

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
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SAN DIEGO, CA 92108-1725  
(619) 521-8036



## RECORD PACKET COPY

Staff: WNP-SD  
Staff Report: 12/17/98  
Hearing Date: 1/12-15/99

Wed 22b

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-14-A2

Applicant: Metropolitan Area Advisory Committee Agent: Jack Henthorn

Original Project

Description: Boundary adjustment between two parcels to create an approximately 17 acre parcel (Lot A) and a 12 acre parcel (Lot B), and construction of 138 apartment units totaling 166,778 sq.ft. in 23 two-story buildings, a daycare center, ball courts, tot lots, and social service/leasing office, on Lot B; payment of an agricultural mitigation fee. No development is proposed on Lot A.

Proposed

Amendment: Modify Special Condition #5 for a one time exemption to allow grading to occur within the rainy season up to January 30, 1999.

Site: South of Palomar Airport Road, between the extension of College Blvd/Alga Road and Laurel Tree Road, Carlsbad, San Diego County. APN 212-040-46, 29.

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed amendment, subject to special conditions requiring submittal of a detailed grading/erosion control plans and a monitoring program. The erosion control plans and monitoring will ensure that grading will not result in any off-site sedimentation impacts.

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Substantive File Documents: Certified Carlsbad LCP Mello II segment; City of Carlsbad GPA 95-01/ZC 95-01/LCPA 95-02/LFMP 87-05(B)/SDP 95-01/HDP 95-01; Hayworth, Anita M. "Environmental Survey Laurel Tree Affordable Housing Site," March 1995; CDP #s 6-95-125, 6-94-131, 6-88-531.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development, as amended, will be in conformity with the adopted Local Coastal Program, 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. Grading/Erosion Control. This condition shall replace Special Condition #5 of the original permit in its entirety. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, final site, grading and erosion control plans and grading schedule that are in substantial conformance with the plans submitted with this application, dated, September 28, 1998 by Robert Bein William Frost & Associates. The plans shall include the following:

- a. All grading activity shall be prohibited within the period from October 1<sup>st</sup> to April 1<sup>st</sup> of any year. However, necessary grading may occur from November 15<sup>th</sup>, 1998 to January 30, 1999.
- b. All permanent and temporary erosion control measures shall be developed and installed prior to or concurrent with any on-site grading activities. Sediment basins (debris basins, desilting basins, or silt traps) and other temporary erosion control measures such as berms, interceptor ditches, sandbagging, hay bales, filtered inlets, debris basins, silt traps, or other similar means shall be installed in conjunction with the initial grading operation and maintained throughout the development process as necessary to remove sediment from runoff waters draining from the land undergoing development.
- c. Demonstration that all on-site temporary and permanent runoff and erosion control devices are installed and the City Engineer of Carlsbad has determined that all measures are in place to minimize soil loss from the construction site.

The permittee shall undertake development in accordance with the approved grading plans. Any proposed changes to the approved grading plans shall be reported to the Executive Director. No changes to the grading plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Monitoring and Reporting. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and written approval, a program for monitoring the condition of erosion control devices and the effectiveness of the erosion control program. The monitoring program shall include, at a minimum, monthly reports beginning one month from the date of Commission action on this permit approval, continuing to April 1, 1999. The reports shall be completed by a licensed engineer and shall describe the status of grading operations and the condition of erosion control devices, including temporary and permanent desilting basins. Any potential modifications to the approved grading schedule shall be indicated. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms. Desilting basin maintenance, including removal of accumulated silt, shall occur prior to the onset of the rainy season and on an as-needed basis throughout the winter.

3. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-96-14 not specifically modified herein, shall remain in full force and effect.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Original Development Description and History. On April 11, 1996, the Commission approved a boundary adjustment between two parcels to create an approximately 17 acre parcel (Lot A) and a 12 acre parcel (Lot B), and construction of 138 affordable housing apartment units totaling 166,778 sq.ft. in 23 two-story buildings. The approval also included the construction of a daycare center, ball courts, tot lots, and social service/leasing office, all on Lot B and payment of an agricultural mitigation fee. No development was proposed or approved on Lot A.

The site is located approximately 770 feet to the south of Palomar Airport Road, east of the existing College Boulevard terminus, at the northeast corner of the future Alga Road/Cobblestone Road intersection. Also approved was the construction of an access road adjacent to the site to the north known as "A" Street, which will intersect with Alga Road, and the construction of Alga Road (which is called College Boulevard north of Palomar Airport Road) from Palomar Airport Road south to the project site. Approximately 12,500 cubic yards of cut and 188,965 cubic yards of fill, including 99,150 cubic yards of fill for Alga Road, was approved.

The major issues involved in the development included impacts to naturally vegetated steep slopes, wetland habitat, and the conversion of agricultural land to urban uses. The Commission approved the project subject to special conditions requiring mitigation for impacts to coastal sage scrub and wetland habitat, submittal of a plan to mitigate for conversion of former agricultural lands to urban uses, grading, erosion and drainage control plans, including a requirement that prohibits grading between October 1 and April 1, landscaping plans, permits from other agencies, and identification of an import site. All the conditions were met and the coastal development permit was issued in September, 1998.

Due to a delay in installing drainage and erosion control facilities and stabilization of an eroded stockpile area, the Commission approved an amendment to this permit at its November, 1998 hearing to revise Special Condition #5 of the original permit to allow site grading to occur up to November 15, 1998. At that time, the applicant provided a grading schedule which indicated that all site grading would be completed and the site stabilized prior to the November 15, 1998 deadline.

The site is located within the Mello II segment of the certified Carlsbad Local Coastal Program (LCP) where coastal development permit authority has been transferred to the City. However, since the project was originally approved by the Commission, the proposed amendment is subject to the Commission's jurisdiction.

2. Proposed Amendment. The proposed amendment is for a one-time only exception from the winter grading season to allow grading to occur up to January 30, 1999. The original permit, as approved by the Commission, included a special condition which prohibited any grading of the site during the winter rainy season of October 1 to April 1 of any year.

The subject amendment request proposes to allow grading to occur during the rainy season. As noted above, an immaterial amendment to allow grading to occur until November 15, 1998 was recently approved by the Commission. That approval was based on the grading being completed by November 15. However, the grading was not completed because delivery of the required 66" storm drain pipe was delayed until November 16, 1998. According to the City of Carlsbad, the storm drain must be installed without delay because "in the event of a heavy rain fall, the potential exists for excessive erosion damage throughout and downstream of the Laurel Tree project". The City has determined that there is a substantial City interest in allowing the grading to continue to complete this storm drain installation beyond the Coastal Commission November 15, 1999 deadline. The applicant is currently constructing the storm drain pipe without the Commission's authorization in an apparent violation of the Coastal Act.

The current amendment requests that an exemption to the rainy season grading restriction be permitted for the following reasons:

1. All downstream drainage and erosion control facilities are installed and on-site erosion control measures are being implemented in accordance with the City of Carlsbad's approved erosion control plan for the Laurel Tree site.
2. Due to the configuration of the storm drain system, once the final facilities have been installed, only a very small portion of the site grading will remain. Site grading is projected to be completed at the same time as the projected completion of drainage facilities (January 30, 1999).
3. The project is over 2 months behind schedule due to delays in delivery of the 66" pipe necessary to complete a public storm drain that traverses the site and because the condemnation process has not been completed to allow construction of access and drainage facilities in "A" street, although a private agreement to allow the work to proceed while the city and the owner complete their negotiations has been obtained.
4. This is a project that will serve housing needs of low income residents in the Coastal Zone. Over 50% of its funding is derived from State tax credits. It would be impossible to meet the tax credit requirements of having initial occupancy not later than November 1, 1999 and full occupancy not later than December 31, 1999, if grading is not allowed to continue.

The applicant notes that waivers of the winter grading restriction has been granted in the past when the City has certified that all erosion control facilities were in place and operating and when it has been determined that any off-site sedimentation would not result in adverse impacts on coastal resources.

3. No Waiver of Violation. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies and ordinances of the certified local coastal program. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. Resource Management/Sensitive Habitat. Relevant policies which address protection of environmentally sensitive habitat areas include Policy 3-1 of the certified Mello II LCP, "Slopes and Preservation of Vegetation" which states:

Certain areas of the Carlsbad coastal zone have very high habitat value. These areas are not suitable for farming. These areas exhibit a large number and diversity of both plant and animal species, several of which are threatened because of extensive conversion of mixed chaparral and coastal sage scrub habitats to urban or agricultural uses. Also, well-established and well-maintained vegetation is a major deterrent to soil erosion and attendant difficulties.

Unless specifically addressed in other policies of this Land Use Plan, the vegetation on steep slopes shall be maintained so that natural habitats are preserved and soil erosion is minimized.

Policy 3-4 of the Mello II LUP provides, in part, that:

- a.) Grading activity shall be prohibited during the rainy season: from October 1<sup>st</sup> to April 1<sup>st</sup> of each year.

The project site and area contains coastal resources such as coastal sage scrub habitat. Downstream to the north is Encinas Creek, a well established coastal stream. In San Diego County the Commission has typically restricted grading, particularly large scale grading projects, to that time of year when erosion and transport of sediment to lagoons or other sensitive resource areas is least likely to occur. That is, the Commission has restricted grading during the winter months. The certified LCP segments for the areas for which the amendment is proposed also contain prohibitions on grading during the winter months for the same reason. Historically, the City and the Commission have allowed exceptions to the winter grading restriction, but only until November 15, and only if mass grading has been completed prior to October 1 and the site has been secured with temporary and permanent erosion control measures. In this particular case, the grading cannot be completed within the required time frame outlined in the Commission's permit approval due to the above stated reasons.

The Commission has previously granted permission to allow minor grading (i.e., utility trenching and building foundations and other finish grading) during the normally restricted winter season under certain circumstances. First, permanent erosion control improvements, including large, frequently maintained sediment control facilities have been in place and operational downstream of the project (and this has been verified in writing by the City of Carlsbad). Second, extensive temporary erosion control measures are implemented during the rainy season to minimize the total amount of soil exposed to erosive forces at any one time, and to direct and control the inevitable runoff from the site. Lastly, due to the location of the development, it is documented that off-site sedimentation would not result in impacts to sensitive coastal resources. Taken together, these factors serve to minimize the potential for adverse sedimentation impacts upon area wide sensitive resources.

In approving CDP #6-95-125 (Cobblestone Sea Village), a 213 lot subdivision on 85 acres adjacent to the subject site, the Commission found that although a large amount of grading was proposed, the site drains into Encinas Creek (Canyon de las Encinas), which in turns drains directly into the Pacific Ocean. Thus, runoff from the site would not pass through any wetland or lagoon system, potentially causing sedimentation of sensitive habitats. Therefore, the Commission allowed the typical rainy season grading restrictions to be waived if it was demonstrated that all erosion control measures were in place and operational.

The same conditions apply to the subject amendment in that the site drains to Encinas Creek and both permanent and temporary erosion control measures are being applied. The site of the proposed grading currently contains a temporary desilting facility and the proposed erosion control consists of the placement of a silt fence around the project anywhere there is the potential for runoff. As the project is graded, temporary swales and/or gravel bags will be used to divert surface flows to the temporary desiltation basins throughout the construction of the project whenever there is threat of rainfall. Haybales will be incorporated as necessary to provide additional erosion control.

The second phase of erosion control will be the permanent erosion control devices. These include maintaining the silt fence until the slope planting is established, slope planting and matting, the use of gravel bags and depressions at the storm drain inlets to desilt the surface runoff. The erosion control plan also indicates maintenance of temporary and permanent erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms.

Special Condition #1 requires that grading may only occur up to January 30, 1999 and that the applicant must submit final grading and erosion control plans in substantial conformance with the submitted plans. The plans shall document that all permanent runoff and erosion control devices are developed and installed prior to or concurrent with any on-site grading activities, and that all areas disturbed but not completed during the construction period shall be stabilized. 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.

Special condition #2 requires the applicant to maintain the erosion control measures to assure the success of the proposed winter erosion control program. The condition requires submittal of monthly monitoring reports describing the current status of the grading operations, the conditions of the erosion control devices and any needed repairs or maintenance of the devices. This condition is proposed to ensure maximum protection of the adjacent sensitive biological resources of Encinas Creek.

Given that no sensitive coastal resources are located downstream of the proposed development and the development includes adequate erosion control measures, the Commission finds that in this particular case, allowing grading to occur during the winter months, will not adversely impact environmentally sensitive habitat areas. Therefore, the Commission finds that the subject permit amendment, as conditioned, is consistent with the resource protection policies of the certified LCP.

5. Local Coastal Planning. Sections 30170(f) and 30171 of the Coastal Act were special legislative amendments which required the Commission to adopt and implement a Local Coastal Program for portions of the City of Carlsbad and County islands prior to the specific statutory dates. The Master Plan covers property located within the jurisdiction

of three of the City of Carlsbad's six local coastal program segments. The project is located within the Mello II segment.

The Commission is reviewing the project because the proposed winter season grading is an amendment to the Commission's original approval and as such requires Commission approval even when a certified LCP is in place. Although the LCP segments contain policies which seek to protect the lagoons and other sensitive habitat areas through the prohibition on grading during the winter rainy season, the Commission has, in past actions, considered the unique nature of the permanent erosion control facilities. As a result of the effectiveness of these facilities and the lack of significant sensitive resources downstream, the Commission has allowed limited grading to occur during winter months, finding that the intent of the LCP language, the protection of wetland resources, was fulfilled.

The special conditions proposed above would provide the type of additional protection the Commission has previously required of winter grading proposals. In the case of the proposed development, due to the lack of significant sensitive resources downstream of the subject site, impacts to the sensitive coastal resources will be avoided. Therefore, the Commission finds that the proposed amendment request, subject to the above cited special conditions, is consistent with the certified Mello II segment of the City of Carlsbad LCP.

6. 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)(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 to be consistent with the resource protection policies of the certified LCP. 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 environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



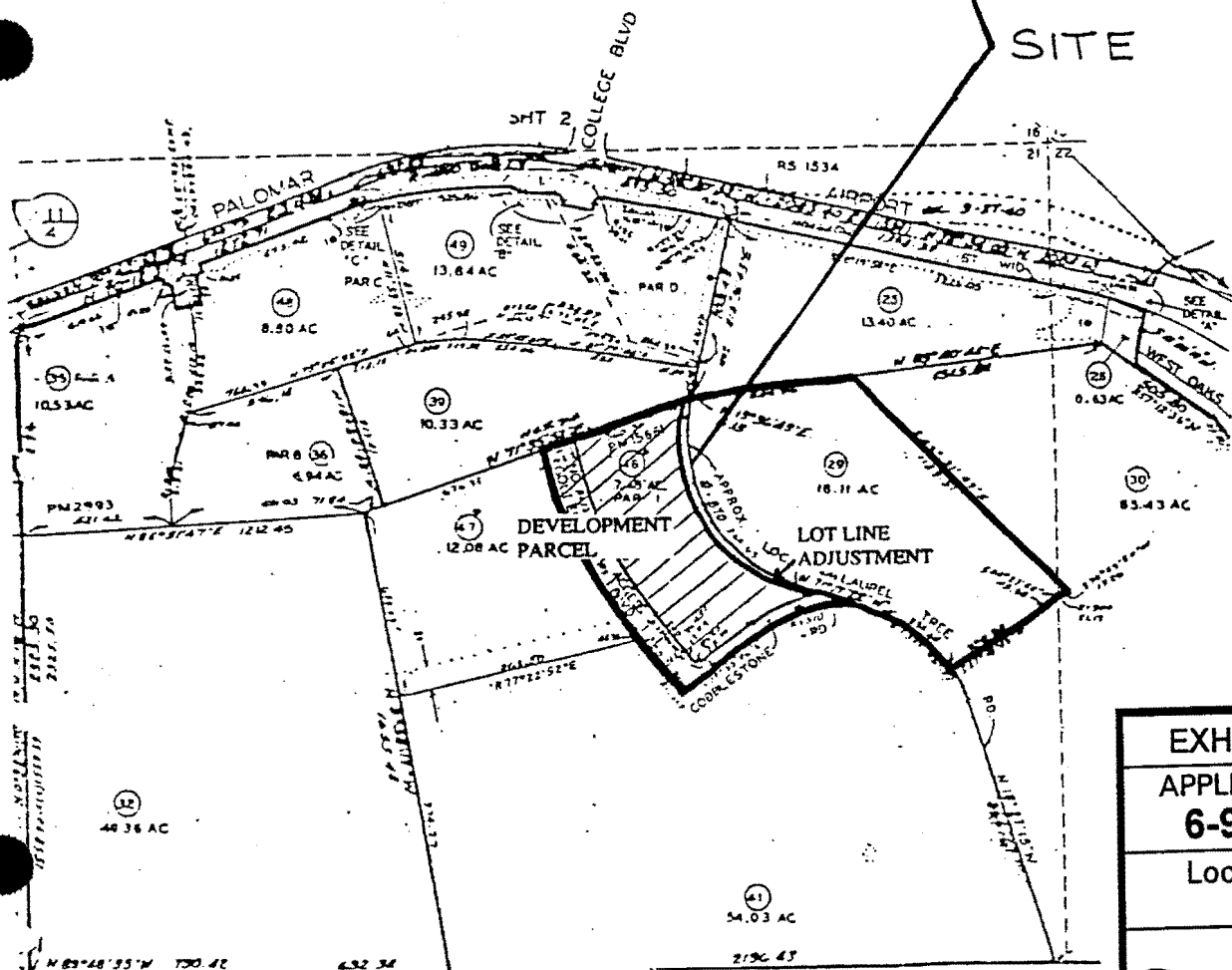
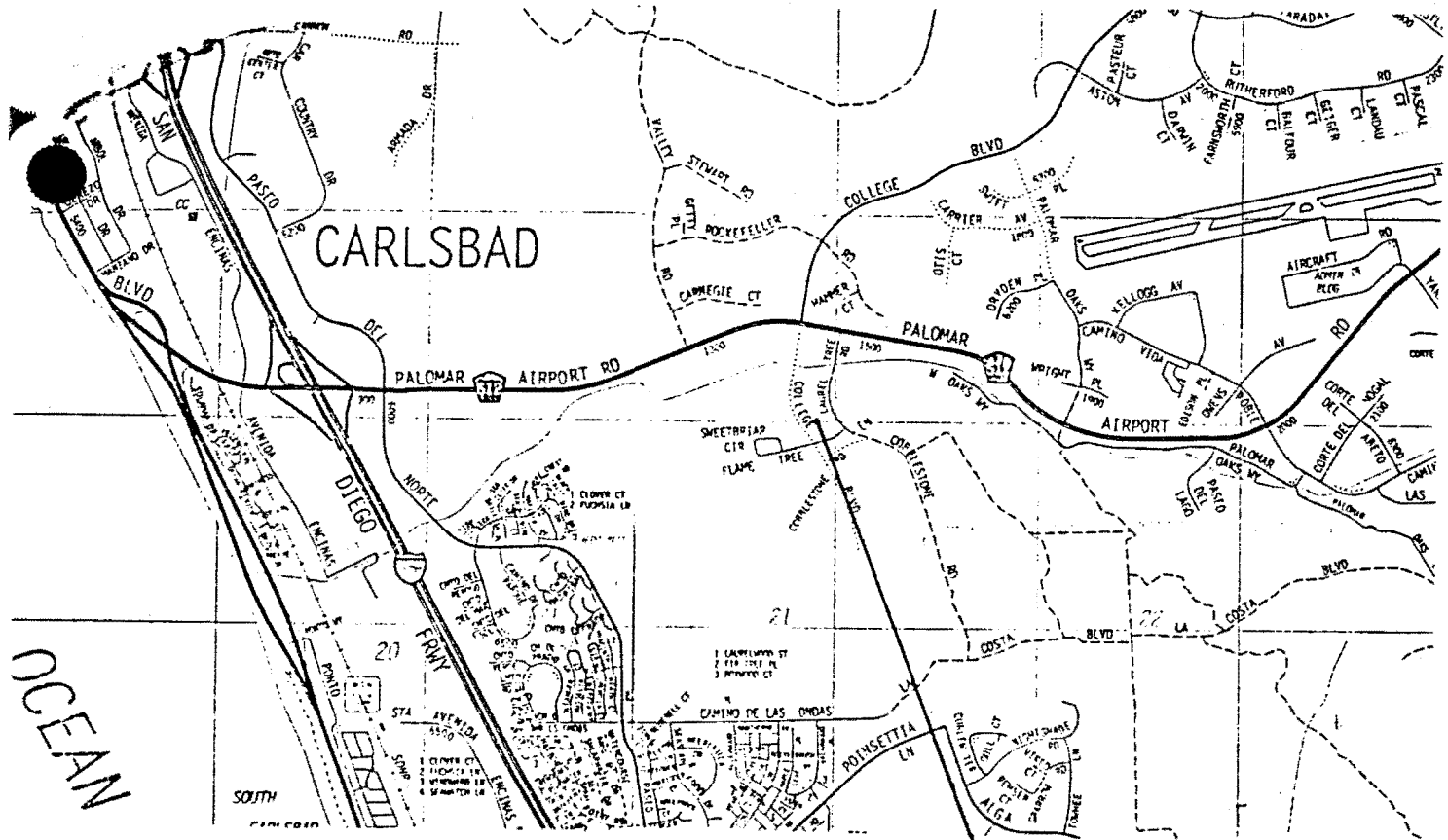


EXHIBIT NO. 1  
 APPLICATION NO.  
**6-96-14-A2**  
 Location Map

California Coastal Commission

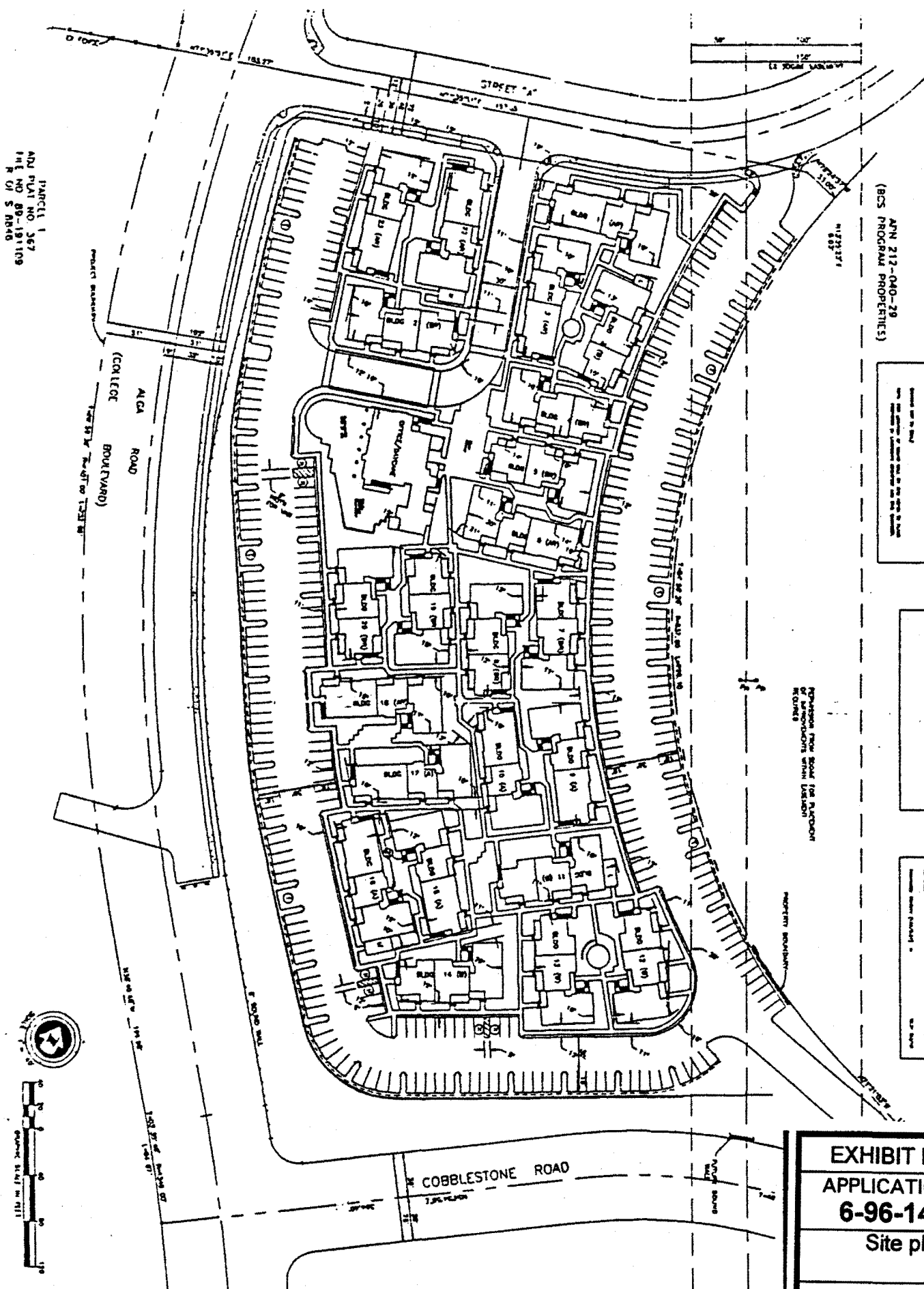
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EXHIBIT NO. 2  
APPLICATION NO.  
**6-96-14-A2**  
Site plan

California Coastal Commission



PARCEL 1  
ADJ PLAT NO. 367  
1416 MO 80-191109  
R CI S 8046



**Laurel Tree Apartments**  
Grading and Utilities Schedule  
Prepared By Cuatro Corporation  
December 4, 1998

Item	Sept 98	Oct	Nov	Dec	Jan
Site Work	7 14 21 28	5 12 19 26	2 9 16 23 30	7 14 21 28	4 11 18 25
Storm Drain and Structures					
Grading of A St. and related Drainage					
Final Grading of Southern Portion of Site					

EXHIBIT NO. 3

APPLICATION NO.

**6-96-14-A2**

Grading Schedule



# City of Carlsbad

## Public Works - Engineering

November 10, 1998

Jack Henthorn  
JACK HENTHORN & ASSOCIATES  
5375 Avenida Encinas, Suite D  
Carlsbad, CA 92008

**SDP 95-01, CA CDP 6-96-14: LAUREL TREE AFFORDABLE APARTMENT PROJECT  
STORM DRAIN INSTALLATION/GRADING OPERATIONS**

Public Works Director, Lloyd Hubbs, has asked me to respond to your November 6, 1998, letter regarding the installation of the 66" storm drain and grading issues associated with the Laurel Tree Apartment project.

Your letter stated that your pipe supplier cannot deliver the storm drain until November 16, 1998, and that the City's Construction Inspector, Chip Escoffier, has indicated to you that your grading operations must cease on November 15, 1998, in accordance with California Coastal Commission requirements.

In the event of a heavy rain fall the potential exists for excessive erosion damage throughout and down stream of the Laurel Tree project without the completion of this necessary storm drain link. I have discussed this issue with our Inspection Section and Planning Department and in order to protect this project, the existing creek to the north and down stream properties, staff has determined that there is a substantial City interest in allowing the grading to continue to complete this storm drain installation beyond the Coastal Commission November 15, 1998, dead line. **Therefore, this correspondence is authorization to continuing grading beyond the November 15, 1998, Coastal Commission grading dead line only to complete the storm drain installation.**

Your letter also stated that you wish to complete the actual project grading. Since the Coastal Commission originally approved the project's grading, they still have jurisdiction over the project, so City staff does not have the authority to grant an extension past the November 15, 1998, grading dead line for actual project grading. To complete this grading, you must obtain an extension from the Coastal Commission directly. If you obtain an extension, provide documentation to Principal Planner, Chris DeCerbo and Chip Escoffier, so that your grading operations can continue.

If you have any questions, please contact me at telephone 760/438-1161, extension 4388.



**MICHAEL J. SHIREY**  
Associate Engineer - Land Development

- c: Public Works Director/City Engineer  
Principal Civil Engineer - Land Development  
Principal Construction Inspector - D. Cook  
Construction Inspector II - C. Escoffier  
Principal Planner - C. DeCerbo

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EXHIBIT NO. 4
APPLICATION NO. <b>6-96-14-A2</b>
City Letter
California Coastal Commission