

CALIFORNIA COASTAL COMMISSION

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



RECORD PACKET COPY

Wed 9a

Filed: 5/2/00
49th Day: 6/20/00
180th Day: 10/28/00
Staff: LRO-SD
Staff Report: 5/24/00
Hearing Date: 6/13-16/00

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-00-52

APPLICANT: George Fleming

PROJECT DESCRIPTION: Demolition of 2,474 sq.ft. of an existing one-story, 2,785 sq.ft., single-family residence and reconstruction of a new two-story, 4,329 sq.ft. single-family residence and swimming pool on a 7,216 sq.ft. blufftop lot.

PROJECT LOCATION: 5360 Calumet Avenue, La Jolla, San Diego, San Diego Co.
APN 415-021-05

APPELLANTS: Joanne Pearson/Sierra Club; California Coastal Commissioners Sara Wan and Pedro Nava

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: 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 1/28/00; CDP #A-6-LJS-99-160; Geotechnical Evaluation by GeoSoils, Inc. dated 3/24/99.

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 the demolition of the majority of an existing one-story, 2,785 sq.ft. single-family residence and reconstruction of a new two-story, 4,329 sq.ft. single-family residence, with retention of only 311 sq.ft. of the existing residence – those portions located within the geologic setback area. Although the City's approval addressed the extent of demolition occurring as it relates to non-conforming rights, the appellants contend that the City's interpretation of the non-conforming rights regulations must be questioned in this particular case. The City's regulations state "repairs and alterations which do not increase the degree of nonconformity" may be made, provided the aggregate value of such repairs or alterations does not exceed 50 percent of the fair market value of the nonconforming structure, according to the assessment by the County Assessor for the fiscal year when the repairs occur. With all but 311 sq. ft. of the existing residence being demolished, the City's interpretation and implementation of the "50% of the fair market value" criteria is questionable. Additionally, the appellants contend that the proposed project as approved by the City increases the degree of nonconformity because it allows for retention of a larger nonconforming principal residence and increases its value with inadequate geologic blufftop setbacks; it extends the life of the existing nonconforming structure; and, it precludes options for siting development in a manner to avoid the need for future shoreline protection consistent with the certified LCP.

In addition, the appellants also contend that the project is potentially inconsistent with the certified LCP with regard to protection of public views 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.

II. Local Government Action.

The coastal development permit was approved by the Planning Commission on February 3, 2000. The project was subsequently appealed to, and approved by, the City Council on April 11, 2000. The conditions of approval address, in part, the following: drainage, building height, off-street parking, outdoor lighting, landscaping, building height, hold harmless agreement, and existing non-conforming accessory structures (i.e., existing deck and railing that overhangs the bluff edge).

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.

IV. **MOTION:** *I move that the Commission determine that Appeal No. A-6-LJS-00-52 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-00-52* 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 2,474 sq.ft. of an existing one-story, 2,785 sq.ft. single-family residence and the reconstruction of a new two-story, 4,329 sq.ft. single-family residence on a 7,216 sq.ft. ocean bluff top lot. Also proposed is a new swimming pool and landscaping. There is a deck in the rear patio area which presently overhangs the bluff edge. The proposed project retains the deck. The existing residence ranges from approximately 10 to 26 feet from the bluff edge at its closest points (western façade). Approximately 21 linear feet of the residence (the southwest corner) are within 10-12 feet of the bluff edge. In addition, the existing deck at the rear of the house, which overhangs the existing bluff edge and portions of the deck sited less than five feet from the bluff edge are also non-conforming. Based on information submitted by the applicant, it appears the existing residence was constructed in approximately 1958.

The site is located on Calumet Avenue, between Sungold Street and Ricardo Place in the southern portion of La Jolla close to the Bird Rock area. The site is bounded to the north, east and south by other residential development. The residential parcel is situated atop a 32-foot high coastal bluff. The beach at the toe of the bluff consists of cobblestones and is impassable to beach-goers at normal to high tide conditions. There is no existing shoreline or bluff protection on the subject site.

The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores Land Use Plan (LUP) and 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 and acted on by the City prior to the effective date of the LCP amendment. The Commission finds

that in this case, the appropriated 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/Coastal Bluff Top Development. Proposed is the demolition of 2,474 sq. ft. of an existing one-story, 2,785 sq.ft. single-family residence and reconstruction of a new two-story, 4,329 sq.ft. single-family residence on a 7,216 sq.ft. ocean bluff top lot. Also proposed is a new swimming pool and landscaping. The applicant proposes to retain portions of the western façade of the residence (311 sq.ft.) that are closer than 25 feet from the bluff edge as shown on the submitted site plan to retain the non-conforming rights potentially associated with that portion of the structure (ref. Exhibit No. 2).

As approved by the City, the proposed development is potentially inconsistent with the geologic bluff top setback requirements in the certified LCP. The certified LCP requires new blufftop development to be setback 40 ft. from the bluff edge, or between 40 and 25 feet from the bluff edge if a geology report demonstrates the residence can be sited closer than 40 feet without being subject to or contributing to geologic instability for the anticipated life of the structure. Specifically, the SCR 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 La Jolla-La Jolla Shores LCP Land Use Plan, which is also applicable to the proposed development states, in part:

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]

The existing residence does not conform with the above LCP provisions. Specifically, the residence is setback approximately 10 ft. from the bluff edge at its closest point, and the deck overhangs the bluff edge. Although the proposed project involves a reconstruction of the residence (by demolition of all but 311 square feet), the resulting residence will include 21 linear feet of the residence within 10-12 feet of the bluff edge. In addition, the project will retain the deck overhanging the bluff edge. The remainder of the residence has been designed to observe a minimum 25 ft. setback.

It is important that the geologic setback area be maintained in order to avoid the need for future shoreline protection. The LCP requires that development on the site 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 or bluff retreat, as in the subject case. In this case, the site does not have any shoreline protection. Under the LCP, a new residence must be sited to avoid the need for shoreline protection in the future. To permit substantial renovations to an existing residence that will essentially result in a brand new structure, with another 75 year economic life, but that retains portions of the structure that are located within the geologic setback area, raises a substantial issue of consistency with the LCP. Approval of the project could set an adverse precedent for other similar development. There are numerous residences in the coastal beach and bluff 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 as far inland as possible.

According to the geotechnical study by GeoSoils, Inc. dated 3/24/99, the following conclusions were stated:

“Based on our field exploration., laboratory testing and geotechnical engineering analysis, it is our opinion that the subject site appears suitable for the proposed residential development from a geotechnical and engineering viewpoint, provided that the recommendations presented in the following sections are incorporated into

the design and construction phases of site development. The primary geotechnical concerns with respect to the proposed development are:

- Depth to competent bearing material.
- Slope instability and engineering properties of onsite sediments (consolidation, strength, etc.)
- Potential for perched water.
- Potential for corrosion.”

With regard to slope stability, it is further stated in the report:

“Geologic conditions indicate gross geologic stability for the design life of the structure, assuming climatological conditions do not change significantly. Recommendations for mitigation of surficial instability are provided in the foundation design section, and consideration might also be given to the construction of a seawall of an upper retaining wall. Per code (City of San Diego), proposed structures should be located at least 25 feet from the edge of the existing bluff and be demonstrated to be behind the identified daylight line.”

Therefore, the geotechnical report does not specifically state that the proposed residence will be safe into the future at the proposed 25 ft. setback—only that the City of San Diego requires that structures be set back at least 25 feet from the bluff edge. As such, the proposed project is potentially inconsistent with the policies of the above-cited SCR ordinance of the City’s certified LCP which requires a bluff edge setback of forty (40) feet, but in no case less than twenty-five (25) feet, where the evidence contained in the geology report indicates that 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. [Emphasis added]

In addition, an existing deck at the rear of the residence presently overhangs the bluff edge. Portions of the remainder of the deck are also located less than five feet from the bluff edge which is inconsistent with the certified LCP. The SCR Ordinances specifically require that accessory improvements such as decks be set back a minimum of five feet from the bluff edge. Although the City acknowledged the non-conforming accessory structure, it did not require its removal at this time. The City instead conditioned the project such that the existing non-conforming deck within the geologic setback area would not be allowed to be maintained, so that it will eventually have to be removed. As stated in the permit condition:

...The Owner/Permittee acknowledges that the existing (19' x 2'6") deck and railing located on the bluff edge does not conform to current Municipal Code regulations. The City will not require removal of the deck and railing, due to potential adverse effects to the coastal bluff edge. It is Owner/Permittee’s responsibility to remove the deck and railing as it deteriorates over time. It is also

understood by the Owner/Permittee that the non-conforming deck and railing is not to be repaired or maintained to extend the period of use, but simply to let the deck and railing deteriorate naturally to the point at which it needs to be removed.

The retention of the nonconforming deck is inconsistent with the certified LCP which also raises a substantial issue.

In summary, approval of this residential development, will perpetuate the existence of the residence in a hazardous location, without consideration of siting of development to avoid the need for future shoreline protection requirements. In this particular case, this is even more paramount because there currently is no shoreline protection on the site. As such, allowing the new residential structure to retain its approximately 10 ft. blufftop setback, may result in the need for shore or bluff protection sometime in the future. Therefore, the Commission finds that given that the proposed residence will be inconsistent with geologic setback requirements the City's approval of the proposed development raises a substantial issue regarding conformity with the certified La Jolla-La shores LCP Land Use Plan and the City's previous Municipal Code.

3. Retention of Non-Conforming Structures. At issue is whether the proposed project can be found consistent with the above-described bluff edge setback and shoreline protection provisions of the LCP in light of the fact that it will essentially result in a new residence that is closer than 25 feet from the bluff edge. As a new residence, the project is inconsistent with the LCP provisions concerning protection of beaches and bluffs.

In this case, with the proposed retention of only 311 sq.ft. of floor area, it is fairly evident that nearly the entire residence is being demolished and reconstructed. The City found the proposed project consistent with the LCP because it concluded that the LCP allows the applicant to retain the non-conforming aspects of the residence. The City made this determination based upon Section 101.0303 of the Municipal Code, which states the following:

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.

[...]

It could be argued that the City's nonconforming use regulations cited above, identify the type of work that can be done without triggering a requirement to bring a nonconforming

structure into conformance with current requirements. The regulations indicate that "repairs and alterations which do not increase the degree of nonconformity" may be made provided the aggregate value of such repairs or alterations does not exceed 50 percent of the fair market value of the nonconforming structure, according to the assessment by the County Assessor for the fiscal year when the repairs occur. This standard is also utilized in the Uniform Building Code to determine when existing nonconforming structures must be brought into conformance with the requirements of the building code. The City has indicated to staff that it determines the fair market value of the nonconforming structure by first assessing the value of the total property including both the home and land. Then, to get the fair market value of the structure, sixty percent (60%) of the overall value is credited to the property and forty percent (40%) of the value is credited to the structure. Then, 50% of the fair market value of the structure is determined. To address this provision, the applicant submitted two appraisals of the subject property. The appraisals ranged from \$1,250,000.00 to \$1,500,000.00 for the existing residence. As such, the applicants used a mid range value of \$1,350,000.00. From this figure, the 50% of the fair market value of the structure was determined as follows:

$$\$1,350,000.00 \times 40\% = \$540,000 \text{ (Fair market value of structure)}$$

$$\$540,000.00 \times 50\% = \$270,000.00 \text{ (50\% of the fair market value of the structure)}$$

Based on the above calculations, \$270,000.00 is 50% of the fair market value of the structure. The applicant's architect also submitted a detailed construction estimate by their contractor for the proposed improvements that totals \$244,577.00. The estimate essentially includes only the cost of building materials and no other costs associated with the proposed reconstruction project and the City accepted these figures. Thus, the City concluded that the proposed project constitutes "repairs and alteration," that the repairs and alterations do not increase the size or degree of nonconformity, and, based upon the above figures, the value of the repairs does not exceed 50% of the fair market value of the structure. The Commission finds that the City's interpretation and application of this LCP provision raise a substantial issue as to conformity with the LCP. Given that all but 311 sq. ft. of the existing structure is being demolished and almost two times the size of the existing home is being reconstructed, along with a new swimming pool, it is unclear how the City could have reached the conclusion that the above LCP provision allows for retention of the residence in its current location.

First, with respect to the calculations of the value of the home and the repairs, it appears that the City may not have used the appropriate figures. The City did not use the highest appraisal of the value of the property in determining the value of the residence. If the highest appraisal is used (i.e., \$1,500,000), the cost of the repairs does exceed 50% of the value of the residence. In addition, the City used only the cost of the building materials in determining the value of the repairs. This does not appear consistent with section 101.0303, which requires a comparison of the "value" of the repairs to the value of the residence, not a comparison of just the building cost. The value of the repairs should include the labor costs associated with making the repairs.

Second, the City's determination that the proposed work qualifies as "repairs and alterations" also raises a substantial issue. The ordinance does not define the terms "repairs," or "alterations." These terms must be interpreted in light of the purposes of the Coastal Act and the LCP. One of the goals of the LCP is to protect the natural bluffs and beaches of La Jolla by ensuring that development is setback a sufficient distance to avoid the need for shoreline protection. In light of this goal, the Commission finds that the terms "repairs" and "alterations" are intended to mean minor activities that allow a nonconforming structure to be kept in adequate condition. These terms do not include demolition, expansion, construction of additions, and such other work that results in reconstruction of the nonconforming structure. To interpret these terms otherwise would not allow for achievement of the goals of the LCP.

The amount of work proposed by the applicant is extensive. A total of 2,474 sq.ft. of an existing 2,785 sq.ft. residence will be demolished with only 311 sq.ft. being retained in the new 4,329 sq. ft. single-family residence being reconstructed. Portions of the existing structure that are located within the geologic setback area will be retained (311 sq. ft.). The Commission finds that the proposed demolition and reconstruction does not constitute repairs or alterations within the meaning of this ordinance. Rather, the work amounts to a construction of a new residence.

Third, the City's determination that the proposed project does not increase the degree of nonconformity of the existing structure appears inconsistent with the LCP. As stated above, the Commission finds there is a significant precedential concern if this ordinance is not interpreted broadly in light of the goals of the LCP and the significance of the coastal resources that are affected by bluff top development. The concern is, if nonconforming use regulations are interpreted to allow demolition and reconstruction of an essentially new development with retention of only the portion that is nonconforming in terms of its geologic setback requirements rather than demolished, the line of development will never be moved inland. This is problematic because the setbacks are established based on bluff recession rates over the anticipated life of the structure, typically 75 years.

The Commission finds the redevelopment of the property as proposed increases the degree of nonconformity because:

1. It allows for retention of a significantly larger nonconforming principal residence and increases its value with inadequate geologic blufftop setbacks;
2. It extends the life of the existing nonconforming structure; and
3. It precludes option for future site development to be brought into conformance with the certified LCP.

Thus, the proposed project does not constitute "repairs and alterations which do not increase the degree of nonconformity" of the nonconforming residence. Accordingly, the Commission finds that Section 103.0303.1 does not allow for retention of the

nonconforming aspects of the existing residence. In addition, the Commission finds that the City's approval of the proposed project raises a substantial issue related to consistency with the LCP because the City did not require that the residence and structures be brought into conformance with the current LCP requirements. The portions of the certified City of San Diego Local Coastal Program which are particularly applicable to the subject proposal are the La Jolla/La Jolla Shores LCP Land Use Plan and the Sensitive Coastal Resource Overlay Zone (commencing with Section 101.0480 of the Municipal Code).

The purpose of any nonconforming use regulations is to allow continued use of existing legal nonconforming uses and structures which have become nonconforming due to changes in the zoning code, provided the degree of nonconformity is not increased or expanded. The regulations are not intended to allow redevelopment of a property solely in reliance on the nonconforming regulations without regard to other requirements for discretionary permits, community land use policies and current zoning requirements.

The City staff has indicated that in review of discretionary permits such as the coastal development permit, the decision maker is required to make specific findings and this requirement is not superceded by an assertion that nonconforming rights exist on a property or with a structure. In this particular case, to approve a Sensitive Coastal Resource (SCR) permit, the decision maker must make the following findings:

- a. The proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas.
- b. The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted community plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.
- c. The proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards.
- d. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.
- e. The proposed development will not adversely affect the General Plan, the Local Coastal Program, or any other applicable adopted plans and programs.

The Commission finds that the City's approval of the proposed project raises a substantial issue of conformity with the above LCP requirement. It does not appear that

the above findings can be made for the proposed project. To allow what amounts to a reconstruction without requiring that the entire residence be brought into conformance with the setback requirements of the LCP would be inconsistent with the requirement that the City find that the proposed development will be sited, designed, and constructed to minimize adverse impacts on sensitive coastal resources, and that the proposed development will be safe from geologic and erosional forces. The extent of work will allow a significant expansion and renovation that will extend the economic life of the residence for another 75 years. Thus, it is essentially resulting in an entirely new residence. The residence should therefore comply with the geologic setbacks requirements. The Commission finds that redevelopment of the site in the manner proposed is not consistent with the applicable policies of the La Jolla Shores Land Use Plan cited previously and therefore, the finding of conformance with the certified Local Coastal Program cannot be made.

4. Visual Resources. 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, 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.

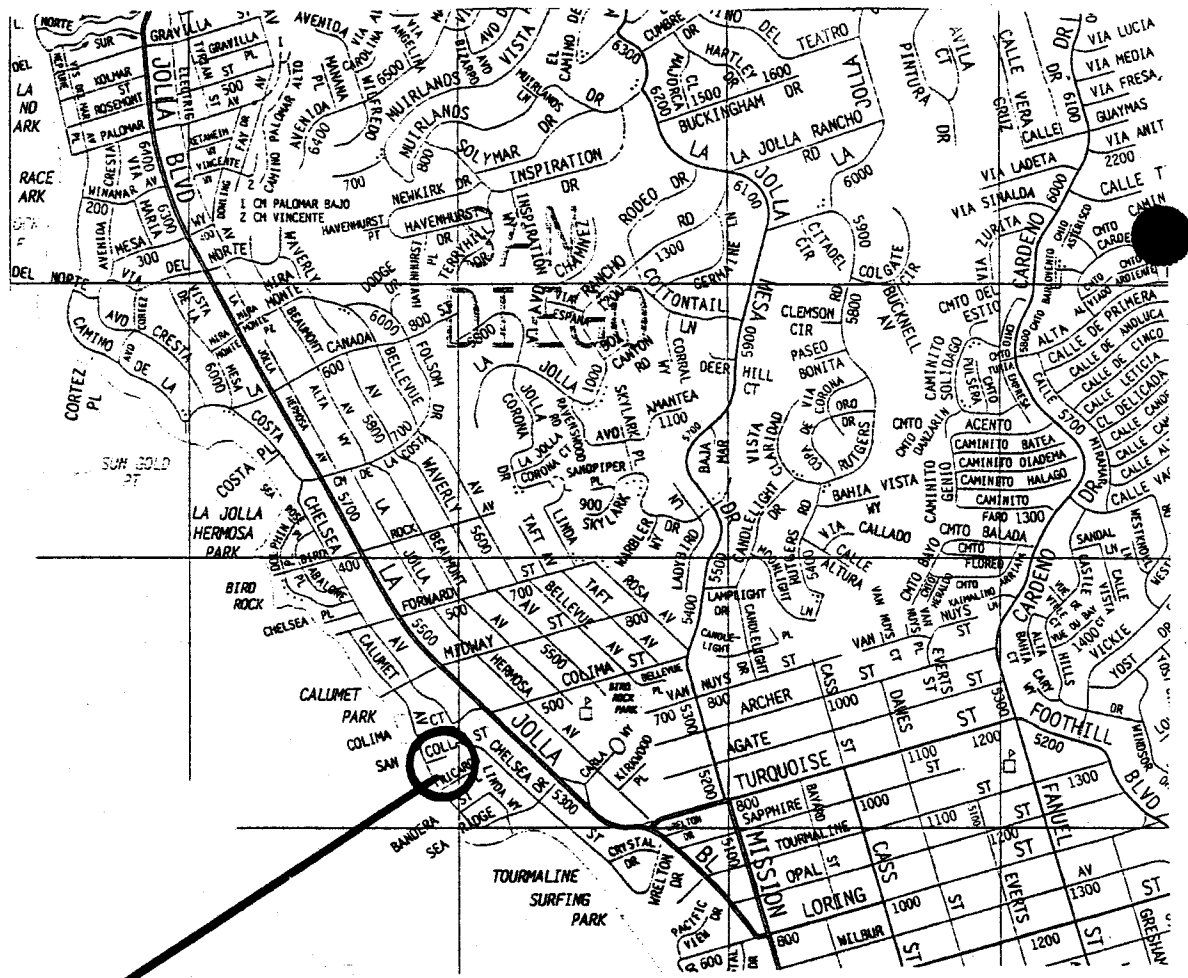
[...]

Given that the proposed development is located between the first coastal road and sea, it is subject to the above-cited LCP policies and ordinances that protect visual resources. There is a concern that the City's action is 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 prevent a "walled off" effect. The side yards for the subject development 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. However, it does not appear that the City required installation of low-level vegetation in the side yards to enhance public views and to prevent a walled off effect.

As presently exists, the existing residence and a solid block wall along the eastern property line blocks views toward the ocean. Through the proposed redevelopment of the site, the applicant has indicated that a fence is proposed at the east elevation of the site that will contain open materials. However, the City did not require through a condition of approval nor a deed restriction that the fencing be composed of open materials for purposes of ensuring public views in this location are maintained, and as such, the proposed development appears to be potentially inconsistent with the certified LCP. The certified LUP requires that side yards be left clear and open to prevent a walled-off effect. 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/Monerieff) 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.

In this particular case, it would appear that because of the extent of demolition and reconstruction, the proposed development is not a remodel, but "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 that calls for enhancing public views to the ocean in the nearshore areas in both new development and redevelopment projects. Therefore, the proposed project raises a substantial issue with regard to protection of public views toward the ocean.

(G:\San Diego\Reports\2000\A-6-LJS-00-052 Fleming SI stfprt.doc)



Project Site

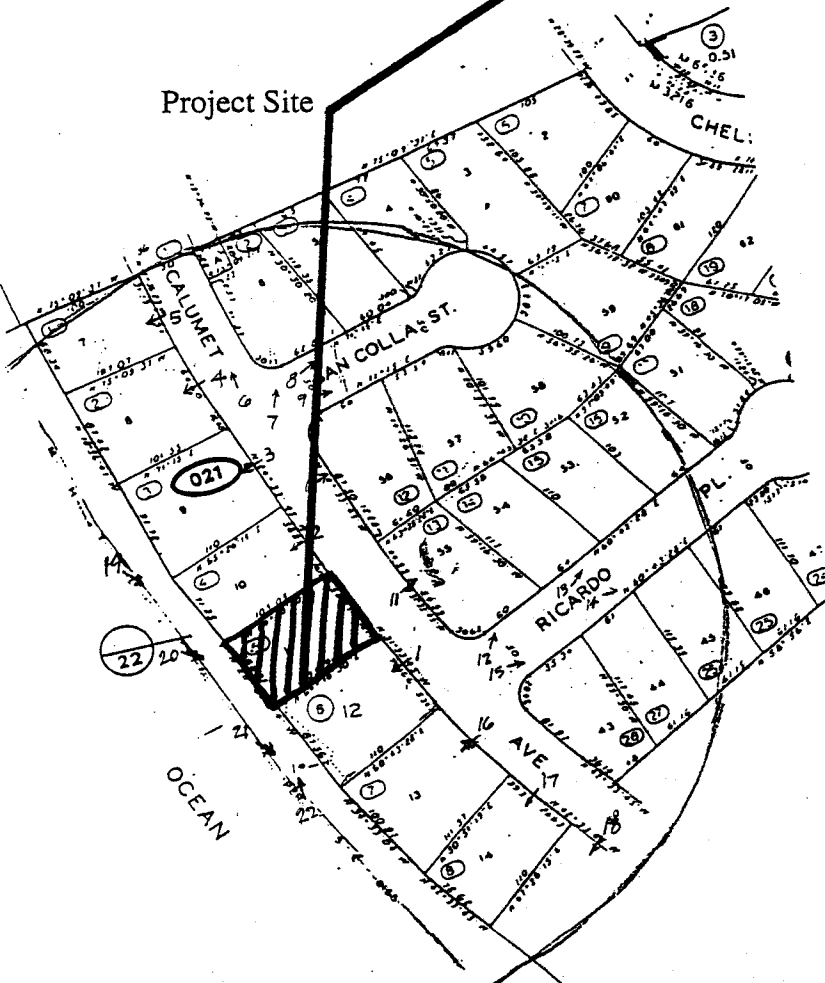



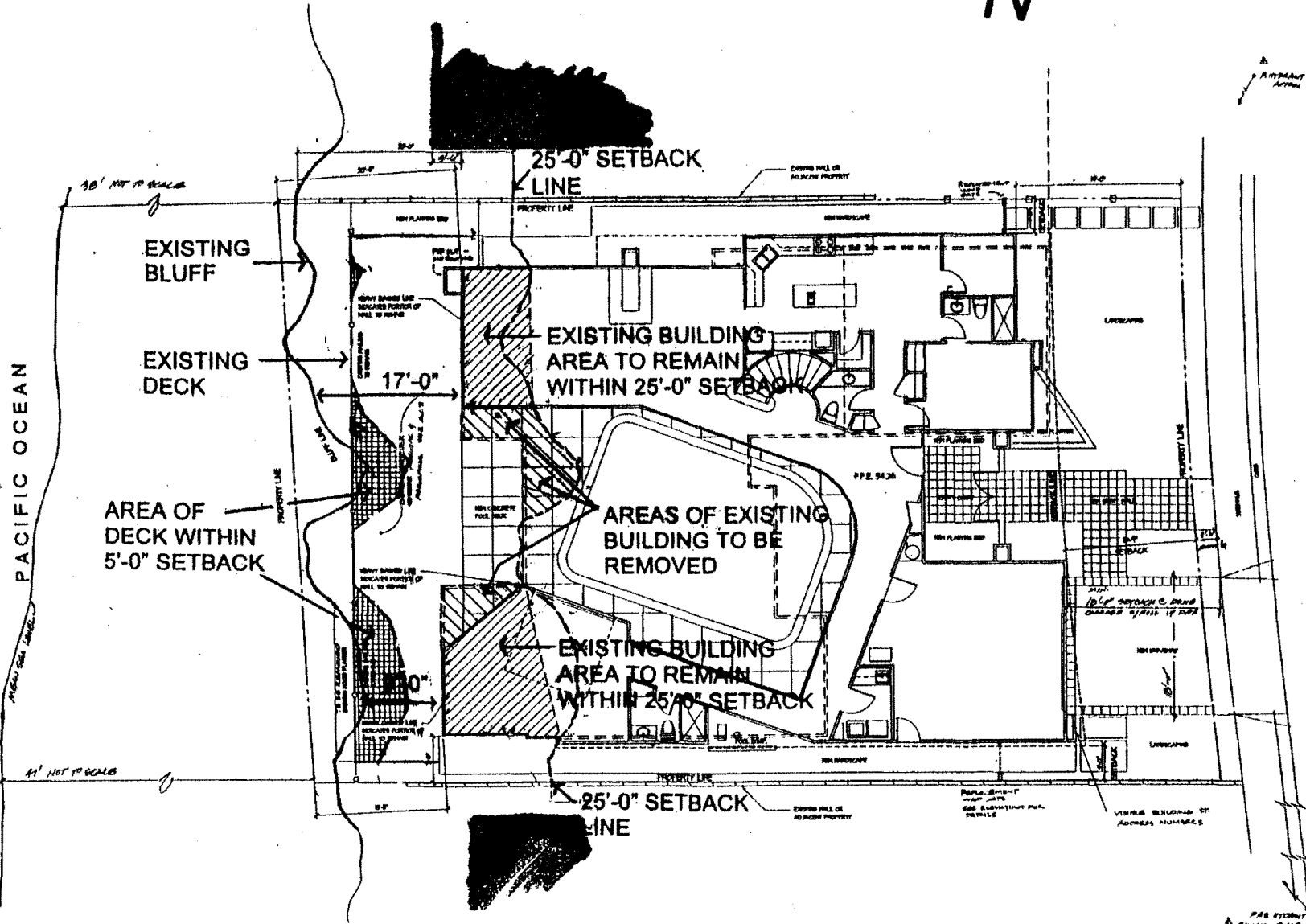
EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-00-52
Location Map
 California Coastal Commission



EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-00-52
Site Plan
 California Coastal Commission



ARCHITECTURAL SITE PLAN
 SCALE: 1/8" = 1'-0"

Prepared By:
 SCOTT BERRY
 Scott Berry Architects
 120 Broadway, Suite 100
 San Diego, CA 92102
 619-291-1488
 Fax: 619-291-1484
 Project Address:
 3850 CALUMET AVE
 LA JOLLA, CA 92037
 Project Name:
 FLEMING RESIDENCE
 Sheet Title:
 ARCHITECTURAL SITE PLAN

Revision 14	
Revision 13	
Revision 12	
Revision 11	
Revision 10	
Revision 9	
Revision 8	
Revision 7	
Revision 6	
Revision 5	
Revision 4	
Revision 3	
Revision 2	
Revision 1	
Revision 0	
Revision 0	7/13/79
Revision 0	5/21/79
Revision 0	5/20/79

Original Date: 5/20/79
 Sheet 1 of 12
 Date: 5/20/79

SCOTT BERRY ARCHITECTS

FLEMING RESIDENCE
 3850 CALUMET AVENUE
 LA JOLLA, CALIFORNIA 92037

DATE: 5/20/79
 SCALE: 1/8" = 1'-0"
 SHEET: 1001
 SHEET NAME: ARCHITECTURAL SITE PLAN

A1.0

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 3111 CAMINO DEL RIO NORTH, SUITE 200
 SAN DIEGO, CA 92108-1725
 619-21-8036



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 - California Coastal Commission
 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: Substantial demolition of 2,474 sq.ft. of an existing 2,785 sq.ft., one-story single family residence on a 7,216 sq.ft. ocean blufftop lot and the reconstruction of a new 4,329 sq.ft. residence on a 7,216 sq.ft. blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 5360 Calumet Avenue, La Jolla, San Diego, San Diego County.
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-00-52

DATE FILED: 5/2/00

DISTRICT: San Diego

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

EXHIBIT NO. 4
APPLICATION NO. A-6-LJS-00-52
Appeal Forms
California Coastal Commission

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

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

Date of local government's decision: 4/11/00

Local government's file number (if any): CDP/SCR #99-0324

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:

George Fleming
5360 Calumet Avenue
La Jolla, CA 92037

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.

San Diego Sierra Club
Attn: Joanne Pearson
3820 Ray Street
San Diego, CA 92104

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.

The Commission believes the City's interpretation of the nonconforming rights regulations must be questioned in this particular case. As cited above, nearly the entire residence is being demolished and, therefore, the City's interpretation and implementation of the "50% of the fair market value" criteria is questionable. Additionally, it could be argued that the proposed project as approved by the City increases the degree of nonconformity because it allows for retention of a larger nonconforming principal residence and increases its value with inadequate geologic blufftop setbacks; it extends the life of the existing nonconforming structure; and, it precludes options for future site development to be brought into conformance with the certified LCP.

Furthermore, the City's certified LCP requires that 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 coastal bluff and shoreline. Presently, there is no shoreline protection along the coastal bluff or the beach. Given that the project is not an alteration or repair, it must be brought into compliance with existing LUP policies, which call for a 40 ft. setback to be reduced to 25 ft. if supported by the findings of a geology report. Approval of this residential renovation, with retention of portions of the home within 25 feet of the bluff edge (10 feet at its closest point), will perpetuate the existence of the residence in a hazardous location. The development should be sited further inland for geologic safety and stability purposes such that shoreline protection will not be necessary in the future. In addition, it should be confirmed that the bluff edge being used for setback purposes has not been altered or modified and is the most landward point for geologic siting.

The certified LUP for La Jolla also contains numerous policies addressing the protection and improvement of visual access to the shoreline, the maintenance and provision of view corridors utilizing side yard setbacks to avoid a continuous wall effect, removal and/or trimming of vegetation in side yards to open up views toward the ocean, etc. Although the street is not designated as a view corridor within the certified LCP, the project site is located between the first coastal road and the sea. The City's conditions and findings do 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 and as such, is inconsistent with the policies of the certified LCP.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1723
(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

Name, mailing address and telephone number of appellant:

SAN DIEGO SIERRA CLUB
3820 RAY ST, SAN DIEGO, CA 92104
92103 (619) 299-1743
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF SAN DIEGO

2. Brief description of development being appealed: CDP/SCR 99-0324: Demolitions of a portion of an existing SCR and construction of a new 2 story SCR on a sensitive coastal bluff adjoining dedicated public parkland.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 5360 Calumet Ave. between Sea Ridge Dr. and Midway Dr. in La Jolla, CA, SAN DIEGO COUNTY
APN 415 02105

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: X _____
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A6-LTS-00-52

DATE FILED: 4/24/00

DISTRICT: San Diego

RECEIVED

APR 14 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

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

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: 4-11-00

7. Local government's file number (if any): CDA/SCR

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

GEORGE FLEMING
5360 CALUMET AVE
LA JOLLA, CA 92037

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

(1) WENDELL GAYMAN
8580 FERNDALE ST
SAN DIEGO, CA 92126

(2) LYNNE HELDER 40
SULLIVAN-WERTZ MCDADE + WALLACE
345 FOURTH AVE
S.D. 92101

(3) SCOTT BERNET ARCHITECTS
525 HAWTHORN
SAN DIEGO, CA ~~92101~~ 92101

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

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

Please see attached sheet.

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

SECTION V. Certification

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

Signed James H. Pearson
Appellant or Agent

Date 4-13-00

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

Signed _____
Appellant

Date _____



SIERRA
CLUB
FOUNDED 1892

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

San Diego Chapter

Serving the Environment in San Diego and Imperial Counties

REASONS FOR APPEAL: CDP/SCR 99-0324, FLEMING RESIDENCE

The City's approval raises issues of consistency with the shoreline hazard and visual resource policies of the certified LCP and La Jolla-La Jolla Shores Local Coastal Program Land Use Plan Addendum. It also raises issues of nonconforming rights for existing structures in hazard areas. The approval by the City would allow the demolition of a 2474 square foot portion of an existing 2785 sq. ft. single family residence, with retention and improvement of approximately 300 sq. ft. of existing nonconforming structure seaward of the 25' geologic setback line, as well as a deck, apparently pre-Coastal Act, seaward of the 5' setback line from the bluff edge. City action would permit construction of a 4329 sq. ft. structure on a 7,216 sq. ft. lot. The project would result in an almost wholly new structure with nonconforming geologic setbacks and structures in a geologic hazard area, thus reducing alternatives for future shoreline protection.

Where the LCP requires that any grading or new development maintain a 40' bluff edge setback that can be reduced to 25' based on a geology report, the City approval was based, in large part, on a 10 year old geologic site review (CDP 90-0110), where the City allowed a 15' encroachment for new construction into the 25' geologic setback. For the current project, the City has interpreted the Municipal Code to "allow existing development to be maintained within 25' of the coastal bluff provided it can be found that the integrity of the bluff will not be damaged." (Staff Report, Page 2, last paragraph).

The City required no current bluff edge determination, no discussion of the bluff instability on adjoining parcels, no demarcation of the 40' setback line, no project analysis of conformance with La Jolla LUP policies or stability assessment within the "area of demonstration" required by the La Jolla Plan (pp. 109-111). Thus, the findings cannot be made that the "site is stable enough to support the development with the proposed bluff edge setback...", that the project would minimize the alteration of natural landforms...and not result in undue risk from geologic and erosional forces,...or that the project would be "...sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources...."

City action failed to identify the coastal bluffs as dedicated public park land with the CDP required buffer area, or as a "coastal scenic resource" under CDP Finding D. Nor did City permit include a condition to secure, through a written deed restriction, a side yard setback running the full depth of the property in conformance with the La Jolla Plan, whose policies provide, in part, that "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."



