

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Staff: GDC-SD
Staff Report: 4/24/00
Hearing Date: 5/9-12/00

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-99-140

APPLICANT: Outback Growers, Inc.

PROJECT DESCRIPTION: Construction of four greenhouses totalling 14,700 sq. ft., two pedestrian footbridges over an existing on-site streambed, two gravel driveways and parking areas on an approximately 7.6 acre site.

PROJECT LOCATION: West side of Saxony Road, approximately 1/2 mile south of La Costa Avenue, Encinitas, San Diego County. (APN: 216-110-14)

STAFF NOTES:

At its February 15, 2000 hearing, the Commission found "substantial issue" exists with respect to the grounds on which the subject appeal was filed. The permit application is now before the Commission for de novo review.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the proposed development as it is inconsistent with the several provisions of the City's LCP related to wetland and riparian corridor preservation, the protection of environmentally sensitive habitat areas, and policies related to prohibitions against altering a natural stream in order to accommodate private development. The proposed development will be located on a 7.6 acre site that contains sensitive Diegan Coastal Sage Scrub habitat. In addition, Saxony Creek, a seasonal stream, traverses north/south through the subject site, contains riparian habitat. However, the applicant has not performed a wetlands delineation or an updated vegetation/biological survey to determine the extent and location of those resources. As such, the extent of direct or indirect impacts to on-site sensitive resources is not known.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program (LCP); Appeal Applications dated October 28, 1999 and November 1,

1999; "Extended Initial Study, Saxony Road Subdivision", 91-192 TPM/EIA, April 1992; "Biological Resources Survey Report for the Saxony Road Tentative Parcel Map Project" by Vincent N. Scheidt dated April 1992; Dudek and Associates letter to Fred Snedeker dated November 25, 1998; Draft Initial Biological Description/Assessment Saxony Canyon dated September 15, 1999 by Robert T. Patton; City of Encinitas Planning Commission Resolution No. PC-99-13; CDP 98-278.

- I. **MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-ENC-99-140 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 the Certified Encinitas Local Coastal Program. 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.:**

1. **Project Description/History.** The proposed development involves the construction of four greenhouses totaling up to 14,700 sq. ft., two pedestrian bridges over a streambed, two gravel driveways and parking areas on a 7.6 acre lot located on the west side of Saxony Road approximately ½ mile south of La Costa Avenue in Encinitas. The property (i.e., the 7.6 acre site) contains both steep slopes and generally flat areas that are located at the western base of a canyon (Saxony Canyon). A 10 to 15 ft. deep seasonal stream bisects the site as it traverses north/south through the property. The proposed development will be sited on semi-flat areas of the property with three of the proposed greenhouses to be located on the west side of the stream and one on the east side. The greenhouses will be located as close as seven feet from the edge of the top banks of the seasonal stream and within 30 feet of steep slopes containing environmentally sensitive habitat (Coastal Sage Scrub).

The two pedestrian footbridges are proposed to traverse over the stream in order to provide access to three of the greenhouses. The proposed footbridges consists of two 60 foot-long, 6 foot-wide wooden decks supported on 2 telephone poles that will span

vertically across the stream and be anchored on either end by 3 foot-wide, 5 feet-deep footings. No grading is proposed. The City has indicated that the property has historically been used for agricultural purposes, although currently the property is undeveloped.

The City's coastal development permit for the proposed development was appealable to the Commission because the approved development was located within 100 feet of a stream that is designated as a "blue-line" intermittent seasonal stream on both the 1898 and 1975 U.S.G.S. quadrangle maps. The site is zoned rural residential (RR1) which allows agricultural and horticultural production with the approval of a minor use permit.

A tentative residential subdivision map has previously been approved by the City (91-192 TMP on February 11, 1993) to create four lots on the subject 7.6 acre parcel and a coastal development permit for the subdivision was approved by the City on August 17, 1998. The subdivision map has not yet been recorded. In addition, the Commission has recently discovered that in approving the coastal development permit for the subdivision, the City failed to identify the permit as being appealable to the Coastal Commission. Therefore, Commission staff has informed both the applicant and the City that the permit has not become effective. The proposed greenhouse development would be located on proposed Lot Four. Resolution of this will be handled as a separate matter.

Because the site is located within 100 feet of a stream, the development approved by the City lies within the Coastal Commission appeals jurisdiction. The standard of review is consistency with the certified City of Encinitas Local Coastal Program.

2. Wetlands. Due to the dramatic loss of wetlands (over 90% loss of historic wetlands in California) and their critical function in the ecosystem, and in response to Section 30233 of the Coastal Act, the City's LCP contains very detailed policies and ordinances for the protection of wetlands. Resource Management (RM) Policy 10.6 of the City's certified LUP provides, in part:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

[. . .]

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or

suspected. [. . .]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within the buffers areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetlands buffers.

In addition, Section 30.34.040B(3)(b) of the City's certified Implementation Plan is applicable and states:

b. In all areas, a buffer of 100 feet in width shall be maintained around all identified coastal lagoon wetland areas. A buffer of 100 feet in width shall be maintained around all other wetland areas, except riparian wetland areas which shall require a minimum 50 foot wide buffer. A buffer of lesser width that will protect the resource of the wetland shall be permitted based on site specific information. Such information shall include, but is not limited to, the type and size of the development and/or proposed mitigations (such as planting of vegetation or construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the wetland. Maps and supplemental information submitted as part of the application shall be used to determine the specific boundaries of the wetland and buffer. The California Department of Fish and Game and the U.S. Fish and Wildlife Service, Army Corps of Engineers shall be consulted in such buffer determinations.

The applicant proposes to construct four greenhouses adjacent to Saxony Creek, an intermittent stream, and two footbridges to cross over the stream in order to access some of the greenhouses. The greenhouses are proposed to be placed as close as seven feet from the edge of the banks of the streamcourse. At this location, the streamcourse consists of a ravine area, 10 to 15 feet deep, approximately 20 to 30 feet wide traversing north/south through the property. The streamcourse drains into Batiquitos Lagoon a short distance to the north, and is one of the few remaining undeveloped stream corridors within the City of Encinitas.

RM Policy 10.6 requires that wetland acreage and resource values be determined prior to consideration of development proposed adjacent to such sites. The applicant has

submitted two reports to address the site's biological resources. The first is a biological survey completed in 1992 by Vincent N. Scheidt. The survey, which focused on identifying rare, endangered and sensitive wildlife and habitats, determined that the subject site contained three plant communities: Diegan coastal sage scrub, Southern willow scrub and disturbed vegetation. The survey also found three sensitive species on or adjacent to the site: Coronado skink, Summer holly and California gnatcatcher. The second survey is a 1998 letter from an environmental consultant (Dudek and Associates) that reports the results of a field evaluation conducted in November of 1998. This letter states that the presence of hydrology and three arroyo willows (an obligate wetlands species) were identified within the streambed. The evaluation did not include an updated mapping of those resources. The evaluation concludes that because all three parameters of wetlands criteria are not present, the area does not contain wetlands under the U. S. Army Corps definition. However, the evaluation does identify the area within the streambed and banks as a riparian corridor.

The LCP requires that wetlands be defined and delineated consistent with the "definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission regulations". The Coastal Act and Commission regulations delineate wetlands as existing if any of the three wetlands criteria are met: hydrology, wetlands vegetation or hydric soils. The Commission's ecologist/wetlands coordinator has reviewed these biological reports and determined that these reports demonstrate that the streambed does contain riparian habitat, but that these reports do not adequately delineate the exact location, extent or wetlands values of the streambed. As such, following the Commission's finding of Substantial Issue relating to the subject development, Commission staff requested that the applicant perform a wetlands delineation and updated biological assessment of the subject site that identifies the exact location, extent and values of the wetlands in the streambed. The applicant has refused, however, to provide an updated biological assessment citing the cost of such to be prohibitive. Instead, the applicant has requested that the Commission utilize the biologically assessments that have previously been prepared for the subject property.

In addition, to the reports submitted by the applicant, the project opponents have submitted a biological assessment of the site. The "Draft Initial Biological Description/Assessment" prepared for the site by Robert Patton, a biologist for the opponents, indicates that "[t]he southern willow riparian scrub plant community is represented by at least six large arroyo willows (*Salix lasiolepis*) and numerous samplings." In addition, the draft assessment states that "[t]he extensive willow thicket downstream and willow corridor upstream indicate that if not for brush management, the drainage through the parcel would also consists of a dense corridor of willow scrub. The catch basin at the south end of the parcel has recently been mechanically cleared, but may have previously contained a wider variety of wetland species" (Draft Initial Biological Description/Assessment Saxony Canyon dated September 15, 1999 by Robert T. Patton).

The Commission's ecologist/wetlands coordinator has reviewed the opponents' biological reports and has also visited the site and concluded that there is riparian species within the streambed that tend to suggest a wetland, but that there is insufficient

information to make a determination as to the extent, location and habitat values of wetlands within the streamcourse. Again, the applicant has been asked to provide the information necessary to make this determination, but has refused to perform the updated wetlands delineation of the subject property.

The above cited LCP policies require that a minimum 50 foot buffer be established between any development and riparian wetlands, although the width may be reduced if resources are protected and the Department of Fish and Game concurs. The proposed development will not result in fill of wetland resources either through construction of the greenhouses or footbridges. However, no upland buffers are proposed. Instead, the green houses are proposed to be located as close as 7 ft. from the top of the banks of the stream, and the footings for the footbridges will be located along the top of the banks of the stream. If the streambed does delineate as wetlands, pursuant to the LCP policies cited above, the proposed development should be setback at least 50 ft. from the banks of the stream to provide an upland buffer. It is possible that this buffer could be reduced in some areas if agreed upon by the resource agencies.

However, because the applicant has failed to document the exact location and extent of wetlands and riparian resources in the stream bed, it is not clear where such a reduction might be possible. Without knowing the exact location and extent of wetlands, it is difficult to determine whether a 50 ft. buffer is required for the entire length of the streamcourse in this area. Therefore, the Commission finds that without a 50 ft. buffer or evidence that the location and extent of wetlands are such that a 50 ft. buffer is not required, the proposed development is inconsistent with the wetland protection policies of the LCP. In addition, without the wetlands/biological assessment, it is not possible to evaluate the potential of siting the proposed development, with appropriate upland buffers, elsewhere on the subject 7.6 acre site. The applicant asserts that a 50 ft. buffer from the streambed, along with a 30 ft. setback from the naturally vegetated steep slopes would not allow sufficient room on the proposed Lot Four to accommodate the proposed greenhouse development. The applicant did not provide information concerning whether the proposed project could be located with a 50 ft wetlands buffer elsewhere on the 7.6 acre site. Therefore, the proposed development is inconsistent with RM Policy 10.6 of the City's LCP and must be denied.

3. Environmentally Sensitive Habitat. In addition to wetlands, the Certified LCP has specific policies which relate to the protection of environmentally sensitive habitat such as Coastal Sage Scrub:

Resource Management (RM) Goal 10 of the certified LUP states, in part:

The City will preserve the integrity, function, productivity, and long term viability of the environmentally sensitive habitats throughout the City, including . . . riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

(RM) Policy 10.5 of the certified LUP states, in part;

The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval:

- conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;
- minimize fragmentation or separation of existing contiguous natural areas;
- connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors;
- maintenance of the broadest possible configuration of natural habitat area to aid dispersal of organisms within the habitat; [. .]
- where significant, yet isolated habitat areas exists, development shall be designed to preserve and protect them; [. .]
- preservation of rare and endangered species on site rather than by transplantation off site.

In addition, all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Act. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game. . . .

Finally, Public Safety (PS) Policy 1.13 of the certified LUP states:

In areas identified as susceptible to brush or wildfire hazard, the City shall provide for construction standards to reduce structural susceptibility and increase protection. Brush clearance around structures for fire safety shall not exceed a 30-foot perimeter in areas of native or significant brush, and as provided by Resource Management Policy 10.1

The subject property is located within the City's Special Study Overlay and contains environmentally sensitive habitat. The biological assessment performed in 1992 for the proposed four lot subdivision ("Biological Resources Survey Report for the Saxony Road Tentative Parcel Map Project" by Vincent N. Scheidt dated April 1992) documents the presence of Coastal Sage Scrub on the overall 7.6 acre property:

Native Diegan Coastal Sage Scrub on this site is in relatively good shape overall, especially on the upper-most slopes. Lower areas of the site appear to have supported more open sage scrub vegetation prior to agricultural conversion many years ago. This community is contiguous offsite to the south, west and east across Saxony Road. Vegetative density is very high onsite, and the canopy cover averages about 90% in most areas. [. . .]

Disturbed areas on the Saxony Road Tentative Parcel Map site are found on both sides of the bisecting drainage on flatter areas which were formerly used for agriculture. [. . .] This areas [sic] undoubtedly supported Diegan Coastal Sage Scrub vegetation prior to being brushed for plantings many years ago. Because the land is currently fallow, several species of Diegan Coastal Sage Scrub plants are rapidly reclaiming the open ground. [. . .] If left in an undisturbed state, Coastal Sage Scrub would become re-established on this site within a decade. (Emphasis added)

The applicant proposes to install the four greenhouses in areas that were described in 1992 as "disturbed" flatter areas adjacent to the streamcourse. While the extent, location and acreage of onsite Coastal Sage Scrub is not identified, the applicant has indicated that the open space areas abutting the proposed development site that were required for the subdivision approval contain approximately 2 acres of Diegan Coastal Sage Scrub habitat. However, a biologist representing the opponents of the proposed development has documented the presence scattered patches of coastal sage scrub outside of the open space areas, on the site of the proposed greenhouses ("Biological Description/Assessment Saxony Canyon" dated September 15, 1999 by Robert T. Patton). Although the applicant has refused to provide an update to the biological assessment performed in 1992, it is likely based on the 1992 assessment and the opponents biology survey that significant additional areas of Coastal Sage Scrub exists on the subject property.

A current biological survey was not required by the City for the subject development, however, a 1992 Extended Initial Study performed prior to the City's approval of a four lot subdivision at the subject site (Extended Initial Study, Saxony Road Subdivision, 91-192 TPM/EIA, April 1992) documents that in 1992 the site contained three plant communities; Diegan Coastal Sage Scrub, Southern Willow Scrub, and Disturbed Vegetation. According to the initial study, Diegan Coastal Sage Scrub habitat covers the western slopes of the subject property and the applicant has indicated that the area covers approximately 2 acres. The initial study indicates that the Diegan Coastal Sage Scrub "community is contiguous offsite to the south, west and east across Saxony Road. Vegetative density is very high onsite, and the canopy averages 90% in most areas."

In addition, the opposition has performed a biological survey of the proposed greenhouse site and has documented the presence of the federally endangered California Gnatcatcher. A representative from the U. S. Fish and Wildlife Service (USFWS) has performed an initial review of the project and has concluded the subject property has the potential of providing gnatcatcher habitat throughout the subject area. However, before USFWS can determine the need for permits for the loss of habitat, the Service would require the applicant to perform an updated vegetation and gnatcatcher survey (Conversation

between USFWS (Julie Vanderwier) and Commission staff, April 12, 2000). The Department of Fish and Game has not provided comments for the proposed development.

RM Goal 10 and RM Policy 10.5 of the LUP require that environmentally sensitive habitat be protected and that development be designed to preserve and protect both the habitat and rare and endangered species. RM Policy 10.5 requires new development be designed in consultation with the USFWS and Department of Fish and Game so that it is consistent with requirements of the statewide Natural Communities Conservation Planning Act. In this case, these resource agencies have not been afforded an opportunity to review the proposed development prior to its design. In addition, the USFWS believes the site may potentially contain the federally listed California Gnatcatcher and would require the applicant to perform a survey to that effect. The applicant, however, is unwilling to perform an updated biological assessment of the site to determine the extent, acreage and location of those resources, therefore, it is unknown whether any environmentally sensitive habitat may be directly impacted by the proposed development.

In addition, (PS) Policy 1.13 of the LUP requires that development be sited no closer than 30 feet from sensitive habitat to assure that any needed brush clearance for fire control purposes will not impact the habitat. Because fire departments are increasingly requiring brush clearance of up to 100 feet from combustible structures, the Commission has recently found that 30 foot buffers do not protect environmentally sensitive habitat areas and that given that a structure can result in the need to remove a 100 ft. swath of vegetation, new development must be set back 100 ft. from such sensitive habitat areas. However, in this case, the applicant has submitted documentation from the Encinitas Fire Department which indicates that, due to the nature of the greenhouse structures, a 30 foot-wide maximum brush clearance area would be required. However, the applicant is unwilling to perform an updated vegetation survey of the property and, therefore, it is not known whether any sensitive habitat would be impacted by the 30 foot-wide brush clearance area.

In summary, the project site has been identified as containing environmentally sensitive habitat (Diegan coastal sage scrub). However, because an updated biological assessment to determine the extent and location of onsite sensitive resources has not been conducted, it is not clear what direct or indirect impacts the proposed development will have on environmentally sensitive areas. Therefore, the proposed development is inconsistent with the certified LCP and must be denied.

4. Channelization and Alterations of Streams. Land Use (LU) Policy 8.2 of the LUP states, in part:

Development within coastal and floodplain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources. Within the floodway, channelizations, dams, or other substantial alterations of rivers or streams shall incorporate the best mitigation measures feasible, and be limited to necessary water supply projects, flood control projects where no feasible method for

protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development, and other development where the primary function is the improvement of fish and wildlife habitat. . . .

The proposed development involves the construction of four green houses adjacent to Saxony Creek and the construction of two footbridges over the streamcourse in order to provide access to some of the greenhouses. LU Policy 8.2 limits the channelization or other substantial alteration of streams to three permitted uses: water supply projects, flood control projects necessary to protect existing development and improvements for fish and wildlife habitat. The proposed development does not include a request to alter the existing stream, however, a condition of the City's approval of the tentative map is that the landowner make "improvements" to the streamcourse in advance of placement of any future development on the site. Thus, the placement of the proposed greenhouses as close as seven feet from the edge of Saxony Creek and two footbridges over the streamcourse has triggered a requirement by the City that the streamcourse be stabilized, which would involve alteration of the natural stream.

The "Extended Initial Study" which was prepared in 1992 for a proposed four lot subdivision on the subject property, identifies the streamcourse as "subject to erosion caused by a combination of concentrated runoff from local improvements and erosion-sensitive on-site soil conditions" (Extended Initial Study, Saxony Road Subdivision, 91-192 TPM/EIA, April 1992). The "field evaluation" performed by the applicant's representative in 1998 identifies that, "[t]he onsite drainage is deeply incised and evidently very rapidly down-cutting; it measures approximately 4 feet wide at the bottom and is approximately 10-15 below the surrounding grade. The drainage bottom is nearly devoid of vegetation, apparently due to the active scouring in the channel bottom." (Dudek and Associates letter dated November 25, 1998).

In approving a tentative map in 1993 for the subject lot, the City recognized the hazardous nature of the streamcourse in relation to future development on the site and required that applicant to propose "appropriate improvements against erosion" within the streamcourse (91-192 TPM/EIA). The City's staff report for the local government appeal of the subject greenhouse project identifies those improvements to be "slurry walls" (Encinitas Agenda Report , 98-278 MIN/CDP, August 18, 1999). The applicant has indicated that the proposed greenhouse structures are considered "portable structures" and thus, will not result in the need to alter the streamcourse to protect them. However, in approving the subject greenhouse development the City further recognized the hazardous nature of the streamcourse and required, as a condition of approval of the permit, that the applicant submit "calculations for channel stability and potential scouring impacts" for the proposed footbridges (Specific Condition "D", 98-278 MIN/CDP).

The intent of LU Policy 8.2 of the City's LUP is to preserve streams in their natural state unless required to be altered to protect existing development, to improve fish or wildlife habitat or if needed for water supply projects. New development should be sited and designed to assure it is safe from threat such that no protection would be needed in the future. In this case, the subject development is proposed very close to a highly erosive

streamcourse. Should erosion threaten the proposed greenhouses or footbridges in the future, alteration of the stream may be required. The subject 7.6 acre lot may contain areas in which this proposed development could occur without requiring the future need for stream alteration or impacts to wetlands. However, the applicant has not provided an updated biological documentation as to where those potential areas may be. In this case, the placement of structures within 7 feet and two footbridges over the streamcourse will likely result in future demands to provide protection from what the "Extended Initial Study" for the subdivision described as "erosion-sensitive on-site soil conditions". Therefore, the proposed development is inconsistent with Land Use (LU) Policy 8.2 of the LUP and must be denied.

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

The City of Encinitas received approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The proposed development was originally approved by the City of Encinitas Planning Commission and subsequently appealed to the City Council. The City Council approved the development on October 13, 1998. Because the subject development is located within 100 feet of a stream it falls within the Commission's appeals jurisdiction. On November 11, 1999 the development approval was appealed to the Coastal Commission.

The subject site is zoned and planned for rural residential development in the City's certified LCP. The proposed development is not consistent with the rural residential zone and plan designation, although horticultural production is a permitted use subject to approval of a minor use permit.

As noted previously, the proposed development is inconsistent with several policies of the City's certified LCP. Because the applicant is unwilling to provide an updated wetlands delineation and biological assessment of the site, the impacts of the proposed development as it relates to wetlands, environmentally sensitive habitat and Saxony Creek cannot be adequately determined. As such, the Commission finds that the proposed development must be denied.

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

As stated previously, the development as proposed would result in impacts to environmentally sensitive habitat areas and a natural stream. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include reduction in the number of greenhouses or siting on other areas of the approximately 7.6 acre site or areas devoid of sensitive habitat. Both these alternatives would lessen the adverse effects of the project. In addition, the proposed development is not the least environmentally damaging alternative and cannot be found consistent with the requirements of the City of Encinitas LCP, nor with the requirements of the Coastal Act to conform to CEQA. Thus, the proposed project must be denied.

(G:\San Diego\Reports\1999\A-6-ENC-99-140 Outback Growers De Novo Fnl sfrpt.doc)

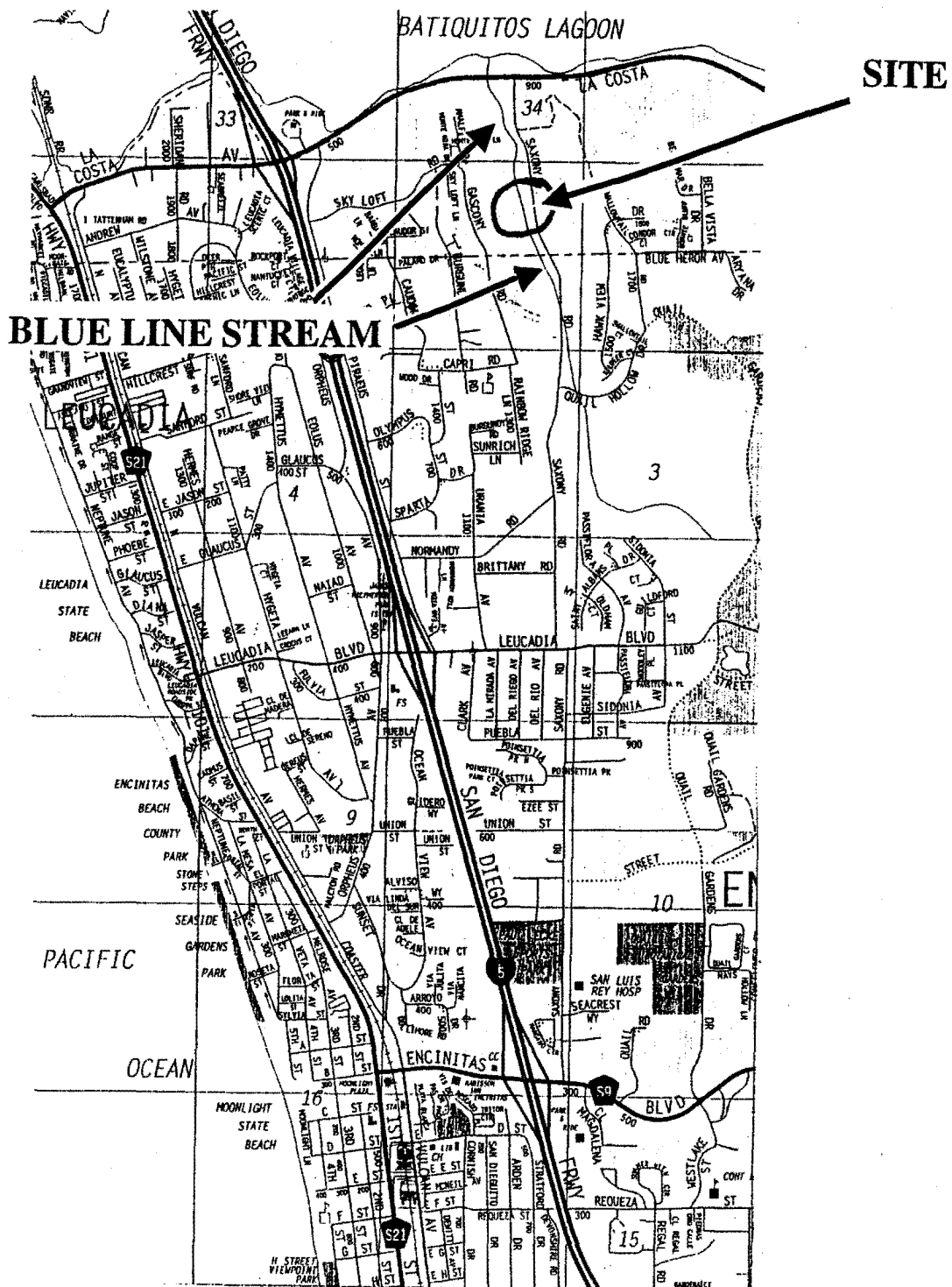
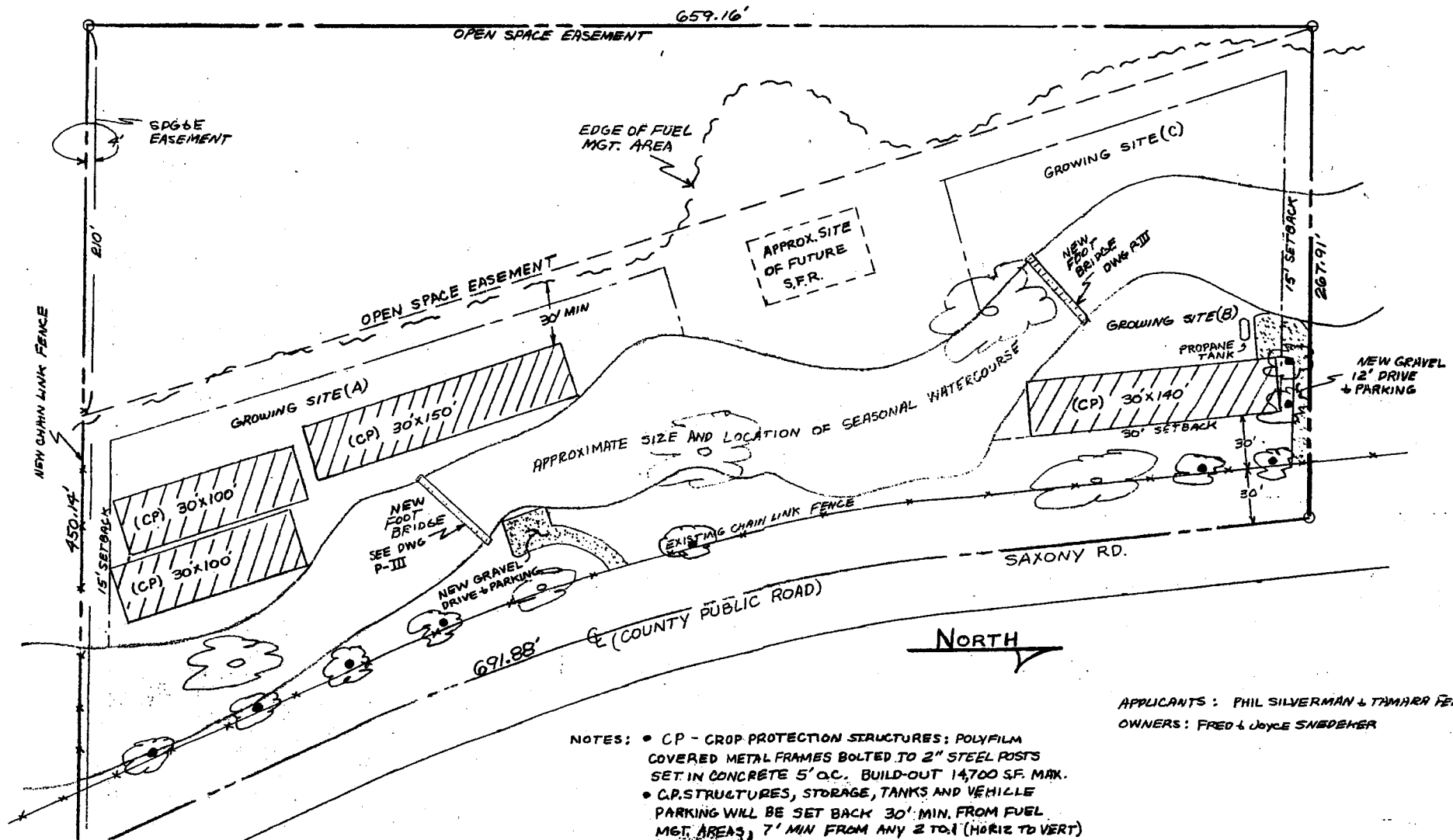


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-99-140
 Location Map
 California Coastal Commission



APPLICANTS : PHIL SILVERMAN & TAMARA FERDICK
 OWNERS : FRED & JOYCE SNEDEKER

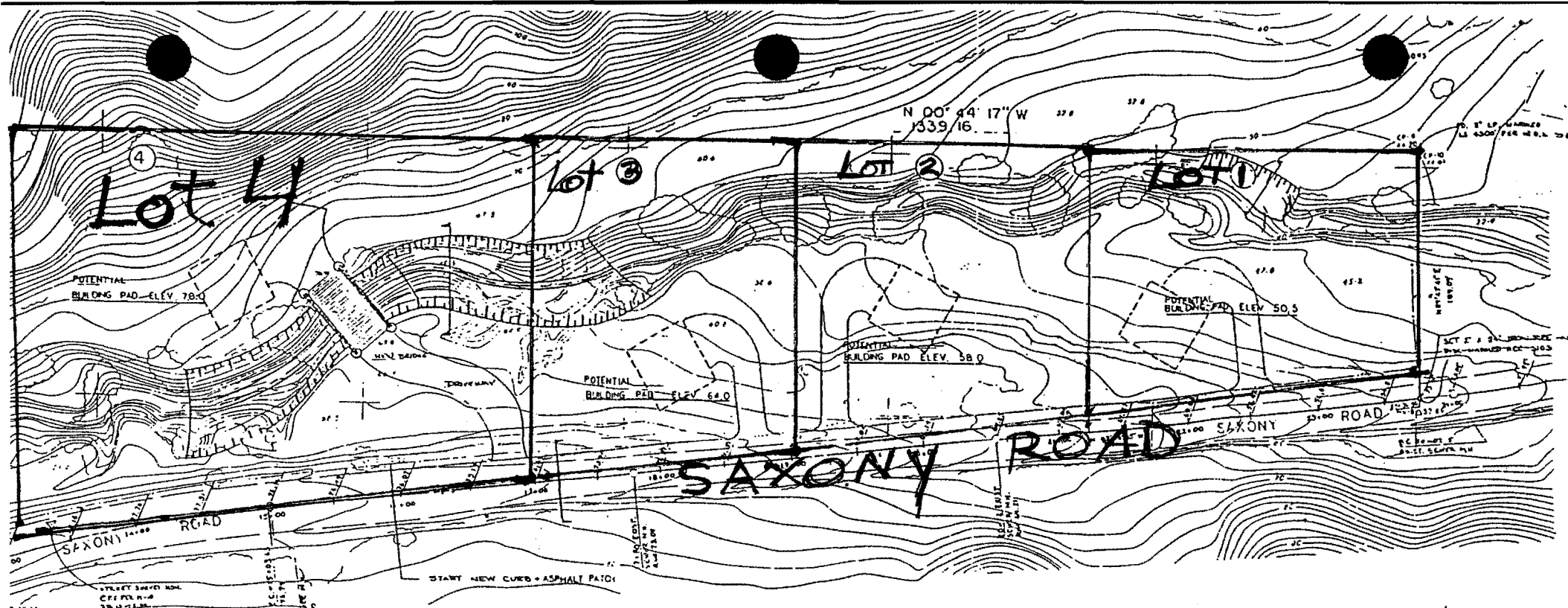
- NOTES :
- CP - CROP PROTECTION STRUCTURES; POLYFILM COVERED METAL FRAMES BOLTED TO 2" STEEL POSTS SET IN CONCRETE 5' O.C. BUILD-OUT 14,700 SF. MAX.
 - C.P. STRUCTURES, STORAGE, TANKS AND VEHICLE PARKING WILL BE SET BACK 30' MIN. FROM FUEL MGT. AREAS, 7' MIN FROM ANY 2 TO 1 (HORIZ TO VERT) MAX. SLOPE AT THE EDGE OF THE RAVINE AND WITHIN ROAD PROPERTY LINE SETBACKS.
 - GROWING SITES WILL BE DEVELOPED AS CROPS REQUIRE.
 - ACACIA (GOLDEN WATTLE) TO BE PLANTED ALONG SAXONY RD. AND TO N. SIDE OF PROPERTY AS SHOWN BY REMAINING VEGETATION TO REMAIN IN NATURAL STATE.
 - SITE TOP. AND ELEVATION CONTOURS ARE SHOWN IN DWG P-II.

| | | |
|---|--------------|--------------------|
| SITE PLAN • 98-278 MIN/CDP | | |
| SCALE: 1" = 40' | APPROVED BY: | DRAWN BY PDS. |
| DATE: 11-30-98 | | REVISION: 3-14-99 |
| PROJECT: OUTBACK GROWERS SAXONY RD. HORTICULTURAL SITE | | |
| CITY OF ENCINITAS LOT #4 OF TPM 91-192 (APN 216-110-14) | | DRAWING NUMBER P-I |

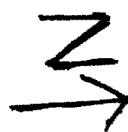
EXHIBIT NO. 2
 APPLICATION NO.
A-6-ENC-99-140

Site Plan
 On Proposed Lot
 Only

California Coastal Commission



POTENTIAL BUILDING SITE & CHANNEL TREATMENT PLAN
 NORTH
 SCALE 1" = 40'



GENERAL NOTES

- Saxony Road has been designated by the City of Encinitas General Plan as a "Local Roadway" with a right-of-way of 60' and a pavement width of 40'. New concrete curb and gutter will tie in to existing 40' wide asphalt roadway from 10+00 to 13+80. New concrete curb and gutter, with asphalt patch will tie in to existing roadway at 15+20 and continue to the northerly property line at 21+76.80. The structural pavement section of this roadway shall be in accordance with City Standards and approved by the City Engineer.

- GRADING
- Drainage: 1% Minimum slope required.
 - Provide brow ditch at top of cut slopes.
 - Provide berm at the top of fill slopes.
 - Cut slope may not be steeper than 1 1/2:1 horizontal to vertical ratio where height of slope is 15 feet or less.
 - Cut slopes may not be steeper than 2:1 horizontal to vertical ratio where height of slope exceeds 15 feet.
 - Fill slopes may not be steeper than 2:1 horizontal to vertical ratio.
 - The top of cut must be 3'-0" minimum from the property line.
 - The toe of a fill slope must be 1'-6" minimum from the property line.
 - No fill or grading operations within 10' of the natural water course and habitat except for work required during construction of required drainage structures and energy dissipaters headwalls; or rip rap.
 - EXCEPTION: Construction of a private bridge, and roadway to access the westerly pad of Lot 14. Every precaution should be taken to ensure no disruption of the natural habitat and environs within the water course.
 - All grading shall be supervised by a registered Civil Engineer.

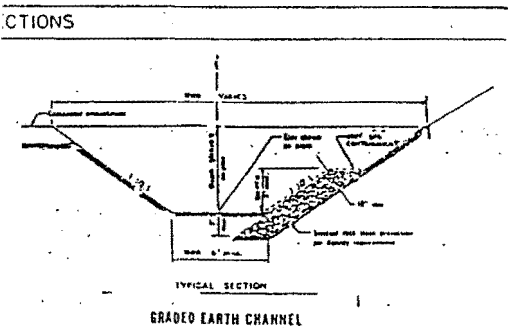
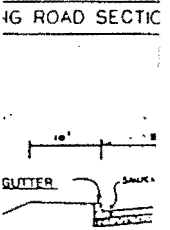
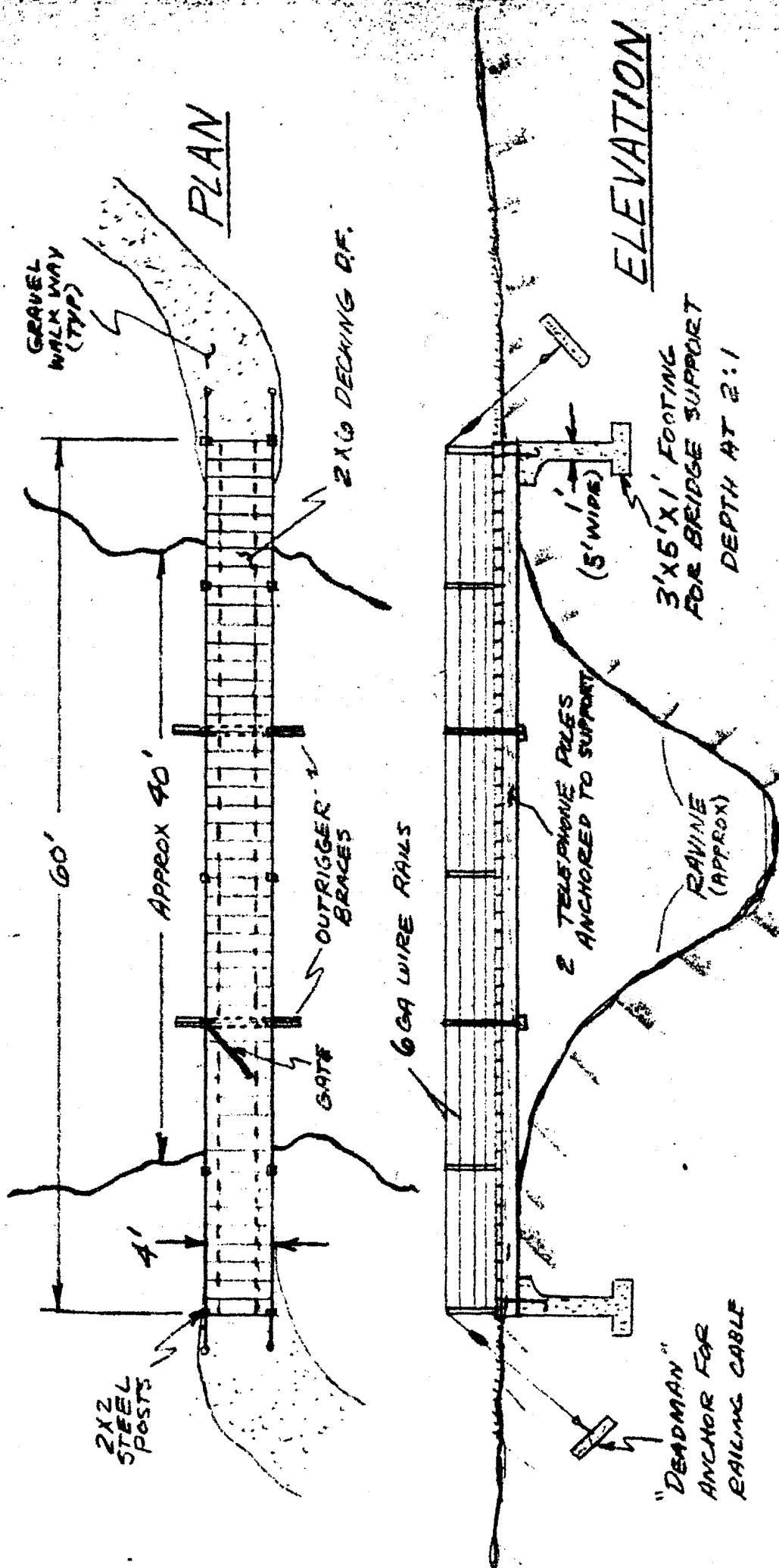


EXHIBIT NO. 3
 APPLICATION NO.
 A-6-ENC-99-140
 Proposed (but not
 effectively permitted)
 Tentative Map

California Coastal Commission



16" ROAD SECTIC



FOOT BRIDGES

SAXONY RD HOERTECULTURAL SITE
98-278 MIN/CDP

| |
|-----------------------|
| EXHIBIT NO. 4 |
| APPLICATION NO. |
| A-6-ENC-99-140 |
| Proposed Foot Bridges |

California Coastal Commission

3-15-99
DWG# P-11

RECEIVED

APR 13 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Philip D. Silverman & Tamara Fedorka
1904 Balboa Avenue
Del Mar, CA 92014
858-755-1344

April 10, 2000

Mr. Gary Cannon, Coastal Planner
California Coastal Commission, San Diego Coast Area
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Re: A-6-ENC-99-140

Dear Gary,

We are writing to urge the Coastal Commission Staff to outline a plan for our greenhouse project that will make it acceptable to the Commissioners so that we can proceed with our project. We feel that all the information you need to make a determination is in your hands. It's time to ask that you and Staff decide what conditions, if any, you would like to see imposed so that we can discuss them and reach agreement.

Following is a review of the status of the project and some further comments on the most recent Staff Report (1/27/00) and other issues that should help you reach a determination.

At the February 15 Commission meeting in Mission Valley, we asked Mr. John Dixon what his interpretation of the property was after an on-site inspection with Gary Cannon. Mr. Dixon responded he "believed the ravine would most aptly be described as a Riparian Corridor". This supports the Biological Assessment performed by Dudek & Associates that began in 1993 with additional site visits performed in 1998.

In regard to Habitat and Wetlands Determination. I would ask that you again review the "Habitat Analysis of the Saxony Road Tentative Parcel Map" prepared by Dudek & Associates by John W. Brown, Ph.D. We feel this is the most accurate and representative account of the existing habitat including lists of the vegetation and classification of habitats. In this report, the scrub community occupying the steep western slopes is best described as Southern Mixed Chaparral and not Diegan coastal sage scrub. This was based on analysis of the plant community and subsequent communications between Dr. Brown and Dr. Robert Holland (formerly of the California Department of Fish & Game) and other prominent biologists. The report continues to identify and describe the Riparian Habitat that exists on this site. Dr. Brown states that "although it certainly represents "waters of the U.S." very little of the drainage is considered wetlands because of the lack of wetland species." We submit that this was also supported by the appellants Biological Report which states the gully is "lacking in diversity of wetland indicator species". The Patton report lists the same species identified in the Dudek Report of 1993 and confirms there has been no dramatic changes in the environment. The majority of the plants along the upper edge of the drainage and on the steep slopes are typical of upland species and


EXHIBIT NO. 5

APPLICATION NO.

A-6-ENC-99-140

Letters from
Applicant

Page 1 of 9

 California Coastal Commission

not obligate wetland species. In the Dudek report an examination of the ravine shows the riparian community that most likely approximates that on-site would be southern willow scrub. Although, Dr. Brown states this is not necessarily accurate "because of the lack of cover by willows and the absence of cottonwoods and sycamores".

Also, in regard to Pattons contention that the willow thicket downstream and willow corridor upstream has been diminished by brush management on this property is patently false. The ravine has never been brushed or cleared. And the possibility of wetland species in the catch basin is remote since it has a cement bottom. The lack of wetland species is due to the lack of hydric soils and the steepness of the grade of the stream (over 2%) which does not allow water to collect long enough to form a wetland.

Further, we feel that all of the habitat and wetlands issues have already been addressed through the approval of the Tentative Parcel Map (91-192) by the City of Encinitas, CDP and the associated Negative Declaration.

In regard to the drainage on-site, we would like you to investigate the erosion problems that have occurred on this property as a direct result of the installation of the catchment basin for the upstream development. In the years since the installation of the basin, there has been massive erosion with up to 200,000 cubic feet of soil removed from the property until the bedrock has been reached. We have met with Howard Mueller of the Natural Resources Conservation Service on-site who confirmed the erosion problems have been created by the installation of the sediment basin. That agency does not recommend these structures for this reason. One would assume the Coastal Commission would be very concerned with the erosion problems already existing and would seek to correct this problem with the City of Encinitas, Quail Gardens Homeowners, Barratt Homes Subdivision and the Encinitas Ranch Development. The extensive upland development and associated hardscaping of the watershed will spell disaster in the future.

Regarding your comments on Channelization and Alterations of Streams. There are no changes proposed in our project associated with the watercourse. The greenhouse structures are considered portable structures (do not require a building permit) and do not in any way affect the watercourse. We will use BMP with regard to tailwater runoff i.e. There will be no run-off!

Preservation of Riparian Corridor. As part of our project, we do not intend to remove vegetation from within the ravine or at the top of the banks. We intend to enhance the corridor by planting more trees along Saxony Road and add to the preservation of the habitat. In regard to Policy 10.4 the City of Encinitas has made attempts to purchase this property although the offer has not been acceptable to the owner.

Brush Management. The appellants contend the fire department would require 100 feet setbacks. This is false. We have approval by the fire department for a 30 foot setback. Please note the Negative Declaration granted in association with the approved Subdivision provides for use on the entire lot except for the open space easement as the basis for No Significant Impact.

Resource Agencies Consultation. We have met with California Fish & Game on-site and at their offices. We were informed that the Department has no issue with our project and it would not fall within their jurisdiction. Army Corps of Engineers also attended this meeting at that time and only requested that the runoff should be channeled into the streambed at an existing outfall, which we will do. No permits are required.

Protection of Viewsheds. As part of our project we propose to plant trees along Saxony Road to create a greenbelt on the East side of the property which would also provide a screen from adjacent properties and the roadway.

In summary, this has been a carefully chosen site to have a minimum impact to our neighbors and surroundings. The City of Encinitas and Planning Commission has granted us a Minor Use Permit based on valid evidence and painstakingly reviews. We feel continued agriculture use of this land would not represent a significant impact.

The issues of wetlands and habitat have been discussed and reviewed over and over by biologist from both sides. All the information is in your hands. Our previous letter, with attached red-lined site plan, outlined the effects of unrealistic set-backs. It's time to establish criteria that you feel will protect coastal interests while at the same time protect our rights to use the land as proposed. Now that the April meeting is completed we ask that you please present a proposal to us for review and discussion so that we can proceed toward being heard at the May meeting.

Sincerely,



Tamara Fedorka



Philip Silverman

Philip D. Silverman and Tamara Fedorka
1904 Balboa Avenue
Del Mar, CA 92014
858-755-1344

April 12, 2000

Mr. Gary Cannon, Coastal Planner
California Coastal Commission, San Diego Coast Area
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

RECEIVED

APR 13 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: A-6-ENC-99-140

Dear Gary,

This letter is a follow-up to our phone conversation of Tuesday April 11, 2000 regarding the following topics:

- Buffer requirements/Policy 10.6. I have enclosed a copy of Policy 10.6 of the Encinitas General Plan which is part of the Encinitas LCP. As you can see the operative word here is "wetlands". The City Planning Department and Dudek Associates have addressed 10.6 as a wetlands issue. "Riparian Corridor" is a separate definition that, to my knowledge, is not part of the Cities LCP.
- Wetland Delineation. Since all the studies have exempted the ravine from wetland status then the first wetland area that we know of is the Batiquitos Lagoon which is over 1300 feet to the north of our property.
- Buffer requirements/CA Dept. of Fish and Game. I actually got through to Tamara Spear at CA Dept. of Fish and Game. She acknowledged receipt of your requests and assured me that she would consult with her supervisor immediately and get back to you this week.
- Fire set-back. I have enclosed a copy of Attachment B of Resolution PC 99-13 with an official stamp and notation from the Sr. Deputy Fire Marshall of Encinitas referring to Specific Condition "SCB" which addresses "A 30 foot fuel management buffer". I also have enclosed his card so you can call him if you have further questions. Deputy Moore remembered issuing this 30 foot requirement on this specific greenhouse situation because he recognized that they would not be a source of combustion. Yes of course they would generally require greater buffers for other types of buildings.
- Revised Preliminary Drain Drawing. Enclosed is a revised copy of the greenhouse drainage plan with the notation at the drain outlet changed to "Existing Approved Storm Drain Outfall". This existing outfall is located approximately 50 ft from the most northern greenhouse at Site A and approximately 150 ft from the greenhouse at Site B. The storm drain off of Saxony Road is granted through an existing easement obtained by the City of Encinitas Engineering Dept. A permit, fee and formal drawing

will be required and they will be the approver of our final design. This type of outfall was suggested by Terry Dean of the Army Corps of Engineers at a pre-project meet we had with them and Fish and Game on November 9, 1999. ACoE has no problem with this approach and no "401" (water quality) or "404" (C of E) permits will be required.

- Greenhouse Run-off/Water Quality. Please refer to page 2 last paragraph (continued on page 3) of the cover letter to our November 10, 1999 package submitted to your office. This pretty well sums up the direction we are taking regarding run-off...there will be none. We are still in the throws of deciding what is the best approach to take. This is, after all, a relatively new technology for all growers in the Encinitas area and we are still learning and formulating a plan. But at the minimum we will implement the techniques discussed in the above paragraph. We have further options if found necessary. i.e. "pave" the surface under the growing benches with polyfilm and direct any run-off into an adequately sized sump for pumping into the existing sewer line or reusing on growing areas. In any case the final plan will be fee-permitted by the Encinitas Engineering Dept. under the direction of their own City NPDES Administrator Kathy Stone. We have already begun the process with her at a meeting on November 11, 1999.

I hope this address all the items of concern. We will be attending a family reunion in West Virginia April 13 to 25. Please feel free to call us/leave a message at 304-336-7777 if you have any questions during that time. We will get together with you when we get back.

Sincerely


Phil Silverman

natural areas rather than dispersing such uses within the natural areas;

- where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them;
- conservation of the widest variety of physical and vegetational conditions on site to maintain the highest habitat diversity;
- design of development, with adjacent uses given consideration, to maximize conformance to these guidelines; and
- preservation of rare and endangered species on site rather than by transplantation off site. (Coastal Act/30240/30250)

In addition, all new development shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Act. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game. Policy 10.5 amended 5/11/95 (Reso. 95-32)

→ POLICY 10.6: The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted 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 newly permitted uses and activities:

- a. Incidental public service projects.
- b. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- c. Restoration purposes.
- d. Nature study, aquaculture, or other similar resource dependent activities.

Identification of wetland acreage and resource value shall precede any consideration of use or development on sites where wetlands are present or suspected. With the exception of development for the primary purpose of the improvement of wetland resource value, all public and private use and development proposals which would intrude into, reduce the area of, or reduce the resource value of wetlands shall be subject to alternatives and mitigation analyses consistent with Federal E.P.A 404(b)(1) findings and procedures under the U.S. Army Corps permit process. Practicable project and site development alternatives which involve no wetland intrusion or impact shall be preferred over alternatives which involve intrusion or impact. Wetland mitigation, replacement or compensation shall not be used to offset impacts or intrusion avoidable through other practicable project or site development alternatives. When wetland intrusion or impact is unavoidable, replacement of the lost wetland shall be required through the creation of new wetland of the same type lost, at a ratio determined by regulatory agencies with authority over wetland resources, but in any case at a ratio of greater than one acre provided for each acre impacted so as to result in a net gain. Replacement of wetland on-site or adjacent, within the same wetland system, shall be given preference over replacement off-site or within a different system.

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

The City shall not approve subdivisions or boundary line adjustments which would allow increased impacts from development in wetlands or wetland buffers. (Coastal Act/30231) Policy 10.6 amended 1/30/91 and 5/11/95 (Reso. 95-32)

POLICY 10.7: The City will urge the State to take appropriate preservation measures relative to Coastal Strand Dune habitat in its development of State beach areas. (Coastal Act/30240)

POLICY 10.8: The City will investigate the establishment of one or more preserves for the preservation of endangered plant species, such as the Encinitas Baccharis, of sufficient size to ensure perpetuation of the species. (Coastal Act/30240)

ATTACHMENT "B"

Resolution PC 99 - 13

CONDITIONS OF APPROVAL

Project No: 98-278 MIN/CDP
Applicant: Outback Growers, Philip Silverman and Tamara Fedorka
Subject: Minor Use Permit and Coastal Development Permit for the construction of 14,700 square feet of greenhouse space for horticultural production on a 1.0 acre parcel located within the Rural Residential - 1 (RR-1) Zoning District.

| | | |
|--|------|--------------------|
| NOTE: APPROVAL APPLIES TO ALL PLANS AS SUBMITTED FOR MINOR USE PERMIT, FIRE AND LIFE SAFETY REQUIREMENTS ONLY. | DATE | 4/11/00 |
| | BY | <i>[Signature]</i> |
| TITLE | | |

APPROVED BY
 FIRE PREVENTION BUREAU
 ENCINITAS
 FIRE DEPARTMENT
 ENCINITAS, CALIFORNIA

SC1 SPECIFIC CONDITIONS:

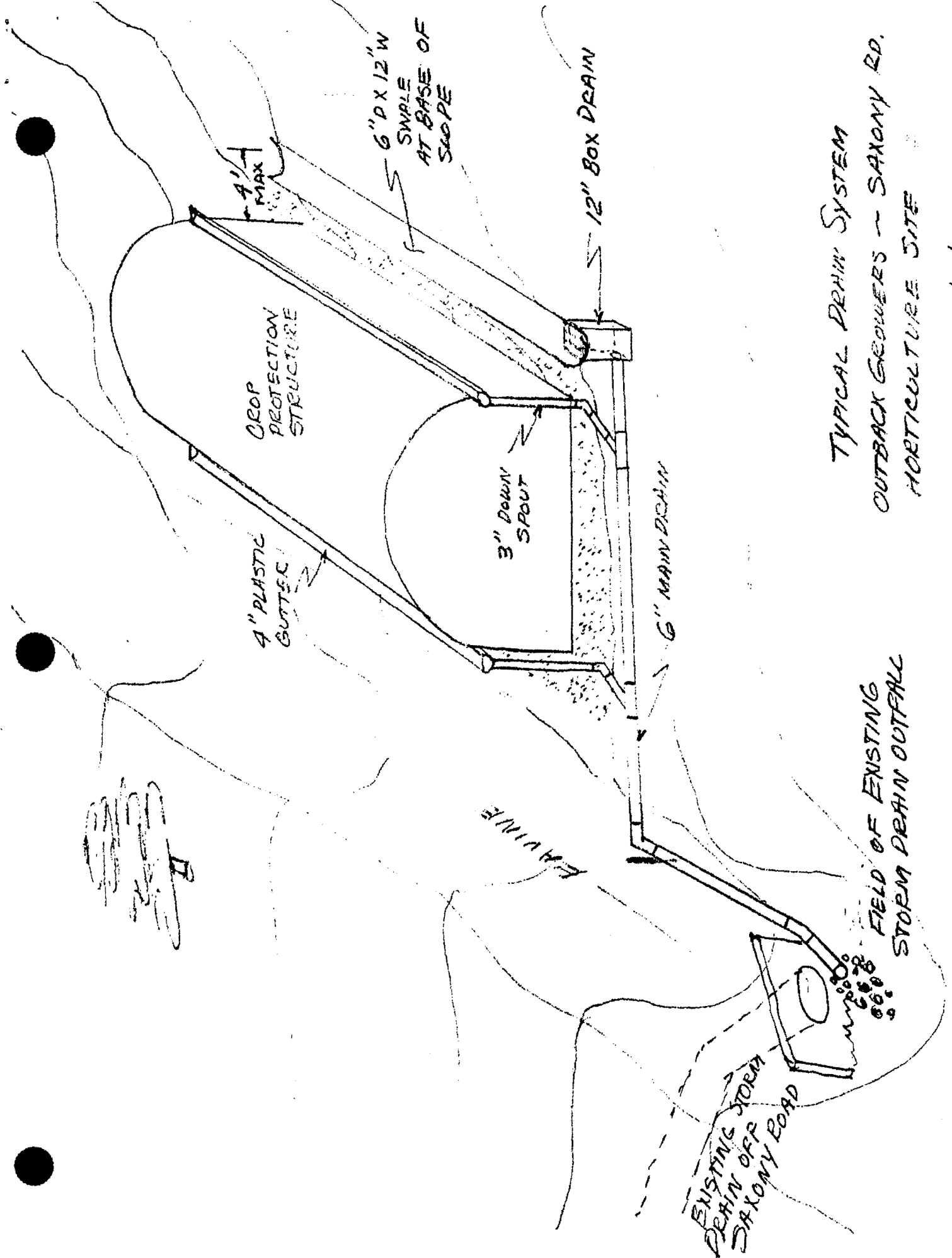
SC2 This approval will expire on April 8, 2001 at 5:00 p.m., two years after the approval of this project, unless the conditions have been met or an extension of time has been approved pursuant to the Municipal Code.

SC5 This project is conditionally approved as set forth on the application and revised project plans consisting of 3 sheets, including Site Topo and Site Plan (dated revised 3-14-99) and footbridges (DWG# P-III dated 3-15-99), all dated received by the City of Encinitas on March 22, 1999. Also reviewed was a photograph of a typical footbridge to illustrate the appearance of the proposed footbridges; all designated as approved by the Planning Commission on April 8, 1999, and shall not be altered without express authorization by the Community Development Department.

SCA The project approval is for the placement of greenhouses and does not set conditions for the placement of a single family residence, which will require a separate Coastal Development Permit prior to building permit submittal. It is understood that the total square footage of the greenhouses will not exceed 14700 square feet; there will be four 30 foot wide structures, the length of each building may vary from that shown on the plans since it will be necessary to maintain the setbacks outlined in SCB, below, and the structures are built in 5 ft. increments.

SCB A 30 foot fuel management buffer will be maintained from all greenhouse structures and shall not encroach into the established open space easement without further environmental review. A fuel management buffer from the future building pad of the single family residence can not be determined until an exact plan indicating the proposed footprint is submitted. The greenhouse structures shall be 15 ft. from the north and south property lines and 7 ft. from the top of the ravine on the property. The parking shall also maintain the 7-ft. setback from the ravine as well as the front yard setback from Saxony Road. There will be no footings for the greenhouses, only a pipe inserted into the ground to serve as a sleeve for the structural elements of the greenhouse frames.

"30 FOOT FUEL MANAGEMENT BUFFER" WAS ESTABLISHED BY THE ENCINITAS FIRE DEPARTMENT FOR GREENHOUSE ONLY.
[Signature]
SR. DEPUTY FIRE MARSHAL 11-64



CROP PROTECTION STRUCTURE

4" PLASTIC GUTTER

4" MAX

6" X 12" SWALE AT BASE OF SLOPE

EAVES

3" DOWN SPOUT

12" BOX DRAIN

6" MAIN DRAIN

EXISTING STORM DRAIN OFF SAXONY ROAD

FIELD OF EXISTING STORM DRAIN OUTFALL

TYPICAL DRAIN SYSTEM
 OUTBACK GROWERS - SAXONY RD.
 HORTICULTURE SITE

JUNE 9, 1999 REV. 4/11/00

November 30, 1999

RECEIVED

DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

California Coastal Commission Members

Dear California Coastal Commission Members:

I am writing to ask you to **deny the building of greenhouses** in this beautiful canyon. The canyon is narrow with a stream that empties into the Batiquitos Lagoon. Greenhouses are especially notorious for their use of chemical pesticides, herbicides, fungicides and fertilizers. This runoff would most likely flow into the Lagoon.

I enjoy the bird watching that the lagoon now offers since it's clean up in 1995. This past summer I observed the first nesting I've seen at the Lagoon of the Great Blue Heron. (see attached fotos). All three babies fledged, and are living along the shore of the lagoon. I have observed countless other species of birds especially during this migratory season. We need to keep this water clean to allow a full comeback of the bird life.

Saxony canyon connects Indian Head Canyon to the lagoon and serves as a **natural corridor for the wildlife**. We have seen bobcats in our back yard as well as coyotes. We have a natural spring at the bottom of our property at the canyon's edge which flows into the stream at the base of the canyon.

Saxony Canyon would **serve the community best as a natural preserve**. It is the only corridor connecting Indian Head Canyon and the lagoon. The survival of wildlife depends on the health of the canyon, its water, and the living space that it provides them.


Please act now to protect this area from chemical runoff that greenhouses would produce. **Deny greenhouse use of this area.**

Thank you and sincerely,

Susan Coyne

Susan and Bill Coyne

Bill Coyne

| |
|---|
| EXHIBIT NO. 6 |
| APPLICATION NO. |
| A-6-Enc-99-140 |
| Letters of Opposition |
| Page 1 of 26 |
|  California Coastal Commission |

July/Aug 1999



Colin Chambers C/O Saxony Preserve Group
1670 Hawk View Drive
Encinitas, California 92024
760-634-2046
www.saxonypreserve.com

November 30, 1999

RECEIVED

DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Members of the California Coastal Commission

Sara Wan, Chair
Cynthia McClain-Hill
Cecilia Estolano
Christina L. Desser
Pedro Nava
Paula Daniels
Nancy Flemming, Mayor, City of Eureka
Mike Reilly, Supervisor, County of Sonoma
Dave Potter, Supervisor, County of Monterey, District 5, Vice Chair
Shirley S. Dettloff, City Council Member, City of Huntington Beach
Christine Kehoe, City Council Member, City of San Diego

45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Appeal No. A-6-99-140 (Outback Growers, Encinitas)** Appeal by Commissioners Estolano & Wan and Saxony Preserve from decision of City of Encinitas granting permit with conditions to Outback Growers to construct four greenhouses (14,700 sq.ft. total) on 7.6 acre lot, on west side of Saxony Road, south of La Costa Avenue, Encinitas, San Diego County. (GDC-SD)

Summary of observations made on September 11 and 12, 1999 by Robert T. Patton, Consulting Biologist, San Diego, CA, of locations of the federally endangered California Gnatcatcher on the Saxony canyon parcel in Coastal Zone pending City of Encinitas permit application 98-278 MIN/CDP.

Reference is made to letters and maps and a Draft Initial Biological Description/Assessment Saxony Canyon, City of Encinitas, San Diego County, California, prepared by Robert T. Patton, which are attached to the above-mentioned appeal. This material may also be accessed on the Internet at www.saxonypreserve.com.

Dear Members of the California Coastal Commission:

The purpose of this communication is to summarize reports prepared by Robert T. Patton, Consulting Biologist, San Diego, CA, on September 15 and 16, 1999, which document observations of California Gnatcatcher locations on the proposed greenhouse construction site in Saxony Canyon referred to in City of Encinitas permit application 98-278 MIN/CDP, and offer a draft initial biological description/assessment of the property.

At an Encinitas City Council hearing on August 18, 1999, members of the Council stated that insufficient environmental evidence was presented to justify the requirement of an Environmental Impact Report before approval of permit application 98-278 MIN/CDP. In combination with an earlier report submitted by Alan Thum, Ph.D. of Pacific Consulting of Encinitas, CA on April 23, 1999, the intent of these new reports is to provide this comprehensive evidence. And the Saxony Preserve Group would like to again request the requirement of the Environmental Impact Report before approval of the proposed greenhouse construction project.

Summary of a letter to Kevin Johnson, Johnson & Edwards, LLP by Robert T. Patton, Consulting Biologist, September 16, 1999, RE: California Gnatcatcher locations on Saxony Canyon parcel with pending Minor Use Permit Application:

- A map is attached with approximate locations of the federally endangered California Gnatcatcher as observed by Robert Patton on September 11 and 12, 1999.

Summary of a letter to Hiroo Kirpalani by Robert T. Patton, Consulting Biologist, September 15, 1999, RE: Saxony Preserve; draft initial biological description/assessment of Saxony Canyon parcel in Coastal Zone pending City of Encinitas permit application 98-278 MIN CDP:

- Attached is a draft initial biological description/assessment of the parcel.
- This description and assessment differs in some significant regards from that of the previous biological survey conducted several years ago.
- A focused Environmental Impact Report based on additional biological surveys and environmental impact assessment should be completed prior to any changes in land use on this property.
- Focused surveys for sensitive species are recommended in light of the presence of federally threatened California Gnatcatchers, the presence of plant species listed as endangered by the California Native Plant Society and considered candidates for listing as federally endangered, and the existing habitat which indicates a potential for additional sensitive species.
- The earlier biological assessment of John Brown, Brock Ortega and the staff of Dudek & Associates is in no way questioned. However it is the opinion of Robert T. Patton that the previous assessment differs from the recent assessment and no longer reflects the current biological condition of the parcel for the following reasons:
 - The plant composition of the property has changed in the six and one half years since the previous survey was conducted.
 - The use of the property by wildlife may have changed.
 - The previous assessment was conducted over an exceedingly brief time period during the time of year when plants and wildlife are least likely to be detected.
 - Plant community and habitat definition is subject to degrees of scale; and a broad assessment of a large area may generalize the entire area into a single category, whereas a more focused assessment may identify a mosaic of two or more distinct categories.
- The proposed construction of greenhouses and growing areas, access bridges, and a single family residence will result in significant negative impacts to sensitive biological and coastal resources.

- For detailed analysis please refer to the Draft Initial biological Description/Assessment Saxony Canyon, City of Encinitas, San Diego County, California.

If I can answer any questions about the above material please feel free to contact me directly at 760-634-2046 or chambers@pacbell.net.

Sincerely,



Colin Chambers

Colin Chambers C/O Saxony Preserve Group
1670 Hawk View Drive
Encinitas, California 92024
760-634-2046
www.saxonypreserve.com

RECEIVED

DEC 01 1999

November 30, 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Members of the California Coastal Commission

Sara Wan, Chair
Cynthia McClain-Hill
Cecilia Estolano
Christina L. Desser
Pedro Nava
Paula Daniels
Nancy Flemming, Mayor, City of Eureka
Mike Reilly, Supervisor, County of Sonoma
Dave Potter, Supervisor, County of Monterey, District 5, Vice Chair
Shirley S. Dettloff, City Council Member, City of Huntington Beach
Christine Kehoe, City Council Member, City of San Diego

45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Appeal No. A-6-99-140 (Outback Growers, Encinitas)** Appeal by Commissioners Estolano & Wan and Saxony Preserve from decision of City of Encinitas granting permit with conditions to Outback Growers to construct four greenhouses (14,700 sq.ft. total) on 7.6 acre lot, on west side of Saxony Road, south of La Costa Avenue, Encinitas, San Diego County. (GDC-SD)

Dear Members of the California Coastal Commission:

The purpose of this communication is to summarize why many Encinitas residents vehemently oppose the construction of a 14,700 SF. greenhouse complex in Saxony Canyon as proposed by Outback Growers and approved by the City of Encinitas in a split vote of the City Council.

The Saxony Preserve Group is a citizens' organization representing over 100 families dedicated to the preservation of Saxony Canyon as an open space nature preserve, and to the prevention of impending commercial development that would forever spoil this rare and pristine natural environment in North San Diego County. We are seeking public funding to acquire the four remaining properties in Saxony Canyon that would allow approximately 100 acres of undeveloped land to be set aside as a continuous nature preserve and trail between the Encinitas Ranch Golf Course and Indian Head Canyon, and the Batiquitos Lagoon.

The 'Outback Growers' organization is attempting to construct a 14,700 SF greenhouse complex on 7.5 acres situated in the middle of an estimated 100 acres of undeveloped land which is occupied by endangered species and which may be a wetland according to Robert T. Patton,

Consulting Biologist, San Diego, CA and Alan Thum, Ph.D. of Pacific Environmental Consulting of Encinitas, CA.

One must ask, "Why should Outback Growers be allowed to construct greenhouses in this undeveloped ecologically valuable open space when there are acres and acres of abandoned greenhouse structures for sale throughout the City of Encinitas alone?"

If Outback Growers are allowed to proceed with their plans this rare and beautiful riparian open space environment in Saxony Canyon will be forever spoiled, and the door will inevitably be opened to continued commercial development.

Alternatively, we are seeking public and private funding to acquire the four remaining parcels in Saxony Canyon that would allow the entire 100-acre region between Indian Head Canyon and the Batiqitos Lagoon to be permanently set aside as a nature preserve and trail. The Quail Gardens, Skyloft and Monte Mira Homeowners' Associations own all other properties in this region. And these organizations are all willing to grant open space easements for this purpose.

Please approve the appeal filed by the Saxony Preserve and require that Outback Growers perform an Environmental Impact Report before further consideration of their greenhouse construction project.

For additional information about our efforts to preserve Saxony Canyon please visit the Saxony Preserve web site at www.saxonypreserve.com.

Sincerely,



Colin Chambers

RECEIVED

DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

From: ElsieChan@aol.com
Sent: Thursday, August 19, 1999 9:56 AM
To: info@saxonypreserve.com
Cc: scameron@ci.encinitas.ca.us
Subject: post-mortem

I attended the 8-18 city council meeting with my husband and, though sorry to see our appeal denied, was interested in observing the process.

The presentation and probably the basis of the appeal seemed to pit one group against another, ie, growers vs homeowners, consultant vs consultant, older residents vs newer. It was disconcerting but not unexpected to see the hearing degenerate into name calling and divisiveness. It is a no-win situation when it is an us vs. them. Mrs. Weidner's remarks about diversity were true, but the group that was not represented nor will it be preserved is the wildlife, the greatest loss to diversity. The endangered species is not the flower growers but the wildlife. Had the issue been framed as an alliance to preserve the area, we might have seen Christy Guerin understand the appeal from a different perspective. She seemed swayed by the amount of money to be spent by Mr. Silverman for what might be presumed to be a delaying action on our part. Truly, is 100k too much to spend if it results in: 1) the resolution of the problem once and for all, or 2) the finding that it is a riparian habitat and that it should be considered as an area to be set aside? The destruction of habitat is priceless compared to 100k.

Pesticide issues and best management practices aside, the land's conversion to residential or commercial use would remove that much land as a feeding and nesting habitat from use forever. It is a steppingstone and a corridor for the wildlife, both land and air species. Given that perspective, neither homeowners nor flower growers would have been demonized. Perhaps the Carlsbad City Council and the Four Seasons could have been enlisted for support because wildlife knows no city borders. The Batiquitos Lagoon, Saxony Preserve and Indianhead Canyon Park would have provided possibly the last wildlife corridor in northwest San Diego county. Today, Batiquitos Lagoon is only starting to come into its own in the preservation of some endangered bird populations (the least tern, still an endangered species, is now regularly seen in the lagoon). Had Ms. Guerin viewed the appeal from this perspective, who knows?*

I did not attend the meeting to support my property values and I felt confined and defined by the narrow characterization of the SaxonyPreserve group. I, for one, am not against greenhouse growers, nor greenhouses. I agree with Sheila Cameron as she supports flowergrowers and greenhouses but this is the wrong location. Flowergrowers, too, probably want to preserve habitat destruction, but they were not given the information with which to come to that conclusion. And, I would have lived with the results of an EIR.

Sincerely,

Elsie Chan
1535 Hawk View Drive
Leucadia

* Based on my perceptions of the city council members, perhaps withdrawing from last night's agenda owing to the absence of James Bond would have removed the deadlock possibility. Also, I am puzzled by Dennis Holz's walking a fine line between the growers and the homeowners, voting for the EIR and yet not backing the Mayor to reconsider the appeal at a later time. Does he want to please everyone?

LCDR David Petri
1712 Hawk View Drive
Encinitas, CA 92024
760-753-7398

RECEIVED

DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

March 23, 1999

Chairman of the Planning Commission
City of Encinitas
City Hall
505 South Vulcan Avenue
Encinitas, CA 92024

In response to your 11 March meeting and your proposed draft resolutions for Project Case Number 98-278 MIN/CDP, the residents of Skyloft and Quail Gardens feel the following issues remain to be resolved.

It is our belief that the Planning Commission failed to thoroughly apply the Municipal Code in evaluating the merits of this project. Contrary to your conclusions, you did not make an independent judgment, overlooked the municipal code regarding storm water management, and failed to determine the environmental significance of the project in accordance with the California Environmental Quality Act.

The Environmental review discussed in your agenda report references an assessment made by Dudek & Associates. Mr. Snedeker – the current owner of the property – hired this company to make the evaluation, which represents a conflict of interests. To this end, the city did not conduct an independent review in evaluating the environmental significance of the proposed project. The draft Resolution of Approval states that the planning commission's judgment is independent, yet you based your judgment on an assessment paid for by one of the concerned parties. This is not independent.

In your findings for a Use Permit (Attachment A of the draft resolution), you state that the project is consistent with the Municipal Code. Contrary to chapter 64.08 (Storm Water Management), this project is inconsistent with the guidelines for protection of watercourses that pass through owned property. Moreover, this chapter specifically addresses development within a set distance from a watercourse. During your 11 March meeting, Mr. Birnbaum, while stating his approval, proposed a 5-foot setback from the bank. This proposal violates city code in that:

Section 64.08.180 prohibits development within 30 feet from the centerline of a creek or 20 feet from the top of the bank which ever is further from the top of the bank. A permit is required from the Director of Engineering Services and/or appropriate State or Federal agencies in order to be exempt from this requirement.

Additionally, Attachment B of your draft resolution fails to require any conditions concerning storm water management

In your findings for a Coastal Development Permit, you state that the project conforms to the California Environmental Quality Act (CEQA).

To determine if a project conforms to CEQA standards, a Public Agency (in this case the City of Encinitas Planning Commission) must first determine whether a project is exempt from CEQA. The Public Agency can exempt CEQA standards if and only if the following apply:

The project is ministerial:

This project requires more than little or no judgment in granting a Use Permit. The nature of the project and the protests it has generated require deliberate consideration. Therefore, the project is not ministerial.

No possible significant effect to the environment:

In their letter, Dudek & Associates did not determine if this project could cause significant effects to the environment. Their assessment evaluates whether the property is a wetland, as determined by applying General Plan Policy 10.6. Although they conclude that the property is not a wetland, they fail to address the environmental impact of constructing Greenhouses within several feet of the watercourse or the lasting impact of potential runoff into the watercourse and Batiquitos Lagoon. Therefore, the assessment is grossly inadequate and it is conceivable that there is some possible significant environmental impact. Without an assessment on the possible significant effects, further evaluation under CEQA is required. This evaluation should include scientific and factual data supported by substantial evidence.

The project can be statutorily or categorically exempted:

This project fails to meet either criterion set forth in CEQA and accordingly, this project is not eligible for statutory or categorical exemption

If the project is not exempt from CEQA, then the Lead Agency must conduct a study to evaluate the relative significance of environmental impact. As the Lead Agency, you must either correctly exempt CEQA or conduct the study. Based on material filed with this case in City Hall, this project does not conform to CEQA and therefore your conclusions are incorrect.

These issues need to be addressed and should be open for further public discussion at the April 8th meeting before final determination.

We are opposed to this project and request that the Planning Commission reconsider their position.

See attached list for signatures

CC: Alice Jacobson, Adam Birnbaum, Joyce Crosthwaite, Lester Bragg, Anne Patton, Sandra Holder, City Attorney Planning Department

November 30, 1999

California Coastal Commission
c/o San Diego Coast Area
3111 Camino del Rio North, Suite 200
San Diego, California 92108-1725

RECEIVED
DEC 01 1999
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

To: COMMISSIONERS, California Coastal

Re: WRITTEN TESTIMONY CONCERNING NEW APPEAL HEARING,
PERMIT NUMBER A-6-ENC-99-140, SCHEDULED FOR DECEMBER
8, 1999

Dear CCC:

On behalf of the Saxony Canyon Preserve Group and three hundred families in the nearby environs, we urge you to deny Mr. Silverman and Ms. Fedorka (Outback Growers) permission to construct 14,700 square feet of greenhouses plus foot bridges, driveways, and parking areas upon a 7.6 acre lot within Encinitas' virginal Saxony Canyon.

The surrounding area of the canyon is already teeming with seeming unbridled development. This fragile and beautifully pristine open space is the last undeveloped coastal canyon within the entire city of Encinitas. We stand adamantly opposed to commercial interests in this precious ecological resource for the following reasons:

We believe the greenhouse project to be wrongly exempted from the California Environmental Quality Act (CEQA) and poses serious risk to the presence of many varieties of wetland flora and fauna, including the sacred California Gnatcatcher. Therefore, we know that an Environmental Impact Report (EIR) **must** be performed before any development proceeds. Please reference Doctor Alan Thum (Pacific Environmental Consultants) and Mr. Robert T. Patton's (Consulting Biologist) substantial evidence regarding the specifics of such endangered species.

We strongly feel that any approval of this project was based on a lack of pertinent information. Namely, landowner Fred Snedeker's hired consultant's (Dudek & Associates) failure to study **any** ground water data for the area. Please note that Dudek acknowledges the jurisdiction of the Army Corps of Engineers and the Department of Fish and Game over stream bed alteration. An EIR would automatically **require** their input. It is also important to note that deferral of mitigation measures for the project is **not allowable** under the CEQA.

We are troubled that if the project is approved, the ability to redesign is functionally very limited. Relocation, downsizing, grading, and other mitigation measures are effectively eliminated. Too, we are especially worried about the necessary use of **hazardous pesticides** for a greenhouse operation and their effect on the existing watercourse, water table and the adjacent Batiquitos Lagoon, the latter of which is under protection as a wildlife conservancy.

We are concerned with the issue of project "splitting", finding it unbelievable that Outback Growers will be indulging in an "avocation" as they claim with the sizable expanse of 14,700 square feet of greenhouses. We worry that the project will become increasingly and diversely commercial over time.

Also, because a tentative map has been approved, the future build-out of the site is likely to include a home with many acres left open for growing space with unidentified future uses. These issues must be reconsidered from the standpoint of the CEQA. It is our opinion that the greenhouses will not practically fit into the planned area, and there has been no formal metes and bounds delineation of the permanent biological space boundaries. In addition, the proposal will create a pressure to "brush into" the open space areas. Notably, the site plan being approved is not consistent with the apparent intent of the project conditions/limitations. Related to this is that the greenhouses are to be placed on the edge of the watercourse. This puts the project in violation of Municipal Code Section 64.08 regarding watercourse protection. That is, there is to be no development within thirty feet of the center line of any creek or twenty feet of the top of a bank, whichever is a greater distance from the top of the bank. There has been no consultation with the appropriate State agencies and no showing of necessity to deviate from the setback requirements. We feel that the project has gone through the planning process based upon an unrealistic and very narrow definition of "project". Because the project is in such a sensitive area which impacts so much, and since hazardous chemicals will be used immediately adjacent to a watercourse feeding directly into the Batiquitos Lagoon, it only makes good sense to **fully** review and require the mitigation of all foreseeable and significant impacts.

Finally, although it is irrelevant to this specific Hearing and Appeal, the Saxony Preserve Group has worked long and hard to achieve our goals through the City of Encinitas' Planning Commission and City Council. We have extensive petition signatures, a well maintained web site (www.saxonypreserve.com) and have raised over \$3,000 toward a \$7,000 cause. Our ultimate goal is to indeed preserve Saxony Canyon as a **coastal** nature preserve and to enable our city to expand their much needed hiking trails through this gorgeous canyon. Our preservation hopes are high in being selected as a qualifier for TEA (Transportation Enhancement Act) monies which will soon be available. Please deny any commercial intrusion into this last, lonely coastal canyon and allow it to survive as yet another beautiful plume in the Coastal Commission legacy!

Respectfully, *Deem R. Bristow*

DEEM R. BRISTOW 1655 Hawk View Dr., Encinitas, CA 92024

Hiroo Kirpalani

From: LCamenzuli [LCamenzuli@email.msn.com]
Sent: Wednesday, December 01, 1999 9:02 AM
To: Hiroo@est.com
Subject: Preserving Saxony Canyon

To the California Coastal Commission-

Thank you for hearing this matter on Saxony Canyon in Encinitas.

I live at 1736 Hawk View Drive directly overlooking the sight where the proposed greenhouses are to be built. At our last city council meeting to decide the fate of that canyon, Mr. Fred Silverman who will be purchasing this land and placing the green houses brought flower growers from Encinitas to testify to the fact that flower-growing is what marked the character of our city for many years and that it should be allowed to prosper. The residents were portrayed as selfishly concerned only over the value of our properties. This grossly misrepresented our concerns.

While property values may very well be in question here, we are in fact living in this neighborhood currently because flower-growers sold their land to developers in the first place! It is the flower-growers themselves who heralded the change in Encinitas character. Now it is becoming an issue of whose needs take precedence, those of the people who have come to live here or those of flower growers who wish to use the land to be able to sell cut flowers at farmers' markets.

We, the local residents, would now like to preserve what is left of the open space and include it eventually as a part of our city's park land. This canyon is a lovely green refuge for a variety of wildlife, not the least of which are the three owls, who hooted rhythmically the other night as they perched on nearby trees.

There is also a stretch of green trees and bushes which runs the length of the property in question toward the lagoon just north of it. One of our neighbors who has lived here for over 11 years has suggested that this strip of land remains wet throughout the year, hence the green of its foliage, and may therefor constitute a wetland which I understand may be investigated.

Mr. Silverman stated that his ultimate intention was to build a home next to his greenhouses and eventually move into it. However, he told us in a meeting of homeowners, which included Mr. Snedeker, the current land owner, that he was looking at the land for possible speculation. He admitted to having recently sold another such piece of land for a tidy profit without having to build anything on it. This kind of attitude about the property leaves it vulnerable to other commercial concerns and speculation in the future with no regard to the areas beauty and functionality in relation to the lagoon it borders.

While Encinitas does indeed have many greenhouses which have been here for a long time, many of them are not well kept and not only appear as an eyesore but attract flies and other insects. I am not well-versed regarding how much they may pollute ground soil and nearby waterways, but the use of chemicals to enhance flower growth and control pests is another issue we have been concerned about both with regard to the canyon itself and to the nearby lagoon.

I realize many of these arguments have been presented before. However, I wish to reiterate them now and to let you know just how important the issue has been to us.

Thank you again for considering this issue and I urge you to continue to protect our coastal areas by limiting commercial development in their vicinities.

Sincerely,

Lorraine Camenzuli Wolfe, Ph.D.

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Hiroo Kirpalani

From: Nan Sterman [nsterman@mindsovermatter.com]
Sent: Wednesday, December 01, 1999 11:09 AM
To: hiroo@est.com
Subject: Letter to Coastal Commission

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT


Saxony_Cyn=Coastal_
Commission....


ATT06012.txt

Hi Hiroo

I have attached a letter to the coastal commission re Saxony Canyon. It is in Word and I expect you will be able to open it. If not, please let me know what format you can open and I will send it again.

Thank you so much

Nan Sterman

To: North Encinitas Property Owners
From: Skyloft and Quail Gardens Residents
Re: Saxony Greenhouse Revolt

An alarming assault on this entire north area is being perpetrated to build four (4) large greenhouses as a "HOBBY" to commercialize potted plants! Location: south of La Costa and north of Quail hollow on Saxony Road.

The plans presently being designated by the Encinitas City Planning Commission on April 8, 7:00 pm at the city Hall is a frontal attack to the quality standard of every residential home.

The size of the four (4) greenhouses are ... one: 30' x 140'; two: 30' x 100'; one: 30' x 150' and located on the west side of Saxony Road, with two foot bridges to span the stream for access to the four structures of the polyfilm covered frames and walls. The toilet facilities will be outdoor porta-pots (formerly called outhouses). All of the cultivation of the small potted plants is to be carried out by two workers, Philip D. Silverman and Tamara Fedorka.

The homeowners of north Encinitas succeeded in saving the Indian Head Wells Canyon Park from development of mass housing several years past that would have impacted traffic on the Quail Hollow entrance/exit road plus destroying the park lands. Now let us support the present action being formulated to stop hobby greenhouses and porta-pots toilets from our front approach and entrance to Skyloft, Quail Gardens, Blue Lagoon and the new developments. A commercial "hobby" should have no place in or near to residential areas, especially as a threat to maintaining the high value of every homeowner's fine and well-kept property.

Edith Brown, Hawk View Resident

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Edith E. Brown
Hawk View Drive
Encinitas, California 92024

April 23, 1999

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mayor Sheila Cameron
Members of the Encinitas City Council
Encinitas City Hall
505 South Vulcan Avenue
Encinitas, California 92024

Re: Appeal on Project No. 98-278 MIN/CDP

Project Name: Outback Growers

Dear Mayor and City Council Members:

As a thirteen plus year resident of Leucadia, now Encinitas, I have walked/hiked the project area many times observing plant and animal life. During the morning walk, I have seen creature & such as California quail, red-tail hawks, hummingbirds, gophers, squirrels, rabbits, snakes, fox, coyote, bobcat, and etc., to mention a few of the creatures long from the Canyon's past. Also, I have talked with other persons born and raised in the area who have told of the natural ground water springs that seep up to send water trickling into the creek to its outlet into the Batiquitos Lagoon.

During my years here, I watched and observed all through the seven year drought the water carved gully was never dry, always green. The animals mentioned above either came to or live down by the stream for their drinking water and livelihood. I have talked with individuals born and raised in old Leucadia who stated they have witnessed the natural fresh water springs seep through the ground in this particular part of north San Diego County. Through the seven year drought, this water carved gully was never dry, always green. The animals mentioned above came down from the Indian Read Wall & Canyon or lived there for their needed food and drinking water.

Sincerely,

Edith Brown

Colin Chambers C/O Saxony Preserve Group
1670 Hawk View Drive
Encinitas, California 92024
760-632-2573

August 11, 1999

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DEC 01 1999

Mayor Sheila Cameron
Members of the Encinitas City Council
Encinitas City Hall
505 South Vulcan Avenue
Encinitas, California 92024

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Appeal of Project No. 98-278 MIN/CDP
Project Name: Outback Growers

Dear Mayor and City Council Members:

The purpose of this communication is to summarize a proposal suggesting an alternate and more logical and appropriate use for the property identified in Project Outback Growers, Case No. 98-278 MIN/CDP, as Project Address: "West side of Saxony Road, south of La Costa" with Cross Streets: La Costa & Quail Hollow.

The Saxony Preserve Group is a citizens' organization representing over 100 local families dedicated to the preservation of Saxony Canyon as an open space nature preserve, and to the prevention of impending commercial development that would forever spoil this rare and pristine natural environment.

The Saxony Preserve Group proposes that a continuous nature preserve and trail be established from the Encinitas Ranch Golf Course to a lookout on property owned by the Monte Mira Home Owners Association (HOA) across La Costa Avenue from the Batiquitos Lagoon.

As indicated in the attached map, the proposed continuous nature preserve and trail would begin at the Encinitas Ranch Golf course and cross an unidentified parcel owned by the City of Encinitas leading into the existing trails of the Indian Head Canyon. From the northwest corner of this property the trail would cross Quail Hollow Drive and Saxony Road over properties owned by the Quail Gardens HOA, where an easement would have to be obtained for this purpose. At the northwest area of these properties the trail would cross four properties currently owned by a Mr. Fred Snedeker, where these properties would have to be purchased from Mr. Snedeker for this purpose. At the northwest corner of the Snedeker property the trail would lead to a lookout site on property owned by the Monte Mira HOA, where an easement would have to be obtained for this purpose.

Members of the Saxony Preserve Group are actively working with public and private agencies to obtain funding to purchase the Snedeker property, and with the indicated Homeowners Associations to obtain the necessary easements to establish the trail proposed above. Additional detail is available upon request.

Sincerely,



Colin Chambers

Enclosure

Tove Tuntland
1670 Hawk View Drive
Encinitas, CA 92024
760-632-2573

August 21, 1999

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mayor Sheila Cameron
Members of the Encinitas City Council
Encinitas City Hall
505 South Vulcan Avenue
Encinitas, California 92024

Dear Mayor Sheila Cameron and Members of the Encinitas City Council:

It is a sad day for those of us who love the nature in Saxony Canyon, knowing that we may soon see unsightly greenhouses in our beautiful valley. Saxony Canyon and everything it means to us will never be the same. And all of this is lost to a man who publicly claims he "only wishes to grow flowers". Mr. Silverman succeeded in winning the support of Encinitas City Officials by mocking the romantic notion that Encinitas is "The Flower Capital of the World". And it seems that flower growing takes precedence over most other considerations in Encinitas. That Saxony Canyon represents one of the few open spaces left in Encinitas, that it borders a lagoon with much wildlife, that hundreds of people are opposed to the development, and that the area could be preserved as a beautiful public park; are all considered less important than Mr. Silverman's right to grow flowers.

It is doubly ironic that our appeal was voted down in part due to the excessive cost of an environmental impact study. Contrary to Mr. Silverman's public position, he revealed to a shocked group of Saxony Preserve members that his cool and calculated plan was to purchase the property, obtain a greenhouse permit, and re-sell the property for a \$100,000 profit. He stated that he was just in the process of accomplishing this with another Encinitas property, and even recommended that we take the same approach to make money! But what price do the community and the nature have to pay for Mr. Silverman to make his profit? Needless to say, we are heartbroken over the Council decision and believe that the Encinitas Planning Commission and the Encinitas City Council have made a grave mistake.

Sincerely,
Tove Tuntland

Colin Chambers C/O Saxony Preserve Group
1670 Hawk View Drive
Encinitas, California 92024
760-634-2046

September 15, 1999

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mayor Sheila Cameron
Members of the Encinitas City Council
Encinitas City Hall
505 South Vulcan Avenue
Encinitas, California 92024

Re: Request to present to the Council on Wednesday, September 22, 1999

Dear Mayor and City Council Members:

The purpose of this communication is to follow up on my August 11, 1999 letter to you that proposed an open space nature preserve and trail in Saxony Canyon as an alternate and more logical and appropriate use for the property identified in the greenhouse permit application by Outback Growers, Case No. 98-278 MIN/CDP. Please see the attached letter.

We would like to request that you allow our group to make a brief 10-minute informational presentation to the City Council on Wednesday, September 22, 1999 to summarize our proposal and provide a binder of information with maps and pictures of the subject site.

Please let me know if this is acceptable to you. I can be reached at 760-634-2046 or chambers@pacbell.net.

Sincerely,



Colin Chambers

Enclosure

From: William J. Simmons [billwjs@home.com]
Sent: Wednesday, November 10, 1999 8:34 AM
To: billwjs@home.com
Subject: Nov. 10 Town Council Meeting, Wednesday at 6pm.....Tonight

This email was sent to all City of Encinitas Council Members. Please show your support at tonights' meeting if you agree with the message.

Thanks.

Bill Simmons
944-9529

=====

Council will consider tonight as Item 7, the Staff's Recommendation for a prioritization of project needs to submit to SANDAG under the Transportation Enhancement Activities Program (TEA)

TEA assistance funds might come from SANDAG to help the city with several desired projects that fit the guidelines under TEA. Some of us in Encinitas will be asking you tonight to alter the Staff's Recommended Priorities before sending it on to SANDAG for consideration.

Simply stated, we would like to see more emphasis by The Council on "Open Space Alternatives" versus "Beautification Projects" like new signs, sidewalks, etc. Although significant, beautification projects can be pursued in the future, while opportunities for open-space purchase can not be revisited once lost.

We will ask your consideration in adding "The Snedeker Property Purchase" to the City's "highest eligibility list"; possibly replacing two beautification projects already on this list. (The Snedeker possibility is currently in the "moderate eligibility" grouping.

Concerned citizens and staff have been trying to find innovative ways to complete a City Acquisition of this remaining 7.5 acre piece of "AN ENCINITAS RANCH SHOPPING CENTER-GOLF COURSE-MAGDALENA-INDIAN HEAD CANYON-BATAQUITOS LAGOON" trail and open-space corridor. ie. land swaps, gov't funding, private assistance, etc.

Let's don't miss this opportunity to save this land for all of Encinitas to enjoy; now and in the future!!!!!!

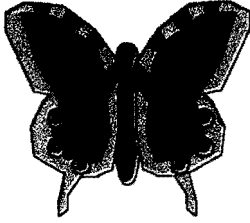
Bill Simmons
Leucadia
944-9529

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SAN DIEGO CO



December 1, 1999

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

California Coastal Commission

RE: Permit Number

A-6-ENC-99-140

Applicant: Outback Growers

Hearing Date: December 8, 1999

Dear Commissioners,

Saxony Canyon is a unique place that is home to many species of birds and wildlife. It is important that we preserve this area in its natural state as a nature preserve. Most of the wetlands and natural habitats in this area have already been destroyed.

Please do not allow greenhouses or any development in Saxony Canyon.

Thank you for this consideration.

Sincerely,

Gwen Terry

311 Trailview Road

Encinitas, CA 92024

Hiroo Kirpalani

From: Elaine Wilson [missywilson@home.com]
Sent: Tuesday, November 30, 1999 1:03 PM
To: missywilson@home.com
Subject: Saxony Preserve Preservation

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DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

I want the commission to be aware of how important it is to preserve the saxony area. we have a lot of business and homes and industrial all around but we do not have enough open park space in one large area to enjoy and appreciate. This area is just that you drive slower as you go through on saxony, you feel the natural beauty and you wish it was this way all over the county. San Diego is losing its original beauty and what is left in Encinitas is rare and we should hold on to it before it's too late. The Batiquitos lagoon would only suffer from any or all run off from the green houses. this would only hurt our environment more. There are quite a bit of abandoned or neglected greenhouses in Encinitas already, why ruin a very beautiful area with something that may in time turn out like the others? please stop the destruction of what is left in the coastal areas! we live here for its beauty and rural atmosphere. many have left because they have lost hope. please help those of us who still have hope, and preserve this large and precious area that will only continue to enhance the area we call Encinitas. Thank You Elaine Wilson

506 Cole Ranch Rd

Olivenhain,92024

P.S Hiroo please remove
my e-mail address from this letter Thanks

RECEIVED

DEC 01 1999

Tove Tuntland
1670 Hawk View Drive
Encinitas, CA 92024

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
Nov. 30, 1999

California Coastal Commission
San Diego Coast Area
3111 Camino Del Rio North, Suite 220
San Diego, CA 92108-1725

Dear Madam/Sir,

This letter concerns the appeal of the decision made by Encinitas City Council to allow construction of four greenhouses on the west side of Saxony Road in Encinitas, CA (Permit # A-6-ENC-99-140). The future greenhouses would be built in Saxony Canyon that is located on Saxony Road immediately south of La Costa Avenue and Batiquitos lagoon. The owner of Outback Growers, Mr. Silverman, has on numerous occasions claimed in public that "he only wishes to grow flowers" and he should therefore be permitted to construct and operate greenhouses in Saxony Canyon. His company succeeded in winning the support of Encinitas City Officials by mocking the romantic notion that Encinitas is "The Flower Capital of the World". It is not clear why Mr. Silverman finds it necessary to grow flowers specifically in Saxony Canyon, one of the precious few open spaces left in Encinitas. There are many greenhouses for sale in Encinitas, properties that are already developed for flower growing – one may ask why he cannot purchase an existing greenhouse (there are indeed many of them around here). The reason was given by Mr. Silverman himself in a meeting earlier this year, as he revealed to group of around 10 Saxony Preserve members that his motivation was primarily profit based and driven by the desire to make money by buying, developing and selling greenhouse properties. The Saxony Preserve group is left with the unanswered question what price the nature and the community has to pay for Mr. Silverman to make his profit.

Saxony Canyon is important to the local plant-, bird- and wildlife and is currently home to many wild species including the endangered California gnatcatcher, hawks, bobcats and coyotes. Building greenhouses on this property would not only affect the nature and wildlife in the canyon itself, but could potentially have damaging effect on the fish- and bird-life in the neighboring lagoon. The goal of the Saxony Preserve group is to obtain funding to acquire the 7.6-acre lot such that the property can be set aside as a permanent nature reserve. I hope the California Coastal Commission will recognize the importance of our appeal and require the applicant to conduct an Environmental Impact Study before constructing greenhouses in Saxony Canyon.

For further information, please see the web page at www.Saxonypreserve.com

Sincerely,
Tove Tuntland

RECEIVED

DEC 01 1999

Hiroo Kirpalani

From: ElsieChan@aol.com
Sent: Friday, November 26, 1999 5:08 PM
To: hiroo@est.com
Subject: Saxony Preserve

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

California Coastal Commission:

The Saxony Canyon area is a natural corridor connecting 2 endangered area habitats, Batiquitos Lagoon and Indianhead Canyon. With the ongoing heavy buildout surrounding this area, the need to preserve Saxony Canyon in its present state forever has a higher than normal urgency.

Your role in objectively deciding environmental issues was almost usurped and avoided by the hasty and rash actions of some on our Encinitas City Council. Surely, we would be staring at the breaking of ground for a commercial and residential development involving ground water contamination and irretrievable destruction of natural habitat were it not for an eleventh plea to your organization.

Please act for the preservation of the wildlife habitat

Thank you.

Elsie Chan
Hal Olson

RECEIVED

Hiroo Kirpalani

From: Brian Power [seabags@bigplanet.com]
Sent: Monday, November 29, 1999 10:58 AM
To: hiroo@est.com
Subject: Saxony CCC letter

DEC 01 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Nov. 28, 1999

Laurie & Brian Power
1757 Gascony Rd.
Leucadia, Ca. 92024
760-944-5505

Dear California Coastal Commission,

We are writing in regards to Saxony Canyon located directly below our residence.

My family and neighbors have viewed bobcats, coyotes, fox, and many varieties of birds living on and around this parcel. Also- during the rainy season a creek runs through this parcel continuously. We do not believe the wildlife and environment was a consideration when the approval for greenhouses was made by the city council.

We strongly object to the decision for greenhouses and hope this issue can be clarified.

Thank You,
Sincerely,

Laurie & Brian Power

Tue 22b

Phillip D. Silverman and Tamara Fedorka
1904 Balboa Ave.
Del Mar, CA 92014
(858) 755-1344

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FEB 10 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

February 10, 2000

California Coastal Commission
San Diego Coast Area
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Re: A-6-ENC-99-140

Honorable Commissioners,

We hereby agree to add the following Specific Condition (SC) to our project:

SCJ A 50 foot buffer shall be maintained between the clumps of "wetland obligate willows" located in the ravine and any bridge or greenhouse structure.

This condition should be incorporated into the above referenced appeal prior to the No Substantial Issue decision.

Sincerely

Phillip D. Silverman

Phillip D. Silverman

Tamara Fedorka

Tamara Fedorka

APPLICANT'S
RESPONSE TO STAFF
RECOMMENDATION

Tue 22b

February 3, 2000

William J. Simmons
Member of Saxony Preserve Group
1733 Gascony Road
Encinitas, CA 92024

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FEB 04 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Commissioner Sara Wan
California Coastal Commission
San Diego Area
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

Subject: Application for Greenhouse Construction by Outback Growers
Appeal Number: A-6-ENC-99-140

Dear Ms. Wan:

I respectfully request that The Coastal Commission, in its upcoming February session, perform a detail review of all supporting documentation regarding the "Usage Request by Outback Growers" to install a commercial, flower growing facility in the Saxony Canyon area of Encinitas, California. (map enclosed)

Those of us who have watched with admiration while the Batiquitos Lagoon Restoration Project was completed with the utmost consideration for environmental protection have been amazed at the lack of detail review of the environmental threats that are being put into place with an approval of this "Usage Request." As the application process has worked it's way through various city agencies on the way to The Coastal Commission, little regard has been shown to the possible environmental dangers that this request imposes. Continued use of the words "Good Business Practices Will be Maintained" and "Operating Practices Will be Provided Later in the Process" seem to have been more than satisfactory when reviewers addressed possible dangers.

Myself, as a member of The Saxony Preserve Group, ask only that The Commission assure that ALL required documentation is in place that guarantees that the investments already made for environmental protection surrounding Batiquitos Lagoon are not neutralized by this land use application. As protectors of our coastal environment, we expect that you will perform the assurance review that we think is justified.

Sincerely,

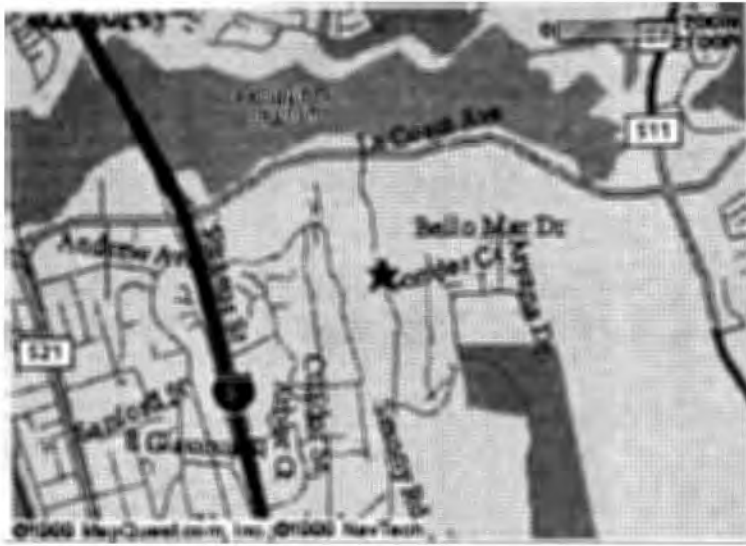


William J. Simmons

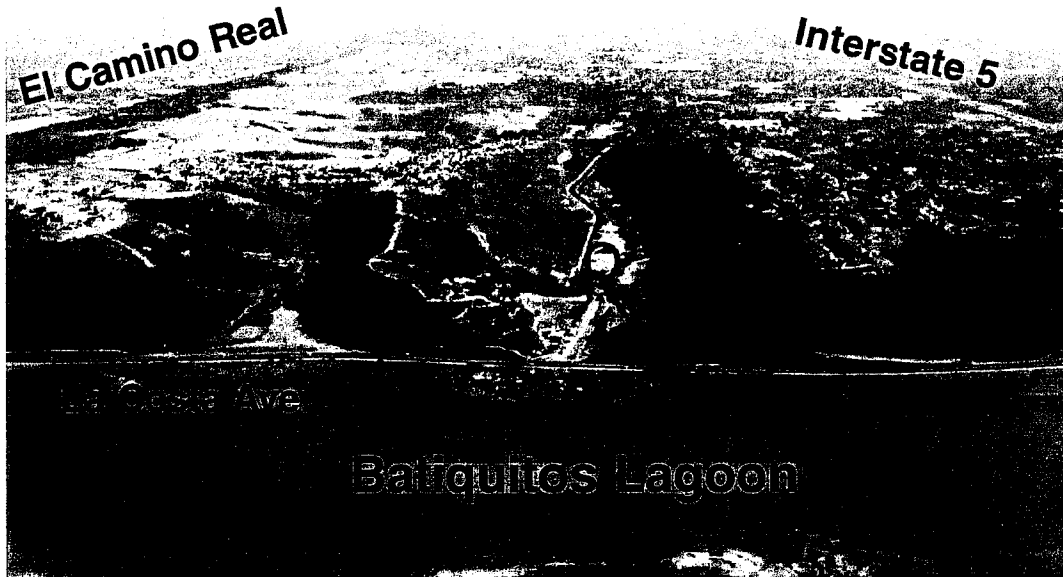
Attachment

Saxony Preserve is a citizens' organization representing over 100 families dedicated to the preservation of Saxony Canyon as an open space nature preserve, and to the prevention of impending commercial development that would forever spoil this rare and pristine natural environment in North San Diego County. We are seeking public funding and private cooperation to acquire four remaining properties to establish a continuous nature preserve between Indian Head Canyon and Batiquitos Lagoon.

LETTER IN SUPPORT
OF STAFF
RECOMMENDATION



**Saxony Canyon (looking south, up
Saxony Road, away from lagoon)**



**Saxony Canyon (looking north, up
Saxony Road, toward the lagoon)**



TUES 22b

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FEB 1 0 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

215100
B Pi
7862 Via Coscoja
Carlsbad CA 92009

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

Subject: Application for Greenhouse Construction by Outback Growers
Appeal Number: A-6-ENC-99-140

Dear Sir/Madam:

We hereby request that The Coastal Commission consider the Appeal associated with the possible construction of 14,000 square feet of greenhouses in the Encinitas coastal plain along Saxony Road.

The residents of several communities within Encinitas, specifically Quail Gardens, Blue Lagoon, Skyloft, and Monte Mira, all want to protect the north end of Saxony Road from a possible, environmentally damaging plan to construct a commercial growing operation along the wetland corridor feeding the Batiqitos Lagoon from the south.

Years ago, this parcel of land along the southern California coast was zoned RR-1 in the Encinitas Master Plan allowing the construction of housing and, if a "Minor Use Permit" could be obtained from the City, commercial green houses. It is the evaluation process of such an application for the parcel's use as a commercial growing operation that we feel has been flawed. *We do not believe that a detail review has sufficiently been performed on the possible, environmentally damaging aspects of greenhouse operations on this site.* We are hoping that The Coastal Commission, with its assigned responsibilities, will assure that this detail is in fact provided and that it clearly shows NO ENVIRONMENTAL IMPACT to the area, now or in the future.

Sincerely,



SAME LETTER WITH 143
SIGNATURES SUPPORTING
SUBSTANTIAL ISSUES