

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036

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 Staff: WNP-SD  
 Staff Report: 12/16/99  
 Hearing Date: 1/11-14/00

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-48

Applicant: Beach King, Inc.

Agent: Mary Anne Paradise

Description: Proposed is the subdivision of a 0.41 acre site into 3 residential lots, and 1 driveway lot (Parcel #1 = 0.11 acres, Parcel #2 = 0.11 acres, Parcel #3 = 0.14 acres, Parcel #4 [driveway] = 0.06 acres) and construction of a two-story, 29-foot high, 3,314 sq.ft. single-family residence on each residential lot. The proposal also includes vacation of the western 27 feet of excess Carlsbad Blvd. right-of-way.

Lot Area	17,994 sq. ft.
Building Coverage	4,860 sq. ft. ( 27 %)
Pavement Coverage	2,560 sq. ft. ( 14 %)
Landscape Coverage	10,574 sq. ft. ( 59 %)
Parking Spaces	8 spaces total
Zoning	R-3 (Residential Multi-Family)-23 du/ac.
Plan Designation	R-H ( Residential High)
Density	9.1 du/ac.
Ht above fin grade	29 feet

Site: At the south west terminus of Chiquapin Avenue, east of Carlsbad Boulevard, Carlsbad, San Diego County APN 206-070-04

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed residential development subject to a number of special conditions. The proposed development is located on a lot overlooking Agua Hedionda Lagoon to the south and the Pacific Ocean to the west. The certified

LCP designates a public vista point at the adjacent western terminus of the street (Chinquapen Avenue) with views identified across the subject site from this street end. The proposed development of three, 29 ft, high single-family homes will adversely impact public views of the lagoon and ocean from the street end. As such, the applicant has revised their request to include public access improvements in the unimproved street end to include parking spaces, benches and landscaping. In this way, the public views from this vista point will be maintained while still allowing the residential development.

However, staff is also recommending the proposed vacation of Carlsbad Blvd. Right-of Way (old Highway 101) not be permitted because if that occurred and the City proposes to widen Carlsbad Blvd. in the future, it would have to be done to the seaward side of Carlsbad Blvd. Currently, the Tamarack Beach free parking lot exists on the seaward side of the street between the right of way and the ocean. Expanding the road in this direction could result in elimination of public parking spaces and/or requiring additional shoreline protection to provide safety to users of the parking lot from wave uprush. For that reason, staff recommends the Commission find that approving the vacation of the Carlsbad Blvd. ROW on the applicant's property is not appropriate. In addition, eliminating the street vacation and requiring the applicant to maintain the required 40 ft. setback will allow for enhanced views from the improved vista point.

As conditioned, the development of the site would not interfere with preservation of views from the adjacent public vista point, consistent with the intent of the LUP and Section 30251 of the Coastal Act. It is staff's understanding that the applicant is not in agreement with staff's recommendation to delete the street vacation and provide a 40 ft. setback from the existing western property line for the proposed residential structures.

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Substantive File Documents: Certified Agua Hedionda Land Use Plan,  
CDP Nos. 6-87-112, 6-99-37, 6-99-66

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**PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-99-48 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions.**

See attached page.

**III. Special Conditions.**

The permit is subject to the following conditions:

1. Revised Parcel Map, Site and Building Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a revised parcel map and revised final site and building plans approved by the City of Carlsbad that are in substantial conformance with the map and plans submitted by Bird Designs, dated October 7, 1999, but shall be revised as follows:

- a. The vacation of the western 27 feet of excess Carlsbad Blvd. Right-of Way shall be deleted.
- b. The proposed residences shall be setback 40-feet from the western property boundary as it currently exists without the Right-of-Way vacation.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Open Space Deed Restriction – Setback Area. No development, as defined in Section 30106 of the Coastal Act shall occur within the 40-foot rear yard setback along the Carlsbad Blvd. Right-of-Way of the proposed residences as shown in Exhibit #8 except for:

- a. low growing (i.e., no greater than 3-feet high) drought tolerant native plants consistent with the present character of the area;

- b. low fencing (i.e., no greater than 3-feet high), and at-grade patio and deck improvements as identified in Special Condition #6 of CDP #6-99-48;

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record an amended deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development on the subject site. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the adjacent public vista point. 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.

3. Open Space Deed Restriction – Public Access Area. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Chinquapin Avenue Street End Right-of-Way except for the public access improvements approved pursuant to CDP #6-99-49. Additionally, the landowner shall be prohibited from interfering with the maintenance of these improvements.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and the City of Carlsbad as landowner shall execute and record an amended deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development on the adjacent public vista point. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the adjacent public vista point. 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.

4. Public Access Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and written approval, a final plans for the proposed public access improvements in the Chinquapin Ave ROW. Said plan shall be in substantial conformance with the preliminary plan submitted by the applicant, by Bird Design, dated October 7, 1999 and approved by the City of Carlsbad. The plan shall include, at a minimum, the following:

- a. Provision of a 40-foot long, five-foot wide (or wider if necessary to meet Americans with Disabilities Act [ADA] standards) improved granite path within the Chinquapin Ave ROW to lead from the proposed parking spaces westward to a 30-foot wide concrete pad with two concrete benches on the pad, two standard sized parking spaces adjacent to the cul-de-sac terminus of Chinquapin Avenue, a three-foot high guardrail

at the seaward extent of the pad which corresponds to the top of the existing 2:1 slope that descends to Carlsbad Blvd

- b. A five-foot high fence at the southern extent of the Chinquapin right-of-way to maintain privacy between visitors and the adjacent proposed residence to the south and drought tolerant shrubs between the fence and the pad and walkway.
- c. Provision of public access signs at the intersections of Carlsbad Blvd./Tamarack Avenue, Tamarack Avenue/Garfield Street and Garfield Street/ Chinquapin Avenue which identify that public access is available to pedestrians, bicyclists and motorists from Chinquapin Avenue to the public viewpoint within the Chinquapin Avenue right of way.
- d. Provision that that the path and signage shall be constructed/installed concurrent with construction of the residences and open and available to the public within sixty (60) days following construction of the approved residences.

The permittee shall undertake development in accordance with the approved public access plan. 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.

5. Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record an amended deed restriction in a form and content acceptable to the Executive Director, which provides that the applicant shall install and maintain the public access improvements required by Special Condition #4 of CDP #6-99-48 for the life of the permitted residences. 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.

6. Revised Landscape Plan. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval a revised final landscape plan, which has been approved by the City of Carlsbad in consultation with the Department of Fish and Game, to incorporate the following:

- a. Only low-growing, native, drought-resistant landscaping which does not reach sufficient height to block public views to Carlsbad Blvd, Agua Hedionda Lagoon, Carlsbad State Beach and the Pacific Ocean is acceptable in the rear yards of the proposed residences. The landscaping plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features.

- b. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan. Said landscaping shall be compatible with the natural character of the surrounding environment (i.e., non-invasive or noxious). A written commitment shall be made that all planted materials shall be maintained in good growing condition.
- c. Only low fencing (i.e., no greater than 3-feet high) and at-grade patio and deck improvements shall be permitted within rear yards.
- d. Landscaping shall be installed concurrent with, or within sixty days following, construction of the approved residences.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director against the subject property. The restriction shall incorporate the requirements of Special Condition #6 of CDP #6-99-48 to ensure that landscaping and rear yard improvements shall be of appropriate height, that a landscape maintenance agreement shall be maintained in perpetuity at the required locations.

The document 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.

7. Drainage/Runoff/Sedimentation Control. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, final drainage and runoff control plans for the project designed by a licensed engineer qualified in hydrology and hydraulics, which have been approved by the City of Carlsbad, which assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity and elevation. Energy dissipating measures at the terminus of any proposed outflow drains shall be constructed. The applicant shall also submit a written commitment indicating that all devices shall be installed and maintained by the applicant in accordance with the approved plan.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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

- a. No grading activities shall be allowed during the rainy season (the period from October 1<sup>st</sup> to March 31<sup>st</sup> of each year). All disturbed areas shall be replanted immediately following grading and prior to the beginning of the rainy season.
- b. The permittee 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.
- d. 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.

9. 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

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 trash removal. The program shall also include a copy of the stenciling that will be placed on the curb of each storm drain inlet.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Disposal of Graded Spoils. Prior to the issuance of the coastal development permit, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

11. 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 encroachment agreements and right-of-way agreements required by the City of Carlsbad that allow for the installation of access improvements in the public right-of-way as shown on the plan required by Special Condition #4 of CDP #6-99-48 and that allows for the applicant to maintain the improvements for the life of the permitted residences.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the subdivision of a 0.41 acre site into 3 residential lots, and 1 driveway lot (Parcel #1 = 0.11 acres, Parcel #2 = 0.11 acres, Parcel #3 = 0.14 acres, Parcel #4 [driveway] = 0.06 acres) and construction of a two-story, 29-foot high, 3,314 sq.ft. single-family residence on each residential lot. The proposal also includes vacation of the western 27 feet of excess Carlsbad Blvd. right-of-way. Approximately 780 cubic yards of grading is proposed with 120 cubic yards of fill and 660 cubic yards to be exported off-site. Special Condition #10 requires the location for the disposal of graded spoils be identified. If the site is located within the coastal zone, a separate coastal development permit or permit amendment must be obtained.

The applicant proposes to install public viewshed improvements within an area identified in the certified Agua Hedionda Lagoon Land Use Plan as a public vista point. The vista point is located immediately adjacent to the project site to the north within 50-foot wide



public right of way owned by the City of Carlsbad. The right of way is the paper street end of Chinquapin Avenue as it would intersect with Carlsbad Blvd., a major coastal access route and identified Scenic Highway. According to the City, the right of way will not be improved as a public street. The proposed improvements include benches, landscaping, a walkway, guardrail and two parking spaces. The City has authorized construction of the proposed improvements. The applicant has also proposed a bench to provide public views to Agua Hedionda Lagoon to the south within the southeast corner of the project site.

The project site is on inland bluff located at the southwest terminus of Chinquapin Avenue, just east of Carlsbad Blvd., approximately 300 feet north of Agua Hedionda Lagoon in the City of Carlsbad. The portion of site to be developed is 40 to 50 feet above sea level and has been previously graded and slopes gently from east to west with the exception of the slope that descends to Carlsbad Boulevard. It is covered with non-native grasses and ice plant and contains no sensitive vegetation. The property fronts on Carlsbad Boulevard to the west; however, it is precluded access from Carlsbad Blvd. because of steep topography.

The project site gives a panoramic view of ocean to the west, the outer basin of Agua Hedionda Lagoon to the south, and Carlsbad State Beach and Carlsbad Boulevard in both directions. The surrounding area is characterized by a mixture of older, single-family homes and duplexes, and newer high density, multi-family housing.

The property is zoned Residential High allowing up to 23 units/acre in the certified Agua Hedionda Land Use Plan. The Agua Hedionda Lagoon plan area is the only uncertified segment in the City of Carlsbad's LCP; therefore, the Commission retains permit jurisdiction in this area with the standard of review being the Chapter 3 policies of the Coastal Act with the Agua Hedionda Lagoon LUP used as guidance.

In CDP #6-87-112, the Commission approved a three-story, 14,175 sq.ft. eight unit condominium structure on a 13,400 sq.ft. lot at the southeast corner of the intersection of Carlsbad Blvd. and Sequoia Avenue, which is about 150-feet north of the project, site. The Commission noted the project site was located to the east of a designated scenic corridor, Carlsbad Blvd., was about 500 feet from Agua Hedionda Lagoon and was approved with a extensive landscape plan.

2. Visual Resources. Section 30251 of the Coastal Act is applicable and states in part:

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

The project site is on a visually prominent inland bluff overlooking Carlsbad Boulevard, a designated scenic corridor and first coastal road, Carlsbad State Beach and the Pacific Ocean. It is also within 300 feet of the outer basin of Agua Hedionda Lagoon. It is relatively flat and contains no biological resources. The adjacent City right of way to the north of the subject site (i.e., the end of Chiquapin Avenue) is identified in the certified Agua Hedionda Lagoon Land Use Plan as a public vista point. LUP policy 8.2 provides that special vista points and viewing areas shall be preserved, and made available to the public, as indicated on Exhibit K (attached). Another LUP identified vista point is identified near the project site at Garfield Street across from Date Avenue at a point that overlooks Agua Hedionda Lagoon. Currently, this vista point is unimproved and there are no plans for its improvement.

In its approval of the parcel map, the City found the project would not preclude the vista point. The City found that a 50' wide view corridor would remain within dedicated Chiquapin Avenue ROW that exists between the proposed cul-de-sac end of Chiquapin and Carlsbad blvd. While on paper Chiquapin Avenue intersects Carlsbad Blvd, according to the City, it has no intention of improving Chiquapin to Carlsbad Blvd. because of topographical differences between the roads.

In its approval of a planned unit development permit and site development plan, the City found the project had no unmitigable adverse visual impacts because it proposed varied architectural features, earth toned building and roof colors, structures compatible with existing multifamily units to the east, single family residences to protect the mix of residential development in the project area as most of the newer developments are multi family attached products. The City also found the proposed detached homes involved less view obstruction and less bulk than a multi-family attached project and concluded the project did not preclude the identified vista point at the westerly terminus of Chiquapin Avenue. In other words, the City found that because the 50' wide view corridor would remain within dedicated Chiquapin Avenue ROW, the project could be found consistent with the LUP requirement.

The existing views across the project site from Chiquapin Ave. offer a panoramic view of the ocean and its horizon as well as downcoast views of the outer basin of Agua Hedionda Lagoon and Carlsbad State Beach as well as Carlsbad Blvd. This view is outstanding looking south from the site because of the site's location on a low bluff at approximate elevation 50 and the fact that looking south there is very little residential development to be seen. In effect, it is an open space view of approximately  $\frac{3}{4}$  of a mile as only the beach, ocean, road, powerplant and a limited view of the lagoon is seen. There are few, if any, views that are like it in San Diego County. Construction of the proposed houses would obstruct much of this view, leaving only two relatively narrow corridors. One corridor would be to the south across the proposed common area of the site towards Agua Hedionda Lagoon. The second corridor would be to the west across the unimproved Chiquapin Ave. right-of-way, which would afford a mostly tunnel view of the ocean with some views to the north. Thus, with construction of the proposed three residential structures, the unique panoramic views across the site would be lost. Upcoast

views from the project site include the ocean and the shoreline; however, the area inland of Carlsbad Blvd. is primarily residential development. This view would mostly remain until development of the two vacant lots to the north of the Chinquapin Right of Way is constructed.

As noted, Section 30251 of the Coastal Act requires that public views to and along the coast be protected in conjunction with new development. As such, within the proposed development, views from Chinquapin Avenue to the south and west need to be preserved. In addition, views of the site from the lagoon, beach and adjacent road need to be addressed.

The applicant has submitted a visual analysis of views from the project site to the identified scenic resources. The applicant's analysis of upcoast and downcoast views was from two points on the site, one near the eastern property line of the 0.41 acre lot and the other near the bluff edge within the City's proposed 50-foot view corridor. Regarding visual impacts from the former, the applicant found that existing views towards the south (lagoon views) will remain unaltered with the use of a proposed transparent material fence proposed on the lot's southeastern boundary and that although the proposed buildings would block the view of Carlsbad Blvd, the public would have a complete view of it from the proposed view corridor. The applicant found that views from inside the view corridor near the bluff edge allows wide open view towards the ocean, that inside the view corridor the viewer will have a completely unobstructed view to the north of the ocean and beach and that views to the south from the view corridor will be unaffected by the proposed project.

However, the Commission disagrees. This identified public viewing area is one of only a few places in Carlsbad where public views are identified in LCP. The proposed 50-foot wide view corridor left from developing the project site with 3 houses and future single family residences on two lots to the north of the project site will not meet the intent of the LCP. What is left provides only a "tunnel" view corridor, not the panoramic view corridor envisioned by the LUP. Views to the south (Agua Hedionda Lagoon) will be dominated not by the lagoon but the Encina Power plant and its tall smokestack, horizon views of the ocean will be lost or partially obscured, Carlsbad State beach and Carlsbad Blvd. views will be lost or partially obscured. Section 30251 of the Coastal Act requires that more not less emphasis be placed on reducing visual impacts to and along the coast.

Additionally, three large houses (each two-story, 29-foot high, 3,314 sq.ft.) sited so near the bluff edge (within 10 feet) will have a greater adverse visual impact on the scenic quality of the area. Because of this siting, the project will be highly visible from Carlsbad Blvd., Carlsbad State beach and along portions of the trail on the north shore of Agua Hedionda Lagoon and the ocean shoreline. The applicant's visual analysis failed to show how the project would impact views to the site from these scenic areas-it only showed views from the project site to those areas. The City's approval made it possible for the houses to be sited so near the bluff edge. The City allowed the vacation of 27' of right-of-way of Carlsbad Blvd. to the applicant. The standard PUD setback requirement from major arterials is 40'. With the street vacation approved by the City, the proposed homes will be sited much closer to the bluff edge than if the right of way not been

vacated. Without the street vacation, the project would be required to meet the 40 ft. rear yard setback from the right of way of Carlsbad Blvd. resulting in the project being sited further away from the bluff edge with the corresponding reduction in size of the units and visual impact. The proposed 40 foot set back would lessen the adverse visual impact of these houses as they would no longer "loom" near the bluff edge. Special Condition #1 requires that the street vacation be deleted and that the homes be moved back 40 feet from the current property line which might require a redesign of the houses. In any event, the entire site does not have to remain completely open for views, but a project should be designed that would maintain view corridors, so public views, particularly to the south, would be maintained from the public street.

In response to these concerns, the applicant has submitted a public viewshed protection plan. As proposed by the applicant, within the 50-foot wide right of way of Chinquapin Avenue a 50-foot wide public view corridor would be maintained. It would include two standard sized parking spaces adjacent to the cul-de-sac terminus of Chinquapin Avenue. A 3-5-foot wide, 40-foot long decomposed granite walkway is proposed to lead from the parking spaces westward to a 30-foot wide concrete pad with two concrete benches on the pad. A three-foot high guardrail is proposed at the seaward extent of the pad which corresponds to the top of the existing 2:1 slope that descends to Carlsbad Blvd. A five-foot high fence is proposed at the southern extent of the Chinquapin right-of-way to maintain privacy between visitors and the adjacent proposed residence to the south. Drought tolerant shrubs are proposed between the fence and the pad and walkway. In addition, the proposed houses will be setback an additional 5 feet from the original submittal. Additionally, a concrete bench is proposed on the southeast corner of the subdivision's 300 sq.ft. passive recreational area to provide public views to the south of the lagoon and beyond. A three-foot high guardrail is also proposed at this location as this area is at the top of a south-facing slope that descends to the north shore trail along Agua Hedionda Lagoon. The applicant finds the plan provides the public views as identified in the LUP as views from the benches within the Chinquapin right-of-way would be panoramic (i.e., 180 degrees).

The Commission finds the proposal meets the requirements of the LUP for preserving and protecting public viewpoints and is consistent with the Coastal Act policies concerning protection of the scenic qualities of the coast. Although the proposed residences would block the panoramic views that are currently available from the terminus of Chinquapin Avenue, the proposal to install public access improvements in the Chinquapin Ave. right-of-way would mitigate this impact by facilitating use of the right-of-way to gain those panoramic views. Notwithstanding the preceding, the Commission finds the proposed houses must be set back 40 feet in order to ensure that the panoramic view will remain available from the Chinquapin ROW. This set back is necessary to retain panoramic views from the ROW. Only as required can the proposed project be found consistent with the Coastal Act.

The revised plan resolves the Commission's concerns regarding preservation of public views, (i.e., the revised plan provides 180-degree views from the viewpoint), however, the Commission remains concerned over the City's action to allow the Carlsbad Blvd.

ROW to be vacated on the applicant's site. If the ROW is vacated as proposed, any plans to widen Carlsbad Blvd. in the future would require widening on the seaward side of Carlsbad Blvd. Currently, the Tamarack Beach free parking lot exists on the seaward side of the street between the right of way and the ocean. Expanding the road in this direction could result in elimination of public parking spaces and/or requiring additional shoreline protection to provide safety to users of the parking lot from wave uprush. Section 30210 of the Coastal Act requires that maximum access be provided, including public access/parking and Section 30253 requires that new development assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Because these impacts could occur if the Carlsbad ROW was expanded on its seaward side, the proposed vacation of the right of way can not be found consistent with the above Coastal Act sections. For that reason, the Commission finds that approving the vacation of the Carlsbad Blvd. ROW on the applicant's property is inconsistent with Sections 30210 and 30253 of the Coastal Act.

Similarly, the Commission also takes issue with the City finding that because Chinquapin would never be extended through to Carlsbad Blvd. there would always be a 50-foot visual corridor for the public to view from. However, this ROW could be abandoned at some point just as Carlsbad Blvd. ROW was abandoned to this applicant. The City could have reserved a public viewpoint with its action and provided benches as a viewing area or could have required the applicant to do the same but failed to do so. The applicant has since proposed the improvements and the City has given the applicant authorization to install the public viewpoint improvements, although the City has refused to join this application as a co-applicant because of concerns over maintenance and liability of the improvements. The deed restriction over the ROW is necessary to insure that the property will be developed only with public access improvements. Moreover, if the ROW is ever vacated, the future property owner will be on notice of the restrictions on use. The Commission further finds that the permittee is required to maintain the public access improvements. If the permittee wants to contract with someone else such as the Agua Hedionda Lagoon foundation or homeowners association they can do so. Another possibility is that a private association like a local rotary club will accept maintenance and liability responsibilities. The below conditions are imposed to assure that the viewpoint will be viable as a public resource for as long as the proposed residences remain on the site.

Special Condition #1 requires that a revised/final parcel map, site and building plans be submitted which identify that the vacation of the western 27 feet of excess Carlsbad Blvd. Right-of Way be deleted with the result that the proposed residences shall be setback 40-feet from the western property boundary. Special Condition #11 requires the applicant to provide evidence that an encroachment agreement and a right of way agreement from the City has been obtained that allows the applicant to install the improvements for the ROW as shown on the plan required by special condition #4 and allows the applicant to maintain such improvements for the life of the permitted residences. Finally, Special Condition #6 requires only low fencing (i.e., no greater than 3-feet high) and at-grade

patio and deck improvements shall be permitted within rear yards to ensure proposed residential improvements will not block or obstruct public views originating from the vista point across the subject site.

Special Condition #2 requires an open space deed restriction prohibiting development within the required 40-foot rear yard setback of the proposed residences except for drought tolerant native plants consistent with the present character of the area, low fencing to demarcate public/private space and at-grade patio and deck improvements. Special Condition #3 requires an open space deed restriction requiring that no development can occur within the Chinquapin Avenue right-of-way except for the approved public access improvements. Additionally, the landowner shall be prohibited from interfering with the maintenance of these improvements.

Special Condition #4 requires a final public access plan for the proposed public access trail improvements in the Chinquapin Ave ROW, approved by the City of Carlsbad, which provides that the final plans are in substantial conformance with the preliminary plan submitted by the applicant. The plan shall include, at a minimum, the provision of a 40-foot long five-foot wide (or wider if necessary to meet Americans with Disabilities Act [ADA] standards) improved granite path within the Chinquapin Ave ROW to lead from the parking spaces westward to a 30-foot wide concrete pad with two concrete benches on the pad, two standard sized parking spaces adjacent to the cul-de-sac terminus of Chinquapin Avenue, a three-foot high guardrail at the seaward extent of the pad which corresponds to the top of the existing 2:1 slope that descends to Carlsbad Blvd, a five-foot high fence at the southern extent of the Chinquapin right-of-way to maintain privacy between visitors and the adjacent proposed residence to the south, drought tolerant shrubs between the fence and the pad and walkway. The plan shall also include public access signs at the intersections of Carlsbad Blvd./Tamarack Avenue, Tamarack Avenue/Garfield Street and Garfield Street/ Chinquapin Avenue which identify that public access is available to pedestrians, bicyclists and motorists from Chinquapin Avenue to the public viewpoint within the Chinquapin Avenue right of way. 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.

Special Condition #5 requires a deed restriction be recorded which requires that the applicant install and maintain the public access improvements required by Special condition #4 for the life of the permitted residences.

Special Condition #6 requires a revised landscape plan requiring that only low-growing, native, drought-resistant landscaping is acceptable in the rear yards. The plan shall also include the use of species which do not reach sufficient height to block public views from Carlsbad Blvd, Agua Hedionda Lagoon and Carlsbad State Beach and shall be compatible with the natural character of the surrounding environment (i.e., non-invasive or noxious). While rear yard improvements, including landscaping, are required to be low to preserve public views across the site, the condition requires that higher growing

vegetation be installed to minimize the visual impact of the proposed structures. The condition also requires that a landscape maintenance agreement shall be maintained for the project through a written commitment that all planted materials shall be maintained in good growing condition and that landscaping shall be installed concurrent with, or within sixty days following construction of the approved residences.

In summary, as conditioned, the proposed residential development will not adversely impact existing public views to and from Agua Hedionda Lagoon, Carlsbad Blvd., Carlsbad State Beach and the Pacific ocean and can be found consistent with Section 30251 of the Coastal Act.

3. Public Access. The project site is not located between the first public road and the sea (Carlsbad Blvd.) However, the site has been historically used by the public as evidenced by worn footpaths between the flat portion of the site and a slope leading to an existing trail on the north shore of the lagoon. As such, the project must be found consistent with Section 30211 of the Coastal Act which states:

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 of the first line of terrestrial vegetation.

The significance of the trail as a regional resource rather than a neighborhood trail is not fully known at this time. The Agua Hedionda Lagoon LUP calls for a trail on the north shore of the lagoon but the paths leading from the site to the existing north shore trail are not part of that trail system. Staff did an informal survey of public use of the site—only area residents said they used path. In any event, there are a number of points east of the project site where access to the lagoon can be gained. These areas extend from nearby Garfield Street as it dead-ends near the bluff edge that leads down to the trail that is within the powerplant property. Although under ownership of the utility, the public is allowed to access the main trail on the north shore of the lagoon from the many footpaths that lead from Garfield down the bluff to the trail. As such, it does not seem likely that visitors to this area would use the trail on the subject site to access the lagoon or the beach.

4. 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 calls for the protection of sensitive habitat by, among other means, regulation of development in adjacent areas. The applicant proposes approximately 780 cubic yards of grading (120 cubic yards of fill and 660 cubic yards to be exported off-site) on a 0.41 acre site located near 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.

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 #7 has been attached to the permit. Special Condition #7 requires a drainage/runoff/sedimentation control plan to assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity and elevation.

Special Condition #8 requires a grading and erosion control plan that indicates no grading activities shall be allowed during the rainy season (the period from October 1<sup>st</sup> to March 31<sup>st</sup> of each year). All disturbed areas shall be replanted immediately following grading and prior to the beginning of the rainy season. The condition also specifies that all disturbed areas will be replanted immediately following grading and prior to the beginning of the rainy season and the installation of temporary and permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. These requirements are consistent with the certified Agua Hedionda LUP which contains detailed grading provisions.

The applicant propose to direct all runoff from the developed portions of the site into an existing municipal storm drain system in Carlsbad Blvd. Special Condition #9 requires a Best Management Practices (BMPs) program for the proposed development which all storm drain inlets shall have stenciling that prohibits the disposal of trash in the drains, solid waste shall be removed regularly and receptacles for trash and recyclable materials shall be placed adjacent to any common facilities and 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. In summary, as conditioned, the Commission finds that potential adverse impacts related to water quality and sedimentation have been minimized to the maximum extent feasible.



5. 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. Such a finding can be made for the subject proposal as conditioned.

The City of Carlsbad has a certified land use plan and is currently developing its implementation component. The site is zoned R-3 and designated in the certified Agua Hedionda Land Use Plan for High-Density Residential development and the proposed project is consistent with these designations (the project's density is 9.1 du/ac). As noted, the LUP identifies as public vista point adjacent to the project site. As conditioned, the project will be redesigned consistent with that intent as it will not block or obscure views to a number of scenic features in the area and the view corridor over this site will be enhanced and preserved to secure this area as a public viewing area in perpetuity. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of Carlsbad to continue developing a fully certifiable LCP.

6. CEQA finding. 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 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.

As redesigned above, the proposed project has been found consistent with the visual protection policies of the Coastal Act. 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. As noted above, the project will be redesigned to maximize public views to and across the site. This redesign will give reasonable use of the site without adversely affecting identified public views from the adjacent public right-of-way. The revised project will also be designed to accommodate public access along the eastern portion of the site to gain access to a bench to accommodate views to the south. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

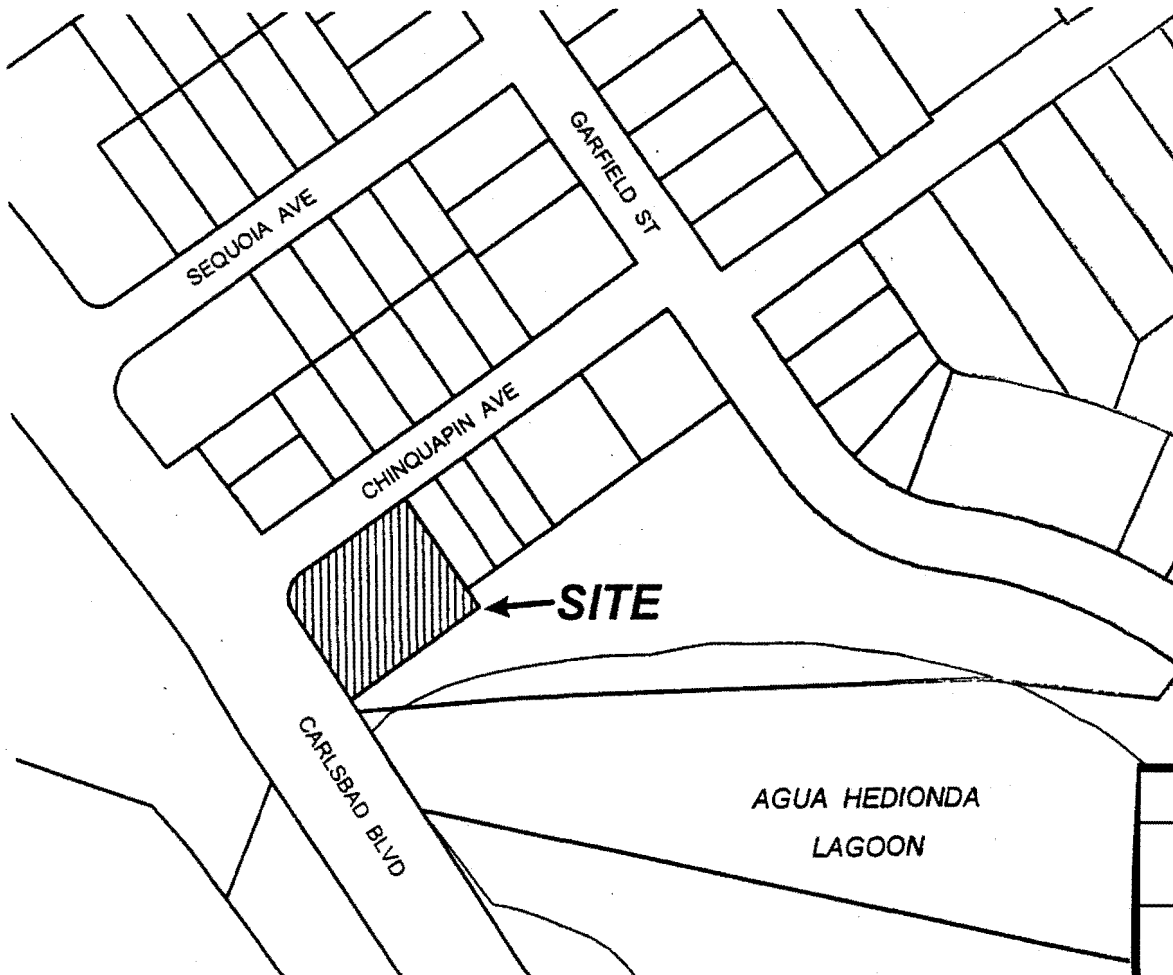
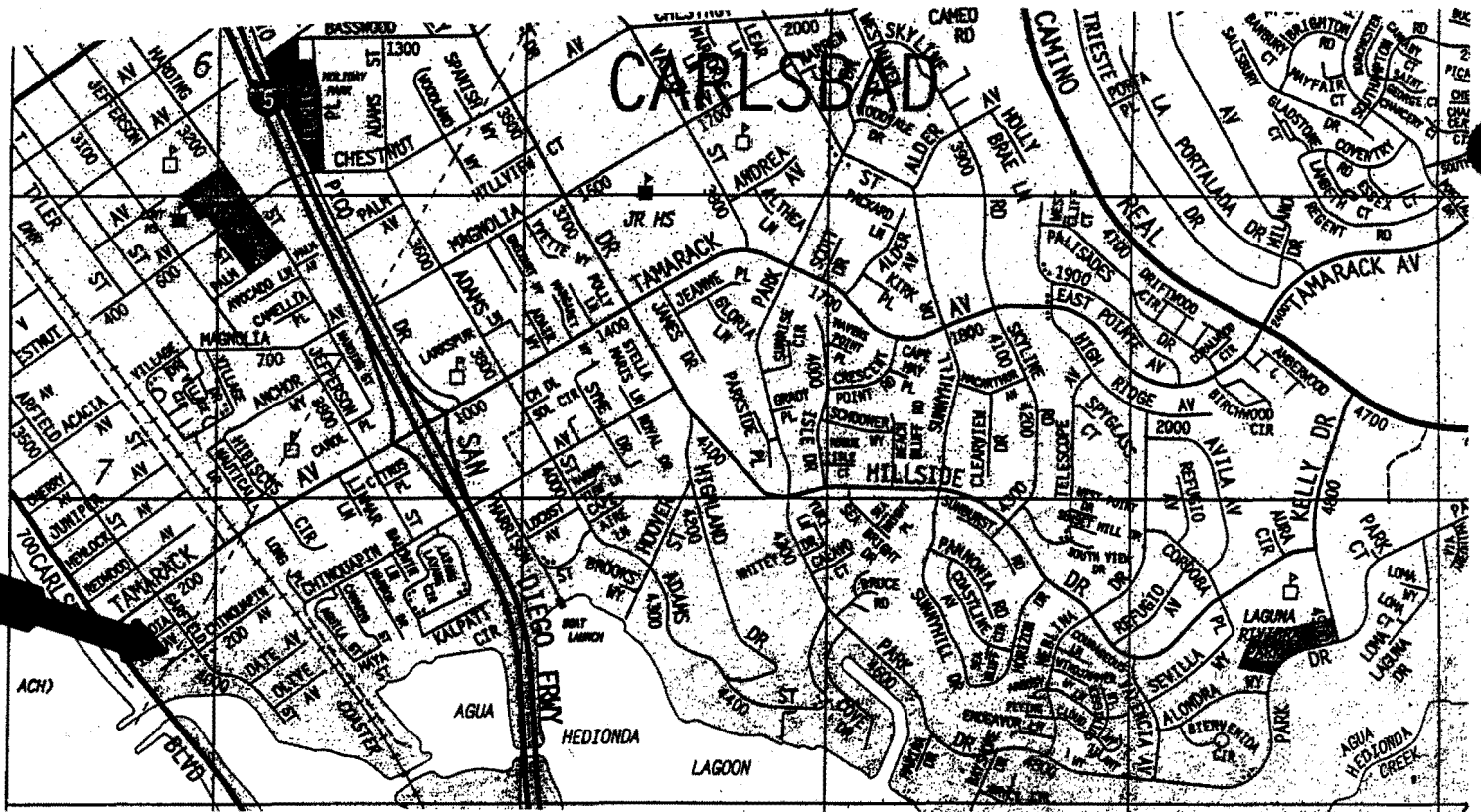


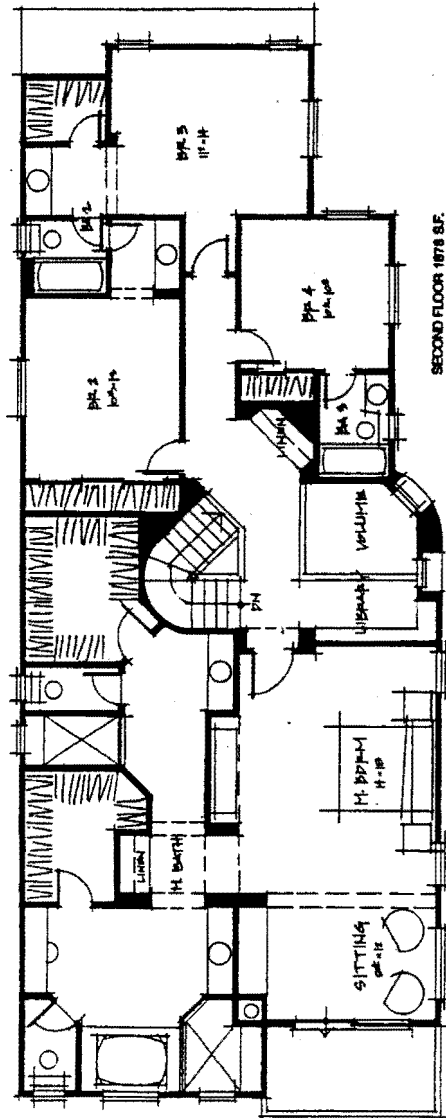
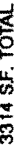
EXHIBIT NO. 1
APPLICATION NO.
6-99-48
Location
California Coastal Commission



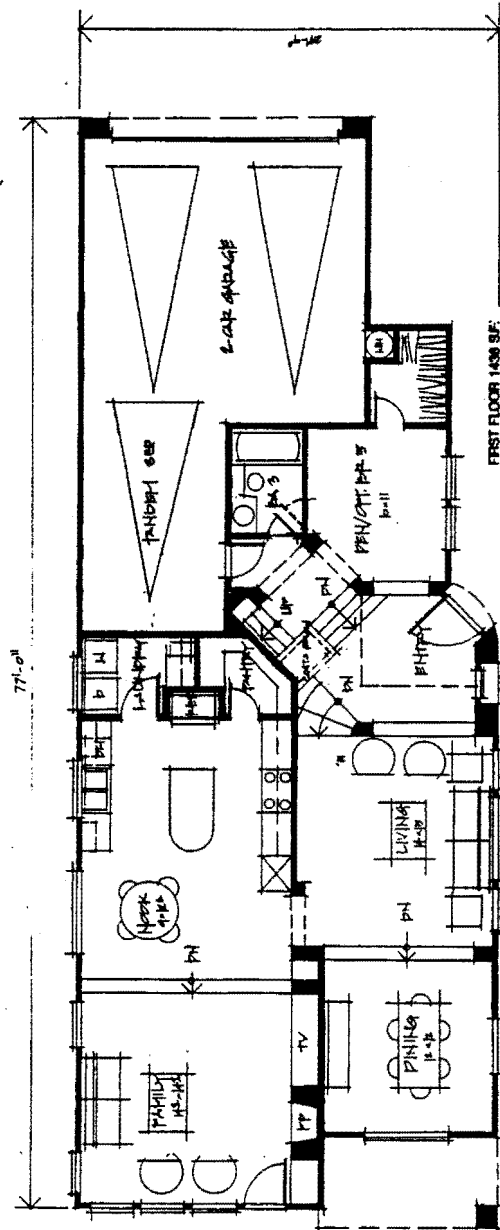


AGUA HEDIONDA LCP

EXHIBIT NO. 3
APPLICATION NO.
6-99-48
Public Views
California Coastal Commission



**SECOND FLOOR 1878 S.F.**



**FIRST FLOOR 1430 S.F.:**

 California Coastal Commission



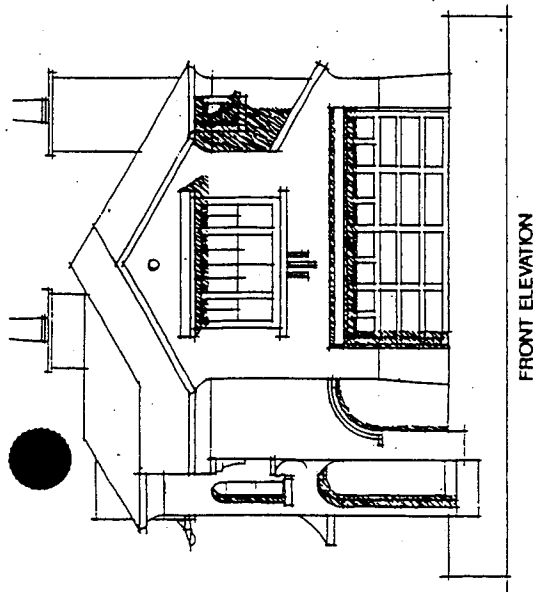
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APPLICATION NO.

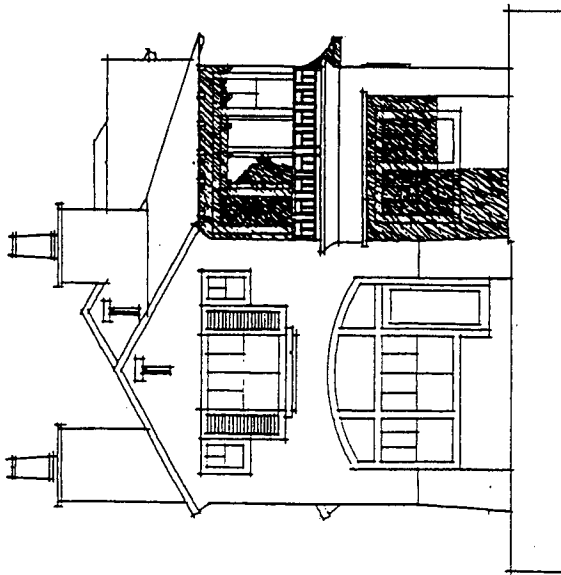
6-99-48

Project Area

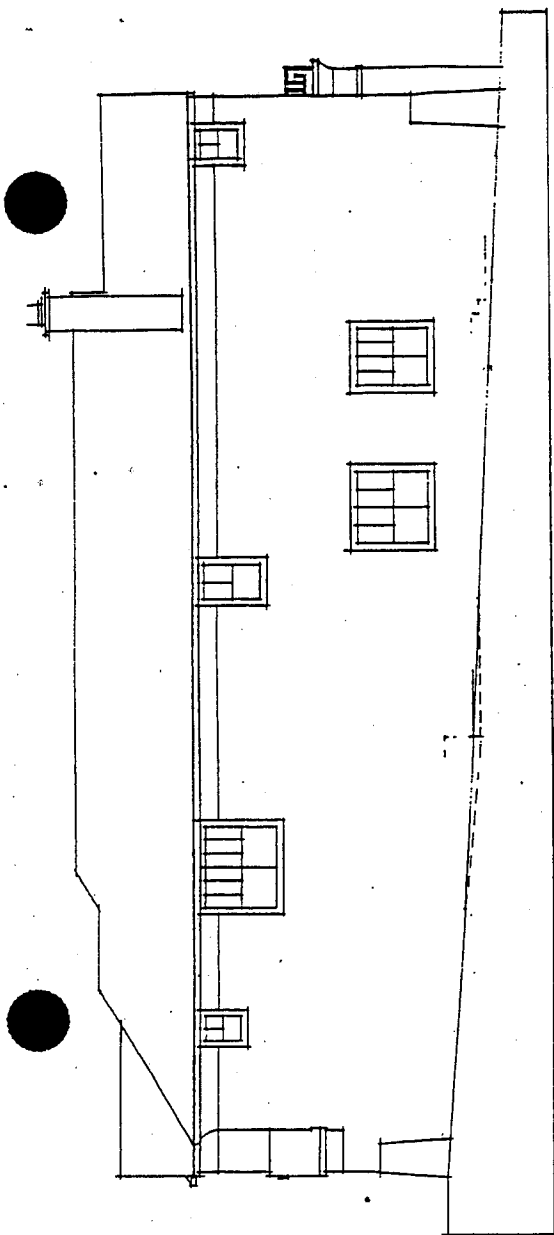
California Coastal  
Commission



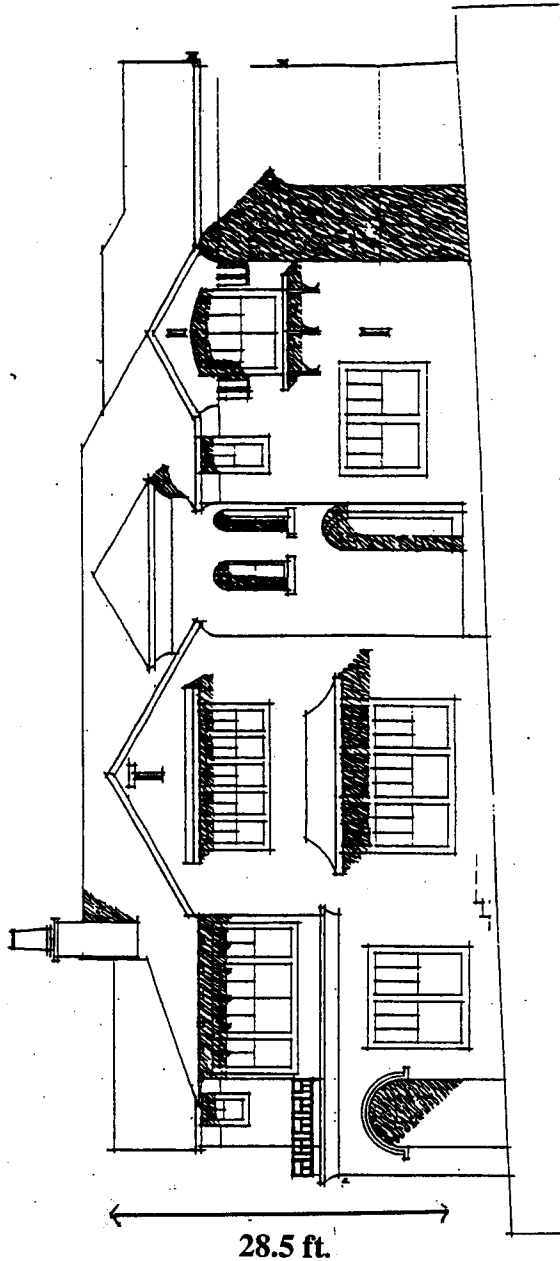
FRONT ELEVATION



REAR ELEVATION

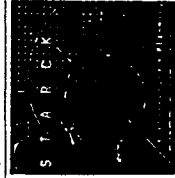


LEFT ELEVATION



28.5 ft.

RIGHT ELEVATION



3.1A

EXHIBIT NO. 6  
APPLICATION NO.  
**6-99-48**  
Elevations



SP 6-99-48

*Palisades*  
Carlsbad, CA

CONCEPTUAL PLAN  
FOR VIEW AREAS

NOTE-  
ALL PROPOSED SCREENS  
TO BE DRAUGHT TOLERANT

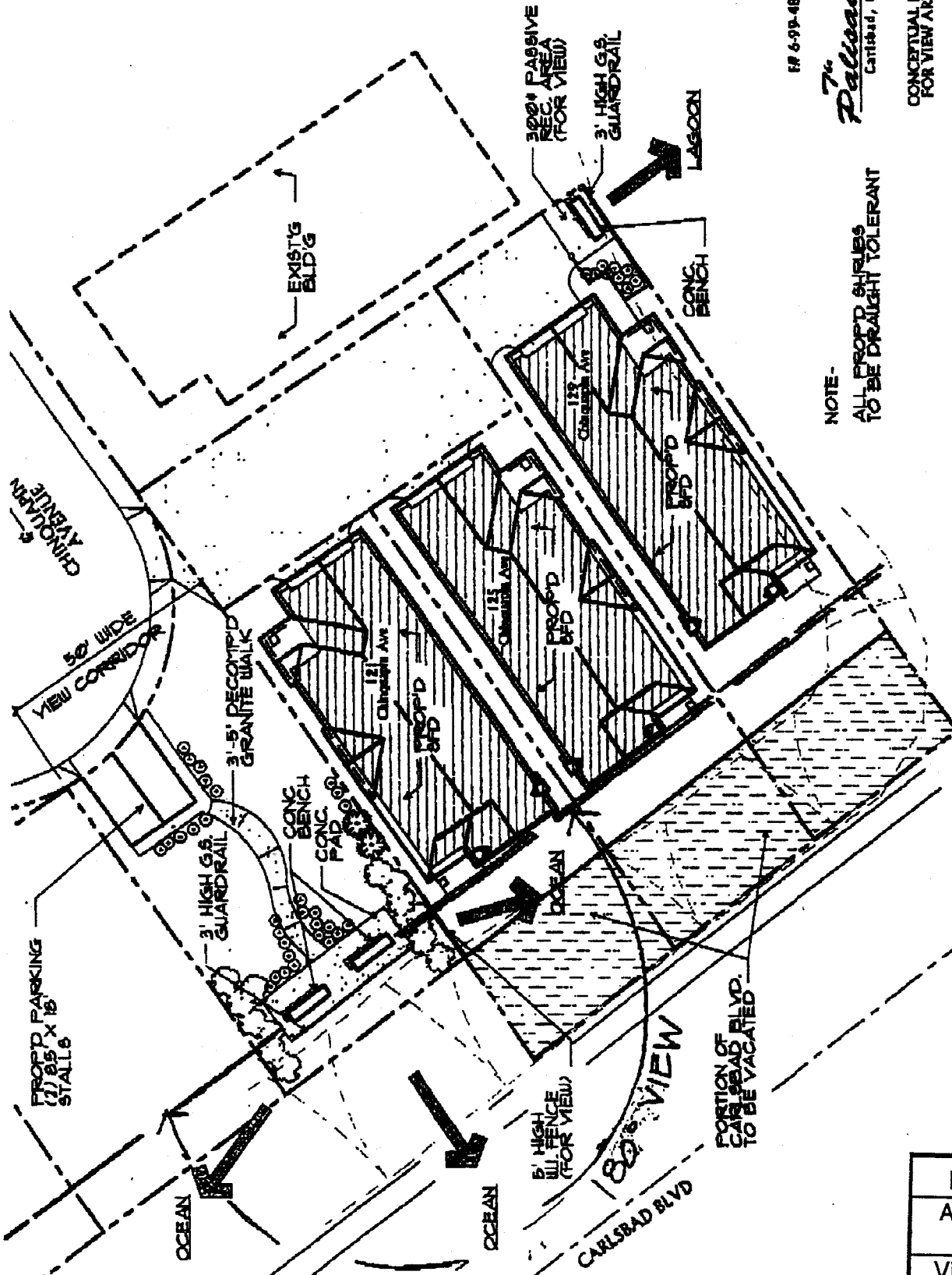


EXHIBIT NO. 7
APPLICATION NO.
6-99-48
View Corridor Plan
California Coastal Commission



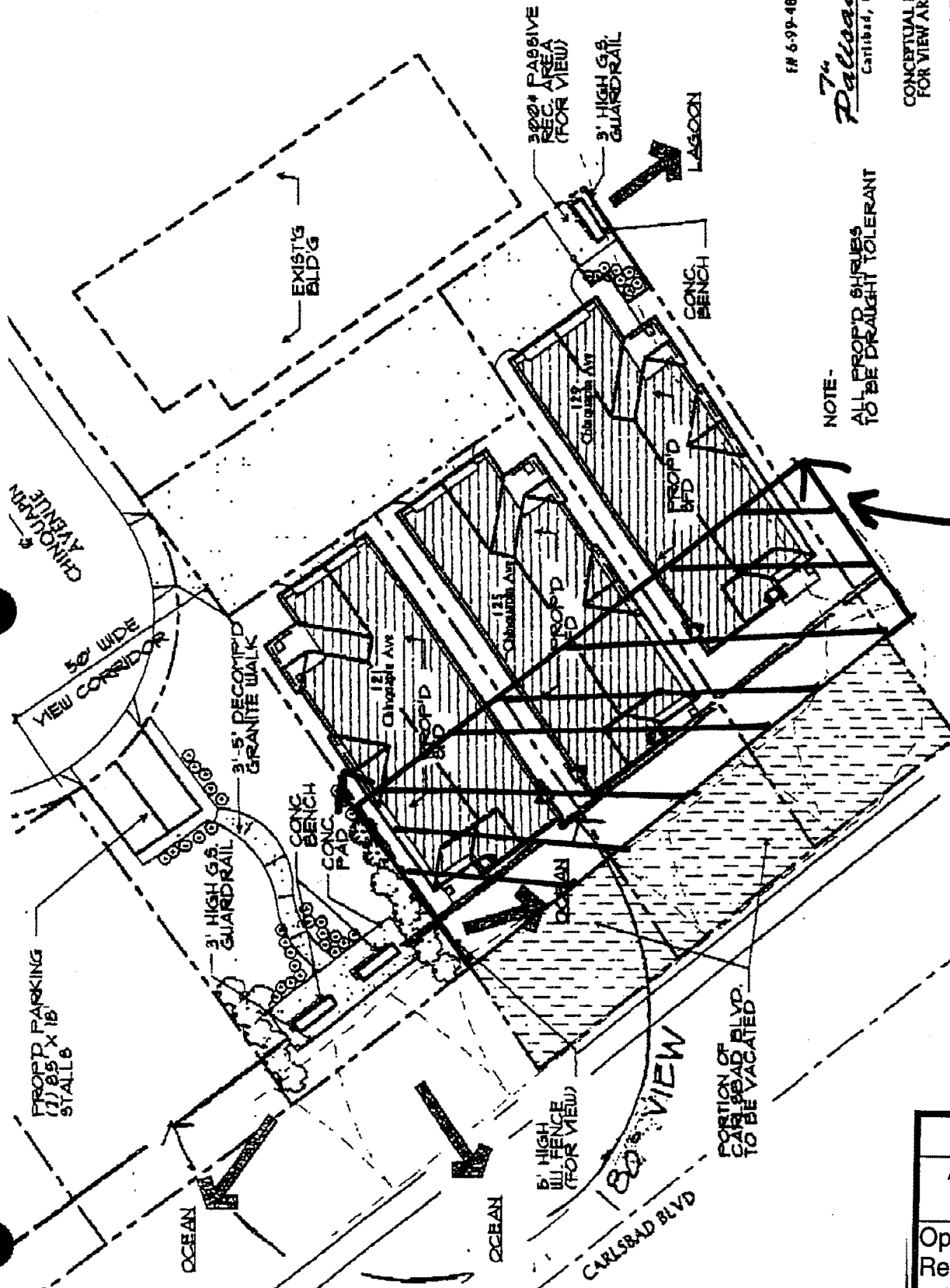


1/6-99-48

*Palisades*  
Carlsbad, CA

CONCEPTUAL PLAN  
FOR VIEW AREAS

NOTE-  
ALL PROPOSED SHUISES  
TO BE DRAUGHT TOLERANT



40-Foot  
Setback  
From Western  
Property line  
(In Concept)  
(Not to Scale)



  
Deed-Restricted  
as Open  
Space  
(Concept only)

EXHIBIT NO. 8
APPLICATION NO.
6-99-48
Open Space Deed Restriction—40-foot setback from western property line
 California Coastal Commission

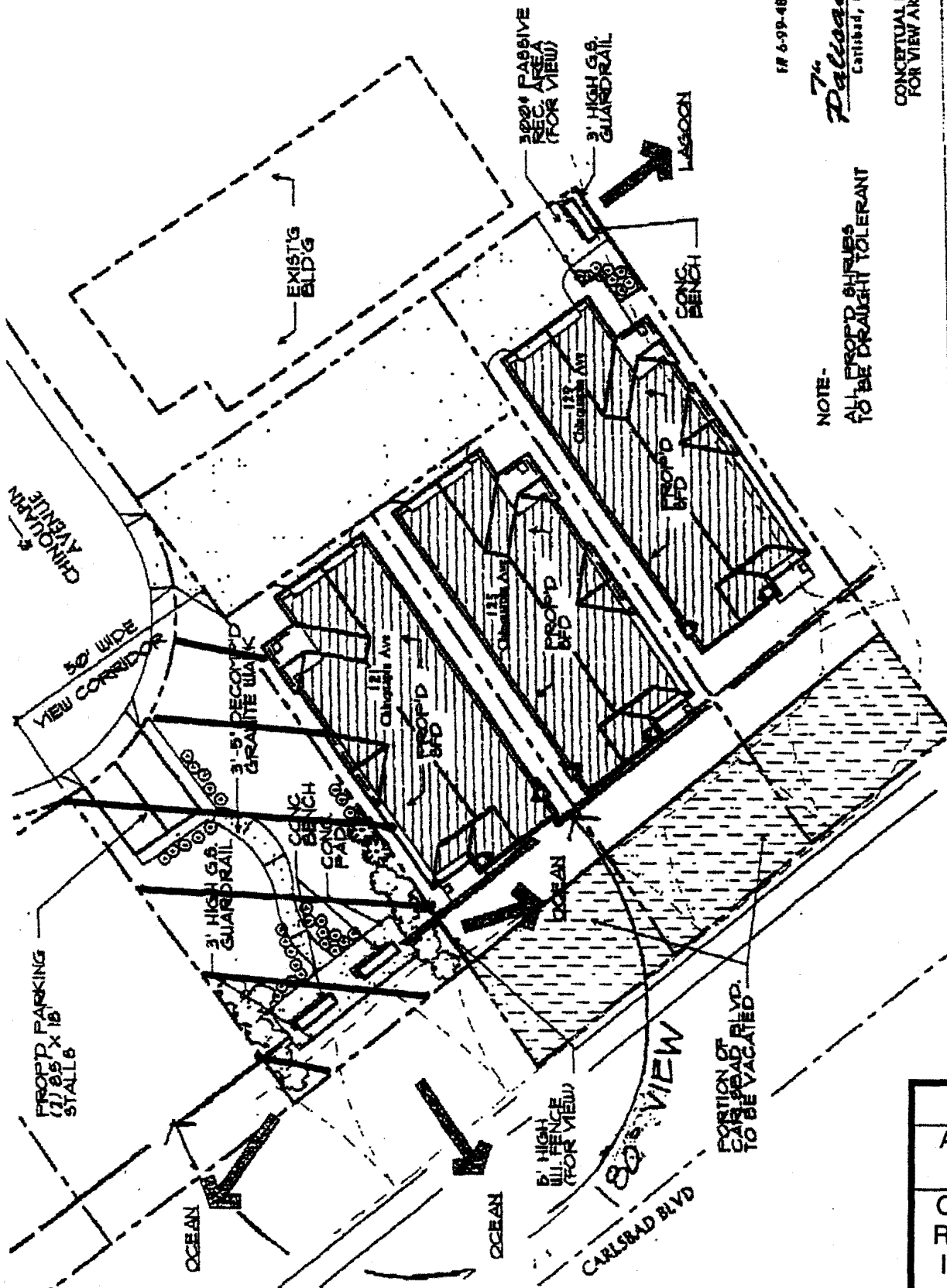


SR 6-99-48

*7th*  
*Dallanades*  
Carlsbad, CA

CONCEPTUAL PLAN  
FOR VIEW AREAS

NOTE -  
ALL PROPD SHRUBS  
TO BE DREAUGHT TOLERANT



**Deed-Restrict  
as Open  
Space for  
Public Im-  
provements**

EXHIBIT NO. 9  
APPLICATION NO.  
**6-99-48**

Open Space Deed  
Restriction—Public  
Improvement Site