

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th8b

Addendum

February 5, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 8b**, Coastal Commission Permit Application
#A-6-NOC-07-130 (Key; McCullough; Ames), for the Commission
Meeting of February 7, 2008

In response to comments made in both the January 14th, 2008 letter, and the January 31st response from the agent for the appealed project, staff recommends the following changes be made to the above-referenced staff report:

1. On Page 6 of the referenced staff report, the following should be inserted immediately after the citation at the top of the page:

As the citation indicates, both the original North City Land Use Plan (LUP) and the more recent Torrey Pines Community Plan apply to the subject site. The North City LUP covers the entire geographic area of North City, with the individual community plans each addressing only one subset of North City. The original document contained more general policies, many taken directly from Chapter 3 of the Coastal Act, whereas the individual plans contain more specific policies applicable to each separate community. Within the Torrey Pines community, the Torrey Pines Community Plan takes precedence only if there are conflicts between the two documents. The Commission does not identify any conflicts between the resource protection policies within the North City LUP and the Torrey Pines Community Plan. All protect sensitive resources and call for impacts to those resources to be minimized. The applicable policies from both plans are attached on new Exhibit 6.

2. On Page 7 of the staff report, the following paragraph should be modified and expanded as follows:

Nowhere in the above finding does the City state that the project will not adversely affect environmentally sensitive lands. In fact, the project will result in adverse impacts to environmentally sensitive lands in the form of direct impacts to CSS and SMC that are otherwise avoidable. The property is large enough that at least

two alternatives to the proposed design are possible. First, the applicant could build an even larger, single home on the existing property; and second, two smaller homes could also be built. Both of these alternatives could be designed to avoid all impacts to southern maritime chaparral and coastal sage scrub from either the residences or Brush Management Zone Two. Although City regulations would still require mitigation for impacts to non-native grasslands, the applicant's mitigation burden would be greatly decreased, especially since the proposed development already impacts the vast majority of non-native grasslands on the site.

The applicant disagrees with the statement the property owner could avoid all impacts to sensitive resources on the property. This is because the City considers the non-native grasslands to be environmentally sensitive requiring mitigation, and no development can occur on either the existing lot or with the proposed subdivision without impacting those sensitive resources. The applicant also argues since the site is not in the MHPA, the applicant is allowed to develop the entire site, even for a single home, impacting all vegetation, so long as mitigation is performed.

The Coastal Commission has not interpreted the resource protection policies of the Act or certified LCPs to allow all impacts at any cost to sensitive resources. Section 143.0140 of the ESL regulations states that allowable development area is based on an existing lot or premises. The determination of the allowable development area should be based on application of all applicable LUP policies and, in this case, the ESL regulations to accommodate minimum reasonable use recognizing any resource constraints. Policies that provide for preventing or minimizing impacts should be considered in a manner that is most protective of the resource. Therefore, in this particular case, to conform to the applicable LUP policies, the allowable development area should not encroach into environmentally sensitive lands if it is possible to avoid such impacts. Where impacts are unavoidable, they should be minimized.

Regarding the resources on this particular site, the City's Land Development Code does not consider the three vegetation types on the site, southern maritime chaparral (Tier I), coastal sage scrub (Tier II) and non-native grasslands (Tier III), as being equal in value, nor do they require the same level of mitigation. Although the Commission acknowledges that non-native grasslands do perform many of the same functions as native grasslands, they would not typically be considered as worthy of protection as the other identified habitats on the site, unless they supported rare or listed species. Therefore, impacts to that habitat are not as significant as impacts to the Tier I and Tier II habitats also present on the site.

As noted above, the subject site is an existing undeveloped legal lot. Approximately one-half of the subject site (.92 acres) contains non-sensitive vegetation (disturbed non-native grasslands). Currently, there is adequate development area on the existing premises to be developed with a large single-family home and avoid all impacts to on-site sensitive habitats (CSS and SMC) from the development itself and necessary brush management. In other words, it is

the subdivision of the existing legal lot into two lots that results in direct impacts to environmentally sensitive lands; the property owner can develop the existing lot and achieve economic use of the site without impacts to sensitive biological resources. Thus, no further subdivision should occur to accommodate reasonable development of the subject property.

3. The final paragraph of the staff report should be modified as follows, and a summary paragraph added:

The project site, ~~which is located at the base of the northern extent of Crest Canyon,~~ is highly visible from both Interstate 5 (southbound) and other public areas of the San Dieguito River Valley west of Interstate 5. While the proposed residential structures do conform to required building heights, setbacks and other lot development standards, the City failed to address, through enforceable conditions of approval, the screening of the proposed structures through on-site landscaping or exterior color treatments, to reduce the visibility of the proposed structures from off-site public vantage points. The City did review and approve building materials, colors, and landscaping, but, without it being required through a recorded deed restriction, future property owners will not receive notice.

In summary, the preceding findings have not only demonstrated that the proposed subdivision and development of the site will have significant impacts on southern maritime chaparral and coastal sage scrub, but they have demonstrated that feasible alternatives exist that could eliminate all such impacts. However, the Commission must first find that substantial issue exists before these alternatives can be further explored through a de novo hearing.

4. Please add the following three new exhibits to the referenced staff report.

APPLICABLE POLICIES FROM THE NORTH CITY AND TORREY PINES LAND USE PLANS

The North City Land Use Plan component of the City's certified LCP contains provisions for protection of sensitive habitat areas as follows:

Environmentally sensitive habitat areas should be protected against any significant disruption of habitat values, and only those uses dependent on and compatible with such resources should be allowed within such areas...

Development should be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas.


New development should first be located adjacent to developed areas able to accommodate it, and where it will not have significant adverse effects on coastal resources.

The Torrey Pines Community Land Use Plan identifies the following **Key Policies** that are applicable to this project:

1. All development adjacent to open space areas shall be designed to reduce visual and development impacts.
 3. Residential development shall reflect the diversity of existing homes in the community, and shall be in compliance with all development regulations.
-

Further, Page 27 of the Torrey Pines Community Plan outlines the following policies:

1. Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.
 2. Development impacts to rare, threatened, endangered, or candidate species shall be minimized or eliminated.
 3. No filling, clearing, grubbing, or other disturbance of biologically sensitive habitats shall be permitted without approved mitigation plans.
-

EXHIBIT NO. 6
APPLICATION NO.
A-6-NOC-07-130
Plan Policies
 8

Non-native grasslands

Coastal Sage Scrub

Southern Maritime Chaparral

PROPERTY TO WEST IS CURRENTLY DEVELOPED. BMZ1 AND BMZ2 ARE NOT REQUIRED ON THIS EDGE, HOWEVER, ALL OF THE PROPOSED DEVELOPMENT AREA THAT WOULD NORMALLY QUALIFY AS BMZ1 HAS BEEN SHOWN.
PROPERTY BOUNDARY

BMZ 1 AND 2 MODIFIED IN THIS AREA
SEE DESIGN STATEMENT.

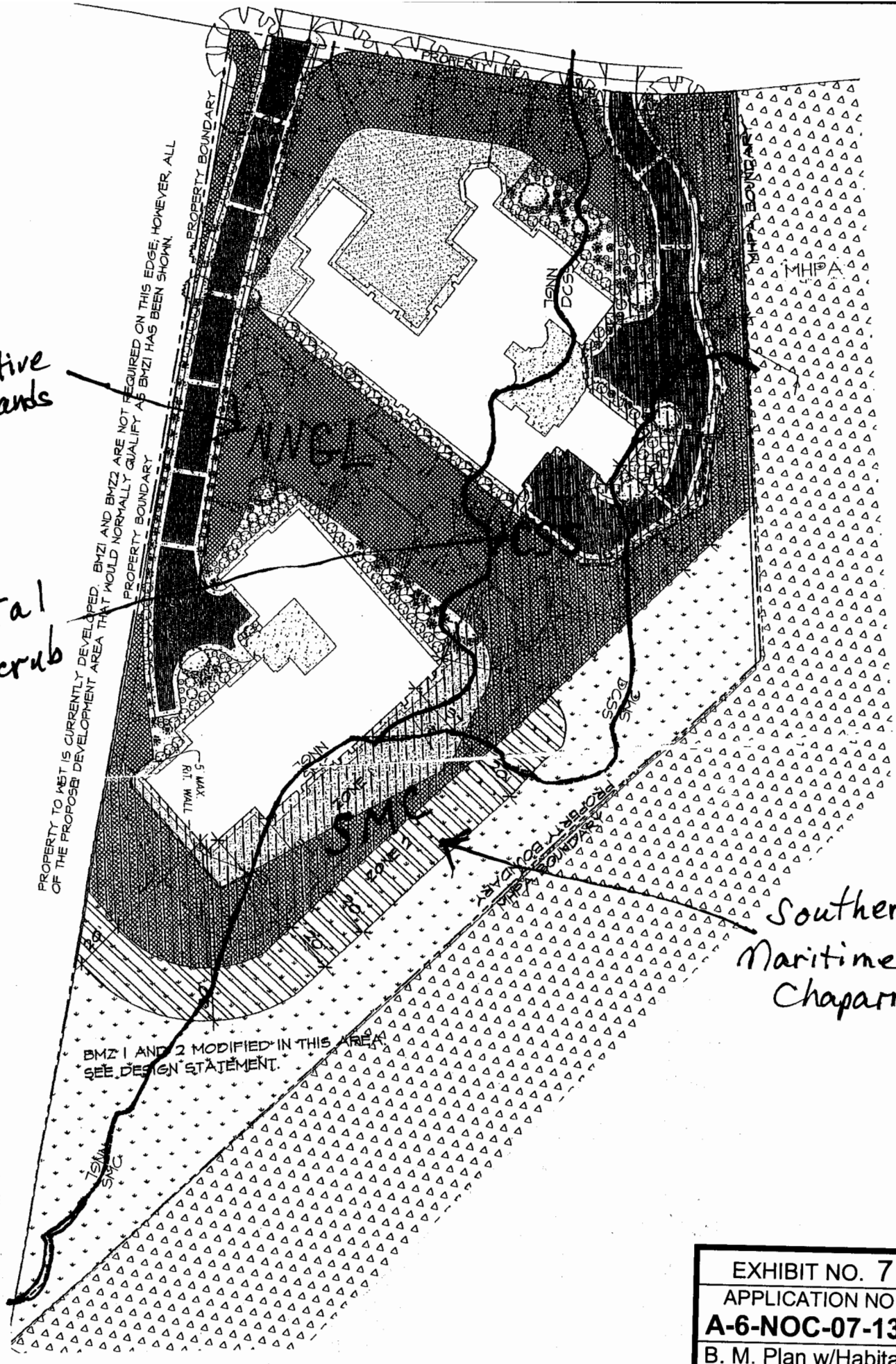
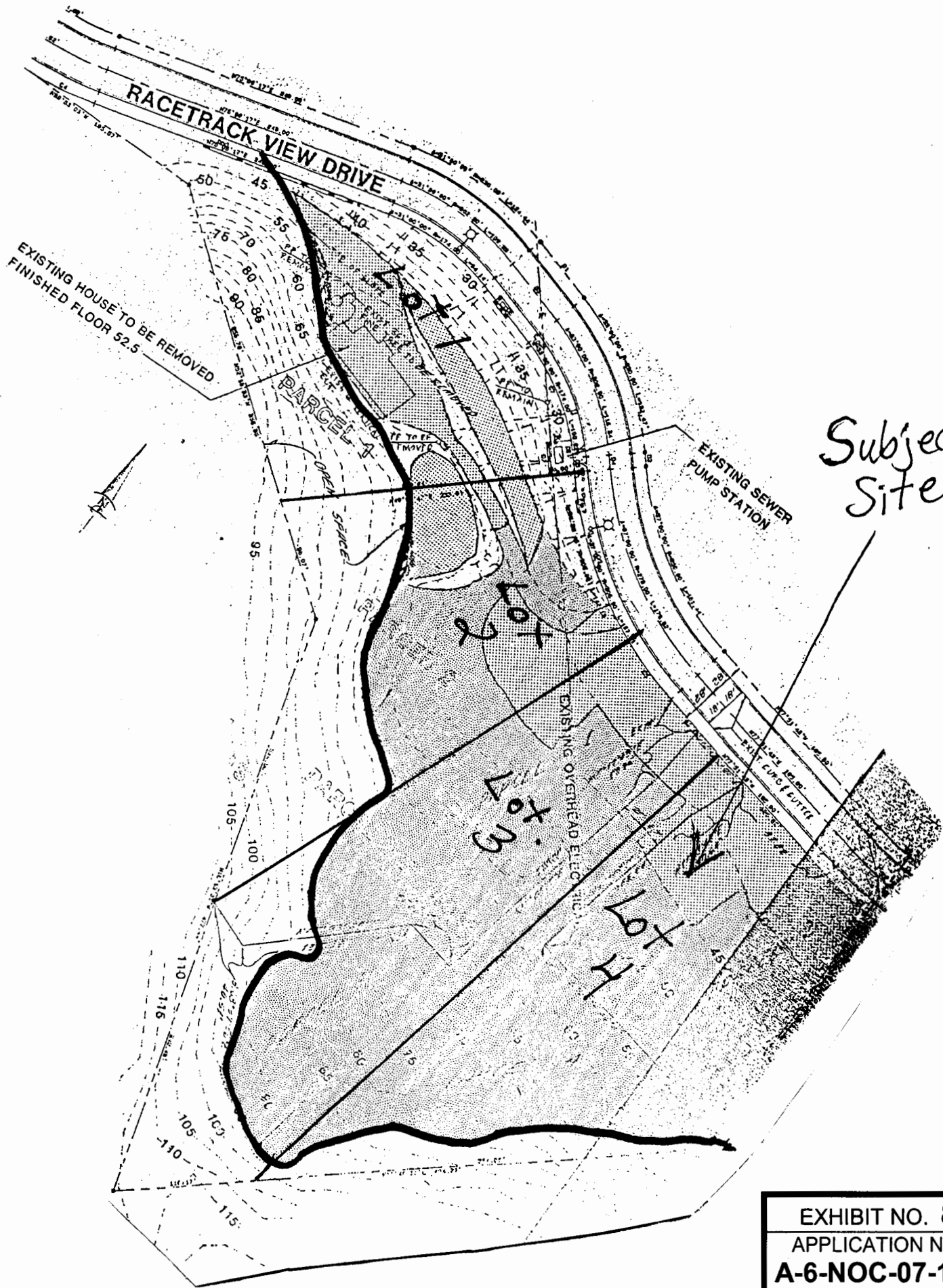


EXHIBIT NO. 7
APPLICATION NO.
A-6-NOC-07-130
B. M. Plan w/Habitats

9
California Coastal Commission



Subject Site

EXHIBIT NO. 8
APPLICATION NO.
A-6-NOC-07-130
Original 4-lot
Subdivision 10
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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



Th8b

Filed: December 28, 2007
49th Day: February 15, 2008
Staff: Ellen Lirley-SD
Staff Report: January 10, 2008
Hearing Date: February 6-8, 2008

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approval with Conditions

APPEAL NO.: A-6-NOC-07-130

APPLICANT: Rick Valles Key; Monty McCullough; Brett Ames

AGENT: Katie Wilson

PROJECT DESCRIPTION: Subdivision of vacant 1.84-acre parcel into two 0.92-acre lots and construction of two approximately 5,000 sq.ft. single-family homes and guest quarters.

PROJECT LOCATION: 2835 Racetrack View Drive, North City (Torrey Pines Community), San Diego, San Diego County. APN: 300-160-59

APPELLANTS: Commissioner Patrick Kruer; Commissioner Sara Wan

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

STANDARD OF REVIEW: Certified City of San Diego Local Coastal Program and the public access policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; City File; Biological Resources Technical Report, dated May, 2007; Report of Preliminary Geotechnical Investigation, dated November 8, 2005, and including April, 2007 Addendum; Mitigated Negative Declaration

I. Appellants Contend That: The appellants contend that the development, as approved by the City, may be inconsistent with the certified LCP. Specifically, the appellants contend that the development is inconsistent with the biological and visual resource policies of the certified LCP. The appellants contend the City should not have allowed a subdivision of the property, and two relatively large homes, due to the extent of ESHA impacts resulting from the development, when one home on the existing lot could be developed with no impacts to ESHA. The appellant's also contend the proposed development may have significant visual impacts, because the site is located in a visually prominent area along the southern edge of the San Dieguito Lagoon and uplands. Yet, the appellant's contend that the City failed to include special conditions on the permit to address the screening of the proposed structures through on-site landscaping or exterior color treatments to reduce the visibility of the proposed structures from off-site public vantage points.

II. Local Government Action: The coastal development permit was approved by the Planning Commission on 12/06/07, along with a number of other local approvals, including a Site Development Permit, a Planned Development Permit, a Neighborhood Use Permit, and a Tentative Map, along with certification of the Mitigated Negative Declaration. The conditions of approval address, in part, the following: parking; hold harmless agreement; outdoor lighting; landscaping; and drainage.

III. Appeal Procedures:

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the

Commission may proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-NOC-07-130 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-NOC-07-130** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. **Project Description/Permit History.** The proposed development involves the subdivision of a vacant 1.84 acre site into two .92 acre lots. Also proposed is the construction of a 5,430 sq. ft. single-family residence with attached 1,120 sq. ft. garage and 570 sq. ft. guest house above the garage on proposed Parcel 1, and a 5,000 sq. ft. single-family residence with attached 960 sq. ft. garage on proposed Parcel 2. Except for the guesthouse above the garage, both houses are one story in height. The house on proposed Parcel 1 will attain a maximum height of 29.2 feet at the guesthouse, with most of the other rooflines at 21 feet. The highest point of the house on proposed Parcel 2 is 29.6 feet at the chimney, with varying lower rooflines for the remainder of the house. The project site is located along the northern extent of Crest Canyon and south of the San Dieguito River Valley, on the south side of Racetrack View Drive (2835) in the City of San Diego (Torrey Pines Community).

The subject site has been addressed by the Commission on at least three separate occasions. In August, 1978, the Commission approved a four-lot subdivision (CDP #F6210) on a 38.8-acre vacant parcel that included this property, and dedication of 5 acres north of San Dieguito Drive (later renamed Racetrack View Drive for that portion east of the City of Del Mar). Then, in 1988, the Commission approved two permits for the site: CDP #6-88-92 and #6-88-364. CDP #6-88-92 proposed re-subdivision of the four lots created in F6210 into the current lot configuration, plus construction of a home on Parcel 1. The applicant was already processing building permits for two homes (the other on Parcel 2, when it was discovered that there had been landslides on the site. This required extensive excavation and recompaction of the soils, and some adjustment to the building footprint. The applicant returned to the Commission that same year with CDP application #6-88-364. This incorporated all the elements of CDP #6-88-92, along with the additional grading and site adjustments required to address the landslides, and the home on Parcel 2; the Commission approved that permit and the applicant abandoned CDP #6-88-92. The subject site is Parcel 4 of the 1988 subdivision.

CDP #6-88-364, the most recent Commission action, required recordation of open space deed restrictions on the steep slopes with native vegetation along the southern portions of all four lots. In 1988, native vegetation was only considered sensitive if it occurred on steep slopes, so the open space restrictions did not apply to the Coastal Sage Scrub (CSS) and Southern Maritime Chaparral (SMC) on the flatter portion of the site. The proposed homes, grading, landscaping, etc. would not encroach into that recorded open space area,

but Zone Two brush management associated with the home on proposed Parcel 2 would encroach into the deed restricted area.

2. Biological Resources. The subject site contains essentially three vegetation communities: disturbed non-native grassland (.92 acres), coastal sage scrub (.38 acres) and southern maritime chaparral (.53 acres). Included within these native habitat areas is the Del Mar Mesa Sand Aster (which is considered sensitive by the California Native Plant Society). In addition, the California Gnatcatcher has been observed on the site. The project site does not contain any areas identified as within the City's Multi-Habitat Planning Area (MHPA), but the MHPA borders the site on the south, east and across Racetrack View Drive to the north.

The proposed project will result in direct impacts to both coastal sage scrub (CSS) and southern maritime chaparral (SMC). Habitat impacts will result from the actual development (homes, driveways, landscaping) and necessary brush management for fire safety. Impacts include .35 acres of CSS and .19 acres of SMC. Approximately 500 Del Mar Mesa Sand Aster individuals were found scattered over the site; some will be impacted, but the biology report did not identify how many. Proposed mitigation for upland habitat impacts is through a combination of on-site preservation of the remaining on-site habitat (through a conservation easement) and payment into the City's Habitat Acquisition Fund; mitigation for the loss of Del Mar Mesa Sand Asters was considered to be included in these measures.

The North City Land Use Plan component of the City's certified LCP contains provisions for protection of sensitive habitat areas as follows:

Environmentally sensitive habitat areas should be protected against any significant disruption of habitat values, and only those uses dependent on and compatible with such resources should be allowed within such areas...

Development should be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas.

New development should first be located adjacent to developed areas able to accommodate it, and where it will not have significant adverse effects on coastal resources.

The North City LUP is a certified document dating back to the early 1980's. It specifically addressed the four communities (University, Torrey Pines, Mira Mesa, and North City West) that were identified within its boundaries at that time. Several additional North City communities have split off or otherwise been created within this same geographical area and some have since been renamed. That original document included mostly general planning policies addressing the broad range of resources within the LCP segment. The document is still in use, but, if more detailed individual LUP's for each subarea have been certified, they generally take precedence. This site is within the Torrey Pines Community of North City, and a Torrey Pines Community Plan/LCP Land

Use Plan was effectively certified in April, 1996. That document includes the following statement, on Page 19:

The North City Local Coastal Program – Land Use Plan as amended remains in full force and effect. However, should any policies contained in this document conflict with the previously adopted LCP Land Use Plan, this document shall take precedence.

In addition, because the subject site contains identified sensitive biological resources, the development is subject to the development provisions for sensitive biological resources contained in the Environmentally Sensitive Lands (ESL) Regulations of the City's certified Implementation Plan. The purpose of the ESL Regulations is to protect and preserve environmentally sensitive lands within the City and the viability of the species supported by those lands. Applicable provisions include the following:

143.0140 General Development Regulations for all Environmentally Sensitive Lands

Development that proposes encroachment into environmentally sensitive lands or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations:

[...]

- (c) No building lot shall be created that provides such a small development area that future reasonable development of the lot will require additional encroachment into environmentally sensitive lands beyond the maximum allowable development area of the original, unsubdivided premises. If additional development area is proposed for a lot that would exceed the maximum allowable development area of the original, unsubdivided premises, a deviation on accordance with Section 143.0150 is required, regardless of the lot size and the existing development area of the individual lot.

143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

[...]

- (h) Outside the MHPA, encroachment into sensitive biological resources is not limited, except as set forth in Section 143.0141(b)* and (g)*.

* The two exceptions referred to in the above citation are wetlands and their buffers, and designated open space.

Under the ESL Regulations, in order to approve development under a coastal development permit, the City must, among other findings, make a finding that the proposed development will not adversely affect environmentally sensitive lands. However, the City failed to make such a finding in this particular case. Specifically the City's findings state:

The proposed project site contains environmentally sensitive lands in the form of biological resources and steep hillsides. The proposed project, to subdivide a 1.84 acre site into two .92 acre parcels and develop the property with two single-family homes and a guest quarters has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources, (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

Nowhere in the above finding does the City state that the project will not adversely affect environmentally sensitive lands. In fact, the project will result in adverse impacts to environmentally sensitive lands in the form of direct impacts to CSS and SMC that are otherwise avoidable. As noted above, the subject site is an existing undeveloped legal lot. Approximately one-half of the subject site (.92 acres) contains non-sensitive vegetation (disturbed non-native grasslands). Currently, there is adequate development area on the existing premises to be developed with a single-family home and avoid all impacts to on-site sensitive habitats (CSS and SMC) from the development and necessary brush management. In other words, it is the subdivision of the existing legal lot into two lots that results in direct impacts to environmentally sensitive lands; the property owner can develop the existing lot and achieve economic use of the site without impacts to sensitive biological resources. Thus, no further subdivision should occur.

It should also be noted that while the subject site is not located within the mapped MHPA, the MHPA does follow exactly the property boundary on the east and south. The same sensitive biological resources that occur on the subject site are located on the adjacent MHPA lands. Thus, the fact that the on-site habitat is not included in the MHPA appears to be a potential mapping error. This has resulted in the City applying a lower standard of review for those on-site ESHAS, even though they extend beyond the site and are really part of the overall ESHA that surrounds, or is adjacent to, the site on the north, east and south. Both the SMC (Tier I) and the CSS (Tier II) are considered environmentally sensitive habitats and in this case, should not be impacted.

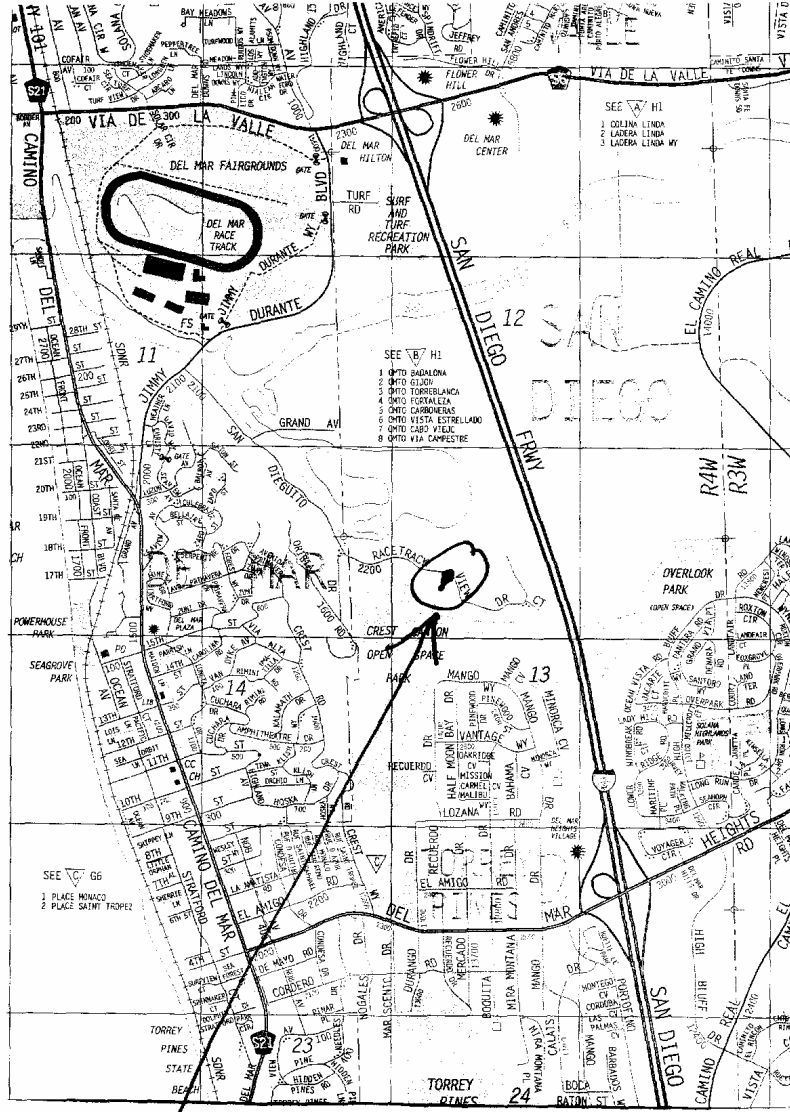
Lastly, the certified North City LUP contains provisions for protection of visual resources within the Coastal Zone. Applicable provisions include the following:

Protect scenic and visual qualities of coastal areas as a public resource.


Development should be designed to protect public views to and along the ocean and scenic coastal areas ...

The project site, which is located at the base of the northern extent of Crest Canyon, is highly visible from both Interstate 5 (southbound) and other public areas of the San Dieguito River Valley west of Interstate 5. While the proposed residential structures do conform to required building heights, setbacks and other lot development standards, the City failed to address, through enforceable conditions of approval, the screening of the proposed structures through on-site landscaping or exterior color treatments, to reduce the visibility of the proposed structures from off-site public vantage points. The City did review and approve building materials, colors, and landscaping, but, without it being required through a recorded deed restriction, future property owners will not receive notice.

A-6-NOC-07-130



Site

EXHIBIT NO. 1
APPLICATION NO.
A-6-NOC-07-130
Location Map
 California Coastal Commission

A-6-NOC-07-130

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, Ca 92037
Phone Number: (858) 551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Subdivision of a vacant 1.84 acre site into 2 lots and construction of a single-family home on each lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2835 Racetrack View Drive, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-NOC-07-130

DATE FILED: 12/28/07

DISTRICT: San Diego

RECEIVED

DEC 28 2007

COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 2
APPLICATION NO.
A-6-NOC-07-130
Appeal #1
<i>6 Pages</i>
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other

Date of local government's decision: 12/6/07

Local government's file number (if any): CDP #325414

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

<u>Rick Valles Key</u>	<u>Monty McCullough & Bret Ames</u>
<u>625 Seaward Ave.</u>	<u>11828 Rancho Bernardo Rd, Suite 205</u>
<u>Carlsbad, CA 92009</u>	<u>San Diego, CA 92129</u>

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Katie Wilson
3417 Purer Road
Escondido, CA 92029

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

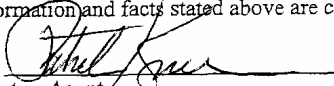
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated December 28, 2007

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 12/28/07

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A
December 28, 2007
Racetrack View Drive Subdivision Appeal

The proposed development involves the subdivision of a vacant 1.84 acre site into two .92 acre lots. Also proposed is the construction of a 5,430 sq. ft. single-family residence with attached 1,120 sq. ft. garage and 570 sq. ft. guest house on Proposed Parcel 1 and 5,000 sq. ft. single-family residence with attached 960 sq. ft. garage on Proposed Parcel 2. The project site is located along the northern extent of Crest Canyon and south of the San Dieguito River Valley, on the south side of Racetrack View Drive (2835) in the City of San Diego (Torrey Pines Community).

The subject site contains essentially three vegetation communities: disturbed non-native grassland (.92 acres), coastal sage scrub (.38 acres) and southern maritime chaparral (.53 acres). Included within these native habitats areas is the Del Mar Sand Aster (which is considered sensitive by the California Native Plant Society). In addition, the California Gnatcatcher has been observed on the site. The project site does not contain any areas identified as within the City's Multi-Habitat Planning Area (MHPA), but the MHPA borders the site on the south, east and across Racetrack View Drive to the north.

The proposed project will result in direct impacts to both coastal sage scrub (CSS) and southern maritime chaparral (SMC). Habitat impacts will result from the actual development (homes, driveways, landscaping) and necessary brush management for fire safety. Impacts include .35 acres of CSS and .19 acres of SMC. Mitigation for upland habitat impacts is through a combination of on-site preservation of the remaining on-site habitat (through a conservation easement) and payment into the City's Habitat Acquisition Fund.

The North City Land Use Plan component of the City's certified LCP contains provisions for protection of sensitive habitat areas as follows:

Environmentally sensitive habitat areas should be protected against any significant disruption of habitat values, and only those uses dependent on and compatible with such resources should be allowed within such areas...

Development should be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas.

Racetrack View Drive Subdivision Appeal
December 28, 2007
Page 2

New development should first be located adjacent to developed areas able to accommodate it, and where it will not have significant adverse effects on coastal resources.

In addition, because the subject site contains identified sensitive biological resources, the development is subject to the development provisions for sensitive biological resources contained in the Environmentally Sensitive Lands (ESL) Regulations of the City's certified Implementation Plan. The purpose of the ESL Regulations is to protect and preserve environmentally sensitive lands within the City and the viability of the species supported by those lands. Applicable provisions include the following:

143.01.0140 General Development Regulations for all Environmentally Sensitive Lands

Development that proposes encroachment into environmentally sensitive lands or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations:

[...]

- (c) No building lot shall be created that provides such a small development area that future reasonable development of the lot will require additional encroachment into environmentally sensitive lands beyond the maximum allowable development area of the original, unsubdivided premises. If additional development area is proposed for a lot that would exceed the maximum allowable development area of the original, unsubdivided premises, a deviation on accordance with Section 143.0150 is required, regardless of the lot size and the existing development area of the individual lot.

Under the ESL Regulations, in order to approve development under a coastal development permit, the City must, among others, make a finding that the proposed development will not adversely affect environmentally sensitive lands. However, the City failed to make such a finding in this particular case. Specifically the City's findings state:

The proposed project site contains environmentally sensitive lands in the form of biological resources and steep hillsides. The proposed project, to subdivide a 1.84 acre site into to .92 acre parcels and develop the property with two single-family homes and a guest quarters has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources, (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A

Racetrack View Drive Subdivision Appeal
December 28, 2007
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mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

No where in the above finding does the City state that the project will not adversely affect environmentally sensitive lands. In fact, the project will result in adverse impacts to environmentally sensitive lands in the form of direct impacts to CSS and SMC that are otherwise avoidable. As noted above, the subject site is an existing undeveloped legal lot. Approximately one-half of the subject site (.92 acres) contains non-sensitive vegetation (disturbed non-native grasslands). Currently, there is adequate development area on the existing premises to be developed with a single-family home and avoid all impacts to on-site sensitive habitats from the development and necessary brush management. In other words, it is the subdivision of the existing legal lot into two lots that results in direct impacts to environmentally sensitive lands; the property owner can develop the existing lot and achieve economic use of the site without impacts to sensitive biological resources. Thus, no further subdivision should occur.

It should be also noted that while the subject site is not located within the mapped MHPA, the MHPA does follow exactly the property boundary on the east and south. However, the same sensitive biological resources that occur on the subject site are located on the adjacent MHPA lands. Thus, the fact that the on-site habitat is not included in the MHPA, appears to be a potential mapping error. Both the SMC (Tier I) and the CSS (Tier II) are considered environmentally sensitive habitats and in this case, should not be impacted.

Lastly, the certified North City LUP contains provisions for protection of visual resources within the Coastal Zone. Applicable provisions include the following:

Protect scenic and visual qualities of coastal areas as a public resource.

Development should be designed to protect public views to and along the ocean and scenic coastal areas ...

The project site, which is located at the base of the northern extent of Crest Canyon, is highly visible from both Interstate 5 (southbound) and other public areas of the San Dieguito River Valley west of Interstate 5. While the proposed residential structures do conform to required building heights, setbacks and other lot development standards, the City failed to address the screening of the proposed structures through on-site landscaping or exterior color treatments to reduce the visibility of the proposed structures from off-site public vantage points.

A-6-NOC-07-130

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan
Mailing Address: 45 Fremont Street
Suite 2000
San Francisco, CA 94105
Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Subdivision of a vacant 1.84 acre site into 2 lots and construction of a single-family home on each lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2835 Racetrack View Drive, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-NOC-07-130

DATE FILED: 12/28/07

DISTRICT: San Diego

RECEIVED
DEC 28 2007

COASTAL DISTRICT
SENT TO COAST DIS

EXHIBIT NO. 3
APPLICATION NO.
A-6-NOC-07-130
Appeal #2
6 Pages California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other

Date of local government's decision: 12/6/07

Local government's file number (if any): CDP #325414

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Rick Valles Key Monty McCullough & Bret Ames
625 Seaward Ave. 11828 Rancho Bernardo Rd, Suite 205
Carlsbad, CA 92009 San Diego, CA 92129

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Katie Wilson
3417 Purer Road
Escondido, CA 92029

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated December 28, 2007

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Sara J. Allen*
Appellant or Agent

Date: 12/28/07

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment A
December 28, 2007
Racetrack View Drive Subdivision Appeal

The proposed development involves the subdivision of a vacant 1.84 acre site into two .92 acre lots. Also proposed is the construction of a 5,430 sq. ft. single-family residence with attached 1,120 sq. ft. garage and 570 sq. ft. guest house on Proposed Parcel 1 and 5,000 sq. ft. single-family residence with attached 960 sq. ft. garage on Proposed Parcel 2. The project site is located along the northern extent of Crest Canyon and south of the San Dieguito River Valley, on the south side of Racetrack View Drive (2835) in the City of San Diego (Torrey Pines Community).

The subject site contains essentially three vegetation communities: disturbed non-native grassland (.92 acres), coastal sage scrub (.38 acres) and southern maritime chaparral (.53 acres). Included within these native habitats areas is the Del Mar Sand Aster (which is considered sensitive by the California Native Plant Society). In addition, the California Gnatcatcher has been observed on the site. The project site does not contain any areas identified as within the City's Multi-Habitat Planning Area (MHPA), but the MHPA borders the site on the south, east and across Racetrack View Drive to the north.

The proposed project will result in direct impacts to both coastal sage scrub (CSS) and southern maritime chaparral (SMC). Habitat impacts will result from the actual development (homes, driveways, landscaping) and necessary brush management for fire safety. Impacts include .35 acres of CSS and .19 acres of SMC. Mitigation for upland habitat impacts is through a combination of on-site preservation of the remaining on-site habitat (through a conservation easement) and payment into the City's Habitat Acquisition Fund.

The North City Land Use Plan component of the City's certified LCP contains provisions for protection of sensitive habitat areas as follows:

Environmentally sensitive habitat areas should be protected against any significant disruption of habitat values, and only those uses dependent on and compatible with such resources should be allowed within such areas...

Development should be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas.

Racetrack View Drive Subdivision Appeal
December 28, 2007
Page 2

New development should first be located adjacent to developed areas able to accommodate it, and where it will not have significant adverse effects on coastal resources.

In addition, because the subject site contains identified sensitive biological resources, the development is subject to the development provisions for sensitive biological resources contained in the Environmentally Sensitive Lands (ESL) Regulations of the City's certified Implementation Plan. The purpose of the ESL Regulations is to protect and preserve environmentally sensitive lands within the City and the viability of the species supported by those lands. Applicable provisions include the following:

143.01.0140 General Development Regulations for all Environmentally Sensitive Lands

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Under the ESL Regulations, in order to approve development under a coastal development permit, the City must, among others, make a finding that the proposed development will not adversely affect environmentally sensitive lands. However, the City failed to make such a finding in this particular case. Specifically the City's findings state:

The proposed project site contains environmentally sensitive lands in the form of biological resources and steep hillsides. The proposed project, to subdivide a 1.84 acre site into to .92 acre parcels and develop the property with two single-family homes and a guest quarters has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources, (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A

Racetrack View Drive Subdivision Appeal
December 28, 2007
Page 3

mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

No where in the above finding does the City state that the project will not adversely affect environmentally sensitive lands. In fact, the project will result in adverse impacts to environmentally sensitive lands in the form of direct impacts to CSS and SMC that are otherwise avoidable. As noted above, the subject site is an existing undeveloped legal lot. Approximately one-half of the subject site (.92 acres) contains non-sensitive vegetation (disturbed non-native grasslands). Currently, there is adequate development area on the existing premises to be developed with a single-family home and avoid all impacts to on-site sensitive habitats from the development and necessary brush management. In other words, it is the subdivision of the existing legal lot into two lots that results in direct impacts to environmentally sensitive lands; the property owner can develop the existing lot and achieve economic use of the site without impacts to sensitive biological resources. Thus, no further subdivision should occur.

It should be also noted that while the subject site is not located within the mapped MHPA, the MHPA does follow exactly the property boundary on the east and south. However, the same sensitive biological resources that occur on the subject site are located on the adjacent MHPA lands. Thus, the fact that the on-site habitat is not included in the MHPA, appears to be a potential mapping error. Both the SMC (Tier I) and the CSS (Tier II) are considered environmentally sensitive habitats and in this case, should not be impacted.

Lastly, the certified North City LUP contains provisions for protection of visual resources within the Coastal Zone. Applicable provisions include the following:

Protect scenic and visual qualities of coastal areas as a public resource.

Development should be designed to protect public views to and along the ocean and scenic coastal areas ...

The project site, which is located at the base of the northern extent of Crest Canyon, is highly visible from both Interstate 5 (southbound) and other public areas of the San Dieguito River Valley west of Interstate 5. While the proposed residential structures do conform to required building heights, setbacks and other lot development standards, the City failed to address the screening of the proposed structures through on-site landscaping or exterior color treatments to reduce the visibility of the proposed structures from off-site public vantage points.

A-6-NOC-07-130

PLANNING COMMISSION
RESOLUTION NO. PC-
COASTAL DEVELOPMENT PERMIT NO. 325414
SITE DEVELOPMENT PERMIT NO. 326387
PLANNED DEVELOPMENT PERMIT NO. 438751
NEIGHBORHOOD USE PERMIT NO. 438758
RACETRACK VIEW DRIVE

WHEREAS, RUSSELL V. VALLES KEY, BRETT E. AMES, AND MONTY E. McCULLOUGH, Owner/Permittee, filed an application with the City of San Diego for a permit to subdivide a 1.84 acre lot into two parcels and construct two single family dwellings and a guest quarters (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit Nos. 325414, 326387, 438751 and 438758) on portions of a 1.84 acre site;

WHEREAS, the project site is located at 2835 Racetrack View Drive in the RS-1-1 Zone, Coastal Overlay Zone (appealable), and Coastal Height Limit Overlay Zone of the Torrey Pines Community Plan;

WHEREAS, the project site is legally described as Parcel 4 of Parcel Map 14043;

WHEREAS, on December 6, 2007, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 325414, Site Development Permit No. 326387, Planned Development Permit No. 438751, and Neighborhood Use Permit No. 438758 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings dated December 6, 2007.

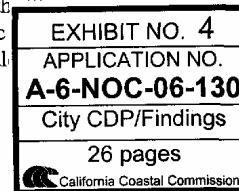
FINDINGS:

Coastal Development Permit - Section 126.0708

A. Findings for All Coastal Development Permits

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, is located adjacent to the San Dieguito Lagoon and Crest Canyon Open Space area. The development is not adjacent to or near an existing physical access way legally utilized by the public or identified in the Community Plan, nor is the development adjacent to the ocean or other scenic vantage points. The development does not obstruct any public views to and al



any scenic coastal areas, as identified in the adopted Local Coastal Program.

2. The proposed coastal development will not adversely affect environmentally sensitive lands; and

The proposed project site contains environmentally sensitive lands in the form of biological resources and steep hillsides. The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, is in conformity with the low density land use designation of the Residential Element of the Torrey Pines Community Plan and the Local Coastal Program and complies with the regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

The project site is located at 2835 Racetrack View Drive and is not in a location that has been used by the public for physical access nor is it identified in the Local Coastal Program as a proposed public access way. The project site is located adjacent to the San Dieguito Lagoon, Crest Canyon Open Space area and the Del Mar Racetrack. The structures have been design to be low profile, stepped to fit the natural contour, and landscaped in an effort to have this development blend into the hillside so it will not have any visual impacts on nearby recreational visitor-serving facilities. The proposed development is, therefore, in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, will be developed consistent with the

Torrey Pines Community Plan which designates the site for very low density residential land use (0-4 dwelling units per acre), and therefore no adverse impacts will occur as a result of project implementation.

2. The proposed development will not be detrimental to the public health, safety, and welfare; and

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

The permit prepared for the project includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the City's Land Development Code in effect for this site. These conditions include a requirement to obtain a Grading Permit and Building Permit to show that all construction will comply with applicable regulations to address slope stability, protection of property, erosion control, water quality, landform preservation, and building safety to protect the public health, safety and welfare of persons, property, and the environment.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed project site is located within the RS-1-1 Zone, Coastal Overlay and Coastal Height Limit Overlay Zones. The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters will comply with all applicable regulations of the Land Development Code except where deviations are allowed with a Planned Development Permit (see Planned Development Permit findings below). The applicant is requesting a deviation from the property development regulations for minimum street frontage (Parcel 2 has no street frontage where the zone requires a minimum of 100-feet).

B. Supplemental Findings--Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters has been designed to minimize alternation of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. As a condition of this permit, the applicant will be required to submit construction documents showing compliance with applicable regulations to address slope stability, protection of property, erosion control, landform preservation, and building safety.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, abuts Crest Canyon Park, which is part of the City's Multi-Habitat Planning Area (MHPA). The project has been reviewed to assure compliance with the Land Use Adjacency Guidelines in the Multiple Species Conservation Program (MSCP). The proposed landscaping plan has been designed to ensure that no invasives are introduced into the area. Potentially significant impacts to nesting California gnatcatchers within the MHPA will be addressed through mitigation measures contained in the Mitigation, Monitoring and Reporting Program (MMRP). No impacts related to runoff are expected to impact Crest Canyon Park as this area slopes upwards from the proposed development footprint. Any potential construction-related water quality impacts to areas within the MHPA downstream of the project site would be addressed through existing City regulations which govern construction activities. Lastly, other MMRP conditions will be included to ensure that construction activities do not result in any significant impacts to the existing open space easement and all sensitive habitats to be preserved on site are protected. Therefore, the proposed development is consistent with the MSCP Subarea Plan.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

The project site is located at 2835 Racetrack View Drive. The site does not contain and is not adjacent to any public beaches, and is located approximately one-half mile from the Pacific

Ocean. With project implementation no changes are proposed to the course or direction of water movements or the flow of flood waters, and the proposed project will therefore not impact the local shoreline and sand supply.

6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

Planned Development Permit - Section 126.0604

A. Findings for all Planned Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, will be developed consistent with the Torrey Pines Community Plan which designates the site for very low density residential land use (0-4 dwelling units per acre), and therefore no adverse impacts will occur as a result of project implementation.

2. The proposed development will not be detrimental to the public health, safety, and welfare;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

The permit prepared for the project includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the City's Land Development Code in effect for this site. These conditions include a requirement to obtain a Grading Permit and Building Permit to show that all construction will comply with applicable regulations to address slope stability, protection of property, erosion control, water quality, landform preservation, and building safety to protect the public health, safety and welfare of persons, property, and the environment.

3. The proposed development will comply with the regulations of the Land Development Code;

The proposed project site is located within the RS-1-1 Zone, Coastal Overlay and Coastal Height Limit Overlay Zones. The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters will comply with all applicable regulations of the Land Development Code except where deviations are allowed with a Planned Development Permit (see Planned Development Permit findings below). The applicant is requesting a deviation from the property development regulations for minimum street frontage (Parcel 2 has no street frontage where the zone requires a minimum of 100-feet).

4. The proposed development, when considered as a whole, will be beneficial to the community; and

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, will be developed consistent with the Torrey Pines Community Plan which designates the site for very low density residential land use (0-4 dwelling units per acre). The use of a private access easement across Parcel 1 for the driveway of Parcel 2 is beneficial to the community as it allows the development of two single family dwellings while minimizing landform changes and visual impacts to the hillsides.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters will comply with all applicable regulations of the Land Development Code except for minimum street frontage (Parcel 2 has no street frontage where the zone requires a minimum of 100-feet). The use of a private access easement across Parcel 1 for the driveway of Parcel 2 allows the development of two single family dwellings while minimizing landform changes and visual impacts to the hillsides.

Neighborhood Use Permit - Section 126.0205

A. Findings for all Neighborhood Use Permits

1. The proposed development will not adversely affect the applicable land use plan;

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, will be developed consistent with the Torrey Pines Community Plan which designates the site for very low density residential land use (0-4 dwelling units per acre). Guest quarters are an accessory use to single family homes and are not specifically regulated in the land use plan; therefore, no adverse impacts will occur as a result of project implementation.

2. The proposed development will not be detrimental to the public health, safety, and welfare; and

The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters, has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance.

The permit prepared for the project includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the City's Land Development Code in effect for this site. These conditions include a requirement to obtain a Grading Permit and Building Permit to show that all construction will comply with applicable regulations to address slope stability, protection of property, erosion control, water quality, landform preservation, and building safety to protect the public health, safety and welfare of persons, property, and the environment.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed project site is located within the RS-1-1 Zone, Coastal Overlay and Coastal Height Limit Overlay Zones. The proposed project, to subdivide a 1.84 acre site into two 0.92 acre parcels and develop the property with two single-family homes and a guest quarters will comply with all applicable regulations of the Land Development Code except where deviations are allowed with a Planned Development Permit (see Planned Development Permit findings below). The applicant is requesting a deviation from the property development regulations for minimum street frontage (Parcel 2 has no street frontage where the zone requires a minimum of 100-feet). Guest quarters are permitted with a Neighborhood Use Permit in the RS-1-1 Zone.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Coastal Development Permit No. 325414, Site Development Permit No. 326387, Planned Development Permit No. 438751, and Neighborhood Use Permit No. 438758 are hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 325414, 326387, 438751, and 438758, a copy of which is attached hereto and made a part hereof.

LESLIE GOOSSENS
Development Project Manager
Development Services

Adopted on: December 6, 2007

Job Order No. 42-6263

cc: Legislative Recorder, Planning Department

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-6263

COASTAL DEVELOPMENT PERMIT NO. 325414
SITE DEVELOPMENT PERMIT NO. 326387
PLANNED DEVELOPMENT PERMIT NO. 438751
NEIGHBORHOOD USE PERMIT NO. 438758
RACETRACK VIEW DRIVE [MMRP]
PLANNING COMMISSION

This Coastal Development Permit No. 325414, Site Development Permit No. 326387, Planned Development Permit No. 438751, and Neighborhood Use Permit No. 438758 is granted by the Planning Commission of the City of San Diego to RUSSELL V. VALLES KEY, BRETT E. AMES, AND MONTY E. McCULLOUGH, Tenants in Common, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0701, 126.0501, 126.0601, 126.0201. The 1.84 acre site is located at 2835 Racetrack View Drive in the RS-1-1 Zone, Coastal Overlay Zone (appealable), and Coastal Height Limit Overlay Zone of the Torrey Pines Community Plan. The project site is legally described as Parcel 4 of Parcel Map 14043.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to subdivide a 1.84 acre site into two (2) 0.92 acre parcels and develop the property with two (2) single-family homes and a guest quarters, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 6, 2007, on file in the Development Services Department.

The project shall include:

- a. Construction on Parcel 1 of a 5,430 sq. ft. single family dwelling, 1,130 square foot garage, and 570 sq. ft. guest quarters, including grading, landscaping and associated site improvements;
- b. Construction on Parcel 2 of a 5,000 square foot single family dwelling and a 960 square foot garage, including grading, landscaping and associated site improvements;

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- c. Deviations to minimum street frontage for Parcel 2, allowing no street frontage along Racetrack View Drive where 100 feet is required by the RS-1-1 Zone;
 - d. Landscaping/Brush Management (planting, irrigation and landscape related improvements);
 - e. Off-street parking; and
 - f. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, or following all appeals.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

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6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.
9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
10. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
11. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit is required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable,

or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

13. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project

14. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Mitigated Negative Declaration No. 99387, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

15. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Mitigated Negative Declaration No. 99387, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Historical Resources (Archaeology)
- Paleontology
- MHPA Land Use Adjacency
- Biological Resources

16. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

AFFORDABLE HOUSING REQUIREMENTS:

17. Prior to the issuance of the first residential building permit, the applicant shall comply with the affordable housing requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13) of the Land Development Code, which requires that the project provide 10 percent of the units as affordable or pay an in lieu fee.

LANDSCAPE REQUIREMENTS:

18. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit 'A,' on file in the Office of the Development Services Department.

19. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the Development Services Department for approval. Improvement plans shall take into account a 40 sq-ft area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

20. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit 'A,' *Landscape Development Plan*, on file in the Office of the Development Services Department. Construction plans shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

21. Prior to final inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

22. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

23. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance

District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

24. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or final inspection.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

25. Prior to issuance of any engineering permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit 'A'.

26. Prior to issuance of any building permits, a complete set of brush management construction documents shall be submitted for approval to the Development Services Department. The construction documents shall be in substantial Conformance with Exhibit 'A' and shall comply with the Uniform Fire Code, SDMC 55.0101, the Landscape Standards, and the Land Development Code Section 142.0412.

27. The Brush Management Program shall consist of two zones consistent with the Brush Management regulations of the Land Development Code section 142.0412 as follows:

- a. Lot 1 shall have a minimum 41-ft Zone One between the existing structure and eastern property line, with 0-ft Zone Two;
- b. Lot 2 shall have a minimum 37-ft Zone One with 20-ft Zone Two;
- c. Brush Management along the south side of the structure on Lot 2 shall observe an expanded 44-ft Zone One and 20-ft Zone Two.

28. All new constructions within 300 feet of the boundary between Brush Management Zone One and Brush Management Zone Two shall comply with building standards and policy per 2001 California Building Code, San Diego Municipal Code Chapter 14, Art. 5, Div. 5 and Chapter 14, Art. 2, Div. 4.

29. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) are not permitted, while non-combustible accessory structures may be approved within the designated Zone One area subject to Fire Marshall and the Development Services Departments approval.

30. The following note shall be provided on the Brush Management Construction Documents: 'It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and the development Services Department to discuss and outline the implementation of the Brush Management Program.'

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31. In Zones One and Two, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section.
32. Prior to Final Inspection and Framing Inspection for any building, the approved Brush Management Program shall be implemented.
33. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

PLANNING/DESIGN REQUIREMENTS:

34. No fewer than 6 off-street parking spaces (4 spaces on Parcel 1 and 2 spaces on Parcel 2) shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," on file in the Office of the Development Services Department. Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the Development Services Department.
35. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
36. The Owner/Permittee shall post a copy of the approved discretionary permit or Tentative Map in the sales office for consideration by each prospective buyer.
37. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

WASTEWATER REQUIREMENTS:

38. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer laterals.
39. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.
40. All onsite sewer facilities shall be private.
41. The developer shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

WATER REQUIREMENTS:

42. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.

- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the Planning Commission of the City of San Diego on December 6, 2007 by Resolution No. PC-~~xxxx~~.

Permit Type/PTS Approval No.: CDP 325414
SDP 326387
PDP 438751
NUP 438758

Date of Approval: December 6, 2007

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

LESLIE GOOSSENS
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1180 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

Owner/Permittees:

By _____
RUSSELL V. VALLES KEY

By _____
BRETT E. AMES

By _____
MONTY E. McCULLOUGH

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

PLANNING COMMISSION RESOLUTION NO. **-PC-xxxx**
TENTATIVE MAP NO. 326386
RACETRACK VIEW DRIVE - PROJECT NO. 99387

WHEREAS, RUSSELL V. VALLES KEY, BRETT E. AMES, AND MONTY E. McCULLOUGH, Applicant/Subdivider, and BRUCE A. ROBERTSON OF REC CONSULTANTS, INC., Engineer, submitted an application with the City of San Diego for a Tentative Map, No. 326386, for the subdivision of a 1.84 acre parcel into two .92 acre parcels. The project site is located at 2835 Racetrack View Drive and is described as Parcel 4 of Parcel Map 14043 within the Torrey Pines Community Plan; and

WHEREAS, the Map proposes the subdivision of a 1.84 acre site into two .92 acre parcels; and

WHEREAS, Mitigated Negative Declaration No. 99387 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) guidelines which addresses potential impacts to biology, Multiple Habitat Planning Area, and archaeology. A Mitigation, Monitoring and Reporting Program would be implemented with this project to reduce the impacts to a level below significance; and

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

WHEREAS, on December 6, 2007, the Planning Commission of the City of San Diego considered Tentative Map No. 326386, and pursuant to Section 125.0440 of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66428, received for its consideration written and oral presentations, evidence having been submitted, and heard testimony from all interested parties at the public hearing, and the Planning Commission having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 326386:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (Land Development Code Section 125.0440.a and State Map Action Sections 66473.5, 66474(a), and 66474(b)).
2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (Land Development Code Section 125.0440.b).

3. The site is physically suitable for the type and density of development (Land Development Code Section 125.0440.c and State Map Act Sections 66474(c) and 66474(d)).
4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (Land Development Code Section 125.0440.d and State Map Act Section 66474(e)).
5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (Land Development Code Section 125.0440.e and State Map Act Section 66474(f)).
6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (Land Development Code Section 125.0440.f and State Map Act Section 66474(g)).
7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Land Development Code Section 125.0440.g and State Map Act Section 66473.1).
8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (Land Development Code Section 125.0440.h and State Map Act Section 66412.3).
9. The proposed subdivision complies with the parking regulations of the Land Development Code (Land Development Code Section 142.0505).
10. That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that, based on the Findings hereinbefore adopted by the Planning Commission, Tentative Map No. 326386, is hereby granted to RUSSELL V. VALLES KEY, BRETT E. AMES, AND MONTY E. McCULLOUGH, Applicant/Subdivider, subject to the following conditions:

GENERAL

1. This Tentative Map will expire December 6, 2010.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Parcel Map, unless otherwise noted.

3. Prior to the issuance of the Parcel Map taxes must be paid on this property pursuant to section 66492 of the Subdivision Map Act. A tax certificate, recorded in the office of the County Recorder, must be provided to satisfy this condition.
4. The Parcel Map shall conform to the provisions of Coastal Development Permit No. 325414; Site Development Permit No. 326387; Planned Development Permit No. 438751; and Neighborhood Use Permit No. 438758.
5. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant

ENGINEERING

6. The subdivider shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
7. The subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the San Diego Municipal Code.
8. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
9. The subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

10. The subdivider shall provide a private drainage easement across Parcel 1 for the proposed concrete brow ditch and private road which conveys drainage from Parcel 2.
11. The subdivider shall construct City standard sidewalk adjacent to the site on Racetrack View Drive.
12. The subdivider shall dedicate a 10 foot wide public drainage easement centered over the existing storm drain pipe located at the northeast corner of Parcel 1.
13. The subdivider shall construct two (2) 12-foot driveways along Racetrack View Drive. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16, and SDG-100.
14. The subdivider shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01(NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.
15. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.
16. The subdivider shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, in accordance with the approved Water Quality Technical Report.
17. The subdivider shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
18. The subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

19. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

20. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
21. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
22. The Parcel Map shall:
- a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true meridian (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

SEWER AND WATER

23. All onsite sewer facilities shall be private.
24. The subdivider shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

25. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer laterals.
26. The subdivider shall design and construct a new 6-inch diameter fire hydrant service connection to the 20-inch diameter D.I. water main adjacent to the property with a new 6-inch diameter flange, flange gate valve, along with a 6-inch diameter water main extension to serve the new water services and existing fire hydrant, in a manner satisfactory to the Water Department Director and the City Engineer.
27. The subdivider shall assure, by permit and bond, the design and construction of new water service(s) as needed utilizing the newly constructed 6-inch diameter distribution water main within the Racetrack View Drive right-of-way.
28. The Subdivider shall design and construct all new water service(s) outside of any driveway, in a manner satisfactory to the Water Department Director and the City Engineer.
29. The subdivider shall assure, by permit and bond, the design and construction of a new fire hydrant to replace the existing fire hydrant adjacent to the property within the Racetrack View Drive right-of-way.
30. The Subdivider shall apply for a plumbing permit for the installation of appropriate private back flow prevention devices(s) on each water service (domestic, fire, and irrigation), in a manner satisfactory to the Water Department Director, the City Engineer, and the Cross Connection Supervisor in the Customer Support Division of the Water Department.
31. The Subdivider shall design and construct all proposed public water facilities, including services and meters, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.

GEOLOGY

32. Prior to the issuance of a grading permit, a geotechnical report shall be submitted and approved by the City Engineer in accordance with the City of San Diego's Technical Guidelines for Geotechnical Reports."

LANDSCAPE

33. Prior to the recordation of the Parcel Map, the subdivider shall submit complete landscape construction documents, including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required right-of-way, slope revegetation and hydroseeding of all disturbed land in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. The landscape construction documents shall be in substantial conformance with Exhibit "A", Landscape Development Plan on file in the Office of the Development Services Department. The applicant shall assure by permit and bond the installation of landscaping per landscape construction documents.
34. Prior to issuance of any engineering permits for grading, the subdivider shall enter into a Landscape Establishment and Maintenance Agreement (LEMA) to assure long-term establishment and maintenance of all common area slope revegetation. The LEMA shall be approved by the Landscape Section of the Development Services Department and shall commence prior to release of the performance bond covering the terms of the agreement.
35. Prior to recordation of the Parcel Map, the subdivider shall identify on a separate sheet titled 'Non-title Sheet' the brush management areas in substantial conformance with Exhibit 'A.' These brush management areas shall be identified with a hatch symbol with no specific dimensions or zones called out. The following note shall be provided on the 'Non-title sheet' to identify the hatched areas: "Indicates fire hazard zones per Section 142.0412 of the Land Development Code."

ENVIRONMENTAL

36. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.
37. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Mitigated Negative Declaration No, 99387, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.
38. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Mitigated Negative Declaration No, 99387, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All

mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Historical (Archaeology)
Paleontology
MHPA Land Use Adjacency
Biological Resources

39. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

INFORMATION:

- The approval of this Tentative Map by the Planning Commission of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer. Municipal Code Section 142.0607.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF
SAN DIEGO, CALIFORNIA, ON DECEMBER 6, 2007

By _____
LESLIE GOOSSENS
Development Project Manager
Development Services Department

Job Order No. 42-6263

Rev 04/13/07 rh

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01-15-2008

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January 14, 2008

Ms. Ellen Lirley and Mr. Lee McEachern
California Coastal Commission
San Diego Area
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Subject: Appeal No. A-6-NOC-07-130

Dear Ms. Lirley and Mr. McEachern:

We are pleased to submit our response to Appeal No. A-6-NOC-07-130 for your consideration.

Project Background

The proposed development involves the subdivision of a vacant 1.84-acre site into two .92-acre lots with proposed construction of single-family residences on each lot. The project site is located along the northern extent of Crest Canyon on the south side of Racetrack View Drive in the Torrey Pines Community in the City of San Diego.

The proposed project will result in direct impacts to coastal sage scrub (CSS) and southern maritime chaparral (SMC), as well as disturbed non-native grassland. The habitat impacts that will result from the development of the homes and necessary brush management include 0.35-acres of CSS, 0.19-acres of SMC, and 0.84-acres of non-native grassland. Mitigation for habitat impacts is through a combination of on-site preservation of the remaining on-site habitat through a conservation easement and payment into the City's Habitat Acquisition Fund.

Previous Coastal Development Permit for Subject Property

On August 16, 1978 Coastal Development Permit No. A-209-78, also referenced as Coastal Development Permit #F6210, (hereinafter "Permit", attached as Attachment A) was issued for the subject property. The Permit was issued as part of the approval for a four-lot subdivision of which this property is Parcel 4. The Permit states as follows (emphasis added for relevance):

"NOW, THEREFORE, in consideration of the granting of Permit No. A-209-78 to the Owner by the California Coastal Commission, the Owner

Received
JAN 15 2008

California Coastal Commission
San Diego

EXHIBIT NO. 4
APPLICATION NO. A-6-NOC-07-130
Applicant's Response
41 Pages California Coastal Commission

hereby irrevocably covenants with the California Coastal Commission that there be and hereby is granted the following restrictions on the use and enjoyment of the Property, to be attached to and become a part of the deeds to the Property. The undersigned Owner, for itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

1. There shall be no further subdivision of Parcel 1 and Parcel 2 of the Property.
2. **Future subdivision of Parcel 3 and Parcel 4 of Property shall be limited to no more than one two-way split of each lot."**

Subsequent to the issuance of Permit No. A-209-78/#F6210, CDP No. 6-88-364 was issued on February 16, 1988 and amended the previous Permit in order to address a development application for Parcel 1 and Parcel 2 (Attachment B). At that time, the future subdivision of Parcel 3 and Parcel 4 was again addressed. In the Staff Report prepared on October 31, 1988 (Attachment C), it is stated as follows:

"When the applicant applies for a coastal development permit for the further subdivisions of Parcels 3 and 4, it will be necessary that a geology report, as detailed as the one prepared for Parcels 1 and 2, be submitted with the application. This will allow reviewing power to approve only those parcels which have adequate, stable building area, and require no encroachments into the designated open space."

The past approvals by the Coastal Commission clearly anticipated that Parcel 4 would be split to create two lots and a deed restriction was placed upon the property as such. Further, in compliance with CDP No. 6-88-364 our application with the City of San Diego included a detailed geological report with an addendum, a copy of which you have been provided. This report identifies that there is adequate stable building area for the two parcels to be created. Likewise, in conformance with CDP No. 6-88-364 there are no encroachments into the designated open space proposed for this project.

Precedence Established by Previous Coastal Development Permit Granted for Adjacent Property

On September 20, 2001 Tentative Map, **Coastal Development Permit, Site Development Permit, and a Planned Development Permit No. 40-014** was approved by the City of San Diego Planning Commission for the lot directly adjacent to the subject property to the west (identified as Parcel 3 in CDP Nos. A-209-78/#F6210 and 6-88-364). The granting of the Permit was not appealed by the California Coastal Commission.

The property involved was also a 1.84-acre parcel subdivided into two .92-acre parcels. Similarly, the proposed development had impacts to CSS, SMC, and non-native grasslands. Each of these impacts was mitigated to below a level of significance using the same methods identified for this project (through a combination of on-site preservation and payment into the HAF). To ensure that the site development would avoid significant environmental impacts, a Mitigation Monitoring and Reporting Program was also required.

There are no substantial differences between the previously approved project for which a CDP was issued and the proposed project under Appeal that would justify the denial of the Coastal Development Permit.

Issue of Appeal – Conformance with Torrey Pines Community Plan

Attachment A to Appeal No. A-6-NOC-07-130 incorrectly applies provisions for the protection of sensitive habitats included in the North City Land Use Plan component of the City's certified LCP. The property is actually subject to the Torrey Pines Community Plan component of the City's certified LCP. Page 17 of the Torrey Pines Community Plan states:

"The North City Local Coastal Program Land Use Plan (LCP) was adopted by the San Diego City Council in March 1981, revised in May 1985, and revised again in March 1987. The LCP, as amended, remains in full force and effect. However, should any policies contained in this document conflict with the previously adopted LCP Land Use Plan, this document [the Torrey Pines Community Plan] shall take precedence." (Emphasis added)

The Torrey Pines Community Land Use Plan identifies the following Key Policies that are applicable to this project:

1. All development adjacent to open space areas shall be designed to reduce visual and development impacts.
3. Residential development shall reflect the diversity of existing homes in the community, and shall be in compliance with all development regulations.

Key Policy #1 clearly states that development adjacent to open space areas shall be designed to reduce the impacts of development. It does not state that there should emphatically be NO impacts caused by development. As will be demonstrated later in this document, the proposed single family homes fully comply with Key Policy #3.

Further, Page 27 of the Torrey Pines Community Plan outlines the following policies:

1. Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.
2. Development impacts to rare, threatened, endangered, or candidate species shall be minimized or eliminated.
3. No filling, clearing, grubbing, or other disturbance of biologically sensitive habitats shall be permitted without approved mitigation plans.

There is no such statement in the Torrey Pines Community Plan that there can be no impact – only no negative impact. Policy #2 and Policy #3 above contemplate that impacts to environmentally sensitive habitat can be mitigated to a level below the threshold of significance. The language here clearly implies that impacts can be made so long as they are mitigated appropriately with an approved mitigation plan. A site specific Mitigation Monitoring and Reporting Plan has been approved for this project and the environmental impacts were adequately addressed within the requirements of this document, of which you have a copy. After implementation, no adverse impacts to environmentally sensitive lands will occur. All of the impacts are reduced to below a level of significance through a combination of preservation measures and payment into the Habitat Acquisition Fund (HAF).

- o Mitigation for the impact to 0.35-acres of CSS is broken up into 0.337-acres being mitigated through payment into the HAF at a 1:1 ratio. The remaining 0.013-acres of impact will be preserved on-site at the appropriate 1.5:1 ratio, resulting in 0.02-acres to be preserved.
- o Mitigation for the impacts to 0.84-acres of non-native grasslands would be broken up into 0.79-acres being mitigated through payment into the HAF at a 0.5:1 ratio resulting in a payment equal to the value of 0.395-acres. The remaining 0.05-acres would be mitigated through on-site preservation at a 1:1 ratio resulting in 0.05-acres being preserved.
- o Mitigation for the impacts to 0.19-acres of SMC would be broken up into a payment into the HAF for 0.05-acres at a 1:1 ratio with the remaining 0.14-acres to be mitigated on-site at a 2:1 ratio for a total of 0.28-acres preserved.

The recommendations and development criteria of the LCP have been incorporated into the individual elements of the Torrey Pines Community Plan. Due to the standard of review established in the Coastal Act of 1976, an LCP Land Use Plan must contain a great deal of specificity to direct the formulation of suitable implementing ordinances. Therefore, more specific and detailed

supplemental coastal development policies not contained within the main body of this Plan are found in Appendix E of the document.

In regard to development in areas of sensitive vegetation, Appendix E states as follows (page 117):

"In addition, to the extent applicable, all new development within the coastal zone shall be designed to be consistent with multi-species and multi-habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Program, and shall comply with the City of San Diego MSCP Interim Habitat Loss Permit Process, or shall obtain an incidental take permit under Section 4d, Section 7 or Section 10a of the Endangered Species Act related to the California Gnatcatcher. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game."

The proposed project fully complies with these requirements.

Issue of Appeal – City of San Diego Environmentally Sensitive Lands Regulations

The Environmentally Sensitive Lands Regulations are contained in the City's Land Development Code. Section 143.0110(b) identifies the appropriate development regulations, the required decision process, and the permitted uses applicable to various types of development proposals that propose to encroach into environmentally sensitive lands. The pertinent section of the table is copied below:

		Wetlands (Not Applicable)	Sensitive Bio Resources Other than Wetlands (Applicable)
Single dwelling units on lots or multiple lots totaling more than 15,000 square feet	R	143.0110(a)(5)	143.0141
	P	SDP Process Three	SDP Process Three
	U	143.0130(d)(c)	--

Section 143.0140 identifies the General Development Regulations for all Environmentally Sensitive Lands and states that development that proposes encroachment into environmentally sensitive lands is subject to the following regulation:

Section 143.0140(b) – The allowable development area for all proposed subdivisions is based on the existing lot or premises to be subdivided. If no development is proposed on any newly created lot, the future

development area of the lot shall be indicated on the required grading plan and included in the maximum allowable development area calculation for the subdivision.

In this application, development is proposed on the newly created lots and is thus indicated on the plans, in compliance with this section.

The Appeal cites the following section of the Land Development Code Environmentally Sensitive Lands Regulations:

Section 143.0140(c) - No building lot shall be created that provides such a small development area that future reasonable development of the lot will require additional encroachment into environmentally sensitive lands beyond the maximum allowable development area of the original, unsubdivided premises. If additional development area is proposed for a lot that would exceed the maximum allowable development area of the original, unsubdivided premises, a deviation in accordance with Section 143.0150 is required, regardless of the lot size and the existing development area of the individual lot.

Section 143.0141 of the Development Regulations for Sensitive Biological Resources addresses the maximum allowable development area of the property. The proposed subdivision is in compliance with this section, which states (emphasis added for relevancy where appropriate):

"Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(h) Outside the MHPA, encroachment into sensitive biological resources is not limited, except as set forth in Section 143.0141(b) [wetlands, not applicable] and (g) [land designated as open space, not applicable].

(i) All development occurring in sensitive biological resources is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact.

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- (1) Acquisition or dedication of another site that can serve to mitigate the project impacts, with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site.
 - (2) Preservation or dedication of on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted site.
 - (3) In circumstances where the area of impact is small, monetary payment of compensation into a fund in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.
- (j) Grading during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego MSCP Subarea Plan.
 - (k) Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval."

These all address the maximum allowable development area of the existing lot. Having complied with each of the above requirements, the proposed subdivision does not result in an encroachment beyond the maximum allowable development area of the unsubdivided property.

Issue of Appeal – Finding of No Adverse Impact

The Appeal indicates that the City did not specifically state in its findings that the project will not adversely affect environmentally sensitive lands. The language in the pertinent finding (reproduced below) clearly acknowledges the impact and

states that the Mitigation Monitoring and Reporting Program to be implemented will reduce the impacts to a level below significance. Clearly, this is a finding of no adverse impact.

"The proposed project site contains environmentally sensitive lands in the form of biological resources and steep hillsides. The proposed project, to subdivide a 1.84 acre site into to .92 acre parcels and develop the property with two single-family homes and a guest quarters has been reviewed in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was prepared which addresses potential impacts to Historical Resources (Archaeology), Paleontology, Biological Resources, and the Multiple Habitat Planning Area. A Mitigation Monitoring and Reporting Program would be implemented with this project to reduce the impacts to below a level of significance."

Further, in the discussion contained in the Appeal it is stated that there is adequate development area on the existing premises that could be developed with a single-family home and avoid all impacts to on-site sensitive habitats from the development and necessary brush management. This is not an accurate assessment. It is not possible to develop anything that would be considered an economically viable project on the parcel without impacting habitat since the City's guidelines consider even non-native grassland to have habitat value. It is impossible to develop the property in a manner such as to avoid all impacts.

Issue of Appeal – MHPA Adjacency

The Appeal accurately states that the subject site is located outside of the mapped MHPA boundary. The appropriateness of the mapped MHPA boundaries is not relevant to this project. The boundaries are mapped and recorded and the project has been designed in accordance with the regulations applicable to properties located outside the MHPA boundaries.

Issue of Appeal – Protection of Visual Resources

Again, the Appeal incorrectly applies the North City Land Use Plan document to this project. The primary applicable Land Use Plan is the Torrey Pines Community Plan. Related to protection of visual resources, the Torrey Pines Community Plan states as follows:

Page 31 – Addressing development adjacent to Crest Canyon as follows:

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"Design of dwelling units adjacent to State Reserve Extension and Crest Canyon shall stress a blending of architecture with the natural terrain. Architectural shapes, bulk, materials, and landscaping should be carefully chosen to respect the physical constraints of the land."

Site planning and design features were incorporated to be sensitive to the natural resources surrounding the property and to be compatible with the existing developed neighborhood.

Single story structures were designed to facilitate the blending of the architecture with the natural terrain and the proposed building colors and materials are earth tones and colors that are subordinate to the natural environment to minimize the visual impacts.

Page 36 – Addressing implementation of the Torrey Pines Community Plan as follows:

"The specific proposals and design guidelines for development adjacent to environmentally sensitive areas currently can only be implemented through the discretionary review process."

The project required the discretionary review by the City of San Diego Planning Commission. The project was considered and unanimously approved by the Planning Commission on December 6, 2007.

Page 66 of the Torrey Pines Community Plan establishes the Residential Development Design Guidelines:

"New residential development within the Torrey Pines community should continue to incorporate a wide variety of architectural styles, colors and building materials. New residential development should also be designed to encourage compatibility in bulk and scale between existing and new residential development. All new residential development shall conform to citywide underlying zoning and Coastal Zone requirements. The Torrey Pines Community Planning Group should review all development requiring discretionary approval by the City."

On September 14, 2005 the project was presented to the Torrey Pines Community Planning Group who unanimously recommended approval of the project as designed.

Appendix E (page 118) discusses Visual Resources as follows:

"5. Landscaping of properties adjacent to open space areas shall not use invasive plant species. Landscaping adjacent to these areas should use plant species naturally occurring in that area.

6. New residential development shall be compatible with the existing neighborhood, and designed to blend into adjacent natural open space areas. Only low-profile dwellings designed to fit with the natural terrain and not be visually prominent from the canyon floor shall be allowed. For development located in visually prominent areas adjacent to space areas, building colors and materials shall be limited to earth tones and colors subordinate to the surrounding natural environment, which minimize the development's contrast with the surrounding hillsides and open space areas.

12. New residential, commercial, and industrial development shall provide landscape buffers to screen views of the buildings from designated scenic roadways."

As stated earlier, site planning and design features were incorporated to be sensitive to the natural resources surrounding the property and to be compatible with the existing developed neighborhood. Single story structures (with one small two story element on one of the homes) were designed to facilitate the blending of the architecture with the natural terrain and the proposed building colors and materials are earth tones and colors that are subordinate to the natural environment to minimize the visual impacts.

In regard to landscaping, the landscaping plans were designed in compliance with the City's guidelines. The Landscape Plans propose plant palettes consisting primarily of plant species native to the immediate project area. While a few non-native species are used, none of them are invasive. Contrary to the claims made in the Appeal, the landscaping is designed to create buffers to screen views of the buildings from designated scenic roadways, including through the planting of street trees. Furthermore, the use of a primarily native planting scheme provides the best possible opportunity to match the overall colors and textures of the surrounding natural areas.

In response to these issues raised in the appeal, the City's Long Range Planning staff made the following comments (in an email dated January 8, 2008 from Leslie Goossens, Development Project Manager, City of San Diego Development Services Department to Katie Wilson):

"[S]taff's analysis, including field visits, of the proposed two new residences, found that the materials and colors proposed for the construction, combined with the proposed new landscaping, would create two new residences that will blend

into the existing surroundings once the required landscaping matures...According to staff in the City's Long Range Planning Division, the proposed two new homes would be of similar development to the existing homes to the east. Further, the Torrey Pines Community Plan does not map preservation of view corridors from public vantage points. Staff can confirm that the view of these homes from I-5 southbound is minimal. The existing mature Torrey pines, palms and stone pines more than adequately buffer the existing homes from public view. The proposed new landscaping would create a similar appearance for the new residences, as is the case with the existing homes and landscaping. The development proposal is not located within a direct view to the coast or open space and is located adjacent to a hill. The only view of these homes is essentially southbound towards the hill and towards the coast. The location of the proposed two residences is below Crest Canyon and would not adversely affect the view to the canyon."

Lastly, the Appeal incorrectly states that the City failed to address exterior color treatments to reduce the visibility of the proposed structures from off-site public vantage points. The City required the submittal of a materials and color board to ensure that the project incorporated earth tones and colors subordinate to the natural environment in order to minimize the visual impacts. Color renderings of the two single family homes were also provided.

Conclusion

With this rebuttal to the issues raised in the Appeal, we would like to conclude with the following observations and statements for the Coastal Commission's consideration:

- 1) The existing lot was apparently approved for future development in general by the Coastal Commission when they approved the initial creation of the parcel, as is evidenced by the language referencing the future splitting of this parcel in the approved Coastal Development Permit Nos. A-209-78 (#F6210) and 6-88-364 and again with the approval of CDP No. 40-014 for an identical lot-split on the adjacent property (referred to as Parcel 3 in the previously approved CDP's) in September of 2001.
- 2) It is not possible to develop anything on the parcel without impacting habitat since the City's guidelines consider even non-native grassland to have habitat value. We are unable to avoid all impacts even without subdividing the property.
- 3) All impacts are being mitigated to less than significant by mitigation methods approved by the City and in conformance with the Torrey Pines Community Plan and the City's land development regulations.

- 4) Given the City's brush management regulations, it would not be possible to develop any single family home on the lot without having at least SOME impact to CSS or SMC.
- 5) Some of the CSS being impacted is fairly degraded in its value. The CSS that is present is a relatively small patch unconnected with larger expanses of CSS, though it is directly connected to the adjacent SMC. The SMC that is on site is classified as such primarily because of its geographic position near the coast, as opposed to its actual species composition. None of the ceanothus, manzanita, and oak species indicators of SMC are present.
- 6) There is not even a remote possibility that any further development will happen next to these parcels, since it is surrounded by MHPA.
- 7) If the Coastal Commission is interpreting the City's regulations to require that no impacts occur even if mitigated to below a level of significance then that essentially means the property cannot be developed; but if the requirement is that the design is done in a manner that provides an economically viable project and still preserves the most valuable habitat, then the project as approved by the City of San Diego under the regulations contained in the Land Development Code is reasonable and should be granted the Coastal Development Permit.

Based upon all of the information provided above, we believe that the merits of the Appeal are such that it should be withdrawn, or at the very least, there should be a finding of No Substantial Issues. We appreciate your consideration of the issues as addressed in this letter and look forward to discussing them with you and with members of the Commission in more detail. If you have any questions, please do not hesitate to contact me at (858) 776-2577.

Sincerely,



Katie P. Wilson

Cc Chairman Pat Kruer, California Coastal Commission
Commissioner Sara Wan, California Coastal Commission
Commissioner Ben Hueso, San Diego Coast Rep., California Coastal Commission

ATTACHMENT A
CDP NO. A-209-78

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO: 0: 1050

83-232958

CALIFORNIA COASTAL COMMISSION
651 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CA 94105
ATTN: Legal Department

RECORDED
OFFICE OF THE CLERK
OF SAN DIEGO COUNTY

REC JUL - 8 AM 11:26

VEVA LOCAL
COUNTY RECORDER

RECORD RESTRICTIONS

- I. WHEREAS, Sibetique, Inc., a California corporation (hereinafter "Owner"), is the record owner of the real property located approximately 2,300 feet west of Interstate 5, at the southeast end of San Dieguito Drive, in the County of San Diego described in attached Exhibit "A", hereby incorporated by reference (hereinafter "Property"); and
- II. WHEREAS, the California Coastal Commission is acting on behalf of the people of the State of California; and
- III. WHEREAS, pursuant to the California Coastal Act of 1976, Willard A. Rigley, Presidio Development Company, applied to the California Coastal Commission for a Coastal Development Permit for the development of the property; and
- IV. WHEREAS, Coastal Development Permit A-209-78 was granted on August 16, 1978, by the California Coastal Commission; and
- V. WHEREAS, pursuant to the California Coastal Act of 1976, Willard A. Rigley, Presidio Development Co., assigned Coastal Development Permit A-209-78 to Owner; and
- VI. WHEREAS, Coastal Development Permit A-209-78 was subject to terms and conditions including but not limited to the following conditions:
 - Prior to recordation of the final map, the applicant shall record the following restrictions to run with the land free of prior encumbrances, except for tax liens, and in a manner approved by the Executive Directors:
 - a. **Number of Lots.** The permit issued for the revised, four-lot division, provided, however, that future division of the property shall be limited to a total of six lots by means of a Covenant Not to Divide Parcels 1 and 2 and similar covenants to limit future divisions of Parcels 3 and 4 to one, 2-way split on each lot.

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1 VII. WHEREAS, the Property is a parcel located in the Coastal Zone; and
 2 VIII. WHEREAS, the Commission found that but for the imposition of the
 3 above condition the proposed development could not be found consistent with
 4 the provisions of the California Coastal Act of 1976 and that a permit could
 5 therefore not have been granted; and
 6 IX. WHEREAS, it is intended that this Deed Restriction is irrevocable
 7 and shall constitute enforceable restrictions; and
 8 NOW, THEREFORE, in consideration of the granting of Permit No.
 9 209-78 to the Owner by the California Coastal Commission, the Owner hereby
 10 irrevocably covenants with the California Coastal Commission that there be
 11 and hereby is created the following restrictions on the use and enjoyment
 12 of the Property, to be attached to and become a part of the deeds to the
 13 Property. The undersigned Owner, for itself and for its heirs, assigns,
 14 and successors in interest, covenants and agrees that:
 15 1. There shall be no further subdivision of Parcel 1 and
 16 Parcel 2 of the Property.
 17 2. Future subdivision of Parcels 3 and 4 of Property shall be
 18 limited to no more than one two-way split of each lot.
 19 Said Deed Restrictions shall remain in full force and effect during
 20 the period that said permit or any modification or amendment thereof remains
 21 effective and during the period that the development authorized by said
 22 permit or any modification or amendment of said development remains in
 23 existence in or upon any part of and thereby confers benefits upon the
 24 Property and to the extent said Deed Restrictions are hereby deemed and
 25 agreed by Owner to be covenants running with the land and shall bind the
 26 Owner and all his assigns or successors in interest.
 27 //
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1 Owner agrees to record this Deed Restriction in the Recorder's office
 2 for the County of SAN DIEGO as soon as possible after
 3 the date of its execution.
 4 DATED: MAY 20 1983
 5
 6 Mehdad Mohtaghi
 7 OWNER
 8 MEHDAD MOHTAGHI
 9 TYPE OR PRINT NAME OF ABOVE
 10
 11 OWNER
 12 TYPE OR PRINT NAME OF ABOVE

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons
 in a partnership, trust, etc., please use

STATE OF CALIFORNIA }
 COUNTY OF SAN DIEGO } ss 1053

On MAY 20 1983, before me, the undersigned, a Notary
 Public for said State, personally appeared MEHDAD MOHTAGHI (President)
 personally known to me or proved to me on the basis of satisfactory
 evidence to be the person who executed the within instrument as the
ZIBATIQUE, President, and
 personally known to me or proved to me on the basis of satisfactory evidence
 to be the person who executed the within instrument as the PRESIDENT
 Secretary of the Corporation that executed the within instrument and
 acknowledged to me that such corporation executed the within instrument
 for the purpose and to the effect of the laws or a resolution of its board of directors.
 Witness my hand and official seal.

SIGNATURE Ruth D. Jahn

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1 Owner agrees to record this Dead Restriction in the Recorder's office
2 for the County of SAN DIEGO as soon as possible after
3 the date of its execution.

4 DATED: MAY 20 1983

5 Mehrad Moshaghi
6 OWNER
7 MEHRAD MOSHTAGHI President
8 TYPE OR PRINT NAME OF ABOVE

9 OWNER
10 TYPE OR PRINT NAME OF ABOVE
11

12 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons
13 signing on behalf of a corporation, partnership, trust, etc., please use
14 the correct notary jurat (acknowledgment) as explained in your Notary
15 Public Law Book.

16 State of California, County of SAN DIEGO, ss

17 On this 20 day of MAY, 1983, in the year 1983

18 before me RUTH L. FABER a Notary Public, personally
19 appeared Mehrad Moshaghi President

20 personally known to me (or proved to me on the basis of satisfactory (IMMEDIATE
21 evidence) to be the person whose name is subscribed to this instrument, and
22 acknowledged that he/she executed it.
23

24
25 Ruth L. Faber
26 NOTARY PUBLIC IN AND FOR SAID COUNTY AND
27 STATE



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1 This is to certify that the deed restriction set forth above is hereby
2 acknowledged by the undersigned officer on behalf of the California Coastal
3 Commission pursuant to authority conferred by the California Coastal
4 Commission when it granted Coastal Development Permit No. 809-78
5 on 8-16-78 and the California Coastal Commission consents to
6 recordation thereof by its duly authorized officer.

7 Dated: May 12, 1983

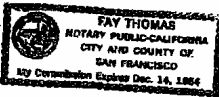
Steven D. Brown
Legal Counsel
California Coastal Commission

8 STATE OF California } ss
9 COUNTY OF San Francisco }

10 On May 12, 1983, before me Ray Thomas

11 a Notary Public, personally appeared Steven D. Brown, personally known to
12 me to be (or proved to me on the basis of satisfactory evidence) to be the
13 person who executed this instrument as the Legal Counsel
14 and authorized representative of the California Coastal Commission and
15 acknowledged to me that the California Coastal Commission executed it.

Ray Thomas
Notary



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EXHIBIT A

Property in the City of San Diego, County of San Diego,
State of California, referred to as Parcels 1 through 4
on the Parcel Map attached hereto as Exhibit "b".

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ATTACHMENT B

CDP NO. 6-88-364

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RECORD REQUESTED BY
GATEWAY INT. WPANY " 2119
BY AND RETURN TO:
STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION
531 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
APR 10 2008 10:56 AM

DEED RESTRICTION

I. WHEREAS, CROSBIE MISHKIN

hereinafter referred to as Owner(s), is the record owner of the
following real property:
TRACT 1 AND 2, OF BLOCK NO. 14843, IN THE CITY, SAN DIEGO, COUNTY
OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY
RECORDS OF SAN DIEGO COUNTY, NUMBER 27, 1985, AS FILE NO. 88-44947 OF
OFFICIAL RECORDS.

hereinafter referred to as the subject property; and
II. WHEREAS, the California Coastal Commission is
acting on behalf of the People of the State of California; and
III. WHEREAS, the subject property is located within the
coastal zone as defined in Section 30101 of the California Public
Resources Code (hereinafter referred to as the California Coastal
Act); and

IV. WHEREAS, pursuant to the California Coastal Act of
1976, the Owner applied to the California Coastal Commission for a
coastal development permit for the development on the subject
property described above; and

V. WHEREAS, coastal development permit No. 6-88-364
was granted on November 17, 1988 by the California
Coastal Commission in accordance with the provision of the Staff
Recommendation and Findings, attached hereto as Exhibit "A" and
herein incorporated by reference; and

COPY MADE
BY SECTION
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MS 1

RECORDING
APR 10 2008 10:56 AM
VERA L. LYLE
COUNTY RECORDER

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1 VI. WHEREAS, coastal development permit No. 6-88-364
 2 was subject to the terms and conditions including but not limited
 3 to the following conditions:

4
 5
 6 Applicant's Assumption of Risk. Prior to the issuance of the
 7 coastal development permit, the applicant as landowner shall
 8 execute and record a deed restriction, in a form and content
 9 acceptable to the Executive Director, which shall provide: A- that
 10 the applicant understands that the site may be subject to extra-
 11 ordinary hazard from landslides potential, and the applicant
 12 assumes liability from such hazards; and B- that the applicant
 13 unconditionally waives any claim of liability on the part of the
 14 Commission and agrees to indemnify and hold harmless the Commission
 15 and its advisors relative to the Commission's approval of the project
 16 for any damage due to natural hazards. The document shall run with
 17 the land, binding all successors and assigns, and shall be recorded
 18 free of prior liens.

19 VII. WHEREAS, the Commission found that but for the
 20 imposition of the above conditions the proposed development could
 21 not be found consistent with the provisions of the California
 22 Coastal Act of 1976 and that a permit could therefore not have
 23 been granted; and

24 VIII. WHEREAS, it is intended that this Deed Restriction
 25 is irrevocable and shall constitute enforceable restrictions; and

26 IX. WHEREAS, Owner has elected to comply with the
 27 conditions imposed by Permit No. 6-88-364 so as to enable
 Owner to undertake the development authorized by the permit.

COURT PAPER
 FILED IN COUNTY OF SAN DIEGO
 FILE NO. 115 7400 0-11

-3-

1 NOW, THEREFORE, in consideration of the granting of Permit
 2 No. 6-88-164 to the Owner by the California Coastal Commission,
 3 the Owner hereby irrevocably covenants with the California Coastal
 4 Commission that there be and hereby is created the following
 5 restrictions on the use and enjoyment of said subject property, to
 6 be attached to and become a part of the deed to the property. The
 7 undersigned Owner, for himself/herself and for his/her heirs,
 8 assigns, and successors in interest, covenants and agrees that:
 9 the site may be subject to extraordinary hazard from landslide potential,
 10 and assumes the liability from such hazards; and agrees to unconditionally
 11 waive any claim of liability on the part of the Coastal Commission and
 12 agrees to indemnify and hold harmless the Commission and its advisors
 13 relative to the Commission's approval of the project for any damage due to
 14 natural hazards.

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24 If any provision of these restrictions is held to be invalid
 25 or for any reason becomes unenforceable, no other provision shall
 26 be thereby affected or impaired.
 27

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1 Said deed restriction shall remain in full force and effect
2 during the period that said permit, or any modification or
3 amendment thereof, remains effective, and during the period that
4 the development authorized by said permit or any modification of
5 said development, remains in existence in or upon any part of, and
6 thereby confers benefit upon, the subject property described
7 herein, and to that extent, said deed restriction is hereby deemed
8 and agreed by Owner to be a covenant running with the land, and
9 shall bind Owner and all his/her assigns or successors in interest.

10
11 Owner agrees to record this Deed Restriction in the
12 Recorder's office for the County of San Diego as
13 soon as possible after the date of execution.

14
15 DATED: February 16, 1988

16
17 SIGNED: *C. Mehtegi*

18
19 Cameron Mehtegi

20 PRINT OR TYPE NAME OF ABOVE

21
22 SIGNED: _____

23
24
25
26 PRINT OR TYPE NAME OF ABOVE

27 (NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

7 PAPER
BY BALTIMORE
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SAN DIEGO COUNTY RECORDER'S OFFICE

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1 **NOTE TO NOTARY PUBLIC:** If you are certifying the signatures of
2 persons signing on behalf of a corporation, partnership, trust,
3 etc., please use the correct notary jurat (acknowledgment) as
4 explained in your Notary Public Law Book.

5
6 State of California, County of San Diego ss
7 On this 16th day of February in the
8 year 1989, before me Melanie M. Adams

9 Notary Public, personally appeared Cameron Mohtashbi
10 personally known to me (or proved to me on the basis of
11 satisfactory evidence) to be the person whose name is subscribed
12 to this instrument, and acknowledged that he/she executed it.



Melanie M. Adams
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

13
14
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16
17
18 State of California, County of _____ ss
19 On this _____ day of _____ in the
20 year _____ before me _____

21 Notary Public, personally appeared _____
22 personally known to me (or proved to me on the basis of
23 satisfactory evidence) to be the person whose name is subscribed
24 to this instrument, and acknowledged that he/she executed it.

25
26
27
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

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ALL RECORDS ARE AVAILABLE ONLINE

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1 This is to certify that the deed restriction set forth above
2 is hereby acknowledged by the undersigned officer on behalf of the
3 California Coastal Commission pursuant to authority conferred by
4 the California Coastal Commission when it granted Coastal
5 Development Permit No. 5-88-364 on November 17, 1988
6 and the California Coastal Commission consents to recordation
7 thereof by its duly authorized officer.

8 Dated: March 15, 1989

John Powers
John Powers, Staff Counsel
California Coastal Commission

12 STATE OF California)
13 COUNTY OF SAN FRANCISCO) ss

14 On March 15, 1989, before me, Deborah L. Rowe,
15 Notary Public, personally appeared John Powers,
16 personally known to me to be (or proved to me on the basis of
17 satisfactory evidence) to be the person who executed this
18 instrument as the Staff Counsel and authorized
19 representative of the California Coastal Commission and
20 acknowledged to me that the California Coastal Commission executed
21 it.



Deborah L. Rowe
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

COURT PAPER
STATE OF CALIFORNIA
1989 15 208 477

RECORDS SECTION

ATTACHMENT C
COASTAL COMMISSION STAFF REPORT
DATED OCTOBER 31, 1988



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EXHIBIT "A" #125

STATE OF CALIFORNIA—THE RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
1555 GARDEN CITY BOULEVARD, SUITE 100
SAN DIEGO, CA 92108-3200
(619) 297-9760

Filed: August 1, 1988
48th Day: Waived
180th Day: January 29, 1989
Staff: EL-50
Staff Report: October 31, 1988
Hearing Date: November 15-18, 1988



REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6 88-364

Applicant: Cameron Moshtaghi

Agent: Concepts West

Description: Resubdivision of four parcels into four new parcels (Parcel 1 - 1.24 acres; Parcel 2 - 1.26 acres; Parcel 3 - 1.84 acres; Parcel 4 - 1.84 acres); also, demolition of existing house and accessory structures and construction of two, two-story, single family residences and associated grading and lot stabilization on two adjacent, vacant parcels (Parcels 1 and 2); project includes approximately 15,800 cu.yds. of cut and fill grading.

Parcel 1

Lot Area 53,846 sq. ft.
Building Coverage 2,904 sq. ft. (5%)
Pavement Coverage 3,000 sq. ft. (6%)
Landscape Coverage 2,000 sq. ft. (4%)
Unimproved Area 45,942 sq. ft. (85%)

Parcel 2

Lot Area 55,016 sq. ft.
Building Coverage 4,687 sq. ft. (9%)
Pavement Coverage 3,000 sq. ft. (5%)
Landscape Coverage 2,000 sq. ft. (4%)
Unimproved Area 45,329 sq. ft. (82%)

Parking Spaces 3 (each)
Zoning R-1-40,000
Plan Designation Torrey Pines/Residential
Ht. abv fin grade 30 feet

Site: South side of Racetrack View Drive, approximately 880 feet east of San Dieguito Drive, North City, San Diego, San Diego County. APN 300-160-5827

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval with special conditions requiring submittal of a detailed grading schedule and erosion control plans, recordation of an open space deed restriction, abandonment of Coastal Development Permit 86-88-92 (and amendment) and revegetation of areas disturbed by grading.

SAN DIEGO COUNTY RECORDS

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6-88-364
Page 2

Substantive File Documents: Certified North City Land Use Plan and City of San Diego LCP Implementing Ordinances
CCC Files #74210; #4-88-92 and amendment

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions: -

1. Grading and Erosion Control. Prior to the issuance of the coastal development permit, the applicant shall submit final grading plans which shall incorporate the following:

A. From November 15 to March 31 of each year, grading may only occur in increments as determined by the City Engineer and in conformance with Section 62.0417.1 of the Land Development Ordinance of the City of San Diego, as certified by the Commission in January, 1988. Prior to commencement of any grading activity, the permittee shall submit a grading schedule to the Executive Director. Any variation from the schedule shall be promptly reported to the Executive Director.

B. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

C. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

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Page 3

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type in the area shown on the attached Exhibit #3 without the written approval of the California Coastal Commission or successor in interest. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.
3. Abandonment of Prior Permit. Prior to the issuance of the coastal development permit, the applicant shall commit in writing that, upon issuance of said permit, all development rights approved under Coastal Development Permit #6-88-92, as amended, shall be abandoned. No grading, demolition or construction may occur in reliance on that prior permit, which is herein superseded by the subject permit. The written agreement shall be submitted to, reviewed and approved in writing by the Executive Director.
4. Building Materials. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval in writing of the Executive Director a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residence. Earth tones designed to minimize the project's contrast with the surrounding hillsides and lagoon shall be utilized.
5. Applicant's Assumption of Risk. Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landslide potential, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.
6. Revegetation Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate that portion of Parcel 1 and 2 that is disturbed by the remedial grading and buttress fill. Drought tolerant native plants shall be utilized to the maximum extent feasible to re-establish the area consistent with the adjacent naturally vegetated hillsides (open space area). Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director.

Description: San Diego County...

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Page 4

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. **Detailed Project Description.** The applicant is proposing resubdivision of four existing parcels into four new parcels of somewhat different dimensions. The resulting parcels will be: Parcel #1 - 1.24 acres; Parcel 2 - 1.26 acres; Parcel 3 - 1.04 acres; Parcel 4 - 1.04 acres. In addition, a single-family residence on Parcel 1 will be removed and new, two-story, single-family residences will be constructed on Parcels 1 and 2. The new home on Parcel 1 will be located in the same area as the existing house. The access driveway for both residences will cut across portions of both parcels, in an area that has seen previous disturbance during the construction of RaceTrack View Drive.

The submitted geology report identifies two old landslides on the site and recommends that the landslide area should be excavated and recompacted prior to preparation of building pads and home construction. The landslide area extends over portions of both Parcels #1 and #2, and includes areas of naturally vegetated slopes on both parcels as well as less steep or previously disturbed areas. Proposed remedial grading includes excavation and recompaction of that portion of the landslide area underlying the proposed building pads, and will result in higher elevations (close to ten feet higher in one cross-section) for the building pads.

2. **Site History.** The proposed subdivision, demolition and residential construction will be located on a site which has been the subject of several previous permit actions by the Commission. The original subdivision (Coastal Development Permit No. 46210) was approved on August 16, 1978, when the California Coastal Commission, on appeal, issued a permit for a four-lot subdivision (Replacement Map #77-149). Either that tentative map was revised before recordation, without further Coastal Commission review, or it was never recorded. In any case, some years later the City approved TM 82-0821, a four-lot subdivision of different configuration than that approved by the Commission in 1978. Final Map #14043 was recorded without Coastal Commission review or approval.

In April 1988, the Commission approved a resubdivision (Coastal Development Permit No. 6-88-82) which altered the previous lot lines, but did not result in the creation of any additional parcels. In that action, which also included the demolition and reconstruction of a residence on Parcel 1, the Commission required that an open space deed restriction be applied to the portions of the site where disturbance was not allowed because of steep slopes or sensitive vegetation. The required deed restriction has not yet been recorded.

In July 1988, the Commission approved an amendment to the April 1988 permit which allowed additional grading on Lots 1 and 2 to stabilize a landslide area. The amendment also included the creation of a building pad on Lot 2. The approved amendment was subject to grading and erosion control conditions, including a limitation on the time of grading, and the applicant was required

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to execute an "assumption of risk" deed restriction. The deed restriction has not yet been recorded.

The subject application was submitted on July 29, 1988, and was for the construction of a single family residence on Lot 2 using the previously approved grading (6-88-92-4). Subsequent to that submittal, the final geological report was issued, indicating that a slight increase in the proposed grading would be required, resulting in two small encroachments into what had been approved as open space, although the deed restriction has not yet been recorded. The applicant also proposed slightly altering the location of the proposed residence on Parcel 2, to accommodate future plans for a boundary adjustment.

In an attempt to organize the various permit actions, both past and on-going, the applicant postponed action on the subject application and submitted new site and grading plans for Parcels 1 and 2 and the final geology report. To avoid further amendments to Coastal Development Permit 68-88-92, and fragmented approvals where the grading for Lot 2 was on one permit and the residence proposed on another, it was suggested that all items be consolidated into a single approval and the prior permit and amendment be abandoned. The applicant agreed and modified the subject application accordingly. Therefore, the subject application now includes all items listed in Coastal Development Permit 68-88-92 (resubdivision of four lots, demolition of one home, construction of one home and removal grading) plus the single family residence first proposed in this application. Special Condition #3 calls for the abandonment of the prior permit and amendment, once the current proposal has been approved and the permit issued.

3. Geologic Hazards/Remedial Grading. Section 30253 of the Coastal Act addresses development in hazardous areas and states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

When the subject four lots were originally created in 1978, and again earlier this year when the revised lot configuration was approved by the Coastal Commission, it was not known that a geologic hazard existed on the site. Soil testing which occurred during the subsequent development of building plans revealed the presence of two old landslides on portions of Parcels 1 and 2. The applicant's geotechnical consultant, Geocem, has prepared a detailed report, outlining the current site conditions and making specific recommendations to alleviate the landslide hazard.

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Page 6

It is the stated opinion of Geocor that a major portion of Parcels 1 and 2 must be excavated, recompact and supported by buttress fill prior to any construction activities occurring on the site. The geologist's maintain that alternatives, such as retaining walls or the raising of the homes, have been considered and found to be equally or more damaging to the environment, while providing a less stable building site. This is due to the presence of an existing buttress fill area of steep slope along Sacattract View Drive, which prevents the homes from being sited nearer the road, and the steep, naturally vegetated condition of the hillsides to the south. Much of the vegetation and portions of the hillsides themselves would have to be removed to properly engineer a retaining wall along the rear of the proposed building sites.

For these reasons, Geocor recommends their preferred treatment, which will excavate and recompact the site, then further stabilize the hillsides with the buttress fill. It is this fill that raises the building pads, minimally in some places, but by as much as ten feet in isolated spots on the site. In addition, the buttress fill will encroach in two areas into the portion of the site previously identified for protection by an open space deed restriction. On Parcel 1, the encroachment into naturally vegetated steep slopes amounts to slightly less than 2% of the total steep slope area on-site, and, on Parcel 2, to slightly more than 1%.

The certified North City Land Use Plan and the City's LCP Implementing Ordinances, specifically the Hillside Review (HR) ordinance, contain provisions allowing some encroachment into naturally vegetated steep slope areas when it is deemed necessary to obtain reasonable use of the site. A sliding scale would allow encroachments of up to 10% on each of the subject parcels, if such were found unavoidable under a discretionary action such as this permit review. In this particular case, the geology report has documented the necessity for remedial site stabilization, and the proposed encroachments are well within the allowed ratio, being 2% and 1% on Parcels 1 and 2 respectively. Therefore, the Commission finds the proposed grading and buttress fill consistent with Section 30253 of the Act, and the Hillside Review Ordinance, since this action will best reduce the landslide hazard on the site.

Due to the inherent risk of any development on this site resulting from the existence of the previous landslides, and the Commission's mandate to minimize risks (Section 30253), the standard waiver of liability condition has been attached. By this means, the applicant is notified of the risks and the Commission is relieved of liability in permitting the development of this site. Pursuant to Section 13166(a)(1) of the Commission's administrative regulations, an application may be filed to remove Special Condition #5 from this permit if the applicant presents newly discovered material information regarding the existence of any hazardous condition which was the basis for the condition, if they could not with reasonable diligence have discovered and produced such information before the permit was granted.

It should be noted at this time that the applicant is currently processing lot splits on Parcels 3 and 4 with the City of San Diego. The original permit review (Coastal Development Permit #F0210) contained a provision that Parcels

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Page 7

1 and 2 could not be further subdivided and Parcels 3 and 4 could not be subdivided more than a single lot split each, potentially creating a maximum of six total building sites on the applicant's property. Had the landslide history of Parcels 1 and 2 been known at the time the original subdivision was proposed, it is likely the Commission's action would have resulted in fewer parcels, or parcels of different configuration. The rezubdivision permitted in Coastal Development Permit 6-88-82 and again in this action did not appreciably alter the buildability of any of the four existing parcels. When the applicant applies for a coastal development permit for the further subdivision of Parcels 3 and 4, it will be necessary that a geology report, as detailed as the one prepared for parcels 1 and 2, be submitted with the application. This will allow the reviewing power to approve only those parcels which have adequate, stable building areas, and require no encroachments into the designated open space.



4. Visual and Environmental Resource Impacts. Sections 30240 and 30251 of the Coastal Act provide for the protection of scenic coastal areas, the preservation/protection of environmentally sensitive habitats, and for the compatibility of new and existing development. This site is located on the south side of San Dieguito Lagoon, and is highly visible from I-5, Jimmy Durante Boulevard and the Fairgrounds itself. Other than the existing house on Parcel 1, there is no development in the immediate area. To the east, there is a larger subdivision, basically complete and partially accepted, which is separated from the subject property by the surrounding topography. To the west, there is a scattering of older homes back in the canyons and on the lower hillsides, but these too are visually separated from the subject site.

The site is on the south side of Race Track View Drive, with lagoon uplands, under the ownership of the California Department of Fish and Game, on the northern side of the road. That parcel had been placed in permanent open space at the time of the original 1978 subdivision. There are some flatter portions of the subject site near the road, with the land rising gradually, then more steeply, towards the south. Most of the site is covered by native vegetation, with the only disturbed areas being near the road and where the existing house is located. Much of the terrain is at or exceeding 25% gradient, and the entire site is within the City of San Diego's Hillside Review (HR) Overlay Zone. Steep slopes on the property are designated as sensitive slopes within the HR policies, except for those on Parcel 1; this exception may be due to the fact that there are already structural improvements on the site. In any event, Special Condition #2 provides that all naturally-vegetated steep slopes not disturbed by the remedial grading and buttress fill activities shall be retained as permanent open space.

The southerly portion of the site (i.e., the area subject to open space restrictions) is heavily vegetated with native chaparral plant materials, as are the slopes farther to the south. Portions of the southern slopes belong to the applicant and the remainder are part of the Crest Canyon Open Space acquired by the City of San Diego a couple years ago. These vegetated slopes will form a fairly uniform background for the residences. The project site is visible across the lagoon from the north and the addition of the residences

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will result in increased visibility, especially if the exterior color of the residences is lighter than the vegetated background. In addition, the remedial grading necessary for site stabilization will raise the pad elevations above the existing grade, further increasing site visibility. Therefore, Special Condition #4 has been attached to require Executive Director review of the proposed color/architectural treatments in order to assure the future residences will not adversely affect the scenic qualities of the area. Additionally, Special Condition #6 requires that all areas disturbed by grading adjacent to the open space area be revegetated with species compatible with the adjacent natural vegetation.

The proximity of development to the lagoon and the impacts of development have been addressed and mitigated, both previously and within this permit action. As described in previous paragraphs, the lagoon uplands to the north and the majority of the hillsides to the south are now in public ownership. To protect downstream resources, as required in Sections 30221 and 30240 of the Coastal Act, Special Condition #1 establishes strict grading and erosion controls. The open space deed restriction, the grading and erosion control measures and the applicant's assumption of risk for the previously-approved grading operation are repeated in this action, since the deed restrictions have not yet been recorded, and that prior permit will become null and void upon issuance of the subject permit. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30221, 30240 and 30251 of the Act, and with the scenic and resource protection policies of the City's certified LCP as well.

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. Such a finding can be made for the subject proposal.

The project site is zoned R-1-40,000 and designated for residential development at a density not to exceed one dwelling unit for every 40,000 sq. ft. Each of the parcels in the subject subdivision meets that requirement, as all the parcels exceed an acre in size. The previous findings have shown that the proposed project, with the attached special conditions, can be found consistent with all applicable policies of Chapter 3 of the Coastal Act and that substantial adverse impacts on coastal resources will not result. The proposed project, as conditioned, is also consistent with applicable policies and implementing ordinances of the City of San Diego's North City Land Use Plan and Local Coastal Program. Approval of the project, as conditioned, will not result in any prejudice to the City's ability to implement their fully-certified Local Coastal Program.

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Page 5

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

(82648)



Description: San Diego, CA Document-Year 1911-1912

951 5873510

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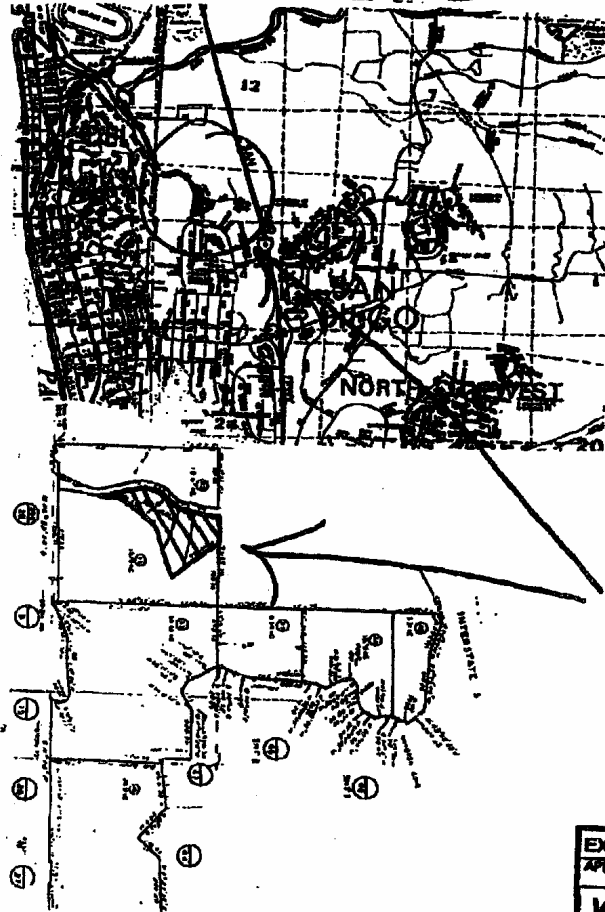
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6-88-364



Site

EXHIBIT NO. /
APPLICATION NO. /
Vicinity Map

AM RECORDS SECTION

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Description: San Diego CA Document

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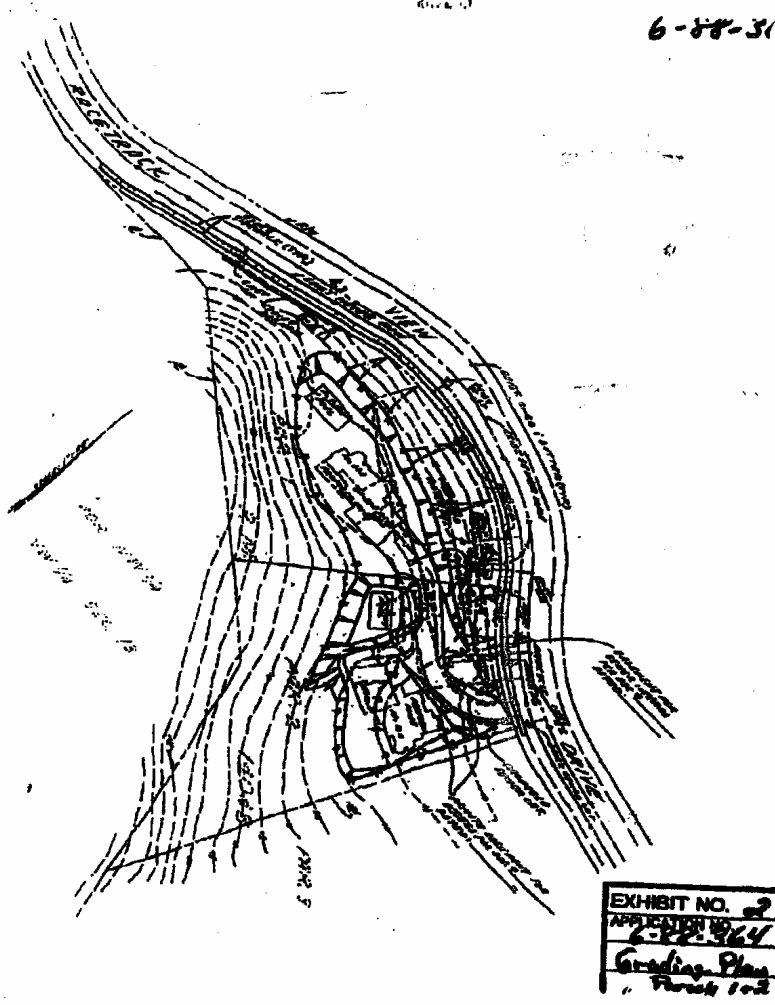
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THE CITY OF SAN DIEGO

January 10, 2008

Ms. Ellen Lirley
 San Diego Coast District Office
 California Coastal Commission
 7575 Metropolitan Drive, Suite 103
 San Diego, CA 92108-4421

Subj: Racetrack View Drive, Commission Appeal No. A-6-NOC-07-130

Dear Ellen:

This letter is in response to your January 2, 2008 Commission Notification of Appeal for the project referenced above. Per your request, I am enclosing the relevant documents and materials used in the City of San Diego's consideration of the Tentative Map, Site Development, Planned Development and Coastal Development Permit.

The November 8, 2005 Report of Preliminary Geotechnical Investigation and a November 10, 2006 Addendum was forwarded to you by the applicant. I understand that you already have the Biological Resources Technical Report. We also have a Stormwater Management Plan, Preliminary Drainage Report, and a Cultural Resources Survey in the project file. Per our phone conversation, you did not need copies of these at this time. There were no interested persons at the public hearing, nor did any person express an interest in the decision in writing to the Planning Commission or city staff.

As we discussed, the appeal language refers to language in the North City Land Use Plan. The applicable policy document for land use and design guidelines for this area is the Torrey Pines Community Plan. Appendix E of the Community Plan includes recommendations from the Local Coastal Program Policies. The Visual Resources section, on pages 118-9, recommends that: "new residential development shall be compatible with the existing neighborhood, and designed to blend into adjacent natural open space areas." Moreover, the plan also recommends: "Building colors and materials shall be limited to earth tones and colors subordinate to the surrounding natural environment which minimize the development's contrast with the surrounding hillsides and open space areas".

Staff's analysis, including field visits, of the proposed two new residences, found that the materials and colors proposed for the construction, combined with the proposed new landscaping, would create two new residences that will blend into the existing surroundings once the required landscaping matures. As seen on the aerial photograph in the Report to the Planning Commission (attachment 1), the location of the prop...



Development Services

1222 First Avenue, MS 501 • San Diego, CA 92101-4155
 Tel (619) 446-5460

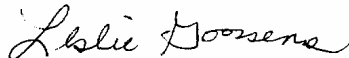
EXHIBIT NO. 5
APPLICATION NO.
A-6-NOC-07-130
Letter from City
<i>2 pages</i>
California Coastal Commission

Ms. Ellen Lirley
January 10, 2008
Page 2

new residences is west of a series of existing homes. Attachment 5 to the Report to the Planning Commission shows that the existing homes to the east of the subject parcel are virtually invisible from a public vantage point. The proposed two new homes would be of similar development to the existing homes to the east. Further, the Torrey Pines Community Plan does not map preservation of view corridors from public vantage points. Staff has confirmed that the view of these homes from I-5 southbound is minimal. The existing mature torrey pines, palms and stone pines more than adequately buffer the existing homes from public view. The proposed new landscaping would create a similar appearance for the new residences as is the case with the existing homes and landscaping. The development proposal is not located within a direct view to the coast or open space and is located adjacent to a hill. The only view of these homes is essentially southbound towards the hill and towards the coast. The location of the proposed two residences is below Crest Canyon and would not adversely affect the view to the canyon.

I hope you find this information helpful. If there is anything else you need, please let me know.

Sincerely,



Leslie Goossens
Development Project Manager

Enclosures:

1. General Application
2. Ownership Disclosure Statement
3. Notice of Public Hearing
4. Certification of Publication for Public Hearing
5. Torrey Pines Community Planning Board Recommendation
6. Report to the Planning Commission, November 29, 2007
7. Racetrack View Drive Exterior Specifications
8. Plans
9. Environmental Resolution with Mitigation, Monitoring a Reporting Program (MMRP) Conditions
10. July 25, 2007 Email from Shawna Anderson of the San Dieguito River Park JPA

cc (without enclosures):

Rick Valles Key
Monty McCullough
Brett Ames
Katie Wilson

Received

JAN 14 2008

California Coastal Commission
San Diego District Office