

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

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 Hearing Date: May 9-12, 2000

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-43

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

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

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

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

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: The Commission briefly reviewed the proposed subdivision and 42-unit condominium project in September, 1999, where the public hearing was opened, testimony received, but no action taken. At that time, the

the public hearing was opened, testimony received, but no action taken. At that time, the staff report recommended approval of the project but only on condition that it be significantly redesigned in order to avoid adverse impacts to wetlands, public access and recreation, and the visual qualities of a coastal lagoon. One issue was whether a number of "depressions" on the site might be wetlands, specifically vernal pools or seasonal ponds. The project, as proposed, would directly impact several of these areas. The Commission continued the item such that wet weather testing of the "depressions" could occur, and a formal delineation be conducted if they were found to be vernal pools or seasonal ponds, prior to the Commission taking action on the application.

During the period of the continuance, a prospective buyer of the property submitted a conceptual redesigned site plan (shown in Exhibit #5) to staff, in response to the staff recommendation put forth for the September, 1999 hearing. The revisions in that conceptual redesign provided for protection of each of the potential vernal pools/seasonal ponds. The redesign also revised the proposed development such that all residential units would be landward of a stringline of development along the shoreline of Agua Hedionda Lagoon and eliminated the proposed community gates. The conceptual redesign included a 100-foot buffer between all potential wetlands and proposed residential development, although some at-grade improvements would occur within the proposed buffer area to construct the proposed public walkway. In a meeting on February 2<sup>nd</sup>, both the applicant and prospective buyer were present and informally submitted the plan shown in Exhibit #5. During that meeting, staff was advised that the City of Carlsbad was interested in purchasing the wetland, potential wetland and buffer area as mitigation for other projects. As recently as the week of April 10<sup>th</sup>, the applicant's representative insisted the plan in Exhibit #5 was the plan they wanted to move forward with. However, the sale of the property has not progressed, and the applicant has chosen not to revise the development to include the conceptual site revisions, but to go with the plans submitted with the application in March, 1999 (Exhibits #2 and #3).

A project very similar to the subject proposal presented to the Commission in September was approved approximately ten years ago, but the coastal development permit has long since expired, although local approvals have remained valid. The project as presented raises an issue over the protection of existing wetland resources on site. The wetlands near the lagoon shoreline that were identified when the prior project was approved ten years ago have expanded. This concern is in addition to the recently-discovered evidence of seasonal ponds and/or vernal pools on the site. The continuance granted in September was to allow wet-weather testing of the potential seasonal ponds. This requires sufficient rainfall to demonstrate how long the potential seasonal ponds hold water and to identify the presence or absence of sensitive species such as fairy shrimp. The 1999-2000 winter was abnormally dry. However, some rainfall did occur in late February/early March and some testing has taken place. The applicant submitted a report to staff on April 18<sup>th</sup>, which was reviewed by the Commission's staff ecologist, and it has now been determined that no vernal pools or seasonal ponds exist on the site.

**Under the Permit Streamlining Act deadlines, the Coastal Commission is required to act on this proposal at their May meeting. Although the critical issue of**

delineating potential vernal pool/seasonal pond resources on the site has now been resolved, staff is recommending denial of the proposed development due to the significant remaining concerns raised under the Coastal Act. Staff had initially recommended approval of the proposal last fall, in response to the applicant's urgent requests to obtain a coastal development permit prior to expiration of local approval of the tentative map. However, that recommendation included a number of special conditions (see Exhibit #9) that called for a very significant redesign of the project in order to find it consistent with Chapter 3 of the Coastal Act; these conditions, had they been adopted, would have left a great deal of discretion to staff in determining adequate compliance with the Commission's direction. Some of the recommended conditions at that time required a redesign to create a 100-foot buffer from both known and potential wetland resources to address biological impacts, a redesign to ensure all residential units were landward of a "stringline of development" with adjacent properties to address visual concerns, and removal of proposed private gates to address public access issues.

At the Commission meeting in September 1999, the Commission expressed grave discomfort with acting on the application until the exact extent of wetland resources could be identified and a determination of appropriate buffers could be made. Staff thus recommended a continuance, such that wetlands testing could occur and an appropriate recommendation be brought forward when the full extent of wetlands was known and the resource agencies could determine appropriate buffer areas. The other issues were not fully explored or resolved during the very brief public hearing in September. Although the question of potential seasonal ponds has now been resolved, there remains a buffer issue with the existing salt marsh in the southeastern corner of the site, as well as remaining issues concerning visual resources, public access and water quality. With respect to the existing salt marsh located in the southeast corner of the site, staff had requested in writing that this wetland be delineated. The applicants' response identified individual plants but did not delineate actual wetland boundaries. At the time, the applicants were most anxious to move forward, even though what they provided was not exactly what staff had requested. To expedite the application, the applicants agreed to assume the depressions were wetlands, and it was fully expected by staff that the depressions on the site would prove to be wetlands. Since these areas were located between the existing salt marsh and the proposed development, the buffer staff was recommending for the potential wetlands (depressions) would have assured no direct impacts to wetlands and also provided a more than adequate buffer for the salt marsh. Thus, staff agreed to schedule the item for Commission action.

Although staff previously recommended approval with conditions requiring a redesign, this recommendation was largely based upon the applicants' concern that the tentative map would expire. Had this not been a concern, staff would have recommended denial because the extent of redesign required by the conditions was such that there was the potential for confusion between the applicant and the Commission, and a great deal of discretion for the staff. However, since that initial recommendation, staff has learned that the extent of redesign required by the conditions would cause the City of Carlsbad to require a new tentative map approval. Apparently, the City reviewed a conceptual redesign intended to conform the project to the previously recommended conditions and

concluded that such a redesign was not within the scope of the prior tentative map approval. Thus, if the Commission were to approve with conditions requiring a significant redesign, the applicant would likely need to begin the local discretionary review process all over again and the City would be reviewing a project upon which the Commission had already taken action. Accordingly, it appears that the applicant no longer has an urgent need for the Commission to approve with conditions. Therefore, staff is now recommending denial rather than approval with conditions that will require a significant redesign of the project. A denial will also give the City a full opportunity to review a redesigned project for consistency with its local policies and ordinances without any perception of prejudice from a prior Commission action.

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

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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. 6-99-43 for the development proposed by the applicant.

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a NO vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Detailed Project Description/Site History.** The applicant is proposing to subdivide a single legal parcel, 7.8 acres in size, into 20 lots. Also proposed is the construction of 42 condominium units in nine separate, two-story, 38-foot high structures

on nine of the created lots. The remaining eleven lots will be used for a variety of purposes, including interior streets, landscaping and open space. The 42, three-bedroom condominium units are proposed as a private, gated community on a property located on the north shore of Agua Hedionda Lagoon. Project grading includes 8,310 cu.yds. of cut and 18,570 cu.yds. of fill, resulting in the import of 10,260 cu.yds. of material to the site. The project includes three water features (freshwater ponds) located to provide view corridors across the site. The proposal also includes the provision of a public walkway connecting the ends of Bayshore and Marina Drives, which are located on the eastern and western perimeters of the subject site, off-site road widening, curb and gutter improvements to those two public streets, and enhancement of an existing wetland area on the site.

As mentioned, the site is located on the north shore of the inner basin of Agua Hedionda Lagoon, less than a mile east of Interstate 5, and is visible from the freeway. The area to the west is a residential community known as Bristol Cove, which consists of many non-related single- and multi-family developments. The two structures nearest the subject site, and also located along the Agua Hedionda Lagoon, includes a three-story structure and a four-story structure, both multi-family residential. A large (thirteen two-story structures) condominium project has been constructed on the property to the east. The site is bordered by Park Drive on the north, with primarily single-family residential development north of Park Drive.

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

The same subdivision proposal was previously approved by the Coastal Commission in 1990, pursuant to Coastal Development Permit (CDP) #6-90-93 (Remington). That approval included a number of special conditions addressing issues of biological and visual resources and public access. The applicant complied with the special conditions, including the recordation of an offer to dedicate an open space/public access easement and recordation of the project CC&R's. Other conditions of approval of the 1990 permit included final/revised plans for the buildings, street improvements, access trail, landscaping, drainage and erosion control, and habitat enhancement and fencing. The permit was issued in 1991. However, the final map never recorded, the development was never built and the permit was not extended. Thus, the permit has expired.

Because of legislation extending the life of tentative maps approved within a certain timeframe, and a recent extension from the City of Carlsbad, the applicant has maintained the original tentative map as a valid approval. Because the applicant's 1990 tentative map approval is still valid, no environmental review has been required by the City since

1990. The applicant initially submitted plans in conformance with the tentative map (i.e., resubmitted the 1990 plans). The applicant subsequently revised the submitted site plan to include an increased building setback from the existing on-site wetland vegetation to 100 feet. The applicant asserts that the project with this change is still in substantial conformance with the City approval. That plan is depicted in Exhibit #3.

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

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

**Section 30233**

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

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

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

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

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

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

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

(7) Restoration purposes.

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

Section 30240

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

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

The project site may have been historic wetlands at one time, but was filled with lagoon dredge spoils prior to the Coastal Act. Most (90%) of the on-site vegetation consists of ruderal/weedy nonwetland species. Thus, the majority of the site does not qualify as a wetland under the Coastal Act definition. However, there is an erosional feature at the southeastern corner of the site, adjacent to the lagoon shoreline; according to the applicants' biologist, and confirmed by the Commission's staff ecologist, portions of this "gully" support wetland vegetation (*salicornia* and *distichlis*). In measuring the vegetated areas plotted on the submitted plans, it appears wetland vegetation may currently cover almost 400 sq.ft. This area is subject to tidal inundation, and the areal extent of salt marsh vegetation has expanded significantly since the Commission reviewed the earlier project in 1990, when 60 sq.ft. of *salicornia* and one *frankenian* plant were identified in a 1988 biology survey as the only wetland resources. Moreover, based on conversations with a representative of the California Department of Fish and Game, the entire erosional feature is at an elevation (+5 feet MSL) appropriate to support salt marsh. The erosional feature occupies the southeast corner of the site and extends to the west, northwest and north in "fingers." Again measuring on the submitted plans, the area at or below the +5 feet MSL contour appears to encompass close to 1,000 sq. ft., and, going beyond that, area shown on the plans as being within the 100-year floodplain of the lagoon totals around 2,000 sq.ft. (the approximately 2,000 sq.ft. figure includes the existing patches of wetland vegetation and everything within the +5 feet MSL contour, of course). According to one of the submitted plans, the high water line for Agua Hedionda Lagoon is approximately +8 feet MSL and daily high tides often exceed +5 feet MSL.

Since the wetland vegetation has expanded significantly, and since the lowest elevation of the erosional feature is an elevation that supports salt marsh, it is possible that the entire erosional feature is wetlands. Even though the wetland vegetation occurs in several patches totaling slightly less than approximately 400 sq.ft., the remainder of the erosional feature may have hydric soils. Neither the applicant's 1988 biology report, nor the two brief updates done in 1998 and 1999, addressed whether the erosional feature contains hydric soils. The feature is addressed as follows in the three reports, identified by year and author:

## 1998 – RECON

“Wetland species were glasswort (*Salicornia subterminalis*) covering about 60 square feet in the small drainage at the southeast corner of the site and one individual (covering about 4 square feet) of alkali heath (*Frankenia grandiflora*) amid the weeds and grasses.”

## 1998 – LSA

“There is a small drainage in the southeast corner of the site. The drainage is vegetated with glasswort (*Salicornia subterminalis*), coastal saltgrass (*Distichlis spicata*), and an occasional sea-blite (*Suaeda* sp.). No cordgrass (*Spartina foliosa*), shoregrass (*Monanthochloe littoralis*), or arrowgrass (*Triglochin concinnum*) was observed at the time of visit. The drainage will not be impacted by the proposed development, and is well within the wetland buffer zone.”

## 1999 – PCR Services Corporation and C2REM

The report itself says only “A small isolated section of salt grass (*Disticillas spicata*) and pickleweed *Salicornia virginica*) are found in what appears to be an erosional feature.” A letter submitted a couple weeks before the actual report (from the same source) included the following information: “Pickleweed (*Salicornia* sp.) occurs along the shoreward edge of the site (within the 100-foot buffer zone) and within adjacent areas to the south. These areas are clearly subject to tidal action and are saturated most of the year.”

In addition, approximately one year ago, the applicants' biologist conducted a field survey and determined that a number of “depressions” on the site could be seasonal ponds or vernal pools (which are specific types of wetlands). During site visits, the Commission's staff ecologist noted the “depressions” and confirmed that they were likely seasonal ponds. Staff of the Army Corps of Engineers also inspected the site and indicated that these areas were likely vernal pools. Until wet-weather testing could be conducted and the results reviewed and analyzed, the Commission could not be sure if these “depressions” were wetlands. These were only discovered after the 1998-1999 El Nino rainy season ended. Since this item was continued in September, 1999, there has been some rainfall, though well below the normal average. However, what rain there was all fell within a three-week period and provided adequate moisture for testing to occur. Wet-weather testing for vernal pool species has been conducted, and test results were submitted on April 18th. The results showed that only one of the depressions contained wetland plant species, and that one depression did not have a preponderance of wetland plant species. Based upon these results, the applicant's biologist concluded that the depressions are not wetlands. The Commission's staff ecologist has concurred with the project's biologist that the testing shows that no vernal pools or seasonal ponds are present at the site. Both the staff ecologist and ACOE representative had noted the presence of wetland indicator species during prior site inspections. However, the 1998-1999 winter was an El Nino year, with an inordinately high amount of rainfall. Under



this year's more normal rainfall conditions, none of the three criteria used to identify wetlands are present at the site.

Thus, the wetlands issue raised by the project is whether the wetlands in the erosional feature are protected as required by Sections 30233 and 30240 of the Coastal Act. The grading plans identified as *Preload Grading Plans* signed off by the project engineer on September 6, 1990, which were submitted with the application, indicate that site grading would occur within fifty feet of what was described as a "biological preserve area" (see Exhibit #3), which includes the salt marsh vegetation identified in 1990 and about two-thirds of the surrounding erosional feature. Moreover, additional grading plans identified as *Grading Plans for The Hamptons* (CEPA Planning, Surveying, Engineering), which are not signed or dated but carry the same engineering stamp as the other grading plans, were submitted with the application on March 26, 1999 and again on August 6, 1999. These plans show grading and construction of the proposed public access path within the erosional feature itself and are included as Exhibits #6 and #7, which show the general area of the site and a close-up of the erosional feature, respectively. The existing wetland vegetation is not depicted on that grading plan. Thus, it is unclear whether the proposed grading would involve fill within the existing nearly 400 sq.ft. of wetland vegetation, shown as five separate patches on Exhibit #3. However, as stated above, the entire erosional feature may well meet the definition of wetlands. If the erosional feature does consist entirely of wetlands, the proposed grading would involve fill of wetlands.

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

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

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

- a. The area determined by the State Lands Commission to be developable shall be designated RMH (10-20 units per acre). The remainder of the site shall be designated Open Space (OS).
- b. Beyond the southern perimeter of the developable portion of the site, an area of 100 feet in width shall remain undeveloped for the purpose of providing a buffer between development and environmentally sensitive areas. The perimeter of the developable area shall be maintained/improved in a manner to prohibit uncontrolled access into the buffer area. Private recreation and landscape improvements in the

buffer area shall be made in consultation with the State Department of Fish and Game. Maintenance of the buffer area shall be the responsibility of the homeowners association. [note: This is the 100-foot buffer referred to in two of the submitted biology reports.]

c. The area beyond the developable portion of the property and the buffer area shall be dedicated in fee or easement to an appropriate public agency. Access to this area shall be restricted to scientific, educational or other uses consistent with resource management in a manner acceptable to the State Department of Fish and Game.

Also, Policy 3.5 of the certified LUP provides:

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

With respect to wetland delineation, the applicants have been given direction that there are different protocols used by the state and federal agencies to identify and delineate wetlands, although the test methodology can be the same. Under the federal protocol, all three wetland indicators (hydric soils, appropriate hydrology and wetland vegetation) must be present before a site is delineated as a wetland. The federal agencies also make a distinction between different types of wetlands, with different levels of protection assigned to each.

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

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

In addition, the California Code of Regulations, Section 13577(b)(1), describes the appeals jurisdiction surrounding delineated wetlands, and offers the following clarification of the definition of wetlands:

(1) Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or

deepwater habitats. For purposes of this section, the upland limits of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

Under this definition, the entire erosional feature in the southeastern corner of the subject site is most likely wetlands, since, according to one of the biology reports/letters, it is saturated most of the year. It is also adjacent to the deep water habitat of Agua Hedionda Lagoon and, since numerous patches of wetland vegetation already occur within the feature, the unvegetated portions are clearly adjacent to vegetated wetlands. Further, this definition does not distinguish between various qualities of wetlands. All wetlands under the Coastal Act and California Code of Regulations are afforded equal protection. Thus, it is likely that the entire erosional feature on-site, not just the portion currently vegetated with salt marsh species, meets the Coastal Act definition of a wetland.

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

In this particular case, the proposed development, which consists of grading and site improvements associated with a residential subdivision, and construction of a public access walkway, does not meet the above requirements. The proposal is not for one of the eight allowed uses in wetlands. If the entire erosional feature is wetlands, the grading plans depict development within that area. The schematic site plan shown in Exhibit #3 has a note by the applicant that development will be 100 feet from wetlands, but that plan does not show the public access path. It also does not include grading, but only identifies a line of development, which conflicts with the grading plans submitted with the application. Therefore, the project, as proposed, may not be permitted under Section 30233 of the Coastal Act.

A wetland buffer provides a distance barrier and a percolating medium, and reduces the chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon and wetlands. In addition, buffers provide upland habitat for birds and other species that use the wetlands surrounding the lagoon itself. The Commission has permitted minor drainage improvements and low

intensity public improvements within wetland buffer areas. In this particular case, site drainage is being collected and directed into an existing storm drain system in Bayshore Drive, so no drainage facilities would be required in the buffer. The applicant is, however, proposing a public access trail which would be located within the typically-required buffer area, in close proximity to the existing salt marsh vegetation and within the erosional feature itself.

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

When the Commission approved this development in 1990, it imposed a 100-foot wide easement for wetlands buffer and public access for the majority of the site. Based on the LUP maps, this was to be drawn from the mean high tide line of the lagoon stretching inland for a distance of 100 feet, since the LUP maps, which were drawn well before the 1990 project was proposed to the Commission, did not identify any on-site wetlands. The LUP text, however, clearly indicated the intent was for a buffer of 100 feet "between development and environmentally sensitive areas." In the 1990 Commission approval, all proposed development, including grading, was prohibited within the buffer area, except for the public access path which was allowed in the buffer but outside wetland areas. In the southeast corner of the site, where the salt marsh vegetation exists in the erosional feature, the Commission allowed the buffer to be reduced to 70-80 feet in width, but required that the vegetated area be enhanced and fenced. The Commission made findings that the wetland buffer be drawn from the limit of wetland vegetation existing on the property at that time.

In summary, the Commission now has a fully-analyzed report of the wet weather testing which has been conducted. Based on this report, which has been accepted by the Commission's ecologist, there are no vernal pools or seasonal ponds on the site at this time. However, salt marsh is present in the southeastern corner of the site and the actual extent of this wetland it is not known. The proposed residential development is not a permitted use in wetlands under Section 30233 of the Act. Although the applicant's revised schematic site plan (Exhibit #3) states that development is not proposed within 100 feet of this area, the plan does not include a scale nor has the public access path been delineated. Based on the previously-referenced grading plans, site grading and public walkway improvements will occur in close proximity to existing wetland plants and within the erosional feature, which may constitute a wetland in its entirety. Under the Chapter 3 policies of the Coastal Act, all direct impacts to wetlands must be avoided, and appropriate buffers provided. Therefore, absent further information documenting that the

erosional feature does not consist entirely of wetlands, the project as proposed is inconsistent with the Chapter 3 policies of the Coastal Act. A feasible alternative site design that avoids all potential wetlands, and maintains a 100-foot buffer, has been identified (see Exhibit #5); this alternative retains 42 units on the site. There are likely a number of other alternatives available as well. Since other alternatives have not been submitted, the Commission cannot determine whether other alternatives are consistent with all Chapter 3 policies. Given that the redesign to avoid wetlands and to include a wetlands buffer could be accomplished in several different ways, each of which could have as yet unidentified impacts on coastal resources, the Commission finds it inappropriate to approve the proposed project on condition that the applicant redesign a development to the extent required to meet the identified habitat concerns. Although a conditional approval had been recommended to the Commission in September, 1999, the Commission did not act on that recommendation and finds that circumstances are changed now that it is aware the City would not accept such a significant redesign as being in substantial conformance with the current tentative map approval. Therefore, the Commission finds the proposed project inconsistent with the cited Coastal Act policies and denies the subject permit application.

It is suggested that the applicant return to the Commission in the future with a new proposal fully consistent with Sections 30233 and 30240 of the Act. This would occur only after all local discretionary reviews are complete. Any subsequent permit applications must include a current wetland delineation approved by the California Department of Fish and Game and U. S. Fish and Wildlife Service. Said delineation must include both narrative descriptions of all existing vegetation, soil conditions and hydrology, and a clear, dimensioned, graphic depiction of the delineated wetland boundaries and buffer area.

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

#### Section 30210

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

**Section 30211**

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

**Section 30212**

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

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

(2) adequate access exists nearby....

**Section 30223**

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

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

**Policy 7.1**

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

**Policy 7.2**

Pedestrian accessways shall be located as shown on Exhibit J.

**Policy 7.3**

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

**Policy 7.6**

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to

allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use....

### Policy 7.8

#### Design of Access Easements, Buffer Areas, and Adjacent Development

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

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

### Policy 7.9

#### Access Signing

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

Most of the north shore lagoon-fronting lots are undeveloped between I-5 and Bristol Cove, which is about one mile inland. Immediately east of Bristol Cove is the subject site; east of it is an existing 26-unit condominium development which was under construction when the Commission first reviewed the proposed development proposal on this site ten years ago. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit, if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical

construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access-related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement.

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

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

The property east of the subject site (L & R), completed its required improvements to Bayshore Drive when it was constructed in 1990. There is an existing vertical accessway from the terminus of Bayshore Drive to the shoreline, located between that site and the subject property, which was approved by the Coastal Commission in CDP #6-87-494 (City of Carlsbad) and was intended to provide both pedestrian and maintenance vehicle access to the shore. The inland portion of the accessway is paved, with the remainder unpaved; the accessway is fenced on both sides with chain-link fencing, which was required in the conditions of approval of the cited permit to protect adjacent sensitive habitats on both sides of the accessway.

The project site is located between Agua Hedionda Lagoon and Park Drive and contains nearly 600 feet of actual lagoon frontage. The subject site is criss-crossed with dirt trails and roads, indicating a significant level of public use over the years. The issue of potential prescriptive rights is raised by the nature and extent of ongoing public use of the site. However, this issue was resolved in the public trust and implied dedication settlement of 1987 which resulted in the recordation of offers to dedicate 25-foot wide public access easements along the eastern (vertical) and southern (lateral) property boundaries (i.e., Bayshore Drive and lagoon frontages). In 1990, the applicants were proposing to improve the vertical access as part of their project; however, that accessway has since been constructed, pursuant to CDP #6-87-494, by the City of Carlsbad. No further vertical access improvements are proposed herein or needed.



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

To address these potential conflicts, the applicant is proposing to construct a public walkway connecting the streetends of Bayshore and Marina Drives, which would be located inland of the lateral access easement granted in the 1987 settlement and inland of the identified salt marsh in the erosional feature at the southeastern corner of the site. However, although the path, as currently proposed, would not occur within the mapped wetland vegetation, a portion of the path crosses a portion of the eroded gully in close proximity to the wetland vegetation. It is likely that the entire eroded gully meets the Coastal Act definition of wetlands, since it is at an elevation below high tide much of the year.

The staff report for CDP #6-87-494 includes an exhibit showing the erosional feature on the subject site, and the adopted findings state:

"On the west side of the access easement, on the Ferraro property, the uplands area subject to past grading (fill) activity extends further to the south towards the beach. In the area just along the beach a small, low-lying area collects the drainage from the Ferraro site. Within this drainage draw, several very small (2-foot by 2-foot square) isolated patches of the wetland species known as salicornia exist, separated from any other wetland or marsh areas of the lagoon."

The Commission acted on this permit in 1988. Based on the description given above, it appears the wetland vegetation in 1988 occupied less area than it did by 1990. This would appear to demonstrate that the wetland vegetation had already started expanding during that 2-year interval, and has now expanded in area several times over during the ten year interval between 1990 and 2000. Moreover, the exhibit attached to the staff report for CDP #6-87-494 identified the wetland habitat on the L&R site, adjacent to the east, as everything at or below the +5-foot MSL contour.

Because there is still some uncertainty regarding the appropriate boundary of the salt marsh wetland resources on the site, the proximity of the proposed walkway to this area leads the Commission to find that the proposed development is inconsistent with the cited Coastal Act policies addressing resource protection. A feasible alternative to the proposed project is to redesign the walkway so that it is located in the upper (inland) half of a 100-foot buffer from the erosional feature (or wetlands if the applicant demonstrates that the entire erosional feature is not wetlands). Similar public access amenities have been permitted in wetland buffers in the past. Allowing such improvements in only the upper half of buffers assures that conflicts between public use and environmentally

sensitive lands do not occur. As currently designed, the Commission finds the public walkway is proposed in an inappropriate location with respect to its proximity to delineated wetlands. It further finds that an appropriately sited public path is a necessary project component in order to find the proposal consistent with the public access and recreation policies of the Coastal Act and the provisions of the certified LUP. Policies of the LUP provide for a continuous, improved public accessway along the shoreline of Agua Hedionda Lagoon. Such an improved accessway already exists on the properties immediately east and immediately west of the subject site. The general public using those existing segments crosses the streetend of either Marina or Bayshore Drive and the applicant's undeveloped site to get from one side to the other. The public also uses the subject site to directly access the shoreline. These types of access will not be possible once the subject property is developed with residential uses. Moreover, it is not feasible to construct a public accessway within the existing lateral access easement along the shoreline, since that easement is underwater much of the time and a path would not be usable by the public as intended in the LUP. An improved accessway located on the middle level of the site and connecting the two adjacent streetends would be usable year-round and at all tides.

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

A final public access concern relates to the residential development being proposed as a gated community. As proposed, both vehicular and pedestrian access would be prohibited through the interior of the site, and the interior street system does not meet public street standards with respect to width, design or setbacks. The applicants contend that adequate vertical public access is available both east and west of the site, as well as lateral access along the shoreline and via the proposed public walkway. Moreover, the applicants have submitted counts of available on-street public parking spaces on the surrounding streets that indicate the availability of 85 parking spaces on the three public streets: 23 spaces on the south side of Park Drive, 38 spaces on both sides of Bayshore Drive and 24 spaces on both sides of Marina Drive. They contend the existing and proposed access amenities, along with the identified reservoir of public parking, is more than adequate to address the needs of the public to access the lagoon. While this may be the case at the moment, with the subject site, property east of the L&R site, and much of the area inland (north) of Park Drive still undeveloped, buildout of the area could have a cumulative impact on available public parking. In addition, the 42 proposed units may draw more people than can park in the proposed private streets, especially during holidays and summer months when a large number of visitors may be present at the site. Moreover, it is possible that the City may choose, at some time in the future, to restrict on-street parking in this area. Maintaining an adequate reservoir to serve future uses, not

just current demand, is both prudent and necessary to conform with the Coastal Act mandate to maximize public access opportunities.

In prior permit actions, the Commission has found that gated communities, particularly on sites like the subject one which is located directly on the shoreline, are inconsistent with the public access policies of the Coastal Act. The Commission has found that the construction of gated communities in the coastal zone, particularly adjacent to recreational or scenic resources, either directly impacts public access, or has a "chilling" effect on the public's perceived ability to access coastal resources. The subject site occupies nearly 600 linear feet of lagoon shoreline, with a roughly equal amount of frontage on Park Drive, the first coastal roadway. Agua Hedionda Lagoon is not only a visual and biological resource but also provides for active recreational use. Because of the irregular shape of the site, the distance from the road to the shoreline varies from approximately 600 feet at the western side to nearly 800 feet on the east. In effect, the site represents an area larger than an average city block. Moreover, there is currently physical and visual access to the lagoon across the property. Fencing the entire developed area will alter existing views, although the lagoon would still be visible through the fence at the designated view corridors. Direct physical access to/across the site would be replaced with the public accessway south of the proposed development. However, the potential loss of parking availability is the real issue. By making the project streets private and enclosing the development behind locked gates, there is no way for the general public to use whatever on street parking might be available within the development. With regional population growth continuing, the need for adequate public recreational support facilities such as parking in nearshore areas becomes ever more critical. Thus, the Commission finds the proposed development must provide the maximum possible number of public parking spaces because of its proximity to coastal waters and a significant coastal public recreational area. The Commission finds it cannot support the proposed development as a gated community with private streets that are unavailable for public parking.

While opening the proposed development up to the public for purposes of parking might appear relatively easy to accomplish without substantial modifications of the proposed design, this is not the case. The gates could readily be removed. However, to bring the proposed private streets up to public standards, a representative of the City of Carlsbad has stated that street widths and building setbacks would significantly change throughout the project. The private streets are designed with guest parking along one side only; public streets must be wide enough to provide parking on both sides. With interior streets private, the proposed residential structures need only observe the City's 30' setback from the curbs of public streets around the perimeter of the site. If the interior streets are made public, all structures would have to observe the 30' setback from every street throughout the project. Such a redesign would significantly modify the currently proposed development through changes to proposed yards and interior open space.

In summary, the Commission finds that the proposed development could have significant adverse impacts on public access to Agua Hedionda Lagoon. There has been continuous public use of this site for many years that will cease with construction of the proposed

residential improvements. An improved vertical accessway exists immediately east of the site, and the applicants propose to construct a public walkway along the seaward side of the proposed development, which will connect the streetends of Bayshore and Marina Drives. However, developing this site as a gated community with private streets would negatively impact public access through adverse cumulative impacts on parking to support public access. In addition, redesigning the project to make the streets public would involve significant modifications to the proposed project such that staff is not certain such modifications could be made and the project be found consistent with Coastal Act policies. Thus, the Commission finds the project inconsistent with the public access policies of both the Coastal Act and the Agua Hedionda LUP. Therefore, the Commission finds it must deny the permit application at this time.

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

Section 30251

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

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

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

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

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

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

One method the Commission has employed to address development located along scenic and recreational areas is to require new development to observe a "stringline" for structural setbacks. The "stringline" represents an imaginary line drawn between the closest structures on either side of the proposed development. In this case there is a greater than usual disparity between those two developments. However, this site is not only visible from inland areas to the north, but from both lagoon shorelines (close-up views on the north shore and a distant view from the south shore). Observance of a "stringline" is necessary to find the proposal consistent with Section 30251 of the Coastal Act, which protects public views to and along the shore. The project, as proposed, does not meet the "stringline." A "stringline" on the subject site is the way to visually "bridge the gap" between the existing developments immediately east and west and prevent the proposed development from being visually obtrusive to the public using the shore and lagoon for recreation.

Moreover, the staff ecologist has suggested that observing a "stringline" would also have a biological benefit. By retaining a greater area of the site near the lagoon in open space at this time, future restoration of the area, allowing the flourishing salt marsh east of the site to expand westward, would be facilitated. The applicant has indicated, in a meeting with staff on February 2<sup>nd</sup>, that the City of Carlsbad has expressed an interest in using portions of the site for salt marsh mitigation.

Compliance with a requirement to provide a building setback consistent with the "stringline" would involve a significant redesign of the project. Utilizing the submitted

site plan, approximately 7 units would have to be eliminated or relocated. The Commission finds it inappropriate to redesign a development to the extent required to meet the identified visual concerns. The applicant should be the one to propose revisions consistent with this concern. A conceptual site plan, attached as Exhibit #5, demonstrates one way the "stringline" can be met while still maintaining the general scale and the density of the proposed development. Other redesigns are likely possible, but any revision must be thoroughly evaluated to assure it does not result in adverse impacts to other coastal resources. In any case, the current proposal is not consistent with the "stringline" and must be denied.

Landscaping is also important in minimizing visual impacts. The applicant has submitted a preliminary landscape plan, which includes mostly non-native ornamental trees and shrubs. There are also some water features proposed to be located in the area where some of the potential seasonal ponds exist. While the proposed plant palette may address the visual concern, it can be problematic from a resource perspective, particularly in areas adjacent to wetlands and wetland buffers. In several recent actions, the Commission has required the exclusive use of drought-tolerant, non-invasive native and naturalizing vegetation, both to minimize the need for irrigation, which can result in nuisance flows/site erosion, and to protect nearby environmentally sensitive habitat areas. Therefore, the Commission finds the proposed landscaping plan is not consistent with cited Coastal Act policies or current precedent. While this, in and of itself could be addressed in special conditions and thus not induce the Commission to deny the project, in conjunction with the other concerns raised previously, it further supports the action of denial.

In summary, the proposed development is not consistent with Section 30251 of the Coastal Act. Appropriate building setbacks to maintain a "stringline" of development along the north shore of Agua Hedionda Lagoon are not included in the project. In order to provide such necessary visual "stringline," major revisions to the proposed development would need to be made such the staff is uncertain such modifications could be made and the project found consistent with Coastal Act policies. Moreover, some of the species proposed in the landscaping plan are not appropriate for use in areas adjacent to sensitive resources. Thus, the Commission denies the permit application.

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

**Section 30231**

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

waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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

There is an existing municipal storm drain system in Bayshore Drive, which discharges into the lagoon/salt marsh at the street's southern terminus, just east of the subject site. The drainage plans indicate that drainage will be collected on site and directed into the existing municipal system right at the discharge point. The submitted plans include a Storm Water Pollution Prevention Plan (SWPPP); this includes both construction and post-construction Best Management Practices (BMPs). However, the included post-construction BMP program does not address day-to-day operations of the developed site consistent with the Commission's current direction. To assure optimum water quality in the adjacent Agua Hedionda Lagoon, the project should include facilities to capture and treat site runoff to remove petroleum products, heavy metals and other particulates, as well as solid trash and debris. Without such facilities the proposal is not consistent with Section 30231 of the Act.

There is also a concern with the actual development of a site in such a sensitive location. The applicant has not submitted final drainage, erosion and sedimentation control plans for the project which are designed to protect the downstream resources of the lagoon from the potential of erosion and sedimentation associated with construction activities at the site. Such plans would include measures to control runoff from the site and would limit all grading activity to the non-rainy season, consistent with the certified Agua Hedionda LUP which contains detailed grading provisions. Although the submitted SWPPP includes some of these measures, it does not address them all. As with the provision of landscaping plans, the provision of drainage plans, BMP programs and temporary erosion control plans is frequently dealt with through conditions of approval, rather than denial of the project. In this particular case, the Commission finds it must deny the proposed development due to inconsistencies with other cited provisions of the Coastal Act. The lack of adequate water quality controls, however, further supports the action of denial.

6. Potential Alternatives. The Commission finds that development of the subject site with residential units might be consistent with the Coastal Act if it were redesigned or sited differently. Thus, if the applicant redesigns or resites the project to protect wetland resources and address water quality, public views and public access, the project

could potentially be found consistent with the above-cited policies of the Coastal Act. There appear to be viable alternative ways to site the development. The Commission identifies alternatives here as suggestions only, and without implication that any or all would definitely be consistent with the Coastal Act. Further, the suggestions do not take into consideration comparative costs, future permit requirements or potential public interest or opposition.

However, it appears the project can be redesigned to avoid the wetland impacts, provide an appropriate buffer zone, and protect existing public views and access. One potential alternative is that all grading and site improvements currently proposed to encroach within 100 feet of existing wetland resources, and within the identified visual stringline, could be deleted from the project. Another potential alternative would be to condense the development. This could be accomplished by shifting the development to the west and north. The proposed site plan provides for several internal open space areas, which it would appear possible to condense or eliminate to achieve this goal. This form of redesign might be able to retain the same number of housing units as currently proposed, and would also provide adequate space along the eastern part of the site to address the LUP requirement to maintain 30% of the site as a view corridor. Finally, the proposed private gates could be removed and the interior streets made public.

In fact, one conceptual plan (see Exhibit #5) has already been submitted for informal staff review which appears to meet nearly all the parameters cited above, with two exceptions: 1) the proposed public walkway would still be located within the 100 foot buffer (although this could be consistent with many past Commission actions depending on the accessways ultimate placement), and 2) the gates have been removed but the streets have not been designed to meet public street standards. The prospective buyer who presented this concept plan suggested access easements could be placed on the private streets so the public could make use of on-street parking, but the developer would not have to meet full public street standards. Moreover, this conceptual redesign does retain 42 units on the site, so would appear to be economically comparable to the proposed development. However, the applicant did not wish to pursue this alternative. Of course, this conceptual design, and any other proposed alternatives, need to be formally analyzed for feasibility and impacts to resources and approved by the City of Carlsbad. In any case, the level of redesign needed in order to meet any of the Coastal Act concerns raised in previous findings would be significant.

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

The Agua Hedionda Land Use Plan (LUP) designates the site for residential development under the RMH Zone, at a maximum density of 8-15 du/ac. The project is consistent with that designation. However, the project is not fully consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua

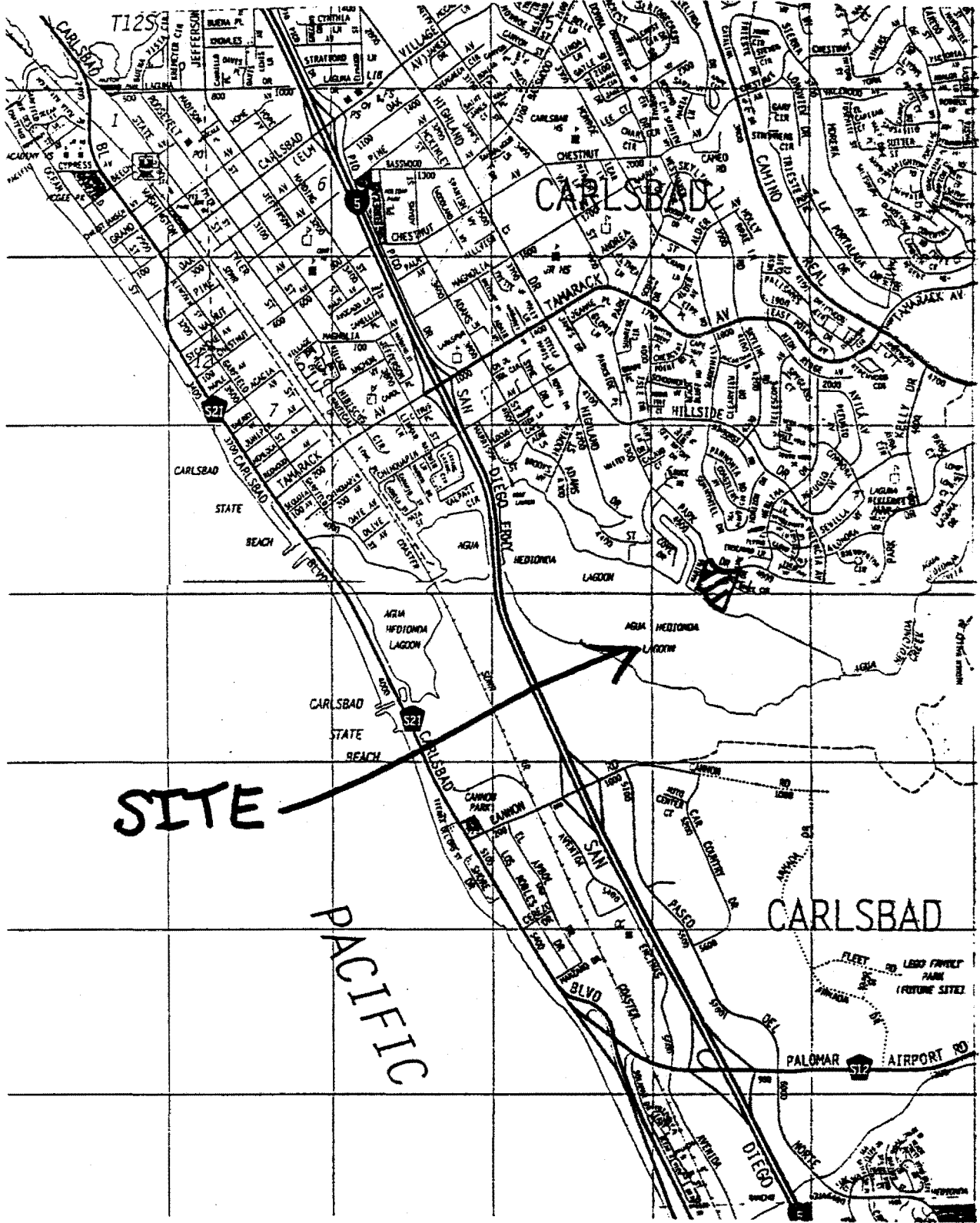


Hedionda Land Use Plan, nor with the corresponding Chapter 3 policies of the Coastal Act. Such an extensive redesign would be required to bring the proposal into full consistency, that such a project would likely no longer be consistent with the existing City of Carlsbad approvals. Thus, were the Commission to approve the development requiring a substantial redesign, the City might feel it had been pre-empted in its right to review development prior to action by the Commission. Therefore, approval of the development, either as proposed or with conditions requiring an extensive redesign, could prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

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

As previously stated, the proposed development will result in impacts on wetland resources, public views and public access opportunities which will result in unmitigable environmental impacts. Furthermore, alternative development siting or design would lessen the environmental impact of the proposed project on coastal resources. The Commission therefore finds that there are feasible alternatives or mitigation measures available which would substantially lessen the significant adverse impacts which the proposed development may have on the environment of the coastal zone.

6-99-43

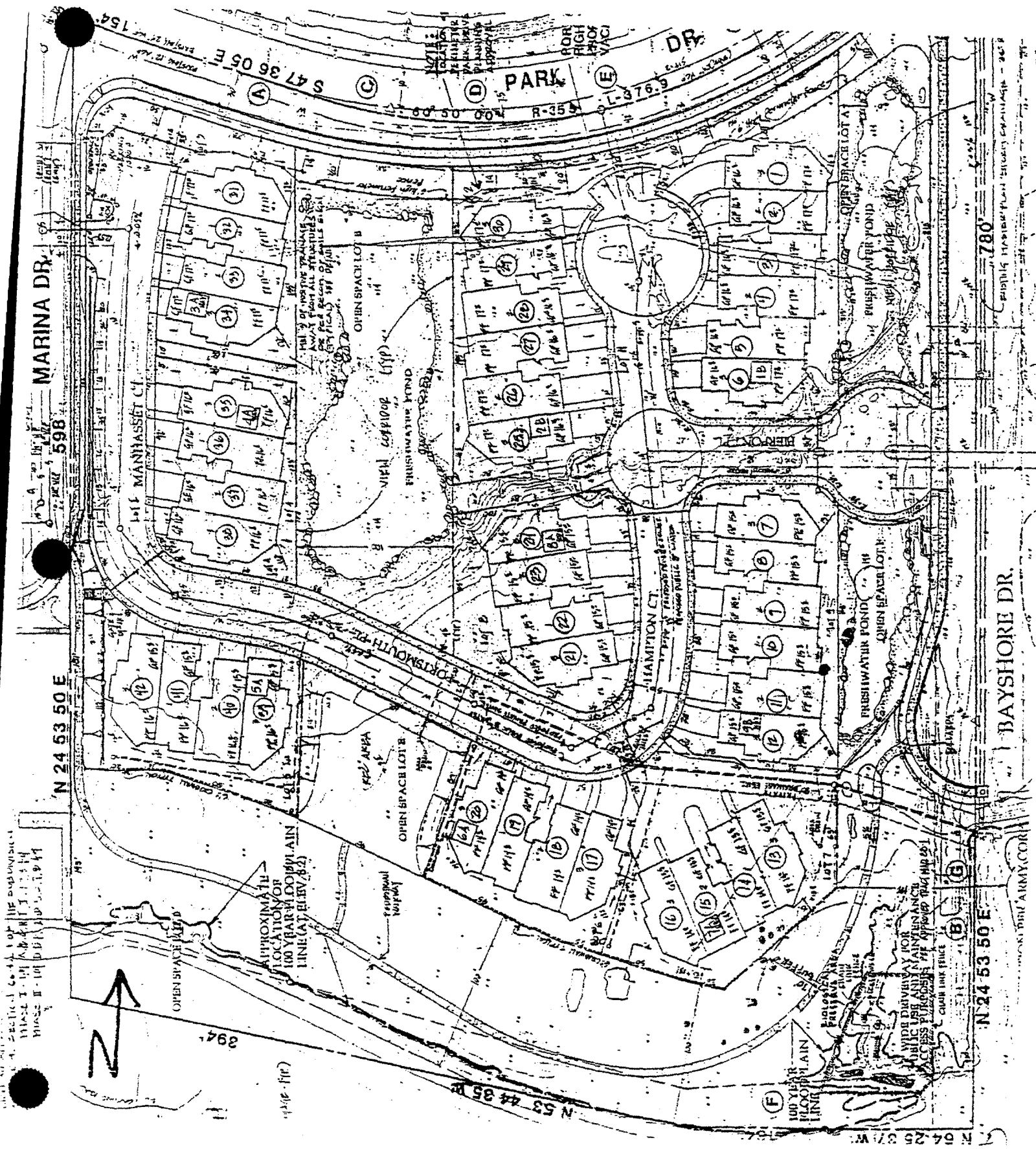


**SITE**

**PACIFIC**

**CARLSBAD**

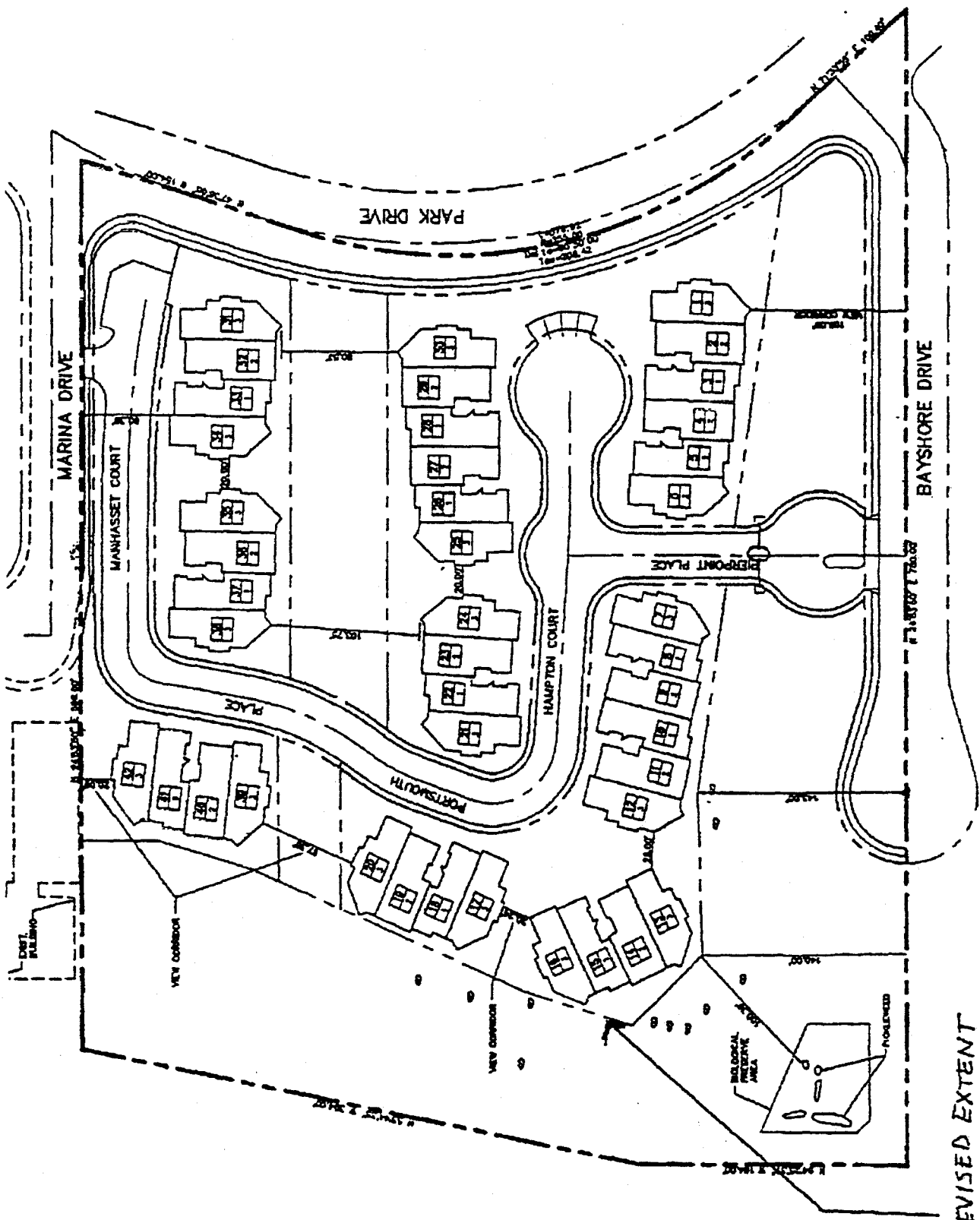
EXHIBIT NO. 1  
APPLICATION NO.  
**6-99-43**  
Location Map



SECTION 1 OF THE DEVELOPMENT  
 PHASE I - 100 LOTS  
 PHASE II - 100 LOTS

Exhibit No. 2  
 6-99-48  
 2-1-48

ARMY CORP OF ENGINEERS  
 WASHINGTON, D.C.



REVISED EXTENT  
OF DEVELOPMENT

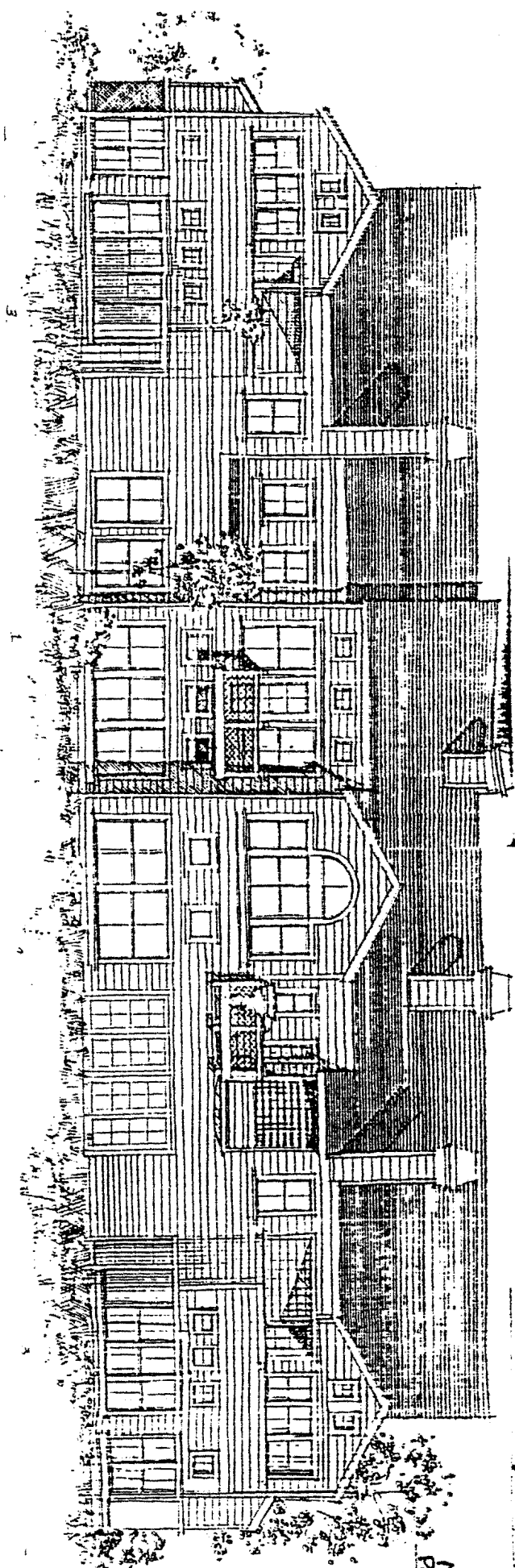
**LEGEND**

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



EXHIBIT NO. 3  
Application No. 6-99-43  
**Site Revision**  
**Submitted 4/24/00**

REAR ELEVATION



Highest Point

Mid-Point

30'  
29'

EXHIBIT NO. 4
APPLICATION NO. 6-99-43
Building Elevation
California Coastal Commission

N 24 53 50 E

598



AP

PROPOSED (P.P.)

N 53 44 35 W

394'

OPEN SPACE LOT D

100 YEAR FLOODPLAIN LINE  
AT ELEVATION 25'

3.32% ACRES  
NATURAL OPEN SPACE

*Spring Hill*

APPROXIMATE LOCATION PEDESTRIAN WALKWAY

100 YEAR FLOODPLAIN LINE

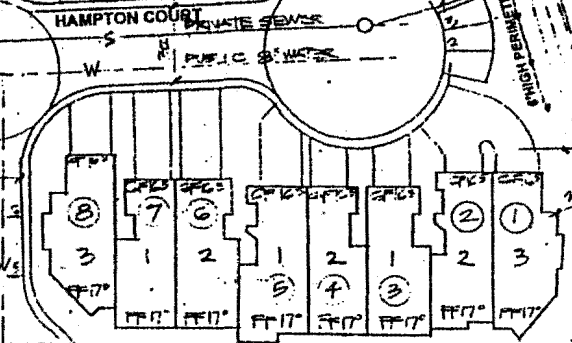
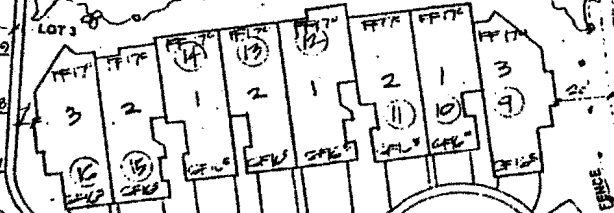
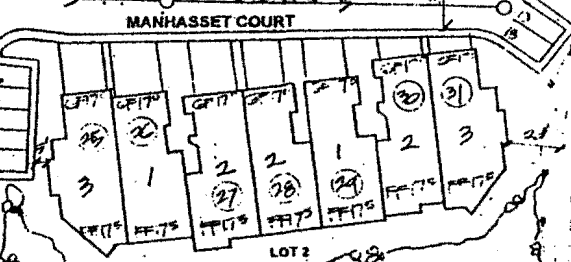
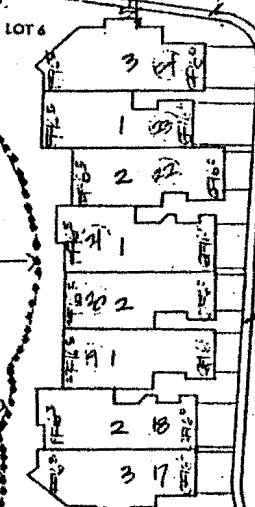
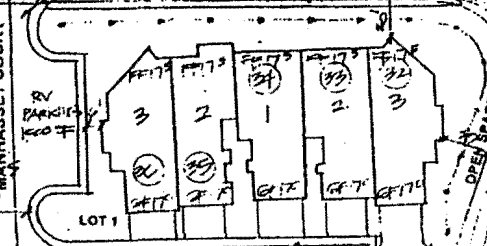
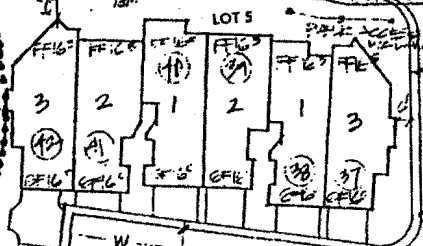
BIOLOGICAL PRESERVE AREA

CHAIN LINK FENCE

12' WIDE DRIVEWAY FOR PUBLIC USE AND MAINTENANCE ACCESS PURPOSES PER APPROVED TRACT MAP 88-1

N 24 53 50 E

1000 HIGH WATER ELEVATION PER ARMY CORP MAPS/WETLANDS EDGE (ELEV. 25')



OPEN SPACE LOT E

NEED 50 FT - RAIL 20 FT  
OPEN SPACE SHALL BE  
MEDIATED PER CHARTER AND  
CALIFORNIA ZONING CODE  
AGREES LOCATIONS  
(IF REQUIRED) AND  
(IF NEEDED)

PUBLIC ACCESS  
NON-GATED ENTRY

ACTIVE REC AREA  
PUTTING GREEN W/ WATER ELEMENT  
20' x 180' = 3600 SQ. FT.

BAYSHORE DR.

780'

EXISTING MASTER PLAN SLOPE DRAINAGE - 3% RCP

NOTE:  
LOCATION OF 16'  
PERIMETER FENCE  
PARK DRIVE IS  
PLANNING DEPT  
APPROVAL

PORTION  
RIGHT OF  
PROPOSED  
VACATED

PARK

DR

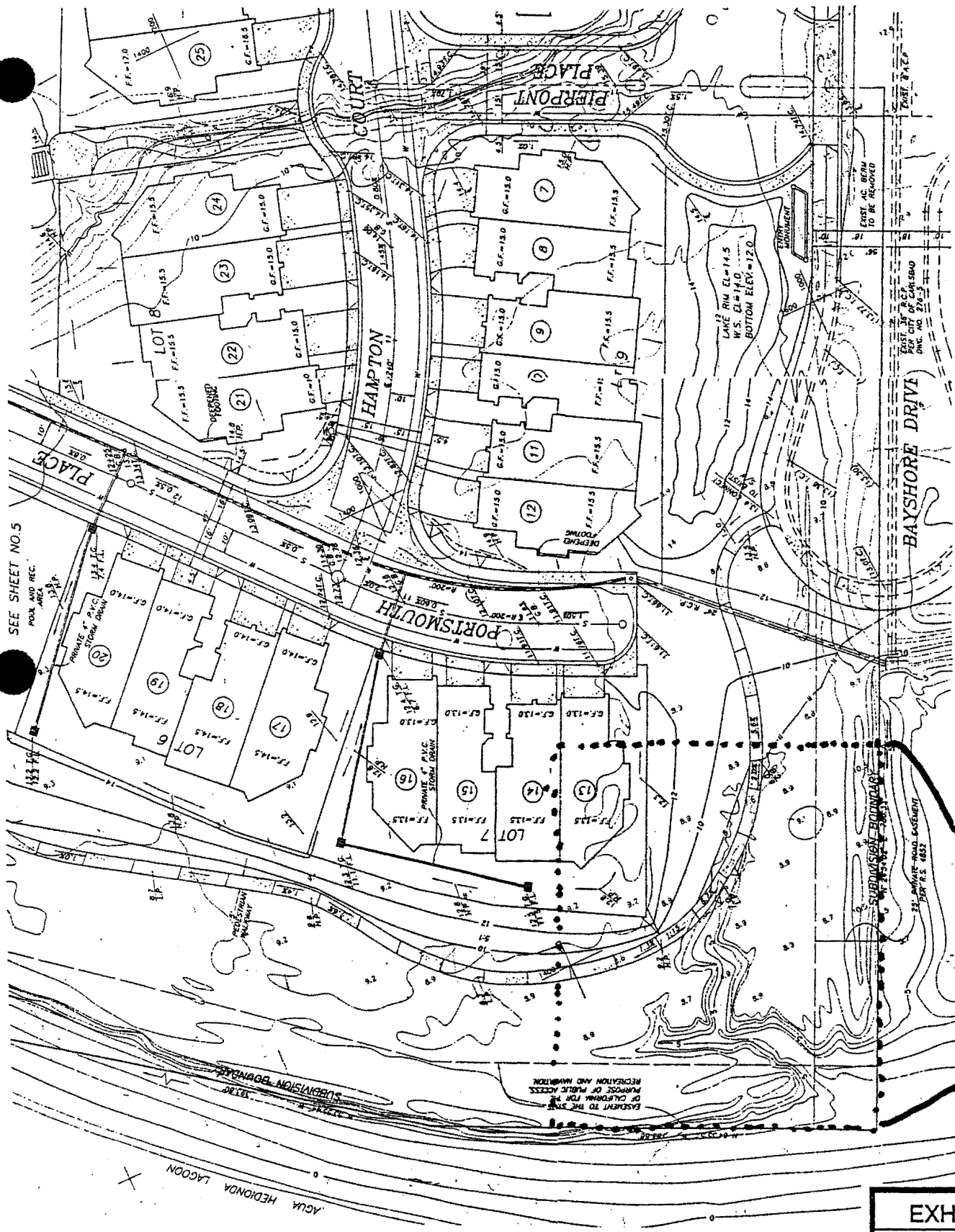
6-99-43

**Conceptual Redesign**  
California Coastal Commission

EXHIBIT NO. **6-99-43**

APPLICATION NO. **6-99-43**

6-99-43



See Exhibit #7 for close-up

EXHIBIT NO. <b>6</b>
APPLICATION NO. <b>6-99-43</b>
<b>Grading Plan</b>
<b>SE Portion</b>
California Coastal Commission





Ms. Ellen Lirley  
California Coastal Commission  
San Diego Coastal Area  
3111 Camino Del Rio North, Suite 200  
San Diego, CA 92108-1725

April 18, 2000

Job No: 98-105

**Monitoring Results of Onsite Depressions  
The Hamptons, Carlsbad, California**

RECEIVED

APR 19 2000

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Ms. Lirley:

C<sub>2</sub> REM/Applied Ecological Research has completed the wet season monitoring of the potential vernal pools on the proposed development site adjacent to Aqua Hedionda Lagoon in the City of Carlsbad, San Diego County, California. The monitoring was done to determine the actual length and depth of flooding within several small depressions on the site that may be vernal pools or seasonal ponds. The California Coastal Commission had requested the additional monitoring to determine the status of the depressions and whether they would be considered jurisdictional areas under the regulatory authority of the U.S. Army Corps of Engineers and the California Department of Fish and Game. This letter report will summarize previous information on the site, document the methods used to evaluate the length and depth of flooding, and provide results and conclusions based on these surveys.

The project site has been used for the placement of dredged material taken from Aqua Hedionda Lagoon during the dredging operations conducted in the 1960's. The differential settling of this material and its composition (lagoon silts and clays) has resulted in the formation of a number of depressions on the site, which are of variable size and shape. These depressions are supported by direct precipitation, as there is no real watershed on the site that would provide additional run off. The majority of the depressions are small, less than 50 square feet, and contain a variety of plant species including upland grasses, isolated individual pickleweed (*Salicornia* sp.) plants. Several of the depressions also contained two common vernal pool plants including Rabbit's foot grass and Brass buttons. Additional focused surveys of the entire site did not find any sensitive vernal pool plants. Previous dry season sampling of the sediments within the depressions did not find any fairy shrimp.

The presence of these common vernal pool plants on the site raised the issue that these depressions may be considered vernal pools by the resource agencies. In order to be considered vernal pools, three parameters must be met. First, there must be an impervious layer, which results in standing water for at least two weeks after the last significant rainfall. Second, the soils within the pool must be hydric. Third, the vegetation must include at least 50% vernal pool species, by cover. In addition, if the pools contain any sensitive vernal pool plants or any of the endangered fairy shrimp, this automatically classifies the depression as a vernal pool. On the Carlsbad site, the presence of the two common vernal pool plant species indicates that the depressions may be vernal pools. Subsequent dry season investigations

Exhibit # 8  
Wet-Weather Tests

determined the physical parameters of the soil were inconclusive. The soils were not considered hydric but there was a layer of compacted coarse sand at about six inches that would act as a retarding layer. The disturbed conditions of the site (placement of dredged material) complicate the soils data and resulted in the need to survey these depressions during the wet season to determine the depth and extent of ponding. If the pools held water for more than two weeks or supported sensitive species, then they would be considered vernal pools and subject to the regulatory authority of the U.S. Army Corps of Engineers (Corps), the California Department of Fish and Game (CDFG), and the California Coastal Commission (CCC). If these areas did not pond water for the required time or did not support any of the sensitive vernal pool species, then the depressions would not be considered vernal pools by the resource agencies. If the depressions were not vernal pools, then additional investigation would be required to determine if they would be jurisdictional seasonal ponds or non-jurisdictional depressions.

## **I. Methods**

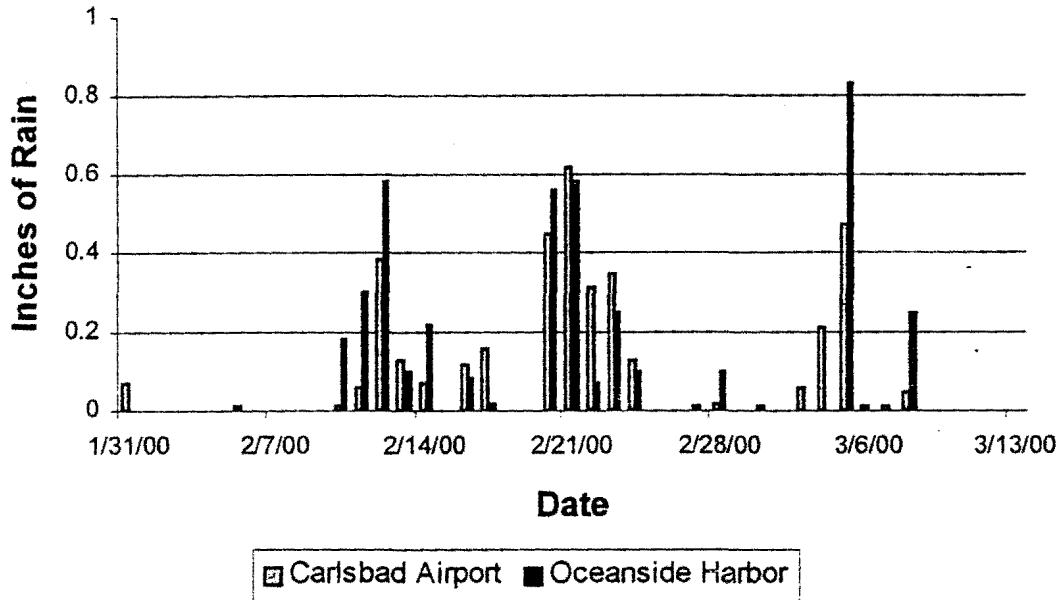
Surveys of the site were conducted in February and March, immediately following the heavy rains to determine the extent and depth of standing water in the depressions on the site. An additional survey was conducted two weeks after the last rains (March 24, 2000) to determine whether any of the pools contained standing water and the depth to saturation within the adjacent sediments. Digital photographs were used to document general site conditions, the presence of water in any of the depressions, and specific conditions within the depressions that were considered potential vernal pools. All surveys were conducted by wetland scientist Dr. Mark Sudol who is responsible for initially locating the depressions and has been monitoring the conditions on the site during the last 18 months.

Data were obtained from the National Weather Service web site to provide indications of the amount and severity of the rainfall on the site. These data were necessary to document that the site experienced normal rainfall amounts during this year's storms.

## **II. Results**

Surveys of the site to document ponding within the depressions were conducted on February 21, February 28, March 11, and March 24. These surveys were conducted at dates thought to have the best chance to determine standing water on the site and in the pools. Prior to the February 21 site visit, there had been insufficient rain to saturate the site (Figure 1).

Figure 1. Rainfall Data



The rainfall this year, while it has occurred during February and March, is within the range for a normal winter storm season. Evidence of standing water on the site in other areas indicates that sufficient rain did occur to saturate the soils. Therefore, it can be postulated that these small depressions would only pond water during very large storm events or during prolonged, heavy rains.

The results of the surveys found that none of the depressions that were thought to be vernal pools held any standing water, even during the period of heavy rain on February 28/29 (Figures 1,2,3). There was clear evidence that the site had been subject to heavy rains as the several of the larger depressions on the site did have standing water (Figures 4,5,6). However, by March 11, only the largest depression, the tire rut complex, held any standing water. The tire rut complex is a larger more defined area where truck and automobile access to the site has formed a deeper depression. This area was found to be completely dry by March 24, 2000 (Figure 7).

Soils on the site were saturated on February 21 and 28 but not on March 11, five days after the heaviest rains of the season. Follow on surveys conducted on March 24 found the site to have only one area that remained saturated at the surface (the large tire rut complex, Figures 7) with the remainder of the site exhibiting normal, summer conditions. These tire ruts are deeper than the remainder of the depressions on the site and vegetation consists of non-native grasses and with five individual pickleweed plants growing on the periphery. Soils pits dug near several of the pools found a thin layer of organic upland soils overlying a thick layer of cemented coarse sand. Neither of these soils exhibited any wetland characteristics. It appears

that the layer of coarse sand retards but does not stop infiltration of rainwater. The larger depressions may hold water during periods of continuous rain but dries as the water percolates into the soils. The percolation rate is slower than normal upland soils of the region but too fast to allow vernal pool plant species and fairy shrimp to inhabit these depressions.

Vegetation within these pools consisted primarily of upland grasses. Previous surveys conducted in 1998 and 1999 identified two common vernal pool plant species, brass buttons and Rabbit's foot grass. These species were not present during the February/March surveys and appeared to have been displaced by the non-native grasses. Isolated, individual pickleweed plants were located in and around the tire rut complex but there were none of the vernal pools plants found in this area.

Sampling of the depressions for fairy shrimp was conducted to determine the presence or absence of the vernal pool indicator species according to the *Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods* set forth by the United States Fish and Wildlife Service (USFWS). The vernal pool sampled was not inundated therefore the guidelines for a dry season survey were followed which included soil collection, soil sieving, and soil examination. During dry season sampling conducted in March 1999, no fairy shrimp or tadpole shrimp cysts were found. Additional sampling at the site occurred in April 2000. Samples were taken from the depressions that may be vernal pools as well as from the tire rut complex. These surveys also did not determine the presence of fairy shrimp or tadpole shrimp cysts.

### **III. Conclusions**

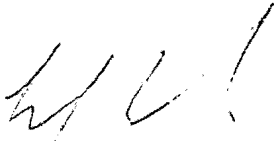
The results of the wet season surveys and fairy shrimp samples indicate that these depressions are not vernal pools. These depressions did not pond water for sufficient time (two weeks) during the winter rains to meet the criteria as vernal pools. In addition, there were no fairy shrimp or sensitive vernal pool plant species found within the depressions.

The existing depressions on the site would also not qualify as jurisdictional seasonal ponds due to the lack of sufficient hydrology, lack of wetland vegetation, and lack of hydric soils. These depressions did not pond water for even a few days, and did not contain hydric soils. The majority of the vegetation within the depressions consisted of non-native grasses that are upland species. No wetland plants were identified within the smaller depressions and only several individual pickleweed plants were found along the edges of the tire rut complex. Predominant vegetation (greater than 80% cover) in and around the tire rut complex was upland plants. Because none of the three wetland indicators are found in any of these depressions, these areas would not be considered jurisdictional by the Corps, CDFG, or the CCC.

These surveys indicated that the depressions on the project site did not pond water during this year's storm season. The lack of ponding for two weeks, vernal pool vegetation, and fairy shrimp indicates that these depressions are not vernal pools. In addition, because they did not exhibit wetland soils, support only upland vegetation, and did not have any evidence of ponding (hydrology); the U.S. Army Corps of Engineers would not consider these depressions jurisdictional.

C<sub>2</sub> REM/Applied Ecological Research has been pleased to conduct these surveys of the site adjacent to Aqua Hedionda Lagoon. If you have any questions regarding these findings, please contact Edmond Bourke at (949) 261-8098. Thank you.

Sincerely,



Edmond F. Bourke, C<sub>2</sub> REM  
Co-Agent for Spirtos and Ferrero (Applicants)

cc: Mary and Leni Ferrero  
Dr. Jack and Penny Spirtos  
Peter Koulos, KCI, Inc.  
David Moore, Moore & Skiljan, Co-Agent for Spirtos and Ferrero (Applicants)



Figure 1. Photograph of Depression on February 21, 2000.

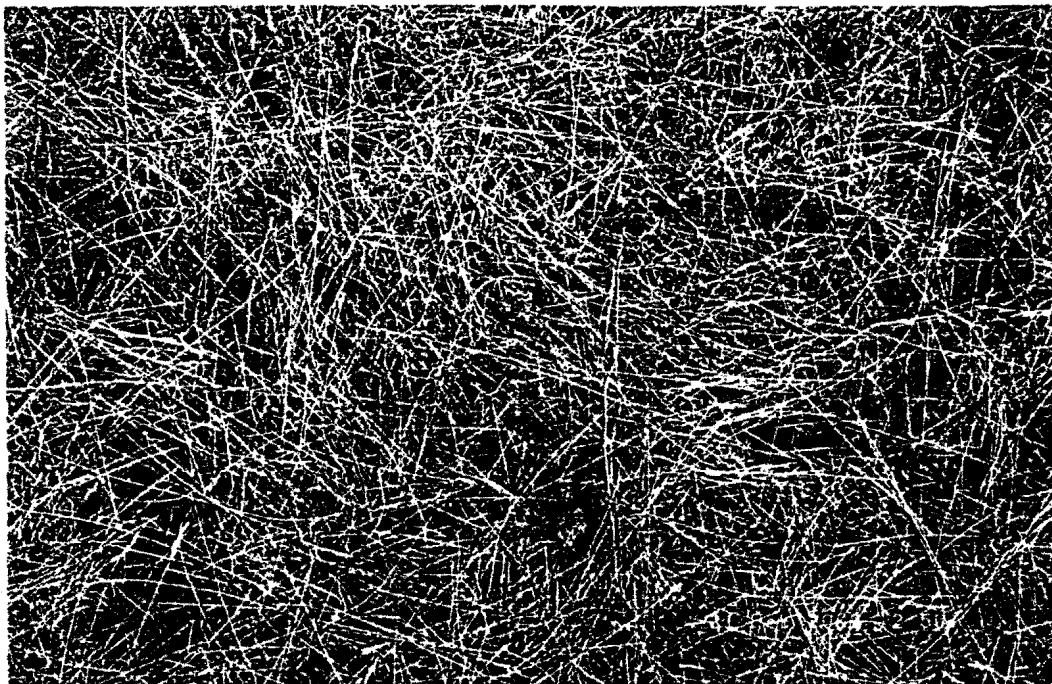


Figure 2. Photograph of Depression on February 28, 2000



Figure 3. Photograph of Depression on March 11, 2000



Figure 4. Photograph of Site Documenting Conditions on February 21, 2000.



Figure 5. Photograph of Site Documenting Conditions on February 28, 2000.





Figure 6. Photograph of Site Documenting Conditions on March 11, 2000.



Figure 7. Photograph of Site Documenting Conditions on March 24, 2000.



6-99-43

**SPECIAL CONDITIONS OF APPROVAL  
RECOMMENDED IN AUGUST 26, 1999 STAFF REPORT**

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

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

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

Exhibit # 9  
6-99-43

Rec. Conditions in 9/99

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

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

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

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

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

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

entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. This deed restriction shall supersede/replace the Irrevocable Offer to Dedicate Open-Space/Lateral Access Easement and Declaration of Restrictions recorded on September 27, 1990 as Instrument No. 90-528549, required pursuant to Coastal Development Permit #6-90-93.

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

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

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

5. Grading/Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for

review and written approval, final grading and erosion control plans that have been approved by the City of Carlsbad. The approved plans shall incorporate the following requirements:

- a. No grading activities shall be allowed during the rainy season (the period from October 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 permittees shall submit a grading schedule to the Executive Director demonstrating compliance with the above restriction.
- c. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss during construction.
- 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

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

- a. All storm drain inlets shall have stenciling that prohibits the disposal of trash in the drains.
- b. Solid waste shall be removed regularly and receptacles for trash and recyclable materials shall be placed adjacent to any common facilities; and
- c. Sweeping of all paved surfaces shall occur at least once a week.

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

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

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

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

8. Other Permits. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, copies of all other required local, state or federal discretionary permits for the development herein approved. Any mitigation measures or other changes to the project required through said permits shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

RECEIVED

SEP 13 1999

9-8-99

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

California Coastal Commission  
3111 Camino del Rio North, Suite 200  
San Diego, Calif. 92108

Re - Permit # 6-99-043

Applicants - Mr. Jack Speritos & Mr. Tim Fones

To Whom It May Concern -

As condo owners of the Tu Casa Complex I would be happy to see something nice built on the 7.8 acres between Marina Dr. & Bayshore Ave. However, I'm concerned about the traffic problem on Marina Dr. with 42 more units coming in. We are already faced with a hazardous condition, with all the cars & boats that are presently using this street.

Another factor of concern is "parking". Are they going to have plenty of parking for themselves as well as their guests. With all the condos & apartments already there, one is lucky to be able to park on Park Ave.

As you can see we already have a couple of major problems & with at least 84 more cars plus boat coming into the area it presents a lot more hazards & problems.

Yours truly,  
Frank Figliuzzi - Tu Casa Homeowner #29

LETTER OF COMMENT

6-99-43

JACKSON, DEMARCO & PECKENPAUGH  
A LAW CORPORATION

4 PARK PLAZA - 16TH FLOOR  
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IRVINE, CALIFORNIA 92623-9704  
(949) 752-8585  
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VENTURA COUNTY OFFICE  
280 N. WESTLAKE BLVD  
SUITE 200  
WESTLAKE VILLAGE, CALIFORNIA 91362  
(805) 230-0023  
FAX (805) 230-0087

REX A. MCKITTRICK  
RETIRED

WRITER'S DIRECT DIAL NUMBER

(949) 851-7424  
INTERNET:  
mtidus@jdpilaw.com  
OUR FILE NUMBER:  
00164

September 10, 1999

RECEIVED

SEP 10 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**VIA PERSONAL DELIVERY**

California Coastal Commission  
San Diego Coast Office  
3111 Camino Del Rio North, Suite 200  
San Diego, California 92108-1725  
Attn: Sherilyn Sarb, District Manager

Re: *Application No. 6-99-43;*  
*Applicants: Mr. Nino Ferrero & Dr. Jack N. Spiritos*  
*Project: "The Hamptons"; Carlsbad, California*

Dear Honorable Members of the Coastal Commission:

I. INTRODUCTION.

We represent C<sub>2</sub> REM, the agents for the owners of the above-referenced property (collectively "Ferrero"), commonly referred to as the "Hamptons". Ferrero has received an approved tentative tract map for the Hamptons ("Project") from the City of Carlsbad ("City"). Ferrero's Project consists of approximately 7.8 acres of undeveloped land ("Property") that has been approved by the City for development as a 42-unit condominium subdivision.

The Coastal Commission Staff, San Diego District ("Staff") has recommended approval of the Project with a number of standard and "special" conditions. Unfortunately, imposing all of Staff's recommended conditions will not only render the Project inconsistent with the City's development approval, but also leaves Ferrero without an economically viable use of the Property.<sup>1</sup> However, as discussed herein, Ferrero believes the Project may be configured so as to remain consistent with Chapter 3 of the California Coastal Act ("Act") and still be viable.

<sup>1</sup>Attached hereto as Exhibit A is a site plan for the Project which demonstrates the impact on the Property and Project of each of Staff's recommended special conditions of approval. As is obvious from Exhibit A, such conditions leave woefully inadequate space for any economically viable use of the Property.

Applicants 9/99 Presentative



Members of the California Coastal Commission  
October 1999

SUMMARY OF SPECIAL CONDITIONS THAT SHOULD BE MODIFIED.

Ferrero is concerned with several of the Special Conditions of Approval suggested for the Project Site. Ferrero's concerns are summarized as follows:

▪ Stringline Development: Nothing in Agua Hedionda Land Use Plan ("LUP") requires the "building-to-building stringline" of adjacent properties proposed by Staff, and it should be noted existing properties in the vicinity clearly have not followed it. *Existing physical constraints of the Project site* are such that imposition of this configuration renders the Project economically infeasible. For example, as depicted in Exhibit B, the Park Drive bows into the Property. As a result, having a stringline of development drawn from the adjacent properties severely, and unfairly constrains the development of the Property. Further, forcing the stringline configuration on the Project imposes burdens upon Ferrero not arising from his Project, but rather arising from the physical attributes of the adjoining property in which Ferrero has no interest.

▪ Public Access: Sufficient public access and parking exists for the Project, including an improved vertical access easement from Bayshore Drive, the dedication and improvement of a lateral access easement along the north lagoon shore, and no less than 85 public parking spaces on the public streets on the boundary of the Property. As Exhibit A shows, the public has a clear path from the existing public streets to the natural resource, i.e., the Lagoon. To maintain an economically viable use of the Property, the development must be a gated community consisting of no less than 42 units. These parameters may be accomplished consistent with the Act, given the already adequate, and proposed future, public access amenities for the Project. Notwithstanding this clear fact, Ferrero may be willing to fund the improvements for additional public parking at the terminus of Bayshore drive in the existing buffer zone and/or view corridor if necessary.

▪ Wetlands and "Depressions": Only one area ("erosional feature") in the southeast corner of the Project site appears to be confirmed as a jurisdictional wetland, and this area will be fully avoided, with required buffers. "Depressions" only recently have been noted by biologists and whether the depressions are jurisdictional remains unresolved. Staff's assertion that the depressions are wetlands is inaccurate. No dispositive evidence exists upon which a claim of jurisdiction may be established. While differing terms have been implied to characterize the depressions, the only term implicating jurisdiction under the Act is wetland. Either the depressions will prove to be jurisdictional wetlands under

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Honorable Members of the California Coastal Commission  
September 10, 1999  
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C. Physical Characteristics of the Property

The Project site is located on the north shore of the Agua Hedionda Lagoon. (See Exhibits A and B, attached hereto.) As a result of the settlement of the Litigation, a vertical 25-foot public access easement exists on the east border of the Property, extending from Bayshore Drive. This improved easement will ultimately connect into the proposed lateral access public easement above the shoreline of the Lagoon.

Years of deposit of spoils from the dredging of the Lagoon make up the surface of the Project site which has also resulted in the introduction of invasive weeds and grasses which currently dominate the plant community on the surface of the Property. (PCR Biological Resources Report, August 25, 1999 ("PCR Bio Survey"), p. 1.)

There is only one area where the Corps of Engineers and Ferrero believe that there is a confirmed, delineated wetland on the Project site, the previously referenced erosional feature. (Staff Report, p. 10.) Recently, due to El Nino conditions last year, trespassers, disturbances, and settlement of the dredge spoils, several depressions were identified on the Project site. Despite numerous biological reconnaissance surveys included in Staff's file (see Staff Report, p. 2), there is no evidence on hand sufficient to establish the depressions as jurisdictional wetlands under the Act. The Army Corps of Engineers and United States Fish and Wildlife have observed the depressions and have stated that the depressions are of marginal -- if any -- quality, and in the unlikely event that the depressions prove to be jurisdictional, any impacts may be addressed through mitigation rather than avoidance. These agencies have not concluded that the depressions are jurisdictional under federal standards.<sup>2</sup> All interested parties agree that surveys must be conducted in the upcoming rainy season.

IV. ADEQUATE PUBLIC ACCESS EXISTS FOR THE PROJECT AS PROPOSED, RENDERING UNNECESSARY STAFF'S RECOMMENDED CONDITIONS WHICH ELIMINATE ANY ECONOMICALLY VIABLE USE OF THE PROPERTY.

In the Litigation, the State obtained a 25-foot vertical public access easement from Bayshore Drive. Additionally, the Project as presently proposed includes a 25-foot lateral public access easement along the north shoreline of the Lagoon. No less than 85 public parking spaces exist on the boundary streets surrounding the Project as proposed, *not including the interior of the Project*. Accordingly, substantial considerations identified in the Commission's Public Access Action Plan, June 1999, are provided under the existing proposal. The adequacy of the

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<sup>2</sup>The Corps and Fish & Wildlife have expressed comfort that -- should the depressions ultimately prove to be jurisdictional under the federal delineation standard -- any impacts may be adequately addressed through mitigation. (See Exhibit C, attached hereto.)

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provision of public parking and access was memorialized in a June 13, 1990, letter from Jim Murray, Associate Civil Engineer for the City, to Sherilyn Sarb. In relevant part, this letter provides:

"Both the Planning Commission and the City Council determined that the public street improvements required to be constructed by the project for Park Drive, Marina Drive, and Bayshore Drive will provide sufficient parallel public parking to allow for convenient public access to the Agua Hedionda Lagoon at this general location."

A copy of this letter is attached hereto as Exhibit D.

Additionally, the California Court of Appeal has held that the Commission is without authority under its general police power to impose as a condition of approval the provision of public parking, where the project at issue does not generate the need for such parking. *Liberty v. California Coastal Commission* (1980) 113 Cal.App.3d 491, 503-504 provides:

"[T]he conditions imposed on the grant of land use applications are valid if reasonably conceived to fulfill public needs emanating from the landowner's proposed use. . . . [¶] . . . Meeting the need for adequate parking to accommodate that increase [generated by the project] is, of course, appropriate. . . . To go beyond that and require the property owner to provide free parking for the public intending to use the beach . . . for which ample parking has not been provided is unfair. The State Commission is here attempting to disguise under the police power its actual exercise of the power of eminent domain. That it cannot do."

Later, the United States Supreme Court in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 held that requiring a public access easement was not a legitimate exercise of the Commission's police power as a condition of approval for building a residential structure.

Unlike the project in *Liberty*, this Project has a demonstrated adequacy of public access and parking under the existing proposal. Nonetheless, Staff proposes that the Project be conditioned to prohibit gating the entrance to the Project and that the streets within the Project be built to City specifications for public streets so as to provide additional public parking for the Lagoon.

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Further, given that the shoreline on the Lagoon along the Project is only 20 feet wide and 600 feet long, the resource here is limited. Indeed, Staff itself characterizes the frontage area as "a small fringe of shoreline along the lagoon perimeter." (Staff Report, p. 8.) Increasing and further facilitating public access and use of the resource at some point runs counter to and actually inhibits the countervailing considerations of protecting the resource. For example, assuming that a homeowners association is responsible for maintaining and protecting the integrity of buffers and fencing for sensitive areas, such responsibilities becomes difficult if not impossible to uphold if access is in large volumes and from multiple access points. Conversely, if access is filtered from the existing vertical easement off Bayshore, the restrictions are more readily established, highlighted and enforced.

Finally, the only economically viable use of the Property, given the substantial investment in infrastructure necessary to develop the Project (no less than \$5 million for such improvements as curbs, gutters, sewer infrastructure, etc.), mandates that the development be a "higher end" community, with a gate, consisting of no less than 42 units. Market surveys demonstrate that the return which must be generated from each unit in this geographic area can only be obtained with a gated community. This has been born out with other projects in the area consisting of both gated and non-gated developments. Thus, the only way to realize any economically viable use of the Property is with the gated community.

Ferrero stresses, however, that the public access issue is not a question of one concern at the expense of another (i.e., *either* economically viable use *or* public access). The Project as currently existing and as proposed makes adequate provision for public access and is consistent with the unchanged conditions of the previous permit, the settlement of the Litigation, as well as the City's permit requirements. Indeed, under the Project as proposed, the public loses nothing to which it is presently legally entitled. Any access across the privately-held portion of the Project site constitutes a trespass. And it is such trespass and non-regulated access which has contributed to the deteriorated state of the on-site resources and continues to threaten such resources (i.e., erosional feature wetland).

V. CONSISTENT WITH THE COASTAL ACT, REFERENCES TO AREAS SUBJECT TO COMMISSION JURISDICTION SHOULD SPEAK ONLY TO "WETLANDS" AND ANY REQUIRED BUFFER ZONES SHOULD BE RELATED TO THE VALUE OF ANY WETLANDS AS DELINEATED.

A. Any Special Conditions Addressing Wetlands Should Use Only the Terminology Included Within the Act.

The purported wetlands in the erosional feature are not at issue. The erosional feature will be avoided and the 100-foot setback required by the Army Corps of Engineers will

Honorable Members of the California Coastal Commission  
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be maintained. Additionally, however, there are several depressions, the status of which remains unresolved.

None of the identified depressions will be filled under the Project as presently proposed. Ferrero has met with Staff to clarify this issue. If the depressions are shown to be wetlands under the Act, Ferrero recognizes that the Act makes no provision for fill for purposes of residential development, and the only issue involves the appropriate level of protective buffer zones. *However*, if the depressions are shown to be non-jurisdictional under the Act, the Commission is without any authority to regulate the planning details of the Project.

Complicating the analysis is the lack of a definite delineation criteria for a wetland under the Act. Despite requests by Ferrero for specification of the standard by which the Commission defines and delineates wetlands under the Act, Staff has yet to articulate the basis upon which this crucial determination is made.

The Staff Report recommends special conditions of approval which utilize collateral terminology not included in the Act, such as "seasonal pond" or "vernal pools." (See, e.g., Proposed Special Condition of Approval III.3 [". . . within delineated wetlands, including vernal pools and seasonal ponds . . ."].) Use of these other terms only confuses the issue. Either the depressions are jurisdictional wetlands as defined in the Act or they are not. If wetlands, the excess terms are unnecessary surplusage. *If not delineated as wetlands*, inclusion of the terms opens an additional door to inquire whether the depressions fit some amorphous definition of such term, not included in the Act, by which a claim of jurisdiction may nonetheless be asserted, based exclusively on the wording of the special conditions of approval.

Limiting the language of the conditions of approval to wetlands is appropriate and the only approach consistent with the Act.

B. The Extent of Required Buffer Zones Should Take into Account the Quality of a Given Wetland as Delineated.

If any or all of the depressions are delineated as wetlands, Ferrero requests that the special conditions of approval maintain some level of flexibility for the appropriate magnitude of buffer protection for any given depression wetland. The functioning, necessity, and propriety of given buffer area will depend in large part upon the findings of the biologist doing the given delineation. Staff's recommendation on a separate project also on the north shore of Agua Hedionda commonly known as the "Kelly" project potentially accepts a wetlands buffer of only 50 feet. (Kelly Staff Report, p. 10.)

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Ferrero requests that any special conditions of approval imposing buffer zones for wetlands anticipate that differing magnitudes or values of wetlands make differing magnitudes of buffer zones appropriate. Accordingly, Ferrero asks that any special conditions on the Project for buffer zones permit no more than 50-foot buffers, as is proposed for the Kelly project.

VI. STAFF'S RECOMMENDED STRINGLINING BUILDING CONFIGURATION IMPOSES INSURMOUNTABLE IMPEDIMENT TO VIABLE DEVELOPMENT OF THE PROPERTY AND FAILS TO CONSIDER PHYSICAL CONSTRAINTS UNIQUE TO THE SITE.

Attached hereto as Exhibit B is an aerial photograph of the Property. This Exhibit is provided to show the particular physical contours of the site and the developments to the immediate east and west of the Property. To the South, the Property extends into the lagoon beyond the limits of the adjacent properties. To the west, the existing development was allowed to develop very close to the shoreline. To the east, the presence of substantial amounts of wetlands pushed the development significantly back from the water. To the north of all three sites is Park Drive which sweeps significantly in northerly/southerly bends from one project site to the next. Where Park Drive abuts the Property, it takes a pronounced swing south towards the Lagoon. This configuration places severe constraints on development of the Property if the stringline mandate is imposed.

Staff recommends a stringline configuration for development of the Property, whereby the frontage of the Project buildings would have to adhere to an imaginary line drawn from the southeasterly most corner of the project to the west to the southwesterly most corner of the project to the east. Exhibit A depicts the exact stringline proposed by Staff.

Such a configuration fails to take into consideration the limitations imposed upon the Property based upon the location of Park Drive. As noted, Park Drive parallels the coastline and cuts much more closely toward the Property than where it abuts the two surrounding projects, to which the Project is being expected to conform.

The adjacent property to the east is set back a greater distance from the Lagoon to account for the lower elevation and resulting greater prevalence of wetland habitat immediately adjacent to the shoreline. This characteristic of the adjacent property, *in which Ferrero has no interest*, should not be basis for conditions of approval compromising the development potential for this Project.

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VII. EXISTING ALLOWANCE OF THE LATERAL PUBLIC ACCESS PATH SHOULD RETAIN FLEXIBILITY TO COMPLY WITH LUP SETBACK STANDARDS.

Staff expressly includes the proposed lateral public access path from the prohibition of development activities within the shorefront buffer zone. There may be some concern over conflict between the location of the path, and setback requirements in the LUP which mandate a setback of foundations from the lateral public access path of two times the height of the building.

Any conditions of approval relating to the positioning of the access path should retain sufficient flexibility to constructively implement the setback policies of the LUP once the true delineations of additional wetlands, *if any*, have been finalized.

VIII. STAFF'S RECOMMENDED SPECIAL CONDITIONS OF APPROVAL DEPRIVE THE PROPERTY OF ANY ECONOMICALLY VIABLE USE.

Attached hereto as Exhibit A is a site plan for the Property which show the impacts each of the respective recommended special conditions of approval impose upon development of the Project. Combining the buffer zone setback for the erosional feature wetland, the public street widening requirement, the City of Carlsbad 20 foot setback limits, the Agua Hedionda setback limits, and the view corridor requirements, it is all too clear that there is little left for development.

As discussed above, the infrastructure improvement requirements to date for the Project exceed \$5 million. When all costs of development are factored, the analysis shows that to be economically feasible the project must maximize the potential returns for this geographic area by providing a higher end, gated community consisting of no less than 42 units. Such a development is a virtual impossibility under the Staff's proposed special conditions.

IX. CONCLUSION.

Adequate public access and parking for the Project have been attested to by the City and independently confirmed by an engineering consultant. Development of the Project does nothing to inhibit public access, but will facilitate it through the improvement of abutting public streets. Providing a gated community at this location will not deprive the public of any legal rights currently enjoyed.

Only one wetland area has been established to exist on the Property, and Ferrero agrees to the proposed avoidance and buffer zone provisions. As to the depressions, no determination has been made that they are jurisdictional at either the state or federal level.

Honorable Members of the California Coastal Commission  
September 10, 1999  
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Special conditions relating to the possibility of additional jurisdiction wetlands should speak exclusively in the terminology recognized by the Act, i.e., "wetland." Further, requirements for buffer zones should retain the flexibility to accord the magnitude of such a buffer zone to the needs and justifications of its subject wetland. As with the Kelly project, 50 feet should be recognized as an adequate buffer zone in appropriate instances.

Finally, imposing the development standards recommended by Staff deprives the Property of any economically viable use. Combining the widening of the streets, mandated setbacks, the stringline development, protective zones, and the view corridor leaves woefully inadequate room for building. As recommended, the Property is left with no economically viable use.

Ferrero requests that Staff's recommended special conditions of approval be revised consistent with comments provided above, all of which provide a development wholly consistent with the Act.

Respectfully submitted,

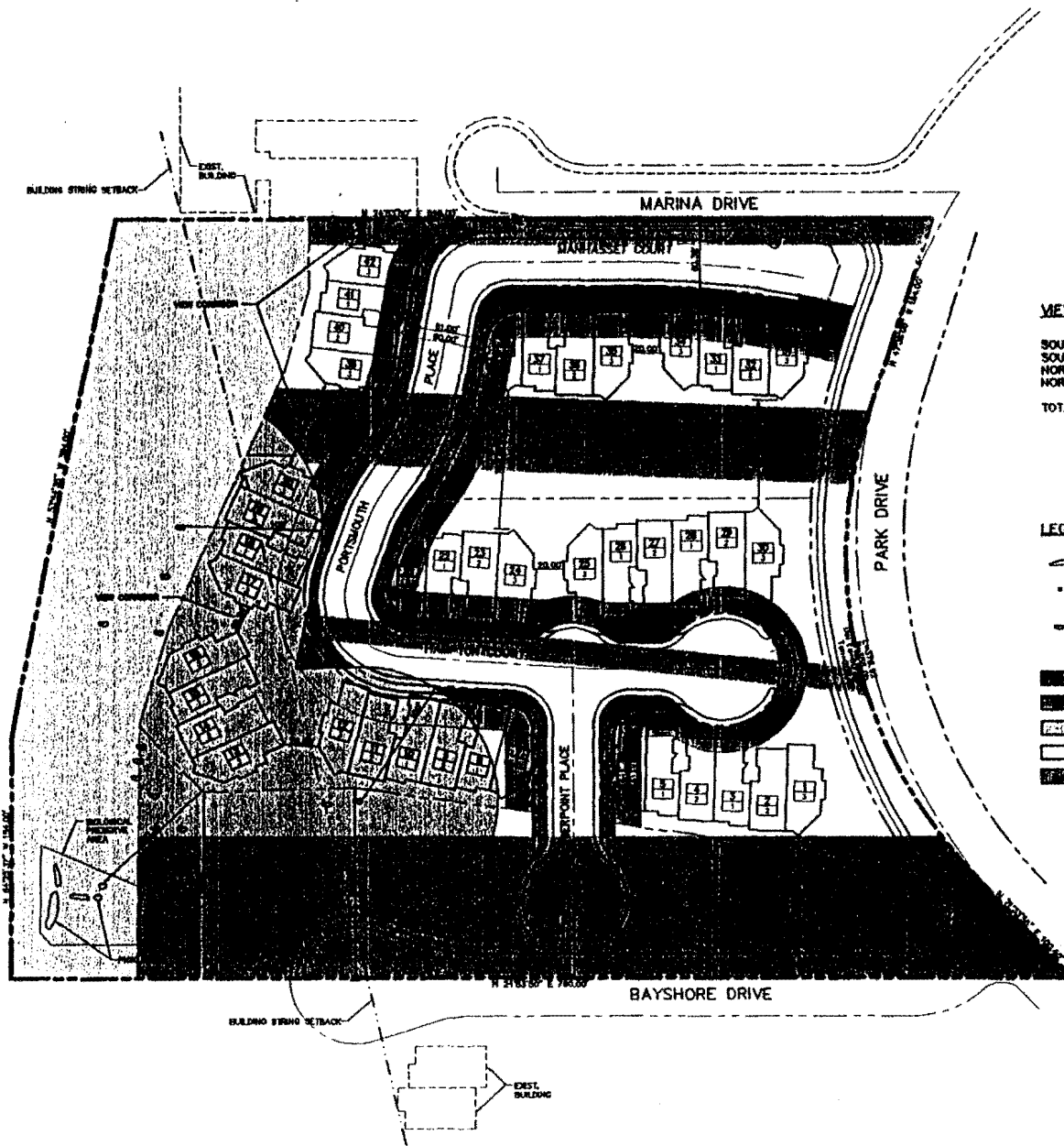


Michael L. Tidus

Attachments  
MLT:DCS:sif  
332911.2

cc: Edmond F. Bourke, C, REM, Agent (w/ encls.)  
David Moore, Esq., Agent/Owner's Representative (w/ encls.)  
Peter Koulos, Owner's Representative (w/ encls.)





**VIEW CORRIDOR SUMMARY TABLE**

SOUTHEAST VIEW	108.09'
SOUTHEAST CENTRAL VIEW	20.24'
NORTHWEST CENTRAL VIEW	87.36'
NORTHWEST VIEW	20.00'
<b>TOTAL</b>	<b>213.69'</b>

**LEGEND**

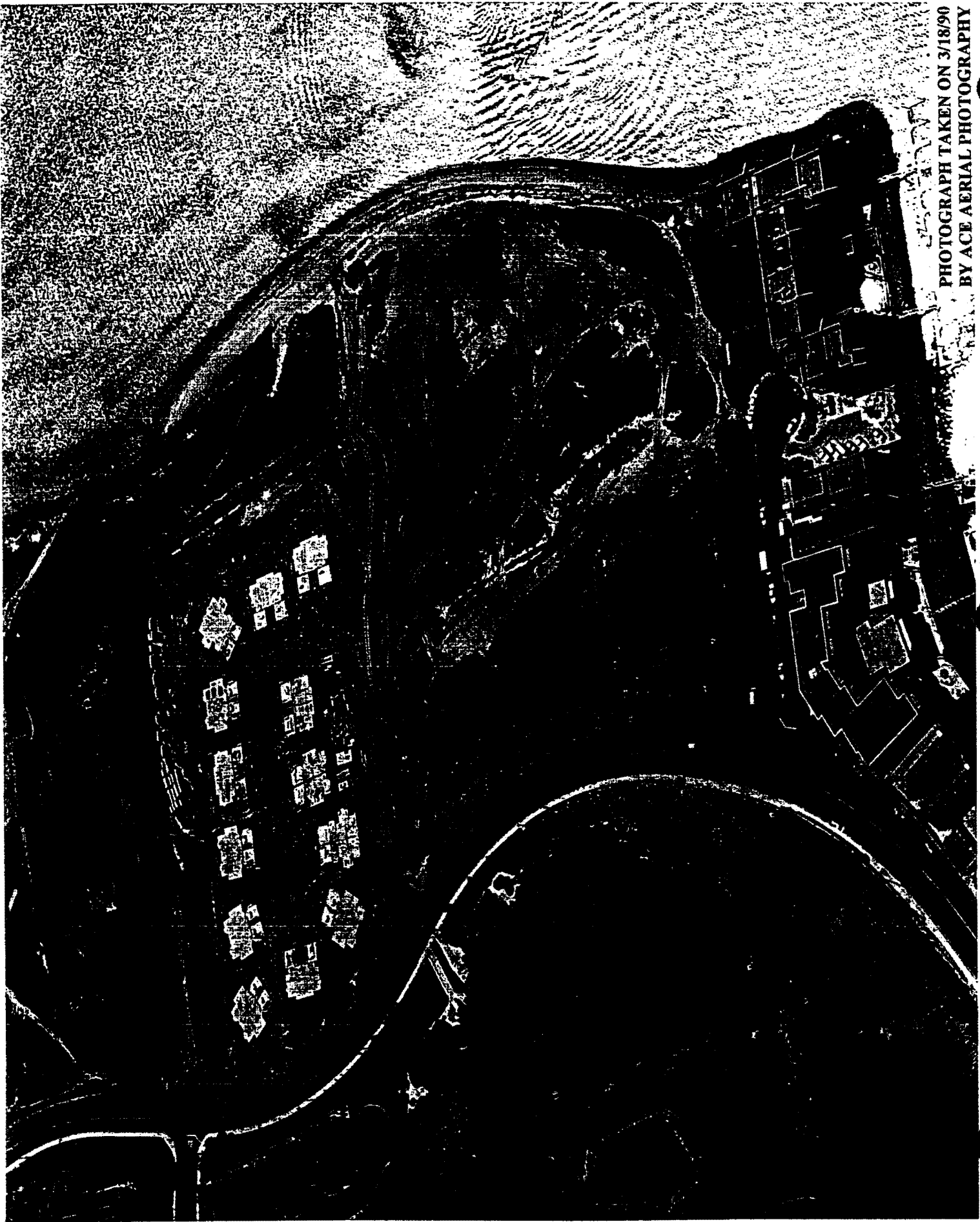
- PICKLEWEED BIOLOGICAL PRESERVE
- PICKLEWEED INDIVIDUAL PLANTS (NON-SUSTAINABLE) PROPOSED FOR TRANSPLANTING
- ON-SITE DEPRESSION (REQUIRING WET SAMPLING TO DETERMINE JURISDICTIONAL STATUS)
- STREET WIDENING REQUIREMENT
- CITY OF CARLSBAD 20 FOOT BUILDING SETBACK LIMITS
- ON-SITE DEPRESSION 100 FOOT SETBACK LIMITS
- AGUA HEDIONDA 100 FOOT SETBACK LIMITS
- VIEW CORRIDOR LIMITS

Development Resources Consultants, Inc.  
 1000 S. PINE STREET, SUITE 200  
 SANTA ANA, CA 92705 (714) 840-8100  
**DRCD**

**THE HAMPTONS**  
**TRACT 89-13**  
**CARLSBAD, CALIFORNIA**  
**VIEW CORRIDOR/SETBACK PLAN**

DATE:	
BY:	
CHECKED BY:	
DESIGNED BY:	
PROJECT NO.:	
SHEET NUMBER:	
OF SHEETS:	
SCALE:	

DRAWN: EXHIBIT  
 DATE: 5/21/10  
 CHECKED BY: DEW/DM  
 DESIGNED BY: FLD/SC/LOM  
 PROJECT NO. 89-13-447  
 SHEET NUMBER: 1  
 OF 1 SHEETS  
 SCALE: 1" = 40'



PHOTOGRAPH TAKEN ON 3/18/90  
BY ACE AERIAL PHOTOGRAPHY

SANTA MONICA

LOS ANGELES

IRVINE



June 17, 1999

Mr. David Zourendyk  
U.S. ARMY CORPS OF ENGINEERS  
San Diego Field Office  
16885 West Bernardo Drive Suite 300A  
San Diego, California 92127

Re: Aqua Hedionda Project with Vernal Pools

Dear David:

The C<sub>2</sub>REM/PCR Project Team has been working on a proposed residential project adjacent to Aqua Hedionda that may result in the placement of fill material into jurisdictional wetlands. We appreciated your taking the time to visit the site and confirm our conclusions that jurisdictional wetlands exist on the site. The California Coastal Commission has requested information regarding the jurisdictional areas on the site and the status of any required Corps permits. In order to answer their questions, we have prepared this letter which summarizes our findings, identifies the habitat and required permits for the project, and proposes a schedule for processing of these permits. In addition, we have included a brief summary of your meeting at the site with Dr. Eric Stein of our office on June 4, 1999. We are requesting your concurrence with the information in this letter which will be used to satisfy the questions raised by the Coastal Commission.

The project site has been used for the placement of dredged material taken from the lagoon during the dredging operations conducted prior to implementation of the Clean Water Act. The differential settling of this material and its composition (lagoon silts and clays) has resulted in the formation of a number of seasonal ponds on the site. These ponds are supported by direct precipitation as there is no real watershed on the site that would provide an additional source of water. The ponds are small and are located near the shoreward edge of the project site. Surveys completed in these ponds have determined the presence of several common vernal pool plants but did not find any sensitive, threatened, or endangered species. Dry season sampling of the sediment in several ponds did not find any fairy shrimp. The presence of several common vernal pool indicator plants complicates the classification of these ponds. If these ponds are flooded for at least two weeks and the majority of the plants are considered vernal pool species, then these ponds would be considered vernal pools and subject to more stringent regulation. However, if the ponds are not saturated for at least one week or if the majority of the plants found are obligate vernal pool species,

SANTA MONICA

LOS ANGELES

IRVINE

Mr. David Zoutendyk  
U.S. ARMY CORPS OF ENGINEERS  
San Diego Field Office  
June 17, 1999 - Page 2



then they would be classified as seasonal ponds which are regulated but are not considered sensitive or subject to the regional special conditions for vernal pools.

The lack of information on the hydrology of these ponds and complete information on the plant species present has made determination of the status of these ponds difficult. In your meeting with Dr. Stein, you offered two alternatives. First, we could wait until the winter rains to conduct detailed analysis on these ponds to determine the length of time they are flooded and the complete list of plant species. This information would allow classification of the ponds but would delay the project until next spring. The second option would be to assume the ponds are vernal pools and apply for a Nationwide permit. This would involve notification to the Corps, mitigation for the impacted pools at the appropriate ratio, and consideration of potential endangered species. The applicant has decided to proceed with the second option, assume they are vernal pools, and proceed through the permit process.

The proposed project has been designed to avoid the majority of the ponds but there would be fill placed in two pools totaling approximately 50 square feet. The two pools are small, relatively shallow, and appear to be low quality. During the site visit on June 4, you examined these pools and agreed with this determination. The applicant would propose to avoid impacts to the remaining pools on the site (approximately 0.2 acres total), enhance and restore some of these existing pools by smoothing tire ruts and other depressions, and creating several new pools within the preserve areas. Material from the pools to be impacted would be used in the creation of additional pools. The preserve area would be adjacent to Aqua Hedionda lagoon and set aside as sensitive coastal habitat to be preserved in perpetuity. Because the existing pools are fed by direct precipitation, there would be no indirect impacts to the preserved and created pools from loss within the adjacent watershed.

The applicant will be completing the formal applications to the Corps and the Regional Water Quality Control Board within the next two weeks. Because of the small size of the proposed impacts, we anticipate the need for a Nationwide Permit. We will complete a Biological Assessment on the potential for threatened or endangered species in these pools to allow the Corps to make a determination of potential impacts. Resolution of the endangered species issues with the U.S. Fish and Wildlife Service would be required and likely be the only potential issue that could delay processing of the permits. The applicant has already submitted an application to the California Coastal Commission and is awaiting a date for the commission hearing.

SANTA MONICA

LOS ANGELES

IRVINE

Mr. David Zoutendyk  
U.S. ARMY CORPS OF ENGINEERS  
San Diego Field Office  
June 17, 1999 - Page 3



We have attempted to summarize the existing information on these seasonal ponds and provided a proposed method to process required permits for the proposed project. We are requesting your concurrence with these findings by your signature at the bottom of the letter. This letter would be submitted to the Coastal Commission as a preliminary determination of the wetland resources on the site and to outline the proposed plan to acquire the necessary permits. If you have any questions regarding the project or the information included in this letter, please call me at (949) 753-7001. Thank you for your consideration.

Sincerely,  
PCR SERVICES CORPORATION

A handwritten signature in black ink, appearing to read 'Mark F. Sudol', is written over a horizontal line.

Mark F. Sudol, Dr. Env  
Principal Ecologist/Regulatory Specialist

I concur with the information provided in the letter above.

A handwritten signature in black ink, appearing to read 'David Zoutendyk', is written over a horizontal line.

David Zoutendyk  
Senior Project Manager  
U.S. Army Corps of Engineers

Date: 6-18-99



# City of Carlsbad

## Engineering Department

Ms. Sherilyn Sarb  
California Coastal Commission  
1333 Camino Del Rio South, Suite 125  
San Diego, CA 92108-3520

June 13, 1990

RE: CT 89-13  
The Hamptons

Dear Sherilyn:

At the request of H.R. Remington Properties I am writing this letter to clarify the City of Carlsbad's perspective on public parking around the proposed Hamptons project. Considerable study of the proposed private and public parking situation was made by staff prior to establishing the recommendation of approval for the Hamptons project. At the City of Carlsbad's Planning Commission and City Council public hearings, testimony was considered regarding the provision of public parking around the Hamptons site. Both the Planning Commission and City Council determined that the public street improvements required to be constructed by the project for Park Drive, Marina Drive, and Bayshore Drive will provide sufficient parallel public parking to allow for convenient public access to the Agua Hedionda Lagoon at this general location.

I would like to emphasize that the responsibility of establishing no parking zones is that of the City's Traffic Engineer and would be based upon the City's safety standards. The project applicant does not share this responsibility and would not normally be required to show "red curb" areas as part of their improvement plan submittal. As a general policy, the City will not allow no parking areas to be established on public streets unless sufficient justification exists.

I hope this information will be of assistance to you in your review of the Hamptons, CT 89-13.

Sincerely,

Jim Murray  
Associate Civil Engineer

cc: Tim Ribant, CEPA

**RECEIVED**

JUN 13 1990

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT