

CALIFORNIA COASTAL COMMISSION

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



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Filed: May 4, 1999
 49th Day: June 22, 1999
 180th Day: October 31, 1999
 Staff: DL-SD
 Staff Report: May 19, 1999
 Hearing Date: June 7-11, 1999

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-45

Applicant: Steven Cohen

Agent: Doug Fess

Description: Construction of an approximately 4,909 sq.ft. two-story single-family residence including an attached 3-car garage on a vacant lot.

Lot Area	9,484 sq. ft.
Building Coverage	2,500 sq. ft. (27%)
Pavement Coverage	600 sq. ft. (6%)
Landscape Coverage	6,384 sq. ft. (67%)
Parking Spaces	3
Zoning	Estate Residential
Plan Designation	Estate Residential (2 du/ac)
Ht abv fin grade	25 feet

Site: 1138 Solana Drive, Solana Beach, San Diego County. APN 298-371-27-09

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance;
 CDP #6-86-249, #6-87-246, #6-88-514.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed residential construction, with a special condition requiring recordation of a deed restriction requiring a permit for all future improvements within the area currently designated as open space by the City of Solana Beach and the homeowners association. The project will not result in any direct or indirect impacts to steep, naturally vegetated slopes, or to the visual quality of the surrounding residential neighborhood.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed 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.

The permit is subject to the following conditions:

1. Future Development Deed Restriction. The subject permit is only for the development described in coastal development permit No. 6-99-45. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not to apply to future development that is proposed to be located outside of the 9,484 sq.ft. graded pad area identified as RU-9 on the Solana Hills Estates Condominium Plan and shown on Exhibit 5 of coastal development permit No. 6-99-45. Accordingly, any future improvements to the existing single-family residence which are proposed within the area shown on Exhibit 5, shall require an amendment to permit No. 6-99-45 from the California Coastal Commission.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves construction of an approximately 4,909 sq.ft. two-story single-family including an attached 3-car garage. The 9,484 sq. ft. lot is located west of Solana Drive, approximately 1/3 mile east of Interstate 5 in the city of Solana Beach. The site is part of a 10-lot subdivision which is condominium-type ownership. The subject site is one of two lots in the subdivision fronting on Solana Drive; the other eight lots are located above the site to the east, along the top of a slope accessed by San Julio Drive.

The Commission has a considerable permit history on the subdivision, beginning with CDP #6-83-652, for the construction of a 15-unit Planned Residential Development and miscellaneous improvements approved in December 1983; CDP #6-86-249, approved in June 1986 for grading and construction of 15 condominium units and tennis court; and CDP #6-87-246, approved in June 1987 for a 15-unit Planned Residential Development, site preparation and construction of an access road. No development occurred pursuant to any these permits. However, as a condition of approval for CDP #6-87-246, both the City of Solana Beach and the Commission imposed restrictions on the developable area of the project site and required that the steep, naturally-vegetated portions of the site be protected through an open space deed restriction, which was subsequently recorded.

Development on the site did eventually occur through CDP #6-88-514, approved in December 1988, for the subdivision of the site into 10 residential lots known as Solana Hills Estates, and rough grading of a building pad on each parcel. This permit required recordation of an open space deed restriction that was different from the one required by the previously approved permit. The revised open space required by CDP #6-88-514 was more protective of the naturally vegetated areas and steep slopes on the site. (This open space was required in part because the City had required it in its local approval of the project.) This deed restriction was also recorded, superceding the previous one, and the permit was issued (see Exhibit #3).

Since the approval of CDP #6-88-514 in December 1988, a number of applications for the construction of individual residences within this subdivision have been reviewed by the Commission. Comparisons of the grading plans approved by CDP #6-88-514 and the "as-built" grading plans for individual lots revealed that many portions of the subdivision had not been graded consistent with CDP #6-88-514 and that grading had taken place in the required, approved open space area.. During the review and analysis of a previous development application for a property in the subdivision, Commission staff contacted the City of Solana Beach in order to determine the City's records of open space on the site. The City stated that their records show that the open space deed restriction for the subdivision that was recorded pursuant to CDP #6-88-514 was subsequently revised without the Commission's approval. Unlike the required open space easement, the new, unapproved easement, (which was approved by the City of Solana Beach), resulted in no open space areas being located within the property boundaries of any of the eight individual lots on the upper portion of the subdivision site; only the areas beyond the individual lot lines were placed in open space. On the lower two lots, including the subject site, the new open space area does include area within the lot line but the

boundaries of the open space are slightly different than what was required by the Commission's under CDP #6-88-514. (see Exhibit #4).

It is unclear why or how the boundaries of the open space area were revised other than the fact that such a revision was never approved by the Commission. As a matter of note, the subdivision has been the subject of numerous problems over recent years and the property has been sold several times due to bankruptcies of previous owners. As a result of a foreclosure, each of the lots are being sold off piece-meal and have been receiving individual coastal development permits. In several cases in the review of these permits, some inconsistencies have been noted between the approved building pad and open space and the as-built development, but generally, new development that has been proposed has been confined to the existing building pads as graded.

In April 1996, the Commission approved an application by the Solana Hills Estates Homeowners Association to re-subdivide the site to convert the 10 lots from condominium ownership to fee simple ownership, and to delete the two lower lots, including the subject site, from any common interest ownership in the subdivision. In its review of the project, the Commission found that the open space deed restriction recorded after, and in conflict with, the open space boundaries approved through CDP #6-88-514, did provide for adequate protection of the steep, natively-vegetated slopes on the project site, and thus, could be found consistent with the resource protection policies of the Coastal Act. Therefore, the Commission required as a condition of approval, that the homeowners association record a new deed restriction superceding the one recorded for CDP #6-88-514, which would mirror the deed restriction approved by the City of Solana Beach subsequent to the Commission's approval. In this manner, the discrepancy between the two recorded open space areas, and the subsequent grading violations would be resolved, and the Commission would be a party to the recordation.

However, the re-subdivision and conversion of the lot to fee simple ownership never occurred, and the permit expired without the newly approved open space deed restriction being recorded. Thus, the two violations of CDP #6-88-514 continue to occur. One is the recordation of an open space deed restriction that supersedes, and conflicts with the deed restriction required by CDP #6-88-514 and the other is the grading of building pads which has occurred inconsistent with the grading plans approved by CDP 6-88-514.

2. No Waiver of Violation. Although development has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the certified Local Coastal Program. Approval of the permit does not constitute a waiver of any legal action with regard to any 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. Consistency with Chapter 3 Policies. Section 30240 of the Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30251 of the Act states in part:

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

The subject site has been rough graded, and, as proposed, no portion of the residence will extend beyond the graded pad. Outside of the pad area, the site is hilly, but is generally less than 25% (steep) in grade. It appears that the building pad was graded based upon the unapproved open space deed restriction. The graded building pad is not identical to the grading approved by CDP #6-88-514, and encroaches slightly into the open space required by that permit. However, the encroachment is minor, and all of the area outside of the graded pad, even areas which are not steep, has been placed in open space. Thus, overall, more area has been protected on the subject site than would be under the approved open space.

Because the protected open space area on the site is area owned in-common by the homeowners association, the Commission is not requiring that the subject applicant re-record the open space easement with the Commission as a party. The Commission will continue to follow-up on the grading violation and discrepancy in open space deed restrictions on the entire subdivision site under a separate permit or enforcement action.

However, in order to maintain the trade-off between the open space that was encroached upon, and the area which is preserved under the revised open space, Special Condition #1 requires the applicant to record a deed restriction which provides that the exemptions to coastal development permits otherwise provided in Public Resources Code section 30610(a) shall not apply to development located outside of the 9,484 sq.ft. graded pad area owned by the applicant and shown on Exhibit 5 of coastal development permit No. 6-99-45. In this manner, normally exempt activities may still occur on the site, as long as they are located within the previously disturbed graded pad. However, future owners will be aware that no development may occur outside of the pad area.

With regard to protection of the steep, natively vegetated slopes on the site, in recent years, the issue of fire safety in areas of "wildland/urban interface" has become increasingly pertinent. Local governments and fire departments/districts have become increasingly aware of the need to either site new development away from fire-prone vegetation, or to regularly clear vegetation surrounding existing structures (ref. Section 4291 of the Public Resource Code). Since fire department requirements for vegetation thinning and clear-cutting can adversely effect coastal resources, the Commission has in many past actions included a 30-foot brush-management zone around proposed structures when calculating the amount of proposed encroachment on steep, naturally vegetated-slopes, with the idea that vegetation at least 30 feet from any structure may have to be cleared to meet fire safety regulations.

In the case of the proposed project, no portion of the residence would encroach beyond the previously graded pad, and thus, there would not be any direct encroachment into steep naturally vegetated slopes. However, the structure would be located a minimum of approximately 10 feet away from steep slopes and native vegetation located in the common area outside of the subject lot. In past projects involving fire department requirements for brush clearance, fire districts have allowed in some cases, depending on the topography of the site, the incorporation of appropriate construction materials into the proposed development, etc., less or no clear-cutting except immediately around structures, with selective thinning of vegetation required further away from the structures. The Solana Beach Fire Marshal has reviewed the plans for the proposed project and has indicated in this particular case, because the hillside nearest the structure slopes upwards, such that fire would travel away from the structure, there is no need to do any clearing of vegetation beyond the graded pad. As such, the native vegetation on the site will not be adversely impacted by any brush-management. Therefore, the Commission finds that the proposed residential development can be found consistent with the resource protection policies of the Coastal Act.

The proposed site is not visible from any scenic areas and the proposed home will be similar in size and character to other homes in the surrounding area. The open space deed restriction on the site will protect the natural vegetation and landform on the site. Therefore, the proposed project can be found consistent with the scenic and natural resource protection policies of Chapter 3 of the Coastal Act.

4. 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 site is designated Residential with a maximum allowable density of 2 dwelling units per acre in the City of Solana Beach General Plan and Zoning Ordinance, and in the previously certified County of San Diego LCP, which the Commission uses for guidance in review of new development in Solana Beach. The proposed single-family residence will be consistent with the certified County LCP and the City's designation. The site is

located within the unsewered overlay identified in the County LCP; however, the site will be fully sewerred, and thus, the provisions of this overlay do not apply. As proposed, the project is consistent with all applicable Chapter 3 policies of the Coastal Act. No adverse impacts to any coastal resources are anticipated as a result of this development. Therefore, the Commission finds the proposed development will not prejudice the ability of the City of Solana Beach to prepare a certifiable local coastal program.

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

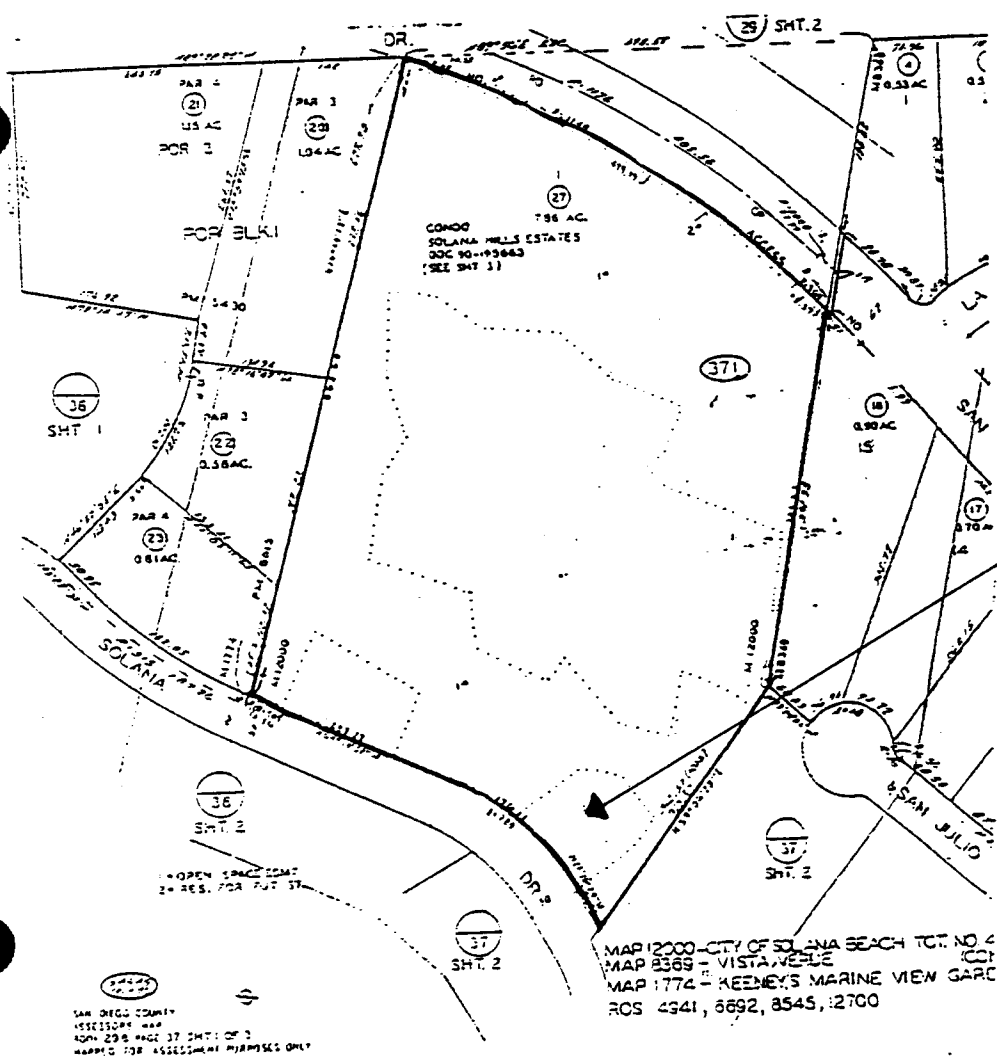
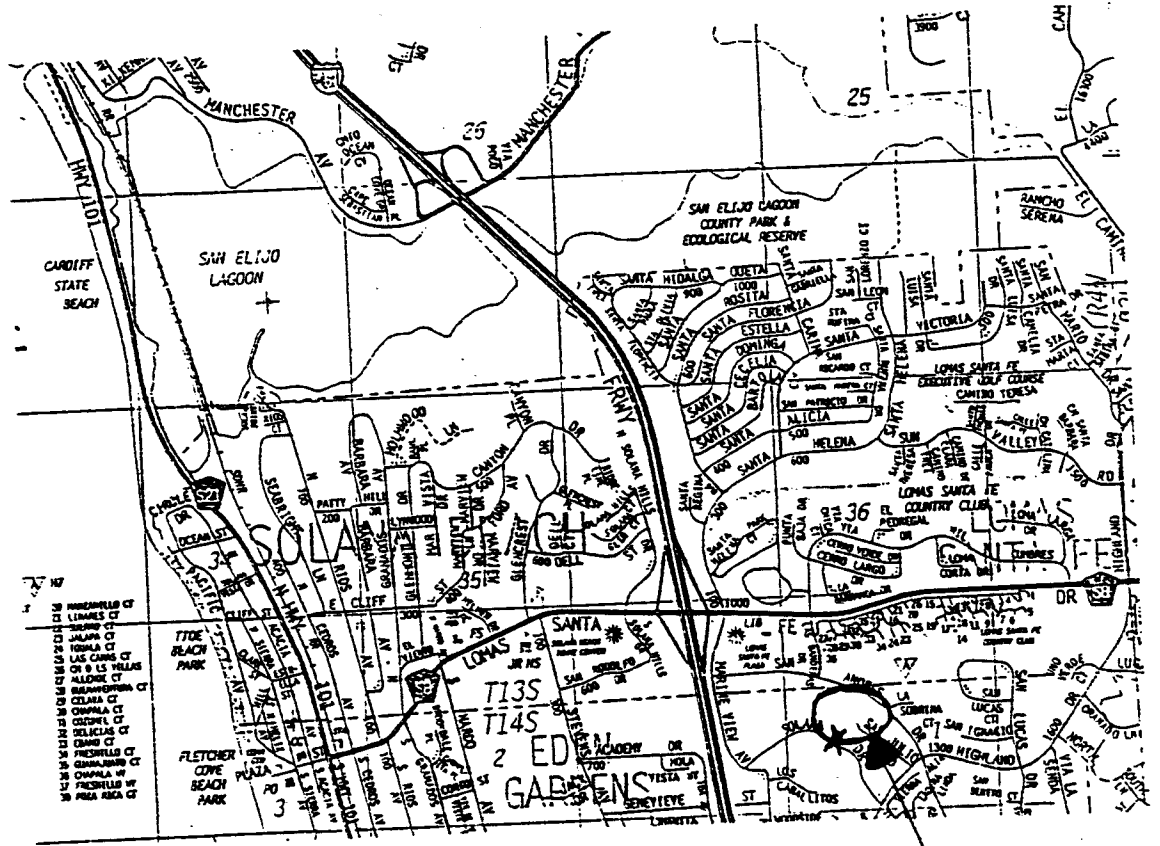
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A)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

The proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures, including a condition addressing future development within the open space area, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project 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.



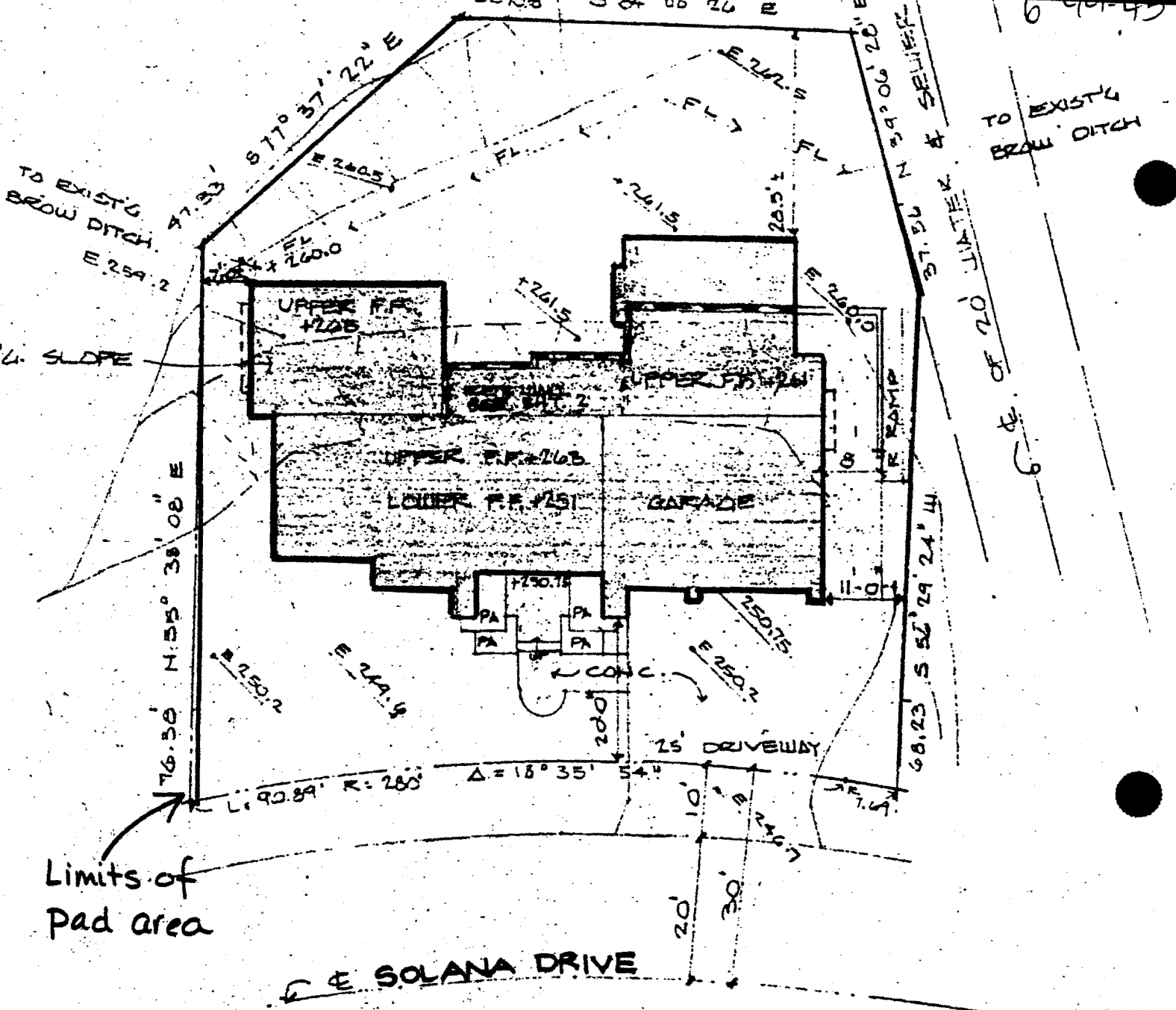
Site

EXHIBIT NO. 1
APPLICATION NO.
6-99-45
Location Map

MAP 12000-CITY OF SOLANA BEACH TOWN NO 4
 MAP 8569 - VISTA VEGLE
 MAP 1774 - KEENEY'S MARINE VIEW GARC
 RCS 4941, 6692, 8545, 12700

SAN DIEGO COUNTY
 ASSISSTANT MAP
 10/11/2008 PAGE 37 SHT. 1 OF 2
 MAPS FOR ASSESSMENT PURPOSES ONLY

6-99-45



Limits of Pad area

E SOLANA DRIVE

NOTE
SITE



SITE / GRADING

EXHIBIT NO. 2
APPLICATION NO.
6-99-45
Site Plan
California Coastal Commission



Example of proposed site of
 same location as per the site plan
 No. 5-16-16, passed 10-25-1966

that under the TP, the
 proposed roads should
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that under the TP, the
 proposed roads should
 and side stop on (10-25-1966)



DELIVERED OCT 24 1968

site plan

EXHIBIT NO. 3
 APPLICATION NO.
 6-99-45
 Original Open Space
 Deed Restriction
 California Coastal Commission

APPLICANT'S NAME: SOLANA HILLS ESTATES
 DATE OF PREPARATION: 10/17/83
 DRAWN BY: [Name]
 SCALE: AS SHOWN
 LEGAL: [Text]
 ADDRESS: [Text]
 STREET: [Text]
 CITY: [Text]
 COUNTY: [Text]
 STATE: [Text]

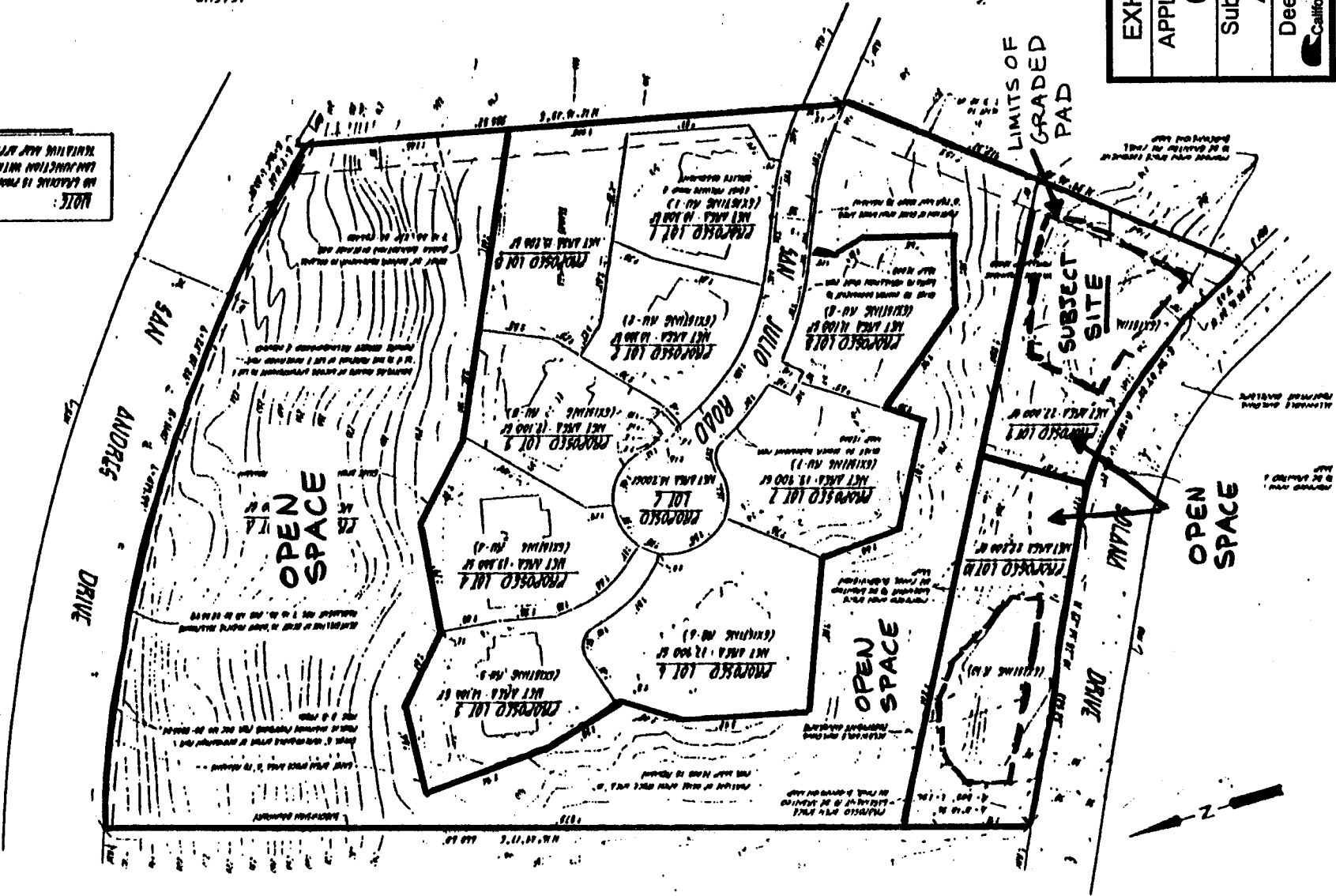
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 EXHIBIT NO. 4

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EXHIBIT NO. 4
 APPLICATION NO.
 6-99-45
 Subsequent (Not
 Approved)
 Deed Restriction
 California Coastal Commission

NOTE:
 NO EXISTING IS SHOWN IN
 THIS SECTION WITH THIS
 EXCEPT AS NOTED



SOLANA HILLS ESTATES: WESTING TENTATIVE SUBDIVISION MAP

SOLANA HILLS ESTATES

CONDOMINIUM PLAN

SHEET II OF 13 SHEET

