Lagoon. Because this intervening space acts as distance barrier and a percolating medium, there is less of a 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. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas.

The applicant has established a wetland buffer zone extending 100-feet upland of the mean high tide line shown on the submitted topographic survey to be at 2.1-ft. MSL. The Commission finds this to be an appropriate elevation for purposes of establishing a permanent buffer zone on the subject site. The site plan does not include any grading or installation of improvements within the proposed 100-foot buffer, with the exception of the proposed drainage improvements. The applicant has proposed to revegetate the buffer with upland, drought-resistant plants that are typical of a coastal sage scrub environment. The Commission finds such revegetation would improve the value of the buffer and is therefore consistent with Coastal Act sections 30230, 30231 and 30240. Special Condition #3 requires the buffer to be reserved as open space. Special Condition #4 requires submittal of a revegetation/brush management plan for the open space buffer that will acknowledge the City of Carlsbad's 60-foot brush management zone (consisting of three 20-foot zones) and the need to enhance the habitat value of the existing disturbed open space area. The condition requires retention of the native vegetation to the maximum extent necessary and use of native, fire-retardent species as replacement vegetation. The Commission has found that enhancement of disturbed native vegetation within the wetland buffer in association with site development can help mitigate the adverse effects of the proposed development and provide for continuance of the upland habitat values associated with the site in its undeveloped state, consistent with Section 30240 of the Coastal Act.

As noted, the site plan indicates that several drainage improvements are proposed within the buffer (rip rap energy dissipators). 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 concentrated runoff and erosion. The amount of runoff and the appropriate location of the discharge point are important to assure the drainage system has been designed to not exceed existing natural levels of runoff which would contribute to additional erosion and sedimentation to the lagoon. It may be necessary to employ retention/sedimentation basins to reach pre-project levels regarding runoff velocities. Without the calculations, it is unclear whether the proposed drainage improvements are adequate. Further study is required to make this determination. Thus, the Commission finds that final drainage plans must be submitted. The final plan must include calculations and such additional drainage improvements necessary to assure that runoff will not exceed pre-project natural levels. The Commission finds that such additional drainage improvements are allowed within the buffer if all disturbed areas are replanted with native plants as required mitigation.

The site not only contains slopes in excess of 25% grade but also roughly 656 cubic yards of cut grading is proposed with 238 cubic yards to be exported off-site to use for the widening of Adams Street on the two adjacent lots under the applicant's ownership. Special Condition #7 specifically prohibits grading during the rainy season when the potential of erosion and sedimentation are greatest. The rainy season is identified as the period from October 1 to April 1 of each year. Each of the plans is to be subject to the review and written approval of the Executive Director.

5. Scenic Preservation. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and 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 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 public 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 the roof line of the proposed residence is proposed at elevation 60-ft. MSL, which is the same elevation as the centerline of Adams Street adjacent to the project site. Thus, the project conforms with the LUP requirement. The City of Carlsbad's approval includes a condition which requires that future development be constructed below the level of Adams Street. Special Condition #8 is attached regarding the maximum height for future structures on the lot. The special condition notifies the applicant and future property owners through recordation of a deed restriction of the need for future permits for subsequent development of the site.

Landscaping is also important in minimizing visual impacts. The applicant has submitted a preliminary landscape plan. As noted, the applicant has proposed and the Commission is requiring the applicant to revegetate the lagoon buffer with upland plants that are compatible with the surrounding environment. However, the landscaping plan indicates the upland remainder of the site would be planted with ornamentals (palm trees and other accent trees such as New Zealand Christmas Tree, Lemon Bottlebrush and Brazillian Pepper). Although not native, the Commission has accepted palm trees as naturalizing vegetation; however, they are limited in their ability to soften project sites' visual impact on surrounding public views. In this case the landscaping plan only suggests what trees could be planted and does not specify what particular species are proposed. 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. Absent a definitive plan for the landscaping of the site, the Commission finds a revised landscape plan is necessary to find conformance with the Coastal Act. The plan must be developed in consultation with the Department of Fish and Game so that invasive or noxious plantings are not chosen.

Additionally, to further mitigate the visual impact of the structures as seen from I-5, the future public trail and the south shore of the lagoon, the Commission finds special emphasis shall be placed on the use of trees to screen the homes while preserving views from the homes. The revised landscape plan shall indicate the placement of one specimen size tree (24-inch box minimum) for every 10 feet of south-facing pad area lagoonward of the proposed building site, arranged to maximize screening of the structures from views from Agua Hedionda Lagoon and Interstate 5. 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. 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.

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. The project is consistent with that designation. As conditioned, the project is also consistent with the policies of the Agua Hedionda Land Use Plan regarding scenic resources, habitat preservation and the provision of public access, and should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for its Agua Hedionda Lagoon segment.

5. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission

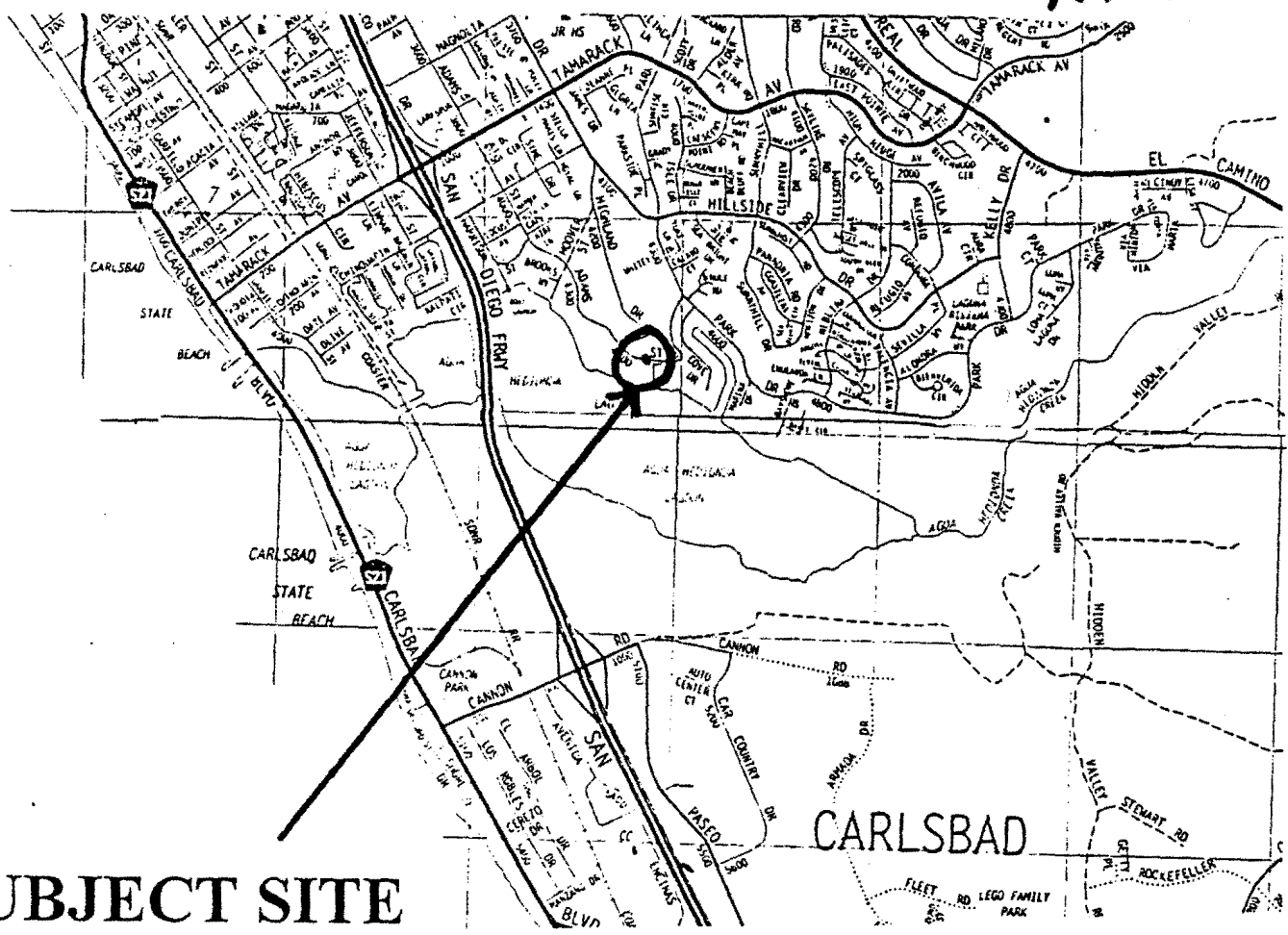
approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are 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.

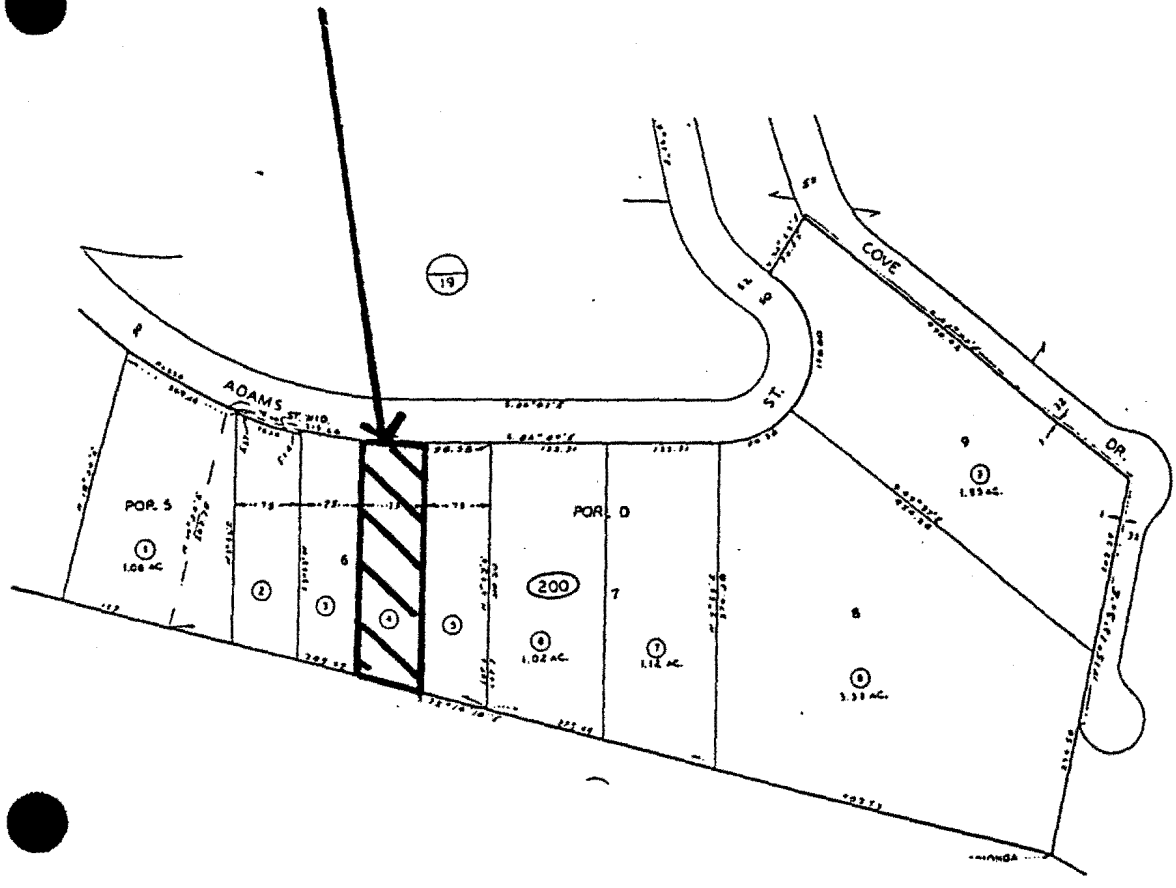
STANDARD CONDITIONS:

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.

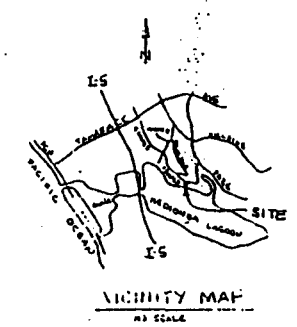
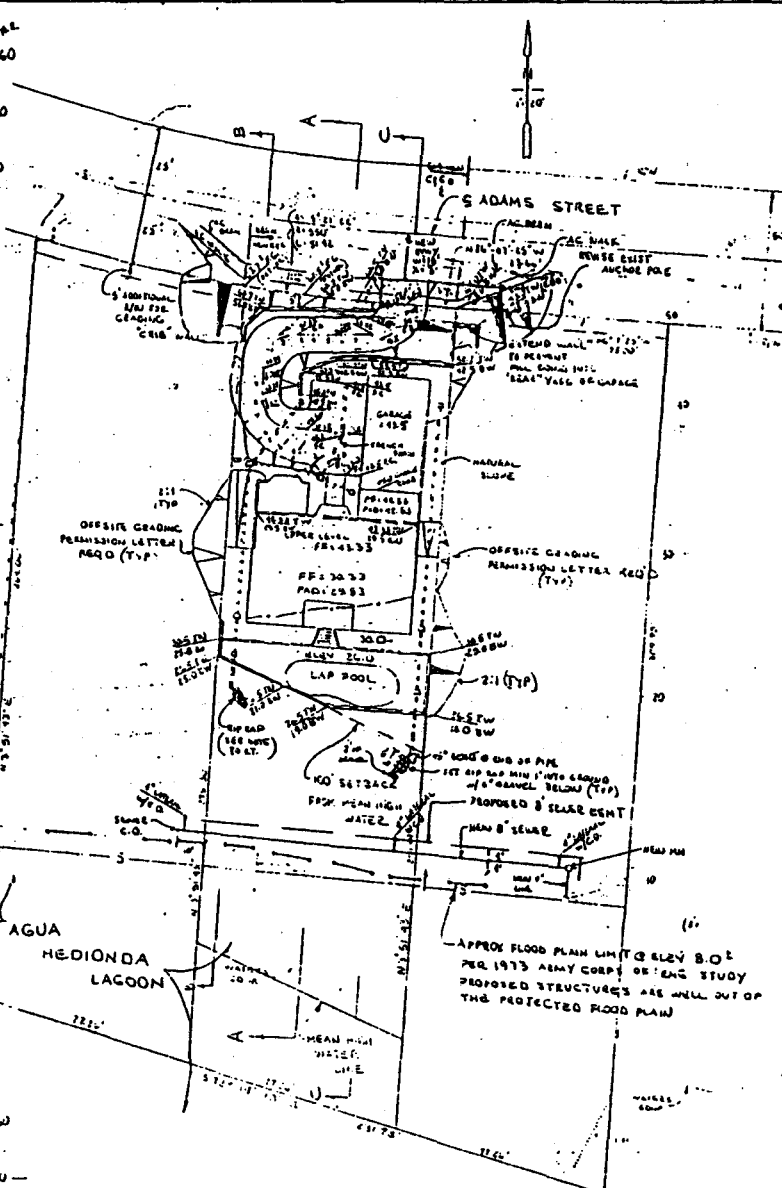
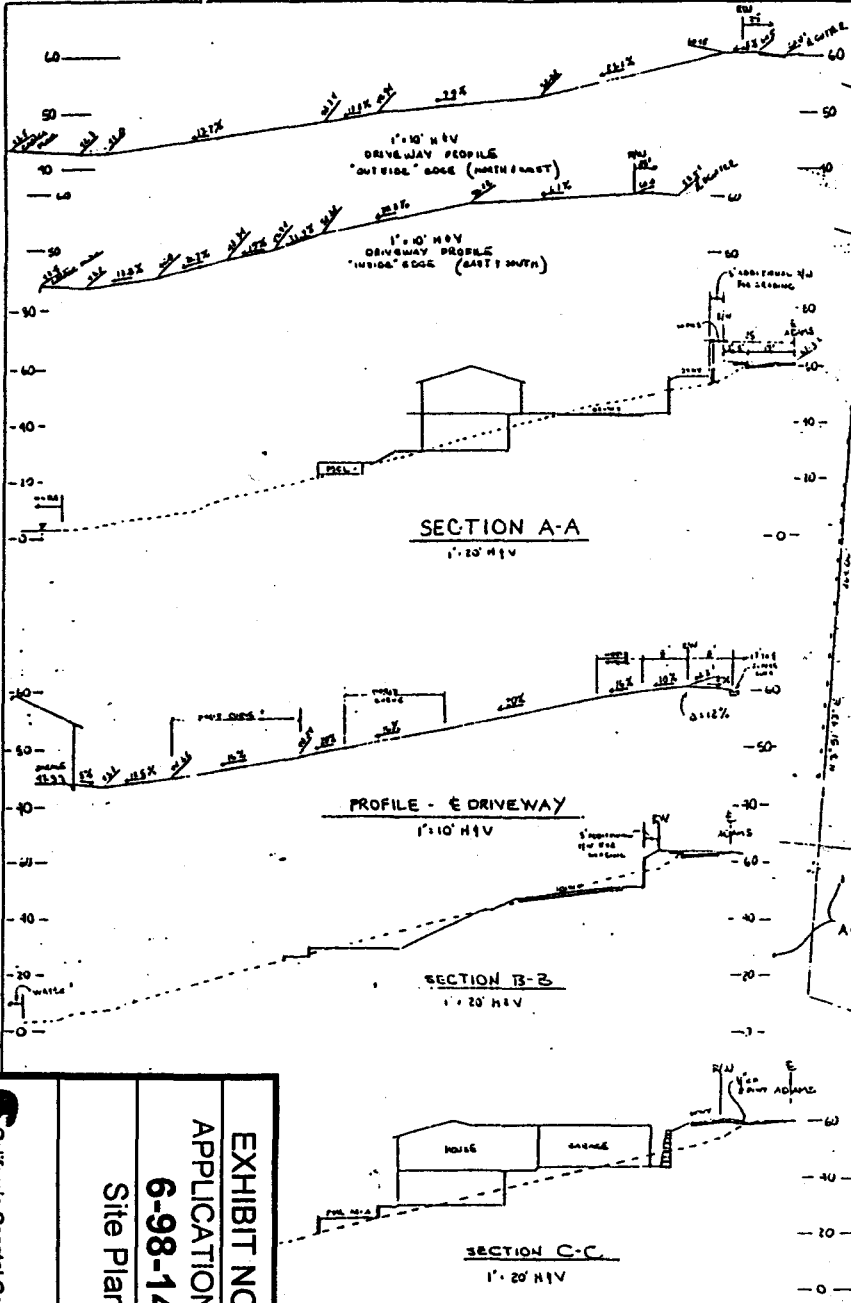
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SUBJECT SITE



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| EXHIBIT NO. 1 |
| APPLICATION NO. |
| 6-98-14 |
| Location Maps |
| California Coastal Commission |



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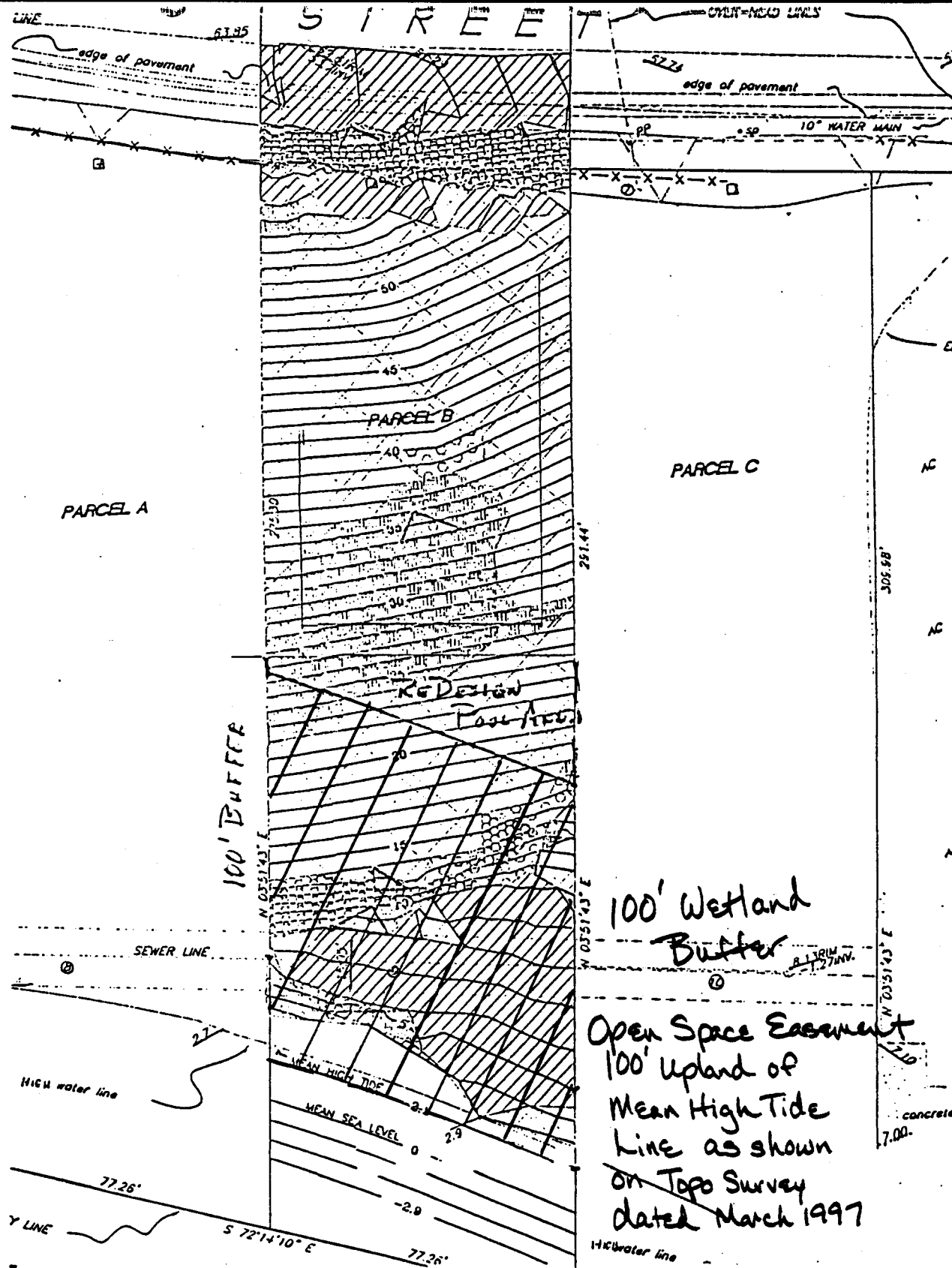
APN: 206-200-04

EARTHWORK
 CUT = 356 C.Y.
 FILL = 418 C.Y.
 EXPORT = 236 C.Y. (USE FOR ADAMS STREET WIDENING ON TWO ADJACENT LOTS)

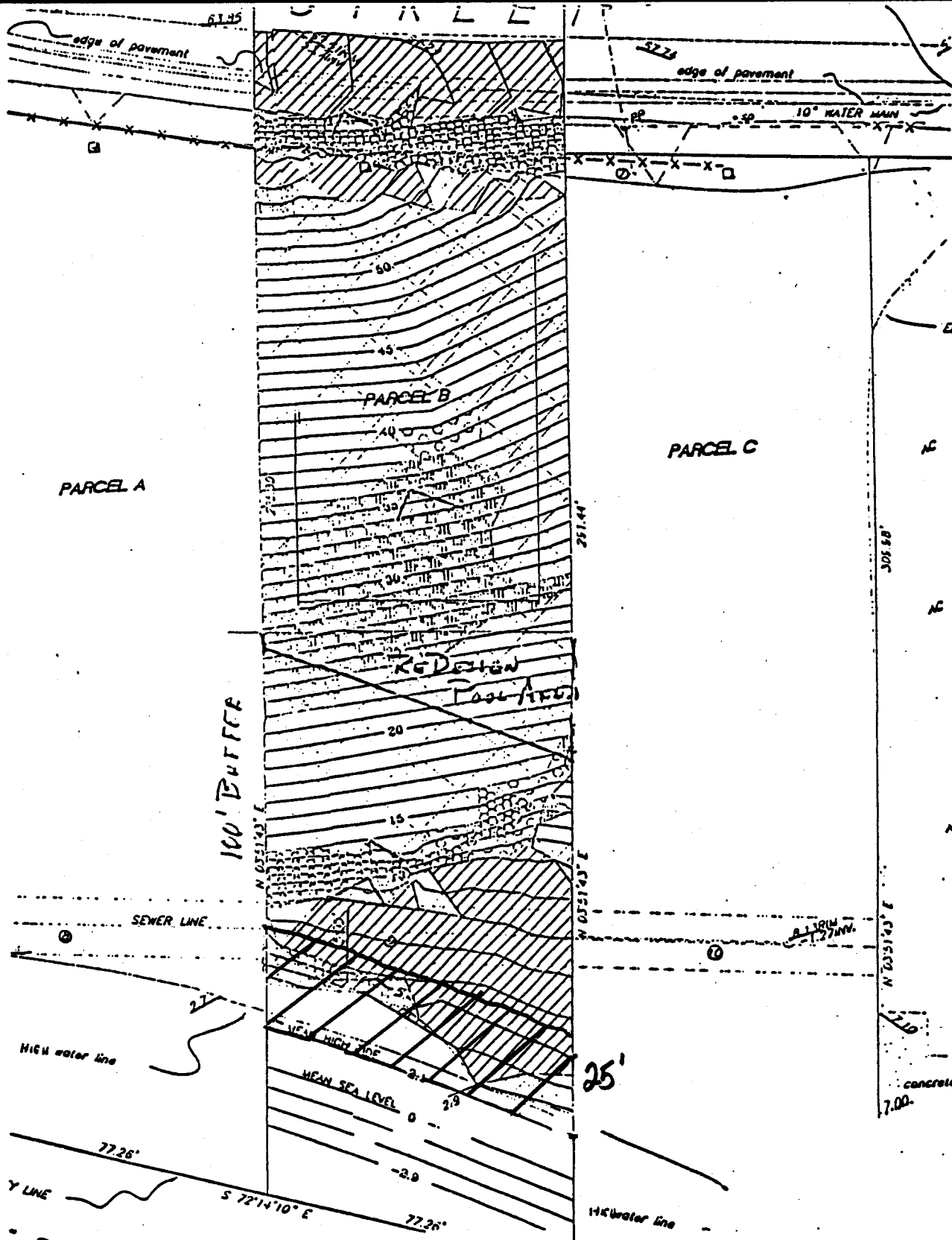
| PRELIMINARY GRADING PLAN | |
|--------------------------|-------------------|
| DATE: 11-20-97 | SCALE: 1/4" = 10' |
| PROJECT: HUBER RESIDENCE | |
| APN: 206-200-04 | |

California Coastal Commission

EXHIBIT NO. 2
 APPLICATION NO.
 6-98-14
 Site Plan



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| EXHIBIT NO. 3 |
| APPLICATION NO. |
| 6-98-14 |
| Open Space Deed Restriction |
| California Coastal Commission |



Ambulatory Public Access Easement
 25 ft. Upland of Mean High Tide Line

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| EXHIBIT NO. 4 |
| APPLICATION NO 6-98-14 |
| Public Access Easement |
| California Coastal Commission |