

CALIFORNIA COASTAL COMMISSION

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



Th 17a

Filed: April 10, 2009
 Staff: G. Cannon-SD
 Staff Report: May 21, 2009
 Hearing Date: June 10-12, 2009

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: 6-08-62-R

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

Commission Action and Date:

On March 11, 2009, the Commission denied the proposed development for demolition of existing garage and construction of 342 sq. ft. below grade garage and 369 sq. ft. first floor addition.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 C.C.R. section 13109.2(a).)

The grounds for reconsideration of a permit denial are provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS:

In the attached letter dated April 9, 2009, the applicant contends that errors of fact or law have occurred that have the potential of altering the initial Commission decision. The applicant asserts the following in support of his request: 1) Commissioners' "mischaracterization" of the installation of deepened pier foundation as "pounding casings into the ground" implied the construction activity would destabilize the bluff and, thereby "alarmed other Commissioners, altering their initial inclination to agree with Commission staff."; 2) Commissioners suggested that Commission staff should be using a factor of safety against sliding of greater than 1.5.

-
- I. **MOTION:** *I move that the Commission grant reconsideration of Coastal Development Permit No. 6-08-62-R*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Following staff's recommended "no" vote will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. **6-08-62-R** on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

II. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Project Description. The applicant is requesting that the Commission reconsider its denial of the applicant's request to demolish an existing 225 sq. ft. garage and construct a below grade 342 sq. ft. garage and 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. The proposed below grade garage would be located as close as 52 ft., and first floor addition as close as 56 ft. from the bluff edge.

In its action to deny the application request, the Commission determined the development was located in a high risk location which, based on the geotechnical information provided by the applicant, could require shoreline protection over its lifetime which would be inconsistent with the requirements of Sections 30235 and 30253 of the Coastal Act (Ref. Exhibit #2, "Reporter's Transcript of Proceedings).

The subject site is located on Pacific Avenue, five lots north of Fletcher Cove Beach Park, the City's primary beach access point.

B. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit #1) contends that errors of fact and law occurred which have the potential for altering the Commission's decision. The applicant has generally cited 2 points of contention: 1) Commissioners' "mischaracterization" of the installation of a deepened pier foundation as "pounding casings into the ground" implied the construction activity would destabilize the bluff and, thereby "alarmed other Commissioners, altering their initial inclination to agree with Commission staff."; 2) Commissioners suggested that Commission staff should be using a factor of safety against sliding of greater than 1.5, which the applicant asserts is at variance from the code requirements for all engineering works in the County.

1. Construction Activity/Destabilization of Bluff. The applicant claims that Commissioner Kruer alarmed other Commissioners when he suggested the construction and installation of deepened caisson piers for foundation support might destabilize the bluff. The applicant identifies that Commissioner Wan also raised the concern about "pounding in to do any kind of development" at the site. In the reconsideration request,

the applicant's engineer identifies the installation of deepened caisson piers in this particular case does not involve "pounding".

The project proposed by the applicant involved the demolition of the existing garage and the construction of a 342 sq. ft. below grade garage and a 369 sq. ft. first floor addition to the existing 1,414 sq. ft. single-family residence. The applicant was not proposing to install deepened caisson piers and, during the public hearing, the applicant stated that it would be too costly for him to install the deepened caisson piers and asked that the Commission remove this requirement from the permit. However, as identified in the Staff Recommendation Report and in the Staff presentation at the hearing, the applicant was proposing to site his new development in a location that would not assure stability over 75 years and would, therefore, likely require shoreline protection over its lifetime, which would be inconsistent with Sections 30235 and 30253 of the Coastal Act. Based on the applicant's geotechnical report, Commission staff determined that in order to construct the additions at a safe location, so as to not require shoreline protection, the additions would need to be sited at a minimum of 81 ft. landward of the bluff edge on the northern portion of the site and a minimum of 86 ft. landward of the bluff edge on the southern portion of site. Since the lot is only about 78 feet in depth, it was not possible for the applicant to meet those setback requirements to assure the safety of the proposed additions. Because the proposed additions could not be sited safely on the site through the use of bluff edge setback, Commission staff recommended that the Commission require the use of a deepened foundation system to assure a 1.5 factor of stability against sliding. With such a foundation, the applicant would then be able to construct the additions at his proposed 51-56 ft. setback from the bluff edge.

While it is true that Commissioners used the term "pounding" to describe the construction activity associated the use of deepened caisson piers, based on reading the transcript of the hearing, the Commission's primary basis for denial was not in reliance on concerns with the installation of the caisson piers, but rather with constructing any new additional development on this hazardous site. As cited in the staff report for the subject development, the Commission had substantial evidence as to the unstable nature of the bluffs at the subject site based on: 1) the applicant's geotechnical report; 2) the previous notch infills that were installed below the subject site (Ref. CDP No. 6-99-103/Coastal Preservation Association and CDP 6-05-91/O'Neil, et. al.); 3) numerous shoreline protective device permits nearby the subject site in Solana Beach (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, Santana and 6-03-33/Surfsong); and 4) the pending local permit before the City involving the construction of a 20 ft.-high tied-back structural wall at the subject site to cover the previous notch infills areas. In addition, the applicant's engineer stated during the public testimony that "you would be hard pressed to find any slope in Solana Beach that has factor of safety anywhere near 1.5. Our slope stability analyses up and down the coast, generally, indicate factors of safety ranging from 1.1. to 1.25." (Ref. Page 10, Line 11 of Exhibit 2).

Based on a review of the “Reporter’s Transcript of Proceedings” (Ref. Exhibit 2), the Commission did cite concerns with the construction activity itself on this unstable blufftop site. However, it is clear that their decision was based on an overriding concern that the site was currently unstable and therefore, no new development should be authorized. 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, Line3 of Exhibit #2 – Reporter’s Transcript of Proceedings)

Based on review of the Commission hearing transcript, the Commission’s decision was not based on or necessarily influenced by the Commission’s concern about “pounding” of the caissons into the bluffs. Rather the decision was based on substantial evidence as to the unstable nature of the site, the fact that the applicant already has reasonable use of the site with his existing home, and whether any additional development should be authorized beyond that which already exists. Therefore, while the Commission may have been factually incorrect as to the method of caisson installation, that error does not have the potential for altering the Commission’s previous decision. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

2. Factor of Safety. The second contention by the applicant is that Commissioner Krueer suggested the use of a factor of safety against sliding of higher than 1.5, which the applicant asserts is at variance from the code requirements for all engineering works in the County. Therefore, the applicant asserts the Commissioner seemed “confused” as to the use of the 1.5 factor of safety against sliding.

In review of the siting of new development, the Commission must determine where it can be sited so that it is safe and will not require the construction of shoreline protective devices:

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. [. . .]

For blufftop developments such as the proposed addition, the Commission requires a thorough geotechnical evaluation of the site that includes, among other things, an

estimation of the longterm erosion rate and the location of the 1.5 factor of safety after 75 years. In the case of the proposed addition, it was determined that the location of the 1.5 factor of safety after 75 years of erosion was 81 to 86 ft. landward of the bluff edge.

Based on a review of the Commission hearing transcript, Commissioner Kruer questioned the effectiveness of a 1.5 factor of safety relating to the use of the caisson pier foundations (Ref. Commissioner Kruer, Page 16 of Exhibit 2). While the applicant appears to interpret the Commissioner's question as "confused", the Commissioner seems to simply ask whether the Commission could make a finding that stability could be achieved even with the caisson foundations. In response, Commission staff clarified for the Commission that both the Commission's geologist and coastal engineer were in agreement with the recommendation to install the caisson pier system in order to achieve the required stability standard of 1.5. Therefore, a review of the transcript does not support the applicant's assertion that Commissioner Kruer suggested a higher value than 1.5 would be appropriate, rather Commissioner Kruer asked whether Commission staff was certain the 1.5 standard could be met even with the use of the caisson foundation.

In addition, based on a review of the Commission hearing transcript, the Commission identified serious concerns with the stability of the proposed development site that were unrelated to the use of caissons, which were recommended by staff to achieve the necessary 1.5 factor of safety against sliding. Some examples of these concerns are as follows:

- - I am more troubled by the fact that we are leaping from taking an existing house, and adding an addition onto it, where we know there is a problem. (Commissioner Kruer, Page 17, Line 16 of Exhibit #2)

I mean, this is a whole - - I look at this, and it is really an untenable situation here, because under the main house, as it exists, it is clearly unstable, everything shows that it is unstable. (Commissioner Wan, Page 19, Line 19 of Exhibit #2)

Based on a review of the hearing transcript, the applicant's contentions as they relate to the use of caisson piers and the application of the 1.5 factor of safety do not appear to be new information or errors in fact or law that have the potential of altering the Commission's previous decision. Instead, the Commission simply was not comfortable approving additional development on this hazardous site, even with a deepened foundation. Thus, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3).

In summary, the applicant has not presented any new relevant facts or information that could not have been presented at the original hearing. In addition, the applicant has not demonstrated any error of fact or law that has the potential for altering the Commission's previous decision. Therefore, the reconsideration request is denied.



Geotechnical Engineering
Coastal Engineering
Maritime Engineering

Proposal No. 1831D
April 9, 2009

RECEIVED

APR 10 2009

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Mr. Gary Cannon
CALIFORNIA COASTAL COMMISSION
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

REQUEST FOR RECONSIDERATION
205 PACIFIC AVENUE (BLACKBURN RESIDENCE)
SOLANA BEACH, CALIFORNIA

CDP APPLICATION NO. 6-08-062

Dear Mr. Cannon:

On behalf of our client, Mr. Ron Blackburn, we are respectfully submitting this request for reconsideration of the Commission's denial of the Coastal Development Permit No. 6-08-062 pursuant to the Staff Recommendations contained in their February 18, 2009, Staff Report for the subject property. We are requesting this reconsideration because we believe that after the close of the public hearing on March 11, 2009, an error of fact occurred, which, in our opinion, altered the ultimate decisions of the Commissioners, causing them to vote against Staff's recommendation to approve the project.

Specifically, immediately after the close of the public hearing, Commissioner Kruer stated his concern about pounding casings into the ground and the implied destabilizing effects of this construction approach. There will be no pounding of anything into the ground and it was Staff's recommendation that the addition be supported on deep piers constructed of reinforced concrete poured into a drilled hole, with no pounding on the coastal bluff. Commissioner Kruer's mischaracterization of the foundation construction understandably alarmed the other Commissioners, altering their initial inclination to agree with Coastal Staff. Commissioner Kruer also appeared to be somewhat confused regarding the factor of safety and suggested that Staff should be using a factor of safety higher than 1.5 for approval of these coastal projects. This is also at variance with the code requirements for all engineering works throughout the County.

EXHIBIT NO. 1
APPLICATION NO.
6-08-62-R
Reconsideration Request

Commissioner Wan then further confused the 1.5 factor of safety line, stating that “it is clearly an unstable situation and particularly I am concerned to hear about, even with the deepened footings, there is a clean sand lens in these bluffs that seems to mean that most things can cause this bluff to simply crumble and that clean sand lense is sitting under the existing house. What happens when you start pounding in to do any kind of development in the rear or to the base in the bluff supporting the existing residence”?

Again, there will be no pounding on or into the bluff, and while the factor of safety is clearly below 1.5, many of the residences in Solana Beach, including the subject residence, were constructed in the 1940s and 1950s, with no instability to the bluffs supporting these structures until the devastating storms during the 1997-98 El Niño storm season, which locally caused 10+ feet of erosion, undermining and destabilizing the sloping coastal terrace deposits, which had previously remained stable for the past century.

Commissioner Krueer’s comments aside, of the 1,100 miles of the California coastline, it is fair to say that virtually all of the coastal bluffs along the California coast have factors of safety below 1.5. This includes essentially all of the urbanized coastal bluffs, and although coastal bluff failures do occur and occasionally damage bluff-top structures, in virtually all cases, this is the result of ongoing marine erosion, which after a period of episodic retreat destabilizes the upper sloping coastal bluff. This results in a bluff failure that then re-equilibrates, then providing decades of reasonably stable coastal bluffs until ongoing marine erosion again destabilizes the upper coastal bluff.

Mr. Blackburn’s proposed 369 square foot addition is located between 52 and 56 feet from the bluff edge, which, when compared with most coastal development along California’s urban coastline, is relatively stable and much more so than all of the other existing residences along the Solana Beach coastline, all of which are much closer than 52 to 56 feet from the bluff edge.

Coastal Staff correctly noted that “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 ... 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 ... 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.” Coastal Staff again correctly note that “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.”

Coastal Staff also correctly noted that “one alternative available to the applicant [to protect his proposed bluff-top improvements] is to construct deepened caisson foundations for the new development, which will provide a 1.5 factor of safety against sliding so as not to require shoreline protection for its lifetime. The Commission’s Coastal Engineer and Geologist have confirmed that the structural stability of the bluff-top addition could be assured if such caisson foundations were in fact placed deep enough so as not to be undermined should the bluff erode or collapse in the future.”

As the Staff Report correctly points out, “Special Condition No. 1 has been attached, which requires the proposed residential addition to 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.”

In the absence of any technical explanation from either the Coastal Commission’s Engineer or Geologist describing the long-term safety of the proposed addition when supported on the drilled piers, as recommended in Special Condition No. 1 of the Staff Report, the comments from Commissioners Kruer and Wan tended to obscure the facts pertaining to the long-term stability afforded the proposed 369 square foot addition when supported on deep, reinforced concrete piers placed in drilled shafts, as recommended in Special Condition No. 1 of the Staff Report. It is for this reason that we are requesting reconsideration of this project, and we are asking for the Commission to approve Coastal Development Permit No. 6-08-062 pursuant to Staff’s recommendations.



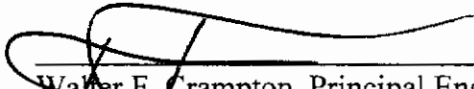
Mr. Gary Cannon
CALIFORNIA COASTAL COMMISSION
Project No. 1831D

April 9, 2009
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If you have any questions or require additional information, please give us a call.

Very truly yours,

TERRACOSTA CONSULTING GROUP, INC.



Walter F. Crampton, Principal Engineer
R.C.E. 23792, R.G.E. 245

WFC/jg

cc: Mr. Lee McEachern, California Coastal Commission
Ms. Leslea Meyerhoff, City of Solana Beach
Mr. Ron Blackburn



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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

EXHIBIT NO. 2
APPLICATION NO.
6-08-62-R
Hearing Transcript
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A P P E A R A N C E S

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Khatchik Achadjian
Steve Blank
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Ben Hueso
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Hope Schmeltzer, Staff Counsel
Jamee Jordan Patterson, Deputy Attorney General
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Vote.....	24

CONCLUSION.....! 25

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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 that 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 Krueger 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 tort 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 Krueer. 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 Krueer. 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".

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Commissioner Shallenberger?

COMMISSIONER SHALLENBERGER: No.

SECRETARY MILLER: Shallenberger, "No".

Commissioner Wan?

COMMISSIONER WAN: No.

SECRETARY MILLER: Wan, "No".

Chairman Neely?

CHAIR NEELY: No.

SECRETARY MILLER: Chair Neely, "No".

The vote is unanimous.

CHAIR NEELY: Okay, the Commission hereby denies
the Coastal Development Permit.

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

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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