

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
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Filed: February 7, 2007
 49th Day: March 28, 2007
 180th Day: August 6, 2007
 Staff: Toni Ross-SD
 Staff Report: March 20, 2006
 Hearing Date: April 10-13, 2007

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: A-6-OCN-02-121-A-1/6-03-23-A1

Applicant: Continental Residential Inc.

Agent: David Ricci

Original Description: Construction of 96-unit condominium development in two 65 ft. high structures, division of 7.5-acre site (3 lots) into 5 lots and a remainder "Not a Part" lot, parking, landscaping, drainage improvements and on-site mitigation.

Proposed Amendment: The addition of a vehicular gate at the roadway entrance into the project site. Gates to remain open from sunrise to 10 p.m. daily.

Site: South side of San Luis Rey River, west of Coast Highway and east of Pacific Street, Oceanside, San Diego County. APN: 143-040-21, 143-040-23, 143-040-43 and 143-010-23.

Substantive File Documents: Certified City of Oceanside Local Coastal Program (LCP); Appeal A-6-OCN-02-121, CDP 6-03-023

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending denial of the proposed vehicular gate construction request. The proposed project would create a gated residential subdivision between the first public road and the sea and raises several issues with regard to coastal access and recreation. In 2003, the Commission approved the project with conditions including, among others, a requirement that public bicycle and pedestrian access be provided from Coast Highway, along the entrance drive and through the project to access the San Luis Rey River and the public bicycle path that runs along its shoreline. While the proposed vehicular gate will not directly block the public bicycle and pedestrian paths, the gate, even with signage, will create a perception that the public access facilities (pedestrian trail and contiguous bike path) are in fact private, leading to a decrease in public access. In addition, although the applicant has proposed to leave the gates open from sunrise to 10:00 p.m. daily, that raises an enforcement issue and it is not possible for Commission staff to monitor the gate operations on a daily basis. Thus, the proposed gate will deter the public from using the public access facilities, the facilities

that were necessary for approval of the original project and therefore, staff recommends the Commission deny the request.

Standard of Review: Certified Oceanside Local Coastal Program and the public access and recreation policies of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve the amendment to Coastal Development Permit No. A-6-OCN-02-121/6-03-23 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 amendment 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 amendment for the proposed development on the ground that the development will not conform with the policies of the certified Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act. 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 History/Amendment Description.** The approved project is located on 7.74 acres on the south side of the San Luis Rey River, west of Coast Highway and east of Pacific Street in the City of Oceanside (ref. Exhibit #2). The approved project consists of two six-story buildings up to 65-foot high, including a two-level underground parking garage and 96 living units ranging up to 1,651 square feet in size. Between the two buildings is a common recreation area including a pool, spa, barbeque and meeting area. Other approved development included an access drive, landscaping, detention basin, drainage outlet pipe and dissipater structure that discharges into the San Luis Rey River.

The main access to the site is from Coast Highway, utilizing an existing public right-of-way directly south of the Guesthouse Inn. A private street was constructed to connect through to the southwestern corner of the site with a secondary, emergency-only access

proposed on the western side of the project site. There is no public parking located within the development.

In CDP #6-99-32 (City of Oceanside), the Commission approved the construction of an 8-foot wide, approximately 1,600-foot long paved segment of bikeway along the southern side of the San Luis Rey River (ref. Exhibit #3). A portion of the completed bike path is located within the project site between the proposed development and the San Luis Rey River. This bike path is part of the San Luis Rey River Recreational Trail, which is an inland trail that goes along the riverbank and connects to a trail in the Camp Pendelton Marine Base and the public streets and eventually to the ocean west of the site.

In August, 2002 Commissioners Dettloff and Wan and Nancy Craig and the Mira Mar Community filed an appeal of the City's approval of this residential development, citing that the project was inconsistent with the certified LCP. In November 2002, the Commission found the project raised a substantial issue with respect to the grounds on which the appeal was filed. At the same time, a portion of the development was located within the Commission's area of original jurisdiction and as such, the applicant submitted a coastal development permit (CDP) application for that portion. The combined De Novo and CDP hearing was held at the November 2003 hearing, and the project was approved with conditions regarding an Open Space Easement, a mitigation program for all impacts to Coastal Sage Scrub, public access including a bike and pedestrian path and signage and specification for grading, landscaping and building exterior. Subsequently, the conditions of approval were satisfied and the permit was issued to the applicant. The approved development is currently under construction.

The proposed amendment is for the addition of a vehicular gate with a 30' radius turnaround at the road way entrance into the project (ref. Exhibit #4). The proposed gate would be located approximately 250' into the project roadway. As proposed there will be three 6' tall pilasters with decorative flower pots at the main entry. The center pilaster will have a call box for guests visiting residents. Just beyond the call box is the 30' radius turn around area. Beyond the turnaround area is the 32' foot long iron gate. There are two pilasters located at either edge of the gate; these will also hold decorative flower pots. It is alongside this gate that the additional public access signage is proposed. The gate would be operated by a timer that will be set to have the gate remain open between sunrise and 10 p.m. daily. Both the bike trail and the pedestrian access would remain accessible to the public by going around the proposed gate. The access signs would be approximately 18" x 12" and have a height just below 5' (ref. Exhibit #4). Additional access signs required by the original approval will remain, but will be located within the proposed gated area. The public access signage required by CDP #6-03-023, to be visible from Pacific Coast Highway, will remain. There is no public parking provided onsite.

The proposed development is an amendment to an appeal heard by the Commission on a site that is located between the first public road and the sea. Therefore, the standard of review is the certified local coastal program and the public access and recreation policies of the Coastal Act.

2. Public Access. Because the proposed development is located between the sea and the first public road, Section 30604(c) requires that a specific access finding be made. In addition, many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, and protecting suitable upland recreational sites.

Section 30210

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

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

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

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) Adequate access exists nearby, or,
- (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30213

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

Section 30223

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

In addition to Coastal Act policies, the City of Oceanside's certified LUP contains the following policies:

The City shall maximize public access in the San Luis Rey River and environs consistent with natural resources values;

Low cost recreation and visitor serving facilities shall be a priority land use in the river area, commensurate with public demand for such facilities;

LUP #7 (Page 4) the bike path along Highway 76 shall be extended under I-5 and the railroad track to the river mouth on the south side of the San Luis Rey River if and when funds become available.

The provision of public access in new development proposals is one of the main tenets of the Coastal Act, especially in conjunction with new development located between the sea and the first public road, such as the subject project. Gated communities that preclude the possibility of public access to the coast conflict with Coastal Act Sections 30210 and 30212. Not only do private gated communities limit public access locally, but the cumulative effect of these private gated communities along the coast impacts public access, public parking, traffic circulation and the availability of non-automobile transportation options. When there are numerous gated communities along the coast, traffic circulation is limited solely to major arterials, parking is unevenly distributed in the few public parking areas near existing vertical accessways, and pedestrians and cyclists are forced to travel on major arterials when seeking coastal access.

In the case of the subject site, the Commission's original approval of the residential community did not permit a gated entrance and in fact required both public pedestrian and bicycle access through the development to an existing public bike path on the site that runs along the shoreline of the San Luis Rey River. The applicant's proposal to now install a vehicular gate at the entrance to the development raises a number of Coastal Act and LCP concerns. Furthermore, the applicants' proposal to make this a private gated community does not maximize coastal access.

As noted, the project site is located along the south shore of the San Luis Rey River, just west of Pacific Coast Highway. The public access, as approved through CDP A-6-OCN-02-121/6-03-023 will provide access from Pacific Coast Highway, through the development and to the San Luis Rey River (See exhibits #1&2) and the San Luis Rey River Recreational Trail/Bike path, which is an inland paved trail and bike path that follows along the riverbank and connects to a trail in the Camp Pendleton Marine Base to the north and the public streets and eventually the ocean to the west of the development. The coastal portion of the San Luis Rey River Recreational Trail/Bike path was constructed under CDP #6-99-32. All of these trails provide important non-vehicular links to coastal areas and resources for residents in the eastern portion of the city and beyond. The completed bikeway enables tourists and residents expanded recreational opportunities and low cost coastal recreational activity including access and views to scenic areas. The public access required through the permitting of this development

provides an important connection from Pacific Coast Highway to the series of bike trails described above (See exhibit #1&2).

The applicant has expressed that the gate is intended to be used to restrict the public from driving into the residential area at night after 10 p.m. thereby decreasing traffic activity and minimizing any potential safety concerns. However, no information documenting safety concerns and the need for the gate has been submitted. Again, the proposed entry gate will be approximately 32 ft. long and 6-ft. high and include imposing 6' high pilasters on either side. Although access to the bike path and pedestrian trail will remain available to the public around the proposed gate, the gate would convey a strong message that no access is allowed. There will be a perception by the addition of a gate, that no further public amenities remain.

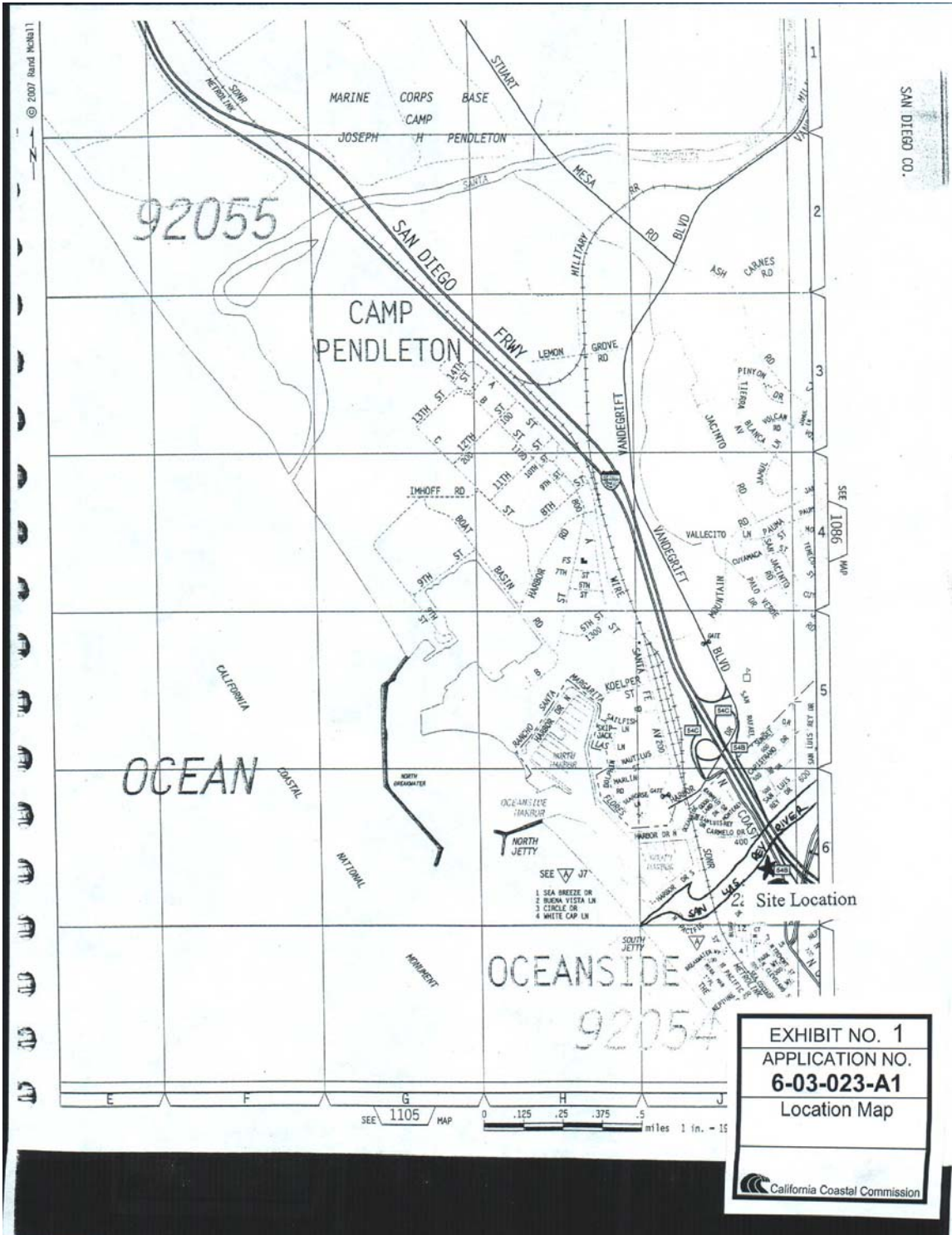
The applicant has proposed to mitigate for the gate by installing the additional signage at the gate to inform the public of the availability of the pedestrian and bike paths. While the presence of signage that informs the public of the location of public access can help overcome the public access barriers created by private communities, they do not compensate for perception the gate will convey when observed by the public. As the public approaches the development they will observe the gate and interpret the area as private long before they come close enough to the gate to see the public access signage, therefore public access is not only not facilitated, it is actually discouraged. In addition, the applicant has also proposed to mitigate for the gate by keeping it open during daylight hours such that it would only be closed from 10:00 p.m. to sunrise each day. Thus the public could gain access through the site during the daytime, when it is most appropriate. Again, such mitigation is not sufficient for several reasons. First, while the gates may remain open during the day, the public will still see the gates as they approach the development and it is likely will have same perception as if the gates were closed – this is a gated community and the public is not welcome. Second, it would be impossible for the Commission to monitor operation of the gates to assure they remain open during daylight hours. Thus, it could not be assured the gates would always be open once installed.

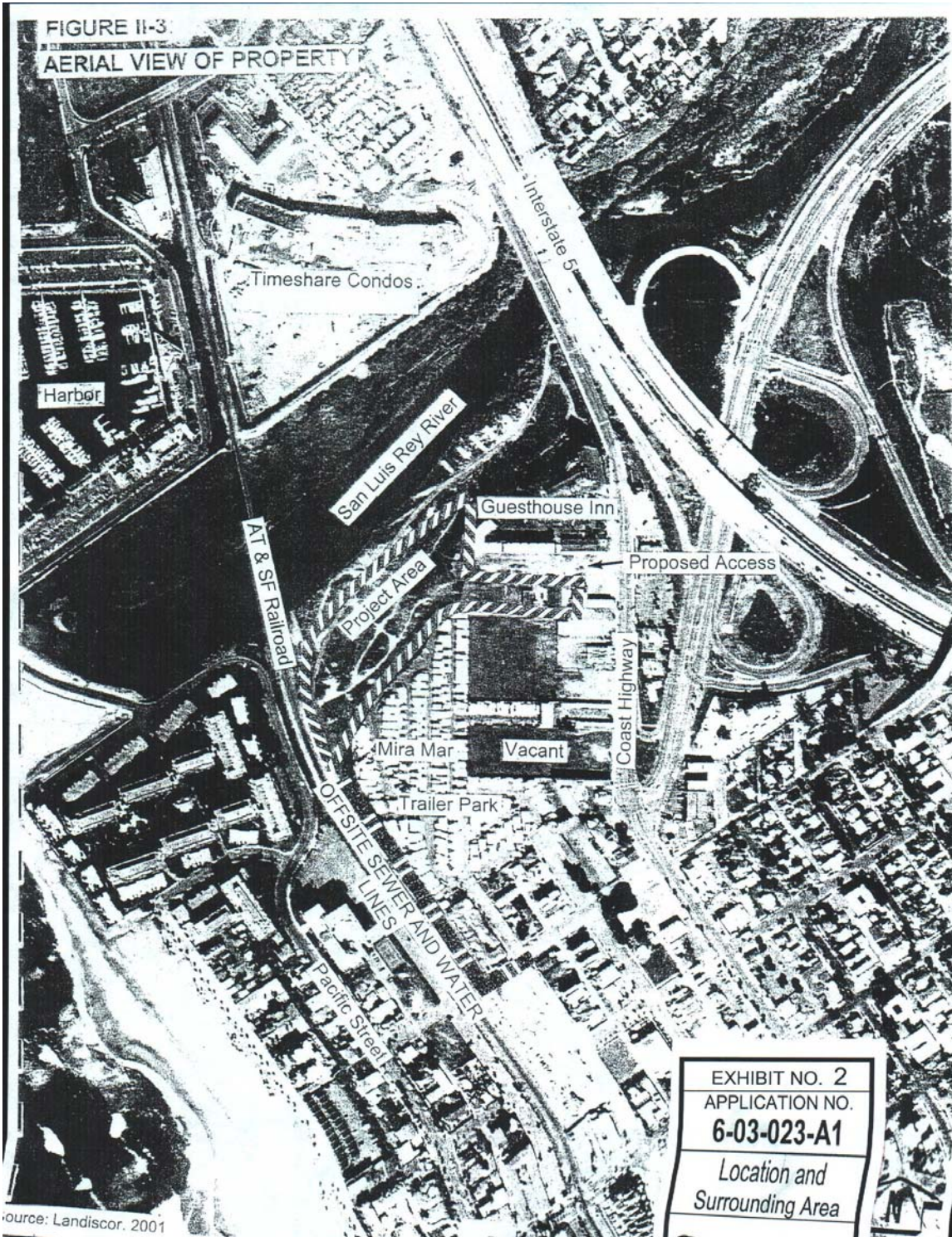
In summary, private gated communities between the first public road and the sea, such as proposed herein, severely limit opportunities for public access to the sea, and are therefore incompatible with the public access requirements of the Coastal Act. (Sections 30210 and 30212). While the proposed residential gate does not physically create an obstruction to public access, it creates a very strong perception that public access is not allowed. Obstructing public access to the San Luis Rey River, especially given its connectedness to city-wide bike paths, is not in conformance to the City of Oceanside's certified LCP or the chapter 3 policies of the Coastal Act. The development itself is not reliant on the installation of a residential gate and therefore not permitting the gate does not inhibit the viability of the development. Further by preventing the project from being gated coastal access would be maximized and would therefore be consistent with the Coastal Act.

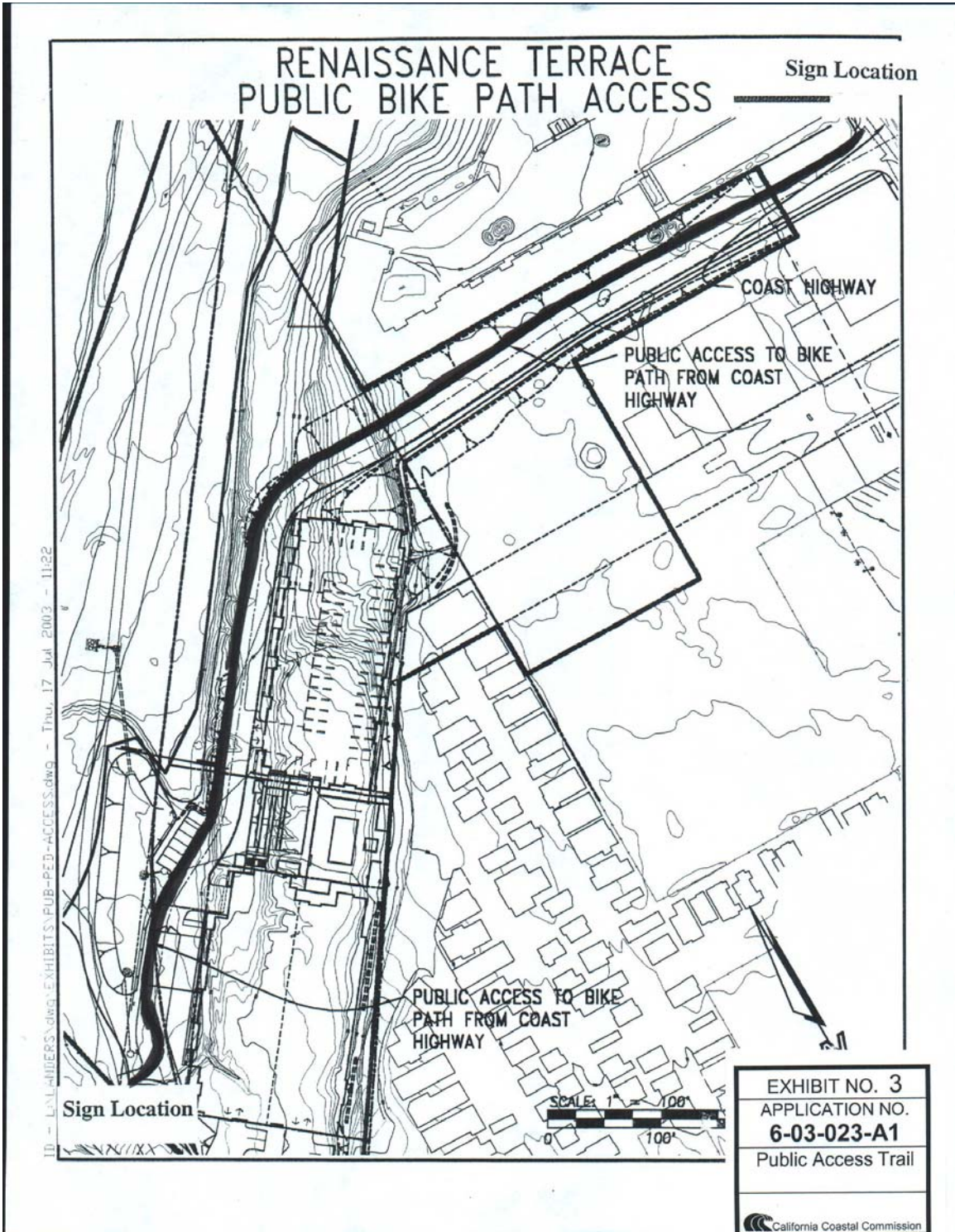
3. Local Coastal Planning. The city of Oceanside has a certified LCP. The project is located in the “D” Downtown District. Because the original permit was appealed and sent to a De Novo hearing, any further changes to the project would require approval by the Coastal Commission through a permit amendment application. Further this area is also within the LCP certified San Luis River Specific Plan area. This plan area has numerous policies protecting public access and recreational activities surrounding the San Luis Rey River, as described above. The proposed vehicular gate at the entrance to the development is inconsistent with many of these provisions as well as with numerous public access policies of the Coastal Act. The Commission finds that project approval will prejudice the ability of the City of Oceanside to continue to implement its fully certified LCP and therefore the proposed project is denied.

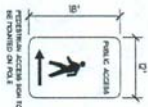
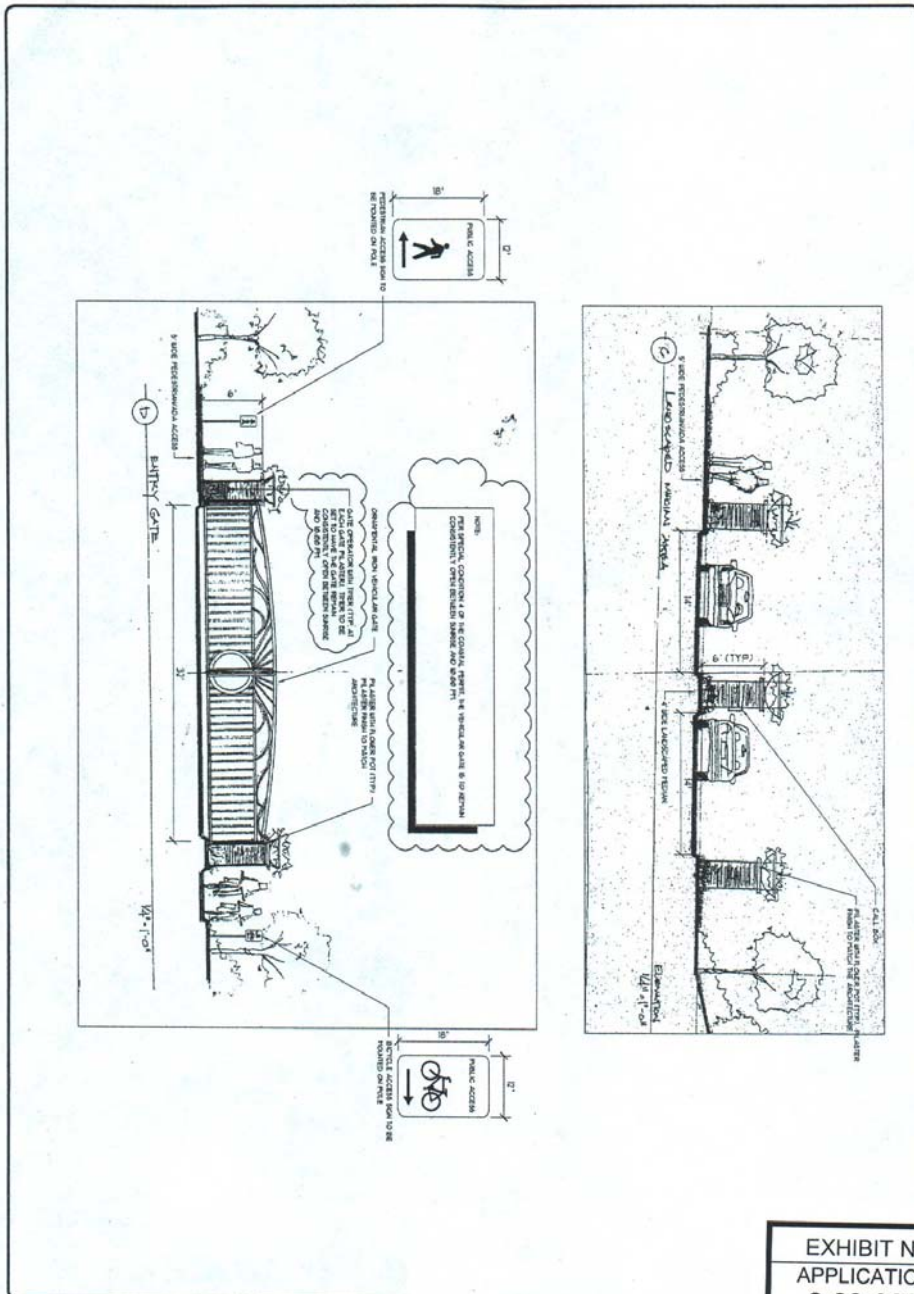
4. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of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

The proposed project has been found inconsistent with the public access policies the certified LCP as well as the public access and recreation 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 public access. The site is being developed as anticipated under the original development permit, and denial of the proposed vehicular gate would not prevent the applicant from completing the development as approved. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and is not consistent with the requirements of the Coastal Act to conform to CEQA.









NOTE:
FIRST REVIEW, CONCERN 4 OF THE GATEWAY PANEL, THE SYMBOLS OF GATE 6 BY OFFICIAL
CONSTRUCTION, OPERATIONAL SYMBOLS AND 6-00 PM.

1083.012 Renaissance Terrace
Conceptual
Details
DATE: 11-2-2011
SCALE: 1/8\"/>

NO.	DATE	DESCRIPTION
1	11-2-2011	CONCEPTUAL DESIGN
2	11-2-2011	REVISIONS
3	11-2-2011	REVISIONS

DR HORTON
**RENAISSANCE TERRACE
CONDOMINIUMS**
Oceanside, California

LANDSCAPE
ARCHITECTURE
1083.012 Renaissance Terrace
Oceanside, California
11-2-2011

EXHIBIT NO. 4
APPLICATION NO.
6-03-023-A1
Residential Gate Site
Plan
California Coastal Commission