

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

RECORD PACKET COPY**Mon 24c**

Filed: 2/15/00
 49th Day: 4/4/00
 180th Day: 8/13/00
 Staff: LRO-SD
 Staff Report: 3/23/00
 Hearing Date: 4/11-14/00

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

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

APPLICANT: Summit Resources, L.P.

PROJECT DESCRIPTION: Substantial demolition of an existing 9,960 sq.ft. two-story over basement single-family residence and reconstruction of 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

STAFF NOTES:

The Commission found Substantial Issue at the February 15, 2000 meeting. This report is for the de novo permit.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed reconstruction of a residence resulting in a 14,630 sq.ft., two-story single family residence on a coastal blufftop. The project raises concerns related to blufftop setbacks and geologic hazards and protection of public views toward the ocean in the sideyard setback areas. The project represents new residential development on a bluff top lot where there is an existing pre-Coastal Act seawall on the beach and gunite on the bluff face. The City's LCP requires that new development maintain a 40 ft. bluff edge setback that can be reduced to 25 ft. based upon recommendations of a geology report which documents that such a reduced setback would still provide adequate bluff top setback to assure the new development is safe throughout its anticipated life. In this particular case, the applicant has submitted several geology reports and the Commission's staff geologist has reviewed them and concurred that a 25 ft. setback is adequate for the proposed home. Staff recommends that protection of geologic stability associated with the new development be

addressed through Special Condition #1 which requires that no development be permitted seaward of 25 ft. from the bluff edge and that any improvements seaward of the 25 ft. geologic setback line must be at grade and no closer than five feet from the bluff edge. In addition, Special Condition #2 notifies the applicant and future property owners that any future repairs or maintenance to the existing non-conforming accessory structures located seaward of the bluff edge requires an amendment to the subject coastal development permit. Protection of visual resources and public views associated with the proposed development will be addressed through landscaping and fence requirements in Special Condition #3. It requires that new landscaping be limited to a height of 3 ft. and that fencing in the sideyards be composed of 50% open materials to prevent a "walled off" effect. Other conditions include: assumption of risk and public rights. With the attached conditions, the project can be found consistent with the certified LCP.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

1. **MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-LJS-99-160 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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; Report of Preliminary geotechnical

Investigation by Christian Wheeler Engineering dated 3/23/99; Report of Slope Stability Analysis by Christian Wheeler Engineering dated 2/25/00; Update/Cover Letter by Christian Wheeler Engineering dated 3/17/00; Geotechnical Engineering Report Update by Christian Wheeler Engineering dated 3/23/00; City of San Diego SCR/CDP #99-0007; San Diego District Staff Report on Substantial Issue dated 2/1/00.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the proposed development including a demolition plan, floor plan, site plan, foundation plan and elevation plan that have been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans submitted with this application by Don Edson Architect dated 9/21/99, except that they shall be revised to reflect the following:

- a. All portions of the residential structure shall be removed or relocated such that no portion of the principal residential structure or pool or spa shall be sited closer than 25 ft. from the edge of bluff.
- b. All existing and proposed accessory improvements shall be identified. All proposed accessory improvements (patios, decks, etc.) proposed within the 25 ft. geological setback area must be "at-grade" and located no closer than 5 ft from the edge of bluff.
- c. No maintenance of the existing non-conforming boathouse/cabana shall be permitted.
- d. The fire pit located in the rear patio area seaward of the bluff edge and adjacent to the seawall shall be removed.

The permittee shall undertake the development in accordance with the approved 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.

2. Future Development. Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the coastal development permit No. A-6-LJS-99-160; and that any repairs or improvements to the existing boathouse/cabana structure, gunite on the bluff face or seawall; stairs; future additions; or, other development as defined in Public Resources Code Section 30106 will require an amendment to permit No. A-6-LJS-99-160 from the California Coastal Commission. The document shall be recorded as a covenant running with the land binding all successors and assignees in interest to the subject property.

3. Revised Landscape/Sideyard Fence 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 Don Edson Architect, as last revised and dated 9/21/99, except for the revisions cited below. The plans shall be revised to keep the sideyard setback areas clear to enhance public views from the street toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. All landscaping in the sideyard setback areas shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean.
- b. All landscaping shall be drought-tolerant, native plant species. No irrigation shall be permitted on the site.
- c. A written commitment by the applicant that all required plants on this site shall be maintained in good growing condition and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements.
- d. Any fencing in the sideyard setback areas shall be composed of a solid base with 50% open materials on top.
- e. The existing palm trees located at the western patio area inland of the existing seawall shall be removed.

The applicant shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes 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 ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, each applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that each applicant understands that the site may be subject to extraordinary hazard from bluff collapse and erosion and the applicant assumes the liability from such hazards; and (b) each applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

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

5. 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.

6. No Shoreline Protection for Accessory Improvements. No shoreline or bluff protection devices shall be permitted to protect any existing or proposed accessory improvements should they be subject to threat in the future.

7. Other Special Conditions of the CDP/SCR No. 99-0007. The following special conditions of the City's CDP/SCR permit #99-0007 are modified herein and are a part of the subject coastal development permit: Special Condition #23 and 29. All other special conditions of the City of San Diego's SCR permit #99-0007 remain subject to the City's jurisdiction.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. Proposed is the substantial demolition of an existing two-story over basement, 9,960 sq.ft. single family residence and the reconstruction of the residence totaling 14,630 sq.ft. on a 0.53 acre ocean bluff top lot. Also proposed is a new swimming pool, spa, covered deck, and landscaping. The subject residence is an older structure that was built in 1928 and includes several accessory improvements either in the geologic setback area or seaward of the bluff edge. In the 25 ft. geologic setback area, the applicant proposes to remove an existing 225 sq.ft. detached bunk house near the northern property line. Also proposed is the removal of an existing room at the main level of the house at the northwest corner and retention of the second story room as a deck, replacement of an existing stair, construction of a new trellis over an existing terrace, removal of an existing room extension under deck and retention of floor as deck and removal of existing roof overhang at southwest corner of residence. Seaward of the bluff edge and at the beach elevation the proposal is to remove an existing fire pit. The City also required the removal of four existing palm trees in this area.

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 area between the toe of the gunited bluff and the existing seawall is backfilled and contains a number of non-conforming structures that include a concrete patio, "sandy terrace", firepit, a barbecue with firepit, deck, railing, stairway, a detached boathouse/cabana and palm trees. The distance between the existing seawall and the toe of the gunited bluff is approximately 25 ft.

Remodeling to the residence, including the addition of an approximate 775 sq.ft. 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 redeveloped and which are located in close proximity to the bluff edge.

The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores LUP, La Jolla Shores PDO, and other applicable sections of the former implementation plan (municipal code) that was in effect at the time that the proposed development was reviewed and approved by the City. The City of San Diego recently received effective certification of an LCP amendment that replaces its former municipal code with its new Land Development Code Update. The LCP amendment became effective on January 1, 2000. However, the amendment was submitted with a provision that the prior municipal code would continue to be applied to projects for which complete permit applications were submitted prior to the effective date of the LCP amendment. The subject proposal was submitted, acted on by the City, and appealed to the Commission prior to the effective date of the LCP amendment. The Commission finds that in this case, the appropriate standard of review is the LCP that was in effect prior to the effective date of the LCP amendment (i.e., the former municipal code).

2. Shoreline Hazards. As noted in the staff report dated 2/1/00 for the findings on substantial issue of the subject project, the proposed development is inconsistent with the geologic bluff top setback requirements in the certified LCP.

Proposed is the substantial demolition of an existing two-story over basement, 9,960 sq.ft. single family residence and the reconstruction of the residence totaling 14,630 sq.ft. on a 0.53 acre ocean bluff top lot. Also proposed is a new swimming pool, spa, covered deck, and landscaping. 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 the 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. These are 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 proposed development also includes installation of a pool, spa, landscaping, deck 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. At the southwest corner of the site, the residence is as close as 9 feet to the bluff edge. In the midwest portion of the site, the residence is approximately 20 feet from the bluff edge, and at the northwest section of the site, the residence is approximately 16 feet from the bluff edge. The applicant proposes to retain these western 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 inconsistent with the certified SCR overlay ordinance of the City's former Implementation Plan which provides, 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....

In addition, the following policies addressing bluff top development and shoreline protective devices from the La Jolla-La Jolla Shores LCP Land Use Plan are also applicable to the proposed development:

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]

At issue with the subject project and as discussed in the findings for substantial issue, is whether the extent of proposed demolition of the residence is so substantial that the applicant should be required to bring the entire residence into conformance with the above-cited policies, which require that bluff top structures be setback 25 to 40 feet from the bluff edge. In its approval of past projects involving partial demolition and reconstruction of an existing structure, the Commission has found that if more than 50% of the exterior walls of a structure are being demolished, the proposal is "new development" as opposed to remodel or an addition to the structure such that the entire structure must be brought into conformance with the current requirements. In this particular case, the applicant's architects verbally indicated to Commission staff fairly early in the review process that more than 50% of the exterior walls were being removed; however, there were never any demolition plans in the City file to document this assertion. As such, once substantial issue was found by the Commission, Commission staff requested in a letter dated 3/14/00 to the applicant's representative that demolition plans, along with other geotechnical information, would be necessary in order to develop a recommendation for the proposed development. In response to this request, the applicant's representative submitted the demolition plans on 3/20/00 along with the requested geotechnical information. The plans reveal that approximately 59% of the exterior walls are being demolished.

The applicants assert that the La Jolla Shores Planned District Ordinance (PDO), which applies to this site, allows for the proposed modifications without triggering a requirement to bring the residence into conformance with the setback requirements. The applicants cite the provisions of the PDO 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.

[...]

As noted above, the PDO allows for "improvements, repairs and alterations" to nonconforming structures which do not increase the degree of non-conformity. The provision must be interpreted broadly in light of the significance of the coastal resources that are affected by bluff top development. As indicated by the policies of the LUP, blufftop development affects sand supply, public access, and scenic natural landforms, and raises issues of geologic stability. Since the setback requirements of the LCP are intended to address these potential adverse impacts, the provision that addresses when nonconforming structures must be brought into compliance with current setback requirements must be interpreted and applied broadly. In this particular case, the Commission finds that the above PDO provisions do not allow the proposed project to occur without bringing the entire residence into conformance with the setback requirements. First, proposed development does not qualify as an "improvement", "repair" or "alteration" because it involves substantial demolition--more than 50% of the exterior walls. As such, it is "new development"—in other words, it is as if the entire residence were being demolished and then a new residence constructed in its place.

Essentially, the bulk of the existing residence is being demolished with only those portions that are nonconforming and within the geologic setback area being retained. Because more than half of the exterior walls of the residence are being demolished, it is feasible that the entire structure could be demolished and the home re-sited so that it conformed with the geologic setback requirements. The proposed development will result in a 14,630 square foot home less than 25 feet from an altered coastal bluff and shoreline where the certified LCP clearly requires 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 anticipated life of the structure. Therefore, as "new development", the safety of the site to support the new development must be addressed as well as the required geologic setbacks. Furthermore, even if the proposed demolition of 59% of the walls of the residence could be considered to be an improvement, repair or alteration, the proposed project does increase the degree of nonconformity of the existing residence because it will result in a significantly larger residence in the geologic setback area. As such, the provisions of the PDO addressing nonconforming uses do not allow the applicant to undertake the proposed substantial demolition/reconstruction without bringing the nonconforming aspects of the residence into conformance with the current setback requirements.

In past review of proposed developments on project sites where there is an existing seawall, the Commission has found that since the site warranted a seawall, the site is then

regarded to be located in a hazardous location and that a reduction to the 40 ft. geologic blufftop setback was not warranted. In this particular case the original geotechnical study implied that the seawall was not constructed to protect the existing home. Specifically, the geotechnical report by Christian Wheeler Engineering dated 3/23/99 states,

“A seawall that was constructed at about the same time as the original principal structure is present near the northwestern property line. It appears that this seawall was built as a preemptive measure to protect some of the improvements near the beach and also to increase privacy.”

In order to determine whether or not the proposed development could be sited a distance of 25 ft. from the bluff edge, Commission staff, in a letter dated 3/14/00 to the applicant's representative, asked the applicant's geotechnical engineers to provide an analysis that addressed the stability of the site to support the proposed development as if the seawall were not presently there. The purpose of the request was to assure that the proposed development will be safe into the future and to assure that new development on the site is not dependent on the seawall in its current location and configuration. Also requested was additional data on bluff retreat and potential for slope failure to determine whether or not a reduction of setback from 40 to 25 feet is adequate to assure the new development is safe into the future. Staff also clarified that it was not being implied that the existing seawall would need to be removed; only that the setback analysis be done without relying on the seawall.

There remains the possibility that, due to its age, the existing shoreline protection may fail. Therefore, new development on the site should not be dependent on its retention for safety reasons and to avoid damage as a result of wind and wave action associated with storm conditions. Additionally, siting development further inland will allow for construction of the full range of alternatives to the existing shoreline protection including complete removal or locating any necessary bluff or shoreline protection further inland. Such alternatives would avoid encroachment on sandy beach and eliminating or minimizing the adverse effects of protective devices on shoreline sand supply, visual quality and public access.

The applicant's geotechnical engineers responded in two letters dated 3/17/00 and 3/23/00. The engineers stated in the letter that they had performed a slope stability analysis with the assumption that the seawall at the base of the seacliff was not there. The engineers also indicated that the seawall was constructed in approximately 1928 for the purpose of protecting the improvements on the beach and increasing privacy but not as a result of erosion of the base of the bluff. The analysis demonstrates that the stability of the site is not dependent on the seawall. The letter also indicates that the bluff is relatively short and the site is most underlain by well-consolidated, Cretaceous-age sandstone with a relatively thin cap of Quaternary-age materials. The engineers concluded in the letter that a 25-foot setback is appropriate for the site and that the site is suitable for the proposed new construction with implementation of the recommendations contained in the report. In addition, the engineers noted that the 1.5 factor of safety line in terms of slope stability indicates that the residence would be safe at a location closer

than 25 feet from the edge of the bluff even though the City and Coastal Commission have a setback requirement for at least 25 feet. The Commission's staff geologist has reviewed these letters and other submitted geotechnical information and concluded that a 25 ft. setback would be acceptable for the proposed development.

Therefore, given that the site-specific geotechnical report documents that the proposed development will be safe into the future and is not dependent on the presence of the existing seawall to support the development, the Commission finds that the proposed geologic setback of 25 feet, in this case, can be supported. However, the project as submitted, proposes to maintain portions of the existing home within the 25 ft. geologic setback area which is inconsistent with the certified LCP addressing the siting of new blufftop development. As such, Special Condition #1 requires submittal of revised building plans that indicates no portion of the principal residential structure shall be permitted seaward of the 25 ft. geologic blufftop setback line and that existing portions of the residence within the 25 ft. setback area must be removed or relocated.

There is an existing concrete patio seaward of the existing residence in the geologic setback area. However, since no work is proposed to this patio area, it is permitted to remain. Other accessory improvements in the geologic setback area include the replacement of stairs. These stairs descend in elevation down the bluff face to the beach below. However, it appears from the project plans that only the portion of the stairs inland of the bluff edge are proposed to be replaced. Special Condition No. 1 calls for the identification of all existing and proposed accessory improvements that all proposed accessory improvements proposed within the 25 ft. geological setback area must be at-grade and located no closer than 5 ft. from the bluff edge. The condition further specifies that no maintenance of the existing non-conforming boathouse/cabana shall be permitted and that the fire pit seaward of the bluff edge near the seawall shall be removed. Also, Special Condition No. 6 requires that no shoreline or bluff protection devices will be permitted to protect any existing or proposed accessory improvements should they become threatened in the future.

On a related point, the existing non-conforming accessory structure (cabana/boat house) seaward of the geologic blufftop setback was permitted to remain pursuant to the City's permit. The conditions of the City's permit allowed the applicant to remove debris, etc. from the structure in the event of unsafe conditions but that no repair or maintenance to extend the period of use of the structure would be permitted. As such, this structure would deteriorate naturally to the point that it would eventually need to be removed. In addition, the City required the applicant to remove landscaping (i.e., four palm trees) that had been installed inland of the seawall and seaward of the bluff edge. As noted earlier, the entire bluff face is presently gunited and there is also an existing seawall on the beach seaward of the bluff. These structures were installed prior to the Coastal Act and due to their age, it is feasible that at some point in the future they will eventually fail. As such, Special Condition #2 addresses future development on the site through recordation of a deed restriction and that requires that no maintenance to the cabana/boathouse, gunite on the bluff face or seawall; new additions; or other development on the site shall be permitted without a subsequent amendment to this

coastal development permit. In addition, Special Condition #3 requires the removal of the palm trees located seaward of the bluff edge as this was a condition of the City's coastal development permit for the subject development proposal.

The Commission also recognizes the inherent risk of shoreline development. There is a risk associated with any shoreline development including damage to the seawall or to property as a result of wave and storm action. Given that the applicants have chosen to construct the proposed residence despite these risks, the applicants must assume the risks. Accordingly, Special Condition #4 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. The proposed development for substantial demolition and reconstruction of a single-family residence represents new development. As such, the development is subject to the geologic setback provisions of the certified LCP. As conditioned to not permit any portion of the proposed principal residence to be located within 25 ft. of the bluff edge, the proposal can be found consistent with the applicable LCP provisions. Therefore, only as conditioned, can the proposal be found consistent with the certified La Jolla-La Jolla Land LCP Land Use, La Jolla Shores PDO and the SCR overlay ordinance of the City's former implementation plan of the certified LCP.

3. Visual Access. The proposed development is 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, the City's previously certified implementation plan (municipal code) required open fencing in the side yard areas not to exceed six feet in height with a three foot solid base and open fencing on top. 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. As noted in the findings for substantial issue in the staff report dated 2/1/00, 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. In other words, the closer one approaches the site, the residence encroaches into the ocean horizon view above the roofline of the residence. While in front of the residence looking west, there are no longer views due to the presence of an existing very tall hedge. However, even if the hedge were not there, the existing residence would obstruct views across the site. In any case, 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. As such, more stringent requirements that apply to designated view corridors do not apply to this site. However, the above-cited policies which provide for protection of views throughout side yards do apply regardless of whether the site or streets leading to the site are designated public view corridors. 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 Saint Louis Terrace at Spindrift Drive. The hedge extends along the entire property line, except at each side yard. The hedge is proposed to remain with the subject proposal. The proposed substantial demolition/reconstruction of the residence will result in a portion of the roofline of the residence extending into the area where ocean horizon views currently can be seen from the upper portions of Saint Louis Terrace. However, because the subject site is not a designated public view corridor, this does not pose any conflicts with regard to the policies of the certified LCP addressing protection of designated public view corridors.

However, existing and proposed landscaping or fencing in the side yards should be designed in a manner that enhances public views toward the ocean to prevent a "walled off" effect, consistent with the policies of the certified LCP. The existing side yards are eight feet wide at the south side yard and nine feet wide at the north side yard, where the City requires a minimum width of four feet under its former implementing ordinances (municipal code) for sideyard setbacks for the subject residential zone where the existing residence is located. The existing setbacks are not proposed to be reduced through the proposed development.

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. No views are presently available looking across the south side yard due to existing vegetation and other improvements in this location. In the review of past appeals between the sea and the first coastal road, the Commission has found that the LCP requires low landscaping to protect views, etc. In addition, the Commission has also 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.

Because the subject site is not located within a designated public view corridor, any proposed encroachment into the ocean horizon views that are visible from the upper portions of Saint Louis Terrace looking west do not raise an inconsistency with the certified LCP. However, for those properties located between the sea and the first coastal road, the LCP policies do call for the opening up side yard areas including keeping side yard areas free of untrimmed landscaping or other obstructions in addition to the installation of open fencing in order to prevent a "walled off" effect as well as to enhance any existing public views toward the ocean. Therefore, Special Condition #3 requires revised landscape/fence plans that includes that all landscaping in the side yard areas be limited to a height of three feet. The condition also requires that fencing in the side yard setback areas be limited to six feet in height and be composed of at least 50% open materials. As such, views toward the ocean in the sideyard setback areas will be enhanced and the open fencing will help to prevent a "walled-off" effect, consistent with the policies of the certified LCP.

4. Public Access/Recreation. Both the certified LCP and the Coastal Act contain policies protecting physical access to the beach and ocean. The subject site is located between the first public roadway and the sea. The beach area is located south of La Jolla Shores which is one of the most popular beaches in San Diego County. The area seaward of the proposed seawall on the subject site is used by residents and beach-goers alike for strolling and other recreational activities. There is an existing improved vertical access easement two lots to the north at the Marine Room restaurant that provides access to this area of beach. While strolling along the beach in a southerly direction from La Jolla Shores, beach-goers can go a few lots south of the subject site; however, the bluffs become quite steep and the beach narrows further south such that physical access around the bluffs to La Jolla Cove is not possible. In addition, the waves come all the way up to the seawall at moderate to high tide conditions making lateral public access at these times not possible.

As noted in the findings for substantial issue, the subject site contains an existing seawall that was constructed prior to the Coastal Act. The seawall was constructed seaward of the natural bluff in order to provide for accessory improvements. Under the standards of the Coastal Act and the certified LCP, if this seawall were proposed today, it would likely be required to be located more landward, along the contour of the natural bluff edge to minimize adverse impacts to public access and sand supply. The existing seawall is

within the stringline of other seawalls in the area. As such, the existing seawalls in this area somewhat inhibit the amount of dry sandy beach area that is accessible to the public for lateral public access during higher tide conditions.

Section 30604(c) of the Act requires that a specific access findings be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (Sprindrift Drive). As noted above, there is an existing vertical public access easement located at the Marine Room restaurant two lots to the south of the site which is used to gain access to the beach. In addition, the site is located about one-half mile from Kellogg Park and the La Jolla Shores beach recreational area, where unlimited access to the shoreline is provided. As such, the proposed project will not result in any adverse impacts to physical public access. Furthermore, as required in Section 30604(a) for development between the first public road and the sea, the project, as conditioned, is found consistent with all other public access and recreation policies of the Coastal Act. Special Condition No. 6 has been attached which serves notice to the applicant that by acceptance of the permit, the applicant acknowledges the potential public rights and/or public trust which may exist on the sandy beach area of the property and that the Commission's approval of the project may not be used or construed as a means to interfere with any kind of public rights.

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 SF and is designated for residential use in the La Jolla Shores PDO. The proposed 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 former implementation plan. The proposed residence, as conditioned, can be found consistent with the SCR overlay.

The certified La Jolla-La Jolla Shores LCP Addendum contains policies which address shoreline protective devices, protection of public access and protection and improvement of existing visual access to the shoreline and that ocean views should be maintained in future development and redevelopment. With regard to the proposed siting of the proposed residence, it has been documented that the proposed development will be safe for its anticipated life and that its proposed siting and configuration is not dependent on the existing seawall located seaward of it. Therefore, only as conditioned for revised building plans such that no development is permitted seaward of the 25 ft. geologic blufftop setback line, can the proposed development be found consistent with the certified Land Use Plan. In addition, the certified LUP calls for opening up of side yard areas to enhance visual access to the sea. Therefore, as conditioned such that all new proposed plantings within the sideyard setback be low level vegetation so as to not obstruct views toward the ocean in the sideyard setback areas, can the proposed development be found consistent with the Coastal Act and certified LUP. In summary,

the proposed development, as conditioned, can be found consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act.

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

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

The proposed project has been conditioned in order to be found consistent with the shoreline hazards, public access and visual resource policies of the Coastal Act. Mitigation measures, including conditions addressing geologic setback, future maintenance of non-conforming accessory improvements, landscaping and fencing, public rights and assumption of risk, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

(\\TIGERSHARK\groups\San Diego\Reports\1999\A-6-LJS-99-160 Summit Resources, L.P. DN stfprt.doc)

Project Site

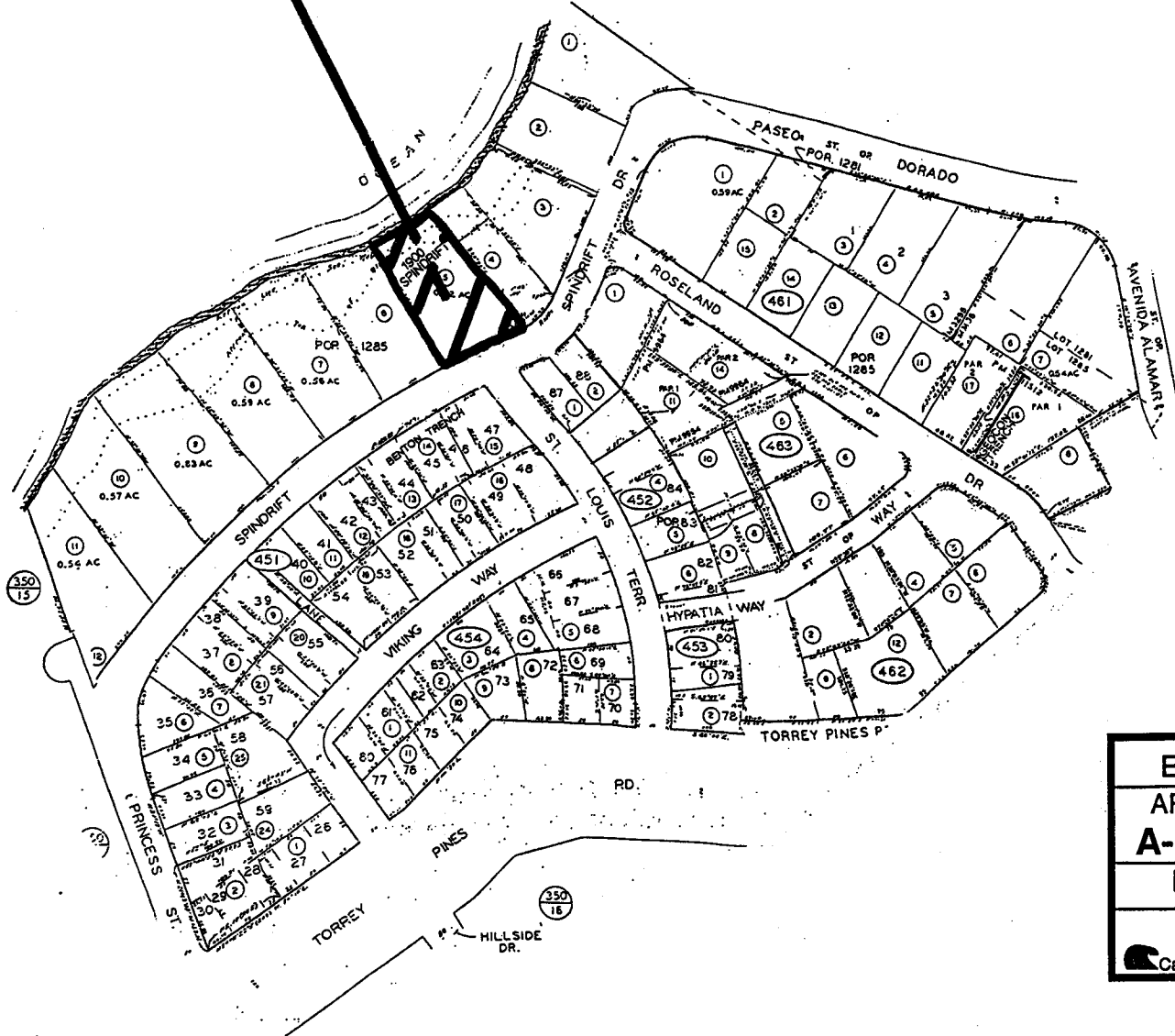
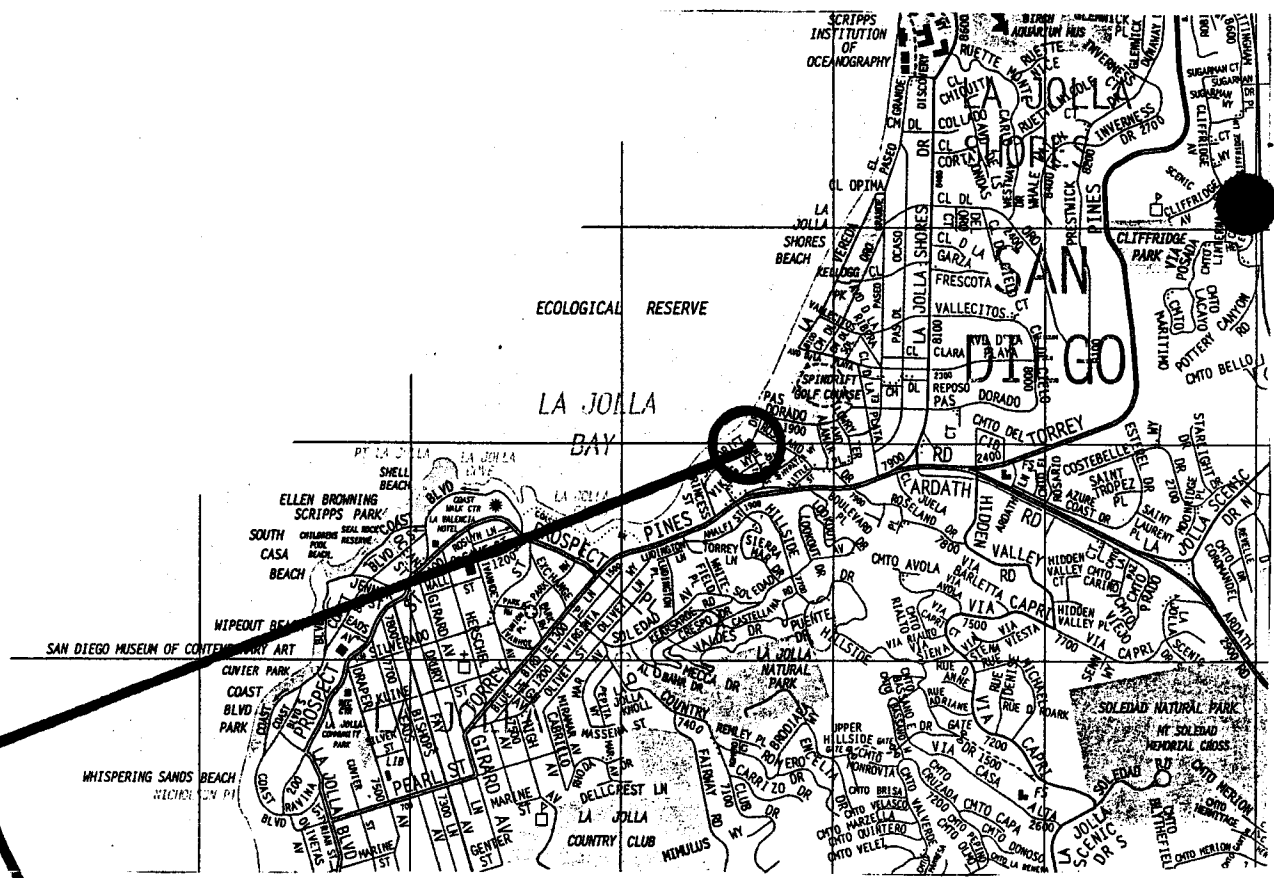


EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-99-16
Location Maps

California Coastal Commission

