

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

**Fr 8a**

Filed: 8/4/99  
49th Day: 9/22/99  
180th Day: 1/31/00  
Staff: GDC-SD  
Staff Report: 8/31/99  
Hearing Date: 9/14-17/99

**STAFF REPORT AND RECOMMENDATION ON APPEAL**  
**SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approval With Conditions

APPEAL NO.: A-6-ENC-99-108

APPLICANT: Dorothea Smith

PROJECT DESCRIPTION: Subdivision of a 5.6 acre site into seven (7) single-family residential lots and one (1) open space lot, construction of on-site road, drainage and utility improvements and approximately 2,600 cubic yards of grading.

PROJECT LOCATION: 1700 Block of Rubenstein Avenue (west of Rossini Dr., between Brighton and Warwick Avenues), Encinitas, San Diego County.  
APN 260-284-01

APPELLANTS: Leah Levi; Tilman Oltersdorf; California Coastal Commissioners  
Cecilia Estolano and Christina Desser

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications dated August 4, 1999 and August 10, 1999; City of Encinitas Planning Commission Resolution No. PC-99-24; Tentative Subdivision Map 92-163; City of Encinitas City Council Resolution No. 94-87; Final Environmental Impact Report for the Smith Canyon Tentative Subdivision Map dated December 1993 by Brian F. Mooner Associates; Supplement to the Previously Certified Environmental Impact Report for the Smith Canyon Tentative Subdivision Map dated February 2, 1999 by Mooney & Associates;

Letter from Dept. of Fish and Game dated April 2, 1999; CDP # A-6-ENC-98-129/Brandywine.

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**I. Appellants Contend That:**

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to preservation of environmentally constrained (steep slopes) and sensitive habitat areas (southern maritime chaparral, riparian habitat). In particular, the appellants allege that the development is inconsistent with the LCP provisions that (1) limit encroachment into steep slopes in excess of 25% grade, (2) limit impacts to chaparral habitat, (3) require necessary brush management for fire safety to avoid native habitat impacts, (4) require the provision of a minimum 50 buffer from riparian habitat for new development and (5) require pollutants and sedimentation be eliminated from offsite drainage generated by new development.

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**II. Local Government Action.**

The coastal development permit was approved by the City of Encinitas Planning Commission on July 8, 1999. Several special conditions were attached which indicate that all conditions placed on the tentative map approval remain in full force and effect and a condition which requires the project be redesigned to avoid direct impacts to on-site riparian habitat.

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**III. Appeal Procedures.**

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

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

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have

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

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

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

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#### Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

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

#### MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-ENC-99-108 raises no substantial issue with respect to the grounds on which the appeal has been filed.

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

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#### Findings and Declarations.

1. Project Description. The proposed development involves the subdivision of a 5.6 acre site into seven (7) single-family residential lots and one (1) open space lot, construction of on-site road, drainage and utility improvements and approximately 2,600 cubic yards of grading. No residential development is proposed at this time. The project

site is located within "Smith Canyon" near the 1700 block of Rubenstein Avenue, west of Rossini Dr., between Brighton and Warwick Avenues in the City of Encinitas.

The existing site is very constrained. A small drainage known as Rossini Creek runs north/south through the eastern portion of the site. The drainage has been delineated as containing approximately 1.7 acres of riparian and freshwater wetlands. In addition, the site includes approximately 2.6 acres of Southern Maritime Chaparral and approximately .6 acres of disturbed chaparral, with approximately 44 percent of the 5.6 acre site consisting of steep slopes in excess of 25% grade.

2. Landform Alteration/Steep Slopes. The appellants contend that the City's approval permits encroachment into the existing steep slopes areas of the site without considering the following requirements of the certified LCP which serves to minimize such encroachments.

Public Safety (PS) Policy 1.2 of the LUP states:

Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of property within steep slopes, upon the discretionary judgement that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. Within the Coastal Zone and for the purposes of this section, "encroachment" shall constitute any activity which involves grading, construction, placement of structures or materials, paving, removal of native vegetation including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat. Modification from this policy may be made upon the finding that strict application of this policy would preclude any reasonable use of property (one dwelling unit per legal parcel). Exceptions may also be made for development of circulation element roads, local public streets or private roads and driveways which are necessary for access to the more developable portions of the site on slopes of less than 25% grade, and other vital public facilities, but only to the extent that no other feasible alternatives exist, and minimum disruption to the natural slope is made.

In addition, Section 30.34.030 (Hillside/Inland Bluff Overlay Zone) of the certified Implementation Plan (IP) contains similar requirements, and states, in part:

Slopes of greater than 25 percent grade shall be preserved in their natural state. Encroachments within the slope areas, as specified below, shall be allowed when it is found that there is no feasible alternative siting or design which eliminates or

substantially reduces the need for such construction or grading, and it has been found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site.

[...]

Said encroachment shall be approved by the authorized agency and shall be discretionary action based on the application. . . .

Approximately 44% of the project site is comprised of steep slopes in excess of 25% grade. In approval of the proposed residential subdivision, the City failed to include review of feasible alternative sitings or designs that would reduce or limit the need for encroachment into steep slope areas. The City's LCP recognizes the fact that a legal parcel may be comprised in whole or part with steep slopes in excess of 25% grade. As such, the above cited policy and ordinance were included in the LCP to assure that steep slope areas are afforded protection while at the same time allowing reasonable use by the property owner.

The above cited LCP provisions allow development to encroach up to a maximum of 20% into such steep slopes, but only when based on a detailed site analysis and a determination that all encroachment has been reduced to the maximum extent possible. Section 30.34.30 includes a sliding scale of maximum permitted encroachments based on the percentage of the site that is covered by steep slopes in excess of 25% grade. In the case of the proposed development, approximately 44% of the site is comprised of steep slopes in excess of 25% grade and, according to the sliding scale, a maximum of 10% encroachment can be permitted. However, as noted above, the maximum of 10% encroachment is not automatic, but discretionary, based on the findings of a site specific evaluation and analysis as to alternatives that would eliminate or minimize the encroachments.

In this particular case, the City simply allowed the maximum 10% encroachment into steep slopes to accommodate the 7 lot subdivision and did not consider alternative designs to fulfill their discretionary requirement of reviewing the development so as to reduce the encroachment to the maximum extent feasible. Thus, the development as approved by the City, is inconsistent with the certified LCP pertaining to development on steep slopes.

3. Wetlands. The appellants contend that approval of the project by the City is inconsistent with provisions of the City's certified LCP pertaining to the provision of appropriate buffers surrounding identified wetland resources. The City's LCP includes several provisions pertaining to the protection of wetlands. The following are relevant to the subject appeal:

Land Use Policy 8.10 of the certified LUP states, in part:

... All areas possessing wetland resource values, including coastal salt marsh and freshwater marsh habitat types, shall be protected by appropriate buffers. Buffer zones sufficient to protect wetlands shall generally be minimum 100 feet in width, and buffer zones to protect riparian areas shall generally be minimum 50 feet in width, unless a use or development proposal demonstrates that a smaller buffer will protect the resources or wetland/riparian area based on site-specific information, including but not limited to, the type and size of the development and/or proposed mitigation (such as planting of vegetation) which will also achieve the purposes of the buffer. ... The California Department of Fish and Game and the U.S. Fish and Wildlife Service shall be consulted in such buffer determinations and their comments shall be accorded great weight. ...

In addition, Resource Management (RM) Policy 10.6 of the certified LUP states, in part:

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

As stated previously, the subject site contains a small drainage area that has been delineated as containing approximately 1.7 acres of riparian and freshwater wetlands. However, the City's decision for the subject residential subdivision did not include provisions for appropriate wetland buffers. The City determined that a buffer surrounding the identified wetland resources in this case was not warranted due to an elevation difference between the wetlands and the proposed developed area, the limited size and extent of the wetlands, the proposed open space easement covering the wetland and a proposed fence to enclose the wetlands. While the LCP does provide for the size of a buffer to be revised based on site-specific consideration and in consultation with resource agencies, the above cited LCP provisions do not permit the elimination of such a buffer. In addition, the Department of Fish and Game submitted a letter of comment for the subject development (attached) in which they stated that a minimum buffer of 25 feet in width be provided. While Land Use Policy 8.10 requires that the Department of Fish and Game's opinions be given "great weight", the City's approval did not address the Department's concerns. In addition, while the City's approval found the on-site wetlands to be of limited value and not worthy of protecting with a buffer, the LCP does distinguish between the size, extent or quality of wetlands, but rather affords all wetlands the same protection. As such, because wetland resources have been delineated on the site

and the City's approval does not include the provision for any wetland buffer, the proposed development is inconsistent with the certified LCP.

4. Environmentally Sensitive Habitat Areas. The appellants contend that the proposed development failed to preserve and protect or minimize impacts to environmentally sensitive habitat as is required by the LCP.

Resource Management (RM) Goal 10 of the certified LUP states, in part:

The City will preserve the integrity, function, productivity, and long term viability of the environmentally sensitive habitats throughout the City, including . . . riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

In addition, Resource Management Policy 10.1 of the certified LUP states, in part:

The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot).... Encroachment for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance.

Resource Management Policy 10.5 of the certified LUP is applicable to the proposed development and states, in part;

The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval:

[...]

-minimize fragmentation or separation of existing contiguous natural areas.

[...]

-where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them; . . .

Finally, Public Safety Policy 1.13 of the certified LUP states:

In areas identified as susceptible to brush or wildfire hazard, the City shall provide for construction standards to reduce structural susceptibility and increase protection.

Brush clearance around structures for fire safety shall not exceed a 30-foot perimeter in areas of native or significant brush, and as provided by Resource Management Policy 10.1

According to the biological analysis presented by the applicant, aside from the 1.7 acre of wetlands, the subject site also contains approximately 2.6 acres of Southern Maritime Chaparral and .6 acres of disturbed chaparral. The City's approval allows direct impacts to approximately 1.6 acres of Southern Maritime Chaparral and .5 acres of disturbed chaparral, a significant amount of which will occur on steep slopes in excess of 25% grade. As cited above, RM Policy 10.1 prohibits the removal of all native vegetation on slopes in excess of 25%, except if such a restriction would preclude reasonable use of the property which is defined as 1 dwelling unit. In this case, the City's approval of the residential subdivision permits the removal of native chaparral vegetation on steep slopes in excess of 25% grade to accommodate 7 single-family residential lots.

In addition, RM Policy 10.5 includes a provision that "where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them." The Department of Fish and Game notified the City in a letter (attached), during the circulation of a Supplemental EIR for the subject development, that the on-site approximately 2.4 acre of Southern Maritime Chaparral, although isolated from larger habitat areas, is a rare and significant environmentally sensitive resource such that any impacts to this resource, no matter if isolated, must be mitigated. The City's approval allows for the construction of a private road that will remove Southern Maritime Chaparral (without any mitigation) and allows for the submission of a future site grading plan that will involve additional impacts to Southern Maritime Chaparral (up to 1.6 acres total). As such, the City's approval is inconsistent with the requirements of RM Policies 10.1 and 10.5.

In addition, because the subject site is heavily vegetated, the City fire department will likely require an extensive brush management plan surrounding future residential development that could impact environmentally sensitive habitat through the requirement of clear cut for fire safety. Although Public Safety Policy 1.2 cited previously requires that brush clearance requirements be included in the determination of acceptable encroachments onto steep slopes, the City's approval did not consider the impacts of brush clearance in its allowance of up to 10% encroachment onto steep slopes that contain native vegetation. In addition, while PS Policy 1.13 does not permit more than 30 feet of perimeter clearance of native vegetation around structures for fire safety, many fire departments today require up to 100 feet of clearance in areas where fire safety is a particular concern. The City's approval failed to evaluate the proximity of the buildable areas within each proposed lot to native vegetation in terms of brush management requirements. Thus, the City's approval of the residential subdivision could result in the need for significant additional removal of native vegetation for fire safety purposes, inconsistent with the above cited provisions of the certified LCP.



5. Water Quality/Polluted Runoff. The appellants contend that approval of the project by the City did not include adequate provisions for controlling pollution or sedimentation that will occur as a result of the proposed development.

Resource Management Policy 2.1 of the certified LUP states:

In that ocean water quality conditions are of utmost importance, the City shall aggressively pursue elimination of all forms of potential unacceptable pollution that threatens marine or human health.

In addition, Resource Management Policy 2.3 of the certified LUP states:

To minimize the harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such waterways.

Resource Management Policy 14.1 of the certified LUP is applicable and states, in part:

... It is the policy of the City that, in any land use and development, grading and vegetation removal shall be limited to the minimum necessary.

In addition, Resource Management Policy 14.3 of the certified LUP states, in part:

The City will reduce the rate of sedimentation of the lagoons by requiring procedures for controlling runoff and erosion associated with upland grading and development based on a minimum 10-year, six hour storm event. ...

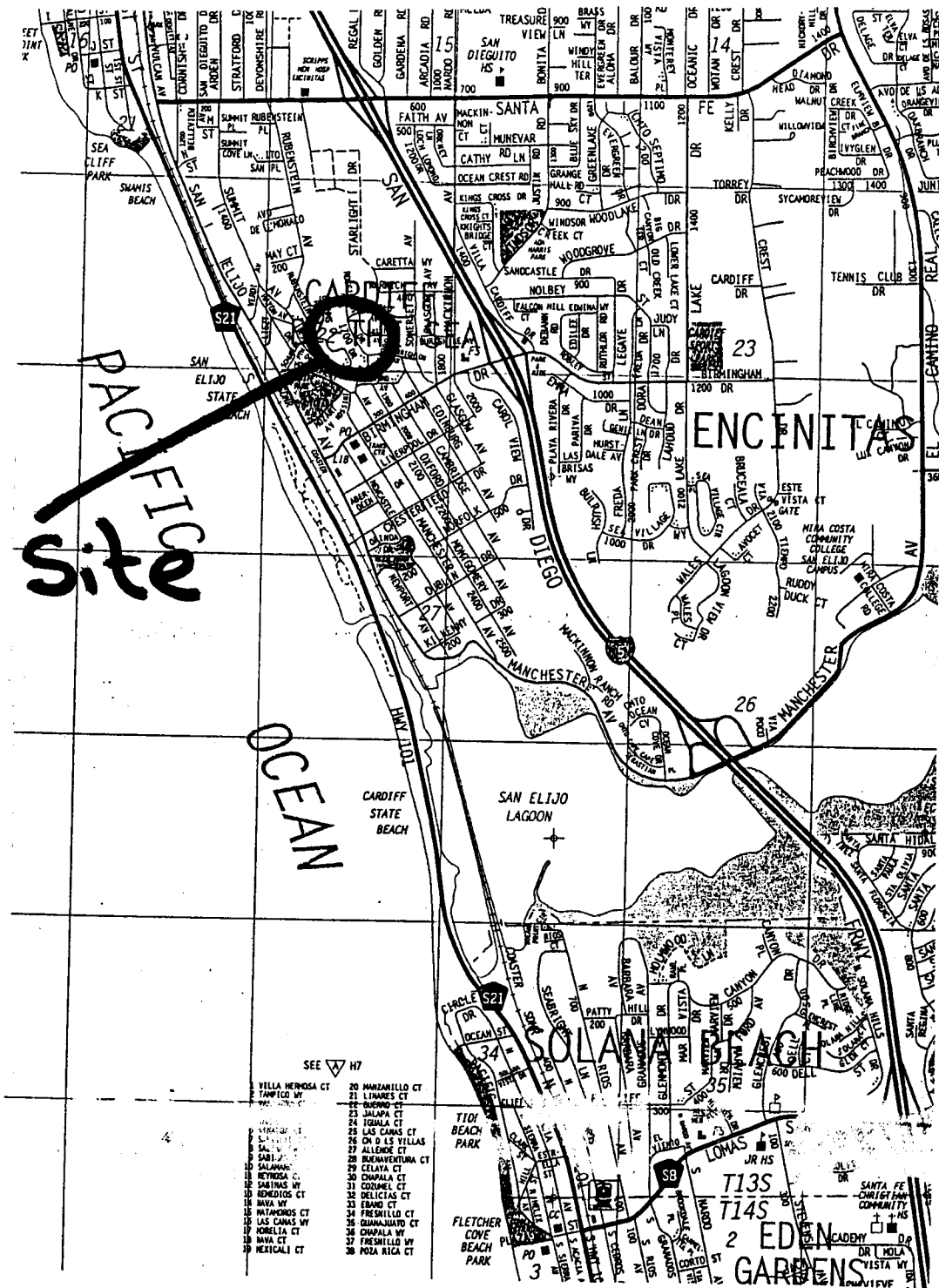
Finally, Resource Management Policy 14.5 of the certified LUP states, in part:

... No grading shall occur during the rainy season within the Special Study Overlay area, or in areas upland of sensitive areas including lagoons, floodplains, riparian or wetland habitat areas, unless by site-specific determination, the grading would not be occurring on sensitive slopes, in floodplain areas or upland of floodplains. ...

The subject development includes grading and the installation of utilities and roads directly adjacent to an existing drainage that contains wetland resources. The City's approval only required that the applicant construct and maintain erosion control measures and install temporary desiltation/detention basins. The approval did not include the provision, as required by RM Policy 14.3, that the erosion control measures be based on a 10-year, six-hour storm event. Although the subject site is located within the City's Special Study Overlay area, the City's approval did not prohibit grading from occurring during the rainy season and did not make a determination as to why grading during the rainy season should be permitted in this case. In addition, the City's approval did not

incorporate the use of Best Management Practices such as oil and grease catch basins or filters that would prevent oils and suspended solids from entering the adjacent wetlands, inconsistent with the above cited provisions of the certified LCP.

In summary, the City's approval of the proposed 7 lot subdivision and associated improvements is inconsistent with several policies of the City's LCP that relate to wetlands, steep slopes, native vegetation and water quality resources. The City has failed to follow the requirements of the LCP which require that: 1) wetlands be protected from the effects of development through the application of a 50 foot-wide buffer; 2) encroachments onto steep slopes in excess of 25% grade be eliminated or reduced; 3) native vegetation be protected and preserved or, if unavoidable, that impacts be minimized and mitigated and; 4) water quality be protected by the elimination or reduction of polluted run-off. As such, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified Local Coastal Program.

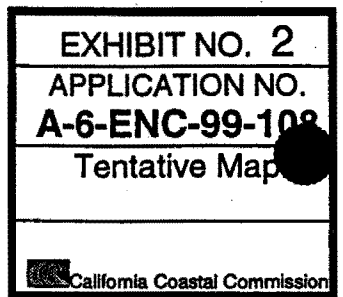


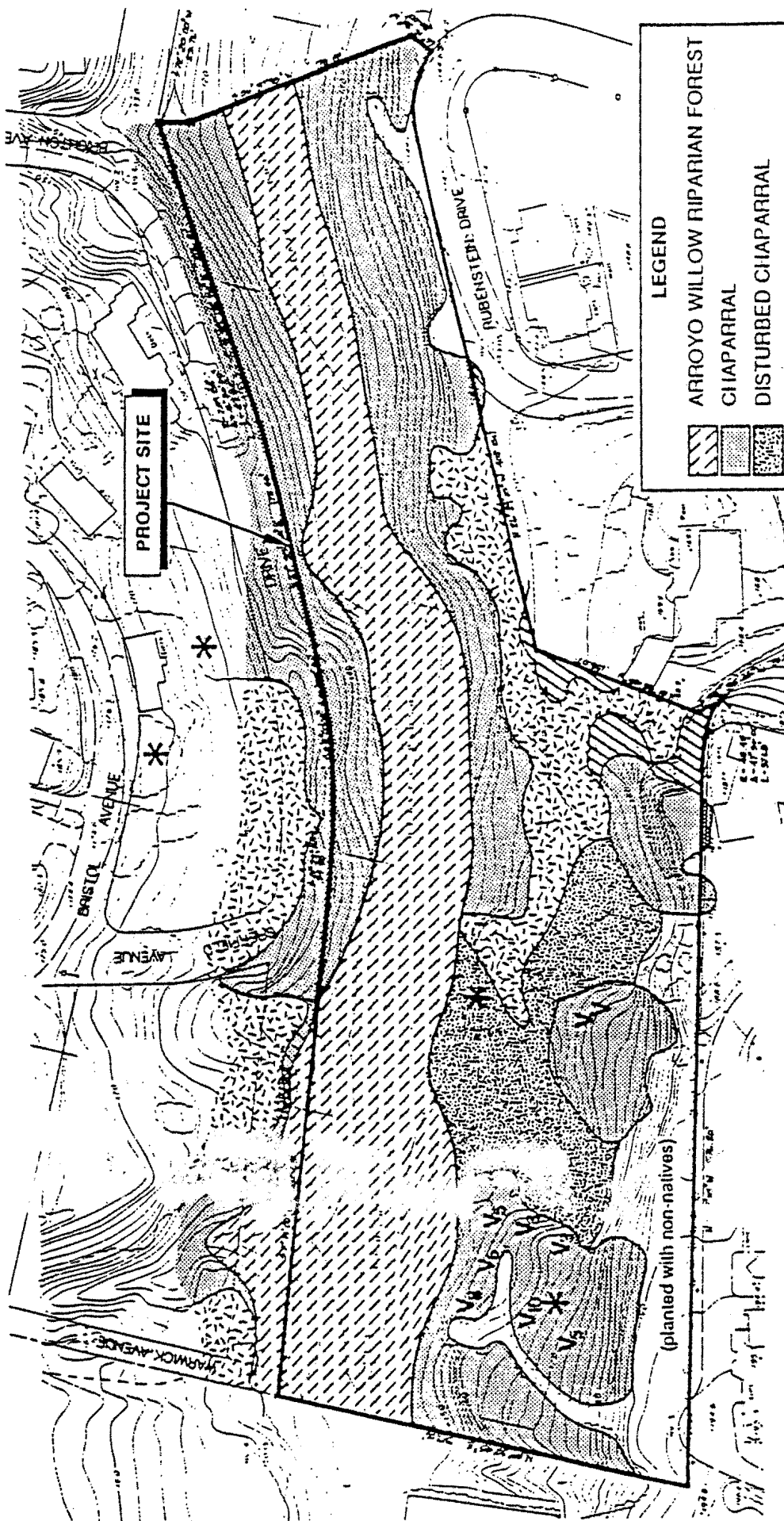
NT

EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-99-108
Location Map
California Coastal Commission

**92-163 TM**

**August 18, 1992**





# LEGEND

- ARROYO WILLOW RIPARIAN FOREST
- CHAPARRAL
- DISTURBED CHAPARRAL
- NON-NATIVE GRASSLAND
- DISTURBED
- ORNAMENTAL

*Ceanothus verrucosus*

*Pinus torreyana*

NOTE: Subscript with *Ceanothus* location represents number of individual plants.

## Smith Canyon Vegetation Survey

1992

EXHIBIT NO. 3

APPLICATION NO.

A-6-ENC-99-108

1992 Vegetation  
Survey

California Coastal Commission

Mooney  
Associates

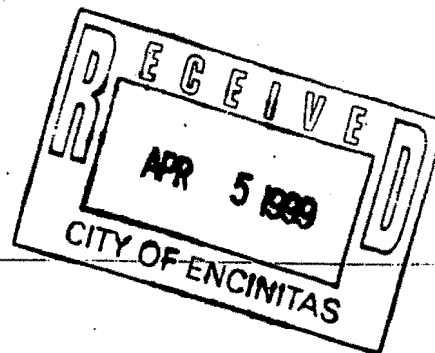
Biological Resource

Figure

Smith Can

**DEPARTMENT OF FISH AND GAME**

South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
(619) 467-4201  
FAX (619) 467-4235



April 2, 1999

Mr. Craig Olson  
Community Development Department  
City of Encinitas  
505 South Vulcan Avenue  
Encinitas, CA 92024-3633

**Supplement to the Environmental Impact Report  
for the Smith Canyon Tentative Subdivision Map  
(Case No. 98-219 CDP, SCH No. 93051039)**

Dear Mr. Olson:

The California Department of Fish and Game (Department) has completed review of the Supplement to the Environmental Impact Report (SEIR) for the Smith Canyon Tentative Subdivision Map and offers the following comments. The project proponent is seeking a Coastal Development Permit (CDP) for a 5.56-acre project with a certified Final EIR in the City of Encinitas (City). The Final EIR was certified by the City on December 14, 1994. The California Coastal Commission certified the City's Local Coastal Plan (May 1995) after the Final EIR for this project was approved. Potential differences between the requirements of the Local Coastal Plan and this project have resulted in the need for this SEIR. The project proposes to subdivide a 5.56 acre parcel into seven residential lots and one 1.6-acre open space lot. The property is located in Cardiff-by-the-Sea, west of Rossini Drive and east of Rubenstein Drive, and is surrounded by development. The undeveloped lands are not proposed to be included within the City's Multiple Habitat Conservation Program (MHCP) Subarea Plan preserve system.

The site supports two sensitive habitat types, southern maritime chaparral (2.8 acres, including disturbed chaparral) and willow riparian woodland (1.7 acres), in addition to non-native grassland and disturbed habitats. The willow riparian habitat bisects the property, and is present in the Rossini Canyon drainage, a drainage that flows through the urbanized portion of Cardiff-by-the-Sea and into San Elijo Lagoon. No listed plant or wildlife species were documented on-site. However, wart-stemmed ceanothus (*Ceanothus verrucosus*), a sensitive species associated with southern maritime chaparral, is present on-site (approximately 42 individuals).

The project would set aside in dedicated open space approximately 1.6 acres encompassing the willow riparian woodland and upland habitat on the east site of the property. The remainder of

EXHIBIT NO. 4  
APPLICATION NO.  
**A-6-ENC-99-108**  
Letter from Dept. of  
Fish and Game  
Page 1 of 3

Mr. Craig Olson

April 2, 1999

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the site would be fully developed. No upland buffer to the riparian habitat is proposed on the western side of the stream. This is potentially in conflict with the City's recently approved Local Coastal Plan, which recommends a 50-foot buffer from riparian habitat. The original tentative map proposed an impact of approximately 800 square feet of riparian habitat for the construction of an access road, but the conditions of the final map include avoiding all impacts to wetlands if feasible. Any impacts to wetland habitat are proposed to be mitigated at a 1.5:1 ratio on-site.

The Department offers the following comments:

1. The Department requests that all impacts to wetland habitats be avoided. In addition, while the riparian habitat on-site is isolated, the SEIR does not provide sufficient justification for eliminating the 50-foot buffer zone along the stream's western edge. Buffering of the wetland along its western boundary should be incorporated into the project. Buffering not only provides some necessary habitat for wildlife species utilizing riparian areas, but discourages encroachment by people which will further degrade the habitat. Because of the isolated nature of this wetland habitat, and its relatively small size, a minimum buffer zone width of 25 feet along the western edge of the riparian habitat should be maintained. In addition, the boundary between the wetland buffer and the active use areas on each lot should be fenced. Besides wildlife habitat values, the riparian habitat also serves a useful function in maintaining water quality. The water from this stream flows into San Elijo Lagoon, a very sensitive wetland resource. The fact that much of this drainage in Cardiff-by-the-Sea no longer supports riparian vegetation makes the remaining riparian habitat on the project site more important for preventing any further decrease in water quality. Avoidance and buffering of wetlands will help maintain the current values of the wetlands for both wildlife and water quality.

Any impacts to riparian habitat will likely require a Streambed Alteration Agreement (1603) from the Department. Our first priority in mitigating impacts to riparian habitat is project redesign to avoid the impacts. A recent change in Department regulations relative to Streambed Alteration Agreements now notes the issuance of these agreements is subject to the California Environmental Quality Act (CEQA). Therefore, to minimize additional requirements by the Department pursuant to Fish and Game Code Section 1603 and/or CEQA, the SEIR should fully identify the impacts to the riparian habitat on-site and provide adequate avoidance and minimization of impacts, appropriate mitigation, and monitoring and reporting commitments for issuance of the Streambed Alteration Agreement. Full avoidance of impacts to the riparian habitat on-site eliminates the need for this agreement, and, as stated previously, that is the Department's preference for this project.

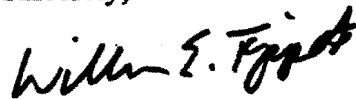
2. The Department does not concur with the conclusion in the SEIR that impacts to southern maritime chaparral are not significant. While we do concur that this site is too small and disjunct from larger habitat areas to warrant including it in the City's MHCP Subarea Plan

Mr. Craig Olson  
April 2, 1999  
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preserve system, that does not mean it is not a significant resource requiring mitigation for impacts. ~~This habitat type is much rarer than coastal sage scrub habitat.~~ In addition, conservation of this habitat type will be a key component of the City's MHCP Subarea Plan, and mitigation will be required for impacts to it. As such, we request that impacts to 2.8 acres of southern maritime chaparral be mitigated at a ratio of 1.5:1 off-site through acquisition of 4.2 acres of southern maritime chaparral lands or mitigation credits.

This concludes the Department's comments regarding the Smith Canyon Project. If you have any questions regarding this letter please contact David Lawhead at (619) 467-4211. Thank you.

Sincerely,



William E. Tippetts  
Habitat Conservation Supervisor

cc: Department of Fish and Game

C.F. Raysbrook  
David Lawhead  
San Diego

U.S. Fish and Wildlife Service

Sherry Barrett

FILE: Chom  
SMITHCYN.DNL

2-14



## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

11 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

CRISTINA DESSER  
319 2nd St  
Sausalito CA 94965 (415) 904-5202  
Zip Area Code Phone No.

RECEIVED

AUG 10 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTSECTION II. Decision Being Appealed1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Seven lot single-family residential subdivision, 1 open space lot, construction of an internal road and grading of approximately 2,600 cu. yds. for the road construction, site drainage and utility installation on a 5.6 acre lot. No residential development is approved with this permit.

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

Northeast of the 1700 block of Rubenstein Drive and west of Rossini Drive, between Brighton Avenue and Warwick Avenue, Encinitas, San Diego County. (APN: 260-284-01)

4. Description of decision being appealed:

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

b. Approval with special conditions: X

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

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-ENC-99-108DATE FILED: 8/10/99DISTRICT: SAN DIEGO

EXHIBIT NO. 5

APPLICATION NO.

A-6-ENC-99-108

Appeal Applications

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California Coastal Commission

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

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

a.    Planning Director/Zoning  
Administrator

c.   X   Planning Commission

b.    City Council/Board of  
Supervisors

d.   Other  

3. Date of local government's decision:   July 8, 1999  

4. Local government's file number (if any):   98-219 CDP  

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

  Dorothea Smith    
  1220 Camino Del Mar    
  Del Mar, Ca 92014  

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

Dept of Fish & Game  
Attn: William E. Tippets  
4949 Viewridge Avenue  
San Diego, CA 92123

Leah Levi & Tilman Oltersdorf  
427 Bristol Avenue  
Cardiff, CA 92007

Jeffrey Fernald  
3855 Manchester Avenue  
Encinitas, CA 92024

Steve Cash  
472 Brighton Avenue  
Cardiff, CA 92007

Tricia A. Smith  
Attorney At Law  
1330 Camino Del Mar  
Del Mar, CA 92014

Michael L. Page  
Mooney & Associates  
9903 Businesspark Avenue  
San Diego, CA 92131-1120

Tom B. Pearson  
Andrews/Pearson  
1312 Camino Del Mar  
Del Mar, CA 92014

Erin Kennedy &  
Raymond Ellstad  
1770 Rubenstein Drive  
Cardiff, CA 92007

Charlie Sorigrias  
1825 Rubenstein Drive  
Cardiff, CA 92007

Grace M. Pearson  
2009 Manchester Avenue  
Cardiff, CA 92007

Stuart & Donna Blumer  
1729 Rubenstein Drive  
Cardiff, CA 92007

Joel Emerson  
2019 Manchester Avenue  
Cardiff, CA 92007

Paul & Janet Massaro  
1720 Rubenstein Drive  
Cardiff, CA 92007

Jolie Cash  
1752 Rubenstein Drive  
Cardiff, CA 92007

Bruce & Joan Atwood  
1708 Rubenstein Drive  
Cardiff, CA 92007

Harold Kester  
1615 Summit Avenue  
Cardiff, CA 92007

Jerry Peters  
PO Box 1091  
Cardiff, CA 92007

Residents  
1778 Rubenstein Drive  
Cardiff, CA 92007

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

SECTION IV. Reasons Supporting This Appeal

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

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

See Attachment "A"

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

SECTION V. Certification

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

Signed Christina L. Benson  
Appellant or Agent

Date: 8/10/00

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

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

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

Dorothea Smith Appeal  
Attachment A

The coastal permit approved by the City of Encinitas allows for a seven lot residential subdivision, one 1.6 acre open space lot, construction of an internal road and grading of approximately 2,700 cu. yd. for the road construction, site drainage and utility installation on a 5.6 acre lot. No residential development is approved with this permit. The existing 5.6 acre lot contains naturally vegetated steep slopes in excess of 25% grade, a natural drainage consisting of approximately 1.7 acres of riparian/freshwater marsh habitat, approximately 1.6 acres of Southern Maritime Chaparral and .5 acres of disturbed chaparral. The City's approval required the project be revised to eliminate all direct impacts to wetland habitat and requires the fencing of the existing riparian/freshwater marsh habitat but does not require or provide for any buffer to separate the proposed development from the riparian/freshwater habitat. In addition, the City's approval includes impacts to Southern Maritime Chaparral habitat, but does not require mitigation for such impacts and permits substantial alteration of the steep slopes in excess of 25% grade.

As approved by the City, the development appears to be inconsistent with several policies contained in the certified local coastal program. Specifically, the development, as approved by the City is inconsistent with the following LUP policies:

Public Safety Element (PS) Policy 1.2 of the Land Use Plan (LUP) limits the amount of encroachment into slopes in excess of 25% grade. The proposal appears to exceed those limitations. In addition, Resource Management (RM) policy 10.1 and 10.5 of the LUP requires preservation of Coastal Mixed Chaparral on natural slopes in excess of 25% grade with minor exceptions and limits impacts to Coastal Mixed Chaparral in areas of less than 25% grade. The City's permit for the subject development, which involves development on steep slopes and impacts to Southern Maritime Chaparral habitat is inconsistent with these policies.

PS policy 1.13 of the LUP requires the city to design development such that needed brush clearance be limited so as to avoid significant impacts to areas of native vegetation. The City's approval did not include any provisions addressing brush management.

Policies 2.1, 2.3, 14.1, 14.3 and 14.5 of the Resource Management element of the LUP requires that the City, in approving new development, ensure that ocean water, lagoons, rivers and streams be protected from the effects of runoff from development through elimination or minimization of pollutants and sedimentation from entering the waterways. Although the proposed development is bisected by a drainage area consisting of an approximately 1.7 acre riparian/freshwater marsh which eventually drains into San Elijo Lagoon, the City's approval did not include provisions for controlling pollution or sedimentation that may occur from the proposed 7 lot subdivision and therefore appears to be inconsistent with these resource management policies.

RM policy 10.6 of the LUP requires the application of a 50 foot-wide buffer zone, preserved in open space easements, upland of riparian habitat and prohibits the City from approving subdivisions that "would allow increased impacts from developments in wetlands or wetlands buffers". The City's approval is inconsistent with these policies in

that no buffer is provided surrounding the onsite 1.7 acre of riparian/freshwater marsh habitat.

In summary, City's approved seven lot subdivision appears to be inconsistent with several resource and public safety policies of the certified LCP as it relates to protection of environmentally sensitive habitat areas, steep natural slopes, polluted runoff, brush management and wetland buffers.

## CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

CECILIA ESTOLANO  
2892 Grand View Avenue  
Venice, CA 90291 (310) 305-3769  
Zip Area Code Phone No.

RECEIVED

AUG 10 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: Encinitas

2. Brief description of development being appealed:

Seven lot single-family residential subdivision, 1 open space lot, construction of an internal road and grading of approximately 2,600 cu. yds. for the road construction, site drainage and utility installation on a 5.6 acre lot. No residential development is approved with this permit.

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

Northeast of the 1700 block of Rubenstein Drive and west of Rossini Drive, between Brighton Avenue and Warwick Avenue, Encinitas, San Diego County. (APN: 260-234-01)

4. Description of decision being appealed:

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

b. Approval with special conditions: X

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-LG-ENC-99-108

DATE FILED: 8/10/99

DISTRICT: SAN DIEGO

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

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

a.    Planning Director/Zoning  
Administrator

c.   X   Planning Commission

b.    City Council/Board of  
Supervisors

d.    Other \_\_\_\_\_

3. Date of local government's decision:   July 8, 1999  

4. Local government's file number (if any):   98-219 CDP  

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

  Dorothea Smith    
  1330 Camino Del Mar    
  Del Mar, Ca 92014  

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

Dept of Fish & Game  
Attn: William E. Tippets  
4949 Viewridge Avenue  
San Diego, CA 92123.

Leah Levi & Tilman Oltersdorf  
427 Bristol Avenue  
Cardiff, CA 92007

Jeffrey Fernald  
3855 Manchester Avenue  
Encinitas, CA 92024

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San Diego, CA 92131-1120

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Bruce & Joan Atwood  
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Harold Kester  
1615 Summit Avenue  
Cardiff, CA 92007

Jerry Peters  
PO Box 1091  
Cardiff, CA 92007

Residents  
1778 Rubenstein Drive  
Cardiff, CA 92007

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

SECTION IV. Reasons Supporting This Appeal

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

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

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See Attachment "A"

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

SECTION V. Certification

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

Signed   
Appellant or Agent

Date: 8/10/99

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

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

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



Dorothea Smith Appeal  
Attachment A

The coastal permit approved by the City of Encinitas allows for a seven lot residential subdivision, one 1.6 acre open space lot, construction of an internal road and grading of approximately 2,700 cu. yd. for the road construction, site drainage and utility installation on a 5.6 acre lot. No residential development is approved with this permit. The existing 5.6 acre lot contains naturally vegetated steep slopes in excess of 25% grade, a natural drainage consisting of approximately 1.7 acres of riparian/freshwater marsh habitat, approximately 1.6 acres of Southern Maritime Chaparral and .5 acres of disturbed chaparral. The City's approval required the project be revised to eliminate all direct impacts to wetland habitat and requires the fencing of the existing riparian/freshwater marsh habitat but does not require or provide for any buffer to separate the proposed development from the riparian/freshwater habitat. In addition, the City's approval includes impacts to Southern Maritime Chaparral habitat, but does not require mitigation for such impacts and permits substantial alteration of the steep slopes in excess of 25% grade.

As approved by the City, the development appears to be inconsistent with several policies contained in the certified local coastal program. Specifically, the development, as approved by the City is inconsistent with the following LUP policies:

Public Safety Element (PS) Policy 1.2 of the Land Use Plan (LUP) limits the amount of encroachment into slopes in excess of 25% grade. The proposal appears to exceed those limitations. In addition, Resource Management (RM) policy 10.1 and 10.5 of the LUP requires preservation of Coastal Mixed Chaparral on natural slopes in excess of 25% grade with minor exceptions and limits impacts to Coastal Mixed Chaparral in areas of less than 25% grade. The City's permit for the subject development, which involves development on steep slopes and impacts to Southern Maritime Chaparral habitat is inconsistent with these policies.

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Policies 2.1.2, 14.1, 14.3 and 14.5 of the Resource Management element of the LUP requires that the City, in approving new development, ensure that wetlands, riparian areas, rivers and streams be protected from the effects of runoff from development through elimination or minimization of pollutants and sedimentation from entering the waterways. Although the proposed development is bisected by a drainage area consisting of an approximately 1.7 acre riparian/freshwater marsh which eventually drains into San Elijo Lagoon, the City's approval did not include provisions for controlling pollution or sedimentation that may occur from the proposed 7 lot subdivision and therefore appears to be inconsistent with these resource management policies.

RM policy 10.6 of the LUP requires the application of a 50 foot-wide buffer zone, preserved in open space easements, upland of riparian habitat and prohibits the City from approving subdivisions that "would allow increased impacts from developments in wetlands or wetlands buffers". The City's approval is inconsistent with these policies in

that no buffer is provided surrounding the onsite 1.7 acre of riparian/freshwater marsh habitat.

In summary, City's approved seven lot subdivision appears to be inconsistent with several resource and public safety policies of the certified LCP as it relates to protection of environmentally sensitive habitat areas, steep natural slopes, polluted runoff, brush management and wetland buffers.

## CALIFORNIA COASTAL COMMISSION

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



AUG 04 1999

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

LEAH LEVI and TILMAN OLTERSDORF

427 BRISTOL AVENUE, CARDIFF BY THE SEA

CA 92007

(760) 6343183

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port  
government: CITY OF ENCINITAS

2. Brief description of development being  
appealed: 7-LOT SUBDIVISION (SINGLE FAMILY RESIDENTIAL)

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 1700 BLOCK OF RUBENSTEIN DRIVE, CARDIFF  
APN 260-284-01

4. Description of decision being appealed:

a. Approval; no special conditions: ☒

b. Approval with special conditions: ☐

c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-99-108

DATE FILED: Aug 4, 1999

DISTRICT: San Diego

D/86

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

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

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

6. Date of local government's decision: July 8, 1999

7. Local government's file number (if any): 98-219CDP

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

TOM PEARSON / DOROTHEA SMITH  
C/O DYSON & DYSON  
1312 CAMINO DEL MAR, DEL MAR, CA 92014

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

- (1) Jeffrey FERNALD  
3855 MANCHESTER AVENUE  
ENCINITAS 92084
- (2) LEON J. THAL  
402 BRIGHTON AVENUE  
CARLIFE CA 92007
- (3) STEVEN CASH  
422 BRIGHTON AVENUE  
CARLIFE CA 92007
- (4) DIETMAR ROTHE  
1404 RUBENSTEIN AVENUE  
CARLIFE CA 92007

SECTION IV. Reasons Supporting This Appeal

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

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

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

THE DEVELOPMENT DOES NOT CONFORM TO THE STANDARDS SET

FORTH IN THE CITY OF ENCINITAS LOCAL COASTAL PROGRAM.

THE ISSUES INCLUDE BUFFERING OF RIPARIAN WETLAND,

AND POLICIES CONCERNING INLAND BLUFFS AND FLOODPLAINS.

PLEASE SEE ATTACHED APPEAL AND ATTACHMENTS FOR

DETAILS.

RELEVANT LCP SECTIONS: LU Goal 8, Policies 8.4, 8.6, 8.7, 8.10; PS Goal 1, policies 1.6g, 2.6;

RM Goal 10, policies 10.1, 10.4, 10.5, 10.6, 10.10; R Goal 2, policy 2.1

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

SECTION V. Certification

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

Signed Tilman Andy  
Appellant or Agent

Date 7/3/99

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

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

## APPEAL TO THE CALIFORNIA COASTAL COMMISSION

**RE:** Coastal Development Permit for Tentative Map 92-163

City of Encinitas Case No 98-219 CDP

**Applicants:** Dorothea Smith/Tom Pearson

**Appellants:** Tilman Oltersdorf/Leah Levi

### **A. PREAMBLE:**

A 7-lot subdivision and Coastal Development Permit has been approved by the City of Encinitas for the last remaining undeveloped canyon west of I-5 in Cardiff, located in the Coastal Zone Planning Area.

This 5.56 acre parcel contains 1.7 acres of riparian wetland and 2.2 acres of Southern Maritime Chaparral. Rossini Creek runs through the property, so placing the property within the riparian corridor draining into the San Elijo Lagoon.

The canyon was originally designated an open space park before it was sold by the County of San Diego to its current owners in 1951. Aerial photographs from the 1946 (see **attachment 1**) show the course of Rossini Creek through the coastal chaparral of the canyon. Historically the public has used the canyon over the years for walking. Property maps still call the area Rossini Park (see **attachment 2**).

The canyon is in the Special Study Overlay Zone as a sensitive and constrained area, and as such there are certain restrictions that are prescribed by the City of Encinitas General Plan (which incorporates the certified Local Coastal Program).

It is in the hillside/inland bluff overlay zone, and thereby faces certain restrictions concerning development on slopes as well as setback rules. Lots 1,2 and 7 in particular have steep topography near the bluff edge (see **attachment 3**).

In addition, the canyon contains a riparian wetland, placing additional restrictions on development (see **attachment 4**).

Finally, the canyon is also in the floodplain overlay zone, as defined by the City of Encinitas Municipal Code 30.34.040, Section A. A site-specific floodplain study, cited in the environmental impact report commissioned by the City prior to the approval of the tentative subdivision map, showed the property to contain a 100-year floodplain, amounting to 1.27 acres (see **attachment 5**).

For all these reasons, this Coastal Zone property falls under the definition of a constrained and sensitive area.

It is our contention that the subdivision as approved does not conform to the requirements of the Local Coastal Program. In fact we contend that the city has ignored the sensitive and constrained nature of the area in coming to several critical decisions regarding the subdivision, and that this has led to maximizing the degree of development rather than taking the conservative approach intended by the provisions of the Local Coastal Program.

**B. PRESERVATION OF CONSTRAINED AND SENSITIVE AREAS:**

There are several parts of the Local Coastal Program where the intent is to discourage development of constrained and sensitive areas, or at least to keep such development to a minimum (see **attachment 6**).

It is stated that sensitive and constrained areas shall be preserved to the greatest extent possible (*Land Use Element, Goal 8*). More specifically, natural features, including bluffs, wetland, riparian areas and steep slopes are also to be preserved (*Land Use Element Policy 8.6*). Furthermore residential development of steep slopes, canyons and floodplains is to be discouraged (*Housing Element Policy 3.11*). Finally, it is stated that the city will preserve environmentally sensitive habitats including riparian areas, coastal sagescrub and coastal mixed chaparral (*Resource Management Element, Goal 10*).

In fact, not only is development of such areas to be discouraged, but it is also stated that constrained areas should be evaluated for possible use as open space (*Land Use Element, Policy 8.7*), and that every effort be made to preserve open space areas that represent a significant resource for the community (*Recreation Element, Goal 2*). In addition, it is stated that the city will develop a program to acquire or preserve the entire riparian corridor that drains into the San Elijo Lagoon (*Resource Management Element, Policy 10.4*).

With regard to specific policies on riparian areas, it is stated that there shall be a 50ft buffer zone upland of riparian wetlands. (*Land Use Element, Policy 8.10; Resource Management Element, Policies 10.6 and 10.10*).

With regard to specific policies on hillside/inland bluff areas and coastal chaparral, it is stated that the City will minimize development on coastal sagescrub and mixed chaparral by preserving within the inland bluff and hillside systems all natural vegetation on slopes steeper than 25 % (*Resource Management Element, Policy 10.1*). In addition, when significant but isolated habitat areas exist, development will be designed to preserve and protect these areas (*Resource Management Element, Policy 10.5*). Finally, open bluff space is to be preserved within an open space easement or other suitable instrument (*Public Safety Element, Policy 1.6g*).

With regard to specific policies on floodplains, it is stated that no development or filling shall be permitted within any 100 year floodplain (*Public Safety Element, Policy 2.6*) and that in fact the city should seek to acquire floodplain areas for appropriate public use (*Recreation Element, Policy 2.1*).

### C. DECISIONS NOT IN KEEPING WITH THE INTENT OF THE LOCAL COASTAL PROGRAM:

A series of critical decisions has been made by the City of Encinitas, any one of which, had they not been in the developer's favor, might have resulted in a substantially redesigned subdivision, more in keeping with the intent of the Local Coastal Program.

All these decisions, taken as a whole, demonstrate a pattern of decision-making on the part of the City designed to maximize the development of the property. It will also be seen that this land is so marginal in its development potential (particularly lots 1, 2 and 7), due to its sensitive and constrained nature, every one of the following decisions was critical in order for this development as currently proposed. In situations where the city had some discretion, the decision was consistently made in favor of the developer, effectively maximizing the development of this sensitive site.

**Decision:** The City vacated easements along Rubenstein Drive, Brahms Road and Rossini Drive. The vacation and consequent boundary alteration was not put to public vote despite the fact that it would substantially increase the intended area development potential (*Land Use Element, Policy 3.12, Para 1*).

**Effect:** This added to the amount of flat land on the property, thus altering slope calculations and calculations of total net acreage. This particularly affected lots 1, 2 and 7 which nevertheless still have the greatest amount of slope steeper than 25% grade (61.2%, 78.9% and 63.8% respectively). (see attachment 7)

In addition, the vacation affected the proposed location of any construction, considering the existing front setback requirements of 25 ft from the public right-of-way in the R-3 zone.

**Decision:** The city chose to ignore elements of its own EIR on the project, namely the finding that the property contained a 100-year floodplain. In doing so it also ignored its own Municipal Code (30.34.040, Section A) which defines this property as being in the floodplain overlay zone because of the site-specific findings in the EIR.

**Effect:** In the original calculations of net acreage, in which the 100-year floodplain was subtracted as required (*Land Use Element, Policy 8.3*), the proposed 7 lots was above mid-range density. This is not permitted in sensitive areas, unless extraordinary community benefit can be demonstrated (*Land Use Element, Policy 8.3*). When the developer failed to demonstrate this, it was then purported that there was no floodplain because it was not on the 1988 FIRM maps. Despite a 1992 floodplain study that was cited in the EIR and that concluded that the area contained a 100-year floodplain, and despite the fact that the developer's own engineer had accepted the existence of the floodplain up to that point (see attachment 5), the City accepted this argument and allowed recalculation of the net acreage in the developer's favor. This resulted in an increase in the developable land.

Despite having site-specific information that was not on the 1988 FEMA maps (because no hydrologic survey had ever been done in that area), the City did not inform FEMA of this new information as it is required to do within 6 months (*Title 44, Code of Federal Regulations, Section 65.3*), with the result that the information is still not on more recent FIRM maps. The developer was able to use this to make the floodplain "disappear". This not only increased net acreage, but also is a public safety issue.



**Decision:** The City decided that the riparian habitat did not need a buffer zone, despite the requirement of a minimum 50 ft buffer by the Local Coastal Program (*Land Use Element, Policy 8.10; Resource Management Element, Policies 10.6 and 10.10*). The City made this decision despite recommendations by City Community Development staff and communications from both the California Coastal Commission and the California Department of Fish and Game (see **attachment 10**). The City even went so far as to accept the developer's contention that Street A will itself act as a "buffer" for that part of the riparian wetland (see **attachment 11**)!

**Effect:** The riparian wetland will not have the upland minimum 50 ft buffer required by the Local Coastal Program.

**Decision:** In a decision as yet unprecedented in sensitive and constrained areas in the City of Encinitas, the City allowed the developer to calculate allowable encroachment on slopes steeper than 25% grade (in this case, 10% allowable encroachment) based on a lot-averaging technique, rather than on a lot-by-lot basis, despite the intention of the developer to sell lots individually.

**Effect:** Although when averaged over the whole parcel, the total encroachment onto land steeper than 25% grade is less than 10%, on the individual lots this is not the case, except for lot 6 (see **attachment 8**).

In fact if one looks at the developable area for each lot and calculates the percent of that area that is steeper than 25% grade, it can be seen that for lots 1 and 2 this is 74.6% and 76.7% respectively, and for lot 7 it is 25.5% (see **attachment 9**). We would doubt that the intent of the Local Coastal Program is to allow construction on an individual lot where over 75% of the developable area is steeper than 25% grade, considering that the intent is to preserve such areas of inland bluff and canyon as much as possible in their natural state (*Land Use Element Policy 8.6, Housing Element Policy 3.11*).

It can be seen that if the slope calculations had been made on a lot-by-lot basis, it is likely that most of the lots would not have been buildable (see **attachment 8**). Allowing lot averaging has therefore increased the density of the subdivision, in contravention of the Local Coastal Program (*Land Use Element, Policy 8.4*).

If one additionally takes into consideration the usual required front setback of 25 ft from the public right-of-way (which even with the easement vacation places the development on the steep part of the bluff for lots 1 and 2), in addition to possible other setback requirements in the case of an inland bluff (*City Code 30.34.030B, Para 5*, that states: "Setbacks shall be placed as follows: (a) For any point along an inland bluff edge") one has to conclude that lots 1 and 2 are essentially unbuildable in the case of the usual required setbacks and the usual required setbacks, or the construction of bridgework on the bluff so that the developments on lots 1 and 2 are accessible from street level.

Finally, since in the case of lots 1 and 2, the bluff face is immediately adjacent to the riparian wetland, not only should it remain undeveloped, but it should also be included in the riparian buffer, according to the California Coastal Commission Statewide Interpretive Guidelines, P51.

These issues again underline the marginal nature of the parcel to begin with.

**D. SUMMARY:**

The granting of a Coastal Development Permit for the 7 lot subdivision in Rossini Canyon in Cardiff is not in keeping with the Local Coastal Program of the City of Encinitas, which, pursuant to the Coastal Act, calls for minimal development, and preservation, or acquisition, if possible, of sensitive and constrained areas in the Coastal Zone Planning Area.

A series of decisions by the City, which not only resulted in the finessing of the net acreage, but also permitted a lot-averaging technique to be used for calculating allowable slope encroachments, and ignored the intent of the Local Coastal Program with regard to riparian wetland buffers, has led to approval of a maximized subdivision on sensitive and marginally developable land.

In every case where the City had discretionary opportunity, it acted in favor of maximal development rather than taking the conservative approach intended by the Local Coastal Program.

Objections by concerned neighbors of the subdivision (see **attachment 12**) have been all but ignored by the City. In fact in the Planning Commission meeting of June 10, 1999, the Commissioners appeared to take great pains to find "wriggle room" (a direct quote from one Commissioner) to accommodate the developer, despite the recommendations of City staff at that time to deny the CDP, as well as the negative comments from the California Coastal Commission and the Department of Fish and Game (see **attachment 10**).

We are particularly concerned about the disregard of the City for the wetland within this parcel and the fact that it needs an adequate natural buffer. In addition, we are very concerned about lots 1, 2 and 7, each of which have a significant amount of slope steeper than 25% grade (61.2%, 78.9% and 63.8% respectively).

We wonder about the following alternatives to the current proposal:

1. Consideration by the City of acquiring the land for use as open space (*Land Use Element, Policy 8.7*).
2. Redesigning the subdivision, with lots 1,2 and 7 omitted.
3. Consideration of "clustering" of lots in the northern flattest part of the canyon, with avoidance of developing the steepest part.

We thank the Coastal Commission for the consideration of this appeal.



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