

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F7453-A2; 6-86-181-A1

Applicant: Ritchard & Agnetha Stephenson

Original Description
F7453 Subdivision of 40.2 acres into 27 lots of between 21,000 sq.ft. to 40,000 sq.ft. each (except lot#1) for the future construction of 25 single-family detached residential units, including landscaping, roads and utilities. Access will be provided by the easterly extension of San Dieguito Drive through a 52' right-of-way with a 32' paved road. No building construction is included; individual development of parcels will proceed in accordance with an approved master development plan to be implemented through specific lot restrictions.

Original Description
6-86-181 Construction of 13 single-family residences on Lots 11 through 23 of the subdivision approved pursuant to CDP #F7453.

Proposed Amendment:
F7453-A2 Revise lot development restrictions to allow maximum lot coverage to increase from 3,000 sq.ft. to 4,656 sq.ft., but only on the subject lot. This amendment will require a modification to the previously recorded deed restriction, but it will only modify that deed restriction as it applies to the subject site.

Proposed Amendment:
6-86-181-A1 Construct an attached, one-story, 1,300 sq.ft. garage/workshop addition to the existing 3,356 sq.ft. single-family residence; and after-the-fact approval of swimming pool, concrete slab, and previous unpermitted 356 sq.ft. residential addition on a 36,000 sq.ft. lot.

Site: 3070 Racetrack View Drive, North City, San Diego, San Diego County.
 APN 300-490-18

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed amendments to: (1) Revise lot development restrictions on the subject lot to allow a residential addition on APN 300-490-18 that would result in total lot coverage greater than 3,000 sq. ft. and; (2) request after-the-fact approval of a swimming pool, concrete slab, and previous unpermitted 356 sq.ft. residential addition. The subject site is in a highly visible area in the San Dieguito Lagoon River Valley. However, the subject site is a part of a larger subdivision on which substantial requirements for view

protection, including the provision of landscaping and color restrictions, were placed through approval of the original permit. Therefore, as conditioned to require landscaping and color restrictions consistent with the existing requirements for the subdivision, the proposed addition on this particular site only, will not have an adverse impact on the scenic environment. Because minimizing the visual impacts of the proposed addition is dependent on the maintenance of appropriate landscape screening, and because the site is adjacent to an environmentally sensitive lagoon, Special Conditions also require the removal of existing exotic bamboo landscaping alongside the proposed addition and replacement with landscaping compatible with the lagoon environment that will also serve to screen the structure. Other exotic vegetation on the site must also be removed and replaced with non-invasive species. Other conditions require the implementation of a drainage control plan, submittal of as-built plans, a time limit on the satisfaction of the special conditions, and recordation of a deed restrictions to address the various changes.

Due to space constraints, the description of the first amendment to CDP #F7453 was not included on the front page:

First Amend Special Condition #5 of original permit pertaining to the
Amendment: construction of a permanent road across the mouth of Crest Canyon.
F7453-A1

Substantive File Documents: Letter from William T. Everett, Everett and Associates,
Environmental Consultants, dated December 5, 2004; CDP #6-86-181;
Certified North City Land Use Plan.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendments to Coastal Development Permit No. F7453 and No. 6-86-181 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendments 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 PERMIT AMENDMENTS:

The Commission hereby approves the coastal development permit amendments on the ground that the development, as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program. Approval of the permit amendments complies with the California Environmental Quality Act because either 1)

feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

This permit action is subject to the following conditions, which, among other things, impose changes to existing special conditions and add new special conditions.

The following Special Conditions shall apply to CDP #6-86-181-A1:

1. Final Landscape Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, a final landscape plan that has been stamped approved by the City of San Diego. Said plan shall be developed in consultation with the California Department of Fish and Game and shall include the following:

- a. The removal of the bamboo located adjacent to the retaining wall along the southern boundary of the site, and replacement with new vegetation that is native or drought-tolerant and non-invasive, and shall, at maturity, reach a height no lower than the height of the approved addition.
- b. The plan shall also indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features on the site. The plan shall indicate that any existing invasive species will be removed and replaced with fire resistant, native or drought-tolerant materials. No invasive species are permitted.
- c. A planting schedule that indicates that all new plantings will be implemented within 60 days of completion of construction.
- d. A written commitment by the applicant that all required plantings will be maintained in good growing condition, and whenever necessary, will be replaced with new plant materials to ensure continued compliance.
- e. A written commitment by the applicant that five years from the date of the receipt of the Certificate of Occupancy for the residential addition, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in

the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

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

2. Exterior Treatment. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, 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 residential addition. The color of the structure and roof permitted hereby shall be restricted to colors compatible with the surrounding environment.

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

3. Final Drainage Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, 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 City of San Diego. The plans shall specifically document either graphically or through written notes on the plan that the runoff from the addition's roof area and other impervious surfaces associated with the addition and the pool 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 AMENDMENT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amendment 6-86-181-A1, 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 amendment. 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 amendment, 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.

5. Condition Compliance. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. Submittal of As-Built Plans. **WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT AUTHORIZED BY PERMIT AMENDMENT #6-86-181-A1 OR IMMEDIATELY FOLLOWING ANY PERIOD OF WORK STOPPAGE OF MORE THAN 60 DAYS**, the permittee shall submit as-built plans of the approved addition consistent with the plans by Joe B. Kroi & Associates, dated 11/04/02.

7. Future Development. This permit amendment #6-86-181 is only for the development described above as the proposed amendment to permit #6-86-181. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, change in the density or intensity of use land, shall require an amendment to Permit #6-86-181 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.

8. Prior Conditions of Approval. All previously existing terms and conditions of the approval of Coastal Development Permit #6-86-181 shall remain in full force and effect.

The following Special Conditions shall apply to CDP #F7453:

1. Modification of Special Condition #3 of CDP No. F7453. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F7453-A2**, the applicants shall modify Special Condition #3 of CDP #F7453 by adding the following text to the end of the condition and doing all of the following:

Prior to Issuance of Coastal Development Permit Amendment F7453-A2, the applicants shall do all of the following:

a. Execute and record an amendment, in a form and content acceptable to the Executive Director, to the deed restriction recorded pursuant to this condition, which deed restriction was recorded on August 8, 1983 in the Office of the County Recorder of the County of San Diego as Instrument Number 83-276026 ("Deed Restriction"), as it applies to the subject lot only. The amendment shall indicate that, notwithstanding the site design concept attached as Exhibit "C" to the Deed Restriction, the maximum lot coverage **for the subject lot** shall be 4,656 square feet, the permitted building level **for the subject lot** shall be one-story, and the front yard setback **for the subject lot** shall be pursuant to applicable zoning under the San Diego Municipal Code. The existing terms of the Deed Restriction shall continue to apply to all other lots covered by the deed restriction.

b. Submit evidence to the Executive Director demonstrating that a new amendment, in a form and content acceptable to the Executive Director, to the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") recorded on October 17, 1986, in the Office of the County Recorder of the County of San Diego as Instrument Number 86-470295 has been recorded. The new amendment shall eliminate purported changes to the Deed Restriction made through the amendment to the CC&Rs recorded on July 19, 2004, in the Office of the County Recorder of the County of San Diego as Instrument Number 2004-0669411. The new amendment shall be consistent with the Deed Restriction, as amended, and shall clarify that the Deed Restriction cannot be altered in the future through the recordation of an amendment to these CC&Rs.

2. Condition Compliance. WITHIN 180 DAYS OF COMMISSION ACTION ON THIS CDP AMENDMENT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3. Prior Conditions of Approval. All other terms and conditions of the approval of Coastal Development Permit #F7453, as amended, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The proposed project involves the construction of a one-story, 1,300 sq.ft. garage/workshop addition. The proposed workshop would be attached to an existing one-story 3,356 sq.ft. single-family residence; the existing 645 sq.ft. attached garage would be converted into living space. The proposed project also includes after-the-fact approval of unpermitted development consisting of the construction of a swimming pool, and placement of concrete slab. As discussed below, the original subdivision permit limited construction on the subject site to a maximum lot coverage of 3,000 sq.ft. Therefore, at some point in the past, either a

356 sq.ft. residential addition was constructed without permits, or the original residence was built 356 sq.ft. larger than permitted. Thus, after-the-fact approval of a 356 sq.ft. of residential construction is also included in the subject amendment. The pool was constructed in early 2000 without the required coastal permit. A portion of the garage/workshop expansion has also already taken place, in the form of a concrete slab poured adjacent to the site without the required coastal permit. Other development that has occurred on the lot includes construction of a retaining wall along the southern boundary of the site, which is exempt from coastal development permit requirements.

The 36,000 sq.ft. lot is located near the terminus of Racetrack Drive, just west of Interstate 5, overlooking San Dieguito Lagoon in the City of San Diego. The City of San Diego has a fully-certified LCP and issues its own coastal development permits for most of its coastal areas, including the subject site. However, the proposed project requires amendment of a past commission permit on the site (#F7453), which placed strict limits on building size and lot coverage.

The Coastal Commission approved permit #F7453 for subdivision of 40.2 acres into 27 lots, including the subject site on May 4, 1979 (see Exhibit #3). The project was approved with nine special conditions covering the preservation of open space, floodplain area, grading, lot density, building size, and landscaping, to list a few. Most relevant to the subject application is Special Condition #3, which required, in part:

- d. (All parcels) – Maximum lot coverage, permitted building levels, and front yard setbacks shall be specified according to an overall site design concept submitted to and approved in writing by the Executive Director prior to the recordation of required deed restrictions.

In response to Condition #3d's requirement of an "overall site design concept," detailed site development restrictions were developed and recorded as a restriction on the property (see deed restriction attached to Exhibit #3). These restrictions limit the building area on the subject site to a maximum of 3,000 sq.ft., and one-story. Thus, the proposed addition, which will result in a structure 4,656 sq.ft. in size, requires an amendment to the original permit and the deed restriction recorded pursuant thereto.

On March 6, 1981, the Commission approved amendment #F7453 (A1), adjusting some of the terms of the original permit (see Exhibit #4).

In May 1986, the Commission approved permit #6-86-181 for construction of 13 single-family residences on Lots 11 through 23 of the subdivision, including the subject site (see Exhibit #5). At that time, the Commission also approved construction of 10 single-family residences on Lots 1 through 10 (#6-86-131). This permit was amended in April 1990 to restore a portion of the required open space that had been damaged by the construction of a tee-off for a golf driving range (#6-86-131-A).

As noted, the site is located within the City of San Diego's permit jurisdiction, within the Torrey Pines Community Planning Area, which is part of the certified North City Local

Coastal Program (LCP) segment. The standard of review for the project is the certified LCP and the public access and recreation policies of the Coastal Act.

Deed Restrictions and CC&Rs

Permit F7453 required the lot development restrictions required by the above-reference Special Condition #3 be recorded on the deed of each individual parcel in the subdivision. The Deed Restriction was recorded August 1983 as Document Number 83-276026. In addition, the restrictions were incorporated in the subdivision's Declaration of Covenants, Conditions and Restrictions (CC&Rs), which were recorded in October 1986, as Document Number 86-470295.

On July 19, 2004, the applicants, and several of the other homeowners in the subject subdivision, recorded an amendment to the Declaration of Covenants, Conditions and Restrictions of Del Mar Estates Subdivision, which purports to amend the 1983 Deed Restriction (which is Exhibit B to the CC&Rs), at least as it exists for purposes of those CC&Rs, by eliminating the lot coverage restrictions imposed by paragraph 4 (and Exhibit C) of the 1983 Deed Restriction, and which includes language amending Article II, section 2.8 of the CC&Rs that could be interpreted to eliminate the restrictions and/or requirements in paragraphs 1 through 5 of the 1983 Deed Restriction.

In other words, the applicants appear to have attempted to remove the restrictions placed on the subject site through CDP #F7453 by removing the conditions imposed in that permit action as they had been incorporated into the community's CC&Rs. However, no change to the CC&Rs could have any effect on the underlying permit, the conditions of which run with the land. Moreover, although the CC&Rs incorporated the existing deed restriction by reference, the purported changes to that document, as incorporated by reference, did not in any way alter or affect the original deed restriction itself, so the deed restriction continued in effect. To the extent the restrictions in the deed restriction were also imposed through these CC&Rs, they were duplicative requirements. This purported change to the CC&Rs did not purport to affect, nor could it have affected, the restriction imposed by paragraph 4 of the deed restriction as that restriction existed pursuant to the deed restriction itself, which continued to exist as an independent and effective imposition of restrictions on the use and enjoyment of the property, separate from the CC&Rs.

2. Visual Impacts. The certified Torrey Pines Community Plan is the applicable land use plan for the subject site, and contains the following policies regarding scenic and visual quality:

RESOURCE MANAGEMENT AND OPEN SPACE ELEMENT

San Dieguito Lagoon and River Valley

1. New development or expansion of existing uses adjacent to the lagoon shall not encroach into or negatively impact this open space area.

4. Development adjacent to the lagoon should be designed to avoid sedimentation, erosion or other potential impacts which degrade the quality of the water resources, and should preserve existing public views. The following measures to reduce grading impacts should be utilized where appropriate: minimize grading during the rainy season, install sediment basins and/or energy dissipating structures, and ensure revegetation and stabilization of slopes before the onset of the rainy season. To reduce visual impacts, development should be low-profile and screened from view by landscaped buffers.
7. Maintain and enhance the experience of nature within the lagoon, by screening present conflicting uses, prohibiting future conflicting uses, retaining natural areas and promoting an expanded water body within the lagoon.

RESIDENTIAL ELEMENT

- The 27-lot residential subdivision of Del Mar Estates is located in the northern portion of the community along Racetrack View Drive. This development includes large single-family detached homes of 25 feet in height on large (average one acre) lots, and over 17 acres set aside in an open space easement. This development is located in an environmentally sensitive location, within the Focused Planning Area of the San Dieguito Regional Open Space Park Plan, situated south of the San Dieguito River and Lagoon and north of Crest Canyon. Because of the area's sensitivity, additional development (tennis courts, pools, decks, gardens, walls, lighting, etc.) shall minimize or eliminate impacts to these resource areas.

Additional policies in the Torrey Pines Community Plan are designated "LOCAL COASTAL PROGRAM POLICIES" and include:

VISUAL RESOURCES

The State Coastal Act states that the scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance. The Torrey Pines Community Planning Area possesses many highly scenic open space areas and dramatic vistas. Torrey Pines also has a number of road segments that have scenic qualities worthy of formal recognition and protection. This community plan contains numerous recommendations, policies and implementing actions focusing on the preservation of these visual resources including:

1. Significant scenic resource areas including San Dieguito River Regional Park, Crest Canyon, Torrey Pines State Reserve Extension, Los Peñasquitos Lagoon, and the Carroll Canyon Creek Corridor have been designated and rezoned to open space.

5. Landscaping of properties adjacent to open space areas shall not use invasive plant species. Landscaping adjacent to these areas should use plant species naturally occurring in that area.
6. New residential development is recommended to be compatible with the existing neighborhood, and designed to blend into adjacent natural open space areas.
11. The plan recommends the preservation of Torrey Pines trees, and encourages the planting of Torrey Pines trees in roadways and other landscaped areas.

The project site is a developed lot in a subdivision adjacent to the west side of Interstate 5, north of San Dieguito Lagoon. The subdivision is in a highly visible area from surrounding areas, including I-5, the San Dieguito River Valley, Via de la Valle, and the Del Mar Racetrack and Fairgrounds. In order to reduce the visibility of development, previous Commission actions on the site included numerous conditions and restrictions on development of the site. For the subdivision (CDP #F7453), these conditions included the dedication of open space adjacent to development, density restrictions, limits on maximum lot coverage, setbacks and building heights, limits on grading of steep slopes, and the preservation of Torrey Pine trees. For the construction of the residences (CDP #6-86-181), conditions included requirements for hydroseeding cut slopes and limiting the colors of exterior surfaces to those compatible with the native environment.

At the time that the subdivision, and later the residences, were constructed, the graded pads and slopes, the streets, and the structures were extremely visually prominent, particularly given the development's location nestled in at the base of a natural hillside adjacent to a lagoon and the lack of existing mature vegetation. However, over time, the significant amount of landscaping associated with each lot has greatly minimized the visibility and appearance of the development. Some lots in the subdivision are more visible than others, of course; however, at this point, only the rooftops of most residences, and some of the cut slopes associated with the lots, particularly those lots on the southern portion of the lot (which are higher in elevation) are visible from surrounding public areas.

With regard to the subject site, the property is one of the lots located closest to the lagoon, and it is located on the western, or lagoon-side of the access road. However, the proposed additions would not be visible from surrounding areas for several reasons. First, and most significantly, as noted, the subject site and the surrounding lots have significant amounts of mature landscaping. Just west of the site's western property line, a row of mature Torrey Pine trees shields views of the site from the west and north. Second, while grading, removal of trees, or increase in height of the existing structure could potentially increase the visibility of the site, the proposed project consists only of an in-ground pool and a single-story addition to the southwestern side of the site. As such, existing landscaping on the site and on the adjacent site to the north, as well as the other residences located to the north, help to screen views of the site from Jimmy Durante Boulevard, Via de la Valle, the fairgrounds, and the trails around the lagoon. Thirdly, with regard to views from the freeway, the subject site is at a fairly low elevation

compared to some of the lots, and thus, the visibility of the site from the freeway is relatively low. In addition, a tall row of bamboo located on the southern side of the lot, adjacent to the proposed addition helps to provide a canopy of vegetation along that side of the lot, reducing views from the freeway.

In this particular case, allowing an increase in the maximum lot coverage to 4,656 sq. ft. will not impact the surrounding resource areas or negatively impact the adjacent open space area. However, although no portion of the proposed addition in this particular case will have an adverse visual impact, the Commission continues to be concerned that the development continue minimize or eliminate impacts to the San Dieguito River and Lagoon, blend into adjacent natural open space areas and be screened from view by landscaped buffers, as required by the above-referenced land use plan policies. Since the development was approved, the San Dieguito Lagoon Restoration Plan currently under development has identified several vista points in the vicinity of the site, and a trail adjacent to the site has been formalized. Preserving the scenic quality of the area continues to be a high priority. Significant changes to the existing landscaping, the height of the existing structure, or changes to the color of the structure could result in visual impacts. The permit for construction of the residence required that the exterior surface of the proposed residences to be compatible with the native environment" (CDP #6-86-181). Therefore, Special Condition #2 of amendment #6-86-181-A1 requires that the addition be consistent with the requirement of the original permit and be restricted to colors compatible with the surrounding environment.

As noted, the bamboo associated with construction of the retaining wall contributes to the canopy of vegetation on the site. However, bamboo, as discussed in detail below in Section 3. Biological Resources, is an inappropriate plant material to use for screening purposes, because of potential impacts to the adjacent lagoon environment. Therefore, Special Condition #1 of amendment #6-86-181-A1 requires submittal of a landscaping plan indicating that the bamboo will be replaced with a non-invasive plant that will, at maturity, be at least as tall as the proposed addition. In this manner, both the existing residence and the proposed addition will be screened from view. Special Condition #4 of amendment #6-86-181-A1 requires the applicant to record a deed restriction imposing the conditions of this amendment, (not including the conditions that were previously imposed on the original permit), as covenants, conditions and restrictions on the use and enjoyment of the property. This restriction will serve to notify future owners of the ongoing requirements for landscaping and coloring. Special Condition #7 of amendment #6-86-181-A1 advises the applicant that future development on site may require a new permit or an additional amendment.

In addition, it is important that the proposed project not be seen as setting a precedent for any and all future residential construction in the subdivision. The restrictions on lot coverage still apply to the remaining residences, pursuant to the original subdivision permit. The visual and biological impacts of new development in this area that would be inconsistent with the original restrictions must be assessed on a case-by-case basis. For example, adding a new story to any of the existing residences would likely be highly visible, and may not be consistent with the certified LUP or even single-story additions that require substantial grading may be inconsistent with scenic preservation provisions

of the LCP. Special Condition #8 of amendment #6-86-181 and Special Condition #3 of amendment #F7453-A2 indicate that with the exception of the conditions modified herein, all of the other terms and conditions of Coastal Development Permits #6-86-181 and #F7453, as amended, remain in full force and effect, thus continuing to protect scenic resources, consistent with the LCP and the original Commission actions.

In summary, as conditioned, the proposed residential addition will take place in a location and manner that will ensure visual impacts are minimized and that existing public views are preserved. The site is well screened by existing landscaping, and new landscaping consistent with the lagoon environment will ensure that both the existing residence and the proposed addition continue to be screened from view by landscaped buffers in the future. Therefore, the proposed project is consistent with the visual protection policies of the certified LCP.

3. Biological Resources. In addition to the policies cited above, the certified Torrey Pines Community Plan contains the following policies regarding biological resources,

RESOURCE MANAGEMENT AND OPEN SPACE ELEMENT

POLICIES

1. Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.
2. Development impacts to rare, threatened, endangered, or candidate species shall be minimized or eliminated.
3. No filling, clearing, grubbing, or other disturbance of biologically sensitive habitats shall be permitted without approved mitigation plans.
4. Coastal lagoons and estuaries that are designated and zoned open space shall remain undeveloped.
5. Public access in areas of environmentally sensitive habitats shall be limited to low-intensity recreational, scientific, or educational use. Access shall be controlled or confined to designated trails or paths, and no access shall be approved which results in disruption of habitat.
8. Preserve and enhance all open space and wildlife corridors (see Figure 6), especially those linking Los Peñasquitos Lagoon with Torrey Pines State Reserve Extension and the Carroll Canyon Creek corridor.

San Dieguito Lagoon and River Valley

6. Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

Additional policies in the Torrey Pines Community Plan are designated "LOCAL COASTAL PROGRAM POLICIES" and include:

WETLANDS

Buffer zones sufficient to protect wetlands shall generally be 100 feet in width, unless the applicant demonstrates that a smaller buffer will protect the resources of the wetland based on site-specific information including but not limited to the type and size of the development and/or proposed mitigation which will also achieve the purposes of the buffer. Developments permitted in wetland buffer areas shall be limited to access paths, passive recreational areas, fences and similar improvement necessary to protect the wetland. Developments shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its fish and wildlife values, or otherwise impair the functional capacity of the wetland.

The subject site is fully developed with a single-family residence, hardscape and landscaping, but the lot is located south of and adjacent to the San Dieguito Lagoon and the floodplain of the San Dieguito River. As part of the original subdivision that created the subject site, an open space easement for the protection of wildlife, steep slopes, scenic and visual amenities, and flood hazards, was placed over the land located adjacent to the subject lot to the west. The protected area is upland of and separated from the lagoon by a fenced gravel trail. This area is within the overall scope of the San Dieguito Lagoon Restoration Plan area overseen by the San Dieguito River Park Joint Powers Authority, and is currently the site of a coastal sage scrub restoration plan being undertaken by Caltrans as mitigation for impacts associated with the construction of a northbound auxiliary lane on Interstate 5 (CDP #6-02-153).

In May, 1986, the Commission approved a permit for the construction of 13 homes, including the subject residence, identified as Lot #18 (#6-86-181). Special Condition #2 of this permit states:

2. Lagoon Impacts. Prior to transmittal of the coastal development permit, the approved site plan shall be subject to Executive Director written approval in consultation with the Dept. of Fish of Game, to assure provision of a minimum 100 ft. buffer between the proposed grading on Lots 17 and 18 and any wetland. Should it be required, prior to transmittal of the permit, the applicant shall record a deed restriction on Lots 17 and 18, in a form and content acceptable to the Executive Director, prior to any liens and encumbrances, which prohibits alteration of landforms, placements of removal of vegetation, or erection of any structures within the area on Lots 17 and 18 located within 100 ft. of any wetland.

Based on the plans submitted to the Commission at the time, the residence on the subject site was proposed to be located a minimum of 100 feet from the adjacent wetlands.

Although the subject site itself is fully developed, the proposed development involves the construction on the western side of the lot, including a pool, which would result in

development located closer to the lagoon wetlands and other off-site sensitive resources. However, a review of the site performed by a biological consultant in December 2004 determined that the subject parcel is located more than 600 feet from the edge of any wetland area. The biological report identifies a row of Torrey Pines located beyond the fenced property line to the west, and beyond that, upland area that is currently disturbed non-native grasslands (the Caltrans coastal sage scrub restoration site). Even taking into account potential fire clearing requirements, the report determined that no sensitive vegetation is located within 100 feet of the proposed addition.

Thus, the proposed addition would not directly negatively impact the adjacent environmentally sensitive habitat area or any rare species that may be located there. Nevertheless, the project does represent an increase in development on the lagoon side of the lot. Pushing development closer to the lagoon increases the opportunities for impacts to the lagoon resulting from noise, domestic animals, and exotic vegetation. The LUP requires that landscaping of properties adjacent to open space areas not use invasive plant species. In order to minimize or avoid any impacts from the proposed increase in development intensity, Special Condition #1 of amendment #6-86-181-A1 requires that the applicants submit a landscape plan indicating the type of existing vegetation on the lot, and which includes removal of any existing invasive species and replacement with fire resistant, native or drought-tolerant materials.

As noted above, in association with the construction of the retaining wall on the southern side of the lot, the applicants planted a row of exotic bamboo. The applicants have submitted a letter from a biological consultant stating, "bamboos are not considered invasive" (see Exhibit #7). However, a letter received from the California Department of Fish and Game indicates that the Department is "concerned because of the ability of this plant to quickly grow outside of the boundaries of the homeowner's property and onto the Reserve. Although bamboos are not known to spread by seed, the underground rhizomes are able to spread quickly" (see Exhibit #6). The letter goes on to note that the vegetation is already growing onto the adjacent open space reserve, and requests that the owner remove the bamboo, which has encroached onto the reserve, and either install root barriers or remove the bamboo altogether. The Commission's ecologist agrees that the presence of bamboo on the site could potentially be a problem for the adjacent natural habitat.

The subject site is located in a highly visible and scenic area. Due to the extensive landscaping on both the subject site and the surrounding lots, the majority of the development on the site is well shielded from public views. The bamboo was not included or required in the landscaping plan originally submitted with the subdivision, but it does contribute to the canopy of vegetation on the site that reduces the visual impact of the existing residence from views from Interstate 5, and maintaining this canopy is necessary to help shield the proposed addition on this site.

Therefore, Special Condition #1 of amendment #6-86-181-A1 also requires that the applicant remove the bamboo and replace it with non-invasive, drought-tolerant vegetation that will provide a screening function. In this manner the visual protection will be maintained, and the potential threat to the lagoon will be removed.

In summary, the proposed project is adjacent to a coastal sage scrub mitigation site and the sensitive resources of the San Dieguito Lagoon. The project does involve increasing the intensity and mass of development on the lagoon-side of the structure. However, the proposed development will maintain a greater than 100 ft. buffer from off-site sensitive resources and as conditioned to remove the bamboo and any other invasive exotic vegetation on the site, the proposed development will not negatively impact the adjacent environmentally sensitive habitat or have any adverse impacts on rare species. Therefore, the project is consistent with the resource protection policies of the certified LCP.

4. Runoff/Water Quality. In addition to the polices cited above, the certified Torrey Pines Community Plan contains the following policies regarding the protection of water resources:

Residential Development Guidelines

The following additional guidelines should also be incorporated into single-family residential development.

2. Natural runoff control measures should be implemented to direct runoff toward the street and not toward open space areas and to eliminate erosion and siltation of biologically sensitive areas...

The subject site is located adjacent to a lagoon and both wetland and upland sensitive biological resources. 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 to amendment #6-86-181-A1. The condition requires that runoff from the proposed addition's roof area and other impervious surfaces associated with the addition and the pool 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.

6. Public Access. The Coastal Act states:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

[...]

(2) Adequate access exists nearby, or,

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

As the proposed development will occur between the first public roadway (Mango Way) and the sea (San Dieguito 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 and the certified LCP.

While the proposed development is located inland of the coast, public access and recreational opportunities exist at nearby San Dieguito Lagoon. There is an existing publicly-accessible trail and easement located adjacent to the subject site to the north. However, the proposed residential addition will be located entirely on the developed portion of the site, mainly on the southwestern portion of the lot, and will not have any effect on public access. Therefore, the proposed development is consistent with the public access policies of the Coastal Act and the certified LCP.

7. Unpermitted Development. Unpermitted development has occurred on the subject site consisting of the construction of a swimming pool, placement of concrete slab, and a 356 sq.ft. residential addition. The proposed project includes a request for the after-the-fact approval of the pool, placement of concrete slab in preparation for a residential addition, and a 356 sq.ft. residential addition that were constructed without a coastal development permit. Additional unpermitted development includes the recordation of an amendment to the subdivision's CC&Rs on July 19, 2004, that purports to eliminate the lot restrictions that were previously required and recorded as a deed restriction for the above referenced parcel pursuant to the Commission's approval of CDP #F7453. To address this concern, Special Condition #1 of amendment F7453-A2 amends special condition #3 of the underlying permit to require the applicant to re-record the CC&Rs that were altered to restate the original lot development restrictions so that there is no conflict among the recorded documents or doubt about the continued applicability

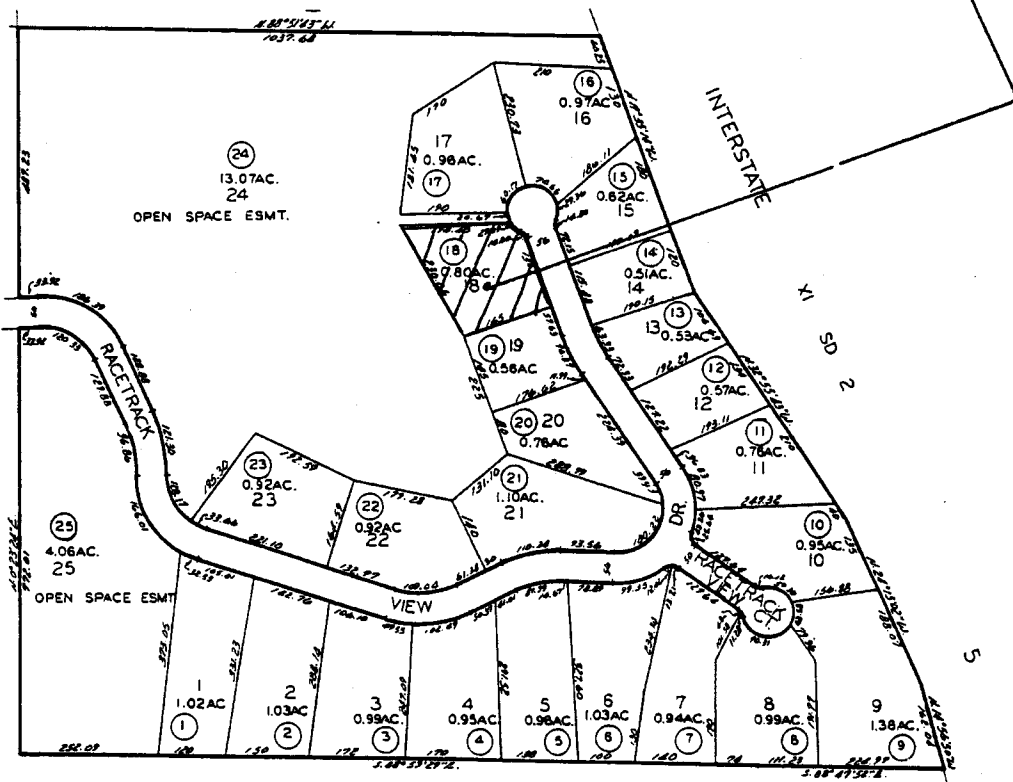
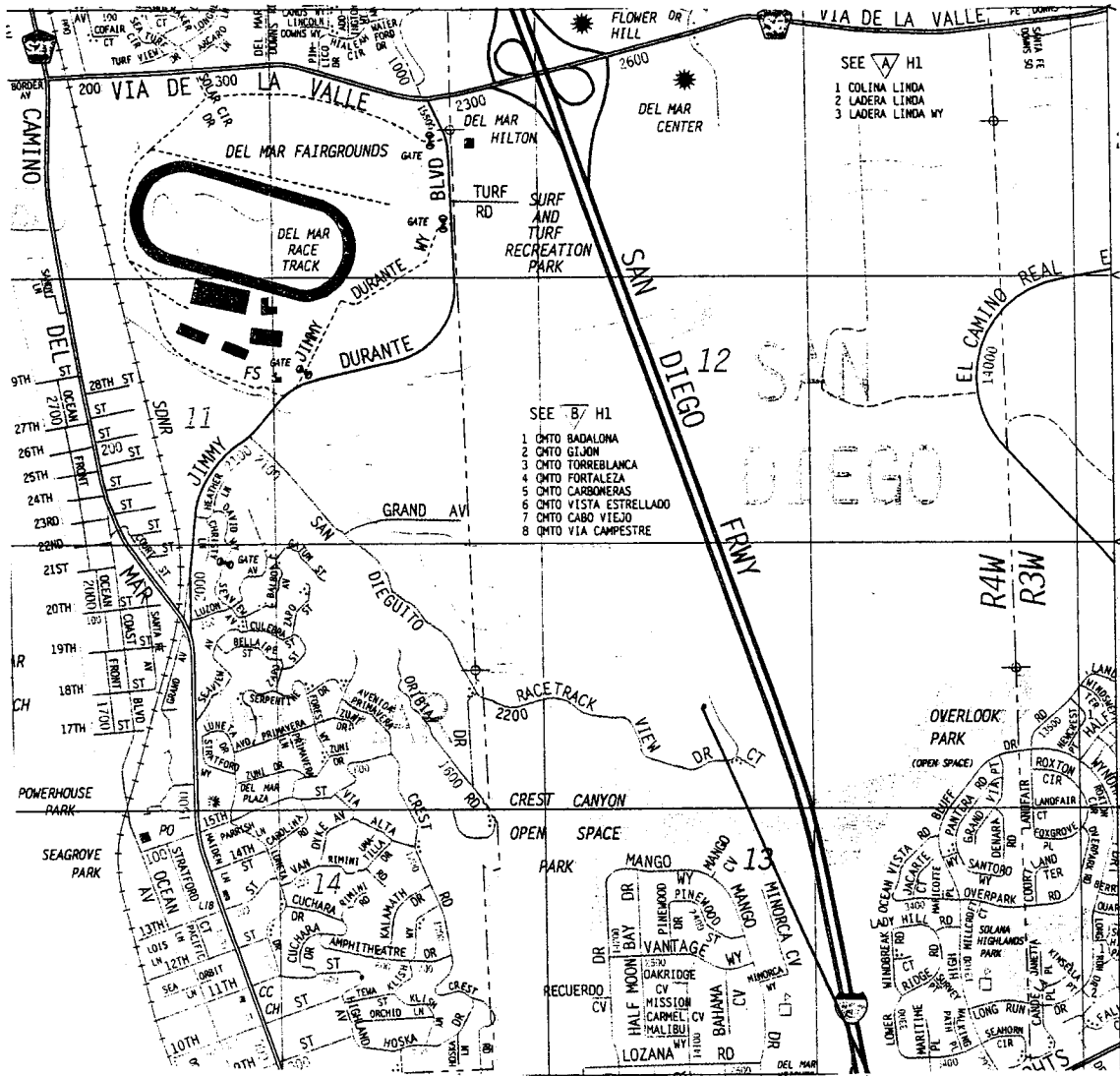
of those restrictions. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #5 of amendment #6-86-181-A1 and Special Condition #2 of amendment #F7453-A2 require that the applicant satisfy all conditions of both amendments that are prerequisite to the issuance of the amendments within 180 days of Commission action. In order to ensure that the addition is constructed as proposed, Special Condition #6 of amendment #6-86-181-A1 requires that as-built plans be submitted within 60 days of project completion, or within 60 days of a significant work stoppage.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the certified City of San Diego LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

8. Local Coastal Planning. The subject site is planned and zoned for residential development in the certified City of San Diego Local Coastal Program. As conditioned, the proposed development is consistent with the City's development standards for an addition to a single-family residence on the subject site, as well as with the provisions of the Torrey Pines Community Plan. As conditioned, the project is consistent with all policies of the certified LCP and the Commission finds that approval of the subject project will not prejudice the ability of the City of San Diego to continue to implement its certified Local Coastal Program

9. 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 certified City of San Diego LCP as well as with the public access and recreation policies of the Coastal Act. Mitigation measures, including conditions addressing landscaping, color, drainage, and future development on the site will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.



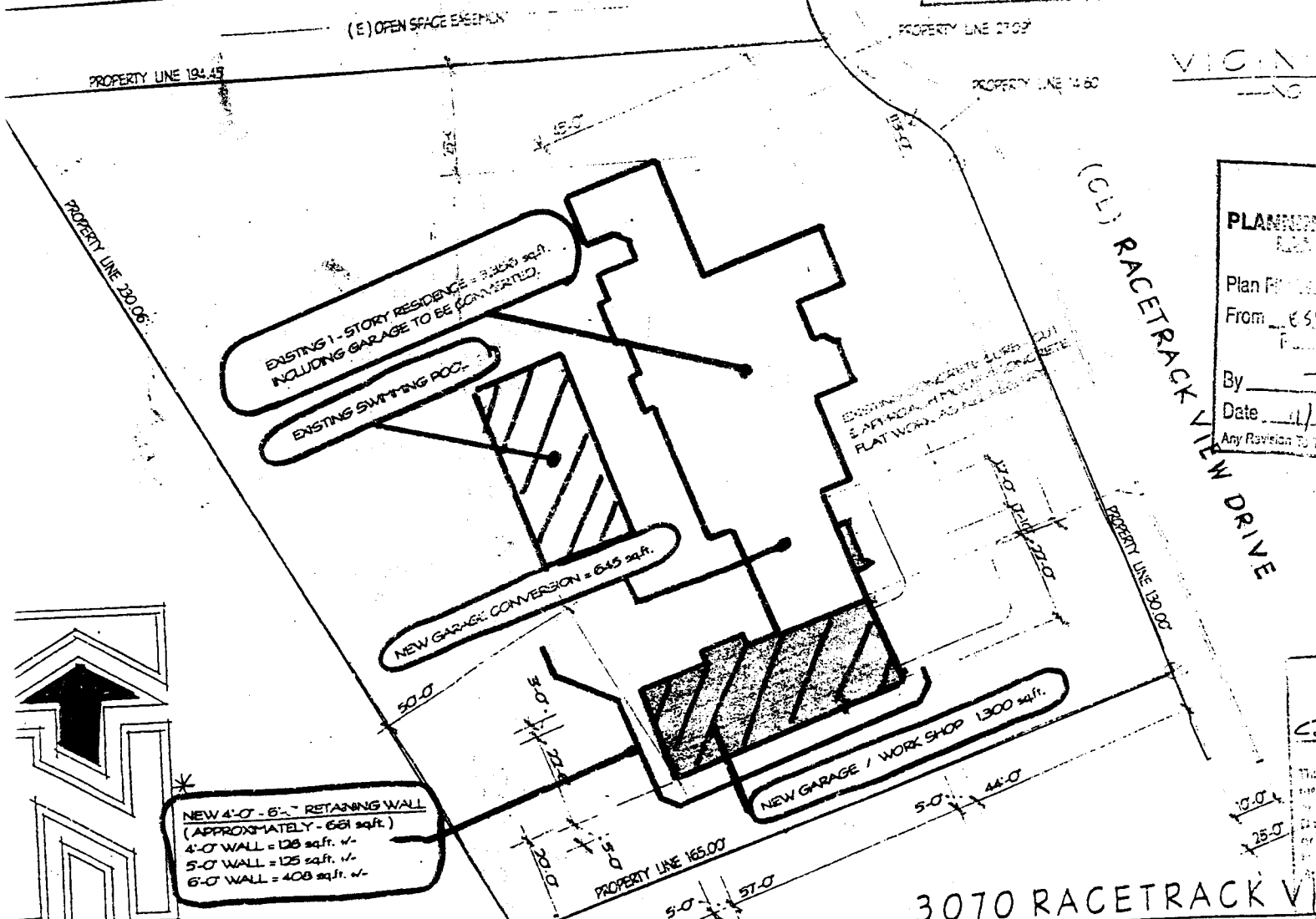
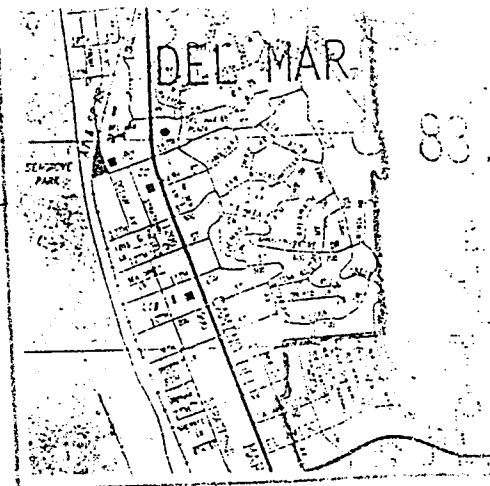
SUBJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
F7453-A2/6-86-181-A1
Location Map

California Coastal Commission

SIGNATURE: _____
 OWNER / LICENSED ENGINEER
 IF THE BUILDING INSPECTOR SUSPECTS RIL, EXPANSIVE SOILS OR ANY GEOLOGIC INSTABILITY BASED ON OBSERVATION OF THE FOUNDATION EXCAVATION, A SOILS OR GEOLOGIC REPORT, AND RE-SUBMITTAL OF THE PLANS TO PLAN CHECK TO VERIFY THAT THE REPORT RECOMMENDATIONS HAVE BEEN INCORPORATED, MAY BE REQUIRED.

Development Services Department
 Information & Application Services
APPROVALS
 By: Jeffrey [Signature] Date: 11-19-02
 Structural [Signature]
 Mechanical [Signature]
 Zoning [Signature] Zone: R3-1
 W/S [Signature] NSSO: [Signature]



PLANNING BOARD
 Plan File No. _____
 From _____
 By _____
 Date _____
 Any Revision To _____

* NOTE: WALL IS UP TO 10 FEET IN HEIGHT

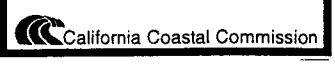
RESIDENTIAL ENERGY EFFICIENCY STANDARDS:

- THE FOLLOWING ARE REQUIREMENTS FOR ALL MANUFACTURED FENESTRATION PRODUCTS (GLASS DOORS AND / OR WINDOWS).
- THEY ARE TO BE CERTIFIED AS TO THEIR OVERALL U-VALUES AS TESTED IN ACCORDANCE WITH THE "NFRC" PROCEDURE, OR A DEFAULT TABLE CONTAINED IN THE DESIGN MANUAL.
 - THEY WILL HAVE A TEMPORARY LABEL, NOT TO BE REMOVED BEFORE INSPECTION BY THE BUILDING DEPARTMENT, LISTING THE CERTIFIED U-VALUE.
 - THEY WILL HAVE A PERMANENT LABEL, LISTING THE U-VALUE, CERTIFYING ORGANIZATION AND RATING PROCEDURES.
 - EACH ROOM CONTAINING A WATER CLOSET HAS A MINIMUM OF (1) FIXTURE PROVIDING A MINIMUM OF 40 LUMENS PER WATT (NO COMPACT FLUORESCENT TUBES). IF THERE IS MORE THAN (1) FIXTURE IN THE ROOM, THE FLUORESCENT FIXTURE IS SWITCHED AT THE MOST ACCESSIBLE SWITCH UPON ENTRANCE (E) TO THE ROOM.
 - NO FLUORESCENT FIXTURE MAY CONTAIN A NEEDLE BASE INCANDESCENT LAMP SOCKET. IN ADDITION, THE FLUORESCENT FIXTURES ARE REQUIRED TO BE ON SEPARATE SWITCH FROM ANY INCANDESCENT LIGHT FIXTURE.
 - ALL SHOWER OR TUB-SHOWER VALVES SHALL INCLUDE HANDLE POSITION STOPS AND CAN BE ADJUSTED TO DELIVER A MIXED WATER SETTING OF 120 DEGREES (MAX.) SECTION 410.7
 - ALL WATER HEATERS WILL BE STRAPPED OR ANCHORED TO RESIST 555MIC LOADING IN SEISMIC ZONE 4. STRAP SHALL BE REQUIRED AT THE TOP AND BOTTOM OF THE WATER HEATER. SEE SECTION 410.5

GENERAL

- These plans and all work Standard Code, found in amended and adopted by the City of Del Mar.
- This project complies with Title 24 & the 1998 Edition of the California Building Code.
- Verify all dimensions at the surface water to be direct gradient for no less than 5% which ever is less.
- If the building inspector sees the foundation excavation, test in accordance with the division 7, title 8 of the SAN DIEGO COUNTY CODE, and require the contractor to plan check, to verify that the soil engineer's recommendations are followed.

EXHIBIT NO. 2
APPLICATION NO.
F7453-A2/6-86-181-A1
Site Plan



3070 RACETRACK VIEW DRIVE
 DEL MAR, CA 92028
 619-734-1234



SAN DIEGO COAST REGIONAL COMMISSION
 1500 GORCE ROAD, SUITE 220
 SAN DIEGO, CALIFORNIA 92120 - TEL. (714) 230-6997

Tim Cochran
 Chairman
 Roger Hedgerock
 Vice Chairman
 Harriet Allen
 Representative to the
 California Coastal Commission

DEVELOPMENT PERMIT

Tom Crandall
 Executive Director

DATE OF COMMISSION ACTION: May 4, 1979

CONTROL NO.: F7453

APPLICANT: Cameron Moshtaghi
 1400 Camino De La Reina
 San Diego, CA 92108

AGENT: Milton Bennet
 110 "C" St., Suite 1112
 San Diego, CA 92101

PROJECT LOCATION: Adjacent to I-5, approx. 1,300 feet easterly of southeast end of San Dieguito Drive (APN 300-160-50)

You are hereby granted a coastal development permit. This permit is issued after a duly held public hearing before the San Diego Coast Regional Commission and after the Regional Commission found that the proposed development is in conformity with the provisions of the California Coastal Act of 1976 including the following:

1. That the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code, Section 30200).
2. That the permitted development will not prejudice the ability of any affected local government to prepare a local coastal program that is in conformity with Chapter 3 of the California Coastal Act of 1976.
3. That if the development is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976 (Public Resources Code, Sections 30210 - 30224).
4. That there are no feasible alternatives or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

This permit is limited to development described below and set forth in material on file with the Regional Commission and subject to the terms, conditions, and provisions hereinafter stated:

Subdivision of 40.2 acres (adjacent to San Dieguito Lagoon) into 27 lots of between 21,000 sq. ft. to 40,000 sq. ft. each (except lot #1) for the future construction of 25 single-family detached residential units. Lots #1 and #2 will be retained for open space/equestrian use, with Lot #1 comprising approximately 13.4 acres. The project includes extensive landscaping, road development, storm drainage, water and all utilities. Approximately 2,600 cu. yds. of balanced cut and fill grading will be required in the development of roads and building sites. Access will be provided by the easterly extension of San Dieguito Drive through a 52' right-of-way with a 32' paved road. No building construction is included with this permit, although individual development of parcels will proceed in accordance with an approved master development plan to be implemented through specific lot restrictions.

A. DEVELOPMENT:

Lot area	40.2 Acres	Parking spaces	75
Building coverage	91,000 sq. ft. (50%)	Zoning	R1-20; R1-40
Paved area coverage	107,000 sq. ft. (50%)	General Plan	Torrey Pines - Open Space
Landscape coverage	20,000 sq. ft. (10%)	Project Density	1.02 du/ac
Unimproved area	1,200 sq. ft. (1%)	Hgt. abv. avg. fin. grade:	N/A

EXHIBIT NO. 3

APPLICATION NO.

F7453-A2/6-86-181-A1

Original Permit

F7453

California Coastal Commission

TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project approved by the Regional Commission.
2. That the applicant agrees to notify the Regional Commission (or State Commission if there is no Regional Commission) of any changes in the project.
3. That the applicant will meet all the local code requirements and ordinances and obtain all necessary permits from State and Federal Agencies.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Commission.
5. That the applicant agrees that the Commission staff may make site inspections of the project during construction and upon completion.

SPECIAL CONDITIONS:

1. Dedication of Open Space Easement and Preservation of Floodplain - Prior to transmittal of the permit by the Executive Director permitting construction to commence, the Executive Director shall certify in writing that the following conditions have been satisfied.

a. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Regional Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an open space easement for the purpose of protecting the steep slopes from erosion, for the protection of scenic and visual amenities along Interstate 5, for the protection of permitted development from flood hazards, and for the provision of a wildlife and recreation access corridor connecting Crest Canyon with the floodplain. Said easement shall be 250' wide along the south property line as measured eastward from the west property line and shall include all of the areas designated as lots 1, 2, 3, 4, and a portion of lot 5 as shown on Exhibit "A".

Said lots or portions as described shall be designated in the tentative and final parcel maps as a single open space easement to be offered for dedication. Such easement shall be free of prior liens or encumbrances except for tax liens.

Any public agency or private association accepting such dedication shall limit public use to education, research and access to Crest Canyon Park. The offer shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 25 years, such period running from the date of recording.

b. That the applicant shall ensure preservation of the valuable wildlife habitat on his adjoining parcels within the floodplain (appropriately 90± acres as shown on Exhibit "C") by either completing the sale of the property to the Wildlife Conservation Board or by prohibiting development of the area with an irrevocable offer to dedicate an open space easement on the property. Documents indicating completion of the sale, or evidence of recordation of the irrevocable offer to dedicate an open space easement on the property, shall be submitted to, reviewed and approved by the Executive Director in writing prior to transmittal of the permit.

Special Conditions (Continued)

2. Density Restriction - That prior to the transmittal of the permit, the applicant shall submit a tentative approved subdivision map, consistent with all terms and conditions attached to the permit. The tentative map shall contain not more than twenty-three (23) parcels exclusive of the area designated as an open space easement (see Exhibit A). Said parcels shall be consistent with the existing zoning and restricted to the development of one single family residence on each parcel.

The Executive Director shall review and approve the tentative subdivision map, and may permit lot line adjustments on lots 22-27 which results in encroachment into the open space area provided a deed restriction is recorded against each individual lot which states that the encroachment area must be maintained as open space with no structures of any type to be permitted. Approval of any encroachment shall be based on maintaining the view corridor and shall not allow any encroachment beyond the line shown on Exhibit "B".

3. Lot Development Restrictions - Prior to recordation of the final map, the applicant shall record the following restrictions, on each individual parcel, to run with the land free of prior encumbrances, except for tax liens, and in a manner approved by the Executive Director:

a. (All parcels south of the proposed road) - Grading shall be limited to areas with less than 20% gradient. No development shall occur on gradients above 25%. Pole foundation shall be required on all development between gradients of 20% - 25%.

b. (All parcels south and east of the proposed road) - No manufactured slopes shall be over 12' in vertical elevation.

c. (All parcels north and west of the proposed road) - No manufactured slopes shall be over 6' in vertical elevation.

d. (All parcels) - Maximum lot coverage, permitted building levels, and front yard setbacks shall be specified according to an overall site design concept submitted to and approved in writing by the Executive Director prior to the recordation of required deed restrictions.

e. (All parcels) - No existing trees over 4" caliper shall be removed. All new and existing landscaping shall be maintained by the property owners. Removal of new or existing Torrey Pine trees shall require a permit from the Regional Commission or its successor in interest. Landscaping within the front yard setback of each lot shall be developed and maintained in accordance with the overall landscape plan approved for the subdivision. (see Condition 4).

4. Landscape Restrictions -

a. Prior to the transmittal of the permit, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. The landscape plan shall comply with the requirements under subheadings b, c, and d of this condition.

Special Conditions (Continued)

b. The landscape plan shall indicate the exact number and location of all proposed Torrey Pine trees on each developable parcel.

c. For the purposes of screening the development and road from Interstate 5 and existing viewshed across the lagoon flood plain, the applicant shall landscape the open space easement and freeway embankment according to the overall landscape plan, required by this condition, and such plan shall incorporate all of the basic landscape features submitted in the preliminary landscape plan for this permit.

d. The applicant shall obtain a written agreement, from the California Department of Transportation, in a form and content approved by the Executive Director, granting permission to landscape the adjacent freeway right-of-way including provisions for the permanent maintenance of the proposed landscaping.

5. Construction of Road Crossing Crest Canyon/Improvements to San Dieguito Drive -

a. Prior to the transmittal of the permit the applicant or other public agency or private entity shall construct a permanent road across the mouth of Crest Canyon, in accordance with the recommendations contained in the Crest Canyon Erosion Control Study which is being prepared for the City of San Diego Parks and Recreation Department. Any new or improved road crossing of Crest Canyon shall require a separate coastal development permit, if it is determined that the existing crossing is not adequate to service the proposed subdivision.

b. Prior to the transmittal of the permit the applicant shall submit evidence in a form and content suitable to the Executive Director that the road across Crest Canyon and associated erosion control structures will be permanently maintained, and that the road improvement would not impair the efforts of the City of San Diego to improve Crest Canyon Park.

c. Prior to construction of subdivision improvements authorized by this permit, the applicant shall agree to and fund the conceptual design, environmental review, construction plans and engineering, and construction costs as required, for construction of San Dieguito Drive roadway improvements throughout the City of Del Mar as necessary to serve the subdivision.

All engineering plans for construction shall be prepared by, or under direct contract to the City of Del Mar. The applicant's funding of proposed road improvements shall be limited to those improvements as may be ultimately approved under a separate permit from the City of Del Mar and the San Diego Coast Regional Commission.

6. Grading restrictions -

a. Prior to the transmittal of this permit, the applicant shall submit a runoff control plan, designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the greatest intensity of rainfall expected during a one-hour period once every 20 years (20-year one-hour rainstorm). Methods employed within the runoff control plan to control increase in runoff are at the discretion of the engineer, and could include check dams, energy dissipators/sedimentation basins, etc. The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director prior to the transmittal of the permit.

b. All grading activities for the road, utilities, and installation of the erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.

c. All permanent erosion control devices shall be developed and installed prior to any on-site grading activities.

d. All areas disturbed by grading, shall be planted within 60 days of the initial disturbance and prior to October 1 with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.

e. All permanent slope plantings and erosion control devices shall be maintained by the developer, or by the property owners through provisions in the covenants, conditions and restrictions of the subdivision. If said maintenance is to be through provisions in the CC&Rs of the subdivision, a copy of the CC&Rs incorporating this requirement shall be submitted to the Executive Director prior to occupancy of the first completed residence.

7. Restoration of San Dieguito Lagoon -

a. The applicant agrees to remove all of the alluvial material deposited into the San Dieguito Lagoon adjacent to the mouth of Crest Canyon to the topographic conditions as existed prior to November 1977. Said removal shall not commence until a permanent canyon road crossing and associated erosion device have been completed.

b. The applicant shall obtain all required permits from the California Department of Fish and Game and the Army Corps' of Engineers. Pursuant to this condition a separate coastal development permit for the removal of the material shall not be required.

c. Removal of all alluvial materials shall be monitored by a representative from the California Department of Fish and Game to ensure the protection of adjacent San Dieguito Lagoon. The applicant shall agree to comply with all recommendations issued by the Fish and Game Department including, if necessary, a temporary cessation of removal activities.

d. The alluvial material shall be offered at no cost, to the City of Del Mar, as the lead agency in the preparation of the San Dieguito Lagoon Management Plan; and priority shall be given to the use of the sand for either lagoon enhancement or beach replenishment.

8. Wildlife Protection - For the purpose of protecting the lagoon wildlife from the intrusion of domestic pets, a fence shall be constructed around the subdivision in accordance with the recommendation of the San Dieguito Lagoon Management Plan. Final design of the fence shall be approved by the Executive Director.

9. Sewer Alternatives - This permit grants the applicant the option of obtaining sewer service from the City of Del Mar using the extension of San Dieguito Drive.

Terms and conditions are to run with the land. These terms and conditions shall be perpetual, and it is the intention of the parties to bind all future owners and possessors of the subject property to said terms and conditions.

STANDARD PROVISIONS:

1. STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit order penalties established by California Coastal Act of 1976.
2. TIMELY DEVELOPMENT AND COMPLETION: Permittee shall commence development within 180 days following final approval of the project by the San Diego Coast Regional Commission. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
3. REQUEST FOR EXTENSIONS: Permittee may request an extension of time for the commencement of construction provided the request is applied for prior to expiration of the permit.
4. ASSIGNABILITY OF PERMIT: This permit is not assignable unless the permittee's obligations under the permit are assumed by assignee in writing within one year and a copy of the required assumption agreement delivered to the Regional Commission or State Commission if there is no Regional Commission.
5. APPEAL: Unless appealed to the State Commission within ten (10) working days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
6. DISCLAIMER: The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
7. PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) working days permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any questions on this permit, please contact the staff of the Regional Commission.

Very truly yours,



Tom Crandall
Executive Director

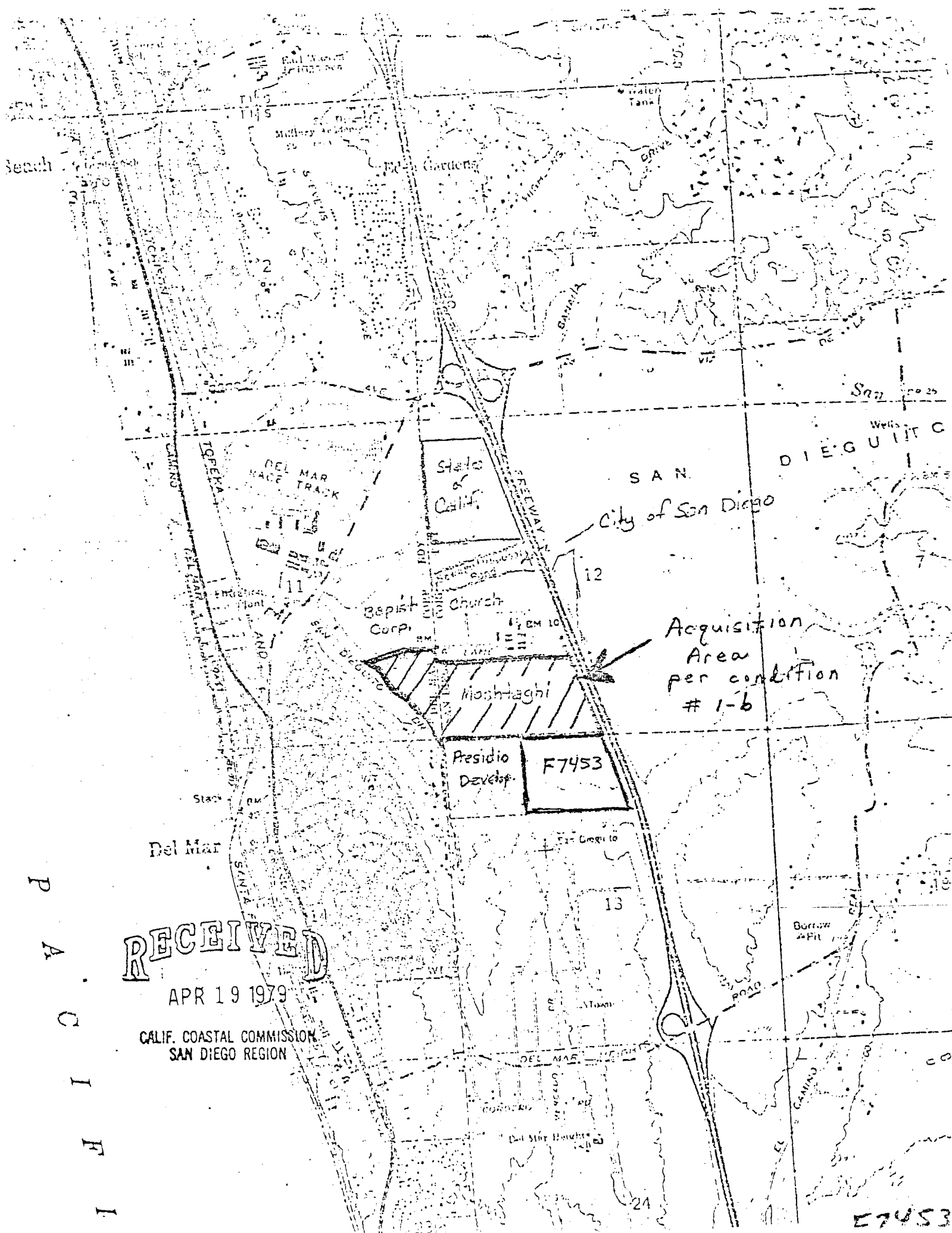
Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Control No.: F7453

Signature of Permittee

Date



RECEIVED

APR 19 1979

CALIF. COASTAL COMMISSION
SAN DIEGO REGION

P
A
C
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F
I

E7453

*file
copy of original
sent for signatures*

1 Recording Requested By and)
When Recorded Mail To:)
2 California Coastal Commission)
631 Howard Street, 4th Floor)
3 San Francisco, California 94105)
Attention: Legal Department)

Space Above This Line for Recorder's Use

A.P.N. 300-160-

DEED RESTRICTIONS

7 I. WHEREAS, Abbas Moshtaghi (hereinafter "Owner"), is the record
8 owner of the real property located adjacent to Interstate 5, approximately
9 1,300 feet easterly of the southeast end of San Dieguito Drive, in the County
10 of San Diego, described in attached Exhibits "A" and "B", hereby incorporated
11 by reference (hereinafter "Property"); and

12 II. WHEREAS, the California Coastal Commission, successor in interest
13 to the San Diego Coast Regional Commission, is acting on behalf of the People
14 of the State of California; and

15 III. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner
16 applied to the San Diego Coast Regional Commission for a coastal development
17 permit for the development of the Property; and

18 IV. WHEREAS, Coastal Development Permit No. F7453 was granted on
19 May 6, 1979, by the San Diego Coast Regional Commission based on the findings
20 adopted by the San Diego Coast Regional Commission; and

21 V. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner
22 applied to the San Diego Coast Regional Commission for an amendment to Coastal
23 Development Permit No. F7453 for the development of the Property; and

24 VI. WHEREAS, an amendment to Coastal Development Permit No. F7453
25 was granted on March 6, 1981 by the San Diego Coast Regional Commission based
26 on the findings adopted by the San Diego Coast Regional Commission; and

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1 VII. WHEREAS, Coastal Development Permit No. F7453 and the amendment
2 to Coastal Development Permit No. F7453A(1) were subject to terms and
3 conditions; and

4 VIII. WHEREAS, the Property is a parcel located in the coastal zone; and

5 IX. WHEREAS, under the policies of Section 30253 of the California
6 Public Resources Code, new development shall assure stability and structural
7 integrity and neither create nor contribute significantly to erosion,
8 geologic instability or destruction of the site or surrounding area, or in
9 any way require the construction of protective devices that would
10 substantially alter natural land forms along the bluff or cliff; and

11 X. WHEREAS, the San Diego Coast Regional Commission found that but
12 for the imposition of the restrictions set forth below, the proposed
13 development would not be found consistent with the provisions of Section
14 30253 and that a permit would not therefore have been granted;

15 NOW, THEREFORE, in consideration of the granting of Coastal Development
16 Permit and the amendment thereto to the Owner by the San Diego Coast Regional
17 Commission there be, and thereby is, created the following restrictions on
18 the use and enjoyment of the Property, to be attached to and become a part of
19 the deeds to the Property.

20 1. On Lots 1 through 9:

21 (i) grading shall be limited to areas with less than 20%
22 gradient;

23 (ii) no development shall occur on gradients above 25%; and

24 (iii) pole foundations shall be required for development
25 between gradients of 20 - 25%.

26 2. On Lots 1 through 16 no manufactured slopes shall be over
27 12 feet in vertical elevation.

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1 3. On Lots 17 through 23 no manufactured slopes shall be over 6
2 feet in vertical elevation.

3 4. On Lots 1 through 23 maximum lot coverage, permitted
4 building levels, and front yard setbacks shall be specified according
5 to an overall site design concept attached as Exhibit "C" and hereby
6 incorporated by reference.

7 5. On Lots 1 through 23 no existing trees of 4 inches in
8 caliper shall be removed; all new and existing landscaping shall be
9 maintained by the Owner; removal of new or existing Torrey Pine trees
10 shall require a permit from the California Coastal Commission or its
11 successor in interest; landscaping within the front yard setback of
12 each lot shall be developed and maintained in accordance with an
13 overall site plan on file with the California Coastal Commission, San
14 Diego District.

15 6. On Lots 1 through 25:

16 (i) all permanent slope plantings and erosion control
17 devices required by Special Condition 6.a. through d. of Coastal
18 Development Permits F7453 and F7453A(1), attached as Exhibit "D",
19 shall be maintained by the homeowners' association, or the Owner
20 if no homeowners' association has been formed.

21 (ii) Owner and Coastal Commission acknowledge that erosion
22 may occur downstream from the erosion control devices approved
23 pursuant to Special Condition 6.a at Station 118+75 and Station
24 131+71, Race Track View Drive on improvement drawings for City of
25 San Diego Tentative Map 76-249. Should such erosion occur to an
26 extent deemed significant by the Executive Director with input
27 from the California Department of Fish and Game, the restoration
28 of the affected open space and the installation and maintenance,

1 to the satisfaction of the Executive Director, of erosion control
2 devices downstream from the erosion control devices mentioned
3 above to an elevation of eight (8) feet shall be the responsi-
4 bility of the homeowners' association, or the Owner if no
5 homeowners' association has been formed.

6 (iii) prior to commencement of development, a ten thousand
7 dollar (\$10,000.00) bond shall be drawn in favor of the
8 California Coastal Commission guaranteeing such restoration of
9 open space and installation and maintenance of the erosion
10 control devices. Said bond shall be purchased by the homeowners'
11 association, or the Owner if no homeowners' association has been
12 formed. Said bond shall be issued and annually renewed for a
13 period of three (3) years from the date of completion of all
14 grading and drainage improvements as shown on the approved
15 grading plan to the satisfaction of the City Engineer.

16 7. Owner:

17 (i) acknowledges that Lots 1 through 23 may be subject to
18 extraordinary hazard from erosion and landslides caused by waves
19 from storms;

20 (ii) assumes the liability for such hazards;

21 (iii) unconditionally waives any claim of liability on the
22 part of the California Coastal Commission for any damage
23 resulting from such hazards; and

24 (iv) understands that construction in the face of such
25 hazards may preclude eligibility for public disaster funds or
26 loans should damage result from such hazards.

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1 Said deed restrictions shall remain in full force and effect during the
2 period that said permit and amendment, or any modification or amendment
3 thereof, remains effective, and during the period that the development
4 authorized by said permit and amendment or any modification of said
5 development, remains in existence in or upon any part of, and thereby confers
6 benefit upon the Property and to that extent, said deed restriction is hereby
7 deemed and agreed by Owner to be covenant running with the land, and shall
8 bind Owner and all his assigns or successors in interest.

9 Owner agrees to record these Deed Restrictions in the Recorder's office
10 for the County of San Diego as soon as possible after the date of execution.

11 DATED: 7/11, 1983.

12 Attorney in fact for
13 Abbas Moshtaghi
14 Reza M. Moshtaghi
15 SIGNED: [Signature]
16 Abbas Moshtaghi

16 STATE OF CALIFORNIA

17 COUNTY OF SAN DIEGO

18 On JULY 11 1983, before the undersigned, a
19 Notary Public for the County and State mentioned above, personally
20 appeared Abbas Moshtaghi whose name(s) is subscribed to the within
21 instrument, and acknowledged that he/she executed the same.

22 [Signature]
23 NOTARY PUBLIC IN AND FOR SAID COUNTY
24 AND STATE



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This is to certify that the deed restriction set forth above dated
7/11, 1983, and signed by Abbas Moshtaghi, Owner,
is hereby acknowledged by the undersigned officer on behalf of the
California Coastal Commission pursuant to authority conferred by the
California Coastal Commission when it granted an amendment to Coastal
Development Permit No. F7453A(1) on March 6, 1981 and the California Coastal
Commission consents to recordation thereof by its duly authorized officer.

DATED: _____

CALIFORNIA COASTAL COMMISSION
SUCCESSOR IN INTEREST TO THE SAN DIEGO
COAST REGIONAL COMMISSION

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On _____, before the undersigned, a Notary Public
in and for said State, personally appeared _____,

_____ known to me to the _____

of the California Coastal Commission and known to me to be the person who
executed the within instrument on behalf of said Commission, and acknowledged
to me that such Commission executed the same.

Witness my hand and official seal.

NOTARY PUBLIC IN AND FOR SAID COUNTY AND
STATE

EXHIBIT A

Property referred to as Lots 1 through 25 of Del Mar Estates in
the City of San Diego, County of San Diego, State of California,
on the map attached hereto as Exhibit B.

EXHIBIT C

Overall Site Design Concept

<u>Levels</u>	<u>Lot Coverage</u>	<u>Lots</u>
Single Level	3,000 Sq. Ft. Maximum	1 - 23
Single Level	4,000 Sq. Ft. Maximum	2 6 - 9 10, 11 22, 23
Split Level	3,500 Sq. Ft. Maximum	1 - 23
Two-Story	2,200 Sq. Ft. Maximum	9 - 16

The front yard setbacks shall be pursuant to applicable zoning under the San Diego Municipal Code.

EXHIBIT D

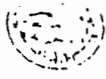
6. Grading Restrictions -

a. Prior to the transmittal of this permit, the applicant shall submit a runoff control plan, designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the greatest intensity of rainfall expected during a one-hour period once every 20 years (20-year one-hour rainstorm). Methods employed within the runoff control plan to control increase in runoff are at the discretion of the engineer, and could include check dams, energy dissipators/sedimentation basins, etc. The runoff control plan, including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director prior to the transmittal of the permit.

b. All grading activities for the road, utilities, and installation of the erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.

c. All permanent erosion control devices shall be developed and installed prior to any on-site grading activities.

d. All areas disturbed by grading, shall be planted within 60 days of the initial disturbance and prior to October 1 with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.



SAN DIEGO COAST REGIONAL COMMISSION

MISSION GORGE ROAD, SUITE 220
SAN DIEGO, CALIFORNIA 92120-TEL. (714) 260-6992

Tim Cochran
Chairman
Roger Hodgecock
Vice Chairman

AMENDMENT TO
DEVELOPMENT PERMIT

Harrist Allen
Representative to the
California Coastal Commission

DATE OF COMMISSION ACTION: March 6, 1981

CONTROL NO.: F7453(A1)

Tom Crandall
Executive Director

APPLICANT: Cameron Moshtaghi
P.O. Box 81735
San Diego, CA 92138

AGENT: John D. Thelan
Peterson, Thelan & Price
530 "B" Street, Suite 2300
San Diego, CA 92101

PROJECT ADDRESS: Adjacent to Interstate 5, approximately 1,300 feet
easterly of southeast end of San Dieguito Drive (APN 300-
160-50 & 51) San Diego (Vicinity of Del Mar)

You are hereby granted an amendment to your development permit. This amendment is issued after a duly held public hearing before the San Diego Coast Regional Commission and after the Regional Commission found that the proposed development is in conformity with the provisions of the California Coastal Act of 1976 including the following:

- (1) That the development is in conformity with Chapter 3 of the California Coastal Act of 1976 (commencing with Public Resources Code Section 30200).
- (2) That the permitted development will not prejudice the ability of any affected local government to prepare a local coastal program that is in conformity with Chapter 3 of the California Coastal Act of 1976.
- (3) That if the development is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976 (Public Resources Code, Sections 30210-30224).
- (4) That there are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available which would substantially lessen any significant adverse impact that the development as finally proposed may have on the environment.

This permit is limited to development described on the original permit and modified in the amendment below and set forth in material on file with the Regional Commission, and subject to the terms, conditions, and provisions hereinafter stated:

AMENDMENT:

SEE ATTACHED

EXHIBIT NO. 4
APPLICATION NO.
F7453-A2/6-86-181-A1
F7453-A1
First Amendment
California Coastal Commission

Project Description:

Subdivision of 40.2 acres (adjacent to San Dieguito Lagoon) into 27 lots between 21,000 sq. ft. to 40,000 sq. ft. each (except Lot #1) for the future construction of 25 single-family detached residential units. Lots #1 and #2 will be retained for open space/equestrian use, with Lot #1 comprising approximately 13.4 acres. The project includes extensive landscaping, road development, storm drainage, water and all utilities. Approximately 2,600 cubic yards of balanced cut and fill grading will be required in the development of roads and building sites. Access will be provided by the easterly extension of San Dieguito Drive through a 52 ft. right-of-way with a 32 ft. paved road. No building construction is included with this permit, although individual development of parcels will proceed in accordance with an approved master development plan to be implemented through specific lot restrictions.

PROPOSED AMENDMENT:

To amend Special Condition #5 of the original permit pertaining to the construction of a permanent road across the mouth of Crest Canyon. Amendment would allow the applicant to construct the road as per plans on file with the Regional Commission dated September 19, 1980, and without requiring it to be in accordance with the Crest Canyon Erosion Control Study. Amendment also would eliminate requirements that construction be by or under direct contract to the City of Del Mar and the necessity for the applicant to obtain another coastal permit for the construction of road improvements. An amendment of Special Condition #7 would add that the applicant not be required to remove alluvial material (as referenced), if the material has been moved by others to the satisfaction of the Executive Director. Also included is a new Special Condition #10 to read "For purposes of satisfying standard provision C.2. of this permit, commencement of development shall be deemed to have occurred upon satisfaction of Special Condition No. 1.b." (Condition 1.b. requires public acquisition of adjacent lowlands.)

PROJECT LOCATION:

Adjacent to Interstate 5, approximately 1,300 feet easterly of southeast end of San Dieguito Drive (APN 300-160-50 & 51) San Diego (Vicinity of Del Mar)

(SPECIAL CONDITIONS - next page)

SPECIAL CONDITIONS - continued:

1. Dedication of Open Space Easement and Preservation of Floodplain - Prior to submittal of the permit by the Executive Director permitting construction to commence, Executive Director shall certify in writing that the following conditions have satisfied.

a. The applicant shall execute and record a document, in a form and content approved by Executive Director of the Regional Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an open space easement for the purpose of protecting the steep slopes from erosion, for the protection of scenic and visual amenities along Interstate 5, for the protection of permitted development from flood hazards, and for the provision of a wildlife and recreation access corridor connecting Crest Canyon with the floodplain. Said easement shall be 250' wide along the south property line as measured eastward from the west property line and shall include all of the areas designated as lots 1, 2, 3, 4, and a portion of lot 5 as shown on Exhibit "A".

Said lots or portions as described shall be designated in the tentative and final parcel maps as a single open space easement to be offered for dedication. Such easement shall be free of prior liens or encumbrances except for tax liens.

Any public agency or private association accepting such dedication shall limit public use to education, research and access to Crest Canyon Park. The offer shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 25 years, such period running from the date of recording.

b. That the applicant shall ensure preservation of the valuable wildlife habitat on his adjoining parcels within the floodplain (appropriately 90± acres as shown on Exhibit "C") by either completing the sale of the property to the Wildlife Conservation Board or by prohibiting development of the area with an irrevocable offer to dedicate an open space easement on the property. Documents indicating completion of the sale, or evidence of recordation of the irrevocable offer to dedicate an open space easement on the property, shall be submitted to, reviewed and approved by the Executive Director in writing prior to transmittal of the permit.

2. Density Restriction - That prior to the transmittal of the permit, the applicant shall submit a tentative approved subdivision map, consistent with all terms and conditions attached to the permit. The tentative map shall contain not more than twenty-three (23) parcels exclusive of the area designated as an open space easement (see Exhibit A). Said parcels shall be consistent with the existing zoning and restricted to the development of one single family residence on each parcel.

The Executive Director shall review and approve the tentative subdivision map, and may permit lot line adjustments on lots 22-27 which results in encroachment into the open space area provided a deed restriction is recorded against each individual lot which states that the encroachment area must be maintained as open space with no structures of any type to be permitted. Approval of any encroachment shall be based on maintaining the view corridor and shall not allow any encroachment beyond the line shown on Exhibit "B".

SPECIAL CONDITIONS:

3. Lot Development Restrictions - Prior to or concurrent with recordation of the final map, the applicant shall record the following restrictions, on each individual parcel, to run with the land free of prior encumbrances, except for tax liens, and in a manner approved by the Executive Director:

- a. (All Parcels South of the Proposed Road) - Grading shall be limited to areas with less than 20 percent gradient. No development shall occur on gradients above 25 percent. Pole foundation shall be required on all development between gradients of 20-25 percent.
- b. (All Parcels South and East of the Proposed Road) - No manufactured slopes shall be over 12 feet in vertical elevation.
- c. (All Parcels North and West of the Proposed Road) - No manufactured slopes shall be over 6 feet in vertical elevation.
- d. (All Parcels) - Maximum lot coverage, permitted building levels, and front yard setbacks shall be specified according to an overall site design concept submitted to and approved in writing by the Executive Director prior to the recordation of required deed restrictions.
- e. (All Parcels) - No existing trees over 4" caliper shall be removed. All new and existing landscaping shall be maintained by the property owners. Removal of new or existing Torrey Pine trees shall require a permit from the Regional Commission or its successor in interest. Landscaping within the front yard setback of each lot shall be developed and maintained in accordance with the overall landscape plan approved for the subdivision. (See Condition #4)."

4. Landscape Restrictions -

a. Prior to the transmittal of the permit, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. The landscape plan shall comply with the requirements under subheadings b, c, and d of this condition.

b. The landscape plan shall indicate the exact number and location of of all proposed Torrey Pine trees on each developable parcel.

c. For the purposes of screening the development and road from Interstate 5 and existing viewshed across the lagoon flood plain, the applicant shall landscape the open space easement and freeway embankment according to the overall landscape plan, required by this condition, and such plan shall incorporate all of the basic landscape features submitted in the preliminary landscape plan for this permit.

SPECIAL CONDITIONS - continued:

d. The applicant shall obtain a written agreement, from the California Department of Transportation, in a form and content approved by the Executive Director, granting permission to landscape the adjacent freeway right-of-way including provisions for the permanent maintenance of the proposed landscaping.

"5. Construction of Road Crossing Crest Canyon/Improvements to San Diequito Drive.

- a. ~~Prior to the transmittal of the permit~~ The applicant or other public agency or private entity shall construct a the permanent road across the mouth of Crest Canyon substantially in conformance accordance with the ~~recom-~~ ~~mendations contained in the Crest Canyon Erosion Control Study which is being prepared for the City of San Diego Parks and Recreation Department.~~ ~~Any new or improved road crossing of Crest Canyon shall require that the existing crossing is not adequate to service the proposed subdivision.~~ Plans on file with the Regional Commission dated September 10, 1980.

Additionally, the drainage design for the road crossing shall be modified to address the concerns of the Department of Fish and Game relative to the adequacy of the drainage structures to accommodate the anticipated volume of water. These modifications shall include, but not be limited to: realignment of the overflow on the dam, an increase in freeboard, and an increase in the size of the Standpipe. Prior to issuance of the permit, final drainage plans shall be submitted to the Executive Director for review and approval, in consultation with the Department of Fish and Game and the City of San Diego Engineering Department.

- b. Prior to the transmittal of the permit the applicant shall submit evidence in a form and content suitable to the Executive Director that the road across Crest Canyon and associated erosion control structures described in the plans referenced in subparagraph a. above will be permanently maintained, and that the road improvement would not impair the efforts of the City of San Diego to improve Crest Canyon Park.

SPECIAL CONDITIONS - continued:

- c. Prior to construction of subdivision improvements authorized by this permit, the applicant shall agree to and fund the conceptual design, environmental review, construction plans and engineering, and construction costs as required, for construction of San Dieguito Drive roadway improvements throughout the City of Del Mar as necessary to serve the subdivision.

All construction shall be substantially in conformance with the engineering plans for construction shall be prepared by or under direct contract to the City of Del Mar on file with the Regional Commission dated March 7, 1980. The applicant's funding of proposed road improvements shall be limited to those improvements as may be ultimately approved under a separate permit from the City of Del Mar and the San Diego Coast Regional Commission described in the referenced engineering plans."

6. Grading restrictions -

a. Prior to the transmittal of this permit, the applicant shall submit a runoff control plan, designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff from the fully developed site over runoff that would occur from the existing undeveloped site as a result of the greatest intensity of rainfall expected during a one-hour period once every 20 years (20-year one-hour rainstorm). Methods employed within the runoff control plan to control increase in runoff are at the discretion of the engineer, and could include check dams, energy dissipators/sedimentation basins, etc. The runoff control plan including supporting calculations shall be submitted to and determined adequate in writing by the Executive Director prior to the transmittal of the permit.

b. All grading activities for the road, utilities, and installation of the erosion and sedimentation devices shall be prohibited within the period from October 1 to April 1 of each year.

c. All permanent erosions control devices shall be developed and installed prior to any on-site grading activities.

d. All areas disturbed by grading, shall be planted within 60 days of the initial disturbance and prior to October 1 with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect and shall consist of seeding, mulching, fertilization and irrigation adequate to provide 90% coverage within 90 days. Planting shall be repeated if the required level of coverage is not established. This requirement shall apply to all disturbed soils including stockpiles.

e. All permanent slope plantings and erosion control devices shall be maintained by the developer, or by the property owners through provisions in the covenants, conditions and restrictions of the subdivision. If said maintenance is to be through provisions in the CC&Rs of the subdivision, a copy of the CC&Rs incorporating this requirement shall be submitted to the Executive Director prior to occupancy of the first completed residence.

7. Restoration of San Dieguito Lagoon -

- a. The applicant agrees to remove all of the alluvial material deposited into the San Dieguito Lagoon adjacent to the mouth of Crest Canyon to the topographic conditions as existed prior to November 1977. Said removal shall not commence until a permanent canyon road crossing and associated erosion device have been completed.
- b. The applicant shall obtain all required permits from the California Department of Fish and Game and the Army Corps of Engineers. Pursuant to this condition a separate coastal development permit for the removal of the material shall not be required.
- c. Removal of all alluvial materials shall be monitored by a representative from the California Department of Fish and Game to ensure the protection of adjacent San Dieguito Lagoon. The applicant shall agree to comply with all recommendations issued by the Fish and Game Department including, if necessary, a temporary cessation of removal activities.
- d. The alluvial material shall be offered at no cost, to the City of Del Mar, as the lead agency in the preparation of the San Dieguito Lagoon Management Plan; and priority shall be given to the use of the sand for either lagoon enhancement or beach replenishment.
- "e. Notwithstanding the above, the applicant shall have no obligation to remove such alluvial material if, prior to completion of construction authorized by this permit, the material has been removed by a public agency or otherwise to the satisfaction of the Executive Director."

8. Wildlife Protection - For the purpose of protecting the lagoon wildlife from the intrusion of domestic pets, a fence shall be constructed around the subdivision in accordance with the recommendation of the San Dieguito Lagoon Management Plan. Final design of the fence shall be approved by the Executive Director.

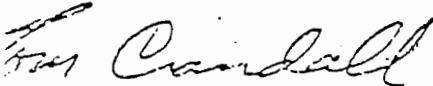
9. Sewer Alternatives - This permit grants the applicant the option of obtaining sewer service from the City of Del Mar using the extension of San Dieguito Drive.

10. Timely Development and Completion: Permittee shall commence develop-
ment within three (3) years following final approval of the project
by the San Diego Coast Regional Commission. Construction shall be
pursued in a diligent manner and completed within a reasonable period
of time. This condition will replace the original time limit of 2 years
pursuant to commencement of the project as outlined in standard
provision 2 of the original development permit.

11. Prior to the transmittal of a coastal development permit, the applicants
shall submit to the Executive Director a recorded deed restriction that
binds the applicants and any successors in interest. The deed restric-
tions shall provide: (a) that the applicants understand that the site
may be subject to extraordinary hazard from erosion and landslides
caused by waves from storms and the applicants assume the liability
from those hazards; (b) the applicants unconditionally waive any
claim of liability on the part of the Commission for any damage from
such hazards; and (c) the applicants understand that construction in
the face of these probable hazards may make them ineligible for public
disaster funds or loans for repair or replacement of the property in
the event of storms.

If you have any questions on this permit, please contact the staff of the Regional Commission.

Very truly yours,



Tom Crandall
Executive Director

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

CONTROL NO.: F 7453 (A1)

Signature of Permittee

Date

ORNIA COASTAL COMMISSION

EGO COAST DISTRICT
 MINO DEL RIO SOUTH, SUITE 125
 SO, CA 92108-3520
 9740

Filed: March 31, 1986
 49th Day: May 19, 1986
 180th Day: September 28, 1986
 Staff: SS-S0
 Staff Report: April 24, 1986
 Hearing Date: May 13-16, 1986

STAFF REPORT: CONSENT CALENDAR

Application No.: 6-86-181

Applicant: Oceanview Development Agent: JP Engineering, Inc.

Description: Construction of thirteen single family residences including 4,000 cu.yd. cut and 38,000 cu. yd. fill on Lots 11 through 23 of a 23 unit residential development.

Lot Area	9.96 acres
Building Coverage	33,983 sq. ft. (8%)
Pavement Coverage	9,100 sq. ft. (2%)
Landscape Coverage	222,024 sq. ft. (51%)
Unimproved Area	168,925 sq. ft. (39%)
Parking Spaces	39
Zoning	R1-20,000
Plan Designation	Open Space and Residential 0-4 dua
Project Density	.6 dua
Ht abv fin grade	25 feet

Site: North and east of Racetrack View Drive at the eastern terminus of San Dieguito Road, San Diego, San Diego County.
 APN 300-160-50 and 51.

Substantive File Documents: SDCRC # F7453A Coastal Development Permit (CDP) and Recommendation and Findings; Certified North City Land Use Plan

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program confor the provisions of Chapter 3 of the Coastal Act, and will not have an significant adverse impacts on the environment within the meaning of California Environmental Quality Act.



I. Standard Conditions.

See attached page.

II. Special Conditions.

The permit is subject to the following conditions:

1. Grading and Erosion Control. Prior to transmittal of the coastal development permit, the applicant shall submit final grading and erosion control plans, approved by the City, which incorporate the following:
 - a. The plans shall be in conformance with the preliminary grading plans submitted 3/28/86 and shall be in conformance with the Lot Development Restrictions imposed in the approved CDP/F7453A.
 - b. All grading activity shall be prohibited between November 15th and April 1st of any year.
 - c. All permanent drainage and erosion control devices approved pursuant to CDP/F7453A shall be installed prior to or concurrent with grading for the residential building sites.
 - d. All drainage from roofs, driveways and all impervious surfaces shall be directed away from the slopes and towards the street drainage improvements approved pursuant to CDP/F7453A.
 - e. All areas disturbed by grading shall be planted within 60 days of the initial disturbance and prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods. Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize a hydroseed mix of native species compatible with surrounding native vegetation subject to Executive Director approval in consultation with the Dept. of Fish and Game.
 - f. All permanent slope plantings and erosion control devices shall be maintained by the developer, or by the property owners through provisions in the CC&R's of the subdivision. If said maintenance is to be through provisions in the CC&R's, a copy of the CC&R's incorporating this requirement shall be submitted to the Executive Director prior to occupancy of the first completed residence.
 - g. The grading plans shall indicate provision of a temporary fence installed along the northern limits of Lots 16 through 23 adjacent to the open space. The fence shall be installed prior to commencement of grading approved pursuant to this permit, and shall remain until project completion. Parking or running of earthmoving equipment within the open space is specifically prohibited.

Said plans shall be submitted to, reviewed and approved in writing by the

Executive Director, prior to transmittal of the permit.

2. Lagoon Impacts. Prior to transmittal of the coastal development permit, the approved site plan shall be subject to Executive Director written approval in consultation with the Dept. of Fish and Game, to assure provision of a minimum 100 ft. buffer between the proposed grading on Lots 17 and 18 and any wetland. Should it be required, prior to transmittal of the permit, the applicant shall record a deed restriction on Lots 17 and 18, in a form and content acceptable to the Executive Director, prior to any liens and encumbrances, which prohibits alteration of landforms, placement or removal of vegetation, or erection of any structures within the area on Lots 17 and 18 located within 100 ft. of any wetland.

4. Visual Impact. Prior to transmittal of the coastal development permit, the applicant shall submit the following :

a. Landscape plans for the individual building sites which indicate areas to be hydroseeded pursuant to Condition #1e and are in conformance with the overall landscape plan approved pursuant to CDP/F7453A regarding tree planting.

b. Building plans which indicate the colors of the exterior surface of the proposed residences to be compatible with the native environment, subject to Executive Director approval.

Said plans shall be submitted to, reviewed and approved in writing by the Executive Director, prior to transmittal of the permit.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant is proposing to grade building pads on 13 residential parcels and construct 13 single family homes. The parcels are part of a 23 unit residential subdivision which was approved by the San Diego Coast Regional Commission in 1979 (F7453A Moshtaughi). The subdivision approval consisted of grading and installation of access roads, drainage improvements and utilities.

The subject application incorporates Lots 11 through 23 located north and east of Racetrack View Drive. The application was divided into two permits (see 6-86-131 for development of Lots 1 through 10) to allow for more expeditious processing of these northern sites which do not contain steep slopes in excess of 20% grade. Also, the lots are being developed consistent with the Lot Development Restrictions and all the conditions imposed in approval of CDP/F7453A.

2. Environmentally Sensitive Habitat/Lagoon and Floodplain. The site is located south of and adjacent to the San Dieguito Lagoon and the floodplain of the San Dieguito River. As part of the Commission approved subdivision, the applicant deeded 90+ acres within the floodplain adjacent to and north of the

subject property to the Wildlife Conservation Board.

Section 30240 of the Coastal Act provides that development adjacent to environmentally sensitive habitat areas such as those found in lagoons and floodplains be compatible with continuance of the habitat values within the sensitive area. Provision of an adequate buffer between development and sensitive areas within the floodplain is appropriate to guard against disruption of habitat values.

The attached Condition #2 provides for Executive Director approval and Dept. of Fish and Game review of the site plan in relation to the current wetland boundaries to assure a minimum 100 feet of undeveloped area will be provided between the limits of the building pads on Lots 17 and 18 and any wetland. This requirement is consistent with Section 30240, past Commission precedent and the floodplain protection policies contained in the North City Land Use Plan. Additionally, the attached conditions address grading and control of erosion from the construction site to protect against sedimentation of downstream resources, consistent with Section 30231 of the Coastal Act.

3. Visual Impact. The site is highly visible from southbound Interstate 5 as it crosses the San Dieguito River Valley, Via De La Valle, a major coastal access route, and the Del Mar Racetrack and Fairgrounds, a popular visitor destination point. Section 30251 of the Coastal Act protects the scenic and visual quality of the coastal zone as a resource of public importance, provides for minimal alteration of the natural landforms and that development be subordinate to the natural setting in highly scenic areas.

Therefore, the attached Condition #3 provides for hydroseeding the manufactured slopes with native species compatible with the surrounding natural vegetation to mitigate the visual impact of the development on this scenic coastal area. Also, planting of a significant number of trees was required in the subdivision approval to screen the structures from view from Interstate 5 and points west and north. The condition also requires the structures be colored to conform to the natural setting consistent with the requirements of Section 30251 of the Coastal Act.

4. 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.

The proposed residential subdivision at a density of .6 dwelling units per acre and its adjacent open space is consistent with the residential O-4 dual use and open space land use designation contained in the certified North City LCP Land Use Plan. The portion of the site covered by this application contains no steep slopes in excess of 25% grade. Provision of a minimum 100 foot buffer between any wetland and the proposed development, as conditioned, is in conformance with the floodplain protection policies in the North City LUP. As conditioned, the approved project should not prejudice the City of San Diego's ability to prepare a certifiable Local Coastal Program.

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.

(6181R)

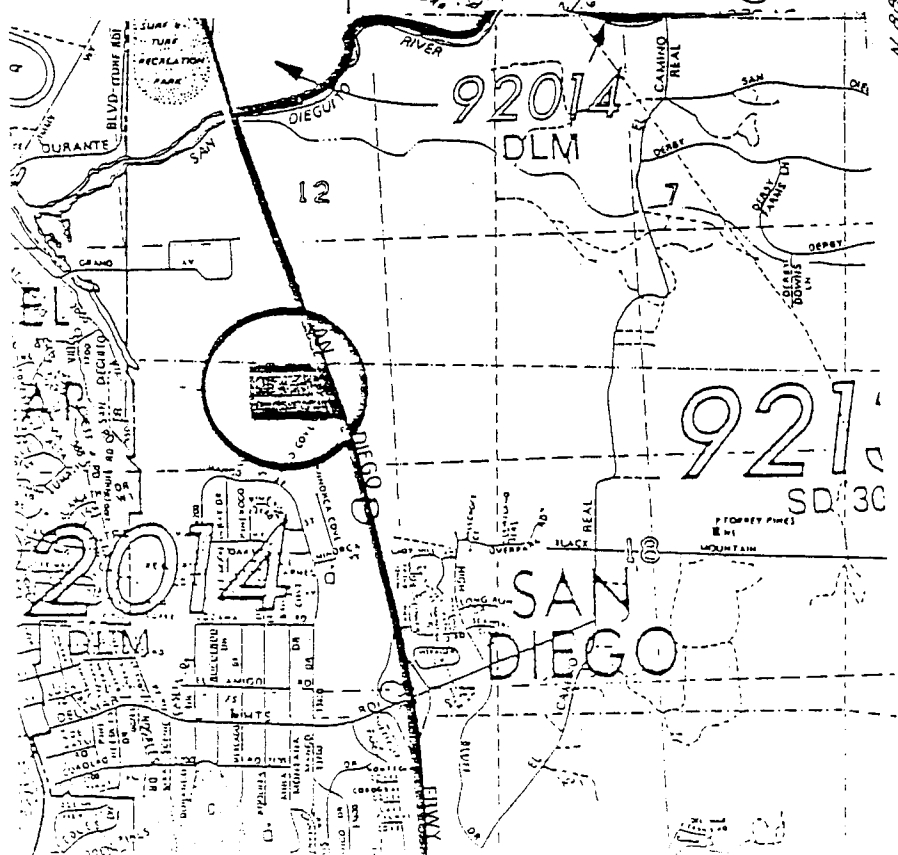
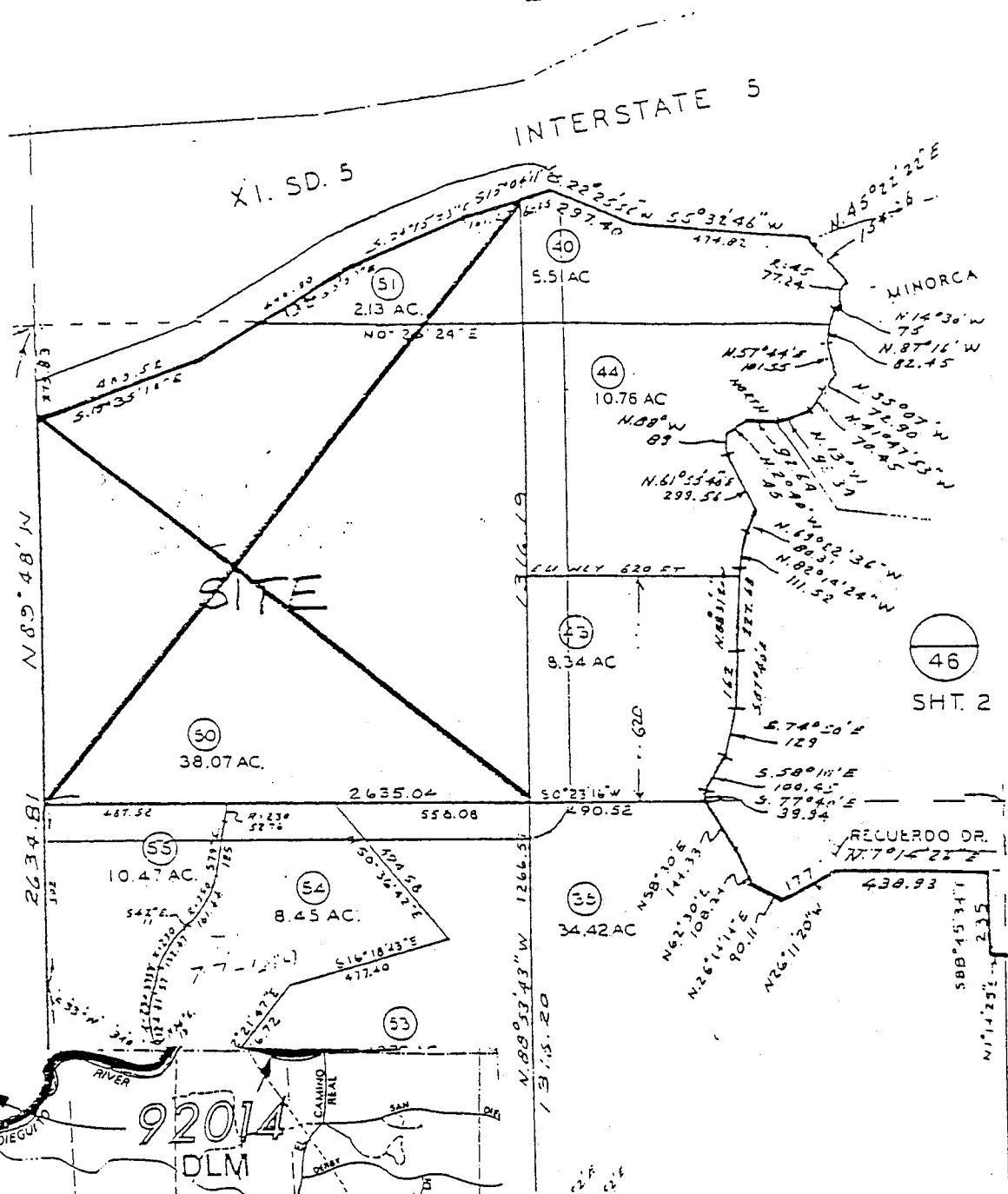
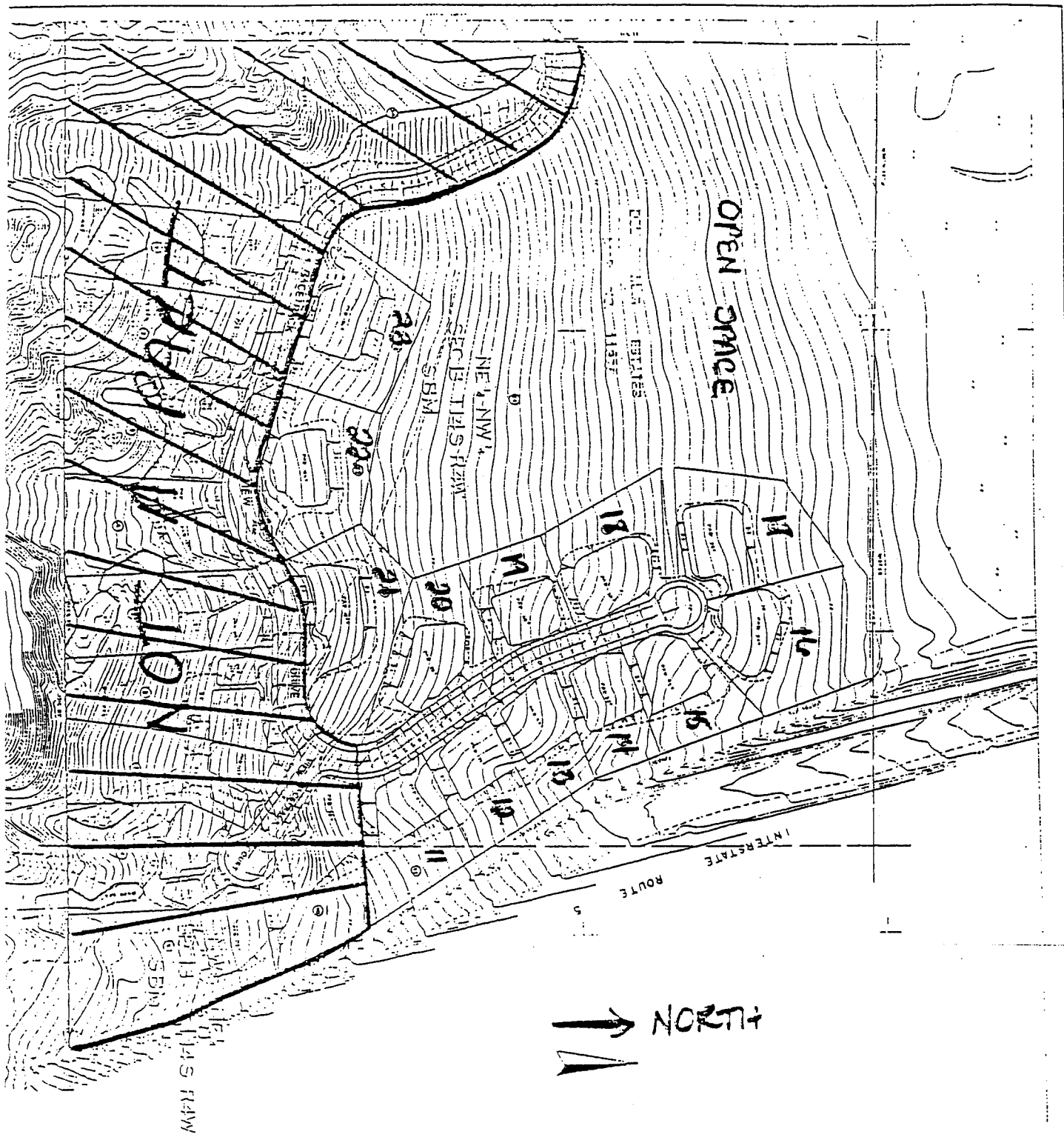


EXHIBIT NO. 1

APPLICATION NO. 6-86-181

Site Maps



5

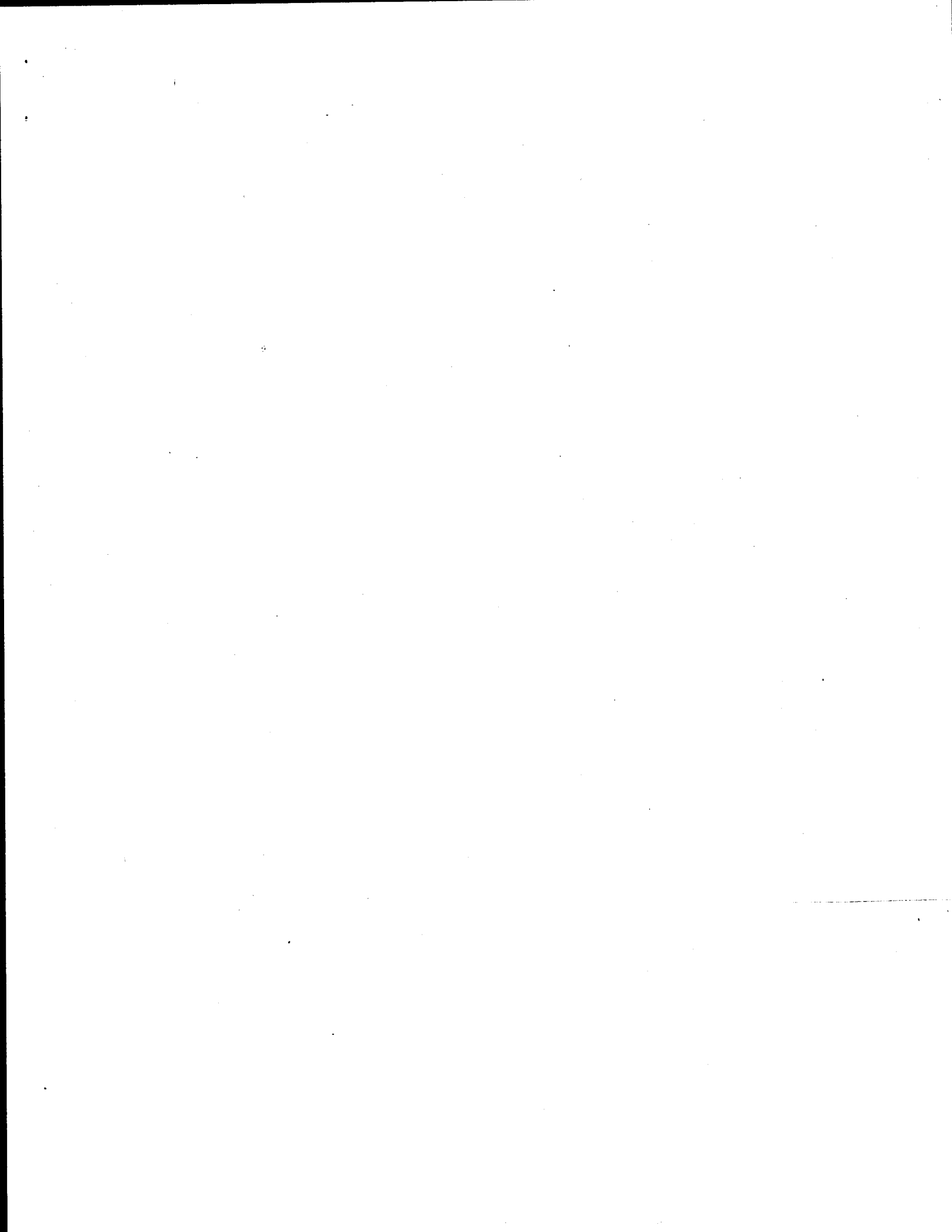
EXHIBIT NO. 2-

APPLICATION NO.

6-86-181

Site Plan

DRAWING PLAN
 LAGUNA DEL MAR
 DEL MAR ESTATES
 J.P. ENGINEERING



1220

86 470295

RECORDED RETURN BY GREAT EASTERN TITLE CO.

OFFICE OF THE COUNTY CLERK
OF SAN DIEGO COUNTY, CA

RECORDING REQUESTED BY)
WHEN RECORDED MAIL TO:)
Oceanview Development Company,)
Inc.)
462 Stevens Avenue, Suite 302)
Solana Beach, California 92075)

1986 OCT 17 PM 12:49

VEV...
COUNTY RECORDER

RF/04
AR/02
MG/1

Space Above for Recorder's Use

HN

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made by Oceanview Development Company, Inc., a Nevada corporation ("Declarant") with reference to the following facts:

A. Declarant is the Owner of certain real property located in the City of San Diego, County of San Diego, State of California, which is more particularly described in Exhibit "A" attached hereto ("Property"). The Property has been subdivided into twenty-five (25) Lots as shown on Map No. 11375 recorded in the Office of the County Recorder of San Diego County ("Subdivision Map").

B. The Property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code and is subject to the jurisdiction of the California Coastal Commission ("Commission"). Coastal Development Permit Nos. F7453, F7453A(1) and 6-86-131 have been granted by the Commission with respect to the Property to allow development of the Property in accordance with the terms and conditions of said permits ("Coastal Commission Permits").

C. Pursuant to the Coastal Commission Permits, certain deed restrictions were recorded against the Property on August 8, 1983 at File/Page No. 83-276026 in order to control and restrict the use and enjoyment of the Property in accordance with the terms of the Coastal Permits a copy of which is attached hereto as Exhibit "B" ("Coastal Commission Deed Restrictions").

D. In compliance with the Coastal Commission Permits, Declarant has installed and constructed certain erosion control improvements on the Property consisting of reinforced concrete drainage ditches, drains, and desilting basins all as more particularly shown on the grading plans for the Property attached hereto as Exhibit "C" (collectively referred to herein as "Erosion Control Improvements").

RECORDS, SAN DIEGO COUNTY

E. Declarant intends to construct residential housing on the Lots and thereafter sell and convey such Lots and housing.

F. Before selling or conveying the Lots, Declarant desires to subject the Property and each Lot to this Declaration to insure that the development, the improvements, and the maintenance of the Property conforms to the Coastal Commission Permits and the Coastal Commission Deed Restrictions and to establish a general plan for the maintenance of the Property for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be owned, held, conveyed, mortgaged, encumbered, leased, used, occupied and improved subject to the covenants, conditions, restrictions, easements, liens and charges set forth below in this Declaration, all of which are equitable servitudes and shall run with the title of the Property and shall inure to the benefit of Declarant and the Owner of fee simple title to the Lots. The covenants, conditions and restrictions set forth herein shall run with the land respecting the use of each Lot within the Property for the benefit of each other Lot within the Property.

ARTICLE I USE RESTRICTIONS

Section 1.1 Uses Other than Residential Prohibited. All of the Lots shall be used only for residential purposes herein provided and no part of any Lot shall be used, caused to be used, permitted to be used, in any way, directly or indirectly, for (i) any business or profession; (ii) any commercial, manufacturing, educational, religious, medical, institutional or other non-residential purpose; (iii) carrying on of any noxious or offensive activity or pursuit.

Section 1.2 Oil Drilling Prohibited. Mining, boring for oil, natural gas or minerals shall not be permitted upon or in any part of the Property.

Section 1.3 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that usual and ordinary household pets, such as dogs and cats, may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 1.4 Property to be Cleared of Weeds and Rubbish. Each Lot shall be maintained in a neat, orderly manner free of weeds and other unsightly materials.

Section 1.5 Window Coverings. All windows of any residences on the Property shall have facing the exterior of the Lot, draperies, drapery linings or casements and no windows or any residences shall be covered by sheets, newspaper, foil or any other unsightly items.

Section 1.6 Antenna. No towers, antenna, satellite dish receivers, aerials, or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected and maintained or permitted to be erected and maintained on the Property.

Section 1.7 Vehicles. No mobile home, camper, trailer, recreational vehicle, truck, boat or trailer or other vehicle of a similar nature shall be parked or stored, temporarily or permanently, on streets or right-of-ways, or on the Property except within a garage. A mobile home may be kept within an enclosed area that shall not be visible from the streets or neighboring lots provided that such mobile home is parked at all times within the enclosed area, except during washing, loading or unloading.

Section 1.8 Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 1.9 Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish. Garbage, trash or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a sanitary and clean condition.

Section 1.10 Signs. No signs or billboard shall be erected, placed or maintained on the Property, except that one professional sign advertising a Lot for sale or rent in compliance with Section 713 of the California Civil Code may be displayed on each Lot.

ARTICLE II EROSION CONTROL IMPROVEMENTS; OBLIGATIONS OF OWNERS

Section 2.1 Slope Banks. All slope banks located on any Lot shall be kept, maintained, watered and replanted by the Owner of such Lot so as to prevent erosion and to protect and maintain the Erosion Control Improvements on such Lot. No structure, planting or other material shall be placed or permitted to remain and no action shall be undertaken on any of the slope banks which may damage or interfere with established slope banks as installed and landscaped by Declarant, create erosion or sliding problems, which may change the direction of flow of water through the Erosion Control Improvements, obstruct or retard the flow of water through the Erosion Control Improvements.

Section 2.2 Erosion Control Improvements. Each Owner of a Lot shall maintain all Erosion Control Improvements on such Owner's Lot in good condition and repair and free from any obstructions or other impediments which would retard or prevent the flow of water through the Erosion Control Improvements or otherwise interfere or inhibit the effectiveness of such Erosion

Control Improvements as designed. No Owner shall alter or modify, in any way, the Erosion Control Improvements on his Lot, or cause any repair of such Erosion Control Improvements which are not consistent with the original design of such improvements as installed by Declarant. Any repair, modification, construction or reconstruction of the Erosion Control Improvements by an Owner can be undertaken only after receipt by the Owner of written approval therefore from the California Coastal Commission. Specifically, the Owners of the following Lots shall be responsible for keeping in a good condition and repair and keeping free of any obstructions the following specific Erosion Control Improvements on such Owner's Lot as described more specifically below:

Lot 1 - 2 foot Reinforced Concrete Drainage Ditch;

Lot 2 - 2 foot Reinforced Concrete Drainage Ditch;

Lot 3 - 2 foot Reinforced Concrete Drainage Ditch and Private Drain "A", as more particularly shown on Exhibit "C" attached hereto.

Lot 4 - 2 foot Reinforced Concrete Drainage Ditch, Desilting Basin and Private Drain "B", as more particularly shown on Exhibit "C" attached hereto.

Lot 5 - 2 foot Reinforced Concrete Drainage Ditch;

Lot 6 - 2 foot Reinforced Concrete Drainage Ditch;

Lot 7 - 2 foot Reinforced Concrete Drainage Ditch and Private Drain "C", as more particularly shown on Exhibit "C" attached hereto.

Lot 8 - 2 foot Reinforced Concrete Drainage Ditch and Private Drain "A," as more particularly shown on Exhibit "C" attached hereto.

Lot 9 - 2 foot Reinforced Concrete Drainage Ditch and Private Drain "D", as more particularly shown on Exhibit "C" attached hereto.

Lot 16 - 2 foot Reinforced Concrete Drainage Ditch and Private Drain "A," as more particularly shown on Exhibit "C," attached hereto.

Lot 17 - Private Drain "A," as more particularly shown on Exhibit "C," attached hereto.

Lot 19 - 2 foot Reinforced Concrete Drainage Ditch;

Lot 22 - 2 foot Reinforced Concrete Drainage Ditch;

Section 2.3 Lots 24 and 25. Lots 24 and 25 within the Property as shown on the Subdivision Map are subject to covenants

space easements in favor of the City of San Diego. In order to provide for the maintenance and repair of the Erosion Control Improvements on Lots 24 and 25, the following maintenance and repair requirements shall apply:

(a) The Owner of Lot 1 shall be responsible for maintaining all Erosion Control Improvements on Lot 25, in good condition and repair and free from any obstructions or impediments which will retard or prevent the flow of water through the Erosion Control Improvements on Lot 25, specifically the 2 foot Reinforced Concrete Drainage Ditch and the Rip-Rap as more particularly shown on Exhibit "C".

(b) The Owners of Lots 19, 20 and 21 shall each be equally responsible for maintaining all Erosion Control Improvements on Lot 24, in good condition and repair and free from any obstructions or impediments which will retard or prevent the flow of water through the Erosion Control Improvements on Lot 24, specifically the 2 foot Reinforced Concrete Drainage Ditch. The Owner of Lots 19, 20 and 21 shall equally share the costs for such maintenance and repair.

Section 2.4 Downstream Erosion. Paragraph 6 (ii) of the Coastal Commission Deed Restriction contemplates that erosion may occur downstream from the Erosion Control Improvements installed and constructed on the Property. In the event any erosion occurs on real property downstream from the Erosion Control Improvements (other than on Lots within the Property), including without limitation, on Property adjacent or within the San Dieguito Lagoon the Owners of all Lots within the Property shall each be equally responsible for the restoration of the affected open space and the installation and maintenance of erosion control devices to an elevation of 8 feet on such affected property pursuant to the terms of the Coastal Commission Deed Restrictions. The Owners of each Lot shall equally share the responsibility, cost and expenses for such actions.

Section 2.5 Easements. Declarant hereby accepts and reserves for the benefit of the Property and for the benefit of all owners of Lots within the Property, a non-exclusive reciprocal easement of access to, ingress, egress, onto each Lot within the Property for the purpose of maintaining and repairing any Erosion Control Improvements located within the Property, in the event any Owner fails to comply with the terms of Article II. Upon the sale of each Lot by Declarant, the Owner of such Lot shall be responsible for maintenance of the Erosion Control Improvements on his Lot and as described in this Article II, and Declarant will have no further liability or responsibility with respect to the maintenance and repair of such Erosion Control Improvements within that Owner's Lot or over such other Lots and Erosion Control Improvements therein. In the event that any Owner fails to maintain or repair any Erosion Control Improvements located upon his Lot any other Owner of a Lot within the Property shall have the right to enter upon such Owner's Lot

and do all things necessary to repair or maintain such Erosion Control Improvements in compliance with this Declaration. The easements granted herein are appurtenant to and for the benefit of each Lot within the Property.

Section 2.6 Compliance with Coastal Commission Permit and Coastal Commission Deed Restrictions. Each Owner of a Lot within the Property shall comply with all the terms and conditions of the Coastal Commission Deed Restrictions and the Coastal Commission Permits and shall not take any action or fail to take any action which would violate the terms of the Coastal Commission Permits and Coastal Commission Deed Restrictions.

Section 2.7 Maintenance of Appurtenant Trees. In order to provide for the maintenance of trees located appurtenant to the Lots, the following requirements shall apply:

(a) The Owners of Lots 2 through 22 shall maintain those trees located within or substantially within the extensions of their side Lot lines beyond their front or back Lot lines, as depicted on the Tree Planting Plan, attached hereto as Exhibit "E", and incorporated by this reference;

(b) The Owner of Lot 1 shall maintain the trees located within or substantially within Lot 25;

(c) The Owner of Lot 23 shall maintain those trees located on Lot 24 which are depicted within the extension lines of the property lines of Lot 23 on Exhibit "E".

For purposes of this Section 2.7, maintenance shall include irrigation and may include occasional fertilization, insect abatement and removal of debris and dead foliage, if necessary. The rights and obligations of the Lot Owners with respect to the maintenance of these trees constitutes covenants running with the land and will be binding on all successors entitled to such Lots.

Section 2.8 Construction Limits. The area certified for construction of residential structures on each Lot within the Property is described in Exhibit "D" attached hereto and is an area consisting of the building footprint as constructed by Declarant and the area five feet beyond the perimeter of the building footprint as constructed by Declarant. Structural fill limits for each Lot are also as indicated in Exhibit "C." Construction of permanent improvements beyond the limits of the area certified for residential structures as described on Exhibit "D" is not recommended by Declarant and should be undertaken, if at all, only after further specific evaluation by knowledgeable engineers and geologists.

Section 2.9 Open Space Restrictions. Pursuant to Deed Restrictions recorded against the Property June 6, 1986, as File No. 86-227417, Records of San Diego County, California, a copy of which is attached hereto as Exhibit "F", and the requirements of the California Coastal Commission described in those Deed Restrictions, Lots 1 through 9 of the Property are subject to a restriction establishing as open space an area within each of such Lots generally described as the area to the south of the building pads on those Lots and more particularly described and depicted in the Deed Restrictions set forth in Exhibit "F". Unless otherwise approved by the California Coastal Commission or its successors in interest as to such Lots 1 through 9, landforms may not be altered, vegetation may not be placed or removed and structures of any type may not be erected. This restriction affecting the open space portion of Lots 1 through 9 of the Property will run with the land and be binding upon the Owners of Lots 1 through 9, whether or not it is specifically set forth in any grant deed conveying title to those Lots.

ARTICLE III
GENERAL PROVISIONS

Section 3.1 Covenants, Conditions and Restrictions to Benefit Owners and Their Successors. The covenants, conditions and restrictions set forth in this Declaration constitute a general scheme for the preservation and maintenance of the Property and the benefit of all Owners. The covenants, conditions and restrictions set forth herein run with the land with respect to the use of each Lot within the Property and are imposed on each Lot for the benefit of every other Lot within the Property and the present and future owners thereof. Said covenants, conditions and restrictions are and shall be covenants running with the land or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of any Owner of a Lot herein.

Section 3.2 Term. Each and every covenant, condition and restriction contained herein shall continue in full force and effect for 50 years from the date of recording of this Declaration and shall thereafter renew for periods of 10 years without necessity of further documentation of any kind unless a majority of Owners vote not to have this Declaration renewed.

Section 3.3 Breach. In addition to all other remedies of law or equity, a breach of any of the covenants, conditions or restrictions of this Declaration may be enjoined, abated or remedied by appropriate legal procedure by any Owner, its heirs, successors or assigns. The result of or condition caused by any violation of any of said covenants, conditions or restrictions shall be a nuisance and every remedy at law and equity now or hereafter available against a public or private nuisance may be exercised by any Owner.

Section 3.4 No Waiver. The failure of any Owner to enforce any of said covenants, conditions or restrictions shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on or incurred by any Owner as a result of such failure.

Section 3.5 Attorneys Fees. The prevailing party in any action at law or equity instituted by an enforcing person to enforce or interpret the covenants, conditions and restrictions contained herein shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees.

Section 3.6 Effect and Validity. In the event that any covenant, condition or restriction contained in this Declaration is held to be invalid, void or unenforceable by any court of competent jurisdiction, the remaining portion of this Declaration shall nevertheless, be and remain in full force and effect.

Section 3.7 Definitions. As used herein "Owner" shall mean the record owner of a fee simple title in any Lot within the Property, including Declarant. As used herein "Lot" shall mean the lots shown on the Subdivision Map for the Property.

Section 3.8 Mortgages Not Affected. A breach of any of the terms, covenants or conditions of this Declaration shall not defeat or impair the lien of any mortgage or deed of trust made in good faith and for value, but such terms, covenants and conditions shall be binding upon any party whose title to a Lot, or any part thereof, is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, and those claiming under it.

Section 3.9 Amendment of Declaration.

3.9.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration.

3.9.2 Amendment After Close of First Sale. After the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect by the vote or written consent of not less than two-thirds percent (66 2/3rd*) of Owners excluding Declarant. Also, if the consent or approval of any governmental authority, mortgagee or other person, firm, agency, or entity is required under this Declaration or at law with respect to any amendment or revocation of any provision of this Declaration, no such amendment or

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revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument executed and acknowledged by two thirds (66 2/3rd%) of the Owners and recorded in the office of the County Recorder of the County.

IN WITNESS WHEREOF this Declaration is executed as of October 9th, 1986 in San Diego County, California.

OCEANVIEW DEVELOPMENT COMPANY,
INC., A Nevada Corporation

By: James F. Hauro, Pres.

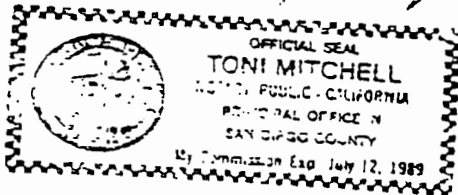
(CORPORATION):

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On October 9, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared James F. Garco personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President, ~~and personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Secretary~~ of the Corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature



1230

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 25, inclusive, of Del Mar Estates, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11375, filed in the Office of the County Recorder of said San Diego County, November 25, 1985.

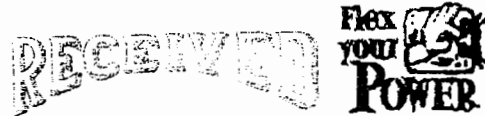


DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



November 4, 2003



JUN 07 2004

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Lee McEachern
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

Dear Mr. McEachern:

Planting of Exotic Bamboo Species Adjacent to San Dieguito Ecological Reserve,
At 3070 Racetrack View, Del Mar

The Department of Fish and Game (Department) was notified of a recent planting of
an exotic bamboo at the Stephenson residence adjacent to the San Dieguito Ecological
Reserve, apparently in violation of the homeowners regulations established for the
development along Racetrack View Drive. The Department is concerned because of the
ability of this plant to quickly grow outside of the boundaries of the homeowner's property
and onto the Reserve. Although bamboos are not known to spread by seed, the underground
rhizomes are able to spread quickly.

This plant is undesirable in an ecological reserve, and if these plants were installed in
violation of a homeowner's association regulation, the Department recommends that they be
removed. It is our understanding that the subject property is currently under consideration for
a coastal development permit, and we recommend that any proposed planting palette be
reviewed by the Department to ensure invasive plants are avoided.

The vegetation is already growing onto the Reserve, and the Department further
requests that the owner remove that bamboo which has encroached, and install root barriers to
prevent further growth from the bamboo, unless a decision is made to remove the bamboo all
together. Thank you for the opportunity to comment on this project.

Sincerely,

ORIGINAL SIGNED BY

C. F. Raysbrook
Regional Manger

cc: TDillingham; CFR-Chron
bcc: Bettie Kirk, 3060 Racetrack View Drive, Del Mar, CA 92014
TD:td/sl
tdillingham\CoastalComm_SanDieguito_bamboo.doc

EXHIBIT NO. 6
APPLICATION NO.
F7453-A2/6-86-181-A1
Letter from Dept. of
Fish & Game
California Coastal Commission

EVERETT AND ASSOCIATES
ENVIRONMENTAL CONSULTANTS

ESTABLISHED IN 1975

POST OFFICE BOX 1085
LA JOLLA, CALIFORNIA 92038

(760) 765-3377 TELEPHONE
(760) 765-3113 FACSIMILE

21 February 2005

RECEIVED

MAR 01 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. and Mrs. Rick and Agnetha Stephenson
3070 Racetrack View Drive
Del Mar, California 92014

Re: Concern Regarding Invasive Plant Species Adjacent to Open Space Reserve


Dear Mr. and Mrs. Stephenson,

It is my understanding that staff from the California Coastal Commission have raised concerns regarding the potential for invasive plant species to spread from your property to the adjacent open space reserve, including wetlands and uplands around the upper reaches of San Dieguito Lagoon.

In general, concern regarding invasive plant species is warranted. Invasive weeds, particularly those which originated in the Mediterranean region, often outcompete native species and ultimately dominate habitats where minor disturbance has created the opportunity for invasion. Not only do invasive plants displace natives, but ultimately they reduce habitat for a large variety of native animal species. Several animal species, in particular riparian wetland inhabitants, are now considered threatened or endangered, in part due to habitat damage caused by invasive plant species.

The concern over invasive plants led to the formation of the California Invasive Plant Council (Cal-IPC). This organization serves as a clearinghouse for information on pest plants, including ranking of species based on the threats they pose, and on techniques for controlling and removing invasive plants from native habitats. Cal-IPC produces a variety of publications (e.g., *Invasive Plants of California's Wildlands*, 2000. Bossard, C.C., J.M. Randall, and M.C. Hoshovsky [eds.], and maintains an on-line inventory of invasive plants that are serious problems in native ecosystems (www.cal-ipc.org). The most recent edition of the inventory (copy attached) includes 89 species of high concern and another 75 species that either require more information to evaluate, are annual grasses, or were considered but not listed.

In your case, it is my understanding that concern focuses around ornamental bamboo that is growing inside the perimeter of your property. Bamboo, commonly used for landscaping, is a member of the Grass Family *Gramineae*. The name bamboo is applied to numerous species in the genera *Arundinaria*, *Bambusa*, *Dendrocalamus*, *Phyllostachys*, and *Susa*. Another member of the Grass Family, *Arundo donax*, superficially resembles bamboo and is one of the worst invasive plant species in California and the west. However, *Arundo* is not a bamboo.

EXHIBIT NO. 7
APPLICATION NO. F7453-A2/6-86-181-A1
Letter from
Biological Consultant  California Coastal Commission


Mr. and Mrs. Rick and Agnetha Stephenson, Page two
6 December 2004

It is important that no bamboo species appear any of the Cal-IPC lists. Bamboos simply do have the characteristics that enable them to spread and thrive outside of cultivation. For example, bamboo roots tend to clump and not spread. Bamboos are not considered invasive, weedy, or pest plant species. There is no evidence to suggest that bamboos pose any threat to native plant communities or habitats.

Therefore, the bamboo on your property poses no threat to native or revegetated habitats adjacent to your property. Please provide this letter to any agency staff who may have concerns about this issue. They may call me directly if any questions remain.

Thank you for the opportunity to conduct this work, and please do not hesitate to contact me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "William T. Everett", with a long horizontal line extending to the right from the end of the signature.

William T. Everett
Certified Biological Consultant

WTE:ge

John C.
Stevenson
Architect
Inc.

3776 Front Street, San Diego, CA 92103-4013

RECEIVED

MAR 01 2005

619-294-7213

fax 619-294-7277

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

28 February 2005

California Coastal Commission
7575 Metropolitan Drive #103
San Diego California 92108

% Ritchard and Agnetha Stephenson
3070 Racetrack View Drive
San Diego, California 92014

Project: 3070 Racetrack View Drive
Lot No. 18 of Del Mar Estates
City and County of San Diego

#03-018


Subject: Opinions with respect to the **Retaining Wall** constructed on subject property and the **Drainage Ditch** constructed within the 10' easement south of the subject property

To Whom it May Concern:

I am thoroughly familiar with this Project, the improvements that have been made to the property at 3070 Racetrack View Drive, the prior litigation (CIG 815033) at which I provided testimony, and the original development improvements to the property and the adjacent easement (the **Drainage Ditch** and the 2:1 slope).

I have reviewed in depth all relevant documents filed with the City Clerk that have bearing on the development of Del Mar Estates and all relevant documents filed with the City Building Inspection Department that were prepared by Joe B. Kroll & Associates for the improvements to the property at 3070 Racetrack View Drive.

With respect to the **Retaining Wall**, its construction conforms to the structural design prepared by Frank E. Gaines, Civil Engineer, license 042127, which was approved by the City of San Diego Development Services Department in April 2003. As-Built, the **Retaining Wall** is sited on the property as shown on the Plot Plan attached as **Exhibit 'A'** to this letter. The recent extensive rain at this site location has demonstrated that the wall has performed to its design capacity. The up-slope 2:1 grade behind the wall retained its

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APPLICATION NO. F7453-A2/6-86-181-A1
Retaining Wall Letter (w/o Exhibits)
 California Coastal Commission

slope. The soil did not sluff or migrate and has thriving ground cover. Two photographs of this wall are attached as Exhibit "B".

With respect to the **Drainage Ditch** constructed within the 10' easement south of the south property line of 3070 Racetrack View Drive, there are several cross-ditch shrinkage cracks plainly visible. This ditch was apparently constructed during the original development of Del Mar Estates, as its location is depicted on the drawings prepared by JP Engineering, Inc, dated 1986. The ditch is defined on those drawings as "2' Type 'B' reinforced concrete ditch per Std Dwg No D-75.1" referring to the San Diego Regional Standard Drawing No D-75 and depicted with an arrow symbol to indicate its general location within the 10 foot wide easement. I have attached **Exhibit 'C'**, Regional Standard Drawing No D-75 and the construction specifications applicable thereto.

Reviewing the original design drawing that show the grading for developing Lot 18 (Stevenson property) and Lot 19 (Kirk property), surface water from Lot 19 drains into the ditch, the southern rim of the ditch is (at some locations) at a higher elevation than its northern rim which accommodates the sloping terrain. I have attached **Exhibit 'D'** that was extracted from the original Civil Engineering drawings applicable to Lots 18 and 19 that shows the grading, property line and **Drainage Ditch** location. The improvement drawings filed with the City Clerk contain the Soils Engineer's stamp that reads:

"AS-GRADED GEOTECHNICAL MAP
DITMAR & ASSOCIATES, INC.
DEL MAR ESTATES
DEL MAR CALIFORNIA
San Diego Soils Engineering, Inc.
Soil Engineering & Engineering Geology"

This stamp is the indication that the improvements were in conformance with the requirements.

The **Drainage Ditch** is performing its intended purpose having intercepted all run-off from south of the ditch during the recent heavy and extended rain storms, without causing any overflow or other erosion type of damage.

For your information, please also find attached **Exhibit 'E'**, the designer's three details for construction of the **Retaining Wall**.

The designer did not include a detail for all **Retaining Wall** heights what were built; however the accompanying Civil Engineer's calculations do fully describe how the taller

John C.
Stevenson
Architect
Inc.

walls were to be built. I have attached **Exhibit 'F'**, the Civil Engineer's design for the 10' high wall and the 8' high wall.

Please let me know if you have any question regarding this information.

Sincerely,

A handwritten signature in black ink, appearing to read 'John C. Stevenson', with a long horizontal flourish extending to the right.

John C. Stevenson, AIA

Encl.

3080 Racetrack View Drive
Del Mar, CA 92014

TO WHOM IT MAY CONCERN:

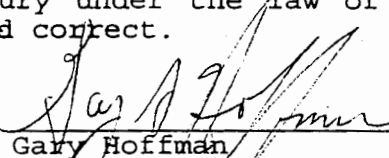
We, Gary Hoffman and Jeanne Hoffman, reside at 3080 Racetrack View Drive, Del Mar, California 92014 and are the owners of Lot No.17 of the sub-division known as DEL MAR ESTATES in the City and County of San Diego, State of California, according to Map Thereof No. 11375, filed in the Office of the County Recorder of San Diego County, on November 25, 1985. That we are aware of and familiar with the home addition that Mr. and Mrs. Stephenson, who own Lot No, 18 at 3070 Racetrack Drive, Del Mar, California 92014, are attempting to complete. We have discussed the home addition with the Stephensons and understand that their neighbor to the South of their property, Ms. Bettie B, Kirk, has filed a lawsuit against the Stephensons alleging that they have violated certain of the Declaration of Covenants, Conditions and Restrictions (CCR's) affecting all of our properties in the sub-division and is seeking damages and a permanent injunction precluding them from completing the addition. We also have read and are aware of and understand the CCR's and feel that the addition invisioned by the Stephensons will do no harm to or degrad Ms. Kirk's property.

Although we have not directly received any correspondence deposited in our mail box by Ms. Bettie B. Kirk regarding her objections to the addition of the Stephensons, we have received a copy from one of our neighbors who did. We have read the document from Ms. Kirk and understand that she has distorted the facts and has requested that the neighbor execute a copy of Ms. Kirk's correspondence that would indicate agreement with Ms. Kirk and her actions.


We wish by this letter to emphatically state that we do not agree with Ms. Kirk and her actions and that we completely back the efforts of Mr. and Mrs. Stephenson and believe that they should be allowed to complete their addition and that the CCR's should be amended and or revised to allow any owner of one of the Lots in the Del Mar Estates subdivision to add on to their home so long as any such addition is not in violation of the building codes of the City of San Diego.

We declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: 5/18/04




Gary Hoffman



Jeanne Hoffman

10 copies of this letter
with different signatures
were received

EXHIBIT NO. 9
APPLICATION NO. F7453-A2/6-86-181-A1
Letters of Support
Page 1 of 16
 California Coastal Commission

2990 Racetrack View Drive
Del Mar, CA 92014

TO WHOM IT MAY CONCERN:

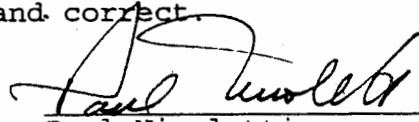
We, Paul Nicoletti and Mari Ann Nicoletti, reside at 2990 Racetrack View Drive, Del Mar, California 92014 and are the owners of Lot No.21 of the subdivision known as DEL MAR ESTATES in the City and County of San Diego, State of California, according to Map Thereof No. 11375, filed in the Office of the County Recorder of San Diego County, on November 25, 1985. That we are aware of and familiar with the home addition that Mr. and Mrs. Stephenson, who own Lot No, 18 at 3070 Racetrack Drive, Del Mar, California 92014, are attempting to complete. We have discussed the home addition with the Stephensons and understand that their neighbor to the South of their property, Ms. Bettie B, Kirk, has filed a lawsuit against the Stephensons alleging that they have violated certain of the Declaration of Covenants, Conditions and Restrictions (CCR's) affecting all of our properties in the sub-division and is seeking damages and a permanent injunction precluding them from completing the addition. We also have read and are aware of and understand the CCR's and feel that the addition invisioned by the Stephensons will do no harm to or degrad Ms. Kirk's property.

We have received correspondence from Ms. Kirk deposited directly into our mail box regarding her objections to the addition of the Stephensons. Ms. Kirk has requested that we execute a copy of her correspondence and return same to her apparently in an attempt to indicate our agreement with her and her actions; however, we feel that she has distorted the facts and we are not in agreement with her or her actions.

We wish by this letter to emphatically state that we do not agree with Ms. Kirk and her actions and that we completely back the efforts of Mr. and Mrs. Stephenson and believe that they should be allowed to complete their addition and that the CCR's should be amended and or revised to allow any owner of one of the Lots in the Del Mar Estates subdivision to add on to their home so long as any such addition is not in violation of the building codes of the City of San Diego.

We declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: 5/18/04


Paul Nicoletti


Mari Ann Nicoletti

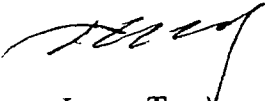
2 copies of this letter
with different signatures
were received

To whom it may concern:

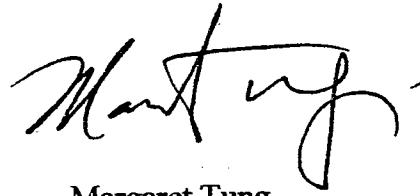
We, Margaret Tung and James Tung reside at 3093 Racetrack View Dr., Del Mar, California 92014 and are the owner of Lot No. 16 of the subdivision known as Del Mar Estate in the City and County of San Diego, State of California.

We agree to allow Mr. and Mrs. Stephenson to complete their addition and that include the CC&R to be amended and or revised to allow them to add on their home as long as such addition is not in violation of the building codes of the City of San Diego.

Date: June 6, 2004.



James Tung



Margaret Tung

*2 copies of this letter
with different signatures
were received*

13413 Racetrack View Court
Del Mar, CA 92014

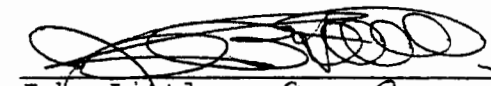
TO WHOM IT MAY CONCERN:

We, John Little and Dianna Little, reside at 13413 Racetrack View Court, Del Mar, California 92014 and are the owners of Lot No.9 of the sub-division known as DEL MAR ESTATES in the City and County of San Diego, State of California, according to Map Thereof No. 11375, filed in the Office of the County Recorder of San Diego County, on November 25, 1985. That we are aware of and familiar with the home addition that Mr. and Mrs. Stephenson, who own Lot No, 18 at 3070 Racetrack Drive, Del Mar, California 92014, are attempting to complete. We have discussed the home addition with the Stephensons and understand that their neighbor to the South of their property, Ms. Bettie B, Kirk, has filed a lawsuit against the Stephensons alleging that they have violated certain of the Declaration of Covenants, Conditions and Restrictions (CCR's) affecting all of our properties in the sub-division and is seeking damages and a permanent injunction precluding them from completing the addition. We also have read and are aware of and understand the CCR's and feel that the addition envisioned by the Stephensons, though may technically violate the CCR's, will do no harm to or degrade Ms. Kirk's property.

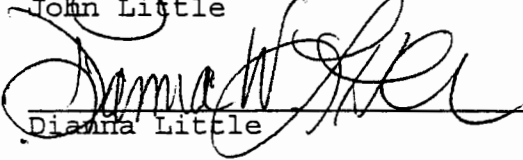
We believe that the Stephensons should be allowed to complete their addition and that the CCR's should be amended and or revised to allow any owner of one of the Lots in the Del Mar Estates subdivision to add on to their home so long as any such addition is not in violation of the building codes of the City of San Diego, and conforms to the general appearance of the neighborhood.

We declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated: 5/22/04



John Little



Dianna Little

2949 Racetrack View Drive
Del Mar, CA 92014

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CALIFORNIA
STATE COMMISSION
STATE DISTRICT

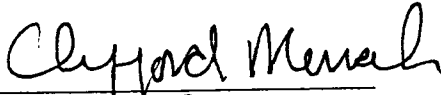
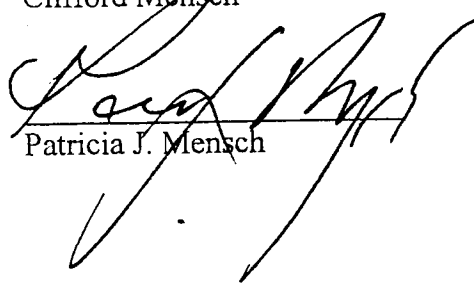
TO WHOM IT MAY CONCERN:

We, Clifford Mensch and Patricia Mensch, reside at 2949 Racetrack View Drive, Del Mar, California 92014 and are the owners of Lot no.1 of the sub-division known as DEL MAR ESTATES in the City and County of San Diego, State of California, according to map thereof No. 11375, filed in the Office of the County Recorder of San Diego County, on November 25, 1985. That we are aware of and familiar with the home addition that Mr. And Mrs. Stephenson, who own Lot No. 18 at 3070 Racetrack View Drive, Del Mar, California 92014, are attempting to complete. We have discussed the home addition with the Stephensons and reviewed the plans. We also have read and are aware of and understand the CCR's and feel that the addition envisioned by the Stephensons will do no harm to or degrade the neighborhood or its property values. Therefore we have no objection to the completion of their home addition.

If required, we believe that the CCR's should be amended and or revised to allow any owner of one of the Lots in the Del Mar Estates subdivision to add on to their home so long as any such addition is not in violation of the building codes of the City of San Diego.

We declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Dated:


Clifford Mensch

Patricia J. Mensch

LUIS MICHAEL BUSTILLOS, ESQ.,
Calif State Bar #102988
100 E. San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988
Voice: 760/942-1853
Fax: 760/942-6548

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JAN 11 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Attorney for Opponent, BETTIE B. KIRK

In Re the Application of)
)
)
)
)
)
RITCHARD and AGNETHA)
STEPHENSON)
)
)
_____)

Amendment to CDP F7543-A1 and
F7543-A2

3070 Racetrack View Dr., Del Mar, CA

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
APPLICATION

The Coastal Commission is a government body charged with protecting the natural and scenic treasures of the coastal zone. With regard to the Del Mar Estates, this protection is secured through coastal development permits and conservation servitudes.

As defined in Restatement 3d, Property (Servitudes), §1.6(1), "A conservation servitude is a servitude created for conservation or preservation purposes. Conservation purposes include retaining or protecting the natural, scenic, or open-space value of land, assuring the availability of land for agricultural, forest, recreational, or open-space use, protecting natural resources, including plant and wildlife habitats and ecosystems, and maintaining or enhancing air or water quality or supply. Preservation purposes include preserving the historical, architectural, archaeological, or cultural aspects of real property."

EXHIBIT NO. 10
APPLICATION NO. F7453-A2/6-86-181-A1
Letter of Opposition

Such a definition mirrors the purposes of the Coastal Act as found in sections 30001 and 30001.5. The above-referenced definition also reflects the concerns set forth in the coastal development permits and the deed restrictions related to this development.

Included in the coastal development permits and the deed restrictions is a limit on lot coverages. The lot coverage restrictions have been implemented to protect views to and along the ocean and scenic coastal areas and to insure visual compatibility with the character of surrounding areas.

Mr. and Mrs. Stephenson have petitioned to change the lot coverage restrictions. It is respectfully submitted that there are three reasons for not changing the restrictions. First, there has not been a change in conditions that would justify a modification. Second, the deed restrictions themselves preclude changes to the deed restrictions for the duration of the development. Third, a recorded deed restriction can only be changed with the agreement of all property owners affected by the restriction.

THERE HAS NOT BEEN
A QUALIFYING CHANGE IN CONDITIONS

“A conservation servitude held by a governmental body or conservation organization may not be modified or terminated because of changes that have taken place since its creation except as follows:

- (1) If the particular purpose for which the servitude was created becomes impracticable, the servitude may be modified to permit its use for other purposes selected in accordance with the cy pres doctrine, except as otherwise provided by the document that created the servitude.
- (2) If the servitude can no longer be used to accomplish any conservation purpose, it may be terminated on payment of appropriate damages and restitution.

Restitution may include expenditures made to acquire or improve the servitude and the value of tax and other government benefits received on account of the servitude.

(3) If the changed conditions are attributable to the holder of the servient estate, appropriate damages may include the amount necessary to replace the servitude, or the increase in value of the servient estate resulting from the modification or termination.

(4) Changes in the value of the servient estate for development purposes are not changed conditions that permit modification or termination of a conservation servitude.” Restatement 3d, Property (Servitudes), §7.11, p. 420-421.

We need to keep in mind that change in a conservation servitude is only appropriate when the original purpose of the servitude can no longer be accomplished.

Comment a to §7.11 points out this requirement about change. “..., it is inevitable that, over time, changes will take place that will make it impracticable or impossible for some conservation servitudes to accomplish the purpose they were designed to serve. If no conservation or preservation purpose can be served by continuance of the servitude, the public interest requires that courts have the power to terminate the servitude so that some other productive use may be made of the land. ¶The rules stated in this section are designed to safeguard the public interest and investment in conservation servitudes to the extent possible, while assuring that the land may be released from the burden of the servitude if it becomes impossible for it to serve a conservation or preservation purpose.” Restatement 3d, Property (Servitudes), §7.11, p. 421-422 (emphasis added).

Comment b to §7.11 emphasizes that the type of change required is change that makes it impossible to accomplish the conservation purpose. “If the particular purpose for which the servitude was created can no longer be accomplished, but the servitude is adaptable for other conservation purposes, the servitude should be continued for those other purposes unless the document that created the servitude provides otherwise. **When change makes it impossible or impracticable to accomplish the particular purpose,** subsection (1) provides for modification to permit use of the servitude for other conservation or preservation purposes, applying the cy pres doctrine of charitable-trust law.” Restatement 3d, Property (Servitudes), §7.11, p. 422 (emphasis added).

Comment c to §7.11 specifically declares, “**Impossibility of accomplishing a conservation purpose permits termination of a servitude.**” Restatement 3d, Property (Servitudes), §7.11, p. 422 (emphasis added).

Comment d to §7.11 points out the limited scope of “changed-conditions” with regard to conservation easements. “Under the rules stated in this section, the changed-conditions doctrine has very limited scope. It can be used only in two instances: (1) **if the servitude cannot be used for the particular conservation purpose contemplated,** the scope of the servitude may be expanded to include other conservation purposes and (2) **if the servitude cannot possibly accomplish a conservation purpose,** it may be terminated. It cannot be used to modify the servitude to permit additional uses or development of the servient estate.” Restatement 3d, Property (Servitudes), §7.11, p. 423-424 (emphasis added).

In the instant case, there have not been any changes that result in the impossibility of preserving the original conservation purposes. In deed, restricting lot coverage to

3,000 square feet still accomplishes a conservation purpose, to wit, "to protect views to and along the ocean and scenic coastal areas and to insure visual compatibility with the character of surrounding areas." Pub Res §30251.

Additionally, in direct contravention of the Comment d declaration, the applicant is trying to use the changed-circumstances doctrine to permit a more profitable use and development of the land. A 4,600 square foot, five-bedroom home is more valuable than a 3,000 square foot, three bedroom home, and results in a more developed use of the land. See, Sierra Club v. City of Hayward (1981) 28 Cal. 3d 840 (owners of land subject to 10-year Williamson Act agricultural-preservation easement did not meet requirements for early termination; opportunity for more profitable use of the land does not justify early termination).

THE LOT COVERAGE RESTRICTIONS
ARE TO CONTINUE FOR THE DURATION
OF THE CDP AND FOR THE DURATION
OF THE DEL MAR ESTATES DEVELOPMENT

The Lot Coverage restrictions herein have been recorded with the San Diego County Recorder on August 8, 1983, as document 83-276026. Recording of the Deed Restriction was consented to by the California Coastal Commission on page 6 thereof.

On page 5 of the document, the Deed Restrictions declare that,

"Said deed restrictions shall remain in full force and effect

[1] during the period that said permit and amendment, or any modification or amendment thereof, remains effective, and

[2] during the period that the development authorized by said permit and amendment or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon the Property and to that extent, said deed restriction is hereby deemed and agreed by Owner to be covenant running with the land, and shall bind Owner and all his assigns or successors in interest.”

It is obvious that the deed restrictions (including the lot coverage restrictions) are to remain in full force and effect for the duration of the coastal development permit **and** for the period that the Del Mar Estates Development remains in existence. It is also obvious that there are no provisions in the Deed that permit modification or termination of the restrictions.

A RECORDED DEED RESTRICTION CAN ONLY
BE CHANGED WITH THE AGREEMENT
OF ALL PROPERTY OWNERS

Even if it were to be assumed that the recorded Deed Restriction is not a conservation easement encumbered by public policy and the prohibitions of §7.11, the recorded Deed Restrictions can only be changed with the agreement of all property owners affected by the restrictions.

"As a general rule, restrictions on land cannot be created without the consent of all of the owners of the land affected, **and they may be modified or amended by the execution of a mutual agreement, signed by all of the property owners of property subject to the restrictions**, but when the document creating the restrictions authorizes amendment or modification by less than all of the owners of the land affected, the restrictions can be amended by the number of landowners specified if the terms and

provisions of the original restrictions are satisfied." Cal Real Estate 3d, Covenants, Conditions & Restrictions, §24:26, p. 83 (emphasis added).

"A servitude may be modified or terminated by agreement of the parties, pursuant to its terms, or under the rules stated in this Chapter." Restatement 3d, Property (Servitudes), §7.1, p. 337.

Comment b to §7.1 elaborates, in relevant part, as follows: "Where all of the parties interested in a servitude agree, they are free to modify or terminate a servitude, subject only to the limits of legality and public policy as set forth in Chapter 3, and compliance with required formalities as set forth in Chapter 2. ¶Parties whose consent is required are the current beneficiaries entitled to enforce the servitude under the rule stated in §8.1. ... A modification agreed to by some but not all of the parties is not effective under this section except under the circumstances described in Comment c." Restatement Third, Property (Servitudes) §7.1, p. 339.

In the instant case, not all property owners have agreed to the changes proposed by Mr. and Mrs. Stephenson. The other property owners have purchased their lots and made improvements based on the provisions of the recorded deed restrictions. For a governmental agency to change the terms of their purchase would be an unconstitutional taking.

CONCLUSION

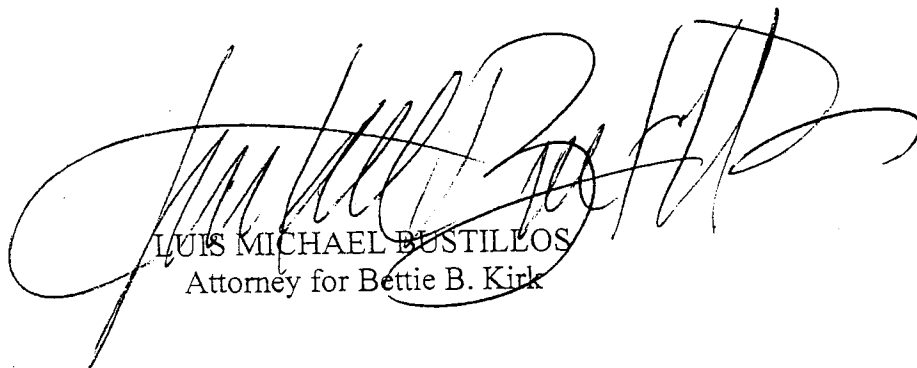
It cannot be forgotten that the Stephensons bought into their lot with full knowledge of the lot coverage restrictions. It cannot be forgotten that permission to live in this portion of the coastal zone would not have been granted in the first place unless the property owner, and all of his successors in interest, agreed to the deed restrictions. It

cannot be forgotten that the coastal zone is managed for all the people of California, and not for just one person.

The application of Ritchard and Agnetha Stephenson for modification of the coastal development permit and the recorded deed restrictions should be denied.

January 7, 2005

Respectfully submitted,



LUIS MICHAEL BUSTILLOS
Attorney for Bettie B. Kirk

