

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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521-8036



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STAFF REPORT AND RECOMMENDATION ON APPEAL  
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-99-160

APPLICANT: Summit Resources, L.P.

PROJECT DESCRIPTION: Demolition of approximately 4,745 sq.ft. of an existing 9,960 sq.ft. two-story over basement single-family residence and addition of 9,415 sq.ft. of new floor area resulting in a two-story, 14,630 sq.ft. single-family residence on a .56 acre ocean blufftop lot.

PROJECT LOCATION: 1900 Spindrift Drive, La Jolla, San Diego, San Diego County.  
APN 346-440-05

APPELLANTS: California Coastal Commission Chairwoman Sara Wan; California Coastal Commissioner Paula Daniels

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SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed. At the January 11-14, 2000 Commission Meeting, the Commission opened the hearing on the subject project and continued it to the February 15-18, 2000 Commission Meeting.

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SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Land Use Plan; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Planning Commission dated 11/24/99; CDP #F5929; A-6-LJS-98-85; A-6-LJS-98-169.

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### I. Appellants Contend That:

The appellants contend that the proposed project is inconsistent with the shoreline hazard policies of the certified LCP and also raises questions regarding non-conforming rights for existing structures in hazard areas. The proposal approved by the City involves a substantial remodel of an existing two-story over basement, 9,960 sq.ft. single family residence including the demolition of 4,745 sq.ft. and the construction of 9,415 sq.ft. which will result in a new 14,630 sq.ft. single-family residence. The proposed project essentially consists of a new residence and portions of the residence which the City allowed to remain are non-conforming. However, the City's approval did not address the extent of work occurring within the portion of the residence to remain, and the existing non-conforming rights which apply. Additionally, if the project represents "new development" the appellants contend it should be consistent with the geologic blufftop setback requirements in the certified LCP. This City action also did not address future shoreline protection requirements for the proposed new development.

The appellants also contend that the project is potentially inconsistent with the certified LCP with regard to protection of visual access to the shoreline in that the City's approval did not address the opening up of side yards or that the landscaping be removed in the side yard areas to enhance public views toward the ocean.

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### II. Local Government Action.

The coastal development permit was approved by the Planning Commission on December 2, 1999. The conditions of approval address, in part, the following: drainage, off-street parking, outdoor lighting, building height, landscaping, and existing non-conforming accessory structures.

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### III. Appeal Procedures.

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

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends

"substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

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

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

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

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IV. **MOTION:**      *I move that the Commission determine that Appeal No. A-6-LJS-99-160 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. *A-6-LJS-99-160* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## V. Findings and Declarations.

1. Project Description/Permit History. Proposed is the demolition of 4,745 sq.ft. of an existing two-story over basement, 9,960 sq.ft. single family residence and the addition of 9,415 sq.ft. of new floor area resulting in a new 14,630 sq.ft. residence on a 0.53 acre ocean bluff top lot. Also proposed is a new swimming pool, spa, covered deck, landscaping and enlargement of an existing two-car garage to a four-car garage including demolition of an existing garage/carport. The subject residence is an older structure that was built in 1928 and includes an accessory bunk house, boat house, guest quarters and other accessory improvements, including a concrete stairway, patios and decks seaward of the residence. The proposal also includes demolition of the bunkhouse and removal of a portion of the existing stairway and a fire pit in the rear patio areas. A note on the project plans summarizes the proposed development as follows:

### SUMMARY OF WORK

- Demolition of existing one-story southeast wing and two-story southwest wing
- Demolition of one-story garage/carport and one-story "bunk house"
- Renovation of existing remaining two-story residence
- New pool and spa
- New driveway and exterior paving
- New landscaping, sub-surface drainage and landscape lighting

The project site is a bluff top lot with an existing 11 ft. high, 100-foot long seawall located on the beach. The majority of the coastal bluff itself, between the seawall and the upper portion of the lot, has been gunited. Both the seawall and gunite were installed prior to the Coastal Act. The coastal bluff is approximately 22 feet high. Portions of the existing residence are sited closer than 25-foot to the bluff edge. The distance between the residence and bluff edge varies. Specifically, an existing one-story element of the residence situated at the southwest corner of the site is only approximately nine feet from the bluff edge. The middle portion of the existing two-story element of the residence is located approximately 20 feet from the bluff edge. The existing one and two-story element located at the northwest corner of the residence is located approximately 16 feet from the bluff edge. The entire bluff face on the subject site is gunited. The area between the toe of the gunited bluff and the existing seawall is backfilled and contains an existing concrete patio, "sandy terrace", firepit, a barbecue with firepit, deck, railing, stairway, a detached boathouse/cabana and palm trees. The new portions of the proposed residence will be located 26 feet from the bluff edge at its closest point.

Remodeling to the residence, including the addition of a second story, was approved by the San Diego Coast Regional Commission in 1977 under CDP #F5929. The special conditions associated with that permit included a condition which stated that in the event any reinforcement or replacement of footings or piers supporting the residential structure were required by the City Building Inspection Department or City Engineer, that the permit would become null and void and a new coastal development permit would be required. The findings of the permit also state that since a Foundation Investigation was

submitted that indicated that the existing piers will be capable of bearing the load of the proposed addition without hazard, the project would be consistent with the Coastal Act and that if subsequent investigation by the City provided any opinion to the contrary, a new coastal development permit would be required. Other special conditions also required a deed restriction limiting the use of the premises to a single family dwelling and a hold harmless agreement.

The subject site is located within the La Jolla community of the City of San Diego. The site is located south of La Jolla Shores, a major recreational area which includes a public beach and park. The site is also in close proximity to the La Jolla Beach and Tennis Club and a restaurant (The Marine Room), which are situated two to three lots to the north. The site is bounded on both sides (north and south) by other residential development. The beach at this location is of average width (not unusually wide or narrow) and is passable for lateral access purposes largely from the north from the vicinity of La Jolla Shores. As one walks further south approximately two to four lots from the subject site, the beach width significantly narrows making it difficult for lateral access. In fact, as noted in the certified La Jolla-La Jolla Shores LCP Addendum, this entire stretch of shoreline is designated as "limited or intermittent access". The LCP also notes that lateral access below the bluffs is dependent on tidal fluctuations and is extremely difficult in most locations. The LCP also indicates that several of the residences along Spindrift Drive have constructed seawalls and installed gunite on the coastal bluffs in this area to stop erosion. The two immediate lots to the north and south both have existing seawalls similar to the seawall that exists on the subject property. The majority of the residences in this area are older, non-conforming residences that have yet to be remodeled and which are located in close proximity to the bluff edge.

2. Certified LCP. On November 4, 1999, the City obtained effective certification of an LCP amendment that revised the Implementation Program (IP) by substituting the City's new Land Development Code (adopted in December 1997) for the prior municipal code. Pursuant to the Commission's regulations, the City submitted the amendment with a resolution providing that the new IP would become effective on January 1, 2000. The City's Planning Commission approved the subject coastal development permit on December 2, 1999, applying the LCP as it existed prior to certification of the amendment (i.e., with the prior Implementation Plan). The permit was appealed on December 21, 1999. Because the permit was approved and appealed while the former IP was in effect, the Commission is determining whether a substantial issue exists with respect to the LCP as it existed prior to certification of the IP amendment. However, if the Commission hears the permit application de novo, it will apply the law in effect at the time it reviews the project, which will be the current LCP containing the new IP. Therefore, the Commission is considering whether the appeal raises a substantial issue with respect to the current LCP as well. Thus, this report addresses consistency of the proposed development with the certified Land Use Plan, and both the current and former versions of the IP.

The applicant asserts that the Commission must apply the former LCP to both the substantial issue hearing and the de novo hearing. The applicant cites a City resolution

that states that the City cannot approve development inconsistent with the new Land Development Code unless an application for the development was deemed complete prior to the effective date of the new code. However, this resolution was not included as a provision of the Land Development Code, and therefore, it is not included within the LCP amendment certified by the Commission. Further, by its terms, the resolution applies only to the City's processing of applications, not to the Commission's review of applications on appeal. Therefore, if the Commission finds substantial issue, it will apply the currently certified LCP, containing the new IP, as the standard of review.

3. Shoreline Hazards/Coastal Bluff Top Development. As approved by the City, the proposed development is potentially inconsistent with the geologic bluff top setback requirements in the certified LCP. The development involves the substantial remodel/demolition of an existing 9,960 sq.ft. single family residence by demolishing 4,745 sq.ft. and constructing 9,415 sq.ft. of new floor area resulting in a new 14,630 sq.ft. single family residence. There is an existing seawall seaward of the property at beach elevation and a gunited coastal bluff inland of the seawall. Other accessory improvements exist on the site which consist of a boathouse structure on the beach seaward of the bluff but behind the existing seawall and a terraced patio area seaward of the residence (less than 25 ft. from the bluff edge). The development also includes improvements and changes to the stairs and patio in this area. As noted earlier, the home was constructed in the 1920's, and portions of the residence are located closer than 25 ft. from the bluff edge. The applicant proposes to retain portions of the residence that are closer than 25 feet from the bluff edge. The new 9,415 sq. ft of floor area would consist of both one and two-story additions to the existing two-story residence. At the northern portion of the residence, a one-story addition is proposed to be located approximately 26 feet from the bluff edge. At the southern portion of the residence, a new second story addition is proposed to be located approximately 32 feet from the bluff edge.

The proposed development is potentially inconsistent with the certified SCR overlay ordinance of the City's former Implementation Plan which provides the following, in part:

#### Coastal Bluffs

- 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...2) Bluff repair and erosion control measures...3) Accessory structures....

[...]

- b. A bluff edge setback of less than forty (40) feet but in no case less than twenty-five (25) feet, may be granted by the Planning Director where the evidence contained in the geology report indicates that: 1) the site is stable

enough to support the development with the proposed bluff edge setback so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures....

The City's currently certified IP contains a similar provision. The current IP states the following:

Section 143.0143 Development Regulations for Sensitive Coastal Bluffs

- (f) All *development* including building, *accessory structures*, and any addition to existing structures shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
  - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary structures, and no shoreline protection is required. Reductions from the 40 foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life-span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:
    - (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
    - (B) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific methods;
    - (C) An analysis of the potential effects of past and projected El Niño events on bluff stability;  
[...]
    - (D) An analysis of whether this section of coastline is under a process of retreat.
  - (2) *Accessory structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. *Accessory structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade, lighting standards, fences and walls seating benches, signs, or similar structures and

features, excluding garages, carports, buildings, pools, spas, and upper *floor* decks with load-bearing support *structures*.

The proposed development will essentially result in a new 14,630 square foot home less than 25 feet from an altered coastal bluff and shoreline.

If the new home were being constructed on a vacant lot, the certified LCP (and the former IP) would clearly require that it be set back 40 feet from the bluff edge, or between 40 and 25 feet from the bluff edge if a geology report demonstrated that the residence would not be subject to or contribute to geologic instability for the duration of its economic life. Since the project represents substantial renovation to an existing residence that is closer than 25 feet from the bluff edge, the issue is whether the applicant is required to comply with the above setback requirements provisions of the certified LCP. The City did not explain why it allowed the applicant to retain those portions of the residence that are less than 25 feet from the bluff edge

Both the current IP and the former IP contain provisions that address circumstances under which structures that do not conform with current requirements can be altered without having to conform to current requirements.

The former implementing ordinances (municipal code) of the City's certified LCP state the following with regard to non-conforming structures:

#### Section 101.0303 Continuance of Nonconforming Uses and Structures

Repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement, nor increase the size or degree of nonconformity of a use, may be made provided that the aggregate value of such repairs or alterations shall not exceed 50 percent of its fair market value, according to the assessment thereof by the County Assessor for the fiscal year during which the repairs and alterations occur. The terms "repairs" and "alterations" do not include painting or replacement of exterior stucco siding or shingles.

[...]

Article 7 of the City's current implementing ordinances of its certified LCP (i.e., Land Development Code) addresses "Previously Conforming Premises and Uses" and states as follows under Section 127.0101 under Purpose of Procedures for Previously Conforming Premises and Uses:

The purpose of these procedures is to establish a review process for the *development*, maintenance, and operation of *previously conforming premises* and uses. Because of changes in the City's zones and zoning regulations over the years, many *structures* that were built, or uses that were established, in compliance with the applicable regulations at the time of their *development* no longer comply with existing regulations. In order to clarify this status, and to avoid confusion with illegal



premises and uses, the term "*previously conforming*" is used to describe these situations and has the same meaning as "*nonconforming*". The intent of these procedures is to allow certain, potentially compatible, previously conforming premises and uses, subject to special regulations and conditions, unless the *previously conforming premises* or uses adversely impact the public health, safety, or welfare.

In addition, Section 127.0106 – Expansion or Enlargement of Previously Conforming Structures of the City's LDC is applicable to the proposed development. Specifically, subsection (d) states the following:

- (d) Within the coastal Overlay Zone, if the proposal involves the demolition or removal of 50% or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new structure.

In addition, this site is subject to the La Jolla Shores Planned Development Ordinance (PDO). This ordinance contains a provision that states:

Section 103.0303.2 Nonconforming Uses and Structures

- A. The lawful use of land which existed at the time the Planned District regulations became effective and which did not conform with said regulations may be continued except when specifically prohibited provided no enlargement or additions to such use is made.
- B. The lawful use of buildings existing at the time the Planned District regulations became effective with which regulations such building did not conform may be continued, provided any enlargement, addition or alterations to such buildings will not increase the degree of nonconformity and will conform in every respect with all the District regulations.

[...]

- C. Improvements, repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement shall be permitted.

[...]

The PDO allows for repairs and alterations to nonconforming structures. However, it does not address the circumstances under which the City can require that the nonconforming structure be brought into compliance with current requirements. One reasonable interpretation of the LCP is that the criteria set forth in the other parts of the IP (whether the former or current version) apply. Thus, under the former IP, the City should have required compliance with the geologic setback requirements if the aggregate value of the repairs or alterations exceeded 50%. Under the current IP, the project would

be required to comply with the setback requirements if more than 50% of the exterior walls would be demolished.

The City did not require information concerning the extent of demolition or the aggregate value of the proposed work. The extent of proposed renovations to the applicant's existing residence are so substantial as to suggest that either of these tests may be met. For example, there is a note on the project plans which indicates that the existing room at the main level of the residence is proposed to be removed with an existing second story room to remain and the floor area to be retained as a deck—a portion of which is within the 25 ft. setback area (refer to Exhibit No. 3). It is not clear how the main level can be "demolished" and the upper level "retained" without being defined as "demolition". Another note on the project plans also states that an existing room extension under a deck will be removed and the floor will be retained as a deck. This is also within the geologic setback area. In other cases, windows are being replaced, stucco is being added to the walls, etc. The City did address some of the non-conforming accessory structures through its review of the subject development. The City conditioned the project such that the existing non-conforming boathouse within the geologic setback area would be limited to repair and maintenance only, so that it will eventually have to be removed. As stated in the permit condition:

"...It is anticipated that the pool cabana will deteriorate over a period of time. It is the Owner's/Permittee's responsibility to remove the pool cabana, and associated debris (everything except the cabana's footings) as it deteriorates naturally or in the event unsafe conditions exist. It is also understood by the Owner/Permittee that the non-conforming pool cabana is not to be repaired or maintained to extend the period of use, but simply to let the pool cabana deteriorate naturally to the point at which it needs to be removed...."

In addition, the City required the applicant to remove landscaping that had been installed inland of the seawall within the geologic setback area.

There were no "demolition" plans in the City's file that clearly showed which exterior walls of each level of the existing residence were being demolished, how the window and door openings were being modified and whether or not these constituted "demolition". In addition, the City did not address this issue nor require demolition plans because the proposed remodeling of the existing residence constituted more than a 10% increase in floor area and height to the residence such that it would not qualify for an exemption from coastal development permit requirements. As such, since a permit would be required anyway, the City did not feel demolition plans were necessary.

The Commission has used the 50% demolition of exterior walls as a "rule of thumb" to determine whether development is a "remodel" versus "new development" in reviewing coastal development permits for consistency with the Chapter 3 policies of the Coastal Act. In those cases, if more than 50% of the exterior walls were being removed, the development would be required to conform to the current requirements of the zoning code (in this case, the land development code, as well) in terms of building setbacks and

blufftop geologic setbacks, etc. In other words, "new development" would mean that the subject proposal is regarded as entirely new as if no development existed on the site at all. Such development would be required to meet the current building setbacks and geologic blufftop setbacks to the same degree that any other "new development" proposal would be in this location.

The proposed development involves a significant renovation of an existing structure, with a large portion of the residence being removed. However, the City did not require information on the extent of the renovation in order to determine whether the structure must comply with the current geologic setback requirements. Instead, the City simply allowed the residence to remain in its current location, closer than 25 feet to the bluff edge and allowed substantial removal and new construction within 25 to 40 feet of the bluff edge.

Absent demolition plans to verify whether or not more than 50% of the exterior walls are being removed or whether the value of the work exceeds 50% of the fair market value of the structure, the proposed development appears to be inconsistent with the LCP because if these criteria are met, the residence would be required to comply with the current geologic setback requirements. As cited at the beginning of this finding, the City's former IP provided that repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement, nor increase the size or degree of nonconformity of a use, may be made provided that the aggregate value of such repairs or alterations shall not exceed 50 percent of its fair market value. Furthermore, the proposed remodel/demolition of the subject residence does increase its degree of non-conformity in that the project will result in a much larger residence in the geologic setback area. Therefore, the City's approval of the proposed development without requiring that the older portions of the home be moved back to at least 25 feet from the bluff edge appears inconsistent with the both the former IP and the current IP.

In addition, Section 143.0143(f) addressing "Distance from Coastal Bluff Edge of Sensitive Coastal Bluffs" of the Coastal Bluffs and Beaches Guidelines of the City's LDC, which is the current IP, states the following:

"Note: If a seawall (or other stabilization/erosion control measures) has been installed due to excessive erosion on a premises, that premises shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge. Since the instability of the coastal bluff necessitated the installation of the seawall, the coastal bluff would not be considered stable enough to support development within the 40-foot bluff edge setback."

Given the presence of an existing seawall on the subject site, it can be documented that the project site is located in a hazardous area. As such, it is critical that any new development on the site be sited consistent with the geologic setback requirements of the certified LCP. It is important that the geologic setback area be maintained and left open in the event that any future shoreline protection is needed so that it can be sited further inland. There remains the possibility that future repairs or alterations to existing

shoreline protection on the site may be necessary, including replacement of the existing seawall with a new seawall altogether. In the event this were to occur, any newly permitted development on the site should be sited consistent with the geologic setback requirements for safety purposes to avoid damage as a result of wind and wave action associated with storm conditions. Siting development further inland will facilitate locating shoreline protection further inland, as well, in order to avoid encroachment on sandy beach areas thereby minimizing their adverse effects on shoreline sand supply, etc. To permit substantial renovations to an existing residence including retention of portions that presently are located within the geologic setback area, could set an adverse precedent for other similar development. There are numerous residences in the coastal beach areas that are presently non-conforming with regard to geologic setback requirements. It is important to assure that, over time, as various properties are redeveloped or residences are remodeled and increased in size, that such structures are sited appropriately to either avoid the need for shoreline protection or to assure that if such protection is necessary, that it be located further inland.

On a related point, there is a question with regard to the potential for maintenance to the existing seawall. The City's project file contains a document which indicates maintenance will be required to the shoreline protection in the future, but the City did not address alternative locations or design of the necessary protection with this application. Although it was not clear from the project file or findings in the City's permit, both City staff and the applicant have since indicated that no maintenance work is proposed through the subject coastal development permit to the existing seawall. Even though no maintenance work is proposed at this time, there is evidence that the seawall will require maintenance. The manner in which the existing residence is renovated could impact the alternatives for maintenance of the seawall. For example, through its rehabilitation, it may be appropriate to relocate the seawall further landward to reduce its adverse impacts on coastal resources. However, if the renovated residence does not comply with applicable geologic setback requirements, this alternative may be precluded. Thus, the impacts of the proposed demolition, remodeling, and expansion of the residence on how the seawall could be maintained must be taken into consideration. The City's failure to consider this impact raises a substantial issue of conformity with the LCP provisions concerning the geologic setback of bluff top structures.

In addition, the certified Land Use Plan for La Jolla (La Jolla-La Jolla Shores LCP Addendum) contains the following policies addressing bluff top development and shoreline protective devices:

## 2. Coastal Bluff Top Development

The shoreline bluffs are one of La Jolla's most scenic natural resources. Beautiful in themselves, the bluffs provide magnificent vistas of the ocean and shoreline. Understandably, these same qualities provide a tremendous incentive to develop bluff top property. Such development, however, is not without its risks. As indicated on the geologic hazards map (page 108), many of the bluff areas are unstable and prone to landslides. Over time, as the bluffs continue to recede,

existing developments will become increasingly susceptible to bluff hazards. In many cases, seawalls, revetments, and other types of erosion structures will be required to stabilize the bluff. Such structures, while necessary to protect private property, are poor substitutes for adequate sit planning. Improperly placed structures may accelerate erosion on adjacent properties and seriously impact lateral public access. The proliferation of such structures may cumulatively degrade the natural scenic quality of the bluffs and interfere with nature shoreline processes. Where large comprehensive structure such as breakwaters, groins, or revetments are required, the public may ultimately bear the costs. [p. 109]

In order to reduce such problems in the future, the following guidelines have been recommended for all bluff top development located between the first through coastal roadway and the ocean. The guidelines are to be applied to all bluffs having a vertical relief of ten feet or greater and whose toe is or may be subject to marine erosion.... [p. 109]

#### Development Guidelines

- A geotechnical report will be required for all bluff top development proposed to be sited within a critical distance from the edge of the bluff, described as the "area of demonstration."... [p. 109]
- The geotechnical report, prepared by a certified engineering geologist, should document that the "area of demonstration" is stable enough to support the proposed development and that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the estimated lifespan of the project structures. [p. 110]
- Bluff top development should be visually compatible with the scale and character of the surrounding development and respectful of the natural scenic qualities of the bluffs. Structures should be sited and designed to minimize alteration of natural landforms. [p. 110]
- Bluff top developments should not contribute significantly to problems of erosion or geologic instability on the site or on surrounding properties. This includes activities related to site preparation and construction. [p. 110]
- The placement of shoreline protective works should be permitted only when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger of erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. [p. 91]
- The placement of any necessary shoreline protective works should not be allowed to encroach on any area utilized by the public unless engineering studies indicate that minimal encroachment may be necessary to avoid significant adverse erosion conditions, and that no better alternatives exist. Any infilling

between protective devices shall encroach no further seaward than adjacent functioning protective works. [p. 91]

- New shoreline protective devices should be constructed and designed to be visually compatible in design, materials, and color with the existing natural environment. [p. 91]

In summary, approval of this residential renovation, which will perpetuate the existence of the residence in a hazardous location, without consideration of future shoreline protection requirements, could eliminate or preclude alternatives for demolition or reconstruction of new shoreline protective devices in a less environmentally-damaging alignment and design in the future. Therefore, the Commission finds that given that the proposed residence may adversely affect shoreline processes and may be inconsistent with geologic setback requirements due to the questions regarding the extent of demolition and "new development" as they relate to non-conforming rights, the proposed development raises a substantial issue regarding conformity with the certified La Jolla-La Jolla LCP Land Use Plan, the City's previous Municipal Code and the implementing ordinances of the City of San Diego's certified LCP (i.e., Land Development Code).

4. Visual Access. The proposed development is potentially inconsistent with the following policies of the certified La Jolla-La Jolla Shores LCP Land Use Plan.

"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 whenever possible."

"View corridors utilizing side yard setbacks, should be encouraged along shoreline and blufftop 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.

In addition, Section 143.0143 - Development Regulations for Sensitive Coastal Bluffs of the City's Land Development Code under subsection (f)(3) states the following:

- (f) All *development* including buildings, *accessory structures*, and any additions to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:

[...]

- (2) *Accessory structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. *Accessory structures* and features may be landscaping, walkways, unenclosed patios, open shade structures, decks that are less than 3 feet above grade, lighting standards, *fences* and walls, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, buildings, pools, spas, and upper *floor* decks with load-bearing support *structures*.
- (3) Open *fences* may be permitted closer than 5 feet to the *coastal bluff edge* only if necessary to provide for public safety and to protect resource areas accessible from public right-of-ways or on public parkland.

In addition, subsection (j) of the same citation provides the following:

- (j) Public views shall be preserved pursuant to Section 132.0403.

Section 132.0403 of the Coastal Zone Overlay then provides:

- (c) If there is an existing or potential public view between the ocean and first public roadway, but the site is not designated in a *land use place* as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side *yard setbacks* areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.
- (d) Where remodeling is proposed and existing legally established development is to be retained that preclude establishment of the desired visual access as delineated above, preservation of any existing public view to the site will be accepted, provided that the existing public view is not reduced through the proposed remodeling.
- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

In addition, under Chapter 11 of the LDC listing definitions, the following is stated:

*Open fence* means a fence that has at least 35 percent of the vertical surface area of each 6-foot section open to light. Within the Coastal Overlay Zone, *open fence* means a fence designed to permit public views that has at least 75 percent of its surface area open to light.

In addition, the City's previously certified implementation plan (municipal code) required open fencing in residential zones for those lots that were adjacent to public rights-of-way, alleys or curbs.

#### Section 101.0620 Fences

#### C. FENCE HEIGHT IN RESIDENTIAL ZONES

[...]

2. In front of an established setback line or within the required front or street side yard, fences shall not exceed three feet in height, except as specified below:
  - a. An open fence not exceeding a height of three feet shall be permitted on top of solid fencing, also not to exceed a height of three feet, provided the fencing meets the following requirements:
    - (1) The fencing shall not exceed six feet in height, except as specified in paragraph C.2.b.
    - (2) Vertical elements, such as a column or post, shall be provided. Each vertical element shall have a minimum plan dimension of no less than six inches and shall be spaced no further than 15 feet from the next element....
    - (3) A horizontal element shall be provided, along the top of wire fence material...
    - (4) The solid fencing shall have a minimum depth of four inches and shall be constructed of wood, stucco masonry.
    - (5) All metal materials shall have a colored finish coat applied to them other than the galvanized metal.

Given that the proposed development is located between the first coastal road and sea, it is subject to the above-quoted LCP policies and ordinances that protect visual resources. The City did an extensive visual analysis of the proposed development. The subject site is located opposite of Saint Louis Terrace which is a public street that runs in an east-west direction and is perpendicular to the subject site. While traveling in a westerly direction along Saint Louis Terrace, there are existing horizon ocean views above the roofline of the existing residence (as well as other development adjacent to it). The views diminish as the street descends in elevation while approaching the subject site. However, neither the street that the subject site is located on (Spindrift Drive), nor Saint Louis Terrace are designated public view corridors in the certified LCP. There is an existing very tall hedge (approximately 10 ft. high) along the eastern property line adjacent to the street frontage which obstructs any views across the site from the public right-of-way. The hedge extends along the entire property line, except at each side yard. The hedge is proposed to remain through the proposed remodel of the existing single family residence. With the proposed additions to the residence, a portion of the roofline of the residence will extend into the area where ocean horizon views can be seen from the upper portions of Saint Louis Terrace.



There is a concern that the City's action might be inconsistent with the LCP because the City did not require that either landscaping or fencing in the side yards be modified to enhance public views toward the ocean and to prevent a "walled off" effect. The side yards are four feet wide, which meet the City's requirements under its former implementing ordinances (municipal code) for sideyard setbacks for the subject residential zone where the existing residence is located. The setbacks are not proposed to be reduced through the proposed development. With regard to the proposed landscaping, as shown on the landscape plans in the north side yard area, there appears to be both existing and proposed landscaping but the plans are not clear as to which plants are remaining as opposed to which plants are proposed. There are notes on the plans which state "landscape at pedestrian viewing level limited to 3'0" high" for the northeast and southeast corners of the property. The plans are shaded such that the note appears to apply to a depth of 16 feet for the north side yard and depth of 10 feet for the south side yard. This correlates with correspondence from the City to the applicant contained in the City's file that required that the proposed project be revised to reduce the height of the proposed landscaping to no higher than 4 feet (such that the landscaping would not obstruct views at a pedestrian eye-view level.) The plans include taller existing vegetation (10 to 12 ft.) as being retained. The remainder of the north side yard contains existing and proposed vegetation which ranges in height from four feet to 12 feet. The remainder of the south side yard shows vegetation ranging in height from 36 inches to 6 feet.

In both side yards, the taller plant materials are located further away from the street, which is consistent with the City's LDC. The existing tall hedge that is located along the eastern property line does not extend into the side yard setback areas. There appears to be taller, existing vegetation/landscaping currently in the side yard setback areas which presently blocks views toward the ocean. A small glimpse of the ocean is visible from the street looking west across the north side yard area but it is mostly obscured by the existing vegetation in this area. Again, the landscape plans are not very clear as to what landscaping is being proposed and retained in the side yard setback areas. There is also a question with regard to why only a portion of the side yards adjacent to the street frontage was required by the City to be maintained at a height of 4 feet as opposed to along the entire length of the side yards. However, as noted in the language of the LDC cited above, for those project sites between the first public road and sea that are not located within a designated visual access corridor of a certified Land Use Plan (as is the case with the subject proposal) if there is a potential public view, the required side yard setback areas are required to be deed restricted to form functional view corridors and to prevent a walled off effect. As such, it appears that through reducing the height of the vegetation in the side yards, potential views of the ocean could be enhanced. In addition, absent a deed restriction in the side yard setback areas for purposes of ensuring public views in this location are maintained, the proposed development appears to be potentially inconsistent with the certified LCP. The requirement for deed restricting the side yards was not a specific requirement of the previously certified implementing ordinances of the City's LCP- however, as noted earlier, the certified LUP requires that side yards be left clear and open to prevent a walled-off effect.

In the review of similar projects taken up on appeal in the nearshore areas, the Commission has not required that existing landscaping in the side yards be removed. However, in one appeal, A-6-LJS-98-169 (Moncrieff), the project site was located adjacent to a designated public view corridor and there was existing vegetation (trees) within the view corridor that obstructed public views toward the ocean. The Commission did require in that permit decision that the existing trees be trimmed to enhance public views toward the ocean. In this particular case, it would appear that because of the extent of demolition and new development, the subject remodel is "new development". As such, the removal of any existing vegetation on the site that would enhance public views toward the ocean would be consistent with past Commission action on improving public views toward the ocean and the certified La Jolla-la Jolla Shores LCP Addendum that calls for enhancing public views to the ocean in the nearshore areas in both new development and redevelopment projects.

As noted earlier, another concern is with regard to whether or not the City required installation of open fencing in the side yard setback areas to enhance public views and to prevent a walled off effect. After receipt of the City file on January 10, 2000, and upon a review of the file and project plans, it can be seen that there is an existing 6-ft. solid wall/fence that runs along the entire north and south property lines of the project site. The site plan indicates that a fence is proposed to be maintained. It was also determined that the City required that a portion of this wall/fence near the eastern property line be modified to a 3 ft. solid base with 3 ft. open materials on top. This is consistent with the certified IP portion of the LCP in effect at the time of the City's approval. However, it is unclear why only a portion of the fence was required to be "opened up". In addition, this appears to be inconsistent with the language of the LDC cited above which requires that within the Coastal Overlay Zone, open fencing must be at least 75 percent "open". Thus, a six-foot high fence would be required to have a 1 1/2 ft. solid base with 4 1/2 ft. of open materials on top.

As noted above, the Commission has historically required that fencing in the side yard areas be composed partially of open materials for the purposes of opening up views toward the ocean and preventing a walled off effect. The Commission has taken the position in past similar projects (A-6-LJS-98-85/Holmes, A-6-LJS-98-169/Moncrieff) that through installation of open fencing in the side yard setbacks along the eastern frontage of the properties between the first coastal road and sea, a "window" to the ocean in the side yard setback areas can be preserved while looking west from the street elevation, as is supported by the policies of the certified LCP. Even small glimpses of the ocean while driving or walking by give passersby 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..." In those cases where views would still not be achieved through installation of open fencing, it is still required to help to prevent a "walled off" effect.

Thus, it is important that fences in the side yard areas meet the requirements of the code for open materials. In this particular case, whether or not the fence has 3 ft. of open

materials vs. 4 ½ ft. of open materials may raise a substantial issue dependent on whether or not such fencing would improve views across the site or not. Absent additional information or further visual simulations with the proposed open fencing, this is potentially inconsistent with the certified LCP and therefore raises a substantial issue. Therefore, in summary, the proposed project raises a substantial issue with regard to protection of public views toward the ocean.

(G:\San Diego\Reports\1999\A-6-LJS-99-160 Summit Resources, L.P. SI stfrpt.doc)

Project Site

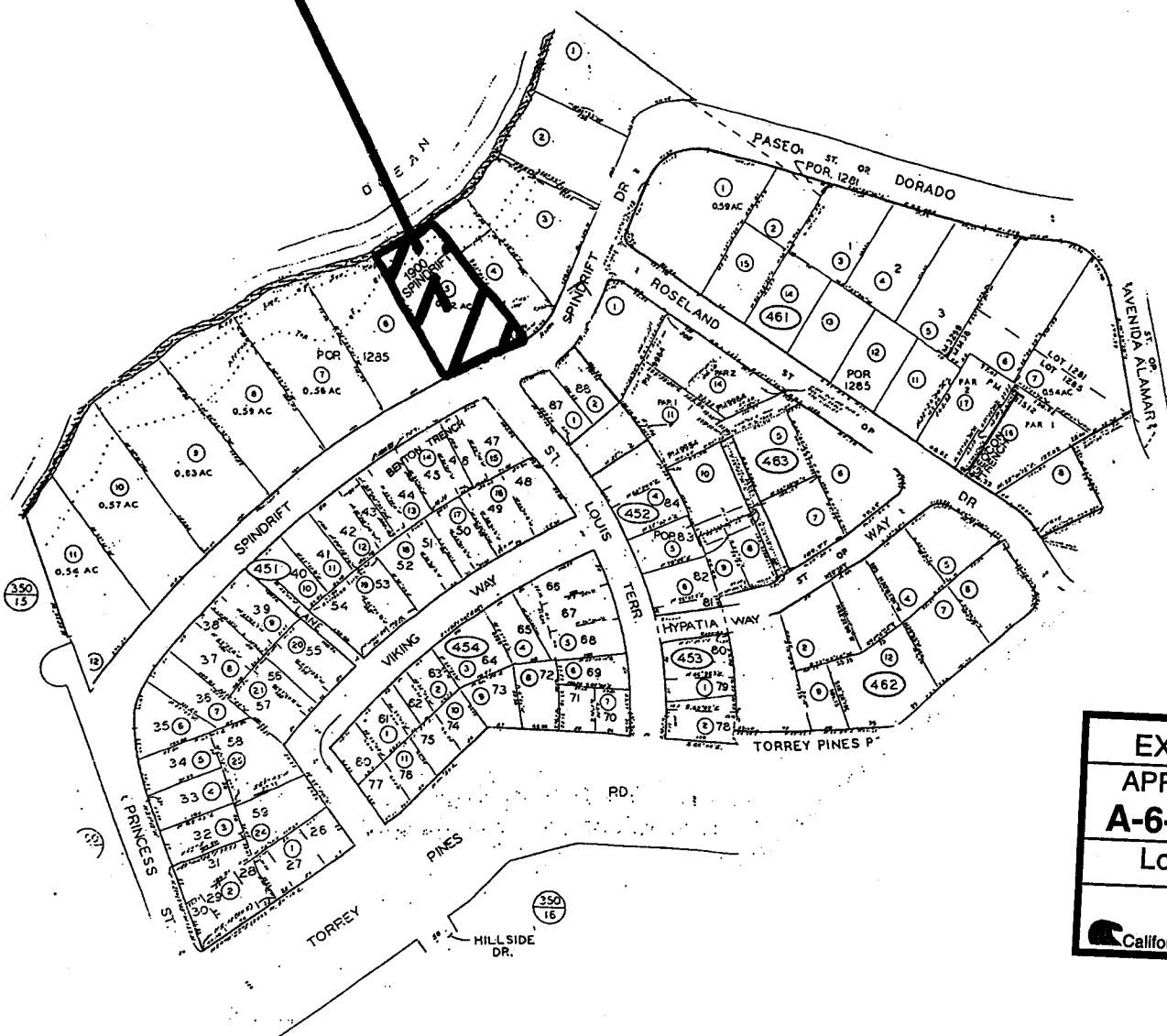
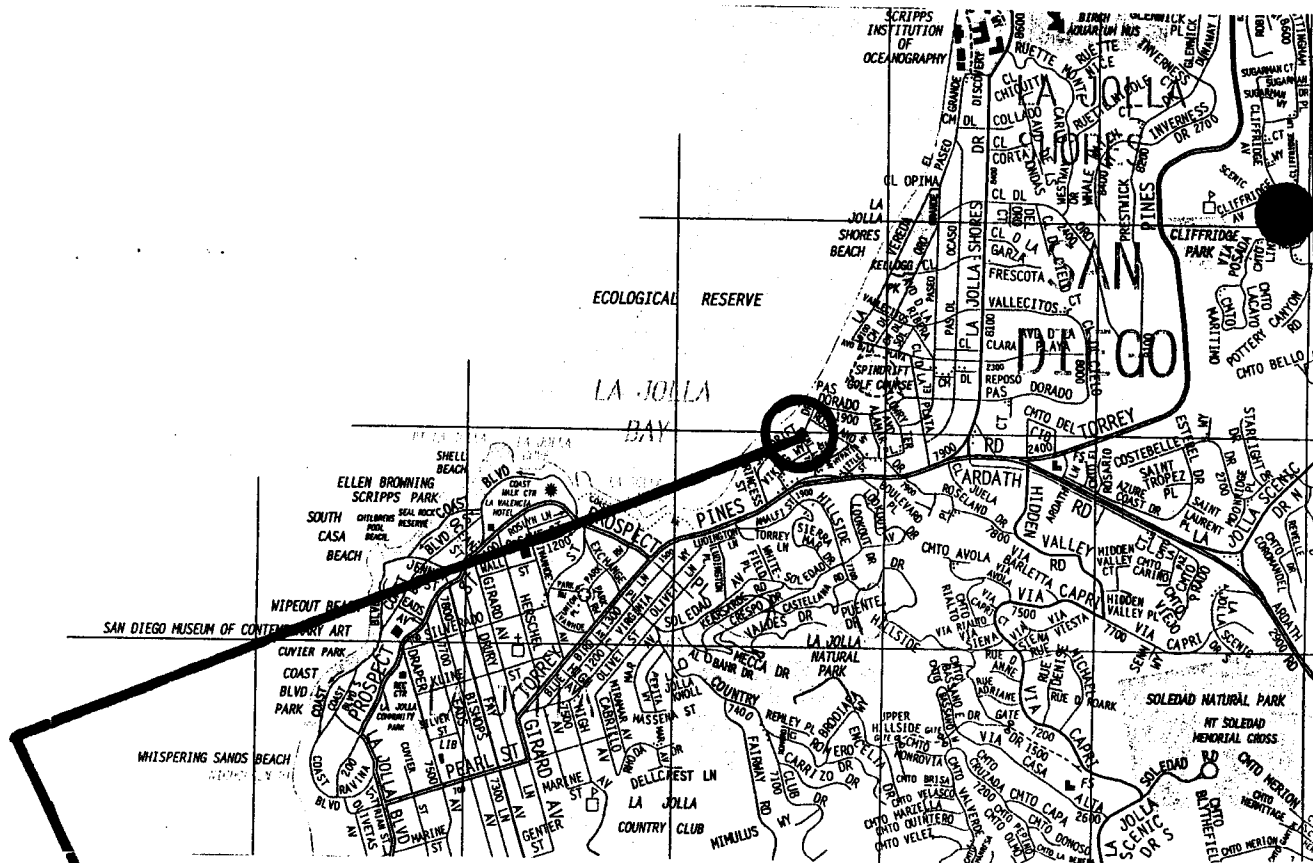


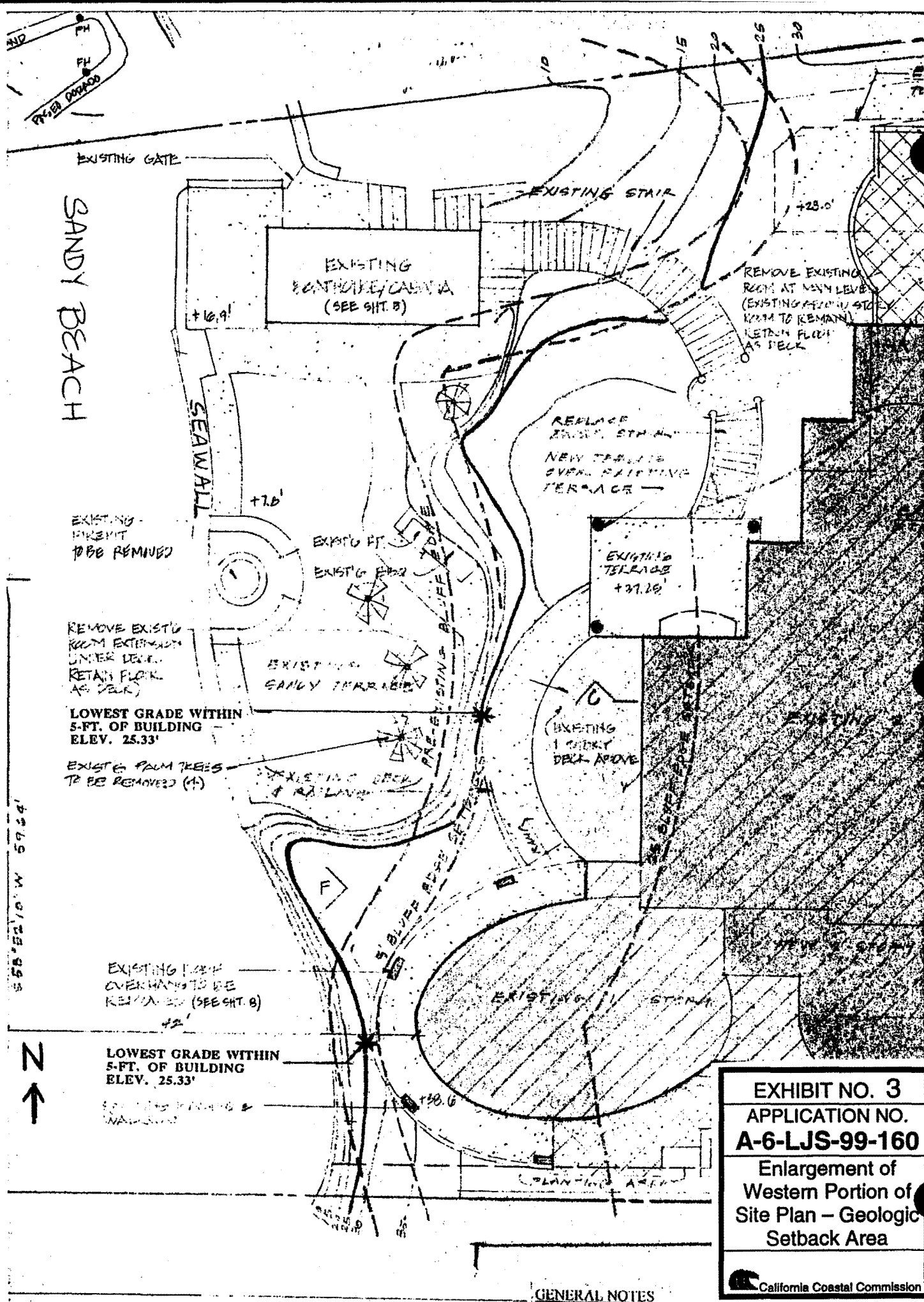
EXHIBIT NO. 1  
APPLICATION NO.  
**A-6-LJS-99-160**  
Location Maps

California Coastal Commission



SITE PLAN.		E. 1/4 Section 16	
T. 12 N. R. 10 E.		S. 1/4	
Property	W. L. & M. P. & A. B.	Section 16	16
Address	1000 N. 10th St., W. 10th St.	Section 15	15
Address	1000 N. 10th St., W. 10th St.	Section 14	14
Address	1000 N. 10th St., W. 10th St.	Section 13	13
Address	1000 N. 10th St., W. 10th St.	Section 12	12
Address	1000 N. 10th St., W. 10th St.	Section 11	11
Address	1000 N. 10th St., W. 10th St.	Section 10	10
Address	1000 N. 10th St., W. 10th St.	Section 9	9
Address	1000 N. 10th St., W. 10th St.	Section 8	8
Address	1000 N. 10th St., W. 10th St.	Section 7	7
Address	1000 N. 10th St., W. 10th St.	Section 6	6
Address	1000 N. 10th St., W. 10th St.	Section 5	5
Address	1000 N. 10th St., W. 10th St.	Section 4	4
Address	1000 N. 10th St., W. 10th St.	Section 3	3
Address	1000 N. 10th St., W. 10th St.	Section 2	2
Address	1000 N. 10th St., W. 10th St.	Section 1	1

1900 SPINDRIFT DRIVE  
LA JOLLA, CA



**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**A-6-LJS-99-160**

**Enlargement of  
 Western Portion of  
 Site Plan – Geologic  
 Setback Area**

**California Coastal Commission**

**GENERAL NOTES**

Sullivan Wertz McDade & Wallace  
A PROFESSIONAL CORPORATION

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January 24, 2000

RECEIVED

JAN 25 2000

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ADMINISTRATOR

VIA MESSENGER AND FACSIMILE

Ms. Laurinda Owens  
California Coastal Commission  
3111 Camino del Rio North, Suite 200  
San Diego, California 92108-1725

Re: A-6-LJS-99-160  
Summit Resources

Dear Ms. Owens:

We represent the owner/applicant relative to the referenced project and request that we be notified of hearing dates and that we receive copies of your reports and correspondence.

The appeals filed by Commissioners Wan and Daniels raise a number of issues. The issues can be characterized in the appeals as consistency with the shoreline hazard and visual resource policies of the LCP. Both of these issues were thoroughly reviewed and addressed by the City of San Diego during its two-year processing of the project. Throughout this process, no public opposition was ever raised. The Planning Commission unanimously approved the project, and no appeal was filed to the City Council.

Shoreline Hazard Policies

A boathouse, referenced in the City Permit as a pool cabana and patio area, are currently located seaward of the residence to the west of the bluff and behind a seawall. All of these structures (boathouse, patio and seawall) significantly predate the Coastal Act. The seawall was built in the 1920s. The boathouse and patio were built shortly thereafter. Although the boathouse is a legal non-conforming structure pursuant to the LCP, the City conditioned the CDP/SCR Permit to require that the boathouse or pool cabana deteriorate over time. A copy of the relevant condition 23 is enclosed

S:\Clients\3969\011\L\Owens re response.wpd

EXHIBIT NO. 4

APPLICATION NO.

**A-6-LJS-99-160**

Letters from  
Applicant's  
Representative



California Coastal Commission

and highlighted. Furthermore, as set forth in the Findings, the project approval requires removal of certain landscaping installed on the patio area of the property.

The proposed remodel contemplates demolition of more than 50% of the exterior walls of the principal habitable floor. Therefore, the project is not exempt from the requirement to obtain a CDP. However, the certified LCP does not require an analysis of the extent of demolition as it relates to non-conforming structures. In fact, the certified LCP provides that repairs, alterations and modifications ("changes") of legal non-conforming structures can take place so long as such changes do not increase the degree of non-conformity.

Even though some minor portions of the existing residence are closer to the bluff edge than 25 feet, in this case the City reviewed the project for consistency with the required geologic setback and determined that it was consistent. Based upon a geotechnical report, the City determined that a 25 foot setback was appropriate. Certain portions of the existing residence within the 25 foot setback are to be removed, thereby decreasing the level of legal non-conformity. It should be noted that the Coastal Commission acknowledged and may have approved the very limited encroachments when the project was remodeled in the past.

The appeal states that a document filed with the City indicates that maintenance of shoreline protection may be required in the future. The City did not make a finding that any maintenance or repair is required at this time, or that such maintenance would be a requirement or condition of approval of the project. Our client has not applied for any repair of the seawall.

#### Visual Access to the Shore

As correctly stated in the appeal, Saint Louis Terrace is not designated as a view corridor within the certified LCP. The project is located at the western terminus ("T Intersection") of a street which provides a very limited ocean view. The City required a visual analysis, copies of which are in your file. The project was specifically designed to preserve this limited view, and actually improves visual access to the ocean by increasing the side yard setback and removing and limiting some vegetation and structures within the side yard setback. The hedge referenced in the appeal is currently in front of the existing residence. Its removal would merely afford a view of the existing and proposed residence, not of the ocean.

In summary, the La Jolla Community Planning Association and its relevant project review committee, the La Jolla Shores Advisory Board and the City Planning Commission all approved the project. All immediate neighbors support the project, and there was no opposition expressed at any of the public meetings or hearings. In addition, the project was designed to comply with the certified LCP and the Land Development Code with regard to view corridors. Finally, the condition of approval concerning the boathouse is unique in that the City will not allow repairs to the non-conforming structure seaward of the bluff. For all these reasons, the appeals raise no substantial

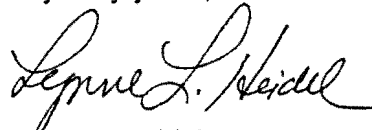


Ms. Laurinda Owens  
January 24, 2000  
Page 3

issue.

We understand that the Coastal Commission files for previous projects approved on this site may have been lost. We have some limited information on the modifications to the property over the last 70 years. If you have any questions about this history, please call us as soon as possible. This project has been under review for nearly two years. The applicant is anxious to proceed and requests that the matter be heard at the February meeting. I will call you soon to discuss the hearing schedule.

Very truly yours,



Lynne L. Heidel  
of

SULLIVAN WERTZ McDADE & WALLACE  
A Professional Corporation

Enclosure

cc: Summit Resources, Ltd.  
Mr. Tim Martin

16. The "Notice of Geologic Conditions", signed by the owner, must be recorded with the County Recorder before or concurrent with issuance of a permit. The notice reflects the potential for ground rupture along the potentially active fault trace discovered during the investigation.

**PLANNING/DESIGN REQUIREMENTS:**

17. No fewer than two (2) off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated December 2, 1999, on file in the Planning and Development Review department.

18. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

19. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

20. A topographical survey conforming to the provisions of the Municipal Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the permittee.

21. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

22. No building additions, including accessory structures and uses, shall be permitted unless approved by the City Manager.

\* 23. The Owner/Permittee acknowledges that the existing rear coastal bluff pool cabana does not conform to current Municipal Code - Development Standards. The City will not require removal of the non-conforming pool cabana at this time, due to the anticipated adverse effects on the coastal bluff face. It is anticipated that the pool cabana will deteriorate over a period of time. It is the owner/Permittee's responsibility to remove the pool cabana, and associated debris (everything except the cabana's footings) as it deteriorates naturally or in the event unsafe conditions exist. It is also understood by the Owner/Permittee that the non-conforming pool cabana is not to be repaired or maintained to extend the period of use, but simply to let the pool cabana deteriorate naturally to the point at which it needs to be removed, as earlier stated.

24. Pursuant to the San Diego municipal code, the aggregate value of the proposed repairs or alterations to non-conforming structures, shall not exceed fifty (50) percent of the fair market value of the improvements. Prior to the issuance of any building permits, the applicant shall provide property assessment and construction estimates in compliance with this provision.

COPY

Sullivan Wertz McDade & Wallace  
A PROFESSIONAL CORPORATION

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January 26, 2000

OF COUNSEL  
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ADMINISTRATOR

RECEIVED

JAN 27 2000

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Amy Roach, Esq.  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

Re: Summit Resources, Ltd. - 1900 Spindrift Drive  
Appeal No. A-6-LJS-99-160

Dear Ms. Roach:

We represent Summit Resources, Ltd. with regard to the above-referenced appeal. A specific legal issue has come up and we would request your assistance to resolve it.

By way of background, Summit Resources submitted on December 11, 1998, an application to remodel and expand the existing residence located at 1900 Spindrift Drive. That application was deemed complete on January 7, 1999 and, without opposition, was unanimously approved by the Planning Commission on December 2, 1999. Throughout this extensive local review and approval process, there was never any opposition and no one filed an appeal to the City Council. The Community Planning Group supported the project, the La Jolla Shores Permit Review Committee reviewed and approved the project, and the only input from the neighbors was in support of the request. Therefore, it came as a shock to our client to find out that the local Coastal staff had prepared an appeal and two Commissioners had purportedly affixed their signatures to that appeal.

After reviewing the appeal, we, along with Matt Peterson, Esq. and representatives from Don Edson Architects, met with Commission staff on January 7, 2000. One of the things that we discussed was the fact that staff had prepared justifications for the appeal which in essence were challenging the City's approval of the project based upon certain aspects of the new Land Development Code which did not become effective until January 1, 2000. We informed staff at that

Amy Roach, Esq.  
January 26, 2000  
Page 2

time that it was the City of San Diego's understanding that any application that was deemed complete prior to the effective date of the new Land Development Code would be reviewed and processed under the existing Municipal Code Sections and the existing Certified LCP, not under the proposed Land Development Code. In fact, this understanding was well documented in the Ordinances approving the Land Development Code (see attached copy of Ordinance No. 18451 dated December 9, 1997, reference Sections 8 and 9 on page 4 of 4 and pages 1 of 96 and 96 of 96 of Ordinance No. 18691 dated October 18, 1999, reference Sections 35 and 36). As you can see, these Ordinances, which were adopted to implement the new Land Development Code and certified by the California Coastal Commission, provided that applications that were deemed complete prior to the effective date of the new Land Development Code were to be processed, reviewed and approved under the existing Municipal Code Sections and existing Certified LCP.

Staff may have also overlooked the fact that this project was reviewed and approved pursuant to the La Jolla Shores Planned District Ordinance. That Ordinance provides in § 103.0303.2 "previously conforming uses and structures" Section D "Improvements, repairs and alterations which do not increase the degree of nonconformity of a previously conforming building, structure or improvement are permitted." As staff is aware, the provisions of La Jolla Shores PDO as currently certified by the Commission are still in tact and were not eliminated with the approval of the new Land Development Code.

Matt Peterson recently sent an e-mail to Laurinda Owens requesting clarification of this issue and received an e-mail back indicating that staff intended to review the project pursuant to the new Land Development Code rather than the existing Municipal Code and Certified LCP. We believe that this is in direct conflict with Ordinance Nos. 18451 and 18691 and the existing Certified La Jolla Shores PDO. Not only was the project application deemed complete prior to the effective date of the new Land Development Code, but the project had already received all of its local discretionary approvals.

Therefore, we request your immediate involvement in this matter and a direction from you to staff that those portions of the appeal which in any way relate to the new Land Development Code are not valid and as such, should not be analyzed or addressed before the Commission at the appeal hearing scheduled for February 15 - 18, 2000 in the City of San Diego. Since the hearing is coming up in approximately two weeks and staff needs to prepare their reports no later than Thursday, January 27, 2000, we would respectfully request your immediate involvement and resolution of these issues.

Amy Roach, Esq.  
January 26, 2000  
Page 3

Thank you for your assistance with this matter.

Very truly yours.



Lynne L. Heidel  
of

SULLIVAN WERTZ McDADE & WALLACE  
A Professional Corporation

Enclosure

cc: Daniel A. Olivas, Esq.  
Mayor Susan Golding and Members of the City Council  
Michael T. Uberuaga, City Manager  
Casey G. Gwinn, Esq.  
Ms. Linda M. Johnson  
Ms. Laurinda Owens  
Mr. Tim Martin  
Matthew A. Peterson, Esq.  
Summit Resources, Ltd.

11-18-97

Hwy.

(O-98-27)(COR. COPY)

(REV. 1)(REV. 2)(REV. 3)

ORDINANCE NUMBER O- 18451 (NEW SERIES)

ADOPTED ON Dec. 9, 1997

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY REPEALING: CHAPTER II, ARTICLE 6, DIVISION 2 TITLED "HISTORICAL SITE BOARD"; CHAPTER V, ARTICLE 4, DIVISION 1, SECTION 54.0120 TITLED "EXCAVATIONS — PERMIT REQUIRED"; SUB-SECTIONS: 54.0120.1 TITLED "PROCEDURE ON APPLICATION FOR PERMIT"; 54.0120.2 TITLED "PAYMENT OF FEES"; 54.0120.3 TITLED "INVESTIGATION AND RECOMMENDATION"; 54.0120.4 TITLED "CONSIDERATION BY THE CITY MANAGER"; 54.0120.5 TITLED "BOND AND CERTIFICATE OF INSURANCE"; 54.0120.6 TITLED "PREVENTING COLLAPSE OF SIDES OF EXCAVATION"; 54.0120.7 TITLED "OTHER CONDITIONS REQUIRED OF APPLICANTS"; 54.0120.8 TITLED "REVOCATION OF SUSPENSION OF PERMIT"; 54.0120.9 TITLED "EXPIRATION OF PERMITS—ISSUANCE OF SUPPLEMENTAL PERMITS"; AND 54.0120.10 TITLED "PERMIT DOES NOT EXCUSE COMPLIANCE WITH OTHER LAWS"; CHAPTER IX, ARTICLE 1 TITLED "BUILDING CODE"; CHAPTER IX, ARTICLE 2 TITLED "ELECTRICAL CODE"; CHAPTER IX, ARTICLE 3 TITLED "PLUMBING AND MECHANICAL CODE"; CHAPTER X, ARTICLE 1 TITLED "ZONING-ZONE PLAN"; CHAPTER X, ARTICLE 2 TITLED "SUBDIVISIONS"; CHAPTER X, ARTICLE 4 TITLED "SPECIAL SIGN DISTRICTS"; CHAPTER X, ARTICLE 5 TITLED "DEVELOPMENT AGREEMENTS"; CHAPTER XI TITLED "LAND DEVELOPMENT"; AND ADDING: NEW CHAPTER 11 TITLED "LAND DEVELOPMENT PROCEDURES"; CHAPTER 12 TITLED "LAND DEVELOPMENT REVIEWS"; CHAPTER 13 TITLED "ZONES"; AND CHAPTER 14 TITLED "GENERAL REGULATIONS", ALL RELATING TO LAND DEVELOPMENT.

WHEREAS, the City Council directed the City Manager to revise the organization and

content of the San Diego Municipal Code relating to land development; and

WHEREAS, the goals of the code update project were (1) to simplify the land development regulations; (2) to make the land development regulations more objective; (3) to make the code more adaptable; (4) to eliminate redundancies and contradictions in the land development regulations; (5) to standardize the land development regulation framework; and (6) to increase predictability in the application of land development regulations; and

WHEREAS, the City Council directed that the process to develop the proposed Land Development Code be as broad and open to comprehensive public participation as possible; and

WHEREAS, the proposed Land Development Code is based upon a comprehensive review of the City's current general and community plans and strengthens the implementation of general and community plan policies while striving for citywide consistency in land use regulations, with the exception of regulations in Chapter X, Article 3, relating to planned districts; and

WHEREAS, the City has held more than 230 public forums for discussion and input by the public on the proposed revisions; and

WHEREAS, the proposed revisions have been reviewed and recommendations made by both the Planning Commission and the Land Use and Housing Committee of the City Council; and

WHEREAS, the proposed Land Development Code accomplishes the goals set for the project by eliminating inconsistencies, duplicate requirements and conflicts contained in the existing regulations and by providing an organization and format that makes regulations easier to locate by both City staff and the public, thus reducing confusion and lost time in the review

process; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego as follows:

Section 1. That Chapter II, Article 6 of the San Diego Municipal Code is amended by repealing Division 2 titled "Historical Site Board."

Section 2. That Chapter V, Article 4, Division 1 of the San Diego Municipal Code is amended by repealing Section 54.0120 titled "Excavations — Permit Required", and by repealing the following Sub-Sections:

- 54.0120.1 titled "Procedure on Application for Permit"
- 54.0120.2 titled "Payment of Fees"
- 54.0120.3 titled "Investigation and Recommendation"
- 54.0120.4 titled "Consideration by The City Manager"
- 54.0120.5 titled "Bond and Certificate of Insurance"
- 54.0120.6 titled "Preventing Collapse of Sides of Excavation"
- 54.0120.7 titled "Other Conditions Required of Applicants"
- 54.0120.8 titled "Revocation of Suspension of Permit"
- 54.0120.9 titled "Expiration of Permits — Issuance of Supplemental Permits"
- 54.0120.10 titled "Permit Does Not Excuse Compliance With Other Laws"

Section 3. That Chapter VI, Article 2, of the San Diego Municipal Code is amended by repealing Division 4 titled "Grading" and Division 8 titled "Street Closings."

Section 4. That Chapter IX of the San Diego Municipal Code is amended by repealing Article 1 titled "Building Code", Article 2 titled "Electrical Code", and Article 3 titled "Plumbing and Mechanical Code."



Section 5. That Chapter X of the San Diego Municipal Code is amended by repealing Article 1 titled "Zoning - Zone Plan", Article 2 titled "Subdivisions", Article 4 titled "Special Sign Districts", and Article 5 titled "Development Agreements."

Section 6. That the San Diego Municipal Code is amended by repealing Chapter XI titled "Land Development."

Section 7. That the San Diego Municipal Code is amended by adding Chapter 11 titled "Land Development Procedures", Chapter 12 titled "Land Development Reviews", Chapter 13 titled "Zones", and Chapter 14 titled "General Regulations", attached hereto as Exhibit A and incorporated in this ordinance as though fully set forth.

Section 8. That City departments are instructed not to issue any permit for development that is inconsistent with this ordinance unless application for such permit was submitted and deemed complete by the City Manager prior to the date this ordinance becomes effective.

Section 9. This ordinance shall take effect and be in force on May 1, 1998 or on the date the Coastal Commission unconditionally certifies the provisions subject to Coastal Commission jurisdiction as a local coastal program amendment, whichever is later.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard  
Prescilla Dugard  
Deputy City Attorney

PD:cdk  
10/07/97  
10/23/97COR.COPY  
10/31/97 REV. 1  
11/10/97 REV. 2  
11/21/97 REV. 3  
Or.Dept:Dev.Svcs.  
O-98-27

ORDINANCE NUMBER O- 18691 (NEW SERIES)ADOPTED ON 10-18-99

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 1, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 111.0101 AND 111.0104; AMENDING CHAPTER 11, ARTICLE 2, DIVISION 1, BY AMENDING SECTION 112.0103; AMENDING CHAPTER 11, ARTICLE 2, DIVISION 3, BY AMENDING SECTIONS 112.0301, 112.0302, AND 112.0306; AMENDING CHAPTER 11, ARTICLE 2, DIVISION 5, BY AMENDING SECTION 112.0503; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 113.0103; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 2, BY AMENDING SECTIONS 113.0228 AND 113.0273; AMENDING CHAPTER 12, ARTICLE 1, DIVISION 1, BY AMENDING SECTION 121.0101; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 1, BY AMENDING SECTIONS 126.0105, 126.0111, 126.0112, AND 126.0113; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5, BY AMENDING SECTION 126.0503; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 7, BY AMENDING SECTIONS 126.0702, 126.0704, 126.0707, 126.0708, 126.0710, 126.0717, 126.0718, 126.0722, BY RENUMBERING 126.0722 TO 126.0723, AND BY ADDING 126.0724; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 8, BY AMENDING SECTION 126.0805; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1, BY AMENDING SECTIONS 127.0106 AND 127.0107; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 1, BY AMENDING SECTIONS 131.0112 AND 131.0140; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2, BY AMENDING SECTIONS 131.0222, 131.0230, 131.0231, AND 131.0250; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3, BY AMENDING SECTIONS 131.0303, 131.0322, 131.0323, 131.0330 AND 131.0331; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4, BY AMENDING SECTIONS 131.0403, 131.0420, 131.0430, 131.0431, AND 131.0461; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5, BY AMENDING SECTIONS 131.0522, 131.0530, 131.0531 AND 131.0540; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6, BY AMENDING SECTIONS 131.0622, 131.0630, AND 131.0631; AMENDING CHAPTER 13, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 132.0402, AND ADDING SECTION 132.0403; AMENDING CHAPTER 13, ARTICLE 2, DIVISION 8, BY AMENDING SECTION 132.0802; AMENDING CHAPTER 13, ARTICLE 2, DIVISION 14, BY AMENDING SECTION 132.1402; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 2, BY AMENDING SECTION 141.0202; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0301; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 4, BY AMENDING SECTIONS 141.0404, 141.0405, 141.0407, AND 141.0413; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6, BY AMENDING SECTIONS 141.0610, 141.0614, 141.0615, 141.0617, 141.0621, 141.0623 and 141.0624; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 9, BY AMENDING SECTION 141.0902; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 3, BY AMENDING SECTIONS 142.0305 AND 142.0340; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING

Section 34. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 35. That City departments as instructed not to issue any permit for development inconsistent with the provisions of the Land Development Code unless application for such permit was submitted and deemed complete by the City Manager prior to the date the Land Development Code becomes effective.

Section 36. That the Land Development Code as approved by Ordinance No. O-18451 and as revised by this ordinance shall take effect and be in force on January 1, 2000, provided that on or before November 5, 1999, the California Coastal Commission has effectively certified The City of San Diego Local Coastal Program Amendment, including the revised Steep Hillside Guidelines submitted pursuant to Resolution No.

R- 291737 (R-99-1165). If the Coastal Commission effectively certifies the Local Coastal Program Amendment and revised Steep Hillside Guidelines after November 5, 1999, the Land Development Code shall be in force and become effective on the sixtieth day after the date of effective certification of both.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard  
Prescilla Dugard  
Deputy City Attorney,

PD:cdk

05/13/99

07/19/99 COR. COPY

Or.Dept:Plan.&Dev.Rev.

O-99-116

Form=o&t.frm

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
3111 CAMINO DEL RIO NORTH, SUITE 200  
SAN DIEGO, CA 92108-1725  
(619) 521-8036



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Sara J. Wan, Chair  
Mailing Address: 22350 Carbon Mesa Road  
Malibu, CA 90265  
Phone Number: (310) 456-6605

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Partial demolition (4,745 sq.ft.) of an existing two-story over basement single-family residence and addition of new floor area resulting in a two-story, 14,630 sq.ft. single-family residence on a .56 acre ocean blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
1900 Sprindrift Drive, La Jolla, San Diego, San Diego County. APN 346-440-05
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-99-160

DATE FILED: 12/21/99

DISTRICT: San Diego

[This appeal form is identical to the one signed by Commissioner Paula Daniels contained in the permit file. Only one copy of the appeal form is reproduced herein as an exhibit to the staff report.]

EXHIBIT NO. 5
APPLICATION NO.
<b>A-6-LJS-99-160</b>
Appeal Form
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

Date of local government's decision: 12/2/99

Local government's file number (if any): CDP/LJS/SCR No. 99-0007

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Summit Resources, L.P.  
Attn: Mr. Richard V. Gibbons  
1 Market Place, 33rd Floor  
San Diego, CA 92101

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.

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.

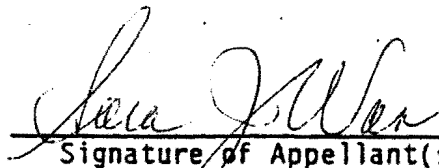
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

[SEE ATTACHED]

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/our knowledge.

  
Signature of Appellant(s) or  
Authorized Agent

Date 12/21/99

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

Summit Resources L.P.  
Attachment to Appeal

The City's action on the proposed development raises concerns with regard to consistency with the shoreline hazard and visual resource policies of the certified LCP. It also raises questions regarding non-conforming rights for existing structures in hazard areas. The proposal approved by the City involves a substantial remodel of an existing 9,960 sq.ft. single family residence including the demolition of 4,745 sq.ft. and new construction resulting in a 14,630 sq.ft. single family residence on a .56 acre ocean blufftop lot. An existing seawall exists seaward of the property and a gunnited coastal bluff, both of which pre-date the Coastal Act. Accessory improvements consisting of a boathouse and terraced patio area exist seaward of the residence within the geologic setback area. Other improvements/changes are also proposed to the stairs and patio in this area. Portions of the existing residence are non-conforming and presently are sited closer than 25 ft. from the bluff edge.

The City's findings indicate that no development is occurring to the portion of the residence seaward of 25 ft. and that less than 50% of the home is being demolished. However, there is no detailed demolition plan or specific description of the extent of work occurring within the portion of the residence proposed to remain other than "extensive renovation". The LCP requires that when 50% or more of the exterior walls of an existing structure are demolished in association with a remodel, that the project is not a remodel but should be treated as "new development" which would affect the non-conforming rights which may apply. The City should have made specific findings re: the extent of work occurring in the portion proposed to remain and how the 50% criteria was established to determine existing non-conforming rights and to assure that if the project is actually new development, it is consistent with the geologic blufftop setback requirements in the certified LCP.

The certified SCR overlay ordinance provides the following, in part:

Coastal Bluffs

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 blufftop improvements...
- 2) Bluff repair and erosion control measures...
- 3) Accessory structures....

[...]

b. A bluff edge setback of less than forty (40) feet but in no case less than twenty-five (25) feet, may be granted by the Planning Director where the evidence

contained in the geology report indicates that: 1) the site is stable enough to support the development with the proposed bluff edge setback so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures....

The proposed development will essentially result in a new home in close proximity to an altered coastal bluff and shoreline. The City has approved extensive renovations to an existing non-conforming residence, portions of which are presently located closer than 25 ft. from the bluff edge. The project file contains a document which indicates maintenance will be required to the shoreline protection in the future, but the City did not address alternative locations or design of the necessary protection with this application. Approval of this residential renovation, which will perpetuate the existence of the residence in a hazardous location, without consideration of future shoreline protection requirements, could eliminate alternatives for demolition or reconstruction of new shoreline protective devices in a less environmentally-damaging alignment and design.

A second potential inconsistency with the certified LCP is with regard to protection of visual access to the shoreline. Although the street is not designated as a view corridor within the certified LCP, the project site is located at the western terminus of a street which provides an ocean view. Although the City required that new fencing meet the City's zoning code requirements (3 ft. solid base with 3 ft. open materials on top), there is an existing tall hedge along the eastern property line that presently blocks views toward the ocean. The City's findings did not address opening up the side yards or that the landscaping be removed in the side yard areas to enhance public views toward the ocean.

As such, the proposed development is potentially inconsistent with the following policies of the certified LCP.

"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 whenever possible."

"View corridors utilizing side yard setbacks, should be encouraged along shoreline and blufftop 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.