

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4402
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Th 13a

Addendum

October 3, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 13a**, Coastal Commission Permit Application
#6-10-016 (Tu Casa), for the Commission Meeting of October 6, 2011

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

1) Modify Special Condition #9 on Page 5 as follows:

9. Invasive Species. **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide evidence that proposed dock replacement can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

[...]

d. If *Caulerpa* is found, the applicant shall, prior to the commencement of any construction activities~~dredging~~, provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated or that the ~~dredging~~ project has been revised to avoid any contact with *Caulerpa*. No changes to the dredging project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2) Modify Special Condition #10(a) as follows:

10. Mitigation for Impacts To Public Access. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director, for review and approval, a final public access mitigation plan. This mitigation plan shall propose either an improved public access trail on the subject site, or a City identified public access project as detailed in subsections (a) or (b) below:

- (a) Public Access Trail Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director, for review and written approval, a final public access plan for an improved public access walkway located on the top of the rock revetment, which shall include, at a minimum, the provision of a five-foot wide improved path. The path shall be covered with decomposed granite or other material acceptable to the Executive Director. The trail shall provide for lateral access along the entire width of the property and shall connect, to the maximum extent feasible (including removal of a portion of the cinder block wall if necessary), with the existing lateral access path requires through the Commission's approval of CDP 6-00-072, located directly to the southeast of the project site. The plan shall also include a public access sign at the southeast corner of the property. The plan shall also provide that the path, and signage, shall be constructed concurrent with, or within 60 days following, construction of the approved revetment.

- 3) Modify Paragraphs 1 and 2 on Page 15 as follows:

Additionally, the applicant's engineer has indicated that the revetment existed prior to the access dedication, and because the revetment would have never had a slope greater than 2:1 it can be concluded that the revetment has always been located, to some extent, within the access easement area. Commission staff has reviewed the easement documents and maps, and there is no indication that the revetment did or did not exist at the time the easement was recorded. Specifically, there is no mention of the revetment in the easement language, nor is the revetment included on the plan attached as an exhibit to the easement document (ref. Exhibit #4). While the Commission agrees that the easement does not address or restrict the revetment in the recorded document, permitting the revetment to be maintained within the easement without mitigation, cannot be found consistent with the public access policies of the Coastal Act. Typically, the Commission would not consider revetments as a type of development/structure that can be permitted within a public access easement. Therefore, it stands to reason that the revetment would not be considered an allowable encroachment in the easement and that the revetment was not within the easement at the time of approval. The easement was recorded 38 years ago, and it seems likely that the site conditions, as well as the beach profile, have changed over that timeframe. This is evidenced by the fact that today, access along the beach in front of the revetment can only occur at the lowest tides. Because work repair and maintenance to an existing revetment, such as that proposed, will extend the lifespan of the revetment, potential impacts to public access need to be reviewed and, perpetuation of impediments to public access should all be eliminated to the maximum extent practicable. When it is not possible to eliminate all encroachments, mitigation should be required.

In this case, and as previously discussed, there is no redesign to the revetment that will completely eliminate the impacts to public access. Commission staff has determined that due to the location of the existing condominium structure, there is not adequate area for the revetment could to be completely removed and redesigned, and then relocated inland of the existing footprint and completely outside the existing access

easement; however, ~~or~~ a bulkhead, or ~~partial~~ vertical seawall could be constructed to adequately protect the condominiums, potentially eliminating the impacts to public access. However, because the proposal is for maintenance of an existing revetment, not development of a new shoreline protective structure, and ~~both of these other~~ options are many times more expensive than the proposed project, making such alternatives infeasible. the project includes relocating the migrated riprap inland to remove some of the existing access obstruction on the beach, the Commission finds complete removal of the existing revetment and replacement with a bulkhead or vertical wall is not warranted in this particular case. However, additional mitigation is required to offset the remaining encroachment within the public access easement. When the Commission reviews any maintenance proposal, it would require redesign to the minimum amount required to address the threat and that the revetment be pulled in as far landward as possible. Thus, while the repaired revetment will represent an improvement to public access, this “improvement” alone does not mitigate for the continued public access intrusion of the revetment. Therefore, mitigation for encroachment of the revetment on the beach and access easement must be required to find the project consistent with the Coastal Act.

CALIFORNIA COASTAL COMMISSION

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Th13a

Filed: April 16, 2011
180th Day: October 13, 2011
Staff: Toni Ross-SD
Staff Report: September 21, 2011
Hearing Date: October 7-9, 2011

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-10-016

Applicant: Tu Casa HOA Agent: Hoffman Planning and Engineering

Description: Repair and maintenance of an existing rock revetment including returning rocks from the beach back to the existing revetment as well as augmentation with an additional of 25 cubic yards of new rock.

Site: 4747 Marina Drive, Agua Hedionda, Carlsbad, San Diego County.
APN No. 207-15-85

Substantive File Documents: Certified Agua Hedionda Land Use Plan, Mitigated Negative Declaration prepared by the City of Carlsbad dated October 2, 2009, Recorded public access Easement Document No. 73-133839; Geosoils wave runup analyses dated February 24, 1010 and May 25, 2010.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the Coastal Development Permit with several special conditions. The primary concern associated with the proposed development is that the existing revetment is currently on the public beach and is located on top of a lateral public access easement, and, as proposed, a portion of the revetment will remain within the easement. Due to site constraints, the revetment, even after being repaired, cannot be completely removed from the easement area. In addition, even though the revetment was originally constructed prior to the Coastal Act, it has been augmented since that time, apparently without obtaining a coastal development permit. As conditioned, the impacts to public access will be mitigated through a requirement to construct an improved public trail, located either on the top of the existing revetment or at an alternative site, identified by the City of Carlsbad. Additional special conditions address the protection of biological resources such as eelgrass, prevention of introduction of invasive species, protection of water quality, and restriction on the future seaward encroachment of the revetment. Only as conditioned can the project be found consistent with the Coastal Act, and therefore, be approved.

Standard of Review: Chapter 3 policies of the Coastal Act.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-10-016 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Disposal of Export Material/Construction Debris. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall identify the location for the disposal of export material and construction debris. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest before disposal takes place.

2. Long-Term Monitoring Program. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a long-term monitoring plan for the existing shoreline protection. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate, but not be limited to the following:

- a. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance.
- b. Measurements taken from the benchmarks established in the survey as required in Special Condition #5 of CDP #6-10-016 to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated.
- c. Recommendations on any necessary maintenance needs, changes or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe.
- d. An agreement that the permittee shall apply for a coastal development permit within 90 days of submission of the report for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit and implement the repairs, changes, etc. approved in any such permit.

The above-cited monitoring information shall be summarized in a report prepared by a licensed engineer familiar with shoreline processes and submitted to the Executive Director for review and written approval. The report shall be submitted to the Executive Director and the City of Carlsbad Engineering Department yearly after each winter storm season but prior to the 1st of May, starting with May 1, 2012. Monitoring shall continue throughout the life of the revetment or until the revetment is removed or replaced under a separate coastal development permit.

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

3. Future Maintenance. The applicant shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions/reinforcement of the revetment beyond exempt maintenance as defined in

Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition will require a coastal development permit. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the applicant shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance.**

4. No Future Seaward Extension of Shoreline Protective Devices. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, shall be undertaken if such activity extends the footprint seaward of the existing device. By acceptance of this Permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

5. As Built Plans. Within 60 days of completion of the project, the applicant shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment and associated structures have been constructed in conformance with the approved plans for the project (drafted by Geosoils, Inc., dated January 10, 2007). The plans shall identify permanent benchmarks from fixed reference point(s) from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

6. Project Modifications. Only that work specifically described in this permit is authorized. Any additional work requires separate authorization from the Commission or Executive Director, if appropriate. **If, during construction, site conditions warrant changes to the project, the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field.** No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from storm waves, flooding, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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

9. Invasive Species. **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION**, the applicant shall provide evidence that proposed dock replacement can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

- a. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any construction activities authorized under this coastal development permit, the applicant shall undertake a survey of the project area (includes and any other areas where the bottom could be disturbed by project activities) and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- b. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- c. Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 1. For the review and written approval of the Executive Director; and
 2. To the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (DFG) (858-467-4218) or Robert Hoffman, National Marine Fisheries Service (NMFS) (562-980-4043).
 3. If *Caulerpa* is found, then the NMFS and DFG contacts shall be notified within 24 hours of the discovery.

d. If *Caulerpa* is found, the applicant shall, prior to the commencement of dredging, provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated or that the dredging project has been revised to avoid any contact with *Caulerpa*. No changes to the dredging project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Mitigation for Impacts To Public Access. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director, for review and approval, a final public access mitigation plan. This mitigation plan shall propose either an improved public access trail on the subject site, or a City identified public access project as detailed in subsections (a) or (b) below:

- (a) Public Access Trail Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director, for review and written approval, a final public access plan for an improved public access walkway located on the top of the rock revetment, which shall include, at a minimum, the provision of a five-foot wide improved path. The path shall be covered with decomposed granite or other material acceptable to the Executive Director. The trail shall provide for lateral access along the entire width of the property and shall connect, to the maximum extent feasible, with the existing lateral access path requires through the Commission's approval of CDP 6-00-072, located directly to the southeast of the project site. The plan shall also include a public access sign at the southeast corner of the property. The plan shall also provide that the path, and signage, shall be constructed concurrent with, or within 60 days following, construction of the approved revetment.

OR

- (b) City Identified Public Access Project. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, in coordination with the City of Carlsbad, the applicant shall provide full funding, at a level equivalent to what it would cost to construct a public accessway on top of the revetment, for all or a portion of an identified public access project. This project shall provide either a new, or improve an existing public access path to the ocean or lagoon within the City of Carlsbad. The final plans shall include necessary signage and shall be subject to the review and approval by the Executive Director.

The permittees shall undertake development in accordance with the approved public access mitigation plan and shall be responsible for the maintenance of the accessway and signage unless such responsibility is assumed by a homeowner's association or the City of Carlsbad. Changes to the approved public access mitigation plan shall only occur with an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Eelgrass Mitigation and Monitoring. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval of the Executive Director, an eelgrass mitigation and monitoring plan that includes at a minimum the following:

- a. Performance of a pre-construction eelgrass survey of the project area by qualified biologist immediately prior to the proposed revetment work in order to establish the location of all eelgrass habitat.
- b. Marking the location of all eelgrass habitat found in the pre-construction survey in order that the contractor can avoid impacting these areas during the proposed revetment work.
- c. Performance of a post-construction eelgrass survey of the project area by qualified personnel no more than 30 days after the completion of the work to determine if any eelgrass habitat was impacted by construction activities.
- d. Performance of mitigation if it is determined by the post-construction eelgrass survey that there has been a loss of eelgrass habitat. This mitigation must be performed in accordance with and subject to the requirements of the Southern California Eelgrass Mitigation Policy (1:1.2 ratio). The applicant shall consult with the Executive Director prior to construction to determine if an additional coastal development permit or amendment is required for any necessary mitigation.

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

12. Other Permits. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicants shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-10-16. The applicants shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

13. Condition Compliance. Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description\Site History.

The project involves maintenance work to repair an existing rock revetment that is on the beach fronting an existing 30-unit condominium complex on the north shore of Agua Hedionda Lagoon. The work will include the removal of rock that has migrated vertically down the shore slope into Agua Hedionda Lagoon and replace the rock on a steepened shore face. As proposed, on average, the work would change the rock slope from an approximately 2.8:1 slope to a slightly steeper 2-2.5:1 slope through moving the toe of the slope existing armoring back towards the shore face. Some of the rock will be reused, while some of the material will be upsized to larger revetment stone to prevent further vertical movement of rock. The work would also include the importation and placement of approximately 25 cubic yards of quarried armor stone. The area of work totals approximately 0.12 acres. The revetment is on the southerly side of the Tu Casa Condominium that faces onto Agua Hedionda Lagoon and on a roughly three foot scarp of the adjacent property to the east to prevent further erosion. The project site is surrounded by residential multifamily units to the north, Agua Hedionda lagoon to the south, open space in the form of a sandy beach at low tide as part of a developed multifamily project to the east, and a waterway of the entrance to Bristol Cove to the south.

Construction equipment will gain access from an existing disturbed beach access at the foot of Bayshore Drive located approximately 600 feet east of the project site. Access would be taken by vehicles at low tide, driving along the hard sand beach to the rubble beach at the project site. Construction work would occur during low tides and equipment would be removed from the intertidal zone during high tide periods.

The subject site is located on the inner basin of Agua Hedionda Lagoon. The Agua Hedionda Lagoon is a lagoon in the City of Carlsbad that is fed by the Agua Hedionda Creek. Stewardship of much of the lagoon is held by the Encina Power Station and its owner NRG Energy. In November 2000 the Agua Hedionda Lagoon was designated as a critical habitat for the tidewater goby. The subject site is also located at the mouth of Bristol Cove, a pre-coastal, man-made cove on the Northeast side of Aqua Hedionda Lagoon. Bristol Cove is developed with several condo complexes lining Cove Drive, Park Drive, and Marina Drive many of the complexes on the cove side of the street have private docks (ref. Exhibits #1, 3).

Agua Hedionda is one of six segments of the City of Carlsbad's LCP. While most of the city's coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review.

The existing condominium development was approved by the Coastal Commission in June 29, 1973 (ref. CDP No. F0201). A lateral public access easement was required by the City and then by the Commission associated with the condominium development. The easement area was 15 feet wide, to be located on the southwesterly portion of the lot, and adjacent to the lagoon waters. The easement was recorded in 1973 and is currently held by the City of Carlsbad (ref. Exhibit #4). However, the revetment itself was constructed during the construction of Bristol Cove, and therefore, was installed prior to enactment of the Coastal Act and thus, prior to development of the condominium development. The applicant has indicated that the revetment was always located on top of a portion of this lateral access easement, resulting in limited public access during high tides. Since that time, the rock from the revetment has rolled down into the beachfront and in some cases into the lagoon waters, further impairing the public's ability to gain access across the beach at this site. Additionally, at some time, additional rock was added to the revetment without benefit of a coastal development permit. As proposed, some, but not all, of the rock located in the lateral access easement will be removed and replaced into the revetment (ref. Exhibit #2).

2. Shoreline Protective Devices. The proposed project includes augmentation of an existing pre-Coastal rock revetment. The Coastal Act has two applicable policies addressing this issue which state, in part:

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger of erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30253

New development shall do all of the following:

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

[. . .]

In reviewing requests for shoreline protection, the Commission must assess both the need to protect private residential development and the potential adverse impacts to public resources associated with construction of such protection. A number of adverse impacts

to public resources are associated with the construction of shoreline structures. These include loss to the public of the sandy beach area that is displaced by the structure, "permanently" fixing the back of the beach, which leads to the narrowing and eventual disappearance of the beach in front of the structure, sand loss from the beach due to wave reflection and scour, accelerated erosion on adjacent unprotected properties, and the adverse visual impacts associated with construction of a shoreline protective device on the contrasting natural shoreline. As such, the construction of shoreline development raises consistency concerns with a number of Coastal Act policies, including Sections 30210, 30211, 30212, 30235, 30240, 30251, and 30253.

The existing revetment was originally constructed prior to the enactment of the Coastal Act. While the project is located in the inner basin of Agua Hedionda Lagoon the revetment is necessary to protect the existing structure from waves, mostly formed through the wakes of recreational boating and wind. The current revetment includes rocks that have become dislodged and are now located on the remaining lagoon front and are thus encroaching upon the beach and affecting the public's access along the lagoon. As such, the purpose of the proposed maintenance is to ensure that the existing revetment continues to protect the existing residential condominium structures. To accomplish this, the applicant is proposing to remove the rocks that have fallen and are taking up useable lagoon -fronting beach area. Some of the rock will be reused, while some of the material will be upsized to larger revetment stone to prevent further vertical movement of rock. The work would also include the importation and placement of approximately 25 cubic yards of quarried armor stone. This new larger-sized quarried armor stone will be used as keystones at the base to facilitate a revetment at a steeper slope, thereby reducing the footprint of the structure and the amount of stone located in the public access easement and on the beach.

A wave runup report has been submitted by the applicant's soils engineer (GeoSoils Inc.) report received February 24, 2010. The GeoSoils report states:

The site is subject to small wind waves and boat wakes. Unlike the open ocean these conditions are very constant and the actual wave runup can be determined by observation...The maximum wave runup during maximum high tide is to about elevation +6.5 MSL, which is just at the top of the revetment.

An additional wave runup report was also submitted by Geosoils, received May 25, 2010, and goes on to state:

The revetment has move (sic) lagoon-ward overtime and is outside the reasonable footprint. In addition there has been some minor undermining of the concrete foundation form (sic) wave and wake overtopping of the revetment.

The Commission's Staff engineer has reviewed the proposed project and technical report and concurs that the existing upland residential structure is subject to threat and that the proposed revetment repairs are necessary to protect the existing condominium structure, are the minimum required, and have been designed appropriately to address both scour

depth and sea level rise and thus, as proposed, will adequately protect the existing structure.

To assure the proposed shore protection has been constructed properly, Special Condition #5 has been proposed. This condition requires that, within 60 days of completion of the project, as built-plans and certification by a registered civil engineer be submitted that verify the proposed revetment repairs have been completed in accordance with the approved plans and that benchmarks be identified from fixed reference point(s) from which the elevation and seaward limit of the revetment can be measured in the future. Special Condition #2 requires the applicant to submit annual monitoring reports to the Commission to determine settling or seaward movement of the revetment to ensure the revetment continues to be configured to minimize impacts to public access. In order to protect future impacts to public access Special Condition Nos. 3 and 4 have also been included. Special Condition #3 notifies the applicant that it is responsible for continued maintenance of the existing revetment. The condition also indicates that, should it be determined that additional maintenance of the proposed structures is required in the future; the applicant shall contact the Commission to determine if permits for such maintenance are required. Special Condition #4 requires the applicant to waive any rights to future seaward extension of the revetment. Special Condition #12 requires the applicant to submit a copy of any required permits from other local, state or federal agencies to ensure that no additional requirements are placed on the applicants that could require an amendment to this permit.

Although the Commission finds that the proposed repair work has been designed to minimize the risks associated with its implementation, the Commission also recognizes the inherent risk of shoreline development. The revetment will be subject to wave action. Thus, there is a risk of damage to the revetment or damage to property as a result of wave action. Given that the applicant has chosen to perform these repairs despite these risks, the applicants must assume the risks. Accordingly, Special Condition #7 requires that the applicant acknowledge the risks and indemnify the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit. Special Condition #8 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. All of these special conditions will ensure that the revetment remains in a configuration that can be considered to minimize impacts to coastal resources, consistent with the above cited Chapter 3 policies of the Coastal Act.

In summary, the Commission finds that the applicant has demonstrated that the existing primary structures continue to be subject to threat from wave action and erosion and that repairs/maintenance of the existing revetment is necessary and the minimum necessary to assure continued protection. Therefore, the Commission finds that the proposed repair project, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Public Access. As stated above, the proposed project may result in impacts to public access. As such, the following Coastal Act policies are applicable and state, in part:

Section 30210

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

Section 30211

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

Section 30212

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,

[...]

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan (which the Commission uses for guidance) contains a detailed set of public access policies that state, in part:

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use....

Policy 7.8 - Design of Access Easements, Buffer Areas, and Adjacent Development

All accessways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property.

Policy 7.9 - Access Signing

All public use areas shall be clearly identified through a uniform signing program, to be carried out by the City of Carlsbad or as a condition of individual private developments. Signs or other devices on public or private property, which might deter use of public access areas, shall be prohibited within the Agua Hedionda Plan area.

By the nature of riprap revetments on the beach, it is recognized that periodic maintenance will be necessary for the revetment to retain its approved form. In the case of the proposed maintenance project, the stones from the revetment have rolled off the revetment and others have been moved around and repositioned by waves, such that the

revetment is no longer providing adequate protection for the upland residential structures. The proposed project would pull back the riprap that has migrated beyond the original revetment footprint. Replacing the migrated riprap will remove some of the existing access obstruction on the beach. The beach in this area is not only used by the public for walking, sunbathing and swimming, but also to land kayaks and other small boats. Agua Hedionda Lagoon is the only lagoon in San Diego County that allows swimming and watercraft.

As discussed previously, the revetment associated with the subject permit is being proposed for maintenance with the inclusion of approximately 25 yards of additional rock. The existing revetment was constructed prior to the enactment of the Coastal Act, and is partially located on an existing lateral public access easement. This easement was required in association with the construction of the condominium complex and is located on the southwesterly 15 feet of the lot (ref. Exhibit #2). The easement was recorded in 1973 and is currently held by the City of Carlsbad. While the original revetment was constructed prior to the Coastal Act, staff has identified that at some point the revetment has been modified, through the inclusion of additional rock, without the benefit of a coastal development permit. This additional rock has resulted in additional encroachment into the public access easement. However, because the project was not reviewed by the Commission, the quantifiable extent of this encroachment cannot be determined at this time.

While the proposed work to the revetment will remove some of the rock from the easement area, the applicant's engineer has indicated that complete elimination of rock from the easement is not feasible for a number of reasons. Specifically, there isn't a slope great enough that could safely protect the development and simultaneously not encumber any portion of the easement. Additionally, there isn't enough space between the condominium complex, the revetment, and the lagoon waters to provide a 15 foot accessway at a different location. Again, the project is located adjacent to Agua Hedionda Lagoon, and the space between the lagoon and the development is minimal and the portions of the existing easement not covered by revetment rock are unavailable during high tides or storm events, as the lagoon waters inundate the easement during these times. Thus, relocation of the easement out of the revetment area is not possible.

Additionally, the current slope of the revetment is approximately 2.8:1. After the proposed repair work, the applicant's engineering plans identifies a steeper slope between 2-2.5:1. Ideally, the entire slope will be 2:1, however, the applicant's engineer is uncertain that reengineering the revetment, given that the revetment is currently comprised of smaller sized rock, will be possible solely at a 2:1 slope. As such, engineering a slope greater than 2:1, thereby eliminating encroachment of the revetment into the easement is also not feasible. Such a slope would be too vertical and may lead to rock failure and quickly lose the effectiveness of the revetment. The Commission's technical staff has visited the site and reviewed the plans and agrees that the potential slope of the revetment could not be sited as safe with a slope at 2:1 or steeper. As such, elimination of all rock currently located in the easement is not possible.

Additionally, the applicant's engineer has indicated that the revetment existed prior to the access dedication, and because the revetment would have never had a slope greater than 2:1 it can be concluded that the revetment has always been located, to some extent, within the access easement area. Commission staff has reviewed the easement documents and maps, and there is no indication that the revetment did or did not exist at the time the easement was recorded. Specifically, there is no mention of the revetment in the easement language, nor is the revetment included on the plan attached as an exhibit to the easement document (ref. Exhibit #4). While the Commission agrees that the easement does not address or restrict the revetment in the recorded document, permitting the revetment to be maintained within the easement cannot be found consistent with the public access policies of the Coastal Act. Because work to an existing revetment will extend the lifespan of the revetment, potential impacts to public access need to be reviewed and, perpetuation of impediments to public access shall be eliminated to the maximum extent practicable.

In this case, and as previously discussed, there is no redesign to the revetment that will completely eliminate the impacts to public access. Commission staff has determined that the revetment could be completely removed and redesigned, and then relocated inland of the existing footprint, or a bulkhead, or partial seawall could be constructed to adequately protect the condominiums, potentially eliminating the impacts to public access. However, the proposal is for maintenance of a revetment, not development of a new shoreline protective structure, and both of these other options are many times more expensive than the proposed project, making such alternatives infeasible. Therefore, mitigation for encroachment of the revetment on the beach and access easement must be required to find the project consistent with the Coastal Act.

The subject site is located within the inner basin of Agua Hedionda Lagoon. The site is surrounded by mostly undeveloped lands to the northwest and southeast, Agua Hedionda Lagoon to the west and Bristol Cove to the direct north (ref. Exhibits #1. 3). Because much of the north shore of the lagoon is undeveloped, there remains an opportunity to create a contiguous public access path along the shoreline. As such, the City's certified LUP requires an improved public accessway at least 5' in width associated with any proposed development on the shorefront. The subject site includes approximately 180 feet of lagoon shorefront, and as such, an unencumbered public access path should be provided.

According to the Commission's staff engineer, the revetment is currently encroaching onto approximately 5,430 square feet of potentially useable shoreline. To mitigate for this encroachment, two potential mitigation options are suggested. The first option would require the applicant to construct an improved public access path on top of the revetment. This option would be consistent with the City's certified Land Use Plan for the Agua Hedionda Lagoon segment, which has numerous specific policies promoting a continuous public access trail along the north shore of Agua Hedionda Lagoon. The path would serve as any alternative lateral access path across the property during the times that the existing lateral access easement isn't available during high tide or storm events. Additionally, the development located east and adjacent to the subject site is currently

developed with an extensive improved public access pathway, and as such, the required public access path would connect to this existing pathway to the maximum extent practicable, thus increasing the opportunity of the public to walk along the lagoon shorefront and have the benefit of views of lagoon waters and wildlife. Therefore, Special Condition #10 requires the applicant to construct an improved public access path, and one potential location for this path is on top of the existing revetment. However, the public access cannot be constructed beyond the property to the west, as the subject site is bounded by the entrance to Bristol Cove. The improved access pathway can be constructed of revetment rock; or, if necessary to provide safe access, can include decomposed granite. The special condition further requires that the access path include appropriate signage, and have a width of at least 5 feet. The Commissions' technical staff has visited the site, and reviewed the site plans, and agrees that public access, through the construction of a pathway on top of the revetment, is a viable mitigation measure. However, should the applicant deem this mitigation to be infeasible, Special Condition #10 also provides for an alternative public access mitigation measure.

This second option would be to fund another public access project in the general area. Commission staff and the City of Carlsbad have begun a cooperative effort to identify a public access project that may provide a suitable mitigation alternative. Examples discussed include maintaining or improving existing public accessways by adding handrails, or replacing portions of deteriorated wooden staircases, or perhaps the construction of a new public access pathway. The City has expressed considerable interest in the opportunity for a public access project; however, to date no specific project has been identified. Special Condition #10 would allow for a mitigation project, subject to the review and approval by the Executive Director, to be submitted by the City and the applicant, should an appropriate project be identified prior to issuance of this Coastal Development Permit.

In conclusion, both the revetment constructed prior to enactment of the Coastal Act, and the previously unpermitted work to the revetment result in impacts to public's ability to gain lateral access along the lagoon shoreline. As proposed, a portion of the revetment will be removed from the access easement area. It has been determined that the complete elimination of encroachment into the access easement is not feasible at this time. In any case, the revetment is an encroachment on the public beach that directly affects public access and as such, mitigation must be provided. Special Condition #10 has identified two alternative projects, one improving a public access path on top of the subject site's revetment, one allowing for an alternative project to be identified within the City of Carlsbad and funded at a similar level to what the public access path on top of the revetment would cost. It is only with this special condition that the project can be permitted. Thus, as conditioned, the project can be found consistent with the applicable policies of the Coastal Act and shall be approved.

4. Water Quality/Sensitive Biological Resources. The following Chapter 3 policies of the Coastal Act apply to the subject proposal and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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

Section 30232

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and clean up facilities and procedures shall be provided for accidental spills that do occur.

The work to the revetment could result in impacts to both water quality and biological resources. The revetment is located in a lagoon where the invasive *caulerpa taxifolia* has been previously found and is known to be vegetated with eel grass beds. *Caulerpa taxifolia* is an invasive green alga previously found in Agua Hedionda Lagoon. Eel grass beds have long been reported to provide crucial fish nursery ground and, as such, any impacts to eel grass beds would require specific mitigation, and the further introduction of *Caulerpa* must be prevented.

Specifically, the proposed project will potentially result in impacts to water quality as a result of beach disturbance during the revetment maintenance activities. In general, it is anticipated that water quality impacts will be limited to disturbance of beach sediments and thus short-term elevation of turbidity levels as exposed fine sediments are released from the sands and gravels of the beach. There is also the potential for petroleum discharges to the lagoon associated with mechanized equipment. The project, as proposed, will be compliant with measures for control of urban runoff, sedimentation, and other pollutants in accordance with the City's standard urban storm water mitigation plans (SUSMP) and the City of Carlsbad's Master Drainage Plan. Specifically, the project includes 1) that all equipment be removed from the beach areas during any tidal condition that may inundate working areas; 2) staging areas will be located at the foot of

Bayshore Drive and on improved surfaces; 3) Rock will only be brought in as needed and stockpiled as high on the shore as practicable; 4) No-fuel zones will be designated for all areas within 10 feet of drainages, sensitive habitat, lagoon waters, or adjacent wetlands; 5) the completion of a site specific water quality control plan, including turbidity, sediment, and hazardous material management practices, and 6) the prohibition of placement of erodible fill material into watercourses. Therefore, the project, as proposed, can be found consistent with the Coastal Act policies pertaining to the protection of water quality.

The proposed project may also result in impacts to biological resources including adjacent eel grass beds. A survey of eelgrass beds was conducted and concluded that there are eel grass beds located outside and immediately adjacent to the shoreline area on which the work is anticipated to occur. However, there is low potential to impact to the eel grass beds directly, as they are not located in any of the identified work areas. However, potential impacts can occur as a result of equipment maneuvering on the beach or excessive displacement of shoreline sands and sediments during construction activities. As proposed, the project includes staking a 10-foot buffer from existing eel grass beds, control of sediments, and designated staging areas. Additionally, monitoring of the eel grass beds will occur both during and post-construction. If the reports indicate impacts to eel grass, mitigation in the form of restoration at a 1.2:1 ratio of eel grass beds will be provided. Special Condition #11 reinforces and memorializes these survey and potential mitigation efforts, further protecting the existing eelgrass beds. Therefore, as conditioned, the project can be found adequate to protect sensitive biological resources consistent with the applicant policies of the Coastal Act.

Lastly, the proposed project is located within an area known to be affected by the invasive species *Caulerpa taxifolia*. *Caulerpa* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species.

Because of the grave risk to native habitats, in 1999 *Caulerpa* was designated a prohibited species in the United States under the Federal Noxious Weed Act. AB 1334, enacted in 2001 and codified at California Fish and Game Code Section 2300, forbids possession of *Caulerpa*. In June 2000, *Caulerpa* was discovered in Aqua Hedionda Lagoon, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *Caulerpa* has been shown to tolerate water temperatures down to at least 50° F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *Caulerpa* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *Caulerpa* infestations in Southern California. The

group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all Caulerpa infestations.

In order to assure that the proposed project does not cause the dispersal of Caulerpa, and adverse impacts to the biological productivity of the Agua Hedionda Lagoon, Special Condition #9 has been attached. Special Condition #9 requires the applicant, prior to commencement of development, to survey the project area and any other areas where the bottom could be disturbed by project activities, for the presence of Caulerpa. If Caulerpa is found to be present in the project area, then prior to commencement of any construction activities, the applicant must provide evidence that the Caulerpa within the project site has been eradicated (the applicant could seek an emergency permit from the Executive Director to authorize the eradication) or that the project has been revised to avoid any disturbance of Caulerpa. If revisions to the project are proposed to avoid contact with Caulerpa, then the applicant shall consult with the local Coastal Commission office to determine if an amendment to this permit is required.

In conclusion, the proposed development, as conditioned, is not expected to have adverse impacts on any sensitive habitat, and, will not result in erosion or adverse impacts to water quality, as adequate construction BMPs will be provided. These include establishing a site-specific water quality control plan, mitigation for any unforeseen impacts to existing eelgrass beds, and pre- and post-construction caulerpa surveys. To ensure that both biological resources and water quality will be protected should any unforeseen occurrences arise during construction, Special Condition #6 requires the applicant to contact the San Diego District office of the Coastal Commission before any changes are made to the project in the field. Thus, the project, as conditioned, can be found consistent with the resource protection policies of Chapter 3 of the Coastal Act.

5. Unpermitted Development. Unpermitted development, in the form of riprap added to the revetment, has occurred on the subject site without the required coastal development permit. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit, as required by Special Condition #13, within 90 days of Commission action. Only as conditioned is the proposed development consistent with the Coastal Act.

6. Local Coastal Planning. Agua Hedionda is one of six segments of the City of Carlsbad's LCP. While most of the city's coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review. As

conditioned, the project is also consistent with the habitat preservation, scenic preservation and public access policies of the certified Agua Hedionda Land Use Plan and with the corresponding Chapter 3 policies of the Coastal Act. Therefore, approval of the development, as conditioned herein, should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for the Agua Hedionda Lagoon segment.

7. Consistency with the California Environmental Quality Act (CEQA).

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing the requirement for mitigation associated with impacts to public access and future maintenance and/or reconfiguration of the revetment will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

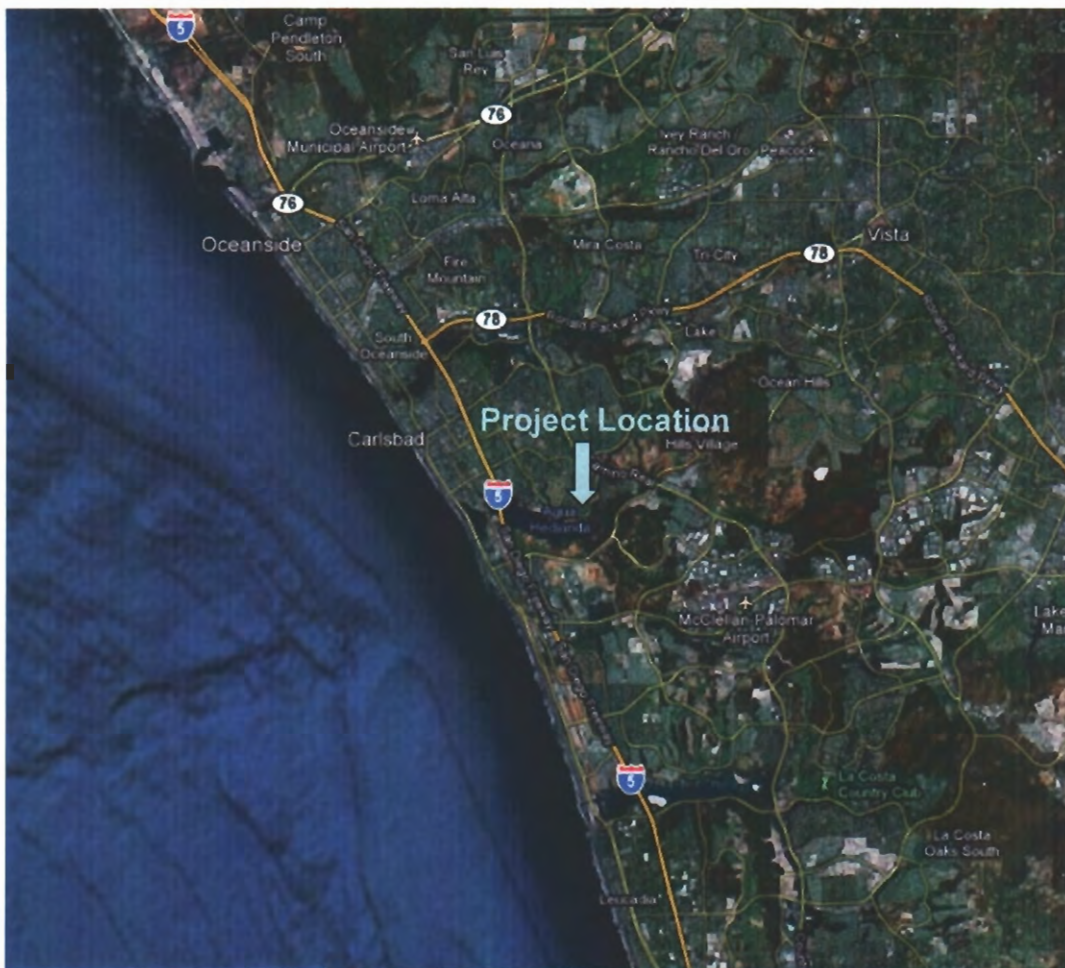


EXHIBIT NO.1

APPLICATION NO.

6-10-016

Location Map

EXISTING CONDITION



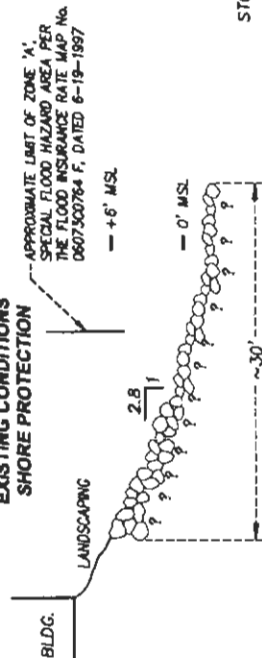
ACCESS ROUTES



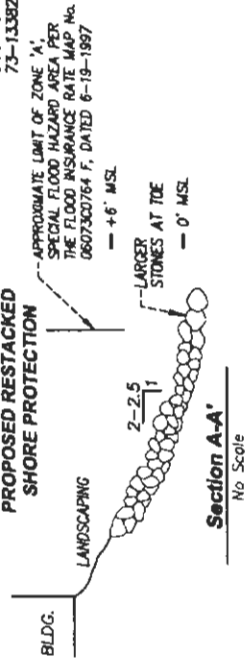
LIMITS OF ZONE 'A', SPECIAL FLOOD HAZARD AREA PER THE FLOOD INSURANCE RATE MAP No. 0607300764 F, DATED 6-19-1997

AN EASEMENT TO THE STATE OF CALIFORNIA FOR THE PURPOSE OF PUBLIC ACCESS (INGRESS AND EGRESS)

TU CASA EXISTING CONDITIONS SHORE PROTECTION



TU CASA PROPOSED RESTACKED SHORE PROTECTION



PLAN VIEW

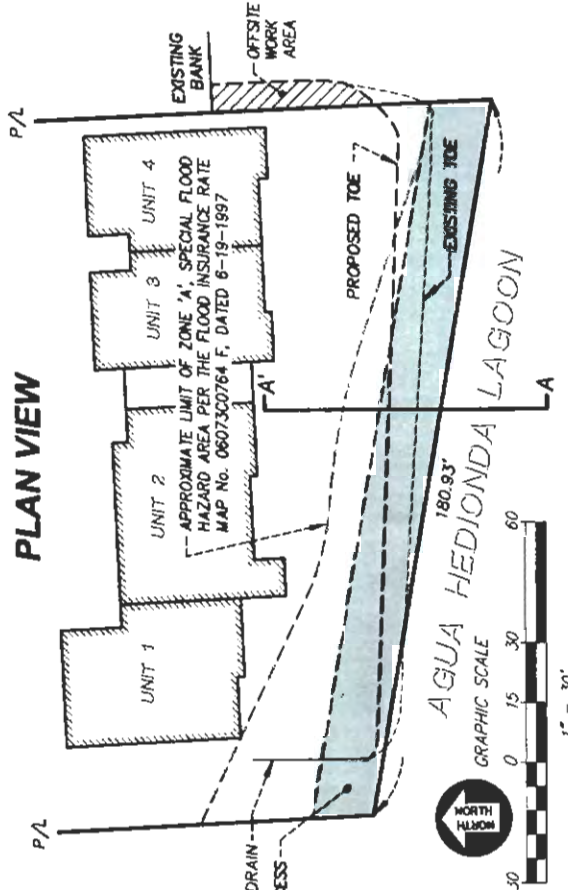


EXHIBIT NO. 2
APPLICATION NO.
6-10-016
Site Plan

7/22/09
9/15/09
11/23/09
1/6/10

DRAFTING BY:
SCM/AMH
(760)414-3979
DATE: 11/15/09
DRAWN BY: DAVE SCHWAB



5741 Palmer Way, Carlsbad, CA 92010
760-438-1155
Geotechnical • Geologic • Coastal • Environmental
CSI

TU CASA H.O.A.
REVESTMENT MAINTENANCE
CLINT: TU CASA H.O.A.
6427 1st Street
Carlsbad, CA 92008

1/10/07
S2



EXHIBIT NO. 3

APPLICATION NO.

6-10-016

Aerial Photographs

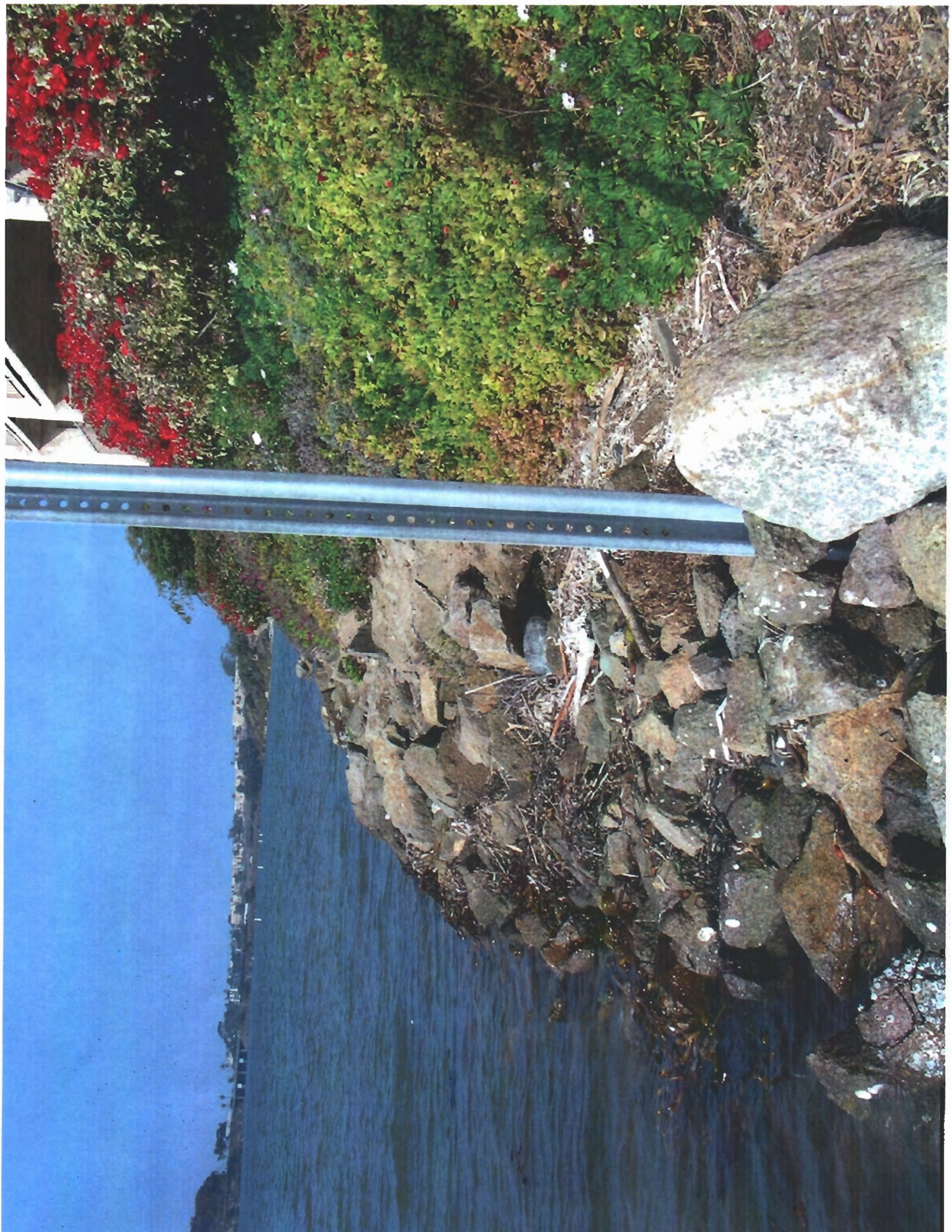
4 pages



California Coastal Commission









SAN DIEGO COAST REGIONAL COMMISSION

6154 MISSION GORGE ROAD, SUITE 220

SAN DIEGO, CALIFORNIA 92120-TEL.(714) 280-6992

RECEIVED JUN 29 1973

DEVELOPMENT PERMIT

Control No:

F 0201

KER

Date:

June 29, 1973

Applicant:

Richard A. Nowell
Marjory A. Nowell
8132 Dinsdale Ave.
Downey, CA 92040

R. L. Sievers & Sons Inc.
4237 1/2 Tweedy Blvd.
South Gate, CA 90280

Project Address :

In Bristol Cove Development on Agua Hedionda Lagoon, Carlsbad

MALCOLM A. LOVE
Chairman

WILLIAM A. CRAVEN
Vice Chairman

JEFFERY D. FRAUTSCHY
Representative to the
California Coastal Zone
Conservation Commission

THOMAS A. CRANDALL
Executive Director

You are hereby granted a development permit. This permit is issued after a hearing before the San Diego Coast Regional Commission (a copy of the Regional Commission's resolution of approval, vote, and other language, drawings and provisions is included herewith). This permit is limited to development described below and subject to the terms, conditions, and provisions, hereinafter stated:

A. DEVELOPMENT:

30 unit condominium

B. TERMS AND CONDITIONS:

1. That the applicant agrees to adhere strictly to the current plans for the project as submitted to the Commission.
2. That the applicant agrees to notify the Commission of any substantial changes in the project.
3. That the applicant will meet all the local code requirements and ordinances.
4. That the applicant agrees to conform to the permit rules and regulations of the California Coastal Zone Conservation Commission.
5. That the applicant agrees that the Commission staff may make site inspections of the project during construction and upon completion.
6. That the applicant provides to the City of Carlsbad the easement as described on File/Page No. 73-133839, Book 1973, recorded in the Office of the City Clerk of the City of Carlsbad.

Terms and conditions are to run with the land. These terms and conditions shall be perpetual and it is the intention of the parties to bind all future owners and possessors of the subject property except in the following particulars:

None

EXHIBIT NO. 4

APPLICATION NO.
6-10-016

Previous CDP with Recorded Easement



California Coastal Commission



SAN DIEGO COAST REGIONAL COMMISSION

6154 MISSION GORGE ROAD, SUITE 220
SAN DIEGO, CALIFORNIA 92120-TEL.(714) 280-6902

MALCOLM A. LOVE
Chairman

WILLIAM A. CRAVEN
Vice Chairman

JEFFERY D. FRAUTSCHY
Representative to the
California Coastal Zone
Conservation Commission

THOMAS A. CRANDALL
Executive Director

Control No. F 0201
Name of Applicant Richard Nowell -- R.L. Sievers & Sons Inc.
Address of development Bristol Cove Development on Agua Hedionda Lagoon
Carlsbad

RESOLUTION APPROVING DEVELOPMENT PERMIT BY SAN DIEGO COAST REGIONAL COMMISSION

Hearing dates of Commission:

6-15-73 Considering proposed development 6-15-73 Disapproving development permit
Commission vote: FOR 9 AGAINST: 0 ABSTAINING: _____

RESOLUTION

"WHEREAS the San Diego Coast Regional Commission at its duly noticed and held public hearing considered the Application for a development permit on the hereinafter described proposed development:

Applied for development description:

(Note: If different than "Proposed development to be approved")

Proposed development to be approved:

30 unit condominium

WHEREAS*

RESOLVED that the Regional Commission finds the proposed development will not have any substantial adverse environmental or ecological effect and is consistent with the findings and declarations set forth in Section 27001 and objections set forth in Public Resource Code Section 275 and is consistent with each provision and policy of the California Coastal Zone Conservation Act of 1972 and such findings are based on the following specific facts:

none

RESOLVED FURTHER that a Development Permit issue on the proposed development subject to the usual provisions, exceptions, and the following reasonable terms and conditions:

none

*Note: For special statutory provisions and policies relevant to the proposed development.

C. STANDARD PROVISIONS

- (1) STRICT COMPLIANCE: Permittee is under obligation to conform strictly to permit under penalties established by California Coastal Zone Conservation Act of 1972.
- (2) TIMELY DEVELOPMENT AND NOTICE OF COMPLETION: Permittee shall commence development in a timely manner and complete in a reasonable time. Upon completion of the development, Permittee shall promptly file with Commission a "Notice of Completion."
- (3) ASSIGNABILITY OF PERMIT: This permit is not assignable unless the Permittee's obligations under the permit are assumed by assignee in writing, and a copy of assumption agreement delivered to Regional Commission.
- (4) APPEAL: Unless appealed to the State Commission within ten (10) days following final action by the San Diego Coast Regional Commission, all terms and conditions shall be final.
- (5) DISCLAIMER: This permit is in no way intended to effect the rights and obligations heretofore existing under private agreements nor to effect the existing regulations of other public bodies.
- (6) PERMITTEE TO RETURN COPY: This permit shall not be valid unless within ten (10) days Permittee returns a signed copy acknowledging contents to San Diego Coast Regional Commission.

If you have any question on any of these matters, please contact the staff of the Regional Commission.

Very truly yours,

Thomas A. Crandall, Executive Director
San Diego Coast Regional Commission

By _____ Signature on file Signature on file

Directions to Permittee: Permittee is to execute below and return one copy of this permit to the San Diego Coast Regional Commission.

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

Control No. F0201

6-27-73
Date

Signature on fi

Signature on file

Signed by Permittee

Signature on file

RECORDING REQUESTED BY

City of Carlsbad
1200 Elm Avenue
Carlsbad, Ca. 92008

AND WHEN RECORDED MAIL TO

Name
Street
Address
City & State

City of Carlsbad
1200 Elm Street
Carlsbad, Calif. 92008

FO-201

73-133839

FILE/PAGE NO.
BOOK 1373
RECORDED REQUEST OF
Carlsbad CITY CLERK

MAY 17 11 42 AM '73

OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
HARLEY F. BLOOM
RECORDER

RECEIVED MAY 17 1973

NO FEE

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Consideration is less than \$100.00

Name
Street
Address
City & State

Not Applicable

DOCUMENTARY TRANSFER TAX \$.0010
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE.
Ray H. DeNeil CITY OF CARLSBAD
Signature of Declarant or Agent determining tax. Firm Name

207-15-78

EASEMENT Grant Deed

TO 409.1 CA (1-70)

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

RICHARD A. NOWELL AND MARJORY A. NOWELL, husband and wife

hereby GRANT(S) to

CITY OF CARLSBAD, A MUNICIPAL CORPORATION

the following described real property in the CITY OF CARLSBAD
County of SAN DIEGO, State of California:

AN EASEMENT FOR PUBLIC ACCESS OVER THE SOUTHWESTERLY 15
FEET OF LOT 72 OF SHELTER COVE, IN THE CITY OF CARLSBAD,
IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORD-
ING TO MAP THEREOF NO. 5162, FILED IN THE OFFICE OF THE
COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 23, 1963.

Assessor's Parcel No. 207-15-78

As shown on Attachment "A", attached here and made a part hereof.

CERTIFICATE OF ACCEPTAN

This is to certify that the
real property conveyed by the
grant dated May 16, 1973
Richard A. Nowell and Marjory A.

to the City of Carlsbad, California,
a political corporation and/or
governmental agency, is hereby accepted
by the undersigned officer or agent
on behalf of the City Council of the
City of Carlsbad, California, pursuant
to authority conferred by Resolution
#1537 of the City of Carlsbad adopted
on July 1, 1968, and the grantee
consents to the recordation thereof by
its duly authorized officer.

Margaret E. Adams, City Clerk

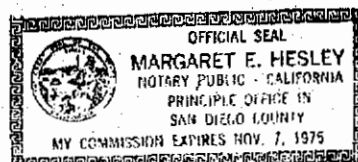
DATED: May 16, 1973

Signature on file

RICHARD A. NOWELL

Signature on file

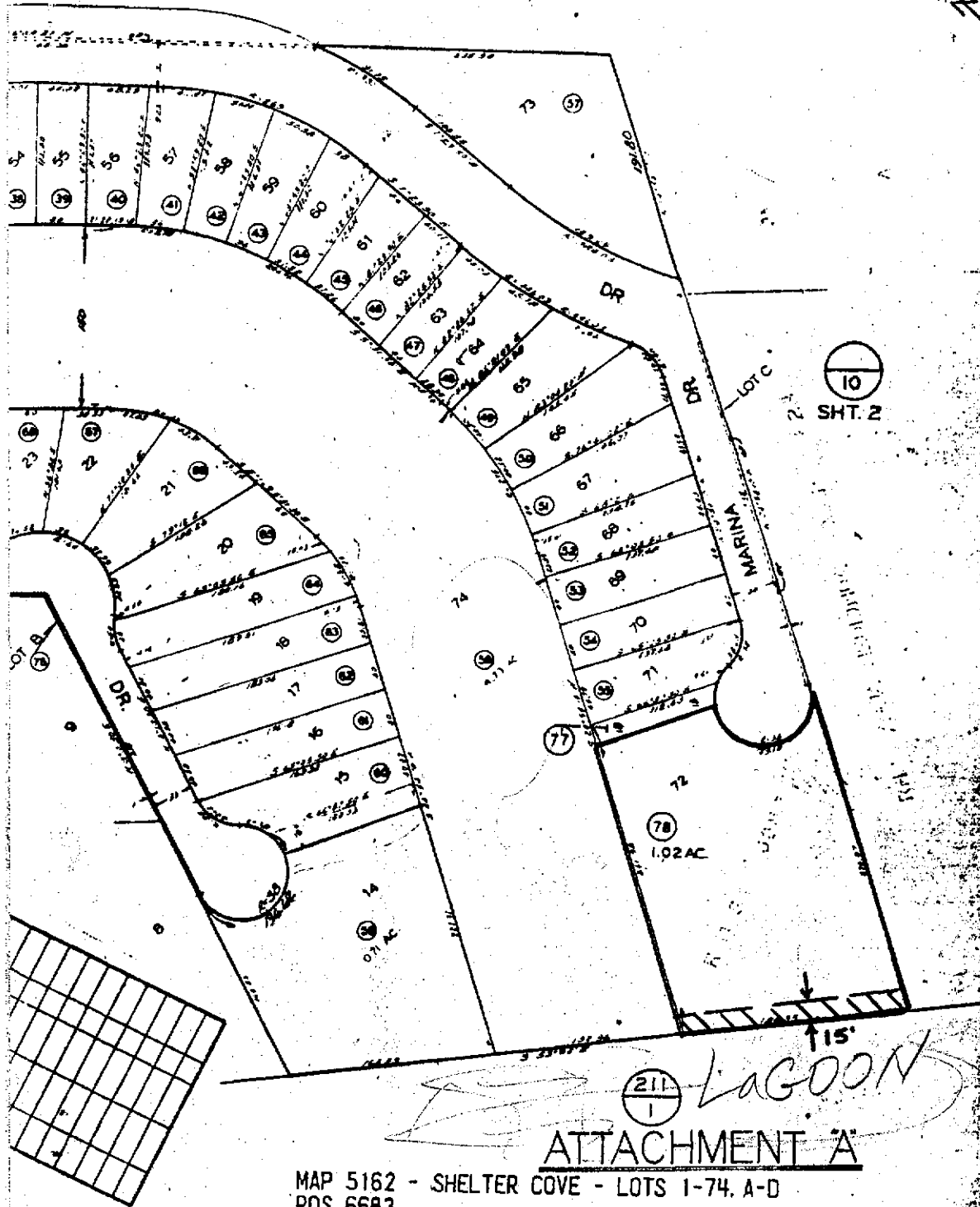
MARJORY A. NOWELL



(This area for official notarial seal)

Draw or Loan No.

DIRECTED ABOVE

$r = 100$ 

MAP 5162 - SHELTER COVE - LOTS 1-74, A-D
ROS 6683