

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.

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. 6-09-24 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 DiPietro Drafting and Design dated March 23, 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.

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 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 structures and providing 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 existing structures that are in danger from erosion. 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.

4. Future Development. This permit is only for the development described in coastal development permit No. 6-09-24. 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. 6-09-24, 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. 6-09-24 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. Other Permits. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director copies of all other required local discretionary permits from the City of Solana Beach for the development authorized by CDP #6-09-24. The applicant shall inform the Executive Director of any changes to the project required by the City of Solana Beach. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

7. 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.

8. Condition Compliance. WITHIN 60 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such

additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves improvements and remodel to an existing two-story, 3,096 sq. ft. home with an attached 829 sq. ft. three-car garage on a 13,865 sq. ft. blufftop lot. The proposed development is located at 417 Pacific Avenue, just south of Solana Vista Drive in the City of Solana Beach. The existing home is located approximately 10 feet from the edge of the bluff at its closest point. The coastal bluff fronting the site contains a 35 ft. high seawall with a geogrid reconstructed bluff extending above the seawall to the top of the bluff. The project will not add any new floor area or change the footprint of the existing home. However, 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 DiPietro Drafting and Design dated 3/23/09 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; construction of raised structurally reinforced ceilings in 3 bedrooms and kitchen to include 4 new 24-inch square concrete pier footings and wooden pier supports; removal and replacement of various framing boards and beams throughout house due to dry rot; and, remodel of kitchen and baths.

Exterior changes: The exterior changes consist of: new roofing; removal of 7 skylights and installation of 2 new skylights; removal of the existing stucco and replacement with wood siding; removal and replacement of the wooden fascia boards; installation of new safety railing along the second floor deck; removal of 7 windows and close openings with new walls; removal of 3 large windows and replacement with sliding glass doors; removal of 2 sets of side by side windows and replacement with one large window (2 sets); removal of one window and replacement with pop-out garden window; removal of one set of double doors and replacement with a window; and, installation of rock accent over the existing fireplace chimney.

The existing home was constructed prior to the Coastal Act. In 1997, the property owner received an Emergency Permit to infill a seacave located on the beach with riprap and concrete (ref. Emergency Permit #6-97-157-G/Folgnier). On December 13, 2007, the

Executive Director authorized an emergency permit for the construction of a 100 ft.-long, 35 ft.-high seawall involving the fill of the seacave and limited backfill behind the seawall to elevation 40 ft. MSL with erodible concrete below the residences at 417 and 423 Pacific Avenue (ref. 6-07-116-G/Burns, Brehmer). Because the emergency permit subsequently expired and the work had not been completed, the Executive Director authorized an additional emergency permit for the seawall construction on May 23, 2008 (ref. 6-08-55-G/Burns, Brehmer). In addition, on May 27, 2008, the Executive Director authorized an emergency permit for the reconstruction of the bluff face above the 100 ft.-long seawall through the installation of a geogrid soil reinforced structure incorporating the use of soil nails (ref. 6-07-134-G/Burns, Brehmer).

In August 2008, the Commission approved the (as a follow-up to the above emergency permits) construction of an approximately 170 ft.-long, 35 ft. high, 2 ft.-wide colored and textured concrete tiedback seawall on the public beach below the subject site (and the adjacent site to the north). The project also included reconstruction of the bluff (and landscaping) below the residences in order to prevent continued upper bluff failures (ref. CDP #6-07-134). Both the seawall and reconstruction of the bluff face have now been completed.

In June of 2008, the City issued a stop work order to the applicants who, at the time the seawall/bluff work was being constructed, began various improvements to the home without the benefit of a building permit or coastal development permit. The applicants then submitted an exemption request to the Commission, which was granted by the Executive Director on September 25, 2008 for various improvements including new roofing, new wood siding over the existing stucco, drywall, electrical, plumbing, HVAC and replacement of windows and doors. On December 10, 2008, the City lifted the stop work order. Then, after a building inspector discovered development that was not covered by the building permit or coastal exemption, a stop work order was again issued by the City on March 13, 2009. On March 25, 2009 the applicants submitted a revised exemption request to the Commission. However, it was determined that the development was no longer exempt as the project now included foundation and exterior wall modifications and the applicants were instructed to submit a coastal development permit. The subject coastal development permit was then submitted on April 24, 2009.

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 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 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 75 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 170 ft. long, 35 ft.-high seawall and bluff reconstruction was approved to be constructed on the beach and bluff below the subject site (and is now complete). In addition, 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 (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, the existing home is sited as close as 10 ft. from the bluff edge. The applicant did not submit a geotechnical report with their 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 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 approximately 1.16. 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 10 ft. from the bluff edge, this implies that the existing home, without shore and bluff protection, would be threatened and the geotechnical report did not even take into consideration the long-term erosion at the site. 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 new concrete pier footings which indicates that these new foundation features "will have no adverse affect on the stability of the coastal bluff fronting the site."

From the preceding discussion, it is apparent that without the existing shore and bluff protection, the existing home would be threatened and 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 10 feet from the edge of an approximately 75 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. Much 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. Although most of the existing exterior walls located within 40 feet of the bluff edge will remain, none of the interior area will be unaffected by the interior demolition, redesign and improvements.

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, 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, only limited 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 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 applicants 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 applicants have chosen to construct the proposed project despite these risks, the applicants 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 shoreline protection which would have an adverse impact on the surrounding natural bluffs and the adjacent beach. Special Condition #3 has been attached which requires the applicants to acknowledge that alternative measures which do not result in additional impacts to the adjacent public property must be analyzed and implemented, if feasible, on the applicant's blufftop property should the need for further stabilization of the residence occur. With this condition (and recordation of the permit conditions as a deed restriction as required pursuant to Special Condition #5), current and future property owners are put on notice that the site is in a hazardous location and measures on the subject property which would reduce risk to the principal residential structure should be considered, to provide stability and avoid further impacts to the adjacent public parkland.

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 applicants 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, much of the existing home is located seaward of the 40 ft. setback line and thus, is 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 much of the existing structure is 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 Section 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 or height of the existing residence. 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 blocked. 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 85 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 100 feet south of Tide Beach Park public access stairway and approximately 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. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. The applicants are requesting after-the-fact approval for some of the improvements to an existing single-family residence. To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition #8 requires that the applicants satisfy all conditions of this permit, which are prerequisite to the issuance of this permit, within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although improvements to the existing residence have taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

7. 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.

The subject site was previously in the County of San Diego's jurisdiction, but is now within the boundaries of the City of Solana Beach. The City has recently submitted a Land Use Plan for Commission review which is expected to be heard by the Commission sometime in 2009. The draft LUP initially contained some innovative components, including a proposal to develop a plan to remove seawalls over time and retreat the line of structures and/or acquire blufftop properties. However, such a comprehensive program must include a combination of measures that address proper design and siting of new development and additions to existing development to avoid both perpetuation of

lower seawalls and total armoring of the bluff. A combination of anticipated lower bluff stabilization along with measures to reduce the size of blufftop structures and move the line of development inland, could avoid the need for mid- and upper bluff stabilization in some cases.

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

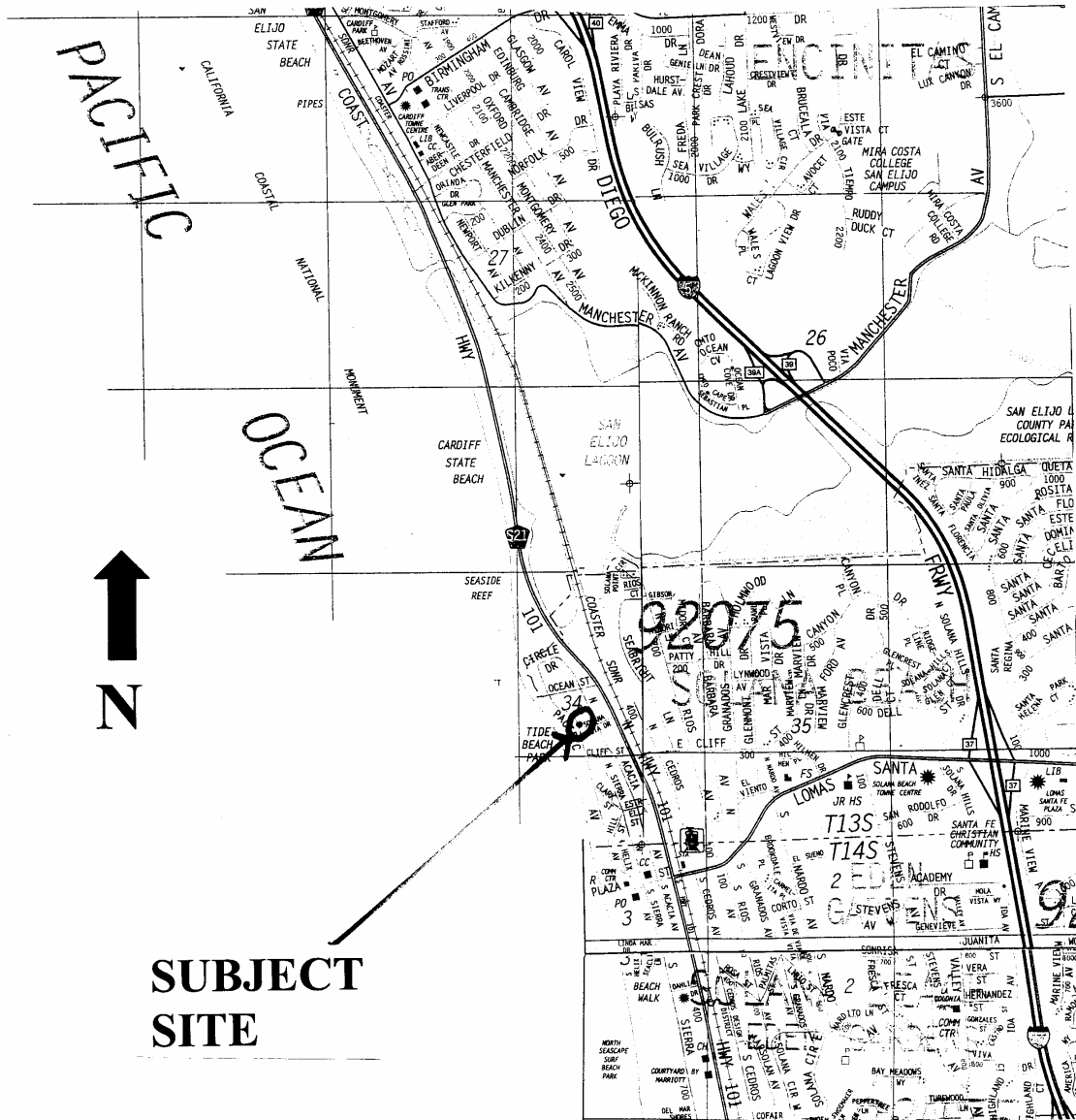
8. Consistency with the California Environmental Quality Act (CEQA).

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.
6-09-24
Location Map


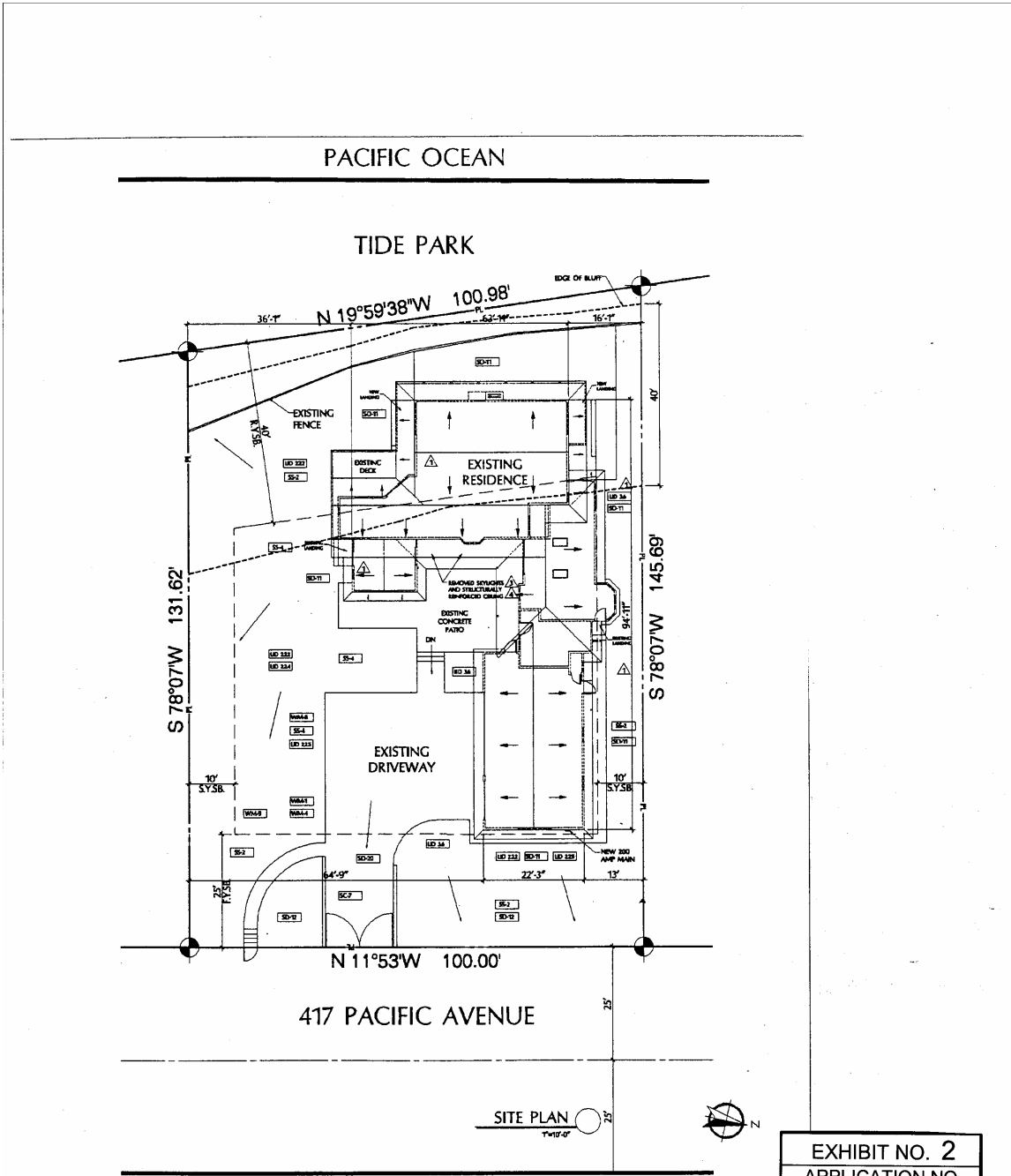
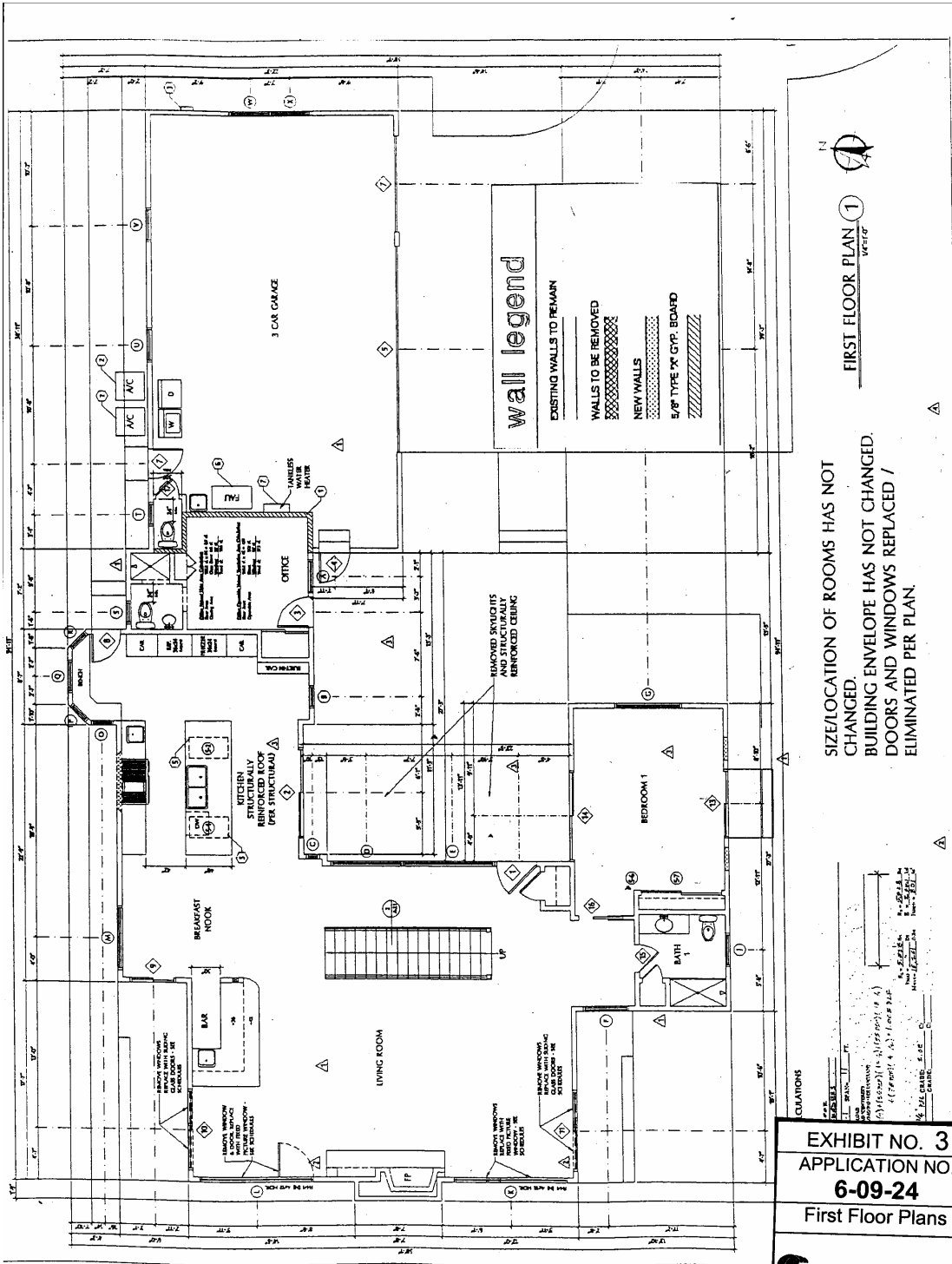


EXHIBIT NO. 2
APPLICATION NO.
6-09-24
Site Plan
California Coastal Commission

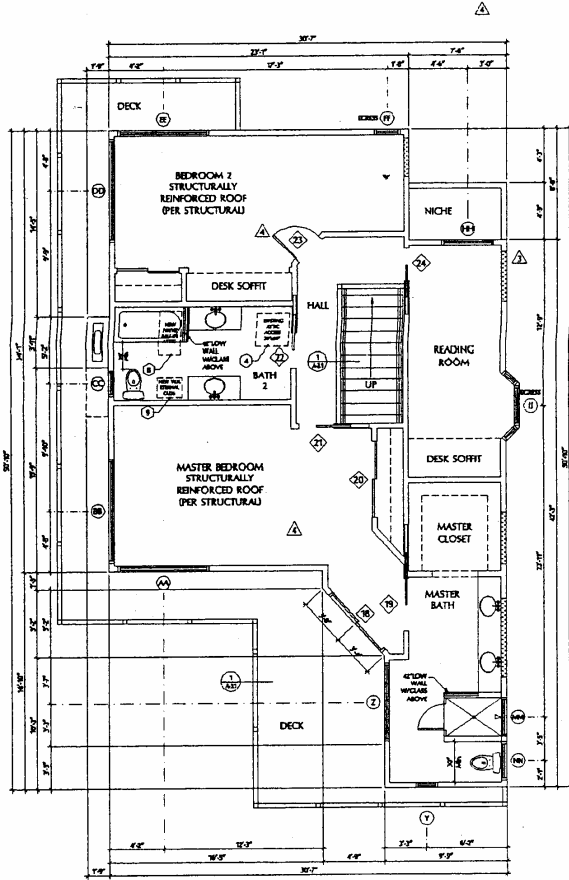


SIZE/LOCATION OF ROOMS HAS NOT CHANGED.
BUILDING ENVELOPE HAS NOT CHANGED.
DOORS AND WINDOWS REPLACED / ELIMINATED PER PLAN.

EXHIBIT NO. 3
APPLICATION NO.
6-09-24
First Floor Plans

California Coastal Commission

SIZE/LOCATION OF ROOMS HAS NOT CHANGED.
BUILDING ENVELOPE HAS NOT CHANGED.
DOORS AND WINDOWS REPLACED / ELIMINATED PER PLAN.



SECOND FLOOR PLAN ②
1/4"=1'-0"



wall legend

- EXISTING WALLS TO REMAIN
- WALLS TO BE REMOVED
- NEW WALLS
- 5/8" TYPE "X" GYP. BOARD

key notes:

- ① 1 HOUR FIRE RALL 5/8" TYPE GYP. BOARD
- ② NEW AC UNIT - PANELE PASH RALM
- ③ NEW 200 AMP MAIN
- ④ ATTIC ACCESS
- ⑤ BAYLIGHT - SEE SCHEDULE B-SHEET A-2.1
- ⑥ EXISTING FAN - CARRIER BLEND 8"U
- ⑦ EXISTING TANKLESS WATER HEATER
- ⑧ NEW FAN - PANELE BLEND 8"U
- ⑨ NEW WATER HEATER - EXTERNAL 0.8MB

general notes:

1. PROVIDE A ONE HOUR OCCUPANCY BARRIER WALL ASSEMBLY BETWEEN THE GARAGE AND THE REST OF THE HOUSE, INCLUDING 5/8" TYPE X SYSTEM WALL BOARD FROM THE FLOOR TO THE UNDERSIDE OF THE ROOF SHEATHING.
2. PROVIDE A MINIMUM 18" HIGH PLATFORM FOR WATER HEATER, HEATER OR COOLING EQUIPMENT CAPABLE OF CONTAINING FLAMES.
3. WATER HEATERS REQUIRE A MINIMUM OF 2 STRIPS TO PREVENT HORIZONTAL OVERFLOW. STRIPS WILL BE A MINIMUM OF 3/4" X 3/4" GAUGE WITH A 100% LAG BOLT ATTACHED DIRECTLY TO THE FLOORING OF THE ROOF SHEATHING.
4. INSULATE ALL OPEN AREAS:
R-13 - ALL WALLS
R-30 - ALL CEILING AND ROOF AREAS
5. WATER CONSERVING FIXTURES: NEW WATER CLOSETS SHALL USE NO MORE THAN 1.6 GALLONS OF WATER PER FLUSH. LAVATORIES AND KITCHEN FAUCETS MAY NOT EXCEED 2.2 GPM AND SHOWERS MAY NOT EXCEED 2.8 GPM OF FLOW.
6. MINIMUM CLEARANCE OF 30" FROM THE CENTER LINE OF ALL WATER CLOSETS.
7. PROVIDE A MINIMUM CLEARANCE OF 30" IN FRONT OF ALL WATER CLOSETS.
8. GLASS IN SHOWER AND TUB ENCLOSURES SHALL BE TEMPERED SAFETY GLASS OR APPROVED SAFETY PLASTIC.
9. THE CONTROL VALVES IN BATHTUBS, WARMPOOLS, BATHTUBS, SHOWERS AND TUB-SHOWER COMBINATIONS MUST BE PRESSURE BALANCES OR THERMOSTATIC MIXING VALVES.
10. PREPLACES WITH GAS/OLEFANT LIGHTERS ARE REQUIRED TO HAVE THE FLUE DAMPER PROPERLY FIXED IN THE OPEN POSITION. PREPLACES WITH LED LIGHTERS ARE TO HAVE NO HOT OR BURNY CONDUCTIONS OR COMPLETIBLY NOTE: NO GAS PORTURES TO BE USED IN THE PREPLACE LAG SECTION 808 AND SECTION 810 (P)
11. PROVIDE 1/8" GAUGE SPARK ARRESTORS WITH 1/2" MAXIMUM OPERING AT ALL PREPLACES.
12. PROVIDE NEW OUTSIDE AIR INTAKE DAMPER AND CONTROL AT ALL EXISTING PREPLACES.
13. CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR PROVIDING A VERTICAL CLEARANCE OF 2" MINIMUM FROM THE BOTTOM OF THE CHIMNEY OPENING TO ALL PORTS OF THE ROOF AND ADJACENT STRUCTURES WITH 80% HORIZONTAL COMPLY WITH CALIFORNIA BUILDING CODE TABLE 314-B.
14. PROVIDE EXTERIOR VENT TO THE OUTDOORS FOR LAUNDRY MECHANICAL CODE.
15. PROVIDE A MINIMUM 80% AFFID ACCESS PANEL OF 20" X 30" OR WHERE MECHANICAL EQUIPMENT IS LOCATED IN THE ATTIC PROVIDE A MINIMUM RISE OF 30" X 30" COMPLY WITH USC CHAPTER 15.

DRAFTING SERVICES
Floor Plans • Details • Conceptual Designs
Dimensions • 50' Plotting • AutoCAD Training
2201 San Diego Ave. San Diego, CA 92108 phone: 619.330.4868 fax: 619.330.4008
email: mch@draftingservices.com

CACCAVO RESIDENCE
417 Pacific Avenue, Solana Beach, CA 92075
SECOND FLOOR PLAN, DOOR, WINDOW & SKYLIGHT SCHEDULES

Scale: 1/4"=1'-0"
Date: 7-15-08
Drawn by: M.I.D.
Checked by:
Owner's Approval: 9-15-08
Plan Check No.: 2008-15-0008
AutoCAD: 3-30-08
Design: 3-22-08
Date: 2008-15

A-3.1

EXHIBIT NO. 4
APPLICATION NO.
6-09-24
Second Floor Plans

California Coastal Commission

