

State of California

California Coastal Commission
San Diego District

MEMORANDUM

TO: Commissioners and
Mailing Recipients

DATE: March 4, 1999

FROM: Staff

FILE NO: A6-LJS-98-169 Moncrieff
Item # WED 15a

RECORD PACKET COPY

SUBJECT: Replacement Staff Report

The staff report for this item that was distributed to you in the Commission mailing inadvertently contained a section that is in draft form and was not intended to be sent to the Commission. Please discard the staff report that was sent to you in the mailing and replace it with the attached staff report. This item is an appeal of a coastal development permit. The only decision on this appeal that is before the Commission at the March hearing is the decision on whether to find substantial issue. The staff report that was inadvertently sent to you included a draft discussion of the de novo portion of the appeal. This draft discussion was distributed to you in error. The staff report that was mailed to the applicant, appellants, and other interested parties did not include this draft discussion. Therefore, please disregard the previous staff report. We apologize for the inconvenience.

(Moncrieffmemo)

RECEIVED

MAR 05 1999

CALIFORNIA
COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8038



Filed: 12/31/98
49th Day: 2/18/99
180th Day: 6/29/99
Staff: LRO-SD
Staff Report: 2/10/99
Hearing Date: 3/9-12/99

WED 15aSTAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-99-169

APPLICANT: Scott Moncrieff

PROJECT DESCRIPTION: Interior and exterior renovation to an existing non-conforming 10,006 sq.ft., two-story over basement single family residence with attached garage resulting in a reduction in size to 9,801 sq.ft. on a .23 acre ocean blufftop lot. Also proposed is the demolition and rebuilding of a south side yard wall, removal of an illegal encroachment into the Mira Monte Place public right-of-way, landscape improvements and associated variances.

PROJECT LOCATION: 6102 Camino de la Costa, La Jolla, San Diego, San Diego County. APN 357-141-04

APPELLANTS: Joanne Pearson for the San Diego Sierra Club; Norma Rink; and Vincent Sucato

STAFF NOTES:

The public hearing for the subject appeal was opened at the February 3-5, 1999 Commission meeting and continued to the March 9-12, 1999 Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

eat elevation of the residence, add 116 sq.ft. atrium at the basement level of the residence on the north elevation, add five foot square addition to the garage at the east elevation, and add a 12 sq.ft. addition consisting of a fireplace at north elevation.

The project site is located on the west side of Camino de la Costa in the community of La Jolla in the City of San Diego. The area is characterized by both older single family residences as well as newer larger single family residences. The subject proposal also involves the demolition of the westerly portion of an existing 6-9 ft. high solid wall that runs in an east/west direction commencing at the southeast corner of the property to the bluff face to the west. The westerly 12 feet of this wall presently encroaches approximately one to six feet in a southerly direction into the public right-of-way. The portion of the wall that encroaches into the Mira Monte Place right-of-way is proposed to be reconstructed and relocated to the southern lot line of the subject property. The new portion of the wall will be composed of three 5-foot wide panels supported by posts (reference Exhibit Nos. 4 & 5). The wall will also be composed of different materials for the westernmost 18 feet up to the bluff edge. These materials consist of a one-foot high solid base with four-foot high open railing composition for the remainder of the wall whereas the existing wall to be removed is composed of solid materials and is 6-9 ft. high.

In addition, there is also a 6-ft. high concrete wall that runs along the north lot line of the property from the northeast corner to the existing seawall. Because the existing residence is non-conforming, the City has also approved variances for the proposed development to allow for a seven-foot front yard setback where 15 feet is required, a two-foot southern side yard setback where ten feet are required, and a six-foot high solid masonry wall along the front property line in the north side yard where a three-foot high wall with solid base and three-foot high wall with open materials is required. In so doing, at least with the front and side yard setback, the City is permitting the single family residence to maintain its present non-conforming setbacks without permitting any new construction or encroachment into the required setback areas. However, with regard to the variance for the wall located along the front yard in the north side yard setback area, the City is granting a variance for a new structure, rather than an existing nonconforming structure since the wall is new construction.

The applicant also proposes to repair and maintain an existing vertical concrete seawall just seaward of the existing residence. However, this latter aspect of the proposed development is subject to the Coastal Commission's coastal development permit jurisdiction. The City approved the proposed work on the seawall but subject to a condition that states that prior to any repair and maintenance of the seawall, the applicant must obtain a permit from the Coastal Commission (or provide evidence that the seawall is within the permit jurisdiction of the City).

The subject of the appeal is the proposed project's inconsistency with the visual resource, shoreline setback and hazard, and community character policies of the certified La Jolla-La Jolla Shores LCP.

site owns to the centerline of the public right-of-way which is managed by the City of San Diego.

The appellants assert that the proposed project fails to protect public views from public vantage points because it involves construction of the southern side yard wall approx. 18 feet onto the bluff face which is beyond what is reasonably necessary for safety needs, and is inconsistent with the certified La Jolla-La Jolla Shores LCP. The appellants also contend that the City should have required removal of the existing mature Myoporum trees from the public view corridor and should not have permitted the new balconies, which will obstruct public views from the public view corridor. Also, the appellants state that the City has failed to acknowledge the detrimental effect of the proposed development on the public view corridor.

The existing single family residence is a non-conforming structure which was constructed in the 1950's. It presently does not meet the geologic setbacks from the bluff edge nor the side yard and front yard setback requirements of the certified LCP.

The certified La Jolla-La Jolla Shores LCP encourages view corridors utilizing side yard setbacks to prevent a "walled off" effect and indicates existing visual access to the shoreline and ocean should be protected and improved. The LCP designates areas as view corridors and then establishes restrictions on development in those view corridors in order to maintain views to the ocean and to prevent a walling off of the coast. However, in this particular case, the proposed development consists of remodeling to an existing residence as opposed to the demolition and construction of a new single family residence on the site. If the existing residence were being removed, it would create the opportunity to site the residence in such a manner as to observe the required geologic setback to the bluff edge as well as establish view corridors in the side yard setbacks. Although the City's staff report (Report to the Planning Commission) does identify the designated view corridor, the findings of the coastal development permit do not acknowledge that the residence is located adjacent to a designated public view corridor or that the side yard wall presently encroaches into the public view corridor.

However, the project does involve removal and replacement of several accessory structures which are not subject to the same constraints as the existing principal structure and can be reconstructed in accordance with the current regulations. The City's granting of a variance to allow the wall along the front yard in the north side yard setback to be built with solid materials where 50% of the wall is required to be composed of open material raises a substantial issue because the wall is in the side yard setback where the LCP calls for use of side yard setbacks to create view corridors to the ocean. With regard to the south side yard wall, it presently extends approximately 12 feet beyond the bluff edge onto the bluff face blocking views as one walks along the pedestrian trail. Although the City's approval of the subject coastal development permit required this wall to be removed and relocated to the southern lot line out of the public right-of-way, there still remains a question with regard to how far this wall should extend onto the bluff face for public safety reasons which raises a substantial issue.

In addition, it is important to note that the predominant character of the area is one- and two-story homes, as viewed from the street. It should also be noted that the lots on the inland side of the street are significantly smaller in size and the pattern of development is smaller in scale than that on the west side of the street. The residences surrounding the site are a mix of sizes, as well as architectural styles. The proposed remodeled residence will appear as a two-level residence from its street elevation which will be in keeping with the community character of the area. Thus, the Commission finds that the City's determination that the proposed three-level residence (two-stories over basement) is compatible with the scale and character of the community and with the pattern of redevelopment for the area does not raise a substantial issue of conformity with the LCP.

(A-6-LJS-98-169 Moncrieff SI stfpt)

CAMINO DE LA COSTA

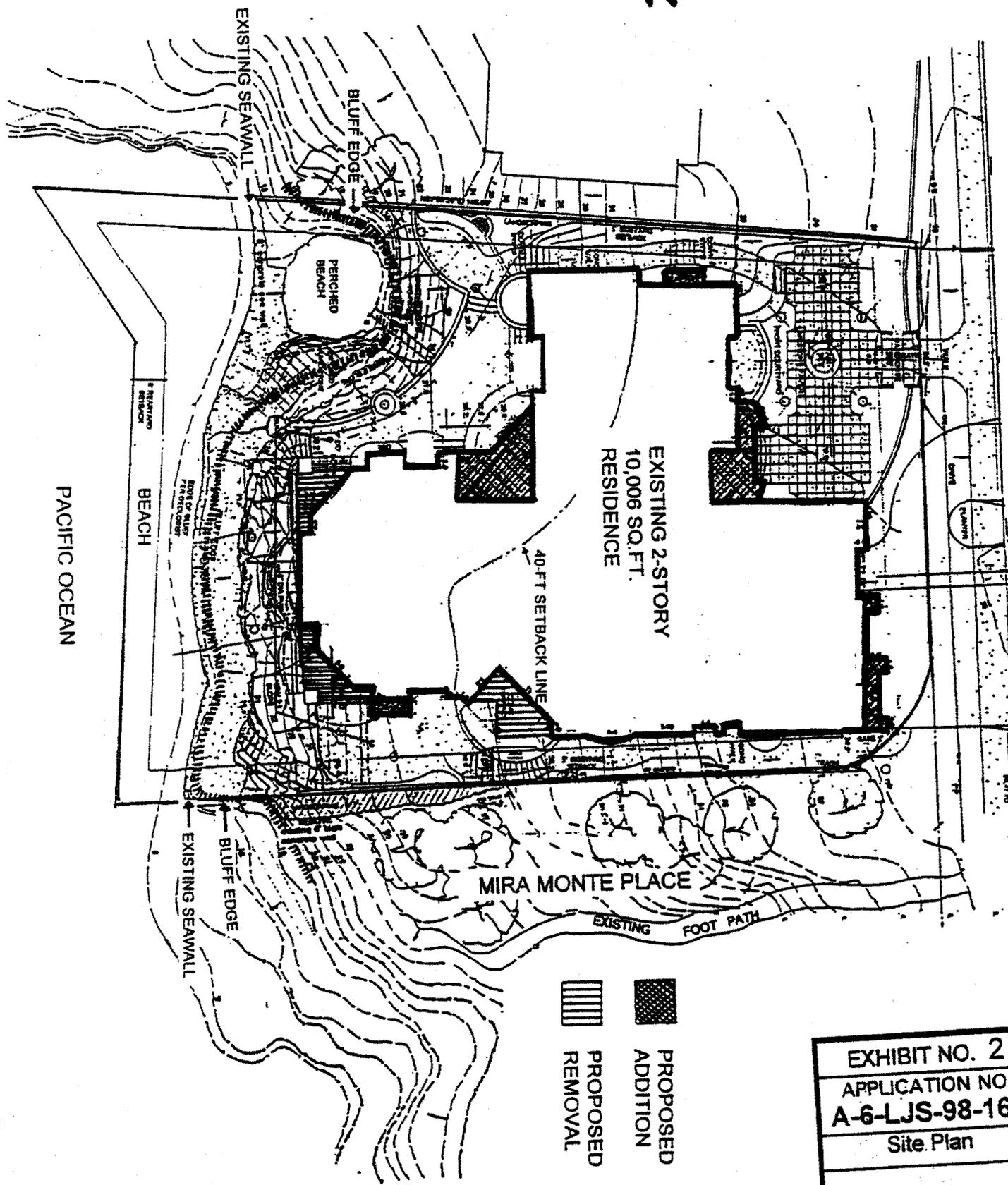
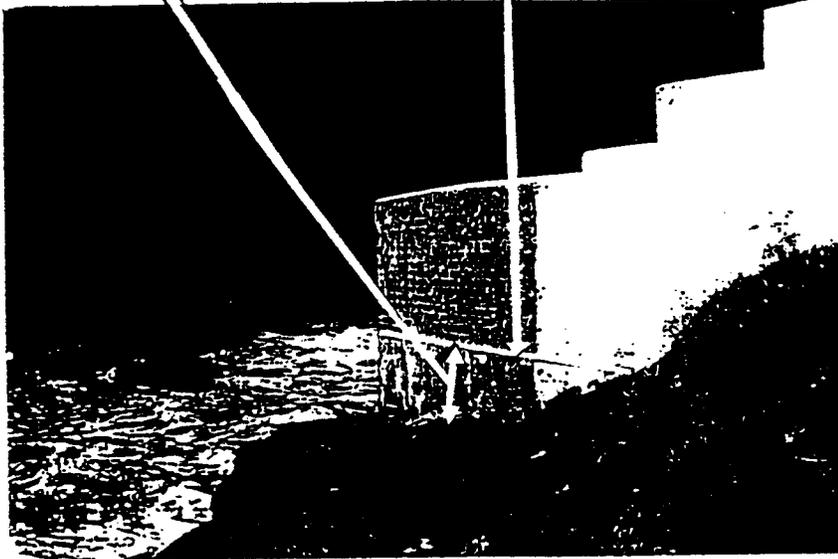


EXHIBIT NO. 2
APPLICATION NO. A-6-LJS-98-169
Site Plan
California Coastal Commission

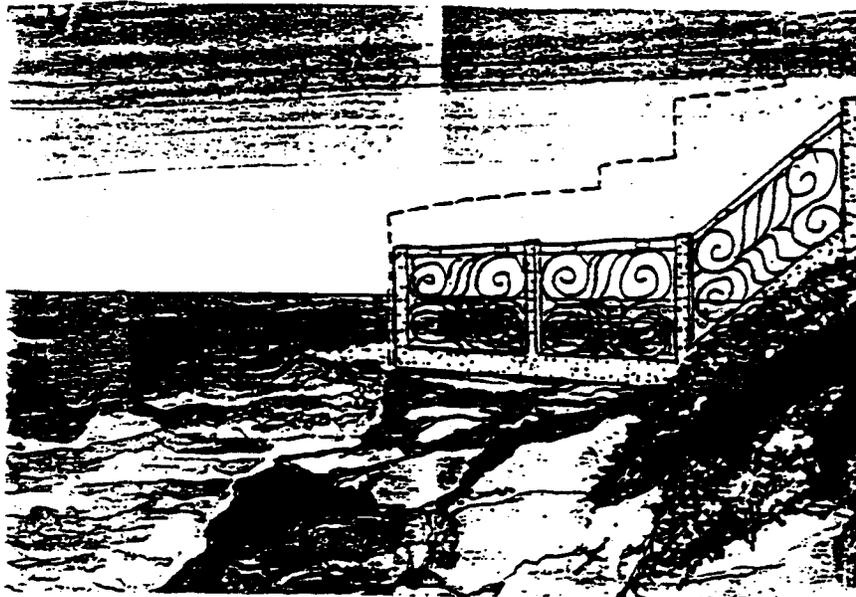
NOTE. LOW RETAINING WALL TO BE REMOVED WHEN
OPEN FENCING IS RELOCATED TO LOT LINE

EXISTING GRADE OF CONCRETE
SEAWALL CAP BEYOND



VIEW FROM MIRA MONTE PLACE TO EXISTING WALL

"before"



VIEW AS PROPOSED FROM MIRA MONTE PLACE THROUGH
NEW REDUCED HEIGHT OPEN PROTECTIVE FENCING

"after"

EXHIBIT NO. 4

APPLICATION NO.

A-6-LJS-98-169

South Side-Yard Wall: To

be moved to property line

California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

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APPELLANTS: Joanne Pearson for the San Diego Sierra Club; Norma Rink; and Vincent Sucato

STAFF NOTES:

The public hearing for the subject appeal was opened at the February 3-5, 1999 Commission meeting and continued to the March 9-12, 1999 Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of San Diego LCP/La Jolla-La Jolla Shores segment; City of San Diego Coastal Development Permit No. 96-7544; Appeal Forms dated 12/31/98; City of San Diego Report to the Planning Commission dated 9/10/98; Geotechnical Evaluation of 6102 Camino de la Costa, La Jolla, California for Skelly Engineering by GeoSoils, Inc. dated 10/31/96; Geotechnical Report by Skelly Engineering dated 11/1/96; Letter/Update to Geotechnical Report by Skelly Engineering dated 3/13/98; Letter/Update to Geotechnical Report by Skelly Engineering dated 4/3/98.

I. Appellants Contend That:

The proposed development fails to conform with the required findings of the certified LCP and La Jolla Land Use Plan as follows:

- Fails to protect public views from public vantage points by allowing the south side yard wall to be reconstructed in the same configuration extending approx. 18 feet over the bluff edge beyond what is reasonably necessary for safety needs, inconsistent with the certified La Jolla-La Jolla Shores LCP;
 - Fails to protect public views by allowing existing mature Myoporum trees to remain in the public view corridor and by permitting new balconies which will obstruct public views from the public view corridor;
 - The City has failed to acknowledge the detrimental effect of the proposed development on the public view corridor;
 - The proposed fencing is inconsistent with the Sensitive Coastal Resource Ordinance of the City's certified LCP which requires that fencing be at grade and at least five feet from the bluff edge and designed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points;
 - The proposed development may significantly alter existing natural landforms by permitting the existing seawall which was constructed without building, engineering or coastal development permits to be maintained;
 - The proposed development does not comply with shoreline erosion and geologic setback requirements;
 - Failure to provide a lateral access dedication and a deed restriction protecting the bluff face; and,
 - The development is not compatible with the established physical scale of the area.
-

II. Local Government Action. The Coastal Development Permit was approved by the Planning Commission on 9/17/98 and subsequently appealed to the City Council. On 11/24/98 the City Council approved the subject coastal development permit. Several special conditions were attached which address: engineering requirements, landscape requirements; a hold harmless agreement; and a condition which requires that prior to issuance of any building permit for the repair, replacement or maintenance of the existing seawall on the site, the applicant shall first obtain a coastal development permit from the Coastal Commission, if such a permit is necessary.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-LJS-98-169 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

Findings and Declarations.

1. Detailed Project Description/Permit History. Proposed is the remodel of an existing 10,006 sq.ft. two-story over basement single family residence with attached three-car garage on a .23 acre oceanfront blufftop lot. The western boundary of the lot is the mean high tide line. An easement for a portion of the Mira Monte Place (paper street) right-of-way runs vertically, from Camino de la Costa to the ocean, across the southern portion of the lot. The applicant owns the land under this street right-of-way up to the centerline of the street. The existing structure is a non-conforming residence that is sited 10 feet from the bluff edge, has an existing 12-18 ft. high, 105-foot long seawall that is six inches thick with a buried toe that is over 12-inches wide. The seawall was constructed in the early 1970's without the benefit of a coastal development permit.

The proposed project does not involve the demolition of more than 50% of the exterior walls. Although the applicant is proposing to remove portions of the house and make minor additions to the house, the top and bottom plates will remain. The applicant's submitted floor plans for the proposed remodel show that in those areas where walls or windows are being removed, the top plates will remain in place. The plans also show that the applicant is planning to remove studs, but not add our double studs. The City determined that the applicant's project constitutes a remodel, not a demolition. The City indicated that it considers a project to be demolition only if more than 50% of the exterior walls are removed, studs are added or doubled, or the top and bottom plates are replaced. Since the applicant has not proposed any of these, the City concluded that the applicant's project is a remodel.

The remodel will reduce the size of the residence to 9,801 sq.ft. Some of the proposed changes to the residence include the following: remove existing chimney and an approx. 128 sq.ft. boathouse structure in the west rear yard of the site, between the residence and existing seawall, remove a total of 269 sq.ft. of floor area at the northwest and southwest corners of the residence that comprises all three levels, add 96 sq.ft. foyer addition at the

eat elevation of the residence, add 116 sq.ft. atrium at the basement level of the residence on the north elevation, add five foot square addition to the garage at the east elevation, and add a 12 sq.ft. addition consisting of a fireplace at north elevation.

The project site is located on the west side of Camino de la Costa in the community of La Jolla in the City of San Diego. The area is characterized by both older single family residences as well as newer larger single family residences. The subject proposal also involves the demolition of the westerly portion of an existing 6-9 ft. high solid wall that runs in an east/west direction commencing at the southeast corner of the property to the bluff face to the west. The westerly 12 feet of this wall presently encroaches approximately one to six feet in a southerly direction into the public right-of-way. The portion of the wall that encroaches into the Mira Monte Place right-of-way is proposed to be reconstructed and relocated to the southern lot line of the subject property. The new portion of the wall will be composed of three 5-foot wide panels supported by posts (reference Exhibit Nos. 4 & 5). The wall will also be composed of different materials for the westernmost 18 feet up to the bluff edge. These materials consist of a one-foot high solid base with four-foot high open railing composition for the remainder of the wall whereas the existing wall to be removed is composed of solid materials and is 6-9 ft. high.

In addition, there is also a 6-ft. high concrete wall that runs along the north lot line of the property from the northeast corner to the existing seawall. Because the existing residence is non-conforming, the City has also approved variances for the proposed development to allow for a seven-foot front yard setback where 15 feet is required, a two-foot southern side yard setback where ten feet are required, and a six-foot high solid masonry wall along the front property line in the north side yard where a three-foot high wall with solid base and three-foot high wall with open materials is required. In so doing, at least with the front and side yard setback, the City is permitting the single family residence to maintain its present non-conforming setbacks without permitting any new construction or encroachment into the required setback areas. However, with regard to the variance for the wall located along the front yard in the north side yard setback area, the City is granting a variance for a new structure, rather than an existing nonconforming structure since the wall is new construction.

The applicant also proposes to repair and maintain an existing vertical concrete seawall just seaward of the existing residence. However, this latter aspect of the proposed development is subject to the Coastal Commission's coastal development permit jurisdiction. The City approved the proposed work on the seawall but subject to a condition that states that prior to any repair and maintenance of the seawall, the applicant must obtain a permit from the Coastal Commission (or provide evidence that the seawall is within the permit jurisdiction of the City).

The subject of the appeal is the proposed project's inconsistency with the visual resource, shoreline setback and hazard, and community character policies of the certified La Jolla-La Jolla Shores LCP.

2. Visual Impacts/Coastal Scenic Area/Public View Blockage. The certified La Jolla-La Jolla Shores LCP contains several policies addressing protection of public views. In part, these policies state the following:

“La Jolla’s relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved.”

“La Jolla’s physical assets should be protected in future development and redevelopment; particularly with respect to the shoreline....Ocean views should be maintained, beach access provided, and open space retained wherever possible.”

“View corridors utilizing side yard setbacks, should be encouraged along shoreline and bluff top areas, in order to avoid a continuous wall effect. Even narrow corridors create visual interest and allow for sea breezes to refresh passersby.

- Setbacks and view corridors should be kept clear of trash receptacles, utility boxes, storage materials, untrimmed landscaping or any other obstructions which may interfere with visual access.

Where existing streets serve as visual corridors, development on corner lots requires special design considerations. In order to maximize public vistas, new development should be setback from the corner or terraced away from the view providing street.”

With respect to the appellants statements that the proposed development will adversely impact on public views to the ocean, Commission staff inspected the subject property and surrounding area to assess the site conditions and potential impacts to public views to and from the ocean. There is an existing designated public view corridor immediately south of, and adjacent to, the subject site within the Mira Monte public right-of-way which is a “paper street”. The view corridor runs along this right-of-way but does not extend onto any portion of the applicant’s lot. The LCP designates the Mira Monte Place right-of-way as a “Visual Access Corridor” (reference Exhibit No. 6.) This right-of-way runs vertically from Camino de la Costa, across the site, down the bluff face to the ocean. An unimproved pedestrian trail extends into the right-of-way from Camino de la Costa all the way up to the sandstone bluffs. From this point on, members of the public typically climb down the sandstone bluffs that lead down to the beach below. Numerous Myoporum trees have grown and spread out broadly throughout the right-of-way, partially obstructing views of the ocean from Camino de la Costa looking west. There are City signs installed along the trail that state, “Danger-Unstable Bluffs-Stay Back”. However, the area is frequently used by members of the public for viewing the ocean and/or gaining access to the small pocket beach below. The right-of-way is identified in the certified La Jolla-La Jolla Shores LCP as a dedicated street that contains a dirt path providing access to a small cove. Plan recommendations are to maintain the natural access trail and provide appropriate access identification. The applicant of the subject

site owns to the centerline of the public right-of-way which is managed by the City of San Diego.

The appellants assert that the proposed project fails to protect public views from public vantage points because it involves construction of the southern side yard wall approx. 18 feet onto the bluff face which is beyond what is reasonably necessary for safety needs, and is inconsistent with the certified La Jolla-La Jolla Shores LCP. The appellants also contend that the City should have required removal of the existing mature *Myoporum* trees from the public view corridor and should not have permitted the new balconies, which will obstruct public views from the public view corridor. Also, the appellants state that the City has failed to acknowledge the detrimental effect of the proposed development on the public view corridor.

The existing single family residence is a non-conforming structure which was constructed in the 1950's. It presently does not meet the geologic setbacks from the bluff edge nor the side yard and front yard setback requirements of the certified LCP.

The certified La Jolla-La Jolla Shores LCP encourages view corridors utilizing side yard setbacks to prevent a "walled off" effect and indicates existing visual access to the shoreline and ocean should be protected and improved. The LCP designates areas as view corridors and then establishes restrictions on development in those view corridors in order to maintain views to the ocean and to prevent a walling off of the coast. However, in this particular case, the proposed development consists of remodeling to an existing residence as opposed to the demolition and construction of a new single family residence on the site. If the existing residence were being removed, it would create the opportunity to site the residence in such a manner as to observe the required geologic setback to the bluff edge as well as establish view corridors in the side yard setbacks. Although the City's staff report (Report to the Planning Commission) does identify the designated view corridor, the findings of the coastal development permit do not acknowledge that the residence is located adjacent to a designated public view corridor or that the side yard wall presently encroaches into the public view corridor.

However, the project does involve removal and replacement of several accessory structures which are not subject to the same constraints as the existing principal structure and can be reconstructed in accordance with the current regulations. The City's granting of a variance to allow the wall along the front yard in the north side yard setback to be built with solid materials where 50% of the wall is required to be composed of open material raises a substantial issue because the wall is in the side yard setback where the LCP calls for use of side yard setbacks to create view corridors to the ocean. With regard to the south side yard wall, it presently extends approximately 12 feet beyond the bluff edge onto the bluff face blocking views as one walks along the pedestrian trail. Although the City's approval of the subject coastal development permit required this wall to be removed and relocated to the southern lot line out of the public right-of-way, there still remains a question with regard to how far this wall should extend onto the bluff face for public safety reasons which raises a substantial issue.

In addition, the City's failure to require that the Myoporum trees be removed from the public right-of-way raises a substantial issue. The City has indicated that since the trees were in the right-of-way, which is managed by the City, they could not require the applicant to remove these trees at the applicant's expense. The City did not remove the trees because it did not want to incur an expense to the City. However, the applicant owns to the center-line of the right-of-way and these trees presently block views to the ocean. Because the applicant is proposing development that will adversely affect existing views such as construction of balconies encroachment into side yard setbacks, these aspects of the development could be mitigated by requiring the trees to be removed. The City's approval of the proposed remodel which allows public views to be adversely affected without any mitigation raises a substantial issue. The proposed development does not include removal of the existing trees which presently obstruct the public view corridor and proposes to construct a six-foot high solid wall in the north side yard setback where the certified LCP calls for utilization of side yard setbacks to create view corridors. Furthermore, the certified LCP calls for existing public views and view corridors to be protected through redevelopment, therefore, the proposed development raises a substantial issue regarding conformity with the certified La Jolla-La Jolla Shores segment of the City of San Diego's certified LCP.

3. Shoreline/Erosion Hazard Policies. The subject site is within the City of San Diego's Sensitive Coastal Resource (SCR) overlay. The SCR Ordinance is part of the City's certified LCP and contains policies addressing the protection of the coastal zone's sensitive areas, particularly, ocean bluffs, beaches and wetlands. The applicant has received an SCR permit for the proposed development. Since the existing residence is presently non-conforming, it does not presently meet the geologic setbacks required in the SCR ordinance. The existing home is setback 10 ft. from the bluff edge. A new residence would require a 25-40 ft. setback from the bluff edge. The adequacy of the existing and proposed seawall to protect the existing residence will be reviewed in connection with the coastal development permit application for the renovated seawall.

4. Community Character. The appellants contend that the proposed development will be incompatible with the community character of the surrounding area. The City, in its review of this issue determined that the height, bulk and scale of the new residence upon completion of the proposed development will be visually compatible with the character of the surrounding neighborhood which contains a variety of one, two and three-story homes. As noted previously, the proposed three-level residence will appear as a two-level structure from the street. Although the existing residence is large in size, it is comparable to other large residences in the area. Also, the existing residence was constructed in the 1950's and is presently non-conforming with regard to its sideyard and front yard setbacks. Through the proposed development, the applicant will decrease the degree of non-conformity by shaving off the two corners of the northeastern and southeastern portion of the residence to a 45-degree angle. A boathouse structure and a chimney will also be removed between the existing residence and existing seawall which will result in increasing the rear yard setback by eight feet. Through various minor modifications to the residence proposed through remodelling, the FAR of the home will be decreased from .99 to .90.

In addition, it is important to note that the predominant character of the area is one- and two-story homes, as viewed from the street. It should also be noted that the lots on the inland side of the street are significantly smaller in size and the pattern of development is smaller in scale than that on the west side of the street. The residences surrounding the site are a mix of sizes, as well as architectural styles. The proposed remodeled residence will appear as a two-level residence from its street elevation which will be in keeping with the community character of the area. Thus, the Commission finds that the City's determination that the proposed three-level residence (two-stories over basement) is compatible with the scale and character of the community and with the pattern of redevelopment for the area does not raise a substantial issue of conformity with the LCP.

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Staff also recommends that the Commission approve the permit with special conditions which require plans for the public right-of-way on the south side of the site (a portion of which is owned by the applicant) and redesign of fence at the northeast corner of the property to keep the area clear and create an unobstructed view from the street toward the ocean. The applicant has applied to the Commission for a coastal development permit for repair and maintenance of the seawall, which is within the Commission's original permit jurisdiction. Staff has consolidated the staff report concerning de novo review of the proposed remodel of the residence with the staff report concerning the proposed seawall. Staff is recommending that the Commission consolidate the hearings on both projects.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

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. Special Conditions.

The permit is subject to the following conditions:

1. Revised Plans. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, revised landscaping and fence plans approved by the City of San Diego designed to keep the southern portion of the site within the public right-of-way clear to create an unobstructed view corridor from the street toward the ocean. The revised plans shall specifically address the southern portion of the site as well as the north sideyard setback area and shall incorporate the following:

- a. All landscaping (i.e. the Myoporum trees) between the masonry wall on the southern property line in a southerly direction up to the centerline of the public right-of-way in ownership of the applicant, shall either be removed or substantially trimmed to enhance the designated public view corridor. If the

vegetation is removed, special emphasis shall be placed on the installation of new vegetation that does not exceed a height of three feet above street elevation. If the vegetation is proposed to be trimmed and retained, special emphasis shall be placed on maintenance of the vegetation so as to assure that neither during growing stages nor upon reaching maturity will such materials encroach into the area which would obstruct views toward the ocean in the established view corridor.

- b. The proposed six-foot high solid wall along the east property line in the north side yard setback shall not be authorized. Installation of only open fencing consisting of wrought-iron with brick at the base or other similar design that is open in appearance shall be permitted along the easterly property line adjacent to the street in the south and north yard setback.

2. Assumption of Risk. Prior to the issuance of the coastal development permit, the applicant shall submit a signed document in which the applicant understands that the site may be subject to extraordinary hazard from wave action and assumes the liability from such hazards, and 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 offices, agents, and employees against any and all claims demands, damages, costs, expenses of liability arising out of the Commission's approval of the project.

3. Maintenance and Monitoring Plan. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, a final maintenance and monitoring plan which shall include the following:

- a) Inspection of the shotcrete facing and restoration of the facing if material chips out;
- b) All wall debris shall be removed from the beach and surfzone;
- c) Monitoring of the position and profile of the unprotected portion of the bluff adjacent to cave fills;

The applicant shall comply with all terms and conditions of the approved maintenance and monitoring plan. Maintenance can only be performed in accordance with the approved plan and monitoring reports shall be submitted annually from the date of project completion to the Executive Director for review and written approval. Any required maintenance activity shall occur prior to the onset of the winter rainy season, i.e., prior to October 1 of any year. Deviations from the maintenance and monitoring plan shall result in the need to obtain a coastal permit or permit amendment.

4. Construction Materials. During construction of the approved development, disturbance to sand and intertidal areas shall be minimized to the maximum extent

feasible. All excavated beach sand shall be redeposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

5. Timing of Work. The approved project shall not occur between Memorial Day weekend and Labor Day. The approved project as described and conditioned herein shall only be implemented during the time period identified above. Any modifications to the approved time period will require a permit amendment.

6. Staging Areas/Access Corridors. Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location and access corridors to the construction site and staging areas. The final plans shall be in substantial conformance with the preliminary plans dated 4/28/97. The final plans shall indicate that:

- a) No staging of equipment will occur on sandy beach or public parking areas;
- b) Access corridors shall be located in a manner that has the least impact on public access.

The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

7. Color and Texture of Sea Cave Plugs and Seawall Repair. The permitted structures will be constructed with concrete that has been colored with earth tones designed to minimize the project's contrast with and be compatible in color to the adjacent sandstone bluffs. The proposed color shall be verified through submittal of a color board. White and black tones are not permitted. The proposed structures shall also be designed to incorporate surface treatments (e.g., air-placed concrete) that resemble the surface texture of the adjacent natural bluffs.

8. 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.

9. Other Special Conditions of the CDP/SCR No. 96-7544. The following special conditions of the City's CDP/SCR permit #96-7544 are modified herein and are a part of the subject coastal development permit: Special Condition #35, 38 & 39. All other special conditions of the City of San Diego's CDP/SCR permit #96-7544 remain subject to the City's jurisdiction as part of the City's Coastal Development Permit and Sensitive Coastal Resource permit.

10. Mitigation for Impacts to Sand Supply. Prior to issuance of the coastal development permit, the applicant shall provide evidence, in a form and content acceptable to the Executive Director, that a fee of XX has been deposited in an interest bearing account designated by the Executive Director, in-lieu of providing sand to replace the sand and beach are that would be lost due to the impacts of the proposed protective structure. The methodology used to determine the appropriate mitigation fee for the sites site shall be that described in the staff report dated 2/10/99 prepared for coastal development permit #A-6-LJS-98-169. All interest earned shall be payable to the account for the purposes stated below.

The purpose of the account shall be to establish a beach sand replenishment fund to aid SANDAG, or a Commission-approved alternate entity, in the restoration of the beaches within San Diego County. The funds shall solely be used to implement projects which provide sand to the region's beaches, not to fund operations, maintenance or planning studies. The funds shall be released only upon approval of an appropriate project by the Executive Director for the Coastal Commission. The funds shall be released as provided for in a memorandum of agreement (MOA) between SANDAG, or a Commission-approved alternate entity, and the Commission, setting both terms and conditions to assure that the in-lieu fee will be expended in the manner intended by the Commission. In the event SANDAG does not enter into MOA with the Commission or the MOA with SANDAG is terminated, the Commission can appoint an alternative entity to administer the fund.

II. Findings and Declarations:

1. Project Description. Proposed is the remodel of an existing 10,006 sq.ft. two-story over basement single family residence with attached three-car garage to reduce the size of the residence to 9,801 sq.ft. on a .23 acre oceanfront blufftop lot. The project site is located on the west side of Camino de la Costa in the community of La Jolla in the City of San Diego. The remainder of the project description is discussed in full detail in the findings on Substantial Issue section of this report (reference pages 3-4 and is hereby incorporated by reference).

2. Visual Impacts/Coastal Scenic Area/Public View Blockage. The proposed development for the demolition of a two-story, 3,500 sq.ft residence on a .82 acre blufftop parcel is not consistent with the policies contained in the certified LCP which address public views of, and to, the ocean. Specifically, the proposed project is inconsistent with the following policies and goals of the certified La Jolla-la Jolla Shores LCP addressing protection of public views:

"La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved."

"La Jolla's physical assets should be protected in future development and redevelopment; particularly with respect to the shoreline, significant canyons

steep slopes. Ocean views should be maintained....and open space retained wherever possible.”

“View corridors utilizing side yard setbacks, should be encouraged along shoreline and bluff top areas, in order to avoid a continuous wall effect. Even narrow corridors create visual interest and allow for sea breezes to refresh passersby....”

- Setbacks and view corridors should be kept clear of trash receptacles, utility boxes, storage materials, untrimmed landscaping or any other obstructions which may interfere with visual access.

As noted earlier in the findings for substantial issue section of this report, the subject site is located immediately adjacent to, and north of, an existing designated public view corridor. The proposed development largely consists of remodelling of an older 10,006 sq.ft. two-story over basement single family residence and its reduction in size to 9,801 sq.ft. The proposed development will result in impacts to public views in two ways. First, the proposed development will maintain existing mature *Myoporum* vegetation in the public right-of-way owned by the applicant that presently obstructs views to the ocean. Secondly, the applicant proposes to construct a six-foot high solid masonry wall in the north side yard setback where a three-foot wall with 50 percent open materials is required. A third potential impact to the public corridor is that the existing 6-9 foot high wall in the public right-of-way that extends to the bluff edge/seawall presently obstructs public views to the ocean in its present location. However, this latter situation is proposed to be remedied through the proposed development which includes the relocation of the wall to the southern property line. In addition, in order to further reduce any adverse impacts to public views associated with the fence, the fence will be reduced in height to five feet and composed of open materials for the westerly length of 18 feet. This will not only result in removal of the encroachment into the public view corridor but will also significantly improve public views.

One of the contentions of the appellants related to the fence's proposed location is that it is inconsistent with the City's certified Sensitive Coastal Resource (SCR) overlay which is part of the City's certified LCP. Specifically, the SCR ordinance provides development requirements for the beaches, coastal bluffs and wetlands areas. For coastal bluffs, the ordinance specifies the permitted uses and development regulations. Specifically, the SCR ordinance does allow open fences as a permitted use in coastal bluff areas provided that they do not interfere with existing or designated public accessways. The ordinance also states the following:

- a. No structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within forty (40) feet of any point along a coastal bluff edge, except for the following uses:
 1. Essential bluff top improvements including but not limited to, a walkway leading to a permitted beach access facility; drainage

facilities, and open fences to provide for safety and to protect resource areas.

[...]

2. Accessory structures and landscape features customary and incidental to residential uses; provided, however, that these shall be located at grade and at least five (5) feet from the bluff edge. Such structures and features may include:
Walkways, unenclosed patios, open shade structures, decks, lighting standards, walls, public seating, benches, pools, spas, garages and upper floor decks with load bearing support structures.

Therefore, in this case, the proposed fence is unique in that it is presently located in a public right-of-way that is a designated public view corridor. In addition, the right-of-way also contains a dirt path utilized by the public for gaining access to the beach. Members of the public can walk along the top of the sandstone bluffs up to the point where it meets the seawall of the existing site. From this point on, there is a sharp drop off in elevation (approximately 8-12 feet) which poses a safety hazard. If the proposed fence were to be located five feet from the bluff edge it would create an opening that would allow someone to walk from the sandstone bluffs in a northerly direction across the top of the existing seawall on the applicant's property. There is also a very steep drop-off in elevation from the seawall to the beach below. In past Commission action, fences located between the coastal bluff edge and existing oceanfront residences have been required to be located at least five feet from the bluff edge to assure that the structural stability of the coastal bluffs was not adversely affected, consistent with the SCR requirements. It should be noted that the City has also indicated that had there not been a public safety issue associated with the fence location, the applicant would have been required to site the fence five feet back from the bluff edge, consistent with the SCR ordinance. In typical situations, the fences that are accessory uses to residential structures run parallel to the bluff edge in a north/south direction. The sideyard wall in question runs in an easterly/westerly direction. In this particular situation the wall is adjacent to a public right-of-way and due to public safety concerns, it is appropriate for it to extend to the bluff edge. This should not be regarded as a precedent that would allow every property owner to extend their sideyard wall or fence to the bluff edge. Therefore, given the hazardous nature of this area that is utilized by the public, maintaining the fence up to the bluff edge is consistent with SCR ordinance. Therefore, the Commission finds that the proposed fence may be located up to the bluff edge for public safety purposes in this situation.

As noted previously, the existing residence is non-conforming as it was originally constructed in the 1950's. As such, it does not presently meet the requirements for the front, rear and sideyard setbacks. For this reason, the City approved variances for the proposed development such that the existing home could maintain its present non-conforming setbacks. However, the City also granted a variance for the construction of a six-foot high solid masonry wall in the north side yard setback along the eastern frontage

of the residence where a three feet solid and three feet 50% percent open wall is required. This element of the proposal is new construction.

In addition, the proposed remodel does not represent new construction since no more than 50% of the exterior walls are being removed. In fact, the applicant has indicated that no demolition is occurring whatsoever since any walls being removed will be removed to the top plate only which does not constitute demolition pursuant to the City's requirements. Given that the proposed development represents maintenance of the existing non-conforming setbacks which consist of two-foot sideyard setback where ten feet are required, it is not possible to enhance public views to the ocean through the sideyard setbacks. In addition, if the proposed development had resulted in demolition and construction of a new residence, greater sideyard setbacks may be possible to preserve public views to the ocean. However, in this particular case, given that the LCP contains policies which state that public views to the ocean should be protected and enhanced, preservation of ocean views in the public view corridor should be enhanced. This can be achieved by either removal of the Myoporum vegetation on that portion of the public right-of-way owned by the applicant (to the centerline) and replacement with low-lying vegetation or trimming and maintenance of such vegetation so that it does not obstruct views to the ocean. The existing Myoporum plants presently partially block views of the ocean looking west from the street elevation. It should be noted that when the project was being reviewed at the City level, the issue of the existing fence which is located on the southern property line that encroaches into the public right-of-way was thoroughly reviewed. During negotiations, the applicant had opted to improve the designated public view corridor by removing the existing Myoporum vegetation, installation of benches for viewing the ocean, etc. if the wall could be permitted to remain in its present location. However, due to local opposition to this proposal and the community's desire to have the fence removed from the public right-of-way, the applicant withdrew his proposal to remove the landscaping from the public right-of-way.

In addition, the applicant's proposal to construct a new six-foot high masonry wall through a variance where only a three-foot solid wall with 50% open would be required in the north sideyard setback is inconsistent with the policies of the certified LCP. The Commission finds that by modifying the proposed improvements in the north side yard setback, a window can be maintained while looking west from the street elevation. Such a window, while it may not create an ocean view, would utilize the side yard setback in order to "avoid a continuous wall effect", consistent with the LCP policy.

Through incorporation of all these design measures, a "window" to the ocean in the side yard setback can be preserved while looking west from the street elevation, as is supported by the policies of the certified LCP referenced above. Even small glimpses of the ocean while driving or walking by gives people the feel of being close to the ocean and eliminates a continuous wall effect. As noted in the earlier cited LCP policy language, "...Even narrow corridors create visual interest and allow for sea breezes to refresh passersby...."

All sites between the ocean and the first coastal roadway must be evaluated for potential public views that should be preserved and enhanced. If the proposed development had represented new development, it would have been possible to require a larger side yard setback at the south and north elevations to enhance or improve views to the ocean. Since this cannot be done, in order to mitigate for the adverse impacts the existing residence has on the public views to the ocean through maintenance of two-foot side yard setbacks where 10 feet are presently required, the applicant is being required to modify the existing vegetation in the public view corridor in such a manner as to create an unobstructed view toward the ocean.

Therefore, the Commission finds that by requiring the removal of vegetation in the south side yard setback that presently blocks views to the ocean and replacement with low-lying vegetation, installation of open fencing along the east elevation in the north sideyard setback, that views toward the ocean will be maintained and a visual window created. As such, Special Condition #1 requires revised plans that include a revised landscape plan that either eliminates all of the *Myoporum* vegetation up to the centerline of the public-right-of way owned by the subject applicant and replacement with low-lying vegetation or trimming and maintenance of such vegetation in order to assure that the vegetation does not impede public views to the ocean by encroachment into the public view corridor. In so doing, views toward the ocean will be maintained and enhanced. In addition, the condition also requires that only open fencing shall be permitted along the eastern elevation of the subject site in the north and south sideyard setbacks of the subject site. In so doing, a "window" to the ocean in the side yard setback can be preserved while looking west from the street elevation, as is supported by the policies of the certified LCP noted above. In addition, both conditions require recordation of a deed restriction such that future property owners will be notified of the site plan requirements for the landscaping in the public right-of-way and fencing in the south and north sideyard setbacks to create a view corridor toward the ocean and a "window" to prevent a walled-off effect. Therefore, as conditioned, the proposed development can be found consistent with the policies of the certified LCP and applicable Chapter 3 policies of the Coastal Act.

2. Shoreline Protective Devices/Geologic Hazards. . 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.

In addition, Section 30253 of the Coastal Act states, in part:

New development shall:

(1) 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...

The 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 connection with construction of new development. A shoreline protective device proposed in those situations is likely to be inconsistent with various other 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 Commission has often times interpreted Section 30235 to require the Commission to approve shoreline protection for existing principal structures only.

In the case of the proposed development, the applicants are proposing to repair an existing seawall by texturing and coloring it to match with the adjacent natural landforms. Also proposed is reinforcement of the seawall by replacing footings and installing tie backs. As noted previously, as of this writing no record of any past coastal development permit has been found for construction of the original seawall on the subject site. According to the applicant, the earliest photographs of the site from 1974 show the seawall as existing on the site at that time. Therefore, the subject permit also represents an after-the-fact permit to authorize the unpermitted seawall.

Prior to receipt of the appeals for the proposed development, Commissions staff had worked with the City of San Diego in reviewing the proposed development through the post-certification review process in an effort to resolve any issues before receiving the notice of final action on the proposed development. One of the primary issues dealt with permit jurisdiction for the existing seawall. Commission staff consulted with the State Lands Commission to determine permit jurisdiction, however, a determination was never made. However, the State Lands Commission did indicate that a survey of a mean high tide line does not fix the boundary but instead approximates the boundary at the time the survey was done. It was also stated that the mean high tide line is not a fixed line and fluctuates from day to day. Some of this information was also reiterated in a letter dated 11/24/98 from the State Lands Commission to the applicant's representative. In that letter, it was further stated:

"Because, based on our current information, there is little evidence of the true location of the elevation of mean high tide on the beach prior to the construction of the seawall, it is plausible that a portion of the was constructed on portions of the beach at times were below the elevation of mean high tide. The likely location would be in the sandy cove areas on the north end of the property

behind the existing seawall. The location of the bluff at the seawall is strong evidence that that area has never been below the elevation of mean high tide. Because so little is known of the history of this property (possible filling, seawall construction plans and dates, etc.) it is not possible to come to a conclusion at this time.”

Therefore, since the subject seawall presently experiences wave run-up, it has been determined that the seawall is subject to the Commission’s jurisdiction. At this time, the applicant has not disputed this assertion and simply wants to obtain whatever permits are necessary for the proposed development.

A geotechnical report has been submitted by the applicant's geotechnical engineer which addresses coastal bluff erosion and the need for the proposed improvements. The conclusions and recommendations on page 19 the report state the following:

“Based on our field exploration, laboratory testing, engineering and geologic analyses, it is our opinion that the project sites appears suited for development from a geotechnical engineering and geologic viewpoint. The recommends presented herein should be incorporated into the final design, grading and construction of the development....”

“The existing seawall should be maintained/rehabilitated and extended to the southeast and northwest. Should these areas not be mitigated, ultimately distress to the improvements and residence will likely occur. The drainage of the existing seawall needs to be improved. The surface drainage of the lot needs to be directed away from the bluff face to an appropriate inlet, utilizing non-erosive devices. This may require a moisture-activated sump pump in order to get the drainage to flow to a suitable outlet. The recommendations presented herein should be incorporated into the final design, earthwork and construction phases of mitigation.”

The information in this report was supplemented by a letter dated 3/13/98 from Skelly Engineering. In that letter, it was stated that the need for the seawall is established by other facts as well which include the following: 1) the existing residence is within approximately 12 feet of the former unprotected bluff top; 2) there are several permitted seawalls in the immediate area for homes that are not as close to the bluff as the referenced property; 3) It is likely that the erosion will continue at the same rate or higher due to climatic trends; 4) Sections of the bluff on adjacent properties have experienced large block failures and sea cave formation due to the last few winters of strong wave action and elevation sea level; and, 5) The seawall is in need of maintenance to prevent it from failing and jeopardizing the residence behind the wall.

In addition alternatives were considered with regard to the location of the existing seawall. Those alternatives included keeping the seawall at the same location, moving it landward about eight feet and relocating the wall to the toe of the cove. The existing seawall is located approximately two feet seaward of the bluff edge, as determined by the

City of San Diego. However, at the northern portion of the property, there is a small cove inland of the seawall that was blocked off when the seawall was originally constructed. This cove consists of a perched beach with sand that has been supplied by natural forces (wind and wave overtopping). With regard to the alternatives considered for the location of the existing seawall, moving the wall landward would have had a positive benefit of making a new beach area available for public use. However, the disadvantage is that the footings would have to be removed and the new wall would need to be about two feet higher than the existing wall to protect the natural bluff behind the wall. There would also likely be an increase in wave splash and scour. With regard to relocating the wall to the toe of the cove, new beach area would also be created. However, the disadvantage of this alternative is that again, there would need to be excavation of the existing wall and footing. The new wall would be about 2.5 times as long as the existing wall segment and it would also need to be much higher due to wave focusing and exacerbated wave runup. Therefore, based on an assessment of all alternatives, it was determined for geologic reasons, that the best location is to leave the wall where it is presently sited.

One of the contentions of the appellants is with regard to the location of the existing seawall. The appellants believe the seawall should be relocated further inland. In addition, the seawall was constructed in a linear fashion just seaward of the existing home blocking off a small cove northwest of the residence that existed prior to construction of the seawall. The appellants believe that the seawall should be pulled back further inland to follow the toe of the cove. In order to assess the viability of this alternative, Skelly Engineering provided written comment as follows:

“The alignment of the existing shore protection for the most part closely follows the toe of the unprotected bluff as evidenced by the 1974 photograph that the City of San Diego has presented for this application....There is one section of the existing seawall that deviates from the toe of the bluff. This is at the southwest portion for the wall. The seawall blocks off a small cove that is approximately 17 feet wide, toe- to-toe. If the seawall were to follow the bluff toe within the cove adverse erosional conditions would be created. First, the pocket formed by the wall would exacerbate wave runup as a result of wave up-rush focusing into the cove. The resulting enhanced wave runup would require a seawall about twice the height of the existing wall. Next the focused wave energy will exacerbate the down wearing and scour at the base of the seawall. In addition, the geometry would form a partial blow hole, which would result in increased wave energy on, and resulting erosion of, the unprotected bluff on the adjacent property. Accordingly, as indicated previously, the existing seawall is optimally located with respect to site conditions.”

Based upon all the information contained in the geotechnical report, the Commission finds that while repairing the seawall is warranted to protect the existing residence, the Commission must consider the impacts to the beach environment which are significant and irreversible. The Coastal Act allows for reasonable development along the shoreline which is a recognized hazard area, but the Commission must also recognize

there are limits to the impacts which are accepted on public property for purposes of protecting such private development. Additionally, in this particular case, significant impacts to the visual quality of the beach and the beach itself have already occurred in an effort to protect the existing principal residential structure. The Commission must minimize impacts from any additional protective devices approved, and assure adequate mitigation for visual impacts and effects on sand supply are provided with any allowable protection.

There are a number of adverse impacts to public resources associated with the construction of shoreline structures. The natural shoreline processes referenced in Section 30235 of the Coastal Act, such as the formation and retention of sandy beaches, may be altered by construction of a seawall, since bluff retreat is one of several ways that beach area and beach quality sand is added to the shoreline. This retreat is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. When a seawall is constructed on the beach at the toe of the bluff, it directly impedes these natural processes.

Many of the effects of a structure on the beach are temporary or difficult to distinguish from all the other actions which modify the shoreline. Nevertheless, some of the effects which a structure may have on natural shoreline processes can be quantified. Three of the effects from a shoreline protective device which can be quantified are: 1) loss of the beach area on which the structure is located; 2) the long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally.

Based on the review of the proposed seawall application, the Commission finds that the impacts associated with the existing seawall and its proposed repairs are limited to the loss of beach area on which the structure is located, as enumerated above. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as a beach. This area will be altered from the time the protective device is constructed and the extent or area occupied by the device will remain the same over time, until the structures is removed or is moved from its initial location. The beach area located beneath a shoreline protective device, referred to as encroachment area, is the area of the structure's footprint. For the proposed project, staff has estimated that, for the proposed length of new seawall with approximately two to 21 ft of encroachment, approximately 200 sq. ft. of public pocket beach will be directly covered by the proposed project and would no longer be available for public use. As a rough indication of the significance of this loss of beach area, it would take 172.8 cubic yards of sand to recreate the public beach area that would be lost through encroachment. Further, the proposed structure will prevent the sand in the bluff material from reaching the shoreline to replace the already dwindling sand supply. The potential for such impacts on the beach and sand supply have been found to result from seawalls in other coastal areas in San Diego

County; particularly, in the north county area of Encinitas (ref. CDP Nos. 6-93-36-G/Clayton, 6-93-131/Richards, et al, 6-93-136/Favero, and 6-95-66/Hann).

It must be acknowledged that the existing seawall was never authorized and through the subject coastal development permit, the Commission is authorizing the seawall as an after-the-fact permit. Given that it is impossible to determine where the location of the mean high tide line (MHTL) was in the early 1970's when the seawall was estimated to have been constructed, and that the seawall presently encroaches beyond the toe of the coastal bluff and experiences wave run-up that touches the toe of the seawall, it is reasonable to assume that the existing seawall encroaches onto what is public trust lands. In this particular case, the Commission finds the adverse impacts associated with the proposed project cannot be accepted without mitigation for the impact. Along with the proposal to improve the drainage in the existing seawall and direct all blufftop drainage away from the bluff towards the street, these measures will help to stabilize the site.

Therefore, the Commission is requiring through Special Condition No. X payment of a mitigation fee (\$XX.XX) for the encroachment of the existing seawall on the sandy beach. Special Condition #3 further requires that the applicant submit a final maintenance and monitoring plan to assure that the shoreline protective works (i.e. repairs to existing seawall) remain structurally sound. Also, due to the inherent risk of shoreline development and the Commission's mandate to minimize risk, Special Condition #2 for a waiver of liability has been attached. By this means, the applicant is notified of the risk and the Commission is relieved of liability in permitting the development. Pursuant to Section 13166(a)(1) of the Commission's regulations, an application may be filed to remove Special Condition #2 from this permit if the applicant presents newly discovered material or information regarding the existence of any hazardous condition which was the basis for the condition, if they could not with reasonable diligence have discovered and produced such information before the permit was granted. Only as conditioned can the proposed project be found consistent with Sections 30235 and 30253 of the Coastal Act.

3. Visual Resources Community Character. Section 30251 of the Act calls for the protection of the scenic qualities of coastal areas and that new development be visually compatible with the character of the surrounding area. It should also be noted that the coastal bluffs along the shoreline in this area are significant landforms worthy of preservation under Section 30251. The subject proposal, as conditioned for approval, represents repairs to an existing concrete vertical seawall and filling of three sea caves. As proposed, the repairs to the existing seawall consist, in part, of sandblasting and re-coloring to match the existing bluffs and replacing the existing wave deflector. Also proposed is the plugging and/or filling of three sea caves with lean concrete (cement slurry backfill). The applicant has proposed to use colored concrete and surface treatments such that the proposed structures will closely resemble the surrounding natural area.

Special Condition #7 has thus been attached requiring submittal of plans which document through a color board that the proposed color will match the adjacent sandstone bluffs.

The condition further requires that the surface treatment be incorporated into the project design so that the texture of the structures will appear the same as the surrounding sandstone bluffs. It should be noted that the Commission recently approved, under CDP #6-84-408-A, repairs to an existing seawall two lots north of the subject site. Through that approval, the Commission also required plans addressing the surface and color treatment of the existing seawall. The subject site is located in a scenic area and the subject block is bounded by two rock outcroppings and/or headlands which jet out into the ocean; one at the terminus of Camino de la Costa and the other at Cortez Place. As noted earlier, there is an unimproved foot trail at Mira Monte Place which is utilized by the public to gain access to the shoreline. By requiring that existing seawalls proposed for repairs be re-colored and texturized to resemble the natural sandstone bluffs, the visual quality of these scenic areas is greatly enhanced, consistent with Section 30251 of the Act. Thus, as conditioned, the proposed project should not result in any adverse visual impacts, and in fact, will actually improve the visual appearance of the existing seawall. As conditioned, the project can be found consistent with Section 30251 of the Act.

Section 30251 of the Act calls for the protection of the scenic qualities of coastal areas and that new development be visually compatible with the character of the surrounding area. It should also be noted that the coastal bluffs along the shoreline in this area are significant landforms worth of preservation under Section 30251. The subject proposal, as conditioned for approval, represents remodelling of an existing residence and repairs to an existing concrete vertical seawall. As proposed, the repairs to the existing seawall consists, in part, of sandblasting and re-coloring to match the existing bluffs. The applicant has proposed to use colored concrete and surface treatments such that the proposed structure will closely resemble the surrounding natural area.

With regard to community character, as noted earlier in the findings for substantial issue in this report, through the proposed development, the applicant will decrease the degree of non-conformity by shaving off the two corners of the northeastern and southeastern portion of the residence to a 45-degree angle and removal of a boathouse structure and a chimney between the existing residence and existing seawall which will result in increasing the rear yard setback by eight feet. Through various minor modifications to the residence proposed through remodelling, the FAR of the home will also be decreased from .99 to .90. The home will be compatible in size and scale with the character of the surrounding area. The Commission, therefore finds that the proposed development is consistent with Section 30251 of the Act. The remainder of this finding is discussed in full detail in the findings on Substantial Issue section of this report (reference pages 7-8 and is hereby incorporated by reference).

4. Public Access/Recreation. Both the certified LCP and the Coastal Act contain policies protecting physical access to the beach and ocean. The subject site is located between the first public roadway and the sea. There is one major physical accessway in the area and it consists of the unimproved dirt trail in the public right-of-way of Mira Monte Place immediately south of, and adjacent to the subject site, cited previously in this report. The trail used primarily by people in the neighborhood and members of the public to gain access to the small cove and beach area located below. There are other

unimproved physical accessways in the Camino de la Costa area at Cortez Place, the southern terminus of Camino de la Costa and one improved physical accessway at Hermosa Terrace Park approximately two-and-a-half blocks to the north of the subject site which includes a paved walkways near Winamar Avenue. All of the aforementioned accessways will remain unaffected by the subject proposal.

In addition, Section 30604(c) of the Act requires that a specific access finding be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (Camino de la Costa). As noted above, there is one unimproved physical access route to the beach immediately south of the site which provide physical access to the shoreline. Given that there is existing vertical public access in the area, the proposed project will not result in any adverse impacts to physical public access. In addition, Special Condition #s 5, 6 and 8 address timing of work such that development does not occur between Memorial Day weekend and Labor Day, limitations on staging areas and access corridors to avoid impacts on public access, and protection of potential public rights. Furthermore, as required in Section 30604(c) for development between the first public road and the sea, the project, as conditioned, is found consistent with all other public access and recreation policies of the Coastal Act.

5. 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, only as conditioned, can such a finding be made.

The certified La Jolla-La Jolla Shores LCP Addendum contains numerous policies which call for the protection and improvement of existing visual access to the shoreline and that ocean views should be maintained in future development and redevelopment. Due to the presence of the existing residence, there are presently no ocean horizon views looking across the site. However, as noted previously, the subject site is located immediately adjacent to, and north of, a designated public view corridor. The proposed development consisting of demolition of an older, one-story, 3,500 sq.ft. single family residence and replacement with a newer, two-story, 8,326 sq.ft. single family residence, coupled with existing vegetation in this area, will diminish the view that exists across the site. However, as conditioned, for revised plans which eliminate the tall vegetation in the southern part of the site in the public right-of-way, require either removal of the existing Myoporum vegetation in the public view corridor and replacement with low-lying vegetation or trimming and maintenance of the existing vegetation such that it will not obstruct public views to the ocean, and installation of open fencing along the south and north side yard setbacks, the Commission finds that public views to the ocean will be protected. As conditioned, the proposal can be found consistent with the certified LCP and public access and recreation policies of the Coastal Act. Approval, as conditioned, will not prejudice the ability of the City of San Diego to implement its certified LCP for the La Jolla area.

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

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

The proposed project has been conditioned in order to be found consistent with the visual resource and shoreline hazard policies of the Coastal Act. In this case, there are feasible alternatives available which can lessen the significant adverse impact the project will have on public views to the ocean and alteration of natural landforms and shoreline sand supply. The proposed conditions addressing landscaping, fencing and repairs to an existing seawall along with appropriate mitigation for the area of beach lost due to the long-term encroachment of the seawall onto the beach, 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.

(A-6-LJS-98-169 Moncrieff SI stfrpt)

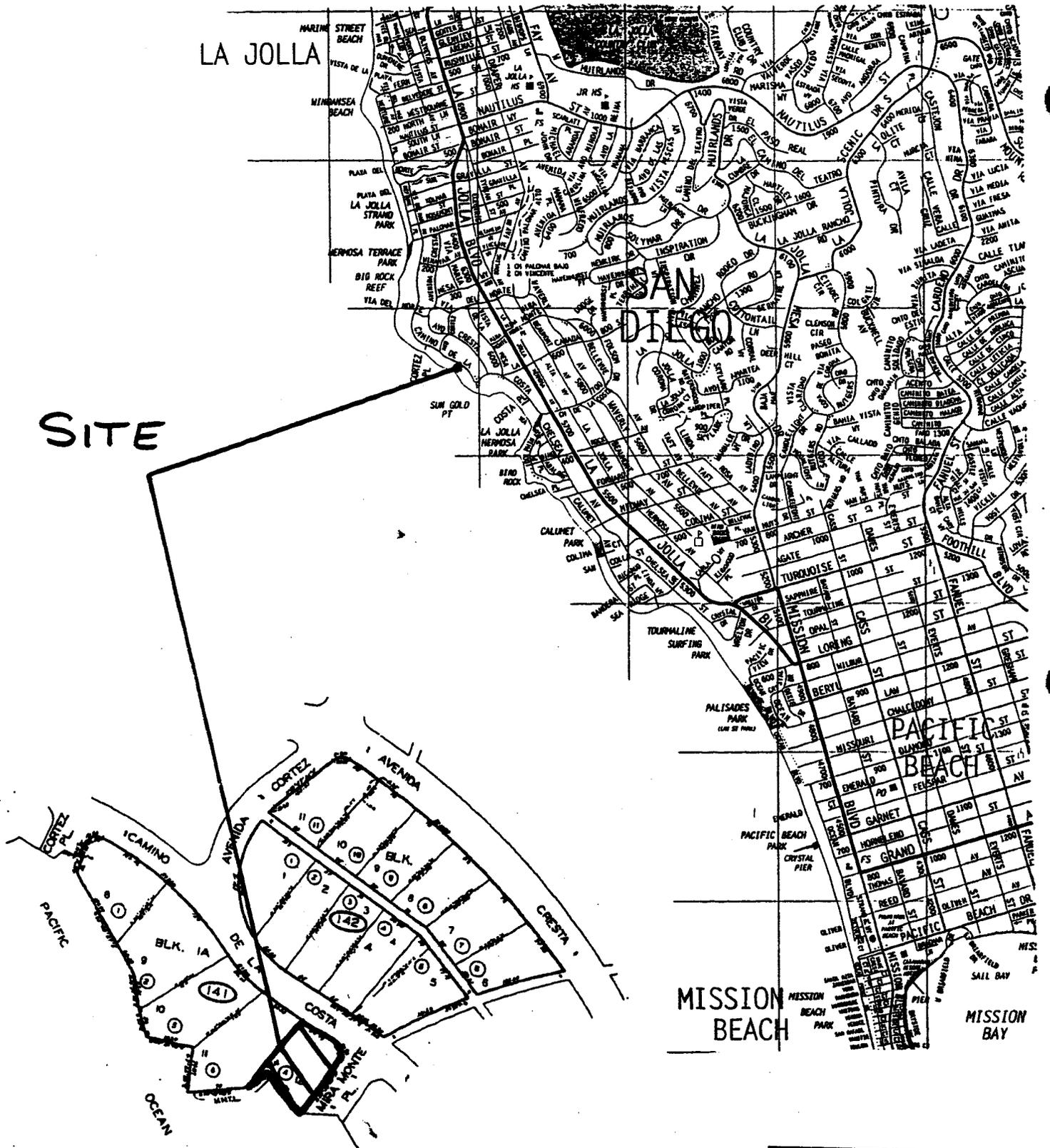


EXHIBIT NO. 1
 APPLICATION NO.
 A-6-LJS-98-169
 Location Map
 California Coastal Commission

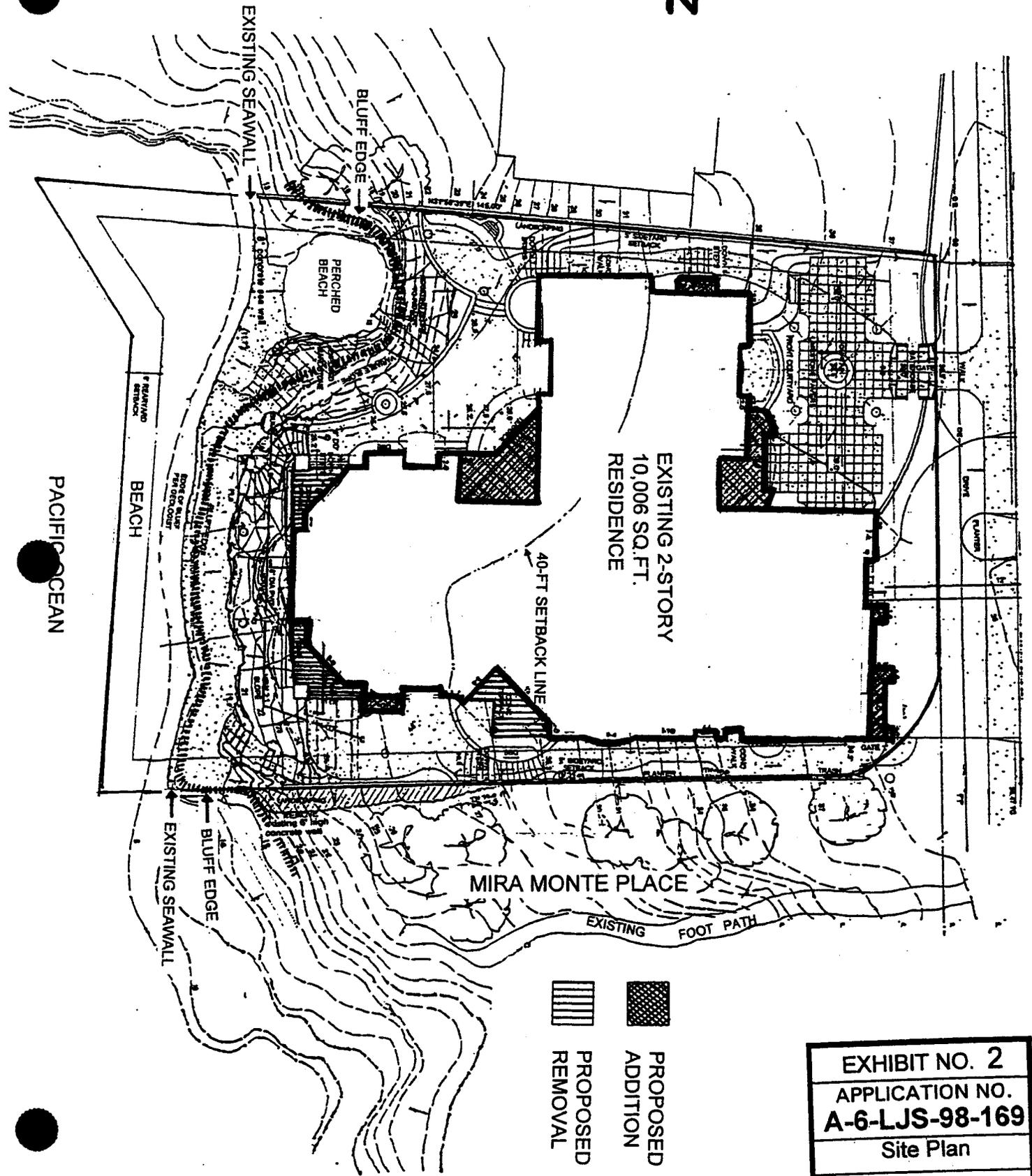


CAMINO DE LA COSTA

PACIFIC OCEAN

BEACH

REMAINING SETBACK



EXISTING 2-STORY
10,006 SQ. FT.
RESIDENCE

40-FT SETBACK LINE

MIRA MONTE PLACE

EXISTING FOOT PATH



PROPOSED
REMOVAL



PROPOSED
ADDITION

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-98-169
Site Plan
California Coastal Commission

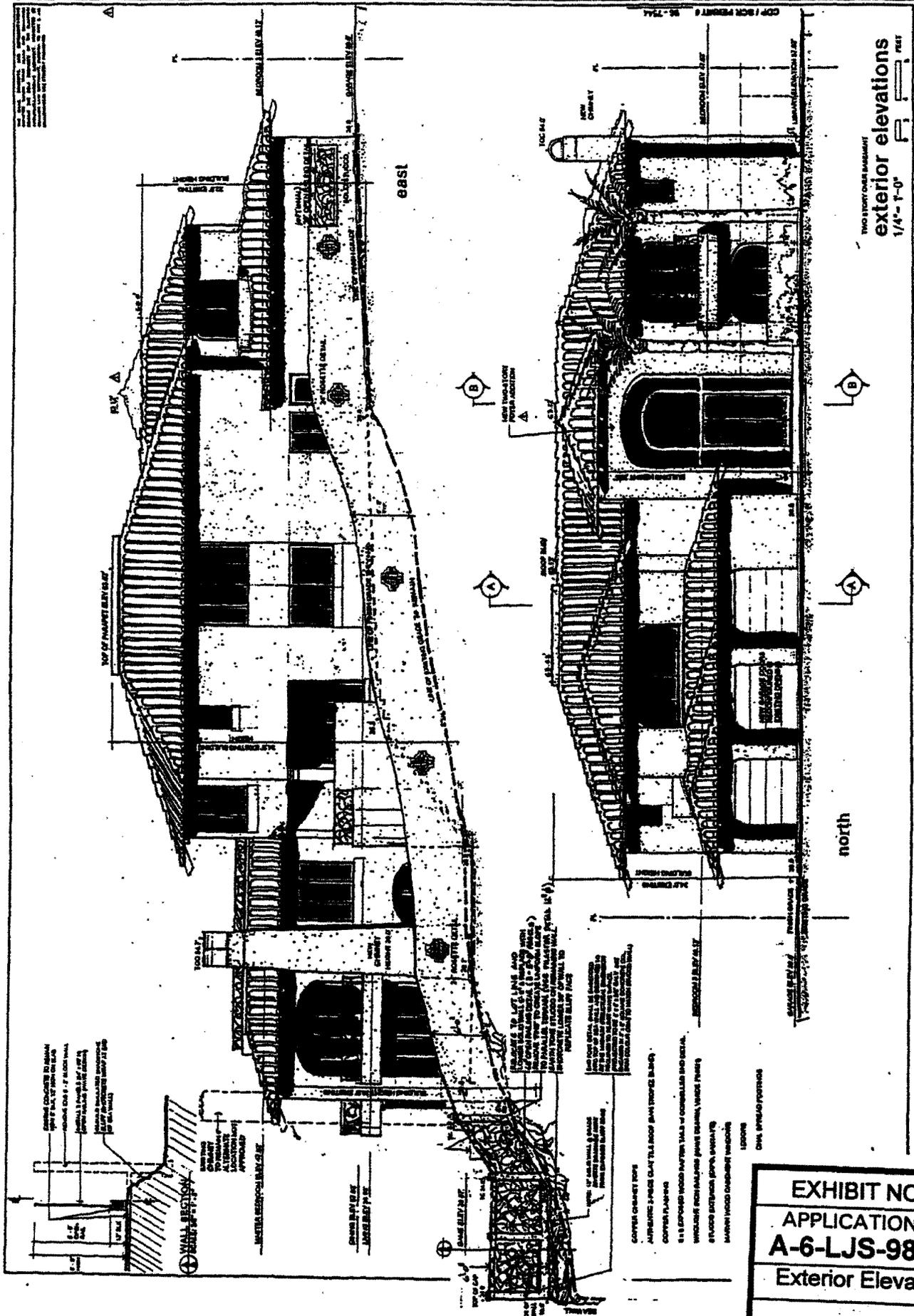
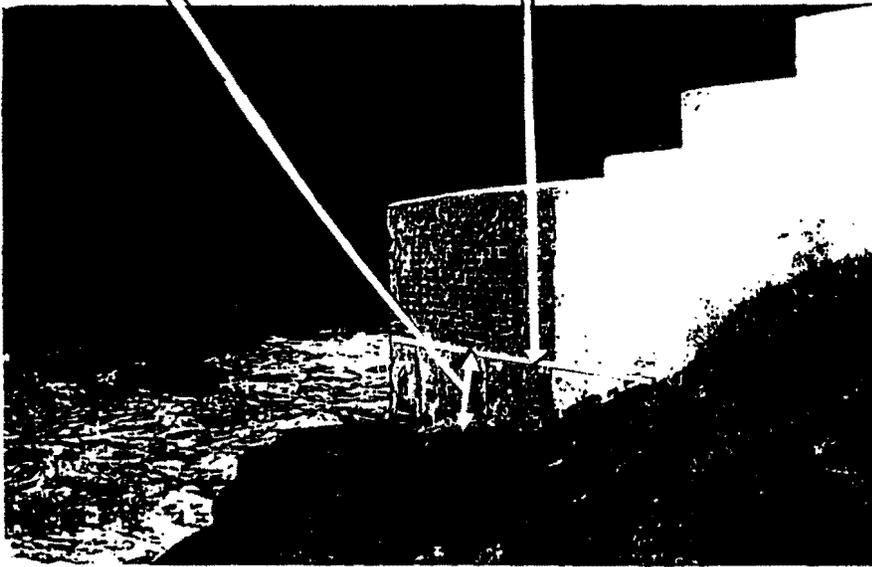


EXHIBIT NO. 3
APPLICATION NO.
A-6-LJS-98-169
Exterior Elevations

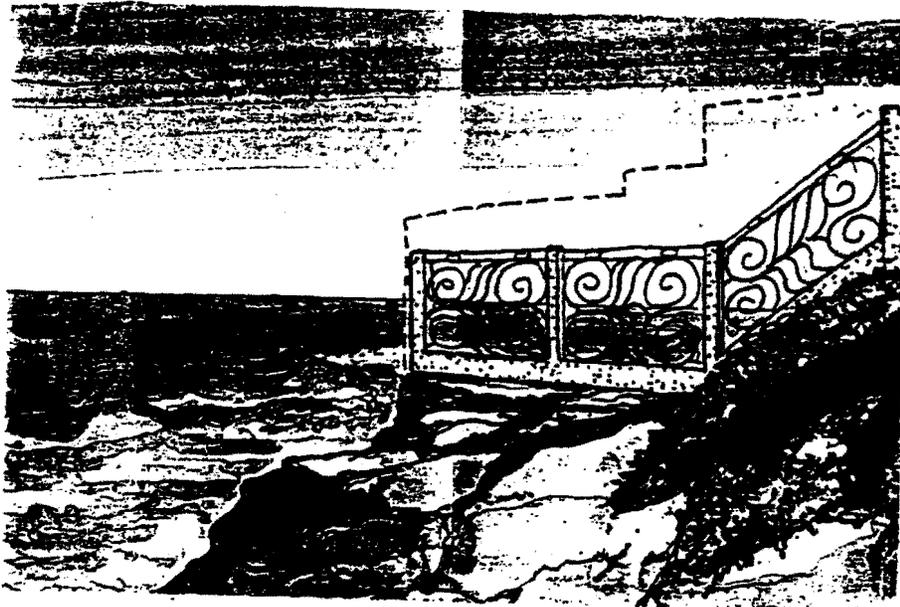
NOTE: LOW RETAINING WALL TO BE REMOVED WHEN
OPEN FENCING IS RELOCATED TO LOT LINE

EXISTING GRADE OF CONCRETE
SEAWALL CAP BEYOND



VIEW FROM MIRA MONTE PLACE TO EXISTING WALL

"before"

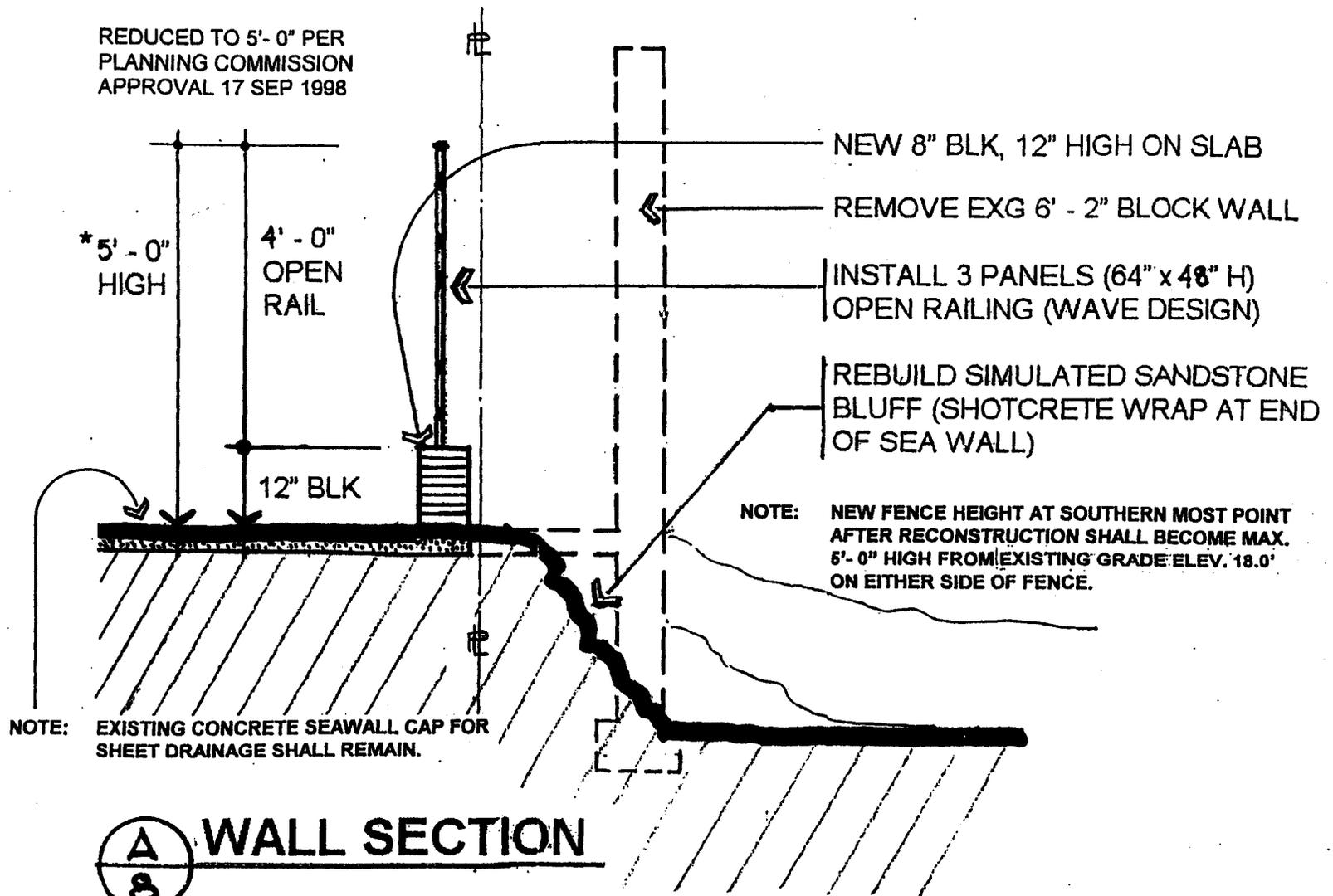


VIEW AS PROPOSED FROM MIRA MONTE PLACE THROUGH
NEW REDUCED HEIGHT OPEN PROTECTIVE FENCING

"after"

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-98-169
South Side-Yard Wall: To
be moved to property line
 California Coastal Commission

REDUCED TO 5'-0" PER
PLANNING COMMISSION
APPROVAL 17 SEP 1998

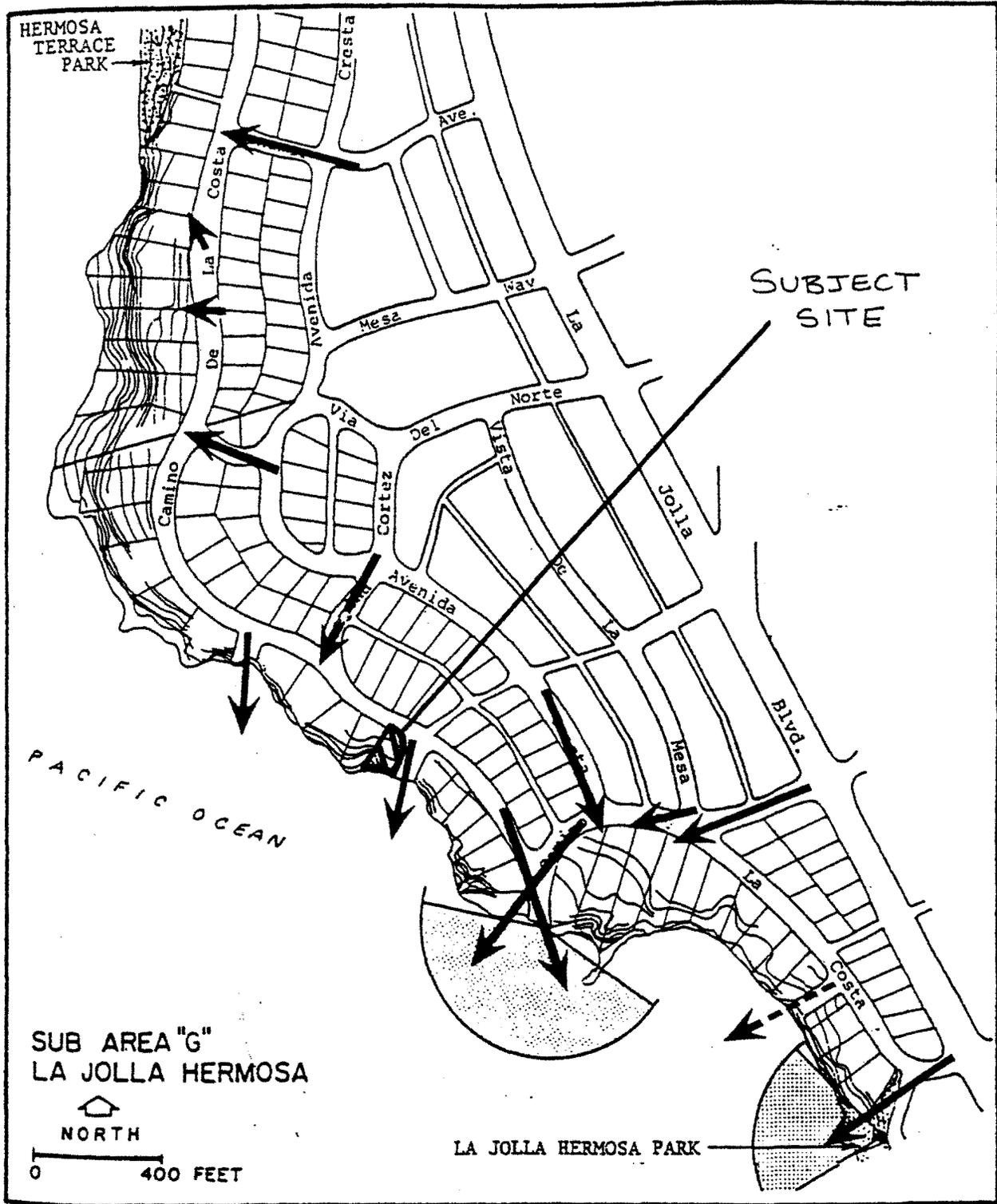


NOTE: EXISTING CONCRETE SEAWALL CAP FOR SHEET DRAINAGE SHALL REMAIN.

NOTE: NEW FENCE HEIGHT AT SOUTHERN MOST POINT AFTER RECONSTRUCTION SHALL BECOME MAX. 5'-0" HIGH FROM EXISTING GRADE ELEV. 18.0' ON EITHER SIDE OF FENCE.

WALL SECTION

	EXHIBIT NO. 5
	APPLICATION NO.
	A-6-LJS-98-169
	Cross-Section of Proposed South Side-Yard Wall



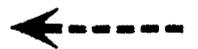
La Jolla • La Jolla Shores
LOCAL COASTAL PROGRAM • VISUAL ACCESS



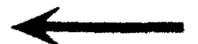
CITY OF SAN DIEGO
 PLANNING DEPARTMENT



MAJOR VISTA POINT



POTENTIAL VISUAL ACCESS



VISUAL ACCESS CORRIDOR
 (existing)

EXHIBIT NO. 6
APPLICATION NO. A-6-LJS-98-169
Designated Public View
Corridor from Certified LCP California Coastal Commission