

CALIFORNIA COASTAL COMMISSION

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Th7.1 – 7.4

CCC-25-CD-03, CCC-25-RO-02, CCC-25-AP-04, & CCC-25-AP3-02
(John C. Levy Jr.)

EXHIBITS PART 3

- Exhibit 12: CCC Staff Report for CDP 6-83-051 dated March 11, 1983
- Exhibit 13: Aerial Photo dated April 14, 1983
- Exhibit 14: CDP 6-83-051
- Exhibit 15: Ingress/Egress Easement recorded August 2, 1984.
- Exhibit 16: Offer to Dedicate a Public Access Easement recorded August 15, 1984
- Exhibit 17: Offer to Dedicate an Open Space Easement recorded August 15, 1984
- Exhibit 18: May 13, 1993 Aerial Image (California Coastal Records Project)
- Exhibit 19: USFWS April 9, 1996 Letter re: Levy Development Proposal
- Exhibit 20: May 1998 Letter from Beach HOA to Levy
- Exhibit 21: City of Carlsbad Resolution No. 4332 dated July 1, 1998 (Local CDP No. 97-59)
- Exhibit 22: CCC Staff Report and Recommendation on Appeal for Appeal No. A-6-CII-98-98 dated August 18, 1998
- Exhibit 23: Color Map of Proposed Development Submitted by to CCC by John C. Levy Jr. prior to CCC Appeal Hearing
- Exhibit 24: Levy 8.25.98 Response to CCC Staff Report
- Exhibit 25: Unofficial Transcript for September 11, 1998 Commission Substantial Issue hearing re CDP 97-59

California Coastal Commission
SAN DIEGO COAST DISTRICT
6154 Mission Gorge Road, Suite 220
San Diego, CA 92120
(714) 280-6992

FILED: January 31, 1983
49th DAY: Waived
180th DAY: July 30, 1983
STAFF: DNL:lro
STAFF REPORT: March 22-25, 1983
DATE: March 11, 1983

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

*See attachment
for changes*

3-23-83

Application No.: 6-83-51

aw/c 10-1

Condition is additional

Applicant: Native Sun Investment Group

Agent: Mike Mahoney/Robert O. Sukup

Description: Minor subdivision of 7.65 acre parcel into three lots: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. Also, construction of 14 condominiums and swimming pool on Lot 1.

Lot area	95,832 sq.ft.
<u>Lot 1:</u>	
Building coverage	30,956 sq.ft. (32%)
Pavement coverage	32,967 sq.ft. (35%)
Landscape coverage	31,909 sq.ft. (33%)
Parking spaces	35
Zoning	R-3
Plan designation	0-4 dua (net w/density credit)
Project density	2.5 (net)
Ht abv fin grade	35 ft. maximum

Site: Parcel located northwest of Ocean St./Mountain View Dr. intersection, Carlsbad, San Diego County. APN 203-010-14

Substantive File Documents: °City of Carlsbad LCP
°Statewide Interpretive Guidelines
°CCC/#6-81-249-Native Sun

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval with conditions addressing revised site plans, public liability, open space easements over the bluff face, runoff and grading controls, open space easements over sensitive habitat/buffer areas, landscaping, lateral access and public access improvements and archaeological mitigation (see pages 2-4) for the special conditions. Major issues include the concentration of development on upland areas, development of the site consistent with the certified LCP, the retention of natural buffer areas and precedential effects on the LCP implementation.

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution.

I. Approval with Conditions.

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

II. Standard Conditions.

See page 16.

III. Special Conditions.

The permit is subject to the following conditions:

all back
1. Revised Site Plan. Prior to transmittal of the permit, the applicant shall submit a revised site plan, any associated floor or grading plans which eliminate any alteration of the bluff face by re-siting the units generally behind the 30 ft. contour line on the northwesterly and westerly slopes (or as specifically shown on Exhibit C), relocating the proposed swimming pool and decks back of the blufftop development line and relocating the proposed private beach stairway towards Buildings D and E in the vicinity of the eroded dirt road. Said plans shall be submitted to, reviewed and accepted in writing by the Executive Director.

2. Open Space Easement/Bluff Face. Prior to the transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over the bluff face as shown in Exhibit D. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and the easement area.

3. Waiver of Public Liability. Prior to transmittal of the coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be submitted to the review and

approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public diaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

4. Runoff Control. Prior to the transmittal of the permit, the applicant shall submit a runoff control plan prepared by a licensed engineer qualified in hydrology and hydraulics which would assure that there will be no increase in peak runoff rate from the developed site over the greatest discharge expected from the existing undeveloped site as a result of a 10-year frequency storm. Runoff control shall be accomplished by a variety of measures, including, but not limited to, on-site catchment basins, detention basins, siltation traps, and energy dissipators, and shall not be concentrated in one area. Sub-drainage systems, if necessary, to remove groundwater from the bluffs shall also be incorporated. Said plans including supporting calculations shall be submitted to, reviewed and accepted in writing by the Executive Director. The applicant shall also submit, for his review and acceptance in writing, detailed maintenance arrangements for providing the ongoing repair and maintenance for all approved and erosion-control facilities.

5. Grading Restrictions.

a) Grading activity shall be prohibited during the rainy season from October 1st to April 1st of each year.

b) All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.

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

d) Sandbags, gravelbags and temporary drainage basins shall be installed along all fill slopes and along the shoreline of Buena Vista Lagoon during grading and construction operations.

6. Open Space Easements/Habitat Protection and Buffer Areas. Prior to transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over Lot 3 of the proposed subdivision as shown on Exhibit E. Said open space easement shall prohibit any alteration of landforms, the placement or removal of vegetation except as specified herein. The irrevocable offer to dedicate an open space easement shall include conditions prohibiting any future land divisions, commercial or residential development but expressly recognizing the right of access to the weir for maintenance purposes. It shall also recognize the right of the accepting agency to conduct activities within the open space area which would enhance the lagoon habitat by dredging or otherwise removing fill.

The offer shall recognize that the erection of some public access improvements may be allowed, in consultation with the State Department of Fish and Game, and subject to Coastal Commission permit requirements.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors in assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and easement areas.

7. Landscaping. Prior to transmittal of a coastal development permit for the subject project, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. Drought tolerant and salt-tolerant plant materials shall be utilized to the maximum extent feasible.

8. Lateral Access. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. Such easement shall be located over and throughout Lot 2 and Lot 3 of the proposed subdivision, as shown on Exhibit F. Such easement shall be recorded free of prior liens except tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall include legal descriptions of both the applicant's entire parcel and the easement area.

9. Archaeological Resources. The applicant shall comply with the adopted mitigation measures on cultural resources in the certified E.I.R. for the project.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History. The applicant has previously applied for a coastal development permit (#6-81-249) for the same project on the site last year. In June 1982, the Commission conditionally approved the project with two alternatives for the construction of either 14 or 10 condominiums on the upland portion, dependent on the incorporation of an adjacent parcel (commonly referred to as the "Tenaglia" property) with the project site consistent with the certified Carlsbad LCP. With the exception of the

above revisions to consolidate the properties, the remaining conditions of approval are consistent with those proposed herein.

The previously approved conditions to require property consolidation resulted from the certified Carlsbad LCP policies and an ongoing ownership dispute and litigation between the applicant, Title Insurance and Trust Company and the State Lands Commission. As background, Native Sun originally took out title insurance on the adjoining Tenaglia site (APN's 155-190-06, 155-101-62/see Exhibit G) and intended to commit it to open space as a tradeoff for developing the lowlands area, comprised in the proposed Lot 3, in their first local government submittal. However, during the original proposal's review by the City of Carlsbad, the applicant stopped mortgage payments on the "Tenaglia parcel" after the State Lands Commission asserted public trust claims. After Native Sun stopped payments, Title Insurance stepped back in and purchased the Tenaglia property and it holds the actual grant deed while Native Sun possesses title. As a result of these circumstances, Native Sun is in litigation against both the title company and State Lands with Title Insurance representing them against the Lands Commission. Although the original coastal development permit application (#6-81-249) did not include the adjoining parcel, the proposed Lot 3 was shown as "reserved for future development."

While the applicant finally agreed to the open space easement over Lot 3, they contended that committing to an open space easement over the adjoining 2.65 parcel ("Tenaglia property") would damage their position with Title Insurance and Trust Company. Specifically, the applicant is litigating that it did not receive fee title to an unencumbered parcel of property and the property should not therefore have been insured. Once the applicant learned of the potential public rights over the property, they stopped payments and the original owner began foreclosure proceedings. However, as previously noted, Title Insurance stepped in, paid off the original seller and now holds the note and security on the parcel. Therefore, although the applicant holds no title to the adjoining parcel and indicated a willingness to commit it to open space, they could not execute any easement offer without the cooperation of Title Insurance as a third party. Under those circumstances, the applicant believes any agreement to commit the adjoining parcel to open space would damage their lawsuit, since Title Insurance and Trust Company could assert that its commitment is only part of the development price for the permitted condominiums, rather than any title defects on the property. Further, the applicant continues to contend that Title Insurance, as holder of the note and security, will only co-sign on the open space easement offer if the applicant settles their lawsuit, possibly losing a substantial investment. These lawsuits are still pending and the issues remain unresolved. Given the applicant's declarations of their limited ability to execute the necessary agreements because of the ongoing title disputes and their desire to gain approval for the original 14-unit project, they have waited the required six months under the Commission's administrative regulations and have submitted this re-application.

2. Detailed Project Description/Location. The applicant is requesting approval of a minor subdivision of a 7.65 acre parcel into three lots. The lots would be divided as follows: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. The applicant then proposes to construct 14 condominium

units on Lot 1. The subject property is topographically distinguished by two areas. An upper bluff extends out from Ocean Street and fronts along the beach. The second area, approximately 10-15 ft. below the bluff, consists of sandy/rocky beach areas terminating at the wood weir on the mouth of Buena Vista Lagoon and then extends eastward to some lowlands abutting the lagoon behind some adjoining apartments. Lot 1 generally comprises the upper bluff area and the proposed condominiums would be developed primarily on its level mesa. The applicant proposes to dedicate Lot 2, comprised mainly of beach area and the lagoon mouth, to the public for open space. As originally submitted, the applicant proposed to reserve the remaining 3.25 acres of Lot 3 or lowlands for possible future development but has subsequently agreed to dedicate it for public access and open space purposes.

The proposed 14 condominium units will be comprised in seven townhouses (or "common-wall") structures. Ten of the proposed units will have two bedrooms and living area between 2500-2600 sq.ft. The remaining four units will have three bedrooms and approximately 2,850 sq.ft. living area. All of the units have two-car garages and seven open guest parking spaces are provided on the site. There is a single access point for the project from Ocean Street. The proposed condominiums are mainly comprised in two living floor areas with some split-level entrances and garages. However, because of the Tudor architectural design, the structures' roof peaks will reach a maximum height of 35 feet above grade.

The submitted site plan delineates the construction of ten units along and over the bluff top (refer to sections) and the remaining four units are located along the southeastern property line. As submitted, a retaining wall of varying height will be constructed along the bluff face. There will be minimal grading performed on the property resulting in a balanced 4,000 cu. yds. of cut and fill. An average of two feet of cut and fill will be done and most of the fill will be deposited along the southeastern corner to elevate Buildings F and G. As submitted, the site plan incorporates a common pool/deck area situated within the ocean bluff face and private beach access stairs which traverse down the bluff to the shoreline.

For background purposes, the applicant had previously submitted a 40 unit condominium project on the subject site to the City of Carlsbad and for draft consultation with Coastal Commission staff. At that time, the project site included not only the subject 7.65 acre parcel, but an additional 2.65 acre property (see Exhibit G) located adjacent to the lowlands area of the proposed Lot 3. While the acreage is still owned by the applicant, it was not included in the current application. The originally proposed 40 units were sited on both the upper and lower portions of the property. Due to expressed concerns by the City of Carlsbad, Commission staff and interested parties relating to beach erosion, public lands determinations and visual impacts, among others, the applicant subsequently withdrew the project from the City. The original 40 unit project was never formally submitted to the Coastal Commission.

The Pointe San Malo project is located within the City of Carlsbad on the south side of Buena Vista lagoon and adjacent to the ocean (see Exhibit A). The parcel is located northwest of the Ocean Street/Mountain View Drive intersection. On the west, the site fronts on the ocean shoreline and on the north, it faces the lagoon, an "ecological reserve", opposite the

existing San Malo residential area in South Oceanside lying on the north side of the lagoon. A public beach accessway abuts the southern property line. Multi-family residential development is located to the east with the lagoon and railroad tracks situated further to the northeast. There are single-family residences situated to the south and across Ocean Street to the southeast.

3. Geologic Stability. As previously stated, the subject site can generally be divided into two topographic areas. The upper level, a coastal bench, is actually part of a larger bench which terminates at this site. The top of the bench slopes gradually northward with slope gradients ranging from 25-45 percent along the ocean. The second topographic area is the lower level consisting of the ocean, beach and lowlands fronting the lagoon. The beach area can be best characterized as a pebbly one with only a limited amount of sandy area. The project site is overlain by three different soil series - Marina Loamy Coarse Sand, Terrace Escarpments and Coastal Beaches. Most of the project area is covered by Marina Loamy Coarse Sand which is found on the gently sloping upper bench and has a moderate erosion hazard. The Terrace Escarpment soil is found near the western boundary and is characterized by steep to very steep slopes in the southwest corner occurring on terrace fronts or alluvial fans; it exhibits a severe erosion hazard. The third soil type, Coastal Beaches, found along the lower level is composed of gravel or sand and is susceptible to tidal inundation from the ocean; it also exhibits severe erosion characteristics.

The certified Carlsbad LCP specifies the need for new development projects to submit a site-specific geologic investigation, to limit shoreline structures, and to execute waivers of public liability. Additionally, Policy 4-4 specifies "no development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities." In reference to this specific site, Policy 7-8 specifically states "residential development shall be clustered on the highland area and the bluff face shall not be altered [and] there shall be appropriate bluff top setbacks based on geologic reports taking into account the prominent location, shoreline instability and significant habitat adjacent to the lagoon." Additionally, Policies 3-1 and 4-7a specifically state the development of slopes greater than 25% incline shall be prohibited and such slopes be left undisturbed. These LCP policies represented the incorporation of the Act's policies (Sections 30235 and 30253) into the general plan.

As detailed in the project description, ten of the proposed condominiums are sited directly on or over the ocean bluff top and face with a retaining wall constructed along the ocean frontage. The proposed retaining wall was primarily designed to allow some backfilling to create additional yard area for the future condominiums on the bluff top. However, as submitted, the proposed development would therefore be inconsistent with the certified LCP policies, since it would involve alteration of erodible and steep slopes particularly located along the property's westerly bluff face and could therefore precipitate coastal erosion. Special Condition #1 requires the applicant to redesign the site plan and construct the proposed units behind the bluff top, relocate the swimming pool/deck away from the bluff face and relocate the private beach accessway. Generally, the Commission does not and the certified LCP does not endorse the construction of private accessways.

However, in this instance, the subject site includes some rounded and low slopes on its northern bluffs, as well as an existing eroded dirt road presently used for beach access by pedestrians and public agencies, which would facilitate future residents to simply access the beach over the natural slopes. Therefore, in order to concentrate access and discourage random access over the bluffs, a property-designed private accessway would, on this site, be more protective of coastal resources than its elimination. With these revisions, the applicant will be restricting any significant bluff face alteration or grading of steep slopes. In conjunction with the required redesign of the site plan, Special Condition #2 requires the dedication of an open space easement over the site's bluff face to permanently preserve the bluffs as natural open space.

The applicant has submitted site-specific geologic and soils information which indicates the property is suitable for residential development with proper foundations, grading specifications and engineering designs. The applicant will be complying with these requirements. As specified in the certified LCP, since the submitted reports do not assure structural stability, a waiver of public liability is being required for the permitted development as detailed in Special Condition #3. It must be noted that this area is one of severe erosional hazard. Existing development upcoast and downcoast is set over the bluffs down to the shoreline and seawalls are required. As documented in the certified LCP, there are limitations on the development of shoreline structures and the need to establish appropriate bluff top setbacks for new development. As approved, the permitted development will have no setbacks from the established bluff top development line and there are no definitive assurances that some shoreline protective works will not be required in the future. However, the proposed development, as conditioned, will be clustered on the upland area which already lies approximately 40 ft. eastward of the existing development stringline. The required bluff top development line is appropriate, given the site's critical location at the ocean's interface with the lagoon, but, in combination with the extensive open space easement areas and existing stringline, a bluff top setback appears overly restrictive. Further, given the existence of a natural pebble berm, even during the winter, along the shoreline and the distance of the site's bluff top from the shoreline, severe tidal action along the slopes' base is infrequent. Additionally, given the almost continual alignment of seawalls throughout Carlsbad and Oceanside, any potential for future development of shoreline structures would not be highly precedential or prejudicial. Therefore, given the required redesign to cluster development and minimize the alteration of natural landforms, the permanent preservation of the ocean bluff face as open space, submitted geologic and soils analyses, the required waiver of public liability, the existing development stringline and the bluff top's setback from the immediate shoreline, the Commission finds the proposed development will assure the geologic stability of the site, minimize coastal erosion and diminish the risk of geologic hazards to life and property. With these findings, the Commission thus determines project approval, as conditioned, will be consistent with the certified LCP policies and all applicable Coastal Act policies and it will not establish any adverse precedent for future developments.

4. Runoff Control/Water Quality. The subject property is located at the southwestern corner of Buena Vista Lagoon and adjacent to the Pacific Ocean. Runoff from the westernmost portion of the property drains into the ocean; the remainder of the property drains into the lagoon through an existing pipe

located about 100 feet east of the weir. Portions of the adjoining property to the east also drain into the lagoon via this existing pipe. Buena Vista Lagoon is considered the northernmost lagoon in San Diego County, and in some ways is not typical of most other lagoons in the county. The lagoon is composed of fresh and brackish waters, is not open to the sea, and its normal surface level is approximately six feet above MSL. At the mouth of the lagoon is a sand beach barrier which was naturally formed by wave and littoral current action. A wooden weir is located within a manmade channel at the mouth of the lagoon which permanently empounds water in the lagoon and controls the water level. A land area of approximately 22 square miles drains into the lagoon through Buena Vista Creek. The main source of water in the lagoon is land drainage, agricultural runoff and rising groundwater.

Buena Vista Lagoon has been designated an "Ecological Reserve" by the State Department of Fish and Game. It is both a valuable biological resource and an aesthetic open space element. As is the case with all of the lagoons in San Diego County, Buena Vista Lagoon has been adversely affected by increased deposition of sediment resulting from agricultural and suburban development in its watershed. Primary effects of this development include the infilling of the lagoon and a reduction of its total volume and the introduction of various nutrients or pollutants which contribute to periodic algal blooms. The primary effects of the proposed development would be the alteration of local drainage patterns, increased runoff due to the presence of impervious surfaces, the exposure of soils to increased erosion and the introduction of increased levels of urban runoff pollutants into the lagoon.

The certified LCP for the City of Carlsbad contains several policies relating to grading requirements, drainage and coastal erosion. Policy 3-2, in reference to developments located along the first row of lots bordering the lagoon, including the subject parcel at the mouth, states "storm drain alignments...which would be carried through or empty into Buena Vista Lagoon shall not be permitted...." Policy 3-4 prohibits any grading activity during the rainy season and requires the immediate revegetation of graded areas to reduce erosion potential. Lastly, Policy 4-7 also states that no development shall be permitted without submittal of acceptable runoff control plans, maintenance agreements and certain specifications for the installation and operation of runoff control devices. The LCP policies were derived from the resource protection and water quality standards (Sections 30231 and 30240(a)(b)) of the Act.

As previously stated, although the applicant will be performing a minimal amount of grading over the site, the construction activity occurring along the bluff face and top, will present a significant erosion hazard. The construction activity and grading operations will thus establish short-term impacts. Along with the required site plan redesign and open space easement over the bluff face, Special Conditions 4 and 5 require the submittal of a runoff control plan and establish restrictions to detail the time and method for the grading activity. With these conditions, appropriate erosion controls will be established to mitigate the short-term impacts of grading and prevent further siltation of the lagoon. With regard to drainage and runoff, the project, as submitted, incorporates roof down-drain systems connected to the storm drain and a requirement that a drainage outfall shall be designed to discharge at a point west of the lagoon weir. Since the discharge point is west of the weir, the potential for any long-term impacts to the closed lagoon will be effectively mitigated. The submittal of a runoff

control plan will serve to document the effectiveness and operation of the designed drainage system. Therefore, given the required runoff and grading controls, along with the submitted drainage system, the Commission finds the proposed development, as conditioned, consistent with all applicable LCP and Coastal Act policies. Further, the Commission thus determines that the project approval, as conditioned, should protect the biological productivity and quality of the lagoon and other adjacent environmentally sensitive habitat values by controlling runoff and effectively mitigating off-site impacts.

5. Biological Resources. Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and coastal strand community, do occur on the subject property. Only a small portion of the lagoon habitat, however, actually lies within the property boundary, but activities on the property could affect the quality of the entire habitat. This seemingly small lagoon located in and around the subject property, is actually a portion of the larger Buena Vista Lagoon, which has been discussed as essential habitat for the California Least Tern. The lagoon also provides nesting and foraging habitat for other avian species although the quality of this habitat is decreasing due to continuous development along the edge of the lagoon. The Pointe San Malo property is one of the last vacant areas along this portion of the Buena Vista Lagoon. Additionally, the coastal strand habitat is a plant community which has become rare in San Diego County due to development along the coast. The community consists of plant species which are tolerant of salt air and sandy soil conditions. This habitat is located on the sandy soils near the base of the west-facing slope. Although the coastal strand habitat on the property has been disturbed by human activity, it still contains several of the plant species characteristic of the coastal strand community.

In reviewing the policies of the certified LCP, Policy 3-2 specifies for developments located along the first row of lots bordering Buena Vista Lagoon, including the subject site, as follows:

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from the wetlands shall be required in all development, in order to buffer sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes....

Land divisions shall only be permitted on parcels bordering the Lagoon pursuant to a single planned unit development permit for the entire original parcel. (emphasis added)

In addition to this site specific policy, Policies 3-1 and 4-7a again prohibit grading of steep slopes and Policy 4-4 prohibits development on the face of any ocean bluff. These LCP policies were derived from Sections 30231, 30240(a) and 30240(b) of the Act which require the preservation of habitat values by maintaining natural vegetation buffer areas and preventing off-site impacts to environmentally sensitive areas.

As submitted, the project would involve elimination of the coastal strand vegetation on the west-facing slopes and reserve the lowlands area, comprising Lot 3 of the proposed subdivision, for future development. The project would therefore be inconsistent with the certified LCP policies and resource protection policies of the Act. However, with the attached special condition to preserve the bluff face as open space, the coastal strand community will be minimally impacted. As conditioned, the Commission has also required Lot 3, consistent with the site-specific, certified LCP policy, to be committed to open space for habitat protection and natural buffer area. With regard to the inclusion of the adjoining parcel, along with proposed Lot 3, and their commitment to open space, their consolidation would fulfill and implement the certified Carlsbad LCP. However, given the applicant's limited ability to properly commit the adjoining property to open space due to the existing legal constraints and the Commission's previous approval which offered two alternatives, one without the lot consolidation, the submitted project, in and of itself, may be found consistent with Chapter 3 policies. With the open space restrictions on Lot 3, the project will incorporate adequate natural vegetative buffer areas necessary to mitigate the impacts of construction and increased human activity near the lagoon and permanently preserve critical open space corridors. Therefore, as conditioned, the Commission finds project approval consistent with applicable Chapter 3 policies.

6. Visual Impacts. The proposed condominiums are situated on a prominent ocean bluff and also located within the Buena Vista Lagoon viewshed. Although the proposed units are generally clustered on an upper bench level, the project, as submitted, will alter and encroach onto the bluff face. As previously stated, the certified LCP for Carlsbad specifically requires that development of this site be clustered to preserve open space and retain the natural landforms of the ocean bluffs (Policies 3-2 and 4-4). These policies were partially derived from Section 30251 of the Act which mandates the protection of public views, the preservation of scenic amenities in coastal areas and the retention of natural landforms.

As conditioned above, the project will be required to setback from the ocean on its blufftop, preserve the ocean bluff face in its natural state and retain the on-site lowlands as open space. These conditions will largely mitigate the project's visual impact by clustering the units away from the bluff line, thus minimizing its intrusion along the shoreline or within the lagoon viewshed, and by retaining the natural vegetation of the area to serve as visual buffers. The applicant contends that the submitted site plan conforms to the existing stringline of development along the shoreline. While the adjacent residences to the south and the existing San Malo residential community to the north in Oceanside across the mouth of the lagoon do extend further seaward than the proposed development, the subject site does not represent an infill area, but, rather, it is viewed as an extension of development northward at a critical interface between the ocean and the lagoon. Therefore, not only for habitat and resource protection purposes,

the required setbacks and open space dedications are necessary to preserve the scenic integrity of this coastal areas. Additionally, the applicant will be required to submit a detailed landscaping plan and revegetate disturbed areas immediately after grading to further enhance the project's amenities and mitigate the short-term impacts of construction activities. Therefore, given the required unit clustering, bluff setback, open space dedications, landscaping requirements and grading restrictions, the Commission finds project approval, as conditioned, will be consistent with the certified LCP, applicable Coastal Act policies and it will preserve the visual amenities of the coastline.

7. Public Access. The subject site is located on a bluff between the ocean and the first coastal roadway, Ocean Street, in this area. The beach area to the west of the proposed project site and the lagoon area to the north can currently be reached via an existing ten-foot wide, improved, open and signed public access easement. The easement is located along the southern boundary of the subject site. The beach and inlet areas are currently used by walkers, runners and amateur naturalists. The two areas, in combination, represent an unusual and varied coastal resource. There also exists an undeveloped potential for an areawide pathway and open space system relating to the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon, along with a bird sanctuary, and the Department of Fish and Game owns properties on the south side of the lagoon, east of the AT & SF Railroad right-of-way, as well as on the north side. The project site is located at a crucial point in any potential linkage between public beach areas and the public lagoon areas. No public parking is available in the vicinity of the public beach access with the exception of parking along Ocean Street.

The certified Carlsbad LCP contains two specific policies relating to development of the subject property and the provision of public access opportunities. The certified LCP states as follows in Policy 7-6 and 7-8.

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon, to facilitate public awareness of the natural habitat resources of the Lagoon. To protect the sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. [and]

On the vacant parcel at the extreme north end of Ocean Street, when development is proposed, an irrevocable offer to dedicate the beach and lowland areas shall be required pursuant to Section 30211 of the Coastal Act.

Sections 30210, 30211 and 30212 of the Act all require that public access to the shoreline and along the coast be maximized and provided in all new developments. Although the proposed development will not obstruct use of the existing public access easement along its southern boundary, the development will certainly inhibit lateral access along the ocean shoreline or lagoon either indirectly by proximity or directly through private attempts to restrict public beach access. Therefore, in order to be consistent with the certified LCP, to maintain public beach access, recognize and protect the informal use of the site, special conditions have been attached to require the provision of lateral accessways along the shoreline and lagoon lowlands. Further, to enhance opportunities for public access and recreation, it is recommended that, along with the provision of lateral access, an access trail or other necessary public access improvements be developed on the southerly side of Buena Vista Lagoon, consistent with resource protection policies and in consultation with the State Department of Fish and Game. Therefore, as conditioned, the Commission finds the proposed development consistent with applicable LCP and Coastal Act policies since adequate vertical access already exists and the project will provide lateral access opportunities. Further, as specifically required by Section 30604(c) of the Act, the Commission finds the proposed development conforms with all the public access and recreation policies of the Act.

8. Housing. The proposed development provides for the construction of fourteen condominiums on a vacant parcel. Under previous Coastal Act policies and the adopted Statewide Interpretive Guidelines, the question of affordable housing protection could have been raised. However, recent legislation has transferred this responsibility to local governments consistent with Section 65590 of the revised Government Code. Further, pursuant to Section 30519.1 of the Act, these regulatory revisions were also applied to the certified Carlsbad local coastal program and any previously approved affordable housing LCP policies deleted. Therefore, the housing issue is no longer a matter of coastal policy review.

9. Archaeological Resources. As a result of some preliminary research and site inspections by qualified archaeologists, one archaeological site was located. This site, SDi-626, was originally recorded by William J. Wallace in 1958, and is located in the upper area of the project at the western and southern extent of the property. Surface materials included flake stone artifacts, bone and shell, and there is a potential for a depth in excess of 50 centimeters. The surface area of the subject parcel is obscured in places by a thick mat of grass, and the ground visibility in the area of the site was limited. Because of this, the actual extent of the site and the degree to which it has been impacted cannot be determined without some limited subsurface testing and clearing of the grasses. It is impossible that the significant portion of the site has been removed, and that only limited, disturbed materials remain. Delineation of this disturbance, however, requires additional investigation. Special Condition 9 requires that, in order to appropriately study and determine the significance of the site, all the adopted mitigation measures of the E.I.R. be met. With its provisions to complete a limited subsurface sample and any further information retrieval, the Commission finds the site's archaeological resources will be appropriately protected against adverse impacts.

10. Local Coastal Planning. Section 30604(a) of the Act provides that a

coastal development permit shall be issued only if the permitted development will not prejudice the ability of the appropriate local government to prepare a certifiable local coastal program (LCP). However, special legislation (AB 1971) was passed which authorized the Commission to prepare the local coastal program for the City of Carlsbad. In its certification of the Carlsbad LCP, the Commission adopted a site-specific land use policy for the subject parcel. Policy 3-2 states as follows:

"Developments located along the first row of lows bordering Buena Vista Lagoon, including the parcel at the mouth of the Lagoon, shall be designated for residential development at a density of up to 4 dwelling units per acre....

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval....[and]

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes...."

As described in Policy 3-1, a density credit of up to one dwelling unit to be built on developable land may be permitted for each acre of land in slopes of 25% or greater.

In conjunction with the above land use designation, the certified LCP also contains policies to promote a single planned unit development on the project site's upland portion and consolidating its lowlands with the adjoining Tenaglia property for open space and buffer area. The Commission recognized these policies previously and approved two alternatives dependent on the lot consolidation. With inclusion of the adjoining property, the applicant was permitted 14 units; however, absent its incorporation, the applicant was only permitted ten units. However, since the Commission did previously grant the applicant an option to develop the site without inclusion of the adjoining parcel and recognizing the potential difficulties and uncertainties in resolving the competing financial interests herein, the only conflict is the appropriateness and conformity of permitting 14 units, rather than the ten, on the upland area without the lot consolidation. Given that portions of the subject property are areas of original jurisdiction, the key factor is the submitted project's consistency with Chapter 3 policies, even under a certified local coastal program. Therefore, although project approval may be technically inconsistent with the certified LCP, it may be found consistent with all applicable Chapter 3 policies. As conditioned and submitted, without inclusion of the adjoining property, the project will establish open space easements to protect the site's bluffs and natural areas, control runoff to mitigate any potential sedimentation of the

adjacent lagoon, provide adequate landscaping and design revisions to enhance and preserve the scenic amenities of the area, provide adequate parking and formalize public access opportunities. Therefore, the Commission finds project approval, as conditioned should not seriously prejudice the implementation of the Carlsbad LCP.

With the exclusion of the "Tenaglia Property" from the proposed development, the Commission is presented with the possibility for some development proposal to be submitted on the environmentally sensitive "Tenaglia Property" for review at a later date. While the Commission will not and cannot evaluate the permissability of any use on the "Tenaglia" site, not presently within wetlands, the Commission does want to provide direction to future applicants about its position on the property in question. Although a density credit of 1 dua for each net developable acre under the certified LCP was previously assigned to the "Tenaglia site" when it was proposed for transfer to the blufftop as a density bonus for the lot consolidation and implementation of the certified LCP, the actual project impacts of any physical development on the site are much more critical. Therefore, only very low intensity uses, such as possibly a single-family residence, educational-science research activities or nature study, are appropriate for the uniquely-situated and constrained property. Given its physical delineations, a single residence could even represent inappropriate overdevelopment. Further, any proposal must address and adequately mitigate the identified issues herein and merit independent approval based on site-specific Commission review.

Application No. 6-83-51

STANDARD CONDITIONS:

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

#6-83-51

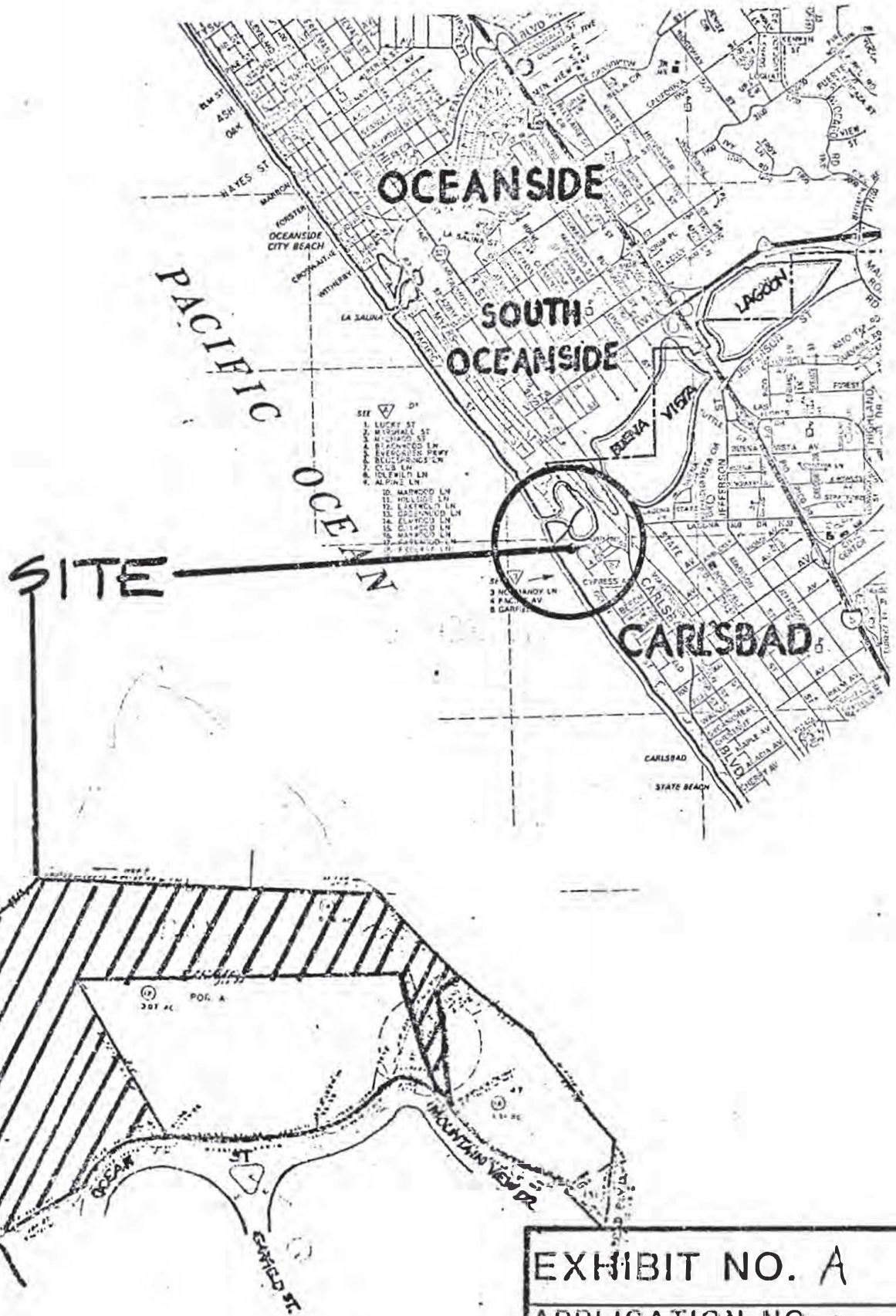

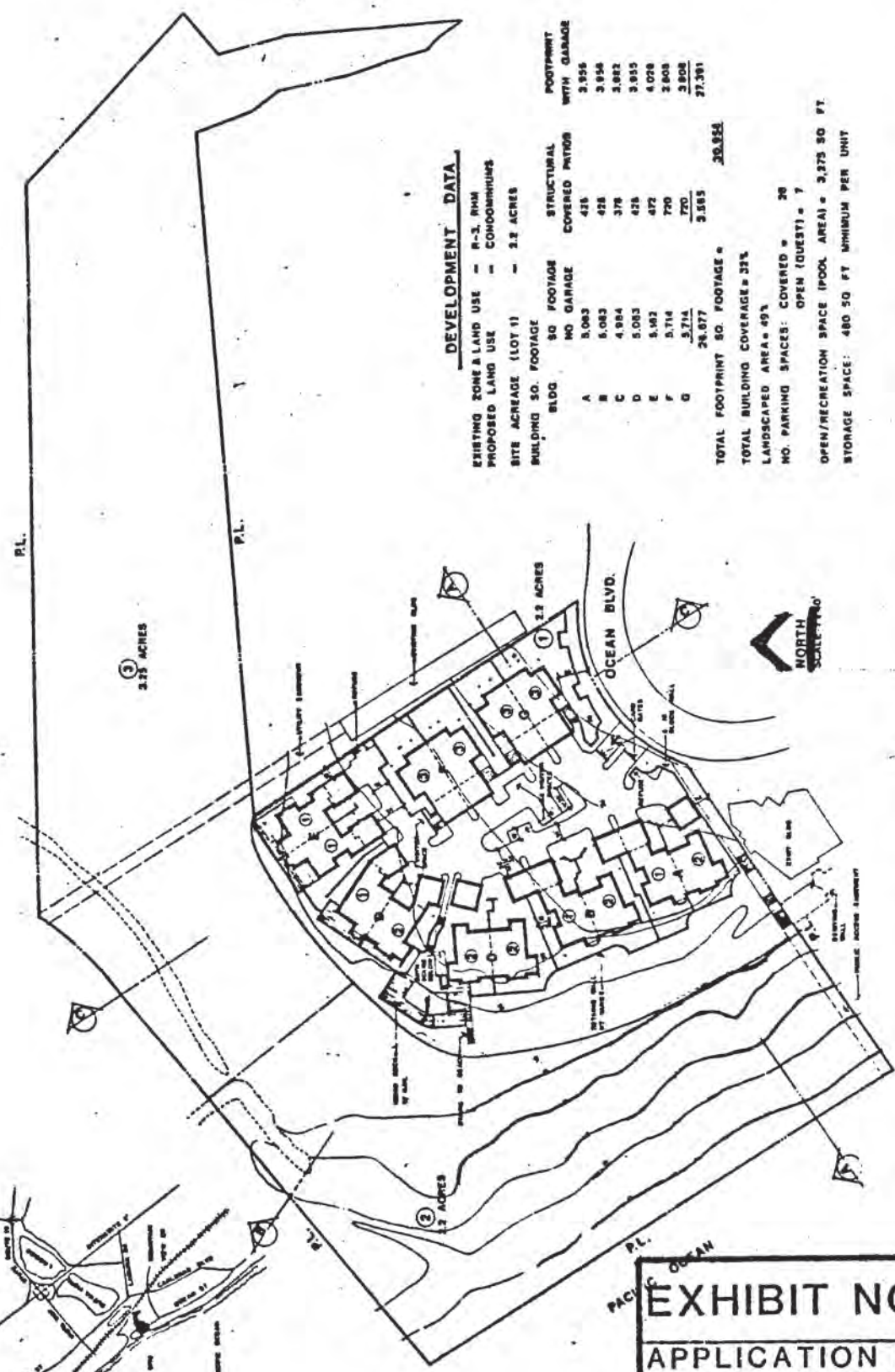
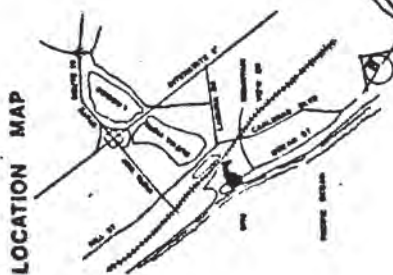


EXHIBIT NO. A
APPLICATION NO. 6-81-249/6-83-51
Site location
 California Coastal Commission

6-81-249/683-51



DEVELOPMENT DATA

EXISTING ZONE & LAND USE	-	R-3, RHM
PROPOSED LAND USE	-	CONDOMINIUMS
SITE AREA (LOT 1)	-	2.2 ACRES
BUILDING SQ. FOOTAGE		
BLDG	SQ. FOOTAGE NO GARAGE	STRUCTURAL COVERED PATIO
A	5,083	425
B	5,083	425
C	4,984	378
D	5,083	425
E	5,083	425
F	5,714	770
G	5,714	770
	24,877	3,585
		27,391

TOTAL FOOTPRINT SO. FOOTAGE = 30,956
TOTAL BUILDING COVERAGE = 33%
LANDSCAPED AREA = 49%
NO. PARKING SPACES: COVERED = 30
OPEN (QUEST) = 7
OPEN/RECREATION SPACE (POOL AREA) = 3,275 SQ. FT.
STORAGE SPACE: 480 SQ. FT. MINIMUM PER UNIT

POINTE SAN MALO
NATIVE SUN INVESTMENT GROUP

SITE PLAN

EXHIBIT NO. B

APPLICATION NO.
6-81-249/683-51

Site plan

California Coastal Commission

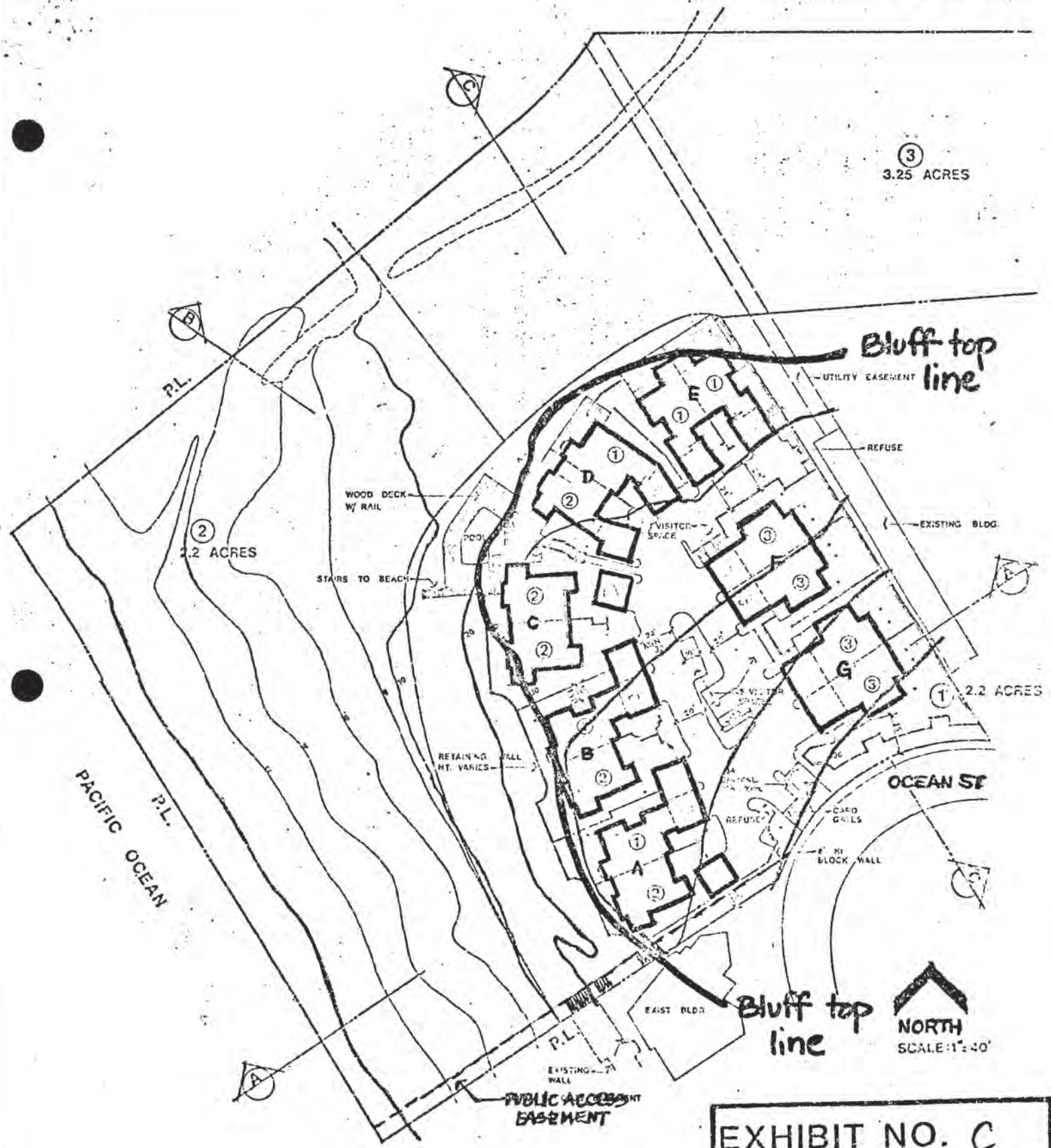



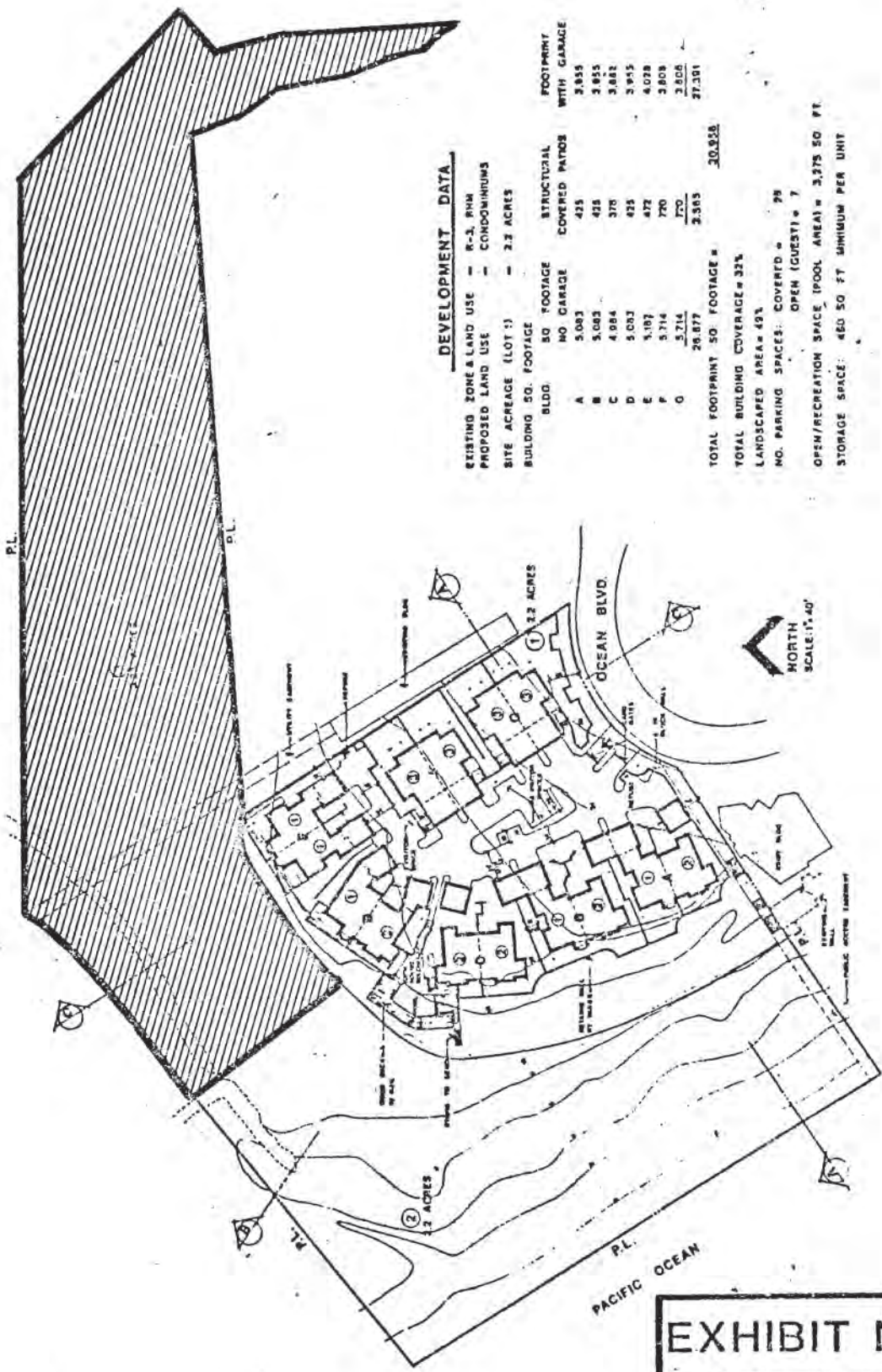
EXHIBIT NO. C
APPLICATION NO. 6-81-249/083-51
<i>Bluff top line</i>
 California Coastal Commission

Exhibit 12

#6-83-51



DEVELOPMENT DATA

EXISTING ZONE & LAND USE - R-3, RHM
PROPOSED LAND USE - CONDOMINIUMS

SITE AREA (LOT 1) - 2.3 ACRES

BUILDING SQ. FOOTAGE

BLDG.	NO. GARAGE	STRUCTURAL COVERED PATIOS	FOOTPRINT WITH GARAGE
A	5,083	425	3,955
B	5,083	425	3,955
C	4,984	370	3,682
D	5,083	425	3,955
E	5,192	472	4,028
F	5,714	770	3,808
G	5,714	770	3,808
	26,877	2,565	27,301
			30,828

TOTAL FOOTPRINT SQ. FOOTAGE = 30,828

TOTAL BUILDING COVERAGE = 32%

LANDSCAPED AREA = 49%

NO. PARKING SPACES: COVERED = 75

OPEN (GUEST) = 7

OPEN/RECREATION SPACE (POOL AREA) = 3,375 SQ. FT.

STORAGE SPACE: 460 SQ. FT. MINIMUM PER UNIT

EXHIBIT NO. E

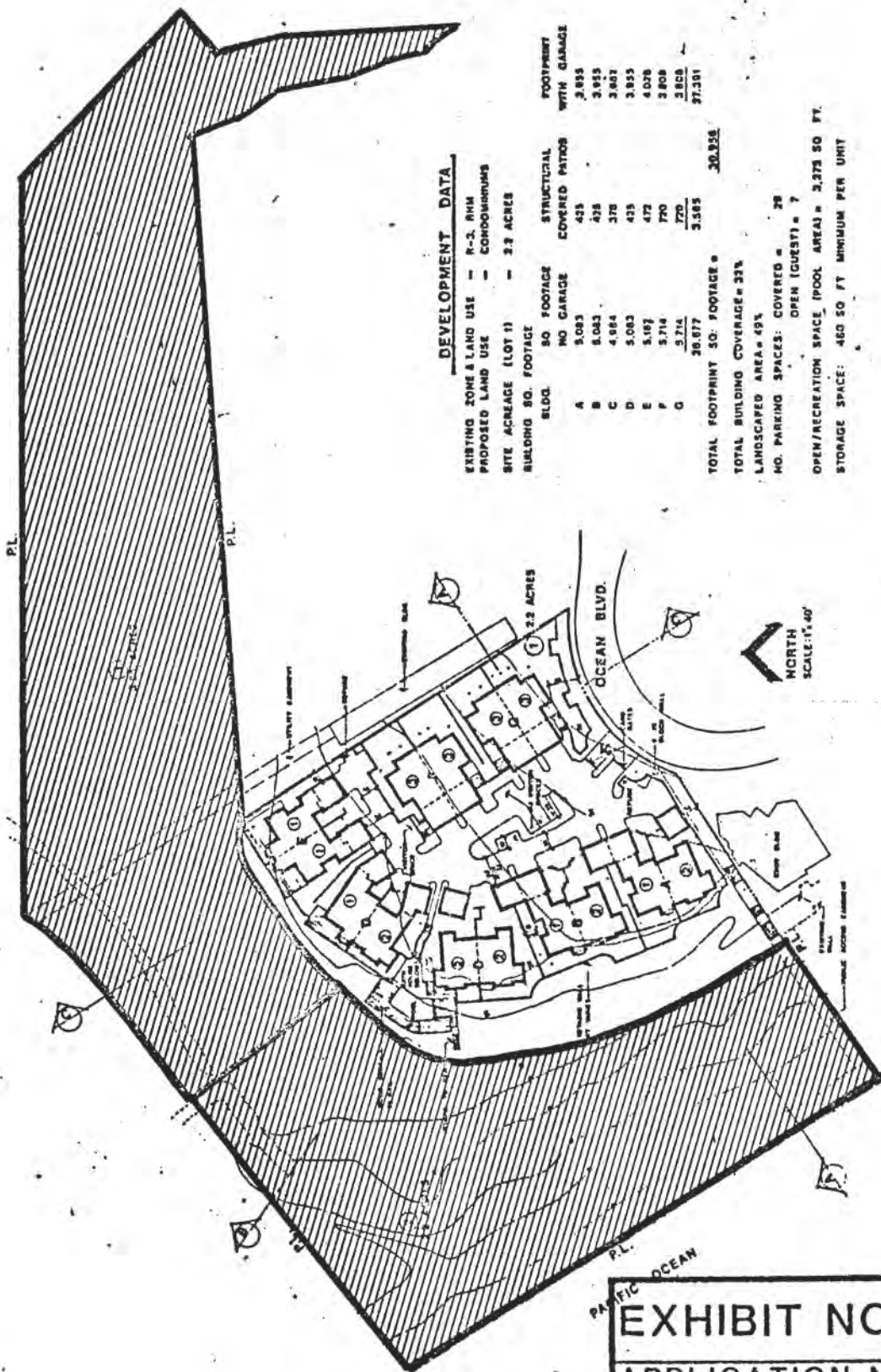
APPLICATION NO.

6-81-249/6-83-51

Open space easement,
lateral access - Lot 3

California Coastal Commission

6-83-51



DEVELOPMENT DATA

EXISTING ZONE & LAND USE - R-2, RM
PROPOSED LAND USE - CONDOMINIUMS

SITE AREA (LOT 1) - 2.2 ACRES

BUILDING SQ. FOOTAGE

BLDG.	NO. GARAGE	STRUCTURAL COVERED PATIO	FOOTPRINT WITH GARAGE
A	5,083	425	2,855
B	8,043	425	3,925
C	4,664	375	2,807
D	5,083	425	3,925
E	5,192	472	4,028
F	5,714	770	3,808
G	5,714	770	3,808
	30,677	3,585	27,391

TOTAL FOOTPRINT SQ. FOOTAGE = 30,938

TOTAL BUILDING COVERAGE = 33%

LANDSCAPED AREA = 49%

NO. PARKING SPACES: COVERED = 28

OPEN (GUEST) = 7

OPEN/RECREATION SPACE (POOL AREA) = 2,375 SQ. FT.

STORAGE SPACE: 460 SQ. FT. MINIMUM PER UNIT

EXHIBIT NO. F

APPLICATION NO.

6-81-249/6-83-51

Lateral access dedication,
Lots 2 and 3



California Coastal Commission

683-51

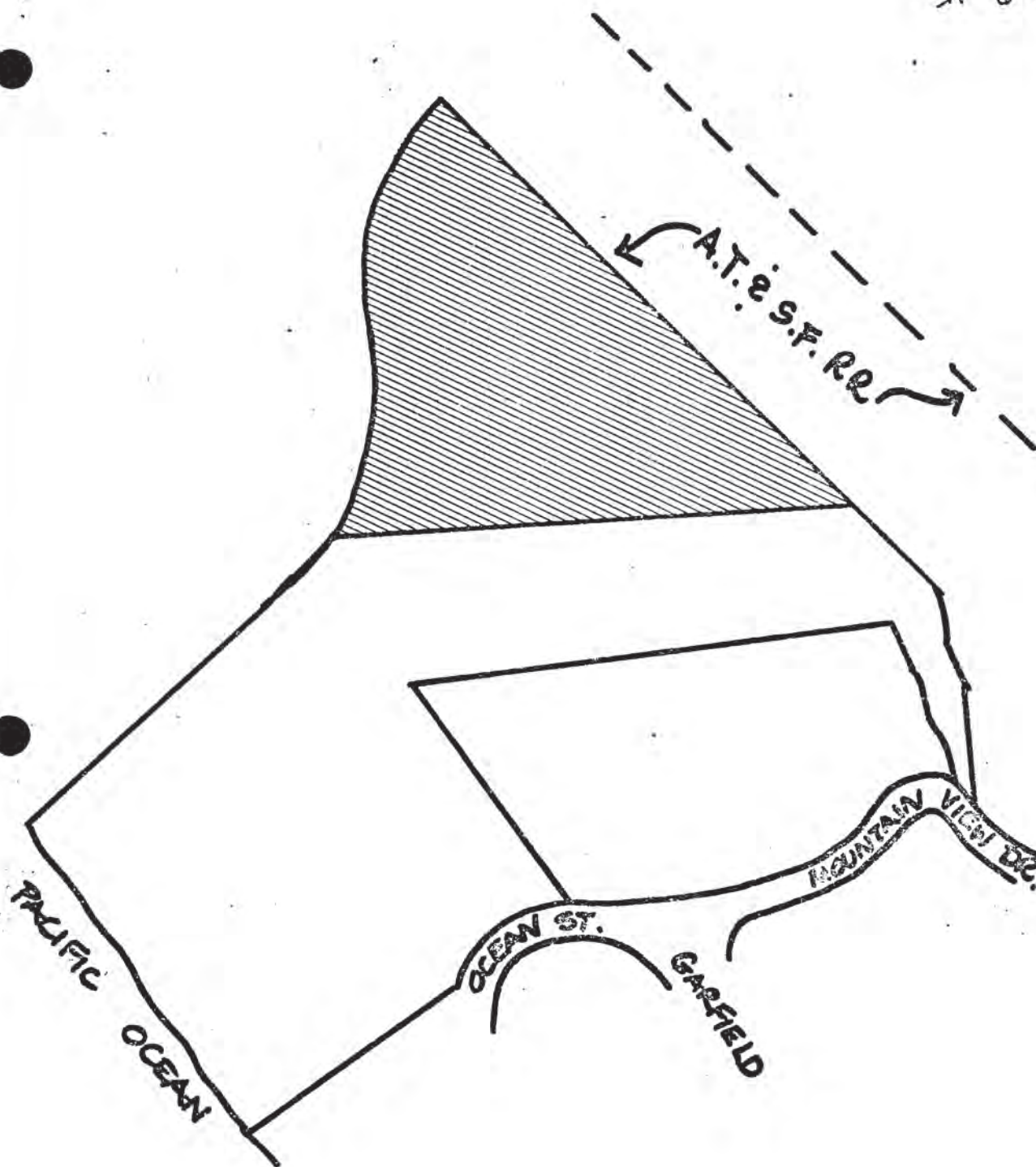



EXHIBIT NO. <i>G. 11/11/17</i>
APPLICATION NO. <i>6-81-249/683-51</i>
<i>Open space easement,</i> <i>APN 155-190-06</i> <i>lateral access APN 155-191-062</i>
 California Coastal Commission

Memorandum

Commissioners

Date : March 21, 1983

File No.: 6-83-51/Native Sun

From : Staff

Subject: Additional Special Condition and amended Findings

Staff recommends the Commission ADOPT the following Special Condition No. 10 and amend the findings, as follows, to coordinate permit approval with the implied dedication claims of the State Lands Commission. These recommended revisions should be incorporated with the March 11th staff report.

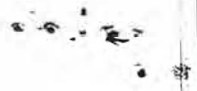
Special Condition No. 10:10. Coordination of Permit Approval With Implied Dedication Claims of State Lands Commission.

Prior to commencing any grading, construction, or physical disturbance of any kind of the bluff top portion of the Native Sun property (Lot 1), applicant shall provide the Executive Director with written documentation that the litigation concerning implied dedication rights in favor of the public over the subject property, Native Sun Investment Group v. State of California, et al., San Diego Superior Court No. N18495, has been resolved by one of the following means:

1. A final judgment has been entered on the subject of the public's implied dedication rights and the appellate review process has been exhausted;
2. The case has been dismissed;
3. The implied dedication issue has been settled between the parties out of court.

Findings and Declarations for Special Condition No. 10.

Special Condition No. 10 has been required in recognition of the authority of the State Lands Commission to assert implied dedication rights in favor of the public over property historically used by the public. The State Lands Commission has asserted such rights over the entire bluff top portion of the Native Sun property (Lot 1), in the pending case entitled Native Sun Investment Group v. State of California, et al., San Diego Superior Court No. N18495 (currently consolidated with Case No. N18496). To allow the construction of buildings on the bluff top prior to the time a final determination is reached in the State Lands Commission litigation over public rights on the bluff top could result in an interference with public rights. In order not to interfere with the pending claim of the Lands Commission, Special Condition 10 is necessary to preserve the current undeveloped condition of the bluff top until the implied dedication litigation is resolved, either in or out of court.





January 2, 1985

California Coastal Commission
6154 Mission Gorge Road - Suite 220
San Diego, CA 92120

Attention: Deborah Lee

Reference: Coastal Permit #6-83-51

Dear Deborah,

Enclosed please find the copy of the above referenced permit with the signed acknowledgement executed by our office.

Do not hesitate to call if you have any questions.

Very truly yours,

Robert O. Sukup

Robert O. Sukup

ROS/bh
Enclosure

California Coastal Commission
San Diego District
6154 Mission Gorge Road, Suite 220
San Diego, California 92120
(714) 280-6992
ATSS 636-5868

COASTAL DEVELOPMENT PERMIT NO. 6-83-51

Page 1 of 5

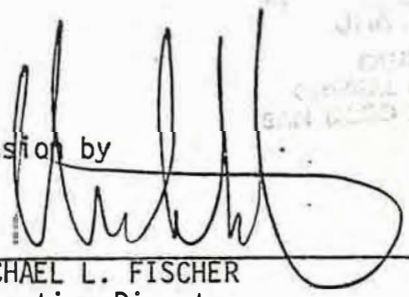
On March 23, 1983, The California Coastal Commission granted to
Native Sun Investment Group
this permit for the development described below, subject to the attached
Standard and Special conditions.

Description: Minor subdivision of 7.65 acre parcel into three lots: Lot 1 = 2.2 acres; Lot 2 = 2.2 acres and Lot 3 = 3.25 acres. Also, construction of 14 condominiums and swimming pool on Lot 1.

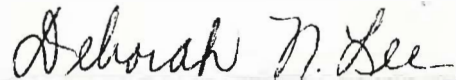
Lot area	95,832 sq.ft.
<u>Lot 1:</u>	
Building coverage	30,956 sq.ft.(32%)
Pavement coverage	32,967 sq.ft.(35%)
Landscape coverage	31,909 sq.ft.(33%)
Parking spaces	35
Zoning	R-3
Plan designation	0-4 dua (net w/density credit)
Project density	2.5 (net)
Ht abv fin grade	35 feet maximum

Site: Parcel located northwest of Ocean St./Mountain View Dr. inter-section, Carlsbad, San Diego County. APN 203-010-14

Issued on behalf of the California Coastal Commission by


MICHAEL L. FISCHER
Executive Director
and


**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS
AND UNTIL A COPY OF THE PERMIT WITH THE
SIGNED ACKNOWLEDGEMENT HAS BEEN RE-
TURNED TO THE COMMISSION OFFICE.**



ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

12/31/84
Date


Signature of Permittee

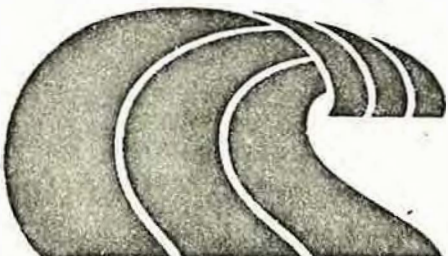


Exhibit 14

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

1. Revised Site Plan. Prior to transmittal of the permit, the applicant shall submit a revised site plan, any associated floor or grading plans which eliminate any alteration of the bluff face by re-siting the units generally behind the 30 ft. contour line on the northwesterly and westerly slopes (or as specifically shown on Exhibit C), relocating the proposed swimming pool and decks back of the blufftop development line and relocating the proposed private beach stairway towards Buildings D and E in the vicinity of the eroded dirt road. Said plans shall be submitted to, reviewed and accepted in writing by the Executive Director.

2. Open Space Easement/Bluff Face. Prior to the transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over the bluff face as shown in Exhibit D. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

SPECIAL CONDITIONS - continued:

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and the easement area.

3. Waiver of Public Liability. Prior to transmittal of the coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be submitted to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

4. Runoff Control. Prior to the transmittal of the permit, the applicant shall submit a runoff control plan prepared by a licensed engineer qualified in hydrology and hydraulics which would assure that there will be no increase in peak runoff rate from the developed site over the greatest discharge expected from the existing undeveloped site as a result of a 10-year frequency storm. Runoff control shall be accomplished by a variety of measures, including, but not limited to, on-site catchment basins, detention basins, siltation traps, and energy dissipators, and shall not be concentrated in one area. Sub-drainage systems, if necessary, to remove groundwater from the bluffs shall also be incorporated. Said plans including supporting calculations shall be submitted to, reviewed and accepted in writing by the Executive Director. The applicant shall also submit, for his review and acceptance in writing, detailed maintenance arrangements for providing the ongoing repair and maintenance for all approved and erosion-control facilities.

5. Grading Restrictions.

a) Grading activity shall be prohibited during the rainy season from October 1st to April 1st of each year.

b) All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.

SPECIAL CONDITIONS - continued:

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

d) Sandbags, gravelbags and temporary drainage basins shall be installed along all fill slopes and along the shoreline of Buena Vista Lagoon during grading and construction operations.

6. Open Space Easements/Habitat Protection and Buffer Areas. Prior to transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, an open space easement over Lot 3 of the proposed subdivision as shown on Exhibit E. Said open space easement shall prohibit any alteration of landforms, the placement or removal of vegetation except as specified herein. The irrevocable offer to dedicate an open space easement shall include conditions prohibiting any future land divisions, commercial or residential development but expressly recognizing the right of access to the weir for maintenance purposes. It shall also recognize the right of the accepting agency to conduct activities within the open space area which would enhance the lagoon habitat by dredging or otherwise removing fill. The offer shall recognize that the erection of some public access improvements may be allowed, in consultation with the State Department of Fish and Game, and subject to Coastal Commission permit requirements.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors in assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and easement areas.

7. Landscaping. Prior to transmittal of a coastal development permit for the subject project, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. Drought tolerant and salt-tolerant plant materials shall be utilized to the maximum extent feasible.

8. Lateral Access. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. Such easement shall be located over and throughout Lot 2 and Lot 3 of the proposed subdivision, as shown

SPECIAL CONDITIONS - continued:

on Exhibit F. Such easement shall be recorded free of prior liens except tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall include legal descriptions of both the applicant's entire parcel and the easement area.

9. Archaeological Resources. The applicant shall comply with the adopted mitigation measures on cultural resources in the certified E.I.R. for the project.

10. Coordination of Permit Approval With Implied Dedication Claims of State Lands Commission. Prior to commencing any grading, construction, or physical disturbance of any kind of the bluff top portion of the Native Sun property (Lot 1), applicant shall provide the Executive Director with written documentation that the litigation concerning implied dedication rights in favor of the public over the subject property, Native Sun Investment Group v. State of California, et al., San Diego Superior Court No. N18495, has been resolved by one of the following means:

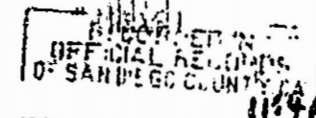
1. A final judgment has been entered on the subject of the public's implied dedication rights and the appellate review process has been exhausted;
2. The case has been dismissed;
3. The implied dedication issue has been settled between the parties out of court.

Order No.
Escrow No.
Loan No.

882666-6

2119

84-294255



RF	5
MG	
UF	
TXPD	

WHEN RECORDED MAIL TO:

Native Sun-Carew
110 Escondido Avenue, Suite 103
Vista, CA 92083

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX \$ NONE - EASEMENT

..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale

Signature of Declarant or Agent determining tax - Firm Name

203-010-13,14

EASEMENT GRANT DEED

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

Native Sun-Carew, a California General Partnership

hereby GRANT(S) to

Native Sun Investment Group, a California Limited Partnership

the real property in the City of Carlsbad
County of San Diego

, State of California, described as

An easement for egress, ingress, street improvements, drainage, and utilities over, under, along, and across those portions of Map No. 11007 as filed in the Office of the County Recorder of San Diego County, State of California, and more fully described in the attached Exhibit "A".

NATIVE SUN-CAREW,
a California General Partnership

BY: Carew Properties, Inc.,
a Minnesota Corporation,
a General Partner

Dated 7/26/84

STATE OF CALIFORNIA
COUNTY OF _____

On _____
before me, the undersigned, a Notary Public in and for said State, personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature _____

BY: [Signature]
Vice President

BY: Native Sun Development, Company
a California Corporation,
a General Partner

BY: [Signature]
President

Exhibit 15

(This area for official notarial seal)

1002 (8/32)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYNE, RECORDER

3005 (6/82) - (Corporation as Partner of Partnership)
First American Title Company

STATE OF CALIFORNIA
COUNTY OF San Diego ss. 2120
On July 26, 1984, before me, the undersigned, a Notary Public in and for
said State, personally appeared Joseph Garcia ~~XXXX~~
_____, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the persons who executed the within instrument as
Vice President ~~XXXXXXXXXXXXXXXXXXXX~~
Carew Properties, Inc. Secretary, on behalf of
the corporation therein named, and acknowledged to me that said
corporation executed the within instrument pursuant to its by-
laws or a resolution of its board of directors, said corporation being
known to me to be one of the partners of _____
Native Sun-Carew
the partnership that executed the within instrument, and ack-
nowledged to me that such corporation executed the same as
such partner and that such partnership executed the same.
WITNESS my hand and official seal
Signature Janice J. Paddock (This area for official notarial seal)

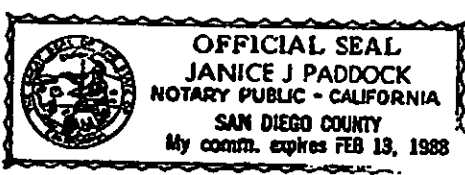


EXHIBIT A

Beginning at the most southeasterly corner of Lot 3 per Map No. 11007, as filed in the Office of the County Recorder of San Diego County, State of California, said point being on a curve, concave Easterly, having a radius of 268.03 feet, a radial line through said point bears South 56°28'57" West; thence North 02°51'21" West, 139.99 feet; thence North 13°46'17" West, 59.75 feet, said point being on a curve, concave Southeasterly, having a radius of 207.16 feet, a radial line through said point bears North 44°24'05" West; thence Northeasterly along the arc of last said curve, through a central angle of 2°44'05", a distance of 9.89 feet to a point, a radial line through said point bears North 41°40'00" West; thence North 42°30'00" West, 212.46 feet to the Northerly line of Lot 3 per Map No. 11007; thence North 89°24'02" West, 54.78 feet; thence South 42°30'00" East, 192.11 feet to the easterly terminus of a line per Lot 3 of Map No. which bears North 86°45'06" East, 560.04 feet; thence South 18°13'44" East, 50.00 feet; thence South 37°18'24" East, 27.55 feet; thence South 9°15'08" East, 57.71 feet; thence South 18°13'44" East, 31.96 feet; thence South 11°02'22" East, 35.99 feet to a point on the arc of a curve, a radial line through said point bears North 34°33'16" East; thence Southeasterly along a curve concave Southwesterly having a radius of 65.00 feet, through a central angle of 24°03'57", a distance of 27.30 feet to a point of compound curve, a radial line through said point bears North 58°37'13" East; thence Southeasterly along a curve concave Southwesterly having a radius of 268.03 feet, through a central angle of 2°08'16", a distance of 10.00 feet to the POINT OF BEGINNING.

STATE OF CALIFORNIA
COUNTY OF San Diego

On July 26, 1984

before me, the undersigned, a Notary Public in and for said State, personally appeared Michael R. Mahoney

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as

President ~~and~~ Native Sun Development Company on behalf of Native Sun

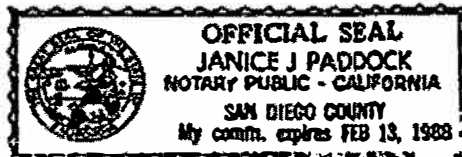
the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being

known to me to be one of the partners of Native Sun-Carew

the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal

Signature Janice J. Paddock



(This area for official notarial seal)

3005 (6/82) - (Corporation as Partner of Partnership)
First American Title Company

When Recorded, Mail To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

81-309895

420

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA

1984 AUG 15 AM 8:00

VERA L. LYLE
COUNTY RECORDER

882666-6

IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT

AND

NO FEE

DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND
DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this 7th day
of August, 19 84, by Native Sun-Carew, a General Partnership
(hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real
properties located in the County of San Diego, State of
California, and described in the attached Exhibit A (hereinafter referred to as
the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as
defined in Section 30103 of the California Public Resources Code (which code is
hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to
as the "Act") creates the California Coastal Commission (hereinafter referred to
as the "Commission") and requires that any development approved by the
Commission must be consistent with the policies of the Act set forth in Chapter
3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the Act within the Coastal
zone of San Diego County (hereinafter the "Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 6-83-51)
was granted on March 23, 19 83, by the Commission in

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1 accordance with the provision of the Staff Recommendation and Findings,
2 Exhibit B, attached hereto and hereby incorporated by reference, subject to
3 the following condition:

4
5 Lateral Access. Prior to transmittal of the permit, the Executive
6 Director shall certify in writing that the following condition has
7 been satisfied. The applicant shall execute and record a document,
8 in a form and content approved by the Executive Director of the
9 Commission irrevocably offering to dedicate to a public agency or
10 private association approved by the Executive Director, an ease-
11 ment for public access and passive recreational use along the
12 shoreline. The document shall also restrict the applicant from
13 interfering with present use by the public of the areas subject
14 to the easement prior to acceptance of the offer. Such easement
15 shall be located over and throughout Lot 2 and Lot 3 of the pro-
16 posed subdivision, as shown on Exhibit F. Such easement shall be
17 recorded free of prior liens except tax liens and free of prior
18 encumbrances which the Executive Director determines may affect
19 the interest being conveyed. The offer shall run with the land
20 in favor of the People of the State of California, binding suc-
21 cessors and assigns of the applicant or landowner. The offer of
22 dedication shall be irrevocable for a period of 21 years, such
23 period running from the date of recording. The document shall in-
24 clude legal descriptions of both the applicant's entire parcel and
25 the easement area.

26
27 VI. WHEREAS, the subject property is a parcel located between the first
public road and the shoreline; and

VII. WHEREAS, under the policies of Sections 30210 through 30212 of the
California Coastal Act of 1976, public access to the shoreline and along
the coast is to be maximized, and in all new development projects located
between the first public road and the shoreline shall be provided; and

VIII. WHEREAS, the Commission found that but for the imposition of the
above condition, the proposed development could not be found consistent with
the public access policies of Section 30210 through 30212 of the California
Coastal Act of 1976 and that therefore in the absence of such a condition, a
permit could not have been granted;

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

IX. WHEREAS, it is intended that this Offer is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII, Section 8 of the California Constitution and that said Offer, when accepted, shall thereby qualify as an enforceable restriction under the provision of the California Revenue and Taxation Code, Section 402.1;

NOW THEREFORE, in consideration of the granting of Permit No. 6-83-5 to the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California or the Commission's designee an easement in perpetuity for the purposes of public access and passive recreational use along the shoreline

located on the subject property adjacent to the Pacific Ocean and outlet weir of the Buena Vista Lagoon in Carlsbad, over and throughout Lots 2 and 3 of the proposed subdivision and as specifically set forth by attached Exhibit C hereby incorporated by reference.

1. BENEFIT AND BURDEN. This Offer shall run with and burden the Property and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

2. DECLARATION OF RESTRICTIONS. The Grantor is restricted from interfering with the use by the public of the area subject to the offered easement for public access. This restriction shall be effective from the time of recordation of this Offer and Declaration of Restrictions.

//

//

1 3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the
2 opening of the accessway, the Grantee, in consultation with the Grantor, may
3 record additional reasonable terms, conditions, and limitations on the use of
4 the subject property in order to assure that this Offer for public access is
5 effectuated.

6 4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions
7 is held to be invalid or for any reason becomes unenforceable, no other
8 provision shall be thereby affected or impaired.

9 5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
10 exceptions, obligations, and reservations contained in this Offer shall be
11 binding upon and inure to the benefit of the successors and assigns of both the
12 Grantor and the Grantee, whether voluntary or involuntary.

13 6. TERM. This irrevocable offer of dedication shall be binding for a
14 period of 21 years. Upon recordation of an acceptance of this Offer by the
15 Grantee, this Offer and terms, conditions, and restrictions shall have the
16 effect of a grant of access easement in gross and perpetuity that shall run
17 with the land and be binding on the parties, heirs, assigns, and successors.
18 The People of the State of California shall accept this offer through the local
19 government in whose jurisdiction the subject property lies, or through a public
20 agency or a private association acceptable to the Executive Director of the
21 Commission or its successor in interest.

22 //

23 //

24 //

25 //

26 //

27 //

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, 21

Acceptance of the Offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate.

Executed on this 16th day of AUGUST, 1984, at VISTA

_____, California.

NATIVE SUN-CAREW, A CALIF. GENERAL PARTNERSHIP
BY: CAREW PROPERTIES, INC., A MINNESOTA CORPORATION, 10 GENERAL PARTNER

Dated: 8-6-84

Signed _____

Owner

Type or Print

BY: NATIVE SUN DEVELOPMENT COMPANY,
A CALIFORNIA CORPORATION,
Signed _____

Type or Print

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

State of California,)

)SS

County of _____)

On this _____ day of _____, in the year _____, before me _____, a Notary Public, personally appeared

// personally known to me

// proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/she/they executed it.

NOTARY PUBLIC IN AND FOR SAID COUNTY AND

STATE

-5-

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

STATE OF CALIFORNIA
COUNTY OF San Diego

On August 6, 1984 before me, the undersigned, a Notary Public in and for
said State, personally appeared Joseph Garcia

personally known to me (or proved to me on the basis

of satisfactory evidence) to be the persons who executed the within instrument as

Vice President of ~~XXXXXXXXXXXXXXX~~, on behalf of
Carew Properties, Inc.

the corporation therein named, and acknowledged to me that said
corporation executed the within instrument pursuant to its by-
laws or a resolution of its board of directors, said corporation being

known to me to be one of the partners of

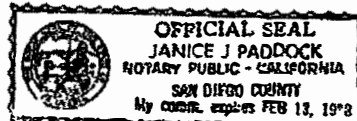
Native Sun-Carew

the partnership that executed the within instrument, and ack-
nowledged to me that such corporation executed the same as
such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature Janice J. Paddock

(This area for official notarial seal)



STATE OF CALIFORNIA
COUNTY OF San Diego

On August 6, 1984 before me, the undersigned, a Notary Public in and for
said State, personally appeared Michael R. Mahoney

personally known to me (or proved to me on the basis

of satisfactory evidence) to be the persons who executed the within instrument as

President of ~~XXXXXXXXXXXXXXX~~, on behalf of Native Sun
Development Company

the corporation therein named, and acknowledged to me that said
corporation executed the within instrument pursuant to its by-
laws or a resolution of its board of directors, said corporation being
known to me to be one of the partners of

Native Sun-Carew

the partnership that executed the within instrument, and ack-
nowledged to me that such corporation executed the same as
such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature Janice J. Paddock

(This area for official notarial seal)



3005 (6/82) - (Corporation as Partner of Partnership)
First American Title Company

3005 (6/82) - (Corporation as Partner of Partnership)
First American Title Company

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

This is to certify that the Offer to Dedicate set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit

No. 83-51 on March 23, 1983 and the California Coastal Commission consents to recrdation thereof by its duly authorized officer.

Dated: June 15, 1984

Cynthia K Long
CYNTHIA K LONG STAFF COUNSEL
California Coastal Commission

STATE OF California

COUNTY OF San Francisco

On 12 June 1984, before me Deborah S Benrubi, a Notary Public, personally appeared Cynthia K Long, personally known to me to be the person who executed this instrument as the Staff Counsel
TITLE

and authorized representative of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.



Deborah S Benrubi
Notary Public in and for said County and State

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

EXHIBIT "A"

427

That portion of Lot "A" of GRANVILLE PARK UNIT NO. 2, according to Map thereof No. 2037 and that portion of Lot 47 of GRANVILLE PARK and that portion of Laguna Drive adjacent thereto (vacated by Resolution No. 918 of the City Council of the City of Carlsbad, California recorded July 19, 1963 as File No. 126793 of Official Records of San Diego County, California) according to Map thereof No. 1782-all in the City of Carlsbad, County of San Diego, State of California and filed in the Office of the County Recorder of said County, more particularly described as follows:

Beginning at a point in the Easterly line of Mountain View Drive shown on said Map No. 1782, said point being on a curve, concave Easterly, having a radius of 268.03 feet, a radial line through said point bears South 58°37'13" West (Record South 58°14'45" West per said Map No. 1782); thence Southeasterly along the arc of said curve, through a central angle of 2°08'16", a distance of 10.00 feet; the last said course being along the Northeasterly line of said Mountain View Drive and along the Southwesterly line of said Lot 47; thence leaving said Northeasterly line of Mountain View Drive, North 02°51'21" West, 139.99 feet; thence North 13°46'17" West, 59.75 feet to a point in the Northwesterly line of said Laguna Drive (vacated) said Northwesterly line also being the Southeasterly line of said Lot "A", said point being on a curve, concave Southeasterly, having a radius of 207.16 feet, a radial line through said point bears North 44°24'05" West; thence Northeasterly along the arc of last said curve, and along the Northwesterly line of said Laguna Drive (vacated), through a central angle of 13°17'54", a distance of 48.68 feet to a point on the Southwesterly right-of-way line of the Atchison Topeka and Santa Fe Railroad (200 feet wide) as shown on said Maps No. 1782 and No. 2037, said point being on a curve, concave Northeasterly, having a radius of 1532.69 feet, a radial line through said point bears South 40°44'00" West (Record South 40°23'15" West per said Map No. 1782); thence Northwesterly along the arc of last said curve being the Southwesterly right-of-way line of said Atchison, Topeka and Santa Fe Railroad and the Northeasterly line of said Lot "A", through a central angle of 7°09'20", a distance of 191.42 feet (Record 191.51 feet per said Map No. 2037) to the Northeasterly corner of said Lot "A"; thence along the Northerly line of said Lot "A", South 89°24'02" West, a distance of 525.28 feet; thence leaving said Northerly line South 38°37'17" West 38.76 feet; thence South 44°49'33" West 27.81 feet; thence South 35°38'44" West 22.85 feet; thence South 53°06'07" West 25.14 feet; thence South 49°36'26" West 22.61 feet; thence South 55°18'26" West 32.21 feet; thence South 76°34'04" West 22.03 feet; thence South 71°52'50" East 26.38 feet; thence South 61°38'56" West 51.21 feet; thence North 38°19'16" West 25.24 feet; thence South 52°02'51" West 216.98 feet; thence South 33°23'58" East 23.93 feet; thence South 27°06'54" East 34.76 feet; thence South 35°28'44" East 46.62 feet; thence South 23°16'58" East 53.31 feet; thence South 43°20'55" East 23.34 feet; thence South 30°06'09" East 51.97 feet; thence South 35°21'24" East 50.22 feet; thence South 28°41'41" East 50.12 feet; thence South 11°02'17" East 31.58 feet; thence South 35°00'56" East 73.87 feet

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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to the Southwesterly extension of the Southeasterly line of said Lot "A"; thence North 57°53'08" East along said Southwesterly extension and along the Southeasterly line of said Lot "A", 239.50 feet to a point on the Northwesterly line of Ocean Street (formerly Laguna Drive per Map No. 2037) said point being on a curve, concave Southeasterly, having a radius of 127.29 feet, a radial line through said point bears North 72°15'24" West; thence continuing Northeasterly along the Southeasterly line of said Lot "A" (being also the Northwesterly line of said Ocean Street along the arc of last said curve, through a central angle of 63°09'00", a distance of 140.30 feet to the beginning of a compound curve, concave Southeasterly, having a radius of 190.00 feet; thence continuing Easterly along the Southeasterly line of said Lot "A" (being also the Northwesterly line of said Ocean Street) along the arc of last said curve, through a central angle of 10°44'11", a distance of 35.60 feet to the Southwest corner of land described in Deed to R. B. J. Enterprises recorded January 4, 1965 as File No. 124 of Official Records of San Diego County, California hereinafter referred to as Deed No. 1; thence North 31°52'30" West (record North 32°21'40" West per said Deed No. 1) along the Southwesterly line of said land to R. B. J. Enterprises, 315.00 feet to the Northwest corner thereof; thence North 86°45'06" East (record North 86°15'50" East per said Deed No. 1) along the Northerly line of said land to R. B. J. Enterprises, 560.04 feet to the Northeast corner thereof; thence South 18°13'44" East (record South 18°45'48" East per said Deed No. 1) along the Northeasterly line of said land to R. B. J. Enterprises, 50.00 feet; thence leaving the Northeasterly line of said land to R. B. J. Enterprises, South 37°18'24" East 27.55 feet; thence South 9°15'08" East 57.71 feet to a point on the Northeasterly line of said land to R. B. J. Enterprises, which bears along said Northeasterly line North 19°23'48" West (record North 18°45'48" West per said Deed No. 1) 31.96 feet from a point of compound curvature on the Easterly line of said Laguna Drive (vacated) as shown on said Map No. 1782 (said point also being an angle point in the Northeasterly line of said land to R. B. J. Enterprises) thence South 18°13'35" East (record South 18°45'48" East per said Deed No. 1) along the Northeasterly line of said land to R. B. J. Enterprises, 31.96 feet; thence leaving the Northeasterly line of said land to R. B. J. Enterprises, South 11°02'22" East, 35.99 feet to a point on the arc of a curve, concave Southwesterly, having a radius of 65.00 feet, which is distant Northwesterly 27.30 feet, measured along the arc of said curve from the TRUE POINT OF BEGINNING herein, a radial line through said point bears North 34°33'16" East; thence Southeasterly along the arc of last said curve, through a central angle of 24°03'57", a distance of 27.30 feet to the TRUE POINT OF BEGINNING.

af/bk

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER CL

California Coastal Commission
 SAN DIEGO COAST DISTRICT
 6154 Mission Gorge Road, Suite 220
 San Diego, CA 92120
 (714) 280-6992

FILED: January 31, 1983
 49th DAY: Waived
 180th DAY: July 30, 1983
 STAFF: DNL:lro
 STAFF REPORT: March 22-25, 1983
 DATE: March 11, 1983

REGULAR CALENDARSTAFF REPORT AND PRELIMINARY RECOMMENDATION**EXHIBIT B**

Application No.: 6-83-51

Applicant: Native Sun Investment Group

Agent: Mike Mahoney/Robert O. Sukup

Description: Minor subdivision of 7.65 acre parcel into three lots: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. Also, construction of 14 condominiums and swimming pool on Lot 1.

Lot area	95,832 sq.ft.
<u>Lot 1:</u>	
Building coverage	30,956 sq.ft. (32%)
Pavement coverage	32,967 sq.ft. (35%)
Landscape coverage	31,909 sq.ft. (33%)
Parking spaces	35
Zoning	R-3
Plan designation	0-4 dua (net w/density credit)
Project density	2.5 (net)
Ht abv fin grade	35 ft. maximum

Site: Parcel located northwest of Ocean St./Mountain View Dr. intersection, Carlsbad, San Diego County. APN 203-010-14

Substantive File Documents: °City of Carlsbad LCP
 °Statewide Interpretive Guidelines
 °CCC/#6-81-249-Native Sun

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval with conditions addressing revised site plans, public liability, open space easements over the bluff face, runoff and grading controls, open space easements over sensitive habitat/buffer areas, landscaping, lateral access and public access improvements and archaeological mitigation (see pages 2-4) for the special conditions. ~~Staff also~~ include the concentration of development on upland areas, development of the site consistent with the certified LCP, the retention of natural buffer areas and precedential effects on the LCP implementation.



OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

21

STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution.

I. Approval with Conditions.

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

II. Standard Conditions.

See page 16.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Site Plan. Prior to transmittal of the permit, the applicant shall submit a revised site plan, any associated floor or grading plans which eliminate any alteration of the bluff face by re-siting the units generally behind the 30 ft. contour line on the northwesterly and westerly slopes (or as specifically shown on Exhibit C), ~~relocating the proposed swimming pool and decks back of the blufftop development line~~ and relocating the proposed private beach stairway towards Buildings D and E in the vicinity of the eroded dirt road. Said plans shall be submitted to, reviewed and accepted in writing by the Executive Director.

2. Open Space Easement/Bluff Face. Prior to the transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, ~~an open space easement over the bluff face~~ as shown in Exhibit D. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and the easement area.

3. Waiver of Public Liability. Prior to transmittal of the coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be submitted to the review and

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approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

4. Runoff Control. Prior to the transmittal of the permit, the applicant shall submit a runoff control plan prepared by a licensed engineer qualified in hydrology and hydraulics which would assure that there will be no increase in peak runoff rate from the developed site over the greatest discharge expected from the existing undeveloped site as a result of a 10-year frequency storm. Runoff control shall be accomplished by a variety of measures, including, but not limited to, on-site catchment basins, detention basins, siltation traps, and energy dissipators, and shall not be concentrated in one area. Sub-drainage systems, if necessary, to remove groundwater from the bluffs shall also be incorporated. Said plans including supporting calculations shall be submitted to, reviewed and accepted in writing by the Executive Director. The applicant shall also submit, for his review and acceptance in writing, detailed maintenance arrangements for providing the ongoing repair and maintenance for all approved and erosion-control facilities.

5. Grading Restrictions.

a) Grading activity shall be prohibited during the rainy season from ~~January 1st to April 1st of each year.~~

b) All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.

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

d) Sandbags, gravelbags and temporary drainage basins shall be installed along all fill slopes and along the shoreline of Buena Vista Lagoon during grading and construction operations.

6. Open Space Easements/Habitat Protection and Buffer Areas. Prior to transmittal of a permit, the applicant shall record an irrevocable offer to ~~dedicate to a public agency, or to a private association acceptable to the~~ Executive Director, an open space easement over Lot 3 of the proposed subdivision as shown on Exhibit E. Said open space easement shall prohibit any alteration of landforms, the placement or removal of vegetation except as specified herein. The irrevocable offer to dedicate an open space easement shall include conditions prohibiting any future land divisions, commercial or residential development but expressly recognizing the right of access to the weir for maintenance purposes. It shall also recognize the right of the accepting agency to conduct activities within the open space area which would enhance the lagoon habitat by dredging or otherwise removing fill.

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The offer shall recognize that the erection of some public access improvements may be allowed, in consultation with the State Department of Fish and Game, and subject to Coastal Commission permit requirements.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors in assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and easement areas.

7. Landscaping. Prior to transmittal of a coastal development permit for the subject project, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. Drought tolerant and salt-tolerant plant materials shall be utilized to the maximum extent feasible.

8. Lateral Access. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. Such easement shall be located over and throughout Lot 2 and Lot 3 of the proposed subdivision, as shown on Exhibit F. Such easement shall be recorded free of prior liens except tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall include legal descriptions of both the applicant's entire parcel and the easement area.

9. Archaeological Resources. The applicant shall comply with the adopted mitigation measures on cultural resources in the certified E.I.R. for the project.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History. The applicant has previously applied for a coastal development permit (#6-81-249) for the same project on the site last year. In June 1982, the Commission conditionally approved the project with two alternatives for the construction of either 14 or 10 condominiums on the upland portion, dependent on the incorporation of an adjacent parcel (commonly referred to as the "Tenaglia" property) with the project site, consistent with the certified Carlsbad LCP. With the exception of the

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~~above revisions to consolidate the properties, the remaining conditions of the original permit with those proposed herein:~~

The previously approved conditions to require property consolidation resulted from the certified Carlsbad LCP policies and an ongoing ownership dispute and litigation between the applicant, Title Insurance and Trust Company and the State Lands Commission. As background, Native Sun originally took out title insurance on the adjoining Tenaglia site (APN's 155-190-06, 155-101-62/see Exhibit G) and intended to commit it to open space as a tradeoff for developing the lowlands area, comprised in the proposed Lot 3, in their first local government submittal. However, during the original proposal's review by the City of Carlsbad, the applicant stopped mortgage payments on the "Tenaglia parcel" after the State Lands Commission asserted public trust claims. After Native Sun stopped payments, Title Insurance stepped back in and purchased the Tenaglia property and it holds the actual grant deed while Native Sun possesses title. As a result of these circumstances, Native Sun is in litigation against both the title company and State Lands with Title Insurance representing them against the Lands Commission. Although the original coastal development permit application (#6-81-249) did not include the adjoining parcel, the proposed Lot 3 was shown as "reserved for future development."

While the applicant finally agreed to the open space easement over Lot 3, they contended that committing to an open space easement over the adjoining 2.65 parcel ("Tenaglia property") would damage their position with Title Insurance and Trust Company. Specifically, the applicant is litigating that it did not receive fee title to an unencumbered parcel of property and the property should not therefore have been insured. Once the applicant learned of the potential public rights over the property, they stopped payments and the original owner began foreclosure proceedings. However, as previously noted, Title Insurance stepped in, paid off the original seller and now holds the note and security on the parcel. Therefore,

~~although the applicant holds no title to the adjoining parcel and indicated a willingness to commit it to open space, they could not execute any easement or open space dedication of Title Insurance as a third party.~~

Under those circumstances, the applicant believes any agreement to commit the adjoining parcel to open space would damage their lawsuit, since Title Insurance and Trust Company could assert that its commitment is only part of the development price for the permitted condominiums, rather than any title defects on the property. Further, the applicant continues to contend that Title Insurance, as holder of the note and security, will only co-sign on the open space easement offer if the applicant settles their lawsuit, possibly losing a substantial investment. These lawsuits are still pending and the issues remain unresolved. Given the applicant's declarations of their limited ability to execute the necessary agreements because of the ongoing title disputes and their desire to gain approval for the original 14-unit project, they have waited the required six months under the Commission's administrative regulations and have submitted this

2. Detailed Project Description/Location. The applicant is requesting approval of a minor subdivision of a 7.65 acre parcel into three lots. The lots would be divided as follows: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. The applicant then proposes to construct 14 condominium

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units on Lot 1. The subject property is topographically distinguished by two areas. An upper bluff extends out from Ocean Street and fronts along the beach. The second area, approximately 10-15 ft. below the bluff, consists of sandy/rocky beach areas terminating at the wood weir on the mouth of Buena Vista lagoon and then extends eastward to some lowlands abutting the lagoon behind some adjoining apartments. Lot 1 generally comprises the upper bluff area and the proposed condominiums would be developed primarily on its level mesa. The applicant proposes to dedicate Lot 2, comprised mainly of beach area and the lagoon mouth, to the public for open space. ~~As originally submitted, the applicant proposed to reserve the remaining 3.35 acres of Lot 1 or lowlands for possible future development but has subsequently agreed to dedicate it for public and/or open space purposes.~~

The proposed 14 condominium units will be comprised in seven townhouses (or "common-wall") structures. Ten of the proposed units will have two bedrooms and living area between 2500-2600 sq.ft. The remaining four units will have three bedrooms and approximately 2,850 sq.ft. living area. All of the units have two-car garages and seven open guest parking spaces are provided on the site. There is a single access point for the project from Ocean Street. The proposed condominiums are mainly comprised in two living floor areas with some split-level entrances and garages. However, because of the Tudor architectural design, the structures' roof peaks will reach a maximum height of 35 feet above grade.

The submitted site plan delineates the construction of ten units along and over the bluff top (refer to sections) and the remaining four units are located along the southeastern property line. As submitted, a retaining wall of varying height will be constructed along the bluff face. There will be minimal grading performed on the property resulting in a balanced 4,000 cu. yds. of cut and fill. An average of two feet of cut and fill will be done and most of the fill will be deposited along the southeastern corner to elevate Buildings F and G. As submitted, the site plan incorporates a common pool/deck area situated within the ocean bluff face and private beach access stairs which traverse down the bluff to the shoreline.

For background purposes, the applicant had previously submitted a 40 unit condominium project on the subject site to the City of Carlsbad and for draft consultation with Coastal Commission staff. At that time, the project site included not only the subject 7.65 acre parcel, but an additional 2.65 acre property (see Exhibit G) located adjacent to the lowlands area of the proposed Lot 3. While the acreage is still owned by the applicant, it was not included in the current application. The originally proposed 40 units were sited on both the upper and lower portions of the property. Due to expressed concerns by the City of Carlsbad, Commission staff and interested parties relating to beach erosion, public lands determinations and visual impacts, among others, the applicant subsequently withdrew the project from the City. The original 40 unit project was never formally submitted to the Coastal Commission.

The Pointe San Malo project is located within the City of Carlsbad on the south side of Buena Vista lagoon and adjacent to the ocean (see Exhibit A). The parcel is located northwest of the Ocean Street/Mountain View Drive intersection. On the west, the site fronts on the ocean shoreline and on the north, it faces the lagoon, an "ecological reserve", opposite the

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existing San Malo residential area in South Oceanside lying on the north side of the lagoon. A public beach accessway abuts the southern property line. Multi-family residential development is located to the east with the lagoon and railroad tracks situated further to the northeast. There are single-family residences situated to the south and across Ocean Street to the southeast.

3. Geologic Stability. As previously stated, the subject site can generally be divided into two topographic areas. The upper level, a coastal bench, is actually part of a larger bench which terminates at this site. The top of the bench slopes gradually northward with slope gradients ranging from 25-45 percent along the ocean. The second topographic area is the lower level consisting of the ocean, beach and lowlands fronting the lagoon. The beach area can be best characterized as a pebbly one with only a limited amount of sandy area. The project site is overlain by three different soil series - Marina Loamy Coarse Sand, Terrace Escarpments and Coastal Beaches. Most of the project area is covered by Marina Loamy Coarse Sand which is found on the gently sloping upper bench and has a moderate erosion hazard. The Terrace Escarpment soil is found near the western boundary and is characterized by steep to very steep slopes in the southwest corner occurring on terrace fronts or alluvial fans; it exhibits a severe erosion hazard. The third soil type, Coastal Beaches, found along the lower level is composed of gravel or sand and is susceptible to tidal inundation from the ocean; it also exhibits severe erosion characteristics.

The certified Carlsbad LCP specifies the need for new development projects to submit a site-specific geologic investigation, to limit shoreline structures, and to execute waivers of public liability. Additionally, Policy 4-4 specifies "no development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities." In reference to this specific site, Policy 7-8 specifically states "residential development shall be clustered on the highland area and the bluff face shall not be altered [and] there shall be appropriate bluff top setbacks based on geologic reports taking into account the prominent location, shoreline instability and significant habitat adjacent to the lagoon." Additionally, Policies 3-1 and 4-7a specifically state the development of slopes greater than 25% incline shall be prohibited and such slopes be left undisturbed. These LCP policies represented the incorporation of the Act's policies (Sections 30235 and 30253) into the general plan.

As detailed in the project description, ten of the proposed condominiums are sited directly on or over the ocean bluff top and face with a retaining wall constructed along the ocean frontage. The proposed retaining wall was primarily designed to allow some backfilling to create additional yard area for the future condominiums on the bluff top. However, as submitted, the proposed development would therefore be inconsistent with the certified LCP policies, since it would involve alteration of erodible and steep slopes particularly located along the property's westerly bluff face and could therefore precipitate coastal erosion. Special Condition #1 requires the applicant to redesign the site plan and construct the proposed units behind the bluff top, relocate the swimming pool/deck away from the bluff face and relocate the private beach accessway. Generally, the Commission does not and the certified LCP does not endorse the construction of private accessways.

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However, in this instance, the subject site includes some rounded and low slopes on its northern bluffs, as well as an existing eroded dirt road presently used for beach access by pedestrians and public agencies, which would facilitate future residents to simply access the beach over the natural slopes. Therefore, in order to concentrate access and discourage random access over the bluffs, a property-designed private accessway would, on this site, be more protective of coastal resources than its elimination. With these revisions, the applicant will be restricting any significant bluff face alteration or grading of steep slopes. In conjunction with the required redesign of the site plan, Special Condition #2 requires the dedication of an open space easement over the site's bluff face to permanently preserve the bluffs as natural open space.

The applicant has submitted site-specific geologic and soils information which indicates the property is suitable for residential development with proper foundations, grading specifications and engineering designs. The applicant will be complying with these requirements. As specified in the certified LCP, since the submitted reports do not assure structural stability, a waiver of public liability is being required for the permitted development as detailed in Special Condition #3. It must be noted that this area is one of severe erosional hazard. Existing development upcoast and downcoast is set over the bluffs down to the shoreline and seawalls are required. As documented in the certified LCP, there are limitations on the development of shoreline structures and the need to establish appropriate bluff top setbacks for new development. As approved, the permitted development will have no setbacks from the established bluff top development line and there are no definitive assurances that some shoreline protective works will not be required in the future. However, the proposed development, as conditioned, will be clustered on the upland area which already lies approximately 40 ft. eastward of the existing development stringline. The required bluff top development line is appropriate, given the site's critical location at the ocean's interface with the lagoon, but, in combination with the extensive open space easement areas and existing stringline, a bluff top setback appears overly restrictive. Further, given the existence of a natural pebble berm, even during the winter, along the shoreline and the distance of the site's bluff top from the shoreline, severe tidal action along the slopes' base is infrequent. Additionally, given the almost continual alignment of seawalls throughout Carlsbad and Oceanside, any potential for future development of shoreline structures would not be highly precedential or prejudicial. Therefore, given the required redesign to cluster development and minimize the alteration of natural landforms, the permanent preservation of the ocean bluff face as open space, submitted geologic and soils analyses, the required waiver of public liability, the existing development stringline and the bluff top's setback from the immediate shoreline, the Commission finds the proposed development will assure the geologic stability of the site, minimize coastal erosion and diminish the risk of geologic hazards to life and property. With these findings, the Commission thus determines project approval, as conditioned, will be consistent with the certified LCP policies and all applicable Coastal Act policies and it will not establish any adverse precedent for future developments.

4. Runoff Control/Water Quality. The subject property is located at the southwestern corner of Buena Vista Lagoon and adjacent to the Pacific Ocean. Runoff from the westernmost portion of the property drains into the ocean; the remainder of the property drains into the lagoon through an existing pipe

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located about 100 feet east of the weir. Portions of the adjoining property to the east also drain into the lagoon via this existing pipe. Buena Vista Lagoon is considered the northernmost lagoon in San Diego County, and in some ways is not typical of most other lagoons in the county. The lagoon is composed of fresh and brackish waters, is not open to the sea, and its normal surface level is approximately six feet above MSL. At the mouth of the lagoon is a sand beach barrier which was naturally formed by wave and littoral current action. A wooden weir is located within a manmade channel at the mouth of the lagoon which permanently empounds water in the lagoon and controls the water level. A land area of approximately 22 square miles drains into the lagoon through Buena Vista Creek. The main source of water in the lagoon is land drainage, agricultural runoff and rising groundwater.

Buena Vista Lagoon has been designated an "Ecological Reserve" by the State Department of Fish and Game. It is both a valuable biological resource and an aesthetic open space element. As is the case with all of the lagoons in San Diego County, Buena Vista Lagoon has been adversely affected by increased deposition of sediment resulting from agricultural and suburban development in its watershed. Primary effects of this development include the infilling of the lagoon and a reduction of its total volume and the introduction of various nutrients or pollutants which contribute to periodic algal blooms. The primary effects of the proposed development would be the alteration of local drainage patterns, increased runoff due to the presence of impervious surfaces, the exposure of soils to increased erosion and the introduction of increased levels of urban runoff pollutants into the lagoon.

The certified LCP for the City of Carlsbad contains several policies relating to grading requirements, drainage and coastal erosion. Policy 3-2, in reference to developments located along the first row of lots bordering the lagoon, including the subject parcel at the mouth, states "storm drain alignments...which would be carried through or empty into Buena Vista Lagoon shall not be permitted...." Policy 3-4 prohibits any grading activity during the rainy season and requires the immediate revegetation of graded areas to reduce erosion potential. Lastly, Policy 4-7 also states that no development shall be permitted without submittal of acceptable runoff control plans,

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maintenance agreements and certain specifications for the installation and operation of runoff control devices. The LCP policies were derived from the resource protection and water quality standards (Sections 30231 and 30240(a)(b)) of the Act.

As previously stated, although the applicant will be performing a minimal amount of grading over the site, the construction activity occurring along the bluff face and top, will present a significant erosion hazard. The construction activity and grading operations will thus establish short-term impacts. Along with the required site plan redesign and open space easement over the bluff face, Special Conditions 4 and 5 require the submittal of a runoff control plan and establish restrictions to detail the time and method for the grading activity. With these conditions, appropriate erosion controls will be established to mitigate the short-term impacts of grading and prevent further siltation of the lagoon. With regard to drainage and runoff, the project, as submitted, incorporates roof down-drain systems connected to the storm drain and a requirement that a drainage outfall shall be designed to discharge at a point west of the lagoon weir. Since the discharge point is west of the weir, the potential for any long-term impacts to the closed lagoon will be effectively mitigated. The submittal of a runoff

control plan will serve to document the effectiveness and operation of the designed drainage system. Therefore, given the required runoff and grading controls, along with the submitted drainage system, the Commission finds the proposed development, as conditioned, consistent with all applicable LCP and Coastal Act policies. Further, the Commission thus determines that the project approval, as conditioned, should protect the biological productivity and quality of the lagoon and other adjacent environmentally sensitive habitat values by controlling runoff and effectively mitigating off-site impacts.

5. Biological Resources. Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and coastal strand community, do occur on the subject property. Only a small portion of the lagoon habitat, however, actually lies within the property boundary, but activities on the property could affect the quality of the entire habitat. This seemingly small lagoon located in and around the subject property, is actually a portion of the larger Buena Vista Lagoon, which has been discussed as essential habitat for the California Least Tern. The lagoon also provides nesting and foraging habitat for other avian species although the quality of this habitat is decreasing due to continuous development along the edge of the lagoon. The Pointe San Malo property is one of the last vacant areas along this portion of the Buena Vista Lagoon. Additionally, the coastal strand habitat is a plant community which has become rare in San Diego County due to development along the coast. The community consists of plant species which are tolerant of salt air and sandy soil conditions. This habitat is located on the sandy soils near the base of the west-facing slope. Although the coastal strand habitat on the property has been disturbed by human activity, it still contains several of the plant species characteristic of the coastal strand community.

In reviewing the policies of the certified LCP, Policy 3-2 specifies for developments located along the first row of lots bordering Buena Vista Lagoon, including the subject site, as follows:

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from the wetlands shall be required in all development, in order to buffer sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes....

Land divisions shall only be permitted on parcels bordering the Lagoon pursuant to a single planned unit development permit for the entire original parcel. (emphasis added)

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In addition to this site specific policy, Policies 3-1 and 4-7a again prohibit grading of steep slopes and Policy 4-4 prohibits development on the face of any ocean bluff. These LCP policies were derived from Sections 30231, 30240(a) and 30240(b) of the Act which require the preservation of habitat values by maintaining natural vegetation buffer areas and preventing off-site impacts to environmentally sensitive areas.

As submitted, the project would involve elimination of the coastal strand vegetation on the west-facing slopes and reserve the lowlands area, comprising Lot 3 of the proposed subdivision, for future development. The project would therefore be inconsistent with the certified LCP policies and resource protection policies of the Act. However, with the attached special condition to preserve the bluff face as open space, the coastal strand community will be minimally impacted. As conditioned, the Commission has also required Lot 3, consistent with the site-specific, certified LCP policy, to be committed to open space for habitat protection and natural buffer area. With regard to the inclusion of the adjoining parcel, along with proposed Lot 3, and their commitment to open space, their consolidation would fulfill and implement the certified Carlsbad LCP. However, given the applicant's limited ability to properly commit the adjoining property to open space due to the existing legal constraints and the Commission's previous approval which offered two alternatives, one without the lot consolidation, the submitted project, in and of itself, may be found consistent with Chapter 3 policies. With the open space restrictions on Lot 3, the project will incorporate adequate natural vegetative buffer areas necessary to mitigate the impacts of construction and increased human activity near the lagoon and permanently preserve critical open space corridors. Therefore, as conditioned, the Commission finds project approval consistent with applicable Chapter 3 policies.

6. Visual Impacts. The proposed condominiums are situated on a prominent ocean bluff and also located within the Buena Vista Lagoon viewshed. Although the proposed units are generally clustered on an upper bench level, the project, as submitted, will alter and encroach onto the bluff face. As previously stated, the certified LCP for Carlsbad specifically requires that development of this site be clustered to preserve open space and retain the natural landforms of the ocean bluffs (Policies 3-2 and 4-4). These policies were partially derived from Section 30251 of the Act which mandates the protection of public views, the preservation of scenic amenities in coastal areas and the retention of natural landforms.

As conditioned above, the project will be required to setback from the ocean on its blufftop, preserve the ocean bluff face in its natural state and retain the on-site lowlands as open space. These conditions will largely mitigate the project's visual impact by clustering the units away from the bluff line, thus minimizing its intrusion along the shoreline or within the lagoon viewshed, and by retaining the natural vegetation of the area to serve as visual buffers. The applicant contends that the submitted site plan conforms to the existing stringline of development along the shoreline. While the adjacent residences to the south and the existing San Malo residential community to the north in Oceanside across the mouth of the lagoon do extend further seaward than the proposed development, the subject site does not represent an infill area, but, rather, it is viewed as an extension of development northward at a critical interface between the ocean and the lagoon. Therefore, not only for habitat and resource protection purposes,

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the required setbacks and open space dedications are necessary to preserve the scenic integrity of this coastal areas. Additionally, the applicant will be required to submit a detailed landscaping plan and revegetate disturbed areas immediately after grading to further enhance the project's amenities and mitigate the short-term impacts of construction activities. Therefore, given the required unit clustering, bluff setback, open space dedications, landscaping requirements and grading restrictions, the Commission finds project approval, as conditioned, will be consistent with the certified LCP, applicable Coastal Act policies and it will preserve the visual amenities of the coastline.

7. **Public Access.** The subject site is located on a bluff between the ocean and the first coastal roadway, Ocean Street, in this area. The beach area to the west of the proposed project site and the lagoon area to the north can currently be reached via an existing ten-foot wide, improved, open and signed public access easement. The easement is located along the southern boundary of the subject site. The beach and inlet areas are currently used by walkers, runners and amateur naturalists. The two areas, in combination, represent an unusual and varied coastal resource. There also exists an undeveloped potential for an areawide pathway and open space system relating to the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon, along with a bird sanctuary, and the Department of Fish and Game owns properties on the south side of the lagoon, east of the AT & SF Railroad right-of-way, as well as on the north side. The project site is located at a crucial point in any potential linkage between public beach areas and the public lagoon areas. No public parking is available in the vicinity of the public beach access with the exception of parking along Ocean Street.

The certified Carlsbad LCP contains two specific policies relating to development of the subject property and the provision of public access opportunities. The certified LCP states as follows in Policy 7-6 and 7-8.

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon, to facilitate public awareness of the natural habitat resources of the Lagoon. To protect the sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. (and)

On the vacant parcel at the extreme north end of Ocean Street, when development is proposed, an irrevocable offer to dedicate the beach and lowland areas shall be required pursuant to Section 30211 of the Coastal Act.

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Sections 30210, 30211 and 30212 of the Act all require that public access to the shoreline and along the coast be maximized and provided in all new developments. Although the proposed development will not obstruct use of the existing public access easement along its southern boundary, the development will certainly inhibit lateral access along the ocean shoreline or lagoon either indirectly by proximity or directly through private attempts to restrict public beach access. Therefore, in order to be consistent with the certified LCP, to maintain public beach access, recognize and protect the informal use of the site, special conditions have been attached to require the provision of lateral accessways along the shoreline and lagoon lowlands. Further, to enhance opportunities for public access and recreation, it is recommended that, along with the provision of lateral access, an access trail or other necessary public access improvements be developed on the southerly side of Buena Vista Lagoon, consistent with resource protection policies and in consultation with the State Department of Fish and Game. Therefore, as conditioned, the Commission finds the proposed development consistent with applicable LCP and Coastal Act policies since adequate vertical access already exists and the project will provide lateral access opportunities. Further, as specifically required by Section 30604(c) of the Act, the Commission finds the proposed development conforms with all the public access and recreation policies of the Act.

8. Housing. The proposed development provides for the construction of fourteen condominiums on a vacant parcel. Under previous Coastal Act policies and the adopted Statewide Interpretive Guidelines, the question of affordable housing protection could have been raised. However, recent legislation has transferred this responsibility to local governments consistent with Section 65590 of the revised Government Code. Further, pursuant to Section 30519.1 of the Act, these regulatory revisions were also applied to the certified Carlsbad local coastal program and any previously approved affordable housing LCP policies deleted. Therefore, the housing issue is no longer a matter of coastal policy review.

9. Archaeological Resources. As a result of some preliminary research and site inspections by qualified archaeologists, one archaeological site was located. This site, SDI-626, was originally recorded by William J. Wallace in 1958, and is located in the upper area of the project at the western and southern extent of the property. Surface materials included flake stone artifacts, bone and shell, and there is a potential for a depth in excess of 50 centimeters. The surface area of the subject parcel is obscured in places by a thick mat of grass, and the ground visibility in the area of the site was limited. Because of this, the actual extent of the site and the degree to which it has been impacted cannot be determined without some limited subsurface testing and clearing of the grasses. It is impossible that the significant portion of the site has been removed, and that only limited, disturbed materials remain. Delineation of this disturbance, however, requires additional investigation. Special Condition 9 requires that, in order to appropriately study and determine the significance of the site, all the adopted mitigation measures of the E.I.R. be met. With its provisions to complete a limited subsurface sample and any further information retrieval, the Commission finds the site's archaeological resources will be appropriately protected against adverse impacts.

10. Local Coastal Planning. Section 30604(a) of the Act provides that a

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coastal development permit shall be issued only if the permitted development will not prejudice the ability of the appropriate local government to prepare a certifiable local coastal program (LCP). However, special legislation (AB 1971) was passed which authorized the Commission to prepare the local coastal program for the City of Carlsbad. In its certification of the Carlsbad LCP, the Commission adopted a site-specific land use policy for the subject parcel. Policy 3-2 states as follows:

"Developments located along the first row of lows bordering Buena Vista Lagoon, including the parcel at the mouth of the Lagoon, shall be designated for residential development at a density of up to 4 dwelling units per acre....

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval....[and]

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes...."

As described in Policy 3-1, a density credit of up to one dwelling unit to be built on developable land may be permitted for each acre of land in slopes of 25% or greater.

In conjunction with the above land use designation, the certified LCP also contains policies to promote a single planned unit development on the project site's upland portion and consolidating its lowlands with the adjoining Tanaglia property for open space and buffer area. The Commission recognized those policies previously and approved two alternatives dependent on the lot consolidation. With inclusion of the adjoining property, the applicant was permitted 14 units; however, absent its incorporation, the applicant was only permitted ten units. However, since the Commission did previously grant the applicant an option to develop the site without inclusion of the adjoining parcel and recognizing the potential difficulties and uncertainties in resolving the competing financial interests herein, the only conflict is the appropriateness and conformity of permitting 14 units, rather than the ten, on the upland area without the lot consolidation. Given that portions of the subject property are areas of original jurisdiction, the key factor is the submitted project's consistency with Chapter 3 policies, even under a certified local coastal program. Therefore, although project approval may be technically inconsistent with the certified LCP, it may be found consistent with all applicable Chapter 3 policies. As conditioned and submitted, without inclusion of the adjoining property, the project will establish open space easements to protect the site's bluffs and natural areas, control runoff to mitigate any potential sedimentation of the

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

adjacent lagoon, provide adequate landscaping and design revisions to enhance and preserve the scenic amenities of the area, provide adequate parking and formalize public access opportunities. Therefore, the Commission finds project approval, as conditioned should not seriously prejudice the implementation of the Carlsbad LCP.

With the exclusion of the "Tenaglia Property" from the proposed development, the Commission is presented with the possibility for some development proposal to be submitted on the environmentally sensitive "Tenaglia Property" for review at a later date. While the Commission will not and cannot evaluate the permissibility of any use on the "Tenaglia" site, not presently within wetlands, the Commission does want to provide direction to future applicants about its position on the property in question. Although a density credit of 1 dua for each net developable acre under the certified LCP was previously assigned to the "Tenaglia site" when it was proposed for transfer to the blufftop as a density bonus for the lot consolidation and implementation of the certified LCP, the actual project impacts of any physical development on the site are much more critical. Therefore, only very low intensity uses, such as possibly a single-family residence, educational-science research activities or nature study, are appropriate for the uniquely-situated and constrained property. Given its physical delineations, a single residence could even represent inappropriate overdevelopment. Further, any proposal must address and adequately mitigate the identified issues herein and merit independent approval based on site-specific Commission review.

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

Application No. 6-83-51

STANDARD CONDITIONS:

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

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

#6-83-51

445

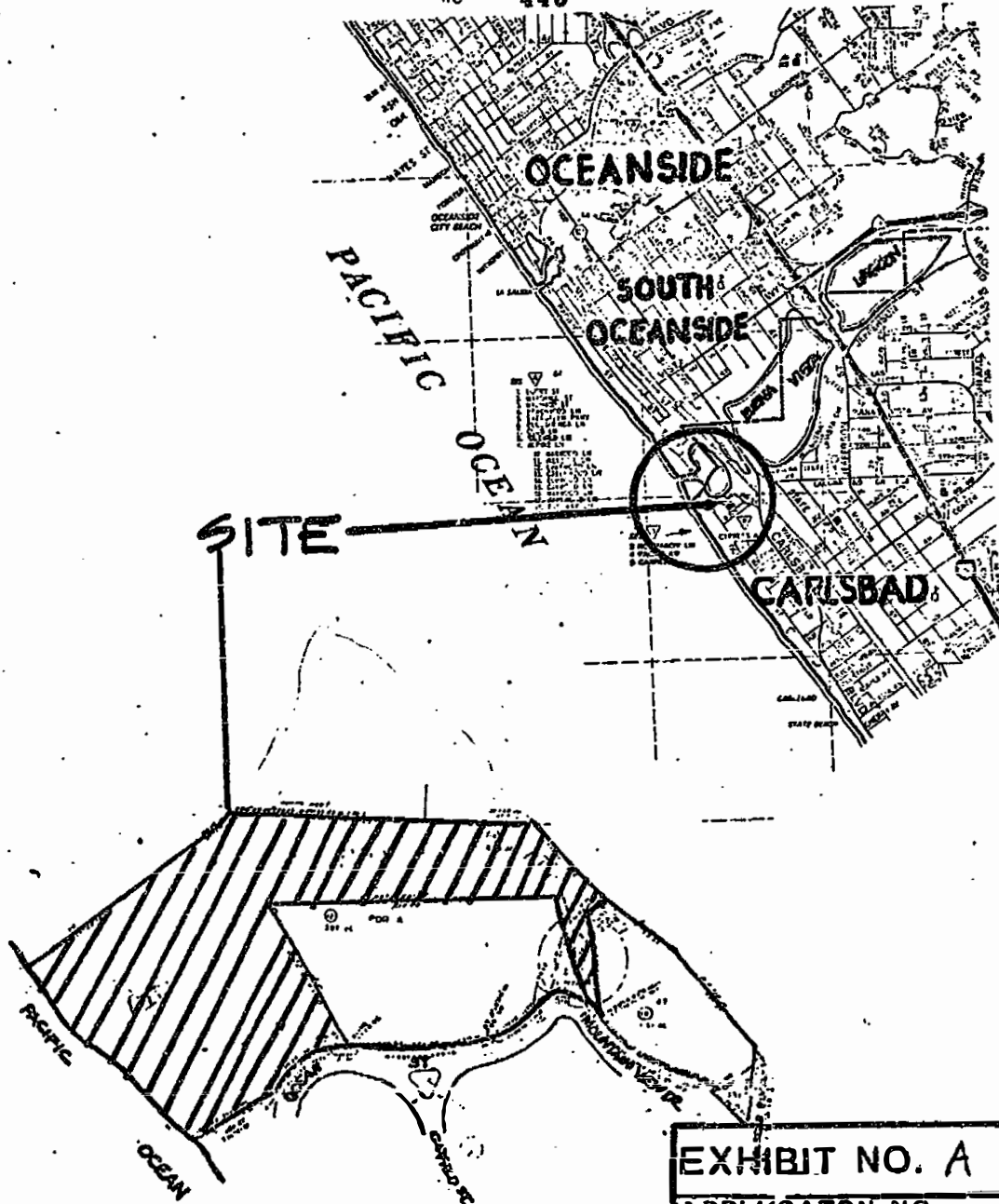



EXHIBIT NO. A
APPLICATION NO.
6-81-249/6-83-51
Site location
 California Coastal Commission

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, 2

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER



OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, 21

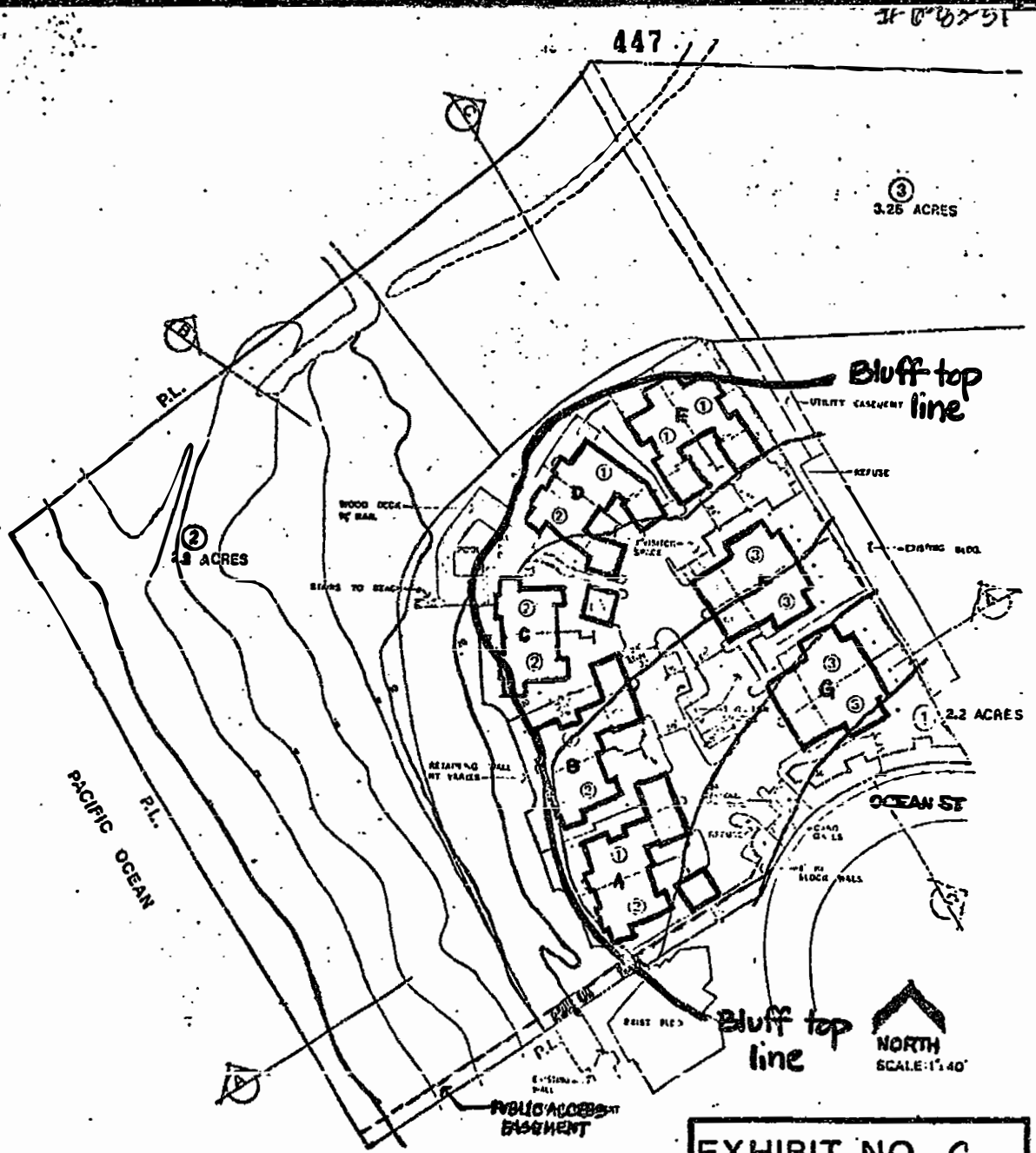



EXHIBIT NO. C
APPLICATION NO. 6-81-249/688-51
<i>Bluff top line</i>
 California Coastal Commission

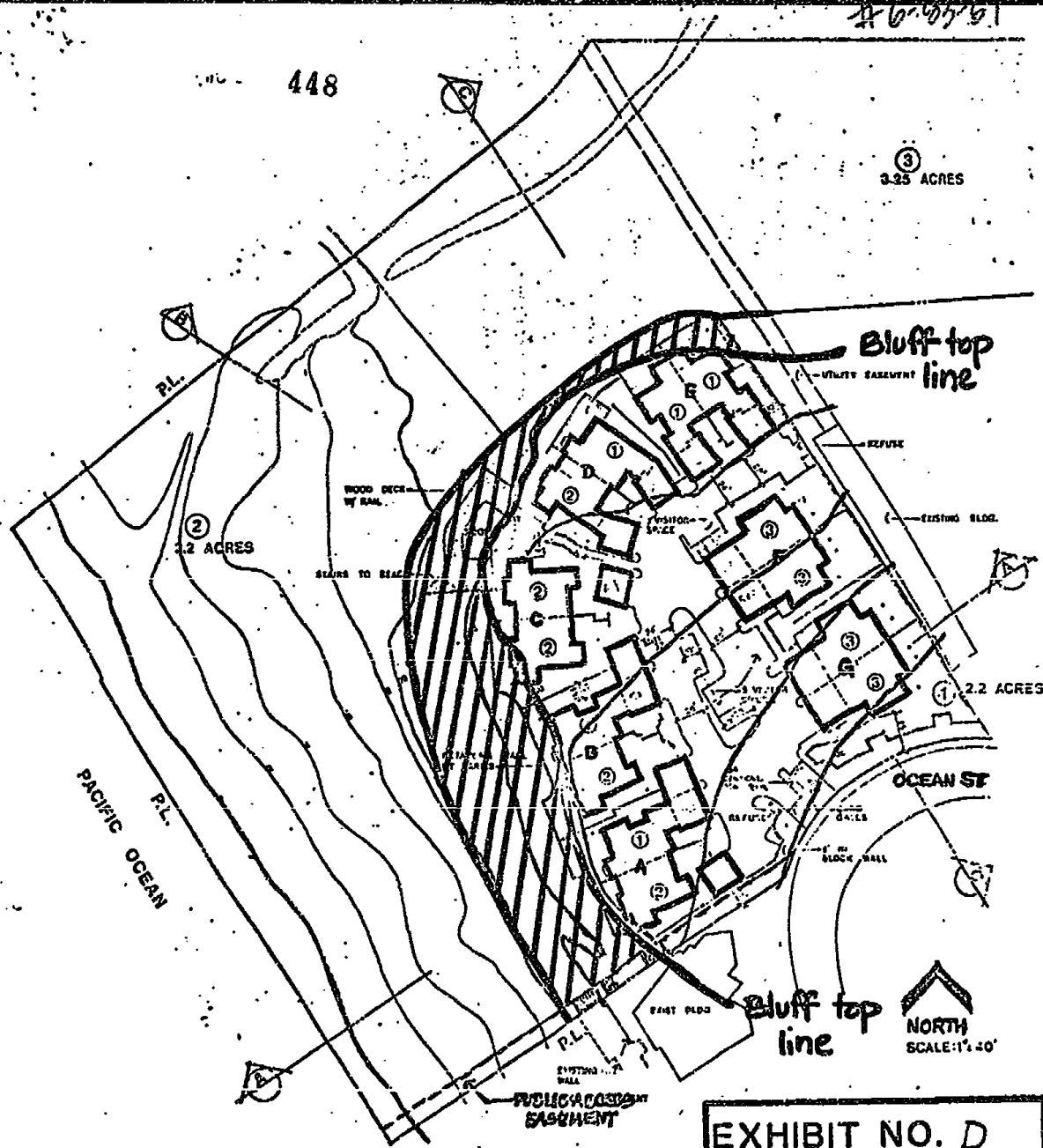

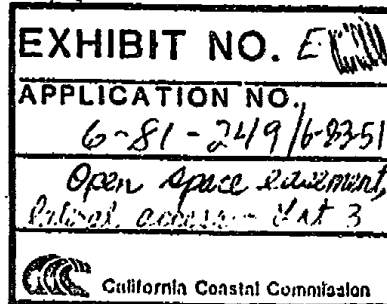


EXHIBIT NO. D
APPLICATION NO. 6-81- 249/687-51
<i>Open Space Easement Bluff face</i>
 California Coastal Commission



OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, CUNY

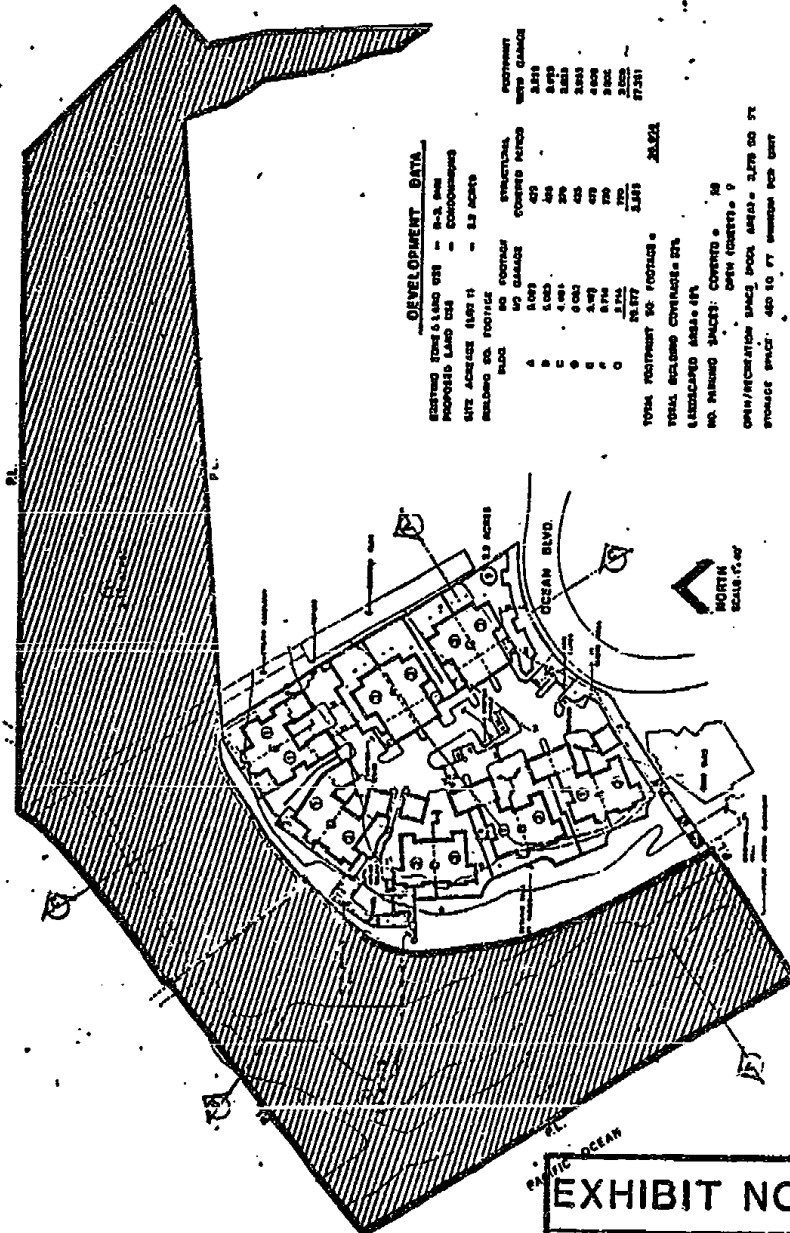


EXHIBIT NO. F(1)

APPLICATION NO.
6-81-249/6-63-51

Lateral access dedication
Lots 2 and 3


 California Coastal Commission

EXHIBIT "C"

Lots 2 & 3 of Carlsbad Tract Number 81-35, Map No. 11007,
filed in the Office of the County Recorder of San Diego on
July 27, 1984, Recorder's File No. 84-286-096.

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, CU

When Recorded Return to:
 California Coastal Commission
 631 Howard Street, Fourth Floor
 San Francisco, California 94105
 Attention: Legal Department

518

84-309898

RECORDED IN
 OFFICIAL RECORDS
 OF SAN-DIEGO COUNTY, CA

1984 AUG 15 AM 8:00

VERA L. LYLE
 COUNTY RECORDER

882666-6

NO FEE

IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT

AND

DECLARATIONS OF RESTRICTIONS

THIS IRREVOCABLE OFFER AND DEDICATION OF OPEN-SPACE EASEMENT AND
 DECLARATIONS OF RESTRICTIONS (hereinafter "Offer") is made this
 (1) August 7, 1984, by (2) Native Sun-Carew, a General
Partnership
 (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain
 real properties located in the County of (3) San Diego
 State of California and described in the attached Exhibit A (hereinafter
 referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone
 as defined in Section 30103 of the California Public Resources Code (which
 code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter
 referred to as the "Act") creates the California Coastal Commission
 (hereinafter referred to as the "Commission") and requires that any
 development approved by the Commission must be consistent with the policies
 of the Act set forth in Chapter 3 of Division 20 of the Public Resources
 Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
 for a permit to undertake development as defined in the Act within the

SPECIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1 coastal zone of (4) San Diego County (hereinafter the
2 "Permit"); and

3 WHEREAS, a coastal development permit, No. (5) 6-83-51 was
4 granted on (6) March 23, 19 83, by the Commission in
5 accordance with the provisions of the Staff Recommendations and Findings
6 Open Space Easements/Habitat Protection and Buffer Areas. Prior
7 to transmittal of a permit, the applicant shall record an irre-
8 vocable offer to dedicate to a public agency, or to a private asso-
9 ciation acceptable to the Executive Director, an open space ease-
10 ment over Lot 3 of the proposed subdivision as shown on Exhibit E.
11 Said open space easement shall prohibit any alteration of land-
12 forms, the placement or removal of vegetation except as specified
13 herein. The irrevocable offer to dedicate an open space easement
14 shall include conditions prohibiting any future land divisions,
15 commercial or residential development expressly recognizing the
16 right of access to the weir for maintenance purposes. It shall also
17 recognize the right of the accepting agency to conduct activities
18 within the open space area which would enhance the lagoon habitat
19 by dredging or otherwise removing fill.

20 The offer shall recognize that the erection of some public access
21 improvements may be allowed, in consultation with the State Depart-
22 ment of Fish and Game, and subject to Coastal Commission permit
23 requirements.

24 The offer shall be irrevocable for a period of 21 years, shall run
25 in favor of the People of the State of California, binding succes-
26 sors in assigns of the applicant and/or landowners, and shall be
27 recorded prior to all other liens and encumbrances except tax
liens. The offer to dedicate shall be in a form and of content
acceptable to the Executive Director and the document shall include
legal descriptions of both the applicant's entire parcel and ease-
ment areas.

28 WHEREAS, the Commission, acting on behalf of the People of the
29 State of California and pursuant to the Act, granted the Permit to the
30 Grantor upon condition (hereinafter the "Condition") requiring inter alia
31 that the Grantor record a deed restriction and irrevocable offer to
32 dedicate an open-space easement over the Property and agrees to restrict
33 development on and use of the Property so as to preserve the open-space and
34 scenic values present on the property and so as to prevent the adverse

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, 23

1 direct and cumulative effects on coastal resources and public access to the
2 coast which could occur if the Property were not restricted in accordance
3 with this Offer; and

4 VII. WHEREAS, the Commission has placed the Condition on the permit
5 because a finding must be made under Public Resources Code Section 30604(a)
6 that the proposed development is in conformity with the provisions of
7 Chapter 3 of the Act and that in the absence of the protections provided by
8 the Condition said finding could not be made; and

9 VIII. WHEREAS, Grantor has elected to comply with the Condition
10 and execute this Offer so as to enable Grantor to undertake the development
11 authorized by the Permit; and

12 IX. WHEREAS, it is intended that this Offer is irrevocable and shall
13 constitute enforceable restrictions within the meaning of Article XIII,
14 Section 8 of the California Constitution and that said Offer when accepted
15 shall thereby qualify as an enforceable restriction under the provision of
16 the California Revenue and Taxation Code, Section 402.1;

17 NOW THEREFORE, in consideration of the above and the mutual
18 benefit and conditions set forth herein, the substantial public benefits
19 for the protection of coastal resources to be derived, the preservation of
20 the Property in open-space uses and the granting of the Permit to the owner
21 by the Commission, Grantor hereby irrevocably offers to dedicate to the
22 State of California, a political subdivision or a private association
23 acceptable to the Executive Director of the Commission (hereinafter, the
24 "Grantee"), an open-space easement in gross and in perpetuity for light,
25 air, view, and for the preservation of scenic qualities over that certain
26 portion of the Property specifically described in Exhibit B (hereinafter
27 the Protected Land); and

1 This Offer and Declaration of Restrictions subjects the Property to the
2 following terms, conditions, and restrictions which shall be effective
3 from the time of recordation of this instrument.

4 1. USE OF PROPERTY. The use of the Protected Land shall be limited to
5 natural open space for habitat protection, public access and passive
6 recreation, and resource conservation uses. No development as defined in
7 Public Resources Code Section 30106, attached hereto as Exhibit C and
8 incorporated herein by reference, including but not limited to, removal of
9 trees and other major or native vegetation, grading, paving, or installation
10 of structures such as signs or buildings, future land divisions, or commercial
11 or residential development of any kind, shall occur or be allowed on the
12 Protected Land with the exception of the following subject to applicable
13 governmental regulatory requirements:

- 14 (a) the removal of hazardous substances or conditions or diseased vegetation;
15 (b) the removal of any vegetation which constitutes or contributes to a fire
16 hazard to existing or permitted residential development and which lies within
17 100 feet of such development;
18 (c) the installation or repair of underground utility lines and septic systems;
19 (d) maintenance of the weir;
20 (e) public access improvements by the Grantee;
21 (f) Grantee's enhancement of the lagoon habitat by dredging or otherwise
22 removing fill.

23 2. RIGHT OF ENTRY. The Grantee or its agents may enter onto the Property
24 to ascertain whether the use restrictions set forth above are being
25 observed at times reasonably acceptable to the Grantor.

26 3. BENEFIT AND BURDEN. This Offer shall run with and burden the Property,
27 and all obligations, terms, conditions, and restrictions hereby imposed shall
28 be deemed to be covenants and restrictions running with the

land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. ENFORCEMENT. Any act or any conveyance, contract, or authorization whether written or oral by the Grantor which uses or would cause to be used or would permit use of the Protected Land contrary to the terms of this Offer will be deemed a breach hereof. The Grantee may bring any action in court necessary to enforce this Offer, including, but not limited to, injunction to terminate a breaching activity and to force the restoration of all damage done by such activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that the Grantee may pursue any appropriate legal and equitable remedies. The Grantee shall have sole discretion to determine under what circumstances an action to enforce the terms and conditions of this Offer shall be brought in law or in equity. Any forbearance on the part of the Grantee to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of Grantee's rights regarding any subsequent breach.

6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid all real property taxes and assessments levied or assessed against the Property.

7. MAINTENANCE. The Grantee shall not be obligated to maintain, improve, or otherwise expend any funds in connection with the Property or any interest or easement created by this Offer. All costs and expenses for

1 such maintenance, improvement use, or possession shall be borne by the
2 Grantor, except for costs incurred by grantee for monitoring compliance
3 with the terms of this easement.

4 8. LIABILITY AND INDEMNIFICATION. This conveyance is made and
5 accepted upon the express condition that the Grantee, its agencies,
6 departments, officers, agents, and employees are to be free from all
7 liability and claim for damage by reason of any injury to any person or
8 persons, including Grantor, or property of any kind whatsoever and to
9 whomsoever belonging, including Grantor, from any cause or causes
10 whatsoever, except matters arising out of the sole negligence of the
11 Grantee, while in, upon, or in any way connected with the Property, Grantor
12 hereby covenanting and agreeing to indemnify and hold harmless the Grantee,
13 its agencies, departments, officer, agent, and employees from all
14 liability, loss, cost, and obligations on account of or arising out of such
15 injuries or losses however occurring. The Grantee shall have not right of
16 control over, nor duties and responsibilities with respect to the Property
17 which would subject the Grantee to any liability occurring upon the land by
18 virtue of the fact that the right of the Grantee to enter the land is
19 strictly limited to preventing uses inconsistent with the interest granted
20 and does not include the right to enter the land for the purposes of
21 correcting any dangerous condition as defined by California Government Code
22 Section 830.

23 9. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
24 exceptions, obligations, and reservations contained in this Offer shall be
25 binding upon and inure to the benefit of the successors and assigns of both
26 the Grantor and the Grantee, whether voluntary or involuntary.

27 10. TERN. This irrevocable offer of dedication shall be binding upon

the owner and the heirs, assigns, or successors in interest to the Property described above for a period of 21 years. Upon recordation of an acceptance of this offer by the grantee in the form attached hereto as Exhibit D, this offer and terms, conditions, and restrictions shall have the effect of a grant of open-space and scenic easement in gross and perpetuity for light, air, view and the preservation of scenic qualities over the open-space area that shall run with the land and be binding on the parties, heirs assigns, and successors.

Acceptance of the Offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate.

Executed on this 6th day of AUGUST, 1984, at VISTA
California. DATED: 8-10-84
BY: NATIVE SUN-GARREW A CALIFORNIA GENERAL PARTNERSHIP
BY: GARREW PROPERTIES, INC. A MINNESOTA CORP. BY: NATIVE SUN DEVELOPMENT COMPANY,
BY: VERA L. LYLE A CALIFORNIA CORPORATION
OWNER OWNER

TYPE OR PRINT NAME ABOVE
(NOTARY ACKNOWLEDGMENT NEXT PAGE)

TYPE OR PRINT NAME ABOVE

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NOTE TO NOTARY PUBLIC: *

If your are notarizing the signatures of anyone signing on behalf of a trust, corporation, partnership, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Law Book.

State of California }
County of _____ } SS

On this _____ day of _____, in the year _____
before me _____, a Notary Public, personally

STATE OF CALIFORNIA
COUNTY OF San Diego
On August 6, 1984, before me, the undersigned, a Notary Public in and for
said State, personally appeared Joseph Garcia
_____, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the persons who executed the within instrument as

Vice President ~~XXXXXXXXXXXXXXXXXXXX~~ on behalf of

Carew Properties, Inc.

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being

known to me to be one of the partners of

Native Sun-Carew

the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature Janice J. Paddock



(This area for official notarial seal)

STATE OF CALIFORNIA
COUNTY OF San Diego
On August 6, 1984, before me, the undersigned, a Notary Public in and for
said State, personally appeared Michael R. Mahoney
_____, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the persons who executed the within instrument as

President ~~XXXXXXXXXXXXXXXXXXXX~~ on behalf of Native Sun

Development Company

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being

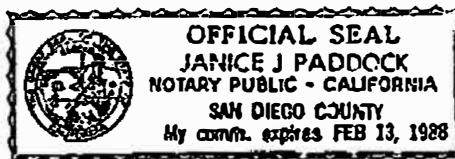
known to me to be one of the partners of

Native Sun-Carew

the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature Janice J. Paddock



(This area for official notarial seal)

Exhibit 17

526

This is to certify that the offer of dedication set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development No. 6-83-51 on ~~6-83-51~~ March 23, 1983 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated:

June 12, 1984

Cynthia K Long

CYNTHIA K LONG STAFF COUNSEL

California Coastal Commission

STATE OF California

)ss

COUNTY OF San Francisco

On 12 June 1984, before me Deborah S. Benushi, a

Notary Public, personally appeared Cynthia K. Long

personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the

Staff Counsel, and authorized representative of the

TITLE

California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Witness my hand and official seal.



Deborah Smully

Notary Public in and for said
County and State

That portion of Lot "A" of GRANVILLE PARK UNIT NO. 2, according to Map thereof No. 2037 and that portion of Lot 47 of GRANVILLE PARK and that portion of Laguna Drive adjacent thereto (vacated by Resolution No. 918 of the City Council of the City of Carlsbad, California recorded July 19, 1963 as File No. 126793 of Official Records of San Diego County, California) according to Map thereof No. 1782-all in the City of Carlsbad, County of San Diego, State of California and filed in the Office of the County Recorder of said County, more particularly described as follows:

Beginning at a point in the Easterly line of Mountain View Drive shown on said Map No. 1782, said point being on a curve, concave Easterly, having a radius of 268.03 feet, a radial line through said point bears South 58°37'13" West (Record South 58°14'45" West per said Map No. 1782); thence Southeasterly along the arc of said curve, through a central angle of 2°08'16", a distance of 10.00 feet; the last said course being along the Northeasterly line of said Mountain View Drive and along the Southwesterly line of said Lot 47; thence leaving said Northeasterly line of Mountain View Drive, North 02°51'21" West, 139.99 feet; thence North 13°46'17" West, 59.75 feet to a point in the Northwesterly line of said Laguna Drive (vacated) said Northwesterly line also being the Southeasterly line of said Lot "A", said point being on a curve, concave Southeasterly, having a radius of 207.16 feet, a radial line through said point bears North 64°24'05" West; thence Northeasterly along the arc of last said curve, and along the Northwesterly line of said Laguna Drive (vacated), through a central angle of 13°17'54", a distance of 48.08 feet to a point on the Southwesterly right-of-way line of the Atchafon Topeka and Santa Fe Railroad (200 feet wide) as shown on said Maps No. 1782 and No. 2037, said point being on a curve, concave Northeasterly, having a radius of 1532.69 feet, a radial line through said point bears South 40°44'00" West (Record South 40°23'15" West per said Map No. 1782); thence Northwesterly along the arc of last said curve being the Southwesterly right-of-way line of said Atchafon, Topeka and Santa Fe Railroad and the Northeasterly line of said Lot "A", through a central angle of 7°09'20", a distance of 191.42 feet (Record 191.51 feet per said Map No. 2037) to the Northeasterly corner of said Lot "A"; thence along the Northerly line of said Lot "A", South 89°24'02" West, a distance of 525.20 feet; thence leaving said Northerly line South 38°17'17" West 38.76 feet; thence South 44°49'33" West 27.81 feet; thence South 35°38'44" West 22.05 feet; thence South 53°06'07" West 25.14 feet; thence South 49°36'26" West 22.61 feet; thence South 55°18'26" West 32.21 feet; thence South 76°34'04" West 22.03 feet; thence South 71°52'50" East 26.38 feet; thence South 61°38'50" West 51.21 feet; thence North 38°19'16" West 25.24 feet; thence South 52°02'51" West 216.98 feet; thence South 33°23'58" East 23.93 feet; thence South 27°00'54" East 54.76 feet; thence South 35°28'44" East 46.62 feet; thence South 23°16'58" East 53.31 feet; thence South 43°20'55" East 23.34 feet; thence South 30°06'09" East 51.97 feet; thence South 35°21'24" East 50.22 feet; thence South 28°41'41" East 50.12 feet; thence South 11°02'17" East 31.58 feet; thence South 35°00'50" East 73.87 feet

to the Southwesterly extension of the Southeasterly line of said Lot "A"; thence North $57^{\circ}53'00''$ East along said Southwesterly extension and along the Southeasterly line of said Lot "A", 239.50 feet to a point on the Northwesterly line of Ocean Street (formerly Laguna Drive per Map No. 2037) said point being on a curve, concave Southeasterly, having a radius of 127.29 feet, a radial line through said point bears North $72^{\circ}15'24''$ West; thence continuing Northeasterly along the Southeasterly line of said Lot "A" (being also the Northwesterly line of said Ocean Street along the arc of last said curve, through a central angle of $63^{\circ}09'00''$, a distance of 140.30 feet to the beginning of a compound curve, concave Southeasterly, having a radius of 190.00 feet; thence continuing Easterly along the Southeasterly line of said Lot "A" (being also the Northwesterly line of said Ocean Street) along the arc of last said curve, through a central angle of $10^{\circ}44'11''$, a distance of 35.60 feet to the Southwest corner of land described in Deed to R. B. J. Enterprises recorded January 4, 1965 as File No. 124 of Official Records of San Diego County, California hereinafter referred to as Deed No. 1; thence North $31^{\circ}52'30''$ West (record North $32^{\circ}21'40''$ West per said Deed No. 1) along the Southwesterly line of said land to R. B. J. Enterprises, 315.00 feet to the Northwest corner thereof; thence North $86^{\circ}45'06''$ East (record North $86^{\circ}15'50''$ East per said Deed No. 1) along the Northerly line of said land to R. B. J. Enterprises, 560.04 feet to the Northeast corner thereof; thence South $18^{\circ}13'44''$ East (record South $18^{\circ}45'48''$ East per said Deed No. 1) along the Northeasterly line of said land to R. B. J. Enterprises, 50.00 feet; thence leaving the Northeasterly line of said land to R. B. J. Enterprises, South $37^{\circ}18'24''$ East 27.55 feet; thence South $9^{\circ}15'08''$ East 17.71 feet to a point on the Northeasterly line of said land to R. B. J. Enterprises, which bears along said Northeasterly line North $19^{\circ}23'48''$ West (record North $10^{\circ}45'48''$ West per said Deed No. 1) 31.96 feet from a point of compound curvature on the Easterly line of said Laguna Drive (vacated) as shown on said Map No. 1782 (said point also being an angle point in the Northeasterly line of said land to R. B. J. Enterprises) thence South $18^{\circ}13'35''$ East (record South $18^{\circ}45'48''$ East per said Deed No. 1) along the Northeasterly line of said land to R. B. J. Enterprises, 31.96 feet; thence leaving the Northeasterly line of said land to R. B. J. Enterprises, South $11^{\circ}02'22''$ East, 35.99 feet to a point on the arc of a curve, concave Southwesterly, having a radius of 65.00 feet, which is distant Northwesterly 27.30 feet, measured along the arc of said curve from the TRUE POINT OF BEGINNING herein, a radial line through said point bears North $34^{\circ}33'16''$ East; thence Southeasterly along the arc of last said curve, through a central angle of $24^{\circ}03'57''$, a distance of 27.30 feet to the TRUE POINT OF BEGINNING.

ef/bk

EXHIBIT B

Protected Land

Lot 3 of Carlsbad Tract Number 81-35, Map No. 11007,
filed in the Office of the County Recorder of San Diego
County on July 27, 1984, Recorder's File No. 84-286-096

EXHIBIT C

Public Resources Code Section 30106

[30106. Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Recording Requested by and
When Recorded Mail To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

CERTIFICATE OF ACCEPTANCE

OFFER OF DEDICATION OF OPEN SPACE EASEMENT

This is to certify that _____ hereby accepts
the Offer to Dedicate Open Space Easement executed by _____
_____ on _____, 19____ and recorded on
_____, 19____ in Book _____, Page _____ of the Official Records in
the Office of the Recorder of _____ County.

By _____

Dated _____

For _____

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, 19____, before the undersigned, a Notary Public in
and for the said State, personally appeared _____,
Title _____ known to me to be the _____
of the _____, who executed the within instrument and
acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

Page 1 of Two Pages

Exhibit 17

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

ACKNOWLEDGEMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that _____
 is a public agency/private association acceptable to the Executive Director of
 the _____ Commission, California
 Coastal Commission to be Grantee under the above described Offer to Dedication.

 Dated

 Executive Director

 Coastal Commission

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On _____, before the undersigned, a Notary Public in and for
 said State, personally appeared _____

 Name

 Title

of the California Coastal Commission and known to me to be the person who
 executed the within instrument on behalf of said Commission, and acknowledged to
 me that such Commission executed the same.

Witness my hand and official seal.

 Notary Public in and for said
 County and State

Page 2 of Two Pages

Exhibit 17

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORD 17, 2

ACKNOWLEDGEMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that _____
 is a public agency/private association acceptable to the Executive Director of
 the _____ Commission, California
 Coastal Commission to be Grantee under the above described Offer to Dedication.

 Dated

 Executive Director

 Coastal Commission

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On _____, before the undersigned, a Notary Public in and for
 said State, personally appeared _____

 Name

 Title

of the California Coastal Commission and known to me to be the person who
 executed the within instrument on behalf of said Commission, and acknowledged to
 me that such Commission executed the same.

Witness my hand and official seal.

 Notary Public in and for said
 County and State

State of California, George Deukmejian, Governor
California Coastal Commission
SAN DIEGO COAST DISTRICT
6154 Mission Gorge Road, Suite 220
San Diego, CA 92120
(714) 280-6992

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FILED: January 31, 1983
49th DAY: Waived
180th DAY: July 30, 1983
STAFF: DNL:lro
STAFF REPORT: March 22-25, 1983
DATE: March 11, 1983

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

EXHIBIT "E"

Application No.: 6-83-51

Applicant: Native Sun Investment Group

Agent: Mike Mahoney/Robert O. Sukup

Description: Minor subdivision of 7.65 acre parcel into three lots: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. Also, construction of 14 condominiums and swimming pool on Lot 1.

lot area	95,812 sq.ft.
<u>Lot 1:</u>	
Building coverage	30,956 sq.ft. (32%)
Pavement coverage	32,967 sq.ft. (35%)
Landscape coverage	31,909 sq.ft. (33%)
Parking spaces	35
Zoning	R-3
Plan designation	O-4 dua (net w/density credit)
Project density	2.5 (net)
Ht abv fin grade	35 ft. maximum

Site: Parcel located northwest of Ocean St./Mountain View Dr. intersection, Carlsbad, San Diego County. APN 203-010-14

Substantive File Documents: *City of Carlsbad LCP
*Statewide Interpretive Guidelines
*CCC/86-81-249-Native Sun

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval with conditions addressing revised site plans / public liability, open space easements over the bluff face, runoff and grading controls, open space easements over sensitive habitat/buffer areas, landscaping, lateral access and public access improvements and archaeological mitigation (see pages 2 - 4) for the special conditions. Major issues / include the concentration of development on upland areas, development of the site consistent with the certified LCP, the retention of natural buffer areas and precedential effects on the LCP implementation.



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STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution.

I. Approval with Conditions.

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

II. Standard Conditions.

See page 16.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Site Plan. Prior to transmittal of the permit, the applicant shall submit a revised site plan, any associated floor or grading plans which eliminate any alteration of the bluff face by re-siting the units generally behind the 30 ft. contour line on the northwesterly and westerly slopes (or as specifically shown on Exhibit C), ~~relocating the proposed swimming pool and decks back of the blufftop development line and relocating the proposed private beach stairway towards Buildings D and E in the vicinity of the eroded dirt road.~~ Said plans shall be submitted to, reviewed and accepted in writing by the Executive Director.

2. Open Space Easement/Bluff Face. Prior to the transmittal of a permit, the applicant shall record an irrevocable offer to dedicate to a public agency, or to a private association acceptable to the Executive Director, ~~an open space easement over the bluff face~~ as shown in Exhibit D. Said open space easement shall prohibit any alteration of landforms, placement or removal of vegetation, or erection of structures of any type, unless approved by the California Coastal Commission or its successor in interest.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and the easement area.

3. Waiver of Public Liability. Prior to transmittal of the coastal development permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that binds the applicant and any successors in interest. The form and content of the deed restriction shall be submitted to the review and

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approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazards from erosion and from landslides and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other regulatory agency for any damage from such hazards; and (c) the applicants understand that construction in the face of these known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of storms.

4. Runoff Control. Prior to the transmittal of the permit, the applicant shall submit a runoff control plan prepared by a licensed engineer qualified in hydrology and hydraulics which would assure that there will be no increase in peak runoff rate from the developed site over the greatest discharge expected from the existing undeveloped site as a result of a 10-year frequency storm. Runoff control shall be accomplished by a variety of measures, including, but not limited to, on-site catchment basins, detention basins, siltation traps, and energy dissipators, and shall not be concentrated in one area. Sub-drainage systems, if necessary, to remove groundwater from the bluffs shall also be incorporated. Said plans including supporting calculations shall be submitted to, reviewed and accepted in writing by the Executive Director. The applicant shall also submit, for his review and acceptance in writing, detailed maintenance arrangements for providing the ongoing repair and maintenance for all approved and erosion-control facilities.

5. Grading Restrictions.

a) Grading activity shall be prohibited during the rainy season from ~~November 1st to April 1st of each year.~~

b) All graded areas shall be landscaped prior to October 1st of each year with either temporary or permanent landscaping materials, to reduce erosion potential. Such landscaping shall be maintained and replanted if not well-established by December 1st following the initial planting.

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

d) Sandbags, gravelbags and temporary drainage basins shall be installed along all fill slopes and along the shoreline of Buena Vista Lagoon during grading and construction operations.

6. Open Space Easements/Habitat Protection and Buffer Areas. Prior to transmittal of a permit, the applicant shall record an irrevocable offer to ~~dedicate to a public agency, or to a private association acceptable to the~~ Executive Director, an open space easement over Lot 3 of the proposed subdivision as shown on Exhibit E. Said open space easement shall prohibit any alteration of landforms, the placement or removal of vegetation except as specified herein. The irrevocable offer to dedicate an open space easement shall include conditions prohibiting any future land divisions, commercial or residential development but expressly recognizing the right of access to the weir for maintenance purposes. It shall also recognize the right of the accepting agency to conduct activities within the open space area which would enhance the lagoon habitat by dredging or otherwise removing fill.

The offer shall recognize that the erection of some public access improvements may be allowed, in consultation with the State Department of Fish and Game, and subject to Coastal Commission permit requirements.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors in assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances except tax liens. The offer to dedicate shall be in a form and of content acceptable to the Executive Director and the document shall include legal descriptions of both the applicant's entire parcel and easement areas.

7. Landscaping. Prior to transmittal of a coastal development permit for the subject project, a detailed landscape plan indicating the type, size, extent and location of plant materials, the proposed irrigation system, and other landscape features shall be submitted to, reviewed, and determined adequate in writing by the Executive Director. Drought tolerant and salt-tolerant plant materials shall be utilized to the maximum extent feasible.

8. Lateral Access. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. Such easement shall be located over and throughout Lot 2 and Lot 3 of the proposed subdivision, as shown on Exhibit F. Such easement shall be recorded free of prior liens except tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording. The document shall include legal descriptions of both the applicant's entire parcel and the easement area.

9. Archaeological Resources. The applicant shall comply with the adopted mitigation measures on cultural resources in the certified E.I.R. for the project.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History. The applicant has previously applied for a coastal development permit (#6-81-249) for the same project on the site last year. In June 1982, the Commission conditionally approved the project with two alternatives for the construction of either 14 or 10 condominiums on the upland portion, dependent on the incorporation of an adjacent parcel (commonly referred to as the "Tenaglia" property) with the project site, consistent with the certified Carlsbad LCP. With the exception of the

~~above revisions to consolidate the properties, the remaining conditions of approval are consistent with those proposed herein.~~

The previously approved conditions to require property consolidation resulted from the certified Carlsbad LCP policies and an ongoing ownership dispute and litigation between the applicant, Title Insurance and Trust Company and the State Lands Commission. As background, Native Sun originally took out title insurance on the adjoining Tenaglia site (APN's 155-190-06, 155-101-62/see Exhibit G) and intended to commit it to open space as a tradeoff for developing the lowlands area, comprised in the proposed Lot 3, in their first local government submittal. However, during the original proposal's review by the City of Carlsbad, the applicant stopped mortgage payments on the "Tenaglia parcel" after the State Lands Commission asserted public trust claims. After Native Sun stopped payments, Title Insurance stepped back in and purchased the Tenaglia property and it holds the actual grant deed while Native Sun possesses title. As a result of these circumstances, Native Sun is in litigation against both the title company and State Lands with Title Insurance representing them against the Lands Commission. Although the original coastal development permit application (#6-81-249) did not include the adjoining parcel, the proposed Lot 3 was shown as "reserved for future development."

While the applicant finally agreed to the open space easement over Lot 3, they contended that committing to an open space easement over the adjoining 2.65 parcel ("Tenaglia property") would damage their position with Title Insurance and Trust Company. Specifically, the applicant is litigating that it did not receive fee title to an unencumbered parcel of property and the property should not therefore have been insured. Once the applicant learned of the potential public rights over the property, they stopped payments and the original owner began foreclosure proceedings. However, as previously noted, Title Insurance stepped in, paid off the original seller and now holds the note and security on the parcel. Therefore, although the applicant holds no title to the adjoining parcel and indicated a willingness to commit it to open space, they could not execute any easement without the cooperation of Title Insurance as a third party. Under those circumstances, the applicant believes any agreement to commit the adjoining parcel to open space would damage their lawsuit, since Title Insurance and Trust Company could assert that its commitment is only part of the development price for the permitted condominiums, rather than any title defects on the property. Further, the applicant continues to contend that Title Insurance, as holder of the note and security, will only co-sign on the open space easement offer if the applicant settles their lawsuit, possibly losing a substantial investment. These lawsuits are still pending and the issues remain unresolved. Given the applicant's declarations of their limited ability to execute the necessary agreements because of the ongoing title disputes and their desire to gain approval for the original 14-unit project, they have waited the required six months under the Commission's administrative regulations and have submitted this

2. Detailed Project Description/Location. The applicant is requesting approval of a minor subdivision of a 7.65 acre parcel into three lots. The lots would be divided as follows: Lot 1 - 2.2 acres; Lot 2 - 2.2 acres and Lot 3 - 3.25 acres. The applicant then proposes to construct 14 condominium

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units on Lot 1. The subject property is topographically distinguished by two areas. An upper bluff extends out from Ocean Street and fronts along the beach. The second area, approximately 10-15 ft. below the bluff, consists of sandy/rocky beach areas terminating at the wood weir on the mouth of Buena Vista Lagoon and then extends eastward to some lowlands abutting the lagoon behind some adjoining apartments. Lot 1 generally comprises the upper bluff area and the proposed condominiums would be developed primarily on its level mesa. The applicant proposes to dedicate Lot 2, comprised mainly of beach area and the lagoon mouth, to the public for open space. ~~As originally submitted, the applicant proposed to reserve the remaining 3.25 acres of Lot 2 or lowlands for possible future development but has subsequently agreed to dedicate it for public access and open space purposes.~~

The proposed 14 condominium units will be comprised in seven townhouses (or "common-wall") structures. Ten of the proposed units will have two bedrooms and living area between 2500-2600 sq.ft. The remaining four units will have three bedrooms and approximately 2,850 sq.ft. living area. All of the units have two-car garages and seven open guest parking spaces are provided on the site. There is a single access point for the project from Ocean Street. The proposed condominiums are mainly comprised in two living floor areas with some split-level entrances and garages. However, because of the Tudor architectural design, the structures' roof peaks will reach a maximum height of 35 feet above grade.

The submitted site plan delineates the construction of ten units along and over the bluff top (refer to sections) and the remaining four units are located along the southeastern property line. As submitted, a retaining wall of varying height will be constructed along the bluff face. There will be minimal grading performed on the property resulting in a balanced 4,000 cu. yds. of cut and fill. An average of two feet of cut and fill will be done and most of the fill will be deposited along the southeastern corner to elevate Buildings F and G. As submitted, the site plan incorporates a common pool/deck area situated within the ocean bluff face and private beach access stairs which traverse down the bluff to the shoreline.

For background purposes, the applicant had previously submitted a 40 unit condominium project on the subject site to the City of Carlsbad and for draft consultation with Coastal Commission staff. At that time, the project site included not only the subject 7.65 acre parcel, but an additional 2.65 acre property (see Exhibit G) located adjacent to the lowlands area of the proposed Lot 3. While the acreage is still owned by the applicant, it was not included in the current application. The originally proposed 40 units were sited on both the upper and lower portions of the property. Due to expressed concerns by the City of Carlsbad, Commission staff and interested parties relating to beach erosion, public lands determinations and visual impacts, among others, the applicant subsequently withdrew the project from the City. The original 40 unit project was never formally submitted to the Coastal Commission.

The Pointe San Malo project is located within the City of Carlsbad on the south side of Buena Vista lagoon and adjacent to the ocean (see Exhibit A). The parcel is located northwest of the Ocean Street/Mountain View Drive intersection. On the west, the site fronts on the ocean shoreline and on the north, it faces the lagoon, an "ecological reserve", opposite the

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existing San Malo residential area in South Oceanside lying on the north side of the lagoon. A public beach accessway abuts the southern property line. Multi-family residential development is located to the east with the lagoon and railroad tracks situated further to the northeast. There are single-family residences situated to the south and across Ocean Street to the southeast.

3. Geologic Stability. As previously stated, the subject site can generally be divided into two topographic areas. The upper level, a coastal bench, is actually part of a larger bench which terminates at this site. The top of the bench slopes gradually northward with slope gradients ranging from 25-45 percent along the ocean. The second topographic area is the lower level consisting of the ocean, beach and lowlands fronting the lagoon. The beach area can be best characterized as a pebbly one with only a limited amount of sandy area. The project site is overlain by three different soil series - Marina Loamy Coarse Sand, Terrace Escarpments and Coastal Beaches. Most of the project area is covered by Marina Loamy Coarse Sand which is found on the gently sloping upper bench and has a moderate erosion hazard. The Terrace Escarpment soil is found near the western boundary and is characterized by steep to very steep slopes in the southwest corner occurring on terrace fronts or alluvial fans; it exhibits a severe erosion hazard. The third soil type, Coastal Beaches, found along the lower level is composed of gravel or sand and is susceptible to tidal inundation from the ocean; it also exhibits severe erosion characteristics.

The certified Carlsbad LCP specifies the need for new development projects to submit a site-specific geologic investigation, to limit shoreline structures, and to execute waivers of public liability. Additionally, Policy 4-4 specifies "no development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities." In reference to this specific site, Policy 7-8 specifically states "residential development shall be clustered on the highland area and the bluff face shall not be altered [and] there shall be appropriate bluff top setbacks based on geologic reports taking into account the prominent location, shoreline instability and significant habitat adjacent to the lagoon." Additionally, Policies 3-1 and 4-7a specifically state the development of slopes greater than 25% incline shall be prohibited and such slopes be left undisturbed. These LCP policies represented the incorporation of the Act's policies (Sections 30235 and 30253) into the general plan.

As detailed in the project description, ten of the proposed condominiums are sited directly on or over the ocean bluff top and face with a retaining wall constructed along the ocean frontage. The proposed retaining wall was primarily designed to allow some backfilling to create additional yard area for the future condominiums on the bluff top. However, as submitted, the proposed development would therefore be inconsistent with the certified LCP policies, since it would involve alteration of erodible and steep slopes particularly located along the property's westerly bluff face and could therefore precipitate coastal erosion. Special Condition #1 requires the applicant to redesign the site plan and construct the proposed units behind the bluff top, relocate the swimming pool/deck away from the bluff face and relocate the private beach accessway. Generally, the Commission does not and the certified LCP does not endorse the construction of private accessways.

However, in this instance, the subject site includes some rounded and low slopes on its northern bluffs, as well as an existing eroded dirt road presently used for beach access by pedestrians and public agencies, which would facilitate future residents to simply access the beach over the natural slopes. Therefore, in order to concentrate access and discourage random access over the bluffs, a property-designed private accessway would, on this site, be more protective of coastal resources than its elimination. With these revisions, the applicant will be restricting any significant bluff face alteration or grading of steep slopes. In conjunction with the required redesign of the site plan, Special Condition #2 requires the dedication of an open space easement over the site's bluff face to permanently preserve the bluffs as natural open space.

The applicant has submitted site-specific geologic and soils information which indicates the property is suitable for residential development with proper foundations, grading specifications and engineering designs. The applicant will be complying with these requirements. As specified in the certified LCP, since the submitted reports do not assure structural stability, a waiver of public liability is being required for the permitted development as detailed in Special Condition #3. It must be noted that this area is one of severe erosional hazard. Existing development upcoast and downcoast is set over the bluffs down to the shoreline and seawalls are required. As documented in the certified LCP, there are limitations on the development of shoreline structures and the need to establish appropriate bluff top setbacks for new development. As approved, the permitted development will have no setbacks from the established bluff top development line and there are no definitive assurances that some shoreline protective works will not be required in the future. However, the proposed development, as conditioned, will be clustered on the upland area which already lies approximately 40 ft. eastward of the existing development stringline. The required bluff top development line is appropriate, given the site's critical location at the ocean's interface with the lagoon, but, in combination with the extensive open space easement areas and existing stringline, a bluff top setback appears overly restrictive. Further, given the existence of a natural pebble berm, even during the winter, along the shoreline and the distance of the site's bluff top from the shoreline, severe tidal action along the slopes' base is infrequent. Additionally, given the almost continual alignment of seawalls throughout Carlsbad and Oceanside, any potential for future development of shoreline structures would not be highly precedential or prejudicial. Therefore, given the required redesign to cluster development and minimize the alteration of natural landforms, the permanent preservation of the ocean bluff face as open space, submitted geologic and soils analyses, the required waiver of public liability, the existing development stringline and the bluff top's setback from the immediate shoreline, the Commission finds the proposed development will assure the geologic stability of the site, minimize coastal erosion and diminish the risk of geologic hazards to life and property. With these findings, the Commission thus determines project approval, as conditioned, will be consistent with the certified LCP policies and all applicable Coastal Act policies and it will not establish any adverse precedent for future developments.

4. Runoff Control/Water Quality. The subject property is located at the southwestern corner of Buena Vista Lagoon and adjacent to the Pacific Ocean. Runoff from the westernmost portion of the property drains into the ocean; the remainder of the property drains into the lagoon through an existing pipe

located about 100 feet east of the weir. Portions of the adjoining property to the east also drain into the lagoon via this existing pipe. Buena Vista Lagoon is considered the northernmost lagoon in San Diego County, and in some ways is not typical of most other lagoons in the county. The lagoon is composed of fresh and brackish waters, is not open to the sea, and its normal surface level is approximately six feet above MSL. At the mouth of the lagoon is a sand beach barrier which was naturally formed by wave and littoral current action. A wooden weir is located within a manmade channel at the mouth of the lagoon which permanently empounds water in the lagoon and controls the water level. A land area of approximately 22 square miles drains into the lagoon through Buena Vista Creek. The main source of water in the lagoon is land drainage, agricultural runoff and rising groundwater.

Buena Vista Lagoon has been designated an "Ecological Reserve" by the State Department of Fish and Game. It is both a valuable biological resource and an aesthetic open space element. As is the case with all of the lagoons in San Diego County, Buena Vista Lagoon has been adversely affected by increased deposition of sediment resulting from agricultural and suburban development in its watershed. Primary effects of this development include the infilling of the lagoon and a reduction of its total volume and the introduction of various nutrients or pollutants which contribute to periodic algal blooms. The primary effects of the proposed development would be the alteration of local drainage patterns, increased runoff due to the presence of impervious surfaces, the exposure of soils to increased erosion and the introduction of increased levels of urban runoff pollutants into the lagoon.

The certified LCP for the City of Carlsbad contains several policies relating to grading requirements, drainage and coastal erosion. Policy 3-2, in reference to developments located along the first row of lots bordering the lagoon, including the subject parcel at the mouth, states "storm drain alignments...which would be carried through or empty into Buena Vista Lagoon shall not be permitted...." Policy 3-4 prohibits any grading activity during the rainy season and requires the immediate revegetation of graded areas to reduce erosion potential. Lastly, Policy 4-7 also states that no development shall be permitted without submittal of acceptable runoff control plans, maintenance agreements and certain specifications for the installation and operation of runoff control devices. The LCP policies were derived from the resource protection and water quality standards (Sections 30231 and 30240(a)(b)) of the Act.

As previously stated, although the applicant will be performing a minimal amount of grading over the site, the construction activity occurring along the bluff face and top, will present a significant erosion hazard. The construction activity and grading operations will thus establish short-term impacts. Along with the required site plan redesign and open space easement over the bluff face, Special Conditions 4 and 5 require the submittal of a runoff control plan and establish restrictions to detail the time and method for the grading activity. With these conditions, appropriate erosion controls will be established to mitigate the short-term impacts of grading and prevent further siltation of the lagoon. With regard to drainage and runoff, the project, as submitted, incorporates roof down-drain systems connected to the storm drain and a requirement that a drainage outfall shall be designed to discharge at a point west of the lagoon weir. Since the discharge point is west of the weir, the potential for any long-term impacts to the closed lagoon will be effectively mitigated. The submittal of a runoff

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control plan will serve to document the effectiveness and operation of the designed drainage system. Therefore, given the required runoff and grading controls, along with the submitted drainage system, the Commission finds the proposed development, as conditioned, consistent with all applicable LCP and Coastal Act policies. Further, the Commission thus determines that the project approval, as conditioned, should protect the biological productivity and quality of the lagoon and other adjacent environmentally sensitive habitat values by controlling runoff and effectively mitigating off-site impacts.

5. Biological Resources. Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and coastal strand community, do occur on the subject property. Only a small portion of the lagoon habitat, however, actually lies within the property boundary, but activities on the property could affect the quality of the entire habitat. This seemingly small lagoon located in and around the subject property, is actually a portion of the larger Buena Vista Lagoon, which has been discussed as essential habitat for the California Least Tern. The lagoon also provides nesting and foraging habitat for other avian species although the quality of this habitat is decreasing due to continuous development along the edge of the lagoon. The Pointe San Malo property is one of the last vacant areas along this portion of the Buena Vista Lagoon. Additionally, the coastal strand habitat is a plant community which has become rare in San Diego County due to development along the coast. The community consists of plant species which are tolerant of salt air and sandy soil conditions. This habitat is located on the sandy soils near the base of the west-facing slope. Although the coastal strand habitat on the property has been disturbed by human activity, it still contains several of the plant species characteristic of the coastal strand community.

In reviewing the policies of the certified LCP, Policy 3-2 specifies for developments located along the first row of lots bordering Buena Vista Lagoon, including the subject site, as follows:

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from the wetlands shall be required in all development, in order to buffer sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes....

Land divisions shall only be permitted on parcels bordering the lagoon pursuant to a single planned unit development permit for the entire original parcel. (emphasis added)

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

In addition to this site specific policy, Policies 3-1 and 4-7a again prohibit grading of steep slopes and Policy 4-4 prohibits development on the face of any ocean bluff. These LCP policies were derived from Sections 30231, 30240(a) and 30240(b) of the Act which require the preservation of habitat values by maintaining natural vegetation buffer areas and preventing off-site impacts to environmentally sensitive areas.

As submitted, the project would involve elimination of the coastal strand vegetation on the west-facing slopes and reserve the lowlands area, comprising Lot 3 of the proposed subdivision, for future development. The project would therefore be inconsistent with the certified LCP policies and resource protection policies of the Act. However, with the attached special condition to preserve the bluff face as open space, the coastal strand community will be minimally impacted. As conditioned, the Commission has also required Lot 3, consistent with the site-specific, certified LCP policy, to be committed to open space for habitat protection and natural buffer area. With regard to the inclusion of the adjoining parcel, along with proposed Lot 3, and their commitment to open space, their consolidation would fulfill and implement the certified Carlsbad LCP. However, given the applicant's limited ability to properly commit the adjoining property to open space due to the existing legal constraints and the Commission's previous approval which offered two alternatives, one without the lot consolidation, the submitted project, in and of itself, may be found consistent with Chapter 3 policies. With the open space restrictions on Lot 3, the project will incorporate adequate natural vegetative buffer areas necessary to mitigate the impacts of construction and increased human activity near the lagoon and permanently preserve critical open space corridors. Therefore, as conditioned, the Commission finds project approval consistent with applicable Chapter 3 policies.

6. Visual Impacts. The proposed condominiums are situated on a prominent ocean bluff and also located within the Buena Vista Lagoon viewshed. Although the proposed units are generally clustered on an upper bench level, the project, as submitted, will alter and encroach onto the bluff face. As previously stated, the certified LCP for Carlsbad specifically requires that development of this site be clustered to preserve open space and retain the natural landforms of the ocean bluffs (Policies 3-2 and 4-4). These policies were partially derived from Section 30251 of the Act which mandates the protection of public views, the preservation of scenic amenities in coastal areas and the retention of natural landforms.

As conditioned above, the project will be required to setback from the ocean on its blufftop, preserve the ocean bluff face in its natural state and retain the on-site lowlands as open space. These conditions will largely mitigate the project's visual impact by clustering the units away from the bluff line, thus minimizing its intrusion along the shoreline or within the lagoon viewshed, and by retaining the natural vegetation of the area to serve as visual buffers. The applicant contends that the submitted site plan conforms to the existing stringline of development along the shoreline. While the adjacent residences to the south and the existing San Malo residential community to the north in Oceanside across the mouth of the lagoon do extend further seaward than the proposed development, the subject site does not represent an infill area, but, rather, it is viewed as an extension of development northward at a critical interface between the ocean and the lagoon. Therefore, not only for habitat and resource protection purposes,

the required setbacks and open space dedications are necessary to preserve the scenic integrity of this coastal areas. Additionally, the applicant will be required to submit a detailed landscaping plan and revegetate disturbed areas immediately after grading to further enhance the project's amenities and mitigate the short-term impacts of construction activities. Therefore, given the required unit clustering, bluff setback, open space dedications, landscaping requirements and grading restrictions, the Commission finds project approval, as conditioned, will be consistent with the certified LCP, applicable Coastal Act policies and it will preserve the visual amenities of the coastline.

7. Public Access. The subject site is located on a bluff between the ocean and the first coastal roadway, Ocean Street, in this area. The beach area to the west of the proposed project site and the lagoon area to the north can currently be reached via an existing ten-foot wide, improved, open and signed public access easement. The easement is located along the southern boundary of the subject site. The beach and inlet areas are currently used by walkers, runners and amateur naturalists. The two areas, in combination, represent an unusual and varied coastal resource. There also exists an undeveloped potential for an areawide pathway and open space system relating to the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon, along with a bird sanctuary, and the Department of Fish and Game owns properties on the south side of the lagoon, east of the AT & SF Railroad right-of-way, as well as on the north side. The project site is located at a crucial point in any potential linkage between public beach areas and the public lagoon areas. No public parking is available in the vicinity of the public beach access with the exception of parking along Ocean Street.

The certified Carlsbad LCP contains two specific policies relating to development of the subject property and the provision of public access opportunities. The certified LCP states as follows in Policy 7-6 and 7-8.

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon, to facilitate public awareness of the natural habitat resources of the Lagoon. To protect the sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. [and]

On the vacant parcel at the extreme north end of Ocean Street, when development is proposed, an irrevocable offer to dedicate the beach and lowland areas shall be required pursuant to Section 30211 of the Coastal Act.

Sections 30210, 30211 and 30212 of the Act all require that public access to the shoreline and along the coast be maximized and provided in all new developments. Although the proposed development will not obstruct use of the existing public access easement along its southern boundary, the development will certainly inhibit lateral access along the ocean shoreline or lagoon either indirectly by proximity or directly through private attempts to restrict public beach access. Therefore, in order to be consistent with the certified LCP, to maintain public beach access, recognize and protect the informal use of the site, special conditions have been attached to require the provision of lateral accessways along the shoreline and lagoon lowlands. Further, to enhance opportunities for public access and recreation, it is recommended that, along with the provision of lateral access, an access trail or other necessary public access improvements be developed on the southerly side of Buena Vista Lagoon, consistent with resource protection policies and in consultation with the State Department of Fish and Game. Therefore, as conditioned, the Commission finds the proposed development consistent with applicable LCP and Coastal Act policies since adequate vertical access already exists and the project will provide lateral access opportunities. Further, as specifically required by Section 30604(c) of the Act, the Commission finds the proposed development conforms with all the public access and recreation policies of the Act.

8. Housing. The proposed development provides for the construction of fourteen condominiums on a vacant parcel. Under previous Coastal Act policies and the adopted Statewide Interpretive Guidelines, the question of affordable housing protection could have been raised. However, recent legislation has transferred this responsibility to local governments consistent with Section 65590 of the revised Government Code. Further, pursuant to Section 30519.1 of the Act, these regulatory revisions were also applied to the certified Carlsbad local coastal program and any previously approved affordable housing LCP policies deleted. Therefore, the housing issue is no longer a matter of coastal policy review.

9. Archaeological Resources. As a result of some preliminary research and site inspections by qualified archaeologists, one archaeological site was located. This site, SDI-626, was originally recorded by William J. Wallace in 1958, and is located in the upper area of the project at the western and southern extent of the property. Surface materials included flake stone artifacts, bone and shell, and there is a potential for a depth in excess of 50 centimeters. The surface area of the subject parcel is obscured in places by a thick mat of grass, and the ground visibility in the area of the site was limited. Because of this, the actual extent of the site and the degree to which it has been impacted cannot be determined without some limited subsurface testing and clearing of the grasses. It is impossible that the significant portion of the site has been removed, and that only limited, disturbed materials remain. Delineation of this disturbance, however, requires additional investigation. Special Condition 9 requires that, in order to appropriately study and determine the significance of the site, all the adopted mitigation measures of the E.I.R. be met. With its provisions to complete a limited subsurface sample and any further information retrieval, the Commission finds the site's archaeological resources will be appropriately protected against adverse impacts.

10. Local Coastal Planning. Section 30604(a) of the Act provides that a

coastal development permit shall be issued only if the permitted development will not prejudice the ability of the appropriate local government to prepare a certifiable local coastal program (LCP). However, special legislation (AB 1971) was passed which authorized the Commission to prepare the local coastal program for the City of Carlsbad. In its certification of the Carlsbad LCP, the Commission adopted a site-specific land use policy for the subject parcel. Policy 3-2 states as follows:

"Developments located along the first row of lows bordering Buena Vista Lagoon, including the parcel at the mouth of the Lagoon, shall be designated for residential development at a density of up to 4 dwelling units per acre....

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval....[and]

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is in wetlands. As described in Policy 3-1, a density credit may be provided for any portion of a parcel which is in steep slopes...."

As described in Policy 3-1, a density credit of up to one dwelling unit to be built on developable land may be permitted for each acre of land in slopes of 25% or greater.

In conjunction with the above land use designation, the certified LCP also contains policies to promote a single planned unit development on the project site's upland portion and consolidating its lowlands with the adjoining Tenaglia property for open space and buffer area. The Commission recognized these policies previously and approved two alternatives dependent on the lot consolidation. With inclusion of the adjoining property, the applicant was permitted 14 units; however, absent its incorporation, the applicant was only permitted ten units. However, since the Commission did previously grant the applicant an option to develop the site without inclusion of the adjoining parcel and recognizing the potential difficulties and uncertainties in resolving the competing financial interests herein, the only conflict is the appropriateness and conformity of permitting 14 units, rather than the ten, on the upland area without the lot consolidation. Given that portions of the subject property are areas of original jurisdiction, the key factor is the submitted project's consistency with Chapter 3 policies, even under a certified local coastal program. Therefore, although project approval may be technically inconsistent with the certified LCP, it may be found consistent with all applicable Chapter 3 policies. As conditioned and submitted, without inclusion of the adjoining property, the project will establish open space easements to protect the site's bluffs and natural areas, control runoff to mitigate any potential sedimentation of the

adjacent lagoon, provide adequate landscaping and design revisions to enhance and preserve the scenic amenities of the area, provide adequate parking and formalize public access opportunities. Therefore, the Commission finds project approval, as conditioned should not seriously prejudice the implementation of the Carlsbad LCP.

With the exclusion of the "Tenaglia Property" from the proposed development, the Commission is presented with the possibility for some development proposal to be submitted on the environmentally sensitive "Tenaglia Property" for review at a later date. While the Commission will not and cannot evaluate the permissability of any use on the "Tenaglia" site, not presently within wetlands, the Commission does want to provide direction to future applicants about its position on the property in question. Although a density credit of 1 dua for each net developable acre under the certified LCP was previously assigned to the "Tenaglia site" when it was proposed for transfer to the blufftop as a density bonus for the lot consolidation and implementation of the certified LCP, the actual project impacts of any physical development on the site are much more critical. Therefore, only very low intensity uses, such as possibly a single-family residence, educational-science research activities or nature study, are appropriate for the uniquely-situated and constrained property. Given its physical delineations, a single residence could even represent inappropriate overdevelopment. Further, any proposal must address and adequately mitigate the identified issues herein and merit independent approval based on site-specific Commission review.

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER, CU

Application No. 6-83-51STANDARD CONDITIONS:

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

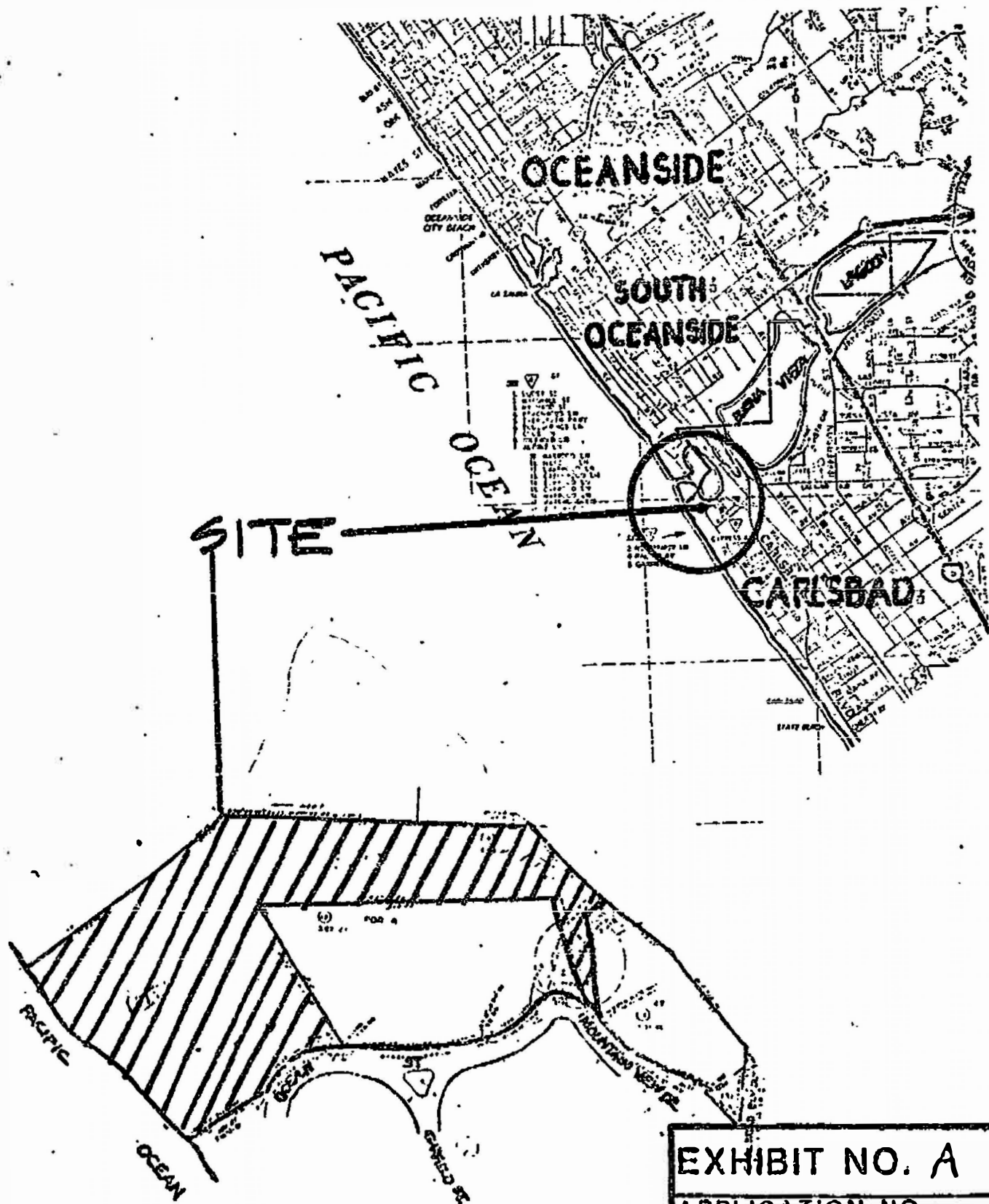


EXHIBIT NO. A

APPLICATION NO.

6-81-249/6-P3-51

Site location

California Coastal Commission

Exhibit 17

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDS CLERK



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California Coastal Commission

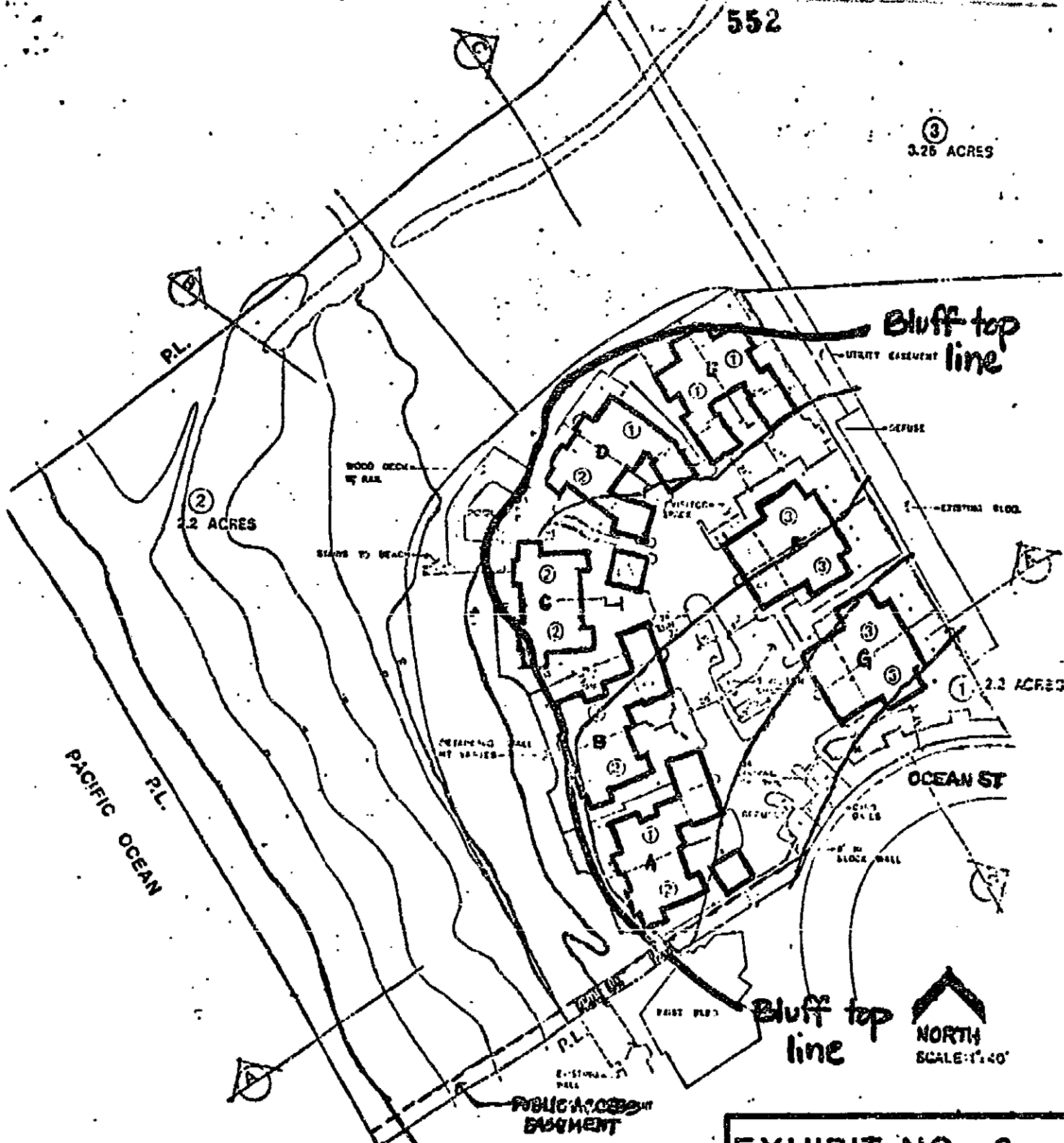



EXHIBIT NO. C
APPLICATION NO. 6-81-249/688-51
<i>Bluff top line</i>
 California Coastal Commission

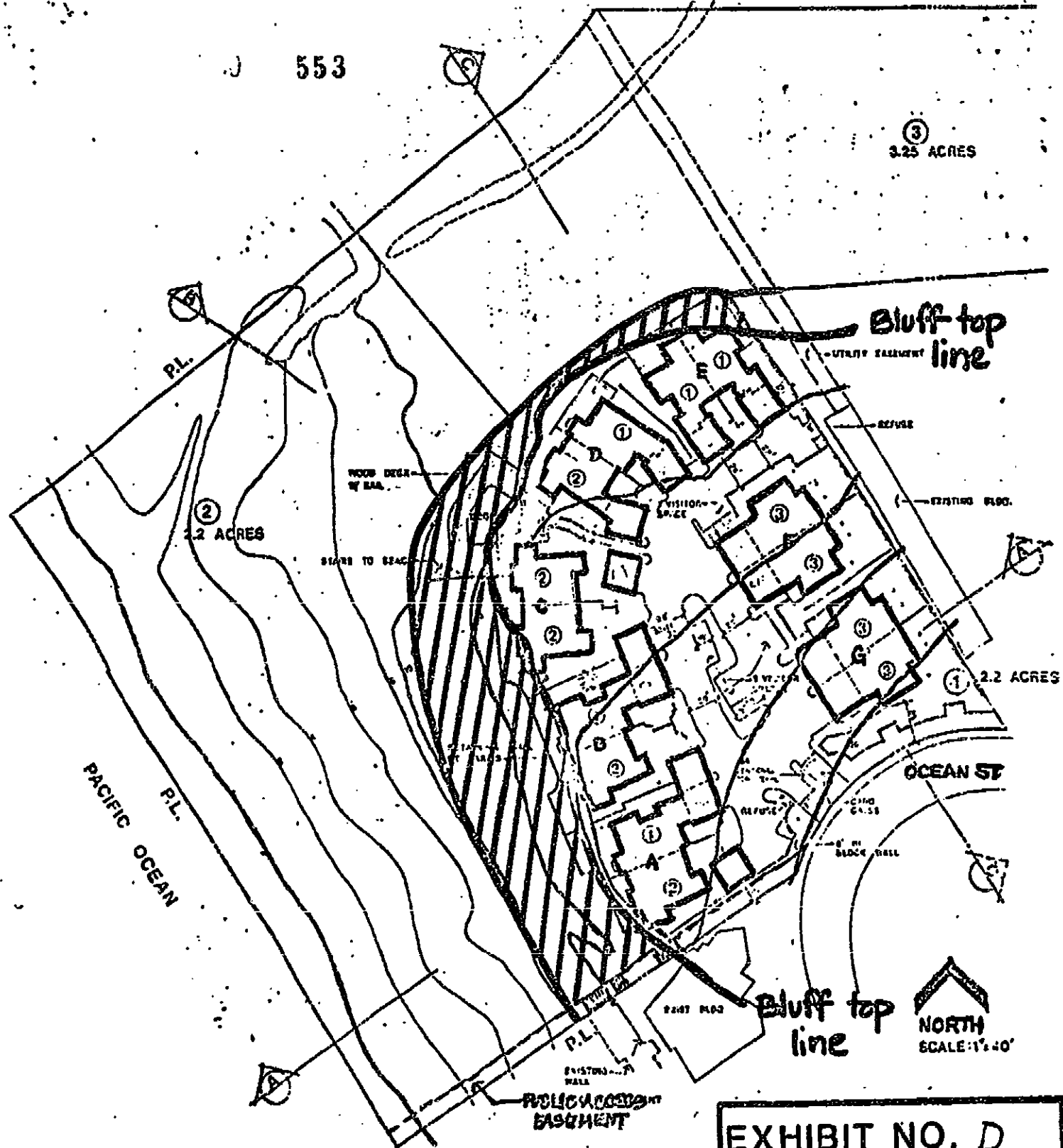

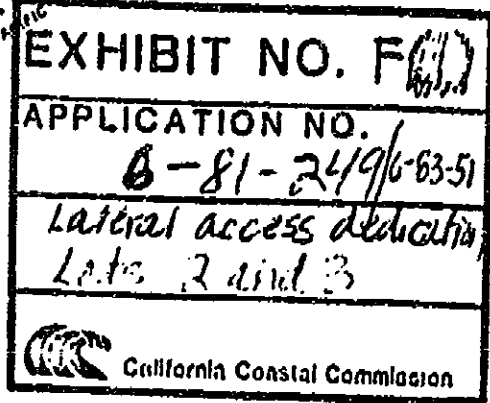
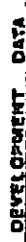


EXHIBIT NO. D
APPLICATION NO. 6-81-249/68351
<i>Open Space Easement</i> <i>Bluff face</i>
 California Coastal Commission

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER 2






BRIDGE ST	414019	775 BRIDGE BLVD
CHAMBERLAIN	---	5175 CHAMBERLAIN
MAIN ST	---	520 CHAMBERLAIN

CODE	NO. RECORDS NO. DUPLICATES	STRUCTURAL COVERED AREAS	PERCENTAGE COVERED
A	5043	431	8.54
B	4044	474	11.72
C	4044	378	9.35
D	11043	475	4.30
E	11043	479	4.34
F	11044	790	7.16
G	11044	470	4.26
	21044	2454	22.81

TOTAL PAYMENT TO PORTAGE • 30.32
 TOTAL BOUND CHARGE • 294
 AND/OR CHARGE AREA • 471
 AND BOUND CHARGE • 30
 CHARGE • 7
 CHARGE/REGISTRATION CHARGE AREA • 3,175 TO
 PORTAGE CHARGE • 450 TO 471 BOUND PAY UNIT

EXHIBIT NO. E
APPLICATION NO. 6-81-249/6-8351
Open Space Easement, Refined, 200114 - Plat 3
 California Coastal Commission

5-13-93

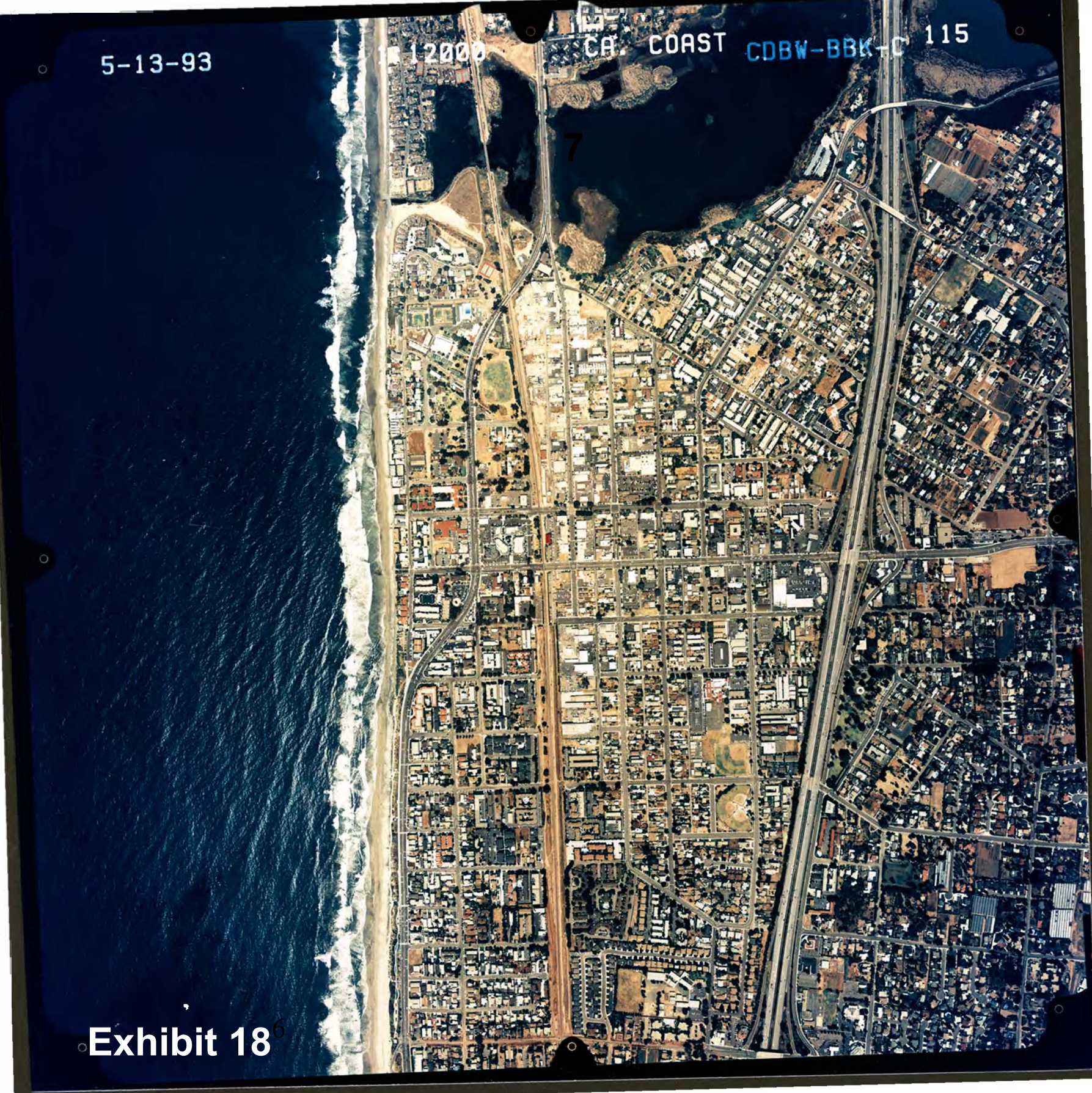
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CA. COAST

CDBW-BBK-C 115

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Exhibit 18⁶





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

April 9, 1996

Robert O. Sukup
The Sea Bright Company
4322 Sea Bright Place
Carlsbad, California 92008

Re: Conceptual development plan for the property located
immediately south and east of the Buena Vista Lagoon mouth, San
Diego County, California.

Dear Mr. Sukup:

Jeff Manning, of my staff, met with you, John Levy (your client). Tim Dillingham of the California Department of Fish and Game (CDF&G), and Bill Ponder of the California Coastal Commission (CCC) on the property located immediately south and east of the Buena Vista Lagoon (Lagoon) mouth on February 1, 1996. The purpose of this meeting was to discuss Mr. Levy's conceptual, blue-line plan (Plan), dated October 18, 1995 to construct two single-family homes. It is our understanding that your client is not the present property owner. He is a prospective buyer and wishes to determine significant issues regarding impacts to sensitive biological resources that may result from implementation of the referenced Plan. This letter addresses potential impacts to endangered species and sensitive biological resources that the Service is aware of in the vicinity of the Lagoon immediately adjacent to the property and provides a chronology of the Service's involvement with this proposed project.

The Service's primary concern and mandate is the protection of fish and wildlife resources and their habitats. A priority of the Fish and Wildlife Service (Service) is to provide comments on any public notices issued for a Federal permit or license affecting the nation's waters (e.g., Clean Water Act, Section 404 and River and Harbor Act of 1899, Section 10). The Service is also responsible for administering the Endangered Species Act of 1973, as amended (ESA).

As discussed during our site visit, the Service has concerns regarding potential direct and indirect impacts to sensitive fish and wildlife resources and species protected under the ESA if the proposed Plan is implemented. One species that is known to occur on the eastern

Exhibit 19

Mr. Robert O. Sukup

2

boundary of the property is the California light-footed clapper rail (Rallus longirostris obsoletus) (rail), a federal and state listed endangered species. The Service is aware of a breeding pair of rails that occupy the cattail marsh along the eastern edge of the property.

Direct impacts to rail may result from construction noise, lighting, and other operations associated with actual construction activities. Additional impacts may result from: 1) the actual loss of upland habitat which functions as a biological buffer from existing human development, 2) the killing, harming, and/or harassment of individual birds by domestic pets, 3) the use of herbicides, pesticides, and insecticides typically associated with urban development that may have potential direct impacts to rail and its prey base, and 4) the reduction in the biological value of the habitat by lighting. Based on these concerns, the Service recommended, during our site visit, that the Plan incorporate a 100-foot "buffer" between the outer edge of the wetland habitat and any structure, fence, or driveway. This "buffer" area should be planted with native vegetation, acceptable to the Service and CDF&G. In addition, the above issues pertaining to the avoidance and minimization of direct and indirect impacts to the rail will need to be addressed.

In addition to the rail, numerous migratory waterfowl are known to use the property for loafing, foraging, and possibly nesting. During our site visit, waterfowl were observed loafing and foraging along the southwestern portion of the property. To avoid impacts to these species, the Service recommended that you explore the opportunity to exchange the property parcel immediately adjacent to the Lagoon (AP# 155-101-65) for the property that abuts the southern boundary of the two parcels. The property abutting the two parcels is designated as open space. This designation could be transferred to parcel (AP# 155-101-65) and your footprint of the Plan could be shifted to the south and away from the shoreline of the Lagoon. At a minimum, there should be a 100-foot setback from the mean high water level to all structures, roads, and fences. This setback would be in compliance with the setback requirement set forth in section 1c in the letter from the City of Carlsbad to you, dated November 1, 1995 (Attachment).

On February 2, 1996, immediately following the site visit, you provided an amendment to the Plan which depicted the location of two single-family homes, driveways, and a parameter fence. This amendment to the Plan does not indicate the avoidance or minimization of impacts to the rail. First, the Plan shows a fence within 30 feet and a driveway within 40 feet of the existing marsh habitat that is occupied by the rail. This does not conform with the 100-foot buffer discussed during our field meeting. Second, the amendment to the Plan does not include measures to avoid and/or minimize potential impacts to the

Mr. Robert O. Sukup

3

rail by herbicides, pesticides, and insecticides. Finally, the amended Plan does not clearly indicate how the proposed 42 inch fence would prevent lighting of the marsh. Minimizing affects of lights into the marsh and lagoon are often most effectively dealt with by placement of back and/or side shields on all outdoor light fixtures.

The Service believes that additional measures should be incorporated into your amended Plan to avoid and/or minimize potential impacts to the rail and other sensitive fish and wildlife resources. These should include: 1) moving the driveways and eastern fence in a westward direction to conform with the 100-foot buffer, 2) grading the slope of the property or constructing barriers along the parameter of the property to prevent urban runoff containing herbicides, insecticides, and pesticides from draining into the marsh and the Lagoon, 3) raising the height of the fence along the eastern boundary to reduce the likelihood of pets, such as cats, from entering the marsh, and 4) the use of light shields to prevent lighting and light glare from entering the marsh.

The Service recommends that you incorporate all prudent and practical avoidance and minimization measures listed above to protect the rail. If, after these measures are included into the Plan and approved by the Service, the Plan still requires the encroachment into the 100-foot buffer, you should propose compensatory mitigation measures which would reduce impacts below that of a level of significance. Compensatory mitigation typically includes the acquisition, creation of the same type and quality of habitat (in-kind habitat functions and values) to that impacted, and the protection of that mitigation site in perpetuity. Creation often includes the excavation of soils from a non-wetland area approved by the Service.

Over 90 percent of California's coastal wetlands have been lost, and the Service considers these habitats as biologically significant public resources. For projects that impact coastal wetlands, the Service typically requires replacement of habitat as high as four times that which was impacted.

The Service recommends that you explore and propose acquisition, creation, and protection of marsh habitat within the vicinity of the Lagoon at a 4:1 ratio for unavoidable impacts resulting from the Plan. You may also wish to explore opportunities to provide an in-lieu fee payment at an amount equal to that for acquisition, creation, and protection.

We appreciate the opportunity to comment on your project. Since your Plan for this development are still conceptual in nature, the Service reserves the right to make additional comments regarding this

Bob Plotted
11007



RECEIVED

AUG 11 1998

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Facsimile Transmittal Letter

Please deliver the following pages to:

NAME: Lee McEachern

We are transmitting a total of 1 pages (in addition to this transmittal letter).

FROM: Bob Sukup

DATE: 8/11/98

TIME: 10:45 AM

REF: Lee - Enclosed is a copy of the letter we received in May, 1998 from The Beach H.O.A. regarding the OK to construct an electric gate

For your future reference, our facsimile telephone number is (760) 720-0098. (If you do not receive a "receive tone" when you dial this number please call (760) 720-0098.)

on Lot 3 of Map # 11007. Said gate will be in the same location as the existing gate. (give or take a few feet)

Call if any questions

Bob

Engineering • Management • General Contracting • Development

4322 Sea Bright Place • Carlsbad, CA 92008 • Telephone/FAX 760-720-0098

Mr. John C. Levey, Jr.
Reflex Corporation
1825 Aston Ave.
Carlsbad, Ca. 92008

Dear Mr. Levey,

Your letter of April 28, 1998 to Mr. Copley was referred to the Board of Directors of the Beach Homeowners Association ("BHA").

To the extent of its interest in Lot 3 of Map 1107 San Diego, County, the BHA hereby consents to your replacing the present gate at the entry to Lot 3 off Mountain View Drive with an electrically operated steel gate, subject to the following conditions:

1. The replacement and maintenance of the gate shall be at the sole cost risk and expense of you and your heirs, successors and assigns.
2. You shall be responsible for and obtain all necessary permits and authorizations for the construction, maintenance and operation of the gate.
3. The BHA, its designees and others legally entitled thereto shall have access at all times to Lot 3 through the gate by means of the controlling device used in Key pad, card, lock or other controller.
4. The width of the gate shall be adequate to permit access by large trucks and heavy construction equipment and there shall be no non-opening over head rods, bars, or other covering that would prevent the entry of such equipment.
5. That construction of the gate shall be commenced no later than June 1, 2000 and construction when commenced shall be completed within thirty (30) days. During construction you shall provide a temporary gate.

The Board will consider your request for the grant of an easement to SDG&E after it has received and evaluated further information as to SDG&E requirements.

Very truly yours,
The Beach Homeowners Association

By: Marilyn W. Copley, President

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CASE NAME: LEVY RESIDENCE
CASE NO.: CDP 97-59

Parcel "A" of City of Carlsbad Adjustment Plat #471.

WHEREAS, said verified application constitutes a request for a Coastal Development Permit as shown on Exhibits "A" - "G" dated July 1, 1998, on file in the Planning Department, LEVY RESIDENCE, CDP 97-59 as provided by Chapter 21.201.040 of the Carlsbad Municipal Code; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the CDP.

A) That the foregoing recitations are true and correct.

1 B) That based on the evidence presented at the public hearing, the Commission
2 **APPROVES LEVY RESIDENCE, CDP 97-59**, based on the following findings
3 and subject to the following conditions:

4 **Findings:**

- 5 1. That the proposed development is in conformance with the Mello II segment of the
6 Certified Local Coastal Program and all applicable policies in that the site is designated
7 for single family residential development, second dwelling units are allowed
8 pursuant to Mello II Affordable Housing Policy 1-1, and no agricultural activities or
9 geologic instability exists on site.
- 10 2. The project is consistent with the provisions of the Coastal Resource Protection Overlay
11 Zone (Chapter 21.03 of the Zoning Ordinance) in that the project will adhere to the
12 City's Master Drainage and Storm Water Quality Management Plan and Grading
13 Ordinance to avoid increased runoff and soil erosion, no steep slopes or native
14 vegetation is located on the subject property and the site is not located in an area
15 prone to landslides, or susceptible to accelerated erosion, floods or liquefaction. The
16 adjacent Buena Vista Lagoon wetlands have been delineated and the project has
17 been designed to include a minimum 100' setback between the wetlands and all
18 structures. The developer has been conditioned to record an open space deed
19 restriction over the entire wetland buffer setback area and to make an irrevocable
20 offer of dedication of the wetlands buffer to the California Department of Fish and
21 Game.
- 22 3. The project is consistent with the provisions of the Coastal Shoreline Development
23 Overlay Zone (Chapter 21.204 of the Zoning Ordinance) in that the proposed project
24 will require minimal grading (75 cubic yards of cut and 75 cubic yards of fill), the
25 project has been designed to avoid increased runoff and soil erosion, and the project
26 applicant has been conditioned to make an irrevocable offer of dedication to the
27 City of Carlsbad for a 25' wide public access trail easement over an existing Lagoon
28 trail which is located along the western perimeter of the project site.
4. The Planning Commission of the City of Carlsbad has reviewed, analyzed and considered
Mitigated Negative Declaration CDP 97-59, the environmental impacts therein identified
for this project and said comments thereon, and the Mitigation Monitoring and
Reporting Program, on file in the Planning Department, prior to APPROVING the
project. Based on the EIA Part II and comments thereon, the Planning Commission
finds that there is no substantial evidence the project will have a significant effect on the
environment and hereby APPROVES the Mitigated Negative Declaration.
5. The Planning Commission does hereby find that the Mitigated Negative Declaration
CDP 97-59 and Mitigation Monitoring and Reporting Program have been prepared
in accordance with requirements of the California Environmental Quality Act, the State
Guidelines and the Environmental Protection Procedures of the City of Carlsbad.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036



CONDITIONS, FINDINGS, ETC
MODIFIED IN ADDENDUM

Filed: July 27, 1998
49th Day: September 14, 1998
180th Day: January 23, 1998
Staff: WNP-SD
Staff Report: August 18, 1998
Hearing Date: September 8-11, 1998

SEE SUBSEQUENT PAGE 26
FOR COMMISSION ACTION

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approved With Conditions

APPEAL NO.: A-6-CII-98-98

APPLICANT: John Levy

PROJECT DESCRIPTION: Construction of a 30-foot high, 2,713 sq.ft. single family residence and a 35-foot high, 1,633 sq.ft., detached garage with a 577 sq.ft. second unit above on 1.9 acre lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of a gate and fencing on the site.

PROJECT LOCATION: The south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive, Carlsbad, San Diego County. APN 155-190-13, APN 155-101-65

APPELLANTS: California Coastal Commissioners Christine Kehoe and Pedro Nava

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program Mello II segment; City of Carlsbad CDP 97-59, CDP #6-83-51

STAFF NOTES:

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 approve the de novo permit with special

conditions that require 100-foot habitat setbacks on the east and west sides of the site to be secured through an open space condition, a public access easement on the south side of Buena Vista Lagoon, revised plans that indicate the proposed residential development will be redesigned to be subordinate to its lagoon setting to be no higher than 25 feet in height and that building materials and colors be earth-tone colors, that fencing and gating plans be revised to not adversely affect public access, that grading, drainage and runoff control plans be submitted to ensure that downstream resources will not be indirectly affected from proposed development and that a clapper rail protection plan be implemented which ensures this endangered avian will not be adversely affected from residential development in this scenic and sensitive area.

I. Appellant Contends That:

The City's decision is inconsistent with the certified LCP and the Coastal Act relative to public access and visual resource protection.

II. Local Government Action

The coastal development permit was approved by the City of Carlsbad on July 1, 1998, and the Notice of Final Action was received on July 13, 1998. Several special conditions were attached pertaining to the protection of public access and environmental resources.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it 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 a de novo hearing on the merits of the project.

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. If the Commission conducts a de novo 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 Act requires that 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. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

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 hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a **NO** vote on the following motion:

I move the Commission determine that Appeal No. A-6-CII-98-98 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS ON SUBSTANTIAL ISSUE

1. Project Description. Construction of a 30-foot high , 2,713 sq.ft. single family residence and a 35- foot high, 1,633 sq.ft., detached garage with a 577 sq.ft. second unit above on one lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of a gate and fencing on the site. The 2.6 acre project site is comprised of 2 lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. The project site is vacant and is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the rip-rap line. An existing unimproved lagoon trail is located around the outer edge of the property running from its western edge and continuing to circle the site like a loop. The AT&SF railroad right-of-way lies to the east of the site, and multi-family housing is located to the south of the project site. The site is designated Residential Low (RL, 0-1.5 du/ac) and zoned R-1-30,000 in the certified Mello II LCP.

2. Protection of Visual Resources. The project site is located at the confluence of the mouth of Buena Vista Lagoon and the Pacific Ocean at the boundary between the cities of Carlsbad and Oceanside. Although there is existing development in the area, because of the site's unique setting adjacent to the lagoon, it is like no other site in Carlsbad. Open waters of Buena Vista Lagoon are on the west side to the site with some rip-rap on the banks; fresh water marsh associated with lagoon environs occurs on the northwest and eastern boundaries of the site below the rip-rap line. The property is vacant and an existing unimproved lagoon trail is located along its western edge and circles the site like a loop.

The following policies and goals of the certified Mello II LCP address protection of public views and are applicable to the proposed development:

Policy 8-1

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad Coastal Zone to assure maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

Policy 3-2 of the Mello II LCP also requires that development be clustered to preserve open space for habitat protection which also serves to minimize the visual impacts of new development.

The proposed 2,713 sq.ft. residence is over 30 feet tall, consists of two-stories, and features a copper-colored metal roof and concrete block walls. Also proposed is a 1,633 sq.ft., with a 577 sq.ft. second unit above that will be 35 feet in height. Second dwelling units are addressed in the City's LCP. As approved in the LCP, such units are allowed by right subject to restrictions on size (650 sq.ft. maximum), affordability, etc. Second units must also meet all the requirements of the local coastal program, with the exception of base density.

The subject site is visible from the beach, the railroad and portions of Old Highway 101 (Carlsbad Boulevard), which is designated as a Scenic Road in the LCP. Old Highway 101 is heavily used by beachgoers to get to the beaches of northern Carlsbad. Existing cattails and the elevated railroad berm are high enough to block views to the west from the portion of Old Highway 101 that is along side the site. The site is however, visible both from the highway as it descends south from the City of Oceanside into Carlsbad and at a point close to the Buena Vista Lagoon pump station going north on the highway. As noted above, the approximately 2.6 acres under the applicant's ownership constitutes a unique, low-lying area immediately adjacent to the lagoon where no development has occurred. As such, the proposed project, consisting of two large structures located directly adjacent to the lagoon, has the potential to adversely impact public views in this scenic area by presenting a significant structure in an otherwise natural setting.

Policy 8-1 of the City's LCP provides that the Scenic Preservation Overlay Zone should be applied where necessary to assure the maintenance of existing views and panoramas, which requires that sites be evaluated for potential public views that should be preserved and enhanced. Its purpose is to provide regulations in areas which possess outstanding scenic qualities or would create buffers between incompatible land uses which enhance the appearance of the environment and contribute to community pride and community prestige. The subject site does not represent an infill area but rather should be viewed as an extension of development northward at a critical scenic interface between the ocean and the lagoon which is visible from Highway 101. Therefore, the site is located in a highly scenic area that meets the criteria for application of the Scenic Preservation Overlay Zone.

Based on the above, the Commission finds that there is a substantial issue as to the proposed project, as approved by the City and conformity with Policy 8-1 of the LCP. As approved by the City, the proposed structures are 30 - 35 feet high which will represent a project that is out of character with the setting of the surrounding lagoon environment. The LCP requires that appropriate height limitations be enforced. While the proposed

development is within the current required height limit, by allowing the project to extend to the maximum height limit allowed by zoning, the City failed to recognize the unique setting where the residence is to be sited. Additionally, the California Department of Fish and Game has indicated that structures this high at this location could discourage shore and migrating birds from visiting the area, or act as "predator perches" affecting sensitive avian species in the area. Moreover, the proposed exterior treatment includes copper-colored metal roofs and concrete block walls. These design features will degrade the natural beauty of this area. That is, the project will "stand out" rather than blend in or be subordinate to the surrounding natural environment. Therefore, the Commission finds the project as approved by the City raises a substantial issue with regard to consistency with the visual resource policies of the certified LCP.

3. Public Access/Recreation. The Coastal Act contains policies that call for protecting public access to the coast. The following Coastal Act policies are applicable to the proposed development.

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,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association

agrees to accept responsibility for maintenance and liability of the accessway.

In addition, several policies of the Mello II LCP apply to the project site.

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon (exhibit 4.10, page 63) to facilitate public awareness of the natural habitat resources of the Lagoon. To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea (reference Exhibit #1 attached). The beach area to the west of the project site can be reached via a public access stairway on Ocean Street. To reach the lagoon area immediately adjacent to the subject site, due to a well-worn path, it is apparent that visitors to this area use a path near Mountain View Drive which leads behind tennis courts on the adjacent lot and then down to the lowland area that comprises the subject property. The beach and lagoon areas are currently used by walkers, fishermen and naturalists. As noted above, the Mello II LCP envisions an areawide pathway along the south shoreline of the lagoon. The City of Oceanside is planning pathways on the northern side of the lagoon along with a bird sanctuary. The Department of Fish and Game owns properties on the south side of the lagoon, east of the subject site and on the north side. Because of its location, the project

site is located at a crucial point in any potential linkage between public beach areas and the public lagoon areas.

There is evidence of historic public use of this site. This evidence is the existence of a well-worn path around the perimeter of the site. The path is evident in numerous aerial photographs of the site taken as early as 1972. In recognition of the existing trail on the south side of the lagoon, the City has required that the applicant record an offer to dedicate a public access easement along the south shore of Buena Vista Lagoon, along the western edge of the site consistent with Policy 7-6 of the Mello II LUP. The City's approval also required that the development maintain a 100 foot setback from the lagoon's edge, consistent with input provided by the resource agencies and LCP requirements. This 100-foot setback would then function as a wetlands buffer. The existing worn path on the site is located within the 100- foot wetland buffer. However, the agencies found that the trail was a permitted use within the buffer. In order to further protect the resources, the resource agencies also required that the applicant construct a fence at the inland edge of the buffer to keep domestic pets out of the buffer area to protect wildlife that occurs near the water's edge. However, the City's approval does not address other public access issues raised by the proposed development.

First, the City's approval authorized a gate across the southern lagoon trail that is the subject of an offer to dedicate a public access easement. The gate is proposed within a fence on Parcel B (exhibit #7), the other lot under the applicant's ownership which is not proposed for residential development at this time. As approved, the gate would be open from dawn to dusk. The Commission found in a recent permit decision, (Ref. CDP # 6-96-159/Cade), that regulating hours of beach access along property fronting Agua Hedionda Lagoon through a time lock gate was inappropriate. The Commission finds that a time-lock gate raises a substantial issue as to conformity with as the certified LCP as policies 7-3 and 7-6 do not contain a provision which would permit such a device. On the contrary, both policies recognize public use in the area and provide for a public trail. The only restrictions the policies make on access is that it should be provided without requiring habitat impacts. No restrictions on what time of day access should be restricted are stated. Time lock gates are also inconsistent with the public access policies of the Coastal Act.

As noted above, Policy 7-3 of the LUP states that "...There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat..." Due to the fact that there is historic use by the public on this site, the City required that the applicant record an offer to dedicate for the path on the west. However, the City's decision did not recognize the remainder of the perimeter path on the site that appears to be historically used by the public (as noted previously, a well worn path is evident on the site and is also evident in

aerial photos dating back to 1972). The City's approval includes a fence across the 100-foot buffer with a dawn to dusk gate and a fence from the proposed cul-de-sac to the marsh to the east. As such, the City's approval will adversely affect continued use of the on-site trails by the public. These proposed fences are not needed for security as the entire building area will be fenced. In addition, such fences close to the lagoon and the marsh may have adverse impacts on birds and wildlife by restricting movement in the buffer and providing potential perches for birds of prey.

In addition, the City's permit decision did not recognize the public's use of an existing trail from Mountain View Drive to the existing trail on the south shore of the lagoon and the ocean shoreline to the west. The City's approval included replacement of an existing manually operated gate with an electric gate near Mountain View Drive for access for the proposed residence, fire and maintenance vehicular access. The existing fenced and locked gate are located just off Mountain View Drive on property that is not owned by the applicant. However, the applicant has a private access easement over the property. The installation date of the gate is unknown. The fence/gate appears on a 1981 tentative map for a neighboring project. In addition, representatives of the City have verbally stated that it has been in place since the 1960s. The gate/fence limits public access from Mountain View Drive to the applicant's site. This gate is where the applicant will take access to the subject site via an existing private access easement. According to the City, it is the only beach vehicle access in northern Carlsbad and has been used by lifeguard personnel and city maintenance crews to maintain the lagoon weir which regulates the water level in Buena Vista Lagoon.

In CDP #6-83-51, the Commission approved the subdivision of the property immediately adjacent to and south of the subject site. The permit allowed subdivision of a 7.65 acre parcel into three lots and construction of 14 condominiums (ref. exhibit #6). In its approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space through an offer to dedicate an open space easement. In its open space easement condition, the Commission prohibited all development except for development needed to allow for vehicle access across Lot 3 to the lagoon weir and for public projects that were planned on this low-lying area, including wetland restoration and possibly as a depository site for beach replenishment projects. The condition did not recognize any private vehicular access across Lot 3 which is needed for the applicant to get to the project site. However, the applicant has demonstrated the right of private vehicular access across Lot 3 to the project site through an easement that was initially granted in 1971 and then recorded again in 1984. In its approval of CDP 6-83-51, the Commission also required a public access easement over the entirety of Lot 3. Neither the offer to dedicate an easement for public access nor the offer to dedicate an open space easement have been accepted by a public agency or private association. The City's decision on this project formalizes lateral access along the lagoon but does not address how the public will access the trail, lagoon and

ocean from Mountain View Drive. Section 30212 of the Coastal Act and Policy 7-6 of the LUP require that vertical access to and along the shoreline be provided where appropriate. The City's action failed to provide public vertical access from Mountain View Drive to the trail on the south shore of the lagoon which is inconsistent with these provisions. As such, the Commission finds that replacement of the existing manual gate with a new electric gate will give the impression that this area is private which could further limit access by the public, inconsistent with Coastal Act and LCP policies.

In summary, because the proposed fencing and gating plans would adversely affect public access, the Commission finds the development as approved by the City raises a substantial issue with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.

4. Environmentally Sensitive Habitat Areas.

Policy 3-2 of the certified Mello II LUP addresses the protection of this environmentally sensitive area and provides the following:

Policy 3-2 - Buena Vista Lagoon

Developments located along the first row of lots bordering Buena Vista Lagoon, including the parcel at the mouth of the Lagoon (see Exhibit 4.5, Page 61), shall be designated for residential development at a density of up to 4 dwelling units per acre. Proposed development in this area shall be required to submit topographic and vegetation mapping and analysis, as well as soils reports, as part of the coastal development permit application. Such information shall be provided as a part of or in addition to any required Environmental Impact Report, and shall be prepared by qualified professionals and in sufficient detail to enable the City to locate the boundary of wetland and upland areas and areas of slopes in excess of 25%. Topographic maps shall be submitted at a scale sufficient to determine the appropriate developable areas, generally not less than a scale of 1" - 100' with a topographic contour interval of 5 feet, and shall include an overlay delineating the location of the proposed project. Criteria used to identify wetlands existing on the site shall be those of Section 30211 of the Coastal Act and based upon the standards of the Local Coastal Program Mapping Regulations, and shall be applied in consultation with the State Department of Fish and Game.

Development shall be clustered to preserve open space for habitat protection. Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through

provision of an open space easement as a condition of project approval. In the event that a wetland area is bordered by steep slopes (in excess of 25%) which will act as a natural buffer to the habitat area, a buffer setback of less than 100 feet in width may be permitted.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is not within wetlands.

Storm drain alignments as proposed in the Carlsbad Master Drainage Plan which would be carried through or empty in to Buena Vista Lagoon shall not be permitted, unless such improvements comply with the requirements of Sections 30230, 30231, 30233, and 30235 of the Coastal Act by maintaining or enhancing the functional capacity of the lagoon in a manner acceptable to the State Department of Fish and Game.

Land divisions shall only be permitted on parcels bordering the lagoon pursuant to a single planned unit development permit for the entire original parcel.

Additionally, the Coastal Resource Protection Overlay Zone, an implementing ordinance of the City of Carlsbad LCP, contains identical language to Policy 3-2 above with respect to Buena Vista Lagoon.

Numerous other policies of the LCP provide that new development not contribute to erosion and sedimentation of sensitive resources, including Buena Vista Lagoon. Policy 4-3 and Policy 4-6 address this issue.

Policy 4-3 - ACCELERATED SOIL EROSION

(A) Areas West of I-5 and the existing Paseo del Norte and Along El Camino Real Upstream of Existing Storm Drains

For areas west of the existing Paseo del Norte, west of I-5 and along El Camino Real immediately upstream of the existing storm drains, the following policy shall apply:

A site specific report prepared by a qualified professional shall be required for all proposed development, identifying mitigation measures needed to avoid increased runoff and soil erosion. The report shall be subject to the requirements of the model erosion control ordinance contained in the appendix to the Carlsbad Master Drainage Plan (June, 1980), and to the additional requirements contained herein. Such mitigation shall become an element of the project, and shall be installed prior to initial grading. At a minimum, such mitigation shall require construction of all improvements shown in the Master Drainage Plan for the area between the project site and the

lagoon (including a debris basin), as well as : restriction of grading activities to the months of April through September of each year; revegetation of graded areas immediately after grading; and a mechanism for permanent maintenance if the City declines to accept the responsibility. Construction of drainage improvements may be through formation of an assessment district, or through any similar arrangement that allots costs among the various landowners in an equitable manner.

Policy 4-6 - SEDIMENT CONTROL PRACTICES

Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters, and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff.

The 2.6 acre project site consists of two lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. The project site is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the rip-rap line.

In recognition of the sensitive nature of the project area, the City approved the project with several conditions regarding the protection of coastal resources. The City found that the project was consistent with the certified Mello II Coastal Resource Protection Overlay Zone (Chapter 21.203 of the zoning ordinance) in that the project would adhere to the City's Master Drainage and Storm Water Quality Management Plan and Grading Ordinance to avoid increased runoff and soil erosion, no steep slopes or native vegetation is located on the subject property and, the site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods or liquefaction. The adjacent Buena Vista Lagoon wetlands have been delineated and the project has been designed to include a minimum 100 foot setback between the wetlands and all structures. The City's approval required the applicant to record an open space deed restriction over the entire wetland buffer setback area and to make an irrevocable offer of dedication of the wetlands buffer to the California Department of Fish and Game.

Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and freshwater marsh community, do occur near the subject property. Thus, activities on the property could affect the quality of these habitats. Buena Vista Lagoon provides nesting and foraging habitat for the California least tern and other avian species; although the quality of this habitat is decreasing due to continuous development along the edge of the lagoon. The City approved a sedimentation catch basin on the southeast corner of the site which will

direct surface runoff to the east of the site within the freshwater marsh which is part of Buena Vista Lagoon. Policy 3-2 provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. That permission has not been obtained from the Department in writing. Urban runoff and pollutants at this location could endanger plants and animals that reside in the marsh, including the endangered clapper rails. Therefore, the City's decision cannot be found consistent with Policy 3-2 of the Mello II LCP and substantial issue must be found.

STAFF RECOMMENDATION ON THE COASTAL PERMIT:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, final, revised site, fencing and building plans approved by the City of Carlsbad which demonstrates compliance with the following requirements:

- a. The proposed residence and garage/second unit shall be redesigned to not exceed 25 feet in height.
- b. No fencing shall be located along the south buffer area as shown on Exhibit 7 (attached). No fencing shall be located along the access drive turnaround on the east side of the site such that it precludes continued public access in its current

location. No fencing of the access drive is permitted.

c. The proposed off-site electric gate off Mountain View Drive is not approved.

2. Future Development/Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall execute and record a restriction in a form and content acceptable to the Executive Director against the subject 2.6 acre property. The deed restriction shall reflect the following: (1) The subject permit is only for the development described in CDP #A-6-CII-98-98. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the area governed by this coastal development permit. (2) This approval limits the height of the residences to no higher than 25 feet. (3) No copper roof or concrete block materials are permitted. (4) Residential structures and garage/second units shall be painted with earth tone colors (deep shades of green brown and gray with no white or light shades, and no bright tones) to minimize the development's contrast with the surrounding scenic area. (5) The south buffer area shall not be fenced. (6) Fencing along the access drive turnaround on the site shall not preclude continued public access in its current location, along the eastern side of the site.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property. The restriction shall prohibit any alteration of landforms, erection of structures of any type and removal of vegetation, except as permitted herein, for any purposes in the proposed habitat buffer areas as shown on the site plan dated 7/17/98 (Exhibit 8) and generally described as the area between the water's edge of Buena Vista Lagoon and the 42" high chain link fence on the west side of the project site and the area between the freshwater marsh habitat and the 72" high chain link fence on the east side of the project site. Native drought-resistant vegetation required herein, public access and the existing public trail shall be permitted within the buffer. Construction of the permitted development shall not be used or construed to interfere with any public prescriptive rights or public trust rights that may exist on the property. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to

this coastal development permit unless the Executive Director determines that no amendment is required.

4. Lateral Public Access. Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the lagoon shoreline. The easement shall be located along the entire width of the property along the Buena Vista Lagoon shoreline and shall be a minimum of 25-feet wide over the public access trail shown on the site plan dated 7/17/98 (Exhibit 2)

The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. It shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

5. Drainage/Runoff/Sedimentation Control. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, final drainage and runoff control plans for the project, approved by the City of Carlsbad and reviewed in consultation with the Department of Fish and Game and designed by a licensed engineer qualified in hydrology and hydraulics, which would assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity and elevation. Energy dissipating measures at the terminus of any proposed outflow drains shall be constructed. Any vegetation removed to install such measures shall be replanted with native vegetation.. The applicant shall also submit a written commitment indicating that all devices shall be installed and maintained by the applicant in accordance with the approved plan.

6. Grading and Erosion Control. Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and written approval of the Executive Director, final grading plans, approved by the City of Carlsbad which shall be subsequently implemented and conform to the following requirements:

- a) No grading activities shall be allowed during the rainy season (the period from November 15 to March 31st of each year). All disturbed areas will be replanted immediately following grading and prior to the beginning of the rainy season. The applicant shall undertake the development in accordance with the approved grading and erosion control plan. Prior to commencement of any grading activity, the applicant shall submit a grading schedule to the Executive Director.
- b) The installation of temporary and permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.
- c) All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

7. Clapper Rail Protection Plan. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a clapper rail protection plan which has been developed in consultation with the Department of Fish and Game. The plan shall document that no construction activities shall be allowed during the breeding season of the light-footed clapper rail within the wetlands adjacent to the project site. Project construction shall be prohibited during the breeding season, March 1 through August 1, unless a focused survey for the clapper rail is conducted immediately prior to project construction and determines that no clapper rails were observed during the study.

The wetlands buffer area shall be staked and flagged in the field by a licensed surveyor and shall be shown on the submitted clapper rail protection plan. A minimum of three notices shall be posted within this area to specify that this area is off-limits to construction activity.

8. Final Landscape/Lighting/Exterior Treatment Plan. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, in consultation with the Department of Fish and Game, a revised landscape/lighting/exterior treatment plan, approved by the City of Carlsbad, which shall incorporate the following:

- a. Building Materials/Colors. No copper roof or concrete block materials are permitted. The proposed residence and garage/second unit shall utilize colors and building materials with earth tone colors (deep shades of green brown and gray

with no white or light shades, and no bright tones) to minimize the development's contrast with the surrounding scenic area.

- b. Lighting. An exterior lighting plan shall be submitted, developed in consultation with the Department of Fish and Game, which indicates all exterior lighting shall include a combination of low-level lights and shields to minimize the amount of light entering the adjacent wetlands and wetland buffer area.
- c. Revised Landscaping Plans. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features and be subject to review by the Department of Fish and Game. The landscaping plan shall consist of native, drought-resistant landscaping acceptable to the Executive Director in consultation with the Department of Fish and Game.
 1. The revised landscape plan shall indicate the placement of a minimum of one specimen size tree (24-inch box minimum) for every 10 feet of pad area lagoonward of the proposed building sites and arranged to maximize screening of the structures from views from Buena Vista Lagoon, its public trail, Old Highway 101 and the railroad. A minimum of 8-trees shall be provided lagoonward of the building pad for Parcel A.
 2. At maturity the trees shall approximate the height of the roofline of the residences.
 3. The required trees shall be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan.
 4. The plan must also indicate non-native plant species shall be removed from the wetland buffer area and the wetland buffer area shall be revegetated with a hydro-mulched coastal sage scrub seed mix.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the construction of a 2,713 sq.ft. residence, consisting of two-stories over 30 feet tall, and features a copper-colored metal roof and concrete block walls. Also proposed is a 1,633 sq.ft., 35-foot high garage with a 577 sq.ft. second unit above. Estimated grading quantities include 75 cubic yards of cut and 75 cubic yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of gate and fencing on the site. The proposed project site is made up of two lots comprising 2.6 acres located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. The project site is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the rip-rap line. The property is vacant and an existing unimproved lagoon trail is located along its western edge and continues to circle the site like a loop. The AT&SF railroad right-of-way lies to the east of the site, and multi-family housing is located to the south of the project site. The site is designated Residential Low (RL, 0-1.5 du/ac) and zoned R-1-30,000 in the certified Mello II LCP.

2. Visual Resources. The previously cited visual resource policies of the Mello II LUP provide for the protection of scenic coastal areas and for the compatibility of existing and new development. The project site is in an area of scenic beauty as it lies at approximately 12 MSL adjacent to the Pacific Ocean, Buena Vista Lagoon and its associated open water and freshwater marsh habitats. The project site is an approximately 2.6-acre vacant and flat parcel that sits in the lowlands near the mouth of the south shore of Buena Vista Lagoon. It is bordered by the lagoon to the north and west and a freshwater marsh to the east with residential development to the south at higher elevations.

While existing apartment and condominium structures located south of the subject site present an urban backdrop, when looking west from old highway 101 across the project site to the ocean, the unique setting of this area was not considered by the City in its approval. Although ocean views would not be significantly altered by this project (except from passenger trains on the adjacent rail line), the City approved residential structures that are large and as such will "stand out" at this location. The bulk and scale of the proposed 30 - 35 foot high structures is out of character with this unique, low-lying site given its proximity to the lagoon and ocean. In addition, the proposed development includes a copper colored roof and a concrete block wall facade.

Policies 3-2 and 8-1 of the Mello II LUP require that new development be visually subordinate to its setting. The Commission finds that the project, as proposed, is out of character with its setting and is inconsistent with the policies. It would be visible from a number of public locations (beach, railroad, and Old Highway 101 from City of Oceanside and near the Carlsbad pump station to the east of the site) and is not appropriate for its lagoon setting. In that regard, the Commission finds the proposed residence and

garage/second unit must be redesigned to be no higher than 25 feet high. This height is consistent with the San Malo residential project, located immediately north of the project site across the lagoon in the City of Oceanside, which is known not only for its French Normandy architecture but for its modest scale which makes it subordinate to the ocean/lagoon setting. In several other permit decisions in Carlsbad, the Commission has also required a 25-foot height limit to reduce the visual impacts of new development. These actions primarily concerned larger residential subdivisions in the Aviara and Sammis Property projects on Batiquitos Lagoon in southern Carlsbad. While this project is of less intensity, it nonetheless has a great visual impact on the surrounding environs of Buena Vista Lagoon. For that reason, the Commission finds the height reduction is warranted. As such, Special Condition #1 requires revised plans that limit project height to 25 feet high. Additionally, Special Condition #8 requires building materials/colors to be subordinate to the lagoon setting by requiring the proposed residence and garage/second unit shall be painted with earth tone colors (deep shades of green brown and gray with no white or light shades, and no bright tones) to minimize the development's contrast with the surrounding scenic area. The height reduction and color changes will result in a smaller, less visually obtrusive project that is compatible with its setting. Special Condition #2 requires the entirety of the property - which includes the other .72 acre adjacent lot under the applicant's ownership - to be subject to the above provisions in the form of a deed restriction. This restriction is necessary to insure future property owners are aware of condition requirements.

The applicant has submitted a landscaping plan that indicates a number of non-native trees and shrubs would be planted. These trees and shrubs may be noxious or invasive to the existing sensitive habitat area surrounding the project site. Special Condition #8 requires that a landscaping plan be developed in consultation with the Department of Fish and Game. The Commission further finds that landscaping upland of the buffer shall be designed to mitigate the visual impact of the structures as viewed from the lagoon and public access trail, while preserving views from the homes, the natural character of the surrounding environment (i.e., non-invasive or noxious). The revised landscape plan shall indicate the placement of a minimum of one specimen size tree (24-inch box minimum) for every 10 feet of pad area lagoonward of the proposed building sites and arranged to maximize screening of the structures from views from Buena Vista Lagoon and its public trail and Old Highway 101 and the railroad. A minimum of 8-trees shall be provided lagoonward of the building pad and be compatible with the existing lagoon environment. At maturity the trees must approximate the height of the roofline of the residences. The revised landscape plan must include provisions requiring the trees to be planted within 60 days of completion of residential construction and be maintained in good growing condition for the life of the residences. Maintenance requirements must also be provided to assure no blockage of public views.

In summary, as required to redesign proposed residential development to be subordinate to its lagoon setting to be no higher than 25 feet in height and that building materials and colors be earth-tone colors, and that appropriate screening vegetation is provided to further reduce the visual impact of the proposed project, the Commission finds the proposed project can be found consistent with the visual resource protection policies of the certified LCP.

3. Public Access/Recreation. Both the certified LCP and the Coastal Act contain policies protecting physical access to the beach and ocean. Policies 7-3 and 7-6 of the LUP and Section 30212 of the Coastal Act require that access to and along the shoreline be maintained. The subject site is located between the first public roadway and the sea at the ocean entrance to Buena Vista Lagoon. There is evidence of use of a trail on the site. There is a system of trails on the applicant's property which together form a loop around the subject property. These trails are well-worn footpaths which appear on numerous aerial photographs dating back to 1972. Presently, based on these existing paths, it appears that access to this loop trail is from the ocean and from an informal path to the east through the fresh water marsh from Carlsbad Blvd and next to tennis courts on Mountain View Drive.

In CDP #6-83-51, the Commission approved the subdivision of the property immediately adjacent to and south of the subject site. The permit allowed subdivision of a 7.65 acre parcel into three lots and construction of 14 condominiums (ref. exhibit #6). In its approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space through an offer to dedicate an open space easement. In its open space easement condition, the Commission prohibited all development except for development needed to allow for vehicle access across Lot 3 to the lagoon weir and for public projects that were planned on this low-lying area, including wetland restoration and possibly as a depository site for beach replenishment projects. The condition did not recognize any private vehicular access across Lot 3 which is needed for the applicant to get to the project site. However, the applicant has demonstrated the right of private vehicular access across Lot 3 to the project site through an easement that was initially granted in 1971 and then recorded again in 1984. In its approval of CDP 6-83-51, the Commission also required a public access easement over the entirety of Lot 3. Neither the offer to dedicate an easement for public access nor the offer to dedicate an open space easement have been accepted by a public agency or private association. The City's decision on this project formalizes lateral access along the lagoon but does not address how the public will access the trail, lagoon and ocean from Mountain View Drive. Section 30212 of the Coastal Act and Policy 7-6 of the LUP require that vertical access to and along the shoreline be provided where appropriate. The City's action failed to provide public vertical access from Mountain View Drive to the ocean and the shore of the lagoon which is inconsistent with these provisions. As such, the Commission finds that replacement of the existing manual gate

with a new electric gate will give the impression that this area is private which could further limit access by the public, inconsistent with Coastal Act and LCP policies.

As stated the policies of the Coastal Act and the Mello II LCP protect public access both to and along the shoreline, including the shoreline of Buena Vista Lagoon. Policies 7-3 and 7-6 specifically provide that access shall be provided along and near Buena Vista Lagoon on the applicant's property. The City's approval secured the access path identified in Policy 7-6 by requiring the applicant to dedicate an easement over the existing trail near the water's edge. The Commission's requirement mirrors that approved by the City in Special Condition #4 and provides that the easement shall be located along the entire width of the property along the Buena Vista Lagoon shoreline as shown on the site plan dated 7/17/98.

In addition, the Commission finds additional steps must be taken to preserve and protect existing public access opportunities consistent with the above LUP policies. For example, the applicant is proposing the installation of 42" high chain link fencing across the required 100 foot setback (exhibit 7). The applicant is also proposing the installation of a time-lock gate within this fence which would extend across the existing trail and be open from dawn to dusk. In two recent decisions by the Commission in Carlsbad (CDP 6-96-159, Cade/ and LCPA 1-98A, Poinsettia Properties Specific Plan), the Commission found that time lock gates were inappropriate. In its action to prohibit them, the Commission found that unrestricted public access was warranted for coastal visitors to be able to access coastal resources. Time lock gates are also subject to mechanical failures and vandalism which limit their effectiveness. In the former decision, the Commission allowed the applicant security fencing at the upper limit of a habitat buffer to protect against vandalism. In this way both public access and private security was maintained. This case is similar in that the Commission is allowing the applicant to fence the site for security reasons but is not allowing fencing or gates that would preclude existing public access. Special Condition #1 requires that the gate and fence be deleted so that the public access trail will remain open at all times along the shoreline of Buena Vista Lagoon.

The applicant is also proposing the installation of 6' high chain link fencing and vegetation on the eastern portion of the site around the access turnaround. Again, fencing at this location could preclude continued movement by the public. Presently, there is a foot path that provides access along the eastern portion of the project site in the 100-foot habitat setback. While the Commission recognizes the need for the setback, it also recognizes that historic public use has occurred along this portion of the trail. Policy 7-3 of the Mello II LUP requires that access be maintained in this area consistent with resource protection. For this reason the Commission is requiring in Special Condition #1 that the applicant submit a fence plan which provides fencing such that the public will not be precluded from using this area as they have in the past. Implementation of this condition will require that

passage through a portion of the fence be provided so that the trail in the eastern buffer will remain accessible for public use.

As noted, access to the project site must come over a lot which is not under the applicant's ownership (Lot 3). Presently, a gate precludes public access over this lot from Mountain View Drive. In 1983, the Commission approved a public access easement over this lot. Thus, the present situation is inconsistent with the Commission's previous approval. The applicant desires to replace this gate with an electric gate, but does not include a provision for public pedestrian access. The Commission finds that replacement of the existing manual fence with a new electric gate will give the impression that this area is private and would further limit access by the public, inconsistent with the public access policies of the Coastal Act and the LCP. In summary, as required to revise fencing and gating plans and record a lateral access easement, the Commission finds the project will not have adverse public access impacts. Only as conditioned, can the Commission find the proposed project in conformance with the access policies of the certified Mello II LCP and the Coastal Act.

4. Environmentally Sensitive Habitat Areas. The project site is an approximately 2.6-acre vacant and flat parcel that sits in the lowlands near the mouth of the south shore of Buena Vista Lagoon. It is bordered by the lagoon to the north and west and a freshwater marsh to the east. Coastal lagoons offer habitat and a resting place for many sensitive plants and animals, including the endangered light footed clapper rail which resides in the freshwater marsh immediately adjacent to the applicant's site. In recognition of these resources, the certified LCP establishes development setbacks from the resource and requires these setbacks to be reserved as open space. Special Condition #3 requires development setbacks from both the open waters of Buena Vista Lagoon and its associated freshwater marsh.

In its findings for approval, the City found that the project was consistent with the certified Mello II Coastal Resource Protection Overlay Zone (Chapter 21.203 of the zoning ordinance) in that the project would adhere to the City's Master Drainage and Storm Water Quality Management Plan and Grading Ordinance to avoid increased runoff and soil erosion, no steep slopes or native vegetation is located on the subject property and the site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods or liquefaction. The adjacent Buena Vista Lagoon wetlands have been delineated and the project has been designed to include a minimum 100 foot setback between the wetlands and all structures. The developer has been conditioned to record an open space deed restriction over the entire wetland buffer setback area and to make an irrevocable offer of dedication of the wetlands buffer to the California Department of Fish and Game.

The Commission finds that similar provisions are necessary as part of this coastal development permit. That is, the Commission finds an open space deed restriction over sensitive areas of the site is warranted. Special Condition #3 requires the restriction shall prohibit any alteration of landforms, erection of structures of any type and removal of vegetation, except as permitted herein, for any purposes in the proposed buffer areas as shown on the site plan dated 7/17/98 (Exhibit 8). Also, removal of the fence within the buffer is necessary because it could limit wildlife movement and provide a predator perch.

Several policies of the certified LCP also require that project construction not indirectly adversely impact coastal resources by way of erosion and sedimentation. The Commission finds in Special Condition #5 that final drainage and runoff control plans must be submitted to assure no increase in peak runoff rate from the developed site over runoff from the natural site, as a result of a ten-year frequency storm over a six-hour duration (10 year, 6 hour rainstorm). The plan shall document that runoff from the impervious surfaces of the site will be collected and discharged at a non-erosive velocity and elevation.

A sedimentation catch basin is proposed on the southeast corner of the site to direct surface runoff to the east of the site within the freshwater marsh which is part of Buena Vista Lagoon. Policy 3-2 of the Mello II LUP provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. Therefore, Special Condition #5 requires the applicant to consult with the Department of Fish and Game to ensure drainage in this sensitive area can be found consistent with Policy 3-2 of the Mello II LCP.

Also, in Special Condition #6 the Commission finds that although there is only minor grading being proposed (i.e., 75 cubic yards of balanced grading) based on the location and the surrounding resources, final grading plans must be submitted which indicate no grading activities shall be allowed during the rainy season (the period from November 15 to March 31st of each year). Typically, the rainy season begins on October 1 of any year; however, because of wildlife concerns, the rainy season restriction can be extended to November 15 in this case. Also, all disturbed areas will be replanted immediately following grading and prior to the beginning of the rainy season. The installation of temporary and permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

Finally, as noted, a nesting pair of clapper rails is known to exist within the freshwater marsh area located immediately east of the project site. The Commission is requiring that development be setback 100-feet from this marsh and that this setback be secured through an open space deed restriction. Additionally, as further protection to this endangered species and as requested by the Department of Fish and Game, the Commission is requiring in Special Condition #7 that no construction activities be allowed during the breeding season of the light-footed clapper rail within the wetlands adjacent to

the project site. Thus, project construction shall be prohibited during the breeding season, March 1 through August 1, unless a focused survey for the clapper rail is conducted immediately prior to project construction and determines that no clapper rails were observed during the study. Special Condition #8 requires an exterior lighting plan shall also be submitted which indicates all exterior lighting will include a combination of low-level lights and shields to minimize the amount of light entering the adjacent wetlands and wetland buffer area. Further, the wetlands buffer area shall be staked and flagged in the field by a licensed surveyor. A minimum of three notices shall be posted within this area to specify that this area is off-limits to construction activity. In summary, as conditioned to mitigate project related impacts to surrounding resources through the provision of habitat buffers preserved as open space and an appropriate location for project drainage, the Commission finds the project consistent with the resource protection policies of the Coastal Act and the Mello II LCP.

In summary, the Commission finds that with 100-foot habitat setbacks on the east and west sides of the site to be secured through an open space condition, a public access easement on the south side of Buena Vista Lagoon, revised plans that indicate the proposed residential development will be redesigned to be subordinate to its lagoon setting by being no higher than 25-feet high and that building materials and colors be earth-tone colors, that existing public trails on the site be preserved so as to not preclude existing public rights, that fencing and gating plans be revised to not adversely affect public access, that grading, drainage and runoff control plans be submitted to ensure that downstream resources will not be indirectly affected from proposed development and that a clapper rail protection plan be implemented which ensures this endangered avian will not be adversely affected from residential development in this scenic and sensitive area the project can be found consistent with all applicable Coastal Act and Mello II LCP provisions. Only as conditioned above is the proposed project consistent with the resource protection policies of the certified LCP.

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

As noted above, the project as submitted has been found inconsistent with a number of Coastal Act and LCP policies. As conditioned, the project will establish open space and public access easements to protect existing coastal resources and public trails, control runoff to mitigate any potential sedimentation of the adjacent lagoon, and provide adequate landscaping and design revisions to preserve the scenic amenities of the area. The proposed project is also consistent with the land use designation and density

permitted in the LCP. Therefore, the Commission finds project approval, as conditioned, will not seriously prejudice the implementation of the Carlsbad LCP.

6. 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 visual resource, public access and environmentally sensitive habitat policies of the Coastal Act and the certified LCP. In this case, there are no feasible alternatives available which can lessen the significant adverse impact the project will have on public views, public access and the environment. The proposed conditions addressing landscaping, fencing, gating, building design and protection of public access and environmentally sensitive habitat, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

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COMMISSION ACTION ON SEP 11 1998

☐ Approved as Recommended
☐ Denied as Recommended
☐ Approved with Changes
☐ Denied
☒ Other *NSI*

- 1 6. The **Planning Commission** finds that the **Mitigated Negative Declaration CDP 97-59**
2 reflects the independent judgment of the **Planning Commission** of the City of Carlsbad.
- 3 7. All necessary public improvements have been provided or will be required as conditions
4 of approval.
- 5 8. The Developer has agreed and is required by the inclusion of an appropriate condition to
6 pay a public facilities fee. Performance of that contract and payment of the fee will
7 enable this body to find that public facilities will be available concurrent with need as
8 required by the General Plan.
- 9 9. The project has been conditioned to pay any increase in public facility fee, or new
10 construction tax, or development fees, and has agreed to abide by any additional
11 requirements established by a Local Facilities Management Plan prepared pursuant to
12 Chapter 21.90 of the Carlsbad Municipal Code. This will ensure continued availability of
13 public facilities and will mitigate any cumulative impacts created by the project.
- 14 10. The project has been conditioned to ensure the building permits will not be issued for the
15 project unless the District Engineer determines that sewer service is available, and
16 building cannot occur within the project unless sewer service remains available, and the
17 District Engineer is satisfied that the requirements of the Public Facilities Element of the
18 General Plan have been met insofar as they apply to sewer service for this project.
- 19 11. Statutory School fees will be paid to ensure the availability of school facilities in the
20 **Carlsbad Unified School District**.

21 **Conditions:**

- 22 1. Staff is authorized and directed to make, or require Developer to make, all corrections
23 and modifications to the **CDP 97-59** document(s) as necessary to make them internally
24 consistent and in conformity with final action on the project. Development shall occur
25 substantially as shown in the approved Exhibits. Any proposed development different
26 from this approval, shall require an amendment to this approval.
- 27 2. **The applicant shall apply for and be issued building permits for this project**
28 **within two (2) years of approval or this coastal development permit will expire**
unless extended per Section 21.201.210 of the Zoning Ordinance.
3. The Developer shall comply with all applicable provisions of federal, state, and local
ordinances in effect at the time of building permit issuance.
4. Building permits will not be issued for development of the subject property unless the
District Engineer determines that sewer facilities are available at the time of application
for such sewer permits and will continue to be available until time of occupancy.
5. The Developer shall pay the public facilities fee adopted by the City Council on July 28,
1987, (amended July 2, 1991) and as amended from time to time, and any development

1 fees established by the City Council pursuant to Chapter 21.90 of the Carlsbad Municipal
2 Code or other ordinance adopted to implement a growth management system or Facilities
3 and Improvement Plan and to fulfill the subdivider's agreement to pay the public
4 facilities fee dated May 26, 1998, a copy of which is on file with the City Clerk and is
incorporated by this reference. If the fees are not paid, this application will not be
consistent with the General Plan and approval for this project will be void.

5 6. The Developer shall provide proof of payment of statutory school fees to mitigate
6 conditions of overcrowding as part of the building permit application. The amount of
7 these fees shall be determined by the fee schedule in effect at the time of building permit
application.

8 7. If any condition for construction of any public improvements or facilities, or the payment
9 of any fees in-lieu thereof, imposed by this approval or imposed by law on this residential
10 housing project are challenged this approval shall be suspended as provided in
11 Government Code Section 66020. If any such condition is determined to be invalid this
approval shall be invalid unless the City Council determines that the project without the
condition complies with all requirements of law.

12 8. **Consistent with subsection 21.203.040(4)(e) of the Carlsbad Municipal Code, no**
13 **grading shall be allowed during the winter season (October 1 - April 1).**

14 9. This project shall comply with all conditions and mitigation measures which are required
15 as part of the approved **Mitigated Negative Declaration**, as contained in Planning
Commission Resolution No. 4331.

16 10. Prior to the issuance of the **building permit**, Developer shall submit to the City a Notice
17 of Restriction to be filed in the office of the County Recorder, subject to the satisfaction
18 of the Planning Director, notifying all interested parties and successors in interest that the
19 City of Carlsbad has issued a **Coastal Development Permit** by Resolution No. 4332 on
20 the real property owned by the Developer. Said Notice of Restriction shall note the
21 property description, location of the file containing complete project details and all
conditions of approval as well as any conditions or restrictions specified for inclusion in
the Notice of Restriction. The Planning Director has the authority to execute and record
an amendment to the notice which modifies or terminates said notice upon a showing of
good cause by the Developer or successor in interest.

22 11. The Developer shall implement, or cause the implementation of, the **CDP 97-59 Project**
23 **Mitigation Monitoring and Reporting Program**.

24 12. **Prior to the issuance of a building permit or grading permit (whichever occurs first)**
25 **the applicant shall record a deed restriction over the entire wetland buffer setback**
26 **area to restrict the property for open space/wildlife uses only, except for a lateral**
27 **public access trail as shown on the site plan for CDP 97-59.**

- 1 13. Prior to the issuance of a building permit or grading permit (whichever occurs
2 first), the property owner shall submit evidence satisfactory to the Planning
3 Director that an irrevocable offer of dedication of the wetland buffer area has been
4 made to the California Department of Fish and Game.
- 5 14. Prior to the issuance of building permits, an exterior lighting plan shall be
6 submitted to the Planning Director for review. All exterior lighting shall include a
7 combination of low-level lights and shields to minimize the amount of light entering
8 the adjacent wetlands and wetland buffer area.
- 9 15. Due to the potential presence of the light-footed clapper rail within the wetlands
10 adjacent to the project site, project construction shall be prohibited during it's
11 breeding season, (March 1 to August 1), unless a focused survey for the clapper rail
12 is conducted immediately prior to project construction and determines that no
13 clapper rails were observed during the survey.
- 14 16. Prior to the issuance of a certificate of occupancy, non-native plant species shall be
15 removed from the wetland buffer area and the wetland buffer area shall be re-
16 vegetated with a hydro-mulched coastal scrub grass seed mix.
- 17 17. Prior to the issuance of a building permit or grading permit (whichever occurs first)
18 the applicant shall irrevocably offer to dedicate in perpetuity to the City of Carlsbad
19 a minimum 25 foot wide public access trail easement over the public access trail
20 which is shown on the site plan for CDP 97-59.
- 21 18. Prior to the issuance of a building permit or grading permit (whichever occurs first)
22 the wetlands buffer area shall be staked and flagged in the field by a licensed
23 surveyor. A minimum of three notices shall be posted within this area to specify
24 that this area is off-limits to construction activity.
- 25 19. If any of the foregoing conditions fail to occur; or if they are, by their terms, to be
26 implemented and maintained over time, if any of such conditions fail to be so
27 implemented and maintained according to their terms, the City shall have the right to
28 revoke or modify all approvals herein granted; deny or further condition issuance of all
future building permits; deny, revoke or further condition all certificates of occupancy
issued under the authority of approvals herein granted; institute and prosecute litigation to
compel their compliance with said conditions or seek damages for their violation. No
vested rights are gained by Developer or a successor in interest by the City's approval of
this Coastal Development Permit.

NOTICE

Please take NOTICE that approval of your project includes the "imposition" of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as "fees/exactions."

1 You have 90 days from July 1, 1998 to protest imposition of these fees/exactions. If you protest
2 them, you must follow the protest procedure set forth in Government Code Section 66020(a), and
3 file the protest and any other required information with the City Manager for processing in
4 accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that
5 procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their
6 imposition.

7 You are hereby FURTHER NOTIFIED that your right to protest the specified fees/exactions
8 DOES NOT APPLY to water and sewer connection fees and capacity charges, nor planning,
9 zoning, grading or other similar application processing or service fees in connection with this
10 project; NOR DOES IT APPLY to any fees/exactions of which you have previously been given
11 a NOTICE similar to this, or as to which the statute of limitations has previously otherwise
12 expired.

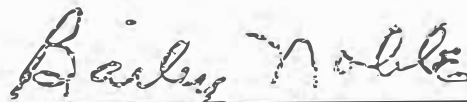
13 PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning
14 Commission of the City of Carlsbad, California, held on the 1st day of July 1998, by the
15 following vote, to wit:

16 AYES: Chairperson Noble, Commissioners Compas, Heineman, Monroy,
17 Nielsen, Savary, and Welshons

18 NOES:

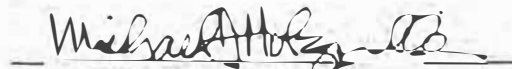
19 ABSENT:

20 ABSTAIN:

21 

22 BAILEY NOBLE, Chairperson
23 CARLSBAD PLANNING COMMISSION

24 ATTEST:

25 

26 MICHAEL J. HOLZMILLER
27 Planning Director

**Applicants Response
to
California Coastal Commission
*Staff Report***

Prepared by:
John C. Levy, Jr.

Prepared for:
California Coastal Commission

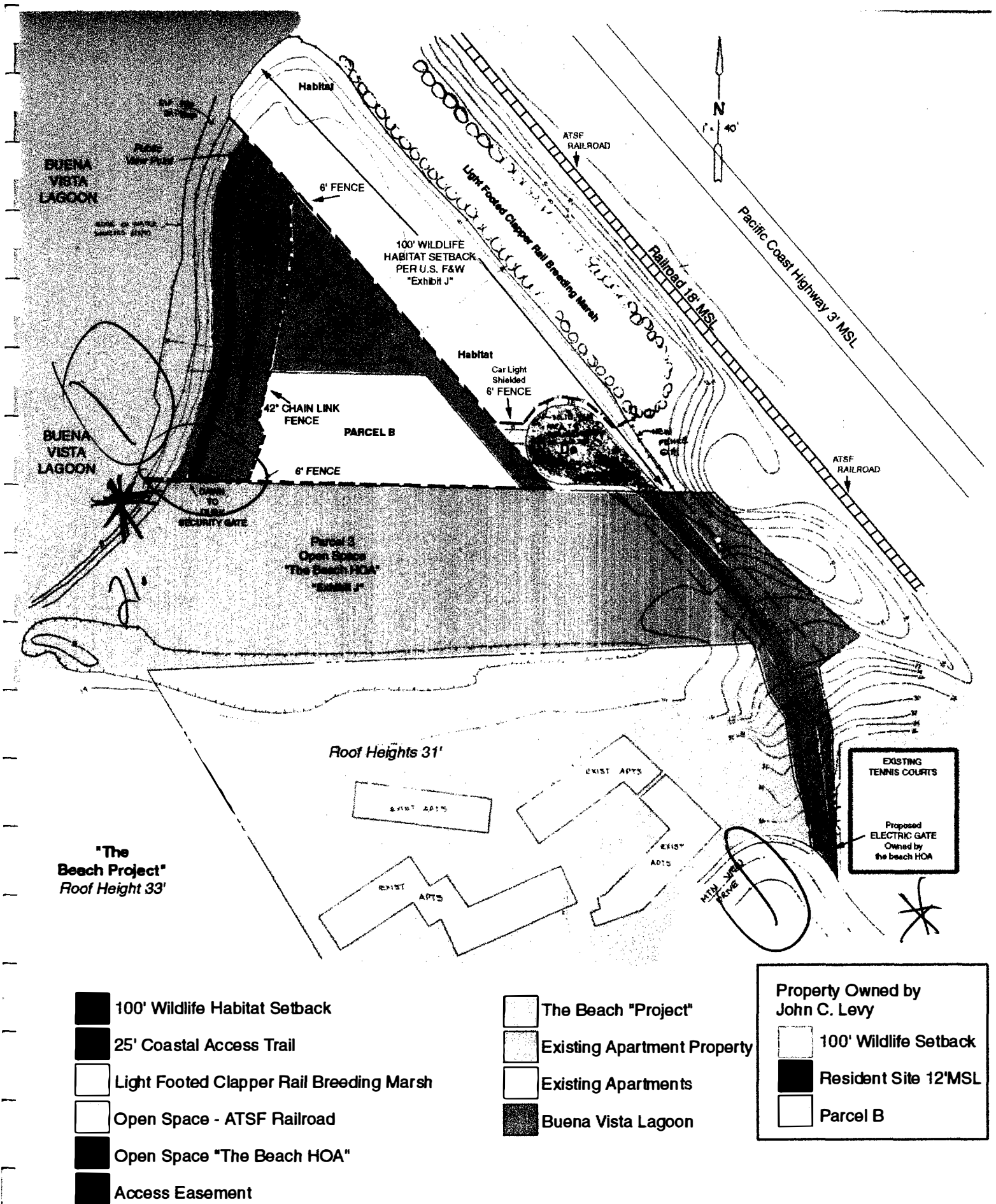


Exhibit 24

August 25, 1998

RE: Coastal Development Permit (CDP 97-59)
CCC Appeal #A-6-98-98

Enclosures:

- 1) A letter of protest to Mr. Peter Douglas dated August 25, 1998.
- 2) My response to coastal staff's substantial issues appeal.
- 3) Applicant Response to Staff Report.
- 4) A chronology of CCC Correspondence and Meetings
- 5) Assorted site maps.
- 6) Letters of Support for the project and the withdrawal of Appeal #A-6-98-98.

Dear Commissioners,

I have worked diligently for over three years with the respective resource agencies in an attempt to build a home for my family adjacent to the Buena Vista Lagoon.

The attached chronology will attest to the facts that this process began on 10/26/95. After fifteen months of site meetings, biology studies, correspondence, memos, and telephone conversations the resource agencies and I met on 1/22/97 for our final meeting.

On that day Mr. Bill Ponder, coastal analyst for the CCC was a participant as he had been for all of the meetings. In that meeting we finally agreed to all of the "conditions of development for approval."

These conditions were spelled out in a letter (*Exhibit I*) and site plan (*Exhibit J*) from USF&W dated 2/13/97.

Albeit the conditions were stringent we felt that they were a fair compromise in response to the agencies' concerns to biological, environmental, public access and view sheds questions.

They included:

- 1) 100' setbacks on two of our three property boundaries.
- 2) An irrevocable offer to dedicate to CDF&G a 100' habitat setback area. This would include the removal of non native plant materials, applying a native grass seed, and installing a 6' chain link fence to prevent human or pet intrusion into this sensitive habitat area.

- 3) Dedicate a 25' wide public coastal access trail along the southern shore of the Buena Vista Lagoon. This would include a 6' fence along the southern property boundary to minimize the impact of pets into the marsh and lagoon environments.
- 4) Install low level lighting on the residence as to minimize it's impact on wildlife.
- 5) Due to the breeding season of the light footed clapper rail I would be allowed to construct from 8-1 through 3-1 only.

Because of the setback requirements imposed upon us by the resource agencies it was required for us to perform a boundary adjustment. If we had not done this it would have been considered a "taking".

- On 2/6/97 the CCC was sent (*Exhibit L*) a memo which included the adjustment plat for the two lots of the subject property. (*Exhibit M*). **CCC did not comment.**
- On 11/4/97 a certificate of compliance (COC) was recorded (*Exhibits N&O*) for the two lots. **CCC did not comment.**
- On 12/20/97 CDP 97-59 for the property was submitted to the City of Carlsbad. Site plan (*Exhibit P*)
- In April of 1998 CDP 97-59 with an associated mitigated negative declaration was sent to all of the resource agencies for comment. **No agency commented including CCC.**
- On 5/12/97 the City of Carlsbad recorded a Notice of Exemption for the boundary adjustment. **CCC did not comment.**
- On 7/1/98 CDP 97-59 was heard and approved unanimously by the Carlsbad Planning Commission. Not a single person from the community attended the meeting nor were there any protests received from noticing. **CCC did not comment.**
- On July 27, 1998 at 5:00, the last day of the appeal period we received a notice of appeal from CCC. We were astonished! Coastal staff had been "part and parcel" to each and every decision along the way!

Coastal staff's appeal:

- 1) Legal site access
- 2) The requirement for an additional CDP for a boundary adjustment.
- 3) Public view from the coast highway.
- 4) Public access to the lagoon.

- On July 31, Bob Sukup and I met with Bill Ponder and Lee McEachern from coastal staff, and Craig Adams from Commissioners Kehoe's office to address the reasons for the appeal. **It became extremely obvious that staff had misplaced or lost the entire file to this very sensitive site.** We supplied them again with all of the pertinent documents, site maps, and photographs, in an attempt to resolve this issue at the staff level.
- On August 11, 1998 Commissioner Kehoe asked local staff to withdraw the appeal. In a conversation with Mayor Lewis of Carlsbad Ms. Kehoe stated that *"local staff had misrepresented the facts of the appeal to her and she wished to withdraw her appeal"*.
- On August 14th, 1998 Mayor Lewis states in a letter to Ms. Kehoe (*Exhibit Q*) that we have met all of the conditions of the LCP, and he asks her to withdraw her appeal.
- On August 17, 1998 Bill Ponder states in a telephone conversation with me. *"I feel really bad about this whole thing, and it is my feeling that you are in full compliance with the LCP"*.

I had been led to believe that we had addressed all of the issues for the appeal.

August 21, 1998, I received a telephone call from Mr. Ponder stating that staff will be continuing the appeal with substantial issues, and a de novo hearing.

When I asked what the "substantial issues" were, he informed me as to the following:

- 1) Incompatibility of building materials including the copper roof.
- 2) Reduce the height of the residence from 31' to 25'. This would result in an entire redesign and engineering of the residence.
- 3) Eliminate the USF&W conditioned 6' fence along the northern lagoon setback.
- 4) Create a pedestrian path in the USF&W conditioned wildlife setback area.
- 5) Place a pedestrian gate at Mountain View on a piece of land that is owned by an adjacent neighbor.

All of these "substantial issues" had never been discussed prior to 8/21/98 as a condition for development. More importantly two of the them are completely contrary to the conditions placed upon us by USF&W and our consulting biologist recommendations. Finally they were conditioning us to construct a public access pedestrian gate on a neighbor's property!

The irony of this process is this.

- 1) Coastal staff was involved in each decision, and every meeting and kept apprised of every development.

- 2) They were active participants in the 1/22/97 conditions for development meeting with all of the resource agencies.
- 3) They were sent a memo and site plan on 2/6/97 as to the boundary adjustment per the conditions of the resource agencies.
- 4) They were kept apprised of the certificate of compliance recorded 11/4/97.
- 5) They never commented on the mitigated negative declaration in April, 1998 during the resource agency review period.
- 6) They did not comment of the Notice of Exemption for the lot line adjustment recorded by the City of Carlsbad on 5/21/97.
- 7) They did not comment during the eight month processing and issuance of CDP 97-59.
- 8) They elect to appeal CDP 97-59, although they have lost virtually every piece of documentation to the site!
- 9) When Commissioner Kehoe asked staff to withdraw the appeal because "the facts of the appeal were misrepresented to her", they declined to do so!
- 10) On 8/21 I am informed of what the "new substantial issues" are to be, although they have never been raised before this date.

Commissioner, today is Tuesday August 25, 1998, and I still do not have the staff report. As you know it is essential that I respond to the 'substantial issues' in writing no later than 8/28/98 for your review.

Unless three commissioners elect to verbally hear my arguments at the meeting, the entire appeal will be based upon staffs 'substantial issues staff report' and my written response to them.

Fairness in the process would dictate that I would have the opportunity to prepare my response to a fifteen page report in less than one day! Staff has had 30 days to prepare their argument.

I ask the following:

- 1) That this appeal be withdrawn.
- 2) If my written response is not compelling enough for withdrawal than the Commissioners vote to allow an open discussion.
- 3) If "substantial issues" are found then the "de novo" hearing be commenced immediately.

Commissioner, I am faced with the following hardships:

- 1) I have sold my current home in anticipation of breaking ground 8/15.
- 2) I have finished engineered plans ready to pull a permit.
- 3) I have a loan commitment for construction.
- 4) I have hired a building supervisor.

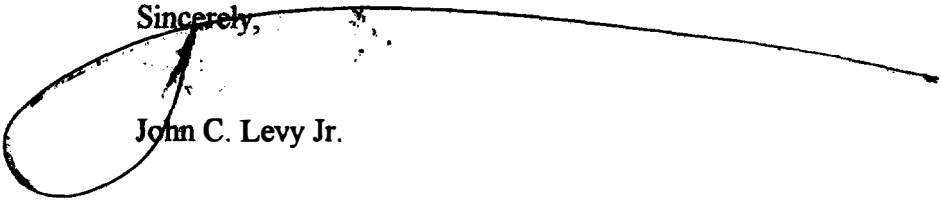
- 5) I have retained a general building contractor
- 6) I have commitments to various subcontractors.
- 7) I have met all of the conditions of the LCP.
- 8) I was issued CDP 97-59 per the City of Carlsbad.
- 9) I am limited to a building window of 8/1 through 3/1 due to the light footed clapper rail.

In closing I ask for you to withdraw the appeal and substantial issues. I have complied with all of the resource agencies conditions to development. Even if there are "substantial issues" found they are of a technical nature. The bottom line is what conditions would be changed in the process?

My family should not be held hostage, and delayed by an agency that was an active participant in the placing of those conditions.

Thank you for your consideration.

Sincerely,



John C. Levy Jr.

August 18, 1998
August 28, 1998

Applicants Response to Staff Report

V. FINDINGS ON SUBSTANTIAL ISSUE

1. Project Description. Construction of a 30-foot high, 2,713 sq.ft. single family residence and a 35-foot high, 1,633 sq.ft., detached garage with a 577 sq.ft. second unit above on one lot of a 2.6 acre site. Estimated grading quantities include 75 cubic yards of cut and 75 yards of fill to be balanced on-site. Also proposed is off-site private access improvements, the replacement of a gate and fencing on the site. The 2.6 acre project site is comprised of 2 lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad.

Incorrect: The project site is 1.9 acres. There is an adjoining vacant lot that is not part of CDP 97-59 that represents .7 acres. The project site is vacant and is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the rip-rap line. An existing unimproved lagoon trail is located around the outer edge of the property running from its western edge and continuing to circle the site like a loop. The AT&SF Railroad right-of-way lies to the east of the site, and multi-family housing is located to the south of the project site. The site is designated Residential LOW (RL, 0-1.5 du/ac) and zoned R-1-30,000 in the certified Mello II LCP.

2. Protection of Visual Resources. The project site is located at the confluence of the mouth of Buena Vista Lagoon and the Pacific Ocean at the boundary between the cities of Carlsbad and Oceanside. Although there is existing development in the area, because of the site's unique setting adjacent to the lagoon, it is like no other site in Carlsbad. Open waters of Buena Vista Lagoon are on the west side to the site with some rip-rap on the banks; fresh water marsh associated with lagoon environs occurs on the northwest and eastern boundaries of the site below the rip-rap line. The property is vacant and an existing unimproved lagoon trail is located along its western edge and circles the site like a loop.

The following policies and goals of the certified Mello II LCP address protection of public views and are applicable to the proposed development:

Policy 8-1

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad Coastal Zone to assure maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction as well as minimize any alterations to topography.

In fact this site is not applicable to the Scenic Preservation Overlay Zone. The only part of Carlsbad that has adopted this zoning ordinance is the El Camino Real Corridor.

Policy 3-2 of the Mello II LCP also requires that development be clustered to preserve open space for habitat protection which also serves to minimize the visual impacts of new development.

The proposed 2,713 sq.ft. residence is over 30 feet tall, consists of two-stories, and features a copper-colored *(This is a real copper roof)* metal roof and concrete block walls. Also proposed is a 1,633 sq.ft., with a 577 sq.ft. second unit above that will be 35 feet in height. Second dwelling units are addressed in the City's LCP. As approved in the LCP, such units are allowed by right subject to restrictions on size (650 sq.ft. maximum), affordability, etc. Second units must also meet all the requirements of the local coastal program, with the exception of base density.

The subject site is visible from the beach, the railroad and portions of Old Highway 101 (Carlsbad Boulevard), which is designated as a Scenic Road in the LCP. *Incorrect: From the west the views to the building site are blocked by tules, and the railroad tracks. Looking south from Oceanside the tules block the site. Looking northwest from Carlsbad the trees and the sewage pump station obscure the building site. Please see accompanying photos.*

Old Highway 101 is heavily used by beachgoers to get to the beaches of northern Carlsbad. Existing cattails and the elevated railroad berm are high enough to block views to the west from the portion of Old Highway 101 that is along side the site. The site is however, visible both from the highway as it descends south from the City of Oceanside into Carlsbad and at a point close to the Buena Vista Lagoon pump station going north on the highway. *Incorrect: Please see caption above.*

As noted above, the approximately 2.6 acres under the applicant's ownership constitutes a unique, low-lying area immediately adjacent to the lagoon where no development has occurred. As such, the proposed project, consisting of two large structures located directly adjacent to the lagoon, has the potential to adversely impact public views in this scenic area by presenting a significant structure in an otherwise natural setting. *Incorrect: The site is surrounded by 30-35' homes to the north and west, 33' apartment buildings to the south, and 34' homes to the southwest*

Policy 8-1 of the City's LCP provides that the Scenic Preservation Overlay Zone should be applied where necessary to assure to the maintenance of existing views and panoramas, which requires that sites be evaluated for potential public views that should be preserved and enhanced. Its purpose is to provide regulations in areas which possess outstanding scenic qualities or would create buffers between incompatible land uses which enhance the appearance of the environment and contribute to community pride and community prestige. The subject site does not represent an infill area but rather should be viewed as an extension of development northward at a critical scenic interface between the ocean and the lagoon which is visible from the Highway 101. Therefore, the site is located in a

highly scenic area that meets the criteria for application of the Scenic Preservation Overlay Zone. *Incorrect: This site is not in the Scenic Preservation Overlay Zone!*

Based on the above, the Commission find that there is a substantial issue as to the proposed project, as approved by the City and conformity with Policy 8-1 of the LCP. As approved by the City, the proposed structures are 30 - 35 feet high which will represent a project that is out of character with the setting of the surrounding lagoon environment. *Incorrect: As stated above all of the surrounding properties are built upon hillsides and are in excess of 30'. CMC 21.10.020 allows houses to be built to 35' and three stories with a 3:12 roof pitch. I am in full compliance with the LCP.*

The LCP requires that appropriate height limitations be enforced. While the proposed development is within the current required height limit, by allowing the project to extend to the maximum height limit allowed by zoning, the City failed to recognize the unique setting where the residence is to be sited. Additionally, the California Department of Fish and Game has indicated that structures this high at this location could discourage shore and migrating birds from visiting the area, or act as "predator perches" affecting sensitive avian species in the area. *Unsubstantiated conjecture: There are no documented reports to this effect, nor was there any mention of this in the Pacific Southwest (Exhibit H) biological report.* Moreover, the proposed exterior treatment includes copper-colored metal roofs and concrete block walls. These design features will degrade the natural beauty of this area. That is, the project will "stand out" rather than blend in or be subordinate to the surrounding natural environment. *Incorrect: In the two years that went into the design of the project, our main design criteria was to create a residence that maintained the environmental integrity of this very unique site. Furthermore there are many examples of this type of building materials utilized in the surrounding area. Please see accompanying photos.* Therefore, the Commission finds the project as approved by the City raises a substantial issue with regard to consistency with the visual resource policies of the certified LCP.

3. Public Access/Recreation. The Coastal Act contains policies that call for protecting public access to the coast. The following Coastal Act policies are applicable to the proposed development.

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 the private 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,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. *In fact the below described irrevocable offer to dedicate open space easement (lot #3) was recorded August 15, 1984. In 14 years the dedication has never been accepted by a public agency or private association.*

In addition, several policies of the Mello II LCP apply to the project site.

Policy 7-3 - ACCESS ALONG SHORELINE

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat.

Policy 7-6 - BUENA VISTA LAGOON

An access trail shall be provided along the southern shoreline of Buena Vista Lagoon, page 63) to facilitate public awareness of the natural habitat resources of the Lagoon. *In our conditions to development we agreed to provide this trail and are conditioned by CDP-97-59.* On (exhibit 4.10) To protect sensitive resources of this area, access development shall be limited and designed in consultation with the State Department of Fish and Game. *We have spent three years working with all of the resource agencies including USF&W, CDF&G, and the CCC.* In permitted development of properties adjacent to the Lagoon, offers of dedication of lateral accessways, irrevocable for a term of 21 years, shall be required to be provided to the City of Carlsbad, State Coastal Conservancy, or other appropriate public agencies. Such access dedications shall be of at least 25 feet in width upland from

environmentally sensitive areas and any required buffers thereto. In addition, the City of Carlsbad, State Coastal Conservancy and Wildlife Conservation Board shall seek to obtain lateral accessways across developed lands.

The subject site is located between the first public roadway and the sea (reference Exhibit #1 attached). The beach area to the west of the project site can be reached via a public access stairway on Ocean Street. To reach the lagoon area immediately adjacent to the subject site, due to a well-worn path, it is apparent that visitors to this area use a path near Mountain View Drive which leads behind tennis courts on the adjacent lot and then down to the lowland area that comprises the subject property. *This is the path that has historically been used as the southern access to the open space. It sits directly to the east of the proposed electric gate.* The beach and lagoon areas are currently used by walkers, fishermen and naturalists. As noted above, the Mello II LCP envisions an areawide pathway along the south shoreline of the lagoon. *This is conditioned in CDP 97-59.* The City of Oceanside is planning pathways on the northern side of the lagoon along with a bird sanctuary. The Department of Fish and Game owns properties on the south side of the lagoon, east of the subject site, and on the north side. Because of its location, the project site is located at a crucial point in any potential linkage between public beach areas and the public lagoon areas. *Incorrect: The public access linkage to the beach area is along the four acres of open space on lot #3. Linkage to the east along the southern trail is impossible due to tules, wetlands, and the rail road tracks.*

There is evidence of historic public use of this site. This evidence is the existence of a well-worn path around the perimeter of the site. The path is evident in numerous aerial photographs of the site taken as early as 1972. In recognition of the existing trail on the south side of the lagoon, the City has required that the applicant record an offer to dedicate a public access easement along the south shore of Buena Vista Lagoon, along the western edge of the site consistent with Policy 7-6 of the Mello III LUP. The city's approval also required that the development maintain a 100 foot setback from the lagoon's edge, consistent with input provided by the resource agencies and LCP requirements. This 100-foot setback would then function as a wetlands buffer. The existing worn path on the site is located within the 100- foot wetland buffer. However, the agencies found that the trail was permitted use within the buffer. In order to further protect the resources, the resource agencies also required that the applicant construct a fence at the inland edge of the buffer to keep domestic pets out of the buffer area to protect wildlife that occurs near the water's edge. *Per USF&W conditions of development 2/13/97 Exhibit I, J, R.* However, the City's approval does not address other public access issues raised by the proposed development.

First, the City's approval authorized a gate across the southern lagoon trail that is the subject of an offer to dedicate a public access easement. *As we are condition by the resource agencies at the direction of Southwest Biological Service report.* The gate is proposed within a fence on Parcel B (exhibit #7), the other lot under the applicant's ownership which is not from dawn to dusk. The Commission found in a recent permit decision, (Ref. CDP #6-96-159/Cade), that regulating hours of beach access along

property fronting Agua Hedionda Lagoon through a time lock gate was inappropriate. The Commission finds that a time-lock gate raises a substantial issue as to conformity with as the certified LCP as policies 7-3 and 7-6 do not contain a provision which would permit such a device. On the contrary, both policies recognize public use in the area and provide for a public trail. The only restrictions the policies make on access is that it should be provided without requiring habitat impacts. *We were conditioned by the resource agencies to fence these boundaries to restrict domestic animals from entering the lagoon and marsh habitats.* No restrictions on what time of day access should be restricted are stated. Time lock gates are also inconsistent with the public access policies of the Coastal Act. *The cited Cade decision that regulating hours of beach access, is inapplicable to this case. The Buena Vista Lagoon is a completely different watershed than the Agua Hedionda Lagoon. The Agua Hedionda lagoon is a public use facility with water sports permitted within the lagoon environment. There is very limited impact to plant or animal species. The Buena Vista Lagoon on the other hand is a designated wildlife habitat and public use is prohibited within the watershed except for fishing. The Buena Vista Lagoon site has well documented biological, wildlife, and public safety concerns. The Cade property borders a restaurant to the west and condominiums to the east. Additionally the residence sits 40' away from the public access. The internal security fence is only 42" high, and actually touches the residence on the northeast corner. Furthermore we are conditioned to low level lighting to protect the lagoon and marsh environments at night. This precludes any security lighting to warn my family of an intruder. The public access trail along the southern boundary of the lagoon ends in a wildlife habitat marsh that is virtually impassable. Therefore it does not create an ingress/egress to another property as the Cade property does. Finally because of the remote nature of this site it has a well documented history of transients, drugs, and gang activity. Therefore compelling public safety issues exist to protect not only the residents but the wildlife habitat as well.*

As noted above, Policy 7-3 of the LUP states that "... There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths criss-cross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect existing access consistent with the needs to protect the habitat..." Due to the fact that there is historic use by the public on this site, the City required that the applicant record an offer to dedicate for the path on the west. However, the City's decision did not recognize the remainder of the perimeter path on the site that appears to be historically used by the public (as noted previously, a well worn path is evident on the site and is also evident in aerial photos dating back to 1972). *In fact they did. Per the Pacific Southwest Biological report and the subsequent resource agencies conditions this area has been designated a wildlife habitat setback area due to the presence of a pair of California light footed clapperrail's in the eastern marsh. We are conditioned to the following:*

- 1) *Remove all non native plant material and seed with a native material approved by CDF&G.*
- 2) *Offer to dedicate to CDF&G a 100' wildlife buffer from the edge of the eastern marsh.*

- 3) *Place along the entire setback a 6' chain link fence that will prohibit human or domestic animal presence.*
- 4) *Place light shields along the southern cul de sac fence to prevent car lights from disturbing the habitat at night. Additionally limit exterior residence lighting to low level or screened lights.*

The City's approval includes a fence across the 100-foot buffer with a dawn to dusk gate and a fence from the proposed cul-de-sac to the marsh to the east. As such, the City's approval will adversely affect continued use of the on-site trails by the public. *LCP policies 7-3 and 7-6 states: "Development shall provide access and protect existing access consistent with the needs to protect the habitat."*

These proposed fences are not needed for security as the entire building area will be fenced. *Incorrect: The northern boundary fence is only 42" tall and actually touches the northeast portion of the residence. It would be extremely easy for an intruder to enter the property along this fence line. Additionally I am conditioned to low level lighting on the residence which precludes security lighting which could warn my family of an intruder.* In addition, such fences close to the lagoon and the marsh may have adverse impacts on birds and wildlife by restricting movement in the buffer and providing potential perches for birds of prey. *Unsubstantiated conjecture! This statement is not supported by any resource document that pertains to the site.*

In addition, the City's permit decision did not recognize the public's use of an existing trail from Mountain View Drive to the existing trail on the south shore of the lagoon and the ocean shoreline to the west. *This is a unimproved prescribed trail that runs to the east of the tennis courts on private property that is owned by the Army Navy Academy and adjoins the open space of lot #3. Consequently the city would have no way of documenting it.* The City's approval included replacement of an existing manually operated gate with an electric gate near Mountain View Drive for access for the proposed residence, fire and maintenance vehicular access. The existing fenced and locked gate are located just off Mountain View Drive on property that is not owned by the applicant. However, the applicant has a private access easement over the property. The installation date of the gate is unknown. The fence/gate appears on a 1981 tentative map for a neighboring project. In addition, representatives of the City have verbally stated that it has been in place since the 1960s. The gate/fence limits public access from Mountain View Drive to the applicant's site. *Incorrect: This access gate sits adjacent to the western side of the tennis courts. (See accompanying photos) It has been closed to pedestrian and public vehicular traffic since the 1950's! Pedestrian access has always been along the eastern side of the tennis courts.* This gate is where the applicant will take access to the subject site via an existing private access easement. According to the City, it is the only beach vehicle access in northern Carlsbad and has been used by lifeguard personnel and city maintenance crews to maintain the lagoon weir which regulates the water level in Buena Vista Lagoon.

In CDP #6-83-51, the Commission approved the subdivision of the property immediately adjacent to and south of the subject site. The permit allowed subdivision of a 7.65 acre parcel into three lots and construction of 14 condominiums (ref. Exhibit #6). In its

approval of CDP #6-83-51, the Commission required Lot 3, the lot over which the applicant must take access to get to the project site, to be reserved as open space through an offer to dedicate an open space easement. *As stated previously this dedication has never been accepted by a private association or public organization which precludes it's legal public access.* In its open space easement condition, the Commission prohibited all development except for development needed to allow for vehicle access across Lot 3 to the lagoon weir and for public projects that were planned on this low-lying area, including wetland restoration and possibly as a depository site for beach replenishment projects. The condition did not recognize any private vehicular access across Lot 3 which is needed for the applicant to get to the project site. However, the applicant has demonstrated the right of private vehicular access across Lot 3 to the project site through an easement that was initially granted in 1971 and then recorded again in 1984. *Prior to the issuance of the offer to dedicate as open space on 8/15/84.* In its approval of CDP 6-83-51, the Commission also required a public access easement over the entirety of Lot 3. Neither the offer to dedicate an easement for public access nor the offer to dedicate an open space easement have been accepted by a public agency or private association. The City's decision on this project formalizes lateral access along the lagoon but does not address how the public will access the trail, lagoon ocean from Mountain View Drive. Section 30212 of the Coastal Act and Policy 7-6 of the LUP require that vertical access to and along the shoreline be provided where appropriate. The City's action failed to provide public vertical access from Mountain View Drive to the trail on the south shore of the lagoon which is inconsistent with these provisions.

Incorrect: Public access is maintained as follows:

- 1) *From the west along lot #3 and the beach, there is coastal public access adjacent Ocean Street, which is an extension of Mountain View.*
- 2) *From the east there is a trail that begins at Maxon Brown Park on State St., ~~crosses the highway at the sewer pump station, continues west across the railroad tracks to lot #3.~~*
- 3) *From the south adjacent to the tennis courts is a prescribed trail that leads to the open space of lot #3.*

As such, the Commission finds that replacement of the existing manual gate with a new electric gate will give the impression that this area is private which could further limit access by the public, inconsistent with Coastal Act and LCP policies. *Incorrect: The above mentioned access trails are well known and have been in place for years. They are used daily by the public to access the beach and open space.*

In summary, because the proposed fencing and gating plans would adversely affect public access, the Commission finds the development as approved by the City raises a substantial issue with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.

4. Environmentally Sensitive Habitat Areas.

Policy 3-2 of the certified Mello II LUP addresses the protection of this environmentally sensitive area and provides the following:

Policy 3-2 Buena Vista Lagoon

Developments located along the first row of lots bordering Buena Vista Lagoon including the parcel at the mouth of the Lagoon (see Exhibit 4.5, Page 61), shall be designated for residential development at a density of up to 4 dwelling units per acre. Proposed development in this area shall be required to submit topographic and vegetation mapping and analysis, as well as soils reports, as part of the coastal development permit application. Such information shall be provided as a part of or in addition to any required Environmental Impact Report, and shall be prepared by qualified professionals and in sufficient detail to enable the City to locate the boundary of wetland and upland areas and areas of slopes in excess of 25%. Topographic maps shall be submitted at a scale sufficient to determine the appropriate developable areas, generally not less than a scale of 1" - 100' with topographic contour interval of 5 feet, and shall include an overlay delineating the location of the proposed project. Criteria used to identify wetlands existing on the site shall be those of Section 30121 of the Coastal Act and based upon the standards of the Local Coastal Program Mapping Regulations, and shall be applied in consultation with the State Department of Fish and Game. *In fact we did please refer to Pacific Southwest Biological report dated 10/15/96 (Exhibit H). The resource agencies included in consultation were CCC, USF&W, and the CDF&G.*

Development shall be clustered to preserve open space for habitat protection. *The site has been clustered from 1.9 acres to .43 acres due to set back conditions.* Minimum setbacks of at least 100 feet from wetlands shall be required in all development, in order to buffer such sensitive habitat areas from intrusion. *We have conditioned to 100' setbacks on two of our three property boundaries!* Such buffer areas, as well as other open space areas required in permitted development to preserve habitat areas, shall be permanently preserved for habitat uses through provision of an open space easement as a condition of project approval. In the event that a wetland area is bordered by steep slopes (in excess of 25%) which will act as a natural buffer to the habitat area, a buffer setback of less than 100 feet in width may be permitted.

The density of any permitted development shall be based upon the net developable area of the parcel, excluding any portion of a parcel which is not within wetlands.

Storm drain alignments as proposed in the Carlsbad Master Drainage Plan which would be carried through or empty in to Buena Vista Lagoon shall not be permitted, unless such improvements comply with the requirements of Sections 30230, 30231, 30233, and 30235 of the Coastal Act by maintaining or enhancing the functional capacity of the lagoon in a manner acceptable to the State Department of Fish and Game.

Land divisions shall only be permitted on parcels bordering the lagoon pursuant to a single planned unit development permit for the entire original parcel.

Additionally, the Coastal Resource Protection Overlay Zone, an implementing ordinance of the City of Carlsbad LCP, contains identical language to Policy 3-2 above with respect to Buena Vista Lagoon.

Numerous other policies of the LCP provide that new development not contribute to erosion and sedimentation of sensitive resources, including Buena Vista Lagoon. Policy 4-3 and Policy 4-6 address this issue.

Policy 4-3 - ACCELERATED SOIL EROSION

(A) Areas West of I-5 and the existing Paseo del Norte and Along El Camino Real Upstream of Existing Storm Drains

For areas west of the existing Paseo del Norte, west of I-and along El Camino Real immediately upstream of the existing storm drains, the following policy shall apply:

A site specific report prepared by a qualified professional shall be required for all proposed development, identifying mitigation measures needed to avoid increased runoff and soil erosion. The report shall be subject to the requirements of the model erosion control ordinance contained in the appendix to the Carlsbad Master Drainage Plan (June, 1980), and to the additional requirements contained herein. *The contents addressing these issues are found in Exhibit I SWBS report 8/15/96.* Such mitigation shall become an element of the project, and shall be installed prior to initial grading. At a minimum, such mitigation shall require construction of all improvements shown in the Master Drainage Plan for the area between the project site and the lagoon (including a debris basin), as well as : restriction of grading activities to the months of April through September of each year; revegetation of graded areas immediately after grading; and mechanism for permanent maintenance if the City declines to accept the responsibility. *The site is extremely flat and the only grading that will be required is a R&R for the pad sites.* Construction of drainage improvements may be through formation of an assessment district, or through any similar arrangement that allots costs among the various landowners in an equitable manner.

Policy 4-6 - SEDIMENT CONTROL PRACTICES

Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters, and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff. *We have proposed, and will incorporate, a sedimentation basin with a*

fossil filter to prevent contaminants from entering the lagoon. There is very little hardscape proposed for the site. In fact the driveway easement will be DG in lieu of concrete or asphalt. Additionally the site is very flat, with sandy soil. We with are conditioned to 100' setbacks on two of the three boundaries, therefore accelerated soil erosion is extremely unlikely.

The 2.6 acre project site consists of two lots located along the south shore of Buena Vista Lagoon, west of the AT&SF Railroad and north of Mountain View Drive in northern Carlsbad. *The site is 1.9 acres.* The project site is covered with disturbed shrub habitat. There are no steep slopes or native vegetation on the project site. Fresh water marsh occurs on the northwest and eastern boundaries of the site below the rip-rap line.

In recognition of the sensitive nature of the project area, the City approved the project with several conditions regarding the protection of coastal resources. The City found that the project was consistent with the certified Mello II Coastal Resource Protection Overlay Zone (Chapter 21.203 of the zoning ordinance) in that the project would adhere to the City's Master Drainage and Storm Water Quality Management Plan and Grading Ordinance to avoid increased runoff and soil erosion, no steep slopes or native vegetation is located on the subject property and, the site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods or liquefaction. The adjacent Buena Vista Lagoon wetlands have been delineated and the project has been designed to include a minimum 100 foot setback between the wetlands and all structures. The City's approval required the applicant to record an open space deed restriction over the entire wetland buffer setback area and to make an irrevocable offer of dedication of the wetlands buffer to the California Department of Fish and Game.

Although the existing vegetation on the site consists primarily of non-native grasses and weeds, two regionally significant habitats, a coastal lagoon and freshwater marsh community, do occur near the subject property. Thus, activities on the property could affect the quality of these habitats. Buena Vista Lagoon provides nesting and foraging habitat is decreasing due to continuous development along the edge of the lagoon. The City approved a sedimentation catch basin on the southeast corner of the site which will direct surface runoff to the east of the site within the freshwater marsh which is part of Buena Vista Lagoon. Policy 302 provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game. *We addressed all of the drainage mitigation issues to the resource agencies in CDP 97-59. On April 1, 1998 the mitigated Negative Declaration was presented to the respective resource agencies (including CDF&G) for their review. No comment was received by any of the agencies (including CDF&G).* That permission has not been obtained from the Department in writing. *No comment from a state agencies constitutes approval on their part and written permission is not required.* Urban runoff and pollutants at this location could endanger plants and animal s that reside in the marsh, including the endangered clapper rails. Therefore, the City's decision cannot be found consistent with Policy 3-2 of the Mello II LCP and substantial issue must be found. *Policy 3-2 of the Mello II LCP has been*

complied with. As previously stated the combination of a sedimentation chamber with the fossil filter will negate possible pollutants from entering the lagoon.

**Response to
"Substantial Issues"**

Prepared by:
John C. Levy, Jr.

Prepared for:
California Coastal Commission

Response to “Substantial Issues”

Substantial Issues

Issue A **Page 3-9**
Substantial Issue with regard to consistency with the visual resource policies of the certified LCP.

1. Proposed elimination of the “dusk to dawn” gate.
2. Removal of the 6’ chain link fence along the southern property boundary in the 100’ northern open space set back area.
3. Incorporate a public access trail within the eastern 100’ habitat setback.

Issue B **Page 9-10**
Public View Sheds and Corridors.

Issue C **Page 10-12**
Substantial Issue with regard to consistency with the visual resource policies of the certified LCP.
Specifically: Reduce the elevation of the residence to 25’.

Issue D **Page 12-13**
Substantial issue with regard to consistency with the visual resource policies of the certified LCP.
Specifically: Eliminate block as an exterior material and copper roof.

Issue E **Page 13-15**
Substantial Issue with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.
Specifically: Deny the applicant the installation of an electric gate on Mountain View Drive.
 Incorporate a pedestrian gate into the design.

Issue F **Page 15-16**
The City’s decision cannot be found consistent with Policy 3-2 of the Mello II LCP and substantial issue must be found.

Response to Findings on Substantial Issues

ISSUE A: Substantial Issue with regard to consistency with the visual resource policies of the certified LCP.

- 1. Proposed elimination of the "dusk to dawn" gate .**
- 2. Removal of the 6' chain link fence along the southern property boundary in the 100' northern open space set back area.**
- 3. Incorporate a public access trail within the eastern 100' habitat setback.**

RESPONSE:

A single response is made for these three issues as they are closely related. The response addresses wildlife, biological, environmental, and public safety concerns as the reasons for rejecting these issues.

In the three years of planning this project our objective was to balance the needs of public access, biological, wildlife, and public safety concerns. I believe that we achieved a proper balance that addresses all of these issues. The "substantial issues" raised by the staff report do not address the "conditions of development" that were agreed upon by all of the resource agencies on 1/22/97 and the fourteen months of work prior to that meeting.

Wildlife, Biological, and Environmental Concerns:

The three points at issue were discussed and resolved by all of the resource agencies (USF&W, CDF&G and CCC) in attendance at the 1/22/97 USF&W meeting, where conditions for development were established and documented. Of principal concern is the protection of the federally listed endangered California light-footed clapper rail and other sensitive fish and wildlife resources. Foot traffic and pets must be excluded along the 100' buffer area to minimize impact on these resources. *The restrictions the policies make on access is that it should be provided without requiring habitat impacts.*

The terms of this agreement are contained in the USF&W letter dated 2/13/97 (Exhibit I) and are illustrated by the 1/27/97 site plan (Exhibit J). The conditions are supported by the Biological report (Exhibit H) and are reiterated in the USF&W letter of 8/25/98 (Exhibit R).

Applicable References

USF&W Letter of 2/13/97 (Exhibit I, page 2, section 1):

“A 100-foot buffer from the mean high water level to all structures, roads and fences shall be established as described in the 1-7-97 plan. The property owner shall make an irrevocable offer of dedication for this buffer area to the CDF&G. This offer should be a recorded in a standard easement document signed by the CDF&G and the property owner, and should include language that requires the offer of dedication prior to obtaining a development permit from the City of Carlsbad.”

USF&W Letter of 2/13/97 (Exhibit I, page 2, section 2):

“Restoration of the 100- foot buffer area shall occur prior to development and shall include removal of non-native plant species and applying a native coastal scrub grass seed mix.”

USF&W Letter of 2/13/97 (Exhibit I, page 2, section 4):

“Installing a 72 inch high solid perimeter fence along the west, north, and, east portions of project site (as described in the 1-7-97 plan) to reduce the likelihood of pets, such as cats, from entering the marsh.” (*emphasis added*)

These conditions imposed by USF&G are aimed at avoiding and/or minimizing potential impacts to the rail and other sensitive resources by restricting access by foot traffic and pets. The conditions were adopted based on the recommendations in the biological report of environmental conditions.

Pacific Southwest Biological Services Report of 10/15/96 (Exhibit H, page 15, section 7.0, item 3):

“A Habitat Protection Fence is proposed along the 100’ buffer to ensure that foot traffic and pets are excluded from the buffer area. This fence would be 3-4 feet tall and may include an additional biological barrier along it (e.g., Bougainvillea sp., Rosa sp., or Carissa sp.).” *(emphasis added)*

The conditions were reiterated by USF&W as necessary for their concurrence on this project.

USF&W Letter of 8/25/98 (Exhibit R, page 2, paragraph 2):

“These recommendations were made part of the biological mitigation measures set forth in the City’s mitigated Negative Declaration (ND) for CDP 97-59/SDU 98-03. Because of this, the Service did not need to comment on the ND when it was sent to us for review on April 6, 1998. Should any of the biological mitigated measures incorporated into the ND as part of the project be modified, in particular placement of a trail within the 100’ buffer area or deletion of the fencing requirement, the Commission needs to be aware that the Service could not concur with the issuance of the City’s ND or CDP 97-59. *(emphasis added)*

USF&W Letter of 8/25/98 (Exhibit R, page 2, paragraph 3):

“It is also our understanding that you wish to install a “dusk to dawn” gating system for the future trail. This system would not restrict access by the public during daylight hours, but rather is intended to preclude access after dark and habitation by transients. The Service would support the use of such a system as such unauthorized access into the marsh and lagoon can result in impacts to sensitive habitats and listed species.” *(emphasis added)*

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. *(emphasis added)*

Policy 7-3 of the LCP states: “Development shall provide access and protect existing access consistent with the needs to protect the habitat.” *(emphasis added)*

Adopting any or all of these three “substantial issues,” that is, eliminating the “dusk to dawn” gate, removing the fencing along the southern property boundary, and/or incorporating a public access trail, would run contrary to the mutual goals of avoiding and minimizing potential impacts on the endangered clapper rail and other sensitive species.

Public Safety Concerns:

There are compelling public safety reasons for the “dusk to dawn” gate and fencing. The site is adjacent to a four acre open space area (lot 3) to the south, rail road tracks to the east, and the Buena Vista Lagoon to the north. The area has been a virtual no man’s land for years because of its remote nature and difficulty in access for policing. This has been a notorious staging area for drugs, alcohol, robberies, public nuisances, tagging and transients living in the wetlands and marshes.

In the attached letters of support, all of the neighbors and resource agencies make note of the need for “dusk to dawn” gated access to the public trail along the Buena Vista Lagoon.

The security of my own family is of a major concern to me. The staff report makes note on Page 9 paragraph one: “These proposed fences are not needed for security as the entire building area will be fenced.” This is incorrect!

If I am conditioned against the proposed “dusk to dawn” gate, and subsequent elimination of the 6’ chain link fence along the entire southern boundary of the north open space setback, it will be quite simple for an intruder to jump the northern 42” fence to enter my property and home. In fact the northeast 100’ setback fence sits directly adjacent to the residence. All adjacent property owners, City of Carlsbad, and USF&W are in full agreement of the need for these public safety measures. The accompanying photographs attest to the fact that all adjoining properties enjoy the same 6’ security fencing along their respective boundaries.

Furthermore on Page 9 paragraph one of the staff report: “In addition, such fences close to the lagoon and marsh may have adverse impacts on birds and wildlife by restricting movement in the buffer and providing perches for birds of prey.” This is unsubstantiated rhetoric! I am conditioned to provide these

fences to protect the habitat from human and domestic animals intrusion into the lagoon and marsh.

The property is currently conditioned to low level exterior lighting (see Exhibit I, page 5): "To prevent lighting of the marsh and lagoon environments, the project shall include a combination of shields and low level lights on all outdoor lighting fixtures."). The use of security lights to further warn my family of intruders is precluded. This increases the need for "dusk to dawn" access gate and fencing.

Conclusion: Through the recommendation of the Pacific Southwest Biological Services study, the respective resource agencies (including the CCC) conditioned the site to include 6' fencing along all three property boundaries.

- 1) The eastern 100' wildlife habitat setback area has been designated as a nesting area to the federally listed endangered California light-footed clapper rail. The introduction of humans or animals into this area is strictly conditioned by USF&W and supported by Pacific Biological Services report. Additionally, Section 30212 (a) addresses the protection of fragile coastal resources which this wildlife habitat setback clearly constitutes.
- 2) The northern 100' wildlife setback along the southern shore of the Buena Vista Lagoon incorporates a 25' public access trail. This trail ends just 100' from the marsh wildlife habitat at a cul de sac lookout. Public access is fully maintained along the southern shore of the Buena Vista Lagoon. The eastern marsh and the rail road "right of way" prevents travel to the east along this trail. Public access to the beach and the coast highway is maintained along the four acre open space (lot #3) adjacent to the property.
- 3) The southern boundary fence should extend all the way into the lagoon to prevent domestic animals from entering the lagoon habitat. This is a public safety measure enjoyed by all adjacent properties, and restricts public access during the night hours.

- 4) The “dusk to dawn” gate allows public access along the public trail during the daylight hours. It will be triggered by a solenoid that electronically closes the gate when the sun goes down, and reopens it at first light.
- 5) The security of fencing the entire southern boundary, combined with a dawn to dusk gate, still offers public access during the day. As a balance it provides safety to my family and to the environment at night.
- 6) The cited (Ref. CDP#6-95-159/Cade) decision that regulating hours of beach access along property fronting the Agua Hedionda Lagoon through a time lock gate is inapplicable to this project. The Agua Hedionda Lagoon is a completely different watershed than the Buena Vista Lagoon and the two can not be compared. The Cade decision dealt with a property that did not share the environmental, public safety, and wildlife issues that the Buena Vista Lagoon site does. The Agua Hedionda Lagoon is a public use watershed where watersports are allowed on the lagoon. Humans and pets are permitted in the watershed. The Buena Vista Lagoon is designated as a wildlife habitat, and public use is prohibited. Furthermore the Cade access trail is used by the public to ingress/egress the adjoining properties, whereas the Buena Vista site does not. Finally because of the remote nature of the Buena Vista site, and its history of transient and gang related crime, the public safety issues are compelling enough to permit a “dawn to dusk” gate. The Cade property is surrounded by condominiums to the east and a restaurant to the west and does not present these same public safety concerns. The house is sited 20’ above the public access trail.

The conditions set forth in the 2/13/97 USF&W letter strikes a good balance in terms of the wildlife, environmental, public access, and public safety concerns.

I ask the Commissioners to find that the “dusk to dawn” public access gate and the fencing along the southern property boundary to concur with the “conditions of development” found in the USF&W letters dated 2/13/97 and 8/25/98. These conditions provide public access yet protect the endangered light footed clapper rail and other sensitive natural resources from foot traffic and domestic pets. This additionally provides security to area residents. I further ask the Commissioners to find that a public access trail within the eastern 100’ habitat setback would be detrimental to this sensitive wildlife habitat.

I ask the Commissioners to find no “substantial issue” with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.

ISSUE B: Public View Sheds and Corridors.

RESPONSE:

The property and siting of the home do not, in fact, interfere with any public views to the ocean.

The Carlsbad Municipal Code 21.204.100 section C states: “Ocean views, buildings, structures, and landscaping will be so located as to preserve to the degree feasible any ocean views as may be visible from the nearest public street.”

The site is located at an elevation of 12’ MSL. The railroad tracks are at elevation 18’ and the Pacific Coast Highway (PCH) sits at an elevation of 6’ MSL. I have attached a southern, western, and northern photograph taken from the PCH for your review.

The western photo of the bicyclists best illustrates the perspective that the site does not block any public views. The site sits directly to the west of the bicyclists. Because the railroad tracks sit at a higher elevation (18 msl) the only view corridor to the west is of the sky.

The southern perspective looking from Oceanside is blocked by Tules, although parts of the lagoon are still visible in the view shed. The residence sits to the south of the lagoon so this coastal view is not impacted.

The northern perspective is a much higher elevation, yet the photo illustrates you can not even see the residence from the highway. The view corridor through the open space and ocean on lot three is unobstructed as the residence is tucked along the northeastern portion of the property. The eastern part of the lagoon watershed is not visible from this perspective.

There are no ocean view sheds or corridors compromised. We were conditioned to 100' setbacks on both our northern and eastern property lines. Although Lot A contains 1.9 acres, setback conditions have reduced the site to a 0.43 acre building envelope. The enclosed site plan illustrates the "clustering" of the property. The residence foot print is only 3,060 feet within a seven acre open space!

I ask the Commissioners to find that no substantial issues exist with regard to with the visual resource policies of the LCP as the siting does not adversely effect public coastal views.

**ISSUE C: Substantial Issue with regard to consistency with the visual resource policies of the certified LCP.
Specifically : Reduce the elevation of the roof to 25 feet.**

RESPONSE:

The Carlsbad Municipal Code 21.10.020 regulates building height in this R-1 zone. Single family residences on lots with a lot area of twenty thousand square feet or greater and within the R-1 zone and specifying a -20 or greater area zoning symbol shall not exceed thirty five feet and three stories with a minimum roof pitch of 3:12 provided.

This plan is in full compliance with the LCP and the local zoning requirements. The height of the main residence is 30 feet and the height of the guest quarters at 33'1" is well below the maximum allowed. Only the peak of the hip roof reaches a 33'1" height. The bulk of the structure (below the top plate) is below 28'.

The attached photographs testify to the height and architecture of the surrounding properties to the west, south, and north. All of the surrounding properties are built on hillsides. Their roof lines are at the same height or higher than we are proposing. Consequently the project is not out of character with the setting of the surrounding lagoon environment.

In the siting of the residence one of our main goals was to preserve coastal views along the Pacific Coast Highway. The stated "Scenic Preservation

Protection Zone. Policy 8-1 of the City's LCP provides that the Scenic Preservation Overlay Zone should be applied where necessary to assure the maintenance of existing views and panoramas, which requires that sites be evaluated for potential public views that should be preserved and enhanced." This area of the city has not been implemented into the Scenic Preservation Overlay Zone. The only portion of the city that has been adopted to include this zoning ordinance is the El Camino Real Corridor. Therefore the Scenic Preservation Overlay Zone is inapplicable to CDP-97-59.

The residence does not block coastal views from any part of the Coast Highway. The public view from the closest street, PCH, is not obstructed by the building.

The view directly to the west is blocked by cattails and the railroad tracks which sits at a much higher elevation than the site. The view looking south from Oceanside is blocked by cattails and the railroad track as well. Although there is a small window of the lagoon from this southern perspective, the residence sits directly to the south of the lagoon so the view corridor to the lagoon and ocean is not effected. The view looking northwest from Carlsbad to the ocean, across the lot #3 open space, and the lagoon is unaffected because the residence is sited at the most northeastern portion of the lot. In fact the site can not be seen from this perspective due to the blockage of trees and the pump station. Please refer to the attached photographs.

I have attached a letter of support from Melvin McGee, MDM attesting to these facts. Mr. McGee was the managing director of our architecture design team and was an associate with Rob Wellington Quigley for over ten years. Mr. Quigley designed the Solana Beach train station and the proposed San Diego Downtown Public Library.

Additionally, I have attached a letter of support from Mr. Steve Adams of the Adams Design Group who is the consulting landscape architect attesting to our concern of preserving public views.

The statement on page 6 paragraph one of the staff report: "Additionally the California Department of Fish and Game has indicated that structures this high at this location could discourage shore and migrating birds from visiting

the area, or act as "predator perches" affecting sensitive avian species in this area."

This statement is unsubstantiated conjecture and is not supported by any biological reports. I seriously doubt that a difference of an eight foot roof height would support this statement.

The issue of building height was not raised by the CCC, (nor any of the other resource agencies), during the review process until August 28, 1998 when the staff report was made public. Ironically this was not cited in the original appeal dated 7/27/98.

I ask that the commissioners find no substantial issues with regard to consistency with the visual resource policies of the LCP as to the height of the proposed residence.

ISSUE D: Substantial issue with regard to consistency with the visual resource policies of the certified LCP

Specifically: Eliminate block as an exterior material and copper roof.

RESPONSE:

The Carlsbad Municipal Code 21.204.100 section B states the requirements for Appearance: "Buildings and structures will be so located on the site as to create a generally creative appearance and be agreeably related to surrounding development and the natural environment."

A team of four talented professionals spent over two years designing this residence. Our "mission statement" was to create a home that was environmentally balanced to the site, yet would offer integrity to the coastal elements. The amount of time that went into the research of materials alone was phenomenal!

The Carlsbad Planning Commission unanimously approved CDP-97-59. There were no comments made any of the neighbors, in fact they are all in support of the proposed architecture. Please refer to the attached letters of support.

The exterior material we finally chose was a sandstone 12 inch block that is lightly sandblasted to soften its appearance. The color and matrix of the material is of earth tones that will blend into the environment. Many of Frank Lloyd Wright's greatest homes used the incredible simple symmetry of block.

Copper roofs date back to the earliest examples of shelter. The natural patina that "ages" with the elements is timeless. There is probably no other roofing material that will blend and age into this unique setting than a copper roof.

Many buildings in the vicinity have employed block and copper materials in their construction. I have enclosed photographs of the Carlsbad train station and a recently completed residence in Del Mar that combine the elements of block and the beautiful patina of a natural copper roof. There is also a recent example of the Walmart building (simulated copper) on the eastern watershed of the lagoon. The city of Carlsbad recently completed a new restroom facility at Tamarack Beach which is block with copper roof.

I ask the Commissioners to find no substantial issues with regard to consistency with the visual resource policies of the LCP as to the use of sandstone block and copper roofing.

Issue E: Substantial Issue with regard to consistency with the public access and recreation policies of the certified LCP and Chapter 3 of the Coastal Act.

Specifically: Deny the applicant the installation of an electric gate on Mountain View Drive. Incorporate a pedestrian gate into the design.

RESPONSE:

My property is accessed off an easement from Mountain View Drive. This easement and the open space (lot 3) is owned by "The Beach Homeowners Association".

The easement is utilized by police, fire, and maintenance crews for access to the beach via lot #3 open space. (see site map). There is currently a locked

chain link gate at Mountain View and has been in place since the 1960's. There is public access to this open space from three points:

- a. From the west it is accessed from the beach, via a public beach access from Ocean St.
- b. From the east there is a pathway that leads across the railroad tracks to the Coast Highway.
- c. From the south, adjacent to the locked gate, is a tennis court and public access is obtained just to the east of that tennis court.

It is incorrect to state that "that replacement of the existing manual gate with a new electric gate will give the impression that this area is private which could further limit access by the public, inconsistent with the Coastal Act and the LCP. This gate has been here for nearly forty years, and public access is maintained directly to the east of the adjacent tennis courts.

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: (3) Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. (emphasis added)

The open space (lot 3) was dedicated on August 15, 1984, albeit no public agency or private association has agreed to accept the dedication. Consequently the open space cannot be required for public use.

The intent of this condition by staff is to incorporate a pedestrian gate into the electric gate plan. Because I do not own nor control the property at Mountain View, I cannot be conditioned to construct a pedestrian gate. I have offered to pay for the installation of an electric gate because it will simplify the accessibility to my residence. The Beach Homeowners Association have agreed to my request because it will allow the Carlsbad Police Department, and San Diego Sheriffs Department to better patrol the open space, beach and railroad tracks. In my past dealings with The Beach HOA they have consistently denied every request I have made. In fact they recently denied a

request to execute a standard Carlsbad Municipal Water District utility easement. They are aware of Section 30212 (a) 3.

If the CCC would like to gain permission from "The Beach" Homeowners Association for a pedestrian gate, I would be more than happy to incorporate it into my site plan.

I ask the Commissioners to find no substantial issues as to a the proposed fencing and gating plans in that it would not affect public access in a manner consistent with public access and recreational policies of the certified LCP and Chapter 3 of the Coastal Act.

Issue F: The City's decision cannot be found consistent with Policy 3-2 of the Mello II LCP and substantial issue must be found.

Response: In the development of our plan, one of the key design criteria was to maintain the integrity of the environment and its impact to the Buena Vista Lagoon. I am an active member of the Buena Vista Lagoon Foundation, and have been instrumental in negotiating the RFP and management plan currently underway with the respective resource agencies.

A site specific report prepared by Pacific Southwest Biological Service was prepared for the site. In that report PSBS identified all mitigation measures needed to avoid increased runoff and soil erosion. Part of those mitigation measures were 100' setbacks on the northern and eastern boundaries of the property. Because of the nature of the sandy soil these setbacks would offer ample protection to the lagoon from urban run off.

The site is generally flat, except for the access easement off of Mountain View Drive. This easement was the only place susceptible to accelerated erosion. Although this was not identified in the report we elected to place decomposed granite along the easement in lieu of concrete or asphalt to minimize the potential for erosion. Additionally very little hardscape is proposed around the site. This would help maintain the natural integrity of the environment as well.

Our site plan proposes a sedimentation catch basin. A Fossil Filter is incorporated in the design to further control possible contamination.

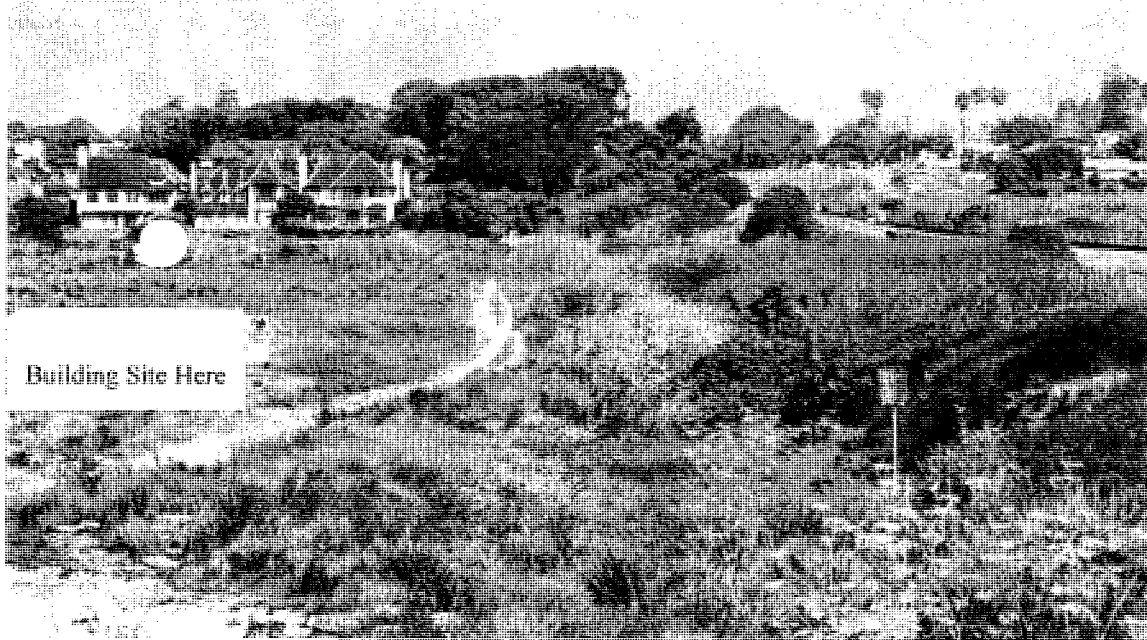
Policy 3-2 provides that no direct discharges to the lagoon can occur without approval of the Department of Fish and Game.

In the Mitigated Negative Declaration resource agency review period of 3-1 CDF&G **did not comment** as to the sedimentation catch basin or other mitigation efforts that address accelerated soil erosion. Written permission from CDF&G is not required.

I ask that the Commissioners find no “substantial issues” be found as to Policy 3-2 of the Mello II LCP.

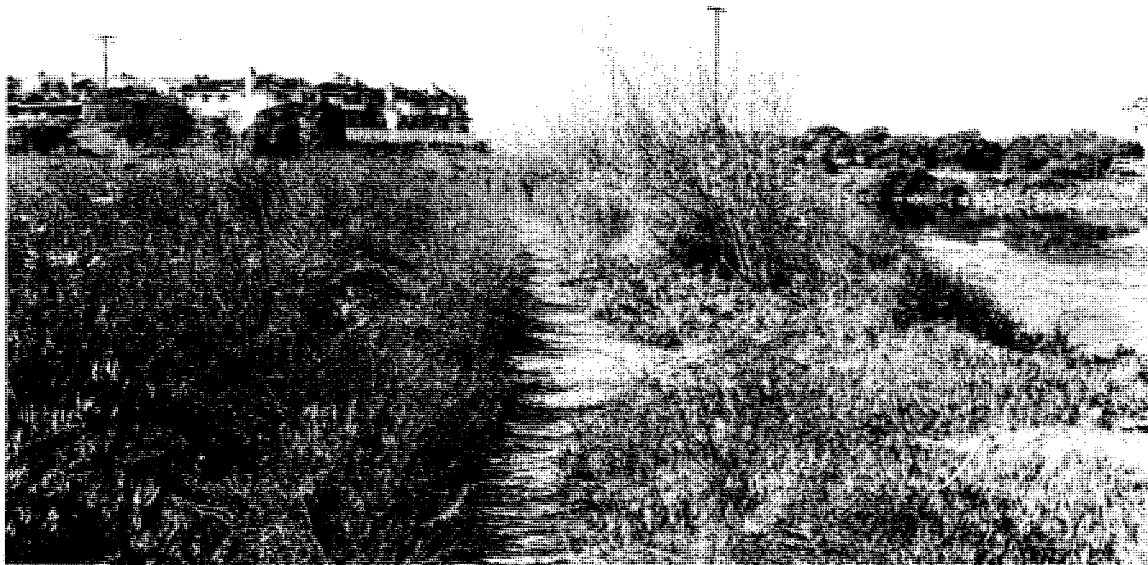
PROPERTY PHOTOGRAPHS

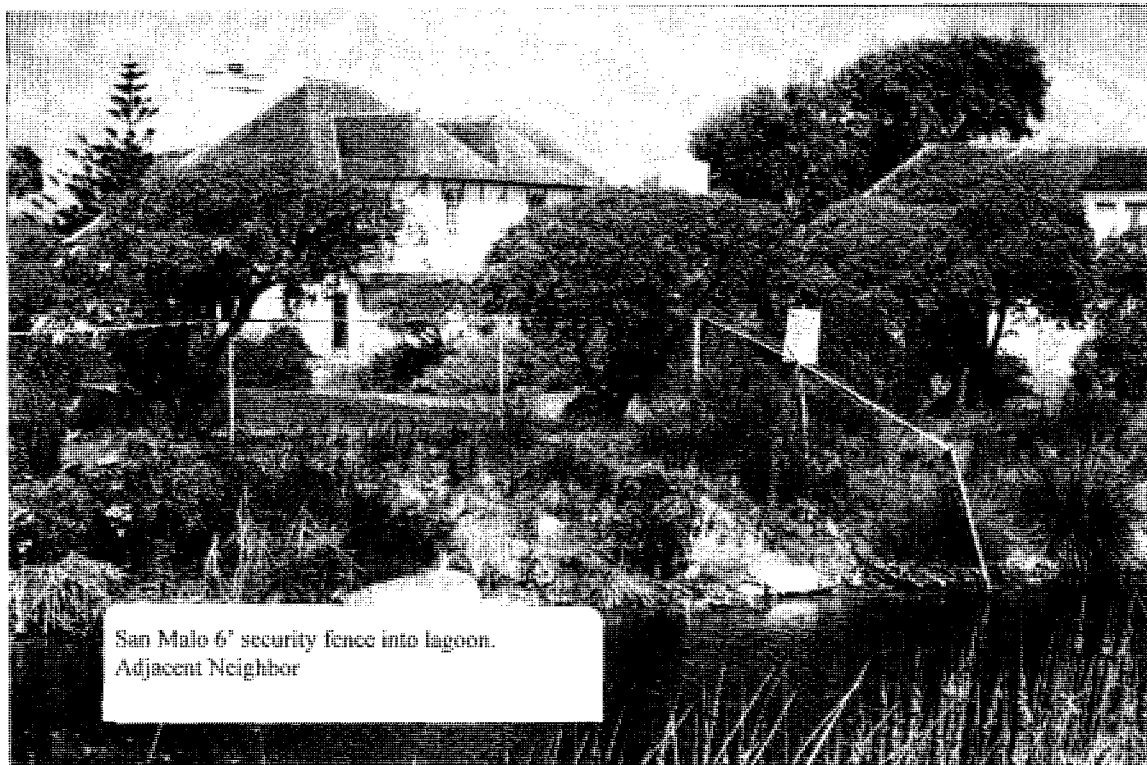
Looking North @ Eastern 100' Wildlife Habitat.



Building Site Here

Looking West Along Coastal Access Trail -
"Pedestrian Path"

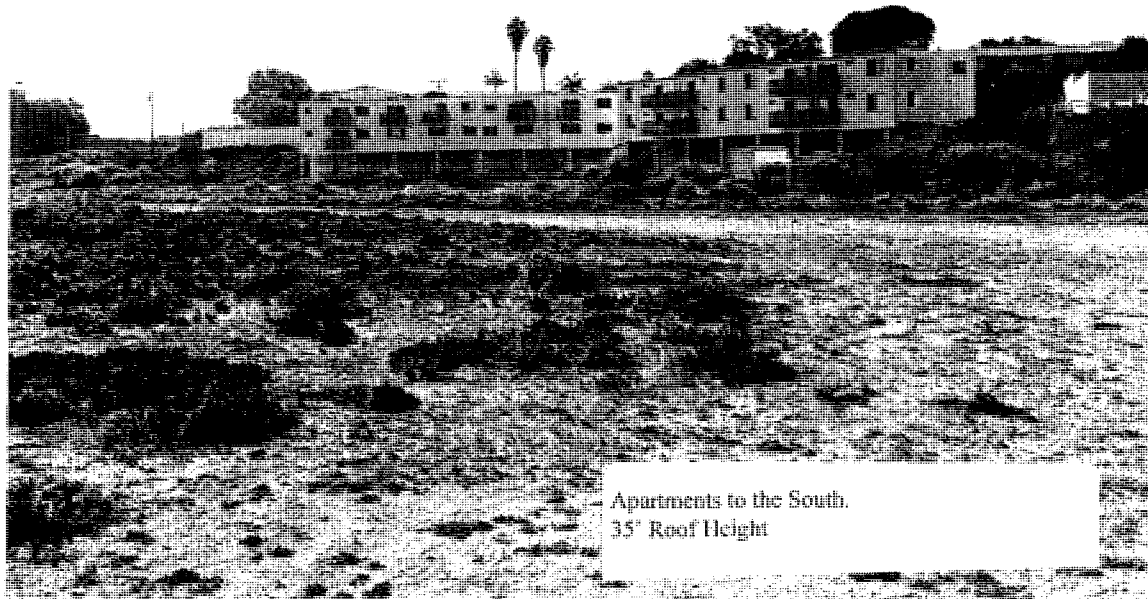




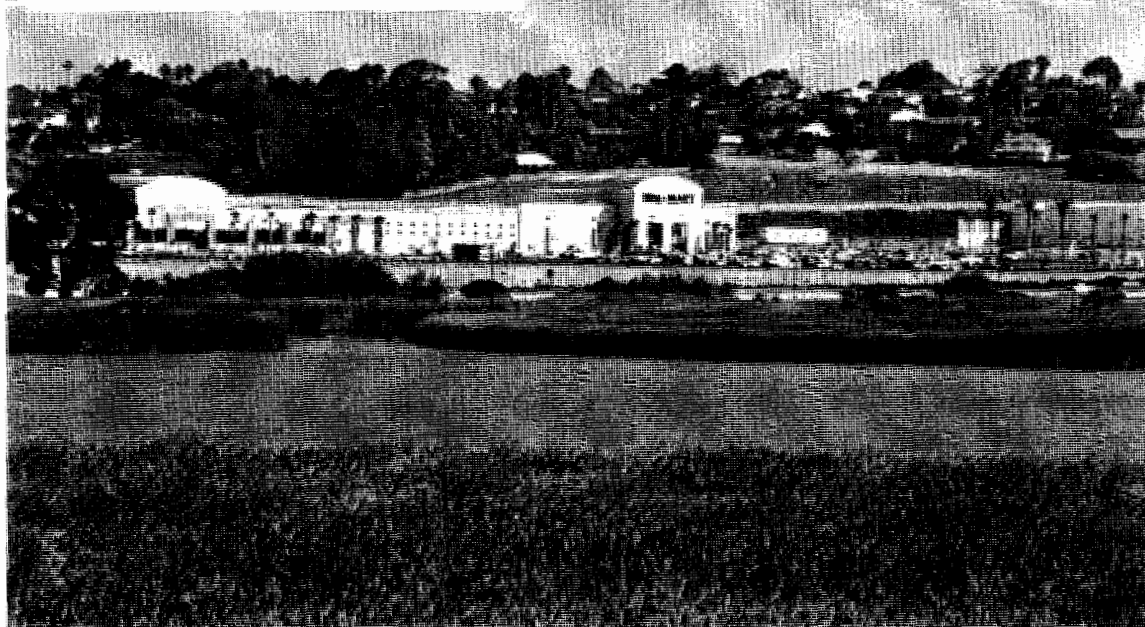
San Mateo 6' security fence into lagoon.
Adjacent Neighbor



Looking South at Apartments & Beach Project
Maximum Roof Heights 35'.

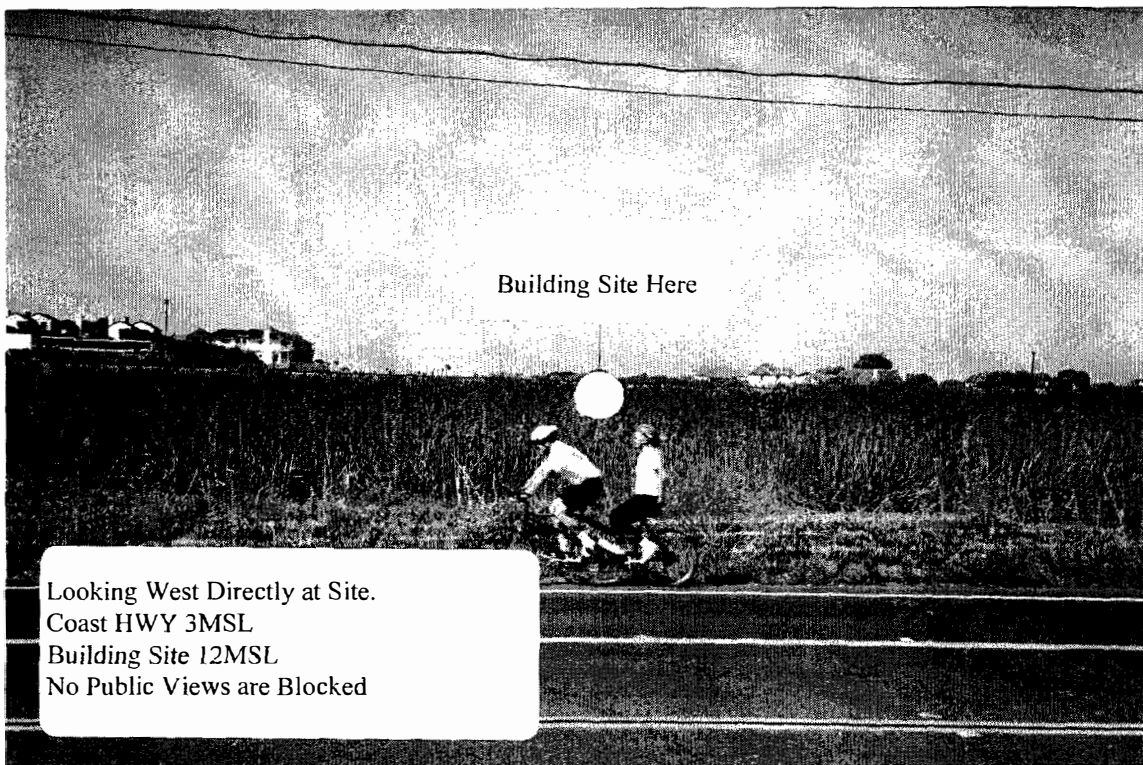


Recently Approved Wal Mart Copper Roof
Eastern Buena Vista Lagoon.



Building Site Here

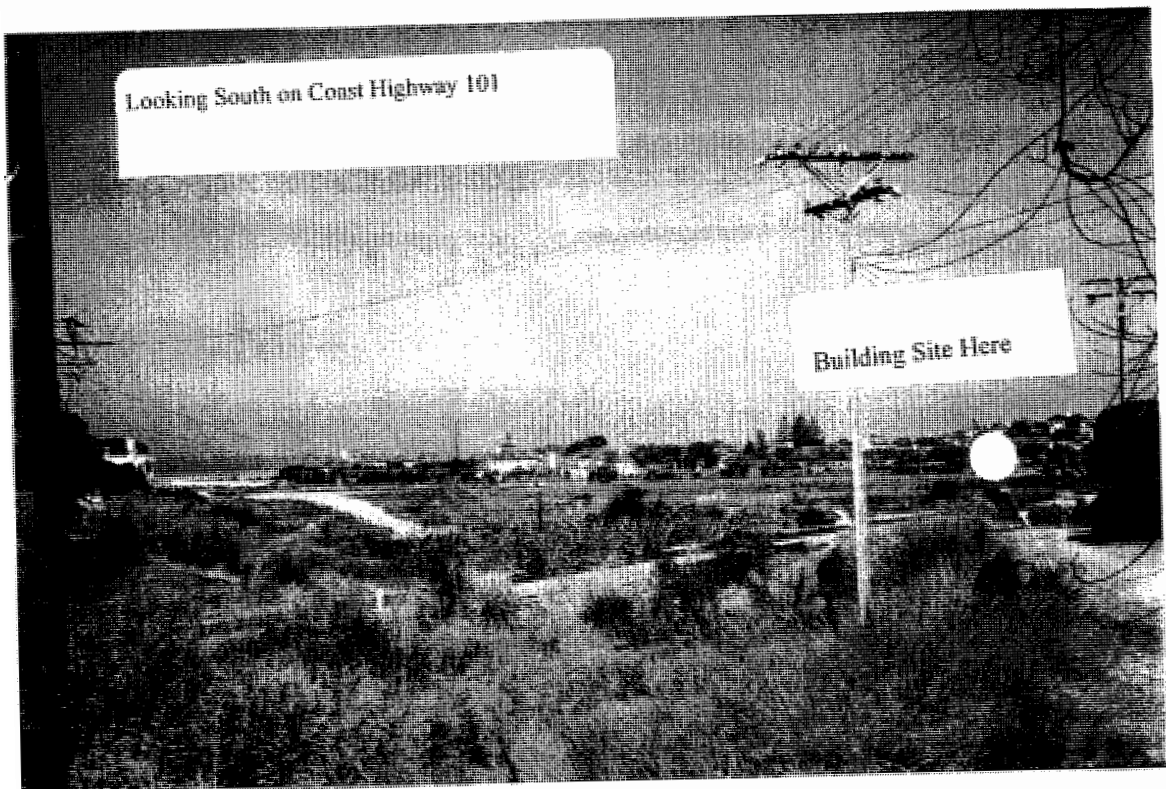
Looking West Directly at Site.
Coast HWY 3MSL
Building Site 12MSL
No Public Views are Blocked

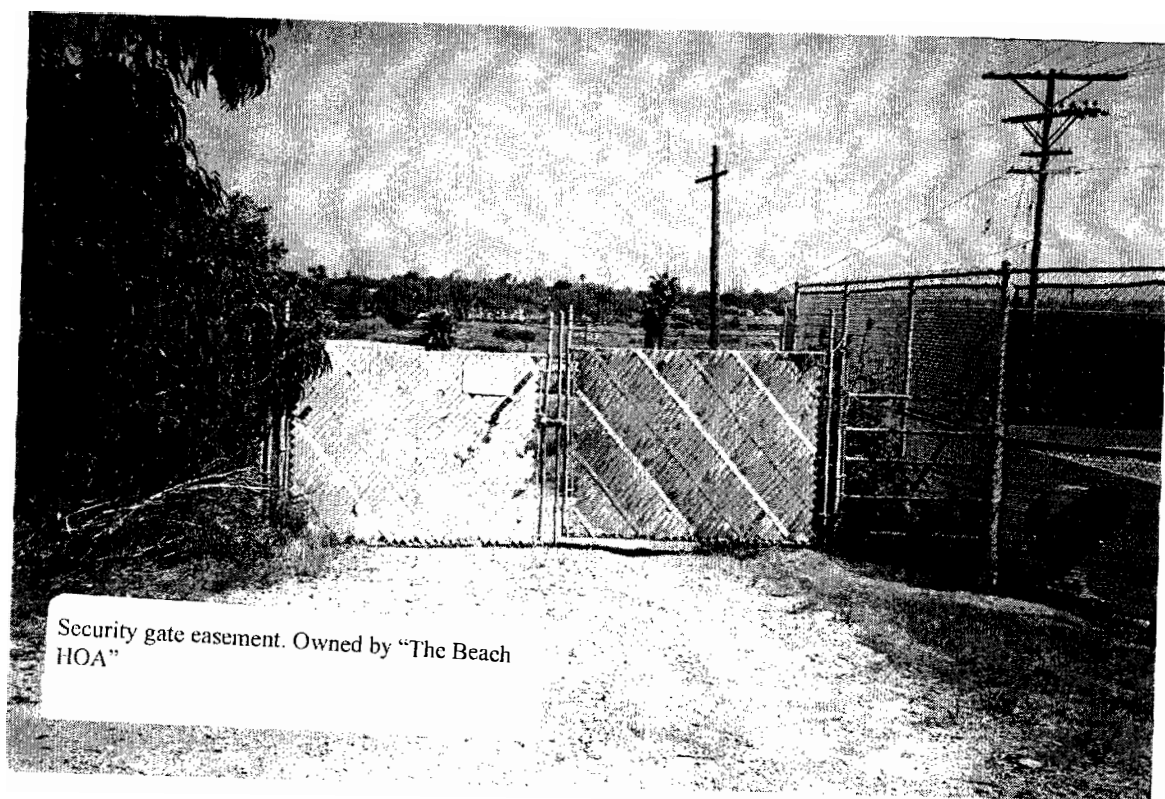


Looking South - Truck is on Site Project



Looking South on Const Highway 101





Security gate easement. Owned by "The Beach HOA"

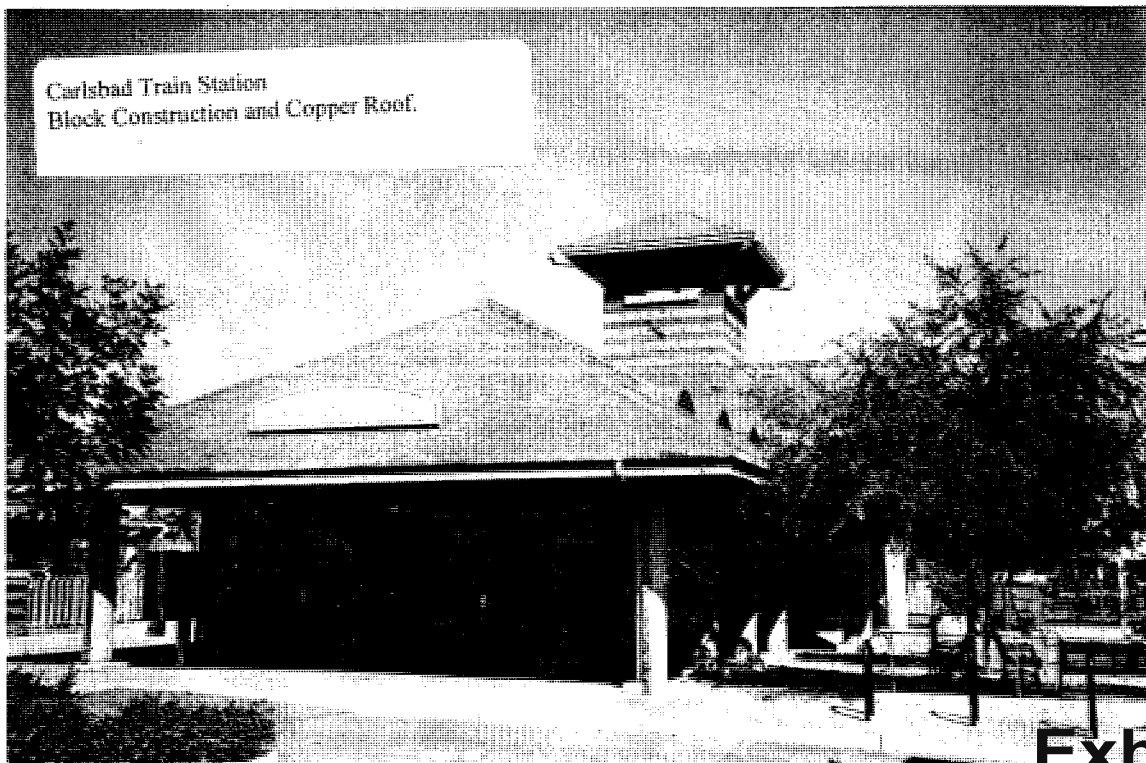
Looking South from Oceanside on Coast
Highway 101. NO COASTAL VIEWS
BLOCKED.

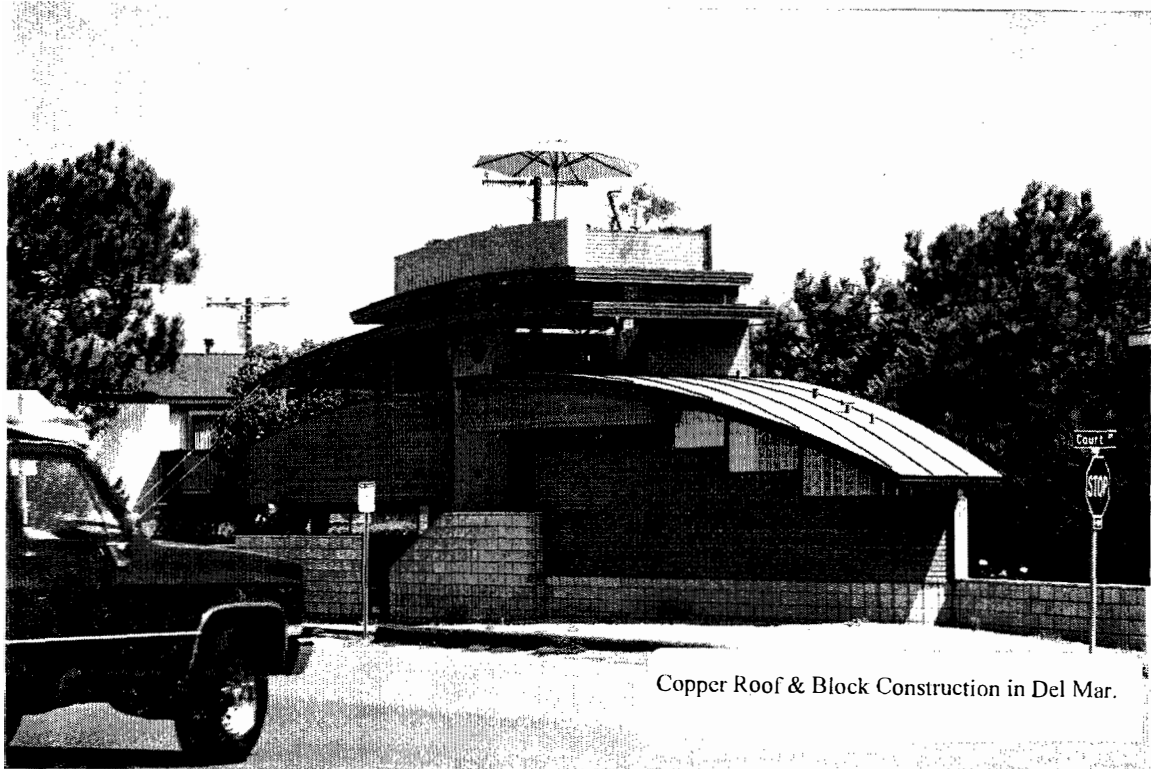


Solana Beach Train Station

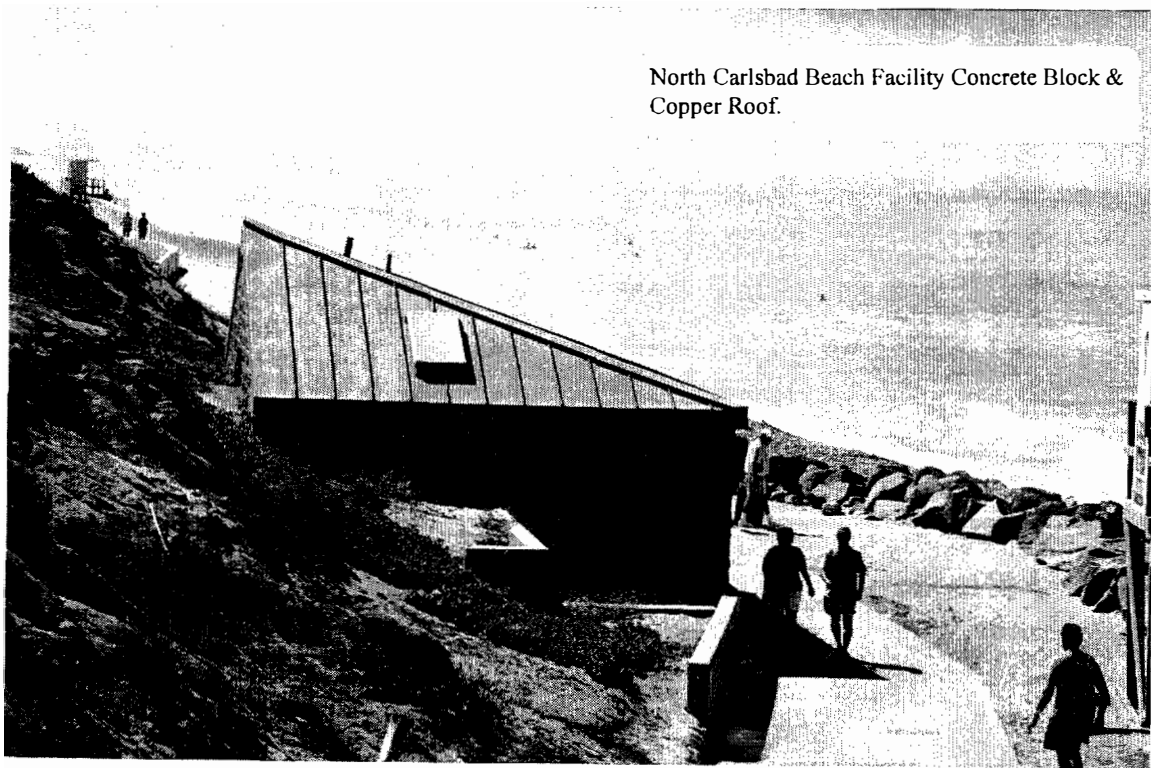


Carlsbad Train Station
Block Construction and Copper Roof.

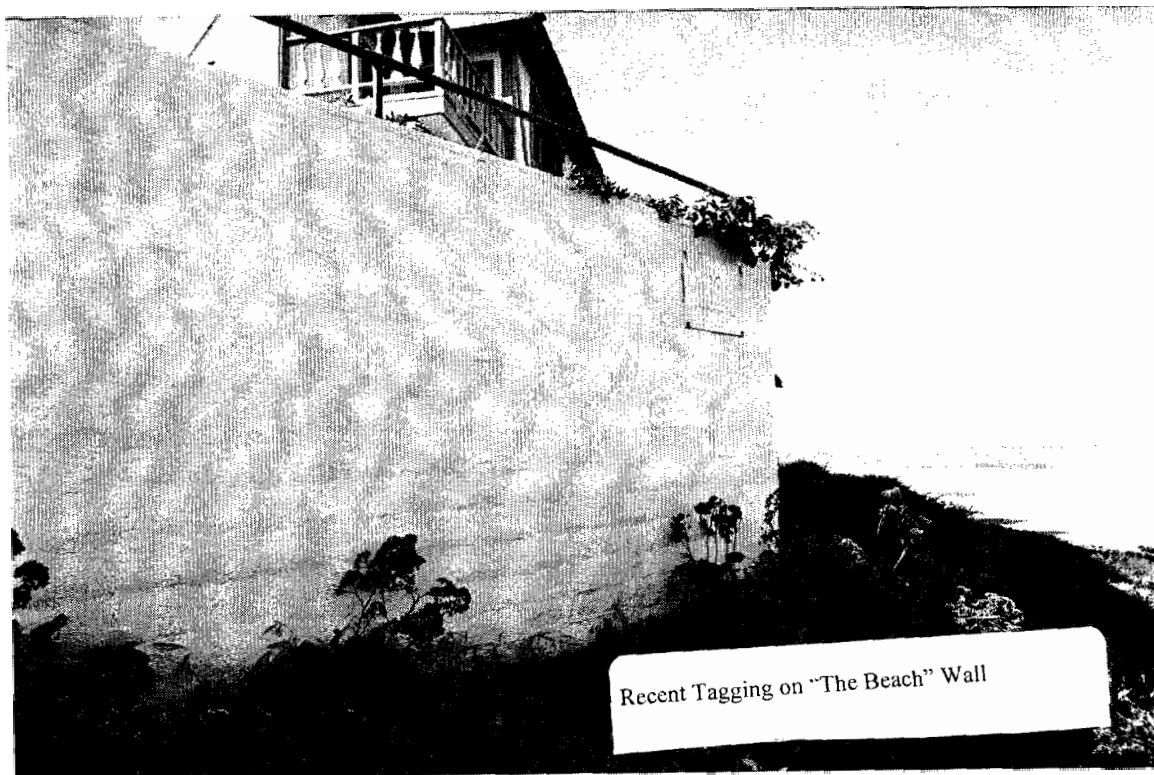




Copper Roof & Block Construction in Del Mar.



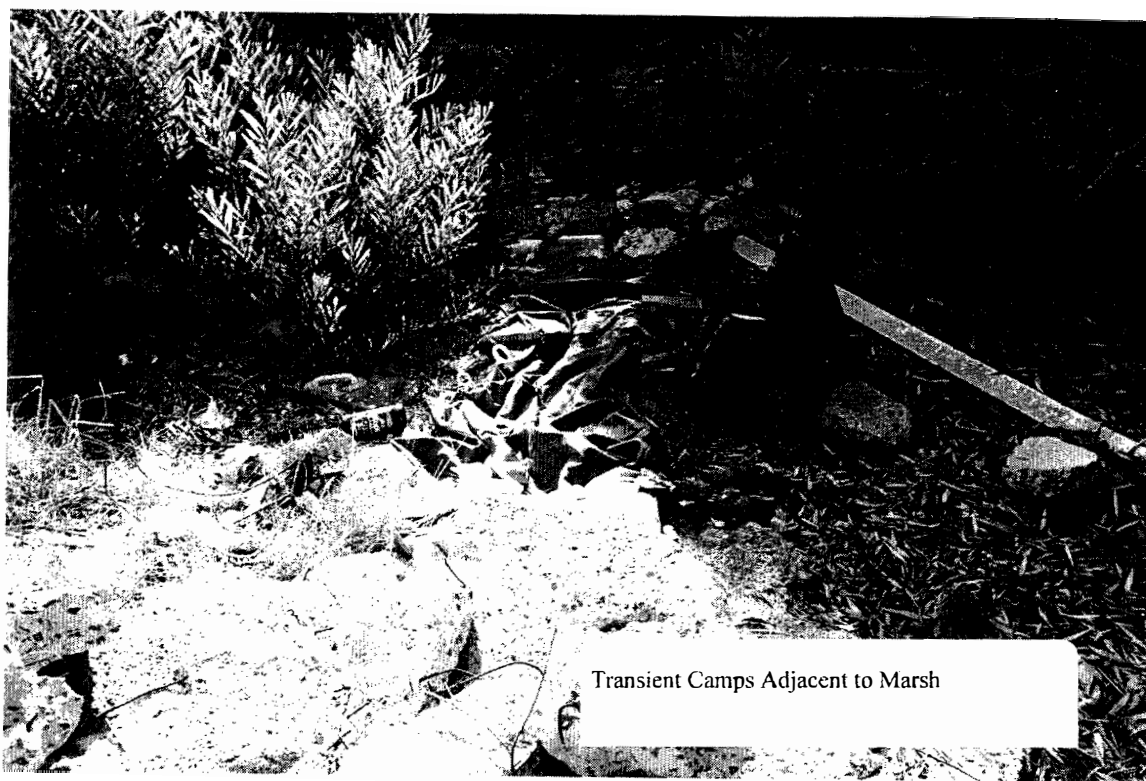
North Carlsbad Beach Facility Concrete Block & Copper Roof.



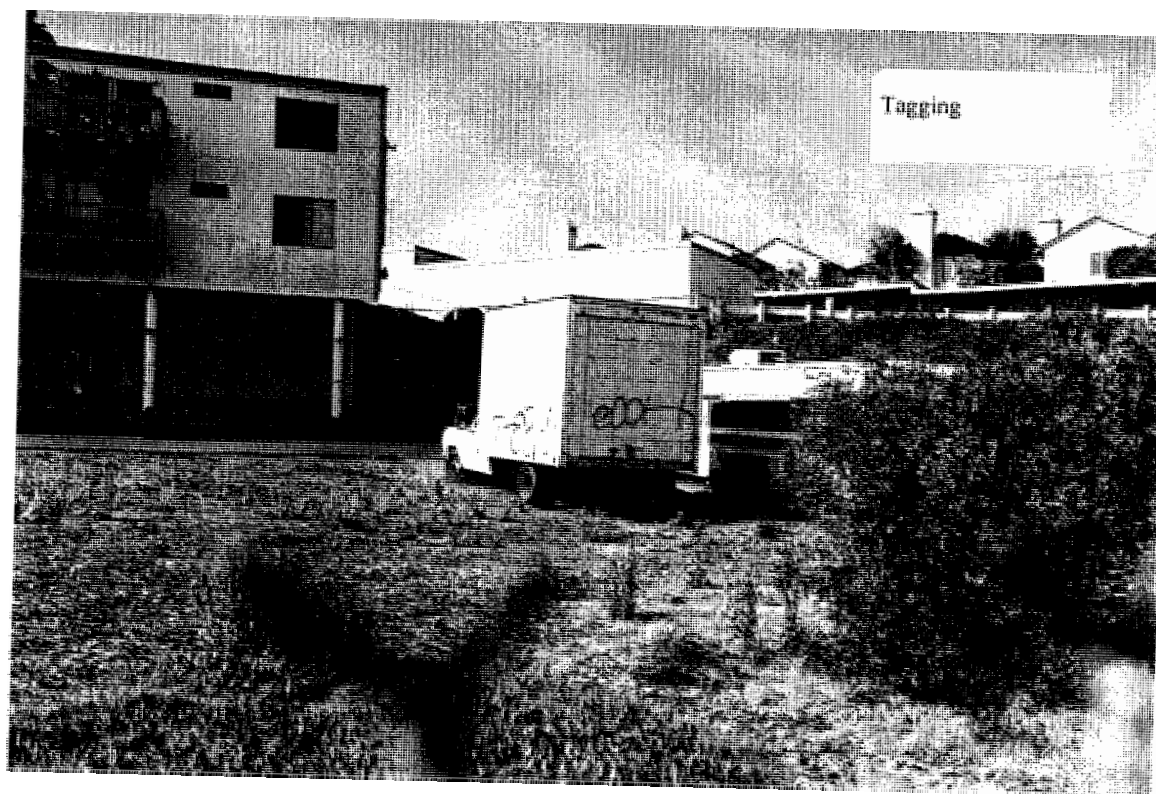
Recent Tagging on "The Beach" Wall



Transient Camps Adjacent to Marsh

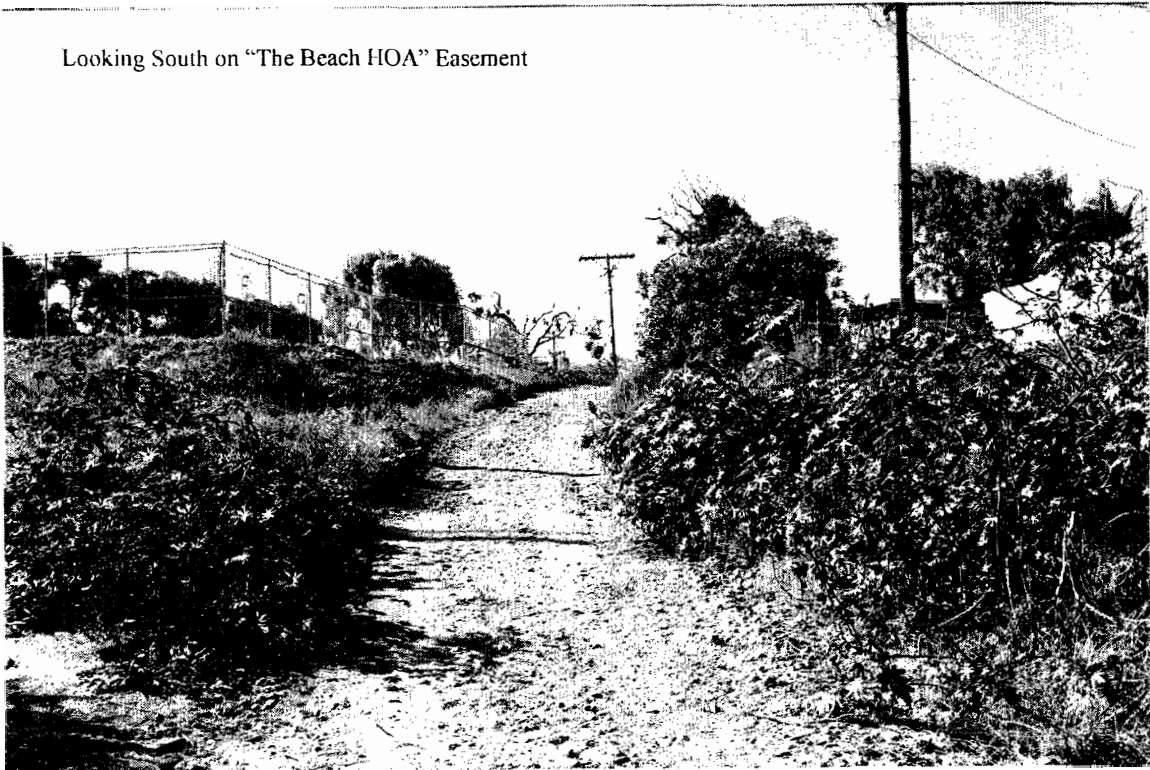


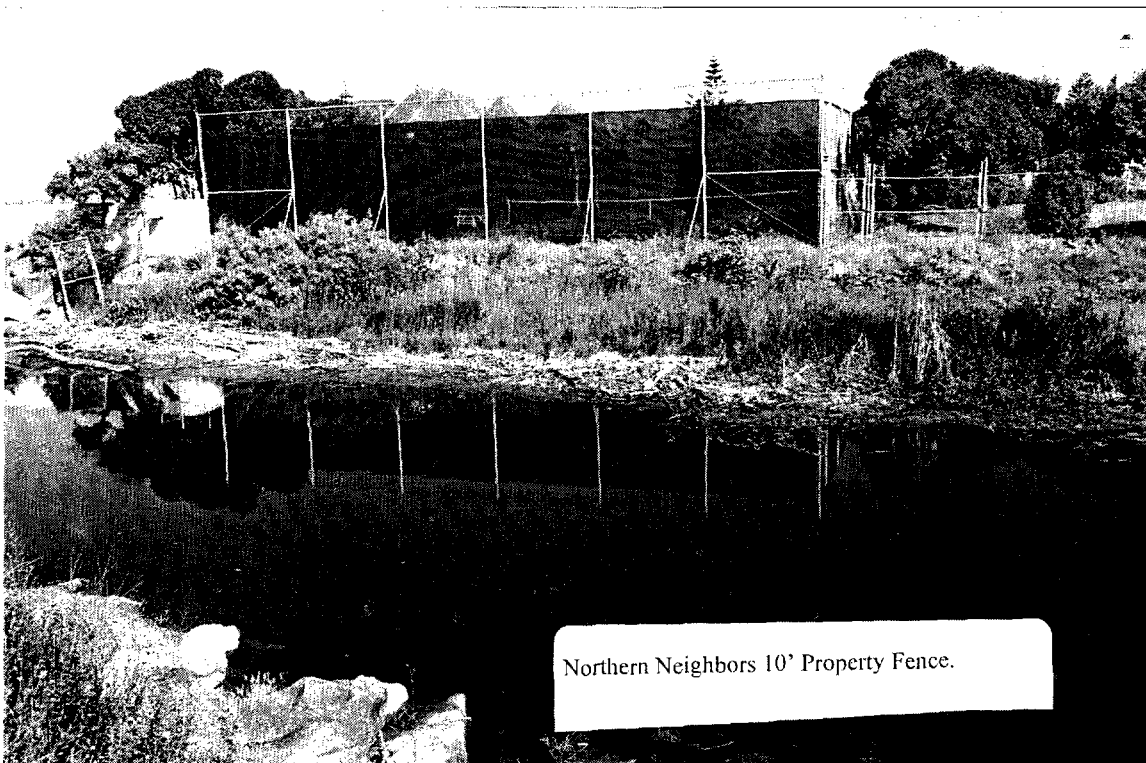
Transient Camps Adjacent to Marsh



Tagging

Looking South on "The Beach HOA" Easement





LETTERS OF SUPPORT



City of Carlsbad

Planning Department

August 27, 1998

Rusty Areias, Chairman
California Coastal Commission
3111 Camino Del Rio North, Suite 200
San Diego, CA 92108-1725

RE: California Coastal Commission Appeal #A-6-98-98

Dear Mr. Areias:

The California Coastal Commission appeal of the Levy Residence and Second Dwelling Unit along Buena Vista Lagoon appears to be based upon two incorrect "substantial issues" findings as discussed below:

Access to the subject property

The Coastal Commission staff's position is that there is no Commission approved access to the subject property.

City review of any lot line adjustments includes a review of all easements on the subject property as well as on property that serves to provide access and utilities. Our records show that lot #3, adjacent and to the south of the subject property is encumbered by a number of easements. Of particular importance is a 40 foot wide private easement from Mountain View Drive across lot #3 to the subject property for ingress, egress, street improvements, drainage and utilities. This easement was recorded on August 2, 1984. On August 7, 1984 an irrevocable offer to dedicate a public access easement and declaration of restrictions in favor of the California Coastal Commission was recorded. There is no record of a subordination agreement affecting the access rights to the subject property. Therefore, when the City reviewed the lot line adjustment, access requirements were satisfied. Our codes do not allow us to create "land locked" parcels. (see attached adjustment plat and portion of the title report)

It should be noted that other private access easements to the subject property have existed since at least 1971 and that the Cities of Carlsbad and Oceanside also have access and maintenance easements across lot #3.

Your staff's appeal indicates concern that the siting of the road to the subject property should be in the least environmentally damaging alignment. In fact, that was a consideration in the City's review of the coastal development permit (CDP). The proposed road, located in the 40 ft. easement is currently occupied by a maintenance road. The location of the access road was fully reviewed by the appropriate state and federal resource agencies. You should note that the location of the public access easement that the Coastal Commission holds is in a sloped and environmentally sensitive area.

Legality of the lot

The Coastal Commission staff's interpretation is that a coastal development permit (CDP) was required for the lot line adjustment (ADJ 471) processed upon the subject property in October, 1997.

The City did not require a CDP for this specific lot line adjustment for the following reasons:

The subject lot line adjustment, modified the lot lines between Mr. Levy's two existing legal lots which front along Buena Vista Lagoon, but did not result in the creation of a greater number of parcels, greater total lot acreage, or a greater intensity of development than existed prior to the lot line adjustment.



Pursuant to Section 21.201.030 of the Carlsbad Municipal Code (CMC), "any applicant wishing to undertake a development (defined in Section 21.04.107) in the coastal zone shall obtain a coastal development permit". Section 21.201.107 of the CMC specifies that "Development in the coastal zone includes a subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code)". Subsection 66412(d) of the California Government Code specifies that the Subdivision Map Act shall be inapplicable to "a lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created". In that the Subdivision Map Act clearly does not apply to Mr. Levy's lot line adjustment, it does not qualify as "development" in the coastal zone and therefore did not require a coastal development permit. Please be reminded that this is consistent with the Supreme Court finding in Landgate, Inc. vs. California Coastal Commission 17 Cal 4th 1006 (1998).

Also pursuant to PRC §30106 and CMC §21.04.107, the subject lot line adjustment in 1997 did not qualify as "Development" because it did not change the density or intensity of the use of the land, it did not involve any construction or modification of the land and by itself it did not and could not affect public access.

You should note that the City shared the Commission's concerns about the developability of the subject property because of its proximity to the wetlands. To ensure sensitivity and compatibility, the City rezoned the two existing legal parcels to R-1-30,000 (30,000 sq. ft. minimum lot size) in 1986. The rezoning was also a LCP amendment that clearly showed the two parcels and that was approved by the Commission. The Commission also accepted the LCP zoning map in 1996 when CDP jurisdiction was transferred to the City.

Based on the above, it appears that there are no substantial issues associated with the City's approval of CDP 97-59. The project fully complies with all policies and provisions of the City of Carlsbad's Mello II LCP segment.

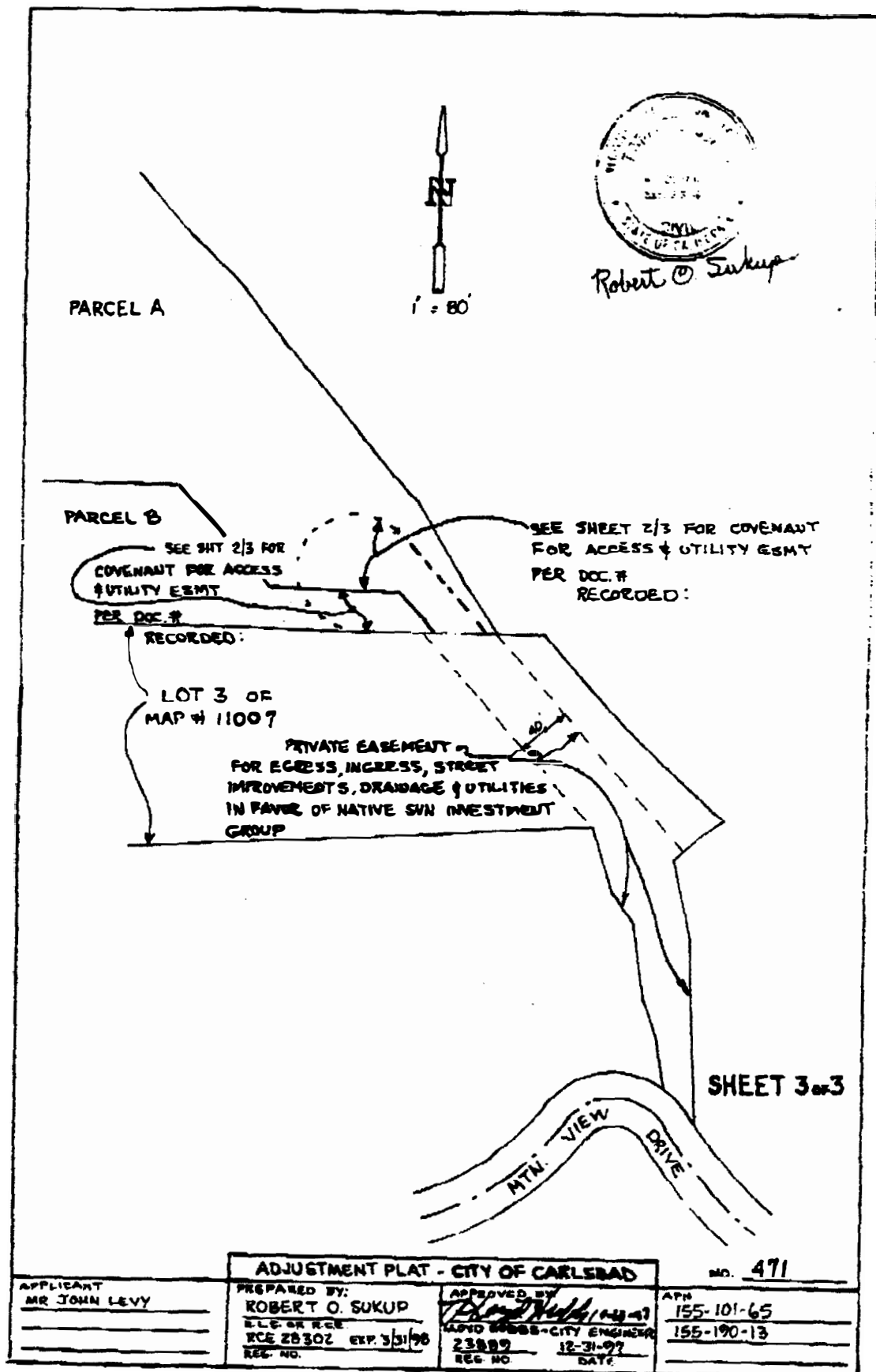
Sincerely,



MICHAEL J. HOLZMILLER
Planning Director

ATTACHMENTS

c: Carlsbad Mayor and Council Members
City Manager
Assistant Planning Director
Assistant City Attorney, Rudolf
Principal Planner, Chris DeCerbo
John Levy
Deborah Lee, Deputy Director for South Coast



Policy No. 982430 - 05

Page 6

SCHEDULE B (CONT.)**Part II**

GRANTED TO: NANCY KEITH TANAGLIA
PURPOSE: (A) INGRESS AND EGRESS
(B) THE CONSTRUCTION, INSTALLATION, REPLACEMENT, REPAIR, MAINTENANCE AND USE OF ROADS AND STREETS, AND
(C) THE CONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE AND USE OF UNDERGROUND LINES, WIRES, MAINS, PIPELINES, CONDUITS, CABLES AND FACILITIES FOR UTILITY PURPOSES AND USES, INCLUDING, BUT NOT LIMITED TO SEWER, WATER, GAS, POWER, TELEPHONE AND TELEVISION
RECORDED: AUGUST 1, 1975 AS FILE NO. 75-202937, OFFICIAL RECORDS
AFFECTS: THE ROUTE AFFECTS A PORTION OF SAID PARCELS 2 AND 3 AS MORE FULLY DESCRIBED IN SAID DOCUMENT

- AC 22. AN EASEMENT FOR THE PURPOSE SHOWN BELOW AND RIGHTS INCIDENTAL THERETO AS SHOWN ON MAP OF SAID TRACT.

EASEMENT

PURPOSE: ACCESS EASEMENT TO MAINTAIN DRAINAGE FACILITIES
AFFECTS: LOT 3 OF MAP NO. 11007

- AD 23. AN EASEMENT FOR THE PURPOSE SHOWN BELOW AND RIGHTS INCIDENTAL THERETO AS SHOWN ON MAP OF SAID TRACT.

EASEMENT

PURPOSE: "PROPOSED PRIVATE ROAD EASEMENT"
AFFECTS: LOT 3 OF MAP NO. 11007

- AE 24. AN EASEMENT FOR THE PURPOSE SHOWN BELOW AND RIGHTS INCIDENTAL THERETO AS SET FORTH IN A DOCUMENT

GRANTED TO: NATIVE SUN INVESTMENT GROUP, A CALIFORNIA LIMITED PARTNERSHIP
PURPOSE: INGRESS AND EGRESS, STREET IMPROVEMENTS, DRAINAGE AND UTILITIES
RECORDED: AUGUST 2, 1984 AS FILE NO. 84-294255, OFFICIAL RECORDS
AFFECTS: THE ROUTE AFFECTS A PORTION OF SAID PARCELS 2 AND 3 AS MORE FULLY DESCRIBED IN SAID DOCUMENT

- AF 25. AN IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS, DATED AUGUST 7, 1984 BY AND BETWEEN NATIVE SUN-CARSW, a General Partnership, AND THE CALIFORNIA COASTAL COMMISSION, UPON THE TERMS, COVENANTS AND CONDITIONS CONTAINED THEREIN, RECORDED AUGUST 15, 1984 AS FILE NO. 84-309895, OFFICIAL RECORDS.



City of Carlsbad

Planning Department

FAX TRANSMITTAL

DATE: 8-27-98NUMBER OF PAGES BEING TRANSMITTED: 5
(INCLUDING FAX TRANSMITTAL)

TIME SENT:

TO: John Levy

COMPANY:

FROM: Chris DeCarboDEPT: PLANNINGPHONE #: 760 931-9009PHONE #: (760) 438-1161 ext. 4445FAX #: 760 931-9089FAX #: (760) 438-0894

SPECIAL INSTRUCTIONS:





City of Carlsbad

Office of the Mayor

August 14, 1998

Council Member Christine Kehoe
California Coastal Commission
202 C Street, MS 10A
San Diego, CA 92101

SUBJECT: CALIFORNIA COASTAL COMMISSION APPEAL #A-6-98-98

Dear Christine:

I received a telephone call from Mr. John Levy, who recently processed and was granted approval of a Coastal Development Permit (CDP 97-59) by the City of Carlsbad to develop a single family residence and a 2nd dwelling unit (granny flat) upon a legal lot adjacent to Buena Vista Lagoon. Mr. Levy informed me that on behalf of the California Coastal Commission (CCC), you have filed an appeal of this permit. I have been apprised of this project by my staff. It appears that Mr. Levy has diligently worked with California Coastal Commission staff as well as the California Department of Fish and Game and U.S. Fish and Wildlife Service (USF&W) for in excess of three years to resolve all project issues. In light of these on-going good faith efforts of Mr. Levy to negotiate with and reach concurrence on his project design with these State and Federal resource agencies, I am surprised by your appeal.

I have enclosed documentation of Mr. Levy's efforts to process this project through to resolution for your review. This documentation includes:

- 1) Copy of the October 26, 1995 memo to the CCC requesting a review of the initial proposed site plan;
- 2) Copy of April 9, 1996 letter from USF&W indicating that CCC was an active participant in negotiating project design and required mitigation;
- 3) Copy of February 6, 1997 memo to CCC staff with copies of the proposed Adjustment Plats/Certificate of compliance; and a
- 4) Copy of February 13, 1997 letter from USF&W indicating that CCC was involved in establishing the conditions of approval from the resource agencies for the site plan.

There are other numerous documents, but I believe that these clearly provide evidence of the diligent efforts by Mr. Levy to achieve concurrence from the respective State and Federal agencies regarding his project. The project as designed and conditioned (through CDP 97-59) is consistent with the project that was conceptually approved by these agencies.

The aforementioned project appeal discusses several project issues including: (1) the legality of the subject lots; (2) project access; and (3) whether the lot line adjustment on the subject property (MS 471) required a Coastal Development Permit. A review of project documentation and records reveals the following:





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

February 13, 1997

Robert O. Sukup
The Sea Bright Company
4322 Sea Bright Place
Carlsbad, California 92008

Re: Revised conceptual development plan, dated January 27, 1997 for the property located immediately south and east of the Buena Vista Lagoon mouth, San Diego County, California.

Dear Mr. Sukup:

The U.S. Fish and Wildlife Service (Service) has reviewed your revised, conceptual blue-lined plan, dated January 27, 1997 (1-7-97 Plan) to construct two single family homes, driveway, parameter fence, and setbacks on the property located immediately south and east of the Buena Vista Lagoon (Lagoon) mouth. Your 1-7-97 Plan was prepared in response to our avoidance, minimization, and mitigation recommendations regarding potential impacts to the federally listed endangered California light-footed clapper rail (*Rallus longirostris obsoletus*) (rail) and other sensitive biological resources discussed in previous correspondence with you. Correspondence includes a Service letter addressed to you, dated April 9, 1997 (Attachment 1), a document titled "Biological Report of Environmental Conditions at a Site Adjacent to Buena Vista Lagoon, Carlsbad, CA," prepared by Pacific Southwest Biological Services and dated October 15, 1997 (Biological Report), and an office meeting on January 22, 1997 with you, John Levy (your client), Tim Dillingham of the California Department of Fish and Game (CDF&G), and Bill Ponder of the California Coastal Commission (CCC) and Martin Kenney and Jeff Manning of the Service.

The Service's primary concern and mandate is the protection of fish and wildlife resources and their habitats. A priority of the Fish and Wildlife Service (Service) is to provide comments on any public notices issued for a Federal permit or license affecting the nation's waters (e.g., Clean Water Act, Section 404 and River and Harbor Act of 1899, Section 10). The Service is also responsible for administering the Endangered Species Act of 1973, as amended (ESA).

The Service has concerns regarding the future ecological viability of the proposed 100 foot buffer areas that you would be required to restore to native coastal scrub. In past correspondence with you, the Service recommended that you explore options to have a resource agency or a non-profit, conservation organization manage the area once you have complied with any restoration requirements. During a February 6, 1997 telephone conversation with Mr. Levy, Mr. Manning explained that an irrevocable offer of dedication for the 100 foot buffer areas described in the 1-7-97 Plan be made to the CDF&G by the property owner.

The Service is also aware of a project proposed by the City of Oceanside to reconstruct the weir at the mouth of Buena Vista Lagoon approximately 200 feet from your project boundary. The proposed weir project may alter the elevation of the water and the shoreline contours of Lagoon. The Service recommends that you should consult with the City of Oceanside to identify potential conflicts between the City's proposed project and yours.

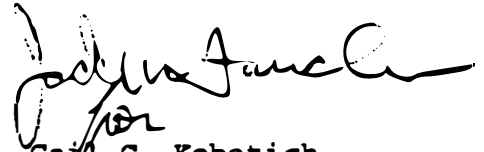
The Service would concur with a final version of the 1-7-97 Plan given the following measures are incorporated into the final development plan to avoid and/or minimize potential impacts to the rail and other sensitive fish and wildlife resources:

1. A 100-foot buffer from the mean high water level to all structures, roads, and fences shall be established as described in the 1-7-97 Plan. The property owner shall make an irrevocable offer of dedication for this buffer area to the CDF&G. This offer should be recorded in a standard easement document signed by the CDF&G and the property owner, and should include language that requires the offer of dedication prior to obtaining a development permit from the City of Carlsbad.
2. Restoration of the 100-foot buffer area shall occur prior development and shall include removal of non-native plant species and applying a native coastal scrub grass seed mix.
3. Grading the slope of the property and/or constructing barriers along the parameter of the property to prevent urban runoff containing herbicides, insecticides, and pesticides from draining into the marsh and the Lagoon.
4. Installing a 72 inch high solid parameter fence along the west, north, and, east portions of project site (as described in the 1-7-97 Plan) to reduce the likelihood of pets, such as cats, from entering the marsh.

5. To prevent lighting of the marsh and lagoon environments, the project shall include a combination of shields and low level lights on all outdoor lighting fixtures.

We appreciate the opportunity to comment on your project and your cooperation in modifying your project to avoid and minimize adverse effects to sensitive wildlife and habitats utilized by them. Since your Plan for this development are still conceptual in nature, the Service reserves the right to make additional comments regarding this development in the future. You should be aware that your proposed development will be subject to the review of the City of Carlsbad, City of Oceanside, CCC, and CDF&G. These entities may require additional requirements beyond what is identified in this letter. If you have any questions regarding these comments, please contact Jeff Manning of this office at (619) 431-9440.

Sincerely,



Gail C. Kobetich
Field Supervisor

cc: * Corps Regulatory, San Diego Office, CA (Attn: David Zoutendyke)
* CDF&G, Long Beach, CA (Attn: Tim Dillingham)
* EPA, Region 9, San Fran., CA (Attn: Harriet Hill/Becky Tuden)
* California Coastal Commission, SD, CA (Attn: Bill Ponder)
* City of Carlsbad, CA (Attn: Diane Vanleggelo, Planning Department and Peter Weiss, Engineering Department)
* City of Oceanside, CA (Attn: Micheal Holzmilller, Planning Dir.)



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008



AUG 25 1998

Mr. John C. Levy, Jr.
REFLEX Corporation
1825 Aston Avenue
Carlsbad, California 92008

Re: City of Carlsbad Coastal Development Permit 97-59

Dear Mr. Levy:

The U.S. Fish and Wildlife Service (Service) is in receipt of your letter dated August 21, 1998, regarding our comments on Coastal Development Permit (CDP) 97-59 presented in a letter to Robert O. Sukup on February 13, 1998. It is my understanding from your letter and phone conversation with Julie M. Vanderwier this morning that the California Coastal Commission (Commission) is appealing the City's issuance of this CDP on a number of issues, at least two of which were conditions set forth by the Service in our February letter. These include:

- Establishment of a 100-foot buffer from the mean high water level to all structures, roads, and fences as described in the January 7, 1997 plan. The property owner shall make an irrevocable offer of dedication (IOD) for this buffer area to the California Department of Fish and Game (Department). The IOD should be recorded in a standard easement document signed by the Department and the property owner, and should include language that requires the IOD to be obtained prior to the receipt of a development permit from the City.
- Installation of a 72-inch high perimeter fence along the western, northern, and eastern portions of the project sites as described in the January 7, 1997 plan to reduce the likelihood of pets, particularly cats, entering the marsh.

Also, the Service included these conditions:

- Slope grading for the property and/or construction of barriers along the perimeter of the property be conducted so as to prevent urban runoff from draining into the marsh and Buena Vista Lagoon.
- Restoration of the 100-foot buffer areas prior to development which will include the removal of non-native plant species and application of a coastal sage scrub-native grassland seed mix.

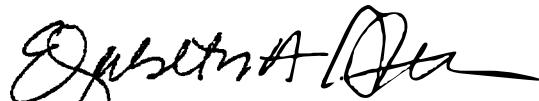
- Incorporation of a combination of shields and low-level lights on its outdoor lighting fixtures to prevent unnatural lighting of the marsh and lagoon environments.

These recommendations were made part of the biological mitigation measures set forth in the City's mitigated Negative Declaration (ND) for CDP 97-59/SDU 98-03. Because of this, the Service did not need to comment on the ND when it was sent to us for review on April 6, 1998. Should any of the biological mitigation measures incorporated into the ND as part of project approval be modified, in particular placement of a trail within the 100-foot buffer area or deletion of the fencing requirement, the Commission needs to be aware that the Service could not concur with the issuance of the City's ND or CDP 97-59.

It is also our understanding that you wish to install a "dusk to dawn" gating system for the future trail. This system would not restrict access by the public during daylight hours, but rather is intended to preclude access after dark and habitation by transients. The Service would support the use of such a system as such unauthorized access into the marsh and lagoon can result in impacts to sensitive habitats and listed species.

If you have any questions regarding the contents of this letter, please call Julie M. Vanderwier of my staff at (760) 431-9440.

Sincerely,



Elizabeth S. Stevens
Deputy Field Office Supervisor

cc: Chris DeCerbo, City of Carlsbad
Tim Dillingham, California Department of Fish and Game
Bill Ponder, California Coastal Commission

MDM
MELVIN DALTON McGEE
ARCHITECT

24 August 1998

California Coastal Commission

Dear Coastal Commissioners,

I am writing in regard to the proposed John C. Levy residence on the Buena Vista Lagoon in Carlsbad, California.

I appreciate the opportunity of being the Architect for this project. I was selected by Mr. Levy in part for my 10 years as an architect with Rob Wellington Quigley, FAIA, and for my numerous design awards. Mr. Levy has insisted that the project be of the highest quality in design and construction.

The residence is designed as a direct response to its unique setting. The siting, massing and choice of materials were all carefully considered to complement the natural setting and to minimize impact on the site. The site configuration was a result of multi-agency collaboration, including the Coastal Commission, City of Carlsbad and Fish and Wildlife Service.

Unlike most residential properties, this site incorporates a significant amount of dedicated open space around every side of the property. The remaining limited building area restricts any view impact to a minimum. The main residence is raised four feet above grade, to minimize possible adverse affects from potential hundred year flooding. The roof height (30 feet) is well below the maximum 35 feet permitted. The key concept of the design is to create interior spaces that relate to the lagoon. Lowering the height of the structure would negatively impact the interior spaces making them feel proportionately too low for the floor area. The plan is multi-storied to preserve the remaining lot area for landscape area.

1530 WEST LEWIS STREET
SAN DIEGO CALIFORNIA 92103

PHONE: 619-299-9111
FACSIMILE: 619-260-1112

MDM

MELVIN DALTON McGEE
ARCHITECT

The height of the guest quarters, also, is below the maximum allowed. Only the peak of the hip roof reaches a 33 foot - 1 inch height. The bulk of the structure (below the top plate) is below 28 feet.

Materials for the project were selected for their suitability to withstand the relatively harsh seaside environment while maintaining their inherent natural appearance. The sand-colored concrete block is a natural finish material. Its variegated aggregate evokes the surrounding beach sand. The copper roof was selected for its longevity as well as its ability to weather and develop a natural patina over time. The use of these materials are not of a particular architectural era, the result being that the residence will feel more like it has been a part of its setting than most of its neighbors.

Mr. Levy is proposing to build a residence that is sensitive to its setting and respectful of its impact on surrounding properties and public space. He has enlisted every applicable agency in its development and, as a result, limited severely the possible scope of development on the property. The proposed residence is consistent with the goals of the California Coastal Act. I urge you to approve the project as submitted.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melvin Dalton McGee', with a stylized flourish extending to the right.

Melvin Dalton McGee, Architect
California License No. C-15586

STATE CAPITOL
ROOM 3070
SACRAMENTO, CA 95814
PHONE: (916) 445-3731

DISTRICT OFFICE
2121 PALOMAR AIRPORT RD.
SUITE 100
CARLSBAD, CA 92009
PHONE: (760) 438-3814
FROM ESCONDIDO
AREA 744-2223
FROM AREA CODE 714 USE
800/ 481-5560

Senate

California Legislature



WILLIAM A. CRAVEN
SENATOR
38TH DISTRICT
CHAIRMAN
COMMITTEE ON LOCAL GOVERNMENT

98-310

August 21, 1998

Mr. Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: California Coastal Commission Appeal (#A-6-98-98)
Coastal Development Permit (CDP 97-59)

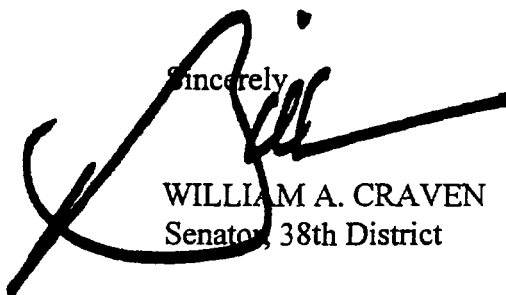
Dear Director Douglas:

The City of Carlsbad has voiced strong support for the above mentioned project, the proposed residence of Mr. John Levy on the Buena Vista Lagoon. I feel strongly that the wishes of the City should be granted deference in this case.

As a longtime supporter of the California Coastal Commission as Chairman of the Senate Local Government Committee, I am well aware of the need to balance competing interests. The City of Carlsbad has had an excellent record of permitting environmentally sensitive development and, accordingly, has been granted authority to issue Coastal Development Permits (CDP's).

Your careful reconsideration is sincerely appreciated.

Sincerely,



WILLIAM A. CRAVEN
Senator, 38th District

WAC:ab:b

cc: Mayor Claude "Bud" Lewis, City of Carlsbad
✓ Mr. John Levy

Exhibit 24

Assembly
California Legislature



BILL MORROW
ASSEMBLYMAN, SEVENTY-THIRD DISTRICT

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-7876

DISTRICT OFFICES
ORANGE COUNTY
27126A PASEO ESPADA, STE. 1625
SAN JUAN CAPISTRANO, CA 92675
PHONE: (714) 489-2404
FAX: (714) 489-2969

SAN DIEGO COUNTY
302 NORTH COAST HWY.
OCEANSIDE, CA 92054
PHONE: (619) 757-8084
FAX: (619) 757-8087

VICE-CHAIR
JUDICIARY
MEMBER:
EDUCATION
HEALTH
TRANSPORTATION

August 20, 1998

Rusty Areias, Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

RE: CCC Appeal #A-6-98-89

Dear Chairman Areias:

I am writing you today to voice my support for Mr. John Levy's proposed residence on the Buena Vista Lagoon in Carlsbad.

Mr. Levy has worked diligently for over three years with all of the resource agencies in implementing a plan that recognizes public access, wildlife habitat, environmental and biological concerns. After several meetings with USF&G, CCC, and CF&G an agreement was met on environmental setbacks, wildlife habitat, and public access. Because the agreement required 100-foot setbacks on two of the three sides of the property a lot boundary adjustment was necessary to comply with these setbacks. Coastal staff was an active participant in all of these meetings.

Mr. Levy made the boundary adjustments. In fact, he has reduced the density of the buildable area from 1.9 acres to .43 acres.

Mr. Levy submitted the revised plans to the City of Carlsbad Planning Department late last year. The plans were unanimously approved on July 1, 1998 and, therefore, issued a CDP. No comment was received from any resource agency nor any neighbors.

On July 27, 1998, Mr. Levy received a notice of appeal from Commissioner Kehoe's office. Needless to say that Mr. Levy was astounded since he hadn't heard one word from Coastal staff during the resource agency mitigated negative declaration review period of nearly four months. Their reasons were:

- 1) Legal site access;
- 2) The requirement for an additional CDP for a boundary adjustment;
- 3) Public siting from the coast highway;
- 4) Public access to the lagoon.

All issues that they had been part and parcel to.

Representing South Orange County, North San Diego County, including the following communities: Aegeran Hills, Aliso Viejo, Bonsall, Camp Pendleton, Capistrano Beach, Carlsbad, Dana Point, De Luz, Fallbrook, Laguna Beach, Laguna Hills, Laguna Niguel, Ladera World, Mission Viejo, Monarch Bay, Oceanside, Oceanside, San Clemente, San Juan Capistrano, San Luis Rey, San Luis Rey Heights, San Onofre, South Laguna, South Oceanside, Three Arch Bay and Vista.

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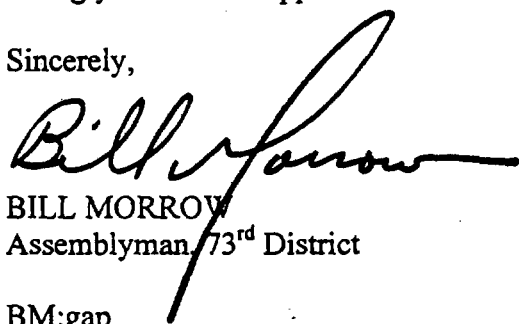
Exhibit 24

Mr. Levy has met with CCC coastal analyst Bill Ponder, Commissioner Kehoe, her alternate Terry Johnson, the City of Carlsbad and Mayor Bud Lewis. All have agreed that the appeal should be withdrawn. Please keep in mind that the proposed siting does not block any public or private view and is situated to minimize it's visual impact to the coast and the project has the support of all neighbors.

In addition, I support a "dawn to dusk" gate along the public access trail of the southern shore of the Buena Vista Lagoon for Public Safety concerns. Because of its remote nature and proximity to the railroad tracks, this property has been a staging ground for transients and gangs who have preyed on the adjacent property owners for years since it is extremely difficult to police. Consequently, I am concerned about Mr. Levy and his family's security during the evening hours. The primary users of the public trail are fisherman and naturalists who limit their use to daytime hours. I strongly urge the commission to adopt a dawn to dusk gate to ensure Mr. Levy's security.

In closing, I feel that this project would be an excellent addition to the City of Carlsbad and strongly endorse its approval as to the CDP97-59.

Sincerely,



BILL MORROW
Assemblyman, 73rd District

BM:gap

cc: Penny Allen
David Armanasco
Nancy Flemming
Sara Wan
Mike Reilly
Shirley Dettloff
Pedro Nava
Andrea Tuttle
Dave Potter
Christine Kehoe
all Coastal Commission staff
John C. Levy, Jr.

Dennis Brandmeyer
Realtor
General Building Contractor

23 Aug 98

To: Coastal Commission
Re: CCC Appeal #A-6-98-98

Dear Commissioners:

I am a neighbor of Mr. Levy's proposed residence and would like to add my support for his project. Of all possible uses of this land I believe his will have the lowest impact and will immediately aid in helping the Carlsbad Police in accessing this somewhat problematic area. Mr. Levy is one of the few people with the tenacity and vision to see this project through the myriad of governmental approvals and compromises. This last minute appeal by Staff appears unfair and costly to Mr. Levy.

Thank you for your consideration.

Dennis Brandmeyer



2360 Rue des Chateaux, Carlsbad Ca. 92008 Tel. and FAX (760) 7292052

**Donald E. Jackson
260 Normandy Lane
Carlsbad, California
92008-2222**

August 25, 1998

California Coastal Commission
c/o Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Dear Commissioners:

I am writing this letter in reference to the California Coastal Commission Appeal # A-6-98-98.

I am a third generation property owner in the northwest corner of Carlsbad, located near the property in question. My wife and I are very aware of the past history of that piece of land which is called "The Flat" created by an illegal fill of the lagoon in the early '70's. I am also on the board of the Buena Vista Lagoon Foundation which keeps a close eye on all aspects of the lagoon.

I have studied all the requirements which the City of Carlsbad, the Coastal Commission staff, and the other regulatory agencies have imposed on the single family residence proposed.

With all of the above in mind, we welcome this single family residence with its present requirements as a positive move toward solving the many problems in that portion of the lagoon of which you must be aware.

Should you have any questions pertaining to this matter, I would be quite willing to respond. My telephone number is: 760-434-3675.

Sincerely,



Donald E. Jackson

8:38

Staff- Mr. Damm

Next on the agenda Mr. Chairman is item 7.a, this is appeal # A6-98-98, this involves an appeal of a City of Carlsbad-approved coastal development permit, allowing construction of a 30 foot high single family residence along with a 35 foot high, 1633 square foot detached garage which would have a 577 square foot second unit above it. The project site is a 1.9 acre lot, it is a lot that is located in a unique location. The property is surrounded by wetlands on two sides, it's a triangular shaped property that is on the south shore of Buena Vista Lagoon, and therefore it certainly is a piece of property that raises concerns as to design of the development in relation to the environmentally sensitive wetlands that are adjacent. The staff is recommending that the Commission, after public hearing, determine that the appeal does raise a substantial issue, and if you do find the appeal raises a substantial issue, we are then recommending that the Commission approve the project at the de novo portion of the hearing subject to special conditions.

10:11

Based on the, and I will be very brief, based on the materials you have received from the applicant, it is clear that they believe the appeal raises no substantial issue. Staff would also note that one of the appellants, Commissioner Kehoe, has indicated that she has withdrawn her involvement as an appellant, however this appeal does remain a valid appeal. Briefly, there are 3 reasons why staff believes the appeal raises substantial issue. First, there are clearly defined trails on the eastern side of the property where the city did not require protection of historic access. Secondly, the city allowed a new electronic gate to be installed in the access easement off of Mountain View Dr, which will extend the life of this gate. Currently there is an old chain link gate, and staff believes it is not appropriate under the public access provisions of the Coastal Act to install a new electronic gate which will restrict the ability of the public to have pedestrian access from Mountain View Dr, down to the trails. A third issue that staff feels raises substantial issue is the question of the application by the city or lack thereof of the Scenic Preservation Overlay Zone. In staff's opinion, the scenic preservation overlay zone does apply to this property. We believe the city should have utilized that in reviewing the design of this proposed residence and garage with a second unit above. Staff at this point will stop our presentation, we do have additional comments should the Commission wish to hear more about the question of substantial issue before making your decision on that point. However, procedurally, unless

there are three or more Commissioners that want to hear more on the question of substantial issue, staff is prepared to go directly to the de novo hearing. So, at this point, inquiring whether three or more Commissioners want to hear more.

12:28

Staff B

Are there three or more Commissioners that, uh, just on substantial issue? 3, 3 or more?

Commissioner A

Not me.

Staff- Mr. Damm

Ok. Then staff will proceed with our presentation –

Commissioner Reilly

Are you talking about- so we go into de novo if we don't want to hear more- or substantial issue?

Staff- Mr. Damm

Correct.

Staff B

Right.

Commissioner Reilly

Well, I wanna hear more on substantial- because I, I looked through the record on this thing...

Commissioner A

You got a couple, you got a couple people with you Mr. Riley-

Commissioner Reilly

It's disturbing.

Commissioner A

I'll go with Mr. Reilly.

Commissioner B

3.

13:10

Staff- Mr. Damm

Ok. Then staff will proceed with additional comments regarding substantial issue. First of all, with regards to public access, if the commission will turn to the last page of the staff report, there is a map of the area. The applicant's property is the two lots located north of what is labeled as Lot 3 on that exhibit. The Commissioners all have that? It's exhibit #6, correct. It's the very last, very last page. As part of a previous commission decision in 1983, the commission allowed a 14 unit condominium development on what is labeled Lot 1 of that exhibit. Lot 2 is the beach area owned by the state, and lot 3 was required to have an irrevocable offer to dedicate an open space easement and to allow for continued public access on that lot. The applicant's property was found to be an existing separate legal parcels and were not part of the 14 unit condominium project. As you can see on that exhibit, the parcel that the applicant is proposing to build their residence on is a triangular shaped property. Located to the west and north of that property is the Buena vista lagoon wetlands. Immediately to the east between the parcel and the railroad tracks is also additional wetland areas. The city in approving the applicant project did allow as I mentioned for the old chain link gate which is located and identified on Exhibit #6 on Mountain View Drive, it's labeled 'electric car gate.' They allowed that old chain link to be replaced by a new electronic gate. The staff does feel that that is an action which extends the life of a structure, in this case a gate, and restricts public access what the Commission required in your previous decision as open space area and public access area. The applicant has private ingress and egress easements across that property to serve their lot. And, staff does not believe that the Commission has the ability to require removal of the existing chain link gate but we do not believe it is appropriate under the public access policies to approve a new electronic gate at that location, which in effect will continue to prevent the public from utilizing that easement to get down to that broader lot 3 open space area.

Regarding the trails, and I'm gonna show slides in just a moment, looking at that exhibit as well as exhibit #2 in your staff report, as I mentioned earlier, there are existing well defined trails on this piece of property, the city and the applicant, in our opinion, did a very good job of addressing the question of wetland buffers. If you refer to exhibit #2, there are requirements for 100 foot buffers, both on the west side of the property as well as the east side of the property, however, the city only required that the trail on the west side, which you can see on exhibit #2, only that that trail be retained for public use. There is a trail on

the east side of the property, adjacent to the railroad track area. Staff believes that trail which has historically been used by the public should also be retained and preserved.

17:20

Commissioner C

Mr. Damm, could you lead us through Exhibit 2 and show us where those trails are?

Staff- Mr. Damm

Yes, if the Commission is looking at Exhibit 2, if you'll simply orient the exhibit so it says where Parcel A, at the top, to the left of what is labeled "42 inch chain link fence", you have the wetland buffer area, you also have the label "existing path to remain," that is what the city in their approval required. Then, to the upper right hand corner, or right hand portion of the site plan, you have an area that's also listed as 100 foot habitat setback. There is a trail in that area that the city did not require be retained, and I will show that to the Commission in the slides in just a moment. And within that setback there's an existing trail, Commissioner. [inaudible someone asking question] It's not shown on the map because this is what the city approved. [inaudible person again saying something off the mic] This is the version of the city's approval.

Commissioner C

I don't want to interrupt you but can I make one question, to go back to that electric gate?

Staff- Mr. Damm

Yes.

Commissioner C

There's currently a chain link fence, right?

Staff- Mr. Damm

There's a chain link fence there.

Commissioner C

Ok, if that easement is gonna be picked up, what would- eventually- there's an easement, there's an open space deed easement, across that Lot 3. Would at that time, the Commission have the ability to remove that chain link fence, if we don't, if there's no electric gate there? Or what? What does it do to the Commission's ability to remove that, if that easement is ever picked up?

Staff- Mr. Damm

Commissioner, I think we would have to, staff would have to more fully explore that, because there is this private, underlying ingress and egress easement, that was recorded prior to the Commission's requirement for an offer to dedicate. So from a legal standpoint, I do not know whether or not we could require the removal of that chain link gate. You want to add something there?

Commissioner or Staff

Well, Mr. Damm has, as we're getting to the testimony you hear from the City and the applicant, a proposal to address that.

Staff- Mr. Damm

Ok, and our legal staff has a comment I think they wanna make as well.

20:00

Staff- Legal

Normally when the Commission requires offers to dedicate, those are recorded free of prior liens and encumbrances, so the fact that there's an access ingress and egress right on that property, normally that would be, you know, someone takes up the offer to dedicate they could require the removal of the gate at that point because the offer to dedicate would be superior to ingress and egress easement. But I would need to check the language of the offer just to be sure.

Commissioner C

Ok.

Staff- Mr. Damm

Then, also with still looking at Exhibit #2, the trail portion that the City did require be retained, there would be a fence across the buffer area with a time lock gate. And the Commission in a recent decision in Agua Hedionda Lagoon did find that time lock gates for these types of trails are detrimental to public access, that they do tend to have a certain factor of discouraging us, and staff believes that is also a point of contention with regards to our recommendation of substantial issue.

Commissioner

So, is that a dusk to dawn thing that we read about in there?

Staff- Mr. Damm

Yes.

Commissioner

It would be open from dawn to dusk?

Staff- Mr. Damm

That's the intent of the city's approval.

The other item that staff believes raises substantial issue on this is the question of visual impact. You have a letter from the city of Carlsbad that indicates that they do not believe that scenic preservation overlay zone requirements apply to this property. Staff has reviewed the local coastal program, and in our review of the local coastal program, the Commission, when you approved the specifically added section 21.40.135, to the coastal zone, titled Coastal Zone Restrictions, and that was added to the scenic preservation overlay zone. And I'll simply quote that, it states, "within the coastal zone, existing public views and panoramas shall be maintained. Through the individualized review process, sites proposed for development shall be conditioned so as not to obstruct or otherwise damage the visual beauty of the coastal zone. In addition to the above, height limitations and see-through construction techniques shall be employed. Staff strongly believes that due to the unique location of this triangular piece which juts out into the Buena vista lagoon, that height limitations are appropriate. The San Malo development, which is nearby and which also extends out into the lagoon, the residents of that subdivision generally have a height of 25 feet. Therefore staff is recommending, with regards to this particular residence, that substantial issue does exist, that the city should have applied the scenic preservation overlay zone requirements and looked at a reduced height for this piece of property, which is visible from the railroad tracks, as well as Carlsbad blvd which is a major coastal access road. I'll just show three or four slides, real briefly.

Commissioner

No it's not Carlsbad blvd, it's pacific coast highway.

Staff- Mr. Damm

I'm sorry. I apologize.

Commissioner

Well, I know it very well. Oceanside and Carlsbad share that lagoon.

Staff- Mr. Damm

I agree. We're talking the same road, but it's Pacific Coast Highway.

This is a view looking down towards the site. You can see the trails, they're very clearly defined. The larger trail there on lot 3, the pedestrian trail extending out on to the triangular piece of property.

This is looking down from the gates, on Mountain View Drive, that leads down to the sites, this is approximately the area where you would have the new electronic gate.

That slide's too dark. So is that one. Oh these are real dark.

This is looking from the railroad tracks directly at the site, the Lot 3 which was required to be open space, you can see the large dirt area that is used by the public. It's also used for getting emergency equipment down to the beach. The condominium development to your left on the promontory is the project the Commission approved in 1983. The San Malo development is in the background of this slide.

24:58

Commissioner

How tall are those condos on the left?

Staff- Mr. Damm

The condos on the promontory? I'm not sure Commissioner, but I would say they are in the 30-35 foot range. They were not, it was not a, you know, low profile type development. In the background on the right is the San Malo development.

This is just a similar still from the railroad tracks, hanging a bit to your north.

This is Pacific Coast Highway, looking back towards the site, just to give you a feel for the open space nature of Buena vista lagoon. That would conclude the slides.

Commissioner

Well that last photo is looking southeast. I mean southwest. And I suppose, what your showing is from the tracks, not from Pacific Coast Highway.

Staff- Mr. Damm

I thought I did indicate that the ones were shown from the tracks, except that last one being from the highway. Correct.

Commissioner

The reason I raised that is because when you're riding down pacific coast highway, or walking down pacific coast highway, you cannot even see the tracks, nor see those condos, or the st malo project, because of the elevation of the site.

Other Commissioner

Staff? Does that conclude your presentation?

Staff- Mr. Damm

Yes, that concludes the staff presentation on substantial issue.

Commissioner

Any ex parte communications? Commissioner Johnson.

Commissioner Johnson

Yes, I forget the exact date, but it was about two weeks ago, I met with the applicant, John Levy, and his developer, his partner, on site in Carlsbad. And I stayed there for maybe about 45 minutes, and we walked around and looked at the plans and talked about the project. And actually both cities, Carlsbad and Oceanside, because they share that lagoon. And we talked about the history of the site, and the neighbors, and the impact of this project on the neighbors and the city of oceanside.

Commissioner

Any other ex parte communications? Commissioner Herron.

Commissioner Herron

Mine are on file.

Commissioner

Anyone else? Welcome Commissioner Flemming. We'll call the applicant, John Levy, and you've asked for 15 minutes. [talking off mic so inaudible but appears to be asking for 20 minutes]

Mr. Levy

[gets on mic]because I have slides, and I know everyone's in a hurry today-

Commissioner

This is just the substantial issue part.

Levy

Right.

Commissioner

Once we get through the substantial issue part, if the Commission decides on substantial issue, then we'll go to a de novo hearing-

Levy

I understand that.

Commissioner

You need to confine your self to the question of substantial issue-

Levy

I understand that. And that's what I'm prepared to do.

Commissioner

Chairman Areias? Make the decision, he wants 20 minutes.

28:25

Levy

I'll try to make it less, but there's quite a bit of information here that you folks are not aware of. I did present it in my written response, however, staff is not acknowledging their last 3 years of involvement in this project and the conditions that were placed upon us by all the resource agencies including the coastal commission.

Commissioner

John, if you're not redundant, you can have 20. If you are redundant, you can have 15.

Levy

That's fine. I appreciate it, thank you. We're gonna set up some- this gentleman's setting up the slides, my colleague here Mr. Sukup will be doing the overheads for us. Let's move very quickly.

For the last 3 years I have been attempting to build a home for my family on the 3 acres on the Buena vista lagoon. The entitlement process began 3 years ago in October 26 1995 a memo to bill ponder of coastal staff. I believe you all have a copy of this correspondence and meetings with the coastal commission. And I believe all of you received that. So this is the intent of 3 years of work with them, and so this does not include US fish and wildlife,

nor CA fish and game, nor the city of Carlsbad. We literally have boxes of, this is specifically coastal commission.

After 14 months of site visits, meetings, phone calls, faxes, a \$5,000 biological report, representatives from US fish and wildlife, CA dept of fish and game, Pacific Southwest Biological Services, Mr. Ponder from Coastal staff, Bob Sukup and myself met on January 22, 1997 to negotiate the conditions for the development of the site. Ok? So. It began on October 26, and January 22, 1997, we all meet. I have here an acetate that was used as a template by the members of the resource agencies, including Mr. Ponder, to ascertain the siting requirements. On that day, Jan 22, 1997, the resource agencies agreed to the following conditions for development. And we have a color overhead, that will help you folks understand exactly what the project is here.

A 100 foot buffer from mean high water level to all structures, roads, and fences. This condition equated to 100 foot setbacks on 2 of the 3 property boundaries. An irrevocable offer of dedication to this buffer to be made to the CA dept of fish and game. Restoration of the 100 ft buffer area to include removal of all non-native material and hydroseeding of native coastal scrub mix. Grading the slope of the property and constructing barriers to prevent urban runoff containing herbicides, insecticides, and pesticides from draining into the marsh or lagoon. And an irrevocable offer to dedicate a 25 foot wide public trail along the southern shore of Buena vista lagoon for the LCP and the coastal Commission. Installing a 72" high solid parameter fence along the west (which is really the south), north, and east portions to reduce the likelihood of pets, such as cats, from entering the marsh. At a later date, the northern fence was allowed to be lowered to 42". The eastern 100 ft setback area was to be designated a wildlife habitat area due to the sighting of a pair of ca light footed clapper rails. Per the recommendation of pacific southwest biological services report, which is Exhibit H, you all have a copy of that I believe. A combination of shields and low level lights on all outdoor light fixtures on the residence. 9, to incorporate headlight shields on the cul de sac fence to protect habitat at night or approaching cars along the easement along Lot 3.

32:13

These conditions were agreed upon by all the resource agencies including Mr. Ponder of coastal staff, who was an active participant in this and every meeting. On 1/27/97, we sent all resource agencies including Mr. Ponder a revised site plan which included the boundary adjustment plat for the two lots on the subject property. Originally the property lines ran east and west, but because of these hundred foot setbacks, it would be literally taking from the resource agencies, so we had to do, had to change the boundary adjustment to address that, to a north- south property. In fact, that first overhead we showed you was at that site

that day and Mr. Ponder was part and parcel to that drawing on that map of those boundary adjustments. This boundary adjustment as I said was necessary to comply with resource agency setbacks. We did not increase the intensity of use of that site by that setback, in fact Lot A was reduced from 1.9 acres to a .43 acre building envelope. No comment was made by coastal staff when we sent them that information.

A letter from USFW dated February 13, 1997, in Exhibit I and it's associated site plan Exhibit J, spelled out the agreement which was reached on January 22 by the resource agencies. Mr. Ponder was sent a letter and copy of this site plan. No comment was made by coastal staff. On November 4, 1997, a CoC and a boundary adjustment were recorded on the 2 lots and sent to the coastal commission. No comment was made by coastal staff. On December 20, 1997, we applied for CDP 97-59 with the City of Carlsbad planning commission. On April 1, 1998, a mitigated negative declaration was sent to all resource agencies including the coastal commission, for their review. No comment was made by any of the resource agencies including coastal staff. On May 1, 1998, a notice of exemption was recorded and mailed to the coastal commission, no comment was made by coastal staff. On July 1, 1998, cdp 97-59 was unanimously approved by the Carlsbad planning commission. There was not one comment received from one of the neighbors, or resource agencies, including coastal staff. On July 9, 1997, at 5pm, the last possible hour, and day, for an appeal, local staff elected to appeal cdp 97-59. Obviously, we were stunned by this action in light of the level of involvement of coastal staff. I want to make this apparent to all of you folks because of the involvement, that they've been there.

34:49

Ok, I want to move on to the issues themselves. Substantial issues. We did meet with Christine Kehoe, excuse me your staff, Mr. Ponder, Mr. McKettrin I believe his name is, on July 31, trying to resolve all the issues.

Bob, we're ready to go right onto the site. If you could get the overhead please, of the site. I just wanna- so we all know what were talking about, just very very quickly.

This is a view on the slides, looking northwest at the site, ok? That long white road is the open space, to the left is the Beach Homeowners Association, and to the right is the san malo project. Bob, you got a sliding overhead there. That's san malo. Right there is where the site is where the home would be built. Just to go over to the overhead for you folks to see.

We're conditioned – let's see here. I'll just go here, move real quickly.

Ok, just, in terms of the areas, we have the eastern habitat setback area, we were conditioned by USFW, for that area, that's where the clapper rails have been seen, there's a

lot of transients, gang members, that sort of thing living in that green area which is the marsh. The public trail along the southern shore of the Buena vista lagoon per the LCP, that's that pinkish, and the purple, is the 100 foot wildlife setback as well. There is a six foot chain link fence in the eastern habitat setback that we've been conditioned by USFW in 2 letters, in a February 6 letter and again on August 25 1998, saying, this is a no mans land, this is a wildlife habitat setback. We have a six foot fence that runs along the southern shore of the Buena vista lagoon. We are proposing a dawn to dusk gate there. Bob, if you could show the commissioners that dawn to dusk gate area into that area, ok.

Issue 8, substantial issue with regard to the consistency with the visual resource policies of the certified LCP, specifically creating a public pathway in the eastern 100 foot wildlife habitat setback area, and eliminate the six foot fence and dawn to dusk gate on the southern boundary that was conditioned by the resource agencies. I've combined all those in one response. Policies 7.3. and 7.6 of the certified lcp place restrictions on public access when habitat is impacted. This is the intent of the conditions placed upon us by CDP 97-59. We were conditioned by USFW to a 100 foot irrevocable offer to dedicate the setback to CA fish and game. To provide a solid 6 foot parameter fence along the west, which again is the south north and east portions to reduce the likelihood of pets, such as cats from entering the marsh. We had to design low level shielded lighting on the residence. These conditions were reiterated again on August 25 by USFW, you were all in receipt of that letter expressing their opposition to these new conditions sought by coastal staff. These conditions were made at the request of pacific southwest biological services report stating that a habitat protection fence as proposed along the 100 foot buffer to ensure that pets were excluded from the buffer area. Clearly this new substantial issue and condition are in complete contradiction to what was conditioned by the resource agencies and recommended by our biological consultant, ok? And Bob, we got the next two slides please.

Ok, eliminating the 100 foot six foot fence along the southern boundary, and dawn to dusk gate. Ok, were looking at a slide here that is looking east along the lagoon, if youll see that fence up in the left hand corner there, that is the fence along San Malo. And the proposed fence would start on the other side of the lagoon and head southeast. Again I am conditioned to this fence along the entire southern boundary of this property and low level lighting per the February 13 1997 and august 25 1998 USFW letters. These conditions are meant to protect the lagoon and marsh areas from human contact and the introduction of Dammmestic pets.

Public access, Bob could we go to the next slide please, thank you- ok, this is looking east along the public trail that were proposing on the southern shore of the Buena vista lagoon,

and that would be basically where that dawn to dusk gate would be. This path terminates at a lookout just in front of the eastern habitat setback were conditioned to. Ok bob could we go to the next 2 slides please.

Again policies 7.3 and 7.6 of the lcp place restrictions on public access when the habitat is impacted. The combination of a six foot fence and dawn to dusk gate provide a balance between habitat protection, public access during the day, and security for my family during the evening hours.

40:10

Mr. Damm's reference to the recent K decision on the agua hedionda lagoon, as I stated in my written response, Buena vista lagoon is a dedicated wildlife habitat where public use is prohibited within the watershed. The agua hedionda lagoon is a public use facility where watersports and domestic animals are permitted in the lagoon environment. In the Kay decision, the adjoining properties were a condominium project to the east and popular restaurant to the west that were historically connected via prescribed trail. There were no security lighting conditions, nor habitat, nor public safety issues as there is on this site. All resources agencies, including usfw, and the city of Carlsbad, are in support of the dawn to dusk gate for wildlife and public safety concerns. The coastal act makes exceptions to public access when public safety and/or wildlife are at risk. The conditions reached on January 22 are a good balance to these competing concerns. Both commissioners Johnson and Herron have been to site and seen the graffiti and the [not sure what word this]. New slides Bob please.

Ok issues C and D, substantial with regards to visual resources of the certified lcp, specifically reduced the elevation of the roof to eliminate the block exterior and copper roof. Ok, I am in full compliance with all the zoning, including the height requirements, to the LCP. Ok, the entire site is surrounded by 30-35 foot homes. To the north, ok this is looking to the south, directly to the south, these are these apartment buildings, the views from the, this looking north, excuse me to the southwest, which is the Beach project. Once again these are in excess of 30, 35 feet tall with the chimneys. Ok bob, and next slide please.

Ok, now were looking at, from the west, the ocean view is blocked from the railroad tracks and tules. And this picture is shot directly looking west and the home site would be just to the left of that powerline. And to your right. Basically you're looking directly at the site from where that car is. and as you can see, the car is probably five feet tall, and the railroad tracks are 18 feet, so virtually, there is no coastal view there, except for the sky, ok? Next shot please, Bob.

Looking south from the coast highway, and this is a lot more representative than the staff's shot, because I'm up on the hill and the site itself would be kind of – from this position here, you'd be looking, it would be blocking the apartments, if you will. And that's the panoramic view of what it is. next shot bob please.

Ok this is looking northwest again, and the site itself – bob, if you could just show the commissioners- just to show you, it does not impact – that is where the building site would be, so looking northwest-

Commissioner

Mr. Levy, how tall are those buildings in the background there?

Levy

I have another picture to show you, that's up close. They're approximately, they're in excess of 30 feet.

Other Commissioner

And that's the St. Malo?

Levy

That's correct.

Commissioner

And when were those built? It was pre coastal?

Levy

Oh it was way pre coastal. Some of those homes were built in the 30s. from the stuff on the southern side, probably in the 70s I believe.

Commissioner

And that's the oceanside side?

Levy

That's correct, commissioner. So, staff's contention that is surrounded by small buildings or whatever, everybody in the coastal plain is allowed to build to the maximum height of 35 feet if the zoning requirements allow it. Ok, got those.

Ok, this is another view of actually I shot it more to the northwest because that really where the residence would sit is in the middle of the two power lines, power poles if you will,

actually more in the center of those, so that would be the view from coast highway, and is shot directly from that.

44:31

Staff's contention that this site is in the scenic preservation protection zone is incorrect. The city of Carlsbad sent you a letter September 4 that in fact it is not. In 3 years of meetings with coastal staff, the substantial issue was never raised, including the July 27 appeal, we only learned of it upon reading the august 28 staff report. Bob, if you could just change that real quickly, thank you.

That is the picture of, commissioner wan, excuse me, that is looking directly from the building site across the lagoon, and as you can see the houses in the back, are probably at 40 feet because of the hill, those are 12 12 roofs, 2 story homes, they're well in excess of 35 feet. Next slide please bob.

This is looking directly onto the beach, out on the open space, as you can see residents are well in excess of 35 feet on the beach. Ok here is a recently built and approved project with a copper roof on the Buena vista lagoon, the wal mart center, with a simulated roof. This is home in the coastal plain of del mar, this is a type of roof, this is a real copper roof, not a simulated copper roof. And it will age of course and patina, as time goes on, next slide please bob.

This is a recently built and approved bathroom facility, albeit were not building that out of block and copper, once again. This is the Carlsbad train station, this is

Side B

00:00

Levy

Heres a relatively famous new architecture in the del mar area that uses concrete block again, sand blasted and a standing seam copper roof. So staff's contention that's not keeping with, architecturally, I will have to oppose them on that statement.

Ok here we are looking at the access gate, and this has to do with substantial issue with regards to the consistency with the public access and the recreation policies of the certified LCP, chapter 3 of the coastal act, deny the applicant the installation of the electric gate on Mountain View. This gate has been in place since the early 60's and predated the open space by 25 years. It is used primarily by city maintenance and utility crews to access the beach and weir. Ironically, the dedication of this open space for lot 3 has never been accepted by a public agency, nor public association in 14 years. Consequently, public

access is prohibited unless this dedication is accepted, albeit everybody uses it and realizes it is open space. This property is owned by the Beach Homeowners Association , I simply possess an ingress/egress underground utility easement to pass through it. Public access is given through the open space directly to the east, now I wanna show you where public access is.

Now, were, bob could you just go back one please. Ok, here we are standing out and you see the tennis courts here. Next picture, please, bob. Here's where the public access is here. You walk directly around the tennis courts and there's a prescribed trail, both Commissioners Johnson and Herron have been down there. And next slide please bob. Here we walk around the eastern portion of the tennis court, and then finally bob, another one. Ok and that's where the trail on the left there joins up to the easement itself. Next picture Bob. Here's a gentleman, this is 3 days ago, I don't know this gentleman, but he was walking his dog down there, and that's how folks get down to the open space down there, to Lot 3, from the south.

2:06

Ok, this is the beach access of ocean which basically mountain view turns into ocean. This is literally a block away, and this is how folks get down to the open space off the beach, and literally it's probably 100 yards, when you get to the beach you turn right and youre in the open space. Next picture please, bob.

Commissioner

Mr. Levy?

Levy

Yes.

Commissioner

You're way over your 20 minutes.

Levy

Ok, im sorry, I just want to show you folks that we do have public access, here it is.

Commissioner

Show us fast.

Levy

ok, were done here, just after this. This is from the coastal highway, this is the access down to the open space, off the coast highway. Next slide please bob, we'll just run through these real quick. Graffiti, there are crime problems down there, graffiti, or trash, or transients Bob, more graffiti, and this was all bright red the day before.

Ok and just finally, in terms of staff's, they didn't bring this up, in terms of the drainage issues, those have all been addressed, by the city, we did have a report done by pacific biological services, we are proposing, we have no hardscape really on the property

Commissioner

Commission staff didn't put that graffiti up did they?

Levy

I think Bill Ponder was out there. Im just kidding. Anyways, we have no hardscape on the site really to speak of. We fought the city, they wanted to put in asphalt on the driveway, we wanted DG, we finally prevailed on that issue, we want to keep the integrity of the site. Ive lived on the lagoon for 10 years, im an active member of the Buena vista lagoon foundation, in saving the lagoon, and quite honestly, im very very surprised by this appeal.

3:56

Commissioner

Mr. Reilley and then Ms. Wan. No? Mr. Johnson and then Ms. Wan.

Commissioner Johnson

I have a question. Any opposition from the neighbors, whether it be the Carlsbad side or the oceanside?

Levy

None whatsoever. Not one letter, in fact, I believe I even enclosed letters of support from all of the adjacent neighbors, except the San Malo HOA, they are in support of the project they just declined to write a letter to that effect.

Commissioner Johnson

Now the reason I ask is because both sides of that lagoon are very active in their community, very concerned about the Buena vista lagoon-

Levy

Absolutely. They will also be in the joint powers meeting of the lagoon, very very active in it. And a project of this impact, if you will, of open space and not to have any public opposition is really [not sure what word] and especially with the planning commission unanimously approving the project as well. Not one vote against it. The city of Carlsbad, the mayor's office, everybody are in full support of this project. And the reason is Commissioner Johnson is, this area has been a cauldron if you will, for transients, crime, graffiti, robbery, you name it down there, because they live down in the thrush down there. And theres two big issues why we have the public support that we do.

One, putting in that electric gate down there will allow Carlsbad police department to patrol the open space, and the sheriff's department for the railroad, itself, for the coaster. And they have not been able to get down there, and literally now I'm down there every day picking up trash, as are two or three of the other neighbors, and broken beer bottles, drugs, you name it, are down there. Now CPD and the sheriff's department can push a gate button and drive down into the open space, and we're not gonna have the problems with the littering, the graffiti, drugs, transients, all that stuff down there. Mary, I know both of you have been down there and seen it. Ok, it's a big big problem.

Now, putting in that electric gate up there is not going to change the public access. It is there, plain and simple.

Commissioner

Ok. Commissioner Wan.

6:15

Commissioner Wan

I just want the staff to address something in their response, but I have to say that the attacks on staff are not appreciated by me. And that's, im not asking for your response on this, im telling you my response to your attacks on staff. And staff, I know that your workload is horrendous, but I would like you to, obviously you cant follow every single single family residence as it goes through the local process, but I guess you should respond to why staff did not respond to his correspondence.

Staff- Mr. Damm

Thank you, when Mr. Levy submitted his letter, I did read that, I did have concerns about the staff and the feedback that staff provided to the applicant with regards to the project. And quite frankly, I think staff could have done a better job in that regard. However, I also want to point out, and I think the applicant and the applicant's representative did the same thing just this morning, the bulk of the discussions were with regards to the site plan and the 100

ft wetland buffer, or whatever type of buffer was going to be appropriate. In talking to the planner, mr. ponder, he indicated to me that building elevations and building plans were not part of the discussion, it was basically limited to looking at the site plan. Now certainly, the staff could have made a very forceful comment that building elevations and height of structures were going to be a concern, and I wish they had, and mr. ponder did indicate to me that he did state that visual impact was going to be a concern, but he also indicated that there were no building elevations in the course of the discussions to refer to.

Commissioner Wan

I just wanted you to include that in your response, your general response.

Staff- Mr. Damm

Mr. Chairman, if I may, and this will only take a minute, I do want to comment that the staff, with regards to the public access question, certainly feels that it is appropriate to have contiguous public access around the perimeter of this site. We are not implying that with regards to the clapper rail, that there cannot be fencing to ensure that the public does not adversely affect the clapper rail that use the site.

Finally, with regards to the access around the tennis court, my only comment there is that that is not a formalized access, there is not an easement that guarantees that access in the future. It certainly is used right now, but it is not a formal accessway.

Commissioner

Commissioner Reilly?

Commissioner Reilly

One of the things that disturbs me besides the opportunities that we've had for some involvement in this project that we haven't taken advantage of, is commissioner kehoe's statement that the reasons for substantial issue on this thing have been kind of a moving target, and her sense was that after going and looking at the site, and her letter, that she felt that the representations made by staff when she signed that appeal didn't bear out when she was on the ground. I find that disturbing, and it seems like we have kind of a moving target about why we're trying to find substantial issue on this. Frankly, on this particular project I'm prepared to find no substantial issue.

Commissioner

And I would agree with that.

Commissioner

Ms. Herron.

Commissioner Herron

I would like to say too on Mr. Levy's behalf, and of course he has a vested interest but his care for the lagoon area and his stewardship there I think are admirable. And some of the places that he showed in the slides, where the transients have been, he tidies up there everyday, and I don't think that any of the public agencies are gonna take the care of the responsibility for the lagoon that he does.

Also, in terms of the access, of course the gate is not on property that Mr. Levy can control. The path around the tennis courts is hidden, and in fact I remember saying to him 'is this a well kept secret' because there is no signage, but we should remember that there is that beach access 100 yards away. And then that leads to the lagoon area, so the public certainly will be able to enjoy that lagoon. Thank you.

Chair

Commissioner [not sure what name it is]

Commissioner

On the issue of the scenic overlay and the height of the structure, when you look at the setting, it's clear that at least a portion of the pre coastal act buildings are quite large and bulky. And I wasn't sure if all- or, it looked like some of them were newer. But if I understand staff's position, it's based on the fact that the city is not applying a policy generally, that you think they ought to be applying, and it so happens to apply to this particular property. Is this a chronic problem with the city not recognizing an lcp policy?

Staff- Mr. Damm

It's certainly a problem that were going to have to discuss with the city. We were not aware that they weren't applying the scenic preservation overlay zone. Their comments to us were that the only place they apply that is where the council has made a formal determination that it will be applied. And theres only one area, along the el camino corridor. The citation I gave the commission in my presentation, in staff's opinion, makes it clear that in the coastal zone, it shall be applied on an individual site basis. That is certainly not the city's position at this time.

12:24

Commissioner

Well regardless of what we do here, I would like the point to be made in our findings that yes the policy applies, and then on a case by case basis that maybe we make an exception. Rather than saying that, in this action, that if we were to approve this particular house, that that means the policy doesn't apply.

Other Commissioner

Right, and that would be more just, because we have a difference with the city here, and shouldn't hold sort of an innocent victim liable, when they have complied with what they thought was the city's requirements. I can certainly see that that needs to be in the findings, however, I agree with that.

Chair

Commissioner Wan, then Commissioner Johnson.

Commissioner Wan

Well, that's the purpose of substantial issue. that when the city is not applying its policies appropriately, you take substantial issue, and you apply it. Now you could choose to take it, and find out how you choose to apply it, but that is one of the purposes for finding substantial issue. so, I beg to differ with you, and I don't think we can write findings on this unless we take substantial issue.

so, aside from that, the other issue that concerns me, and I am not personally asking that or concerned about the height issue, frankly, except for the fact that it is a substantial issue. there is a process here that is precisely what substantial issue is all about.

The issue that does concern me, however, is the issue of public access. And I think that that is one that the commission has held very sacred in the past in terms of ensuring adequate public access. I am concerned about putting that elect- one, about the electric gate that can go in, that will, clearly- I don't know what the impacts are gonna be of that electric gate across an open space deeded parcel that was the condition of another development in another subdivision that that's the way were gonna get, were gonna get public access across that parcel. So im concerned about a number of the public access issues, and what substantial issues does, is you take it in on substantial issue, you get the right to discuss those things. Otherwise, we don't get to deal with it.

Chair

Commissioner Johnson.

Commissioner Johnson

Yes chairman, being respectful of all those who disagree, id like to make a motion that we find there is no substantial issue, and id like to ask for a yes vote.

Chair

Moved by commissioner johnson, seconded by commissioner heron, that we find no substantial issue, and they ask for a yes vote, commissioner johnson.

Commissioner Johnson

Yes, id like to just briefly thank staff for all the work they put into it, I recognize that sometimes things can be a bit difficult, and just to let you know that the city of Carlsbad, regardless of the intent of the overlay scenic zone area, have been historically a very good steward of coastal issues, and im sure they would be more than happy to work with you in the future on this one issue. and id just like to say that I recognize the fact that the applicant has said a few words , I think in a harsh way, belitting staff, and I recognize staff is overworked, and the personnel is not there. So having said that, I hope that we can pass this project, it's a good project, both cities like it. Neighbors on both sides of the lagoon are supportive of it, and like I said im asking for a yes vote.

Chair

Ok, any further questions? Question's been called for, secretary you can call the roll.

Secretary

[voting] Chairmain Aerias, 6-3.

