

CALIFORNIA COASTAL COMMISSION

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



Tue 11a

Filed: June 15, 2006
49th Day: August 3, 2006
180th Day: December 12, 2006
Staff: Ellen Lirley-SD
Staff Report: October 24, 2006
Hearing Date: November 14-17, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-03-099

Applicant: Pardee Homes, Attn: Carlene Matchniff

Agent: Lucast Consulting

Description: Subdivision of a 37.3 acre lot into 20 residential parcels and 4 open space parcels, creation of manufactured slopes, construction of an access road, seven homes, retaining walls and drainage facilities, and landscaping improvements, including brush management and public trails, with 29.2 acres of the site remaining in permanent open space.

Zoning RS-1-14 and OC-1-1
Plan Designation Very Low Density Residential

Site: South of Sunny Mesa Road and Lopez Ridge Way, North City, San Diego, San Diego County. APN 311-020-25 and 26

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed subdivision, which is generally consistent with the Coastal Commission's action on City of San Diego LCP Amendment No. 3-03C, which modified the land use plan policies and zoning for this site. The primary issues raised by the proposal relate to impacts to biological and visual resources, erosion control/drainage/water quality, conservation of open space, and provision of public access and trails. Special conditions are recommended addressing these issue areas by requiring final plans establishing appropriate building envelopes, requiring only native and non-invasive landscaping adjacent to open space, requiring appropriate water quality BMPs, requiring appropriate building colors and materials, and requiring preservation/dedication of public trails and open space. The project will occur in both the City of San Diego coastal development permit (CDP) jurisdiction and Coastal

Commission deferred certification CDP jurisdiction, with the legal standards of review being the certified LCP and 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. 3-03C; City of San Diego Substantial Conformance approval.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-03-099 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 the certified Local Coastal Program and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final 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. 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 June 13, 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. Public Trail Easement. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT** and prior to recordation of the final map No. 40-0329 by the City, the applicant shall submit to the Executive Director for review and written approval, a copy of final map No. 40-0329 suitable for recordation without any further modification by the City or applicant, which contains the following:

a. Delineation of the dedicated easement of sufficient size to accommodate a 15-foot-wide, decomposed granite perimeter public trail and a minimum 5-foot-wide, decomposed granite utility easement public trail and a minimum of 2 public parking spaces within the future cul-de-sac area of the property. The easement shall be in substantial conformance with the easement area delineated on Exhibit #7 to this staff report;

Within 30 days of recordation of the final map, the applicant shall submit to the Executive Director a copy of the recorded map No. 40-0329. Any changes to the public trail easement, as recorded, shall require an amendment to this coastal development permit.

3. Public Trail(s)/Recreation. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final plans approved by the City of San Diego for public trail improvements. The plans shall include, at a minimum:

- a. the proposed perimeter trail along the western edge of the development, as depicted on Exhibit #4
- b. an additional, minimum five-foot wide, decomposed granite trail along the existing utility easement on Lot 8 running between Sunny Mesa Way and Street "A," unless prohibited by the utility agency

c. the locations and elevations of public trail signage delineating trailheads and hours of operation; locations shall include, at a minimum:

1. the southern terminus of Sunny Mesa Way
2. Lopez Ridge way as it enters the subject property
3. the proposed on-site cul-de-sac

d. hours of operation that should approximate daylight hours, seven days a week

e. the locations of all parking for the public trail access points (minimum two spaces)

f. a provision that Street "A" and the cul-de-sac shall remain public and allow on-street parking and trail access; no red curbing to eliminate public parking shall be permitted

f. a provision that the trail system shall be constructed and opened prior to occupancy of the permitted residential development

The permittee shall install the trail improvements and signage in accordance with the approved plan concurrent with residential development and prior to the occupancy of the first residence. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. 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 each proposed residential parcel as depicted on Substantial Conformity Review sheet 4 of 10, dated May 16, 2006. The brush management plans shall delineate the area within 100 feet of all proposed habitable structures on each of the residential 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 ESHA, which consists of some areas of coastal sage scrub and native grasslands on this specific site. 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 and consistent with Special Condition #6, Landscaping.

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 ESHA, including any areas revegetated with coastal sage scrub or native grassland vegetation as required mitigation for project impacts.
- (c) Revisions to the proposed site plan and brush management plans for individual parcels, if necessary, to address the full 100-foot brush management area. 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.
- (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 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.

5. Coastal Sage Scrub/Native Grassland/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, native grassland, 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. 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.
 2. As proposed, impacts, both permanent and temporary, to native grasslands shall be mitigated at not less than a ratio of 2:1 in-kind mitigation consisting of creation or substantial restoration of native grasslands. The native grasslands at the mitigation site should be similar to nearby, relatively undisturbed stands of native grasslands 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. Identify the location where the seeds will be collected and identification of plant species to be used for the restoration area(s);
- f. Specify the application rate (e.g. pounds per acres of seeding effort);
- g. Specify the methods for weed eradication. No weed whips shall be permitted after installation of the seed mixes;
- h. Specify the final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards.
- i. 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
- j. 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.

6. 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 plant materials compatible with the adjacent upland habitats, and that are exclusively drought tolerant, plus non-invasive, plus native and naturalizing, 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 #4, shall emphasize the use of native species, but use of non-invasive ornamental species and lawn area is allowed. 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 southern perimeter of the graded pad on parcels 16, 17, 18, 19, and 20, as depicted on Substantial Conformity Review sheet 3 of 10, dated May 16, 2006, and trees or similarly-sized plants shall be planted on the proposed manufactured slope supporting the access road, consistent with brush management requirements. Upon maturity, required trees and/or shrubs shall exceed the roofline of the homes, height of the walls, and manufactured slope so as to break up the facade of the structures and maximize screening of development from views from the Lopez Canyon public recreational areas, trails, nearby public roads, and vista points, including those from the south across Lopez Canyon.

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 clear glass windscreens, clear glass railings around decks, or clear 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.

7. 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 herein 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.

8. 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 or native grasslands, and shall be contained within the development footprint, including manufactured slopes.
- (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.

9. 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.

10. 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.

11. 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.

12. Open Space and Conservation Easement. No development, as defined in Section 30106 of the Coastal Act, shall occur within Lot 24 of Vesting Tentative Map No. 40-0329 except for:

- a. creation and restoration of coastal sage scrub and native grasslands mitigation as required in Special Condition #5
- b. ongoing maintenance of the existing sewer easement

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 Lot 24 of Vesting Tentative Map No. 40-0329 as shown in Exhibit #7. 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.

13. Open Space Restriction.

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur within parcels 21, 22 and 23 as depicted on the Vesting Tentative map dated May 12, 2006 and Exhibit #7 except for:
 - 1. Zone Two brush management as specified in Special Condition #4 of this permit
 - 2. creation of manufactured slopes on parcels 22 and 23
 - 3. revegetation, maintenance and monitoring activities within the created manufactured slopes
 - 4. installation of drainage facilities within portions of the manufactured slopes on parcel 22
 - 5. ongoing maintenance activities within existing sewer easement on parcel 22
 - 6. installation of public park and trail improvements on parcels 21 and 22

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.

14. Other Conditions Imposed By Local Government (VTM No. 40-0329; CDP No. 11758; PRD No. 11760; and SDP No. 11761). 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.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing subdivision of a 37.3 acre lot into 20 residential parcels and 4 open space parcels, one for recreational use, two for brush management and one for permanent resource conservation; the conservation parcel equals 29.2 acres of the site. Also proposed is the grading of manufactured slopes, and construction of seven homes, an access road, retaining walls and drainage facilities.

The existing property is generally located south of Calle Cristobal, west of Camino Santa Fe, and north of Lopez Canyon. The site is not directly bordered by either Calle Cristobal or Camino Santa Fe, but would be accessed through an existing subdivision to the north of the subject site that borders Calle Cristobal. The Sunset Pointe property is technically located south of the Sunny Mesa Road and Lopez Ridge Way cul-de-sacs of that existing subdivision. Although the Crescent Heights Multi-Family West subdivision component of Coastal Development Permit Application #6-03-098/A-6-NOC-05-050, which the Commission approved at its October 2006 meeting, would be located directly east of portions of Sunset Pointe, existing topography and vegetation would not allow access to Sunset Pointe through Crescent Heights.

On June 8, 2005, the Coastal Commission certified a revised Mira Mesa Community Plan LCP Land Use Plan (LUP) with suggested modifications addressing this specific site, along with other LUP changes and a companion rezone (City of San Diego LCPA 3-03C). The City adopted all Commission-suggested modifications, and the applicant has redesigned the proposed project to be consistent with the currently-certified LCP. The City reviewed these changes under its substantial conformance review process and determined that the redesign did not raise any new or different concerns than had previously been addressed through environmental review and City action. The applicant has formally substituted the substantial conformance plans for those the City had approved in 2003, and the redesigned project is what is being reviewed herein.

The project includes grading steep slopes in excess of 25% gradient and impacts to environmentally sensitive habitat area (ESHA) to construct access to the flatter, less sensitive portion of the western mesa designated for development. This was addressed in the Commission's certification of LCP Amendment No. 3-03C, which redrew the lines between developable area and open space, preserving significantly more of the ESHA on the site than would have occurred under the previously certified LUP. However, given the overall constraints of the property, the Commission found it would not be possible to access the developable area of this particular site without ESHA impacts on approximately 2.62 acres of the site. This will be discussed in greater detail in the following findings.

The project will occur in both the City of San Diego coastal development permit jurisdiction (CDP) and Coastal Commission deferred certification CDP jurisdictions. Since the Commission deferred certification of this area in 1988, the City and Commission staff have used the rim of Lopez Canyon as the line denoting Commission permit jurisdiction; the subdivision creates new lots in the deferred certification area, such that the entire subdivision is under the Commission's review. A subdivision includes those improvements establishing the ultimate developable area, such as grading, roads, drainage improvements, setbacks, brush management zones, etc. Thus, the Commission is reviewing all the subdivision improvements, but is only reviewing the actual construction of seven of the twenty homes, the remainder of which occur only in the City of San Diego coastal development permit jurisdiction. The City has already issued a non-appealable CDP for those portions of the project within its jurisdiction. The standard of review for development in this area is the certified LCP above the canyon rim and Chapter 3 of the Coastal Act below it.

2. Environmentally Sensitive Habitats/Biological Resources. The following LCP provisions and Coastal Act policies are most applicable to this proposed development, and state, in part:

From the Open Space Element of the Mira Mesa Community Plan LCP Land Use Plan (LUP):

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.)*

Proposal 1. states in part:

Preserve the flood plain and adjacent slopes of the five major canyon systems that traverse the community – Lopez Canyon ... in a natural state as open space.

From the Residential Land Use element of the certified LUP:

Goal (cover page of element) allows:

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.

Proposal 1. states in part:

The following density ranges and building types are proposed to meet the goals of this plan: ...

... Very low density: 0-4 dwelling units per gross acre. 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. ...

e. **Sunset Pointe.** Approximately 37.3 acres (Pardee Homes) located to the west of Camino Santa Fe, south of Calle Cristobal, at the southern termini of Sunny Mesa Road and Lopez Ridge Way, are proposed for a mix of residential housing and open space. The following development criteria shall apply:

1. All open space lands outside the area to be developed shall be preserved through open space deed restrictions or conveyances, and all such areas shall be zoned as OC (open space conservation).
2. 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.
3. Grading over the rim of the Los Penasquitos Canyon Preserve shall be prohibited except to access flatter, less sensitive areas of the site, and only under all of the following specific circumstances:
 - a. Such grading is the only means to take access from Lopez Ridge Way and to develop an access road to the western mesa, 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.
4. 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 and native grassland shall not be permitted. Measures such as replacing cleared or thinned native vegetation with fire-resistive 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.
5. Impacts to coastal sage scrub habitat and native grassland within open space areas shall be limited to habitat restoration, enhancement and maintenance of restored areas.
 6. Public access to the existing informal trails leading down to the floor of Lopez Canyon shall be maintained for public use. Public and/or on-street parking shall be provided.

From the Environmentally Sensitive Lands Regulations of the Land Development Code:

Section 143.0140(a)

Environmentally sensitive lands that are outside of the allowable development area on a premises shall be left in a natural state and used only for those passive activities allowed as a condition of permit approval. ...

From Chapter 3 of the Coastal Act:

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.

The subject property contains significant areas of sensitive upland vegetation, including areas of up to ten different sensitive upland communities, including coastal sage (six communities), chaparral (one community), both native and non-native grasslands and one area of mixed coastal sage and native grasslands. There is coyote bush scrub in the lower reaches of the on-site canyons, though far removed from any proposed 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/or listed plant and animal species, including the San Diego Coast Barrel Cactus, Coastal California Gnatcatcher, and Southern California Rufous-Crowned Sparrow. Two of these species occur on both the portion of the property proposed as open space and the portion proposed for development, although the gnatcatcher was reported only in proposed open space..

Native grasslands 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 that are rarest and most valuable for the overall preservation of sensitive plants and animals. Grasslands provide foraging area for many species, and are particularly valuable for raptors as hunting fields. Non-native grasslands, a Tier IIIB habitat, are considered less valuable than the native grasslands, but still perform many of the same biological functions. Nearly all the identified non-native grasslands on the Sunset Pointe site occur within the proposed residentially-designated areas; more significantly, 0.4 acre of the native grasslands are located within the proposed development footprint.

Likewise, the various coastal sage communities are scattered throughout the site, and even the same vegetative communities would rank differently from place to place in terms of native cover and habitat value. More of the coastal sage vegetation occurs outside the proposed developable area, but there are still 2.2 acres of coastal sage identified within the proposed development footprint, including the access road. Based on site surveys conducted during preparation of the EIR, one gnatcatcher pair has been identified on the property, but in an area located well away from proposed development areas. Some sightings of Rufous-Crowned Sparrows, however, occur within the proposed development area, as do individuals of Coast Barrel Cactus. Moreover, although the one gnatcatcher sighting was not within 500 feet of the area proposed for residential development, the coastal sage habitat types where the gnatcatchers were seen extend into the project footprint. Although none were observed, gnatcatchers probably do occupy the site at least for foraging and resting purposes.

The flat portion of the eastern mesa is entirely comprised of ESHA, in the form of native grassland and coastal sage scrub habitat. The Sunset Pointe subdivision proposal would result in the direct loss of 2.22 acres of coastal sage scrub and 0.4 acres of native grasslands that the Commission's staff ecologist has determined constitute ESHA, along with impacts to significant portions of the non-native grasslands on the site. The potential loss of these habitats is all the more significant as they are part of a natural canyon system that supports sensitive species and represents one of the few remaining natural urban greenbelts in San Diego.

Construction of the access road could not be accomplished without displacing a minimum of the 2.62 acres of ESHA described above, as identified by the project engineer. Because of existing site topography, and the proximity of existing development to the north, the grading required to create the road will also create a flat area north of the road (i.e., between the proposed road and the existing development) that will provide space to site several of the proposed homes. The potential to leave this area unimproved and revegetate it with ESHA species was investigated, but the applicant's biologist determined, and the Commission's staff ecologist concurred, that the area would not provide usable habitat, as it would be an isolated linear strip cut off from nearby open space by the access road and the required fill slope for the road. Moreover, this isolated strip would be completely surrounded by development.

However, grading over the rim to construct a road for access to the developable area of the Sunset Pointe property will result in approximately 2.62 acres of unavoidable impact to ESHA. A road must first be graded south from the terminus of Lopez Ridge Way, then west 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, as discussed in the prior paragraph. Seven single-family homes will be built on that pad area, with the remainder of the proposed development to be located on the flat mesa area further west. There is no alternative to this access route, since existing development along most of the northern property boundary and steep, natively-vegetated canyons to the east, west and south prevent access from any other direction. An alternatives analysis has demonstrated that the same ESHA impacts would occur to build access for any degree of development on this site. Since the western portion of the site contains the largest flat area suitable for the proposed single-family residences, access to reach that area must be allowed.

In approving the LCP amendment in June, 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. Portions of the area where the road would run are actually outside of the geographic area covered by the certified LCP, as a significant part of the site is in an area of deferred certification. Nevertheless, in approval of the LCP amendment in June, 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. However, construction of the road will effectively destroy approximately 2.22 acres of coastal sage scrub habitat and 0.4 acre of native grasslands, 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.

Another ESHA 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 property; 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/terraces, 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 subject property is located north of the Lopez Canyon floodplain, and future stormwater flows from this site 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 Sunset Pointe property. The piping system runs through the canyon bottom, with lateral pipes extending into many of the side canyons to serve mesa top development, including the Sunset Pointe property. 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 Sunset Pointe 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 #8 and #9 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, and shall be clearly delineated in the final plans called for in the cited conditions and also in Special Condition #1.

Also, both new and existing development often have the potential to impact ESHA in order to provide brush management, particularly from Zone Two brush management activities. In this particular case, the proposed project maintains all required brush management zones outside of areas containing ESHA. In some cases, the required 35-foot Zone One area and 65-foot Zone Two area are fully provided. In other cases, Zone One has been significantly expanded, allowing Zone Two to be less than 65 feet in width. In all cases, the entire Zone One area is contained within the developable area of the site. Although portions of Zone Two brush management will occur in areas to be placed in open space, these areas do not contain ESHA, as they consist of non-native grasslands and a manufactured slope. The proposed brush management program, formalized in Special Condition #4, is thus consistent with the cited resource-protection policies, and has been approved by the City of San Diego.

In summary, the Commission finds that the proposed development, as conditioned, would adequately protect downstream Monardella resources, and is consistent with the cited policies in that respect. It also finds the proposed brush management program consistent with those policies, as it avoids any brush management in ESHA. However, other aspects of the proposed development would result in significant adverse effects on coastal resources, which is inconsistent with Section 30240 of the Act. The prior LCP amendments acknowledged the existing resources and topography and concentrated development on the least sensitive portions of this property. Action on the LCP amendments, however, identified that some impacts to steep slopes and ESHA would be unavoidable to accommodate any development on the property. 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 for the 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.

3. 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 policy from the Residential Element of the LUP states:

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.

The proposed development is consistent with these citations. It concentrates all development along the northern boundary of the site adjacent to existing residential uses, and proposes the remainder of the lot as permanent open space. Most of the open space, 29.2 acres, will be dedicated to the City of San Diego, but there are also three proposed open space lots that will contain manufactured slopes, Zone Two brush management areas, and recreational use that will remain under the control of the homeowner's association. The proposed configuration maximizes the amount of area retained in open space, nearly all of which is contiguous with, and mostly within, the Lopez Canyon portion of the Los Penasquitos Canyon Preserve. These open space areas will be preserved pursuant to recorded documents required in Special Conditions #12 and #13. The proposed development consists of twenty (20) single-family residential lots, and is consistent with the policy defining the Very Low Density Residential category, since the proposed density is just over .5 dwelling units per acre (dua).

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 requires the same by concentrating development on the mesa tops and prohibiting grading below the canyon rim except as required for access to the developable areas of two properties, namely Sunset Pointe and Crescent Heights. The proposed development is consistent with these provisions. Although grading below the rim and significant resource impacts will occur, they still represent the least damaging alternative to gain access to the developable area of the site.

Also in LCP Amendment No. 3-03C, the Commission rezoned the site from its previous agricultural holding zone, to OC-1-1 for the open space area and RS-1-14 for the single-family residential area. These zones accommodate the development approved by the City through Substantial Conformance Review, which includes 20 single family residences and open space. Although the RS-1-14 Zone would allow development up to 8 dua, the City-approved project for this site only attains a density of slightly more than .5 dua.

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 #12 requires placement of an open space and conservation easement over Lot 24 of the proposed tentative map, which is designated as open space and will be dedicated to the City of San Diego upon recordation of the final map for the proposed subdivision. Special Condition #13 places an open space restriction over the manufactured slopes south of the access road, designated Zone Two brush management areas and a small proposed recreational lot. As conditioned, the Commission finds the proposal consistent with all cited LCP and Coastal Act policies.

4. 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 component of 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 property where development is proposed is in a highly visible location above Lopez Canyon, which is part of the Los Penasquitos Canyon Preserve. The site is not only visible from the floor of the canyon, but from the mesa top beyond the canyon to the south as well, although these views are at a considerable distance. Portions of the property may also be visible from Camino Santa Fe as it crosses Lopez Canyon. Assuring development is not visible from the canyon floor, 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, mountain lions, and many smaller mammals, as well as rodents and reptiles.

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 that occurred to the original project pulled the proposed development back from the canyon rim in at least one location such that visibility of the development has been reduced. The single-family homes are proposed to not exceed thirty feet in height; the proposed architecture remains the same as was reviewed in the EIR, although the structures have been relocated to some degree. 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 #6, addressing landscaping. Moreover, there are several instances where the existing development north of the subject site is already visible from the canyon floor. The required landscaping improvements may serve to screen this existing development as well as that currently proposed.

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 clear glass windscreens or 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 #7 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.

5. Water Quality/Drainage. 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, 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 #8 requires submittal of a detailed drainage plan, identifying all proposed drainage facilities, their locations, and plans to maintain the drainage system. The plan must be designed to control the quantity, quality and velocity of runoff leaving the site, and assure that post-construction runoff does not exceed pre-construction runoff in these parameters, through use of appropriate detention and filtration methods. Special Condition #9 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.

6. Public Access and Recreational Use. The following policies are applicable to the proposed development and state:

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

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

Section 30223

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

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.

The subject site is currently vacant land that, based on the number of footpaths across the site, has been and is currently used by members of the public to gain access to Los Penasquitos Canyon Preserve and to experience the open space vistas afforded from the property. A master plan for the preserve system has not yet been developed and is the primary reason that area was not included within the certified LCP and certification is deferred.

The certified LUP indicates “a trail system is proposed in Los Penasquitos Canyon Preserve as part of the Preserve Master Plan to provide access to equestrians and hikers. The trail system is a concept plan only and will be refined during environmental analysis to avoid sensitive areas of the Preserve.” (page 51). General locations for these trails are shown on Figure 7 in the LUP and include the floor of Lopez Canyon as one of the main trail locations. In addition, the site-specific development criteria for Sunset Pointe, previously cited in the findings addressing biological resources, specifically requires the provision and/or maintenance of access to existing public trails.

Given that Lopez Canyon is designated as a primary access point within the Los Penasquitos Preserve, the Commission must assure public access to such lower cost public recreational facilities is maintained. Special Conditions #2 #3 require recordation of a trail easement and submittal of a public trails plan to assure access to the existing informal trail leading down to the floor of Lopez Canyon from the southwestern tip of the proposed residential development. The applicant is proposing to provide a public trail from the southern terminus of Sunny Mesa Way, around the western perimeter of the proposed houses, to connect with the existing trail.

However, the site plan indicates an existing utility easement in the western portion of proposed Lot 8 that runs between the terminus of Sunny Mesa Road south to proposed Street “A.” A marked trail through this easement is more likely to be used than the proposed perimeter trail, as it provides a better visual link through the development to the open space. Once one reaches Street “A,” a simple right turn to the cul-de-sac will access the proposed perimeter trail without having to cross behind several back yards in the proposed subdivision. The special conditions requires the applicant to provide this alternative trail, in addition to the proposed trail, unless the holder of the utility easement will not grant permission. The conditions also requires the provision of appropriate signage to assure the public is aware of this access opportunity and the trail system’s hours of operation. Street “A” must be a public street and allow public parking to access the trail either along the street or in the cul-de-sac. Finally, the conditions assures the trail system will remain available to the public in perpetuity by requiring that a public trail easement be recorded on the final map. As conditioned, the Commission finds the proposal consistent with the cited public access policies.

7. 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).

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.

This issue was previously addressed by the Commission in June, 2005, when it certified with suggested modifications LCP Amendment No. 3-03C, which established the residential designation and zoning and specific development standards 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.

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, even as conditioned, is inconsistent with Coastal Act policies that protect environmentally sensitive habitat areas (ESHA), as well as others, as identified above. As described above, the proposed development is inconsistent with the ESHA protection policies in Section 30240 because it would allow for the construction of an access road in an area that qualifies as ESHA, since the road would have to run below the edge of the canyon, within coastal sage scrub and native grassland habitats to access the developable portion of the site. 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, in the Commission's certification of LCP Amendment No. 3-03C in June, 2005, it established the basis for the currently proposed development to occur. It designated the flatter portions of the site, containing fewer sensitive resources, for residential development and approved rezoning them to the RS-1-14 single-family residential zone. The remainder of the site was designated and zoned as open space. Prior to that LCP amendment, two separate areas of the site were designated for residential development, one of them (the eastern mesa) almost entirely comprised of ESHA; moreover, the old boundary between open space and developable area did not accurately reflect on-the-ground resources. Such development would have been inconsistent with Section 30240 and would not have concentrated development in the manner required by Section 30250. The LCP amendments approved in June, 2005, resolved those issues. Finally, in the adopted findings for the LCP amendments, the Commission identified that the property owner's 20-lot Study, Plan B would be an appropriate way to develop the site consistent with the action taken on the LCP. That specific proposal is what is now before the Commission in the subject coastal development permit application.

In sum, it is unknown what level of development might occur on this site if the proposed development were denied, but it is reasonable to assume that some development would move forward under the existing subdivision of land, and negatively affect these sensitive habitat areas, since the same access road improvements would be required for any potential development.

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 and Coastal Act Provisions at Issue in this Coastal Development Permit Application Must be Resolved so as to be the Most Protective of Significant Coastal Resources at this Site

Construction of a road to access the most developable portion of the site (i.e., the western mesa) could not be accomplished without displacing a minimum of 2.62 acres of ESHA (see Exhibit #2), as identified by the project engineer. The ESHA displaced for the road would allow for approximately 4.9 acres of appropriately sited residential development, including the access road. In addition, although the road would impact ESHA, it does not encroach into designated open space, and the disturbed area south and east 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. The small strip of land between the existing development and the proposed road that is proposed for residential uses herein, does not comprise a significant patch of ESHA, and would not provide habitat value, even if revegetated, due to its small size and isolation. Pulling the access road any closer to the existing development to the north than proposed herein was determined infeasible from an engineering standpoint.

Moreover, the Commission emphasizes that there is no less damaging way to permit development on this site. At the time of the LCP amendment review, staff had suggested accessing the site from Sunny Mesa Way rather than Lopez Ridge Way, to access a smaller development in a different configuration. However, the applicant's engineer demonstrated conclusively that existing topography precluded this means of access, and the Commission determined the staff's suggested development configuration was far more visible than that proposed herein. The developer could have a right to some development in this area, pursuant to takings law, even if the LCP and Coastal Act would not normally allow it. Thus, there is a significant risk that some 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 part of 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 referenced on page 5, thus, the LCP policies do not apply to it. Nevertheless, the certified LCP is designed to accommodate a specific amount and location of development. Certification of the LCP amendment in June, 2005, in effect, presumed the approval of the necessary infrastructure to support that development, including any roads necessary for access to the development. Thus, the prior LCP amendments effectively anticipated approval of the road through a subsequent coastal development permit (i.e., the subject permit).

The Commission notes that the certified LUP and IP both require mitigation for unavoidable impacts to sensitive habitats, which would be applied to any development proposal that allowed an ESHA impact. Appropriate mitigation is addressed in Special Condition #3, establishing the types and location of required mitigation.

Although the Commission was only reviewing LCP changes in its prior action, and not approving a specific development, a number of potential development scenarios were presented to the Commission by both the landowner and Commission staff. These alternatives were reflected in various open space/developable area boundaries that were discussed at that time. The Commission ultimately found that the line proposed by the landowner, which was based on the subject proposal, best protected visual resources, provided appropriately placed drainage improvements and minimized the fire threat. Moreover, the Commission found the landowner's proposed line concentrated development immediately adjacent to already developed areas. Ultimately, the

Commission found these advantages to the landowner's proposed line outweighed the resultant ESHA impacts.

Given all of the above factors, the Commission finds it is, on balance, most protective of the significant coastal resources within Lopez Canyon to approve the proposed coastal development permit application with the attached special conditions. The development will preserve large, contiguous blocks of habitat with high natural resource value relative to covered species, and will generally locate development away from these areas. This will ensure that the critical wildlife movement corridors and on-site populations of gnatcatchers and other sensitive species have sufficient areas of high-quality habitat for species survival. The Commission therefore finds that approval of the proposed development, as conditioned, would result in increased concentration of development and permanent preservation of protected areas as open space.

Although not entirely consistent with every Coastal Act policy, the proposed development, as conditioned, is fully consistent with the certified LCP, which was previously modified to accommodate this type of development. In fact, the benefits of the proposed development would, on balance, be the most protective of significant coastal resources as could reasonably be expected, given the circumstances, as the majority of the overall site will be placed in permanent open space.

Moreover, the Commission emphasizes that there is no other way to permit development on the subject site. Furthermore, regardless of the level of development ultimately permitted on the site, this same ESHA displacement would be the minimum necessary to create access to the developable portion of the property. 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. 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 with the Coastal Act mandate that, where conflicts exist, they be resolved in a manner that, on balance, is most protective of significant coastal resources.

8. 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. Since the proposed subdivision creates lots in both the City's and Coastal Commission's jurisdiction, the Commission has permit jurisdiction over the subdivision itself and all related improvements, such as grading, drainage, etc. However, the City has sole jurisdiction over thirteen of the homes, with

only seven homes located in the area of deferred certification. Those portions 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.

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

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

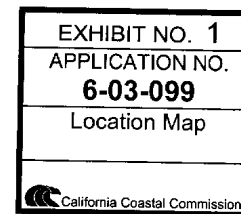
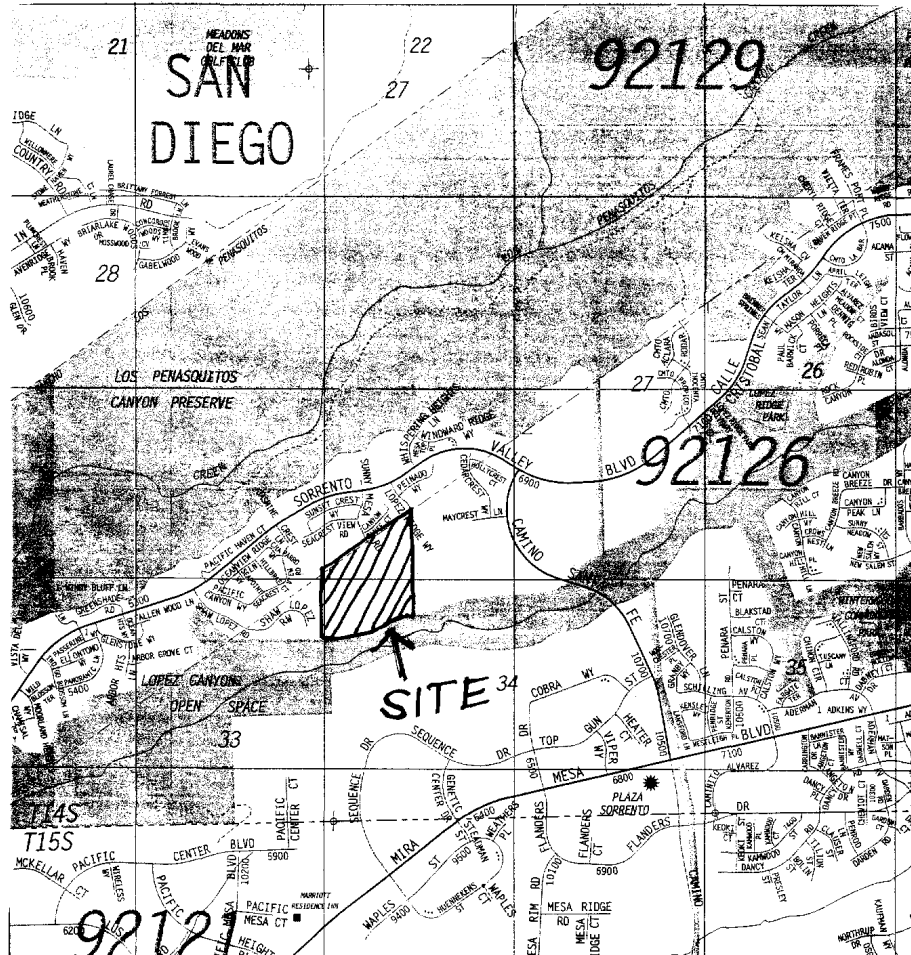
The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act and the certified LCP. Mitigation measures, including conditions addressing brush management, biological and visual resources, water quality, hazards, and the preservation of open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

6-03-099



6-03-099

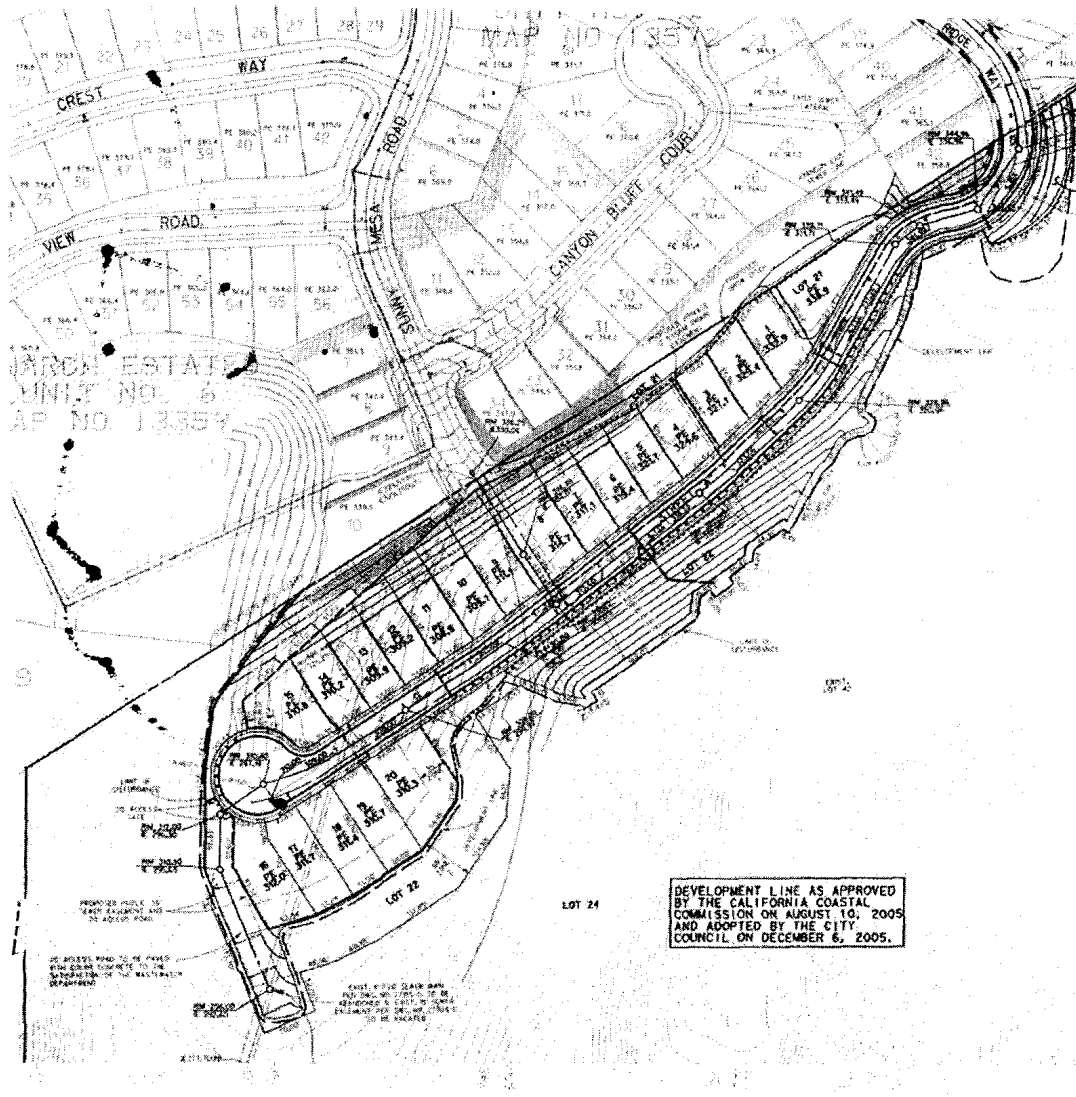
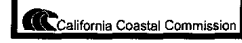


EXHIBIT NO. 2
APPLICATION NO.
6-03-099
Site Plan/VTM



City CDP
Jurisdiction

CCC CDP
Jurisdiction

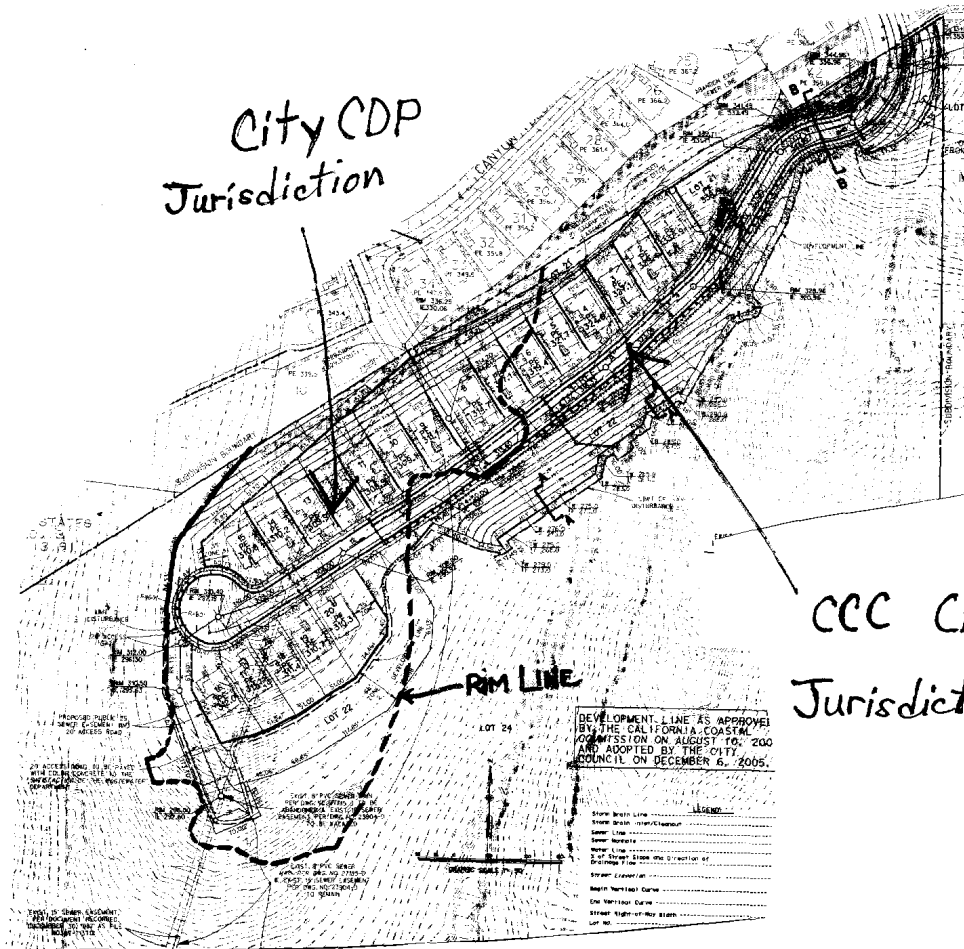



EXHIBIT NO. 3
APPLICATION NO. 6-03-099
Rimline – City vs CCC jurisdiction
 California Coastal Commission

6-03-099

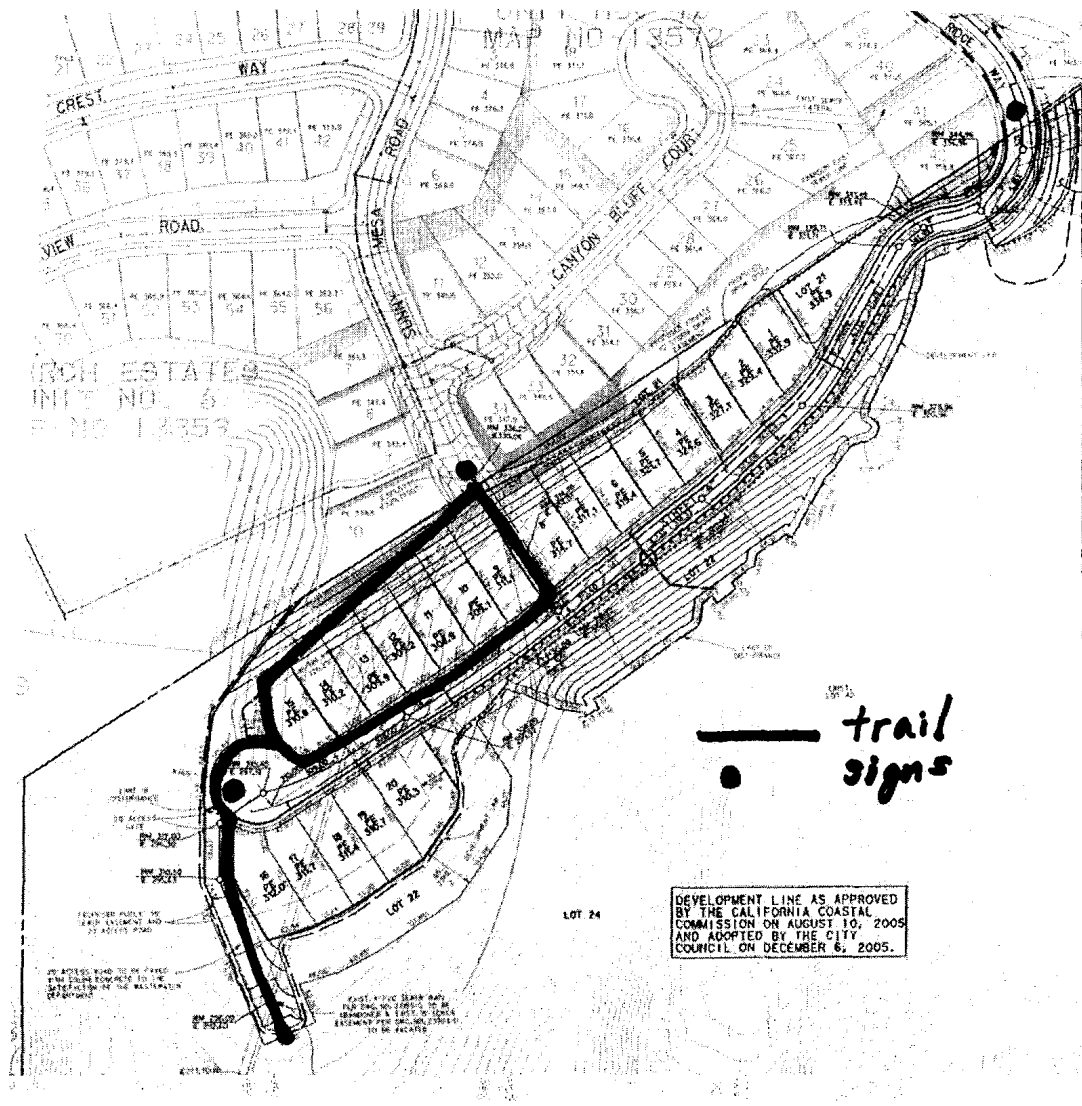


EXHIBIT NO. 4
APPLICATION NO.
6-03-099
Trail System



6-03-099

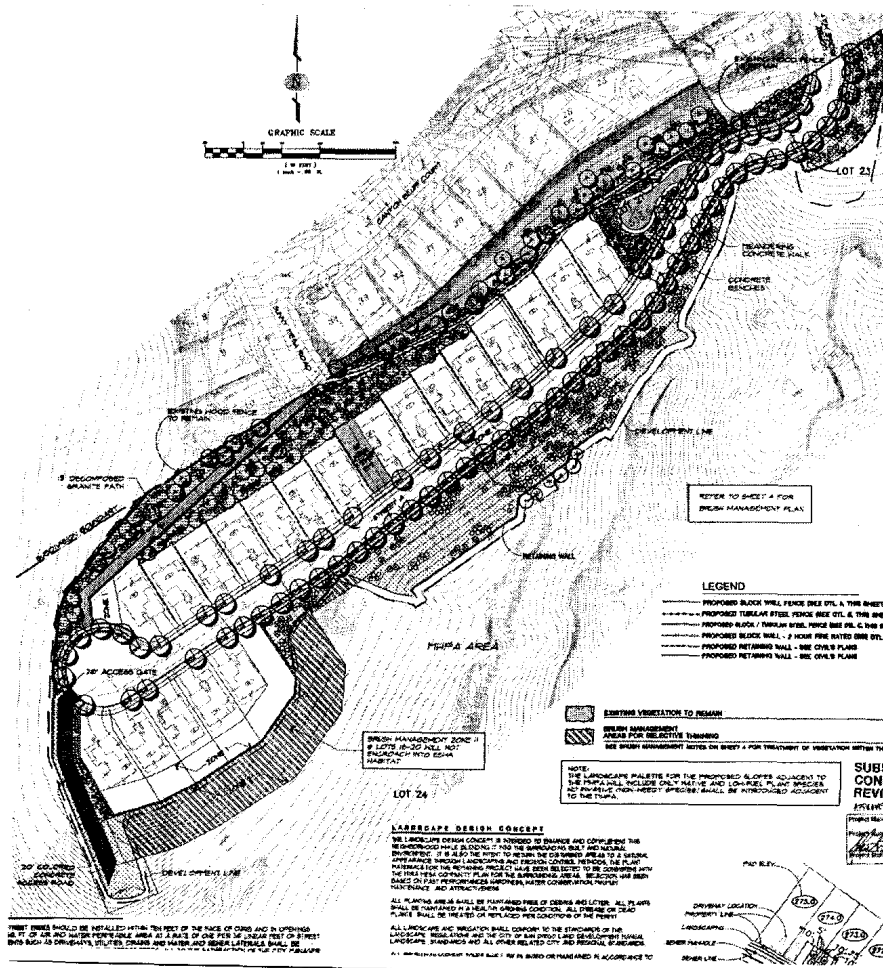


EXHIBIT NO. 5
APPLICATION NO.
6-03-099
Landscaping Plan
California Coastal Commission

6-03-099

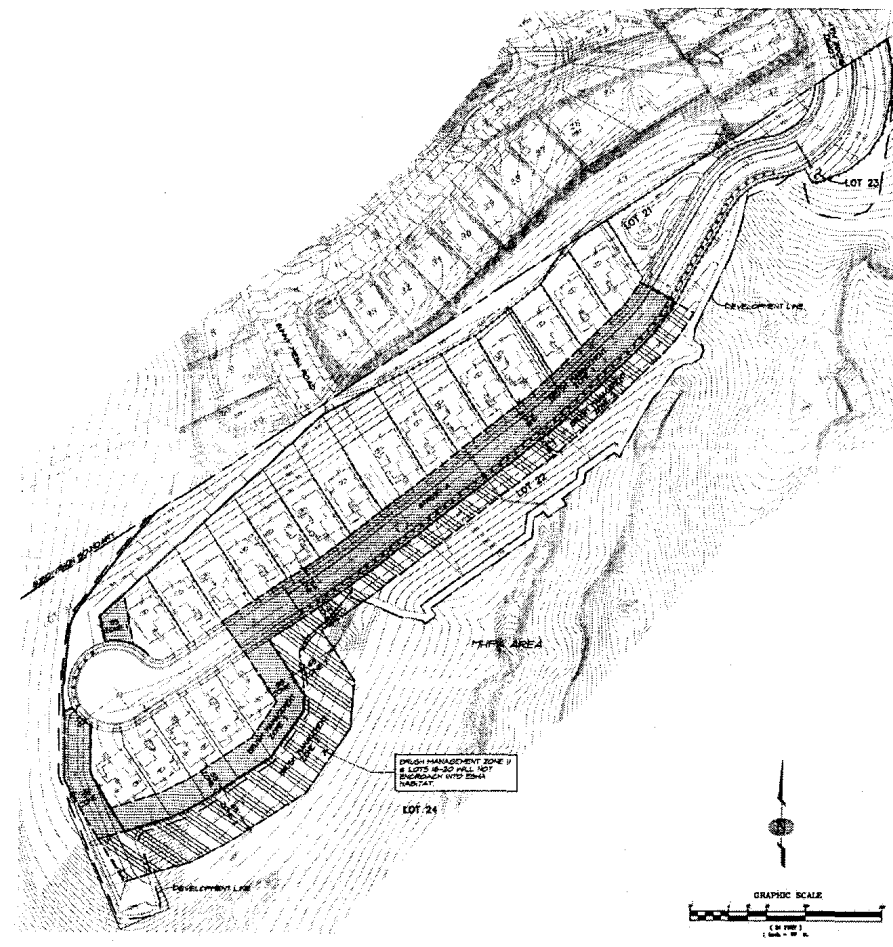
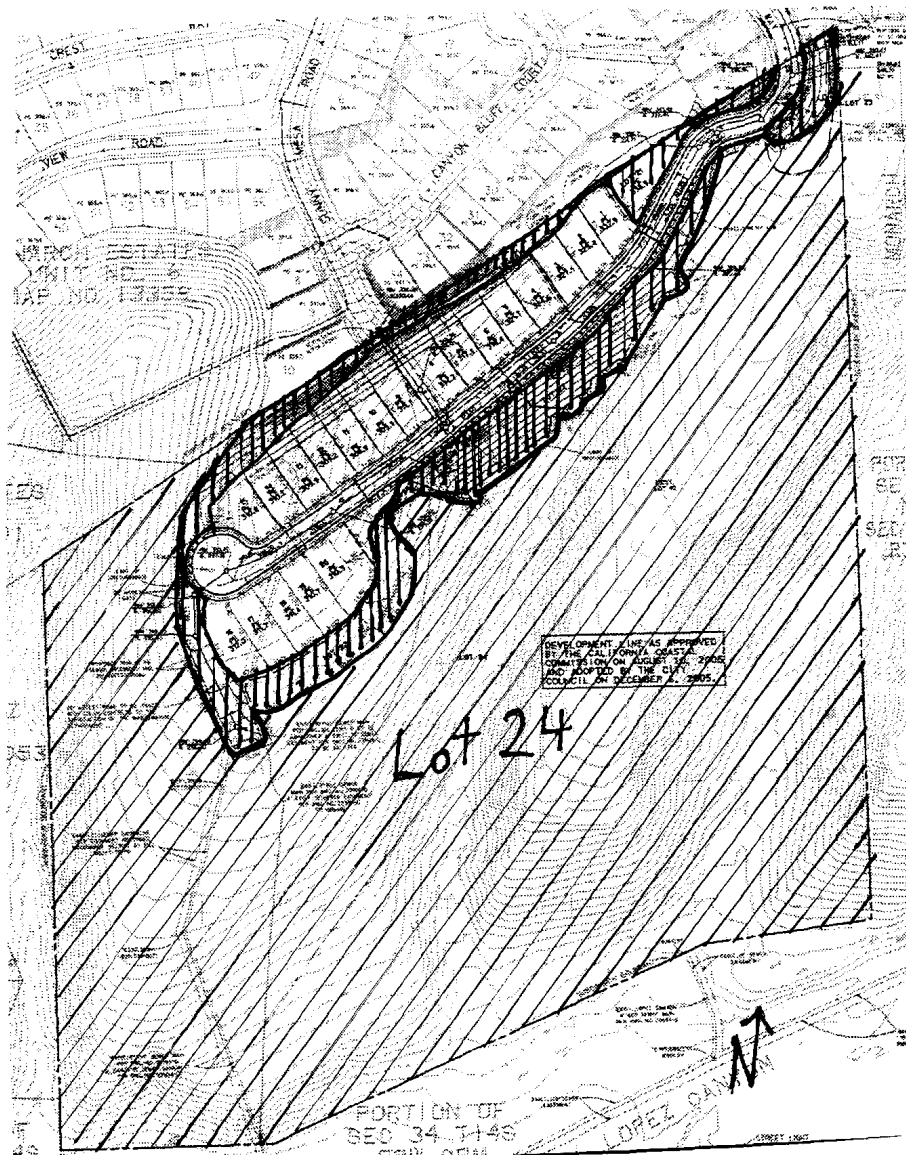


EXHIBIT NO. 6
APPLICATION NO.
6-03-099
Brush Management
 California Coastal Commission

6-03-099



 Dedicated Open Space

 Homeowner Open Space

EXHIBIT NO. 7
APPLICATION NO.
6-03-099
Open Space Lots
 California Coastal Commission