

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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**TH 14a**

Staff: EL-SD  
Staff Report: May 10, 1999  
Hearing Date: June 8-11, 1999

REVISED CONDITIONS AND FINDINGS

Application No.: 6-98-124

Applicant: BRE Properties

Agents: Nancy Lucast; Janay  
Kruger; Joe Wong

Description: Redevelopment of an approximately 40-acre site located partially within the coastal zone, including approximately 30,000 cu.yds. of grading necessary for reclamation of an existing sand mining operation and construction of 348 apartments, recreation and fitness buildings, retaining walls, installation of sewer and water lines, 818 parking spaces, and on- and off-site road improvements to Carmel Creek Road. The project also includes the on-site creation of a 0.12-acre mitigation site and a 0.09-acre mitigation site to address 0.04-acres of off-site wetland impacts associated with the road improvements, offers to dedicate open space easements over both mitigation sites, and funding for enhancement of an off-site 0.12-acre area of degraded riparian habitat within Torrey Pines State Reserve Extension.

Lot Area	1,230,688 sq. ft. (coastal zone portion only)
Building Coverage	184,072 sq. ft. (15%)
Pavement Coverage	298,501 sq. ft. (24%)
Landscape Coverage	229,697 sq. ft. (19%)
Unimproved Area	518,418 sq. ft. (42%)
Parking Spaces	818
Zoning	MF-2/OS
Plan Designation	Low Medium Density Residential/Open Space
Project Density	8.7 dua
Ht abv fin grade	43 feet

Site: Southern terminus of Carmel Creek Road, south of Route 56 in Carmel Valley Neighborhood 8, North City, San Diego, San Diego County.  
APN 307-051-06

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Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on April 14, 1999, approving the development with special

conditions. The Commission's approval includes two additional mitigation components, as proposed by the applicant at the public hearing and described above.

Date of Commission Action: April 14, 1999

Commissioners on Prevailing Side: Daniels, Dessler, Dettloff, Flemming, Kehoe,  
McClain-Hill, Orr, Potter, Reilly and Chairman  
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Substantive File Documents: Certified Carmel Valley Neighborhood 8 Precise Plan and  
City of San Diego LCP Implementing Ordinances;  
SCH No. 97091020 (Environmental Impact Report);  
CDFG Streambed Alteration Agreement No. 5-223-98;  
ACOE Sec. 404 Permit Authorization No. 982008200-DZ

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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. Revised/Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final plans for the permitted development; some of the required plans are further addressed in subsequent conditions. Said plans shall be revised to reflect the amended project description, which provides for two on-site mitigation areas that include a minimum fifty (50) foot buffer between the area credited as wetlands mitigation and all development (i.e., buildings, parking areas, pavement, etc.), except the grading required to prepare the wetlands, buffers and adjacent

development areas. The plans shall also identify the location of a fence around the wetland/buffer areas sufficient to prevent intrusion by people and domestic animals. Required final plans shall include:

- a. Site plan, building plans and elevations;
- b. Plans for the Carmel Creek Road improvements;
- c. Grading, drainage and runoff control plans;
- d. A landscaping plan; and
- e. A mitigation and monitoring plan/program incorporating the two proposed on-site mitigation areas and addressing funding of the proposed off-site wetlands enhancement area.

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

2. Mitigation and Monitoring Plan/Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a final revised mitigation and monitoring plan designed by a qualified wetland biologist. Said program shall be in substantial conformance with the concepts included in the "Wetland Creation Plan" submitted with this application by RECON, dated May 6, 1998, but shall be revised to include the following:

- a. Revised exhibits reflecting the amended project proposed by the applicant and fencing required in Special Condition #1 above. The fence for the second wetlands creation area (Exhibit #4) shall be located in the upper half of the buffer (that portion furthest from the wetland habitat);
- b. Submittal, within 30 days of completion of construction (i.e., grading and planting) at the on-site mitigation sites, of an as-built assessment of the mitigation project that includes as-built plans, to determine if the project has been built as proposed.
- c. Substitution of the performance standards required in Condition #19 of streambed alteration agreement No. 5-223-98 from the California Department of Fish and Game for the standards in Table 3 on Page 11 of the May 6, 1998 plan.

- d. Submittal of annual monitoring reports to the Executive Director of the Coastal Commission, the California Department of Fish and Game and the U.S. Army Corps of Engineers, as well as to the City.
- e. Submittal of evidence of a commitment to fund enhancement of a 0.12-acre area in the Torrey Pines State Reserve Extension satisfactory to the California Department of Parks and Recreation, as proposed by the applicant.

The permittee shall undertake mitigation and 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 approved program shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Conservation and Open Space Easement. No development, as defined in Section 30106 of the Coastal Act shall occur in the 0.12-acre wetlands mitigation site and the 0.09-acre mitigation site and fifty-foot buffer as shown in Exhibits No. 3 and 4 except for initial grading and planting and maintenance activities conducted in accordance with the approved monitoring program.

PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the U.S. Army Corps of Engineers, to another public agency, or to a private association approved by the Executive Director, open space and conservation easements for the purpose of habitat conservation. Such easements shall be located on the 0.12-acre wetlands mitigation site and the 0.09-acre mitigation site and its associated fifty-foot buffer, as shown in Exhibits No. 3 and 4. The recorded document shall include legal descriptions of both the applicant's entire parcel(s) and the easement areas. The recorded document shall also reflect that development in the easement areas is restricted as set forth in this permit condition.

The offers shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offers shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

4. Open Space Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur on the natural, undisturbed and manufactured, restored/revegetated steep slopes outside the development area of the site as shown in Exhibit No. 5 except for:

- a. minor regrading/recontouring of portions of the existing manufactured slopes,
- b. restoration/replanting of the existing manufactured slopes,

c. ongoing maintenance activities within existing utility easements,

AND

d. installation of drainage facilities on portions of the existing manufactured slopes.

PRIOR TO THE 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 restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the 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 required.

5. Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a detailed final landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. The plan shall be reviewed in consultation with the resource agencies identified below and shall include the following specific features:

- a. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible;
- b. Only native plant materials acceptable to the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (Service) and U.S. Army Corps of Engineers (Corps) shall be used within the created wetlands, its buffer area, the desiltation/detention basin, and adjacent to undisturbed steep slopes;
- c. Restoration/revegetation of the existing manufactured slopes shall include only native plant materials compatible with the plant communities on adjacent natural areas; and
- d. For visual purposes, special emphasis shall be placed on the treatment of all portions of the site which would be visible from public roads and recreation areas in Carmel Valley. Said treatment shall include complete revegetation of the north-facing manufactured slopes and provision of a row of trees which, at maturity, will serve to break up large expanses of wall or roof within the identified viewshed.

The permittee shall undertake development in accordance with the approved final landscaping plan and submit a written commitment that all planted materials shall be

maintained in good growing condition. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Grading/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 and erosion control plans that have been approved by the City of San Diego. The approved plans shall incorporate the following requirements:

- a. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. 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 during construction.
- b. Landscaping shall be installed on all cut and fill slopes prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. 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, subject to Executive Director approval.

The permittee shall undertake development in accordance with the approved grading and erosion control plans. Any proposed changes to the approved landscaping 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. Water Quality/ Best Management Practices (BMPs). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a BMP program for the proposed development. At a minimum, the program shall incorporate the following requirements:

- a. All storm drain inlets shall have stenciling that prohibits the disposal of trash in the drains;
- b. Solid waste shall be removed regularly and trash receptacles shall be placed adjacent to all parking areas and common facilities;
- c. Containers for collection of recyclable materials shall be placed in a common location (in or near the recreation building, for example); and
- d. Sweeping of all paved surfaces shall occur at least once a week.

The submitted program shall include, at a minimum, a site plan that shows the location of all storm drains, trash receptacles, and recycling containers; and schedules for street sweeping and trash removal. The program shall also include a copy of the stenciling that will be placed on the curb of each storm drain inlet.

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

8. Lagoon Enhancement Fund. PRIOR TO THE ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence for the review and written approval of the Executive Director, that the \$16,683.48 contribution to the Los Penasquitos Lagoon Enhancement Fund, as required in the special conditions of the local approvals and thus proposed herein, has been paid.

9. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or amendment to this permit shall be obtained prior to the disposal. If no export is required (i.e., if grading is balanced on site), written confirmation of this fact is sufficient to satisfy this condition.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing redevelopment of an approximately 40-acre site, currently used for sand mining. After the reclamation activities described below conclude, the applicant proposes construction of 348 apartment units in sixteen two- and three-story buildings. These will contain a mix of one-, two- and three-bedroom apartments. The development includes the provision of 818 parking spaces, which will be provided in a combination of attached garages, covered carports and surface parking. Also proposed is a fitness building and a recreation building, which will include the leasing offices for the complex; these buildings are both one story in height. Proposed accessory improvements include retaining walls, installation of sewer and water lines, landscaping, on-and off-site improvements to Carmel Creek Road, including terminating the road in a cul-de-sac at the northwestern corner of the site and construction of a desiltation basin adjacent to one of the created wetlands described below.

The proposal includes a three-component mitigation package to address off-site wetland impacts associated with the road improvements. First, the applicant proposes the on-site creation of a 0.12-acre wetland mitigation site nearby the northwest entrance to the project. Due to the mitigation site's proximity to proposed apartment buildings and

associated development, only 0.03 acres of this site will be credited as mitigation for project impacts. The remaining 0.09 acres is within fifty feet of the proposed buildings and associated development; this portion of the created wetlands represents the required buffer area. Second, the applicant proposes the on-site creation of a 0.09-acre wetland mitigation site located slightly east of the southwestern corner of the property, with a full fifty-foot buffer between the created wetlands and all proposed development. Third, the applicant proposes to fund the off-site enhancement of 0.12 acres of degraded riparian habitat within the Torrey Pines State Reserve Extension. No development is proposed within the on-site wetlands mitigation areas except the grading, planting and maintenance required to create the sites and achieve successful mitigation. The proposal also includes offers to dedicate open space easements over the mitigation sites.

The subject property is located in Carmel Valley Neighborhood 8. The site is in a deferred certification area of the City of San Diego. Recently, the City of San Diego submitted Local Coastal Program (LCP) Amendment #3-98, which incorporates the site into the LCP. The Commission certified the amendment with suggested modifications in March 1999. The modifications have not yet been accepted by the City and therefore certification of the amendment is not yet effective. Accordingly, the Commission retains coastal development permit authority and must review the development for consistency with Chapter 3 policies of the Coastal Act, with the LCP as guidance. The LCP amendment designates approximately seventeen acres of the site for multi-family residential development and the remainder for open space.

Currently the property is the site of a sand-mining operation and overall gives the appearance of a bowl or pit surrounded by very steep, manufactured and natural slopes. The application includes the minor regrading of existing manufactured slopes and revegetation as necessary to reclaim the areas now being mined and make the site suitable for the proposed residential development. A total of approximately 30,000 cu.yds. of grading (26,500 in the coastal zone) is proposed. Although the application indicates the grading will be balanced on-site, more recent conversations with the applicant indicate there may be excess graded materials. Special Condition #7 addresses this possibility and requires the applicant to identify, and demonstrate appropriate permits for, any off-site disposal areas. The area to be left in permanent open space (approximately twenty-two acres) will include both the remaining undisturbed, natively-vegetated steep slopes (which occur mostly along the western and eastern edges of the site, and restored slope areas which are currently part of the mining operation; some minor drainage facilities will be constructed at the base of restored slopes to control drainage onto the developable portion of the site.

Approximately two-thirds of the site is within the coastal zone, including nearly all the area to be developed. The coastal zone boundary, as shown on Exhibit No. 2 (site plan - development area), cuts diagonally across the site, trending from the southwest towards the northeast, with the coastal zone being that portion of the site north of the line. Buildings 1-11 and 15-18 are entirely within the coastal zone and at least portions of Buildings 12-14 are also within the coastal zone. Accessory improvements such as driveways, parking spaces and landscaping, the first wetland creation site, desiltation



basin, and approximately half the designated open space are within the coastal zone. Portions of Buildings 12-14, along with some proposed landscaping, driveways, a few parking spaces and the second wetlands creation area, all located in the more southern portion of the site, are outside the coastal zone, along with the remaining half of the area designated as open space.

2. Wetlands/Sensitive Biological Resources. The following Chapter 3 policies of the Coastal Act apply to the subject proposal and state in part:

**Section 30233**

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, 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:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities....

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

**Section 30240:**

(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.

Although there are areas of coastal sage and maritime chaparral habitat on the property, all proposed improvements will occur in the portions of the site previously disturbed by the sand mining operation. All the naturally vegetated steep slopes are proposed to be permanently retained in open space. Moreover, significant areas of disturbed land, particularly in the southern portion of the site (i.e., primarily outside the coastal zone), are being restored and revegetated. These slopes will also be retained as open space. Thus, the proposed development will not encroach into any areas of existing sensitive hillside habitat. Potential construction impacts to nesting birds have been addressed in the permit issued by CDFG (No. 5-223-98).

The project will result, however, in permanent impacts to 0.04 acres of existing riparian/freshwater marsh habitat, due to the construction of required off-site road improvements. Carmel Creek Road is the only access to the project site and exists as a narrow, unpaved street at this southern terminus. It is a four-lane major street north of, and at its interchange with, State Route 56, which is about a third of a mile north of the subject site. Just slightly south of the interchange, the pavement narrows significantly, and the unstriped, paved road cannot accommodate more than a single line of traffic in each direction; the pavement ends approximately 500 feet northwest of the subject site. The applicant proposes to widen the street to accommodate the residential traffic that will be generated by the proposed development and to allow for emergency vehicles to access the site. The street would be widened to a width of forty feet, within a sixty-foot right-of-way. The recently approved LCP amendment provides that Carmel Creek Road will continue south of State Route 56 as a two-lane collector street, and will cul-de-sac at the subject site.

There is a drainage course which runs along the west side of the existing dirt road; the drainage area supports a mixture of riparian and exotic vegetation, plus a few cattails. The principal water source for the drainage appears to be the truck-washing operation which is conducted in conjunction with the sand mining on the subject site. The drainage channel has been modified in the past and is approximately four feet deep and ten feet across, with side slopes that appear to have been engineered. However, since the dirt road exists in a natural depression between hills, it is likely that some water would flow intermittently in this general area even without the assistance of the mining activities.

The proposed road improvements will impact (remove) 0.04 acres of the existing drainage channel with its mixture of wetland and exotic vegetation. As such, Section 30233 of the Coastal Act is applicable. As cited above, under the Coastal Act, disturbance and/or fill of wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill of coastal waters and wetlands. These are:

- 1) That the project is limited to one of the eight stated allowable uses;
- 2) That the project has no feasible less environmentally damaging alternative; and,
- 3) That adequate mitigation measures have been provided to minimize adverse environmental effects.

In this particularly case, the proposed development meets the above requirements. The widening and paving of an existing road, which has been certified as a circulation element road in past Commission LCP actions, is considered an incidental public service project, which is one of the above-cited permitted uses. Without the proposed road improvements, the site cannot be developed with residential uses. Moreover, there is existing private development immediately to the northeast of the existing dirt road, such that the road cannot be widened in that direction. Therefore, the only alternative is to widen the road to the southwest, where the drainage course exists. The decision to end the road in a cul-de-sac on the subject site also significantly reduces potential adverse impacts on environmentally sensitive lands. Several planning documents certified by the Commission prior to its recent action on the updated Neighborhood 8 Precise Plan identified Carmel Creek Road as a four-lane collector street crossing the entire subject site from north to south and connecting with Carmel Mountain Road/El Camino Real to the south in the Sorrento Hills community. Improving the road along that previously certified alignment would have resulted in the removal of many acres of sage and chaparral habitats and the fragmentation of Multiple Species Habitat Area lands. It would almost certainly have resulted in greater direct wetland impacts as well, since the roadway would be much wider (four lanes instead of two) where the proposed wetland impacts will occur. Thus, terminating the road at the subject site, and reducing it in size from four lanes to two, minimizes wetland impacts and results in the least environmentally damaging alternative.

As noted, once the proposed impacts have been found to be permitted and minimized, all remaining unavoidable impacts must also be mitigated. A 3:1 mitigation ratio is typically applied to impacts on riparian vegetation, which constitutes the majority of impacted species in this proposal. Mitigation ratios for freshwater marsh have varied significantly in past Commission actions, with anywhere from 1:1 up to 4:1 mitigation required, based on site-specific circumstances and the marsh species being impacted. In this case, cattails are the only freshwater species present and the drainage course overall is considered to be of relatively low quality, due to the presence of many exotics (pampas grass and eucalyptus, among others).

To mitigate for the removal of wetland species, the applicant is proposing a three-component mitigation package, including two on-site wetlands creation areas and funding of off-site enhancement in the Torrey Pines State Reserve Extension. The applicant is proposing to construct a 0.12-acre and a 0.09-acre wetlands on the project site. The first will be located near the northwestern corner of the property, just south of the Carmel Creek Road cul-de-sac and west of proposed Building 15; the second will be located near the southwestern corner of the site between proposed Buildings 13 and 14. The applicant is further proposing to fund the enhancement of one of several degraded riparian areas within the Torrey Pines State Reserve Extension.

The first component is to create a 0.12-acre wetlands within the subject property near the entrance of the development site. The area will be appropriately graded and planted with riparian and freshwater marsh species, and a portion of the property's drainage will be directed into the mitigation site to provide a water source. From the wetlands, drainage will flow into the proposed desiltation basin and from there into the municipal storm drain system. Thus, the created wetland was initially designed by the applicant with the intent to not only provide replacement habitat at a 3:1 ratio, but also to filter runoff and thus improve downstream water quality.

However, the Commission has typically found that development within 100 feet of wetlands (freshwater or saltmarsh) or 50 feet of riparian vegetation areas will adversely impact the wetland. The wetlands impacted by the off-site road improvements consist of mostly riparian and exotic vegetation, with a few cattails present as well. The purpose of establishing a buffer area between wetlands and development is to reduce the amount of human and domestic animal intrusion into sensitive vegetation, to reduce the impact of human activity on native wildlife species, to provide an area of land which can filter drainage and runoff from developed areas before it impacts the wetlands, and to provide an upland resting retreat area for some wetland animal species.

The first proposed mitigation site is surrounded by naturally vegetated steep slopes to the south and west, the proposed desiltation basin to the north and residential development to the east. The on-site steep slopes are to be retained as open space, and are part of a larger area of open space (MHPA) lands extending to the west and south. The desiltation basin to be located just north of the created wetlands will serve as a buffer in that direction. However, to the east, the nearest proposed apartment building is located within a few feet of the proposed wetland site, approximately twenty feet from the top of the created wetlands side slope. A significant elevational difference (generally at least ten feet) between habitat and active use areas can sometimes support a reduced buffer width; in this case, as currently designed, there would only be a four-foot elevational difference between the lowest wetland elevation and the graded pad for the residential structure. The Commission finds this is not a sufficient elevational difference to act as a vertical buffer and thus warrant a reduced horizontal buffer between the created wetlands and residential uses.

In response to this concern, the applicant has modified the proposal to acknowledge that those portions of the original wetlands creation site within fifty feet of the proposed residential development would not count as mitigation, but would constitute the required buffer. Thus, only 0.03 acres of the originally-proposed wetlands area would receive mitigation credit. To achieve adequate mitigation to address project impacts, the applicant then modified the mitigation package to include two additional components. The applicant has proposed a second on-site wetlands creation area of 0.09 acres in size, plus a fifty foot buffer between the wetlands area and all proposed development. The second wetlands creation area is located along the southern property boundary, near the southwestern corner of the site, on the portion of the site outside the coastal zone. The area will be prepared and maintained in the same manner as the first site; the two sites together will achieve 0.12 acres of wetlands mitigation, exclusive of required buffers.

In addition, the applicant is proposing to fund 0.12 acres of riparian wetland enhancement activity at an off-site location. The California Department of Parks and Recreation has identified several currently degraded riparian areas within the Torrey Pines State Reserve Extension, which the Department hopes will be seen by private developers, and accepted by the resource agencies and the Coastal Commission, as potentially acceptable off-site mitigation areas. The Commission would not typically accept off-site locations unless there was no ability to provide adequate mitigation for impacts on the proposed development site. In addition, the Commission does not accept enhancement of existing wetlands in place of creation of new wetlands to mitigate for the loss of wetland resources. In this particular case, the applicant is already achieving 3:1 mitigation, in the form of new wetlands creation, on the development site. Therefore, the Commission finds this additional mitigation component entirely acceptable.

Special Condition #1 requires the project to be redesigned to reflect a minimum fifty-foot buffer on all sides of the on-site created wetlands, as proposed by the applicant in the combination of the two on-site wetlands creation areas. In addition, the condition requires that both of the created wetlands be fenced, to minimize intrusion by people and pets, which could result in degradation or failure of the mitigation sites. For the second wetlands creation site (conceptually shown in Exhibit #4), the fence shall be located within the upper twenty-five feet of the fifty-foot buffer.

Another concern is raised by the "Wetland Creation Plan" submitted as part of the application. The plan identifies appropriate mitigation ratios, an appropriate mix of species, and a five-year monitoring program. However, the performance standards included in the submitted plan are inconsistent with the standards required in the streambed alteration permit issued by CDFG. The submitted plan proposes a 90% survival rate the first year, then only 85% survival for the next four years of the five-year monitoring period. The CDFG permit requires only 80% survival the first year, but 100% survival thereafter. Also, the submitted plan requires coverage rates ranging from 40% in the second year to 65% at the end of five years. The CDFG permit requires 75% cover after three years and 90% after five years for the life of the project. The Commission finds it appropriate for the applicant to meet these higher standards in order to fully mitigate for permitted impacts. Thus, Special Condition #2 requires submittal of

a final plan fully consistent with CDFG requirements. The condition also requires that the Coastal Commission and other permitting resource agencies receive copies of the annual monitoring reports and that the final plan include the redesigned site plan, which will reflect the fifty-foot buffers now proposed by the applicant.

To ensure that the created wetlands are preserved, all future development in the wetlands, aside from the initial grading, planting and maintenance activities required to prepare and successfully establish the sites, must be prohibited. To ensure development does not occur, there should be either a deed restriction or open space easement covering the mitigation site. The Corps has issued a nationwide permit authorization under Section 404 of the Clean Water Act addressing the proposed development in a wetland. The Corps permit requires the applicant to place a wildlife conservation easement in favor of the Corps in perpetuity on the original 0.12-acre mitigation site. Therefore, an easement is part of the proposed project for this site, and the applicant has modified the proposal to include a similar easement over the second created wetlands area as well. Accordingly, Special Condition #3 of this permit reflects this aspect of the project and requires that the applicant demonstrate that an offer to dedicate an easement has been recorded before the coastal development permit is issued. Thus, the Commission finds that adequate mitigation is proposed, consistent with past Commission precedent for impacts to riparian wetlands and buffers.

Special Condition #4 prohibits development on all the steep slopes on the site and requires the applicant to record a deed restriction that reflects this prohibition. This is consistent with the certified land use plan designation and zoning, which both identify these areas as open space. Although the proposed residential development, including all Zone 1 brush management areas, does not encroach onto any portion of the existing undisturbed naturally-vegetated steep slopes, the development proposed is very intense and will result in over eleven acres of new impermeable surfaces. Furthermore, the proposal includes the minor recontouring and revegetation of the existing manufactured slopes as part of the reclamation activities required to convert the site from a sand mining operation to residential use. The Commission finds that both the natural and restored steep slope areas must be protected from future development. By requiring recordation of a deed restriction, the Commission ensures that all future owners of the site are aware of the restriction on development of the steep slopes. This will preserve the biological resources of the slopes, as well as address the slopes' importance from visual and water quality perspectives, which will be discussed in the following findings. However, the continued maintenance of an existing utility easement which crosses a portion of the proposed open space area must be acknowledged.

In summary, the proposed development involves impacts to existing wetland species and development adjacent to areas of naturally vegetated, undisturbed steep slopes. The wetland impacts have been found to be a permitted use under 30233 of the Act and impacts to wetland resources have been minimized and mitigated at an appropriate ratio. In addition, through the attached special conditions, the provision of a wetland buffer, revisions to the applicant's mitigation and monitoring program and preservation in perpetuity of the site's steep slope areas are assured. Also, a component of Special

Condition #5 (Landscaping Plan) requires that plantings adjacent to the created wetlands and naturally vegetated areas be of native materials compatible with those areas. Therefore, as conditioned, the project can be found consistent with Sections 30233 and 30240 of the Coastal Act.

3. Visual Resources. The following policy of the Coastal Act addresses visual resources, and states, in part:

**Section 30251**

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 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 is located about a third of a mile south of State Route 56 and the Carmel Valley Resource Enhancement Plan (CVREP) area along Carmel Creek. North of the freeway and enhancement area (i.e., further from the subject site) is located the existing, intense urban development of Carmel Valley Neighborhoods 4, 5 and 6. The site itself is currently being mined for sand, and much of the property is disturbed. It consists primarily of the mining pit surrounded by very steep, unvegetated manufactured side slopes. The East and west perimeters of the site contain some naturally-vegetated, undisturbed slopes, much of which is within a utility easement which runs north and south along the eastern edge of the property. The proposal is to construct the residential structures on the relatively flat base of the mining pit, and, aside from restoration of the manufactured slopes, the "walls" of the pit will not be altered.

Because the site is surrounded by slopes in nearly all directions, the proposed structural improvements will not be visible except from the north/northwest, where portions of the site can be seen from the areas described previously. At present, the view from the north/northwest is mostly of the denuded slopes forming the southern "wall" of the mining operation. Thus, future views will be primarily of those same slopes, which will be restored and revegetated. However, it is possible that the roofs or upper parts of a few residential structures may be visible as well. It should be noted that the identified viewing areas are some distance away (a third of a mile and more). Special Condition #5 requires submittal of a final landscaping plan that will emphasize revegetation of the manufactured, north-facing slopes and the provision of trees to break up any large expanses of wall or roof which may be visible from the identified public viewshed areas to the north/northwest. The submitted conceptual plan includes a significant number of trees and shrubs in this area, which is also the part of the site where the desiltation basin and created wetlands are proposed. However, the conceptual plan does not identify appropriate native species nearby the created wetlands which will be non-invasive and compatible with wetland resources, and does not call out revegetation of the manufactured slopes with native plant communities. The final plan submitted to the Executive Director in compliance with the special condition will be reviewed in

consultation with the resource agencies, to assure that no inappropriate plant materials have been selected. The Commission finds, however, that as conditioned, potential impacts on visual resources are minimized to the maximum extent feasible. Therefore, the Commission finds the development, as conditioned, consistent with Section 30251 of the Act.

### 3. Water Quality/Resource Protection.

#### Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The project site is located upstream from the environmentally sensitive habitat area of the CVREP project and, approximately two miles to the west, Los Penasquitos Lagoon. The major portion of the project site is currently used for mining purposes and contains no sensitive natural resources. There are existing, unvegetated and manufactured steep slopes surrounding the mining pit, which are proposed for restoration as part of the subject development. There are also some areas of naturally vegetated, undisturbed slopes, located on the eastern and western perimeters of the site. At present, there are no permanent improvements on-site (i.e., no paving, structures or other impermeable surfaces). Stormwater runoff can percolate into the soil over the entire site, thus minimizing any off-site, downstream impacts from erosion.

When completed, the proposed development will result in over eleven acres of new impermeable surfaces due to paving for driveways and surface parking areas and the construction of eighteen structures (sixteen apartment buildings and two recreational buildings). Although revegetation of the existing manufactured slopes will help prevent erosion onto the site itself, the addition of over eleven acres of impermeable surfaces could significantly modify existing drainage and runoff patterns and rates which could affect downstream properties and resources. In addition, runoff from the project site during construction could result in increased sedimentation entering the lagoon. After project completion, trash, dirt and oil from the development could ultimately discharge into the lagoon as well, via proposed and existing storm drain improvements on-site and in Carmel Creek Road.

The U.S. Environmental Protection Agency 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 portion of the project site proposed for development is generally flat and none of the undisturbed steep slopes will be graded. However, approximately 30,000 cu.yds. of grading will occur overall. A small portion of the grading is associated with restoring the manufactured slopes around the mining pit, but most of it is needed to prepare level pads suitable for the construction of buildings. There are primarily two ways in which the proposed development could potentially increase the amount of sediment entering the CVREP enhancement area and potentially the lagoon, two miles further downstream. The first is through construction activities when loose soils on the site could be washed downstream during storms. Secondly, the increase in impermeable surfaces after project completion could result in the discharge from the existing storm drain system inland of the lagoon reaching an erosive velocity.

To address construction impacts, the City, in conditions of its local approvals, has applied the grading and erosion control regulations approved by the Commission in the certified LCP; these appear sufficient to assure adequate protection of downstream resources during the construction process. In addition, because the project involves more than five acres, the applicant is required to obtain a stormwater construction permit from the Regional Water Quality Control Board. Construction impacts are also addressed, though in a limited fashion, by the CDFG and Corps permits. Special Condition #6 requires submittal of a final grading/erosion control plan which implements best management practices and the erosion control methods required in the local approvals. The plan must be approved by the City of San Diego, prior to issuance of the coastal development permit.

To address permanent impacts of the completed project, the applicant has included a detention/desiltation basin in the development, which will collect and retain site runoff. The facility is designed to release flows at non-erosive velocities into an existing storm drain system in Carmel Creek Road, which was sized to accommodate this development. Thus, increased runoff from the new impermeable surfaces will be appropriately discharged such that erosion of downstream resources will not occur. Drainage calculations included in the Technical Appendices of the project EIR demonstrate that the proposed drainage system, with the inclusion of the detention/desiltation basin, will result

in peak runoff rates from the site at equal or lower levels than runoff from the predeveloped site (the site as it exists today).

The potential discharge of pollutants into the identified downstream enhancement area and lagoon is also associated with the proposed development. However, one of the created wetlands, in conjunction with the adjacent desiltation basin, will serve to reduce the pollutant level leaving the developed site. A significant portion of site runoff will be first directed into the created wetlands, then into the desiltation basin, providing a two-step approach to allow a greater amount of pollutants and sediments to settle out before final discharge. In addition, Special Condition #7 requires the applicant to implement a series of BMPs on a permanent basis to reduce the amount of pollutants entering the drainage system in the first place. These include weekly sweeping of all paved areas on-site, curb inlet stenciling and the provision of an adequate number of trash and recyclable containers for use by future site residents. These features are intended as a minimum; the applicant may add other BMPs as appropriate in the final plan submitted in compliance with the condition.

Finally, Special Condition #8 requires evidence that the applicant has contributed to the Los Penasquitos Lagoon Enhancement Fund consistent with the conditions of the local approvals. This requirement is placed on all development within the coastal zone of the Los Penasquitos Lagoon watershed. Even with the special conditions identified above, development will have some degree of adverse effects on Los Penasquitos Lagoon. As noted in other permits (e.g. 6-82-100, Genstar; 6-82-106-A, Fieldstone; 6-83-13, Baldwin; and, A-69-81 Village Properties) and in the findings of the predecessor Regional Commission to deny the North City Land Use Plan, development will increase the amount and rate of runoff; and will increase the amount of urban pollutants in runoff. In addition, even with controls over the rate of runoff, as addressed above and assured through the applicant's provision of a detention/desiltation basin, a greater net volume of runoff will result because less water will percolate into the ground. The combined result will provide the potential for a substantial increase in sedimentation.

In order to mitigate the effects of runoff, the Commission sponsored a study of Los Penasquitos Lagoon entitled "Stream and Lagoon Channels of the Los Penasquitos Watershed, California, with an Evaluation of Possible Effects of Proposed Urbanization" by Karen Prestegaard; a recommendation was made to increase the tidal prism of the lagoon by restoring channels cut off by construction of the railroad across the lagoon. It was recommended that this would enhance the capability of the lagoon to maintain an open mouth. It was also reasoned that a lagoon that was open more of the year would be better flushed and more capable of absorbing the increased load of pollutants.

Commission staff worked with North City West developers to analyze the costs of a minimal improvement project along the lines recommended in the Prestegaard study and establish a proportional share that could be allocated to the overall expected buildout in North City West. The calculated fair share has been established, and certified in the City's LCP, at one-half cent per square foot of surface area graded and three cents per square foot of new impervious surface (buildings and paving) created by each project. The City approval included a requirement to pay into this fund, with the total contribution

calculated at \$16,683.48. Because the fee was required in the local approval, it is part of the proposed project.

Thus, as conditioned, the proposed project will implement best-management practices regarding the management and reduction of non-point source urban pollution, and runoff from the development will not adversely impact water quality or have a significant adverse impact on downstream resources. Therefore, the project can be found consistent with Sections 30231 and 30240 of the Coastal Act.

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, as conditioned, such a finding can be made.

The area of the project site proposed for residential development (approximately 17 acres) is designated Low Medium Density Attached Residential in the recently-certified Carmel Valley Neighborhood 8 Precise Plan, a component of the North City LCP segment. The remaining 22+ acres of the total 39.9-acre site is designated as open space. Existing zoning is the same, with the developable portion of the site zoned MF-2 and the remainder OS. The proposed development is fully consistent with these designations. As just stated, an amended land use plan for Carmel Valley Neighborhood 8 has recently been certified; however, the City has not yet assumed permit authority over the subject site. Thus, the Commission is processing the coastal development permit, with Chapter 3 of the Coastal Act being the standard of review. As discussed in previous findings, the development has been found consistent, as conditioned, with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposal, with the attached special conditions, will not prejudice the ability of the City of San Diego to continue implementation of its fully 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.

As discussed herein, the proposed project, with the inclusion of the special conditions, will not cause significant adverse impacts to the environment. Specifically, the project has been found consistent with the biological resources, visual resources and water quality policies of the Coastal Act. As conditioned, there are no feasible alternatives or mitigation measures available that would substantially lessen any significant adverse impact that the activity might 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.

6-98-124-RF

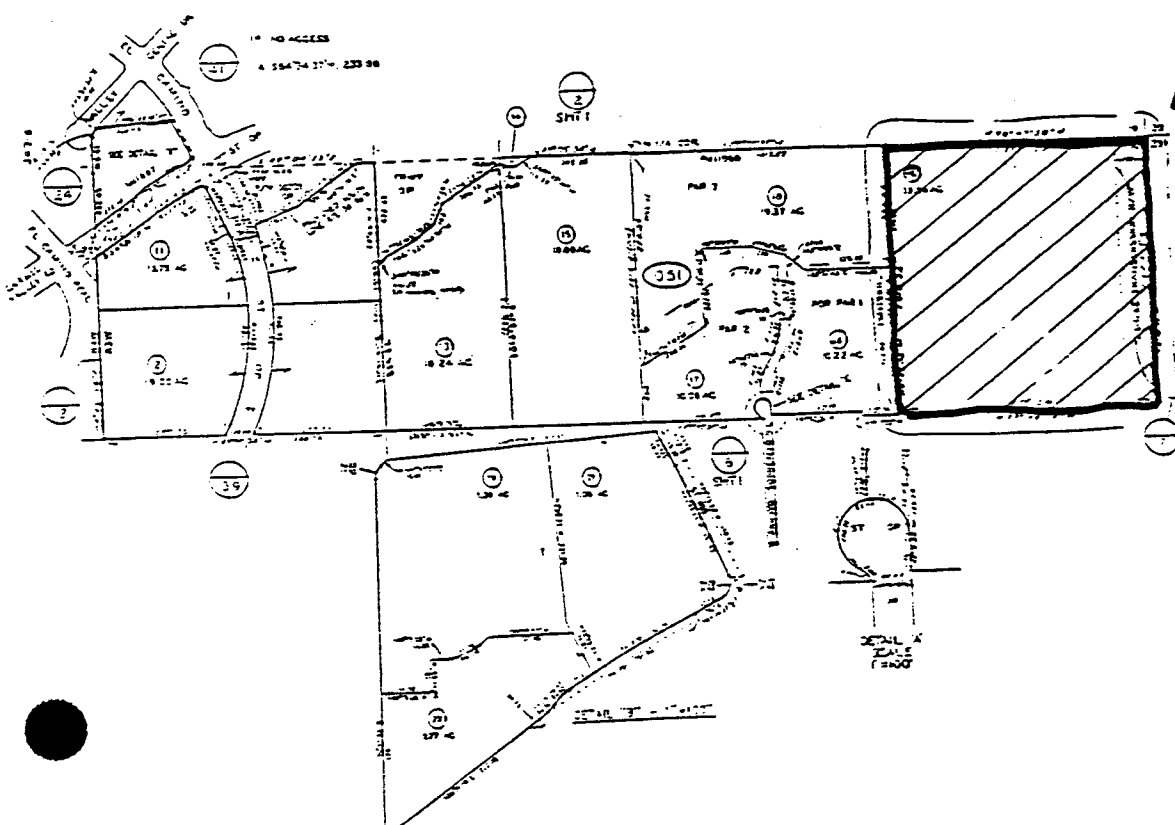
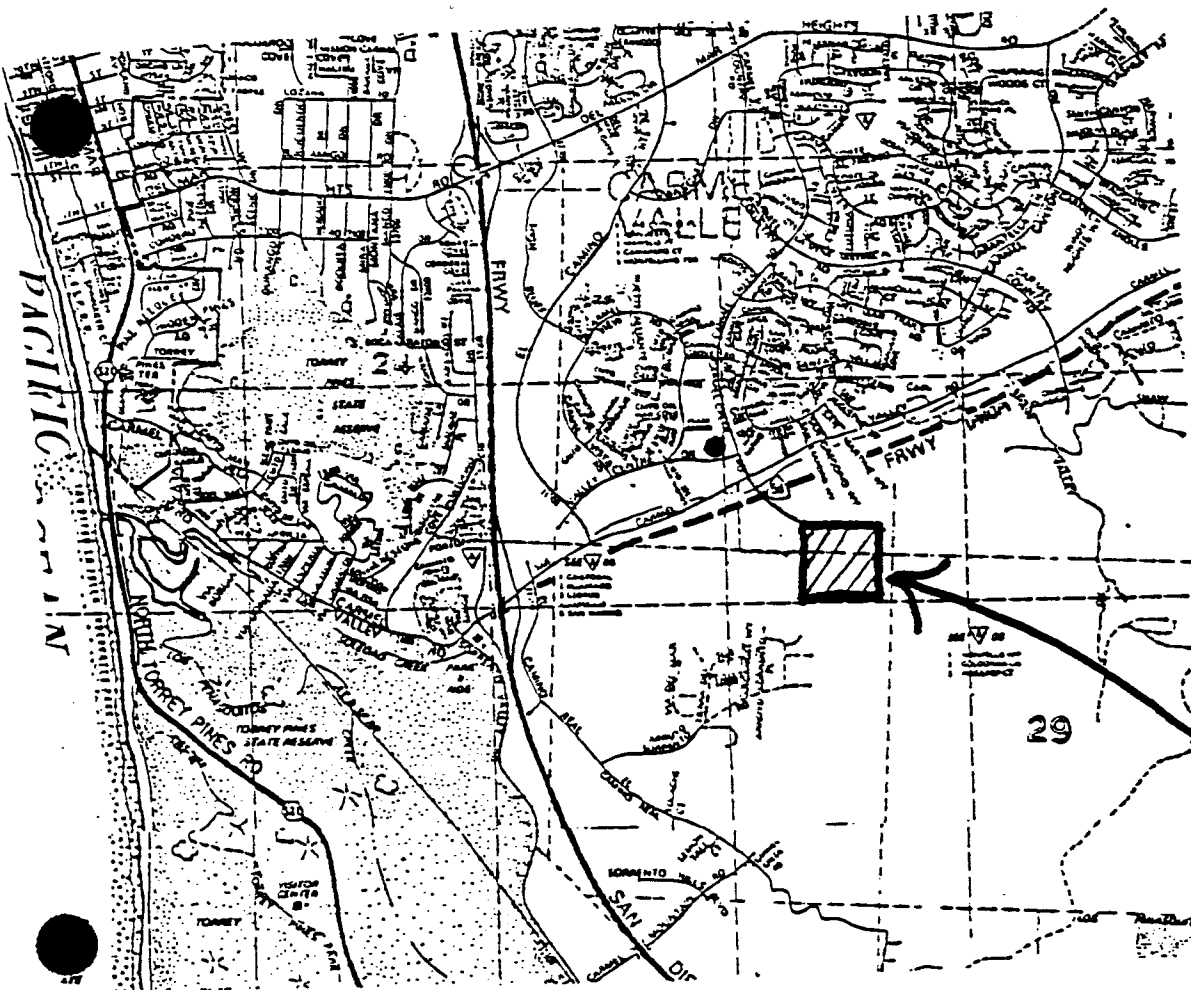


EXHIBIT NO. 1
APPLICATION NO.
6-98-124-RF
Vicinity Maps
California Coastal Commission

6-98

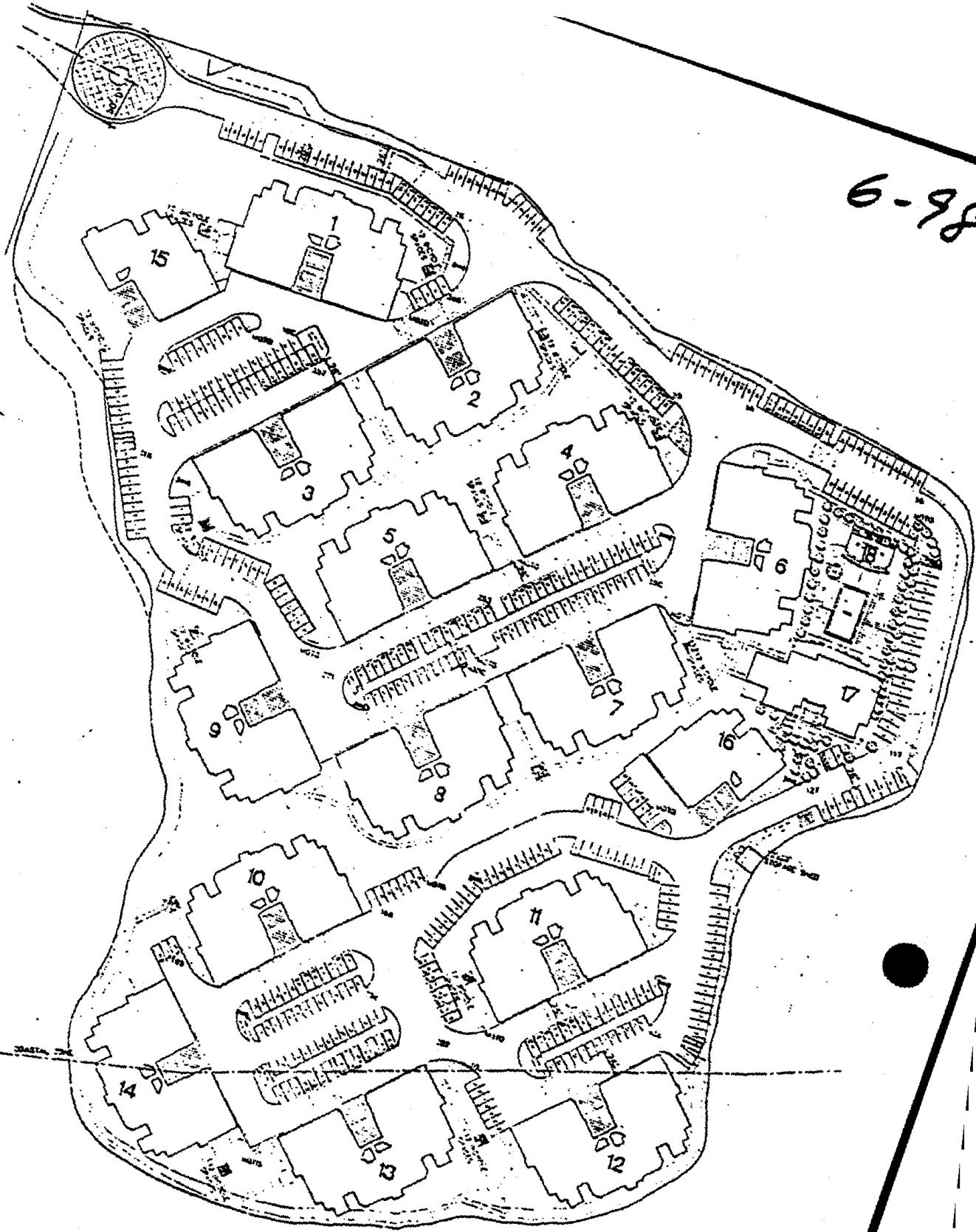
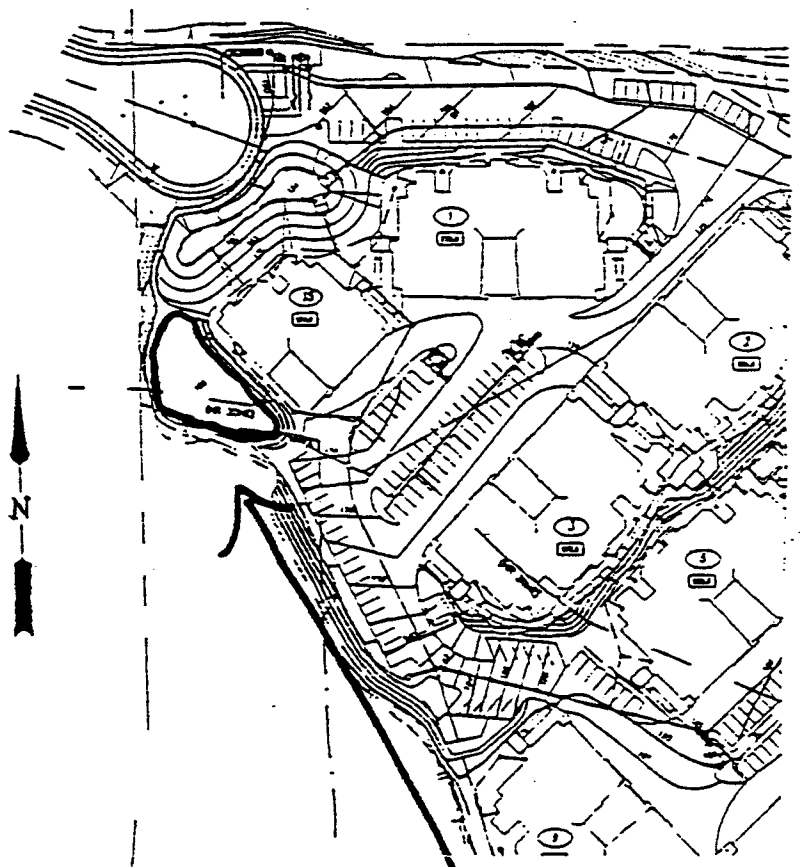
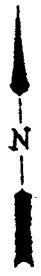


EXHIBIT NO. 2  
APPLICATION NO.  
6-98-12  
Site Plan  
Developer

Hatching shows  
50' buffer from  
Building #15



General  
Location in  
NW corner  
of site

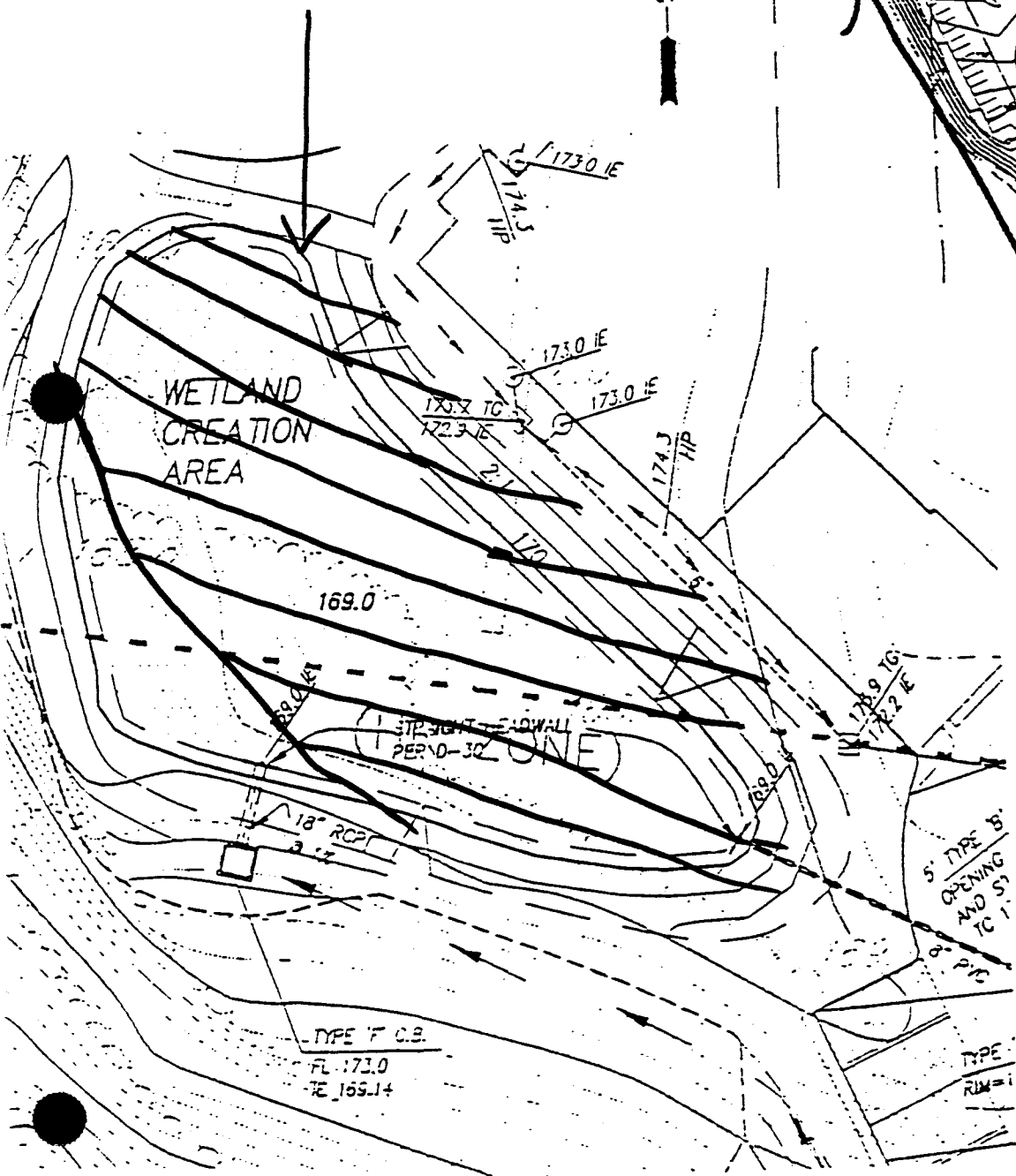


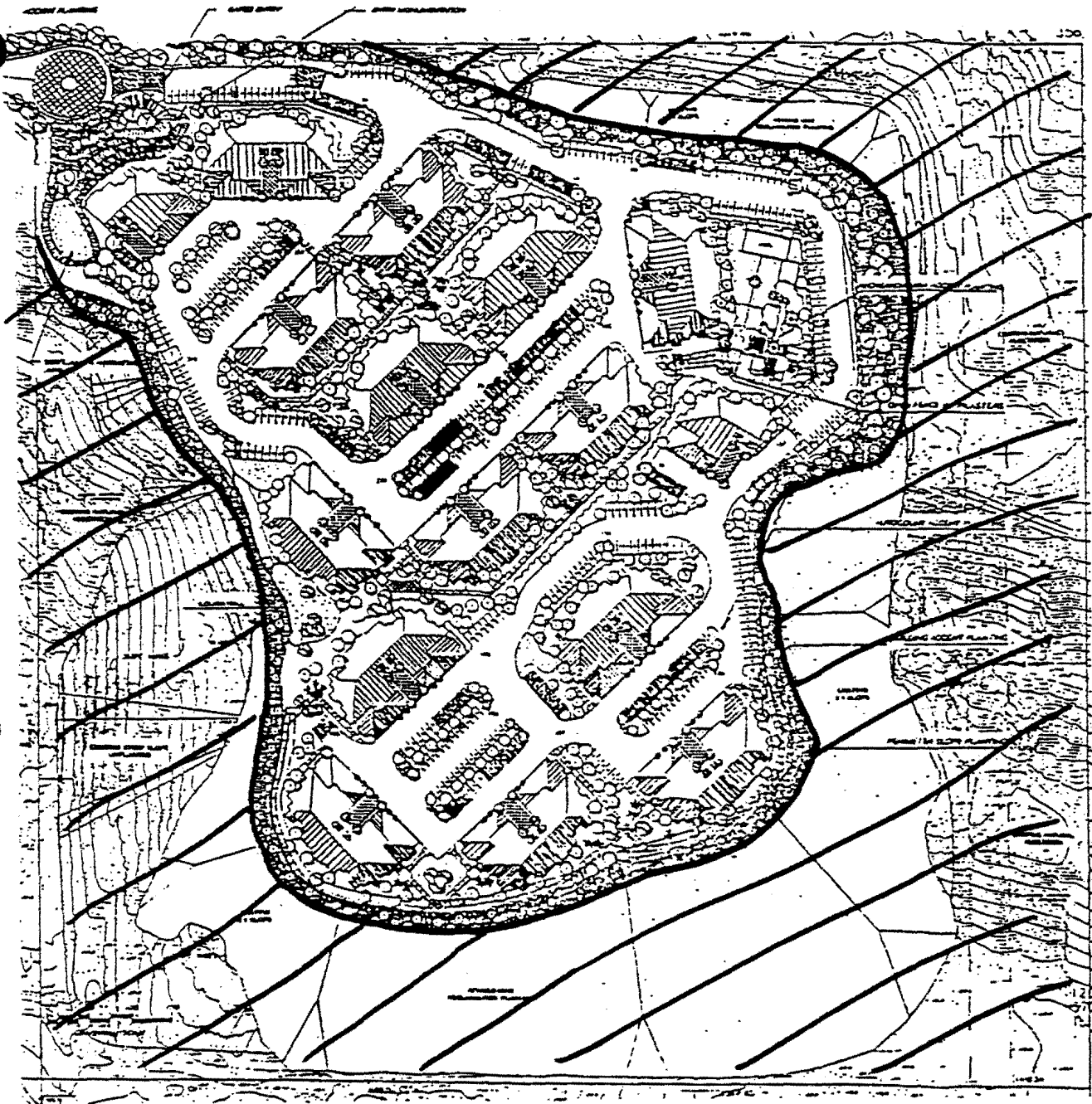
EXHIBIT NO. 3
APPLICATION NO.
6-98-124-RF
Wetlands (first)
Easement
California Coastal Commission

[illegible]

# Site/Easement



6-98-124-RF



0' 50' 100' 200'



 - Open Space

EXHIBIT NO. 5

APPLICATION NO.

6-98-124-R

Open Space  
Easement

California Coastal Commission

[illegible]

EXHIBIT NO. 6  
APPLICATION NO. 6-98-124  
Off-Site Road  
Improvements  
California Coastal Commission

CALIFORNIA DEPARTMENT OF FISH AND GAME

Golden Shore, Suite 50  
Long Beach, California 90802

Notification No. 5-223-88

Page 1 of 4

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Guth Ecosay of BRE Builders, Inc.: 12555 High Bluff Drive, Suite 300, San Diego, CA 92130; (619) 270-5088; (619) 792-7474, State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1603 of California Fish and Game Code, the Operator, on the 3<sup>rd</sup> day of June, 1998, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): unnamed drainage approximately 1000' south of Carmel Creek, near Los Peñasquitos Lagoon, San Diego County, California, Section 30 NE, Township 14S, Range 3W.


WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within an unnamed drainage approximately 1000' south of Carmel Creek, near Los Peñasquitos Lagoon, specifically identified as follows: reptiles: orange-throated whiptail, red diamond rattlesnake, San Diego horned lizard, coastal western whiptail; birds: white-tailed kite, northern harrier, other raptors, rufous-crowned sparrow, coastal California gnatcatcher, other songbird; mammals: San Diego black-tailed jackrabbit; riparian vegetation which provides habitat for these species: willows, mulefat; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, 3503.5, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates December 31, 1998 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

EXHIBIT NO. <u>7</u>
APPLICATION NO. <u>6-98-124 RF</u>
Permit from Dept. of Fish & Game
 California Coastal Commission

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

2. The Operator proposes to alter the streambed to lengthen and widen Carmel Creek Road, (the access road to the 40-acre apartment complex being constructed on a former sand mine) impacting 0.04 acre of stream. The project is located south of Highway 56 at the end of Carmel Creek Road, in the City of San Diego.

3. The agreed work includes activities associated with No. 2 above. The project area is located in an unnamed drainage approximately 1000' south of Carmel Creek, near Los Peñasquitos Lagoon in San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including "Wetland Creation Plan for Pinnacle Carmel Creek San Diego, California", prepared by Recon and dated May 6, 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 (southern willow scrub). All impacts are permanent. All other impacts shall be avoided.

5. The Operator shall mitigate with the creation of a minimum of 0.12 acre of southern willow scrub habitat, as described in the submitted documents. No maintenance impacts shall occur at the mitigation site.

All mitigation shall be installed within 90 days of project impact and no later than December 31, 1999.

6. The Operator shall not remove vegetation within the stream from March 15 to July 15 to avoid impacts to nesting birds.

7. The Operator shall implement measures to ensure no impacts occur to any raptors, their nests, eggs or fledglings, as described in the draft EIR and pursuant to Fish and Game Code Section 3503.5. Be advised, failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, 3503.5, and 5948, may result in prosecution.

8. No equipment shall be operated in ponded or flowing areas.

9. Be advised that the coastal sage scrub habitat impacts must meet current restrictions, and mitigation shall be determined, through the NCCP and the Federal Endangered Species Act process.

10. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.

11. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.

12. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

13. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-223-98

14. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
15. The perimeter of the work site shall be adequately flagged/fenced to prevent damage to adjacent riparian habitat.
16. Staging/storage areas for equipment and materials shall be located outside of the stream.
17. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
18. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
19. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 5 years for the life of the project. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.
20. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season.
21. An annual report shall be submitted to the Department by Jan. 1 of each year for 5 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.
22. Access to the work site shall be via existing roads and access ramps.
23. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
24. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
25. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
26. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

27. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.

28. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

29. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 330 Golden Shore, Suite 50, Long Beach, CA 90802, Attn: ES.

30. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

31. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

32. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

(Operator's name)

California Dept. of Fish and Game

*BRE Builders, Inc 11/5/98*

(signature)

(date)

(signature)

(date)

*E. Smith*  
(title) *Vice President*

Environmental Specialist III  
(title)



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-7325

January 20, 1999

REPLY TO  
ATTENTION OF:

Office of the Chief  
Regulatory Branch

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION

Mr. Garth Erdossy  
BRE Builders, Inc.  
12555 High Bluff Drive, Suite 300  
San Diego, California 92130

RECEIVED

FEB 05 1999

Dear Mr. Erdossy:

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

This is in reply to your application (No. 982008200-DZ) dated June 2, 1998, concerning our permit authority under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) over your proposal to construct a 60 ft wide culverted crossing over an unnamed tributary of Carmel Valley Creek for the extension of Carmel Creek Road into the Pinnacle Carmel Creek development project in the City of San Diego, San Diego County, California.

The Corps of Engineers has determined that your proposed activity complies with the terms and conditions of nationwide permit NW14 [Federal Register, December 13, 1996, pp. 65874-65922] for fills for roads crossing waters of the United States (including wetlands and other special aquatic sites).

As long as you comply with the attached nationwide permit terms and conditions, an individual permit is not required. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time. Presently, all nationwide permits are scheduled to expire on February 11, 2002 except nationwide permit 26 which is currently scheduled to expire on September 15, 1999. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice announcing the changes when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of the nationwide permit.

Furthermore, you must comply with the following Special Conditions:

1. The permittee shall mitigate permanent impacts to 0.04 acre of southern willow scrub/freshwater marsh in an unnamed tributary to Carmel Valley Creek by: a) creating 0.12 acre of southern willow scrub/freshwater marsh; and b) separate detention basin between the 0.12 acre mitigation site and unnamed tributary to Carmel Valley Creek. Water from the 0.12 acre mitigation site will flow into the detention basin via a spill way, and from the spill way to the remaining section of the unnamed tributary via a pipe culvert in such a way that will not cause erosion in the unnamed tributary. All mitigation construction shall be completed

EXHIBIT NO. 8

APPLICATION NO.

6-98-124-RF

Permit from Army Corp  
of Engineers

within 2 months of channel grading. The permittee may perform maintenance within the detention basin to remove vegetation, silt and trash as needed, in perpetuity. No maintenance, except successful completion of mitigation requirements, shall occur in the 0.12 acre wetland creation area, in perpetuity.

2. The permittee shall submit final mitigation plans based on the "Wetland Creation Plan for Pinnacle Carmel Creek" (RECON, May 6, 1998) to the Corps for approval at least 60 days prior to initiating waters/wetlands impact authorized by this NWP. These final plans shall be prepared in detail according to the Corps "Habitat Mitigation and Monitoring Proposal Guidelines" (1 June 1993) and shall include: a) all final specifications and topographic-based layout grading, planting and irrigation (with 0.25-foot contours); b) submittal of as-built drawings of the mitigation grading (including the detention basin and pipe culvert), planting and irrigation; and c) a final implementation schedule that indicates when all wetland impacts, as well as mitigation grading (including the detention basin and pipe culvert), planting and irrigation will begin and end.

3. The permittee shall impact no more than 0.04 acre of southern willow scrub/freshwater marsh in an unnamed tributary to Carmel Valley Creek. The permittee shall fence (with silt barriers) the limits of the construction corridor at the road crossing to prevent additional wetland impact and spread of silt from the construction zone into adjacent wetlands and waters. The permittee shall submit to the Corps for approval final construction and excavation plans and photographs showing fenced and marked limits of impact, and all Corps jurisdictional areas to be impacted and preserved prior to the planned date of initiating waters/wetlands impact authorized by this NWP. If wetland impacts occur outside of these limits, all work shall cease and the Corps shall be notified immediately. Any wetland impacts that occur outside of the fenced and marked limits shall be mitigated at a minimum 6:1 ratio.

4. The permittee shall staff a qualified biologist on site during project construction to ensure compliance with all the above requirements, and produce reports that document compliance with these requirements. The permittee shall submit the biologist's name, address, telephone number, and work schedule on the project to the Corps prior to initiating waters/wetlands impact authorized by this NWP. The permittee shall also report any violation to the Corps within one day of its occurrence, and submit compliance reports (including photographs of all areas of authorized impact) on a monthly basis to the Corps.

5. That the permittee shall submit to the Corps within 60 days of completion of waters/wetlands impact authorized by this NWP a report that will include as-built construction drawings with an overlay of waters/wetlands that were impacted and preserved, photographs of waters/wetland areas to be preserved, and a summary of all project activities which documents that authorized impacts in each drainage were not exceeded, and compliance with the conditions above.

6. That the permittee shall preserve and place a wildlife conservation easement in favor of the Corps) in perpetuity on the 0.12 acre mitigation area. A draft of the easement shall be



submitted to the Corps (cc: USFWS) for approval, and the a copy of the recorded easement document shall be submitted to the Corps (cc: USFWS) prior to initiating impacts authorized by this NWP. The easement shall state clearly that no other easements or vegetation clearing shall be allowed for flood control or other purposes within the wildlife conservation area.

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact David A. Zoutendyk of my staff at (619) 674-5384.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Durham', with a long horizontal flourish extending to the right.

Mark Durham  
Chief, South Coast Section  
Regulatory Branch

Enclosure

