

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

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 Staff: GDC-SD  
 Staff Report: January 14, 1999  
 Hearing Date: February 3-5, 1999

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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-98-129

APPLICANT: Brandywine Development

ORIGINAL PROJECT DESCRIPTION: Subdivision of 16 acres into 31 single-family residential lots, one open space lot and one remainder lot, to include demolition of several existing structures, grading, drainage and street improvements resulting in fill of .31 acre riparian and freshwater marsh habitat. On-site mitigation is proposed for the wetland impacts.

PROJECT LOCATION: South of Santa Fe Drive between Rubenstein Avenue and Starlight Drive, Encinitas, San Diego County. APN(s) 260-082-19, 20; 260-650-02, 05, 06 and 07

APPELLANTS: California Coastal Commissioners Sara Wan and Andrea Tuttle

STAFF NOTES:

The public hearing for the subject appeal was opened at the November 5, 1998 Commission meeting and continued to the December 8-10, 1998 Commission meeting. Prior to the December hearing, however, the applicants requested a postponement to respond to the proposed staff recommendation. The applicants have subsequently revised the development to reduce the number of lots from 31 to 26 which will eliminate the need to fill wetlands.

SUMMARY OF STAFF RECOMMENDATION:

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

conditions which require the implementation of a mitigation and monitoring plan for the wetland and buffer areas, an open space easement to protect the on-site wetland and proposed buffer areas, the implementation of specific Best Management Practices (BMP) to prevent polluted runoff from entering the wetland habitat and a restriction prohibiting future conversion of the development into a gated community.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications; City of Encinitas Agenda Report for CDP 97-283 dated 9/10/98; City of Encinitas Resolution Nos. 98-52, CDP 97-283 and revised CDP 97-283 received 10/21/98, TM 89-229; Extended Initial Study TM 89-229 for Eikel/Funaki Subdivision dated January 1991; Wetland Mitigation and Monitoring Plan by Dudek and Associates, Inc. dated September 4, 1997 and updated July 20, 1998; Wetland Mitigation and Monitoring Plan by Dudek and Associates, Inc. dated December 28, 1998; Coastal Development Permit Nos: A-6-ENC-6-34/Fletcher; A-6-ENC-97-70 Kirkorowicz; 6-98-1/Skerret.

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I. Appellants Contend That:

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to allowable uses within a wetland, appropriate level of mitigation for wetland impacts, size and extent of required buffers, and the lack of alternative analysis.

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II. Local Government Action.

The Coastal Development Permit was approved by the Encinitas Planning Commission on 9/10/98. Several special conditions were attached which address mitigation for proposed wetland impacts, enforcement of original tentative map conditions and expiration date, and traffic control measures.

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III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

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

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

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

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#### Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

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

#### MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-ENC-98-129 raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

### Findings and Declarations.

1. Project Description. The proposed development involves the subdivision of 6 legal lots, totalling 16 acres, into 31 single-family residential lots, one open space lot and one remainder lot and including grading, drainage and private street improvements resulting in fill of .31 acre riparian and freshwater marsh habitat. The applicant proposes to mitigate the wetland impacts through creation on-site of .45 acre of southern willow scrub and enhancement of .83 acre southern willow scrub habitat. Site preparation for the proposed development will involve between 36,000 to 56,000 cubic yards of grading and will involve the demolition of an existing duplex, single-family residence and several greenhouses. No residential development is proposed at this time.

The project site is located on the south side of Santa Fe Drive between Rubenstein Avenue and Starlight Drive in the City of Encinitas. Surrounding uses include single-family residences and greenhouses. Access to the proposed subdivision will be through the extension of Warwick Avenue on the southeast and the creation of a new street via Rubenstein Drive on the west. Two single-family residences on Rubenstein Drive will be demolished to create access for the new private street. Most of the proposed development site is currently used for the production of cut-flowers utilizing covered greenhouses and open fields. A small drainage known as Rossini Creek runs north to south through approximately the middle of the subject property. The drainage has been delineated as riparian and freshwater wetland by both the Army Corps of Engineers (ACOE) and the California Dept. of Fish and Game (DFG).

2. Wetlands. The appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to permitted uses within wetlands, appropriate mitigation standards for wetland impacts and the need for appropriate wetland buffers. The City's LCP includes several provisions pertaining to the protection of wetlands. The following are relevant to the subject appeal. Policy 10.6 on Page RM-18/19 of the certified LUP states:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have

been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding area of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt-water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible. All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language as above, limiting wetland fill to projects involving nature study, restoration, incidental public services and mineral extraction.

In review of the project by the City, it was determined that wetlands, as defined in the LCP, are present on the site and that the proposed development would permanently fill approximately .31 acres of wetlands. As cited, the fill of wetlands within the City's Coastal Zone is limited to only four types of newly permitted uses and activities. These include nature study, restoration projects, incidental public service projects and mineral extraction. The City's findings for approval of the coastal development permit include a determination that the proposed .31 acre of wetlands fill is a permitted use under the above cited LCP policies and ordinances because it is an 'incidental public service project'. Specifically, the City found that "the uncontrolled nature of the drainage across the site has resulted in erosion which in turn causes damage to the adjoining property and siltation damage to the higher quality habitat on-site". As such, the City found that the drainage should be channelized to address this problem. However, an "incidental public service project" has generally been limited to temporary impacts of resources such as the burying of cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines. The Commission has in previous permit decisions found that limited expansion of existing roads and bridges necessary to maintain existing traffic capacity could be considered an incidental public service project. However, in this case, the redirection of a .31 acre wetland channel through an underground pipe, in order to accommodate a 31 lot residential subdivision including roads, grading and drainage, does not constitute an incidental public service project and as such, is not a permitted use under the City's LCP.

The appellants also contend that aside from not being a permitted use within a wetland, the proposed project is not the least environmentally damaging alternative, as also required by LCP policies and ordinances. Specifically, the proposed project will fill approximately .31 acres of wetlands to accommodate the proposed subdivision. The City, in its review and approval of the project did not adequately review other alternatives that would avoid or reduce the need for wetland fill.

Another contention of the appellants is that even if the permanent fill of wetlands was found to be a permitted use, the City's required mitigation for wetland impacts is not appropriate. The certified LCP states that when wetland impacts are unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost at a ratio determined by the regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than 1:1. The proposed fill of .31 acre of wetland area includes .05 acre of southern willow scrub, .06 acre of freshwater marsh and .20 acre of "disturbed wetland channel". The City's approved mitigation plan for the .31 acre of wetland fill provides for the creation on-site of .45 acre of southern willow scrub. The created wetland area would, therefore, involve a mitigation rate of 1.5:1. However the standard of the LCP is that it be of the same type lost. The City's approval only included mitigation of the same type lost for southern willow scrub. No creation is proposed for the freshwater marsh or disturbed wetland channel, inconsistent with the above cited LCP provisions.

Finally, the City's decision did not include provisions for appropriate wetland buffers. The above cited LCP policies and ordinances require that a minimum 50 foot buffer be

established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Dept. of Fish and Game concurs. The City's LCP limits uses in buffers to minor passive recreational and improvements deemed necessary to protect the habitat. All such improvements, however, are to be located in the upper half of the buffer, as feasible. The City's decision permits a 25-foot buffer consisting of graded and re-vegetated manufactured slopes. However, the buffer will not function as a true buffer which should remain natural and undeveloped so as to minimize the effects of erosion and sedimentation and to allow for a transitional habitat zone between wetlands and uplands. Therefore, an actual unimproved buffer is not proposed between the wetland and the developed areas.

In summary, the proposed development is inconsistent with the City's LCP pertaining to protection of wetland resources in that the proposed 31 lot residential subdivision and associated improvements is not a permitted use within a wetland, does not provide adequate mitigation for wetland impacts, is not the least environmentally damaging alternative and does not provide adequate wetland buffers. The proposed development is not only inconsistent with the City's LCP but, because wetlands are a significant resource, the City's action of approving a nonallowable fill of wetland would establish an adverse precedent for future developments. For these reasons, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified local Coastal Program.

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#### STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

1. Final Wetlands/Riparian Mitigation Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final wetland mitigation plan for all

freshwater marsh and riparian impacts associated with the proposed project. The final mitigation plan shall be developed in consultation with the California Department of Fish and Game and U.S. Fish & Wildlife Service, be in substantial conformance with the mitigation plan submitted with this application and at a minimum shall include:

- a. Preparation of a detailed site plan of the wetland/riparian impact area(s), clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included.
- b. Preparation of a baseline ecological assessment of the impact area(s) and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at each site, description of the functions of these resources and habitats and the associated values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project.
- c. The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Sustainability of the attributes should be a part of every performance standard.
- d. All mitigation shall occur on-site. All riparian impacts shall be mitigated at a ratio of greater than one to one (1:1).
- e. A buffer approved by the Department of Fish and Game and as shown on Exhibit #3 of the staff report shall be provided from all existing and newly created riparian habitat.

The permittee shall undertake mitigation 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. Final Monitoring Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service as appropriate, a final detailed monitoring program designed by a qualified wetland biologist. Said monitoring program shall be in substantial conformance with the approved Mitigation Plan required in Special Condition #1 above and shall at a minimum provide the following:



- a. Submittal, upon completion of the mitigation site, of "as built" plans. Description of an as built assessment to be initiated within 30 days after completion of the mitigation project. This description shall include identification of all attributes to be evaluated, the methods of evaluation, and a timeline for completion of an as-built assessment report. This report shall describe the results of the as-built assessment including a description of how the as-built project differs from the originally planned project.
- b. A description of all attributes to be monitored along with the methods and frequency of monitoring. This description shall include a rationale for the types of data collected and how those data will be used. The description shall also clearly state how the monitoring data will contribute to the evaluation of project performance.
- c. A description of provisions for augmentation, maintenance, and remediation of the mitigation project, throughout the monitoring period or in perpetuity as appropriate.
- d. Annual reports on the monitoring program shall be submitted to the Executive Director for approval for a period of five years. Each report shall include copies of all previous reports as appendices. Each annual report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the mitigation project in relation to the performance standards.
- e. At the end of the five year period, a comprehensive monitoring report prepared in conjunction with a qualified wetland biologist shall be submitted to the Executive Director for review and approval. This comprehensive report shall consider all of the monitoring data collected over the five-year period in evaluating the mitigation project performance. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to their coastal development permit.

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

3. Grading and Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final grading plans and erosion control plans approved by the City of Encinitas. Said plans shall incorporate the following:

a. All areas disturbed by grading shall be planted within 60 days of the initial disturbance with temporary or permanent (in the case of finished slopes) erosion control methods. 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 graded areas. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation developed in consultation with the Department of Fish and Game), subject to Executive Director approval.

The permittee shall undertake grading 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.

4. Drainage/Runoff Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final drainage and runoff control plans approved by the City of Encinitas. Said plans shall be designed by a licensed engineer qualified in hydrology and hydraulics, and assure no increase in peak runoff rate from the developed site over runoff that would occur from the existing undeveloped site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). Runoff control shall be accomplished by such means as on-site detention/desilting basins. Energy dissipating measures at the terminus of outflow drains shall be constructed. The runoff control plan, including supporting calculations, shall be submitted to, reviewed and approved in writing by the Executive Director.

The permittee shall undertake the 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.

5. Final Improvement Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final improvement plans approved by the City of Encinitas for proposed on- and off-site improvements associated with the proposed development (private streets, two bridge crossings and storm drain systems). Said plans shall be subject to the review and written approval of the Executive Director.

The permittee shall undertake the 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.

6. Street Sweeping. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a final street sweeping plan to be subsequently implemented, which includes the following elements:

- a. Street sweeping shall occur at least monthly from April to October of any year.
- b. Street sweeping shall be by means of a vacuumized sweeper and at least three passes shall be made along each curb.

The permittee shall undertake street sweeping 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.

7. Other Permits. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, copies of all other required state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

8. Future Development. This permit is for the subdivision of 16 acres, site preparation, including rough grading, construction of roads and trails, utility and drainage improvements, and mitigation for impacts to environmentally sensitive habitat areas. All other development proposals for the site, including, but not limited to, construction of residential structures or other structures, shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

9. Final Landscape Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a detailed landscape plan for the interim and any long-term plantings indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features. Drought tolerant native and naturalizing plants shall be utilized to the maximum extent feasible. Said plan shall be developed in consultation with the Department of Fish and Game to assure species inherently noxious to environmentally sensitive species are avoided and shall be submitted to, reviewed and approved in writing by the Executive Director and include the following:

- a. A planting schedule that indicates that the interim planting plan shall be implemented within 60 days of completion of grading.
- b. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials.

The permittee shall undertake the landscaping 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.

10. Open Space Deed Restriction. No development, as defined in section 30106 of the Coastal Act shall occur in the area generally described as wetland and buffer areas surrounding Rossini Creek as shown on the attached Exhibit "4" except for necessary storm drain and desiltation/pollution basins, two bridge crossings across Rossini Creek and grading and planting to accomplish proposed mitigation for impacts to sensitive habitat areas and maintenance of the mitigation area.

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

#### IV. Findings and Declarations:

1. Project Description (Revised). The development as approved by the City of Encinitas included the subdivision of 16 acres to create 31 residential lots. The applicant has subsequently revised the project to eliminate the fill of wetlands. As such, the proposed development (as revised by the applicant) involves the subdivision of 6 legal lots, totalling 16 acres, into 26 single-family residential lots, one open space lot and one remainder lot to include grading, drainage and private street improvements including the construction of two bridges. Installation of the proposed bridges will result in shading impacts to .04 acre of riparian marsh/disturbed wetland. The applicant proposes to mitigate the shading impacts through on-site creation of .08 acre of southern willow scrub and enhancement of 1.08 acre of southern willow scrub/freshwater marsh habitat. Site preparation for the proposed development will involve between 36,000 to 56,000 cubic

yards of grading and will involve the demolition of an existing duplex, single-family residence and several greenhouses.

The project site is located on the south side of Santa Fe Drive between Rubenstein Avenue and Starlight Drive in the City of Encinitas. Surrounding uses include single-family residences and greenhouses. Access to the proposed subdivision will be through the extension of Warwick Avenue on the southeast and the creation of a new street via Rubenstein Drive on the west. A duplex and single-family home on Rubenstein Drive will be demolished to create access for the new private street. Most of the proposed development site is currently used for the production of cut-flowers utilizing covered greenhouses and open fields. A small drainage known as Rossini Creek runs north to south through approximately the middle of the subject property. The drainage has been delineated as 1.08 acre of riparian and freshwater wetland by both the Army Corps of Engineers (ACOE) and the California Dept. of Fish and Game (F&G).

The proposed development does not include construction of residences at this time. As such, Special Condition #8 has been proposed to notify the applicant that this permit is for subdivision, grading, road and utility improvements and biological mitigation and that any other development proposals, including, but not limited to residential construction, shall require review by the Commission or its successor agency.

The applicant has indicated that other permits are being pursued through various state and federal agencies having jurisdiction over this project. Thus, conditions of approval and/or mitigation measures may be required from these agencies. As such, Special Condition #7 has been proposed. This condition requires the applicant to submit copies of any discretionary permits obtained from other state or federal entities. Should any project modifications be required as a result of any of these permits, the applicant is further advised that an amendment to this permit may be necessary to incorporate such mitigation measures into the project.

2. Wetlands. Due to the dramatic loss of wetlands (over 90% loss of historic wetlands in California) and their critical function in the ecosystem, and in response to Section 30233 of the Coastal Act, the City's LCP contains very detailed policies and ordinances relative to wetlands protection. The following LCP provisions are relevant to the subject development: Resource Management Policy 10.6 of the certified LUP states, in part:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value whenever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A. 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve wetland intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetlands on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding area of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt-water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible. All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

In addition, Section 30.34.040(B)(3)(a) of the City's Implementation Plan contains similar language as above, limiting wetland fill to projects involving nature study, restoration, incidental public services and mineral extraction.

The 16 acre project site consists of greenhouses and open fields for the production of cut flowers. Rossini Creek, a small drainage, runs north to south through approximately the middle of the subject site. All drainage immediately upstream and approximately one-half mile downstream of the subject site is channelized. However, the open creek on the subject site has been delineated as riparian and freshwater marsh habitat by both the Army Corps of Engineers (ACOE) and the California Department of Fish and Game (DFG). In addition, the subject riparian and freshwater marsh habitat is connected to an even larger wetland area directly south of the subject parcel. These riparian areas ultimately drain into San Elijo Lagoon, an environmentally sensitive habitat area and regional park that is managed jointly by DFG and the San Diego County Parks and Recreation Department.

Based on review of the wetland and mitigation plan prepared for the site, Commission staff has determined that wetlands, as defined in the LCP, are present on the site. The proposed development, as revised by the applicant, has been designed, however, to avoid any direct impact to the wetlands. Indirect impacts to two small sections of degraded wetland will occur by the shading affects of two proposed bridges on the northern portion of the development. The wetland area over which the two bridges will cross is a highly disturbed drainage area consisting primarily of non-native vegetation. The wetland and mitigation plan prepared for the subject development indicates that the shading will affect .04 acre of freshwater marsh/disturbed wetland. The overall character of the surrounding wetland consist of southern willow scrub habitat. As cited previously, Policy 10.6 of the certified Encinitas LCP expressly restricts and prohibits the fill of wetlands. However, in this case, fill of wetlands is not proposed. In addition, Policy 10.6 requires that "Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve wetland intrusion or impact." In this case, the applicants have proposed to construct bridges over the wetland to gain access to other development areas of the site as an alternative to their earlier proposal of fill .

Although the proposed development will only have indirect impacts to the wetland, Policy 10.6 does require that any development which would reduce the resource value of wetlands should be mitigated at a rate of greater than 1:1. The primary goal of the policy is to assure a no net loss of resource values. The applicants are proposing to mitigate the .04 acre of shading impacts through the creation of .08 acre of southern willow scrub and the enhancement of 1.08 acre of southern willow scrub and emergent freshwater marsh. However, to assure that mitigation measures assure a no net loss of habitat in both quality and quantity, Special Condition #1 has been proposed. This conditions requires the applicant to submit a detailed mitigation program for mitigation of all wetland impacts. In addition, Special Condition #2 has been proposed to require the submittal of a detailed monitoring program to measure the success of the mitigation plan. With a requirement that annual monitoring reports be submitted and remediation measures required if cited

performance standards are not met, the Commission can be assured of a successful mitigation program.

The City's LCP policies and ordinances also require that a minimum 50 foot buffer be established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Department of Fish and Game concurs. In this case, the applicants are proposing a graded manufactured buffer which will vary in width from 15 to 90 feet and will surround the wetland habitat in a contiguous band. The Department of Fish and Game have concurred with the applicant's proposal for a reduced buffer primarily because the proposed buffer is an improvement over what is existing. Typically the Commission and other resource agencies would require that a natural buffer be preserved to maintain a transitional habitat zone between development and the wetland. However, in this case the existing wetland is surrounded by agricultural production, greenhouses and debris such that no natural buffer currently exists.

The City's LCP also requires that all wetlands and buffers resulting from the development be protected by an open space easement. The applicants are proposing and the City's Tentative Map approval required that the wetland area be preserved as an open space parcel (Lot A). However, because the Commission was not a party to such easements and because the applicant has subsequently revised the boundary of the affected wetland and buffer area, Special Condition #10 has been proposed to assure no development occurs in these areas in the future. The condition requires the applicant to record an open space deed restriction over these areas thereby restricting development in these areas to the minor developments proposed and permitted in this application (site preparation and landscaping for mitigation, buffer creation, bridge crossings and drainage improvements).

In summary, the proposed development, as revised by the applicant, and conditioned herein, will avoid all fill of wetlands, appropriately mitigates for the indirect affects of shading to the wetland caused by the proposed bridges, provides an adequate buffer to separate the development from the wetland and includes has an open space restriction over all wetland resources and buffer areas. Therefore, the Commission finds the proposed development is consistent with Resource Management Policy 10.6 of the certified LCP.

3. Water Quality. Recognizing the value of protecting the water quality of oceans and waterways for residents and visitors alike, the City's LCP requires that preventive measures be taken to protect waterways from pollution. Resource Management Policy 2.3 of the LCP states in part:

To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways . . .



As discussed previously, the subject site has a drainage area known as Rossini Creek which runs through the center of the property and eventually flowing into San Elijo Lagoon, an environmentally sensitive habitat. Runoff from the project site during construction could result in increased sedimentation entering the on-site wetland and downstream lagoon. After the construction of the subject development, trash, dirt, oil and other pollutants could be directed into the storm drains which will discharge into the wetland and the lagoon.

The U.S. Environmental Protection Agency (EPA) has identified a series of Best Management Practices (BMPs) to manage runoff from new development and prevent pollution from entering coastal waters. Some of these measures include:

- restrictions on slope development
- erosion and sediment control plans
- dust controls
- scheduling of projects so that clearing and grading are conducted during the time of minimum erosion potential
- management of pet excrement
- storm drain stenciling in appropriate areas
- sweeping, vacuuming and washing of residential/urban streets and parking lots
- water outlet protection (consider flow, discharge rate and velocity in outlet design)
- detention ponds, filtration basins, sand filters and oil/water separators
- preservation of existing vegetation and landscaping plans that include species that will not compete with existing vegetation

The proposed development involves approximately 36,000 to 56,000 cubic yards of grading of the existing site to create building pads, drainage and street improvements. To address construction impacts, Special Condition #3 requires submittal of grading/erosion control plan which implements best management practices. Such practices should include at a minimum: sandbagging all graded slopes prior to the rainy season; constructing each graded pad left undeveloped during the rainy season in such a way that it will act as a detention basin and; installing landscaping on all cut and fill slopes prior to the rainy season.

Because the subject application for 26 lot subdivision improvements does not include the construction of the single-family homes at this time, the Commission is concerned with what effect barren, unvegetated buildings pads and slopes may have to runoff into wetland and buffers areas. To address this concern, Special Condition #4 requires the applicant to submit a drainage and runoff control plan which assures that the development will not increase runoff from what currently exists. In addition, Special Condition #9 is proposed to ensure that, in the interim before home construction commences, the development site will be adequately landscaped to further reduce the potential for erosion and off-site sedimentation. The condition also requires consultation with the Dept. of Fish and Game to ensure to use of non-invasive drought tolerant species.

In addition, there are significant pollutants associated with the proposed residential uses such as oils, heavy metals, fertilizers, hydrocarbons, organic debris, etc. While the applicant has indicated that Best Management Practices will be implemented with the proposed development, the Commission is concerned in this case because the streets are private and will not be afforded City maintenance. The EPA's recommendation of street sweeping has been found in studies to be an effective measure to control polluted runoff. Novotny and Chesters document in their book, Handbook of Nonpoint Pollution Sources (1981) that much of the pollutant load from residential areas is found within 36-inches of the street curb. The first significant rainfall of the year carries this curb-side load into the storm drains. Their studies indicate that regular vacuumized street sweeping during the non-rainy season is an effective control of pollutants. In addition, they indicate that three passes along the curb will remove 90 percent or more of the curb-side pollutants. Special Condition #6 requires the applicant to implement a street sweeping plan during the non-rainy season (April-October) which includes monthly sweeping with at least three passes along each curb. A similar condition was approved by Commission in April 1998 for a nine lot subdivision in Solana Beach adjacent to San Elijo Lagoon (ref. CDP#6-98-1/Skerrett).

Thus, as conditioned, the proposed project will implement the best management practices regarding non-point source urban pollution, and runoff from the development will not adversely impact water quality or have a significant adverse impact to the wetland resources. Therefore, the project can be found consistent with Resource Management Policy 2.3 of the certified LCP.

4. Visual Resources. The subject site is located west of Interstate 5 which has been designated a scenic view corridor within the certified LCP. However, in this case, very little of the proposed development will be visible from Interstate 5. The site is currently hidden by greenhouses which lie between I-5 and the subject site. In addition, the development site lies in a canyon setting well below the level of the Interstate such that the predominant view from the freeway will remain the upper western wall of canyon, although the rooflines of the future homes will probably be visible. Therefore, in this case, the subject development can be found consistent with the visual resource policies of the LCP.

5. Local Coastal Planning. Section 30604 (a) also 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. In this case, such a finding can be made.

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The City of Encinitas Planning Commission approved the subject development on September 10, 1998. Because the development is located within 100 ft. of wetlands, it falls within the Commission's appeals jurisdiction. On October 13, 1998, the development approval was appealed to the

Coastal Commission. The standard of review is the policies and ordinances of the certified LCP.

The subject site is zoned and planned for residential development in the City's certified LCP. The majority of the site is zoned R-3 permitting up to a maximum of 3 dwelling units per acre. Two of the subject parcels are zoned R-8 permitting up to a maximum of 8 dwelling units per acre. The proposed development conforms to mid-range density of 2.5 dwelling units per acre and is, therefore, consistent with the residential zone and plan designation.

The original project, as approved by the City, included the fill of wetlands to accommodate the residential subdivision, inconsistent with the certified LCP. The project as revised by the applicant and conditioned herein, is consistent with all applicable policies and ordinances of the certified LCP.

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

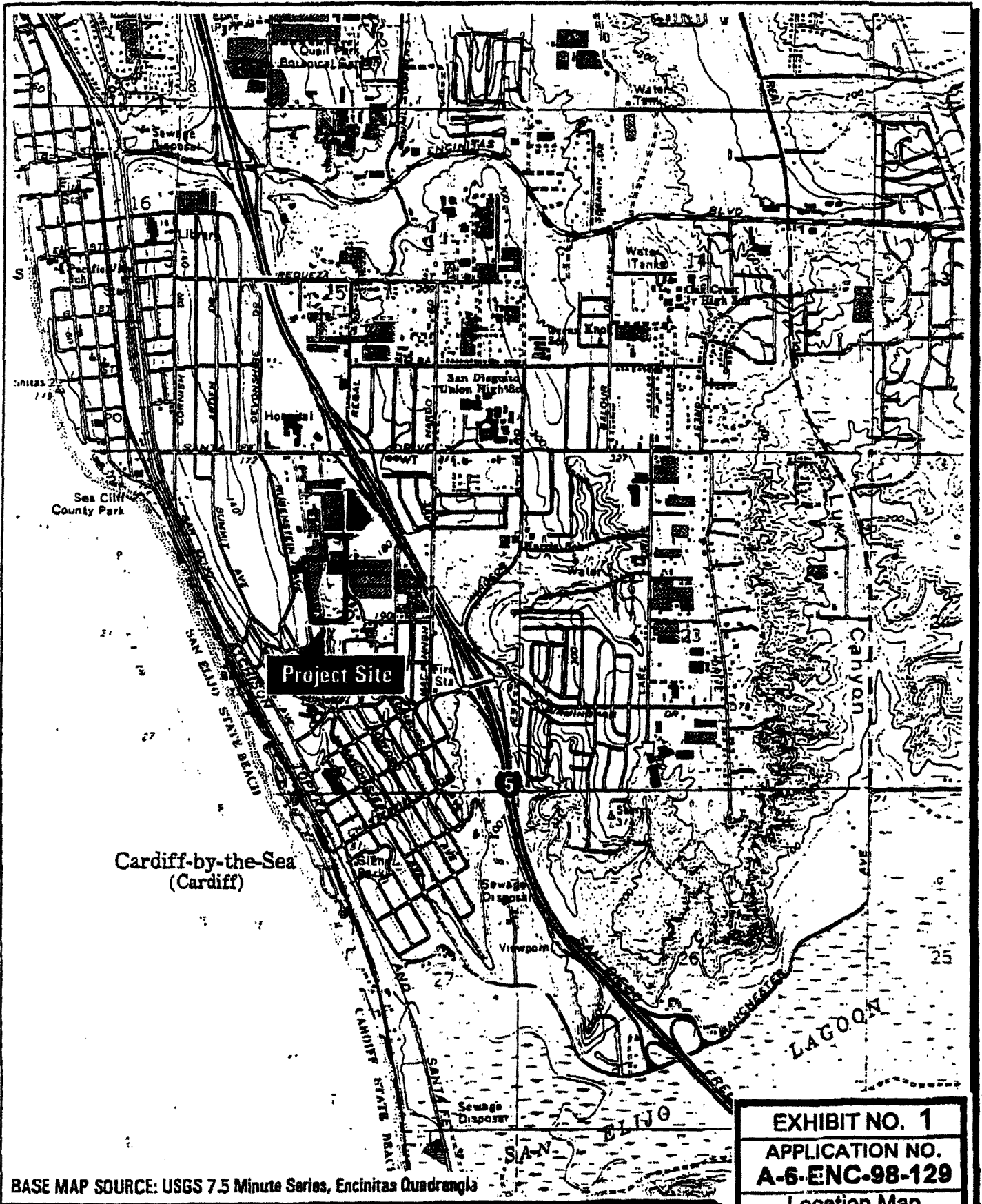
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits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

The proposed project has been conditioned in order to be found consistent with the wetland and water quality resource policies of the certified Encinitas LCP. Mitigation measures will minimize all adverse environmental effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



BASE MAP SOURCE: USGS 7.5 Minute Series, Encinitas Quadrangle




<b>EXHIBIT NO. 1</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-129</b>
<b>Location Map</b>

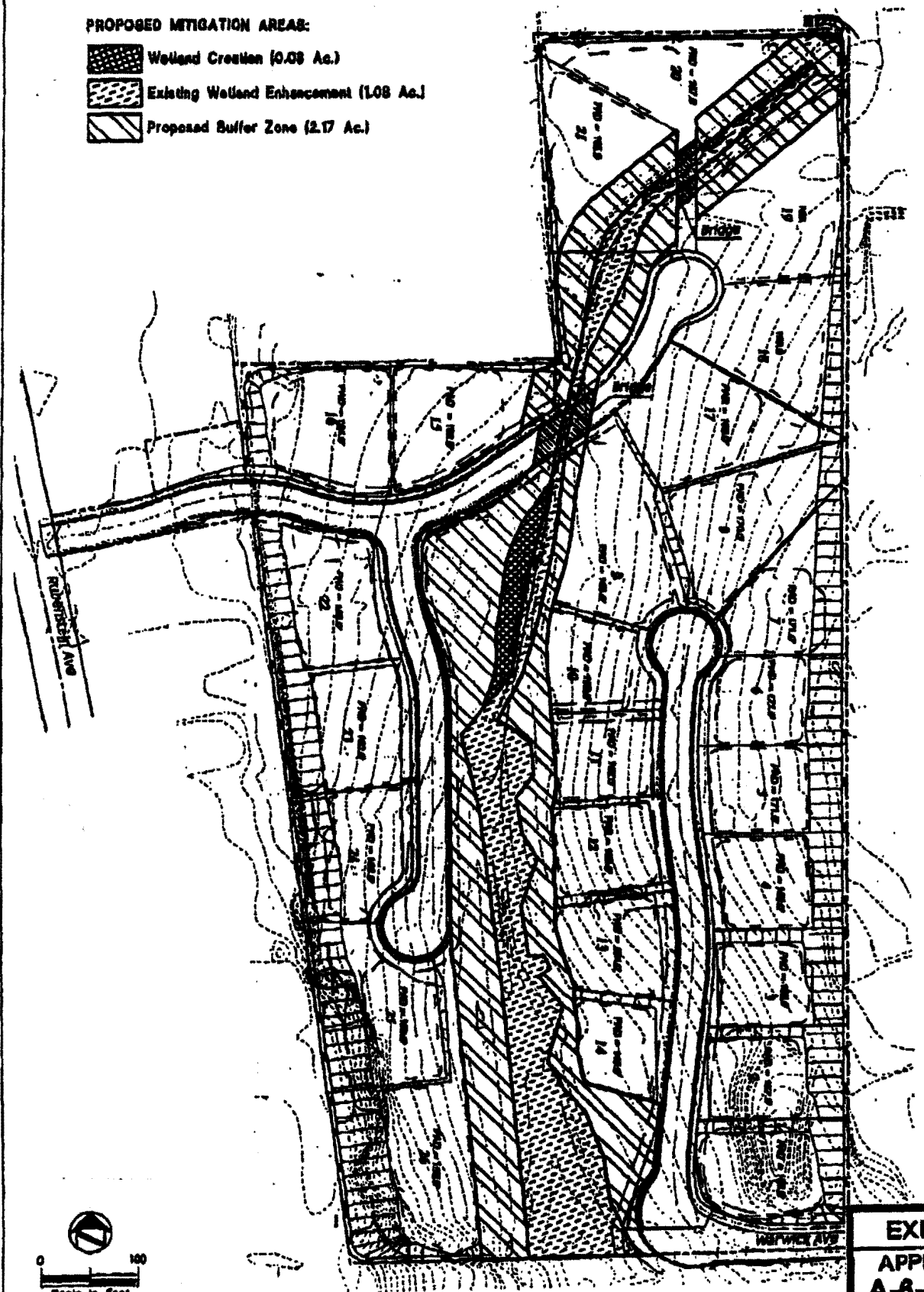
Rossini Parkside Devel.

Vi


California Coastal Commission

**PROPOSED MITIGATION AREAS:**

-  Wetland Creation (0.08 Ac.)
-  Existing Wetland Enhancement (1.08 Ac.)
-  Proposed Buffer Zone (2.17 Ac.)






SOURCE: Peace Engineering

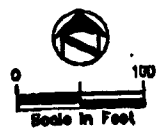
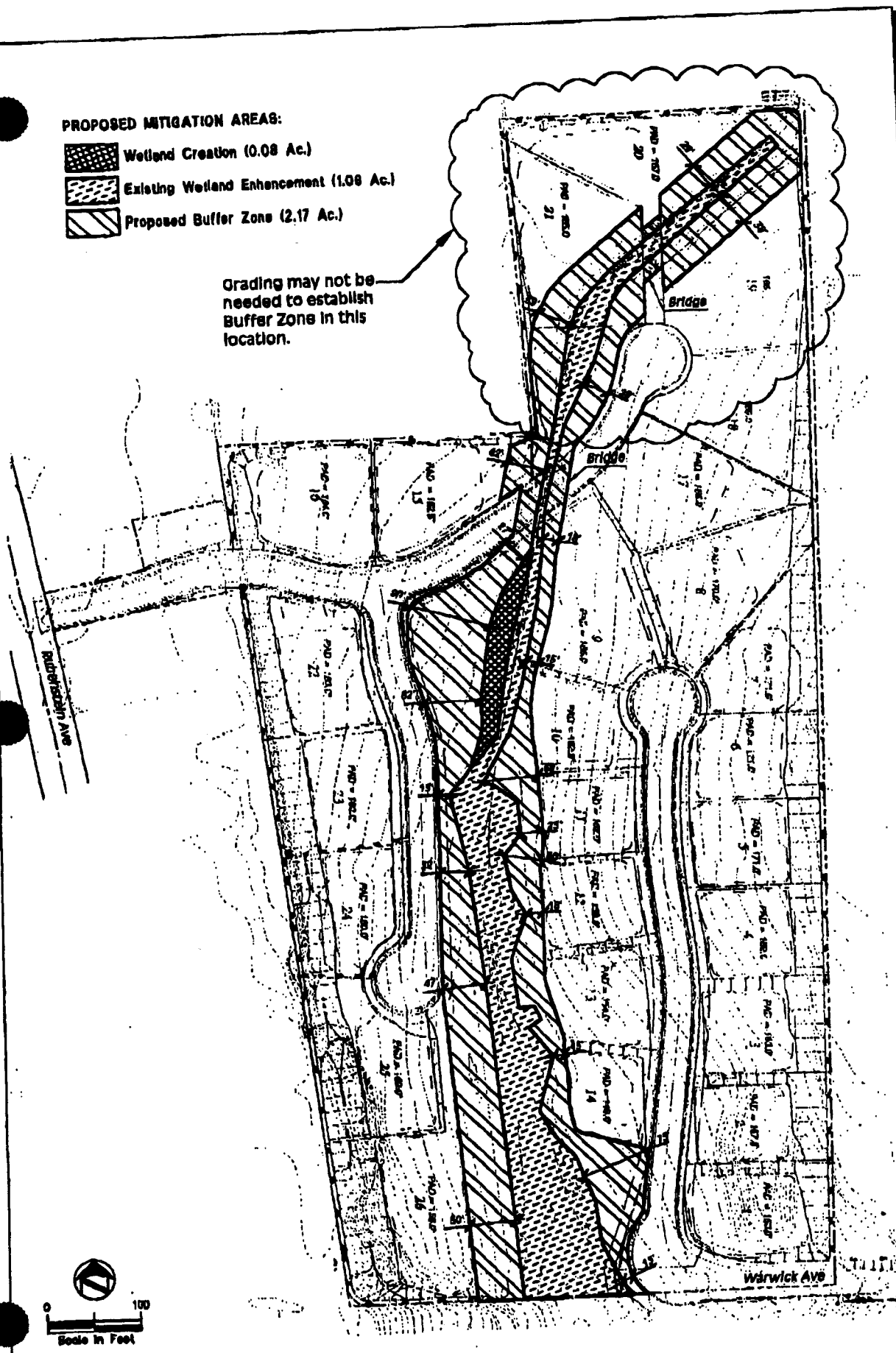
<b>EXHIBIT NO. 2</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-129</b>
<b>Site Plan</b>
 California Coastal Commission

Rossini Parkside Development Project  
Site Plan

**PROPOSED MITIGATION AREAS:**

-  Wetland Creation (0.08 Ac.)
-  Existing Wetland Enhancement (1.08 Ac.)
-  Proposed Buffer Zone (2.17 Ac.)

Grading may not be needed to establish Buffer Zone in this location.



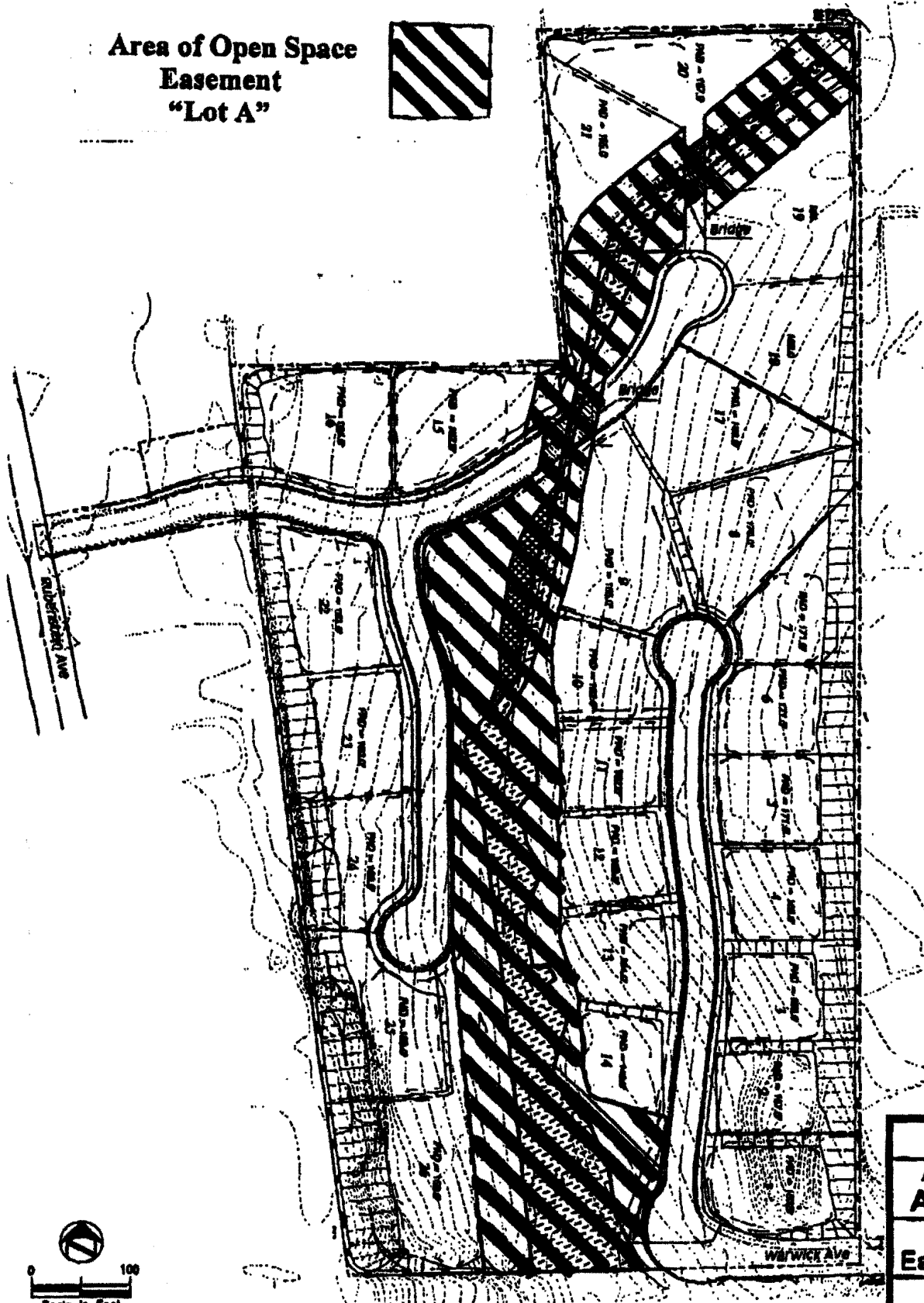
SOURCE: Pasco Engineering

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**A-6-98-129**  
**Mitigation Plan with**  
**Buffer Widths**

California Coastal Commission

Rossini Parkside Development Project  
**Site Plan w/ Buffer Width Measurements** **FIGURE 1**

Area of Open Space  
Easement  
"Lot A"



SOURCE: Pasco Engineering

<b>EXHIBIT NO. 4</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-129</b>
<b>Open Space</b>
<b>Easement - "Lot A"</b>
 <b>California Coastal Commission</b>



STATE OF CALIFORNIA - THE RESOURCES AGENCY

PETE WILSON, Governor

**DEPARTMENT OF FISH AND GAME**

Region 5  
 P.O. Box 6657  
 Laguna Niguel, California 92607-6657  
 (949) 383-7538

**RECEIVED**

JAN 13 1999



CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

Attn: Jeff Thomas  
 Dudek & Associates  
 605 Third Street  
 Encinitas, CA 92024

RECEIVED

James L. Barisic  
 The Brandywine Development Corp.  
 340 South Flower Street  
 Orange, CA 92668

January 8, 1999

Dear Mr. Barisic:

We have reviewed your request to amend and extend our Streambed Alteration Agreement, 5-285-97, to alter the streambed to construct the Rossini Parkside Development Project of the Willows Road Bridge, within or adjacent to an unnamed tributary to the Pacific Ocean, near San Elijo Lagoon in San Diego County. The project is located south of Santa Fe Drive, between Rubenstein Avenue and Interstate 5, in the City of Encinitas.

Pursuant to Fish and Game Code Section 1600 et seq. this letter, when countersigned by you, amends our agreement as follows:

2. The Operator proposes to alter the streambed to construct the 16-acre Rossini Parkside Development Project (26 single family residential lots, streets, and associated structures), impacting 0.04 acre of stream by shading. The project is located south of Santa Fe Drive, between Rubenstein Avenue and Interstate 5, in the City of Encinitas.
3. The agreed work includes activities associated with No. 2 above. The project area is located in an unnamed tributary to the Pacific Ocean, near San Elijo Lagoon in San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including the "Wetland Mitigation and Monitoring Plan for the Rossini Parkside Development Project San Diego County, California", prepared for Brandywine Development Corporation and prepared by Dudek and Associates, Inc., dated September 4, 1997 and revised December 1998, and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.04 acre of stream by shading: 0.02 acre freshwater marsh and 0.02 acre disturbed wetland. The Operator is retaining the wetlands on site (0.05 acre freshwater marsh; 0.79 acre southern willow scrub; 0.20 acre disturbed wetland plus the 0.04 acre impacted by shading).

<b>EXHIBIT NO. 5</b>
<b>APPLICATION NO.</b>
<b>A-6-ENC-98-129</b>
<b>Dept. of Fish and Game Approval of Buffers</b>

5. The Operator shall mitigate as described in the submitted documents, including: the creation of 0.08 acre of willow scrub habitat and the enhancement of the retained 1.08 acre of vegetated wetlands through the removal of exotic species and the supplemental planting of native species. This shall result in a minimum of 1.16 acres of high quality riparian habitat.

All mitigation shall be installed within 120 days of project impact and no later than April 30, 2000.

The Operator shall submit documentation to the Department prior to project impacts which demonstrates that the CC&R's include protection of the mitigation site and all stream resources and buffer areas on the site.

The Operator is also creating an approximate 2.17-acre transitional buffer habitat, in a contiguous band surrounding the wetland habitat (a minimum 15' in width, and in most areas 25' or greater). The buffer shall consist of native species only, both for the protection of the wetland resources and as refuge for wildlife species.

The Department recommends the use of native vegetation in all the landscaped areas, especially near the mitigation site and buffer areas, to the greatest extent possible.

16. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season, or shall be irrigated to ensure survival.

This letter also extends the period during which activities otherwise authorized by the agreement may continue. The new termination date of the agreement is September 30, 2000.

**Be advised that all terms of Agreement 5-285-97 remain in force throughout the new term of the agreement.** A copy of said agreement AND THIS AMENDMENT AND EXTENSION LETTER must be kept on site and be shown upon request to Department personnel during all periods of work.

Two copies of this letter are being sent to you. PLEASE RETURN ONE SIGNED ORIGINAL to the Department of Fish and Game, at 330 Golden Shore, Suite 50, Long Beach, CA 90802.

If you have further questions, please contact me at (949) 363-7538.

Sincerely,



Terri Dickerson  
Environmental Specialist III

CONCURRENCE: \_\_\_\_\_ DATE: \_\_\_\_\_

STATE OF CALIFORNIA - THE RESOURCES AGENCY

PETE WILSON, Governor

**CALIFORNIA COASTAL COMMISSION**

San Diego Area  
 3700 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 421-8038



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

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

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

Commissioner Andrea Tuttle  
1215 Union St.  
Arcata, Ca (707) 822-3966  
 Zip Area Code Phone No.

**SECTION II. Decision Being Appealed**

1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Single-family residential 31 lot subdivision of 16 acres that involves the fill of .31 acre riparian and freshwater marsh habitat. On-site mitigation is proposed for the wetland impacts.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

South of Santa Fe Drive, between Rubenstein Avenue and Starlight Drive, Encinitas, San Diego County. (APN(s) 260-082-19, 20, 260-650-02, 05, 06 and 07)

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions:  X
- c. Denial: \_\_\_\_\_

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-6-ENC-98-129

DATE FILED: 10/13/98

DISTRICT: San Diego

<b>EXHIBIT NO. 6</b>
<b>APPLICATION NO. A-6-ENC-98-129</b>
<b>Commissioners' Appeal Applications</b>
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

2. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator
- b.  City Council/Board of Supervisors
- c.  Planning Commission
- d.  Other \_\_\_\_\_

3. Date of local government's decision: September 10, 1998

4. Local government's file number (if any): 97-283 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Brandywine Development/Jim Barisic  
340 So. Flower St.  
Orange, Ca 92868

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Dietmar and Rose Rothe  
1404 Rubenstein Avenue  
Cardiff, CA 92007

(2) Claude and Ruth Fenner  
1566 Rubenstein Avenue  
Cardiff, CA 92007

(3) Mr. & Mrs. Greg Brooks  
1616 Brahms Rd.  
Cardiff, CA 92007

(4) Robert Eikel  
2363 Needham Road  
El Cajon, CA 92020

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

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

See Attachment "A"

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

SECTION V. Certification

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

Signed Andrew E. Tuttle  
Appellant or Agent

Date: 10/13/98

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Brandywine Development Appeal  
Attachment A**

The coastal permit approved by the City allows fill of approximately .31 acre of wetlands for the construction of residential lots and streets. A wetlands boundary determination has been completed which indicates the on-site wetlands meets the Army Corps of Engineers definition of wetlands. As approved by the City, the development does not conform to the standards set forth in the certified local coastal program. Specifically, Resource Management (RM) Policy 10.6 of the certified Land Use Plan requires that "The City shall not approve subdivisions or boundary line adjustments which allow increased impacts from development in wetlands or wetland buffers."

RM Policy 10.6 of the certified LCP also limits the filling of wetlands to the following "newly permitted uses and activities: a) Incidental public service projects. b) Mineral extraction. c) Restoration purposes d) Nature study." The proposed development does not fall into any of the above categories of permitted development. The City, in approving the development, failed to prepare a finding of consistency with RM Policy 10.6.

RM Policy 10.6 of the certified LCP also requires completion of an alternative analysis to limit or minimize wetland fill even for permitted uses. The City, in approving the 31 lot subdivision, failed to complete any alternative analysis as required by RM Policy 10.6.

A biology survey indicates the .31 acre wetland site impacted by the proposed development consists of .05 acre southern willow scrub, .06 acre freshwater marsh and .20 acre "disturbed wetland channel". The City approved a wetland mitigation plan for the creation of .45 acre of southern willow scrub. Therefore, the proposed mitigation, if for a permitted use, would not be consistent with RM Policy 10.6 of the certified LCP which requires that unavoidable wetland impacts be mitigated through the creation of new wetlands "of the same type lost" at a ratio of greater than 1:1. The City, in approving the development, failed to require a greater than 1:1 in-kind mitigation for each component of the proposed fill of wetland.

RM Policy 10.6 of the certified LCP also requires that a minimum 50 foot buffer be provided between any development and wetland habitat and the buffer be protected with an open space easement. The City's action allows grading and manufactured slopes directly adjacent to the remaining on-site wetlands and, therefore, does not create a true buffer. In addition, the graded and manufactured slope areas are of less than 50 foot widths between the wetlands and the residential lots.

In summary, the 31 lot subdivision is not in conformity with the resource policies of the certified LCP as it relates to permitted uses within wetlands, the requirements of buffers and appropriate mitigation.

# CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
211 MARINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1726  
(619) 821-8038



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

### SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Commissioner Sara Wan  
22350 Carbon Mesa Rd.  
Malibu, Ca 90265 (610) 456-6605  
Zip Area Code Phone No.

### SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Single-family residential 31 lot subdivision of 16 acres that involves the fill of .31 acre riparian and freshwater marsh habitat. On-site mitigation is proposed for the wetland impacts.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

South of Santa Fe Drive, between Rubenstein Avenue and Starlight Drive, Encinitas, San Diego County. (APN(s) 260-082-19, 20, 260-650-02, 05, 06 and 07)

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

c. Denial: \_\_\_\_\_

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

### TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-98-129

DATE FILED: 10/13/98

DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

2. Decision being appealed was made by (check one):

a.  Planning Director/Zoning  
Administrator

c.  Planning Commission

b.  City Council/Board of  
Supervisors

d.  Other \_\_\_\_\_

3. Date of local government's decision: September 10, 1998

4. Local government's file number (if any): 97-283 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Brandywine Development/Jim Barisic

340 So. Flower St.

Orange, Ca 92868

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Dietmar and Rose Rothe  
1404 Rubenstein Avenue  
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(3) Mr. & Mrs. Greg Brooks  
1616 Brahms Rd.  
Cardiff, CA 92007

(4) Robert Eikel  
2363 Needham Road  
El Cajon, CA 92020

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.



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

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

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See Attachment "A"

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

**SECTION V. Certification**

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

Signed *Sara J. Han*  
Appellant or Agent

Date: 10/13/98

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Brandywine Development Appeal  
Attachment A**

The coastal permit approved by the City allows fill of approximately .31 acre of wetlands for the construction of residential lots and streets. A wetlands boundary determination has been completed which indicates the on-site wetlands meets the Army Corps of Engineers definition of wetlands. As approved by the City, the development does not conform to the standards set forth in the certified local coastal program. Specifically, Resource Management (RM) Policy 10.6 of the certified Land Use Plan requires that "The City shall not approve subdivisions or boundary line adjustments which allow increased impacts from development in wetlands or wetland buffers."

RM Policy 10.6 of the certified LCP also limits the filling of wetlands to the following "newly permitted uses and activities: a) Incidental public service projects. b) Mineral extraction. c) Restoration purposes d) Nature study." The proposed development does not fall into any of the above categories of permitted development. The City, in approving the development, failed to prepare a finding of consistency with RM Policy 10.6.

RM Policy 10.6 of the certified LCP also requires completion of an alternative analysis to limit or minimize wetland fill even for permitted uses. The City, in approving the 31 lot subdivision, failed to complete any alternative analysis as required by RM Policy 10.6.

A biology survey indicates the .31 acre wetland site impacted by the proposed development consists of .05 acre southern willow scrub, .06 acre freshwater marsh and .20 acre "disturbed wetland channel". The City approved a wetland mitigation plan for the creation of .45 acre of southern willow scrub. Therefore, the proposed mitigation, if for a permitted use, would not be consistent with RM Policy 10.6 of the certified LCP which requires that unavoidable wetland impacts be mitigated through the creation of new wetlands "of the same type lost" at a ratio of greater than 1:1. The City, in approving the development, failed to require a greater than 1:1 in-kind mitigation for each component of the proposed fill of wetland.

RM Policy 10.6 of the certified LCP also requires that a minimum 50 foot buffer be provided between any development and wetland habitat and the buffer be protected with an open space easement. The City's action allows grading and manufactured slopes directly adjacent to the remaining on-site wetlands and, therefore, does not create a true buffer. In addition, the graded and manufactured slope areas are of less than 50 foot widths between the wetlands and the residential lots.

In summary, the 31 lot subdivision is not in conformity with the resource policies of the certified LCP as it relates to permitted uses within wetlands, the requirements of buffers and appropriate mitigation.

**RECEIVED**

DEC 01 1998

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT**PETER STERN**  
1232 RUBENSTEIN AVE.  
CARDIFF, CA. 92007-2408  
760-944-9355

November 30, 1998

California Coastal Commission  
3111 Cam. Del Rio Norte, Suite 200  
San Diego, Ca. 92108-1725**Re: Permit # A-6-ENC-98-129**

Dear Commission,

I am a neighbor of the above mentioned applicant, Brandywine Development. For a host of reasons stated below I hope that you will support the determination of the staff report to **reverse the decision to permit, and rule that a substantial issue exists with regard to this appeal and this project.** In sum, the project is offensive and in violation of the local coastal plan, it will adversely affect wetlands and animal habitat; and, of a more local concern, it is inconsistent with the character and ambiance of the immediate community. Please remember that once our precious resources and character are gone, they can never be restored!

1) This project proposes to fill in wetland. **This is in specific violation and contrary to the local coastal plan which bans the fill of wetlands.** It is a stated "goal" of the local plan and the City to realize a net gain of acreage and value whenever possible when dealing with wetland mitigation. The local coastal plan requires that every development plan comport with the local coastal plan and this project does not. Moreover, to allow the wetland to be filled in will degrade and afflict wildlife habitat- which has been severely diminished over the years.

2) The project has an inadequate "buffer" between the property line and the wetland. The coastal plan requires a 50 foot buffer which is natural. This is important esthetically as well as for the animals. The local plan is clear that buffers shall be permanently conserved and protected... This is reflective of the importance of the buffer to insulate the wetlands and animals from development in perpetuity. This project contemplates a graded, unnatural buffer which will be planted with non-indigenous plants. This not only spoils the completely natural look of the area; but also, poses a threat to indigenous plant species

**EXHIBIT NO. 7****APPLICATION NO.****A 6 ENC 08-129**


which will be crowded out by other plants. Wildlife may also be threatened by this encroachment. To permit this loose and inappropriate interpretation of the local plan sets a degrading precedent for future projects as well.

The project proposal to redirect wetland channel through an underground pipe to accommodate 31 residential lots is not consistent with a "public service" project as envisioned by the local plan and therefore is inconsistent and not a permitted use under the local plan.

3) Of a more local concern, this project is very large in scale and will affect traffic, infrastructure, and air quality. The more people in any area put greater strains upon that area's resource's ability to accommodate those persons. In this regard, the natural, unplanned character and ambiance of our community will be permanently affected. The more people in the immediate area who have access to our fragile coast and wetland put greater and irreversible pressures upon the coast, wetland and critters, who rely upon the wetlands, non-density of population and coast for their well-being.

In light of the scale and inconsistency of this project with the specific and well designed requirements of the Local Coastal Plan I hope that you will reverse the determination to permit this project as designed; and, to specifically require a fifty foot natural buffer between the project and the wetlands and compel strict compliance with the Local Coastal Plan as adopted.

Sincerely,



Peter Stern

***"Don't it always seem to go, that you don't know what you got till it's gone, pave paradise put up a parking lot." Joni Mitchel.***

**BRAD ROTH**

1507 Rubenstein Avenue, Cardiff, CA 92007-2401

(760) 436-2632

December 3, 1998

California Coastal Commission  
1111 Camino del Rio North, Suite 200  
San Diego, CA 92108-1725

Dear Commissioners:

This is regarding Permit No. A-6-ENC-98-129, the Brandywine Development. I have owned and lived in my home two lots south of the proposed entrance road to this development for twenty-one years. I am on the Board of Directors of the Cottonwood Creek Conservancy and Project Manager for our current revegetation project on a portion of the creek at Moonlight Beach State Park in Encinitas. (Please see enclosed flyer.) I am not speaking for the Conservancy but I am sure I echo the sentiments of the other members on this matter.

One problem I and my neighbors have had since the early planning stages is that the developer plans to knock down two houses to put an entrance road, rather than use an existing road which has been used for years by commercial vehicles servicing the greenhouse businesses on and adjacent to the 16 acre parcel in question. This unprecedented action is being done because the present entrance to the property is on Santa Fe Drive next to a gas station and fast food outlet, and using this entrance would lower the sales value of the homes. Nevertheless, the City of Encinitas approved this plan, and we will have to live with it, despite unnecessary increased traffic on our street which will end up on Santa Fe Drive anyway.

I would like to address the subject of the Coastal Commission's appeal of your permit granted by the City under authority of it's LCP, namely protection of the riparian areas. There is not a lot of land left for development in Encinitas, and much of the riparian and wetland zones have been paved over, channeled, or otherwise disturbed. In my opinion, the City of Encinitas has a poor track record in protecting these sensitive areas.

In 1993 the City approved siting of a Home Depot store in wetlands on Encinitas Creek at El Camino Real and Olivenhain Road. The developer wrote six letters to city planners listing changes to the general plan of the city necessary for their project, and they got all of them. These include shrinking the required buffer zone for wetlands from 100 down to 50 feet, adding parking lots as a permitted use in a floodplain, and adding "fudgewords" such as "when feasible" and "shall attempt to" to many of the requirements protecting sensitive habitats. The 100 year floodplain goes through a corner of the store, but

it was artificially shrunk by the planned construction of two check dams upstream, part of a road realignment associated with another development in the City of Carlsbad, which has yet to be built. This not only took away these wetlands but also the mandated open space, whose boundary is defined by the 100 year floodplain in the general plan. No compensation for that loss was ever even discussed.

A few months ago I visited the construction site of a school being built by St. John's Church on Encinitas Blvd. just below Balour Drive. One building pad sat directly on a southern tributary to Cottonwood Creek, which is itself almost entirely underground under Encinitas Blvd.

Part of the plans for the new Encinitas Ranch development include an elementary school on a northern tributary to Cottonwood Creek along Quail Gardens Drive. Despite testimony of the Cottonwood Creek Conservancy during the planning process urging the inclusion of the creek as an amenity, the plans are presently to pave over the creek there, too.

About two years ago the city approved a tentative map for the Smith property, a seven acre parcel down Rossini Canyon from the proposed Brandyvine development. Despite protests, the city approved building a retaining wall within the buffer zone and grading of the steep canyon slopes there, to maximize the number of buildable lots.

There used to be a family of foxes living in this canyon, the only one I know of in this area. One was killed by a car a few years ago, and I have not seen or heard of any since. This canyon is the only really wild area around here, and the foxes likely relied on the undisturbed riparian area for sustenance, as do many other creatures there.

I strongly urge you to deny the plans as proposed and to require altered plans to protect the riparian areas. Developers need to be confronted with the fact that we have precious little native habitat left, and it must be protected. They must not be allowed to follow the old, lazy approach to dealing with creeks: turn them into a "drainage ditch" or cover them with pavement. Only then may they see that, properly handled, our watercourses can be the attractive amenities they once were.

Thank you for your time and consideration.

Yours truly,

  
Bradford Roth

Enclosure: Flyer for Cottonwood Creek Conservancy revegetation project

# Cottonwood Creek Conservancy



## COME AND HELP RESTORE COTTONWOOD CREEK

The Cottonwood Creek Conservancy is reaching out to all communities and organizations in the area, asking your volunteer help in removing invasive exotic vegetation within the creek and canyon near Moonlight Beach.

This growth is covering the willows and other native plants and must be removed so the native plants can attract birds, butterflies, and water creatures, such as frogs and crawdads.

Cottonwood Creek is the single most important factor in the creation of the little town of Encinitas, beginning in 1881. It supplied water for the California Southern Railroad engines and was also a major source of water for early settlers.

Today the creek needs our help in bringing it back to a state of greater cleanliness and health. If you care about your community, and we hope you do, please join us.

Wear old clothes and bring work gloves. Extra hedge shears, shovels, and rakes would be helpful if you have them. Water and oranges will be provided. Check in is at 8:30 at the creek, on the southwest corner of Coast Highway 101 and B Street (Encinitas Blvd.). We hope to see you there.

This work is supported by a grant from the State of California Coastal Conservancy and is done with the support and cooperation of the City of Encinitas.

### WORK PARTY SCHEDULE

(All work parties are scheduled for Saturdays, 8:30 - 12:00.)

No.	Date	Work Planned
1	Oct. 10	General cleanup / trash removal
2	Oct. 24	Morning Glory and Honeysuckle
3	Nov. 14	Morning Glory and Honeysuckle
4	Nov. 21	Morning Glory
5	Dec. 5	Morning Glory, Fennel, Cocklebur
6	Dec. 12	Morning Glory, Cocklebur, Ice Plant
7	Jan. 2	Ice Plant, Castor Bean, Pampas Grass
8	Jan. 16	Castor Bean, Giant Cane Arundo
9	Jan. 30	Castor Bean, Arundo

The Cottonwood Creek Conservancy

Mark Wisniewski, Brad Roth, Kathleen O'Leary, and Ida Lou Coley

Questions? call (760) 436-2632

