

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370

**RECORD PACKET COPY****Thu 11b**

Filed: April 4, 2004  
49th Day: May 21, 2004  
180th Day: September 29, 2004  
Staff: GDC-SD  
Staff Report: July 22, 2004  
Hearing Date: August 11-13, 2004

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-31

Applicant: Paul and Diane Saber

Agent: Russell Stout

Description: Construct approx. 1,004 sq. ft. guesthouse on a 3.4 acre lot containing an existing approx. 4,666 sq. ft. two-story single-family residence, swimming pool and 650 sq. ft. detached garage with game room.

Lot Area	149,410 sq. ft.
Building Coverage	8,110 sq. ft. (05 %)
Pavement Coverage	8,865 sq. ft. (06 %)
Landscape Coverage	33,938 sq. ft. (23 %)
Unimproved Area	98,497 sq. ft. (66 %)
Zoning	RS1 (1du/ac)
Plan Designation	General Plan 2

Site: 16146 El Camino Real, Rancho Santa Fe, San Diego County.  
APN No. 302-180-50

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval with Special Conditions. The primary issue raised by this proposal is the need to provide a 100 ft. brush management zone surrounding the proposed guest house, as required by the Rancho Santa Fe Fire Department, which extends approximately 30 ft. into an area of the site that contains coastal sage scrub habitat (and was previously designated by the County of San Diego as open space due to its habitat value). The Commission's Ecologist has reviewed the proposal and determined that because the requirement of the fire department is to only remove dead vegetation from a small portion of this native habitat area (approximately 4,000 sq. ft.) and because this area is separated from the developed portion of the site by irrigated ornamental, fire-resistant landscaping, a concrete drainage swale and a chain-link fence, the brush management requirements will not result in an adverse impact to this native habitat area.

Substantive File Documents: Certified County of San Diego Local Coastal Program  
(LCP); CDP #F7655, 6-99-136-W; 6-04-76-W.

---

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-04-31 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. Final Brush Management Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, revised detailed brush management plans addressing the area within 100 feet of the proposed guesthouse. Said plans shall be approved by the Rancho Santa Fe Fire Department and shall include the following:

- (a). Within the approximately 4,042 sq. ft. open space area of the subject property that lies within 100 ft. of the proposed guesthouse (as shown on the fuel modification plan by Russell Stout and Associates dated received on July 19, 2004), the plans shall note that only dead plant material shall be removed or cut. No clear cut or grubbing (removal of roots below the soil surface) of living plants shall occur.
- (b). A licensed biologist shall be present during the brush management operation to assure that no work occurs if California Gnatcatchers are present, and that all work is in accordance with the approved plan. If it is determined that Gnatcatchers are present, brush management work shall be postponed until the biologist determines that no Gnatcatchers are present.
- (c). The property owner shall be responsible for at least annual maintenance within the designated open space to remove any introduced non-native or invasive plant species.
- (d). Any future brush clearance (including future removal of dead plants) within the open space area other than removal of invasive and non-native plant species shall require approval of a coastal development permit or amendment to the subject permit, unless the Executive Director determines no permit or amendment is legally required.

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

2. Future Development. This permit is only for the development described in coastal development permit No. 6-04-31. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the existing residence or the guest house authorized by coastal development permit No. 6-04-31, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. 6-04-31 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

3. Final Drainage Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans that have been approved in writing by the County of San Diego. The plans shall specifically document either graphically or through written notes on the plan that the runoff from the roof, driveway and other impervious surfaces resulting from the subject permit request will be

directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation, prior to being conveyed off-site.

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.

4. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposal involves the construction of an approx. 1,004 sq. ft. guesthouse on a 3.4 acre lot that contains an existing approx. 4,666 sq. ft. two-story single-family residence, swimming pool and 650 sq. ft. detached garage that has a game room on the second floor. As proposed, the construction of the guesthouse will require the removal of dead plant material from within an open space area containing natural habitat in order to meet the Fire Department's brush management requirements.

The existing residence was approved by the San Diego Coast Regional Commission in 1978 (CDP #7655/Hall) without special conditions relating to the steep slopes or natural vegetation that existed on the property at the time. However, in 1978, as part of the local government approval of the project, the County of San Diego required an open space and recreational easement be placed across the western portion of the property that contains mostly steep slopes and natural vegetation. The easement was subsequently recorded and prohibits the construction of any structure, grading, planting or irrigation within the open space area. It does not prohibit the removal of vegetation for brush management purposes. In 1999, the Commission waived permit requirements for the construction of detached garage with second floor art studio on the subject lot although it appears the

second floor art studio was not subsequently constructed (CDP #6-99-136-W). Recently, the Commission waived permit requirements for the construction of a second story game room addition to the detached garage (6-04-7-W/Saber).

The proposed development is located in the County of San Diego, east of the City of Solana Beach and within approximately ¼ mile of San Elijo Lagoon County Park and Ecological Reserve. In addition, the project is located between the first coastal roadway (El Camino Real) and the "sea" as defined in the Coastal Act (here, San Elijo Lagoon). While the County of San Diego did receive approval of its Local Coastal Program from the Commission in 1985, it never became effectively certified. As such, the standard of review is Chapter 3 policies of the Coastal Act with the County LCP used as guidance.

2. Environmentally Sensitive Habitats/Steep Slopes. Section 30231 of the Coastal Act is applicable to the proposed development and states, in part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff...

In addition, Section 30240 of the Coastal Act is applicable and states:

(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.

The project site is located within the Coastal Resource Protection (CRP) overlay zone of the County of San Diego LCP. The CRP overlay zone was developed as part of the County LCP in response to the habitat protection policies of the Coastal Act and the need to preserve environmentally sensitive habitats and steep slopes. Because the County never formally accepted the Commission's LCP modifications, the LCP was never effectively certified. However, the Commission has continued to use the County's LCP as guidance in review of permit requests in the County. The CRP overlay, which regulates the development of naturally vegetated slopes in excess of 25% grade, states, in part:

Steep slopes. No development, grading, planting, excavation, deposit of soil or other material, or removal of natural vegetation, except as may be necessary for fire safety or installation of utility lines, shall be permitted on steep natural slopes of 25% grade or greater...No alteration of such natural steep slopes shall be permitted in order to

obtain use of a property in excess of the minimum reasonable use. For purposes of this provision, the term "minimum reasonable use" shall mean a minimum of one (1) dwelling unit per acre. Any encroachment into steep slope areas over 25% shall not exceed 10% of the steep slope area over 25% grade.

The intent of the CRP's restrictions on grading steep slopes is to minimize the visual impacts associated with such grading, to preserve the habitat values of significantly vegetated steep slopes areas, and to avoid the increased likelihood of erosion, runoff and sedimentation which can occur when steep slopes are graded. These concerns are addressed by eliminating or significantly reducing grading on steep slopes or the removal of vegetation. Furthermore, since the time when the County LCP was initially approved (but not effectively certified) by the Commission, the coastal California Gnatcatcher has been listed as threatened under the federal Endangered Species Act. As a result of this listing, preservation of areas containing coastal sage scrub habitat is even more significant, particularly when they are located within a larger system of environmentally sensitive habitat area.

As previously described, the proposed project involves the construction of a 1,004 sq. ft. detached guest house on a 3.4 acre lot that contains a single-family residence, swimming pool and detached garage with a game room on the second floor. The guesthouse would be located between the existing residence and the naturally vegetated open space area of the subject site which commences approx. 70 ft. from the proposed guesthouse. This open space area is separated from the developed portion of the site by irrigated ornamental, fire-resistant landscaping, a concrete drainage swale and a chain-link fence. While the entire open space area includes steep slopes and naturally vegetated areas that include coastal sage scrub habitat, the area proposed for brush management is not on steep slopes. In addition, the area proposed for brush management (i.e., removal of dead vegetation) represents only a small section of the open space area near the northeast corner of the open space area (ref. Exhibit #2). The brush clearance area of the open space represents an area of approximately 4,042 sq. ft., while the overall open space area within the property lines is about 1/3 of the 3.4 acre site.

The area southwest, west and northwest of the subject property is characterized by steep, natively vegetated slopes that the Commission's Ecologist/Wetlands Coordinator has determined contains environmentally sensitive habitat (coastal sage scrub) which is suitable as California Gnatcatcher habitat. The steep slopes and environmentally sensitive habitat extend along the western sides of the large estate residential lots, which includes the subject property, that lie between San Dieguito Park approximately 1/2 mile to the south and San Elijo Lagoon Ecological Reserve approximately 1/4 mile to the northwest. The Commission's Ecologist/Wetlands Coordinator has previously identified that this sensitive habitat could serve as "stopping points" or links for birds between the San Elijo Lagoon to the northwest and San Dieguito County Park to the south (Ref. CDP #6-99-148/Horseman's Valley).

While the subject development is proposed to occur on the developed area of the residential site, the Rancho Santa Fe Fire Department is requiring the new structure be

afforded a 100 ft. wide brush management protection zone which will extend up to 30 ft. into the open space easement area containing coastal sage scrub vegetation. The fire department's general requirements are that the first 50 ft. from the residential structure be planted only with drought-tolerant, fire resistant plants. In the area of the outer 50 ft., most native vegetation can remain but it must be thinned-out by 50%, dead vegetation must be removed, and specific fire-related "undesirable" plants and weeds must be completely removed.

In the case of the subject development, the fire department has determined that removal of dead vegetation within the outer 30 ft. open space area of the 100 ft. brush management zone will satisfy the brush management requirements for the proposed guesthouse, at least at this time. The remaining area within the 100 ft. brush management zone is outside the open space and currently landscaped with fire department acceptable low-fuel plants. The Commission's Ecologist/Wetlands Coordinator has concluded that removal of dead vegetation in the open space area will not adversely affect the existing habitat. However, the concern is that, overtime, the area formerly occupied by the dead vegetation may be replaced by new native vegetation as part of the existing coastal sage scrub community. Brush clearance of such thicker vegetation may be required to protect the proposed guesthouse in the future which would be inconsistent with resource protection provisions of the Sections 30231 and 30240 of the Act.

The issue of fire safety in areas of "wildland/urban interface" has become increasingly pertinent in recent years. Local governments and fire departments/districts have become increasingly aware of the need to either site new development away from fire-prone vegetation, or to regularly clear vegetation surrounding existing structures. Fire department requirements for vegetation thinning and clear-cutting can adversely affect coastal resources in various ways ranging from complete removal of the plant and root stock to trimming of the plant but leaving the below-ground root stock intact. Typically to avoid such conflicts, the Commission has required that new development be sited such that the brush management requirements will not adversely affect environmentally sensitive habitat.

Historically, it has been assumed that at least 30 ft. of a 100-foot wide brush management zone would be clear-cut removal of all native and/or high fuel vegetation. Beyond the first 30 feet, there has been variations in the amount of thinning that may be permitted or required, depending on the habitat value and density of the existing native vegetation. Given the current drought conditions and fire threat in southern California, it is reasonable and prudent to plan for at least a 100-foot wide brush management zone when considering approval of new development.

In this case, the applicant has examined redesign or relocation of the detached guest house and has concluded that, because the developable area on the property has been substantially built-out, the only options to site the structure at least 100 ft. from native vegetation involve a smaller guest house, or an attached structure. In this particular case, the Commission finds that, because the majority of the 100 ft. brush management zone is landscaped, irrigated yard area with the native vegetation only within the most distant 30

ft., the potential for additional brush clearance requirements in the open space area is minimal. In addition, the brush management required within the existing on-site habitat area is minimal, i.e. clearance of dead vegetation. Therefore, it is possible to design a plan for the 100 ft. brush management zone to protect the guesthouse which will not adversely affect the existing habitat value in the open space. Additionally, there is minimal potential that more substantial brush clearance will be required in the future. If this were not the case, the Commission would require the project be redesigned to avoid adverse impacts to the on-site open space or deny the guesthouse.

Therefore, Special Condition #1 has been attached which requires the submittal of a plan for the 100 ft. brush management zone, that assures only dead brush material will be removed from within the open space as required for the initial construction of the guesthouse, and that any future brush management on the property relating to the guesthouse will require approval by the Commission prior to commencement. In addition, the brush management program shall include a requirement that a licensed biologist be present during brush management activity to assure the activities are consistent with the approved plan and that the California Gnatcatchers are not present. If it is determined that Gnatcatchers are present, brush management work must cease, until the biologist determines they are no longer present. Further, the condition requires the property owner to maintain the open space and avoid introduction of non-native or invasive species that may increase the fuel load. In this way, the potential for adverse impacts to environmentally sensitive habitat will be reduced to the maximum extent possible.

In addition, Special Condition #2 has been attached which requires any future addition or modification to the existing residence or the approved guesthouse receive a coastal development permit or amendment to the subject permit. In this way, if any improvement is proposed on the property, particularly closer than existing development to the open space, the Commission can be assured no development will occur that would result in additional impacts to the open space area or environmentally sensitive habitat due to brush management requirements.

Special Condition #4 has also been attached to require the property to record a deed restriction against the property so as to notify all future property owners of the terms and conditions of approval to which they will also be responsible to adhere to.

In summary, the proposed development, as conditioned to protect the environmentally sensitive habitat area within the adjacent open space, will not result in adverse impacts to native vegetation due to brush management and fire safety concerns. Therefore, the proposed project can be found consistent with Sections 30231 and 30240 of the Coastal Act.

3. Runoff/Water Quality. Section 30231 of the Coastal Act is applicable to the proposed development and 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 order to reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, Special Condition #3 is attached. The condition requires that runoff from the roof, driveway and other impervious surfaces be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing runoff through landscaping is a well-established BMP for treating runoff from small developments such as the subject proposal. As conditioned, the proposed development will serve to reduce any impacts to water quality from the project to insignificant levels.

4. Visual Resources. 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...

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be considered and protected and that development be sited and designed to protect views along scenic coastal areas. The proposed project site is located well inland of the shoreline and is not visible from San Elijo Lagoon which is located northwest of the site or from any scenic roadways or recreational areas. Additionally, the proposed project is compatible in size and scale with the pattern of development in the subject area. As such, the project will not adversely impact the visual quality of the area, and can be found consistent with Section 30251 of the Act.

5. Public Access. As the proposed development will occur between the first public roadway (El Camino Real) and the sea (San Elijo Lagoon in this case), a public access finding must be made that such development is in conformity with the public access and public recreation policies of the Coastal Act.

While the proposed development is located well inland of the coast, public access and recreational opportunities exist at nearby San Elijo Lagoon Ecological Reserve and Regional Park. However, there are currently no such trails existing or planned on the subject site and the proposed development will not impede access to the lagoon over that which currently exists. Therefore, the proposed development would have no adverse

impacts on public access opportunities, consistent with the public access policies of the Coastal Act.

6. 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 County of San Diego previously received approval, with suggested modifications, of its Local Coastal Program (LCP) from the Commission. However, the suggested modifications were never accepted by the County and therefore, the LCP was never effectively certified. While the LCP was never effectively certified and the standard of review for development in the unincorporated County of San Diego is Chapter 3 policies of the Coastal Act, the Commission does use the County LCP as guidance.

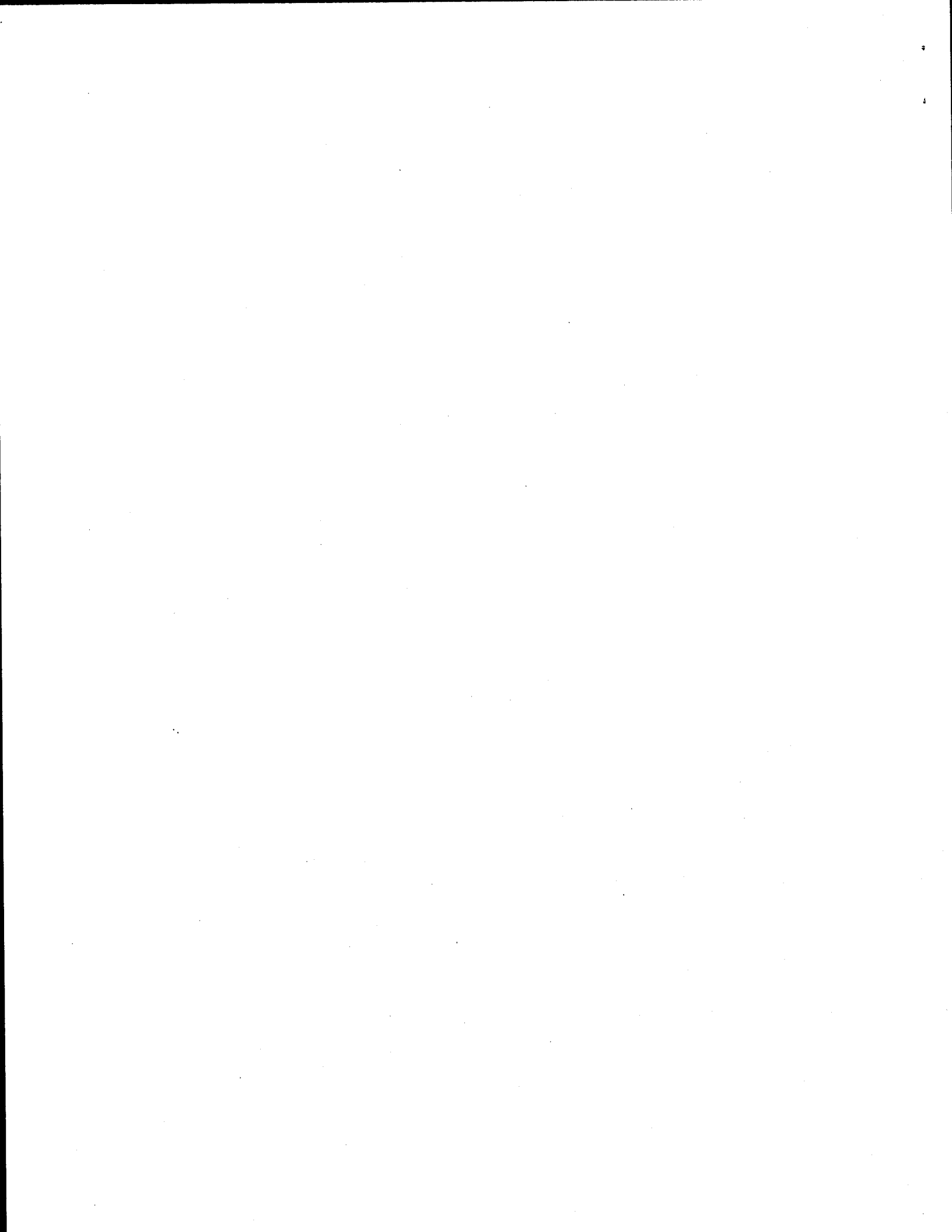
The project site is also located within the County's Coastal Resource Protection (CRP) Overlay area, which calls for the protection of steep naturally vegetated areas. As conditioned, the proposed project is consistent with the CRP provisions. As discussed above, the Commission finds that approval of the proposed development, as conditioned, will not adversely impact environmentally sensitive habitat areas and is consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that project approval will not prejudice the ability of the County of San Diego to obtain an effectively certified LCP.

7. 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 requiring maintenance and monitoring of the open space area relating to brush management, future development restrictions and incorporation of Best Management Practices 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.

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.



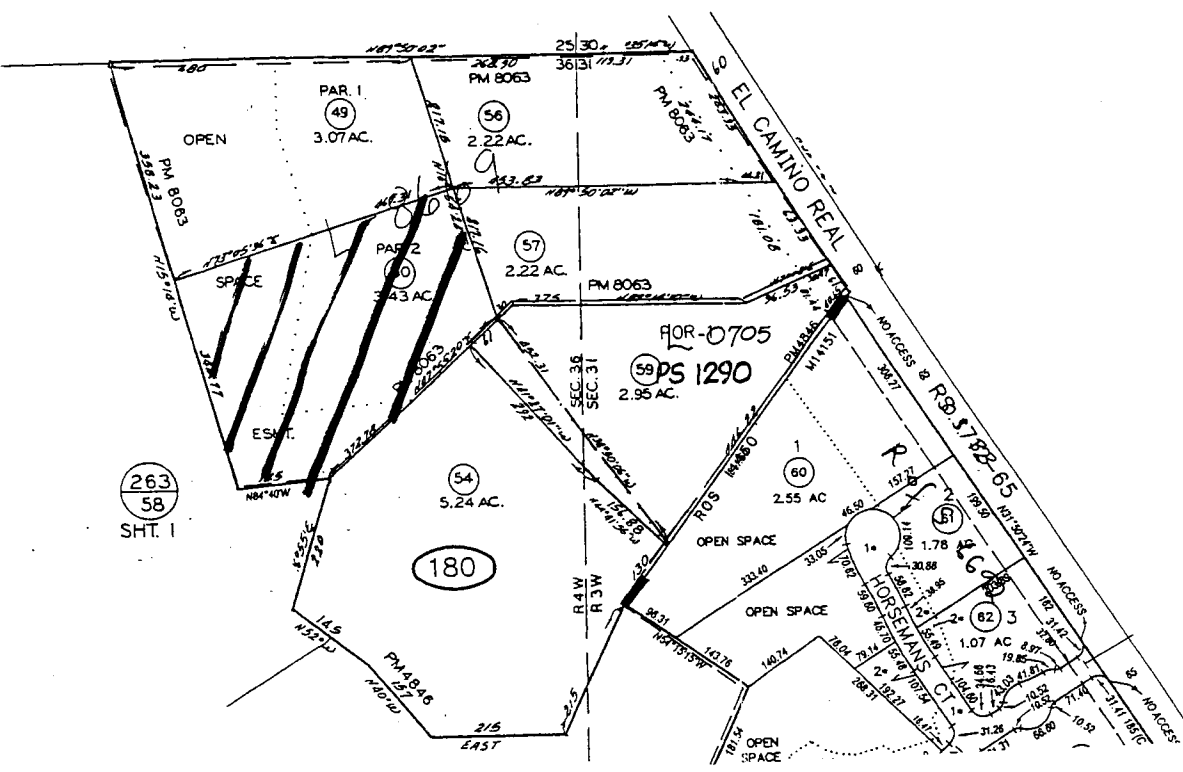
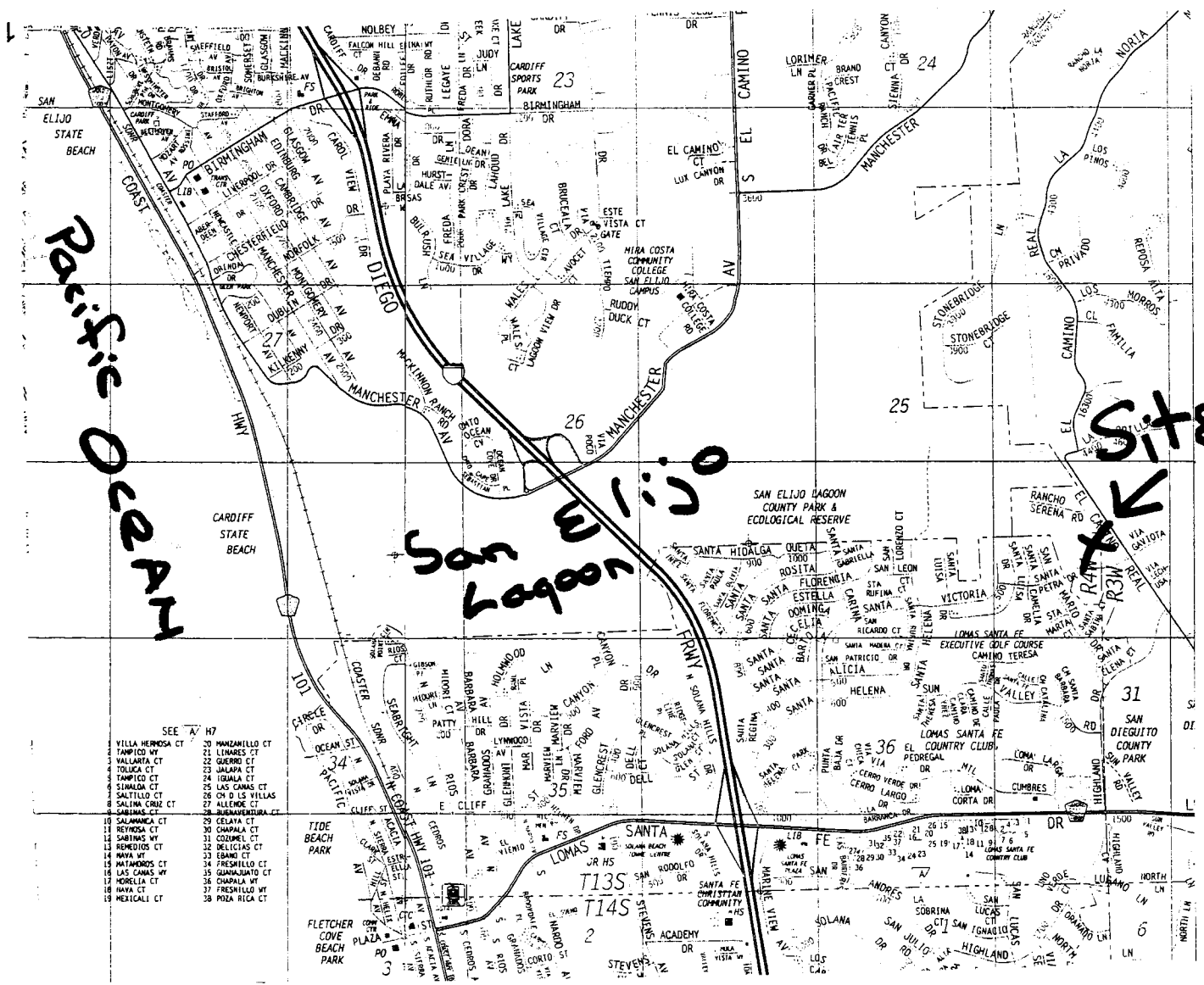
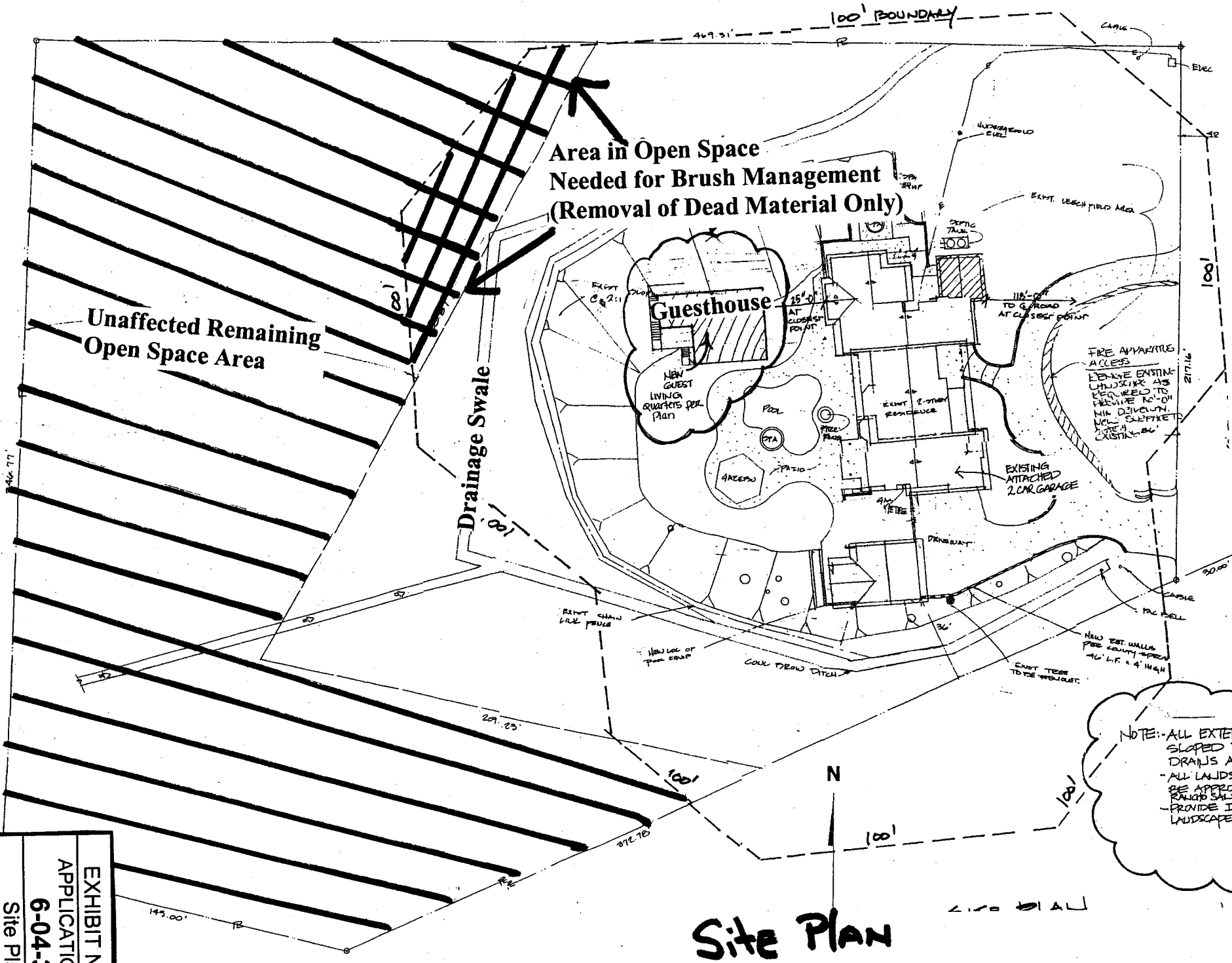



EXHIBIT NO. 1  
 APPLICATION NO.  
**6-04-31**  
 Location Map




 California Coastal Commission  
**EXHIBIT NO. 2**  
**APPLICATION NO. 6-04-31**  
**Site Plan**