



ESHA) portion of the site is large enough to accommodate two reasonably-sized homes without impacts. Therefore, some of the recommended special conditions address the necessary revisions to existing plans, such as the Tentative Parcel Map (TMP), site plan, landscaping plan, etc, along with exterior color treatments to minimize visual impacts. Two of the conditions require recorded restrictions to incorporate all permit conditions and to protect ESHA on the site, and another advises that no additional development can occur on the property without further review, in the form of an amendment to this coastal development permit or separate new coastal development permit, from the Coastal Commission or appropriate local government. The final condition upholds all conditions of the City approvals based on non-Coastal Act requirements.

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-6-NOC-07-130 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified local coastal program and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final TPM/Building Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final, full-size plans, approved by the City of San Diego, that include the following:

- A revised tentative parcel map eliminating resource impacts and identifying open space to be preserved in perpetuity pursuant to Special Condition #7.
- A revised site plan, including all required fuel management areas, overlain on a vegetation map.
- Revised floor plans and elevations of the proposed homes.

Revised plans shall eliminate all encroachments into the upland native plant communities of coastal sage scrub and southern maritime chaparral. Encroachments into non-native grasslands are allowed.

The permittee shall undertake the development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Final Landscaping Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, a revised final landscaping plan developed in consultation with the California Department of Fish and Game and approved by the City of San Diego. Said plan shall be in substantial conformance with the plans approved by the City of San Diego (City's Exhibit "A"), but shall be revised to include the following:

- a. A plan showing the type, size, and location of all landscape species to be retained, removed and planted on site and shall include, at a minimum, 4 trees (minimum 24-inch box or 5-foot trunk height minimum) or 4 similarly sized non-invasive plant species to be located adjacent to the northern/northeastern side of the proposed residence(s) in a manner that will maximize screening of the structure and/or upon maturity will exceed the roofline of the residence so as to break up the façade of the structure from views from San Dieguito Lagoon and Interstate 5.
- b. All landscaping shall be drought-tolerant and native or non-invasive plant species, except that use of drought-tolerant, non-invasive ornamental species is allowed as a small garden component. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.

- c. The applicant shall provide a written commitment that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, which certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. Exterior Treatment. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and written approval of the Executive Director, a color board or other indication of the exterior materials and color scheme to be utilized in the construction of the proposed residential addition. This document shall comply with the following requirement:

- a. The color of the proposed residence(s) and roof permitted herein, along with any proposed fences or walls, shall be restricted to colors compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones except as minor accents.
- b. All proposed external windows on the east and north sides of the residence(s) visible from Interstate 5 or the San Dieguito Lagoon shall be comprised of non-glare

glass. No clear glass windscreens, clear glass railings around decks, or clear glass in perimeter or fire walls shall be installed on the site.

The permittee shall undertake the development in accordance with the approved color board. Any proposed changes to the approved color board shall be reported to the Executive Director. No changes to the color board shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Grading/Erosion Control. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final grading and erosion control plans that have been approved by the City of San Diego. The plans approved shall contain written notes or graphic depictions demonstrating that all permanent and temporary erosion control measures will be developed and installed prior to or concurrent with any on-site grading activities and include, at a minimum, the following measures:

- a. Placement of a silt fence around the project anywhere there is the potential for runoff. Check dams, sand bags, straw bales and gravel bags shall be installed as required in the City's grading ordinance. Hydroseeding, energy dissipation and a stabilized construction entrance shall be implemented as required. All disturbed areas shall be revegetated after grading.
- b. The site shall be secured daily after grading with geotextiles, mats and fiber rolls; only as much grading as can be secured daily shall be permitted. Concrete, solid waste, sanitary waste and hazardous waste management BMP's shall be used. In addition, all on-site temporary and permanent runoff and erosion control devices shall be installed and in place prior to commencement of construction to minimize soil loss from the construction site.
- c. If grading is to occur during the rainy season (October 1<sup>st</sup> to April 1<sup>st</sup>) of any year, the applicant shall submit to the Executive Director for review and written approval, a program for monitoring the condition of erosion control devices and the effectiveness of the erosion control program. The monitoring program shall include, at a minimum, monthly reports beginning November 1<sup>st</sup> of any year continuing to April 1<sup>st</sup>, which shall be submitted to the Executive Director for review and written approval at the end of each month. The reports shall be completed by a licensed engineer and shall describe the status of grading operations and the condition of erosion control devices. Maintenance of temporary erosion control measures is the responsibility of the applicant, including replacement of any devices altered or dislodged by storms. Desilting basin maintenance, including removal of accumulated silt, shall occur prior to the onset of the rainy season and on an as-needed basis throughout the season.
- d. Landscaping shall be installed on all cut and fill slopes prior to October 1st with temporary or permanent (in the case of finished slopes) erosion control methods.

Said planting shall be accomplished under the supervision of a licensed landscape architect, shall provide adequate coverage within 90 days, and shall utilize vegetation of species compatible with surrounding native vegetation, subject to Executive Director approval.

The permittee shall undertake development in accordance with the approved grading and erosion control plans. Any proposed changes to the approved grading and erosion control plans or grading schedule shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Final Drainage Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final drainage and runoff control plan in substantial conformance with plans approved by the City of San Diego (City's Exhibit "A"), documenting, graphically and through notes on the plan, that runoff from the roof(s), driveway(s) and other impervious surfaces will be directed into the street storm drain system.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

7. Open Space and Conservation Easement

A. No development, as defined in section 30106 of the Coastal Act shall occur in the on-site coastal sage scrub or southern maritime chaparral vegetation, as shown in Exhibit #8 except for:

1. maintenance of the existing utility easement that crosses the site in a general southeast to northwest direction;
2. maintenance of that portion of the existing desilting basin located in the northeast portion of the site, and extending into the adjacent MHPA lands;

AND

3. installation of minor drainage pipes.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT**

**PERMIT**, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an open space and conservation easement for the purpose of habitat conservation. Such easement shall be located over all coastal sage scrub and southern maritime chaparral vegetation, as shown in Exhibit #8. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.

C. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

8. Future Development Restriction

A. This permit is only for the development described in coastal development permit No. A-6-NOC-07-130. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. A-6-NOC-07-130 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

9. Other Special Conditions from City of San Diego. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/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 part of 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 southern slopes 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 four separate occasions, including February 7, 2008, when Substantial Issue was found regarding the City's permit for the subject development. Going back to the first action on the site, 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 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 majority, flatter portion of the site. The recorded deed restriction includes specific allowed uses in the open space, but fuel management isn't one of them. Therefore, if any project is approved that includes impacts into the recorded open space area, including impacts from fuel management, an amendment to that deed restriction (i.e., an amendment to CDP # 6-88-364) will be required.

The 1988 permit also discussed the potential for future subdivision of Parcels 3 and 4, which are significantly larger than Parcels 1 and 2 of the 1988 subdivision. Apparently, the City was conducting discretionary review at that time for subdivisions on Parcels 3 and 4, such that they were expected to be submitted for Commission review in the near future. Since the Commission, and its staff, were only protecting ESHA if it occurred on steep slopes in 1988, any on-site habitat outside the open space deed restriction area was not an issue. In any case, the potential subdivisions of Lots 3 and 4 did not occur at that time. Lot 3 was subsequently subdivided and there is now one home built and another under construction on that site.

The subject site is located generally within the multi-community area of the North City LCP segment, and more specifically, within the Torrey Pines community of that segment. Thus, planning policies from both certified documents (North City LCP Land Use Plan & Torrey Pines Community Plan) apply to the proposed development. 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.

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 over the North City LCP Land Use Plan 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.

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

Page 73 - 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...

Page 74 - Development should be sited and designed to prevent impacts which would significantly degrade environmentally sensitive habitat areas.

Page 84 - 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 following citations addressing biological resources are from the certified Torrey Pines Community Plan:

Page 5, Key Policies:

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.

Page 9, the following were identified as issues to the community:

Development and construction impacts to environmentally sensitive areas, including sedimentation, erosion, visual impacts, and encroachment.

The lack of protection of environmentally sensitive resources

Page 26, the following goals:

1. Ensure long term sustainability of the unique ecosystems in the Torrey Pines Community, including all soil, water, air, and biological components which interact to form healthy functioning ecosystems.
2. Conserve, restore, and enhance plant communities and wildlife habitat, especially habitat for rare, threatened, and endangered species.

Page 29, 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.

Page 31, policies for San Dieguito Lagoon and River Valley:

4. Development adjacent to the lagoon should be designed to avoid sedimentation, erosion or other potential impacts which degrade the quality of the water resources, and should preserve existing public views. The following measures to reduce grading impacts should be utilized where appropriate: minimize grading during the rainy season, install sediment basins and/or energy dissipating structures, and ensure revegetation and stabilization of slopes before the onset of the rainy season. To reduce visual impacts, development should be low-profile and screened from view by landscaped buffers.
6. Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

Page 119, under Local Coastal Program Policies/Visual Resources policies:

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 [open] 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.

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 in 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.

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 is not 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 and contains the same vegetation communities that are found on the site.

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 fuel management for fire safety. Impacts include removal of .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 applicants' biology report was reviewed by the Commission's staff ecologist, who determined the CSS and SMC on the subject site are environmentally sensitive habitat area (ESHA). The CSS is ESHA because it is rare, but also because it performs the function of providing habitat to the coastal California gnatcatcher, an avian species listed as "threatened" by the Federal government. SMC's rarity makes it ESHA. Moreover, both vegetation types are easily disturbed by human activities.

As proposed, and approved by the City of San Diego, the project will result in adverse impacts to environmentally sensitive lands in the form of direct impacts to CSS (.35 acres) and SMC(.19 acres), that are otherwise avoidable. The property is large enough that several alternatives to the proposed design are possible. These will be discussed in detail in a subsequent finding. The applicant disagrees that all impacts to sensitive resources on the property could be avoided. This is based on the fact that the City considers the non-native grasslands to be environmentally sensitive and requiring mitigation, and no development can occur on either the existing lot or with the proposed subdivision without impacting those non-native grasslands. The applicant also argues that because the site is not located within 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 reasonable use recognizing any resource constraints. Whenever ESHA is present, it must always be avoided if possible, then potentially minimized and mitigated depending on the circumstances. Policies that provide for preventing or minimizing impacts should be considered in a manner that is most protective of the resource if impacts may be allowed at all. 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.

It must be recognized that this property has no right or entitlement to a subdivision. As an existing, subdivided legal lot it is entitled only to reasonable use of that one lot, which is generally interpreted to mean one modest single-family residence. The City was under no obligation to approve a subdivision when the resulting project had ESHA impacts. Neither was the City required to approve the specific, large homes that were proposed, when other projects could avoid ESHA impacts. It is only because the site is large enough to accommodate two homes without ESHA impacts, that the Commission can find subdivision of the property into two lots to be consistent with the certified LCP, and particularly with the certified LUP documents that apply to the site, and are controlling over the ESL regulations.

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 important a resource to protect as are the other identified habitats on the site, unless they supported rare or listed species. Therefore, impacts to that habitat are not considered impacts to ESHA and thus less significant than impacts to the Tier I and Tier II habitats also present on the site.

The City of San Diego created its Multiple Species Conservation Plan (MSCP) in the mid-90's, in response to the state's Natural Communities Conservation Plan (NCCP) legislation. Based on the MSCP requirement to preserve the best habitats, along with connecting habitats to provide corridors for wildlife movement, the City created the Multi-Habitat Preserve Area (MHPA). However, the MSCP/MHPA was never incorporated into the City's LCP, although it is referenced in the newer certified LUPs of the City, and in portions of the certified IP as well. Because the program itself is not certified as part of the LCP, it is not a legal standard of review for CDPs. Since most City-issued CDPs are associated with other local discretionary permits, however, the MSCP provisions are typically relied upon for most City actions..

It should also be noted that while the subject site is not located within the mapped MHPA, the MHPA is currently composed of mostly public lands. Private lands were only included in the MHPA when the property owner was willing to allow that designation. Otherwise, the MHPA boundaries simply exclude the private properties, regardless of the resources on the private sites. In this particular case, the MHPA follows the property boundary on the east and south of the subject site exactly, as well as across Racetrack View Drive to the north. 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 ESHA (as determined by the Commission's ecologist) is not included in the MHPA appears to be based not on biology but on the cooperation, or lack thereof, of the property owner at the time the City put together the MHPA. On its face, this would not appear consistent with the intent of the NCCP program overall.

The City's MHPA mapping has thus 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 very environmentally sensitive lands pursuant to the LCP's categorization, and in this case, with several non-impactive alternatives available, these resources should not be disturbed. It should be noted that the City's LCP did not include a definition of ESHA when it originally reviewed this proposal, relying instead on the definition of Environmentally Sensitive Lands when determining the standards applicable to proposed development.

In summary, the proposed development is clearly inconsistent with the various resource protection policies of the North City LCP Land Use Plan and the Torrey Pines

Community Plan that have been cited above. Where there is any potential for interpreting the LUP and IP differently, the LUP is the controlling document, such that the IP must be interpreted in a manner most consistent with LUP policies. All relevant LUP policies must be considered before allowing any impacts to sensitive resources. In addition, the proposed development is inconsistent with the LDC regarding new subdivisions. Therefore, Special Condition #1 requires a revision to the site plan that eliminates all impacts to CSS and SMC, whether for buildings, pavement, landscaping, or fuel management. Special Conditions #2-5 require revision to the rest of the plan package (landscaping, color board, erosion control and drainage plans) to be consistent with the redesign required in Special Condition #1.

Implementation of two of the special conditions (Special Condition #6 and Special Condition #7) involve the processing and recordation of a deed restriction and an offer to dedicate an easement. The purpose of the deed restriction required in Special Condition #6 is to record all conditions of approval, therefore reminding the current property owner of his or her duties with respect to the use and upkeep of the site, and notifying any and all future owners of the property that there are restrictions that run with the land and continue to be applicable. Special Condition #7 requires the permittees to record an offer to dedicate the open space area of their site for permanent preservation. Since this open space portion of the subject site is contiguous with MHPA lands, it is likely the City may accept the offer and potentially add the area to the MHPA. Only as conditioned, can the Commission find the proposed development consistent with the entire certified LCP, that is, with all applicable LUP policies considered, and the IP provisions interpreted in the manner most consistent with those controlling LUP policies.

3. Potential Project Alternatives. 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 itself and necessary brush management. In other words, it is the subdivision of the existing legal lot into two lots, creating development expectations over a significantly greater portion of the property, 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 subdivision need occur to accommodate reasonable development of the subject property.

However, the Commission is not prohibiting a subdivision of this property through this action, if the applicant revises the project to avoid ESHA. As stated previously, it would appear there are several viable project alternatives. First, the applicant could build a single home complex on the existing property without a subdivision. Recognizing the constraint of the utility easement that crosses the property and prohibits buildings within it, the applicant could achieve equal or greater floor area in a single home at the northern end of the site, and construct a detached garage, guest house, or other outbuildings south of the utility easement.

Second, the applicant could have the desired subdivision, and construct two smaller single-story homes on the two resulting legal lots. This would provide homeowners a greater outdoor area, and still preserve all on-site ESHA. Third, two, 2-story homes could be built. This would allow the subdivision, plus allow the applicant to construct larger homes while cutting the project footprint in half, thus preserving all on-site ESHA. Although the applicant is currently proposing two single-story homes attaining over 29 feet in height (where a maximum of 30 feet is allowed), many good-sized two-story homes are built within the City of San Diego within that same height limit. Since complete two-story homes would have more bulk, if not more height, than the single-story homes proposed, this alternative could result in view impacts. These can be resolved through appropriate design, landscaping, building colors, and siting.

Any of these alternatives, and perhaps many more as well, could be designed to avoid all impacts to southern maritime chaparral and coastal sage scrub from either the residences or the required fuel management zones. Although City regulations would still require mitigation for impacts to non-native grasslands, the applicant's mitigation burden would be greatly decreased by not having to mitigate for losses to CSS and SMC. Since a variety of alternatives would be environmentally preferable to the proposed project, the Commission finds the proposed project inconsistent with the certified LCP, and can only approve the development as conditioned to require avoidance of impacts on ESHA.

4. Visual Resources. The certified North City LUP contains provisions for protection of visual resources within the Coastal Zone. Applicable provisions include the following:

Page 89 - Protect scenic and visual qualities of coastal areas as a public resource.

Page 89 - Development should be designed to protect public views to and along the ocean and scenic coastal areas ...

In addition, several of the earlier citations for biological resources reference visual resources as well. The project site is highly visible from both Interstate 5 (southbound) and other public areas within the San Dieguito River Valley west of Interstate 5. Current construction of a major restoration project in the river valley includes a new public trail system. Thus, the proposed development will be visible to an even larger number of people in the future.

The proposed residential structures conform to required building heights, setbacks and other lot development standards. However, as discussed in the previous section, the proposed homes impact ESHA, and, as such, are required to be revised. However, Special Condition #2 is required to assure the screening of the proposed structures through on-site landscaping, and Special Condition #3 addresses appropriate exterior color treatments, to reduce the visibility of the proposed structures from off-site public vantage points. The first of these conditions includes that additional screening trees may be required if the 2-story option is chosen, even though, at 29+ feet, the currently-proposed 1-story homes attain as great a height as 2-story homes would typically. Thus,

even if the applicant switches to 2-story homes, they will not be significantly more prominent in the identified viewsheds than the proposed 1-story residences. Thus, the Commission finds that, with the attached special conditions, the project can be found consistent with the certified LCP.

5. Public Access. The following public access Chapter 3 policies are most applicable to the proposed development and state, in part:

**Section 30210**

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

**Section 30212**

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. ...

The site is located between the sea (San Dieguito Lagoon) and the first public road, which is I-5 in this location. Racetrack View Drive ends in a cul-de-sac within a larger subdivision east of the subject property. The San Dieguito Lagoon open space system begins just north of Racetrack View Drive, with native uplands just north of the road sloping down to wetlands moving north towards the San Dieguito River. The river valley is undergoing a massive restoration project, which is about halfway complete at this time. The restoration project includes a public trail system; however, it is located mostly along the northern side of the wetlands and uplands, with a smaller overlook loop trail in the upland area on the south side of the valley, but east of I-5.

The ocean itself, and the municipal beaches in the City of Del Mar, are more than a mile west of the subject site. The main east-west beach access routes are Via de la Valle and Del Mar Heights Road, located north and south of the site, respectively. Racetrack View Drive is strictly a two-way residential street within the City of San Diego. Its western terminus is at Jimmy Durante Drive, which primarily accesses various areas of the Fairgrounds. Thus, Jimmy Durante is used by the public for access to recreational events at the Fairgrounds, and also as a means of connecting to other access points to the Del Mar beaches.

To summarize, the proposed project is on a tucked-away site on the south side of the San Dieguito open space, separated from it by Racetrack View Drive. Except for residents living further east on this street (less than thirty houses), this street is not used as a beach access route. The beach itself is over a mile to the west, and there will be no water contact activities within the lagoon. Therefore, the Commission finds the proposed development, as conditioned, consistent with the cited public access Coastal Act policies.

6. Local Coastal Planning. The City of San Diego has a fully certified LCP, and has issued a coastal development permit (CDP) based on consistency with the LCP. The City's permit was appealed, and the Commission found, on February 7, 2008, that a substantial issue has been raised. Therefore, the City's CDP is null and void, although other local permits approved in conjunction with the CDP remain effective. A new CDP from the Coastal Commission is approved herein, using the certified LCP as the legal standard of review. With the conditions attached hereto, the Commission finds that approval of this development will not prejudice the City's ability to continue implementation of the certified LCP throughout its coastal zone.

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

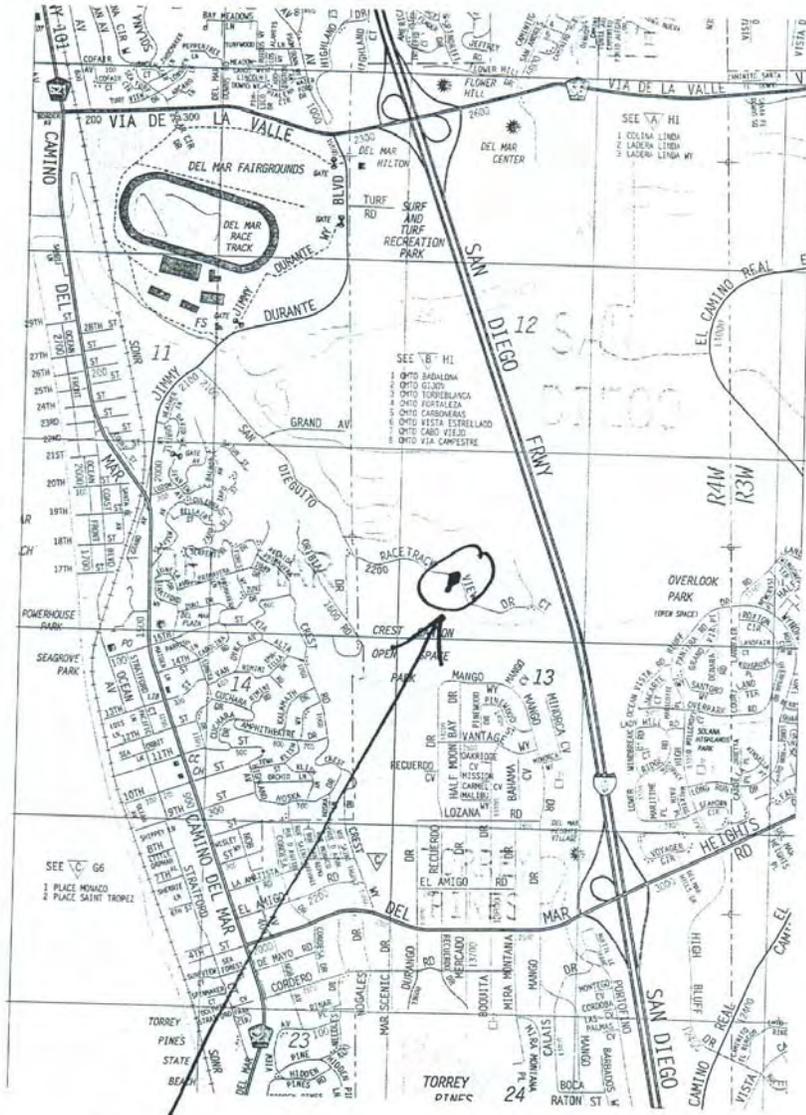
The proposed project has been conditioned in order to be found consistent with the City of San Diego's certified LCP. Mitigation measures, including conditions addressing project redesign will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

#### STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

A-6-NOC-07-130



Site

EXHIBIT NO. 1
APPLICATION NO.
<b>A-6-NOC-07-130</b>
Location Map

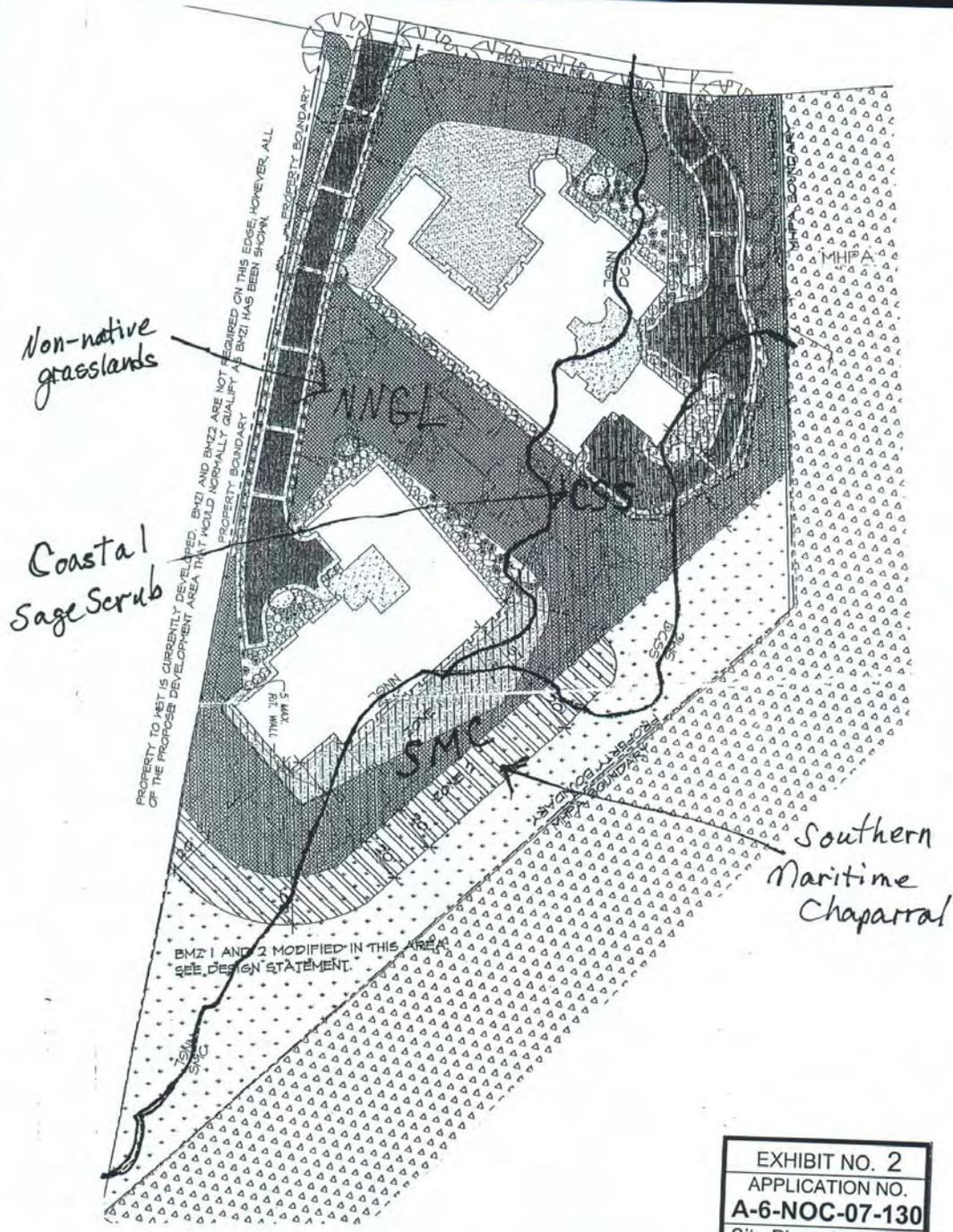
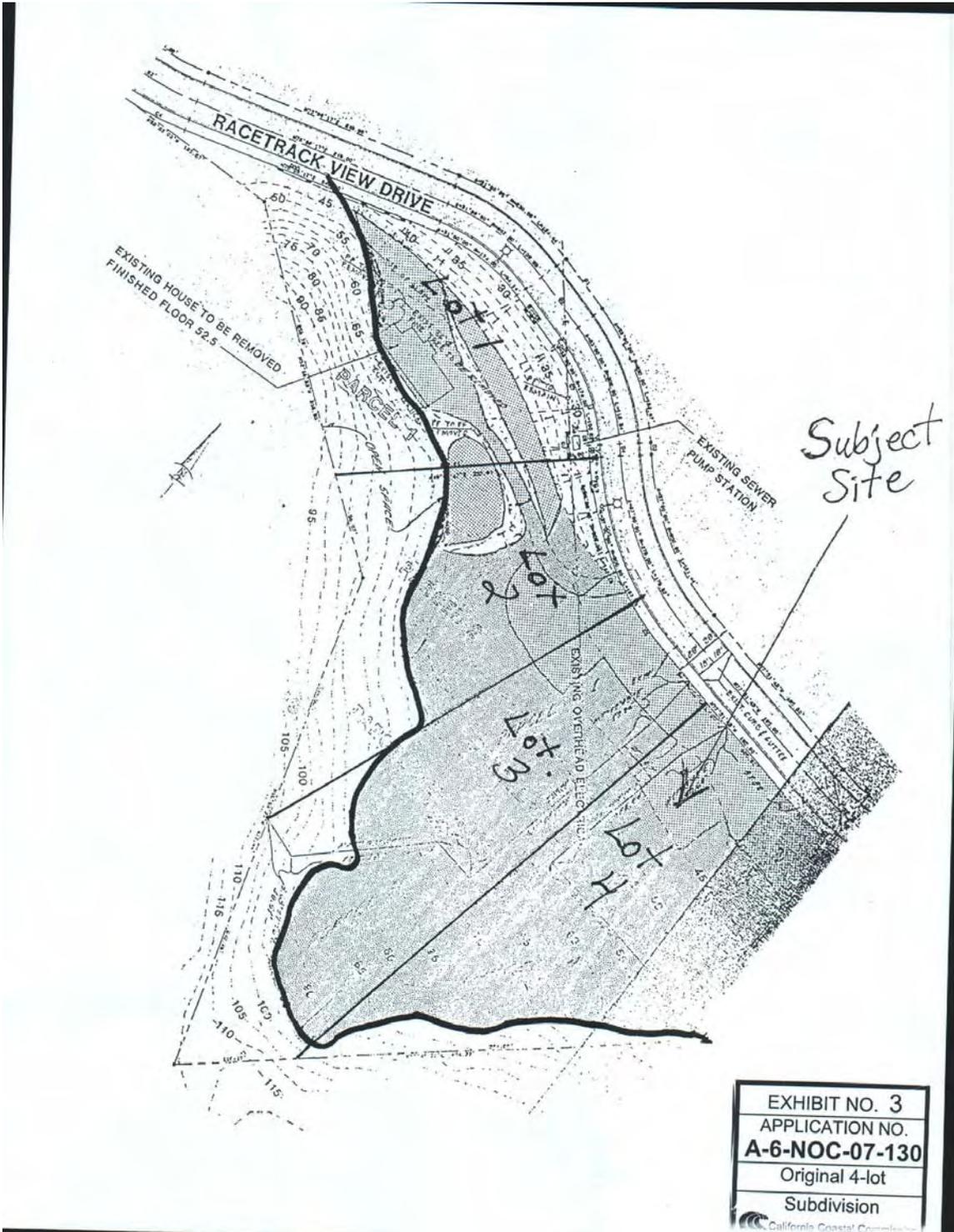



EXHIBIT NO. 2  
APPLICATION NO.  
**A-6-NOC-07-130**  
Site Plan with biology  
overlay  
California Coastal Commission



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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

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EXHIBIT NO. 4
APPLICATION NO.
<b>A-6-NOC-07-130</b>
Applicant's Response
<i>41 pages</i>
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	143.0141(a),(b)	143.0141
	P	SDP Process Tree	SDP Process Tree
	U	143.0130(d),(e)	--

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

951 5873510

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07:08:30 a.m.

01-15-2008

14 / 42

ATTACHMENT A  
CDP NO. A-209-78

951 5673510

MuniFancial

07:08:34 a.m.

01-15-2008

15 / 42

4

FILED IN PUBLIC RECORDS  
By: [Signature]

457

FILED IN PUBLIC RECORDS  
RECORDED REQUEST OF  
City of San Diego  
Jan 9 1 59 PM '08  
OFFICIAL RECORDS  
SAN DIEGO COUNTY, CALIF.  
FILED IN PUBLIC RECORDS

PLAN FILE NO.: T.H. 77-149

CITY ADDRESS: 1595 San Dieguito Drive

DECLARATION OF COVENANTS  
FOR  
PUBLIC IMPROVEMENTS

WHEREAS, Carmona Natchanghi is (are) the owner(s) of the following described property (Legal):  
LOT: \_\_\_\_\_

ACRITY, a portion of the SW 1/4 of the SW 1/4 of Section 13, \_\_\_\_\_ MAP: \_\_\_\_\_

WHEREAS, the owner(s) seeks a change affecting said property to obtain a Building Permit pursuant to Municipal Code Section 82.0207 which change will cause additional burdens on the City of San Diego; and

WHEREAS, The City of San Diego is empowered to prevent said change, or to deny or withhold its consent to the proposed change, as the case may be, until the owner(s) provides such public improvements as will alleviate such burdens; and

WHEREAS, the installation by owner(s) of Public Improvements described below is a reasonable condition to the granting of authority for said change by the City of San Diego; and

WHEREAS, in lieu of the immediate installation and dedication of said Public Improvements, it is the desire and intention of the owner(s) to impose upon the property described above these covenants for future improvements for the benefit of the City of San Diego; NOW, THEREFORE,

The owner(s) hereby declares that all the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, which shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the described lands or any part thereof.

No protest shall be made by the owner(s) to any proceedings for the installation or acquisition of sidewalks on San Dieguito Drive under any special Act of 1911 or the Municipal Improvement Act of 1913, or any other applicable state or local law, and whether processed by the City of San Diego or any other governmental entity having jurisdiction in the matter and for the purposes of determining property owner(s) support for such

Carmona Natchanghi  
(PLAINTIFF)  
[Signature]  
(DEFENDANT)

STATE OF CALIFORNIA  
COUNTY OF San Diego  
I, Carmona Natchanghi, before me, the undersigned, a Notary Public in and for said state, personally appeared Carmona Natchanghi

RECORDED

Witness my hand and official seal.  
Notary Public  
Wendy A. Warnick  
Wendy A. Warnick  
(Name Printed or Plated)



190 207696  
THIS ONLY!

S51 5873510

MuniFancial

07.08.51 a.m.

01-15-2003

18 /42

RECORDING REQUESTED BY AND  
WHEN RECEIVED MAIL TO: - 0: 1050

CALIFORNIA COASTAL COMMISSION  
631 BOWEN STREET, FOURTH FLOOR  
SAN FRANCISCO, CA 94105  
ATTN: Legal Department

83-232958

RECORDING  
OFFICE OF THE CLERK  
OF SAN DIEGO COUNTY  
REC JUL -8 AM 11:26

VEP A. L. ...  
COUNTY CLERK

DEED RESTRICTIONS

- I. WHEREAS, Ribotique, 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 Diego 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. Higley, 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-209-73 was granted on August 16, 1978, by the California Coastal Commission; and
- V. WHEREAS, pursuant to the California Coastal Act of 1976, Willard A. Higley, Presidio Development Co., assigned Coastal Development Permit A-209-73 to Owner; and
- VI. WHEREAS, Coastal Development Permit A-209-73 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 Director:  
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 Government Lot 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.

RP  
ASD

\*

83-232958

1051

VII. WHEREAS, the Property is a parcel located in the Coastal Zone; and  
VIII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted; and

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

NOW, THEREFORE, in consideration of the granting of Permit No. 209-78 to the Owner by the California Coastal Commission, the Owner hereby irrevocably covenants with the California Coastal Commission that there be and hereby is created 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:

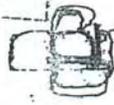
1. There shall be no further subdivision of Parcel 1 and Parcel 2 of the Property.
2. Future subdivision of Parcels 3 and 4 of Property shall be limited to no more than one two-way split of each lot.

Said Deed Restrictions shall remain in full force and effect during the period that said permit or any modification or amendment thereof remains effective and during the period that the development authorized by said permit or any modification or amendment of said development remains in existence in or upon any part of and thereby confers benefits upon the Property and to the extent said Deed Restrictions are hereby deemed and agreed by Owner to be covenants running with the land and shall bind the Owner and all his assigns or successors in interest.

//  
//

NOT PAPER  
12 OF CALIFORNIA  
1 115 143V, 9-731  
SEP

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1983-232958



951 5873510

MuniFancial

07:09:16 a.m.

01-15-2008

18 / 42

1052

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

DATED: MAY 20, 1983

Mehdad Moshirani  
OWNER  
MEHDAZ MOSHIRANI  
TYPE OR PRINT NAME OF ABOVE

OWNER  
TYPE OR PRINT NAME OF ABOVE

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons  
in 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 MEHDAZ MOSHIRANI (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  
pursuant to its laws or a resolution of its board of directors.  
Witness my hand and official seal.

SIGNATURE Ruth J. Jaber

NOTARY PUBLIC - CALIFORNIA  
RUTH J. JABER  
Notary Public  
San Diego County  
My Commission Expires Aug. 12, 1985

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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

*Mehrad Moshaghi*  
OWNER  
MEHRAD MOSHTAGHI  
TYPE OR PRINT NAME OF ABOVE

OWNER  
TYPE OR PRINT NAME OF ABOVE

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 RUEN 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 (INDICATE  
21 evidence) to be the person whose name is subscribed to this instrument, and  
22 acknowledged that he/she executed it.

*Ruth L. Faber*  
NOTARY PUBLIC IN AND FOR SAID COUNTY AND  
STATE



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19 232958  
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07:09:37 a.m.

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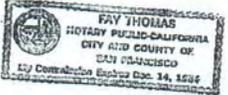
1 This is to certify that the deed restriction set forth above is hereby  
 2 acknowledged by the undersigned officer on behalf of the California Coastal  
 3 Commission pursuant to authority conferred by the California Coastal  
 4 Commission when it granted Coastal Development Permit No. 209-78  
 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  
 9 COUNTY OF San Francisco ss

10 On May 12, 1983, before me Fay 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.



Fay Thomas  
 Notary

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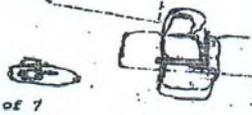
1055

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".



19 232958  
83



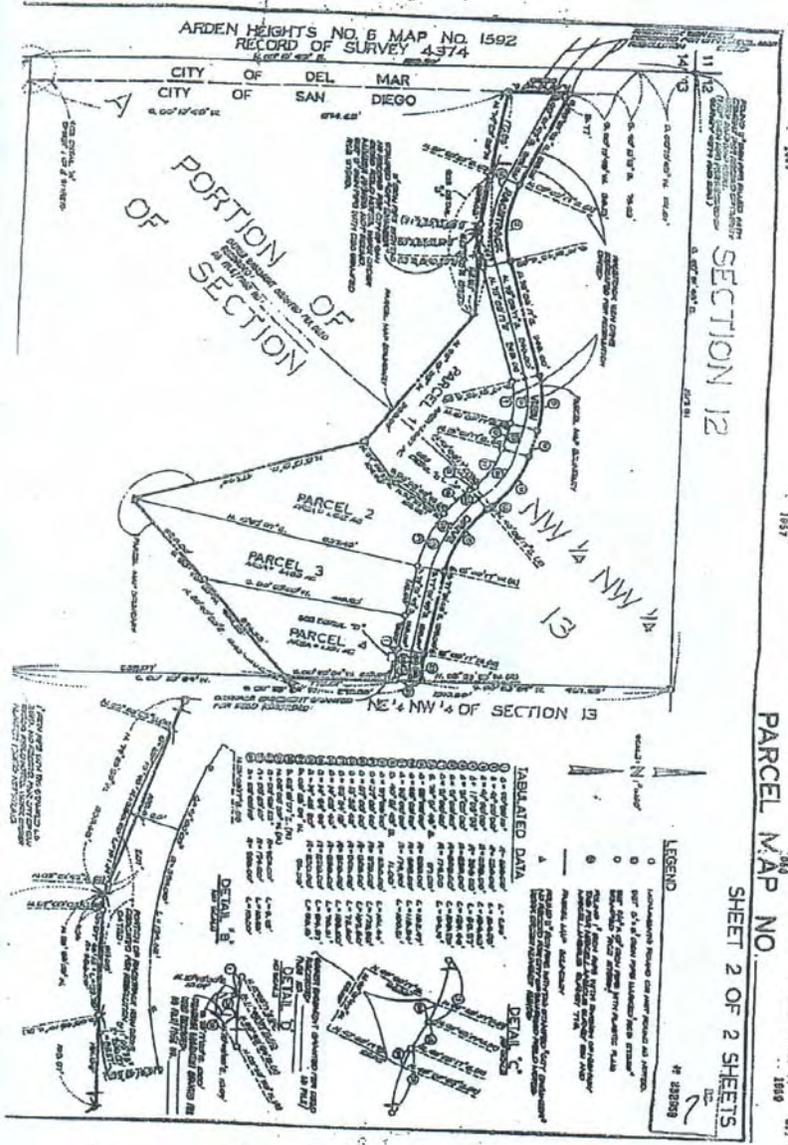
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ATTACHMENT B

CDP NO. 6-88-364

951 5873510

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07:10:15 a.m.

01-15-2008

24 / 42

RECORD REQUESTED BY  
GATEWAY III WYAND  
BY AND RETURN TO:  
STATE OF CALIFORNIA  
CALIFORNIA COASTAL COMMISSION  
531 HOWARD STREET, FOURTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105

2110

SPN 200-100-5687

DEED RESTRICTION

I. WHEREAS, CYNTHIA WISBERGH

hereinafter referred to as Owner(s), is the record owner of the following real property:

PARCEL 1 AND 2, OF TRACT MAP 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, NOVEMBER 22, 1965, AS PER 17, 85-69247 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 30103 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

CUFF PAPER  
State of California  
Sta 115 - 100 - 671

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AR 1.0  
RAC 1

68 100403  
APR 10 PM 3:56  
VERA L. LYLE  
COUNTY RECORDER

-3-

1 VI. WHEREAS, coastal development permit No. 6-00-356  
2 was subject to the terms and conditions including but not limited  
3 to the following conditions:

4  
5  
6  
7 Applicant's Assumption of Risk. Prior to the issuance of the  
8 coastal development permit, the applicant as landowner shall  
9 execute and record a deed restriction, in a form and content  
10 acceptable to the Executive Director, which shall provide: a- that  
11 the applicant understands that the site may be subject to natural  
12 hazards from landslides potential, and 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. 6-00-356 so as to enable  
Owner to undertake the development authorized by the permit.

COUNTY CLERK  
SAN DIEGO COUNTY  
270 113 - 420 2-11  
44

-3-

1 NOW, THEREFORE, in consideration of the granting of Permit  
 2 No. 6-88-354 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 landslides 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 agree 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.  
 15  
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 22

23  
 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

QUEST BUREAU  
 1000 G ST. SAN DIEGO, CA 92101  
 TEL 619 594 1111  
 FAX 619 594 1112



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01-15-2008

27 / 42

-4-

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, 2008

16  
 17 SIGNED: *C. M. [Signature]*

18  
 19 Cameron Mestephi

20  
 21 PRINT OR TYPE NAME OF ABOVE

22  
 23 SIGNED: \_\_\_\_\_

24  
 25 \_\_\_\_\_  
 26 PRINT OR TYPE NAME OF ABOVE

27 (NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

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" 2129

- 3 -

1 **NOTE TO NOTARY PUBLIC:** If you are notarizing 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  
7 On this 16th day of February in the  
8 year 1989, before me Melanie N. Adams  
9 Notary Public, personally appeared Cameron Houghton  
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 N. Adams  
NOTARY PUBLIC IN AND FOR SAID  
COUNTY AND STATE

13  
14  
15  
16  
17  
18 State of California, County of \_\_\_\_\_  
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

COPY PAPER  
STATE OF CALIFORNIA  
170 "X" 40" "X"  
WEP

RECORDING INFORMATION

2124

- 6 -

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 B. [Signature]  
John B. [Signature], Staff Counsel  
California Coastal Commission

9  
10  
11  
12 STATE OF California )  
13 COUNTY OF San Francisco ) ss

14 On March 15, 1989, before me, Richard L. Dove,  
15 Notary Public, personally appeared John B. [Signature]

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.



Richard L. Dove  
NOTARY PUBLIC AND FOR  
SAID STATE AND COUNTY

RECORDS SECTION  
COUNTY OF SAN FRANCISCO  
11

ATTACHMENT C

COASTAL COMMISSION STAFF REPORT  
DATED OCTOBER 31, 1988



951 5873510

MuniFancal

07:11:27 a.m.

01-15-2008

31/42

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO COUNTY DISTRICT  
 1535 CARMINO COTTAGE DRIVE, SUITE 121  
 SAN DIEGO, CA 92108-3389  
 (619) 597-9740

**EXHIBIT "A" #125**

Filed: August 1, 1988  
 49th Day: Malvered  
 100th Day: January 29, 1989  
 Staff: EL-58  
 Staff Report: October 31, 1988  
 Hearing Date: November 15-18, 1988

**REGULAR CALENDAR  
 STAFF REPORT AND PRELIMINARY RECOMMENDATION**

Application No.: 6 00-364

Applicant: **Cameron Moshtagh** Agent: **Concepts Most**

Description: Resubdivision of four parcels into four new parcels (Parcel 1 - 1.24 acres; Parcel 2 - 1.26 acres; Parcel 3 - 1.04 acres; Parcel 4 - 1.04 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 15,000 cu-yds. of cut and fill grading.

**Parcel 1**  
 Lot Area 53,046 sq. ft.  
 Building Coverage 2,504 sq. ft. ( 5%)  
 Pavement Coverage 3,000 sq. ft. ( 6%)  
 Landscape Coverage 2,000 sq. ft. ( 4%)  
 Unimproved Area 45,542 sq. ft. (85%)

**Parcel 2**  
 Lot Area 55,016 sq. ft.  
 Building Coverage 4,607 sq. ft. ( 8%)  
 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 Macarack View Drive, approximately 680 feet east of San Dieguito Drive, North City, San Diego, San Diego County.  
 APN 300-160-5867

**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 86-80-92 (and amendment) and revegetation of areas disturbed by grading.

Description: San Diego, CA Document-Year Dec 10 1988 18648

3126

6-88-364  
Page 2

Substantive File Documents: Certified North City Land Use Plan and City of San Diego LCP Implementing Ordinances CCC Files #75210; 86-88-92 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 silt, interceptor ditches, sandbagging, filtered inlets, fabric basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

2127

6-88-366  
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 parcels 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 Coastal Commission

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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. F6210) was approved on August 16, 1978, when the California Coastal Commission, on appeal, issued a permit for a four-lot subdivision (Replacement Map #77-140). 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 TR 03-0221, 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. 6-83-82) 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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6-88-104  
Page 5

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-A). 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 66-88-92, 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 66-88-92 (re subdivision of four lots, demolition of one house, construction of one house and remedial 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 1970, 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, Gecon, 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 Geoccon that a major portion of Parcel 1 and 2 must be excavated, recompact and supported by buttress fill prior to any construction activities occurring on the site. The geologist's maintains that alternatives, such as retaining walls or the resting of the houses, 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 Racetrack View Drive, which prevents the houses 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, Geoccon 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, minutely in some places, but by as much as ten feet in isolated spots on the site. In addition, the buttress fill will unroach 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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6-88-304  
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 subdivision permitted in Coastal Development Permit 6-88-02 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 area, 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 occupied, 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 1976 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 30231 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 30231, 30238 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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6-80-364  
Page 9

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. Those 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.

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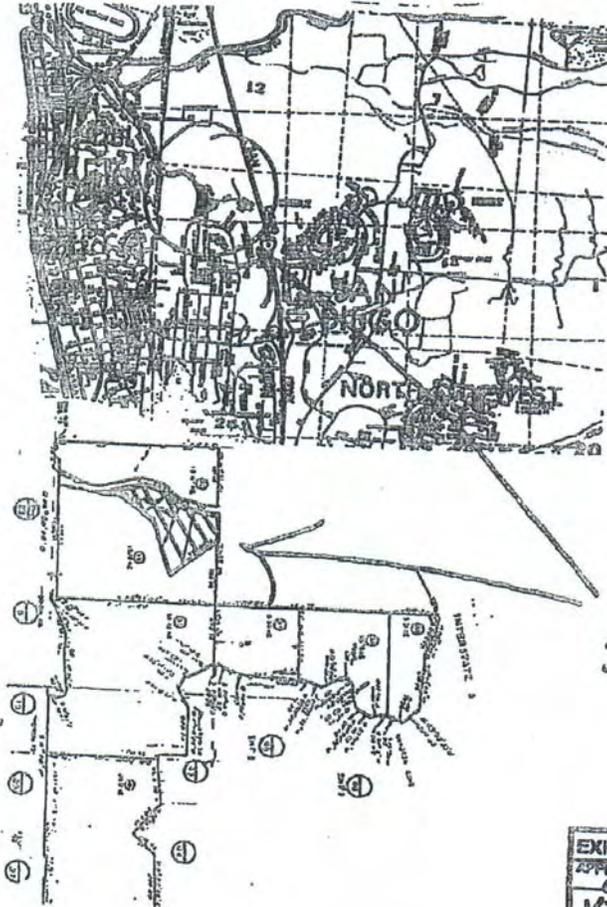
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6-88-364



Site

EXHIBIT NO.	1
APPLICANT	San Diego
VICINITY MAP	San Diego

SAN DIEGO COUNTY RECORDS  
 COUNTY OF SAN DIEGO  
 1

Description: San Diego CA Document #

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6-88-31

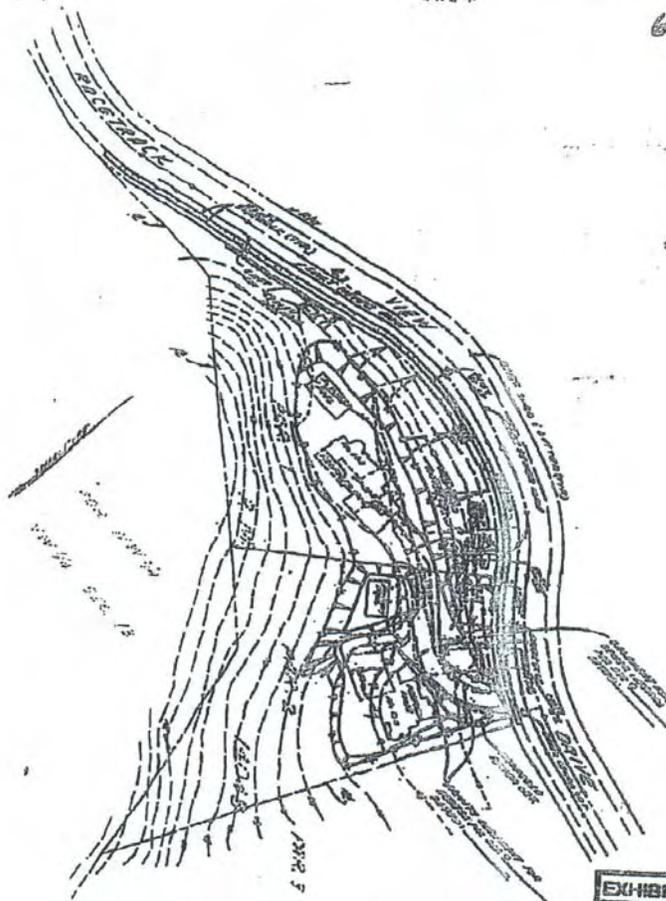


EXHIBIT NO. 2  
APPLICATION NO. 6-88-31  
Grading Plan  
March 1988

1

951 5873510

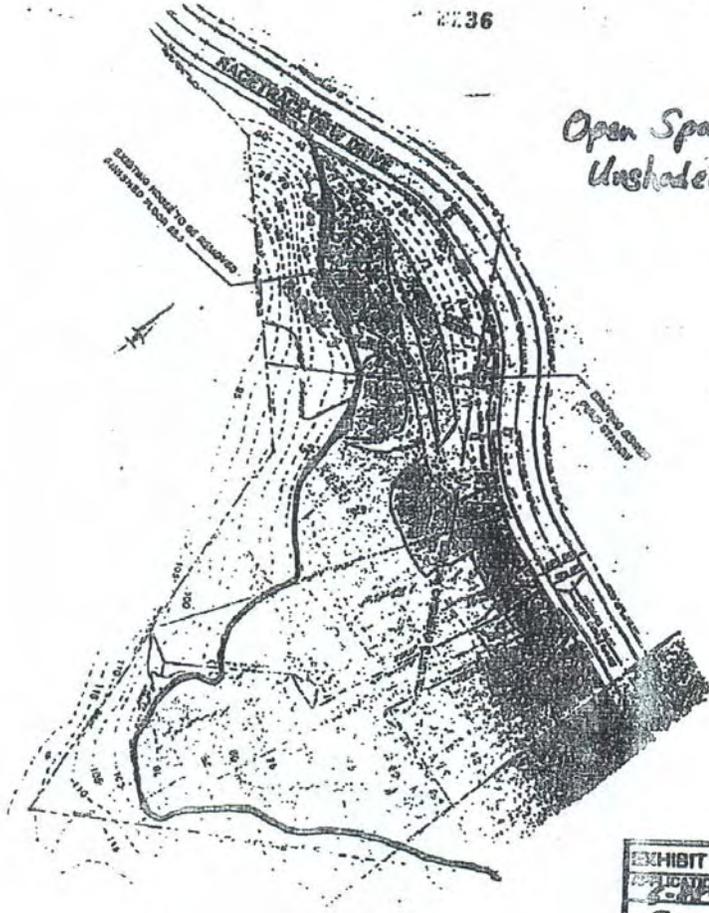
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2236



Open Space is  
Unshaded Area

EXHIBIT NO. 3  
APPLICATION NO. 2007-004  
Open Space  
City of the Grand Comoros

IN RECORD ROOM



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 proposed



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

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

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

Planning Commission  
Development Division

FILE COPY

**From:** Katie Wilson [mailto:katiw@muni.com]  
**Sent:** Thursday, January 31, 2008 11:27 AM  
**To:** sblank@kandsranch.com  
**Subject:** Racetrack View Dr. Appeal (Item th8b on next week's Coastal Comm. Agenda)

Good morning, Commissioner Blank.

I am very interested in an opportunity to speak with you before next week's Coastal Commission hearing regarding an appeal of a project that was approved by the City of San Diego and appealed by the Commission. I have attached the agenda report to this email. Included within the report is our letter responding to the issues raised in the appeal (beginning on page 48 of the report). The issues and our response are as follows:

The project is for a lot split of a 1.84 acre vacant parcel into two .92 acre parcels and construction of two single family homes (one on each lot). The main focus of the appeal is a section of the San Diego Land Development Code that states that no new lot shall be created that results in more encroachment into environmentally sensitive habitat than would be allowed if the lot were left unsubdivided. However, what was ignored was the statement related to ESHA in the Land Development Code that clearly states that development of single family homes have NO LIMIT ON ENCROACHMENT so long as very specific mitigation measures are in place (basically payment into a Habitat Acquisition Fund and/or mitigation on-site --- of which we are doing both). Thus, the City of San Diego Planning Commission and Planning staff correctly found that there is no encroachment beyond what would be allowed without the lot being split.

It is important to note that the Coastal Commission issued the original Coastal Development Permit that created the 1.84 acre parcel and the CDP identified its potential for a further lot split into two lots and did not impose any restrictions whatsoever. The adjacent parcel to the west was also 1.84 acres and was split approximately 5 years ago into two .92 acre parcels with the mitigation of ESHA impacts through the exact same methods we are using (on site preservation and payment into a Habitat Acquisition Fund, as mandated by the San Diego Land Development Code). The City's files show that the Coastal Commission was notified of the approval of that project, but apparently there was a decision made (rightfully so) NOT to appeal that project. Yet, here we are five years later with the exact same Land Development Code and exact same Community Land Use Plan and our identical project is appealed.

Lastly, the appeal incorrectly cited the wrong Community Land Use Plan. Staff identified the applicable plan as the North City LUP, when actually the appropriate plan is the Torrey Pines Community Plan. The North City Plan was the leading document for this area until the Torrey Pines Community Plan was adopted and it clearly states in the Torrey Pines LUP that any conflicts between the two documents shall mean that the Torrey Pines Plan is the guiding document (basically trumps the North City Plan). Thus, in our response to the appeal we address the applicable provisions in the Torrey Pines LUP and our counter arguments showing how our project complies completely. We were unanimously supported by the Torrey Pines Community Planning Group when the project was presented to them for consideration.

Commissioner Ben Hueso is anticipated to make the motion that NO SUBSTANTIAL ISSUE exists and he is considering a YES vote on that motion. We are hoping that you will follow suit and would love to discuss the issues in more detail with you to support our position.

Please feel free to contact me at (858)776-2577 at your convenience, including evenings and weekends. I appreciate your time.

Katie Wilson

EXHIBIT NO. 6
APPLICATION NO.
<b>A-6-NOC-07-130</b>
Applicant's E-mail

San Diego Coastal Commission

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;

EXHIBIT NO. <b>7</b>
APPLICATION NO. <b>A-6-NOC-07-130</b>
City's CDP
<i>10 pages</i> California Coastal Commission

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).

- 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 affect 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.

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.'

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.**

