CALIFORNIA COASTAL COMMISSION
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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-98-9

Applicant: Chris and Judith Hamilton Agent: Walt Crampton

Description: Filling a 40-foot wide, 7-foot high, maximum 14-foot deep seacave/undercut area at the base of the bluff below an existing single-family residence with a colored and textured erodible concrete mixture and riprap. This application is a follow-up to an emergency permit granted for the seacave/undercut area fill.

Zoning	Open Space/Recreation
Plan Designation	Open Space/Recreation

Site: Bluff face below 407 Pacific Avenue, Solana Beach, San Diego County. APN 263-051-04.

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; Walt Crampton, "Coastal Development Permit Application For Sea-Cave Infill," October 20, 1998; C.J. Randle, "Report: Sea Cave Plugs," October 12, 1998; CDP #6-98-9-G .

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed seacave/undercut area fill with special conditions requiring long-term monitoring of the fill, regular maintenance, final plans demonstrating the coloring and texturing process, a waiver of liability, and submittal of other required permits. As conditioned, the project will not have a significant adverse impact on shoreline processes, public access and recreation, or the visual quality of the shoreline because the fill will not encroach beyond the bluff face, will erode consistent with the native bluff material, and will be colored and textured to the match the surrounding bluffs.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a plan prepared by a licensed geologist or geotechnical engineer for a seacave/undercut area monitoring program which includes the following:

A. An evaluation of the current condition and performance of the seacave/undercut area, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seacave/undercut area. This evaluation shall include an assessment of the color and texture of the wall comparing the appearance of the wall to the surrounding native bluffs.

B. Current measurements of the distance between each residence and the bluff edge (as defined by Section 13577 of the California Code of Regulations) at 3 or more locations taken within 60 days of Commission action, and annually thereafter. The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. so that annual measurements can be taken at the same bluff location and comparisons between years can provide information on bluff retreat.

C. Current measurements of any differential retreat between the natural bluff face and the seacave/undercut area face, at both ends of the seacave/undercut area and at 20-foot intervals (maximum) along the top of the seacave/undercut face and the bluff face intersection taken within 60 days of issuance of the permit, and annually thereafter. The program shall describe the method by which such measurements shall be taken.

D. Provisions for submittal of a report to the Executive Director of the Coastal Commission on June 1 of each year for three years beginning June 1, 1999. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall contain the measurements and evaluation required in sections a, b, and c above. The report shall also summarize all measurements and provide some analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, including the upper bluff area, and the impact of the seacave/undercut area on the bluffs to either side of the wall, which do not include the construction of structures on the face of the bluff. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. If the seacave/undercut area plug is found to extend seaward of the face of the natural bluff by more than six (6) inches in any location, the report shall include alternatives and recommendations to remove or otherwise remedy this condition such that no seaward extension of the plug will remain.

E. Provisions for submission of a report containing the information identified in section D above at 3 year intervals following the last annual report (i.e., the first of these triennial reports to be submitted on June 1, 2004); however, reports shall be submitted in the Spring of any year in which the following event occurs:

1. A 20-year storm event
2. An "El Niño" storm event
3. A major tectonic event magnitude 5.5 or greater affecting San Diego County

Thus reports may be submitted more frequently depending on the occurrence of the above events in any given year.

F. An agreement that the permittee shall apply for a coastal development permit within three months of submission of the report required in subsection D and E above (i.e., by September 1) for any necessary maintenance, repair, changes or modifications to the project recommended by the report that require a coastal development permit.

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

2. Future Maintenance/Debris Removal. The permittee shall remove all debris deposited on the beach or in the water as a result of construction of shoreline protective device. The permitee shall also remove all debris deposited on the beach or in the water as a result of failure or damage of the shoreline protective device in the future. In addition, the permittee shall maintain the permitted seacave/undercut area in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the seacave/undercut area shall include maintaining the color, texture and integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond minor regrouting or other exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the seacave/undercut area to its original condition as approved herein, will require a coastal development permit. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, including maintenance of the color of the fill to ensure a continued match with the surrounding native bluffs, the permittee shall contact the Commission office to determine whether permits are necessary, and shall subsequently apply for a coastal development permit for the required maintenance. If at any time after project completion, the seacave/undercut area plug is found to extend seaward of the face of the natural bluff by more than six (6) inches in any location, the permittee shall obtain and implement a coastal development permit to remove or other remedy this condition such that no seaward extension of the plug remains.

3. Assumption of Risk: PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from bluff collapse and erosion and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards. 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.

4. U.S. Army Corps of Engineers Permit. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a U.S. Army Corps of Engineers permit, or letter of permission, or evidence that no Corps permit is necessary. Any mitigation measures or other changes to the project required through said permit shall be reported to the Executive Director and shall become part of the project. Such modifications, if any, may require an amendment to this permit or a separate coastal development permit.

5. State Lands Commission Review. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain a written determination from the State Lands Commission that:

a) No state lands are involved in the development; or

b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or

c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

6. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

7. Seacave/Undercut Area Fill Surface Treatment Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the seacave/undercut area fill which describe in detail the construction method and technology utilized for texturing and coloring the fill. Such plans shall confirm, and be of sufficient detail to verify, that the fill color and texture closely matches the adjacent natural bluffs, including provision of a color board indicating the color of the fill material.

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

8. Condition Compliance. WITHIN SIXTY (60) DAYS OF COMMISSION ACTION OF THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The proposed project involves filling 40-foot wide, 7-foot high, maximum 14-foot deep seacave/undercut area with both riprap and pneumatically placed concrete. The cave is located at the base of an approximately 80 foot high coastal bluff below a lot which contains an existing single-family residence. The house was constructed in 1973. This permit application is a follow-up to an emergency permit granted on February 6, 1998 to fill the seacave/undercut area (#6-98-9-G).

The site is located west of Pacific Avenue, south of Cliff Street, in the City of Solana Beach. The City of Solana Beach owns the bluff face and beach below the residence.

Construction of the seacave/undercut area fill involves clearing the area of cobbles and loose materials and filling the cave with both riprap and pneumatically placed 3500 psi concrete. The filled area surface consists of a 12-14 inch thick lean, erodible, colored concrete placed in front of a stronger mixture that incorporates steel matting. The process of plugging and filling with a "leaner" erodible soil-cement mix on the external facade and a "stronger" steel mix internally is intended to allow erosion of the plug to match the rate of natural erosion on the adjacent bluffs. The plug would cease eroding once the 12-14 inches of concrete is gone and the steel is exposed. The external facade of the cave has been colored and textured to match the natural bluff, although the fill material is still curing, and thus is difficult to determine at this time how closely the finished material will match the surrounding bluffs.

In December 1997, the Commission approved the temporary placement and removal of 4-5 ton size riprap boulders along the base of the coastal bluff at the subject site (#6-97-135). However, the riprap was never actually placed at this location.

The City of Solana Beach does not yet have a certified LCP, and the project site is located in an area of the Commission's original jurisdiction. Therefore, Chapter 3 of the Coastal Act is the standard of review.

2. Geologic Stability. Section 30235 of the Coastal Act states, in part:

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...

Section 30253 of the Act states, in part:

New development shall:

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

(2) 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.

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in conjunction with construction of new development. A shoreline protective device proposed in those situations is likely to be inconsistent with various Coastal Act policies. For example, Section 30253 addresses new development and requires that it be sited and designed to avoid the need for protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located at the base of a coastal bluff in the City of Solana Beach. Continual bluff retreat and the formation and collapse of seacaves have been documented in northern San Diego County, including the Cities of Solana Beach and Encinitas. Bluffs in this area are subject to a variety of erosive forces and conditions (e.g., wave action, reduction in beach sand, seacave development). As a result of these erosive forces, the bluffs and blufftop lots in the Solana Beach and Encinitas area are considered a hazard area. Documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in these communities and nearby communities (ref. CDP Nos. 6-98-134/6-93-181/Steinberg, 6-92-212/Wood, 6-92-82/Victor, 6-89-297-G/Englekirk, 6-89-136-G/Adams, and 6-85-396/Swift). In addition, a number of significant bluff failures have occurred along the northern Solana Beach/Encinitas coastline which have led to emergency permit requests for shoreline

protection (ref. CDP Nos. 6-93-181/Steinberg, 6-93-131/Richards et al, 6-93-36-G/Clayton, 6-93-024-G/Wood, 6-92-212/Wood, 6-92-167-G/Mallen et. al., 6-92-73-G/Robinson, and 6-91-312-G/Bradley).

Historically, the Commission has approved a number of regular permits for seacave fills similar to the proposed project on the bluffs in Solana Beach (#6-98-29/Bennett; #6-98-25/Stroben; #6-97-1646/Lingenfelder; #6-96-102/Solana Beach & Tennis Club; #6-92-82/Victor; #6-87-391/Childs). In late 1997 and early 1998 the Commission granted a request for temporary riprap on the beach in front of the subject site and 16 other locations in Solana Beach (CDP Nos. 6-97-125 through 6-97-138; 6-98-2); seven properties eventually placed and then removed riprap from the beach. In addition, in early 1998 the Executive Director granted emergency permits to fill seacave/undercut areas on the bluffs on the property adjacent to the subject to the north (#6-97-157/Folgner) and on the three consecutive properties adjacent to the project site to the south (#6-98-13-G/Johnson; #6-98-21-G/Blackburn; #6-98-27-G/O'Neal). The Commission has since approved follow-up regular permits for these projects.

The geotechnical report submitted with the application provides an evaluation of the condition of the bluffs and coastline in the general area of the project site. The report indicates that mechanisms for sea cliff retreat in this area include undercutting by wave action, storm surf, surge and higher tides. Other factors affecting the rate of bluff retreat include degree of fracturing, jointing, seacave and scour formations, consolidation of sediments, steepness of slope, groundwater and surface water conditions, vegetation or lack of, and intensity of pedestrian and animal traffic. The report states that the rate of sea cliff retreat has been calculated from less than 1 inch to more than 6 inches per year. For the Solana Beach area, the study notes that the lower bluff was calculated to have a retreat rate on the order of 3 inches per year between the years 1968 through 1983. However, the report notes that it is difficult to predict the exact future and magnitude of bluff retreat that may occur in one year, since severe erosion is generally episodic in nature and depends on the intensity of storms and combined high tides.

Between October 1997 and March 1998 the lack of sand on the beaches and other factors resulted in a number of bluff failures and formation of seacaves and notches, or undercut areas, along the Solana Beach shoreline. Winter storms removed both beach sand and cobbles in many instances, leaving only the flat wave cut bedrock platform. Because the base of the cliff contact with the bedrock platform is about -2 feet MSL, the base of the bluffs have been exposed to frequent impact from waves and storm surge. The geotechnical report indicates that erosion impact creates seacaves defined along ancient fault and fracture zones.

Although the report indicates that the bluffs along this section of shoreline will continue to retreat and additional bluff failures in the area are possible, there is no evidence that the home on the blufftop is itself in jeopardy. The residence is set back a minimum of

approximately 23 feet from the bluff edge. Thus, in this particular case, Section 30235 of the Coastal Act does not require that the Commission approve a shoreline-altering device. Nevertheless, although the residence may not be in jeopardy at this time, failure to fill the seacave/undercut areas will perpetuate the risk of future bluff failures that could threaten the existing structure, resulting in requests for construction of far more massive upper and lower bluff protection than the proposed project.

In reviewing requests for shoreline protection, the Commission must assess the need to protect private residential development and the potential adverse impacts to public resources associated with construction of shoreline protection. In numerous past actions, the Commission has found that the filling of seacaves as a preemptive measure can have fewer impacts upon coastal resources and access than the construction of seawalls and upper bluff structures, which are frequently required to protect existing structures after the collapse of seacaves (#6-92-82/Victor; #6-87-391/Childs). Construction of a seawall and/or upper bluff protection is associated with a number of adverse impacts to public resources, including loss of the public sandy beach area displaced by the structure, "permanently" fixing the back of the beach, which leads to the narrowing and eventual disappearance of the beach in front of the structure, and a reduction/elimination of sand contribution to the beach from the bluff. Other impacts include sand loss from the beach due to wave reflection and scour, accelerated erosion on adjacent unprotected properties and the adverse visual impacts associated with construction of shore/bluff protective device on the contrasting natural bluffs.

To address these impacts to shoreline processes, the Commission has developed an in-lieu fee program to provide mitigation for the quantifiable effects of seawalls on the shoreline. The methodology estimates the total quantity of sand necessary to replace: a) the reduction in the beach quality material contributed from the seacliff over the life of the armoring; b) the reduction in beach width which will occur when the landward migration of the beach profile is stopped, over the life the structure; and c) the reduction in beach area which will occur from the seaward encroachment of the seawall. The methodology uses site specific information provided by the project applicant as well as estimates, derived from region-specific criteria, of both the loss of beach material and beach area which could occur over the life of the structure, and of the cost to purchase an equivalent amount of beach quality material and to deliver this material to the beaches in the project vicinity. Once the effects are quantified and the costs totaled, an in lieu fee is paid for use for beach sand replenishment projects as mitigation for impacts of the development on beach sand supply.

However, in contrast to seawall projects, the proposed seacave/undercut area plug is set into the bluff face and would not take up a portion of the beach seaward of the bluff face that is currently available for public use. Because the structure would be within the bluff, the accelerated erosion from increased wave reflection and "edge effects" to adjacent properties associated with seawalls are not expected to occur with the proposed project.

In addition, as noted above, the proposed seacave/undercut area plugging and filling procedure has been designed with a "leaner" soil-cement mix 12-14 inches deep on the external facade and a "stronger" mix internally to allow the plug to erode at the same rate as the adjacent bluffs, at least until the internal steel mat is exposed. Thus, the back of the beach is not permanently fixed in place. Further, the seacave/undercut area will not prevent the continued erosion of bluff face material onto the beach via subaerial erosion since it will not cover any portion of the bluff as a seawall or upper bluff work would.

On the other hand, like a seawall, the proposed project will have an adverse impact on shoreline processes in that by reducing the risk of bluff collapse, the sandy material of the bluff will not contribute to the beach as it eventually would if the site were left unprotected and the bluffs allowed to erode naturally. However, this impact is outweighed by the benefits of constructing the proposed seacave/undercut area plugs now, as a preventative measure, rather than waiting until collapse of the caves requires construction of a seawall, which, as described above, can cause far more adverse impacts to shoreline sand supply and public access. Thus, the shoreline protection mitigation fee has not typically been applied to seacave/undercut area fill projects, and has not been attached to this project.

The geotechnical information submitted indicates that it is difficult to determine the exact rate at which the lean concrete mix will erode. Estimates of the life of the erodible mix range from 3 years to 60 years, as the rate of erosion depends both on the strength gain the mix ultimately achieves, storm conditions, and the presence of beach sand. Approximately twelve inches of erodible mixture is the thickness typically applied to seacave/undercut area fill projects in Solana Beach to mimic the erosion rate of the natural bluffs. Thus, retreat of the lower bluffs is expected to continue at its current rate, and the proposed project will not fix the back of the beach in the immediate future. However, the erodible mix will eventually wear away, leaving the hard concrete plug extending onto the beach. This plug, if not removed, would function as a seawall in that it would block access and fix the back of the beach. Therefore, in order to find the seacave/undercut area fill consistent with Chapter 3 policies of the Coastal Act, the plug must be maintained such that it does not extend seaward of the bluff. If the fill does extend seaward of the bluff, it must be shaved, removed, or otherwise altered to be made flush with the bluff face.

In order to monitor the status of the seacave/undercut area plug (as proposed by the applicant) and to ensure that that the plug continues to function as proposed, thus avoiding future requests for more substantial protective devices, Special Condition #1 has been proposed. Special Condition #1 requires submittal and implementation of a monitoring program to include, at a minimum, periodic measurements of the distance between the bluff edge and the residence, an evaluation of the condition of the plugs (i.e., whether any significant weathering or damage has occurred that would adversely impact the performance of the plugs) and measurements of the distance between the face of the

seacave/undercut area plug and the bluff face, to ensure the plug material is eroding as designed. The initial "baseline" measurements must be taken within 60 days of Commission action. The reports must be submitted to the Commission yearly for the first three years, then at three-year intervals and/or following any major storm event, whichever is more frequent. The condition requires that should the seacave/undercut area plug be found to extend seaward of the face of the natural bluff by more than six (6) inches in any location, the report must include alternatives and recommendations to remove or otherwise address this condition.

In addition, Special Condition #2 requires the applicant to be responsible for the general maintenance of the seacave/undercut area plugs; for example, the removal of debris deposited on the beach during construction of the plug or damage to the plugs in the future. Minor regrouting or exempt maintenance as defined by Section 13252 of the California Code of Regulations to restore the seacave/undercut area plugs to its original condition as approved herein (i.e., color, texture, etc.) shall not require an additional coastal development permit or amendment. However, whenever changes or maintenance on the seacave/undercut area is proposed, the applicant shall contact the Commission office to determine whether permits are necessary.

In addition, in the event that it is determined through the monitoring report or visual observation that any of the seacave/undercut area plugs extend seaward of the face of the natural bluff more than six inches, Special Condition #2 requires that the applicant obtain and implement a coastal development permit to remove the portion extending onto the beach, or to implement other corrective measures. The purpose of this condition is to ensure that the permittee removes any portion of the fill that extends seaward of the bluff face pursuant to a coastal development permit. If for an unforeseen reason the Coastal Commission refuses to grant such a permit, the permittee should obtain an amendment to this permit. If the protruding portion of the plug is removed, the concrete would not adversely impact sand supply. Should the applicant request more substantial shoreline protection in the future, the Commission would reassess the need and appropriateness of assessing the mitigation fee at that time. Thus, the Commission can be assured that, as conditioned, the proposed project will continue to function as proposed, the fill will be properly maintained and that any adverse impacts to shoreline processes have been mitigated.

Thus, the proposed development has been designed and conditioned to be the least environmentally damaging feasible alternative. Failure to pursue the seacave/undercut area fill is likely to result in requests for shoreline and/or upper bluff protection in the future which, if permitted, could have a far greater impact on coastal resources. Although the Commission finds that the seacave/undercut area plugs have been designed to minimize the risks associated with their implementation, the Commission also recognizes the inherent risk of shoreline development. The plugs will be subject to wave action and will be surrounded by an eroding bluff. Thus, there is a risk of bluff failure during and

after construction of the seacave/undercut area fill. In addition, there is a risk of damage to the seacave/undercut area fill or damage to property as a result of wave action on the seacave/undercut area fill. Given that the applicants have chosen to construct the seawall despite these risks, the applicants must assume the risks. Accordingly, Special Condition #3 requires that the applicants record a deed restriction that evidences their acknowledgment of the risks and that indemnifies the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit.

Special Conditions #4 requires the applicant to submit a copy of any required permits from the Army Corps of Engineers, to ensure that no additional requirements are placed on the applicant that could require an amendment to this permit. Because the development has already been constructed, all of the "prior-to-issuance" conditions are required to be satisfied within 60 days of Commission action.

Given the above special conditions, the risk to the bluff top structures will be minimized and future stability assured, without adverse impacts to shoreline sand supply. Therefore, the Commission finds that the subject development, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Visual Resources. Section 30251 of the Act states, in part:

> 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...

The proposed development would be located on the face of a coastal bluff immediately adjacent to and at the same level as the existing sandy beach. Seacaves are a fairly prominent feature of the shoreline in this area, and filling the cave has altered the natural appearance of the bluffs. It can take weeks or even months before the fill material fully cures, and thus it is difficult to tell at this time how well the fill material will blend into the surrounding natural bluffs. Therefore, Special Condition #7 requires the applicant to submit final plans of the method by which the color and texture was applied to the fill material, with a color board indicating the color of the fill material. Per Special Condition #2, the applicant is also required to maintain the color of the fill to ensure the material continues to blend in with the surrounding bluffs in the future. Since the fill material is designed to erode at the same rate as the surrounding natural bluffs, the project will not result in a plug of concrete extending out from the bluffs onto the beach any time in the near future. Special Condition #2 requires monitoring of the fill to ensure it continues to erode. As noted above, if at any point the fill material does protrude as far

as 6 inches onto the beach, the applicant must apply for a coastal development permit to remove the protruding portion of the fill.

There are numerous seacave plugs along the bluffs in Solana Beach. These plugs, while visible, are relatively inconspicuous and do not represent a significant visual blight. The appearance of the proposed project would be consistent with the various existing seacave plugs located in the bluffs along the southern stretch of Solana Beach. Seacave plugs in general are considerably less visually prominent than traditional seawall projects or riprap revetments. Thus, although the project will have an impact on the appearance of the bluffs, the project must be designed and conditioned to match the surrounding natural bluffs to the maximum extent feasible, thereby reducing potential negative visual impacts to a less than significant level. Therefore, the Commission finds that the subject development is consistent with Section 30251 of the Coastal Act.

4. Public Access. Many policies of the Coastal Act address the provision, protection and enhancement of public access to and along the shoreline, in particular, Sections 30210, 20211, 30212.5, 30221, 30223 and 30252. These policies address maintaining the public's ability to reach and enjoy the water, preventing overcrowding by providing adequate recreational area, protecting suitable upland recreational sites, and providing adequate parking facilities for public use. In addition, Section 30604(c) requires that a specific access finding be made for all development located between the sea and first coastal roadway. In this case, such a finding can be made.

The subject project is located on the bluff formation directly adjacent to a public beach. Although public lateral access is available along the entire stretch of coastline in this area, mostly at low tides, vertical access is available only at a limited number of public accessways. Because of the nature of the topography of the area, with steep, fragile coastal bluffs between the first public roadway and the coastline, and the existing, highly developed pattern of development, the provision of additional vertical public access is not practical at this time. In addition, there is an existing public beach stairway approximately one block north of the subject site at Tide Park Beach. The proposed seacave/undercut area filling will not impact this accessway.

Shoreline protection projects do have the potential to impact existing lateral access along the beach. Structures which fix the back of the beach stop the landward migration of the beach profile while the shoreward edge continues to erode, thereby reducing the amount of dry sandy beach available to the public. In the case of the proposed seacave/undercut area filling, the plug material has been designed to erode with the natural bluffs, and thus will not fix the back of the beach.

The City of Solana Beach owns the bluff face and beach on the subject site. Dry, sandy beach is accessible in this area only at lower tides, and thus, the protection of a few feet of beach along the toe of the bluff is more critical in this location than it might be in a

location where the beach is wider. This stretch of beach has historically been used by the public for access and recreation purposes. It is possible that public prescriptive rights have been established in this area and will continue to be established in the future. Special Condition #6 acknowledges that the issuance of this permit does not waive any public rights that may exist on the property. The seacave/undercut area plug may be located on State Lands Property, and as such, Special Condition #5 requires the applicant to obtain any necessary permits or permission from the State Lands Commission to perform the work.

Filling of seacave/undercut areas can present the potential for impacts to public access and recreation resulting from the construction on the beach. However, in the case of the proposed project, the work has already occurred under an emergency permit. No additional work is proposed. Except for minor exempt maintenance as defined by Section 13252 of the California Code of Regulations, any other work will require an amendment to this permit or a new coastal development permit. Therefore, as conditioned, the Commission finds that the subject proposal will not result in any significant adverse impacts on beach access or public recreation consistent with Sections 30210, 30211, 30212.5, 30221, 30223 and 30252, pursuant to Section 30604(c) of the Coastal Act.

5. No Waiver of Violation. On February 6, 1998, the Executive Director issued emergency permit 6-98-9-G. Special Condition #4 of this permit states that within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. Although the follow-up application was not received within the required time period, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to this violation of the Coastal Act that may have occurred; nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

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

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 will, in an likelihood, prepare and submit a new LCP for the area to the Commission for review. Because of the incorporation of the City, the certified County of San Diego Local Coastal Program no longer applies to the area. However, the issues regarding protection of coastal resources in the area have been addressed by the Commission in its

review of the San Diego County LUP and Implementing Ordinances. As such, the Commission will continue to utilize the San Diego County LCP documents for guidance in its review of development proposals in the City of Solana Beach until such time as the Commission certifies an LCP for the City.

In preparation of an LCP, the City of Solana Beach is faced with many of the same issues as the City of Encinitas, located immediately north of Solana Beach, whose LCP was certified by the Commission in March 1995. The City of Encinitas' LCP includes the intent to prepare a comprehensive plan to address the coastal bluff recession and shoreline erosion problems in the City. The plan will include at a minimum, bluff top setback requirements for new development and redevelopment; alternatives to shore/bluff protection such as beach sand replenishment, removal of threatened portions of a residence or the entire residence or underpinning existing structures; addressing bluff stability and the need for protective measures over the entire bluff (lower, mid and upper); impacts of shoreline structures on beach and sand area as well as mitigation for such impacts; impacts for groundwater and irrigation on bluff stability and visual impacts of necessary/required protective structures.

The City of Solana Beach should also address these items in the context of a comprehensive approach to management of shoreline resources. Within the limits of the proposed project development, as conditioned, the project can be found consistent with the Chapter 3 policies of the Coastal Act, and 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.

The project site is designated Open Space Recreation in the City of Solana Beach Zoning Ordinance and General Plan, and was also designated for open space uses under the County LCP. As conditioned, the subject development is consistent with these requirements. Therefore, the Commission finds the proposed development, as conditioned, conforms to all applicable Coastal Act Chapter 3 policies, and the subject development will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

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

The proposed project has been conditioned in order to be found consistent with the geologic stability, visual quality and public access policies of the Coastal Act. Mitigation measures, including conditions addressing seacave/undercut area monitoring and the color of construction materials, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. 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.

7. 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.

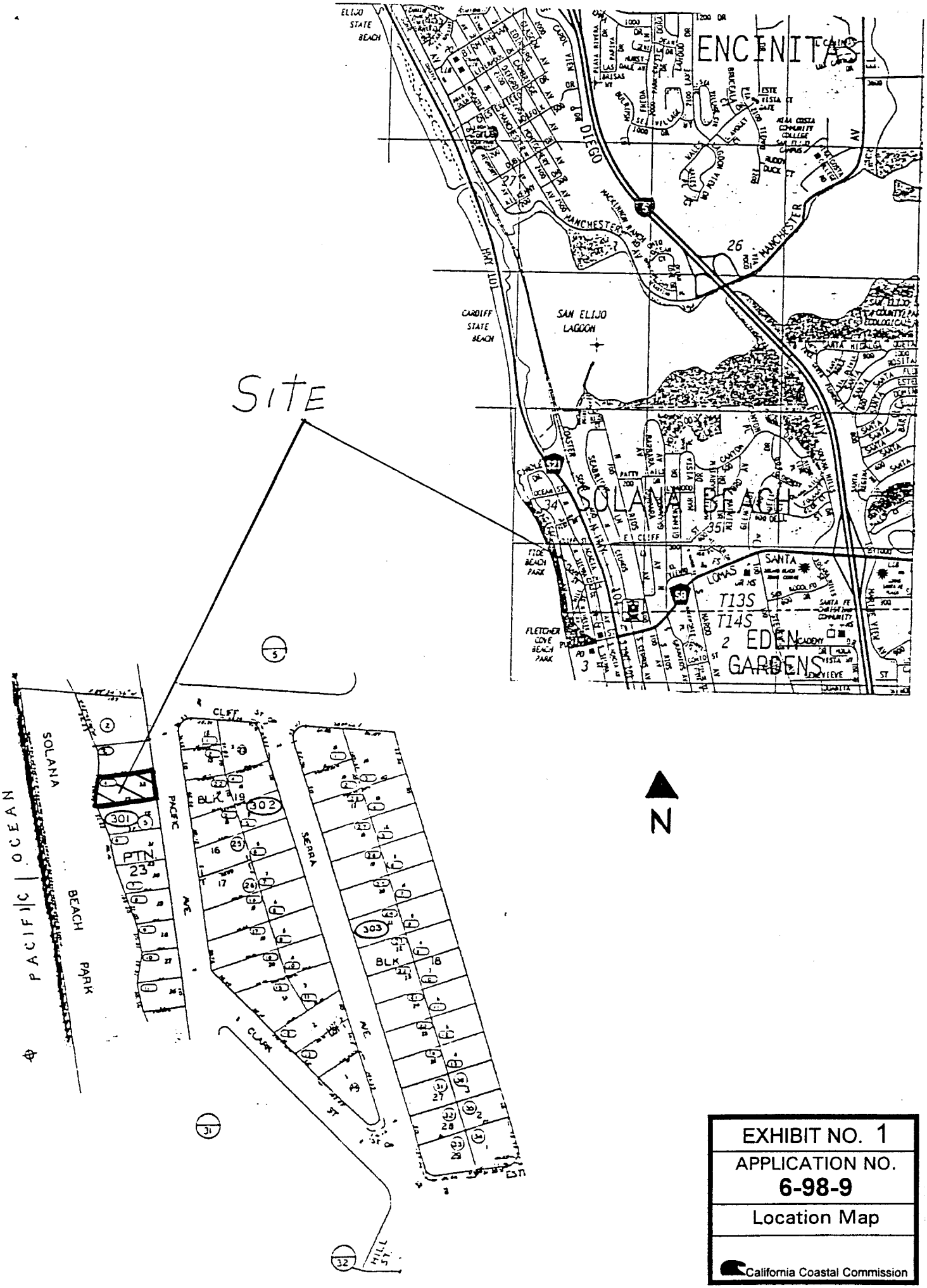


EXHIBIT NO. 1
APPLICATION NO. **6-98-9**
Location Map
California Coastal Commission

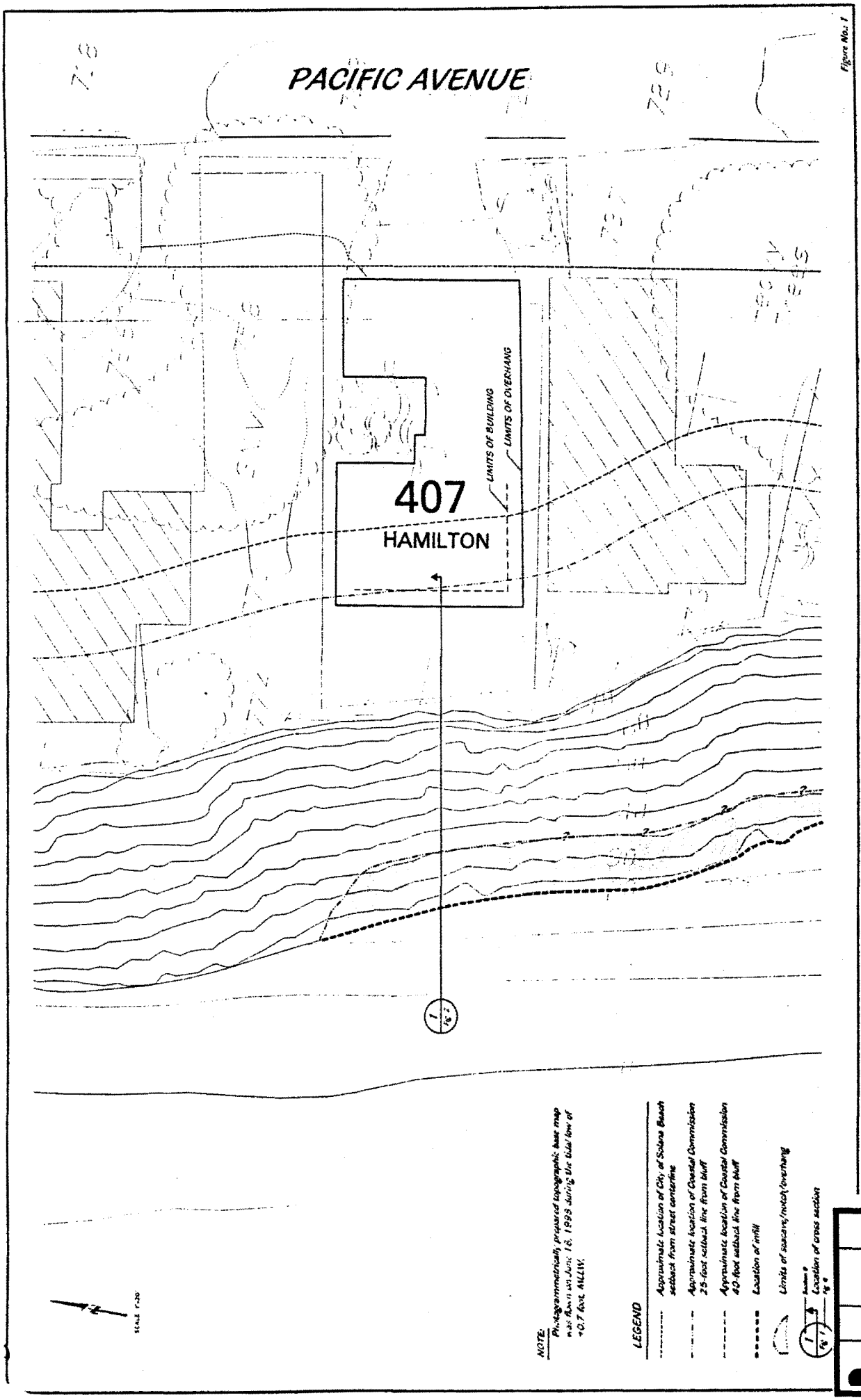
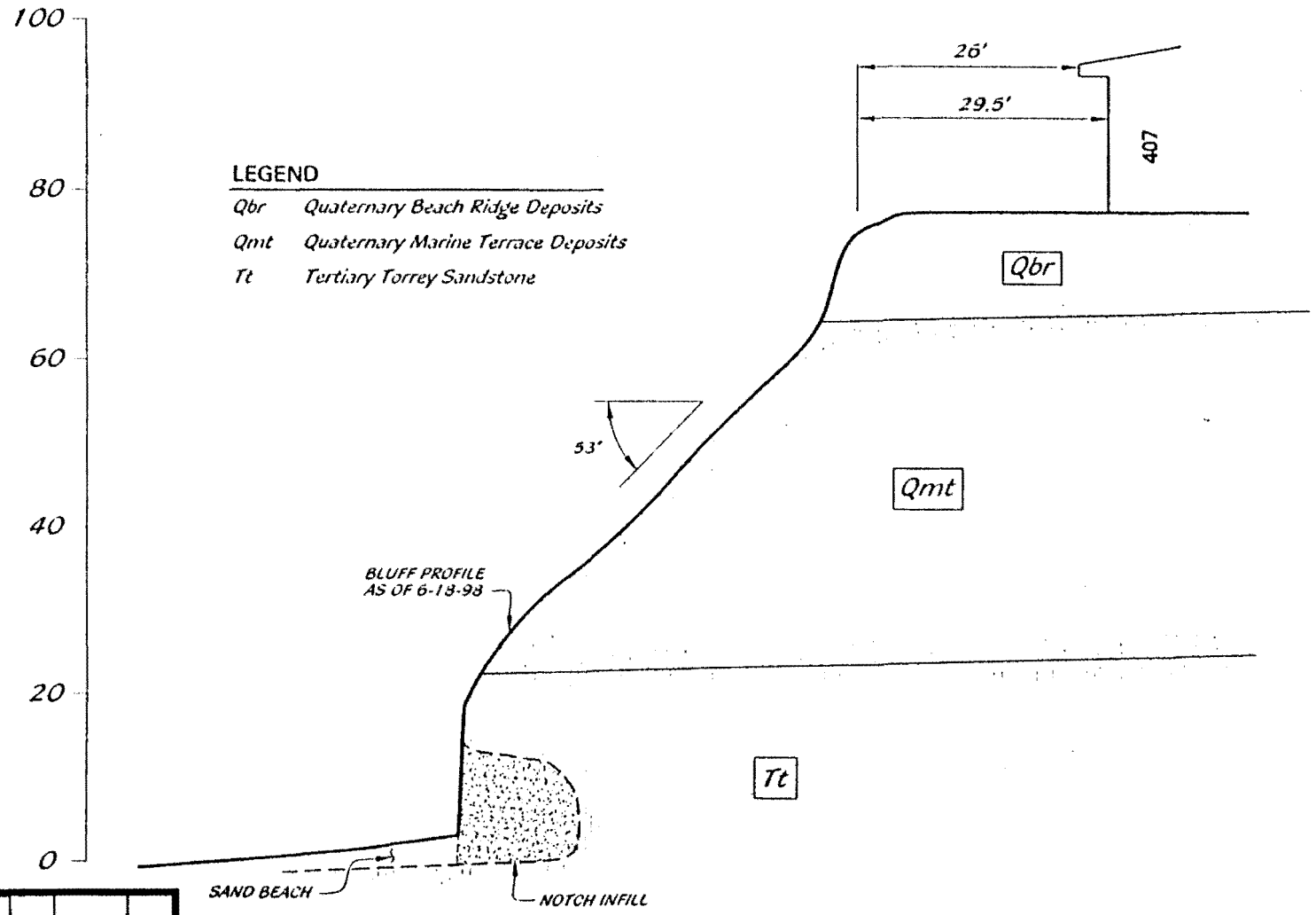


EXHIBIT NO. 2
APPLICATION N
6-98-9
Site Plan
California Coastal Commission



407 PACIFIC AVE - SECTION

SCALE: 1"=20' (HORIZ.:VERT.)

1
Fig. 1

EXHIBIT NO. 3
APPLICATION NO.
6-98-9
Cross-Section

California Coastal Commission