

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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Wed 15a & b

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Staff: Ellen Lirley-SD
Staff Report: September 27, 2006
Hearing Date: October 11-13, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-03-098/A-6-NOC-05-050

Applicant: Pardee Homes, Attn: Carlene Matchniff Agent: Lucast Consulting

Description: Subdivision of 185.2 acres on nine separate legal lots, creation of 143 new lots on three of the nine legal lots, and construction of 113 single-family residences, 129 multi-family units in 15 buildings, and associated street, drainage and landscaping improvements. The project also includes the retirement of development rights on six of the legal lots and the dedication/preservation of open space on all or portions of the nine legal lots.

Lot Area	8,067,345 sq. ft.
Building Coverage	292,159 sq. ft. (3.6%)
Pavement Coverage	595,425 sq. ft. (7.4%)
Landscape Coverage	837,537 sq. ft. (10.4%)
Unimproved Area	6,342,224 sq. ft. (78.6%)
Parking Spaces	733
Zoning	RX-1-2, RM-2-5, and OC-1-1
Plan Designation	Very Low Density Residential and Open Space
Project Density	1.31 dua
Ht abv fin grade	30 feet single-family; 40 feet multi-family

Site: North and south of Calle Cristobal, east and west of Camino Santa Fe, in the Mira Mesa Community Plan area, North City, San Diego, San Diego County. APNs 308-040-15; 311-020-43; 311-020-44; 31-020-45; 311-021-08; 311-021-10; 311-031-23; 311-031-24; 311-031-25

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends approval of the proposed residential subdivision and open space dedications with conditions that require significant redesign of Parcels 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 64, 87, 88, 111, 112, and 113 in the Single-Family Residential component, Buildings 5, 6, 7, and 8 of the Multi-Family North component, and Buildings 2, 3, 4, and 5 of the Multi-Family

West component to address potential impacts on ESHA from Zone Two brush management activities. For these parcels and buildings, the applicant is proposing alternative compliance methods, such as fire walls and fire-resistive building materials, rather than providing the full 100-foot (Zones One and Two combined) brush management area required in the certified Mira Mesa Community Plan LCP Land Use Plan.

Other recommended special conditions protect biological resources and water quality by requiring the use of appropriate landscaping species, adequate mitigation for coastal sage impacts, and implementation of appropriate drainage and erosion controls. Visual resources are addressed by requiring extensive landscaping around the project's perimeters and use of appropriate colors and materials. The project will occur in both the City of San Diego coastal development permit (CDP) jurisdiction and Coastal Commission deferred certification CDP jurisdictions. However, the CDP approved by the City was appealed to the Commission and substantial issue was found; therefore, this staff report addresses the entire development, and this staff report combines the application for the deferred certification portions of the project with the de novo review of the project on appeal. The standard of review for those portions of the project within the City's CDP jurisdiction is the certified LCP, and the legal standard of review for the deferred certification area is Chapter 3 of the Coastal Act.

Substantive File Documents: Certified Mira Mesa Community Plan LCP Land Use Plan and certified City of San Diego Implementing Ordinances; City of San Diego LCP Amendment No. 3-03B; City of San Diego Substantial Conformance approval; CCC File #A-6-NOC-06-075; EIR No. 99-0639, prepared by the City of San Diego Land Development Review Division, and dated May 14, 2003

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolutions:

MOTION A: *I move that the Commission approve Coastal Development Permit No. 6-03-098 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as

conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

MOTION B: *I move that the Commission approve Coastal Development Permit No. A-6-NOC-05-050 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and written approval, final site plans, floor plans and elevations approved by the City of San Diego, incorporating all changes resulting from the Substantial Conformity Review approval of June 8, 2006, and any changes required by these special conditions.

a. In particular, Special Condition #2, addressing brush management, will require redesign or elimination of the development on the following parcels: 6, 7, 8, 9, 10,

12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 64, 87, 88, 111, 112, and 113 within the Single-Family Residential component, as depicted on Substantial Conformity Review sheet 3 of 21, dated May 16, 2006; Buildings 3, 4, 5, 6, 7, and 8 of the Multi-Family North parcel 123, as depicted on Substantial Conformity Review sheet 4 of 21, dated May 16, 2006; and Buildings 2, 3, 4, and 5 of the Multi-Family West parcel 127, as depicted on Substantial Conformity Review sheet 5 of 21, dated May 16, 2006, in order to achieve a full 100-foot brush management zone without impacting coastal sage scrub habitat, vernal pools and wetland buffers.

b. To address the provision of public overlooks within the Single-Family Residential component of the proposed development, the plans shall include the locations of all guest parking, and shall specifically identify parking for the public overlooks.

c. The final plans shall depict the line between developable area (i.e., residentially-designated area) and open space as it was effectively certified by the Coastal Commission on February 9, 2006.

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

2. **Revised Brush Management Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a detailed brush management plan for all proposed parcels adjacent to open space or within 100 feet of environmentally sensitive habitat area (ESHA), namely the Multi-Family North parcel 123, the Multi-Family West parcel 127, and the following parcels within the Single-Family Residential component: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 64, 87, 88, 111, 112, and 113 as depicted on Substantial Conformity Review sheets 3, 4, and 5 of 21, dated May 16, 2006. The brush management plans shall delineate the area within 100 feet of all proposed habitable structures on each of the identified parcels. The brush management plan shall be overlain on the vegetation mapping to document that Zone One and Zone Two brush management does not impact any coastal sage scrub, vernal pools or wetland buffers. Said plans shall be approved by the City of San Diego Fire Department and shall include the following components:

(a) The area between 0 and 35 feet from any habitable structure on each parcel shall comprise Zone One brush management, and shall consist of the following:

1. Fire-resistive, drought-tolerant, non-invasive vegetation compatible with the adjacent open space areas.

2. A permanent irrigation system.
 3. Non-habitable, non-combustible accessory structures (fences, patios, etc.) approved by the Fire Department as consistent with Zone One fuel modification.
 4. Containment of the entire Zone One area outside designated open space.
- (b) The area between 35 and 100 feet from any habitable structure shall comprise Zone Two brush management, and shall consist of the following:
1. Allowance for selective thinning and pruning of no more than 50% of the existing ground cover.
 2. A stipulation that non-native plants shall be thinned and pruned before native plants are thinned and pruned.
 3. The removal of dead and dying plant material.
 4. A prohibition on any clear cut, grubbing (removal of roots below the soil surface) or soil disturbance.
 5. Temporary irrigation only to establish fire-resistive native vegetation not requiring fuel modification and compatible with existing adjacent habitat.
 6. A prohibition on Zone Two brush management within coastal sage scrub habitat, vernal pools, or vernal pool/wetland buffers, including any areas revegetated as coastal sage scrub mitigation.
- (c) Revisions to the proposed site plan and brush management plans for individual parcels to address the full 100-foot brush management area and eliminate encroachment into coastal sage scrub, vernal pools, or wetland buffers for Zone One or Zone Two. Alternative compliance shall not be allowed to reduce any portion of the 100-foot brush management area, but may be used with the 100-foot brush management area to attain even greater fire safety. If greater Zone One width allows for reduction in Zone Two width, the full 100-foot area should still be delineated indicating where no brush management is required. This criteria affects, but is not limited to, the proposed site plan for the following parcels: 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 64, 87, 88, 111, 112, and 113 within the Single-Family Residential area, as depicted on Substantial Conformity Review sheet 3 of 21, dated May 16, 2006; Buildings 5, 6, 7, and 8 of the Multi-Family North parcel 123, as depicted on Substantial Conformity Review sheet 4 of 21, dated May 16, 2006; and Buildings 2, 3, 4, and 5 of the Multi-Family West parcel 127, as depicted on Substantial Conformity Review sheet 5 of 21, dated May 16, 2006.
- (d). A licensed biologist shall be present during the brush management operation to assure that no work occurs if California Gnatcatchers are present, and that all work is

done in accordance with the approved plan. If it is determined that Gnatcatchers are present, brush management work shall be postponed until the biologist determines that no Gnatcatchers are present.

(e). The property owner shall perform annual maintenance within the designated 100 ft. brush management area to remove any introduced non-native or invasive plant species and dead or dying vegetation.

The permittee, and each subsequent landowner, shall undertake development in accordance with the approved brush management plan for that specific parcel. Any proposed changes to the approved brush management plan should be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Coastal Sage Scrub/San Diego Coast Barrel Cactus Mitigation Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final detailed coastal sage scrub and coast barrel cactus mitigation plan to the Executive Director for review and written approval. The plan shall be developed in consultation with the California Department of Fish and Game(CDFG) and the U.S. Fish and Wildlife Service (Service). Said plan shall incorporate the *Mitigation Monitoring and Reporting Program*, attached to the final EIR No. 99-0639, prepared by the City of San Diego Land Development Review Division, and dated May 14, 2003, addressing biological resources, and shall be augmented with the following:

- a. A detailed site plan of the impact area that substantially conforms to the *Biological Resources Assessment*, dated November 11, 2002. The final plan must delineate all impact areas, the types of impact (both permanent and temporary), and the exact acreage of each identified impact.
- b. A detailed plan for the transplantation of San Diego Coast Barrel Cactus plants found within the line of development, identifying locations and methodology.
- c. A detailed plan for the mitigation site, located on-site or within the coastal zone portion of the Los Penasquitos Lagoon watershed, and a description of how the site will be secured (e.g., dedication, easement, etc.).
- d. The following goals, objectives, and performance standards for the mitigation program:
 1. As proposed, impacts, both permanent and temporary, to coastal sage scrub shall be mitigated at not less than a ratio of 1:1 in-kind mitigation consisting of creation or substantial restoration of coastal sage scrub habitat.

2. The coastal sage scrub at the mitigation site should be similar to nearby, relatively undisturbed stands of CSS in both species composition and ground cover, and shall achieve 90% coverage in 5 years. Monitoring reports will be submitted to the City, wildlife agencies, and Coastal Commission annually for five years.
- e. Mitigation shall be contiguous with, or nearby, existing similar habitat within the project site.
 - f. Identify the location where the seeds will be collected and identification of plant species to be used for the restoration area(s);
 - g. Specify the application rate (e.g. pounds per acres of seeding effort);
 - h. Specify the methods for weed eradication. No weed whips shall be permitted after installation of the seed mixes;
 - i. Specify the final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards.
 - j. Specify provisions for submittal, within 30 days of completion of initial restoration work, of “as built” plans demonstrating that the mitigation site has been established in accordance with the approved design and construction methods
 - k. At completion of the restoration effort, the restoration specialist shall prepare and submit to the Executive Director a letter report indicating the installation is finished and that the five-year monitoring period has begun.

The permittee shall undertake development in accordance with the approved mitigation plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved 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. Landscaping Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a final revised landscaping plan that shall include the following:

- a. A plan showing the type, size, extent and location of all trees, shrubs and groundcovers on the site.
- b. Only drought tolerant, non-invasive, native and naturalizing plant materials compatible with the adjacent upland and vernal pool habitats shall be utilized in the approved plant palette for the project. However, the landscape palette immediately

adjacent to the residences, that is subject to Zone One brush management provisions pursuant to Special Condition #2, shall emphasize the use of native species, but use of non-invasive ornamental species and lawn area is allowed as a small garden component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

c. A planting schedule that indicates that slope stabilization/revegetation planting shall be implemented within 60 days of completion of grading and the remainder of the planting plan shall be implemented within 60 days of completion of construction of the homes.

d. A minimum of 3 trees (minimum 24-inch box or 5-foot trunk height minimum) or 3 similarly sized plants shall be located adjacent to the single-family residences and/or accessory walls along the perimeter of the graded pad on parcels **6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, as depicted on Substantial Conformity Review sheet 3 of 21, dated May 16, 2006, and sufficient trees, or similarly sized plants, shall be located adjacent to Multi-Family North Buildings **2, 3, 6, 7, and 8 and/or perimeter walls, as depicted on Substantial Conformity Review sheet 4 of 21, dated May 16, 2006, and Multi-Family West Buildings **2, 3, 4, and 5 and/or perimeter walls, as depicted on Substantial Conformity Review sheet 5 of 21, dated May 16, 2006, which upon maturity will exceed the roofline of the homes or height of the walls so as to break up the facade of the structures and maximize screening of development from views from the Penasquitos and Lopez Canyon public recreational areas, trails, and vista points. **Specific parcel and building numbers may need to be revised pursuant to the requirements of Special Condition #2.

e. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.

f. No pesticides or rodenticides shall be use on the site.

g. No glass windscreens, glass railings around decks, or glass in perimeter or fire walls shall be installed on the site.

Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies 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 written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or 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, and each subsequent landowner, shall undertake and maintain the development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the landscape 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.

5. Exterior Treatment. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, 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 structures and perimeter walls. The color of the structures and roof permitted hereby shall be restricted to color compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The permittee, and each subsequent landowner, shall undertake and maintain the development in accordance with the approved 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.

6. Drainage and Polluted Runoff Control Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans approved by the City of San Diego, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) BMPs (or suites of BMPs) selected for use on this site shall be designed to treat, infiltrate or filter the amount of stormwater produced by the 85th percentile, 24-

- hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of all outflow drains. Drainage structures, including dissipating measures, shall not be located within coastal sage scrub habitat, vernal pools or vernal pool buffers.
 - (c) Drainage from all roofs, parking areas, street and driveway areas, and other impervious surfaces shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
 - (d) Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
 - (e) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. The plan shall include an identification of the party or entity(ies) responsible for maintaining the various drainage systems over their lifetime and shall include written acceptance by the responsible entity(ies). Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to and during each rainy season, including conducting an annual inspection no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

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

7. Grading/Erosion Control. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final grading and erosion control plans consistent with the project as revised through the City's substantial conformance review process and a grading schedule. The plans shall first be approved by the City of San Diego and shall

contain written notes or graphic depictions demonstrating that all permanent and temporary erosion control measures will be developed and installed prior to or concurrent with any on-site grading activities and include, at a minimum, the following measures:

- a. Placement of a silt fence around the project anywhere there is the potential for runoff. Check dams, sand bags, straw bales and gravel bags shall be installed as required in the City's grading ordinance. Hydroseeding, energy dissipation and a stabilized construction entrance shall be implemented as required. All disturbed areas shall be revegetated after grading.
- b. The site shall be secured daily after grading with geotextiles, mats and fiber rolls; only as much grading as can be secured daily shall be permitted. Concrete, solid waste, sanitary waste and hazardous waste management BMP's shall be used. In addition, all on-site temporary and permanent runoff and erosion control devices shall be installed and in place prior to commencement of construction to minimize soil loss from the construction site.
- c. If grading is to occur during the rainy season (November 15th to March 31st) of any year, the applicant shall submit to the Executive Director for review and written approval, a program for monitoring the condition of erosion control devices and the effectiveness of the erosion control program. The monitoring program shall include, at a minimum, monthly reports beginning December 1st of any year continuing to March 31st which shall be submitted to the Executive Director for review and written approval at the end of each month. The reports shall be completed by a licensed engineer and shall describe the status of grading operations and the condition of erosion control devices. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms.

The permittee shall undertake development in accordance with the approved grading plans. Any proposed changes to the approved grading plans shall be reported to the Executive Director. No changes to the grading 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.

8. Disposal of Graded Spoils. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission.

9. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against each residential parcel, as governed by this permit, a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to

this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. Open Space and Conservation Easement. No development, as defined in Section 30106 of the Coastal Act, shall occur within parcels 121, 125, 126, 129, 130, 131, 135, 140 and 142 of Vesting Tentative Map No. 99-0639 except for:

- a. creation of manufactured slopes on parcels 121, 125 and 129
- b. revegetation, maintenance and monitoring activities within the created manufactured slopes on parcels 121, 125 and 129
- c. installation of drainage facilities within portions of the manufactured slopes on parcels 121 and 129
- d. ongoing maintenance activities within existing drainage, slope or utility easements on parcels 121, 129, 130, 131, and 135
- e. maintenance of existing trails on parcels 131 and 140

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an open space and conservation easement for the purpose of habitat conservation. Such easement shall be located over Lots 121, 125, 126, 129, 130, 131, 135, 140 and 142 of Vesting Tentative Map No. 99-0639 as shown in Exhibit #6 and as may be revised pursuant to these special conditions. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.

The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

11. Open Space Restriction.

A. No development, as defined in Section 30106 of the Coastal Act, shall occur within parcels 114, 115, 116, 117, 118, 119, 120, 122, 124, 128, 132, 133, 134, 136, 137, 138, 139, 141, 143, and public overlook/park parcels A, B, and C as depicted on the Vesting Tentative map dated May 16, 2006 and Exhibit #7 except for:

1. Zone Two brush management as specified in Special Condition #5 of this permit
2. ongoing maintenance activities within existing drainage easement on parcel 139
3. installation of meandering walkways and seating on parcels A, B, and C

B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT (NOI) FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #7 attached to this staff report.

12. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and landslides; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

13. Other Conditions Imposed By Local Government (VTM No. 9691; PRD No. 9693). Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act. The conditions contained in this coastal development permit are in addition to the conditions imposed and required by the City of San Diego. In case of conflict, the conditions contained in the subject coastal development permit shall be controlling.

IV. Findings and Declarations.

1. Project Description. The applicants propose to subdivide 185.2 acres, consisting of nine separate legal lots, to accommodate a residential development and open space. The existing legal lots are located both north and south of Calle Cristobal, north and south of Lopez Canyon and east and west of Camino Santa Fe and are shown on Exhibit #2. Prior to the Coastal Commission action on the associated LCP Amendment No. 3-03B (Crescent Heights) effectively certified on February 9, 2006, all but one of the lots

included at least some small area designated for residential use. These areas typically were located at the tops of side canyons, and consisted of both flat and sloping areas. The lots now designated entirely as open space consist of the three lots south of Lopez Canyon, two lots north of Lopez Canyon and one of the two legal lots north of Calle Cristobal.

The open space lots on the mesa top along the southern rim of Lopez Canyon abut existing built residential subdivisions, and access to those undeveloped sites would only be available via easements through the existing development or roads constructed around the perimeter of the existing development. Also, site topography and biological resources would have limited these areas to very few homes, as would prior zoning. The one lot north of Calle Cristobal retained as open space appears completely landlocked, and was designated as open space in the Mira Mesa LUP, even prior to the LCP amendments.

Exhibit #2 is an approximation of the nine existing legal lots, which are identified by the last two digits of the assessor's parcel number. Lot 8 is 9.97 acres in size, Lot 10 contains 8.19 acres, Lot 15 equals 8.54 acres, and Lot 23 contains 26.32 acres. Lot 24 equals 10.21 acres, Lot 25 contains 5.44 acres, Lot 43 is comprised of 55.18 acres, Lot 44 is 29.49 acres in size and Lot 45 contains 36.06 acres.

The proposed project would subdivide the three legal lots (311-020-43, 311-020-45 and 311-021-08) which are concentrated near the intersection of Calle Cristobal and Camino Santa Fe on Lopez Ridge in Mira Mesa and construct 113 single-family residences and 129 apartment units located in fifteen buildings of seven or ten units each on those parcels. In addition, the proposal includes construction of access roads, street improvements, installation of drainage facilities, landscaping of common areas, implementation of a brush management program, and provision of three public overlook areas within the single-family portion of the project. Finally, the proposed project includes dedication of multiple open space lots, with six of the nine original lots retired from development. This project is redesigned from the original proposal in response to the Commission's action on the LCP Amendment # 3-03B that modified the certified LCP Land Use Plan (LUP) applicable to the site and rezoned the parcels. However, even as redesigned, the proposal is not fully consistent with all LUP policies, as certified.

Coastal development permit jurisdiction is divided on the project site, with the City of San Diego having jurisdiction of the mesa areas and the Coastal Commission having jurisdiction of the area below the rims of Penasquitos and Lopez Canyons, because the Los Penasquitos Canyon Preserve is an area of deferred certification. Thus, Chapter 3 policies of the Coastal Act are the legal standard of review for the deferred certification area, and the certified LCP is the legal standard of review for the remainder of the site. Because the City's CDP was set aside through the appeal process, the Commission has coastal development permit jurisdiction over the entire development including the subdivision, accessory features like access roads, drainage facilities, landscaping and brush management, and construction of all residential units, but portions will be reviewed pursuant to the LCP and portions pursuant to Chapter 3 of the Coastal Act, depending on

specific location within the site. Except for Building 1 in the Multi-Family West component, the proposed residential structures are entirely within the City's jurisdiction and are reviewed pursuant to the certified LCP.

2. Brush Management. The following Coastal Act policies are most applicable to brush management concerns, and state, in part:

Section 30240.

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

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

Section 30253.

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area ...

In addition, the Residential Land Use element of the certified Mira Mesa Community Plan LCP Land Use Plan (LUP) includes these site-specific brush management provisions for the Crescent Heights property:

6. Brush management/fuel modification requirements shall be consistent with the following specific standards:

a. Structures shall be located such that Zone One brush management (minimum width of 35 feet) shall be entirely within the area designated for development and outside open space and environmentally sensitive lands. The width of Zone One should be increased when possible to reduce the width of Zone Two and impacts to native vegetation.

b. Zone Two brush management (selective clearing to maximum width of 65 feet) may be allowed in open space when subject to an approved site-specific brush management plan acceptable to the fire department that avoids significant disruption of habitat values to the maximum extent

possible. However, Zone Two brush management within open space areas containing coastal sage scrub habitat, vernal pools and/or wetland buffers shall not be permitted. Measures such as replacing cleared or thinned native vegetation with fire-resistant native vegetation that does not require fuel modification and is compatible with the existing habitat, and maintenance of at least 50% of the existing ground cover of native vegetation shall be implemented, when possible, to avoid significant disruption.

The potential effects of brush management on biologically sensitive habitat must not be underestimated and the potential for wildfire at the subject site warrants discussion as well. The areas designated for single- and multi-family development in the certified LUP are immediately adjacent to naturally vegetated steep slopes that are part of a large canyon system. It is very likely that future development on this site will be threatened by fire sometime during the economic life (approximately 75 years) of such development. This is true, however, for most new development throughout the City of San Diego and elsewhere in Southern California. Population increases have forced new development ever further into undisturbed and topographically constrained areas. The above-cited language was added to the LUP in 2005, since specific fire safety and brush management criteria were not previously addressed in the Mira Mesa Community Plan, LCP Land Use Plan. In addition, the certified Implementation Plan/Land Development Code (LDC) addresses this concern with specific building elements and setbacks in fire-prone areas. In addition, Commission staff is currently reviewing an LCP amendment submittal revising the City's brush management regulations, which will likely be heard at the Commission's November meeting.

The new proposed brush management regulations are a response to the devastating wildfires in San Diego County that occurred in October, 2003. The new regulations require a minimum 100-foot brush management zone citywide, including a minimum 35 feet of clear-cut (Zone One) and 65 or more feet of selective thinning and pruning (Zone Two). The brush management regulations also require new habitable structures to incorporate fire preventive construction materials, including sprinkler systems, non-combustible roofs and garage doors, and special exterior treatments for eaves, skylights, gutters, etc.

As proposed in the pending LCP amendment, Zone One requires clear-cutting of all portions of vegetation above the ground, and, based on the above LUP citations, must be located entirely within the developable area of the site; no Zone One clearance is allowed in open space. Zone Two allows up to 50% of the overall cover to be reduced in height to 6 inches, and also allows pruning of the remaining uncut vegetation and the removal of dead and dying vegetation. These pending LDC brush management regulations should be consistent with and adequate to carry out the cited LUP policies for Crescent Heights.

In its relatively recent actions on Dana Point LCP Amendment #1-03 (Dana Point Headlands) and the Marblehead development (CDP #5-03-013), the Commission has found fuel modification that includes selective thinning, clearing and/or replacement of

cleared vegetation with fire-resistant vegetation to be an unacceptable impact within environmentally sensitive habitat areas (ESHA). Such activities are not resource dependent and are not compatible with the continuance of these habitat areas. Fuel modification places long-term management constraints on the conserved habitat, and replacement vegetation may not include species important to the sensitive habitat value.

In addition, selective thinning or deadwood removal is difficult to implement without changing the understory character of the habitat or having impacts on the health of individual plants that remain. Deadwood removal also requires periodic disturbance to the habitat. Finally, since coastal sage scrub vegetation is woody and seasonally dry, it is difficult, at best, even for trained experts to confine deadwood removal to truly “dead” wood on these inherently dry, woody plants. Rather, the deadwood removal could amount to trimming and thinning of the habitat and not merely removal of dead stems of individual plants. These impacts are not compatible with the continuance of the habitat areas and must be prohibited within environmentally sensitive habitat area (ESHA). The City has Environmentally Sensitive Lands regulations in the certified LDC and the Multi-Habitat Preserve Area (MHPA) identified in the City’s Multiple Species Conservation Program (MSCP) to protect sensitive habitat. The LDC defines environmentally sensitive lands (ESL) to include sensitive biological resources, steep hillsides, floodplains, coastal bluffs and beaches. The term environmentally sensitive lands is not the same as ESHA, as addressed in Section 30240 of the Coastal Act. For instance, Tier I through Tier IV vegetation, as classified by the City, is considered sensitive biological resources and regulated through the ESL regulations. However, based on review of the biological report and visits to the site, the Commission’s ecologist has determined that, for this particular site, only Tier I (vernal pools) and Tier II (coastal sage scrub) vegetation is considered ESHA. This determination is based on both the quality of the different habitats and their function as wildlife resources.

Both terms (i.e., sensitive biological resources and ESHA) are applicable to the Crescent Heights property, since portions of the site are subject to the certified LCP and portions subject to the Chapter 3 policies of the Coastal Act. However, for purposes of review of brush management on the subject site, it is generally accurate to say that the LCP applies to Zone One and the Coastal Act to Zone Two, since Zone One will always occur on the mesas and Zone Two will occur primarily, although not exclusively as with vernal pools, below the canyon rim. The Commission finds that, pursuant to Section 30240 and the certified LUP policies applicable to the subject site, it is not appropriate for Zone One brush management to occur within areas designated open space. Zone Two brush management may be permissible in open space areas that do not contain ESHA. The full 100-foot brush management area must be delineated on project plans and new development must be sited to avoid impacts to ESHA for the full 100 feet. This applies whether or not alternative compliance might otherwise allow a reduction in Zone Two width.

The redesigned project before the Commission in this application has confined all Zone One brush management to the flat mesa tops within the designated developable area. However, not every parcel is currently designed to accommodate a full 35-foot setback

from the open space area, with less than 35 feet being provided in portions of the Multi-Family West component. This issue may be partially resolved through use of the correct certified development line for that component. The proposed plans do not show the development line as it was effectively certified by the Commission. Although the applicant has incorporated some alternative fire safety provisions in the areas where the full 35-feet may be lacking, any Zone One setback of less than 35 feet is inconsistent with the certified LUP provisions. Although alternative fire safety provisions are appropriate to further lessen the risk of future fire damage to the approved homes, they cannot replace the 35-foot Zone One setback requirement.

Likewise, Zone Two brush management must include the full 65-foot area between Zone One and any ESHA. Although a reduction in Zone Two width today may temporarily avoid the need to impact ESHA, it is not prudent and would not protect on-site ESHA over the long term. On-the-ground conditions, the level of fire threat, and fire safety standards change over time. Providing the full 65-foot Zone Two width now sets development back a safer distance from future threats, and maintains a viable habitat area for the long term.

To the extent possible by Commission staff, the vegetation maps prepared for the original project have been compared with the proposed site plans. Some of the habitat within open space and adjacent to potential development sites is not ESHA and, as such, some areas could accommodate Zone Two brush management measures without conflicts with Section 30240 of the Coastal Act and the certified LUP. It appears, however, that, in order to accommodate the full 65-foot wide Zone Two (i.e., a total distance of 100 feet from any habitable structure) in all areas, some Zone Two brush management would occur in coastal sage scrub vegetation in the Single-Family Residential and Multi-Family West components south of Calle Cristobal. It appears this could also occur in the Multi-Family North component along the northern edge of proposed development. There are no vegetation maps for that area in the subject permit file, as it is outside the applicant's property, and is part of the Los Penasquitos Canyon Preserve. In addition, portions of the Multi-Family North project would require brush management within the established vernal pool buffer. Any brush management within coastal sage scrub habitat, vernal pools, or wetland buffers is inconsistent with both the certified LCP and with Section 30240 of the Coastal Act. Moreover, in past actions, the Commission has determined that Zone Two brush management is an adverse impact in ESHA. The Commission's staff ecologist concurs that Zone Two brush management represents a significant disruption of habitat values.

To address brush management concerns, Special Condition #2 requires submittal of a site-specific brush management plan for each parcel located adjacent to open space, namely single-family parcels 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 and the two multi-family parcels 123 and 127. The condition first requires that the project be redesigned to provide a full 35-foot setback, entirely within the developable area of each site, for every part of the site adjacent to open space. The condition also identifies the planting and irrigation requirements of Zone One and allows for non-combustible accessory structures.

Special Condition #2 also addresses Zone Two brush management and provides that a 65 ft. brush management Zone Two must be implemented and cannot encroach into coastal sage scrub habitat, vernal pools or any wetland buffers. Complying with this condition, the LUP requirements, and Section 30240 of the Coastal Act will require redesigning the development on parcels 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 64, 87, 88, 111, 112, and 113 within the Single-Family Residential area, Buildings 5, 6, 7, and 8 of the Multi-Family North parcel 123, and Buildings 2, 3, 4, and 5 of the Multi-Family West parcel 127. Parcel identification is based on measurements taken from the Substantial Conformity Review sheets, dated May 16, 2006. The exact number may vary slightly when the Substantial Conformity Review sheets are overlain on the base biology maps. Another change may occur when the biology off-site north of the Multi-Family North component is mapped. Since the area north of the proposed Multi-Family North component is outside the property boundaries, the vegetation in that area was not mapped in the project EIR. The Multi-Family North buildings identified as requiring redesign may not need redesign if the area on the adjacent property within 100 feet of the buildings is not ESHA. In any case, Special Condition #2 requires this analysis, and redesign of the development as necessary to achieve the full 100 ft. brush management requirements.

Another concern, addressed again in the findings for ESHA and visual resources, is the use of glass on fire walls and other facilities such as windscreens, railings and perimeter walls. Should fire walls remain a component of the proposed plan, which could occur in addition to the full 100-foot brush management area, glass should not be part of their design. Glass walls and railings are a known cause of bird strikes; eliminating the glass component on any fire walls will significantly reduce the number of potential bird strikes.

In summary, the project currently before the Commission is not consistent with the brush management provisions of the certified LUP, nor with section 30240 of the Coastal Act. There are areas of the project that do not provide the required 35-foot Zone One brush management area, and areas where Zone Two brush management will occur within coastal sage scrub habitat area that have been determined to be ESHA. The Commission finds it unacceptable to substitute alternative compliance measures instead of providing the full 100-foot brush management area for the proposed new subdivision because conditions change over time. What may be adequate fire safety measures today may prove insufficient in the future. It is for this very reason that the City of San Diego has proposed new brush management regulations to respond to recent devastating wildfires. Once the project is built, and a threat of fire occurs, the Fire Department can declare a nuisance and require additional vegetation removal and/or thinning, which would then, if the applicant's proposed brush management program were approved, impact ESHA. The Commission finds it more prudent to provide sufficient setbacks from ESHA at this time, before the development is existing and choices are limited. Where alternative compliance has been accepted in the past, it has generally been associated with existing development, not a new subdivision. The Commission finds it entirely appropriate to require the full 100-foot brush management zone for new subdivisions, and, where possible, for existing development and existing legal lots as well.

Special Condition #2 requires a site specific brush management plan for each created residential parcel adjacent to open space or within 100 feet of coastal sage scrub vegetation. Any parcels not fully consistent with the LUP or Chapter 3 of the Coastal Act must be redesigned to achieve said consistency. This redesign must also be reflected in the final project plans required by Special Condition #1. Other provisions of Special Condition #2 require the presence of a biologist to assure no impacts occur to California Gnatcatchers through brush management activities, and require the individual landowners to perform basic maintenance activities such as removal of non-native or invasive species from the Zone Two area and the removal of dead and dying vegetation annually. Thinning and pruning activities are not specifically required on a yearly basis through this condition. With the attached special conditions, the Commission finds the proposed development consistent with the cited LUP and Coastal Act provisions addressing brush management.

3. Environmentally Sensitive Habitat Areas. The Chapter 3 policies most applicable to this issue are Section 30240, cited previously and Section 30231, cited below:

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Several certified LUP policies within the site-specific Crescent Heights development criteria also apply, and state:

3. Downstream sensitive resources, particularly the remaining populations of the endangered Monardella, shall be protected from the effects of runoff through appropriate on-site drainage facilities. No detention basins shall be located within the MHPA and all facilities must be designed/sited within disturbed areas to the maximum extent possible and minimize impacts to open space.

4. All impacts to on-site vernal pools shall be avoided; and, the buffer area shall include the entire watershed and/or a minimum 100 ft. distance from each individual vernal pool to any structure or grading, whichever is greater. The vernal pool and buffer area shall be included in the MHPA and zoned OC (Open Space Conservation).

5. Grading over the rim of the Los Penasquitos Canyon Preserve shall be prohibited except to access flatter, less sensitive areas north of Calle Cristobal and west of Camino Santa Fe, and only under all of the following specific circumstances:

- a. Such grading is the only means to access flatter, less sensitive portions of the site which shall be determined through review of a comprehensive alternatives analysis.
- b. Required grading avoids impacts to steep hillsides and sensitive biological resources to the maximum extent possible and such impacts are mitigated in accordance with the Biology Guidelines contained in the Land Development Manual.
- c. Flexibility in road design is achieved through use of retaining walls, minimum road width, or other appropriate methods to reduce impacts to steep hillsides and sensitive biological resources to the maximum extent possible.

In addition, several of the more general policies in the open space element of the certified LUP are also applicable, and state:

Policy 1.a. states:

Sensitive resource areas of community-wide and regional significance shall be preserved as open space.

Policy 4.c. states:

No encroachment shall be permitted into wetlands, including vernal pools. Encroachment into native grasslands, Coastal Sage Scrub, and Maritime Chaparral shall be consistent with the Resource Protection Ordinance. Purchase, creation, or enhancement of replacement habitat area shall be required at ratios determined by the Resource Protection Ordinance or State and Federal agencies, as appropriate. In areas of native vegetation that are connected to an open space system, the City shall require that as much native vegetation as possible is preserved as open space. (*The Resource Protection Ordinance [RPO] was part of the City's old municipal code; these resources are now protected under the Environmentally Sensitive Lands [ESL] regulations.*)

Policy 4.e. states, in part:

... Manufactured slopes and graded areas adjacent to sensitive habitat shall be revegetated with the appropriate native plant community, as much as is feasible considering the City's brush management regulations.

Policy 4.i. states:

Vernal Pools: The remaining vernal pool habitat in the community shall be preserved and shall be protected from vehicular or other human-caused damage, encroachment in their watershed areas, and urban runoff.

Proposal 1. states in part:

Preserve the flood plain and adjacent slopes of the five major canyon systems that traverse the community – Los Penasquitos Canyon, Lopez Canyon, ... and the remaining vernal pool sites ... in a natural state as open space.

In addition, the Residential Land Use portion of the certified LUP (Mira Mesa Community Plan) includes the following goal and subsequent policies and proposals:

Goal (cover page of element) states:

Residential subdivisions that are designed to preserve Mira Mesa's unique system of canyons, ridge tops and mesas.

Policy 1. Determination of Permitted Density states:

a. In determining the permitted density and lot size for specific projects, within the density ranges provided under the Proposals below, the City shall take into account the following factors:

1. Compatibility with the policies established in this plan;
2. Compatibility with the density and pattern of adjacent land uses;
3. Consideration of the topography of the project site and assurance that the site design minimizes impacts on areas with slopes in excess of 25 percent and sensitive biology.

Policy b. states:

The City shall permit very low density development in canyon and slope areas that are not to be preserved for open space and shall permit flexibility in street improvements in residential subdivisions in topographically constrained sites.

This area of the Mira Mesa community of San Diego consists primarily of flat mesas several hundred feet in elevation that abruptly drop off into deep canyons. The canyons were formed by streams that were once intermittent but that now, because of upstream development, run most of the year. The canyon walls are vegetated with a number of different native plant communities, with small areas of disturbance and/or exotic plants also present.

The subject proposal consists of nine separate legal parcels totaling 185.2 acres in size. These various legal lots all contain areas of sensitive upland vegetation, including areas of up to ten different sensitive upland communities of coastal sage (six communities), chaparral (three communities) and non-native grasslands. The residential sites proposed for development are located to the west and east of Camino Santa Fe, south and north of Calle Cristobal in the Mira Mesa community of North City. The other six parcels are located to the northeast, east, and southeast of the residential development site, along the north and south rims of the canyons, and are now designated as open space pursuant to the Commission's action on LCP Amendment No. 3-03B.

There are also seven vernal pools, a rare, seasonal form of wetland, on one of the parcels, and riparian wetlands (southern willow scrub and coyote bush scrub) on another parcel not proposed for development. In addition to the presence of several sensitive habitat types, the coastal sage and associated upland communities are home to a number of sensitive and and/or listed plant and animal species, including the San Diego Coast Barrel Cactus, Coastal California Gnatcatcher, San Diego Horned Lizard and Southern California Rufous-Crowned Sparrow. Not all vegetative communities and sensitive plants and animals exist on all lots, and some are currently in areas designated as open space in the certified LUP. Based on site surveys conducted during preparation of the EIR, there are four gnatcatcher pairs and one unpaired male on the Crescent Heights properties. Although none of the actual gnatcatcher sightings was within 500 feet of the area delineated for residential development, the habitat types where the gnatcatchers were seen extend into the proposed development area. It would be difficult, and probably inaccurate, to say the project site is not occupied by gnatcatchers, at least for foraging and resting purposes.

As recently certified by the Commission, the LUP established an open space boundary that protects all the vernal pools, wetland buffers, and the majority of the coastal sage scrub habitat on the Crescent Heights properties, by applying an open space designation to those areas. The certified open space boundary line generally follows the rimline or grading limits shown on the tentative map approved by the City through the Substantial Conformance Review process for the development areas north of Calle Cristobal and east of Camino Santa Fe, and always includes the upper limits of the coastal sage scrub vegetation within open space. An exception includes the area required for an access road to the Multi-Family West development site, which will be discussed in detail below. For that development area west of Camino Santa Fe, the open space line generally follows the southern limits of the potential road alignment, grading limit or the upper limits of the coastal sage scrub vegetation where non-ESHA vegetation extends beyond the rim line. The proposed subdivision generally follows the open space boundaries as set out in the certified LUP and through rezoning.

The certified LUP includes specific development criteria for the Crescent Heights property, to protect the significant resources on the site (including vernal pools and occupied coastal sage scrub habitat), taking into account the non-contiguous nature of the nine legal lots, and the balancing of harms and benefits to this area that is discussed below, and which is ultimately accomplished through retirement of six legal lots from

development potential as proposed herein. The criteria impose a cap on the total number of units allowed (250) and requires the units to be clustered on three of the existing legal lots. Development rights on the other six legal lots will be retired and those lots maintained as open space conservation areas. The proposed development includes 242 residential units, including 113 single-family residences and 129 apartments in 15 separate buildings. All development is proposed on the three legal lots designated for that purpose in the certified LUP.

The original Crescent Heights subdivision proposal approved by the City in 2003 would have resulted in the direct loss of 4.61 acres of coastal sage scrub, 29.23 acres of chaparral, and 2.58 acres of non-native grasslands. Grasslands in general provide foraging area for many species, and are particularly valuable for raptors as hunting fields. Native grasslands, which do not occur on the Crescent Heights property, are very rare, and are identified as a Tier I habitat in the City of San Diego's MSCP. Tier I habitats are considered those rarest and most valuable for the overall preservation of sensitive plants and animals. Although non-native grasslands, a Tier IIIB habitat, are considered less valuable than the native grasslands, they still perform many of the same biological functions. Nearly all the identified non-native grasslands on the Crescent Heights site occur within the proposed single-family development area.

After the Commission's action on the related LCP amendment, heard in March, 2005, the property owner redesigned the subdivision, significantly reducing overall impacts, and that redesigned subdivision, described above, is the project presented in this permit application. The coastal sage scrub impacts have been reduced to approximately 1.17 acres, and that impact is associated solely with an access road to the Multi-Family West development area. The impacts to chaparral vegetation are also reduced in the subject proposal, but the impacts to non-native grasslands remain roughly the same. However, the chaparral and non-native grassland habitat types were determined by the staff ecologist not to constitute ESHA on the subject site, based on location, condition and function.

To protect the sensitive habitats adjacent to proposed development, the landscaping plan required in Special Condition #4 strictly limits the species allowed in the planting palette, particularly for common areas and manufactured slopes, in order to protect adjacent open space containing ESHA from invasive non-native species. Native or naturalizing plants that are drought-tolerant, non-invasive and compatible with coastal sage scrub habitats are required in all such areas. An exception is the rear-yard areas that are subject to Zone One brush management. Since permanent irrigation is required in this zone, drought-tolerant species may be inappropriate. Thus non-invasive native species shall still be emphasized, but a small garden component, as well as lawn area, for each residential structure is permitted where non-invasive ornamentals are allowed.

Within the Single-Family Residential project component, development was originally proposed to include fill slopes beyond the canyon rim, supporting proposed houses and roads, that would have resulted in significant impacts to coastal sage scrub communities. To eliminate the impacts, the applicant moved the development back and out of the

canyon area, eliminated 15 units, redesigned interior roads, and provided retaining walls at the heads of canyons such that fill slopes in ESHA were no longer necessary. Thus, there is no proposed impact to ESHA associated with construction of the Single-Family Residential component of the Crescent Heights development.

The Crescent Heights development criteria identified above allows an exception to the general LUP policy prohibiting grading beyond the rim of the canyon. This exception applies to both the Multi-Family West and Multi-Family North residential development areas located north of Calle Cristobal and west of Camino Santa Fe, and is necessary to allow access to the developable portions of the sites already delineated for residential development in the certified LUP. No impacts to ESHA will result from construction of road access to the Multi-Family North development area, although grading of steep slopes is proposed.

However, grading over the rim to construct a road for access to the Multi-Family West development will result in approximately 1.17 acres of unavoidable impact to ESHA. To access Multi-Family West a road must be graded west from Camino Santa Fe across a north-south trending side canyon leading down into Lopez Canyon. The road will require a fill slope to support it, and will in effect also create a development pad north of the road. One seven-unit apartment building is proposed on that pad, with the remainder of the seven multi-family buildings to be located on the flat mesa area further west. There is no alternative to this access route, since existing development to the north prevents access from Calle Cristobal. An alternatives analysis has demonstrated that the same ESHA impacts would occur to build access for a single-family residence, which would otherwise be allowed as a minimum development right on a legal lot. Since the western portion of the site contains a large flat area suitable for the proposed multi-family units, access to reach that area must be allowed.

In approving the LCP amendment in March, 2005, the Commission discussed this issue and made findings that designating the flatter portion of the site for residential use presumed construction of a means to access the area. The area where the road would run is actually outside of the geographic area covered by the certified LCP, as it is in an area of deferred certification. Nevertheless, approval of the LCP amendment in March, 2005, designed to accommodate a specific amount and location of development, in effect, presumed the approval of the necessary infrastructure to support that development, including any roads necessary for access to the development. However, construction of the road will effectively destroy approximately 1.17 acres of coastal sage scrub habitat, which is ESHA pursuant to the Coastal Act. For that reason, the proposed access road remains inconsistent with Section 30240 and could not be approved but for the application of the Coastal Act's balancing provisions. This factor will be discussed in more detail below, in the findings regarding the balancing provisions of the Coastal Act.

In addition to upland habitats, there are seven vernal pools, a rare and unique form of seasonal wetland, on the Crescent Heights site, all located north of Calle Cristobal in the Multi-Family North area. The seven vernal pools on the subject legal lot, including five vernal pools in the western part of the site and two in the eastern part, are adjacent to

areas designated to remain in open space and which connect with the canyon preserve as a whole. Both areas of vernal pools are, however, immediately adjacent to, and just north of, Calle Cristobal, a significant east-west trending transportation corridor. When the proposed development is built, the group of five pools will be surrounded on every side but to the northwest with residential development. The group of two pools, although adjacent to the four-lane road on the south, is otherwise surrounded by areas to remain in open space. The only pool containing San Diego fairy shrimp is one of these two, which have been determined to be of higher value biologically than the others.

The vernal pools are all located on a legal lot proposed for multi-family residential development, but no direct impacts to the pools or their watersheds will occur. The vernal pools, including their watersheds, have been designated as open space, and have been preserved in perpetuity through application of the OC-1-1 Zone (Open Space Conservation), the City's most restrictive open space zone, through LCP Amendment No. 3-03B. Thus, no direct impacts to vernal pools will occur. Moreover, the redesigned project currently before the Commission includes a minimum 100-foot buffer between each vernal pool and proposed grading to support the multi-family residential structures. The 100-foot buffer itself includes the pools and their watersheds. This buffer width is consistent with the certified LCP, resource agency policy, and numerous prior Commission actions. A conservation easement is being placed over the vernal pools, vernal pool watersheds and buffer area pursuant to Special Condition #10.

Another wetland concern is protection of the willowy Monardella (*Monardella linoides* ssp. *Vimineae*), which is a riparian subshrub species that grows on sandy terraces in seasonally dry washes. It is found only in San Diego County and Baja California, Mexico, and is declining rapidly in San Diego due to urbanization. Urbanization increases runoff, primarily through decreasing permeable surfaces and planting/irrigation practices, and many canyon streams that were once ephemeral now flow all, or nearly all, year long. Areas that were only subject to occasional erosion during major storms or floods now see some level of erosion during nearly every rain event. The San Diego County population of Monardella has dwindled to a few scattered locations within the northern part of the city, including two small areas in Lopez Canyon downstream from the subject properties; as a comparison, a biological survey conducted in 1982 in conjunction with a different project located 14 distinct populations of this species in Lopez Canyon.

In Lopez Canyon, increased flows from upstream development have caused all sediments to wash downstream, and the entire streambed, with the exception of some small remaining islands, is now cobble. Although Lopez Creek is still usually dry part of the year, the banks of these islands are being eroded away bit by bit. The Monardella requires the very specific micro-habitat that these islands/terraces provide. There have been a few attempts to transplant the species, but none have been successful. Thus, the species is identified as endangered on both the federal and state lists, and the California Department of Fish and Game (CDFG) has determined that all remaining individuals and colonies must be protected in place.

The various existing legal lots of the subject property are located both north and south of the Lopez Canyon floodplain, and future stormwater flows from those properties will be directed into Lopez Creek. As previously discussed, a number of sensitive habitat types are present within the canyon bottom, including the monardella, and on the canyon slopes. The type and location of future drainage facilities may be critical to the survival of the monardella. The Commission approved a coastal development permit (6-03-039) to install protective devices to prevent further erosion of the “islands” where the remaining monardella exists. The erosion rate is directly linked to the amount and velocity of stream flow, which, outside of major storm events, is dictated by the amount of upstream impervious surfaces and the upstream residents’ practices with respect to irrigation, car-washing, and the recreational use of water (pools, spas, etc.).

In 1983, the Commission approved a permit for construction of a stormwater detention and conveyance system for Lopez Canyon. The detention facility is the Montongo Basin, which is located near the head of Lopez Canyon, approximately a mile upstream of the Crescent Heights property. The piping system runs through the canyon bottom, with lateral pipes extending into many of the side canyons to serve mesa top development. The basin was sized to assure no overall increase in peak runoff from the build-out of Mira Mesa. Because much of the buildout occurs west (downstream) of the basin, the basin itself is designed to overcompensate for development to the east to achieve the overall goal of no net increase.

Although this system assures that the actual amount of water reaching downstream resources does not increase, it does little to address the issue of water velocity and erosion potential due to runoff from the Crescent Heights site. These are the factors of concern when considering preservation of the downstream Monardella populations. The LUP amendment approved by the Commission to address this specific site includes a policy that the drainage facilities must be designed to address the velocity issue. As such, final drainage and runoff control plans are required through Special Conditions #6 and #7 that must, among other things, appropriately resolve the quantity, quality, and velocity of water leaving the site. Furthermore, the conditions require that all drainage facilities must be located outside open space or within disturbed areas to the maximum extent possible, and shall be clearly delineated in the final plans called for in the cited conditions and also in Special Condition #1.

In summary, the project currently proposed, and with the attached special conditions, assures the protection of on-site vernal pools and off-site Monardella in downstream Lopez Creek. However, the proposed development is inconsistent with the cited resource protection policies of the Coastal Act as it would allow destruction of ESHA to construct an access road to the Multi-Family West development site. This issue can only be resolved through the Commission’s balancing provisions, and will be discussed in detail in that portion of this report.

4. Land Use/Concentration of Development. Section 30250 of the Coastal Act is most applicable, and states in part:

Section 30250.

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. ...

In addition, the following policies from the Residential Element of the LUP states the following:

Very low density: 0-4 dwelling units per gross acres. This density range is proposed for Lopez Ridge and the northeastern corner of the community near Canyon Hills Park. This range is generally characterized by clustered detached single-family or attached multifamily units (such as duplexes and townhomes) built on large hillside parcels that contain relatively small areas suitable for buildings. Design flexibility on these hillside parcels is necessary to integrate development with the natural environment, preserve and enhance views, and protect areas of unique topography and vegetation. The maximum four units per acre is not likely to be achieved except on lots that have large areas in slopes of less than 25 percent.

d. **Crescent Heights.** Approximately 185 acres in nine lots (Pardee Homes) located to the west and east of Camino Santa Fe, south and north of Calle Cristobal are proposed for a mix of residential housing types including both single- and multi-family units, and open space. The following development criteria shall apply to this area:

1. A maximum of 250 residential units clustered on the portions of the three lots located north and south of the intersection of Calle Cristobal and Camino Santa Fe that are designated for residential development, with the development potential on the remaining six lots retired as open space and undevelopable area. The extinguishment of development rights shall occur at the time of recordation of the final map for any subdivision proposed on this site.
2. All of the other land on the three legal lots to be developed (i.e., all of the land not designated for residential development) shall be preserved through open space deed restrictions or conveyances, and all such areas shall be zoned as OC (open space conservation). Recordation of the deed restrictions or completion of the conveyances shall occur at the time of recordation of the final map for any subdivision proposed on this site.

The proposed development is consistent with these citations. It proposed 242 units, below the 250 maximum. It concentrates all development into portions of three lots and

proposes the remaining lots as permanent open space with all development rights extinguished. The development is concentrated adjacent to existing developed areas, maximizing the amount of area retained in open space, all of which is contiguous with, and mostly within, the Los Penasquitos Canyon Preserve. These open space areas will be preserved pursuant to recorded documents required in Special Conditions #10 and #11. The proposed development consists of single-family residences and multi-family apartment structures, consistent with the policy defining the Very Low Density Residential category, and, since density is calculated over the entire property, is within the allowed density range at 1.31 dwelling units per acre.

The existing legal lots are located both north and south of Calle Cristobal, north and south of Lopez Canyon and east and west of Camino Santa Fe and are shown on Exhibit #2. Only three of the lots now include areas designated for residential use, with the remainder designated open space, pursuant to the Commission's action on LCP Amendment No. 3-03B in March, 2005. The three lots surrounding the intersection of Calle Cristobal and Camino Santa Fe include both residentially-designated area and open space area. The lots designated entirely as open space consist of the three lots south of Lopez Canyon, two lots north of Lopez Canyon and one of the two legal lots north of Calle Cristobal. Although some of the open space lots are adjacent to existing residential uses, the parcels are now landlocked such that access to those undeveloped sites would only be available via easements through the existing development or roads constructed around the perimeter of the existing development or through Lopez Canyon. Since access to these lots would involve significant impacts to ESHA, it is appropriate that they be retired from development through this permit action.

Section 30250 of the Coastal Act mandates consolidation of development on areas able to accommodate it without significant adverse effects on coastal resources. The certified LUP demands the same by concentrating development on the mesa tops and prohibiting grading below the canyon rim except as required for access to the Crescent Heights developable areas and for development of one other property (Sunset Pointe). All development proposed herein is concentrated on Portions of Lots 8, 43 and 45, which total 101 acres. However, significant portions of those lots will be retained in open space, with the development itself only occupying approximately 37 acres of the 101 total acres.

Also in LCP Amendment No. 3-03B, the Commission rezoned all the parcels, from their previous agricultural holding zone, to OC-1-1 for the open space areas, RX-1-2 for the single-family residential area, and RM-2-5 for the multi-family areas. These zones accommodate the development approved by the City through Substantial Conformance Review, which includes 113 single family units and 129 multi-family units within the areas of the three lots that are now residentially designated. Although the zones would allow development up to 14.1 du for the RX-1-2 Zone and up to 29 du for the RM-2-5 Zone, the City-approved project for this site attains a density of only 1.31 du on average. Moreover, the certified LUP limits the density on the site to a maximum of 250 units; the current proposal is for 242 units.

In summary, the proposed development is consistent with Section 30250 of the Coastal Act, the cited LUP policies, and the zoning. Two special conditions address the open space areas of the project. Special Condition #10 requires placement of an open space and conservation easement over all areas of the total site that are designated as open space and that will be dedicated to the City of San Diego upon recordation of the final map for the proposed subdivision. Special Condition #11 places an open space restriction over all the designated Zone Two brush management lots and the three public overlook park sites located within the Single-Family Residential component. These parcels will be the property of the Homeowners Association, but only Zone Two brush management, maintenance of an existing drainage easement, and public recreational improvements are allowed within these parcels, as specified in the condition. As conditioned, the Commission finds the proposal consistent with all cited LCP and Coastal Act policies.

5. Visual Resources. The following Coastal Act policy is applicable and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. ...

In addition, Item 5 of the Development Criteria in the certified LUP states:

Clustered units, single-story structures or single-story elements, roofs sloped toward the canyon, or increased setbacks from the canyon rim shall be used to ensure that visibility of new development from Los Penasquitos Canyon Preserve is minimized. Development shall not be visible from the northern trail in Los Penasquitos Canyon or the location of the planned trail in Lopez Canyon at the point that is located nearest to the proposed development. Lines-of-sight from the trails to the proposed development shall be submitted by the applicant.

The residentially-designated portion of the three lots where development is proposed are in a highly visible location above both Los Penasquitos and Lopez Canyons, both of which are part of the Los Penasquitos Canyon Preserve. The site is not only visible from the floor of the canyons, but from the mesa tops beyond the canyons as well, although these views are at a considerable distance. Portions of the development sites are also visible from Camino Santa Fe, which crosses Lopez Canyon. Assuring development is not visible from the canyon floors, however, is most significant, as Los Penasquitos Canyon Preserve is a major urban greenbelt area. It is valuable for nature study, more active public recreation such as hiking and biking, and also as a mitigation/restoration

site for various development projects within the watershed. It is home to many endangered plants and animals, as well as deer, bobcats, and mountain lions.

The project EIR includes lines-of-sight from the planned trail in Lopez Canyon for the originally proposed development. New site lines for the redesigned project currently proposed were not submitted, but the revisions pulled the proposed development back from the canyon rim in several locations such that visibility may have been reduced with project revisions. The single-family homes are proposed to not exceed thirty feet in height, and the multi-family homes not to exceed forty feet; the proposed architecture remains the same as was reviewed in the EIR, although some of the structures are relocated. Although there were a couple areas where small parts of the originally proposed structures were visible, this concern, if it still exists with the project revisions, is adequately addressed through Special Condition #4, addressing landscaping.

Specifically, the condition identifies the proposed parcels most likely to be visible and requires special treatment in the form of screening trees and shrubs. It requires a minimum of three trees or large shrubs per parcel that will, upon maturity, exceed the roofline of the proposed structure on that parcel. This will serve to break up the facade of the structures and will minimize or eliminate impacts on views from the canyon floors. The condition also mandates the types of plants that can be used in various areas, sets a schedule for planting to occur within 60 days of completion of various project components, and prohibits the use of pesticides and rodenticides. There is also a prohibition on glass windscreens or glass railings on decks, which are a common cause of bird strikes, and are thus not appropriate adjacent to, or nearby, open space areas where large numbers of birds can be expected to live. Finally, the condition requires that the landscaping be monitored for five years, and that the applicant submit a report at the end of five years documenting the condition of the landscaping. If the landscaping has been unsuccessful, remediation is required.

In addition, to further assure that the development is not visually prominent, Special Condition #5 requires the applicant to submit a color board or other documentation of the proposed colors and materials for the exteriors of the proposed residential structures. Colors must be restricted to earth tones compatible with surrounding natural areas, and only non-glare glass is permitted for windows. As conditioned, the Commission finds the development consistent with the cited Coastal Act and LUP policies.

6. Water Quality. The following Coastal Act policy addresses this issue:

Section 30231

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

waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The subject site is located within the Los Penasquitos Lagoon watershed, and the area proposed for development is located north and upland of the streambed of Lopez Creek, and south and upland of the streambed of Penasquitos Creek, on top of the adjacent mesas. The proposed residential project will significantly increase the amount of impervious surfaces on the currently-vacant property. If not appropriately detained and filtered/treated, site runoff could degrade downstream water quality and adversely affect marine organisms. Special Condition #6 requires submittal of a detailed drainage plan, identifying all proposed drainage facilities, their locations, and plans to maintain the drainage system. Special Condition #7 requires temporary erosion control devices to be installed during project construction. With these conditions, the Commission finds the proposed development consistent with the cited Coastal Act policy.

7. Hazards. Section 30253 of the Coastal Act, cited previously, addresses, among other things, the geologic stability of the site. A neighbor has submitted pictures showing an area of undercutting in the general area of the proposed Multi-Family West development. Geotechnical analysis of the site was conducted prior to preparation of the project EIR, and did not identify any specific concerns with the development proposed at that time. However, because development on the Multi-Family West portion of the site will extend slightly further west than proposed in the EIR review, it is possible some geologic hazard exists that was not previously identified. The City's Tentative Parcel Map and Site Development Permit conditions require additional review by a geologist prior to issuance of grading or building permits. Special Condition #12 requires the applicant to waive all liability on the part of the Coastal Commission for the permit granted herein. If the final geologic review requires project modifications, the applicant is advised that such modifications may require an amendment to this permit. As conditioned, the Commission finds the project consistent with the cited Coastal Act policy.

8. Conflict Resolution: ESHA and Concentration of Development.

a. The Balancing Approach to Conflict Resolution

As is indicated above, the standard of review for the Commission's decision on the proposed development is project consistency with the certified LCP for those areas above the canyon rim and project consistency with Chapter 3 policies of the Coastal Act for those areas below the canyon rim. In general, a proposal must be consistent with all relevant policies in order to be approved. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies). This issue was previously addressed by the Commission in March, 2005, when it certified LCP Amendment No. 3-03B, which established the residential designation and zoning required to facilitate the proposed development of the site. The following analysis is consistent with the Commission's previous conflict resolution balancing analysis regarding the LCP amendment for the project.

However, the Legislature also recognized that conflicts can occur among those policies. PRC § 30007.5. It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved “in a manner which on balance is the most protective of significant coastal resources.” PRC §§ 30007.5 and 30200(b). That approach is generally referred to as the “balancing approach to conflict resolution.” Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

b. Conflicts Between Coastal Act Policies in this Matter

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that the proposal presents a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a proposal is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily indicate a conflict. Rather, the Commission must find that to deny the proposal based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

The policy conflicts that arise in this particular coastal development permit request flow from the fact that the proposed development is inconsistent with Coastal Act policies that protect environmentally sensitive habitat areas (ESHA), as well as others, as identified above. However, denial could also result in coastal zone effects that are inconsistent with Sections 30240 and 30250 because it would leave all nine existing legal lots available for future development. Because of the non-contiguous locations of these lots, and the existing lot configuration, the developer could (1) undertake a diffuse pattern of development that would not cluster development near existing developed areas, (2) develop in areas that constitute ESHA, where denial of development would constitute a taking, and (3) develop in areas that are not ESHA themselves but that are sufficiently close to ESHA that the development would disrupt the connectivity between existing ESHA areas, thus significantly degrading those ESHAs.

As described above, the proposed development is inconsistent with the ESHA protection policies in Section 30240 because it would allow for the construction of access to residential development in an area that qualifies as ESHA, since an access road would have to run below the edge of the canyons, within coastal sage scrub habitat, in one location. This development would significantly disrupt the habitat values of the ESHA and would not constitute a use dependent on the resource. Thus, that component of the proposed development is inconsistent with Section 30240 of the Coastal Act.

However, to deny the proposed development based on its inconsistency with this Chapter 3 policy would result in adverse impacts that, in some areas, would be even more inconsistent with this policy, as it could result in more extensive development in ESHA. Currently, there are nine separate legal lots along the mesa tops above Los Penasquitos

and Lopez Canyons. Although six of those legal lots are now designated as open space, the ability of the applicant to place a single home on each legal lot exists. For those six mesa top legal lots, it appears there is no access to the lots at this time. In order to accommodate the minimal development allowed by law, access roads would have to be built which, in some cases, due to the pattern of existing development, would displace substantial amounts of ESHA on both the hillsides and within the canyon bottoms.

Moreover, the Commission has approved rezoning those six legal lots to OC-1-1, as open space zone that would not allow any residential development. However, those rezonings do not actually take place until recordation of the final map for the proposed project.

Thus, the denial of the proposed development could be interpreted to allow approval of future development that would have impacts that are more damaging than those associated with the current proposal, when considering the impacts to ESHA necessary to access and develop those six legal lots. Thus, denial of the proposed development would forfeit the opportunity afforded by the proposal to retire the development potential in several areas to ensure at least some degree of increased ESHA protection, as Section 30240 demands. Moreover, in the Commission's certification of LCP Amendment No. 3-03B in March, 2005, it established the basis for the currently proposed development to occur. It designated the six legal lots as open space and approved rezoning them to the OC-1-1 conservation zone in preparation for the retirement of development rights on those lots proposed herein.

In addition, current law could provide for at least minimal development in nine separate areas of the subject site. This dispersed development pattern is inconsistent with Section 30250 in several respects. First, and most directly, it fails to concentrate development. In addition, development would not be limited to the areas with the least sensitive resources. Finally, piecemeal development of this nature has the effect of degrading even more ESHA than it directly displaces, as it fragments the remaining habitat, which significantly degrades its functionality. In sum, so long as the six legal lots retain their old zoning (AR-1-1, an agricultural holding zone allowing one unit for every ten acres), which is only changed through recordation of the subject subdivision map, the law could be interpreted to permit development in non-contiguous areas that would have more severe negative impacts than the current proposal. Thus, a simple denial would forfeit the ability to implement the mandates of Section 30250 by reducing the applicant's ability to consolidate development contiguous with existing development and away from the most sensitive resources.

Furthermore, the existing lot configuration includes nine separate legal lots. Although it is not clear that the landowner has perfected its right to develop each lot (*see, e.g., District Intown Properties v. District of Columbia*, 198 F.3d 874 (D.C. Cir. 1999)), there is also an argument that the number of legal lots is even greater than nine. In addition, contrary to most situations involving old subdivisions, not all of the nine existing lots are contiguous, raising the possibility of a takings claim if development on those lots were denied. Finally, each of the nine legal lots contains significant areas of ESHA within the MHPA, even though some areas of each lot are vegetated with habitat not considered

ESHA. In sum, although there is ambiguity as to the correct application of takings law to this scenario, it is clear that the existing subdivision would allow development that could have substantial impacts on sensitive resources, whereas the current proposal, as conditioned, would ensure that all development would be limited to three of the nine existing lots, and only to specific sub-areas of those three lots.

In sum, it is unknown what level of development would ultimately occur in these areas, but it is reasonable to assume that some development, under the existing subdivision of land, may move forward and negatively affect these sensitive habitat areas. This type of development would be inconsistent with Section 30240 and 30250 of the Coastal Act as it would have a negative impact on sensitive habitat and lead to a configuration that does not concentrate development adjacent to existing developed areas.

However, this is not the end of the conflict analysis. An application does not present a conflict among Chapter 3 policies if there are feasible alternatives that would achieve the proposal's essential goals without violating any Chapter 3 policy. Thus, an alternatives analysis is a critical condition precedent to conflict identification, and to invocation of the balancing approach. Here, however, there is no viable alternative that would satisfy all Chapter 3 policies. As a result, there is a true conflict, and the Commission must proceed to resolve the conflict in a manner that is, on balance "the most protective of significant coastal resources." PRC § 30007.5.

c. How the LCP Provisions at Issue in this Amendment Must be Drafted so as to be the Most Protective of Significant Coastal Resources at this Site

Although the certified LCP for this area would not allow residential development beyond the rim of the canyon, two of the areas designated for residential development in the certified LUP would only be accessible by building a road that would encroach beyond the rim of a canyon. For the Multi-family North development, this encroachment would not impact ESHA. However, for the Multi-family West development site, construction of the access road could be accomplished without displacing more than one acre of ESHA. Thus, the acre of ESHA displaced for the road would allow for approximately 7 acres of appropriately sited residential development. In addition, although grading for the road would impact ESHA and encroach into designated open space, the disturbed area south of the finished road, although impacted, can be revegetated with native species and provide some habitat value. Furthermore, the road would not fragment or isolate any significant patches of ESHA, as it would be very close to an existing developed area.

Moreover, the Commission emphasizes that there is no other way to permit development to the west of Camino Santa Fe. Under the certified LCP, this area is designated for residential development, and if it were treated as a separate legal lot due to the road, the developer would have a right to some development in this area, pursuant to takings law. Furthermore, even if only a single home were to be allowed in the area west of Camino Santa Fe, this same one acre of ESHA displacement would be the minimum necessary to site such a home and create access to it. Thus, there is a significant risk that this same ESHA impact would occur under any scenario within the Commission's control. Finally,

the Commission notes that the Legislature specifically declared, in Section 30007.5, that the principle of concentration of development in close proximity to developed urban area may be more protective, overall, than preserving each specific wildlife habitat.

It is important to note that the area where the road would run is actually outside of the geographic area covered by the LCP. It is an area of deferred certification, thus, the LCP policies do not apply to it. Nevertheless, when the Commission approved the LCP amendment in March, 2005, designed to accommodate a specific amount and location of development, the approval, in effect, presumed the approval of the necessary infrastructure to support that development, including any roads necessary for access to the development. Thus, that prior approval effectively anticipated approval of the road through this subsequent coastal development permit.

The Commission notes that the certified LUP and IP both require mitigation for unavoidable impacts to sensitive habitats, which is being applied to the subject development proposal, since it allows an ESHA impact.

With the exception of the one acre addressed in this proposal, no ESHA or Tier I and II habitat currently protected within the City's MHPA will be impacted with the proposed development. The open space areas of the Crescent heights property will contain the rest of the existing Tier I and II habitat on the subject site as well as include expanded acreage forming a continuous habitat corridor afforded by retiring the development potential on six sites. The lots proposed for retirement of development rights are all adjacent to the canyon preserve and contiguous with much larger areas of ESHA. This will better maintain the continuity of open space and is the unique aspect of this proposal, as conditioned.

In addition to the significant biological impacts of scattered development that would occur, the sites on the southern rim of Lopez Canyon are very prominent and could also result in significant view issues from the floor of the canyon. Views in this scenic area are also a public resource to be protected. Therefore, the Commission finds that approval of the proposed development, as conditioned herein, is on balance the most protective option for all relevant coastal resources.

Given all of the above factors, the Commission finds it is, on balance, most protective of the significant coastal resources within Penasquitos and Lopez Canyons, especially when compared to build-out of the individual parcels, to approve the proposed development with special conditions addressing all other potential project impacts. This will promote the basic development pattern in the certified LUP, which concentrates allowable development adjacent to existing urban services and other developed areas, as is required by Section 30250, and it will protect many acres of currently vulnerable ESHA, as is required by Section 30240.

The proposed development, as conditioned herein, provides for the preservation of large, contiguous blocks of habitat with high natural resource value relative to covered species, and generally locates development away from these areas. This will ensure that the

critical wildlife movement corridors and on-site populations of gnatcatchers have sufficient areas of high-quality habitat for species survival. The clustering and concentration of development away from sensitive areas that will result from the proposed project will provide a larger, more contiguous preserve area than if development on the same properties were to be approved on a lot-by-lot basis. Moreover, edge effects will be minimized by the retirement of development rights altogether on six of the nine legal lots.

The three lots available for development are adjacent to existing residential development and will be accessible with less adverse environmental impacts than would be necessary to create access to development on the other six lots. The Commission therefore finds that approval of the proposed development, as conditioned, would result in increased clustering of development, expansion of protected areas, and reduction of urban sprawl into sensitive habitat areas and open space/MHPA lands.

Although not entirely consistent with every Coastal Act policy, the proposed development, as conditioned, would produce cumulative benefits that would be more consistent with the policies in Chapter 3 of the Coastal Act than either development of each individual legal lot. In fact, the benefits would, on balance, be the most protective of significant coastal resources as could reasonably be expected, given the circumstances. This finding that approval of the proposed development, as conditioned, is the most protective option for coastal resources is based on the understanding that the retirement of development rights on six legal lots will be implemented prior to any physical development occurring on any of the nine legal lots. It is also based on strict application of the Open Space Conservation zone requirements on open space areas of the three buildable lots.

Therefore, the Commission finds that, with the understandings listed above, and the special conditions included herein, the proposed development is consistent with applicable Coastal Act policies, and that, on balance, it represents the option most protective of significant coastal resources.

9. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case such a finding can be made.

That portion of the proposed development within the City's certified LCP is consistent, as conditioned, with all aspects of that LCP. The portion of the proposed development within the deferred certification where the Commission retains permit jurisdiction, and the standard of review is the Coastal Act, is consistent, as conditioned, with the Coastal Act. Nothing in this approval would prejudice the ability of the City of San Diego to prepare a certifiable land use plan for the Los Penasquitos Canyon Preserve, and obtain coastal development permit authority over this area.

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

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing brush management, biological and visual resources, water quality and hazards 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.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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6-03-098/A-6-NOC-05-050

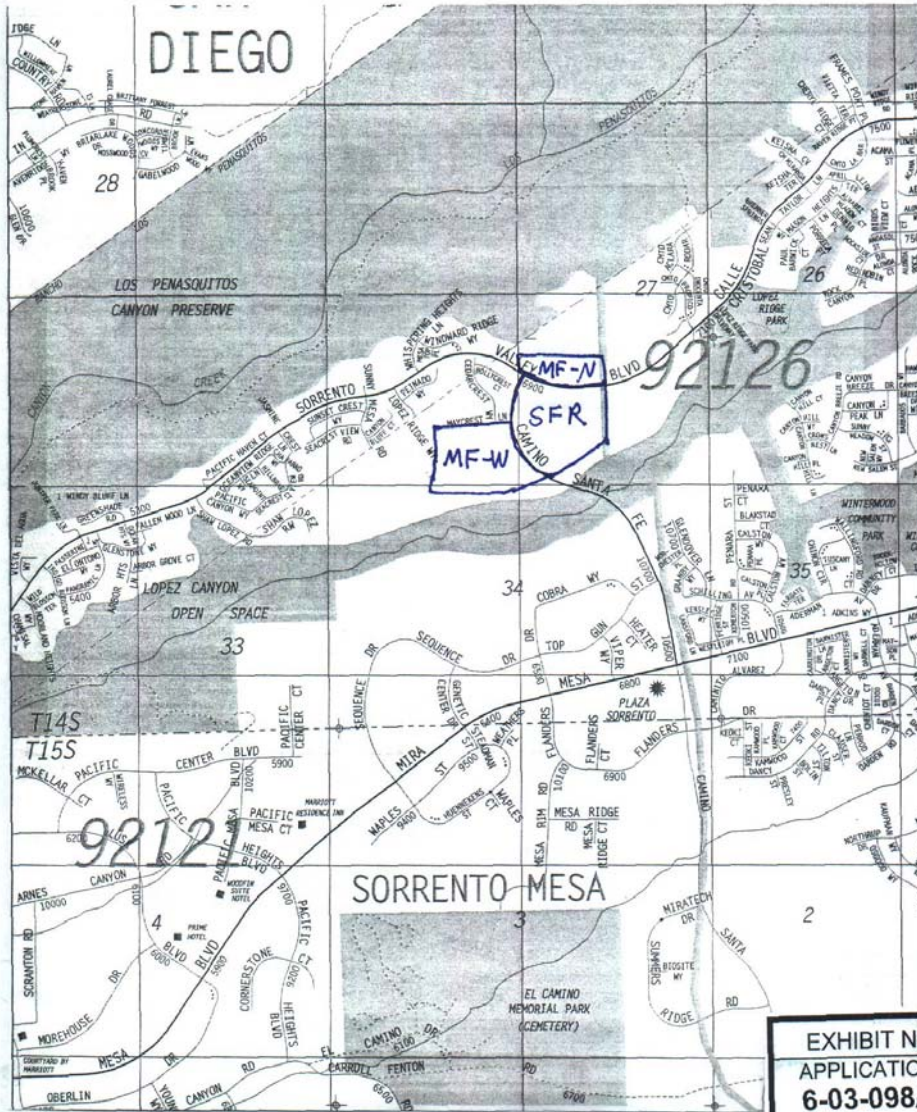


EXHIBIT NO. 1
APPLICATION NO.
6-03-098/A-6-
NOC-05-050
 Location Map of Lots
 to be Developed

California Coastal Commission

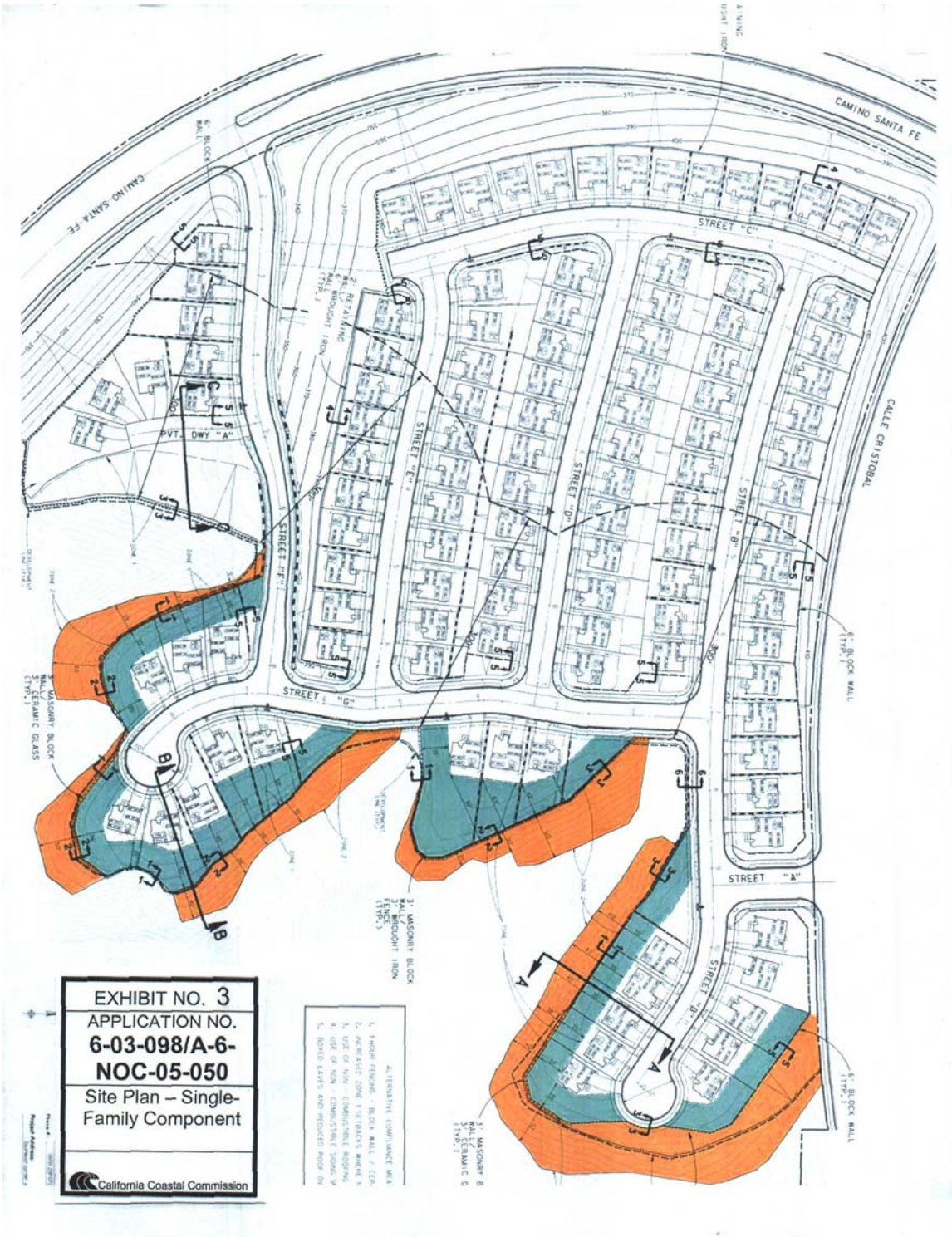
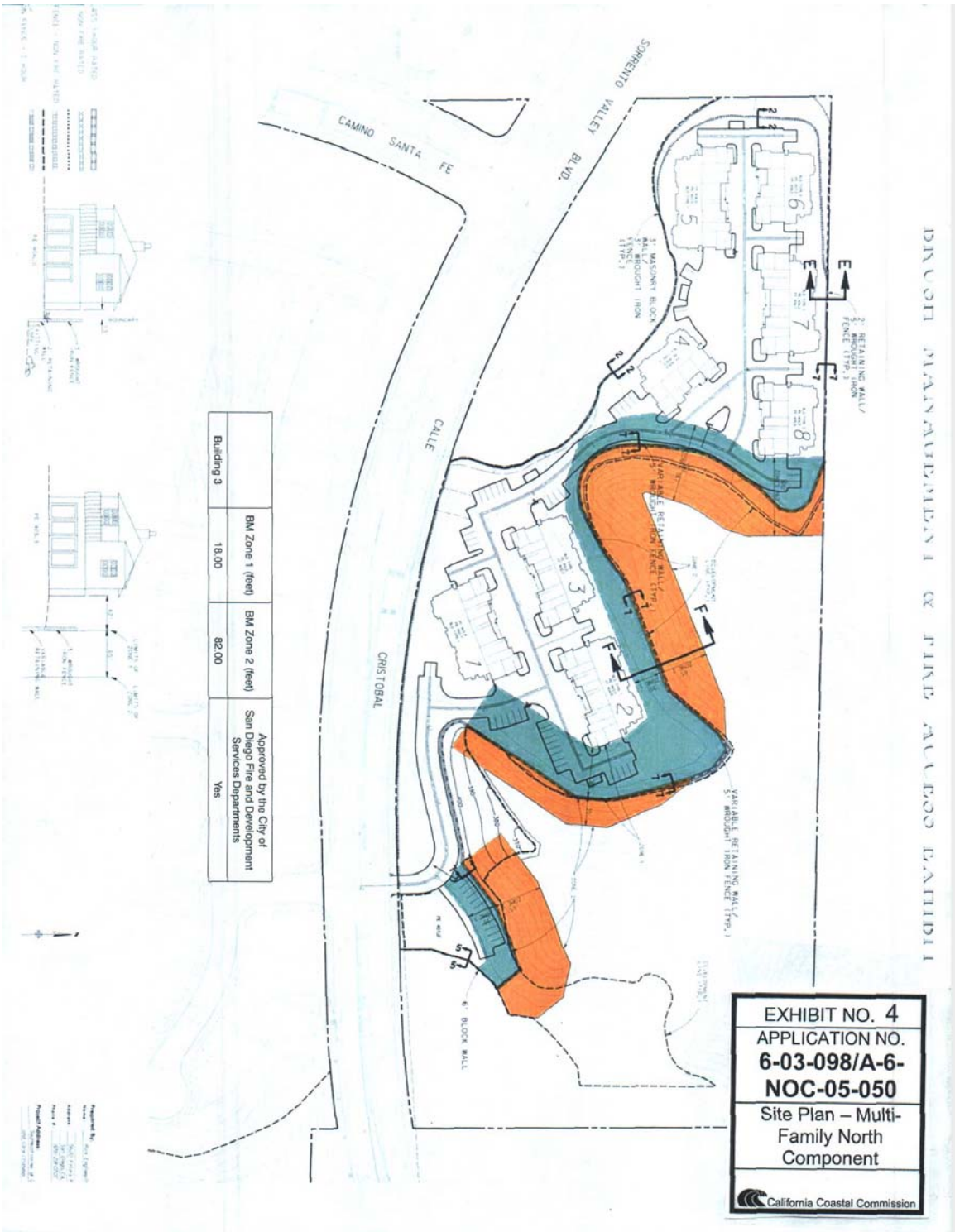


EXHIBIT NO. 3
APPLICATION NO.
6-03-098/A-6-
NOC-05-050
Site Plan – Single-
Family Component

Project Address:
Project Name:
Project Number:
Project Date:

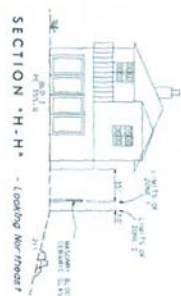
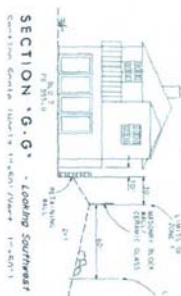
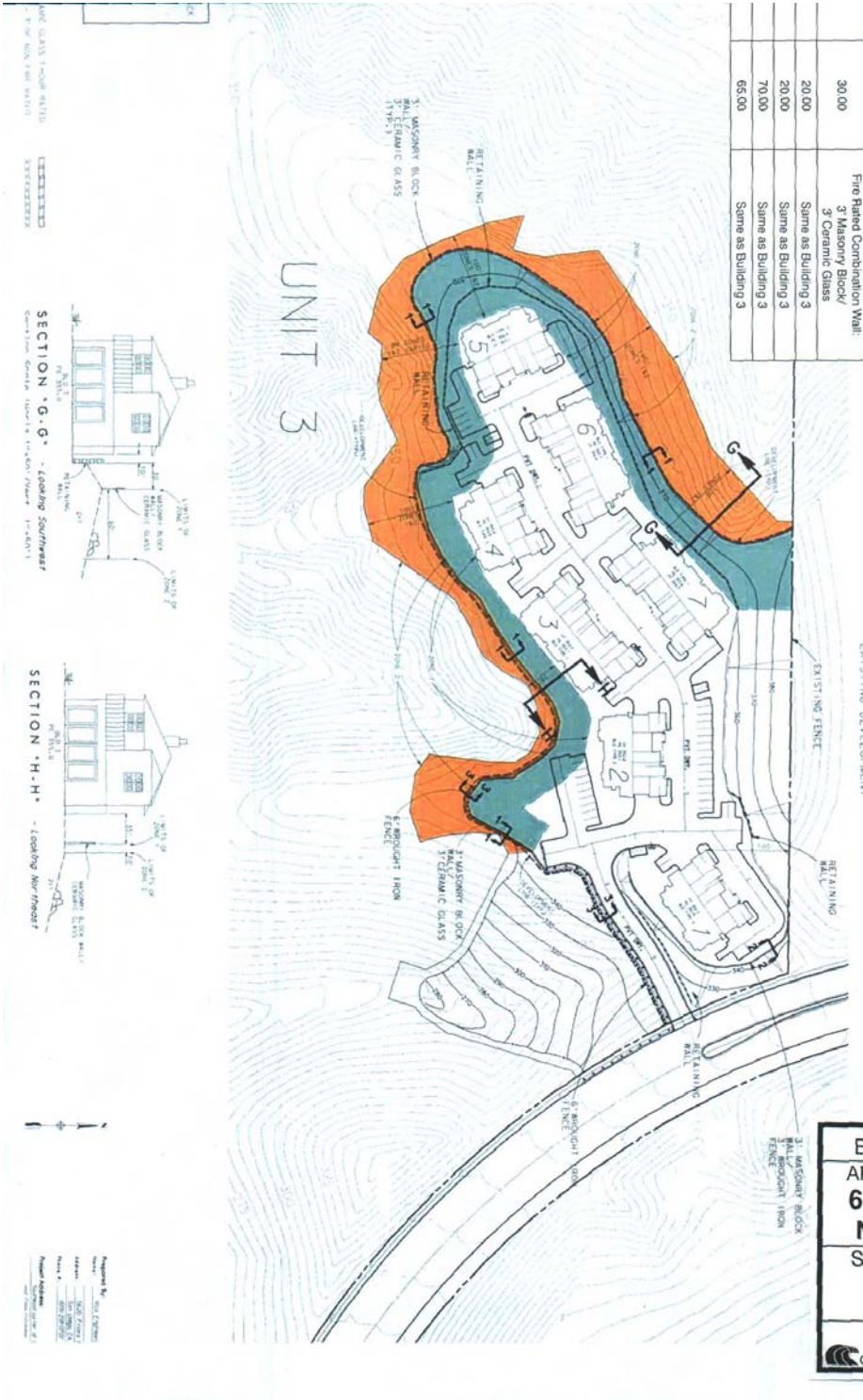
California Coastal Commission

- 1. MASSONRY BLOCK WALL (TYPE 1)
- 2. RESTAURANT WALL (TYPE 1)
- 3. MASSONRY BLOCK WALL (TYPE 1)
- 4. TENTATIVE COMPLIANT WITH
- 5. HAZARDOUS - BLOCK WALL (TYPE 1)
- 6. HAZARDOUS ZONE RESTAURANT WALL (TYPE 1)
- 7. USE OF NON - CONDUCTIVE BLOCK WALL (TYPE 1)
- 8. BOXED LOTS AND REDUCED ROW BY



SUBSTANTIAL CONFORMANCE REVIEW
BRUSH MANAGEMENT & FIRE ACCESS EXHIBIT

(feet)	DM Zone 2 (feet)	Approved by the City of San Diego Fire and Development Services Departments with Alternative Compliance Measures
30.00		Fire Rated Combustion Wall 3 Masonry Block 3 Ceramic Glass
20.00		Same as Building 3
70.00		Same as Building 3
65.00		Same as Building 3



Prepared By: [Firm Name]
Date: [Date]
Scale: [Scale]

CRESCENT HEIGHTS
SUBSTANTIAL CONFORMANCE REVIEW
TYPICAL WALL CROSS-SECTIONS EXHIBIT

