

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



Wed 24a

Staff: DL-SD
 Staff Report: November 18, 1999
 Hearing Date: December 7-10, 1999

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-89-366-A1

Applicant: Terry Lingenfelder

Agent: Lynne Heidel

Original Description: Construction of a 54 sq.ft. addition to 1st floor of a 2,074 sq.ft. one-story residence and construction of a 1,252 sq.ft. 2nd story with a 185 sq.ft. deck on a 4,050 sq.ft. bluff-top lot.

Proposed Amendment: Amend open space deed restriction required by Special Condition #6 of original permit to allow construction of an approved seawall at the base of the bluff against the bluff face as a permitted use.

Site: 309 Pacific Avenue, Solana Beach, San Diego County. APN 263-312-04.

Substantive File Documents: Certified County of San Diego Local Coastal Program; City of Solana Beach General Plan and Zoning Ordinance; CDP #6-99-100.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed amendment. The amendment will allow the construction of a previously approved seawall as a permitted use against the face of the bluff at the subject site. Construction of a seawall at this location was approved by the Commission in August 1999, with a special condition requiring that the open space deed restriction on the site be amended to allow the seawall to be built. The subject amendment will comply with that special condition. No impacts to coastal resources not previously reviewed and approved by the Commission will occur as a result of the proposed amendment.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-89-366 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote 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 the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment complies with the California Environmental Quality Act because there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development as amended on the environment.

II. Special Conditions.

The permit is subject to the following conditions:

1. Amended Deed Restriction. PRIOR TO ISSUANCE OF THE AMENDMENT, the applicant shall execute and record, in a form and content acceptable to the Executive Director, an amendment to the existing open space deed restriction that prohibits development on the bluff face, extending down from the bluff edge to the bluff toe. The amendment shall revise the prior recorded deed restriction to reflect that the construction of a seawall as approved in CDP #6-99-100 is permissible in the open space area. The amendment shall not modify any other terms of the open space deed restriction. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #6-89-366 not specifically modified herein, shall remain in full force and effect.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The proposed project involves amending a special condition previously placed on permit #6-89-366 to allow construction of a seawall in an open space deed restricted area.

In April 1990, a 1,306 sq.ft. addition to an existing single-family residence at the subject site was approved by the Commission with a number of special conditions, including a prohibition on any changes to the portions of the existing structure located within 25 feet of the bluff edge, and placement of an open space deed restriction over the bluff face (#6-89-366). The open space restriction prohibits the construction of any structures on the bluff face. The findings in support of this condition indicate that the purpose of this restriction was to prevent any construction which could destabilize the bluff face. Specifically, the findings state the condition "is proposed to avoid placement of structures or alteration of natural landforms in such a fashion as to add to the instability of the coastal bluff or remove vegetative cover which serves to retard or prevent bluff erosion." The restriction was not specifically intended to preclude the future building of shoreline protection devices if required in the future to protect existing primary structures.

In August 1999, the Commission approved construction of a seawall at the base of the bluff against the bluff face on the subject site as part of a 352-foot long, 35-foot high seawall spanning eight contiguous properties on Pacific Avenue (#6-99-100). However, as currently recorded, the open space deed restriction on the subject site would not permit construction of a seawall or any other structure on the bluff face. Therefore, the Commission approved the seawall subject to the following special condition:

10. Amend Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall obtain an amendment to Special Condition #6 of Coastal Development Permit #6-89-366 to allow construction of the shoreline protective device approved herein on the bluff face below 309 Pacific Avenue.

In its findings for approval of the seawall project, the Commission indicated that it was in effect making the determination that the previous deed restriction should be amended. The proposed amendment is intended to comply with Special Condition #10 of CDP #6-99-100.

2. Consistency with Chapter 3 Policies of the Coastal Act. Construction of a shoreline protective device is associated with a number of impacts to coastal resources addressed by the Coastal Act, including public access, public recreation, visual resources, and sand supply. However, these issues were addressed by the Commission in detail in its previous approval of a seawall at the subject site (#6-99-100). The findings for approval of the seawall are hereby incorporated into this report. As discussed above, the Commission approved construction of the seawall with the explicit understanding that the subject amendment would be required to allow construction of the wall, and thus, that such an amendment could be found consistent with the policies of the Coastal Act.

As proposed, the amendment will allow only the approved seawall as a permitted use within the open space area against the face of the bluff; no additional structures would be permitted. Special Condition #1 requires the applicants to record an amendment to the prior recorded open space deed restriction to allow for construction of the approved seawall. The Special Condition provides that this amendment is only to allow for

construction of the seawall; the amendment does not allow any other changes to the open space deed restriction. Thus, the deed restriction would continue to ensure that no other structures, which could have an adverse impact on coastal resources, are permitted in the open space area without a further amendment to this permit. Special Condition #2 specifies that all of the other terms and condition of the original approval remain in effect. Therefore, as conditioned, the Commission finds that the proposed amendment is consistent with the applicable Chapter 3 policies of the Coastal Act.

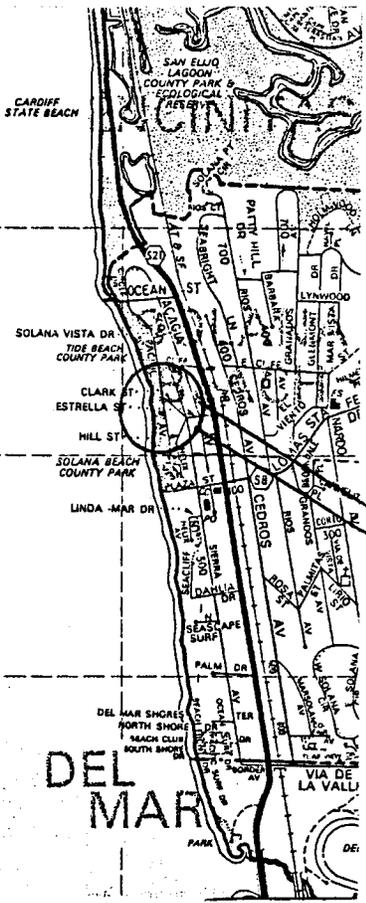
3. Local Coastal Planning. Section 30604(a) requires that a coastal development permit amendment shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions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

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. The City of Solana Beach does not have a certified LCP, thus, Chapter 3 of the Coastal Act is the standard of review. The City of Solana Beach has also approved the construction of a seawall at the base of the bluff at the subject site. The proposed amendment will permit the construction of the seawall, consistent with the City's action. The Commission previously found construction of the seawall consistent with the Coastal Act. Therefore, approval of the proposed amendment will not prejudice the ability of the City of Solana Beach to complete a certifiable LCP.

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

The proposed amendment has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including re-recording the open space deed restriction on the site, 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 amendment is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

PACIFIC OCEAN



Site

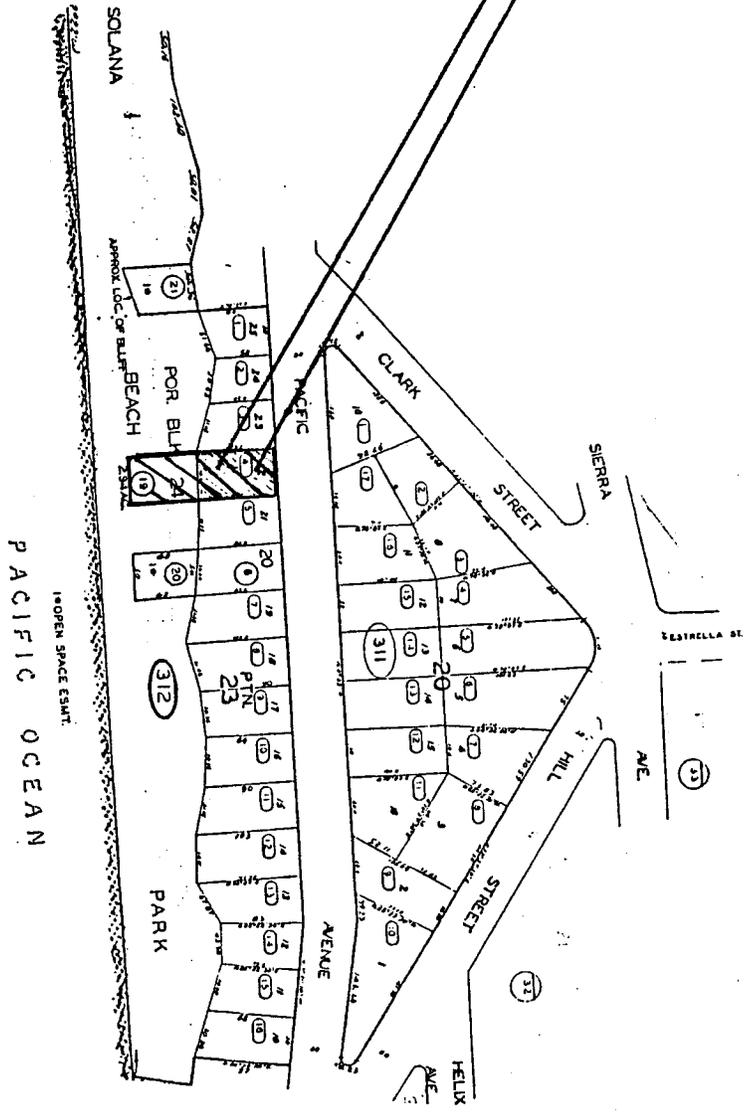


EXHIBIT NO. 1
 APPLICATION NO.
6-89-366-A1
 Location Map



2
3 DEED RESTRICTION
4

5 I. WHEREAS, Terry Lingenfelder and Dale F.
6 Lingenfelder, Trustees of the Terry and Dale Lingenfelder Family
7 Trust dated June 29, 1979, hereinafter referred to as Owners,
8 are the record owners of the real property described in EXHIBIT
9 "A" attached hereto and incorporated by reference herein,
10 hereinafter referred to as the subject property; and

11 II. WHEREAS, THE California Coastal Commission is acting
12 on behalf of the People of the State of California; and

13 III. WHEREAS, the subject property is located within
14 the coastal zone as defined in Section 30103 of the California
15 Public Resources Code (hereinafter referred to as the California
16 Coastal Act); and

17 IV. WHEREAS, pursuant to the California Coastal Act
18 of 1976, the Owners applied to the California Coastal Commission
19 for a coastal development permit for the development on the
20 subject property described above; and

21 V. WHEREAS, coastal development permit No. 6-89-366
22 was granted on April 10, 1990, by the California Coastal
23 Commission in accordance with the provision of the Revised
24 Findings to be recorded as Exhibit B upon adoption by the
25 Commission and thereupon incorporated herein by reference; and

26 VI. WHEREAS, coastal development permit No. 6-89-366
27 was subject to the terms and conditions including but not
28 limited to the following condition:

EXHIBIT NO. 2
APPLICATION NO. 6-89-366-A1
Existing Deed
Restriction
California Coastal Commission

DE 511

1 Open Space Deed Restriction. Prior to the issuance
2 of the coastal development permit, the applicant
3 shall record a restriction against the subject
4 property, free of all prior liens and encumbrances,
5 except for tax liens, and binding on the permittee's
6 successors in interest and any subsequent
7 purchasers of any portion of the real property.
8 The restriction shall prohibit any alteration
9 of landforms, removal of vegetation or the erection
10 of structures of any type in the area shown on
11 the approved site plans as required in Special
12 Condition #7 below, and otherwise described as
13 the bluff face, extending down from the bluff
14 edge to the bluff toe. The recording document
15 shall include legal descriptions of both the
16 applicant's entire parcel and the restricted area,
17 and shall be in a form and content acceptable
18 to the Executive Director. Evidence of recordation
19 of such restriction shall be subject to the review
20 and written approval of the Executive Director.

21 VII. WHEREAS, the Commission found that but for the
22 imposition of the above conditions the proposed development
23 could not be found consistent with the provisions of the
24 California Coastal Act of 1976 and that a permit could therefore
25 not have been granted; and

26 VIII. WHEREAS, Owners have elected to comply with
27 the conditions imposed by Permit No. 6-89-366 so as to enable
28 Owners to undertake the development authorized by the permit.

1 NOW, THEREFORE, in consideration of the granting of
2 Permit No. 6-89-366 to the Owners by the California Coastal
3 Commission, the Owners hereby irrevocably covenant with the
4 California Coastal Commission that there be and hereby is
5 created the following restriction on the use and enjoyment
6 of said subject property , to be attached to and become a part
7 of the deed to the property.

8 1. COVENANT, CONDITION AND RESTRICTION. The undersigned
9 Owners, for themselves and for their heirs, assigns, and
10 successors in interest, covenant and agree that: they are
11 prohibited from making any alteration of landforms, removal
12 of vegetation or the erection of structures of any type in
13 the area shown on the approved site plans shown on EXHIBIT
14 "C" attached hereto and incorporated by reference, otherwise
15 described as the bluff face, extending down from the bluff
16 edge to the bluff toe. The legal description of this restricted
17 area is shown as Parcel B, on EXHIBIT A of this document.

18
19 2. DURATION. Said Deed Restriction shall remain in
20 full force and effect during the period that said permit, or
21 any modification or amendment thereof, remains effective, and
22 during the period that the development authorized by said permit
23 or any modification of said development, remains in existence
24 in or upon any part of, and thereby confers benefit upon, the
25 subject property described herein, and to that extent, said
26 deed restriction is hereby deemed and agreed by Owners to be
27 a covenant running with the land, and shall bind Owners and
28 their assigns or successors in interest.

1 3. TAXES AND ASSESSMENTS. It is intended that this
2 Deed Restriction is irrevocable and shall constitute an
3 enforceable restriction within the meaning of a) Article XIII
4 §8, of the California Constitution; and b) §402.1 of the
5 California Revenue and Taxation Code or successor statute.
6 Furthermore, this Deed Restriction shall be deemed to constitute
7 a servitude upon and burden to the Property within the meaning
8 of §3712(d) of the California Revenue and Taxation Code, or
9 successor statute, which survives a sale of tax-deeded property.
10 4. RIGHT OF ENTRY. The Commission or its respective agent
11 may enter onto the property at times reasonably acceptable
12 to the Owner to ascertain whether the use restrictions set
13 forth above are being observed.
14 5. REMEDIES. Any act, conveyance, contract, or authorization
15 by the Owner whether written or oral which uses or would cause
16 to be used or would permit use of the Property contrary to
17 the terms of this Deed Restriction will be deemed a violation
18 and a breach hereof. The Commission and the Owner may pursue
19 any and all available legal and/or equitable remedies to enforce
20 the terms and conditions of this Deed Restriction. In the
21 event of a breach, any forbearance on the part of either party
22 to enforce the terms and provisions hereof shall not be deemed
23 a waiver of enforcement rights regarding any subsequent breach.
24 6. SEVERABILITY. If any provision of these restrictions is
25 held to be invalid, or for any reason becomes unenforceable,
26 no other provision shall be thereby affected or impaired.
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1 DATED: MAY 10, 1990

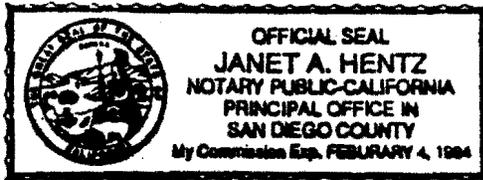
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3 *Terry Lingenfelder*
4 TERRY LINGENFELDER - TRUSTEE

Dale F. Lingenfelder
DALE F. LINGENFELDER - TRUSTEE

5 STATE OF CALIFORNIA)
6)ss
7 COUNTY OF SAN DIEGO)

8 On this 10TH day of May, 1990, before me Janet A. Hentz
9 a Notary Public, personally appeared Terry Lingenfelder and Dale
10 F. Lingenfelder, personally known to me or proved to me on the
11 basis of satisfactory evidence, to be the persons whose names
12 are subscribed to this instrument, and acknowledged to me that
13 they executed it.

14 WITNESS my hand and official seal.



Janet A. Hentz
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

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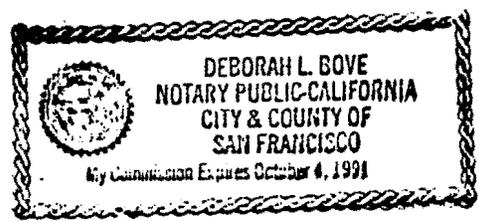
1 This is to Certify that the Deed Restriction set forth above
2 is hereby acknowledged by the undersigned officer on behalf
3 of the California Coastal Commission pursuant to authority
4 conferred by the California Coastal Commission when it granted
5 Coastal Development Permit No. 6-89-366 on April 10, 1990
6 and the California Coastal Commission consents to recordation
7 thereof by its duly authorized officer.

8 DATED: June 13, 1990

9 John Bowers
10 John Bowers, Staff Counsel
CALIFORNIA COASTAL COMMISSION

11 STATE OF CALIFORNIA)
12) ss
13 COUNTY OF SAN FRANCISCO)

13 On this 13th day of June, in the year 1990, before me
14 Deborah L. Bove, a NOTary Public, personally appeared
15 John Bowers, personally known to me or proved to
16 me on the basis of satisfactory evidence to be the person who
17 executed this instrument as Staff Counsel of the California
18 Coastal Commission and acknowledged to me that the California
19 Coastal Commission executed it.



Deborah L. Bove
NOTARY PUBLIC FOR
SAID COUNTY AND STATE

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EXHIBIT "A"

PARCEL A

Lot 22 in Block 23 of SOLANA BEACH, in the County of San Diego, State of California, according to Map thereof No. 1749, filed in the Office of the County Recorder of San Diego County, March 5, 1924.

PARCEL B

That portion of that certain unnumbered lot labeled SOLANA BEACH PARK in the City of Solana Beach, County of San Diego, State of California, according to Map thereof No. 1749 filed in the Office of the County Recorder of Said County, described as follows:

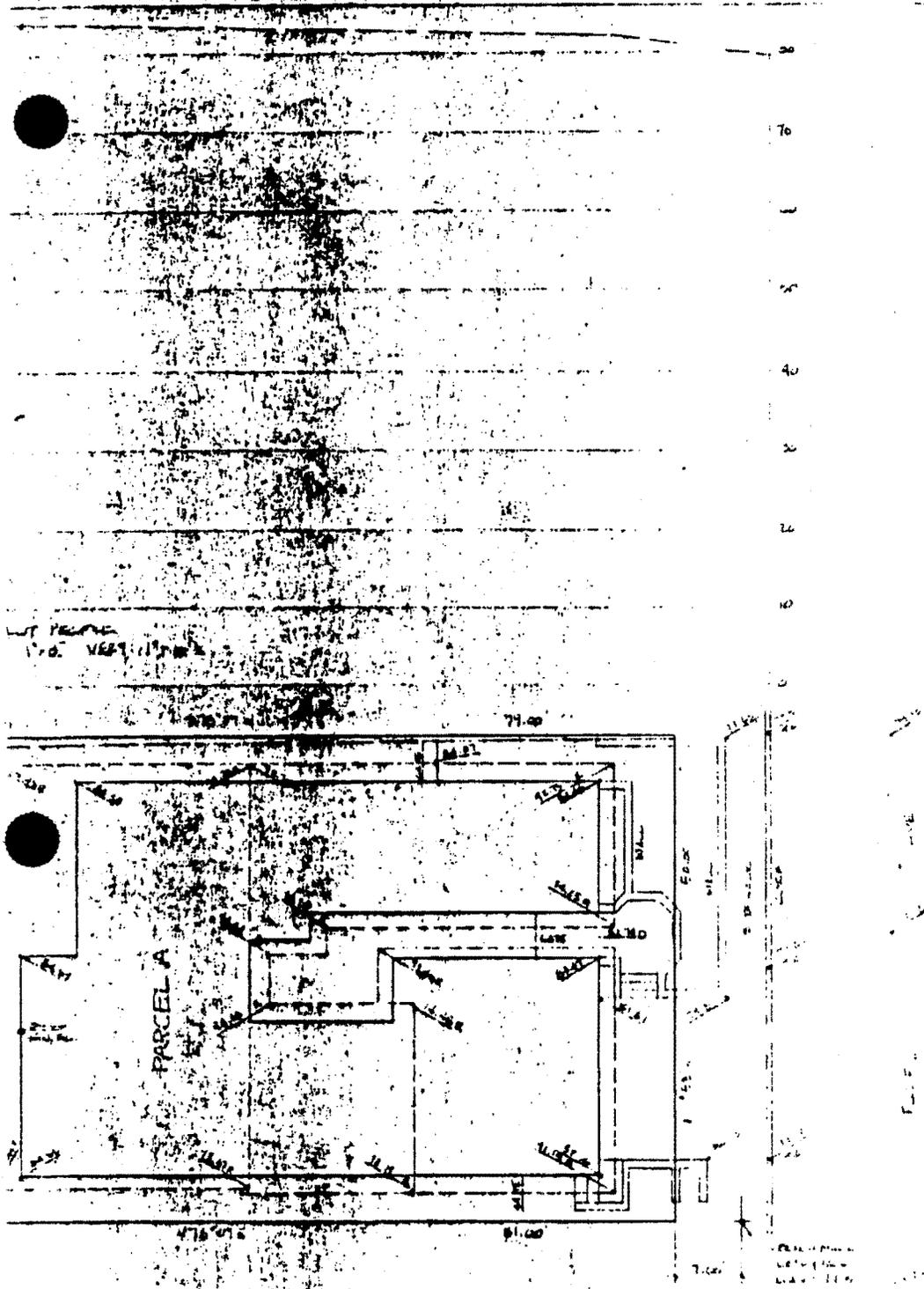
That portion of said SOLANA BEACH PARK lying between the Westerly prolongation of the Northern and Southern lines of that portion of Lot 22, in Block 23, of said Map No. 1749 described in deed to TERRY LINGENFELDER AND DALE F. LINGENFELDER, recorded January 13, 1983

EXCEPTING THEREFROM, that portion thereof lying seaward of the toe of the bluffs. And further reserving a perpetual open space easement as defined in Section 51075 (d) of the California Government Code. Grantee covenants on behalf of Grantee and Grantee's heirs, successors, and assigns, that Grantee will not construct, or permit the construction of, any improvements or structures on the land subject to this reserved easement for which a permit or approval is required by any law without having first obtained the required permit. Nothing in this covenant shall prohibit the maintenance of vegetation on the property subject to the easement provided the maintenance does not require the installation of irrigation systems, terraces, retaining walls or other similar improvements.

EXHIBIT B

REVISED FINDINGS FOR COASTAL DEVELOPMENT PERMIT
NO. 6-89-366 WILL BE RECORDED SUBSEQUENTLY UPON
APPROVAL BY THE CALIFORNIA COASTAL COMMISSION.

EXHIBIT "C"



TOPOGRAPHIC SURVEY
 LOT 22, BLOCK 28
 SOLANA BEACH, MAP 1741
 APN 265 512 04

PREPARED FOR:
 HERBES TRACY, ENCINITAS
 JUNE 1981

LEGEND
 - BOUNDARY
 - EXISTING BUILDING
 - EXISTING DRIVEWAY
 - EXISTING WALKWAY
 - EXISTING UTILITY LINES
 - EXISTING EASEMENTS
 - EXISTING SETBACKS
 - EXISTING ENCROACHMENTS
 - EXISTING ADJACENT PROPERTY

SFS	SANTA FE SURVEYS, INC.
	222 North Highway 101, Suite G Encinitas, California 92021 (619) 435-1200 Local Surveying

