

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

675 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

(619) 767-2370

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Filed: September 8, 2000
 49th Day: October 27, 2000
 180th Day: March 7, 2001
 Staff: EL-SD
 Staff Report: September 20, 2000
 Hearing Date: October 10-13, 2000

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-118

Applicant: Martin Van Der Hoeven

Agents: Thomas C. Nelson
Jim R. Martin

Description: Restoration of slope, including removal of non-native species and revegetation of area with native species, and installation of a wooden and decomposed granite access path on slope face, within a portion of a 1.85 acre site containing a +6,000 sq.ft. single-family residence.

Lot Area	1.85 acres
Zoning	R5 1 dua
Plan Designation	2 1 dua

Site: 4646 Rancho Reposo, San Diego County. APN 302-210-22

Substantive File Documents: County of San Diego Local Coastal Program (LCP); CCC Files #F7943; 6-85-287 and CCC-00-CD-05

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the restoration plan, which is consistent with the Commission's past direction through enforcement action (cease and desist order). However, staff recommends the submittal of revised plans deleting a proposed decomposed granite path/stairway which is proposed to be located in an area of deed restricted open space. Issues raised include potential impacts of restoration activities on adjacent, undisturbed natural areas and the overall improvements to biological resources through restoration of the site to pre-violation conditions. These issues are resolved through the attached special conditions.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-00-118 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. **Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final restoration plans, developed in consultation with the California Department of Fish and Game and approved by the Rancho Santa Fe Fire Department. The final plans shall be in substantial conformance with the restoration, temporary irrigation and temporary erosion control components of the plan submitted by the applicant on September 8, 2000, and titled "Hydroseed Planting Plan." except they shall be revised as follows:

- a. the wooden and decomposed granite walkway shall be deleted;

- b. the buried irrigation lines shall be deleted and replaced with only temporary irrigation (brown line only);
- c. irrigation shall be controlled manually (i.e., not on a timer) or incorporate rain shut-off devices, such that irrigation will not occur during periods of rainfall.
- d. The plan shall provide that all temporary irrigation shall be removed when it is determined that all plants are self-sufficient and do not need irrigation.

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. 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. Monitoring Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a monitoring program to assure long-term success of the permitted/required restoration. The program shall continue for a minimum of three years, or for one full year after discontinuance of temporary irrigation, whichever comes first, and shall result in full restoration of the area to pre-violation conditions. Within 30 days of completion of construction (i.e., hydroseeding and planting of container stock), the applicant shall submit an as-built assessment of the restoration project that includes an as-built plan, to determine if the area has been seeded and planted consistent with the approved final plans. Thereafter, a monitoring report shall be submitted to the Executive Director of the Coastal Commission every six months, until the restoration site has re-established to attain 90% coverage of native species and is self-sufficient (i.e., thriving without irrigation).

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

3. Condition Compliance. All requirements specified in the foregoing conditions that the applicant is required to satisfy as prerequisites to the issuance of this permit, must be met within 30 days of Commission action. Actual restoration activities must be completed within 30 days of the date the permit is issued. Failure to comply with these requirements may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Site History. The applicant is proposing to restore/revegetate a portion of an existing 1.85 acre lot with coastal sage habitat. The site contains an approximately 6,000 sq.ft. single-family residence, and a large portion of the property (most of the area south and east of the existing residence) is covered by a recorded open space deed restriction. This area of the site is steeply sloping and was heavily vegetated with various native plants (primarily coastal sage community species) at the time the restriction was imposed. Existing native vegetation was subsequently removed from approximately a third of the restricted open space area without authorization from the Coastal Commission.

The restoration plan, which was developed in consultation with the California Department of Fish and Game (CDFG), includes hydroseeding the steeper areas of the site and utilizing container stock on the flatter areas. It provides for a temporary (brown line) irrigation system to establish plant growth and temporary erosion control measures to protect downslope properties from erosion until the vegetation is mature enough to perform this function. The plan also includes cautions to the contractor/gardener/botanist to avoid adjacent areas of undisturbed native vegetation. Special Condition #1 requires, among other things, submittal of final plans

The Commission first reviewed this site in April, 1979, when it approved a coastal development permit for subdivision of an approximately 30 acre site into 17 parcels, the subject site being one of those parcels. The 1979 subdivision approval identified significant areas of natively-vegetated steep slopes, and protected this habitat through imposition of an open space deed restriction prohibiting alteration of landforms, erection of structures or removal of vegetation within the mapped open space area without Coastal Commission approval. In July, 1985, the Commission again reviewed the site when construction of a 3,870 sq.ft. single-family home was proposed. The Commission's approval of the proposed home again included restrictions on further development, by imposing a future permits deed restriction. This provided that any alteration of landforms, erection of structures or removal of vegetation beyond the existing building pad was prohibited unless specifically authorized by the Commission. This condition actually covered a greater portion of the site than did the prior open space restriction, encompassing all areas of the site outside the approved building pad; both restrictions remain in effect. The site of the project is entirely within the deed restricted area.

In November, 1996, the current property owner submitted an application to construct a number of accessory improvements on the property, including a pool, decks, retaining walls and landscaping, much of which was proposed within the restricted open space area. The application was incomplete; in notifying the applicant regarding the items needed to complete the application, staff strongly suggested that it would be unable to recommend approval of any improvements within the open space area. After a brief

round of correspondence, the file remained incomplete and idle for approximately a year, at which time application materials were returned to the applicant and his fee refunded.

In August, 1999, Commission staff determined that native vegetation had been removed from the site. An investigation ensued and the property owner was notified by letter on several occasions that the activity was unauthorized and requested immediate submittal of a permit application to restore the site. When no application had been submitted, the Coastal Commission, on July 11, 2000, issued a cease and desist order (CCC-00-CD-05). The subject permit application was received in the Commission's San Diego office on August 14, 2000, but was incomplete. Additional materials/information were received on September 8, and the application was deemed filed at that time.

The Commission approved, with suggested modifications, an LCP for the County of San Diego. This occurred in the early 1980's, but the City never accepted the modifications, so the LCP was never effectively certified. However, the Commission still uses the document as guidance, with Chapter 3 of the Coastal Act being the standard of review.

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

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.

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 proposal is for restoration of a portion of the subject site, from which significant amounts of native vegetation were removed without benefit of a coastal development permit. The cleared area is adjacent to areas of existing undisturbed natively-vegetated slopes and within a portion of the site designated as open space. The applicant has

prepared a revegetation plan in coordination with the CDFG and is proposing appropriate materials, both in the form of the proposed hydroseed mix and container stock plantings to restore the hillside to pre-existing natural conditions. Only temporary irrigation is proposed on the steeper areas, but buried irrigation lines are proposed on the flatter areas, which appears to be inconsistent with the drought-tolerant nature of the chosen species. There is no need for permanent irrigation on any portion of the restoration area; once the plants have firmly established, they will be self-sufficient under normal San Diego climate conditions. CDFG has expressed a desire that irrigation be discontinued at the earliest possible time to minimize erosion.

Both the currently denuded condition of the slopes, especially with the rainy season approaching, and the proposed use of irrigation, raise the potential that significant erosion could occur on this site, particularly during the rainy season. The site is located on slopes north of the San Dieguito River Valley, with the river itself located approximately half a mile south of the site. Both the subject site specifically and the overall subdivision of which the site is a part, are comprised of flat mesas, steep hillsides and deep canyons. Surface runoff from this area moves downhill by gravity over private lands in other ownerships, and eventually enters the San Dieguito River/Lagoon waters or settles in its floodplain. Should erosion occur, it could result in sedimentation to these sensitive downstream resources.

The Commission is concerned that the restoration take place as quickly as possible, preferably before any significant rainfall, to reduce the potential for erosion from the barren slopes. Moreover, the restoration is intended to remediate an open violation case that has been active for over a year; for this reason also, timeliness matters. To address this concern, Special Condition #3 requires that the applicant comply with all "prior to issuance" conditions within 30 days of permit approval, and then complete the restoration project within 30 days of permit issuance. In addition, temporary erosion control, in the form of a line of sandbags at the lowest elevation of the restoration area, is proposed to be installed and maintained for the duration of plant establishment. Special Condition #1 stipulates that all irrigation be temporary (no buried lines) and further requires manual control, or a rain shut-off device, to prevent the irrigation system from operating during periods of rainfall.

In conjunction with the restoration activities, the applicant is also proposing to install a wooden beam and decomposed granite walkway/stairs down the steep slopes, ending just beyond the restoration area. The path would be three feet wide and over 100 feet long and cuts through a portion of the deed restricted open space, within which the Commission has twice previously prohibited the construction of any structures. The applicant suggests that a walkway is needed in order to maintain the restoration area. However, this type of restoration effort requires little maintenance and can likely be monitored primarily from the flatter portions of the site above the restoration area. In the rare instance where someone may actually have to descend the slopes, this can be done without a formal access system. Placement of a walkway in this area is a concern in that it would involve the movement of earth and displacement of native vegetation. There is nothing beyond or below the delineated end of the walkway except more open space,

both on-site and in the adjacent canyon bottom. The Commission finds installation of the proposed walkway inconsistent with both the language and the intent of the recorded deed restrictions, and with the resource protection policies of the Coastal Act, and thus requires that the walkway be deleted from the final plans required in Special Condition #1.

In summary, the Commission finds the proposed plantings, methods and temporary erosion controls appropriate and consistent with the cited Chapter 3 policies. The Commission further finds the irrigation system consistent with these policies as modified/augmented by Special Condition #1. The Commission finds it necessary to require site monitoring to assure the success of restoration efforts, and has addressed that issue in Special Condition #2. Finally, the Commission finds it appropriate to set time limits for the satisfaction of conditions and completion of restoration activities, since this permit is a means to resolve an outstanding violation consisting of the unauthorized removal of significant native vegetation. With the attached conditions, the Commission finds that the site will be restored and the erosion potential reduced. Therefore, as conditioned, the Commission finds the proposed restoration program consistent with Sections 30231 and 30240 of the Coastal Act.

3. 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.

This site is located on the south-facing slopes north of Via de la Valle, at least portions of the site are likely visible from points within the San Dieguito River Valley (south of Via de la Valle) and possibly from northbound Interstate 5 as well. In this particular case, however, the restoration project will restore the former natural appearance of slopes that are currently devoid of vegetation. Therefore, the Commission finds that the visual amenities of this scenic area will be enhanced through the proposed project; thus, the proposal, as conditioned, is consistent with Section 30251 of the Act.

4. No Waiver of Violation. Although 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.

5. 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 County of San Diego previously received approval, with suggested modifications, of its Local Coastal Program (LCP) from the Commission. However, the suggested modifications were never accepted by the County and therefore, the LCP was never effectively certified. While the LCP was never effectively certified and the standard of review for development in the unincorporated County of San Diego is Chapter 3 policies of the Coastal Act, the Commission does use the County LCP as guidance. The subject site is designated as Residential in the Certified County of San Diego LCP, and is currently zoned R5; these designations allow a density of 1 dwelling unit per acre. The site was subdivided in 1979 and developed with a single family residence in the latter 1980's; this existing development is fully consistent with those parameters. The restoration of native vegetation on areas of the site disturbed by the unauthorized removal of native vegetation is also consistent with these designations.

The project site is also located within the Coastal Resource Protection (CRP) Overlay area, which calls for the protection of steep naturally vegetated areas. The initial removal of major native vegetation from steep hillsides was inconsistent with this overlay; however, the proposed restoration of the disturbed area, as conditioned herein, is consistent with the CRP provisions. As discussed above, the Commission finds that approval of the proposed development, as conditioned, will not adversely impact environmentally sensitive habitat areas and is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that project approval will not prejudice the ability of the County of San Diego to obtain an effectively certified LCP.

6. 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.

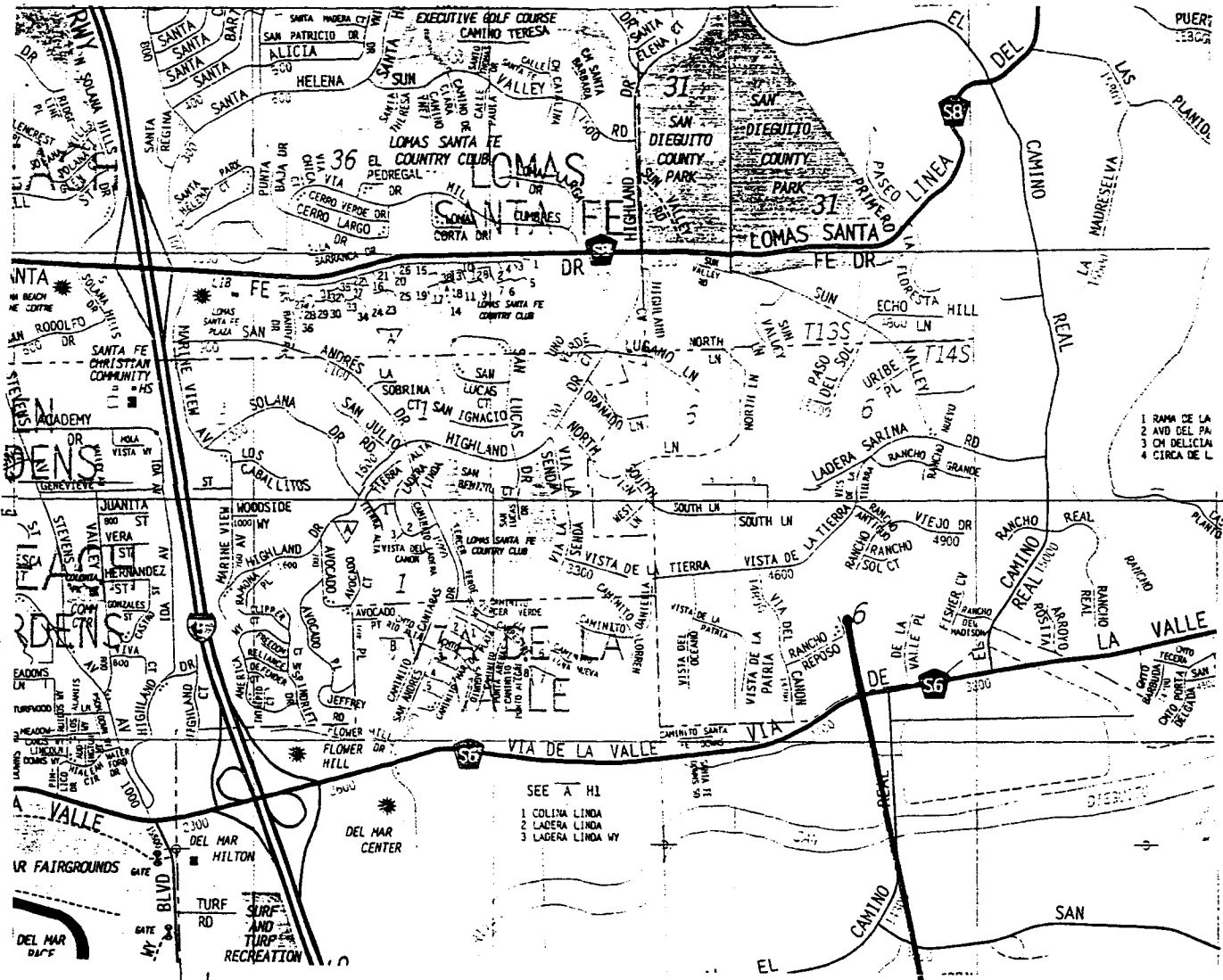
As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the biological and visual resource policies of the Coastal Act. There are no feasible alternatives or mitigation measures 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.





- SEE A H1
- 1 COLLINA LINDA
 - 2 LADERA LINDA
 - 3 LADERA LINDA WY

SITE

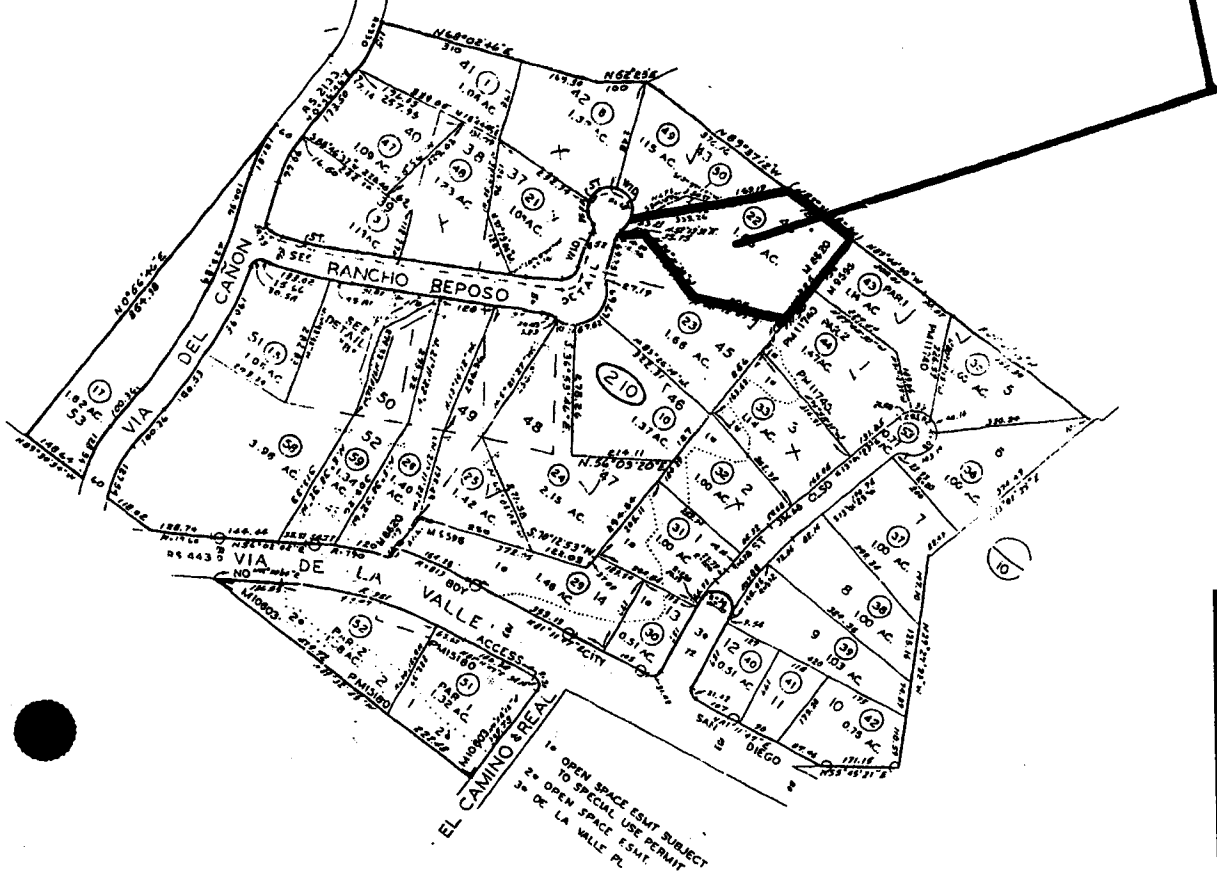


EXHIBIT NO. 1
APPLICATION NO.
6-00-118
Location Map



1" OPEN SPACE ESMT SUBJECT TO SPECIAL USE PERMIT
 2" OPEN SPACE ESMT
 3" DE LA VALLE PL

NOTE: TO BE SUBJECT TO APPROVAL BY STATE OF CALIFORNIA COASTAL COMMISSION.
 PROPOSED 3' WIDE TRAIL
 4' WIDE 12' HIGH
 BY OWNER

NOTE: TO BE DETERMINED BY FIELD FOR CHANGING ROUGHNESS & CONDITIONS
 NOTE: SLOPES OF SANDHILLS & BENTON SOILS OF PROPOSED IMPROVED ROAD NEEDED TO PROPOSED

CAUTION
 KEEP TRAILSIDE
 FROM THIS ROAD
 & WORKING AREA

100' OF SITE
 TO BE 5' WIDE OF 22'6" / 22'6" / 22'6"

PROPOSED PATH



EXISTING NATIVE SLOPES
 TO NOT DISTURB


EXISTING NATIVE SLOPES
 TO NOT DISTURB

DO NOT DISTURB
 & OTHER TREE NATIVES

EXISTING NATIVE SLOPES
 TO NOT DISTURB

VANDERHOFFEN RESIDENCE
 SCALE=1"=16'-0"

SITE	BOTANICAL NAME (COMMON NAME)	QTY	SIZE
(1)	SPHIS INTERMEDIA (LEMONADE BUSH)	9	5ft
(2)	ERIANIS CHINENSIS (CORDESSANT)	12	1
(3)	MIMULUS MEXICANUS (SISYNOBYTHUS)	16	
(4)	SUCCELLA PANDORA (CONCRETE)	25	

EXHIBIT NO. 2
APPLICATION NO.
6-00-118
Site Plan
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-5200
 FAX (415) 904-5400

**CEASE AND DESIST ORDER No. CCC-00-CD-05**

Pursuant to its authority under Public Resource Code section 30810, the California Coastal Commission hereby orders Martin and Josee Vanderhoeven, their employees, agents, and contractors, and any person acting in concert with any of the foregoing to cease and desist from engaging in any development activity at the subject property without a coastal development permit.

The Commission further orders all of the above-identified persons to cease and desist from refusing to either a) obtain after-the-fact approval for, or b) remediate property conditions resulting from, the unpermitted removal of major vegetation. Accordingly, all persons subject to this order shall fully comply with paragraphs A and B:

- A. Within 30 days of the date of this order, or within such additional time as the Executive Director may grant for good cause, submit to the Coastal Commission's San Diego District Office, a complete coastal development permit application requesting to either 1) retain the unpermitted change in property conditions, or 2) using appropriate native California plants, restore the vegetative cover of the site to pre-violation conditions. For an application for restoration and revegetation to be deemed complete it must contain a revegetation plan that is developed in consultation with the California Department of Fish and Game. This plan should include specific erosion control measures to prevent damage from runoff to the subject and surrounding properties during rain events.
- B. In a manner which complies fully with the terms and conditions of any coastal development permit that the Commission may grant under option 2 of the preceding paragraph, carry out such restoration within 180 days from the date of issuance of the permit, or within such additional time as the Executive Director may for good cause grant.


Persons Subject to the Order

Martin and Josee Vanderhoeven, their employees, agents, and contractors, and any person acting in concert with any of the foregoing.

Identification of the Property

The property that is subject to this Cease and Desist order is described as follows:

4646 Rancho Reposo, Del Mar, CA, San Diego County, APN 302-210-22

EXHIBIT NO. 3
APPLICATION NO.
6-00-118
Cease & Desist
Order
 California Coastal Commission

Description of Unpermitted Development

Unpermitted development consists of the removal of native vegetation below the 220-foot elevation line on the northern half of the aforementioned property.

Effective Date and Term of the Order

This order shall take effect on July 12, 2000, and shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

This order is issued on the basis of the findings adopted by the Commission on July 11, 2000, as set forth in the attached document entitled "Adopted findings for Cease and Desist Order No CCC-00-CD-05."

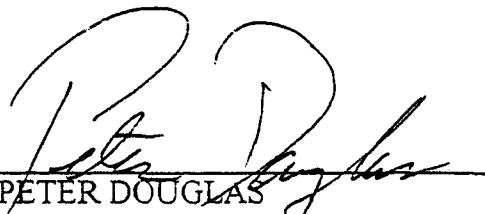
Compliance Obligation

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

Pursuant to Public Resource Code §30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Executed in San Rafael, California on July 11, 2000, on behalf of the California Coastal Commission.


PETER DOUGLAS
Executive Director