

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



W7e

Filed: 12/31/98  
49th Day: 2/18/99  
180th Day: 6/29/99  
Staff: LRO-SD  
Staff Report: 3/23/99  
Hearing Date: 4/13-16/99

## RECORD PACKET COPY

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-98-169

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 blufftop lot. Also proposed is the demolition and rebuilding of a south side yard wall, removal of an encroachment into the Mira Monte Place public right-of-way, removal and replacement of a wall along the eastern portion of the home, landscape improvements and after-the-fact approval (and repair) of an existing 96-foot long, concrete vertical seawall which attains a height of +11.7 ft. MSL to +18 ft. MSL.

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

STAFF NOTES:

The Commission found Substantial Issue at the March 10, 1999 meeting. This report is for the de novo permit.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed remodel of an existing single family residence and the after-the-fact approval and repair of the southerly approximately 64 linear feet of an existing 96-foot long vertical seawall with several special conditions. The staff also recommends that the Commission deny the northerly approximately 32 linear feet of the existing seawall as it has not been demonstrated as needed to protect the existing residence and is inconsistent with Coastal Act policies.

The project raises concerns related to the protection and provision of designated view corridors and geologic hazards associated with the existing unpermitted seawall. For that portion of the proposed development recommended for approval, protection of visual resources and public views associated with the designated public view corridor is addressed through landscaping, fence and wall requirements in Special Condition #3. The condition requires that the applicant trim existing vegetation in the public view corridor in order to open up public views toward the ocean and that the trees be maintained in perpetuity to assure that views are protected on an on-going basis. It further requires that a south side yard wall be relocated to the southern property line to eliminate its encroachment into the view corridor and that it be lowered in height and be composed of open materials. A fence along the eastern frontage of the site is also required to be composed of open materials to prevent a "walled off" effect.

Other conditions associated with the portion of the seawall recommended for approval include a monitoring program for the seawall; assumption of risk; construction staging areas, access corridors and timing of construction; submittal of final seawall plans; public rights; conditions of the City's permit modified through the subject permit; sand mitigation fee, U.S. Army Corps of Engineers Permit; storm design and as-built plans for the seawall; and, future maintenance and debris removal associated with the seawall.

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, the latter of which is within the Commission's original permit jurisdiction. With the attached conditions, that portion of the project recommended for approval can be found consistent with Chapter 3 policies of the Coastal Act. However, the approximately 32 ft. section of the seawall that cannot be found consistent with Coastal Act policies is recommended for denial. Removal of the seawall denied by this action will be addressed through enforcement proceedings.

---

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; CCC Staff Report: Appeal Substantial Issue dated 2/10/99.

---

#### STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

I. Approval, in Part, with Conditions/Denial, in Part.

The Commission hereby grants a permit for the proposed residential remodel and section of the proposed seawall that extends approximately 64 ft. from the southerly property line to the north, 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 and hereby denies a permit for the section of the seawall that extends approximately 32 ft. from the northerly property line to the south on the grounds that the development is not in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will have significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

III. Standard Conditions.

See attached page.

IV. Special Conditions.

The permit is subject to the following conditions:

1. Final Building Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final building plans that have been approved by the City of San Diego and that are in substantial conformance with the preliminary plans dated 4/28/97, except that such plans shall be revised to reflect that the southern section of the seawall that extends approximately 32 feet south from the northern property line is not approved. The applicant shall undertake each phase of the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

2. Monitoring Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for the following:

- a. An annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall including an assessment of the color and texture of the wall.

- b. Provisions for submittal of a report to the Executive Director of the Coastal Commission on May 1 of each year (beginning the first year after construction of the project is completed), for the life of the project. Each report shall be prepared by a licensed geologist or geotechnical engineer. The report shall provide some analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, and the impact of the seawall on the bluffs to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.

The applicant shall undertake the monitoring in accordance with the approved monitoring program. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the monitoring program shall occur without a Commission-approved amendment to this permit unless the Executive Director determines that no such amendment is required.

3. Revised Fence/Wall/Landscape 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. The plans shall be in substantial conformance with the plans as submitted by David Lee Soanes, Limited dated 4/28/97, except for the revisions cited below. The plans shall be revised to keep the sideyard setbacks and public right-of-way clear to create an unobstructed view corridor from the street and along the pedestrian footpath in the designated public view corridor toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. Removal of 12 linear feet of an existing south side yard wall in the public right-of-way of Mira Monte Place and its relocation to the southern lot line of the subject site. The replacement wall shall be no higher than 6 ft. and be painted or composed of colored concrete that is earth tone to be compatible in color with the adjacent sandstone bluffs. The proposed color shall be verified through submittal of a color board. White and black tones are not permitted. The westerly 12 feet of the fence near the bluff edge shall be composed of solid materials at the base (maximum one foot) with the remainder of the wall comprised of only open materials. The wall shall extend no further seaward than the inland extent of the approved seawall.
- b. Removal of an existing 25 linear foot, nine-foot high concrete wall along the eastern (street) frontage of the site and replacement with a new six-foot high wall that consists of an approximate 14-foot long wall, a 12-foot high, approximately 65 sq.ft. gate structure, and an approximately 20-foot long wall that will extend to the north property line into the north sideyard setback. The northerly 14 feet of this wall shall be designed with no more than 3 feet of solid materials at the base and open fence materials on the top.

- c. All landscaping (i.e., the Myoporum trees) between the masonry wall extending from the southern property line up to the centerline of the public right-of-way in ownership of the applicant, shall be trimmed. In the area between 9 ft. to ground level existing vegetation shall be removed or modified to provide an unobstructed view to the ocean. A canopy at the top of the trees may be maintained.
- d. Landscaping in the north side yard setback shall be no higher than three feet.
- e. A written commitment by the applicant that all required plants on this site shall be maintained in good growing conditions and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements. Also, all trees trimmed in the public right-of-way shall be maintained in perpetuity to maintain the views to the ocean.

The applicant shall undertake each phase of the development in accordance with the approved fence/wall/landscape plans. Any proposed changes to the approved fence/wall/landscape plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

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 reflects the restrictions stated above on the proposed development. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded, free of all prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. The 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. Assumption of Risk. PRIOR TO THE 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 wave and storm activity 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 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 document 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. The 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.

5. Construction Materials. During construction of the approved development, disturbance to the beach 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.

6. Staging Areas/Access Corridors/Timing of Construction. 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 indicate that:

- a. No staging of equipment or materials shall occur on sandy beach or public parking areas. During both the construction and the removal stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach between Memorial Day weekend and Labor Day of any year.
- d. 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.

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

7. Final/Revised Seawall Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans for the reconstruction of the seawall. Such plans shall be revised to eliminate the northern approximately 32 lineal feet of seawall and to reflect that repair and reconstruction of only the southern approximately 64-lineal feet of seawall is permitted. The repair/reinforcement techniques for this portion of the seawall shall be in substantial conformance with the preliminary plans dated 11/8/96. The seawall shall 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. The proposed structure shall

also be designed to incorporate surface treatments (e.g., air-placed concrete) that resemble the surface texture of the adjacent natural bluffs. The applicant shall undertake of the development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No change to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is required.

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 SCR permit #96-7544 remain subject to the City's jurisdiction.

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 \$935.79 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 site shall be that described in the staff report dated 3/23/99 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 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 the MOA with SANDAG is terminated, the Commission can appoint an alternative entity to administer the fund.

11. 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.

12. Storm Design/As-Built Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit certification by a registered civil engineer that the proposed shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83.

Within 60 days following completion of the project, the permittee shall submit as-built plans of the approved seawall which includes measurements of the distance between the residence and bluff edge (as defined by Section 13577 of the California Code of Regulations). The locations for these measurements shall be identified through permanent markers, benchmarks, survey position, written description, etc. to allow annual measurements to be taken at the same bluff location and comparisons between years to provide information on bluff retreat.

In addition, within 60 days following completion of the project, the permittee shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the seawall has been constructed in conformance with the approved plans for the project.

13. Future Maintenance/Debris Removal. The permittee shall remove all debris deposited on the beach or in the water during and after construction of the shoreline protective devices or resulting from failure or damage of the shoreline protective device. In addition, the permittee shall maintain the permitted seawall in its approved state except to the extent necessary to comply with the requirements set forth below. Maintenance of the seawall 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 seawall 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, the permittee shall contact the Commission office to determine whether permits are necessary.

14. Denial of Northern Portion of the Seawall. The retention and maintenance of the northern approximately 32 lineal feet of the proposed seawall is denied.

15. Condition Compliance. WITHIN NINETY (90) 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.:

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 on a .23 acre oceanfront blufftop lot. The existing structure is a non-conforming residence that is sited 10 feet from the bluff edge. 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 east 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.

There is also an existing 6-9 foot high south sideyard wall (a portion of which is within the Mira Monte Place public right-of-way) that extends from the eastern property line to the bluff edge in an east/west direction which presently obstructs public views to the ocean in its present location. As part of the subject proposal, the southerly 12-feet of this wall that encroaches into the right-of-way is proposed to be removed and reconstructed along the southern lot line, extending along the bluff edge to the southernmost portion of the existing seawall. The new portion of the wall will be composed of a one-foot high solid base with the remainder comprised of open railing. In addition, the applicant proposes to remove an existing 20-foot long, nine-foot high wall along the eastern frontage of the property adjacent to Camino de la Costa and replace it with a six-foot high, approximately 14-foot long wall, a 12-foot high, approximately 65 sq.ft. gate structure, and an approximately 20-foot long wall. Another 6-ft. high wall and gate exists at the southeast corner of the property in the south side yard setback. The wall and gate are composed of wood and are proposed to remain but will be resurfaced with stucco to match the newer wall that will be constructed near the eastern frontage of the residence cited above. 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 of the site to the existing seawall which is proposed to remain.

Also proposed is the after-the-fact approval of the existing seawall and repairs consisting of reinforcement of the seawall by replacing footings and installing tie backs. The seawall is also proposed to be textured and colored to match the adjacent natural landforms. The height of the existing seawall varies from approx. +18 ft. MSL to +11.7 ft. MSL. The seawall appears to have been constructed in two sections with the most southerly section of the seawall that follows the alignment of the bluff edge and is most closely sited to the home constructed in the early 1970's. This portion of the seawall begins at or near the southern property line and extends approximately 64 lineal feet to the north. It has an approximate height of +18 ft. MSL. The second portion of the seawall was constructed sometime around 1985, according to aerial photographs, and extends in a northerly direction from the original seawall to the north property line for a linear distance of approximately 32 feet. This northern portion of the seawall has an

approximate height of +11.7 ft. MSL. This northern section of seawall does not follow the alignment of the bluff, which curves inland to create a pocket beach and cove. Instead, the northern section of the seawall extends directly north in a mostly straight line, cutting off the small pocket beach and cove on the subject property.

The subject residential site is located on Camino de la Costa in the community of La Jolla in the City of San Diego. The shoreline area is characterized by a rocky shoreline and coastal bluffs. The subject site is located immediately adjacent to, and north of, the Mira Monte Place public right-of-way and designated public view corridor. 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. An existing unimproved pedestrian trail is located within the right-of-way which leads down to sandstone bluffs that drop off to small pocket beach below. There is also an abundance of trees and shrubs located within the public right-of-way.

The subject project is located within the City of San Diego's permit jurisdiction and the Coastal Commission's appeal jurisdiction. The proposed project for the remodel of an existing residence was appealed to the Coastal Commission and Substantial Issue was found. As such, the Commission now assumes permit jurisdiction for the review and approval of the proposed remodel. As noted above, the applicant is also proposing after-the-fact approval and repair of an existing seawall. The seawall never received a coastal development permit and is located within the Commission's area of original jurisdiction. As such, the application for the approval of the after-the-fact seawall and repairs to it (Ref. CDP Application #6-99-16/Moncreif), has been incorporated into this review.

While the house remodel is the subject of the City's appeal, the seawall is within the Commission's original jurisdiction. Thus, the house remodel standard of review is the certified LCP and the public access and recreational policies of the Chapter 3 of the Coastal Act. The standard of review for the proposed repairs to the existing seawall is Chapter 3, with the certified LCP used as guidance.

Although the applicant is proposing to remove portions of the house and make minor additions to the house, the proposed project does not involve the demolition of more than 50% of the exterior walls. The top and bottom plates will remain in place. 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 or 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.

In review of the project, the City approved three variances; 1) to allow for a seven-foot front yard setback where 15 feet is required to accommodate the proposed fence and gate

structure; 2) to allow the encroachment of a small architectural feature in the southeast corner of the residence into the south side yard setback; and, 3) to allow 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.

## 2. Home/Fences.

a) Visual Impacts/Coastal Scenic Area/Public View Blockage. The following policies and goals of the certified La Jolla-La Jolla Shores LCP addressing protection of public views are applicable to the subject development:

"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 this report, the existing residence is located immediately adjacent to, and north of, an LCP-designated public view corridor located in the Mira Monte public right-of-way which is a "paper street". As noted in the findings for Substantial Issue for the proposed development, 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 "Visual Access Corridor". The right-of-way runs in a vertical direction 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 pocket 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 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 beach below.

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 raises concerns related to public views because the existing residence is non-conforming and presently does not meet the current requirement with regard to side yard setbacks which would otherwise be required to be maintained as a view corridor.

As noted earlier, the applicant also proposes to construct a six-foot high, approximately 14-foot long wall, a 12-foot high, approximately 65 sq.ft. gate structure, and an approximately 20-foot long wall along the eastern frontage of the residence adjacent to Camino de la Costa. This proposed wall along the eastern frontage of the site will be located east of a proposed courtyard in front of the residence and into the north sideyard setback. The portion of the proposed masonry wall in the north side yard setback is inconsistent with current zoning code requirement which stipulates that such walls must be composed of 50% open materials.

As noted previously, there is also an existing 6-9 foot high south yard wall (a portion of which is within the public right-of-way) that extends from the eastern property line to the bluff edge in an east/west direction which presently obstructs public views to the ocean in its present location. As part of the subject proposal, the southerly 12-feet of this wall that encroaches into the Mira Monte Place right-of-way is proposed to be removed and reconstructed along the southern lot line, extending along the bluff edge to the southernmost portion of the existing seawall. The new portion of the wall will be composed of three 5-foot wide panels supported by posts. The wall will also be composed of a one-foot high solid base with four-foot high open railing.

While walking along the pedestrian trail from Camino de la Costa toward the ocean, the existing Myoporum shrubs presently partially obstruct public views to the ocean. As one approaches closer to the sandstone bluffs further down the trail, the existing solid south sideyard wall which is 6-9 ft. in height blocks public views of the ocean looking northwest. With the proposed improvements to the south side yard wall it will significantly improve public views. With the proposed open fencing, views of the ocean are opened up where previously they were blocked by the solid fence/wall.

One of the contentions of the project opponents is related to the fence's proposed location on and along the bluff. The opponents claim is the fence is inconsistent with the City's Sensitive Coastal Resource (SCR) overlay which is part of the City's certified LCP because it should be no closer than five feet from the edge of the bluff.

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.

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. However, in this particular 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 existing southern vertical wall, which extends over the bluff face and thus prevents people from continuing north on the blufftop. West of the wall, there is an existing vertical seawall (approximately 12-18 feet in height). If the proposed wall were to end five feet from the bluff edge, people could walk from the sandstone bluffs in a northerly direction across the top of the existing seawall on the applicant's property. As noted above, there is a very steep drop-off in elevation from the seawall to the beach below which the applicant and City agree raises a public safety issue if the public were allowed to walk along the top of the wall.

The City in its approval of the development 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. 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 so that people can gain access to the bluff edge. As a result, there is a legitimate public safety concern and, therefore, it is appropriate for the wall to extend to the bluff edge to prevent people from walking on top of the seawall where they could fall; thus, it is for public safety. This should not be regarded as a precedent that would allow other property owners to extend their sideyard wall or fence to the bluff edge. Given the hazardous nature of this area,

maintaining the fence up to the bluff edge is consistent with SCR ordinance as a public safety issue. Therefore, the Commission finds that the proposed fence may be located up to the bluff edge for public safety purposes in this situation. In addition, with regard to the composition of the westerly 12 feet of the fence itself, the Commission finds that the fence which will largely be composed of open materials, will greatly enhance views beyond those which presently exist with the 8-9 ft. solid wall.

As noted previously, the existing residence is non-conforming as it was originally constructed in the 1950's and does not presently meet the requirements for the front, rear and sideyard setbacks. Under the City's current zoning code, if a nonconforming structure is remodeled, the nonconforming aspects of it may be retained only if the cost of the remodel is less than 50% of the fair market value of the house and the remodel does not enlarge the degree of the nonconformity. In the case of the proposed development, the City found that the proposed remodel met both of these criteria. However, variances were required for three aspects of the proposed development: 1) the south side yard wall that presently encroaches into the public right-of-way, 2) the proposed six-foot high solid wall along the eastern frontage of the residence, and, 3) architectural changes to the garage which resulted in it protruding into the front yard and side yard setback areas. The reason it protruded into the front and side yard setback areas is due to the curvature of the property line at that corner of the site. The City did not consider the modification to the garage to result in an increase in the non-conformity of the residence and regarded the change to the garage as an improvement to the articulation to the facade of the residence. One of the variances associated with the proposed development is 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.

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 existing residence is a non-conforming structure and the proposed remodel includes maintenance of the existing non-conforming status of the setbacks, it is not possible to enhance public views to the ocean by increasing the sideyard setbacks. As noted previously, the existing residence observes a two-foot south sideyard setback where ten feet are required. If the proposed development had resulted in demolition and construction of a new residence, greater sideyard setbacks would have been required to preserve public views to the ocean and to help reduce the appearance of a "walled-off" coast as viewed from the street. In addition, the proposal includes the construction a six-foot high solid wall running parallel to the east property line which will extend to the north property line in the north side yard setback. This proposed wall will also potentially affect public views to the ocean and will increase the "walled off" effect in this shoreline area.

Given that the LCP contains policies which state that public views to the ocean should be protected and enhanced, and that view corridors utilizing side yard setbacks should be

encouraged to avoid a continuous wall effect mitigation should be required for the impacts the proposed development has on public views to the ocean. Since it is not possible to increase the side yard setbacks, such mitigation can be achieved by trimming and maintenance of the Myoporum vegetation on that portion of the public right-of-way owned by the applicant (to the centerline) so that it does not obstruct views to the ocean. The existing Myoporum plants in the public right-of-way and designated view corridor presently partially block views of the ocean looking west from the street elevation. The City has indicated they do not have a problem with the applicant opening up the view corridor.

Also, it should be recognized that the existing six-foot high wall and fence that is situated at the southeast corner of the property near the trash enclosures, should be redesigned to incorporate open materials since it is immediately adjacent to the public view corridor. However, because of the minimum size of the side yard setback (two feet) enhancement of the adjacent view corridor through the trimming of existing vegetation impacts associated with retention of a wall in the south side yard setback will be mitigated.

In addition, the proposed six-foot high wall that will extend into the north side yard setback to be composed of solid materials should be redesigned to be composed of open materials at the top to create a "window" to the ocean, consistent with the certified LCP. The applicant has proposed a design which will incorporate a solid four-foot high base with two-foot open on top of the base.

However, the applicant's proposal is inconsistent with the policies of the certified LCP which requires that such a fence maintain at least 50 percent as "open fencing". 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...."

As such, Special Condition #3 requires revised fence/wall/landscape plans that require that all of the remainder of the Myoporum vegetation up to the centerline of the public-right-of way owned by the subject applicant be trimmed and maintained in order to assure that the vegetation does not impede public views to the ocean by encroachment into the public view corridor. The condition also requires that the landscaping be maintained in perpetuity so that it does not grow or encroach into the view corridor in the future. In so doing, views toward the ocean will be maintained and enhanced. In addition, the condition also requires that 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, the condition requires 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. Also, Special Condition #1 requires submittal of final building plans in substantial conformance with the preliminary plans and that any proposed changes to the approved final plans shall be reported to the Executive Director which may require an amendment unless determined otherwise. 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 addressing protection of public views to and along the ocean.

b) Visual Compatibility/Community Character. The certified La Jolla-La Jolla Shores LCP contains several policies addressing visual compatibility and preservation of community character which state, in part:

"New buildings should be compatible with the scale and character of the surrounding development."

"Larger structures should be designed to reduce actual or apparent bulk. This can be achieved by pitched roof designs, separating large surface masses through changes in exterior treatment and various other architectural techniques. Landscaping can also be used to add texture to blank walls, soften edges, and provide a sense of pedestrian scale."

"To preserve and enhance the residential character of the community."

The subject proposal, as conditioned for approval, represents a remodel of an existing single family residence and after-the-fact approval of an existing seawall and repairs to the seawall. The applicant has proposed to use colored concrete and surface treatments such that the proposed seawall will closely resemble the surrounding natural area.

Special Condition #7 requires that the applicant shall submit revised final plans for the seawall which eliminate the northerly 32 ft. section of the seawall (the findings for denial of this seawall segment are in a separate section of this report) and that the southerly 64 ft. section of the seawall approved herein be composed of earth tone colored concrete in order to be compatible in color to the adjacent sandstone bluffs. The condition specifies also that 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. It should be noted that the Commission also approved repairs to an older seawall in the Camino de la Costa vicinity under CDP #6-84-408-A. Through that approval, the Commission also required plans addressing the surface and color treatment of the existing seawall. 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. The applicants proposal to re-color and texturize the seawall, as part of the proposed repairs, to resemble the natural sandstone bluffs, will enhance the visual quality of these scenic areas for those utilizing the area for active and passive recreation.

As noted in the findings for Substantial Issue for the proposed project, 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 size of the structure by having 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. 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 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, consistent with certified La Jolla-La Jolla Shores LCP.

2. Seawall/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 or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local sand supply. The Coastal Act does not require the Commission to approve shoreline altering devices to protect vacant land or in connection with requests to construct 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 requesting after-the-fact approval of an existing seawall and to repair the existing seawall. The existing seawall is a concrete block seawall with a buried concrete footing, varying in total height from approx. +11.7 ft. MSL to +18 ft. MSL. The proposed repairs consist of replacing the footing with a high-strength scour panel, strengthening the seawall by installing walers and tie backs, and covering the wall with a textured and colored shotcrete finish to match the adjacent natural landforms.

The existing seawall is the width of the existing masonry blocks that it is composed of, which is about six inches. The seawall also has a concrete toe that is over one-foot wide that will be replaced with a panel that is about one-foot wide. The panel will also be covered with about four inches of shotcrete thus resulting in a total width of the repaired seawall to be approximately 22 inches. The total square footage of the proposed seawall's footprint is 175 square feet. The northern portion of the existing seawall closed off a very small pocket sandy beach.

Over the past year, Commission staff has 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 has also consulted with the State Lands Commission to determine permit jurisdiction. The State Lands Commission (the "SLC") indicated 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 and that the mean high tide line is not a fixed line, but fluctuates from day to day. In a letter dated 11/24/98 from the State Lands Commission to the applicant's representative, the SLC 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 wall 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 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."

Since the subject seawall presently experiences wave run-up, it has been determined that the seawall is subject to the Commission's permit jurisdiction. As such, the applicant submitted a permit application for after-the-fact approval and repair of the existing seawall (ref. CDP application #6-99-16). That application has been combined with this one.

The seawall appears to have been constructed in two phases with the most southerly section of the seawall constructed in the early 1970's. This section of the seawall is approximately 64 feet long and attains a height of +18 ft. MSL. A second section of the seawall was constructed sometime after 1985, according to aerial photographs, and extends in a northerly direction from the original seawall to the north property line for a linear distance of 32 feet. This portion of the seawall attains a height of +11.7 ft. MSL. This latter section of seawall does not follow the alignment of the bluff, which curves inward. As a result, this northern section of the seawall closes off a small pocket beach and cove on the subject property (reference Exhibit No. 10 for photographs). The size of the beach area closed off is approximately 216 sq.ft.

A geotechnical report has been submitted by GeoSoils, the applicant's geotechnical engineer. The geotechnical report addresses coastal bluff erosion and the need for the seawall. The conclusions and recommendations of that report are that, "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." This geotechnical report provided information on bluff retreat rates for the La Jolla area, based on general studies of the La Jolla coast and on bluff retreat that was measured along the bluff adjacent to 6000 Camino de la Costa. The geotechnical report found that, "our evaluation indicates that erosion in the range of 3 to 4 inches per year may be occurring in localized areas at the site vicinity. This range appears to be relatively conservative for estimating future marine erosion at this site. This translates to about 7 to 8+ feet of bluff retreat in 25 years, or possibly as much as 25 feet in 75 years".

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.

The information provided by the applicant treats the northern and southern section of the seawall similarly. However, the Commission finds that the northern and southern sections of the seawall should be addressed separately with respect to the need for protection of existing structures in danger from erosion, and the design of such protection. The Commission is required to assess the site conditions as if the seawall does not exist to determine whether it should be authorized as consistent with Chapter 3 policies of the Coastal Act. There is evidence that the two walls were constructed at separate times and the site conditions on the beach and bluff and the blufftop setback for the residential structure are substantially different between the northern and southern portions of the property. Therefore, the difference in site conditions supports a separate examination of each wall section with regard to consistency with the Coastal Act.

#### A. Findings for Approval of the Southern 64 ft. Section of the Seawall

Based upon all the information contained in the geotechnical report, the Commission finds that the southern 64 feet of the seawall is required to protect the existing residence. The unprotected bluff is fairly low and the structures on the blufftop can be subject to wave damage when there is wave overtopping. The bluffs in this area have exhibited a trend of long-term retreat from both block failures and cave formation. While the average annual retreat rate of 3 to 4 inches per year suggests that the bluff will retreat by 3 or 4 inches per year, the real situation is much different. Erosion in the La Jolla area tends to be episodic. The bluff can remain stable for a number of years and retreat several feet during one storm or over one winter. Since these bluffs often retreat through block failure, the bluff may be weakened substantially from storms or excess runoff and the actual retreat may occur several weeks or months after the bluff has been weakened.

Based on the bluff characteristics and the long-term erosion rates and bluff retreat mechanisms, the existing home can be found to be in danger from erosion and flooding from wave attack if unprotected along the southern portion of the bluff edge. As noted by the applicant, the existing seawall needs maintenance. If the southern portion of the seawall were left in its existing condition, it would not be effective in providing long-term protection. With walers and tie backs, the southern portion of the seawall is necessary for long-term protection of the existing home from bluff retreat and wave erosion. Therefore, the Commission finds that the southern portion of the seawall, with the proposed maintenance, is consistent with Sections 30235 and 30253 of the Coastal Act. 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 the approved protective device, and assure adequate mitigation for visual impacts and effects on sand supply are provided with any allowable protection.

Although construction of a seawall is required to protect the existing principle structures on the site, Section 30235 of the Coastal Act requires that the shoreline protection be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. 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 review of the proposed seawall application, the Commission finds that the following impacts on beach sand supply would result from construction of the proposed seawall. The southerly portion of the existing seawall, which is approximately 64 ft. long by 22-inches thick, will encroach onto and permanently displace an estimated 117 ft. of public beach area that is would otherwise be available for public use.

Therefore, the Commission is requiring payment of a mitigation fee of \$935.79 for the encroachment of the existing seawall on the sandy beach. Although it is unclear if the seawall encroaches beyond the toe of the bluff, the proposed fee mitigates for impacts associated with the loss of beach area occupied by the seawall. Furthermore, through the proposed coloring and texturing of the seawall to improve its visual appearance, the visual impacts of the seawall will be further mitigated.

Special Condition #1 requires the applicant to deposit an in-lieu fee to fund beach sand replenishment projects as mitigation for impacts of the proposed shoreline protective device on beach sand supply and shoreline processes. The following is the methodology used by Commission staff develop the in-lieu fee amount. The methodology uses site-specific information provided by the 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 the structure, and of the cost to purchase an equivalent amount of beach quality material and to deliver this material to beaches in the project vicinity.

The following is a description of the methodology. The actual calculations which utilize values that are applicable to the subject sites, and were used as the basis for calculating the estimated range of the mitigation fee, are attached as Exhibit A to this report.

Fee = (Volume of sand for mitigation) x (unit cost to buy and deliver sand)

$$M = V_e \times C$$

where

**M** = Mitigation Fee

**C** = Cost, per cubic yard of sand, of purchasing and transporting beach quality material to the project vicinity (\$ per cubic yard). Derived from the average of three written estimates from sand supply companies within the project vicinity that would be capable of transporting beach quality material to the subject beach, and placing it on the beach or in the near shore area.

**V<sub>e</sub>** = Volume of sand necessary to replace the Area of beach lost due to encroachment by the Seawall based on the seawall design and beach And nearshore profiles (cubic yards)

$$V_e = E \times W \times v$$

where

**E** = Encroachment by seawall, measured from the toe of the bluff or back beach (ft.)

**W** = Width of property to be armored (ft.)

**v** = Volume of material required, per unit width of beach, to replace or reestablish one foot of beach seaward of the seawall, as described above;

The San Diego Association of Governments (SANDAG) has adopted the Shoreline Preservation Strategy for the San Diego region and is currently working on techniques toward its implementation. The Strategy considers a full range of shoreline management tactics, but emphasizes beach replenishment to preserve and enhance the environmental quality, recreational capacity, and property protection benefits of the region's shoreline. Funding from a variety of sources will be required to implement the beach replenishment and maintenance programs identified in the SANDAG Strategy. In this particular case, SANDAG has agreed to administer a program which would identify projects which may be appropriate for support from the beach sand replenishment fund, through input from

the Shoreline Erosion Committee which is made up of representatives from all the coastal jurisdictions in San Diego County. The Shoreline Erosion Committee is currently monitoring several large scale projects, both in and out of the coastal zone, they term "opportunistic sand projects", that will generate large quantities of beach quality material suitable for replenishing the region's beaches. The purpose of the account is to aid in the restoration of the beaches within San Diego County. One means to do this would be to provide funds necessary to get such "opportunistic" sources of sand to the shoreline.

The applicant is being required to pay a fee in-lieu of directly depositing the sand on the beach, because the benefit/cost ratio of such an approach would be too low. Most of the adverse effects of the seawall on sand supply will occur gradually. In addition, the adverse effects impact the entire littoral cell but to different degrees in different locations throughout the cell (based upon wave action, underwater canyons, etc.) Therefore, mitigation of the adverse effects on sand supply is most effective if it is part of a larger project that can take advantage of the economies of scale and result in quantities of sand at appropriate locations in the affected littoral cell in which it is located. The funds will be used only to implement projects which benefit the area where the fee was derived, and provide sand to the region's beaches, not to fund operations, maintenance or planning studies. Such a fund will aid in the long-term goal of increasing the sand supply and thereby reduce the need for additional armoring of the shoreline in the future. The fund also will insure available sandy beach for recreational uses. The methodology, as proposed, ensures that the fee is roughly proportional to the impacts to sand supply attributable to the proposed seawall. The methodology provides a means to quantify the sand and beach area that would be available for public use, were it not for the presence of the seawall.

There are several impacts associated with the existing seawall on the sandy beach areas. Some of these impacts include increased scouring of the beach and increased erosion. Further, the proposed structure will prevent the sand in the bluff material from reaching the shoreline to replace the already dwindling sand supply. These impacts are difficult to quantify. The only impact that can be quantified with certainty is the space taken up by the seawall and this is the impact that can be mitigated through a sand mitigation fee. 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 structure 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. 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).

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. It must be acknowledged that filling behind the seawall has occurred which consists of a concrete patio between the seawall and the residence. In order for the Commission to find the seawall consistent with Chapter 3 policies, the adverse impacts to sand supply must be mitigated. The required mitigation fee compensates for the seawall's encroachment seaward of the natural landform.

Although the Commission finds that the seawall has been designed to minimize the risks associated with its implementation, the Commission also recognizes the inherent risk of shoreline development. The seawall 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. In addition, there is a risk of damage to the seawall or damage to property as a result of wave action. 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 acknowledgement 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.

Several other special conditions related to the proposed seawall are required as a condition of approval. Those conditions are as follows: Special condition #2 requires compliance with a monitoring program prepared by a licensed geologist or geotechnical engineer for the site and seawall which provides for an annual evaluation of the condition and performance of the seawall, addressing whether any significant weathering or damage has occurred that would adversely impact the future performance of the seawall including an assessment of the color and texture of the wall. The report shall provide some analysis of trends, annual retreat or rate of retreat, and the stability of the overall bluff face, and the impact of the seawall on the bluffs to either side of the wall. In addition, each report shall contain recommendations, if any, for necessary maintenance, repair, changes or modifications to the project.

Special Condition #5 requires that construction associated with the proposed seawall shall disturb the beach to the minimum extent possible. It also provides that all excavated beach sand shall be redeposited on the beach and that local sand, cobbles or shoreline rocks shall not be used for backfill or for any other purpose as construction material.

Special Condition #7 requires that the applicant shall submit revised final plans for the seawall repair in substantial conformance with the preliminary plans dated 11/8/96 except that they shall be revised to eliminate the northerly 34 feet of seawall (findings for denial of this portion are addressed in a separate section of this report). In addition, the condition also requires that the seawall shall 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 which shall be verified through



submittal of a color board. The condition specifies also that the proposed structure shall also be designed to incorporate surface treatments (e.g., air-placed concrete) that resemble the surface texture of the adjacent natural bluffs.

Special Condition #11 requires the applicant to submit a copy of a U.S. Army Corps of Engineers permit, or letter of permission, or evidence that no Corps permit is necessary for the proposed development. In addition, Special Condition #12 addresses storm design of the proposed seawall repair which requires that the applicant shall submit certification by a registered civil engineer that the proposed shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83.

Special Condition #13 requires that the permittee shall remove all debris deposited on the beach or in the water during and after construction of the shoreline protective devices or resulting from failure or damage of the shoreline protective device. The condition further specifies that the permitted seawall shall be maintained in its approved state except to the extent necessary to comply with color, texture and its integrity. Any change in the design of the project or future additions/reinforcement of the seawall beyond minor regrouting or maintenance to restore the seawall to its original condition as approved herein, will require a coastal development permit.

In summary, the Commission finds that the southerly 64 ft. section of the proposed seawall is necessary to protect the existing residence. In addition, with the required mitigation fee, its impact on its encroachment onto the beach will be mitigated and the proposed coloring and texturing of the wall will mitigate for its adverse visual impacts. Therefore, only as conditioned, can this portion of the seawall be found consistent with Sections 30235 and 30253 of the Coastal Act.

#### B. Findings for Denial of the Northern 32 ft. Section of the Seawall

The northern portion of the seawall is a low wall that does not follow the alignment of the bluff, which curves inward (eastward) at the point where the southern section of the seawall ends. As a result, the northern section of the seawall closes off a small beach cove. The area behind the northern section is filled with sand. It is not clear whether this sand was placed there by someone or whether it was carried there by wind and waves. The latter is unlikely given the volume of sand behind the wall. The geotechnical report focuses primarily on the proposed repairs and does not directly address the issue of whether the northern section of the seawall is required to protect the residence. The applicant's engineer prepared a supplement to the geotechnical report that addresses alternative alignments of the northern section of the seawall. In an assessment of alternatives to the proposed siting of the seawall within the northern cove area, the applicant's engineer states:

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

northwest 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."

The engineer's addresses why an alternative location for a seawall on the northern portion of the site would not be desirable from a design standpoint, however, the submitted analysis does not support that the newer portion of the seawall (northerly approx. 32 linear feet) is needed to protect existing residential structures. The projected long-term erosion rates do not suggest that the existing structure would be threatened because the structure is setback from the bluff edge at the inland extent of the cove approximately 15 ft at its closest point, and 25 feet at the farthest point. Further, the bluff in this location slopes at an angle such that the toe of the pre-existing bluff is from one to four feet further seaward of the bluff edge. With this setback, the rate of bluff erosion in this area, and the topography of the cove area, the residence should not be subject to danger from bluff erosion, or from the wave overtopping experienced on the southern portion of the property. Furthermore, although the applicant's engineer asserts that alternative alignments of the northern seawall would enhance wave run-up and increase scour, the engineer does not address what effects would occur if there were no seawall in this location. Although there might be wave run-up and scour if there were no seawall, it does not appear that these would threaten the residence. Further, due to the irregularities in the Point Loma Formation (i.e., the lower bluff face), the natural bluff might dissipate wave energy to a greater extent than a seawall. This would result in less wave run-up than would occur if there were a seawall along the bluff. Thus, the Commission finds that a seawall is not required to protect the existing structure on the northern portion of the property pursuant to Section 30235.

Furthermore, the northern portion of the seawall wall is inconsistent with Coastal Act policies addressing public access, recreation, alteration of natural land forms, and scenic and visual quality of coastal areas. The seawall encroaches onto a sandy beach area that would otherwise be available for use by the public. Historic photos of the site indicate public use of the northern cove area as a pocket beach. Additionally, it is feasible to remove the unauthorized northern portion of the seawall without adverse impacts on the bluff or beach. For these reasons, the Commission denies this northern portion of the seawall because it cannot be found consistent with the public access and recreation policies and Sections 30251 and 30253 of the Coastal Act.

The Commission notes that at this time the exact condition of the Point Loma Formation (i.e., the lower bluff face) cannot be determined because the seawall and perched beach

cover up the lower bluff face. If approval of some form of protection within the cove area had been sought prior to unauthorized construction, less environmentally damaging alternatives such as fill of caves or cracks in the Point Loma Formation may have been considered appropriate. Such measures are not necessarily precluded in the future after the unauthorized construction is removed and the site conditions assessed. IN this particular case, it is feasible to remove the unauthorized northern portion of the seawall without adverse impacts on the bluff or beach, and there is not current threat to the existing residence. For these reasons, the Commission finds that this northern section of the seawall is inconsistent with the Chapter 3 policies of the Coastal Act and accordingly denies this portion of the proposed development.

4. No Waiver of Violation. 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.

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.

The subject site is zoned R-1-8000 and is designated for residential use. The proposed remodel to an existing single family residence is consistent with that zone and designation. The subject site is also located within the Sensitive Coastal Resource (SCR) overlay zone of the City's certified LCP. As proposed to be remodeled, the existing residence, as conditioned, can be found consistent with the SCR overlay.

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 remodeling of 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 and after-the-fact approval and repairs to an existing 96-foot long seawall, will impact public views in the designated public view corridor adjacent to, and south of, the subject site. However, as conditioned, for revised plans which require trimming of the existing Myoporum vegetation in the public-right-of-way and maintenance of the existing vegetation such that it will not obstruct public views to the ocean, and installation of open fencing along the north side yard setback, the Commission finds that public views to the ocean will be protected. As conditioned, the residential remodel and southerly 64 ft. section of the proposed seawall can be found consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act.

However, the northerly 32 ft. section of the seawall cannot be found consistent with the Coastal Act and therefore is recommended for denial.

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

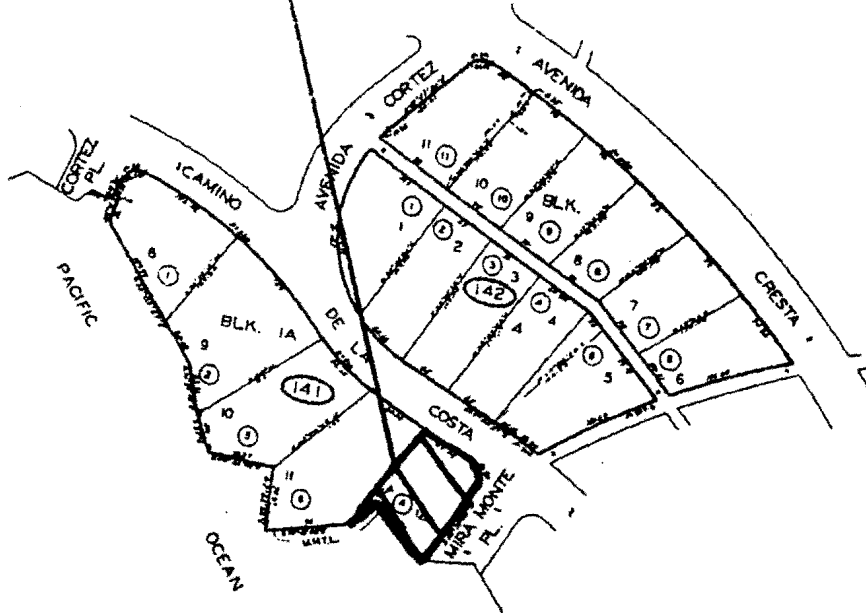
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 proposal for the residential remodel and section of seawall proposed for the southerly 64 feet of the site has been conditioned in order to be found consistent with the visual resource and shoreline hazard policies of the Coastal Act, while the northern approximately 32 lineal foot section of the seawall cannot be found consistent with the Coastal Act and is, herein, denied. 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.

LA JOLLA

SAN  
DIEGO

SITE



MISSION  
BEACH

PACIFIC  
BEACH

MISSION  
BAY

EXHIBIT NO. 1

APPLICATION NO.

A-6-LJS-98-169

Location Map

California Coastal Commission

CAMINO DE LA COSTA

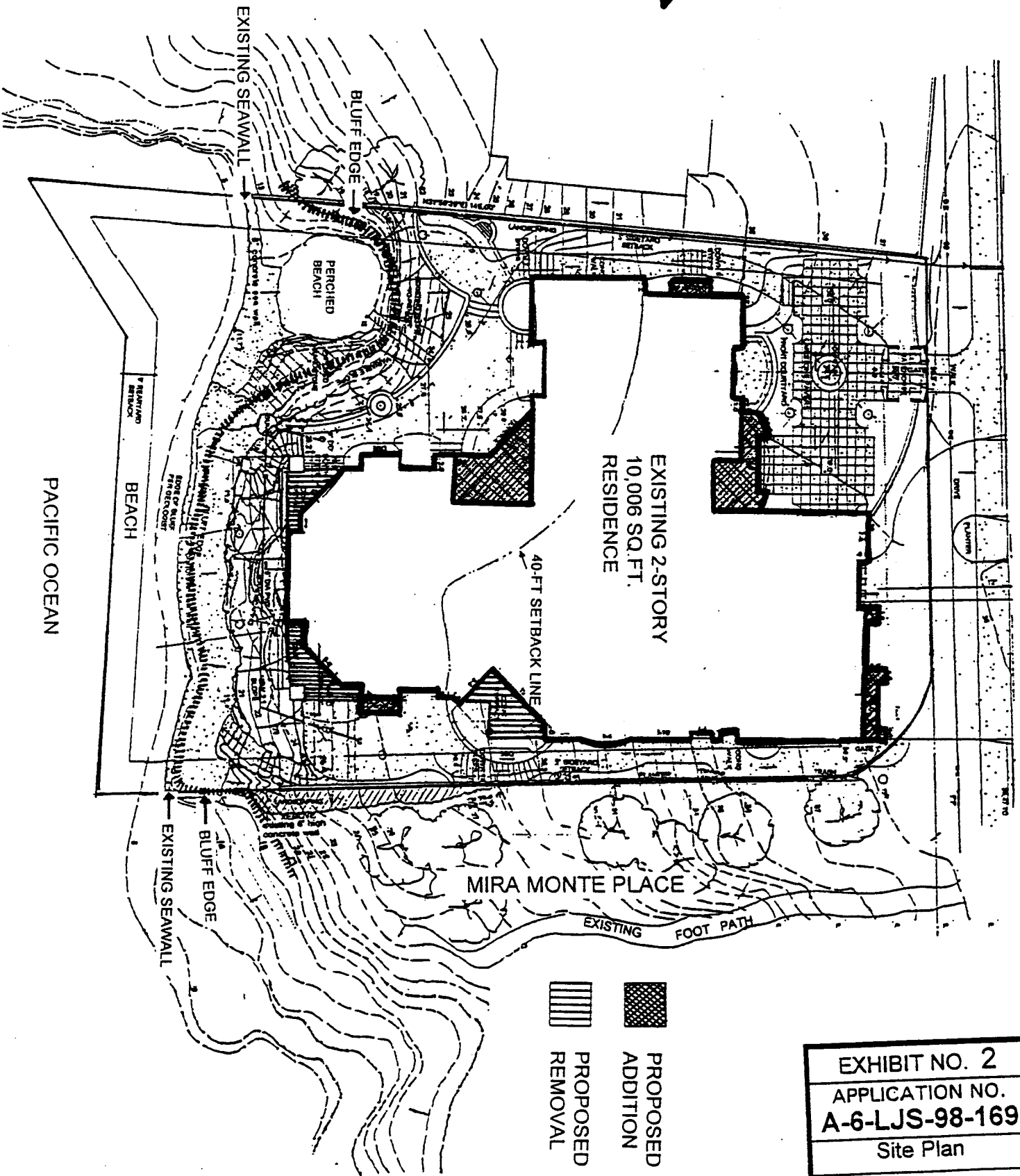


EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-98-169
Site Plan
California Coastal Commission



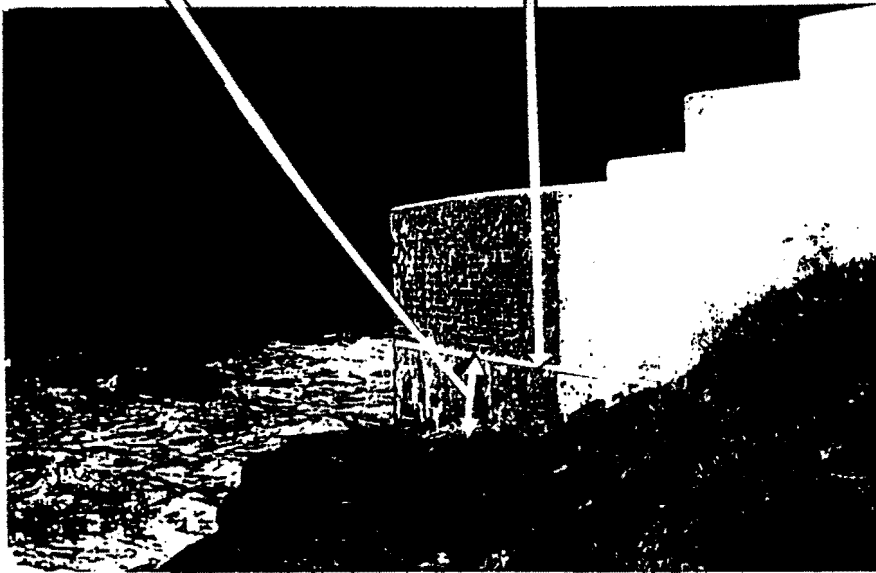
**TWO STORY OVER BASEMENT**



California Coastal Commission

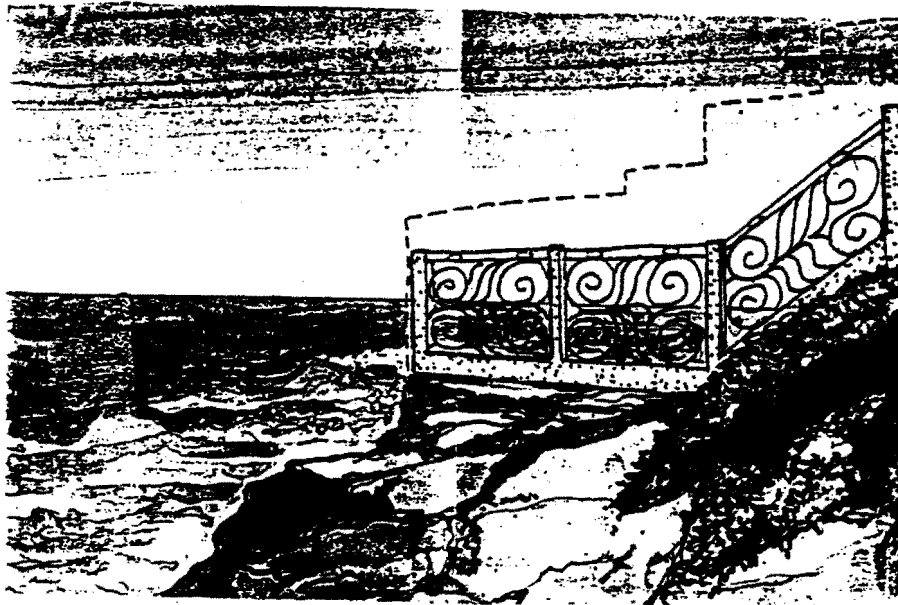
NOTE. LOW RETAINING WALL TO BE REMOVED WHEN  
OPEN FENCING IS RELOCATED TO LOT LINE

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



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

\*5'-0"  
HIGH

4'-0"  
OPEN  
RAIL

12" BLK

NEW 8" BLK, 12" HIGH ON SLAB

REMOVE EXG 6' - 2" BLOCK WALL

INSTALL 3 PANELS (64" x 48" H)  
OPEN RAILING (WAVE DESIGN)

REBUILD SIMULATED SANDSTONE  
BLUFF (SHOTCRETE WRAP AT END  
OF SEA WALL)

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.

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



## WALL SECTION

EXHIBIT NO. 5

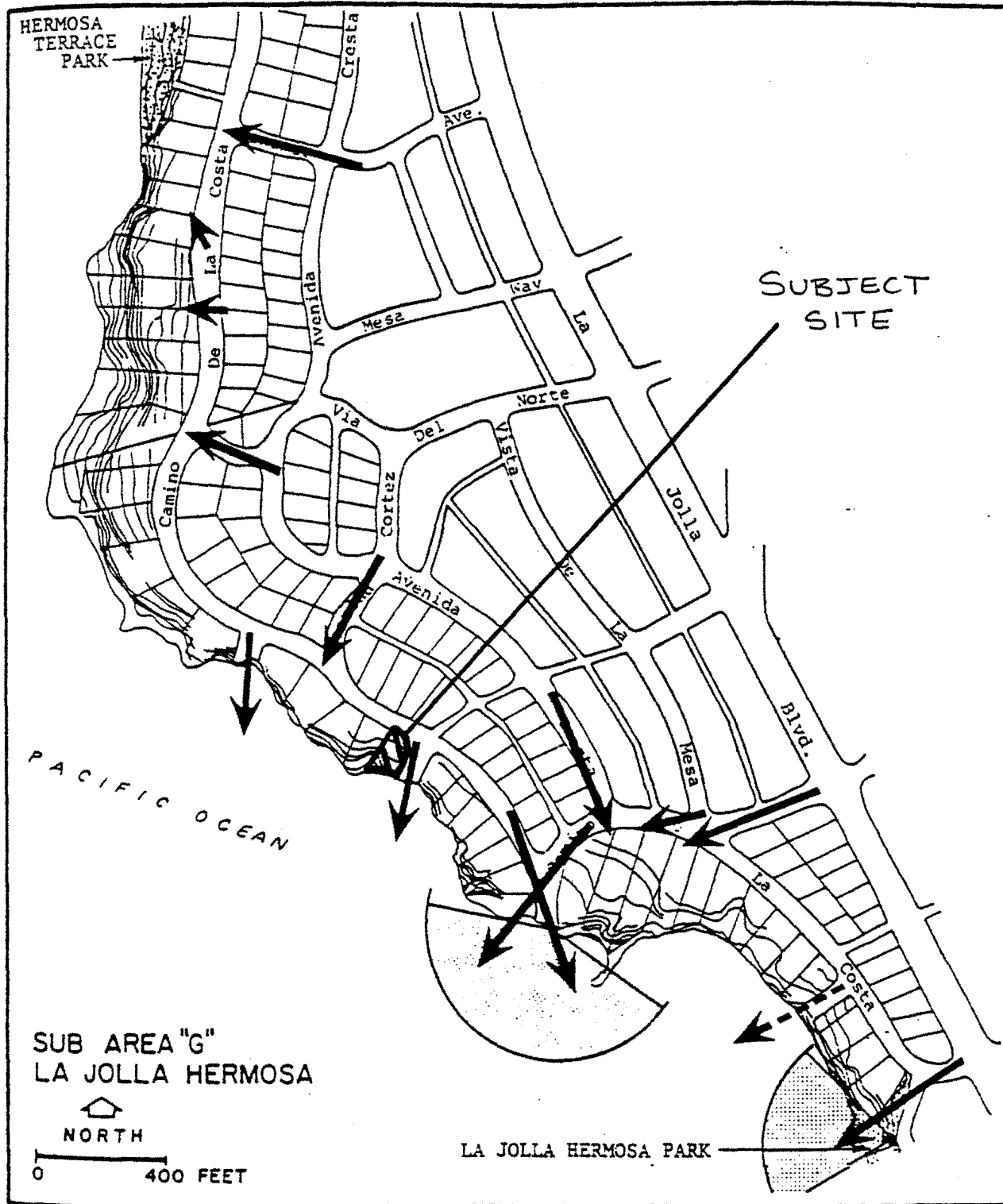
APPLICATION NO.

A-6-LJS-98-169

Cross-Section of Proposed

South Side-Yard Wall

California Coastal Commission



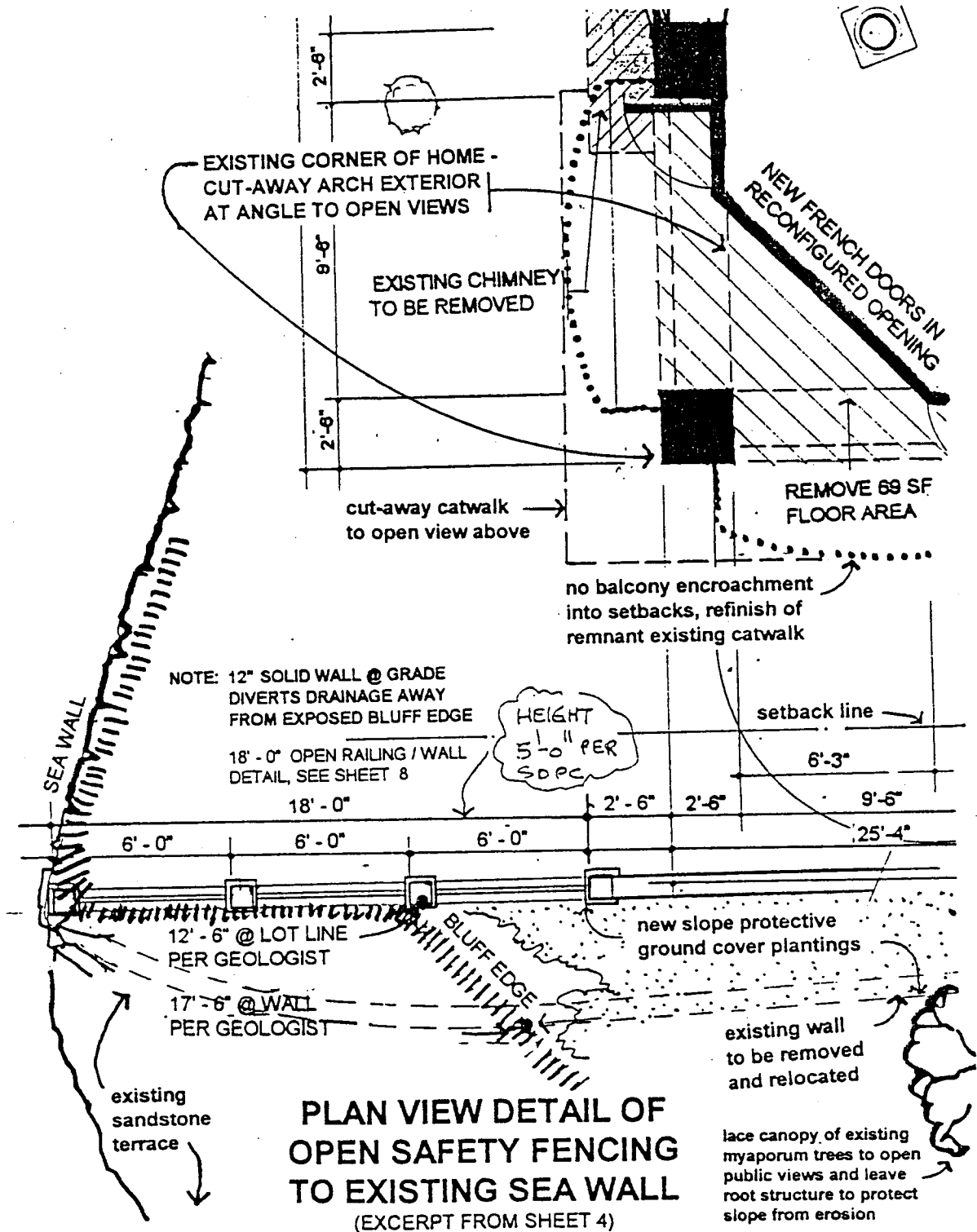
# La Jolla • La Jolla Shores LOCAL COASTAL PROGRAM • VISUAL ACCESS



CITY OF SAN DIEGO  
PLANNING DEPARTMENT

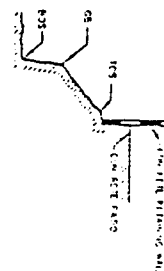
- MAJOR VISTA POINT
- POTENTIAL VISUAL ACCESS
- VISUAL ACCESS CORRIDOR (existing)

EXHIBIT NO. 6
APPLICATION NO.
A-6-LJS-98-1
Designated Public View
Corridor from Certified LCP
California Coastal Commission



*the moncrieff residence*

EXHIBIT NO. 7
APPLICATION NO.
<b>A-6-LJS-98-169</b>
Plan View Detail of Open Safety Fencing to Existing Seawall
California Coastal Commission



SECTION  
2-1

MET LOA ARE WTC MAY - JUN FOR LUG AND  
EAST-WEST OF CANAL DE LA CITA AND SEA  
WAT PART CO. 62 N ELS 5-2078 (02-18  
ACZES)

1107

PACIFIC OCEAN

6102 CAVINO DE LA COSTA

CAMINO DE LA COSTA

MIRA MONTE PLACE

[illegible]
$$\frac{DET}{NO\ SCAL}$$

EXHIBIT NO. 8

APPLICATION NO.

**A-6-LJS-98-169**

## Topographic Survey

 **California Coastal Commission**

**PETERSON & PRICE**  
A PROFESSIONAL CORPORATION

EDWARD F. WHITTIER  
MARSHAL A. SCARR  
MATTHEW A. PETERSON  
LARRY N. MURNANE  
LOUIS A. GALUPPO  
JENNIFER L. CUSICK

OF COUNSEL  
PAUL A. PETERSON

Union Bank of California Building  
530 "B" Street, Suite 1700  
San Diego, California 92101-4454  
Telephone (619) 234-0361  
Fax (619) 234-4786

Carlsbad Office  
701 Palomar Airport Road  
Suite 170  
Carlsbad, California 92009-1026  
Telephone (760) 431-4575  
Fax (760) 431-4579

File No.

March 3, 1999

5121.001  
via messenger

Ms. Laurinda Owens, Coastal Program Analyst  
CALIFORNIA COASTAL COMMISSION  
3111 Camino del Rio No., Ste. 200  
San Diego, CA 92108-1725

Re: The Moncrieff Residence  
Appeal No. A-6-LJS- 98-169

Dear Laurinda:

We have previously written you letters concerning the appeal of the La Jolla Town Council ("LJTC") and would request confirmation that the LJTC appeal is not valid. The purpose of this letter is to go through the remaining three (3) appeals and provide the applicant's response to each of the issues raised. The appeal applications of Norma Rink, Vince Sucato and Joanne Pearson are virtually identical, therefore, we will provide one response.

As you know, Rink, Sucato and Pearson appealed the Planning Commission's unanimous approval of this project to the City Council. We submitted to the Mayor and members of the City Council a letter dated November 16, 1998 with color tabs which addressed each of the issues (see Tab #4). You will notice remarkable similarities between the issues raised in those appeals to the City Council and the appeals which are now before you. We are not aware of any new issues. In fact, the issues which the appellants continue to raise have already been adequately addressed and resolved at the local level.

As you know, when you were first contacted by the opponents to this project, the only concerns that was raised at that time was the removal of the solid 6'-9' wall within the public right of way to open up views to and along the coast. Obviously, our client's agreement to demolish the existing solid wall and replace it (within the property

EXHIBIT NO. 9
APPLICATION NO.
<b>A-6-LJS-98-16</b>
Statement From
Applicant's
Representative

California Coastal Commission

Ms. Laurinda Owens, Coastal Program Analyst  
CALIFORNIA COASTAL COMMISSION  
March 3, 1999  
Page 2

boundaries) with a new wall/fence with the westerly 18' "open" for public viewing to and along the coast addresses the original concern. However, as you see, the opponents continue to raise the same objections and issues which have already been raised at the local hearing.

We would urge you to review Tab #4 of our letter to the City Council dated November 16, 1998. This tab, as well as the entire package of information which we have submitted to you will demonstrate that there are no new issues to be addressed.

The following is a brief response to the appeal issues raised by Rink, Sucato and Pearson. For the purposes of responding to each allegation, we have prepared these responses in the same order as presented in the attachment to the appeals.

1. A. We do not know which "nonconforming" wall appellants are referring to. The existing nonconforming wall along the southerly property boundary will be demolished and replaced with a conforming wall/fence on the applicant's property. This new wall/fencing will be a total of 1' solid and 4' open along the most westerly 18' of the wall to enhance and in fact create new views to and along the coast which do not exist at this time. The view down unimproved Mira Monte Pl. ("Paper Street") from Camino De La Costa does not allow one to see the existing nonconforming wall (even in its current location). Obviously, the relocated wall/fence will not obstruct any public views. As can be seen in our November 16, 1998 letter to the Mayor and City Council, the new fencing opens up, enhances and creates public viewing opportunities to and along the coast.
1. B. There are no new "protruding balconies" as alleged by the opposition. The balcony elements are being created entirely within the envelope of development as defined by the existing structural reinforced catwalks and the existing roof overhang. The balcony elements are being created by demolishing existing windows and habitable area. These alterations will enhance the visual character of the area and result in a more pleasing appearance of the home.

While it is true that the existing home is within the 40' setback under the current SCR Regulations, the home was built in the early 1950s before the Coastal Act, and before

the City's SCR Regulations were adopted. Therefore, it is a legally nonconforming home. Under the San Diego Municipal Code, repairs, alterations, and modifications to a legal nonconforming structure are allowed so long as the alterations do not increase the degree of nonconformity. In this case, the proposed remodel will not increase the degree of nonconformity. In fact, many of the alterations decrease the nonconformity (i.e., FAR, structural setback from the ocean, reduced side wall height). Further, none of the alterations obstruct any views or the Coastal Access down the Paper Street.

1. C. The City conducted a thorough analysis of impacts to views. This analysis included many site visits. As a result of those site visits and the negotiated design of the fencing, it was concluded that the project would enhance views to and along the ocean. In addition, we presented a "view analysis" of photographs which were presented to the various decision makers. As you know, by your site visits, neither the house nor the existing wall obstructs any views until one gets down towards the ocean at the edge of the rock cliff. At this location, our client proposes to significantly enhance and create additional public viewing opportunities.
1. D. Opponents have presented a gross misrepresentation of the facts. We met with the opponents nearly a year ago and discussed the possibility of a compromise whereby our client would have been able to retain the existing wall (within the Paper Street) by processing an Encroachment Removal Agreement (or a partial street vacation) and reduce it in height to open up views to and along the coast. In exchange for that, our client would have agreed to maintain the existing vegetation in Paper Street to significantly open up additional views to the ocean. Our client also proposed to install a bench at the top of the Paper Street next to Camino De La Costa for pedestrians to rest and view the ocean. When the opponents (rather than negotiating in good faith), initiated a zoning violation case against our client, the proposal was abandoned. It has always been the City's position that our client does not have the legal authority to alter any of the existing vegetation within the Paper Street. For the opponents to assert

that this issue was not known to them until the time of the hearing at the City Council is not only false, it is a direct misrepresentation to the Coastal Commission. If the opponents had negotiated with our client in good faith, the views from Camino De La Costa could have been significantly improved and our client would have agreed by a recorded document to maintain the vegetation within the Paper Street. It was only after the opponents' bad faith efforts to thwart the approval process and to delay the project as much as possible, that our client decided to discontinue any negotiations with the opponents. In fact, the opponents stated into the record at the Planning Commission that they did not want our client to be responsible for maintaining the trees and bushes in the Paper Street. Once again, as with the relocated wall/fence, the opponents have gotten exactly what they originally requested and then complain about the result!

2. A. The opponents have difficulty accepting (or understanding) that this house is legal and nonconforming. It was built well before the current zoning codes were adopted. As you know, Camino De La Costa is an extremely diverse and unique neighborhood.. There are very large homes on both sides of the street. The size of this remodeled home is very much in keeping with recently remodeled homes in the area. This remodel which actually reduces the size of the home will dramatically improve the visual appearance and the aesthetics of this coastal area.
2. B. The atrium and other smaller additions break up the "box-like" appearance of the existing home as viewed from Camino De La Costa. We believe that the architectural renderings as compared to the existing site photographs show that this remodel will enhance the appearance of the home and improve the character of the neighborhood.
2. C. The roof area is being modified. However, it is being reduced along the westerly facade rather than enlarged as alleged by the opponents. Once again, this is a misleading and erroneous statement by the opponents.



Ms. Laurinda Owens, Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION

March 3, 1999

Page 5

2. D. The opponents have always known that our client owns the property to the mean high tide line. They also know that our client also theoretically owns to the centerline of the Paper Street. If the opponents do not concur with the boundaries of the property as set forth in the Record of Survey, they must, pursuant to Section 8726 of California Business and Professions Code, hire a licensed surveyor to refute the recorded Record of Survey. As you know, our client is not attempting to "gain any additional beach area." Further, the jurisdictional issues associated with the processing of the repair to the seawall are of no consequence to our client. Since the entire matter is before the Coastal Commission on appeal, the Coastal Commission will have jurisdiction over the seawall repairs and pursuant to your request, they can act on the separate application which our client has already filed.

The opponents also mischaracterized the discussions that we had at the site concerning the City's non-utilization of the Paper Street. In the context of the settlement negotiations between our client and the opponents, we indicated to the opponents that our client could seek a court order which would result in the abandonment of the City's Paper Street. If such a ruling were granted, the Paper Street (less any presumptive easement such as the trail) would revert back to our client. We made it clear that if our client was able to address the issues of public safety and security for its property, then our client would not pursue that course of action. At this point, and assuming that the Coastal Commission affirms the decision of the City Council, our client has no intention of pursuing the abandonment procedure.

3. A. The plans indicate the existing facilities which are to remain as well as the new improvements which are to be constructed as part of the remodel project. Landscaping and patio and other accessory improvements are allowed pursuant to the City of San Diego's Sensitive Coastal Resource Overlay Zone.

The opponents make reference in Items 3A and B to an "illegal seawall" which is constructed. To the best of our

knowledge, portions of this seawall was originally constructed in the early 1970s. The remaining portions of the seawall were built in the mid-1980s. We were not able to locate any Coastal Development Permit for the seawall. However, based upon a recent evaluation by Skelly Engineering, the location, the height, and the configuration of the seawall are all the most appropriate based upon the configuration of the coastline and the proximity of the existing home to the ocean. Although the opponents continue to question the location of the westerly property line, even if one were to assume that Tax Assessor's maps were accurate (which they are not as confirmed by the Record of Survey), there has been no "conversion of a public beach." Stated more directly, and as the opponents are fully aware, the existing seawall, (even utilizing the County Tax Assessor maps) is located almost entirely within the private property and well above the mean high tide line. The coastal beach area which the opponents claim has been "converted" is in fact within our client's private property and is landward of the existing vertical seawall.

3. B. This allegation relates to very minor contour grading and the installation of landscaping to enhance the visual appearance of the oceanfront side of the home.
4. A. The original bluff edge determination (which was signed off and accepted by the City of San Diego) was modified by the City in an attempt to come up with an appropriate side wall design. The City felt that with the new bluff edge determination would allow the City to control which portions of the side yard wall/fence would remain "open" for public viewing purposes. The agreed-upon redesign requires that the fencing would be 1' solid and 4' open for the most westerly 18'. The discrepancy in the bluff edge determination is irrelevant as it relates to the home since the existing structures and the proposed alterations are consistent with the City of San Diego's SCR Regulations.

As previously indicated, and as supported by the documents which we have provided to you, the location, height, and

extent of the proposed repairs to the seawall are warranted under current standards. Our client's seawall consultant, Skelly Engineering, has determined that the seawall is in the most appropriate location based upon tidal action and the potential "blow hole" effect if the wall were to be relocated easterly.

4. B. The opponents continue to mischaracterize structural setback under the current codes. The fencing will be smaller and more "open" than what is allowed by the Code. The Code allows for 3' solid and 3' "open" along street side yards. The Code also allows safety fencing (which is permitted to extend beyond "the buried bluff") to protect the public from the hazards associated with the vertical drop along the seawall and the adjacent cliff area. The opponents' assertion that the relocated side wall will still be 8' is inaccurate.
4. C. The set of stamped and approved plans are those which were acted upon by the City Council. These plans have included the accessory landscaping and other yard improvements which are all authorized under the Sensitive Coastal Resource/Coastal Development Permit.

### CONCLUSION

It would appear that the opponents are trying to stop the improvement and rehabilitation of our client's home. They appear to be asking that the Coastal Commission deny our client the right to remodel their home even though the project will decrease the degree of nonconformity and repair an existing seawall which will significantly enhance the appearance of the coast. They believe that the seawall should be demolished and that the home and the bluff be subject to storm and wave action. The opponents also talk in terms of "conserving and preserving the bluff" when in fact they know that the bluff is buried beneath, and preserved by the existing seawall and seawall cap. By the opponents' own admission, their preference is to have the bluff exposed to the elements which would not only jeopardize the existing house and bluff, but would also subject the general public to severe risk of injury at the foot of the Paper Street.

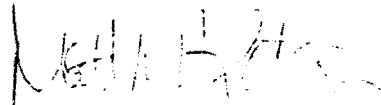
Ms. Laurinda Owens, Coastal Program Analyst  
CALIFORNIA COASTAL COMMISSION  
March 3, 1999  
Page 8

Therefore, we would respectfully ask the Coastal Commission to deny the appeals and allow this very worthwhile project to go forward.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE  
A Professional Corporation

A handwritten signature in dark ink, appearing to read "Matthew A. Peterson", is written over the printed name.

Matthew A. Peterson

MAP:mw  
cc: Scott and Debra Moncrieff

G:\WP\5121\OWENS.LT5

For enclosure re: Coastal Appeal

Prepared 3/3/99

From : Dr. Norma Rink, Dr. Vincent Sucato

Moncrieff Project: 6102 Camino de la Costa

**ARCHIVAL PHOTOGRAPHS '74/'78/'85/'95**

**PROGRESSIVE ENCRoACHMENT OF BEACH BY REBUILDING OF "RETAINING WALL"**  
**COASTAL BEACH COVE CONVERTED TO PERCHED BEACH AND CUT OFF FROM PUBLIC ACCESS.**

These photographs show how successive illegal encroachments of the bluffs and beach have occurred, and how the public has been deprived of their rightful enjoyment of the sandy cove and lateral access along the bluff top.

The 1978 photo shows the first portion of the retaining wall in place. The public still had access to all of the bluff behind it.

The 1985 photo shows further encroachment of the beach. The public still had access to the sandy cove and to the bluffs around it. The 1995 photo shows the final northern portion of the retaining wall built across the sandy cove. Public access to a scarce sandy cove was lost.

*We believe that this portion of the seaward wall should be removed and the cove restored to the public.*

If this portion of the retaining wall is permitted to remain, we believe that public access to this beach should be restored.

This could be achieved by a fenced walkway, laterally from Mira Monte Place. A similar public access-way exists in Cortez Place, across the back of 6204 Camino de la Costa to the rocky headland behind).

Alternatively, steps could be provided up the face of the retaining wall with a sign for the public.

**SIDE WALL/SAFETY FENCE**

It is not accurate to say that we dispute the necessity for a safety fence

We believe that the SIDE WALL should be built to code and end, by code, set back 5ft. from the bluff edge.

If the City deems a safety fence necessary to protect the public, then a SAFETY FENCE can be built in the public domain, into the setback. It could extend from the end of the SIDE WALL as far over the bluff edge as the city deems necessary.

*We believe it important that the two structures be clearly distinguished, one from the other.*

*It should be clear to anyone where the side wall ends and where the safety fence begins.*

Since any safety fence will impinge on public views, it should be built to code standard, open wire construction, 42ins. high, similar to the safety fence in Cortez Place. Such construction would have minimum impact on public views along the coast and to the ocean. A safety fence should be City Property, and no vines or vegetation should be permitted on it. A safety fence is designed to protect the public but is not designed to be an unscalable security fence.

*We believe it important that the applicant does not use the argument for a SAFETY FENCE as a reason to extend the SIDE WALL.* Such a side wall would be the applicant's property, would be higher (96ins. above pre-existing grade at the ocean end) and far more obstructive of public views. It would also create a worrying precedent for other property developments in the area, since it would have the appearance of a private non conforming side wall encroaching into the setback and over the bluff edge with little regard for Public Views.

**"OWNERSHIP" OF RIGHT OF WAY**

The applicant's attorney makes frequent reference to the Moncrieff's ownership of half of the Right of Way.

In fact, the City has control of the Right of Way and the homeowner "owns" the Right of Way only as he "owns" the land to the center of the city street. It is disingenuous, to say the least, to represent the lot line as centered in the Mira Monte Place View Corridor and Public Right of Way.

The applicant's attorney has made it plain to us that he will argue that the city has abandoned the Right of Way by failing to maintain it as an easement or View Corridor. By this argument he said he intends to achieve, for his clients, full control over the Right of Way. (He represents homeowners on each side of the Right of Way.)

We believe it is essential that the City accept its responsibility to restore and maintain the Designated View Corridor for the full 60 ft., to preserve and protect the public access and views.

EXHIBIT NO. 10

APPLICATION NO.

A-6-LJS-98-16:

Letter From  
Opponent With  
Attachments

**THE CITY'S TOLERANCE OF ILLEGAL ENCROACHMENT INTO THE PUBLIC RIGHTS OF WAY ON THE COAST.**  
**THE CITY'S TOLERANCE OF ILLEGAL FIXED IRRIGATION SYSTEMS AND LANDSCAPE OBSTRUCTION OF THE PUBLIC VIEW CORRIDORS AND PUBLIC RIGHTS OF WAY ON THE COAST.**  
**THIS TOLERANCE CARRIES RISKS.**

The City suggested that in this particular project the applicant could be given a permit ( Encroachment/Removal Permit) to allow obstructing Myoporun to remain in the Public View Corridor and Right of Way.

*The Designated View Corridor is severely obstructed and should be restored.*  
*All illegal irrigation of these bluff areas should be stopped.*

For some 12 years the City has been aware of illegal encroachments into the Coastal Public Rights of Way but has not enforced removal of encroachments.

For over a year the city has had in its possession photographs of the illegal fixed irrigation systems in the rights of way , and illegal run off over the bluff edge. There has been no enforcement of Code Compliance by the City.

*A recent major bluff fall in La Jolla underlines the danger in permitting irrigation of bluffs. A preliminary analysis of this bluff slide suggests that bluff irrigation was the cause.*



CAMINO DE LA









25

PROPOSED SIDE WALL NOT TO CODE

BLOCKS PUBLIC VIEWS

7'9" WOULD  
BE BUILT OUT ON  
ILLEGAL CONCRETE  
PAD BEYOND COAST  
EDGE

9'9" ENCROACHES  
BEYOND BLUFF  
EDGE

5' OF SIDE WALL  
ENCROACHES INTO BLUFF  
SETBACK

← --- 7'9" --- → ← --- 9'9" --- → 5' --- →

8'

NON CONFORMING SIDE WALL  
DISGUISED AS ROCK!

CONCRETE PAD  
EXTENDS COAST

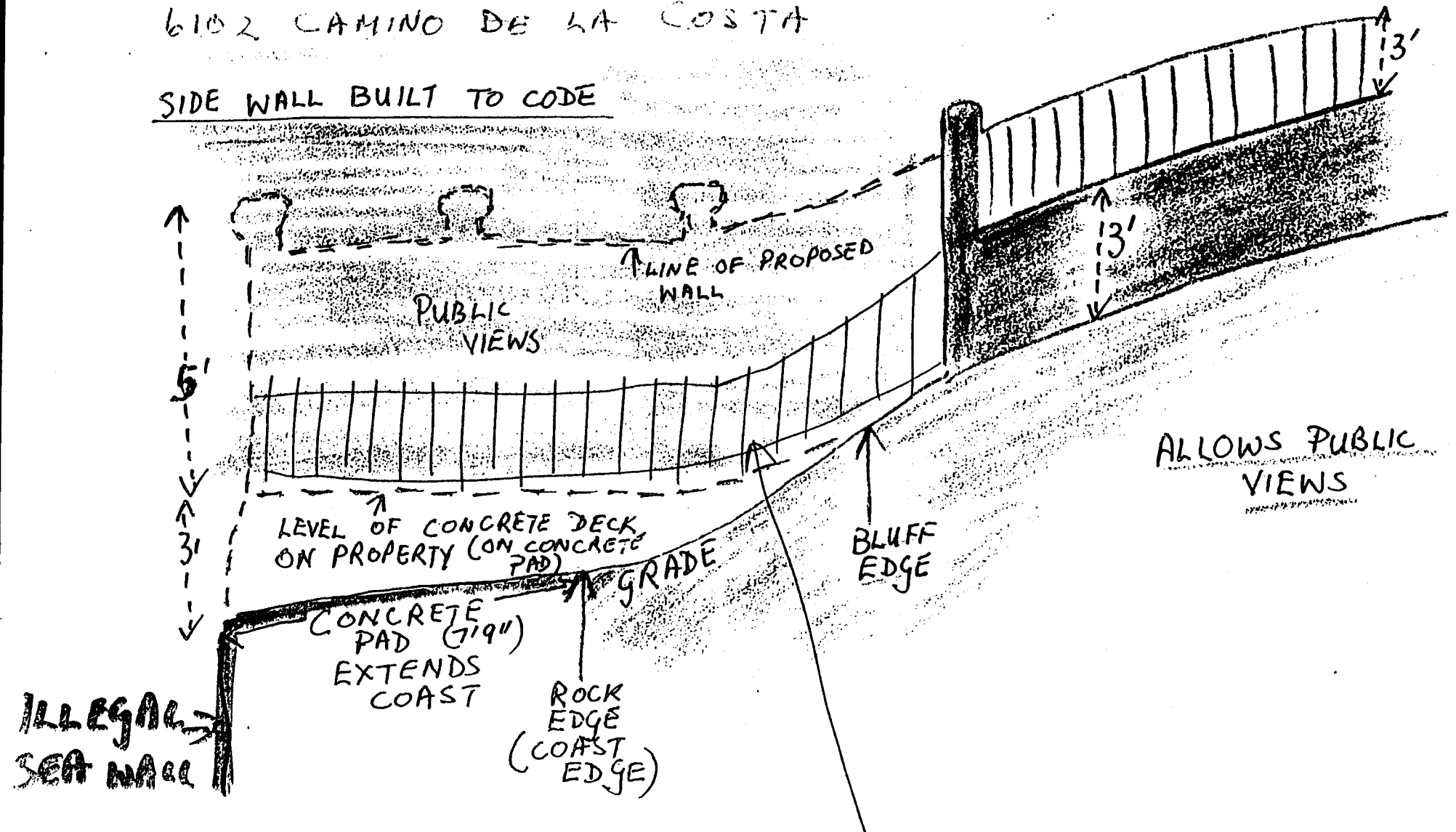
ROCK  
EDGE  
(COAST  
EDGE)

BLUFF  
EDGE

THIS IS NOT  
A SAFETY FENCE  
IT IS PRIVACY  
WALL

6102 CAMINO DE LA COSTA

SIDE WALL BUILT TO CODE

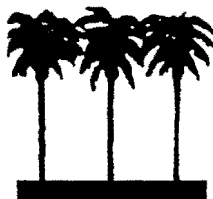


IF SAFETY FENCE IS NEEDED  
IT COULD BE BUILT

SHOWS TRUE 'SAFETY FENCE' IN CORTES  
PLACE



3' SAFETY FENCE AT 6204 CAMINO DE LA COSTA  
SAFETY FENCE IS LOWER THAN SIDE FENCE



LA JOLLA  
TOWN COUNCIL  
ESTABLISHED 1950

March 3, 1999

Honorable Rusty Areias, Chairman  
California Coastal Commission  
San Diego Coast Area  
3111 Camino Del Rio North  
San Diego, CA 92108-1725

RECEIVED

MAR 03 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Re: Appeal No. A-6-LJS-99-169; Scott Moncrieff

Dear Chairman Areias and Commissioners:

The Trustees of the La Jolla Town Council strongly support the Coastal Commission staff's recommendation that the Commission find a substantial issue with respect to this appeal. The project raises the following substantial issues:

- The project fails to protect public views, because of obstructions that would be constructed over the bluff edge.
- The proposed fencing would violate setback and grade requirements.
- Existing vegetation in the adjacent public view corridor will be allowed to remain, blocking public views.
- The existing seawall, which was constructed without permits and is nonconforming, would be allowed to remain in place.
- The project would contribute to adverse cumulative impacts along the shoreline to public views and community character.

We hope that the Commission will find a substantial issue and schedule a de novo hearing to consider these serious problems.

Very truly yours,

Scott H. Peters,  
Trustee, Land Use Chair

SHP/st

EXHIBIT NO. 11  
APPLICATION NO.  
**A-6-LJS-98-169**  
Letter of Opposition

 California Coastal Commission

**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

**RECEIVED**

MAR 04 1999

Hon. Rusty Areias, Chair  
California Coastal Commission  
March 2, 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**SUBJECT: MONCRIEFF APPEAL A-6-LJS-99-169**

Dear Chairman Areias and Commissioners:

The San Diego Sierra Club urges the Commission to support the staff recommendation of Substantial Issue for this project, with consideration of the following points.

1. **ACCESS:** We respectfully suggest that substantial issue also exists for lateral access, which is a required consideration under the San Diego Sensitive Coastal resource Ordinance. While the Mean High Tide Line location has apparently not yet been determined, the site plan approved by the City would extend the applicant's property significantly oceanward of the historic, recorded boundary line. If this new survey turns out to be correct, it is even more critical to evaluate a lateral access dedication.
2. **VISUAL IMPACTS:** We would like to clarify the staff report in the first paragraph on p. 8 regarding ownership by the applicant to the centerline of the adjoining Right of Way. The site plan approved for the project by the City shows the applicant's property boundary to be at just that point. In fact, like other property owners everywhere, the fee ownership to the midline of the adjacent street indeed exists, but **SUBJECT TO THE CITY'S EASEMENT**. In other words, only if the City were to vacate the ROW would any legal uses revert to the property owners. In fact, the City has acknowledged that the applicant's irrigated landscaping in the ROW is illegal. Therefore, we believe there should be no hesitation in requiring the applicant to remove the plantings to restore and enhance the public views of the coast.
3. **SHORELINE/EROSION HAZARD POLICIES:** We continue to believe that historic information and photos confirm that the Bluff Edge is not located as portrayed on the City's approved site plan. While the applicant has repeatedly stated that "bluff edge" location is irrelevant to his project, we believe that substantial issue exists regarding the location of an unpermitted existing concrete patio, proposed grading, and new landscaping features. The San Diego SCR Ordinance would require that these features be located "at grade" and no closer than 5' to the bluff edge.

*Printed on 50% recycled paper*

EXHIBIT NO. 12  
APPLICATION NO.  
**A-6-LJS-98-169**  
Letter From Project  
Opponent

 California Coastal Commission

**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

4. **COMMUNITY CHARACTER:** The staff report states in the middle of the first paragraph that the existing residence is "comparable to other large residence in the area," and that the "FAR of the home will be decreased from .99 to .90." The applicant has made these claims throughout the public hearing process. In truth, this residence, at .99 FAR, is much larger than any other homes in the area, which has a maximum permitted FAR of .60. In addition, the 200 square feet proposed for FAR reduction is not .09 %, but closer to .02%. The significance of the overbuilt status of the residence goes to the issue of how to recapture the appropriate geologic setbacks when a legally nonconforming structure comes to the Commission for major redevelopment approval. We would appreciate a discussion by the Commission of this issue. If nonconforming footprints are allowed to override SCR setback requirements, how will it be possible ever to achieve the appropriate geologic and hazard setbacks?
5. **THE SEAWALL:** The only information before the Commission in the project has come from the applicant: Geological investigation, MHT survey, Permit Conditions and Findings--all have been supplied by the applicant. We urge the Commission to review alternatives that would result in restoration to public use of the pocket beach. Less environmentally damaging alternatives do exist, and have been supported in past projects by the Commission. We look forward to supplying appropriate testimony at the De Novo hearing.

Thank you for your consideration of these points. Again, we urge you to support your staff's finding of Substantial Issue

Sincerely yours,

Joanne H. Pearson, Co-Chair  
San Diego Sierra Club Coastal Committee





PICO  
Holdings, Inc.

RECEIVED

MAR 04 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

November 23, 1998

To City Council:

My wife and I live at 6101 Camino de la Costa, which is directly across the street from the Moncrieff Residence. We are unable to attend the hearing but have authorized the Moncrieff's to present this letter to the City Council.

The Moncrieff's should be applauded for how they have conducted themselves. From the beginning of the permit application process they invited neighbors into their home to review their architectural drawings and plans and to answer any questions. They have been sensitive and accommodating to legitimate concerns neighbors might have.

I am sure that they never anticipated opposition to their plans. This is understandable given that from what I can determine from the architectural drawings and plans the majority of the work is inside the house with very few changes to the outside other than cosmetic. The opposition to their plans seems to be an attempt to turn back the clock and remove structures that were built over twenty years ago.

I question how one or two neighbors could delay this project for over one year and increase the cost of the permitting process by thousands of dollars over variances for walls and fences that already exist. And again concerning the issue of fairness, the wall and fences existed before the neighbors who are complaining purchased their homes.

No one is made worse off by this project. The Moncrieffs' plans are an improvement and an update to the current appearance of their house. Not only are the plans consistent with the character of the neighborhood but structurally represent very little change to the outside of the existing house. I look forward to the completion of their project.

Sincerely,

John R. Hart  
CEO and President

EXHIBIT NO. 13

APPLICATION NO.

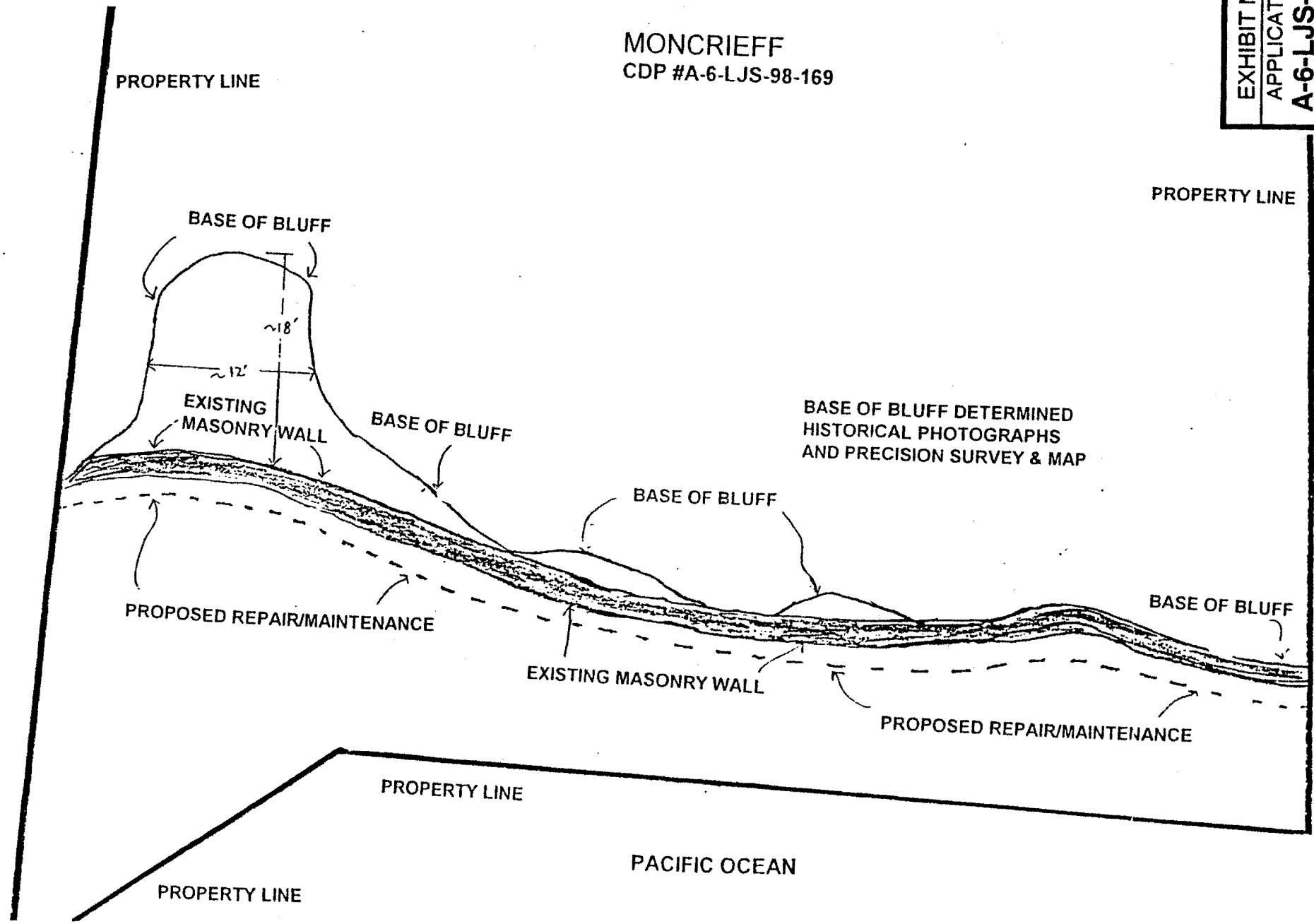
A-6-LJS-98-169

Letter of Support



California Coastal Commission

MONCRIEFF  
CDP #A-6-LJS-98-169





**SIERRA CLUB, SAN DIEGO CHAPTER**  
San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

**RECEIVED**

MAR 25 1999

Office (619) 299-1743  
Fax (619) 299-1741  
Mail (619) 299-1742  
EBBS (619) 299-4018

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Moncrieff Appeal to California Coastal Commission  
December 31, 1998

**REASONS FOR APPEAL:**

1. The proposed development fails to protect public views from public vantage points. Illegal street side yard wall would be permitted to be reconstructed in the same illegal configuration, i.e., approximately 18' over the bluff edge, thus extending fencing seaward beyond what is reasonably necessary for safety needs, and in conflict with the La Jolla Land Use Plan policies which provide that "Where existing streets serve as visual corridors,...In order to maximize public vistas, new development on corner lots should be setback from the corner, or terraced away from the view providing street." (P. 121)

Under the Sensitive Coastal Resource Ordinance, MC 101.0480 C.2.j. and D.1.a. b. and c., such fencing must be an "essential blufftop improvement;" must be located at grade and at least 5 feet from the bluff edge;" must be designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points; and ..."shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs. The supposed "necessity" for this fence is based on an illegal seawall, built without permits of any kind. We believe that any illegal development, such as the proposed fencing reviewed under this after-the-fact permit, should be required to conform to current code in all respects.

2. The development may significantly alter existing natural landform. Because the existing seawall was constructed without building, engineering, or coastal permits, (page 4 Staff Report P98-171), we request clarification of whether evidence exists to show that the structure was in imminent danger from erosion, which would have been a requirement before allowing construction of a seawall that has completely encapsulated the bluff edge and the bluff face. Applicant's agent, David Skelly, in a March 13, 1998 letter to Project Architect David Soanes, states "At local, city acknowledged erosion rates, the house if unprotected would be hanging over the blufftop in about three decades." What does the Commission consider when reviewing imminent danger? (SCR E. 5.a. through e.)

EXHIBIT NO. 14

APPLICATION NO.

**A-6-LJS-98-169**

Letters of Comment

California Coastal Commission



**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

3. The development does not comply with shoreline erosion and geologic setback requirements. We believe the City has erred in approving a Site Plan based on the applicant's survey of the Mean High Tide Line. Nor can we agree with the applicant's submittal of the bluff edge location. While applicant stated in his submittal that the Bluff edge had no relevance to the project, we believe that allowable setbacks, grading, landscaping, and other improvements are related to such a determination. The City has performed no independent determination, merely confirming applicant's report, which has many points of uncertainty or query noted on Sheets 14 and 15 of the Revised geologic Map dated 9-96.
4. We further would appreciate clarification of what degree of repair and/or maintenance under Coastal standards can be accomplished without requiring the proposed development to be brought up to current Code. We question whether the project can be found in conformance with policies in the La Jolla Land Use Plan, pp. 110-111, in particular Bullets 1, 2, 3, 4, 7, 8, and 9. We have disagreed with the City's proposal for granting an encroachment removal agreement for the illegal seawall. We believe, instead, in reliance on the staff report that the wall will apparently be rebuilt not merely repaired, that consideration should now be given to locating and constructing the seawall in accordance with current coastal requirements. Only then do we believe that the necessary findings of SCR E.5.a.-e. could be made.

In addition, the project has not addressed SCR E. 6.a. and c., which would require a lateral access dedication, and could have required a deed restriction protecting the bluff face, had the applicant applied for appropriate permits.



**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

**MONCRIEFF APPEAL TO CALIFORNIA COASTAL COMMISSION  
SUPPLEMENTAL INFORMATION IN SUPPORT OF SUBSTANTIAL ISSUE  
JANUARY 13, 1999**

The San Diego Sierra Club is writing to clarify our reasons for appeal, and to indicate that we believe the proposed remodel of the nonconforming principal structure and associated accessory and landscaping features must be considered in concert with the proposed reconstruction of the illegal seawall and street side yard fence and wall in order to adequately address the certified Local Coastal Program, as well as the public access and recreational policies of the Coastal Act (Sections 30210, 30211, 30212, 30235, and 30240).

A March 4, 1998, City Attorney memorandum, setting out the City's legal position regarding nonconforming structures in the Coastal Zone, was not available to the public in the City file at the time of the City Council hearing. We believe this new information indicates the City Council failed to properly evaluate the impact of the proposed changes to the principal structure, accessory structures, and landscape features on the certified Local Coastal Program. The Sensitive Coastal Resource Ordinance, (SCR), Section D.1.a.3), requires such features to be located at grade and at least 5' from the bluff edge.

In short, the appeal and request for a finding of Substantial Issue for this after-the-fact permit are based on:

1. **PUBLIC ACCESS:** We believe the City of San Diego failed to make findings for a lateral access dedication offer, which is required by the SCR Ordinance where there is a sandy or cobble beach or passable rock headland (Section E.6.a.).

We further believe the City of San Diego failed to protect visual and vertical access in the Mira Monte Place Right of Way, (ROW), as designated in the La Jolla Land Use Plan, by failing to perform an analysis of the identified visual access cone, by allowing applicant to obtain an encroachment removal agreement for unpermitted irrigated landscaping in the dedicated Mira Monte ROW, and by allowing new fencing to extend approximately 18' seaward of the bluff edge. (SCR Sections E.5.b. and e.)



**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
ESBS (619) 299-4018

**MONCRIEFF APPEAL**

**PAGE 2**

**2. SHORELINE EROSION AND GEOLOGIC SETBACK REQUIREMENTS:**

In regard to the seawall/retaining wall, which photographs show was built sometime in the late 1970's and 1980's without building, engineering, or coastal permits, we believe the City of San Diego improperly approved repair and/or reconstruction of this illegal structure. Testimony by City staff indicated that the wall, by closing off a sandy cove, has eliminated approximately 600 square feet of public beach, and could not be built today in the same location or configuration.

Further, the City Council failed to evaluate or ask for evidence from the City Geologist as to whether the principal structure was in danger from erosion, whether the development would "minimize the alteration of natural landforms," whether the design was the "minimum necessary to adequately protect existing principal structures, to reduce beach consumption, and to minimize shoreline encroachment." These considerations, and others, would have been required findings had the applicant sought proper permits prior to constructing the seawall. Thus, we believe that SCR findings D.1.a.2) and E.5.c.d., and e. were not properly made.

As mentioned above in paragraph two, we believe the concrete patio, stairs, and landscaping features can be located only at grade and at least 5' back from the bluff edge. We further believe SCR Section D.1.a.3) precludes spas and upper floor decks with load bearing structures, which would call into question the City's approval of the proposed jacuzzi and blufftop concrete patio.

Thank you for your consideration of this clarification and supplemental information.

Sincerely,

Joanne H. Pearson, Co-chair  
San Diego Sierra Club Coastal Committee

Office of  
The City Attorney  
City of San Diego

MEMORANDUM

533-5800

DATE: March 4, 1998

TO: Gary Halbert, Deputy Director, Land Development Review

FROM: City Attorney

SUBJECT: Alteration of Nonconforming Structures in the Coastal Zone

---

On November 12, 1997, our office issued a legal memorandum providing you with an interpretation of San Diego Municipal Code [SDMC] section 101.0303. Specifically, at that time you were asking whether a project which proposes to demolish and reconstruct nonconforming exterior walls (the value of which does not exceed 50 percent of the fair market value of the improvement) should be considered an abandonment of nonconforming rights or a permissible alteration. Our conclusion was that any repair or change to the structure (interior or exterior) is permissible so long as that change does not increase the degree of nonconformity or exceed 50 percent of the value of the improvements (minus the cost of paint, shingles, and exterior stucco).

You have now asked me to supplement our previously issued memorandum to address how the application of SDMC section 101.0303 would apply in the Coastal Zone.

It is important to understand that the rights contained in Section 101.0303 (Continuance of Nonconforming Uses and Structures) are subject to and must be applied in conjunction with SDMC section 101.0302, which reads as follows:

SEC. 101.0302 -- Existing Ordinances, Rules, Regulations Or  
Permits Retained

Except as herein specifically provided, it is not intended by this Chapter to modify or abrogate or repeal any ordinances, rules, regulations or permits previously adopted or issued pursuant to law, relating to the use, management or conduct of buildings, structures, signs, advertising displays, improvements or premises; provided, however, that where this Chapter imposes a greater restriction upon the erection, establishment, alteration or

Gary Halbert  
March 4, 1998  
Page 2

enlargement of buildings, structures, signs, advertising displays, improvements, or premises than is imposed or required by such ordinance, rules, regulations or permits, the provisions of this Chapter shall control.

When the above section is read in conjunction with Section 101.0303 it must be concluded that the right to permissibly alter a nonconforming structure within the context of Section 101.0303 does not supercede or obviate any requirement to obtain any discretionary permit otherwise required to develop property in the Coastal Zone. Typically, development in the Coastal Zone requires a Coastal Development Permit and in certain cases a Sensitive Coastal Resources Permit. These discretionary permits require the decision maker to find that the project is in conformance with the City's Certified Local Coastal Program.

Therefore, at one level, all proposals to modify nonconforming structures in the City must comply with limitations set forth in SDMC section 101.0303; i.e., cannot increase the degree of nonconformity or exceed 50 percent of the value of the improvements (minus the cost of paint, shingles, and exterior stucco). Additionally, if the project is in the Coastal Zone and requires a coastal permit, additional findings must be made with respect to the project's conformance with our Certified Local Coastal Program. In that case, it is appropriate to evaluate whether the aspect or degree of the nonconformity proposed to be maintained by the project negatively impacts implementation of the Local Coastal Program. It is entirely within the discretion of the decision maker, notwithstanding rights provided for in SDMC section 101.0303, to then decide whether or not the development proposal conforms with the policies and development regulations contained in our Certified Local Coastal Program and to act on the project accordingly.

CASEY GWINN, City Attorney

By

Richard A. Duvernay  
Deputy City Attorney

RAD:lc:600x605.3.1

Attachment

cc: Linda Johnson  
Tracy Elliot-Yawn

L:\DUVERNAY\MEMOS\NOV\CO3.MMO



PETERSON & PRICE  
A PROFESSIONAL CORPORATION

EDWARD F. WHITTIER  
MARSHAL A. SCARR  
MATTHEW A. PETERSON  
LARRY N. MURNANE  
LOUIS A. GALUPPO  
JENNIFER L. CUSICK

OF COUNSEL  
PAUL A. PETERSON

Union Bank of California Building  
530 "B" Street, Suite 1700  
San Diego, California 92101-4454  
Telephone (619) 234-0361  
Fax (619) 234-4786

Carlsbad Office  
701 Palomar Airport Road  
Suite 170  
Carlsbad, California 92009-1026  
Telephone (760) 431-4575  
Fax (760) 431-4579

File No.

5121.001

November 23, 1998

Mayor Susan Golding and Members  
of the City Council  
The City of San Diego  
202 C Street, 10th and 11th Floors  
San Diego, CA 92101

Re: Tuesday, November 24, 1998 Agenda Item No. 331  
The Moncrieff Remodel SCR/CDP 96-7544

Dear Mayor Golding and Members of the City Council:

As a supplement to our package to you dated November 16, 1998, attached please find the following:

1. A artist rendering of the proposed remodel as viewed from Camino de la Costa looking west; and
2. A draft set of Findings to support approval of the Coastal Development/Sensitive Coastal Resource Permit and the requested Variances.

We are presenting you with these Findings since we believe they more accurately reflect the discussion that took place at the Planning Commission as well as the additional information and evidence which has been presented as part of our packet to you.

Mayor Susan Golding and Members  
of the City Council  
November 23, 1998  
Page 2

We would urge you to adopt these Findings in lieu of the Findings contained within  
the Planning Commission package as we believe they are more legally defensible and  
more accurately reflect the justification supporting the approval of the requested Permit  
and Variances.

Thank you for your consideration of this request.

Sincerely,

PETERSON & PRICE  
A Professional Corporation



Matthew A. Peterson

Enclosures

cc: Charles G. Abdelnour, City Clerk  
Michael T. Uberuaga, City Manager  
Casey Gwinn, City Attorney  
Stephen Haase, Assistant Director, Project Review, Development Services  
Patrick Hooper, Planner, Land Development Review  
David Lee Soanes, Architect, David Lee Soanes, Limited  
Michael J. Pallamary, PLS, President, Precision Survey And Mapping  
David W. Skelly MS, PE, Skelly Engineering  
Scott and Debra Moncrieff  
(All w/ enclosures)

RESOLUTION NUMBER R-290999

ADOPTED ON NOVEMBER 24, 1998

WHEREAS, Norma J. Rink, et al., appealed the decision of the Planning Commission of The City of San Diego [Planning Commission] in approving by Planning Commission Resolution No. 2698-PC on September 17, 1998, Sensitive Coastal Resource/Coastal Development Permit [SCR/CDP] No. 96-7544 submitted by Scott Moncrieff, Owner/Permittee, to partially demolish and remodel the existing residence and seawall, located 6102 Camino De La Costa, and legally described as Lot 12, Block 1-A, La Jolla Hermosa Subdivision, Map No. 1810, in the La Jolla Community Plan area, in the R-1-8000 zone; and

WHEREAS, the matter was set for public hearing on November 24, 1998, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to SCR/CDP No. 96-7544:

**COASTAL DEVELOPMENT PERMIT FINDINGS (San Diego Municipal Code § 105.0202):**

A. The proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in an adopted Local Coastal Program [LCP] Land Use Plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

The subject property is not identified in the City's adopted LCP Land Use Plan as a public accessway. The site is privately owned and improved with a single family residence and sea wall, and therefore would not encroach upon any existing physical accessway legally utilized by the general public.

The project borders Mira Monte Place [Paper Street] which is identified in the La Jolla Community Plan as unimproved access to a small cove beach. The site currently contains a side yard wall which ranges from 6-9 ft. tall that angles into this Paper Street approximately 1-2 ft. at the point closest to the water. The wall pre-dates the adopted LCP and Community Plan. The location of the existing wall does not interfere with any public access to the coast. However, the applicant has nevertheless agreed to remove and relocate the wall outside the Paper Street and replace it with an open fence for the westerly 18 ft. to open up views to and along the ocean.

The remodel will not obstruct coastal or scenic views from any public vantage point. There will not be any increase in building mass of the existing structure. The repairs to the existing sea wall with the contouring, coloring and sculpting to match the adjacent bluff and sandstone formations will enhance the visual quality of the shoreline. The removal of the 6-9 ft. sidewall and the replacement of it with a 5 ft. tall "open" fencing for the westerly 18 ft. will significantly enhance public viewing to and along the coast. The proposed design of the remodel project will eliminate the existing box-like design of the structure, remove a tall unsightly fireplace chimney, remove a boathouse, and reduce the gross floor area by nearly ten percent by the creation of balcony elements.

The proposed interior exterior remodeling activities to the existing single-family home on the subject property would not exceed the height of the existing structure. It has been concluded that implementation of the various improvement features will not adversely obstruct public views to or along the ocean.

Therefore, the proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in an adopted LCP land use plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

**B. The proposed development will not adversely affect identified marine resources, environmentally sensitive areas, or archaeological or paleontological resources.**

The proposed project is a remodel of an existing single family residence. The entire project site is graded and padded as a result of construction of the existing home and associated improvements on the property. No further grading of the site is required to implement the various improvement features proposed on the subject property. The remodel will utilize the existing footings and foundation. As such, no grading is proposed as part of this application. No natural slopes, sensitive coastal or marine resources or other environmentally sensitive areas will be adversely affected.

Furthermore, as concluded in the Negative Declaration 96-7544, no adverse impacts to marine paleontological or archaeological resources are anticipated to occur as a result of project implementation.

Therefore, the proposed development will not adversely affect identified marine resources, environmentally sensitive areas, or archaeological or paleontological resources.

Therefore, the proposed development has been sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.

**F. The proposed development will minimize the alterations of natural land forms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.**

The project site has been graded and padded as a result of construction of the existing structure and associated improvements on the property. No further grading of the site is necessary to implement the proposed remodel. Therefore, no mitigation measures would be necessary to reduce impacts associated with geologic and erosional forces.

The project site is not located within the FW (Floodway) or FPF (Floodplain Fringe) zones. The existing drainage system designed for the project is consistent with relevant requirements of the City Engineer and would minimize risks associated with runoff and erosion.

Therefore, the proposed development will minimize the alterations of natural land forms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

**G. The proposed development will be visually compatible with the character of the surrounding area, and where feasible, will restore and enhance visual quality in visually degraded areas.**

The scale, design and building materials incorporated into the existing structure are consistent with the varied design and character of existing single-family development in the surrounding area. The majority of the proposed remodeling activities would occur within the existing structure. Exterior remodeling activities would incorporate materials and colors consistent with recently remodeled homes in the vicinity and would be visually compatible with the architectural materials and varied design theme of existing single-family development along Camino de la Costa.

The proposed remodel will reduce the "box-like" appearance of the existing structure as well as building mass by reducing the floor area and adding balcony elements, articulation and glass features to the facade. Further, the repairs to the sea wall will produce a natural looking sandstone appearance that will blend in with the surrounding natural topography features. Finally, the removal of the tall 6-9 ft. nonconforming block wall and its replacement with a 5 ft. open fence for the westerly 18 ft. (closest to the ocean) will restore and enhance the visual quality of the area. Together, these improvements will enhance the visual quality of the site and surrounding area.

Therefore, the proposed development will be visually compatible with the character of the surrounding area, and where feasible, restores and enhances visual quality in visually degraded areas.

**H. The proposed development will conform with the City's Progress Guide And General Plan, the LCP, and any other applicable adopted plans and programs in effect for this site.**

The proposed project (i.e., remodel of an existing single-family residence) is consistent with the recommended land use, design guidelines, and development standards in effect for the subject property per the adopted La Jolla Community Plan, the Sensitive Coastal Resource [SCR] Ordinance, the City's LCP, and the City of San Diego's Progress Guide and General Plan, which recommend that the subject property be developed with single-family residential development in accordance with development regulations of the existing R-1-8000 zone.

Although the proposed structure will maintain certain legally nonconformities, the remodel will result in an overall decrease in the nonconforming elements of the property including the bluff setback (i.e., removal of the boathouse), a reduction in FAR, and a reduction in the height of the sidewalls. These types of repairs and alterations are allowed pursuant to San Diego Municipal Code section 101.0303.

Therefore, the proposed development conforms with the City's Progress Guide and General Plan, the LCP, and any other applicable adopted plans and programs in effect for this site. (Also see Variance Findings below.)

**SENSITIVE COASTAL RESOURCE PERMIT FINDINGS (San Diego Municipal Code § 101.0480):**

**A. The proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas.**

The entire project site is graded and padded as a result of construction of the existing home and associated improvements on the subject property.

No further grading of the site is required to implement the proposed interior and exterior remodeling, alterations, and improvements to the residence. The repairs to the sea wall will not require any grading and will not result in any adverse impacts upon sensitive coastal resources or other environmentally sensitive areas. No sensitive coastal resources or environmentally sensitive areas will be affected by the proposed project.

A Negative Declaration was prepared for this project. No significant (adverse) impacts are anticipated to occur as a result of project implementation (i.e., interior and exterior remodeling of the existing structure and repairs to an existing sea wall). As such, there will be no adverse impacts to environmentally sensitive areas or sensitive coastal resources.

Therefore, the proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas. (Also see Coastal Development Findings "E" above.)

**B. The proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in the adopted community plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.**

As referenced in Coastal Development Finding "A" above, the proposed remodel of the residence and the repairs to the sea wall will not encroach upon any existing or future accessway legally utilized by the public nor will it obstruct views to and along the ocean from public vantage points. (Also see Coastal Development Finding "A" above.)

**C. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards on site.**

As referenced in Coastal Development Finding "F" above, the proposed development will not result in any alteration of the natural landform and as such, will not result in undue risk from geologic and erosional forces.

**D. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.**

The proposed project is a remodel to an existing structure and repair and maintenance to an existing sea wall. Therefore, there will not be any increased impacts to the shoreline sand supply. The proposed repairs to the seawall in its current location has been identified in the associated geotechnical report as the minimum necessary to adequately protect the principal structure located on the site. The design and materials used to repair the sea wall will incorporate the structure into the existing native bluff by matching both the colors and texture of the natural coastline. The design and repair of the wall will ensure the protection of the residence while minimizing erosional forces on the shoreline and visually enhancing the coastline.

The project would involve repairs to an existing sea wall. These repairs to the shoreline protective device will not contribute to erosion or otherwise adversely impact the shoreline sand supply.

Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.

**E. The proposed development will not adversely affect the City's Progress Guide and General Plan, the LCP, or any other applicable adopted plans and programs in effect for this site.**

As referenced in the Coastal Development Findings above, the proposed project will not adversely affect the City's General Plan, LCP, La Jolla Community Plan or any other applicable adopted plan or programs in effect for this site.

**VARIANCE FINDINGS (San Diego Municipal Code § 101.0502D):**

**A. There are special circumstances or conditions applying to the land or buildings for which the adjustment is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to the land or buildings in the neighborhood. Such condition shall not have resulted from any act of the applicant subsequent to the adoption of the applicable zoning ordinance.**

The variances include a 7 ft. front yard setback where 15 ft. is required, a 2 ft. street side yard setback where 10 ft. is required, a 6 ft. solid masonry wall with 12 ft. tall gated entry element and front and side yard 6 ft. solid walls and 1 ft. solid and 48" open wrought iron fencing where 3 ft. solid and 3 ft. 50% open is required.

This beachfront residence is located at 6102 Camino de la Costa in La Jolla. The property is constrained on the west by the Pacific Ocean and on the south, by an unimproved paper street (Mira Monte Pl.) which is utilized by the public during the day and night for access down to the beach. Camino de la Costa is heavily traveled by residents and visitors to La Jolla. The home is currently a nonconforming structure with regard to a variety of regulations as contained within the Municipal Code, including FAR, setbacks, and height and location of fences and walls. The shape of the lot is peculiar because of the radius turn in the southeast portion of the lot adjacent to the unimproved Mira Monte Pl. at Camino de la Costa. Because of the high levels of pedestrian activities during the day and through the night, there are issues associated with safety, privacy, quiet, and peaceful enjoyment of the property by the applicant. The terrain is steep in certain areas where the existing southeast wall is located within Mira Monte Pl.

As set forth above, there are special circumstances and conditions applying to the land and building for which adjustment is sought. These circumstances and conditions are peculiar to this property and the residence and do not generally apply to land or buildings in the neighborhood. These conditions have not resulted from any act of the applicant subsequent to the adoption of the applicable zoning ordinance.

**B. The aforesaid circumstances or conditions are such that strict application of the provisions of the ordinance would deprive the applicant to the reasonable use of land or buildings and that the variance granted by the city is the minimum variance that will accomplish this purpose.**



The requested variances associated with the request to have 6 ft. solid walls along the front property line and along the street side yard adjacent to Mira Monte Pl. stepping down to 1 ft. solid and 5 ft. open fence near the bluff are necessary to provide a minimum level of safety to the public. Mira Monte Pl. is a heavily traveled unimproved access. There have been many occasions when high school and college students have "partied" along Camino de la Costa and down and along unimproved Mira Monte Pl. These activities on the rocks and sandy beach area immediately adjacent to the subject property which extend into the night and at times into the early morning hours are disruptive to the applicant and to the neighborhood without appropriate safety fencing. There also exists a present danger of intrusion onto the existing sea wall. There is a risk that the general public may fall off the top of the sea wall. Therefore, strict application of the provisions of the Municipal Code as it relates to the setbacks, fence height, and materials would deprive the applicant of the reasonable use of the land. In addition, the existing nonconforming structure in its current state is not visually compatible with the character of the surrounding neighborhood. The proposed remodel will provide variety, articulation, and new materials will significantly enhance the visual appearance of the neighborhood and provide the applicant with an opportunity to upgrade the home consistent with some of the more recent remodels within the immediate vicinity. Because the home has legal nonconforming status, a reasonable use includes the ability of an owner to upgrade the property both to protect its investment in the property. These improvements will enhance the appearance to the neighborhood, and protect the general public from undue risk of falling off the sea wall. Without the ability to remodel, the applicant will be deprived of the reasonable use of the property. The proposed southeast wall and wrought iron fencing (which will be located completely out of the Paper Street) is necessary to provide safety to the general public. Absent such a feature extending to the vertical face of the sea wall, there are risks of the general public falling off the sea wall and suffering injury.

The setback issue near Camino de la Costa is exasperated by the property line radius at the corner of Camino de la Costa and Mira Monte Pl., an unimproved right-of-way, requires a street side yard setback of 10 ft. This street is likely to remain unimproved due to the topography of the area and the proximity to the water and could in fact be characterized as an interior side yard (rather than a street side yard) where a 5 ft. setback to the home would be required, and a 6 ft. solid wall would be allowed. With such a side yard classification, the proposed fence would be consistent with the interior side yard regulations of the R-1-8000 Zone.

Additionally, the variance for the solid wall is necessary to provide a buffer between the public activities in the unimproved Mira Monte Pl. and the immediately adjacent home. Mira Monte Pl. is used for coastal access to a small beach at the foot of the bluff. This area is popular for recreation activities normally associated with the ocean. However, the isolated nature of the area also attracts an undesirable element that could pose threats of trespass, vandalism and general misbehavior. Police reports in the area have revealed that 109 calls for service have been logged over a 33-month period, with 55% of those calls being to report a suspected burglary.

**C. The granting of the variance will be in harmony with the general purpose and intent of the zoning regulations. It will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

The proposed remodel is for an existing, legally nonconforming structure. A 40 ft. setback from the bluff edge would normally be required in accordance with the Sensitive Coastal Resource Ordinance of the San Diego Municipal Code section 101.0480. Since the home was built prior to the Coastal Act and the SCR regulations, a large portion of the site is within the 40 ft. setback and is restricted in terms of further grading and development. The 6 ft. solid front yard wall and gate element is intended to allow for some useable outdoor area on the site and is consistent with similar walls in the immediate area. The 6 ft. solid side yard wall is consistent with development regulations for interior side yards and considered harmonious with the intent of the Single Family Ordinance. These variances have been considered under the provisions of the City's Zoning Ordinance and viewed as fulfilling the purpose and intent of the zoning regulations, and will conditions imposed, are not seen as injurious to the neighborhood.

The proposed variances will provide for a more pedestrian friendly feel along Camino de la Costa through the use of articulation, an entry gate element, and architectural features consistent with other recently remodeled homes within the vicinity. None of these requested variances will adversely affect either access or views to or along the ocean. In fact, the variance related to the southeast wrought iron fencing, 1 ft. solid and 48" open (instead of 3 ft. solid and 3 ft. open), will enhance and improve public viewing along the coast by eliminating the existing 6-9 ft. solid block wall which currently obstructs public viewing opportunities.

The granting of this variance will be in harmony with the general purpose and intent of the zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**D. The granting of the variance will not adversely affect the progress guide and general plan for The City of San Diego or the adopted community plan for the area.**

The proposed variances are considered to be minor in scope and would be consistent with design of the remodeled structure. The proposed walls are also considered minor deviations and compatible with the surrounding neighborhood. Due to the minimal nature of the requests, no adverse impacts to the General Plan, or the La Jolla Community Plan and Local Coastal Plan are anticipated.

Therefore, the requested variances will not adversely affect the Progress Guide or General Plan for the City of San Diego or the adopted La Jolla Community Plan for this area.

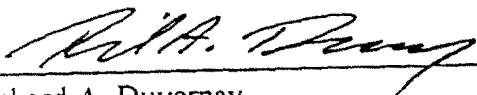
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of Norma J. Rink, et al., is denied; the decision of the Planning Commission is sustained; and Sensitive Coastal Resource/Coastal

Development Permit No. 96-7544 is hereby granted to Scott Moncrieff, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By

  
Richard A. Duvernay  
Deputy City Attorney

RAD:lc  
12/10/98  
Or.Dept:Clerk  
R-99-694  
Form=perapplr.frm

Doctor Vincent Sucato, 6039 Camino de la Costa, La Jolla, CA 92037  
Doctor Norma Rink, 6041 Camino de la Costa, La Jolla, CA 92037

RECEIVED

20 March 1999

California Coastal Commission

Chairman Wan, Committee Chairman

Re: Appeal A-6-98-169 (Moncrieff)

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Chairman Wan and Committee Members,

We enclose a booklet of argument and photographs for the April Meeting that we hope will clarify the areas where we believe the application violates the Coastal Act and the La Jolla Community Plan.

This project is especially important because it illustrates so many of the issues that concern the Public in the development of the Coastal Strip between the Coast Edge and the first road.

This property is adjacent to a 60ft. Designated View Corridor and Public Right of Way. If you walk from Wind and Sea to the Birdrock overlook at the bottom of La Canada, you pass forty-two large homes that Wall Off the Ocean from the Public. There are only two Designated View Corridors and Rights of Way, of which this is one.

- i) There is currently an illegal Side Wall built in the Right of Way, obstructing Public Views to the ocean. This would be removed, but replaced by a New Obstructing Side Wall, built out from the Coast Edge on Illegal Development, over coast in-fill. The Coast Extension and in-fill appears first in the Photo in 1985. We believe that Public Views should be restored: the Side Wall should be built to Code, set back 5ft. from the Bluff Edge.
- ii) The newly submitted Sea Wall application will legitimize the Illegal Sea Wall. The Sea Wall and Side Wall have illegally excluded the Public from the Bluffs and Sandy Cove to which they had free direct and access as late as 1985 (Photo). There are no plans to restore Public Access. We believe that there should be a thorough review of alternative configurations, which would restore Public Access to Bluffs and Cove. In neighboring properties the Sea Wall is applied directly to Bluff Face.
- iii) The View Corridor is 90% obstructed at the street by landscaping, encroaching from this property and the other neighboring property. The City has consistently refused to correct this, or to accept its responsibility to maintain the View Corridor. We oppose the intention of the City (City Council Appeal) to grant this project an Encroachment/ Removal Permit to allow the Mature Myoporum, planted by previous owner, to remain in the Right of Way obstructing the View Corridor.
- iv) This is a very large, encroaching, non-conforming property. There has been no credible attempt to reduce the non-conformity. Claims of reduced FAR rest on making certain areas windowless, and removing a boathouse, but the house envelope and roof area will actually be increased.

We thank you for your attention in these matters.

Sincerely,

*Norma Rink*  
*Vincent Sucato*

A Copy of this package has been sent to Coastal Staff in San Diego

## CONTENTS:

- 1) Evidence in Historic Photographs relevant to current Permit Application - Page 1
- 2) Establishing a Private Back Yard - Page 2
  - 1974 Photo - Page 3
  - 1978 Photo - Page 4
  - 1985 Photo - Page 5
  - 1995 Photo - Page 6
  - 1998 Plans for Permit Application - Page 6A
- 3) Obstructing Public Views from designated View Corridor
  - Obstructing Side Wall
    - i) Position of Drawn Bluff Edge is Wrong according to the Evidence from Archival Photos. - Page 7
      - Evidence that Bluff Edge Determination is wrong - Page 8
      - Side Wall built on infill - Page 9
      - 1998 Side Wall from View Corridor - Pages 10,11,12
    - ii) Illegal Development should not be used as reason to permit Side Wall/ Safety Fence. - Page 13
      - Safety Fence for Public Access in nearby Right of Way - Page 14
      - Safety Fence in Coastal Commission Publication - Page 15
  - Mature Myoporum in Right of Way obstructs ocean views from street. - Page 16
    - Mature Myoporum obstructing Designated View Corridor - Page 17
    - Mature Myoporum Encroaching into Setback; No Off Street Parking (and Road Red Lined) - Page 18
  - New planned Balconies will obstruct Public Views from Public Vantage Points. - Page 19
    - New Balconies protrude further into Setback - Page 20
    - New Balconies to be made out of Sunshade? - Page 21
- 4) The Application for a Sea wall - Blocking Public Access to Bluffs and Sandy Cove. - Page 22
  - Sea Wall Applied to Bluff Face in neighboring properties (6160. and 6204) - Page 23
- 5) The New Lot Line. The changing Lot Line. - Page 24
  - Lot line through first Planning Commission Hearing - Page 25
  - Plan showing the extensions to lot lines provided for the last two hearings - Page 26
- 6) Enforcement of Permit Conditions. - Page 27

PUBLIC ACCESS - PRIVATE ACCESS

1974 PHOTO NO PRIVATE BACK YARD  
OWNER AND PUBLIC SHARE BLUFFS AND BEACHES  
  
PUBLIC HAS ACCESS FROM RIGHT-OF-WAY  
TO BLUFFS WEST OF PROPERTY  
  
PUBLIC HAS ACCESS TO SANDY COVE AND BLUFFS ROUND IT

1978 PHOTO NO PRIVATE BACK YARD  
OWNER AND PUBLIC SHARE BLUFFS AND BEACHES  
  
PUBLIC HAS ACCESS FROM RIGHT-OF-WAY  
TO BLUFFS WEST OF PROPERTY  
  
PUBLIC HAS ACCESS TO SANDY COVE AND BLUFFS ROUND IT

1985 PHOTO NO PRIVATE BACK YARD  
OWNER AND PUBLIC SHARE BLUFFS AND BEACHES  
  
PUBLIC STILL HAS ACCESS TO SANDY COVE AND BLUFFS ROUND IT  
  
LATERAL ACCESS BLOCKED AT RIGHT-OF-WAY  
  
BLUFFS, WEST OF PROPERTY, BURIED IN CONCRETE

1995 PHOTO ALL LATERAL ACCESS BLOCKED TO PUBLIC  
  
ALL BLUFF ACCESS BLOCKED TO PUBLIC  
  
ACCESS TO SANDY COVE BLOCKED TO PUBLIC

1998 PERMIT LEGITIMIZES - ALL LATERAL ACCESS BLOCKED TO PUBLIC  
APPLICATION LEGITIMIZES - ALL BLUFF ACCESS BLOCKED TO PUBLIC  
LEGITIMIZES - ACCESS TO SANDY COVE BLOCKED TO PUBLIC

MAJOR DEVELOPMENT OF NEW BACK YARD TO BE MADE OUT OF  
"CAPTURED" BLUFFS AND BEACH  
LANDSCAPING/ TERRACING/ STEPS/ GRADING/ IRRIGATION

NEW LOT LINE "CAPTURES" EXTRA 25FT. OF BEACH  
NEW LOT LINE "CAPTURES" EXTRA 30FT. OF RIGHT-OF-WAY

STRUCTURES  
FENCES/SIDE WALL/SEA WALL/COAST IN-FILL

CHAIN LINK FENCE WRAPS ROUND BACK OF HOUSE CLOSE TO WALLS

CHAIN LINK FENCE WRAPS ROUND BACK OF HOUSE CLOSE TO WALLS  
  
RETAINING WALL BUILT AGAINST BLUFF, WEST OF PROPERTY  
  
RETAINING WALL BUILT ACROSS PART OF RIGHT-OF-WAY, ADJACENT  
TO PROPERTY (Fills in gap in Coast)

RETAINING WALL BUILT UP TO FORM SEA WALL  
  
ILLEGAL CONCRETE PATIO BUILT OVER BLUFFS, WEST OF PROPERTY  
  
ILLEGAL RETAINING WALL BUILT OUT ONTO BEACH, AT SOUTH WEST  
BACK FILLED TO FORM COAST EXTENSION  
  
ILLEGAL SIDE WALL BUILT OUT FROM COAST ON COAST EXTENSION  
PUBLIC VIEWS (FROM DESIGNATED VIEW CORRIDOR) BLOCKED

ILLEGAL SEA WALL BUILT ACROSS MOUTH OF SANDY COVE

LEGITIMIZES SEA WALL/ STRENGTHENS SEA WALL  
LEGITIMIZES COAST EXTENSION AT SOUTH WEST

NEW SIDE WALL ON COAST EXTENSION WILL OBSTRUCT PUBLIC VIEWS  
FROM DESIGNATED VIEW CORRIDOR  
(This to be permitted as Safety Fence to protect Public Safety)

NEW BALCONIES WILL ENCROACH FURTHER INTO SETBACKS,  
OBSTRUCTING PUBLIC VIEWS FROM DESIGNATED VIEW CORRIDOR

ENCROACHMENT/ REMOVAL AGREEMENT TO ALLOW MATURE  
MYOPORUM TO REMAIN IN VIEW CORRIDOR, OBSTRUCTING PUBLIC

**BLOCKING PUBLIC ACCESS TO BLUFFS AND BEACH BY ILLEGAL DEVELOPMENT.  
ESTABLISHING A PRIVATE BACK YARD.**

The house was built in the early 1950s with **no private back yard** apart from a small sun terrace, on the second floor above the sandy cove.

The **1974 and 1978 photographs** show a chain-link fence wrapped round the west face of the house, close to the house walls.

The public had free access to the bluffs and to the sandy cove from the adjoining Public Right of Way, Mira Monte Place.

The **1985 photograph** shows seven members of the public relaxing in the cove.

It is the first photograph that shows an attempt to capture a private back yard:

a) The illegal Sea Wall pushed out onto the beach in the SW corner of the property.

b) The sandy beach in-filled behind it.

c) A high Side Wall built along the Right of Way and out onto the in-filled area.

This new illegal Side Wall obstructs public views from the Designated View Corridor, and obstructs physical lateral access along the bluff.

d) A concrete patio built out over the bluff, and over the in-filled area of beach, to meet the edge of the new Sea Wall.

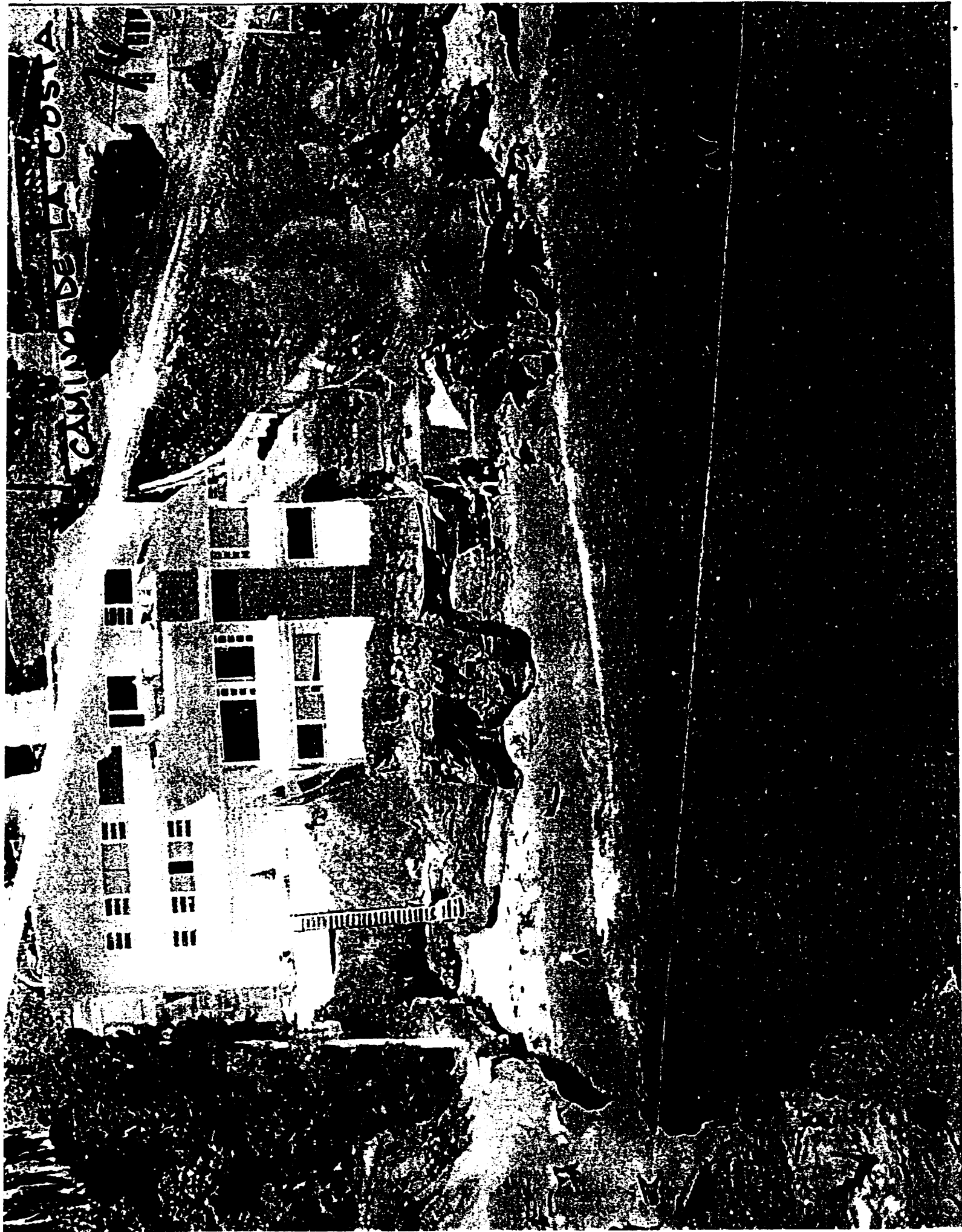
The **1995 photograph** shows the final sea wall addition, across the mouth of the sandy cove.

The public is now cut off from the sandy cove and from the bluffs surrounding it.

The **1998 plans** show a planned massive development to establish a new **private back yard**.

The plans show grading, terracing, patio, steps, landscaping, and irrigation.

This development will take place over the bluffs and sandy cove that were enjoyed by the public until 1985 when public access was finally cut off by illegal development.





4



78  
GAP IN COAST  
BEFORE FILL  
PUBLIC HAS ACCESS TO BLUFFS AND COVE

REPRODUCED WITH THE PERMISSION OF:  
AERIAL PHOTOGRAPH 619-455-0780



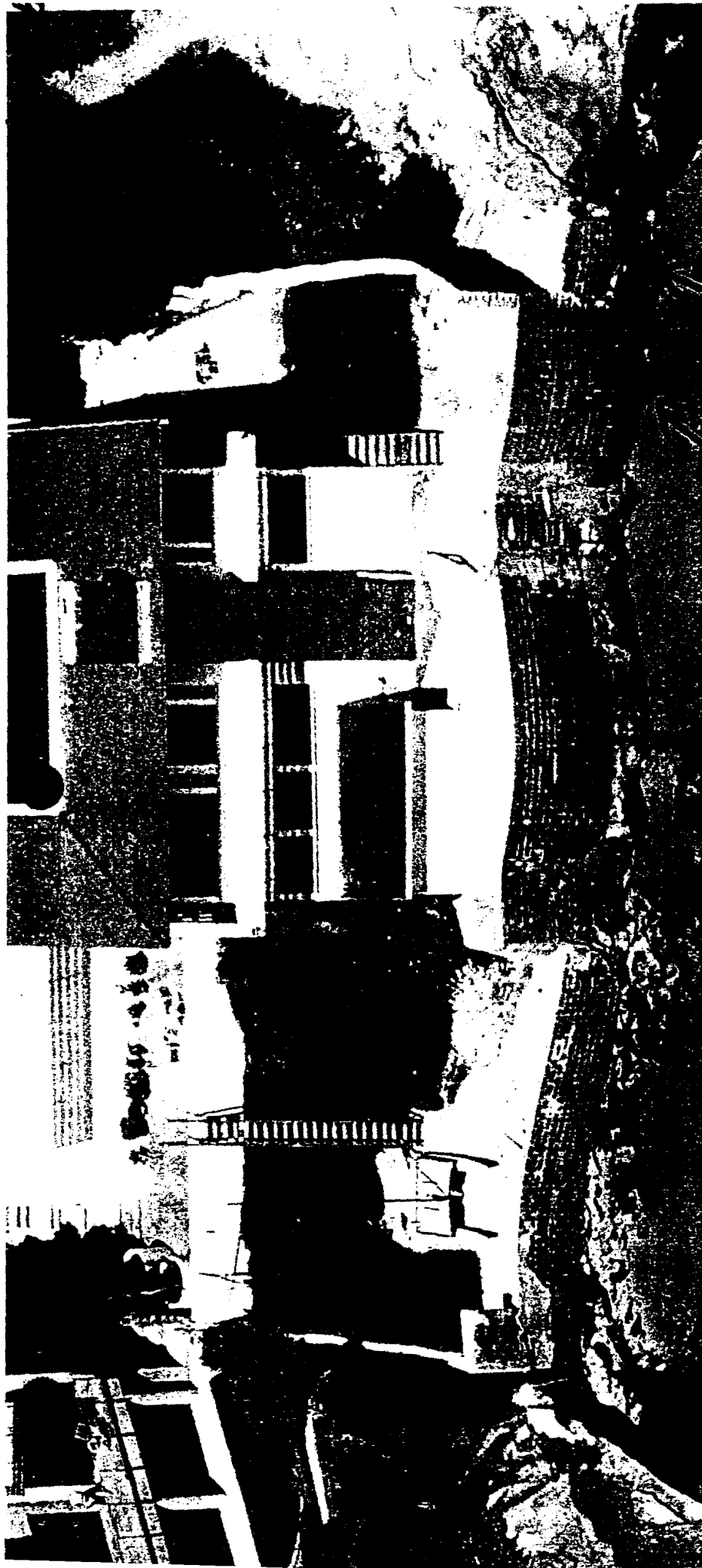
PUBLIC STILL HAVE BEACH ACCESS

INFILL

COAST INFILL APPEAR

1985

COAST LINE APPEAR



1995

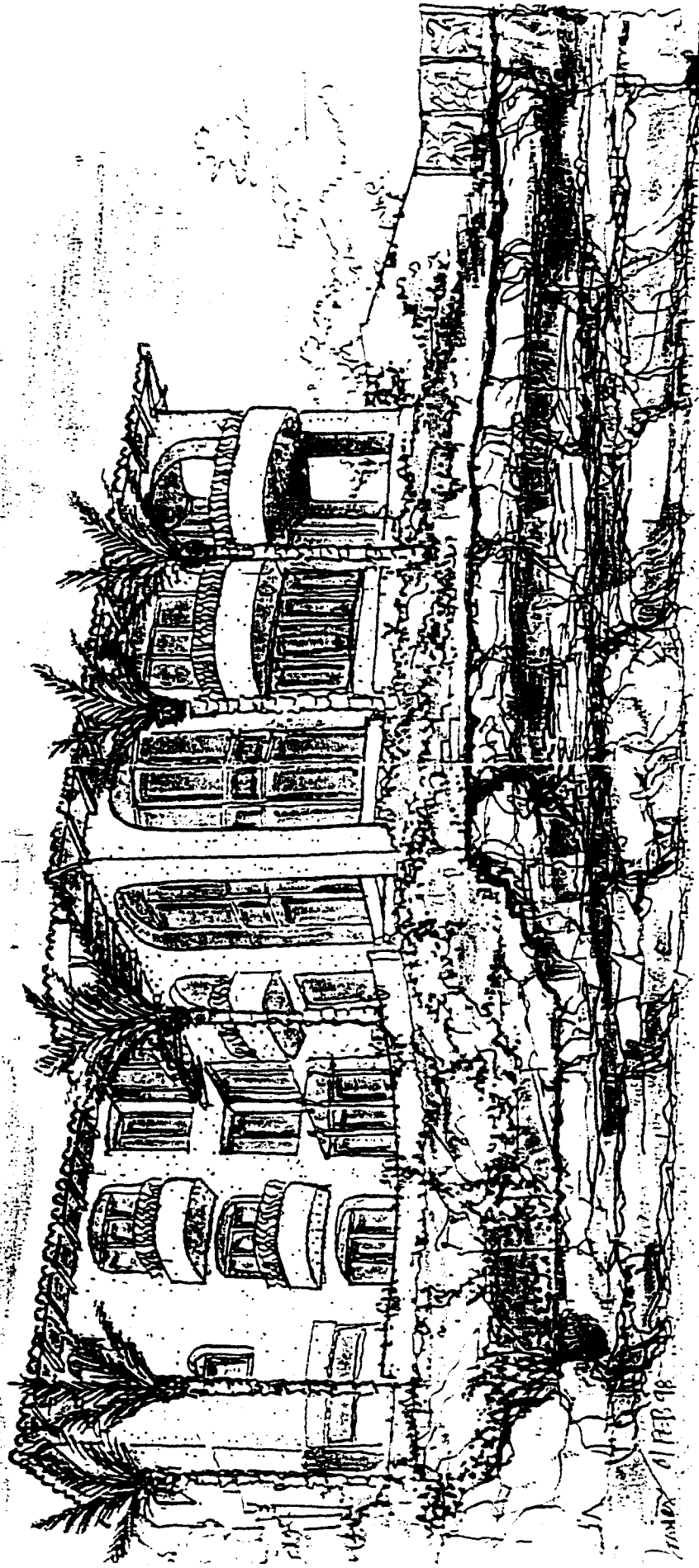
COAST INFILL

SEA WALL ACROSS MOUTH OF COVE  
BLUFF BUILT UNDER CONCRETE

SIDE WALL BUILT ON COAST INFILL

PAVING AND EXCAVATED FROM COVE AND BLUFFS  
PARK VUE EXCAVATED

NEW 'CAPTURED' BACK YARD



1/10/98 01 FEB 98

VIEW FROM OCEAN TO  
RESIDENCE AS RENOVATED

the Monseiff residence

relocated from

## OBSTRUCTING PUBLIC VIEWS FROM DESIGNATED VIEW CORRIDOR

### A) High Side Wall will block Public Views from Public Vantage Points in the Designated View Corridor.

#### The Position of the Drawn Bluff Edge needs to be Reviewed.

It is clear that position of the Bluff Edge is crucial to how the Coastal Staff view the issue of the Side Wall: whether the last 18 ft. of Side Wall runs E/W parallel to the Bluff Edge, or E/W over the bluff face.

According to the determination of Bluff Edge per City Geologist (09/11/98):

*The Bluff Edge passes N along the 19ft. contour line in the Right of Way until it meets the property line. It then turns at right angles to run W over in-filled beach until it hits the outer edge of the reclaimed coast. It then turns N to run along the outermost edge of the illegal development on the beach.*

City Planners told us that the Geologist said he could make no proper assessment because the Bluff is buried under the concrete patio. It seems likely that the City Geologist did not have access to the 1974 historic photograph that the City provided to the applicant's geologist, Mr. Steele, for his report on the Sea Wall.

Archival photographs clearly show that in 1978 even the Coast Edge was "landward" of the Bluff Edge determination made by the City Geologist.

The photographs make it clear that the planned Side Wall will run over the bluff, continue 8 ft. beyond the edge of the coast, over illegal fill which extends the Coast, until it meets the edge of the Sea Wall (1985 photograph)

**As far as we know, no one is yet claiming that the ocean is retreating here or the land rising! Now that the new photographs are available to us, we hope we can avoid any pretence at continuing the fiction that the applicant's Bluff Edge submission is plausible or acceptable.**

In the Staff Report on Substantial Issue, Staff acknowledges that the "historic" Bluff Edge may lie "inland" from the Bluff Edge drawn by the City Geologist.

We understand that it is difficult for Coastal Staff to take a position on this when a City Geologist has certified the Bluff Edge offered by the applicant. We believe the Geologist would not have recorded the Bluff Edge as he did, had he been given access to archival photographs.

**We believe that the Public is entitled to ask for a plausible Bluff-Edge determination to work with, rather than a fantastical one.**

The Public reasonably expects Bluff Edge determination to be based on facts:

- a) Historic photographs, or
- b) Contour lines illustrated in the first site plans that the applicant submitted, or
- c) Drilling results.

The results of a) and b) are reasonably consistent.

**The evidence shows that the planned Side Wall would run across the Bluff Edge setback, over the Bluff and the Bluff Toe, to continue for a further 8ft. over illegal fill which extends the Coast, until the Side Wall meets the edge of the Sea Wall. (1985 photograph)**

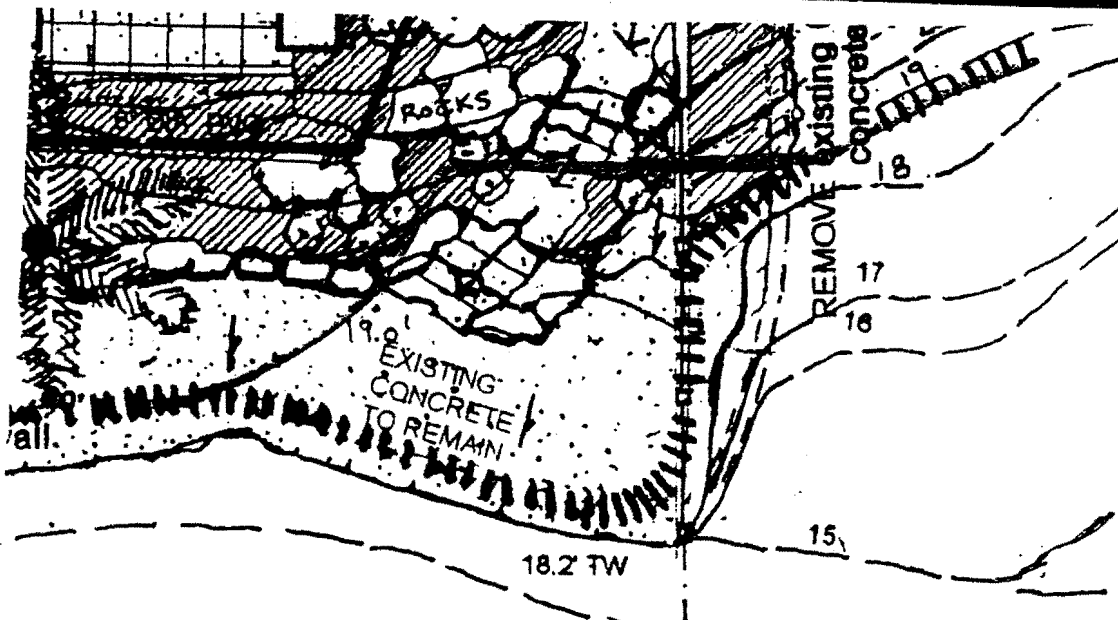
**We believe that to permit such an encroaching non-conforming Side Wall would create an undesirable precedent, with serious coast wide implications for Public Access and Views.**

8  
BLUFF EDGE NOT AS  
DRAWN



REPRODUCED WITH THE PERMISSION OF  
AERIAL FOTOBANK 619-455-0780

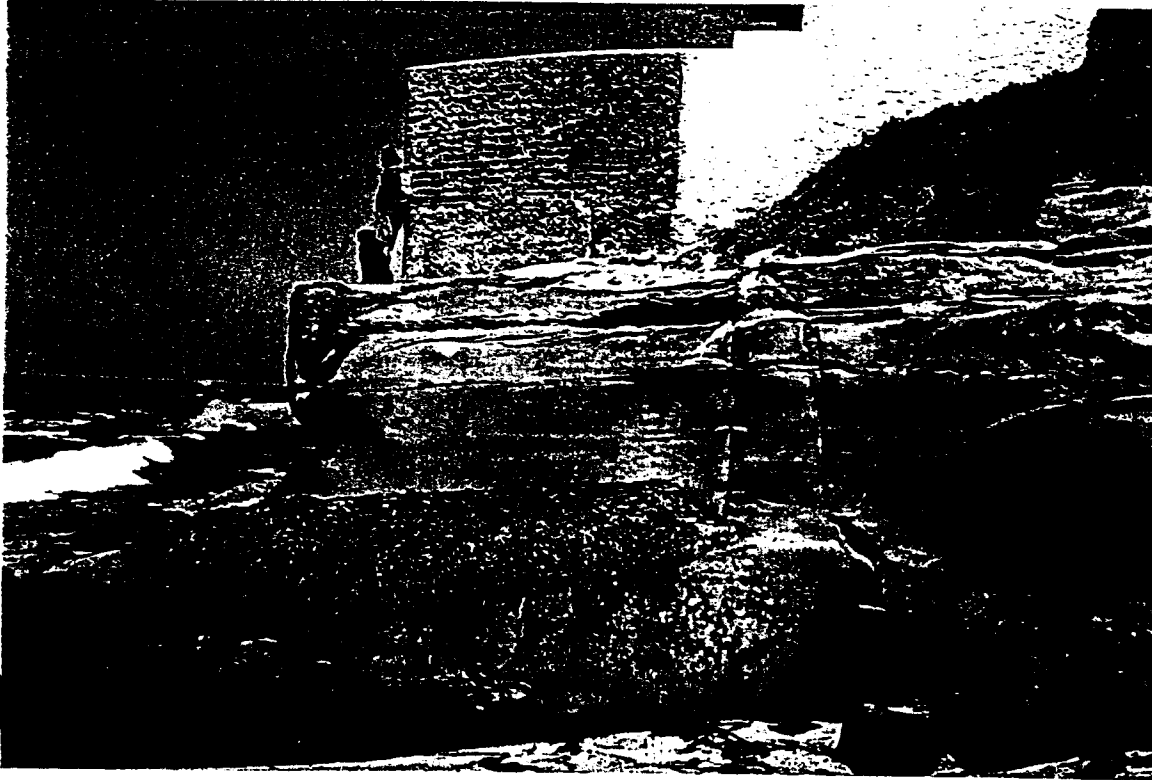
Nov.  
78



— = BLUFF EDGE IN 1978

END OF WALL WOULD BE ONLY 1' LOWER  
THAN EXISTING WALL.

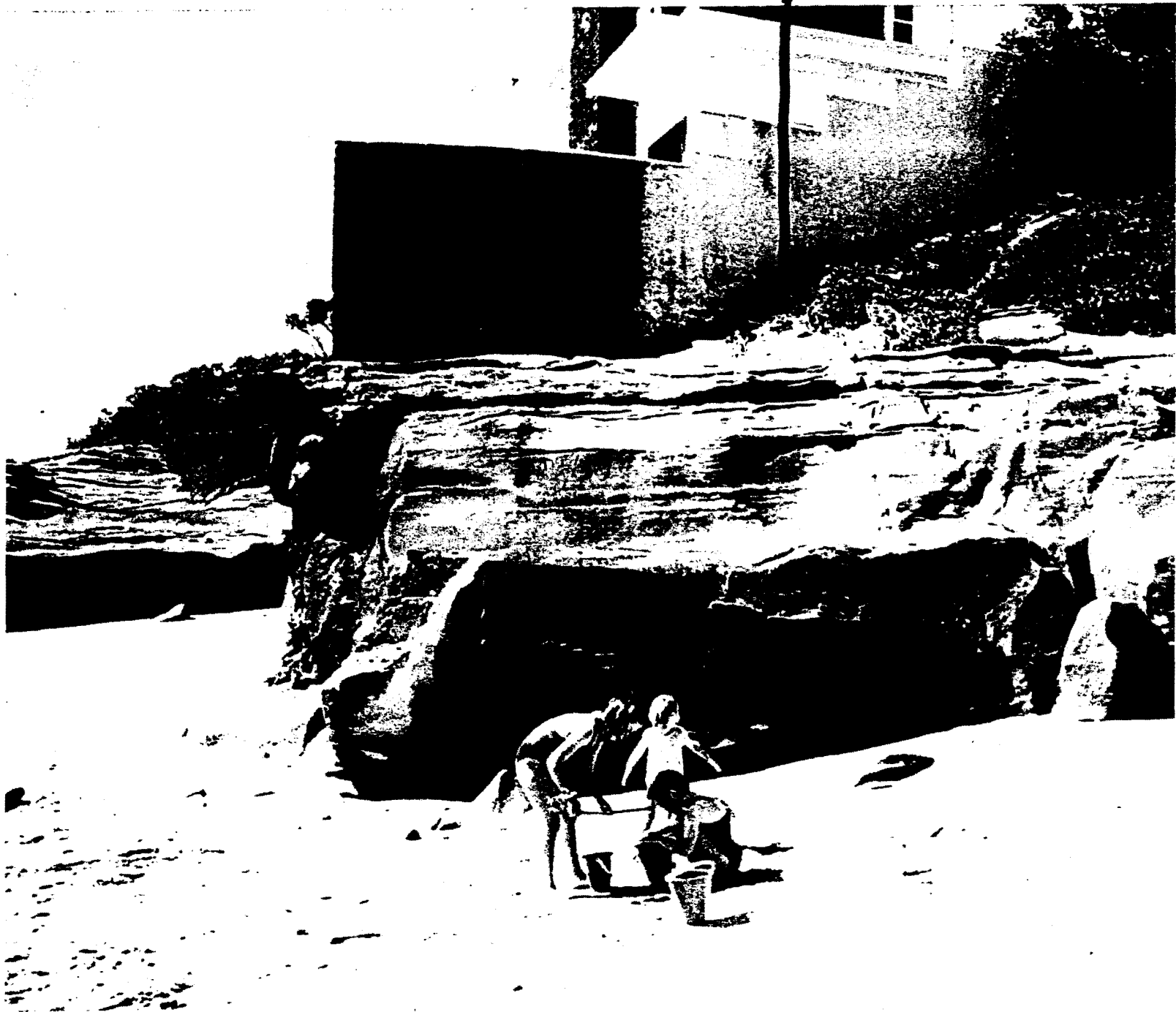
WALL PROTRUDES 8' OVER COAST  
EDGE



SHOWS  
COAST  
EDGE  
AND  
CONCRETE  
IN  
FILL

SE7BACIK

12



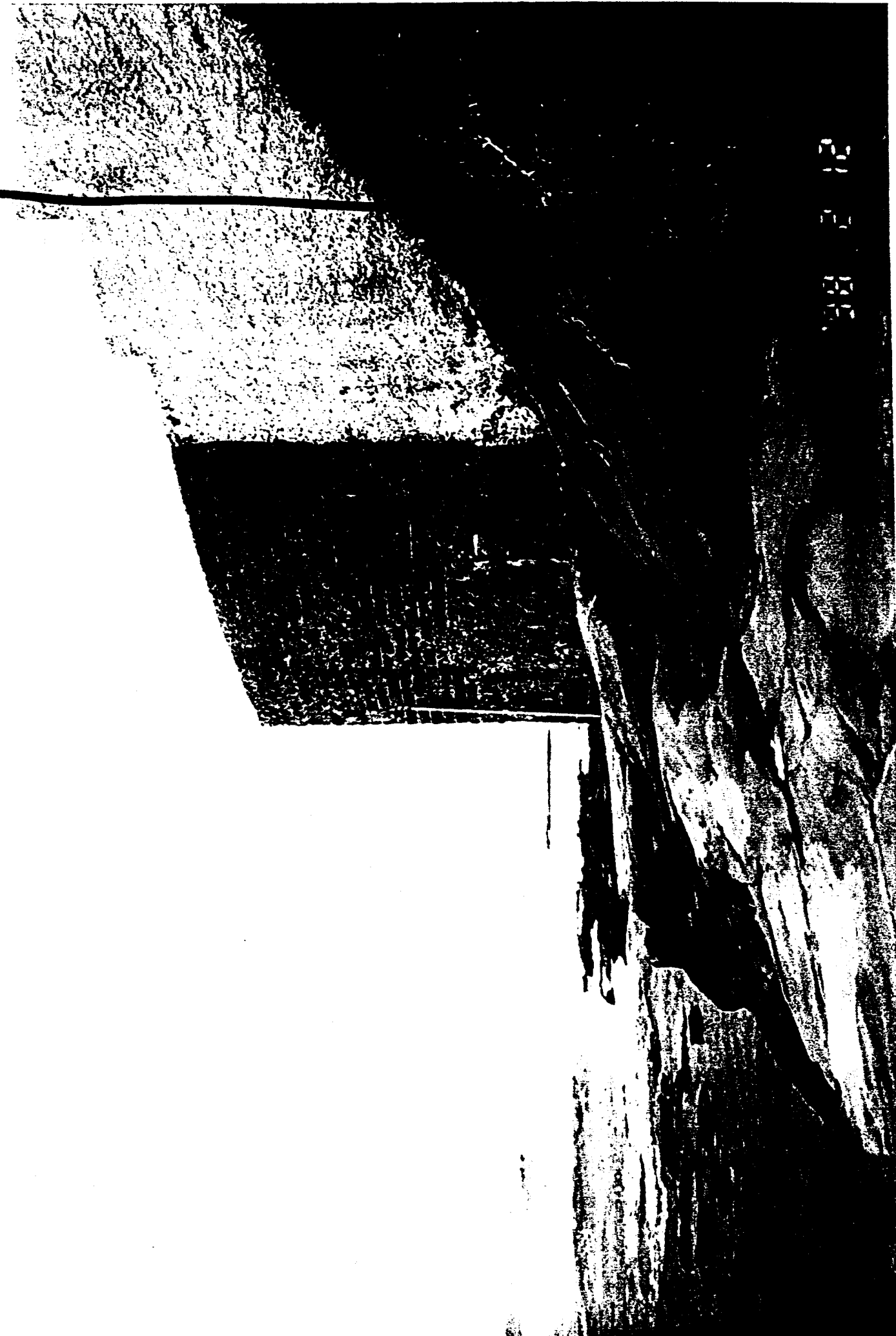


11  
SETBACK



11 200000

21 3 86



E IN  
ON

as reason to permit Side Wall/Safety Fence.

stall Commission should not permit a Side Wall to be built out over Illegal  
of the coast.  
rable precedent, with coast wide implications for Public Views and Public

rgues that:  
ssion voted unanimously to pass the project.  
e 6ft. high to the bluff edge, but not more than 5ft. high at the edge of the coast.  
be permitted to continue to the edge of the sea wall (built  
Illegal development to the very edge of the reclaimed, in-filled beach)  
tted on grounds of public safety.

record that two of the six Planning Commissioners voted against the planned  
ian and Vice-Chairman).  
tate that the development includes building up the grade in the Right of Way by  
end of the side wall above presently existing grade will be: 5ft.+3ft.= 8ft.  
than the existing side wall. It will be obstruct Public Views.  
al Staff is not ready to accept that, if a Safety Fence is necessary, the planned  
ed as the Safety Fence. We believed that Coastal Staff would examine  
ent on alternatives in the Staff Report. Have alternatives been

ed necessary in this location extending, from the 5ft. bluff setback, 18ft. to  
over reclaimed beach, we believe it should be designed to maximize public  
gh it.  
designs are available, far less obstructive to Public Views. For illustration we  
afety Fencing from Coastal Commission Publications, and from nearby areas in

Fence would be necessary if there were no illegal development.  
is area are used to scrambling up and down the bluffs to get to the beach,  
cs in using the bluffs.  
hat the Public be asked to agree to the sacrifice of their Views as well as  
on the grounds that an obstructive Side Wall is necessary to protect Public



MISSION





**OBSTRUCTING PUBLIC VIEWS FROM DESIGNATED VIEW CORRIDOR**

**B) Mature Myoporum planted and established by the previous owners obstructs Public Views from the street, over the Designated View Corridor.**

The applicant's attorney argues that:

- a) Because views are already obstructed at the street, a Side Wall obstructing Public Views from Public Vantage Points lower in the Right of Way is not important. He showed slides to illustrate this.
- b) The appellants unreasonably rejected a "deal" offered to the City, whereby the applicant would trim the Myoporum, and place a seat at the top of the Right of Way.  
In return the City would vacate a 4 ft. strip of the Right of Way to the applicant.
- c) The applicant is not permitted to trim the obstructing Myoporum in the Right of Way.

In response :

- a) We believe that, where the View Corridor is Obstructed at the Street, the Views should be restored. Arguments b) and c) seem mutually exclusive, but appear together in the attorney's letter of 22 February.

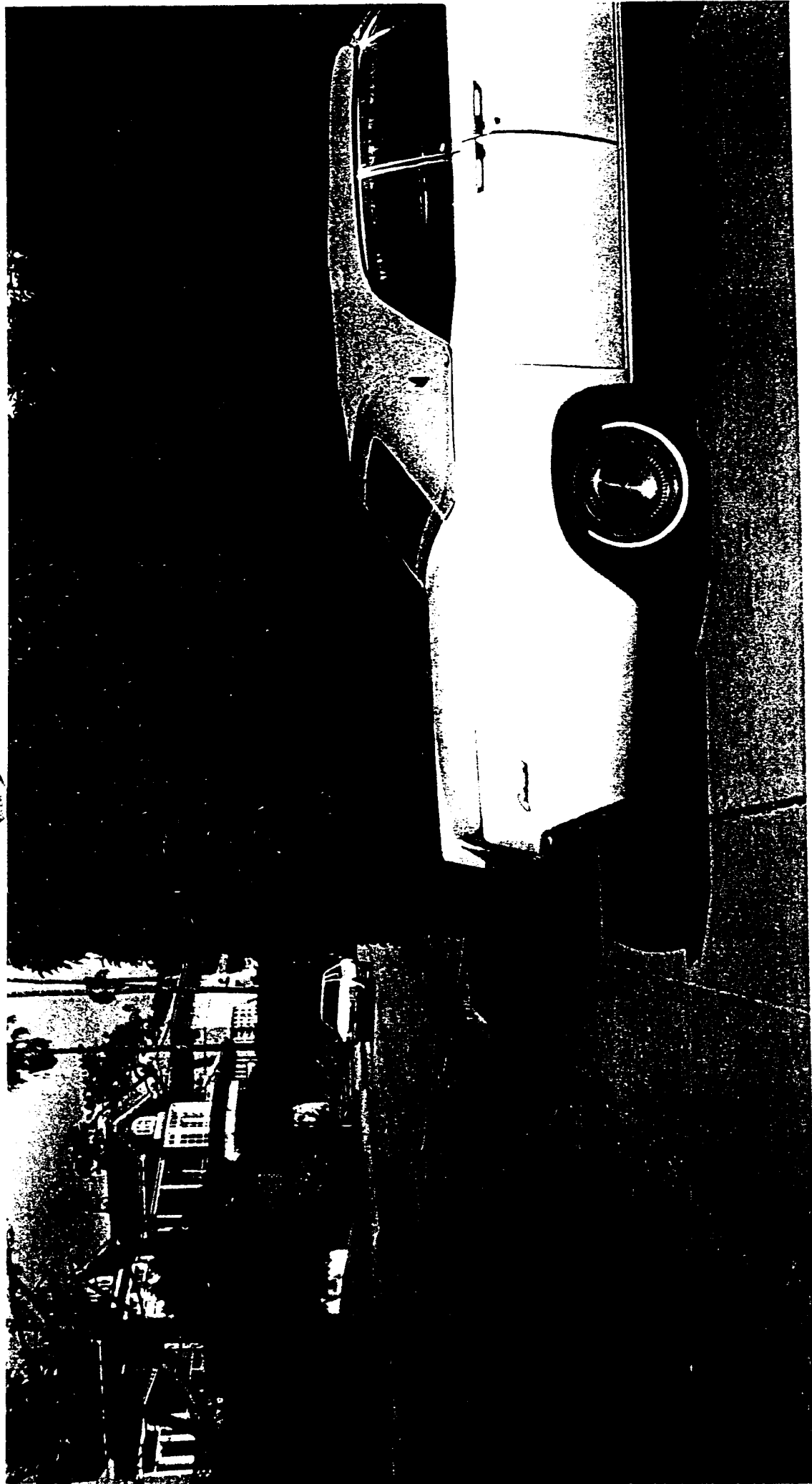
It is a matter of Public Record that at the City Council Hearing, it was agreed that the applicant would apply to the City for an Encroachment/Removal Agreement that would allow Mature Myoporum to remain in the View Corridor.

**We believe that the City should not permit Encroachments/Removal Agreements in Designated Public View Corridors for private landscaping or development that would obstruct Public Views. This is against the intent to protect and restore Public Views to the ocean, in violation of the Local Community Plan and the Coastal Act.**

View towards (R. 100) 17



APPROXIMATELY 11:30 AM



NO OFF STREET PARKING  
CURB SIDE LIMITED

**OBSTRUCTING PUBLIC VIEWS FROM DESIGNATED VIEW CORRIDOR**

**C) New Protruding Balconies would further obstruct Public Views from the Designated View Corridor.**

The City Planner told us that cantilevered extensions from buildings are not normally considered as encroachments into setbacks. He said they are normally permitted except where they obstruct Public Views from Public Vantage Points.

In this property, the entire back section of the house encroaches into the 40 ft. setback and obstructs Public Views to the ocean.

We believe that new permanent protrusions in the form of balconies should not be permitted. They would further obstruct Public Views, as well as increase the apparent "Bulk and Mass" of the building. Balcony extensions are not counted in the FAR.

The applicant's attorney has argued that the balconies simply replace the catwalk or sunshade. The sunshade is a flimsy slatted wooden structure, which appears to have been bolted on to the house after it was built.

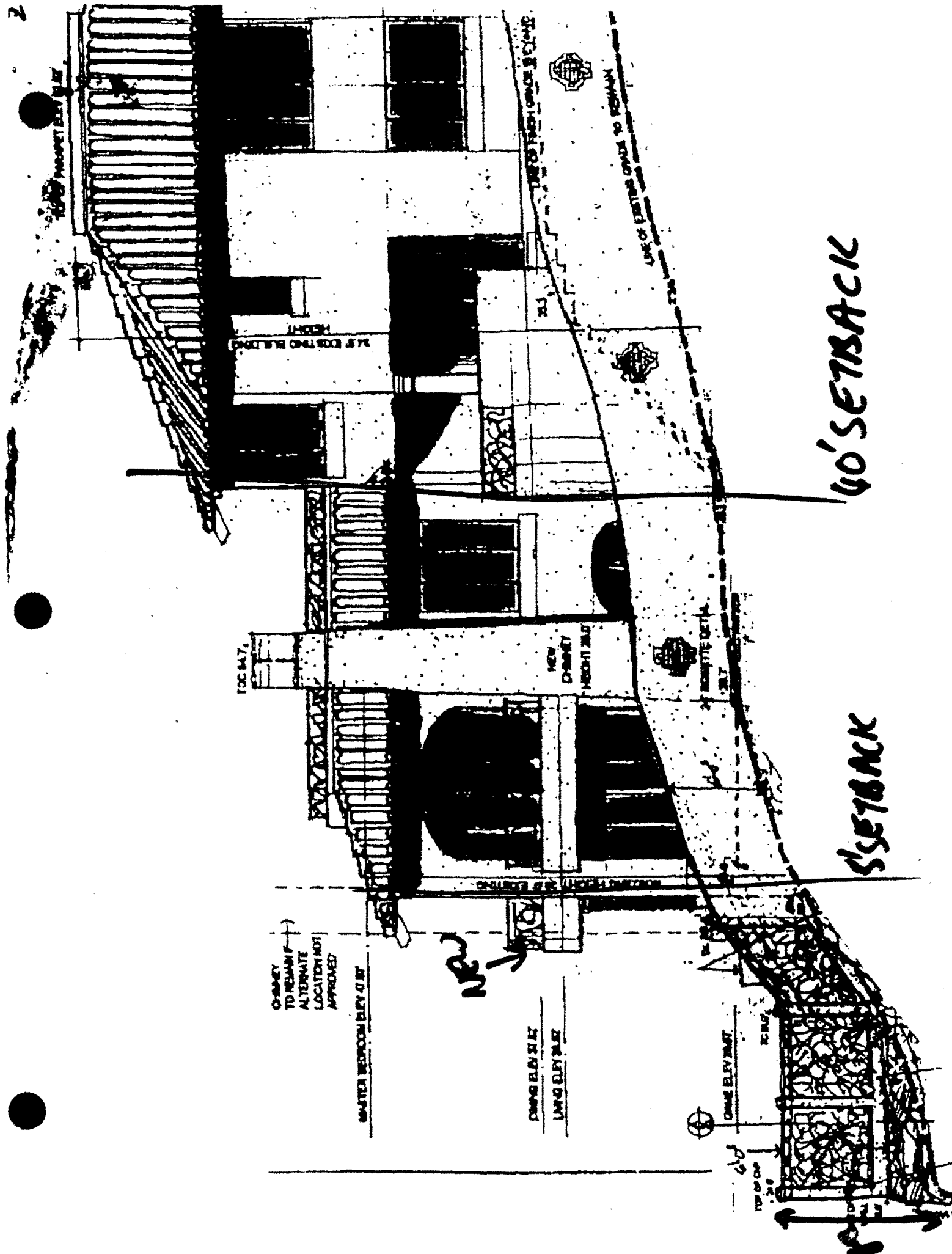
In his set of plans, the architect refers to the sunshade as "existing balcony"!

The plans include a sketch of "sistering on" additional framing to the "existing balcony".

We are skeptical that this flimsy old slatted sunshade could possibly be used as structural framing for new weight-bearing balconies, but an engineer or architect would be needed to comment on that.

The entire back section of the house already encroaches into the setback, and obstructs Public Views. We believe that The Coastal Commission should not permit new balconies that will encroach into the setback and obstruct Public Views.





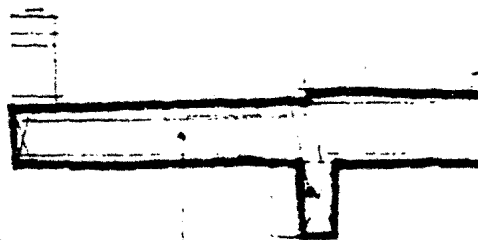


THIS  
FLIMSY  
SUNSHADE  
IS BOLTED  
ON.

IT IS  
NOT  
"EXISTING  
BALCONY"

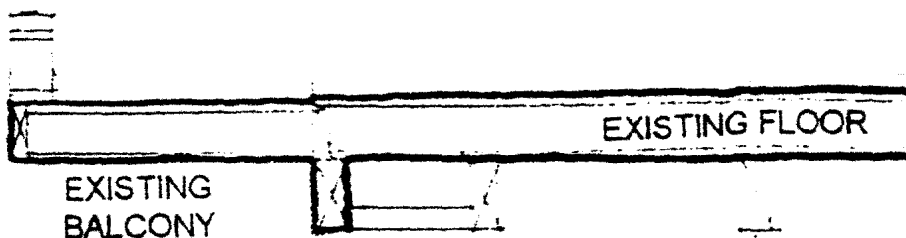
balcony

CONSTRUCT  
NEW RAIL



"SISTER" ON NEW  
FRAMING TO EXISTING BALCONY

NEW 14" STUCCO  
24" OPEN VERDE RAIL



" 1999.

: from

: to

the toe

ant

in to  
bluffs

SHOWS SEA WALLS APPLIED TO BLUFF FACE



A) THE APPLICATION TO STATE LANDS COMMISSION FOR A NEW LOT LINE INCORPORATING AN EXTRA 25FT. OF BEACH

B) THE THREE DIFFERENT LOT LINES IN THE SUBMITTED PLANS

A) The Mean High Tide Line

The applicant's expert, Mr. Palomeri, has argued to State Lands Commission that the historic mean high tide line is inaccurate: that the mean high tide line is now 25ft. lower on the beach.

We would like to draw notice to the fact that in the 1985 Photograph:

- a) There is no scouring in the sandy cove.
- b) Sea weed is present right to the toe of the cove.

Additionally, documents provided by the applicant, in the file, state that the sea level in this area is slowly rising, (by less than 0.1 inches per year).

-----

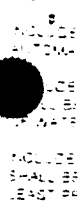
B) The Three Different Lot Lines in the Plans

In the course of this project the applicant's representatives have submitted three different lot-lines. They never informed us of the changes ahead of time, but instead **introduced the new plans with altered lot lines for the first time at official hearings in the City Council Chamber .**

**There was no Public Rebuttal because we were not aware of the changes until after the hearings.**

- i) Through two CDP hearings, months of talking with City Planners, and through the first Planning Commission hearing, all plans used the official "lot parcel" property line. This shows the Sea Wall almost wholly on the Public Beach. On the attached plan we have labeled this 1.
- ii) At the second Planning Commission Hearing we were surprised to hear the attorney repeatedly refer to the Sea Wall as being entirely on the applicant's property. When we asked him about this after the hearing, he told us that that a surveyor had redrawn the lot line, and recorded it with the City. We believe that State Lands Commission has not yet accepted the redrawn lot. The new lot line took a further 25ft. of beach for the applicant. We have labeled this 2 on the plan.
- iii) At the City Council Hearing, the plan that was provided to the City Council used yet another lot-line. We had called City Planners several times before the meeting to ask whether there were any new submissions, and were told by Mr. Hooper, the City Planner, that he had received none. The Booklet, which included the new plan, was provided to only one of the appellants (Mrs. Pearson) before the meeting. She received it at 4.00 PM the evening before the meeting, so had little time to review it. It has never been provided to the two other appellants. Before the City Council Hearing, Doctor Rink expressed to Mr. Hooper her concern that there were new submissions which she had not seen. Mr. Hooper replied that he had not seen them either(!) **In these new submissions, on which the City Council based their deliberations, the lot line is drawn right in the center of the Public Right of Way, taking a further 30ft. into private property on the south side, as well as the extra 25ft. on the beach side.** We label this line, 3.





BASEMENT  
ELEVATION 25.57'

**pacific ocean**

## ENFORCEMENT OF PERMIT CONDITIONS – WHO WILL BE RESPONSIBLE?

Local precedent suggests that the Permit Conditions applied to this project will not be enforced by the City.

We would like assurances that some official body will undertake enforcement of Permit Conditions.

At the Planning Commission Hearings, the Permit Conditions Specified that the Side Wall would be removed out of the Right of Way, and re-built at the property line, within 60 days of work starting. The City Planner had assured us that this would take care of our concerns that Conditions left until the end of a project might never be fulfilled.

By the City Council Hearing (Appeal), the attorney had asked that these conditions be changed so that work on the encroaching, illegal Side Wall would not need to begin until after the project was completed.

This is an ominous change because homeowners on the coast are well aware that the City has a history of not enforcing compliance of Permit Conditions in this area. We are concerned that the project may be completed, and the applicant could request amendment to Permit Conditions, arguing 97% compliance.

To back up this statement we append some detail of two other local violations that are being tolerated by the City.

---

### Examples of precedent – (not this case)

i) Re: the property to the south at 6040 Camino de la Costa.

At the hearing for the Negative Declaration for the Sea Wall in 1986, the owner's representative gave assurances that the owner would remove all encroachments into the Public Right-of-Way, in Mira Monte Place. This is in the Public Record.

No enforcement took place.

Encroachment increased over time so that now the Right-of-Way is encroached 35ft. and the Designated View Corridor is obstructed (by driveway, wall, landscaping and high hedge).

The owner has installed terracing and fixed irrigation in the Right of Way, right on the Bluff.

Water runs down the Bluff and over the Bluff Edge.

The City Planners were alerted to the violation in 1996 when the owner applied for a new building Permit. A new letter was sent out by one of the Planners, asking for the encroachments to be removed. Again, no enforcement has taken place.

ii) Re: the property at 6160 Camino de la Costa.

It encroaches, similar to the property above, across the View Corridor and Right-of Way at Cortez Place. It too encroaches by driveway and obstructing landscaping, and it too has a fixed irrigation system that causes water to run over the Bluff Edge.

The City refuses to enforce Code Compliance.

We have written to many City Departments requesting restoration these two important View Corridors, in a street almost totally walled off from the ocean.

We received a letter from the City stating that Parks and Recreation, Environmental Services, and Code Compliance, all feel that

**“the View Corridor is being maintained, even though it is landscaped by adjacent properties”(!)**

The City is aware of the violations, but does not enforce compliance.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8034

RECEIVED

DEC 31 1998

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTCALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant

Name, mailing address and telephone number of appellant:

JOANNE H. PEARSON FOR SAN DIEGO SIERRA CLUB  
1525 BUCKINGHAM DRIVE  
LA JOLLA, CA 92037 (619) 459-7041  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port  
government: CITY OF SAN DIEGO2. Brief description of development being  
appealed: SCR/LCP: REMOVAL OF EXISTING  
STRUCTURE AND REPAIR OF AN EXISTING  
ILLEGAL SEAWALL3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 6142 CAMINO DE LA COSTA  
LA JOLLA, CA 92037

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

EXHIBIT NO. 15
APPLICATION NO.
<b>A-6-LJS-98-169</b>
3 Appeal Summaries
California Coastal Commission



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: NOVEMBER 24, 1998

7. Local government's file number (if any): 96-7544

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

SCOTT MONCRIEFF  
6102 CAMINO DE LA COSTA  
LA JOLLA, CA 92037

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Project approval by the City fails to conform with  
required Findings of the certified LCP and  
La Jolla Land Use Plan for this after-the-fact  
SCR/CDP/Variance permit request.  
Please see attached sheets for details

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed James H. Pearson  
Appellant or Agent

Date 12-31-98

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200



December 16, 1993

TO: Appellants of local coastal permits

FROM: Peter Douglas  
Executive Director

SUBJECT: Filing fee for appeals determined to be patently  
frivolous (effective January 1, 1994)

The Coastal Act has been amended, effective January 1, 1994, to require that an appeal fee be submitted in certain cases when a coastal permit action taken by a local government is appealed to the Coastal Commission.

When an appeal is received, the executive director must determine within five working days of receipt of the appeal whether the appeal is patently frivolous. (This does not apply to appeals by members of the Coastal Commission or by any public agency.) If the appeal is determined to be patently frivolous, then the appeal will not be filed until a fee of \$300 has been deposited with the Commission. If the Commission subsequently finds that the appeal raises a substantial issue, then the filing fee will be refunded.

SFS/alr/mcc  
6314p



**SIERRA CLUB, SAN DIEGO CHAPTER**  
San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

Moncrieff Appeal to California Coastal Commission  
December 31, 1998

**REASONS FOR APPEAL:**

1. The proposed development fails to protect public views from public vantage points. Illegal street side yard wall would be permitted to be reconstructed in the same illegal configuration, i.e., approximately 18' over the bluff edge, thus extending fencing seaward beyond what is reasonably necessary for safety needs, and in conflict with the La Jolla Land Use Plan policies which provide that "Where existing streets serve as visual corridors,...In order to maximize public vistas, new development on corner lots should be setback from the corner, or terraced away from the view providing street." (P. 121)

Under the Sensitive Coastal Resource Ordinance, MC 101.0480 C.2.j. and D.1.a. b. and c., such fencing must be an "essential blufftop improvement;" must be located at grade and at least 5 feet from the bluff edge;" must be designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points; and ..."shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs. The supposed "necessity" for this fence is based on an illegal seawall, built without permits of any kind. We believe that any illegal development, such as the proposed fencing reviewed under this after-the-fact permit, should be required to conform to current code in all respects.

2. The development may significantly alter existing natural landform. Because the existing seawall was constructed without building, engineering, or coastal permits, (page 4 Staff Report P98-171), we request clarification of whether evidence exists to show that the structure was in imminent danger from erosion, which would have been a requirement before allowing construction of a seawall that has completely encapsulated the bluff edge and the bluff face. Applicant's agent, David Skelly, in a March 13, 1998 letter to Project Architect David Soanes, states "At local, city acknowledged erosion rates, the house if unprotected would be hanging over the blufftop in about three decades." What does the Commission consider when reviewing imminent danger? (SCR E. 5.a. through e.)



**SIERRA CLUB, SAN DIEGO CHAPTER**

San Diego and Imperial Counties  
3820 Ray Street  
San Diego, CA 92104-3623

Office (619) 299-1743  
Conservation (619) 299-1741  
Fax (619) 299-1742  
Voice Mail (619) 299-1744  
EBBS (619) 299-4018

3. The development does not comply with shoreline erosion and geologic setback requirements. We believe the City has erred in approving a Site Plan based on the applicant's survey of the Mean High Tide Line. Nor can we agree with the applicant's submittal of the bluff edge location. While applicant stated in his submittal that the Bluff edge had no relevance to the project, we believe that allowable setbacks, grading, landscaping, and other improvements are related to such a determination. The City has performed no independent determination, merely confirming applicant's report, which has many points of uncertainty or query noted on Sheets 14 and 15 of the Revised geologic Map dated 9-96.
4. We further would appreciate clarification of what degree of repair and/or maintenance under Coastal standards can be accomplished without requiring the proposed development to be brought up to current Code. We question whether the project can be found in conformance with policies in the La Jolla Land Use Plan, pp. 110-111, in particular Bullets 1, 2, 3, 4, 7, 8, and 9. We have disagreed with the City's proposal for granting an encroachment removal agreement for the illegal seawall. We believe, instead, in reliance on the staff report that the wall will apparently be rebuilt not merely repaired, that consideration should now be given to locating and constructing the seawall in accordance with current coastal requirements. Only then do we believe that the necessary findings of SCR E.5.a.-e. could be made.

In addition, the project has not addressed SCR E. 6.a. and c., which would require a lateral access dedication, and could have required a deed restriction protecting the bluff face, had the applicant applied for appropriate permits.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

RECEIVED



DEC 31 1998

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTCALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant

Name, mailing address and telephone number of appellant:

NORMA RINK  
5666 LA JOLLA BLVD #5  
LA JOLLA CA 92037 (619) 454 7449  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port  
government: CITY COUNCIL2. Brief description of development being  
appealed: HOUSE REMODEL, INCREASING FOOTPRINT OF NON-CONFORMING  
RESIDENCE, REBUILDING OF ILLEGAL SIDE WALL,  
REPAIR OF ILLEGAL SEA WALL.3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 6102 CAMINO DE LA COSTA  
LA JOLLA CA 92037

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: ✓
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

D/86

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: 11/24/98

7. Local government's file number (if any): 46-7544

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

SCOTT MONCRIEFF  
6102 CAMINO DE LA COSTA  
LA JOLLA CA 92037

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- i) Development fails to protect public views from public road and from the recreational area of Mira Park Place.
- ii) Development may significantly alter existing natural landforms.
- iii) Development does not comply with shoreline erosion & geologic setback requirements.

SEE ATTACHED SHEETS

- (iv) Development is not compatible with the established physical scale of the area

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed Mona J. Ruiz  
Appellant or Agent

Date 12/30/98

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_



### OTHER RELATED ISSUES

#### 1) The issue of whether the non-conforming and encroaching portion of the side-wall should be permitted as a "safety fence"

We have serious concerns about allowing illegal sea-wall development and then permitting a safety fence to be sited along the top of an illegal development. The City still regards the sea-wall as illegal.

If a safety fence is required, the safety fence should conform to the required to comply with minimum height, configuration and setbacks specified by code for a safety fencing. Such an encroachment is of special significance and sensitivity in this particular place since the encroachment blocks public views from the Public Right of Way. It obstructs public views to the ocean from the street (these are already obstructed by illegal landscaping encroaching from a neighboring property).

There is a safety fence nearby, in Cortez Place, where a public path runs alongside a steep drop to the ocean. It is an open wire fence, 42 ins. high as required by code.

In contrast:

a) here the proposed side-wall will be 5ft. high built across a patio that is already built up 3ft above the grade level in the public right of way: the wall will be eight feet above the public right of way.

b) here the proposed side-wall does not look like a safety fence. The proposed wall is not open although it has some open areas: one of the architect's renderings shows the wrought iron portions of the wall with vines twining through them.

c) here the proposed side-wall will seriously obstruct public views to the ocean from the right of way.

#### 2) The issue of enforcement of the permit conditions

We are concerned that the owner will be allowed to complete all of the development on his property BEFORE he is required to remove the present encroaching and obstructing side-wall from out of the right of way. At the end of the job there will be every incentive for him not to fulfil this part of the permit conditions. He can apply for an amendment or simply do nothing. We have no confidence that the city would enforce compliance.

We believe that the permit conditions need to be fulfilled and signed off on BEFORE the actual development is allowed to start. This is the only sure way of avoiding non-compliance or costly litigation to enforce compliance in the future.

The city's record in enforcing compliance of permit conditions in this area is dismal. In 1986 the owner of a neighboring house (6040 Camino de la Costa) applied for a permit for a sea wall, and at the hearing on the negative declaration the owner's agent agreed that all encroachments into the right of way would be removed. This is in the written record for the negative declaration. No one undertook enforcement and encroachment has actually increased so that now high irrigated landscaping obstructs more than 30ft. of the view corridor. Again in 1996, when a further permit was applied for, one of the city planners wrote to the owner to remind her that the encroachments should be removed. No enforcement has taken place. For thirteen years the city has been aware of serious encroachment, detrimental to the public's rights to public views to the ocean, but has not corrected it.

#### 3) The issue of "due process" in the appeal process

We are concerned that the applicant used (misused) the appeal process to push through new amendments to plans and new proposals that had not been endorsed by the planning department or reviewed by the public.

The applicant's attorney provided to the City Council a booklet/package. A copy of this was provided to Mrs. Pearson late on 23<sup>rd</sup>, the day before the hearing, without adequate time for her to review it or to prepare rebuttal. (At the hearing on 24<sup>th</sup>, she requested a continuance but her request was denied) Before the hearing Doctor Rink expressed to Mr. Hooper her concern about this package, which she had not seen. Mr. Hooper, the city planner, replied that he had not seen it either.

The package provided to the City Council contained new proposals and amendments. At the time of the hearing on 24<sup>th</sup>, the appellants (and the planners) were ignorant of the amendments and new proposals contained in the package submitted to the Council by the applicant's attorney. These amendments were passed by the city council without contest.

We can not believe that it is the spirit or intention of the appeal process to permit an applicant clandestinely to push through amendments that have not been approved by the Planning department and have not been made available for public review or for review by the appellant. This seems a misuse of the appellant process.

## Appeal against development on 6102 Camino de la Costa – Moncrieff Project

### 1) The development fails to protect public views from a public road and from Mira Monte Place, a recreational area to the coast

- a) Non-conforming side-wall will obstruct public views from an identified Public View Corridor.
- b) New protruding balconies will further obstruct public views from the same View Corridor and from the street. (The back portion of the existing structure already encroaches about 35ft. into the 40ft. bluff edge setback and obstructs public views to the ocean.)
- c) The City has undertaken no formal analysis of the Public View Corridor. The City has refused to acknowledge the detrimental effect of this project on the View Corridor.
- d) The late proposal (16<sup>th</sup> Nov. to City Council) by the applicant to allow mature obstructive Myoporum to remain in the public view corridor is inconsistent with the Coastal Act. The obstructed public views to the ocean SHOULD BE RESTORED; tall irrigated Myoporum obstructs these views. (This added proposal, passed by the City Council, was not known to the appellants at the time of the hearing; it was included in a booklet not made available for public review.)

### 2) The development is not compatible with the established physical scale of the area

- a) The FAR and lot coverage of this property far exceeds that for any other property in the area, and far exceeds the current standard established by the City.
- b) The footprint of this already massively encroaching and massively non-conforming house will be increased by the addition of an entry atrium, and other smaller additions.  
(The plans include eliminating glass from the windows in the corner areas; it has been argued that this will reduce the FAR. Eliminating window glass does absolutely nothing to reduce bulk and mass of the huge structure. Glass can be restored in these rooms at any time in the future.)
- c) The roof area for this already massively encroaching and massively non-conforming house will be increased.
- d) The plans submitted to City Council on Nov 16<sup>th</sup> show a lot parcel which has been redrawn to increase the size of the lot (by adopting a 25ft. strip of beach and half of the public right of way, Mira Monte Place).  
The State Lands Commission has not accepted the redrawn mean high tide line.  
Redrawing half of the public right of way as private property and including it in a lot parcel is ominous and egregious. The attorney, Mr. Petersen, was clear to us in discussion that it is his aim to claim that the City has abandoned the rights of way along the coast, and to claim them for his clients' private use. He told us that he represents several clients who are presently encroaching into these rights of way.  
It is not clear to us whether the stated FAR and lot coverage is based on this proposed redrawn parcel or the present legal parcel.

### 3) The development may significantly alter existing natural landforms

- a) The present plans show landscaping and new patio at and over the bluff edge around the coastal beach which has been cut off by the most recent addition to the illegal sea wall.
- b) The northern portion of the illegal sea wall has converted a coastal beach to what the applicant terms a "perched" beach on private property.
- c) The plans state that 1500sf of the site will be graded. Plans show a 2:1 graded slope over the bluff edge

### 4) The development does not comply with shoreline erosion and geologic setback requirements

- a) The bluff-edge determination is inaccurate. At least two differing bluff edge plans have been stamped accepted by city engineers. The current drawn bluff edge ignores the underlying topography and simply follows the lot line and the top of the illegal unpermitted sea wall built up from the public beach outside the applicant's property.
- b) The side-wall will be built into the bluff-edge setback and over the bluff-edge for 23ft beyond the required setback. The side-wall will be built across the top of the illegal patio to meet the illegal sea wall. Its height will be a full eight feet above the level of the right of way at the seaward end (since the sea wall is 3ft higher than the grade).
- c) The City was unable to provide us with a stamped set of plans prior to the appeal deadline.  
The most recent plans we saw show steps and landscaping over the bluff edge.  
This attempt to increase the size of the usable outside viewing and recreation area is incompatible with safety and incompatible with conserving the bluff.

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

RECEIVED

DEC 31 1998

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTCALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant

Name, mailing address and telephone number of appellant:

Vincent Sucato  
6009 Camino de la Costa  
La Jolla, CA 92037 (619) 456 1481  
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port  
government: City Council2. Brief description of development being  
appealed: Repair of illegal sea wall - which meets in  
standards of a sea wall, wall will have to be rebuilt,  
House remodel which increases foot print of non-  
conforming residence, rebuilding of illegal side wall3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 6102 Camino de la Costa  
La Jolla, CA 92037

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: ☒ \_\_\_\_\_

c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
 decisions by a local government cannot be appealed unless  
 the development is a major energy or public works project.  
 Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-6-LJS-98-169

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

D/86

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: 11/24/98

7. Local government's file number (if any): 96-7544

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

SCOTT Moncrieff  
6102 Camino de la Costa  
La Jolla, CA 92037

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Ruth Sucato  
6039 Camino de la Costa  
La Jolla, CA 92037

(2) Karsten Tuckman  
6101 Avenida Costa  
La Jolla, CA 92037

(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- ① The development fails to protect public views from a public road & from Mesa Monte Place, a recreational area to the coast. A non-conforming side wall will obstruct public views.
- ② Development is not compatible with established physical scale of the area. - The FAR + lot coverage up property far exceeds that for any other property in the area.
- ③ Development may significantly alter existing natural sandforms with landscaping, patios, & will cut off 20- or more public beach.
- ④ Development does not comply with shoreline erosion & geologic setback requirements - by bluff edge.

Note: The above description need not be a complete or exhaustive determination statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my knowledge.

Signed Vincent [Signature]  
Appellant or Agent

Date 12/30/98

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed \_\_\_\_\_  
Appellant

Date \_\_\_\_\_

**Appeal against development on 6102 Camino de la Costa – Moncrieff Project**

**1) The development fails to protect public views from a public road and from Mira Monte Place, a recreational area to the coast**

- a) Non-conforming side-wall will obstruct public views from an identified Public View Corridor.
- b) New protruding balconies will further obstruct public views from the same View Corridor and from the street. (The back portion of the existing structure already encroaches about 35ft. into the 40ft. bluff edge setback and obstructs public views to the ocean.)
- c) The City has undertaken no formal analysis of the Public View Corridor. The City has refused to acknowledge the detrimental effect of this project on the View Corridor.
- d) The late proposal (16<sup>th</sup> Nov. to City Council) by the applicant to allow mature obstructive Myoporum to remain in the public view corridor is inconsistent with the Coastal Act. The obstructed public views to the ocean SHOULD BE RESTORED: tall irrigated Myoporum obstructs these views. (This added proposal, passed by the City Council, was not known to the appellants at the time of the hearing; it was included in a booklet not made available for public review.)

**2) The development is not compatible with the established physical scale of the area**

- a) The FAR and lot coverage of this property far exceeds that for any other property in the area, and far exceeds the current standard established by the City.
- b) The footprint of this already massively encroaching and massively non-conforming house will be increased by the addition of an entry atrium, and other smaller additions.  
(The plans include eliminating glass from the windows in the corner areas: it has been argued that this will reduce the FAR. Eliminating window glass does absolutely nothing to reduce bulk and mass of the huge structure. Glass can be restored in these rooms at any time in the future.)
- c) The roof area for this already massively encroaching and massively non-conforming house will be increased.
- d) The plans submitted to City Council on Nov 16<sup>th</sup> show a lot parcel which has been redrawn to increase the size of the lot (by adopting a 25ft. strip of beach and half of the public right of way, Mira Monte Place).  
The State Lands Commission has not accepted the redrawn mean high tide line.  
Redrawing half of the public right of way as private property and including it in a lot parcel is ominous and egregious. The attorney, Mr. Petersen, was clear to us in discussion that it is his aim to claim that the City has abandoned the rights of way along the coast, and to claim them for his clients' private use. He told us that he represents several clients who are presently encroaching into these rights of way.  
It is not clear to us whether the stated FAR and lot coverage is based on this proposed redrawn parcel or the present legal parcel.

**3) The development may significantly alter existing natural landforms**

- a) The present plans show landscaping and new patio at and over the bluff edge around the coastal beach which has been cut off by the most recent addition to the illegal sea wall.
- b) The northern portion of the illegal sea wall has converted a coastal beach to what the applicant terms a "perched" beach on private property.
- c) The plans state that 1500sf of the site will be graded. Plans show a 2:1 graded slope over the bluff edge

**4) The development does not comply with shoreline erosion and geologic setback requirements**

- a) The bluff-edge determination is inaccurate. At least two differing bluff edge plans have been stamped accepted by city engineers. The current drawn bluff edge ignores the underlying topography and simply follows the lot line and the top of the illegal unpermitted sea wall built up from the public beach outside the applicant's property.
- b) The side-wall will be built into the bluff-edge setback and over the bluff-edge for 23ft beyond the required setback. The side-wall will be built across the top of the illegal patio to meet the illegal sea wall. Its height will be a full eight feet above the level of the right of way at the seaward end (since the sea wall is 3ft higher than the grade).
- c) The City was unable to provide us with a stamped set of plans prior to the appeal deadline.  
The most recent plans we saw show steps and landscaping over the bluff edge.  
This attempt to increase the size of the usable outside viewing and recreation area is incompatible with safety and incompatible with conserving the bluff.

## OTHER RELATED ISSUES

### 1) The issue of whether the non-conforming and encroaching portion of the side-wall should be permitted as a "safety fence"

We have serious concerns about allowing illegal sea-wall development and then permitting a safety fence to be sited along the top of an illegal development. The City still regards the sea-wall as illegal.

If a safety fence is required, the safety fence should conform to the required to comply with minimum height, configuration and setbacks specified by code for a safety fencing. Such an encroachment is of special significance and sensitivity in this particular place since the encroachment blocks public views from the Public Right of Way. It obstructs public views to the ocean from the street (these are already obstructed by illegal landscaping encroaching from a neighboring property).

There is a safety fence nearby, in Cortez Place, where a public path runs alongside a steep drop to the ocean. It is an open wire fence, 42 ins. high as required by code.

In contrast:

a) here the proposed side-wall will be 5ft. high built across a patio that is already built up 3ft above the grade level in the public right of way; the wall will be eight feet above the public right of way.

b) here the proposed side-wall does not look like a safety fence. The proposed wall is not open although it has some open areas; one of the architect's renderings shows the wrought iron portions of the wall with vines twining through them.

c) here the proposed side-wall will seriously obstruct public views to the ocean from the right of way.

### 2) The issue of enforcement of the permit conditions

We are concerned that the owner will be allowed to complete all of the development on his property BEFORE he is required to remove the present encroaching and obstructing side-wall from out of the right of way. At the end of the job there will be every incentive for him not to fulfil this part of the permit conditions. He can apply for an amendment or simply do nothing. We have no confidence that the city would enforce compliance.

We believe that the permit conditions need to be fulfilled and signed off on BEFORE the actual development is allowed to start. This is the only sure way of avoiding non-compliance or costly litigation to enforce compliance in the future.

The city's record in enforcing compliance of permit conditions in this area is dismal. In 1986 the owner of a neighboring house (6040 Camino de la Costa) applied for a permit for a sea wall, and at the hearing on the negative declaration the owner's agent agreed that all encroachments into the right of way would be removed. This is in the written record for the negative declaration. No one undertook enforcement and encroachment has actually increased so that now high irrigated landscaping obstructs more than 30ft. of the view corridor. Again in 1996, when a further permit was applied for, one of the city planners wrote to the owner to remind her that the encroachments should be removed. No enforcement has taken place. For thirteen years the city has been aware of serious encroachment, detrimental to the public's rights to public views to the ocean, but has not corrected it.

### 3) The issue of "due process" in the appeal process

We are concerned that the applicant used (misused) the appeal process to push through new amendments to plans and new proposals that had not been endorsed by the planning department or reviewed by the public.

The applicant's attorney provided to the City Council a booklet/package. A copy of this was provided to Mrs. Pearson late on 23<sup>rd</sup>, the day before the hearing, without adequate time for her to review it or to prepare rebuttal. (At the hearing on 24<sup>th</sup>, she requested a continuance but her request was denied) Before the hearing Doctor Rink expressed to Mr. Hooper her concern about this package, which she had not seen. Mr. Hooper, the city planner, replied that he had not seen it either.

The package provided to the City Council contained new proposals and amendments. At the time of the hearing on 24<sup>th</sup>, the appellants (and the planners) were ignorant of the amendments and new proposals contained in the package submitted to the Council by the applicant's attorney. These amendments were passed by the city council without contest.

We can not believe that it is the spirit or intention of the appeal process to permit an applicant clandestinely to push through amendments that have not been approved by the Planning department and have not been made available for public review or for review by the appellant. This seems a misuse of the appellant process.

