

CALIFORNIA COASTAL COMMISSION

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Tue 19h

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 Hearing Date: December 12-15, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-106

Applicant: M. Lou Marsh

Agent: John Leppert

Description: Subdivision of a 3.96 acre lot into two parcels: Parcel 1 = 1.12 acres; Parcel 2 = 2.84 acres. The existing single-family residence on proposed Parcel 1 will remain; no grading or construction is proposed at this time.

Lot Area	3.96 acres
Zoning	RS-1 (Single Family Residential)
Plan Designation	Residential 1 du/acre

Site: 4610 Rancho Reposo, San Diego County. APN 302-210-58

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending denial of the subdivision request. The proposed Parcel 2 contains high-quality sage scrub vegetation, steep slopes, and sensitive animal species, including a pair of breeding California gnatcatchers, and also is encumbered by an open space deed restriction previously required by the Commission. The Commission's ecologist has determined the proposed Parcel 2 constitutes environmentally sensitive habitat (ESHA).

The Commission first determined in 1977 that the slopes on and around the subject site are worthy of preservation, and the proposed Parcel 2 and the adjacent slopes have been under the protection of an open space deed restriction since 1979. There have been four subsequent permit actions on the subject site reaffirming the value of the habitat on the southern portion of the subject site and the need to keep the area in open space, including a 1999 denial of the same parcel split now proposed.

Creation of the proposed Parcel 2 and subsequent development of the site would result in significant direct adverse impacts to ESHA and the visual quality of the surrounding area. These impacts are unmitigatable and can be avoided by maintaining the area in a natural condition, as has been repeatedly required by the Commission. Therefore, the project cannot be found in conformance with the Chapter 3 policies of the Coastal Act.

Standard of Review: Chapter 3 Policies of the Coastal Act.

Substantive File Documents: Certified San Dieguito LCP Land Use Plan and Implementing Ordinances; CDP #F5286; F7943; CCC Appeal #109-77; CCC #6-86-1/Ford; CDP #6-87-94/Marsh; CDP #6-92-160/Marsh; CDP #6-99-11/Marsh; “Biological Resources Survey Report for the Marsh Tentative Parcel Map Property TPM 20269, Log 96-13-13” by Vincent N. Scheidt, June 1998; County of San Diego Notice of Decision Extension of Time TPM #20269; Review of Scheidt Report by Kelly & Associates Environmental Sciences, Inc., 6/6/06.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-06-106 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act, and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The applicant is proposing to subdivide a 3.96-acre lot into two parcels, 1.12 acres (Parcel 1) and 2.84 acres (Parcel 2), within the unincorporated Lomas Santa Fe area of the County of San Diego. Proposed Parcel 1 contains an existing single-family development consisting of a 4,239 sq.ft. residence, 878 sq.ft. attached garage and an outdoor swimming pool. The proposed Parcel 2 would be created on the hillside south of the existing development. The proposed tentative parcel map shows an area that would be graded for a residential pad and driveway in the future; however, the

applicant has indicated that no grading or residential construction is proposed at this time. Future access to the new parcel would be from Via del Cañon. The applicant has indicated that connection to the City's sewer system could occur in the location of the future driveway.

The site is located on the northeast corner of Via de la Valle and Via del Cañon. The property is north of and adjacent to the San Dieguito River Valley, approximately ½ mile west of the Coastal Zone boundary. The proposed Parcel 2 is comprised of over 50% steep slopes and canyons vegetated with high-quality coastal sage scrub.

While the County of San Diego did receive approval of its Local Coastal Program from the Commission in 1985, it never became effectively certified. As such, the standard of review is Chapter 3 policies of the Coastal Act.

2. Site History: There is a substantial history of Commission action on the site. In March 1977, the San Diego Coast Regional Commission reviewed a project for subdivision of a 29.2 acre site into 17 lots with 93,300 cubic yards of cut and 73,300 cubic yards of fill (CDP #F5286). The project was approved by the Regional Commission, but denied on appeal to the State Commission, which determined that the project would have contributed to erosion and thus harmed the biological productivity and the quality of coastal waters (Appeal #109-77). The State Commission found that there were less-environmentally damaging feasible alternatives, and specifically discussed the elimination of separate legal lots on the southern hillsides of the proposed subdivision, which includes the area where the subject development is proposed.

In 1979, the Regional Commission approved a revised project that also consisted of creation of 17 parcels on 29.2 acres, but that eliminated the separate legal lots on the southern hillsides, and reduced the grading to 53,200 cubic yards of balanced grading for the building pads and construction of main access roads, including Via del Cañon and Rancho Reposo (CDP #F7943). (This project was appealed to the State Commission, but the appeal was withdrawn prior to the State Commission taking action (Appeal #158-79)). The Commission action required the southern hillsides of the site, including the area now proposed as Parcel 2, to be placed under a deed restriction prohibiting the removal of existing revegetation or the erection of any structures unless approved by the Commission. Special Condition #7(b) of CDP #F7943 states:

On lots 47-52 of the amended tentative map, any alteration of landforms, removal of existing vegetation, or erection of structures of any type, shall be prohibited unless approved by the San Diego Coast Regional Commission or its successors in interest, on that area south of a line projected across these parcels as shown on Exhibit B.

In its approval, the Commission found that "the steep southern slopes of the site [are] to be left in open space." The subject site is Lot 52, and the steep southern slopes includes the area now proposed as Parcel 2. Exhibit B, (see attached Exhibit #4) indicates that all property south of the line is to be deed-restricted as open space. The permit was issued and the subdivision occurred. The residential structures were then approved individually under separate coastal development permits.

In April 1986, prior to approval of any permit to construct a residence on the subject site, a previous owner applied for a coastal development permit to construct a residence on the steep southern portion of the subject lot in the deed restricted area, taking access via a driveway off Via Del Cañon. Preliminary grading was completed to create the southern building pad and driveway without a permit (under the pretext of obtaining soil samples). Portions of the vegetation immediately south of and adjacent to the original building pad that had been approved in the subdivision permit were also removed in unauthorized clearing operations. The Commission approved the application with special conditions requiring relocation of the proposed residence to the approved, previously graded building pad on the northern portion of the lot, with access off Rancho Reposo, and revegetation and restoration of the illegally graded areas (CDP #6-86-001/Ford). File records indicate that restoration activities were completed as of 1988.

The property was then sold to the current owner (M. Lou Marsh) who received approval from the Commission in March, 1987 (#6-87-94) to construct a 4,239 sq.ft. single-family residence, 878 sq.ft. garage and outdoor swimming pool on the approved building pad. The Commission's approval allowed a very minimal encroachment into the steep slopes beyond the graded pad, while requiring recordation of a new deed restriction over the steep slopes on the southern portion of the site (the proposed Parcel 2) prohibiting any alteration of natural landforms, erection of any structures, or removal of native vegetation without a coastal development permit from the Commission, to ensure that the remaining steep slopes would be preserved. The Commission found that only as conditioned to reaffirm and establish the deed restriction over the sensitive hillside, could the project be found consistent with the Commission's previous actions and Chapter 3 policies of the Coastal Act. The special conditions were satisfied and the residence constructed.

In August 1992, the Commission approved a boundary adjustment between the subject lot and the adjacent 1.84-acre lot to the east (CDP #6-92-160). The lot line adjustment resolved a property ownership dispute and corrected a front yard setback problem on the easternmost lot. In its approval, the Commission made specific findings that the lot line adjustment would not affect sensitive resources or the boundary of the open space deed restricted area of the site. As a condition of approval for the boundary adjustment, the County of San Diego required the applicant to submit evidence that the grading violation on the southern portion of the lot had been cleared.

In July 1999, the Commission denied a request from M. Lou Marsh to subdivide the subject site into two parcels of (1.12 acres and 2.84 acres) and grading of a building pad and driveway requiring 6,400 cubic yards of cut, 1,600 cubic yards of fill and 4,800 cubic yards of export on Parcel 2 (CDP #6-99-11). The denied subdivision project is essentially the same as the proposed project, although no grading is proposed with the current project, and the County has approved connection to the sewer system rather than a septic tank for the site. The Commission found in 1999 that the proposed subdivision would create an undevelopable lot and allow grading in a steeply sloping area containing environmentally sensitive habitat that not only contains sensitive plants and animals but also is encumbered by an open space deed restriction previously approved by the Commission.

3. Environmentally Sensitive Habitat. The subject site is located within the viewshed and watershed of the San Dieguito River Valley within the CRP overlay identified in the County LCP. Section 30240 of the Coastal Act is applicable and states:

(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.

In the subject application, the applicant is proposing to subdivide 3.96 acres into two parcels, 1.12 acres (Parcel 1) and 2.84 acres (Parcel 2). Proposed Parcel 1 contains an existing single-family residence and pool. The tentative parcel map submitted shows where a pad area and driveway with access from Via del Cañon would be constructed; however, the applicant has stated that no grading or residential development is proposed on Parcel 2 at this time.

In the 1999 application for subdivision of the site, a detailed and comprehensive biology survey was submitted. The applicants have submitted an updated biological survey performed in June 2006 that determined that the conclusions of the previous survey are still accurate. The updated survey states that “In general, the vegetation and associated fauna found on the site are in good condition and comprise diverse, functioning ecosystems.” The effort to revegetate the disturbed areas in the late 1980’s appears to have been largely successful, and the “generally thriving vegetation community displays a wide range of native species...[t]he animal population supported on the site also appears to be diverse and robust.”

The previous biology report found that 119 species of plants exist on the site, six of which (wart-stemmed ceanothus, sea dahlia, Del Mar mesa sand aster, decumbent goldenbush, Green’s ground cherry and ashy spike-moss) are considered sensitive. Twenty-five species of vertebrate animals are identified, five of these (California gnatcatcher, orange-throated whiptail, San Diego pocket mouse, California pocket mouse and Bewick’s wren) are considered sensitive. The updated survey found that, with minor exceptions, these species are still present on site. The report notes that locations previously mapped as including species such as the Del Mar sand-aster and at least two species of dudleya that might thrive in a more disturbed, open area with patches of bare ground, now support more mature, closed-canopy native vegetation that may limit or exclude these species.

The updated report confirms the continued presence of a pair of California gnatcatchers on the site. As described in the previous biology report:

...two specimens, representing a breeding pair, were observed moving over most of proposed Parcel 2 within undisturbed Diegan Coastal Sage Scrub vegetation. This pair presumably nests either onsite or a short distance offsite in suitable scrub habitat. Because this site is primarily situated on a south facing slopes, this pair very likely represents the carrying capacity of the property. It is also clear, based on our understanding of the ecology of this species, that the Marsh lot-split property forms only a small portion of the breeding territory of this pair. California Gnatcatcher, however, is nevertheless considered a significant biological resource on the property....

The plant communities on the site were previously identified as (1) Southern Coastal Bluff Scrub containing elements of Diegan Coastal Sage Scrub and comprising about 77% or 3.04 acres of the property, (2) Southern Maritime Chaparral comprising about 6% or 0.24 acres, and (3) Disturbed Areas, including horticultural landscaping, along roads and surrounding a developed home on the northern end of the site. The former two plant communities are considered sensitive plant communities in the San Diego County region. The updated survey generally concurs, while noting that based on current literature, the scattered occurrence of a few individuals of chaparral species “does not warrant the identification of the shrub community as “southern maritime chaparral,”” but rather should be included within the broader coastal sage scrub/coastal bluff scrub community.

Southern Coastal Bluff Scrub, a variant found only along the immediate coast of Southern California and Baja California, has suffered significant losses as ocean-facing bluff areas are converted to residential developments. As demonstrated on the subject site, this habitat is known to support a number of sensitive species of plants and animals, including the Federally-listed California Gnatcatcher and other very rare species. Unfortunately, the few remaining extensive areas of Southern Coastal Bluff Scrub vegetation along the coast are becoming fragmented where they persist. The coastal bluff scrub vegetation on the Marsh lot-split property is in very good condition, given the small size of the property and the prior disturbance to certain areas. This plant association forms a biologically significant feature on the subject property.

As noted above, the entire proposed Parcel 2 is within an area previously deed restricted to preserve the sensitive species on the site. The existing single-family residence on the northern portion of the site was specifically sited (along with the 17 other structures in the subdivision) on the mesa top off of Rancho Reposo in order to limit impacts to the adjacent slopes.

The slope analysis/vegetation survey submitted in 1999 indicates that 57% of the site contains steep slopes (greater than 25% grade). Of these steep slopes, 53 % are identified as naturally vegetated steep slopes (coastal sage scrub on slopes greater than 25% grade). Although no development is proposed at this time, the proposed tentative map shows that access to proposed Parcel 2 would be off of Via del Cañon with a driveway proposed up the slope to a future building pad. The survey indicates that grading to create the driveway and pad shown on the parcel map would impact 9% of these dual criteria slopes. Grading would also have to occur on areas less than 25% grade that contains sensitive habitat.

Based on this plan configuration, the previously submitted biological report estimated that development of the proposed Parcel 2 would result in impacts to approximately .82 acres of coastal sage scrub/coastal bluff scrub community. Other direct impacts identified by the report include a loss of 100 specimens of Del Mar Mesa sand aster and losses of orange-throated whiptail, San Diego pocket mouse, California pocket mouse and Bewick's wren and related habitat. Indirect potential losses include impacts to California Gnatcatchers, and losses of Bewick's Wren. This acreage reflects the brush management clearance that would likely be required around a proposed driveway when the site was developed in the future, but not the brush management associated with a structure. The Rancho Santa Fe Fire Protection District submitted a letter in 2002 stating:

...As for the 100 feet brush clearing around all structures, this would not apply on the eastern, southern and north slopes because of the steep and sparsely vegetated hillsides. However, as we stated previously, the portion of the structure built facing the above mentioned slopes shall have a minimum setback of 30 feet from the closest point of the structure to the edge of the slope.

Pertaining to the westerly facing slope...“For a distance of 100 feet from the proposed structure, the existing native vegetation shall be modified in the following manner: Dead and dying vegetative matter and weedy grasses shall be removed utilizing a method which leaves the existing live specimens and their root structure in place. Native specimens, which are neither listed as endangered nor considered part of the protected habitat, shall be removed....”

To summarize, 30 feet of clearing would be required around a structure on the site, and removal of dead vegetation and grasses, and some native plant removal would be required up to 100 feet from the structure. Almost all the area that would be cleared for brush management would occur on natively vegetated steep slopes with corresponding adverse impacts to site resources. These impacts would be in addition to the .82 acres described above.

Because of the impacts that would be associated with development of the proposed Parcel 2, both the previous biological survey and the County, in its approval of the subdivision, found these losses could be reduced to a level they determined to be less than significant provided the majority of the site (2.52 acres) was placed in open space and offsite mitigation of 0.8 acres of occupied California Gnatcatcher habitat were secured.

Nevertheless, Section 30240 of the Act prohibits any significant disruption of environmentally sensitive habitat values. Since the U.S. Fish and Wildlife Service listed the gnatcatcher as an endangered species in 1996, the Commission has found that areas of coastal sage scrub are often environmentally sensitive habitat area (ESHA). The Commission's ecologist has reviewed the biological information and determined that the the proposed Parcel 2 contains high-quality environmentally sensitive habitat (ESHA), in addition to the steep slopes and sensitive animal species. Creation of the proposed Parcel 2 and subsequent development of the site would result in the removal of native vegetation, grading of steep slopes, and significant direct adverse impacts to sensitive

species, including impacts to the pair of breeding California gnatcatchers that have been documented on the site. This disruption of ESHA is unmitigatable and can be avoided by maintaining the slopes in a natural condition, as has been repeatedly required by the Commission.

As described above, under 2. Site History, the Commission first determined in 1977 that the slopes on and around the subject site are sensitive and worthy of preservation, and the proposed Parcel 2 and the adjacent slopes have been under the protection of a deed restriction since 1979. The Commission found at that time that requiring development to be clustered on the mesa tops and placing a deed restriction on the property would allow for “the steep southern slopes of the site to be left in open space.”

The other lots that were created as a result of the Commission’s approval of F7943 have subsequently constructed residential development on the mesa top portion of the property while the steep lower hillside portions of the lots have remained in deed restricted open space. As individual lots have come forward for approval of residential development, the Commission has allowed some limited encroachment (i.e., less than 10%) into steep slope areas on the mesa top; however, the Commission has never allowed encroachments onto the steep, naturally-vegetated lower portions of these sites. These areas were deed restricted as open space to mitigate the habitat and visual resource impacts associated with its approval of the subdivision.

Since 1979, there have been four subsequent permit actions on the subject site that have reaffirmed the value of the habitat on the southern portion of the site and the need to keep the area in open space, including the 1999 denial of the same parcel map now in question. Given the continued success of the revegetation effort on the site, the habitat value of the site may be even greater now than it was seven years ago.

The applicant owns an existing 4,239 sq.ft. residence, 878 sq.ft. garage and outdoor swimming pool on the northern portion of the existing 4-acre unsubdivided lot. In its approval of coastal development permit F7943, the Commission found that an open space deed restriction was appropriate on those portions of Lots 47-52 south of the boundary (Exhibit #4). When the applicant purchased the property, the open space deed restriction was in place. All the homes constructed within this subdivision are required to maintain the open space area (with some minimal encroachment permitted) to preserve this area as habitat and a visual corridor.

The proposed Parcel 2 could not be accessed or developed without grading sensitive vegetation and steep slopes and adversely impacting sensitive species as described above. If it were to approve creation of Parcel 2, the Commission would be creating a lot comprised almost entirely of ESHA and as a result, it could potentially be faced with an argument that it must allow impacts to ESHA to obtain reasonable use of the lot. Approval of the subdivision would set an adverse precedent for allowing significant encroachment into not only the open space deed-restricted slopes on the subject site, but on the surrounding open space deed-restricted slopes as well. Therefore, the Commission finds the proposed subdivision cannot be found consistent with Section 30240 of the Coastal Act and previous Commission decisions, and must be denied.

4. Visual Resources. Section 30251 of the Coastal Act provides in part:

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...

While only a subdivision of land, no physical development, is proposed at this time, the future construction of a structure and the substantial amounts of grading that would be necessary to develop the proposed Parcel 2 would result in impacts to visual resources from a number of scenic areas in the San Dieguito River Valley.

The site is within the viewshed of the San Dieguito River Valley, which is immediately south of Via De La Valle. Via de la Valle fronts the proposed Parcel 2. The San Dieguito River Valley is a proposed regional park and contains open space and future trails for public use. The project area is north of Via de la Valle on sloping hillsides that rise to a mesa top and is within the viewshed of a public viewpoint within the river valley, the High Bluff Overlook Park. The High Bluff Overlook Park is located on the south side of the river valley and provides views which extend from east of El Camino Real to the ocean, and well to the north of Via de la Valle.

The project site comprises a portion of a significant natural landform, which extends east and west of the subject site and is comprised of slopes and canyons between the developed mesa top and Via De La Valle that have been retained as open space. In many permit decisions, the Commission has found that dual criteria slopes (steep and natively-vegetated) are worthy of protection as they not only provide habitat for sensitive plants and animals but also are a visual resource. Were the proposed Parcel 2 approved, the visual impacts of future development on the lot would occur as a result of grading for the driveway, construction of a residence, and the brush management associated with development, which would affect at least 30-feet of vegetation from the building site, with corresponding impact on public views to the project site.

While a single residential development on this site would not in itself significantly impact this public viewshed, it would contribute to loss of open space and add to the incremental adverse impact that development can have on the scenic resources in this area. Approval of development on the subject site would set a precedent for allowing development of the adjacent slopes as well, which cumulatively would have a significant adverse impact on the scenic quality of the area.

In summary, the proposed project would create a new lot in a location where the Commission has found on six previous occasions to contain sensitive habitat and visual resources, worthy of preservation in open space. Any future development on the proposed lot would necessarily encroach on these resources, inconsistent with the visual policies of Chapter 3 of the Coastal Act. Thus, the Commission finds the proposed

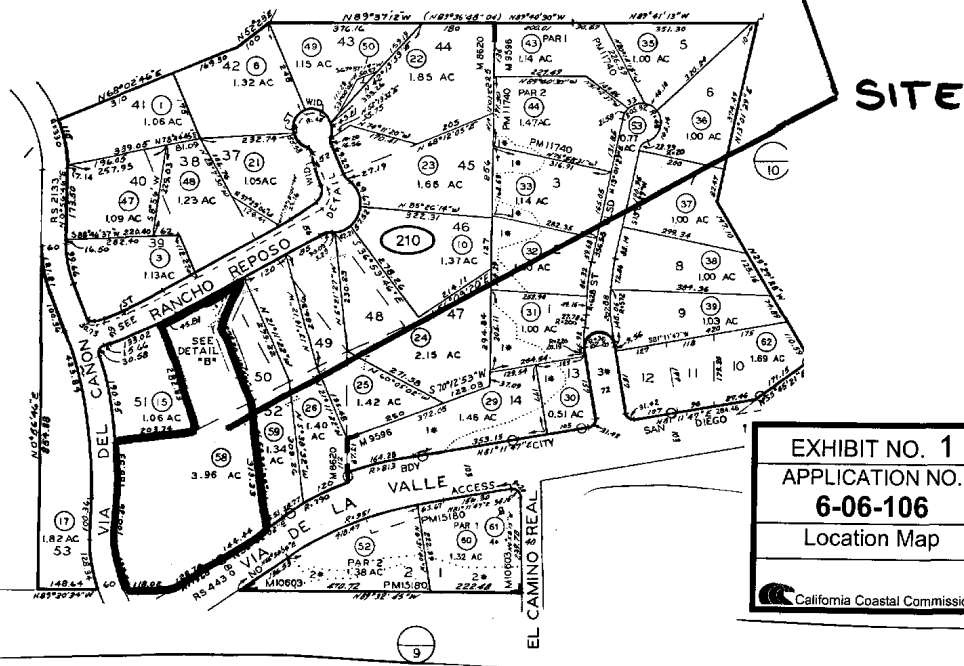
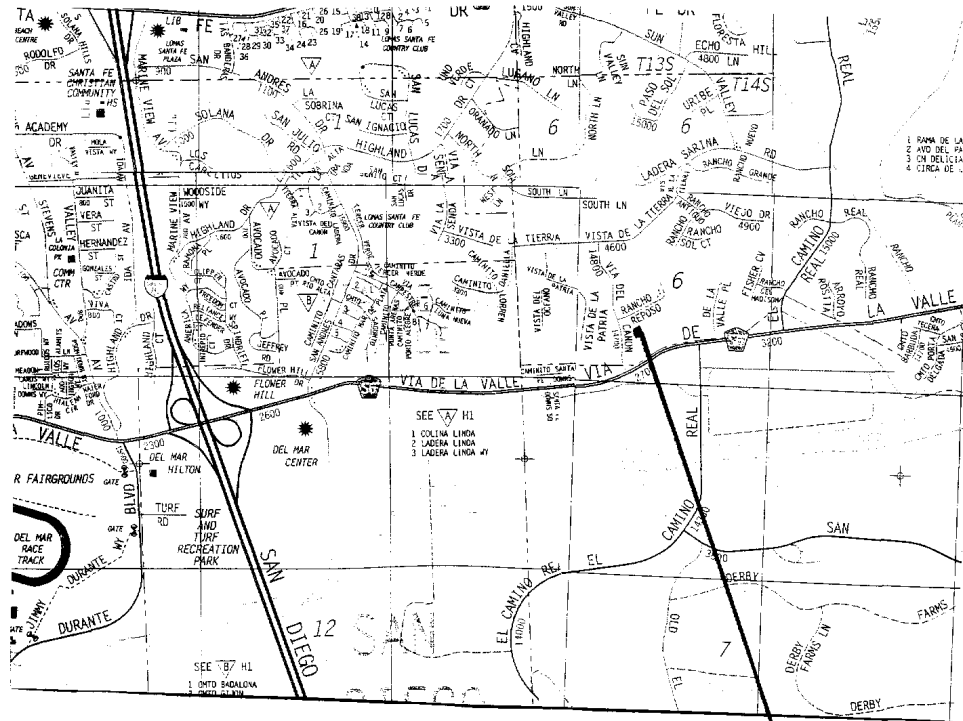
subdivision does not conform to the Chapter 3 policies of the Coastal Act and must be denied.

5. 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 cannot be made.

This site is zoned RS1 and designated in the certified San Dieguito Land Use Plan for residential development at a density of one dwelling unit per acre. Although the proposed project is consistent with those designations, it does not meet the requirements of Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that project approval will prejudice the ability of the County of San Diego to complete and effectively certify an LCP for the unincorporated areas north of the San Dieguito River valley.

6. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is 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 found inconsistent with the sensitive resource and visual protection policies of the Coastal Act. The "No Project" alternative is the only feasible alternative that would substantially lessen any significant adverse impact which the activity would have on the environment. The site has been developed as anticipated under the original subdivision with one single-family residence, which is a reasonable use of the site. The restriction on development of the southern portion of the lot has been in place since 1979, and there should be no expectation that further development could occur in this location. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.



Original subdivision denied by State Commission
in 1977 (#F5286)

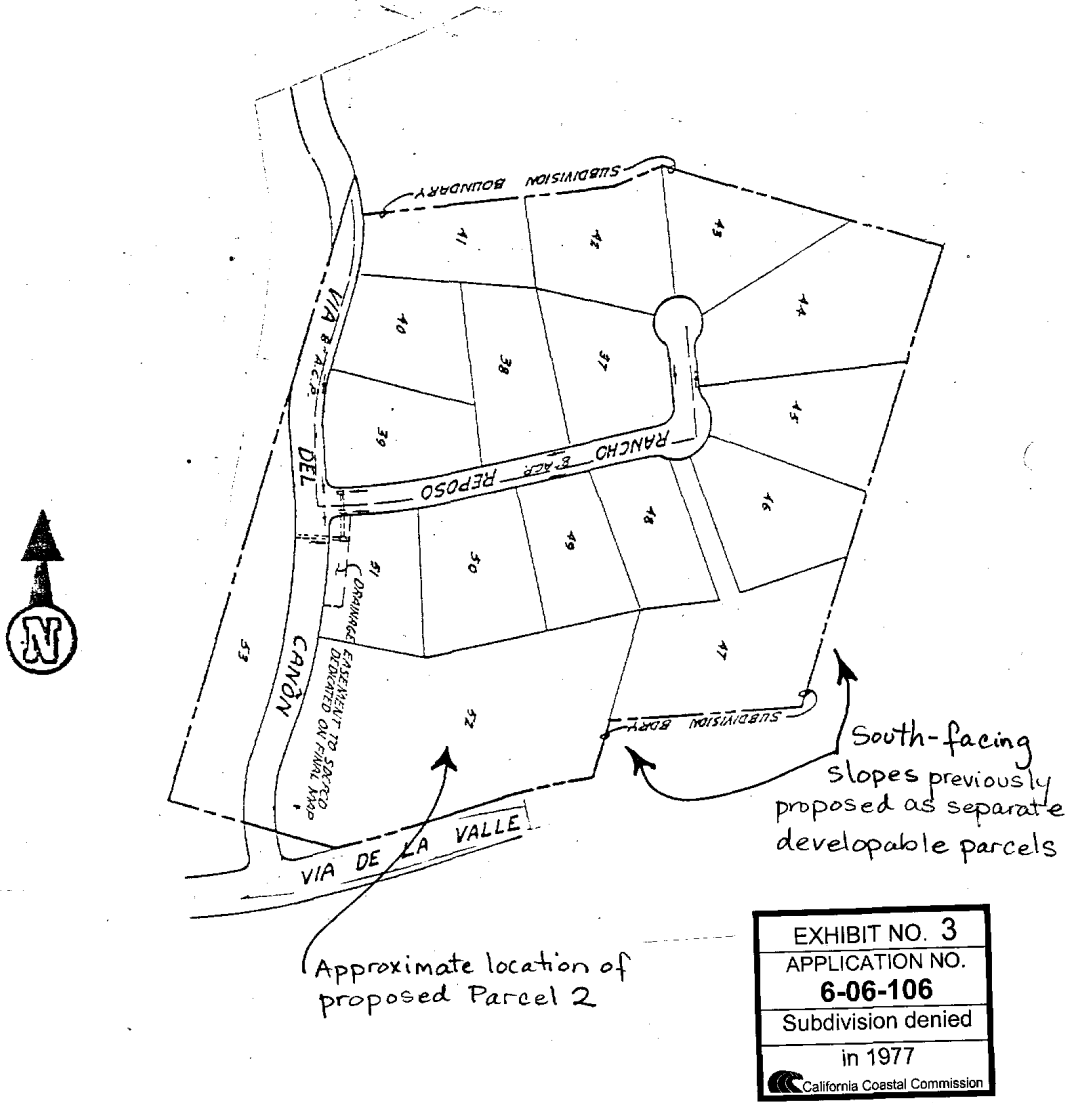


EXHIBIT NO. 3
APPLICATION NO.
6-06-106
Subdivision denied
in 1977
California Coastal Commission

