

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY



Thu 7a

Staff: GDC-SD
Staff Report: December 16, 2004
Hearing Date: January 12-14, 2005

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-89-34-A1

Applicant: Colleen and Kenneth Roth

Agent: David Soames

Original

Description: Expand approved graded pad from 10,512 sq. ft. to 15,640 sq. ft., modify design of approved residence with minor increase in square footage, remove existing railroad-tie stairway and portions of an existing perimeter wall, construct new stairs and three- and six-foot high garden walls along northern and western property and install new drainage system

Proposed

Amendment: Allow brush management for fire safety purposes to occur within the open space deed restricted area.

Site: 4839 Rancho Sol Court, San Diego County

Substantive File Documents: Certified County of San Diego Local Coastal Program (LCP); "Notice to Abate Hazard" Rancho Santa Fe Fire Protection District dated 8/20/04; "Biological Conditions, 4839 Rancho Sol Court" by Pacific Southwest Biological Services, Inc. dated 9/17/04; CDP Nos. 6-84-374/Carson and 6-89-34/Smith.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed brush management with conditions to assure the removal of all non-native vegetation, the replanting with drought-tolerant native and non-invasive species and for the work to occur outside of the California Gnatcatcher breeding season. Staff is also recommending the project be conditioned to assure that any future brush management on the subject property will be consistent with the approved plan. The primary issue raised by the subject development relates to protection of environmentally sensitive habitat areas. In this particular case, while the Commission previously required the slopes adjacent to the home be placed in open space, the Commission's staff ecologist has reviewed the proposal and determined that the proposal will not result in use of or adverse impacts to the habitat values of an environmentally sensitive habitat area, consistent with the Coastal Act and the previous Commission decision on this site.

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. 6-89-34-A1 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 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. Standard Conditions.

See attached page.

III. Special Conditions.

The permit, as amended, is subject to the following condition:

1. Final Brush Management Plan. PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT 6-89-034-A1, the applicants shall submit to the Executive Director, for review and written approval, a final brush management plan that has been approved by the Rancho Santa Fe Fire Department. Said plan shall be in substantial conformance with the proposed plan outlined in Pacific Southwest Biological Services, Inc.'s letter of September 17, 2004 to Dr. Kenneth and Colleen Roth but shall be revised to include the following:

- a. A qualified landscape architect or biologist shall be onsite during all brush management activities to assure the work is performed consistent with the approved plans and to assure that California Gnatcatchers are not present.
- b. Brush management activities are prohibited if California Gnatcatchers are present.
- c. No work shall occur during the breeding season of the California Gnatcatcher, February 15th through August 30th of any year.
- d. Replacement of all non-native vegetation with native, drought-tolerant and non-invasive plant species compatible with the adjacent coastal sage scrub and chaparral plant community shall be required within the 100 ft. wide brush management area.
- e. Any future brush management within the open space deed restriction area shall be consistent with the brush management plan approved herein.

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

2. **Prior Conditions of Approval.** All terms and conditions of the original approval of Coastal Development Permit #6-89-34 shall remain in full force and effect.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. **Project History/Site/Amendment Description.** The proposed development involves brush management activity within an open space deed restricted area. The existing open space deed restriction, required as a result of Commission action in 1989 involving the existing single-family residence, prohibits the removal of any vegetation within the open space area without Commission approval (Ref. CDP 6-89-34/Smith). The subject amendment will authorize brush management/fire suppression work to occur within the deed restricted open space. The applicant proposes to remove most exotic vegetation from within 100 ft. of the existing single-family residence, re-plant the exotic vegetation areas with native, non-invasive species and trim all remaining native vegetation to within 6 inches of the ground. However, since the rear yard of the residence is approximately 40 ft. in deep, the actual work that will occur within the open space area is limited to the approximately 60 ft. beyond the existing yard area. The applicant's proposal is in response to an abatement order from the Rancho Santa Fe Fire Department. In consideration of the Commission's deed restriction and permit

jurisdiction, the Fire Department has agreed to hold the abatement order in abeyance until the Commission has reviewed the development request.

The project site is located on an approximately 2.8 acre lot in the unincorporated area of San Diego County, east of Solana Beach and just north of the San Dieguito River Valley. This area is characterized by large estate-sized single-family residences located on steep slopes with native vegetation. The existing residence was constructed in approximately 1988 following Commission approval of Coastal Development Permit #6-85-374/Carson). In approving the residence in 1985, the Commission identified that approximately 84% of the lot involved natural slopes in excess of 25% in grade. At the time of Commission action in 1985, the property was located within the Coastal Resource Protection Area of the approved San Dieguito Land Use Plan which placed restrictions on development onto natural slopes of 25% or greater primarily for protection of native habitats, but also to limit alteration of natural landforms and protect visual resources associated with the natural slopes. As a result, the Commission minimized impacts to the steep slopes areas by approving an approximately 4,945 sq. ft. single-family residence on an approximately 10,912 sq. ft. building pad at the top of the steep slopes, adjacent to an existing street and required adequate runoff control measures to avoid erosion of the steep slopes. However, in violation of that permit, the property owner constructed an approximately 15,640 sq. ft. building pad along with a slightly larger residence (approximately 4,976 sq. ft.) and failed to provide adequate erosion control mechanisms. The unpermitted development resulted in an additional encroachment of approximately 5,000 sq. ft. of steep slope area resulting from the expanded building pad and its manufactured slope. In 1989, a subsequent property owner requested after-the-fact approval for the developed residence and building pad along with new improvements including construction of 3 to 6 ft. high garden walls and a new drainage system (ref. 6-89-34/Smith). The Commission approved the application in April of 1989 as CDP 6-89-34 but required the property owner to place all areas outside of the generally flat building pad into deed restricted open space prohibiting any alteration of landform, removal of vegetation or erection of structures without approval by the Commission or its successor in interest. No provision was included to allow for brush management for fire safety purposes. In addition, to mitigate for the additional 5,000 sq. ft. of steep slope encroachment, the Commission required that the manufactured slope resulting from the unpermitted grading be restored through the removal of non-native plant species and its replacement with native, drought-tolerant species "compatible with the adjacent coastal sage scrub and chaparral plant community." Based on the applicant's existing vegetation survey, the manufactured slope area currently contains mostly non-native, exotic vegetation.

The subject site is located in the County of San Diego, east of Solana Beach. While the County of San Diego did receive approval, with suggested modifications, of its Local Coastal Program (LCP) submittal from the Commission in 1985, the County never accepted the suggested modifications and thus, the LCP was never effectively certified. As such, the standard of review is the Chapter 3 policies of the Coastal Act with the Commission-approved version of the County LCP submittal used as guidance.

2. Resource Protection. The following Coastal Act policies are applicable to the proposed development:

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 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 30251.

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act section 30240 was implemented in the previously Commission-approved version of the County of San Diego LCP through the Coastal Resource Protection (CRP) overlay zone. The CRP regulations restricted development of naturally vegetated steep slopes to maintain the visual and habitat values of coastal areas, to maintain natural landforms and to avoid grading and sedimentation impacts on sensitive lagoon resources located downstream. The subject property is located approximately ½ mile north of San Dieguito River Valley which flows into San Dieguito Lagoon and the Pacific Ocean. The CRP designator also triggered the Scenic Area regulations in the Commission-approved

version of the County LCP. Section 30240 of the Coastal Act requires that new development on existing lots must avoid impacts to Environmentally Sensitive Habitat Area (ESHA) that would significantly degrade the area or cause significant disruption of habitat values. Also, to reduce risk to property and protect valued open space, natural landforms and critical habitat consistent with the Coastal Act, new development should not be located in a hazardous location.

The existing approximately 2.8 acre lot contains an approximately 4,976 sq. ft. two-story residence on an approximately 15,640 sq. ft. building pad and surrounding manufactured slope. The remaining lot area consists of steep slopes in excess of 25% containing non-native and native vegetation. The local Fire Department is requiring that the applicant perform brush management activities within a 100 feet of the existing residence that include the removal of exotic plants, the replanting with native, drought-tolerant and fire-resistant species and the trimming of all remaining native species. The Commission's staff ecologist, Dr. Dixon, has reviewed the vegetation in the open space and has determined that while vegetation within the brush management zone is good quality native chaparral and coastal sage scrub, it is not considered an Environmentally Sensitive Habitat Area (ESHA) since the area is generally isolated and there is no information documenting the use of the site as California Gnatcatcher breeding habitat. Therefore, in Dr. Dixon's opinion, the removal of non-native plants, replanting with native and the thinning of native plants for brush management purposes will not impact any ESHA.

However, while the slope where the proposed brush management will occur is not ESHA, it is a large lot adjacent to other steep slope lots containing native chaparral and coastal sage scrub and is located approximately ½ mile from San Dieguito River Valley which empties into San Dieguito Lagoon and the Pacific Ocean approximately 1 mile to the west. As such, the planted areas serve as natural habitat for non-endangered species and to inhibit erosion of the steep slopes which could lead to sediments adversely the coastal waters of the Pacific Ocean approximately 1 mile west as well as the waters of nearby San Dieguito River Valley and Lagoon. In addition, non-native, invasive plants located so close to the riparian and wetlands resources of San Dieguito Lagoon and River Valley can lead to the introduction of exotic plants into riparian and wetland areas. To assure that the resources of the nearby lagoon and river valley area fully protected, consistent with Section 30231, Special Condition #1 requires that any existing non-native or invasive plant species within the 100 ft. brush management area be removed and replaced as necessary with native and non-invasive species. Specifically, the condition requires that the native and non-invasive species be "compatible with the adjacent coastal sage scrub and chaparral plant." As previously described, the original developer of the subject site graded approximately 5,000 sq. ft. of naturally vegetated steep slope area on the property in excess of that authorized by the Commission in 1985 (ref. 6-85-374/Carson). As mitigation for the unauthorized encroachment, the Commission required the manufactured slopes surrounding the development pad be planted with native and non-invasive species so as to be "compatible with the adjacent coastal sage scrub and chaparral plant." Therefore, in addition to re-planting the brush management zone with species that are fire resistant, Special Condition #1 will be consistent with the Commission's previous action regarding plantings on the manufactured slope while being

fully protective of the riparian and wetland resources of San Dieguito Lagoon and River Valley. The Commission's ecologist, Dr. Dixon, has indicated that although the site is not ESHA, it is possible that California Gnatcatcher could occasionally visit the site. Thus, to be most protective of the area resources, Special Condition #1 also requires a landscape architect or plant biologist be present during all brush management activities to assure no work occurs if California Gnatcatcher should happen to be onsite and that no brush management activity occurs during the Gnatcatcher breeding season.

Section 30251 of the Act also requires that the scenic and visual resources of the coastal zone be protected and enhanced. While the site is not located within the critical viewshed overlay of the Commission-approved version of the County's LCP which is used for guidance, the site is visible from within San Dieguito River Valley approximately ½ mile to the south as well as from Via De La Valle, a major coastal access road. Any development that affects visual appearance of the naturally vegetated steep slopes or alters the natural landform has the potential to adversely affect the scenic resources of the area. In this case, the proposed brush management plan involving the removal of non-native plants and the replanting with native plants will serve to improve the natural visual appearance of the area, particularly the area containing a manufactured slope, consistent with the requirements of Section 30251.

In summary, the proposed brush management is necessary to assure adequate fire protection for the existing residence on the site. While the brush management will occur in a deed restricted open space area, the deed restriction provides for Commission approval of the work, and based on the analysis above, the work is consistent with Coastal Act section 30240 in that it will not result in any impacts to ESHA. In addition, as proposed and conditioned, non-native and invasive plants will be removed from this natural area and replaced with native, non-invasive plants that are compatible with the surrounding natural area. As conditioned to maximize protection of the site's natural vegetation and steep slopes, the Commission finds that the subject proposal is consistent with Section 30240 and 30251 of the Coastal Act.

3. 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 Commission-approved version of 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 that conforms with the provisions of Chapter 3 of the Coastal Act.

4. 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.

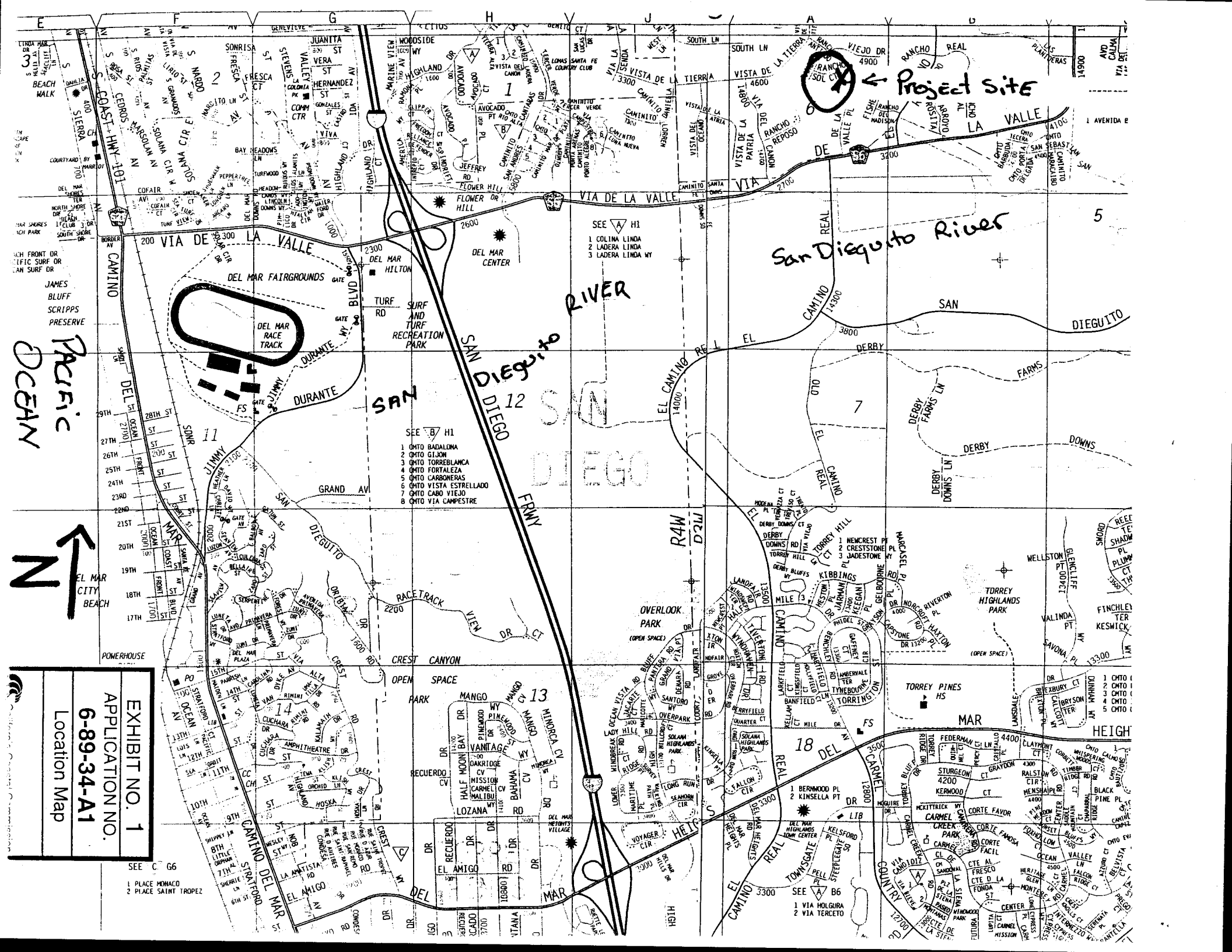
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including the removal of exotic plants and replanting with native, non-invasive species, monitoring of the brush management activity by a qualified landscape architect or biologist and prohibition of work during the California Gnatcatcher breeding season will minimize all potential 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.

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Project Site

Pacific
Ocean



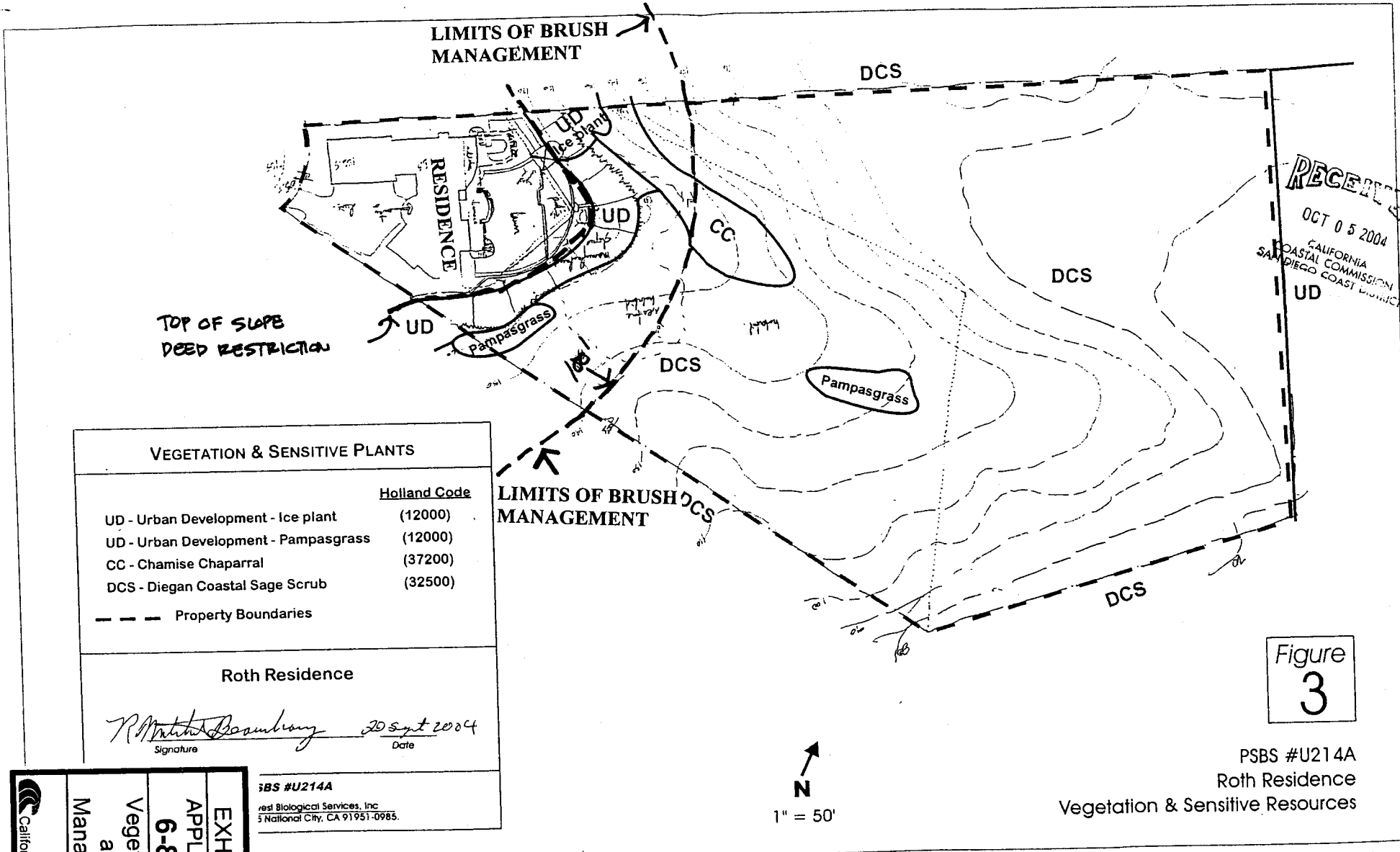
EXHIBIT NO. 1
APPLICATION NO.
6-89-34-A1
Location Map

- SEE B/H 1
- 1 QMTO BADALONA
 - 2 QMTO GILJON
 - 3 QMTO TORREBLANCA
 - 4 QMTO FORTALEZA
 - 5 QMTO CARBONERAS
 - 6 QMTO VISTA ESTRELLADO
 - 7 QMTO CABO VIEJO
 - 8 QMTO VIA CAMPESTRE

- SEE H 1
- 1 COLINA LINDA
 - 2 LADERA LINDA
 - 3 LADERA LINDA WY

- SEE B 6
- 1 VIA HOLGUERA
 - 2 VIA TERCEO

- SEE C 66
- 1 PLACE MONACO
 - 2 PLACE SAINT TROPEZ



VEGETATION & SENSITIVE PLANTS	
	Holland Code
UD - Urban Development - Ice plant	(12000)
UD - Urban Development - Pampasgrass	(12000)
CC - Chamise Chaparral	(37200)
DCS - Diegan Coastal Sage Scrub	(32500)
- - - Property Boundaries	
Roth Residence	
<i>R. M. Deambrosio</i>	20 Sept 2004
Signature	Date

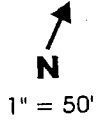
EXHIBIT NO. 3
 APPLICATION NO.
6-89-34-A1
 Vegetation Survey
 and Brush
 Management Area
 California Coastal Commission

PSBS #U214A
 West Biological Services, Inc.
 5 National City, CA 91951-0985.

RECEIVED
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 UD

Figure
3

PSBS #U214A
 Roth Residence
 Vegetation & Sensitive Resources



Open Space



continued to property lines

EXIST. R.R. TIE STAIRS TO BE REMOVED

EXIST. WALL TO REMAIN

EXIST. WALL TO BE DEMOLISHED

EXISTING RESIDENCE

Open Space

RANCHO SOL COURT

SITE PLAN

SC: 1"=10'

LEGAL DESCRIPTION

LOT 15, SUN VALLEY BLUFFS SUBDIVISION
COUNTY OF SAN DIEGO, CALIFORNIA
A.P.N. = 302-221-07

EXHIBIT NO. 4
APPLICATION NO.
6-89-34-A1
Original Open Space Exhibit
California Coastal Commission

