

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 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 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. **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 and landscaping plans for the permitted development. Said plans shall be in substantial conformance with the concept plans dated 12/12/02 by George Mercer Associates submitted with the coastal development permit amendment application, and shall specifically include the following in written notes on the plans:

- a. Drought tolerant native or non-invasive plant materials shall be utilized for all landscaping.
- b. The pond shall not be stocked with invasive plant species, fish or other animal species.
- c. Any new lighting attached to the entry monuments shall be shielded and directed away from the lagoon.
- d. No chemicals shall be added to the pond.
- e. The existing culvert shall be replaced with a culvert no greater in size or diameter than the existing culvert, and no riprap shall be placed in or around the culvert.

- f. No excavated material shall be placed within the floodplain that results in the raising the land higher than the floodplain elevation, or results in alterations to flood flows.

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. 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 #6-89-138-A1. 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.

3. Condition Compliance. Within 60 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to 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.

4. Prior Conditions of Approval. All special conditions adopted by the Coastal Commission as part of the original permit action, except as specifically modified or replaced herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The proposed project is expansion of an existing decorative pond to create a larger pond approximately 40,000 sq.ft. in size at the surface, with depths ranging from 4 inches to 4 feet. The new pond, which will be approximately triple the size of the existing pond, will be located on the southern portion of an approximately 12.6 acre lot also containing an existing single-family residence. Grading for the pond expansion has already occurred, in an apparent violation of the Coastal Act. Other development proposed on the site includes replacement of an existing corrugated steel culvert under the driveway with a larger concrete culvert, replacement of existing walls and pilasters at the driveway entry monument on the property, landscaping, and installation of new electronic gates at the entry.

The Commission approved the original permit for construction of the single-family residence in August 1989. The project included construction of the house, moving an existing driveway, and construction of a small dock at the edge of an existing pond. The project was approved with special conditions including limiting grading to outside the rainy season, a drainage plan, a limitation on the exterior colors of the residence, and an open space deed restriction on the southern portion of the lot, which is located within the 100-year flood plain. The restriction prohibits any alteration of landforms, removal of vegetation or the erection of structures of any type in the floodplain without the written approval of the Commission. The approved permit did allow construction of the driveway and dock, the corrugated steel culvert under the driveway and an entry monument at the driveway entrance within the open space flood plain area.

The purpose of the open space restriction placed on the original permit was to limit fill in the floodplain, not specifically to protect sensitive vegetation. There is some riparian vegetation on the southernmost portion of the lot, south of the existing pond. There is no native vegetation on the portion of the site proposed for the expanded pond. Construction of the pond will require approximately 1,500 cubic yards of excavation, which will be distributed elsewhere on the subject site for landscaping improvements.

The project site is located within the unincorporated County of San Diego. The County does not have a certified Local Coastal Program. Chapter 3 policies of the Coastal Act are the standard of review.

2. Water Quality/Biological Resources/Floodplain Hazards. The following sections of the Coastal Act address the biological productivity of coastal waters and habitat, and the potential hazards of flooding:

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 entrapment, controlling runoff,

Section 30240

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

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

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

[...]

The existing pond has been located on the subject site since before 1989. The construction date of the pond is unknown, but the pond was constructed by building donut-shaped retaining berms approximately 24 inches higher than the surrounding land. The pond water level has been maintained with water from an adjacent well on the site. There is no indication that the pond is a natural water feature or that the pond would exist if not artificially contained and supplied. Thus, expansion of the pond is not considered development in a wetland.

During storm conditions, the existing pond discharges water through the approved culvert located under the driveway on the southwestern side of the site, onto an open meadow on the adjacent property. Although La Orilla Creek is nearby, water from the subject site does not drain directly into the creek because the elevation of the creek is higher than the subject site or the adjacent lot. The minimum water level in the creek is approximately 1 foot high than the maximum proposed pond level. Flooding conditions actually result in water from the creek discharging towards the subject site, not the other way around.

The proposed pond will discharge water at the same location. However, the new pond may result in less water exiting the culvert. The water level in the proposed pond will be at 13.8 feet, which is approximately two feet lower than the water level of the existing pond. The elevation of the overflow culvert is 14.8 feet. Currently, the site topography directs all surface runoff from the subject site directly into the culvert and onto the neighbor's property. As proposed, in a storm situation, the water elevation of the pond would have to rise at least six to eight inches before water is discharged through the culvert. As the new pond area is approximately 40,000 sq.ft., the pond system will be able to retain approximately one acre-foot of water (which is the volume of water, 43,560 cubic feet, that will cover an area of one acre to a depth of one foot) before water discharges from the culvert onto the neighboring property. Therefore, the expanded pond

should provide a buffering effect to flooding on the neighboring property. Thus, the proposed project has been designed to minimize risks to life and property from flooding, and should not result in the need for any substantial alterations of rivers and streams to protect existing structures in the floodplain. The proposed expansion of the pond is therefore consistent with Sections 30253 and 30236 of the Coastal Act.

However, because of the site is in near proximity to a stream which eventually discharges into San Elijo Lagoon there remains a potential for indirect contact between the pond waters and the natural lagoon environment, and as such, pollutants or invasive plants or animals within the expanded pond could adversely impact sensitive biological resources.

The composition of the proposed pond will be native soils; no lining is proposed. The pond will not be stocked with fish and no chemicals will be added to the pond. The Commission's ecologist has reviewed the plant species proposed for the pond and determined that the plants are not invasive and do not pose a risk to the lagoon environment. Special Condition #1 requires the submittal of final plans that specifically prohibits the addition of any chemicals or fish into the pond. The addition of chemicals into the pond could introduce contaminants into the nearby sensitive biological resources. The condition also requires that any new lighting be shielded and directed away from the lagoon environment, since artificial lighting can disrupt native birds and animal species. The condition also requires that the proposed landscaping utilize only drought tolerant native or non-invasive plant materials, due to the site's proximity to San Elijo Lagoon. The applicants have proposed replacing and expanding the existing culvert on the site for visual reasons. The engineering study associated with the culvert expansion suggests layering riprap on slopes of the expanded culvert. However, this would result in new fill in the floodplain, inconsistent with Section 30236 of the Coastal Act. Similarly, placing the excavated fill material from the pond elsewhere on the site within the floodplain could raise the site elevation above the flood plain or substantially alter existing flood waters, potentially creating a flooding hazard. Therefore, Special Condition #1 prohibits expanding the existing culvert beyond the existing size and adding riprap to the site, or placing the excavated material within the floodplain such that flood elevations or patterns are altered.

Because of the possibility that permits may be required from the Army Corps of Engineers and/or the Regional Water Quality Control Board, Special Condition #2 requires that the applicant submit copies of these permits to the Executive Director prior to the commencement of construction. Any changes required by these agencies may result in the need for an additional amendment to the subject permit.

In summary, the proposed ornamental pond expansion will not adversely impact sensitive biological resources, nor result in a potential for off-site flooding hazards. The project has been conditioned to ensure that no impacts to water quality from artificial substances in the pond will occur. Therefore, the proposed project is consistent with the above-cite Chapter 3 policies of the Coastal Act.

3. Public Access/Visual Resources. Many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 20211, 30212.5, 30221, 30223 and 30252. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, protecting suitable upland recreational sites, and providing adequate parking facilities for public use. In addition, Section 30604(c) requires that a specific access finding be made for all development located between the sea and first coastal roadway. In this case, such a finding can be made.

With regard to visual resources, Section 30251 of the Act 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 project involves adding a gated entrance on a site located between the lagoon and the first public roadway. However, there is no existing public access on the site that would be blocked by the proposed driveway gates. In addition, there are no public views of the ocean or lagoon that would be blocked by the gates. There is extensive landscaping on the site and the applicant is proposing additional landscaping that will soften the visual impact of the gates. Therefore, no impacts to public access or visual resources will occur.

4. Unpermitted Development. A portion of the proposed development has already occurred without the necessary coastal development permit, including construction of the pond. The applicant is requesting after-the-fact approval for the pond grading. To ensure that the matter of unpermitted development is 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 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

The Commission notes that although development has taken place prior to the submission of this permit application, consideration of the application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Commission action upon the permit does not constitute a waiver of any legal action with regard to the alleged violations of the Coastal Act; 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. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local

Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Commission approved, with suggested modifications, an LCP for the County of San Diego in the early 1980's. However, the County never accepted the modifications, so the LCP was never effectively certified. The Commission uses Chapter 3 of the Coastal Act being the standard of review.

The subject project is consistent with the large-lot residential zoning contained in the County LCP. As conditioned, the project is consistent with all applicable Chapter 3 policies of the Coastal Act and the Commission finds that approval of the subject project will not prejudice the ability of the County of San Diego to obtain a fully certified Local Coastal Program.

6. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing non-invasive species, and chemicals in the pond will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

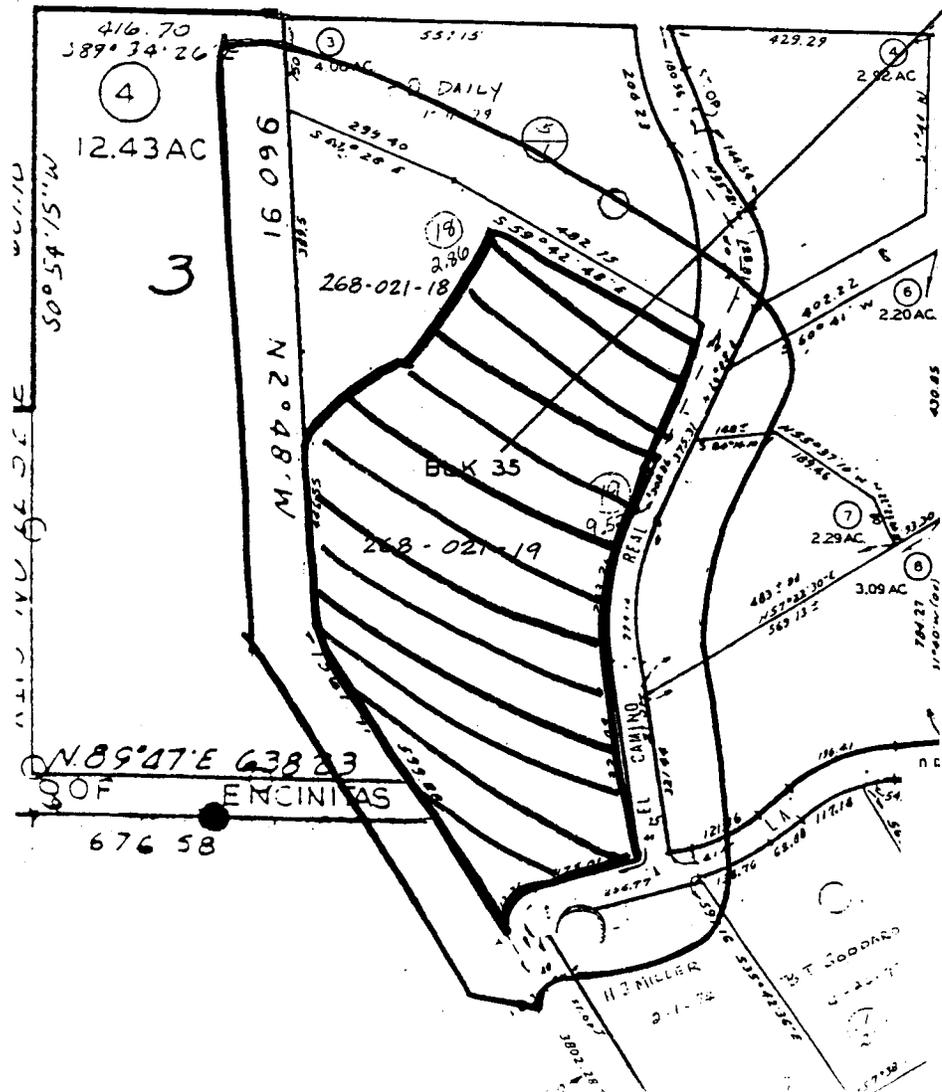
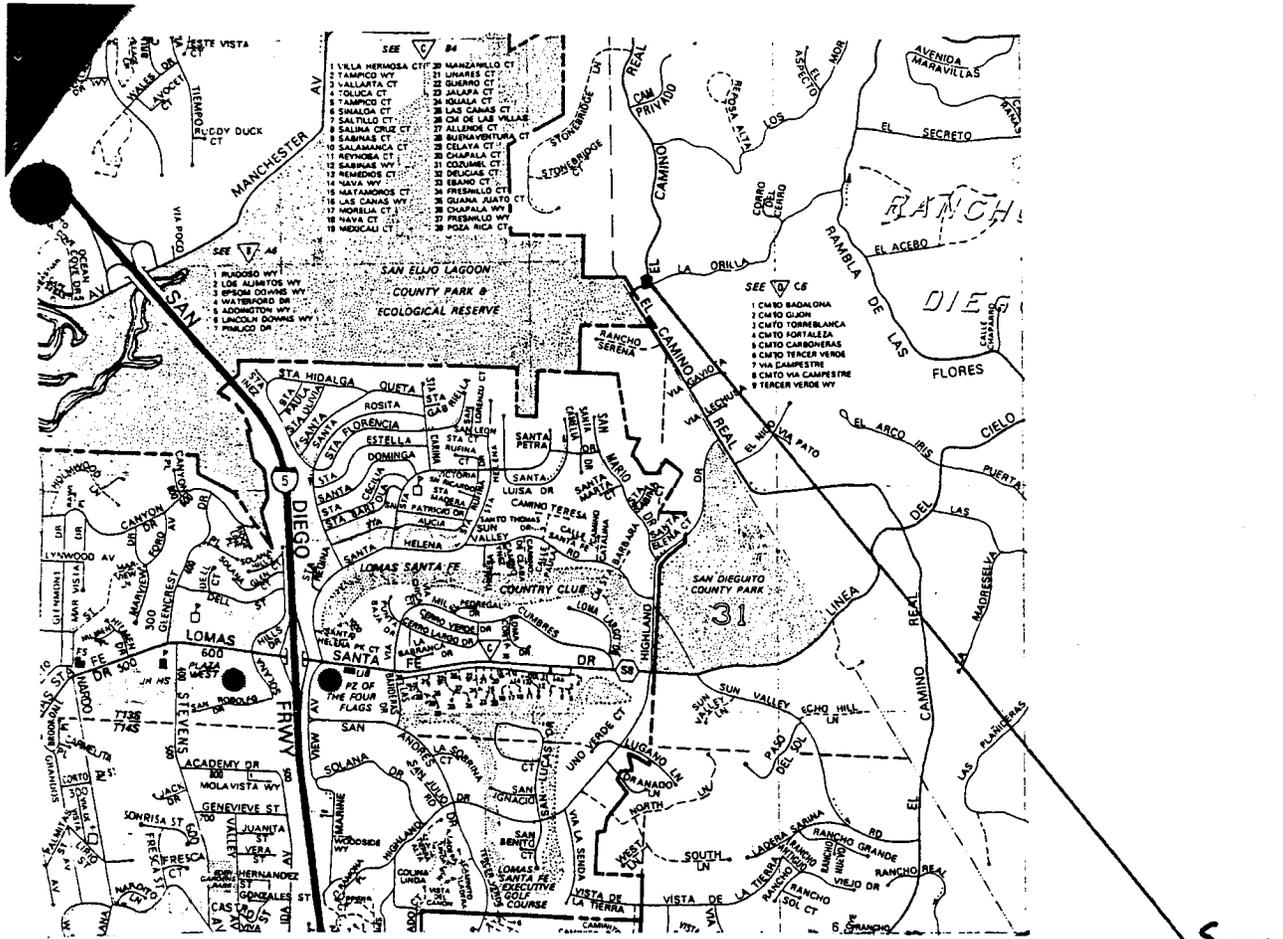
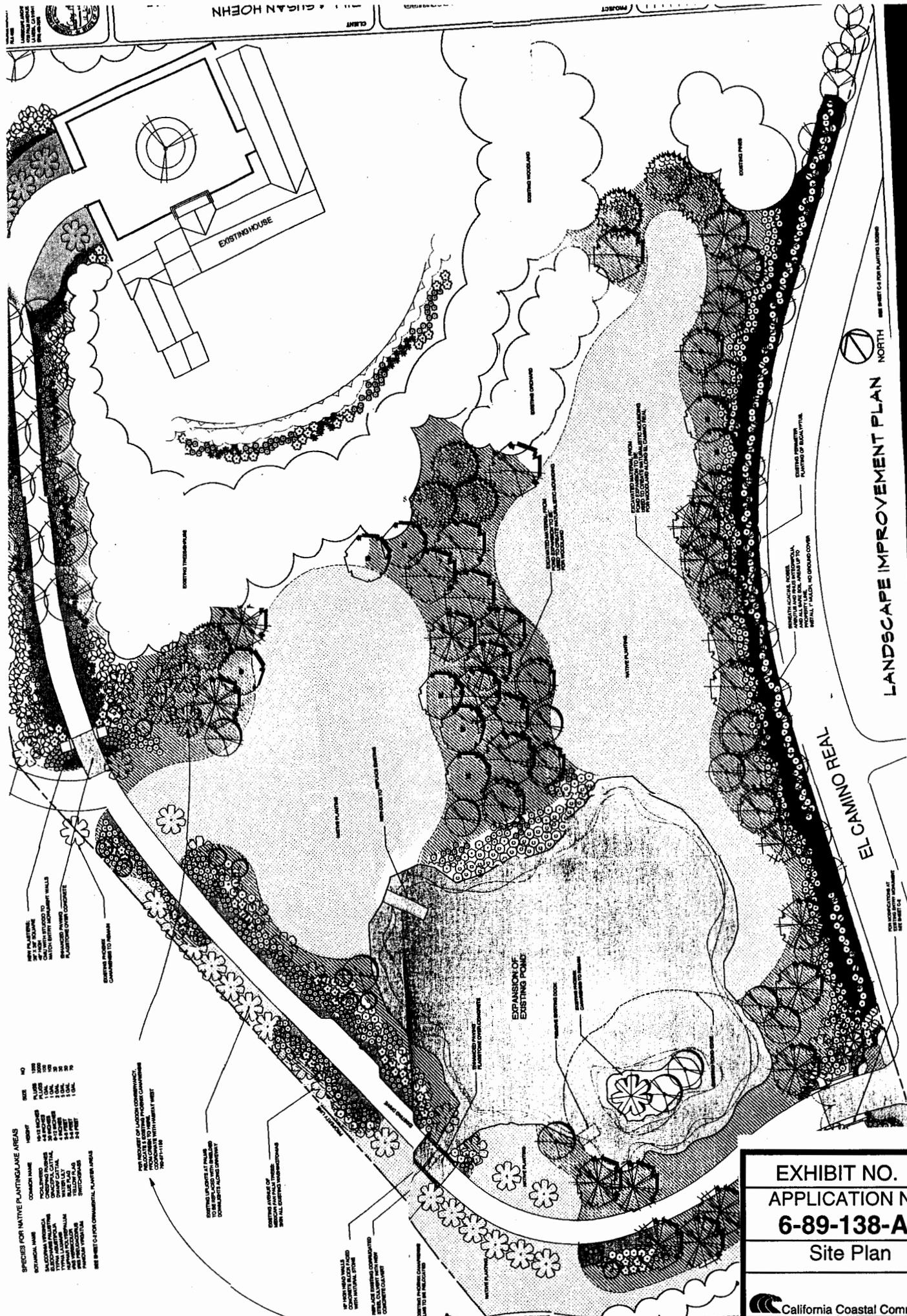


EXHIBIT NO. 1
 APPLICATION NO.
6-89-138-A1
 Location Map

California Coastal Commission



LANDSCAPE IMPROVEMENT PLAN

EL CAMINO REAL

EXHIBIT NO. 2
APPLICATION NO.
6-89-138-A1
 Site Plan