

CALIFORNIA COASTAL COMMISSION

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



W25a

Addendum

December 3, 2009

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W25a**, Coastal Commission Permit Application
#6-09-61 (Di Noto), for the Commission Meeting of December 9, 2009

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

1. On Page 5 of the staff report, the last paragraph on the page shall be revised as follows:

Exterior changes: The exterior changes consist of: removal of the tile mansard, modification to the external parapet to reduce its height by three inches, recovering the parapet with stucco and adding a fiberglass parapet cap; removal and replacement of the existing stucco ~~and replacement with wood siding~~; removal and replacement of the wooden fascia boards; reduction in the height of the existing chimneys; removal of a small add-on closet area on the second floor deck (resulting in a net reduction in area of 11 sq. ft.); removal of existing trellis; minor modification to exterior decks and patios; removal of exterior decorative "boxing-out" window frames; application of insulating cool roof membrane over existing roofing; installation of a photo-voltaic grid on roof (shielded by parapet); removal of 2 existing skylights and the installation of 3 new skylights; installation of a roof access hatch; installation of 3 new heat pumps on roof; replacement of safety railing around second floor decks, removal of 4 windows and close openings with new walls; addition of a new sliding door on second floor and two new windows on first floor; and, removal of 1 door and replacement with 2 windows.

2. On Page 10 of the staff report, the last paragraph shall be revised as follows:

As previously described, the proposed project to renovate and improve the existing home is more than ~~not just~~ a repair ~~or an addition~~ to a nonconforming single-family residence and does not include the addition of any new square footage. The question is whether or not the proposed improvements are so substantial that the project essentially consists of rebuilding the home in its existing non-conforming location, thus resulting in an increase in the degree of non-conformity. [...]

CALIFORNIA COASTAL COMMISSION

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



W25a

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Staff: L.McEachern-SD
Staff Report: 11/19/09
Hearing Date: 12/9-11/09

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-09-061

Applicant: Thomas Di Noto

Agent: Ken Ronchetti

Description: Improvements/remodel to existing two-story, 3,714 sq. ft. home with attached 455 sq. ft. two-car garage on a 4,700 sq. ft. blufftop lot. A seawall is currently under construction on the beach fronting the site.

Lot Area	4,700 sq. ft.
Building Coverage	2,257 sq. ft. (48%)
Pavement Coverage	1,675 sq. ft. (36%)
Landscape Coverage	768 sq. ft. (16%)
Parking Spaces	2
Zoning	Medium Residential (5-7 dua)
Plan Designation	Medium Residential
Ht abv fin grade	24 feet

Site: 365 Pacific Avenue, Solana Beach, San Diego County. APN 263-301-04

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; Slope Stability Considerations for proposed Remodel at 365 Pacific Avenue by Terra Costa Consulting Group dated July 24, 2009: CDP #6-08-73.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed project, with special conditions. The main issue raised by the proposed development relates to the status of the existing home as a legal nonconforming structure in that the existing home is located within 15 feet of the edge of the bluff, within the required geologic setback area. As proposed, the applicants will leave all of the exterior walls of the existing home, including those located within 40 ft. of the bluff edge but will construct some minor exterior improvements and renovate the interior of the home.

While the proposed improvements are substantial and clearly go beyond normal repair and maintenance, the proposed improvements do not result in a greater risk to the existing nonconforming residential structure over that which currently exists, as only a small area of the exterior walls is being modified, there is no new living area being added, no foundation work is proposed and the footprint of the structure remains the same. Therefore, the proposed improvements to the existing home will not result in the need for shoreline protection any more than the need that currently exists with the present home.

A seawall is currently under construction on the beach fronting the subject site and it, and reconstruction of the upper bluff, was approved pursuant to a previous coastal development permit (ref. CDP #6-08-73).

The City of Solana Beach does not have a certified local coastal program (LCP). Thus, the Chapter 3 policies of the Coastal Act are the standard of review.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-09-061 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site and building plans that have been approved by the City of Solana Beach and that substantially conform with the plans by Ronchetti Design Group dated October 27, 2009, but shall be revised to include the following:

- a. Any existing permanent irrigation system located on the bluff top site shall be removed or capped and no new permanent irrigation system shall be installed.
- b. All runoff from the home and impervious surfaces on the site shall be collected and directed away from the bluff edge towards the street.
- c. The existing residence and accessory improvements (i.e., decks, patios, walls, etc.) located on the site shall be detailed and drawn to scale on a site plan.
- d. No demolition of exterior walls is proposed or authorized (except for minor changes to accommodate new doors and windows). If, during construction, it is determined that any of the exterior walls need to be demolished due to the deteriorated state of the walls, the applicant shall immediately contact the Executive Director to determine if a coastal development permit or amendment to this permit is necessary.

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

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

fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct additional bluff or shoreline protective devices, the permittee shall be required to include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, public access and recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of portions of the principal structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal residence and allowing reasonable use of the property, without constructing additional bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting the existing principal structure for the remainder of its economic life. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean. Any future redevelopment of the lot shall not rely on the existing shoreline protection to establish geologic stability or protection from hazards.

4. Future Development. This permit is only for the development described in Coastal Development Permit No. 6-09-61. 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. Accordingly, any future improvements to the existing single family residence other than those authorized by Coastal Development Permit No. 6-09-61, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to Permit No. 6-09-61 from the California Coastal Commission.

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

6. Landscaping. Any proposed landscaping must be drought-tolerant and native or non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized within the property.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves improvements and remodel to an existing two-story, 3,714 sq. ft. home with an attached 455 sq. ft. two-car garage on a 4,700 sq. ft. blufftop lot. The proposed development is located at 365 Pacific Avenue, just south of Cliff Street in the City of Solana Beach. The existing home is located approximately 15 feet from the edge of the bluff at its closest point and was originally constructed prior to the Coastal Act.

Pursuant to Section 13250(b)(1) of the Commission’s Code of Regulations, because the project involves improvements where both the improvements and the existing home are located within 50 ft. of the edge of the bluff, a coastal development permit is required. Based on the plans by Ronchetti Design Group (dated 10/27/09) submitted with this application, the project includes the following improvements:

Interior changes: The interior changes involve: removal of all drywall and installation of new insulation and drywall; removal and replacement of all electrical, plumbing and mechanical (HVAC) systems; demolition of various interior non-bearing walls and construction of new walls; and, new flooring, cabinetry, fixtures and appliances.

Exterior changes: The exterior changes consist of: removal of the tile mansard, modification to the external parapet to reduce its height by three inches, recovering the parapet with stucco and adding a fiberglass parapet cap; removal of the existing stucco and replacement with wood siding; removal and replacement of the wooden fascia boards; reduction in the height of the existing chimneys; removal of a small add-on closet area on the second floor deck (resulting in a net reduction in area of 11 sq. ft.); removal of existing trellis; minor modification to exterior decks and patios; removal of exterior decorative “boxing-out” window frames; application of insulating cool roof membrane over existing roofing; installation of a photo-voltaic grid on roof (shielded by parapet); removal of 2 existing skylights and the installation of 3 new skylights; installation of a roof access hatch; installation of 3 new heat pumps on roof; replacement of safety railing around second floor decks, removal of 4 windows and close openings with new walls; addition of a new sliding door on second floor and two new windows on first floor; and, removal of 1 door and replacement with 2 windows.

No removal of exterior walls is proposed. The building footprint and foundation will remain unchanged. No grading is required.

In July 2009, the Commission approved the construction of a 94-ft. long, 35-ft. high seawall below the subject site and the property to the north (367 Pacific Street) and reconstruction of portions of the upper bluff using geogrid structure (ref. CDP #6-08-73). The seawall is currently under construction and according to the applicant's agent, construction of the approved geogrid reconstructed bluff extending above the seawall to the top of the bluff will begin soon. The City of Solana Beach does not yet have a certified LCP. Therefore, the Chapter 3 policies of the Coastal Act are the standard of review.

2. Improvements to Blufftop Structures. Coastal Act sections 30240(b) and 30253 are applicable to the proposed development and state, in part:

30240(b)

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

Section 30253

New development shall do all of the following:

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

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

[. . .]

A. Blufftop Stability.

Both of the above cited sections are applicable to the Commission's review of new blufftop development and improvements to existing blufftop development such as that proposed. The policies are designed to assure that development in such hazardous locations and adjacent to parks and recreation areas, such as the public beach, are sited and designed to reduce risks and to prevent impacts which would significantly degrade those areas. In review of blufftop development in nonconforming locations, i.e. with insufficient geologic setbacks, the Commission must assure that any development which is approved will not contribute to the destruction of the site or the surrounding area, in

this case the adjacent public parkland comprised of the bluffs and beach. Approved development must also be designed to prevent impacts to those areas. One means to assure such protection of public beach recreational areas is to assure, to the extent possible, that improvements or new development will not require protective devices that substantially alter the natural landforms along bluffs and adversely impact visual quality, coastal processes and public access along the shoreline.

The site of the proposed development is on top of an approximately 78 ft. high coastal bluff in the City of Solana Beach. Because of the natural process of continual bluff retreat, coastal bluffs in this area and at the subject site are considered a hazard area. Due to several bluff failures and exposure of a clean sand lens and the presence of a seacave, an approximately 94 ft. long, 35 ft.-high seawall and bluff reconstruction was approved to be constructed on the beach and bluff below the subject site. In addition, a number of significant bluff failures have occurred along this stretch of coastline, including several slides on the bluffs north and south of the subject site, and documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in this area of the coast (ref. CDP Nos. 6-87-391/Childs; 6-92-82/Victor, 6-92-212/Wood, 6-93-181/Steinberg, 6-97-165/Wood, Lucker; 6-98-148/City of Solana Beach; 6-99-91/Becker; 6-99-95/City of Solana Beach, 6-99-100/Presnell, et.al). In addition, projections of sea level rise continue to be updated with the latest reports estimating a significant rise in sea level over the next 100 years. Clearly, the potential exists for significant bluff retreat in this area.

In response to slope stability problems found in Solana Beach and Encinitas, in the past, the Commission typically required that all new development observe a minimum setback of 40 feet from the top of the bluff, with a reduction to 25 feet allowed subject to the finding of a certified engineering geologist that bluff retreat will not occur to the extent that the principal permitted structure would be endangered within its economic life (typically 75 years). When the County of San Diego had jurisdiction over the area, the County adopted the Coastal Development Area regulations as part of its LCP Implementing Ordinances, which had similar requirements. The City of Solana Beach has also utilized a 40 foot setback which may be reduced to 25 feet following a discretionary review process which finds that the construction will not be subject to foundation failure during the economic life of the structure. However, due to the number of slope collapses in the area and, in the case of Solana Beach, the recent discovery of a mid-bluff layer of clean sands within the bluffs, the Commission now typically requires that a minimum 40-foot setback development be maintained in Solana Beach. In addition, the Commission has required a geologist's certification that bluff retreat will not occur to the extent that a seawall or other shoreline protective devices would be required to protect the new development within the economic life of the structure. This has actually resulted in the necessary setback to assure structural stability to be far greater than 40 ft. in some cases in Solana Beach and Encinitas.

In the case of the subject residence, approximately 1/3 of the western frontage of the existing home is sited as close as 15 ft. from the bluff edge. The applicant did not submit a geotechnical report with his application for the proposed development. However,

several geotechnical reports have been completed for the site to support the previously approved bluff and shoreline protection. Based on review of the slope stability analysis contained within these previous reports, prior to construction of the shore and bluff protection, the factor of safety against sliding along most of the slide planes was estimated to be at a range of between 1.00 and 1.28. The slope stability analysis measures the likelihood of a landslide at the subject site. (The factor of safety is an indicator of slope stability where a value of 1.5 is the industry-standard value for new development. In theory, failure should occur when the factor of safety drops to 1.0, and no slope should have a factor of safety less than 1.0.) As the existing home is located as close as 15 ft. from the bluff edge, this implies that the existing home, without shore and bluff protection, is currently threatened. It should be noted that while the applicants did not provide a geotechnical report for the proposed development, they did submit a letter from a geotechnical consultant regarding the proposed improvements which states that the proposed improvements will have “no adverse impact on slope stability.”

From the preceding discussion, it is apparent that without the previously approved shore and bluff protection, the existing home would be threatened. As such, it raises the issue of how the proposed improvements can be found consistent with section 30253 of the Coastal Act in that they consist of new blufftop development that appears to require shoreline protection. To address these concerns, the Commission must look at the site specific circumstances to determine whether or not the proposed improvements themselves will significantly contribute to the need for existing or future shoreline protection at the subject site.

B. Retention of Nonconforming Structures.

The existing single-family home is non-conforming with respect to the City of Solana Beach Zoning Ordinance regarding setback requirements for blufftop developments. While this zoning ordinance is not the standard of review for this project, it can provide guidance on how non-conforming structures are analyzed and addressed within Solana Beach. Section 17.72.120 of the City’s Municipal Code defines a nonconforming structure as a building, structure or improvement that:

1. Does not conform to the development standards described in this title, together with all building standards including, without limitation, height, setbacks, density, parking, type of building, or coverage of lot by structure; and
2. Did comply with the development standards contained in this title in effect at the time the building, structure or improvement was constructed or structurally altered and was lawfully constructed.

The existing residence is located as close as 15 feet from the edge of an approximately 78 ft. high coastal bluff. The City’s municipal code requires that blufftop structures be setback at a minimum of 40 feet landward of the bluff edge unless an engineering geology report is prepared that certifies a setback of less than 40 feet (but not less than 25 feet) is adequate to assure the residence will be safe from erosion over an estimated 70

years. Portions of the existing home proposed for improvement is located within 40 feet of the bluff edge and, as such, may be threatened over its remaining lifetime. Additionally, by City standards, the existing structure is nonconforming in that it does not maintain a 40 ft. setback from the edge of the bluff. While the proposed development does not add any square footage or change the footprint of the existing home, the portions of the home within the 40 ft. geologic setback will be substantially altered with exterior improvements and interior redesign.

Section 30253 of the Coastal Act requires that new development be setback to a safe location so as not to require shoreline protection in the future which would result in adverse effects to the natural bluff and beach. The goal of Section 30253 is to avoid construction of upper and lower bluff stabilization devices that alter natural landforms and coastal processes. The question raised by this proposal is how much the existing nonconforming structure can be revised or improved without increasing the geologic risk. In this case, the City's current zoning ordinances relating to nonconforming structures provide some guidance in interpreting when that threshold has been exceeded.

The City's nonconforming structure regulations at Section 17.16.040 of the City's Municipal Code identify the type of work that can be done without triggering a requirement to bring a nonconforming structure into conformance with current standards. The regulations indicate "[r]outine internal and external maintenance and repairs may be performed on a nonconforming structure." In addition, Section 17.16.110E states:

Replacement, repair or reinforcement of existing structural components within the existing building envelope of principal residential structures and related accessory structures is allowed as necessary to repair damage from fire, earthquake, flood, weather, sunlight, mold, mildew, termites, accidental or natural causes. Further, reinforcement, augmentation or strengthening of existing structural components within the existing building envelope of these structures when necessary to support fire safety or building safety code improvements shall be allowed.

Additionally, Section 17.16.060 of the City's Municipal Code allows additions to occur to nonconforming structures as long as the addition does not "increase the size or degree of the existing nonconformity." The purpose of these regulations is to limit the type and extent of work that can be performed on nonconforming structures. And as Section 17.16.060 specifically identifies, "[t]his section shall not be interpreted to allow the reconstruction of a nonconforming structure". Thus, using these guidelines, the issue is whether the proposed project constitutes "routine internal and external repairs" which do not "increase the size or degree of the existing nonconformity" and whether or not the proposed development represents the "reconstruction of a nonconforming structure". In the context of proposals to enlarge and reconstruct existing non-conforming structures, the Commission has in some cases required these structures to be brought into conformity with the shoreline hazard policies of the Coastal Act or certified LCPs (ref. CDP #A-6-LJS-99-160/Summit Resources).

As stated, one of the goals of the Coastal Act is to protect natural bluffs and beaches. New development or reconstruction of a nonconforming structure which has inadequate setbacks to protect it from erosion over its lifetime, will likely result in demands for shoreline protection which can result in adverse impacts to the bluffs and beach. In light of this goal, the Commission finds that the term “repair” is intended to mean minor activities that allow a nonconforming structure to be kept in habitable condition. This term does not include demolition, expansion, construction of additions, and such other work that results in reconstruction of the nonconforming structure. To interpret this term otherwise would allow new development that would conflict with the goals of the Coastal Act.

In the case of the proposed development, the Commission finds that the proposed project results in improvements to a non-conforming structure, allowing the structure to remain in a non-conforming location for a longer period of time. In addition, the Commission finds the proposed interior and exterior improvements and renovation to be more than routine repair and maintenance, but also not full reconstruction of the residence. Thus, the remaining question is whether the project increases the degree of nonconformity and/or results in an additional threat to the residential structure.

C. Does the Project Increase the Degree of Nonconformity?

The purpose of any nonconforming structure regulations is to allow continued use of existing legal nonconforming structures which were legally constructed but have become nonconforming due to changes beyond the property owner’s control, provided the degree of nonconformity is not increased or expanded. These types of regulations are not intended to allow redevelopment of a property solely in reliance on the nonconforming regulations without regard to other requirements for discretionary permits, community land use policies and current zoning requirements. The Commission has found that increasing the size of a nonconforming structure with an inadequate geologic setback increases the degree of nonconformity and extends the time period that the nonconformity will exist, thereby increasing the risk to the structure.

As previously described, the proposed project to renovate and improve the existing home is not a repair or an addition to a nonconforming single-family residence. The question is whether or not the proposed improvements are so substantial that the project essentially consists of rebuilding the home in its existing non-conforming location, thus resulting in an increase in the degree of non-conformity. However, neither the Coastal Act, nor the City’s Municipal Code provide a means to make this determination. What has been done in some coastal jurisdictions is to determine if more than 50% of the exterior walls are being demolished. If more than 50% of the exterior walls are being demolished, then the project is not a remodel and is considered new development. Some other local governments have adopted a method based on a ratio of the cost of the proposed improvements to the value of the existing home. If, based on this valuation method, the proposed improvements exceed 50% of the value of the home, then the project is no longer considered a remodel and instead is considered new development and must therefore meet all current code requirements relative to setbacks, height, etc. However,

the City of Solana Beach does not have either of these provisions in its municipal code and as such, this analysis was not provided.

In this particular case, while the proposed improvements are substantial and clearly go beyond normal repair and maintenance, only a small portion of the exterior walls are being modified (through window and door replacements), and the Commission finds that the proposed improvements do not result in a greater risk to the existing nonconforming residential structure over that which currently exists, as only a small area of the exterior walls is being modified, there is no new living area being added, the foundation is not being modified and the footprint of the structure will remain the same. Therefore, the proposed improvements to the existing home will not result in the need for additional shoreline protection any more than the need that currently exists.

The existing home is in a hazardous location, however, and the proposed development will likely increase the amount of time that the structure will remain in its hazardous location. Special Condition #1 has been attached which requires the applicant to submit final plans for the project that demonstrate that all runoff on the top of the bluff is collected and directed away from the bluff and that all permanent irrigation on the blufftop be removed or capped. In review of any development in a blufftop location, the Commission has required implementation of such measures to reduce risk and assure that overall site conditions which could adversely impact the stability of the bluff have been addressed.

Also, due to the inherent risk of developing on an eroding blufftop, as documented by the applicants' geotechnical report, Special Condition #2 requires the applicants to waive any claim of liability against the Commission and to indemnify the Commission against damages that might result from the proposed development. Given that the applicant has chosen to construct the proposed project despite these risks, the applicant must assume the risks. Only as conditioned can the proposed project be found consistent with Sections 30235, 30240 and 30253 of the Coastal Act.

The subject site is subject to erosion which may, over time, threaten the existing structure and may result in a request for additional shore and bluff protection which would have an adverse impact on the surrounding natural bluffs and the adjacent public beach. Special Condition #3 requires that feasible alternative measures which would avoid additional alteration of the natural landform of the public beach or coastal bluffs must be considered by the property owner in the future should additional destabilization occur. The condition will ensure that future property owners acknowledge the hazardous condition on the subject site and are aware that any proposals for additional protection such as an augmented seawall or bluff stabilization measures, will require an alternative analysis including measures designed to reduce the risk to the principal residence without additional shoreline or bluff protective devices. Potential alternatives include, but are not limited to: relocation of all or portions of the principal structure that are threatened, structural underpinning, or other remedial measures capable of protecting the principal residence for the remainder of its economic life. To avoid additional impacts on visual quality, sand supply and public access and recreation, the Commission can require the

property owner to implement those alternatives. The condition also states that no shore or bluff protection shall be permitted for ancillary improvements located within the blufftop setback area (such as decks, patios, fences, etc.)

Through this condition, the property owner is required to acknowledge the risks inherent in the subject property and that there are limits to the structural protective measures that may be permitted on the adjacent public property in order to protect the proposed development in its current location. Special Condition #3 also requires the applicant and future property owners to acknowledge that future new development on the site cannot rely on the existing bluff and shore protection for its protection. In other words, the existing/permitted shore and bluff protection are in a hazardous location and should not be considered permanent structures. If a new home or residential addition is proposed in the future, it must be located in an area where the development is consistent with the Coastal Act and/or applicable LCP requirements regarding geologic safety and protection from hazards as if the seawall/bluff protection does not exist.

Special Condition #4 has been attached which requires that an amendment be approved for any future additions to the residence or other development as defined by the Coastal Act on the subject site. Requiring an amendment for all future development allows the Commission to insure that such development will not create or lead to the instability of the coastal bluffs, impacts to public access, adverse visual impacts or result in the construction or enlargement of the existing structure in a high risk area. Special Condition #5 requires the applicants to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

Because erosion and landslides are caused by a variety of factors including over-watering on the blufftop and inappropriate drainage, Special Condition #1a prohibits the applicant from having permanent irrigation devices on top of the bluff. In addition, landscaping that is not drought-tolerant may require irrigation that could contribute to erosion of the blufftop. Special Condition #7 has been attached to address this risk by requiring any future landscaping on the site be limited to drought-resistant, native or non-invasive species, which will help serve to reduce the need for irrigation.

In summary, portions of the existing home are located seaward of the 40 ft. setback line and thus, are non-conforming. While the Commission is concerned that remodeling and improvements to existing nonconforming blufftop structures not result in an increase of the nonconformity in a way that would heighten the risk or require new or additional shoreline protection in the future, such is not the case here. Although portions of the existing structure are in a location where the Commission could not now authorize new development due to the threat from shoreline erosion and bluff failure, the proposed development represents improvements to a non-conforming blufftop structure, without increasing the degree of non-conformity or resulting in an additional or increased threat to the existing home. The proposed development, therefore, does not warrant requiring the entire existing structure to be brought into conformance with the blufftop setback requirements for new development. Therefore, the Commission finds the subject

development, as conditioned, consistent with Sections 30240 and 30253 of the Coastal Act.

3. Visual Resources. Sections 30251, 30240, and 30250 of the Coastal Act require that the scenic and visual qualities of coastal areas be protected, that new development adjacent to park and recreation areas be sited so as to not degrade or impact the areas and that new development not significantly adversely affect coastal resources. These sections specifically provide:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30240

[. . .]

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

Section 30250

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The subject development involves improvements to an existing two-story blufftop residence. The development site is located in a residential neighborhood consisting of single-family homes of similar bulk and scale to the proposed development. The proposed development does not include any change to the footprint of the existing residence and the height will actually be lowered by a couple of inches. In addition, while the proposal includes the installation of a photo-voltaic grid system on the roof, the existing roof is flat and is surrounded by an approximately 4 ft. high parapet that will shield the grid system from views. Although the existing home is visible from the beach below, the proposed development will improve the exterior appearance of the home, but

not enlarge it in any way and as such, no public views will be altered. In addition, views across the site to the shoreline are not currently available. Therefore, it is not anticipated that the proposed development will have any adverse effect on scenic or visual resources and the project may be found consistent with Section 30251 of the Coastal Act.

4. Runoff/Water Quality. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained by, among other means, controlling runoff. Specifically, it reads:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrapment, controlling runoff,

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and run-off from the development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. To reduce the risk associated with unattended running or broken irrigation systems, Special Condition #1a restricts the property owner from installing permanent irrigation devices and requires the removal or capping of any existing permanent irrigation systems. In addition, in order to protect coastal waters from the adverse effects of polluted runoff, the Commission has typically required that all runoff from impervious surfaces be directed through landscaping as a filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability by increasing the amount of ground water within the bluff material that can lead to bluff failures. Therefore, in this case, reducing the potential for water to be retained on the site will be more protective of coastal resources. The restriction on irrigation will minimize the amount of polluted runoff from the property to the extent feasible. Therefore, the Commission finds the proposed project consistent with Sections 30231 of the Coastal Act.

5. Public Access. Section 30212 of the Coastal Act requires, in part:

- (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, . . .

The subject site is located between the Pacific Ocean and the first public roadway, which in this case is Pacific Avenue. The project site is located within a developed single-family residential neighborhood on an approximately 78 ft.-high coastal blufftop lot.

Vertical access through the site is not necessary nor warranted, given the fragile nature of the bluffs.

The proposed project is located approximately 350 feet south of Tide Beach Park public access stairway and less than ½ mile to the north of Fletcher Cove, the City's central beach access location. Thus, adequate public access is provided nearby. Therefore, the proposed project, as conditioned, will have no impact on public access, consistent with the public access policies of the Coastal Act.

6. 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, such a finding can be made.

In the case of the subject development, the proposed improvements to the existing residential structure, as conditioned, have been found to be consistent with the Chapter 3 policies of the Coastal Act in that the proposed development will not result in reconstruction of an existing structure within the geologic setback area such that, as a result of the proposed improvements, new or additional bluff and/or shoreline protection would be necessary in the future. It is expected that the City's LCP will include ordinances to address these issues associated with improvements to existing nonconforming structures in order to meet the requirements of the Coastal Act.

The location of the proposed residential development is designated for residential uses in the City of Solana Beach Zoning Ordinance and General Plan, and was also designated for residential uses under the County LCP. As conditioned, the subject development is consistent with these requirements. Based on the above findings, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program. However, these issues of shoreline planning will need to be addressed in a comprehensive manner in the future through the City's LCP certification process.

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

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing assumption of risk, future development and submittal of final project plans

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 is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

**SUBJECT
SITE**

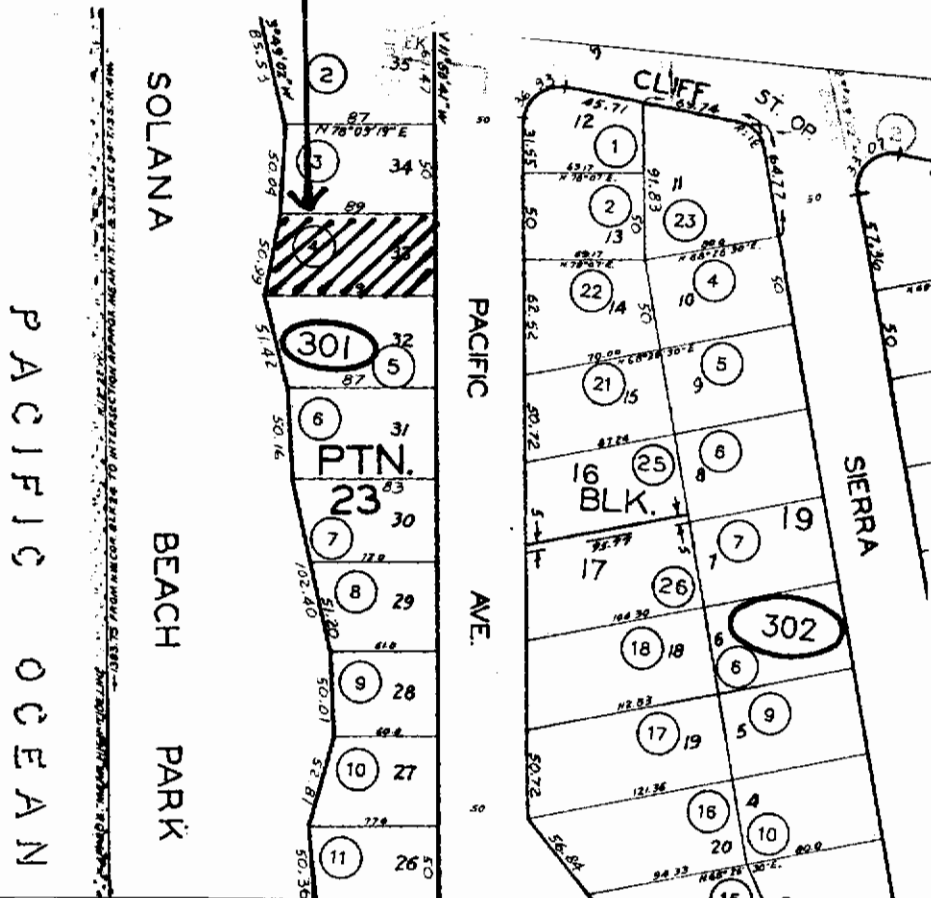
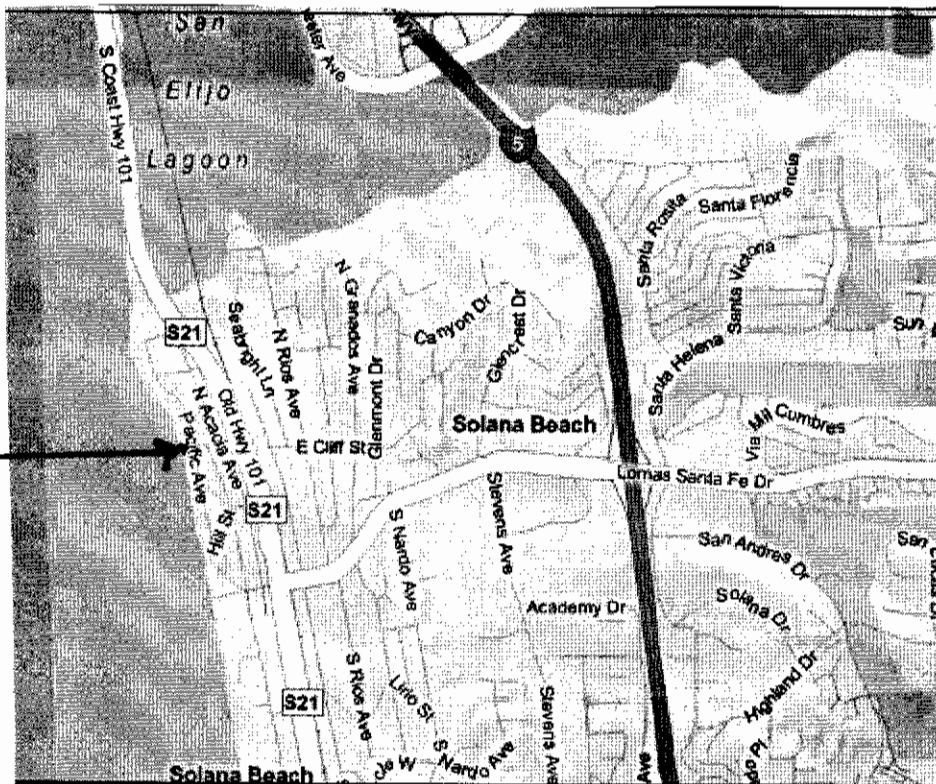

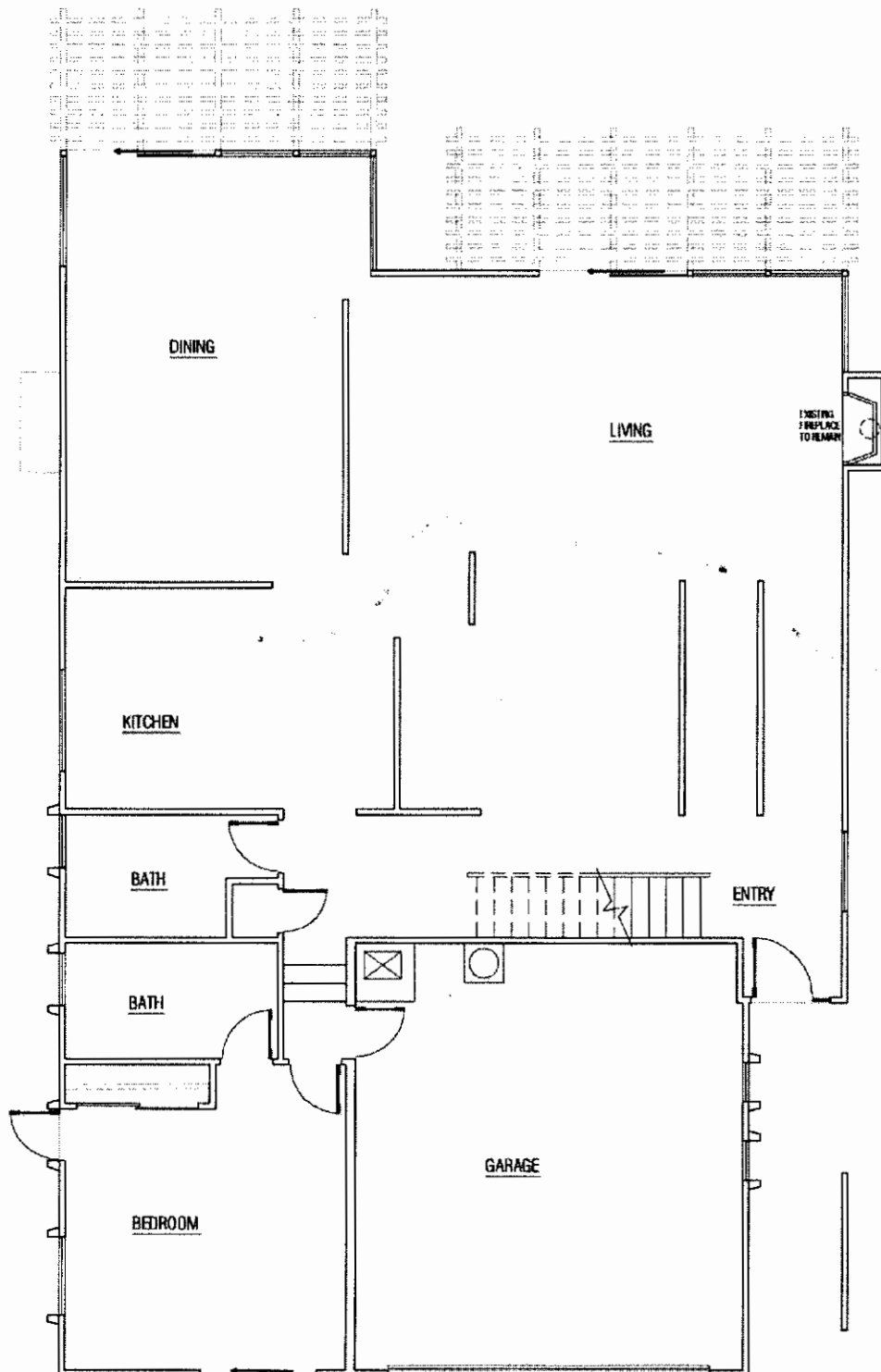


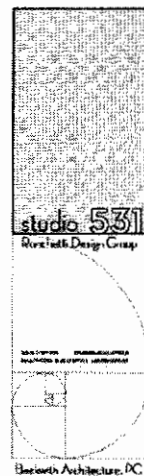
EXHIBIT NO. 1
APPLICATION NO.
6-09-61
Location Map
 California Coastal Commission



FLOOR AREAS
 HOUSE AREA = 1,796 SQ. FT.
 GARAGE AREA = 455 SQ. FT. TOTAL AREA = 2,251 SQ. FT.

EXISTING FIRST FLOOR PLAN

scale: 1/8" = 1'-0"



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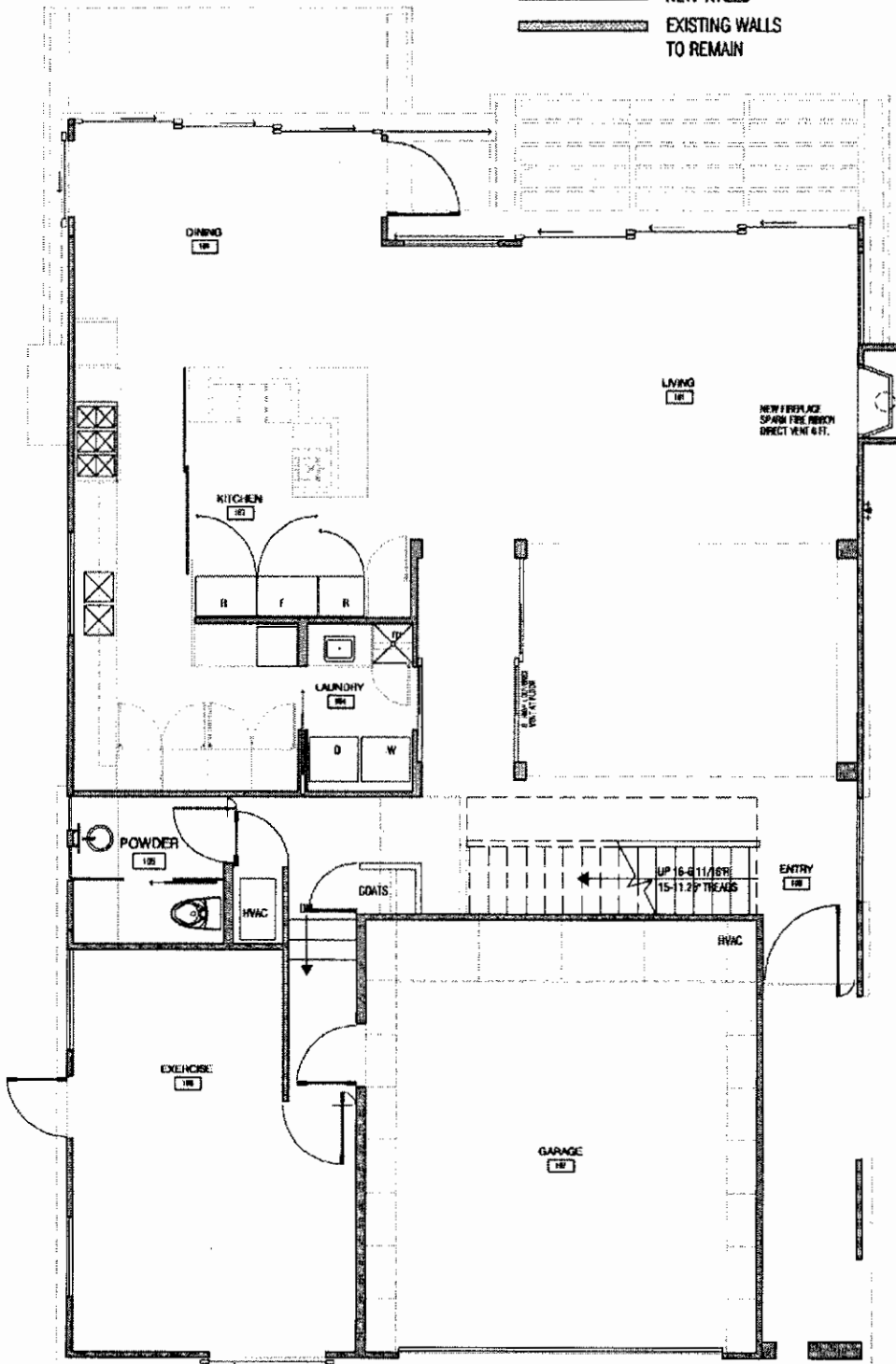
EXHIBIT NO. 4
 APPLICATION NO.

6-09-61

Existing First Floor
 Plan

WALL LEGEND

- NEW WALLS
- EXISTING WALLS TO REMAIN



FLOOR AREAS
HOUSE AREA = 1,801 SQ. FT.
GARAGE AREA = 455 SQ. FT. TOTAL AREA = 2,256 SQ. FT.

PROPOSED FIRST FLOOR PLAN

scale: 1/8" = 1'-0"



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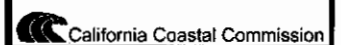
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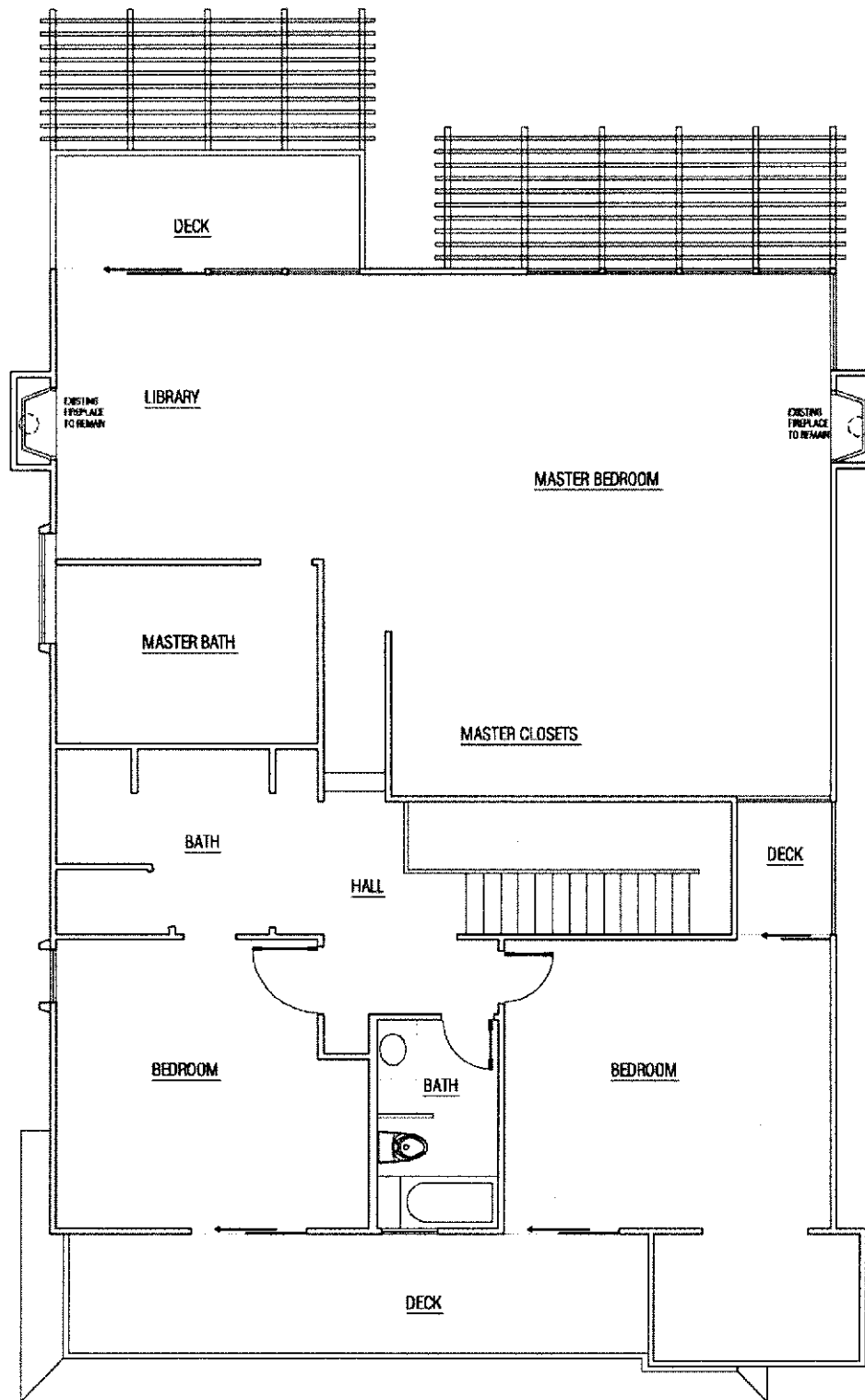
EXHIBIT NO. 5

APPLICATION NO.

6-09-61

Proposed First Floor
Plan





FLOOR AREAS
HOUSE AREA = 2,021 SQ. FT.

EXISTING SECOND FLOOR PLAN

scale: 1/8" = 1'-0"

NORTH



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EXHIBIT NO. 6

APPLICATION NO.

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Existing Second
Floor Plan



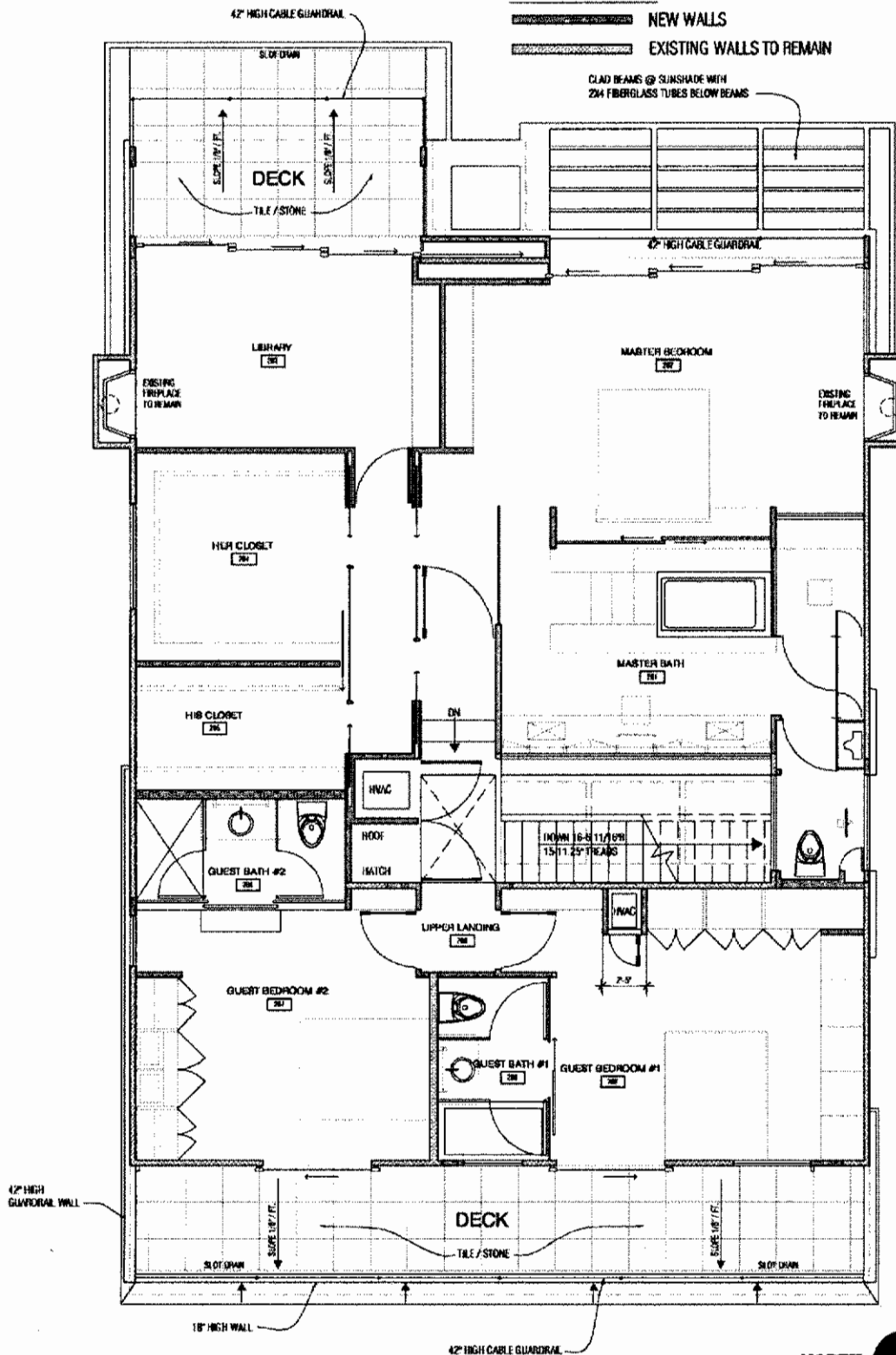
WALL LEGEND

NEW WALLS
EXISTING WALLS TO REMAIN

CLAD BEAMS @ SUNSHADE WITH
2X4 FIBERGLASS TUBES BELOW BEAMS



Bonin Architects, PC



FLOOR AREAS
HOUSE AREA = 1,986 SQ. FT.

PROPOSED SECOND FLOOR PLAN

scale: 1/8" = 1'-0"

NORTH



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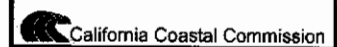
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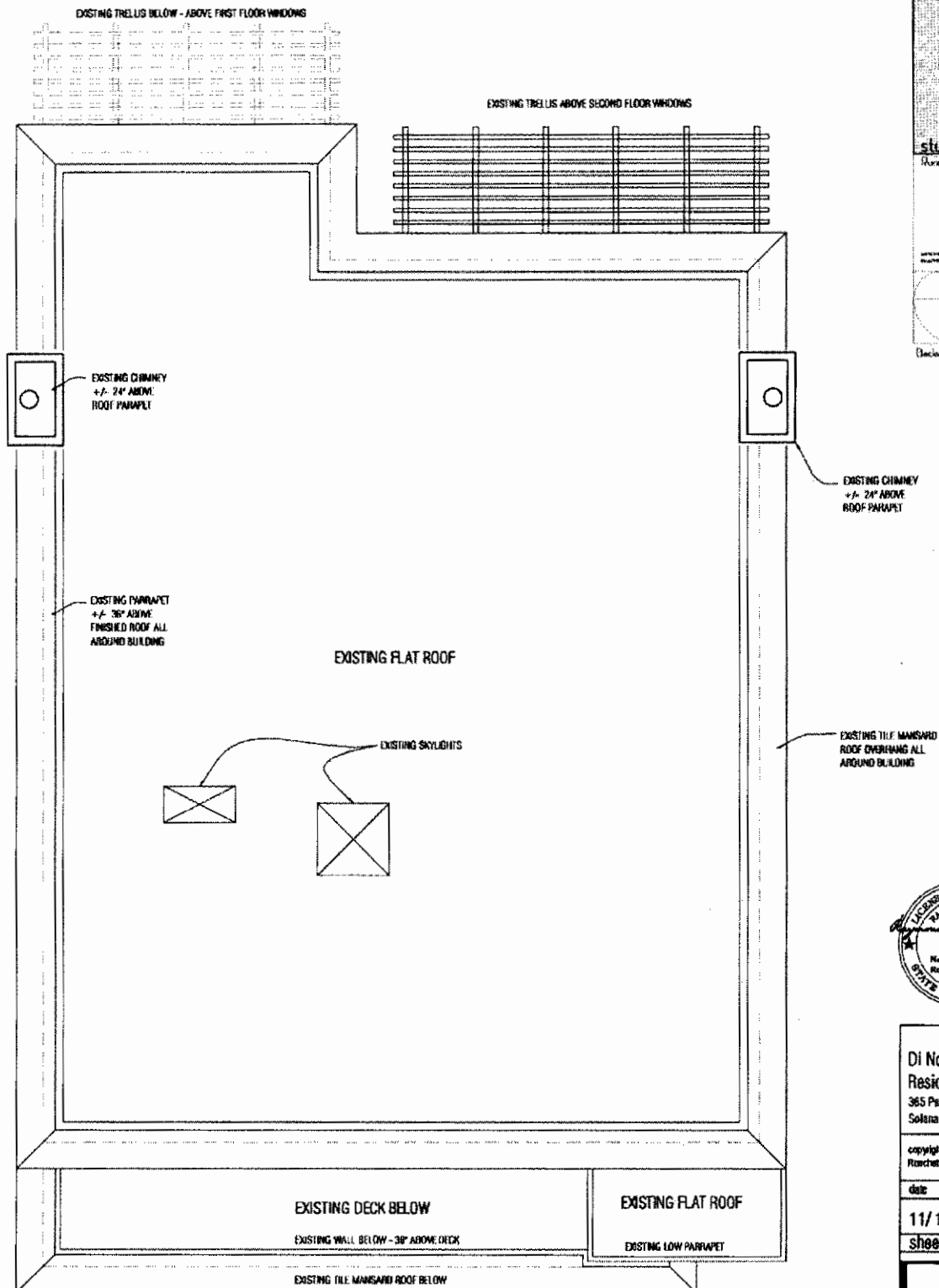
EXHIBIT NO. 7

APPLICATION NO.

6-09-61

Proposed Second
Floor Plan





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sheet title Existing Roof Plan

EXHIBIT NO. 8

APPLICATION NO.

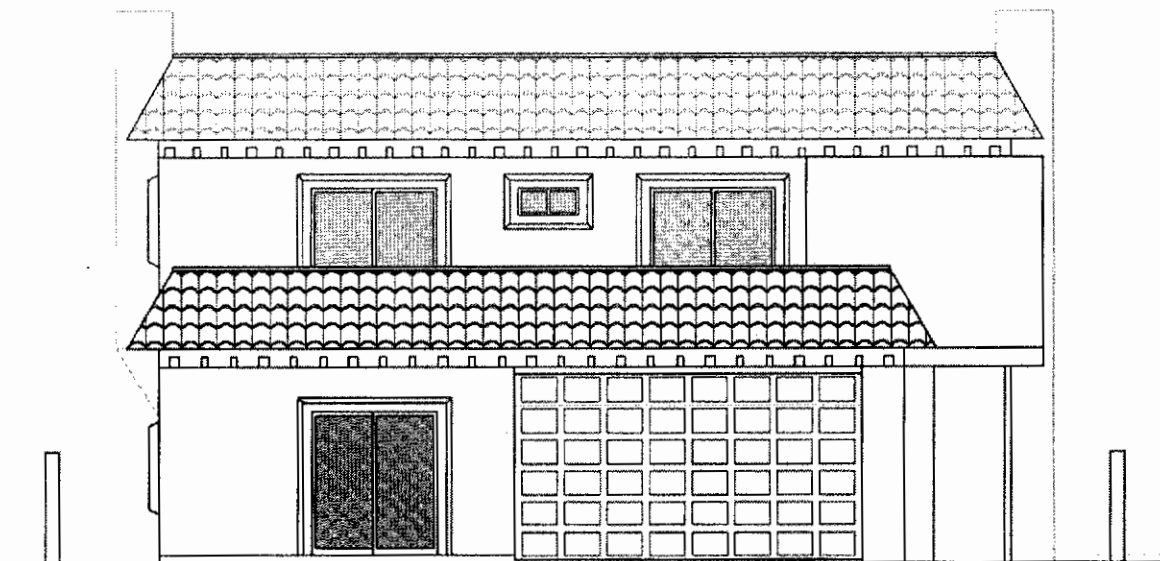
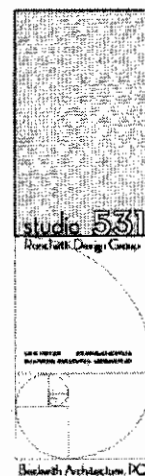
6-09-61

Existing Roof Plan

EXISTING ROOF PLAN

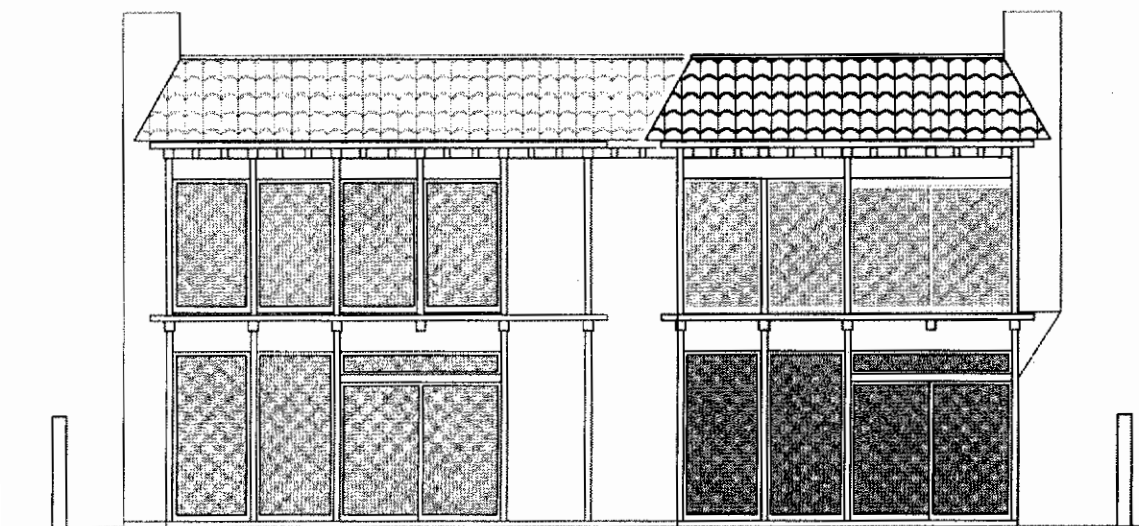
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EXISTING EAST ELEVATION

scale: 1/8" = 1'-0"



EXISTING WEST ELEVATION

scale: 1/8" = 1'-0"



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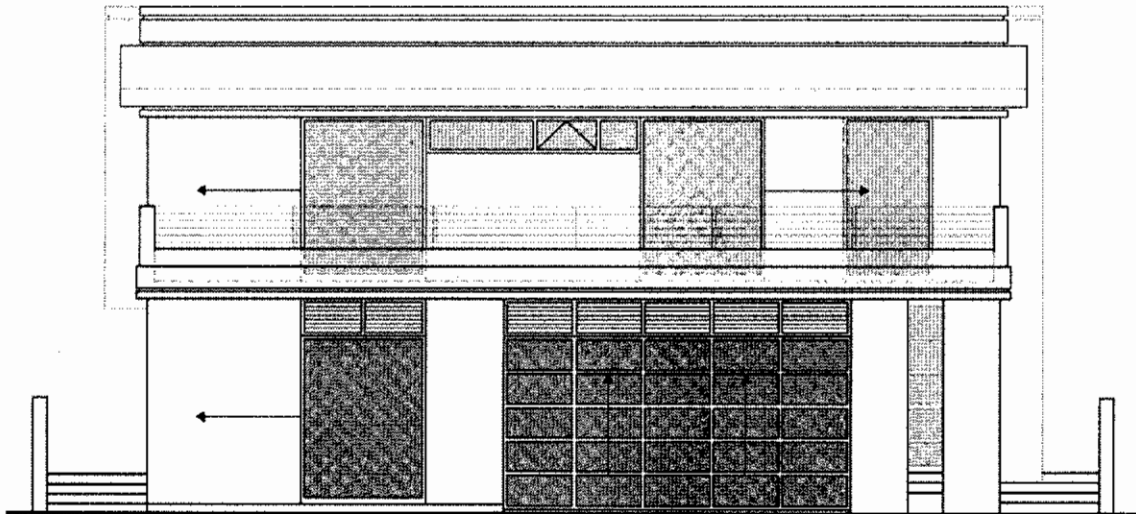
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EXHIBIT NO. 10

APPLICATION NO.

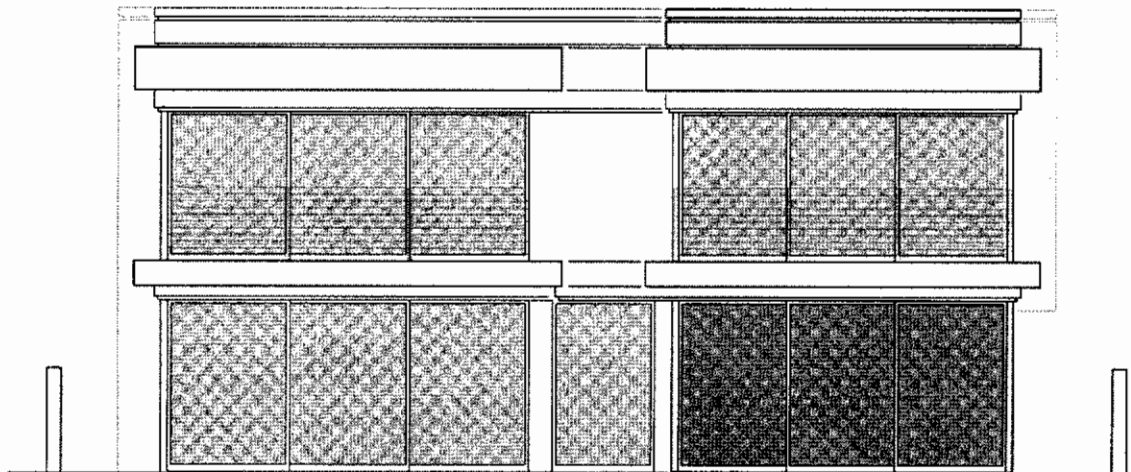
6-09-61

Existing East/West
Elevations



PROPOSED EAST ELEVATION

scale: 1/8" = 1'-0"



PROPOSED WEST ELEVATION

scale: 1/8" = 1'-0"



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EXHIBIT NO. 11

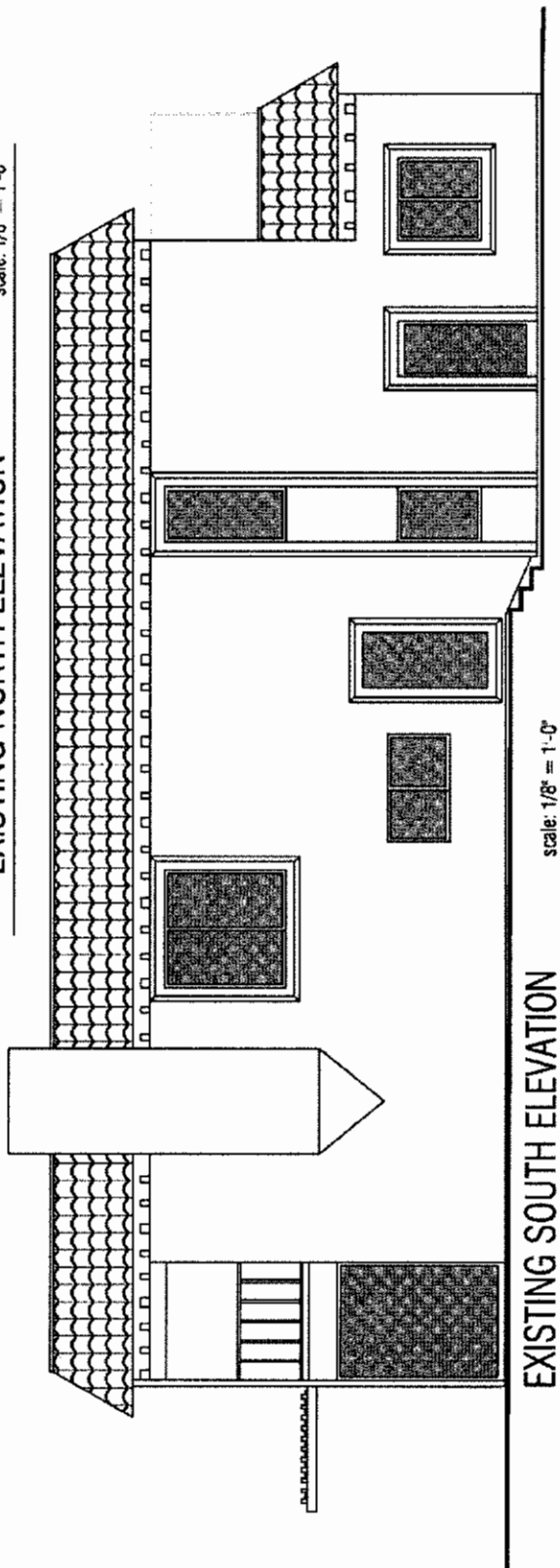
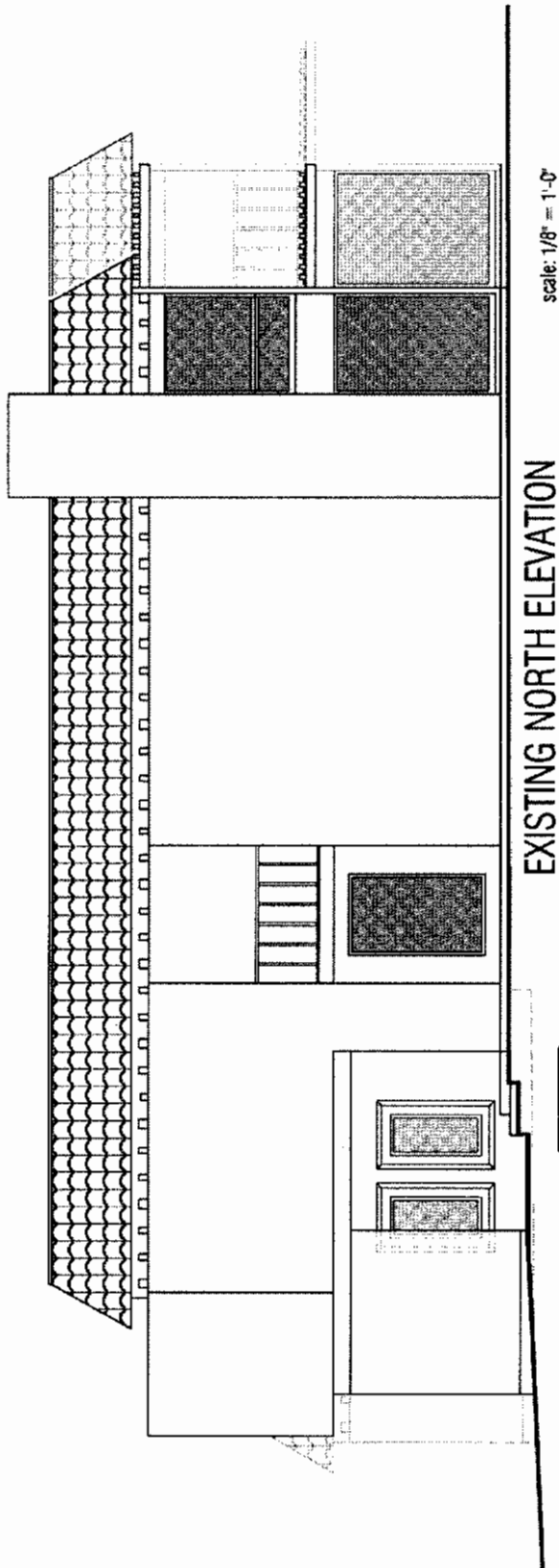
APPLICATION NO.

6-09-61

Proposed East/West
Elevations

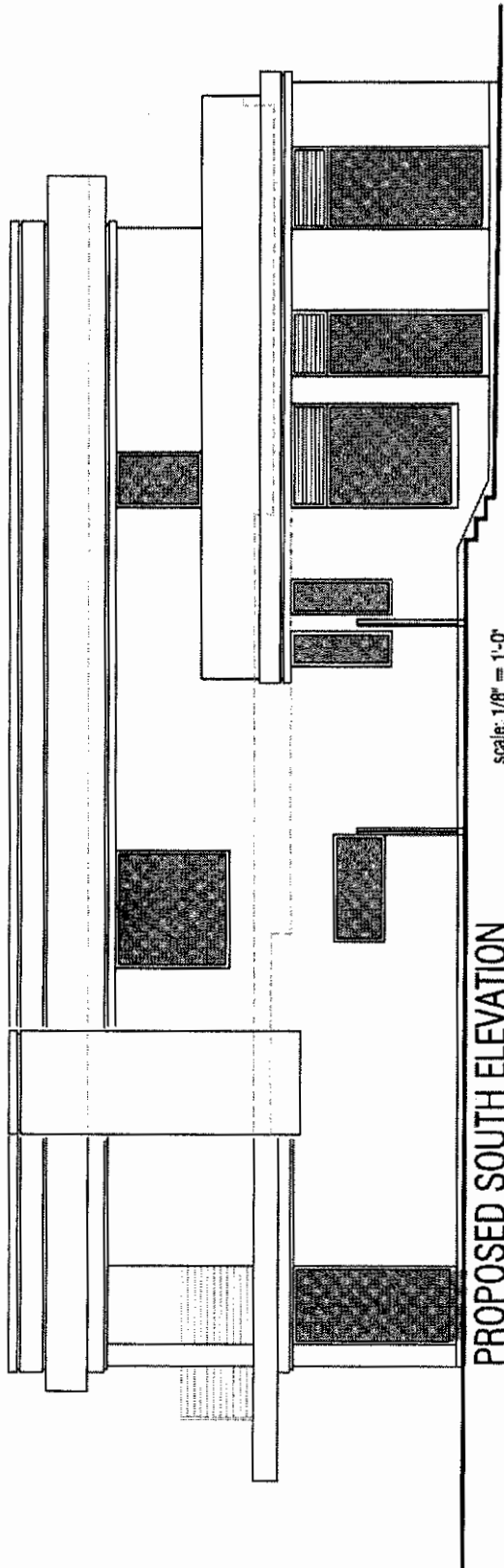
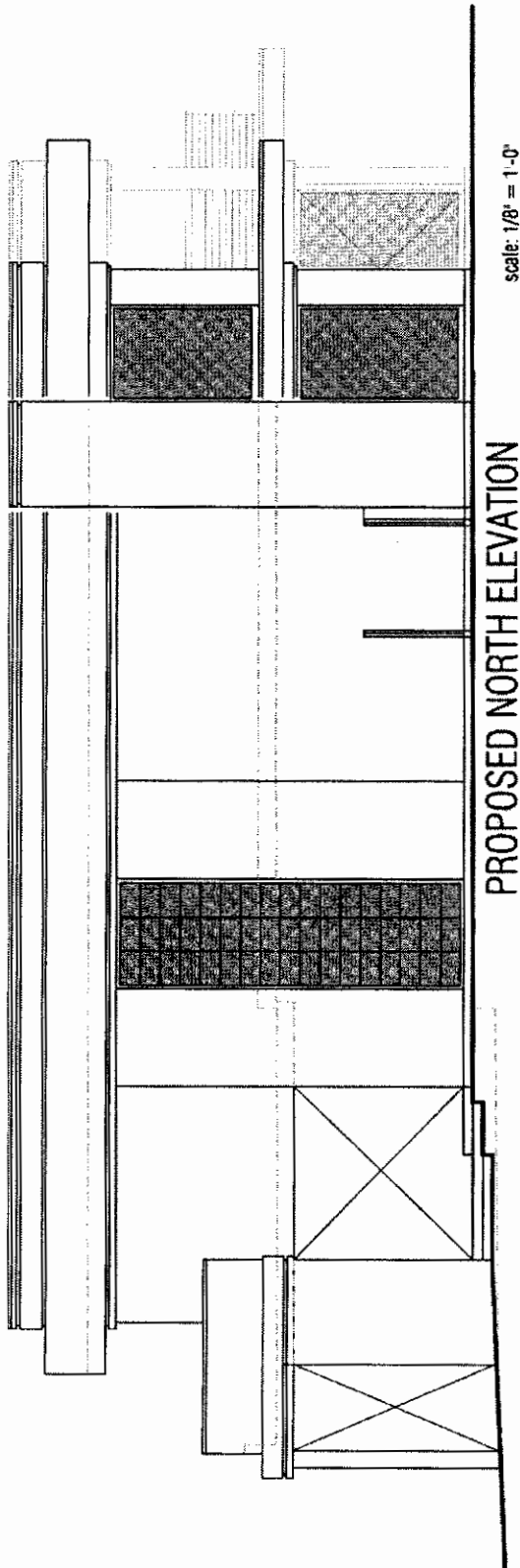


California Coastal Commission




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EXHIBIT NO. 12
APPLICATION NO. 6-09-61
Existing North/South Elevations
California Coastal Commission



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EXHIBIT NO. 13
APPLICATION NO.
6-09-61
Proposed North/South Elevations
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