

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

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 Staff: EL-SD  
 Staff Report: September 20, 2000  
 Hearing Date: October 10-13, 2000

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-98

Applicant: George T. Kelly

Description: Subdivision of an existing, approximately one acre lot into three legal lots (Parcel 1 = 14,009 sq.ft.; Parcel 2 = 16,495 sq.ft.; Parcel 3 = 13,601 sq.ft.) and construction of a 20-foot wide concrete access road and retaining wall across a portion of a separate adjacent legal parcel to gain access to Highland Drive.

Zoning	MR (5-7 dua)
Plan Designation	Medium Residential (5-7 dua)

Site: 900 block of Highland Avenue, at Ida Avenue, Solana Beach, San Diego County. APNs 298-284-03; 298-293-07 and 15

Substantive File Documents: Certified County of San Diego Local Coastal Program (LCP); City of Solana Beach General Plan and Zoning Ordinance

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed subdivision and access improvements with conditions addressing open space and future development of the created lots. The primary issue raised by the proposed development relates to public views. While no direct public view blockage will occur with this or future development proposals for this site, the site is visible from Interstate 5 and Via De La Valle. Special Condition #1 requires the applicant to record a deed restriction which details development criteria for the lots relative to future residential development and further advises what types of information/design considerations should be included in any future applications for residential development on the lots. With this condition, potential impacts on visual resources associated with future residential development will be reduced to the maximum extent feasible.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-00-98 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and 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 either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) 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. Future Development Deed Restriction. The subject permit is for subdivision of one, approximately one-acre, legal lot into three legal lots and construction of an access road and retaining wall to allow the created sites access from Highland Drive across an adjacent lot. All other development as defined in Public Resources Code Section 30106, including but not limited to, grading and construction of residences and accessory structures, will require an amendment to permit No. 6-00-98 or will require an additional coastal development permit from the California Coastal Commission or from its successor agency.

To minimize the impacts of future development on public viewsheds/highways, particularly westbound Via de la Valle and southbound Interstate 5, the following development criteria shall apply to all four lots subject of this permit:

- a. future improvements shall minimize the alteration of natural landforms to the extent possible;
- b. future improvements shall avoid encroachment into all designated open space areas as identified in Special Condition #2, and shall minimize encroachment onto non-restricted slopes exceeding 25% gradient to the maximum extent possible;
- c. building footprints shall be minimized and landscaped areas maximized;
- d. exterior materials and colors shall be restricted to earth tones, including shades of green, brown, and gray, with no white or light shades except as minor accent features;
- e. to achieve these requirements, future applications for site improvements on these lots should include, at a minimum, the following information:
  1. a site plan demonstrating adequate slope setbacks to accommodate substantial landscape screening, along with a conceptual landscaping plan utilizing non-invasive, drought-tolerant, fire-resistant native species which, at maturity, will provide an adequate visual screen;
  2. a plan of proposed structural elevations delineating sight-lines from Interstate 5 and Via de la Valle and the location of on-site story poles;
  3. a color-board or material/color samples indicating the specific finishes proposed for future structures, or a range of finish materials/colors.

**PRIOR TO 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, which reflects the restrictions stated above on the proposed development. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Open Space Deed Restriction. No development, as defined in section 30106 of the Coastal Act shall occur in the area generally described as those steep slope areas exceeding 25% gradient located along the Highland Drive frontage, as shown on the attached Exhibit #3.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space area. The deed restriction shall include legal descriptions of both the applicant's entire parcel(s) and 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 necessary.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing to subdivide an existing, approximately one acre lot (comprised of two assessor's parcels – 298-284-03 and 298-293-15) into three legal lots resulting in the following: Parcel 1 = 14,009 sq.ft.; Parcel 2 = 16,495 sq.ft.; and Parcel 3 = 13,601 sq.ft. The applicant is also proposing construction of a 20-foot wide concrete access road and retaining wall across a portion of a separate adjacent legal parcel (298-293-07) to gain access to Highland Drive. No homes, grading (except minor grading for the access road and retaining wall footings), drainage or landscaping improvements are proposed at this time.

The site is currently undeveloped, and slopes downhill towards the north/northwest with a vertical escarpment bordering the entire site along Highland Avenue, except for the area where the access road improvements are proposed. Some preliminary site work, in the form of grading and trenching for the road and retaining wall, has occurred without Coastal Commission authorization. Also, there are existing palm trees at, or near, the top of the escarpment, and forming an informal boundary along the property line between the proposed subdivision site and the adjacent parcel to the east. Most of the total site (including both the subdivision lot and the access improvements lot) consists of gentle slopes, but some slopes are in excess of 25% gradient. Moreover, the property has been scraped/bladed on an annual basis in response to Fire Department requirements to reduce fuel loads.

Although the applicant was originally proposing to install drainage improvements, the City has requested that these be deferred at this time. The City is reviewing potential realignment/reconfiguration of the Highland Drive/Ida Avenue intersection, which is immediately adjacent to this site. Rather than approve improvements on a lot by lot basis, the City wants to develop a plan of drainage improvements for the overall area, accommodating anticipated road modifications. Improvement of the on-site access road and construction of the retaining wall will not significantly affect current site drainage patterns, since the access point already represents the low spot and currently exists as a dirt road. Thus, the Commission agrees it is reasonable to review drainage improvements in conjunction with future site build-out rather than now.

This project is located in the City of Solana Beach, which does not have a certified LCP at this time (a draft is in process). Thus, this area remains in the Coastal Commission permit jurisdiction and Chapter 3 of the Coastal Act is the standard of review.

2. Scenic Resources. Section 30251 of the Coastal Act addresses visual resources 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 most significant Coastal Act concern on this site is its visibility from southbound Interstate 5 and eastbound Via de la Valle, two major coastal access routes. The topography of the site and surrounding existing development preclude any public ocean views across the site from the freeway. However, the ocean and Del Mar Fairgrounds are visible from the highest portions of the undeveloped site. Since the site slopes away from this viewshed, towards the north, it is probably not discernable from the ocean or Fairgrounds. It is possible, however, that future development on the property would be visible from these public recreational venues, although at a considerable distance and against a backdrop of nearby existing development.

Although the proposed subdivision and access road/retaining wall improvements will have no significant impact on views, Special Condition #1 is intended to address the anticipated visual impacts of future site improvements, including residential and accessory structures. Again, there are currently no existing ocean views that would be adversely impacted by the proposed development and the site is located in a nearly built-out, urbanized area devoid of most natural vegetation. However, this vacant property is within the viewshed of two major coastal access routes and is particularly visible because it is vacant. The properties east/southeast of the site (between the site and Interstate 5 at its closest point) are already developed with large residential structures and accessory buildings; the properties to the north and west are developed with multi-family uses, but sit at a lower elevation than the subject site. Although these properties can all be seen from southbound Interstate 5, the primary view is of rooftops and landscaping. Low scale commercial development exists between this site and Via de la Valle, but the elevation of the subject site and adjacent public streets make them visible above the commercial structures.

Special Condition #1 establishes the limits of the subject permit (i.e., subdivision and access improvements only) and also establishes design criteria for future buildout. This condition also details what supporting documentation must be submitted with any applications for future development to address the identified visual concerns. Landscape screening is expected to be the primary method utilized to buffer views from Interstate 5

and Via de la Valle; however, design elements such as colors, finish materials, building heights and setbacks can also be effective tools in this regard. Because it is important that future owners of the lots are aware of these development criteria, they are required to be recorded as a restriction on the deed of each of the lots subject to this review. As conditioned, the Commission finds appropriate guidance is provided for future development on this prominent site (especially from southbound Interstate 5) such that potential impacts on visual resources will be minimized. Thus, the Commission finds the proposed development, as conditioned, consistent with Section 30251 of the Act.

3. Biological Resources. Section 30240 of the Coastal Act addresses development within or adjacent to environmentally sensitive habitat areas, and states, in part:

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

This is a site surrounded by existing residential and commercial development, which has resulted in the property being disturbed for fuel modification on an annual basis for many years. Thus, much of the site is barren and the only vegetation existing within the developable portions of the three proposed lots is several varieties of iceplant.

There are, however, several individual *Rhus integrifolia* plants, a member of the coastal sage community, on portions of the site not proposed for development of the access road, nor in areas identified for future residential improvements. These specimens are interspersed with iceplant and several other exotic species and are located exclusively on the vertical escarpment bordering the northern and western property boundaries where no development can occur. They are too few and too scattered to be considered environmentally sensitive habitat area (ESHA). Moreover, these isolated plants are totally surrounded by fully developed urban sites and there are no nearby stands of native vegetation. The Commission finds, therefore, that the proposed development, as conditioned, is fully consistent with Section 30240 of the Coastal Act.

4. Hazards – Steep Slopes. Section 30253 of the Coastal Act addresses this issue and states, in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) 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.

The current application is for subdivision of one existing lot into three lots for future development with residential uses. No construction is proposed at this time except for an access road and retaining wall to connect the subdivision with Highland Drive. The access improvements will cross a portion of a separate legal lot east of the subdivision site, such that the access site is also before the Commission as part of this application.

According to the submitted slope analyses, portions of the lot proposed for subdivision are comprised of slopes exceeding 25% gradient, where development is generally either prohibited outright or severely restricted. Development on steep slopes is discouraged for three separate, but often overlapping, reasons: 1) steep slopes often contain significant amounts of undisturbed native vegetation; 2) steep slopes are often visually prominent; and 3) disturbance of steep slopes can lead to geologic instability and erosion. In this case, there is no significant native vegetation on the subject site. However, the site is within public viewsheds from Interstate 5 and Via de la Valle. This issue is resolved through the two attached special conditions, which address future development on the site and prohibit development within the steepest areas of the site through application of an open space deed restriction.

The proposed subdivision does not include any development or construction activities on the subdivision site at this time other than minor access improvements on the existing eastern lot, but its purpose is to allow for future residential development on the three created parcels. Thus, the Commission must determine at this time whether or not the creation of three legal lots is consistent with Chapter 3 of the Act and with established permit precedent with regard to potential development on steep slopes. The slope analysis for the subdivision site delineates adequate area for residential uses outside the steep slope areas on each of the three proposed lots. In addition, the access road proposed for construction herein on the adjacent existing legal parcel can be extended onto all three of the proposed new lots in the future without any encroachment onto steep slopes. Special Condition #2 requires that the steep areas along Highland Drive be retained permanently in open space. This condition thus addresses both the visual impacts of future residences and overall site stability. With this condition, the Commission finds that the subdivision proposed herein will not result directly in any encroachment onto slopes exceeding 25% gradient and criteria has been established to direct future buildout; thus, the subdivision portion of the development, as conditioned, is consistent with Section 30253 of the Act.

The situation is somewhat different on the adjacent site proposed in this application only for access. Except for the access road/retaining wall itself, the entire site contains slopes at or exceeding 25% gradient. Some preliminary grading/trenching has already occurred along the road alignment, including lowering of the roadway to be consistent with the City of Solana Beach's allowed road gradients. Thus, although it is known that the road

alignment used to be steeper than it is today, it is not clear whether the gradient exceeded 25%, such that it would have been considered steep slopes worthy of protection under the Coastal Act. However, this accessway has been used for many years to bring in equipment to clear vegetation from the site for fuel modification purposes to protect adjacent developed properties.

In addition, this is already an existing legal lot, with some inherent development right. It is reasonable to expect that residential improvements will be proposed on this site in the future, and that any such improvements will necessitate encroachment onto steep slopes. This site was not considered part of the development by the City of Solana Beach, and the access improvements proposed thereon were characterized as "off-site" improvements. However, the Commission considers this parcel as part of this application as development is proposed (access improvements) and it is a contiguous lot in similar ownership, and because any access to the three proposed lots (or the one existing lot) must, due to topographical constraints, cross this lot. The proposed road improvements are located in the only reasonable part of the site to accommodate such use (only non-steep area and following natural contours), and would be required to provide access to this site itself, even without a need to access the adjacent subdivision site. Moreover, if the subdivision were not approved, there would still be a development right associated with the one existing lot, and access identical, or very similar, to that proposed would still need to be provided. As such, Special Condition #1 applies to this lot to notify the owner and future owners of the development criteria that must be followed for future residential development.

In summary, the Commission finds the proposed subdivision and road/retaining wall improvements, as conditioned, consistent with Section 30253 of the Act for the following reasons: 1) the proposed project does not involve any encroachment onto slopes exceeding 25% gradient; 2) the applicant has demonstrated that adequate space will exist on all three created lots to accommodate future residential uses; 3) the access road proposed for improvement herein already exists and serves its own lot whether or not the adjacent subdivision occurs. The subject application does not change the existing situation on the access site, which is that any future development will involve encroachment onto steep slopes. Although no open space restrictions are applied to this access site at this time, the Commission (or its successor agency) will review future development on this lot in a manner similar to its review of the three newly-created lots. Thus, the applicant should work towards developing a design that minimizes steep slope encroachments to the extent possible and addresses visual concerns through design, color/materials and landscape screening.

5. Locating New Development. Section 30250 of the Coastal Act provides, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and



where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The Commission finds the proposed development fully consistent with this Coastal Act policy. The proposed lots are within an urbanized area that provides adequate public services and an existing infrastructure that can accommodate the level of development proposed. The lots will be similar in size to surrounding developed properties, and larger than required under existing zoning. Moreover, the typical pattern of development in this area is multi-family, primarily in the form of duplexes and triplexes. The subject site can potentially accommodate the same maximum number of units (seven, based solely on acreage and not considering physical constraints) after subdivision as the single lot currently could contain under existing zoning density limits.

6. No Waiver of Violation. Although minor development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

7. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, with the attached conditions, such a finding can be made.

The subject site is designated as Medium Residential in the Solana Beach General Plan and is currently zoned MR; these designations allow a density of 5 to 7 dwelling units per acre and a minimum lot size of 6,000 sq.ft. The proposed subdivision is fully consistent with those parameters. In addition, as conditioned, the project has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that project approval, as conditioned, will not prejudice the ability of the City of Solana Beach to continue developing a certifiable LCP.

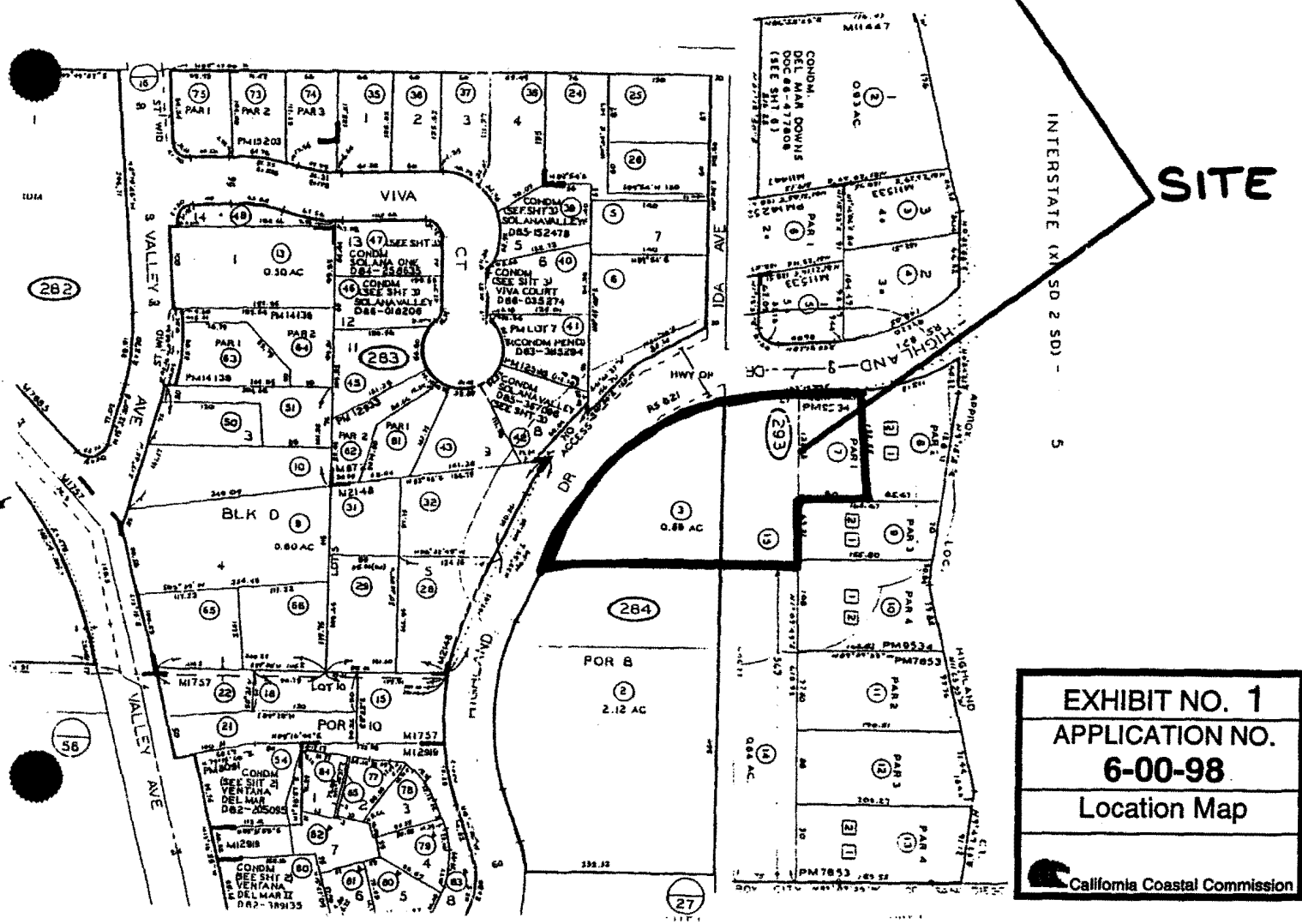
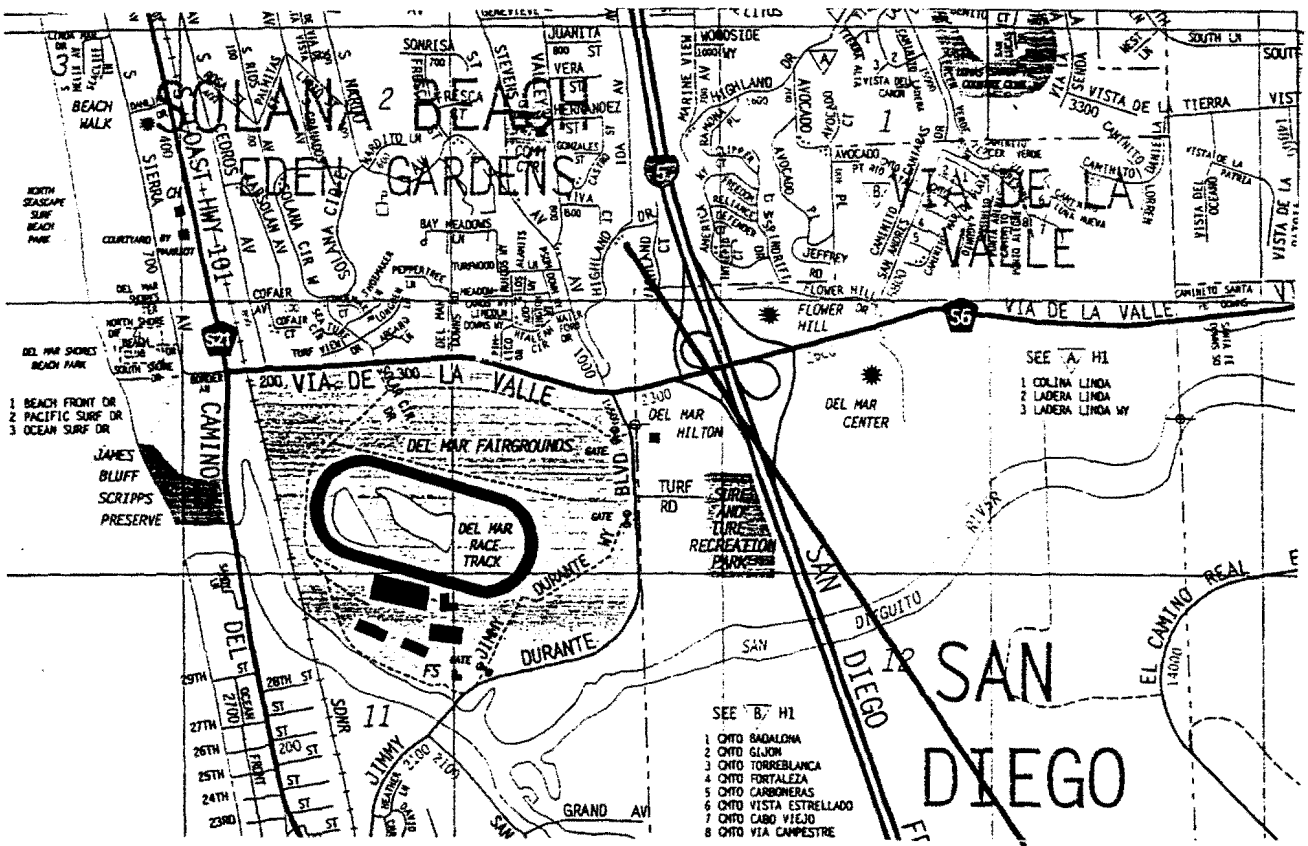
8. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental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

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with

the biological and visual resources and hazard policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

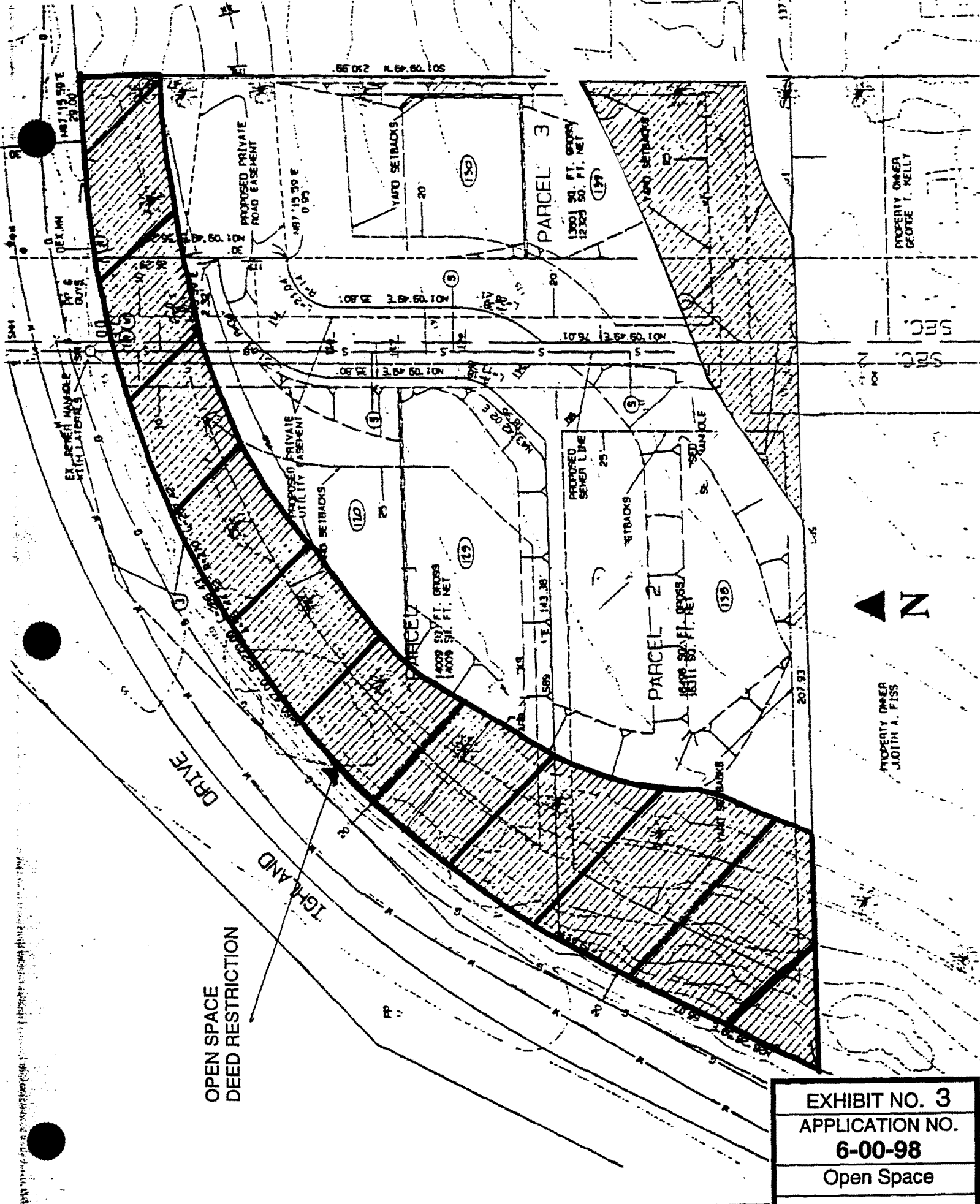
1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.



**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-00-98**  
**Location Map**

California Coastal Commission





OPEN SPACE  
DEED RESTRICTION

EXHIBIT NO. 3  
APPLICATION NO.  
6-00-98  
Open Space

