

CALIFORNIA COASTAL COMMISSION

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



Th 16a

Filed: April 10, 2009
 Staff: G. Cannon-SD
 Staff Report: May 21, 2009
 Hearing Date: June 11, 2009

REVISED CONDITIONS AND FINDINGS

Application No.: 6-08-62

Applicant: Ron Blackburn

Description: Demolish existing garage and construct 342 sq. ft. below grade garage and 369 sq. ft. first floor addition to an existing single-story 1,414 sq. ft. single-family residence on a 3,750 sq. ft. lot.

Lot Area	3,750 sq. ft.
Building Coverage	1,783 sq. ft. (47 %)
Pavement Coverage	100 sq. ft. (3 %)
Landscape/ Unimproved Area	1,867 sq. ft. (50 %)
Parking Spaces	2
Zoning	Medium Residential
Plan Designation	Medium Residential
Ht abv fin grade	13 ½ feet

Site: 205 Pacific Avenue, Solana Beach, San Diego County.
 APN 263-323-03

STAFF NOTES:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on March 11, 2009. In its action, the Commission denied the applicant's request to demolish the existing garage and construct the residential additions.

Date of Commission Action: March 11, 2009

Commissioners on Prevailing Side: Achadjian, Blank, Burke, Clark, Hueso, Secord, Kruer, Potter, Shallenberger, Wan, Chairperson Neely.

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of the proposed residential addition with Special Conditions that include requirements that the proposed addition be constructed with a deepened foundation to assure the addition will not require shoreline protection over its lifetime and that the applicant waive all

~~rights to future protection of the proposed addition.~~ The main issue raised by the project relates to constructing additions to an existing structure in a hazardous location and the potential need for future shoreline protection for the new development. The project involves minor additions to the landward portions of the residence that will not increase the threat already posed by erosion to the existing structure, however, ~~without a deepened foundation and waiver of future protection,~~ the addition itself cannot be found to be consistent with the requirements of Section 30253 of the Coastal Act. ~~Other Special Conditions include an assumption of all risk associated with the project, submission of as-built foundation plans, the elimination of any blufftop irrigation devices and a condition addressing future development of the site.~~

Standard of Review: Chapter 3 policies of the Coastal Act

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; “Coastal Bluff Evaluation and Basis of Design Report 139-241 Pacific Ave. Solana Beach” by TerraCosta Consulting Group dated 2/29/08; “Geotechnical Addendum 205 Pacific Avenue” by TerraCosta Consulting Group dated 6/23/08; CDP Nos. 6-04-86/Winkler and 6-06-107/Becker.

~~I. PRELIMINARY STAFF RECOMMENDATION:~~

~~The staff recommends the Commission adopt the following resolution:~~

~~**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-08-62 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.

I. MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on March 11, 2009 concerning denial of Coastal Development Permit No. 6-08-62.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of Commission's action are eligible to vote on the revised findings. The Commissioners eligible to vote are:

Commissioners Achadjian, Blank, Burke, Clark, Hueso, Secord, Kruer, Potter, Shallenberger, Wan, Chairperson Neely.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for *Coastal Development Permit No. 6-08-62* on the ground that the findings support the Commission's decision made on March 11, 2009 and accurately reflect the reasons for it.

~~II. Standard Conditions:~~

~~— See attached page.~~

~~III. Special Conditions:~~

~~— The permit is subject to the following conditions:~~

~~1. Revised 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, building, drainage and foundation plans that have been approved by the City of Solana Beach and that substantially conform with the plans by R&R Custom Building, Engineering & Design dated 2/12/08, but shall be revised to include the following:~~

~~a. Engineering plans and supporting calculations for a foundation system that will assure structural stability of the residential addition, over 75 years, and that will meet the following requirements:~~

~~1. The foundation shall assure structural stability and allow ongoing shoreline erosion (30.0 feet of erosion is anticipated over the next 75~~

~~years, based on historic long term average, annual erosion rate), bluff retreat and possibly bluff collapse to continue unimpeded by the foundation system.~~

~~2. The foundation shall provide stability for current and foreseeable loads, including seismic loads and impulse loads from bluff collapse, for current site conditions and for the most exposed conditions that could result from erosion, slides, and other changes to the geologic conditions of the site.~~

~~3. The plans shall note the most extreme erosion and bluff retreat situation for which the foundation can assure stability.~~

~~4. The foundation shall be able to be isolated from and shall not rely upon the foundation for the existing development to provide stability to the residential addition.~~

~~5. Other information that demonstrates the residential addition will not require either shore protection or bluff retention for stability over the full life of the structure.~~

~~b. 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 surveyed site plan that is tied into stable monuments.~~

~~c. Any existing permanent irrigation system located on the bluff top site shall be removed or capped and no new permanent irrigation system may be installed.~~

~~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 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 principle 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 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. 6-08-62. 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 proposed single family residence, 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. 6-08-62 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.~~

~~— 5. As-Built Plans. Within 60 days following completion of the project, the permittee shall submit as-built plans approved by the City of Solana Beach to be reviewed and approved in writing by the Executive Director documenting that the residential addition and foundations were constructed consistent with the Executive Director approved construction plans~~

~~— 6. No Future Bluff or Shoreline Protective Device. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-08-62 including, but not limited to, the proposed residential addition, garage, foundations, driveways, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.~~

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

IVII. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves the demolition an existing 225 sq. ft. garage and construction of a below grade 342 sq. ft. garage and a 369 sq. ft. landward side addition to the first floor of an existing 1,414 sq. ft. one-story single-family home on an approximately 3,750 sq. ft. blufftop lot. The existing home which was built in the 1950's is located as close as 18 ft. from the bluff edge at its closest point and the below grade garage is proposed as close as 52 ft., and first floor addition as close as 56 ft. from the bluff edge. The applicant is not proposing a deepened foundation for the proposed additions.

The existing residence was originally constructed prior to the Coastal Act, however, in 1978, the Commission approved the construction of a 155 sq. ft. addition to the north side and a 208 sq. ft. addition to the southwest side of the residence within 19 ft. of the bluff edge. Following discovery of dry rot and termite damage, the Commission approved an amendment authorizing the removal of all walls down to the subfloor and reconstruction of the walls in the same location (Ref. F6569 and F6569-A/Morrison). In January 1999, the Commission approved the fill of seacaves and notch undercut areas as a preventative measure to protect the existing residences along a 400 ft.- long section of the bluffs that include the subject site (ref. CDP No. 6-99-103/Coastal Preservation Association). In 2005, the Commission approved additional fill around the 400 ft.-long section of seacave and notch fill in places where the notches and seacaves had expanded including at the subject site (Ref. CDP 6-05-91/O'Neil, et. al.). In addition, a local permit is pending with the City of Solana Beach for the construction of additional shoreline protection

devices along this 400 ft. long stretch of shoreline. Below the subject site, the project pending at the City involves the construction of a 20 ft.-high tied-back structural wall to cover the previous notch infill area. However, this project is not included with the subject residential addition request and, therefore, is not under consideration as part of this application request.

The subject site is located on Pacific Avenue, five lots north of Fletcher Cove Beach Park, the City's primary beach access point. The City of Solana Beach does not yet have a certified Local Coastal Program (LCP) and, therefore, Chapter 3 of the Coastal Act is the standard of review.

2. Geologic Stability/Blufftop Development. The following Coastal Act Policies are applicable to the subject development:

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.

[. . .]

Section 30235

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

A. Blufftop Stability. The proposed development involves a 369 first floor landward addition to an existing approximately 1,414 sq. ft. one-story single-family residence. In addition, the project includes the demolition of an existing non-conforming garage and the construction of a below-grade 342 sq. ft. garage. The existing home was constructed in the 1950's and is located approximately 18 ft. from an approximately 85 ft. high coastal bluff that has notch overhangs below at the base of the bluff that have been filled with colored and textured erodible concrete. The shoreline below the development site is a highly used park and recreation area used by the public for a variety of ocean and

beach activities. In addition, Fletcher Cove Beach Park is located 5 lots south of the subject site which is the City's primary beach and shoreline access location.

Because of the natural process of continual bluff retreat, coastal bluffs in this area are considered a hazard area. In January 1999, the Commission approved the fill of a 40 ft. long notch overhang below the subject site as a preventative measure which would serve to delay the construction of more extensive shoreline protection such as a seawall that may otherwise have been required to protect the existing structure if the notch had collapsed. Also, if the notch had collapsed, it is likely a layer of "clean sands" located in the middle of the bluff would have ultimately become exposed. As previously described, the applicant (along with several other homeowners) is processing a request through the City of Solana Beach to construct 20 ft. high tiedback walls along this section of shoreline over the face of the previous infills. It is not known at this time whether the structures are required to protect the existing residence or if the request is simply the type of required maintenance that the Commission anticipated might occur in the future in approving the original notch fill. In any event, it is likely that the existing residence at the subject site will require some form of additional shoreline protection over its lifetime especially because of the presence of a clean sands layer that lies within the bluffs at the subject site.

The presence of this clean sand layer within the bluffs along the Solana Beach shoreline has previously been identified in geotechnical reports submitted in conjunction with seawall, seacave and notch infill projects throughout the Solana Beach shoreline. (ref. CDP Nos. 6-99-100/Presnell, et. al, 6-99-103/ Coastal Preservation Association, 6-00-66/Pierce, Monroe and 6-02-84/Scism, 6-00-9/Del Mar Beach Club, 6-00-138/Kinzel, Greenberg, 6-02-2/Gregg, Santina and 6-03-33/Surfsong).

According to the Commission's staff geologist, the typical mechanism of sea cliff retreat along the Solana Beach shoreline involves the slow abrasion and undercutting of the Torrey Sandstone bedrock, which forms the sea cliff at the base of the bluffs, from wave action which becomes more pronounced in periods of storms, high surf and high tides. Other contributing factors to sea cliff retreat include fracturing, jointing, sea cave and overhang collapse and the lack of sand along the shoreline. When the lower sea cliff is undercut sufficiently, it commonly fails in blocks. The weaker terrace deposits are then unsupported, resulting in the collapse of the terrace deposits through circular failures. Such paired, episodic failures eventually result in a reduction in the steepness of the upper bluff, and the landward retreat of the bluff edge. Such retreat may threaten structures at the top of the slope. When failures of the upper bluff have sufficiently reduced the overall gradient of the upper bluff, a period of relative stability ensues, which persists until the lower bluff becomes sufficiently undercut to initiate a block failure once more, triggering a repetition of the entire process. The mechanism of bluff retreat that occurs in conjunction with the exposure of the clean sand layer is somewhat different than the paired, episodic failure model described above. Because of the cohesionless character of the clean sands, once they are exposed they continue to slump on an ongoing basis as a result of very small triggers such as traffic vibrations or wind erosion.

To find a proposed blufftop residential addition consistent with Section 30253, the Commission must find that it will be stable throughout its useful life and that it will not require a seawall or other shoreline protective device throughout its useful life. To make these findings for blufftop residential additions in Solana Beach and Encinitas, the Commission has required that such developments be setback a “safe” distance from the bluff edge. In previous permit actions, the Commission has required that new development observe a minimum setback of 40 feet from the top of the bluff and that the proposed setback be supported by a site specific geotechnical report documenting that the residence or residential addition will be sited at a safe location such that over its lifetime it will not require the construction of shoreline protection.

In the case of the subject development, the applicant has submitted geotechnical reports for the subject site relating to a proposed single-family residential addition that included site-specific quantitative slope stability analyses and an estimation of the long-term erosion rate for the area. The analysis took into account the exposed clean sands layer on the bluff. The slope stability analysis measures the likelihood of a landslide at the subject site. According to the applicant’s geotechnical report of June 2008, a minimum factor of safety of 1.5 (the industry standard) against a landslide occurring at the subject site is located at approximately 51 ft. landward from the bluff edge along the north portion of the site and at approximately 56 feet landward of the edge of the bluff along the south portion of the 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.) This implies that the safe location for a slab based foundation structure would need to be setback at approximately 51 ft. from the edge of the bluff along the northern portion of the site and approximately 56 ft. from the edge of the bluff along the southern portion of the site. In addition to the landslide potential, the bluff will be subject to long-term erosion and retreat and the geologic setback will need to be based on an accurate estimate of this retreat rate as well.

The applicant’s geotechnical report identifies that the historic long-term erosion rate for the area is approximately 0.40 ft. per year. Given an estimated 75-year design life, about 30 feet of erosion might be expected to occur at the subject site based on this historic long-term erosion rate. Therefore, based on the combination of slope stability analyses and the estimated erosion rate, the Commission would typically require that any new development at the subject site be located at a minimum of 81 ft. on the northern portion of the site and a minimum of 86 ft. landward of the edge of the bluff for a slab based foundation structure. However, in this case, the lot is only about 78 ft. in depth.

In this case, the proposed addition, including a slab based foundation, will be located approximately 52 ft. to 56 ft. from the bluff edge (at its closest point), and, therefore would be sited at a location that would likely be threatened over the next 75 years. Thus, the proposed development will be located in a hazardous location such that the proposed development will likely require shoreline protection over its lifetime. In this particular case, the Commission finds that no additional development should occur on the site beyond what currently exists.

While it is clear that the more seaward portions of the home would be threatened first, Section 30253 does not permit new development (such as the proposed addition) if it will be threatened over its lifetime. As the Commission determined in approving other residential additions along the Solana Beach shoreline, one alternative available to the applicant is to construct deepened caisson foundations for the new development which will provide a 1.5 factor of safety against sliding, so as to not require shoreline protection for its lifetime. However, even with caissons, the Commission is concerned with allowing additional development on such a hazardous site. As summarized by Commissioner Shallenberger:

Well, just to reiterate what has been said already by several Commissioners up here, is that this is a particularly high risk site, and there is already an economic use, so the question of a takings is not fairly before us, and I think this is too high a risk. It is an unstable bluff, and we should not be approving, even with deepened caissons, that we should not be approving any additional development here.

(Ref. Page 23, Line 3 of Exhibit #4 – Reporter’s Transcript of Proceedings)

~~–The Commission’s coastal engineer and geologist have confirmed that the structural stability of the blufftop addition could be assured if such caisson foundations were in fact placed deep enough so as to not be undermined should the bluff erode or collapse in the future.~~

~~Therefore, Special Condition #1 has been attached which requires the proposed residential addition be revised to include a deepened foundation system which will provide for a 1.5 factor of safety against sliding for the lifetime of the proposed addition. Only with this revision can the proposed addition be found to be consistent with the requirements of Section 30253.~~

~~Although it appears that the use of deeply embedded caissons to assure geologic stability of this residential addition is a practical alternative to the need for shoreline protection, its use in other developments along the Solana Beach shoreline may ultimately have adverse visual impacts as the caissons become exposed following landslide or expected erosion. However, in this case, it is unlikely the caissons required to support the proposed residential addition will become exposed over its lifetime since these caissons will be located not closer than 56 ft. from the bluff edge. The applicant’s current geotechnical letter (Ref. “Geotechnical Addendum 205 Pacific Avenue” by TerraCosta Consulting Group dated 6/23/08) estimates that the bluff at this location may erode by approximately 30 ft. over the next 75 years. Therefore, based on the applicant’s estimate of bluff erosion at the subject site, it is unlikely a caisson foundation system installed at 51 ft. to 56 ft. from the bluff edge will be exposed over its lifetime.~~

~~Because erosion and landslides are caused by a variety of factors including over watering on the blufftop and inappropriate drainage, Special Condition #1e prohibits the applicant from having permanent irrigation devices on top of the bluff. In addition, although the applicant has not proposed new landscaping as part of the residential addition, Special~~

~~Condition #7 has been attached to require any future landscaping on the site be limited to drought resistant, native or non-invasive species.~~

~~In addition, although the applicant asserts that the proposed development can be constructed safely despite ongoing erosion and the potential of landslide, the bluffs along the Solana Beach shoreline are known to be hazardous and unpredictable. Given that the applicant has chosen to construct a residential addition despite these risks, the applicant must assume the risks. Accordingly, Special Condition #3 requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit. In addition, since the applicant has assured the Commission that the proposed residential addition can be constructed without requiring shoreline protection in the future, Special Condition #6 requires the applicant to waive all rights and claims for future protection of the addition that may exist under the Coastal Act. Only with this waiver can the project be found to be consistent with Section 30253 of the Act, which prohibits new development from requiring future shoreline protection. In addition, Special Condition #8 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.~~

~~— B. Retention of Structures in Hazardous Locations. The subject applicant proposes to add a total of 711 sq. ft. (including garage) to the existing approximately 1,414 sq. ft. one-story single-family residence which is located as close as 18 ft. from the edge of the bluff. The City's municipal code requires residential structures on blufftop lots be setback 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. Therefore, the existing residence is a legal non-conforming structure. As identified above, the Commission has more recently found that the appropriate setback for new development must be based on site-specific geologic stability analysis such that a property owner, the City and the Commission can no longer assume that the 40 ft. setback established in the zoning code is in all cases sufficient. In this case, that appropriate setback may be as much as 86 ft. from the edge of the bluff, which is greater than the depth of the existing lot.~~

~~In the context of proposals to enlarge and reconstruct existing structures, the Commission has sometimes required those structures to be brought into conformity with shoreline hazards policies of the Coastal Act or certified LCPs. (Ref. A-6-LJS-99-160/Summit Resources). Also, in its recent action on the Malibu LCP, the Commission certified ordinances that identify when repair and maintenance or improvements to existing blufftop structures would not require the entire structure be brought into conformance with the certified standards for new development. These criteria include when there is no demolition and/or reconstruction that results in replacement of more than 50 percent of the existing structure, and when additions do not increase the size of the structure by more than 50 percent. In this instance, 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 new addition to the existing structure~~

~~is fairly minor in scope and meets the above stated criteria. The proposed development, therefore, does not warrant requiring the entire existing structure to be brought into conformity with Chapter 3 policies regarding shoreline development. However, to assure that future improvements to the residence do not occur without review by the Commission, Special Condition #4 requires that all future modifications that otherwise may be exempt from the need of a coastal permit must be reviewed and approved by the Commission as an amendment to the subject permit or as a new coastal development permit.~~

~~Therefore, as conditioned to require the use of a deepened foundation system, Based on the above discussion, because the proposed development is proposed to be sited in an unsafe location, the proposed residential addition cannot be assured structural stability over its lifetime ~~and so as to not~~ require shoreline protection. ~~As conditioned, Therefore,~~ the proposed development is not consistent with Section 30253 and 30235 of the Coastal Act and must be denied.~~

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:

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 an addition to an existing single-story blufftop residence. The existing home and proposed addition are located in a residential neighborhood consisting of single-family homes of similar bulk and scale to the proposed development. The proposed addition will occur on the landward side of the existing residence and the addition will not exceed the height of the existing structure. Although the existing development is visible from the beach below, the proposed additions will not likely be visible from the beach since views of the addition will be blocked by the existing residence. 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 such that the project is 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:~~

~~———— 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 #1c restricts the property owner from installing permanent irrigation devices and requires the removal or capping of any existing permanent irrigations 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 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.~~

54. Public Access/Recreation. 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. Adequate public vertical access is provided five lots south of the subject site at Fletcher Cove Beach Park, the City's primary beach and shoreline access location. ~~In addition~~ However, since the project ~~as conditioned~~ will not be sited at a safe location such that shoreline protection will ~~not~~ be necessary over the lifetime of the addition, approval of the project itself ~~will not~~ will likely result in the need for placement of ~~any~~ additional structures on the beach that ~~could~~ will impede public access. Therefore, the proposed project, ~~as conditioned~~, will have ~~no~~ impacts on public access, inconsistent with the public access policies of the Coastal Act and must be denied.

65. 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 cannot 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 in 2009.

~~In the case of the proposed project, the applicant has proposed a landward addition that is approximately 52 ft. from the edge of the bluff but is not proposing a deepened foundation to assure no future shoreline protection will be needed for the addition. Since that would be inconsistent with Section 30253 of the Act and the Commission has been provided evidence that a deepened foundation system on the subject site is a practical alternative to assure no future shoreline protection will be needed for the addition, the Commission can only approve the addition if caisson foundations are used. While in this case, the applicant would likely be precluded from constructing a blufftop addition without the deep caisson support, the use of caissons should not send a signal that blufftop development setbacks can be reduced if deep seated caissons are used. While each case is different, any new development on the blufftop must be sited in ways that are most protective of coastal resources. In this case, on balance, the use of caissons setback at least 52 ft. from the bluff edge achieves that goal. Decisions regarding future blufftop developments should be done through a comprehensive planning effort that analyzes the impact of such a decision on the entire City shoreline.~~

The location of the proposed residential addition 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, T~~the subject development is consistent with these requirements. Based on the above findings, the proposed development is inconsistent with the Chapter 3 policies of the Coastal Act in that the home addition ~~as conditioned to require deepened foundations~~ will not be sited to assure structural stability and ~~not~~ will likely require shoreline protection over its lifetime.

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~~

76. 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 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 that the activity may have on the environment.

~~The proposed project has been conditioned in order to be found consistent with the public access, water quality and geologic stability policies of the Coastal Act. Mitigation measures, including the installation of a deepened foundation to assure stability of the addition over 75 years, waiver of all rights to protection for the addition, reduction in risk by over watering, future development restrictions and an assumption of risk 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.~~

As previously stated, the proposed development would result in adverse impacts to coastal resources since the development is proposed in an unsafe location which over time would require the construction of shoreline protective device(s). The construction of shoreline protective devices could have adverse impacts to public access and recreational opportunities and could adversely affect the contribution of sand that would otherwise erode from the natural bluff at the subject site. The applicant has reasonable use of the existing property in the form an existing single-family home. A feasible alternative to the subject project is the no project alternative which would allow continued use of the property without adverse impacts to public access, recreational opportunities and sand contribution. Therefore, as currently proposed, the Commission finds the proposed project is not the least environmentally damaging feasible alternative

and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

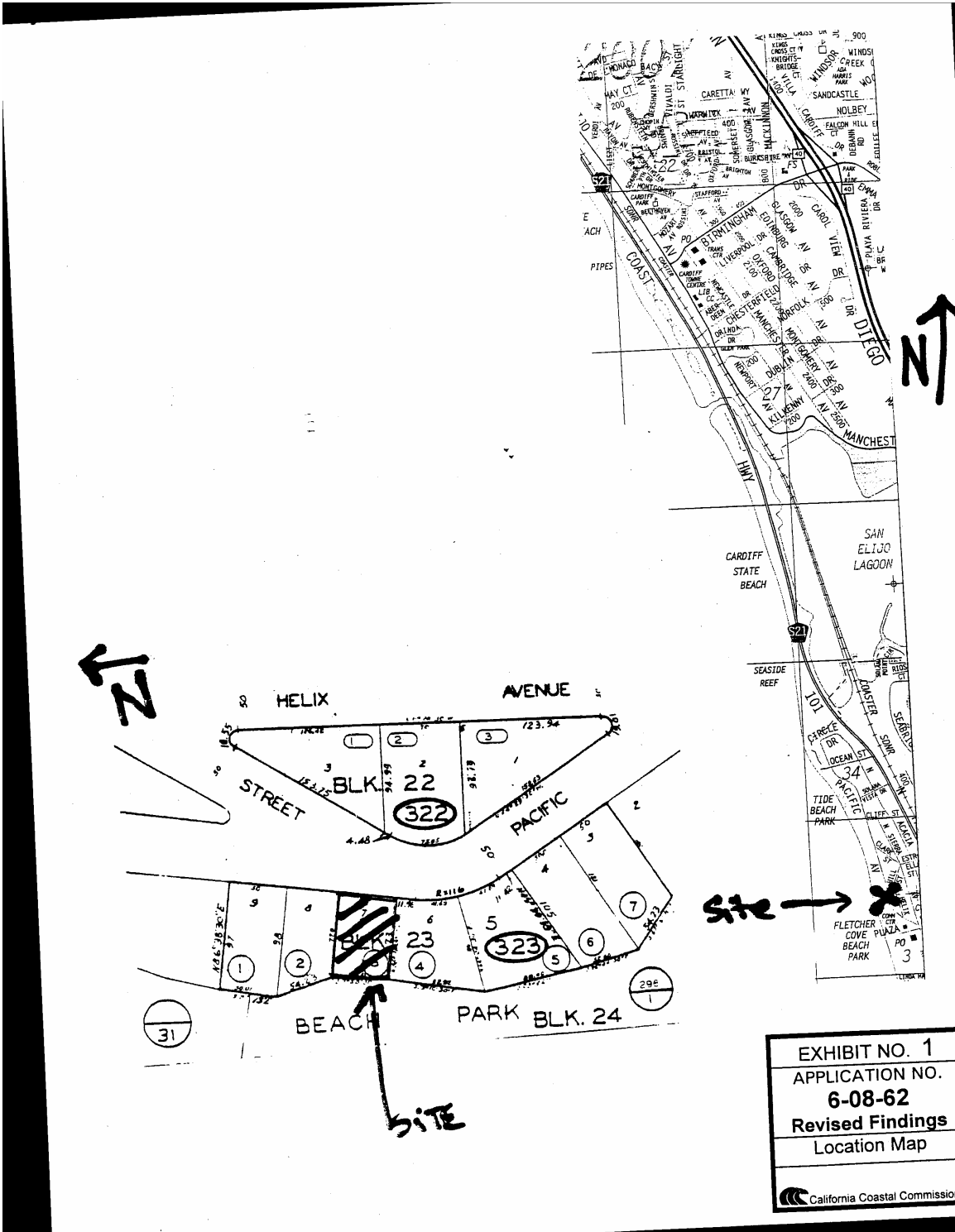
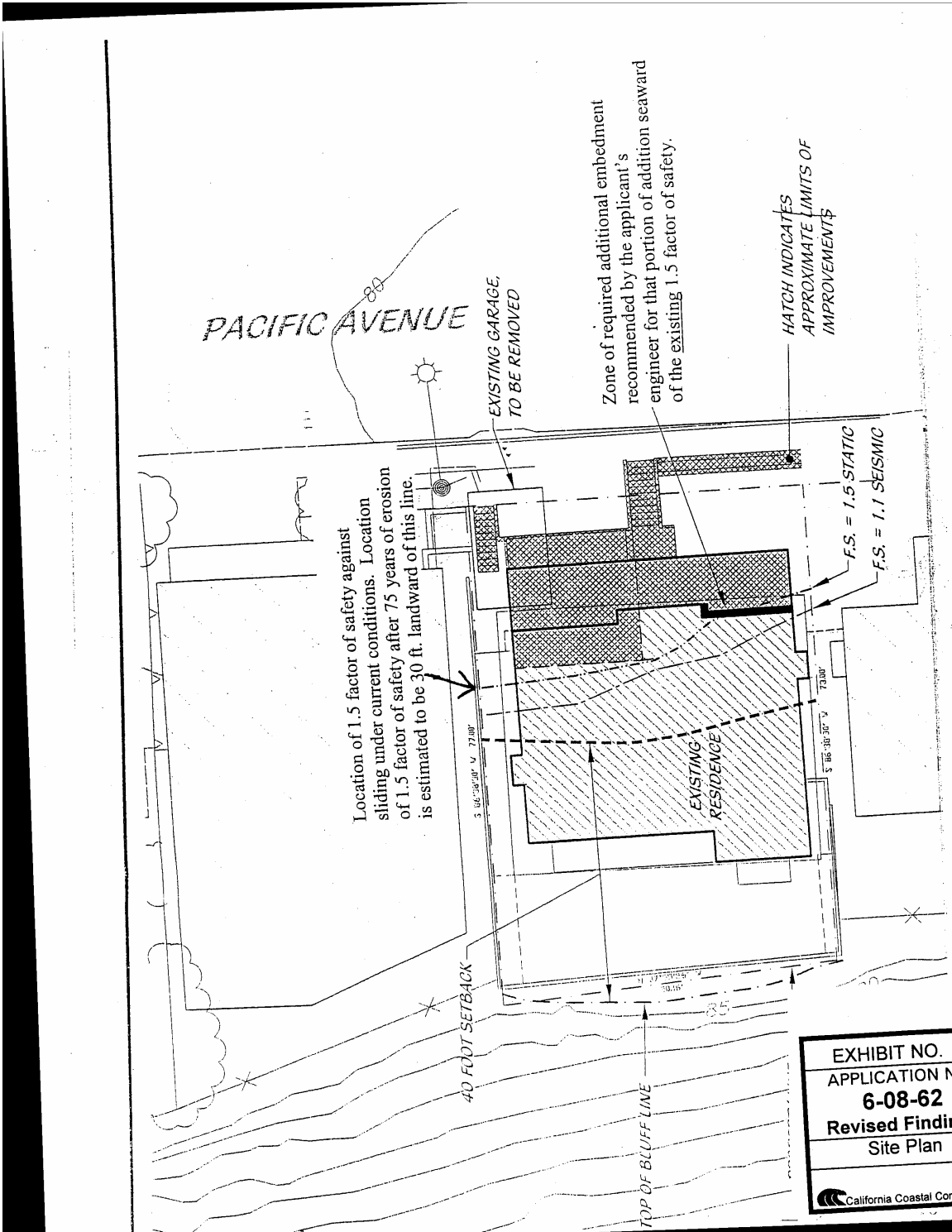


EXHIBIT NO. 1
APPLICATION NO.
6-08-62
Revised Findings
Location Map
California Coastal Commission



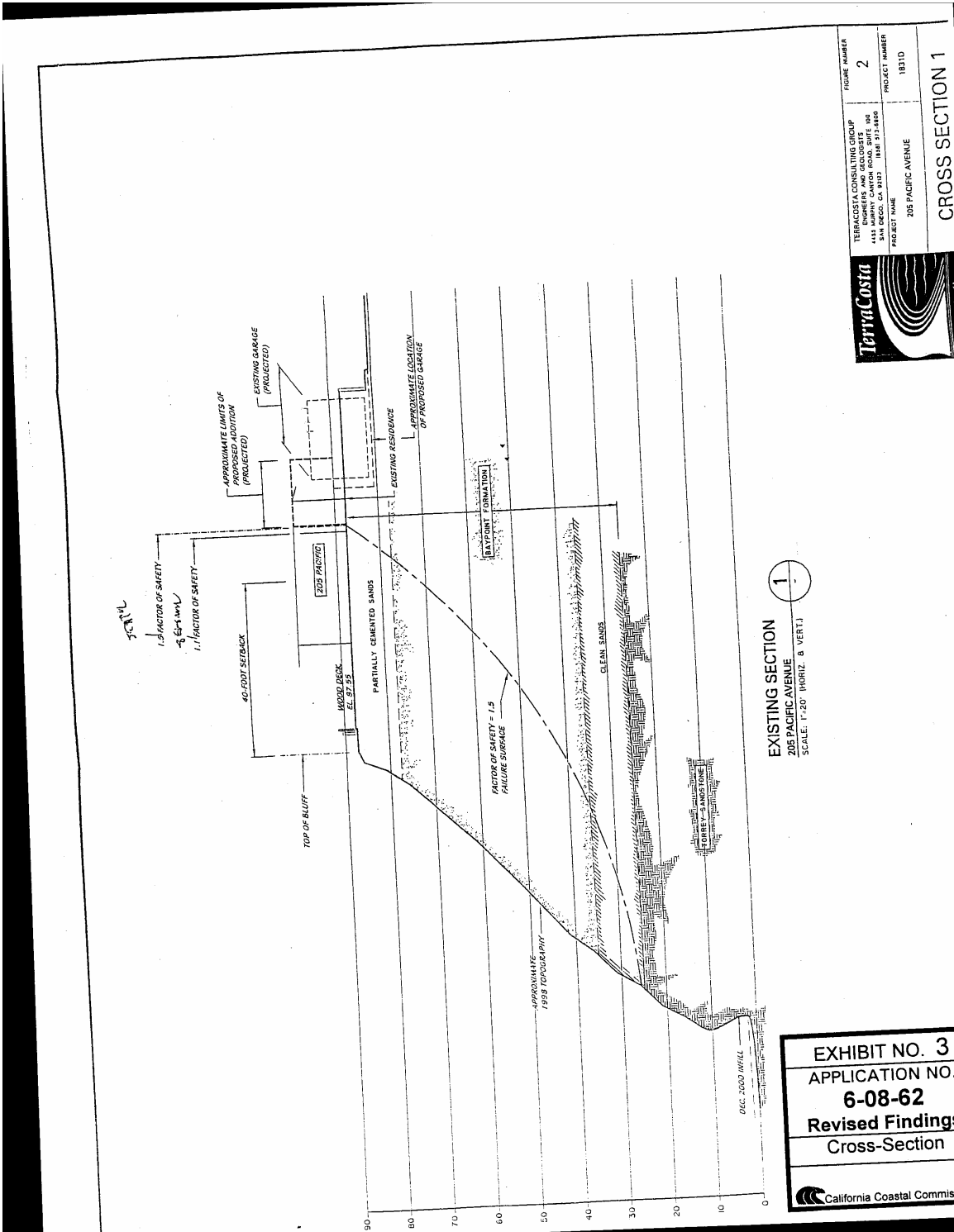
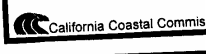


FIGURE NUMBER	2
PROJECT NUMBER	1811D
PROJECT NAME	205 PACIFIC AVENUE
TERRACOSTA CONSULTING GROUP ENGINEERS AND GEOSCIENTISTS 1441 AVENUE OF THE STARS, SUITE 100 SAN DIEGO, CA 92131 (619) 513-8800	

EXISTING SECTION
205 PACIFIC AVENUE
SCALE: 1"=20' (HORIZ. & VERT.)

EXHIBIT NO. 3
APPLICATION NO.
6-08-62
Revised Finding:
Cross-Section



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA
COASTAL COMMISSION

CERTIFIED COPY

RON BLACKBURN
CITY OF SOLANO BEACH
COUNTY OF SAN DIEGO

Application No. 6-08-62

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday
March 11, 2009
Agenda Item No. 19.a.

Portola Plaza Hotel
Two Portola Plaza
Monterey, California

RECEIVED

EXHIBIT NO. 4
APPLICATION NO.
6-08-62
Revised Findings
Hearing Transcript
Page 1 of 29
California Coastal Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COMMISSIONERS

Bonnie Neely, Chair
William A. Burke, Vice Chair
Khatchik Achadjian
Steve Blank
Larry Clark
Ben Hueso
Patrick Krueer
Dave Potter
Dan Secord, Alternate
Mary Shallenberger
Sara Wan

STAFF

Peter Douglas, Executive Director
Hope Schmeltzer, Staff Counsel
Jamee Jordan Patterson, Deputy Attorney General
Sherilyn Sarb, Deputy Director

-o-o-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X T O S P E A K E R S

Page Nos.

STAFF

Deputy Director Sarb.....	1, 13, 16, 19
Executive Director Douglas.....	17
Chief Counsel Schmeltzer.....	21
Deputy Attorney General Patterson.....	22

PUBLIC COMMENT

David Nevius, Applicant.....	7
Ron Blackburn, Applicant.....	12

COMMISSIONERS

Achadjian.....	22
Kruer.....	15, 22
Secord.....	20
Wan.....	18

ACTION

Motion by Shallenberger..	22
Vote.....	24

<u>CONCLUSION</u>!	25
--------------------------	----

-000-

1 California Coastal Commission
2 March 11, 2009
3 Ron Blackburn -- Application No. 6-08-62
4 * * * * *

5 11:40 a.m.

6 **DEPUTY DIRECTOR SARB:** And, I have a Power Point
7 for the next item, please.

8 This is Item 19.a. 6-08-62, Blackburn. It is a
9 proposal to demolish an existing garage, and to construct a
10 new 342-square foot garage, and a 369-square foot first floor
11 addition to an existing 1414-square foot bluff-top single
12 family residence on a 3750-square foot lot in Solano Beach.

13 The staff is recommending approval of the project
14 with several conditions typically applied to residential
15 development along these bluff-back beaches, including the
16 requirement that the applicant waive the right to future
17 shoreline protection for the proposed addition.

18 Other conditions require removal of the irrigation
19 system, and use of only native, or non-invasive drought
20 tolerant landscaping, to reduce introduction of water into
21 the erosive bluff environment.

22 Special Condition No. 1 also requires a revised
23 foundation plan that will assure structure stability, and
24 provide a 1.5 factor of safety against landslide potential
25 for the new addition, over the protected 75-year lifetime

1 typically applied to new development.

2 Slide No. 1 shows the site. There is an existing
3 -- the site is marked, and there is an existing older home on
4 the property that was built in the '50s that is located,
5 approximately, 18 feet inland of the bluff edge. In 1999,
6 there was a notch built that was permitted at the base of the
7 bluff as a preventive measure to slow erosion at the toe and
8 delay the need for a seawall.

9 This owner and the neighbors are currently
10 processing a request for a tied-back seawall as lower bluff
11 protection, through the City of Solano Beach. This area is a
12 highly used public beach area just north of Fletcher Cove
13 Beach Park, which is the main coastal access point for the
14 city, and a prime visitor location.

15 Slide No. 2 is also Exhibit 2 in the staff report
16 -- if it is hard to read -- and it shows the proposed
17 addition in the darker gray hatched area. The location of
18 the 1.5 factor of safety daylight line, under current
19 conditions, is shown by the arrow, and is, approximately, 51
20 feet inland of the bluff edge at the north, and 56 feet
21 inland of the edge of the southern portion of the property.

22 The proposed addition is at 52 to 56 feet inland
23 of the bluff edge, and so based on the slope stability
24 analysis, the addition could be threatened over the 75-year
25 period.

1 In addition, the Commission typically adds the
2 factor of safety line to the protected long term bluff
3 erosion rate, to assure stability over a 75-year time frame
4 for new development, because the factor of safety lines move
5 inland with the retreat of the bluff. In this case, at .4
6 feet per year, times 75 years, thus 30 feet should be added
7 to -- or the factor of safety should be added to 30 feet of
8 inland recession, and that would require the proposed
9 addition, or any new development, to be set back 81 to 86
10 feet.

11 In this particular case, the lot is only 78 feet
12 deep, so it is not possible to meet the Commission's typical
13 standard for new development. In such cases, the Commission
14 has considered denial of the proposed addition to an existing
15 structure in a known hazard area. The economically viable
16 use already exists, so this would be an option; however, the
17 Commission is not -- and the Commission is not required to
18 approve additional improvements to the structure at this
19 time.

20 Denial is more often considered when the addition
21 is a substantial renovation of an existing home, resulting
22 in, basically, an entirely new home, in a non-conforming and
23 hazardous location. In this case, the proposed addition is
24 less than 50 percent of the existing structure, and doesn't
25 result in demolition or replacement of more than 50 percent

1 of the existing structure.

2 Or, as recommended by staff, the Commission could
3 also allow the minor addition on the landward side as
4 proposed, but with a deepened foundation that would extend
5 below the 1.5 factor of safety protected failure surface.

6 As proposed, the applicant's geologist has
7 recommended this deepened foundation for the portion of the
8 proposed addition that is seaward of the 1.5 factor of safety
9 line for existing conditions, and that area is shown in bold
10 on the exhibit.

11 Slide 3 is a cross-section of the site, and it is
12 also Exhibit 3 in the staff report. Given the bluff erosion
13 rate, the staff is recommending the deepened foundation for
14 the entire new development, which we believe is consistent
15 with the Commission's precedent when a lot is not deep enough
16 to accommodate a setback that takes into consideration both
17 the 1.5 factor of safety, and the long term erosion rate,
18 when determining a setback for 75 years.

19 The logical question raised here is why does it
20 matter if the existing structure will be threatened before
21 the addition, due to the fact that it is seaward in location?
22 and, the main reason is the Commission can't make the
23 findings for consistency under *Section 30253* to assure
24 stability, and also the Commission does not typically
25 consider the existing or potential shoreline protection in

1 developing recommendations for setback requirements.

2 And, there is a third reason here for the City of
3 Solano Beach, in that the city is in the process of
4 developing its first LCP Land Use Plan, and that was the
5 subject of an initial hearing before the Commission in
6 November, and this effort includes the challenge of
7 developing a beach and bluff management plan that balances
8 the need to protect private development, public access, and
9 the scenic and visual qualities of public beaches and the
10 bluff-backed shorelines.

11 The draft Land Use Plan, as submitted, contains
12 some innovative components, including an acknowledgement that
13 most, if not all of the homes will require at least lower
14 bluff protection for the existing line of development. And,
15 the *Coastal Act Section 30235* requires the Commission to
16 approve shoreline protection devices to protect existing
17 structures in danger from erosion.

18 But, the city is proposing that any seawall be
19 approved for only 75 years -- again, corresponding to the
20 life of existing development, and that the removal of bluff
21 retention devices will occur, and the beach and bluff will be
22 returned to a natural condition in 2081.

23 In the interim, the city will develop a plan to
24 reduce the need for seawalls, retreat the line of structures,
25 and/or acquire blufftop properties.

1 The staff has indicated that any comprehensive
2 program must include a combination of measures that address
3 proper design and siting of new development, and additions to
4 existing development, to avoid total armoring of the bluff.
5 A combination of the anticipated interim lower-bluff
6 stabilization, along with measures to reduce the size of
7 bluff-top structures, and move the line of development
8 inland, could avoid the need for mid- and upper-bluff
9 stabilization in some cases.

10 Slide No. 4 shows the difference in impacts to the
11 natural land form and scenic qualities of the shoreline
12 between lower stabilization only, which can be constructed to
13 conform fairly closely to the natural land form at the base
14 of the bluff, and the type of mid- and upper-bluff stabili-
15 zation from geo-grid slopes and retaining walls.

16 If the city is serious about lower seawalls being
17 an interim use to protect existing structures and not future
18 development, we feel the plan must include measures to reduce
19 the need for total armoring.

20 The staff recommendation achieves the goal of
21 allowing the existing structure to remain viable, but also
22 preserves the potential option of removing the older more
23 seaward portions of the structure, because the proposed
24 addition could stand on its own, in terms of stability, and
25 not require protection.

1 The staff recommendation is consistent with the
2 approach that the Commission has taken, historically, in its
3 action on new bluff-top development, including additions to
4 existing structures, and it will preserve options for
5 planning purposes, and not set an adverse precedent for
6 development in hazardous areas.

7 And, that concludes my comments, at this time.

8 -CHAIR NEELY: Thank you, staff.

9 Let me look to the Commissioners to see if we have
10 any ex parte communications, starting on my left?

11 [No Response]

12 And, on the right, any ex partes?

13 [No Response]

14 Okay, we have two speaker slips for this item,
15 David Nevins.

16 MR. NEVIUS: Nevius.

17 CHAIR NEELY: Nevius, okay, sorry.

18 MR. NEVIUS: That's correct.

19 CHAIR NEELY: Thank you. How much time would you
20 like, sir?

21 MR. NEVIUS: My presentation is on the order of 7
22 minutes.

23 CHAIR NEELY: Okay, and do you want some time for
24 rebuttal? so I can give you 12?

25 MR. NEVIUS: We'd like a few minutes to answer any

1 questions, if need me.

2 CHAIR NEELY: All right, go ahead and start.

3 MR. NEVIUS: Okay, first of all, I would like to
4 thank the San Diego staff for their efforts in preparing the
5 staff report.

6 CHAIR NEELY: Is his mike on? I don't think it is
7 picking up here.

8 Okay, go ahead, sir.

9 MR. NEVIUS: Like I said, I would like to thank
10 the San Diego staff for their efforts in preparing this
11 report, and for their initial support of this project.

12 I also have a Power Point presentation for this.
13 Staff report is requesting a significant setback
14 line which exceeds the accepted City of Solano Beach setback
15 line, the main consequence of which has been summarized, will
16 require that this small addition be founded on a substantial
17 drilled pier foundation system. This type of foundation
18 system conflicts with the long range plan of the City of
19 Solano Beach's draft LCP, and it will ultimately prevent Mr.
20 Blackburn from a reasonable use of his property.

21 We would like to respectfully request that the
22 Commission consider the use of the city approved setback
23 line, which is supported by the city, and would allow an
24 elimination of this deep foundation system.

25 If I may point your attention to this excerpt

1 taken from Dr. Johnsson's 2002 paper on the establishment of
2 development setbacks for coastal bluffs. This sentence is
3 from that paper, and it reads: this process -- meaning the
4 development of setbacks -- may be thwarted by limitations
5 imposed by parcel size, and constitutional takings issues may
6 complicate land use decisions.

7 In this particular case, Mr. Blackburn has a very
8 small lot, which I will point out in a moment.

9 The other important thing to note, is that in a
10 January 2003 memo, also written by Dr. Johnsson, he points
11 out that his methodology in the 2002 paper is neither the
12 formal position or policy of the California Coastal
13 Commission.

14 So, here we have an aerial photo of the subject
15 site, Mr. Blackburn's parcel, there at 205 Pacific Avenue, is
16 a fairly small house.

17 I think that this map is a little more illuminat-
18 ing. Again, Mr. Blackburn's property is located right there.
19 As you can see, it is, perhaps, the smallest, and certainly
20 one of the shallowest lots on this particular stretch of
21 Pacific Avenue.

22 Let's move into a closer picture. Here, you can
23 see the existing house, the proposed addition in the dark
24 gray. Now, with the City of Solano Beach, they require that
25 slope stability analyses be performed to determine a

1 sufficient setback line.

2 It is a little bit hard to see on this screen, but
3 there is a purple line right here which represents a static
4 slope stability line for a factor safety of 1.5 to the
5 existing bluff.

6 There is a green line just to the left of that,
7 which represents a seismic slope stability line, for a factor
8 of safety of 1.1.

9 It is also important to note that we show that the
10 factor of safety of 1.5 is very conservative, especially when
11 you take into consideration that you would be hard pressed to
12 find any slope in Solano Beach that has a factor of safety
13 anywhere near 1.5. Our slope stability analyses up and down
14 the coast, generally, indicate factors of safety ranging from
15 1.1 to 1.25.

16 Additionally, I will point out the 40-foot setback
17 line in blue, which is the city's minimum setback require-
18 ment, which incidentally is 33 percent greater than the
19 anticipated 75-year erosion amount that is expected to occur
20 at the site.

21 As was pointed out, a very small portion the
22 proposed addition is located slightly seaward of the slope
23 stability line -- of the slope stability setback. We are
24 proposing through the implementation of a localized deepened
25 foundation system that we can penetrate the hypothetical

1 failure surface, and still have the building founded on
2 ground that exceeds that factor of safety of 1.5.

3 The other important line to point out, of course,
4 is the line in red that represents the Coastal Commission set
5 back line using Dr. Johnsson's methodology. As you can see,
6 it extends 30 feet beyond the static slope stability line, in
7 purple.

8 In defense of the city's setback policy -- and I
9 might add that the method that we are following is not only
10 endorsed by the City of Solano Beach, but it is used in other
11 municipalities in San Diego County, as well, including the
12 City of Encinitas.

13 But, the -- let me back up here, for a minute.
14 The important thing to point out, in defending the city's
15 setback policy, the city has consulted with land use
16 attorneys in the past to have workshops with city staff on
17 the development of setback lines, and it was that land use
18 attorney's position, that considering the shallow parcel
19 depths along Pacific Avenue in Solano Beach, that the Coastal
20 Commission's methodology would essentially constitute a
21 taking.

22 Let's move onto this cross-section. In purple, we
23 have the hypothetical failure surface associated with the
24 City of Solano Beach setback line. In the red, we have the
25 hypothetical failure surface associated with the Coastal

1 Commission setback line. The important thing to note here is
2 that by following the city's accepted policy, we can provide
3 support for this proposed addition, which is shaded in gray,
4 using a very localized, slightly deepened footing.

5 If we are required to use the preferred Coastal
6 Commission methodology, then we would be required to install
7 a significant drilled pier system, on the order of 30 to 40
8 feet deep, to support a 370-square foot addition, and garage.

9 So, essentially, what we are requesting from the
10 Commission is that they consider the allowance of using the
11 preferred City of Solano Beach setback, which has been used
12 in past projects, and is the preferred approach on this
13 project. And, by doing so, we will enable Mr. Blackburn the
14 reasonable use of his property, by using the shallow
15 foundation system.

16 That is all.

17 **CHAIR NEELY:** All right, thank you.

18 The next speaker is Ron Blackburn.

19 **MR. BLACKBURN:** Hello, my name is Ron Blackburn.
20 I have been a resident of north county San Diego for 12
21 years, now. We absolutely love the small beach community of
22 Solano Beach. If it possible at all, my wife and I would
23 intend on living in this house for the rest of our lives,
24 retiring there. I am an honorary commander of the San Diego
25 Sheriff Department, and I have a genuine interest in the

1 community.

2 This project, although it is very small, will
3 allow people who have no work right now, to have work in
4 times like this.

5 It is currently a one-bedroom home, and my wife
6 and my daughter and myself have lived in it for 2.5 years.
7 For 2.5 years we have been asking to add 2 small bedrooms to
8 the front of this house, as well as a 2-car garage, because
9 parking is an issue on this street in Solano Beach.

10 The truth is, with the current proposal, with the
11 deepened caissons 30 to 40 feet in the ground, it won't be
12 possible for us to build this home, it is just too costly.

13 So, we are asking that you approve the recommend-
14 ation from Solano Beach on this project.

15 That's it.

16 **CHAIR NEELY:** All right, thank you, sir.

17 **MR. BLACKBURN:** Thank you.

18 **CHAIR NEELY:** And, there is no need for rebuttal,
19 as there were only 2 speakers, and they were both in favor.

20 So, we will bring it back to staff for comment.

21 **DEPUTY DIRECTOR SARB:** Thank you, Chair Neely.

22 First, I would like to address the criteria that
23 staff and the Commission has used to establish setbacks for
24 new development, to assure that the structure is safe over
25 the 75 year period.

1 Dr. Mark Johnsson has indicated that he is often
2 told by other experts in the field, who argue that the
3 setback should be the greater of the daylight line, for the
4 1.5 factor of safety, or the 75 years times the long term
5 erosion bluff retreat rate. But, he feels that would not
6 assure stability for 75 years. For stability, the develop-
7 ment must be located inland, or behind, the 1.5 factor of
8 safety line, and since that line retreats with the bluff, you
9 must add the factor of safety to the erosion rate on this
10 site, and to the site development, so that the site is
11 developed inland of that line.

12 This criteria for determining appropriate bluff
13 top setbacks, we believe, is something that staff will be
14 recommending the city include in their certified Land Use
15 Plan.

16 There certainly is no takings issue here, as I
17 mentioned in my initial comments. There is an existing
18 economically viable use on the property.

19 With our recommendation, the addition would be
20 allowed, just as it is proposed. We are just recommending
21 that there be a deepened foundation for the entirety of the
22 addition.

23 And, in response to the first speaker, we don't
24 understand how this is inconsistent with the long term goals
25 in the city's Land Use Plan. We think it is entirely

1 consistent. It presents feasible options to remove all but
2 the stable portion of a home in the future, and it gives a
3 realistic idea of the development potential for the property.
4 It concentrates the value of the home on the inland portion
5 of the site, without reliance on a seawall, and it allows the
6 Commission to find stability is assured, and protection won't
7 be required, which is consistent with *Section 30253*.

8 And, that concludes my comments.

9 **CHAIR NEELY:** All right, thank you, staff.

10 We will bring it back to the Commission.

11 Commissioner Kruer.

12 **COMMISSIONER KRUER:** Madam Chair, I just have some
13 questions. This one is a little bit troubling to me. I
14 appreciate the hard work staff has done, and listening to the
15 applicant's presentation, et cetera, I mean, I think, as one
16 Commissioner -- may be all of the Commissioners -- it is
17 ludicrous to think that the house, the addition, should be
18 approved on this site, unless it was set back in caissons, et
19 cetera.

20 Even with setback, and looking at the sand lens,
21 and all of the other things on this house, it is very
22 difficult to achieve a finding -- and I wanted to ask staff
23 about that, because I understand when someone, the argument
24 that they made on the takings, there is no takings when you
25 have an existing house, and somebody is just making an

1 addition to that house.

2 That being said, why do we take this -- how can we
3 make a finding? even on the setback with the caissons in,
4 start digging into that hillside, putting pounding caissons
5 in, and everything, that with the factor of 1.5. do you feel
6 very comfortable, you know, with Dr. Johnsson, and Leslie
7 Ewing? Have you really looked at this, because I am not
8 saying you are wrong, but I question the fact whether or not
9 we, even us, can make those findings.

10 I find the discussion from the applicant is,
11 basically, I couldn't conceive adding an addition here, doing
12 anything to a house here, unless you put the caissons. So, I
13 agree with staff on that.

14 I am still concerned that it isn't enough, and do
15 you really feel comfortable with the factor of 1.5 can work?

16 **DEPUTY DIRECTOR SARB:** All I can tell you is that
17 our staff geologist and our engineer did review the slope
18 stability analysis, and they are in support of the staff
19 recommendation. They helped develop the staff recommendation
20 that requires the deepened foundations for the new develop-
21 ment of the portion of the project that is before the
22 Commission today.

23 **COMMISSIONER KRUER:** Okay, let me ask you this.

24 Is the waiver that the applicant agrees to, if
25 they go with the staff recommendation, is it only applying to

1 the new addition? or does it apply to the existing house,
2 also?

3 **DEPUTY DIRECTOR SARB:** It would only apply to the
4 new addition.

5 **COMMISSIONER KRUER:** And, that is kind of
6 troubling, too, so I am just trying to understand this.

7 We have had this argument, or discussion, before
8 with houses built on bluff tops, and there is no assurance
9 that somebody can build on, create bigger houses, and some
10 houses on bluff faces up and down the coast shouldn't have
11 been built, or given permits to begin with, because of the
12 soils, the bluff tops, and everything else.

13 It just seems to me that if you were coming in and
14 saying you were going to build a house, a new house, new
15 development, and there is the property rights -- if it
16 doesn't have an existing house -- I am more troubled by the
17 fact that we are leaping from taking an existing house, and
18 adding an addition onto it, where we know there is a problem.

19 It is concern of mine, and I am comforted by the
20 fact that you told me that Dr. Johnsson, and Leslie Ewing
21 have looked at it, and I have a lot of confidence in what
22 they do, but this one is very -- I am very much concerned
23 about it, and I just wanted to ask you a few questions on it.

24 **EXECUTIVE DIRECTOR DOUGLAS:** Madam Chair.

25 **CHAIR NEELY:** Yes, Director Douglas.

1 **EXECUTIVE DIRECTOR DOUGLAS:** I am sorry, I didn't
2 make this comment before we completed our response.

3 I just want to remind the Commission, again, the
4 applicant made comments, in terms of what his personal needs
5 are, and we understand that, and appreciate it.

6 But, again, I need to remind the Commission that
7 our charge here is to look at the land use, to look at the
8 issue of the appropriateness of the use, and the site in the
9 location that is being proposed, and what that means in terms
10 of precedent, and the other issues -- like the ones that
11 Commissioner Krueer just raised -- not the personal situation
12 of the applicant.

13 So, I just wanted to add that for context here.

14 **CHAIR NEELY:** All right, thank you.

15 Commissioner Wan.

16 **COMMISSIONER WAN:** Yes, I also have a lot of
17 concerns about this one. Let me make a couple of comments,
18 and then go into some of the specifics.

19 On the issue of takings, let's make it clear,
20 there is no issue of takings here. You have a house on
21 there. You have use of the property, and there is no way
22 that this can be considered a takings, whether we allow this
23 addition to occur, or not.

24 The other comment I would like to make to staff,
25 is I don't really find, even the lower bluff walls look like

1 the natural bluff. I certainly don't find them attractive.
2 That having been said, we need to look at this.

3 I am concerned. I look at where that 1.5 factor
4 of safety line is, and in essence that is currently at the
5 edge of where the addition is going to go in, and so it is
6 clearly an unstable situation. And, particularly, I am
7 concerned here about -- even with the deepened footings --
8 there is a clean sand lens in these bluffs. That seems to
9 mean that most things can cause this bluff to simply crumble,
10 and that clean sand lens is sitting under the existing house.
11 What happens when you start pounding in to do any kind of
12 development in the rear, to the basis in the bluff to support
13 the existing residence? what is going to happen here? have we
14 looked at that question? because that concerns me. Are we
15 going to find a situation where we are going to have to allow
16 some armoring of the bluff to support the existing residence,
17 because it is going to be undermined as the result of this
18 construction activity?

19 I mean, this is a whole -- I look at this, and it
20 is really an untenable situation here, because under the main
21 house, as it exists, it is clearly unstable, everything shows
22 that it is unstable.

23 **DEPUTY DIRECTOR SARB:** I can't tell you if that
24 has been looked at specifically, addressed in the
25 construction techniques for any development proposal.

1 I did indicate to the Commission, if you are
2 uncomfortable with approval of improvements to an existing
3 structure in a hazardous location, such as this, that denial
4 would be an option. These are very difficult questions, that
5 we wrestled with each one of these, and looked at the site
6 specific circumstances continually, and have for years, and
7 these are very difficult questions that the city is going to
8 have to address in their LCP.

9 This was staff's attempt at a recommendation that
10 would allow the addition to go forward, but you are correct,
11 the foundation would be expensive, it would be deep, and we
12 have certainly examples where activities on the bluff face,
13 not necessarily this distance back inland from the bluff
14 edge, but on the bluff face, that that kind of activity has
15 been noted.

16 **CHAIR NEELY:** All right, thank you.

17 Commissioner Secord.

18 **COMMISSIONER SECORD:** Thank you, Madam Chair.

19 This is a very high risk site, and if we are going
20 to approve this development, then I think we need to do it
21 with the caissons and the whole deal.

22 I wanted to ask a couple of questions. One has to
23 do with the liability that this applicant is incurring, to
24 the extent that they start hammering, or doing caissons into
25 the bluff, and they loosen something that would accrue to

1 other properties, and cause damage, they would be responsible
2 for that, and they would have insurance, or a bonding way, to
3 cover damage, or something, to an adjacent parcel? how does
4 that work, if you could help?

5 **CHIEF COUNSEL SCHMELTZER:** I believe, yes, they
6 would be responsible. We do not obligate them to provide
7 bonding to their neighbors; however, their neighbors would
8 have a cause of action against them, and it would be up to a
9 court to decide whether, in fact, they had caused the damage.
10 It would be a torte action.

11 **COMMISSIONER SECORD:** Okay, so the second
12 question, then, has to do with page 7 of the staff report.
13 The third paragraph, where it talks about the applicant,
14 along with other homeowners, is processing requests to the
15 city to construct a 20-foot high tide-back wall along the
16 section of the shoreline.

17 So, in the event that this tied-back wall were
18 successfully pursued, according to page 7 of the staff
19 report, what does that do to the factor of safety? In other
20 words, if you put a seawall down that bluff, what happens to
21 the factor of safety? is it the same? or would it be a
22 different number?

23 **DEPUTY DIRECTOR SARB:** The Commission, typically,
24 does not rely on the presence of an existing seawall to
25 determine what the factor of safety is.

1 **COMMISSIONER SECORD:** So, the factor safety is
2 independent of any bluff -- any seawall, revetment or
3 armoring, or whatever?

4 **DEPUTY DIRECTOR SARB:** That is my understanding,
5 yes.

6 **COMMISSIONER SECORD:** Okay, thank you, very much.

7 **CHAIR NEELY:** Thank you.
8 Commissioner Achadjian.

9 **COMMISSIONER ACHADJIAN:** Thank you, Madam Chair,
10 considering the difficulties shared by my colleagues, if
11 something was to go wrong, since we are the body to process
12 the application, I would like to see some clause that would
13 indemnify us.

14 **DEPUTY ATTORNEY GENERAL PATTERSON:** You are immune
15 from liability under the *Torte Claims Act* for the issuance of
16 permits.

17 **COMMISSIONER ACHADJIAN:** Okay.

18 **CHAIR NEELY:** All right, anyone else?

19 [MOTION]

20 **COMMISSIONER SHALLENBERGER:** I move that the
21 Commission approve Application No. 6-08-62 pursuant to the
22 staff recommendation, and recommend a "No" vote.

23 **COMMISSIONER KRUER:** Second.

24 **CHAIR NEELY:** We have a motion by Commissioner
25 Shallenberger, seconded by Commissioner Kruer. The maker and

1 seconder are recommending a "No" vote.

2 Would you like to speak to the motion?

3 **COMMISSIONER SHALLENBERGER:** Well, just to
4 reiterate what has been said already by several Commissioners
5 up here, is that this is a particularly high risk site, and
6 there is already an economic use, so the question of a
7 takings is not fairly before us, and I think this is too high
8 a risk. It is an unstable bluff, and we should not be
9 approving, even with the deepened caissons, that we should
10 not be approving any additional development here.

11 **CHAIR NEELY:** All right.

12 Would the "seconder" like to speak to the motion.

13 **COMMISSIONER KRUER:** No, Madam Chair. I think the
14 people have covered it, and you know, I just gave grave
15 concerns on this item.

16 **CHAIR NEELY:** All right.

17 We have a motion by Commissioner Shallenberger, a
18 second by Commissioner Kruer. The maker and seconder are
19 recommending a "No" vote. Passage of the motion will result
20 in denial of the permit.

21 Any other comments from Commissioners?

22 [No Response]

23 Do we need a roll call vote on this item?

24 **COMMISSIONER WAN:** Yes.

25 **CHAIR NEELY:** All right, then, would the Clerk

1 please call the roll.
2 **SECRETARY MILLER:** Commissioner Achadjian?
3 **COMMISSIONER ACHADJIAN:** No.
4 **SECRETARY MILLER:** Achadjian, "No".
5 Commissioner Blank?
6 **COMMISSIONER BLANK:** No.
7 **SECRETARY MILLER:** Blank, "No".
8 Commissioner Burke?
9 **COMMISSIONER BURKE:** No.
10 **SECRETARY MILLER:** Burke, "No."
11 Commissioner Clark?
12 **COMMISSIONER CLARK:** No.
13 **SECRETARY MILLER:** Clark, "No".
14 Commissioner Hueso?
15 **COMMISSIONER HUESO:** No.
16 **SECRETARY MILLER:** Hueso, "No".
17 Commissioner Secord?
18 **COMMISSIONER SECORD:** No.
19 **SECRETARY MILLER:** Secord, "No".
20 Commissioner Kruer?
21 **COMMISSIONER KRUER:** No.
22 **SECRETARY MILLER:** Kruer, "No".
23 Commissioner Potter?
24 **COMMISSIONER POTTER:** No.
25 **SECRETARY MILLER:** Potter, "No".

1 Commissioner Shallenberger?
2 **COMMISSIONER SHALLENBERGER:** No.
3 **SECRETARY MILLER:** Shallenberger, "No".
4 Commissioner Wan?
5 **COMMISSIONER WAN:** No.
6 **SECRETARY MILLER:** Wan, "No".
7 Chairman Neely?
8 **CHAIR NEELY:** No.
9 **SECRETARY MILLER:** Chair Neely, "No".
10 The vote is unanimous.
11 **CHAIR NEELY:** Okay, the Commission hereby denies
12 the Coastal Development Permit.

13 *

14 *

15 [Whereupon the hearing concluded at 12:15 p.m.]

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTICE

This transcript has been sealed to protect its integrity. Breaking my signature seal, or the transcript binding seal, will void the Reporter's Certification

If either of these seals is broken, the transcript shall be returned to the court reporter for recertification for an additional fee of \$500.00.

To purchase a certified copy of this transcript please contact the court reporter who is the signatory below.

R E P O R T E R ' S C E R T I F I C A T E

STATE OF CALIFORNIA)
) SS.
COUNTY OF MADERA)
)

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 25 pages represent a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission for their hearing of March 11, 2009.

Dated: April 21, 2009

PRISCILLA PIKE
PRISCILLA PIKE