

CALIFORNIA COASTAL COMMISSION

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Staff: BP-SD
Staff Report: 6/24/99
Hearing Date: 7/13-16/99

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-88-531-A1

Applicant: Standard Pacific Corporation: Agent: Jack Henthorn

Original Project
Description: Subdivision of a 65.7 acre vacant parcel into two parcels of 11.4 and 54.3 acres in size. No other improvements are proposed.

Proposed
Amendment: Modify Special Condition #1 to allow a circulation element roadway (Aviara Parkway) grading and landscaping as permitted uses within an open space deed restricted area.

Site: South of Palomar Airport Road, between Cobblestone Road and Plum Tree Road in the City of Carlsbad, San Diego County.

STAFF NOTES:

Summary of Staffs Preliminary Recommendation:

Staff recommends approval of the proposed amendment, subject to conditions requiring a revised open space deed restriction documenting the proposed road improvements and landscaping are permitted uses within the deed restricted area, a revegetation plan which requires that native plants be installed consistent with the surrounding area on the area disturbed by road construction, and a condition that requires that all previous conditions imposed by the Commission in its approval of a Coastal Development Permit 6-88-531 remain in full force and effect. With these conditions, the project can be found consistent with the certified LCP.

Substantive File Documents: Certified Carlsbad LCP Mello II segment; City of Carlsbad CT 97-14; PUD 97-11; SDP 97-16; HDP 97-13; CDP 97-34 Hayworth, Anita M. "Biological Resources Survey Report for the Carlsbad Heights Property," January 10, 1995; Dudek and Associates "Wetland Determination Report for the Mariano Project" dated July 24, 1996; CDP #s 6-95-125, 6-94-131, 6-88-531.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit amendment for the proposed development, subject to the conditions below, on the grounds that the development, as amended, will be in conformity with the adopted Local Coastal Program, 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. The following shall replace Special Condition #1 of the original permit in its entirety:

1. Open Space Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur on the steep slope areas of the site covered with natural vegetation as shown in Exhibit #3 except for:

- a. Grading and associated improvements associated with the installation of Aviara Parkway as depicted on the plans by Hunsaker and Associates, dated May 29, 1999.
- b. Drought tolerant native plants consistent with the present character of the area as required pursuant to Special Condition #2 of CDP #6-88-531-A1.

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.

2. Revegetation Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate that portion of the slopes of Aviara Parkway that is disturbed by the installation of the road. Drought tolerant, fire-resistant native plants consistent with the surrounding area shall be utilized to the maximum extent feasible to re-establish the area consistent with its present character. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director.

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

3. Prior Conditions of Approval. All other terms and conditions of the approval of Coastal Development Permit #6-88-531 not specifically modified herein shall remain in full force and effect.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Original Development Description and History. On December 14, 1988, the Commission approved in CDP 6-88-531 a financial subdivision of a 65.7 acre parcel into two parcels of 11.4 and 54.3 acres in size in the City of Carlsbad. Since the approval was granted for financial purposes only, no improvements were included in the Commission's approval. The site is located approximately 1300 feet to the south of Palomar Airport Rd. at the existing terminus of Aviara Parkway (formerly known as College and more recently, Alga Road), immediately south of the intersection of Cobblestone Road and Aviara Parkway. The major issues identified in the original permit issuance included impacts to naturally vegetated steep slopes and the conversion of agricultural land to urban uses. The Commission approved the project subject to special conditions requiring restrictions on steep slope areas covered with native vegetation and restrictions on conversion of agricultural lands. All the conditions were met by the applicant and the coastal development permit was issued in 1989.

Subsequently the Commission approved Coastal Development Permit 6-96-14 approving the construction of a 138-unit affordable apartment project on the 11.4 acre site created with the approval of 6-88-531.

In October, 1997 the City's LCP was certified by the Commission and the City assumed permitting authority. The City of Carlsbad issued a coastal development permit for a 150 unit single family development and a 26-unit affordable apartment project (known as the Mariano site) on the 54.3 subject site on November 18, 1997. The approval included a requirement to construct Aviara Parkway, a circulation element roadway connecting

Palomar Airport Road to Poinsettia Lane. The City-issued Coastal Development Permit includes the extension of Aviara Parkway south of its existing terminus at Cobblestone Road to connect with the southern portion of Aviara Parkway thereby providing a north-south connection between Palomar Airport Road and Poinsettia Lane.

The site is located within the Mello II segment of the certified Carlsbad Local Coastal Program (LCP) where coastal development permit authority has been transferred to the City. However, since the land division was originally approved and conditioned by the Commission, the proposed amendment is subject to the Commission's jurisdiction with the certified LCP as the standard of review.

2. Proposed Amendment. The amendment proposes to modify Special Condition #1 to allow a circulation element roadway, Aviara Parkway, and grading and landscaping as permitted uses within an open space deed restricted area that was approved in CDP 6-88-531. CDP 6-88-531 approved two areas as deed-restricted open space on the subject site (known as the Mariano site), one of 3.4 acres and the other of .6 acres (this smaller area is unaffected by this request and lies to the east of the subject area). Based on the submittal, it has been determined that approximately 2.4 acres of the 3.4-acre deed-restricted area would be impacted by construction of the road. The applicant is proposing to enhance the remaining area covered by the open space deed restriction with native, fire retardant plants. Both areas contain "dual criteria" slopes (naturally vegetated slopes that contain coastal sage scrub or chaparral and are at least 25% grade), which are protected under Section 21.203.040(A)(1)(a) of the Carlsbad LCP (Coastal Resource Protection Overlay Zone) which states:

- 1) For those slopes mapped as possessing endangered plant/animal species and/or coastal sage scrub and chaparral plant communities, the following policy language would apply
 - a. Slopes of 25% grade and over shall be preserved in their natural state, unless the application of this policy would preclude any reasonable use of the property, in which case an encroachment not to exceed 10% of the steep slope area over 25% grade may be permitted. For existing legal parcels, with all or nearly all of their area in slope area over 25% grade, encroachment may be permitted; however, any such encroachment shall be limited so that at no time is more than 20% of the entire parcel (including area under 25% slope) permitted to be disturbed from its natural state. This policy shall not apply to the construction of roads of the City's Circulation Element (emphasis added) or the development of utility systems. Uses of slopes over 25% may be made to provide access to flatter areas if there is no less environmentally damaging alternative available.

The following is a history of how the alignment of Aviara Parkway was chosen:

The original Aviara Parkway alignment was approved by Carlsbad on October 1,

1985 as part of a project known as Cobblestone which is large residential subdivision located to the north of the Mariano site and adjoins Palomar Airport Road. This alignment traveled substantially to the east of the existing SDG&E easement the Cobblestone and Mariano sites. However, before final design plans were prepared, City engineering staff evaluated several alternative alignments and recommended a modification to achieve a more environmentally sensitive alignment that was also more responsive to the natural topography and that facilitated access to properties in the area.

Subsequently, the original alignment (east of the SDG&E easement) was found to be a more environmentally damaging alignment and the current alignment (west of the SDG&E easement and the one that is the subject of this amendment request) was found to be a less environmentally damaging alignment than the alignment to the east.

Based on this environmentally preferred alignment, fixed horizontal control was established and public right of way dedicated in accordance with the City's approval of the subdivision of the Mariano and Laurel Tree sites. In CDP #6-88-531, the Commission found:

The approval at the local level did include the exaction of right-of-way areas for the City's proposed College Boulevard. However, construction of the roadway has not been submitted as a part of this or any other coastal development permit application.

While the Coastal Commission specifically did not approve the road alignment, the City states that the above action fixed the current alignment of Aviara Parkway and that once the horizontal alignment was fixed, a number of subsequent projects were approved based on this alignment as follows:

1. The City and the Coastal Commission approved the Sambi tentative map (6-94-131) which included a finding that the on-site location for Aviara Parkway was the environmentally preferred alignment. This permit authorized the completion of Aviara Parkway from Poinsettia Lane to the south property line of the subject site.
2. The City and the Coastal Commission approved the Mariner's Point tentative map (6-94-52) which included the southerly segment of Aviara Parkway from Poinsettia Lane to the southerly property line of the Sambi subdivision.
3. The Coastal Commission approved 6-95-125 for Cobblestone which included completion of Aviara Parkway from the northerly property line of the subject site to the Aviara Parkway/Palomar Airport Road intersection. This action further established the northerly horizontal control and alignment of the missing segment of Aviara Parkway.

4. The City approved the Laurel Tree inclusionary housing project, which also reflected the Aviara Parkway alignment as previously approved.

Based on the above, final design plans for the last segment of Aviara Parkway, approximately 1,000 feet, are being prepared. Over 4,500 feet, or approximately 85% of Aviara Parkway both north and south of the Mariano site has been constructed in accordance with the above cited approvals.

The Commission acknowledged in CDP #6-88-531 that while the dual criteria area that was identified to be deed-restricted as open space was within the right of way of a major arterial (at that time identified as College Boulevard), no construction of the roadway was approved. The deed restriction was approved with the following language:

...The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type in the steep slope areas of the site covered with native vegetation shown on the attached Exhibit #3 without the written approval of the California Coastal Commission or its successor in interest....

As noted above, the reason why the road was shown in the dual criteria open space area was that the City was evaluating several road alignment options at that time, one of which was in the subject open space area and the other alignment being considered was to the east in a larger more contiguous canyon area with better quality and greater amounts of coastal sage scrub habitat. This more eastern alignment would have also been through a SDG&E easement that contained a major utility corridor. Subsequent to the Commission's approval of CDP #6-88-531, the City found the road alignment on the subject site was the environmentally preferred alignment.

In addition to the existing deed restriction being modified to allow the grading and construction of a Aviara Parkway within the deed-restricted area, the applicant is proposing to enhance the remaining area covered by the open space deed restriction (approximately 1 acre) with native, fire retardant plants. The area covered by the requested amendment is the last remaining segment of Aviara Parkway required to complete the linkage between Palomar Airport Road and Poinsettia Lane. The alignment has been reviewed and found to be the least damaging alternative. The United States Fish and Wildlife Service and the California Department of Fish and Game have also approved the alignment.

In its approval of the Mariano project, the City found that the project is not located within any of the Preserve Planning Areas (PPAs) defined in the City's draft Habitat Management Plan (HMP). The City found that although disturbance to 3.4 acres of coastal sage scrub would result from implementation of the project, it will not preclude connectivity between PPAs nor preclude the preservation of CSS habitat. Moreover, the project provides mitigation in the form of off-site preservation at a 2 to 1 ratio because it will result in the purchase for preservation of 6.8 acres of habitat in an off-site habitat mitigation bank. While the City required mitigation for the entire 3.4 acres of the canyon, as noted in the project description, the applicant has indicated only 2.4 acres of

impact would occur for road construction. The left over 1-acre area will be enhanced with native plants species consistent with the character of the surrounding area.

The Commission has approved portions of the roadway both north and south of the subject location as parts of CDP's 6-94-131 (Sambi); 6-95-125 (Cobblestone Sea Village); 6-96-14 (Laurel Tree Apartments) and 6-94-52 (Mariners Point). The Commission found in these decisions that the roadway is the least environmentally damaging alignment and would not result in resource impacts inconsistent with the Mello II LCP or long range planning options addressed in the City's Habitat Management Plan and the statewide Natural Communities Conservation Plan. Moreover, the Commission implicitly approved the roadway on the subject Mariano site through the following findings contained in 6-94-52:

The City's Zone 20 Specific Plan indicates the extension of Alga Road (now known as Aviara Parkway) north of the project site (the Mariners Point site is south of the Mariano site) would impact some areas of coastal sage scrub off-site to the north (the subject canyon). The City indicates the impacts are less environmentally damaging as currently proposed when compared with a former preferred alignment (the more eastern alignment) of Alga/College which was through a large canyon containing significant amounts of coastal sage scrub. That alignment was changed because it conflicted with an existing SDG&E easement for major transmission lines in the large canyon and the road use and utility easement could not be shared. As a result, the City decided to move the Alga/College alignment to the west into a smaller canyon (the subject canyon) resulting in fewer impacts to coastal sage scrub. Thus, the City found the present alignment of Alga Road was the least environmentally damaging alignment.

The Commission further found and concluded in CDP #6-94-52:

...the Commission notes the present proposed alignment (on the subject site) of Alga Road north of the proposed [Mariner's Point] subdivision appears to be the least environmentally damaging alignment based on the City's representations and the Zone 20 Specific Plan and that approval of this action would not result in resource impacts inconsistent with the Mello II LCP or long range planning options addressed in the City's draft Habitat Management Plan and the Statewide Natural Communities Conservation Plan.

Thus, based on the above, the City and the Commission found that the road through the canyon on the subject site was the least environmentally damaging alternative.

However, based on the preceding, while the Commission acknowledged the road generally, it did not review a specific alignment proposal. Therefore, with this amendment, the Commission must find the road alignment to be the least environmentally damaging alignment. To address this issue, the City submitted an alternatives analysis. The submitted analysis concludes that the subject roadway segment can not be redesigned to alter its alignment to avoid the dual criteria area.

Since the northerly and southerly segments of Aviara Parkway have already been fully constructed, the alignment for this remaining important segment cannot now be altered. Major Arterial horizontal and vertical street design standards must be met. Minimum horizontal radii for Aviara Parkway, a major arterial, are 1400 feet. Attempting to curve the road around the deed-restricted area cannot be accomplished with a 1400-foot radius curve. Street grades for Aviara Parkway (vertical alignment) cannot exceed 7%. Currently, the street grade is designed at 6% without the use of vertical curves, thereby matching the existing northerly and southerly termini of the street as constructed with the Cobblestone, Sambi and Mariner's Pointe subdivisions. The existing northerly and southerly termini of this remaining segment are fixed points, which necessitate completing Aviara Parkway as approved by the City Council, the Coastal Commission, and the various resource agencies.

Additionally, the Commission finds that the deed restricted area to be impacted is not an environmentally sensitive habitat area (ESHA). That is, as noted above, the small canyon that will be impacted is not contiguous with other significant undisturbed stands of sensitive habitat that provide significant habitat value such as the canyon to the east of the subject canyon. The habitat within the subject canyon is also disturbed, further diminishing its habitat value and does not contain any sensitive, threatened or endangered species. Additionally, the resource agencies found the site not to be ESHA, but that its removal was necessary to assure that ESHA to the east would be preserved. Thus, the Commission finds that ESHA is not being impacted by the proposed amendment.

The Commission finds that based on the above and subject to the following special conditions it can accept the proposed amendment. That is, the current alignment, although it would affect coastal resources within this particular deed-restricted area, is on the whole the environmentally preferred alignment. As noted, impacts to dual criteria areas are allowed for Circulation Element roads in the certified LCP.

Special Condition #1 requires the existing open space deed restriction to be replaced with a revised open space deed restriction that allows the road as a permitted use within the deed-restricted area.

To memorialize the applicant's proposal to enhance the remaining area covered by the open space deed restriction with fire retardant plants, Special Condition #2 requires the applicant to revegetate that portion of the slopes of Aviara Parkway that are disturbed by the installation of the road. Drought tolerant, fire-resistant native plants consistent with the surrounding area shall be utilized to the maximum extent feasible to re-establish the area consistent with its present character.

Special Condition #3 requires that all other terms and conditions of the approval of Coastal Development Permit #6-88-531 not specifically modified herein remain in full force and effect.

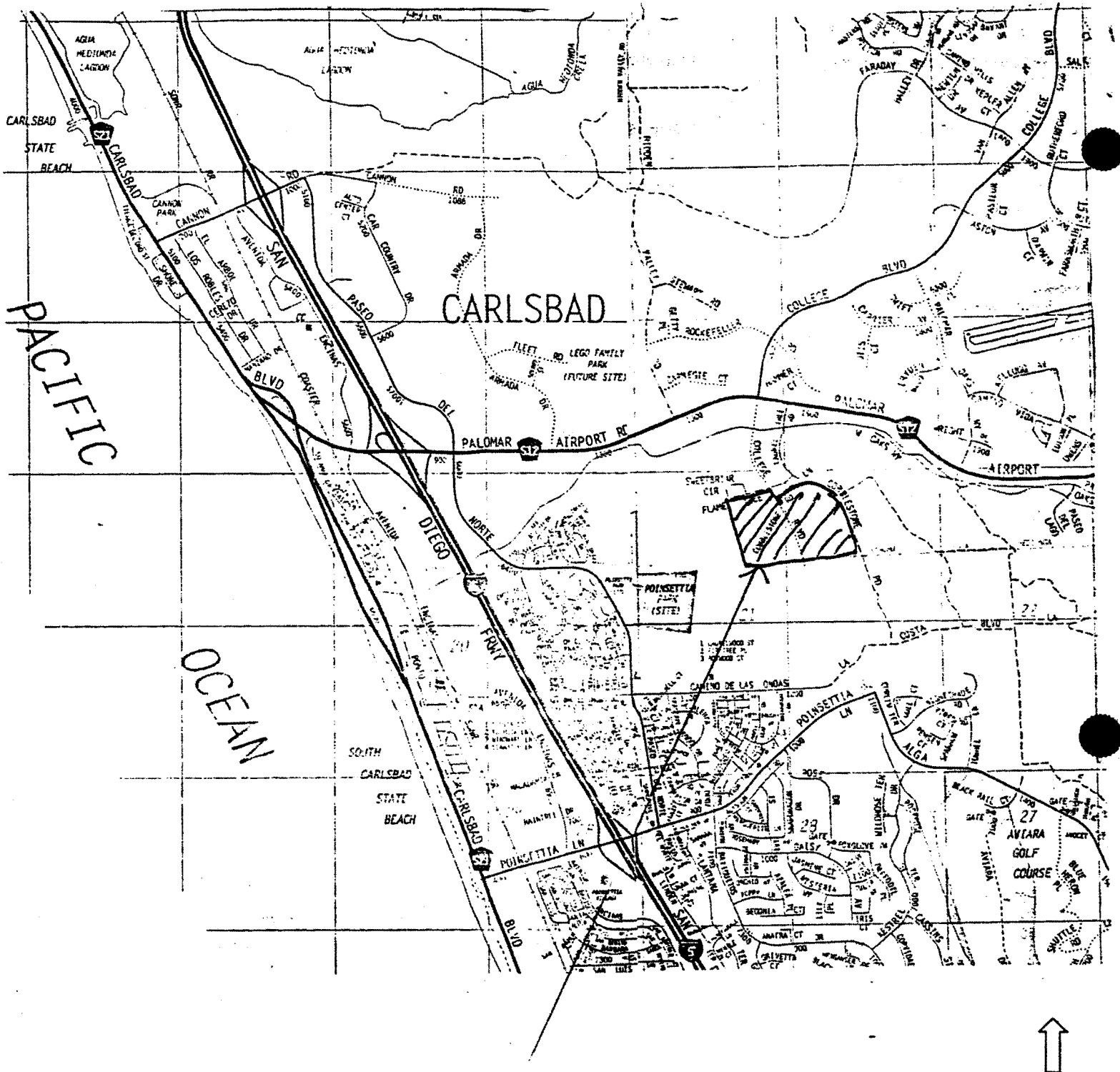
In summary, the Commission finds that based on past Commission and City actions regarding environmental review of the proposed road alignment, it can find the road through the previously deed restricted area can be accepted as a permitted use within the open space. Additionally, the Commission finds that removal of the 2.4 acres of dual criteria slopes to accommodate the circulation element road does not represent impacts to ESHA. Additionally, the applicant is proposing to enhance the one-acre of remaining deed-restricted area with vegetation consistent with the character of the surrounding area. As conditioned, the Commission finds the proposed amendment can be found consistent with the resource protection policies of the certified Mello II LCP.

3. Local Coastal Planning. Section 30604 (a) 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.

Based on the above, the Commission finds that the proposed amendment request, subject to the above cited special conditions, is consistent with the certified Mello II segment of the City of Carlsbad LCP. Therefore, approval of the proposed amendment should not prejudice the City of Carlsbad to conform to the provisions of its certified LCP.

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

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



SUBJECT SITE

NORTH

EXHIBIT NO. 1

**APPLICATION NO.
6-88-531-A**

Location Map