

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



RECORD PACKET COPY

Staff: BP-SD
Staff Report: 3/15/99
Hearing Date: 4/13-16/99

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No: 6-93-175-A3

Used 8c

Applicant: Shea Homes

Agent: Keith Merkel

Original Description: Subdivision of 128 acres into 194 lots and 5 open space lots, and construct 194 homes with streets, parking, related improvements and mitigation for impacts to wetlands.

Proposed Amendment: After-the- fact approval of revisions to approved on-site mitigation program to include a reconfiguration of the open space system and substitutions of plant materials to better fit hydrologic conditions.

Site: Northwestern corner of El Camino Real and Camino Hills Drive, Carlsbad, San Diego County APN 212-050-22

Substantive File Documents: Certified City of Carlsbad Mello II Land Use Plan, CDP #6-93-175 (as amended), Various Mitigation and Monitoring Reports for Shea Homes

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed revisions to the mitigation program subject to a revised mitigation and monitoring plan and revised open space easement and a condition which requires that all previous conditions of approval remain in effect. In this way the revisions can be found to not result in a substantive change in the functions or values of the approved mitigation site and no net loss of wetland mitigation area.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval With Conditions.

The Commission hereby grants a permit amendment for the proposed development on the grounds that the development, as amended, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of

1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Monitoring/Maintenance 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, a revised monitoring program designed by a qualified wetland biologist and acceptable to the Executive Director. Said monitoring program shall be in substantial conformance with the provisions of the originally approved monitoring program, except it shall be revised to require the provisions of the monitoring program to be implemented for an additional 5 years.

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

2. Revised Offer to Dedicate Open Space Easement. Prior to the issuance of a coastal development permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "#3" and generally described as the revised 16.5 acre wetland and riparian areas identified in the submitted mitigation plan (Merkel and Associates, 1999), including the approved 100-foot buffer. Within the lower 50-foot buffer, one temporary desiltation basin is approved which will be revegetated with wetland and riparian plants as mitigation. Within the upper 50-feet of the buffer, the following are approved: the pedestrian trail and associated trail improvements, slopes associated with building pads, the proposed fence to discourage entry into the riparian area by pets and humans, and the wildlife undercrossing under "C" street to provide a connection between the upland chaparral habitat and the wetland habitats. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. Said open space easement shall prohibit any development, including but not limited to, alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

3. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-93-175 (as amended) not specifically modified herein, shall remain in full force and effect.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The applicant is requesting after-the-fact approval of revisions to the approved on-site mitigation program for a residential subdivision to include a reconfiguration of the open space system and substitutions of plant materials to better fit hydrologic conditions. The revisions are detailed below in the next section of this report.

The site contains approximately 16.5 acres of wetland and riparian habitat within a low-lying area in the site's northwest section along El Camino Real. The Commission approved the large residential subdivision with conditions relating to preserving and enhancing this area by requiring the project to conform to the recommendations of the submitted mitigation plan which included provisions for creation and enhancement of these resources. The Commission also approved a 5-year monitoring program, which included maintenance provisions and required the resource area and its buffer to be subject to an open space easement. The permit conditions were subsequently satisfied and the permit was released. However, the mitigation was not completed pursuant to the approved plan. Thus, the applicant is now requesting after-the-fact approval of the revised mitigation plan.

In CDP #6-93-175-A1 the Commission approved an amendment to allow grading within the rainy season subject to maintenance and monitoring requirements to ensure that Agua Hedionda Lagoon would be protected from erosion and sedimentation. In CDP #6-93-175-A2 an amendment was submitted to allow use of the approved open space site to provide mitigation area for the City of Carlsbad's Cannon Road project (CDP #6-97-11). The amendment was proposed to restore a dirt access road that is on the perimeter of the open space system to wetlands. However, the City withdrew that amendment; the City is currently securing other mitigation sites to mitigate Cannon Road impacts.

2. No waiver of Violation Although development has taken place prior to submission of this permit application in the form of a revisions to an approved wetland mitigation site, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that

may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Sensitive Habitat Areas. Policy 3-7 of the certified Mello II LUP provides:

Wetlands and riparian resources outside the lagoon ecosystems shall be protected and preserved. No direct impacts may be allowed except for the expansion of existing circulation element roads identified in the certified LCP and those direct impacts associated with installation of utilities. There must be no feasible less environmentally damaging alternative to the proposed disturbance; any allowable disturbance must be performed in the least environmentally damaging manner. Open space dedication of sensitive resource areas is required.

Mitigation ratios for any temporary disturbance or permanent displacement of identified resources also must be determined in consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service. Appropriate mitigation ratios shall be determined based on site-specific information. Specific Information shall include, but is not limited to, the type and size of the development and or proposed mitigations (such as planting of vegetation or the construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the designated resource. The California Department of Fish and Game and the United States Fish and Wildlife Service shall be consulted in such buffer determinations. Buffer zones shall be protected through the execution of open space easements and passive recreational uses are restricted to the upper half of the buffer.

Two modifications to the originally approved 16.5-acre wetlands and riparian mitigation plan have occurred without benefit of a coastal development permit (exhibit 2). First, to accommodate a change in the design of the subdivision, a section of the riparian enhancement area along the southernmost boundary of the mitigation site was not planted with oaks and riparian trees as originally approved. Mitigation acreage here was replaced at a 1:1 ratio with additional plantings along the western boundary of the mitigation site. Second, upon further review, it was found that an approved 0.44-acre riparian revegetation site in the northern section of the mitigation area could not be planted because of insufficient area. However, the 0.44-acre riparian revegetation site was recaptured by extending the revegetation area along an embankment towards a detention basin. The proposed revision will maintain the same acreage and ratios required in the original project, just in a different configuration. The California Department of Fish and Game and the U.S. Fish and Wildlife Service has found the proposed revisions results to be acceptable in that they will not result in a substantive change in the functions or values of the mitigation site. There has been no net loss of wetland mitigation area under these modifications to the original design.

The species composition was also modified at the 0.44-acre location. The arroyo willow, Palmer's Sage and Mexican elderberry were not ideally suited for the restoration area or the hydrological conditions of the site. Thus, sandbar willow was planted as a

replacement and is currently thriving at this location. The above changes have been reviewed and approved by the California Department of Fish and Game and the United States Fish and Wildlife Service. Again, the resource agencies found that the revisions did not result in a substantive change in the functions or values of the mitigation site and no net loss of wetland mitigation area occurred.

Special Condition #1 requires a revised maintenance and monitoring program be submitted. This condition requires that the proposed revisions to the mitigation plan conform with the provisions of the originally approved monitoring program, except it shall be revised to extend an additional 5 years from when the changes were implemented. Thus, the monitoring and maintenance requirements, shall extend until 2002 to assure success of the revised mitigation efforts.

Because the mitigation site has been reconfigured, the previously approved open space easement and the mitigation site need to be revised. Special Condition #2 provides that the approved open space easement regarding the 16.5-acre wetland and riparian mitigation site be revised to reflect the reconfiguration of the mitigation site. Special Condition #3 requires that all the previous conditions of this project, not modified herein, remain in effect. This will ensure that the modified areas will be treated consistent with the Commission's original approval regarding resource protection.

In summary, the applicant is proposing to revise a previously approved mitigation plan to better reflect site conditions. The revised plan does not change the required mitigation ratios or acreage originally required and has been found to be acceptable by the Resource Agencies in that the revised plan will still provide the same function and values required under the original plan. Therefore, the Commission finds that the proposal, as conditioned, is consistent with the resource protection policies of the certified Mello II LUP.

(6-93-175-A3 stf rpt)

SITE



VICINITY MAP.

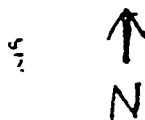
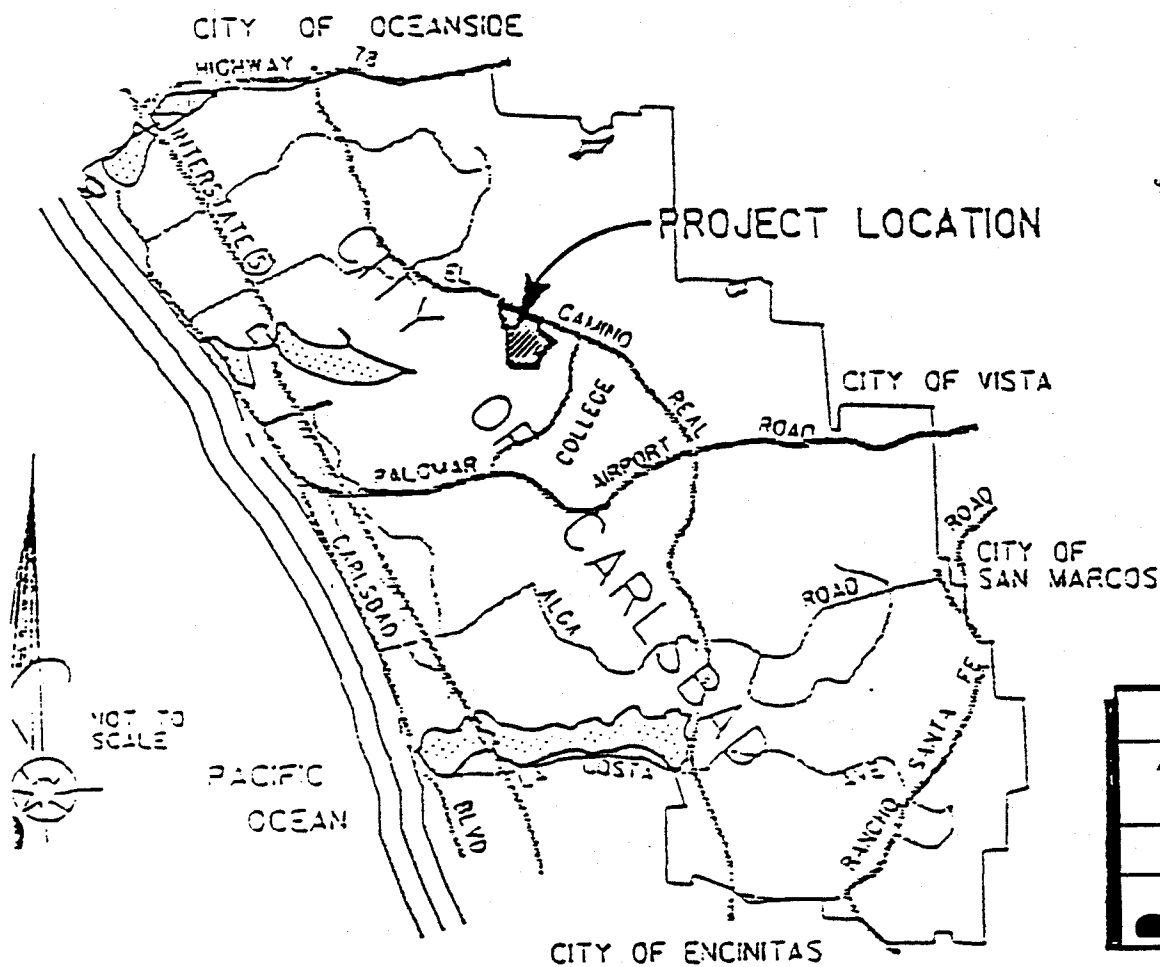


EXHIBIT NO. 1
APPLICATION NO.
6-93-175-A3
Location Map

California Coastal Commission

Legend

- Existing Riparian Scrub
- Existing Alkali Marsh
- Riparian Revegetation
- Riparian Enhancement
- Alkali Marsh Enhancement
- Existing Wetland Boundary
- Additional Wetland Plantings, Enhancement

P1 = Photo Points

Replacement Plantings

Wetland Planting Area Converted To Upland Habitat Area

(0.24 ac)

EXHIBIT NO. 2
APPLICATION NO.
6-93-175-A3
Site Plan








California Coastal Commission

Figure 2



Revised Open Space Easement
In Concept Only

P1 = Photo Points

-  Existing Riparian Scrub
-  Existing Alkali Marsh
-  Riparian Revegetation
-  Riparian Enhancement
-  Alkali Marsh Enhancement
-  Existing Wetland Boundary
-  Additional Wetland Plantings, Enhancement

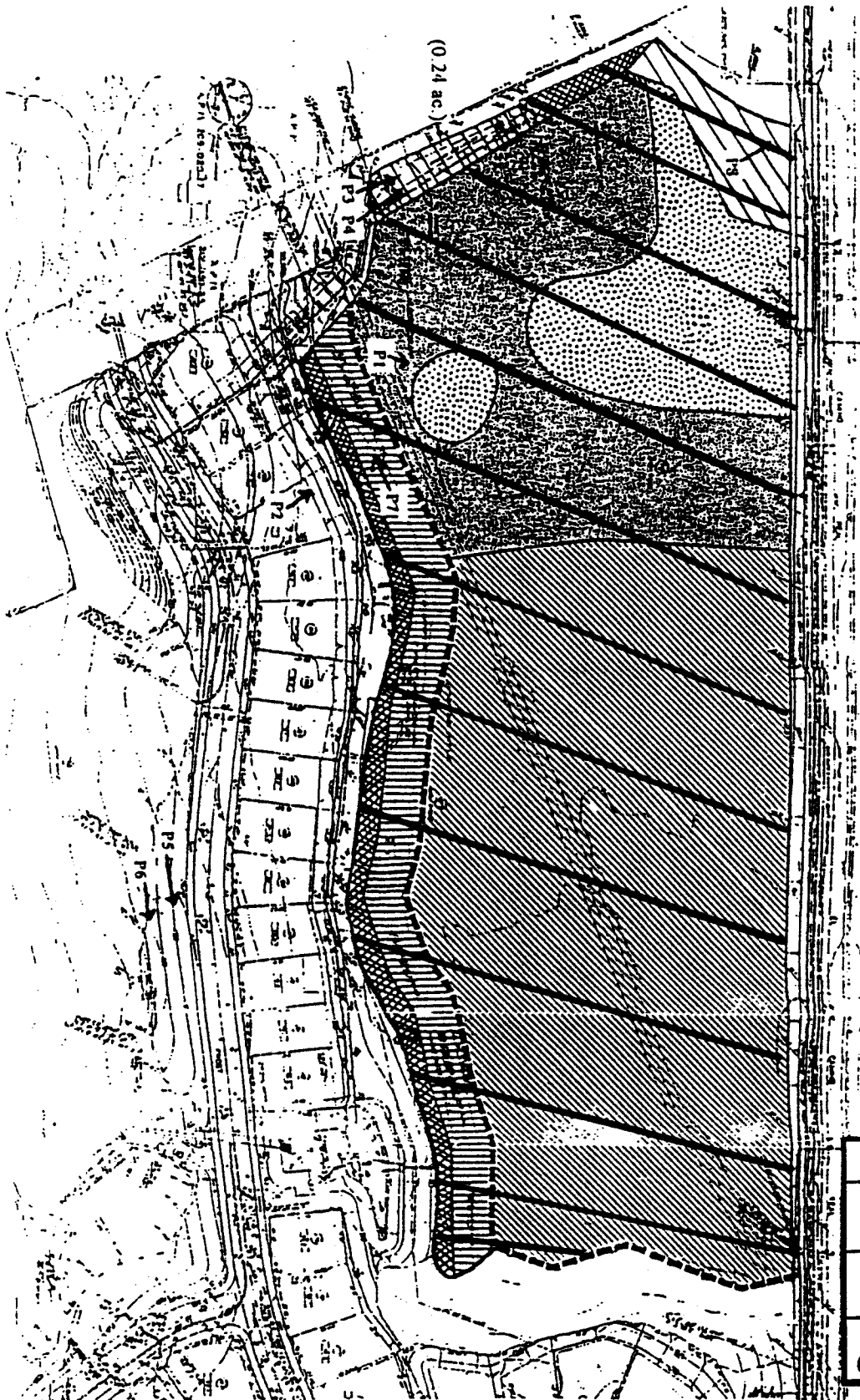


EXHIBIT NO. 3
APPLICATION NO.
6-93-175-A
Revised Open
Space Easement