

## CALIFORNIA COASTAL COMMISSION

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 Staff: EL-SD  
 Staff Report: June 19, 2000  
 Hearing Date: July 11-14, 2000

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-72

Applicant: Dr. Jack and Penelope Spirtos/  
 Mary Ferrero

Agents: David R. Moore/  
 Edmond F. Bourke

Description: Subdivision of an approximately 7.8 acre vacant site into 20 lots, and construction of 42, two-story, three-bedroom condominium units, with associated interior street, driveway, utility, drainage and landscaping improvements; proposal includes offer of public access and parking within the project and construction of a public access trail parallel to the lagoon shoreline. Also proposed are off-site street improvements to Park, Marina and Bayshore Drives.

Lot Area	338,810 sq. ft.
Building Coverage	65,340 sq. ft. (19%)
Pavement Coverage	47,568 sq. ft. (14%)
Landscape Coverage	125,714 sq. ft. (37%)
Unimproved Area	100,188 sq. ft. (30%)
Parking Spaces	109
Zoning	Planned Community
Plan Designation	Residential Medium High 8-15 dua
Project Density	5.38 dua
Ht abv fin grade	34 feet

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

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: The Commission briefly reviewed a subdivision and 42-unit condominium project somewhat differently-designed than the subject proposal in September, 1999, where the public hearing was opened, testimony received, but no action taken. At that time, the staff report for Coastal Development Permit (CDP) Application #6-99-43 recommended approval of the project but only on

condition that it be significantly redesigned in order to avoid adverse impacts to wetlands, public access and recreation, and the visual qualities of a coastal lagoon. One issue was whether a number of "depressions" on the site might be vernal pools or seasonal ponds. The project, as then proposed, would have directly impacted several of these areas. The Commission continued the item so wet weather testing of the "depressions" could occur, and a formal delineation be conducted if they were found to be vernal pools or seasonal ponds, prior to the Commission taking action on the application. After some brief winter rains, the testing occurred. The applicant submitted a report to staff on April 18<sup>th</sup>, which was reviewed by the Commission's staff ecologist, who concurred with the determination that no vernal pools or seasonal ponds exist on the site.

However, the other identified issues (extent of wetlands, stringline of development and public access) were not fully explored or resolved during the very brief public hearing in September and continued to raise serious concerns. Staff determined, based on the extent of revisions recommended at the September, 1999 hearing, and the extent of discretion thus delegated to the staff, that it had erred in recommending approval. This determination was supported by a letter the applicants received from the City of Carlsbad indicating the extent of revisions was too great for the City to find such a plan in substantial conformance with the existing tentative map. The item was brought back before the Coastal Commission in May, 2000 with a staff recommendation of denial, and the Commission denied the project at that time.

The applicants have submitted a new application with a revised proposal that the City of Carlsbad has found to be in substantial conformance with the existing tentative map for the site. The revisions respond to the previously-identified concerns. The redesign provides that all residential units and associated site improvements will be landward of a stringline of development along the shoreline of Agua Hedionda Lagoon. It includes a +100-foot buffer between all potential wetlands and proposed development, with the exception of some at-grade improvements within the inland half of the proposed wetland buffer to construct the public walkway. The redesign also includes a proposal to allow public access and parking within the proposed interior street system.

Staff is recommending approval of the proposal. However, the applicants have only submitted preliminary plans and the sensitive location of this property still raises concerns. To address these issues, staff is recommending a number of special conditions, addressing appropriate setbacks, landscaping, building colors, and the public walkway. This lateral access path would connect with existing public streets at either end of the site. Staff recommends special conditions addressing the walkway's location, appropriate signage and compliance with ADA standards for public trails. Other recommended conditions address grading and erosion controls, water quality concerns, and permits required from other agencies.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

1. MOTION: *I move that the Commission approve Coastal Development Permit No. 6-00-72 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final site plans, building plans and elevations approved by the City of Carlsbad for the permitted development, which shall be in substantial conformance with the tract map submitted by the applicant, titled "Substantial Conformance with Tentative Parcel Map No. 89-13 Exhibit," dated June 19, 2000. The final plans shall include detailed plans for off-site street improvements.

The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive

Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Open Space and Public Access Deed Restriction.

A. No development, as defined in Section 30106 of the Coastal Act (including roads, parking spaces and volleyball courts) shall occur within the delineated wetlands, the minimum 100-foot wetland buffer area, or within 100 feet of the shoreline of Agua Hedionda Lagoon, as shown in Exhibit #3, except for:

1. Construction of an improved public walkway and adjacent fence in the landward (inland) half of the wetland buffer area consistent with this permit (#6-00-72);
2. Installation of security fencing around the erosional feature itself, as an alternative to fencing immediately adjacent to the walkway, if the resource agencies determine that such a fence is required to adequately protect the resource; and
3. Unrestricted public use of any improved public walkway and of the existing informal trails within this portion of the site.

B. The permittees shall allow unrestricted public use of the improved public walkway for recreational pedestrian purposes. No gates, signs or other devices which would tend to discourage public use shall be permitted.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. This deed restriction shall supersede/replace the Irrevocable Offer to Dedicate Open-Space/Lateral Access Easement and Declaration of Restrictions recorded on September 27, 1990 as Instrument No. 90-528549, required pursuant to Coastal Development Permit #6-90-93.

3. Public Access Deed Restriction. As proposed by the applicants, and depicted on Exhibit #4, the approved development shall provide for full public access (vehicular and pedestrian) to the on-site street system and also to the guest parking spaces on a first come-first serve basis. Access to the site via Bayshore Drive shall not be restricted in any way, including by the use of gates or signage.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on use of the on-site street system and guest parking spaces. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Exterior Building Materials. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, a color board addressing exterior building materials and identifying that all building exteriors shall be finished in earth tones including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on building materials. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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

- a. Drought tolerant, non-invasive native or naturalizing plant materials shall be utilized to the maximum extent feasible;
- b. Only native plant materials acceptable to the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (Service) and U.S. Army Corps of Engineers (Corps) shall be used in areas adjacent to any wetlands or buffer area;
- c. For visual purposes, special emphasis shall be placed on the treatment of all portions of the site which would be visible from public roads and the lagoon shoreline, and areas adjacent to view corridors. Said treatment shall include adequate plantings to break up large expanses of wall or roof within the identified viewshed, yet not interfere with public views through the designated view corridors;

- d. A written commitment shall be made that all planted materials shall be maintained in good growing condition; and
- e. Landscaping shall be installed concurrent with, or within 60 days following, construction of the approved residences.

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

6. Grading/Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final grading and erosion control plans that have been approved by the City of Carlsbad. The approved plans shall incorporate the following requirements:

- a. No grading activities shall be allowed during the rainy season (the period from October 1<sup>st</sup> to March 31<sup>st</sup> of each year). All disturbed areas shall be replanted immediately following grading and prior to the beginning of the rainy season.
- b. The permittees shall submit a grading schedule to the Executive Director demonstrating compliance with the above restriction.
- c. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss during construction.
- d. Landscaping shall be installed on all cut and fill slopes prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

The permittee shall undertake development in accordance with the approved grading and erosion control plans. Any proposed changes to the approved grading and erosion control plans or grading schedule shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to

this coastal development permit unless the Executive Director determines that no amendment is required

7. Runoff Control Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a drainage and polluted runoff control plan designed by a licensed engineer which minimizes the volume, velocity and pollutant load of stormwater leaving the site via the street system. The plan shall include but not be limited to the following criteria:

- a. Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
- b. Runoff from all streets and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the building site in non-erosive manner.
- c. The plan shall include provisions for maintaining the drainage and filtration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the permittee shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the permittee shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. However, in no case shall the improvements be located in an area containing steep slopes or native vegetation.

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

8. Public Access Trail Plan. As proposed by the applicants, and PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director, for review and written approval, a final public access plan for the proposed public access walkway and fence improvements, approved by the City of Carlsbad, which shall include, at a minimum, the provision of a five-foot wide (or wider if necessary to meet Americans with Disabilities Act [ADA] and/or Title 24 standards) improved path within the upper (inland) half of the required wetland buffer. The path shall be paved or covered with decomposed granite or other material acceptable to the Executive Director. The trail shall provide for lateral access along the entire width

of the property and shall connect with the southern ends of Marina and Bayshore Drives, as improved herein. A low, open (bollard and chain, split rail, etc.) fence shall be installed on the lagoonward side of the access trail to discourage public intrusion into the more sensitive portions of the site, including wetlands. As an alternative to a low fence along the entire access trail, the applicant may submit a design for security fencing around the erosional feature itself, along with a written determination from the resource agencies that such a fence is required to adequately protect the resource. The plan shall also include public access signs at the intersections of Park Drive with Marina and Bayshore Drives. The plan shall also provide that the path, fence and signage shall be constructed concurrent with, or within 60 days following, construction of the approved residences.

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

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

10. Import Site. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the importation of fill material. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/Site History. The applicant is proposing to subdivide a single legal parcel, 7.8 acres in size, into twenty lots. Also proposed is the construction of 42 condominium units in eight separate, two-story, 34-foot high structures on eight of the created lots. The remaining twelve lots will be used for a variety of purposes, including interior streets, landscaping and both active (volleyball courts) and passive open space. The 42, three-bedroom condominium units are proposed as a non-gated community, with a private, interior street system open to the public for parking and pedestrian use, on a property located on the north shore of Agua Hedionda



Lagoon. Project grading includes 2,000 cu.yds. of cut and 30,700 cu.yds. of fill, resulting in the import of 28,700 cu.yds. of material to the site. Special Condition #10 requires identification of the import site and, if the site is in the coastal zone, documentation that there is a valid coastal development permit allowing for the export of material from that site. The project includes three view corridors across the site. The proposal also includes the provision of a public walkway connecting the ends of Bayshore and Marina Drives, which are located on the eastern and western perimeters of the subject site, off-site road widening of Bayshore, Marina and Park Drives, with curb and gutter improvements to the public streets.

As mentioned, the site is located on the north shore of the inner basin of Agua Hedionda Lagoon, less than a mile east of Interstate 5 and visible from the I-5 freeway. The site to the west is part of the existing Bristol Cove development, and consists of both three- and four-story multi-family residential structures. A large (thirteen two-story structures) condominium project has been constructed on the property to the east. The site is bordered by Park Drive on the north, with primarily single-family residential development north of Park Drive.

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

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

Because of legislation extending the life of tentative maps approved within a certain timeframe, and a recent extension from the City of Carlsbad, the applicant has maintained the original tentative map as a valid approval. The City has not required or conducted any additional environmental review since the original approval. The proposal presented to the Commission in September, 1999 in CDP application #6-99-43 was virtually the same as the plan approved in 1990. Commission staff at the September hearing recommended a significant redesign to accommodate recently-discovered potential

seasonal ponds and apply a "stringline" setback from the lagoon, and also recommended against the proposed gated community. Since the applicants' argued against the proposed redesigns, the Commission determined not to act on the proposal until wet weather testing could either prove or disprove the existence of the seasonal ponds. Although the testing ultimately revealed no seasonal ponds, the other significant issues remained, and the Commission denied the application on May 10, 2000.

The applicants have developed a redesign for development of the site to address the Commission's prior concerns, and have submitted it for Commission review in the subject application. The number of proposed buildings has been reduced from nine to eight, although the same number of units has been retained, and the development has been pulled to the northeast, further from the existing wetlands. Moreover, the applicants' redesign fully respects the existing stringline of buildings along this portion of the lagoon shoreline and the project is no longer proposed as a gated community. Staff at the City of Carlsbad have reviewed the revisions and determined that the project still substantially complies with the existing tentative map, such that no new local approvals are required.

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

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

**Section 30233**

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities....

- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities....

#### **Section 30240**

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

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

The project site may have been historic wetlands at one time, but was filled with lagoon dredge spoils prior to the Coastal Act. Thus, the site as a whole has been altered to such a degree that it does not function as a wetland and most (90%) of the on-site vegetation consists of ruderal/weedy nonwetland species. However, there is an erosional feature at the southeastern corner of the site, adjacent to the lagoon shoreline; according to the applicants' biologist, portions of this "gully" support approximately 140 sq.ft. of wetlands (*salicornia* and *distichlis*). This area is subject to tidal inundation, and the salt marsh wetland area has more than doubled since the Commission reviewed the earlier project in 1990, when 60 sq.ft. of *salicornia* and one *frankenia* plant were identified as the only wetland resources. The Commission's staff ecologist has visited the site and confirmed that wetlands exist in the erosional feature.

In addition to the wetland resources identified previously, there are a number of isolated *salicornia* plants scattered over the site. These are not located in hydric soils and the individual plants do not represent 50% or more of the vegetation in the immediate area. Thus, both the applicant's biologist and the Commission's staff ecologist have determined that these individual plants do not constitute wetlands.

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

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

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

- a. The area determined by the State Lands Commission to be developable shall be designated RMH (10-20 units per acre). The remainder of the site shall be designated Open Space (OS).
- b. Beyond the southern perimeter of the developable portion of the site, an area of 100 feet in width shall remain undeveloped for the purpose of providing a buffer between development and environmentally sensitive areas. The perimeter of the developable area shall be maintained/improved in a manner to prohibit uncontrolled access into the buffer area. Private recreation and landscape improvements in the buffer area shall be made in consultation with the State Department of Fish and Game. Maintenance of the buffer area shall be the responsibility of the homeowners association.
- c. The area beyond the developable portion of the property and the buffer area shall be dedicated in fee or easement to an appropriate public agency. Access to this area shall be restricted to scientific, educational or other uses consistent with resource management in a manner acceptable to the State Department of Fish and Game.

Also, Policy 3.5 of the certified LUP provides:

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

In this particular case, the proposed development, which consists of grading and site improvements associated with a residential subdivision, and construction of a public access walkway, meets the above requirements. No development activities will occur within existing wetlands. Therefore, the project, as proposed, can be permitted under Section 30233 of the Coastal Act.

Although no activities are proposed within the wetlands, the project proposes temporary construction activities and permanent site improvements within 100 feet of identified wetland areas associated with the construction and operation of a public access trail and habitat protection fence. The first 100 feet upland from a wetland is generally reserved as a buffer to provide transitional habitat between the actual wetland and permitted development. Although the size of an individual buffer can vary depending on site-specific circumstances, 100 feet is generally accepted as a minimum. A buffer provides a distance barrier and a percolating medium, and reduces the chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon and wetlands. In addition, buffers provide upland habitat for birds and other species that use the wetlands surrounding the lagoon itself. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas in past decisions. In this particular case, site drainage is being collected and directed into an existing storm drain system in Bayshore Drive, so no drainage facilities would be required in the buffer. The applicant is, however, proposing a public access walkway and associated fence within the proposed 100-foot buffer area. However, these facilities would be located in the upper (inland) half of the buffer, consistent with past Commission actions on similar low impact public improvements.

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

The Commission briefly reviewed a subdivision and 42-unit condominium project somewhat differently-designed than the subject proposal in September, 1999, where the public hearing was opened, testimony received, but no action taken. At that time, the staff report for Coastal Development Permit (CDP) Application #6-99-43 recommended approval of the project but only on condition that it be significantly redesigned in order to avoid adverse impacts to wetlands, public access and recreation, and the visual qualities of a coastal lagoon. One issue was whether a number of "depressions" on the site might be vernal pools or seasonal ponds. The project, as then proposed, would have directly impacted several of these areas. The Commission continued the item so wet weather testing of the "depressions" could occur, and a formal delineation be conducted if they were found to be vernal pools or seasonal ponds, prior to the Commission taking action on the application. After some brief winter rains, the testing occurred. The applicant submitted a report to staff on April 18<sup>th</sup>, which was reviewed by the Commission's staff ecologist, who concurred with the determination that no vernal pools or seasonal ponds exist on the site.

However, the other identified issues (extent of wetlands, stringline of development and public access) were not fully explored or resolved during the very brief public hearing in September and continued to raise serious concerns. Staff determined, based on the extent of revisions recommended at the September, 1999 hearing, and the extent of discretion thus delegated to the staff, that it had erred in recommending approval. This determination was supported by a letter the applicants received from the City of Carlsbad indicating the extent of revisions was too great for the City to find such a plan in substantial conformance with the existing tentative map. The item was brought back before the Coastal Commission in May, 2000 with a staff recommendation of denial, and the Commission denied the project at that time.

The subdivision the Commission denied in May, 2000 was identical to one the Commission approved in 1990 pursuant to CDP #6—90-93. When the Commission approved the first proposal (also for 42 residential units) in 1990, it imposed a 100-foot wide easement for wetlands buffer and public access for the majority of the site. This was reduced to 70 feet in the area of the erosional feature, but coupled with an enhancement plan for the existing marsh. Based on the LUP maps, this was to be drawn from the mean high tide line of the lagoon stretching inland for a distance of 100 feet, since the LUP maps, which were drawn well before the 1990 project was proposed to the Commission, did not identify any on-site wetlands. The LUP text, however, clearly indicated the intent was for a buffer of 100 feet "between development and environmentally sensitive areas." In the 1990 Commission approval, all proposed development, including grading, was prohibited within the buffer area, except for the public access path which was allowed in the buffer but outside wetland areas.

Several special conditions address the biological aspects of the proposed development. Condition #1 requires submittal of final plans, since only a preliminary site plan has been submitted at this time for the current project design. The final plans must be in substantial conformance with the preliminary plan, which includes a minimum 100-foot buffer from all identified wetlands.

The second special condition requires recordation of a new open space deed restriction. This would cover the minimum 100-foot buffer from all wetlands, but would allow for protective fencing, public access and the public walkway in the upper half of the buffer. The applicants are proposing a fence along the seaward side of the public access path. Fence design is addressed in Special Condition #6 and will be further discussed in the visual resource findings to follow, since any fence will have potential visual impacts. The Commission would prefer a low bollard or rail fence to minimize view impacts while still discouraging the public from encroaching lagoonward of the improved trail into more sensitive areas of the site, including wetlands. As an alternative to a fence immediately adjacent to the public trail, the applicant may submit a design for security fencing around the erosional feature itself, along with a written determination from the resource agencies that such fencing is required to adequately protect the resource. The new deed restriction will supersede/replace the one recorded pursuant to CDP #6-90-93. Finally, Special Condition #3, for final landscaping plans, addresses biology only in the

sense that it requires the use of native plant materials acceptable to the resource agencies in the areas adjacent to wetlands and buffers.

In summary, the proposed residential development has been significantly redesigned from the plan last reviewed, and denied, by the Coastal Commission. The current proposal does not involve any fill of wetlands and incorporates a minimum 100-foot buffer between wetlands and development, with the minor exceptions noted above to accommodate a public access trail and habitat protection fence. Any concerns regarding biological resources are adequately resolved through the cited special conditions, which only serve to formalize what the applicants are already proposing. Therefore, as conditioned, the Commission finds the proposed project consistent with the cited Coastal Act policies.

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

#### Section 30210

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

#### Section 30211

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

#### Section 30212

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

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

(2) adequate access exists nearby....

**Section 30223**

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

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

**Policy 7.1**

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

**Policy 7.2**

Pedestrian accessways shall be located as shown on Exhibit J.

**Policy 7.3**

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

**Policy 7.6**

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use....

**Policy 7.8**

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

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



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

#### Policy 7.9

##### Access Signing

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

Most of the north shore lagoon-fronting lots are undeveloped between I-5 and Bristol Cove, which is about one mile inland. Immediately east of Bristol Cove is the subject site; east of it is an existing 26-unit condominium development which was under construction when the Commission first reviewed the development proposal for the subject site in 1990. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda Land Use Plan (LUP) has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit, if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access-related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement.

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

On the Bristol Cove site to the west, the lateral access easement was required to extend from the southern boundary line of the parcel to a minimum width of 6 feet on the top of the lagoon bank, which is lined with rip rap. The required easement is approximately 23

feet wide at the eastern end and narrowing to approximately 16 feet at the western end. A ten-foot wide vertical easement was also required at the western end extending south from Cove Drive to the property boundary. On the eastern, Marina Drive, side of Bristol Cove, there is no vertical access to the shoreline, although there is evidence that the public has used the subject site, located immediately east of Bristol Cove, to get from the streetend of Marina Drive to the shoreline of the lagoon.

The property east of the subject site (L & R), completed its required improvements to Bayshore Drive when it was constructed in 1990. There is an existing vertical accessway from the terminus of Bayshore Drive to the shoreline, located between that site and the subject property, which was approved by the Coastal Commission in CDP #6-87-494 and was intended to provide both pedestrian and maintenance vehicle access to the shore. The inland portion of the accessway is paved, with the remainder unpaved; the accessway is fenced on both sides with chain-link fencing, which also serves to demarcate the approximately two-acre salt marsh seaward of the L&R development and east of the accessway.

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

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

To address these potential conflicts, the applicant is proposing to construct a public walkway connecting the streetends of Bayshore and Marina Drives, which would be located inland of the lateral access easement granted in the 1987 settlement and inland of the identified salt marsh in the erosional feature at the southeastern corner of the site. However, although the path would not occur within the mapped wetland vegetation, it would be located within the upper half of the 100-foot buffer area. At its closest point, the walkway would be sixty feet from the erosional feature containing the salt marsh,

although the closest existing salt marsh vegetation would be approximately eighty feet away from the nearest point of the path.

These concerns are addressed through the attached special conditions, which identify the public pathway as an exception within the minimum 100-foot wetland buffer, that must be placed in the upper (inland) half of the buffer as depicted on the proposed plan. This will assure that conflicts between public use and environmentally sensitive lands do not occur. Because of the existing wetland resources adjacent to the shoreline, the Commission is not endorsing formalizing use of the 1987 lateral public access easement; however, nothing in this approval precludes continued informal use of the area by the general public or future site residents.

Special Condition #8 requires submittal of final plans for the public access trail. The plans should demonstrate compliance with any local, state or federal parameters for public trails, such that no additional redesign will be required as the project moves forward. Although a five-foot wide paved trail is proposed, it is possible a wider trail may be required to meet ADA standards, and specific surfacing materials may be required as well. The condition further requires that the trail and associated fence be constructed concurrent with, or within sixty days following, construction of the residences. Finally, the condition requires placement of public access signage at the intersections of Park Drive with Bayshore and Marina Drives, to inform the public that lateral access is available.

Policy 7.8 of the LUP provides that a setback from the inland extent of the public use area be provided equivalent to twice the height of the structures. This policy was included in the LUP so that an adequate setback would be provided between private/public areas to provide a greater sense of privacy for both the property owner and coastal visitors. Proposed building height of the residential structures is 34 feet above finished grade; however, the proposed buildings are designed with peaked roofs. Therefore, the final plans required in Special Condition #1 must demonstrate that the buildings are setback the required distance from the public access walkway, as determined by building height.

A final public access concern raised in the 1999 application related to the residential development being proposed, at that time, as a gated community. The current proposal no longer includes gates, but the interior street system does not meet public street standards with respect to width, design or setbacks. However, the applicants propose that the public can use the street system and guest parking spaces within the project in order to access the proposed public walkway and lagoon shoreline. Vertical public access is available both east and west of the site, as well as lateral access along the shoreline and via the proposed public walkway. The applicants have submitted counts of available on-street public parking spaces on the surrounding streets that indicate the availability of 85 parking spaces on the three public streets: 23 paces on the south side of Park Drive, 38 spaces on both sides of Bayshore Drive and 24 spaces on both sides of Marina Drive. Thus, the proposed access amenities, along with the identified reservoir of existing public parking, is adequate to meet the needs of the public to access the lagoon in this location.

The Commission finds it unnecessary to require that the interior streets be upgraded to meet public street standards. However, the Commission does find it appropriate to record a deed restriction acknowledging that the public has use of the interior streets and guest parking spaces, and the applicants have proposed such a restriction. Special Condition #3 formalizes this proposal and will assure that all property owners, including future owners, are aware of the public amenities provided on the site.

In summary, the Commission finds that the proposed development could have significant adverse impacts on public access to Agua Hedionda Lagoon. There is evidence of continuous public use of this site for many years that will cease with construction of the proposed residential improvements. An improved vertical accessway exists immediately east of the site, and the applicants propose to construct a public walkway along the seaward side of the proposed development, which will connect the streetends of Bayshore and Marina Drives. Moreover, the applicants propose that all parking on the interior street system is available to the public or guests of residents, on a first come-first serve basis. This access will be provided via Bayshore Drive; the smaller driveway on Marina Drive is intended for egress only, both for residents and the general public, and may be appropriately signed or gated to identify the driveway as "exit only." With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

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

**Section 30251**

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

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

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

b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road.

c) On all property adjoining the shoreline, permitted development shall be designed to "step down" in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas ...

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

The development as proposed provides for the required view corridors. Also, Special Condition #4 requires that final plans include a color board verifying that the residences will be finished in deep earthtones compatible with the surrounding hills and lagoon. The condition further requires that this be formalized through recordation of a deed restriction so all subsequent owners of the residential units are aware of these restrictions.

Moreover, the buildings have been sited behind an imaginary "stringline" drawn between the developed properties immediately east and west of this vacant site. This is particularly critical for this site, as there is great disparity between the setbacks of the two adjacent projects. The site immediately east (the L&R property) is setback a very long distance from the lagoon, due to the presence of portions of a two-acre salt marsh between the shoreline and the development. The 26-unit project is sited on a pad at a higher elevation than the marsh, and the structures are set back a minimum 100 feet from the resource. In contrast, the property immediately west of the subject site was developed long before the LUP was certified. Pursuant to CDP #F1012, the San Diego Coast Regional Commission, in 1973, allowed the site to develop right up to the shoreline, with no discernable setback from the beach, which was ripped. Such a development would not likely be allowed today, or at any time since the LUP's certification in 1982, since it is clearly inconsistent with many of the LUP policies cited herein, as well as with many policies of the Coastal Act, which did not exist in 1973.

One method the Commission has employed to address development located along scenic and recreational areas is to require new development to observe a "stringline" for structural setbacks. The "stringline" represents an imaginary line drawn between the closest structures on either side of the proposed development. Although, in this case, there is a greater than usual disparity between those two developments, this subject site is not only visible from inland areas to the north, but from both lagoon shorelines (close-up

views on the north shore and a distant view from the south shore). The current proposal represents a redesigned project which accommodates the stringline provisions and allows a visual transition between the properties to the east and west. The only proposed improvements seaward of the "stringline" are at-grade or "see-through" improvements, such as the public walkway and fencing; these will not compromise the integrity of the "stringline" setback. Fence design has been addressed in Special Conditions #2 and #8. The applicants are proposing, and the Commission prefers, a low, open fence along the lagoonward side of the public trail. Such fencing would minimize visual impacts and serve to direct the public away from the more sensitive areas of the sites. However, if the resource agencies determine that such fencing will not adequately protect the on-site wetlands, the conditions allow for alternative security fencing around the erosional feature itself. Such a contingency would likely result in a higher fence, with potentially greater visual impacts. Thus, this alternative will only be permitted with confirmation from the resource agencies that such a fence design is required.

Landscaping is also important in minimizing visual impacts. The applicant has not submitted a preliminary landscape plan as yet, since the currently-proposed development is a recent revision to the project which was denied. Special Condition #5 requires submittal of a final landscaping plan which shall use native and naturalizing, drought-tolerant, non-invasive plants to the maximum extent possible. Because of the sensitive wetland resources on site, the plan will be reviewed in consultation with the resource agencies, particularly with regards to plantings in areas adjacent to wetlands and buffers. In addition, the condition requires that landscaping adjacent to view corridors utilize species which will not interfere with public views, but will break up large expanses of walls and roofs. As conditioned, the Commission finds the project consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda Land Use Plan regarding scenic preservation.

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

**Section 30230**

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

**Section 30231**

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste

water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Also, Section 30240 of the Coastal Act, cited previously, calls for the protection of sensitive habitat by, among other means, regulation of development in adjacent areas. The applicant proposes to subdivide and grade, including the import of approximately 28,700 cu.yds. of material, a nearly eight-acre parcel located along the north shore of Agua Hedionda Lagoon. Agua Hedionda Lagoon has been identified by the State Department of Fish and Game as one of the 19 highest priority wetland areas for acquisition and, as such, is referenced in Section 30233(c) of the Coastal Act. The adverse impacts of development most often associated with wetland areas are erosion of soils within the watershed, subsequent sediment transport to the wetlands and introduction of pollutants in the runoff into the wetlands.

There is an existing municipal storm drain system in Bayshore Drive, which discharges into the lagoon/salt marsh at the street's southern terminus, just east of the subject site. There are drainage plans on file submitted with earlier proposals in 1990, and as presented to the Commission in September, 1999, but no drainage plan has been submitted which corresponds to the recently redesigned site plan in the subject application. However, the earlier plans indicated that drainage would be collected on site and directed into the existing municipal system just inland of the discharge point. Although drainage patterns on the site will be slightly different under the proposed redesign, the ultimate discharge point would remain the same. Special Condition #7 requires the applicants to submit a runoff control plan to address day-to-day operations of the developed site. To assure optimum water quality in the adjacent Agua Hedionda Lagoon, post-development peak runoff rates and average volumes cannot exceed pre-development conditions. Moreover, the applicants are required to capture and treat site runoff to remove petroleum products, heavy metals and other particulates, as well as solid trash and debris.

However, there is still a concern with the actual development of a site in such a sensitive location. To protect the downstream resources of the lagoon from the potential of erosion and sedimentation associated with construction activities at the site, Special Condition #6 has been attached to the permit. The special condition requires the applicant to submit final grading, erosion and sediment control plans for the project. The plan shall include measures to control runoff from the site and shall limit all grading activity to the non-rainy season. These requirements are consistent with the certified Agua Hedionda LUP which contains detailed grading provisions. The plan shall be subject to the review and written approval of the Executive Director. As conditioned, the Commission finds the proposed development consistent with the cited provisions of the Coastal Act.

6. Local Coastal Planning. Section 30604 (a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program

(LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made, with the inclusion of all special conditions.

The Agua Hedionda Land Use Plan (LUP) designates the site for residential development under the RMH Zone, at a maximum density of 8-15 du/ac. The project is consistent with that designation. As conditioned, the project is also consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua Hedionda Land Use Plan and with the corresponding Chapter 3 policies of the Coastal Act. Therefore, approval of the development, as conditioned herein, should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

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

The proposed project has been conditioned to be found consistent with the resource, visual and public access protection policies of the Coastal Act. The attached mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

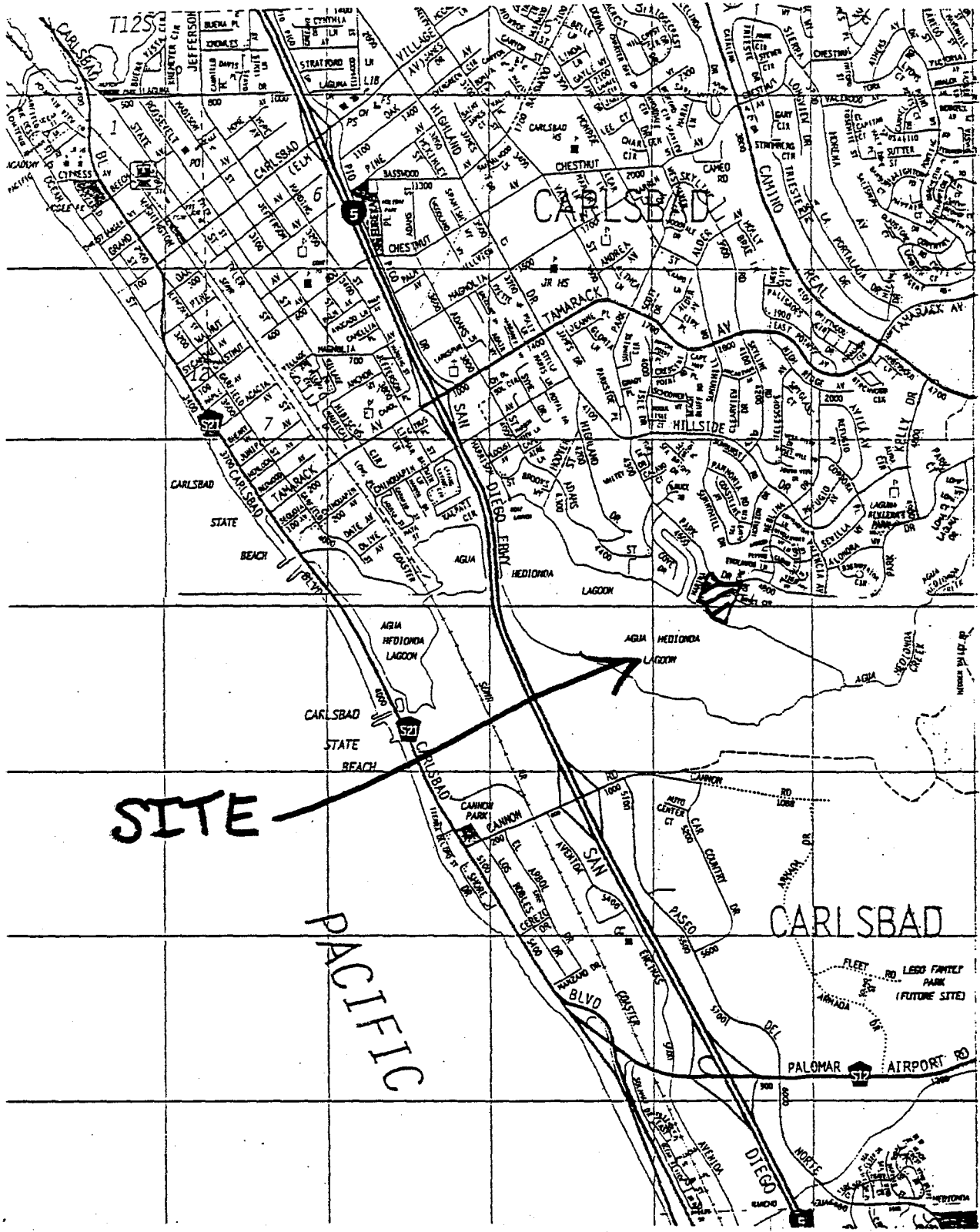
STANDARD CONDITIONS:

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.

6-00-72



SITE

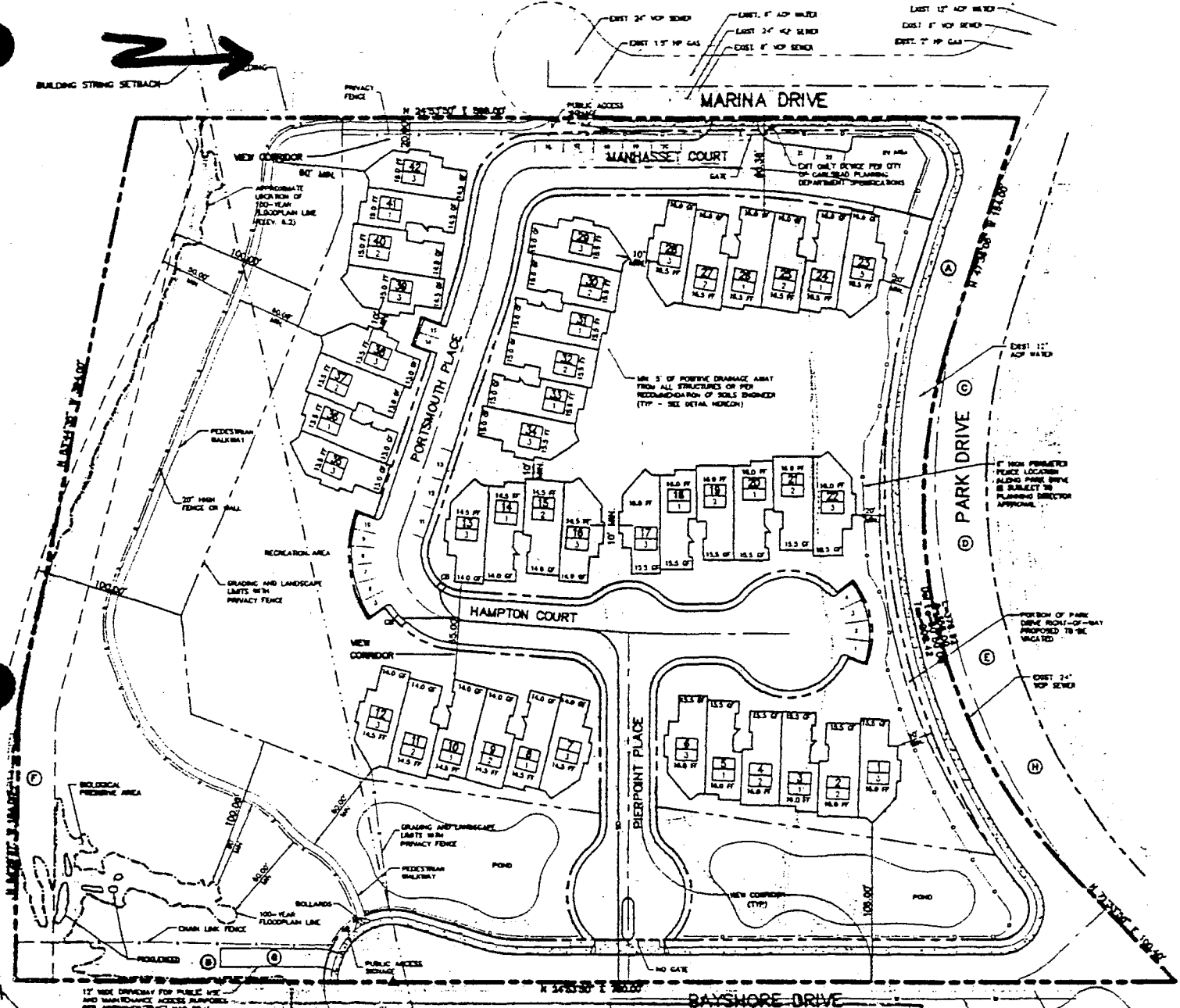
PACIFIC

CARLSBAD

EXHIBIT NO.  
APPLICATION NO.  
**6-00-72**  
Location Map

6-00-72

"SUBSTANTIAL CONFORMANCE WITH TENTATIVE PARCEL MAP NO. 89-13 EXHIBIT"



**APPROVED**

THIS IS THE APPROVED TENTATIVE MAP/SITE PLAN PER CONDITIONAL RESOLUTION 2985

*Michael Wojcik*

*Michael Wojcik*

EXHIBIT NO. 2
APPLICATION NO. 6-00-72
Site Plan

6-00-72

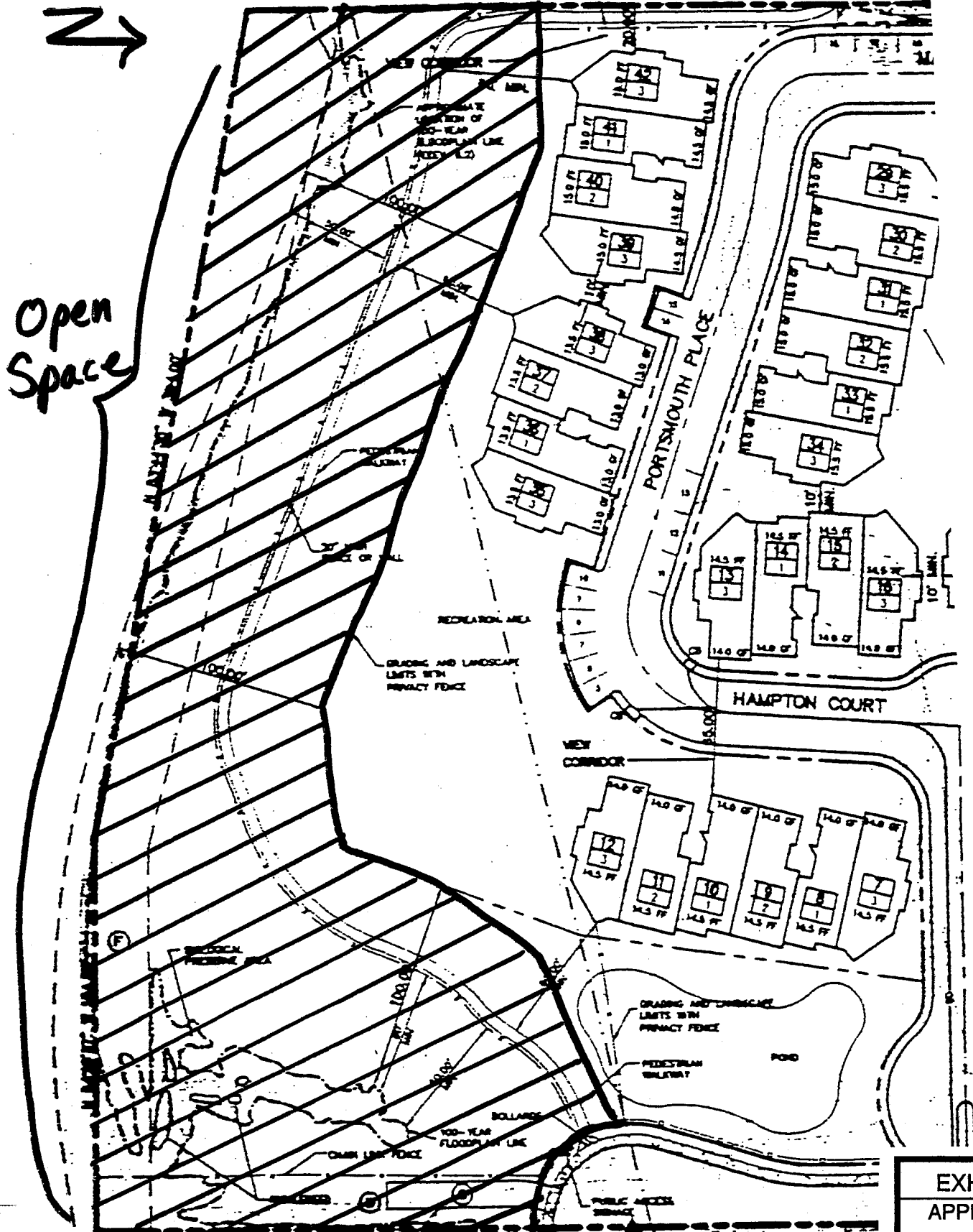


EXHIBIT NO. 3
APPLICATION NO.
6-00-72
Biological
Open Space

6-00-72

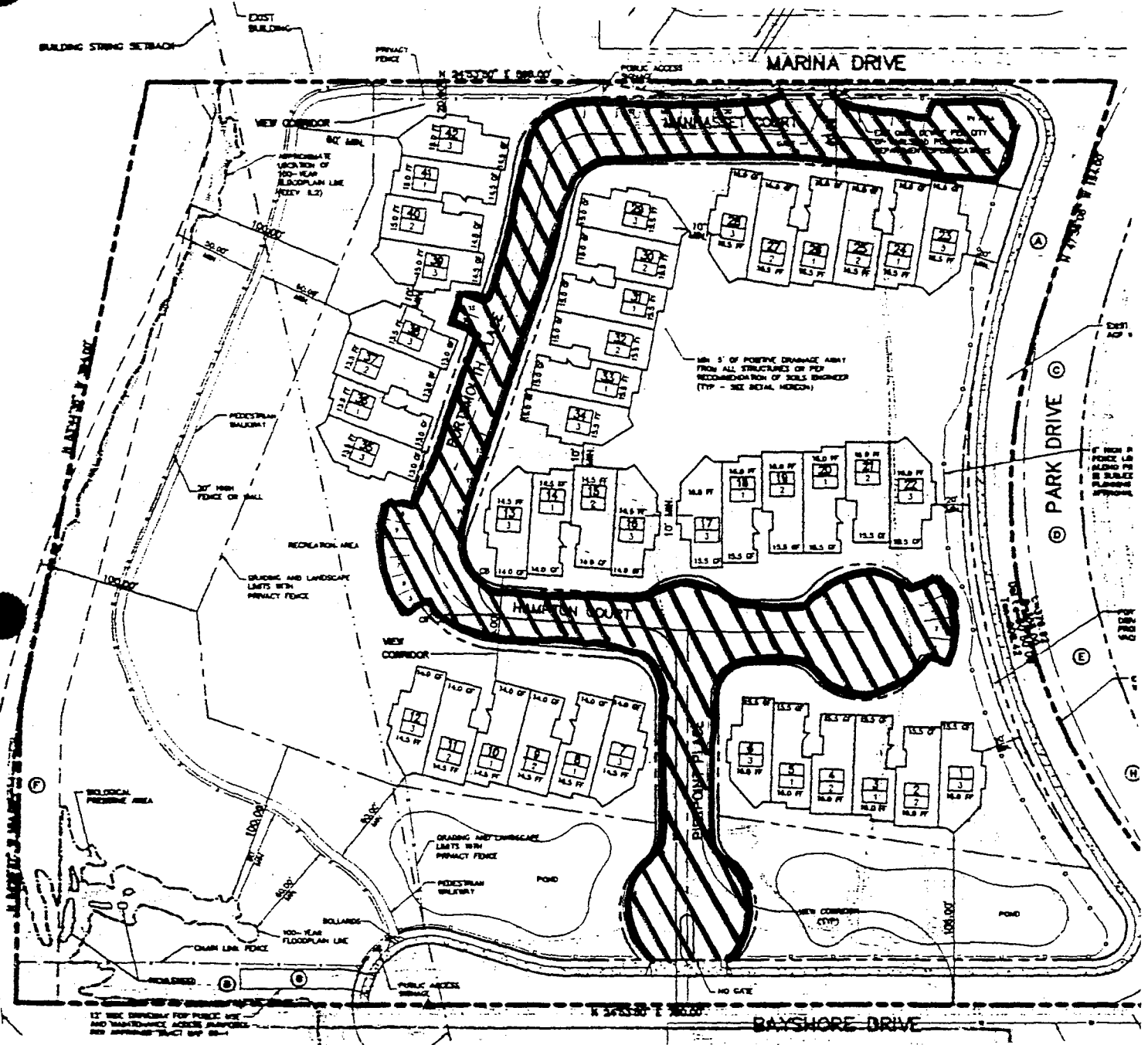
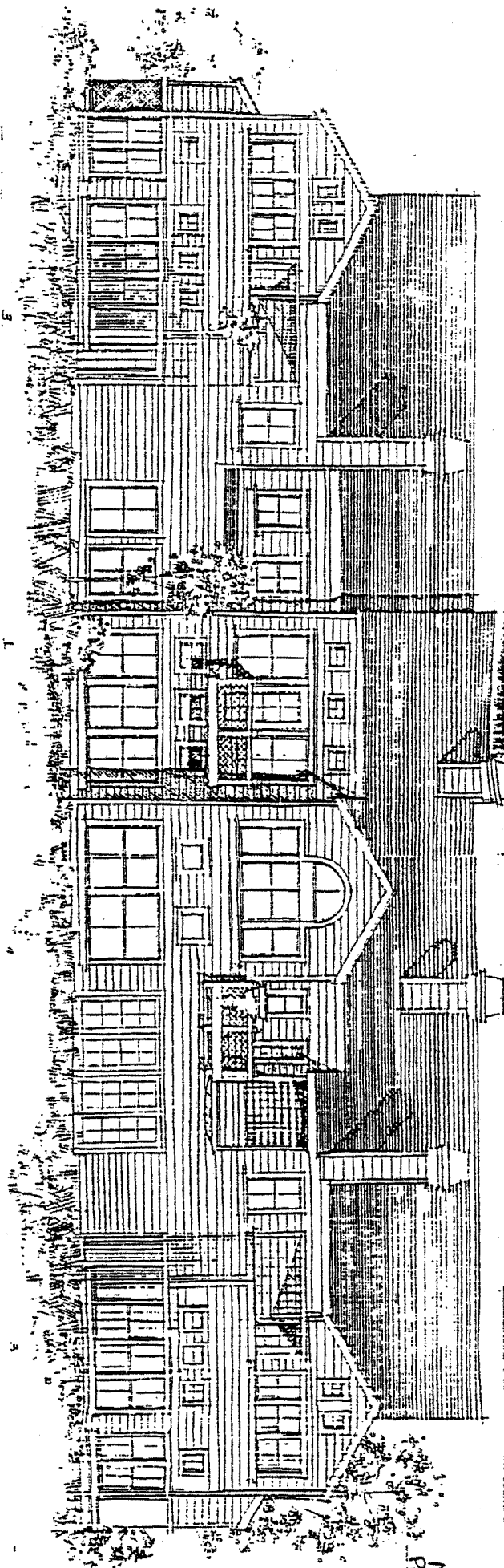


EXHIBIT NO. 4  
 APPLICATION NO.  
**6-00-72**  
 Public Vehicular/  
 Pedestrian Access  
 California Coastal Commission

6-00-72

REAR ELEVATION



Highest Point

Mid-Point

30'

EXHIBIT NO.   
 APPLICATION NO.   
 6-00-72   
 Typical Elevations