

## CALIFORNIA COASTAL COMMISSION

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



# Wed 12a

## Addendum

September 5, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Wed 12a**, Coastal Commission Permit Application  
**#6-08-32 (Gessner)**, for the Commission Meeting of September 10, 2008

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Staff recommends the following changes be made to the above-referenced staff report:

1. Special Condition #1c on Page 3 of the staff report shall be modified as follows:

c. Fuel modification activities are prohibited during the breeding season of the California Gnatcatcher, February 15<sup>th</sup> through August 30<sup>th</sup> of any year; unless written approval for work during this period is first obtained from the Dept. of Fish and Game or U.S. Fish and Wildlife Service.

2. Special Condition #2(b)(2) on Page 4 of the staff report shall be modified as follows:

2. As proposed, impacts, both permanent and temporary, to Southern maritime chaparral shall be mitigated, as a goal, at not less than a ratio of 3:1 in-kind mitigation consisting of creation and/or substantial restoration of Southern maritime chaparral habitat. If it is determined that planting of Southern maritime chaparral is not biologically feasible, Diegan coastal sage scrub shall be substituted at the same ratio (3:1).

3. Special Condition #3a on Page 6 of the staff report shall be modified as follows:

a. The plan shall include enhancement of wetlands within San Elijo Lagoon at a 2:1 rate and/or the restoration of upland habitats within the same lagoon ecosystem at a 2:1 rate. Alternatively, restoration of upland habitats may involve payment of an in-lieu fee to the San Elijo Lagoon Conservancy for the removal of exotic/invasive species and the planting of native habitat.

4. On Page 19 of the staff report, the first complete paragraph shall be revised as follows:

In terms of mitigation for wetland impacts, the applicant has not proposed mitigation since his biological reports have asserted that the wetlands does not constitute jurisdictional wetlands as defined by the Coastal Act. Therefore, pursuant to Dr. Dixon's recommendation, **Special Condition #3** has been attached which requires the submission of a detailed wetlands mitigation plan for Executive Director approval that has been created in consultation with the Dept. of Fish and Game and/or the U.S. Fish and Wildlife Service. The plan calls for enhancement of wetlands within San Elijo Lagoon at a 2:1 rate or restoration of upland habitats within the same lagoon ecosystem at a 2:1 rate. The restoration of upland habitat may include participation in existing ongoing program by San Elijo Lagoon Conservancy to remove pampas grass from within the lagoon and replanting of the areas with native upland species.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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# W12a

Filed: March 14, 2008  
49th Day: May 2, 2008  
180th Day: September 10, 2008  
Staff: G. Cannon-SD  
Staff Report: August 21, 2008  
Hearing Date: September 10, 2008

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-08-32

Applicant: Bradley and Debra Gessner

Description: Construct 3,664 sq. ft., 2-story, single-family residence and 587 sq. ft. detached garage involving 1,750 cu. yds. of grading on a 2.61 acre vacant lot.

Lot Area	113,692 sq. ft. (2.61 acres)
Building Coverage	2,599 sq. ft. ( 2 %)
Pavement Coverage	1,214 sq. ft. ( 1 %)
Landscape Coverage	12,389 sq. ft. (11 %)
Unimproved Area	97,490 sq. ft. (86 %)
Parking Spaces	2
Zoning	RS1
Plan Designation	RS1
Ht abv fin grade	27 feet

Site: 1451 Rancho Serena Road, Rancho Santa Fe, San Diego County.  
APN 262-130-13

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STAFF NOTES:

Standard of Review: The standard of review for the proposed development is Chapter 3 of the Coastal Act.

Summary of Staff's Preliminary Recommendation: Staff is recommending approval with conditions. The development has been sited and designed to minimize impacts to ESHA to the maximum extent practicable, however, impacts to ESHA cannot be avoided and will occur as a result of the 100 ft. fuel modification requirements of the Fire Department. In addition, a small isolated wetland has been identified on the site that appears to have been created as a result of drainage or water pipe leakage from the slope above the site. Impacts to this wetland cannot be avoided as they occur on the only level pad area on the site where the home is proposed to be located. Staff believes that as conditioned, the

development will include measures to mitigate all significant adverse impacts to the ESHA to the greatest extent feasible while providing for a reasonable economic use of the property that will avoid an unconstitutional taking of private property for public use.

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Substantive File Documents: “Biological Technical Report” dated March 10, 2008 by Chris Norby and “Fuel Modifications Zone Impacts Assessment” dated July 21, 2008 by Dudek (Tricia Wotipka), “Wetlands Delineation Report dated July 18, 2008 by Dudek (Tricia Wotipka); Memorandum by Dr. John Dixon dated August 15, 2008; CDP Nos. #F5926 and F#8371.

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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. 6-08-32 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 policies of Chapter 3 of the Coastal Act and 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. 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. Final Fire Dept. Fuel Modification Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, revised final fire department fuel modification plans addressing the area within 100 feet of the proposed home, garage and driveway. Said plans shall be in substantial conformance with the plans submitted with this application by Darsono Design Associates, date-stamped received March 14, 2008 and by Dudek Associates date-stamped received on July 23, 2008. Said plans shall be approved by the Rancho Santa Fe Fire Department and shall include the following:

- a. The fuel modification zone is limited to 100 ft. from the proposed structures and 30 ft. from the proposed access driveway.
- b. The property owner shall be responsible for at least annual maintenance within the designated 100 ft. brush management area to remove any introduced non-native or invasive plant species.
- c. Fuel modification activities are prohibited during the breeding season of the California Gnatcatcher, February 15<sup>th</sup> through August 30<sup>th</sup> of any year.
- d. Any future vegetation clearance within the proposed fuel modification area other than removal of invasive and non-native plant species and dead or dying plants shall require approval of a coastal development permit or amendment to the subject permit, unless the Executive Director determines no permit or amendment is legally required.

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

2. Southern Maritime Chaparral/Diegan Coastal Sage Scrub Mitigation Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a detailed Southern maritime chaparral/Diegan coastal sage scrub mitigation plan to the Executive Director for review and written approval. The plan shall be developed in consultation with the San Elijo Lagoon Conservancy and California Department of Fish and Game (CDFG) and/or the U.S. Fish and Wildlife Service (USFWS). Said plan shall include at a minimum the following elements:

- a. A detailed site plan of the impact area that substantially conforms to the "Biological Technical Report", dated March 10, 2008 by Chris Norby and *Fuel* "Modifications Zone Impacts Assessment", dated July 21, 2008 by Dudek. The final plan must delineate all impact areas, the types of impact (both permanent and temporary), and the exact acreage of each identified impact.

b. A detailed restoration and monitoring plan for the coastal sage scrub mitigation that includes:

1. As proposed, impacts, both permanent and temporary, to Diegan coastal sage scrub shall be mitigated at not less than a ratio of 2:1 in-kind mitigation consisting of creation and/or substantial restoration of Diegan coastal sage scrub habitat.
2. As proposed, impacts, both permanent and temporary, to Southern maritime chaparral shall be mitigated, as a goal, at not less than a ratio of 3:1 in-kind mitigation consisting of creation and/or substantial restoration of Southern maritime chaparral habitat.
3. The Diegan coastal sage scrub and Southern maritime chaparral planted at the mitigation site should be similar to the existing onsite undisturbed stands of SMC and DCSS in both species composition and ground cover, and shall achieve 90% coverage in 5 years. Monitoring reports will be submitted to the San Elijo Lagoon Conservancy, wildlife agencies, and Coastal Commission annually for five years.

c. The following goals, objectives, and performance standards for the restoration (mitigation) site:

- Goals of the Restoration. A clear statement of the goals of the restoration, including the desired coastal sage scrub community, major vegetation components, and wildlife support functions. There should be a clear narrative description of the characteristics of the habitat type that the restoration is intended to provide.
- Description of the Existing Habitat. The plan should include a quantitative description of the chosen restoration site. This information is necessary in order to assess whether the proposed restoration site is appropriate for this use.
- Characterization of the Desired Habitat. Although the characteristics of the model habitat may be based on descriptions in the literature, the best approach is to identify an actual habitat that can act both as a model for the restoration and as a reference site for developing success criteria. The reference habitat should be sampled using the methods that will be applied to the restoration site. The resultant data should be included in the Restoration and Monitoring Plan.
- Restoration Manager. A qualified individual who will be personally responsible for all phases of the restoration should be identified by name as the restoration manager. Different phases of the restoration should not be assigned to different contractors without onsite supervision by the

restoration manager. The restoration manager should be a qualified restoration biologist, not a project manager with no technical background.

- Grading Plan. If the topography must be altered, a formal grading plan should be included.
- Erosion Control. Methods to control erosion and maintain water quality should be included if soil or other substrate will be significantly disturbed during the course of the restoration.
- Weed Eradication Plan. One of the greatest threats to the success of restoration projects is invasion by exotic species. If the site chosen for a restoration project is currently dominated by weeds, weed eradication should precede restoration. After restoration takes place, weeding should be very frequent (usually monthly and then quarterly) and intense (zero tolerance) until the native vegetation is sufficiently well-established to resist continued colonization by exotics. Weeding should generally be done by hand and must be supervised by a restoration biologist to insure that the native plants are not disturbed.
- Planting plan. The plan should identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. Based on these goals, the plan should identify the species that are to be planted (plant “palette”), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. Plant propagules should come from local native stock. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars and the planting plan should provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.) Technical details of planting methods (e.g., spacing, mycorrhizal inoculation, etc.) should also be included.
- Irrigation Plan. If supplemental watering is planned, the method and timing of watering should be described. All irrigation infrastructures must be removed by the end of the monitoring period.

d. Provisions for submittal, within 30 days of completion of initial planting work, of “as built” plans demonstrating that the restoration site has been established in accordance with the approved design and construction methods

The permittee shall undertake development in accordance with the approved mitigation plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved 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.

3. Wetlands Mitigation Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final wetland mitigation plan for all freshwater riparian impacts associated with the proposed project. The final mitigation plan shall be developed in consultation with the San Elijo Lagoon Conservancy, the California Department of Fish and Game and/or the U.S. Fish & Wildlife Service. The Mitigation Plan shall include the following:

- a. The plan shall include enhancement of wetlands within San Elijo Lagoon at a 2:1 rate and/or the restoration of upland habitats within the same lagoon ecosystem at a 2:1 rate.
- b. The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Sustainability of the attributes shall be a part of every performance standard.

The permittee shall undertake mitigation 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.

4. 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 final landscaping plan developed in consultation with the California Department of Fish and Game. Said plan shall be approved by the County of San Diego, have the written approval of the Rancho Santa Fe Fire Department, and shall include the following requirements:

- a. All proposed landscaping shall be drought-tolerant, native, fire resistant, non-invasive plant species that are obtained from local stock, if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest 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.
- b. A planting schedule that indicates that the planting plan shall be implemented within 60 days of completion of residential construction.
- c. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be



replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

- d. The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) is prohibited.
- 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, that 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 Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**5. Final 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 County 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 County'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 BMPs 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 1<sup>st</sup> of any year 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.

6. Drainage Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a drainage and runoff control plan approved by the County of San Diego documenting that the runoff from the roof, driveway and other impervious surfaces will be collected and directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation in a non-erosive manner, prior to being conveyed off-site.

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.

7. Future Development Restriction. This permit is only for the development described in coastal development permit No. 6-08-32. Pursuant to Title 14 California

Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit No. 6-08-32. Accordingly, any future improvements to the development authorized by this permit, shall require an amendment to Permit No. 6-08-32 from the Commission or shall require an additional coastal development permit from the Commission.

8. Other Permits. **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide to the Executive Director, copies of all other required federal, state or local permits for the development. The applicant shall inform the Executive Director of any changes to the development required by any of these other permits. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. Open Space Restriction. No development, as defined in section 30106 of the Coastal Act, shall occur south of the 100 foot fuel modification zone as generally described and depicted in Exhibit #4 to the August 21, 2008 staff report and more specifically described and depicted in Exhibit #1 attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- a. Restoration/enhancement/maintenance, consistent with the Executive Director approved Southern Maritime chaparral/Diegan coastal sage scrub Mitigation Plan.
- b. Removal of any existing unauthorized irrigation lines.

**PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #4 attached to the August 21, 2008 staff report.

10. 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.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. Proposed is the construction of a 3,664 sq. ft., 2-story, single-family residence and 587 sq. ft. detached garage involving 1,750 cu. yds. of grading on a 2.61 acre lot. The majority of the existing vacant lot consists of a steep, densely vegetated north-facing slope that ranges from 40 to 180 ft. above mean sea level, according to the applicant's Biological Technical Report (Ref. "Biological Technical Report" by Chris Nordby dated 3/10/08). The development is proposed to occur near the bottom of the slope in a previously disturbed and graded area near the street and adjacent to an existing single-family residence. Access to the site is proposed via an existing undeveloped lot to the east through an existing unimproved driveway that leads from the street.

The development also involves fire department required clearance/thinning of vegetation within 30 ft. of the proposed access driveway and within 100 ft. of the proposed structures. However, although designed to minimize impacts to environmentally sensitive habitat areas (ESHA) by locating the development on the previously disturbed and graded area at the bottom of the slope, the development will have unavoidable impacts to ESHA due to fire clearance requirements and the siting of the residence. The applicant is also proposing to place all portions of the property outside of the development area into open space so as to prohibit future development. In addition, the applicant proposes enhancement/re-vegetation of the proposed open space area (Ref. "Fuel Modification Zone Impacts Assessment" by Dudek dated 8/1/08).

In 1979, the Commission approved, as submitted, the construction of a comparably sized single family home (3,690 sq. ft. plus 792 sq. ft. garage) on the subject 2.61 acre lot in approximately the same area as currently proposed (Ref. CDP #8371). Although the development pad area was subsequently graded, the site has remained vacant. In addition, in 1979, the Commission approved an 8 lot subdivision and construction of 8 homes on the north and west sides of Rancho Serena across from and west of the subject site which have been constructed (Ref. CDP #F5926).

The proposed development site is located 2 ¼ miles inland of the shoreline near the eastern extent of the Coastal Zone boundary (El Camino Real) in Rancho Santa Fe, an unincorporated community of San Diego County and is located between the sea (San Elijo Lagoon) and the first coastal roadway (El Camino Real). The project site is located within an area that would have been covered by the County of San Diego's Certified Local Coastal Program (LCP), but the County LCP was never effectively certified and therefore is only used as guidance with the Chapter 3 Policies of the Coastal Act used as the standard of review.

2. Environmentally Sensitive Habitat/Wetlands. Section 30240 of the Coastal Act is applicable and states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30253(1) states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

In addition, Section 30233 identifies that the fill of wetlands is limited to 7 prescribed uses and must be mitigated:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

The subject site is located approximately 1,000 ft. southeast of San Elijo Lagoon Ecological Reserve and Regional Park. San Elijo Lagoon is an environmentally sensitive habitat area and Regional Park that is managed jointly by the California Department of Fish and Game and the San Diego County Parks and Recreation Department. In addition, San Elijo Lagoon is one of the 19 priority wetlands listed by the State Department of Fish and Game for acquisition. The lagoon provides habitat for several State or Federal-listed threatened or endangered birds that include the California gnatcatcher, California least tern, the light-footed clapper rail, Belding's savannah sparrow, and the western snowy plover. As such, potential adverse impacts on sensitive resources as a result of activity surrounding the lagoon could be significant.

Coastal Act section 30240 was implemented in the County of San Diego Local Coastal Program (used for guidance within Rancho Santa Fe) through the Coastal Resource Protection (CRP) overlay zone. The CRP regulations restrict development of naturally vegetated steep slopes to maintain the visual and habitat values of coastal areas, to maintain natural landforms and to avoid grading and sedimentation impacts on sensitive lagoon resources located downstream. The CRP designator also triggers the Scenic Area regulations in the County LCP. The subject site is located within the CRP overlay of the County of San Diego LCP. Section 30240 of the Coastal Act requires that new development avoid impacts and significant disruption to environmentally sensitive habitat areas (ESHA) and that only uses dependent on those resources shall be allowed within those areas.

Upland ESHA Impacts

The applicant is proposing to construct a 3,664 sq. ft., 2-story, single-family residence and a 587 sq. ft. detached garage involving 1,750 cu. yds. of grading on a 2.61 acre vacant lot that is zoned for residential use (RS1). The 2.61 acre steep-sloping lot is described by the applicant's biology reports as containing 1.6 acres of Southern maritime chaparral (SMC), 0.1 acre of disturbed SMC, 0.4 acre of Diegan coastal sage scrub (DCSS), 0.1 acre of disturbed habitat, 0.6 acre of ornamental habitat and 0.2 acre of developed area (Ref. "Biological Technical Report" by Chris Nordby dated 3/10/08). The proposed home will be sited on the 0.2 acres of "developed area", an area that has previously been graded.

The applicant's biology report also identifies that Southern maritime chaparral is a sensitive upland habitat:

This vegetation community is typically considered to be of high ecological value as it is rare, occurring in few localities in association with the coastal fog belt. This habitat provides appropriate habitat for a variety of wildlife species. Furthermore, it typically supports sensitive plant species, such as Nuttall's scrub oak and wart-stem-lilac. On-site, this habitat is contiguous with more expansive areas of southern

maritime chaparral occurring off-site. This habitat is considered to be of high ecological value. Disturbed southern maritime chaparral also provides habitat for wildlife species and is contiguous with more expansive areas of southern maritime chaparral. Disturbed southern maritime chaparral is of moderate ecological value. (Ref. Page 6, “Biological Technical Report” by Chris Nordby dated 3/10/08).

In addition, the applicant’s biologist has identified the importance of Diegan coastal sage scrub particularly as potential habitat for the threatened California gnatcatcher:

This vegetation community is typically considered to be of high ecological value as it provides potential habitat for the coastal California gnatcatcher (*Polioptila californica californica*) as well as a variety of wildlife species. Although very small in size, Diegan coastal sage scrub on-site provides potentially appropriate habitat for coastal California gnatcatcher and is contiguous with native habitats off-site. Thus, Diegan coastal sage scrub on-site is considered to be of moderate to high ecological value. (Ref. Page 7, “Biological Technical Report” by Chris Nordby dated 3/10/08)

In addition, the applicant’s biology report identifies that impacts to the habitat of the California gnatcatcher, a threatened species, will require a Habitat Loss Permit from the U.S. Fish and Wildlife Service (USFWS).

The Commission’s staff ecologist, Dr. John Dixon, has reviewed the applicant’s biological reports and has identified that the SMC and CSS onsite areas are considered ESHA:

Both these habitat types are considered to be “sensitive upland habitats” by the County (Nordby 2008) and meet the definition of Environmentally Sensitive Habitat Area under the Coastal Act both because of their rarity and because of their important ecosystem function of supporting rare plant or animal species (e.g., Nuttall’s scrub oak (CNPS 2.2), warty stemmed ceanothus (CNPS 1B.1), or the federally threatened California gnatcatcher). [Ref. Exhibit 6, Memorandum from Dr. John Dixon]

As cited above, Section 30240 of the Act limits development within ESHA to uses that are dependent on the ESHA resources. In addition, Section 30240 requires that development adjacent to those areas shall be sited and designed so as to not adversely impact the ESHA. In this case, however, the proposed development will result in direct impacts to the existing wetlands due to the siting of the home and impacts to upland ESHA (MSC and CSS) due to fire department requirements addressing fuel modification around the proposed development. The proposed residential development has been sited on an area of the 2.61 lot that contains the least amount of ESHA, i.e., on the previously graded development pad adjacent to the street. The proposed residence will be 3,664 sq. ft. with a 516 sq. ft. garage. The home will be comparable in bulk and scale to the surrounding homes which range from 3,000 to 4,000 sq. ft. but area on less than 1 acre parcels. Commission staff have reviewed the applicant’s plans to determine if the home could be sited or redesigned in any way to eliminate or significantly reduce the impacts to wetlands and the ESHA and have concluded that there are no alternative designs or

siting locations on the lot. Moving the home closer to the street will continue to require fill of the wetlands as the wetlands are sited approximately in the middle of the development pad (Ref. Color Exhibit #3). In addition, moving the home closer to the street would eliminate the front yard and access around the home for fire protection since the home is to be sited on an existing building pad approximately 30 ft. above the street. Reducing the footprint of the home might slightly reduce the impacts associated with fire department vegetation modifications, but would not result in the avoidance or even a significant reduction in impacts to ESHA. In other words, the applicant has demonstrated that the proposed development has been sited and designed to minimize impacts to ESHA and wetlands, but impacts will still occur.

The fire department requires 100 feet of fuel modification around all combustible structures (residence and garage) and 30 feet of fuel modification around all driveways. Around the home and garage, the fire department requires that the first 50 ft. of fuel modification requires removal of existing plants and re-planting with drought-tolerant, fire resistive plants and that it be irrigated. The outer 50 feet of the 100 ft. fuel modification area is required to have all native plants be thinned out by 50% of the canopy cover and/or all dead and dying vegetation removed and non-native plants need to be removed if that achieves the thinning of the 50% canopy. The applicant's biologists have identified that the fuel modification requirements of the fire department for the residence, garage and access road will impact up to a total of .26 acres of Southern maritime chaparral and .1 acres of Diegan coastal sage scrub.

#### Wetland Impacts

In an update to the biology report cited above, 866 sq. ft. of "potential" wetlands have been delineated within the developed area/ornamental area of the site. The applicant has identified that the home itself will be sited over the entire 886 sq. ft. of riparian wetlands (Ref. Exhibit #3). In addition, Dr. Dixon has reviewed the applicant's wetlands delineation report and has determined that the 886 sq. ft. of wetlands appears to meet the definition of "wetlands" in the Coastal Act and the Commission's Regulations. Dr. Dixon states:

A formal wetland delineation was later conducted by Wotipka (2008a). She mapped a 0.02-acre (886-square foot) area supporting wetland plants, including cattails. She also characterized the area as having hydric soils. The 0.02-acre area mapped as a potential wetland appears to meet the wetland definition in the Coastal Act and the Commission's Regulations. Although Wotipka (2008a) opines that, "...because the resources on site provide very little ecological value, these resources are not likely under the jurisdiction of the CCC," there is no basis for such a supposition. This wetland is probably the result of nuisance flow from adjacent properties as suggested by both Nordby (2008) and Wotipka (2008a). However, the evidence regarding both the principal source of water and the age of the wetland is conflicting. [Ref. Exhibit 6, Memorandum from Dr. John Dixon]



Therefore, the total impacts to ESHA and wetlands resulting from the proposed development will be: 0.26 acres of Southern maritime chaparral, .1 acre of Diegan coastal sage scrub and 886 sq. ft. of riparian wetlands.

A. Resource Dependent Use and Takings.

The Commission finds that the project site and the surrounding area constitutes an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values.

In addition, Section 30233 limits fill of wetlands to 7 prescribed uses and development of a single-family residence is not one of them. As the construction of a residence on the site will require the complete removal of riparian wetlands from the home site and will adversely impact ESHA for fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240 and 30233, by themselves, would therefore require denial of the project, because the project would result in significant disruption of habitat values, is not a use dependent on those sensitive habitat resources and is not one of the permitted uses within wetlands.

However, the Commission must also consider Section 30010, and the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would conflict with background principles of state law such as nuisance. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act policy would otherwise prohibit it, unless the proposed project

would constitute a nuisance under state law. In other words, Section 30240 and 30233 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 and 30233 cannot be interpreted to require the Commission to act in an unconstitutional manner.

As described above, the subject parcel is designated by the County of San Diego for residential use. Residential development has previously been approved by the Commission on the subject site and in generally the same size and location of the proposed development. Based on these facts, the applicant had reason to believe that he had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. There is currently no offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use. In addition, there is no evidence that construction of a residence on the project site would create a nuisance under California law.

In conclusion, the Commission finds that, notwithstanding Sections 30240 and 30233, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of his property consistent with Section 30010 of the Coastal Act.

#### B. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to “take” his property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240 and 30233, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still assure compliance with Section 30240 and 30233 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat and mitigate for any unavoidable impacts, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and garage, and the use of the development by residents will result in unavoidable loss of ESHA and wetlands. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat

areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. All proposed structures are located within a previously disturbed area. Although a smaller development area could reduce the ESHA loss somewhat, the reduction would not be significant. Nor are there other resources such as streams or visual resources that would be protected by a smaller development area. In addition, the proposed size and siting of the residence is comparable to previously approved surrounding residences, including the home previously approved by the Commission on the subject site. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA and wetlands to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

### **C. Mitigation.**

Although the Commission has determined that the proposed development has been sited and designed to minimize impacts to ESHA and wetlands, significant impacts will unavoidably occur. However, even when impacts to ESHA and wetlands are unavoidable, they still must be mitigated to minimize their adverse impacts to the overall habitat community pursuant to Coastal Act Sections 30240 and 30233. As required by the Fire Department to clear and thin vegetation within 100 ft. of the proposed structures and within 30 ft. of the proposed driveway access, the development will impact 0.26 acres of Southern maritime chaparral (SMC) and 0.1 acre of Diegan coastal sage scrub (DCSS). In addition, siting of the residence will impact 886 sq. ft. of riparian wetlands.

The applicant is proposing to mitigate the impacts to SMC and DCSS by placing all remaining portions of the property outside of the development area and fuel modification zone into open space (approx. 1.7 acres) and to enhance the open space area through the removal of non-native/invasive species and planting of SMC, DCSS or other native species. In the case of SMC, the Commission typically requires the creation of new SMC at a ratio of not less than 3:1. For DCSS, the mitigation is typically 2:1. Therefore, at those rates, the Commission would typically require the applicant to revegetate 0.78 acres of SMC and 0.2 acre of DCSS. The applicant's biology report identifies that the 1.7 acres to be placed in open space contains 1.1 acre of disturbed SMC, 0.1 acre of SMC, 0.3 acre of DCSS and 0.2 acre of ornamental. Based on those numbers, it may possible to revegetate some additional SMC within the 1.1 acre of disturbed SMC and create 0.2 acre of DCSS in place of the existing 0.2 acre of ornamental.

The Commission's ecologist has reviewed the applicant's general suggestion of mitigation and identified the difficulty of planting new SMC:

Mitigating impacts to these habitats may be challenging because of the location of the property in the landscape and the specific site characteristics. Southern

maritime chaparral only occurs on well-drained sandy or gravelly nutrient-poor soils close enough to the ocean to be in the summer fog zone. Therefore, this habitat cannot be easily created. In-kind mitigation would generally only be possible within existing southern maritime chaparral that was sufficiently degraded to warrant restoration. If there are mitigation opportunities on other parts of the subject property, that would be best. In view of the limited opportunities for creation or restoration of maritime chaparral, restoration of either maritime chaparral or coastal sage scrub on site would be appropriate for impacts to either habitat if there is insufficient area to do strictly in-kind mitigation. [Ref. Exhibit 6, Memorandum from Dr. John Dixon]

Therefore, in Dr. Dixon's opinion, restoration of either SMC or DCSS may be appropriate for the subject site. **Special Condition #2** has been attached which requires the applicant to submit a detailed restoration/enhancement mitigation plan for the creation of SMC and DCSS within the proposed deed restricted open space area that will be subject to review and approval by the Executive Director and which has been developed in consultation with the Dept. of Fish and Game and/or the U.S. Fish and Wildlife Service. Because of the unique and rare character of SMC, the condition requires the applicant to emphasize the restoration of SMC if feasible.

In terms of mitigation for the impacts to the 886 sq. ft. of riparian wetlands, the Commission typically requires creation at an overall ratio of 3:1. The applicant's biology reports assert that the 886 sq. ft. of onsite wetlands are of such low quality and have been created as result of nuisance flows such that the wetlands should not be considered jurisdictional wetlands as defined by the Coastal Act. The applicant has identified two irrigation lines that cross onto his property which he asserts has resulted in the nuisance flows that have created the low quality wetlands. These unauthorized irrigation lines will be removed as part of the proposed development. Dr. Dixon has reviewed the applicant's wetlands delineation and, as previously cited, identifies that the subject wetlands appears to meet the Coastal Act definition of "wetlands":

#### **Section 30121**

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

However, Dr. Dixon also acknowledges the unique character of the small wetlands area and suggests that alternative mitigation for its impact might be appropriate:

The wetland does not appear to be a natural feature and would not be expected to occur on a steep hillside that supports chaparral and coastal sage scrub. Its existence is due to alterations of the environment by human activities. However, the changes in hydrology due to irrigation in the neighborhood may be the new normal situation in the area. Nevertheless, there are no evident opportunities for creating new wetlands in the general area on the small scale appropriate for the

expected impacts. In this instance, I think that out-of-kind and off-site mitigation would be appropriate, if necessary. The San Elijo Lagoon is nearly adjacent to the property. I think that restoration of either wetland or associated upland habitats within the lagoon ecosystem would appropriately mitigate any of the adverse impacts of the proposed development on natural habitats on the subject property. [Ref. Exhibit 6, Memorandum from Dr. John Dixon]

In terms of mitigation for wetland impacts, the applicant has not proposed mitigation since his biological reports have asserted that the wetlands does not constitute jurisdictional wetlands as defined by the Coastal Act. Therefore, pursuant to Dr. Dixon's recommendation, **Special Condition #3** has been attached which requires the submission of a detailed wetlands mitigation plan for Executive Director approval that has been created in consultation with the Dept. of Fish and Game and/or the U.S. Fish and Wildlife Service. The plan calls for enhancement of wetlands within San Elijo Lagoon at a 2:1 rate or restoration of upland habitats within the same lagoon ecosystem at a 2:1 rate.

This project is inconsistent with Section 30240 and 30233 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use. The Commission finds that for the project to be consistent with Section 30240 and 30233 to the maximum extent feasible, while providing a reasonable economic use, this project must constitute the minimum amount of ESHA and wetlands destruction on the site, mitigation must be provided and the remaining ESHA on the property must be preserved in perpetuity. Therefore, in addition to the above described mitigation plans, **Special Condition #9** requires that all remaining property outside of the development site and fuel modification zone be deed restricted as open space prohibiting all future development except for activities associated with the Executive Director approved restoration/enhancement mitigation plan(s) and the removal of existing unauthorized irrigation lines.

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the nearby San Elijo Lagoon Reserve and Ecological Park. Direct adverse effects from such landscaping results from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to out compete native species) adjacent to new development. Therefore, in order to minimize adverse effects to the indigenous plant communities of nearby San Elijo Lagoon and Ecological Park, **Special Condition #4** requires that all landscaping consist of native plant species and that invasive plant species shall not be used.

To assure the removal/thinning required by the fire department of vegetation within 100 feet of the residence is limited, controlled and consistent with the requirements of the Fire Department so as to minimize impacts on ESHA, **Special Condition #1** has been attached. Special Condition #1 requires submission of the final approved Fire Department fuel modification plans for Executive Director approval that includes a

prohibition of vegetation removal or thinning activities during the California gnatcatcher breeding season of February 15<sup>th</sup> through August 30<sup>th</sup>, requires the property owner to annually remove any introduced non-native or invasive plants and requires Commission review of any future vegetation clearance within the fuel modification area.

In addition, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition #7**, the future development restriction, has been required which requires Commission review of all future development on the site.

As previously described, the applicant may be required to obtain a Habitat Loss Permit from the U.S.F.W.S for potential impacts to California gnatcatcher habitat. Along with this permit, other local, state or federal agencies might also require permits for the proposed development. Therefore, **Special Condition #8** has been attached to require submission of all other permits for the development to assure that no conditions required by other permits conflict with the subject coastal development permit. If so, an amendment to the subject permit may be required.

Finally, **Special Condition #10** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In summary, the applicant is proposing to construct a single-family residence on an existing lot that is zoned for residential use. The applicant has designed and sited the development to minimize impacts to ESHA to the greatest extent practicable, but nonetheless the development will impact wetlands and ESHA. Since the project cannot be redesigned to avoid the impacts, the Commission is approving the project so as to avoid a takings of private land. However, to minimize impacts to the wetlands and ESHA, the applicant is required to mitigate for the adverse impacts as identified above. For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 and 30233 and 30253 of the Coastal Act.

3. Visual Resources. Section 30251 of the Coastal Act states in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the

alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Section 30251 of the Coastal Act protects the scenic and visual quality of the coastal zone as a resource of public importance. The site is located on the lower portion of a steep hillside near the southeast corner of the San Elijo Lagoon Ecological Reserve and Regional Park. Although near the Park, there are existing residential structures between the proposed project and the Park, and the proposed structure will not be visible from coastal access streets/highways or from San Elijo Lagoon. In addition, the proposed size and design of the home is comparable to the existing surrounding residential developments such that it will be in character with the surrounding neighborhood. The applicant is also proposing to grade on an already disturbed and graded area of the lot such that alteration to the natural land forms has been minimized. Thus, as designed, the project will not have adverse impacts on the scenic resources of the area and is consistent with Section 30251 of the Coastal Act.

4. Runoff/Water Quality. Section 30231 of the Coastal Act is applicable to the proposed development and states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The subject site is upstream of San Elijo Lagoon and its surrounding wetlands. In the past in San Diego County, the Commission typically has restricted grading, particularly large scale grading projects, to outside the winter months when erosion and transport of sediment to lagoons or other sensitive resource areas is least likely to occur. However, due to technological advances and a better understanding of the importance of erosion control measures, many of the local jurisdictions in San Diego County have new grading ordinances that include detailed erosion control provisions. As such, limiting grading to the non-rainy months is no longer necessary (in most cases) or required by many of the local jurisdictions in San Diego County. In the case of the proposed project, 1,750 cu. yds. of grading is proposed with 150 cu. yds. to be exported to a site outside of the Coastal Zone.

The County of San Diego has also revised its ordinances to not require a rainy season moratorium in coastal San Diego County and has recently adopted new erosion control provisions that assure that off-site sedimentation impacts will be minimized. In this case, erosion control measures are important to ensure off-site resources are not harmed.

**Special Condition #5** requires the submittal of final grading and erosion control plans documenting that erosion control measure will be implemented.

In order to further reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, **Special Condition #6** is attached. The condition requires that runoff from the roof, driveway and other impervious surfaces be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing runoff through landscaping is a well-established BMP for treating runoff from developments such as the subject proposal. As conditioned, the proposed development will serve to reduce any impacts to water quality from the project to insignificant levels, and the Commission finds that the project is consistent with Section 30231 of the Coastal Act regarding the protection of water quality.

5. Public Access. Section 30604(c) of the Act requires that a specific access finding be made for any development located between the sea and the first public roadway. In this particular location, El Camino Real serves as the first public roadway and the proposed development would be located between El Camino Real and San Elijo Lagoon.

While the proposed development is located well inland of the coast, public access and recreational opportunities exist at nearby San Elijo Lagoon Ecological Reserve and Regional Park. However, there are no existing or planned trails to the Park across the site toward the lagoon and because of adjacent steep slopes and residential developments, public trails across this site would be impractical. In addition, a public trailhead leading into the Park is located approximately ½ mile northeast of the subject site on El Camino Real. Therefore, the proposed development will not impede or affect existing access to San Elijo Lagoon Ecological Reserve and Regional Park. Therefore, the proposed development would have no adverse impacts on public access opportunities, consistent with the public access policies of the Coastal Act.

6. Local Coastal Program. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The County of San Diego previously received approval, with suggested modifications, of its Local Coastal Program (LCP) from the Commission. However, the County did not assume permit issuing authority. Therefore, the LCP was not effectively certified, and the standard of review for development in the unincorporated County of San Diego is Chapter 3 policies of the Coastal Act.

The subject site is designated for estate residential use in the County LCP, and as conditioned herein, the proposed project conforms to all applicable Chapter 3 policies of the Coastal Act. Therefore, as conditioned, the project will not prejudice preparation of a certifiable LCP by the County of San Diego.

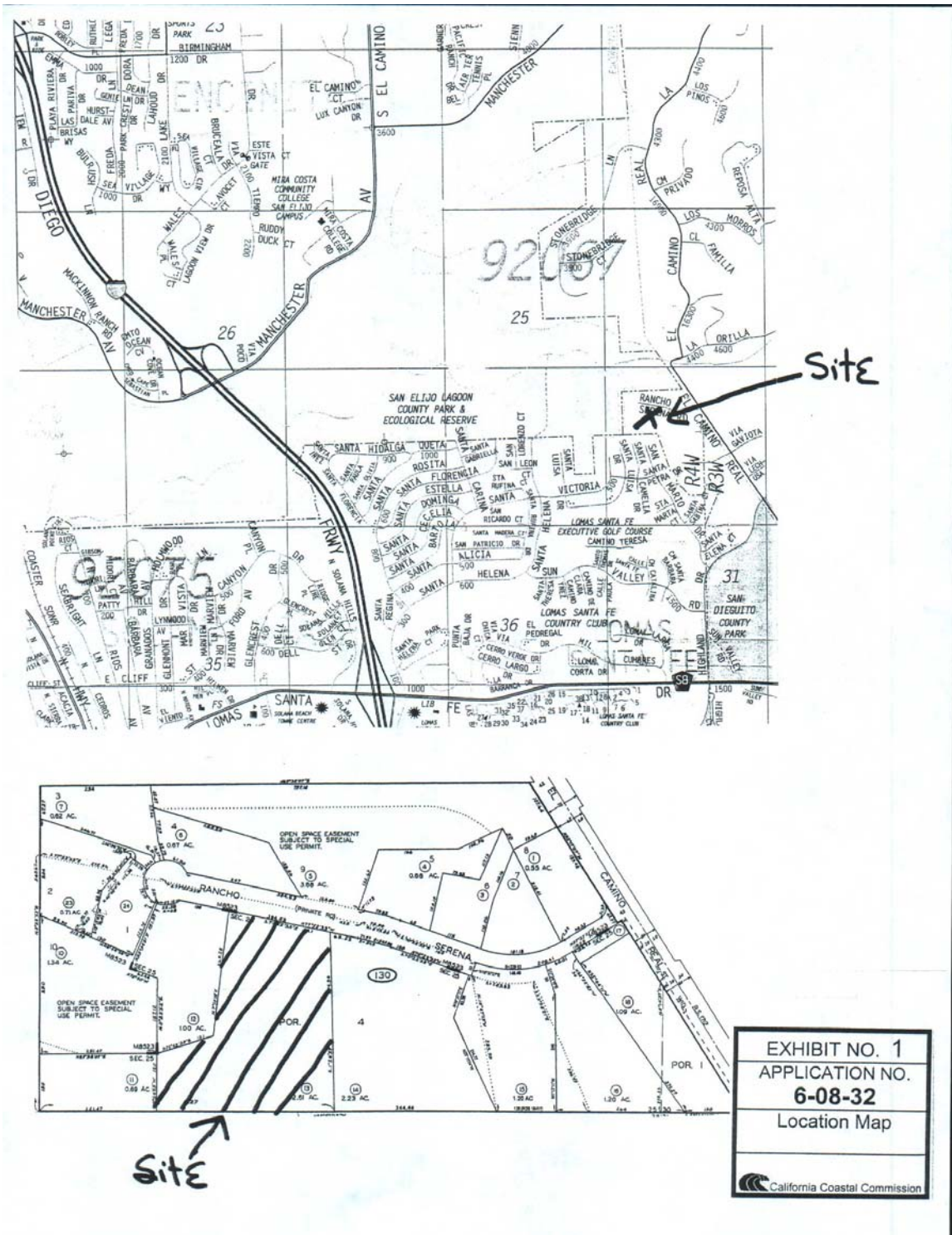


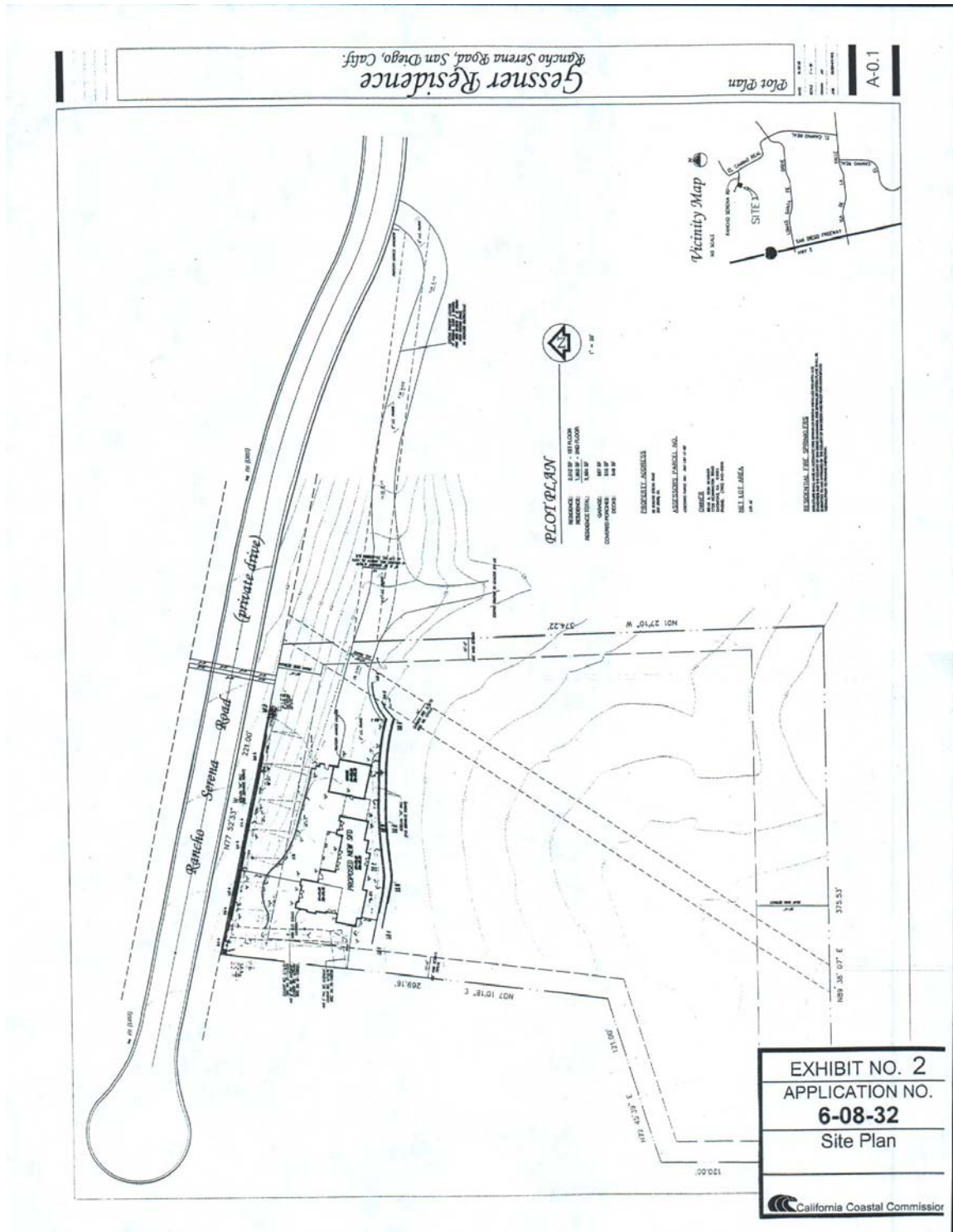
7. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California 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 is consistent with the resource and visual protection policies of the Coastal Act as modified herein. The attached mitigation measures 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 to mitigate the identified impacts, 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.







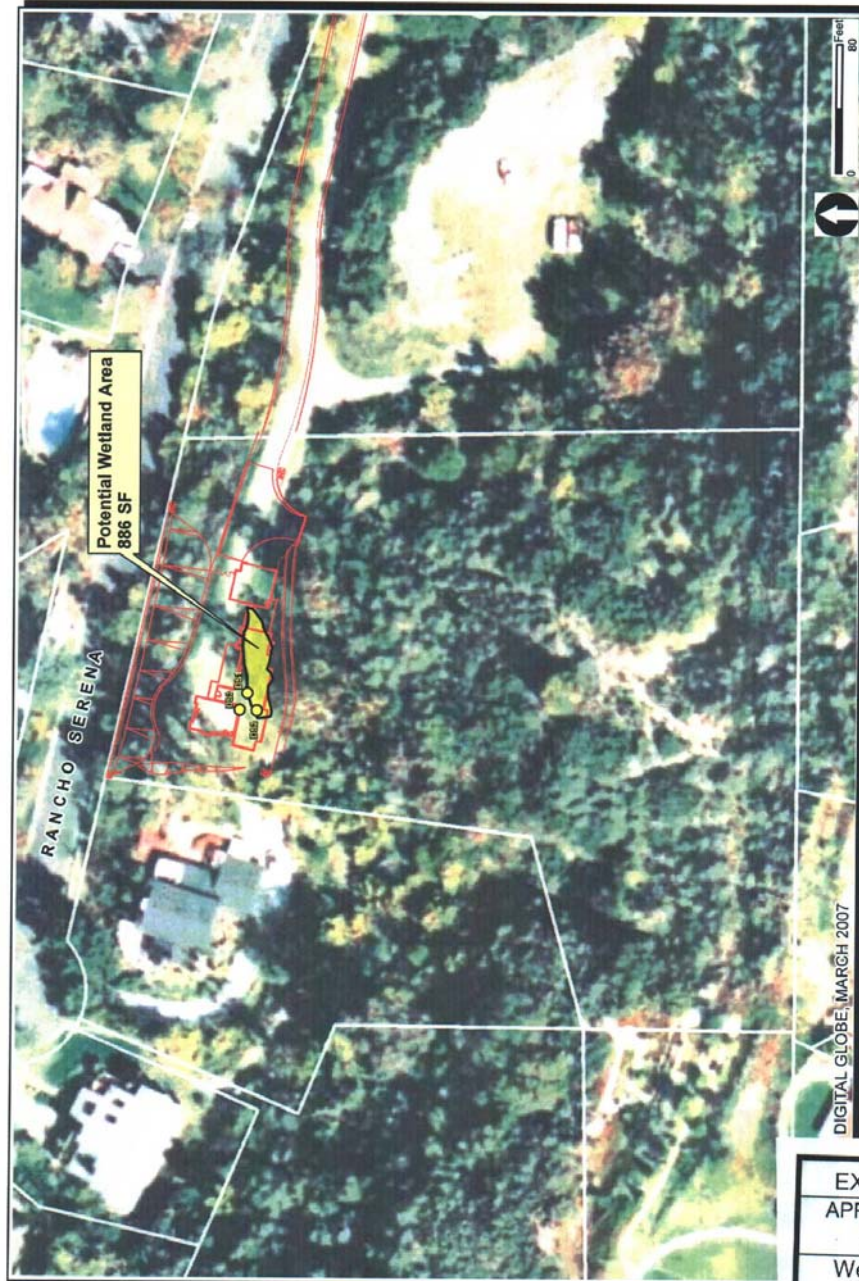
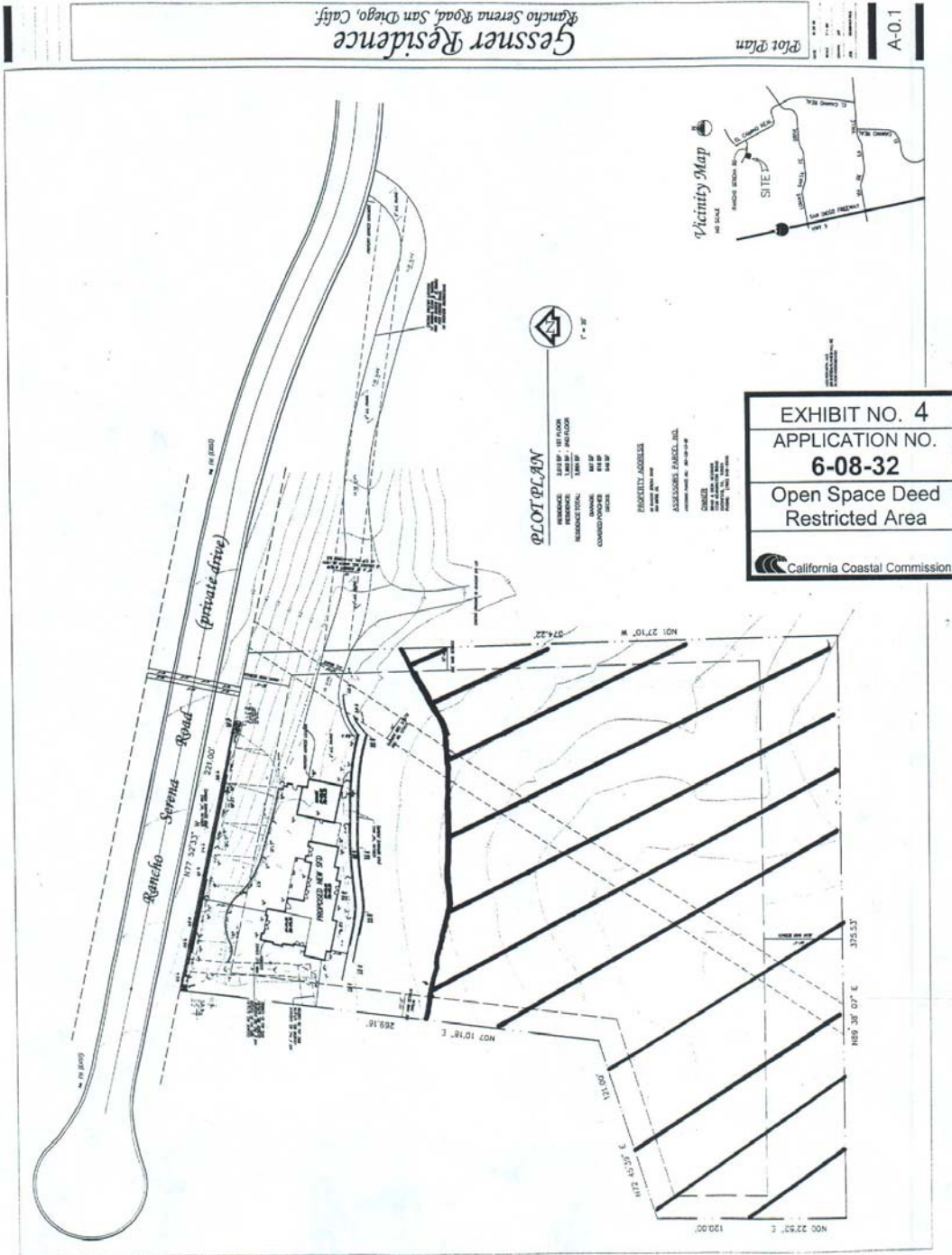


FIGURE  
4

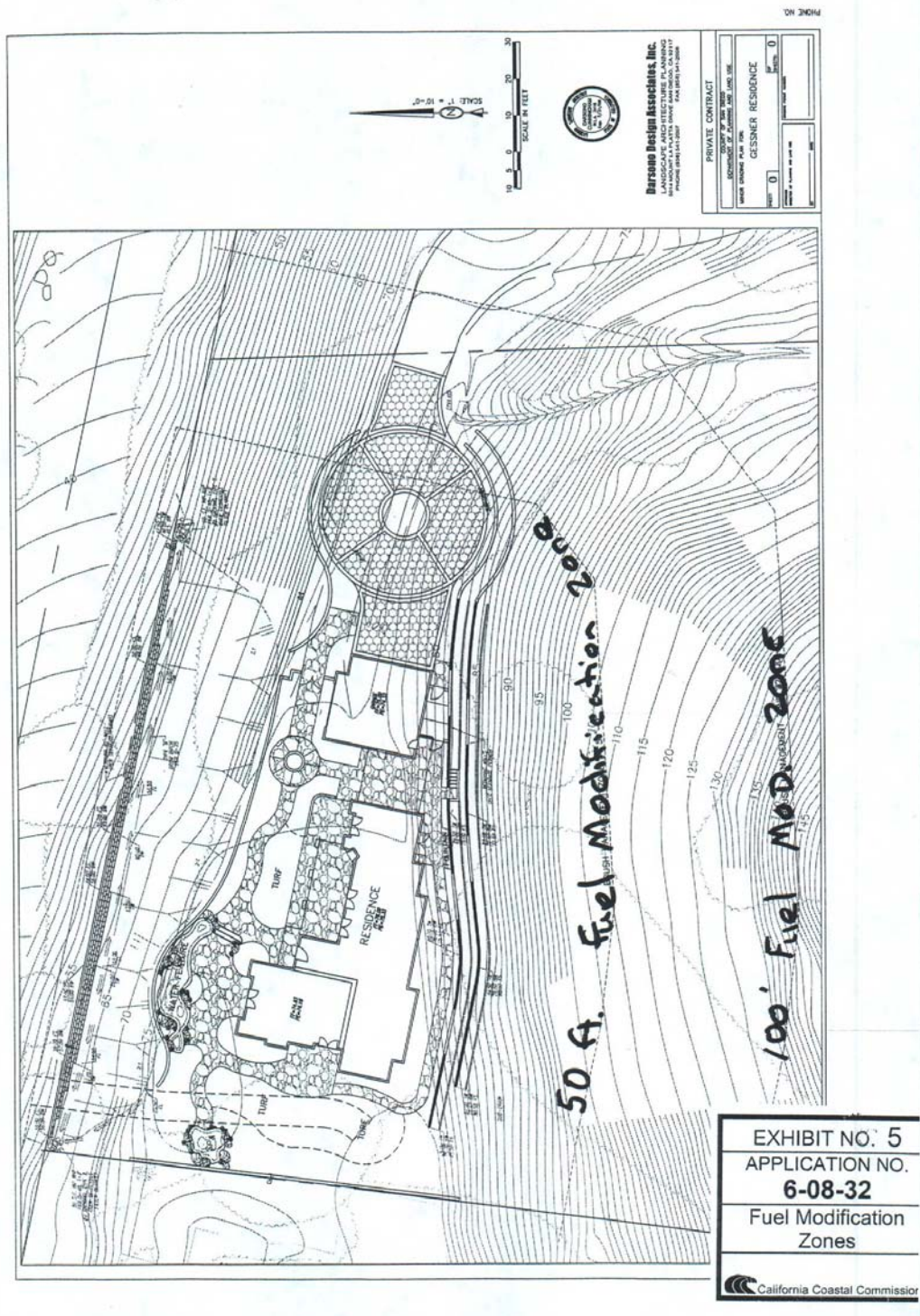
1451 Rancho Serena Road Wetland Delineation Study  
Wetland Delineation Map with Development Plan

EXHIBIT NO. 3  
APPLICATION NO.  
**6-08-32**  
Wetlands/Home  
Siting









## CALIFORNIA COASTAL COMMISSION

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FAX (415) 904-5400



## MEMORANDUM

FROM: John Dixon, Ph.D.  
Ecologist

TO: Gary Cannon

SUBJECT: Gessner Proposal

DATE: August 15, 2008

## Documents reviewed:

Nordby, C. (Tierra Environmental Services). 2008. Biological technical report for the Rancho Serena Road 2.6-acre property, San Diego County, California. A report prepared for the County of San Diego dated March 10, 2008.

Wotipka, T. (Dudek). 2008a. Letter report to B. Gessner regarding "Wetlands delineation report for 1451 Rancho Serena Road, Community of Rancho Santa Fe, County of San Diego, California" dated July 18, 2008.

Wotipka, T. (Dudek). 2008b. Letter report to B. Gessner regarding "Fuel modification zone impacts assessment, 1451 Rancho Serena Road, Community of Rancho Santa Fe, County of San Diego, California" dated July 21, 2008.

Nordby (2008) mapped the native vegetation communities on the Gessner property and characterized them as southern maritime chaparral and Diegan coastal sage scrub, portions of which are disturbed. He estimated the impacts of the proposed development to be 0.1 acre of high quality southern maritime chaparral and 0.1 acre of coastal sage scrub on the property and 0.004 acre of coastal sage scrub on a neighboring property due to a fire buffer around the residence. Both these habitat types are considered to be "sensitive upland habitats" by the County (Nordby 2008) and meet the definition of Environmentally Sensitive Habitat Area under the Coastal Act both because of their rarity and because of their important ecosystem function of supporting rare plant or animal species (e.g., Nuttall's scrub oak (CNPS 2.2<sup>1</sup>), warty stemmed ceanothus (CNPS 1B.1<sup>2</sup>), or the federally threatened California gnatcatcher). Wotipka (2008b) estimated that the fuel clearance for 30 feet around the access road would impact an additional 0.16 acre of southern maritime chaparral on the neighboring property. Therefore, taken together, these two reports indicate that an estimated total of 0.264

<sup>1</sup> CNPS ranking system includes a "degree of concern" followed by a decimal "threat rank." 2.2= Rare, threatened or endangered in California, but more common elsewhere; fairly threatened in California.

<sup>2</sup> 1B.1=Rare, threatened or endangered in California and elsewhere; seriously threatened in California.

EXHIBIT NO. 6
APPLICATION NO.
<b>6-08-32</b>
Memorandum from
Dr. Dixon

California Coastal Commission



acres of southern maritime chaparral and 0.1 acre of coastal sage scrub will be permanently impacted by the proposed development.

Nordby (2008) also noted the presence of "a few wetland plants" in a graded area at the bottom of a north-facing slope, asserted that there were no hydric soils present, and concluded that the area is not a jurisdictional wetland because it is not a natural feature. Because a wetland was created by human activities does not necessarily remove it from jurisdictional status under federal or California law. The Coastal Commission has often taken jurisdiction over created wetlands. Nordby (2008) did not delineate and map this wet area. A formal wetland delineation was later conducted by Wotipka (2008a). She mapped a 0.02-acre (886-square foot) area supporting wetland plants, including cattails. She also characterized the area as having hydric soils<sup>3</sup>. The 0.02-acre area mapped as a potential wetland appears to meet the wetland definition in the Coastal Act and the Commission's Regulations. Although Wotipka (2008a) opines that, "...because the resources on site provide very little ecological value, these resources are not likely under the jurisdiction of the CCC," there is no basis for such a supposition. This wetland is probably the result of nuisance flow from adjacent properties as suggested by both Nordby (2008) and Wotipka (2008a). However, the evidence regarding both the principal source of water and the age of the wetland is conflicting<sup>4</sup>.

Mitigating impacts to these habitats may be challenging because of the location of the property in the landscape and the specific site characteristics. Southern maritime chaparral only occurs on well-drained sandy or gravelly nutrient-poor soils close enough to the ocean to be in the summer fog zone. Therefore, this habitat cannot be easily created. In-kind mitigation would generally only be possible within existing southern maritime chaparral that was sufficiently degraded to warrant restoration. If there are mitigation opportunities on other parts of the subject property, that would be best. In view of the limited opportunities for creation or restoration of maritime chaparral, restoration of either maritime chaparral or coastal sage scrub on site would be appropriate for impacts to either habitat if there is insufficient area to do strictly in-kind mitigation. The wetland does not appear to be a natural feature and would not be expected to occur on a steep hillside that supports chaparral and coastal sage scrub. Its existence is due to alterations of the environment by human activities. However, the changes in hydrology due to irrigation in the neighborhood may be the new normal situation in the area. Nevertheless, there are no evident opportunities for creating new wetlands in the general area on the small scale appropriate for the expected impacts.

<sup>3</sup> The descriptions on the data sheets suggest that the technical hydric soil indicator F3 was met due to a depleted matrix with common (2-20%) or abundant (>20%), distinct or prominent redoximorphic features (Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region). The abundance of these features was not estimated; presumably they were "common" since the conclusion was that hydric soil was present.

<sup>4</sup> Wotipka (2008a) provides paired photographs taken in April 2007 and July 2008. Although purportedly taken of the same areas, there are no landmarks in the photographs to document this. In the 2007 photographs there appears to be scrubland with no indication of wetland characteristics. In the 2008 photographs, there are moderately large stands of cattails present. Wotipka (2008a) suggests that this sudden appearance of a wetland was due to the unpermitted installation of an 8-inch drain pipe in 2007 that directs water from off site onto the Gessner property. It is unlikely that the wetland is only one year old, both because of the size and extent of the cattails and because redoximorphic soil features do not develop that rapidly, especially in seasonally wet areas in southern California.



In this instance, I think that out-of-kind and off-site mitigation would be appropriate, if necessary. The San Elijo Lagoon is nearly adjacent to the property. I think that restoration of either wetland or associated upland habitats within the lagoon ecosystem would appropriately mitigate any of the adverse impacts of the proposed development on natural habitats on the subject property. An overall plan for restoration of the lagoon exists and there are probably opportunities to contribute toward that effort. Information can be obtained from the San Elijo Lagoon Conservancy.