

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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 Staff Report: 7/18/02
 Hearing Date: 8/6-9/02

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-28

Applicant: Klementyna S. Newkirk

Agent: Tom Jones

Description: Construction of a 948 sq.ft. room addition to an existing single-story 5,300 sq.ft. residence on a 2.11-acre hillside and lagoon fronting lot. The proposed project also includes the request for after the fact approval to enlarge a boat launch ramp below the mean high tide line, construct a 1,600 sq.ft. asphalt apron for boat storage and cleaning, install a 60 sq.ft. detached storage building and stairway down slope onto the beach and palapas within approved open space.

Site: 4525 Adams Street, Agua Hedionda, Carlsbad (San Diego County)

Substantive File Documents: Certified Agua Hedionda Land Use Plan; Coastal Development Permit 6-96-159

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the permit with special conditions. The proposed development is located adjacent to the Agua Hedionda Lagoon. The primary issue raised by the development relates to protection of water and visual quality and sensitive resources. Because the site drains directly into the lagoon, a special condition requires that all runoff from the site be filtered prior to discharge into the lagoon. Also, the application requests after-the-fact approval for development within the open space buffer established by the original permit for the house. A special condition requires that final revised plans be submitted demonstrating that the development within the open space buffer has been deleted. The applicant requests authorization to remove development that is not approved by the Commission in this action. As conditioned, the proposed development is consistent with all applicable policies of Chapter 3 of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-02-28 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. **Revised Final Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final site, building and elevation plans that have been approved by the City of Carlsbad. Said plans shall be in substantial conformance with the plans submitted by Paul Weatherly Inc., dated received 4/3/02, except they shall be revised as follows:

- (a) The palapas and flagstone steps within the approved open space buffer shall be deleted.

- (b) The boat launch ramp shall be modified to delete that portion below the mean high tide line (elevation 2-ft Mean Sea Level).
- (c) Plans for removal of palapas, flagstone steps and boat launch ramp

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

2. Final Drainage Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final drainage and runoff control plans that have been approved by City of Carlsbad to the Executive Director for review and written approval. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plans shall document that the runoff from the roof, asphalt apron and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) or other media filter devices for infiltration and/or percolation to the maximum extent practicable, prior to being conveyed off-site in a non-erosive manner. In addition to the specifications above, the plan shall provide that:

- (a) No maintenance or refueling of vessels is allowed on the boat ramp or apron. Water may be used to rinse off vessels, but no cleaning agents may be used.

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

3. 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.

3. Removal of Unpermitted Structures. The applicant shall remove the existing palapas and flagstone steps within the approved open space buffer and the portion of the boat launch ramp below the mean high tide line within the 30 days of issuance of the coastal development permit consistent with the revised final plans required by Special Condition 1. The Executive Director may grant additional time for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

5. Other Permits. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director copies of all other required state or federal discretionary permits for the development authorized by CDP #6-02-28. The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the construction of a 948 sq.ft. room addition to an existing single-story 5,300 sq.ft. residence on a 2.11 acre lagoon fronting lot located on the north shore of Agua Hedionda Lagoon in Carlsbad. The proposed project also includes the request for after the fact approval to enlarge a boat launch ramp below the mean high tide line, construct a 1,600 sq.ft. asphalt apron for boat storage and cleaning, install a 60 sq.ft. detached storage building and stairway down slope onto the beach and palapas within approved open space. The applicant requests authorization to remove development that is not approved by the Commission in this action.

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. The hillside site contains elevations ranging from 0 to 43 feet mean sea level (MSL). No grading is proposed. The existing residence is setback approximately 80-feet from the mean high tide line.

The site is bounded on the west and north by existing approved single-family homes (CDP #6-96-159, Cade and 6-97-49, Jones) and bounded on the east by a 23-unit condominium complex known as Bristol Cove.

In approving the home, the Commission included a number of special conditions to find the development consistent with Coastal Act policies. These conditions included, among others, a 25-foot wide lateral access easement along the beach and an open space buffer area between the residential development and Agua Hedionda Lagoon (a public trail, a small boat launch ramp and fencing at the edge of the buffer were permitted within the buffer). The open space buffer is required to remain free of all structures except as provided in the permit.

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. Unpermitted Development. Unpermitted development has occurred on site without the required coastal development permit including the enlargement of a boat launch ramp below the mean high tide line, construction of a 1,600 sq.ft. asphalt apron for boat storage and cleaning, installation of a 60 sq.ft. detached storage building and stairway down slope onto the beach and palapas within approved open space easement. Commission Enforcement staff discovered the unpermitted development during a site visit and the applicant has submitted the current application in response to direction by Commission Enforcement staff.

The applicant has agreed to remove those components of the unpermitted development that are not authorized after-the-fact pursuant to this coastal development permit application (including the palapas, flagstone steps, and a portion of the boat launch ramp) and has specifically requested authorization for their removal if not approved. Special Condition #1 requires the applicant to submit revised plans that delete the unpermitted palapas, flagstone steps, and a portion of the boat launch ramp and provide for the removal of those as-built structures. To ensure that all unpermitted development not authorized by this permit are removed in a timely manner, Special Condition #4 requires that the applicant remove the palapas, steps, and portion of the boat launch ramp, consistent with the revised final plans required by Special Condition 1, within 30 days of issuance of the permit, unless additional time is granted by the Executive Director for good cause. In addition, to ensure that the components of this application involving unpermitted development are resolved in a timely manner, Special Condition #3 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

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. Approval of the permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

3. Environmentally Sensitive Habitat. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Agua Hedionda has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act. Section 30240 (b) of the Act is applicable and 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.

Section 30231 of the Act provides:

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 a 60-foot open space buffer between development and Agua Hedionda lagoon. The Commission found the 60-foot buffer was acceptable (rather than the typical 100-foot buffer) because of the significant elevation difference between the resource and new development. The buffer was required as open space. A vegetative barrier and low fencing between the area of public use and the upland portion of the site was approved as a boundary between private and public use. The Commission also accepted minor drainage improvements and a boat launch ramp within the buffer.

The site plan indicates that several structures are located within the open space buffer area (several palapas [shade structures] and a stairway down the bluff face) that were not approved by the Commission. The Commission permitted the following uses within the buffer: an existing sand volleyball court, native drought-resistant vegetation, rip-rap energy dissipater, boat launch ramp, a future public trail with its associated improvements and upland fencing and/or landscaping to demarcate public/private use. No other uses were permitted. 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 proposed palapas and stairway were not permitted uses and are development that encroaches into the buffer, inconsistent with Sections 30231 and 30240(b) of the Coastal Act. In addition, while approved within the buffer at the eastern end of the subject site, the boat launch is larger than that approved by the Commission as it extends into the water below the mean high tide line (elevation 2-ft. MSL). The Commission previously required it to terminate at the mean high tide line. As built, the ramp adversely affects benthic organisms that reside under the water and may have impacted eelgrass resources in the lagoon. The Commission does not approve the boat ramp below the mean high tide line or the construction of the stairway or palapas within the open space area.

Special Condition #1 requires revised plans deleting the palapas and stairway from the buffer and that portion of the boat launch ramp below the mean high tide line. In addition, this condition requires submittal of plans for their removal. Special Condition #5 requires that other permits associated with the boat launch ramp removal be submitted. The Army Corp of Engineers approved the boat launch ramp; thus, it is necessary to obtain their approval to remove the portion of the ramp that is in the water. As conditioned, the project conforms to Sections 30231 and 30240(b) of the Coastal Act.

Although a small storage shed has been installed approximately 250 feet from the water without benefit of a permit, its location outside the approved buffer raises no Coastal Act concerns.

4. Scenic Preservation. Section 30251 of the Coastal Act is applicable and states, in part:

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

The proposed addition to the home does not raise any Coastal Act issues as it would be sited far from designated open space areas, would be visually unobtrusive and its height would not extend above the centerline of the fronting street. Therefore, the Commission finds the project is consistent with Section 30251 of the Coastal Act.

5. 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, unless such access would be inconsistent with public safety, military security or resource protection needs.

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.

In CDP #6-96-159, the Commission approved a lateral access easement along the beach within an open space buffer area between the residential development and Agua Hedionda Lagoon. The required 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 changes over time at a point where the mean high tide meets land changes over time. The upland extent of the easement will always be 25 feet from wherever the mean high tide is on the property. Approved signage installed between the site and the Bristol Cove apartments to the east identifies that public access is available across the subject site; a similar sign exists on the adjoining lot to the west. A 5-foot wide public trail was constructed (approved by the Commission) immediately upland of the lateral access easement. The easement has been accepted by the Agua Hedionda Lagoon Foundation and is open to the public. Fencing at the edge of the buffer was permitted within the upland extent of the buffer to provide additional privacy to the homeowner. Vertical access is provided to the subject site from nearby Cove Drive. No changes to existing access provisions is proposed nor will be affected by the proposed development. Therefore, both lateral and public access are adequate in the subject area and the project is consistent with the above public access policies of the Coastal Act.

6. Water Quality. The following Coastal Act policy is applicable to the proposed development and states:

Section 30231

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

Section 30231 protects marine water quality from adverse affects associated with new development. Agua Hedionda Lagoon has been identified by the State Department of Fish and Game as one of the 19 highest priority wetland areas for acquisition and, as such, is referenced in Section 30233(c) of the Coastal Act. The adverse impacts of development most often associated with wetland areas are erosion of soils within the watershed and subsequent sediment transport to the wetlands.

Although no grading is proposed, the Commission is concerned existing conditions on site are adversely affecting the water quality of the lagoon. The boat launch ramp directs stormwater containing urban pollutants directly into the lagoon. Regarding the 1,600 sq.ft.unpermitted asphalt area (used as a boat rinsing area) that has been constructed upland of the boat launch ramp, the applicant indicates an existing drain at the low point directs storm water to a drum that is filled with porous volcanic stone. According to the

applicant this drum filters storm water before it ultimately enters the lagoon. However, these improvements were installed without benefit of a permit and did not include a detailed drainage and runoff control plan and supporting hydrologic calculations. Therefore, it is difficult to determine whether the existing drainage improvements are adequate to minimize impacts to the water quality of the lagoon. Special Condition #2 requires that the applicant submit to the Executive Director a detailed drainage plan. The plan shall document that the runoff from the roof, asphalt apron and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) or other media filter devices for infiltration and/or percolation to the maximum extent practicable, prior to being conveyed off-site in a non-erosive manner. Because maintenance and refueling activities can result in the spillage of petroleum products, grease, and other pollutants, no maintenance or refueling is allowed on the boat ramp or apron. In addition, because chemical agents used to clean boats can adversely affect water quality, no cleaning agents may be used on the boat ramp or apron. Vessels, however, may be rinsed with water. Only as conditioned can the Commission find the project has been designed to adequately treat storm water prior to its discharge into Agua Hedionda Lagoon, consistent with section 30231 of the Coastal Act.

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

The Agua Hedionda Land Use Plan (LUP) designates the site for residential development at a maximum density of 4 du/ac. The proposed room addition to an existing single-story residence will not change the site's density. As conditioned, the project is also consistent with the habitat preservation, water quality and scenic preservation policies of the certified Agua Hedionda Land Use Plan and should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda segment.

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

The proposed project has been conditioned to be found consistent with the resource and visual policies of the Coastal Act. The attached mitigation measures will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the

Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

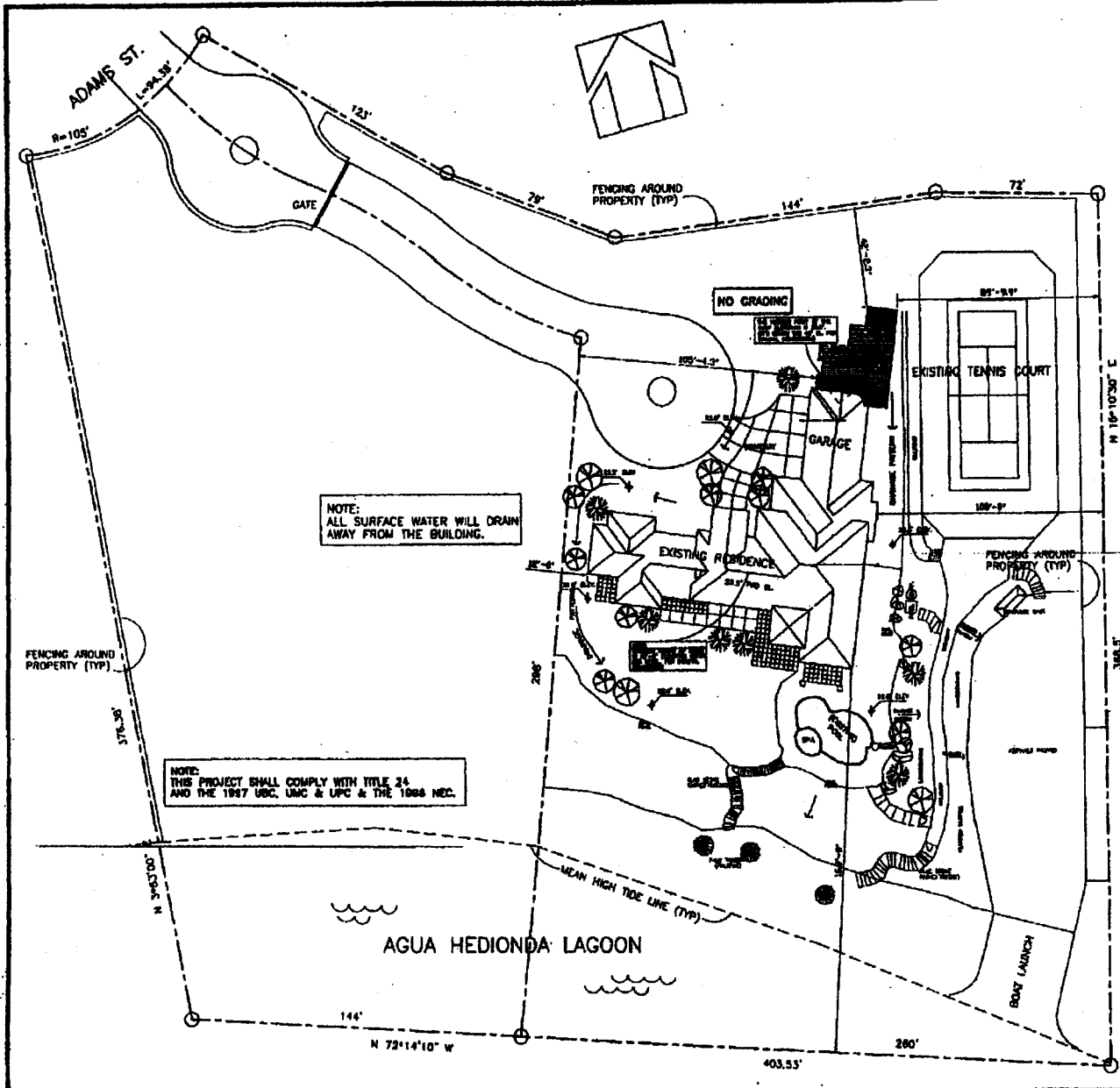
1-20-02

Newkirk Addition, 4525 Adams St., Carlsbad
Parcel Map

6-02-08



EXHIBIT NO. 1
APPLICATION NO.
6-02-28
Location Map



SHEET INDEX	
SHEET	TITLE
A1	SITE PLAN
A2	FLOOR PLAN
A3	ELEVATIONS
W	WINDOW SCH. & NOTES
SA	NOTES & SCHEDULES
SB	NOTES & SCHEDULES
S1	FOUNDATION PLAN
S2	ROOF /FRAMING
SD1	STRUCTURAL DETAILS
SD2	STRUCTURAL DETAILS

PROJECT INFO	
PROJECT ADDRESS 4025 ADAMS STREET CARLSBAD, CA	
CONSTRUCTION TYPE <u>VII</u>	
LEGAL DESCRIPTION A.P.N. 206 200 12	
SQUARE FOOTAGE PROPOSED ADDITION	848 S.F.

PROJECT DIRECTORY	
OWNER:	HERBERT 1255 ADAMS STREET CARLSBAD, CA
GENERAL CONTRACTOR:	NEWKIRK ADDITION 2734 WOODSON ST. CARLSBAD, CA 92008 760/730-1808
PROJECT DESIGNER:	W. WEATHERLY 5125 THE CREEK OCEANVIEW, CA
CIVIL ENGINEER	SCOTT & SONS ENGINEERING INC. 2187 HENRIETTA AVE. SUITE 103 CHERRY, CA 92007 760/434-8000
STRUCTURAL ENGINEER	BEACH COAST STRUCTURAL DESIGN 2418 3RD OCEAN AVE. SUITE 200 SAN MARCO, CA 92116 760/730-1804
SOILS ENGINEER	1811 - A ST. SEASIDE, DL. #285 MESA, CA 90280 760/948-3180

VICINITY MAP	

EXHIBIT NO. 2
APPLICATION NO. **6-02-28**
Site Plan

NEWKIRK ADDITION

OWNER: HERBERT
1255 ADAMS STREET
CARLSBAD, CA

GENERAL CONTRACTOR:
NEWKIRK ADDITION
2734 WOODSON ST.
CARLSBAD, CA 92008
760/730-1808

PROJECT DESIGNER:
W. WEATHERLY
5125 THE CREEK
OCEANVIEW, CA

CIVIL ENGINEER
SCOTT & SONS ENGINEERING INC.
2187 HENRIETTA AVE. SUITE 103
CHERRY, CA 92007
760/434-8000

STRUCTURAL ENGINEER
BEACH COAST STRUCTURAL DESIGN
2418 3RD OCEAN AVE. SUITE 200
SAN MARCO, CA 92116
760/730-1804

SOILS ENGINEER
1811 - A ST. SEASIDE, DL. #285
MESA, CA 90280
760/948-3180

DATE: 10-1-87
SCALE: N.T.S.

PREPARED BY: **W. WEATHERLY**
760/433-7842

SHEET NO. **A1**