

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370

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REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-80

Applicant: J.A. Gallagher

Agent: Jack Henthorn

Description: Construction of a 27-foot high, 8,200 sq. ft. single family residence with detached garages, driveways, pool, and 800 sq.ft. second unit. Also proposed is a 25-foot wide public access easement and an average 102-foot wide open space setback from the lagoon. Approximately 3,261 cu.yds. of after-the-fact grading is proposed.

Lot Area	48,787 sq.ft.
Building Area	4,350 sq.ft. (9%)
Paved Area	4,200 sq.ft. (9%)
Landscaped Area	24,037 sq.ft. (49%)
Unimproved Area	16,200 sq.ft. (33%)
Zoning	R-1-15,000
Plan Designation	Residential Low Medium-(0-4 du/ac)
Ht. Above Fin.Grade	27 ft.

Site: 4519 Adams St., Carlsbad, San Diego County. APN 206-200-07

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed single-family residence with special conditions. The main issues raised by this proposal on a constrained lagoonfronting site are potential impacts to biological, public access and visual resources. The project, as proposed, provides for public views to the lagoon from the fronting street (by proposing a residence below street level), proposes a lateral public access easement 25-feet upland from the mean high tide line along the lagoon and proposes an average 102-foot wide open space buffer between proposed development and the mean high tide line. Staff recommends that no grading or structures be permitted within the buffer with the exception of drainage improvements. Other recommended conditions address building colors and water quality concerns.

Substantive File Documents: Certified Agua Hedionda Land Use Plan, CCC files #F1012, #6-86-035, #6-88-477, #6-90-93, #6-96-159, #6-98-14.

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-00-80 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, final site and building plans approved by the City of Carlsbad which are in substantial conformance with the site plan prepared by ASL Consulting Engineers, Commission date stamped received 1/24/2001 submitted with this application, but that are revised as follows:

- a. The proposed rip rap drainage swale located within the beach portion of the open space buffer shall be deleted; riprap disposal at the terminus of the drainage pipe on the property may be permitted. A revised plan shall be submitted to limit the erosion in a manner that requires less rip rap.
- b. No improvements within the area subject to the public access easement shall be permitted. Public access trail improvements shall be determined in the future and require an amendment to this permit or a separate coastal development permit.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Lateral Public Access. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and as proposed by the applicant, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The easement shall be located along the entire width of the property along the Agua Hedionda Lagoon shoreline and shall extend 25-foot upland of the mean high tide line (2.0-ft. MSL) which is understood to be ambulatory from day to day.

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. It shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recorded document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

3. Open Space Deed Restriction. No development, as defined in section 30106 of the Coastal Act shall occur in the area generally described as buffer area between the mean high tide line (2.0-ft. MSL) and a line extending on average 102-foot upland (northward) as shown in Exhibit 3 attached to the staff report prepared by ASL Consulting Engineers, Commission date stamped received 1/24/2001. Native, non-invasive, drought-resistant vegetation acceptable to the California Department of Fish and Game, a future public access trail and necessary drainage improvements, shall be permitted within the buffer.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a restriction in a form and content acceptable to the

Executive Director, reflecting the above restriction on development in the designated open space area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

4. Revised Landscape Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, in consultation with the Department of Fish and Game, a final landscape plan approved by the City of Carlsbad that is in substantial conformance with the plan dated received 1/24/2001 by George Mercer Associates, except it shall be revised as follows:

- a. Drought tolerant, native or non-invasive plant materials shall be utilized to the maximum extent feasible. Native, non-invasive, drought-tolerant vegetation acceptable to the California Department of Fish and Game shall be installed for that portion of the southern slope within the buffer. The remainder of the buffer may be retained in its natural state as beach.
- b. For visual purposes, special emphasis shall be placed on the treatment of all portions of the site which would be visible from public roads and the lagoon shoreline, and areas adjacent to view corridors. The revised landscape plan shall indicate the placement of a minimum of one native specimen size tree (24-inch box minimum) for every 10 feet of property along the south-facing portion of the lot and arranged to maximize screening of the structures from views from Agua Hedionda Lagoon and Interstate 5. A minimum of 13-trees shall be provided lagoonward of the building pad for the proposed residence. The required trees shall be planted within 60 days of completion of residential construction. The plan shall require the use of species which do not reach sufficient height to block public views from Adams Street. Said landscaping shall be designed to mitigate the visual impact of the structure as viewed from the lagoon and public access trail, while preserving views from the home.
- c. A written commitment shall be made that all planted materials shall be maintained in good growing condition for the life of the residences.
- d. A 20-foot landscaped buffer using native plant materials shall be planted along Adams Street. However, species within the landscaped buffer shall not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views shall be incorporated into the approved plan.

- e. The proposed rip rap swale on the beach within the buffer shall be deleted from the plans.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the above requirements. The restriction shall provide that landscaping shall be implemented in accordance with plans approved pursuant to Special Condition #4 of CDP #6-00-080. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Drainage and Polluted Runoff Control Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans approved by the City of Carlsbad, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- (e) Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.

- (f) The proposed driveway leading to the existing boat launch shall be redesigned to be a pervious surface (for example crushed gravel, concrete grid, or cobblestones) to allow increased percolation of runoff into the ground
- (g) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

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

6. Height of Structures/Future Development. This approval limits the height of the residences to no higher than the centerline of Adams Street which is at elevation 44-ft. Mean Sea Level. The subject permit is only for the development described in coastal development permit No. 6-00-80. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the single family residence authorized by coastal development permit No. 6-00-80. Accordingly, any future improvements to the single family residence authorized by coastal development permit No. 6-00-80 shall require an amendment to permit No. 6-00-80 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive

Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal-Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required. All other development proposals for the site shall require review and approval by the Coastal Commission, or its successor in interest, under a separate coastal development permit or an amendment to this permit.

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

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

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The applicant proposes the construction of a 27-foot high, 8,200 sq. ft. single family residence with detached garages, driveways, pool, landscaping and 800 sq.ft. second unit on a 1.12-acre hillside lot overlooking Agua Hedionda Lagoon in Carlsbad. Also proposed is a 25-foot wide public access easement and an average 102-foot wide open space setback measured from the mean high tide line (2.0-Ft MSL). Approximately 3,261 cu.yds. of after-the-fact grading is proposed to construct a public storm drain and for remedial grading (cut 2,111 cu.yds., fill 932 cu.yds., export 1,179 cu.yds., remedial grading 1,150 cu.yds.). Remedial grading was required when unacceptable subsurface materials were found during installation of a public storm drain, requiring the area to be enlarged to accommodate the proper removal of unacceptable materials. The limits of the overexcavation extended approximately 60 feet to the west and produced a terraced hillside pad on the sloping property. No additional grading is proposed.

The site is located south of Adams Street on the north shore of Agua Hedionda Lagoon in Carlsbad. The site is a sloping hillside lot that contains a graded driveway and pad and a relatively level area near the shoreline of Agua Hedionda Lagoon. Except for some vegetation that was installed as erosion control when the site was last graded in June, 1999 the site is disturbed and contains no vegetation. Approximately 25% of the site

contains steep slopes that are defined as slopes greater than 25% grade; however, no wetland or sensitive upland vegetation is present on the site.

The subject site is located adjacent to an existing single family residence on the east and a commercial site on the west which contains a private boat club and a restaurant. The Commission approved a two-lot parcel map and associated approximately 5,000 sq.ft. single family dwellings to the east in CDP #6-96-159/Cade. That project also included a public access easement along the shoreline and an open space buffer between proposed development and the shore of Agua Hedionda Lagoon. Carlsbad approved a 3-lot subdivision on the subject site in 1996; however, the project was not submitted to the Coastal Commission for approval and the project did not go forward and the map has subsequently expired.

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

2. No Waiver of Violation. Although development in the form of grading (3,261 cubic yards) has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Public Access. Public access along and to the waters of Agua Hedionda Lagoon is very important because of the recreational nature of the lagoon. It is the only lagoon in San Diego County where water sports are permitted. Additionally, a public trail along the north shore of the lagoon is identified in the certified Agua Hedionda Lagoon LUP. The following Coastal Act sections are applicable to the proposed project.

#### Section 30210

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



Section 30211

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

Section 30212

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

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

(2) adequate access exists nearby....

Pursuant to these sections of the Act, the certified Agua Hedionda Lagoon Land Use Plan contains a detailed set of public access policies.

Policy 7.1

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

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

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

Policy 7.6 (in part)

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

Policy 7.8Design of Access Easements, Buffer Areas, and Adjacent Development

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

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

Most of the north shore lagoon-fronting lots, between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, are undeveloped between I-5 and Bristol Cove (about 1 mile). Many of the primarily hillside lots contain coastal sage scrub on the hillsides and wetland vegetation near the water's edge. They are also within the public viewshed. Because much of the north shore of the lagoon is undeveloped, the majority of the public access path called for in the certified Agua Hedionda LUP has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. The LUP also identifies other access related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement.

To date, lateral access easements have been recorded on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035), a 23-unit Bristol Cove condominium project (CDP #F 1012), Cade (#6-96-159 which is adjacent to the subject site on the west) and Huber (#6-98-14). Three sites (L&R, Bristol Cove, Cade) were identified as having constructed their segment of the public access path called for in the LUP. The subject property lies adjacent to two sites approved in the adjacent Cade parcel map to the east

where a public access walkway has been constructed and the Agua Hedionda Lagoon Foundation has accepted the access easement.

The project site is located between Agua Hedionda Lagoon and Adams Street and contains roughly 137 feet of actual shoreline frontage. The hillside, lagoon-fronting site has been extensively used by hikers in flatter areas near the water's edge. The LUP requires that a lateral public access easement at least 25 feet in width be provided landward of the mean high tide line and that a trail be built within the easement. The City did not require any discretionary approvals for this development, finding the project consistent with existing land use and zoning designations. The applicant has proposed to offer to dedicate a 25-foot wide public access easement with this application, upland and ambulatory of the mean high tide line.

There is some evidence that the public has historically used the applicant's property for lateral access along the lagoon. Vertical access is provided two lots to the east from Cove Drive to the Agua Hedionda Lagoon shoreline. From there, public trail segments exist to the east in front of the Bristol Cove multi-family project and the two lots to the immediate west. In the past, these two lots have had a significant amount of public use, mainly as a boat launch site. The Commission circulated questionnaires and accepted declarations regarding the public use of these lots when the Commission reviewed the two-lot parcel map that created the lots in #6-96-159. Sixty-three declarations were returned which identified that the site had been used for recreational use by primarily local residents although non-local windsurfers and boaters also documented they had used the site to gain access to the lagoon. While the questionnaires indicate the 2 lots to the immediate east of the subject lot have been used for public access, several indicated that public use had occurred on the subject site. Historical aerial photos also indicate the subject site has been used by the public (cars parked on the upper portion of the site probably in connection with the restaurant/private boat club on the adjacent site to the west).

In addition, the construction of a home along the lagoon raises issues of consistency with Coastal Act policies protecting public access to and along the shoreline (which includes the shoreline of coastal lagoons). In recognition of the requirements of the Agua Hedionda LUP and past Commission permit decisions in the area, the applicant proposes to dedicate a lateral public access easement to extend 25-feet upland and ambulatory from a mean high tide line elevation of 2.0-ft. MSL. Special Condition #2 memorializes the applicant's proposal and requires the proposed easement to be recorded in a form and content acceptable to the Executive Director. The easement area shall be for lateral public access and passive recreational use along the lagoon shoreline and shall extend upland 25-feet from the mean high tide line which is understood to be ambulatory from day to day. In this way, the proposed easement and required trail segment will coincide with those to the east. The proposed rip rap drainage swale on the beach within the buffer is not permitted.

The Commission recognizes that either the City of Carlsbad or other appropriate agency may assume responsibility for provision of the access improvements necessary to provide

access along the lagoon's entire north shore in the future when the access easements are accepted and the entire alignment open for public use. Therefore, Special Condition #1 requires that the area within the public access easement be left unimproved at this time.

In summary, as discussed above, there is some evidence of previous public use of the site for lateral access. In addition, the proposed development does not propose any structures that would interfere with continued access. Additionally, as proposed to provide a lateral access easement, upland of the mean high tide line which will assure continued use by the public, the Commission finds that adequate public access will be provided. With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

4. Environmentally Sensitive Habitat/Wetlands. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Coastal Act Sections 30233 and 30240 call for the preservation of sensitive habitat areas, including wetlands. Agua Hedionda in particular has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act.

#### Section 30233

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

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

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

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

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

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

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

(7) Restoration purposes.

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

#### Section 30240

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

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

Section 30240 provides that environmentally sensitive habitat areas be protected against any significant disruption of habitat values. Pursuant to these policies, the certified Agua Hedionda Land Use Plan contains a policy regarding preservation of Agua Hedionda's upland areas.

#### Policy 4.4

Recognizing the unique environmental features of the lagoon and its environs and the sensitivity of the area to soil erodibility and sedimentation, development shall be regulated as follows:

- a. Development on existing subdivided lots having all of their area in slopes of 25% or greater shall be permitted, but grading shall be limited to minimal site preparation for pole-type footings. Driveway/parking areas shall be limited in size and shall be restricted to an area adjacent to the local streets. On-site vegetation shall not be disturbed beyond the minimal area needed to be cleared for the construction process, which shall be clearly delineated on approved site plans.
- b. Development, grading and landform alteration in steep slope areas (25%) shall be restricted. Exceptions may include encroachments by roadway and utilities necessary to reach developable areas. The maximum allowable density may be modified through setbacks, plan review, or other requirements of this plan and applicable city regulations.
- c. Use of the Planned Development Ordinance (PD) and cluster development shall be required in areas containing environmentally sensitive resources, extensive steep slope areas and significant natural landform features.

The 1.12 acre hillside project site is a lagoon-fronting lot which has been previously graded. While the lot extends to the lagoon, no wetland vegetation exists on site and no fill of wetlands is proposed. Approximately 25% of the site contains steep slopes which are defined as slopes greater than 25% grade. No natural upland habitat is located on the site. A February 17, 2000 letter from REC Consultants indicates "the site appears to be a graded pad with no native vegetation. What vegetation occurs on the site appears to be germinated from the erosion seed mix that was placed on the slopes. The seed mix appears to have been composed of ornamental species."

The applicant states the subject site was previously graded in the late 1950s and has provided four aerial photographs to verify the statement. The photographs (1958, 1977, 1988 and 1995) show the presence of a graded pad with minimal vegetation. Grading along the eastern property line of the site also occurred in May 1999, prior to the applicant purchasing the property, to install a public storm drain required by the City of Carlsbad. The soils report indicates the purpose of the grading was to provide a fill slope for the support of the proposed storm drain system and that unacceptable subsurface materials were found requiring the area to be enlarged to accommodate the proper removal of unacceptable materials (the area near the terminus of the storm drain had to be over-excavated to remove trash and unstable soils). The limits of the grading extended approximately 60 feet to the west and produced a terraced hillside pad at contours close to natural grade (as found in a comparison of on-site contours prior to the applicant's involvement in the property with grading that occurred to install the storm drain). The comparison indicates the site as graded, is generally at the same contours and elevations that it was prior to the applicant's involvement. Thus, the Commission finds the May 1999 grading did not change the previous contours of the site, as it returned the site to its pre-existing contours. Additionally, no additional grading is proposed; the residence and associated improvements are proposed on the existing pad. In any case, based on review of aerial photos, no upland vegetation exists on the site.

The Commission has typically in the past required a 100-foot buffer between new development and the water's edge of a coastal lagoon. Historically, the Commission requires that buffer areas remain undeveloped to provide physical space between development and environmentally sensitive areas like Agua Hedionda Lagoon. Because this intervening space acts as distance barrier and a percolating medium, there is less of a chance that adverse impacts associated with development (i.e., runoff and siltation associated with grading and site preparation, construction debris, debris generated by residential use, etc.) will find its way into the lagoon. The Commission has permitted minor drainage improvements and low intensity public improvements within buffer areas.

The applicant is proposing a buffer with an average width of 102-feet measured from the mean high tide line (the 2-ft. MSL elevation) to the 10-foot msl contour. The 10-foot msl contour is located near the toe of the southern slope below the graded pad area for the proposed home. The greatest extent of the buffer is approximately 118 feet in the eastern portion of the site while the smallest extent of the buffer is approximately 84 feet in the western portion of the site; the width of the buffer varies because of the variation of the

shoreline and the 2-foot msl contour. While portions of the proposed buffer are not 100-feet from the mean high tide line, the Commission finds in this particular case the setback adequate to protect the down slope lagoon. As stated previously, no native upland habitat exists on the site and no wetland vegetation has been identified. Thus, the proposed average 102-ft. buffer will provide sufficient area to preserve the adjacent resources of Agua Hedionda Lagoon. Special Condition #3 memorializes the applicant's proposal and assures that the buffer will be protected through recordation of an open space deed restriction.

While the applicant is proposing to maintain the majority of the lagoon buffer as existing sandy beach, revegetation with upland plants that are compatible with the surrounding lagoon environment is proposed for up to approximately 6-feet of the southern slope within the buffer. The remainder of the site is proposed to be planted with exotic ornamental landscaping. However, based on the site's setting adjacent to Agua Hedionda Lagoon, Special Condition #4 requires a revised landscaping plan indicating that drought tolerant, native or non-invasive plant materials will be utilized to the maximum extent feasible for the bulk of the site. Regarding the buffer, native, non invasive, drought-resistant vegetation acceptable to the California Department of Fish and Game shall be installed for that portion of the southern slope within the buffer. The remainder of the buffer is permitted to be retained in its natural state as beach. The Commission finds such revegetation would improve the habitat value of the site, including the buffer, would avoid erosion associated with non-drought-resistant vegetation, and would avoid the introduction of invasive exotic species, and is therefore consistent with Coastal Act sections 30230, 30231 and 30240.

In summary, the proposed residential development does not involve impacts to any sensitive upland habitat or any fill of wetlands, incorporates an average 102-foot buffer between the mean high tide line and on-site development and as proposed assures coastal resources will be preserved. Therefore, as conditioned, the Commission finds the proposed project consistent with the cited Coastal Act policies.

5. Runoff/Water Quality. 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...

The site is immediately adjacent to Agua Hedionda Lagoon. The project site is currently undeveloped, but is surrounded by existing residential and commercial development. Additionally, the site is considered a "hillside" development, as it involves steeply sloped terrain, which can be susceptible to erosive conditions. The proposed development will encroach directly on steep slopes and will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land

on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides and pesticides; and bacteria and pathogens from animal waste.

The proposed development includes site drainage improvements to ensure that most runoff is collected and dissipated prior to it entering the lagoon. An existing 18-inch public storm drain and outlet structure has been constructed along the eastern property line which collects runoff from surrounding offsite areas. A smaller private drainage structure and outlet structure is proposed along the western property line to collect runoff from the site itself, including a 10-foot wide paved asphalt driveway that would provide access to an existing boat launch ramp at the water's edge. The driveway is proposed to terminate at the upland extent of the buffer. The drainage structure and dissipater would intercept runoff coming off the driveway prior to it entering the buffer and lagoon.

To find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of BMPs designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e., the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition #5, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Additionally, the driveway that leads to the existing boat launch is an impervious surface. The Commission finds the driveway must be redesigned to be a pervious surface (for example, crushed gravel, concrete grid, or cobblestones) to allow increased percolation of runoff into the ground



Regarding the public storm drain on the eastern side of the site, the applicant is proposing to install riprap in a swale located in the buffer downstream of the energy dissipater associated with the public storm drain. This swale was created by runoff not being effectively handled by the existing rip rap dissipater at the discharge of the storm drain (the existing rock has been unable to reduce the velocity of the water leaving the storm drain pipe to prevent downstream erosion in the buffer). While the Commission recognizes the problem that has resulted from the inadequately operating energy dissipater, it can not find that the up to 10-foot wide and 70-foot long rip rap lined swale located across the beach within the buffer is acceptable. The Commission finds a revised plan must be submitted to limit the erosion in a manner that requires less rip rap subject to Executive Director approval. In any event, while the Commission may allow some additional riprap to be placed within the buffer to correct the erosion problem, it cannot support the applicant's proposal to install riprap within the swale at this time. Special Condition #1 requires revised plans indicating the deletion of the swale and riprap.

To ensure that water quality will be treated prior to discharge into sensitive areas like lagoons, the Commission typically requires that runoff be filtered through vegetation or filters. In this case the applicant indicates a "bubbler" water-purifying device is preferred near the discharge of the private storm drain. Runoff leaving the energy dissipater would be routed into the device and filtered prior to its discharge into the buffer and lagoon. Routing the runoff into vegetation is not proposed because it would require more planting area than is proposed to achieve the desired improvement in water quality. The Commission can accept the applicant's approach provided the device will be sized to handle runoff from the 85<sup>th</sup> percentile storm event. If this proves unfeasible, the Commission is requiring that the drainage be put into vegetated area prior to it entering the lagoon. Special Condition #5 would allow this measure as a post construction best management practice.

In summary, as conditioned to require a drainage and runoff control plan which includes BMPs designed to treat, infiltrate, or filter stormwater from each runoff event, the proposed development will reduce any impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act.

6. Scenic Preservation. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and major recreational resource, it was the subject of a detailed LCP Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of views from Adams Street. This street is a designated scenic corridor which runs along the north shore of the lagoon. Policy 8.3 of the LUP requires that development of the lots which lie between Adams Street and Agua Hedionda Lagoon be designed so as to preserve the public views from Adams Street.

Section 30251

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

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

- a) Where a significant elevation difference (e.g., 35 feet) exists between the shoreline and the first parallel public road, as in the case of Hedionda Point and Snug Harbor, no portion of a structure in the intervening area shall be permitted to exceed the elevation of the roadway.
- b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road.
- c) On all property adjoining the shoreline, permitted development shall be designed to "step down" in height, to avoid casting shadows on shoreline areas and to produce a perceived transition from open space areas to developed areas ...
- d) Any development proposed to be located on or near a significant landform (e.g., Agua Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraced or pole foundations and variations of roof lines to complement the topography

Policy 8.3 calls for view preservation to occur through either: (a) the siting of structures at elevations below that of Adams Street adjacent to the property or (b) the preservation of one third of the width of the parcel as a "view corridor". The preferred method for preserving such views lies in the siting of all structures so that the tops of the structures are below that of the elevation of the adjacent scenic roadway. This would allow passers-by to see over the structure(s) to the lagoon and surrounding areas.

In the case of the proposed development, the roofline of the proposed residence is proposed at elevation 44-ft. MSL, which does not exceed the elevation of Adams Street adjacent to the project site. Thus, the project conforms with the LUP requirement.

Special Condition #6 is attached regarding the maximum height for future structures on the lot. In addition, this special condition notifies the applicant and future property owners through recordation of a deed restriction that any future development of the site in the future, including additions to the house, will require review and approval by the Commission.

The residential development as proposed provides for the required view preservation from the adjacent scenic roadway. Also, Special Condition #7 requires that final plans include a color board verifying that the residence will be finished in deep earthtones compatible with the surrounding hills and lagoon. The condition further requires that this be formalized through recordation of a deed restriction. In this way, the visual impact of the proposed structure will be reduced.

Landscaping is also important in minimizing visual impacts. Policy 8.1 of the LUP requires that development adjacent to Adams Avenue, the fronting street, shall maintain a minimum 20-foot landscaped buffer between the street and parking areas. The applicant has submitted a preliminary landscape plan which indicates the site would be planted with ornamentals and naturalizing vegetation. The landscape plan indicates the parking areas would be setback greater than 20-feet from the street. It also indicates the street setback and upper portion of the lot would be planted with a row of olive trees, "flowering" trees (Gold Medallion Tree, New Zealand Xmas Tree) and several varieties of ground cover. However, based on the project's location adjacent to an environmentally sensitive area, Agua Hedionda Lagoon, the Commission finds that native landscaping should be installed to the maximum extent feasible not only to restore area habitat values but to also assure that the scenic values in the area are maintained.

Additionally, to further mitigate the visual impact of the structures as seen from I-5, the future public trail and the south shore of the lagoon, the Commission finds special emphasis shall be placed on the use of trees to screen the homes, while preserving views from the home. The preliminary landscape plan indicates New Zealand Xmas Trees, a clump of Phoenix Reclinata and several palm trees are proposed at the top and sides of the south facing fill slope located between the residence and the lagoon. As noted above, the Commission has found these non-native ornamental species to be inappropriate in a lagoon setting. Therefore, native tree species (for example, Sycamore, Willow, or Cottonwood) must be substituted. Thus, the Commission finds a revised landscape plan must be submitted which indicates the placement of one native specimen size native tree (24-inch box minimum) for every 10 feet of south-facing pad area lagoonward of the proposed building site, arranged to maximize screening of the structures from views from Agua Hedionda Lagoon and Interstate 5. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. The plan shall also include the use of native species which do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan.

Policy 7.8 of the LUP provides that a setback from the inland extent of the public access easement be provided equivalent to twice the height of the structures. This policy was included in the LUP so that an adequate setback would be provided between private/public areas to provide a greater sense of privacy for both the property owner and coastal visitors. The proposed building height of the residence is 27-feet; therefore, a 54-foot setback should be provided between the residence and the easement. Because the inland extent of the access easement will vary from day-to-day (it is ambulatory) it is difficult to identify just where the inland extent of the easement would be at any given time. The Commission finds that for purposes of determining an adequate setback, the mean high tide line at elevation 2.0-ft. MSL can be accepted as the seaward extent of the easement. Given that, for purposes of identifying a setback, the inland extent of the easement would be 25-feet upland of the 2.0-ft. elevation. The proposed residence is setback approximately 90-feet from that point; therefore, the project can be found consistent with the above identified LUP policy.

In summary, as conditioned to provide adequate native landscaping along the road and lagoonward of the residence which will screen the residence from public areas but not interfere with public views, limit the maximum height for future structures on the lot, require that the residence will be setback from public areas, finished in deep earthtones compatible with the surrounding hills and lagoon, and that maintenance of the landscaping be maintained in perpetuity, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible, consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda Land Use Plan regarding scenic preservation.

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

The Agua Hedionda Land Use Plan (LUP) has been certified by the Commission but no implementing ordinances have been submitted by the City for this plan segment. Thus, the standard of review for this application is Chapter 3 policies of the Coastal Act. The Agua Hedionda Land Use Plan (LUP) designates the site for residential development. The project is consistent with that designation. As conditioned, the project is consistent with the policies of the Agua Hedionda Land Use Plan regarding scenic resources, habitat preservation and the provision of public access and also consistent with the corresponding Chapter 3 policies of the Coastal Act. Therefore approval of the project should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for its Agua Hedionda Lagoon segment.

8. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit, as conditioned, is consistent with any applicable requirements of the California Environmental Quality Act


(CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. 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.
5. 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.





MAP 2152 - BELLAVISTA - POR BLK D

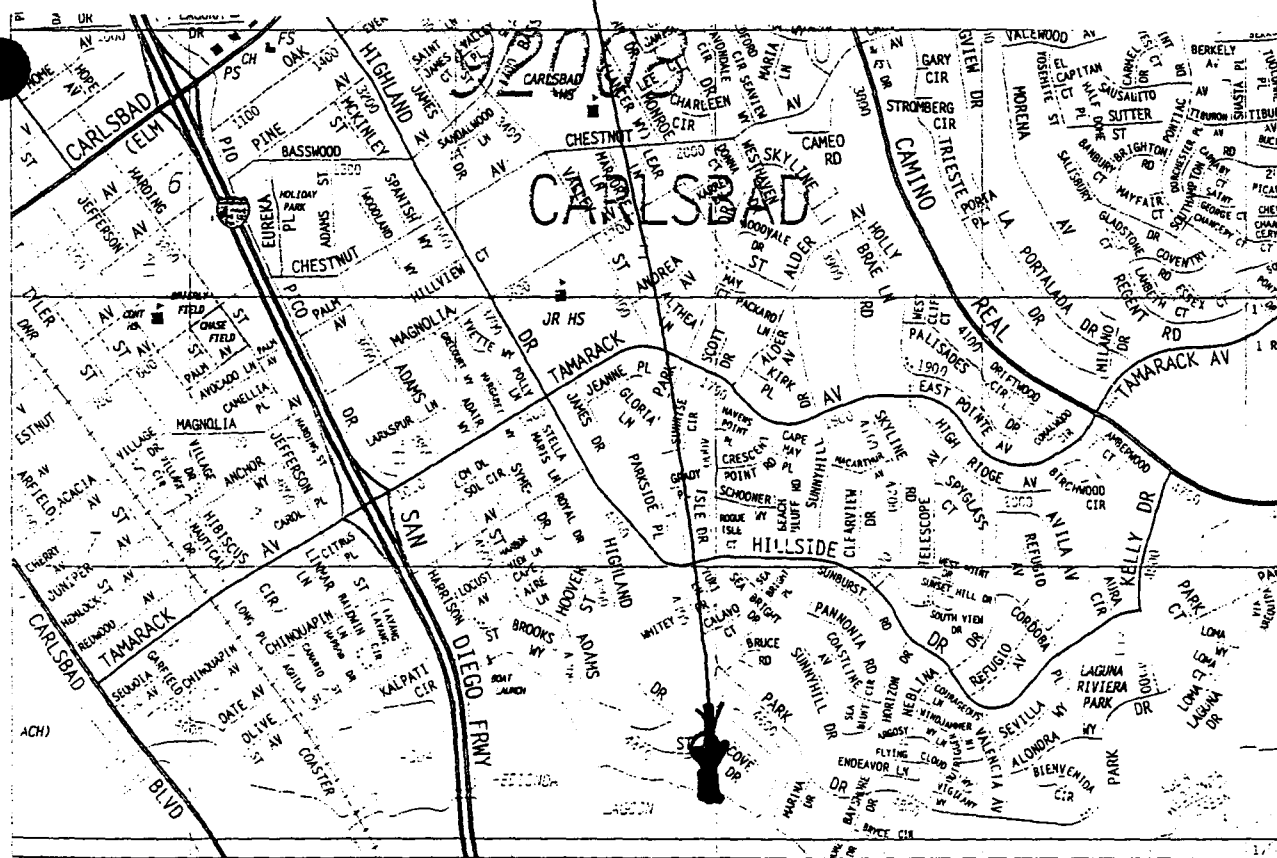


EXHIBIT NO. 1  
APPLICATION NO.  
**6-00-80**  
Location Map

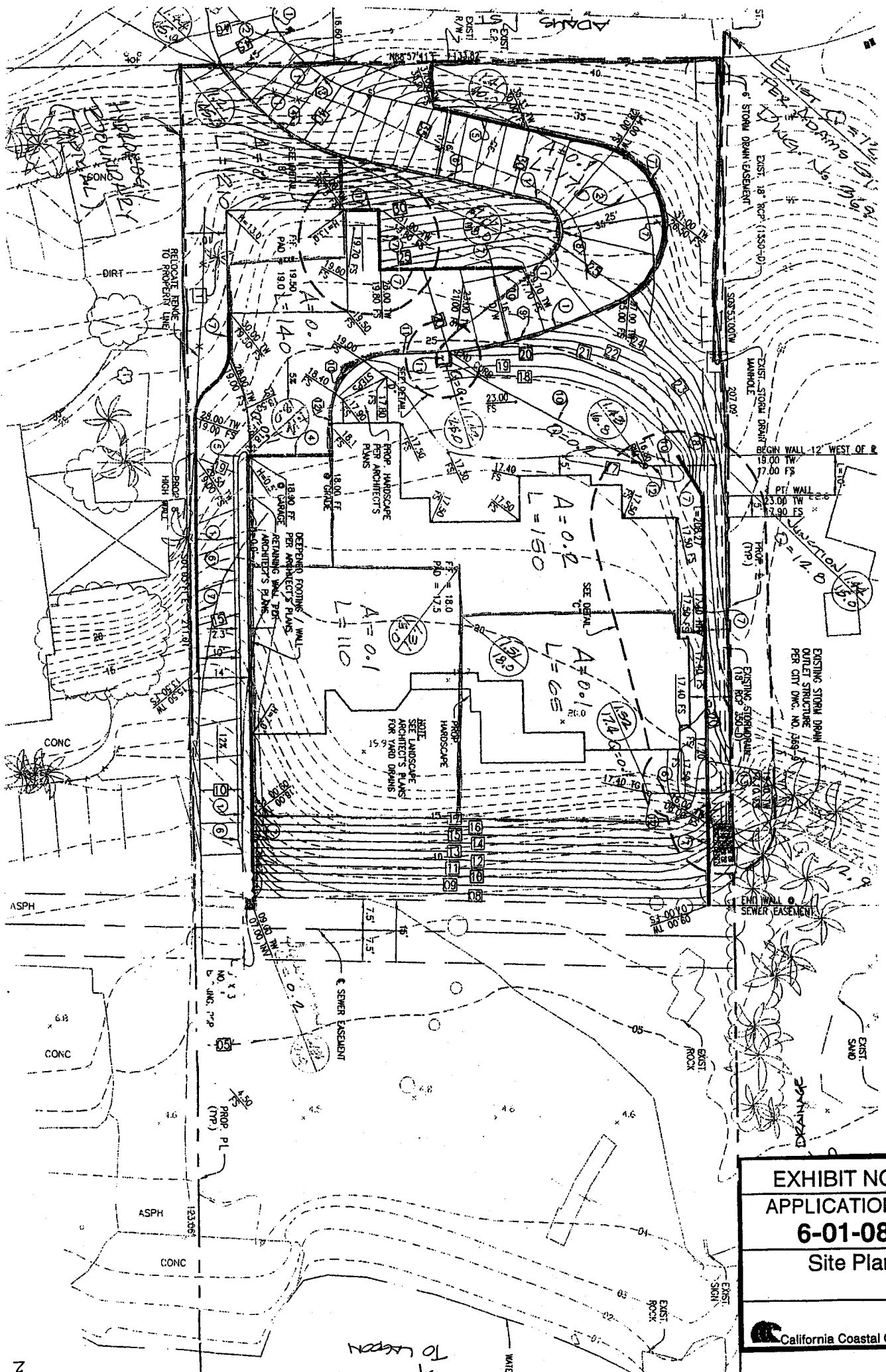
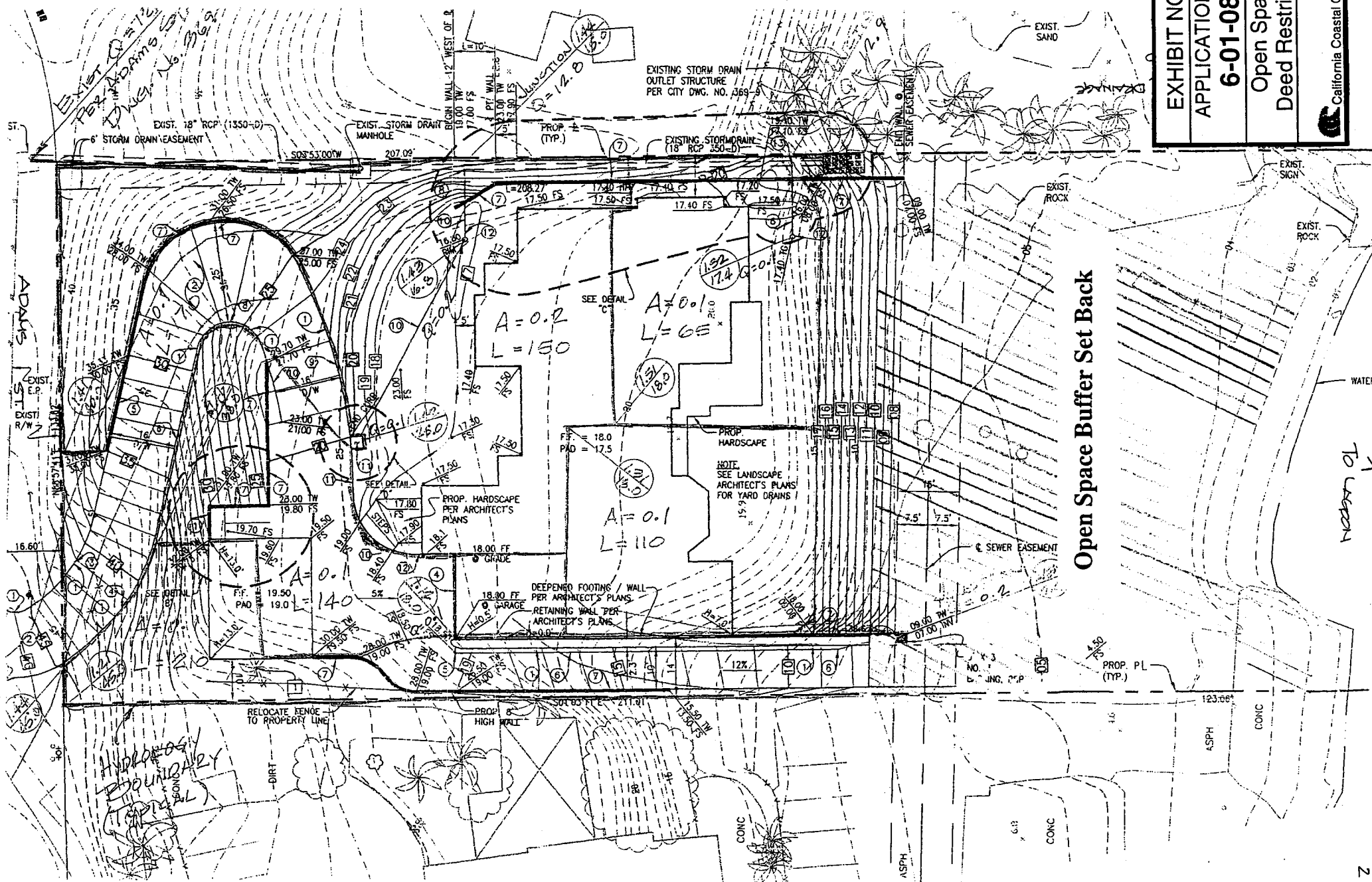
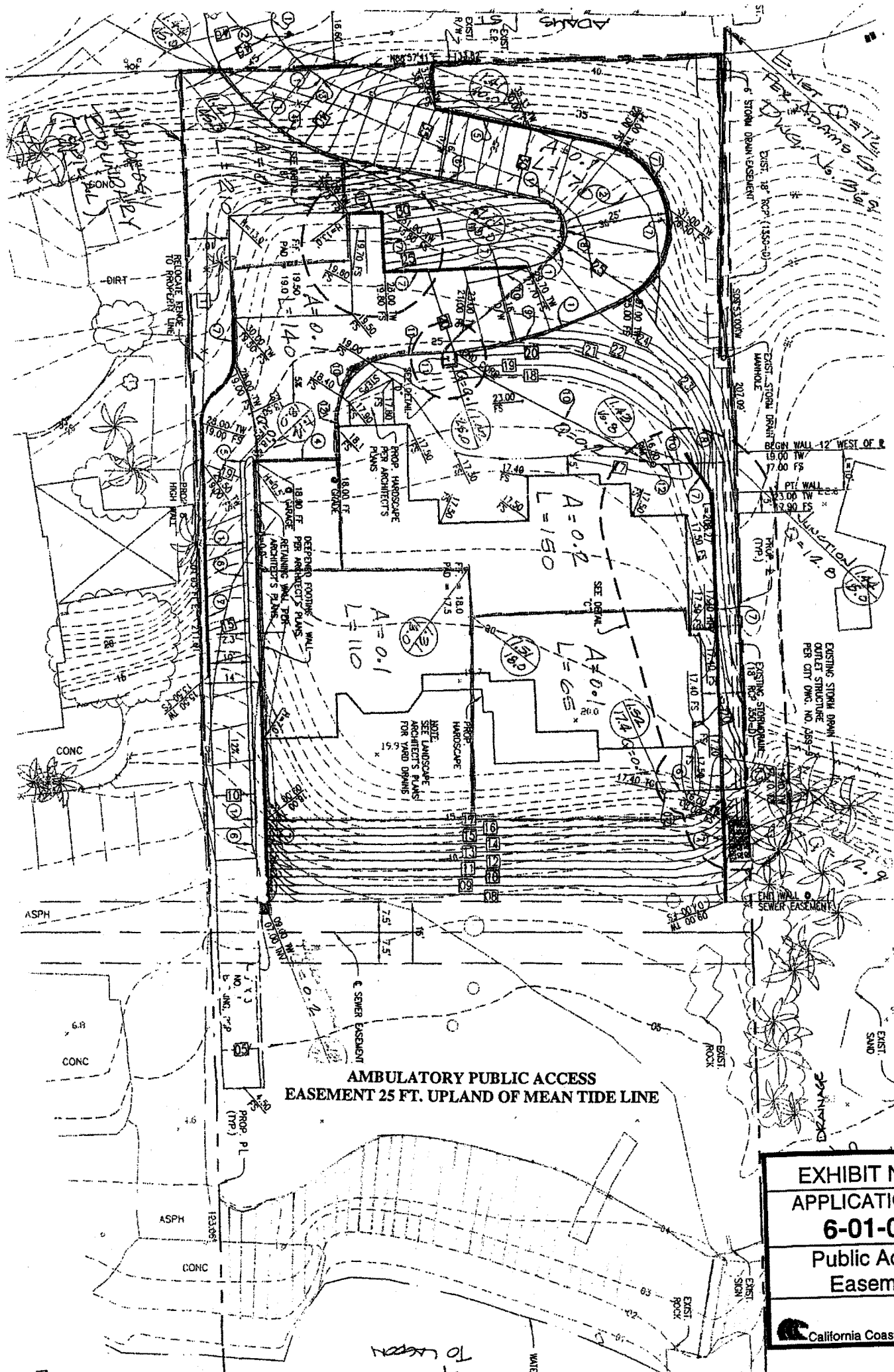


EXHIBIT NO. 2  
APPLICATION NO.  
6-01-080  
Site Plan



California Coastal Commission





AMBULATORY PUBLIC ACCESS  
EASEMENT 25 FT. UPLAND OF MEAN TIDE LINE

EXHIBIT NO. 4
APPLICATION NO.
<b>6-01-080</b>
Public Access Easement
California Coastal Commission