

CALIFORNIA COASTAL COMMISSION

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



Thu 20a

Filed: January 11, 2007
Staff: D. Lilly-SD
Staff Report: January 25, 2007
Hearing Date: February 14-16, 2007

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: 6-06-106-R

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

Commission Action and Date:

On December 12, 2006, the Commission denied the proposed development for subdivision of the existing 3.96-acre lot.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 C.C.R. section 13109.2(a).)

The grounds for reconsideration of a permit denial are provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS:

In the attached letter dated January 10, 2007, the applicant contends that errors of fact or law have occurred that have the potential of altering the initial Commission decision. The applicant asserts the following in support of its request: 1) The Commission relied on the purported existence of a recorded open space deed restriction over the area of proposed Parcel 2 when no such recorded open space deed restriction exists; 2) The Commission relied on purported adverse visual effects from development of Parcel 2 with a driveway and single-family home, when no such evidence exists; 3) The Commission relied on staff's unfounded and factually unsupportable representation that development of Parcel 2 with a driveway and single-family home would have remaining unmitigated significant adverse effect(s) on the environment; 4) The Commission failed to either open or close a hearing on CDP #6-06-106; 5) The Commission failed to allow the applicant's representative to address the Commission; 6) Commission staff incorrectly characterized documents received at the Commission hearing as not in the official Commission record for my project; 7) The Commission erred in using the Chapter 3 policies of the Coastal Act as the standard of review, instead of the applicable certified County of San Diego LCP; 8) The Commission failed to hold a roll call vote on the application; 9) The Commission failed to adequately respond to applicant's Public Records Act request for documents in Commission's files that are directly relevant to the Commission's decision; 10) The Commission failed to issue CDP #6-06-106 in the required legal time limits.

- I. **MOTION:** *I move that the Commission grant reconsideration of Coastal Development Permit No. 6-06-106-R*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. **6-06-106-R** on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

II. FINDINGS AND DECLARATIONS.

A. Project Description. The applicant is requesting that the Commission reconsider its denial of the applicant's request to subdivide a 3.96-acre lot into two parcels of 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 would occur at this time. Future access to the new parcel would be from Via del Cañon. In its action, the Commission denied the development (ref. Exhibit #3).

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.

B. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit #1) contends that errors of fact and law occurred which have the potential for altering the Commission's decision. The applicant has generally cited 10 points of contention:

1. Recorded Deed Restriction. The applicant claims the Commission relied on the purported existence of a recorded open space deed restriction over the area of proposed Parcel 2 when no such recorded open space deed restriction exists.

The history and nature of the deed restrictions on the site are documented in detail in the staff report (ref. Exhibit #2). Two deed restrictions have been recorded against the applicants property—one through CDP #F7943 and one through CDP #6-87-94. Both deed restrictions prohibit any alteration of landforms, removal of existing vegetation, or erection of structures of any type on the southern portion of the applicant's property without the approval of the Commission. As described in the staff report, the deed restriction is intended to protect the area from development without further review by the Coastal Commission. The applicant has presented no evidence of any error of fact or law. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

2. Visual Impacts. The applicant claims the Commission relied on purported adverse visual effects from ultimate implementation of CDP #6-06-106 pursuant to future entitlements for development of Parcel 2 with a driveway and single-family home, when no such evidence exists.

Evidence in the form of descriptions of the project site, the surrounding undeveloped hillsides, the surrounding viewshed of the San Dieguito River Valley, and past findings by the Commission regarding the scenic nature of the project site was provided in the staff report. Evidence in the form of photos shown at the Commission hearing further documents the scenic nature of the subject site, and the likely adverse impacts that construction and grading required to build a structure and driveway on the subject site would have on the existing scenic resources. During deliberations Commission Kruer noted that he is personally familiar with the project site, and as such, had concluded that development of the site would have a visual impact. The applicant has presented no evidence of any error of fact or law. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

3. Adverse Environmental Impacts. The applicant claims Commission relied on staff's unfounded and factually unsupportable representation that development of the subject site with a driveway and single-family home would have remaining unmitigated significant adverse effect(s) on the environment.

As noted above, there is substantial evidence that the project would have unmitigable visual impacts on the environment. With regard to biological impacts, Commission staff reviewed all the technical reports and information presented by the applicant and also visited the site in person. Based on this review and observations from locally-based Commission staff, the staff's ecologist determined that the project would have an unmitigable adverse impact on environmentally sensitive habitat. The evidence and findings are cited in the staff report (ref. Exhibit #2).

The applicant has not provided any information that rebuts the evidence previously available to the Commission. Thus, there is no evidence of an error in fact in law that has the potential to alter the initial decision.

4. Public Hearing Procedures. The applicant claims that Commission failed to either open or close a hearing during its proceeding on CDP #6-06-106.

Section 13066 of the Commission's regulations, 14 C.C.R. § 13066 ("Order of Proceedings"), lays out the process for hearings on permit applications. Per these sections, Commission staff made a presentation to the Commission identifying the application, describing the project, and summarizing the staff recommendation, including the proposed findings, proposed conditions, and written correspondence received prior to the public hearing. The Commission chairperson then reviewed the written speaker slips submitted to her, and opened the public hearing by calling for the applicant's representative, applicant, or any other speakers to testify. Although the applicant's

representative had submitted a speaker slip, he was not present in the room when the Commission called for him to speak. Commission staff members looked in and outside the hearing room in an attempt to locate the applicant's representative. When he could not be found, the chairperson asked for commissioner discussion, thereby concluding the public testimony portion of the public hearing. A motion was made and seconded, and the Commission unanimously denied the project.

In conclusion, the applicant has presented no evidence of any error of fact or law committed by the Commission in its management of the hearing. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3). Moreover, that section requires that any error have the potential to alter the initial decision. The applicant has not presented any evidence of what additional information would have been introduced that might have changed the Commission's decision had the applicant's representative been able to testify. To the extent the applicant contends that the Commission failed to open or close the hearing because the Commission did not expressly state, "The hearing is now open," and "The hearing is now closed," the applicant has not and cannot show how the addition of this language has any potential of altering the initial decision or how the absence of this language violated the applicant's due process rights. Thus, this claim presents no basis for reconsideration.

5. Public Testimony. The applicant claims that the Commission failed to allow her representative to address the Commission when he was unavoidably out of the hearing room briefly, although he did return to the hearing room while the proceeding on the permit application was still underway. Section 13064 of the Commission's regulations, 14 C.C.R. § 13064 ("Conduct of Hearing"), lays out the process for holding a public hearing on a permit matter. That section states that the commission's public hearing on a permit matter shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay. Section 13066 of the Commission's regulations, 14 C.C.R. § 13066 ("Order of Proceedings"), lays out the process for hearings on permit applications. Subsection (b)(4) states that the chairperson may close the public testimony portion of the public hearing when a reasonable opportunity to present all questions and points of view has been allowed.

The applicant's representative was not unavoidably out of the hearing room; he has stated that he was at a nearby copy service making copies of documents to hand out at the Commission hearing. This could have been done at any time prior to the hearing on the applicant's project, which was heard in the order listed on the agenda, and did not come up until after 10:30 a.m. Nevertheless, consistent with the above cited sections, when the public hearing was opened and the applicant's representative did not respond to calls to testify, staff members looked in and outside the hearing room in an attempt to locate the applicant's representative. When he could not be located after a brief search, the chairperson called for Commission discussion. Only when the vote was on the verge of being taken did the applicant's representative come back in the room, at which point, a

motion was on the table, and the chairperson informed the representative that the public hearing was closed.

In conclusion, the applicant has presented no evidence of any error of fact or law committed by the Commission in its management of testimony at the hearing. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3). Moreover, that section requires that any error have the potential to alter the initial decision. The applicant has not presented any evidence of what additional information would have been introduced that might have changed the Commission's decision had the applicant's representative been able to testify. Thus, this claim presents no basis for reconsideration.

6. Official Commission Record. The applicant states that Commission staff received document submittals from her representative at the December 12, 2006 Commission hearing, and staff has told her that a copy of these documents have been placed in the project file, but have also explained that the documents are not part of the Commission's administrative record. The applicant correctly states that applicant's representative submitted documents to Commission staff as the Commission was completing deliberations on the permit application, after the public hearing was closed. Staff did inform the applicant's representative that a copy of the document received at the meeting has been placed in the permit file, but because it was submitted after the close of the public hearing and thus was not reviewed by staff or the Commission, it is not part of the Commission's administrative record. Only documents that are provided to the Commission prior to the close of the public testimony portion of the public hearing are considered to be part of the official administrative record for the Commission's action. *See* 14 C.C.R. §§ 13060(a), 13067.

Moreover, the applicant does not point to any information in the documents that establish that the Commission made errors of fact or law. Because the applicant has presented no evidence of any error of fact or law that has the potential of changing the Commission's action, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

7. Standard of Review. The applicant claims that the Commission erred in using the Chapter 3 policies of the Coastal Act as the standard of review, instead of the applicable certified County of San Diego LCP.

On November 22, 1985, the Commission certified the resubmitted Local Coastal Program Land Use Plan (LUP) for the County of San Diego encompassing the San Dieguito communities. The County also resubmitted the Local Coastal Program Implementation Plan (IP) at that time. With the exception of those ordinances dealing with bluff-top properties, the IP was also certified.

Normally, once the local government agrees to assume permit-issuing responsibility, the County's LCP would have become "effectively certified" (except for the blufftop lots). However, on July 1, 1986, and October 1, 1986, the Cities of Solana Beach and Encinitas were incorporated, reducing the remaining unincorporated County area within the coastal zone from 11,000 to 2,000 acres. The County subsequently indicated that it had decided

not to assume coastal development permit-issuing authority over its remaining jurisdiction.

Because the County did not agree to assume permitting authority, the LCP was never effectively certified. *See* 14 C.C.R. § 13544(a). Thus, the Commission appropriately relied on Chapter 3 of the Coastal Act. The applicant has presented no evidence of any error of fact or law committed by the Commission in its application of the standard of review. Furthermore, the applicant has not presented any evidence of how reliance on the County LCP as the standard of review would have potentially altered the Commission's decision. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

8. Roll Call Vote. The applicant claims that the Commission did not hold a roll call vote on the application.

Section 13094 of the Commission's regulations, 14 C.C.R. § 13066 ("Voting Procedure"), states that voting upon permit applications shall be by roll call, with the chairperson being polled last. The purpose of a roll call vote is to ensure the record is clear on how each commissioner votes. At the conclusion of Commission discussion on the applicant's permit request, the Commission chairperson asked if there were objections to a unanimous roll call. No objections were raised, thus, the motion to approve the permit was denied by unanimous roll call, as required. With a unanimous roll call, there is no ambiguity, and it is clear that each commissioner voted to deny the applicant's project.

The applicant has presented no evidence of any error of fact or law committed by the Commission in its voting procedure. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3). Moreover, that section requires that any error have the potential to alter the initial decision. The applicant has not presented any evidence of what or how additional information could have been introduced had the vote been by individual roll call.

9. Public Records Act Request. The applicant claims the Commission failed to adequately respond to applicant's Public Records Act request for documents in Commission's files relevant to the Commission's decision.

Attached as Exhibit #4 are copies of the applicant's Public Records Act request and the Commission's response. The applicant has not identified what documents she believes were not provided as legally required, nor has she identified how information apparently present in the file and available to staff, the Commission and the public might have altered the Commission's action.

10. Legal Time Limits. The applicant claims the Commission failed to issue CDP #6-06-106 in the required legal time limits. The Coastal Act does not establish a deadline for the issuance of CDPs. Section 30621 does direct the Commission to "set" a hearing within 49 days of the filing of a permit application, but the Coastal Act does not authorize

issuance of a CDP merely because this deadline was missed. This is in contrast to other situations in which the Coastal Act specifies a remedy if the Commission does not act by a certain deadline. *See, e.g.*, Sections 30625(a) (loss of jurisdiction over permit appeal if hearing not set within 49 days), 30512(a)(3) (deemed approval of land use plan if Commission does not act within 90 days), 30513 (deemed approval of implementation program if Commission does not act within 60 days). The Permit Streamlining Act does establish a process for deemed approval of permit applications, but the Commission acted well within the deadline established by the Permit Streamlining Act. This claim therefore does not establish that an error of fact or law occurred that had the potential of altering the Commission's decision.

In summary, the Commission finds that the applicant has not presented any new relevant facts or information that could not have been presented at the original hearing. In addition, the applicant has not demonstrated any error of fact or law that has the potential for altering the Commission's previous decision. Therefore, the reconsideration request is denied.

Anesthesia & Consultant Services

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January 10, 2007

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. W. Patrick Kruer, Chairman
And Commissioners
California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
Attn.: Ms. Sherilyn Sarb, Deputy Director

SUBJECT: REQUEST FOR RECONSIDERATION, CDP 6-06-106 (Marsh)

Dear Mr. Chairman and Commissioners:

As the applicant in the above-referenced matter, I respectfully request the California Coastal Commission to reconsider, pursuant to Coastal Act Section 30627, its decision on December 12, 2006, to deny my application for Coastal Development Permit 6-06-106 (Marsh, CCC Item Tuesday19h). The basis for this request is that the Commission committed errors of fact and law in this matter, as exemplified by Exhibit 1 (which shows that Commission staff already knew in 1997 that no open space deed restriction exists on my property). These errors include, but are not limited to:

Errors of Fact

1. The Commission relied on the purported existence of a recorded Open Space Deed Restriction over the area of proposed Parcel 2 in CDP 6-06-106. No such recorded Open Space Deed Restriction exists.
2. The Commission relied on purported adverse visual effects from ultimate implementation of CDP 6-06-106 pursuant to future entitlements for development of Parcel 2 with a driveway and single family home. No such evidence exists.
3. The Commission relied on staff's unfounded and factually unsupportable representation that ultimate implementation of CDP 6-06-106 through future entitlements for development of Parcel 2 with a driveway and single family home would have remaining unmitigated significant adverse effect(s) on the environment.

Errors of Law

1. The Commission failed to either open or close a hearing on CDP 6-06-106 during its proceeding under Item Tuesday 19h on December 12, 2006.
2. The Commission failed to allow my representative, who was unavoidably out of the hearing room briefly, to address the Commission upon his return while the proceeding on CDP 6-06-

EXHIBIT NO. 1
APPLICATION NO.
6-06-106-R
Reconsideration
Request
California Coastal Commission

106 was still underway, after Commission staff introduced his presence, and the Commission's meeting schedule for the day contained some seven remaining items that would keep it in session for at least another half an hour before adjourning for the day at approximately 12:30 p.m.

3. The Commission staff received my representative's document submittals while the proceeding under Item Tuesday 19h on December 12, 2006 was still in progress and has informed my representative that a copy of these documents is in my Commission project file, but simultaneously and inconsistently claims that they are not in the official Commission record for my project.
4. The Commission acted under purported color of selected Coastal Act Chapter 3 policies, instead of the applicable certified County of San Diego ("San Dieguito") Local Coastal Program, as the standard of review for my application for CDP 6-06-106.
5. The Commission failed to hold a roll call vote on the application for CDP 6-06-106 on December 12, 2006.
6. The Commission failed to respond at all to one of my Public Records Act request for documents in Commission's files that are directly relevant to the Commission's decision, and only in part and belatedly responded to a separate Public Records Act request that I made to the Commission.
7. The Commission failed to issue CDP 6-06-106, in response to my specific request, after all time afforded by the Coastal Act, Commission's own regulations, and the federally approved California Coastal Management Program had passed for the Commission to hear and act on the application for CDP 6-06-106.

I reserve the right to augment this submittal, as provided by the Commission's adopted regulations. Thank you in advance for your timely scheduling of this reconsideration request for Commission hearing. By requesting reconsideration of your December 12, 2006 decision, I expressly waive no rights or entitlements.

Sincerely,



M. Lou Marsh, M.D.

Enclosure: 1 (Exhibit 1)

cc: Mr. John Leppert, Leppert Engineering Corporation, Inc.
Mark Mazzearella, Esq.

STATE OF CALIFORNIA--CALIFORNIA COASTAL COMMISSION

FILE NOTES

NOTES BY: SPSUBJECT/FILE: 6-96-155COPIES TO: File

PAGE _____ OF _____

DATE/TIME	NOTES
8/19/97	Spoke w/ Maggie Loy at the County (694-3736) who asked for info on the deed restrictions recorded on the project site. I sent her copies of the recorded deed a permit for F7943 and deed a staff report for 6-86-1. (Address: 5201 Ruffin Rd Ste B; MS 0650, 92123-1666) She agreed to keep in touch on the progress of this application including making sure we are contacted during the comment period on the N.D.
12/1/97	Spoke w/ M. Loy ^{deed restrictions} Faxed her 6-86-1 (she said she never rec'd earlier info.) Confirmed that dr.'s on site are not open space, just future permit conditions. Thus, she can't say that area is currently preserved as open space. Applicant's current proposal involves setting aside portions of site as open space - if resource agencies say project is okay, then County is likely to approve it. They are still working on bio. report for the N.D.

EXHIBIT 1

RECONSIDERATION REQUEST

CDP 6-06-106 (Marsh)

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



Tue 19h

Filed: September 1, 2006
 49th Day: October 20, 2006
 180th Day: January 28, 2007
 Staff: D. Lilly-SD
 Staff Report: November 20, 2006
 Hearing Date: December 12-15, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-106

**SEE SUBSEQUENT PAGE 10
 FOR COMMISSION ACTION**

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

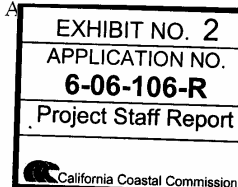
Site: 4610 Rancho Reposo, San Diego County. APN 302-210-58

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.



6-06-106

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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

6-06-106

Page 3

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.

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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.

6-06-106

Page 7

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 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

6-06-106
Page 10

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.

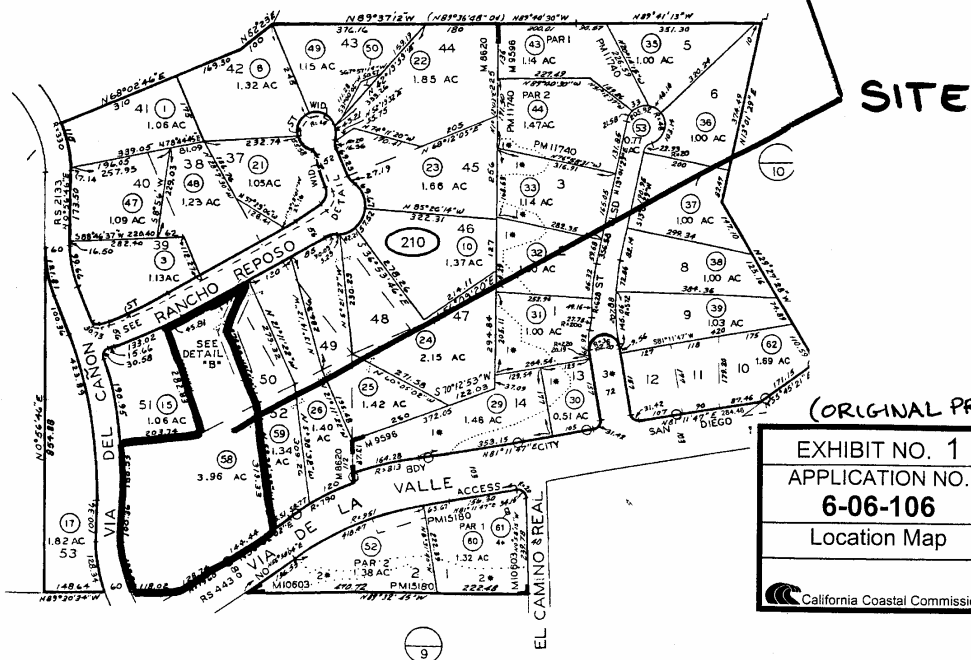
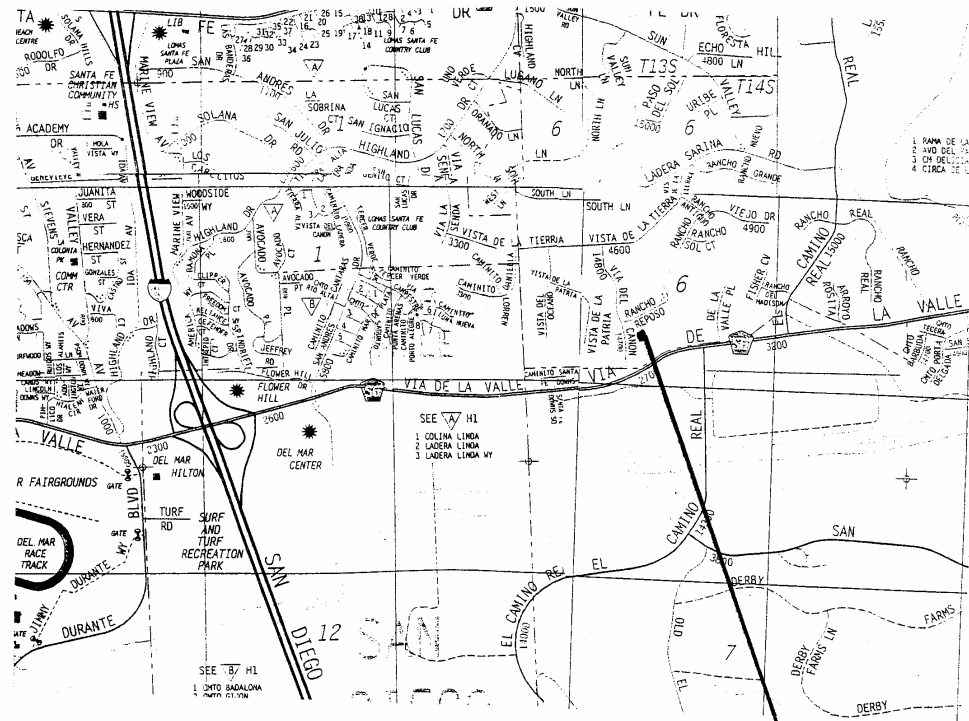
6. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit to be supported by a finding showing the permit is consistent with any applicable requirements of the California Environmental 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.

(G:\San Diego\Reports\2006\6-06-106 Marsh stf\pt.doc)

COMMISSION ACTION ON DEC 12 2006

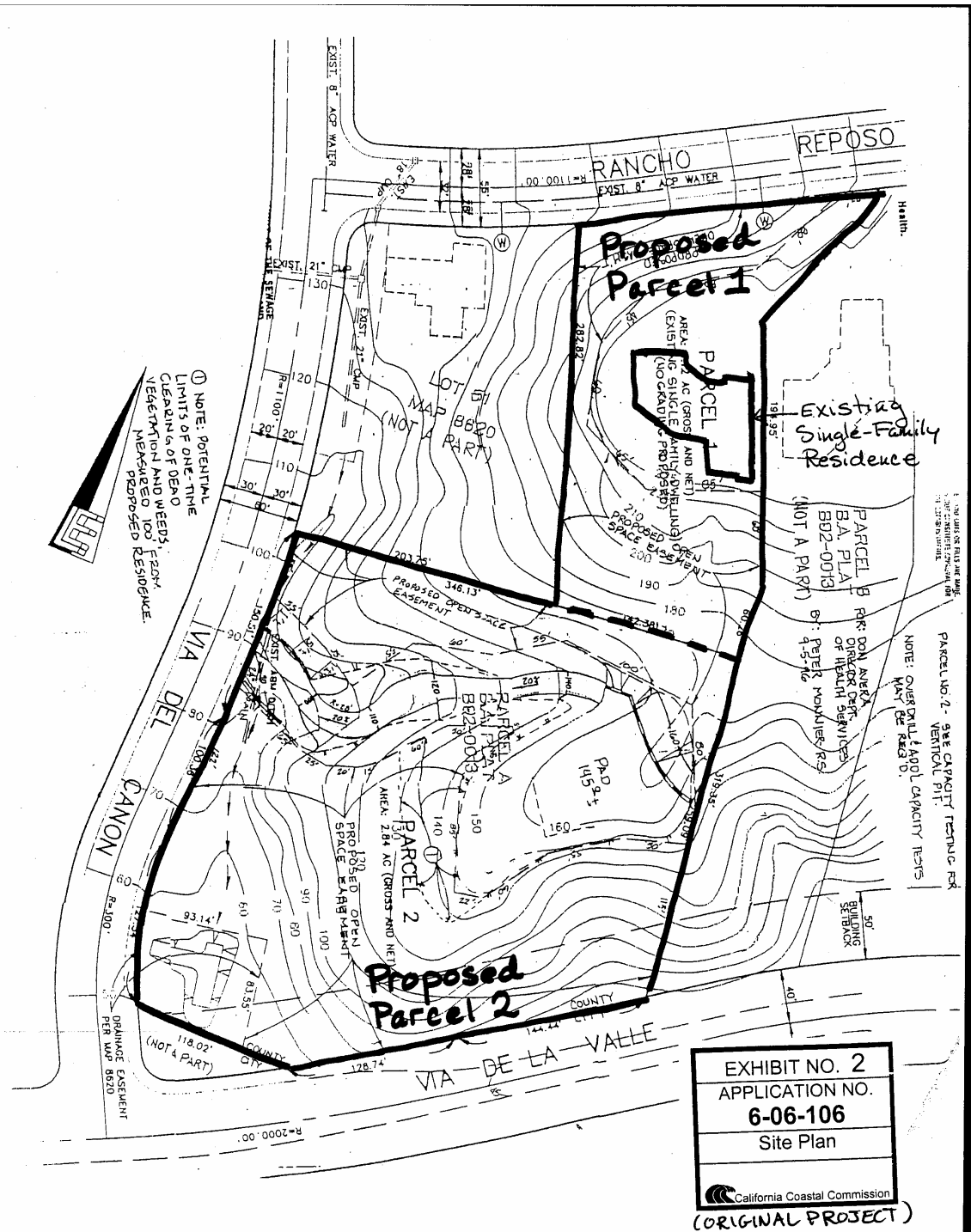
- ☐ ~~Approved as Recommended~~
- ☒ Denied as Recommended
- ☐ Approved with Changes
- ☐ Denied
- ☐ Other



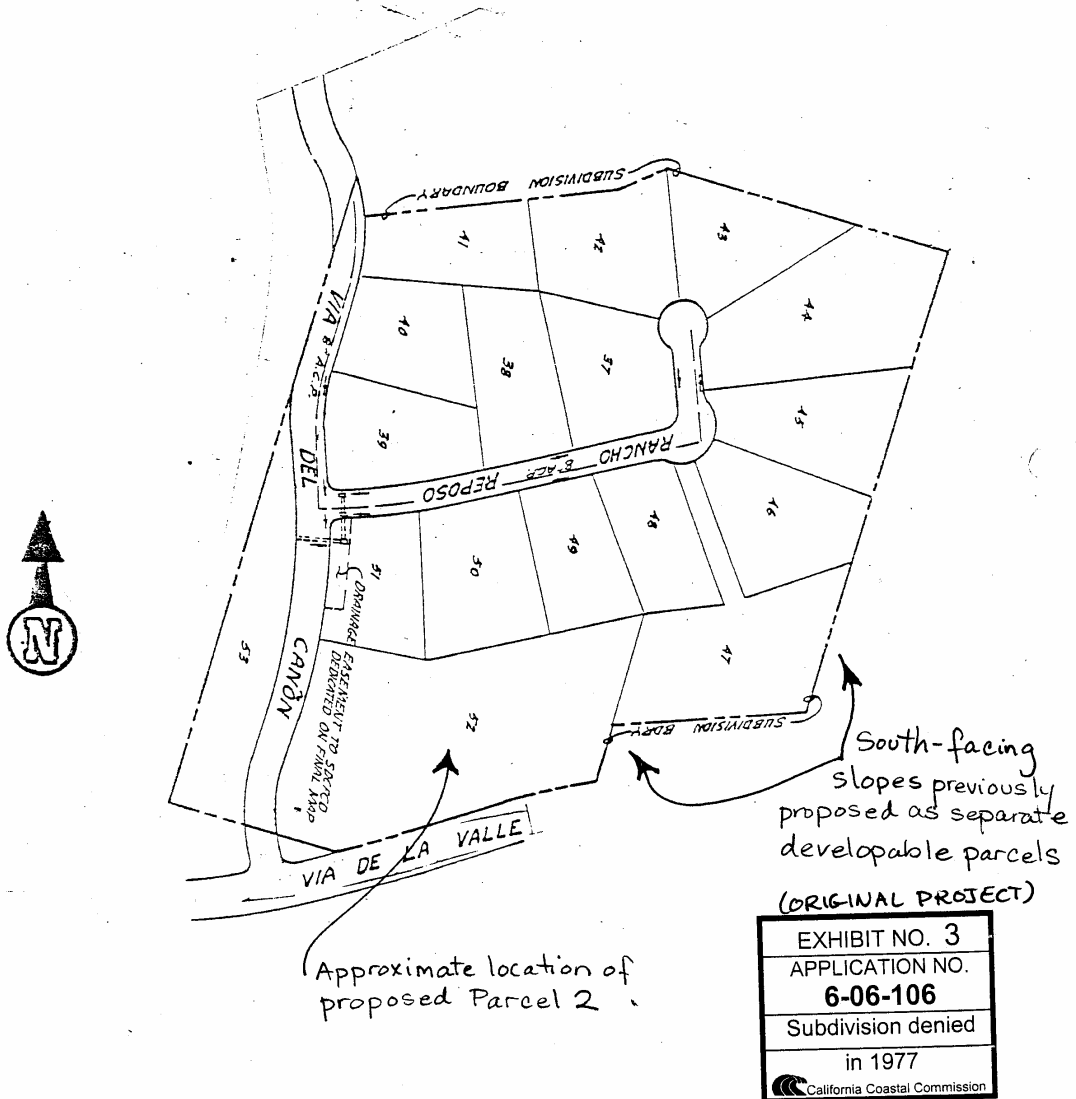
(ORIGINAL PROJECT)

EXHIBIT NO. 1
APPLICATION NO.
6-06-106
Location Map





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



DATE FILED _____
 REC'D BY _____

DATE _____
 DATE _____
 NO. _____

IN = 200 FT

RANCHO DE LA VALLE
 UNIT No. 3
 MAP NO. 8520

VIA DEL CAÑON

Subject Site →

PARCEL "A" 2.147 Ac.
 PARCEL "B" 1.415 Ac.
 PARCEL "C" 1.396 Ac.
 PARCEL "D" 1.431 Ac.
 PARCEL "E" 3.871 Ac.

Area south of dashed line subject to deed restriction protection

VIA DE LA VALLE

VICINITY MAP

EXHIBIT "B"

HEALTH DEPARTMENT CERTIFICATION
 Subdivision approved in 1979
 (#F7943)

FOR DEPARTMENTAL USE ONLY

(ORIGINAL PROJECT)

EXHIBIT NO. 4
 APPLICATION NO.
6-06-106
 Deed Restriction
 approved in 1979
 California Coastal Commission

Prelim Fee _____
 Rec. No. _____ Rec. No. _____

ADDRESS ROUTE 1, 109-V

DL

6-06-106

RECEIVED

denied 0-8

DEC 20 2006

Date:

12/12/06

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

ROLL CALL VOTE

		Yes	No
Commissioner	Achadjian	<input type="checkbox"/>	<input type="checkbox"/>
	Firestone	<input type="checkbox"/>	<input type="checkbox"/>
	Burke	<input type="checkbox"/>	<input type="checkbox"/>
	Clark, Orr	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Kram Secord	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Kruer Liberman	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Neely Wright	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Padilla Allgood	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Potter	<input type="checkbox"/>	<input type="checkbox"/>
	Reilly Kinsey	<input type="checkbox"/>	<input type="checkbox"/>
	Shallenberger	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Wan Vargas	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Chairman Caldwell	<input type="checkbox"/>	<input checked="" type="checkbox"/>

EXHIBIT NO. 3
APPLICATION NO.
6-06-106-R
Commission Vote

 California Coastal Commission

November 27, 2006

NOV 29 2006

Anesthesia & Consultant Services

California Coastal Commission

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



P.O. Box 1478
Solana Beach, CA 92075

(858) 755-1703
Fax (858) 755-7823

Attn.: Ms. Sherilyn Sarb, District Manager

7575 Metropolitan Way, Suite 103

San Diego, CA 92108-4421

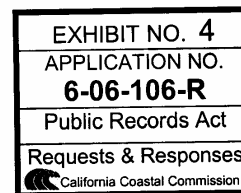
Facsimile: (619)767-2384

SUBJECT: COASTAL COMMISSION STAFF REPORT AND PRELIMINARY
RECOMMENDATION, CDP 6-06-106

Dear Ms. Sarb:

My initial reading of Coastal Commission's "Staff Report and Preliminary Recommendation," dated November 20, 2006, regarding my application for CDP #6-06-106 raises the following questions, to which I would appreciate your response on or before Tuesday, December 5, 2006. To avoid any misunderstanding, all page references below are to the November 20, 2006 staff report and recommendation; "staff" means Coastal Commission staff.

1. What is the significance of the staff recommendation, in contrast to the report, being described as "preliminary"?
2. Is staff contemplating a different or alternative recommendation to the recommendation for denial of CDP 6-06-106 that is summarized on page 1 and stated as to motion, recommendation, and resolution on page 2?
3. If the reply to (2), above, is in the affirmative, what is that different or alternative recommendation, and on what is it based?



4. If the reply to (2), above, is in the affirmative, will staff produce and publish another written staff report and recommendation, and when?
5. Will staff present, or does staff plan to present, any additional oral, photographic imagery, or written information, beyond that contained or appended to the staff report of November 20, 2006, at, or following the close of, the belated hearing on CDP #6-06-106 now set for December 12, 2006?
6. If the reply to (5), above, is in the affirmative, please provide me with a copy of any such information.
7. Specifically, in the absence of signed or initialed approval by Coastal Commission supervisory or management staff, does the staff recommendation reflect the position, as of this date, of the staff author listed on page 1, the District Manager, the Deputy Director who supervises the San Diego District, or the Executive Director of Coastal Commission?
8. When did each of the above persons make their determinations about what the staff recommendation should be for this application?
9. Was the preliminary staff recommendation for this application discussed at any meeting(s) of Commission staff?
10. What was (were) the date(s) of such meeting(s) and what Commission staff participated in it (them)?
11. Were any correspondence, documents, maps, notes, or reports reviewed or discussed at such meeting(s) other than those listed under "Substantive File Documents" on page 2?
12. If the reply to (11), above, is in the affirmative, please indicate their names, titles (headings), and dates.

13. Please provide me with a copy of any written analysis, correspondence, maps, memoranda, notes, photographs, and reports, regarding my subject property, that were prepared (dated) on or before November 20, 2006 by the Coastal Commission staff ecologist referenced on pages 1 and 7.
14. Please indicate whether the Coastal Commission staff ecologist referenced on pages 1 and 7 has performed a personal site visit to my subject property, and provide the date of such visit, as well as a copy of any contemporaneous field notes from it.
15. The upper panel of Exhibit 1 to the staff report consists of a joined excerpt from The Thomas Guide for San Diego County, map pages 1187 and 1188, a copyrighted publication. Please provide me with a copy of the publisher's authorization to Coastal Commission for use of these two copyrighted map pages.
16. Please provide me with Coastal Commission staff's internal draft agendas for the October and November 2006 meetings prior to those published on the web site.
17. Please provide me with any request by Commission staff in the San Diego office to technical staff (geological, geology, etc.) for analysis of technical reports in support of the coastal permit application CDP 6-06-106 and 99-06-11.
18. Please provide me including, but not limited to, the names, dates and contents of all communications between or among Coastal Commission staff, the executive director, coastal commissioners and any others, including as they may be stored on Coastal Commission's hard drives.
19. Please provide me with any *ex parte* communications relating to CDP 99-06-11 and 6-06-106 through December 12, 2006.
20. Please provide me with any draft addendum staff report prepared by Commission staff prior to the date of this letter, including the hard drive on which it was prepared.

Thank you for your timely attention to this request, which I make pursuant to the Coastal Act's provision that the public, which necessarily includes owners of real property, has a right to the widest opportunities for and full participation in coastal permit decision-making, including through understanding of Commission's continuing permit regulatory programs. To the extent that this request is also subject to the California Public Records Act, please also deem it made pursuant to it. If you incur any copying costs that should be defrayed, please let me know and I will send you a check for them. Please also note that this information request does not constitute any waiver of my rights under California or federal law.

Sincerely,

M Lou Marsh, M.D.

M. Lou Marsh, M.D.

Cc: Mr. John Leppert, Leppert Engineering, Inc.

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

FILE COPY

December 6, 2006

M. Lou Marsh
P.O. Box 1478
Solana Beach, CA 92075

Re: Public Records Act Request dated November 27, 2006

Dear Dr. Marsh:

This letter is in response to your letter dated November 27, 2006, in which you posed a variety of questions and requested certain documents pursuant to the Public Records Act.

A number of your questions concern the statement on the staff report for CDP application no. 6-06-106 that it is staff's "preliminary" recommendation. Staff's normal practice is to characterize staff reports as preliminary recommendations because the receipt of new information prior to the Coastal Commission's vote on a matter may result in changes to the recommendation. On the basis of the information it currently has, staff does not anticipate changing its recommendation regarding your CDP application. The recommendation is the recommendation of the Executive Director, who has delegated authority to make recommendations such as this to the District Office.

Staff does anticipate making a presentation to the Commission regarding your permit application, but that presentation is not yet prepared. The staff presentation is typically a summary of the analysis and recommendations contained in the staff report. It also normally includes responses to significant new information received after the issuance of the staff report. Any information that staff currently has that might be included in the presentation is contained in the permit file. The permit file does include documents that are not listed as "substantive file documents" that staff evaluated in the course of formulating its recommendation. As explained below, you are free to inspect the contents of the permit file or have it copied.

No ex parte communications have been received relating to CDP application no. 6-06-106. Any ex parte communications relating to CDP application no. 6-99-06 would be in that permit file and available for your review.

As of November 27, 2006, staff had not prepared a draft addendum staff report. In addition, drafts of staff reports, addenda, internal staff memoranda and other communications relating to the formulation of staff recommendations are exempt from disclosure under the Public Records Act, Government Code sections 6254(a), (k) and 6255.

Your letter also requests information regarding the timing of decisions, the dates of meetings, the titles of documents, etc. The Public Records Act requires the disclosure of

December 6, 2006

Page 2

non-exempt public records, but does not require agencies to compile information in response to questions other than requests for copies of documents.

Staff can make the file available to you or your colleagues for review during regular business hours (8:00 a.m. to 5:00 p.m.). Please call our office to let us know when you intend to review the files so that we can be sure they are ready for your review. If after reviewing the files, you determine that you need copies of any of the documents, you will need to pay for the copies in advance, at a cost of 27 cents per page, with the exception of oversize documents, for which the cost will be the rate charged by an outside copy service. Alternatively, you could arrange for a copy service to come in and copy the file. In addition, for some documents, we may request that you arrange for a copy service to copy the documents. For example, you must arrange to copy any large blueprints, as we are unable to copy them in our office. If you wish to have documents copied, we will provide you with copies of the requested documents after we receive your payment.

Please contact Holly Parker at (619) 767-2370 to arrange a mutually convenient time for your review of the files. If you have any questions, please contact me at the number on the above letterhead.

Sincerely,



Deborah Lee
District Manager
San Diego Area

CC: Chris Pederson, Staff Counsel

(G:\San Diego\DIANA\2006 Permit Items\6-06-106 Marsh PRA request.doc)

M. Lou Marsh, M.D.
Diplomate

American Board of Anesthesiology
Anesthesia & Consultant Services



P.O. Box 1478
Solana Beach, CA 92075

(858) 755-1703
Fax (858) 755-7823

By Facsimile and US Mail
(619)767-2384

December 4, 2006

California Coastal Commission
San Diego Coast District
Attn.: Ms. Sherilyn Sarb, District Manager
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

SUBJECT: CDP 6-06-106: REQUEST FOR EX PARTE COMMUNICATION
DISCLOSURES

Dear Ms. Sarb:


In addition to my previous information requests, please send me and provide to my agent John Leppert a complete copy of any additional written disclosures by Coastal Commissioners, including Alternate and ex officio Commissioners, of all *ex parte* communications with regard to CDP 6-06-106, through December 12, 2006, that have not previously been produced to me.

Please also provide me with a copy of Coastal Commission's adopted standard *ex parte* communications disclosure form, the date on and manner by which the Coastal Commission adopted it, and the location of the Commission's official record for full disclosure of *ex parte* communications, including those related to my application for CDP 6-06-106.

Please provide the requested documents to Mr. Leppert prior to the scheduled hearing on my application, and no later than 12 noon, at the Commission meeting in San Francisco on December 12, 2006. Thank you. Please inform me by return fax of the cost of duplicating the requested documents and I will send payment directly to your office.

Please consider this request to be made under both the maximum public information policy of the Coastal Act, Section 30006, and the California Public Records Act.

Sincerely,


M. Lou Marsh, M.D.

cc: Mr. John Leppert, Leppert Engineering Company

RECEIVED

DEC 07 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

FILE COPY

VIA FAX AND U.S. MAIL

December 8, 2006

M. Lou Marsh
P.O. Box 1478
Solana Beach, CA 92075

Re: Public Records Act Request dated December 4, 2006

Dear Dr. Marsh:

This letter is in response to your letter dated December 4, 2006, in which you requested certain documents pursuant to the Public Records Act.

As of December 8, 2006, no ex parte communication disclosure forms have been received relating to CDP application no. 6-06-106. Copies of ex parte communication disclosure forms are kept in the Commission's San Francisco office, and also in the relevant permit application file.

Copies of the Commission's adopted standard ex parte communications form and a staff report describing adoption of these forms will be available in the San Diego Commission office on Monday, December 11, 2006. The total number of pages is 23, and at 27 cents per page, the cost of reproduction will be \$6.21. If you would like to ensure that Mr. Leppert has these documents prior to the December 12, 2006 Commission hearing, I suggest that you arrange to have them picked up on Monday. Otherwise, after we receive your payment, the documents will be mailed to Mr. Leppert's address.

Please contact Holly Parker at (619) 767-2370 to check on the status of the requested documents or to arrange a time to pick them up. If you have any questions, please feel free to call me.

Sincerely,

Diana Lilly
Coastal Planner

CC: Chris Pederson, Staff Counsel