

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-43

Applicant: Dr. Jack N. Spiritos;
Mr. Nino FerreroAgent: David Moore;
Edmond F. Bourke

Description: Subdivision of approximately 7.8 acres of vacant land into 20 lots and construction of 42, two-story, three-bedroom condominium units, with associated private interior streets and driveways, utility connections, landscaping, private gated entry and a public trail on the north shore of Agua Hedionda Lagoon. Also proposed are off-site improvements to Bayshore and Marina Drives and enhancement of existing wetlands on-site.

Lot Area	339,800 sq. ft.
Building Coverage	61,000 sq. ft. (18%)
Pavement Coverage	74,000 sq. ft. (22%)
Landscape Coverage	152,500 sq. ft. (45%)
Unimproved Area	52,300 sq. ft. (15%)
Parking Spaces	109
Zoning	Planned Community
Plan Designation	Residential Medium High 8-15 dua
Project Density	5.38 dua
Ht abv fin grade	35 feet

Site: South side of Park Drive, between Marina and Bayshore Drives, Carlsbad, San Diego County. APN 207-101-01

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed development with a number of special conditions. A very similar project was approved approximately ten years ago, but the coastal development permit has expired, although local approvals have remained valid. Of greatest concern, the project

raises an issue over the protection of existing wetland resources on site. The wetlands near the lagoon shoreline that were identified when the prior project was approved have expanded. In addition, there is recently-discovered evidence of seasonal ponds and/or vernal pools on the site. Whether these actually exist cannot be confirmed until the upcoming rainy season. However, since the applicants have time constraints associated with local approvals which will expire early next year, they have requested that the Commission assume that there are seasonal ponds and/or vernal pools on the site and to act on the permit application under this assumption. Staff is recommending revised plans to avoid all impacts to these areas, along with other identified wetland habitat, and to provide a minimum 100-foot buffer from all wetland resources.

A second significant concern is over the preservation of public views both to and from the lagoon. To address this issue, staff is recommending conditions addressing appropriate setbacks, landscaping, building colors and view corridors. The final major concern is that the project, which is located on the north shore of Agua Hedionda Lagoon, is proposed as a gated community. Staff is recommending that the gates be eliminated and the interior street system be improved to public street standards so that the streets will be dedicated to the City as public streets. In addition, the applicants propose a public walkway seaward of their proposed residences to provide lateral access across the site. This lateral access would connect with existing public streets at either end of the site. Staff recommends special conditions addressing the walkway's location, appropriate signage and compliance with ADA standards for public trails. Other recommended conditions address grading and erosion controls and a BMP program to address water quality concerns, and permits required from other agencies. It is staff's understanding that several of the recommended conditions are not acceptable to the applicant, particularly any which would require significant modification of the project as proposed. However, staff believes that only as conditioned can the project be found consistent with Chapter 3 of the Coastal Act.

Substantive File Documents: Certified Agua Hedionda Land Use Plan; CCC files #6-90-93 and #6-96-159; Biological Reports: Recon - September 16, 1988, LSA Associates, Inc - December 22, 1998, PCR - June 17 and August 25, 1999

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will

not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised/Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised site plans, building plans and elevations approved by the City of Carlsbad for the permitted development, which shall incorporate the following requirements:

- a. there shall be a minimum 100-foot buffer between all delineated wetlands, as depicted on Exhibit #3, including seasonal ponds or vernal pools, and all proposed site improvements, including grading, with the exception of the proposed public walkway, which may be placed in the upper (landward) half of the buffer;
- b. all building elevations shall conform with the City of Carlsbad's setbacks/height limits applicable to development adjacent to public use areas (i.e., buildings must be setback from the realigned inland edge of the public walkway a minimum of twice the proposed building height);
- c. all structures shall be landward of the "stringline of development," which is the line formed between the southwestern most corner of the existing building immediately to the east of the subject site and the southeastern most corner of the existing building immediately to the west of the subject site;
- d. a minimum of 30% of the street frontage along Park Drive shall be preserved as view corridor;
- e. the plan shall contain a color board addressing exterior building materials and identifying that all building exteriors shall be finished in earth tones including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features;
- f. all interior streets shall conform with City of Carlsbad public street standards; and
- g. the entry gates shall be eliminated.

The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive

Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Final Enhancement and Monitoring Plan/Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and written approval of the Executive Director, a final enhancement and monitoring plan designed by a qualified wetland biologist. Said program shall be in substantial conformance with the plan identified as Sheet 12 (Wetland Enhancement Plan) of The Hamptons, TR.89-13 as proposed by the permittees in this application, but shall be revised to include the following:

- a. Revised exhibits reflecting the amended project proposed by the applicant and any fencing required by the resource agencies. To protect controlled public access and visual amenities, bollard or rail fencing along the southern edge of the public walkway is preferred, unless the resource agencies determine this will not adequately protect the wetland resources;
- b. Submittal, within 30 days of completion of construction (i.e., planting) at the on-site mitigation sites, of an as-built assessment of the enhancement project that includes as-built plans, to determine if the project has been built as proposed.
- c. Submittal of annual monitoring reports to the Executive Director of the Coastal Commission, as well as the California Department of Fish and Game.

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

3. Open Space/Public Access Deed Restriction. No development, as defined in Section 30106 of the Coastal Act shall occur within the delineated wetlands, including vernal pools and seasonal ponds, the minimum 100-foot wetland buffer area, or within 100 feet of the shoreline of Agua Hedionda Lagoon, as shown in Exhibit #3, except for:

- a. Enhancement and maintenance activities conducted in accordance with the approved enhancement/monitoring program;
- b. Installation of fencing to protect wetlands, unless this requirement is waived by the resource agencies;
- c. Construction of a public walkway in the landward (upland) half of the wetland buffer area consistent with this permit (#6-99-43); and
- d. Unrestricted public use of the permitted walkway.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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. This deed restriction shall supersede/replace the Irrevocable Offer to Dedicate Open-Space/Lateral Access Easement and Declaration of Restrictions recorded on September 27, 1990 as Instrument No. 90-528549, required pursuant to Coastal Development Permit #6-90-93.

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

- a. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible;
- b. Only native plant materials acceptable to the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (Service) and U.S. Army Corps of Engineers (Corps) shall be used in areas adjacent to any wetlands or buffer area;
- c. For visual purposes, special emphasis shall be placed on the treatment of all portions of the site which would be visible from public roads and the lagoon shoreline, and areas adjacent to view corridors. Said treatment shall include adequate plantings to break up large expanses of wall or roof within the identified viewshed, yet not interfere with public views through the designated view corridors;
- d. A written commitment shall be made that all planted materials shall be maintained in good growing condition; and
- e. Landscaping shall be installed concurrent with, or within sixty days following, construction of the approved residences.

The permittees shall undertake development in accordance with the approved final landscaping plan. Any proposed changes to the approved landscaping plans shall be reported to the Executive Director. No changes to the approved landscaping plans shall

occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Grading/Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final grading and erosion control plans that have been approved by the City of Carlsbad. The approved plans shall incorporate the following requirements:

- a. No grading activities shall be allowed during the rainy season (the period from October 1st to March 31st of each year). All disturbed areas shall be replanted immediately following grading and prior to the beginning of the rainy season.
- b. The permittees shall submit a grading schedule to the Executive Director demonstrating compliance with the above restriction.
- c. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss during construction.
- b. Landscaping shall be installed on all cut and fill slopes prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

The permittee shall undertake development in accordance with the approved grading and erosion control plans. Any proposed changes to the approved grading and erosion control plans or grading schedule 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

6. Water Quality/ Best Management Practices (BMPs). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and written approval of the Executive Director, a BMP program for the proposed development. At a minimum, the program shall incorporate the following requirements:

- a. All storm drain inlets shall have stenciling that prohibits the disposal of trash in the drains;

- b. Solid waste shall be removed regularly and receptacles for trash and recyclable materials shall be placed adjacent to any common facilities; and
- c. Sweeping of all paved surfaces shall occur at least once a week.

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

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

7. Public Access Trail Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director, for review and written approval, a final public access plan for the proposed public access trail improvements, approved by the City of Carlsbad, which shall include, at a minimum, the provision of a five-foot wide (or wider if necessary to meet Americans with Disabilities Act [ADA] standards) improved path within the upper half of the required wetland buffer and within the open space area along the lagoon shoreline, as required in Special Condition #3 of this permit. The path shall be paved or covered with decomposed granite or other material acceptable to the Executive Director and consistent with ADA standards. The trail shall provide for lateral access along the entire width of the property and shall connect with the southern ends of Marina and Bayshore Drives, as improved herein. The plan shall also include public access signs at the intersections of Park Drive with Marina and Bayshore Drives. The plan shall also provide that the path and signage shall be constructed/installed concurrent with, or within sixty days following, construction of the approved residences.

The permittees shall undertake development in accordance with the approved public access plan and shall be responsible for the maintenance of the accessway and signage unless such responsibility is assumed by a homeowner's association. Any proposed changes to the approved public access plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Other Permits. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, copies of all other required local, state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director

and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Site History. The applicant is proposing to subdivide a single legal parcel, 7.8 acres in size, into twenty lots. Also proposed is the construction of 42 condominium units in nine separate, two-story, 38-foot high structures on nine of the created lots. The remaining eleven lots will be used for a variety of purposes, including interior streets, landscaping and open space. The 42, three-bedroom condominium units are proposed as a private, gated community on a property located on the north shore of Agua Hedionda Lagoon. Project grading includes 8,310 cu.yds. of cut and 18,570 cu.yds. of fill, resulting in the import of 10,260 cu.yds. of material to the site. The project includes three water features (freshwater ponds) located to provide view corridors across the site. The proposal also includes the provision of a public walkway connecting the ends of Bayshore and Marina Drives, which are located on the eastern and western perimeters of the subject site, off-site road widening, curb and gutter improvements to those two public streets, and enhancement of an existing wetland area on the site.

As mentioned, the site is located on the north shore of the inner basin of Agua Hedionda Lagoon, less than a mile east of Interstate 5 and visible from the freeway. The site to the west is part of the existing Bristol Cove development, and consists of both three- and four-story multi-family residential structures. A large (thirteen two-story structures) condominium project has been constructed on the property to the east. The site is bordered by Park Drive on the north, with primarily single-family residential development north of Park Drive.

The subject site has been disturbed/graded in the past and fill material from lagoon dredging, which occurred prior to the Coastal Act, was placed on the site. There are three distinct "levels" on the property, with a small fringe of shoreline along the lagoon perimeter. Just north of that is an escarpment, six to eight feet in height; between a third and half of the site is at this elevation. A second, smaller escarpment crosses the site further inland, and the remainder of the site is equal with, or slightly higher than, adjacent Park Drive. No development is proposed on the shoreline fringe, but the residential subdivision, as proposed, will occupy most of the two upper levels of the site.

The same subdivision proposal was previously approved by the Coastal Commission in 1990, pursuant to Coastal Development Permit (CDP) #6-90-93 (Remington). That approval included a number of special conditions addressing issues of biological and visual resources and public access. The applicant complied with the special conditions, including the recordation of an offer to dedicate an open space/public access easement and recordation of the project CC&R's. Other conditions of approval of the 1990 permit included final/revised plans for the buildings, street improvements, access trail,

landscaping, drainage and erosion control, and habitat enhancement and fencing. The permit was issued in 1991. However, the final map never recorded, the development was never built and the permit was not extended. Thus, the permit has expired.

Because of legislation extending the life of tentative maps approved within a certain timeframe, and a recent extension from the City of Carlsbad, the applicant has maintained the original tentative map as a valid approval. Since the current proposal, as reviewed by the City of Carlsbad, is virtually the same as the plan approved in 1990, no additional environmental or public review has been required by the City. The applicant's conceptual site plan has recently been revised slightly in response to concerns raised by Commission staff regarding buffers from delineated wetlands, but is still, in essence, the same project the Commission reviewed in 1990.

Agua Hedionda is one of six segments of the City of Carlsbad's LCP. While most of the city's coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission and Chapter 3 of the Coastal Act is the standard of review.

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

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

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

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

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

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

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

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

(7) Restoration purposes.

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

Section 30240

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

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

The project site may have been historic wetlands at one time, but was filled with lagoon dredge spoils prior to the Coastal Act. Thus, the site as a whole has been altered to such a degree that it does not function as a wetland and most (90%) of the on-site vegetation consists of ruderal/weedy nonwetland species. However, there is an erosional feature at the southeastern corner of the site, adjacent to the lagoon shoreline; according to the applicants' biologist, portions of this "gully" support approximately 140 sq.ft. of wetlands (*salicornia* and *distichlis*). This area is subject to tidal inundation, and the salt marsh wetland area has more than doubled since the Commission reviewed the earlier project in 1990, when 60 sq.ft. of *salicornia* and one *frankenia* plant were identified as the only wetland resources. In addition, the applicants' biologist recently discovered a number of "depressions" on the site, which are evidence that these areas may be seasonal ponds or vernal pools. During a site visit, the Commission's staff biologist noted the "depressions" and confirmed that they are likely seasonal ponds. Staff of the Army Corps of Engineers also inspected the site and indicated that these areas are likely vernal pools. These were only discovered after this year's rainy season ended, so wet-weather testing for vernal pool species has not been possible to date. Since the applicants are under time constraints with respect to filing a final map before local approvals expire, they have requested that the Commission and other resource agencies assume that the "depressions" are indeed vernal pools or seasonal ponds and to act on the permit application under that assumption.

The proposed project thus raises issues under Section 30233 of the Coastal Act. Most of the potential seasonal ponds occur outside the area proposed for development, but two of them would be impacted by the development as proposed. Moreover, all the

"depressions" shown on the updated project plan submitted on August 25th (Exhibit #3) are located in relatively close proximity to proposed development, within the 100-foot area that would typically be required for buffer purposes. In addition, the grading plans submitted with the application indicate that site grading would occur within twenty feet of the identified salt marsh vegetation in the southeastern corner of the site and within the erosional feature itself.

As cited above, under the Coastal Act, disturbance and/or fill of wetlands is severely constrained. Coastal Act Section 30233(a) sets forth a three-part test for all projects involving the fill of coastal waters and wetlands. These are:

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

In addition, the certified Agua Hedionda Land Use Plan (LUP), which the Commission uses for guidance in the review of development in this area, includes policies specific to the subject site addressing the protection of sensitive habitat areas, including wetlands. These policies state:

- a. The area determined by the State Lands Commission to be developable shall be designated RMH (10-20 units per acre). The remainder of the site shall be designated Open Space (OS).
- b. Beyond the southern perimeter of the developable portion of the site, an area of 100 feet in width shall remain undeveloped for the purpose of providing a buffer between development and environmentally sensitive areas. The perimeter of the developable area shall be maintained/improved in a manner to prohibit uncontrolled access into the buffer area. Private recreation and landscape improvements in the buffer area shall be made in consultation with the State Department of Fish and Game. Maintenance of the buffer area shall be the responsibility of the homeowners association.
- c. The area beyond the developable portion of the property and the buffer area shall be dedicated in fee or easement to an appropriate public agency. Access to this area shall be restricted to scientific, educational or other uses consistent with resource management in a manner acceptable to the State Department of Fish and Game.

Also, Policy 3.5 of the certified LUP provides:

The implementation phase of the LCP shall include specific provisions for assuring protection of wetlands in the design of adjacent new development, including provision of adequate buffer areas, protective fencing, revegetation, etc.

In this particular case, the proposed development, which consists of grading and site improvements associated with a residential subdivision, and construction of a public access walkway, does not meet the above requirements. The proposal is not for one of the eight allowed uses in wetlands. Therefore, the project, as proposed, cannot be permitted under Section 30233 of the Coastal Act. However, it appears the project can be redesigned to avoid the wetland impacts and provide an adequate buffer zone. This can probably be accomplished by shifting the development to the west and north although this would represent a major revision to the proposed plans. The proposed site plan provides for several internal open space areas, which it would appear possible to condense or eliminate to achieve this goal. However, this may not be easy to accomplish, since revisions to address wetland concerns may be further impacted by recommended revisions to achieve conformance with other Coastal Act standards, particularly those addressing visual resources and public access, which will be addressed in subsequent findings.

In addition to the wetland resources identified previously, there are a number of isolated salicornia plants scattered over the site. These are not located in hydric soils and the individual plants do not represent 50% or more of the vegetation in the immediate area. Thus, both the applicant's biologist and the Commission's staff biologist have determined that these individual plants do not constitute wetlands. However, the applicant is proposing, as part of project construction, to transplant these individual specimens to the existing marsh and/or "depression" areas, where their chances of survival are greater, provided these areas are adequately protected with an appropriate buffer.

A buffer provides a distance barrier and a percolating medium, and reduces the chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon and wetlands. In addition, buffers provide upland habitat for birds and other species that use the wetlands surrounding the lagoon itself. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas. In this particular case, site drainage is being collected and directed into an existing storm drain system in Bayshore Drive, so no drainage facilities would be required in the buffer. The applicant is, however, proposing a public access trail which, based on the attached conditions, would be located in the upper half of the buffer area required through this approval.

There is currently one recorded document addressing resource protection and public access on the subject site, and two others addressing access only. The State Lands interest in the site, referenced in the cited land use plan policies, apparently was settled through provision of two 25-foot wide public access easements adjacent to the southern and eastern property lines, which were to provide lateral and vertical access to the lagoon. The extent of wetland vegetation which existed on the site at the time of that court settlement is not known, and wetlands were not addressed in those easements. However, based on the locations of those easements, as shown on the submitted topographic maps, it is likely that some wetland vegetation occurs within those easement areas today, which would make the easements less suitable for active public use.

When the Commission approved this development in 1990, it imposed a 100-foot wide easement for wetlands buffer and public access for the majority of the site. Based on the LUP maps, this was to be drawn from the mean high tide line of the lagoon stretching inland for a distance of 100 feet, since the LUP maps, which were drawn well before the 1990 project was proposed to the Commission, did not identify any on-site wetlands. The LUP text, however, clearly indicated the intent was for a buffer of 100 feet "between development and environmentally sensitive areas." In the 1990 Commission approval, all proposed development, including grading, was prohibited within the buffer area, except for the public access path which was allowed in the buffer but outside wetland areas. In the southeast corner of the site, where the salt marsh vegetation exists in the erosional feature, the Commission allowed the buffer to be reduced to 70-80 feet in width, but required that the vegetated area be enhanced and fenced. The Commission made findings that the wetland buffer be drawn from the limit of wetland vegetation existing on the property at that time. At the time of that approval, of course, no seasonal ponds (depressions) had been identified on the site.

Four special conditions address the biological aspects of the proposed development. Condition #1 requires submittal of final plans, which require a redesign to achieve a 100-foot buffer from all identified wetlands, including the potential seasonal ponds/vernal pools. Special Condition #2 addresses the wetland enhancement program submitted by the applicants as part of the permit application. This program represented condition compliance in the previous permit, since it justified the reduced buffer permitted at that time. The Commission does not find it appropriate to allow a reduced buffer in the subject permit action, and no impacts to wetlands are herein permitted. Thus, the enhancement program is not required as a mitigation measure. However, the applicant has proposed the enhancement activities, and has further proposed to transplant the individual *salicornia* plants scattered over much of the site into the existing marsh areas. Thus, Condition #2 requires submittal of a final enhancement/monitoring program, which should be in substantial conformance with the program as proposed, but should incorporate the transplanting proposal and identify that copies of all monitoring reports are sent to the Commission, in addition to any other agencies requesting such information.

The third special condition requires recordation of a new open space deed restriction. This would cover the minimum 100-foot buffer from all wetlands, but would allow for the enhancement/monitoring activities proposed herein, protective fencing, public access and the public walkway in the upper half of the buffer. A fence would not be required in this action, but would be permitted if the resource agencies do not waive the requirement. Since any fence will have potential visual impacts, the Commission would prefer a low bollard or rail fence along the seaward side of the public access path to the 5' chain-link fence proposed, unless the resource agencies feel that won't adequately protect the resources. The new deed restriction will supersede/replace the one recorded pursuant to CDP #6-90-93. Finally, Special Condition #4, for final landscaping plans, addresses biology only in the sense that it requires the use of native plant materials acceptable to the resource agencies in the areas adjacent to wetlands and buffers.

It is the applicants' intent to return to the Commission with an amendment request to modify the required buffers, if wet weather testing of the "depressions" does not demonstrate that they are wetlands. The applicants should be aware that there are different protocols used by the state and federal agencies to delineate wetlands. Under the federal protocol, all three wetland indicators (hydric soils, appropriate hydrology and wetland vegetation) must be present before a site is delineated as a wetland. The federal agencies also make a distinction between vernal pools and seasonal ponds, with different levels of protection assigned to each.

However, both the Coastal Commission and the California Department of Fish and Game (CDFG) define wetland as lands that contain any one of the three indicators. The Coastal Act definition of "wetland" states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Under this definition there is no distinction between seasonal ponds and vernal pools, nor between seasonal and permanent wetlands; they are all afforded equal protection. The species identified by the applicants' biologist have been confirmed by the Commission's staff biologist as wetland indicator species. Thus, it is likely that, even if wet weather testing demonstrates that the on-site "depressions" do not meet the federal definition of a vernal pool, they may still meet the Coastal Act definition of a wetland. If this is the case, an amendment application may be rejected, since the applicants would not be able to demonstrate a change in conditions, and amendments which would delete or diminish the effect of an adopted condition of approval must be rejected. If the applicants can produce information demonstrating that the "depressions" do not meet the Coastal Act definition of a wetland, an amendment request may be accepted.

In summary, the proposed residential development is not a permitted use under Section 30233 of the Act. All impacts to wetlands must therefore be avoided through a redesign of the project. In addition, the Commission finds it appropriate to require a 100-foot buffer between wetlands and development, with the minor exceptions noted above. Furthermore, until information to the contrary is presented to the Commission, it considers that the "depressions" containing wetland indicator species are, in fact, wetlands, and the buffer must be drawn from those areas inland for a distance of 100 feet. These concerns are adequately resolved through the first four special conditions. Therefore, only as conditioned, the Commission finds the proposed project consistent with the cited Coastal Act policies.

3. Public Access. Public access along and to the waters of Agua Hedionda Lagoon is very important because of the recreational nature of the lagoon. It is the only lagoon in San Diego County where water sports are permitted, including motor and sail boating, water skiing, wind surfing, jet skiing, etc.,. Additionally, a public trail along the north shore of the lagoon is identified in the certified Agua Hedionda Lagoon Land Use Plan.

The following Coastal Act sections are applicable to the proposed project and state, in part:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]

(2) adequate access exists nearby....

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan contains a detailed set of public access policies that state, in part:

Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use....

Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development

All accessways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational area:

- a) All portions of such structures shall be set back from the point nearest any public use area a distance equivalent to twice the height of the structure above finished grade; and
- b) New development shall provide landscaping adequate to minimize visual intrusion upon public use areas.

Policy 7.9

Access Signing

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private developments. Signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area.

Most of the north shore lagoon-fronting lots are undeveloped between I-5 and Bristol Cove, which is about one mile inland. Immediately east of Bristol Cove is the subject site; east of it is an existing 26-unit condominium development which was under construction when the Commission first reviewed the subject proposal. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit, if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access-related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement.

To date, lateral access easements have been required on several north shore sites between the first public road and the lagoon, including Remington (#6-90-93 – the previous permit on the subject site), L&R (#6-88-477 – the development immediately east of the subject site), Mellgren (#6-87-36), Abeledo (#6-86-035) and the 23-unit Bristol Cove condominium project (CDP #F 1012) which is adjacent to the subject site on the west. Only two sites (L&R and Bristol Cove) have constructed their segment of the public access path called for in the LUP. The subject property lies between those two sites and is proposing construction of a public access walkway.

On the Bristol Cove site to the west, the lateral access easement was required to extend from the southern boundary line of the parcel to a minimum width of 6 feet on the top of the lagoon bank, which was lined with rip rap at the time. The required easement is approximately 23 feet wide at the eastern end and narrowing to approximately 16 feet at the western end. A ten-foot wide vertical easement was also required at the western end extending south from Cove Drive to the property boundary. On the eastern, Marina Drive, side of Bristol Cove, there is no vertical access to the shoreline, although the public has used the subject site, located immediately east of Bristol Cove, to get from the streetend of Marina Drive to the shoreline of the lagoon.

The property east of the subject site (L & R), completed its required improvements to Bayshore Drive when it was constructed in 1990. There is an existing vertical accessway from the terminus of Bayshore Drive to the shoreline, located between that site and the subject property, which was approved by the Coastal Commission in CDP #6-87-494 and was intended to provide both pedestrian and maintenance vehicle access to the shore. The inland portion of the accessway is paved, with the remainder unpaved; the accessway is fenced on both sides with chain-link fencing, which also serves to demarcate the approximately two-acre salt marsh seaward of the L&R development and east of the accessway.

The project site is located between Agua Hedionda Lagoon and Park Drive and contains nearly 600 feet of actual lagoon frontage. The subject site is criss-crossed with dirt trails and roads, indicating a significant level of public use over the years. The issue of potential prescriptive rights is raised by the nature and extent of ongoing public use of the site. However, this issue was resolved in the public trust and implied dedication settlement of 1987 which resulted in the recordation of 25-foot wide public access easements along the eastern and southern property boundaries (i.e., Bayshore Drive and lagoon frontages). In 1990, the applicants were proposing to improve the eastern access as part of their project; however, that accessway has since been constructed, either by the L&R property developers or by the City of Carlsbad. No further vertical access improvements are required herein.

The lateral easement currently includes the immediate shoreline and, on the westernmost portion of the site, the easement is below the high water mark; thus, portions of the easement are underwater most of the time. The sandy beach area inland to the existing escarpment, and the upland portion of the site which was filled at a higher elevation and is now proposed for development, is currently utilized by the public for pedestrian and vehicular access to the lagoon's recreational resources. On the southeastern portion of the site, where the existing salt marsh vegetation occurs, the typical conflicts between public use and environmentally sensitive habitat areas may occur. With the newly-discovered "depressions" on the site, which contain wetland vegetation and likely meet the Coastal Act definition of wetlands, additional conflicts may occur.

To address these potential conflicts, the applicant is proposing to construct a public walkway connecting the streetends of Bayshore and Marina Drives, which would be located inland of the lateral access easement granted in the 1987 settlement and inland of the identified salt marsh in the erosional feature at the southeastern corner of the site. However, although the path, as currently proposed, would not occur within the mapped wetland vegetation, a portion of the path crosses a portion of the eroded gully in close proximity to the wetland vegetation. In addition, since the newly-discovered seasonal ponds have not been delineated on a plan that also shows the proposed access path, it is not known whether or not the path would directly impact any of these ponds.

These concerns are addressed through the attached special conditions, which require a project redesign to move all development a minimum 100 feet inland of all identified wetlands, including the "depressions" which show evidence of being seasonal ponds or vernal pools. The public pathway is herein approved as an exception within the buffer, but can only be placed in the upper (inland) half of the buffer. Thus, the path may be no closer than fifty feet to any identified resources. This will assure that conflicts between public use and environmentally sensitive lands do not occur. Because of the existing wetland resources, both adjacent to the shoreline and further inland, the Commission is not endorsing formalizing use of the 1987 lateral public access easement; however, nothing in this approval precludes continued informal use of the area by the general public or future site residents.

Special Condition #7 requires submittal of final plans for the public access trail. These plans must demonstrate that the trail has been sited in the upper half of the buffer required in Special Condition #1 and must demonstrate compliance with the Americans with Disabilities Act (ADA). Although a five-foot wide paved trail is proposed, it is possible a wider trail may be required to meet ADA standards, and surfacing materials must meet those standards as well. The condition further requires that the trail be constructed concurrent with, or within sixty days following, construction of the residences. Finally, the condition requires placement of public access signage at the intersections of Park Drive with Bayshore and Marina Drives, to inform the public that access is available.

Policy 7.8 of the LUP provides that a setback from the inland extent of the public use area be provided equivalent to twice the height of the structures. This policy was included in the LUP so that an adequate setback would be provided between private/public areas to provide a greater sense of privacy for both the property owner and coastal visitors. Proposed building height of the residential structures is 30-feet to the mid-point of the proposed peaked roofs. Therefore, buildings must be setback a minimum of sixty feet from the public access walkway, as realigned pursuant to Special Conditions #1 and #3 or lowered in height accordingly.

A final public access concern relates to the residential development being proposed as a gated community. As proposed, both vehicular and pedestrian access would be prohibited through the interior of the site, and the interior street system does not meet public street standards with respect to width, design or setbacks. The applicants contend that adequate vertical public access is available both east and west of the site, as well as lateral access along the shoreline and via the proposed public walkway. Moreover, the applicants have submitted counts of available on-street public parking spaces on the surrounding streets that indicate the availability of 85 parking spaces on the three public streets: 23 paces on the south side of Park Drive, 38 spaces on both sides of Bayshore Drive and 24 spaces on both sides of Marina Drive. They contend the existing and proposed access amenities, along with the identified reservoir of public parking, is more than adequate to address the needs of the public to access the lagoon.

However, in prior permit actions, the Commission has found that gated communities, particularly on sites like the subject one which is located directly on the shoreline, are inconsistent with the public access policies of the Coastal Act. The Commission has found that the construction of gated communities in the coastal zone, particularly adjacent to recreational or scenic resources, either directly impacts public access, or has a "chilling" effect on the public's perceived ability to access coastal resources. The subject site occupies nearly 600 linear feet of lagoon shoreline, with a roughly equal amount of frontage on Park Drive, the first coastal roadway. Because of the irregular shape of the site, the distance from the road to the shoreline varies from approximately 600 feet at the western side to nearly 800 feet on the east. In effect, the site represents an area larger than an average city block. Moreover, there is currently physical and visual access to the lagoon across the property. Fencing and gating the entire developed area will alter existing views, whether or not the loss of existing physical access could be found to be

adequately mitigated through the public access features described previously. The Commission finds it appropriate to require that the site not be gated.

The Commission further finds it appropriate to require that the interior streets be upgraded to meet public street standards, thus increasing the amount of parking spaces available to the public. Public streets are required to accommodate parking on both sides of the street, whereas the proposed private streets would accommodate parking on one side only. With regional population growth continuing, the need for adequate support facilities becomes ever more critical. Thus, the Commission finds the proposed development must provide the maximum possible number of public parking spaces because of its proximity to coastal waters and a significant coastal public recreational area.

In summary, the Commission finds that the proposed development could have significant adverse impacts on public access to Agua Hedionda Lagoon. There has been continuous public use of this site for many years that will cease with construction of the proposed residential improvements. An improved vertical accessway exists immediately east of the site, and the applicants propose to construct a public walkway along the seaward side of the proposed development, which will connect the streetends of Bayshore and Marina Drives. However, developing this site as a gated community would negatively impact both physical and visual access, and would preclude increasing the existing reservoir of public parking available in the area. With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

4. Visual Resources. The following policy of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

Section 30251

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

Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and a major recreational resource, it was the subject of a detailed LCP Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of public views from the first public roadway, which is Park Drive in this case. This street is a designated scenic roadway, which runs along the north shore of the lagoon. The most pertinent policies of the LUP provide the following, in part:

Policy 8.3 Development located adjacent to scenic roadways, or located between the road and the shoreline, shall be regulated as follows:

- b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road.
- c) On all property adjoining the shoreline, permitted development shall be designed to "step down" in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas ...

The project site is located on the north shore of Agua Hedionda Lagoon, between the lagoon and Park Drive, a designated scenic roadway. In addition to views across the site from inland areas, those walking or driving on Park Drive can see the open vistas, although actual water views are very limited because of the fill which was placed on the site long ago. The site is also highly visible from both the north and south shorelines of the lagoon, with views available from the general area of Legoland to the south.

The development as proposed provides for the required view corridors, but would still be visually obtrusive when viewed in comparison to the site immediately east (the L&R property). This site is setback a very long distance from the lagoon, due to the presence of portions of a two-acre salt marsh between the shoreline and the development. The 26-unit project is sited on a pad at a higher elevation than the marsh, and the structures are set back a minimum 100 feet from the resource. In contrast, the property immediately west of the subject site was developed long before the LUP was certified. Pursuant to CDP #F1012, the San Diego Coast Regional Commission, in 1973, allowed the site to develop right up to the shoreline, with no discernable setback from the beach, which was rippedraped. Such a development would not likely be allowed today, or at any time since the LUP's certification in 1982, since it is clearly inconsistent with many of the LUP policies cited herein, as well as with many policies of the Coastal Act, which did not exist in 1973.

One method the Commission has employed to address development located along scenic and recreational areas is to require new development to observe a "stringline" for structural setbacks. The "stringline" represents an imaginary line drawn between the closest structures on either side of the proposed development. In this case there is a greater than usual disparity between those two developments. However, this site is not only visible from inland areas to the north, but from both lagoon shorelines (close-up views on the north shore and a distant view from the south shore). Redesigning the site to accommodate the stringline provisions would allow a visual transition between the properties to the east and west. Because of the size of the site, and the current design which includes large open areas within the middle portions of the development, it is

possible such a revision can occur without the loss of any units, or at least without a significant reduction in the number of units.

The Commission acknowledges that a substantial redesign will be required to meet the terms of Special Condition #1, which includes a requirement to honor the stringline, particularly in conjunction with the redesigns necessary to find the proposed development consistent with the wetland and access policies of the Coastal Act. Development would need to be concentrated in the northwestern portion of the site, with the southern and most of the eastern perimeters kept open. This should, however, provide adequate space along the eastern part of the site to address the LUP requirement to maintain 30% of the site as a view corridor.

In imposing these conditions, the Commission finds that the subject site is severely constrained by existing visual, biological and access resources which require protection under the Coastal Act. In redesigning the project to accommodate a 100-foot buffer from all wetlands, including the seasonal ponds, it is likely the applicant will have met the stringline requirement as well. This projection is based on the site plan most recently submitted to the Commission, which is included as Exhibit #3.

Landscaping is also important in minimizing visual impacts. The applicant has submitted a preliminary landscape plan, which includes mostly non-native ornamental trees and shrubs. Special Condition #4 requires submittal of a final landscaping plan which shall use native and naturalizing, drought-tolerant plants to the maximum extent feasible. Because of the sensitive wetland resources on site, the plan will be reviewed in consultation with the resource agencies, particularly with regards to plantings in areas adjacent to wetlands and buffers. In addition, the condition requires that landscaping adjacent to view corridors utilize species which will not interfere with public views, but will break up large expanses of walls and roofs. As conditioned, the Commission finds the project consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda Land Use Plan regarding scenic preservation.

5. Water Quality/Grading/Erosion and Sedimentation. The following Coastal Act policy is applicable to the proposed development and states:

Section 30231

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

Also, Section 30240 of the Coastal Act, cited previously, calls for the protection of sensitive habitat by, among other means, regulation of development in adjacent areas. The applicant proposes to subdivide and grade, including the import of approximately 10,000 cu.yds. of material, a nearly eight-acre parcel located along the north shore of Agua Hedionda Lagoon. Agua Hedionda Lagoon has been identified by the State Department of Fish and Game as one of the 19 highest priority wetland areas for acquisition and, as such, is referenced in Section 30233(c) of the Coastal Act. The adverse impacts of development most often associated with wetland areas are erosion of soils within the watershed and subsequent sediment transport to the wetlands.

The applicants propose to direct all runoff from the developed portions of the site into an existing municipal storm drain system in Bayshore Drive. No drainage facilities are required or proposed to be placed in the portions of the site preserved as open space. Special Condition #6 requires the applicants to submit a Best Management Practices (BMP) program to address day-to-day operations of the developed site. To assure optimum water quality for all storm drain inflows generated at the site, stenciling of storm drain inlets, regular collection of trash and regular sweeping of paved areas is required, as a minimum.

However, there is still a concern with the actual development of a site in such a sensitive location. To protect the downstream resources of the lagoon from the potential of erosion and sedimentation associated with development of the site, Special Condition #5 has been attached to the permit. The special condition requires the applicant to submit final drainage, erosion and sedimentation control plans for the project. The plan shall include measures to control runoff from the site and shall limit all grading activity to the non-rainy season. These requirements are consistent with the certified Agua Hedionda LUP which contains detailed grading provisions. The plan shall be subject to the review and written approval of the Executive Director. As conditioned, the Commission finds the proposed development consistent with the cited provisions of the Coastal Act.

6. 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, with the inclusion of all special conditions.

The Agua Hedionda Land Use Plan (LUP) designates the site for residential development under the RMH Zone, at a maximum density of 8-15 du/ac. The project is consistent with that designation. As conditioned, the project is also consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua Hedionda Land Use Plan and with the corresponding Chapter 3 policies of the Coastal Act. Therefore, approval of the development, as conditioned herein, should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

7. 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 found consistent with the resource, visual and public access protection policies of the Coastal Act. 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.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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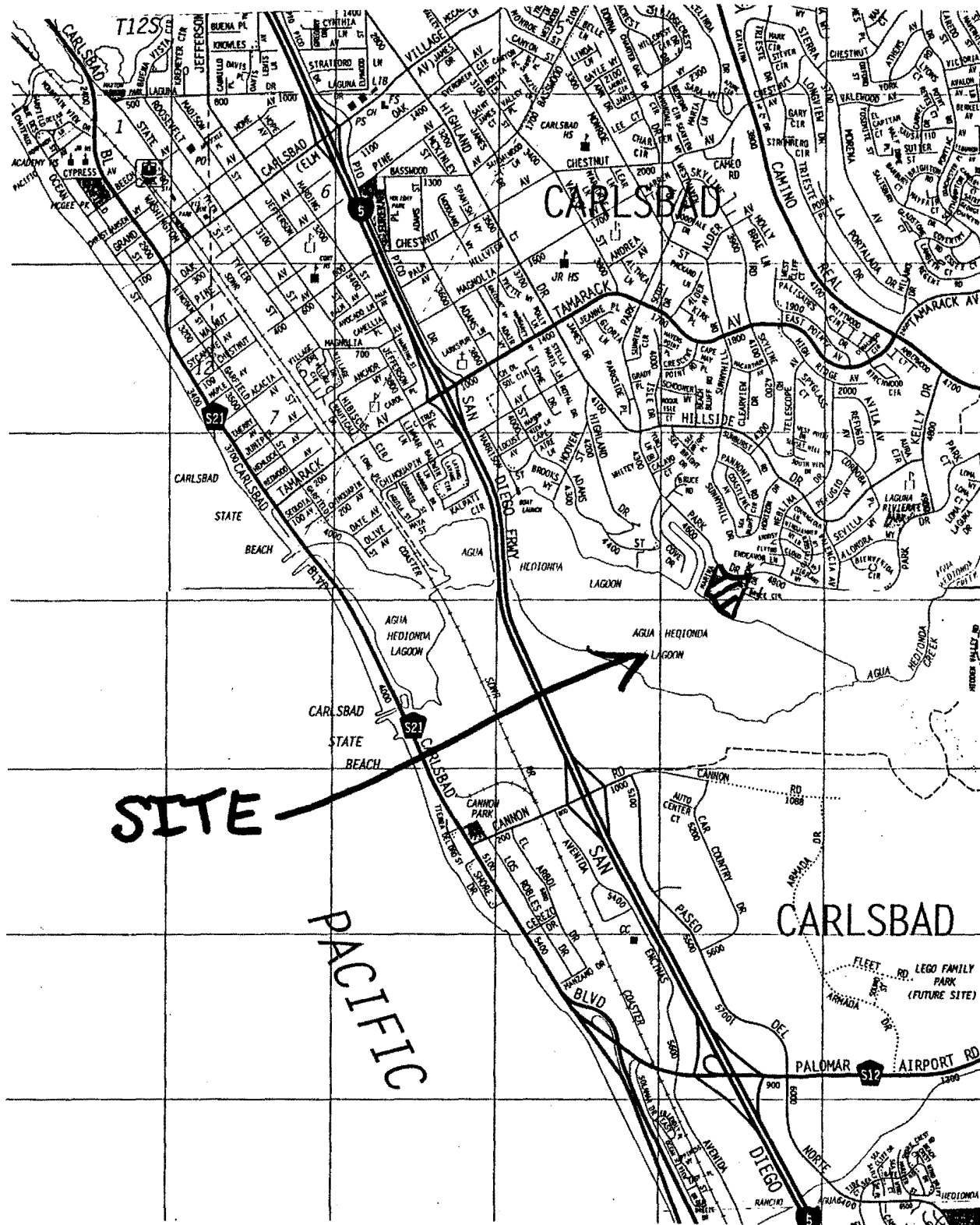



EXHIBIT NO. 1

APPLICATION NO.

6-99-43

Location Map

EXHIBIT NO. 28
APPLICATION NO. 6-99-43
Site Plan
 California Coastal Commission Western Half

California Coastal Commission
Western Half

6-99-43

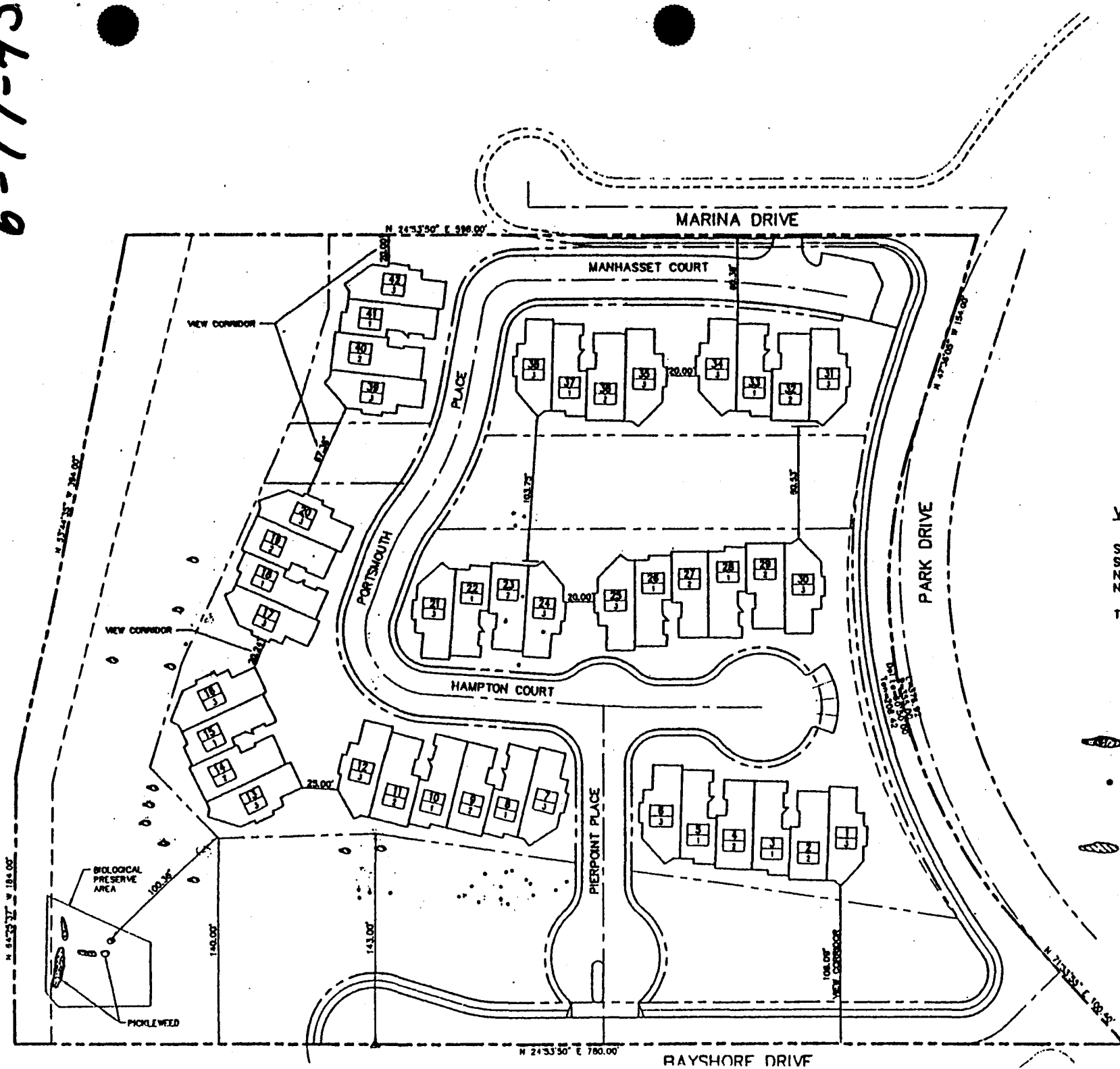


EXHIBIT NO. 3
Application No. 6-99-43
Results of 8/25/99
Field Survey by
Applicants' Biologist

VIEW CORRIDOR SUMMARY TABLE

SOUTHEAST VIEW	108.09'
SOUTHEAST CENTRAL VIEW	20.24'
NORTHWEST CENTRAL VIEW	67.36'
NORTHWEST VIEW	20.00'
TOTAL	213.69'

- PICKLEWEED BIOLOGICAL PRESERVE
- PICKLEWEED INDIVIDUAL PLANTS (NON-SUSTAINABLE) PROPOSED FOR TRANSPLANTING
- ONSITE DEPRESSION (REQUIRING WET SAMPLING TO DETERMINE JURISDICTIONAL STATUS)