

## CALIFORNIA COASTAL COMMISSION

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

## RECORD PACKET COPY



Staff: JP-SF  
 Staff Report: June 22, 2000  
 Hearing Date: July 11, 2000

# Tu 4

PROPOSED FINDINGS FOR CEASE AND DESIST ORDER

<b>CEASE AND DESIST ORDER:</b>	CCC-00-CD-05
<b>RELATED VIOLATION FILE:</b>	V-6-96-002
<b>PROPERTY LOCATION:</b>	4646 Rancho Reposo, Del Mar, CA, San Diego County, APN 302-210-22 ( <b>Exhibit 1</b> )
<b>DESCRIPTION OF PROPERTY</b>	The property is a 1.9 acre lot located on top of a hill with a building pad and natural slopes averaging 50-60% slope gradient. The property is located upstream of the San Dieguito River Valley. ( <b>Exhibit 1</b> )
<b>PROPERTY OWNERS:</b>	Martin and Josee Vanderhoeven ( <b>Exhibit 2</b> )
<b>VIOLATION DESCRIPTION:</b>	Unpermitted removal of major, native vegetation. ( <b>Exhibit 3</b> )
<b>SUBSTANTIVE FILE DOCUMENTS:</b>	CDP F7943 & 6-85-297; CDP application 6-96-153 ( <b>Exhibits 4, 5 &amp; 6</b> )
<b>CEQA STATUS:</b>	Exempt (CEQA Guidelines (CG) §§ 15061 (b)(1) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)

## I. SUMMARY

The subject violation consists of the unpermitted removal of native vegetation below the 220-foot elevation line on the northern half of the aforementioned property. (**Exhibit 3**)

In August 1999 Coastal Commission staff in the San Diego Coast District Office (San Diego Office) revived a report of the occurrence at the subject site of development activity consisting of the removal of major vegetation. Upon investigation staff determined that such activity was unpermitted. On August 4, 1999 Commission staff notified Martin Vanderhoeven by phone that

he had violated the Coastal Act by performing the development detailed above without a coastal development permit (CDP). Additionally Commission staff requested that Martin Vanderhoeven submit a complete CDP application for the restoration and revegetation of the site. On October 19, 1999 District staff sent the Vanderhoevens a letter regarding the subject Coastal Act violation and gave them 30 days to file a complete CDP application with the San Diego Office to resolve the violation. **(Exhibit 7)** To date the Vanderhoevens have failed to comply with District staff's request.

On March 20, 2000 Statewide Enforcement Unit staff sent the Vanderhoevens a Notice of Intention (NOI) letter to proceed with Restoration Order hearing proceedings if they failed to submit a complete CDP application for restoration and revegetation of the site by April 17, 2000<sup>1</sup>. **(Exhibit 8)** This deadline was later extended to May 12, 2000.

As of the writing of this staff report the Vanderhoevens have not submitted a complete CDP application to the San Diego Office. As a result of their failure to comply, Commission staff is recommending that, pursuant to Coastal Act section 30810, the Commission issue a Cease and Desist Order to resolve the subject violation of Coastal Act permit requirements.

The proposed Commission cease and desist order would require Martin and Josee Vanderhoeven to 1) refrain from engaging in any further unpermitted development on their property, and 2) submit within 30 days of the issuance of the order, a complete CDP application to the Coastal Commission's San Diego District Office requesting a permit for either 1) after-the-fact approval of the vegetation removal, or 2) restoration of the site to its pre-violation condition. If the applicant chooses to submit a restoration application, the order would require that the application include an approved revegetation plan that is developed in consultation with the CA Department of Fish and Game. Additionally the order would require that restoration and revegetation activities be completed within 180 days of the issuance of a coastal development permit.

## II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are outlined in section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist hearing the Chair shall announce the matter and request that all parties or their representatives identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, at any time

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<sup>1</sup> Commission staff subsequently determined that it is more appropriate to require a Cease and Desist Order proceeding pursuant to section 30810 of the Act. The Vandehoevens were notified of the change in a letter dated June 16, 2000.

before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff shall respond to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. After the Chair closes the hearing, the Commission may ask questions as part of its deliberations on the matter, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist order, either in the form recommended by staff, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, as the case may be, will result in issuance of the order.

### III. MOTION

Staff recommends adoption of the following motion:

*I move that the Commission issue Cease and Desist Order No. CCC-00-CD-05 as proposed by staff.*

Staff recommends a **Yes** vote. An affirmative vote by the majority of the Commissioners present will result in the issuance of the order set forth in Section V of this report.

### IV. PROPOSED FINDINGS

Staff recommends the Commission adopt the following findings of fact in support of its action:

#### A. Background and Administrative Resolution Attempts

The subject property was created as part of a 17-lot subdivision approved in April, 1979, by the San Diego Coast Regional Coastal Commission (CDP F7943). (**Exhibit 4**) The Commission conditioned its approval of the subdivision with special condition No. 7(b) that prohibited any alteration of landforms, removal of vegetation or erection of structures of any type in the area below the 220 foot contour line on the subject property (and other lots approved by the permit), unless authorized by a coastal development permit granted by the Commission.

In 1985 the Commission approved CDP 6-85-297 for the construction of the existing residence on the subject property. **(Exhibit 5)** CDP 6-85-297 contained a special permit condition (No. 3) which required the applicant to record a deed restriction on the property that would "serve to notify future property owners that any alteration of landforms, erection of any additional structures or removal of native vegetation beyond the existing [building] pad shown on Exhibit #3 **[Exhibit 3]** will require a coastal development permit or waiver from the Coastal Commission or its successor in interest." **(Exhibit 9)**

On November 20, 1996 the Vandehoevens submitted CDP application 6-96-153 for construction of terraced decks, lawns, a pool, and stairway within the deed restricted area of the subject property. Their application reflects their awareness of CDP 6-85-287 and the deed restriction on their property<sup>2</sup>. **(Exhibit 6)** On December 10, 1996, Commission staff notified the Vanderhoevens through a letter sent to their representative Allen Abshez of the deed restriction. Commission staff determined Vanderhoeven's application to be incomplete and, on May 13, 1998, returned the incomplete application and associated materials to the Vanderhoevens.

Between July 17, and August 2, 1999, the Vanderhoevens removed vegetation from the deed restricted area on the subject property.

On August 4, 1999, Commission staff in the Commission's San Diego Office confirmed, during a telephone conversation with Vanderhoeven, that vegetation removal had in fact occurred within the deed restricted area of the subject property. Commission staff notified Vanderhoeven that he had violated the Coastal Act by performing development without a CDP. At that time Commission staff requested that Vanderhoeven submit a complete CDP application for the restoration and revegetation of the site. On October 19, 1999 Commission staff followed up their verbal request with a written request for a CDP application to be submitted within 30 days.

On March 20, 2000 Commission staff sent the Vanderhoevens a Notice of Intent (NOI) to issue a Restoration Order<sup>3</sup>. **(Exhibit 8)** In that letter Commission staff stated the nature of the violation as well as proposed resolution procedures.

On April 11, 2000 Tom Nelsen, Vanderhoevens business partner, called Commission staff in the Statewide Enforcement Unit to inquire how to resolve the violation. Thereafter, Commission staff met with Nelsen to discuss the violation. Additionally, Nelsen has met with staff from the Department of Fish and Game to discuss restoration and revegetation of the subject property. But as of the writing of this staff report the Vanderhoevens have not filed with the Commission a complete CDP application to either obtain after-the-fact authorization of the vegetation removal or restore that subject property to the state it was in prior to the violation.

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<sup>2</sup> On page 5 of CDP application 6-96-153 the Vanderhoevens list CDP 6-85-297 as a permit previously issued for development on their property.

<sup>3</sup> Commission staff subsequently determined that it is more appropriate to require a Cease and Desist Order proceeding pursuant to section 30810 of the Act. The Vandehoevens were notified of the change in a letter dated June 16, 2000.

As a result of the Vanderhoevens' failure to comply with Commission staff request, Commission staff recommends the issuance of the subject cease and desist order to require timely filing to resolve this violation of permit requirements.

## **B. Resource Impacts**

Section 30231 of the Coastal Act is applicable to the proposed development and states, in part:

*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...*

In addition, section 30240 of the Coastal Act is applicable and states:

*(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.*

*(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.*

In 1979 when the Commission approved the subdivision which included the subject lot, it found that because the subject property drains into the San Dieguito River, which flows into the San Dieguito Lagoon, measures to control runoff and sedimentation are especially critical. Therefore, the Commission imposed a number of conditions designed to control sedimentation and runoff from the site to protect the biological quality and habitat value of the San Dieguito River and Lagoon. The Commission also attached conditions to require permits for proposed development, which included vegetation removal, proposed on the steep slopes of the subject lot. Specifically, the Commission required that a deed restriction be recorded notifying present and future owners that no development could occur within the restricted area without permit approval of the Coastal Commission. The restricted area covered most of the naturally vegetated steep slopes within the subdivision. **(Exhibit 3)**

In past action within the subject subdivision, the Commission has found that the steep slopes of this subdivision are covered with native vegetation.<sup>4</sup> More specifically the area contains

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<sup>4</sup> Adopted findings of fact for CDP Nos. 6-97-154 & 6-99-011. **(Exhibits 10 & 11)**

elements of Diegan Coastal Sage Scrub and Southern Maritime Chaparral. Both of these plant communities are considered sensitive plant communities in the San Diego County region. These plant communities are known for supporting a wide diversity of vertebrate invertebrate species, some of which are listed as State and/or Federally listed species.

The Vanderhoevens' removal of vegetation from the deed restricted portion of the subject property likely resulted in the destruction of native plant communities and the assemblage of organisms they support. Additionally the removal of vegetation created the potential situation for erosion of the slope and sedimentation loading in the San Dieguito River.

### **C. Staff Allegations**

The staff alleges the following:

1. Martin and Josee Vanderhoeven are the owners of the property located at 4646 Rancho Reposo, Del Mar, CA, San Diego County, APN 302-210-22. **(Exhibit 2)**
2. Between July 17, 1999 and August 2, 1999, the Vanderhoevens removed major vegetation from the subject property without obtaining a permit therefor. **(Exhibit 3)**
3. The development activity on the Vanderhoevens' property constitutes a violation of section 30600 of the Coastal Act as well as of special condition No. 7(b) of CDP F7943 and special condition No. 3 of CDP 6-85-297. **(Exhibits 4 & 5)**
4. On March 20, 2000 Commission Staff sent Martin and Josee Vanderhoeven a Notice of Intent to proceed with Restoration proceedings in the absence of his filing a complete CDP application for restoration and revegetation of the violation site<sup>5</sup>. **(Exhibit 8)**
5. As of the writing of this staff report the Vanderhoevens have failed to apply for a coastal development permit for either after-the-fact authorization of the vegetation removal or restoration and revegetation of the subject property.

### **D. Alleged Violators Defense and Commission Response**

As of the date of this staff report, the Vanderhoevens have not responded to Commission staff's allegations as set forth in the March 20, 2000 Notice of Intent to commence Order proceedings. Furthermore, the Vanderhoevens have not requested an extension of the time limit for submittal of the statement of defense form (See Cal. Code of Regs., tit.14, section 13181, subd. (b) (where

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<sup>5</sup> Commission staff subsequently determined that it is more appropriate to require a Cease and Desist Order proceeding pursuant to section 30810 of the Act. The Vanderhoevens were notified of the change in a letter dated June 16, 2000.

executive director "may at his or her discretion extend the time limit...upon receipt within the time limit of a written request for such extension and a written demonstration of good cause").) Since the completion of section 13181's statement of defense form is mandatory, the Vanderhoevens have failed to raise and preserve any defenses that they may have.

The defense form requirement is not an empty exercise. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d363, 368) ("When administrative machinery exists for the resolution of differences...such administrative procedures are [to be] fully utilized and exhausted".) It must be remembered that the Coastal Commission's cease and desist hearings are "quasi-judicial." (*Ojavan Investors, Inc. v. California Coastal Commission* (1994) 26 Cal.App.4<sup>th</sup> 516, 528, *cert. denied* (1995) 513 U.S. 1148.) Thus, if the Coastal Commission is to make findings of fact and conclusions of law in the form of an adopted Staff Report, the Vanderhoevens must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider before making its decision on whether or not to issue a cease and desist order.<sup>6</sup> The Commission should not be forced to guess which defenses the Vanderhoevens want the Commission to consider and which defenses the Vanderhoevens may have raised informally prior to the hearing, but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 27 ("It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing, ... The rule is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play".))

## V. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following Cease and Desist Order:

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

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<sup>6</sup> The Statement of Defense Form has six categories of information that the Vanderhoevens should have provided to the Coastal Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondents; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondents; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondents have no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondents; (5) any other information, statement, etc. that respondents desire to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondents to the Statement of Defense form.

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

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

**Persons Subject to the Order**

Martin and Josee Vanderhoeven

**Identification of the Property**

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

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

**Description of Unpermitted Development**

Unpermitted development consists of the removal of native vegetation below the 220-foot elevation line on the northern half of the aforementioned property. **(Exhibit 3)**



Martin and Josee Vanderhoeven  
Cease and Desist Order No. CCC-00-CD-05  
July 11, 2000

**Term of the Order**

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

**Compliance Obligation**

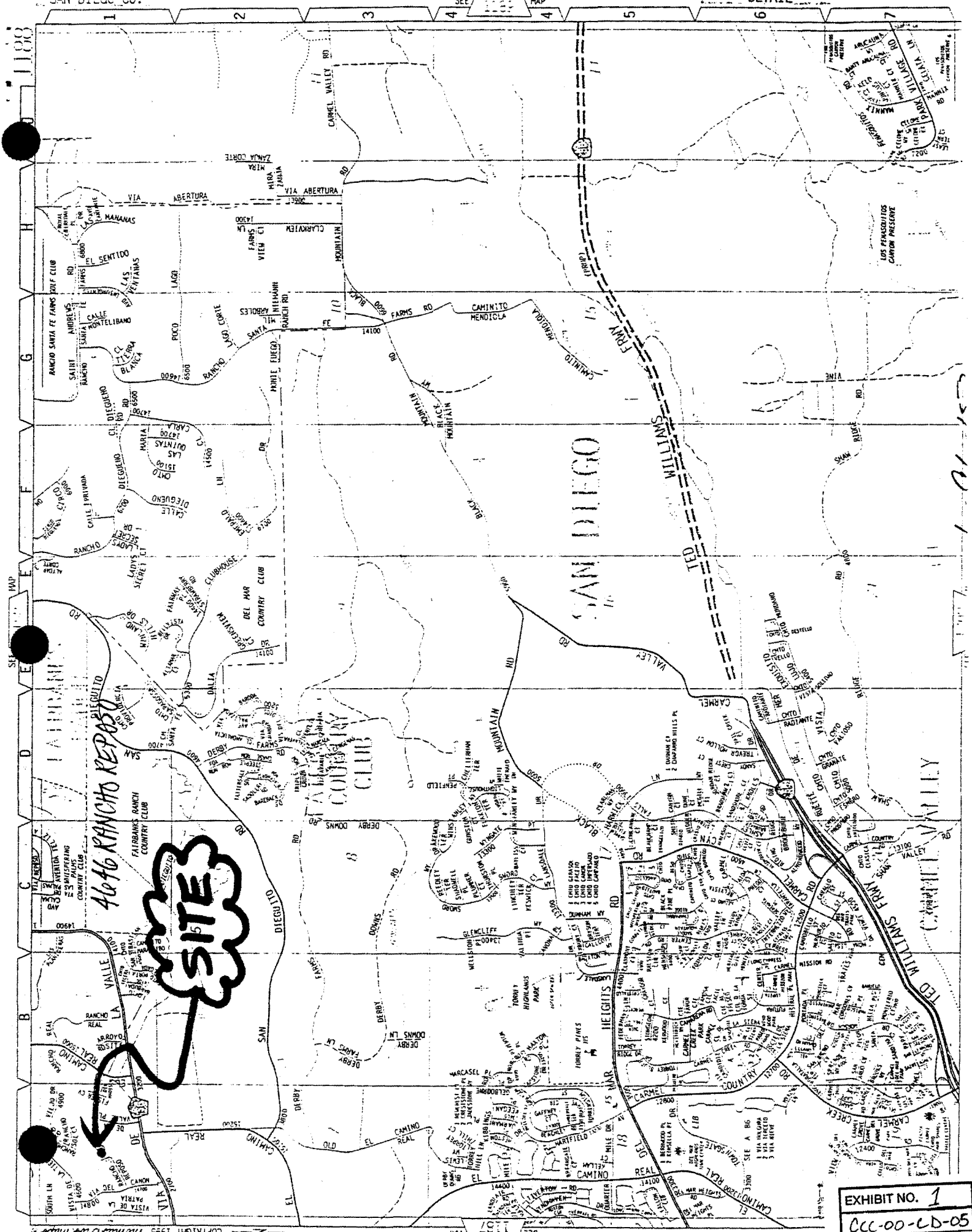
Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation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

**Appeal**

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

**Exhibits**

1. Location of the subject property
2. Proof of ownership
3. Map of the deed restricted open space area and the site of the violation
4. CDP F7943
5. CDP 6-85-297
6. CDP application 6-96-153
7. Notice of Violation letter, October 19, 1999
8. Notice of Intent to proceed with Cease and Desist proceedings, March 20, 2000
9. Recordation of Deed Restriction
10. Staff report for CDP 6-97-154
11. Staff report for CDP 6-99-011



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 MAP  
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1 2 3 4 SEE MAP 4 5 6  
 DETAIL

**4646 RANCHO REPO**  
**SITE**

EXHIBIT NO. 1  
 CC-00-LD-05  
 1 of 1

1 ) Prcl:302-032-18 Site:4647 VISTA DE LA TIERRA TIERR\*DEL MAR CA 92014  
 Ownr:WAGNER,LORRAINE L TR Mail:4647 VISTA DE LA TIERRA TIERR\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph: Zn:R1 Sale: Date:09/29/76  
 Lns: Doc:318992 Xmpt:Y Yb:1980 Sqft:4,642 Asd:\$388,375  
 Map:0008265 Blk: Lot:6 Bd/Bth:4/4.0 Ltsz:43,560 Imp:80% Un:1

2 ) Prcl:302-032-19 Site:4637 VISTA DE LA TIERRA\*DEL MAR CA 92014  
 Ownr:WORTHEN,H MICHAEL & P Mail:4637 VISTA DE LA TIERRA\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph:(619)481-6855 Zn:R1 Sale:\$550,000F Date:12/31/86  
 Lns: Doc:627867 Xmpt:Y Yb:1980 Sqft:3,705 Asd:\$660,224  
 Map:0008265 Blk: Lot:7 Bd/Bth:3/3.0 Ltsz:1.09 A Imp:55% Un:1

3 ) Prcl:302-210-06 Site:4647 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:OMAGAD,JUANA N G TR Mail:4647 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph: Zn:R1 Sale: Date:07/30/85  
 Lns: Doc:271715 Xmpt:Y Yb:1984 Sqft:4,929 Asd:\$933,035  
 Map:0008620 Blk: Lot:42 Bd/Bth:4/3.5 Ltsz:1.32 A Imp:60% Un:1

4 ) Prcl:302-210-10 Site:4634 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:MORENO,GRISELDA M Mail:4634 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph:(619)793-1273 Zn:R1 Sale:\$500,000F Date:11/25/86  
 Lns: Doc:544122 Xmpt: Yb:1984 Sqft:4,117 Asd:\$587,624  
 Map:0008620 Blk: Lot:46 Bd/Bth:3/3.5 Ltsz:1.37 A Imp:50% Un:1

5 ) Prcl:302-210-21 Site:4643 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:GLASSON,JERRY M & ROB Mail:4643 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph:(619)755-5290 Zn:R1 Sale:\$Q Date:08/19/92  
 Lns: Doc: Xmpt:Y Yb:1988 Sqft:5,252 Asd:\$927,701  
 Map:0008620 Blk: Lot:37 Bd/Bth:4/4.5 Ltsz:1.05 A Imp:62% Un:1

6 ) Prcl:302-210-22 Site:4646 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:VANDERHOEVEN,MARTIN & Mail:4646 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph: Zn:R1 Sale:\$890,000F Date:02/23/96  
 Lns:\$650,000 Doc:89424 Xmpt: Yb:1988 Sqft:6,319 Asd:\$1,060,000  
 Map:0008620 Blk: Lot:44 Bd/Bth:5/4.5 Ltsz:1.85 A Imp:52% Un:1

7 ) Prcl:302-210-23 Site:RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:LARA D I LTD Mail:4826 RANCHO SOL CT\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph: Zn:R1 Sale:\$200,000F Date:03/28/91  
 Lns: Doc:139453 Xmpt: Yb: Sqft: Asd:\$217,149  
 Map:0008620 Blk: Lot:45 Bd/Bth: Ltsz:1.66 A Imp:0% Un:1

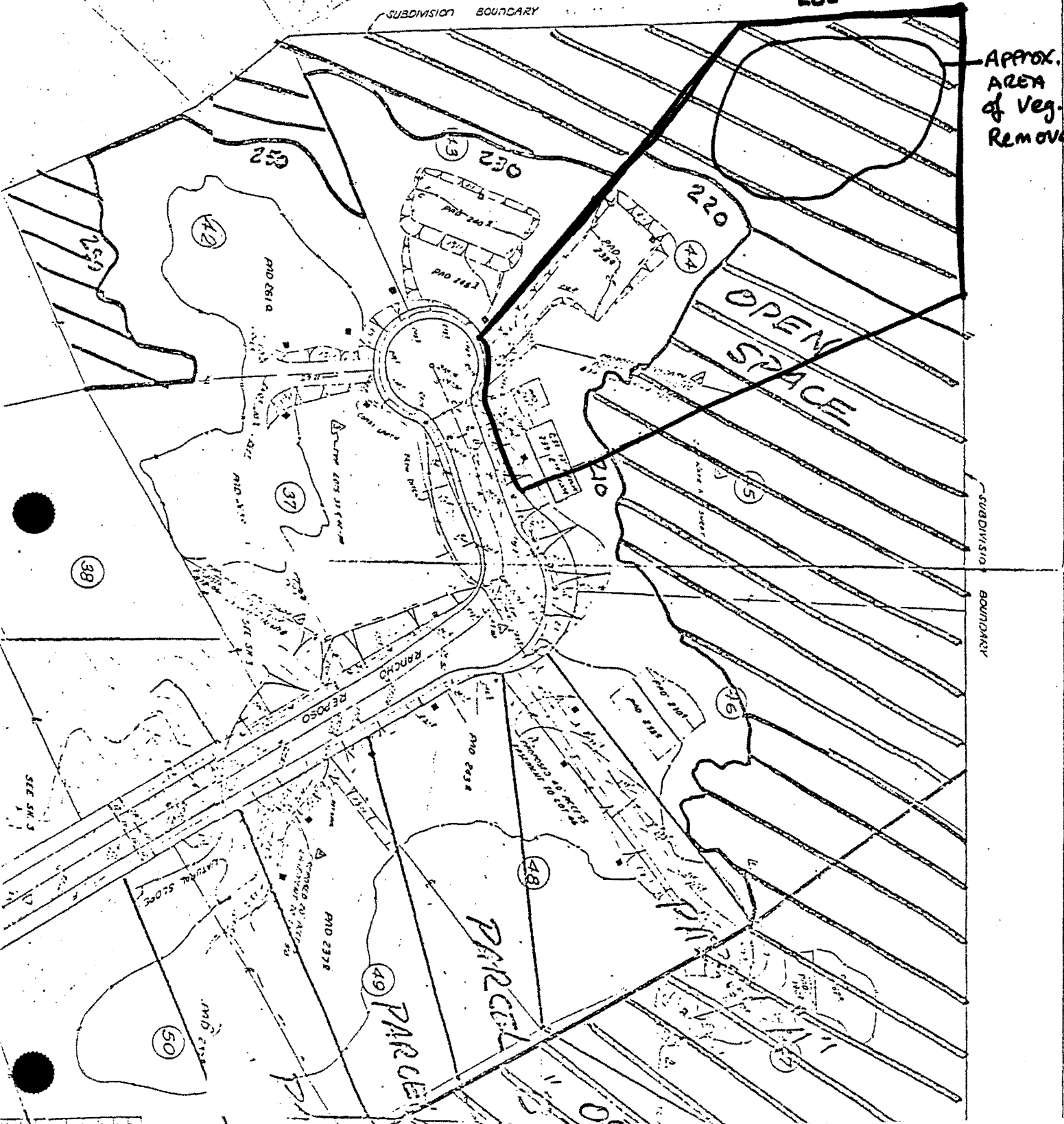
8 ) Prcl:302-210-24 Site:4628 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:CARSON,ROBERT W & MAR Mail:4628 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph:(619)259-7768 Zn:R1 Sale:\$350,000F Date:04/07/88  
 Lns:\$150,000 Doc:158303 Xmpt:Y Yb:1991 Sqft:4,366 Asd:\$973,617  
 Map:0008620 Blk: Lot:48 Bd/Bth:3/3.5 Ltsz:2.15 A Imp:56% Un:1

9 ) Prcl:302-210-25 Site:4616 RANCHO REPOSO\*DEL MAR CA 92014  
 Ownr:AHLWEDE,ANN W Mail:4616 RANCHO REPOSO\*DEL MAR CA 92014  
 Use:SINGLE RESIDENC Ph:(619)755-2427 Zn:R1 Sale: Date:05/27/86  
 Lns: Doc: Xmpt:Y Yb:1982 Sqft:3,376 Asd:\$534,657  
 Map:0008620 Blk: Lot:52 Bd/Bth:1/2.0 Ltsz:1.42 A Imp:49% Un:1

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EXHIBIT NO. 2  
 66-00-CD-05  
 1 of 1

# Vanderhoevens' Lot



## SAN DIEGO COAST REGIONAL COMMISSION

6154 MISSION GORGE ROAD, SUITE 220  
SAN DIEGO, CALIFORNIA 92120—TEL. (714) 280-6992Tim Cohelan  
ChairmanRoger Hedgeco  
Vice ChairmanHarriet Allen  
Representative to the  
California Coastal Com.Tom Crandall  
Executive DirectorDEVELOPMENT PERMIT

DATE OF COMMISSION ACTION: April 20, 1979

CONTROL NO.: F7943

APPLICANT: A.K. Enterprises  
Route 1, 109-V  
Del Mar, CA 92014AGENT: Rancho Santa Fe Engineering Co.  
P.O. Box 1532  
Rancho Santa Fe, CA 92067PROJECT LOCATION: North side of Via de La Valle, along both sides of Via Del Canon,  
San Diego County (APN 302-090-23-24)

You are hereby granted a coastal development permit. This permit is issued after a duly public hearing before the San Diego Coast Regional Commission and after the Regional Commission found that the proposed development is in conformity with the provisions of the California Coastal Act of 1976 including the following:

1. That the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30200).
2. That the permitted development will not prejudice the ability of any affected local government to prepare a local coastal program that is in conformity with Chapter of the California Coastal Act of 1976.
3. That if the development is located between the nearest public road and the sea c shoreline of any body of water located within the coastal zone, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976 (Public Resources Code, Sections 30210 - 30224).
4. That there are no feasible alternatives or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

This permit is limited to development described below and set forth in material on file w the Regional Commission, and subject to the terms, conditions, and provisions hereinafter stated:

- A. DEVELOPMENT: Subdivision of 29.2 acres into 17 parcels, all in excess of 1 acre. The project includes road development, storm drainage, water and all utilities. Approximately 53,200 cubic yards of balanced cut and fill grading will be required in the development of road, building sites and access to each lot. No building construction is included with this permit.

Lot area	<u>29.2 acres</u>	Parking	<u>85</u>
Building coverage	<u>40,000 sq. ft. ( 3%)</u>	Zoning	<u>E-1</u>
Paved Area coverage	<u>77,000 sq. ft. ( 6%)</u>	General Plan	<u>Very Low Res. (1 du/ac.)</u>
Landscape coverage	<u>135,000 sq. ft. (11%)</u>	Project Density	<u>.75 du/ac.</u>
Unimproved area	<u>939,952 sq. ft. (80%)</u>		

EXHIBIT NO. 4
CC-00-CD-05
1 of 5

TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project as approved by the Regional Commission.
2. That the applicant agrees to notify the Regional Commission (or State Commission if there is no Regional Commission) of any changes in the project.
3. That the applicant will meet all the local code requirements and ordinances and obtain all necessary permits from State and Federal Agencies.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Commission.
5. That the applicant agrees that the Commission staff may make site inspections of the project during construction and upon completion.

SPECIAL CONDITIONS:

1. All grading activities for the road, utilities, and installation of the erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.
2. All permanent erosion control devices shall be developed and installed prior to any on-site grading activities.
3. All areas disturbed by grading, shall be planted within 60 days of the initial disturbance and prior to October 1 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 and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.
4. All permanent slope plantings and erosion control devices shall be maintained by the developer, or by the property owners through provisions in the covenants, conditions and restrictions of the subdivision. If said maintenance is to be through provisions in the CC&Rs of the subdivision, a copy of the CC&Rs incorporating this requirement shall be submitted to the Executive Director prior to occupancy of the first completed residence.
5. Prior to the issuance of a coastal development permit, the developer shall submit a runoff control plan, designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the greatest intensity of rainfall expected during a one-hour period once every 20 years (20 year one-hour rainstorm). Methods employed within the runoff control plan to control increase in runoff are at the discretion of the engineer, and could include

Terms and conditions are to run with the land. These terms and conditions shall be perpetual, and it is the intention of the parties to bind all future owners and possessors of the subject property to said terms and conditions.

Special Conditions (Continued)

check dams, energy dissipators/sedimentation basins. The runoff control plan shall also include soil or sand filtration or its equivalent sufficient to trap oils and suspended solids and prevent them from entering the river. The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director. All drainage from graded building pads shall be away the bluff edge and controlled through appropriate drainage devices.

6. That the applicant shall, prior to transmittal of the permit, submit to the County of San Diego an amended tentative subdivision map in accordance with map attached to the findings as Exhibit B. Evidence of approval by the County of San Diego of the amended tentative map shall be submitted to and acknowledged in writing by the Executive Director prior to the transmittal of the permit.
7. That prior to recordation of the final map the applicant shall record the following restrictions, on each individual parcel, to run with the land free of prior encumbrances, except for tax liens, and in a manner approved by the Executive Director:
  - (a) On lots 37-46, of the amended tentative map, any alterations of landforms, removal of existing vegetation, or erection of structures of any type shall be prohibited unless approved by the San Diego Coast Regional Commission or successors in interest on that area shown on plans filed with the San Diego Coast Regional Commission and indicated on Exhibit C attached to these findings.
  - (b) On lots 47-52 of the amended tentative map, any alterations of landforms, removal of existing vegetation, or erection of structures of any type, shall be prohibited unless approved by the San Diego Coast Regional Commission or its successors in interest, on that area south of a line projected across these parcels as shown on Exhibit B. A final detailed topographic plan with this line demarcated shall be submitted and approved by the Executive Director.

Evidence of these restrictions shall be submitted to and acknowledged in writing by the Executive Director prior to transmittal of the permit.



C. STANDARD PROVISIONS:

1. STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit under penalties established by California Coastal Act of 1976.
2. TIMELY DEVELOPMENT AND COMPLETION: Permittee shall commence development within 2 years following final approval of the project by the San Diego Coast Regional Commission. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
3. REQUEST FOR EXTENSIONS: Permittee may request an extension of time for the commencement of construction provided the request is applied for prior to expiration of the permit.
4. ASSIGNABILITY OF PERMIT: This permit is not assignable unless the permittee's obligations under the permit are assumed by assignee in writing within one year and a copy of the required assumption agreement delivered to the Regional Commission or State Commission if there is no Regional Commission.
5. APPEAL: Unless appealed to the State Commission within ten (10) working days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
6. DISCLAIMER: The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any questions on this permit, please contact the staff of the Regional Commission.

Very truly yours,

*Tom Crandall*

Tom Crandall  
Executive Director

\*\*\*\*\*

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Control No.: F7943

*W. D. [Signature]*  
Signature of Permittee

7/20/79  
Date

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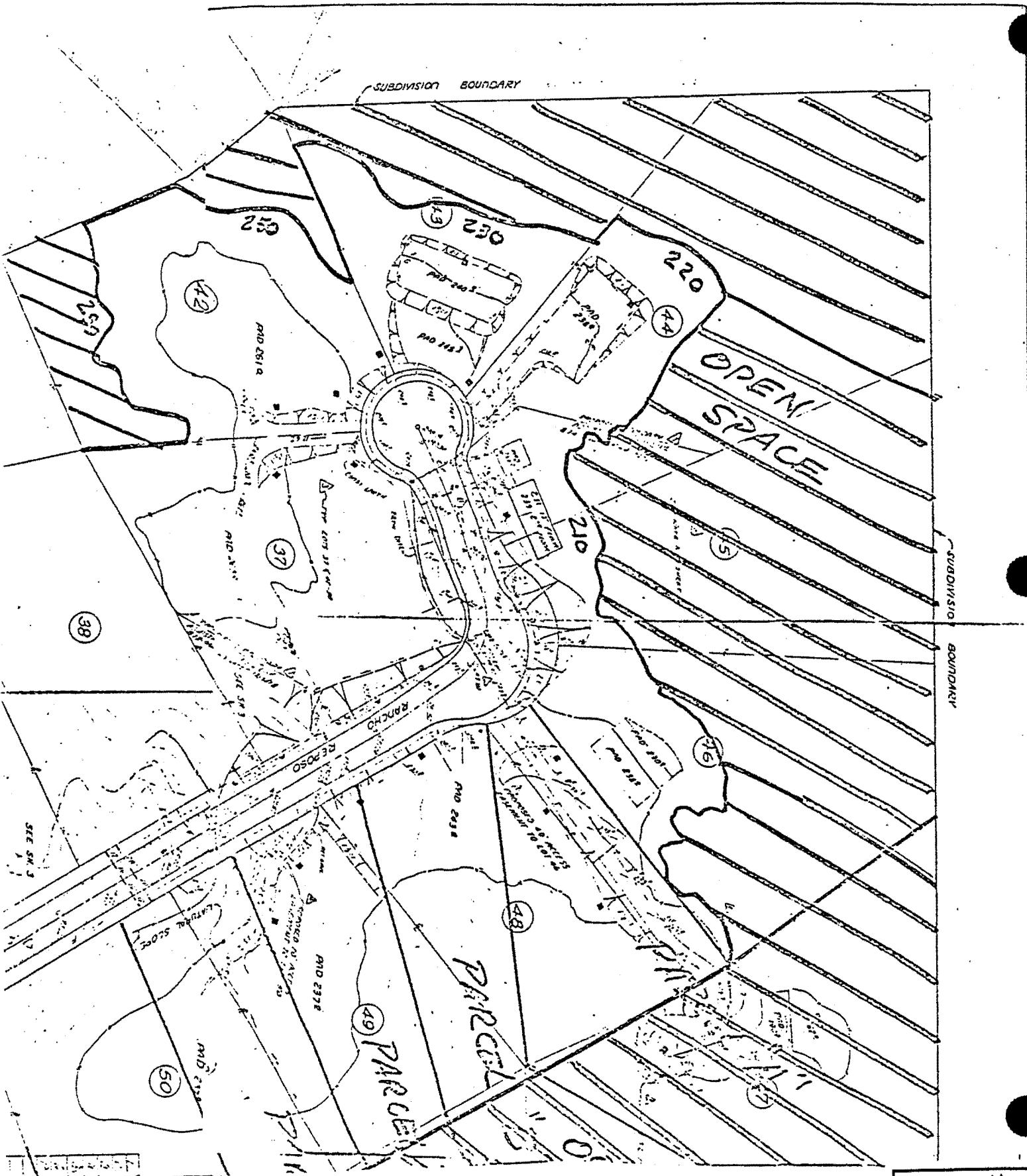


Exhibit "C"

EXHIBIT NO. 4
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## CALIFORNIA COASTAL COMMISSION

COASTAL DEVELOPMENT PERMIT NO. 6-85-297

SAN DIEGO COAST DISTRICT

Page 1 of 3

33 CAMINO DEL RIO SOUTH, SUITE 125

SAN DIEGO, CA 92108-3520

(619) 297-9740



On July 23, 1985, the California Coastal Commission granted to  
James L. Kosbie  
 this permit for the development described below, subject to the attached  
 Standard and Special Conditions.

Description: Construct a 3,870, two-story single family residence on an  
 81,021 sq.ft. lot.

Lot Area	81,021 sq. ft.
Building Coverage	4,670 sq. ft. ( 6%)
Pavement Coverage	4,300 sq. ft. ( 5%)
Landscape Coverage	7,900 sq. ft. (10%)
Unimproved Area	64,151 sq.ft. (79%)
Parking Spaces	6
Zoning	RR-1 Rural Residential
Plan Designation	#2 Residential - 1 dua
Ht abv fin grade	24 feet

RECEIVED  
 SEP 11 1985  
 CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

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

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
 Executive Director  
 and

*Laurinda R. Owens*

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT  
 WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

## ACKNOWLEDGEMENT

The undersigned permittee acknowledges  
 receipt of this permit and agrees to abide by  
 all terms and conditions thereof.

Date

9/11/85

Signature of Permittee

EXHIBIT NO. 5
CCC-00-CD-05
1 of 3

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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.

SPECIAL CONDITIONS:

1. Revised Site and Elevation Plans. Prior to the transmittal of the development permit, the applicant shall submit to the Executive Director for his review and written approval, plans showing that the proposed structure does not extend beyond the limits of the fill permitted under coastal development permit F7943.

2. Drainage Plan. Prior to the transmittal of the development permit, the applicant shall submit a drainage and runoff control plan documenting that runoff from the roof and any impervious surfaces will be collected and

EXHIBIT NO. 5
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SPECIAL CONDITIONS - continued:

appropriately discharged. The runoff control plan shall be submitted to and determined adequate in writing by the Executive Director and shall provide that any runoff directed over the hillside shall be retained and discharged at a non-erosive velocity and elevation, to protect the scenic resources and habitat values of the hillsides from degradation by scouring or concentrated runoff.

3. Future Permits. Prior to the transmittal of the development permit, the applicant shall submit to the Executive Director a deed restriction for recording, free of prior liens, except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. Said deed restriction shall serve to notify future property owners that any alteration of natural landforms, erection of any additional structures or removal of native vegetation beyond the existing pad shown on Exhibit #3 will require a coastal development permit or waiver from the Coastal Commission or its successor in interest.

4. Geologic Stability. Prior to the transmittal of the development permit, the applicant shall submit evidence for review and approval of the Executive Director which confirms that no geologic problems exist on-site or with proposed structures which would threaten the structure during its expected economic life (ie., 75 years).

5. Applicant's Assumption of Risk. Prior to the transmittal of a coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens, except for tax liens, that binds the applicants and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards, as a consequence of approval of the project; and (c) the applicant understands that construction in the face of such known hazards may make them ineligible for public disaster funds or loans for repair, replacement or rehabilitation of the property in the event of erosion.

(5297P)

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CC-00-00-05
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**CALIFORNIA COASTAL COMMISSION**  
 SAN DIEGO COAST AREA  
 111 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 521-8034



**APPLICATION FOR COASTAL DEVELOPMENT PERMIT**

**SECTION I. APPLICANT**

1. Name, mailing address, and telephone number of all applicants.

MARTIN VANDERHOEVEN, C/O ABFLEX INTERNATIONAL

5962 LA PLACE COURT #260

CARLSBAD, CALIFORNIA 92008

(619) 438-5800

*(Area code/daytime phone number)*

Note: All applicants for the development must complete Appendix A, the declaration of campaign contributions.

2. Name, mailing address and telephone number of applicant's representatives, if any. Please include all representatives who will communicate on behalf of the applicant or the applicant's business partners, for compensation, with the Commission or the staff. (It is the applicant's responsibility to update this list, as appropriate, including after the application is accepted for filing. Failure to provide this information prior to communication with the Commission or staff may result in denial of the permit or criminal penalties.)

ALLAN ABSHEZ, ESQ.

IRELL & MANELLA

1800 AVENUE OF THE STARS #900, LOS ANGELES, CA 90067-4276 (310)203-75

STEPHEN R. HAWXHURST, CHRIS A. POST ANTHONY-TAYLOR CONSULTANTS

2240 VINEYARD AVENUE, ESCONDIDO, CA 92029

(619)738-8800

*(Area code/daytime phone number)*

**SECTION II. PROPOSED DEVELOPMENT**

Please answer all questions. Where questions do not apply to your project (for instance, project height for a land division), indicate Not Applicable or N.A..

1. Project Location. Include street address, city, and/or county. If there is no street address, include other description such as nearest cross streets.

4646 RANCHO REPOSO

*number*

*street*

DEL MAR

SAN DIEGO COUNTY, CALIFORNIA

*city*

*county*

Assessor's Parcel Number(s) (obtainable from tax bill or County Assessor): 302-210-22

FOR OFFICE USE ONLY

6-96-153

APPLICATION NUMBER

RECEIVED 11/20/96

FILED

FEE 250.00

DATE PAID 11/20/96

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2. Describe the proposed development in detail. Include secondary improvements such as grading, septic tanks, water wells, roads, driveways, outbuildings, fences, etc. (Attach additional sheets as necessary.)

(SEE ATTACHED)
----------------

a. If multi-family residential, state: N/A

Number of units			Number of bedrooms per unit (both existing and proposed)	Type of ownership proposed
Existing units	Proposed new units	Net number of units on completion of project		
				<input type="checkbox"/> rental <input type="checkbox"/> condominium <input type="checkbox"/> stock cooperative <input type="checkbox"/> time share <input type="checkbox"/> other _____

b. If land division or lot line adjustment, indicate: N/A

Number of lots			Size of lots to be created (indicate net or gross acreage)	
Existing lots	Proposed new lots	Net number of lots on completion of project	Existing	Proposed

3. Estimated cost of development (not including cost of land) \$ 150,000
4. Project height: Maximum height of structure (ft.)
- above existing (natural) grade ..... 6 FT. MAX. - RETAINING WALLS
  - above finished grade ..... N/A
  - as measured from centerline of frontage road ..... N/A
5. Total number of floors in structure, including subterranean floors, lofts, and mezzanines N/A

6. Gross floor area excluding parking (sq.ft.) 6,294 SQ.FT. (INCLUDING PROPOSED ROOM ADDITION)  
 Gross floor area including covered parking and accessory buildings (sq.ft.) N/A

7. Lot area (within property lines) (sq.ft. or acre) 82,727 SQ.FT. / 1.90 ACRES

Lot coverage	Existing (sq.ft. or acre)	New proposed (sq.ft. or acre)	Total (sq.ft. or acre)
Building	6,075 SQ.FT.	219 SQ.FT.	6,294 SQ.FT.
Paved area	3,594 SQ.FT.	N/A	3,594 SQ.FT.
Landscaped area	9,821 SQ.FT.	8,013 SQ.FT.	17,834 SQ.FT.
Unimproved area	55,005 SQ.FT.	N/A	55,005 SQ.FT.
<i>Grand Total (should equal lot area as shown in #7 above)</i>			82,727 SQ.FT.

8. Is any grading proposed?.....  Yes  No

*If yes, complete the following:*

a) Amount of cut	387	cu. yds.	d) Maximum height of cut slope	6	ft.
b) Amount of fill	101	cu. yds.	e) Maximum height of fill slope	6	ft.
c) Amount of import or export (circle which)	286	cu. yds.	f) Location of borrow or disposal site		

Grading and drainage plans must be included with this application. In certain areas, an engineering geology report must also be included. See Section IV, paragraph 11 for the specifics of these requirements.

Please list any geologic or other technical reports of which you are aware that apply to this property EARTH SYSTEMS ENGINEERING GROUP GEOTECHNICAL INVESTIGATION FOR REAR YARD IMPROVEMENTS, DATED 5/13/96

9. Parking: N/A

*Number of parking spaces (indicate whether standard or compact):*

Existing spaces	Proposed new spaces	Net number of spaces on completion of project
	NONE	

Is any existing parking being removed?.....  Yes  No

If yes, how many spaces? \_\_\_\_\_ size \_\_\_\_\_

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Is tandem parking existing and/or proposed? .....  Yes  No

If yes, how many tandem sets? \_\_\_\_\_ size \_\_\_\_\_

10. Are utility extensions for the following needed to serve the project? (Please check yes or no)

a) water      b) gas      c) sewer      d) electric      e) telephone

Yes       Yes       Yes       Yes       Yes

No       No       No       No       No

Will electric or telephone extensions be above-ground? .....  Yes  No

11. Does project include removal of trees or other vegetation? .....  Yes  No

If yes, indicate number, type and size of trees \_\_\_\_\_

or type and area of other vegetation NATIVE SHRUBS AND BRUSH OVER APPROXIMATELY  
2,500 SQ. FT.

### SECTION III. ADDITIONAL INFORMATION

The relationship of the development to the applicable items below must be explained fully. Attach additional sheets if necessary.

1. Present use of property.

a. Are there existing structures on the property? .....  Yes  No

<i>If yes, describe</i>
4,670 SQ. FT. SINGLE-FAMILY RESIDENCE

b. Will any existing structures be demolished? .....  Yes  No

Will any existing structures be removed? .....  Yes  No

<i>If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable.</i>

2. Is the proposed development to be governed by any Development Agreement?  Yes  No

3. Has any application for development on this site including any subdivision been submitted previously to the California Coastal Zone Conservation Commission or the Coastal Commission? .....  Yes  No

If yes, state previous application number(s) 6-85-297

4. Is the development between the first public road and the sea (including lagoons, bays, and other bodies of water connected to the sea) .....  Yes  No

If yes, is public access to the shoreline and along the coast currently available on the site or near the site? .....  Yes  No

If yes, indicate the location and nature of the access, including the distance from the project site, if applicable.

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5. Does the development involve diking, filling, draining, dredging or placing structures in open coastal waters, wetlands, estuaries, or lakes? (Please check yes or no)

a) *diking*      b) *filling*      c) *dredging*      d) *placement of structures*

- Yes       Yes       Yes       Yes  
 No       No       No       No

Amount of material to be dredged or filled (indicate which) N/A cu. yds.

Location of dredged material disposal site \_\_\_\_\_

Has a U.S. Army Corps of Engineers' permit been applied for? ..... N/A .....  Yes  No

6. Will the development extend onto or adjoin any beach, tidelands, submerged lands or public trust lands? .....  Yes  No

For projects on State-owned lands, additional information may be required as set forth in Section IV, paragraph 10.

7. Will the development protect existing lower-cost visitor and recreational facilities? .....  Yes  No

Will the development provide public or private recreational opportunities? .....  Yes  No

If yes, explain.

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8. Will the proposed development convert land currently or previously used for agriculture to another use? .....  Yes  No  
 If yes, how many acres will be converted? \_\_\_\_\_
9. Is the proposed development in or near:
- a. Sensitive habitat areas (Biological survey may be required) .....  Yes  No
  - b. Areas of state or federally listed rare, threatened, or endangered species ...  Yes  No
  - c. 100-year floodplain (Hydrologic mapping may be required) .....  Yes  No
  - d. Park or recreation area .....  Yes  No
10. Is the proposed development visible from:
- a. State Highway 1 or other scenic route .....  Yes  No
  - b. Park, beach, or recreation area .....  Yes  No
  - c. Harbor area .....  Yes  No
11. Does the site contain any: (If yes to any of the following, please explain on an attached sheet.)
- a. Historic resources .....  Yes  No
  - b. Archaeological resources .....  Yes  No
  - c. Paleontological resources .....  Yes  No
12. Where a stream or spring is to be diverted, provide the following information: N/A
- Estimated streamflow or spring yield (gpm) \_\_\_\_\_
- If well is to be used, existing yield (gpm) \_\_\_\_\_
- If water source is on adjacent property, attach Division of Water Rights approval and property owner's approval.

**SECTION IV. REQUIRED ATTACHMENTS**

The following items must be submitted with this form as part of the application.

1. Proof of the applicant's legal interest in the property. A copy of any of the following will be acceptable: current tax bill, recorded deed, lease, easement, or current policy of title insurance. Preliminary title reports will not be accepted for this purpose. Documentation reflecting intent to purchase such as a signed Offer to Purchase along with a receipt of deposit or signed final escrow document is also acceptable, but in such a case, issuance of the permit may be contingent on submission of evidence satisfactory to the Executive Director that the sale has been completed.

The identity of all persons or entities which have an ownership interest in the property superior to that of the applicant must be provided.

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2. Assessor's parcel map(s) showing the page number, the applicant's property, and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor.)
3. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc., as noted on Local Agency Review Form, Appendix B. Appendix B must be completed and signed by the local government in whose jurisdiction the project site is located.
4. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2" x 4 1/8"). Include first class postage on each one. Metered postage is not acceptable. Use Appendix C, attached, for the listing of names and addresses. (Alternate notice provisions may be employed at the discretion of the District Director under extraordinary circumstances.)
5. Stamped, addressed envelopes (no metered postage, please) and a list of names and addresses of all other parties known to the applicant to be interested in the proposed development (such as persons expressing interest at a local government hearing, etc.).
6. A vicinity or location map (copy of Thomas Bros. or other road map or USGS quad map) with the project site clearly marked.
7. Copy(s) of project plans, drawn to scale, including site plans, floor plans, elevations, grading and drainage plans, landscape plans, and septic system plans. Trees to be removed must be marked on the site plan. In addition, a reduced site plan, 8 1/2" x 11" in size, must be submitted. Reduced copies of complete project plans will be required for large projects. NOTE: See Instruction page for number of sets of plans required.
8. Where septic systems are proposed, evidence of County approval or Regional Water Quality Control Board approval. Where water wells are proposed, evidence of County review and approval.
9. A copy of any Draft or Final Negative Declaration, Environmental Impact Report (EIR) or Environmental Impact Statement (EIS) prepared for the project. If available, comments of all reviewing agencies and responses to comments must be included.
10. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Department of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard). For projects such as seawalls located on or near state tidelands or public trust lands, the Coastal Commission must have a written determination from the State Lands Commission whether the project would encroach onto such lands and, if so, whether the State Lands Commission has approved such encroachment. See memo to "Applicants for shorefront development" dated December 13, 1993.
11. For development on a bluff face, bluff top, or in any area of high geologic risk, a comprehensive, site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office.

#### SECTION V. NOTICE TO APPLICANTS

Under certain circumstances, additional material may be required prior to issuance of a coastal development permit. For example, where offers of access or open space dedication are required, preliminary title reports,

land surveys, legal descriptions, subordination agreements, and other outside agreements will be required prior to issuance of the permit.

In addition, the Commission may adopt or amend regulations affecting the issuance of coastal development permits. If you would like notice of such proposals during the pendency of this application, if such proposals are reasonably related to this application, indicate that desire.....


Yes  No

**SECTION VI. COMMUNICATION WITH COMMISSIONERS**

Decisions of the Coastal Commission must be made on the basis of information available to all commissioners and the public. Therefore, permit applicants and interested parties and their representatives are advised not to discuss with commissioners any matters relating to a permit outside the public hearing. Such contacts may jeopardize the fairness of the hearing and result in invalidation of the Commission's decision by court. Any written material sent to a commissioner should also be sent to the commission office for inclusion in the public record and distribution to other Commissioners.

**SECTION VII. CERTIFICATION**

1. I hereby certify that I, or my authorized representative, have completed and posted or will post the Notice of Pending Permit card in a conspicuous place on the property within three days of submitting the application to the Commission office.
2. I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attached appendices and exhibits is complete and correct. I understand that the failure to provide any requested information or any misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Commission.
3. I hereby authorize representatives of the California Coastal Commission to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 A.M. and 5:00 P.M.

  
 \_\_\_\_\_  
 Signature of Authorized Agent(s) or if no agent, signature of Applicant

**NOTE: IF SIGNED ABOVE BY AGENT, APPLICANT MUST SIGN BELOW.**

**SECTION VIII. AUTHORIZATION OF AGENT**

I hereby authorize \_\_\_\_\_ to act as my representative and to bind me in all matters concerning this application.

\_\_\_\_\_  
 Signature of Applicant(s)  
 (Only the applicant(s) may sign here to authorize an agent)

EXHIBIT NO. <u>6</u>
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# APPLICATION FOR COASTAL DEVELOPMENT PERMIT

## APPENDIX A

### DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner from voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify himself or herself from voting on the project.

Each applicant must declare below whether any such contributions have been made to any of the listed Commissioners or Alternates (see last page).

CHECK ONE


The applicants, their agents, employees, family and/or any person with a financial interest in the project have not contributed over \$250 to any Commissioner(s) or Alternate(s) within the past year.

The applicants, their agents, employees, family, and/or any person with a financial interest in the project have contributed over \$250 to the Commissioner(s) or Alternate(s) listed below within the past year.

Commissioner or Alternate \_\_\_\_\_

Commissioner or Alternate \_\_\_\_\_

Commissioner or Alternate \_\_\_\_\_

  
Signature of Applicant or Authorized Agent

11-1-96  
Date

Please print your name \_\_\_\_\_

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant MARTIN VANDERHOEVEN

Project Description CONSTRUCTION OF POOL, DECKS, LANDSCAPED AREAS AND  
RETAINING WALLS ON REAR PORTION OF PROPERTY

Location 4646 RANCHO REPOSO  
DEL MAR, CALIFORNIA 92008

Assessor's Parcel Number 302-210-22

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation RS1 1 cu/ac

General or Community Plan Designation 2 cu/ac

Local Discretionary Approvals

- Proposed development meets all zoning requirements and needs no local permits other than building permits.
- Proposed development needs local discretionary approvals noted below.

Needed Received

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Design/Architectural review                         |
| <input type="checkbox"/> | <input type="checkbox"/> | Variance for _____                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Rezone from _____                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | Tentative Subdivision/Parcel Map No. _____          |
| <input type="checkbox"/> | <input type="checkbox"/> | Grading/Land Development Permit No. _____           |
| <input type="checkbox"/> | <input type="checkbox"/> | Planned Residential/Commercial Development Approval |
| <input type="checkbox"/> | <input type="checkbox"/> | Site Plan Review                                    |
| <input type="checkbox"/> | <input type="checkbox"/> | Condominium Conversion Permit                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Conditional, Special, or Major Use Permit No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Other _____   |

CEQA Status

- Categorically Exempt Class \_\_\_\_\_ Item \_\_\_\_\_
- Negative Declaration Granted (Date) \_\_\_\_\_
- Environmental Impact Report Required, Final Report Certified (Date) \_\_\_\_\_
- Other \_\_\_\_\_

Prepared for the City/County of San Diego by Karen Buller  
Date 10-17-96 Title Land Use Technician II

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APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX C

LIST OF PROPERTY OWNERS AND OCCUPANTS WITHIN 100 FEET AND THEIR ADDRESSES  
(MAKE ADDITIONAL COPIES OF THIS SHEET AS NECESSARY)

302-032-18  
LORRAINE L WAGNER  
4647 VISTA DE LA TIERRA TIERR  
DEL MAR CA 92014-4218

302-032-19  
H M & PATTI WORTHEN  
4637 VISTA DE LA TIERRA  
DEL MAR CA 92014-4218

302-210-10  
GRISELDA M MORENO  
4634 RANCHO REPOSO  
DEL MAR CA 92014-4201

302-210-21  
JERRY M & ROBERTA GLASSON  
4643 RANCHO REPOSO  
DEL MAR CA 92014-4201

302-210-23  
LARA D I LTD  
4826 RANCHO SOL CT  
DEL MAR CA 92014-4239

302-210-24  
ROBERT W & MARIANNE CARSON  
4628 RANCHO REPOSO  
DEL MAR CA 92014-4201

302-210-32  
MENDELL  
14828 DE LA VALLE PL  
DEL MAR CA 92014-4256

302-210-33  
JERALD & GAIL WHITE  
14858 DE LA VALLE PL  
DEL MAR CA 92014-4256

302-210-43  
GARY S & LINDA FIRESTEIN  
14886 DE LA VALLE PL  
DEL MAR CA 92014-4256

302-210-44  
JOHN C & PATRICIA BECKER  
14872 DE LA VALLE PL  
DEL MAR CA 92014-4256

302-210-49  
JOHNSON  
4650 RANCHO REPOSO  
DEL MAR CA 92014-4201

302-210-50  
MARTIN & JOSEE VANDERHOEVEN  
4646 RANCHO REPOSO  
DEL MAR CA 92014-4201

302-221-03  
JOHN A & KAY YOUNG  
4802 RANCHO VIEJO DR  
DEL MAR CA 92014-4235

302-221-04  
WILLIAM R & EILEEN CONNELLY  
4805 RANCHO VIEJO DR  
DEL MAR CA 92014-4236

302-221-06  
CYRUS & KIMBERLY RAOUFPUR  
5400 LYNDON B JOHNSON FWY 1045  
DALLAS TX 75240-2618



(THIS LIST INCLUDES OCCUPANTS  
WITHIN 300 FT.)

Application No. \_\_\_\_\_

### APPLICATION FOR COASTAL DEVELOPMENT PERMIT

#### APPENDIX C

LIST OF PROPERTY OWNERS AND OCCUPANTS WITHIN 100 FEET AND THEIR ADDRESSES  
(MAKE ADDITIONAL COPIES OF THIS SHEET AS NECESSARY)

302-221-06 OCCUPANT RANCHO SOL CT DEL MAR CA 92014	302-210-06 JUANA N OMAGAD 4647 RANCHO REPOSO DEL MAR CA 92014-4201
302-210-50 OCCUPANT RANCHO REPOSO DEL MAR CA 92014	302-210-22 MARTIN & JOSEF VANDERHOEVEN 4646 RANCHO REPOSO DEL MAR CA 92014-4201
302-210-23 OCCUPANT RANCHO REPOSO DEL MAR CA 92014	302-210-25 ANN W AHLSEWEDE 4616 RANCHO REPOSO DEL MAR CA 92014-4201
	302-210-35 SCOTT A & PAMELA LINTON 14891 DE LA VALLE PL DEL MAR CA 92014-9787
	302-210-48 LARRY M & MARCIA OSTERINK 4615 RANCHO REPOSO DEL MAR CA 92014-4201
	302-221-02 MERRILL M & ELIZABETH MITLER 4820 RANCHO VIEJO DR DEL MAR CA 92014-4235
	302-221-05 STUART W JAMIESON 4823 RANCHO VIEJO DR DEL MAR CA 92014-4236

EXHIBIT NO. 6
CCC-00-05-05
12 of 12

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036



October 15, 1999

Martin Vanderhoeven  
5962 La Place Court #260  
Carlsbad, Ca 92008

Certified Mail  
#P954 086 592

OR

4646 Rancho Reposo  
Del Mar, Ca 92014

Property Location: **4646 Rancho Reposo, Del Mar, San Diego County  
(APN #302-210-22)**  
Subject Activity: **Unpermitted removal of major vegetation and sensitive  
habitat within a deeded open space easement**  
Violation: **V6-99-02**

Dear Mr. Vanderhoeven:

Staff of the California Coastal Commission has confirmed reports received regarding the above-referenced activity that has been conducted on your property. This vegetation and habitat removal activity is considered unpermitted, as you have not been issued a coastal development permit from the Commission to authorize any work undertaken within the deeded open space easement area.

On April 20, 1979 the Commission approved a subdivision that created your subject lot (CDP #F7943). The Commission conditioned its approval of the subdivision with a special condition that prohibited any alteration of landforms, removal of vegetation or erection of structures of any type in the area below the 220 foot contour line on your subject lot (and on the other lots created by the subdivision) unless approved by the Coastal Commission. In addition, the Commission approved the construction of your existing residence in July of 1985 (CDP #6-85-297) with a similar prohibition on grading or removal of vegetation below the 220 foot contour line. Further, the Commission required the recordation of a deed restriction that notified all future property owners that any alteration of landforms, erection of any additional structures or removal of native vegetation beyond the existing grading pad would require the approval of the Coastal Commission.

On November 20, 1996 you submitted an application for a coastal development permit, proposing to construct terraced decks, lawns, a pool and stairways within the deed restricted area of your property. Subsequently, and through your attorney Mr. Allan Abshez, you were advised by letter on December 10, 1996 (enclosed) of the existence of the deed restricted open space easement that prohibits grading, landform alteration or removal of vegetation below the 220 foot contour line on your subject property without the approval of the Coastal Commission. The application you submitted on November

EXHIBIT NO. 7
CC-00-00-05
1 of 3

Martin Vanderhoeven

October 15, 1999

Page 2

20, 1996 remained unfiled pending your compliance with the information requested in the Commission's letter of December 10, 1996. Since that information was not subsequently received, the application and associated materials were returned to you on May 13, 1998.

On August 4, 1999, you confirmed by telephone that the above cited unpermitted removal of vegetation had occurred. You contended at that time that you did not know where the open space deed restricted area was and that, therefore, the removal of the vegetation was required to provide access to a survey team. You agreed to immediately send a letter to our office which documented in detail the unpermitted work that had been performed. I also informed you of the necessity to apply for a coastal development permit for the restoration of the site. To date neither the letter nor the necessary restoration application have been received.

The removal of major vegetation within the deed restricted open space area constitutes "development" as defined by section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...

Section 30600(a) of the Coastal Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

Resolution of a Coastal Act violation may include, but not be limited to, the imposition of civil penalties by a court of law. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists. In light of our earlier communications concerning the protection of the open space easement area, and your previous coastal development permit application attempt, Commission staff considers this violation to be knowing and intentional.

EXHIBIT NO. 7
CC-00-CD-05
2 of 3

Martin Vanderhoeven

October 15, 1999

Page 3

Coastal Act sections 30809 and 30810 state that if the executive director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission or from a certified local government without first securing a permit, the executive director or the Commission after conducting a public hearing, may issue an order directing that person to cease and desist. A cease and desist order may be subject to terms and conditions that the executive director or the Commission determines are necessary to avoid irreparable injury to the impacted coastal resources. A violation of a cease and desist order can result in additional fines of up to \$6,000 for each day in which the violation persists.

Therefore, if you wish to avoid additional formal Coastal Act enforcement action by the Executive Director or the Commission, you are required to submit a completed coastal development permit application within 30 days of receipt of this letter for the restoration and revegetation of the subject site. The revegetation plan should be developed in consultation with the California Department of Fish and Game and should include specific erosion control measures to prevent damage from runoff to the subject and surrounding properties during this winter's storms. Your failure to submit a completed coastal development permit application within the next 30 days for restoration of this open space easement area will cause us to elevate this case to our statewide enforcement unit in San Francisco for further legal action. Please contact our office immediately if you have questions regarding this matter.

Sincerely,



Gary D. Cannon  
Coastal Planner

Enclosures

cc:

Calif. Dept. of Fish and Game  
Nancy Cave, Manager, Statewide Enforcement Program

(G:\San Diego\GARY\Letters\VanderhoevenViolation.doc)

EXHIBIT NO. 7
CC-00-05-05
3 of 3

## CALIFORNIA COASTAL COMMISSION

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



## REGULAR AND CERTIFIED MAIL (Z 778 711 951)

March 20, 2000

Martin and Josee Vanderhoeven  
4646 Rancho Reposo  
Del Mar, CA 92014

**SUBJECT: Notice of intent to commence Restoration Order proceedings; Coastal Act Violation File No. V-6-99-002**

Dear Martin and Josee Vanderhoeven:

*This letter is to notify you of the intent of the California Coastal Commission to commence Restoration Order proceedings as a result of unauthorized development activities at 4646 Rancho Reposo, in the City of Del Mar, California*

**History of the Violation Investigation**

The above-referenced violation investigation concerns development (as that term is defined in section 30106 of the California Coastal Act) that is in violation of the conditions of approval that the Commission adopted in its approval of coastal development permits F7943 and CDP 6-85-297. This development consists of the removal of vegetation below the 220 foot elevation line on the northern half of the aforementioned property in deed-restricted open space. This development activity took place between July 17, 1999 and August 2, 1999.

Coastal Commission staff in the San Diego Coast District Office (San Diego Office) became aware of the unpermitted development in August 1999. On August 4, 1999 Commission staff notified you by phone that you had violated the Coastal Act by performing this development without a coastal development permit (CDP) and requested that you submit a complete CDP application for the restoration and revegetation of the site. On October 19, 1999 Commission staff sent you a letter regarding the subject Coastal Act violation and gave you 30 days to file a complete CDP application with the San Diego Office to resolve the violation. As of March 17, 2000 you have failed to comply with Commission's staff request.

Given the fact that you have not submitted a complete CDP application, Commission enforcement staff is moving forward to schedule a Restoration Order proceeding to order you to restore the site to the condition it was in prior to removal of the vegetation.

EXHIBIT NO. 8
CC-00-CD-09
1 of 3

### Steps in the Restoration Order Process

Pursuant to Coastal Act section 30811, the Commission has the authority to issue a restoration order, ordering restoration of a site if the Commission finds; after a public hearing, that the development occurred without a coastal development permit from the Commission, that the development is inconsistent with the Coastal Act, and that the development is causing ongoing resource impact.

Under the California Code of Regulations Title 14, section 13196(e) a restoration order would authorize the Commission to require you to restore the property affected by the violation to the condition the property was in prior to the violation.

Please be advised that if the Commission issues a restoration order section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists.

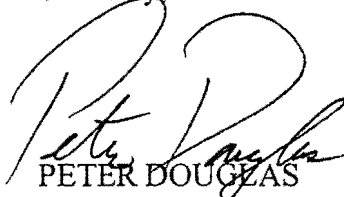
In accordance with the California Code of Regulations, Title 14, section 13181(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. The completed Notice of Defense form must be returned to this office **no later than April 17, 2000.**

### Options for Resolving this Violation

You can prevent this hearing from taking place by filing with the San Diego Office prior to the scheduled date of Commission action on a proposed restoration order a complete coastal development permit application for restoration and revegetation of the site. Attached to the application should be a revegetation plan that is developed in consultation with the California Department of Fish and Game. This plan should include specific erosion control measures to prevent damage from runoff to the subject and surrounding properties during rain events. For CDP filing requirements, please contact Lee McEachern of our San Diego office at 619-521-8036.

Should you have any questions regarding this enforcement action or procedures, please contact Jan Perez at (415) 904-5294.

Sincerely,



PETER DOUGLAS

Executive Director

Enclosure

cc: Nancy L. Cave, Manager, Statewide Enforcement Program  
Jan Perez, Statewide Enforcement Program  
Lee McEachern, Chief of Permits, San Diego Office

EXHIBIT NO. 8
CC-00-10-05
2 of 3

**CALIFORNIA COASTAL COMMISSION**

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

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate restoration order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than April 17, 2000** to the Commission's enforcement staff at the following address:

**Jan E. Perez, Legal Division,  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105**

If you have any questions, please contact **Jan E. Perez** at **(415) 904-5294**.

RECORDING REQUESTED BY AND RETURN TO:  
STATE OF CALIFORNIA  
CALIFORNIA COASTAL COMMISSION/SAN DIEGO DISTRICT  
6154 MISSION GORGE ROAD, STE. 220  
SAN DIEGO, CA 92120

DEED RESTRICTION

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I. WHEREAS, JAMES L. KOSBIE and ELAINE KOSBIE, Husband and wife  
as Joint Tenants \_\_\_\_\_, hereinafter referred to

as Owner(s), is the record owner of the following real property:  
Lot 44 of RANCHO DE LA VALLE UNIT NO. 3, in the County of San Diego, State of  
California, according to Map thereof No. 8620, filed in the Office of the  
County Recorder of San Diego, July 14, 1977, and as more particularly described  
on legal description attached hereto and made a part hereof as EXHIBIT "A".

hereinafter referred to as the subject property; and

II. WHEREAS, the California Coastal Commission is acting on  
behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal  
zone as defined in Section 30103 of the California Public Resources Code  
(hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the  
Owner applied to the California Coastal Commission for a coastal  
development permit for the development on the subject property described  
above; and

V. WHEREAS, coastal development permit No. 6-85-297 was  
granted on July 23, 1985 by the California Coastal Commission;  
and

VI. WHEREAS, coastal development permit No. 6-85-297 was  
subject to the terms and conditions including but not limited to the  
following condition:

SEE PAGE 2

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3. Future Permits. Prior to the transmittal of the development permit, the applicant shall submit to the Executive Director a deed restriction for recording, free of prior liens, except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and written approval of the Executive Director. Said deed restriction shall serve to notify future property owners that any alteration of natural landforms, erection of any additional structures or removal of native vegetation beyond the existing pad shown on Exhibit #3 will require a coastal development permit or waiver from the Coastal Commission or its successor in interest.

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted; and

VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable and shall constitute enforceable restrictions; and

IX. WHEREAS, Owner has elected to comply with the condition imposed by Permit No. 6-85-297 so as to enable Owner to undertake the development authorized by the permit.

NOW, THEREFORE, in consideration of the granting of Permit No. 6-85-297 to the Owner by the California Coastal Commission, the Owner hereby irrevocably covenants with the California Coastal Commission that there be and hereby is created the following restrictions on the use and enjoyment

1 of said subject property, to be attached to and become a part of the deed  
2 to the property. The undersigned Owner, for himself/herself and for  
3 his/her heirs, assigns, and successors in interest, covenants and agrees  
4 that:

5 Any alteration of natural landforms, erection of any additional  
6 structures or removal of native vegetation beyond the existing pad, as  
7 documented on Exhibit A of application #6-85-297 on file at the Coastal  
8 Commission office, will require a coastal development permit or waiver  
9 from the Coastal Commission or its successor in interest.

10  
11 Said deed restriction shall remain in full force and effect during the  
12 period that said permit, or any modification or amendment thereof, remains  
13 effective, and during the period that the development authorized by said  
14 permit, or any modification of said development, remains in existence in or  
15 upon any part of, and thereby confers benefit upon, the subject property  
16 described herein, and to that extent, said deed restriction is hereby  
17 deemed and agreed by Owners to be a covenant running with the land, and  
18 shall bind Owners and all his/her assigns or successors in interest.

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1 Owner agrees to record this Deed Restriction in the Recorder's office  
2 for the County of San Diego as soon as possible after  
3 the date of its execution.

4 DATED: July 30, 1985

*Elaine Kosbie*  
OWNER

ELAINE KOSBIE  
TYPE OR PRINT NAME OF ABOVE

*James L. Kosbie*  
OWNER

JAMES L. KOSBIE  
TYPE OR PRINT NAME OF ABOVE

12 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons  
13 signing on behalf of a corporation, partnership, trust, etc., please use  
14 the correct notary jurat (acknowledgment) as explained in your Notary  
15 Public Law Book.

16 State of California, County of San Diego, ss

17 On this 30th day of July, in the year 1985,

18 before me Jill Karen Bankerd, a Notary Public, personally

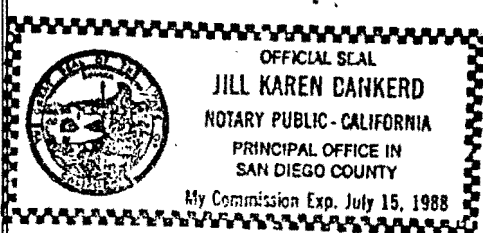
19 appeared Elaine Kosbie and James L. Kosbie,

20 personally known to me (or proved to me on the basis of satisfactory

21 evidence) to be the person whose name is subscribed to this instrument, and

22 acknowledged that he/she executed it.

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*Jill Karen Bankerd*  
NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

EXHIBIT NO. 9  
CCC-00-CD-05  
4 of 8

1 This is to certify that the deed restriction set forth above is hereby  
2 acknowledged by the undersigned officer on behalf of the California Coastal  
3 Commission pursuant to authority conferred by the California Coastal  
4 Commission when it granted Coastal Development Permit No. 6-85-297  
5 on July 23, 1985 and the California Coastal Commission consents to  
6 recordation thereof by its duly authorized officer.

7 Dated: Sept 3, 1985

8 T. A. Crandall  
9 District Director  
California Coastal Commission

11 STATE OF CALIFORNIA )  
12 COUNTY OF SAN DIEGO ) ss

13 On September 3, 1985, before me Gala E. Marshall,  
14 a Notary Public, personally appeared T. A. Crandall, personally known to  
15 me to be (or proved to me on the basis of satisfactory evidence) to be the  
16 person who executed this instrument as the District Director,  
17 and authorized representative of the California Coastal Commission and  
18 acknowledged to me that the California Coastal Commission executed it.

19  
20 WITNESS my hand and official seal.

21  
22 Gala E. Marshall  
23 Notary Public in and for Said County and State



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EXHIBIT NO. 9  
CC-00-CD-05  
548

EXHIBIT "A"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF SAN DIEGO , CITY OF UNINCORPORATED AND IS DESCRIBED AS  
FOLLOWS:

LOT 44 RANCHO DE LA VALLE UNIT NO. 3, ACCORDING TO MAP NO. 8620,  
FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY,  
JULY 14, 1977. EXCEPTING THEREFROM THAT PORTION LYING SOUTHERLY  
OF A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER COMMON TO SAID LOTS 44 AND  
45, IN SAID RANCHO DE LA VALLE UNIT 3, THENCE ALONG SAID LINE COMMON  
TO LOTS 44 AND 45, SOUTH  $68^{\circ}12'05''$  WEST, 205.00 FEET TO THE POINT OF  
BEGINNING; THENCE LEAVING SAID COMMON LINE, NORTH  $74^{\circ}11'20''$  WEST,  
170.41 FEET; THENCE SOUTH  $52^{\circ}19'32''$  WEST, 55.75 FEET TO THE POINT OF  
REVERSE CURVATURE ON THE NORTHEASTERLY LINE OF RANCHO REPOSO, SAID  
POINT BEING THE POINT OF TERMINUS.

EXHIBIT NO. 9

CC-00-00-05

6/8

9 3 85

PERMIT # 6-85-297  
APPLICANT JAMES L. KOSBIE and ELAINE KOSBIE, husband and wife 2365 85-322191

1 RECORDING REQUESTED BY:  
2 STATE OF CALIFORNIA  
3 CALIFORNIA COASTAL COMMISSION  
4 631 HOWARD STREET, FOURTH FLOOR  
5 SAN FRANCISCO, CA 94105

REC-3  
AR-3  
TLR  
MG-1  
SEP -3 PM 2:57  
VERA L. LYLE  
COUNTY RECORDER

SUBORDINATION AGREEMENT

6 NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE  
7 PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE  
8 LIEN OF SOME OTHER OR LATER INSTRUMENT. (THIS NOTICE  
9 REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3)

10 This subordination agreement is made between (1) A K ENTERPRISES,  
11 a Limited Partnership, hereinafter called  
12 "Beneficiary" and (2) JAMES L. KOSBIE and ELAINE KOSBIE, husband and wife  
13 \_\_\_\_\_, hereinafter called "Trustor."

14 The undersigned, as beneficiary under a Deed of Trust dated (3) \_\_\_\_\_  
15 23rd day of August, 1982 in Book 1965, Page 93561,  
16 Official Records in the Office of the County Recorder of (4) San Diego  
17 \_\_\_\_\_ encumbering the real property described in Exhibit A (5)  
18 to this document, which Deed of Trust has as trustee (6) CALIFORNIA FIRST BANK,  
19 a California corporation, hereby acknowledges the (7) Waiver of Liability Deed  
20 Restriction and the Deed Restriction to fulfill Special Condition 3 of permit  
21 # 6-85-297, (both)  
22 dated (both) July 30, 1985, executed by JAMES L. KOSBIE and ELAINE KOSBIE  
23 husband and wife, recorded concurrently herewith, and does  
24 hereby subordinate the interests of its deed of trust thereto on behalf of  
25 the People of the State of California.

26 DATED: July 30, 1985 BY: [Signature]  
27 \_\_\_\_\_  
SIGNATURE OF BENEFICIARY

28 [Signature]  
29 \_\_\_\_\_  
SIGNATURE OF TRUSTOR  
PRINT OR TYPE NAME ABOVE

30 [Signature]  
31 \_\_\_\_\_  
SIGNATURE OF TRUSTOR  
PRINT OR TYPE NAME ABOVE

COURT PAPER  
STATE OF CALIFORNIA  
STD 113 (REV. 8-72)

THIS IS CERTIFIED TO BE A TRUE AND ACCURATE  
COPY OF THAT CERTAIN INSTRUMENT RECORDED  
9-3-85 AS FILE NO. 85-322191  
IN THE OFFICE OF THE COUNTY RECORDER OF  
SAN DIEGO COUNTY, CALIFORNIA.

STEWART TITLE COMPANY OF SAN DIEGO

[Signature]

No 322191  
85-

EXHIBIT NO. 9  
CC-00-00-05  
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NOTE TO NOTARY PUBLIC: If any party signing the attached subordination agreement is signing on behalf of a corporation, public agency, trust, partnership, etc., please use the proper notary acknowledgment (jurat).

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STATE OF ~~CALIFORNIA~~ Washington

COUNTY OF King

On this 14<sup>th</sup> day of August, in the year 1985,

before me KRISTINE A. RICEY, a Notary Public, personally appeared VAUN D. RICHESON signing for A.K. ENTERPRISES, LIMITED PARTNERSHIP personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/she executed it.

Kristine A. Ricey  
NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

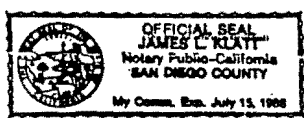
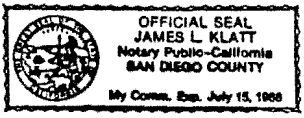
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me \_\_\_\_\_, a Notary Public, personally

This Form Furnished by Founders Title Company  
STAPLE HERE

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
On AUGUST 17<sup>th</sup> 1985 before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES L. KOSBIE AND ELAINE KOSBIE

\_\_\_\_\_ (proved to me on the basis of satisfactory evidence) to be the person S whose name ARE subscribed to the within instrument and acknowledged that executed the same

WITNESS my hand and official seal.  
Signature James L. Klatt  
JAMES L. KLATT  
Name (Typed or Printed)



COURT PAPER  
STATE OF CALIFORNIA  
STD 113 1987 9-73  
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No 32219  
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EXHIBIT NO. 9  
CC-00-CD-05  
B-18

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036

*Tudub*

Filed: 1/23/98  
 49th Day: 3/13/98  
 180th Day: 7/22/98  
 Staff: LJM-SD  
 Staff Report: 2/19/98  
 Hearing Date: 3/10-13/98

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

*AW/C 9-D, 3/10/98,  
 Monterey*

Application No.: 6-97-154

Applicant: Martin and Gail Solarsh

Agent: Travis Deal

Description: Construction of a two-story, 30 ft. high, 4,860 sq. ft. single-family residence with an attached 929 sq. ft. garage, a pool, septic system and approximately 1,050 cubic yards of grading on a vacant 1.66 acre site.

Lot Area	72,310 sq. ft.
Building Coverage	3,815 sq. ft. (5%)
Pavement Coverage	3,196 sq. ft. (5%)
Landscape Coverage	2,144 sq. ft. (3%)
Unimproved Area	63,155 sq. ft. (87%)
Parking Spaces	3
Zoning	RS1
Plan Designation	Residential 2 (1 du/ac)
Ht abv fin grade	30 feet

Site: 4740 Rancho Reposo Court, Lomas Santa Fe vicinity, San Diego County.  
 APN 302-210-23.

Substantive File Documents: County of San Diego Local Coastal Program (LCP); CDP  
 Nos. F7943, F9772, 6-82-96, 6-83-25, 6-83-67, 6-85-168, 6-85-297, 6-85-  
 582, 6-87-94, 6-88-273

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed project with special conditions which will require a redesign of the proposed residence to avoid encroachment into designated open space (required at the time of Commission approval of the subdivision) and to allow for a setback for fire protection purposes. The subject site is very constrained. The majority of

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the site is comprised of steep naturally vegetated slopes, most of which have been preserved in open space. This, along with front and side yard setback requirements and the need to place a septic system on the site, leaves only a small area of the site where the residence can be constructed. While the proposed residence will not encroach into the designated open space area, it is proposed to be sited on naturally vegetated steep slopes (not restricted to open space) and immediately adjacent to the edge of the open space area, leaving no area for necessary brush management between the structure and designated open space.

As such, staff is recommending approval of the proposed project with special conditions which require the applicant to revise the project such that a 30 ft. setback for all structures from the identified open space area (for brush management purposes) is provided. However, in order to allow the applicant to meet the minimal floor area requirements of the CC&Rs, some encroachment into the setback is acceptable in order to provide for a maximum of 1,600 sq. ft. of habitable floor area on the first level.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, final revised building plans (site plan, floor plans and elevations) approved by the County of San Diego Building Department. Said plans shall document that all structures (residence, pool, decks and patios) are setback 30 ft. from the area deed restricted as open space pursuant to CDP #F7943 (which corresponds with the 210 foot topographic contour as

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depicted on the Slope Analysis and Vegetation Survey for the Solarsh Residence by Resource Development Corporation dated 11/6/97). However, said plans may show encroachment into the 30 ft. setback area (in the areas where the currently proposed home does not meet the 30 ft. setback) by portions of the proposed residence to the extent necessary to allow for a maximum of 1,600 sq. ft. of habitable floor area on the first floor (decks, patios or a pool may not encroach within the 30 ft. setback as they are not necessary to meet minimal habitable floor area requirements). The project shall be constructed in accordance with the approved plans.

2. Landscaping Plan. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible. Special emphasis shall be placed on the treatment of south and eastern facing portions of the residence with specimen size trees (min. 24-inch box). Landscaping shall be installed in accordance with the approved plans.

3. 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, grading and erosion control plans approved by the County. The project shall be implemented in accordance with the approved plan and shall incorporate the following requirements:

- a. All grading activity shall be prohibited between October 1st and April 1st of any year.
- b. All areas disturbed by grading shall be planted within 60 days of the initial disturbance and 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 prior to October 1st, and shall utilize vegetation of species compatible with surrounding native vegetation. The species list shall be subject to Executive Director approval, prior to issuance of the permit.

4. Drainage Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a drainage and runoff control plan, with supporting calculations. This plan shall document that runoff from the roof, driveway and other impervious surfaces will be collected and appropriately discharged into the existing street drainage system and away from the hillside in order to protect the scenic resources and habitat values of the hillside from degradation by scouring or concentrated runoff. The project shall be constructed in accordance with the approved plans.

#### IV. Findings and Declarations.

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The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed development involves the construction of a two-story, 30 ft. high, approximately 4,860 sq. ft. single-family residence with an attached 929 sq. ft. garage, a pool, septic system and landscaping on a vacant 1.66 lot on Rancho Reposo Court in the unincorporated County of San Diego. In order to prepare the site for development, grading consisting of 900 cubic yards of cut and 150 cubic yards of fill is proposed. The excess graded material will be exported to a landfill outside of the Coastal Zone.

The proposed residence will be constructed on an existing narrow graded pad area adjacent to the existing cul-de-sac street. The site drops off sharply to the east beyond the existing pad into a highly vegetated canyon overlooking the eastern portion of Via de la Valle and the San Dieguito River Valley, with approximately 88% of the site consisting of steep, naturally vegetated slopes.

The subject site was created as part of a 17 lot subdivision approved by the Commission in April of 1979 (ref. CDP #F7943). This permit involved the subdivision, construction of Rancho Reposo Court and grading of the building pads. No residential construction was proposed or approved at that time. An open space deed restriction was placed over several of the lots, including the subject site, which prohibits any alteration of landforms, removal of vegetation or the erection of structures without review and approval of the Coastal Commission. For the subject site, the open space restriction applies to all areas below the 210 foot topographic contour line (ref. Exhibit #2 attached) but did not include all the steep naturally vegetated areas of the site beyond the proposed building pad. As proposed, portions of the structure would be constructed beyond the building pad created by the original subdivision for this site on steep naturally-vegetated areas and up to the 210 ft. topographic contour line, with a small portion of decking cantilevered over and above this limit.

In March, 1986, the Commission approved construction of a three-story, 4,087 sq. ft. single-family residence on the subject site. While the approved residence did not encroach onto naturally-vegetated steep slopes, portions of a deck were cantilevered over the steep natural slopes (ref. CDP #6-85-582). In addition, the residence was proposed to be constructed as close as 12 ft. from the open space area. However, the majority of the approved residence was setback greater than 30 ft. from the open space area. The applicant at that time had also received a variance from the County of San Diego to reduce the required front yard setback to 33 ft. at its closest point. However, the structure was never built and the permit has since expired.

The site is located within the Lomas Santa Fe vicinity of the unincorporated County of San Diego, east of the City of Solana Beach and is planned and zoned for residential development. While the County of San Diego did receive approval of its Local Coastal Program from the Commission in 1985, it never became effectively certified. As such, the

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standard of review is Chapter 3 policies of the Coastal Act with the County LCP used as guidance.

2. Environmentally Sensitive Habitats/Steep Slopes. Section 30231 of the Coastal Act is applicable to the proposed development and states, in part:

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...

In addition, Section 30240 of the Coastal Act is applicable and states:

(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.

In 1979, when the Commission approved the subdivision which included the subject site, it found that because the project site drains into the San Dieguito River, which flows into the San Dieguito Lagoon, measures to control runoff and sedimentation are especially critical. The Commission imposed a number of conditions designed to control sedimentation and run-off from the site to protect the biological quality and habitat value of the San Dieguito River and Lagoon, including restricting the amount of grading on steep slopes. Specifically, the Commission required that a deed restriction be recorded notifying future owners that no development could occur within the restricted area (in the case of the subject site, slopes below the 210 foot topographic contour line) without the approval of the Coastal Commission. The restricted area covered most, but not all, of the naturally vegetated steep slopes within the subdivision.

As noted previously, the County of San Diego LCP was certified by the Commission in 1985. However, because the County never formally accepted the Commission's decision, the LCP was never effectively certified. However, the Commission has continued to use the County's LCP as guidance in review of permit requests in the County. In response to the habitat protection policies of the Coastal Act and the need to preserve sensitive habitats and steep slopes, the County of San Diego developed the Coastal Resource Protection (CRP) overlay zone as part of its certified LCP. The CRP ordinance, which regulates the development of naturally-vegetated slopes in excess of 25% grade, states, in part:

Steep slopes. No development, grading, planting, excavation, deposit of soil or other material, or removal of natural vegetation, except as may be necessary for fire safety or installation of utility lines, shall be permitted on steep natural slopes of 25% grade or greater...No alteration of such natural steep slopes shall be permitted in order to obtain use of a property in excess of the minimum reasonable use. For purposes of this provision, the term "minimum reasonable use" shall mean a minimum of one (1) dwelling unit per acre. Any encroachment into steep slope areas over 25% shall not exceed 10% of the steep slope area over 25% grade.

The project site is located within the CRP overlay zone. The intent of the CRP's restrictions on grading steep slopes is to minimize the visual impacts associated with such grading, to preserve the habitat values of significantly vegetated steep slope areas, and to avoid the increased likelihood of erosion, runoff and sedimentation which can occur when steep slopes are graded. These concerns are addressed by eliminating or significantly reducing grading on steep slopes. While encroachments into steep slopes can be allowed in some instances, where there is the possibility to develop sites without such encroachments, they are to be avoided.

When the Commission approved the subdivision which created the subject site in 1979, the County had not yet received approval of its LCP and the CRP provisions were not in place. While most of the naturally-vegetated steep slope areas were protected in open space by the Commission's action, not all were. As such, in subsequent review by the Commission of permit applications for construction of individual homes within this subdivision, staff has not only assured that no encroachment into the designated open space area occurred, but has also applied the CRP provisions to assure that all steep, naturally-vegetated slopes would be protected from encroachment to the maximum extent feasible (ref. CDP Nos. 6-85-297, 6-85-582 and 6-87-94). However, in each of these cases, (including the project previously approved on the subject site), the Commission approved the projects with some minor encroachments into steep natural areas (but not into the designated open space area), finding that the proposed encroachments were minimal and would not result in adverse impacts to habitat or visual resources.

Since the time when the County LCP was certified by the Commission and the other permit decisions by the Commission within this subdivision, the California Gnatcatcher has been listed by the U.S. Fish and Wildlife Service as an endangered species. As a result of this listing, preservation of naturally vegetated (coastal sage/chaparral) slopes is even more significant. As such, where the protection of the naturally-vegetated steep areas by the Commission in the previous permit actions within this subdivision was primarily addressing issues of erosion, sedimentation and protection of visual resources, in light of the listing of the Gnatcatcher, the Commission must now also consider the protection of this natural area as potential habitat for endangered species.

In the case of the proposed development, portions of the residence (and pool and decking) are proposed to be located directly adjacent to the designated open space area. While a small portion of the pool deck is proposed to be cantilevered over the open space area,

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there will not be any direct encroachment into the restricted area by the residence. However, the project does involve some encroachment onto steep, naturally-vegetated slopes which were not included in the previously applied open space restriction. Based on the slope analysis and vegetation survey submitted by the applicant, approximately 63,273 sq. ft. or 88% of the site contains naturally vegetated steep slopes and the proposed project will encroach directly onto 1,698 sq. ft., or 3% of the naturally-vegetated steep slopes, but again, not into the designated open space area.

Additionally, in recent years, the issue of fire safety in areas of "wildland/urban interface" has become increasingly pertinent. Local governments and fire departments/districts have become increasingly aware of the need to either site new development away from fire-prone vegetation, or to regularly clear vegetation surrounding existing structures (ref. Section 4291 of the Public Resource Code). Since fire department requirements for vegetation thinning and clear-cutting can adversely effect coastal resources, the Commission has in past actions included a 30-foot brush-management zone around proposed structures when calculating the amount of proposed encroachment on steep, naturally vegetated-slopes, with the idea that vegetation at least 30 feet from any structure may have to be cleared to meet fire safety regulations. While brush management concerns are typically addressed at the subdivision stage, in the case of the previous subdivision which created the subject lot, it was not. However, according to the plans approved for the subdivision, there is a 30 ft. distance between the approved building pad on this particular site and the required open space which would provide a setback for fire protection purposes. In any case, brush management for fire safety needs to be addressed in review of the proposed residence.

In the case of the proposed residence, the provision of a 30-foot "clear-cut" of vegetation for brush management around the proposed structure, would eliminate approximately 7,600 sq. ft. of naturally vegetated steep slopes, or 12% of the entire amount of the steep, naturally vegetated slopes on the site. In addition, because portions of the residence are to be located directly adjacent to the open space restricted area, clearing of vegetation for brush management would encroach as much as 30 feet into the deed restricted area, resulting in the loss of approximately 3,000 sq. ft. of natural steep slope habitat.

Commission staff have met with staff at the Rancho Santa Fe Fire Department, which has jurisdiction over the subject site, to review the Department's requirements regarding the potential for future need to clear vegetation around the proposed structure for fire safety. They indicated that no clearing of vegetation on steep slopes would be required for this particular site at this time, as removal of vegetation would increase the risk of mudslides on this extremely steep canyon lot. However, staff at the Fire Department have also indicated that at the Department's discretion, up to 100 feet of clear-cut could be required around any structure. In some cases, zones may be established where clear-cutting is required around structures, with selective thinning of vegetation required further away from the structures.

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While the Commission understands the Fire Department's concerns related to the potential for mud slides and erosion resulting from clear-cut of vegetation on the steep portions of the site, the commission is concerned that at some point in the future, maybe after several years of drought, that the Fire Department may determine that the need to clear the brush outweighs the potential for erosion, especially if the area that is cleared is replanted with other non-native fire-resistant plant species. In other words, even though the Fire Department is not requiring clearing around the home now, they may in the future due to some changed circumstances. Therefore, in order to assure long-term protection of the open space deed restricted area, the Commission must address even the potential for fire clearance around the residence with this permit.

As such, the provision of a 30 ft. setback for all structures from the existing open space line for brush management purposes would provide the Commission with the necessary assurance that the existing natural open space area will not be adversely affected should a 30 ft. clear-cut be required at some point in the future by the Fire Department. While the Commission acknowledges that the subject site is one of the last sites to develop in this subdivision and brush management was not specifically addressed by the Commission on other permit applications for construction of residences in this subdivision, many of the developments incorporated setbacks from the open space into their proposals. Specifically:

CDP #F9772 - approved by the Commission in 1981 for construction of a two-story single-family residence with a setback of 200 ft. from the open space area.

CDP #6-82-96 - approved by the Commission in 1982 for the construction of 4,767 sq. ft. single-family residence with a setback of 10 ft. from the open space area.

CDP #6-83-25 - approved by the Commission in 1983 for the construction of a 3,308 sq. ft. single-family residence with a setback of 30 ft. from the open space area.

CDP #6-85-168 - approved by the Commission in 1985 for the construction of a 4,564 sq. ft. single-family residence with a setback of 180 ft. from the open space area.

CDP #6-85-297 - approved by the Commission in 1985 for the construction of a 3,870 sq. ft. single-family residence with no setback from the open space area (patio areas were permitted up to the open space limit).

CDP #6-85-582 - approved by the Commission in 1985 (for the subject site) for construction of a 4,087 sq. ft. single-family residence with a setback of 12 ft. from the open space area.

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**CDP #6-87-94** - approved by the Commission in 1987 for the construction of a 5,117 sq. ft. single-family residence with a **setback of 60 ft. from the open space area.**

**CDP #6-88-273** - approved by the Commission in 1988 for the construction of a 4,181 sq. ft. single-family residence with a **setback of 100 ft. from the open space area.**

As noted above, all but one of the previous developments listed included a setback from the open space area and five of the eight, included a setback of 30 ft. or greater. Thus, the provision of a setback of 30 ft. from the open space in this application is consistent with other development within this subdivision.

As noted previously, the subject site is very constrained. With the open space restricted area on the east, the front and side yard setbacks requirements and the need to place a septic system on the site, only a small area remains on the site where a residence can be developed. In addition, existing restrictions on the property contained in the CC&Rs for the subdivision, require that for two-story residences a minimum of 1,600 sq. ft. of habitable floor area must be provided on the first floor. In discussing the 30 ft. setback with the applicant, it was determined that a 1,600 sq. ft. first floor area could not be accommodated if the 30 ft. setback applies. While the Commission feels that the provision of 30 ft. setback for brush management purposes is necessary in order to find the proposed development consistent with Coastal Act policies, it also acknowledges the existing constraints applied to the site.

Taking into consideration the need for the 30 ft. setback and the existing site constraints, Special Condition #1 has been attached. This condition requires the applicant to submit revised plans for the development which require a 30 ft. setback for all structures from the open space restricted area for brush management. However, given the constraints associated with the site and the requirement that the residence provide a minimum of 1,600 sq. ft. of area, the condition allows for the encroachment in the setback area by portions of the residence only to the extent necessary to provide a maximum of 1,600 sq. ft. of habitable floor area. The allowance for encroachment only applies to those areas where the currently proposed home does not meet the 30 ft. setback. In addition, decks, patios and a pool are not permitted to encroach into the 30 ft. setback area as they are not necessary to meet minimal floor area requirements. While this condition allows for less than the 30 ft. setback for brush management, it takes into consideration the existing site constraints and reduces the potential for impacts to the adjacent natural open space area should clearance for fire protection be required in the future.

To provide additional protection to the adjacent natural habitat area and the sensitive habitat areas of the San Dieguito River Valley and Lagoon, Special Condition Nos. 3 and 4 have been attached. These conditions call for the provision of drainage, grading and erosion control plans and limit site grading to the non-rainy season months (April 1st through September 30 of any year). In addition, the conditions require that all graded

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areas on the site be stabilized during the rainy season to reduce the potential for erosion and associated downstream adverse impacts from sedimentation. The conditions further require that all runoff from impervious surfaces of the site be collected and appropriately discharged into the existing street drain system.

With the proposed conditions, the Commission can be assured that the existing natural open space area will not be adversely impacted by direct development, the need to provide brush clearance for fire safety or from runoff or sedimentation. Therefore, the Commission finds the proposed development consistent with Sections 30231 and 30240 of the Coastal Act.

3. Visual Resources. Section 30251 of the Coastal Act is applicable and states, in part:

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

The project site is located along the top of a canyon area and while not visibly prominent, portions of the proposed residence will be visible from Via de la Valle at the bottom of the canyon as well as from other areas within the San Dieguito River Valley. As such, the development has the potential to affect public views of this natural canyon area. To address this concern, Special Condition #2 has been proposed. This condition requires the applicant to submit a final landscape plan for the site which includes provisions for special treatment of the south and eastern facing portions of the residence with trees to help break-up the facade of the structure and effectively screen the structure from views from Via de la Valle and the River Valley. With this condition and the existing open space deed restriction over the eastern facing slope, the potential for the proposed residence or other development on the site in the future to become a visual intrusion into the river valley will be minimized to the maximum extent feasible, consistent with Section 30251 of the Coastal Act.

4. 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.

The County of San Diego previously received approval, with suggested modifications, of its Local Coastal Program (LCP) from the Commission. However, the suggested modifications were never accepted by the County and therefore, the LCP was never effectively certified. While the LCP was never effectively certified and the standard of review for development in the unincorporated County of San Diego is Chapter 3 policies

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of the Coastal Act, the Commission does use the County LCP as guidance. The County designates this area for residential development as a maximum density of one dwelling unit per acre. The proposed development is consistent with that designation.

The project site is also located within the Coastal Resource Protection (CRP) Overlay area which calls for the protection of steep naturally vegetated areas. While some encroachment into steep natural areas may result from the subject development, the encroachment is minimal and will not adversely impact any environmentally sensitive habitat areas. In addition, no encroachment into the open space restricted area will occur. As conditioned to require a 30 ft. setback for all structures for brush management, the proposed development can be found consistent with the CRP provisions. As discussed above, the Commission finds that approval of the proposed development, as conditioned, will not adversely impact environmentally sensitive habitat areas and is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development, as conditioned, will not prejudice the ability of the County of San Diego to prepare a certified LCP.

5. 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, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. Mitigation measures, including conditions which require redesign of the proposed residence to provide, to the maximum extent feasible, a 30 ft. wide setback for all structures from the existing open space area for brush management purposes, 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 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.

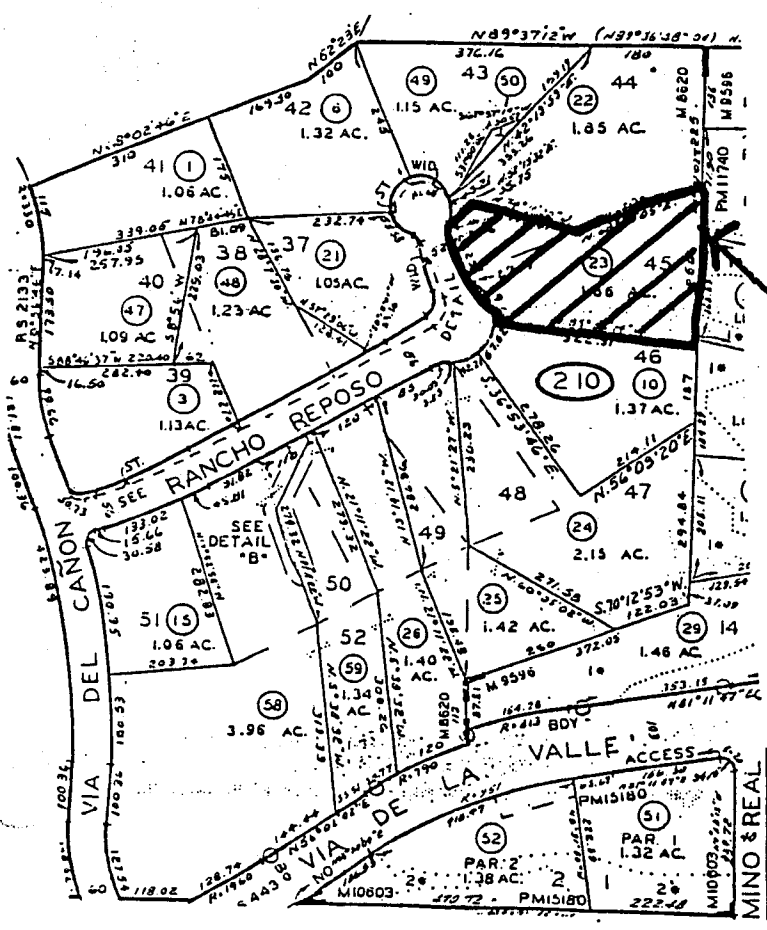
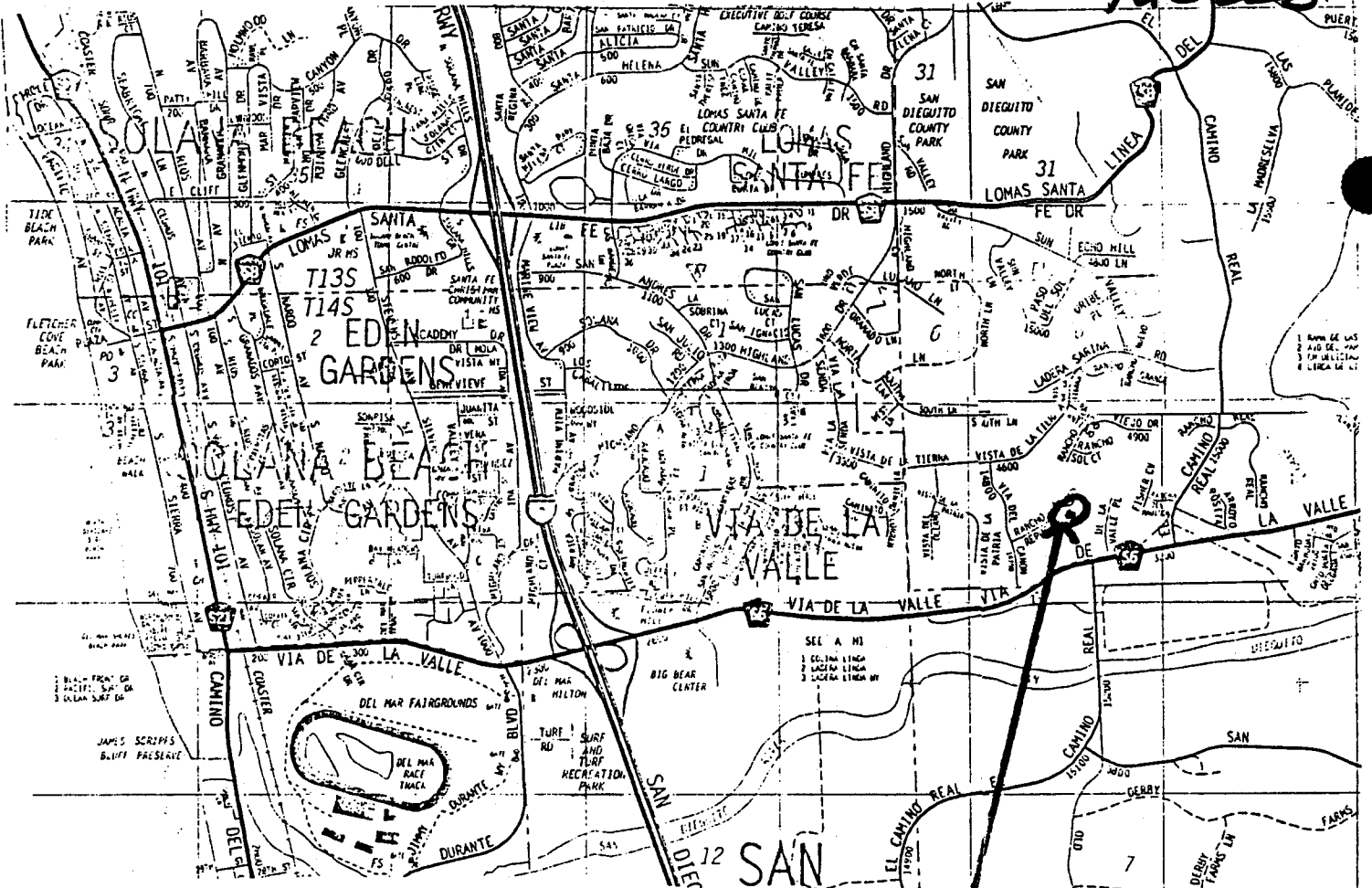
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2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application 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.

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Tue 22b



Subject Site



EXHIBIT NO. 1  
 APPLICATION NO.  
 6-97-154  
 Location Maps

EXHIBIT NO. 10  
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210 ft. topographic contour

# Open Space

210 ft. topographic contour

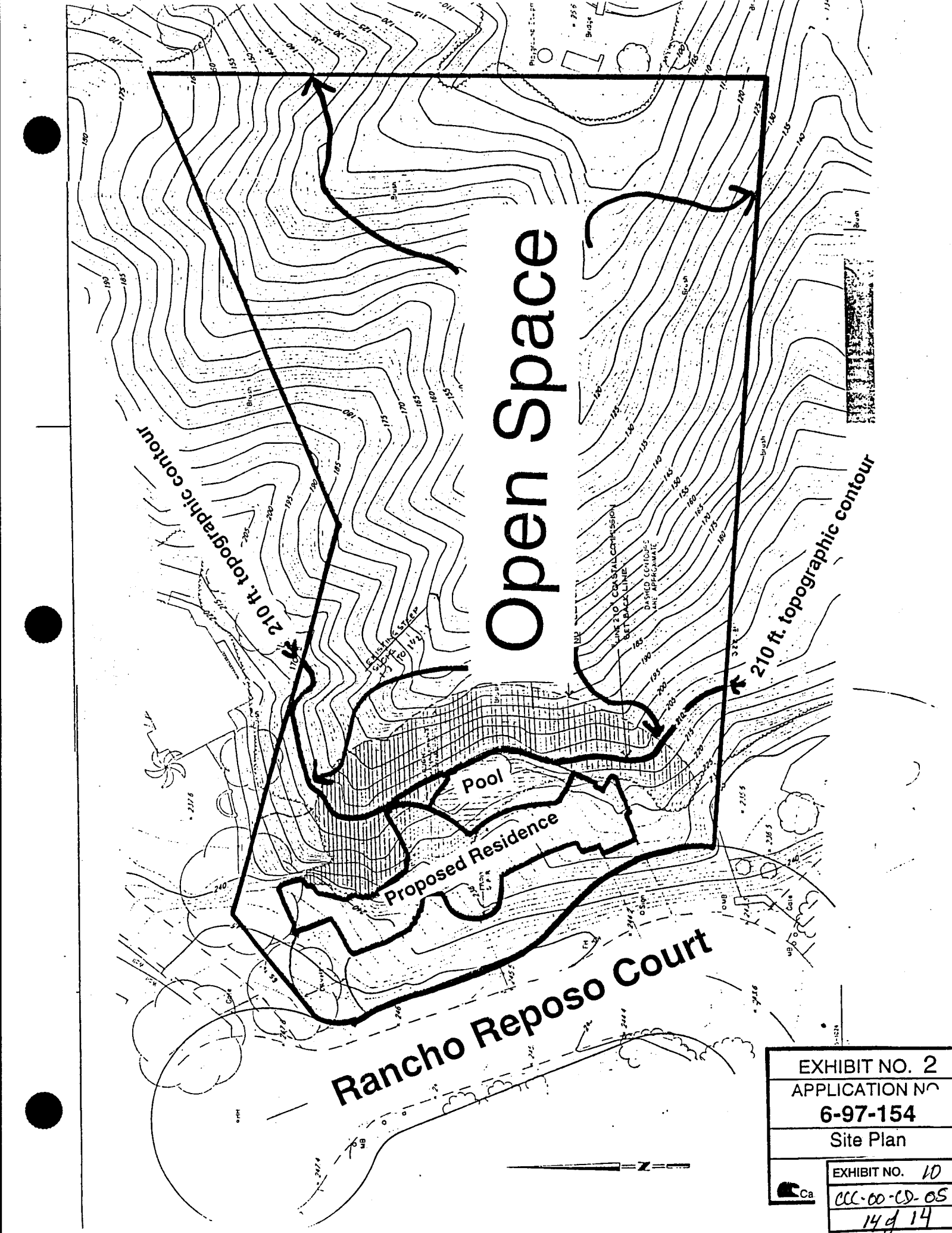
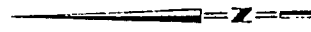
Pool

Proposed Residence

## Rancho Reposo Court

EXHIBIT NO. 2
APPLICATION NO
6-97-154
Site Plan

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## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
 3111 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 521-8036

Denied 0-6, 7/13/99, Marsh



TU 15e

Filed: May 10, 1999  
 49th Day: June 29, 1999  
 180th Day: November 10, 1999  
 Staff: BP-SD  
 Staff Report: June 24, 1999  
 Hearing Date: July 13-16, 1999

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-11

Applicant: M. Lou Marsh

Agent: John Leppert

Description: Subdivision of a 3.96 acre lot into two parcels of 1.12 acres for Parcel 1 and 2.84 acres for Parcel 2. Proposed Parcel 1 contains an existing single family residence; proposed Parcel 2 proposes grading of a building pad and driveway requiring 6,400 cubic yards of cut, 1,600 cubic yards of fill and 4,800 cubic yards of export. No residential development is proposed.

Zoning: RS-1 (Single Family Residential)  
 Plan Designation: Residential 1 du/acre

Site: 4610 Rancho Reposo, Del Mar, San Diego County. APN 302-210-58

Substantive File Documents: Certified San Dieguito LCP Land Use Plan and Implementing Ordinances; SDCRC # F7943; CCC Appeal No. 109-77; CCC #6-86-1 (Ford), CDP #6-87-94 (Marsh), "Biological Resources Survey Report for the Marsh Tentative Parcel Map Property TPM 20269, Log 96-13-13 County of San Diego

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the subdivision request because it cannot be found in conformance with the Chapter 3 policies of the Coastal Act. The project proposes development in an environmentally sensitive habitat area that not only contains sensitive plants and animals but also is encumbered by an open space deed restriction previously approved by the Commission.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would 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 of the Coastal Act.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and Site History. The applicant is proposing to subdivide a 3.96-acre lot into two parcels of 1.12 acres for Parcel 1 and 2.84 acres for Parcel 2 within the unincorporated County of San Diego. Proposed Parcel 1 contains existing single family development (4,239 sq.ft. residence, 878 sq.ft. garage and outdoor swimming pool) which was approved in Coastal Development Permit (CDP) 6-87-94; proposed Parcel 2 proposes grading of a building pad and driveway requiring 6,400 cubic yards of cut, 1,600 cubic yards of fill and 4,800 cubic yards of export. Construction of a residence is not proposed on Parcel 2 at this time. Access to the new parcel is proposed from Via Del Canon. The proposed subdivision would create a legal lot (Parcel 2) that would consist almost entirely of native vegetation that provides habitat to sensitive species and would be comprised of over 50% steep slopes and canyons located above the San Dieguito River Valley.

The site is located on the north side of Via De La Valle, which is north of and adjacent to the San Dieguito River Valley. The lot was created by a larger subdivision which was reviewed and approved by the San Diego Coast Regional Commission in 1979 (F-7943). The subdivision was for creation of 17 parcels on 29.2 acres, 53,200 cubic yards of balanced grading for the building pads, and construction of main access roads (i.e., Via del Canon, Rancho Reposo). The Commission action required the southern hillside portion of the subject site (proposed Parcel 2), as well as surrounding lots with a similar configuration, to remain as open space through recordation of an open space deed restriction. The deed restriction stated that no development could occur in the open space area unless approved by the Coastal Commission. Prior to its approval of the 17-lot subdivision, the Commission had denied an earlier version of the subdivision that included lots on the southern sloping hillside. The Commission had denied the initial subdivision because it found those lots on the southern hillside to be inconsistent with the policies of the Coastal Act. The subdivision was approved only after the applicant revised the project to eliminate the southern hillside lots. Proposed parcel 2 is on the southern hillside and is in the same configuration as those lots that were the basis for

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denial of the initial subdivision. Much of the site and the surrounding hillside properties consist of naturally vegetated steep slopes, well in excess of 25% gradient. As approved in 1979, access to all the building sites for the subdivision were from the north from Rancho Reposo, and all residences were to be sited on the flatter (mesa top) portions of each site. Today, property in active agricultural and equestrian usage occurs to the south within the floodplain of the San Dieguito River Valley. To the north above the escarpment are a number of developed homes. To the west immediately across from Via del Canon is a single family home.

In April 1986, prior to approval of any permit to construct a residence on the site, a previous owner applied for a coastal development permit to construct a residence on the steep southern portion of the subject lot (in the deed restricted area) taking access via a driveway off Via Del Canon. Preliminary grading was completed to create the southern building pad and driveway without a permit (under the auspices of obtaining soil samples). Portions of the vegetation immediately south of and adjacent to the original building pad that had been approved in the subdivision permit were also removed in unauthorized clearing operations. The Commission approved the application with special conditions requiring relocation of the proposed residence to the approved, previously graded building pad on the northern portion of the lot, with access off Rancho Reposo, and revegetation and restoration of the illegally graded areas (CDP #6-86-001/Ford). File records indicate that restoration activities were completed as of 1988.

The property was then sold to a new owner (M. Lou Marsh) who received approval from the Commission in March, 1987 (#6-87-94) to construct a 4,239 sq.ft single family residence, 878 sq.ft. garage and outdoor swimming pool on the approved building pad. The Commission's approval required relocation of the residence and accessory structures to eliminate any encroachment by grading or structures beyond the existing top of slope or edge of the previously graded pad area. Thinning or revegetation of the naturally vegetated area within ten feet of the slope edge was permitted, pursuant to a landscape plan for fire protection purposes approved by the Executive Director. The Commission's action assured minimal encroachment into the open space deed restricted area of the site consistent with the Commission's previous action and Chapter 3 policies of the Coastal Act. The subject application by the new owner proposes a building site within the previously recorded open space deed-restricted area.

In CDP 6-92-160, the Commission approved a boundary adjustment between the subject lot and the adjacent 1.84 acre lot to the east. The lot line adjustment resolved a property ownership dispute and corrected a front yard setback problem on the easternmost lot. In its approval, the Commission found the lot line adjustment would not affect the boundary of the open space deed restricted area of the site. As a condition of approval for the boundary adjustment, the County of San Diego required the applicant to submit evidence that the grading violation on the southern portion of the lot had been cleared.

While the County of San Diego did receive approval of its Local Coastal Program from the Commission in 1985, it never became effectively certified. As such, the standard of review is Chapter 3 policies of the Coastal Act with the County LCP used as guidance.

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2. Environmentally Sensitive Habitat. The subject site is located within the viewshed and watershed of the San Dieguito River Valley within the CRP overlay identified in the County LCP. Section 30240 of the Coastal Act is applicable and states:

(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.

In the subject application, the applicant is proposing to subdivide 3.96 acres into two parcels of 1.12 acres (Parcel 1) and 2.84 acres (Parcel 2). Proposed Parcel 1 contains the previously approved and built single family residence, which was approved in CDP 6-87-94. Proposed Parcel 2 proposes grading of a building pad and driveway requiring 6,400 cubic yards of cut, 1,600 cubic yards of fill and 4,800 cubic yards of export; no residential development is proposed on Parcel 2 at this time. The entire proposed Parcel 2 is within the previous deed restricted area while an existing single family residence already exists on the mesatop off of Rancho Reposo. Access to proposed Parcel 2 will be off of Via del Canon to the proposed building pad with a driveway proposed up the slope to the building pad. This is in direct contradiction to the previous Commission action taken in 1979 which required this area be reserved in open space and access to the site be taken off Rancho Reposo.

The proposed subdivision will result in adverse impacts to identified environmentally sensitive habitat. The submitted biology survey identifies three primary plant communities on the site: (1) Southern Coastal Bluff Scrub containing elements of Diegan Coastal Sage Scrub and comprising about 77% or 3.04 acres of the property, (2) Southern Maritime Chaparral comprising about 6% or 0.24 acres, and (3) Disturbed Areas, including horticultural landscaping, along roads and surrounding a developed home on the northern end of the site. The former two plant communities are considered sensitive plant communities in the San Diego County region.

The biology report states the following regarding Southern Coastal Bluff Scrub:

Southern Coastal Bluff Scrub, a variant found entirely along the immediate coast of Southern California and Baja California, has suffered significant losses, as ocean-facing bluff areas are converted to residential developments. This habitat is known to support a number of sensitive species of plants and animals, including the Federally-listed California Gnatcatcher and other very rare species. Unfortunately, the few remaining extensive areas of Southern Coastal Bluff Scrub vegetation are becoming fragmented where they persist. The coastal bluff scrub vegetation on the Marsh lot-split property is in very good condition, given the small size of the property and the

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prior disturbance to certain areas. In any case, this plant association forms a biologically significant feature in association with the subject property.

The biology report also states one hundred and nineteen species of plants exist on the site, six of which (Wart-stemmed Ceanothus, Sea Dahlia, Del Mar Mesa Sand Aster, Decumbent Goldenbush, Green's Ground Cherry and Ashy Spike-moss) are considered sensitive. Twenty-five species of vertebrate animals are identified, five of these (California Gnatcatcher, Orange-throated Whiptail, San Diego Pocket Mouse, California Pocket Mouse and Bewick's Wren) are considered sensitive. The report identifies that approximately 0.78 acres of sensitive Southern Coastal Bluff Scrub and 0.04 acres of Southern Maritime chaparral vegetation would be impacted as a result of the proposed development. Other direct impacts identified by the report include a loss of 100 specimens of Del Mar Mesa Sand Aster and losses of Orange-throated Whiptail, San Diego Pocket Mouse, California Pocket Mouse and Bewick's Wren and related habitat. Indirect potential losses include impacts to California Gnatcatchers, and losses of Bewick's Wren.

The biology report states the following regarding the California Gnatcatcher:

....two specimens, representing a breeding pair, were observed moving over most of proposed parcel 2 within undisturbed Diegan Coastal Sage Scrub vegetation. This pair presumably nests either onsite or a short distance offsite in suitable scrub habitat. Because this site is primarily situated on a south facing slopes, this pair very likely represents the carrying capacity of the property. It is also clear, based on our understanding of the ecology of this species, that the Marsh lot-split property forms only a small portion of the breeding territory of this pair. California Gnatcatcher, however, is nevertheless considered a significant biological resource on the property....

Both the biological survey and the County in its approval of the subdivision found these losses could be reduced to a level which is less than significant provided the majority of the site (2.52 acres) was placed in open space and offsite mitigation of 0.8 acres of occupied California Gnatcatcher habitat is secured. California Gnatcatcher, however, is nevertheless considered a significant biological resource on the property.

The submitted slope analysis/vegetation survey indicates that 57% of the site contains steep slopes (greater than 25% grade). Of these steep slopes, 53 % are identified as naturally vegetated steep slopes (coastal sage scrub on slopes greater than 25% grade). In many permit decisions, the Commission has found that such dual criteria slopes are worthy of protection as they not only provide habitat for sensitive plants and animals but also are a visual resource. Furthermore, since the U.S. Fish and Wildlife Service listed the gnatcatcher as an endangered species in 1996, the Commission has found areas of coastal sage scrub to be an environmentally sensitive habitat area (ESHA). In this case, the ESHA onsite consists of sensitive Southern Coastal Bluff Scrub, Southern Maritime chaparral vegetation, Del Mar Mesa Sand Aster, and sensitive animals and their related habitat. A significant direct adverse impact could include impacts to a pair of breeding

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California Gnatcatchers which have been documented on the site. The survey indicates that proposed grading would impact 9% of these dual criteria slopes. Additionally, grading is proposed on area less than 25% grade which contains sensitive habitat. The slope analysis does not address the fact that vegetation removal associated with fuel management provisions is required by the fire department. In its approval, the County required that a minimum of 100-feet of vegetation be subject to brush management which would result even more impacts to sensitive habitat. Almost all the area that would be cleared for brush management would occur on natively vegetated steep slopes with corresponding adverse impacts to site resources.

The applicant states the project has been designed in a sensitive manner to minimize the disturbance of the natural resources that are present on the site and to maintain, to the maximum extent possible, the interconnectivity of the habitat in the overall area. Grading has been kept to a minimum and offsite mitigation is proposed. The applicant states that although some discussion was made in previous staff reports regarding open space, neither the conditions of approval or the CC&Rs required that any development of the remaining portions of the property would require Commission approval.

Regarding the applicant's contention that the proposed building site was never identified as an open space area, the Commission found in both CDP #F7943 that this area was subject to preservation as an open space area.

Special Condition #7(b) of CDP #F7943 provides that:

On lots 47-52 of the amended tentative map, any alteration of landforms, removal of existing vegetation, or erection of structures of any type, shall be prohibited unless approved by the San Diego Coast Regional Commission or its successors in interest, on that area south of a line projected across these parcels as shown on Exhibit B. (Exhibit B [attached] indicates that all property south of the line is to be deed-restricted as open space.)

The subject site is Lot #52. Additionally, the Commission findings for both #F7943 and CDP #6-87-94 make findings that the area was to be reserved as open space. In its finding for Special Condition #7b of #F7943 the Commission found "Special Condition #7b was attached to ensure that the visually prominent steep southern slopes of the site will remain in open space, retaining the visual quality of the area and provide a substantial view corridor across the subject site. The findings also state: "Special Condition #7b provides for the retention of a considerable amount of the site to remain in open space which provides permanent habitat to mitigate the effects of the project on wildlife." Similar references to the southern portion of the subject site being reserved as open space are made in the succeeding Commission actions on this property (i.e. CDP #6-86-1, CDP #6-87-94, CDP 6-92-160).

As noted, the other lots that were created as a result of the Commission's approval of F7943 were approved to allow residential development on the mesa top portion of the property while the steep lower hillside portions of the lots were deed restricted as open

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space. Subsequent to its approval of the subdivision, when the individual lots came forward for approval of residential development, the Commission allowed some limited encroachment (i.e., less than 10%) into steep slope areas on the mesa top; however, the Commission never intended to allow encroachment onto the steep, naturally vegetated lower portions of these sites. As noted, the Commission approved these areas as open space to mitigate the habitat and visual resource impacts associated with its approval of the subdivision.

Further, the amount of grading and vegetation removal associated with developing the site make the project inconsistent with Section 30240 of the Coastal Act. As previously indicated, the lot is made up of ESHA that would be significantly, adversely impacted by development of the site. The proposed site plan requires 6,400 cubic yards of grading to construct a building pad and driveway in an area that is occupied by sensitive habitat including the gnatcatcher, orange throated whiptail lizard, and Del Mar Sand Aster. As noted, undeveloped land containing Southern Coastal Bluff Scrub is located along the flanks of the escarpment to the west of the project site and to the immediate east and southeast of the subject property. To allow the proposed disturbance of this stand of environmentally sensitive habitat on the subject site would result in adverse impacts to these resources that would be unmitigable.

The applicant owns an existing 4,239 sq.ft. residence, 878 sq.ft. garage and outdoor swimming pool on the northern portion of the existing 4-acre unsubdivided lot. When the applicant purchased the property, the open space deed restriction was in place. Additionally, all the other homes constructed within this subdivision were required to maintain the open space area (with some minimal encroachment) to preserve this area as habitat and a visual corridor. If it were to approve creation of Parcel 2, the Commission would be creating a lot comprised almost entirely of ESHA and as a result, it could potentially be faced with an argument that it must allow impacts to ESHA to obtain reasonable use of the lot. As stated, the ESHA is the onsite sensitive Southern Coastal Bluff Scrub, Southern Maritime chaparral vegetation, Del Mar Mesa Sand Aster, and sensitive animals and their related habitat. A significant direct adverse impact could include impacts to a pair of breeding California Gnatcatchers which have been documented on the site. Thus, the Commission finds the proposed subdivision can not be found consistent with Section 30240 of the Coastal Act, previous Commission decisions, and the resource protection policies of the County LCP.

3. Visual Resources. Section 30251 of the Coastal Act provides in part:

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

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As noted, the subject site is located within the viewshed and watershed of the San Dieguito River Valley within the CRP overlay. There would be impacts to visual resources from the proposed project from a number of scenic areas in the San Dieguito River Valley. While the proposed building site on Lot #2 is located at an elevation well below the existing single family residence on proposed Lot #1, development of this site with a single family dwelling would contribute to the cumulative degradation of the public viewshed in the area. These impacts would occur not only as a result of the grading of the driveway and the building pad but with the subsequent construction of a single-family residence. Further, brush management associated with fire safety would affect 100-feet of vegetation from the building site with its corresponding impact on public views to the project site.

In summary, the proposed project would create a new lot in a location, which the Commission has found on four previous occasions to contain sensitive habitat and visual resources, worthy of preservation in open space. Any future development on the proposed lot would necessarily encroach on these resources, inconsistent with the resource protection and visual policies of Chapter 3 of the Coastal Act. Thus, for the reasons stated above, the Commission finds the proposed subdivision must be denied for its nonconformance to the Chapter 3 policies of the Coastal Act.

4. 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 not be made.

This site is zoned RS1 and designated in the certified San Dieguito Land Use Plan for residential development at a density of one dwelling unit per acre. Although the proposed project is consistent with those designations, it does not meet the requirements of Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that project approval will prejudice the ability of the County of San Diego to complete and effectively certify an LCP for the unincorporated areas north of the San Dieguito River valley.

5. 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 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 found inconsistent with the sensitive resource and visual protection policies of the Coastal Act. With the exception of the "No Project" alternative, 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 is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

(6-99-11 marshstfrpt)

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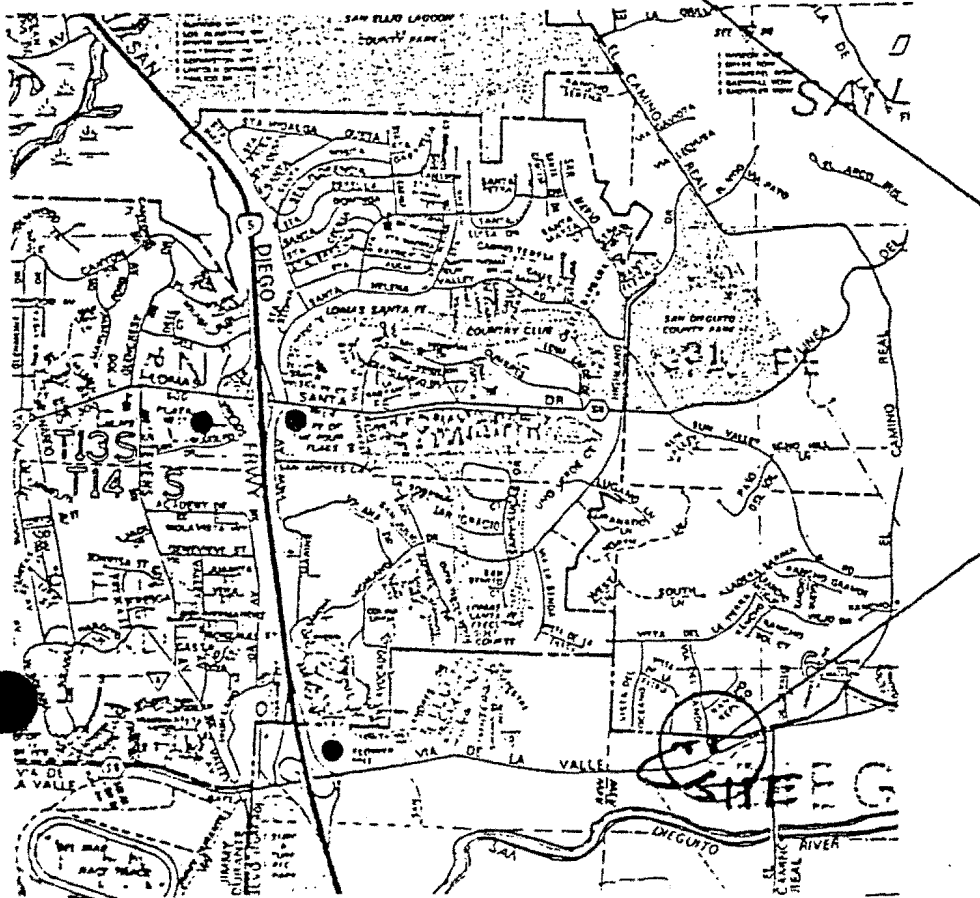
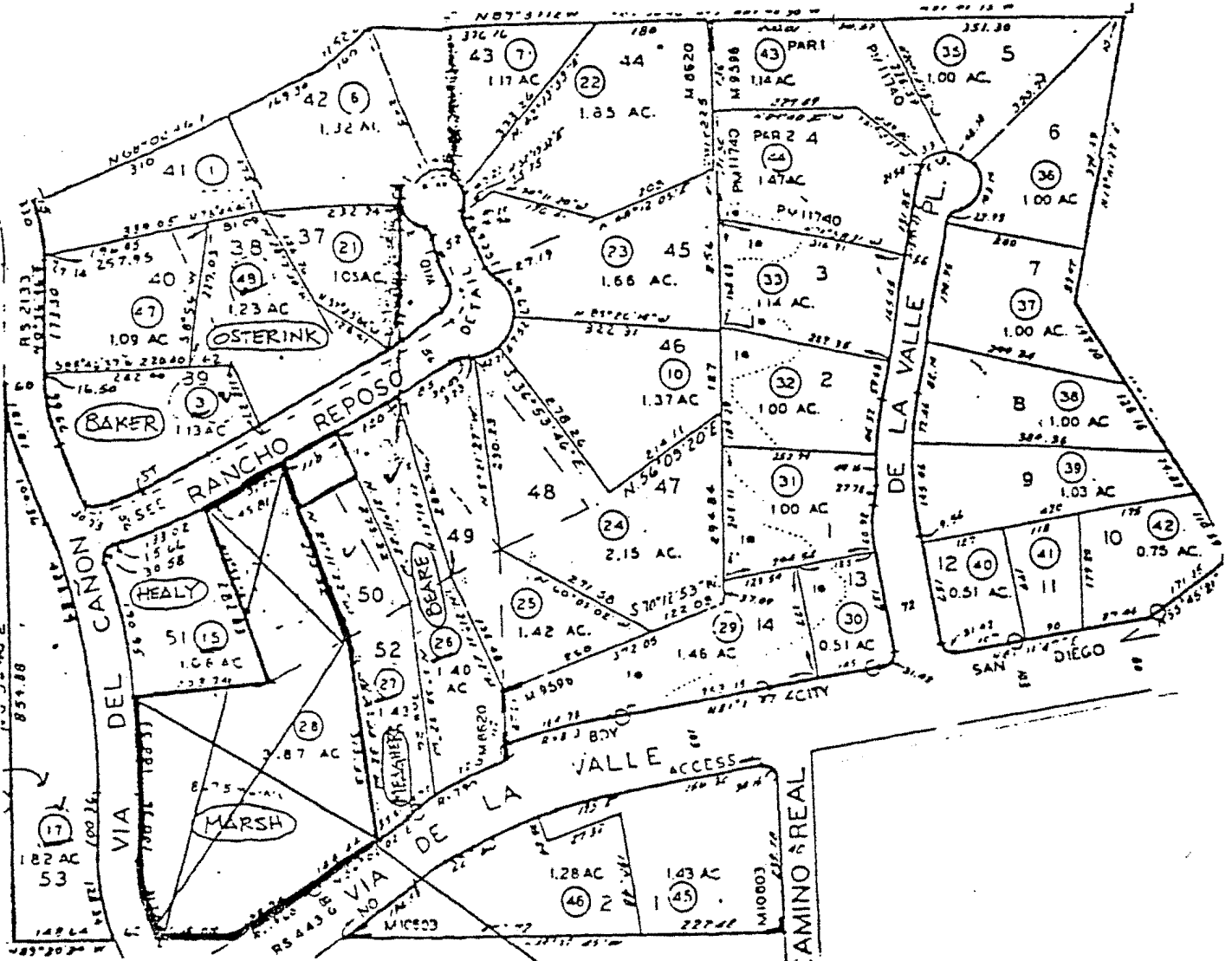


EXHIBIT NO. 1  
 APPLICATION NO.  
 6-99-11  
 Location Map

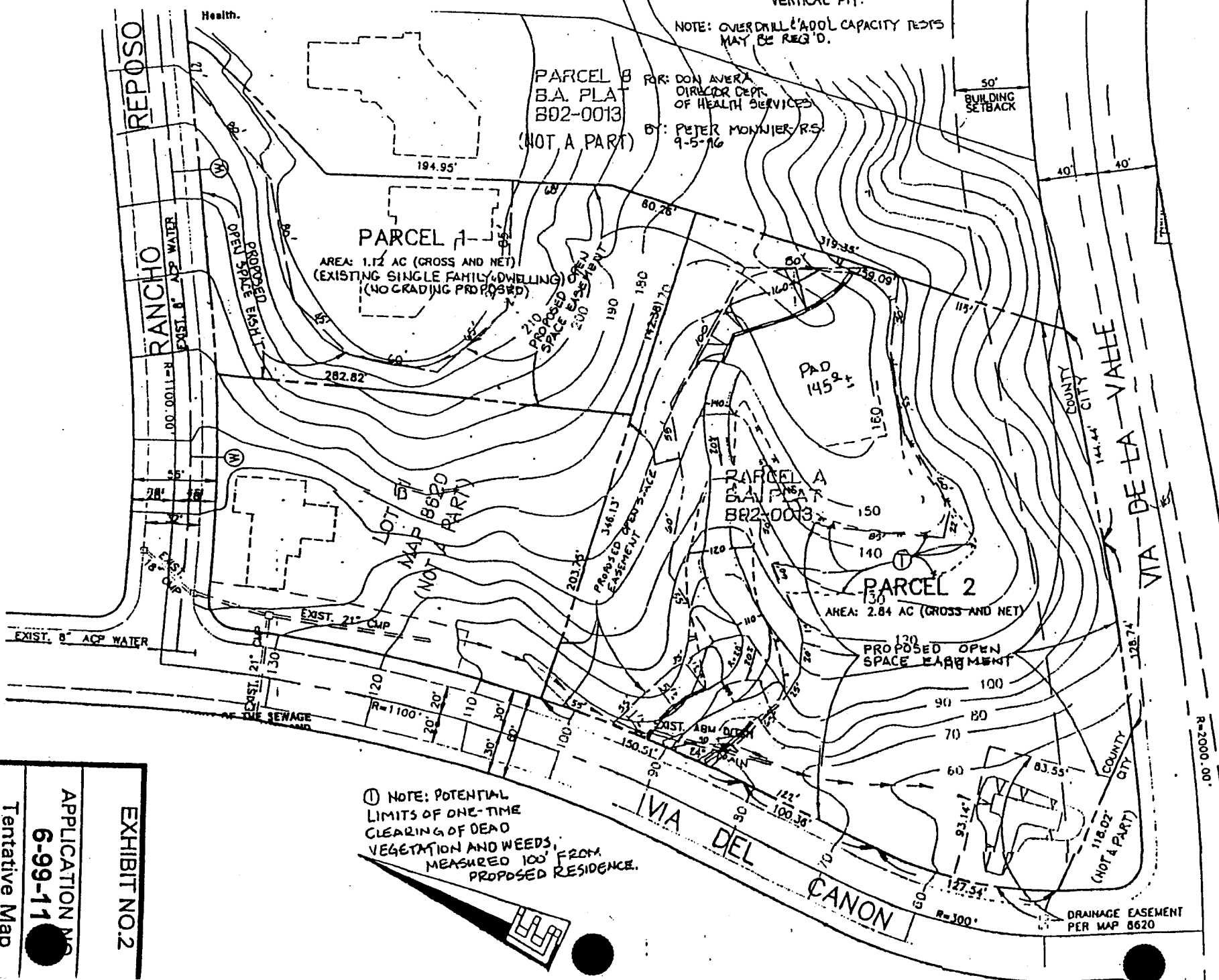
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DATA & RECOMMENDATIONS UNDER THE NAME OF  
 THE JIM FORD, BY: ROBERT BOWARDS RCE 2640A  
 PARCEL NO. 1 - EXISTING 4FD WITH  
 SUBSURFACE SEWAGE DISPOSAL.  
 PARCEL NO. 2 - SEE CAPACITY TESTING FOR  
 VERTICAL PIT.

NOTE: OVER DRILL & ADDL CAPACITY TESTS  
 MAY BE REQ'D.

PARCEL B  
 B.A. PLA  
 B02-0013  
 (NOT A PART)  
 FOR: DON AVERA  
 DIRECTOR DEPT.  
 OF HEALTH SERVICES  
 BY: PETER MONNIER-RS  
 9-5-76

50'  
 BUILDING  
 SETBACK



NOTE: POTENTIAL  
 LIMITS OF ONE-TIME  
 CLEARING OF DEAD  
 VEGETATION AND WEEDS,  
 MEASURED 100' FROM  
 PROPOSED RESIDENCE.

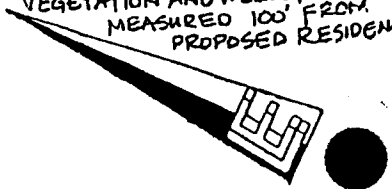


EXHIBIT NO. 2	
APPLICATION NO. 6-99-11	
Tentative Map	
EXHIBIT NO. 11	11 923
CC-00-00-05	



RECEIVED  
JAN 08 1980  
SAN DIEGO COAST COMMISSION

CALIFORNIA COASTAL COMMISSION  
631 Howard Street, San Francisco 94105 — (415) 543-8555

STAFF REPORT ON APPEAL

REGULAR CALENDAR

Appeal No. 158-79  
(A.K. Enterprises)  
42nd Day: 6/15/79

DECISION OF  
REGIONAL  
COMMISSION:

Permit granted with conditions by San Diego Coast Regional Commission

PERMIT  
APPLICANT:

A. K. Enterprises

DEVELOPMENT  
LOCATION:

On the north side of Via del la Valle, along both sides of Via del Canon, north of the City of San Diego, San Diego County (Exhibit 1)

DEVELOPMENT  
DESCRIPTION:

Subdivision of 29 acres into 17 parcels and installation of roads and utilities service lines (Exhibit 2)

APPELLANT:

Mr. C. D. Keeling

APPELLANT CONTENTS THAT:

1. The following grounds of appeal warrant rehearing of the application by the State Commission:

a. The development presents a statewide planning issue on which guidance of the State Commission is required and the matter is of statewide significance.

b. The decision of the Regional Commission adversely affects coastal resources or the proper public use of resources, contrary to specific provisions of the Coastal Act of 1976.

c. The decision of the Regional Commission is inconsistent with previous decisions of the State Commission or did not adequately address issues covered by the Interpretive Guidelines adopted by the State Commission.

2. In support of the above-stated grounds of appeal the appellant contends:

a. "The applicant has submitted basically the same plan that was denied by the State Commission in June, 1977."

b. "The conditions as approved by the Regional Commission the protection of the lagoon and wetlands as the conditions proposed by Commission staff in June, 1977 on Appeal No. 109-77."

c. "The appellants in that case were not notified of the project and feel that this is very important because the staff was not given sufficient time to review."

EXHIBIT NO. 3
APPLICATION NO. 6-99-11
Previously approved CCC actions
EXHIBIT NO. 11
6/5-5/79 111-00-00-05 2 of 23

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Appeal
2. Regional Commission file
3. Appeal No. 109-77 (A.K. Enterprises)

STAFF NOTES:

1. Project Description. The applicant proposes to subdivide 29.2 acres into 17 parcels, including road construction, storm drainage and utilities, on the north side of Via del la Valle, San Diego County (Exhibit 1). Approximately 53,200 cu. yds. of grading, with balanced cut and fill, are proposed. No building construction is proposed in this application. The project is the third phase of a large subdivision proposal, the first two phases of which have been completed. The entire 67-acre project would include 51 lots.

2. Project History. The project was originally proposed to the Regional Commission in March, 1977. That project contained the same number of lots but proposed substantially more grading than the present project. The Regional Commission approved the original project. However, this decision was appealed to the State Commission which subsequently denied the project, finding that it would lead to erosion and alteration of natural landforms, and that alternatives existed that were less environmentally damaging [Appeal No. 109-77 (A.K. Enterprises)]. In its "Staff Note" the State Commission's staff discussed the possibility that the project could be approved if lots 52 and 47 were eliminated, thus eliminating the need for long driveway requiring substantial grading, and resulting in an improved visual impact by keeping development on the mesa top and off the hillsides leading down to the San Dieguito River Valley.

The applicant subsequently applied to the Regional Commission for a permit for a development which retained lots 52 and 47 and which provided a substantial scenic easement. The applicant submitted a copy of this plan to the State Commission staff which indicated that it would be unacceptable based on the State Commission's previous findings (Exhibit 4). The applicant then amended its application before the Regional Commission, deleting lots 52 and 47 and adding 2 additional lots on the mesa top (Exhibit 2). The Regional Commission approved this amended project with conditions requiring the following:

- (1) all grading shall be prohibited between the months of October and April;
- (2) erosion control devices shall be installed before grading occurs;
- (3) all areas to be graded shall be replanted within 60 days, under the supervision of a licensed landscape architect;
- (4) slope plantings and erosion control devices shall be maintained by the developer or through CC&R's approved by the Executive Director;
- (5) the developer shall submit a run-off control plan, assuring no increase in peak run-off rates beyond that rate which would occur if the site remained undeveloped. The plan shall be designed by a licensed engineer and shall include soil or sand filtration "sufficient to trap oils and suspended solids and prevent them from entering the river." Building pad drainage shall be directed away from the bluff edge and control

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- (6) the amended plan for subdivision shall be submitted to the County;
- (7) the applicant shall record open space easements along the perimeter of the development.

3. Issues on Appeal. The major impacts involved in this appeal are the amount and impacts of grading, the effects of erosion on the San Dieguito River and the San Dieguito Lagoon, and visual impacts. These issues are thoroughly discussed in the attached Regional Commission staff recommendation which the Regional Commission adopted as its findings (Exhibit 5). The appellant contends that the project as approved by the Regional Commission is "basically the same" as the project that was previously denied by the State Commission. However, the applicant did rearrange the lot pattern in response to the Commission's concerns in an attempt to minimize grading and minimize the adverse impact on views from the San Dieguito River Valley. Exhibit 2 shows the original project denied by the State Commission and the present, amended project approved by the Regional Commission. The Regional Commission found:

The applicant has...submitted an amended tentative map which also serves to further reduce the grading of the site. The amended map eliminates lots 52 and 47 which would have necessitated long driveways that would have required grading. This also allows for the steep southern slopes of the site to be left in open space. To mitigate against erosion impacts associated with the substantial amount of grading which is proposed, several site-grading conditions have been attached. These conditions should substantially reduce both long-term and short-range construction impacts on the site. (see conditions 1-4) Additionally, the special condition regarding energy-dissipating measures will prevent scouring of the existing slopes in connection with future development and the proposed stormdrains system.

Because the project site naturally drains into the San Dieguito River which flows into the San Dieguito Lagoon measure to control run-off and sedimentation are especially critical. The condition attached to project to control sedimentation and run-off from the site will serve to protect the biological quality and habitat value of the San Dieguito River and Lagoon. Specifically condition 5 calls for a run-off control plan which also "includes soil or sand filtration or its equivalent sufficient to trap oils and suspended solid and prevent them from entering the river."

Under the amended tentative map submitted by the applicant lots 52 and 47 which were located on the southern edge of the mesa, and the most visually prominent, are eliminated. Also, the remaining lots to the south of the access road were altered to allow for the addition of two lots to make up for the eliminated lots. Thus, development will occur on the mesa top along the access road and be removed from the steep, visually prominent southern slopes of the site along Via de la Valle.

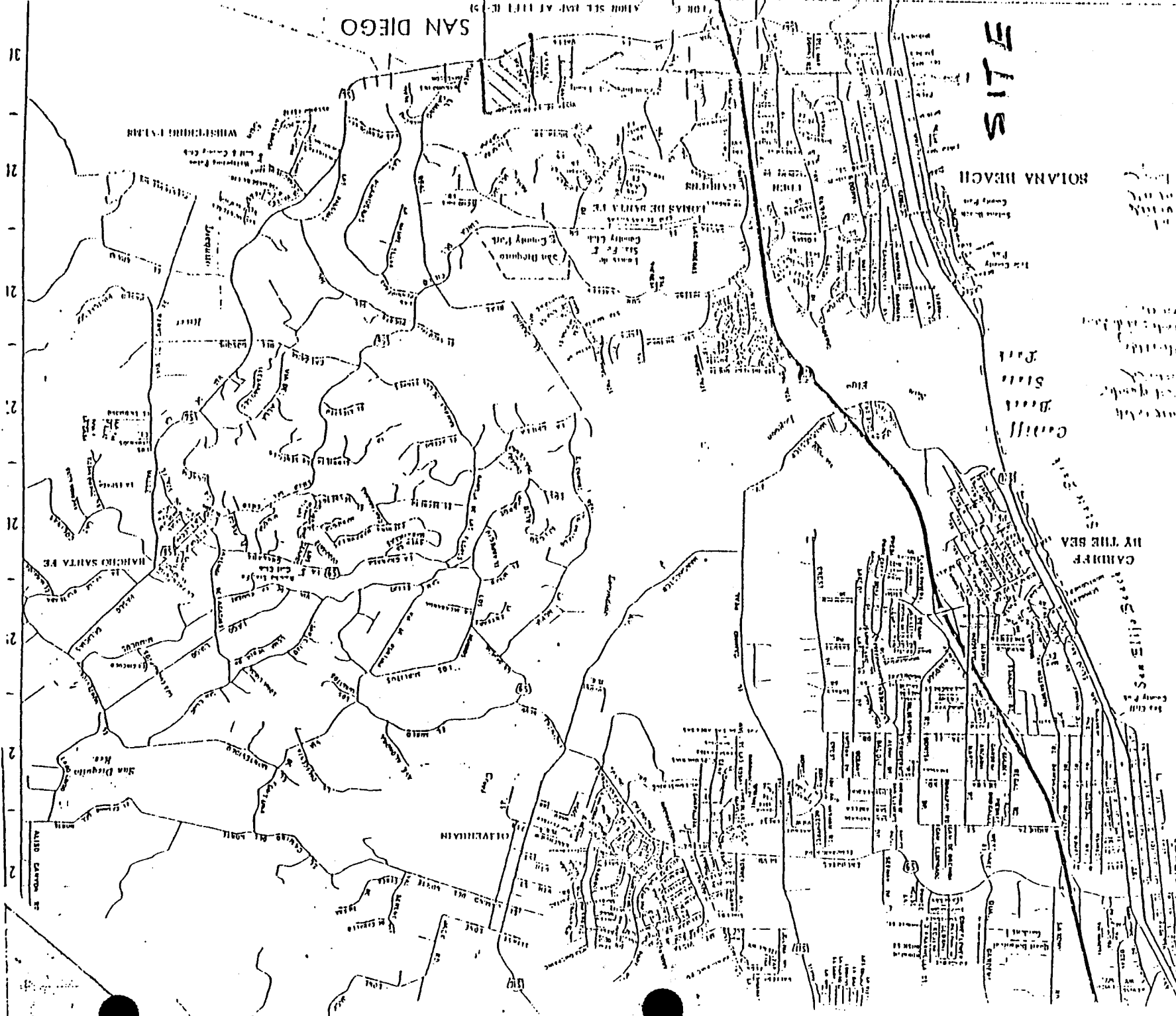
4. Alternative Road Location. When the project was previously denied by the State Commission, the State Commission's staff discussed with the applicant the possibility of alternative locations for the proposed access road, Rancho Reposo, since construction of this road would result in substantial filling of a canyon.

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One of the two other alternative locations discussed would result in more grading than the proposed location. The other alternative discussed would have resulted in the road running through a lot in the adjacent subdivision to the north; this alternative is no longer feasible since that lot has been sold to a private owner. The Regional Commission staff states that the road location as approved by the Regional Commission is the least damaging feasible alternative. The Regional Commission staff report states:

Under the subject permit...the applicant has substantially reduced the amount of grading proposed (approximately 30% reduction). This reduction is attributed to the applicant increasing the slope of the road, to diminish side cuts. This alteration reduces the amount of cut and fill for the road.

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SAN DIEGO

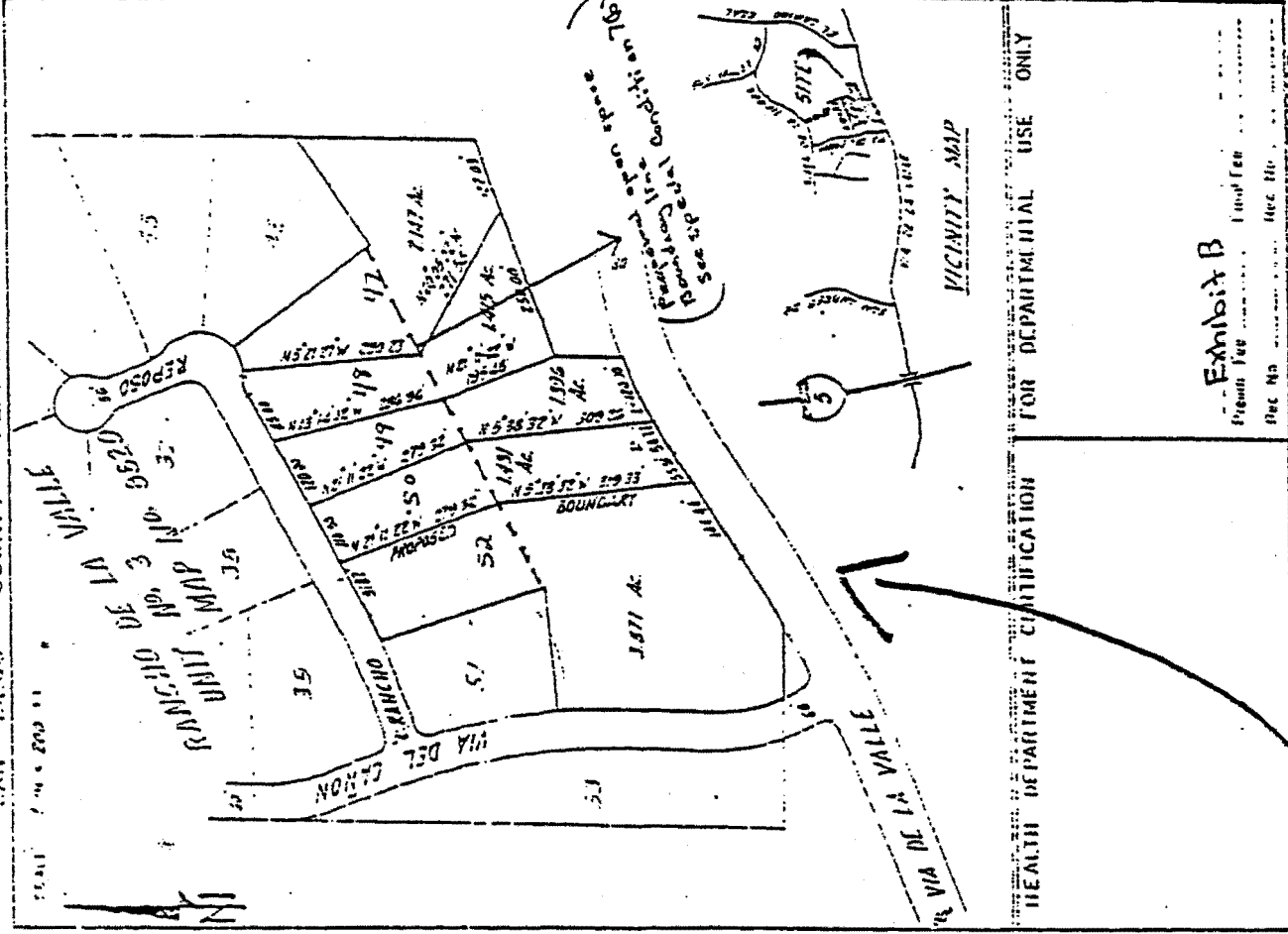
SITE

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Exhibit 1

San Diego County Clerk  
 San Diego, California  
 County of San Diego  
 State of California  
 1900  
 1901  
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SAN DIEGO COUNTY PLANNING DEPARTMENT



HEALTH DEPARTMENT CERTIFICATION FOR DEPARTMENTAL USE ONLY

Exhibit B  
 Figure No. \_\_\_\_\_  
 Rec No. \_\_\_\_\_  
 Rec. No. \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

*Amended lot pattern approved by Regional Commission*

*Project denied by State Commission (Appel No. 109-77)*

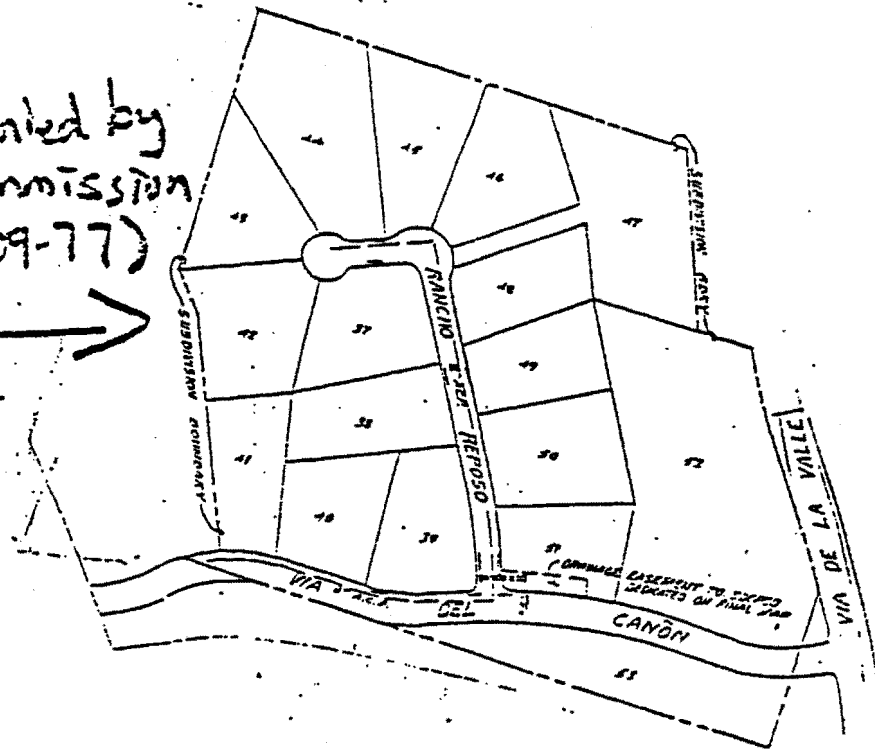
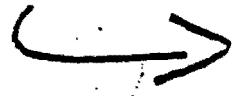


Exhibit A  
 F7940

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EXHIBIT 2

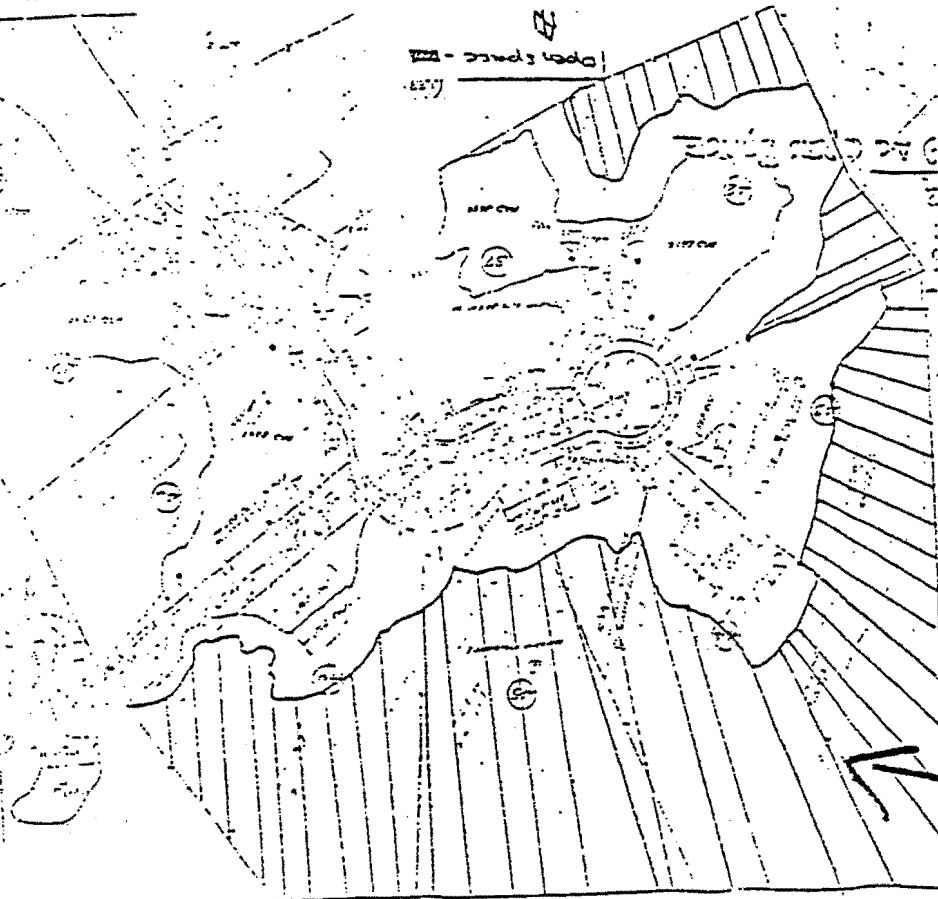
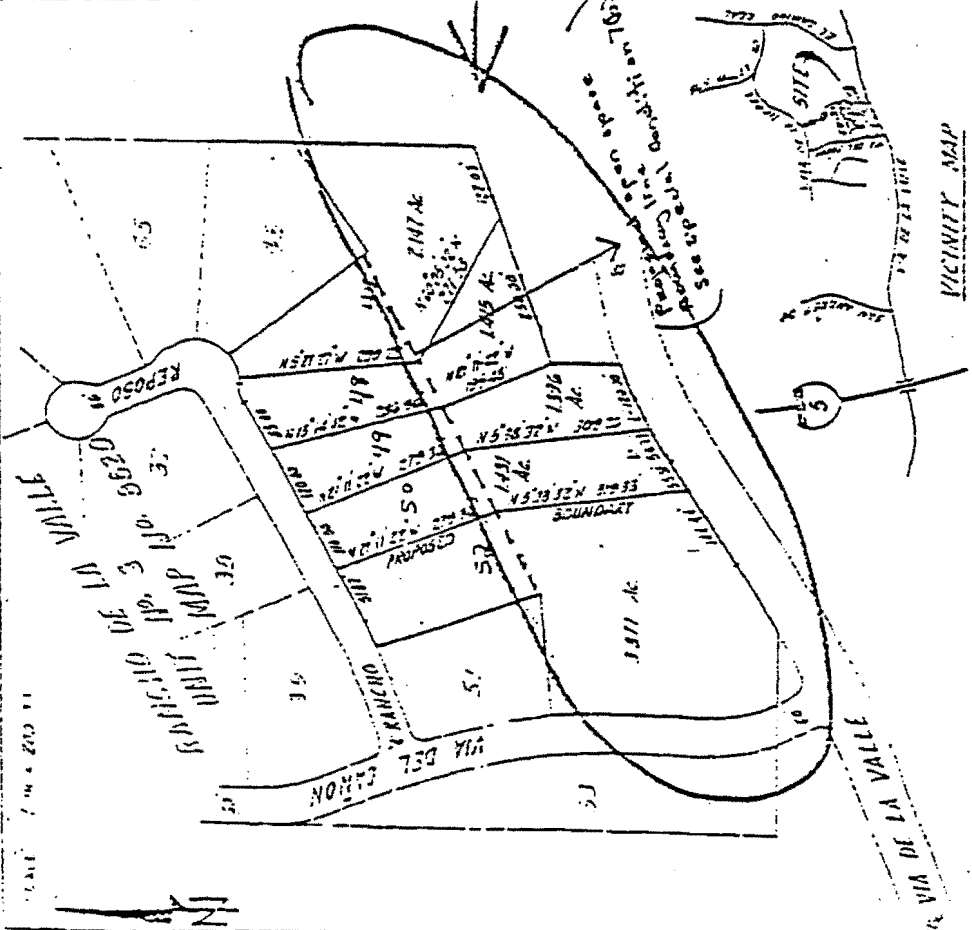


Exhibit C  
 F7943  
 ↑ North  
 5/21/13

Open Space Easements

DATE FILED \_\_\_\_\_ PRELIMINARY ACTION BY \_\_\_\_\_ FINAL ACTION BY \_\_\_\_\_ PLAT NO. \_\_\_\_\_  
 REC'D BY \_\_\_\_\_ DATE \_\_\_\_\_ DATE \_\_\_\_\_



HEALTH DEPARTMENT CERTIFICATION FOR DEPARTMENTAL USE ONLY

South  
 half

Exhibit B  
 Premium Fee \_\_\_\_\_ Land Fee \_\_\_\_\_  
 Plat No. \_\_\_\_\_ Rec. No. \_\_\_\_\_  
 Date \_\_\_\_\_

EXHIBIT NO. 11  
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EXHIBIT 3

San Diego  
Chuck Damm

State of California, Edmund G. Brown Jr., Governor

California Coastal Commission  
631 Howard Street, 4th floor  
San Francisco, California 94105  
(415) 543-8555

March 6, 1979

Vaun Acheson  
A-K Enterprises  
RFD Box 109-v  
Del Mar, CA 92014

Re: Appeal No. 109-77

Dear Mr. Acheson:

I am responding to your letter of February 26, 1979 regarding Rancho de la Valle Unit 3. I had been anticipating submittal of a revised plan for the parcel since our discussion with Steve Horn at the Regional Commission offices last summer.

Unfortunately, the material you submitted does not conform to the conclusions we reached at our earlier meeting, and I cannot support the project as proposed. If you will recall, we discussed elimination of the two lots fronting on Via De La Valle because of the need for long driveways that would require grading and because of the visual impact of development. Steve Horn and I agreed that the two lots thus eliminated could be made up by increasing the number of lots on the mesa top, but we were firm on the point that lots #52 and 47 should be eliminated. The plans submitted with your letter do not eliminate those lots, or even change their orientation. Indeed, the only change is the inclusion of a scenic easement on portions of the visible lots. Had that been the only problem we could have approved the project and required scenic easements as a condition. I remain convinced that lots #52 and 47 are poorly designed and should be changed. Indeed, after viewing the effects of Rancho de la Valle Units 1 and 2 from across the San Dieguito Valley, I'm even more convinced of the point.

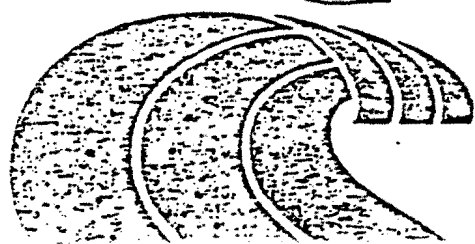
When the project plans are changed to conform to our discussion of last summer I will support the project both with the Regional Commission and the State Commission. Until that time, I cannot support the project. Again, I hope that the necessary changes can be made.

Very truly yours,

JAMES McGRATH  
Permit Analyst

cc: Chuck Damm, SDCRC

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F7943  
EXHIBIT 4



STATE OF CALIFORNIA - CALIFORNIA COASTAL COMMISSION  
 SAN DIEGO COAST REGIONAL COMMISSION  
 COMMISSION BOARD ROOM, SUITE 210  
 SAN DIEGO, CALIFORNIA 92120 TEL: (619) 240-6002

EDUARDO G. BROWN, JR., Governor  
 TIM CONNELLEY  
 CHIEF OF STAFF

ROGER HEDGECOCK  
 Vice Chairman  
 HARVEY ALLEN  
 Representative to the  
 California Coastal Commission  
 Vice Chairman  
 Executive Director  
 RANCHO SANCTA FE NEIGHBORHOOD  
 P.O. Box 1532  
 Rancho Santa Fe, CA 92067

CONTRACT NO. 1  
 PROJECT NO. 77943  
 APPLICANT  
 A. K. Pekaripiana ANSITT  
 Route 1, 109-A  
 Del Mar, CA 92014

PROJECT LOCATION North side of Via de la Valle, along both sides of Via del Canyon, San Diego County (A/E 302-090-23-24)

PROJECT DESCRIPTION Subdivision of 29.2 acres into 17 parcels, all in excess of 1 acre. The project includes road development, storm drainage, water and all utilities. Approximately 53,200 cubic yards of balanced cut and fill grading will be required in the development of road, building sites and access to each lot. No building construction is included with this permit.

Lot area	29.2 acres
Building coverage	40,000 sq. ft.
Level Area coverage	77,000 sq. ft.
Lot coverage	77,000 sq. ft.
Unimproved area	939,952 sq. ft.
Parking	85
Grading	5-1
General Plan	Very Low Density (1 du/acre)
Project Density	75 du/acre

OTHER REQUIRED APPROVALS Tentative Map from County of San Diego

STATE INTEREST

1. **Historic Project Description** - The applicant is proposing the subdivision of 29.2 acres into 17 lots, all in excess of 1 acre, and installation of necessary utilities, underground power and water utilities are existing in Via del Canyon. Approximately 53,200 cubic yards of balanced cut and fill is proposed for the construction of the 960 ft. wide access road (Rancho Reposo) and building pads with access to each lot. Approximately 80% of the site will remain in open space. No building construction is included with this permit.

The proposed development is the third phase of a large subdivision proposed by the applicant known as Rancho de la Valle. The entire project, shown in Exhibit D, would subdivide 67 acre site into 51 lots. Lots 1 and 2, located in the flatter portion of the site, have been completed and substantially developed.

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 00-00-05  
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EXHIBIT 5

Regional Coastal Development Recommendation  
 77943  
 Page - 2

2. **Project History** - The applicant originally brought the proposed project before the Regional Commission in March of 1977 (see 75206). Under the originally proposed project (75206) the 29.2 acre site was also to be subdivided into 17 lots, however, substantially more grading was proposed (93,300 cu. yds. cut and 73,300 cu. yds. fill). The project (75206) was approved with a grading certificate by the Regional Commission in April of 1977. The project was then amended to the State Commission. The State Commission denied the project, finding it inconsistent with Section 30253 and 30213 of the Coastal Act. The State Commission also found that there were feasible alternatives available which would substantially lessen the impacts of the project. Specifically discussed was the elimination of two lots fronting Via de la Valle (lots 52 and 47). This was due to the need for long driveways that would require grading and the visual impacts on the San Diego-Via del Canyon corridor that would be caused by their development.

The applicant has subsequently resubmitted for the subject coastal development permit (77943). The tentative map originally submitted with the permit application (77943) retains lots 52 and 47 and provides for a scenic easement on portion of the visible lots (see Exhibit A). However, the applicant has submitted, upon staff request, an amended tentative map which eliminates lots 52 and 47 and adds two new lots on the access road along the proposed public road. (Rancho Reposo) (See Exhibit B) The amended tentative map submitted by the applicant has not yet received County of San Diego approval.

3. **Surrounding Development, Zoning and General Plan Designations** - The project site is a heavily vegetated hillside north of the San Diego River Valley. Just of the area is in slopes at 20-40%. To the west of the project site is a large privately subdivided tract (Rancho del Valle units 1 and 2) which is substantially developed with large single-family residences. To the east and north are subdivisions with existing houses. To the south, across Via de la Valle, are the approximately leveled flat plain of the San Diego River Valley.

The proposed subdivision is consistent with the R-1 zoning and the San Diego County General Plan which designates the area Very Low Residential (1 du/acre).

4. **Grading and Erosion** - To construct the access road and level building pads, approximately 53,200 cu. yds. of balanced cut and fill grading is proposed. This grading is based on the original tentative map submitted with the application having lots 52 and 47 along Via de la Valle. As stated previously, the amended tentative map eliminates lots 52 and 47 and adds two lots on the access road along the access road. This would reduce the amount of grading which was proposed on the original map by the elimination of the access road and pad required for lot 47 and any future potential access road and pad which would have been requested for lot 52.

According to the fill on the project, the soils covering the majority of the site are severely susceptible to erosion and have very high runoff potential. The report states that these conditions are mitigatable through proper landscaping and controls during grading and construction.

5. **Visual Impacts/Setting** - The proposed subdivision is located on the top and on the western canyon faces of a mesa overlooking the San Diego River Valley. The site is visually prominent from Interstate 5 freeway, and from other major thoroughfares in the area and Del Mar Heights. Fill will be used to create building pads in the hands of canyon along the east side of Via del Canyon. The nature of the proposed grading could make it possible for well landscaped, low profile houses to be visually unobtrusive from Via de la Valle.

PRELIMINARY RECOMMENDATION AND FINDINGS

RECOMMENDATIONS

Staff recommends that the San Diego Coastal Regional Commission ISSUE a development permit for the proposed project subject to the following special conditions:

SPECIAL CONDITIONS

1. All grading activities for the road, utilities, and installation of the erosion and sedimentation devices shall be completed within the period from October 1 to April 1 of each year.
2. All permanent erosion control devices shall be developed and installed prior to any on-site grading activities.
3. All areas disturbed by grading, shall be planted within 60 days of the initial disturbance and prior to October 1 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 and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.
4. All permanent slope planting and erosion control devices shall be maintained by the developer, or by the property owners through provisions in the covenants, conditions and restrictions of the subdivision. If said maintenance is to be through provisions in the CC&Rs of the subdivision, a copy of the CC&Rs incorporating this requirement shall be submitted to the Executive Director prior to occupancy of the first completed residence.
5. Prior to the issuance of a coastal development permit, the developer shall submit a runoff control plan, designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the project. Intensity of rainfall expected during a one-hour period once every 20 years (30 year one-hour rainstorm). Methods employed within the runoff control plan to control increases in runoff area at the discretion of the engineer, and could include check dams, energy dissipators/sedimentation basins. The runoff control plan shall also include soil or sand filtration or its equivalent sufficient to trap silt and suspended solids and prevent them from entering the river. The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director. All drainage from graded hillside pads shall be away the bluff edge and controlled through appropriate drainage devices.
6. That the applicant shall, prior to transmission of the permit, submit to the County of San Diego an amended tentative subdivision map in accordance with map attached to the findings as Exhibit B. Evidence of approval by the County of San Diego of the amended tentative map shall be submitted to and acknowledged in writing by the Executive Director prior to the transmission of the permit.
7. That prior to transmission of the final map the applicant shall record the following restrictions, on each individual parcel, to run with the land from prior encumbrances, except for tax liens, and in a manner approved by the Executive Director:

Of primary concern is the proposed grading of pads and access on the mesa top and the visual impacts which may be caused by the associated alterations of land forms.

6. Applicable portions of the Coastal Act of 1976 - The following are provisions of the Coastal Act which apply to the subject development:

Section 30251(2) - states that: "prior development shall... (2) Assume an ability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability or destruction of the site, or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."

Section 30251 - states that: "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 landforms, to be visually compatible with the character of surrounding areas..."

Section 30250 - states that: "new development shall be located... within, contiguous with or in close proximity to, existing developed areas and where it will not have significant adverse effects either individually or cumulatively, on coastal resources."

Section 30240 - states that: "(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only such use dependent on such resources shall be allowed within such areas."

Section 30231 - states that: "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 encouraging waste water, incineration, maintaining natural vegetation buffer that protects riparian habitats, and minimizing alteration of natural streams."

KEY FINDINGS

1. Grading, Erosion and Drainage - Would the proposed grading and drainage plan create a substantial potential for soil erosion? The applicant has indicated that "erosion drains will be installed to transport storm water directly to the existing culvert in Via de la Valle." Thus the storm waters would be allowed to go directly to the San Diego River. Would the water quality of this river be degraded by impaction of nonpoint source runoff?
2. Visual Impacts - The subdivision is proposed on the top of a mesa over looking the San Diego River Valley. The project site is highly visible from the surrounding area. Will the proposed project significantly impact the visual quality of this area?
3. Existing Development Area - Can the proposed project be found consistent with Section 30250 of the Coastal Act which calls for new development to be located "within circumstances with, or in close proximity to, existing developed areas..."
4. Habitat - Can the proposed project be found to be consistent with Section 30240(a) of the Coastal Act which calls for the protection of environmentally sensitive habitat areas against any significant disruption of habitat values...?

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EXHIBIT 5 (cont.)

- (a) On lots 37-46, of the amended tentative map, any alterations of landforms, removal of existing vegetation, or erection of structures of any type shall be prohibited unless approved by the San Diego Coast Regional Commission or successors in interest on that area shown on plans filed with the San Diego Coast Regional Commission and indicated on Exhibit G attached to these findings.
- (b) On lots 47-52 of the amended tentative map, any alterations of landforms, removal of existing vegetation, or erection of structures of any type, shall be prohibited unless approved by the San Diego Coast Regional Commission or the successors in interest, on that area north of a line projected across those parcels as shown on Exhibit B. A final detailed topographic plan with this line demarcated shall be submitted and approved by the Executive Director.

Evidence of these restrictions shall be submitted to and acknowledged in writing by the Executive Director prior to transmittal of the permit.

FINDINGS

1. Conformity with the Coastal Act of 1976 - Section 30600(a) of the California Coastal Act of 1976, requires that the Regional Commission first, prior to issuance of a permit, that the proposed development is in conformity with the provisions of Chapter 3 of the Coastal Act. This general finding can be made for the proposed development based on the following specific findings.

A) Grading and Erosion Protection of Wetland Areas - Section 30253 states in part: "Development shall (2) neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Section 30251 of the Coastal Act states: "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries and bays, 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 discharge and encroachment, controlling runoff, preventing depletion of ground water supplies and encouraging waste water reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and admitting alteration of natural streams."

The soils at the subject site are classified gravely loamy sand, Corvettion loamy sand, Hawthorne loam and terrace excursions. These soils are described in the project's EIR as "...generally susceptible to erosion..." and have very high runoff potential. The report also states that these conditions are mitigated through proper techniques and controls during grading and construction. Under permit application (F5286) which was denied by the State Commission approximately 93,300 cu. yds. of fill grading and 73,300 cu. yds. of fill grading was proposed, the majority of which was required for the construction of the access road (Sancho Road). Under the subject permit application (F7947) the applicant has substantially reduced the amount of grading proposed (approximately 30%) reduction. This reduction is attributed to the applicant increasing of the slope of the road, to eliminate side cuts. This alteration reduces the amount of cut and fill for the road. The applicant has also submitted an amended tentative map which also serves to further reduce the grading of the site. The amended map eliminates lots 52 and 47 which would have necessitated long driveways that would have required grading. This also allows for the steep southern slopes of the site to be left in open space. To mitigate equal erosion impacts associated with the ungraded lot parcel of grading which is proposed, covered site grading conditions have been attached. These conditions should substantially reduce both long term and short term impacts on the site. (see exhibit item 1-4) Additionally,

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EXHIBIT 5 (cont.)

The special condition regarding energy dissipating measures will prevent scouring of the existing slopes in connection with future development and the proposed storm-drainage system.

Because the project site naturally drains into the San Diego River which flows into the San Diego Bay, measures to control runoff and sedimentation are especially critical. The condition attached to project to control sedimentation and runoff from the site will serve to protect the biological quality and habitat value of the San Diego River and Laguna. Specifically condition 5 calls for a runoff control plan which also includes soil erosion filtration or its equivalent, sufficient to trap silt and suspended solids and prevent them from entering the river."

Therefore the proposed project, as conditioned, can be found consistent with Sections 30253 and 30251 of the Coastal Act.

(i) Scenic and Visual Resources - Section 30251 of the Coastal Act states in part: "The scenic and visual qualities of coastal areas shall be maintained and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along scenic and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality of visually degraded areas."

Since the project is located on a visually prominent mesa overlooking the San Diego River valley, a considerable amount of attention has been given to visual impacts associated with it. The grading plans show that the top of the mesa and western edge of Via del Camino will be graded to create building pads. The fill will be used to create building pads in the hands of canyon along the east side of Via del Camino and to create fill for the access roads. The nature of the proposed grading would make it possible for well landscaped low profile houses to be visually indistinguishable from Via de Valle. Under the amended tentative map submitted by the applicant lots 52 and 47 which were located on the southern edge of the mesa, and the most visually prominent are eliminated. Also, the remaining lots to the south of the access road were allowed to allow for the addition of two lots to be set up for the eliminated lots. Thus, development will occur on the mesa top along the access road and be removed from the steep, visually prominent southern slopes of the site along Via de la Valle.

Special condition #7(i) was attached to insure that the visually prominent steep southern slopes of the site will remain in open space, retaining the visual quality of the area and provide a substantial view corridor across the subject site.

Therefore, the proposed subdivision, as conditioned, can be found consistent with Section 30251 of the Coastal Act.

(c) Habitat - Section 30240 states that (a) "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only such uses dependent on such resources shall be allowed in such areas." An issued statement by the Commission when it considered the permit application (F5286) appears in, 102-77) was that of impact on the cliff habitat of whiteface. "...the steep canyon on the property provide unusual cliff habitats which support arroyos, arroyos, foxes, rabbits and other small animals including the San Diego lizard and the orange-throated whistling which are considered depleted by the International Union for Conservation of Nature and Natural Resources." The IUCN submitted with the application contains no mention of the species, nor plans for mitigation other than keeping portion of the site in natural setting. Special condition #7(i)(ii) provides for the retention of a considerable amount of the site to remain in open space which provides permanent habitat to mitigate the effects of the project on whiteface.

Therefore, the proposed project, as conditioned, is found to be consistent with Section 30246(n) of the Coastal Act.

Subdivision - Section 30250 states that, "No development shall be located... within, contiguous with, or in close proximity to existing developed areas... The subject site is surrounded on 3 sides by smaller subdivisions in which houses are rapidly being constructed on the remaining vacant lots. It can be reasonably estimated that the surrounding area is 50% developed; if not it soon will be there. The proposed project is found to be consistent with Section 30250 of the Coastal Act.

2. Preparation of a local Coastal Program - Section 30608(a) also requires that, prior to certification of the local coastal program, the Regional Commission shall issue a coastal development permit only after it 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 particular case, such a finding can be made. The proposed project is consistent with the existing and the San Diego's Community Plan. With the attached special conditions, the proposed development conforms with all the applicable portions of Chapter 3 of the Coastal Act. Therefore, project approval would not prejudice the ability of San Diego's ability to develop a certifiable local coastal program.

3. Feasible Alternatives or Mitigation Measures - Under the terms of the California Environmental Quality Act, the Commission must review any feasible alternatives or mitigation measures which would avoid any potentially significant adverse environmental impacts associated with development. With the attached special conditions, the proposed subdivision and minor improvements should not create any substantial impacts on the environment. Therefore, no additional alternatives or mitigation measures are proposed.

NOTE TO APPLICANT AND OTHER INTERESTED PERSONS:

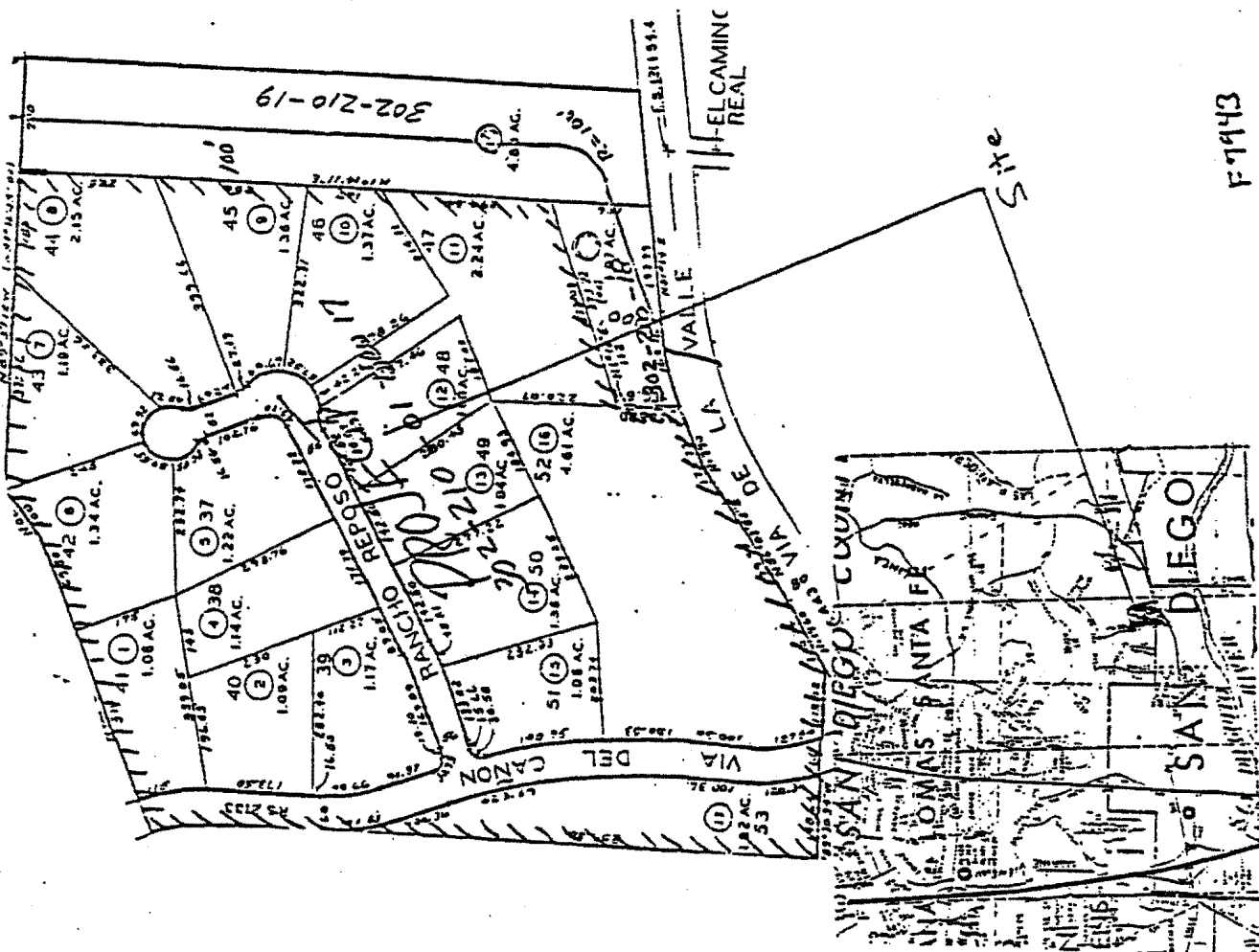
Color slides pertaining to this project may be shown to the Commission at the time of the Final Vote. Those wishing to see these slides, as well as other recent material received pursuant to this application, are welcome to do so at the Commission's offices prior to the day of the Commission meeting.

APPEALS

All appeals of Regional Commission decisions must be received in the State Commission office not later than 10 working days from the date of the Regional Commission's decision. Appeal forms are available at the Regional Commission office.

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CCC-00-00-0
230/23

EXHIBIT 5 (cont.)



F7943

**CALIFORNIA COASTAL COMMISSION**

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



**RECORD PACKET COPY**

**MEMORANDUM**

July 5, 2000

**TO: All Commissioners**

**FROM: Legal Division**

**RE: Cease & Desist Order CCC-00-CD-05  
Martin & Josee Vanderhoeven  
Item 4, Tuesday, July 11, 2000**

---

Enclosed is a copy of a letter we received from Gary Firestein regarding the above-mentioned Cease & Desist item scheduled for hearing on July 11, 2000.

Enclosure

Tu 4

Gary S. Firestein, M.D.  
14886 De La Valle Place  
Del Mar, CA 92014  
gfirestein@ucsd.edu

Coastal Commission  
45 Fremont St.  
Ste 2000  
San Francisco, CA 94105

In re: Cease and Desist Order CCC-00-CD-05  
Martin and Josee Vanderhoeven  
Item 4, Tuesday, July 11, 2000

To the Commission:

Thank you for the opportunity to comment on this item in writing, since I will be unable to attend the public hearing on July 11. I have attached my contemporaneous notes regarding this violation along with a copy of a certified letter that I sent to the Vanderhoevens.

As you can see from my notes, the Vanderhoevens hired Emma Landscape to clear a large portion of the open area in July, 1999. After several promises to discontinue the work, Mr. Vanderhoeven admitted to me that he planned extensive landscaping at the base of the canyon (about 200 feet below his house) and asked if I would grant an easement so that he could move heavy equipment into the area. On several occasions I asked if he had any permits for the ongoing activity. Also, on several occasions the Vanderhoevens promised to discontinue work, only to have the workers return the next day. I also pointed out the erosion risk several times. In five separate conversations, the owners gave different reasons for the work:

- 1) It was an "accident" and the landscapers had misunderstood the work order
- 2) It was for fire prevention (although much of the brush was left on Mr. Bill Conolly's property in the canyon, which posed an even greater fire risk)
- 3) It was part of a landscape plan to include a pool on the top area of the lot and a volleyball court at the base of the canyon
- 4) It was required so that a surveyor could have access to the canyon
- 5) It was needed to have access to a "jogging trail" in the canyon (there is no jogging trail in the canyon!)

The work that was done on the hillside essentially denuded the entire region of all vegetation. We were fortunate that winter 1999-2000 was relatively mild; although there were some mud slides in the area, they were relatively mild. Although some vegetation has grown back, there are still some completely bare areas and the hillside still needs to be restored to its original state.

I would urge the Commission to approve the Cease and Desist order in light of the owner's disregard for the natural vegetation and the deed restrictions that were well-known to them. I would also strongly oppose any after-the-fact approval in light of the disregard for due process demonstrated by the owners. One should not reward such behavior by giving retroactive approval. One only wonders what the owners will do next in the hope that they will receive similar approvals after violating the law. The owners should also be required to revegetate the area in order to prevent further erosion and damage to the natural habitat. Finally, any requests for further work in the open area (including pools, volleyball courts, etc.) should be denied because 1) they are not consistent with the deed restrictions that the owners agreed to when they bought the property; and 2) they demonstrated obvious disrespect for the spirit of the open area and the Coastal Commission authority.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Firestein".

Gary S. Firestein, M.D.

# ATTACHMENT 1

Contemporaneous notes on 4646 Rancho Reposo  
In re Cease and Desist Order CCC-00-CD-05  
Gary S. Firestein, M.D.  
14886 De La Valle Place  
Del Mar, CA 92014

July-September, 1999

July 17--First noted 5-6 gardeners clear cutting slope. Talked to them and found out that they worked for Emma Landscape. Spoke with owner, who told me who employed them. Went to 4646 Rancho Reposo. Spoke with Josee who said that husband was in the shower and would call me when he got out. She had no knowledge of the gardeners' activities. Martin did not call.

July 18--Continued activity on the slope by the gardeners. Noted that sledge hammers were used to knock out plants by the roots. Went to 4646 Rancho Reposo and spoke with Josee. She said that Martin had just left town and that she didn't know what they were doing. I walked back with her and showed her the bare dirt on the slope and asked about permits, etc. I told her that I thought it was a designated open area and that there was a significant erosion concern. I also expressed concern regarding any development of the slope and open area. She said that she had no idea but told the gardeners to stop. Told me that she would get back to me.

July 24--Received phone call from Josee, who said that the gardeners had made a "mistake" and that they were supposed to clear the slope on the other side of the hill. She thanked me and told me that there were no plans to build on the slope or open area. The clearing was just for fire protection, although much of the brush was left at the base of the canyon. I told her that I was very concerned about water runoff and erosion and suggested that when she replant she water the area also.

July 30-August 1--Gardeners return to slope after I go to work and continue clearing

August 1--I call Martin, who tells me that he plans to build a pool and then landscape the bottom of the canyon so that he can have a volleyball court and other amenities there. I inquire about permits and express concern again about runoff and erosion. He tells me that he has spent \$30,000 on lawyers, etc. in order to develop this area. He asks about using my property to bring equipment onto the base of the valley to work on the landscaping. I express concern about how close he is planning on working to my property and again ask about permits. He says that he will file with the Coastal Commission in the future and that I would be notified at that time. I ask about erosion and he says that he will plant iceplant and will turn his sprinklers onto the hill to help it grow. I point out how close the gardeners are to my property and ask him to stop them. He agrees and the gardeners are withdrawn.



Later in the day, I meet with Bill Conolly, a resident on the other side of the canyon, who told me that the gardeners had been dumping the dead plants on his property. Bill says that he had to threaten to call the sheriff in order to get the brush removed.

I meet with Bob Dolry of the Rancho Del Mar Association, who says that the Home Owners Association received no notification of the work. He expressed great concern about the runoff and erosion problems. This had been addressed years earlier and necessitated the building of drains, etc. However, the increased runoff after the clearing would require a complete re-evaluation of the site.

August 2--Gardeners again are clearing on the hill in the morning. I confirm that there is a deed restriction on this lot and that no vegetation could be removed below the pad without a permit.

August 9—I am informed that the land was he cleared the land "so that [the owner's] surveyor could have access". He did not know that he was supposed to remove vegetation.

September 21—Certified letter sent to owners informing them that I would hold them responsible for any flood or erosion damage that occurred on my property. I received a return receipt from the post office, but no acknowledgement or response from the Vanderhoevens.

ATTACHMENT 2

Mr. and Mrs. Martin Vanderhoeven  
4646 Rancho Reposo Dr.  
Solana Beach, CA 92014

Gary S. Firestein, M.D.  
14886 De La Valle Place  
Del Mar, CA 92014

September 21, 1999

Dear Mr. and Mrs. Vanderhoeven,

In July, your landscape employees cleared the slope southwest of my property of vegetation under your instructions. I discussed my concerns with you on several occasions, including July 17, 18, and 24 as well as August 1. Each time, I advised you about the issue of potential erosion and changes in the water flow pattern on the slope and its potential impact on my property. I continue to have great concern about this potential problem. The lack of vegetation on the cleared area will greatly increase the amount and rate of water flow off of your property as well as movement of topsoil. I would strongly encourage you to take appropriate erosion and water control action prior to the onset of the rainy season. If any damage occurs to my property from water or mud movement after you have cleared the adjacent slope, you would naturally need to repair this damage.

Thank you for your understanding.

Sincerely,

Gary S. Firestein, M.D.

