

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036



Wed 23c

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 Hearing Date: 12/7-10/99

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-48

Applicant: Beach King, Inc.

Agent: Mary Anne Paradise

Description: Proposed is the subdivision of a 0.413 acre site into 3 residential lots and 1 driveway lot (Parcel #1 = 0.11 acres, Parcel #2 = 0.11 acres Parcel #3 = 0.14 acres, Parcel #4 [driveway] = 0.06 acres) and construction of a two-story, 29-foot high, 3,314 sq.ft. single-family residence on each residential lot. The proposed subdivision also includes vacation of the western 27 feet of excess Carlsbad Blvd. right-of-way.

Lot Area	17,994 sq. ft. (.413 acres)
Building Coverage	4,860 sq. ft. (27 %)
Pavement Coverage	2,560 sq. ft. (14 %)
Landscape Coverage	10,574 sq. ft. (59 %)
Parking Spaces	8 spaces total
Zoning	R-3 (Residential Multi-Family, 23 du/ac)
Plan Designation	R-H (Residential High)
Density	9.1 du/ac
Ht abv fin grade	29 feet

Site: At the south west terminus of Chinguapin Avenue, east of Carlsbad Boulevard, Carlsbad, San Diego County (APN 206-070-04)

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the subdivision request because it is inconsistent with Section 30251 of the Coastal Act. The project proposes the construction of 3 very large (compared to lot size) single family residences on what is now a single lot within an identified viewshed in the certified Agua Hedionda Land Use Plan. As proposed, views to the lagoon and ocean across the site will be significantly adversely impacted. While

the applicant has proposed to mitigate such adverse impacts through a public viewshed protection plan on the adjacent City right of way, the City has refused to authorize the proposed improvements or join this application as a co-applicant because of concerns over maintenance and liability of the improvements. The applicant has indicated a homeowner's association could be formed to accept maintenance and liability of the improvements. However, the City still refuses to authorize the improvements. The City has indicated it could authorize the improvements to go forward if a private association like a local rotary club or the Agua Hedionda Lagoon Foundation could accept maintenance and liability responsibilities. However, at this writing, neither of those associations has indicated a firm commitment to sponsoring the project. Thus, the applicant does not have the ability to carry out the proposed mitigation for the adverse impacts. Without such mitigation, the project will adversely impact existing public views to and from Agua Hedionda Lagoon, Carlsbad Blvd., Carlsbad State Beach and the Pacific Ocean and therefore cannot be found consistent with Chapter 3 policies of the Coastal Act.

Substantive File Documents: Certified Agua Hedionda Land Use Plan, CDP Nos. 6-87-112, 6-99-37, 6-99-66

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-99-48 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a NO vote and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the subdivision of a 0.41-acre site into 3 residential lots and 1 driveway lot (Parcel #1 = 0.11 acres, Parcel #2 = 0.11 acres Parcel #3 = 0.14 acres, Parcel #4 [driveway] = 0.06 acres) and construction of a two-story, 29-foot high, 3,314 sq.ft. single-family residence on each residential lot. The proposal also includes vacation of the western 27 feet of "excess" Carlsbad Blvd. right-of-way. Approximately 780 cubic yards of grading is proposed with 120 cubic yards of fill and 660 cubic yards to be exported off-site.

The project site is on inland bluff located at the southwest terminus of Chinquapin Avenue, just east of Carlsbad Blvd., approximately 300 feet north of Agua Hedionda Lagoon in the City of Carlsbad. The portion of site to be developed is 40 to 50 feet above sea level and has been previously graded and slopes gently from east to west with the exception of the steep slope that descends to Carlsbad Boulevard at the westernmost portion of the property. The project site is covered with non-native grasses and ice plant and contains no sensitive vegetation. The property fronts on Carlsbad Boulevard to the west; however, it is precluded access from Carlsbad Blvd. because of steep topography.

There are significant views across the project site from the public street that is east/northeast of the site. These views consist of a panoramic view of ocean to the west, the outer basin of Agua Hedionda Lagoon to the south, and Carlsbad State Beach in both directions. The surrounding area to the north and east of the site is characterized by a mixture of older, single-family homes and duplexes, and newer high density, multi-family housing.

The property is designated for residential use at a maximum density of 23units/acre, in the certified Agua Hedionda Land Use Plan. The proposed project's density is 9.1 du/ac. While the LUP was certified in 1982, no implementing ordinances have been certified for this segment. Thus, the standard of review for this project is the Chapter 3 policies of the Coastal Act, with the certified LUP providing guidance as to what could be considered consistent with the Coastal Act.

2. Visual Resources. Section 30251 of the Coastal Act is applicable and states in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....

The project site is on a visually prominent inland bluff overlooking Carlsbad Boulevard (a designated scenic corridor and first coastal road), Carlsbad State Beach and the Pacific Ocean. It is also within 300 feet of the outer basin of Agua Hedionda Lagoon. The certified Agua Hedionda Lagoon Land Use Plan designates various areas as vista points. The site of the proposed project is within a designated vista point. Currently views to the lagoon and ocean are available across the site from the end of Chinguapin Avenue, which is a public street situated to the east/northeast of this site. LUP policy 8.2 provides that "Special vista points and viewing areas shall be preserved, and made available to the public, as indicated on Exhibit K "(ref. Exhibit #3).

In its approval of the parcel map, the City found the project would not interfere with public views from the vista point (i.e., the city found the project would not adversely affect the use of the area as a vista point). There is a dedicated right of way (ROW) that exists between the cul-de-sac end of Chinguapin and Carlsbad Blvd. While on paper Chinguapin Avenue intersects Carlsbad Blvd, according to the City, there is no intention of improving Chinguapin to Carlsbad Blvd. because of topographical differences between the roads. The City found that because no private development can occur in this ROW, and no development by the City is likely to occur in the ROW, the ROW would form a 50' wide view corridor between the proposed project and existing structures to the north of the site.

In its approval of a planned unit development permit and site development plan, the City found the project had no unmitigable adverse visual impacts because it proposed varied architectural features, earth toned building and roof colors, structures compatible with existing multifamily units to the east, single family residences to protect the mix of residential development in the project area as most of the newer developments are multi family attached products. The City also found the proposed detached homes involved less view obstruction and less bulk than a multi-family attached project and concluded the project did not block views from the westerly terminus of Chinguapin Avenue. As noted above, the City found that once the project is constructed, there would be a 50' wide view corridor as a result of the dedicated Chinguapin Avenue ROW. The City found that this 50' wide view corridor satisfied the view protection requirements of the LUP.

The existing views from the project site offer a panoramic view of the ocean and its horizon as well as downcoast views of the outer basin of Agua Hedionda Lagoon and Carlsbad State Beach as well as Carlsbad Blvd. This view is outstanding looking south from the site because of the site's location on a low bluff at approximate elevation 50 and the fact that looking south there is very little residential development to be seen. In effect, it is an open space view of approximately $\frac{3}{4}$ of a mile as only the beach, ocean, road, powerplant and a limited view of the lagoon is seen. There are few, if any, views that are like it in San Diego County. Construction of the proposed houses would obstruct much of this southern view, leaving only a relatively narrow corridor through the southeast corner of the site which would show primarily the smokestack of the powerplant. Thus, with construction of the proposed three (3) residences, this unique, panoramic view would be lost. Upcoast views from the project site include the ocean and

the shoreline; however, the area inland of Carlsbad Blvd. is primarily residential development. This view would mostly remain until development of the two vacant lots to the north of the Chiquapin Right of Way is constructed.

The applicant has submitted a visual analysis of views from the project site to the identified scenic resources. The applicant's analysis of these upcoast and downcoast views was from two points on the site, one near the eastern property line of the 0.41 acre lot and the other near the bluff edge within the City's proposed 50-foot view corridor. Regarding visual impacts from the former, the applicant found that existing views towards the south (lagoon views) will remain unaltered with the use of a proposed transparent material fence proposed on the southern boundary of the proposed common area lot and that although the proposed buildings would block the view of Carlsbad Blvd, the public would have a complete view of it from the proposed view corridor. The applicant found that views from inside the view corridor near the bluff edge allows almost wide open view towards the ocean, that inside the view corridor the viewer will have a completely unobstructed view to the north of the ocean and beach and that views to the south from the view corridor will be unaffected by the proposed project.

As noted, Section 30251 of the Coastal Act requires that public views to and along the coast be protected in conjunction with new development. As such, within the proposed development, views from Chiquapin Avenue to the south and west need to be preserved. In addition, views of the site from the lagoon, beach and adjacent road need to be addressed. This identified public viewing area is one of only a few places in Carlsbad where public views are identified in LCP. The proposed 50-foot wide view corridor left from developing the project site with 3 houses and future single family residences on two lots to the north of the project site will not meet the intent of the LCP nor satisfy the requirements of Section 30251 of the Coastal Act. What is left provides only a "tunnel" view corridor directly to the west, not the panoramic view corridor envisioned by the LUP. Views to the south (Agua Hedionda Lagoon) will also be a "tunnel" view that will be dominated not by the lagoon but the Encina Power plant and its tall smokestack, horizon views of the ocean will be lost or partially obscured, Carlsbad State beach and Carlsbad Blvd. views will be lost or partially obscured. The Commission notes that views from the ROW along the bluff edge are panoramic; however, people should have those views from the street end. In other words visitors should not have to walk across an unimproved street end to gain those views. The presence of the proposed structures adds an intimidating factor which would discourage the public from walking out to the bluff edge. Section 30251 of the Coastal Act requires that more, not less emphasis be placed on reducing visual impacts to and along the coast.

Additionally, three large houses (each two-story, 29-foot high, 3,314 sq.ft.) sited so near the bluff edge (within 10 feet) will have a greater visual impact. Because of this siting, the project will be highly visible from the above-identified scenic areas. The applicant's visual analysis failed to show how visible the project was from the identified visual resources-it only showed views from the project site to those areas. The City's approval made it possible for the houses to be sited so near the bluff edge. The City allowed the vacation of 27' of right-of-way of Carlsbad Blvd. to the applicant. The standard PUD setback requirement from major arterials is 40'. Had the right of way not been vacated,

the project would have been subject to a 40' setback from the right of way of Carlsbad Blvd. resulting in the project being moved further away from the bluff edge with the corresponding reduction in size of the units and visual impact. In any event, the entire site does not have to remain completely open for views, but a project should be designed that would maintain view corridors, so public views, particularly to the south and southwest, would be maintained. The proposed 3-unit subdivision does not do this. The project could be redesigned to incorporate only one unit on the unsubdivided lot such that view corridors across the site could be preserved.

The applicant has submitted a public viewshed protection plan. As proposed by the applicant, within the 50-foot wide right of way of Chinguapin Avenue a 50-foot wide public view corridor would be maintained. It would include two standard sized parking spaces adjacent to the cul-de-sac terminus of Chinguapin Avenue. A 3-5-foot wide, 40-foot long decomposed granite walkway is proposed to lead from the parking spaces westward to a 30-foot wide concrete pad with two concrete benches on the pad. A three-foot high guardrail is proposed at the seaward extent of the pad that corresponds to the top of the existing 2:1 slope that descends to Carlsbad Blvd. A five-foot high fence is proposed at the southern extent of the Chinguapin right-of-way to maintain privacy between visitors and the adjacent proposed residence to the south. Drought tolerant shrubs are proposed between the fence and the pad and walkway. In addition, the proposed houses have been setback an additional 5 feet from the original submittal. Additionally, a concrete bench is proposed on the southeast corner of the subdivision (within the 300 sq.ft. passive recreational area) to provide public views to the south of the lagoon and beyond. A three-foot high guardrail is also proposed at this location as this area is at the top of a south-facing slope that descends to the north shore trail along Agua Hedionda Lagoon. The applicant asserts that the plan provides the public views as identified in the LUP, as views from the benches within the Chinguapin right-of-way would be panoramic (i.e., 180 degrees).

The Commission finds the proposal generally meets the intent of providing a public viewpoint inasmuch as impacts to public views from Chinguapin Avenue to the south and west are generally mitigated by the revised proposal. The City has refused to join this application as a co-applicant because of concerns over maintenance and liability of the improvements. The applicant has indicated a homeowner's association could be formed that will accept maintenance and liability of the improvements. The City is uncomfortable with this arrangement, noting that it is too large a responsibility for a small homeowner's association to be required to maintain this area in perpetuity. The City has indicated it could authorize the improvements to go forward if a private association like a local rotary club or the Agua Hedionda Lagoon Foundation could accept maintenance and liability responsibilities. However, at this writing, neither of those associations has indicated a firm commitment to sponsoring the project. Thus, without the City's authorization of the project, the applicant's proposal is not feasible and thus cannot be considered by the Commission.

In addition, the City's vacation of the Carlsbad Blvd. ROW on the applicant's site raises issues of consistency with the Chapter 3 policies of the Coastal Act. If the ROW is

vacated, any widening of Carlsbad Blvd. in the future would have to be done to the seaward side of Carlsbad Blvd. Currently, the Tamarack Beach free parking lot exists on the seaward side of the street between the right of way and the ocean. Expanding the road in this direction could result in elimination of public parking spaces and/or requiring additional shoreline protection to provide safety to users of the parking lot from wave uprush, inconsistent with Sections 30252 which requires that adequate parking be provided in shorefront locations and Section 30253 which requires that new development not require the construction of protective devices that would substantially alter natural landforms along bluffs. The City has indicated that it has not vacated its ROW for Carlsbad Blvd. on any other properties in this area. Because the vacation of the Carlsbad Blvd. ROW on the applicant's property could have adverse impacts on public parking, it is inconsistent with the Chapter 3 policies.

Similarly, the Commission also takes issue with the City finding that because Chinquapin would never be extended through to Carlsbad Blvd. there would always be a 50-foot visual corridor for the public to view from. However, the City could propose to abandon this ROW in the future, as it has proposed to do with the Carlsbad Blvd. ROW. Any vacation of road right-of-way constitutes development and would require a coastal development permit. The City could have reserved a public viewpoint with its action and provided benches as a viewing area or could have required the applicant to do the same but failed to do so. The applicant has since proposed the improvements but the City has not given the applicant authorization to install the public viewpoint improvements.

As noted, the City did not assure preservation of the area as a public viewpoint. The City only made a finding that because Chinquapin would never be extended through to Carlsbad Blvd. there would always be a 50-foot visual corridor for the public to view. However, this ROW could be abandoned at some point just as Carlsbad Blvd. ROW was abandoned to this applicant. The City could have reserved a public viewpoint with its action and provided benches as a viewing area or could have required the applicant to do the same but failed to do so or required the project to be redesigned to assure public views across the site from the public street. For these reasons, the Commission must deny the proposed development as it will adversely impact existing public views to and from Agua Hedionda Lagoon, Carlsbad Blvd., Carlsbad State Beach and the Pacific ocean and can not be found consistent with Section 30251 of the Coastal Act. The Commission finds the project can be redesigned to protect views such as construction of one house close to the eastern property line, or one house situated diagonally across the lot. The Commission finds this application is being denied so that the applicant can decide how to redesign.

3. Public Access. The project site is not located between the first public road and the sea. In this area, the first public road paralleling the sea is Carlsbad Blvd., which is seaward of the subject site. However, it appears that the site has been historically used by the public as evidenced by worn footpaths between the flat portion of the site and a slope leading to an existing trail on the north shore of the lagoon. As such, the project must be found consistent with Section 30211 of the Coastal Act that states:

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

The significance of the trail as a regional resource rather than a neighborhood trail is not fully known at this time. The Agua Hedionda Lagoon LUP calls for a trail on the north shore of the lagoon but the paths leading from the site to the existing north shore trail are not part of that trail system. Commission staff did an informal survey of public use of the site and found that only area residents said they used the paths on the site. In any event, there are a number of points east of the project site where access to the lagoon and lagoon trail can be gained. These areas extend from nearby Garfield Street as it dead-ends near the bluff edge that leads down to the trail that is within the powerplant property. Although under ownership of the utility, the public is allowed to access the main trail on the north shore of the lagoon from the many footpaths that lead from Garfield down the bluff to the trail. As such, it does not seem likely that visitors to this area would use the trail on the subject site to access the lagoon or the beach. Thus, the Commission finds that the proposed development would not be inconsistent with the public access policies of the Coastal Act.

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

The City of Carlsbad has a certified land use plan for the Agua Hedionda segment and is currently developing its implementation component. The site is zoned R-3 and designated in the certified LUP for High-Density Residential development and the proposed project is consistent with these designations. However, the subject proposal has been found inconsistent with Section 30251 of the Coastal Act and the visual resource policies of the LUP. As noted, the LUP identifies the site as a public viewing area. The project has not been designed consistent with that intent as it would block or obscure views to a number of scenic features in the area. Also, the City failed to identify how the view corridor on this site would be preserved or what implementing measures would be proposed to secure this area as a public viewing area. Another issue is the City's vacation of a portion of the Carlsbad Blvd. right-of-way. Aside from allowing bigger structures to be built closer to the bluff edge, it does not make sense to vacate this right-of-way when the roadway may need to be widened in the future. Therefore, the Commission finds that approval of the proposed development will prejudice the ability of the City of Carlsbad to continue developing a fully certifiable LCP.

5. CEQA finding. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit 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 found inconsistent with the visual protection policies of the Coastal Act. There are several feasible alternatives or feasible mitigation measures available which would substantially lessen the significant adverse impacts of the proposed development on the environment. As noted above, the project could be redesigned to preserve public views to and across the site. This could be accomplished by providing fewer units on the 0.41-acre unsubdivided lot and siting them on the lot such that view corridors to the coast are maintained. This redesign would give reasonable use of the site without adversely affecting identified public views. The revised project could be designed to accommodate such an easement along the eastern portion of the site. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

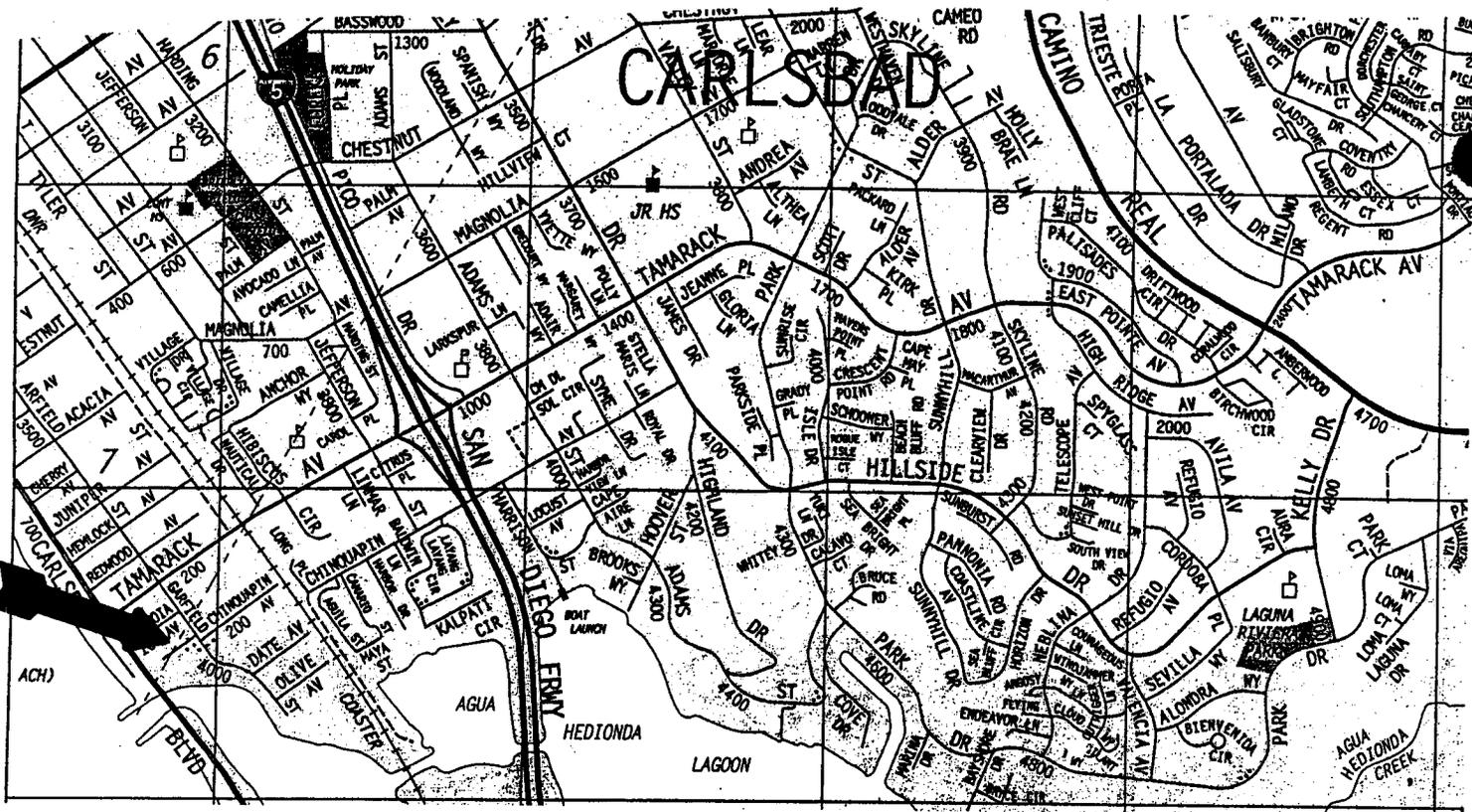
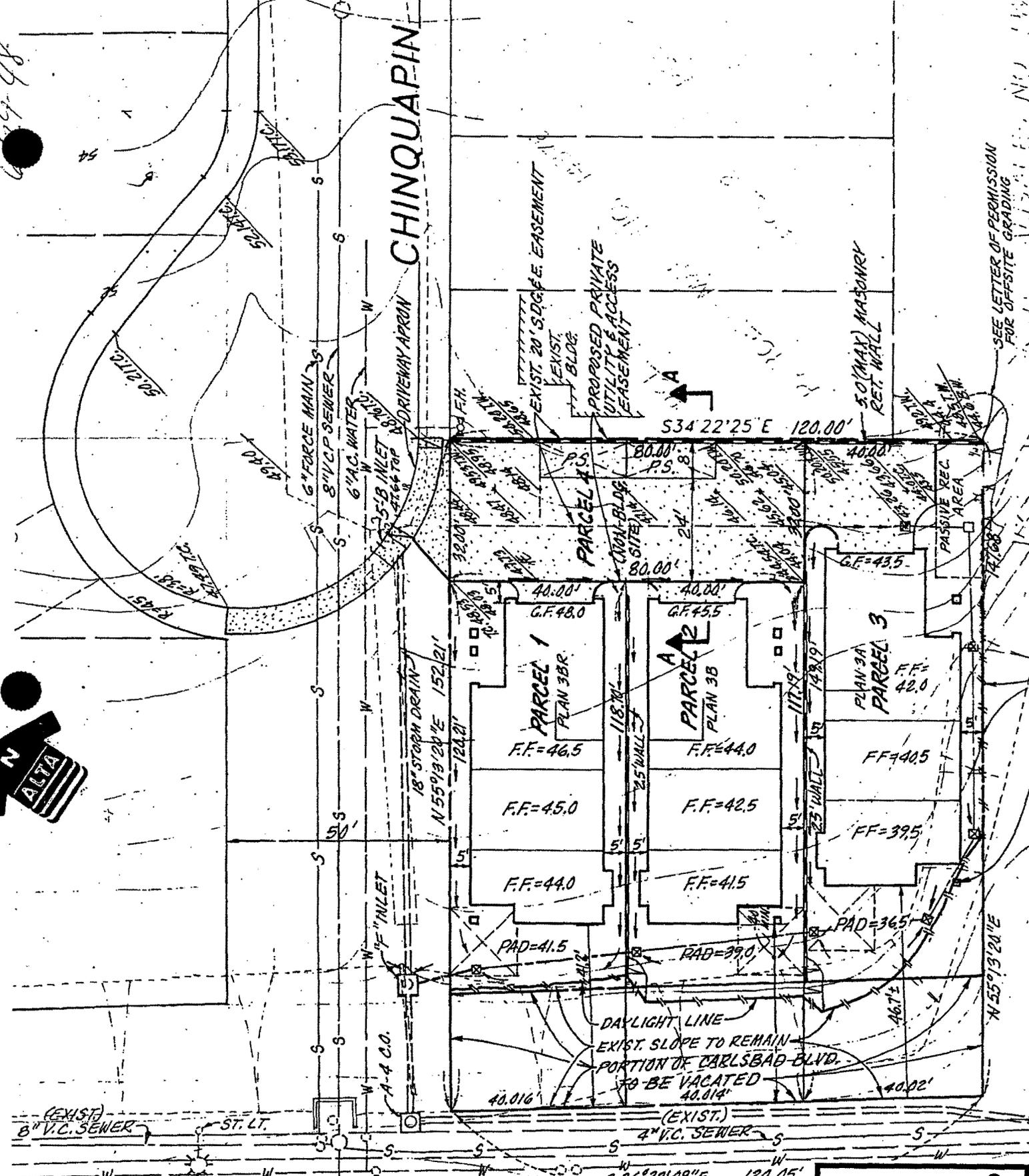


EXHIBIT NO. 1
APPLICATION NO.
6-99-48
Location
California Coastal Commission

6-99-48



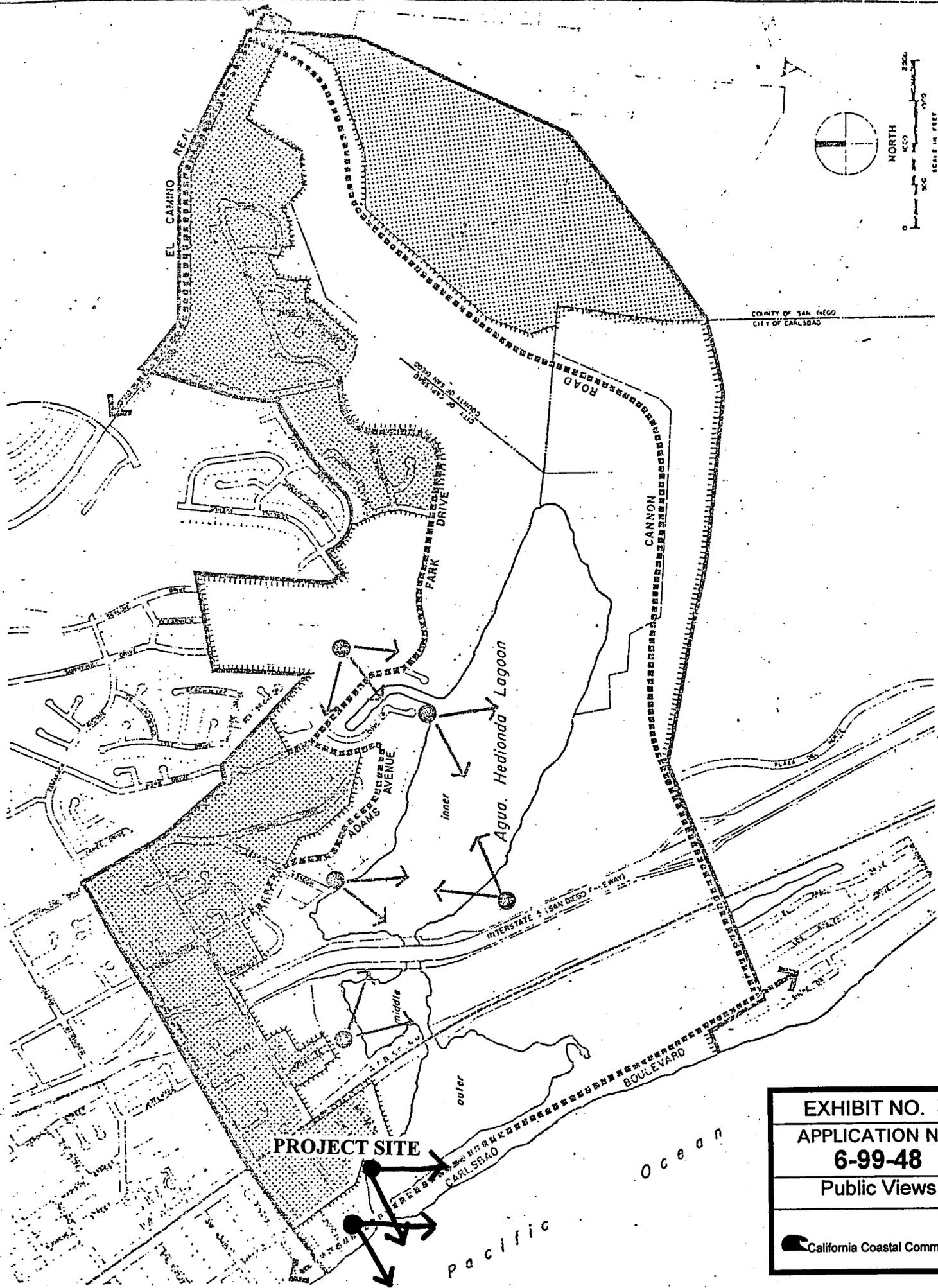
CHINQUAPIN



SEE LETTER OF PERMISSION FOR OFFSITE GRADING

CARLSBAD BOULEVARD

EXHIBIT NO. 2
APPLICATION NO.
6-99-48
Parcel Map
California Coastal Commission



NORTH
 0 500 1000
 SCALE IN FEET

COUNTY OF SAN DIEGO
 CITY OF CARLSBAD

AGUA HEDIONDA LCP

PROJECT SITE

EXHIBIT NO. 3
APPLICATION NO.
6-99-48
Public Views
California Coastal Commission



3314 SF. TOTAL

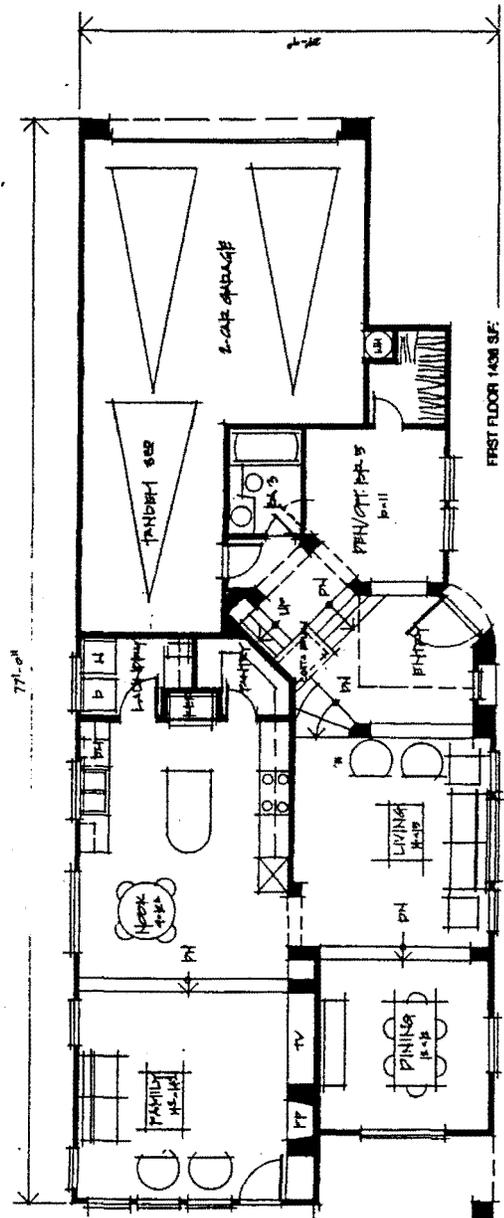
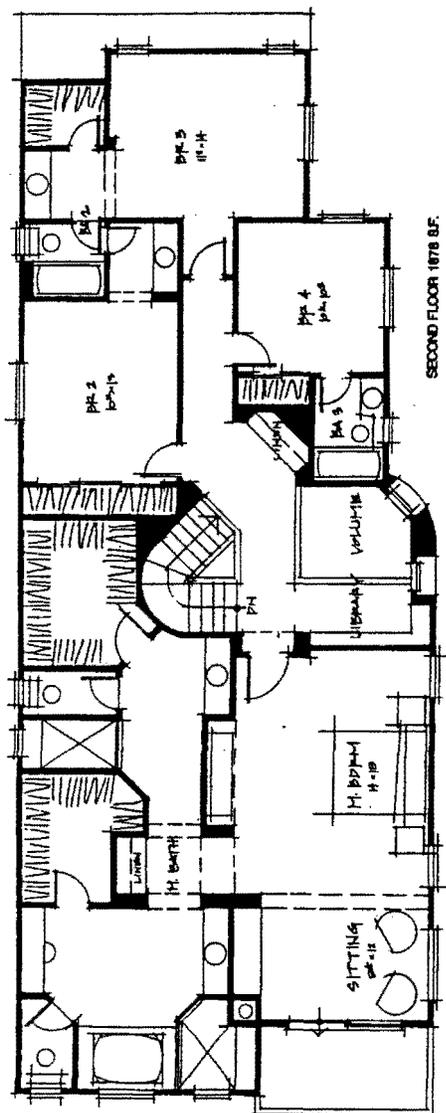
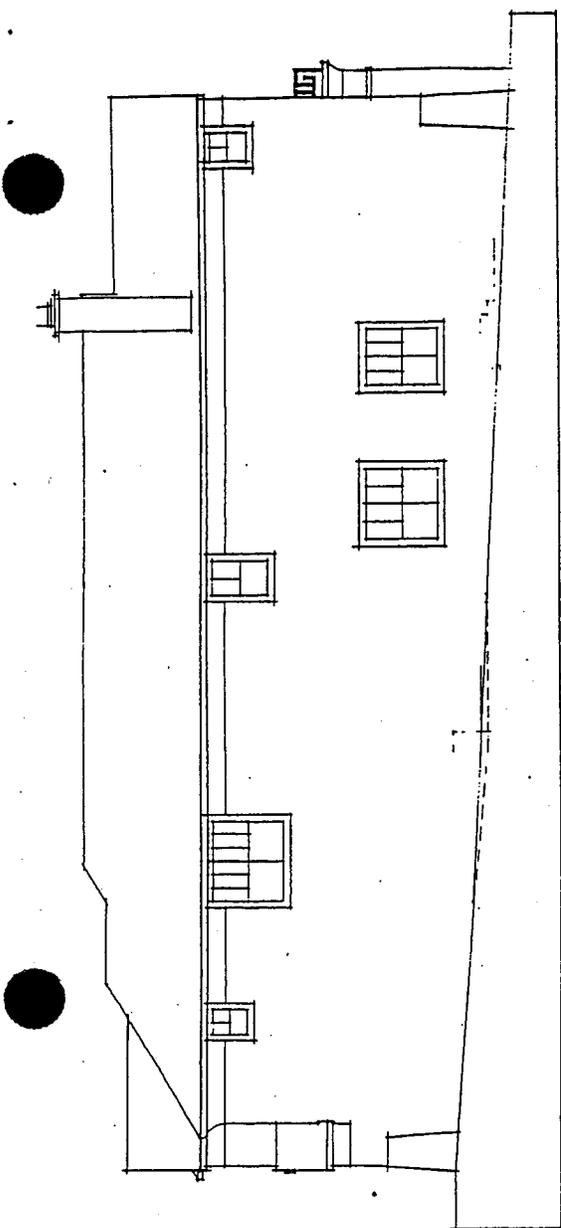


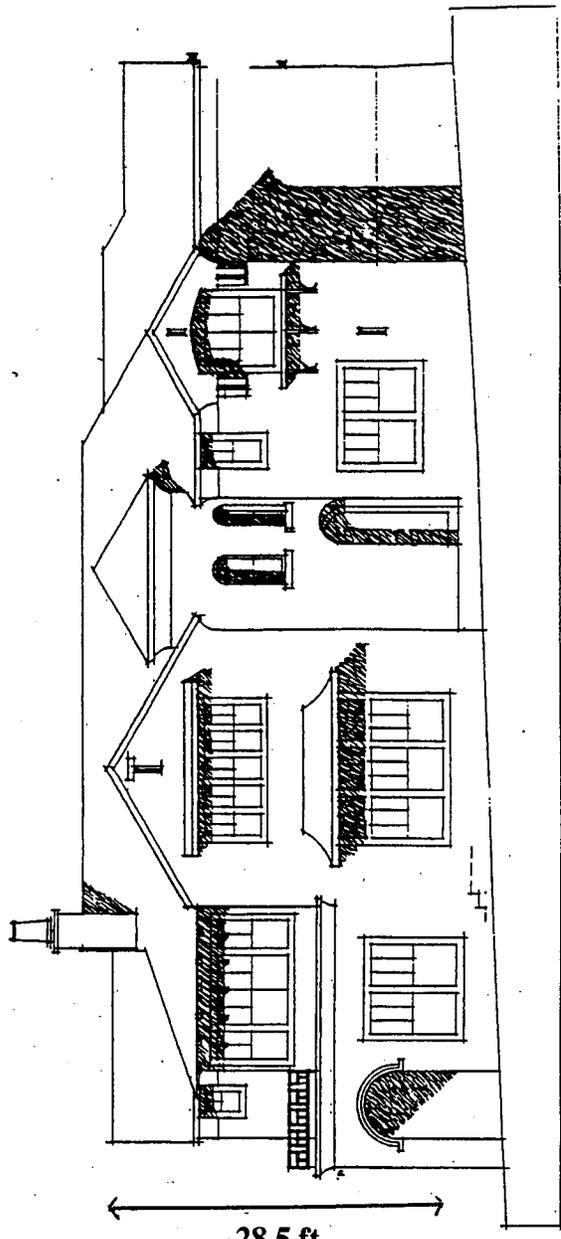
EXHIBIT NO. 4
APPLICATION NO.
6-99-48
Floor Plan
California Coastal Commission



EXHIBIT NO. 5
APPLICATION NO. 6-99-48
Project Area
 California Coastal Commission

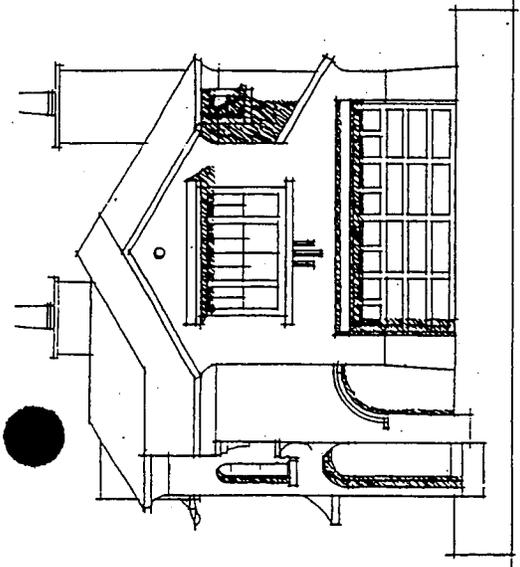


LEFT ELEVATION

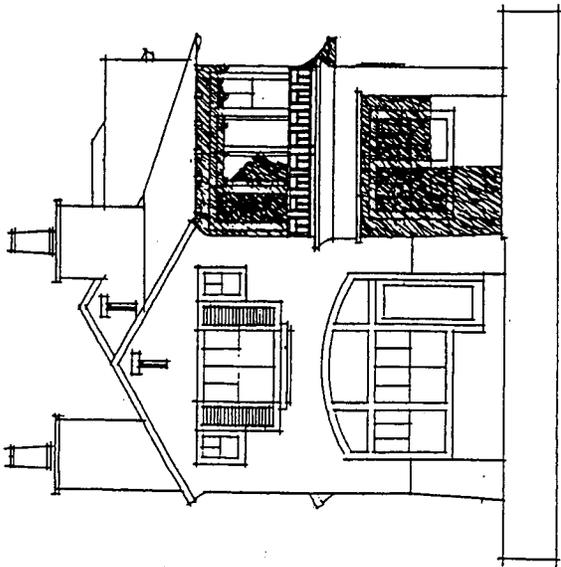


28.5 ft.

RIGHT ELEVATION



FRONT ELEVATION



REAR ELEVATION

3.1 A



EXHIBIT NO. 6
APPLICATION NO.
6-99-48
Elevations
 California Coastal Commission

