

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036**F7a**Filed: July 27, 1998
49th Day: September 14, 1998
180th Day: January 23, 1998
Staff: WNP-SD
Staff Report: August 18, 1998
Hearing Date: September 8-11, 1998STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved With Conditions

APPEAL NO.: A-6-CII-98-98

APPLICANT: John Levy

PROJECT DESCRIPTION: Construction of a 30-foot high, 2,713 sq.ft. single family residence and a 35-foot high, 1,633 sq.ft., detached garage with a 577 sq.ft. second unit above on 1.9 acre lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of a gate and fencing on the site.

PROJECT LOCATION: The south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive, Carlsbad, San Diego County. APN 155-190-13, APN 155-101-65

APPELLANTS: California Coastal Commissioners Christine Kehoe and Pedro Nava

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program Mello II segment; City of Carlsbad CDP 97-59, CDP #6-83-51

STAFF NOTES:SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. Staff also recommends that the Commission approve the de novo permit with special

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a **NO** vote on the following motion:

I move the Commission determine that Appeal No. A-6-CII-98-98 raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

Policy 3-2 of the Mello II LCP also requires that development be clustered to preserve open space for habitat protection which also serves to minimize the visual impacts of new development.

The proposed 2,713 sq.ft. residence is over 30 feet tall, consists of two-stories, and features a copper-colored metal roof and concrete block walls. Also proposed is a 1,633 sq.ft., with a 577 sq.ft. second unit above that will be 35 feet in height. Second dwelling units are addressed in the City's LCP. As approved in the LCP, such units are allowed by right subject to restrictions on size (650 sq.ft. maximum), affordability, etc. Second units must also meet all the requirements of the local coastal program, with the exception of base density.

The subject site is visible from the beach, the railroad and portions of Old Highway 101 (Carlsbad Boulevard), which is designated as a Scenic Road in the LCP. Old Highway 101 is heavily used by beachgoers to get to the beaches of northern Carlsbad. Existing cattails and the elevated railroad berm are high enough to block views to the west from the portion of Old Highway 101 that is along side the site. The site is however, visible both from the highway as it descends south from the City of Oceanside into Carlsbad and at a point close to the Buena Vista Lagoon pump station going north on the highway. As noted above, the approximately 2.6 acres under the applicant's ownership constitutes a unique, low-lying area immediately adjacent to the lagoon where no development has occurred. As such, the proposed project, consisting of two large structures located directly adjacent to the lagoon, has the potential to adversely impact public views in this scenic area by presenting a significant structure in an otherwise natural setting.

Policy 8-1 of the City's LCP provides that the Scenic Preservation Overlay Zone should be applied where necessary to assure the maintenance of existing views and panoramas, which requires that sites be evaluated for potential public views that should be preserved and enhanced. Its purpose is to provide regulations in areas which possess outstanding scenic qualities or would create buffers between incompatible land uses which enhance the appearance of the environment and contribute to community pride and community prestige. The subject site does not represent an infill area but rather should be viewed as an extension of development northward at a critical scenic interface between the ocean and the lagoon which is visible from Highway 101. Therefore, the site is located in a highly scenic area that meets the criteria for application of the Scenic Preservation Overlay Zone.

Based on the above, the Commission finds that there is a substantial issue as to the proposed project, as approved by the City and conformity with Policy 8-1 of the LCP. As approved by the City, the proposed structures are 30 - 35 feet high which will represent a project that is out of character with the setting of the surrounding lagoon environment. The LCP requires that appropriate height limitations be enforced. While the proposed

agrees to accept responsibility for maintenance and liability of the accessway.

In addition, several policies of the Mello II LCP apply to the project site.

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (exhibit 4.10, page 63) to facilitate public awareness of the natural habitat resources of the Lagoon. To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea (reference Exhibit #1 attached). The beach area to the west of the project site can be reached via a public access stairway on Ocean Street. To reach the lagoon area immediately adjacent to the subject site, due to a well-worn path, it is apparent that visitors to this area use a path near Mountain View Drive which leads behind tennis courts on the adjacent lot and then down to the lowland area that comprises the subject property. The beach and lagoon areas are currently used by walkers, fishermen and naturalists. As noted above, the Mello II LCP envisions an areawide pathway along the south shoreline of the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon along with a bird sanctuary. The Department of Fish and Game owns properties on the south side of the lagoon, east of the subject site and on the north side. Because of its location, the project

aerial photos dating back to 1972). The City's approval includes a fence across the 100-foot buffer with a dawn to dusk gate and a fence from the proposed cul-de-sac to the marsh to the east. As such, the City's approval will adversely affect continued use of the on-site trails by the public. These proposed fences are not needed for security as the entire building area will be fenced. In addition, such fences close to the lagoon and the marsh may have adverse impacts on birds and wildlife by restricting movement in the buffer and providing potential perches for birds of prey.

In addition, the City's permit decision did not recognize the public's use of an existing trail from Mountain View Drive to the existing trail on the south shore of the lagoon and the ocean shoreline to the west. The City's approval included replacement of an existing manually operated gate with an electric gate near Mountain View Drive for access for the proposed residence, fire and maintenance vehicular access. The existing fenced and locked gate are located just off Mountain View Drive on property that is not owned by the applicant. However, the applicant has a private access easement over the property. The installation date of the gate is unknown. The fence/gate appears on a 1981 tentative map for a neighboring project. In addition, representatives of the City have verbally stated that it has been in place since the 1960s. The gate/fence limits public access from Mountain View Drive to the applicant's site. This gate is where the applicant will take access to the subject site via an existing private access easement. According to the City, it is the only beach vehicle access in northern Carlsbad and has been used by lifeguard personnel and city maintenance crews to maintain the lagoon weir which regulates the water level in Buena Vista Lagoon.

In CDP #6-83-51, the Commission approved the subdivision of the property immediately adjacent to and south of the subject site. The permit allowed subdivision of a 7.65 acre parcel into three lots and construction of 14 condominiums (ref. exhibit #6). In its approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space through an offer to dedicate an open space easement. In its open space easement condition, the Commission prohibited all development except for development needed to allow for vehicle access across Lot 3 to the lagoon weir and for public projects that were planned on this low-lying area, including wetland restoration and possibly as a depository site for beach replenishment projects. The condition did not recognize any private vehicular access across Lot 3 which is needed for the applicant to get to the project site. However, the applicant has demonstrated the right of private vehicular access across Lot 3 to the project site through an easement that was initially granted in 1971 and then recorded again in 1984. In its approval of CDP 6-83-51, the Commission also required a public access easement over the entirety of Lot 3. Neither the offer to dedicate an easement for public access nor the offer to dedicate an open space easement have been accepted by a public agency or private association. The City's decision on this project formalizes lateral access along the lagoon but does not address how the public will access the trail, lagoon and

provision of an open space easement as a condition of project approval. In the event that a wetland area is bordered by steep slopes (in excess of 25%) which will act as a natural buffer to the habitat area, a buffer setback of less than 100 feet in width may be permitted.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is not within wetlands.

Storm drain alignments as proposed in the Carlsbad Master Drainage Plan which would be carried through or empty in to Buena Vista Lagoon shall not be permitted, unless such improvements comply with the requirements of Sections 30230, 30231, 30233, and 30235 of the Coastal Act by maintaining or enhancing the functional capacity of the lagoon in a manner acceptable to the State Department of Fish and Game.

Land divisions shall only be permitted on parcels bordering the lagoon pursuant to a single planned unit development permit for the entire original parcel.

Additionally, the Coastal Resource Protection Overlay Zone, an implementing ordinance of the City of Carlsbad LCP, contains identical language to Policy 3-2 above with respect to Buena Vista Lagoon.

Numerous other policies of the LCP provide that new development not contribute to erosion and sedimentation of sensitive resources, including Buena Vista Lagoon. Policy 4-3 and Policy 4-6 address this issue.

Policy 4-3 - ACCELERATED SOIL EROSION

(A) Areas West of I-5 and the existing Paseo del Norte and Along El Camino Real Upstream of Existing Storm Drains

For areas west of the existing Paseo del Norte, west of I-5 and along El Camino Real immediately upstream of the existing storm drains, the following policy shall apply:

A site specific report prepared by a qualified professional shall be required for all proposed development, identifying mitigation measures needed to avoid increased runoff and soil erosion. The report shall be subject to the requirements of the model erosion control ordinance contained in the appendix to the Carlsbad Master Drainage Plan (June, 1980), and to the additional requirements contained herein. Such mitigation shall become an element of the project, and shall be installed prior to initial grading. At a minimum, such mitigation shall require construction of all improvements shown in the Master Drainage Plan for the area between the project site and the

direct surface runoff to the east of the site within the freshwater marsh which is part of Buena Vista Lagoon. Policy 3-2 provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. That permission has not been obtained from the Department in writing. Urban runoff and pollutants at this location could endanger plants and animals that reside in the marsh, including the endangered clapper rails. Therefore, the City's decision cannot be found consistent with Policy 3-2 of the Mello II LCP and substantial issue must be found.

STAFF RECOMMENDATION ON THE COASTAL PERMIT:

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. Final Revised Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, final, revised site, fencing and building plans approved by the City of Carlsbad which demonstrates compliance with the following requirements:

- a. The proposed residence and garage/second unit shall be redesigned to not exceed 25 feet in height.
- b. No fencing shall be located along the south buffer area as shown on Exhibit 7 (attached). No fencing shall be located along the access drive turnaround on the east side of the site such that it precludes continued public access in its current

this coastal development permit unless the Executive Director determines that no amendment is required.

4. 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 Buena Vista Lagoon shoreline and shall be a minimum of 25-feet wide over the public access trail shown on the site plan dated 7/17/98 (Exhibit 2)

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.

5. 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, approved by the City of Carlsbad and reviewed in consultation with the Department of Fish and Game and 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.

6. 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, approved by the City of Carlsbad which shall be subsequently implemented and conform to the following requirements:

with no white or light shades, and no bright tones) to minimize the development's contrast with the surrounding scenic area.

- b. Lighting. An exterior lighting plan shall be submitted, developed in consultation with the Department of Fish and Game, which indicates all exterior lighting shall include a combination of low-level lights and shields to minimize the amount of light entering the adjacent wetlands and wetland buffer area.
- c. Revised Landscaping Plans. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features and be subject to review by the Department of Fish and Game. The landscaping plan shall consist of native, drought-resistant landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game.
 1. 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 Buena Vista Lagoon, its public trail, Old Highway 101 and the railroad. A minimum of 8-trees shall be provided lagoonward of the building pad for Parcel A.
 2. At maturity the trees shall approximate the height of the roofline of the residences.
 3. 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. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan.
 4. The plan must also indicate non-native plant species shall be removed from the wetland buffer area and the wetland buffer area shall be revegetated with a hydro-mulched coastal sage scrub seed mix.

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.

V. Findings and Declarations.

The Commission finds and declares as follows:

garage/second unit must be redesigned to be no higher than 25 feet high. This height is consistent with the San Malo residential project, located immediately north of the project site across the lagoon in the City of Oceanside, which is known not only for its French Normandy architecture but for its modest scale which makes it subordinate to the ocean/lagoon setting. In several other permit decisions in Carlsbad, the Commission has also required a 25-foot height limit to reduce the visual impacts of new development. These actions primarily concerned larger residential subdivisions in the Aviara and Sammis Property projects on Batiquitos Lagoon in southern Carlsbad. While this project is of less intensity, it nonetheless has a great visual impact on the surrounding environs of Buena Vista Lagoon. For that reason, the Commission finds the height reduction is warranted. As such, Special Condition #1 requires revised plans that limit project height to 25 feet high. Additionally, Special Condition #8 requires building materials/colors to be subordinate to the lagoon setting by requiring the proposed residence and garage/second unit shall be painted with earth tone colors (deep shades of green brown and gray with no white or light shades, and no bright tones) to minimize the development's contrast with the surrounding scenic area. The height reduction and color changes will result in a smaller, less visually obtrusive project that is compatible with its setting. Special Condition #2 requires the entirety of the property - which includes the other .72 acre adjacent lot under the applicant's ownership - to be subject to the above provisions in the form of a deed restriction. This restriction is necessary to insure future property owners are aware of condition requirements.

The applicant has submitted a landscaping plan that indicates a number of non-native trees and shrubs would be planted. These trees and shrubs may be noxious or invasive to the existing sensitive habitat area surrounding the project site. Special Condition #8 requires that a landscaping plan be developed in consultation with the Department of Fish and Game. The Commission further finds that 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 natural character of the surrounding environment (i.e., non-invasive or noxious). 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 Buena Vista Lagoon and its public trail and Old Highway 101 and the railroad. A minimum of 8-trees shall be provided lagoonward of the building pad and be compatible with the existing lagoon environment. At maturity the trees must approximate the height of the roofline of the residences. The revised landscape plan must include provisions requiring the trees to be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. Maintenance requirements must also be provided to assure no blockage of public views.

with a new electric gate will give the impression that this area is private which could further limit access by the public, inconsistent with Coastal Act and LCP policies.

As stated the policies of the Coastal Act and the Mello II LCP protect public access both to and along the shoreline, including the shoreline of Buena Vista Lagoon. Policies 7-3 and 7-6 specifically provide that access shall be provided along and near Buena Vista Lagoon on the applicant's property. The City's approval secured the access path identified in Policy 7-6 by requiring the applicant to dedicate an easement over the existing trail near the water's edge. The Commission's requirement mirrors that approved by the City in Special Condition #4 and provides that the easement shall be located along the entire width of the property along the Buena Vista Lagoon shoreline as shown on the site plan dated 7/17/98.

In addition, the Commission finds additional steps must be taken to preserve and protect existing public access opportunities consistent with the above LUP policies. For example, the applicant is proposing the installation of 42" high chain link fencing across the required 100 foot setback (exhibit 7). The applicant is also proposing the installation of a time-lock gate within this fence which would extend across the existing trail and be open from dawn to dusk. In two recent decisions by the Commission in Carlsbad (CDP 6-96-159, Cade/ and LCPA 1-98A, Poinsettia Properties Specific Plan), the Commission found that time lock gates were inappropriate. In its action to prohibit them, the Commission found that unrestricted public access was warranted for coastal visitors to be able to access coastal resources. Time lock gates are also subject to mechanical failures and vandalism which limit their effectiveness. In the former decision, the Commission allowed the applicant security fencing at the upper limit of a habitat buffer to protect against vandalism. In this way both public access and private security was maintained. This case is similar in that the Commission is allowing the applicant to fence the site for security reasons but is not allowing fencing or gates that would preclude existing public access. Special Condition #1 requires that the gate and fence be deleted so that the public access trail will remain open at all times along the shoreline of Buena Vista Lagoon.

The applicant is also proposing the installation of 6' high chain link fencing and vegetation on the eastern portion of the site around the access turnaround. Again, fencing at this location could preclude continued movement by the public. Presently, there is a foot path that provides access along the eastern portion of the project site in the 100-foot habitat setback. While the Commission recognizes the need for the setback, it also recognizes that historic public use has occurred along this portion of the trail. Policy 7-3 of the Mello II LUP requires that access be maintained in this area consistent with resource protection. For this reason the Commission is requiring in Special Condition #1 that the applicant submit a fence plan which provides fencing such that the public will not be precluded from using this area as they have in the past. Implementation of this condition will require that

The Commission finds that similar provisions are necessary as part of this coastal development permit. That is, the Commission finds an open space deed restriction over sensitive areas of the site is warranted. Special Condition #3 requires 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 areas as shown on the site plan dated 7/17/98 (Exhibit 8). Also, removal of the fence within the buffer is necessary because it could limit wildlife movement and provide a predator perch.

Several policies of the certified LCP also require that project construction not indirectly adversely impact coastal resources by way of erosion and sedimentation. The Commission finds in Special Condition #5 that final drainage and runoff control plans must be submitted to 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.

A sedimentation catch basin is proposed on the southeast corner of the site to direct surface runoff to the east of the site within the freshwater marsh which is part of Buena Vista Lagoon. Policy 3-2 of the Mello II LUP provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. Therefore, Special Condition #5 requires the applicant to consult with the Department of Fish and Game to ensure drainage in this sensitive area can be found consistent with Policy 3-2 of the Mello II LCP.

Also, in Special Condition #6 the Commission finds that although there is only minor grading being proposed (i.e., 75 cubic yards of balanced grading) based on the location and the surrounding resources, final grading plans must be submitted which indicate no grading activities shall be allowed during the rainy season (the period from November 15 to March 31st of each year). Typically, the rainy season begins on October 1 of any year; however, because of wildlife concerns, the rainy season restriction can be extended to November 15 in this case. Also, all disturbed areas will be replanted immediately following grading and prior to the beginning of the rainy season. 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.

Finally, as noted, a nesting pair of clapper rails is known to exist within the freshwater marsh area located immediately east of the project site. The Commission is requiring that development be setback 100-feet from this marsh and that this setback be secured through an open space deed restriction. Additionally, as further protection to this endangered species and as requested by the Department of Fish and Game, the Commission is requiring in Special Condition #7 that no construction activities be allowed during the breeding season of the light-footed clapper rail within the wetlands adjacent to

permitted in the LCP. Therefore, the Commission finds project approval, as conditioned, will not seriously prejudice the implementation of the Carlsbad LCP.

6. Consistency with the California Environmental Quality Act (CEQA).

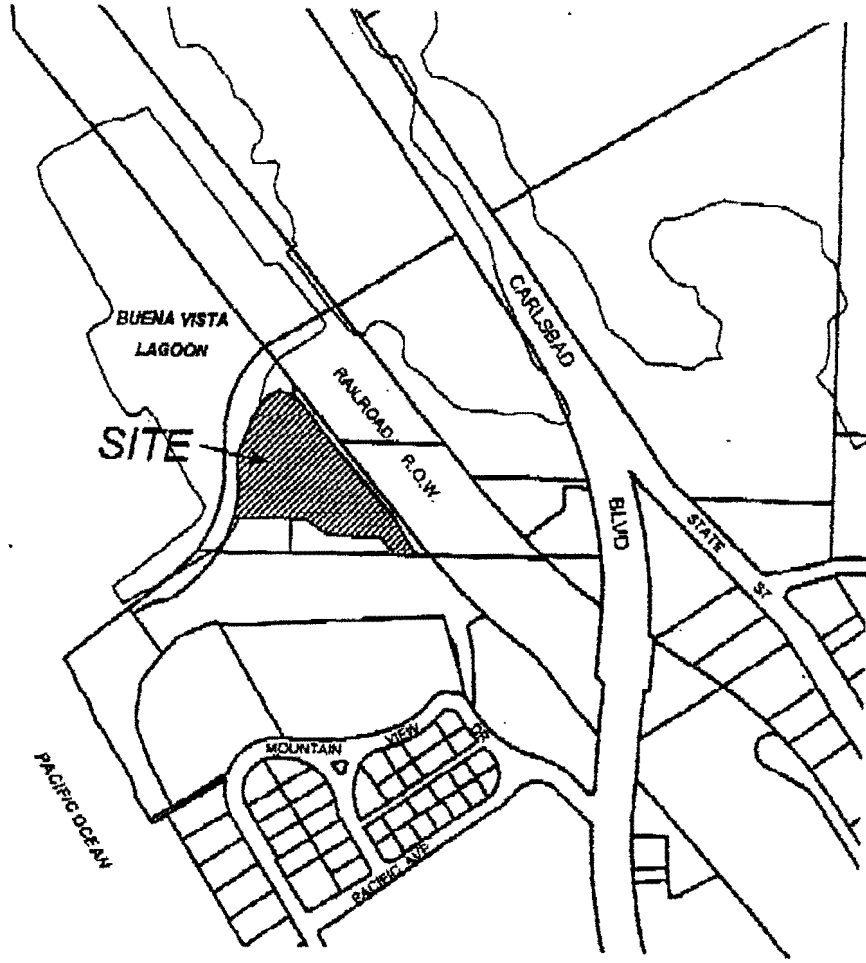
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the visual resource, public access and environmentally sensitive habitat policies of the Coastal Act and the certified LCP. In this case, there are no feasible alternatives available which can lessen the significant adverse impact the project will have on public views, public access and the environment. The proposed conditions addressing landscaping, fencing, gating, building design and protection of public access and environmentally sensitive habitat, 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 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 Acknowledgment. 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.

Fr 7a



LEVY RESIDENCE

CDP 97-59

EXHIBIT NO. 1
APPLICATION NO.
A-6-CII-98-98
Location Maps
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Commissioner Christine Kehoe
City of San Diego
202 "C" Street, San Diego 92101 619 236-6633
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad

2. Brief description of development being appealed: Construction of a two-story, 33-foot high and 2,713 sq.ft. single family residence and 577 sq.ft. second dwelling unit over a detached garage upon a 1.9 acre lot.

3. Development's location (street address, assessor's parcel no., cross street, etc.):
South Shore of Buena Vista Lagoon, west of the AT&SF Railroad, north of Mountain View Drive, Carlsbad, San Diego County

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: XXX
- c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-98-98

DATE FILED: 7/27/98

DISTRICT: San Diego

Decision

EXHIBIT NO. 3
APPLICATION NO.
A-6-CII-98-9825
Appeal Form
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The project includes construction of a residence and second dwelling unit on a 1.9 acre landlocked parcel adjacent to the mouth of Buena Vista Lagoon. The project requires an access road to the subject parcel which extends across a lot that has been designated by the Commission for open space and public access in a permit for subdivision of the adjacent parcels (CDP #6-83-51). That permit has not yet been amended to allow the access road in the open space. Issues which must be addressed in that amendment review include siting of the road in the least environmentally damaging alignment and public use of the road within the public access/open space lot. A second concern is the legality of the lot on which the proposed residence is located. It appears that redivision of two lots was required to reach the current configuration of lots on which the residence was approved; however, the City did not process a coastal development permit for the redivision of land. At the time the Commission approved the adjacent subdivision, the number of existing legal lots on this site and the appropriate intensity of use on this site was questioned due to concerns associated with a development's proximity to wetlands, visual impact and the effects on public access to the lagoon. All of these issues should have been addressed at the subdivision stage through cdp review by the City. Approval of a permit for an sfr on this lot which has not been established as legal under the Coastal Act, and dependent on an access road which has not been authorized by the Commission through an amendment to a previously-issued permit, would prejudice that review process.

Concerns related to the residential project include the siting and design to preserve existing public views from Carlsbad Blvd., the railroad and the beach; effects on any prescriptive rights of public access across the site to the lagoon; and the proximity of the development to wetlands. Therefore, the project raises question regarding consistency with the public access and recreation policies of the Coastal Act, and applicable LCP policies which include address development adjacent to Buena Vista lagoon, protect public vistas, environmentally sensitive habitat areas and public access.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge

Signed Christine Kellie
Appellant or Agent

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Commissioner Pedro NavaBauer, Harris, McEvoy & Clinkenbeard925 De La Vina StreetSanta Barbara, CA 93101

Zip

805

Area Code

965-0043

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Construction of a two-story, 33-foot high and 2,713 sq.ft. single family residence and 577 sq.ft. second dwelling unit over a detached garage upon a 1.9 acre lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
South Shore of Buena Vista Lagoon, west of the AT&SF Railroad, north of Mountain View Drive, Carlsbad, San Diego County
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XXX
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-98-98DATE FILED: 7/27/98DISTRICT: SAN Diego**RECEIVED**
JUL 27 1998

EXHIBIT NO. 4

APPLICATION NO.

A-6-CII-98-98

Appeal Form

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

see attached summary

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

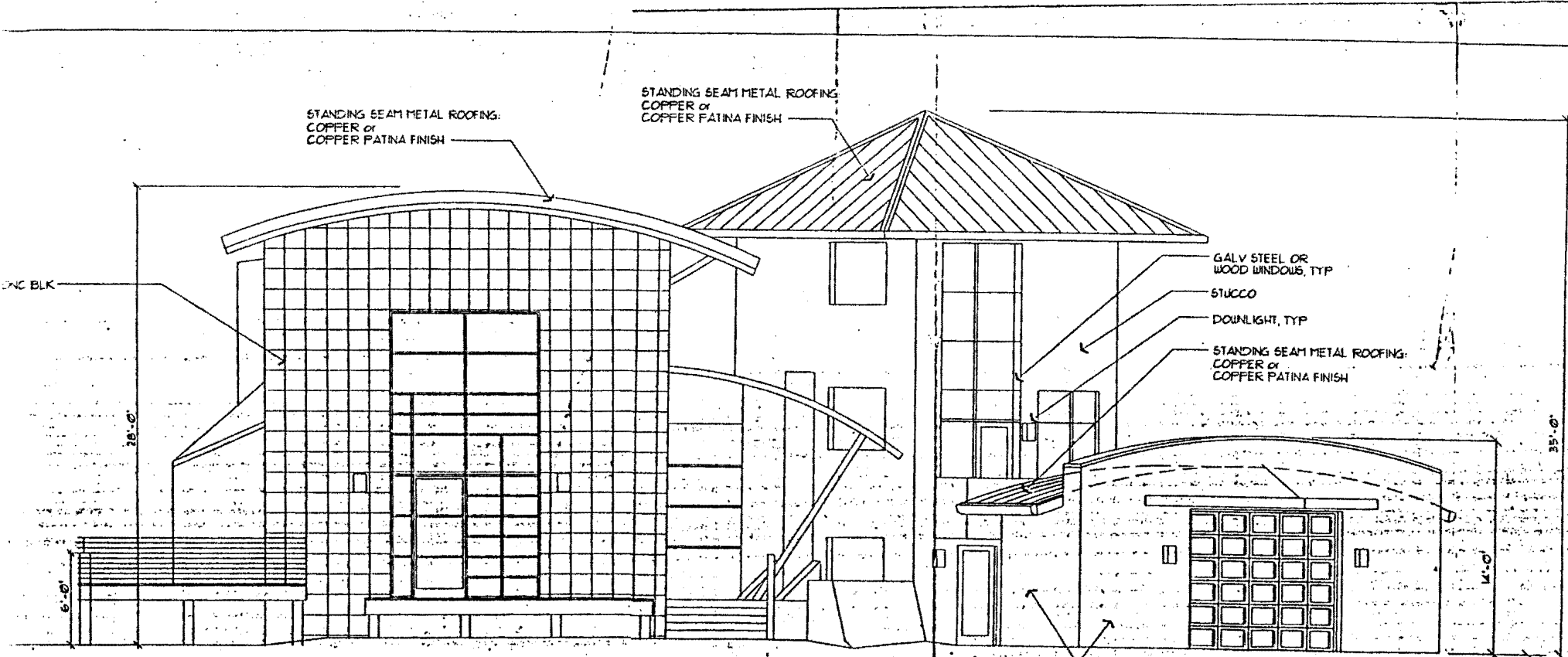
Signed 
Appellant or Agent

Date _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed _____
Appellant

Date _____



NORTH ELEVATION

SCALE: 1/4" = 1'-0"

California Coastal Commission	EXHIBIT NO. 5
	APPLICATION NO.
	A-6-C11-98-98
	Elevations