

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4402
 767-2370

RECORD PACKET COPY

A-6-CII-99-84

Filed: 6/10/99

49th Day: WaivedA-6-CII-01-121

Filed: 8/1/01

49th Day: 9/19/01

Staff: BP-SD

Staff Report: 8/28/01

Hearing Date: 9/11-14/01

Tue 11a -11b

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approval with Conditions

APPEAL NOs.: A-6-CII-99-84/A-6-CII-01-121

APPLICANT: Kelly Land Company

PROJECT DESCRIPTION:

1. **A-6-CII-99-84:** Three coastal development permits authorizing division of 174 acres into 179 lots, construction of 147 single family homes and 451 apartments, establishment of open space system, and construction of infrastructure improvements, day care facilities and recreational vehicle storage area.
2. **A-6-CII-01-121:** Amendments to the three coastal development permits subject to appeal number A-6-CII-01-121 to reduce the number of single-family lots by 7, the number of apartment units by 43, relocate future day care and recreational vehicle storage areas and establish modified open space preservation areas on 174 acres.

PROJECT LOCATION: East of Agua Hedionda Lagoon and north of Macario Canyon,
 Carlsbad (San Diego County).

APPELLANTS: **A-6-CII-99-84/Commissioners Kehoe and Wan**
A-6-CII-01-121/Commissioners McCoy and Wan

STAFF NOTES:

On June 10, 1999 Commissioners Kehoe and Wan filed an appeal of the City's approval of three coastal development permits pertaining to subdivision and residential development of the 174 acre "Core Area" of the Kelly Ranch property (A-6-CII-99-84) citing that the project was inconsistent with the certified LCP as it was approved based on policies and ordinances that had not yet been approved by the Commission through an amendment to the certified LCP. The applicant waived its right to a hearing within 49 days of the appeal.

Subsequently, the Commission certified, with suggested modifications, the City of Carlsbad Local Coastal Program Amendment No. 2-99D pertaining to the Kelly Ranch. The City Council accepted all the Commission's suggested modifications and approved amendments to the three coastal development permits relating to subdivision and development of the Kelly Ranch "Core Area" to bring the development into compliance with the Commission's suggested modifications to LCPA #2-99D.

On August 1, 2001 the City's action approving the amended project was appealed (A-6-CII-01-121) by Commissioners McCoy and Wan. Both appeals (A-6-CII-99-84, A-6-CII-01-121) are the subject of this report and will be heard together at the Commission's September, 2001 hearing. However, because the amended project supercedes and replaces the project as originally approved by the City, only the issues raised by the amended project are addressed below in this report. The standard of review is consistency with the certified City of Carlsbad Local Coastal Program (Mello II segment) and the public access policies of the Coastal Act.

In addition to the subject appeals, a related application, CDP #6-84-617-A, is before the Commission at its September 2001 meeting. In CDP #6-84-617 the Commission approved the master subdivision and related improvements of the 433-acre Kelly Ranch, which includes lands in both the Agua Hedionda and Mello II LCP segments. Some development occurred in the Mello II LCP segment, now known as the "Core Area" but the project was subsequently abandoned. In 1997, the Carlsbad LCP was effectively certified by the Commission and the City began issuing coastal development permits in all LCP segments except the Agua Hedionda segment which remained uncertified (Agua Hedionda has only a certified Land Use Plan). In 1998 the subject developer acquired the site and in 1999, the City issued a coastal development permit for the Mello II portion of the Kelly Ranch holdings. The subject appeals address that portion of the Kelly Ranch development that is within the Mello II segment. However, because the Commission's original approval in CDP #6-84-617-A addressed all of Kelly Ranch, the Commission has the opportunity to review the entirety of the Kelly Ranch again in its review of CDP #6-84-617-A.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeals have been filed.

Upon further review and consultation with the City regarding coastal development permit procedures and review of the amendment to CDP #6-84-617-A, staff has determined that all the issues identified in the appeal (i.e., vista point and trail dedications, open space restoration, permitted uses within open space) have been addressed and thus recommends the Commission find that the appeals raise no substantial issue.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program (LCP)/Mello II Segment. Planning Area E Single Family Subdivision CDP 96-13 (4/8/98), Planning Area F Nature Center CDP 98-59 (10/7/98), Core Area Master Subdivision CDP 97-43(A) (6/12/01), Planning Areas I and J Single Family Subdivision CDP 98-66(A) (6/12/01) and Planning Areas D, G and H Apartment Project CDP 98-70(A) (6-12-01); Cannon Road CDP 6-97-11 (2/4/98)

I. Appellants Contend That:

The proposed development is inconsistent with the policies of the certified LCP which pertain to public views, environmentally sensitive habitat and public access.

II. Local Government Action.

1. **A-6-CII-99-84:** The City of Carlsbad Planning Commission approved the proposed development on May 18, 1999. The conditions of approval address impacts and mitigation to many sensitive plants and animals including coastal sage scrub, southern maritime chaparral, wetlands and riparian habitat, drainage impacts to Agua Hedionda Lagoon and consistency with the City's draft Habitat Management Plan.
 2. **A-6-CII-01-121:** The City of Carlsbad Planning Commission approved the proposed amendments on June 12, 2001. The conditions of approval addressed various issues including water quality, landscaping, fire suppression, and consistency with the City's Local Coastal Program.
-

III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within appealable areas as defined by Section 30603(a) of the Coastal Act.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the

certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolutions:

- A. **MOTION I:** *I move that the Commission determine that Appeal No. A-6-CII-99-84 raise NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-CII-99-84 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

- B. **MOTION II:** *I move that the Commission determine that Appeal No. A-6-CII-01-121 raise NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-CII-01-121 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. **Findings and Declarations.**

The Commission finds and declares the following:

1. **Project Description/History.** Kelly Ranch is a 433-acre site in Carlsbad at the east end of Agua Hedionda Lagoon. The site contains a wide variety of topography and habitat including wetlands, pastureland, field crops, farmland, and gentle and steep naturally vegetated slopes containing sensitive upland habitat. The property lies within the plan area of two of the six existing Carlsbad LCP segments: Agua Hedionda and Mello II segments

On June 10, 1999 Commissioners Kehoe and Wan appealed the City's approval of three coastal development permits (CDP Nos. 97-343, 98-66 and 98-70) pertaining to the "Core Area" of the Kelly Ranch property (A-6-CII-99-84). The permits approved by the City authorized the subdivision of 174 acres into 179 lots (with 7 planning areas and a remainder parcel), the construction of 147 single-family homes and 451 apartments, establishment of an open space system, infrastructure improvements, a day care facility and a recreation vehicle storage area. The grounds for this appeal were that the project, as approved by the City, was inconsistent with the certified LCP as it was approved based on policies and ordinances that had not yet been approved by the Commission through a LCP amendment. The applicant waived its right to a hearing within 49 days of the appeal.

At its July 11, 2000 meeting, the California Coastal Commission certified, with suggested modifications, the City of Carlsbad Local Coastal Program Amendment No. 2-99D. The amendment revises the City's certified land use and implementation plans by rescinding

the previously certified Kelly Ranch Master Plan, which allowed up to 1,400 residential units on 433 acres, and replacing it with changes to land use and zoning designations within both the Agua Hedionda Lagoon and Mello II segments of the LCP.

The City Council subsequently accepted all the Commission's suggested modifications and on June 12, 2001 the City approved three coastal development permit amendments (97-43A, 98-66A and 98-70A) relating to subdivision of the Kelly Ranch Core Area which is within the Mello II segment. The permit amendments were approved by the City to bring the project into compliance with the Commission's suggested modifications to LCPA #2-99D. The permits, as amended by the City, result in a reduction in the number of residential lots by 7 and the number of apartment units by 43, relocation of day care and recreational vehicle areas and modification to the open space boundaries.

On August 1, 2001 the City's action approving the amended project was appealed (A-6-CII-01-121) by Commissioners McCoy and Wan. Both appeals (A-6-CII-99-84, A-6-CII-01-121) are addressed in this report and will be heard together at the Commission's September, 2001 hearing. The standard of review is consistency with the certified City of Carlsbad Local Coastal Program (Mello II segment) and the public access policies of the Coastal Act.

2. LCP Amendment #2-99D. As noted above, in July 2000, the Commission approved the City of Carlsbad, LCPA #2-99D pertaining to the Kelly Ranch Master Plan area. The LCP amendment, as submitted by the City, included a revised open space system that acknowledges the work done to date by the resource agencies and the City in developing the City's of Carlsbad's draft Habitat Management Plan (HMP) on all the proposed planning areas except Planning Area L. The proposed upland open space system contained steep and non-steep areas containing primarily coastal sage scrub and southern maritime chaparral vegetation in two core habitat corridors oriented in a north/south and an east/west direction to provide connectivity between Macario Canyon, preserve areas to the south of Kelly Ranch and Agua Hedionda Lagoon.

In review of the LCP amendment, the Commission acknowledged the areas shown as open space in the LCP amendment as environmentally sensitive habitat areas are also protected by Section 30240 of the Coastal Act. However, the Commission also found there were additional Coastal Act concerns reflected in the steep slope policies of Chapter 3 and the current LCP which address landform alteration and visual impacts of development within scenic viewsheds. The Commission noted the open space system established by the LCP amendment was based only on sensitive habitat and long-term connectivity of wildlife corridors. The Commission noted it failed to take into account other concerns which must be considered in addition to habitat protection to find the LCP amendment in conformance with Chapter 3 policies of the Coastal Act.

The LCP amendment as submitted by the City proposed to revise the previously-approved open space system to eliminate certain "dual criteria" slopes from open space and designate them for residential development; however the City did not propose to modify the LCP language which protects "dual criteria" slopes which would serve as the standard of review to implement the proposed land use map. The Commission approved

revisions to the proposed open space system to result in either protection of significant environmentally sensitive area in place because its development would result in an unacceptable conflict with Coastal Act policies; or the revised open space would result in expansion of the proposed habitat corridors to enhance connectivity and functions for long-term continuance of the resource value.

The Commission acknowledged that the proposed open space system would allow development within environmentally sensitive habitat areas protected by the Kelly Ranch Master Plan. The Commission also acknowledged that the property owner had developed a revised residential development plan for this property primarily in recognition of the requirements in the City's draft HMP which has established "hardline" preserve boundaries on all the sensitive planning areas except Planning Area L. The Commission found the proposal to concentrate development and recognize long-term goals for habitat protection resulted in a conflict between Sections 30240, 30251 and 30253 of the Coastal Act which protect environmentally sensitive habitat areas, significant natural landforms and scenic resources and Section 30250 which seeks to concentrate development in areas having the least individual and cumulative impact on coastal resources.

The Commission found that through use of the balancing provisions of the Coastal Act, and with significant revisions to the approved open space system, the proposed impacts to environmentally sensitive habitat areas could be accepted to allow for clustering of development that results in greater protection of other significant environmentally sensitive habitat areas. The revisions to open space the Commission approved include additional area on the west-facing hillside extending up to the ridgeline of Planning Area J be retained in open space, as well as elimination of area for three potential residential lots on the north and west-facing slopes to widen the habitat corridor and require development to be setback from the ridgeline. A third revision requires development to be eliminated from the northern portion of Planning Area D (43 potential units) to avoid impacts to 1.44 acres of jurisdictional wetlands and provide a direct linkage of the upland open space to Agua Hedionda Lagoon. With this revision, a minimum 800-foot wide wildlife corridor, extending to approx. 1,300 feet in some areas, would be provided. With these changes to the open space system, the Commission found the impacts to environmentally sensitive habitat in a canyon on Planning Areas D and G, a hillside in Planning Areas H and I, and the upper reaches on the hillsides and canyons on the northeast, east, and southeast portions of Planning Area J are offset, and the development and open space plan results in a concentration of the development which, on balance, is most protective of significant coastal resources.

Additional suggested modifications included requirements for public trails and vista points to serve as recreational amenities for future residents in addition to the proposed interpretive center and a prohibition on gated communities within the planning areas which would contain such facilities. Brush management provisions were also approved which accept the 3-fuel management zones established in the City's Landscape Manual, but regulate their application adjacent to open space. The revisions require that development be sited a sufficient distance away from designated open space to accommodate Zones 1 and 2 outside the open space. Zone 3 may be permitted if planting of fire retardant, native vegetation is permitted to replace vegetation required to be removed. The suggested modifications also address water quality by including in the

land use plans and implementing ordinances provisions which require best management practices to meet not only NPDES permit requirements, but also address runoff volume by maximizing permeable surfaces. The revisions also address control of potential pollutants from parking lots of 25 spaces or more.

Finally, for the Planning Areas along the north shore of the lagoon in the Agua Hedionda Lagoon LUP segment, the revisions include a reduction in density on Planning Area A and specify the wetland buffer shall be a minimum of 100 feet to avoid indirect impacts to sensitive resources and protect significant upland habitat within the buffer. The revisions are intended to concentrate the proposed intensity in the areas able to accommodate it, without significant adverse effect, individually and cumulatively on coastal resources, consistent with Section 30250.

The Commission found the above revisions would result in an open space system that is superior to that approved in the Kelly Ranch Master Plan. The revised Kelly Ranch Open Space includes the 195 acre Wetland Preserve and an extensive upland habitat system which provides connectivity to significant habitat core areas to the north and south and will enhance long-term productivity of rare and endangered species. The revisions to the LCP, when implemented, will also result in reduced density and greater wetland buffers provided in development of the lagoon's north shore in Planning Areas A and C. Impacts to existing wetland vegetation will be avoided on Planning Area D, and development will be concentrated in the least environmentally sensitive area within Kelly Ranch. Finally, development along prominent ridgelines within Planning Areas L, K and J will be set back to reduce visibility and brush management within open space to mitigate the habitat impact and preserve the visual quality of this scenic coastal area. Finally, public trails and vista points will be provided, in addition to the proposed interpretive center, to address the recreational needs of future residents.

3. Appellants Contentions. In Appeal No. A-6-CII-99-84, the appellants contend that the approved coastal development permits inappropriately preceded approval of an LCP amendment and as such, the project, as approved by the City, was inconsistent with numerous provisions of the certified the LCP (ref. Exhibit #1).

Subsequent to the original appeal (as noted above), the Commission approved with suggested modifications, LCP Amendment No. 2-99D (Kelly Ranch) to the Carlsbad Local Coastal Program (LCP). The suggested modifications ensure identified sensitive coastal resources and public access opportunities are protected consistent with the certified LCP and Chapter 3 policies of the Coastal Act. The City subsequently accepted the Commission's suggested modifications and the applicant requested the City revise the original project to address the requirements of the certified LCP, as amended.

In Appeal No. A-6-CII-01-121, the appellants contend that the City's action, approving the amended project, is inconsistent with several policies of the Certified Carlsbad Local Coastal Program (LCP) pertaining to public views (vista points), environmentally sensitive habitat (RV parking), public access and restoration of open space (ref. Exhibit #2).

4. Public Trails and Vista Points. As noted and as described below, Policy 3-5(f) of the certified LCP requires public trails and vista points to address the recreational needs of future residents. Policy 3-5(f) (Kelly Ranch/Macario Canyon) of the certified Mello II LUP provides:

Public vista points shall be provided at two locations, one in Planning Area J and the other either entirely within Planning Area L or including portions of Planning Area L and the disturbed high points of adjacent Planning Area D, to provide views of the Pacific Ocean, Agua Hedionda Lagoon and its environs, and shall be accessible to the public at large. Vista points may be located in disturbed open space areas subject to approval by the Department of Fish and Game. Support parking shall be provided and may be located either on street or off-street within close proximity to the vista point(s). Dedications necessary to provide the vista points and access to the vista points shall be a condition of coastal development permit approval at the subdivision stage. (emphasis added)

This policy requires that the development provide two public vista points and necessary support parking. This policy further requires that dedication of easements and access to two approved vista points be secured through permit conditions at the subdivision stage. The appellants contend that although the City's findings of approval indicate that vista points and necessary access will be provided, no condition of approval in the permit requires such or that they be secured through recorded dedications at the subdivision stage. In addition, the vista points were not identified on a plan/tentative map or approved by the Department of Fish and Game (DFG), as required by the LCP.

While the City recognizes that no specific conditional language was approved that required dedication of the vista points, the City indicates that trails and vista points consistent with the LCP requirements, will be provided and that the dedication of such will occur when the final map is recorded. According to the City, the "subdivision stage" is a two-step process: tentative map and final map. The subdivision of property is not complete until the final map is approved by the City Council and recorded in the County Records Office. Thus, while the City's action did not specifically require the vista point and access dedications, it is the City's intent to include such on the final recorded map. In addition, the City has stated that the final map exhibits and applicable recorded documents will be forwarded to Coastal Commission staff prior to final map recordation to ensure consistency with LCP requirements.

As noted above, the tentative map approved by the City did not identify the vista points or access thereto. However, since the appeal was filed, the tentative map was revised to indicate the location of the vista points and access thereto and that the vista points/access will be secured through recorded easements upon recordation of the final map. The revised tentative map indicates the approved vista point at Planning Area "L" will include the right-of-way to the proposed cul-de-sac plus 5 ft. of trail. The easement area will accommodate curb and sidewalk, public parking area, and approximately 10 ft. of unimproved area for viewing with a bench, interpretive kiosk and 5 ft. wide trail. No access trail is necessary because the vista point is along the cul-de-sac frontage. This location was approved by DFG (ref. letter dated July 30, 2001, attached as Exhibit #5). Regarding the Planning Area "J" vista point, a 10-ft. wide public trail and vista point

(vista point 10 ft. x 16 ft.) is proposed at the edge of a plateau revegetated with coastal sage scrub (CSS). A panoramic view of the coastline and Pacific Ocean to the west would be provided at this location. A minimum of seven public parking spaces are identified on the adjacent public street. This location was approved by DFG (ref. letter dated Aug. 9, 2001 attached as Exhibit #6).

Policy 3-5(g) of the LCP states:

A public trails system that links Agua Hedionda Lagoon, the interpretive center, the street system, open space areas and public vista point(s) shall be provided in consultation with California Department of Fish and Game. Trails provided outside of the public right-of-way shall be dedicated by easement as a condition of subdivision approval. Trail improvements may be a combination of sidewalks within the public right-of-way and, for segments located outside of the public right-of-way, as defined in the Open Space Conservation and Resource Management Plan. Trails shall be installed concurrent with residential development and are indicated on Exhibit 19 (Conceptual Open Space & Conservation Map).

This policy requires that a public trail system linking Agua Hedionda Lagoon and the Kelly Ranch development be provided. The appellants contend that while the City's approvals require a trail dedication within Open Space Lot #79, its alignment is not shown on the tentative map as required by the certified LCP. The City states the tentative map shows the alignment of the trail, although it was not labeled. After the appeal was filed, the tentative map has been labeled to indicate the trail alignment. Similar to the above discussion regarding vista points, the approved alignment of the public trail system will be secured through easements which will be recorded on the final map. The final map exhibits and applicable recorded documents will be forwarded to Coastal Commission staff prior to final map recordation to ensure consistency with LCP requirements.

In addition, as noted previously, CDP #6-84-617-A is before the Commission at its September 2001 meeting. This permit amendment addresses the entirety of Kelly Ranch, including the open space system which is located in both the Agua Hedionda and Mello II segments. Staff is recommending the Commission approve a condition which requires recordation of the offers to dedicate of the two vista points and access trail easements prior to issuance of the amendment. With this condition, the Commission will retain review authority over any future changes to the vista points and trails within the approved open space. Therefore, the Commission will further address this issue through its action on CDP #6-84-617-A. Therefore, the Commission finds the appeals do not raise a substantial issue regarding the conformity of the proposed development, as approved by the City, with the LCP requirements which require public vista points and trails be provided in perpetuity and, with the public access policies of the Coastal Act.

5. Open Space Revegetation. Section 21.203.040(A)(2)(c) of the certified Coastal Resource Protection Overlay Zone requires:

Restoration of disturbed areas within the designated open space through revegetation of disturbed areas and enhancement of existing vegetation with native upland species shall be required, in consultation with the Department of Fish and Game, as a condition of subdivision approval. The restoration and enhancement plan shall include maintenance and monitoring component to assure long-term productivity of the habitat value.

This certified LCP provision requires that a restoration plan be implemented to revegetate disturbed areas within the Kelly Ranch Open Space and that it be developed in consultation with the Department of Fish and Game. The City's approvals reference a biological revegetation program within the approved open space lots that comprise the Kelly Ranch Open Space. However, the appellants contend that the City's action approving the permit amendments does not require such a program be developed as a condition of subdivision approval, nor that it be developed in consultation with the Department of Fish and Game as required by the certified LCP.

While the City admits that the conditions of the permit pertaining to requirements for revegetation of the open space areas are not "optimally clear", it is the intent to assure that such occurs. The City indicates that the coastal development permit is tied to all other permits and that it contains conditions incorporated by reference from those associated permits (condition No.10 of Planning Commission Resolution No. 4965). In addition, in a letter dated August 16, 2001 (ref. Exhibit #7) the assistant planning director of the City states that the permits approved by the City include the following conditions:

- If any of the required conditions of approval fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted.
- The Developer or their successors shall comply with all applicable provisions of federal, state and local ordinance in effect at time of building permit issuance.
- Approval of this request shall not excuse compliance with all applicable sections of this Zoning Ordinance and all other applicable City Ordinances in effect at time of building permit issuance, except as otherwise specifically provided herein.

Thus, while the permits approved by the City did not include conditions of approval which specifically require that revegetation occur, the City has indicated that the project is subject to all applicable provisions of local ordinances that would include Section 21.203.040(A)(2)(c) of the certified Coastal Resource Protection Overlay Zone, which requires the subject revegetation program on Kelly Ranch. That, coupled with the above cited provisions, assures that the revegetation will occur.

In addition, the Kelly Ranch developer has prepared and received approval from CDF&G and USF&WS of the Kelly Ranch Core Area Natural Habitat Revegetation Program, dated May 14, 2001. This program has been submitted and approved by the City Planning Department. The City has indicated that this program must be implemented by

the Kelly Ranch developer or the project cannot be found consistent with the conditions of approval nor with Section 21.203.040(A)(2)(c) of the certified Carlsbad LCP. A finding of non-compliance with either of these policies is grounds for a cease-and-desist order ("red-tagging") of the project, even if the construction effort is underway. Based on the above, the City found that as required by the Local Coastal Program, all disturbed areas within the Kelly Ranch Open Space preserve which are intended to be "re-naturalized" will be restored and maintained.

As indicated, CDP #6-84-617-A is before the Commission at its September 2001 meeting. This permit amendment addresses the entirety of Kelly Ranch, including the open space system which is located in both the Agua Hedionda and Mello II segments. As part of the staff recommendation on the amendment request, staff is recommending the Commission approve a condition which requires a revised restoration program for the upland habitat that is proposed for restoration through the Kelly Ranch Open Space system. After review of the submitted program, the Commission's biologist found that the plan does not address existing disturbed habitat and some of the proposed maintenance and monitoring provisions could be improved to ensure the success of the restoration effort; therefore, a special condition is proposed which requires a revised restoration document that addresses these concerns.

Therefore, based on the above, and because the Commission will retain review authority over any future changes to the revegetation and restoration program through its action on CDP #6-84-617-A, the Commission finds the appeals do not raise any substantial issue regarding the conformity of the development with the certified Carlsbad LCP relative to open space revegetation.

6. RV Parking. Policy 3-5 (h) of the LCP is applicable and states:

Other Uses in Open Space: The designated open space on Planning Area D may be modified to accommodate daycare facilities and RV parking which meet the following criteria, subject to an approved coastal development permit:

- 1) In no case shall the designated open space corridor be less than 800 feet including the desiltation basin on Planning Area E;
- 2) No development shall encroach into jurisdictional wetlands mapped by the ACOE;
- 3) The facilities shall be located on the least environmentally sensitive portion of the site and within non-native grassland and/or disturbed agricultural area to the maximum extent possible; and,
- 4) The area utilized for these uses shall be the minimum size necessary to satisfy the requirements of the City of Carlsbad Zoning Code.

The policy specifically allows for daycare facilities and RV parking in the open space area of Planning Area D. However, the LCP requires that these facilities be the minimum

necessary to satisfy the requirements of the City's Zoning Code. The appellants contend the City's approvals do not require that the RV storage area be the minimum size and that no acceptable argument for the larger size has been provided.

The City indicates it went through several steps to ensure that the RV storage lot would be developed at the minimum size necessary to comply with zoning standards. First of all, the City determined that 308 residential units are subject to the RV storage requirements. Zoning Ordinance Section 21.45.090.(k)(2) stipulates that 20 sq. ft. of RV storage area be provided for each residential unit (308 d/u X 20 sq. ft. = 6,160 sq. ft. of parking area, exclusive of driveways and approaches). The plan approved by the City includes 6,160 sq. ft. of parking space area for RVs. However, such storage facilities also require driveways and area for turn around and maneuvering. In this case, the City found that the minimal turn around area within the RV lot, approximating 1,040 sq. ft. was required as a necessary safety precaution, inasmuch as forward travel of exiting vehicles is required, particularly since the storage lot driveway travels past the daycare site, and vehicular backing into the public street is unsafe (ref. Exhibit #3). Thus, while this 1,040 sq. ft. area cannot, by code, be counted within the parking area calculations, it still must be accommodated in the site planning for vehicular safety reasons.

In addition, the City required (and the developer agreed to provide) retaining walls (up to 8 feet in height) to replace proposed slope areas which originally cut into natural vegetation. The retaining walls allow the demarcation between the natural vegetation and the RV storage lot to be a vertical line, rather than the significant take of vegetation that could occur with manufactured cut slopes.

The City notes the RV storage area does not displace any sensitive vegetation and the LCP required 800-foot minimum open space corridor approved by the Commission has been achieved. Additionally, the RV storage area does not encroach into jurisdictional wetlands mapped by the ACOE and the facilities are located on the least environmentally sensitive portion of the site, within non-native grassland and/or disturbed agricultural area to the maximum extent possible. Thus, based on the above, the appeals do not raise a substantial issue regarding the conformity of the City's action in approving the RV storage area, consistent with the Certified Carlsbad LCP and the public access policies of the Coastal Act.

In summary, no substantial issue relating to the subject development's conformity with the certified LCP and the public access policies of the Coastal Act has been identified. The proposed development, as approved by the City, will secure public vista points and a public trail system, will revegetate disturbed areas and restore environmentally-sensitive habitat areas within Core Area open space, and complies with the certified LCP standards for RV parking facilities within Planning Area D. Based on these findings, the proposed residential development does not raise a substantial issue regarding conformity with the certified Local Coastal Program or public access policies of the Coastal Act.

In addition, the Commission also concludes that there is no Substantial Issue regarding the original appeal (A-6-CII-99-84) because the project has been revised to incorporate changes that make the project consistent with the certified LCP.

7. Other Issues Addressed in City Action. In the City's action amending the three coastal development permits, a number of resource issues were adequately addressed by the City to bring the project into compliance with the certified LCP. These issues were not identified as grounds for appeal. This section is for informational purposes only and cannot be relied upon as a basis for finding substantial issue. Relative to water quality, Section 21.203.040 (B) 4) j) of the certified Carlsbad LCP states:

All new development, substantial rehabilitation, redevelopment or related activity, shall be designed and conducted in compliance with all applicable local ordinances including Chapter 15.12 of the Carlsbad Municipal Code Stormwater Management and Discharge Control Ordinance, the Standard Specifications for Public Works Construction when performing public work, and applicable provisions of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity issued by the State Water Resources Control Board (State Board Order No. 92-08-DWQ), and any subsequent amendments, and the San Diego NPDES Municipal Storm Water Permit issued to San Diego County and Cities by the California Regional Water Quality Control Board (Regional Board Order No. 90-42) and any amendment, revision or re-issuance thereof.

In addition the following shall apply to development within Kelly Ranch:

New development and significant redevelopment of private and publicly owned properties, must incorporate design elements and/or Best Management Practices (BMPs) which will effectively prevent runoff contamination, and minimize runoff volume from the site in the developed condition, to the greatest extent feasible. At a minimum, the following specific requirements shall be applied to development of type and/or intensity listed below:

Residential Development

Development plans for, or which include residential housing development with greater than 10 housing units shall include a drainage and polluted runoff control plan prepared by a licensed engineer, designed to infiltrate, filter or treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event, prior to conveying runoff in excess of this standard to the stormwater conveyance system. The plan shall be reviewed and approved by the consulting soils engineer or engineering geologist to ensure the plan is in conformance with their recommendations. The plan shall be designed in consideration of the following criteria, and approved prior to issuance of a coastal development permit:

- a. Maximize the percentage of permeable surfaces and green space to allow more percolation of runoff into the ground and /or design site with the capacity to convey or store peak runoff from a storm and release it at a slow rate so as to minimize the peak discharge into storm drains or receiving water bodies;

- b. Use porous materials for or near walkways and driveways where feasible;
- c. Incorporate design elements which will serve to reduce directly connected impervious area where feasible. Options include the use of alternative design features such as concrete grid driveways, and/or pavers for walkways.
- d. Runoff from driveways, streets and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices, where feasible. Selected filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the building site in a non-erosive manner.
- e. Selected BMPs shall be engineered and constructed in accordance with the design specifications and guidance contained in the California Stormwater Best Management Practices Handbook (Municipal).
- f. The plan must include provisions for regular inspection and maintenance of structural BMPs, for the life of the project.

Parking Lots

Development plans for, or which include parking lots greater than 5,000 sq.ft. in size and/or with 25 or more parking spaces, susceptible to stormwater shall:

- a. Incorporate BMPs effective at removing or mitigating potential pollutants of concern such as oil, grease, hydrocarbons, heavy metals, and particulates from stormwater leaving the developed site, prior to such runoff entering the stormwater conveyance system, or any receiving water body. Options to meet this requirement include the use of vegetative filter strips or other media filter devices, clarifiers, grassy swales or berms, vacuum devices or a combination thereof. Selected BMPs shall be designed to collectively infiltrate, filter or treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. BMPs shall be engineered and constructed in accordance with the guidance and specifications provided in the California Stormwater Best Management Handbooks (Commercial and Industrial).

All Development

- a. A public education program designed to raise the level of awareness of water quality issues around the lagoon including such elements as catch basin stenciling and public awareness signs;
- b. A landscape management plan that includes herbicide/pesticide management.

Such measures shall be incorporated into project design through a water quality/urban runoff control plan and monitoring program to ensure the discharge from all proposed outlets is consistent with local and regional standards. Such measures shall be required as a condition of coastal development permit approval at the subdivision stage.

The City's approval addresses the above LCP requirements by requiring a water quality plan be submitted which is consistent with the above requirements. A copy of the preliminary plan has been submitted to Commission staff. The water quality plan identifies a system of drainage and storm water related improvements that currently exist to ensure water quality will not be adversely affected both on and off site. Four permanent desiltation/detention basins exist in the project area: two within the project site on Planning Areas 'D' and 'F' and two nearby offsite basins, i.e., one large desiltation basin on Planning Area 'E', immediately to the east of the core area, and a fourth basin on the adjacent subdivision at Evan's Point to the east of the project site. According to the water quality report, these off-site basins were designed to incorporate the storm water flows from the Kelly Ranch Core Project and are well established and functioning properly. Additionally, the plan indicates that the basin in Planning Area 'D' contains wetland habitat and it will no longer be maintained in those areas containing habitat. However, it will continue to function as a desiltation basin. According to the applicant, the basin will serve as an area which accepts runoff naturally and will function as a filtration device prior to discharge to the lagoon.

The water quality report was prepared in response to the LCP requirements, and to define potential Best Management Plan (BMP) options that not only meet LCP requirements, but also the requirements identified in the following documents: 1) Carlsbad Municipal Code Stormwater Management and Discharge Control Ordinance, 2) Standard Specifications for Public Works Construction, 3) NPDES General Permit for Storm Water Discharges Associated with Construction Activity issued by the State Water Resources Control Board, and 4) San Diego NPDES Municipal Storm Water Permit (Order Number 2001-01).

The report includes: 1) point-by-point response to the water quality requirements identified in the LCP, 2) three preliminary BMP options for the project, and 3) BMP device information for the three options. Additionally, the Regional Water Quality Control Board has found the project consistent with its requirements. The Commission's water quality specialist has reviewed the proposed plan and concurs with its preliminary recommendations. The applicant has incorporated the Commission's suggestions into the water quality plan regarding the required public information component of the plan. One suggestion was to distribute user friendly educational brochures to those residing with the core area, alerting them to safe and effective practices to dispose of household solvents, pesticides and the like.

Other issues addressed by the City action on the amended permits and found consistent with the LCP, as amended, include fire suppression, landscaping for screening purposes,

building materials and colors, public streets and gated communities (all streets are public except the apartment streets) and grading season restrictions.

(G:\San Diego\Reports\Appeals\2001\A-6-CII-99-84; A-6-CII-01-121 finalstfprt.doc)

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

DIEGO, CA 92108-1725

521-8036



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Sara Wan
Mailing Address: 22350 Carbon Mesa Rd.
Malibu, CA 90265
Phone Number: (310) 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Subdivision of 174 acres into 179 lots.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
South of Agua Hedionda Lagoon and east of Macario Canyon, Carlsbad (San Diego County).
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-99-84

DATE FILED: 6/10/99

DISTRICT: San Diego

RECEIVED

JUN 10 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 1
APPLICATION NO. A-6-CII-99-84
Original Commission Appeals

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: 5/18/99

Local government's file number (if any): CDP 97-43

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Kelly Land Company
2011 Palomar Airport Rd., Suite 206
Carlsbad, CA 92009

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment A

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *[Signature]*
Appellant or Agent

Date: 6/10/99

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Christine Kehoe
Mailing Address: 202 C Street
San Diego, CA 92101
Phone Number: (619) 236-6633

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Subdivision of 174 acres into 179 lots.
3. Development's location (street address, assessor's parcel no., cross street, etc.): South of Agua Hedionda Lagoon and east of Macario Canyon, Carlsbad (San Diego County)

4. Description of decision being appealed:

- a. Approval; no special conditions: b. Approval with special conditions:
c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-CII-99-84DATE FILED: 6/10/99DISTRICT: San Diego**RECEIVED**

JUN 10 1999

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning
Administrator

c. Planning Commission

b. City Council/Board of
Supervisors

d. Other

Date of local government's decision: 5/18/99

Local government's file number (if any): CDP 97-43

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Kelly Land Company
2011 Palomar Airport Rd., Suite 206
Carlsbad, CA 92009

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment A

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Christine Kloe
Appellant or Agent

Date: June 10, 1999

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

ATTACHMENT A

Kelly Ranch Appeal

The development approved by the City involves the subdivision of 174 acres into 179 lots and grading. The subdivision is located within the Mello II Segment area of the certified City of Carlsbad Local Coastal Program and encompasses 174 acres of the entire 433 acre Kelly Ranch. Kelly Ranch is a 433 acre site in Carlsbad which lies adjacent to the intersection of El Camino Real and Cannon Road, at the east end of Agua Hedionda Lagoon. The site contains a wide variety of topography and habitat including wetlands, pastureland, field crops, farmland and gentle and steep slopes.

The City's approval is inconsistent with the policies and provisions of the certified LCP. Specifically, the City did not make a finding that the coastal development permit was consistent with the Kelly Ranch Master Plan requirements certified in the Mello II LUP. While the City has approved an amendment to the LCP to rescind the master plan, this has not yet been reviewed or acted upon by the Coastal Commission and as such, the Mello II LUP and the Kelly Ranch Master Plan remain the standard of review. The permit is in fact inconsistent with the following Master Plan requirements: the existing master plan provides that all RDM development standards be used while the approved permit provides for R-1/R-3/RDM/OS/and R-P standards; the existing master plan requires a Planned Unit Development (PUD) for all development while the City's approval only requires a PUD for sites I, J, and A; the existing master plan provides that Kelly Drive be extended while the City's approval does not; and, the master plan requires a 10% density transfer whereas no density transfer is required in the City's approval. There are many more areas of inconsistency with the existing master plan.

The permit is also inconsistent with other policies of the certified Mello II LUP.

1. The permit allows grading to occur up to November 15 if all erosion control measures are in place. This is inconsistent with the resource protection provisions of the Mello II LCP which prohibits grading between October 1 and April 1, regardless of what protections are in place.
2. The City's approval fails to identify that development on this parcel will conform to the sensitive habitat buffer requirements of the certified Mello II LUP. This requirement is typically applied at the subdivision level. Specifically, Policy 3-8 provides that new development must setback a minimum of 50 feet from riparian resources and 100 feet from wetland resources unless a lesser buffer is approved by the resource agencies. Lot 167 (Area F as identified in CDP #6-84-617) is adjacent to these resources and no buffer requirement is identified in the coastal development permit.
3. The City's permit identifies that 61.6 acres of lands are designated as sensitive "dual criteria" slopes (slopes in excess of 25% containing coastal sage scrub of chaparral)

which the Mello II LCP protects in Policy 3-4. The permit indicates the project proposes disturbance of 6 acres of dual criteria slopes which is less than the 10% limit that is allowed in the LCP to provide "reasonable" use of the property. However, the Commission has found that large subdivisions can be designed so that no encroachment is needed to provide reasonable use of the property. The City's approval permits the encroachment by right without an analysis of why reasonable use of the property cannot be achieved by allowing no encroachment into sensitive areas

The City's permit is also inconsistent with Section 21.201.110 (Planning Commission Action) of the certified LCP implementing ordinances. This section states that no approval shall be given unless the Planning Commission finds that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Neither the Planning Commission or Council resolutions of the proposed subdivision made those findings; thus, the permit can not be found consistent with LCP requirements.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Sara Wan
Mailing Address: 22350 Carbon Mesa Rd.
Malibu, CA 90265
Phone Number: (310) 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Subdivision of 174 acres into 179 lots.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
South of Agua Hedionda Lagoon and east of Macario Canyon, Carlsbad (San Diego County).
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-01-121

DATE FILED: 8/1/2001

DISTRICT: San Diego

EXHIBIT NO. 2
APPLICATION NO. A-6-CII-01-121
Commissioner Appeal of Amended Permits
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other

Date of local government's decision: 6/12/2001

Local government's file number (if any): CDP #97-43A, 98-70A, 98-66A

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Kelly Land Company
2011 Palomar Airport Rd., Suite 206
Carlsbad, CA 92009

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Sara Khan*
Appellant or Agent

Date: 8/1/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Patricia McCoy
Mailing Address: 132 Citrus Avenue
Imperial Beach, CA 91932
Phone Number: 619) 423-0495

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Subdivision of 174 acres into 179 lots.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
South of Agua Hedionda Lagoon and east of Macario Canyon, Carlsbad (San Diego County).
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CII-01-121

DATE FILED: 8/1/2001

DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other

Date of local government's decision: 6/12/2001

Local government's file number (if any): CDP #97-43A, 98-70A, 98-66A

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Kelly Land Company
2011 Palomar Airport Rd., Suite 206
Carlsbad, CA 92009

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 8/1/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
DIEGO, CA 92108-4402
767-2370

**ATTACHMENT "A" - Kelly Ranch Amended Permits Appeal**

The proposal involves amendments to three coastal development permits regarding subdivision of 174 acres into 171 lots and construction of up to 147 single family homes and 493 apartments. On June 10, 1999 the Commission appealed the City's original approval of the subdivision (CDP's 97-43, 98-66 and 98-70); that appeal is currently pending (i.e., the Commission has not yet held a hearing on Substantial Issue). The grounds for the earlier appeal were that the project, as approved by the City, was inconsistent with the certified LCP as it was approved based on policies and ordinances that had not yet been approved by the Commission as an amendment to the LCP. Both this and the previous appeal will be reviewed together.

On July 11, 2000, the Commission approved, with suggested modifications, LCP Amendment No. 2-99D (Kelly Ranch) to the Carlsbad's Local Coastal Program (LCP). The LCPA amended the City's certified LCP regarding the Kelly Ranch property. Kelly Ranch is a 433-acre site in Carlsbad which lies adjacent to the intersection of El Camino Real and Cannon Road, at the east end of Agua Hedionda Lagoon. The site contains a wide variety of topography and habitat including wetlands, pastureland, field crops, farmland, and gentle and steep naturally vegetated slopes containing sensitive upland habitat. The property lies within the plan area of two of the six existing Carlsbad LCP segments: Agua Hedionda Lagoon and Mello II.

On June 12, 2001 the City approved three coastal development permit amendments (97-43A, 98-66A and 98-70A) relating to subdivision of the Kelly Ranch Core Area property into 7 planning areas and one remainder parcel consisting of single and multiple family residential development. The Core area is within the Mello II segment. The permit amendments were approved by the City to bring the project into compliance with the Commission's suggested modifications to LCPA #2-99D. The permits, as amended by the City, will result in a reduction in the number of residential lots by 7 and the number of apartment units by 43, relocation of day care and recreational vehicle areas and modification to the open space boundaries.

Based upon review of the City's action to amend the permits, it appears the amended development is not consistent with several of the current policies and ordinances of the certified LCP pertaining to environmentally sensitive habitat, public views and public access.

Policy 3-5(f) (Kelly Ranch/Macario Canyon) of the certified Mello II LUP provides:

Public vista points shall be provided at two locations, one in Planning Area J and the other either entirely within Planning Area L or including portions of Planning Area L and the disturbed high points of adjacent Planning Area D, to provide views of the Pacific Ocean, Agua Hedionda Lagoon and its environs, and shall be accessible to the public at large. Vista points may be located in disturbed open

space areas subject to approval by the Department of Fish and Game. Support parking shall be provided and may be located either on-street or off-street within close proximity to the vista point(s). Dedications necessary to provide the vista points and access to the vista points shall be a condition of coastal development permit approval at the subdivision stage.

This policy requires that dedication of easements and access to two approved vista points be secured through permit conditions at the subdivision stage. Although the City identified the vista points as exhibits, no condition was approved which required such dedications. The coastal development permit amendments indicate that dedication will occur at the final map stage and not at the subdivision stage as required by the certified LCP. In addition, the vista points have not yet been approved by the Department of Fish and Game as required by the LCP.

Policy 3-5(g) of the LCP states:

A public trails system that links Agua Hedionda Lagoon, the interpretive center, the street system, open space areas and public vista point(s) shall be provided in consultation with California Department of Fish and Game. Trails provided outside of the public right-of-way shall be dedicated by easement as a condition of subdivision approval. Trail improvements may be a combination of sidewalks within the public right-of-way and, for segments located outside of the public right-of-way, as defined in the Open Space Conservation and Resource Management Plan. Trails shall be installed concurrent with residential development and are indicated on Exhibit 19 (Conceptual Open Space & Conservation Map).

As noted above, this policy requires that a public trail system linking Agua Hedionda Lagoon and the Kelly Ranch development be provided. While the City's approvals require a trail dedication within Open Space Lot #78, its alignment is not shown on the tentative map as required by the certified LCP.

Section 21.203.040(A)(2)(c) of the certified Coastal Resource Protection Overlay Zone requires:

Restoration of disturbed areas within the designated open space through revegetation of disturbed areas and enhancement of existing vegetation with native upland species shall be required, in consultation with the Department of Fish and Game, as a condition of subdivision approval. The restoration and enhancement plan shall include maintenance and monitoring component to assure long-term productivity of the habitat value.

This ordinance requires that a restoration plan be implemented to revegetate disturbed areas within the Kelly Ranch Open Space and that it be developed in consultation with the Department of Fish and Game. The City's approvals reference a biological revegetation program within the approved open space lots that make up the Kelly Ranch Open Space. However, the approvals do not require such a program be developed, as a

condition of subdivision approval nor that such a plan be developed in consultation with the Department of Fish and Game as required by the certified LCP.

Policy 3-5 (h) states:

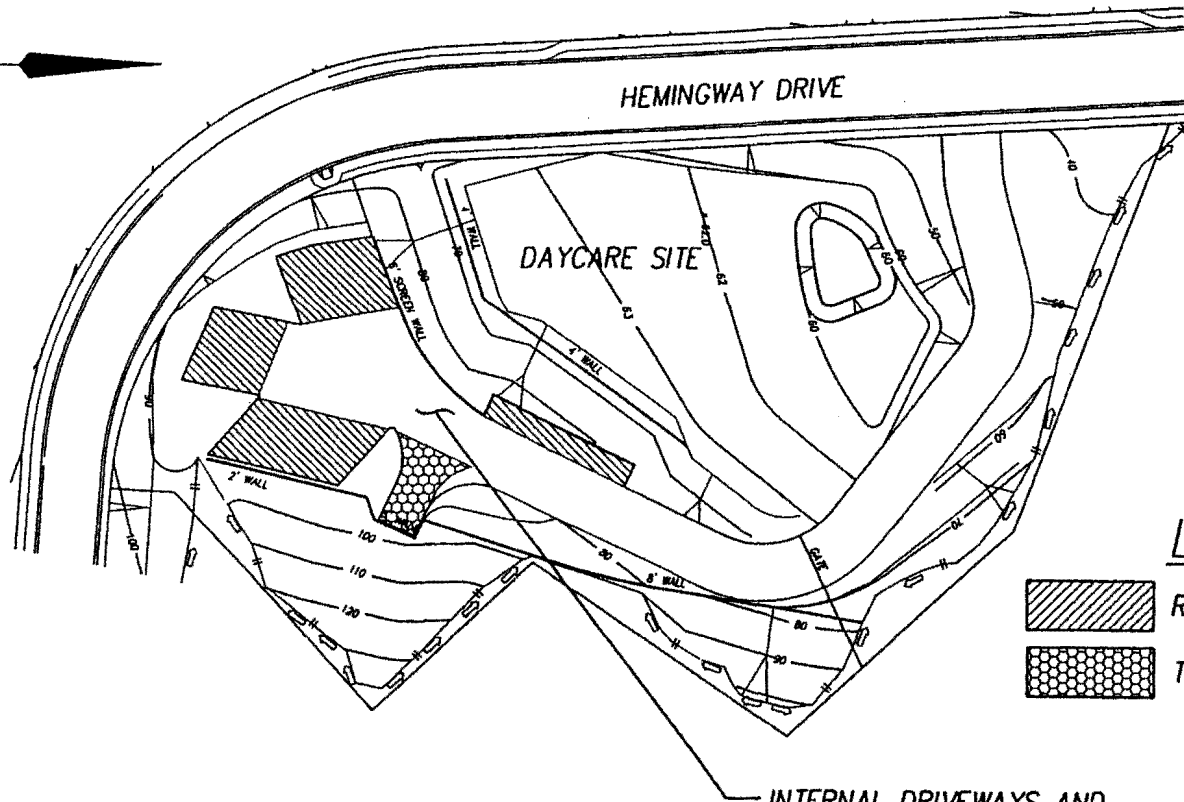
Other Uses in Open Space: The designated open space on Planning Area D may be modified to accommodate daycare facilities and RV parking which meet the following criteria, subject to an approved coastal development permit:

- 1) In no case shall the designated open space corridor be less than 800 feet including the desiltation basin on Planning Area E;
- 2) No development shall encroach into jurisdictional wetlands mapped by the ACOE;
- 3) The facilities shall be located on the least environmentally sensitive portion of the site and within non-native grassland and/or disturbed agricultural area to the maximum extent possible; and,
- 4) The area utilized for these uses shall be the minimum size necessary to satisfy the requirements of the City of Carlsbad Zoning Code.

The policy addresses, among other things, allowable uses within designated open space areas. As noted above, the policy specifically allows for daycare facilities and RV parking in the open space area of Planning Area D. However, the LCP requires that these facilities be the minimum necessary to satisfy the requirements of the City of Carlsbad Zoning Code and that they be located on the least environmentally sensitive portion of the site and within non-native grassland and/or disturbed agricultural area to the maximum extent possible. The City's approvals do not require that the RV storage area be the minimum size or has an acceptable argument for the larger size been provided.



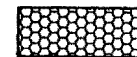
1" = 100'



LEGEND



RV PARKING AREA - 6,160 SF



TURN-AROUND AREA - 1,040 SF

INTERNAL DRIVEWAYS AND APPROACHES NOT INCLUDED IN AREA CALCULATIONS PER 21.45.090 (k)(2).

CH CORE AREA
E AREA ANALYSIS

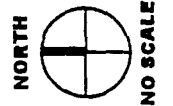
California Coastal Commission

EXHIBIT NO. 3
 APPLICATION NO.
 A-6-CII-99-84/
 A-6-CII-01-121
 RV Storage Area
 Analysis



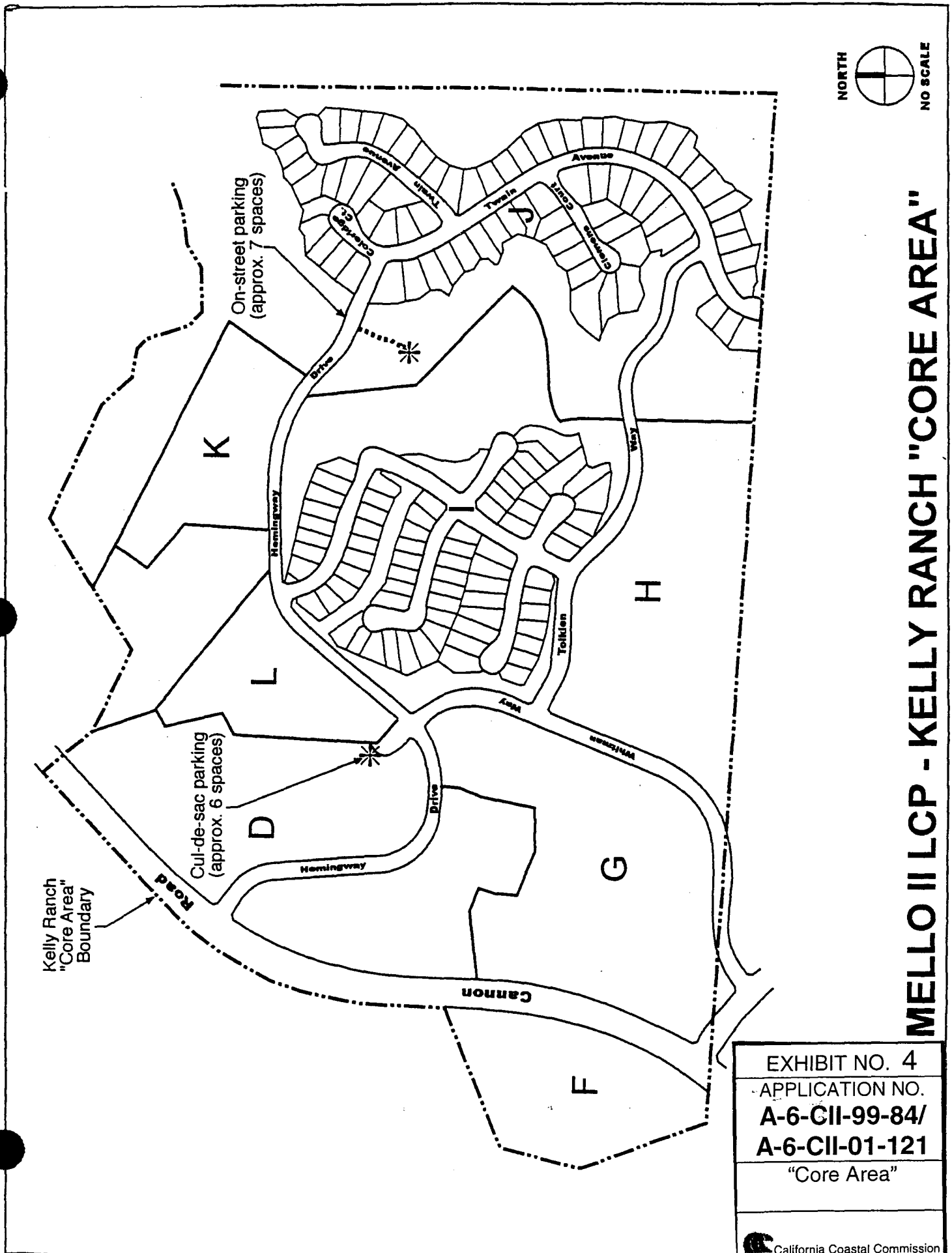
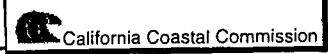
PROJECT DESIGN CONSULTANTS
 PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEY/GPS
 701 B Street, Suite 800, San Diego, CA 92101
 619-235-6471 FAX 619-234-0349

EXHIBIT C



MELLO II LCP - KELLY RANCH "CORE AREA"

EXHIBIT NO. 4
APPLICATION NO.
A-6-CII-99-84/
A-6-CII-01-121
"Core Area"



DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235

**RECEIVED**

AUG 01 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

July 30, 2001

Mr. Bill Ponder
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Kelly Ranch, City of Carlsbad

Dear Mr. Ponder:

At the request of representatives of the Kelly Land Company, the California Department of Fish and Game (Department) has reviewed several components of the Kelly Ranch development project for adequacy. It is our understanding that this request for review by the Department is at the request of the Coastal Commission staff to insure that the proposed project is consistent with our goals for conservation of biological resources. The Department has reviewed three components of the project: (1) the revegetation plan; (2) the need for wildlife undercrossings/culverts under Hemingway Drive and Tolkein Way; and (3) the proposed vista points in Areas L and J.

The proposed Natural Habitat Revegetation Program - Kelly Ranch "Core Area", dated May 28, 2001, adequately addresses the revegetation needs of the project. It is our understanding as well that the entire open space on the project site, including areas to be revegetated, will be managed long-term by a qualified management entity.

The Department, Coastal Commission staff, and Kelly Land Company have had prior discussions about the need for incorporating wildlife undercrossings/culverts under both Hemingway Drive and Tolkein Way, to facilitate the movement of wildlife species through the wildlife corridor on the eastern portion of the property. While the Department is normally supportive of the inclusion of wildlife undercrossings where feasible, we believe that in this case the wildlife crossings should be at-grade. Based upon information provided to us by the Kelly Land Company illustrating the topographic and engineering constraints of the two proposed crossing sites, it appears that the level of impacts to sensitive habitat to install the wildlife culverts outweighs the potential benefits to wildlife from the culverts. The lengths of the culverts would also be such that wildlife species would likely be hindered from using them. Given that both roads are only two lanes, both are internal development roads, and that traffic at night will be minimal, we believe that at-grade crossings at these two locations will not significantly hinder wildlife movement through this wildlife corridor.

EXHIBIT NO. 5
APPLICATION NO.
A-6-CII-99-847
A-6-CII-01-121
Letter from DFG


Mr. Bill Ponder
July 27, 2001
Page2

We do recommend that street lighting be excluded from the wildlife corridor areas unless essential for public safety.

The final project component reviewed was the placement of vista points, with their associated trails. The vista point in Area L is located such that it minimizes any impacts to sensitive resources. The vista point in Area J is located at the end of a proposed 6-foot wide 300-foot long trail. This trail and vista point are located within an area that is to be used as a revegetation/mitigation site for southern maritime chaparral. We would like to continue to work with the Kelly Land Company to adjust the location of this vista point and trail to assure that no habitat areas assumed to be conserved as a part of the project are directly or indirectly affect by the proposed vista point.

If you have any questions regarding our comments please contact David Lawhead at (868) 467-4211. Thank you.

Sincerely,


for William E Tippets
Environmental Program Manager

cc: C.F. Raysbrook - CDGF
David Lawhead - CDFG
John Martin - USFWS
Paul Klukas - Planning Systems

FILE: Chron
KELLYRANCH.DNL

DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235



RECEIVED

August 9, 2001

AUG 13 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Bill Ponder
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Kelly Ranch, City of Carlsbad

Dear Mr. Ponder:

This letter is being sent as a follow up to our letter to you dated July 30, 2001, which addressed requested Department of Fish and Game (Department) input regarding the adequacy of certain development issues related to the Kelly Ranch development in the City of Carlsbad. In that letter the Department expressed concern regarding the location of the proposed vista point and trail located in Area J. After the Department's letter was sent to you, the Kelly Land Company provided us with additional information showing that the amount of open space acres within Area J is greater than what the Department had originally agreed to in our earlier evaluation and concurrence with the project's design. The greater open space is the result of project modifications requested by the Coastal Commission staff. This additional information, indicating a higher level of habitat conservation than we originally believed was present in Area J, addresses our concern regarding the placement of the vista point in Area J. We have reached agreement with the Kelly Land Company on this vista point and trail, and find it acceptable. If you have any questions regarding this letter, please contact David Lawhead at (858) 467-4211.

Sincerely,

for William E. Tippets.
Environmental Program Manager

cc: C.F. Raysbrook- CDFG
David Lawhead-CDFG
Nancy Gilbert-USFWS, Carlsbad

KELLYRANCH2LTR

EXHIBIT NO. 6
APPLICATION NO.
A-6-CII-99-84/
A-6-CII-01-121
Letter from DFG



City of Carlsbad

Planning Department

August 16, 2001

Chuck Damm
California Coastal Commission
7575 Metropolitan Drive
San Diego CA 92108-4402

RE: COASTAL DEVELOPMENT PERMIT CDP 97-43(A) - KELLY RANCH

Dear Mr. Damm:

Thank you for the opportunity to discuss the Kelly Ranch Coastal Development Permit (CDP) appeal with you and your staff. It is our hope that through our dialogue and the additional information provided in this letter, your staff will be able to see that the City has either already addressed or will address through the final map process all of the issues raised in the Commission's appeal of the Kelly Ranch CDP. We are confident that based on the information and assurances outlined below that your staff will be able to recommend that the Coastal Commission can make a determination of No Substantial Issue on the Kelly Ranch appeal.

To help you better understand our development process, a summary of our processing framework follows:

Development within the City of Carlsbad is subject to a litany of local laws. A project is reviewed for conformance with those laws and if it is not in compliance, the project is not allowed to proceed. This procedure is no different for the review of Coastal Development Permits within the Coastal Zone. In the case of the Kelly Ranch, the standard of review is the certified LCP as modified by the City's adoption of the Coastal Commission's suggested modifications to LCPA 97-09. Those modifications included amendments to the City's zoning ordinance that implements the LCP.

Additionally, when the City approves a project that is based on multiple permits, it ties all of the permits together through the resolutions of approval (i.e., each resolution contains all of the conditions of all of the other resolutions by reference and is subject to the approval of the other permits). The Kelly Ranch project is composed of a Tract Map, Hillside Permit, Site Development Plan, and Coastal Development Permit. These permits are made up of a multitude of documents, which include maps, reports, easements, exhibits, resolutions and ordinances. All of these documents are tied to the requirement that every aspect of the development must be consistent with the local laws.

Finally, for the sake of clarification, there was a concern on the part of the appellant Coastal Commissioners that conditions were tied to final map and not to the subdivision stage. As we discussed in our meeting, the subdivision process includes the tentative map stage and the final map stage. The subdivision does not actually occur unless and until the final map and accompanying documents are approved and recorded. Public hearings are conducted at the tentative map stage, conditions are recommended by staff, sometimes additional conditions are

EXHIBIT NO. 7

APPLICATION NO.

A-6-CII-99-84/

A-6-CII-01-121

Letter from City

applied by the decision making body, "final" exhibits and documents are prepared to include all of the conditions approved by the decision makers and the last step is that all of the documents and exhibits are recorded. All of these steps are the subdivision process and the project is conditioned accordingly to comply with Coastal Program requirements at the subdivision stage. Regarding your specific interest of requiring the dedication of trail and vista point easements, these are a condition of the tentative map and the actual granting of the easements occurs with the recordation of the final map.

Coastal Commission's Appeal

Regarding the first two points of appeal, the vista points and trails, both are now shown and labeled on the approval exhibits (Sheet 4 of 9 dated August 9, 2001). In addition, dedications for the vista points and trails will be shown on the "Final" map when it records. The responsibility for maintenance of the trails lies with the Kelly Ranch Home Owners Association. (See condition No. 15D of Resolution No. 4963) Concurrence of the California Department of Fish and Game regarding the location of the vista points is provided in the attached letter.

Regarding the third point of appeal, a restoration and enhancement plan for disturbed areas within the Kelly Ranch Open Space conservation easement, we agree that the condition guaranteeing that the plan will be prepared is not optimally clear.

Nonetheless, the Coastal Development Permit is conditioned to prepare the enhancement plan by virtue of that specific requirement is called for by the City's zoning ordinance. Remember that the Coastal Development Permit is tied to all of the other permits and that it contains conditions incorporated by reference from those associated permits (See condition No. 10 of PC Resolution No. 4965). Therefore, Coastal Development Permit CDP 97-43(A) includes all of the conditions of Planning Commission Resolution No. 4965 [CDP 97-43(A)] AND Planning Commission Resolution No. 4963 [CT 97-16(A)]. The following conditions apply:

- If any of the following conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted: ... (No. 1 PC Reso. 4963 and No. 1 PC Reso 4965)
- The Developer or their successors shall comply with all applicable provisions of federal, state, and local ordinances in effect at time of building permit issuance. (No. 3 PC Reso 4963).
- Approval of this request shall not excuse compliance with all applicable sections of the Zoning Ordinance and all other applicable City Ordinances in effect at time of building permit issuance, except as otherwise specifically provided herein. (No.86 PC Reso 4963)

Both the Local Coastal Program and Zoning Ordinance (§ 21.203.040(A)(2)(c)) require the preparation of the plan.

As required by the Local Coastal Program, all disturbed areas within the Kelly Ranch Open Space preserve which are intended to be "re-naturalized" will be restored and maintained. A draft of a plan to satisfy the requirements of the Coastal Program and Coastal Resource Protection Overlay Zone has been reviewed by the California Department of Fish and Game

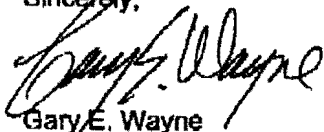
and has been approved by them. That plan has been submitted to your staff and City of Carlsbad staff.

The fourth point of appeal is the size of the proposed recreational vehicle storage area. Attached are a list of design constraints that dictate the final size of the facility and a graphic illustrating the current recreational vehicle (RV) storage design and its relationship to the Kelly Ranch Open Space as proposed. Regarding the minimum size of the RV storage, the City's zoning ordinance requires that it be provided at the rate of 20 sq. ft. per unit and that area is exclusive of driveways and approaches. In the case of Kelly Ranch, 308 units require 6,160 sq. ft. An additional 1,040 sq. ft. is comprised of driveways and approaches that can't be counted towards the required area. It is important to note that the RV storage area does not displace any sensitive vegetation and that the 800-foot minimum open space corridor has been achieved. Regarding the daycare facility, the site is approximately a half-acre in size. The City requires 2 acres plus 1% of the net developable acreage for master plans be set aside for community facilities and daycare. In the case of Kelly Ranch, the elimination of the master plan did not eliminate this requirement. This will be one of the smallest daycare facilities in the City of Carlsbad.

Regarding follow-up action to our August 14 meeting, as agreed, the final map exhibits and applicable documents will be forwarded to Coastal Commission staff prior to exhibit and document recordation for guidance regarding coastal concerns. By providing these documents for your review, you and your staff can be assured that Coastal Program concerns are being properly addressed.

If you have any questions regarding the appeal information provided in this letter or attachments, please call me at (760) 602-4601.

Sincerely,



Gary E. Wayne
Assistant Planning Director

ATTACHMENTS:

C: Sherilyn Sarb
Bill Ponder
Ray Patchett
Michael Holzmilller
Steve Smith
Larry Clemens

