

CALIFORNIA COASTAL COMMISSION

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49th Day: Waived
Staff: Toni Ross-SD
Staff Report: December 18, 2008
Hearing Date: January 7-9, 2009

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approved with Conditions

APPEAL NO.: A-6-OCN-08-49

APPLICANT: Mr. Peter Biniaz

PROJECT DESCRIPTION: The subdivision of a 24,000 sq. ft. lagoon fronting residential lot into two lots (Lot 1 = 10,806 sq. ft.; Lot 2 = 13,224 sq. ft.), and construction of a 24 ft.-high, 3,384 sq. ft. single-family home with attached 624 sq. ft. garage on Proposed Lot 2. An existing single-family home will remain on Proposed Lot 1.

PROJECT LOCATION: 2020 Stewart Street, Oceanside, San Diego County. APN No. 155-071-05.

APPELLANTS: MHCP Task Force of San Diego Sierra Club, Attn: Dianne Nygaard;
Buena Vista Audubon Society, Attn: Andrew Mauro; Coastal Commissioners
Patrick Kruer and Sara Wan.

SUMMARY OF STAFF RECOMMENDATION:

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

Staff also recommends that the Commission deny the de novo permit application as the proposed subdivision is inconsistent with provisions of the certified LCP. The project attempts to maximize the building envelope on a highly-constrained lagoon-fronting lot. The site constraints lead to concerns with the adequacy of proposed buffers and brush management, and the project in general raises the question of precedent given that this is the first lot in the surrounding community to come forward with such a proposal. If the project were approved, it could represent a new line of development, located nearer to the lagoon edge, resulting in additional impacts to Buena Vista Lagoon. The project is over the maximum allowable density (project density ~3.62, maximum allowable is 3.5). Further, the project is located in an area of steep slopes and as such is required to abide

by the Hillside Development Ordinance. This ordinance strictly prohibits subdivisions or development if the proposal is greater than the maximum density allowable. The project design also required variances for garage size (2 car instead of 3 car), and reductions in both side- and rear- yard setbacks. The project only includes a proposed 10' fire suppression zone, where 30' is the typical minimum standard size. Further, the project's balcony overhangs the fire suppression zone, effectively sullyng the function of the fire suppression zone. When combining all potential impacts, the project cannot be found consistent with the intent of the City's LCP or its Hillside Development Ordinance. Furthermore, due to the underlying concern with the subdivision itself and because of the constraints on the site, the project cannot be redesigned to adequately address these issues.

STAFF NOTES:

This item was originally scheduled for a previous hearing. However, the applicant requested a postponement in attempt to address some of staff's concerns. The primary concern raised by the project approved by the City is that it is inconsistent with the City's certified Implementation Plan regarding density. It appears that the City reviewed the project with a different standard of review (zoning ordinances) then the document the Commission is using to review projects for consistency. It appears the City has modified their Implementation Plan without the review or approval by the Coastal Commission as an amendment to their certified Local Coastal Program. The result being that the City has been approving projects with a modified standard of review. Given that no such amendment has been processed to date, the Commission's standard of review remains the version submitted and certified by the Commission in 1985. As such, the recommendation for denial is still being recommended.

SUBSTANTIVE FILE DOCUMENTS: The City of Oceanside's certified LCP; City of Oceanside's Staff Report for permit # RC-28-06; City of Oceanside Resolution # 2008-P32; Comment Letter submitted by Paul Klukas of Planning Systems dated September 8th, 2008; Bluff Opinion report written by Ralph Jeffrey of Pacific Coast Land Consulting, dated August 26, 2008; Geological Investigation prepared by Ralph Jeffrey of Pacific Coast Land Consulting dated September 20, 2006; Comment Letter written by Stephen Juarez of California Department of Fish and Game dated October 7, 2008; Biological survey prepared by Vincent Scheidt dated September 12, 2006, revised December 17, 2007; Additional Information - Wetland and Waters Report prepared by Vincent Scheidt dated October 17, 2007; Appeal forms.

I. Appellants Contend That:

The appellants have eight key concerns regarding the approval of the proposed project and its consistency with the certified Local Coastal Program (LCP). Of the eight items of concern, six raise major inconsistencies with the certified LCP. The remaining two are more minor or, non-applicable concerns.

The first major concern is that the development is located in an area generally considered undevelopable by the City's LCP, in that specific language stating that the bluffs at this location are generally undevelopable has been certified into the City's LCP. As such, development of any kind could potentially be considered inconsistent. The second major concern is the lack of an adequate wetlands delineation. The project is located immediately adjacent to Buena Vista Lagoon, and as such, additional information needs to be provided clearly indicating the extent and location of any sensitive resource. This information will be necessary to determine an adequate buffer to protect the sensitive habitats from impacts associated with the proposed development. The third major concern is that all developments adjacent to Buena Vista Lagoon are required to get California Department of Fish and Game (CDFG) to agree to the size and location of any buffer from sensitive habitat. The City failed to obtain CDFG sign-off prior to its decision to approve the development.

The fourth major concern is the lack of any required maintenance of habitat within the proposed buffer. Again, as approved by the City, the development includes a 100' biological buffer. This area is currently cleared on a regular basis for fire safety and contains predominantly disturbed habitat. The permitting of the proposed development did not include any future maintenance or revegetation of the buffer area. As such, the buffer could remain as a highly disturbed and degraded hillside providing little protection for the existing sensitive habitat. Furthermore, if native/sensitive vegetation developed within the buffer over time, the newly developed sensitive habitat may be removed for future brush management, eliminating the necessary function of the approved buffer. The fifth major concern is that the approved development will set a new precedent for the proximity, or line of development, to the lagoon edge. The project as approved by the City is splitting an existing lot and allowing for development closer to the lagoon edge. If the surrounding lots follow suit, the result will be potential impacts to public views and a decrease in lagoon protection. These potential impacts are exacerbated by the project's proximity to open space, major scenic transportation corridors (Interstate 5), and public trails. The final concern further relates to brush management within the buffer. As approved by the City the project only includes 10' of the lot for brush management or a fire suppression zone; furthermore, the proposal includes an upstairs balcony within the 10' fire suppression zone, effectively eliminating the benefits of the fire suppression zone as the home would extend into this zone. In light of previous wildfire disasters in San Diego County, the adequacy of having minimal to no fire suppression zone to protect the home from wildfires appears unsafe and inconsistent with the City's certified zoning ordinances.¹

¹ As discussed in more detail below, the City's fire marshal has sent the applicant a letter indicating approval of the 10' fire suppression zone. Given that the opinion of the fire marshal may change, however,

The appellants also raise two minor areas of concern. The first is that the deck proposed by the applicant and approved by the City is located within the buffer area. While this would be a concern, the balcony, based on staff's review, does not encroach into the proposed buffer, but rather sits within the proposed 10' fire suppression zone that is located immediately inland of the buffer. The second minor concern is that the project is inconsistent with both the draft Sub Area Plan (SAP) and the Multiple Habitat Conservation Plan (MHCP). Both of these documents are not currently included in the certified LCP and as such are not standards of review for this project.

II. Local Government Action:

The proposed project was originally submitted for City staff review in December 2006. The project was presented to Oceanside's Planning Commission in June 2007. The project was denied on a vote of 5-to-2. Following the Planning Commission hearing and prior to the end of the appeal period, a call for review was filed by Councilmember Feller, which was subsequently withdrawn. At the direction of the Planning Commission at the June 25th hearing, the applicant decided to provide further environmental review and attempt to address some of the issues raised. The project was brought back to the Planning Commission in May 2008. The project included a variance reducing the size of the garage from a required 3-car to a 2-car garage. The project included additional variances for side- and rear- yard setbacks. A conditional use permit was also approved as the proposed density (~3.62 dua) is greater than the allowable maximum (3.5 dua). The Planning Commission approved the project with several special conditions. The required special conditions include requirements for year-round erosion control measures, and a storm water management plan. Further conditions address the re-vegetation of the property. The City has required the applicant to re-vegetate with only native species *outside* the biological buffer. Thus, the permit allows the applicant to re-vegetate the buffer and fire suppression zones, if the applicant desires, but does not require it. The only required revegetation is outside these areas. Should the applicant choose to revegetate the buffer, the City required that the landscape plan be approved by the Fire Department and be of native species. A further special condition restricts brush management within the buffer to hand pruning, any machinery used for removal of vegetation is prohibited. Lastly, the special conditions included the necessary fire safety improvements for a home with a reduced fire suppression zone.

III. Appeal Procedures:

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. The approval of projects within

and that the fire suppression zone is approximately one-third of the current requirement and one-tenth of the standard fire suppression zone in many other local communities, there is a real concern that once the house is built, significantly more fuel modification may be required.

cities and counties may be appealed if the projects are located within appealable areas. The grounds for such an appeal are limited to the assertion that “development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies.” Cal. Pub. Res. Code § 30603(b)(1).

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

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends “substantial issue” and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date.

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

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

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

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-OCN-08-049 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. **A-6-OCN-8-049** presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. The project, as proposed, includes a lot split and the development of a 3,384 sq. ft. second home on a lagoon fronting lot. The parcels will be split into 10,806 sq. ft. (Lot 1) and 13,224 sq. ft. (Lot 2). The existing single family residence is on proposed Lot 1 and will remain. Given the slope of the property, the development will include grading of the site and stepping down the development. The project includes two variances; one for reduced side- and rear-yard setbacks and another for a reduction in the size of the garage required (two instead of a three car garage). The project also includes a Conditional Use Permit because the development will result in a base density greater than 1-3.5 dwelling units per acre, as required by the Residential Estate designation for the site.

The project includes a 100' biological buffer from Buena Vista Lagoon, and any associated sensitive habitat. The project also includes a 10' fire suppression zone; however a proposed balcony encroaches into this zone. As approved by the City, the biological buffer shall remain in its current state, consisting of highly degraded non-native vegetation, without a requirement that the buffer be restricted to open space.

The project site is located along the east side and southerly terminus of Stewart Street in the City of Oceanside. A portion of the .55 acre property is developed with a single-

family residence. The site is just north of Buena Vista Lagoon and is bordered by natural slopes to the east and south. The existing ground surface elevation varies from 11 feet Mean Sea Level (MSL) to approximately 63 feet MSL. Because the site is adjacent to Buena Vista Lagoon and contains steep slopes, the project also has to comply with the Hillside Development Ordinances included in the City's Implementation Plan. The property is surrounded by single-family residences to the north, east, and west and the Buena Vista Lagoon to the south. This is the first property the Commission has reviewed that includes a subdivision and construction closer to the edge of Buena Vista Lagoon within the surrounding neighborhood and community.

2. Development on a Bluff. The appellants contend that the project is located in an area considered to be "undevelopable" by the City's certified LCP. The appellants further contend that by allowing the subdivision of the lot, a precedent is being set for the lots in the surrounding area. The concern is that other properties will follow suit and construct new developments encroaching further down the bluffs and towards the lagoon, leading to cumulative and damaging impacts to the lagoon and its sensitive resources.

The City's certified LCP does contain policies for development on steep hillsides and specific policies for development located between I-5 and Alvarado Street, and areas located adjacent to open space which state:

III. Water and Marine Resources

B.2. Geologic Hazards

6. The City recently adopted a Hillside Development Manual and Ordinance which controls development on slopes over 20%. Slopes ranging from between 20% and 40% slope may be developed only if geologic stability is verified by a qualified soils engineer or geologist, and the integrity of the slope is preserved to the maximum extent feasible. Development is prohibited on slopes over 40% with a 25 foot elevation differential.

V. Environmentally Sensitive Habitat - Major Finding #5b

The slopes above the lagoon between I-5 and Alvarado Street are generally undevelopable under the terms of the City's Hillside Ordinance.

V. Environmentally Sensitive Habitat - Policy #5

In the area between Interstate 5 and Alvarado Street, the City shall prohibit encroachment of development beyond the bluff line of the lagoon.

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.

8. The city shall ensure that all new development is compatible in height, scale, color, and form with the surrounding neighborhood.

The City also has policies addressing design standards incorporated into its Land Use Plan that state:

Design Guideline - Scale

2. Building forms shall be designed to respect and improve the integrity of open space and other public spaces adjacent to open space

The City also has a Buena Vista Lagoon Working Paper incorporated into its Land Use Plan that states:

Issues:

The properties which front on the lagoon between I-5 and Hill Street are zoned for 3,500 square foot minimum lot size. The lots in the location range in size from 3,827 to 73,000 square feet. Thus, theoretically, it would be possible for additional subdivisions along the lagoon embankments in areas that are currently open space. The City's Hillside Ordinance already prohibits grading on slopes higher than 50 feet whose slope gradients are 40% or greater. In addition, the ordinance puts restrictions on development of slopes whose gradient is between 20% and 40%. Also, the Subdivision Map Act prohibits subdivisions on properties which "are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat" [Section 66474 (e)]. However, in addition to these existing laws the Local Coastal Program should take additional specific steps to ensure that these slopes and flood prone areas beneath them are retained as open space. A "stringline" should be drawn which separates commercial and residential uses from permanent open space on the slopes above the lagoon.

The City's Implementation Plan also has policies for development on steep slopes and adjacent to open space that state:

Article 20 - Hillside Development Overlay District -

2001 Specific Purposes

- a. Maintain an environmental equilibrium consistent with existing vegetation, soils, geology, slopes, and drainage patterns, and to preserve the natural topography, including swales, canyons, knolls, ridgelines, and rock outcrops, wherever feasible.
- b. Avoid development that would result in unacceptable fire, flood, slide, or other safety hazards.

2002 Definitions

- c. "Undevelopable land" includes land with a slope in excess of 40 percent with a minimum elevation differential of 25 feet and riparian corridors or associated vegetated areas of rivers, intermittent streams, perennial streams, or lakes.

2008 Required Plans and Materials

- b. A slope map with minimum five-foot contour lines at a scale of 1 inch - 200 feet clearly depicting areas between 20 percent and 40 percent slope and areas with slopes over 40%. Tabulations of gross site area and area within each slope range shall be shown on the map.

The City of Oceanside's Hillside Development Overlay, as included in its Implementation Plan, protects development on steep slopes. The ordinance restricts development on slopes greater than 40% and requires a geotechnical survey be completed for any proposed development on hillsides with a slope between 20-40%. The City reviewed this project and concluded that the development would be located on a hillside in excess of 20%. The geotechnical report indicated that only a small portion of the site contains slopes greater than 40% and the majority of the site is less than 40%. The slope analysis relied on by the City shows only a couple of small areas of slopes in excess of 40%. However, the contours (lines that indicated a change in elevation at one foot increments) over the majority of the site appear the same – thus, it is not clear that the development approved by the City avoids slopes greater than 40% grade. If the project site includes 40% slopes in the area of proposed development, the project would be inconsistent with the City's Hillside Development Overlay ordinance. As such, it is unclear if development would even be permissible on the hillside.

Even assuming the development will not take place on slopes greater than 40%, the development raises concerns regarding its conformity with the City's LCP. The development is located at the southern terminus of Stewart Street. The site is located between Alvarado St. and Interstate 5 and thus two other LCP policies for this area are also applicable. The City's LCP has provisions prohibiting encroachment of development towards Buena Vista Lagoon. The project as approved by the City would split one lot into two separate lots, Lot 2 (lot to be developed) being located closer to the lagoon than Lot 1 (lot to remain). Therefore, the development will result in a single family residence being constructed closer to the lagoon.

The City's LCP also has a policy protecting the bluff line of the lagoon at this location. As stated previously, the development is located on a steep hillside. The City, in its review, failed to define where the "bluff line" is located at this location, as required by Policy #5 listed above. Policy #5 prohibits encroachment of development beyond the bluff line, so if the bluff line is located above the proposed development, the project would conflict with this provision of the LCP. In addition, it is inconsistent with the portion of the Land Use Plan suggesting that a stringline should be used to protect open

space on the slopes above the lagoon. The proposed development would be constructed beyond any existing "stringline" in this area.

Lastly, the project includes the subdivision of a single lot, resulting in the new lot being located closer to the lagoon and sensitive habitat. The City has policies protecting areas of open space and natural aesthetic value. The appellants contend that if the project, including the lot split, is approved, a precedent will be set that could result in the surrounding properties being subdivided and development encroaching closer to the lagoon edge. The healthy functioning of sensitive ecosystems is directly related to its proximity to development. A series of potential impacts could result from allowing development to be located closer to the lagoon and further down the bluff. The City failed to address these concerns, or the potential precedent being set by this permit.

In conclusion, the project as approved by the City raises concerns with the City's policies regarding hillside development, encroachment beyond the bluff line of the lagoon and development located in an area generally considered "undevelopable" by the City's LCP. Because the City failed to address these concerns when reviewing the project, the impacts this project may have to the existing bluff and Buena Vista Lagoon have not been adequately addressed. The project therefore raises a substantial issue based on the concerns raised by the appellants.

3. Inadequate Biological Buffer. The appellants contend that the proposed buffer separating the development from the sensitive lagoon resources is inadequate for several reasons. The first source of concern is the lack of consultation with CDFG; without CDFG's approval of the biological buffer, the project is inconsistent with the certified LCP which specifically requires CDFG's sign off on the adequacy of the buffer. Second, the appellants contend that the wetland boundary was inaccurately determined given that the wetlands were delineated after vegetation was removed from the subject site. It is the appellants' contention that if the vegetation had not been removed, a more accurate review of the sensitive vegetation would have been possible. The appellants further contend that an adequate buffer cannot be determined without an accurate wetland habitat boundary determination. Lastly, the appellants contend that the revegetation and maintenance of the biological buffer has not been well established and as such, the buffer will not provide the most protective buffer between the development and the lagoon. The City has policies for the protection of environmentally sensitive habitats which state:

V. Environmentally Sensitive Habitat - Policy #2

Prior to approving any developments on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

- a. Provision of adequate buffers between development and the lagoon
- b. Erection of barriers - such as fences - to prohibit access to sensitive portions of the lagoon.

- c. Incorporation of native riparian plant species into project designs to enhance habitat value
- d. Construction of informational signs/kiosks educating the public on the value of the lagoon, and listing regulations for public use.
- e. Habitat restoration measure (such as removal of built up sediment) providing that such measures are approved by the State Department of Fish and Game.

I. Coastal Access Policy #5

The City, in conjunction with the State Department of Fish and Game, shall continue its efforts to provide and maintain an adequate buffer zone between Buena Vista Lagoon and development along its shore. Such a buffer is necessary for the provision of public access and protection of the lagoon from adverse environmental impacts.

The buffer zone shall be generally 100 feet in width as measured from the landward edge of the lagoon or existing riparian vegetation, whichever is more extensive. Within the buffer zone only passive recreational uses (such as walking, nature study, photography, small resource interpretive facilities and viewing areas) shall be allowed with no structures other than permitted by this policy and only very minor alteration of natural land forms or conditions for uses permitted by this policy.

A buffer zone shall be established around all sensitive habitats. The buffer zone shall be generally 100' for small projects on existing lots. If the project requires substantial improvements or increased human impacts, a much wider buffer area shall be required. Likewise, a reduced buffer area will be considered if, in consultation with the State Department of Fish and Game, it can be demonstrated that 100' is unnecessary to protect the resources of the habitat areas.

The project as approved by the City is for the subdivision of one lot into two and the construction of a single family residence located on a lagoon facing lot. The project does identify a 110' habitat buffer (100' buffer, 10' fire suppression zone). However, as noted above, the LCP requires that the buffer be established in consultation with California Department of Fish and Game. Commission staff have received a letter from Fish and Game to the City responding to the draft EIR (ref. Exhibit #9). The comment letter does not support the development; in fact, the letter details CDFG's concerns associated with this project and the proposed buffer. The City did not seek any further comments from CDFG and brought the project forward for approval without the concurrence of CDFG. Again, as previously stated, the City's LCP requires developments adjacent to Buena Vista Lagoon to consult CDFG to determine adequate size and location of the biological buffer. Because CDFG had not concurred that the project includes adequate measures to protect and enhance the lagoon's sensitive resources, the City should not have found the project consistent with its LCP. Subsequent to the appeal being filed, however, the applicant did further consult with CDFG (ref. Exhibit #9) which has now, based on further biological analysis, concurred with the proposed 100 ft. buffer.

Further, a biological report was included in the applicant's proposal. This biological report concluded that no wetlands existed on the subject site. The report stated:

Wetlands and jurisdictional "waters" are not present on the project site. However, the Buena Vista Lagoon which adjoins the site, is clearly a jurisdictional wetland area....the lagoon's hydric soils, which delineate its boundary, begin approximately ten feet beyond the southeastern property corner. A small amount of willow scrub vegetation is found paralleling the eastern side of the property. However, this is entirely offsite.

While the biological report included the methodology for identifying the vegetation, the report did not include the methodology for determining the line of hydric soils; one of the three components that represent potential wetlands. The appellants' further claim that it is unclear if the property surveyed had been impacted by vegetation clearing. The appellants contend that the property may include sensitive/wetland vegetation and that clearing for brush management has removed the opportunity to properly assess the wetland boundary. Without the proper boundary determination of wetland habitats, it is impossible to determine an adequate biological buffer. The City of Oceanside's LCP requires the development of adequate buffers, and the City did not address these potential concerns. The project therefore cannot be found consistent with the City's certified LCP.

A further concern is the functionality of the biological buffer. The City has included in their approval of the project the requirement for a 100' biological buffer. However, the permit has not been conditioned to require re-vegetation of the buffer area. The biological report states that currently the buffer is comprised of non-native disturbed habitat. The non-native habitat in the buffer could expand over time into the lagoon area, causing negative impacts to the lagoon vegetation. In order for the approved biological buffer to provide the greatest protection to the adjacent habitat, the buffer would need to be re-vegetated with native non-invasive and drought-tolerant species. The City did require in its approval that if the applicant chose to revegetate the buffer, the landscape plan would have to include only native, drought-tolerant species. It stands to reason that this revegetation would not benefit the applicant as it could be costly and could result in additional fire risk (discussed below). Because the City failed to require revegetation of the buffer, the buffer cannot be considered adequate to protect the sensitive habitat and therefore cannot be found consistent with the City's LCP.

The project illustrates both a 100' buffer and a 10' fire suppression zone in between the lagoon waters and the proposed development. The project underwent CEQA review and during this time the applicant received comments from the Resource Agencies regarding concerns with the necessary fuel modification area. A concern was that the proposed development was not only located within the existing residence's brush management area but that because of this there wouldn't be adequate area for necessary brush management for the existing *or* the proposed home after the subdivision and development of the second residence. An additional concern is the location of the proposed second floor balcony, which is directly above and completely covers the 10' fire suppression zone. The Fire Department has submitted a letter of support for the project indicating that the

proposed 10' buffer is adequate for the home and that no clearing would be required within the habitat buffer now or in the future. However, given the design of the home, its location on a steep hillside and its proximity to natural vegetation, concerns are raised for the adequacy of brush management. Future fire restrictions may require that the fire suppression zone extend into the habitat buffer, resulting in impacts to native vegetation. The City has conditioned the permit to require that any brush management occurring in the buffer be completed by hand thinning and that no mechanical devices may be utilized. Thus, fuel modification in the buffer zone is currently allowed in the CDP issued by the City. Even hand thinning within a biological buffer would be considered an impact and would not be the highest level of protection for lagoon habitat.

In conclusion, the project as approved by the City failed to include CDFG's input on the size and location of the buffer, did not adequately determine the wetland boundary, failed to require the buffer be re-vegetated with native drought-tolerant species, but also allowed for thinning of vegetation within the buffer. All of these oversights lead to a buffer that may not adequately protect sensitive resources and a project that is not consistent with the certified LCP. The project therefore raises a substantial issue based on the concerns raised by the appellants.

4. Impacts to Public Views. The appellants contend that development at this location will result in impacts to public views. The project is located directly adjacent to Buena Vista Lagoon and is visible from Interstate 5 (ref. Exhibit #5). The appellants further contend that the proposed project will also result in impacts to the view shed available from public trails located in and around the lagoon area. Namely, lagoon views will be impacted by the project in that it is located east of the Buena Vista Nature Center, where a number of trails begin. The City of Oceanside's LUP has policies addressing impacts to public views which state:

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
3. All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation.
6. Open space buffers and greenbelts shall be provided along major scenic corridors.
8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.
9. In areas where a change to more intensive use is proposed, adequate buffers or transition zones (such as increased setbacks, landscaped barriers, or decorative walls) shall be provided.

VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

The proposed structure includes 2-stories and 3,384 sq. ft. of living space along with a 624 sq. ft. garage on a lagoon-fronting site (ref. Exhibit #s 1-4). The surrounding neighborhood is generally comprised of other single family residences of similar or smaller size. While the project may not be grossly out of scale with the surrounding neighborhood, the location of the proposed development raises concerns for impacts to public views. Because the existing lot is being split into near and far shore lagoon sites, the proposed lot closest to the lagoon (currently vacant land) will be located lower and closer to the lagoon edge than other adjacent or neighboring development (ref. Exhibit #1). The location of the proposed development may result in view impacts while looking westward from other portions of the lagoon east of the proposed site (development encroaching down closer to the lagoon edge), and from Interstate 5 or other public vantage points in and around the lagoon and from the public trails. The project has been designed to follow the natural slope of the site and has been conditioned to use colors that can blend in with the surrounding environment. However, as previously discussed, this is the first of this type of proposal that has been reviewed by the Commission. There is, therefore, a potential for a precedent to be set. The City approved a project that encroaches closer to the lagoon than the established line of development. Therefore, if the other lots are developed in the same manner, a new line of development may be established. The subdivision and subsequent construction of several lots at this location would have a potential for significant impacts to public views, inconsistent with the City's LCP. The City failed to address this potential cumulative impact and therefore, the project raises substantial issue regarding the concerns contended by the appellants.

In conclusion, the project raises concerns regarding hillside development, brush management requirements, wetland delineation and adequate buffering, and impacts to public views. It is unclear at this time if the project is located on a hillside steep enough to be considered "undevelopable" by the City of Oceanside's LCP. Further, while a biological report was submitted in association with this project, it is unclear at this time whether the wetland delineation and thus the habitat buffer is adequate. Also, while the Fire Department supports the project, given its proximity to native habitat and the second story balcony located within the fire suppression zone, it is unclear how the brush management would be adequate to protect the home or how future brush management requirements may lead to vegetation removal within the buffer, especially if the buffer is revegetated with native habitat. In addition, the location of the development may result in adverse impacts to public views while traveling on Interstate 5 or recreating in or around the lagoon. Further, in order for the City to be able to approve the new home on the new lot, setback and garage size variances were required and a CUP was required to exceed density, and given the site constraints, the project would not be possible without these reductions. The project, as approved by the City, is inconsistent with the above

stated LCP policies developed to address these concerns, and therefore raises a substantial issue.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-OCN-08-49 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations:

The Commission finds and declares as follows:

1. Project Description/Permit History. The project, as proposed, includes a lot split and the development of a 3,384 sq. ft. second home on a lagoon fronting lot. The parcels will be split into 10,806 sq. ft. (Lot 1) and 13,224 sq. ft. (Lot 2). The existing single family residence is on Lot 1 and will remain. Given the slope of the property, the development will include grading of the site and stepping down the development. The applicant also proposes to revegetate the 100 ft. buffer with native plants and place a conservation easement over the buffer to assure it is protected in perpetuity. The project includes two variances; one for reduced side- and rear-yard setbacks and another for a reduction in the size of the garage required (two instead of a three car garage). The project also includes a Conditional Use Permit to allow the development to exceed the Residential Estate base density of 1-3.5 dwelling units per acre (dua).

The project includes a 100' biological buffer from Buena Vista Lagoon, and any associated sensitive habitat. The project also includes a 10' fire suppression zone; however a proposed balcony encroaches into this zone. As approved by the City, the biological buffer shall remain in its current state, consisting of highly degraded non-native vegetation, without a requirement that the buffer be restricted to open space.

The project site is located along the east side and southerly terminus of Stewart Street in the City of Oceanside. A portion of the .55 acre property is developed with a single-family residence. The site is just north of Buena Vista Lagoon and is bordered by natural slopes to the east and south. The existing ground surface elevation varies from 11 feet Mean Sea Level (MSL) to approximately 63 feet MSL. Because the site is adjacent to Buena Vista Lagoon and contains steep slopes, the project also has to comply with the Hillside Development Ordinances included in the City's Implementation Plan. The property is surrounded by single-family residences to the north, east, and west and the Buena Vista Lagoon to the south. This is the first property the Commission has reviewed that includes a subdivision and construction closer to the edge of Buena Vista Lagoon within the surrounding neighborhood and community.

2. Density of Development/Development on a Bluff. The project, as proposed, includes the subdivision of a lot that fronts Buena Vista Lagoon, and contains steep slopes and currently contains a single family home. The subdivision will split the lot into two lots; a near-shore (Lot 2), and a far-shore (Lot 1). Lot 1 = 10,806 sq. ft and Lot 2 = 13,224 sq. ft. The existing home will remain and is located on proposed Lot 1. Lot 2 is proposed to be developed with a 2-story, 3,384 sq. ft home, with an attached 624 sq. ft. two-car garage. Therefore, the proposed home would be located closer to the lagoon edge, and within the sloping portion of the lot. In addition, the proposed development exceeds the density requirements for the subject site.

The City's certified LCP contains policies for development on steep hillsides and specific policies for development located between I-5 and Alvarado Street (including the project site), and areas located adjacent to open space which state:

III. Water and Marine Resources

B.2. Geologic Hazards

6. The City recently adopted a Hillside Development Manual and Ordinance which controls development on slopes over 20%. Slopes ranging from between 20% and 40% slope may be developed only if geologic stability is verified by a qualified soils engineer or geologist, and the integrity of the slope is preserved to the maximum extent feasible. Development is prohibited on slopes over 40% with a 25 foot elevation differential.

V. Environmentally Sensitive Habitat - Major Finding #5b

The slopes above the lagoon between I-5 and Alvarado Street are generally undevelopable under the terms of the City's Hillside Ordinance.

V. Environmentally Sensitive Habitat - Policy #5

In the area between Interstate 5 and Alvarado Street, the City shall prohibit encroachment of development beyond the bluff line of the lagoon.

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.

8. The city shall ensure that all new development is compatible in height, scale, color, and form with the surrounding neighborhood.

The City also has policies addressing design standards incorporated into its Land Use Plan that state:

Design Guideline - Scale

2. Building forms shall be designed to respect and improve the integrity of open space and other public spaces adjacent to open space

The City also has a Buena Vista Lagoon Working Paper incorporated into its Land Use Plan that states:

Issues:

The properties which front on the lagoon between I-5 and Hill Street are zoned for 3,500 square foot minimum lot size. The lots in the location range in size from 3,827 to 73,000 square feet. Thus, theoretically, it would be possible for additional subdivisions along the lagoon embankments in areas that are currently open space. The City's Hillside Ordinance already prohibits grading on slopes higher than 50 feet whose slope gradients are 40% or greater. In addition, the ordinance puts restrictions on development of slopes whose gradient is between 20% and 40%. Also, the Subdivision Map Act prohibits subdivisions on properties which "are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat" [Section 66474 (e)]. However, in addition to these existing laws the Local Coastal Program should take additional specific steps to ensure that these slopes and flood prone areas beneath them are retained as open space. A "stringline" should be drawn which separates commercial and residential uses from permanent open space on the slopes above the lagoon.

The City's Implementation Plan also has policies for development on steep slopes and adjacent to open space that state:

Article 10 - Residential Districts -

1050 RE, RS, RH, RT Districts: Property Development Regulations

(B) The Planning Commission, for projects with three or more units, or the City Planner, for projects with two or fewer units, may approve a use permit authorizing an increase in density up to the maximum potential density for a project exceeding standards established by City Policy if the Commission or City Planner, as the case may be, finds the project conforms to the provisions of Section 2.3 of the Land Use Element of the General Plan. In determining how much additional density to grant, the Commission or City Planner, as the case may be, shall account for any density bonus to be provided under Section 3032, Affordable Housing Density Bonus. ***No use permit shall be granted that would directly or indirectly allow the maximum potential density to be exceeded.*** [emphasis added]

Article 20 - Hillside Development Overlay District -

2001 Specific Purposes

- a. Maintain an environmental equilibrium consistent with existing vegetation, soils, geology, slopes, and drainage patterns, and to preserve the natural topography, including swales, canyons, knolls, ridgelines, and rock outcrops, wherever feasible.
- b. Avoid development that would result in unacceptable fire, flood, slide, or other safety hazards.

2002 Definitions

- c. "Undevelopable land" includes land with a slope in excess of 40 percent with a minimum elevation differential of 25 feet and riparian corridors or associated vegetated areas of rivers, intermittent streams, perennial streams, or lakes.

2008 Required Plans and Materials

- b. A slope map with minimum five-foot contour lines at a scale of 1 inch - 200 feet clearly depicting areas between 20 percent and 40 percent slope and areas with slopes over 40%. Tabulations of gross site area and area within each slope range shall be shown on the map.

2009 Hillside Development Plan: Minimum Lot Size; Maximum Number of Dwelling Units

The Planning Commission or the City Planner, as the case may be, may approve an HD plan including lots and side yards smaller than those required by the base district, **but shall not approve a total number of dwelling units on a parcel or in a subdivision greater than permitted by the General Plan.** Restrictions on the number of dwelling units permitted shall be recorded with a final map or prior to issuance of a zoning permit. [emphasis added]

City Zoning Ordinance - Article 10 - Residential Districts

RE Residential Estate District. To provide opportunities for very-low-density single-family residential land use (except as otherwise notes in Section 1030), compatible with the topographic and public-service capacities. Two types of Residential Estate districts are established: the Estate A (RE-A) District where the potential density is 0.5 dwelling units per gross acre and the maximum potential density is 0.9 dwelling units per gross acre; and the Estate B District (RE-B) where the base density is 1.9 dwelling units per gross acre and the maximum potential density is 3.5 dwelling units per gross acre.

As noted, the proposed project includes dividing an existing 24,000 sq. ft. lot into two lots. As detailed above, Policy 2009 controls allowable lot sizes and densities. Further, Policy 1050 (B) controls allowable densities in residential designations. Both of these policies strictly prohibits development that would result in density greater than what is permitted by the General Plan. The proposed development is located in Residential Estate - B (RE-B) zoning and land use designation. This designation permits between 1-3.5 dwelling units per acre (dua). The proposed project density is calculated at 3.62 dua. The intent of this designation is to limit development to the least dense among the residential zoning. Such a designation classically is used in areas of high real estate value, or where there are many physical constraints effectively limiting development potential. Both of these policies prohibit the subdivision of and the development of an additional residence in this instance because the overall lot size (24,000 sq. ft.) is not large enough to meet the density requirements of the LCP and be split into two lots. Thus, based on the size of the existing lot and density provisions of the LCP, the subdivision is inconsistent with the LCP. To address this, the City approved a Conditional Use Permit (CUP) to allow for the development to exceed the required density. However, it is unclear at this time what provisions of the certified LCP would allow for an increase in density at this location, via conditional use permit, or any other method. Additionally, as previously stated, because the project is located on steep slopes, the obligatory Hillside Development Ordinances prohibit the increased density because it is inconsistent with the General Plan. Lastly, given the discussion below, even if the City were to allow the increased density and thus the creation of the additional lot, the project is not permissible under the LCP for a number of other reasons.

As previously stated, the proposed project includes the subdivision of a lot containing a single family residence in order to facilitate the construction of an additional single family residence on a lagoon fronting lot that contains steep slopes. The portion of the lot located adjacent to Buena Vista Lagoon will be the location of the proposed development. The project includes a 100' biological buffer from the inland extent of Buena Vista Lagoon and its vegetation.

The City included in its LCP a working paper discussing the protection of the bluffs located from Interstate 5 to Hill Street. The proposed development is located in this area. The paper includes language discussing how future subdivisions at this location are possible given that the minimum lot size is 3,500 sq. ft. and some of the lots are greater than 17,000 sq. ft. The concern is that development could encroach closer to the lagoon, resulting in impacts to wildlife, water quality, scenic views, etc. The working paper discusses a number of ways in which development could be restricted and laws that would prohibit development in these areas. The working paper concludes that in addition to the existing laws, the Local Coastal Program should take additional specific steps to ensure that these slopes and flood prone areas beneath them are retained as open space and suggested a "stringline" should be drawn to separate commercial and residential uses from permanent open space on the slopes above the lagoon. The "stringline" policy was not included in the LCP, but the intent of the paper is addressed in the City's Hillside Development Ordinance.

The City of Oceanside's Hillside Development Overlay, as included in its Implementation Plan, protects steep slopes from inappropriate development. The ordinance restricts development on slopes greater than 40% and requires a geotechnical survey be completed for any proposed development on hillsides with a slope between 20-40%. The ordinance also further regulates those developments proposed on lots containing slopes between 20-40%. The project site contains slopes between 20-40% and over 40%. The parameters for restricting development on lots containing 40% slopes require that the slope gradient be maintained consistently over the location of the proposed development.

The applicant's agent submitted a slope analysis for the project site indicating that the areas of the site exceeding 40% slope are patchy and not connected. The report concludes that a very small ratio of the lot was actually comprised of 40% slopes, and that the majority of the site was less than 40% and therefore developable.

In reviewing the submitted slope analysis (ref. Exhibit #6), it appears as though only a small portion of the lot contains slopes with 40% or more gradient. However, it is unclear at this time how this figure was created. The figure shows the topographic lines equally spaced throughout the site. The applicant's agent has indicated that the figure was created on the computer and the minimal changes in topographic line separation is there but may not be visible to the human eye. The applicant's agent further conceded that the change in elevation is not drastic, but gradual, thus no major changes in elevation should be shown. The computer program separated the lot into three categories; over 40%, between 20-40%, and less than 20%. Therefore, it is possible, and likely given that the lot elevation changes gradually, that while only a small portion of the lot has slopes

that are over 40%, a significant portion of the 20%-40% areas are very close to over 40%, for example 38%. As described by the applicant's agent, the slope analysis is done by computer and as such, slopes of 39.9% gradient would still be represented as the 20-40% region. Again, based on review of the slope analysis, it appears a good portion of the site contains slopes very close to 40% gradient – so close, in fact, that it is hard to make the call either way. Therefore, it stands to reason that while the numbers on the figure show that the proposed development would be consistent with this portion of the Hillside Development Ordinance, additional analysis should be done to determine the effect of maximizing development on a lot that is so close to the borderline for when development should be prohibited. This is especially true where, as previously discussed, the proposed project does not meet the *intent* of the City's LCP and should therefore be denied.

The third direct impact that will result from the proposed project is the precedent that will be set. As previously discussed, the proposed project is the first of its kind being reviewed by the Commission. There are a number of lots located on the bluffs/hillsides adjacent to Buena Vista Lagoon. If the project is approved, the surrounding lots could potentially follow suit and develop new homes close to the lagoon's edge. The applicant's agent submitted for Commission review a survey of the surrounding area that concludes that only one of the lots in question has the slopes and square footage necessary to construct a second residence. However, the study did not include (similar to the slope analysis for this location) how lot size, elevation gradient and lagoon edge, were calculated. In order to assure that the proposed project will not set an adverse precedent, it would need to prove through presentation of verifiable facts that the other lots in the area would be prohibited from additional development. This would require a wetland boundary determination and slope analysis for each lot. Furthermore, conditions can change overtime, and therefore, it is not possible to dismiss the potential for an adverse precedent to be set by the approval of this project; it should therefore be denied.

In conclusion, the City's LCP and Hillside Development Ordinance were designed to prevent development on the bluffs located between Interstate 5 and Alvarado St. The LUP, in its policies and in the working paper included in the LCP provide specific language intended to prevent additional development on these lagoon fronting lots. The project site does contain steep slopes, a portion of which are greater than 40% and the majority of which is likely at or near 40%. The project also exceeds the maximum density allowed by the certified LCP. The Hillside Development Ordinance adds additional language prohibiting development on slopes that results in greater density than what the site's designation allows and the residential designation for the property also prohibits densities beyond the maximum allowable for anything other than a development including an affordable housing component. Lastly, the project will set a precedent for the surrounding community, which could cause additional impacts to the Lagoon and surrounding habitat if other lots subdivide and develop in the manner proposed here. Because the project is inconsistent with the City's LCP and is located adjacent to a sensitive resource, the proposed project shall be denied.

3. Inadequate Biological Buffer/Fire Safety. The proposed project is located adjacent to Buena Vista Lagoon and as such requires a biological buffer. The City of Oceanside has policies that determine adequate buffers that state:

V. Environmentally Sensitive Habitat - Policy #2

Prior to approving any developments on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

- a. Provision of adequate buffers between development and the lagoon
- b. Erection of barriers - such as fences - to prohibit access to sensitive portions of the lagoon.
- c. Incorporation of native riparian plant species into project designs to enhance habitat value
- d. Construction of informational signs/kiosks educating the public on the value of the lagoon, and listing regulations for public use.
- e. Habitat restoration measure (such as removal of built up sediment) providing that such measures are approved by the State Department of Fish and Game.

I. Coastal Access Policy #5

The City, in conjunction with the State Department of Fish and Game, shall continue its efforts to provide and maintain an adequate buffer zone between Buena Vista Lagoon and development along its shore. Such a buffer is necessary for the provision of public access and protection of the lagoon from adverse environmental impacts.

The buffer zone shall be generally 100 feet in width as measured from the landward edge of the lagoon or existing riparian vegetation, whichever is more extensive. Within the buffer zone only passive recreational uses (such as walking, nature study, photography, small resource interpretive facilities and viewing areas) shall be allowed with no structures other than permitted by this policy and only very minor alteration of natural land forms or conditions for uses permitted by this policy.

A buffer zone shall be established around all sensitive habitats. The buffer zone shall be generally 100' for small projects on existing lots. If the project requires substantial improvements or increased human impacts, a much wider buffer area shall be required. Likewise, a reduced buffer area will be considered if, in consultation with the State Department of Fish and Game, it can be demonstrated that 100' is unnecessary to protect the resources of the habitat areas.

The proposed project is located adjacent to Buena Vista Lagoon and includes a 100' biological and 10' fire suppression buffer. During Commission review of the project, several concerns were raised regarding the adequacy of the biological and fire suppression buffers. The first issue raised was that the vegetation on the subject site has been removed on a regular basis. The biological report indicates that the wetland

vegetation does not extend onto the site; however, this cannot be certain if the vegetation is removed from the lot and therefore unidentifiable. If the site were left to revegetate, it would be more evident what species were located on the property. Since this original concern was raised, Commission staff has met with the applicant's agent to discuss the uncertainty of the wetland boundary. The agent indicated that the elevation change on the property would prohibit any water or wetland species from developing on the subject site. The applicant's agent further indicated that the hydric soils stemming from the lagoon cease 10 feet beyond the southeastern portion of the lot. The report further indicates that a small amount of willow scrub was found paralleling the site, but again was located entirely offsite. It is possible that if wetland indicator species are located parallel to the site, and the site had been denuded of vegetation, then even with the elevational change, wetland plants could cover at least a portion of the site. Without this knowledge, an adequate buffer cannot be determined.

The second major concern raised by the biological policies in the City's LCP is the requirement that all biological buffers designed to accommodate development adjacent to Buena Vista Lagoon be reviewed by the Department of Fish and Game. The City did not require such review associated with its approval of the project. However, DFG has since reviewed the project and signed off on the location and size of the buffer (ref. Exhibit #9). DFG further indicated, however, that in order for the buffer to be functional, the buffer would have to be revegetated with native drought tolerant species and a conservation easement would have to be placed over the buffer. The Commission agrees with these concerns.

First, the development, as approved by the City, did not include the revegetation of the buffer. The City required that should the applicant choose to revegetate the buffer, only native drought-tolerant plants could be used, but the revegetation wasn't required. Second, the project, as approved by the City, did not modify the designation of the biological buffer, or restrict the uses within the buffer via a conservation easement, deed restriction, or offer to dedicate and in fact allowed hand clearing of vegetation for necessary brush management. Without some protective mechanism, various small scale developments such as retaining walls and brush management could occur within the buffer, reducing its function. The applicant has since modified the project to include the revegetation requirement and a conservation easement for the buffer. While these additions may address the revegetation and future protection issues, they do not address the issue of whether the wetland boundary was determined accurately. Furthermore, given that the subdivision and general development of an additional unit is prohibited based on density, the project description, even if modified, would not result in a project consistent with the City's LCP.

The third major biological concern is the adequacy of the fire suppression zone, and its potential impacts to the biological buffer. The City's LCP includes provisions to assure adequate fire protection which state, in part:

2001 Specific Purposes

[...]

- b. Avoid development that would result in unacceptable fire, flood, slide, or other safety hazards.

As previously discussed, the applicant regularly removes vegetation from the site of the buffer zone for fuel modification purposes to protect the existing home and surrounding development. It is unclear whether the removal of the vegetation is to create a larger fire suppression zone for the existing development. The proposed development is located within the area currently mowed, and as such would decrease the potential brush management area. The proposed development includes a 10' fire suppression zone. Typically, a minimum of 30' is required in areas adjacent to open spaces. The fire department, however, has signed off of the 10' buffer, and has further indicated that if the buffer were revegetated with native plants, the development would not require any brush clearing within the buffer, and the proposed 10' fire suppression zone would be adequate to protect the proposed development. While the letter from the fire department addresses the current concerns, it represents the fire marshal's current opinion of the need for fuel modification, and there is very little to ensure that the vegetation would not be removed from the site at some point in the future if that opinion changed.

In response to the previous California wildfires, a brush clearing distance of 100' at the wildland/urban interface has been proposed and may become a requirement. Apparently this site is not considered to be at the wildland/urban interface, but given its proximity to the Buena Vista Lagoon, it appears it would present many of the same concerns that development at the wildland/urban interface would. If it became necessary for safety reasons to remove vegetation in the buffer, the buffer's utility would be decreased. Thus, new development located in close proximity to open space with a minimal fire suppression zone would very likely result in future encroachment into sensitive habitat or it could endanger the surrounding developments if adequate fire suppression did not take place.

Again, the applicant has proposed the inclusion of a conservation easement in the project description. This conservation easement could prohibit the removal of vegetation for brush management or any other purpose. However, it is unwise to prohibit an activity that could potentially be required to maintain human safety. If the project was denied, the potential for additional brush management would not be an issue.

The fire marshal has, however, determined that a ten foot fire suppression zone would be adequate to protect the proposed development and that even if the biological buffer were to revegetate, future fuel modification in that area would not be required. As discussed above, Commission staff has concerns about this conclusion, given the exceedingly small size of the fire suppression zone, the trend towards increasing fuel modification zones in southern California and the proximity of this site to an open space area. Given the serious public safety concerns raised by an inadequate fuel suppression zone, it would be

difficult to prohibit fuel modification in the buffer zone if it were later determined to be necessary. Despite these concerns, Commission staff does not have a sufficient basis to question the conclusion of the Fire Marshal, who is an expert on fire protection.

4. Impacts to Public Views. The approved project is located in an area of high scenic value and may result in impacts to public views. The City of Oceanside has policies addressing the protection of public views that state:

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
3. All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation.
6. Open space buffers and greenbelts shall be provided along major scenic corridors.
8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.
9. In areas where a change to more intensive use is proposed, adequate buffers or transition zones (such as increased setbacks, landscaped barriers, or decorative walls) shall be provided.

VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

The proposed structure includes 2-stories and 3,384 sq. ft. of living space along with a 624 sq. ft. garage on a lagoon-fronting site (ref. Exhibit Nos. 1-4). The surrounding neighborhood is generally comprised of other single family residences of similar or smaller size. While the project may not be grossly out of scale with the surrounding neighborhood, the location of the proposed development raises concerns for impacts to public views. Because the existing lot is being split into near and far shore lagoon sites, the proposed lot closest to the lagoon (currently vacant land) will be located lower and closer to the lagoon edge than other adjacent or neighboring development (ref. Exhibit #1). The location of the proposed development may result in view impacts while looking westward from other portions of the lagoon east of the proposed site and from Interstate 5 or other public vantage points or public trails in and around the lagoon. The project has been designed to follow the natural slope of the site and has been conditioned to use colors that blend in with the surrounding environment. However, as previously discussed, this is the first of this type of proposal that has been reviewed by the Commission. There is, therefore, a potential for a precedent to be set.

The City approved this project even though it encroaches closer to the lagoon than the established line of development in the area. Therefore, if the other lots are developed in the same manner, a new line of development may be established. The subdivision and subsequent construction of several lots at this location would have a potential for significant impacts to public views, inconsistent with the City's LCP. The applicant has submitted a survey indicating that no precedent would be set associated with this development, however, as previously stated; it is unclear how this conclusion was determined, and whether this information (wetland boundary, thus required buffer or lot size) could change over time. When looking at the potential impacts to views specifically, it may be considered a small scale impact. When looking at the proposed development, both in individual impacts and potential cumulative impacts, the project is inconsistent with the City's policies and the intent of the LCP regarding development at this location and shall be denied.

5. Conclusion. The proposed development represents a project that is forced to maximize the potential building envelope due to constraints on the site. The project is located next to a lagoon resulting in the requirement for a 100' biological buffer. The project contains steep slopes, resulting in additional development regulations. The project is highly visible from Interstate 5 and public trails thus creating concerns for public view impacts. The development is located adjacent to open space, resulting in concerns for required fire suppression zones and brush management. The subject site is currently .55 acres, and would be cut in half with the subdivision, resulting in a development that exceeds the LCP required density. In order for the applicant to design a home that would address all of these constraints, variances were required for reduced side- and rear-yard setbacks, a variance for a reduction in garage size, and a reduction in the standard fire suppression/ brush management zone. The subject site is the first to be reviewed by the Commission for this type of proposal in this area. As such, an adverse precedent would be set, as the development is essentially building out to the maximum buildable area, and in some cases going beyond the potential building area to accommodate the development due to the site constraints. The project requires variances, and reductions, revisions and adjustments. However, most importantly, the subject site is not large enough to accommodate a subdivision or an additional residence consistent with the LCP, as the Hillside Development Ordinance and the Residential Development Regulations prohibit development at a density higher than what is permitted by its designation. All of the constraints on the site have effectively combined to make the proposed development impossible to accommodate in a manner consistent with the LCP. Moreover, as noted above, because the project is inconsistent with the allowed density, there is no potential for redesigning the project. In addition, the applicant already has reasonable use of the site with the existing single-family home. The project therefore must be denied.

6. Local Coastal Planning. The City of Oceanside's LCP was certified in 1985. This certification included both a Land Use Plan (LUP) and an Implementation Plan (IP). Both of these components included policies addressing development adjacent to Buena Vista Lagoon and on Steep Slopes. The Hillside Development Ordinance was developed

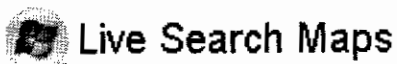
to regulate development on slopes between 20-40%. Slopes greater than 40% are considered undevelopable. The Hillside Development Ordinance contains a series of standards that any project located on a steep slope must abide by. In this case, the Hillside Development Ordinance prohibits development on sloping lots, if the proposed subdivision or development will result in a density that is greater than what is permitted by the General Plan. The subject lot's designation, Residential Estate - B, has an allowable density of between 1-3.5 dwelling units per acre. The subject site's density is ~3.62 du which exceeds this maximum. Furthermore, any lot containing steep slopes is also prohibited from allowing the development of a total number of dwelling units on a parcel or in a subdivision greater than permitted by the General Plan. Because the policy expressly prohibits such types of development, to remain consistent with the City's certified LCP, the project must be denied.

As previously stated, this appeal was scheduled for a previous hearing; however, the applicant requested a postponement in order to address the concerns raised by staff. Namely, the applicant contended that the standard of review the Commission was using was not the same as what the City used to approve the lot split and construction of a second dwelling. The applicant requested time to ascertain which standard of review was to be considered most accurate. Currently, it appears that the City has modified its Implementation Plan without the review or approval of the Coastal Commission as an amendment to the certified Local Coastal Program. The result being that the City has been approving projects with a modified standard of review. Since the first hearing was scheduled, the applicant and Commission staff have attempted to locate an LCP amendment addressing these modifications, however, no such amendment has been submitted by the City. The only modifications the City has submitted for review are within the redevelopment area. This project is not located in the redevelopment area. Given that no such amendment has been processed to date, the standard of review remains the version submitted and certified by the Commission in 1985. As such, the recommendation for denial is still recommended. Approval of the project would prejudice the City's ability to continue to implement its Local Coastal Program, as approving this proposed project would be inconsistent with its certified LCP.

7. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit 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.

As stated previously, and incorporated herein by reference, the development as proposed is inconsistent with the Certified LCP policies pertaining to maximum density, development on slopes, adequate buffering from Buena Vista Lagoon, and potential impacts to public views. The development as proposed exceeds the permitted building envelope, and requires reductions in standards for parking, setbacks, fire clearance, and

density. The subject site constraints essentially prohibit development at this location. The project has a density that is prohibited by the Hillside Development Regulations, in that the lot is too small to accommodate another residence, all other constraints aside. Because the proposal increased the number of units on the site from one to two, there is no alternative to the proposed development, as any additional development would increase the density beyond that which is allowed. The site is currently one lot containing an existing single family residence. The existing home already provides a reasonable economic use for the lot. The project's denial is therefore consistent with the requirements of the California Environmental Quality Act (CEQA).



My Notes

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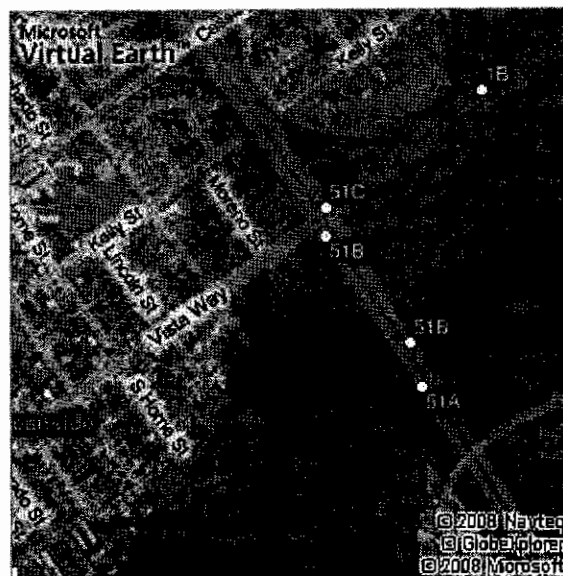


EXHIBIT NO. 1
APPLICATION NO.
A-6-OCN-08-049
Location Map

P-29-06, C-56-06, RC-28-06

571A-125M

Diagram 1: Headwater stream, V-shaped valley, steep banks.

Diagram 2: Stream with a meandering pattern, slightly wider valley.

Diagram 3: Stream with a more pronounced meandering pattern, wider valley.

Diagram 4: Stream with a large meander loop, wider valley.

Diagram 5: Stream with a very large meander loop, wider valley.

Diagram 6: Mature river with a wide, flat floodplain and a meandering pattern.

LEGAL DESCRIPTION:

LEGAL DESCRIPTION:
PARCEL 1, IN THE CITY OF DEARBORN COUNTY OF SAN DIEGO STATE OF CALIFORNIA, AS SHOWN ON PAGE 8334 OF THE PUBLIC RECORDS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 26, 1980 EXCEPTING THEREFROM THAT PORTION HEREOUTOFT OF NOW LYING BELOW THE ARCHA WHITE MARK OF ANTENA WISTA LASDON.

SOURCE OF TOPOGRAPHY:

TOPOGRAPHY SHOWN ON THIS MAP WAS GENERATED BY RIGHT-OF-WAY ENGINEERING, JAN. 10, 2008

EARTHWORK

AD 0071	IMPORT
AD 00	771
AD 0001	101



BUENA VISTA LAGOON

BENCHMARK

document city of document

[illegible]

CONDUCTANT ALSO MUST BE

Second round

5

DATE OF ACQUISITION: 10/10/00

EXHIBIT NO. 2
APPLICATION NO.
-6-OCN-08-049
Site Plan



EXHIBIT NO. 3
APPLICATION NO.
A-6-OCN-08-049
Existing Site conditions
 California Coastal Commission



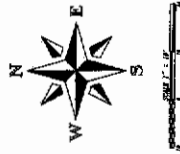
EXHIBIT NO. 4
APPLICATION NO.
A-6-OCN-08-049
Project Rendering

A = Existing
B = Future

B | **A**

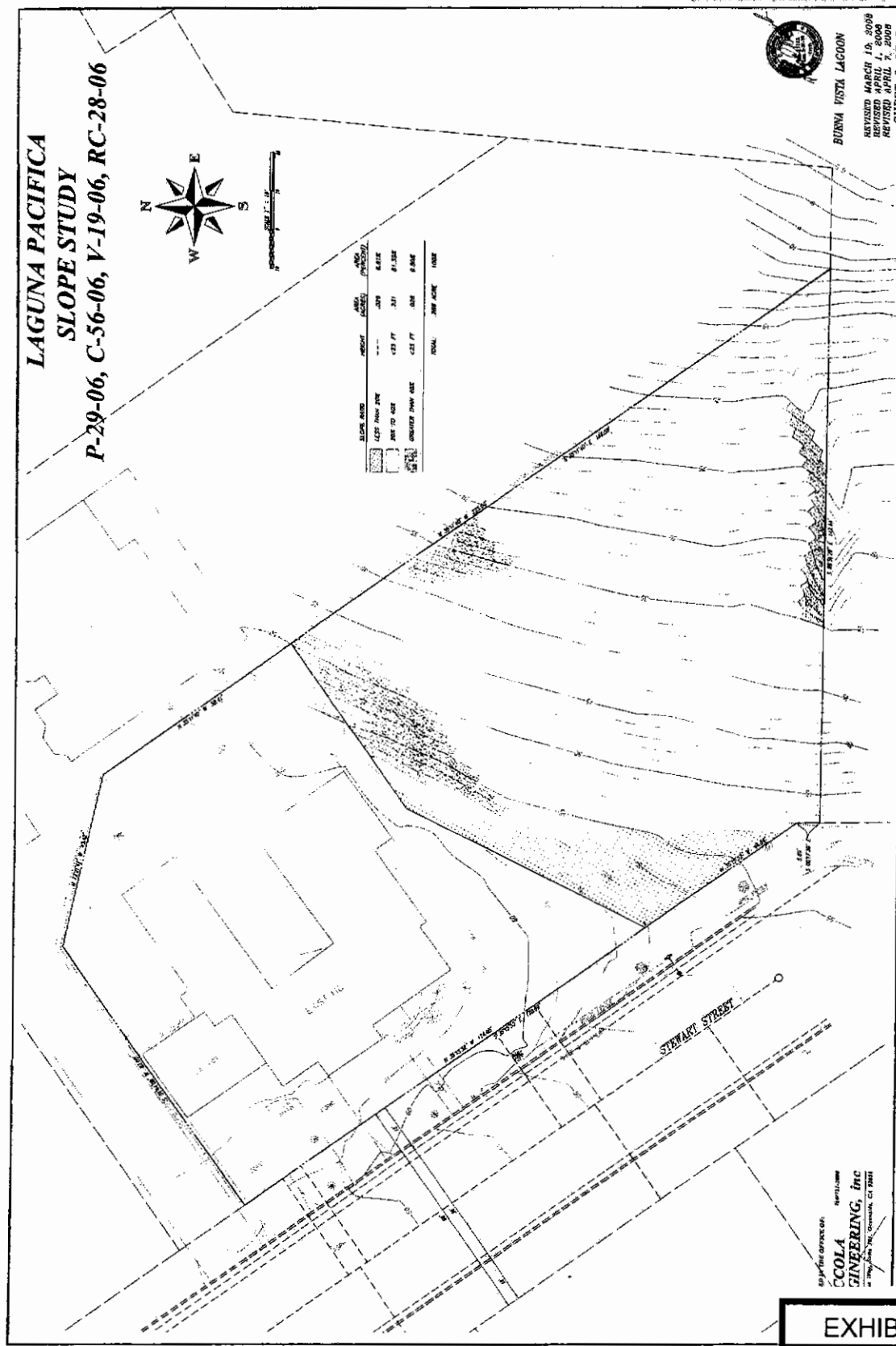
EXHIBIT NO. 5
APPLICATION NO.
A-6-OCN-08-049
View from I-5

**LAGUNA PACIFICA
SLOPE STUDY
P-29-06, C-56-06, V-19-06, RC-28-06**



SLOPE RATIO	HEIGHT	AREA	PERCENT
1:1	4.00 FT	1.00	0.10
2:1	4.00 FT	2.00	0.20
3:1	4.00 FT	3.00	0.30
4:1	4.00 FT	4.00	0.40
5:1	4.00 FT	5.00	0.50
6:1	4.00 FT	6.00	0.60
7:1	4.00 FT	7.00	0.70
8:1	4.00 FT	8.00	0.80
9:1	4.00 FT	9.00	0.90
10:1	4.00 FT	10.00	1.00

BUNNA VISTA LAGOON
REVISED MARCH 10, 2008
REVISED APRIL 1, 2008
REVISED APRIL 7, 2008
SHEET 5 OF 5



CCOLA
ENGINEERING, Inc
10000 E. 10th Avenue, Suite 100
Denver, CO 80231

EXHIBIT NO. 6

APPLICATION NO.

A-6-OCN-08-049

Slope Analysis

California Coastal Commission

RECEIVED

MAY 09 2008

CALIFORNIA
COASTAL COMMISSION
SANTA MONICA COAST DISTRICT

PLANNING COMMISSION
RESOLUTION NO. 2008-P32

A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF OCEANSIDE, CALIFORNIA APPROVING A
TENTATIVE PARCEL MAP, CONDITIONAL USE PERMIT,
VARIANCE, AND REGULAR COASTAL PERMIT ON
CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO: P-29-06, C-56-06, V-19-06, RC-28-06
APPLICANT: Peter and Joni Biniaz
LOCATION: 2020 Stewart Street

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES
RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms
prescribed by the Commission requesting approval of a Tentative Parcel Map, Conditional Use
Permit, Variance and Regular Coastal Permit under the provisions of Articles 10, 40, 41, and 43 of
the Zoning Ordinance of the City of Oceanside to permit the following:

subdivision of an approximately .55-acre site into two lots, construction of a single-family
detached dwelling, development on the subject site at a density in excess of the base
density of one dwelling unit per acre, construction of a two-car garage in lieu of a three-car
garage and reduced side and rear yard building setbacks;


on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 5th day
of May, 2008 conduct a duly advertised public hearing as prescribed by law to consider said
application.

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State
Guidelines thereto; a Mitigated Negative Declaration has been prepared stating that if the
mitigation measures are met there will not be an adverse impact upon the environment;

WHEREAS, there is hereby imposed on the subject development project certain fees,
dedications, reservations and other exactions pursuant to state law and city ordinance;

WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS HEREBY GIVEN that the
project is subject to certain fees, dedications, reservations and other exactions as pr

EXHIBIT NO. 7
APPLICATION NO.
A-6-OCN-08-049
City Resolution
1 of 28 pgs.
 California Coastal Commission

<u>Description</u>	<u>Authority for Imposition</u>	<u>Current Estimate Fee or Calculation Formula</u>
Parkland Dedication/Fee	Ordinance No. 91-10 Resolution No. 06-R0334-1	\$3,503 per unit
Drainage Fee	Ordinance No. 85-23 Resolution No. 06-R0334-1	Depends on area (range is \$2,843-\$15,964 per acre)
Public Facility Fee	Ordinance No. 91-09 Resolution No. 06-R0334-1	\$2,072 per unit for residential
School Facilities Mitigation Fee	Ordinance No. 91-34	\$2.63 per square foot residential for Oceanside
Traffic Signal Fee	Ordinance No. 87-19 Resolution No. 06-R0334-1	\$15.71 per vehicle trip
Thoroughfare Fee	Ordinance No. 83-01 Resolution No. 06-R0334-1	\$255 per vehicle trip (based on SANDAG trip generation table available from staff and from SANDAG)
Water System Buy-in Fees	Oceanside City Code §37.56.1 Resolution No. 87-96 Ordinance No. 05-OR 0611-1	Fee based on water meter size. Residential is typically \$4,395 per unit
Wastewater System Buy-in fees	Oceanside City Code § 29.11.1 Resolution No. 87-97 Ordinance No. 05-OR 0610-1	Based on capacity or water meter size. Residential is typically \$6,035 per unit
San Diego County Water Authority Capacity Fees	SDCWA Ordinance No. 2005-03	Based on meter size. Residential is typically \$4,326 per unit

WHEREAS, the current fees referenced above are merely fee amount estimates of the impact fees that would be required if due and payable under currently applicable ordinances and resolutions, presume the accuracy of relevant project information provided by the applicant, and are not necessarily the fee amount that will be owing when such fee becomes due and payable;

WHEREAS, unless otherwise provided by this resolution, all impact fees shall be calculated and collected at the time and in the manner provided in Chapter 32B of the Oceanside

1 City Code and the City expressly reserves the right to amend the fees and fee calculations
2 consistent with applicable law;

3 WHEREAS, the City expressly reserves the right to establish, modify or adjust any fee,
4 dedication, reservation or other exaction to the extent permitted and as authorized by law;

5 WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS FURTHER GIVEN that
6 the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction
7 described in this resolution begins on the effective date of this resolution and any such protest must
8 be in a manner that complies with Section 66020;

9 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes
10 effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

11 WHEREAS, the documents or other material which constitutive the record of proceedings
12 upon which the decision is based will be maintained by the City of Oceanside Planning Division,
13 300 North Coast Highway, Oceanside, California 92054.

14 WHEREAS, studies and investigations made by this Commission and in its behalf reveal
15 the following facts:

16 FINDINGS:

17 For the Tentative Parcel Map (P-29-06):

- 18 1. The proposed parcel map is consistent with the General Plan and provisions of the
19 Subdivision Ordinance of the City of Oceanside. The subject subdivision creates parcels
20 that are consistent with the requirements of the RE-B (Residential Estate B) zoning
21 designation. Pursuant to Section 1.13 H of the General Plan, lands within the South
22 Oceanside Neighborhood Planning Area that are designated Estate B Residential and
23 with the corresponding zoning of RE-B, a minimum lot size of 10,000 square foot shall
24 be considered consistent with the underlying Land Use designation of Estate B
25 Residential. Parcel 1 shall be 10,806 square feet and Parcel 2 shall be 13, 224 square
26 feet.
- 27 2. The site is physically suitable for the proposed type of development. The design of the
28 subject subdivision accommodates development of a new single-family detached
29 dwelling. The proposed project has been designed to complement the existing
topography.

3. The site is physically suitable for the proposed density of development. The two lots that are proposed are within the size range of the surrounding properties. In addition, both parcels are consistent with Section 1.13 H of the General Plan and the land use regulations of the Zoning Ordinance.
4. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat. The proposed project incorporates a 100-foot habitat buffer from the edge of riparian habitat adjacent to the Buena Vista Lagoon and a 10-foot fire buffer has been created to ensure that the biological buffer can remain natural.
5. The design of the subdivision and type of improvements will not conflict with easements acquired by the public at large, for access through or use of property within the proposed subdivision. No public access to the Lagoon or adjacent to the Lagoon currently exists nor are there any foreseeable plans for such public access.
6. The tentative parcel map complies with all other ordinances, regulations and guidelines of the City of Oceanside including the Local Coastal Plan and Hillside regulations with the exception of the requested variance for garage size and setback deviations.

For the Conditional Use Permit (C-56-06) (exceeding base density):

1. The proposed location for the subject land use is in accord with the objectives of the Zoning Ordinance and the purposes of the RE-B zoning district. The development portion of the subject property is zoned RE-B with a corresponding Land Use designation of Estate B Residential (1-3.5 dwelling units per acre). The project density is 3.6 dwelling units per acre. However, pursuant to Section 1.13 H of the General Plan, a minimum lot size of 10,000 square feet shall be considered consistent with the underlying Land Use designation of Estate B Residential for property within the South Oceanside Neighborhood Planning Area, despite the proposed project density. Parcel 1 shall be 10,806 square feet and Parcel 2 shall be 13, 224 square feet.
2. The proposed location of the conditional use and the proposed conditions under which it would be maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city. The proposed parcels

1 are within the size range of 123 surrounding residential properties. The proposed
2 single-family home will be one of the largest out of 123 surrounding residential lots.
3 The project can be adequately, reasonably and conveniently served by public services,
4 utilities and public facilities.

- 5 3. The proposed conditional use permit will comply with the provisions of the ordinance,
6 with the exception of the requested variance items, including any specific condition
7 required for the proposed conditional use permit in the district in which it will be
8 located.

9 For the Variance (V-19-06) (reduced parking and setback requirements):

- 10 1. Because of special circumstances and conditions applicable to the development site –
11 including size, shape, topography, location and surroundings – strict application of the
12 requirements of this ordinance would deprive the subject property of privileges enjoyed
13 by other properties in the vicinity and under identical zoning classification.
14 Development on the site is constrained by hillside regulations and provision of a 100-ft.
15 habitat buffer from the edge of the riparian habitat adjacent to the Buena Vista Lagoon. In
16 addition, in order to maintain natural habitat within the buffer area, the project has been
17 designed with an additional 10-foot fire buffer. Staff finds that implementation of the
18 three-car garage zoning provision would negatively affect grading on the hillside site and
19 would shift the proposed development at least 10 feet closer to Buena Vista Lagoon, which
20 would cause encroachment in to the habitat buffer area. In addition, based on the proposed
21 floor plan and number of bedrooms, staff has determined that the proposed two-car garage
22 will adequately serve the proposed development and construction of a two-car garage will
23 be consistent with parking requirements for other properties in the vicinity.
- 24 2. Granting the application will not be detrimental or injurious to property or
25 improvements in the vicinity of the development site, or to the public health, safety or
26 general welfare. The project's design will contribute in the enhancement of the existing
27 neighborhood by developing property that is currently vacant and often a pathway for
28 vagrants to access the Buena Vista Lagoon. The new single-family dwelling will
29 maintain a minimum 13.7-foot side yard setback to the garage, with a minimum 11-foot
side yard setback to the edge of the proposed deck, and a minimum 28.1-foot rear yard
setback to the wall of the house, with a minimum 16-foot rear yard setback to the edge of

1 the proposed deck. This is in compliance with the corresponding 7.5 feet side and 20 feet
2 rear yard setback for the underlying RE-B zoning district and the setback regulations for
3 decks over 30 inches in height as per Section 3005 of the Zoning Ordinance. As such the
4 project will be consistent with development in the surrounding area under the same zoning
5 classification. In addition, since this site required such a large habitat buffer, the useable
6 yard space is diminished significantly. Allowing for a large deck, even though it
7 encroaches into the required setback areas, provides useable open space for the residents.

- 8 3. Granting the application is consistent with the purposes of this ordinance and will not
9 constitute a grant of special privilege inconsistent with limitations on other properties in
10 the vicinity and in the same zoning district. The parking ordinance requires provision of a
11 three-car garage for single-family dwellings that exceed 2,500 sq. ft. in area. This
12 requirement is based on the assumption that a larger home would incorporate more
13 bedrooms, thus occupants, and there would be a need for provision of additional
14 automobile storage on the property. In this case the applicant proposes a 2,867.75-square
15 foot, three-bedroom home with customized, larger than typical living areas, to serve the
16 specific owner's needs. A driveway, more than 70 feet in length, is proposed to provide
access to a two-car garage.

17 For the Regular Coastal Permit (RC-28-06) with Hillside Development Plan:

- 18 1. The project is consistent with the policies of the Local Coastal Program as implemented
19 through the City Zoning Ordinance. The house has been designed to conform to the
20 slope of the existing hillside and the roofline of the proposed home will be at the
21 existing grade elevation. The home will not block coastal views from Stewart Street. In
22 addition, the home will be set back 110 feet from the edge of the Buena Vista Lagoon
23 and the property will continue to be partially blocked by existing trees along the edge of
24 the lagoon. The project will not substantially alter or impact existing public views of the
coastal zone area.
- 25 2. The project will not obstruct any existing or planned public beach access; therefore, the
26 project is in conformance with the policies of Chapter 3 of the Coastal Act.
- 27 3. The development plan conforms to the General Plan. The proposed grading plan
28 minimizes cut and fill on a Hillside property. In addition, the development is providing
29 a 100-foot habitat buffer as well as a 10-foot fire buffer in order to protect the Buena

1 Vista Lagoon. The size of the lots and the size and type of development all conform to
2 the Land Use Element of the General Plan.

3 4. The development plan complies with the land-use and development regulations of the
4 base zoning district and the Hillside Development Provisions with the exception of the
5 requested variance for garage size and setback deviations. However, the reduction in the
6 garage size allows for less cut and fill and the setback deviations allow for development
7 of the single-family home while still maintaining a 100-foot habitat buffer and a 10-foot
8 fire buffer zone. A variance has been requested in order to deviate from these
9 regulations.

10 5. The project can be adequately, reasonably and conveniently served by public services,
11 utilities and public facilities. The proposed development will only add one additional
12 home to an existing residential neighborhood.

13 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
14 approve Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-
15 06) and Regular Coastal Permit (RC-28-06) subject to the following conditions:

16 **Building:**

- 17 1. Applicable Building Codes and Ordinances shall be based on the date of submittal for
18 Building Division plan check.
- 19 2. Construction plans submitted to the Building Division after January 1, 2008 must meet all
20 requirements of the newly adopted CBC codes.
- 21 3. The granting of approval under this action shall in no way relieve the applicant/project
22 from compliance with all State and Local building codes.
- 23 4. All electrical, communication, CATV, etc. service lines within the exterior lines of the
24 property shall be underground (City Code Sec. 6.30).
- 25 5. Compliance with the Federal Clean Water Act (BMP's) shall be demonstrated on the
26 plans.
- 27 6. Separate/unique addresses may be required to facilitate utility releases. Verification that
28 the addresses have been properly assigned by the City's Planning Division shall
29 accompany the Building Permit application.
7. A complete Soils Report, Structural Calculations, & Energy Calculations/documentation
shall be required at time of plans submittal to the Building Division for plan check to

show that the hillside soil conditions are suitable to support the proposed buildings, retaining walls etc.

8. The developer shall monitor, supervise and control all building construction and supporting activities so as to prevent these activities from causing a public nuisance, including, but not limited to, strict adherence to the following:

a) Building construction work hours shall be limited to between 7:00 a.m. and 6:00 p.m. Monday through Friday, and on Saturday from 7:00 a.m. to 6:00 p.m. for work that is not inherently noise-producing. Examples of work not permitted on Saturday are concrete and grout pours, roof nailing and activities of similar noise-producing nature. No work shall be permitted on Sundays and Federal Holidays (New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day) except as allowed for emergency work under the provisions of the Oceanside City Code Chapter 38 (Noise Ordinance).

b) The construction site shall be kept reasonably free of construction debris as specified in Section 13.17 of the Oceanside City Code. Storage of debris in approved solid waste containers shall be considered compliance with this requirement. Small amounts of construction debris may be stored on-site in a neat, safe manner for short periods of time pending disposal.

Engineering:

9. If the project involves demolition of an existing structure or surface improvements, the grading plans shall be submitted and erosion control plans be approved by the City Engineer prior to the issuance of a demolition permit. No demolition shall be permitted without an approved erosion control plan.

10. All right-of-way alignments, street dedications, exact geometrics and widths shall be dedicated and improved as required by the City Engineer.

11. Design and construction of all improvements shall be in accordance with standard plans, specifications of the City of Oceanside and subject to approval by the City Engineer.

12. Prior to issuance of a building permit all improvement requirements shall be covered by a development agreement and secured with sufficient improvement securities or bonds guaranteeing performance and payment for labor and materials, setting of monuments, and warranty against defective materials and workmanship.

- 1 13. The approval of the tentative parcel map shall not mean that closure, vacation, or
2 abandonment of any public street, right-of-way, easement, or facility is granted or
3 guaranteed to the developer. The developer is responsible for applying for all closures,
4 vacations, and abandonments as necessary. The application(s) shall be reviewed and
5 approved or rejected by the City of Oceanside under separate process(es) per codes,
6 ordinances, and policies in effect at the time of the application.
- 7 14. Prior to approval of the parcel map or any increment, all improvement requirements, within
8 such increment or outside of it if required by the City Engineer, shall be covered by a
9 subdivision agreement and secured with sufficient improvement securities or bonds
10 guaranteeing performance and payment for labor and materials, setting of monuments, and
11 warranty against defective materials and workmanship.
- 12 15. Pursuant to the State Map Act, improvements shall be required at the time of development.
13 A covenant, reviewed and approved by the City Attorney, shall be recorded attesting to
14 these improvement conditions and a certificate setting forth the recordation shall be placed
15 on the map.
- 16 16. Prior to the issuance of a grading permit, the developer shall notify and host a
17 neighborhood meeting with all of the area residents located within 300 feet of the project
18 site, and residents of property along any residential streets to be used as a "haul route", to
19 inform them of the grading and construction schedule, haul routes, and to answer questions.
- 20 17. The developer shall monitor, supervise and control all construction and construction-
21 supportive activities, so as to prevent these activities from causing a public nuisance,
22 including but not limited to, insuring strict adherence to the following:
- 23 a) Dirt, debris and other construction material shall not be deposited on any public
24 street or within the City's stormwater conveyance system.
- 25 b) All grading and related site preparation and construction activities shall be
26 limited to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. No
27 engineering related construction activities shall be conducted on Saturdays,
28 Sundays or legal holidays unless written permission is granted by the City Engineer
29 with specific limitations to the working hours and types of permitted operations.
All on-site construction staging areas shall be as far as possible (minimum 100
feet) from any existing residential development. Because construction noise may

- 1 still be intrusive in the evening or on holidays, the City of Oceanside Noise
2 Ordinance also prohibits "any disturbing excessive or offensive noise which
3 causes discomfort or annoyance to reasonable persons of normal sensitivity."
- 4 c) The construction site shall accommodate the parking of all motor vehicles used by
5 persons working at or providing deliveries to the site.
- 6 d) A haul route shall be obtained at least 7 days prior the start of hauling operations
7 and must be approved by the City Engineer. Hauling operations shall be 8:00 a.m.
8 to 3:30 p.m. unless approved otherwise.
- 9 18. A traffic control plan shall be prepared according to the City traffic control guidelines and
10 be submitted to and approved by the City Engineer prior to the start of work within open
11 City rights-of-way. Traffic control during construction of streets that have been opened to
12 public traffic shall be in accordance with construction signing, marking and other
13 protection as required by the Caltrans Traffic Manual and City Traffic Control Guidelines.
14 Traffic control plans shall be in effect from 8:00 a.m. to 3:30 p.m. unless approved
15 otherwise.
- 16 19. Approval of this development project is conditioned upon payment of all applicable impact
17 fees and connection fees in the manner provided in chapter 32B of the Oceanside City
18 Code. All drainage fees, traffic signal fees and contributions, highway thoroughfare fees,
19 park fees, reimbursements, and other applicable charges, fees and deposits shall be paid
20 prior to recordation of the map or the issuance of any building permits, in accordance with
21 City Ordinances and policies. The developer shall also be required to join into, contribute,
22 or participate in any improvement, lighting, or other special district affecting or affected by
23 this project. Approval of the tentative map (project) shall constitute the developer's
24 approval of such payments, and his agreement to pay for any other similar assessments or
25 charges in effect when any increment is submitted for final map or building permit
26 approval, and to join, contribute, and/or participate in such districts.
- 27 20. Stewart Street shall be improved with curbs and gutters and/or as required by the City
28 Engineer.
- 29 21. Sight distance requirements at the project driveway or street shall conform to the corner
sight distance criteria as provided by the California Department of Transportation Highway
Design Manual.

- 1 22. Streetlights shall be maintained and/or installed on all public streets per City Standards.
2 The system shall provide uniform lighting, and be secured prior to occupancy. The
3 developer shall pay all applicable fees, energy charges, and/or assessments associated with
4 City-owned (LS-2 rate schedule) streetlights and shall also agree to the formulation of, or
5 the annexation to, any appropriate street lighting district.
- 6 23. Prior to approval of the grading plans, the developer shall contract with a geotechnical
7 engineering firm to perform a field investigation of the existing pavement on all streets
8 adjacent to the project boundary. The limits of the study shall be half-street plus 12 feet
9 along the project's frontage. The field investigation shall include a minimum of one
10 pavement boring per every 50 linear feet of street frontage. Should the existing AC
11 thickness be determined to be less than three inches or without underlying Class II base
12 material, the developer shall remove and reconstruct the pavement section as determined by
13 the pavement analysis submittal process detailed in Item No. 2 below.
- 14 24. Upon review of the pavement investigation, the City Engineer shall determine whether the
15 Developer shall: 1) Repair all failed pavement sections, header cut and grind per the
16 direction of the City Engineer, and construct a two-inch thick rubberized AC overlay; or 2)
17 Perform R-value testing and submit a study that determines if the existing pavement meets
18 current City standards/traffic indices. Should the study conclude that the pavement does
19 not meet current requirements, rehabilitation/mitigation recommendations shall be provided
20 in a pavement analysis report, and the developer shall reconstruct the pavement per these
21 recommendations, subject to approval by the City Engineer.
- 22 25. Pavement sections for all streets, alleys, driveways and parking areas shall be based upon
23 approved soil tests and traffic indices. The pavement design is to be prepared by the
24 developer's soil engineer and must be approved by the City Engineer, prior to paving.
- 25 26. Any existing broken pavement, concrete curb, gutter or sidewalk or any damaged during
26 construction of the project, shall be repaired or replaced as directed by the City Engineer.
- 27 27. All existing overhead utility lines within the development and/or within any full width
28 street or right-of-way abutting a new development, and all new extension services for the
29 development of the project, including but not limited to, electrical, cable and telephone,
shall be placed underground per Section 901.G. of the Subdivision Ordinance (R91-166)
and as required by the City Engineer and current City policy.

- 1 28. The developer shall comply with all the provisions of the City's cable television ordinances
2 including those relating to notification as required by the City Engineer.
- 3 29. Grading and drainage facilities shall be designed and installed to adequately accommodate
4 the local storm water runoff and shall be in accordance with the City's Engineers Manual
5 and as directed by the City Engineer.
- 6 30. The applicant shall obtain any necessary permits and clearances from all public agencies
7 having jurisdiction over the project due to its type, size, or location, including but not
8 limited to the U. S. Army Corps of Engineers, California Department of Fish & Game, U.
9 S. Fish and Wildlife Service and/or San Diego Regional Water Quality Control Board
10 (including NPDES), San Diego County Health Department, prior to the issuance of grading
11 permits.
- 12 31. Prior to any grading of any part of the tract or project, a comprehensive soils and geologic
13 investigation shall be conducted of the soils, slopes, and formations in the project. All
14 necessary measures shall be taken and implemented to assure slope stability, erosion
15 control, and soil integrity. No grading shall occur until a detailed grading plan, to be
16 prepared in accordance with the Grading Ordinance and Zoning Ordinance, is approved by
17 the City Engineer.
- 18 32. This project shall provide year-round erosion control including measures for the site
19 required for the phasing of grading. Prior to the issuance of grading permit, an erosion
20 control plan, designed for all proposed stages of construction, shall be reviewed, secured by
21 the applicant with cash securities and approved by the City Engineer.
- 22 33. A precise grading and private improvement plan shall be prepared, reviewed, secured and
23 approved prior to the issuance of any building permits. The plan shall reflect all pavement,
24 flatwork, landscaped areas, special surfaces, curbs, gutters, medians, striping, and signage,
25 footprints of all structures, walls, drainage devices and utility services. Parking lot striping
26 and any on-site traffic calming devices shall be shown on all Precise Grading and Private
27 Improvement Plans.
- 28 34. Landscaping plans, including plans for the construction of walls, fences or other structures
29 at or near intersections, must conform to intersection sight distance requirements. Landscape and irrigation plans shall be approved by the City Engineer prior to the issuance

1 of occupancy permits, and a pre-construction meeting held, prior to the start of any
2 improvements.

3 35. The drainage design on the tentative parcel map is conceptual only. The final design shall
4 be based upon a hydrologic/hydraulic study to be approved by the City Engineer during
5 final engineering. All drainage picked up in an underground system shall remain
6 underground until it is discharged into an approved channel, or as otherwise approved by
7 the City Engineer. All public storm drains shall be shown on City standard plan and profile
8 sheets. All storm drain easements shall be dedicated where required. The applicant shall
9 be responsible for obtaining any off-site easements for storm drainage facilities.

10 36. Sediment, silt, grease, trash, debris, and/or pollutants shall be collected on-site and disposed
11 of in accordance with all state and federal requirements, prior to stormwater discharge
12 either off-site or into the City drainage system.

13 37. The development shall comply with all applicable regulations established by the United
14 States Environmental Protection Agency (USEPA) as set forth in the National Pollutant
15 Discharge Elimination System (NPDES) permit requirements for urban runoff and
16 stormwater discharge and any regulations adopted by the City pursuant to the NPDES
17 regulations or requirements. Further, the applicant may be required to file a Notice of
18 Intent with the State Water Resources Control Board to obtain coverage under the NPDES.
19 General Permit for Storm Water Discharges Associated with Construction Activity and
20 may be required to implement a Storm Water Pollution Prevention Plan (SWPPP)
21 concurrent with the commencement of grading activities. SWPPPs include both
22 construction and post construction pollution prevention and pollution control measures and
23 identify funding mechanisms for post construction control measures. The developer shall
24 comply with all the provisions of the Clean Water Program during and after all phases of
25 the development process, including but not limited to: mass grading, rough grading,
26 construction of street and landscaping improvements, and construction of dwelling units.
27 The applicant shall design the Project's storm drains and other drainage facilities to include
28 Best Management Practices to minimize non-point source pollution, satisfactory to the City
29 Engineer.

38. Upon acceptance of any fee waiver or reduction by the developer, the entire project will be
subject to prevailing wage requirements as specified by Labor Code section 1720(b)(4).

- 1 The developer shall agree to execute a form acknowledging the prevailing wage
2 requirements prior to the granting of any fee reductions or waivers.
- 3 39. The developer shall prepare and submit an Operations & Maintenance (O&M) Plan to the
4 City Engineer with the first submittal of engineering plans. The O&M Plan shall be
5 prepared by the applicant's Civil Engineer. It shall be directly based on the project's Storm
6 Water Mitigation Plan (SWMP) previously approved by the project's approving authority
7 (Planning Commission/City Council/Community Development Commission). At a
8 minimum the O&M Plan shall include the designated responsible parties to manage the
9 storm water BMP(s), employee's training program and duties, operating schedule,
10 maintenance frequency, routine service schedule, specific maintenance activities, copies of
11 resource agency permits, cost estimate for implementation of the O&M Plan and any other
12 necessary elements.
- 13 40. The developer shall enter into a City-Standard Stormwater Facilities Maintenance
14 Agreement with the City obliging the project proponent to maintain, repair and replace the
15 Storm Water Best Management Practices (BMPs) identified in the project's approved
16 Storm Water Mitigation Plan (SWMP), as detailed in the O&M Plan into perpetuity. The
17 Agreement shall be approved by the City Attorney prior to issuance of any precise grading
18 permit and shall be recorded at the County Recorder's Office prior to issuance of any
19 building permit. Security in the form of cash (or certificate of deposit payable to the City)
20 or an irrevocable, City-Standard Letter of Credit shall be required prior to issuance of a
21 precise grading permit. The amount of the security shall be equal to 10 years of
22 maintenance costs, as identified by the O&M Plan. The applicant's Civil Engineer shall
23 prepare the O&M cost estimate.
- 24 41. At a minimum, maintenance agreements shall require the developer or any future property
25 owner(s), inspection and maintenance of all BMPs on an annual basis. The project
26 proponent shall complete and maintain O&M forms to document all maintenance activities.
27 The developer or any future property owner(s) is responsible for the O&M plans, shall
28 retain records at the subject property for at least 5 years. These documents shall be made
29 available to the City for inspection upon request at any time.
42. The Agreement shall include a copy of executed on-site and off-site access easements
necessary for the operation and maintenance of BMPs that shall be binding on the land

1 throughout the life of the project to the benefit of the party responsible for the O&M of
2 BMPs, until such time that the stormwater BMP requiring access is replaced, satisfactory to
3 the City Engineer. The agreement shall also include a copy of the O&M Plan approved by
4 the City Engineer.

5 43. The BMPs described in the project's approved Storm Water Mitigation Plan (SWMP) shall
6 not be altered in any way, shape or form without formal approval by either an
7 Administrative Substantial Conformance issued by the Community Development
8 Department/Planning Division or the project's final approving authority (Planning
9 Commission/Community Development Commission/City Council) at a public hearing. The
10 determination of whatever action is required for changes to a project's approved SWMP
11 shall be made by the Community Development Department/Planning Division.

12 44. All landscaping, fences, walls, etc. on the site, in medians in the public right-of-way and in
13 any adjoining public parkways shall be permanently maintained by the owner, his assigns
14 or any successors-in-interest in the property. The maintenance program shall include
15 normal care and irrigation of the landscaping; repair and replacement of plant materials;
16 irrigation systems as necessary; and general cleanup of the landscaped and open areas,
17 parking lots and walkways, walls, fences, etc. Failure to maintain landscaping shall result
18 in the City taking all appropriate enforcement actions by all acceptable means including but
19 not limited to citations and/or actual work with costs charged to or recorded against the
20 owner. This condition shall be recorded with the covenant required by this resolution.

21 45. In the event that the conceptual landscape plan (CLP) does not match the conditions of
22 approval, the resolution of approval shall govern.

23 46. Landscape plans, meeting the criteria of the City's Landscape Guidelines and Water
24 Conservation Ordinance No. 91-15, comply with Zoning Ordinance Article 30, Section
25 3019 including the maintenance of such landscaping, shall be reviewed and approved by
26 the City Engineer prior to the issuance of building permits. Landscaping shall not be
27 installed until bonds have been posted, fees paid, and plans signed for final approval. The
28 following special landscaping requirements shall be met:

- 29 a) Final landscape plans shall accurately show placement of all plant material such
as but not limited to trees, shrubs, and groundcovers. New planting within the

1 100-foot habitat area is not required; however, if planting is proposed within the
2 buffer area, it must be shown on the final landscape plans.

3 b) Landscape Architect shall verify utility, sewer, storm drain easements and place
4 planting locations accordingly to meet City of Oceanside requirements.

5 c) All required landscape areas shall be maintained by owner. The landscape areas
6 shall be maintained per City of Oceanside requirements.

7 d) Outside of the 100' habitat buffer and 10' fire buffer areas the proposed
8 landscape species shall be native or naturalized to fit the site and meet climate
9 changes indicative to their planting location. The selection of plant material shall
10 also be based on cultural, aesthetic, and maintenance considerations. In addition,
11 proposed landscape species shall be low water users as well as meet all fire
12 department requirements.

13 e) Any proposed landscape species inside of the 100' habitat buffer and 10' fire
14 buffer areas shall be native only and must meet all fire department requirements.

15 f) All planting areas outside of the 100' habitat buffer and 10' fire buffer areas shall
16 be prepared with appropriate soil amendments, fertilizers, and appropriate
17 supplements based upon a soils report from an agricultural suitability soil sample
18 taken from the site.

19 g) All planted areas on-site within the 100' habitat buffer and 10' fire buffer is to
20 remain as is and protected in place. Thinning shall only be done by hand; no
21 machinery shall be operated or permitted within the 100' habitat buffer and 10'
22 fire buffer areas.

23 h) Ground covers or bark mulch shall fill in between the shrubs to shield the soil
24 from the sun, evapotranspiration and run-off where permitted. All the flower
25 and shrub beds shall be mulched to a 3" depth to help conserve water, lower the
26 soil temperature and reduce weed growth where permitted.

27 i) The shrubs on-site shall be allowed to grow in their natural forms. All landscape
28 improvements shall follow the City of Oceanside Guidelines.

29 j) Root barriers shall be installed adjacent to all paving surfaces, where a paving
surface is located within six feet of a trees trunk. Root barriers shall extend five
feet in each direction from the centerline of the trunk, for a total distance of 10

1 feet. Root barriers shall be 24 inches in depth. Installing a root barrier around
2 the tree's root ball is unacceptable.

- 3 k) An automatic irrigation system shall be installed to provide coverage for all
4 planting areas shown on the plan. Low precipitation equipment shall provide
5 sufficient water for plant growth with a minimum water loss due to water run-
6 off.
- 7 l) All planting areas outside of the 100' habitat buffer and 10' fire buffer areas shall
8 have a permanent irrigation system.
- 9 m) The 100' habitat buffer and 10' fire buffer shall have an on-grade temporary
10 irrigation system to aid in vegetation growth to help stabilize the slope as well as
11 assist in fire suppression.
- 12 n) Irrigation systems shall use high quality, automatic control valves, controllers
13 and other necessary irrigation equipment. All components shall be of non-
14 corrosive material. All drip systems shall be adequately filtered and regulated
15 per the manufacturer's recommended design parameters.
- 16 o) All irrigation improvements shall follow the City of Oceanside Guidelines and
17 Water Conservation Ordinance.
- 18 p) The landscape plans shall match all plans affiliated with the project.
- 19 q) Landscape plans shall comply with Biological and/or Geotechnical reports, as
20 required, shall match the grading and improvement plans, comply with SWMP
21 Best Management Practices and meet the satisfaction of the City Engineer.
- 22 r) Existing landscaping on and adjacent to the site shall be protected in place and
23 supplemented or replaced to meet the satisfaction of the City Engineer.

Fire:

- 24 47. Smoke detectors are required, and detector locations must be indicated on the plans.
- 25 48. In accordance with the California Fire Code Sec. 901.4.4, approved address for
26 commercial, industrial, and residential occupancies shall be placed on the structure in
27 such a position as to be plainly visible and legible from the street or roadway fronting
28 the property. Numbers shall be contrasting with their background.
- 29 49. Single-family dwellings require 4-inch address numbers.

- 1 50. Plans shall be submitted to the Fire Prevention Bureau for plan check review and
2 approval prior to the issuance of building permits.
- 3 51. Buildings shall meet Oceanside Fire Department's current codes at the time of building
4 permit application.
- 5 52. Fire Department requirements shall be placed on plans in the notes section, and details
6 section.
- 7 53. All construction shall comply with Chapter 7A of the Wildland Urban Interface building
8 standards.
- 9 54. All structural mitigation notes and details resulting from the wildland urban interface
10 report and Fire Department conditions shall be included on the architectural plans when
11 submitted to the Building Division for building permit.
- 12 55. Roofs shall be a class A assembly. Roofs shall have a class "A" roof covering. For roof
13 coverings where the profile allows a space between the roof covering and roof decking,
14 the space at the eave ends shall be fire stopped to preclude entry of flames or embers.
- 15 56. In the urban wildland interface areas, paper faced insulation shall be prohibited in attics
16 or ventilated spaces.
- 17 57. Eave assembly shall be one-hour fire rated construction. Eaves and soffits shall be
18 protected on the exposed underside by materials approved for a minimum one-hour fire
19 resistance rated construction. Fascias shall be protected on the backside by materials
20 approved for a minimum of one-hour fire resistance rated construction or 2-inch (51mm)
21 nominal dimension lumber.
- 22 58. Gutters and downspouts shall be constructed of noncombustible material. Gutters shall
23 be designed to reduce the accumulation of leaf litter and debris that contributes to roof
24 edge ignition.
- 25 59. Exterior walls of buildings or structures shall be constructed with materials approved for
26 a minimum of one-hour fire resistance rated construction on the exterior side or
27 constructed with approved noncombustible materials. Exterior wall coverings shall meet
28 the one-hour fire resistance requirement. Exception: Heavy timber or log wall
29 construction. Such material shall extend from the top of the foundation to the underside
of the roof sheathing.

- 1 60. Buildings or structures shall have all under floor areas enclosed to the ground with
2 exterior walls with a one-hour fire rating. Exception: Complete enclosure may be
3 omitted where the underside of all exposed floors and all exposed structural columns,
4 beams and supporting walls are protected as required for exterior one-hour fire
5 resistance rated construction or heavy timber construction.
- 6 61. Where fencing attached to or immediately adjacent to structures face the vegetative
7 fuels, the first five feet (1,524 mm) of such fencing which connects to the structure, shall
8 be constructed of noncombustible, heavy timber or fire retardant pressure treated wood
9 or material.
- 10 62. Unenclosed accessory structures attached to buildings with habitable spaces and
11 projections such as deck assemblies shall be a minimum of a one-hour fire rated
12 assembly.
- 13 63. When the attached structure is located and constructed so that the structure or any
14 portion thereof projects over a descending slope surface greater than 10 percent, the
15 area below the structure shall have all under floor areas enclosed to within six inches
16 (152 mm) of the ground, with exterior wall construction that meets the one-hour fire
17 resistance rating.
- 18 64. Exterior glazing or other transparent, translucent or opaque glazing shall be tempered
19 glass, multi-layered glass panels, or glass block each having a fire protection rating of
20 not less than 20 minutes. Glazing frames made of vinyl materials shall have welded
21 corners, metal reinforcement in the interlock area, and be certified to
22 ANSI/AAMA/NWDA 101/I.S.2-97 structural requirements. Skylights shall be
23 tempered glass or a class "A" rated assembly.
- 24 65. Exterior windows, window walls and glazed doors, windows within exterior doors, and
25 skylights shall be tempered glass, multilayered glazed panels, and glass block or have a
26 fire protection rating of not less than 20 minutes.
- 27 66. Exterior doors shall be approved noncombustible construction, solid core wood not less
28 than 1 3/4 inches thick (45mm), or have a fire protection rating of not less than 20
29 minutes. Windows, doors and glazed doors shall be in accordance rated in accordance
with the exterior glazing and skylights section. Exception: Vehicle access doors.

67. Attic ventilation openings, foundation or under floor vents, or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches (0.0929 m²) each. Such vents shall be covered with noncombustible corrosion resistant mesh with openings not to exceed 1/4-inch (6.4 mm), or shall be designed and approved to prevent flame or ember penetration into the structure. Turbine attic vents shall be equipped to allow only one way direction rotation and shall not free spin in both directions.
68. Attic ventilation openings shall not be located in soffits, in eave overhangs, between rafters at eaves, or in other overhang areas. Gable end and dormer vents shall be located at least 10 feet (3048 mm) from property lines. Under floor ventilation openings shall be located as close to grade as practical.
69. Detached accessory structures located less than 50 feet (15,240 mm) from a building containing a habitable space shall be a minimum one hour fire resistance rated assembly. When the detached structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all under floor areas enclosed to within six inches (152 mm) of the ground, with exterior wall construction with a one-hour fire resistance rating. Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour fire resistance rated construction or heavy timber construction.

Planning:

70. Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-06), and Regular Coastal Permit (RC-28-06) shall expire on May 5, 2010 unless implemented as required by the Zoning Ordinance.
71. Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-06) and Regular Coastal Permit (RC-28-06) approves only the subdivision and development of a new single-family detached dwelling as shown on the plans and exhibits presented to the Planning Commission for review and approval. No deviation from these approved plans and exhibits shall occur without Planning Division approval. Substantial deviations shall require a revision to the Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-06) and Regular Coastal Permit (RC-28-06) or new plans.

- 1 72. Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-06)
2 and Regular Coastal Permit (RC-28-06) is valid for a two-year period beginning on the date
3 of approval and is subject to possible extension pursuant to the provisions of the Zoning
4 Ordinance. The Commission may add new conditions and/or delete and/or modify existing
5 conditions, as it deems necessary to protect the general health, safety and welfare of
6 residents in the area or surrounding land uses.
- 7 73. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold
8 harmless the City of Oceanside, its agents, officers or employees from any claim, action or
9 proceeding against the City, its agents, officers, or employees to attack, set aside, void or
10 annul an approval of the City, concerning Tentative Parcel Map (P-29-06), Conditional Use
11 Permit (C-56-06), Variance (V-19-06), and Regular Coastal Permit (RC-28-06). The City
12 will promptly notify the applicant of any such claim, action or proceeding against the
13 City and will cooperate fully in the defense. If the City fails to promptly notify the
14 applicant of any such claim action or proceeding or fails to cooperate fully in the
15 defense, the applicant shall not, thereafter, be responsible to defend, indemnify or hold
16 harmless the City.
- 17 74. All mechanical rooftop and ground equipment shall be screened from public view. The
18 roof jacks, mechanical equipment, screen and vents shall be painted with non-reflective
19 paint to match the roof. This information shall be shown on the building plans.
- 20 75. All single-family or multi-family unit dwelling projects shall dispose of or recycle solid
21 waste in a manner provided in City Code Section 13.3.
- 22 76. A covenant or other recordable document approved by the City Attorney shall be prepared
23 by the applicant and recorded prior to the approval of the Final Parcel Map. The covenant
24 shall provide that the property is subject to this resolution, and shall generally list the
25 conditions of approval.
- 26 77. Prior to the transfer of ownership and/or operation of the site the owner shall provide a
27 written copy of the applications, staff report and resolutions for the project to the new
28 owner and or operator. This notification's provision shall run with the life of the project
29 and shall be recorded as a covenant on the property.

- 1 78. Failure to meet any conditions of approval for this development shall constitute a violation
2 of Tentative Parcel Map (P-29-06), Conditional Use Permit (C-56-06), Variance (V-19-06)
3 and Regular Coastal Permit (RC-28-06).
- 4 79. Unless expressly waived, all current zoning standards and City ordinances and policies in
5 effect at the time building permits are issued are required to be met by this project. The
6 approval of this project constitutes the applicant's agreement with all statements in the
7 Description and Justification and other materials and information submitted with this
8 application, unless specifically waived by an adopted condition of approval.
- 9 80. The developer's construction of all fencing and walls associated with the project shall be in
10 conformance with the approved plans. Any substantial change in any aspect of fencing or
11 wall design from the approved plans shall require a revision to the Regular Coastal Permit
12 or a new Regular Coastal Permit.
- 13 81. If any aspect of the project fencing and walls is not covered by an approved plan, the
14 construction of fencing and walls shall conform to the development standards of the City
15 Zoning Ordinance. In no case, shall the construction of fences and walls (including
16 combinations thereof) exceed the limitations of the zoning code, unless expressly granted
17 by a Variance or other development approval.
- 18 82. Side and rear elevations and window treatments shall be trimmed to substantially match
19 the front elevations. A set of building plans shall be reviewed and approved by the
20 Planning Division prior to the issuance of building permits.
- 21 83. Elevations, siding materials, roofing materials and floor plans shall be substantially the
22 same as those approved by the Planning Commission. These shall be shown on plans
23 submitted to the Building and Planning Division.
- 24 84. The two-car garage area shall be kept available and useable for vehicle parking at all times.
- 25 85. The new single-family dwelling shall be limited to three bedrooms. No conversion of
26 approved habitable areas to additional bedrooms or any building addition shall be permitted
27 without provision of an additional enclosed parking space.
- 28 86. Existing fences within the Stewart Street right-of-way, along the property's frontage, shall
29 be removed.

- 1 87. All retaining walls visible from public right-of-way areas shall be decorative. The type of
2 retaining wall shall be subject to review and approval by the City Planner prior to issuance
3 of grading permits.
- 4 88. A professional archeologist, certified by the Society of Professional Archaeologists
5 (SOPA), shall monitor the earth movement related to construction activities for the project.
- 6 89. In the event any subsurface archaeological resources are encountered during grading or
7 construction activities, such activities in the locality of the find shall be halted immediately.
8 The archaeologist/monitor shall determine the significance of the archaeological resources
9 and implement appropriate mitigations prior to recommending earthwork.
- 10 90. A pre-excavation agreement shall be executed between the applicant and the San Luis
11 Rey Band of Mission Indians, specifying the disposition of human remains, grave goods,
12 or other culturally sensitive material encountered during grading, trenching or other
13 ground disturbance in conjunction with implementation of the proposed project.
- 14 91. An archaeologist and a Native American monitor shall be on-site during grading and
15 trenching within the project area. The monitors shall have the power to temporarily halt
16 or redirect grading if sensitive cultural material is found.
- 17 92. An archaeologist and a Native American monitor shall be present for a pre-grade
18 meeting to discuss the monitoring program with the grading contractor, City staff and
19 the developer.
- 20 93. If archaeological materials are encountered, their importance must be evaluated to assess
21 the significance of impacts. If significant cultural resources are encountered, mitigation
22 would be accomplished through documentation and excavation of features, cataloging
23 and analysis of cultural material collected, and preparation of a report detailing the
24 methods and results of the monitoring/data recovery program.
- 25 94. Any cultural material recovered shall be overseen at an appropriate facility, except as
26 stipulated differently in the pre-excavation agreement.
- 27 95. Prior to the issuance of grading permits, the applicant shall establish a program with a
28 qualified paleontologist to monitor grading activities. The applicant shall provide the
29 Planning Division with a copy of the paleontological resource-monitoring program.
96. A 100-foot habitat buffer from the edge of the riparian habitat adjacent to the lagoon,
which begins approximately 10 feet from the southeastern property corner, shall be put

in place to ensure that site development does not result in adverse direct impacts to the Buena Vista Lagoon. No structures, development, grading, or vegetation clearing shall be allowed within the buffer.

97. Any proposed or future landscaping of the 100-foot habitat buffer area between the proposed development area and the riparian habitat adjacent to the lagoon shall consist of 100 percent indigenous, native species. No invasive or noxious species shall be present on the project's plant palette.

98. A qualified biologist shall be retained by the applicant to review the final grading plans, access routes and staging areas, monitor all aspects of construction, educate contractors about the biological sensitivities associated with the area and ensure compliance with mitigation measures.

99. The qualified biologist shall conduct a training session for all project personnel prior to any grading/construction activities. At a minimum the training shall include a description of the target species of concern, its habitats, the general provisions of the Endangered Species Act (Act) and the MHCP, the need to adhere to the provision of the Act and the MHCP, the penalties associated with violating the provisions of the Act, the general measures that are being implemented to conserve the target species of concern as they relate to the project, any provisions for wildlife movement, and the access routes to and project site boundaries within which the project activities must be accomplished.

100. A water pollution and erosion control plan shall be developed that describes sediment and hazardous materials control, dewatering or diversion structures, fueling and equipment management practices and other factors as deemed necessary. Erosion control measures shall be monitored on a regularly scheduled basis, particularly during time or rainfall. Corrective measures shall be implemented in the event erosion control strategies are inadequate. Sediment/erosion control measures shall be continued at the project site until such time as the revegetation efforts are successful at soil stabilization.

101. The limits of project disturbance shall be clearly defined and marked in the field and reviewed by the biologist prior to initiation of work.

102. Equipment storage, fueling and staging areas shall be located to minimize risks of direct drainage into riparian areas or other environmentally sensitive habitats. These designated areas shall be located in such a manner as to prevent runoff from entering

- sensitive habitats. All necessary precautions shall be taken to prevent the release of cement or other toxic substances into surface waters. All project related spills of hazardous materials shall be reported to appropriate entities including but not limited to the City of Oceanside, FWS, and CDFG, SWQCB and shall be cleaned up immediately and contaminated soils removed to approved disposal areas.
103. Erodible fill material shall not be deposited into water courses. Brush, loose soils, or other similar debris material shall not be stockpiled within the lagoon or on its banks.
104. Stockpiling of materials and other aspects of construction staging shall be limited to disturbed areas without native vegetation, areas to be impacted by project development or in non sensitive habitats.
105. "No-fueling zones" shall be established within a minimum of 10 meters (33 feet) from all drainages and fire sensitive areas.
106. Site brushing, grading, and/or removal of vegetation (including landscaping and trees) within 300 feet of any potential migratory songbird nesting location is not normally permitted during the spring/ summer songbird breeding season, defined as from 1 January to 31 August of each year. Should it be necessary to conduct brushing, grading, or other habitat-removal activities during the bird breeding season, a preconstruction nesting survey of all areas within 300 feet of the proposed activity will be required. This survey must be conducted by a qualified biologist who must submit a summary report with findings and recommendations (such as noise abatement, seasonal restrictions on vegetation removal, etc.) to be approved by the City of Oceanside and the wildlife agencies prior to project implementation. .
107. Artificial lighting adjacent to the preserve area shall be eliminated except where essential for roadway, facility use and safety and security purposes. Where use of artificial lighting is necessary it shall be limited to low-pressure sodium sources. Use of low voltage outdoor or trail lighting, spotlights or bug lights is prohibited. All light sources shall be shielded so that lighting is focused downward to restrict any light spillover onto sensitive habitat.
108. The qualified biologist shall monitor construction activities throughout the duration of the project to ensure that all practicable measures are being employed to avoid incidental disturbance of habitat and any target species of concern outside the project footprint.

1 Construction monitoring reports shall be completed and provided to the City of
2 Oceanside, FWS and CDFG summarizing how the project is in compliance with
3 applicable conditions. The project biologist shall be empowered to halt work activity if
4 necessary and to confer with staff from the City of Oceanside, FWS and CDFG to
5 ensure the proper implementation of species and habitat protection measures.

6 109. The removal of native vegetation shall be avoided and minimized to the maximum
7 extent practicable. Temporary impacts shall be returned to pre-existing contours and
8 revegetated with appropriate native species. All revegetation plans shall be prepared and
9 implemented consistent with Appendix C (Revegetation Guidelines of the Final MHCP
10 Plan – Volume II) and shall require written concurrence of the FWS and CDFG.

11 110. To avoid attracting predators of the target species of concern, the project site shall be
12 kept clean of debris as possible. All food related trash items shall be enclosed in sealed
13 containers and regularly removed from the site. Pets of project personnel shall not be
14 allowed on site where they may come in contact with any listed species.

15 111. Construction employees shall strictly limit their activities, vehicles, equipment, and
16 construction materials to the proposed footprint and designated staging areas and routes
17 of travel. The construction area(s) shall be the minimal area necessary to complete the
18 project and shall be specified in the construction plans. Construction limits shall be
19 fenced with orange snow screen. Exclusion fencing shall be maintained until the
20 completion the completion of all construction activities. All employees shall be
21 instructed that their activities are restricted to the construction areas.

22 112. If dead or injured listed species are located, initial notification must be made within
23 three working days, in writing to the Service's Division of Law Enforcement in
24 Torrance California and by telephone and in writing to the applicable jurisdiction,
25 Carlsbad Field Office of the FWS, and CDFG.

26 113. The City of Oceanside shall have the right to access and inspect any sites of approved
27 projects, including any restoration/enhancement area, for compliance with project
28 conditions and BMPs. The FWS and CDFG may accompany the City representatives on
29 this inspection.

- 1 114. Approved landscaping shall be installed immediately upon completion of construction
2 and maintained by the property owner in good growing condition for the life of the
3 development.
- 4 115. The use of chemical pesticides for mosquito control is prohibited (rely on biological
5 agents).
- 6 116. Access to buffer and sensitive habitat areas is prohibited during the breeding season (see
7 species specific guidelines for breeding season dates) except for emergency access.
- 8 117. The development area shall be securely fenced with temporary chain-link fence and silt
9 fencing.
- 10 118. A letter of clearance from the affected school district in which the property is located
11 shall be provided as required by City policy at the time building permits are issued.

12 **Water Utilities:**

- 13 119. The developer shall be responsible for developing all water and sewer utilities necessary to
14 develop the property. Any relocation of water and/or sewer utilities is the responsibility of
15 the developer and shall be done by an approved licensed contractor at the developer's
16 expense.
- 17 120. The property owner will maintain private water and wastewater utilities located on private
18 property.
- 19 121. Water services and sewer laterals constructed in existing right-of-way locations are to be
20 constructed by approved and licensed contractors at developer's expense.
- 21 122. All Water and Wastewater construction shall conform to the most recent edition of the
22 Water, Sewer, and Reclaimed Water Design and Construction Manual or as approved by
23 the Water Utilities Director.
- 24 123. Prior to the approval of final engineering design plans, all public water and/or sewer
25 facilities not located within the public right-of-way shall be provided with easements sized
26 according to the Water, Sewer, and Reclaimed Water Design and Construction Manual.
27 Easements shall be constructed for all weather access.
- 28 124. Prior to the approval of final engineering design plans, it shall be shown that no trees,
29 structures or building overhang are located within any water or wastewater utility
easement.

Prior to the approval of final engineering design plans, all lots with a finish pad elevation located below the elevation of the next upstream manhole cover of the public sewer shall be protected from backflow of sewage by installing and maintaining an approved type backwater valve, per the Uniform Plumbing Code (U.P.C.).

Prior to the issuance of building permits, Water and Wastewater Buy-in fees and the San Diego County Water Authority Fees are to be paid to the City and collected by the Water Utilities Department at the time of Building Permit issuance.

Prior to occupancy, it shall be shown that the new single-family residential unit shall include hot water pipe insulation and installation of a hot water recirculation device or design to provide hot water to the tap within 15 seconds in accordance with City of Oceanside Ordinance No. 02-OR126-1

PASSED AND ADOPTED Resolution No. 2008-P32 on May 5, 2008 by the following

_____ wit:

_____ = Parker, Neal, Balma, Bertheaud and Rosales

_____ : Martinek, Troisi

_____ NT: None

_____ AIN: None

Dennis Martinek
Dennis Martinek, Chairman
Oceanside Planning Commission

_____ ST:

RY Hittleman
Hittleman, Secretary

_____ RY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that

_____ a true and correct copy of Resolution No. 2008-P32.

_____ May 5, 2008

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commission Patrick Kruer
Mailing Address: The Monarch Group
7727 Herschel Avenue
La Jolla, CA 92037
Phone Number: 858-551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside
2. Brief description of development being appealed: Subdivision of .55 acre lot into two lots and construction of 3,384 sq. ft. single-family residence.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2020 Stewart Street, Oceanside, San Diego County

4. Description of decision being appealed:

- a. Approval; no special conditions: ☐ b. Approval with special conditions: ☒
c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-OCN-08-49

DATE FILED: 5/23/08

DISTRICT: San Diego

RECEIVED
MAY 23 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 8
APPLICATION NO. A-6-OCN-08-049
Appeal Forms
Page 1 of 21
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

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

Date of local government's decision: 5/5/08

Local government's file number (if any): RC-28-06

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Peter & Joni Biniarz
2020 Stewart Street
Oceanside, CA

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

<u>Andy Morrow, Buena Vista Audubon Society</u>	<u>Diane Nygaard, Sierra Club</u>
<u>808 Capris Rd.</u>	<u>5020 Nighthawk Way</u>
<u>Encinitas, CA 92024</u>	<u>Oceanside, CA 92056</u>

SECTION IV. Reasons Supporting This Appeal

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

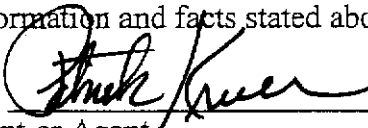
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" dated 5/23/08

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 5/23/08

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

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Oceanside
2. Brief description of development being appealed: Subdivision of .55 acre lot into two lots and construction of 3,384 sq. ft. single-family residence.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
2020 Stewart Street, Oceanside, San Diego County
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☒
 - c. Denial: ☐

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-OCN-08-49

DATE FILED: 5/23/08

DISTRICT: San Diego

RECEIVED
MAY 23 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 2

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

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

Date of local government's decision: 5/5/08

Local government's file number (if any): RC-28-06

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Peter & Joni Biniarz
2020 Stewart Street
Oceanside, CA

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

<u>Andy Morrow, Buena Vista Audubon Society</u>	<u>Diane Nygaard, Sierra Club</u>
<u>808 Capris Rd.</u>	<u>5020 Nighthawk Way</u>
<u>Encinitas, CA 92024</u>	<u>Oceanside, CA 92056</u>

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

See Attachment "A" dated 5/23/08

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

SECTION V. Certification

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

Signed: *Sara J. War*
Appellant or Agent

Date: 5/23/08

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

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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



Attachment A
Biniaz Appeal - 2020 Stewart St., Oceanside
May 23, 2008

The project, as proposed, includes a lot split and the development of a 3,384 sq. ft. second home on a lagoon fronting lot. The parcels will be split into 10,806 sq. ft. (Parcel 1) and 13,224 sq. ft. (Parcel 2). The existing single family residence is on Parcel 1. Given the slope of the property, the development will include grading of the site and stepping down the development. The project includes two variances; one for reduced side- and rear-yard setbacks and another for a reduction in the size of the garage required (two instead of three car garage). The project also includes a Conditional Use Permit because the development will result in a base density greater than one dwelling unit per acre, as required by the Residential Estate designation for the site.

The project site is located along the east side and southerly terminus of Stewart Street. A portion of the .55 acre property is developed with a single-family residence. The site is just north of Buena Vista Lagoon and is bordered by natural slopes to the east and south. The existing ground surface elevation varies from 11 feet Mean Sea Level (MSL) to approximately 63 feet MSL. The property is surrounded by single-family residences to the north, east, and west and the Buena Vista Lagoon to the south.

The City found that the development is consistent with all applicable policies of their certified LCP. However, the development as approved by the City raises several LCP consistency issues with regard to wetland delineations, brush management and development located on a steep hillside. Specifically, the development is located directly adjacent to Buena Vista Lagoon, and while the applicant did submit a biological report with the proposal, the biological report is inadequate to determine the wetland boundary nor does it provide the types and extent of habitat located offsite. Further, it is unclear how the brush management proposed at this location will provide the necessary protection for the residence from any wildfire. Lastly, the project is located on a steep hillside, in an area specifically included in the City's LCP as an area that is highly constrained because of the slope gradient, habitat and view concerns.

1. The City has policies for development on steep hillsides, and specific policies for development located between I-5 and Alvarado Street which state:

Geologic Hazards - Policy #6

The City recently adopted a Hillside Development Manual and Ordinance which controls development on slopes over 20%. Slopes ranging from between 20% and 40% slope may be developed only if geologic stability is verified by a qualified soils engineer or geologist, and the integrity of the slope is preserved to the maximum extent feasible. Development is prohibited on sloped over 40% with a 25 foot elevation differential.

Environmentally Sensitive Habitat - Major Finding #5b

The slopes above the lagoon between I-5 and Alvarado Street are generally undevelopable under the terms of the City's Hillside Ordinance.

Environmentally Sensitive Habitat - Policy #5

In the area between Interstate 5 and Alvarado Street, the City shall prohibit encroachment of development beyond the bluff line of the lagoon.

The City of Oceanside's Hillside Development Overlay, as included in their Implementation Plan, requires a geotechnical survey be completed for development on hillsides with a slope between 20-40%. The ordinance also includes that development shall be prohibited on hillsides with a 40% slope or greater. The City reviewed this project and included that the development would be located on a hillside in excess of 20%. However, no geotechnical report has been submitted associated with this development. As such, it is unclear if development would even be permissible on the hillside.

Further, as stated previously the development is located at the southern terminus of Stewart Street. The site is located between Alvarado St. and Interstate 5 and thus two LCP policies for this area are also applicable. The City's LCP has provisions for the prohibition of encroachment of development towards Buena Vista Lagoon. The project as approved by the City would split one lot into two separate lots, Parcel 2 (lot to be developed) being located closer to the lagoon than parcel 1 (lot to remain). Therefore, the development will result in a single family residence being constructed closer to the lagoon.

The City's LCP also has a policy protecting the bluff line of the lagoon at this location. As stated previously the development is located on a steep hillside. The City, in its review failed to define where the "bluff line" is located at this location, as required by Policy #5 listed above.

In conclusion, the project as approved by the City, raises concerns with the City's policies regarding hillside development, encroachment beyond the bluff line of the lagoon and development located in an area generally considered "undevelopable" by the City's LCP.

2. The City has policies for the protection of environmentally sensitive habitats and state:

Environmentally Sensitive Habitat - Policy #2

Prior to approving any developments on dry lands adjacent to Buena Vista Lagoon, the City shall consult the State Department of Fish and Game to ensure that adequate measures are provided to protect and enhance the lagoon's sensitive resources. Such measures shall include, where appropriate:

- a. Provision of adequate buffers between development and the lagoon

- b. Erection of barriers - such as fences - to prohibit access to sensitive portions of the lagoon.
- c. Incorporation of native riparian plant species into project designs to enhance habitat value
- d. Construction of informational signs/kiosks educating the public on the value of the lagoon, and listing regulations for public use.
- e. Habitat restoration measure (such as removal of built up sediment) providing that such measures are approved by the State Department of Fish and Game.

Coastal Access Policy #5

The City, in conjunction with the State Department of Fish and Game, shall continue its efforts to provide and maintain an adequate buffer zone between Buena Vista Lagoon and development along its shore. Such a buffer is necessary for the provision of public access and protection of the lagoon from adverse environmental impacts.

The buffer zone shall be generally 100 feet in width as measured from the landward edge of the lagoon or existing riparian vegetation, whichever is more extensive. Within the buffer zone only passive recreational uses (such as walking, nature study, photography, small resource interpretive facilities and viewing areas) shall be allowed with no structures other than permitted by this policy and only very minor alteration of natural land forms or conditions for uses permitted by this policy.

A buffer zone shall be established around all sensitive habitats. The buffer zone shall be generally 100' for small projects on existing lots. If the project requires substantial improvements or increased human impacts, a much wider buffer area shall be required. Likewise, a reduced buffer area will be considered if, in consultation with the State Department of Fish and Game, it can be demonstrated that 100' is unnecessary to protect the resources of the habitat areas.

The project as approved by the City is the construction of a single family residence located on a lagoon facing lot. The project does identify a 110' habitat buffer (100' buffer, 10' fire suppression zone). However, the City requires that the buffer be established in consultation with California Department of Fish and Game. Commission staff have received a letter from Fish and Game to the City detailing their concerns associated with this project and the proposed buffer. To date, the California Department of Fish and Game has not concurred that a 100' buffer would be adequate to protect the adjacent habitat.

Further, a biological report was included in the applicant's proposal. This biological report concluded that no wetlands existed on the subject site. The report stated:

Wetlands and jurisdictional "waters" are not present on the project site. However, the Buena Vista Lagoon which adjoins the site, is clearly a jurisdictional wetland area....the lagoon's hydric soils, which delineate its boundary, begin approximately ten feet beyond the southeastern property corner. A small amount of willow scrub

vegetation is found paralleling the eastern side of the property. However, this is entirely offsite.

While the biological report included the methodology for identifying the vegetation, the report did not include the methodology for determining the line of hydric soils. Further, it is unclear if the property surveyed had been impacted by vegetation clearing, thus making the identification of wetland species unfeasible.

The project illustrates both a 100' buffer and a 10' fire suppression zone in between the lagoon waters and the proposed development. As required by the City, the habitat buffer will be revegetated with native non-invasive plants. As discussed above, it is unclear at this time whether this buffer would provide adequate protection for the surrounding habitat. Another primary concern of this buffer is its relation to the fire suppression zone. The project underwent CEQA review and during this time the applicant received comments from the Resource Agencies regarding concerns with the necessary fuel modification area. A concern was that the proposed development was located within the existing residence's brush management area and there wouldn't be adequate brush management for the existing or the proposed home after the development of the second residence. A further concern is the location of the proposed second floor balcony which is directly above and completely covers the 10' fire suppression zone. The Fire Department has submitted a letter of support for the project indicating that the proposed 10' buffer is adequate for the home and that no clearing would be required within the habitat buffer. However, given the design of the home, and its proximity to natural vegetation, concerns are raised for the adequacy of brush management. Future fire restrictions may require that the habitat buffer be incorporated into the fire suppression zone, resulting in impacts to native vegetation.

3. The City has provisions for protection of public views and state:

Visual Resources Policy #'s 1 & 5

In areas of significant natural aesthetic value, new development shall be subordinate to the natural environment

The City shall maintain existing view corridors through public rights-of-way.

Visual Resources Objective #1

The City shall protect, enhance, and maximize public enjoyment of Coastal Zone public resources.

The City also has further provisions for development adjacent to open space and state:

Design Guideline - Scale #2

Building forms can be designed to respect and improve the integrity of open space and other public spaces adjacent to open space

The proposed structure includes 2-stories and 3,384 sq. ft. of living space on a lagoon-fronting lot. The surrounding neighborhood is generally comprised of other single family residences of similar or smaller size. While the project may not be grossly out of scale with the surrounding neighborhood, the location of the proposed development raises concerns for both scale and impacts to public views. Because the lot is being split into near and far shore lagoon sites, the proposed lot closest to the lagoon (currently vacant land) will be located lower and closer to the lagoon edge than other adjacent or neighboring development. The location of the proposed development may result in view impacts while looking westward from other portions of the lagoon east of the proposed site (development encroaching down closer to the lagoon edge), and from Interstate 5 or other public vantage points in and around the lagoon.

In conclusion, the project raises concerns regarding hillside development, brush management requirements, wetland delineation and adequate buffering, and impacts to public views. It is unclear at this time if the project is located on a hillside steep enough to be considered "undevelopable" by the City of Oceanside's LCP. Further, while a biological report was submitted associated with this project, it is unclear at this time the adequacy of the wetland delineation and thus the habitat buffer. Also, while the Fire Department supports the project, given its proximity to native habitat and the second story balcony located within the fire suppression zone, it is unclear how the brush management would be adequate to protect the home. And lastly, the location of the development may result in adverse impacts to public views while traveling on Interstate 5 or recreating in or around the lagoon.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Diane Nygaard, on Behalf of MHCP Task Force of S.D. Sierra Club

Mailing Address: 5020 Nighthawk Way

City: Oceanside

Zip Code: 92056

Phone: 760-724-3887

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Oceanside

2. Brief description of development being appealed:

Regular Coastal Permit RC-28-06 for the subdivision of an approximately .55 acre site, into two lots, the development of a new single family detached dwelling within the coastal zone.

Laguna Pacifica

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Existing residence is at 2020 Stewart Street, Oceanside, CA

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-CCN-08-049

Received

MAY 12 2008

California Coastal Commission
San Diego Coast District

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384



DATE FILED:

5/12/08

DISTRICT:

San Diego

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384

MAY 19 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT OFFICE

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Andrew Mauro; for Buena Vista Audubon Society

Mailing Address: P.O. Box 480

City: Oceanside

Zip Code: 92049

Phone: 760-753-1266

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Oceanside

2. Brief description of development being appealed:

Regular Coastal Permit RC-28-06 for the subdivision of an approximately .55 acre site, into two lots, the development of a new single family detached dwelling within the coastal zone.

Laguna Pacifica

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Existing residence is at 2020 Stewart Street, Oceanside, CA

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-G-OCV-08-49

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384



DATE FILED:

5/19/08

DISTRICT:

San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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

- ☐ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☒ Planning Commission
- ☐ Other

6. Date of local government's decision: May 5, 2008

7. Local government's file number (if any): RC- 28-06

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Peter and Joni Biniarz
2020 Stewart St
Oceanside, CA

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

- (1) Andy Mauro, Buena Vista Audubon Society
- (2) 808 Capri Rd , Encinitas, CA 92024

(2) Diane Nygaard, MHCP Task Force of S.D. Sierra Club
5020 Nighthawk Way
Oceanside, CA 92056

(3)

(4)

COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

Reasons Supporting This Appeal

government coastal permit decisions are limited by a variety of factors and requirements of the Coastal
view the appeal information sheet for assistance in completing this section.

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

is a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient
information to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may
provide information to the staff and/or Commission to support the appeal request.

any building on slopes on this specific site

consultation with CA DFG as is required by the LCP

is delineation - vegetation clearing done prior to survey

extends within lagoon buffer

is for buffer maintenance

has draft SAP- particularly conditions to protect wetlands

required MHCP edge effect conditions for development next to sensitive habitat

public view impacts from South Coast Hwy and Audubon Nature Center trails


is safety provisions

will respond to issues raised in prior comment letters of CCC staff Nov 7, 2007 and CA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: May 8, 2008

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



RECEIVED

OCT 08 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

October 7, 2008

Lee McEachern
District Regulatory Supervisor
California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

Subject: Laguna Pacifica Project, City of Oceanside, San Diego County, California

Dear Ms. Ross:

The intent of this letter is to summarize the Department of Fish and Game's (Department's) involvement in the review of the above referenced project and to provide clarification as to our current position regarding this project's redesign that was approved by the Oceanside Planning Commission in May 2008.

The Department wrote a CEQA comment letter in October 2007 that expressed concerns with the proposed Laguna Pacifica project. These concerns regarded compliance with the Oceanside draft subarea plan, Oceanside's Local Coastal Program (LCP), and indirect effects to the adjacent Buena Vista Lagoon. The project was subsequently redesigned and approved by the Oceanside Planning Commission in May 2008. The Department was not given an opportunity to review the project's redesign before it was brought to the Planning Commission. Because of this, the Department requested a formal response to item 2 of our letter. City staff provided a written response July 15, 2008. The applicant also contacted Councilmember Kern in late July and the Department responded to Councilmember Kern in a letter dated August 5, 2008. The Department is also in receipt of the report prepared by Planning Systems, dated September 8, 2008, regarding the slope analysis of the subject property.

The redesign of the Laguna Pacifica project resulted in a 100-foot set back from Buena Vista Lagoon and a 10-foot fuel modification zone, as approved in a letter from the Oceanside Fire Department (OFD) dated December 12, 2007. In a letter dated March 31, 2008, OFD conditionally approved the expansion of a deck to extend over this 10-foot fuel modification zone. The Department was pleased to see that the redesign incorporated the 100-foot biological buffer but was concerned that in the future, the OFD-approved 10-foot fuel modification zone (with deck superposed) may not be adequate for safety and/or insurance purposes for the propped project and a request will be made to clear vegetation from the biological buffer. Additionally, the homeowner may make a request to remove vegetation within the buffer to improve the view from the property. These types of requests are already being made by other homeowners adjacent to the Lagoon. The Department has determined through electronic correspondence with the applicant's consultant that the applicant is willing to

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EXHIBIT NO. 9
APPLICATION NO.
A-6-OCN-08-049
Letters from DFG
California Coastal Commission

the buffer with native species (the Department has already approved the planting palette), not irrigate the buffer, and place a Conservation Easement over the buffer such that no fuel modification activities will ever occur in the buffer, including native vegetation removal or thinning. We request that the City of Oceanside be Grantee on the Conservation Easement and the Department be named as Third Party Beneficiary. The Hold Harmless section of the Conservation Easement will stipulate that the Grantor, "shall hold harmless, protect and indemnify the Department from and against any and all liabilities" in the event of a fire on the applicant's property. The Department must review/approve to form the Conservation Easement before it is recorded.

Another concern that the Department raised in our October 2007 comment letter regarded the gradient of the property and the incorporation of LCP requirements into the draft subarea plan. The LCP states that "The slopes above the lagoon between I-5 and Alvarado Street are generally undevelopable under the terms of the City's Hillside Ordinance" (page 24). The draft subarea plan states that "For wetlands and riparian areas possessing an unvegetated bank or steep slope (greater than 25 percent), the buffer shall be measured from the top of the bank or steep slope rather than the edge of habitat, unless there is at least 50 feet between the riparian or wetland area and the toe of slope. If the toe of the slope is less than 50 feet from the wetland or riparian area, the buffer shall be measured from the top of the slope." Based on the Planning Systems report, the subject property is 27 percent gradient, and based on a site visit, it appears that the toe of the slope for this property is located in the wetland area adjacent to Buena Vista Lagoon. Therefore, based on requirements in the City's LCP and draft SAP, the 100-foot buffer zone for the proposed project should begin at the top of the slope of the vacant parcel and not from the edge of the adjacent wetland as was proposed in the draft MND. As the Planning Systems report indicates, based on this requirement many of the current homes are not in compliance with the LCP or draft SAP. However, these projects are basically "grandfathered-in" and do not set a precedent for this regulation. As was also mentioned in the report, a new single-family home to the east of Laguna Pacifica is likely not in compliance with the LCP and draft SAP. However, this project was never submitted to the Department for review and likely did not undergo a public CEQA evaluation. We therefore, were never given the opportunity to raise these issues for that project. Lastly, the report states that the subject property does not meet the definition of a "bluff". The Department's position on the slope regulations is that this is a City of Oceanside and LCP regulation. The language was included in the draft SAP, such that the City of Oceanside would be in compliance with their steep slope ordinance and their LCP. The Department requests that the Coastal Commission provide an interpretation of the statement on page 24 of the LCP, a determination of whether the Laguna Pacifica project lot is buildable, and whether this condition should be considered when reviewing future projects adjacent to Buena Vista Lagoon. The City has already approved the project and therefore must have determined it is in compliance with their Hillside Development Regulations.


In summary, we believe that the integrity of Buena Vista Lagoon is maintained with the proposed 100-foot biological buffer protected by a Conservation Easement. Ideally, we would prefer that no development occur on this parcel of land, as we stated in our October 2007 letter. The vacant portion of the lot is currently providing both a biological buffer to the Lagoon and a fuel modification zone to the existing home.

Ms. Ross
October 7, 2008
Page 3 of 3

However, if the project redesign satisfies the requirements of both the LCP and the draft subarea plan, then we are not opposed to its approval by your agency.

Should you require further assistance in this matter, please contact Environmental Scientist, Christine Beck, at the address on the letterhead or by telephone at (858) 637-5511.

Sincerely,



Stephen M. Juarez
Environmental Program Manager
South Coast Region

Cc: Paul Klukas, Planning Systems
1530 Faraday Avenue, Suite 100
Carlsbad, CA 92008

Mr. Biniaz,
2020 Stewart Street
Oceanside, CA 92054

Ms. Sally Schifman
City of Oceanside
Community Development Department / Planning Division
300 N. Coast Highway
Oceanside, CA 92054

Ms. Marci Koski, U. S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



August 5, 2008

Councilmember Jerome Kern
City of Oceanside
300 North Coast Highway
Oceanside, California 92054

Dear Councilmember Kern:

On August 1, 2008 via email you contacted Mr. Warren Wong of the Department of Fish and Game's (Department) Lands Unit regarding Mr. Biniarz's Laguna Pacifica project. Mr. Wong referred your question to the Habitat Conservation Planning Unit. The Habitat Conservation Planning Unit prepared the Department's October 9, 2007 California Environmental Quality Act (CEQA) comment letter in conjunction with the U.S. Fish and Wildlife Service for the Laguna Pacifica Mitigated Negative Declaration in which several inconsistencies with the City of Oceanside's Draft Multiple Habitat Conservation Program (MHCP) Subarea Plan (SAP) were noted. A copy of the original comment letter is attached. In direct response to the questions you posed to Mr. Wong:

1. On May 12, 2008 the Department received a copy of the Staff Report and all of the information that was presented at the May 5, 2008 Planning Commission meeting pertaining to the Laguna Pacifica project. It is our understanding that the Planning Commission approved the Laguna Pacifica project during this May meeting. After review of the Staff Report, the Department determined that some of our concerns had been addressed through a project redesign. However, on May 14, 2008 the Department requested that the City provide a written response to Comment #2 in the comment letter. The City complied with this request on July 15, 2008. The Department does not typically provide the lead agency with a response to their Response to Comments, and in this case, that seemed unnecessary as the project already had approval from the Planning Commission. The CEQA comment letter represents the Department's position on this project (Attached) and even with the proposed project redesign, we still believe the project has not met the intent of the draft subarea plan or the City's Local Coastal Program (LCP). The City has adopted the LCP into the General Plan as Appendix B and Chapter 2 (Policy Group Summaries). The LCP states: "The slopes above the lagoon between I-5 and Alvarado Street are generally undevelopable under the terms of the City's Hillside Ordinance" (p. 24) and "In the area between Interstate 5 and Alvarado Street, the City shall prohibit encroachment of development beyond the bluff line of the lagoon" (p. 26).

Additionally, it appears that the following language taken from the City's draft subarea plan would prohibit the City from approving this development as proposed: "For wetlands and riparian areas possessing an unvegetated bank or steep slope (greater than 25 percent), the buffer shall be measured from the top of the bank or steep slope rather than the edge of the habitat, unless there is at least 50 feet between the riparian or wetland area and the toe of the slope." The Department reviewed the draft SAP for context to this excerpt and, although there are conditions to allow modification of the buffer width, there are no allowances to change where the buffer is measured from.

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Therefore, any buffer should be measured landward beginning at the top of slope. Mr. Biniarz gave us a copy of a letter from his engineer that contained the following statement, "Based upon my calculations, the average slope of the subject parcel is less than 25 percent. I calculated it to be 16.5 percent based upon cross sections ..." On July 7, 2008 the Department requested Mr. Biniarz submit supporting documents from his engineer as to how this average steepness was calculated and as yet, we have not received this information.

The Department continues to have concerns regarding this project and its potential impacts on the Buena Vista Lagoon Ecological Reserve. Indirect effects including lighting, noise and introduced exotic species from adjacent development increases the stress on the lagoon and its wildlife. For these reasons, the Department cannot recommend approval of the revised project.

2. The Department has not been contacted directly by the California Coastal Commission (CCC) for comments regarding this project; however, we did send a copy of our joint comment letter to them. To facilitate future coordination between us and the CCC regarding this project, we have included them on this response.

Should you require further assistance in this matter, please contact Environmental Scientist, Christine Beck, at the address on the letterhead or by telephone at (858) 637-5511.

Sincerely,

FOR

Stephen M. Juarez
Environmental Program Manager
South Coast Region

Attachment (1)

cc: ✓ Ms. Toni Ross, California Coastal Commission
7575 Metropolitan Drive, #103
San Diego, California 92108

Ms. Sally Schiffman
City of Oceanside
Community Development Department / Planning Division
300 N. Coast Highway
Oceanside, California 92054

Mr. Peter Biniarz
2020 Stewart Street
Oceanside, California 92054



U. S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011
(760) 431-9440
FAX (760) 431-5901



California Department of Fish and Game
South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4299

In Reply Refer To:
FWS/CDFG-SDG-5500.1

Mr. Jerry Hittleman, Acting City Planner
City of Oceanside
300 North Coast Highway
Oceanside, California 92054

OCT 09 2007

Subject: Comments on the Mitigated Negative Declaration for the Laguna Pacifica Project, City of Oceanside, San Diego County, California (SCH# 2007091028)

Dear Mr. Hittleman:

The U.S Fish and Wildlife Service (Service) and the California Department of Fish and Game (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the above-referenced Mitigated Negative Declaration (MND) dated September 7, 2007. The comments provided herein are based on information provided in the MND, a site visit with the applicant and City of Oceanside (City) staff on September 20, 2007, the Biological Survey Report (Scheidt 2006), the Geologic Investigation (Pacific Coast Land Consulting 2006), our knowledge of sensitive and declining vegetation communities in the County of San Diego, and our participation in regional conservation planning efforts.

The primary concern and mandate of the Service is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; Sections 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA) and other sections of the Fish and Game Code. The Department also administers the Natural Community Conservation Planning (NCCP) Program. The City is currently participating in the NCCP program through the preparation of a Multiple Habitat Conservation Program (MHCP) Subarea Plan (SAP).

The proposed project is a lot split of a 0.55-acre parcel that currently supports one single family residence. The lot is located at the end of a cul-de-sac overlooking Buena Vista Lagoon, which the Department owns and manages as an Ecological Reserve. The property is also located within the Coastal Zone of the City's SAP. The resulting two parcels will be 11,554 and 12,476 square feet in size, and a new 3,384 square foot residence has been proposed for the vacant lot closest to the

Lagoon. A Hillside Development Plan is required by the City prior to construction of the new residence as a large portion of the site has slopes greater than 20 percent and a minimum elevation change of 25 feet. The proposed project is bordered by Buena Vista Lagoon to the east and south and single family residences to the north and west. A 100-foot biological buffer has been proposed between the new residence and the Lagoon. The buffer will be planted with native species and no irrigation has been proposed. The project has incorporated the use of Class I construction materials in an effort to reduce the area of required fuel modification.

According to the Biological Survey Report, the site does not support any native vegetation communities, although some evidence of coastal sage scrub species including California sagebrush (*Artemisia californica*) and flat-top buckwheat (*Eriogonum fasciculatum*) were observed in the "disturbed" habitat. During the September 20, 2007, site visit, the applicant stated that he regularly brushes the site per a requirement by the City's Fire Marshall. Therefore, no vegetation communities have been allowed to recover or persist on the site.

The Wildlife Agencies appreciate the opportunity to comment on the MND for the Laguna Pacifica Project. We offer the following comments and recommendations to assist the City in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that any approved project is consistent with all applicable requirements of the City's draft SAP.

1. According to the draft SAP, properties within the Coastal Zone shall have a minimum buffer width of 100 feet from wetlands (p. 5-30), separate from any required fuel modification zones. As described above, the 0.55-acre lot currently supports a single family residence, and the vacant portion of the lot currently provides the residence with the required fuel modification zone and 100-foot biological buffer to Buena Vista Lagoon. As proposed, the development of the additional house would be within the fuel modification zone and 100-foot biological buffer that currently exists for the building presently located on site. This use within the existing buffer is inconsistent with the draft SAP and counters the standards for development within the Coastal Zone by encroaching on sensitive and rare habitats adjacent to Buena Vista Lagoon.
2. The draft SAP states that "For wetlands and riparian areas possessing an unvegetated bank or steep slope (greater than 25 percent), the buffer shall be measured from the top of the bank or steep slope rather than the edge of habitat, unless there is at least 50 feet between the riparian or wetland area and the toe of slope. If the toe of the slope is less than 50 feet from the wetland or riparian area, the buffer shall be measured from the top of the slope." Based on the Laguna Pacifica Tentative Parcel Map, the majority of the site possesses slopes between 20 and 40 percent. Based on this map and our site visit, it also appears that the toe of the slope for this property is located in the wetland area adjacent to Buena Vista Lagoon. Therefore, based on requirements in the City's LCP and draft SAP, the 100-foot buffer zone for the proposed project should begin at the top of the slope of the vacant parcel and not from the edge of the adjacent wetland as was proposed in the draft MND.
3. According to the City's Local Coastal Permit (LCP), projects adjacent to Buena Vista Lagoon must include a 100-foot buffer between the development and the Lagoon and no structures shall be allowed within the buffer (p. 3; Appendix B). The proposed project

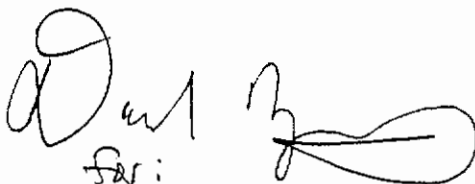
includes a wall and riprap within the buffer to collect storm water runoff from the project site. The Wildlife Agencies were told by the applicant at the site visit that the storm water would be filtered, piped under the wall, and allowed to run down the remainder of the property into the Lagoon. According to the LCP, the wall is not an allowable use in the buffer. We are also concerned that funneling the runoff will cause erosion of the steep slope and sedimentation will occur in the wetland/riparian area and/or the Department's Ecological Reserve adjacent to the site.

4. The City's draft SAP also states that no development, grading or alterations, including clearing of vegetation, shall occur in the buffer area except for trails and public pathways. As proposed, the 100-foot buffer is also serving as the fuel modification zone for the new residence. This is incompatible with the intent of the biological buffer zone; the fuel modification zone must occur outside of the 100-foot buffer.

For the above reasons, we believe that the proposed lot split and construction of an additional residence, which would lack sufficient distance to accommodate the fuel modification zone and the 100-foot biological buffer zone, is inconsistent with the City's draft SAP and LCP. The additional encroachment on Buena Vista Lagoon represents a cumulative impact on an already highly constrained ecosystem, and therefore we recommend against approving the project as proposed.

If a revised project design can be identified which meets the above-described requirements, we recommend that any approval by the City be conditioned to incorporate the Grading and Landscaping Requirements for new developments within the Coastal Zone (p. 5-31). These include seasonal restrictions on grading, landscape requirements, and erosion control measures that must be incorporated into the project description.

If you have any questions or comments pertaining to this letter, please contact Christine Beck of the Department at (858) 637-5511 or Marci Koski (Service) at (760) 431-9440.



for:
Therese O'Rourke
Assistant Field Supervisor
U.S. Fish and Wildlife Service

Sincerely,



for:
Michael J. Mulligan
Deputy Regional Manager
California Department of Fish and Game

Enclosure

cc: State Clearinghouse (by fax only)
Amy Volzke, City of Oceanside Planning Department
Toni Ross, California Coastal Commission

ENCLOSURE

U.S. Fish and Wildlife Service Standard Recommendations

In addition to the comments presented in the accompanying letter, we recommend that the final MND include the conditions in the following list that pertain to this project.

1. The project applicant shall temporarily fence (with silt barriers) the limits of project impacts (including construction staging areas and access routes) to prevent additional upland habitat impacts and to prevent the spread of silt from the construction zone into adjacent habitats. Fencing shall be installed in a manner that does not impact habitats to be avoided. The applicant shall submit to the Wildlife Agencies for approval, at least 60 days prior to initiating project impacts, the final plans for initial clearing and grubbing of habitat and project construction. These final plans shall include photographs that show the fenced limits of impact and all areas (including riparian/wetland or coastal sage scrub) to be impacted or avoided. If work occurs beyond the fenced or demarcated limits of impact, all work shall cease until the problem has been remedied to the satisfaction of the Wildlife Agencies. Any upland habitat impacts that occur beyond the approved fence shall be mitigated at a minimum 5:1 ratio. Temporary construction fencing shall be removed upon project completion.
2. The applicant shall ensure that the following conditions are implemented during project construction.
 - a. Employees shall strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint.
 - b. To avoid attracting predators of sensitive wildlife, the project site shall be kept as clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site.
 - c. Pets of project personnel shall not be allowed on the project site.
 - d. Disposal or temporary placement of excess fill, brush, or other debris shall not be allowed in waters of the United States or their banks.
 - e. All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities shall occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas shall be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States, and shall be shown on the construction plans. Fueling of equipment shall take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" shall be designated on

construction plans.

The applicant shall install permanent protective fencing along any interface with developed areas and/or use other measures approved by the Wildlife Agencies to deter human and pet entrance into on- or off-site habitat. Fencing should be designed to prevent intrusion by pets, especially cats. Signage for areas within conservation easements shall be posted and maintained at conspicuous locations. Plans for fencing and/or other preventative measures shall be submitted to the Service for approval at least 30 days prior to initiating project impacts. Fencing shall be installed prior to completion of project construction.

The applicant shall ensure that development landscaping does not include exotic plant species that may be invasive to native habitats. Exotic plant species not to be used include any species listed on the Invasive Plant Inventory list of the California Invasive Plant Council (Cal-IPC). This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained from Cal-IPC's web site at <http://www.cal-ipc.org>. In addition, landscaping should not use plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas, and water runoff from landscaped areas should be contained and/or treated within the development footprint and directed away from the areas within conservation easements. The applicant shall submit a draft list of species to be included in the landscaping to the Service for approval at least 30 days prior to initiating project impacts. The applicant shall submit to the Service the final list of species to be included in the landscaping within 30 days of receiving approval of the draft list of species.

Any planting stock to be brought onto the project site for landscape or habitat creation/restoration/enhancement shall be first inspected by a qualified pest inspector to ensure it is free of pest species that could invade natural areas, including but not limited to, Argentine ants (*Iridomyrmex humil*), fire ants (*Solenopsis invicta*) and other insect pests. Any planting stock found to be infested with such pests shall not be allowed on the project site or within 300 feet of natural habitats unless documentation is provided to the Agencies that these pests already occur in natural areas around the project site. The stock shall be quarantined, treated, or disposed of according to best management principles by qualified experts in a manner that precludes invasions into natural habitats. The applicant shall ensure that all temporary irrigation will be for the shortest duration possible, and that no permanent irrigation will be used, for landscape or habitat creation/restoration/enhancement.

The applicant shall ensure that proposed exterior lighting adjacent to all on- or off-site habitat shall be directed away from and/or shielded so as not to illuminate native habitats.

The applicant shall submit a lighting plan to the Service at least 30 days prior to initiating project impacts.

To reduce the frequency of avian collisions with the proposed buildings, non-reflective glass should be used on all windows within avian flight paths. Avian collisions also occur when birds are attracted to or disoriented by indoor lighting shining out through

windows at dusk and after dark. Therefore, we recommend that windows also be treated to prevent indoor light from shining through them. We can provide information on technology available to meet these requests.

8. If night construction is necessary, exterior night lighting shall be of the lowest illumination necessary for human safety, selectively placed, shielded and directed away from natural habitats.



CITY OF OCEANSIDE

FIRE DEPARTMENT

TERRY A. GARRISON
FIRE CHIEF

October 8, 2008

To Whom It May Concern:

The Oceanside Fire has reviewed the Concept Revegetation Plan prepared by Planning Systems for the proposed Biniaz residence and finds that this plan is acceptable and that no future brush management is anticipated to be required within the 100-foot wetland buffer identified on the Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Margot".

Mike Margot
Fire Marshal
Oceanside Fire Prevention Bureau

FIRE ADMINISTRATION
760-435-4100

TRAINING DIVISION
760-435-4355

FIRE PREVENTION
760-435-4101

EMERGENCY

CIVIC CENTER 300 NORTH COAST HIGHWAY OCEANSIDE, CA 92054-2

EXHIBIT NO. 10

APPLICATION NO.

A-6-OCN-08-049

Letter from Fire
Marshal

California Coastal Commission

Toni Ross

From: Paul Klukas [pklukas@planningsystems.net]
Sent: Friday, October 17, 2008 12:38 PM
To: Lee McEachern
Cc: Toni Ross; Peter Biniarz
Subject: Buena Vista North Slope Analysis

Lee: At your request, my office has conducted a mapping analysis of whether other properties along the southerly urban edge on the north side of Buena Vista Lagoon, between I-5 and Alvarado St. could potentially be subdivided or otherwise build on the lagoon edge steep slope as a result of precedent that could be set by the Biniarz project. We have analyzed all of these edge properties in relation to lot size, access, buffer and slope gradient. The following are the conclusions of our analysis starting from the east:

1. 2012 Stewart St. (Hamilton) – Slope gradient approximately 30%. House already built on slope. No further area to build. Lot not of sufficient size to further divide.
2. 2020 Stewart St. (Biniarz) – Slope gradient 27%. Subdividable for only the one proposed house. No further subdivision possible due to lot size and 100 ft. buffer requirement.
3. 2025 Stewart St. (Kray) – Lot of sufficient size to subdivide but slope gradient in excess of 40%. City disallows grading on 40% slopes. Portion that is flatter is wetland vegetation in lagoon. No possibility of 100-ft. buffer from wetland vegetation.
4. 2040 Lincoln St. (Pennant-Jones) – Lot of sufficient size to subdivide but entire slope gradient in excess of 40%. City disallows grading on 40% slopes.
5. 2035 Lincoln St. (Johnson) – Lot of sufficient size to subdivide but slope gradient in excess of 40%. City disallows grading on 40% slopes. Portion that is flatter is wetland vegetation in lagoon. No possibility of 100-ft. buffer from wetland vegetation.
6. 2048 Horne St. (Asedo) – Lot of sufficient size to subdivide but entire slope in excess of 40% gradient. City disallows grading on 40% slopes.
7. Open Space lots on west side Horne St. and east side Nevada St. No development allowed.
8. 2105 Nevada St. (Burr) – Lot not of sufficient size to divide. No access to public street for any additional lot. Undeveloped portion of lot has entire slope gradient in excess of 40% slope. City disallows grading on 40% slopes.
9. 2102 Ditmar St. (Dunne) - No access to public street for any additional lot. Undeveloped portion of lot has entire slope gradient in excess of 40% slope. City disallows grading on 40% slopes.
10. No Alvarado street homes. Open space lots south of existing apartments have 40% slopes, but no development allowed due to OS designation.

Based on the above analysis, it is our conclusion that the Biniarz circumstance is the only remaining residential lot that complies with the requirements of (a) non steep slopes, (b) sufficient lot size, (c) public street access, and (d) 100 ft. wetland vegetation setback.

Therefore no undesirable precedent would be established through approval of the Biniarz project.

Please let me know if you need any further info on this, or if you need our background analysis sheets info on this.

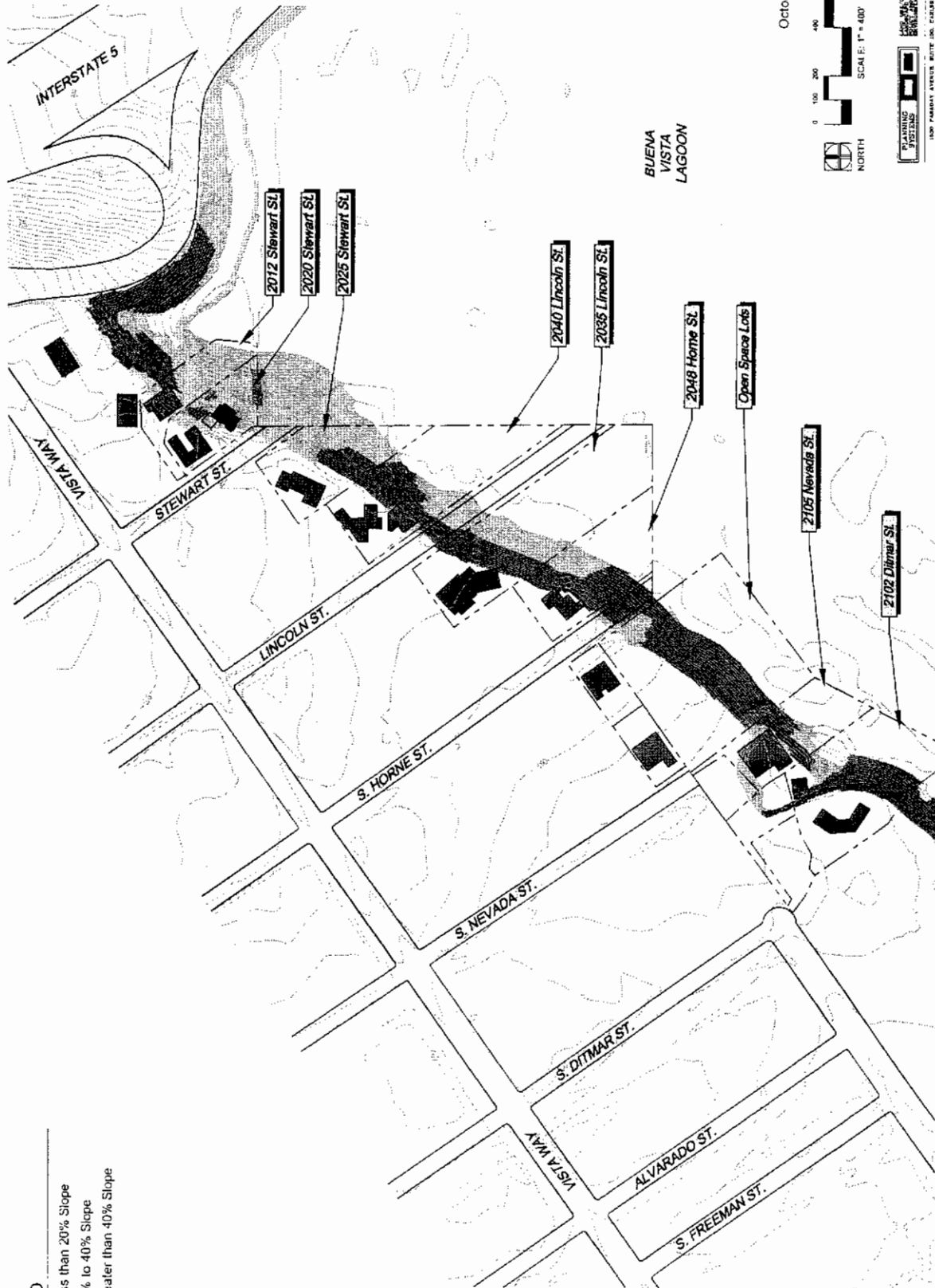
Paul J. Klukas
 PLANNING SYSTEMS
 1530 Faraday Ave. #100
 Carlsbad, CA 92008

EXHIBIT NO. 11
APPLICATION NO.
A-6-OCN-08-049
Comment letters from
Applicant's Agent
1 of 4 pages
California Coastal Commission

(760) 931-0780 ph
pklukas@planningsystems.net

LEGEND

- Less than 20% Slope
- 20% to 40% Slope
- Greater than 40% Slope



October 17, 2008



PLANNING
DESIGN
CONSULTING
1500 PARKWAY SUITE 100, CHICAGO, IL 60606
TEL: 312.555.5555 FAX: 312.555.5556

A. PETER BINIAZ
2020 Stewart St.
Oceanside, CA 92054

RECEIVED

OCT 29 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

October 29, 2008

Ms. Sherilyn Sarb
CALIFORNIA COASTAL COMMISSION
7575 Metropolitan Dr.
Suite 103
San Diego, CA 92108-4402

RE: REQUEST FOR CONTINUANCE
Appeal No. A-6-OCN-08-49 (Biniaz, Oceanside)

Dear Ms. Sarb:

I am the applicant on the above-referenced project presently scheduled for the November Coastal Commission hearing. We have recently been informed by Coastal Commission Staff that a new issue has arisen relating to policy compliance with the 1988 City of Oceanside Hillside Development Ordinance.

We will need some additional time to resolve this issue.

Therefore, please consider this letter a request for a continuance of this appeal hearing to the December, 2008 Coastal Commission meeting.

Sincerely,



A. Peter Biniaz
Applicant