

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-33

Applicant: Jack Lichty

Agent: Don Edson Architect, Inc.,
Chris Cohen-Richards

Description: Construction of two, 2- and 3-story, 30 ft. high, four-unit apartment buildings totaling 4,212 sq. ft. and 4,100 sq. ft., respectively, on two adjacent parcels totaling 27,834 sq.ft. also proposed is the vacation of an alley separating the two sites.

	<u>Montalvo Site</u>	<u>Mentone Site</u>
Lot Area	13,937 sq. ft.	13,897
Building Coverage	3,100 sq. ft. (22 %)	4,000 (29%)
Pavement Coverage	1,000 sq. ft. (7%)	900 (6%)
Landscape Coverage	9,837 sq. ft. (71%)	8,997 (65%)
Parking Spaces	8	8
Zoning	RM-3-7	RM-3-7
Plan Designation	Multi-family	Multi-family
Project Density	4 dua	4 dua
Ht abv fin grade	30 feet	30 feet

Site: Eastern terminus of Montalvo and Mentone Streets, Point Loma
 (Peninsula), San Diego, San Diego County. APNs 449-865-11, 14

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed residential development with a number of special conditions. The project raises concerns over potential impacts to biological and visual resources and water quality. The subject development involves construction of two 4-unit apartments on two sites directly adjacent to Famosa Slough. The applicant has designed the project with a 50 ft. wetlands buffer that the applicant proposes to revegetate. The California Department of Fish and Game (CDFG) and the Commission's

staff biologist have determined that the proposed revegetated 50-foot buffer is adequate to protect the Slough. Special Condition #1 requires recordation of an open space deed restriction to ensure that the proposed 50-foot wetlands buffer is maintained. The condition allows for the removal of all exotic and invasive plant species in the wetlands buffer and the replanting of the buffer with native, drought-tolerant plant species. The applicant is also proposing to install a pedestrian trail with signage and fencing in the wetlands buffer. Staff recommends approval of the trail because it will enhance public access around the Slough. Special Condition #1 allows for construction of the trail subject to the review and approval of the California Department of Fish and Game.

Special Condition #2 addresses landscaping and requires the replanting of the buffer area with native, drought-resistant, fire-retardant landscaping, as proposed by the applicant. Portions of the site will be visible, although at a distance, across the slough from the public street (West Point Loma Boulevard) and public recreational areas located to the north of the site. Protection of visual resources is addressed through landscaping requirements in Special Condition #2 and exterior treatment of the proposed structures through Special Condition #3. A monitoring program is proposed for the revegetation of the buffer area and Special Condition #4 addresses submittal of annual monitoring reports. Special Conditions #5, and 8 address water quality; they require submittal of grading and erosion control plans and a Best Management Practices Program. With the proposed conditions, potential impacts associated with the proposed development will be reduced to the maximum extent feasible and the project can be found consistent with applicable Coastal Act policies.

Substantive File Documents: Certified Peninsula Community Plan and City of San Diego LCP Implementing Ordinances; Famosa Slough Enhancement Plan; CCC Files #6-95-128; #6-99-82

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-00-33 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Open Space Deed Restriction. No development, as defined in Section 30106 of the Coastal Act, shall occur in the area extending from the east property line to 50 feet upland of the wetlands boundary as shown on Sheet 4 of the plans by Don Edson Architects, AIA dated 4/17/00 approved pursuant to Special Condition #2 of CDP #6-00-33 except for:

(1) Removal of existing invasive or exotic plant species and planting of native drought-resistant, fire retardant vegetation; (2) development necessary for the installation of a public trail, including installation of signage along the trail, grading, and placement of granite; (3) installation of upland fencing and/or landscaping to demarcate the boundary between the public and private areas; and (4) removal of the chain link fence near the eastern property line.

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director which reflects the restrictions stated above on the proposed development in the designated open space. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Revised Landscape and Fence Plan/Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit

to the Executive Director for review and written approval, a revised landscape plan, developed in consultation with the California Department of Fish and Game, and approved by the City of San Diego. The plan shall be in substantial conformance with the plan by Don Edson Architects, AIA dated 3/23/00 submitted with this application but shall be revised to reflect the following:

- a. The type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features shall be included. All nonnative vegetation shall be removed from the 50-foot wetland buffer (as described in Special Condition #1), which shall be replanted with native, non-invasive, drought-resistant, fire-retardant landscaping acceptable to the Executive Director.
- b. A least 14 specimen size trees (minimum 24-inch box) shall be planted along the east-facing portion of the apartment buildings outside the 50 ft. buffer to the maximum extent feasible. Special emphasis shall be placed on screening of the structures from views from West Point Loma Boulevard, the Slough and the proposed access trail.
- c. A planting schedule indicating that the 14 box size trees shall be planted within 60 days of completion of residential construction and the revegetation of the wetland buffer (i.e., the removal of non-native vegetation and planting of the native, non-invasive, drought tolerant vegetation) shall occur within 60 days of completion of residential construction.
- d. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- e. The existing chain link fence near the eastern property lines of both sites shall be removed after the third year of vegetation establishment, in consultation with the City Department of Parks and Recreation.

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

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the above requirements. The restriction shall provide that landscaping shall be implemented in accordance with plans approved pursuant to Special Condition #2 of CDP #6-00-33. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be

recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Exterior Treatment/Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence. The color of the residential structures and roofs permitted herein shall be restricted to earthen tones compatible with the surrounding environment (i.e., shades of green, brown and grey, with no white or light shades, no red tile roof and no bright tones except as minor accents. All windows shall be comprised of non-glare glass).

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

PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the above requirements. The restriction shall provide that the color of the residential structures and roofs permitted herein shall be restricted to earthen tones compatible with the surrounding environment (white tones shall not be acceptable) in accordance with Special Condition #3 of CDP #6-00-32. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Revegetation/"As Built" Plans. Within 15 days of completion of the revegetation of the wetland buffer area in accordance with the approved landscape plan, the permittee shall submit "as built" plans that document the type and location of all vegetation in the wetland buffer. The "as built" plans shall include a photographs and a site plan. In addition, at the end of each year commencing with one year after completion of revegetation of the buffer area, the applicant shall submit to the Executive Director, for review and written approval, annual monitoring reports performed by a qualified biologist that include information on the extent of coverage, rate of growth and any necessary remediation for the duration of the monitoring program (five years).

5. Grading/Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site and grading plans approved by the County with plan notes specifically incorporating the following requirements:

- a. All grading activity shall be prohibited between November 15th and April 1st of any year. All areas disturbed shall be replanted immediately following grading and prior to the beginning of the rainy season.
- b. All areas disturbed by grading shall be planted within 60 days of the initial disturbance and prior to November 15th with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.
- c. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. All areas disturbed but not completed during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins and silt traps shall be utilized in conjunction with plantings to minimize soil loss during construction.

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

6. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or amendment to this permit shall be obtained prior to the disposal.

7. Project Timing. No grading or construction shall occur within the nesting period of sensitive avian species located within 500 feet of the San Elijo Lagoon County Park and Ecological Reserve unless approved in writing by the resource agencies.

8. Polluted Runoff Control Plan/ Best Management Practices (BMPs). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for the review and written approval of the Executive Director, a polluted runoff control plan. The plan shall incorporate structural and non-structural Best Management Practices (BMPs) designed to mitigate (infiltrate or treat) the volume of runoff. The plan is subject to the following requirements, and shall, at a minimum, include the following components:

- a. Post-development peak runoff rates and volumes shall not exceed current levels.

- b. Drainage from all on-site parking areas, roofs, and driveways susceptible to runoff, shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons and heavy metals, and other particulates, prior to discharge off-site into the existing street drainage system.
- c. Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
- d. Solid waste shall be removed regularly and receptacles for trash and recyclable materials shall be placed adjacent to any common facilities.
- e. A BMP maintenance agreement, which includes an acceptance and/or dedication of operation and maintenance responsibility to the applicant/owner or successor in interest upon issuance of a Coastal Development Permit, shall be in effect until such responsibility is effectively accepted by another appropriate entity, such as a homeowner's association.

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

9. Timing of Construction/Staging Areas/Access Corridors. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final staging and access corridor plans for the proposed development. Said plans shall include the following:

- a. The plans shall indicate the locations, both on- and off-site, which will be used as staging and storage areas for materials and equipment during the construction phase of this project. No equipment or materials shall be staged or stored on within the wetlands and/or the buffer area.
- b. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of vehicular traffic flow on coastal access routes (West Point Loma Boulevard, in this instance) and pedestrian access to areas of Famosa Slough not directly involved in construction of the project;

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

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the construction of two, four-unit apartment buildings on two adjacent vacant sites adjacent to Famosa Slough in the Peninsula community of the City of San Diego. The southernmost site is 13,937 sq.ft. in size and is located at the eastern terminus of Montalvo Street (herein referred to as "Montalvo site") where it abuts Famosa Boulevard (paper street). The northernmost site is 13,897 sq.ft. in size and is located at the eastern terminus of Mentone Street (herein referred to as "Mentone site") where it also abuts Famosa Boulevard. The two sites are separated by an alley. Both of the sites slope downwards in elevation from west to east. Each site is triangular in shape, with the widest portion of the site facing the Slough (reference Exhibit No. 3). At the far eastern portion of both sites, there is wetland vegetation. On the Montalvo site, the area of the site that contains wetlands is 885 sq.ft. On the Mentone site, the area of the site that contains wetlands is 2,278 sq.ft.

The proposed building on the Montalvo site will be 4,212 sq.ft. in size, three stories in height and 30 feet high. Each of the proposed four units within the building will contain two bedrooms. Two of the units will be 900 sq.ft. in size, one unit will be 1,120 sq.ft. and the other will be 1,202 sq.ft. A total of eight parking spaces are proposed in two tandem garages and two regular two-car garages. Access for two of the garages will be taken off of Montalvo Street and access for the other two garages will be taken from the alley north of the proposed building. Grading will consist of 86 cy. of cut and 362 cy. of fill to level the site for development.

The proposed building on the Mentone site will also be 4,100 sq.ft. in size, three stories in height and 30 feet high. Each of the proposed four units will also contain two bedrooms. Two of the units will be 912 sq.ft. in size, one unit will be 1,050 sq.ft., and the largest will be 1,450 sq.ft. in size. A total of eight parking spaces are proposed in two tandem garages and two regular two-car garages. Access for two of the garages will be taken off of Mentone Street and access for the other two garages will be taken from the alley south of the proposed building. This site is steeper than the Montalvo site and, as such, grading will consist of 634 cy. of cut and 88 cy. of fill with 546 cy. of material to be exported off site.

In addition, the applicant is also proposing to vacate the alley located between the two sites. A pedestrian path on the site just east of the proposed structures is also proposed

which will include a retaining wall on its western edge and signage at various points along the path. A 50 ft. wetlands buffer is proposed with the project. Proposed landscape improvements in the buffer area consist of removal of invasive and weedy plant species and revegetation of the area with native plant species.

Famosa Slough is an area of original jurisdiction and the standard of review is, therefore, Chapter 3 policies of the Coastal Act. The Commission has certified an LUP applicable to Famosa Slough which is referenced as the Peninsula Community Plan. This plan provides guidance to the Commission in its review of development in, and adjacent to, Famosa Slough.

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

Section 30231

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

Section 30240

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

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

As cited earlier, the subject site is located immediately adjacent to, and west of Famosa Slough. Famosa Slough, as noted in the wetlands delineation report performed for the proposed development, is a 37 acre remnant of Mission Bay wetland located immediately south of Mission Bay and the San Diego River flood control channel. Culverts provide a connection between the slough and a tidal channel that extends northward to the San Diego River flood control channel. Famosa Slough was historically part of the wetland associated with the San Diego River delta and Mission Bay but has become isolated by construction of roadways, flood control channels and Mission Bay. With regard to sensitive biological species, Famosa Slough includes open salt pond/open water, intertidal mudflat, southern coastal salt marsh, coastal brackish marsh, salt panne, coastal

freshwater marsh, southern willow scrub, disturbed fields, and urban disturbed/exotic plantings.

According to the wetlands delineation report, the Slough is utilized by a variety of wildlife species with wintering shorebirds and waterfowl being the most abundant. Freshwater marsh occurs just outside of the project boundaries which supports a variety of animal species. Several individuals including yellow-rumped warbler, Anna's hummingbird and mourning dove were observed. Famosa Slough is also considered a significant resting site for the migrating wildlife, and as such, is a popular bird watching area. Other species known to use the area include mallard, pintail, great blue heron, black-necked stilt, and sensitive species such as Belding's Savannah sparrows and the endangered light-footed clapper rail.

The certified Peninsula Community Plan identifies Famosa Slough as an important wetland environment that should be designated for open space, dedicated for park purposes and restored as a wetland habitat. This goal is currently being met in that the City has purchased the Slough and is now in the process of restoring and enhancing it. Since much surface run-off from surrounding development and streets drains into the Slough, a major aspect of the restoration and enhancement of the Slough is the construction of wetland treatment ponds that were permitted under CDP #6-99-82 in August, 1999. These treatment ponds were constructed in an area of the Slough that consisted of freshwater marsh. That area was the lowest quality area of the Slough. These treatment ponds will collect run off directed to the Slough and filter it before it is discharged into the higher quality areas of the Slough. The treatment ponds contain freshwater wetland vegetation, which is essential to the ponds ability to remove pollutants from run-off.

The project site consists of two parcels separated by an alley at the streetends of Montalvo and Mentone Streets. These parcels are on a slope that descend in elevation from west to east toward the Slough. The area of the Slough closest to the parcels is the treatment ponds. The freshwater wetland vegetation of the treatment ponds extends toward the property boundary between the subject site and the City property. In some areas along the property boundary the freshwater vegetation extends up to the property boundary. In other areas, there are invasive, nonwetland species along the property boundary. On the subject property there is some remnant southern coastal saltmarsh vegetation, including saltgrass, pickleweed and saltwort.

Development on the project site is constrained by the site's proximity to the wetlands. Coastal Act policies 30231 and 30240 provide for protection of wetlands and environmentally sensitive habitat areas. The Slough is a wetlands. The Commission also finds that it is an environmentally sensitive habitat area. In order to protect the biological quality of wetlands pursuant to Section 30231 and to prevent significant disruption of environmentally-sensitive habitat areas pursuant to Section 30240 of the Coastal Act, the Commission has in the past required a 100-foot buffer between new development and environmentally-sensitive habitat area wetlands. Buffer areas provide physical space between development and environmentally sensitive habitat area wetlands. This

intervening space acts as a distance barrier between human activity and the resource, as well as a transitional habitat area for species that use the area. It also functions as a percolating medium where the water from the lagoon, etc., is allowed an area to absorb into the ground, etc. For these reasons, there is less of a chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) in this area will find its way into the slough. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas.

Commission staff and the applicant consulted with the Department of Fish and Game (CDFG) to determine an appropriate buffer for the subject site. The subject site is highly constrained in that if a 100-foot buffer from the edge of the on-site wetlands is provided, it would leave only a very small corner on each parcel, 450 sq.ft. in size for the Montalvo site and 114 sq.ft. for the Mentone site, for development. The CDFG determined that a 50-foot buffer would be adequate to protect the wetlands associated with the Slough provided that several features were incorporated into the project design. CDFG found that the reduced buffer was not expected to result in adverse impacts to Famosa Slough wetlands. In a letter dated 7/8/99 from CDFG to the applicant (ref. Exhibit No. 5), the reasons for permitting a reduced buffer for the subject proposal are listed as follows:

"1. lands adjacent to the Lichty property and bordering Famosa Slough are already developed and occupied by multi-family dwellings. Wetland functional values would likely not be comprised by a reduction of the recommended 100-foot wide buffer on this property."

2. Steep topography would be preserved in the minimum 50-foot wide wetland buffer which may effectively reduce human disturbances to the wetland."

CDFG also recommended that in lieu of the 100-foot buffer that development of the property include, in part, that the buffer area is permanently conserved through a biological easement to an appropriate agency and that exotic plants in the proposed buffer be removed and replacement with native plants. It was also recommended that vegetation screening/barrier within the upper portion of the buffer area be installed; that runoff from the site be directed away from the Slough into the storm drain system; and, that the applicant contribute a monetary sum to the Friends of Famosa Slough fund for enhancement measures of the slough.

In response to these recommendations from CDFG, the applicant has designed the proposed project to incorporate all of the above referenced measures. The applicant has also indicated that in the future, the 50-foot buffer area will be dedicated or transferred to the City of San Diego as part of the slough where the area will be permanently preserved and the buffer maintained. In addition, the applicant has submitted a preliminary landscape plan which includes the removal of all exotic, invasive and weedy plant species within the proposed buffer area and the replacement with other native vegetation recommended by CDFG. As part of the proposed landscape/revegetation plan, the applicant has also proposed several shrubs within the upper portion of the buffer area for

screening purposes. Lastly, the applicant has proposed to contribute a monetary sum to the Friends of Famosa Slough, which is responsible for implementing restoration and enhancement efforts in association with the Famosa Slough Enhancement Plan. The monetary contribution will be determined by computing the number of acres lost by not retaining a 100-foot wide buffer multiplied by \$20,000/acre.

The Commission staff biologist has also visited the site and reviewed the submitted wetlands delineation and concluded that the delineation is accurate and concurs that the proposed 50 ft. buffer will be sufficient to assure protection of the Slough and environmental resources. The biologist determined that a 50-foot buffer would be adequate in part because the subject property is located in a highly urbanized area and the slough is completely surrounded by existing development and public roadways. In addition, the buffer will be measured from the on-site wetlands. These remnant saltmarsh wetlands are not as high-quality as other areas of the Slough. In many areas, the freshwater wetlands of the treatment ponds are located approximately 20-30 feet further west from these on-site wetlands. Thus, in many areas there will be a greater than 50-foot buffer from the freshwater wetlands. For all of these reasons, the staff biologist has concluded that a 50-foot buffer is adequate in this case. The Commission finds that the proposed 50-foot buffer is consistent with sections 30231 and 30240 of the Coastal Act in light of the conclusions of the staff biologist, the recommendations of CDFG, and the fact that the applicant proposes to significantly improve the buffer by removing all of the non-native plant species and replanting with native species.

Special Condition #1, requires that the applicant record a deed restriction indicating that development is prohibited in the on-site wetlands and in the area extending 50 feet upland of the wetlands boundary (reference Exhibit No. 4). This condition will ensure that the proposed buffer area and on-site wetlands will be maintained for the life of the project. The open space deed restriction, would however, specifically allow for some improvements in the buffer area to include a public trail, retaining wall on its western edge, fencing near the eastern property line, etc. Both the California Department of Fish and Game and the Friends of Famosa Slough specifically require that the fencing near the eastern property line be left in place so that the public will walk on the proposed trail upland from the lagoon so as to deter public access near the wetlands. The proposed trail can be found consistent with Sections 30231 and 30240 of the Coastal Act because it is a passive recreational use associated with nature study and viewing. Both CDFG and the City of San Diego Parks and Recreation Department support the proposed location of the trail. The applicant revised the proposed trail alignment recently to meet the concerns of resource agencies such that it would be constructed in the uppermost portion of the 50-ft. buffer so that it would be located as far from the wetlands as possible. In addition, as noted earlier, the Famosa Slough Enhancement Plan contains policies addressing the installation of a trail in this location to enhance public recreation and use of this area for nature study, etc. As such, the proposed trail within the buffer area can be found consistent with applicable Coastal Act policies.

Three special conditions address the biological aspects of the proposed development. Special Condition #2, in part, addresses the replanting of the buffer area with native

vegetation through submittal of a revised landscape plan. Special Condition #4 requires submittal of the "as built" plans for the area of the buffer to be revegetated including . copies of the annual monitoring reports. Condition #7 notifies the applicant that no development shall occur during the seasonal restrictions imposed by the other resource agencies. The restrictions are imposed to prevent construction activities at those times and in those places where it could adversely affect several threatened and endangered species that use the project area for breeding and foraging. In addition, the condition requires a plan clearly delineating staging and storage areas for project implementation.

In summary, the proposed development will not involve any direct impacts to wetlands resources. In addition, indirect impacts associated with the development will be reduced to the maximum extent feasible through provision of Special Conditions. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the cited resource protection policies of the Coastal Act.

3. Water Quality. The following Coastal Act policy is applicable to the proposed development and states:

Section 30231

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

The project site is located at the southern end of Famosa Slough, an existing wetland resource area. Although the area surrounding the slough is fully built-out, there are nearby natural landforms which contribute sediments; trash and pollutants from domestic pets, fertilizers, pesticides, etc. also accumulate in the storm drains and are washed downstream. The applicant has indicated that all site drainage from the proposed new development will be directed into the existing storm drain system at Montalvo Street, which drains into the new wetland treatment ponds in Famosa Slough. The purpose of the treatment ponds is to collect the stormwater entering the area and treat it to remove sediments and pollutants before it enters the main body of the slough. As designed, freshwater marsh vegetation has been planted in the ponds will absorb and contain the pollutants. The vegetation (cattails and bullrush) will be periodically cleared out and replanted as it becomes saturated with pollutants, so that the contaminants do not re-enter the slough and to aid in vector control. Inflows are anticipated to move slowly from pond to pond, then out into the main body of the slough in a much cleaner condition than what previously occurred.

The potential discharge of additional pollutants in addition to the usual runoff associated with new impervious surfaces into the identified downstream slough is also associated with the proposed development. To address potential impacts from runoff associated with the proposed development, Special Condition #8 requires implementation of best management practices for the proposed project to further assure that the water quality of the Slough will not be adversely affected. The BMPs include, in part, that post-development peak runoff rates and volumes not exceed current levels, that drainage from parking areas and driveways be directed through some form of filtration device that removes contaminants, etc. before being discharged off-site into the City storm drain system and that solid waste be removed regularly and receptacles for trash and recyclables be placed next to common facilities. The plan must be approved by the City of San Diego, prior to issuance of the coastal development permit. The applicant may add BMPs as appropriate in the final plan submitted in compliance with the condition.

Grading is also proposed for the site consisting of 86 cy. of cut and 362 cy. of fill grading for the Montalvo site and 634 cy. of cut and 88 cy. of fill with 546 cy. of material to be exported off site for the Mentone site. The typical rainy season restriction begins November 15th and ends on March 31st of any year. As a result of the proposed grading, there is the potential for excavated soils to be temporarily stockpiled on the site during construction activities that could be carried downstream to the Slough particularly during rainy weather. This is particularly true for the subject site due to its close proximity to the Slough. In order to avoid impacts to downstream resources, Special Condition #5 requires submittal of a final grading/erosion control plan which includes the installation of permanent and temporary erosion control devices prior to commencement with grading activities.

In addition, construction is typically not permitted during the breeding season (i.e., February 15th to May 31st of any year) of the sensitive bird species that use the lagoon for habitat. As such, Special Condition #7 prohibits construction activities during this time frame. Any exceptions to the construction schedule must be reviewed and approved in writing by the California Department of Fish and Game.

Thus, as conditioned, to implement temporary and permanent erosion control measures and best-management practices regarding the management and reduction of non-point source urban pollution and runoff, the proposed development will not adversely impact water quality or have a significant adverse impact to adjacent downstream resources. In addition, since the location of the disposal of graded spoils has not been identified, Special Condition #6 requires the applicant to identify the location of the graded spoils and that if the site is located within the coastal zone, a separate coastal development permit or amendment to this permit will be required.

In summary, while the proposed development is located directly adjacent to Famosa Slough and its sensitive resources, with required conditions, the potential for sediment and adverse water quality impacts have been reduced to the maximum extent feasible. Therefore, the Commission finds that the development, as conditioned, is consistent with Sections 30231 and 30240 of the Act.

4. Public Access. Many policies of the Coastal Act address the provision, protection and enhancement of public access opportunities, particularly access to and along the shoreline. In the subject inland area, the following policies are most applicable, and state, in part:

Section 30210

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

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

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

Famosa Slough is within the highly urbanized Point Loma/Ocean Beach area of San Diego, and West Point Loma Boulevard, which separates the main body of the slough from the northern channel connecting with the San Diego River, is a major coastal access route to the municipal beaches west of the site. Implementation of the proposed development will not require any closures of West Point Loma Boulevard, nor will it affect beach access in any way.

The Slough includes public trails and interpretive signage and provides a low-cost form of public recreation. The proposed project will result in the construction of an approximately 350-linear foot long, six-foot wide public access trail across the lower and eastern portions of the subject parcels which will connect to the existing trail located further north of the project site. The provision of such a trail is called out in the Peninsula Community Plan and as such, the proposed development, will result in enhancement of public pedestrian access around the Slough. The trail will be composed of decomposed granite and will be ADA-accessible. The trail is proposed to be located within the upper-most portion of the 50-foot buffer area between the wetlands of the slough and the proposed apartment buildings. Signs are proposed to be installed along the trail advising the public to stay out of the revegetated areas of the buffer area. An existing 4-5 ft. high chain link fence is located near the eastern property line of both sites. Both the California Department of Fish and Game and the Friends of Famosa Slough specifically require that this fence be left in place so that the public will walk on the

proposed trail upland from the Slough so as to deter public access near the wetlands. However, as noted in a letter dated 1/20/00 from the City Department of Parks and Recreation, the policies of the Famosa Slough Enhancement Plan and City Park's policy provide for minimizing fencing within preserves and parks. As such, the City advises that the fence be left in place until the third year of the vegetation establishment in the buffer and to keep the new growth from being trampled. However, the City specifically recommends that the fence be removed before the end of the mitigation monitoring period. The City also noted that other types of prohibitive vegetation may be used in lieu of fencing such as cactus and California rose.

In addition, access to the public trails in the northern part of the Slough will remain unaffected by the proposed construction on the subject parcels. Thus, access to the portions of the Slough not directly impacted by project construction will not be affected by the proposed development. Special Condition #9 requires submittal of a final plan delineating the construction staging/storage areas and also requiring submittal of a construction schedule which incorporates the seasonal restrictions imposed by other agencies to protect biological resources. The Commission thus finds that the proposed project will not have a significant adverse impact on existing public access in the area, even during construction but in fact will enhance public access opportunities in this area. Therefore, the Commission finds the development, as conditioned to address other concerns, consistent with the cited access policies of the Coastal Act.

5. Visual Resources. The following policy of the Coastal Act addresses visual resources, and states, in part:

Section 30251

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

The subject sites are located within a highly urbanized area of the City of San Diego and adjacent to Famosa Slough which is open space. The proposed development will not result in the removal of any native vegetation nor impacts to wetland vegetation off-site. The proposed development includes the removal of existing non-native species and replacement with native plant species which compliment the adjacent wetland vegetation associated with the slough. Upon completion of the project, the proposed landscaping within the 50-foot buffer area will be more natural in appearance than the existing exotic and non-native species that are presently located in this area adjacent to the wetlands. Construction impacts on visual resources will be short term and unavoidable.

With regard to visual impacts associated with the construction of the apartment buildings, the project site is visible from across the slough to the northeast from West Point Loma Boulevard as well as from Valeta Street. Other areas along the eastern portions of the

Slough are not as accessible for pedestrian use and do not raise a concern. As viewed from West Point Loma Boulevard looking southwest, there is a variety of development along the banks of the Slough. Most of the development is one and two stories in height; however, on Montalvo there are several buildings that are three-stories in height. The proposed apartment buildings will be located adjacent to these structures and will become the most visually prominent structures as viewed from across the Slough.

The Commission has typically required the visual buffering, through the installation of tree elements. As such, landscaping is also important in minimizing visual impacts. The applicant has submitted a preliminary landscape plan. Although the preliminary landscaping plan indicates installation of several native species of plants in the buffer area east of the proposed multi-residential structures, the plants will attain a height of 10-15 ft. and will be located in the upper buffer area. However, in order to effectively screen the apartment buildings from across the slough, further mitigation of the visual impact of the structures as seen from West Point Loma Boulevard, must be required. For this reason, the Commission is requiring a revised landscape plan (Special Condition #2) that places special emphasis on the use of trees to screen the apartment buildings while preserving views from the structures. The revised landscape plan shall indicate the placement of at least 14 specimen size tree (24-inch box minimum) facing both to the east and towards the Slough, arranged to maximize screening of the structures from views from West Point Loma Boulevard. To the maximum extent feasible, the trees shall be planted inland of the required 50-foot buffer in close proximity to the apartment buildings. The required trees shall also be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences.

To further reduce the visual impacts associated with the proposed development, Special Condition #3 requires recordation of a deed restriction that requires exterior building materials to be of an earth tone (no whites or bright shades) to blend in with the natural character of the area. Both of the special conditions which address landscaping and exterior color treatment are required to be recorded in a deed restriction for the subject site so that requirements run with the land should the parcel be sold in the future.

With regard to compatibility with the character of the surrounding community, the lands surrounding Famosa Slough are zoned predominantly for multi-family use. The land uses immediately adjacent to the channel consist solely of multi-family use. The Slough is bordered by commercial uses along the northwestern edge, public school use across the street at the southernmost end and multi-family and residential uses along all other edges. As such, the proposed condominium buildings will be compatible in size and scale with the character of the surrounding development. In summary, the Commission finds that, as conditioned, potential impacts to visual resources associated with the proposed development will be reduced to the maximum extent feasible, consistent with Section 30251 of the Act.

6. 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 can be made for the proposed development, as conditioned.

The subject site is zoned and planned for multi-family residential development. The proposed improvements are fully consistent with those designations. The site is within the Commission's area of original jurisdiction, and is being reviewed under Chapter 3 of the Coastal Act. The preceding findings have demonstrated that the proposal, as conditioned, is consistent with all applicable Chapter 3 policies. Additional permits are likely required from other state and federal agencies, including the U.S. Army Corps of Engineers, California Department of Fish and Game and the RWQCB. Special Condition #10 requires submittal of these permits and advises that amendments to this permit could be required if the other agencies significantly modify the project through their approval processes. Therefore, the Commission finds that approval of the development, as conditioned, should not prejudice the ability of the City of San Diego to continue implementation of their fully certified LCP.

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

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the biological and marine resources, water quality, visual resource and public access policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development

shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Project Site

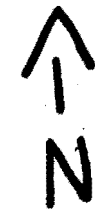
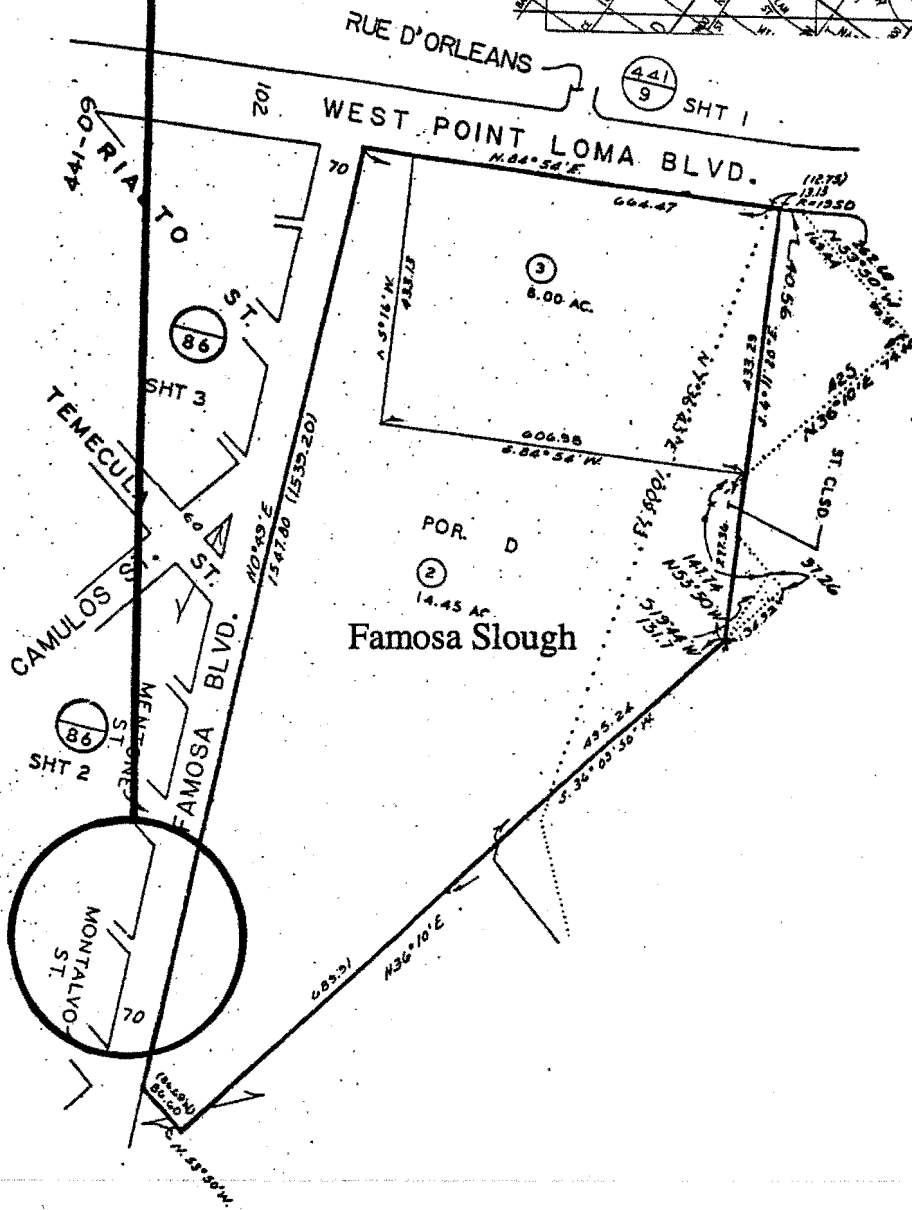
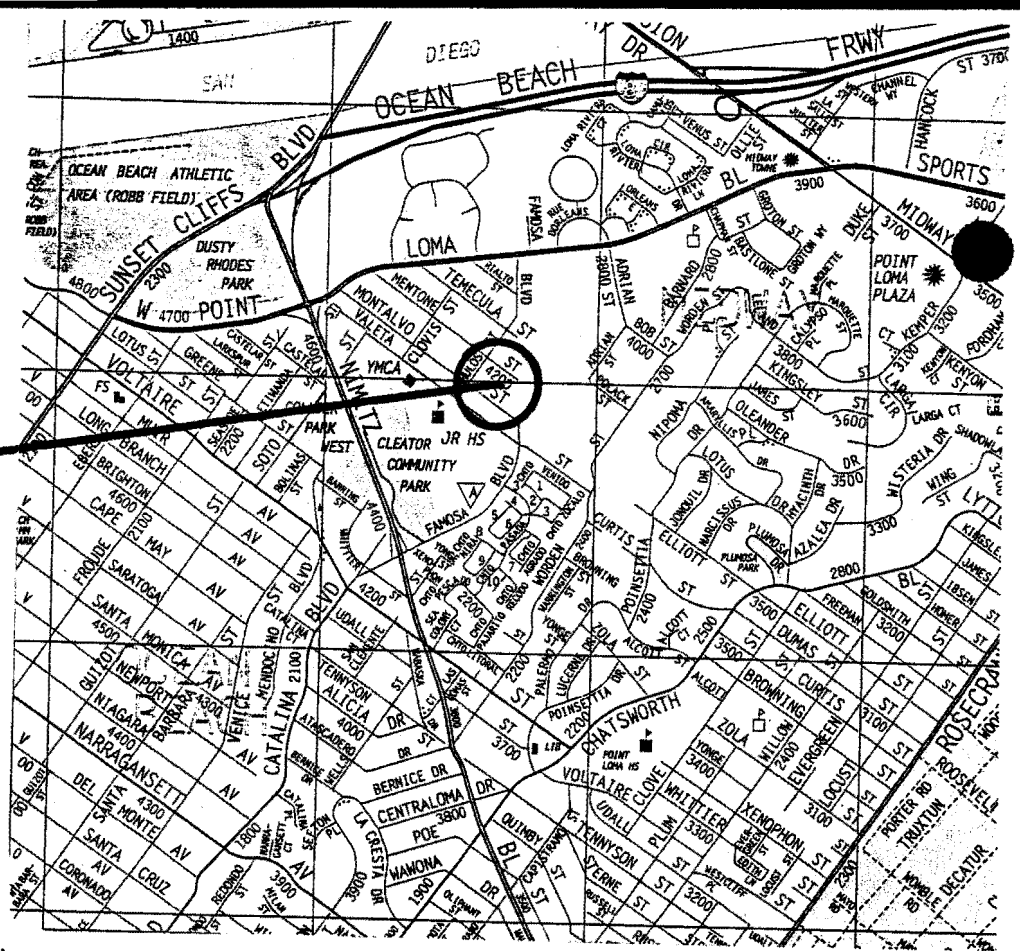

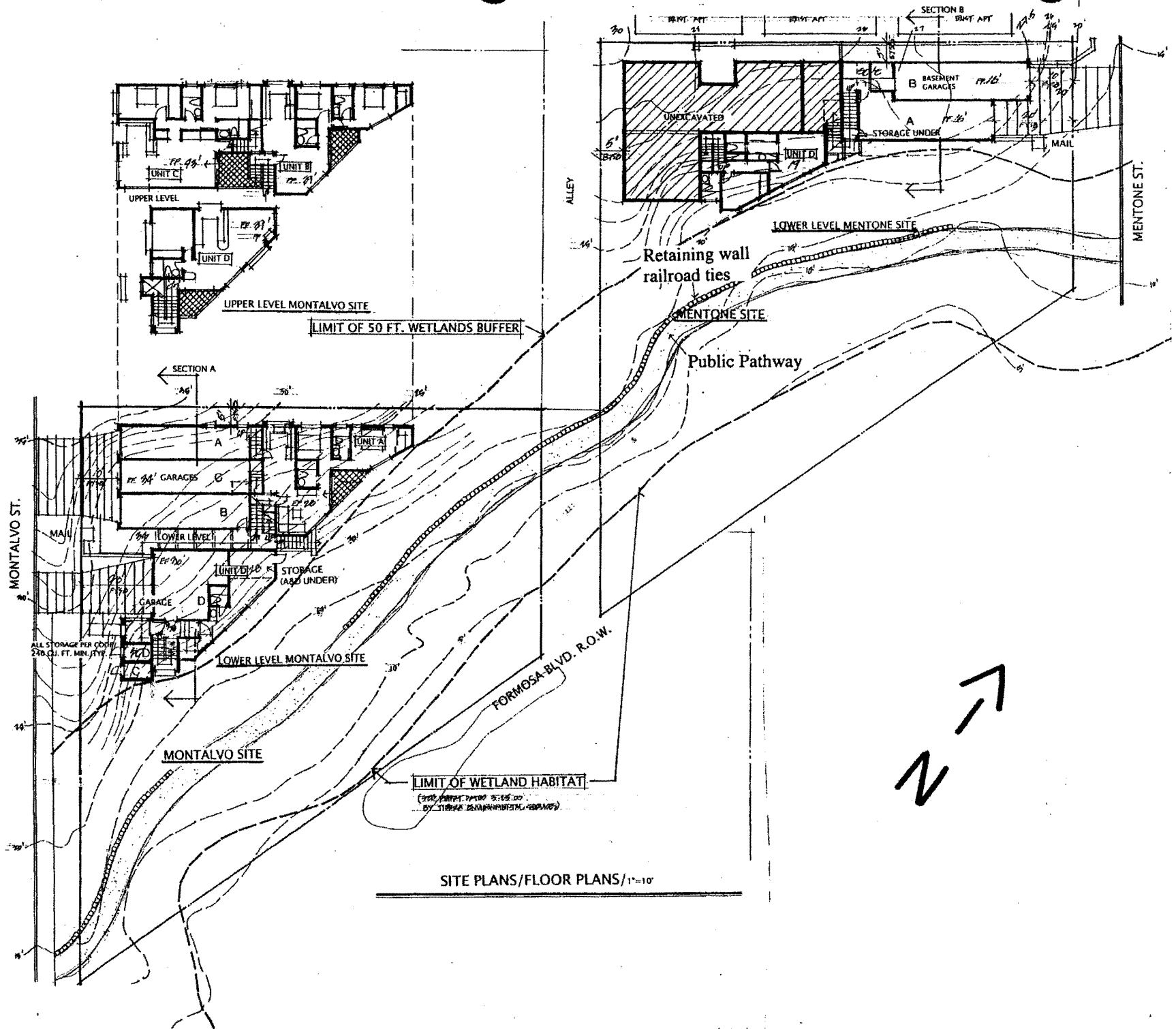


EXHIBIT NO. 1
APPLICATION NO.
6-00-33
Location Maps
 California Coastal Commission



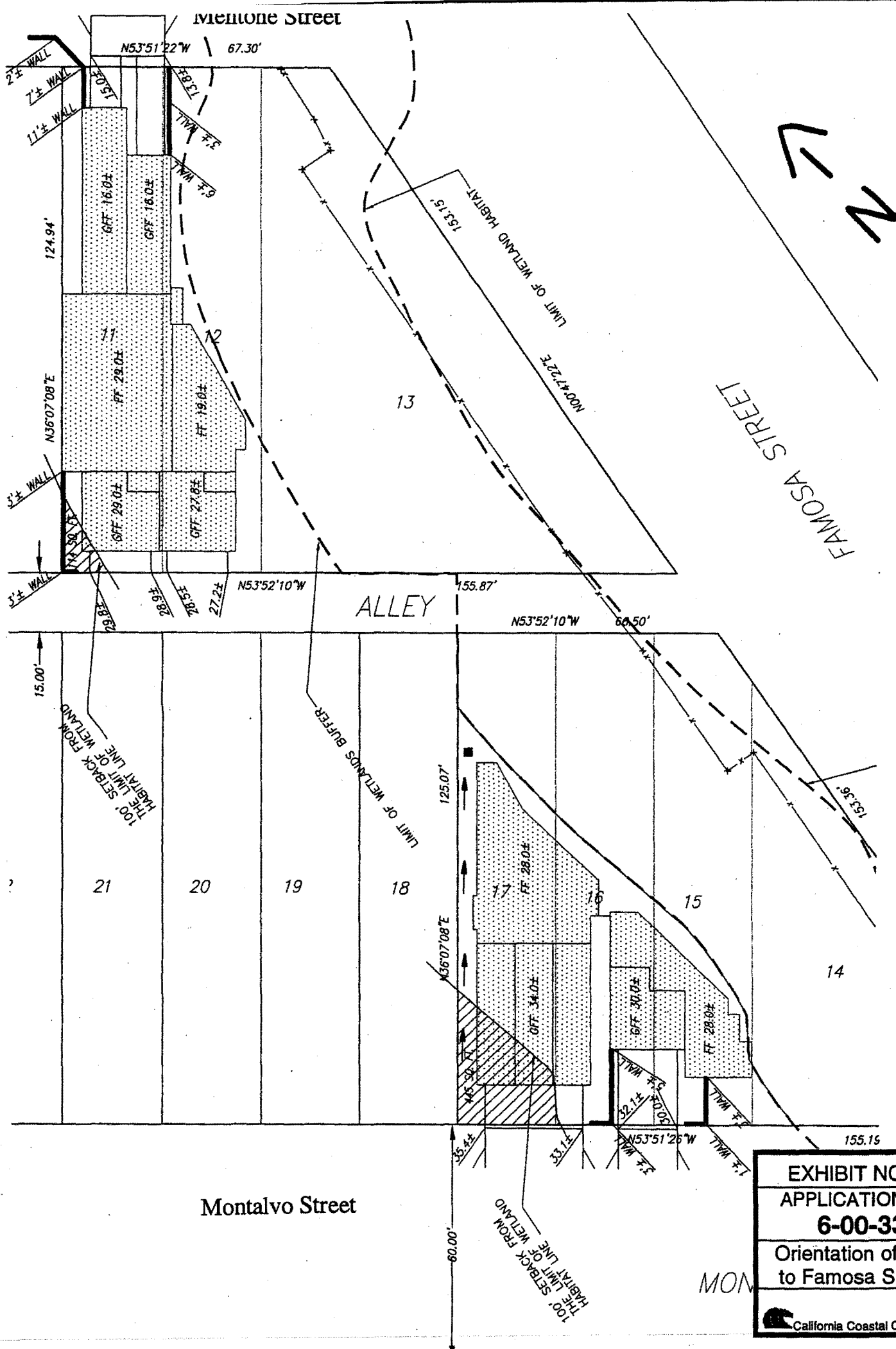
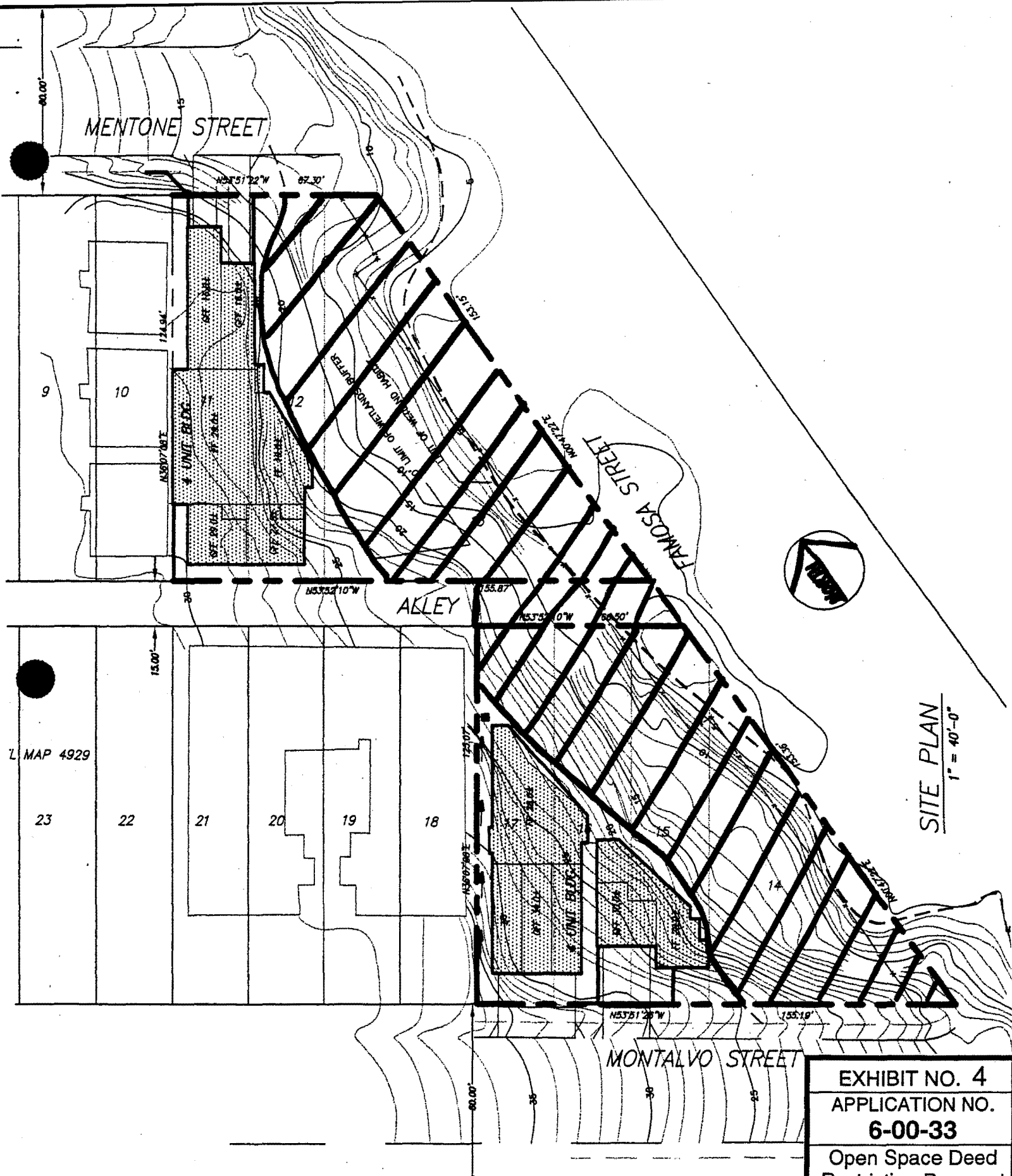



EXHIBIT NO. 3
APPLICATION NO.
6-00-33
Orientation of Sites to Famosa Slough
California Coastal Commission



L MAP 4929

SITE PLAN
1" = 40'-0"

EXHIBIT NO. 4
APPLICATION NO.
6-00-33
Open Space Deed Restriction Pursuant to Special Condition Number 3 (In Concept Only)
 California Coastal Commission

DEPARTMENT OF FISH AND GAME

Natural Community Conservation Planning

19 Viewridge Avenue

San Diego, CA 92123

(619) 467-4251

FAX 467-4235



July 8, 1999

Mr. Chris Richards
Don Edson Architects
5752 Oberlin Drive, Suite 104
San Diego, CA 92121

Recommendation for Wetland Buffer Width for the Lichty Property

The Department of Fish and Game (Department) has reviewed the request by Mr. Jack Lichty to reduce the wetland buffer on his project site situated between Montalvo Street and Mentone Street, City of San Diego (City) (Assessor's Parcel #449865; lots 8 to 14) from 100 feet to approximately 50 feet. The Department would consent to a minimum 50-foot wide (and wider where feasible) buffer that is maintained between any future development project on the Lichty property and the limit of jurisdictional wetland habitat of Famosa Slough that was delineated pursuant to the U.S. Army Corps of Engineers standards on May 15, 1999. This 50-foot wide buffer will allow some economic development of the Lichty property (number of units is currently unknown) and will also provide adequate protection to Famosa Slough wetlands.

A minimum 50-foot wide buffer, instead of the 100-foot wide buffer that is typically recommended to separate development projects from wetland resources, may be permitted in this particular case. This reduced buffer is not expected to create additional impacts to Famosa Slough wetlands because of the following reasons:

1. lands adjacent to the Lichty property and bordering Famosa Slough are already developed and occupied by multi-family dwellings. Wetland functional values would likely not be compromised by a reduction of the recommended 100-foot wide buffer on this property.
2. steep topography would be preserved in the minimum 50-foot wide wetland buffer which may effectively reduce human disturbances to the wetland.

In lieu of a 100-foot wide wetland buffer on the Lichty property, the Department requests that any future project on the property include the following compensation measures:

- the buffer area is permanently conserved through a biological easement and maintained directly by the landowner or by transfer of this area to an appropriate entity.

EXHIBIT NO. 5
APPLICATION NO.
6-00-33
Letter From the
Department of Fish
and Game

Mr. Chris Richards

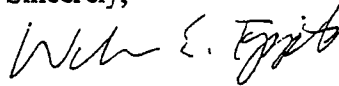
Page Two

July 8, 1999

- the removal of exotic plants and the planting of native plants and shrubs in the wetland buffer.
- vegetation screening/ barrier planting to be placed at the top of the minimum 50-foot wide buffer.
- water draining from the proposed development area should be directed away from Famosa Slough and should empty into the sewer system.
- provide enhancement funds for Famosa Slough to the Friends of Famosa Slough. The required amount will be computed by multiplying the number of acres lost by not retaining a 100 foot-wide buffer by \$20,000/acre. Friends of Famosa Slough will determine, with the approval of the City of San Diego, where and how enhancement measures will occur, consistent with the Famosa Slough restoration plan.
- the project meets all other applicable City planning and development requirements, including requirements imposed by the City's Multiple Species Conservation Program (MSCP).

Please contact Ms. Stacy Hewitson at (619) 467-4229 if you have questions or comments.

Sincerely,



William E. Tippetts

Habitat Conservation Supervisor

30' HEIGHT

VIEW FROM WETLAND HABITAT

Mentone Street

Montalvo Street

EXHIBIT NO. 6
APPLICATION NO.
6-00-33
Elevations
California Coastal Commission

