

## CALIFORNIA COASTAL COMMISSION

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



Staff: WNP-SD  
Staff Report: 10/14/99  
Hearing Date: 11/2-5/99

Th 8a

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-87-680-A11

Applicant: Aviara Land Associates/Brehm Aviara III Assoc. Agent: Paul Klukas

Original

Description: Conceptual approval of a master plan for a mixed use project covering 1402 acres, 2,836 single and multi-family family homes, hotel, golf course, installation of infrastructure improvements and natural recreational open space areas, including the eastern basin of Batiquitos Lagoon and trail systems.

Site: Planning Areas 22 and 23 of the Aviara Master Plan areas, north of Alga Road and east of Ambrosia Lane, Carlsbad, San Diego County.

Proposed

Amendment: Revise approved 248-acre open space preserve within the Aviara Master Plan by removing a total of 0.39 acres from four different areas of the preserve in exchange for adding 0.39 acres into the preserve at another location.

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Substantive File Documents: City of Carlsbad Certified Mello I segment, CDP #6-87-680-A-4, CDP #6-87-680-A-5; CDP #6-90-249; CDP #6-91-46, CDP #6-91-190, CDP #6-91-46 CDP #6-90-249-A

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

The Commission previously approved a permit to subdivide a 1400-acre area into planning areas that would be further subdivided for residential development in the future. The subdivision included the establishment of 248 acres as permanent open. From time to time the open space system has been revised when subsequent buildout of planning areas has occurred. These revisions all involved the removal of open space in one area and the addition of similar acreage into open space in another area. In each case, the Commission has approved such open revisions only when it was found that 1) no dual

criteria area would be affected, 2) that at least 248 acres of open space will be maintained; and 3) the quality of the newly preserved area is equal to or higher than the area proposed for encroachment. In this case, all of the above criteria cannot be met for all the proposed areas. Therefore, staff recommends approval of the proposed amendment subject to conditions requiring revised plans which indicate that only those areas that comply with the above Commission criteria are appropriate for an open space tradeoff and that the existing open space system deed restriction within the master plan shall be modified to reflect the approved changes.

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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 for the proposed amendment, subject to the conditions below, on the grounds that the development, as amended, 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 to the Executive Director for review and written approval, final construction plans for the proposed project. Said final construction plans shall be in substantial conformance with the submitted plans dated 9/21/99 by Estrada Land Planning, but shall be revised as follows:

- a. Proposed Encroachment Area 4 and Encroachment Area 5 shall be shown as open space, with the exception that 525 sq.ft. of encroachment area in the rear yards of Lot 1 and 2 shown in Encroachment Area 5 shall remain as encroachment area such that it is no longer part of the open space.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the 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. Amended Open Space Deed Restriction. The existing deed-restricted Aviara Open Space Preserve shall be amended to reflect the above-approved changes to the preserve. No development, as defined in Section 30106 of the Coastal Act shall occur within the area proposed for addition to the Aviara open space preserve as shown in Exhibit #6 except for drought tolerant native plants consistent with the present character of the area.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record an amended deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space 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.

3. Prior Conditions of Approval. All other terms and conditions of the approval of Coastal Development Permit #6-87-680, as amended, not specifically modified herein shall remain in full force and effect.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description/History. In CDP #6-87-680, the Commission conceptually approved a master plan for a mixed use project covering 1,402 acres and 31 planning areas, which included 2,836 single and multi-family family homes, hotel, golf course, installation of infrastructure improvements and natural recreational open space areas (including a 248-acre open space preserve) and trail systems. The Planning Areas (PA) that are the subject of the amendment are PAs 22 and 23 which are located within Phase III of the Aviara Master Plan (exhibit 1). Phase III of the Aviara Master Plan was approved by the Commission in CDP #6-91-46 for the subdivision of 247 acres into 11 Planning Areas for residential development.

Final site design for the construction of single family homes in Aviara Planning Area 23 is in progress. The applicant proposes to revise the approved 248-acre open space preserve within the Aviara Master Plan by encroaching into a total of 0.39 acres of the preserve in four different areas adjacent to PA 22 (Exhibit 2). These four areas, referred to as proposed Encroachment Areas 2, 3, 4 and 5 are shown on exhibits 3-5. To mitigate the proposed encroachments, the applicant proposes to add a total of 0.39 acres of

revegetated coastal sage scrub into the preserve at one location adjacent to PA 23 (Exhibit 6).

The site is subject to the policies and provisions of the Aviara Master Plan, which is both the Land Use Plan (LUP) and implementing ordinances for those portions of the Mello I, Mello II, and East Batiquitos Lagoon/Hunt Properties segments of the certified Carlsbad LCP that are contained within the Master Plan area. Phase III lands are subject to the Mello I and Mello II LCP segments. In this case the standard of review is the certified Mello I LCP.

According to the applicant, the purpose of Encroachment Areas 3, 4 and 5 is to create additional back yard area in several residential lots within Planning Area 23. The Encroachment Areas themselves would not be used as back yards. Rather, increasing the yards would result in fire suppression zones being located within previously deed restricted open space. The purpose of Encroachment Area 2 is to allow the realignment of an access road to an approved RV storage site. Finally, approximately 525 sq.ft. of encroachment into open space is proposed in Encroachment Area 5 to correct a discrepancy between the location of the open space and the location of the boundary of PA 23. For some reason the legal description of the deed restriction adopted in 1988 overlapped slightly onto the graded pad. This area has been graded and is actually part of the approved building pad for Lot 1 and Lot 2 within PA 23.

Subsequent to the original approval, the Commission has approved several revisions to the approved 248-acre open space preserve provided that the overall trade responds to three conditions:

- a) Avoid taking preserve dual criteria areas on the "Coastal Constraints" Map.
- b) The total open space restricted area within Aviara may not fall below 248 total acres.
- c) The biological quality of the new preserve areas must be equal to or higher quality than the areas removed.

Specifically, the Commission has previously approved a number of revisions to the open space preserve, including approving them in concept in LCPA 1-90 and LCPA 3-91, and through five separate permit actions: CDP #6-87-680-A-4; CDP #6-87-680-A-5; CDP #6-90-249; CDP #6-91-46 and CDP #6-91-190. In CDP #6-91-46 (Phase II approval), the Commission allowed removal of 9.37 acres of previously deed restricted open space in exchange for addition of 12.97 acres of previously unrestricted open space. Of the 9.37 acres, .15 acres were dual criteria but developable slopes. Of the 12.97 acres, 1.21 acres were dual criteria slopes. In CDP #6-90-249-A, the Commission allowed the removal of 707 sq. ft. from deed restricted open space to enhance views in exchange to commit 1,400 sq. ft. of land that was natural but permitted for development. The Commission found the added area was of similar or greater habitat value as the removed area.

In CDP #6-87-680-A-4, the Commission allowed the removal of .93 acres of previously protected as open space but not containing steep slopes or sensitive vegetation for the addition of 1.18 acres between the golf course and the wetland buffer. The added site was undisturbed with all pre-existing vegetation in place. The Commission found the dedication of the 1.18 acre site provided additional wetland buffer over the existing buffer. The proposal included the revegetation of trails and haul routes in dedicated open space areas.

In CDP #6-87-680-A-5, the Commission approved the removal of .286 acres (one area in dual criteria slopes and the other area not containing dual criteria slopes) previously restricted as open space because of steepness and location in exchange for addition of .598 acres. The Commission found the areas proposed for compensation were superior habitat for the California gnatcatcher than those areas previously restricted. Given that the removed area did not represent good quality habitat and better quality habitat was available for compensation, the Commission approved the request. In CDP #6-91-190, the Commission found 2.8 acres of added area in exchange for 2.01 acres of removed area was acceptable because the former contained superior coastal sage scrub habitat for the gnatcatcher. The tradeoff consisted of currently restricted open space for currently non-restricted open space.

2. Environmentally Sensitive Areas. The Mello I and Mello II LUPs protect naturally vegetated hillsides mapped as containing endangered plant and animal species and/or coastal sage scrub and chaparral plant communities. Relevant policies which address protection of environmentally sensitive habitat areas include Policy 3-1 of the certified Mello I 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.

Also, Subsection 4 of Mello I LUP Policy #1, which pertains directly to Phase III lands, provides:

4. All land uses and intensity of use shall be compatible with the protection of sensitive coastal resources.

Finally, the Aviara Master Plan, the land use and zoning document for the proposed project, includes provisions to protect environmentally sensitive habitat areas. The

Aviara Master Plan provides in its "Open Space" Section (p. 26 of the Master Plan) that one of the four open space categories which are included within the Master Plan LUP under "Open Space for the Preservation of Natural Resources" is "Natural Slopes". It does not define whether these slopes are steep or non-steep but states there are approximately 248 acres within the Aviara Master Plan. As indicated in the following discussion the Commission has found that both steep and non-steep areas have constituted environmentally sensitive habitat on the Aviara property. The master plan open space map is not of sufficient detail to determine why each of the proposed encroachment areas were made open space. The above encroachments are not within prohibited "dual criteria" areas shown on the approved "Constraints" map where such encroachments are prohibited from occurring. However, because several of the encroachment areas are adjacent to coastal sage scrub areas, it can be speculated that they were made open space to protect this habitat.

The topography of the Phase III area is characterized by a series of north-south trending hills and valleys. The valley areas have served as drainage courses carrying runoff from the northern portion of the watershed to the downstream lagoon. Some of the hillsides are composed of slopes of 25% grade and greater and are covered with native vegetation, primarily coastal sage scrub and chaparral plant communities. A number of eucalyptus groves are scattered over the property. The policies of the certified Mello I and Mello II segments of the City's LCP contain the following language regarding the development of steeply sloping hillsides with native vegetation:

#### Grading and Erosion Control

For those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, the following shall apply:

Slopes of 25% grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed 10% of the steep slope area over 25% grade may be permitted.

For existing legal parcels, with 25% grade, encroachment shall be permitted, however, any such encroachment shall be limited so that at no time is more than 20% of the entire parcel (including areas under 25% slope) permitted to be disturbed from its natural state. This policy shall not apply to the construction of roads of the City's Circulation Element or the development of utility systems. Uses of slopes over 25% may be made in order to provide access to flatter areas if there is no less environmentally damaging alternative available.

Of the roughly 310 acres of slopes of 25% grade or greater contained within the entire Master Plan area, about 160 acres or one-half of those on-site meet the dual criteria of 25% grade with coastal sage and chaparral plant communities. Of the 160 acres which meet the dual criteria, the Master Plan as approved by the Commission allows encroachment onto about 50 acres. Some of this encroachment involves small and

isolated pockets of slopes meeting the dual criteria. However, the topography of the site is such that it also included some of the major continuous steep slope landforms.

In its findings for the approval of the original Master Plan, the Commission found that a system of weighted values could be applied to the site. These weighted values were assigned to the various steep slope areas which met the dual criteria and were protected under the LCP policies. Only the most critical slopes, based on local review after application of the weighting system, were designated for permanent open space while other steep slope areas meeting the dual criteria were determined to be less important as viable species habitats.

Another major factor in allowing encroachment into the dual criteria areas was that the Master Plan as proposed, called for other habitat areas and sensitive vegetation on more gentle terrain i.e., less than 25% grade and not ordinarily subject to the development prohibitions contained in the LCP, to be retained as natural open space. These other open space areas, exclusive of the wetlands of Batiquitos Lagoon or the golf course, include 132 acres.

The determination to retain this additional acreage in natural open space was due to a variety of factors. In some cases, the areas in question included flora or fauna, such as the California gnatcatcher, which through the CEQA review process was determined to be appropriate for protection. In other cases, the additional areas to be retained in natural open space involved other development constraints, such as major overhead electrical transmission lines. Other areas were constrained pursuant to project requirements applied at the local level. For instance, the City required, primarily for visual reasons, that large stands of mature eucalyptus groves be preserved, even though the LCP, either as previously certified or as now amended, would not have specifically required their retention. The importance of these groves has been recognized for their ability to screen portions of the development from views from I-5, a major coastal access route, and for their historic character as a visual resource.

The Commission found that adding non-dual criteria areas to the open space system of the Master Plan committed substantial acreage to permanent open space, retained sensitive habitats and preserved natural landforms consistent with the applicable Coastal Act sections. The Commission further found the proposal mitigated the proposed encroachment into sensitive steep slope areas. Therefore, while the protection of naturally vegetated steep slopes was clearly the main focus of preserving environmentally sensitive habitat, protection of non-steep sensitive habitat areas were also found worthy of preservation.

The amendment proposes four separate encroachments into previously restricted open space, totaling 0.39 acres adjacent to and in Planning Area (PA) 23. In exchange, a total of 0.39 acres of revegetated coastal sage scrub within PA 22 would be added to the open space system so there would be no net loss of open space. The plant community existing in Encroachment Areas 2 and 3 is ruderal/ornamental vegetation and weedy growth of poor habitat value and are located on non-steep slopes (i.e., less than 25%). The plant

community in Encroachment Area 4 consists of natural, sandy unvegetated soils and some existing coastal sage scrub on steep and non steep slopes. Encroachment Area 5 consists of fair quality revegetated coastal sage scrub installed approximately 5 years ago on steep and non-steep slopes.

Approximately 4,525 sq.ft of the total 10,890 sq.ft. of encroachment area in Encroachment Areas 2 and 3 is due to the realignment of the RV storage facility access road. The present road was a temporary alignment designed without considering ultimate development of the site. The remaining 6,365 sq.ft. of encroachment is proposed to move the entire fire suppression zone program (Zones 1, 2 and 3) outward from the proposed PA 23 homes by 20 feet. The entire encroachment area affects "poor" quality ruderal and ornamental vegetation.

Encroachment Area 4 proposes to encroach 2,750 sq.ft. into deed restricted area to move the fire suppression zone outward from the PA 23 homes to keep Zone 1 out of the rear yards. This proposal would result in elimination of "fair" quality coastal sage scrub vegetation and a small area of sandstone bluff.

Encroachment Areas 5 is 3,350 sq.ft. Approximately 2,825 sq.ft. of encroachment is proposed to move the fire suppression zones outward from the homes to keep Zone 1 out of the rear yards. This encroachment involves "fair" quality coastal sage scrub, contiguous to a large open space preserve. Approximately 525 sq.ft. of encroachment is proposed in Encroachment Area 5 due to inadvertent overlap of the deed restriction onto area that was mass graded in PA 23. For some reason the legal description of the deed restriction adopted in 1988 overlapped slightly onto the graded pad. This area has been graded and is actually part of the approved building pad for Lot 2.

The area that would be added to the open space preserve to compensate for the above-described encroachments is three-year-old revegetated coastal sage scrub on a steep manufactured slope. This habitat is part of a large slope of revegetation that has been successfully established on the perimeter of Planning Area 22 and offers an increase in the area or width of the wildlife "connecting corridors" which increase its "value" from a habitat standpoint. This addition to the open space preserve would expand and widen the open space deed restriction over an important Phase III north-south habitat corridor.

The applicant has concluded that given there is no net loss in area resulting from the exchange (i.e., the open space system will not drop below 248 acres), the proposed tradeoff is favorable in terms of habitat quality being exchanged, and the area proposed for addition to the preserve is contiguous to an existing deed restricted open space parcel, the tradeoff is consistent with past Commission action.

While the Commission can agree with the report's findings regarding Encroachment Areas 2 and 3, it cannot find the proposed open space tradeoff is consistent with the LCP and past Commission actions in two areas: Encroachment Area 4 and partially within Encroachment Area 5. Subsection 4 of Mello I LUP Policy #1 provides that all land uses and intensity of use shall be compatible with the protection of sensitive coastal resources.



Additionally, Policy 3-1 of the certified Mello I LCP states the vegetation on steep slopes shall be maintained so that natural habitats are preserved and soil erosion is minimized.

In Encroachment Area 4 and partially within Encroachment Area 5 the fuel management zone is proposed to be extended down the slope into chaparral and coastal sage scrub areas so that the back yards of these lots can be increased and not be subject to Zone 1 fuel management requirements. Because making the rear yards larger would involve encroaching into sensitive habitat that is equal in value to what is being proposed as a tradeoff, the Commission can not find that the open space tradeoff in these areas meets the criteria set by past Commission action and cannot be found consistent with the above LUP policies. Thus, the Commission finds that the approval of the proposed Encroachment Area 4 and 2,825 sq.ft. of Encroachment Area 5 would be inconsistent with the certified LCP. Accordingly, Special Condition #1 requires that the applicant submit revised plans, which indicate that these proposed encroachments will not occur, and that these areas will remain in open space. The Commission finds that the 525 sq.ft. area in the rear yard of Lot 1 and Lot 2 in Encroachment Area 5 can be permitted because this area has been graded and is actually part of the approved building pad for Lot 2, and as such no adverse impacts to coastal sage scrub would occur.

Special Condition #2 requires the applicant to memorialize the trade in currently restricted open space for currently non-restricted open space through a modification to the existing open space deed restriction. As conditioned, the Commission finds the proposed open space tradeoff meets the requirements of the Coastal Act and past permit decisions with regards to resource protection, and is consistent with the certified City of Carlsbad LCP.

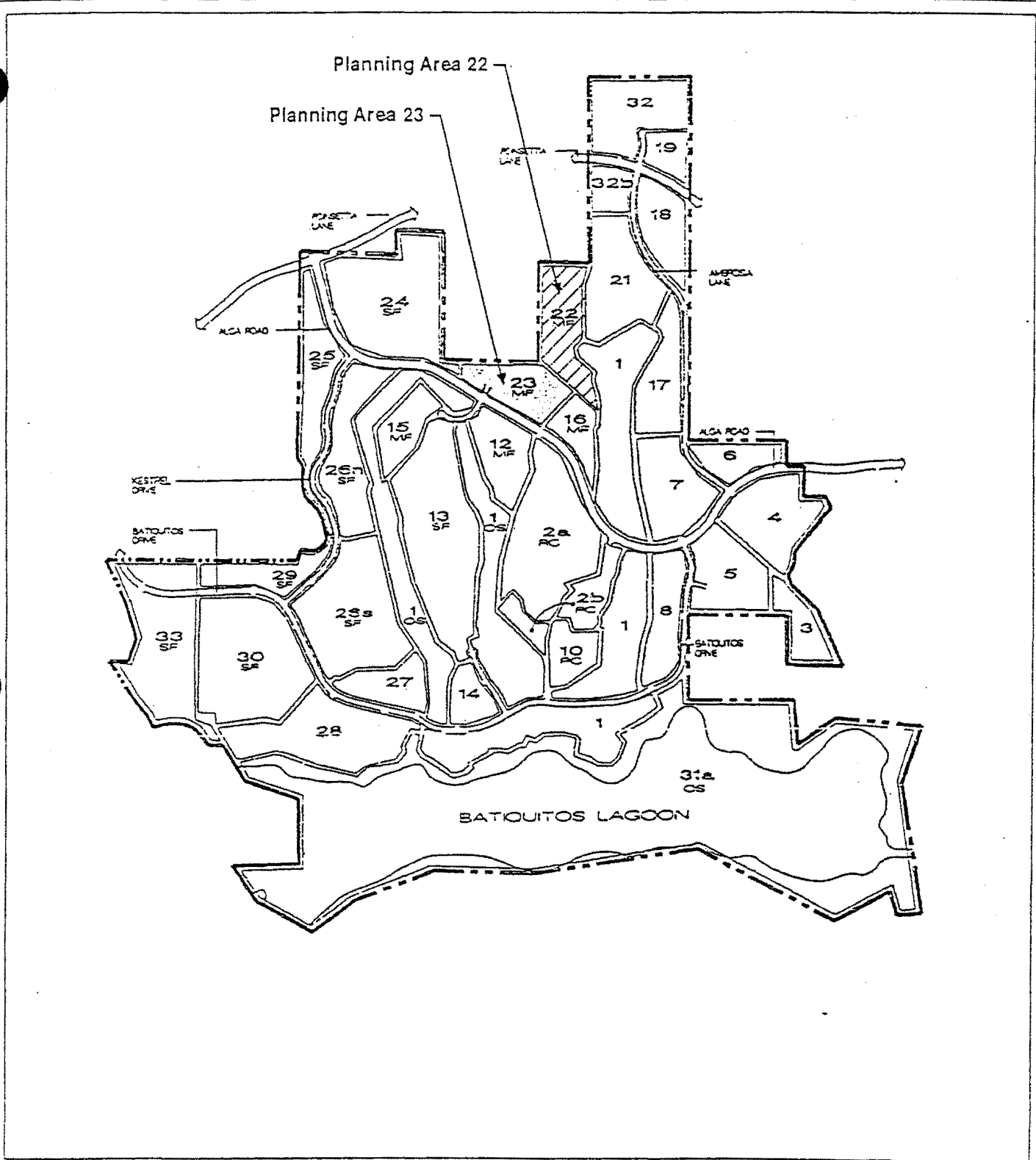
3. Local Coastal Planning. Sections 30170(f) and 30171 of the Coastal Act were special legislative amendments which required the Commission to adopt and implement a Local Coastal Program for portions of the City of Carlsbad and County islands prior to the specific statutory dates. The Master Plan covers property located with the jurisdiction of three of the City of Carlsbad's six local coastal program segments. PAs 22 and 23 are located within the Mello I segment. The Mello I segment was certified by the Commission in 1980. The Aviara Master Plan serves as the implementing ordinances for the Mello I LCP.

Based on the preceding discussion the Commission finds that a portion of the open space tradeoff is inconsistent with past permit decisions and the Mello I LCP as the proposal 1) does not exchange better habitat than that proposed for encroachment; and 2) proposes an intensity of land use that is incompatible with the protection of sensitive resources. Only those areas that assure the newly preserved open space area is equal to or higher in quality than the area proposed for encroachment can be approved. As conditioned, the Commission finds the proposal can be found consistent with the certified Mello I segment of the City of Carlsbad LCP and past Commission precedent.

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

Coastal Development Permit application to be supported by a finding showing the application, 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.

As discussed herein, the proposed project, as conditioned, will not cause significant adverse impacts to the environment. Specifically, as required to not encroach upon areas containing sensitive vegetation, the project can be found consistent with the environmentally sensitive habitat policies of the Carlsbad LCP. 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.



Vicinity Map

Planning Areas 22 and 23

EXHIBIT NO. 1
APPLICATION NO.
<b>6-87-680-A11</b>
Location
California Coastal Commission



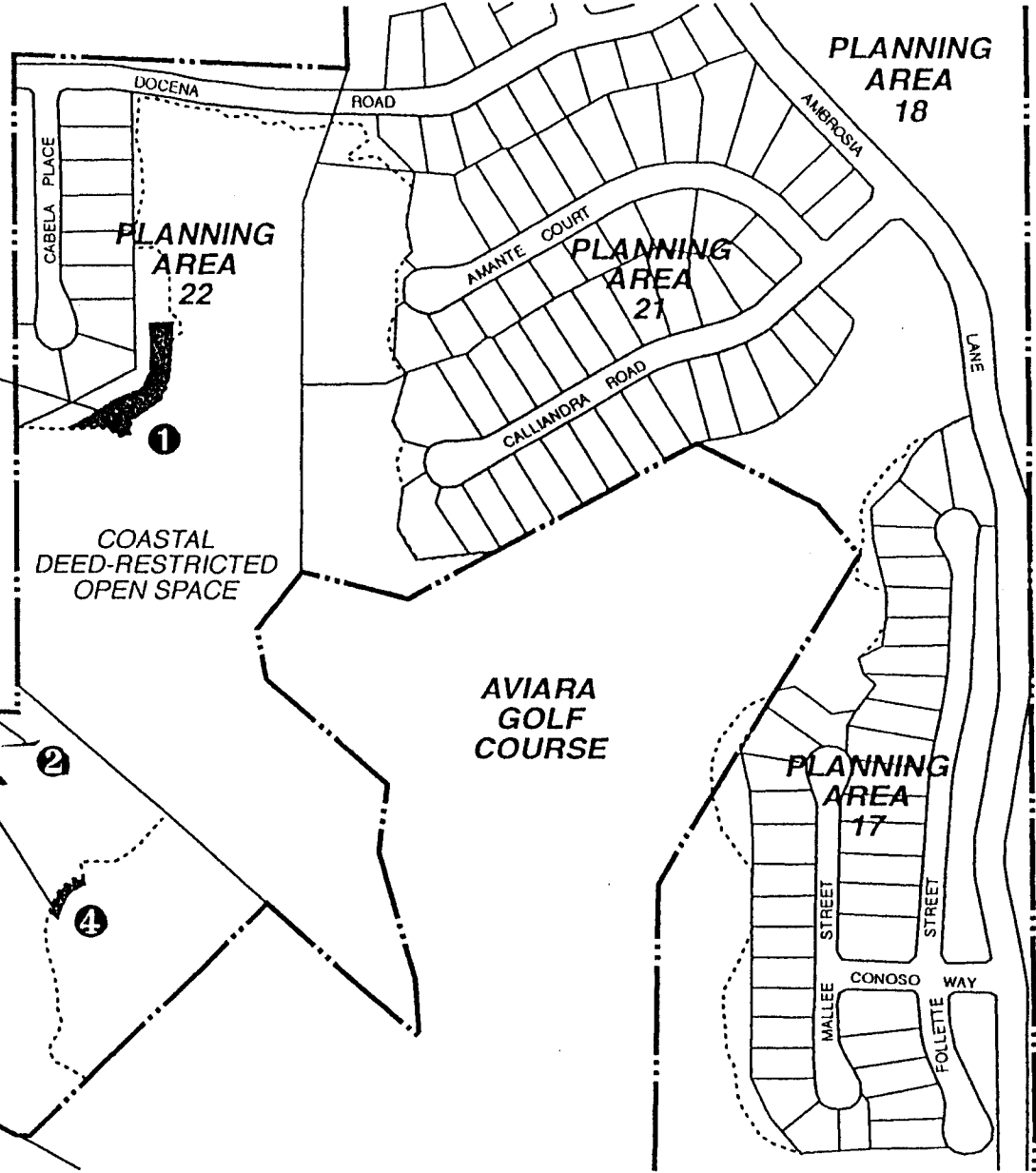
**Planning Areas 22 & 23**  
 Aviara Master Plan Phase III  
 Carlsbad, California

**Legend**

- · — · — · Aviara Phase III Boundary
- Coastal Deed Restricted Line
- ① Trade-off Area Number

Proposed "Give-back" Area (1)  
16,990 Square Feet


Proposed Encroachment Areas (4)  
16,990 Square Feet



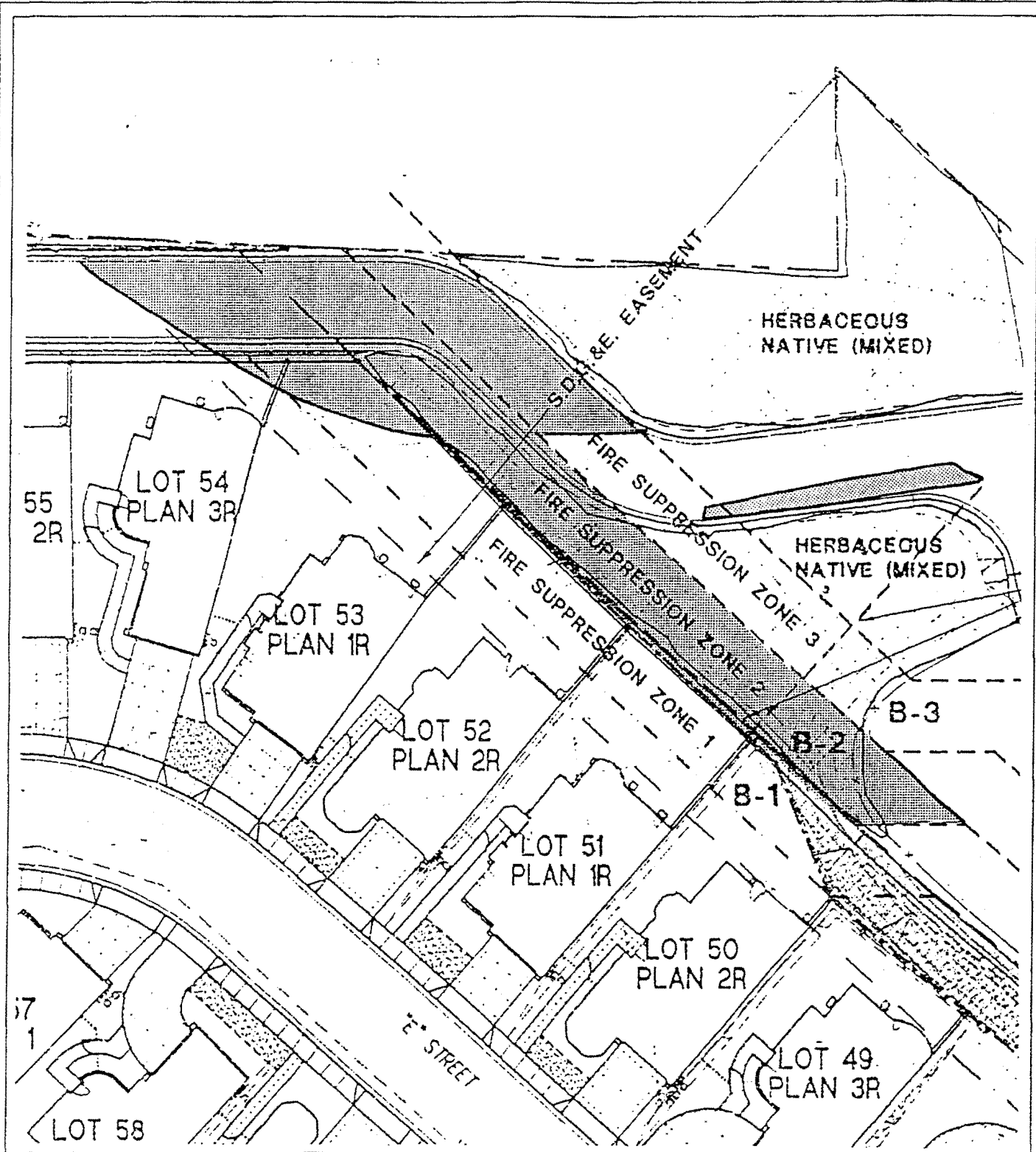
California Coastal Commission	EXHIBIT NO. 2
	APPLICATION NO.
	6-87-680-A11
	Overview

**Proposed "Give-Back," "Take-Away" Areas**  
Deed Restricted Open Space  
Aviara Phase III

NORTH



NO SCALE



**Coastal Deed Restricted Area Encroachment**  
**Encroachment Areas 2 & 3 - 10,890 Square Feet**

**LEGEND**

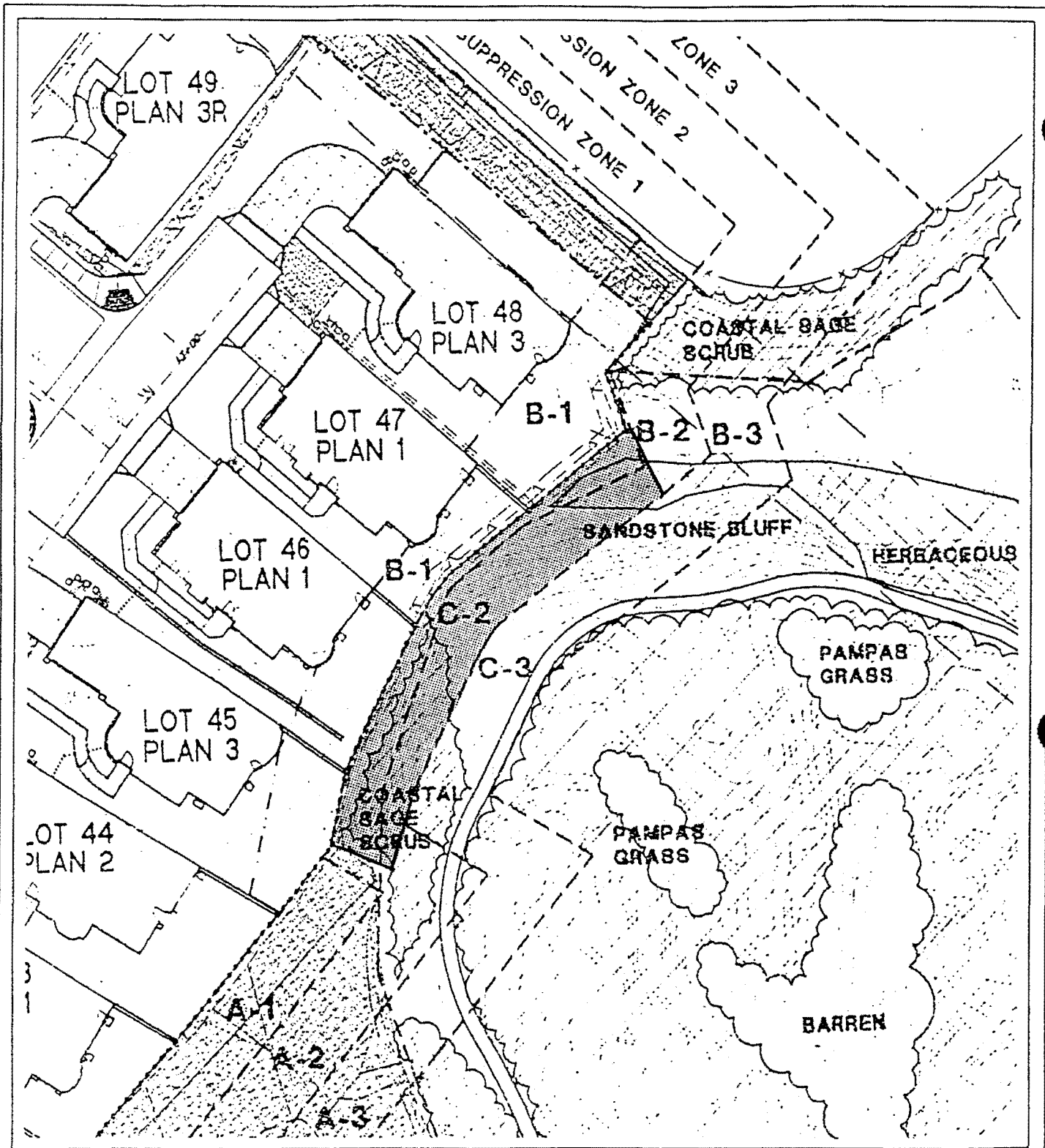
 LOCATION OF SITE

SCALE: 1" = 40'



**Planning Area 23**  
**Aviara Master Plan Phase III**  
**Carlsbad, California**


**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**6-87-680-A11**  
**Encroachment Areas**  
**2&3**



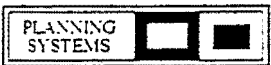
**Coastal Deed Restricted Area Encroachment**

Encroachment Area 4 - 2,750 Square Feet

**LEGEND**

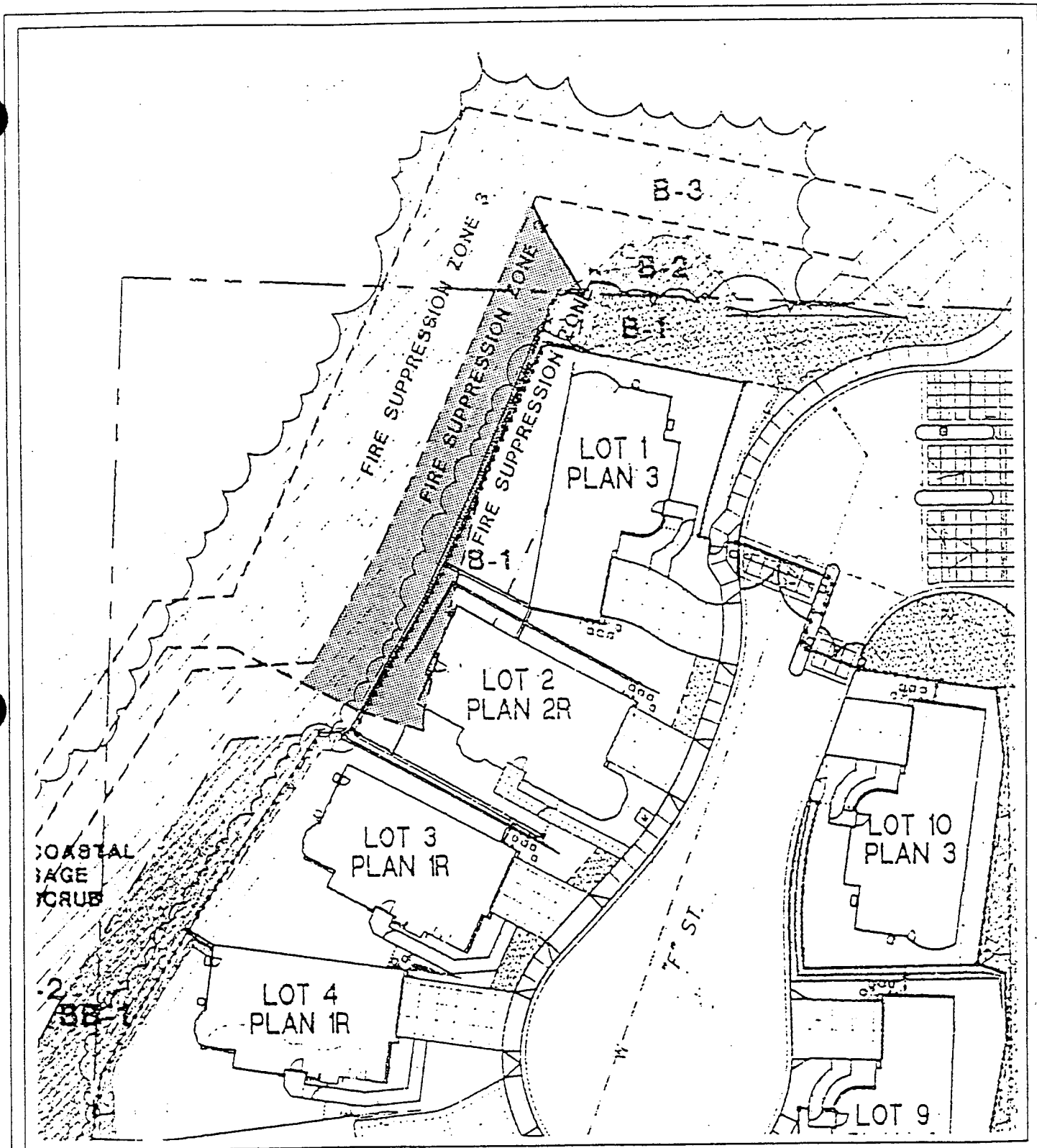
 LOCATION OF SITE

SCALE: 1" = 40'




**Planning Area 23**  
 Aviara Master Plan Phase III  
 Carlsbad, California

**EXHIBIT NO. 4**  
**APPLICATION NO.**  
**6-87-680-A11**  
 Encroachment Area  
 4



Coastal Deed Restricted Area Encroachment  
 Encroachment Area 5 - 3,350 Square Feet

LEGEND

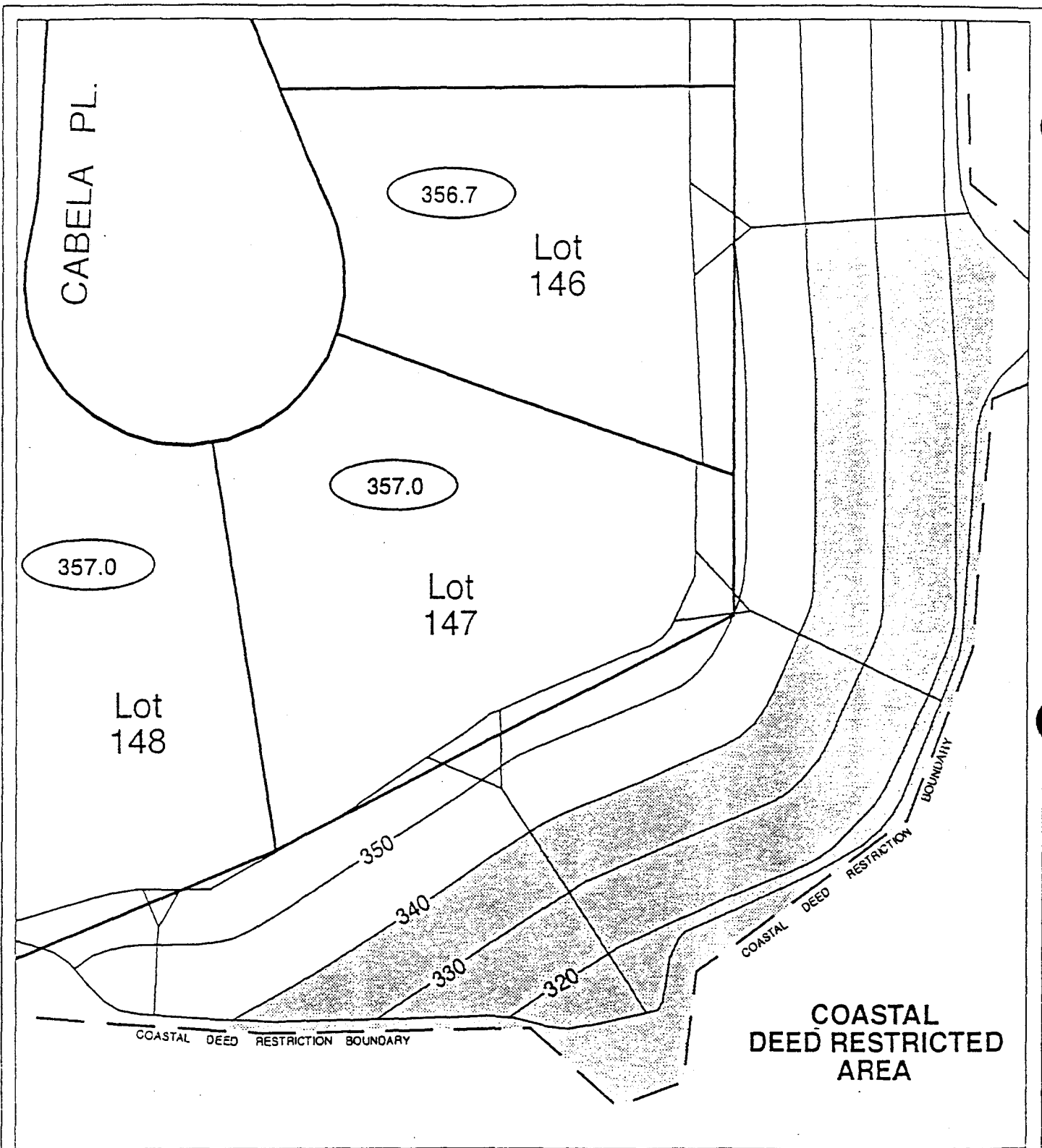
 LOCATION OF SITE

SCALE: 1" = 40'



Planning Area 23  
 Aviara Master Plan Phase III  
 Carlsbad, California

EXHIBIT NO. 5  
 APPLICATION NO.  
**6-87-680-A11**  
 Encroachment Area  
 5



"Give-Back" Area 1

Revegetated Coastal Sage Scrub - 16,990 Square Feet

LEGEND

 LOCATION OF SITE

SCALE: 1" = 40'



**Planning Area 22**  
 Aviara Master Plan Phase III  
 Carlsbad, California

EXHIBIT NO.  
 APPLICATION NO.  
**6-87-680-A11**  
 Addition Area 1