

CALIFORNIA COASTAL COMMISSION

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



Wed 24b

Staff: GDC-SD
Staff Report: 11/18/99
Hearing Date: 12/7-10/99

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-94-25-A5

Applicant: Brehm-Aviara III Development Associates Agent: Paul Klukas

Original

Description: Subdivision of approximately 165 acres into seven parcels as Phase III of Aviara Master Plan (Planning Areas 17-23, 32) for ultimate residential development; modification of open space boundaries previously approved in Phase I; 1,072,300 cubic yards of grading for residential pads, the circulation system and installation of infrastructure improvements. No residential development in the individual planning areas is proposed at this time. Off-site improvements include the construction of a circulation loop involving Poinsettia Lane west to Black Rail Road, then Black Rail Road south to the existing Alga Road.

Proposed

Amendment: One time exemption to allow grading to occur from December 13, 1999 to January 31, 2000 only in Aviara Planning Area 23.

Site: North Side of Aviara Parkway at Black Rail Road, Carlsbad, San Diego County. APN 215-042-01 and 02.

Substantive File Documents: Certified City of Carlsbad Local Coastal Program Mello I and Mello II segments.

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 performance during the rainy season will not result in any sedimentation impacts to the downstream sensitive resources of Batiquitos Lagoon.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-94-25-A5 pursuant to the staff recommendation.*

I. STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES 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 approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment complies with the California Environmental Quality Act because there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development as amended on the environment.

II. Special Conditions.

The permit is subject to the following conditions:

1. **Grading/Erosion Control.** This permit replaces Special Condition #3 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 that are in substantial conformance with the plans submitted with this application dated 11/10/99 by P & D Consultants, Inc. The plans shall include the following:

- a. All grading activity shall be prohibited within the period from October 1st to April 1st of any year. However, necessary grading may occur from December 13, 1999 to January 31, 2000.
- 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 January 31, 2000. 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 #6-94-25 (as amended) not specifically modified herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Original Development Description and History. On August 8, 1994, the Commission approved the subdivision of approximately 165 acres into seven parcels as Phase III of the Aviara Master Plan (Planning Areas 17-23, 32,) for residential development; and 1,072,300 cubic yards of grading for residential pads, the circulation system and installation of infrastructure improvements on the north shore of Batiquitos Lagoon in the City of Carlsbad. Phase III lands are located about 1 mile north of the lagoon and drain in that direction. The overall Master Plan was approved in concept in CDP #6-87-680, which also included grading and partial residential development of Phase I (Planning Areas 1 to 16, inclusive), and open space dedications for the entire Master Plan development

Mass grading of the site included a total of approximately 1,072,300 cubic yards of balanced grading. The grading was proposed to create the master residential pads and circulation corridors for the development. All of the proposed water, sewer, and storm drain systems will connect to existing improvements within Phase I. These improvements were approved in concept in the original Master Plan permit. Phase III would be served by Ambrosia Lane, connecting to the existing Alga Road in the south and future Poinsettia Lane to the north. An off-site circulation loop is proposed involving Poinsettia Lane west to Black Rail Road; then Black Rail south to existing Alga Road.

In CDP #6-94-25-A1, the Commission approved at its March, 1997 hearing as a material amendment, minor grading within and removal of 14,314 sq.ft. from currently approved open space for site development with the replacement of 14,430 sq.ft. of deed restricted open space. Also approved was the deletion of Black Rail Road and Poinsettia Lane as off-site improvements and provision of secondary access via Cassia Road.

In CDP #6-94-25-A2, the Commission approved at its November, 1998 hearing as an immaterial amendment, the revision of Special Condition #3 of the original permit to allow site grading to occur up to November 15, 1998. The City, however, was unable to complete its review of underground utilities in time to release the grading permit. Therefore, the grading did not occur prior to November 15th and the amendment expired.

In CDP #6-94-25-A3, the Commission approved at its December, 1998 hearing as a material amendment, the revision of Special Condition #3 of the original permit to allow site grading to occur up to February 15, 1999. However, due to unforeseen circumstances, the grading did not occur and the amendment expired.

In CDP #6-94-25-A4, the Commission approved at its September, 1999 hearing as an immaterial amendment, the revision of Special Condition #3 of the original permit to allow site grading to occur up to November 15, 1999. Because the City was unable to issue the grading permit in time, the grading did not occur during the extended time period and the amended permit, therefore, expired.

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. However, since the proposal involves an amendment to a previously approved coastal development permit issued by the Commission, the request is reviewed by the Commission with the Certified LCP used as the standard of review.

2. Proposed Amendment. The proposed amendment is for a one-time only exemption from the winter grading season restriction to allow grading to occur from December 13th, 1999 to January 31, 2000. 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 for limited grading (trenching for utilities and final pad elevations) to occur during the rainy season. As noted above an immaterial amendment to allow this grading to occur until November 15, 1999 was recently approved by the Commission. That approval was based on the grading being completed by November 15th. However, this limited grading did not occur because the City was delayed in issuing the grading permit. The City has informed the applicant that the grading permit will be issued on approximately November 25, 1999. The applicants have indicated the need to complete the grading in advance of the breeding season of the California gnatcatcher which is February 15, 2000. The applicants also indicated that the survival rate of hydroseeded planting and other landscaping installed as erosion control measures concurrent with the grading will be enhanced if those planting occur during the rainy season of December to January rather than later in 2000.

3. 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.

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.

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

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

Similarly, Policy 3d of the Mello I LUP provides, in part, that

- d.) All grading activities shall be prohibited within the period from October 1st to March 31st of each year.

In San Diego County, the Commission has typically restricted grading, particularly large scale grading projects in areas which drain into lagoons or other environmentally

sensitive areas, to that time of year when erosion and transport of sediment to lagoons is least likely to occur. That is, the Commission has restricted grading during the winter months. The certified LCP segment for the area in which the amendment is proposed also contain prohibitions on grading during the winter months for the same reason. Historically, the Commission has 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 mass grading has been completed and both temporary and permanent erosion control devices have been installed.

In the case of the Aviara holdings, the Commission has previously granted permission to grade during the normally restricted winter season as a result of two major factors. First, a series of permanent erosion control improvements, including large, frequently maintained sediment control facilities were constructed during the initial construction of Phase I. Second, extensive temporary erosion control measures were 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. Taken together, these actions by the developer served to minimize the potential for adverse sedimentation impacts upon the sensitive resources of Batiquitos Lagoon.

In all cases the extensions were to allow minor grading (i.e., utility trenching and building foundations and other finish grading). The Commission found the existence of permanent erosion control facilities on the north shore of Batiquitos Lagoon was adequate to allow grading to occur during winter months, finding the protection of wetland resources was fulfilled. These permanent erosion control facilities have been likened to a dam across the southern boundary of the project, preventing any sediment that should be generated on the site from being transported to the lagoon.

The site of the proposed grading is located in an area that is served by one of the major permanent desilting basins within the Aviara holdings. This basin is located on the Aviara Golf Course adjacent to Golf Course hole #17, and is served by previously constructed intake and outfall facilities that have been designed and sized according to the criteria established in the Commission's original approval of Phase I (Ref. Exhibit #3 attached). Additional calculations have been prepared for this desilting basin which determined that there is adequate remaining capacity in this basin for the runoff anticipated to be generated from the Phase III grading areas which drain to the basin, even under worst-case assumptions. Also, 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.

Special Condition #1 requires that grading may only occur up to January 31, 2000 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 Batiquitos Lagoon. Given the proposed erosion control measures, the potential impacts to environmentally sensitive habitat areas will be reduced to the maximum extent feasible. Therefore, the Commission finds that the subject permit amendment, as conditioned, is consistent with the resource protection policies of the certified 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. The Phase III project is located within two of the segments, the Mello I and Mello II segments.

The Mello I segment was certified by the Commission in 1980; the Mello II segment was certified in 1981. In these actions, the City proposed that the "Pacific Rim Master Plan" (now the Aviara Master Plan) serve as both the LUP and implementing ordinances for that portion of the LCP. These segments have been the subject of additional amendments over the years.

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 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 on the north shore of Batiquitos Lagoon. As a result of the effectiveness of these facilities, 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.

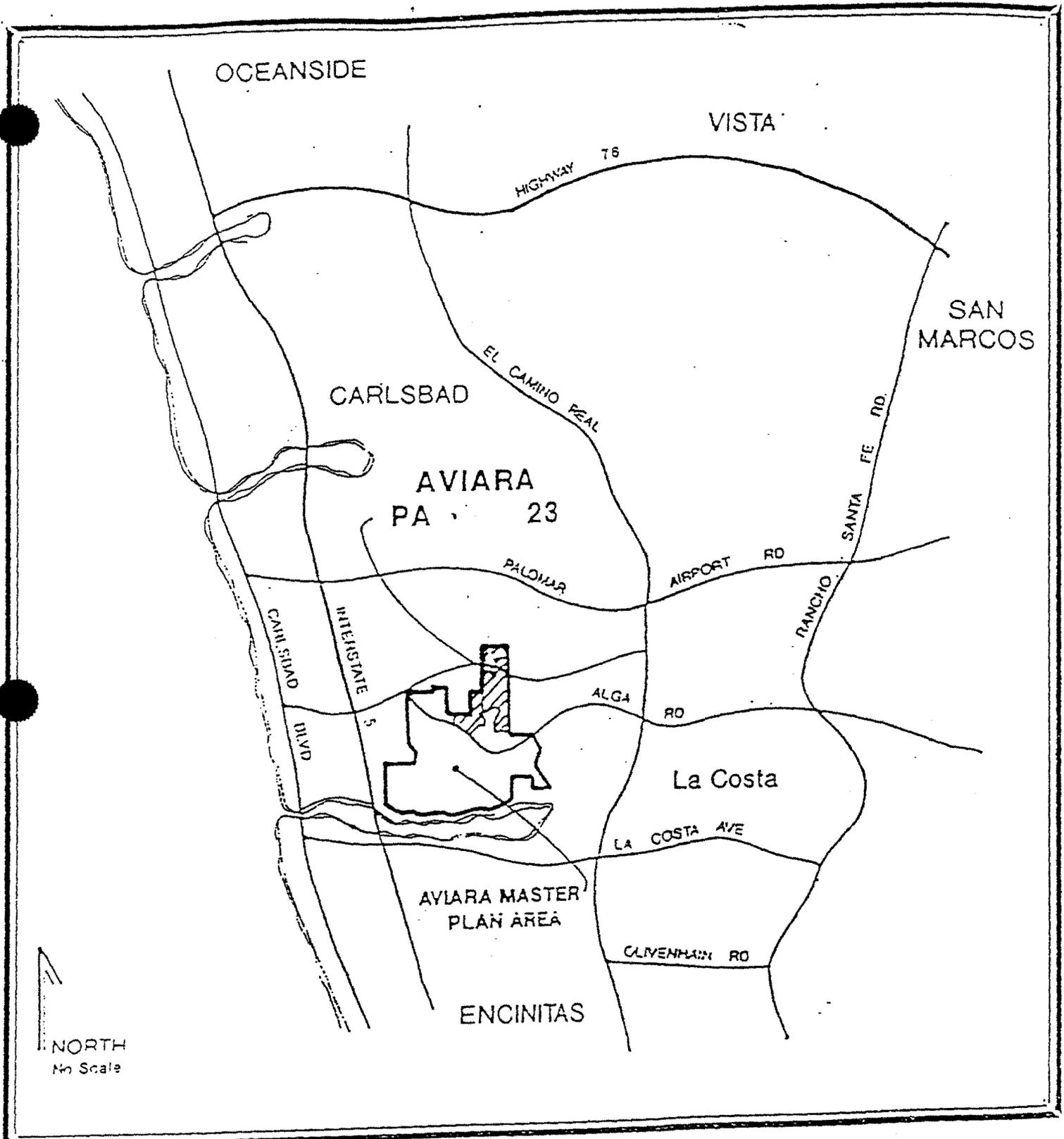
The special conditions proposed above would provide the type of additional protection the Commission has previously required of winter grading proposals. Given the extra protection, impacts to the resources of Batiquitos Lagoon should be avoided. Therefore, the Commission finds that the proposed amendment request, subject to the special condition, is consistent with the certified Aviara Master Plan and the Mello I segment of the City of Carlsbad LCP.

4. 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.

6-94-25-A5



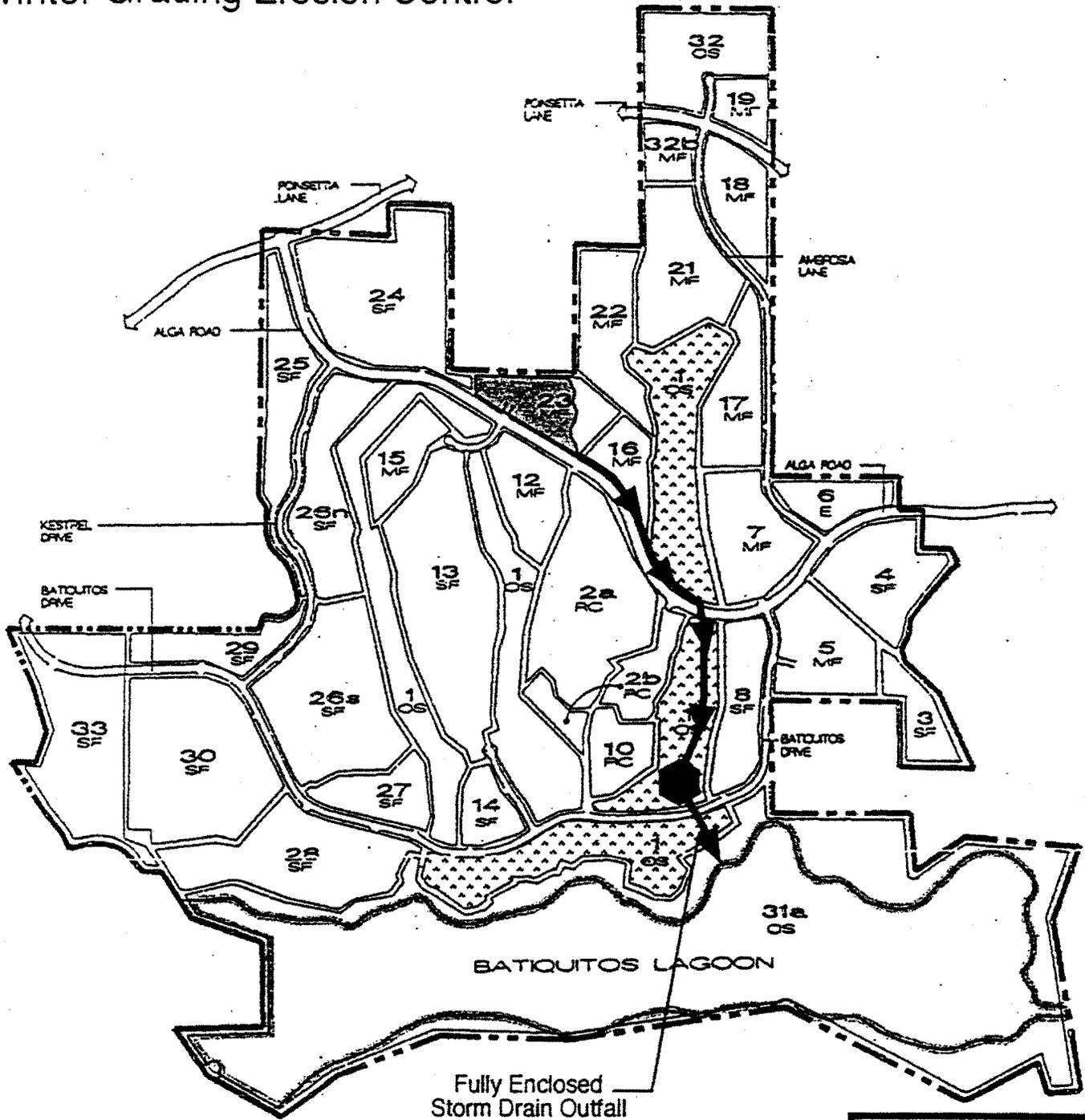

 NORTH
 No Scale

VICINITY MAP

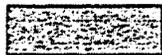
EXHIBIT NO. 1
APPLICATION NO.
6-94-25-A5
Location Map
 California Coastal Commission

AVIARA PLANNING AREA 23

Winter Grading Erosion Control



LEGEND



Proposed Area of Winter Grading - Planning Area 23



Permanent Golf Course Desiltation Basin



Fully Enclosed Drainage System to Golf Course Desiltation Basin

EXHIBIT NO. 2
APPLICATION NO.
6-94-25-A5

Location Map of
Existing Desiltation
and Drainage
Systems

P

California Coastal Commission

