

## CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY



# Thu 8c

Filed: 6/16/05  
49th Day: 8/4/05  
180th Day: 12/13/05  
Staff: GC-SD  
Staff Report: 10/27/05  
Hearing Date: 11/17/05

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-88-535-A2

Applicant: Dan Stone

**Original**

Description: Demolish existing residence and construct two approximately 3,500 sq. ft., three bedroom, single-family residences on two vacant lots totaling 1.44 acres. Also proposed is a fee dedication of the wetlands portion of the parcels.

**Proposed**

Amendment: Request to amend Special Condition #2 of original permit to allow for the construction of a deck that includes an approximately 42-inch high rail surrounding the deck and barbeque within the open space deed restricted area. Deck will be constructed on existing approximately 18-inch high concrete pilings.

Site: 2512 San Elijo Avenue, Cardiff, Encinitas, San Diego County.  
APN 261-190-30

Substantive File Documents: City of Encinitas Local Coastal Program; Coastal Development Permit 6-88-535/De Remer; City Coastal Development Permit 04-078; "Summary of Wetland Boundary Determination for 2512 San Elijo Avenue, Cardiff" by Mooney & Associates, dated 6/13/03; Letter from Dept. of Fish and Game, "Re: Dan Stone residence deck at San Elijo Lagoon, Encinitas, California" dated 2/8/05.

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STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending denial of the request to amend the deed restricted open space area to allow for the construction of a deck. The subject site is on a hillside adjacent to San Elijo Lagoon. The original coastal development permit approved by the Commission prior to certification of the City's LCP

required that an open space area between the residences and the nearby wetlands be deed restricted to prohibit development from occurring within the area as a protective buffer between the residences and the nearby wetlands and lagoon resources. The effect of the proposed amendment would substantially diminish the required buffer between the residence and the wetlands. In addition, the original permit required that effective landscape screening of the homes be installed along the southern perimeter of the homes and that the area within the open space be planted with native species and that non-native, invasive plants be removed. This landscaping was not installed or has subsequently been removed. The proposed deck would be located within the area where the required landscape screening should be located to effectively screen the home from public views off-site. With construction of the deck, the applicant has indicated that the previously required landscape screening cannot be placed along the southern perimeter of the home. Therefore, staff is recommending denial of the request to allow the deck to be constructed within the required open space.

The proposed development occurs within the City of Encinitas's coastal development permit jurisdiction. As such, the City has reviewed and approved the proposed development (Ref. 04-078 CDP) with conditions. The local coastal development permit was appealable, however, no appeals were filed. In particular, Commission staff did not believe an appeal was warranted at the time since the local decision was conditioned with, among other things, a requirement that the applicant first receive an approved amendment to Coastal Commission permit # 6-88-535 to allow development to occur within the deed restricted area. If the Commission denies the applicant's request to amend the open space deed restriction requirement, the local coastal permit will not become effective.

Due to Permit Streamlining Act (PSA) requirements, the Commission must act on the application request at its November 2005 hearing unless a 90-day extension is granted by the applicant.

Standard of Review: City of Encinitas certified Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act.

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**I. PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

**MOTION:** I move that the Commission approve proposed Coastal Development Permit amendment No. 6-88-535-A2 for the development as proposed by the applicant.

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT AMENDMENT:**

The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of certified LCP. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The original project involved the construction of two residential homes on steep slopes adjacent to San Elijo Lagoon, an environmentally sensitive habitat (ref. CDP 6-88-535/De Remer). Special Conditions of approval for the residential developments included a requirement to deed restrict an open space area approximately 100 ft. in width between the residences and the wetland of San Elijo Lagoon. The applicant subsequently recorded the deed restriction. The open space deed restriction "prohibits any alteration of landforms, removal of vegetation or erection of structures of any type, . . . without the written approval of the Coastal Commission or its successor in interest."

In addition, special conditions of approval for the residences included a requirement to revegetate and landscape the area between the homes and the wetlands. The revegetation/landscaping was authorized to occur within the deed restricted open space area. The applicant was required to remove invasive, non-native plants and to re-plant with drought-tolerant native plants. In addition, the applicant was required to plant trees and other landscaping along the southern perimeter of the buildings to break-up the façade of the buildings and screen the buildings from public views from within the lagoon and other public areas such as Highway 101 (Ref. Special Condition #6 of CDP #6-88-535). In addition, the permit was conditioned to require that the residences be designed with exterior materials and colors that are earth toned so as to minimize the project's contrast with the surrounding hillside and the lagoon environment (Ref. Special Condition #7 of CDP #6-88-535). In violation of the original permit, the homes have subsequently been painted white and the landscaping was either not placed or has been subsequently removed. There currently is no landscaping that breaks up the façade of the residences. As a result, the existing white-colored residences are highly visible from Highway 101 and other public areas.

The applicant is requesting to amend Special Condition #2 of the original permit which required that an open space deed restriction be placed over the area that lies between the

residences and the wetlands that exist within San Elijo Lagoon and that development within the open space area be prohibited. The open space area ranges from 75 ft. to 100 ft. between the residences and the wetlands. The applicant is requesting to construct an approximately 664 sq. ft. deck that will extend approximately 22 to 25 ft. into the open space deed restricted area. Most, if not all, of the deck will be located within the deed restricted open space area. The deck is proposed to be surrounded by an approximately 42-inch high rail. Concrete steps are proposed to extend from the west side of the residence to the deck. A 20 ft.-long retaining wall is also proposed to support a proposed 20 ft.-long, 2 ft. wide barbeque/countertop/refrigerator complex. The barbeque complex and retaining wall are proposed to be located outside of the open space deed restricted area between the residence and the deck.

2. Environmentally Sensitive Habitat/Wetlands. The following certified Land Use Policies from the certified Encinitas LCP apply to the proposed development:

Resource Management Policy 10.6:

The City shall preserve and protect wetlands within the City's planning area. "Wetlands" shall be defined and delineated consistent with the definitions of the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the Coastal Act and the Coastal Commission Regulations, as applicable, and shall include, but not be limited to, all lands which are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

There shall be no net loss of wetland acreage or resource value as a result of land use or development, and the City's goal is to realize a net gain in acreage and value when ever possible.

[...]

The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. Unless otherwise specified in this plan, use and development within buffer areas shall be limited to minor passive recreational uses with fencing, desiltation or erosion control facilities, or other improvements deemed necessary to protect the habitat, to be located in the upper (upland) half of the buffer area when feasible.

All wetlands and buffers identified and resulting from development and use approval shall be permanently conserved or protected through the application of an open space easement or other suitable device.

[...]

Resource Management Policy 10.10

The City will encourage and cooperate with other responsible agencies to plan and implement an integrated management plan for the long-term conservation and restoration of wetlands resources at San Elijo Lagoon (and where it applies, Batiquitos Lagoon), Escondido and Encinitas Creeks and their significant upstream feeder creeks, according to the following guidelines:

[. . .]

Adequate buffer zones should be utilized when development occurs adjacent to the floodplain and sensitive habitats; 100 foot wide buffers should be provided adjacent to all identified wetlands, and 50 foot wide buffers should be provided adjacent to riparian areas. In some cases, smaller buffers may be appropriate, when conditions of the site as demonstrated in a site specific biological survey, the nature of the proposed development, etc., show that a smaller buffer would provide adequate protection; and when the Department of Fish and Game has been consulted and their comments have been accorded great weight.

[. . .]

Human uses of the wetland and adjacent areas should be compatible with the primary use of the wetland as a natural value;

[. . .]

The integrity of the existing natural system (in particular, topography, hydrology, and vegetative cover) should not be disturbed, except as required to restore internal lagoon water circulation, tidal flushing, and plant habitat improvements;

(The City's certified Implementation plan contains similar policy requirements.)

The applicant is requesting to amend a deed restricted open space area that functions as an approximately 100 ft. wide natural buffer between the wetlands of San Elijo Lagoon and the residence. Resource Management Policies 10.6 and 10.10 both require 100 ft. buffers adjacent to wetlands. In approving the residential structures in 1989, the Commission found that the buffer was necessary to prevent future impacts to the environmentally sensitive habitat of the lagoon. Along with requiring revegetation of the site using native plants and the removal of invasive, non-native plants, the project was designed to assure that future impacts to the wetland resources would be effectively mitigated. The current applicant however, is requesting permission to construct an approximately 664 sq. ft. deck that extends approximately 22 to 25 ft. into the 100 ft. wide wetland buffer. The purpose of the deed restricted open space area was to assure permanent protection in the form of a natural buffer between the residence and any wetlands. The resulting deck could effectively reduce the resource value of the open

space and lead to future demands by the neighboring homeowners for development, such as a deck, within the open space area.

The applicant has performed updated wetlands delineation for the area surrounding the residence and open space area ("Summary of Wetland Boundary Determination for 2512 San Elijo Avenue, Cardiff" by Mooney & Associates dated 6/13/05). This report identifies that the existing subject residence is located from between 75 ft. and 130 ft. from wetlands. The deck is proposed to be sited on the south side of the property in proximity to the closest identified wetlands, i.e., the wetlands that are within 75 ft. of the residence. The Department of Fish and Game (DFG) has reviewed the development request and has written a letter accepting a reduced buffer at this location with requirements that the deck be moved inland approximately 2 ft., that a 42-inch high rail surround the deck and that if glass is used, that it be tinted to make it visible to birds (Ref. Letter dated 2/8/05 to Keith Merkel from Dept. of Fish and Game). In addition, the letter requests that pampas grass be removed from within the wetland buffer. While the City's LCP, as cited above, does allow for a reduced buffer after consultation with DFG, in this particular case, the applicant has not revised the project to comply with the DFG requirements cited above. Therefore, construction of the deck will result in a reduced buffer that is insufficient to provide adequate protection to the nearby wetland resources of San Elijo Lagoon. As such, the Commission finds the proposed amendment request is inconsistent with the City's LCP provisions relating to wetlands protection and must be denied.

3. Protection of Viewsheds. Policy 4.6 requires that:

The City will maintain and enhance the scenic highway/visual corridor viewsheds.

In addition, RM Policy 4.7 requires:

The City will designate the following view corridors as scenic highway/visual corridor viewsheds:

... San Elijo Ave. (and Hwy 101) south of Cardiff Beach State Park to Santa Fe Drive ...

In addition, RM Policy 4.8 states that:

It is intended that development would be subject to the design review provisions of the Scenic/Visual Corridor Overlay Zone for those locations within Scenic View Corridors, along scenic highways and adjacent to significant viewsheds and vista points with the addition of the following design criteria:

[...] Development that is allowed within a viewshed area must respond in scale, roof line, materials, color, massing, and location on site to the topography, existing vegetation, and colors of the native environment.

The original permit for the construction of the homes required that the visual impacts of the residences be mitigated by the planting of effective landscaping screening along the southern perimeter of the homes and by restricting the colors of the homes to earth tones. Both residences are located on a slope overlooking San Elijo Lagoon, Highway 101 and Cardiff State Beach. As such the homes are highly visible by motorists and beachgoers. Although required to by coastal development permit #6-88-535, both property owners have failed to plant trees and other landscaping along the southern perimeter of the residences to break up the façade of the homes and have painted their homes white in violation of the permit. The LCP policies cited above clearly require that the viewshed along San Elijo Drive at this location overlooking the lagoon and ocean be protected. The proposed deck by itself does not necessarily raise significant visual concerns. The deck is located at lower elevation than the residence and is largely blocked by the railroad track berm that crosses San Elijo Lagoon. However, the proposed request to allow for development to occur within the deed restricted open space area will result in a conflict with ultimate resolution of the landscaping requirements for the homes.

The applicant has identified that after constructing the deck there will be inadequate room between the residence and the deck to install trees along the southern perimeter of the home as required by coastal development permit 6-88-535. The applicant indicates that the root systems of trees planted in such close proximity to the house would cause damage to the home. However, the applicant is proposing to install an approximately 20 ft. long retaining wall and approximately 20-ft. by 2-ft. wide barbeque grill/counter/refrigerator complex between the home and the deck. Therefore, based on the information provided by the applicant, it appears that the construction of the deck within the open space may preclude the ability of the applicant to plant trees and other effective landscaping along the southern perimeter of the home as required by coastal development permit #6-88-535. In addition, the deck (and presumably the barbeque complex) will be located in an area that was contemplated to be planted with landscape screening as mitigation for the impacts of the residential structures.

The amendment involves a request to amend the deed restricted open space area to allow for the construction of a deck within the open space. The City has already approved the deck, barbeque system and concrete stairway to the deck with a condition that requires Coastal Commission approval for development within the deed restricted open space area. Because the proposed amendment request may preclude the open space area from being used to satisfy the landscaping requirements of the original coastal development permit which would conflict with the visual resource protection policies of the above-cited LCP, the Commission denies the applicant's request to allow development to occur within the open space deed restricted area.

4. Public Access. The project site is located on the south side of San Elijo Avenue, overlooking San Elijo Lagoon, Highway 101 and Cardiff State Beach. San Elijo Avenue in this location is designated as the first public roadway. As the proposed development will occur between the first public roadway and the sea (San Elijo Lagoon in this case), pursuant to Section 30.80.090 of the City's LCP, 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.

The proposed development is located adjacent to San Elijo Lagoon but public trails across the site toward the lagoon do not currently exist and none are currently planned at this location. Public access and recreational opportunities, in the form of hiking, do exist in the area providing access into San Elijo Lagoon Ecological Reserve and Regional Park. Access to the trail system is available at the San Elijo Lagoon Visitor Center which is located within ¼ mile of the subject site. Access to the shoreline from this site through the lagoon also does not exist and would not be appropriate from this site since the Amtrak/Coastal Rail train tracks lie between this site and the shoreline. The proposed amendment request would not, therefore, impede access to the lagoon or to any public trails. Therefore, the proposed development would have no adverse impacts on public access or recreational opportunities, consistent with the public access policies of the Coastal Act.

5. Violation of Coastal Act. The existing residential developments were approved by the Commission in 1989 with special conditions that required the use of earth tones in the materials and coloring of the residences and extensive landscaping including trees along the southern perimeter of the residences. In violation of the permit, the homes were colored white and no trees or other effective landscaping was installed along the southern perimeter of the homes as required to break up the façade of the buildings.

Although a violation of coastal development permit 6-88-535 has occurred, consideration of this amendment application by the Commission has been based solely upon the policies and provisions of the certified City of Encinitas LCP as well as the public access and recreation policies of Chapter 3 of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violation.

6. Local Coastal Planning. The City of Encinitas has a certified LCP and has been issuing coastal development permits for its areas of jurisdiction since 1995. The subject site is zoned and designated for residential use in the certified LCP. The proposed request to amend the deed restricted open space area to allow development to occur would result in conflicts with the intent and goals of the wetlands policies and the visual resource protection policies of the LCP. Therefore, the Commission finds that the subject proposal would prejudice the ability of the City of Encinitas to continue to consistently implement its certified LCP.

7. 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 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 that the activity may have on the environment.



As discussed above, the proposed request to allow for development to occur within a deed restricted open space area is inconsistent with the policies of the certified Encinitas LCP. The proposed request would have adverse environmental impacts to the wetlands buffer area upland of San Elijo Lagoon and could preclude the planting of landscaping needed to mitigate the visual appearance of the residence. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include the no project alternative or effective landscaping as required by the original permit. With consultation with DFG, these alternatives would eliminate all adverse impacts to the wetlands and would minimize adverse visual impacts associated with the existing development. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and must be denied.



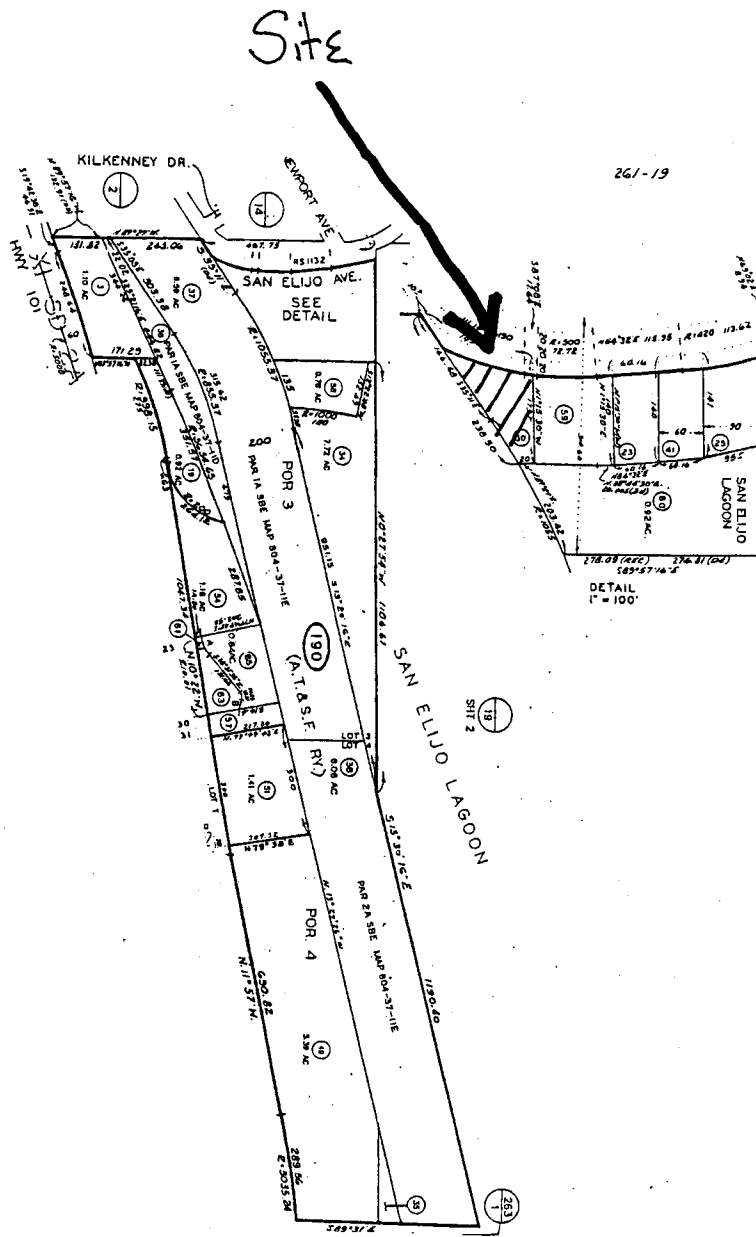
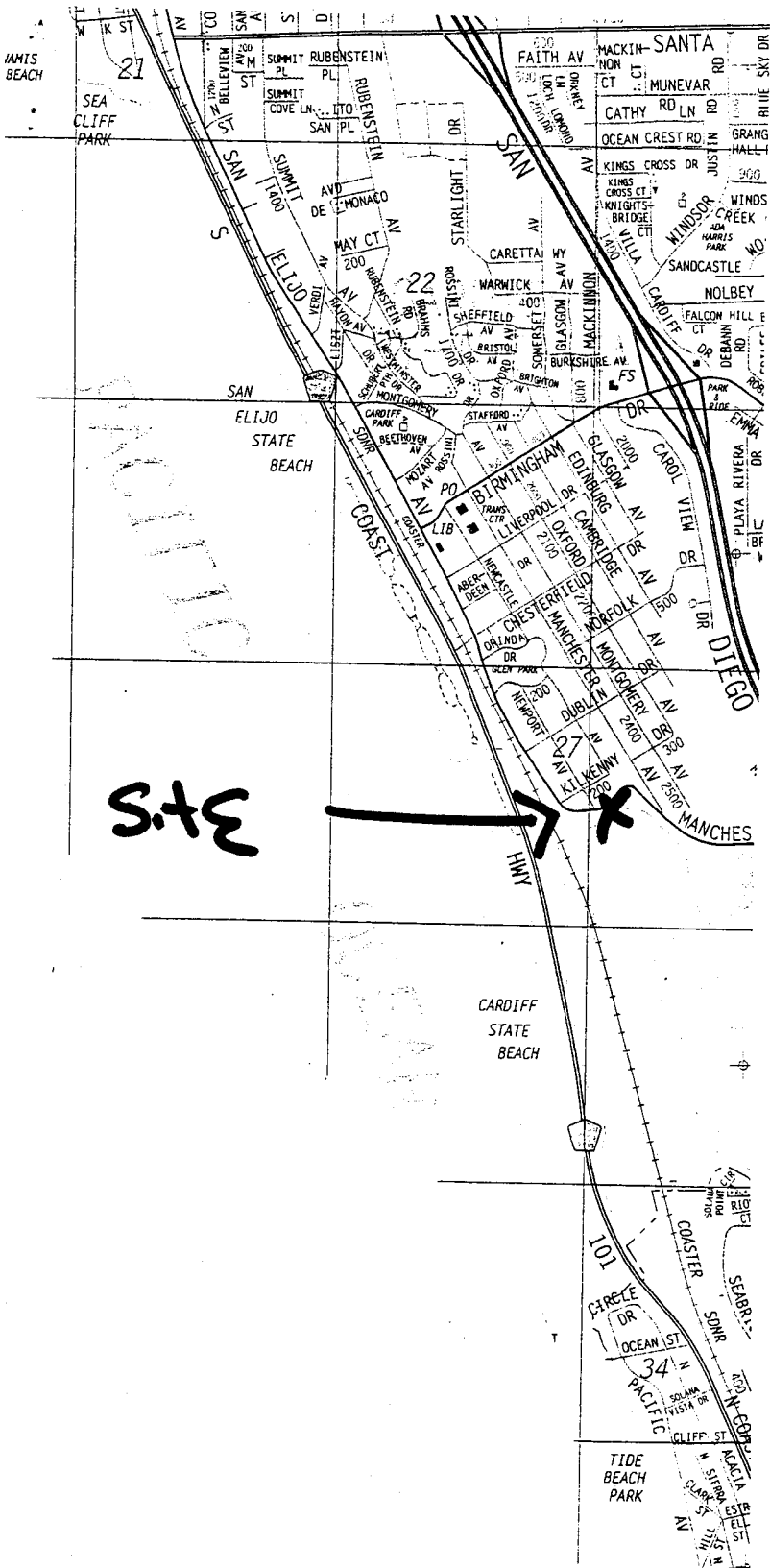
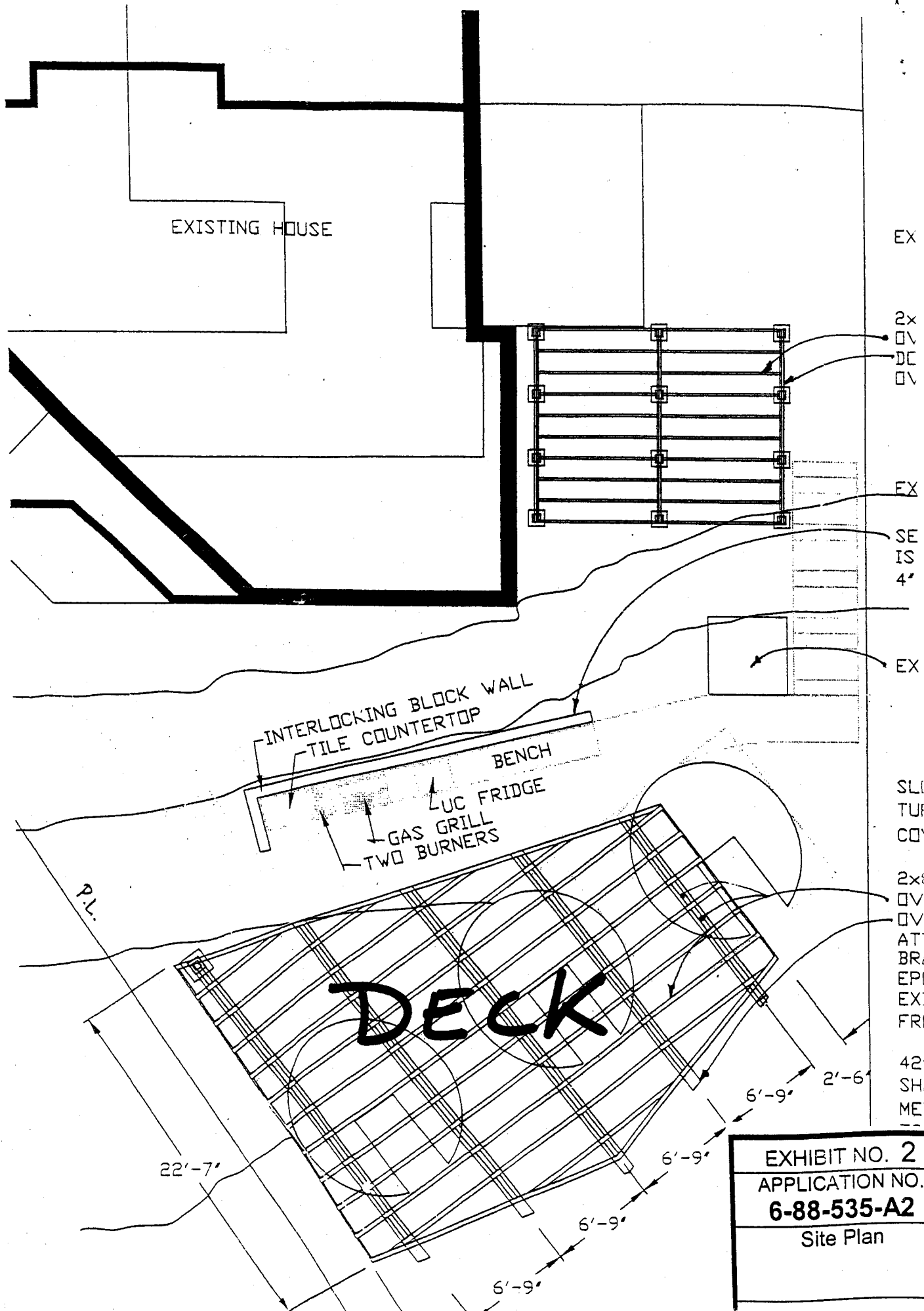


EXHIBIT NO. 1  
 APPLICATION NO.  
**6-88-535-A2**  
 Location Map

California Coastal Commission





EXISTING HOUSE

EX

2x  
4x  
4x

EX

SE  
IS  
4"

EX

INTERLOCKING BLOCK WALL  
TILE COUNTERTOP

BENCH

LUC FRIDGE  
GAS GRILL  
TWO BURNERS

P.L.

DECK

SLU  
TUF  
CO

2x  
4x  
4x  
AT  
BR  
EPI  
EX  
FRI

42'  
SH  
ME

22'-7"

6'-9"

6'-9"

6'-9"

6'-9"

2'-6"

EXHIBIT NO. 2  
APPLICATION NO.  
6-88-535-A2  
Site Plan

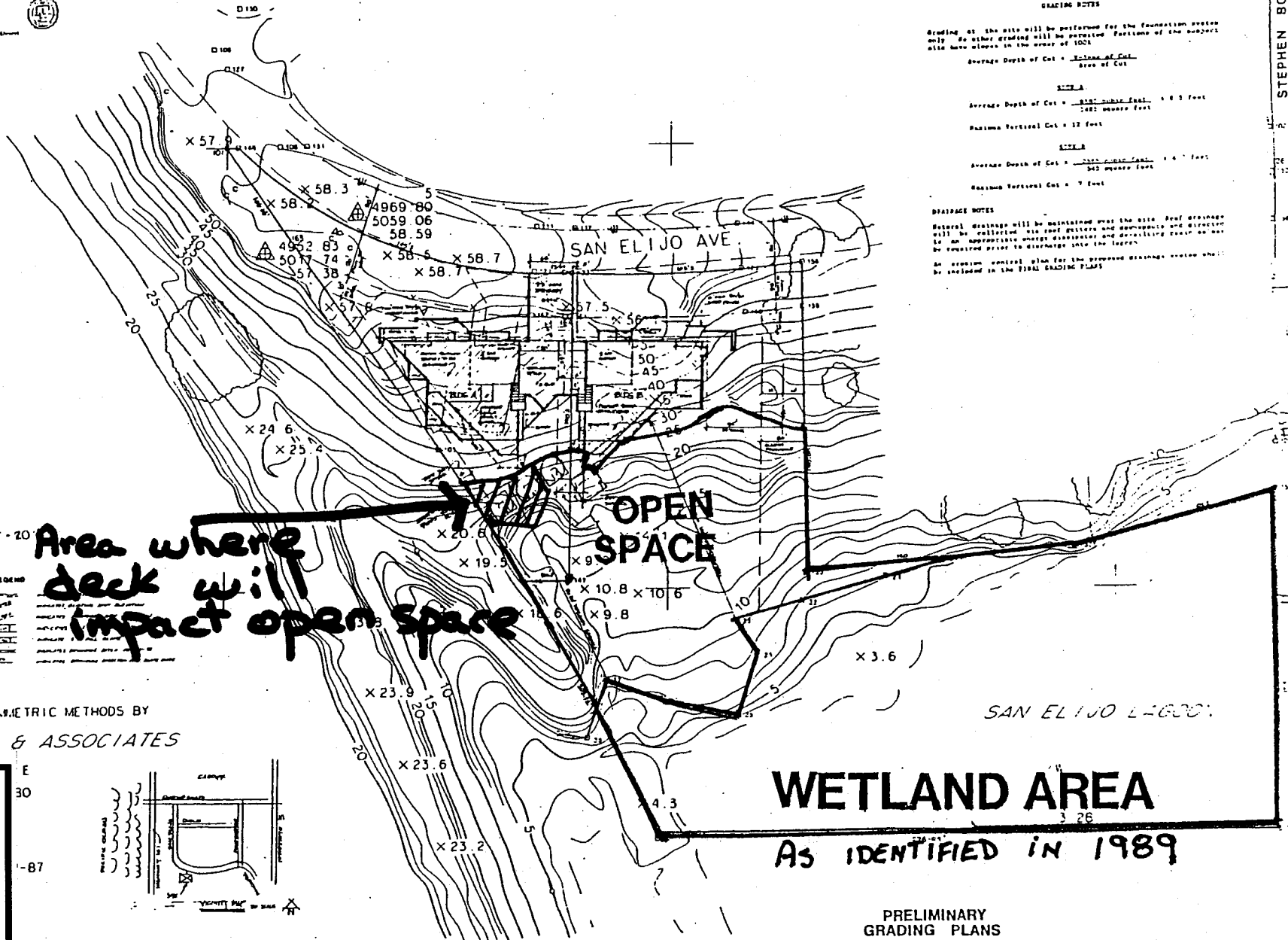


Advanced Engineering Laboratories, Inc.  
 2000 West 10th Street, Suite 200  
 San Diego, CA 92161  
 Telephone: 619-591-1710



**GENERAL NOTES**

1. All work shall be in accordance with the California Building Code, 1991 Edition, and all applicable local ordinances.
2. The contractor shall be responsible for obtaining all necessary permits from the appropriate authorities.
3. The contractor shall maintain access to all existing utilities and structures.
4. The contractor shall be responsible for protecting all existing trees and vegetation.
5. The contractor shall be responsible for maintaining the site in accordance with the local health and safety codes.
6. The contractor shall be responsible for maintaining the site in accordance with the local environmental codes.
7. The contractor shall be responsible for maintaining the site in accordance with the local fire codes.
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99. The contractor shall be responsible for maintaining the site in accordance with the local grading codes.
100. The contractor shall be responsible for maintaining the site in accordance with the local foundation codes.



**GRADING NOTES**

Grading at the site will be performed for the foundation system only. No other grading will be executed. Portions of the project site have slopes in the order of 10:1.

Average Depth of Cut =  $\frac{\text{Area of Cut}}{\text{Area of Cut}}$

**NOTE A**

Average Depth of Cut =  $\frac{247 \text{ square feet}}{142 \text{ square feet}} = 1.73 \text{ feet}$

Maximum Vertical Cut = 12 feet

**NOTE B**

Average Depth of Cut =  $\frac{247 \text{ square feet}}{342 \text{ square feet}} = 0.72 \text{ feet}$

Maximum Vertical Cut = 7 feet

**DRAINAGE NOTES**

Natural drainage will be maintained near the site. Roof drainage will be collected via roof gutters and downspouts and directed to an appropriate energy dissipator and discharging back to the street or to a stormwater management system. An erosion control plan for the proposed drainage system shall be included in the final GRADING PLANS.

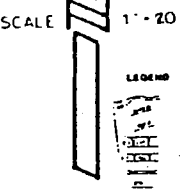
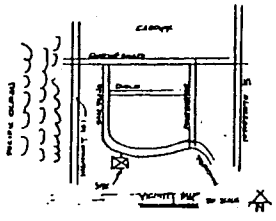


TABLE 261-140-42

COMPILED USING PHOTOGRAMMETRIC METHODS BY

VG & ASSOCIATES

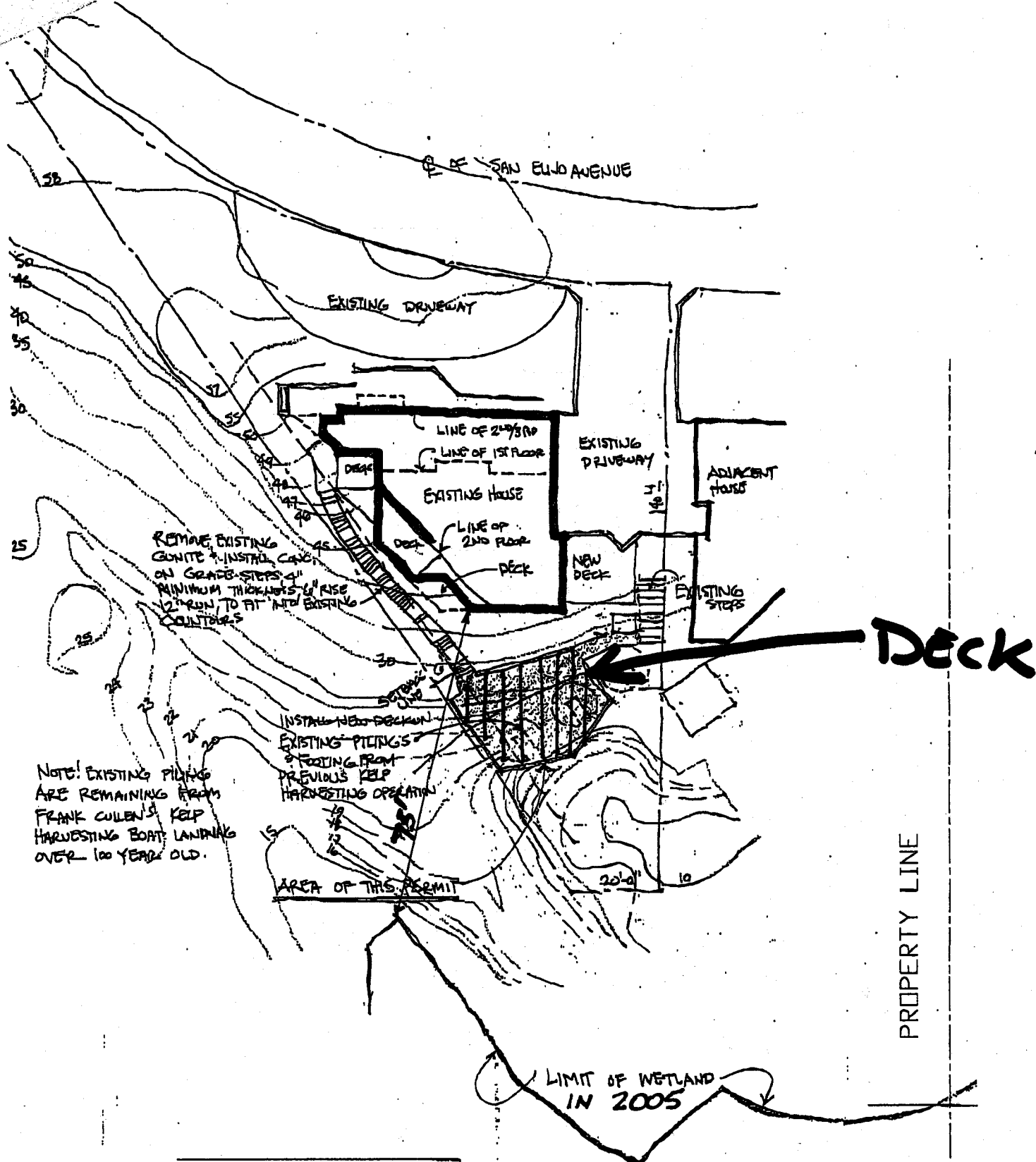
<p>California Coastal Commission</p>	<p>EXHIBIT NO. 3</p>
	<p>APPLICATION NO.</p>
	<p>6-88-535-A2</p>
	<p>Open Space/Deck (with Wetlands as identified in 1989)</p>



**WETLAND AREA**  
 As IDENTIFIED in 1989

PRELIMINARY  
 GRADING PLANS

STEPHEN BOROW



**DECK**

PROPERTY LINE

LIMIT OF WETLAND IN 2005

REMOVE EXISTING CONCRETE & INSTALL CONCRETE ON GRADE STEPS. MINIMUM THICKNESS 6" RISE 1/2" RUN TO FIT INTO EXISTING COUNTERTOPS

NOTE! EXISTING PILING ARE REMAINING FROM FRANK CULLEN'S KELP HARVESTING BOAT LANDING OVER 100 YEARS OLD.

INSTALL NEW DECK ON EXISTING PILING & FOOTING FROM PREVIOUS KELP HARVESTING OPERATION

AREA OF THIS PERMIT

EXHIBIT NO. 4
APPLICATION NO.
<b>6-88-535-A2</b>
Wetlands as identified by applicant in 2005

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT  
1333 CAMINO DEL RIO SOUTH, SUITE 125  
SAN DIEGO, CA 92108-3520  
(619) 297-9740

COASTAL DEVELOPMENT PERMIT NO. 6-88-535  
Page 1 of 5



On January 10, 1989, the California Coastal Commission granted to  
Joanne De Remer  
this permit for the development described below, subject to the attached  
Standard and Special Conditions.

Description: Demolish existing fire damaged residence and construct two  
approximately 3,500 square foot, three-bedroom single family  
residences on two vacant parcels totalling 1.44 acres. Also  
proposed is fee dedication of wetland portion of parcels.

Lot Area	1.44 acres
Building Coverage	4,200 sq. ft. ( 7%)
Pavement Coverage	1,100 sq. ft. ( 2%)
Landscape Coverage	4,000 sq. ft. ( 6%)
Unimproved Area	53,700 sq. ft. (85%)
Parking Spaces	4
Zoning	RV-11
Plan Designation	Residential #7 - 10.9 dua
Project Density	3 dua
Ht abv fin grade	35 feet

Site: 2510 San Elijo Avenue, Cardiff, Encinitas, San Diego County.  
APN 261-190-30 & 42.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive Director  
and

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT  
WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

## ACKNOWLEDGEMENT

The undersigned permittee acknowledges  
receipt of this permit and agrees to  
abide by all terms and c  
thereof.

Date \_\_\_\_\_

Signature \_\_\_\_\_

EXHIBIT NO. 5
APPLICATION NO. <b>6-88-535-A2</b>
Original Coastal Development Permit
California Coastal Commission

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Transfer of Title of the Wetlands/Floodplain Area. Prior to the commencement of construction or within six (6) months from the date of Commission action to approve this permit, whichever occurs first, the applicant shall comply with one of the following:

(a) Submit evidence to the satisfaction of the Executive Director that title of the wetlands/floodplain portion of the applicant's property, and as generally shown on Exhibit 2 of the staff report and preliminary recommendation dated for CDP #6-88-535 December 21, 1988, has been transferred as a gift (as proposed in the permit application) to the Wildlife Conservation Board, Coastal Conservancy, California Department of Fish and Game or other public agency or private association acceptable to the Executive Director.



SPECIAL CONDITIONS, continued:

OR

(b) If the intent of the applicant is not carried out pursuant to (a) above, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "3" and generally described as the wetland/floodplain portion of the applicant's property. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on the attached Exhibit "3" and generally described as the area between the proposed residences and the wetlands boundary or northern limit of the area proposed to be dedicated to a public agency, without the written approval of the California Coastal Commission or successor in interest. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

3. Grading and Erosion Control. The applicant shall comply with the following conditions related to grading and erosion control:

A. Prior to the issuance of the coastal development permit, the applicant shall submit final grading plans to the Executive Director for review and written approval. Said plans shall indicate that all grading activities shall be prohibited within the period from October 1 to March 31st of each year.

B. Prior to commencement of any grading activity, the permittee shall submit a grading schedule which indicates that grading will be completed within the permitted time frame designated in this condition and that any variation from the schedule shall be promptly reported to the Executive Director.

SPECIAL CONDITIONS, continued:

C. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

D. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

4. Drainage Plan. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a drainage and runoff control plan, including supporting hydrologic calculations based upon a six-hour, ten year rainstorm. This plan shall document that runoff from the roof will be collected and appropriately discharged. Runoff directed toward the lagoon shall be retained and discharged at a non-erosive velocity and elevation in order to protect the scenic resources and habitat values of the hillsides from degradation by scouring or concentrated runoff.

5. Assumption of Risk. Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flooding and from slope failure, and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Revegetation/Landscape Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation and landscape plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate that portion of the slope that will be disturbed by the construction of the residence or the installation of the drainage system. Drought tolerant native plants shall be utilized to the maximum extent feasible to re-establish the area consistent with its present character. Invasive, non-native vegetation, including but not limited to iceplant, shall be removed in favor of such native plants. Special emphasis shall be given to the screening of the supports for the parking deck and installation of trees of substantial height along the southern building perimeter to break-up the building facade and to create a vegetative buffer between the residences. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director in consultation with the Department of Fish and Game.

SPECIAL CONDITIONS, continued:

7. Exterior Treatment. Prior to the issuance of the coastal development permit for the proposed project, the applicant shall submit for the review and approval in writing of the Executive Director a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence. Earth tones and building materials designed to minimize the project's contrast with the surrounding hillside and with the lagoon environment shall be utilized.

(8535P)

