

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

767-2370

RECORD PACKET COPY

**Wed 16.5a**

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Final Date for
CCC Action: February 17, 2003
Staff: BP-SD
Staff Report: November 20, 2002
Hearing Date: December 10-13, 2002

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-159-A1

Applicant: Steven Cade

Original Project

Description: Two lot subdivision of a 3.66-acre site (Lot 1=1.55 acres; Lot 2=2.11 acres), construction of a single-story, and 5,400 sq.ft. residence on Lot 1 and a single-story, 5,300 sq.ft. residence on Lot 2; construction of a swimming pool on Lot 1 and a tennis court and swimming pool on Lot 2, vertical fencing along the property lines to the mean high tide line of Agua Hedionda Lagoon; landscaping and irrigation within the lagoon buffer and upland areas covering both lots, a boat launch ramp, crib wall, fire ring and barbecue. Record an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon (within the buffer), and to construct trail improvements. Lot line adjustment between Lot 2 and an adjacent parcel to the northeast and street improvements to Adams Street.

Proposed

Amendment: Install a rope barrier and signage to demarcate the public/private boundary along existing public access easement. The proposed project also includes the request for after-the-fact approval of a riprap dissipator structure on the beach.

Site: 4523 Adams Street, Agua Hedionda, Carlsbad, San Diego County.
APN 155-180-17

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the permit amendment with special conditions. The proposed development is located adjacent to Agua Hedionda Lagoon in Carlsbad. Currently, a public access easement exists on the subject site. The applicant proposes to delineate, with a rope barrier, the boundary between his private property and the inland extent of the public access

easement. Proposed conditions require that proposed barrier and signage be located entirely upland of the easement area. Additionally, Commission staff discovered an unpermitted structure on the site within the approved open space buffer between development and Agua Hedionda Lagoon. After discussing this with the applicant, the amendment request was modified to include after-the-fact approval of the unpermitted structure which consists of a substantial rip rap dissipater extending down onto the beach. Staff is recommending that the proposed rip rap dissipater be approved as it serves to reduce the potential for beach erosion and will not affect public access on the site because of its small size and width. As conditioned, staff recommends the Commission find the proposed development is consistent with all applicable Chapter 3 policies of the Coastal Act.

Substantive File Documents: Certified Agua Hedionda Land Use Plan, CDP #6-02-28, Newkirk

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-96-159 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the amendment 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 A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions will be in conformity with the policies of the certified Local Coastal Program and with the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

The permit is subject to the following conditions:

1. Revised Public Access Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a revised site and signage plan which has been approved by the City of Carlsbad and incorporates the following:

- a. The proposed signage and rope barrier shall be installed on the applicant's site in a location upland of the inland extent of the approved ambulatory public access easement, as identified in Exhibit Nos. 3 & 4.

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

2. Condition Compliance. WITHIN 90 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. In CDP #6-96-159, the Commission approved creation of the subject lot and home as part of a two-lot subdivision of a 3.66-acre site. In approving the home, the Commission included a number of special conditions to make the development consistent with Coastal Act policies. These conditions included, among others, recordation of an offer to dedicate a 25-foot wide ambulatory lateral access easement along the beach, a 100-foot open space buffer area between the residential development and Agua Hedionda Lagoon (a public trail proposed by the applicant, was permitted within the buffer) and a signage plan identifying public access opportunities across the site. The open space buffer is required to remain free of all structures except as provided in the permit. The applicant is proposing to install a rope barrier and within the open space buffer to demarcate where the public/private boundary is on the site. The Agua Hedionda Lagoon Foundation has accepted the public access easement and it is open for public use. The applicant is also proposing to install public access signage as originally approved by the Commission and to retain a riprap dissipator that has been constructed without permits on the beach.

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

of the Coastal Act is the standard of review.

2. Public Access. Section 30604(c) of the Act requires that a specific access finding is made for any development located between the sea and the first public roadway:

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

In this particular location, Adams Street serves as the first public roadway and the proposed development is located between Adams Street and Agua Hedionda Lagoon.

In addition, Section 30212 of the Act requires that public access from the nearest public roadway be provided, and states, in part:

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,

(2) adequate access exists nearby.

Also, policies 7.6 and 7.9 of the certified Agua Hedionda LUP state:

Policy 7.6

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

Policy 7.9

Access Signing

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private

developments. Signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area.

The Agua Hedionda Lagoon LUP identifies that public access should be provided to and along the north shore of the lagoon. Vertical access to the lagoon is provided near the subject site from Cove Drive to the east. In CDP #6-96-159, the Commission approved a lateral access easement on the beach portion of the subject lot between residential development and Agua Hedionda Lagoon. The recorded easement is 25 feet wide along the entire width of the property which fronts the Agua Hedionda Lagoon shoreline. The easement area is ambulatory, meaning it will always extend 25 feet upland from wherever the mean high tide line intersects the applicant's property. The easement was accepted by the Agua Hedionda Lagoon Foundation (AHLF) and is currently open to the public. Approved signage near the western property line identifies that public access is available across the subject site through the easement. Additionally, the applicant constructed a 5-foot wide public trail which is open and available to the public.

The applicant is proposing to install signage and a rope barrier to demarcate where the public/private boundary is adjacent to the public access easement. The applicant states the public often wanders onto his private property upland of the easement and that dogs have attacked him. The applicant states that the proposed signage and barrier will make it clearer to the public that while there is public access across the site it is confined to a 25-foot wide area and not allowed over the entire site.

The Commission can accept the proposed amendment as long as the location of the barrier and signage is located entirely on the applicant's property, upland of the public access easement such that it allows for public access across the site at all times. As noted, the approved easement is "ambulatory" which means the easement will always be 25 feet upland from wherever the mean high tide is on the property. This is important as the line where the mean high tide line meets dry land fluctuates over time. To ensure that the public is not prevented from using the easement when it is at its inland-most location, the Commission finds that the applicant's signage and barrier must be located upland of the highest point where the water level occurs under normal conditions (i.e., upland of the inland extent of the easement) as identified on Exhibit Nos. 3 & 4. Special Condition #1 requires revised plans that are consistent with this exhibit. Only as conditioned is the proposed amendment consistent with the access policies of the Coastal Act and the certified Agua Hedionda LUP.

Unpermitted riprap exists in the buffer near the trail. In the original project, the Commission approved the installation of a storm drain and dissipator structure on the site. However, after it was constructed, the applicant indicated that the approved dissipator structure was not adequate to dissipate flows from the pipe and the beach area below the pipe was severely eroded. As such, the applicant extended the dissipator structure further onto the beach. However, because of its limited length and breadth, it will have no adverse impacts on public access. Additionally, as will be discussed in the

next section of this report, it will have no adverse effect on sensitive environmental resources.

Finally, the applicant proposes to "restore" approved signage indicating that alcohol and dogs are prohibited within the lateral access easement. The Commission previously permitted the installation of this sign. However, the permitted signs were changed by the Coastal Conservancy and the AHLF upon opening up the easement for public use. The language on the sign was changed to be more "positive" (Exhibit #6); AHLF also felt that its maintenance and liability responsibilities did not include policing the easement for dogs and alcohol which were more properly covered by local code enforcement. Nevertheless, the Commission in its review of the original application approved signage that the applicant proposes to reinstall. Therefore, based on the above, the Commission finds that the proposed amendment is consistent with the access requirements of the LUP and Section 30212 of the Act.

3. Environmentally Sensitive Habitat. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Agua Hedionda Lagoon has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act and is the only "recreational" lagoon in San Diego County (i.e., allows active and passive use of the lagoon). Section 30240 of the Coastal Act states:

(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.

Also, Section 30231 of the Coastal Act states:

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

In CDP #6-96-159, the Commission required an open space buffer between development and Agua Hedionda lagoon on the subject and the adjacent site to the east created by the subdivision. Buffers serve as physical space between development and a resource (in this case Agua Hedionda Lagoon) to protect the resource from direct and indirect adverse impacts associated with development. The Commission accepted minor drainage improvements (10-inch private storm drain and rip-rap energy dissipater) within the buffer on the adjacent site because no adverse impacts were associated with these improvements. However, due to excessive erosion, the applicant has installed more rip rap than was approved by the Commission. The existing rip rap extends approximately

35 feet from the outlet of the drainage pipe, terminating just upland of the public access easement. This is much larger than was approved with the original permit. The applicant indicates the rip rap is necessary to control erosion that occurs within the buffer which has threatened to undermine the public trail and a public sewer that exists between the storm drain and the trail. This statement is confirmed by the AHLF and a City engineer. No sensitive vegetation was removed during the installation of the rip rap and no indirect adverse impacts to the lagoon are anticipated should it remain. As such, the Commission finds that the riprap will serve to help retard beach erosion caused by runoff from the drainage pipe. Thus, the Commission finds the rip rap can be found consistent Section 30240(b) of the Coastal Act.

4. Unpermitted Development. Unpermitted development has occurred on site consisting of rip rap placed within the recorded open space buffer without the required coastal development permit. Commission Enforcement staff confirmed the violation during a site visit and directed the applicant to submit the current application for resolution of the pending violation. In this case, the Commission finds the existing unpermitted development may be approved after-the-fact as it is necessary to protect coastal resources (public access easement and trail). Although development 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. Special Condition #2 requires that within 90 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. 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.

5. Local Coastal Planning. The Agua Hedionda Lagoon LUP requires that public access be provided along the north shore of Agua Hedionda Lagoon. As conditioned herein to ensure that public access will be maintained along the subject site and at the same time provide more privacy to the applicant, the Commission finds the proposed amendment is consistent with the public access policies of the Agua Hedionda Lagoon LUP and the Coastal Act

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

As conditioned, the proposed amendment is consistent with the public access policies of the certified Agua Hedionda Lagoon LUP and Chapter 3 policies of the Coastal Act. As conditioned to comply with the herein requirements, 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 amendment is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

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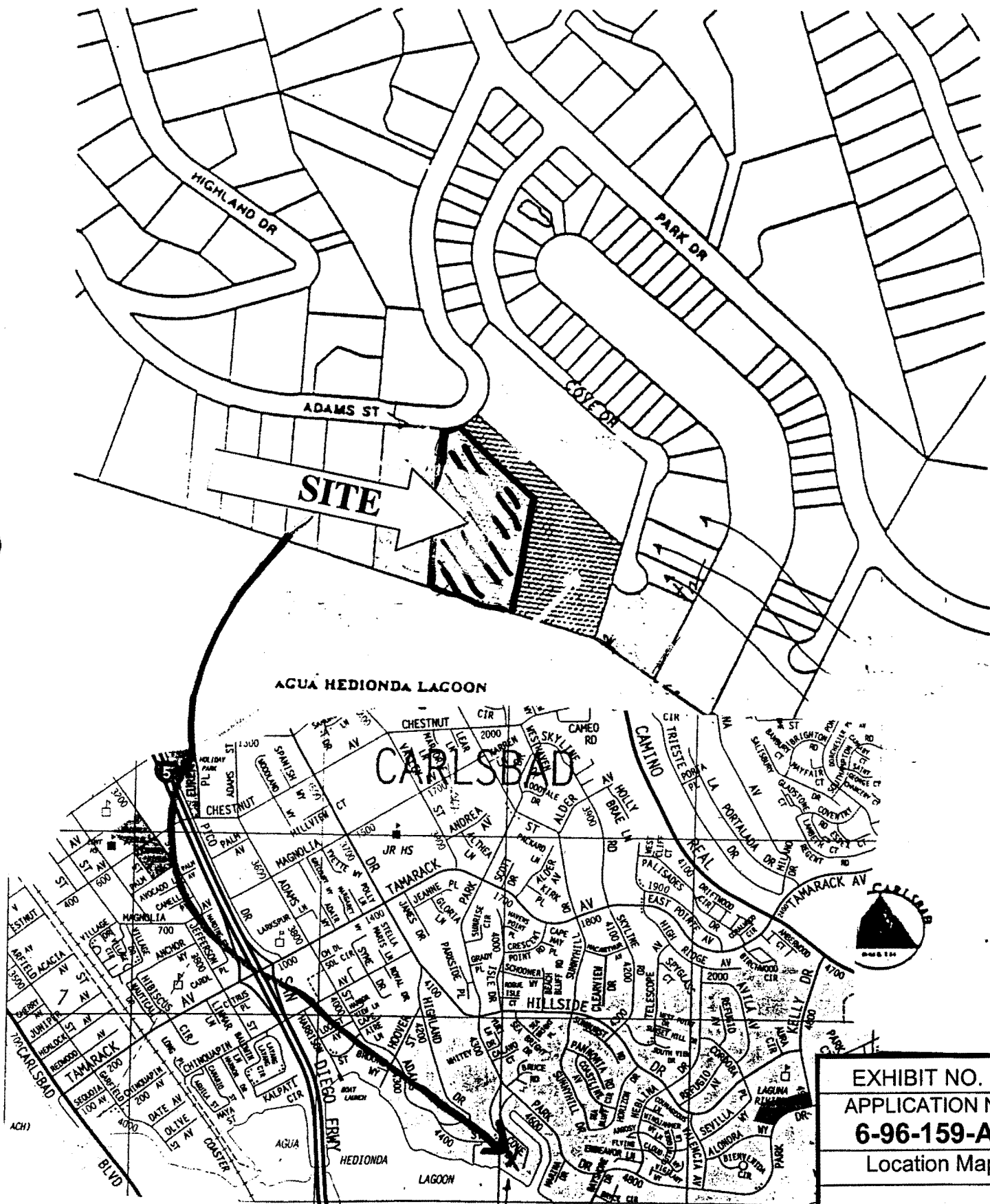


EXHIBIT NO. 1
APPLICATION NO.
6-96-159-A1
Location Map

BARRIER DETAIL AT LATERAL
ACCESS PATH

SCALE: $\frac{3}{8}" = 1'0"$

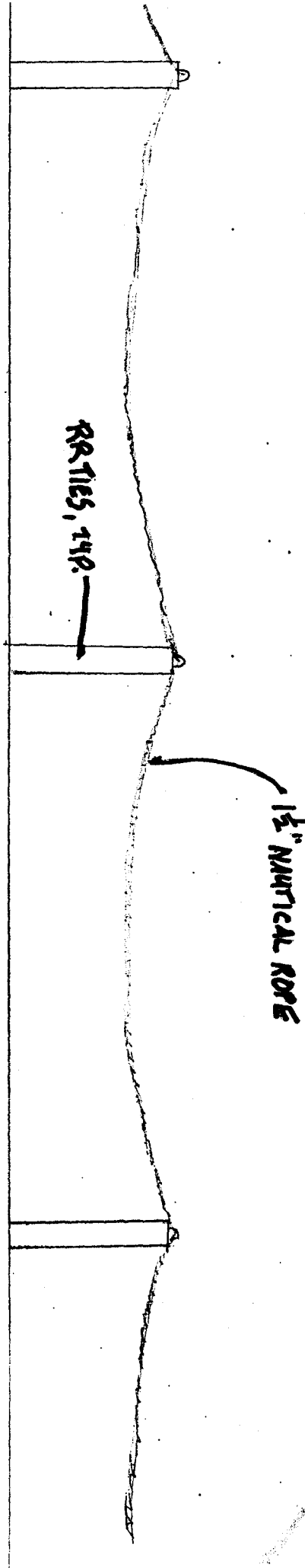

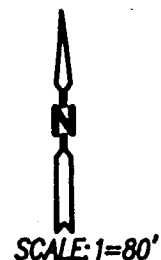


EXHIBIT NO. 2
APPLICATION NO. 6-96-159-A1
Barrier Detail
 California Coastal Commission

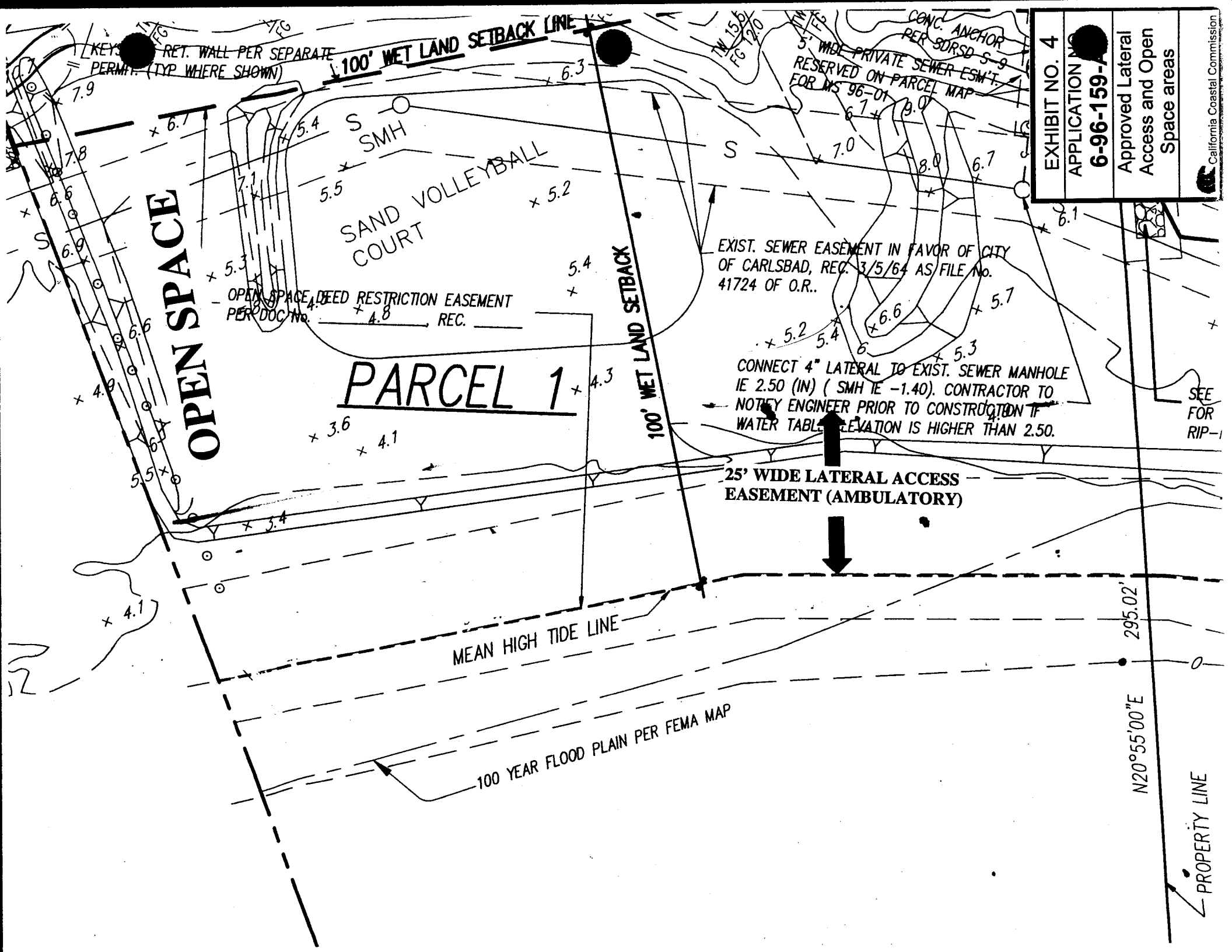


2/23/99

CONSULTING ENGINEERS
2187 NEWCASTLE AVENUE SUITE 103
CARDIFF BY THE SEA, CA. 92007
TEL 760/436-8500 FAX 760/436-8603

Recorded IOD for
Ambulatory 25-ft.
wide Public Access
Easement





PUBLIC LAGOON ACCESS



Please Pick Up Trash
Please Respect
Private Property

This accessway is made possible through the efforts of the
Agua Hedionda Lagoon Foundation, with assistance from the
California Coastal Commission and the Coastal Conservancy.

Two copies

4 Signs Total all @
18" x 24"

PUBLIC LAGOON ACCESS



PUBLIC LAGOON ACCESS



Customer: Rob Richards @ Agua Hedionda Lagoon Foundation

Date: 1/23/01

Comments: Permcast Forest Green on White .063 Aluminum, Clear vinyl overlay.

Here is the design I have for your order.
Please sign off and FAX back. Thank!

OK as is:

OK with indicated changes:

Another proof is required ☐

Rich

[Signature] 23 JAN 01

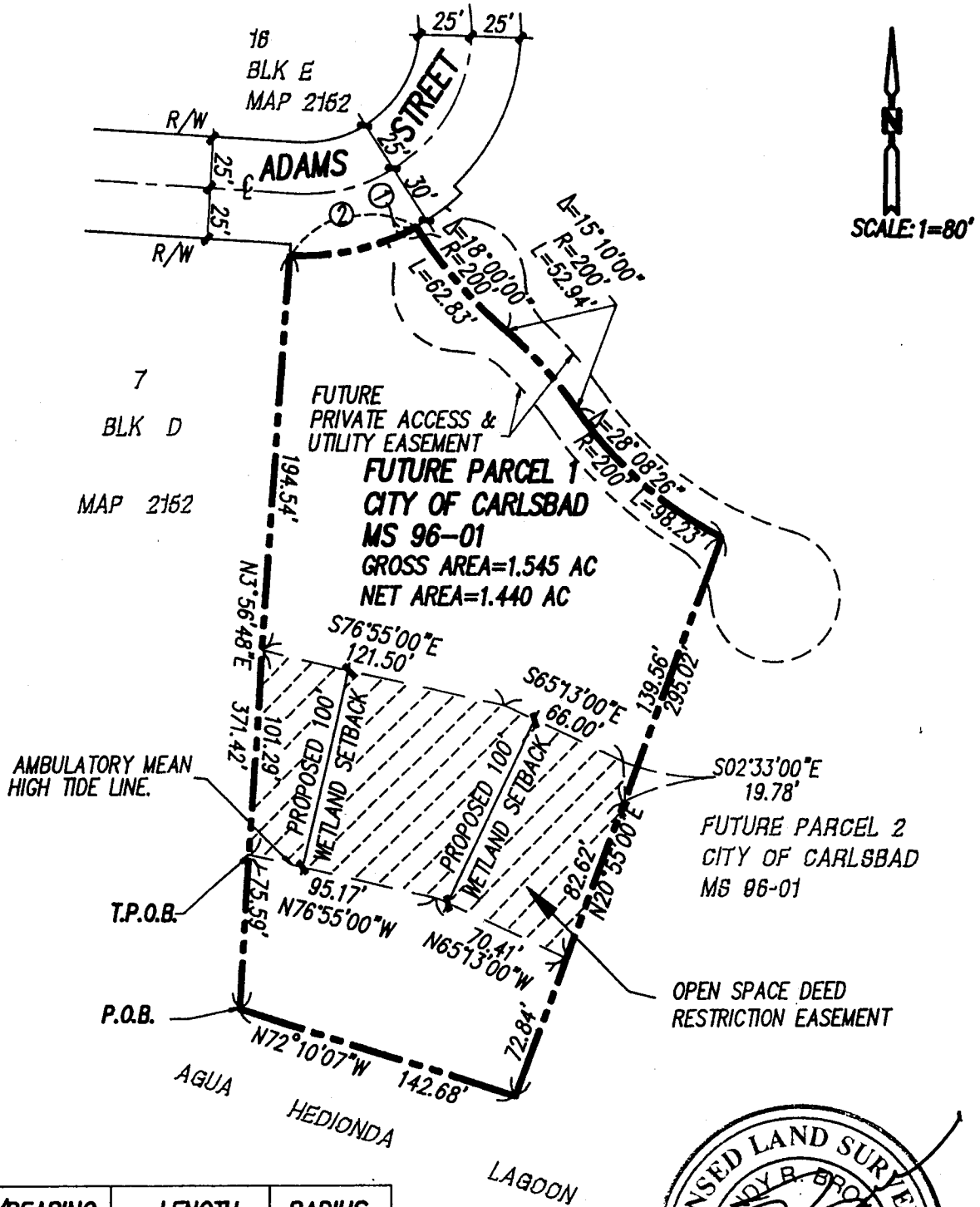
EXHIBIT NO. 5
APPLICATION NO.
6-96-159-A1

Existing Signage

EXHIBIT 'B'

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PLAT FOR OPEN SPACE DEED RESTRICTION EASEMENT (OVER FUTURE PARCEL 1 OF CITY OF CARLSBAD MS 96-01)



No.	Δ/BEARING	LENGTH	RADIUS
①	N32°35'26"W	4.80'	---
②	Δ=33°18'38"	63.98'	110.04'

JOB No. 98-035

2/5/99

HOWARDS & BROWN ENGINEERING, INC.

CONSULTING ENGINEERS
2187 NEWCASTLE AVENUE SUITE 103
CARDIFF BY THE SEA, CA. 92007
TEL. 760/436-8500 FAX 760/436-8603



**EXHIBIT NO. 6
APPLICATION NO.
6-96-159-A1**

Approved 100-foot
wide Open Space
Deed Restriction

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California Coastal Commission