

CALIFORNIA COASTAL COMMISSION

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**Wed 25a**

Staff: LRO-SD
Staff Report: August 29, 2000
Hearing Date: September 12-15, 2000

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application No.: A-6-LJS-99-160-R

Applicant: Summit Resources, L.P.

Agents: Matthew Peterson

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.

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

Commission Action and Date: On May 10, 2000, the Commission approved the request for 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 with special conditions requiring removal of existing gunite on the bluff face and all portions of the existing residence located within 25 feet of the bluff edge, limitations on height of landscaping and design of sideyard fencing, the identification of all existing and proposed accessory structures, an amendment to this permit to repair or maintain any existing non-conforming accessory structures located within 25 feet of the bluff edge in the future, a prohibition against future maintenance of the existing non-conforming boathouse/cabana, a deed restriction for assumption of risk and an acknowledgement that issuance of the permit does not waive any public rights that may exist on the property.

Summary of Staff's Preliminary Recommendation:

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not have been reasonably presented at the hearing and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

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; San Diego District Staff Report on De Novo dated 4/26/00; Request for Reconsideration from Summit Resources dated May 22, 2000.

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 CA. Admin. Code 13109.2)

The grounds for reconsideration of a permit denial are provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

APPLICANT'S CONTENTIONS:

In the attached letter dated 5/22/00, the applicant contends that errors of fact and law occurred and that these errors have the potential of altering the Commission's decision. The applicant asserts the following in support of his contention: 1) The appeal applications were not properly prepared, signed or filed; 2) The Commission failed to take action on the question of Substantial Issue within the prescribed 49 days per Public Resources Code Sections 30621 and 30625; 3) In review of the project, the Commission disregarded the pipeline provisions of the new Land Development Code and "disregarded" the Certified LCP and Legal Non-conforming Use and Structure provisions of the La Jolla Shores Planned Development Ordinance (PDO) and, as such, the Commission's action resulted in a "de facto" amendment to the certified LCP; 4) The applicant was prevented from asserting these errors at the Commission hearing and that there were errors of fact and law pertaining to the geologic and soils conclusions contained in the Commission's staff report; 5) The Commission's action constituted "a taking and confiscation of the property right to remodel and expand the home"; 6) Some of the Commissioners who voted at the De Novo hearing were not present at the Substantial Issue hearing.

- I. **MOTION:** *I move that the Commission grant reconsideration of Coastal Development Permit No. A-6-LJS-99-160-R*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. *A-6-LJS-99-160-R* on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

II. **FINDINGS AND DECLARATIONS.**

A. **Project Description/History.** The applicant is requesting that the Commission reconsider its approval of the applicant's request for 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 blufftop lot. The project represented redevelopment of a site which was developed prior to the Coastal Act (1928). Due to the nature in which the site was developed, all of the existing structures possess some degree of non-conformity with the Coastal Act and corresponding policies of the City of San Diego certified Local Coastal Program (LCP) which would be applied to new development today. Additionally, the principal residence is approaching the 75 year life expectancy which the Commission and the local government has used to determine the appropriate geologic blufftop setbacks for new development.

The applicant proposes to demolish 4,745 sq.ft. of the inland portion of the residence and construct 9,415 sq.ft. of new floor area in one and two stories (the residence is a two-level home over basement). Approximately 5,215 sq.ft. of the seaward portion of the structure would be retained, although the applicant proposes to make interior renovations. In the portion of the residence that is located within 25 ft. from the bluff edge, an existing room at the northwest corner of the main level will be removed. The floor area is proposed to be retained and used as a deck. At the middle portion of the main level at the western elevation, an existing room is proposed to be removed. The floor area is proposed to remain as a "view deck". Also proposed is the removal of an existing roof "canopy" overhang at the southwest corner of the main level.

Other proposed changes to the existing portions of the residence as well as new construction include: a new swimming pool, spa, covered deck and landscaping and several accessory improvements located either on the blufftop or seaward of the bluff edge. The applicant proposes to remove an existing 225 sq.ft. detached bunk house located near the northern property line in the area usually reserved as the geologic setback area. 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 blufftop lot. There is an 11 ft. high, 100-foot long seawall located on the beach some distance seaward of the bluff. The majority of the coastal bluff itself 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 at or near the gunite coated face of the bluff. Because the entire bluff face is covered with gunite, it is hard to determine the location of the actual bluff edge (i.e., the natural bluff underneath the gunite). Thus, the actual distance between the existing residence and the existing bluff edge has not been determined. The area between the toe of the gunited bluff and the existing seawall is filled and contains an existing 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.

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 south of 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 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.

B. Reconsideration Request. The applicant's request for reconsideration (ref. Exhibit No. 11) contends that errors of fact and law occurred which have the potential for altering the Commission's decision. The applicant has generally cited six points of contention:

1. "...Although the Commission does have appellate jurisdiction over local decisions pursuant to Regulations §13110, et seq. and Public Resources Code §30603, the two appeals were not properly prepared, signed or filed, and as such,

are invalid. Consequently, the City's approval was final and was not subject to the Commission's appellate review.

The invalid appeals which were filed concerning the Project also violated Public Resources Code §30603, et seq. and Regulations §13110, as well as the procedural due process rights and rights of equal protection of the State and Federal Constitutions...."

Specifically, the applicant contends that local Commission staff determined independently that the proposed development warranted review by the Commission, prepared the "reasons for appeal" and obtained authorization from Commissioner Wan and Daniels to file the appeals on 12/21/99. The applicant further contends that staff removed a signed photocopied signature page of a blank appeal form containing Commissioner Wan and Daniels signatures and asserts that the Commission's procedures of preparing Commissioner signed appeals is invalid.

Both of these arguments were presented to the Commission before it acted on the de novo permit application. Therefore, neither argument constitutes new evidence under Coastal Act Section 30627. Further, neither of these arguments demonstrates that there was an error of law or fact.

With respect to the Commission's procedures for preparation of Commissioner appeals, the Coastal Act authorizes the Commission to have a staff to assist it with carrying out the provisions of the Act. The Commission has given staff the responsibility to review local government notices of final action on permit decisions for consistency with the applicable LCP and to notify the Commission of projects that appear to be inconsistent with an LCP. If two Commissioners authorize an appeal of a local government action, the staff prepares an appeal form that identifies the basis for the appeal. This is similar to, and consistent with, staff's responsibility to draft staff reports that are presented to the Commission for adoption as findings. The Commissioners do not individually draft findings in support of the Commission's action; this is a responsibility properly delegated to the staff. Similarly, appeal forms that contain all of the information needed to appeal a local government permit decision are prepared by staff. When an individual Commissioner authorizes an appeal of a local action, he/she either signs the proposed appeal application himself/herself, or authorizes Commission staff, as his/her agent, to use a pre-signed blank form. (The Commissioners have the option to pre-sign blank appeal forms that are then stored in the Commission's San Francisco office.) The use of the pre-signed forms is consistent with California law, which provides that individuals can authorize another person to sign their name or use their signature. In this case, Commissioners Wan and Daniels authorized use of their pre-signed forms on December 21, 1999 and the completed appeals were filed in the San Diego office on December 21, 1999. Therefore, no error of fact or law occurred as it relates to the Commission's appeal application procedures.

2. "The Commission failed to resolve the Substantial Issue question within the 49-day period as mandated by Public Resources Code Section 30621 and 30625. The

Commission's act of opening and continuing the Agenda matter on January 12, 2000 without resolving the Substantial Issue question did not comply with Section 30621 (see Coronado Yacht Club. V. California Coastal Commission (1993) 13 Cal.App.4th 860). It was not until February 15, 2000 over 56 days from the date on which the appeals were filed that the Commission (on the basis of the invalid appeals) made a determination that the appeals raised a Substantial Issue and set the appeals for a de novo hearing. The failure of the Commission to find Substantial Issue within the requisite 49-days period is a violation of Public Resources Code."

The subject appeal was filed on 12/21/99. The California Code of Regulations, states the following:

13112 Effect of Appeal

(a) Upon receipt in the Commission office of a timely appeal by a qualified appellant, the executive director of the Commission shall notify the permit applicant and the affected local government that the operation and effect of the development permit has been stayed pending Commission action on the appeal by the Commission as required by Public Resources Code Section 30623. Upon receipt of a Notice of Appeal the local government shall refrain from issuing a development permit for the proposed development and shall, within five (5) working days, deliver to the executive director all relevant documents and materials used by the local government in its consideration of the coastal development permit application. If the Commission fails to receive the documents and materials, the Commission shall set the matter for hearing and the hearing shall be left open until all relevant materials are received. [Emphasis added]

The appeal was filed by Commissioners Wan and Daniels on 12/21/99. The Commission Notification of Appeal was sent to the City on 12/22/99 requesting that the City provide its record within five working days. (The record from the City was not received at the Commission's office until 1/10/00.) In order for this matter to be heard at the January Commission Meeting, a report had to be completed for reproduction and mailing by 12/23/00. Because the record had not been received from the City pursuant to the California Code of Regulations, staff requested that the Commission open the hearing on Substantial Issue and continue it to subsequent hearing. As such, the hearing on Substantial Issue was opened at the 1/12/00 Commission hearing. Thus, an error of fact or law has not occurred with respect to scheduling the hearing on Substantial Issue for Commission action.

3. "Staff analyzed the project for the Hearing of Substantial Issue Determination and at the De Novo Hearing disregarding the pipeline provisions of the new Land Development Code and disregarding the Certified LCP and Legal Non-conforming Use and Structure provisions of the La Jolla Shores PDO. The Commission then utilized a new subjective and arbitrary definition of what Staff believed should be

considered as alterations, modifications and repairs as permitted by the PDO. In so doing, Staff classified the Project as "New Development" which in some unexplained way mandated the complete removal of the legal nonconforming portions of the home including the portion of the home that the California Coastal Commission approved in 1977". [...]

The applicant further contends that the project was designed consistent with the standards of the LCP that were in effect at the time the project was going through the City's review process and that the staff applied new standards which exceeded its appellate and planning authority jurisdiction by ignoring the pipeline provisions of the new Land Development Code which imposed a "de facto" LCP amendment on the City of San Diego. The applicant further contends that that if new requirements were to be imposed on the project that this should have been done as an amendment to the certified LCP.

In response to the first contention, although the staff report containing the findings on Substantial Issue stated that the new Land Development Code might be used as the standard of review of the project if it were to be heard as de novo; the Commission subsequently acknowledged the pipeline provisions of the City's certified LCP and in fact, reviewed the findings for the de novo permit using the City's former municipal code as the standards of review. As stated in the de novo report dated 4/26/00:

"The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores Land Use Plan (LUP), La Jolla Shores Planned District Ordinance (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)." [Emphasis added]

As such, the applicants allegation that Commission staff used the wrong standard of review or ignored the pipeline provisions is inaccurate.

With regard to the second contention that the Commission incorrectly imposed a "new and subjective and arbitrary definition" of what was considered as "alterations, modifications and repairs as permitted by the PDO", and that staff's classification of the project as "new development" is inaccurate, the staff report for recommendation on appeal dated 4/26/00 contained extensive findings as to why the Commission found the

proposed project was not a "repair, alteration or improvement" and why the project should be regarded as new development.

In response to this allegation, in its findings for approval with special conditions, the Commission found that the La Jolla PDO does not define the terms "improvements," "repairs," or "alteration" and that these terms should be interpreted in a manner that is consistent with the purposes of the Coastal Act and the LCP. The findings of the report then cite the La Jolla Shores Planned District Ordinance Section 103.0300 which states:

"The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain . . .

Thus, the goal of the LCP is to protect the natural bluffs and beaches of the La Jolla Shores area. In light of this goal, the Commission finds that the terms "improvements" "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. This interpretation is supported by other provisions of the PDO, which use the terms "remodel" and "demolition" as separate terms from "alteration," suggesting that each of these terms have different meanings (see PDO section 103.0302.3, requiring a permit for "the erection of any new building or structure, or remodeling, alteration, addition, or demolition of any existing building or structure.")"

As such, the Commission in approval of the project found that as proposed, with approximately 4,745 sq.ft. to be demolished and approximately 9,415 sq.ft. of new area to be constructed, that the proposed development was so extensive that it did not constitute repairs, improvements, or alterations within the meaning of this ordinance. Rather, the work amounts to a reconstruction of the existing residence.

The staff report further contained an analysis of whether the project increased the degree of nonconformity and included, in part, the following:

"The proposed project also increases the degree of nonconformity of the existing structure. 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 substantial demolition and reconstruction of an essentially new development in the same nonconforming location when only the nonconforming portion is retained and renovated rather than demolished, the line of development will never be moved inland. [...] 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 which is at the end of the 75 year lifespan for a typical residence;
3. It precludes option for future site development to be brought into conformance with the certified LCP;
4. It perpetuates retention of the nonconforming gunite on the bluff face which could be removed if the replacement structure is moved inland.

Thus, the proposed project does not constitute "improvements, 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.[....]"

The Commission further found that the proposed project was inconsistent with the LCP unless the residence and structures were brought into conformance with the current LCP requirements regardless of whether the demolition involves less than 50 percent of exterior walls. The applicable LCP includes the La Jolla/La Jolla Shores LCP Land Use Plan, the La Jolla /La Jolla Shores LCP Land Use Plan, the La Jolla Shores Planned District Ordinance (commencing with Section 101.0300 of the Municipal Code) and the Sensitive Coastal Resource Overlay Zone (commencing with Section 101.0480 of the Municipal Code). The Commission found that the proposed development was inconsistent with the purpose and intent of the La Jolla Shores Planned District which states:

"The public health, safety and welfare require that property in La Jolla Shores shall be protected from impairment in value and that the distinctive residential character and the open seascape orientation of the La Jolla Shores Area shall be retained and enhanced.

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast...."

The Commission also found that 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.

As stated in the findings, in the review of discretionary permits such as the coastal development permit, the decision maker (i.e., in this case, the City of San Diego) is

required to make specific findings which are not superceded by an assertion that nonconforming rights exist on a property or with a structure. The Commission found that the proposed development cannot be found consistent with the City's Sensitive Coastal Resource (SCR) permit which includes findings, in part, that require that the proposed development will be sited and designed to minimize adverse impacts upon sensitive coastal resources and environmentally sensitive areas. The findings also require that proposed development will minimize the alteration of natural landforms nor contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

The Commission specifically found that the extent of the proposed work would allow a significant expansion and renovation that would extend the economic life of the residence for another 75 years which essentially results in an entirely new residence. As such, the Commission determined that the residence must comply with the current setbacks and standards and therefore comply with the geologic setbacks requirements, as well as the requirements concerning protection of the bluffs by removal of the existing gunite. The gunite could be removed if the residence is relocated further inland to comply with the setback requirements that exist for new development today. The Commission found that redevelopment of the site in the manner proposed was 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 could not be made.

In conclusion, the findings of the staff report fully addressed the issues of whether or not the proposed development was considered a repair, alteration or improvement vs. new development and explained the rationale for the Commission's decision. In addition, the Commission found that the proposed development was not an "alteration, modification or repair" as permitted by the PDO and that the development was essentially "new development". Furthermore, the Commission applied the correct standards and policies to the project in its review and action on the proposed development. As such, the Commission's approval of the subject development with special conditions did not result in a "de facto LCP amendment" to the Certified LCP and thus an error of fact or law has not occurred.

4. "The Applicant was prevented from asserting these errors of law at the public hearing because of the Commission's hearing procedures. The discussion by the Commissioners, which revealed the true and subjective nature of the Commission's intent to apply unwritten stringent new "policy" and arbitrary limits, occurred after the close of the public testimony portion of the hearing. The Commission's hearing procedures prevented members of the public, including my representatives, from addressing the Commission or participating in any discussion by the Commissioners after the public testimony portion of the hearing was closed."

Prior to the hearing, the applicant was given a copy of the written staff report detailing the staff recommendation. The staff report explained that because the proposed development involved a substantial demolition and reconstruction of an existing non-

conforming structure with proposed retention of portions of the residence that were within the geologic blufftop setback area, the development was not a "repair, alteration or improvement" to a non-conforming structure and was essentially "new development".

The project was reviewed for consistency with the certified LCP which consisted of the La Jolla Shores Planned District Ordinance and the City's former implementation plan, the Municipal Code. In addition, the report explained that since the proposed development is located between the first public roadway (Spindrift Drive) and the sea, Coastal Act Section 30604(c) requires that the development must be found to be in conformity with the public access and recreation policies of the Coastal Act. The staff report then analyzed the project for consistency with the City's LCP and the public access and recreational policies of the Coastal Act. The applicant was afforded an opportunity to speak at the hearing and, in fact, the representative made formal presentations at the public hearing. Since the applicant had been informed of the Commission staff's application of the Certified City of San Diego LCP and the public access and recreational policies of the Coastal Act in the staff report, nothing precluded the applicant or his agent from addressing these concerns at the hearing. Furthermore, the Commission discussion after the close of the public comment portion of the hearing did not suggest that the Commission was applying any standard other than those described in the staff report. In addition, it is common for the Commission to discuss aspects of the public hearing after the public hearing has been closed. This is part of the hearing process. Thus, no errors of law or fact occurred.

The applicant further contends,

"There were numerous errors and non-supported Geologic and Soils conclusions including a non-supported and illegally produced bluff edge determination contained within the Staff Report. These errors of fact and analysis were utilized by the Commission in adopting the findings. These errors were not responded to by Staff. The record upon which the Commission relied for its denial was inaccurate, incomplete and not based upon substantial evidence in the record."

The applicant contends that errors of fact occurred in the staff report and that those errors may have misled the Commission. The applicant specifically indicates that the staff report included a "non supported and illegally produced bluff edge determination" ; however, the applicant is erroneously referring to an exhibit (Exhibit No. 20) contained in the staff report which is identified as "Approximate Location of Existing Bluff Edge". The Commission staff did not purport that the exhibit was a surveyed description of the actual bluff edge, but rather, as titled, an "approximate" location of the bluff edge. Furthermore, Special Condition 1(a), of the staff report further addressed this issue.

[...]

- 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 existing edge of bluff, shown on Exhibit #20. The bluff edge

cannot presently be determined accurately where it lies beneath the existing gunite or residential structure. Determination of the precise location of the bluff edge requires further examination, either through use of any crawl space that may exist beneath the present structure, or during demolition, following removal of the gunite and/or the existing structures.

As such, it is clear that the bluff edge depicted on Exhibit No. 20 was not intended to represent the *exact* bluff edge and, as such, the applicant's allegations are incorrect. The Commission considered each of the factual assertions that the applicant supplied in advance of and during the public hearing, and concluded that the facts as set forth in the staff report were accurate in terms of its finding for approval of the proposed development with special conditions which required final revised plans for the removal or relocation of all portions of the residence that were sited any closer than 25 ft. from the existing bluff edge of bluff as shown on Exhibit No. 20 in the staff report. Thus, the Commission did not make any errors of fact which would have the potential for altering the initial decision of the Commission.

5. "...The effective denial of the Coastal Permit has damaged the property for some unidentified public benefit without the payment of just compensation. In addition, the effective denial is an unreasonable restriction of land use which bears absolutely no relationship or "nexus" to the impacts of this existing Project."

"The Commission's effective denial of the Project has resulted in a taking and confiscation of my property right to remodel and expand the home as permitted by the Certified LCP, thereby depriving me of the reasonable and valuable use of my property."

The Commission's action did not deny the subject project; it approved the project with special conditions. As such, the applicant has not been denied reasonable use of his property. The findings in support of the Commission's decision explain in detail the basis for approving the proposed project and the basis for the special conditions which were imposed on the proposed development. The findings demonstrate that the approval with conditions was based upon the project's adverse impacts, and its inconsistencies with the certified LCP. Further, the Commission's decision did not result in a taking of the subject property. The Commission found that the retention of the portions of the residence within the 25 ft. geologic blufftop setback area and the gunite on the bluff face of the subject property were inconsistent with the certified LCP. This did not result in a denial of all reasonable economic use of the property or interfere with investment backed expectations. With the condition applied by the Commission, the applicant could still construct the same size home proposed, only it must be sited 25 feet from the edge of the bluff. Thus, the Commission finds that it did not make any error of law or fact in this regard.

6. "After the close of the public testimony portion of the hearing, it was disclosed by at least one Commissioner that he/she was seeing this matter "for the first time"

and did not have the benefit or any knowledge from the prior hearings that had taken place concerning the appeal. We note that the Commissioners at the initial hearing to determine substantial issue, at the hearing which resulted in a split 5-5 vote to approve per applicant on April 10, 2000, and at the Wednesday, May 10, 2000 hearing were not the same. Yet at no point did any of the Commissioners abstain from participating in the appeal hearings despite the fact that many of them at the final hearing on May 10, 2000 obviously had not listened to the prior hearing tapes or otherwise reviewed the transcripts to bring them up to speed on the status of the appeals. We believe this is clear violation of law and a procedural due process violation. Since this disclosure was not presented until after the public testimony portion of the hearing was closed, my representatives did not have an opportunity to raise this issue at the hearing.”

There is no requirement in the statute or otherwise that the Commissioners who participated in the Substantial Issue hearing be present at any future de novo hearing on a particular permit item. Each Commissioner (and their alternates) receive an agenda packet in the mail of all the permit items scheduled to be reviewed for the meeting in advance of the meeting and, as such, are aware of the particular issues for various projects, in advance of the meeting. With regard to attendance at the meetings by the same Commissioners, it is not possible that the same Commissioners be present for all of the hearings for any one particular permit item if it is brought back before the Commission at several different hearings, such as the subject permit. In the subject case, the hearing for the subject appeal was first opened and continued at the 1/12/00 Commission meeting. Substantial Issue was found at the February 15, 2000 meeting. The de novo permit was originally scheduled for Commission review at its April 10th meeting. After beginning the public hearing and a discussion of the project, the Commission ultimately voted to continue the matter to the May 9-12, 2000 Commission meeting. Again, there is no requirement that the Commissioners who were present at the April 10, 2000 meeting be present at the May 9-12, 2000 meeting. Furthermore, this is the reason that alternates are selected for each Commissioner in the event that a Commissioner cannot attend a particular meeting. As such, no errors of law or fact have occurred as a result of the Commission's hearing procedures.

In summary, the Commission finds that the applicant has not presented any new relevant facts or information that could not have been presented at the original hearing. In addition, the applicant has not demonstrated any error of fact or law that has the potential for altering the Commission's previous decision. Therefore, the reconsideration request is denied.

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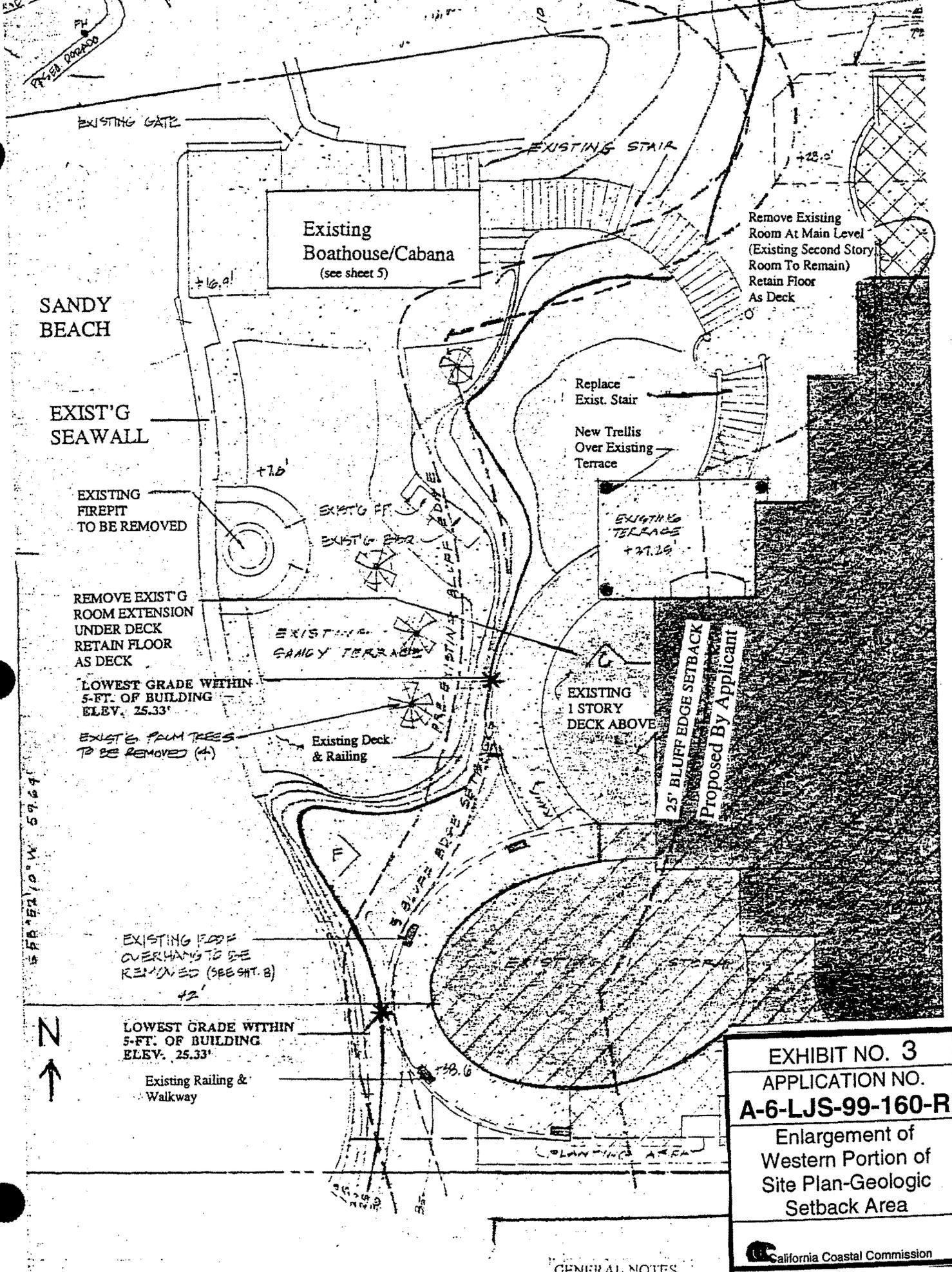
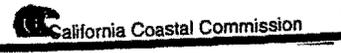


EXHIBIT NO. 3
APPLICATION NO.
A-6-LJS-99-160-R
Enlargement of
Western Portion of
Site Plan-Geologic
Setback Area



GENERAL NOTES

Summit Resources, LP
One Market Place, San Diego, 92101
(619) 231-3800 Fax: (619) 696-7100

May 22, 2000

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

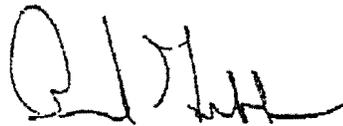
Re: Application No. A-6-LJS-99-160 - Request for Reconsideration
(1900 Spindrift Drive, La Jolla, CA 92037)

Dear Mr. Douglas:

Pursuant to the California Coastal Commission Regulation Section No. 13109.1 et seq., please accept this as my Request for Reconsideration of the denial of the above-referenced Permit concerning the Coastal Commission's action on May 10, 2000. The justification for the Request for Reconsideration is attached heretc. I would request that this matter be set and heard by the Commission at the June 2000 meeting.

Sincerely,

SUMMIT RESOURCES, LP



Richard V. Gibbons
Executive Vice President

RVG:h

Enclosure

- cc: Chairperson Sara Wan
- Members of the California Coastal Commission
- Daniel A. Olivas, Esq., Deputy Attorney General
- Chuck Damm, Senior Deputy Director
- Ralph Faust, Chief Legal Counsel
- Amy Roach, Esq., Staff Counsel
- Laurinda Owens, Coastal Planner
- Matthew A. Peterson, Esq., Peterson & Price, APC

EXHIBIT NO. 4
APPLICATION NO. A-6-LJS-99-160-R
Applicant's Request for Reconsideration (Page 1 of 91)
 California Coastal Commission

Date: May 22, 2000

Summit Resources, LP
1900 Spindrift
Application No. A-6-LJS-99-160

REQUEST FOR RECONSIDERATION

California Coastal Commission Regulation §13109.1 et seq. deals with the topic of reconsideration. Section 13109.2 states that:

"Anytime within 30 days following a final vote upon an application for a coastal development permit, the applicant of record may request the Regional Commission to grant a reconsideration of the denial of an application for a coastal development permit, or of any term or condition of a coastal development permit which has been granted. This request shall be in writing and shall be received by the Executive Director of the Commission within 30 days of the final vote."

The Coastal Commission denied the Project on May 10, 2000.

The grounds for reconsideration of a permit action are provided in Public Resources Code § 30627 that states in part:

"The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error in fact or law has occurred which has the potential of altering the initial decision."

The purpose of this letter is to request that the Commission reconsider its denial.

ERRORS OF FACT AND LAW

After certification of an LOP, the Act provides for limited appeals to the Commission for certain local government actions concerning Coastal Development permits. For developments approved by the City, which are located between the ocean and the first

public road parallel to the ocean, the grounds for an appeal to the Commission are contained within Public Resources Code §30603 and Regulations §13111. Appeals are limited to an allegation that the development does not conform to the standards set forth in the Certified LCP or the Public Access Policies of the Act.

1. The Appeals are Invalid

Following the City of San Diego Planning Commission's unanimous approval of the Project, as set forth in attached Resolution No. 2884-1-PC, on or about December 21, 1999, the Commission Staff purportedly prepared filed two separate, albeit identical, appeals challenging the City's approval of the Project.

Although the Commission does have appellate jurisdiction over local decisions pursuant to Regulations §13110, *et seq.* and Public Resources Code §30603, the two ~~appeals were not properly prepared, signed or filed, and as such, are invalid.~~ Consequently, the City's approval was final and was not subject to the Commission's appellate review.

The invalid appeals which were filed concerning the Project also violated Public Resources Code §30603, *et seq.* and Regulations §13110, as well as the procedural due process rights and rights of equal protection under the State and Federal Constitutions. I believe the following procedure was utilized:

(a) The local Commission Staff, Laurinda Owens, Coastal Planner ("Owens") on her own determined that the unanimously approved and unopposed home

warranted a review by the Commission.

(b) Owens then prepared the "reasons for appeal" and Staff claims that Chuck Damm on December 21, 1999 got authorization from Wan and Daniels to file the appeals.

(c) That same day, Staff removed from a drawer either a signed or photocopied signature page of a blank appeal form(s) containing Wan and Daniels' signature(s). Staff then apparently hand wrote the dates on the signature page(s), "slip sheeted" or otherwise attached the signature page(s) to the appeal package which Staff prepared.

(d) The Commission Staff then utilized a photocopy of the exact same reasons (or justifications) of appeal for both of the Commissioners' appeal forms. The Commission Staff then purportedly assembled the appeal and filed it at the local Commission office on December 21, 1999 and assigned an appeal number to the Case, to wit: Application No. 6-LJS-99-160. Effectively, this was a Staff Appeal, not two (2) California Coastal Commissioners' Appeals.

i do not believe that the appeal procedures utilized comply with the Public Resources Code or the Regulations sections as referenced above. These procedural and substantive due process violations clearly constitute an error of law. Further, based upon my lawyer's investigation, it would appear that this invalid and unlawful appeal procedure is widely utilized by the Commission Staff.

**2. The Commission Failed to Act Within the Mandated Time Frame
Concerning the Determination of Substantial Issue**

The Commission failed to resolve the Substantial Issue question within the 49-day period as mandated by Public Resources Code §30621 and §30625. The Commission's act of opening and continuing the Agenda matter on January 12, 2000 without resolving the Substantial Issue question did not comply with §30621 (see Coronado Yacht Club v. California Coastal Commission (1993) 13 Cal.App.4th 860). It was not until February 15, 2000 over 56 days from the date on which the appeals were filed that the Commission (on the basis of the invalid appeals) made a determination that the appeals raised a Substantial Issue and set the appeals for a de novo hearing. The failure of the Commission to find Substantial Issue within the requisite 49-day period is a violation of Public Resources Code.

3. Improper Standard of Review on Appeal

Staff analyzed the project both for the Hearing of Substantial Issue Determination and at the De Novo Hearing disregarding the pipeline provisions of the new Land Development Code and disregarding the Certified LCP and Legal Non-conforming Use and Structure provision of the La Jolla Shores PDO. The Commission then utilized a new subjective and arbitrary definition of what Staff believed should be considered as alterations, modifications and repairs as permitted by the PDO. In so doing, Staff classified the Project as "New Development" which in some unexplained

way mandated the complete removal of the legal nonconforming portions of the home including the portion of the home that the California Coastal Commission approved in 1977. As submitted, the Project is "permitted" by the LCP and was designed in accordance with all of the standards and regulations of the LCP and the various Implementing Ordinances. The Commission's use of the subjective criteria new definitions and unwritten "policies" in justifying its denial of the Project constituted an error of law.

In declaring its intent to apply new standards and unwritten policies to the Project after the close of the public testimony portion of the hearing (irregardless of LCP policies to the contrary), the Commission exceeded both its appellate and planning authority jurisdiction by ignoring the pipeline provisions of the new Land Development Code and imposed a "de facto" LCP amendment on the City of San Diego.

The appropriate vehicle for imposing new requirements (or additional restrictions) that deviate from a Certified LCP is to process and approve an LCP Amendment. Under Section 30500(c) of the California Coastal Act ("Coastal Act"), it is the local government, in this case, the City of San Diego, which determines the precise content of an LCP, subject to Commission certification. Under Section 30514(a) of the Coastal Act, that LCP can be amended, but such an amendment can only be initiated by the local government (in this case, the City of San Diego). The City has not proposed an amendment that would justify the Commission's denial of the Project. Moreover, even if the Commission possessed the lawful authority to initiate an LCP

Amendment of its own volition, which it does not, it failed to conform to the public participation, public notice and public hearing requirements of Section 30503 of the Coastal Act.

The Commission's de facto LCP Amendment is a clear error of law. If the Commission believes an amendment to an LCP is necessary to prevent homeowners from repairing, altering and modifying the legal non-conforming portions of the structures as currently allowed by the LCP, the procedure for accomplishing such an amendment is set forth in Section 30519.5 of the Coastal Act. The Commission cannot unilaterally amend a Certified LCP or lawfully take action to effectively deny a permit based upon unwritten "policy."

4. No Chance to Respond at the Hearing

The Applicant was prevented from asserting these errors of law at the public hearing because of the Commission's hearing procedures. The discussion by Commissioners, which revealed the true and subjective nature of the Commission's intent to apply unwritten stringent new "policy" and arbitrary limits, occurred after the close of the public testimony portion of the hearing. The Commission's hearing procedures prevented members of the public, including my representatives, from addressing the Commission or participating in any discussion by the Commissioners after the public testimony portion of the hearing was closed.

There were numerous errors and non-supported Geologic and Soils conclusions including a non-supported and illegally produced bluff edge determination contained within the Staff Report. These errors of fact and analysis were utilized by the Commission in adopting the findings. These errors were not responded to by Staff. The record upon which the Commission relied for its denial was inaccurate, incomplete, and not based upon substantial evidence in the record.

5. A Taking Has Occurred

There are also issues associated with the Commission's denial that clearly violate certain constitutionally mandated protections; to wit, equal protection and due process of law.

Public Resources Code § 30010 states in part:

"The Legislature hereby finds and declares that this division is not intended and shall not be construed as authorizing the Commission for a governing body or a local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore."

The effective denial of the Coastal Permit has damaged the property for some unidentified public benefit without the payment of just compensation. In addition, the effective denial is an unreasonable restriction of land use which bears absolutely no relationship or "nexus" to the impacts of this existing Project.

The Commission's effective denial of the Project has resulted in a taking and confiscation of my property right to remodel and expand the home as permitted by the

Certified LCP, thereby depriving me of the reasonable and valuable use of the property.

6. Improper Hearing Procedures

After the close of the public testimony portion of the hearing, it was disclosed by at least one Commissioner that he/she was seeing this matter "for the first time" and did not have the benefit or any knowledge from the prior hearings that had taken place concerning the appeal. We note that the Commissioners at the initial hearing to determine substantial issue, at the hearing which resulted in a split 5-5 vote to approve per applicant on April 10, 2000, and at the Wednesday, May 10, 2000 hearing were not the same. Yet at no point did any of the Commissioners abstain from participating in the appeal hearings despite the fact that many of them at the final hearing on May 10, 2000 obviously had not listened to the prior hearing tapes or otherwise reviewed the transcripts to bring them up to speed on the status of the appeals. We believe this is clear violation of law and a procedural due process violation. Since this disclosure was not presented until after the public testimony portion of the hearing was closed, my representatives did not have an opportunity to raise this issue at the hearing.

G:\wp14196\004\req. for reconsideration

PLANNING COMMISSION
RESOLUTION NO. 2884-1-PC
LA JOLLA SHORES PLANNED DISTRICT/COASTAL DEVELOPMENT AND
SENSITIVE COASTAL RESOURCE PERMITS NO. 99-0007(MMRP)
1900 SPINDRIFT

WHEREAS, SUMMIT RESOURCES, L.P., Owner/Permittee, filed an application with the City of San Diego for a permit to remodel an existing 9,960 square-foot residence; demolishing 4,745 square-feet and adding 9,415 square-feet to result in a 14,630 square-foot residence (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 99-0007, on portions of a 0.56 acre site and;

WHEREAS, the project site is located at 1900 Spindrift drive at the intersection of Saint Louis Terrace in the SF zone of the La Jolla Shores Planned District and within the boundaries of the La Jolla Community Plan area and;

WHEREAS, the project site is legally described as a Portion of Pueblo Lot 1285, Map No. 1762, and;

WHEREAS, on December 2, 1999, the PLANNING COMMISSION of the City of San Diego considered LJS/CDP/SCR Permit No. 99-0007 pursuant to Sections 103.0300, 111.1201, 101.0480 and 111.0508 of the Municipal Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the PLANNING COMMISSION of the City of San Diego as follows:

That the PLANNING COMMISSION adopts the following written Findings, dated December 2, 1999.

FINDINGS:

LA JOLLA SHORES (PDO) - (MUNICIPAL CODE SECTION 103.0300)

- A. THE PROPOSED CONSTRUCTION AND USE OF THIS SITE MEETS ALL TECHNICAL REQUIREMENTS SET FORTH IN THE ADOPTED LA JOLLA SHORES PLANNED DISTRICT ORDINANCE AND THE LA JOLLA SHORES DESIGN MANUAL RELATING TO ARCHITECTURAL STYLE, VARIETY AND DIVERSITY IN DESIGN, HEIGHT, LOT COVERAGE, LANDSCAPING, ORIGINALITY, AND NO VARIANCES ARE REQUIRED.

The subject 0.56 acre site is existing fully developed with a 9,960 square-foot single-family residence, accessory bunk house, boat house, guest quarters and other accessory improvements. The project site is within a neighborhood of diverse lot configurations and diverse architectural styles. The project site is on a bluff top over the Pacific Ocean and surrounded on the remaining three sides by

similar development. The existing house dates to 1928 and was designed and resided in by persons of significance and, although the structure and site are environmentally historically significant, the property has not been designated by the Historical Sites Board.

The project proposes to demolish 4,745 square-feet of existing improvements and construct 9,415 square-feet of new improvements resulting in a total floor area of 14,630 square-feet and a Floor Area Ratio of 0.58 and a building height of 28-feet 8-inches. The existing architectural style is being modified with a sense of retention of some of the existing style. Materials utilized for the roof, walls, windows and trim are compatible with the neighborhood, as specified in the La Jolla Planned District Ordinance and consistent with the existing architectural structure. The La Jolla Planned District Advisory Board has reviewed the project and found that it conformed to the PDO and the La Jolla Shores Design Manual.

B. THE PROPOSED CONSTRUCTION AND USE OF THIS SITE IS CONSISTENT WITH THE LA JOLLA SHORES PLANNED DISTRICT ORDINANCE WHICH STATES THAT PUBLIC VIEWS FROM PUBLIC RIGHTS-OF-WAY AND PUBLIC PLACES SHALL BE PROTECTED.

The project site is on the coastal bluff overlooking the Pacific Ocean and is opposite the intersection of St. Louis Terrace which intersects with Spindrift Drive. The site is occupied with existing improvements of a single-family residence and accessory structures on the 24,461 square-foot lot. The property is surrounded by similar development on both sides and has an overheight hedge on the front propertyline. The site is not shown for coastal view on the La Jolla/ La Jolla Shores Local Coastal Program and is not generally accepted as providing any existing views to the coast or ocean from any adjoining public rights-of-ways. The partial demolition and new construction will not alter any existing public views or impact public places.

C. THE PROPOSED USE WILL NOT ADVERSELY AFFECT THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LA JOLLA COMMUNITY PLAN OR THE LA JOLLA SHORES PRECISE PLAN.

The demolition of 4,745 square-feet of an existing 9,960 square-foot single-family home and new construction of 9,415 square-feet of floor area to result in a total of 14,630 square-feet on a 24,461 square-foot lot, will not adversely affect the City of San Diego Progress Guide and General Plan or the La Jolla Community Plan and La Jolla Shores Precise Plan that designate this site for single-family use consistent with the design as proposed and as sited.

COASTAL DEVELOPMENT (Municipal Code Section 105.0202)

A. THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY

EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE GENERAL PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN AN ADOPTED LCP LAND USE PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.

The proposed development will result in the partial demolition of an existing single-family detached residence and accessory structures and the addition of new floor area and improvements to a 24,461 square-foot SF zoned lot located at 1900 Spindrift Drive overlooking the Pacific Ocean from atop a 22-foot high coastal bluff. No existing physical public accessway or proposed accessway exists or is proposed within the La Jolla/La Jolla Shores Local Coastal Program and this Program does not identify any public views or view corridors across this property. This property, by the shape and configuration of the coastline to the north, south and west, affords views of other bluff, beach and coastal improvements and this property is visible from these other locations as well, however, the improvements as ultimately to be built-out, will become the view from these points but will not be in conflict with the provisions of these plans and programs.

B. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT IDENTIFIED MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE AREAS, OR ARCHAEOLOGICAL OR PALEONTOLOGICAL RESOURCES.

This 0.56 acre lot was developed 70 years ago with a single-family residence that has been modified a number of times in the intervening years. The current project proposes a partial demolition and new construction to result in a 14, 630 square-foot residence. The site has an existing seawall, boat house and other minor improvements on the ocean bluffs and lower beach areas of the lot as well as structural improvements within the 40-foot blufftop setback and 25-foot blufftop setback permissible with a supporting geotechnical report. The project approval will require removal of landscaping installed on the sandy beach areas. The Environmental Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program No. 99-0007, requires archaeological monitoring and recovery and that a "Notice of Geologic and Geotechnical Conditions" be signed by the owner and recorded that reflects the potential for ground rupture along the fault trace discovered on-site. No other adverse affect have been identified on Marine Resources, environmentally sensitive areas or archaeological or paleontological resources.

C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE REQUIREMENTS RELATED TO BIOLOGICALLY SENSITIVE LANDS AND SIGNIFICANT PREHISTORIC AND HISTORIC RESOURCES AS SET FORTH IN THE RESOURCE PROTECTION ORDINANCE, CHAPTER X, SECTION 101.0462 OF THE SAN DIEGO MUNICIPAL

CODE, UNLESS BY THE TERMS OF THE RESOURCE PROTECTION ORDINANCE, IT IS EXEMPTED THEREFROM.

The remodel of an existing single-family residence with a partial demolition and new additions on a 0.56 acre lot in the SF (single-family) zone within the La Jolla Shores Planned District, will comply with the biologically sensitive lands and significant prehistoric and historic resources provisions of the Resource Protection Ordinance. No biologically sensitive lands are within this project area and previously added landscaping on the sandy beach area will be required to be removed. The property and improvements therein, were considered by the City of San Diego Historical Sites Board for possible designation but was not deemed to qualify. Because of the age of the improvements existing on the site and location, requirements for Historical Resources have been identified in the accompanying Mitigated Negative Declaration and made a part of the conditions for approval of the project.

D. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT IDENTIFIED RECREATIONAL OR VISITOR-SERVING FACILITIES OR COASTAL SCENIC RESOURCES.

This site is not identified in the La Jolla/La Jolla Shores Local Coastal Program as a public view corridor to or from the ocean and the site is within a developed single-family neighborhood. A private recreational club is located to the north and a public beach and park lie beyond that. The remodeling of this residence through a partial demolition and new construction will have no adverse affects on these identified recreational and visitor serving facilities and coastal scenic resources.

E. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS TO ENVIRONMENTALLY SENSITIVE HABITATS AND SCENIC RESOURCES LOCATED IN ADJACENT PARKS AND RECREATION AREAS, AND WILL PROVIDE ADEQUATE BUFFER AREAS TO PROTECT SUCH RESOURCES.

The existing single-family residence requesting to be remodeled, will have no adverse impacts on scenic resources or parks and recreation areas as specified in Item D above. Private recreation and public parks are located to the north and are not adjacent to this site which shares common lot lines with similar zoned and utilized properties. A geotechnical report has been completed which analyzed stability of the site for the location of the existing and proposed improvements and staff review and completion of a Mitigated Negative Declaration have investigated any possible impacts to sensitive habitats and scenic resources and found that there are no adverse impacts associated with this proposed project.

F. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE

ALTERATIONS OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISKS FROM GEOLOGIC AND EROSIONAL FORCES AND/OR FLOOD AND FIRE HAZARDS.

The site is existing improved since the 1920's and is a relatively flat with a slope towards the ocean bluff that descends about 22-feet to the beach area below. The site requires minor alteration of existing grades and through review of a required geotechnical report, has been determined that the partial demolition and new construction to the residence will not result in undue risks from geologic and erosional forces. A seawall already exists on the bluff/beach that has protected the site from natural erosion and also protected the house above which is considered a blufftop improvement. No flood or fire risks or hazards are unaddressed by this project.

G. THE PROPOSED DEVELOPMENT WILL BE VISUALLY COMPATIBLE WITH THE CHARACTER OF THE SURROUNDING AREA, AND WHERE FEASIBLE, WILL RESTORE AND ENHANCE VISUAL QUALITY IN VISUALLY DEGRADED AREAS.

This area of the La Jolla Shores Planned District is composed of older single-family homes punctuated by newer construction following demolition and other remodeled homes. It is an area of individually designed and sited homes that offers owners wider choices in design to maintain the character of the area. The area is not considered visually degraded. The partial demolition and new additions proposed to this existing residence will result in a maintaining of architectural integrity and visual quality of the site and neighborhood.

H. THE PROPOSED DEVELOPMENT WILL CONFORM WITH THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LOCAL COASTAL PROGRAM, AND ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS IN EFFECT FOR THIS SITE.

The maintenance of this existing single-family residence conforms to the La Jolla Shores Planned District Ordinance, the La Jolla Community Plan and the Progress Guide and General Plans, the La Jolla/La Jolla Shores Local Coastal Program and all other City Ordinances, Codes and Policies for development of this lot. Through this application and review for the goals and purposes of the ordinances and the completion of a Mitigated Negative Declaration, this determination has been made.

SENSITIVE COASTAL RESOURCE -(MUNICIPAL CODE SECTION 101.0480)

A. THE PROPOSED DEVELOPMENT WILL BE SITED, DESIGNED, AND CONSTRUCTED TO MINIMIZE, IF NOT PRECLUDE, ADVERSE IMPACTS UPON SENSITIVE COASTAL RESOURCES AND

ENVIRONMENTALLY SENSITIVE AREAS.

The 24,461 square-foot single-family zoned lot is improved with an existing 9,960 square-foot residence and accessory improvements including a seawall, boat house, landscaping and other minor improvements. The partial demolition and new construction proposed has been sited and designed to meet the City of San Diego bluff top setback as permitted based on a supporting Geotechnical Report and to utilize the large buildable area present. The improvements have been reviewed as well and recommended for approval by the La Jolla Shores Planned District Advisory Board. The proposed development will minimize and preclude to the extent possible, adverse impacts to sensitive coastal resources and environmentally sensitive areas.

- B. THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE GENERAL PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN THE ADOPTED COMMUNITY PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.**

The proposed development will result in the partial demolition of an existing single-family detached residence and accessory structures and the addition of new floor area and improvements to a 24,461 square-foot SF zoned lot located at 1900 Spindrift Drive overlooking the Pacific Ocean from atop a 22-foot high coastal bluff. No existing physical public accessway or proposed accessway exists or is proposed within the La Jolla/La Jolla Shores Local Coastal Program and this Program does not identify any public views or view corridors across this property. This property, by the shape and configuration of the coastline to the north, south and west, affords views of other bluff, beach and coastal improvements. This property is visible from these other locations as well, however, the improvements as ultimately to be built-out, will become the view from these points but will not be in conflict with the provisions of these plans and programs.

- 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 ON SITE.**

Minimal grading is proposed to this existing improved 24,461 square-foot single-family zoned lot located atop a 22-foot coastal bluff. A Geotechnical report has been submitted and reviewed with the City's Geologists accepting the conclusions within the report. No new development will be nearer than 25-feet to the bluff top and the Mitigation Monitoring and Reporting Program in conjunction to the Mitigated Negative Declaration, requires that proof of a "Notice of Geologic and Geotechnical conditions" be signed by the owner/permittee and recorded with the

county Recorder prior to the issuance of building permits. Site drainage and roof top drainage is required to be directed to the City street to the east and not over the bluff to the ocean below in order to minimize risk of erosion to the bluff and beach. The Fire marshal has reviewed the project application and determined that fire risks and hazards have been adequately addressed.

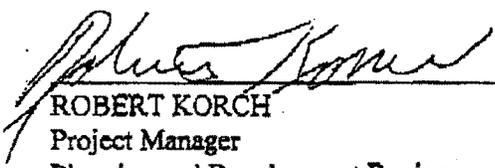
- D. THE PROPOSED DEVELOPMENT WILL NOT CONTRIBUTE TO THE EROSION OF PUBLIC BEACHES OR ADVERSELY IMPACT LOCAL SHORELINE SAND SUPPLY. SHORELINE PROTECTIVE WORKS WILL BE DESIGNED TO BE THE MINIMUM NECESSARY TO ADEQUATELY PROTECT EXISTING PRINCIPAL STRUCTURES, TO REDUCE BEACH CONSUMPTION AND TO MINIMIZE SHORELINE ENCROACHMENT.**

This 24,461 square-foot SF (single-family) zoned lot is improved with an existing 9,960 square-foot residence and accessory uses, including a boat house, seawall and other shoreline improvements. Proposed partial demolition and new construction will result in a total floor area of 14,630 square-feet of improvement. New development, based on a Geotechnical Report, will be a minimum of 25-feet back of the bluff top and through conditions in the accompanying La Jolla Shores Planned District Permit, Coastal Development Permit and Sensitive Coastal Resource Permit, will remove non-approved existing landscaping from the sandy beach area and condition the non-conforming boat house and other improvements to limited repair and maintenance. Improvements to the existing structure and site will not contribute to erosion of public beaches or adversely impact local shoreline sand supply. All surface and rooftop drainage is to be intercepted on site and directed to the street to flow through the City drainage system. No new shoreline protective works are proposed with this permit.

- E. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LOCAL COASTAL PROGRAM, OR ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS IN EFFECT FOR THIS SITE.**

The proposed demolition of a portion of an existing single-family residence and construction of new additions on a lot located between Spindrift Drive and the Pacific Ocean, has been reviewed by City Staff, the La Jolla Shores Advisory Board and the La Jolla Community Planning Board as the project pertains to the City of San Diego Progress Guide and General Plan, the La Jolla/La Jolla Shores Local Coastal Program, the La Jolla Community Plan and La Jolla Shores Planned District Ordinance and existing SF zoning and all other related codes, ordinances and policies. The project has been found in compliance as proposed and will not adversely affect these identified plans and programs.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, LJS/CDP/SCR Permit No. 99-0007, is hereby GRANTED by the PLANNING COMMISSION to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 99-0007, a copy of which is attached hereto and made a part hereof.



ROBERT KORCH
Project Manager
Planning and Development Review



LINDA LUGANO
Legislative Recorder to the
Planning Commission

Adopted on: December 2, 1999.

PETERSON & PRICE
A PROFESSIONAL CORPORATION

EDWARD F. WHITTIER
MARSHAL A. SCARR
MATTHEW A. PETERSON
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OF COUNSEL
PAUL A. PETERSON

RECEIVED

MAY 05 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

May 4, 2000

4196.004
Via Overnight Courier Delivery

Chairperson Sara Wan and Members of The
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

THIS WRITTEN MATERIAL IS SUBMITTED
TO THE CALIFORNIA COASTAL
COMMISSION IN ACCORDANCE WITH THE
EX PARTE COMMUNICATION
REQUIREMENTS OF PUBLIC RESOURCES
CODE SECTIONS 30319-30324. THIS
MATERIAL IS A MATTER OF PUBLIC
RECORD AND HAS BEEN SUBMITTED TO
ALL COASTAL COMMISSIONERS, THEIR
ALTERNATES, AND THE COASTAL
COMMISSION STAFF.

Re: Summit Resources, LP, Appeal No. A-6-LJS-99-160
Wednesday, May 10, 2000
Agenda Item No. 14E

Dear Chairperson Wan and Members of the California Coastal Commission:

We along with Lynne L. Heidel, Esq., and Mark C. Mazzarella, Esq. represent Summit Resources, LP with regard to the above-referenced matter.

As you know, our client is preceding with this appeal under protest because the appeals that were filed were not properly prepared, were not filed timely and are invalid. As such, the unanimous approval of the project by the City of San Diego is final.

We have reviewed the Staff Report dated April 26, 2000 and are amazed that the San Diego District Staff has again attempted to conjure up yet another reason to deny our client's home.

A-6-LJS-99-160
Letters from Applicant
Representatives

Chairperson Sara Wan and Members of the
California Coastal Commission
May 4, 2000
Page 2

BACKGROUND

It is obvious from reviewing the latest Staff Report that the San Diego District Office is in need of reorganization and legal guidance.

Our client has been through a horrendous Coastal Commission appeal process. As you have seen in our letters to you and to Peter Douglas, your staff has at every stage refused to work with the Design Team and has attempted to delay the processing of the appeal and imposed rules, regulations and policies which are not applicable to the Project. While each of staff's attempts to impose its unwritten policies on the project has been rebuffed, staff continues to come up with some new theory or subjective criteria to impose their policy on our client's proposed home.

Staff has learned that they cannot: 1) apply their "Rule of Thumb" or the new Land Development Code ("LDC") to the project; 2) conclude that the site is unstable (either with or without the seawall and gunnite in place); 3) apply unrelated provisions of the Municipal Code which are not applicable to the project; and 4) make a finding that this is "new development." So staff has now come up with a new and bizarre subjective definition of what it concludes is an "improvement, repair and alteration" as authorized by the La Jolla Shores Planned District Ordinance §101.0303.2. Staff now and for the first time, concludes (without any legal justification) that "improvement, repair and alteration" is defined as "minor activities and would allow a legal nonconforming structure to be kept in adequate condition." This new definition is not supported by any evidence in the record, it is not within the La Jolla Shores Planned District Ordinance, and it is not contained within any of the Certified LCP or other implementing ordinances within the City of San Diego. In fact, if the Commission were to accept this definition, we assert that this acceptance would constitute a de facto amendment to the Certified LCP.

Even if staff were correct in this rather strange new definition and interpretation, the activities that are occurring to the nonconforming portions of the structure (i.e., interior remodeling; the replacement of windows and doors and the removal of exterior walls to reduce the degree of nonconformity) could be classified as "minor activities." Further, even if staff were

Chairperson Sara Wan and Members of the
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correct in this interpretation, which clearly they are not, then how does staff also recommend the complete removal of the gunnite which is also a legal nonconforming structure and suggest in another condition that our client should not be permitted to do any repairs to the existing legal nonconforming seawall. Obviously such future repair and maintenance to the seawall would be a minor activity (as outlined in the Dave Skelly letter dated October 15, 1998) which would keep the legal nonconforming seawall in "adequate condition." Staff's definition is ludicrous at best and once again shows its desperate attempt to support the invalid appeal(s) and to implement staff's unwritten policies.

At the bottom of page 15, staff concludes that the project somehow increases the degree of nonconformity of the existing structure, but does not at all state how staff has factually reached this conclusion. Staff then goes on to state that there is a "significant precedential concern" if staff is not allowed to redefine or broadly interpret the Certified LCP to impose its policy on this project. There is not a significant precedential concern. The new LDC is now applicable to any project which did not have its applications deemed complete prior to January 1, 2000. At the last minute before the Commission certified The LCP, staff forced the City to include the following language in the new LDC:

"Within the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50% or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new structure. [Emphasis Added.] See LDC – previously conforming structures - §127.0106(d).

As such, any project which now submits its Coastal Development Permit applications after January 1, 2000 will be subject to staff's "Rule of Thumb." Therefore, if this project is approved consistent with the unanimous City approval, no precedent will be established.

After creating this new definition, staff engages in a circuitous reasoning of why its previous recommendation should still be applicable and again attempts to classify the proposed remodel and expansion as "new development." As "new development" staff recommends that all portions of the legal nonconforming home (some of which was approved by the Coastal Commission!) should be

Chairperson Sara Wan and Members of the
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chopped off and/or removed. As if that's not enough and to our further amazement, staff has now added the following additional recommended Conditions:

1. That our client be compelled to remove the legal nonconforming gunnite on the face on the bluffs (thus exposing the bluff to erosion); and
2. The provision that our client cannot perform any repairs, maintenance or upkeep to the seawall (purportedly in the hope that it will in the future fall down or that once our client requests repairs that staff would compel our client to remove the seawall entirely!).

ENOUGH IS ENOUGH!

As you may recall at the hearing of April 10, 2000, because of a split vote to approve the project as presented, the matter was reluctantly continued because staff said they wanted additional assurances that the existing legal nonconforming portions of structure located seaward of the 25 ft. bluff edge setback were stable and safe for habitation. Through tremendous effort (and of course with the threat that staff would not be able to bring this matter back to you for this hearing), our client's consultants worked nights and overtime and produced these additional reports and submitted them to the Commission staff on a timely basis. We note that the Staff Report dated April 26, 2000 which (excluding attachments) is 31 pages long does not even make reference or mention of the conclusions of the additional studies. The conclusion for the record is that the existing legal nonconforming portions of the home are also safe. While completely disregarding the purpose of the continuance and the information requested by the Commission, staff has gone off on another wild goose chase and has developed new arguments in an attempt to support its newly proposed recommendation. Rather than reading the tedious 31-page Report, staff's entire argument can be reduced to one sentence on page 25, which states:

"From a policy standpoint, the proposal should be treated as new development and moved back to adhere to the geologic setback requirement. Furthermore, since the gunnite is not needed, then it should be removed as well." [Emphasis Added.]

Finally, and based upon the above-quoted statement, your staff has admitted that it does not have any legal authority or justification for the recommendation which effectively: 1) results in a denial of our client's home; 2) requires a complete redesign and reprocessing of the project through the City of San Diego pursuant to the new LDC (which of course would then also be appealable by your staff!).

DISCUSSION

Although it would take well over 50 pages to adequately respond to the improper and subjective analysis as contained within the Staff Report, we will attempt to address at least the major points of contention. In addition to the improper analysis, the Staff Report also contains many false statements and misrepresentations (see Tab 1).

COMPLIANCE WITH THE CERTIFIED LCP

Staff concludes that the existing residence, the seawall and the gunnite do not comply with the LCP. Portions of the existing residence, the seawall and the gunnite are all legal and nonconforming and as such, comply completely with the provisions of the Certified LCP. The La Jolla Shores PDO specifically states: "that the lawful use of buildings existing at the time the Planned District Regulations became effective with which Regulations such buildings 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 to every aspect with all the Planned District Regulations." [Emphasis Added.] The PDO goes on to state: "Improvements, repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure and improvement, shall be permitted." [Emphasis Added.]

The seawall, the gunnite and the nonconforming portions of the structure (including the Boathouse) are legal and nonconforming and as such, may be enlarged, added to, altered, and repaired (collectively "Improvements") so long as such Improvements do not increase the degree of nonconformity. As staff knows, but will not admit, none of the proposed Improvements which are "Permitted" to the nonconforming portions of the structure increase the degree of nonconformity. In fact, some of the proposed Improvements actually decrease the nonconformity by reducing the size of the structure (habitable space) within the 25 ft. setback area. Further, as your staff is aware but also refuses to acknowledge, there are no Improvements proposed to the seawall or the gunnite at this time. Therefore, these two legal nonconforming structures may be retained pursuant to the Certified LCP.

Chairperson Sara Wan and Members of the
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On page 14, staff concludes that the applicable section of the nonconforming uses and structures provisions of the La Jolla Shores Planned District is Paragraph D. However, the second sentence of Paragraph A is also directly applicable. If the Commission requires that a significant portion of the home be demolished, then how would our client have the continued lawful use of the buildings which existed at the time the applicable regulations of the Planned District became effective? As stated in the Staff Report, the PDO also provides that enlargements, additions and alterations to such buildings can occur so long as they do not increase the degree of nonconformity. None of the proposed enlargements, additions, alterations or repairs increase the degree of nonconformity.

Staff indicates on page 9 that the SCR (which was not adopted until 1988) is applicable to the legal nonconforming portions of this project (which were built in the 1920s and 1930s and in 1977 pursuant to State Coastal Permit #F5929). As such, staff suggests the gunnite should be removed and the seawall should not be maintained or repaired. At the top of page 19, staff states that a letter from Dave Skelly dated October 15, 1998 indicated that the seawall and gunnite would fail unless repaired and maintained soon. This is false and misleading. No such statement is contained within that letter. In addition, although staff's speculation about the appropriate location of a seawall or removal of the gunnite is fascinating, it is irrelevant to a review of this project since, even though allowed by the Certified LCP, our client has not proposed any alterations or repairs to these legal nonconforming structures at this time.

Staff also cites certain sections of the SCR Overlay Ordinance as justification for its recommendation to chop off the westerly portions of the house. However, staff did not cite those sections of the SCR which specifically anticipated that certain structures would be located "wholly or partially upon a coastal bluff" (see Municipal Code §101.0480D.1.c). Staff's selective citation and interpretation of the SCR Ordinance is inappropriate and intended to mislead the Commission.

LIFE EXPECTANCY?

Throughout the Report and for the first time, staff asserts that the existing home has reached the end of its projected 75-year life expectancy. Staff asserts that by allowing the

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remodel and expansion (all of which is allowed by the Certified LCP), the Commission would be perpetuating a nonconforming structure and extending its life expectancy. First, the California Coastal Commission issued a Coastal Development Permit for the expansion and remodel of the home in 1977. By our calculation, staff's unwritten "anticipated life expectancy" of the structure, would therefore extend to the year 2052, not presently as staff alleges. Further, there is no language in the Certified LCP, the implementing ordinance or the Coastal Act which states that when a home is 75 years old, it should be demolished so that staff can design a home that fulfills its "policy." In fact, the Certified LCP specifically allows for the retention of and the enlargement, addition, alteration and repairs to such legal nonconforming buildings without respect to their age. In fact, by definition, it is because of the structure's age that it is the beneficiary of this language. In an attempt to justify its position on this 75-year life expectancy theory, staff cites the SCR Ordinance Bluff Edge Setback Standards. The SCR Ordinance states in pertinent part:

"That the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures."

The SCR Ordinance was adopted to preserve the bluffs, not to assure that homes that are 75 years or older be demolished as staff has suggested. Finally, staff in its misguided analysis concludes that once the house is demolished and moved back 25 ft. from wherever staff speculated the bluff edge is, that the gunnite could then be removed so that the bluffs would again be exposed to new and continual erosion.

Without saying it directly, staff would prefer for our client to completely demolish the existing residence and all Improvements on the property (most of which have been in place since the late 1920s) so that the site can be once again exposed to the natural elements and be subject to erosion and bluff recession. Once the site is cleared of all Improvements, then staff would like our client to redesign a new project consistent with the new LDC and whatever new subjective standards staff may propose at that time. Unfortunately, what staff refuses to understand and acknowledge is that its agenda is not contained within the Certified LCP, and our client has a legal right to proceed with the project as approved by the City of San Diego

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which is consistent with the Certified LCP and implementing ordinances.

There is an allegation within the Staff Report contained within the Visual Access discussions on pages 27 through 29 which attempts to imply that the existing gunnite is creating visual blight and that the structure in its current location must be modified to address visual resources of the area. As you can see within attached Tab 2, a site photograph, the existing colored and textured gunnite extends beyond our client's property onto the adjacent property to the south. Further, the pattern of development in this area has a variety of homes which are bluff top and even cascading down the front of the bluff. As such, the assertion that this project must be modified by removal of legal nonconforming structures and the removal of gunnite to address visual impacts is ridiculous. As in previous cases, the photographs within the Staff Report do not present the Commission with the big picture. Obviously, the adjacent developments tend to establish the visual character and quality of this area.

Page 27 of the Staff Report states that the City's previously Certified Implementation Plan (Municipal Code) required open fencing in the side yard areas not to exceed 6 ft. in height with 3 ft. solid base and open fencing on top. This statement is not accurate as the 3ft. solid and 3 ft. open fencing is only required along and adjacent to street front and street side yards. Interior side yards do not have any such restriction. However, because of our client's desire to enhance views, he has voluntarily agreed to replace the existing fencing within the side yard area of the front setback so that the fencing does not exceed 3 ft. solid and 3 ft. open on top. This clarification was previously reviewed and approved by your staff and was already required by staff!

On page 29 of the Staff Report, staff suggests that by requiring that the home be chopped back, that ultimately the seawall could be removed or located closer to the bluff in order to gain private property and enhance lateral beach access. However, in the previous 18-page Staff Report dated March 23, 2000 staff concluded (analyzing the exact same project) that there were no identified impacts to public access or recreation associated with the proposed project.

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COASTAL STAFF'S DETERMINATION OF BLUFF EDGE

Our client strongly objects to the staff's determination of bluff edge as indicated in Exhibit 20 of the Staff Report which we just received.

On page 21, the Staff Report indicates that the applicant "has incorrectly interpreted the City's Coastal Bluff and Development Guidelines." However, it was the City of San Diego that specifically directed our applicant's Design Team on how to interpret and precisely determine the bluff edge. Rob Hawk, the City Geologist, independently reviewed the bluff edge determination that was produced by Curtis Burdett of Christian Wheeler Engineering and Mike Pallamary of Precision Surveying and Mapping (both of which are licensed in their field and are qualified under the State laws to determine and plot the location of a bluff edge). While it is our understanding that the Coastal Commission Geologist may have reviewed this material and may have in fact even produced Exhibit 20, he does not possess the requisite training, expertise or licenses to determine the location of a bluff edge. If a licensed surveyor did not produce Exhibit 20, whoever did may have violated State laws by preparing and presenting Exhibit 20 to the California Coastal Commission.

The bluff edge as determined by the Design Team licensed professionals was verified independently by the City Geologist as consistent with the City's Certified LCP. Your staff does not have the unilateral right to make an independent determination which is inconsistent with the City's Certified LCP.

CONCLUSION

As you can see, the Staff Report is filled with false statements, misrepresentations and inappropriate analysis and conclusions. Staff has gone from producing an 18-page Report dated March 23, 2000 which inappropriately recommended modifications to the project based upon staff's "Rule of Thumb" to a 31-page Staff Report dated April 26, 2000 which now unlawfully recommends a complete redesign of the project, the removal of legal nonconforming structures, the removal of gunnite (which currently prevents erosion of the bluffs consistent with the City's SCR Regulations) and the prohibition of any future maintenance or repair to the

Chairperson Sara Wan and Members of the
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seawall.

In light of all of this, we would respectfully request that the Commission disregard the Staff Report and approve the project as submitted by applicant.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosure

cc: Governor Gray Davis
Chairperson Senator John Burton, Senate Rules Committee
Senator Robert Hertzberg, Speaker Of The Assembly
Peter M. Douglas, Executive Director, CCC
Ralph Faust, Chief Legal Counsel, CCC
Nancy L. Cave, Manager, Statewide Enforcement Program, CCC
Daniel A. Olivas, Esq., Deputy Attorney General
Debra Lee, Deputy Director, CCC
Chuck Damm, Senior Deputy Director, CCC
Sherilyn Sarb, District Manager, CCC
Laurinda Owens, Coastal Planner, CCC
Lee McEachern, Supervisor of Regulation and Planning, CCC
Bob Korch, Development Project Manager, Dev. Services, City of San Diego
Tim Martin, Associate, Don Edson Architects AIA & Associates
Lynne L. Heidel, Esq., Sullivan Wertz McDade & Wallace
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, L.P.

**A SAMPLING OF FALSE STATEMENTS
AND MISREPRESENTATIONS
AS CONTAINED IN THE
STAFF REPORT DATED 4/26/00**

1. The public notice, the project description and throughout the Report, staff classifies the project as "substantial demolition," "reconstruction," and "new development". As your staff knows, the total existing area of the residence is 9960 square feet, of which 5590 square feet will be retained. As such, 56% of the existing structure will be retained. It is not appropriate for staff to continue to classify the project as "new development" involving "substantial demolition" and reconstruction.

2. The Staff Report indicates that the project involves the substantial demolition and reconstruction of a pre-Coastal Act residence. As staff is aware, a California Coastal Commission Permit was issued in 1977 for an expansion on the most westerly portion of the home. That Permit acknowledged the location of the existing residence on the bluff and the fact that there was a seawall and gunnite. Therefore, the California Coastal Commission reviewed and approved an expansion of this home precisely in the area, which your coastal staff now says, must be demolished.

3. Staff concludes that the existing residence, the seawall and the gunnite do not comply with the LCP. Portions of the existing residence, the Boathouse, the seawall and the gunnite are all legal and nonconforming and as such, comply with the provisions of the Certified LCP. The La Jolla Shores PDO specifically states: "that the lawful use of buildings existing at the time the Planned District Regulations became effective with which Regulations such buildings 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 to every aspect with all the Planned District

Regulations." [Emphasis Added.] The PDO goes on to state: "Improvements, repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure and improvement, shall be permitted." [Emphasis Added.] No further rebuttal is necessary.

4. The Staff Report on page 8 contains the statement that the portion of the residence that the applicant proposes to retain is all the square footage located closer than 25 ft. from the applicant's definition of bluff edge. This statement is not accurate. The proposal (prior to staff's attempted imposition of its "Rule of Thumb") was to decommission (or remove) existing habitable area within the 25 ft. setback area.

5. Staff indicates that the portions of the residence that is proposed to be demolished and rebuilt are closer than 25 ft. to the gunnite bluff edge and to the existing bluff edge. [Emphasis Added.] This is not correct. The proposal is not to rebuild anything closer than 25 ft. from the bluff edge as determined by the City of San Diego.

6. On page 9, staff misrepresents to the Commission that the new Land Development Code ("LDC") should not be applicable to this project since the project was reviewed and approved by the City prior to the effective date of the LDC. As staff has been shown, the implementing ordinances of the LDC contain "pipeline" provisions which state that the LDC would not be applicable to projects which have applications that were deemed complete prior to the effective date of the new Land Development Code, which was January 1, 2000.

7. Again on page 9, staff states that all of the structures, which exist on the property today, are nonconforming with respect to the policies of the Coastal Act

and the corresponding policy in the Certified San Diego LCP. This is false and misleading. Once again staff repeats the false statement that the principle residence, the existing gunnite coating on the bluff face and the seawall are nonconforming structures because they are inconsistent with the Certified LCP. As previously stated, the LCP allows these structures to remain and be repaired, altered and even expanded.

8. In the middle of page 13, the Report states that following the applicant's demonstration that 50% of the exterior walls could be salvaged, that "at that time staff indicated the project's inconsistency with the LCP would still be an issue given that the project involved such substantial work to and expansion of the existing residence such that to allow the nonconforming aspects to remain could be inconsistent with the LCP." We have an audiotape of the meeting. The conclusion reached by staff was that staff would be "hard pressed" to recommending against the project if it were not classified as "new development" pursuant to staff's "Rule of Thumb."

9. Staff references at the bottom of page 13 a section of the Municipal Code which staff knows is not applicable to this project. This reference and discussion is misleading and a waste of the Commission's time.

10. On page 17, staff suggests that the Planned District Ordinance addresses nonconforming uses and structures in a manner similar to the citywide Municipal Code. This is a false statement. The La Jolla Shores Planned District Ordinance nonconforming use and structure provision does not contain any restrictions as to the extent or scope of the "repairs, modifications and alterations" and it specifically allows for "enlargements, additions and alterations to such buildings" so long as such repairs,

modifications, alterations, additions and enlargements do not increase the degree of nonconformity. This language is specific to La Jolla Shores and is not similar to the citywide Municipal Code sections dealing with nonconforming uses and structures (which does contain some limited restrictions on the scope of such repairs, modifications and alterations).

11. Page 18 of the Staff Report indicates, **“In past review of proposed developments on project sites where there is an existing seawall, the Commission has found that the development must be set back 40 ft.** This is a false statement as there are many, many examples throughout La Jolla and La Jolla Shores where existing projects during the past couple of years have received Coastal Commission approval for homes significantly closer than 40 ft. (see multiple and numerous approvals for projects approved on Camino de la Costa, El Paseo Grande and in La Jolla Shores). Further, there is nothing in the Certified LCP which contains this unwritten staff policy. Although this policy has been written into the new LDC, staff has already concluded that the new LDC does not apply to this project. Once again, staff's misrepresentation is an attempt to support its subjective and arbitrary recommendations concerning this project.

12. At the top of page 19, staff states that a letter from Dave Skelly dated October 15, 1998 indicated, **“The seawall and gunnite would fail unless repaired and maintained soon.”** This is false and misleading. No such statement is contained within that letter. In addition, although staff's speculation about the appropriate location of a future seawall or recommended removal of the gunnite is fascinating, it is irrelevant

to a review of this project since our client has not proposed any alterations or repairs to these legal nonconforming structures at this time.

13. Staff's determination of a "Theoretical" Bluff Edge as shown in Exhibit 20 is inconsistent with the Certified LCP and Implementing Ordinances and is not supported by the evidence in the record and is not supported by the Geologist of the City of San Diego. Further, we assert that your staff by not having the requisite training or licenses, has violated State laws by producing an Exhibit which purports to determine the location of the bluff edge.



MAZZARELLA, DUNWOODY & CALDARELLI LLP

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May 4, 2000

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Summit Resources, LP, 1900 Spindrift Drive, La Jolla, CA;
CDP Application No. A-6-LJS-99-160

Dear Mr. Douglas:

As Matt Peterson informed you in his letter of April 28, 2000, Summit Resources has directed my firm to file an action for declaratory relief and for writ of mandate against the California Coastal Commission as a result of the Commission's action regarding the remodel of the property located at 1900 Spindrift Drive, in La Jolla, California. A copy of the complaint and petition that we are filing in San Diego County Superior Court is attached to this letter for your information.

Summit has done everything feasible to comply with all applicable laws, ordinances and regulations concerning its project. The project received all local discretionary approvals without opposition, and enjoys the support of its neighbors and surrounding community. Nonetheless, Commission Staff has taken every step in its power—and several steps well beyond its authority and in abuse of its discretion—to impede the project. These measures include: improperly and illegally processing appeals of the City of San Diego's approval of the project, and then attempting to mislead us regarding the circumstances of the appeal, attempting to subject the project to review under the standards of an amended LCP when the project was prepared, approved and even appealed under the certified LCP, attempting to subject the project to an unauthorized so-called "rule of thumb" that both the City and the Commission's own legal counsel stated was inapplicable, employing a tortured and patently erroneous construction of the provisions of the applicable La Jolla Planned District Ordinance implementing the certified LCP in order to avoid a clear and mandatory duty to approve the project, and seeking to impose onerous, unwarranted and unlawful conditions upon approval of the project without legal or ethical bases for doing so.

Peter Douglas
Executive Director
California Coastal Commission
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This conduct constitutes not only bad faith, but also actionable abuse of discretion. Summit has worked very hard to satisfy any legitimate concerns raised by the Commission or its Staff. It has spent tens of thousands of dollars jumping through one hoop after another to show its good faith and cooperation. However, it has become clear that a separate, and improper, agenda is driving the administrative action in this matter. Therefore, Summit feels that it has no alternative but to pursue a lawsuit through which the actions of the Commission and its Staff will be scrutinized and reviewed by an independent judicial officer.

My client and I deeply regret that we have been driven to this point. I had hoped that after members of the Coastal Commission chastised the local Staff at the last hearing on April 10, 2000, that the Staff would respond by acting honestly, fairly and legally. They said they wanted continuance to evaluate 'whether the remodel would jeopardize the safety of existing structures.' The Commission granted their request. But once we demonstrated there was no reason to be concerned about this issue, did they concede the point? No. They simply ignored it in their report, and searched on for progressively more spurious arguments.

At the April 10, 2000 hearing, Commissioner Kruer said: "I've really been troubled by this whole project and the testimony and the staff preparation and everything on it."

Commissioner Dresser said: "This discussion today is just the kind of process that causes people to be very concerned about what's going on at the Coastal Commission..."

Commissioner McLane-Hill added: "We have discussed in other occasions the problems associated with making policy on the back of a particular applicant... and I don't think that's, it's our job to strain the boundaries in order to find it's not legal."

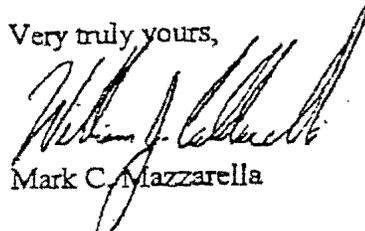
Commissioner Algood noted: "Policy is best made away from a single application."

We agree with these comments - as far as they go. But moreover, we ask that the Commission recognize that "policy" cannot be applied inconsistently with established law. The Staff has once again argued that its unilateral policy superceded the applicable legal standards.

Peter Douglas
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We can only hope that the Coastal Commission will take this one last opportunity to follow the law as it is required to.

Very truly yours,


for Mark C. Mazzarella

MCM:dll
Enclosure

cc: Governor Gray Davis
Chairperson Sara Wan & Members of the Commission
Ralph Faust, Esq., Legal Counsel
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
Lee McEachern, Supervisor of Regulation and Planning
Laurinda Owens, Coastal Planner
Tim Martin, Associate, Don Edson Architects & Associates
Lynne L. Heidel, Esq., Sullivan, Wertz, McDade & Wallace
Matthew Peterson, Esq., Peterson & Price
Summit Resources, LP
(All with enclosure)

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Attorneys for Plaintiff and Petitioner SUMMIT RESOURCES, LTD.,
5 a California limited partnership
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11	SUMMIT RESOURCES, LTD., a California)	Case No.:
12	limited partnership,)	
	Plaintiff/Petitioner,)	COMPLAINT FOR DECLARATORY
13	vs.)	RELIEF AND PETITION FOR WRITS OF
)	PROHIBITION AND/OR MANDATE
14	CALIFORNIA COASTAL COMMISSION, a)	
15	government entity; SARA WAN, an)	
16	individual; PAULA DANIELS, an individual;)	
17	DEBORAH LEE, an individual; PETER)	
18	DOUGLAS, an individual; SHERILYN)	
19	SARB, an individual, LAURINDA OWEN, an)	
	individual, LEE McEACHERN, an individual;)	
	and DOES 1-100 inclusive,)	
	Defendants/Respondents.)	

20
21 For its complaint and petition against defendants and respondents CALIFORNIA
22 COASTAL COMMISSION, SARA WAN, PAULA DANIELS, DEBORAH LEE, PETER
23 DOUGLAS, SHERILYN SARB, LAURINDA OWEN, LEE McEACHERN, and DOES 1-
24 100, plaintiff and petitioner SUMMIT RESOURCES, LTD. hereby alleges as follows:

25 GENERAL ALLEGATIONS

26 1. Jurisdiction and venue are proper in this Court because the subject property is
27 located in the City of San Diego, County of San Diego, State of California, and the activities
28 complained of occurred therein. This Court has jurisdiction over the petitions requested

1 herein under sections 1085, 1094.5 and 1103 of the Code of Civil Procedure and section
2 30801 of the Public Resources Code. Additionally, at all times relevant, Plaintiff has and had
3 its principal place of business in the County of San Diego, State of California.

4 2. Plaintiff and petitioner, SUMMIT RESOURCES, LTD. ("SUMMIT" or
5 "Plaintiff"), is a California Limited Partnership with its principal place of business in the
6 County of San Diego, State of California. SUMMIT owns the property located at 1900
7 Spindrift, La Jolla, California (the "Property"), which is a single family residence and is the
8 subject of defendant/respondent the CALIFORNIA COASTAL COMMISSION's
9 ("COMMISSION") action for which Plaintiff seeks relief.

10 3. Plaintiff is informed and believes, and on that basis alleges, that defendant and
11 respondent COMMISSION is a governmental body with a local office located within the City
12 of San Diego, County of San Diego, State of California. COMMISSION is charged with the
13 authority to review or appeal the City of San Diego's implementation of the Local Coastal
14 Program ("LCP") and the California Coastal Act of 1972, Public Resources Code §§30000, *et*
15 *seq.* (the "Act"), and Division 5.5 of the California Coastal Commission Regulations §13001 -
16 §13664.4 ("Regulations"), and to review or appeal Coastal Development permits that the City
17 of San Diego (the "City") has issued in accordance therewith.

18 4. Plaintiff is informed and believes, and on that basis alleges, that defendant and
19 respondent SARA WAN ("WAN") is the Chairperson of the COMMISSION, and defendant
20 and respondent PAULA DANIELS ("DANIELS") is a Commissioner of the COMMISSION.
21 Plaintiff is further informed and believes, and on that basis alleges, that WAN and DANIELS
22 performed the acts complained of herein at the local COMMISSION office, which is within
23 this Court's jurisdiction.

24 5. Plaintiff is informed and believes, and on that basis alleges, that defendants
25 and respondents DEBORAH LEE, PETER DOUGLAS, SHERILYN SARB, LAURINDA
26 OWEN AND LEE McEACHERN are professional staff employees of the COMMISSION.
27 LEE, DOUGLAS, SARB, OWEN and McEACHERN shall be referred to collectively herein

28

1 as 'STAFF.' Plaintiff alleges on information and belief that STAFF performed the acts
2 complained of herein within the Court's jurisdiction.

3 6. Plaintiff is ignorant of the true names and capacities of defendants and
4 respondents sued under the fictitious names of DOES 1-100. Plaintiff will amend this
5 Complaint to show their true names and capacities when the same have been ascertained, in
6 accordance with the Code of Civil Procedure §474.4. Plaintiff is informed and believes that
7 each of the fictitiously named DOE defendants and respondents is legally responsible for or
8 interested in the occurrences, disputes and disagreements herein alleged.

9 7. Plaintiff is informed and believes, and on that basis alleges, that at all relevant
10 times all defendants and respondents, including DOES 1-100, inclusive, were the agents,
11 servants, employees, and officers of each other, and in doing or failing to do the things alleged
12 in this Complaint, were purportedly acting within the course and scope of their authority.

13 8. Plaintiff is informed and believes, and on that basis alleges, that the existing
14 residence on the Property was built in approximately 1928. The existing boathouse and
15 seawall were built shortly thereafter. Additions were made to the house and it was
16 extensively remodeled several times over the decades that followed. The 1977 addition and
17 remodel were approved by the COMMISSION pursuant to Coastal Development Permit No.
18 F5929. The boathouse, the seawall, the gunite on the bluff, and the most seaward
19 improvements to the Property were all in place when the COMMISSION approved the
20 addition and remodel in 1977. The Property is situated on a bluff over La Jolla Shores.

21 9. On December 11, 1998, Plaintiff submitted an application to the City of
22 San Diego to remodel and expand the existing residence located at 1900 Spindrift Drive in La
23 Jolla, California (the "Project") pursuant to City of San Diego Municipal Code §§105.0201, *et*
24 *seq.*, 101.0480, *et seq.*, and 103.0300, *et seq.* That application was deemed complete on
25 January 7, 1999 and, without any public opposition, was unanimously approved by the City of
26 San Diego Planning Commission on December 2, 1999. During the application processing
27 period, the Project was reviewed by the La Jolla Shores Permit Review Committee and the La
28 Jolla Community Planning Association, as well as the La Jolla Shores Advisory Board, all of

1 which recommended approval of the Project. Throughout this extensive local review and
2 approval process, there was never any opposition to Plaintiff's proposed remodel and
3 expansion Project, and no one, pursuant to the Adopted and Certified Local Coastal Program
4 (the "Certified LCP") and implementing ordinances, filed an appeal with the San Diego City
5 Council. In fact, throughout the process, Plaintiff's neighbors expressed support for the
6 Project.

7 10. At the time the residence on the Property was built, it was not subject to a
8 requirement that it be set back twenty-five feet or more from the bluff edge. Such a set-back
9 requirement was subsequently adopted, but the structure on the Property was allowed to
10 remain in place as a legal pre-existing non-conformity. Therefore, a portion of the total 9,960
11 square feet of the existing residence on the Property is "nonconforming" in that it is not set
12 back twenty-five feet or more from the bluff edge.

13 11. In connection with the Project, Plaintiff proposes to demolish and remove
14 approximately 375 square feet of the non-conforming portion of the house. Although the
15 Project actually expands the total size of the residence on the Property, the additional square
16 footage is almost entirely located on the landward side of the Property, well beyond the
17 twenty-five foot setback line. Thus, the Project actually decreases the degree of non-
18 conformity of the Property even though the residence itself is expanded. The rule governing
19 review of the Project is contained in the ordinances implementing the Certified LCP, codified
20 at section 103.0303.2 of the San Diego Municipal Code as a part of the La Jolla Planned
21 District Ordinance. That ordinance provides, in relevant part, that: "Improvements, repairs
22 and alterations which do not increase the degree of nonconformity of a nonconforming
23 building, structure or improvement shall be permitted" (emphasis added.)

24 12. After certification of an LCP, the Act provides for limited appeals to the
25 COMMISSION for certain local government actions concerning coastal development permits.
26 For developments approved by the City of San Diego which are located between the ocean
27 and the first public road parallel to the ocean, the grounds for an appeal to the COMMISSION
28 are contained within Public Resources Code §30603 and Regulations §15111. The grounds

1 for an appeal are limited to an allegation that the development does not conform to the
2 standards set forth in the Certified LCP or the Public Access Policies of the Act.

3 13. Plaintiff is informed and believes, and on that basis alleges, that on or about
4 December 23, 1999, STAFF and Chairperson WAN and Commissioner DANIELS
5 purportedly filed two separate appeals challenging the City's approval of Plaintiff's Project.

6 14. Plaintiff is informed and believes, and on that basis alleges, that although the
7 COMMISSION generally does have appellate jurisdiction over local decisions pursuant to
8 Regulations §13110, *et seq.* and Public Resources Code §30603, the two appeals filed
9 concerning the Project were not properly prepared, signed or filed, and as such are invalid.
10 Consequently, Plaintiff is informed and believes, and therefore alleges, that the decision of the
11 City approving the Project is now final and not subject to the COMMISSION's appellate
12 review.

13 15. Plaintiff is further informed and believes, and on that basis alleges, that the
14 invalid appeals which were filed concerning Plaintiff's Project violated Public Resources
15 Code §30603, *et seq.* and Regulations §13110, as well as Plaintiff's procedural due process
16 rights and rights of equal protection under the State and Federal Constitutions. Plaintiff
17 alleges on information and belief that the procedure that actually was utilized to file the
18 appeals referenced above was as follows:

19 (a) The local COMMISSION STAFF determined that approval at the City
20 level warranted a review by the COMMISSION.

21 (b) STAFF informed two Commissioners concerning STAFF's desire to
22 file the appeals.

23 (c) Once the Commissioners informed the local STAFF of their consent to
24 file the appeals, STAFF removed from a drawer a photocopy of a signature page of a blank
25 appeal form containing copies of the Commissioners' signature(s). STAFF then hand wrote
26 or typed the date on the signature page(s) and then filed the appeal.

27 (d) The COMMISSION STAFF later prepared the reasons or justifications
28 for appeal for the Commissioners' appeal forms.

1 16. Plaintiff alleges that the appeal procedure utilized by defendants/respondents
2 does not comply with either the letter or the intent of the Public Resources Code or
3 Regulations sections referenced above. Unless and until the Commissioners actually prepare,
4 sign, date and file the appeals themselves (after a thorough review of the Project, the local
5 approval, the findings, the Certified LCP, and the relevant local implementing ordinances),
6 the Plaintiff's procedural substantive due process and equal protection rights, the Public
7 Resources Code, and the Regulations have been and will continue to be violated.

8 17. Plaintiff is informed and believes, and on that basis alleges, that the
9 COMMISSION STAFF, after the appeals of the Project approval were filed, further modified
10 the appeals by adding the words "see attached" to the photocopied signed appeal cover sheets
11 in an apparent attempt to incorporate into the slip-sheeted photocopied signature pages
12 justifications and reasons for appeal (which were not originally attached to the signature
13 pages). Plaintiff is informed and believes that this act was a response to the improper
14 procedures utilized and to the fact that the appeals were not appropriately prepared or filed
15 consistent with the above-referenced Code sections.

16 18. These improprieties and violations of the Code sections were brought to the
17 attention of Daniel A. Olivas, Esq., Deputy Attorney General, State of California, Department
18 of Justice, with copies sent to Peter M. Douglas, Executive Director of the COMMISSION,
19 Ralph Faust, Chief Legal Counsel to the COMMISSION, and to the COMMISSION STAFF
20 in a letter dated February 14, 2000.

21 19. On February 15, 2000, the COMMISSION, on the basis of the invalid appeals,
22 and as a result of a STAFF Report and Recommendation that sought to justify the appeals,
23 made a determination that the appeals raised a substantial issue and set the appeals for a *de*
24 *novo* hearing. The *de novo* hearing was scheduled for COMMISSION action on April 10,
25 2000. Plaintiff objected to the *de novo* hearing on the ground that the appeals procedure was
26 improper. A further hearing is currently scheduled for May 10, 2000. STAFF has issued a
27 Report and Recommendation on Appeal in connection with that scheduled meeting of the
28

1 COMMISSION that seeks to impose burdensome conditions on approval of the Project that
2 are improper and without basis in law or fact.

3 20. Despite the fact that the Project will actually result in a *decrease* in the amount
4 of nonconformity of the Property, and despite the fact that the community and the City
5 support the Project as a beneficial and aesthetic improvement to the Property,
6 defendants/respondents have repeatedly attempted to block the Project on a number of
7 meritless and improper grounds.

8 21. Defendants/respondents originally improperly attempted to subject the Project
9 to review under the City's newly adopted Land Development Code ("LCP Update"), which
10 did not become effective until January 1, 2000. Defendants/respondents attempted to analyze
11 the appeals under the LCP Update (which, among other things, contained a much larger
12 setback requirement than the Certified LCP) despite the fact that: (1) Plaintiff applied for all
13 necessary permits and approvals prior to the effective date of the LCP Update; (2) the LCP
14 Update did not become effective until after the Project had received all of its final
15 discretionary approvals at the local level; (3) the LCP Update was not in effect at the time
16 STAFF's invalid appeals were filed for the Project; and (4) the ordinances implementing the
17 LCP Update contained "pipeline" provisions which specifically exempted projects already in
18 process from the provisions of the LCP Update. Only after strenuous objection from Plaintiff,
19 and the intervention of the City regarding the inapplicability of the LCP Update to the Project,
20 did defendants/respondents concede that the Project should be analyzed under the Certified
21 LCP.

22 22. Defendants/respondents also attempted to subject the Project to a so-called
23 "rule of thumb," for which no statutory or regulatory support whatsoever existed. Pursuant to
24 this unauthorized "rule of thumb," defendants/respondents claimed that if the Project involved
25 the destruction of fifty percent (50%) or more the exterior walls, it constituted "new
26 development" and not "improvements, repairs and alterations" to an existing nonconforming
27 structure which are expressly permitted under the implementing ordinances of the Certified
28 LCP. While contesting the propriety of this unauthorized "rule of thumb," Plaintiff offered to

1 revise the Project slightly so as to preserve more than fifty percent (50%) of the exterior walls.
2 At the COMMISSION's April 10, 2000 hearing, COMMISSION legal counsel Ralph Faust
3 advised the COMMISSION that the so-called "rule of thumb" was "not applicable" to review
4 of the Project. In light of attorney Faust's conclusions, and in light of Plaintiff's ability to
5 revise the Project slightly to preserve more than fifty percent (50%) of the exterior walls of
6 the Property if necessary, Plaintiff is informed and believes that STAFF has now abandoned
7 its attempt to subject the Project to the "rule of thumb" test in order to treat it as new
8 development instead of an alteration to an existing nonconforming structure.

9 23. Plaintiff is informed and believes and on that basis alleges that STAFF is
10 currently attempting to find another device for refusing to analyze the Project under the
11 appropriate ordinances for improvements and alterations to existing nonconforming
12 structures. Specifically, and without legal basis, STAFF is attempting to collect information
13 concerning the potential increase in the fair market value of the Property resulting from the
14 Project so that they can argue that if the fair market value increases by fifty percent (50%) or
15 more, the Project should be classified as new development and not as an improvement or
16 alteration to an existing nonconforming structure. On information and belief, STAFF is
17 pursuing this artifice despite a lack of statutory or regulatory basis and despite the fact that
18 Ralph Faust, legal counsel to the COMMISSION, and the City have opined to the
19 COMMISSION that the fifty percent (50%) fair market value increase test is "not applicable"
20 to review of the Project.

21 24. Faced with the failure of its various stratagems to subject the Project to review
22 under inapplicable rules, standards and other tests, STAFF ultimately resorts to attempting to
23 impose a tortured interpretation upon the provisions of the implementing ordinances of the
24 Certified LCP that are applicable to the Project in order to create grounds for impeding the
25 Project.

26 25. STAFF's April 26, 2000 Report and Recommendations on Appeal to the
27 COMMISSION recognizes that section 103.0303.2D of the San Diego Municipal Code
28 (which is part of the implementing ordinances of the Certified LCP) applies to review of the

1 Project. That ordinance provides that: "improvements, repairs and alterations which do not
2 increase the degree of nonconformity of a nonconforming building, structure or improvement
3 shall be approved" (emphasis added). STAFF attempts to avoid the obvious meaning of this
4 ordinance, which would clearly mandate the approval of the Project as the Project actually
5 reduces the amount of nonconformity of the Property, by imposing an unsupported and
6 irrational interpretation upon the ordinance.

7 26. Specifically, and without any legal precedent whatsoever, STAFF claims that
8 the terms "improvements," "repairs" and "alterations" in the implementing ordinances of the
9 Certified LCP are limited to minor maintenance work and do not include the type of
10 demolition and construction work involved in the Project. Therefore, STAFF concludes that
11 the Project does not constitute an improvement, repair or alteration to an existing structure
12 that would come within the ordinance provision. Similarly, in contradiction to the plain facts
13 and without any legal authority whatsoever, STAFF contends that the Project actually
14 increases the degree of nonconformity of the Project.

15 27. STAFF's determination that the Project would increase, instead of decrease,
16 the degree of nonconformity of the Property is not based on a finding that the portion of the
17 residence on the Property seaward of the twenty-five foot setback line would be expanded. In
18 fact, approximately 375 square feet of the residence that is currently located within the
19 twenty-five foot setback zone, and thus is nonconforming, will be removed pursuant to the
20 Project. Rather, STAFF's determination is based on the conclusion that the Project will
21 extend the life of the existing structure on the Property, a portion of which will continue to be
22 nonconforming. However, STAFF's logic is flawed because the relevant implementing
23 ordinances of the Certified LCP specifically permit improvements and repairs to existing
24 nonconformities, regardless of whether such improvements and repairs would have the
25 practical effect of extending the life of the nonconforming structure.

26 28. Defendants/respondents are also attempting to condition any approval of the
27 Project upon onerous requirements that they have no authority to impose. The STAFF's April
28 26, 2000 Report and Recommendation on Appeal states that the COMMISSION should

1 approve the Project only if: (a) all portions of the residential structure are removed or
2 relocated to the landward side of the twenty-five foot setback; and (2) the gunite coating on
3 the bluff face and the existing seawall be removed. Because the Project is an improvement or
4 alteration to an existing nonconformity that does not increase (and in fact decreases) the
5 degree of nonconformity, the COMMISSION has a mandatory duty to approve the Project
6 and has no authority to impose the conditions proposed by STAFF.

7 29. STAFF's desire to impede the Project is further evidenced by the
8 circumstances under which STAFF recommended, and ultimately received, continuance of
9 the COMMISSION's determination of the appeals from April 10, 2000 to May 10, 2000. At
10 the April 10, 2000 hearing, STAFF requested continuance of the appeal determination for the
11 specific purpose of allowing STAFF to gather additional geological and structural information
12 from Plaintiff concerning the safety and stability of existing portions of residence on the
13 Property within the twenty-five foot setback. At substantial expense to Plaintiff, and
14 inconvenience to Plaintiff's consultants, Plaintiff provided additional reports and information
15 to the COMMISSION demonstrating that there were no safety concerns that should adversely
16 affect approval of the Project. Plaintiff is informed and believe that STAFF's request for
17 continuance on this ground was yet another subterfuge. While STAFF's April 26, 2000
18 Report and Recommendation on Appeal attaches Plaintiff's consultant's report as an exhibit,
19 the STAFF report itself does not mention, discuss or in any way respond to the additional
20 information provided by Plaintiff.

21 30. Defendants/respondents' actions, as alleged herein, constitute an
22 unconscionable abuse of discretion and represent an unaccountable bureaucratic process run
23 wild. Plaintiff's Project has received all local discretionary approvals without opposition and
24 enjoys the support of Plaintiff's neighbors and community. STAFF, often times in
25 contradiction to the advice of the COMMISSION legal counsel, have asserted one meritless
26 objection after another to the Project, at great personal cost to Plaintiff and in violation of the
27 letter and spirit of all applicable laws, regulations and ordinances. For all of the reasons

28

1 described above, Plaintiff seeks judicial intervention to prevent the perpetuation of such
2 abusive and improper practices by defendants/respondents.

3 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

4 **(Against all Defendants/Respondents)**

5 31. Plaintiff realleges and incorporates herein by reference each and every
6 allegation contained in paragraphs 1 through 30, above.

7 32. An actual controversy exists between Plaintiff and defendants/respondents, and
8 each of them, concerning their respective rights and obligations. Specifically, Plaintiff
9 contends the following:

10 (a) Defendants/respondents' appeals were improperly prepared, signed and
11 filed, and as such are invalid and void. Therefore, the decision of the City of San Diego
12 approving the Project is final and is not subject to COMMISSION review.

13 (b) Defendants/respondents failed to comply with the appeal procedures in
14 a timely and proper manner, which failure includes, without limitation, the failure to properly
15 state the reasons for the appeals, as required in Section IV of the appeal form. Thus, the
16 appeal is invalid and void.

17 (c) Plaintiff's project was properly reviewed and approved by the City
18 pursuant to the existing Certified LCP and implementing Ordinances, including the PDO, as
19 previously certified by the COMMISSION.

20 (d) Defendants/respondents' filing of invalid appeals, erroneous finding of
21 a substantial issue, and setting the matter for a *de novo* hearing are in direct conflict with the
22 Act, Public Resources Code §30602(b)(1), implementing Ordinance Nos. 18451 and 18691,
23 the Municipal Code, and the La Jolla Planned District Ordinance.

24 (e) Defendants/respondents' appeals raise no substantial issue with respect
25 to the Certified LCP, the implementing ordinances, or the Public Access Policies of the Act.
26 As such, the COMMISSION could not have found a substantial issue, and should not have set
27 the matter for a *de novo* hearing.

28

1 33. Plaintiff is informed and believes, and on that basis alleges, that
2 defendants/respondents, and each of them, deny Plaintiff's contentions as alleged above and
3 contend that the appeals were properly and timely prepared and filed and raise a substantial
4 issue.

5 34. Plaintiff has no adequate remedy at law and a declaratory judgment is
6 necessary and appropriate at this time so that Plaintiff and defendants/respondents may
7 ascertain their rights and obligations against each other.

8 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

9 **(Against all Defendants/Respondents)**

10 35. Plaintiff realleges and incorporates herein by reference each and every
11 allegation contained in paragraphs 1 through 30, above.

12 36. An actual controversy exists between Plaintiff and defendants/respondents, and
13 each of them, concerning their respective rights and obligations. Specifically, Plaintiff
14 contends the following:

15 (a) Based on the foregoing: (1) the Project constitutes an improvement,
16 repair or alteration to the Property which does not increase the degree of nonconformity of the
17 nonconforming buildings and improvements currently located on the Property; (2) the Project
18 should be approved forthwith; (3) the COMMISSION may not impose, as conditions of
19 approval of the Project, any requirement that: (i) the residential structure on the Property be
20 removed or relocated further landward; or (ii) the gunite coating on the bluff face or the
21 existing seawall be removed.

22 37. Defendants/respondents' erroneous determination that the Project is not an
23 improvement, repair or alteration to an existing nonconformity, and that the Project increases
24 the degree of nonconformity of the Property, is without basis in law and contradicts the plain
25 meaning of the relevant portions of the implementing ordinances of the Certified LCP.

26 38. Plaintiff is informed and believes, and on that basis alleges, that
27 defendants/respondents, and each of them, deny Plaintiff's contentions as alleged above, and
28 contend that the Project is not an improvement, repair or alteration to an existing

1 nonconformity, that the Project increases the degree of nonconformity of the Property, and
2 that approval of the Project may be conditioned upon the requirements set forth above.

3 39. Plaintiff has no adequate remedy at law and a declaratory judgment is
4 necessary and appropriate at this time so that Plaintiff and defendants/respondents may
5 ascertain their rights and obligations against each other.

6 **THIRD CAUSE OF ACTION FOR WRIT OF PROHIBITION**
7 **PURSUANT TO C.C.P. SECTION 1102 OR WRIT OF MANDATE**
8 **PURSUANT TO C.C.P. SECTIONS 1085 OR 1094.5**

9 **(Against all Defendants/Respondents)**

10 40. Plaintiff realleges and incorporates herein by reference each and every
11 allegation contained in paragraphs 1 through 30, above.

12 41. The decision of defendants/respondents to pursue and to proceed with the
13 appeals, despite the fact that such appeals were improperly prepared, signed and filed, is an
14 act exceeding the jurisdiction of defendant/respondents and constitutes an abuse of discretion.
15 Specifically, applicable law requires that any appeal of the City's decision approving the
16 Project to be personally considered, determined and signed by two Commissioners of the
17 COMMISSION exercising independent judgment within the time proscribed by law.

18 42. As alleged above, the two appeals of the City's approval of the Project were
19 prepared and filed by COMMISSION STAFF utilizing photocopies of executed forms
20 containing the Commissioners' signatures, and were not the result of independent
21 consideration and determination by the Commissioners, in violation of Plaintiff's legal rights.
22 Additionally, because the appeals were improperly filed, they are untimely and ineffective.

23 43. Consequently, defendants/respondents' appeals of the City's approval of the
24 Project were acts in excess of defendants/respondents' legal jurisdiction and were an abuse of
25 discretion.

26 44. Plaintiff has exhausted its administrative remedies, except for those that would
27 be futile acts, and has no adequate remedy at law. Therefore, a writ of prohibition or writ of
28 mandate should issue from the Court: (a) staying the appeals of the City's approval of the

1 Project by defendants/respondents; and (b) declaring the appeals invalid and ordering that
2 such appeals be dismissed forthwith.

3 **FOURTH CAUSE OF ACTION FOR WRIT OF MANDAMUS**
4 **PURSUANT TO C.C.P. SECTION 1085 or 1094.5**

5 **(Against all Defendants/Respondents)**

6 45. Plaintiff realleges and incorporates herein by reference each and every
7 allegation contained in paragraphs 1 through 30, above.

8 46. Defendants/respondents have made a final decision that: (1) the Project does
9 not constitute an improvement, alteration or repair to a pre-existing nonconformity; (2) that
10 the Project increases the degree of nonconformity of the Property; and (3) that the Project will
11 be approved only if: (a) the residential structure on the Property is removed or relocated
12 further landward; and (b) the gunite coating on the bluff face and the existing seawall are
13 removed.

14 47. The Project, in fact, does constitute an improvement, alteration or repair to a
15 preexisting nonconformity and actually decreases the degree of nonconformity of the
16 Property. Thus, the COMMISSION is required by law to approve the Project and is not
17 entitled to condition such approval on the requirements set forth above.

18 48. Defendants/respondents' contrary determinations and actions exceed their
19 authority and constitute an abuse of discretion.

20 49. Plaintiff has exhausted its administrative remedies, except for those that would
21 be futile acts, and has no adequate remedy at law. Therefore, a writ of mandate should be
22 issued from the Court requiring defendants/respondents to approve the Project forthwith
23 without imposing any of the above-described conditions.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays judgment against defendants/respondents, and each of
26 them, as follows:

27 1. That this Court declare that defendants/respondents' appeals are invalid and
28 void, and that defendants/respondents have no jurisdiction or authority to review the City's

1 approval of the Project;

2 2. Alternatively, that this Court declare that: (a) the Project constitutes an
3 improvement, alteration or repair to a preexisting nonconformity and actually decreases the
4 degree of nonconformity of the Property; and (b) that the COMMISSION cannot condition
5 approval of the Project upon either removal or relocation of the residential structure on the
6 Property or the removal of the gunite coating on the bluff face or of the seawall;

7 3. That this Court issue a writ of prohibition or writ of mandate: (a) staying the
8 appeals of the City's approval of the Project; and (b) declaring the appeals invalid and
9 ordering that such appeals be dismissed forthwith;

10 4. Alternatively, that this Court issue a writ of mandate ordering
11 defendants/respondents to approve the Project forthwith under the Certified LCP without
12 imposing any conditions regarding relocation or removal of the residential structure, the
13 gunite on the bluff face, or the existing seawall;

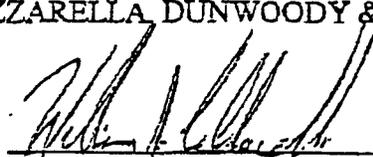
14 5. For costs of suit herein incurred;

15 6. For reasonable attorneys' fees; and

16 7. For such other relief as the Court deems proper.

17 Dated: May 4, 2000

18 MAZZARELLA, DUNWOODY & CALDARELLI LLP

19
20 By: 
for

21 MARK C. MAZZARELLA
22 Attorneys for Plaintiff/Petitioner
SUMMIT RESOURCES, LTD., a California
23 limited partnership
24
25
26
27
28

DON EDSON

ARCHITECT INC. AIA
5752 OBERLIN DRIVE-104
SAN DIEGO CALIF. 92121

May 3, 2000

Chairperson Sara Wan and Members
Of the California Coastal Commission
45 Fremont St #2000
San Francisco CA 94105-2219

RECEIVED

MAY 05 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RE: Summit Resources CDP #A-6-LJS-99-160
Coastal Commission Meeting May 8-12, 2000

Dear Chairperson Wan and Members of the California Coastal Commission,

When this case was before you at the Coastal Commission Hearing in April, staff was attempting to argue that the project did not conform with the LCP because as designed more than 50% of the exterior walls were being demolished. When we pointed out that the 50% provision does not apply in the La Jolla Shores PDO, the Commission's legal staff (those "at the other end of the table") concurred that this provision clearly does not apply. At that point, staff requested a continuance so that they could ask for additional information from the applicant regarding the safety of existing portions of the Home within the 25' geologic setback. Several Commissioners admonished the staff for now asking for information which they could have asked for initially. Nevertheless, staff was ultimately given a continuance for this specific purpose.

Staff subsequently did ask for and by working overtime we promptly provided the requested information. The additional studies, which provided information well beyond what the City requires or what our consultants felt was necessary or appropriate, concluded that the existing improvements are in fact safe. Although included in staff's report in exhibit 16, page 6 & 7 of 29, the new staff report does not even acknowledge receipt of this report for which the continuance was granted, much less respond to it. Rather staff, in spite of the certified LCP, continues to argue that the legal non-conforming portions of the home should be required to be removed. In fact, Staff recommends taking away even more of the Owners

existing improvements (Including the gunite which prevents erosion of the bluff).

Rather than recommending denial (which Staff knows is illegal) the Local Coastal Staff recommends approval with "conditions" that result in the most severe consequences on the viability of our clients home. Staff suggests that removing the existing improvements within the 25' geologic setback will allow the project to conform to current guidelines. Please be advised that the structural integrity of virtually every room on the west side of the house would be destroyed. At least six (6) rooms would be chopped in half with the same result as sawing a table (and two of its four legs) in half. The Master Suite and the Living Room are virtually eliminated and the project would have to be completely redesigned, thus returning us to where we were nearly 2 years ago when we started the process at the City of San Diego. Little, if any, of our work product developed over the past 2 years could be salvaged.

This project, which was supported at every level of the City after a more than year long review process, including neighbors, the Community Planning Group, City Staff and the City Planning Commission, has never heard a voice of opposition until the Coastal Staff abruptly appeared it. Now they, for the last 4 months, have at every stage attempted to impose subjective and non-supported criteria to effectively deny the City unanimously approved project. We therefore hope that the Commission would, in fairness support this project as designed and not subject our client to any further unnecessary and costly processing.

Sincerely,



Tim Martin AIA
Don Edson Architect Inc, AIA

TM:fkM

Cc: Peter M Douglas, Executive Director
Ralph Faust, Esq., Chief Legal Counsel
Amy Roach, Esq., Staff Counsel
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Sherilyn Sarb, District Manager
Laurinda Owens, Coastal Program Analyst
Matthew A. Peterson, Attorney
Mark Mazzarella, Attorney
Summit Resources

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File No.

4196.004

Via fax & U.S. mail

April 28, 2000

Mr. Peter M. Douglas, Executive Director
The California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

Re: Summit Resources, LP, 1900 Spindrift Dr.
CDP Application No. A-6-LJS-99-160

RECEIVED

MAY 01 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Peter:

Our client and we are extremely disappointed and quite frankly shocked about how the local Staff has handled the processing of the above-referenced appeal.

Although your Staff has been presented with a plethora of evidence that this Project complies in every manner with the Certified LCP, they have at every stage attempted to delay the processing of the appeal and impose rules, regulations and policies, which are not applicable to our client's home. These attempts have included but are not limited to the following:

1. Staff's attempt to apply a "Rule of Thumb" to the Project, which your own Legal Staff concluded and testified at the last Coastal Commission hearing, was inappropriate and not applicable to this Project.
2. Staff's attempt to evaluate the Project based upon the New Land Development Code, which 1) did not come into effect until after the Project had received all of its final discretionary approvals at the local level, 2) was not in effect when Staff's invalid appeals were filed concerning the Project, and 3) by the terms of the Ordinances which implemented the new Land Development Code specifically exempted this Project from the new Land Development Code. After a monumental effort on our and the City's part, the Staff finally reversed its position in this regard.

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 2

3. Staff's multiple attempts to somehow classify the site as "unstable" and Staff's unreasonable requests for costly and time-consuming soils and geologic analysis and reports. Such reports have been far beyond anything that we have ever heard of both in terms of the scope and in terms of a very worst-case analysis. Even with this very worst-case analysis, the City's approval is fully supported by the evidence in the record.
4. Staff's latest attempt to apply provisions of the Municipal Code which are not applicable to this Project, specifically related to the retention of, and the repairs, alterations and improvements to the legal nonconforming portions of the structure.
5. Staff's attempt to mislead us with regard to the procedures utilized concerning the filing of the invalid appeal (see Mark Mazzarella, Esq. letter dated April 21, 2000 – copy attached).

We previously forwarded to you a copy of our letter to Tracy Elliot-Yawn dated April 20, 2000 (which contained a copy of our letter to the Commission, dated April 7, 2000). We are now enclosing a copy of a letter to the California Coastal Commission dated April 21, 2000 from the City of San Diego which specifically deals with your Staff's inability (or unwillingness) to acknowledge or understand the City's Municipal Code or the City's policies regarding legal nonconforming structures.

On Wednesday, April 26, 2000 (5 days after your Staff received the letter from the City), we received a letter from Lee McEachern (copy attached) requesting even more information on the Project purportedly in an attempt to fashion some recommended Staff condition or restriction that would severely limit the repairs, alterations and modifications to the legal nonconforming portions of the structure to 50% of the Fair Market Value of such improvements.

We are amazed that Staff, in light of the Coastal Commissioner's "strong" words concerning the public's perception of the Commission at the last hearing, would nevertheless continue to persist in such an inappropriate manner. We view this latest Staff request as an attempt to somehow

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 3

further delay the Project or to justify Staff's invalid appeals and impose conditions on this Project, which are clearly not contained within the Certified Local Coastal Program (the standard by which this Project must by law be evaluated on appeal).

As can be seen by literally all of the correspondence and information that your Staff has been provided (well before Mr. McEachern's latest letter to us), Municipal Code §101.0303 is not applicable to this Project. Simply because a "standard" condition was erroneously included in the local approval does not give your Staff the legal justification to completely disregard the Certified LCP which has specific and unequivocal language concerning the retention of, and the permitted repairs, modifications, and alterations of legal nonconforming structures.

Although you appear to have avoided involvement in this case, obviously the San Diego District Office needs guidance and immediate direction from you and your Legal Staff concerning the processing of this appeal.

Per Mr. McEachern's request, which we received by mail on Wednesday, April 26, 2000, we have requested that the Architect forward the reduced site plans. However, we do not have, and will not be providing any information requested in the bullet points of Mr. McEachern's letter. This requested information is well beyond the scope of the Commission or Staff's legal authority and is not necessary to determine if the City's approval was in compliance with the Certified LCP.

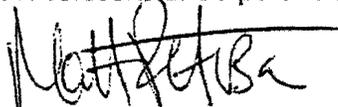
Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 4

We would request an immediate written response to this letter and your and Ralph Faust's direct and immediate involvement in these matters. In the interim, our client has directed Mr. Mazzarella to immediately file a Writ of Mandate and Declaratory Relief Action against the Coastal Commission.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosures

cc: Governor Gray Davis
Chairperson Sara Wan & Members of Commission
Ralph Faust, Esq., Legal Counsel
Chuck Damm, Senior Deputy Director
Debra Lee, Deputy Director
Sherilyn Sarb, District Manager
Lee McEachern, Supervisor of Regulation and Planning
Laurinda Owens, Coastal Planner
Tim Martin, Associate, Don Edson Architects AIA & Associates
Lynne L. Heidel, Esq., Sullivan Wertz McDade & Wallace
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, L.P.
(All via fax with enclosures)

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- File No.

4196.004
Via Messenger

April 20, 2000

Ms. Tracy Elliot-Yawn, Associate Planner
Development Services
THE CITY OF SAN DIEGO
CITY OPERATIONS BLDG.
1222 First Ave., 5th Floor
San Diego, CA 92101

Re: Summit Resources, L.P. – 1900 Spindrift Dr.
CDP No. A-6-LJS-99-160

Dear Tracy:

It is my understanding that City Staff had a discussion with the California Coastal Commission Staff ("Commission Staff") about the above-referenced Project.

You indicated to me this morning that Commission Staff is or will be requesting that our client perform and submit a valuation assessment to determine if the Project complies with Municipal Code §101.0303 – "Continuance of Nonconforming Uses and Structures". To date, we have not received such a request from the Commission Staff.

As the Commission Staff is well aware, Municipal Code §101.0303 is not applicable to this Project. At the last hearing at the California Coastal Commission ("The Commission"), it is our recollection that Ralph Faust, Esq., The Commission's

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 2

Legal Staff, advised the Commission Staff that the regulations that were applicable to this property were contained within Chapter X, Article 3, Division 3 entitled "La Jolla Shores Planned District" (see Municipal Code §103.0300 et seq.)(hereafter referred to as "The Planned District"). In addition to Mr. Faust's legal opinion, we have directly communicated this to The Commission and to the Commission Staff in letters dated April 7, 2000 and April 12, 2000 (see attached copies).

If you look at the attached letter dated April 7, 2000, page 4 clearly spells out the applicable standard for the retention of, and the repairs, alterations and modifications to the legal noncontrolling structures of the Project. In addition, we also provided The Commission and Commission Staff with a Xerox copy of the applicable portions of Chapter X, Article 3, Division 3 – La Jolla Shores Planned District (and even highlighted those portions, which were applicable to this Project!). Please note that Municipal Code §103.0303.1 entitled "Planning, Zoning and Subdivision Regulations Which Shall Apply", clearly indicates which portions of the Municipal Code are applicable to projects within The Planned District and which portions of the Municipal Code are not applicable to projects within The Planned District. Please note that the last sentence of the above-referenced Section states:

"All other Divisions of Chapter X, Article 1 are superseded in the La Jolla Shores Planned District by the regulations contained within Chapter X, Article 3, Division 3."

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 3

What this means, and what Commission Staff apparently refuses to acknowledge, is that Municipal Code §101.0303 (which is contained within Chapter X, Article 1, Division 3) has been superseded by the applicable provisions as contained within The Planned District (Chapter X, Article 3, Division 3). Therefore, no valuation assessment or an analysis of the Project's compliance with Municipal Code §103.0303 is required.

The Commission Staff appears now to be "grasping at straws" in an attempt to require that the approved Project be modified. Municipal Code §103.0303 (which contains the 50% Fair Market Value limitation to proposed repairs, alterations and modifications to legal nonconforming structures) is not applicable to this Project. The applicable provisions of the Municipal Code to this Project which deal with "Nonconforming Uses and Structures" is contained within The Planned District as set forth in Municipal Code §103.0303.2. As you know, the Planned District does not contain any limitation as to the amount, extent or nature of such improvements, repairs or alterations so long as such improvements, repairs and alterations do not "increase the degree of nonconformity of a nonconforming building, structure or improvement".

As you know, through the City's review and unanimous approval of this Project, the improvements, repairs and alterations to those portions of the Project which are located within the 25 ft. bluff edge setback do not increase the degree of nonconformity.

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 4

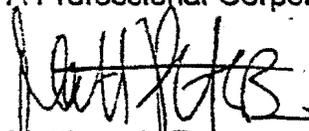
In fact, the alterations proposed decrease the degree of nonconformity by removing certain portions of the legal nonconforming structure(s), which are within the 25 ft. setback.

Please be advised that if the Commission Staff asks the City for any further information concerning the Fair Market Value of the existing improvements or for an estimate of the aggregate value of the proposed repairs, alterations and improvements, our client respectfully requests that the City deny the request and not provide any further information to the Commission Staff pursuant to Municipal Code §103.0303.

Should you have any questions, please don't hesitate to call.

Sincerely,

Peterson & Price
A Professional Corporation



Matthew A. Peterson

Enclosures

cc: Peter M. Douglas, Executive Director, California Coastal Commission
Ralph Faust, Chief Legal Counsel, California Coastal Commission
Robert M. Korch, Senior Planner, Land Development Review, City of San Diego
Summit Resources, L.P.
(With Enclosures)

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File No.

4196.004

April 7, 2000

Chairperson Sara Wan and Members of
The California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

THIS WRITTEN MATERIAL IS SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION IN ACCORDANCE WITH THE EX PARTE COMMUNICATION REQUIREMENTS OF PUBLIC RESOURCES CODE SECTIONS 30319-30324. THIS MATERIAL IS A MATTER OF PUBLIC RECORD AND HAS BEEN SUBMITTED TO ALL COASTAL COMMISSIONERS, THEIR ALTERNATES, AND THE COASTAL COMMISSION STAFF.

Re: Summit Resources, LP, Monday, April 10, 2000
Agenda Item No. 24C, 1900 Spindrift Dr.
Appeal No. A-6-LJS-99-160

Dear Chairperson Wan and Members of the California Coastal Commission:

We along with Lynne L. Heidel, Esq., and Mark C. Mazzarella, Esq. represent Summit Resources, LP with regard to the above-referenced matter. For the record, please be advised that our client is proceeding with this appeal hearing under protest based upon the fact that we assert that the appeals that were filed were not properly prepared, are invalid, and the decision of the City of San Diego is final.

We have reviewed the Staff Report dated March 23, 2000 and with the exception of Special Conditions No. 1A and 3B, our client is generally in concurrence.

First, we would ask the Commission to clarify Condition No. 3B to indicate that landscaping within the 25 ft. bluff edge setback shall be drought tolerant native species and that no irrigation shall be permitted within the 25 ft. bluff setback.

Chairperson Sara Wan and Members of the
California Coastal Commission

April 7, 2000

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As it relates to Special Condition No. 1A, Staff has recommended that "all portions of the residential structure shall be removed or relocated such that no portion of the principal residential structure shall be sited closer than 25 ft. from the bluff edge." Although this Condition also references a pool and spa, neither of these improvements are located within the 25 ft. bluff edge setback. Staff's justification of this very onerous recommendation is based upon Staff's conclusion that the Project involves "a substantial demolition and construction of a new residential development on the property." Staff reaches this conclusion based upon the fact that 59% of the exterior walls of the structure would have been demolished as part of this remodel project.

First and foremost, the Notice of Hearing and the description in the Agenda indicate that the City of San Diego authorized a Permit with Conditions to "demolish a 9,960 sq. ft. single family home and construct a 14,630 sq. ft. single family home" This statement is inaccurate and misleading. By our client's Architect's calculation, over 52% of the existing home will be retained by this remodel. In addition, with the very minor modifications, which our client has presented to the Coastal Staff on April 6, 2000, virtually the same Project will result in only 48.4% of the perimeter walls being removed! Therefore, it is inaccurate to conclude that this Project involves the substantial demolition and the construction of a new residence.

Chairperson Sara Wan and Members of the
California Coastal Commission

April 7, 2000

Page 3

There is no "Rule of Thumb" in the Certified LCP

Although the standard is not included in the Certified LCP, the La Jolla Shores PDO, the Coastal Act, or any other documents that we, or Staff is aware of, Staff utilizes a 50% demolition of exterior walls as their "rule of thumb" in attempting to classify a remodel project as "new development." Once classified as new development, Staff then requests that all portions of the structure located closer than 25 ft. from the bluff edge be removed and/or relocated. Staff has, on more than one occasion, admitted that this "rule of thumb" is not contained within any provisions of the San Diego Municipal Code, the La Jolla Shores PDO, the Certified La Jolla/La Jolla Shores Local Coastal Program, or the Coastal Act. The only possible connection between Staff's "rule of thumb" and the Certified LCP is a provision within the City Municipal Code which provides for an exemption from the need to obtain a Coastal Development Permit. Obviously, this Project has processed Coastal Development Permits, and clearly the exemption criteria is not applicable.

Since this "Rule of Thumb" is not contained within the existing LCP (the standard upon which the appeal(s) must be based), Staff cannot classify this Project as "a substantial demolition" or as "new development".

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 4

The Retention, Repairs, Alterations and Modifications to Legal
Nonconforming Structures are Allowed Pursuant to the Certified LCP

The La Jolla Shores PDO (the Certified LCP) is abundantly clear as it relates to Legal Nonconforming Rights. San Diego Municipal Code §103.0303.2 is restated verbatim in the Staff Report on page 10 (also see attached copy of pertinent sections). It states that: "improvements, repairs, and alterations which do not increase the degree of nonconformity of a nonconforming building structure or improvement shall be permitted." (Emphasis Added.) Since the existing home is legal and nonconforming and was built with validly issued building permits (including a California Coastal Commission Permit issued in 1977 as Coastal Development Permit No. F-59297) The Sensitive Coastal Resource ("SCR") Overlay Zone, which was adopted and incorporated into the La Jolla Shores PDO on April 18, 1988 by Ordinance No. 0-17078 NS, is not applicable to the legal nonconforming portions of the home. As indicated in the Staff Report, the PDO permits the improvement, repair and alteration to those legal nonconforming structures which do not increase the degree of nonconformity. None of the proposed improvements, repairs or alterations increase the degree of nonconformity. In fact, the Project as approved by the City actually reduced the degree of legal nonconformity!

Finally, even if one were to apply the SCR Overlay Zone to this Project, the terms and conditions of it have been complied with because there is no new structural improvements to be located within the 25 ft. setback as determined by the City of San

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 5

Diego. All new structural improvements and "new development" is sited beyond the 25 ft. setback and supported by the Geology Reports (with the concurrence of the California Coastal Commission Geologist). Further, the SCR Overlay Zone anticipated that certain structures would be "located upon coastal bluffs (see Municipal Code §101.0480D(1)(b)). Each and every one of the five (5) criteria of that Section has been adhered to.

By the terms of the Certified LCP, the nonconforming structure can be maintained, and improvements, repairs and alterations can be made which do not increase the degree of nonconformity. As your Staff is aware, none of the proposed improvements, repairs or alterations increase the degree of nonconformity to those portions of the home that are legal and nonconforming within the 25 ft. bluff edge setback. In fact, as previously stated, our client's proposal significantly reduces the degree of nonconformity by eliminating portions of the structure that are within the 25 ft. setback.

If Staff Insists, Our Client Will Retain 50% of the Exterior Walls

Based upon the Staff recommendation and Staff's justification for classifying the Project as new development, our client's Architects were directed to prepare very minor modifications to the Plans which would retain enough of the exterior walls so that the remodel would involve less than 50% demolition of the exterior walls. We presented this Plan to Staff on Thursday, April 6, 2000. The ironic part of the Staff recommendation is that it forces our client to retain more of the nonconforming structure than what was

Chairperson Sara Wan and Members of the
California Coastal Commission

April 7, 2000

Page 6

originally proposed and approved by the City of San Diego. If the Commission agrees with the Staff recommendation, then we have submitted a very minor revision to avoid Staff's unenforceable "rule of thumb."

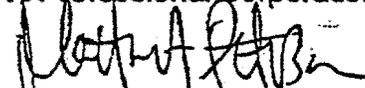
Although it is still our client's desire to have the Coastal Commission approve the Project that was approved by the City, which reduces the degree of nonconformity, our client has submitted the revised Plan for your consideration.

In summary, we would request that Staff's Special Condition No. 1A be deleted and Special Condition No. 3B be modified as referenced above.

Thank you for your consideration of this request.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosure

cc: Peter M. Douglas, Executive Director
Debra Lee, Deputy Director
Sherilyn Sarb, District Manager
Laurinda Owens, Coastal Planner
Lee McEachern, Supervisor of Regulation and Planning
Bob Korch, Development Project Manager, Dev. Services, City of San Diego
Tim Martin, Associate, Don Edson Architects AIA & Associates
Lynne L. Heidel, Esq., Sullivan Wertz McDade & Wallace
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, L.P.

DIVISION 3

La Jolla Shores Planned District

(Added 5-30-74 by O-11332 N.S.)

§ 103.0300 Purpose and Intent

The public health, safety, and welfare require that property in La Jolla Shores shall be protected from impairment in value and that the distinctive residential character and the open seascape orientation of the La Jolla Shores Area shall be retained and enhanced.

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast. The proper development of La Jolla Shores is in keeping with the objectives and proposals of the Progress Guide and General Plan for the City of San Diego, of the La Jolla Community Plan, and of the La Jolla Shores Precise Plan.

(Added 5-30-74 by O-11332 N.S.)

§ 103.0301 Boundaries

The regulations as defined herein shall apply in the La Jolla Shores Planned District which is within the boundaries of the La Jolla Shores Area in the City of San Diego, California, designated on that certain Map Drawing No. C-403.4 and described in the appended boundary description, filed in the office of the City Clerk under Document No. 00-16006.

Amended 7-18-83 by O-16006 N.S.)

§ 103.0302 Administrative Regulations

The administrative regulations as defined herein shall apply in the La Jolla Shores Planned District.

(Amended 6-9-76 by O-11852 N.S.)

§ 103.0302.1 Administration of the La Jolla Shores Planned District

A. The Development Services Director shall administer the La Jolla Shores Planned District.

B. Powers and Duties.

It is the duty of the Development Services Director to administer and ensure compliance with the regulations and procedures contained within this Division in the manner prescribed herein for both public and private developments; to recommend to the Planning Commission any changes to the regulations, provided such

changes are necessary for the proper execution of the adopted plan, and to adopt rules of procedure to supplement those contained within this Division.

(Amended 7-25-94 by O-18088 N.S.)

§ 103.0302.2 La Jolla Shores Planned District Advisory Board

A. LA JOLLA SHORES PLANNED DISTRICT ADVISORY BOARD CREATED

1. There is hereby created a La Jolla Shores Planned District Advisory Board which shall be composed of seven members who shall serve without compensation. The members shall be appointed by the Mayor and confirmed by the Council. The members shall serve two-year terms and each member shall serve until his successor is duly appointed and qualified. The members shall be appointed in such a manner that the terms of not more than four members shall expire in any one year. The expiration date shall be April 1. During April of each year, the Mayor may designate one member as Chairman; however, in the absence of such designation, the Board shall, on or after May 15, select a Chairman from among its members.

2. At the time of appointment and during incumbency five of the seven-member board shall be resident property owners of the La Jolla Shores Planned District. The sixth member shall be a resident of the district but need not own property and the seventh member shall own property in the district but need not be a resident. Members of the Board shall be persons who shall be specifically qualified by reason of interest, training or experience in art, architecture, land development, landscape architecture, planning, urban design, or other relevant business or profession to judge the effects of a proposed development upon the desirability, property values, and development of surrounding areas. At least one member of such Board shall be a registered architect in the State of California.

3. The Board may adopt rules of procedure to supplement those contained within this Division. Four members shall constitute a quorum for the transaction of business and a majority vote; and not less than four affirmative votes shall be necessary to make any Board decision.

4. The Development Services Director or his designated representative shall serve as Secretary of the Board and as an ex officio member and maintain records of all official actions of the Review Board. The Secretary shall not be entitled to vote.

5. All officers of the City shall cooperate with the Board and render all reasonable assistance to it.

6. The Board shall render a report annually on March 31, or on request, to the Mayor.

B. POWERS AND DUTIES

It shall be the duty of the Advisory Board to review all applications for permits referred to it including applications for Planned Residential Developments (PRD's) within the La Jolla Shores Planned District and to submit its recommendations or comments on these matters in writing within thirty (30) calendar days to the Development Services Department. When the California Environmental Quality Act requires that an Environmental Impact Report be prepared in conjunction with an application within the Planned District, the Advisory Board shall review this report before submitting its recommendation to the Development Services Department. It shall also recommend to the Planning Commission any changes to the regulations, provided such changes are necessary for the proper execution of the adopted plan, and to adopt rules of procedure to supplement those contained within this Division. The Advisory Board shall utilize architectural criteria and design standards adopted by the City Council in evaluating the appropriateness of any development for which a permit is applied under this Division.

(Amended 7-25-94 by O-18088 N.S.)

§ 103.0302.3 Procedures for Permits Application and Review

A. A La Jolla Shores Planned District Permit shall be issued pursuant to the Municipal Code, Chapter IX, and Chapter VI, Article 2, before the commencement of any work in the erection of any new building or structure, or remodeling, alteration, addition, or demolition of any existing building or structure within the Planned District or any building which is moved into the Planned District or any grading or landscaping. A La Jolla Shores Planned District Permit is not required for interior modifications, repairs or remodeling, nor any exterior repairs or alterations for which a permit is not now required.

B. The applications shall include the following:

1. The purpose for which the proposed building, structure or improvement is intended to be used.

2. Adequate plans and specifications indicating dwelling unit density, lot area, lot coverage and off-street parking.

3. Adequate plans and specifications for the building and improvements showing the exterior appearance, color and texture of materials, and architectural design of the exterior.

4. Adequate plans and specifications for any outbuildings, party walls, courtyards, fences, setbacks, landscaping, signs, lighting or traffic safety.

5. Within the Coastal Zone, where any portion of a lot contains slopes of twenty-five percent (25%) or greater, the information required to accompany an application for a Hillside Review Permit, as described in The City of San Diego Municipal Code Article 1, Division 4, SEC. 101.0454, Subsection J.2., shall also be required to accompany an application for a permit in accordance with the La Jolla Shores Planned District.

6. Any other information deemed necessary by the Advisory Board and the Development Services Director to judge compliance with the regulations contained herein and other applicable laws and regulations.

C. The City Engineer shall refer all applications made under Section 103.0302.3(A) to the Development Services Director.

D. A La Jolla Shores Planned District Permit may be approved, conditionally approved, or denied by a "Hearing Officer," in accordance with "Process Three," after receiving written recommendations or comments from the Advisory Board. The decision of the "Hearing Officer" may be appealed to the Planning Commission in accordance with Section 111.0506. Applications for PRD's shall be processed in accordance with Municipal Code section 101.0901. Action by the "Hearing Officer" on applications, other than those for PRD's, shall follow receipt of recommendation or comments from the Advisory Board and shall include a statement that the "Hearing Officer" finds that the building, structure, or improvements for which the permit was applied does or does not conform to the regulations contained herein. In the event the "Hearing Officer" determines that the proposed development does not conform to the regulations contained herein, the specific facts on which that determination is based shall be included in the written decision. Applications for improvements to patio covers, decks, fences, retaining walls, uncovered swimming pools, unlighted tennis courts, single family residences and any addition to or alteration of any structure which the Development Services Director determines to be minor in scope, may be approved or denied in accordance with "Process One," by the Development Services Director, without receiving recommendations or comments from the Advisory Board. Notwithstanding the foregoing provision, the Development Services Director may refer an application for such improvement to the Advisory Board for a recommendation before taking action on the application. The Development Services Director may approve the application if the Development Services Director determines that the improvement conforms to the architectural criteria and design standards adopted by the City Council.

E. Within 60 days after the submission of a complete application to the Development Services Director, the Development Services Director shall send the decision in writing to the applicant, and City Engineer, except when the applicant requests or agrees to an extension of time.

F. A La Jolla Shores Planned District Permit granted by the City as herein provided, shall expire and become void thirty-six (36) months after the "Date of Final Action" on the permit if the permit is not utilized in the manner set forth in Section 111.1119.

G. A "Hearing Officer" may grant an extension of time in accordance with the provisions set forth in Section 111.1122. To initiate a request for extension of time, the property owner or owners shall file a written application with the Development Services Department. The extension of time may be approved if there has been no material change of circumstances since the permit was originally granted.

H. A La Jolla Shores Planned District Permit is not required for all other applications made under the Building Code and not under Section 103.0302.3 or involving interior work and not subject to any regulation contained within this Division.

(Amended 7-25-1994 by O-18088 N.S.)

§ 103.0302.4 Appeals to the Planning Commission

(Repealed 11-23-92 by O-17870 N.S.)

§ 103.0302.5 Appeal from Decision of the Planning Commission

(Repealed 11-23-92 by O-17870 N.S.)

§ 103.0303 General Regulations

The general regulations as defined herein shall apply in the La Jolla Shores Planned District.

(Added 5-30-74 by O-11332 N.S.)

§ 103.0303.1 Planning, Zoning and Subdivision Regulations Which Shall Apply

Chapter X, Article 1, Division 1 (Definitions and Interpretations), Chapter X, Article 1, Division 9 (Planned Developments), Chapter X, Article 1, Division 4, SEC. 101.0406 (Home Occupations in Residential Zones), and Chapter X, Article 2 (Subdivisions), and Article 1, Division 4, SEC. 101.0458 (Sensitive Coastal Resource Overlay Zone) of the Municipal Code shall apply in the La Jolla Shores Planned District. All other Divisions of Chapter X, Article 1, are superseded in the La Jolla Shores Planned District by the regulations contained within Chapter X, Article 3, Division 3.

(Amended 4-18-88 by O-17078 N.S.)

§ 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.

The lawful use of buildings existing at the time the Planned District regulations became effective which regulations such buildings did not conform may be continued, provided any enlargement, addition

alterations to such buildings will not increase the degree of nonconformity and will conform in every respect with all the District regulations.

B. Any discontinuance of a nonconforming use for a continuous period of 12 months shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the Division.

C. Any change from a nonconforming use of land or buildings to a conforming use shall constitute abandonment of such nonconforming rights.

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

E. If any nonconforming building be destroyed by fire, explosion, act of God, or act of the public enemy to the extent of twice the assessed value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations of this Division. In the event it is determined by the Fire Chief of The City of San Diego the destruction was incendiary in origin then the building may be completely restored or rebuilt not exceeding the size of the original building.

(Amended 12-22-76 by O-11973 N.S.)

§ 103.0303.3 Height Limitation — Measurement Of

The height of the building or structure, and measurement thereof shall be in accordance with this Division and Municipal Code sections 101.0214, 101.0215 and 101.0216.

(Amended 1-6-92 by O-17726 N.S.)

§ 103.0303.4 General Design Regulations

Concurrent with the adoption of this Division, the City Council by resolution adopted architectural and design standards to be used in evaluating the appropriateness of any development for which a permit is applied under this Division; such architectural and design standards shall be filed in the office of the City Clerk as a numbered document.

A. CHARACTER OF THE AREA

In this primarily single-family residential community, a typical home is characterized by extensive use of glass, shake or shingle overhanging roof, and a low, rambling silhouette. Patios, the atrium or enclosed courtyard and decks facilitate the "inside-outside" orientation of life in Southern California. Spanish Mediterranean and Mexican influences are seen in the prevalent use of the arch and of terra cotta and glazed tiles. The residential and commercial structures incorporate an honest use of natural building materials and, in many instances, are characterized as a truly American style of architecture, fusing the purity and geometry of the Mexican-Spanish period with a simplicity of materials and detail with integrated landscape design.

B. DESIGN PRINCIPLE

Within the limitations implied above, originality and diversity in architecture are encouraged. The theme "unity with variety" shall be a guiding principle. Unity without variety means simple monotony; variety by itself is chaos. No structure shall be approved which is substantially like any other structure located on an adjacent parcel. Conversely, no structure will be approved that is so different in quality, form, materials, color, and relationship as to disrupt the architectural unity of the area.

C. DESIGN REQUIREMENTS

Building materials and color are the most critical unifying elements. For this reason, roof materials within the La Jolla Shores Planned District shall be limited to wood shakes, wood shingles, clay tile, slate or copper of good quality where the pitch is 4 in 12 or greater, or other materials which would contribute to the character of the surrounding neighborhood. Roofs with a pitch of less than 4 in 12 may also be covered with crushed stone of muted dark tone. Exterior wall materials shall be limited to wood siding, wood shingles, adobe and concrete blocks, brick, stucco, concrete or natural stone. White and natural earth colors should predominate. Primary colors may be used for accent.

To preserve the seaside character of the community each building shall be sited and designed so as to protect public views from public rights-of-way and public places and provide for see-throughs to the ocean.

Lighting which highlights architectural features of a structure shall be permitted. Such lighting shall be unobtrusive and shielded so as not to fall excessively on adjacent properties.

Appurtenances on the roof shall be enclosed or otherwise designed or shielded to be attractive.

D. GRADING REGULATIONS

1. It is the intent of these regulations to preserve canyons and to prevent the cutting of steep slopes and the excessive filling to create level lots. No grading or disruption of the natural terrain shall be permitted until a permit which includes grading has been approved by the Director.

2. Grading plans may be approved if it is concluded that:

a. The development will result in minimum disturbance of the natural terrain and vegetation commensurate with the proposed use of the lot or premises.

b. Grading, excavation and filling proposed in connection with the development will not result in soil ero-

PETERSON & PRICE
A PROFESSIONAL CORPORATION

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File No.

4196.004

Via Fax & Messenger

April 12, 2000

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
3111 Camino Del Rio No., Ste. 200
San Diego, CA 92108-1725

Re: Summit Resources, LP
Coastal Development Permit No. A-6-LJS-99-160
Coastal Commission Meeting May 8-12, 2000

Dear Sherilyn:

Attached please find a copy of a letter addressed to Tim Martin dated April 11, 2000 from Curtis Burdett of Christian Wheeler Engineering. His letter addresses two issues which were discussed at the Coastal Commission meeting on Monday, April 10, 2000.

LANDSCAPING AND IRRIGATION

The first deals with landscaping. It is our client's desire to have Special Condition No. 3B modified to be consistent with the recommendations as contained within the attached letter. It is our understanding having discussed this matter with Lee McEachern and Laurinda Owens that Staff would consider a modification to the Landscaping and Irrigation Condition if it could be demonstrated that landscaping and irrigation (if restricted and controlled) would not adversely affect the stability of the bluff.

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 2

SAFETY OF EXISTING STRUCTURES

The second issue, which is addressed by the attached letter, is the issue which was brought up by Chairperson Wan and a couple of the other Commissioners. Some of the Commissioners wanted some type of assurance that the existing structure(s) located within the 25 ft. setback are safe and would not be adversely affected by the proposed improvements landward of the 25 ft. setback. As you can see by the attached letter, these assurances have now been made.

NONCONFORMING USES AND STRUCTURES (Municipal Code §103.0303.2)

Based upon the testimony of Ralph Faust, Esq., at the last hearing and the fact that it has been determined inappropriate for Staff to use the 50% demolition of the exterior walls "Rule of Thumb" to classify the project as "new development," our client will proceed with the project as approved by the City of San Diego. As you know, our client's home reduces the degree of nonconformity in certain portions of the existing structure. As Mr. Faust stated, the standard, which is applicable to the project, is contained within the Certified LCP in Municipal Code §103.0303.2. In addition to subparagraph D, which states that improvements, repairs and alterations ... "shall be permitted," we also assert that subparagraph A is applicable. If the Commission were to require demolition, then obviously our client would not be able to "use the building" pursuant to §103.0303.2(A). In

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 3

light of these legal determinations, we would again urge the Staff to revise its report consistent with the ~~strikeout~~/underline, which is attached hereto.

If Staff continues to persist in classifying this project as new development, our client's slightly modified project which retains over 50% of the exterior walls as submitted to Staff last Thursday, April 6, 2000 is still available to the Commission for approval in May.

BLUFF EDGE DETERMINATION

Finally, as we understand it, Staff has taken the position that they do not agree with the City of San Diego's determination of the location of the bluff edge. Please provide us with your Geotechnical, Soils, and Land Surveying Studies and Analysis which substantiate your position in this regard consistent with the City's definition of bluff edge as contained in the Certified LCP. Also, please provide us with an Exhibit or Diagram which depicts Staff's determination of the location of bluff edge on or before Monday, April 17, 2000. Obviously, our client's Development and Design Team would like the opportunity to evaluate Staff's location of bluff edge to determine what effect, if any, the Staff proposed location of the bluff edge will have on the proposed project.

As a final note, if Staff is going to be presenting an Addendum or any Supplemental Information (or revised Conditions) to the Coastal Commission for its hearing in May, we

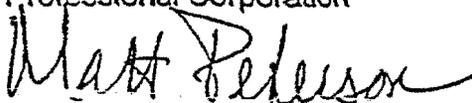
Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 4

would sincerely appreciate receiving that information by no later than Monday, May 1, 2000 so that our client's Development and Design Team can have an opportunity to evaluate and respond to the Supplemental Information.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosure

cc: Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Debra Lee, Deputy Director
Ralph Faust, Esq., Chief Legal Counsel
Lee McEachern, Supervisor of Regulation & Planning
Laurinda Owens, Coastal Planner
Mark Johnson, Senior Geologist, State of CA Coastal Commission
Curtis R. Burdett, C.E.G., Christian Wheeler Engineering
Michael J. Pallamary, Director of Mapping, P&D Consultants, Inc.
Tim Martin, Associate, Don Edson Architects AIA & Associates
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, LP
(All with copies of Enclosures)



THE CITY OF SAN DIEGO

April 21, 2000

California Coastal Commission
Sherilyn Sarb, District Manager, San Diego Office
3111 Camino del Rio North, Ste 200
San Diego, CA 92101

Subject: Summit Resources; 1900 Spindrift Dr. SCR/CDP/LJS No. 99-0007

Dear Sherilyn:

This letter is written to further clarify our recent discussion on the subject matter and your request for interpretation of San Diego Municipal Code Section 101.0303 dealing with the continuance of nonconforming uses and structures. You have raised questions that pertain to the paragraph which deals with "repairs and alterations" and what is considered "increasing the degree of nonconformity". You have asked how this section relates to bluff top development and for the City to clarify it's own interpretation of "new development".

SDMC Section 101.0303, Continuance of Nonconforming Uses and Structures, states....."Repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement or increase the size or degree of nonconformity of a use may be made provided 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 or alterations occur." Our City Attorney has opined that "repairs and alterations" can be any repair or change to the structure (interior or exterior) so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco)." (see Enclosures, City Attorney's Memo dated November 12, 1997 and March 4, 1998). Our City Attorney has also clarified that a reconstruction project (because of the demolition required) does not constitute a "change from a nonconforming structure" to a more conforming structure and would not constitute abandonment of non-conforming use rights.

As discussed, SDMC Section 101.0303 allows not only bluff top home owners an opportunity to maintain existing structures but it affects many property owners City-wide. As a result of significant code changes over the years, the City of San Diego has created many non-conforming structure and uses. It is not the intent of the City to discourage redevelopment of property. In fact, it allows the City an opportunity to encourage modifications that reduce the degree of nonconformity. Although our offices disagree on this point, the City must continue processing



Planning and Development Review

1222 First Avenue, MS 501 • San Diego, CA 92101-4155

Tel (619) 446-5460

Ms. Sherilyn Sarb
April 21, 2000
page 2

projects under the purview of "non-conforming" rights as established by long time Department Policy substantiated by City Attorney concurrence.

In the case of the Summit Resource project, the La Jolla Shores Planned District Ordinance (PDO) has it's own section on nonconforming uses and structures. Pursuant to the provisions of the PDO, it was determined that the improvements would not "increase the degree of nonconformity", hence, the project was approved. Although the permit contains a standard condition that is normally applied to city-wide zoned property; the 50% fair market value limitation to proposed repairs, alterations and modifications to legal nonconforming structures is not applicable to this project. According to the LJS PDO (Chapter X, Article 3, Division 3), San Diego Municipal Code Section 101.0303 would be superseded by the PDO.

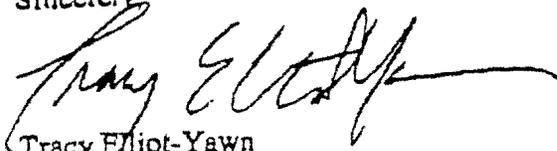
Your questions on clarifying remodel vs. new development can also be addressed. The Coastal Ordinance specifically defines "Coastal Development" (SDMC Section 111.0107). A Coastal Development Permit (CDP) is required for "coastal development" within the boundaries of the Coastal Zone as illustrated on Map no. C-730.1 unless an exemption can be granted pursuant to San Diego Municipal Code Section 105.0204 (old code). The Summit Resource project is located on a bluff top site and lies within the Sensitive Coastal Resource Overlay Zone. The proposed development exceeds the exemption criteria therefore, is considered "Coastal Development" that would require a Coastal Development and Sensitive Coastal Resource Permits.

There also seems to be some confusion with respect to remodel vs. new development. The City's Coastal exemptions were amended in 1990 to restrict improvements to an existing structure or structures by limiting the removal of up to 50% of exterior linear walls. This threshold was established to allow the City to look at development within the coastal boundaries. As you know, consistent with the State CC exemptions, the City already has a strict requirement for review of new development (additions, remodels and/or demolition and new construction) that are located within the sensitive areas such as beaches and bluffs, or within 300 ft. of a mean high tide line or within the first public roadway. Outside these areas, the communities desired a higher level of scrutiny on development. Therefore, the City developed several formulas. As a result of public hearings, City Council adopted the "50% rule" which was subsequently certified by the Coastal Commission.

Ms. Sherilyn Sart
April 21, 2000
page 3

I hope you find this information useful. We look forward to our meeting next week to discuss the geological and landscape issues on the subject matter. If you have any questions please call me at 446-5340.

Sincerely,



Tracy Elliot-Yawn
Senior Planner, Coastal Section
City Planning and Development Review

ENCLOSURES

cc: Lee McEachern, Supervisor of Regulation
Laurinda Owens, Coastal Planner
CDP/SCR/LJS file

Office of
The City Attorney
City of San Diego

MEMORANDUM

533-5800

DATE: November 12, 1997
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures

In a memorandum dated November 5, 1997, you asked our office to provide you with an interpretation of San Diego Municipal Code ("SDMC") section 101.0303. Specifically, you have asked whether a project which proposes to demolish and reconstruct nonconforming exterior walls (the value of which does not exceed fifty percent of the fair market value of the improvement) should be considered an abandonment of nonconforming rights which must be reconstructed in conformance with all applicable regulations or a permissible alteration. This memo responds to that issue.

SDMC section 101.0303 reads as follows:

SEC. 101.0303 Continuance of Nonconforming Uses and
 Structures

The lawful use of land existing at the time the Zone Ordinance became effective, with which ordinance such use did not conform, may be continued provided no enlargement or addition to such use is made.

The lawful use of buildings existing at the time the Zone Ordinance became effective, with which ordinance such building did not conform with respect to the development regulations, may be continued provided any enlargements, additions or alterations to such building will not increase its degree of nonconformity and will conform in every respect with the development regulations of the zone in which the building is located, except as hereinafter provided by zone variance.

Any discontinuance of a nonconforming use for a continuous period of two years shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the ordinance.

Any change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights.

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.

If any nonconforming building or use be destroyed by fire, explosion, act of God or act of the public enemy to the extent of fifty percent (50%) or more of the fair market value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council, the said building or use and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by the Zone Ordinance for the district in which such building was located. The provisions of this paragraph shall not apply to any nonconforming building for which a Reconstruction Permit has been or is obtained pursuant to Municipal Code Section 101.0500(B).

If the use is a medical or counseling service and is prohibited pursuant to Sections 101.0410(B)(9)(c), 101.0423(B)(1), 101.0426(B)(1), 101.0427(B)(1), or 101.0435.2(B)(11)(e), and if such use existed on August 13, 1984, it shall become a nonconforming use and shall be governed by the provisions of this section. Any such medical or counseling service existing on the effective date of the ordinance shall have ninety (90)

days to cease operation, after which time the service shall be unlawful at that site and shall constitute a violation of this Code unless a Conditional Use Permit is obtained in accordance with Section 101.0513.

If an investigation by the Development Services Department reveals that a particular property contains a legal, nonconforming use or structure, a "Notice of Nonconforming Rights," may be recorded in the County Recorder's office. This notice is designed to provide constructive notice to any successors in interest that nonconforming rights as to the property or structures existed at the time of the recordation of notice. Nothing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right.

If a subsequent investigation reveals that a previous nonconforming right as to the property's use or structure has been lost, a cancellation of the Notice of Nonconforming Rights shall be recorded.

The state of the law in this area is such that "[m]ost nonconforming provisions of local ordinances do not permit structural alterations because they may lead to the creation of a nonconforming building that will better accommodate and make the nonconforming building use more permanent." Longtin's California Land Use section 3.82[4] (1987) (emphasis added). However, as you can tell from reading SDMC section 101.0303, The City of San Diego does not follow the norm. SDMC section 101.0303 does not preclude alterations. Rather, we specifically permit alterations which do not exceed fifty percent of the fair market value of the improvement. The provision with section 101.0303 addressing "Notices of Nonconforming Rights" also provides that "[n]othing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right." This provision further reiterates the point that nonconforming rights can only be extinguished through expansion, enlargement, abandonment or destruction and not by any act qualifying as a repair or alteration.

Evidently, based on your memorandum and my recent conversations with City staff, the sentence in SDMC section 103.0303 which reads "[t]he terms "repairs" and "alterations" do not include painting or replacement of exterior stucco siding, or shingles," has been given special meaning. This sentence has historically been interpreted to define the permissible scope of a "repair" or "alteration." I do not believe this is a legally defensible interpretation of the sentence and I

suggest instead that the sentence must be interpreted and applied within the context of the entire paragraph. I think the correct interpretation of the sentence in light of the whole paragraph is that it provides for an exception to the formula for calculating the value of the repair or alteration. In other words, in calculating whether a repair or alteration constitutes more or less than fifty percent of the fair market value of the improvement, the cost of painting, exterior stucco and shingles should not be included. Therefore, using the application I have suggested, any repair or change to the structure (interior or exterior) is permissible so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco).

A second issue raised by your question involves whether a proposed alteration or repair of a nonconforming structure which involves demolition and reconstruction constitutes an abandonment of a nonconforming right. On this point, SDMC section 101.0303 contains a sentence which provides that "[a]ny change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights." Precisely, the question is whether a reconstruction project (because of the demolition required) constitutes a "change from a nonconforming structure" to a more conforming use or structure.

I believe that precluding reconstruction under the above referenced provision amounts to an overly restrictive interpretation of the Code. If plans are submitted and building permits are issued which result in a structure that is more conforming to the code, clearly in that situation, all or some partial degree of the nonconforming right is abandoned. The land owner cannot later come back to reclaim the right that was abandoned. The horn book law on this point states:

A change in structure occurs when the landowner modifies an existing building or structure, either by repair or physical alteration of the premises. In most cases, a change in the physical structure involves merely a minor expansion of the same use. However, in some cases a change in the structure, if extensive enough, may amount to a substantial expansion or change of use.

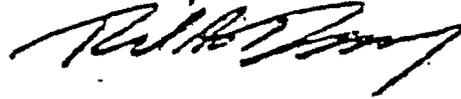
Longtin's California Land Use section 3.82[4] (1987).

The legal definition of the word "abandonment" is: "Knowing relinquishment of one's right or claim to property without any future intent to again gain title or possession." Barron's Law Dictionary, Second Edition. This commonly accepted definition of the term is consistent with the example I used above where permits are issued for a project which results in a structure exhibiting a lesser degree of nonconformity. However, if someone is proposing an alteration to partially reconstruct a nonconforming structure, without expanding the degree of nonconformity, it is generally not their intent to relinquish or forfeit their nonconforming rights. For these reasons, in

Gary Halbert
November 12, 1997
Page 5

a situation where a project proposes demolition and reconstruction, unless the end result of the project amounts to an expansion in the structure, I do not think the reconstruction itself qualifies as a "change" which constitutes "abandonment."

CASEY GWINN, City Attorney



By

Richard A. Duvernay
Deputy City Attorney

RAD:ic:600

cc: Linda Johnson

Tracy Elliot-Yawn

LADUVERNA MEMOSNONCONLMMO

MAR 05 1998

Office of
The City Attorney
City of San Diego

DEVELOPMENT SERVICES

MEMORANDUM

533-5800

DATE: March 4, 1998
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures in the Coastal Zone

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

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

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

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

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

Gary Halbert
March 4, 1998
Page 2

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

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

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

CASEY GWINN, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

RAD:lc:600x605.3.1

Attachment

cc: Linda Johnson
Tracy Elliot-Yawn

LDUVERNA@MEMPHISNONCOJ.MING

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

DIEGO, CA 92108-1725

521-8036



April 25, 2000

Mr. Matt Peterson
Peterson and Price
530 B Street, Suite 1700
San Diego, CA 92101-4454

Re: Coastal Development Permit Application #A6-LJS-99-160 Summit Resources

Dear Mr. Peterson:

This letter is a follow-up to our conversation yesterday wherein I requested that you provide additional information to complete our review. City staff indicates the following condition is attached to the permit in order to assure the improvements do not exceed 50% of the fair market value of the residence.

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

While you indicated that you do not have this information readily available, it is pertinent to our review of this application. Thus, please provide the following information as soon as possible:

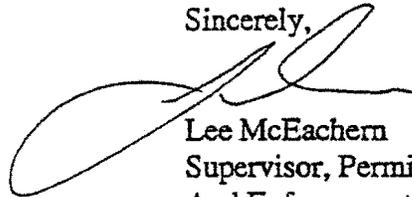
- Copies of any construction estimates that have been done by licensed contractors for the renovation and addition to the existing residence located at 1900 Spindrift Dr., La Jolla, as proposed in the above referenced permit application and as approved by the City of San Diego in CDP/SCR Permit No. 99-0007;
- The estimate should include the aggregate value of the entire reconstruction project including improvements to the portion of the structure being retained, demolition costs and construction of the new addition;
- The submittal should include the documents that form the basis for the construction estimates. The documents should clearly describe the work being performed including, the new addition, and work within the portion of the structure being retained such as, upgrades to wiring and/or plumbing, and/or modifications to the walls, windows and/or floor structure to comply with current UBC requirements.

Mr. Matt Peterson
April 25, 2000
Page 2

- Copy of the most recent assessed fair market value of the existing residence done by the County Assessor.

In addition, in our conversation I requested, and you agreed to provide, a complete set of reduced (8 ½" X 11") plans for use as exhibits to the staff report (site plan, floor plans and elevations). Thank you in advance for your cooperation.

Sincerely,



Lee McEachern
Supervisor, Permits
And Enforcement

cc: Mark Mazzarella
Sherilyn Sarb
Laurinda Owens

MAZZARELLA, DUNWOODY & CALDARELLI LLP

ATTORNEYS AT LAW
550 WEST "C" STREET, SUITE 530
SAN DIEGO, CALIFORNIA 92101-8575
TELEPHONE: 619.238.4900
FACSIMILE: 619.238.4959

April 21, 2000

VIA FACSIMILE & U.S. MAIL

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

Re: Response to March 29, 2000 Request for Documents Relating to Coastal
Commission Appeal No. A-6-LJS-99-160 (1900 Spindrift, La Jolla California)

Dear Lee:

Thank you for your April 7, 2000 response to my March 29, 2000 document request in the above-referenced matter. I note that you have indicated that your computer records do not readily reveal appeal document creation dates. We have learned from past experience with similar computer document dating problems that computer experts can accurately determine document creation dates from residual electronic data on a computer's hard drive.

Time is of the essence. We therefore request immediate access to the computer hard drive in question. To the extent that you require a formal California Public Records Act Request pursuant to Government Code Section 6250 *et seq.*, please consider this letter to constitute such a request for any and all electronic and or computer records in their original digital form that mention, discuss, or in any way pertain to the property commonly known as 1900 Spindrift Lane, La Jolla, California, which is the subject of Appeal No. A-6-LJS-99-160. Our expert can quickly copy the necessary information from your computer when given access to do so. Needless to say, we expect that all electronic data will be retained by the Commission pending our inspection.

Please give me or my associate, Brian Goodwin, a call at your earliest convenience to let us know when we can review your computer files on this matter to verify creation dates and other relevant information.

You also indicated in your letter of April 7, 2000 that the original signed appeal forms are sent to the San Diego office via the Commission's courier service, and that a copy of the courier log showing that a courier delivery was made to the San Diego office on December 21, 1999 (the date the appeal forms were received by San Diego staff) would be available. I would like a copy of the log.

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
April 21, 2000
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More importantly, I would like to know how San Diego staff could have: (1) spoken to the commissioners who filed the appeal; and then (2) requested the original signed appeals form from San Francisco; and then (3) received them on December 21, 1999 when the telephone records you produced to us previously reflect that the discussions that purportedly took place between Charles Damm and Commissioners Wan and Daniels occurred late in the morning and late in the afternoon on December 21, 1999. There was, therefore, no opportunity to have in fact first obtained the commissioners' approval, then contact San Francisco and then have forms sent via overnight messenger to San Diego in order to be filed late afternoon on the 21st.

As you may recall, Matt Peterson advised you, Sherilyn Sarb and Deborah Lee during our meeting on March 10, 2000, that when he first saw the file on this matter in the Coastal Commission's office, all that existed were xeroxed copies of the commissioners' signatures on the appeals. Furthermore, when he first saw the appeals forms the words "See Attached" were not typed on them. We were advised during our meeting on March 10, 2000 that Mr. Peterson was mistaken, and in fact originals were in the file, and further that the words "See Attached" were added at a later date, not because the materials were generated at a later date, but in order to make it clear that the appeal and the findings in the file were related (a fact that would seem quite obvious).

When Mr. Peterson first inquired months ago as to the process utilized to file the appeals, he was told that xeroxed copies of the commissioners' signatures on the appeal forms were kept in the San Diego office, and used by the local staff to file appeals. This was consistent with what he saw in the file. In our meeting on March 10, 2000, this was denied. Instead, Ms. Lee stated emphatically:

"[the blank signed appeal forms] are kept under the control of Peter Douglas' executive assistant. Whoever makes the calls and contacts the commissioners has to call her and indicate that THEY HAVE GOTTEN that specific authorization, THEN those two forms are sent down to the district office ..." [Emphasis added.]

Obviously, the required procedure did not occur in this case. Calls could not have been made to the commissioners on December 21, and the blank signed appeal forms received from San Francisco and filed on December 21st.

I appreciate, as was explained to us at our meeting on March 10, 2000, that at the time this matter was coming to a head, Laurinda Owens was out ill, and two other staffers were on vacation, and that Chuck Damm, who generally works out of Ventura, was pinch-hitting. That may explain why required procedures were not followed, and the appeal deadline was missed. But it does not excuse the late filing. The local staff should acknowledge the true facts to the Commission; and the appeal should be voluntarily dismissed.

Upon reviewing the transcript of our meeting on March 10, 2000, an additional public records request has come to mind. In that transcript either Sherilyn Sarb or Deborah Lee stated, "There were several appeals being filed at that time." I would like copies of whatever other appeals were filed by the

Lee McEachern, Supervisor,
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local San Diego Coastal Commission staff between December 20 and December 24, 1999. I would also like a copy of the tape of your meeting with Matt Peterson, Tim Martin, Laurinda Owens, Sherilyn Sarb and Deborah Lee on April 3, 2000. Enclosed is a check for \$5.00 to cover what I understand to be the cost of duplication. Please consider these formal California Public Records Act Requests pursuant to Government Code Section 6250 et seq.

I look forward to your response to these requests and questions.

Very truly yours,



Mark C. Mazzarella

MCM:dll

cc: Matthew Peterson, Peterson & Price
Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Ralph Faust, Esq. Chief Legal Counsel
Laurinda Owens, Coastal Planner
Summit Resources, LP

MAZZARELLA DUNWOODY & CALDARELLI LLP

PH. 619-238-4900
550 W. C STREET, STE. 530
SAN DIEGO, CA 92101

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90-3210/1222

DATE 4-21-00

PAY
TO THE
ORDER OF

CALIFORNIA COASTAL COMMISSION

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CALIFORNIA BANK & TRUST

SAN DIEGO OFFICE
111 N ST., SAN DIEGO, CALIFORNIA 92101

FOR _____

Michael J. Raden

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CALIFORNIA COASTAL COMMISSION

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



Wed 14e

SEE SUBSEQUENT PAGE 31
 FOR COMMISSION ACTION

Filed: 2/15/00
 49th Day: 4/4/00
 180th Day: 8/13/00
 Staff: LRO-SD
 Staff Report: 4/26/00
 Hearing Date: 5/9-12/00

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. The de novo permit was previously scheduled for Commission review at its April 10th meeting. After beginning the public hearing and a discussion of the project, the Commission ultimately voted to continue the matter to the May Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed substantial demolition/remodel of a residence resulting in a 14,630 sq.ft., two-story single family residence on a coastal blufftop lot. The project raises concerns related to blufftop setbacks, geologic hazards, continuance vs. discontinuance of nonconforming rights of older residential structures and protection of public views toward the ocean in the sideyard setback areas. The project involves substantial demolition and remodel of a pre-Coastal Act residence that is located on a bluff top lot and that has a variety of accessory structures, including a seawall on the beach and gunite on the bluff face, that were also constructed prior to the Coastal Act. The bluff was apparently graded or sculpted prior to application of the gunite. The residence is situated almost directly above the gunite, such

EXHIBIT NO. 5
APPLICATION NO. A-6-LJS-99-160-R
Original Staff Report (Page 1 of 186)

that there is no setback between the residence and the gunited bluff edge. The City's LCP requires that all 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. The LCP also prohibits the construction of seawalls and bluff protective devices unless necessary to protect an existing structure.

The existing residence, seawall, and gunite do not comply with the LCP. Since the applicant is proposing to essentially reconstruct the house, staff recommends that such reconstruction only be approved if the applicant removes both those portions of the existing residence that are within 25 feet of the bluff edge and the gunite. 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 portion of the principal residential structure or pool or spa shall be sited closer than 25 ft. from the existing edge of bluff. The condition also requires submittal of plans for the removal of the gunite from the bluff face and that the gunite be removed within 60 days of removal of the portions of the existing residential structure that are located within 25 feet of 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; Response to California Coastal Commission prepared by Christian Wheeler Engineering, dated 4/18/00; 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; Letter from Skelly Engineering to applicant dated 10/15/98.

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 existing edge of bluff, shown on Exhibit #20. The bluff edge cannot presently be determined accurately where it lies beneath the existing gunite or residential structure. Determination of the precise location of the bluff edge requires further examination, either through use of any crawl space that may exist beneath the present structure, or during demolition, following removal of the gunite and/or the existing structures.

- b. Plans for the removal of the gunite from the bluff face. The gunite shall be removed within 60 days of removal of the portions of the existing residential structure that are located within 25 feet of the bluff edge.
- c. All existing and proposed accessory improvements shall be identified. All proposed accessory improvements (patios, decks, etc.) proposed within the 25 ft. geologic setback area must be "at-grade" and located no closer than 5 ft. from the edge of the existing bluff.
- d. No maintenance of the existing non-conforming boathouse/cabana shall be permitted.

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 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 existing landscaping in the sideyard setback areas shall be trimmed or removed and replaced with landscaping to be maintained at a height of three feet

or lower to preserve views from the street toward the ocean. All new landscaping shall not exceed a height of three feet.

- 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 blufftop lot. The project represents redevelopment of a site which was developed prior to the Coastal Act (1928). Due to the nature in which the site was developed, all of the existing structures possess some degree of non-conformity with the Coastal Act and corresponding policies of the City of San Diego certified Local Coastal Program (LCP) which would be applied to new development today. Additionally, the principal residence is approaching the 75 year life expectancy which the Commission and the local government has used to determine the appropriate geologic blufftop setbacks for new development.

The applicant proposes to demolish 4,745 sq.ft. of the inland portion of the residence and construct 9,415 sq.ft. of new floor area in one and two stories (the residence is a two-level home over basement). Approximately 5,215 sq.ft. of the seaward portion of the structure would be retained, although the applicant proposes to make interior renovations. In the portion of the residence that is located within 25 ft. from the bluff edge, an existing room at the northwest corner of the main level will be removed. The floor area is proposed to be retained and used as a deck. At the middle portion of the main level at the western elevation, an existing room is proposed to be removed. The floor area is

proposed to remain as a "view deck". Also proposed is the removal of an existing roof "canopy" overhang at the southwest corner of the main level.

Other proposed changes to the existing portions of the residence as well as new construction include the following:

Main level changes: At the northwest part of the existing residence, an existing study will be enlarged by removing walls and constructing a larger room. The room will be larger in size than the study but will not extend any further west than the facade of the existing building at this location. Presently, there are three bedrooms on the north side of the residence, north of the existing courtyard. This entire area will be enlarged by removing existing walls and constructing a family room, kitchen, office and billiard room and gallery. At the east elevation of the residence, a new entry will be constructed. On the south side of the residence south of the existing courtyard, presently there is a kitchen, breakfast area, laundry and maid's room. Floor area changes include a new office and new circular stair. External changes include a swimming pool and spa.

Upper Floor Plan: At this level, the existing floor plan is L-shaped. At the west side of the floor, there is an existing bath, sitting room, and master bedroom. Proposed changes in this area are to keep the master bedroom but to expand this area to include his and her bathrooms and closets, re-orientation of the bedroom and an elevator and child's room. Presently, along the south side of this level are three small bedrooms with baths and hallway. The entire floor will be enlarged through demolition of existing walls and removal of the existing bedrooms. The new construction will include two new bedrooms at the southeast side of the residence. In addition, the north part of this level will be expanded through demolition of existing walls and construction of two large bedrooms with baths and closets. South of this area, also proposed is a new common area/hallway.

Existing Basement Level: At this level there are presently only two changing rooms with showers, mechanical room and a stairway that lead to the main level. There is also an existing boiler room at the southeast corner of this level which will remain. Proposed changes at this level include demolition of walls and expansion of the entire basement to at least twice its present size through new construction to include a maid's room with bath and closet, a caretaker/storage area with bath, a game room/exercise room and mechanical/pool equipment room and hallway. New mechanical improvements will also include a pool filter and heater at this level for the newly proposed swimming pool and pool and Jacuzzi pumps.

Also proposed is a new swimming pool, spa, covered deck and landscaping. The subject residence includes several accessory improvements located either on the blufftop or seaward of the bluff edge. The applicant proposes to remove an existing 225 sq.ft. detached bunk house located near the northern property line in the area usually reserved as the geologic setback area. 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 blufftop lot. There is an 11 ft. high, 100-foot long seawall located on the beach some distance seaward of the bluff. The majority of the coastal bluff itself 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 at or near the gunite coated face of the bluff. Because the entire bluff face is covered with gunite, it is hard to determine the location of the actual bluff edge (i.e., the natural bluff underneath the gunite). Thus, the actual distance between the existing residence and the existing bluff edge has not been determined. The area between the toe of the gunited bluff and the existing seawall is filled and contains an existing 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.

The portion of the residence that the applicant proposes to retain, is all the square footage located closer than 25 feet from the applicant's definition of the bluff edge. The applicant defines the bluff edge as the location of the bluff as it existed prior to the grading, sculpting, and covering with gunite. Thus, the applicant's definition of the bluff edge results in a location that is seaward of the gunite bluff edge, and seaward of the existing bluff edge. As a result, the portions of the residence that are proposed to be demolished and rebuilt are closer than 25 feet to the gunite bluff edge and to the existing bluff edge.

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 of 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 south of 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 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 Land Use Plan (LUP), La Jolla Shores Planned District Ordinance (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 and 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 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. Consistency with LCP/Existing Non-Conforming Structures. All of the structures which exist on the property today are non-conforming with respect to the policies of the Coastal Act and the corresponding policies of the certified City of San Diego LCP. The existing principal structure is located at or very near the bluff edge and does not provide a minimum 40 ft. geologic setback from the existing bluff edge. The entire bluff face has been previously modified, graded in some areas and then coated with gunite. The submitted geotechnical information (10/2/98) indicates the portion of the lot seaward of the structure has been sculpted and some tunnels have been made in the bluff and beneath the house. The report states: "Based on the information available to us, it appears that the seawall was built at about the same time as the original improvements and was not installed due to excessive erosion but rather had been placed as a preemptive measure to protect the boathouse and other improvements near the beach and also to provide increased privacy".

The principal residence, existing gunite coating of the bluff face and the seawall are nonconforming structures because they are inconsistent with the certified LCP, including LUP policies concerning protection of bluffs and beaches, and the SCR overlay ordinance of the City's former LCP Implementation Plan which is attached in its entirety as Exhibit #13. The SCR overlay (101.0480 D. Special Regulations) 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 including, but not limited to, structures needed to repair damage to, or to prevent or retard erosion of the bluff face in order to protect existing principal structures; provided, however, that no such measures or structures shall cause significant alteration of the natural character of the bluff face....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....

SCR overlay ordinance 101.0480 C.1 states:

Permitted uses shall be those permitted by the underlying zone subject to the regulations and restrictions of the underlying zone, except as limited below.

1. Beach Areas. Permitted uses allowed in the beach areas, as shown on the SCR Zone maps, shall be limited to the following:

- a. Lifeguard towers and stations and associated life and security facilities.
- b. Public comfort stations.
- c. Public piers
- d. Safety and public information signs.
- e. Shoreline protective works necessary to prevent bluff and beach erosion, where needed to protect coastal dependent uses, public beach roadways, or existing principal structures in danger from wave and wind action; and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.
- f. Stairways, ramps, and other physical access structures, as proposed within an adopted community or other applicable plan.
- g. Public recreational equipment.

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 site 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, gunite and seawall do not conform with the LCP. The residence is not sited at least 25 feet from the bluff edge. The gunite significantly alters the natural landform, degrades the natural scenic quality of the bluffs, interferes with natural shoreline processes, and is not necessary to protect the existing residence. Similarly, the seawall degrades the scenic quality of the shoreline, interferes with natural shoreline processes, is not necessary to protect the existing residence, and has not been designed to minimize encroachment onto the beach. The submitted geotechnical information demonstrates that the subject site is sufficiently stable to support the existing principal structure with or without the gunite in place. Therefore, maintenance of these non-conforming structures would not be consistent with the certified City of San Diego LCP.

The boathouse/cabana and patio improvements are also non-conforming structures. These structures are located on the beach inland of the seawall and seaward of the gunited bluff. Thus, they are also inconsistent with the LCP provisions that prohibit any structures on the beach except public improvements or necessary shoreline protection. The inconsistency of the gunite and seawall with the LCP is discussed more fully in Section 4 of this report.

3. Retention of Non-Conforming Structures. Proposed is the substantial demolition/remodel of an existing two-story over basement, 9,960 sq.ft. single-family residence by demolishing 4,745 sq. ft. and constructing 9,415 sq. ft. of new floor area resulting in a 14,630 sq.ft. residence on a 0.53 acre ocean bluff top lot. Also proposed is a new swimming pool, spa, covered deck, and landscaping. There is an existing seawall, boathouse and patio seaward of the property at beach elevation and a gunited coastal bluff inland of the seawall which are proposed to remain. The applicant proposes to retain western portions of the residence that are closer than 25 feet from the pre-existing bluff edge (i.e., the bluff edge as it existed before it was graded, sculpted, and covered with gunite) as shown on the submitted site plan to retain the non-conforming rights potentially associated with that portion of the structure. 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 issue with the subject project is whether the proposed demolition/remodel is so substantial that the failure to bring the residence and accessory structures into conformance with current standards of the LCP causes the entire project to be inconsistent with the LCP. The demolition/remodel will essentially result in a new residence on this site. As a new residence, the project is inconsistent with the LCP provisions concerning protection of beaches and bluffs. 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 constitutes the development of a new structure and therefore, 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 no 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.

Prior to the April 2000 Coastal Commission hearing on the project, the applicant indicated if the extent of demolition is an issue, the project could be revised to retain three portions of the existing walls within the seaward part of the structure which would bring the percent of demolition down to less than 50%. At that time staff indicated the project's consistency with the LCP would still be an issue given that the project involved such substantial work to, and expansion of, the existing residence such that to allow the nonconforming aspects to remain could be inconsistent with the LCP. The policy question is whether there is a threshold where work to a nonconforming structure essentially constitutes total redevelopment such that it should be brought into conformance with the current codes and standards.

It could be argued that the City's nonconforming use regulations at Section 101.0303 of the municipal code attached in its entirety in Exhibit #13, 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. Staff has asked the

applicant to provide us with the information necessary to calculate whether the value of the proposed project exceeds 50 percent of the value of the existing residence (in the form of construction bids and estimates); however, the applicant's representative has indicated the information is not available. Additionally, the applicant asserts, and the City concurs (ref. Exhibit #12 – letter from the City) that the 50% valuation standard is not applicable to the existing residence because the residence is governed by the La Jolla Planned District Ordinance, which does not contain this standard.

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 current requirements. The applicants cite the provisions of the PDO (ref. Exhibit #13) that state:

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.

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.

B. [...]

C. [...]

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

[...]

The applicable section of the above-quoted ordinance appears to be subsection D. The first three subsections address whether a use of property may continue if that use is inconsistent with currently allowed uses. Clearly the existing use of the property (for a residence) conforms with the allowable uses (residential). Thus, the issue is whether the proposed project constitutes "improvements, repairs and alterations which do not increase the degree of nonconformity" of the existing structures. In the 4/21/00 letter (attached as Exhibit #12), the City indicates that it agrees with the applicant's assertion that the above-quoted ordinance is applicable to this project; the municipal code provision containing the 50 percent standard does not apply.

Attached to the City's letter in Exhibit #12 are two written opinions from the City Attorney to help clarify the City's interpretation of the nonconforming use regulations contained in the Municipal Code. However, again, the City does not believe that standard applies to development within the La Jolla Planned District.

A. Whether the Project Constitutes Improvements, Repairs, or Alterations

The ordinance does not define the terms "improvements," "repairs," or "alterations." These terms must be interpreted in light of the purposes of the Coastal Act and the LCP. The La Jolla Shores Planned District Ordinance section 103.0300 states:

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain . . .

Thus, the goal of the LCP is to protect the natural bluffs and beaches of the La Jolla Shores area. In light of this goal, the Commission finds that the terms "improvements" "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. This interpretation is supported by other provisions of the PDO, which use the terms "remodel" and "demolition" as separate terms from "alteration," suggesting that each of these terms have different meanings (see PDO section 103.0302.3, requiring a permit for "the erection of any new building or structure, or remodeling, alteration, addition, or demolition of any existing building or structure.")

The amount of work proposed by the applicant is extensive. Approximately 4,745 square feet will be demolished and approx. 9,415 square feet of new area will be constructed. The portion of the existing structure that will be retained will be renovated. The renovations to the retained portion could be extensive because if the value of the repairs exceeds 50% of the value of the residence, the applicant will be required to bring the retained portion into conformance with current building code requirements (e.g., requirements for plumbing, electrical, insulation, etc.). The Commission finds that the proposed demolition, remodel and renovation are so extensive it does not constitute repairs, improvements, or alterations within the meaning of this ordinance. Rather, the work amounts to a reconstruction of the existing residence.

B. Whether the Project Increases the Degree of Nonconformity. The proposed project also increases the degree of nonconformity of the existing structure. 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 substantial demolition and reconstruction of an essentially new development in the same nonconforming location

when only the nonconforming portion is retained and renovated 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. In this particular case, the structure was developed in a manner that is inconsistent with the Coastal Act and the certified LCP and has reached the end of its 75 year life expectancy. The nature of the site improvements which have altered the bluff face and beach to construct private accessory improvements and include a seawall 25 ft. seaward of the bluff would not be permitted today. 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 which is at the end of the 75 year lifespan for a typical residence;
3. It precludes option for future site development to be brought into conformance with the certified LCP;
4. It perpetuates retention of the nonconforming gunite on the bluff face which could be removed if the replacement structure is moved inland.

Thus, the proposed project does not constitute "improvements, 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 in light of the significance of the resources impacted by the nonconformity of the existing structure, and given substantial extent of the proposed demolition and remodel of the structure, the proposed project is inconsistent with the LCP unless the residence and structures are brought into conformance with the current LCP requirements, regardless of whether the demolition involves less than 50 percent of exterior walls. The basis for this conclusion is discussed more fully in Section C below.

C. Consistency with Certified Local Coastal Program. 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, the La Jolla Shores Planned District Ordinance (commencing with Section 101.0300 of the Municipal Code) and the Sensitive Coastal Resource Overlay Zone (commencing with Section 101.0480 of the Municipal Code). The purpose and intent of the La Jolla Shores Planned District is stated in Section 103.0300 as follows:

The public health, safety and welfare require that property in La Jolla Shores shall be protected from impairment in value and that the distinctive residential character and the open seascape orientation of the La Jolla Shores Area shall be retained and enhanced.

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural

terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast. The proper development of La Jolla Shores is in keeping with the objectives and proposals of the Progress Guide and General Plan for the City of San Diego, of the La Jolla Community Plan, and the La Jolla Shores Precise Plan.

In most cases, the provisions of a Planned District Ordinance are intended to supercede other zoning regulations in order to be more specific and adaptive to a specific community's land use requirements. In this particular case, the Planned District Ordinance addresses nonconforming uses and structures, as stated previously, in a manner similar to the city-wide 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 these findings cannot 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 LCP would be inconsistent with the intent and goals of the LCP. 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, as well as the requirements concerning protection of the bluffs by removal of the existing gunite. The gunite could be removed if the residence is relocated further inland to comply with the setback requirements that exist for new development today. 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. Shoreline Hazards/Geologic Stability.

A. Consistency with Blufftop Setback Requirements.

The proposed development is 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.

In past review of proposed developments on project sites where there is an existing seawall, the Commission has found that development must be setback 40 feet because the presence of a seawall demonstrates that the site is hazardous such that a reduction of the geologic blufftop setback is not justified. However, in this particular case, the applicant's geologic information demonstrates that the seawall was not constructed for purposes of protecting the residence from erosion, and is not needed for this purpose. Specifically, the applicant's geologist has stated:

(It appears that the seawall was constructed in approximately 1928 but was built to protect the improvements on the beach and increase privacy.) The results of the analysis demonstrate that the stability of the site is not dependent on the seawall.

Thus, the presence of the seawall does not necessarily demonstrate that a 40 foot setback is warranted.

Further, the presence of the seawall and the gunite should not be a factor in determining the appropriate setback. Since the seawall and gunite are not needed to protect the existing residence or the stability of the site, and since they do not conform with the LCP, the house should be sited in a manner that allows for these nonconforming structures to be either phased out (by not maintaining them) or relocated and redesigned consistent with the LCP. According to the applicant's engineer, (Dave Skelly in a letter dated

10/15/98), the seawall and gunite will fail unless repaired and maintained soon. Therefore, new development on the site should not be dependent on retention of the seawall and gunite for protection from bluff erosion or wind and wave action associated with storm conditions. Additionally, siting new development consistent with the geologic setbacks 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 should this be contemplated in the future. Such alternatives would avoid or reduce encroachment on sandy beach and eliminate or minimize the adverse effects of protective devices on shoreline sand supply, visual quality and public access.

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 and gunite 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 or gunite in its current location and configuration as suggested by the original geotechnical report. 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.

The applicant's geotechnical engineers responded in two letters dated 3/17/00 and 3/23/00. In a letter dated 3/17/00 from Christian Wheeler Engineering, it is stated:

"In response to your letter of March 15, 2000, we are providing, herewith additional information regarding the stability of the site to support the proposed development. The accompanying slope stability analysis (dated February 25, 2000) was performed with the assumption that the seawall at the base of the seacliff was not there. (It appears that the seawall was constructed in approximately 1928 but was built to protect the improvements on the beach and increase privacy and was not built as a result of erosion of the base of the bluff). The results of the analysis demonstrate that the stability of the site is not dependent on the seawall. As noted in both the geologic reconnaissance report and the geotechnical report prepared for the project, the bluff is relatively short and the site is underlain predominantly by well-consolidated, Cretaceous-age sandstone with a relatively thin cap of quaternary-age materials."

The engineers further stated in the letter:

"...In general, we found that a 25-foot setback is appropriate for the site and that the site is suitable for the proposed new construction, provided the recommendations provided in our reports are followed. It can be noted that the 1.5 factor of safety line with regards to slope stability is less than 25 feet from the

edge of the bluff but the City of San Diego and the Coastal Commission both have a mandatory setback of at least 25 feet.”

This information demonstrates that the stability of the existing residence, and the site in general, is not dependent on the seawall and gunite.

In addition, bluff retreat rate is further discussed in a report dated 10/2/98 by Christian Wheeler Engineering, as follows:

“The mode of historical recession in the immediate vicinity of the subject site appears to be manifested both as small block falls caused by erosion along the fractures and joints in the Point Loma Formation and by subaerial erosion of the terrace deposits and other surficial materials caused by severe storm conditions and/or drainage conditions. The rate of erosion is variable with periods of very little recession alternating with episodes in which a small block of the Point Loma Formation falls from the face of the seacliff or substantial surficial erosion occurs. Based on the available information, it appears that the overall recession rate of the Point Loma formation at the base of the bluff in this portion of La Jolla is less than one-half inch per year and that the recession rate of the terrace deposits and other surficial materials ranges from less than an inch per year to several feet per year with an average rate of a few inches per year in unprotected areas. It should be noted that there is currently no erosion occurring at the subject site proper at either the base of the bluff nor on the bluff face due to the presence of the seawall and the concrete/gunite placed on the western portion of the lot. The amount of apparent recession from the edge of the bluff shown on the original house plans and the present edge of the flatter portion of the lot appears to be due to previous grading operations instead of natural processes.”

In the same report, under “Conclusions”, it is further stated:

“5) The site is located largely in Geologic Hazards Category 43 and Hazards Category 11 according to the City of San Diego Seismic Safety Study. Category 43 is assigned to coastal bluffs that are considered to be generally unstable due to unfavorable jointing and local high erosion; the potential risks in Category 43 are considered to be moderate. Category 11 is assigned to areas in the State of California Alquist-Priolo Earthquake Hazard Zone. Our limited reconnaissance indicated that there are faults both north and south of the lot and possibly on the subject proper. The possible small on-site faults should be of only economical consequence to the project; no setback from these small inactive or potentially active faults is anticipated. However, it should be noted that when redevelopment plans are submitted, the City of San Diego may possibly require the property owner to complete a Notice of Possible Geologic Hazard and file it with the County Recorder.

There do not appear to be any geotechnical-related features that make the existing improvements unsuitable for continued use for residential purposes. Most of the native material present at the site is Cretaceous-age Point Loma Formation which

consistent of generally competent, well-consolidated sandstones. However, it should be recognized that no site is entirely without some level of risk; some risks are associated with this site due to the aforementioned geotechnical conditions but the risks appear to be within an acceptable range. Based on the information available to date, it is our opinion that the 40-foot setback from the edge of the bluff can be reduced to that the area located 25 feet or more from the northwestern edge of the existing residential structure can be redeveloped. It is our opinion that "1) the site is stable enough to support the development with the proposed bluff edge setback; and 2) that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures" (75 years). Continued vigilance and maintenance by the homeowner is recommended to ascertain the adverse conditions do not significantly impact the site."

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 and that this setback is not dependent upon retention of the seawall or gunite. However, it should be clarified, that the Commission's staff geologist reached this conclusion based on "the actual extant bluff edge, which is somewhat landward of the most seaward parts of the structure, and not on any previously existing bluff edge that was removed during development." In other words, in determining the necessary setback to assure the proposed residential structure is safe in the future, the edge of the bluff as it currently exists must be used and not the edge of the bluff that existed in the 1920's before the bluff was graded and cut landward.

The applicants contend that the location of the bluff edge for purposes of the measuring the setback of the residence should be based on the City's "Coastal Bluffs and Beaches Guidelines" dated 11/97 (reference Diagram III-3 and Section 3 on page 11 of Exhibit #15). That document states that if a coastal bluff face has been altered by the installation of retaining walls, seawalls or other device, that the coastal bluff edge should be considered the bluff edge as it existed prior to the changes in gradient. Based upon this document, the applicant's surveyor, Precision Survey and Mapping, prepared a topographical map which identifies a hypothetical pre-development bluff configuration based on surveys and floor plans that were prepared prior to the construction of the residence in late 1920's or early 1930's and that showed the approximately bluff edge at that time. While this survey appears to be accurate in its representation of a "pre-existing" bluff edge, the Commission finds that this is not the bluff edge that should be used to determine the geologic setback of blufftop structures. The Commission finds that the applicant has incorrectly interpreted the City's Coastal Bluffs and Beaches Guidelines. The intent of the guidelines relative to this issue is to address a circumstance where the bluff has been altered such that it extends further seaward. In this particular case, according to the geologist, the bluff has been "sculpted and cut back landward from its natural configuration". As can be seen by Figure III-3 of Exhibit #15 attached, the intent of the guidelines is clearly to address circumstances where the bluff was modified seaward of the original bluff edge. In this case, the applicant is asserting that the pre-development bluff edge, now hanging in space seaward of the modified bluff edge,

should be used in order to preserve the pre-development 25-foot setback, even though this 25-foot setback now has no physical meaning.

Specifically, the applicable section of the City's Coastal Bluffs and Beaches Guidelines states:

“(3) Sensitive Coastal Bluff with a Seawall

If the coastal bluff face has been partially altered with the installation of retaining walls, seawall, or other device, the coastal bluff edge shall be considered the pre-existing change in gradient and shall continue to be measured as described in (a) above. That is, the installation of a seawall shall not affect the location of the coastal bluff edge. See Diagram III-3.”

However, after review of the guidelines, Commission staff has determined that the City has not correctly interpreted the statement related to “pre-existing bluff edge”. Where the “alteration” has moved the bluff edge landward, this policy should not be applicable, as in the subject case or in other alterations of the bluff face. The diagram from the guidelines clearly shows that when the seawall has moved the bluff edge seaward, it is the pre-existing bluff edge that is to be used as a datum. However, in this case, modifications to the bluff have moved the bluff edge landward, so the policy should not be applicable in this situation. In Exhibit #20 attached, the Commission's staff geologist has delineated the general locale of the bluff edge that should be used to measure the appropriate geologic setback.

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 or gunite to support the development, the Commission finds that the proposed geologic setback of 25 feet from the existing bluff edge, 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. This is inconsistent with the certified LCP addressing the siting of new development which requires a minimum 25 ft. setback. Therefore, no portion of the principal structure should be permitted seaward of the 25 geologic blufftop setback line—as measured from the currently existing bluff edge. Again, from a policy standpoint, the Commission finds that a larger non-conforming structure with an inadequate setback increases the degree of nonconformity and increases the time period that the nonconformity will exist. In this case, the Commission finds that the development clearly increases the degree of non-conformity because it is a substantial demolition and reconstruction of a single-family residence with the proposed retention of those areas that are located within the geologic setback area and which are non-conforming. This particular project is not simply an addition on the inland side of the residence with no effect to the existing structure. The non-conforming portion will also be renovated, and the intent is for it to function as the primary living area for the replacement structure for the extended life of the structure. The proposal will extend the life of not only the additions, but the existing home as well, because the newly proposed construction is not separate in any way from the new portions of the residence. As noted

earlier in the section on non-conforming rights, the proposal should not be treated as simply retaining the non-conforming rights. As cited earlier in the project description, portions of the lower level are proposed to be removed in the geologic setback area yet the upper portions are proposed to remain. From a feasibility standpoint, there is no reason that the entire portion of the residence in this area could not be removed altogether and bring the residence into conformance with the geologic blufftop requirements of the certified LCP.

It is important to note that one of the policies of the certified LUP states, "Shoreline protective devices are poor substitutes for adequate site planning". In this case, where the project results in the total redevelopment of the property and the existing structure is very old, proper siting of development should be required. It is acknowledged that the residence was constructed in the 1920's long before the enactment of the Coastal Act. The existing residence is approaching its 75 year life expectancy which has been used by the Commission and local governments to determine the appropriate bluff top setbacks. If the residence was not reconstructed as proposed, it would likely soon reach the point where a landowner would seek to demolish it altogether. Therefore, it would be inconsistent with the LCP to allow the proposed project, which amounts to a reconstruction of the residence without requiring that the residence be brought into conformance with the geologic setback requirements of the LCP. Therefore, the Commission is requiring through Special Condition #1, 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 (as measured from the existing bluff edge) and that portions within the 25 ft. setback area must be removed or relocated such that no portion of the proposed residence shall be located within 25 ft. of the existing bluff edge.

B. Removal of Gunite.

Available bluff retreat rates provided by the applicant's geologist indicate that the Point Loma formation in the La Jolla area tends to erode due to combined wave attack, surficial erosion, and groundwater processes at the rate of 0.1-0.4 inches per year. These values are somewhat lower than published bluff retreat values of 1-12 inches per year (Benum of and Griggs, 1999; Moore et al., 1999), but these values include erosion of bluffs in which terrace deposits make up a higher proportion of the bluffs than at the subject site. The seawall protects the structure from wave attack, and the gunite is most effective against surficial erosion, although it would provide some protection against wave attack if it were exposed to the surf by removal of the seawall. The removal of the gunite might be expected to lead to bluff erosion rates of between 0.05 and 6 inches per year (half the rates observed in unprotected areas nearby). Removal of both the gunite and the seawall might lead to erosion rates of 0.1 to 12 inches per year. Actual erosion rates would probably be near the lower ends of these ranges because the bulk of the bluff at the subject site is made up of the Point Loma formation, with the terrace deposits only making up a small proportion. At these rates, the principal residence would be at little risk over its effective economic lifetime if the forty-foot geologic setback were adopted.

If the twenty-five foot setback is adopted, there is somewhat more risk, but it may be acceptable given the wide range of bluff retreat rates quoted above.

One benefit of moving the residential structure inland from its present position would be the removal of the unnecessary and unsightly gunite coating on the coastal bluff face. In a letter from Skelly Engineering dated 10/15/98 it is stated, "Both the seawall and retaining wall are in need of maintenance. However, no structural maintenance is required at this time. We suggest the following maintenance activities...." As such, moving the residential structure back would allow for the removal of the gunite. The gunite is a non-conforming structure that would not be permitted under the Sensitive Coastal Resource Overlay. Under the SCR Overlay, structures permitted on coastal bluffs are strictly limited. Specifically, under the special regulations of the SCR overlay addressing coastal bluffs, it is stated:

[....]

2) Bluff repair and erosion control measures including but not limited to, structures needed to repair damage to, or to prevent or retard erosion of, the bluff face in order to protect existing principal structures; provided, however, that no such measures or structures shall cause significant alteration of the natural character of the bluff face.

[...]

In this case, although it is acknowledged that the gunite was installed prior to the Coastal Act, it is nonetheless, a non-conforming structure that is not permitted on a coastal bluff. Given that the gunite is not necessary to protect the principal residence from erosion if appropriate geologic setbacks are adopted and that it is non-conforming, it should be removed. In addition, as noted in a letter dated 10/15/98 from Skelly Engineering to the applicant addressing an inspection of the bluff and seawall on the subject site, it is stated, "Both the seawall and bluff structure have been subject to maintenance over their lifetime."

It is further noted in the letter, "Core samples taken recently show that the thickness of the cover varies from 20 inches to 4 inches in the lower portions of the structure." It was also cited,

"There were several cracks on the order of 1/8 to 1/4 inch wide in the concrete cover, ... These crack[s] are likely due to shrinkage, water seepage, and stresses. In addition to the cracks there were signs of carbonation on the surface of the concrete. The carbonation appears most noticeably as a white deposit on the surface of the concrete. Carbonation is a form of effervescence and deterioration of the concrete. The pH of the concrete is lowered through the chemical reaction. Carbonation if left unchecked can lead to spalling and flaking of the concrete and deterioration of the steel reinforcing ("chicken wire")....

It is concluded in the letter that, "Both the seawall and retaining wall are in need of maintenance. No structural maintenance is needed at this time. We suggest the following maintenance activities.

[...]

Bluff Retaining Structure: Powerwash the concrete and sand blast the areas of carbonation. Clean out cracks and apply an epoxy sealer. Clean out drains. Reapply shotcrete as necessary and re-stain the concrete to match the natural bluff...."

As noted in the previous citations regarding the geotechnical studies that were completed for the project, it has been documented that the existing home is safe where it is presently located with or without the gunite. From a policy standpoint, the proposal should be treated as new development and moved back to adhere to the geologic setback requirements. Furthermore, since the gunite is not needed, then it should be removed, as well. If the existing home were to remain in its current location, maintenance of the gunite would be necessary, as cited by Skelly Engineering. The gunite cannot continue to remain on the face of the bluff indefinitely unless it is maintained. However, because the gunite is a non-conforming structure that is not necessary if appropriate setbacks are adopted, it should not be allowed to be maintained, in which case, it should be removed. By requiring relocation further inland of the portions of the residence that presently are nonconforming, the gunite can be eliminated.

As cited in the policies of the certified LUP, prudent siting of development should occur to avoid the need for shoreline protection devices. In addition, such structures, as in the subject case, are massive and visually obtrusive which detract from the beauty of the coastal bluffs and result in the significant alteration of natural landforms. Over time, as properties redevelop, it is the goal to bring into conformance many of the structures that presently do not conform in order to improve the visual appearance of the coastal bluffs, but to also avoid the need for shoreline protection which adversely affects shoreline processes. Therefore, Special Condition #1 also requires that the applicant submit plans for the removal of the gunite and that the gunite be removed within 60 days of removal of the portions of the existing structure that are within 25 feet of the bluff edge. Since it is not known how the non-conforming portions of the structure at the bluff edge are connected to the gunite, the gunite should be removed after the portions of the non-conforming residence are removed.

There is a square-shaped terrace/concrete patio in the geologic setback area. This terrace is immediately south of existing stairs which descend in elevation down the bluff face to the beach below. The project plans call only for the replacement of the portion of the stairs inland of the bluff edge. Special Condition #1 also calls for the identification of all existing and 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 without authorization. Also,

Special Condition #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.

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. Through Special Condition #1 addressed above, the gunite is being required to be removed at the same time as the residential structure. 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 or seawall; new additions; or other development on the site shall be permitted without a subsequent amendment to this coastal development permit. The purpose of this requirement is to assure that if a seawall is ever needed in the future to protect the residence, that it be located as far landward as possible to minimize its encroachment on public sandy beach and its effects on shoreline processes, as well as to enhance public lateral access along the shoreline. 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.

In summary, the proposed substantial demolition and reconstruction of a single family residence represents new development per the above findings. The new home must meet current standards. As conditioned to not permit any portion of the proposed principal residence to be located within 25 ft. of the bluff edge and removal of gunite, 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.

5. 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 (Spindrif 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 Spindrif 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 significant conflicts with regard to the policies of the certified LCP addressing protection of designated public view corridors.

However, any newly 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.

In summary, 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 existing landscaping be trimmed

and replaced with landscaping to be maintained at 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. In addition, through Special Condition #1, which requires the relocation of the residence such that it is sited no closer than 25 feet from the existing bluff edge and that the gunite from the bluff face be removed, adverse impacts on visual resources in this area will be significantly enhanced, as viewed from the beach.

6. 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. However, relocating the principal residence further inland away from the bluff edge (pursuant to Special Condition #1), will allow for the seawall to be removed or located closer to the bluff in the future should it be necessary or proposed by the applicant, which could open this area to public use.

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 (Spindrift Drive). As noted above, there is an existing vertical public access easement located at the Marine Room restaurant two lots to the north 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 #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.

7. 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 and removal of the gunite, can the proposed development be found consistent with the certified LCP. 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.

8. 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, removal of gunitite from the bluff face, 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.

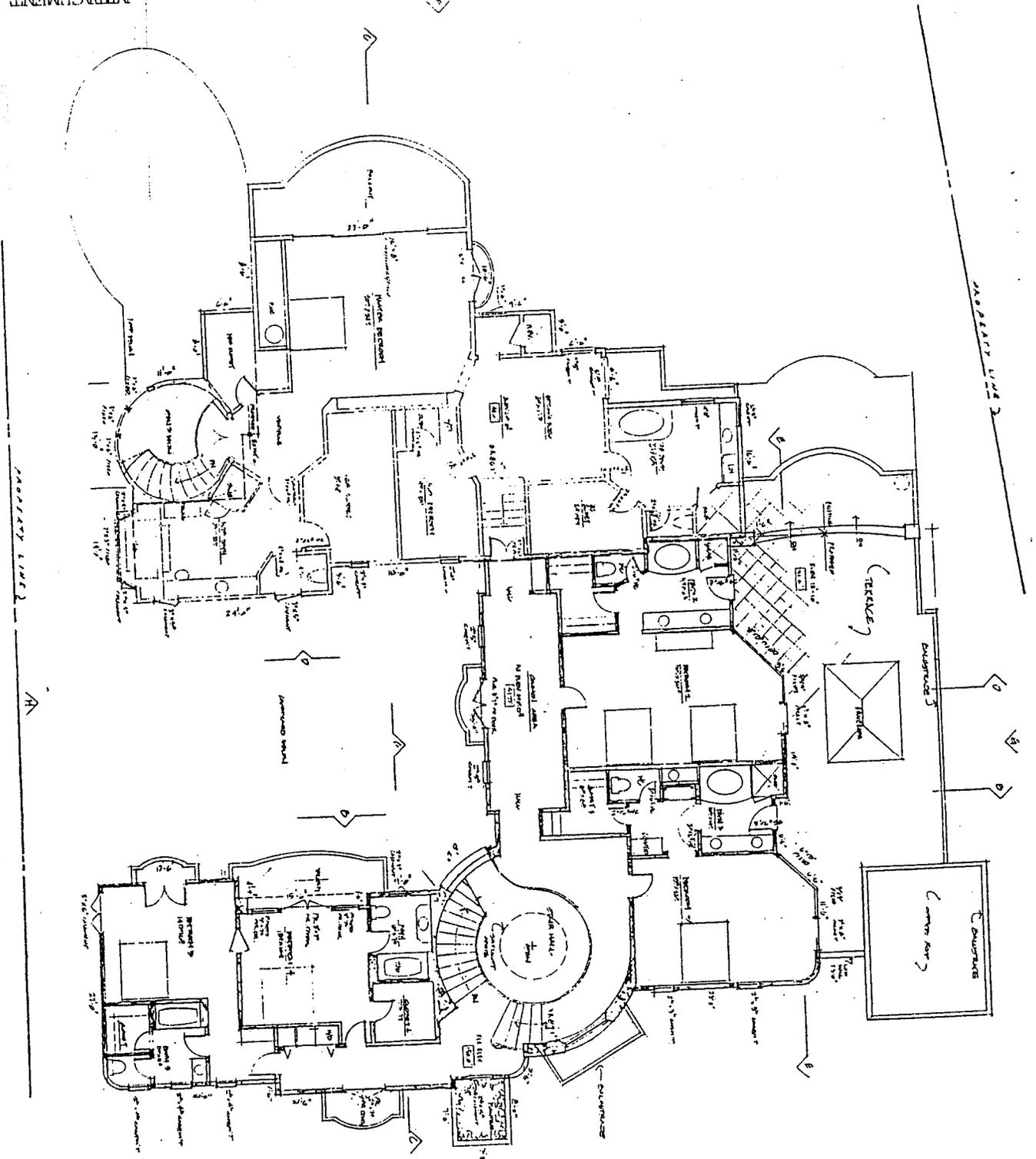
STANDARD CONDITIONS:

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.

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COMMISSION ACTION ON MAY 10 2000

- Approved as Recommended *WC, S, MOVED TO CAUSE*
- Denied as Recommended
- Approved with Changes
- Denied
- Other



UPPER LEVEL PLAN

1/16" = 1'-0"

Project No.	1999-0001
Client	1999-0001
Architect	1999-0001
Scale	1/16" = 1'-0"
Date	1999-0001
Sheet No.	1999-0001
Total Sheets	1999-0001
Author	1999-0001
Checker	1999-0001
Plotter	1999-0001
Printer	1999-0001
Scale	1999-0001
Date	1999-0001
Sheet No.	1999-0001
Total Sheets	1999-0001
Author	1999-0001
Checker	1999-0001
Plotter	1999-0001
Printer	1999-0001

DON EDSON
 ARCHITECT AIA 452-1860
 5752 OBERLIN DRIVE-104
 SAN DIEGO CALIF. 92121

1999-0001
 1999-0001
 1999-0001
 1999-0001

1900 SPINDRIFT DR
 LA JOLLA, CA

EXHIBIT NO. 7
APPLICATION NO.
A-6-LJS-99-160
Proposed Upper
Level Plan

California Coastal Commission

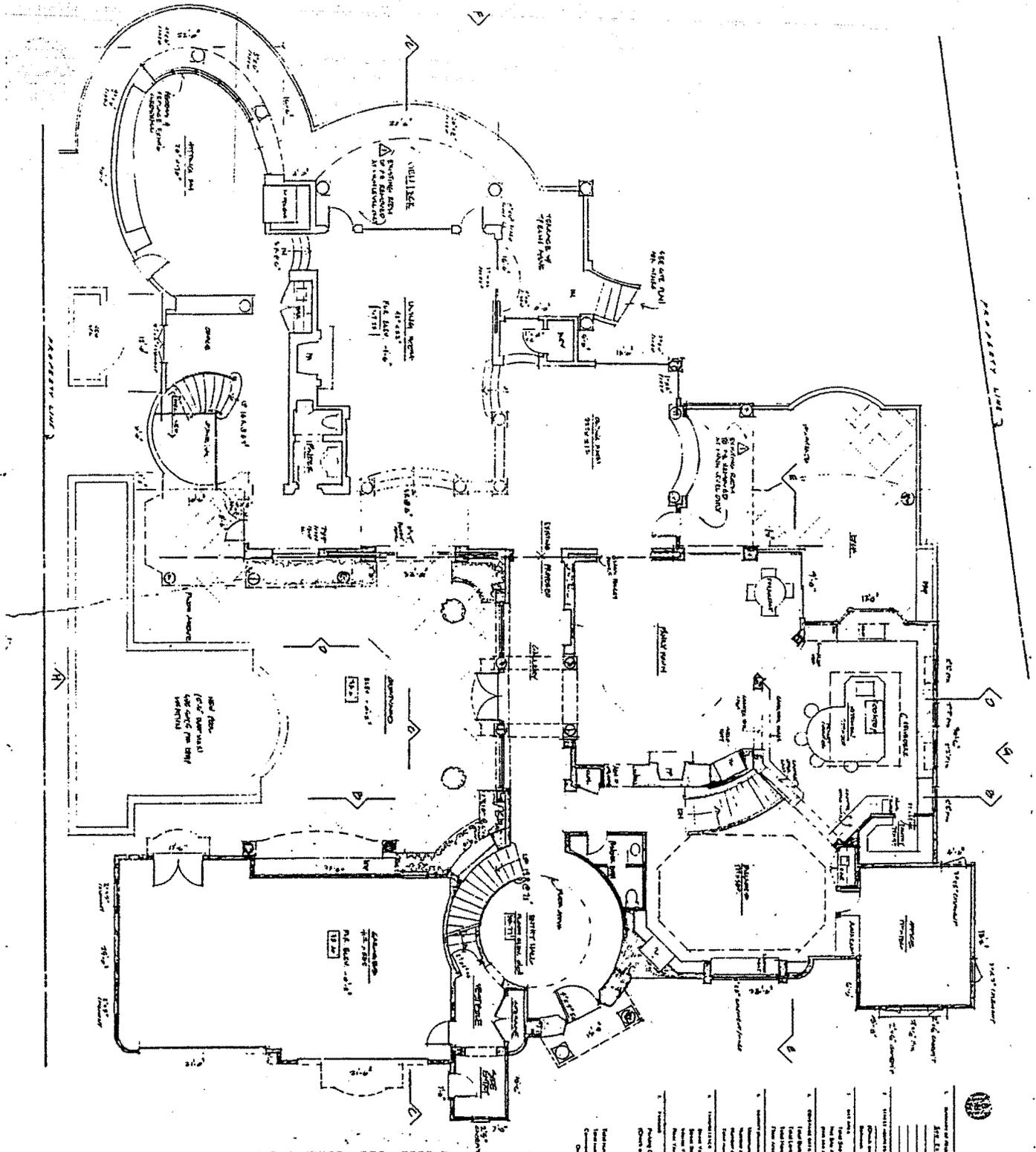


EXHIBIT NO. 8
APPLICATION NO
A-6-LJS-99-160

Proposed Main Level Plan

Development S1
 1800 Spindrift Drive
 La Jolla, CA 92037

Architect: DON EDSON ARCHITECTS
 5717 La Jolla Village Drive
 San Diego, CA 92161

Scale: 1/8" = 1'-0"

Date: 10/11/99

EXHIBIT NO. 8
APPLICATION NO
A-6-LJS-99-160

Proposed Main Level Plan

Development S1
 1800 Spindrift Drive
 La Jolla, CA 92037

Architect: DON EDSON ARCHITECTS
 5717 La Jolla Village Drive
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Scale: 1/8" = 1'-0"

Date: 10/11/99

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Date: 10/11/99

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 La Jolla, CA 92037

Architect: DON EDSON ARCHITECTS
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 San Diego, CA 92161

Scale: 1/8" = 1'-0"

Date: 10/11/99

DON EDSON
 ARCHITECT A LA 452-1860
 5752 OBERLIN DRIVE-104
 SAN DIEGO CALIF. 92121

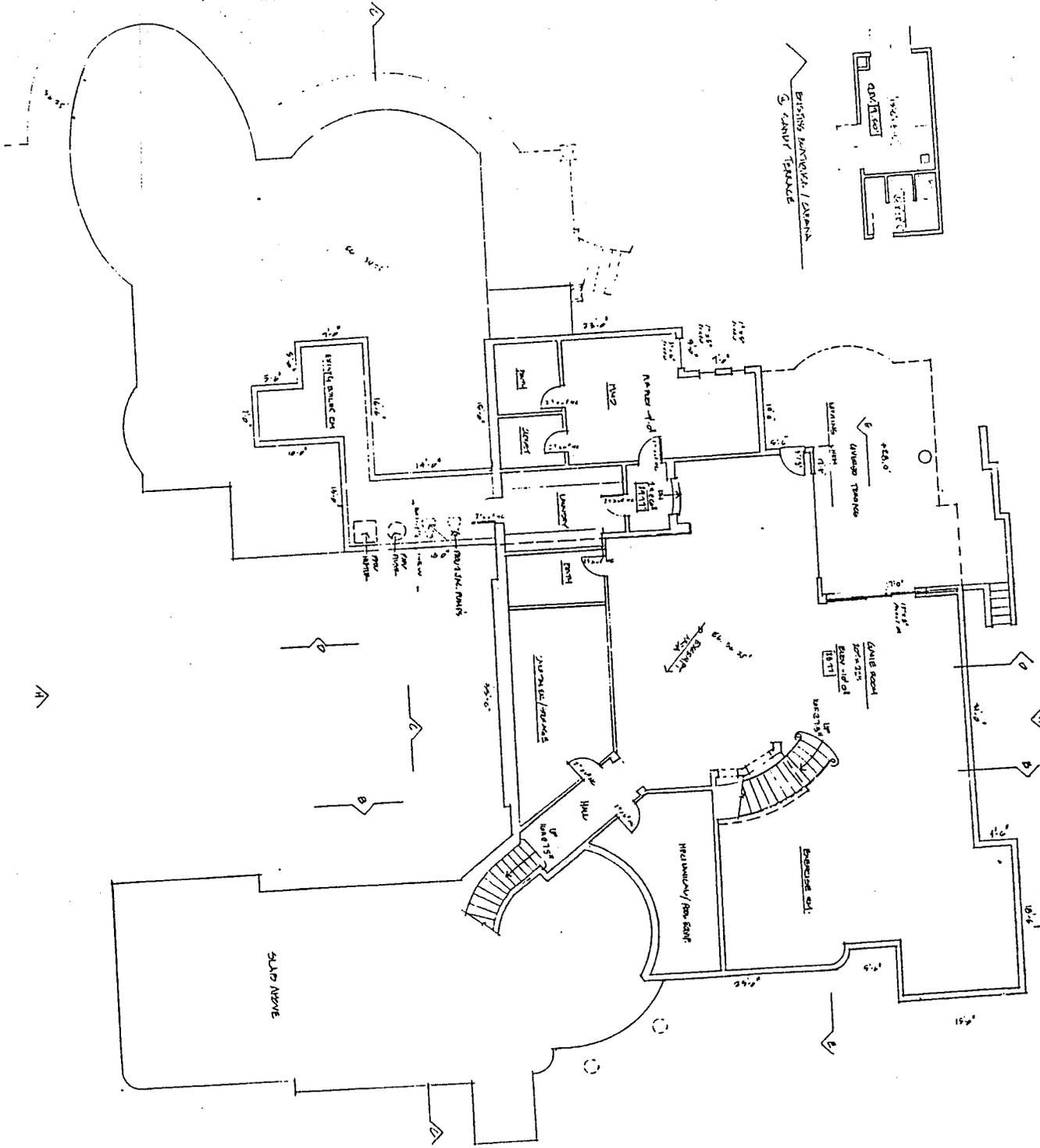
5717 La Jolla Village Drive
 San Diego, CA 92161
 619-591-7777
 7/10/99

1900 SPINDRIFT DRIVE
 LA JOLLA, CA

EXHIBIT NO. 8
APPLICATION NO
A-6-LJS-99-160

Proposed Main Level Plan

California Coastal Commission



BASEMENT PLAN

DATE: 11/11/99

Project Name	1900 SPINDRIFT I
Client Name	LA JOLLA COMMUNITY CENTER
Client Address	5752 OBERLIN DRIVE
Client City	SAN DIEGO, CA 92121
Architect Name	DON EDSON
Architect License No.	452-1860
Architect Address	5752 OBERLIN DRIVE
Architect City	SAN DIEGO, CA 92121
Architect Phone	619-594-1111
Architect Fax	619-594-1111
Architect Email	don@edson.com
Architect Website	www.edson.com
Architect Firms	LA JOLLA COMMUNITY CENTER
Architect Date	11/11/99
Architect Scale	1/8" = 1'-0"
Architect Sheet No.	5
Architect Total Sheets	5
Architect Project No.	1

DON EDSON
 ARCHITECT A.J.A. 452-1860
 5752 OBERLIN DRIVE-104
 SAN DIEGO CALIF. 92121

11/11/99
 11/11/99
 11/11/99
 11/11/99

1900 SPINDRIFT I
 LA JOLLA, CA

EXHIBIT NO. 9
APPLICATION NO.
A-6-LJS-99-160
Proposed Basement Plan
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



21 April 2000

MEMORANDUM

To: Sherilyn Sarb, District Manager
From: Mark Johnsson, Senior Geologist
Re: A-6-LJS-99-160 (Summit Resources); Geologic Issues

At their meeting of 10 April 2000, the Commission raised questions concerning geologic issues at 1900 Spindrift Lane, La Jolla, that were not addressed in the Staff Report of 23 March 2000. This memo is to provide answers to those questions.

1) Safety from geologic hazard of the existing structure, with the existing shoreline protective devices in place.

At my request, Curtis Burdett of Christian-Wheeler Engineering has performed additional slope stability analyses to assess the stability of the existing, modified slope under both static and earthquake-loading conditions. I was provided with a number of analyses performed under a variety of assumptions. These included variations in several important geotechnical parameters (most notably, cohesion of some of the geologic units), making careful comparisons between different conditions difficult. No values of these parameters were available for the materials actually present at the 1900 Spindrift site. Nevertheless, the values adopted appear to be conservative ones consistent with observations on similar materials at nearby sites.

Mr. Burdett has demonstrated to my satisfaction that a minimum factor of safety of 1.5 for the static condition and 1.1 for the pseudo-static (earthquake-loading) condition exists for the bluff at 1900 Spindrift given existing conditions. It is my understanding that the earthquake load imposed is based on a seismic coefficient, k , of 0.2 g. This value is an appropriate coefficient for a magnitude 6.5 earthquake on the Rose Canyon Fault, located within 50 feet of the structure, which may be expected to yield a maximum peak ground acceleration of 0.6 to 0.65 g.

The site as currently protected by the seawall and gunite appears to be at very low risk from bluff retreat. There has been little or no observable bluff retreat since these shoreline protective devices were installed in the late 1920's. Some erosion may be expected at the northwestern corner of the site, where the slope is not protected by gunite and is underlain by alluvium. Given the apparent low retreat rate in the past 70 years, a setback of 25 feet is probably appropriate.

Mr. Burdett has concluded in his letter of 18 April 2000 (as well as in several earlier reports) that the likelihood of surface rupture at the site "can be considered to be low." Although the Rose Canyon

EXHIBIT NO. 10
APPLICATION NO. A-6-LJS-99-160
Memo from CCC's Geologist
(1 of 4)

Fault has not experienced an earthquake with surface rupture in historic time, its geomorphic expression, geologically recent movement, and seismicity have lead many geologists to consider it to be an active fault (see, for example, Abbott, 1989), although it is officially zoned as "potentially active" under the Alquist-Priolo Act. In the absence of historic earthquake information, it is not possible to quantitatively assess the probability of an earthquake on this fault. Although I concur with Mr. Burdett that it is likewise not possible to quantify the likelihood of surface rupture, it is my professional opinion that if an earthquake were to occur on this fault, then the probability of surface rupture at the site would best be characterized as "high." Due to the uncertainty as to the likelihood of such an earthquake occurring at all, this designation could be downgraded to "moderate."

2) Safety from geologic hazard of the existing structure, if the existing shoreline protective devices were to be removed.

Mr. Burdett also produced slope stability analyses, subject to the same limitations described above, for the existing bluff topography with the gunite that is now present on the slope removed. These were performed, as above, for both the static and earthquake-loading conditions. As for the protected slope, adequate factors of safety of 1.5 for the static and 1.1 for the earthquake-loading condition could be demonstrated. Thus, from the information provided, it appears that the structure would be safe from slope failure at its current position even if the gunite were removed from the slope.

Available bluff retreat rates provided by Mr. Burdett indicate that the Point Lomo formation in the La Jolla area tends to erode due to combined wave attack, surficial erosion, and groundwater processes at the rate of 0.1-0.4 inches per year. These values are somewhat lower than published results of 1-12 inches per year (Benumof and Griggs, 1999; Moore et al., 1999). If both the seawall and gunite protecting the site were removed, it is reasonable to expect that even at the lower values the structure would be threatened by bluff retreat within the economic lifespan of the new development (75 years), since parts of the existing structure actually overhangs the existing bluff face, and the foundation setback appears to be only about four feet, given the cross-sections and plans provided by Mr. Burdett and the project architect, Mr. Donald Edson. It is more difficult to assess the threat to the structure if the seawall alone, or the gunite alone, were to be removed. The seawall protects the structure from wave attack, and the gunite is most effective against surficial erosion, although it would provide some protection against wave attack if it were exposed to the surf by removal of the seawall. There are no data available separating the relative importance of wave attack and subaerial erosion at the subject site. The profile of the unprotected cliff to the southeast of the subject site would suggest that the processes are subequal, given the classification scheme of Emery and Kuhn (1982). Accordingly, removal of the gunite might be expected to lead to bluff erosion rates of between 0.05 and 6 inches per year (half the rates observed in unprotected areas nearby). Removal of the seawall would expose the gunite to wave attack. Without knowing more about the structural design of the lower part of the gunite slope, it is impossible to assess its ability to protect against wave attack. As always when discussing bluff retreat rates, it must be remembered that long-term average rates incorporate periods of much higher and much lower erosion than average, due to the episodic nature of bluff retreat.

The hazard associated with surface rupture would not change appreciably if the shoreline protective devices were removed.

3) Configuration of the bluff edge and significance in establishing geologic hazard and setbacks.

The applicants contend that the bluff edge for this project should be as defined in the document entitled "Coastal Bluffs and Beaches Guidelines," dated November 1997, now incorporated into the Land Development/Zoning Code Update for the San Diego Municipal Code. Quoting from the Christian-Wheeler "Report of Geologic Reconnaissance" dated 2 October 1998:

Subsection III(A)(3) and the accompanying Diagram III-3 refer to seawalls; this subsection states "If the coastal bluff face has been partially altered with the installation of retaining walls, seawalls, or other device, the coastal bluff edge shall be considered the pre-existing change in gradient." This section further states "Note: If a seawall has been installed on a premises due to excessive erosion, that premises shall not qualify for development at a reduced distance from the coastal bluff edge. Since the instability of the sensitive coastal bluff necessitated the installation of a seawall, the sensitive coastal bluff would not be considered stable enough to support development within the 40-foot distance to the coastal bluff edge."

The applicants contend that the seawall was installed as a prophylactic measure, not as the result of excessive erosion. They base this interpretation in part on the fact that the seawall is built well seaward of the bluff face, allowing space for the installation of a cabana, barbecue, and other amenities. The seawall is, however, continuous with an identical structure that extends several hundred feet southeast of the subject site. This seawall is for the most part installed close to the bluff face, and apparently dates from the same as that at the subject site. In the absence of other documentation, it is impossible at this time to determine whether the seawall was built in response to excessive erosion, as a prophylactic measure, or some combination of both.

Precision Survey and Mapping provided a topographic map derived from the original house plans, prepared in 1928, which showed the approximate bluff edge at 1900 Spindrift at that time. Since that time, the bluff has apparently been sculpted and cut back landward from its natural configuration. On the basis of the code quoted above, the applicant contends that any setback must be measured from the pre-existing bluff edge as derived from the 1928 house plans.

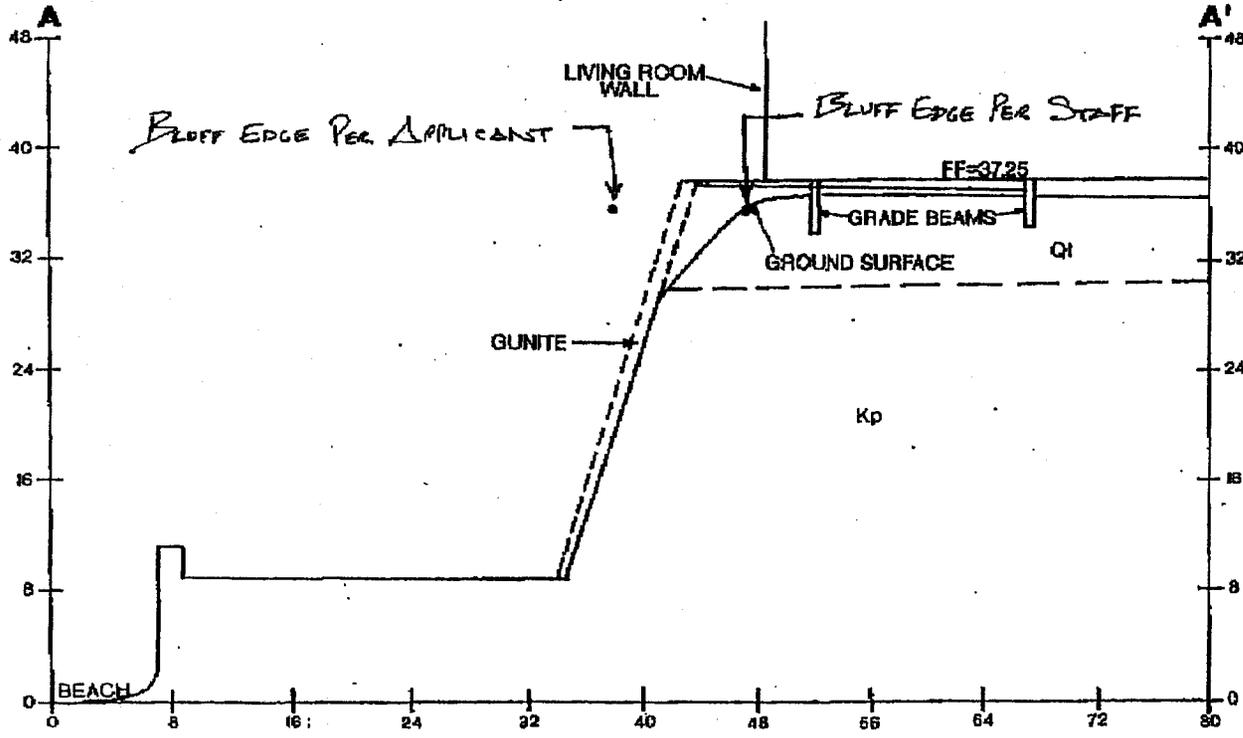
The intent of the code quoted above, especially in conjunction with the cited figure, would appear to be that an artificially *extended* bluff not be used to move bluff setback lines seaward, not the reverse. In any case, the geologic hazard assessment above is derived from topographic profiles of the *existing* site topography. To a large degree, the definition of the bluff edge is immaterial; the stability of the slope is defined on the basis of critical failure surfaces, that can be precisely located on the basis of the topographic profile used in the analysis. The area that is described as the setback distance, on the basis of those analyses, is measured from the point *where the downward gradient of the land surface begins to increase more or less continuously until it reaches the general gradient of the coastal bluff face*, consistent with the City of San Diego code and with the Coastal Act. That position can be clearly identified by a break in slope on profiles A-A' and B-B' prepared by Christian-Wheeler.

Published References

- Abbott, P., 1989, The Rose Canyon Fault: Why San Diegans shouldn't be complacent: *Environment Southwest*, v. 524, p. 1-7.
- Benumof, B. T., and Griggs, G. B., 1999, The dependence of seacliff erosion rates on cliff material properties and physical processes: San Diego County, California: *Shore and Beach*, v. 67, no. 4, p. 29-41.
- Emery, K. O., and Kuhn, G. G., 1982, Sea cliffs; Their processes, profiles, and classification: *Geological Society of America Bulletin*, v. 93, p. 644-654.
- Moore, L. J., Benumof, B. T., and Griggs, G. B., 1999, Coastal erosion hazards in Santa Cruz and San Diego counties, California: *Journal of Coastal Research*, v. 28, p. 121-139.

APR 27 '00 09:15AM CA COASTAL COMM P.2/3

CROSS SECTION A-A'



LEGEND
 Q1 TERRACE DEPOSITS
 Kp POINT LOMA FORMATION

SCALE: 1"=8'

EXHIBIT NO. 11
APPLICATION NO. A-6-LJS-99-160
Cross-Section from 4/18/00 Christian Wheeler Engineering Report

W CHRISTIAN WHEELER ENGINEERING	
1800 SPINDRIFT	
BY: CRB/HG	DATE: 04-18-00
JOB NO: 198054.11	PLATE NO: 3



THE CITY OF SAN DIEGO

April 21, 2000

California Coastal Commission
Sherilyn Sarb, District Manager, San Diego Office
3111 Camino del Rio North, Ste 200
San Diego, CA 92101

Subject: Summit Resources; 1900 Spindrift Dr. SCR/CDP/LJS No. 99-0007

Dear Sherilyn:

This letter is written to further clarify our recent discussion on the subject matter and your request for interpretation of San Diego Municipal Code Section 101.0303 dealing with the continuance of nonconforming uses and structures. You have raised questions that pertain to the paragraph which deals with "repairs and alterations" and what is considered "increasing the degree of nonconformity". You have asked how this section relates to bluff top development and for the City to clarify it's own interpretation of "new development".

SDMC Section 101.0303, Continuance of Nonconforming Uses and Structures, states....."Repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement or increase the size or degree of nonconformity of a use may be made provided 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 or alterations occur." Our City Attorney has opined that "repairs and alterations" can be any repair or change to the structure (interior or exterior) so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco)." (see Enclosures, City Attorney's Memo dated November 12, 1997 and March 4, 1998). Our City Attorney has also clarified that a reconstruction project (because of the demolition required) does not constitute a "change from a nonconforming structure" to a more conforming structure and would not constitute abandonment of non-conforming use rights.

As discussed, SDMC Section 101.0303 allows not only bluff top home owners an opportunity to maintain existing structures but it affects many property owners City-wide. As a result of significant code changes over the years, the City of San Diego has created many non-conforming structure and uses. It is not the intent of the City to discourage redevelopment of property. In fact, it allows the City an opportunity to encourage modifications that reduce the degree of nonconformity. Although our offices disagree on this point, the City must continue processing



Planning and Development Review
1222 First Avenue, MS 501 • San Diego, CA 92101-4155
Tel (619) 446-5460

EXHIBIT NO. 13
APPLICATION NO.
A-6-LJS-99-160
4/21/00 Letter from City of San Diego re Continuance of Non- Conforming Uses & Structures (w/attach.)
(Page 1 of 10)
California Coastal Commission

Ms. Sherilyn Sarb
April 21, 2000
page 2

projects under the purview of "non-conforming" rights as established by long time Department Policy substantiated by City Attorney concurrence.

In the case of the Summit Resource project, the La Jolla Shores Planned District Ordinance (PDO) has it's own section on nonconforming uses and structures. Pursuant to the provisions of the PDO, it was determined that the improvements would not "increase the degree of nonconformity", hence, the project was approved. Although the permit contains a standard condition that is normally applied to city-wide zoned property; the 50% fair market value limitation to proposed repairs, alterations and modifications to legal nonconforming structures is not applicable to this project. According to the LJSPDO (Chapter X, Article 3, Division 3), San Diego Municipal Code Section 101.0303 would be superseded by the PDO.

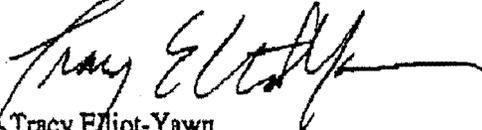
Your questions on clarifying remodel vs. new development can also be addressed. The Coastal Ordinance specifically defines "Coastal Development" (SDMC Section 111.0107). A Coastal Development Permit (CDP) is required for "coastal development" within the boundaries of the Coastal Zone as illustrated on Map no. C-730.1 unless an exemption can be granted pursuant to San Diego Municipal Code Section 105.0204 (old code). The Summit Resource project is located on a bluff top site and lies within the Sensitive Coastal Resource Overlay Zone. The proposed development exceeds the exemption criteria therefore, is considered "Coastal Development" that would require a Coastal Development and Sensitive Coastal Resource Permits.

There also seems to be some confusion with respect to remodel vs. new development. The City's Coastal exemptions were amended in 1990 to restrict improvements to an existing structure or structures by limiting the removal of up to 50% of exterior linear walls. This threshold was established to allow the City to look at development within the coastal boundaries. As you know, consistent with the State CC exemptions, the City already has a strict requirement for review of new development (additions, remodels and/or demolition and new construction) that are located within the sensitive areas such as beaches and bluffs, or within 300 ft. of a mean high tide line or within the first public roadway. Outside these areas, the communities desired a higher level of scrutiny on development. Therefore, the City developed several formulas. As a result of public hearings, City Council adopted the "50% rule" which was subsequently certified by the Coastal Commission.

Ma. Sherilyn Sarb
April 21, 2000
page 3

I hope you find this information useful. We look forward to our meeting next week to discuss the geological and landscape issues on the subject matter. If you have any questions please call me at 446-5340.

Sincerely,



Tracy Elliot-Yawn
Senior Planner, Coastal Section
City Planning and Development Review

ENCLOSURES

cc: Lee McEachem, Supervisor of Regulation
Laurinda Owens, Coastal Planner
CDP/SCR/LJS file

Office of
The City Attorney
City of San Diego

MEMORANDUM

533-5800

DATE: November 12, 1997
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures

In a memorandum dated November 5, 1997, you asked our office to provide you with an interpretation of San Diego Municipal Code ("SDMC") section 101.0303. Specifically, you have asked whether a project which proposes to demolish and reconstruct nonconforming exterior walls (the value of which does not exceed fifty percent of the fair market value of the improvement) should be considered an abandonment of nonconforming rights which must be reconstructed in conformance with all applicable regulations or a permissible alteration. This memo responds to that issue.

SDMC section 101.0303 reads as follows:

SEC. 101.0303 Continuance of Nonconforming Uses and Structures

The lawful use of land existing at the time the Zone Ordinance became effective, with which ordinance such use did not conform, may be continued provided no enlargement or addition to such use is made.

The lawful use of buildings existing at the time the Zone Ordinance became effective, with which ordinance such building did not conform with respect to the development regulations, may be continued provided any enlargements, additions or alterations to such building will not increase its degree of nonconformity and will conform in every respect with the development regulations of the zone in which the building is located, except as hereinafter provided by zone variance.

(p. 4 of 10)

Gary Halbert
November 12, 1997
Page 2

Any discontinuance of a nonconforming use for a continuous period of two years shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the ordinance.

Any change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights.

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.

If any nonconforming building or use be destroyed by fire, explosion, act of God or act of the public enemy to the extent of fifty percent (50%) or more of the fair market value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council, the said building or use and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by the Zone Ordinance for the district in which such building was located. The provisions of this paragraph shall not apply to any nonconforming building for which a Reconstruction Permit has been or is obtained pursuant to Municipal Code Section 101.0500(B).

If the use is a medical or counseling service and is prohibited pursuant to Sections 101.0410(B)(9)(c), 101.0423(B)(1), 101.0426(B)(1), 101.0427(B)(1), or 101.0435.2(B)(11)(e), and if such use existed on August 13, 1984, it shall become a nonconforming use and shall be governed by the provisions of this section. Any such medical or counseling service existing on the effective date of the ordinance shall have ninety (90)

Gary Halbert
November 12, 1997
Page 3

days to cease operation, after which time the service shall be unlawful at that site and shall constitute a violation of this Code unless a Conditional Use Permit is obtained in accordance with Section 101.0513.

If an investigation by the Development Services Department reveals that a particular property contains a legal, nonconforming use or structure, a "Notice of Nonconforming Rights," may be recorded in the County Recorder's office. This notice is designed to provide constructive notice to any successors in interest that nonconforming rights as to the property or structures existed at the time of the recordation of notice. Nothing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right.

If a subsequent investigation reveals that a previous nonconforming right as to the property's use or structure has been lost, a cancellation of the Notice of Nonconforming Rights shall be recorded.

The state of the law in this area is such that "[m]ost nonconforming provisions of local ordinances do not permit structural alterations because they may lead to the creation of a nonconforming building that will better accommodate and make the nonconforming building use more permanent." Longtin's California Land Use section 3.82[4] (1987) (emphasis added). However, as you can tell from reading SDMC section 101.0303, The City of San Diego does not follow the norm. SDMC section 101.0303 does not preclude alterations. Rather, we specifically permit alterations which do not exceed fifty percent of the fair market value of the improvement. The provision with section 101.0303 addressing "Notices of Nonconforming Rights" also provides that "[n]othing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right." This provision further reiterates the point that nonconforming rights can only be extinguished through expansion, enlargement, abandonment or destruction and not by any act qualifying as a repair or alteration.

Evidently, based on your memorandum and my recent conversations with City staff, the sentence in SDMC section 103.0303 which reads "[t]he terms "repairs" and "alterations" do not include painting or replacement of exterior stucco siding, or shingles," has been given special meaning. This sentence has historically been interpreted to define the permissible scope of a "repair" or "alteration." I do not believe this is a legally defensible interpretation of the sentence and I

Gary Halbert

November 12, 1997

Page 4

suggest instead that the sentence must be interpreted and applied within the context of the entire paragraph. I think the correct interpretation of the sentence in light of the whole paragraph is that it provides for an exception to the formula for calculating the value of the repair or alteration. In other words, in calculating whether a repair or alteration constitutes more or less than fifty percent of the fair market value of the improvement, the cost of painting, exterior stucco and shingles should not be included. Therefore, using the application I have suggested, any repair or change to the structure (interior or exterior) is permissible so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco).

A second issue raised by your question involves whether a proposed alteration or repair of a nonconforming structure which involves demolition and reconstruction constitutes an abandonment of a nonconforming right. On this point, SDMC section 101.0303 contains a sentence which provides that "[a]ny change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights." Precisely, the question is whether a reconstruction project (because of the demolition required) constitutes a "change from a nonconforming structure" to a more conforming use or structure.

I believe that precluding reconstruction under the above referenced provision amounts to an overly restrictive interpretation of the Code. If plans are submitted and building permits are issued which result in a structure that is more conforming to the code, clearly in that situation, all or some partial degree of the nonconforming right is abandoned. The land owner cannot later come back to reclaim the right that was abandoned. The horn book law on this point states:

A change in structure occurs when the landowner modifies an existing building or structure, either by repair or physical alteration of the premises. In most cases, a change in the physical structure involves merely a minor expansion of the same use. However, in some cases a change in the structure, if extensive enough, may amount to a substantial expansion or change of use.

Longtin's California Land Use section 3.82[4] (1987).

The legal definition of the word "abandonment" is: "Knowing relinquishment of one's right or claim to property without any future intent to again gain title or possession." Barron's Law Dictionary, Second Edition. This commonly accepted definition of the term is consistent with the example I used above where permits are issued for a project which results in a structure exhibiting a lesser degree of nonconformity. However, if someone is proposing an alteration to partially reconstruct a nonconforming structure, without expanding the degree of nonconformity, it is generally not their intent to relinquish or forfeit their nonconforming rights. For these reasons, in

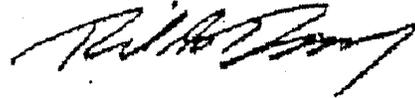
(p. 7 of 10)

Gary Halbert
November 12, 1997
Page 5

a situation where a project proposes demolition and reconstruction, unless the end result of the project amounts to an expansion in the structure, I do not think the reconstruction itself qualifies as a "change" which constitutes "abandonment."

CASEY GWINN, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

RAD:lc:600

cc: Linda Johnson
Tracy Elliot-Yawn
L:DUVERNA F MEMOS NCN CZNL MHO

RECEIVED

MAR 05 1998

DEVELOPMENT SERVICES

Office of
The City Attorney
City of San Diego

MEMORANDUM

533-5800

DATE: March 4, 1998
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures in the Coastal Zone

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

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

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

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

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

(p. 9 of 10)

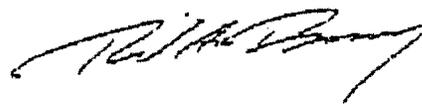
Gary Halbert
March 4, 1998
Page 2

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

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

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

CASEY GWINN, City Attorney

By 

Richard A. Duvernay
Deputy City Attorney

RAD:lc:600x605.3.1

Attachment

cc: Linda Johnson
Tracy Elliot-Yawn

L.DUVERNAY\MEMOES\ENCL\COJ.NING

**APPLICABLE SECTIONS FROM THE CITY OF SAN
DIEGO MUNICIPAL CODE AND CERTIFIED LOCAL
COASTAL PROGRAM**

- 1. City-wide nonconforming use regulations commencing with
Section 101.0301**
- 2. La Jolla Planned District Ordinance commencing with
Section 103.0300 through 103.0303.2 Nonconforming Uses
and Structures**
- 3. Sensitive Coastal Resource Overlay Zone commencing with
Section 101.0480**

EXHIBIT NO. 14
APPLICATION NO. A-6-LJS-99-160
Sections from City's Municipal Code and La Jolla Shores PDO
(Page 1 of 12)
 California Coastal Commission

DIVISION 3
General Regulations

§ 101.0301 Non-Conforming Uses Permitted

Except as provided herein, the use or uses of all buildings, improvements and premises existing in any of the said zones or districts thereof, respectively at the time of the adoption of this Code may be continued.

Except as provided herein, no building, structure, sign, advertising displays, or improvement now existing shall be altered or enlarged, and no buildings, structures, signs, advertising displays or improvements shall be erected, constructed or established which is designed, arranged or intended for occupancy or use in any of said zones or districts restricted by this Chapter against such erection, construction or establishment.

(Amended 1-17-84 by O-16115 N.S.)

§ 101.0302 Existing Ordinances, Rules, Regulations Or Permits Retained

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

(Amended 1-17-84 by O-16115 N.S.)

§ 101.0303 Continuance of Nonconforming Uses and Structures

The lawful use of land existing at the time the Zone Ordinance became effective, with which ordinance such use did not conform, may be continued provided no enlargement or addition to such use is made.

The lawful use of buildings existing at the time the Zone Ordinance became effective, with which ordinance such building did not conform with respect to the development regulations, may be continued provided any enlargements, additions or alterations to such building will not increase its degree of nonconformity and will conform in every respect with the development regulations of the zone in which the building is located, except as hereinafter provided by zone variance.

Any discontinuance of a nonconforming use for a

continuous period of 12 months shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the ordinance.

Any change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights.

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.

If any nonconforming building or use be destroyed by fire, explosion, act of God or act of the public enemy to the extent of 50 percent or more of the fair market value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council, the said building or use and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by the Zone Ordinance for the district in which such building was located. The provisions of this paragraph shall not apply to any nonconforming building for which a Reconstruction Permit has been or is obtained pursuant to Municipal Code Sections 101.0500 and 101.0502.

If the use is a medical or counseling service and is prohibited pursuant to Sections 101.0410 B.9.c., 101.0423 B.1., 101.0426 B.1., 101.0427 B.1., or 101.0435.2 B.11.e., and if such use existed on the effective date of the ordinance enacting the provisions of this paragraph, it shall become a nonconforming use and shall be governed by the provisions of this section. Any such medical or counseling service existing on the effective date of the ordinance shall have 90 days to cease operation, after which time the service shall be unlawful at that site and shall constitute a violation of this Code unless a Conditional Use Permit is obtained in accordance with Section 101.0513.

If an investigation by the Planning Department reveals that a particular property contains a legal, nonconforming use or structure, the Zoning Administrator may record a "Notice of Nonconforming Rights," in the County Recorder's office. This notice is designed to provide constructive notice to any successors in interest that nonconforming rights as to the property or structures existed at the time of the recordation of notice. Nothing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extin-

guishes the previous nonconforming right.

If a subsequent investigation reveals that a previous nonconforming right as to the property's use or structure has been lost, the Zoning Administrator shall record a cancellation of the Notice of Nonconforming Rights.

(Amended 1-22-91 by O-17585 N.S.)

§ 101.0304 Zoning Use Certificate

A. PURPOSE AND INTENT

The purpose of this section is to provide a procedure by which business uses can be assured of consistency with the underlying zone, Planned District, Planned Development, Conditional Use Permit, or any other discretionary permit regulation. It establishes a preliminary review of the proposed use only.

It is the intent of this section that business uses shall not be inconsistent with the applicable zone or other use standards established by the San Diego Municipal Code.

B. ZONING USE CERTIFICATE REQUIRED

After the effective date of this section, a Zoning Use Certificate shall be required prior to the commencement of any business within the City of San Diego, in addition to any other permits required by the Municipal Code. It shall be unlawful to operate any business herein so regulated without a Zoning Use Certificate or any other required permit. Failure of any business to obtain a Zoning Use Certificate or failure to comply with specified conditions or operational regulations required by the Municipal Code shall constitute a violation and shall be subject to prosecution under Municipal Code Section 13.0201. The City Manager and the Planning Director shall promulgate such rules as may be appropriate for administration of this section.

C. AUTHORITY

The Zoning Administrator, or a designated representative of the Zoning Administrator, shall administer the Zoning Use Certificate.

D. ZONING USE CERTIFICATE

The Zoning Use Certificate is a document issued by the Zoning Administrator which states, based upon the information provided by the applicant on the form provided by The City of San Diego, that the proposed use in the proposed location is in general conformity with the underlying zone, Planned District, Planned Development, Conditional Use Permit, or any other discretionary permit regulations which are applicable. The Zoning Use Certificate may specify conditions of the specific zone or permit necessary for conformance with zoning use standards as established in the San Diego Municipal Code.

E. APPLICATION PROCEDURES

1. Completion of the Zoning Use Certificate information shall be required on City forms before determination of compliance is rendered. This application shall be made on forms provided by Zoning Administration and shall include a description of the proposed use at the proposed location.

Any other information deemed necessary by the Zoning Administrator to judge compliance with the regulations contained herein and other applicable regulations shall also be included with the application.

2. A fee established in accordance with Section 101.0204 of the Municipal Code shall be paid by the applicant. Said fee shall be used to recover the costs associated with the issuance of a Zoning Use Certificate.

F. DETERMINATION

If the proposed use does not conform with the zone's use regulations, or does not constitute a nonconforming use in the general regulations, Sections 101.0301 and 101.0303 of the Municipal Code, then the Zoning Administrator shall not issue a Zoning Use Certificate.

G. REQUIRED PERMITS

The Zoning Use Certificate does not relieve the applicant from obtaining all appropriate permits and licenses required by The City of San Diego. The Zoning Use Certificate does not involve a plan check and as such does not relieve the applicant from complying with all applicable development regulations and restrictions.

H. EXPIRATION

The Zoning Use Certificate will expire one hundred eighty (180) days after issuance if not obtained in conjunction with a certificate of payment. The Zoning Use Certificate shall establish the applicant's right to initiate business operations at the specified location regardless of rezones with the exception of emergency or interim ordinances.

(Amended 1-8-90 by O-17408 N.S.)

§ 101.0305 Crematory Permitted Only Within Cemetery

That, except only within a cemetery in said City now or hereafter established and maintained according to law, it shall be unlawful for any person, firm, association, or corporation to erect, establish, maintain or operate, or cause to be erected, established, maintained or operated within the limits of the City of San Diego, California, any crematory for the cremation of human bodies.

(Incorp. 1-22-52 by O-5046 N.S., contained in O-7939 O.S. adopted 2-25-20 .)

§ 101.0307 Affordable Housing Density Bonus

There is hereby established the Affordable Housing Density Bonus.

(Added 3-23-81 by O-15471 N.S.)

§ 101.0307.1 Purpose and Intent

The purpose of the Affordable Housing Density Bonus is to provide increased residential densities to developers who guarantee that a portion of their housing development will be affordable by persons of low or moderate income.

The Affordable Housing Density Bonus is

intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for low and moderate income persons throughout the City. It is intended that the Affordable Housing Density Bonus be available for all residential development projects, using criteria and standards provided in the Progress Guide and General Plan as defined by the City Housing Commission.

It is intended that the Affordable Housing Density Bonus implement the provisions of Chapter 4.3 of Division 1 of Title 7 of the California Governmental Code.

(Added 3-23-81 by O-15471 N.S.)

§ 101.0307.2 Affordable Housing Density Bonus Agreement

A. The Affordable Housing Density Bonus shall be

DIVISION 3
La Jolla Shores Planned District
(Added 5-30-74 by O-11332 N.S.)

§ 103.0300 Purpose and Intent

The public health, safety, and welfare require that property in La Jolla Shores shall be protected from impairment in value and that the distinctive residential character and the open seascape orientation of the La Jolla Shores Area shall be retained and enhanced.

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast. The proper development of La Jolla Shores is in keeping with the objectives and proposals of the Progress Guide and General Plan for the City of San Diego, of the La Jolla Community Plan, and of the La Jolla Shores Precise Plan.

(Added 5-30-74 by O-11332 N.S.)

§ 103.0301 Boundaries

The regulations as defined herein shall apply in the La Jolla Shores Planned District which is within the boundaries of the La Jolla Shores Area in the City of San Diego, California, designated on that certain Map Drawing No. C-403.4 and described in the appended boundary description, filed in the office of the City Clerk under Document No. OO-16006.

Amended 7-18-83 by O-16006 N.S.)

§ 103.0302 Administrative Regulations

The administrative regulations as defined herein shall apply in the La Jolla Shores Planned District.

(Amended 6-9-76 by O-11852 N.S.)

§ 103.0302.1 Administration of the La Jolla Shores Planned District

A. The Planning Director shall administer the La Jolla Shores Planned District.

B. Powers and Duties.

It is the duty of the Planning Director to administer and ensure compliance with the regulations and procedures contained within this Division in the manner prescribed herein for both public and private developments; to recommend to the Planning Commission any changes to the regulations, provided such changes are necessary for the proper execution of the adopted plan, and to adopt rules of procedure to supplement those contained within this Division. The Planning Director shall utilize architectural criteria and design standards adopted by the City Council in evaluating the appropriate-

ness of any development for which a permit is applied under this Division. Except as otherwise provided in Section 103.0302.3, paragraph "D," the Planning Director may approve, modify, or disapprove any applications for a permit after receiving the recommendations or comments from the Advisory Board and based upon the conditions of compliance or noncompliance with the adopted regulations and approved criteria and standards.

(Added 5-30-74 by O-11332 N.S.)

§ 103.0302.2 La Jolla Shores Planned District Advisory Board

A. LA JOLLA SHORES PLANNED DISTRICT ADVISORY BOARD CREATED

1. There is hereby created a La Jolla Shores Planned District Advisory Board which shall be composed of seven members who shall serve without compensation. The members shall be appointed by the Mayor and confirmed by the Council. The members shall serve two-year terms and each member shall serve until his successor is duly appointed and qualified. The members shall be appointed in such a manner that the terms of not more than four members shall expire in any one year. The expiration date shall be April 1. During April of each year, the Mayor may designate one member as Chairman; however, in the absence of such designation, the Board shall, on or after May 15, select a Chairman from among its members.

2. At the time of appointment and during incumbency five of the seven-member board shall be resident property owners of the La Jolla Shores Planned District. The sixth member shall be a resident of the district but need not own property and the seventh member shall own property in the district but need not be a resident. Members of the Board shall be persons who shall be specifically qualified by reason of interest, training or experience in art, architecture, land development, landscape architecture, planning, urban design, or other relevant business or profession to judge the effects of a proposed development upon the desirability, property values, and development of surrounding areas. At least one member of such Board shall be a registered architect in the State of California.

3. The Board may adopt rules of procedure to supplement those contained within this Division. Four members shall constitute a quorum for the transaction of business and a majority vote; and not less than four affirmative votes shall be necessary to make any Board decision.

4. The Planning Director or his designated representative shall serve as Secretary of the Board and as an ex officio member and maintain records of all official actions of the Review Board. The Secretary shall not be entitled to vote.

5. All officers of the City shall cooperate with the Board and render all reasonable assistance to it.

6. The Board shall render a report annually on

March 31, or on request, to the Mayor.

B. POWERS AND DUTIES

It shall be the duty of the Advisory Board to review all applications for permits referred to it including applications for Planned Residential Developments (PRD's) within the La Jolla Shores Planned District and to submit its recommendations or comments on these matters in writing within 30 days to the Planning Director. When the California Environmental Quality Act requires that an Environmental Impact Report be prepared in conjunction with an application within the Planned District, the Advisory Board shall review this report before submitting its recommendation to the Planning Director. It shall also recommend to the Planning Commission any changes to the regulations, provided such changes are necessary for the proper execution of the adopted plan, and to adopt rules of procedure to supplement those contained within this Division. The Advisory Board shall utilize architectural criteria and design standards adopted by the City Council in evaluating the appropriateness of any development for which a permit is applied under this Division.

(Amended 6-9-76 by O-11852 N.S.)

§ 103.0302.3 Procedures for Permits Application and Review

A. Applications for permits shall be made in accordance with the Municipal Code, Chapter IX, and Chapter VI, Article 2, before the commencement of any work in the erection of any new building or structure, or remodeling, alteration, addition, or demolition of any existing building or structure within the Planned District or any building which is moved into the Planned District or any grading or landscaping. Approval of the Planning Director is not required for interior modifications, repairs or remodeling, nor any exterior repairs or alterations for which a permit is not now required.

B. The applications shall include the following:

1. The purpose for which the proposed building, structure or improvement is intended to be used.
2. Adequate plans and specifications indicating dwelling unit density, lot area, lot coverage and off-street parking.
3. Adequate plans and specifications for the building and improvements showing the exterior appearance, color and texture of materials, and architectural design of the exterior.
4. Adequate plans and specifications for any outbuildings, party walls, courtyards, fences, setbacks, landscaping, signs, lighting or traffic safety.
5. Within the Coastal Zone, where any portion of a lot contains slopes of twenty-five percent (25%) or greater, the information required to accompany an application for a Hillside Review Permit, as described in The City of San Diego Municipal Code Article 1, Division 4, SEC. 101.0454, Subsection J.2., shall also be required to accompany an application for a

permit in accordance with the La Jolla Shores Planned District.

6. Any other information deemed necessary by the Advisory Board and the Planning Director to judge compliance with the regulations contained herein and other applicable laws and regulations.

C. The Building Inspection Director and the City Engineer shall refer all applications made under "A." above to the Planning Director.

D. The Planning Director may approve, modify or disapprove any application for a permit except that the Planning Director shall process applications for PRD's in accordance with Municipal Code Section 101.0901 after receipt of written recommendations or comments from the Advisory Board. Action by the Planning Director on applications other than those for PRD's shall follow receipt of recommendation or comments from the Advisory Board and shall include a statement that the Planning Director finds that the building, structure, or improvements for which the permit was applied does or does not conform to the regulations contained herein. In the event the Planning Director determines that the proposed development does not conform to the regulations contained herein, the specific facts on which that determination is based shall be included in the written decision provided for in paragraph "E." following. Patio covers, decks, fences under six feet, retaining walls, uncovered swimming pools, unlighted tennis courts, single family residences, landscaping and any addition to or alteration of any structure which the Planning Director determines to be minor in scope may be approved by the Director without receiving a recommendation or comments from the Advisory Board providing the Director can conclude that the application conforms to architectural criteria and design standards adopted by the City Council. The Planning Director may refer an application for any improvement identified in this paragraph to the Advisory Board for a recommendation before taking action on the application.

E. Within 60 days after the submission of a complete application to the Planning Director, the Planning Director shall as required above, send his decision in writing to the applicant, Building Inspection Director and City Engineer, except when the applicant requests or agrees to an extension of time.

F. If the Planning Director approves the application and the Building Inspection Director or City Engineer finds that the application conforms to all other regulations and ordinances of The City of San Diego, the appropriate department shall then issue the permit for the work.

G. Any permit granted by the City as herein provided, shall be conditioned upon the privileges granted being utilized within 18 months after the date of issuance of said permit. Failure to start work within this 18-month period will automatically void the permit unless an extension of time has been granted by the Planning Director as set forth in paragraph "H." below. Construction must actually

be commenced within the stated period and must be diligently prosecuted to completion. If the City should find that there has been no construction substantial in character since the date of the issuance of said permit or that there has been during the course of development a lapse of work for six months, the permit shall be void.

H. The Planning Director may grant an extension of time up to two years on the time limit contained in a currently valid permit. To initiate a request for extension of time, the property owner or owners shall file a written application with the Planning Director in the office of the Planning Department prior to the expiration of the permit. The Planning Director may grant the extension of time if he finds from the evidence submitted that there has been no material change of circumstances since the permit was originally granted.

I. All other applications made under the Building Code and not under Section 103.0302.3 or involving interior work and not subject to any regulation contained within this Division shall be processed in the normal manner without referral to or approval by the Planning Director.

(Amended 10-16-89 by 0-17363 N.S.)

§ 103.0302.4 Appeals to the Planning Commission

A. Any interested person, governmental body or agency may appeal from the decision of the Planning Director to the City Planning Commission within ten days after the decision is filed with the Planning Department. The appeal shall be in writing and filed in duplicate with the Planning Department upon forms provided by the Planning Department. If an appeal is filed within the time specified, it automatically stays proceedings in the matter until a determination is made by the Planning Commission. Any action taken by the Planning Director on those applications which are not submitted to the Advisory Board for review as indicated in Section 103.0302.3 Paragraph D shall be final.

B. Upon the filing of the appeal, the Planning Department shall set the matter for public hearing before the Planning Commission giving the same notice as provided in Section 101.0206. The Planning Director shall transmit to the Planning Commission a copy of his decision and findings, and all other evidence, maps, papers and exhibits upon which the Planning Director made his decision.

C. Decision of the Planning Commission. Upon the hearing of such appeal, the Planning Commission may, by resolution, affirm, reverse, or modify, in whole or in part, any determination of the Planning Director. The decision of the Planning Commission shall be final on the eleventh day following its filing with the City Clerk, except when an appeal is taken to the City Council as provided in Section 103.0302.5.

(Amended 6-23-86 by 0-16670 N.S.)

§ 103.0302.5 Appeal from Decision of the Planning Commission

The decision of the Planning Commission shall be final on the eleventh day following action by the Planning Commission unless a request to be heard on appeal is filed in the office of the City Clerk.

When a request to be heard on appeal is filed with the City Clerk it shall be placed on the Council docket for the limited purpose of determining whether the City Council will hear the appeal. The City Council will accept an appeal for hearing when any of the following situations are found to exist:

1. The appellant was denied the opportunity to make a full and complete presentation to the Planning Commission;
2. New evidence is now available that was not available at the time of the Planning Commission hearing; or
3. The Planning Commission decision was arbitrary because no evidence was presented to the Planning Commission that supports the decision.

The City Council shall rely upon the record of the proceedings before the Planning Commission and the written appeal. No oral presentations shall be made to the City Council by proponents or opponents of the project. A vote on a motion to set the appeal for hearing shall not constitute a vote on the merits of the appeal. If at least five (5) members of the Council vote in favor of hearing the appeal, the City Clerk shall set the appeal for hearing before the City Council and give notice of the appeal in the manner required by the Municipal Code.

(Amended 6-23-86 by 0-16670 N.S.)

§ 103.0303 - General Regulations

The general regulations as defined herein shall apply in the La Jolla Shores Planned District.

(Added 5-30-74 by 0-11332 N.S.)

§ 103.0303.1 Planning, Zoning and Subdivision Regulations Which Shall Apply

Chapter X, Article 1, Division 1 (Definitions and Interpretations), Chapter X, Article 1, Division 9 (Planned Developments), Chapter X, Article 1, Division 4, SEC. 101.0406 (Home Occupations in Residential Zones), and Chapter X, Article 2 (Subdivisions), and Article 1, Division 4, SEC. 101.0458 (Sensitive Coastal Resource Overlay Zone) of the Municipal Code shall apply in the La Jolla Shores Planned District. All other Divisions of Chapter X, Article 1, are superseded in the La Jolla Shores Planned District by the regulations contained within Chapter X, Article 3, Division 3.

(Amended 4-18-88 by 0-17078 N.S.)

§ 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.

The lawful use of buildings existing at the time the Planned District regulations became effective with which regulations such buildings 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.

B. Any discontinuance of a nonconforming use for a continuous period of 12 months shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the Division.

C. Any change from a nonconforming use of land or buildings to a conforming use shall constitute abandonment of such nonconforming rights.

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

E. If any nonconforming building be destroyed by fire, explosion, act of God, or act of the public enemy to the extent of twice the assessed value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations of this Division. In the event it is determined by the Fire Chief of The City of San Diego the destruction was incendiary in origin then the building may be completely restored or rebuilt not exceeding the size of the original building.

(Amended 12-22-76 by O-11973 N.S.)

§ 103.0303.3 Height Limitation—Measurement Of

The height of the building or structure, and measurement thereof shall be in accordance with this Division and Municipal Code sections 101.0214, 101.0215 and 101.0216.

(Amended 1-6-92 by O-17726 N.S.)

§ 103.0303.4 General Design Regulations

Concurrent with the adoption of this Division, the City Council by resolution adopted architectural and design standards to be used in evaluating the appropriateness of any development for which a permit is applied under this Division; such architectural and design standards shall be filed in the office of the City Clerk as a numbered document.

A. CHARACTER OF THE AREA

In this primarily single-family residential community, a typical home is characterized by extensive use of glass, shake or shingle overhanging roof, and a low, rambling silhouette. Patios, the atrium or enclosed courtyard, and decks facilitate the "inside-outside" orientation of life in Southern California. Spanish Mediterranean and Mexican influences are seen in the prevalent use of the arch and of terra cotta and glazed tiles. The residential and commercial structures incorporate an honest use of natural building materials and, in many instances, are characterized as a truly American style of architecture, fusing the purity and geometry of the Mexican-Spanish period with a simplicity of materials and detail with integrated landscape design.

B. DESIGN PRINCIPLE

Within the limitations implied above, originality and diversity in architecture are encouraged. The theme "unity with variety" shall be a guiding principle. Unity without variety means simple monotony; variety by itself is chaos. No structure shall be approved which is substantially like any other structure located on an adjacent parcel. Conversely, no structure will be approved that is so different in quality, form, materials, color, and relationship as to disrupt the architectural unity of the area.

C. DESIGN REQUIREMENTS

Building materials and color are the most critical unifying elements. For this reason, roof materials within the La Jolla Shores Planned District shall be limited to wood shakes, wood shingles, clay tile, slate or copper of good quality where the pitch is 4 in 12 or greater, or other materials which would contribute to the character of the surrounding neighborhood. Roofs with a pitch of less than 4 in 12 may also be covered with crushed stone of muted dark tone. Exterior wall materials shall be limited to wood siding, wood shingles, adobe and concrete blocks, brick, stucco, concrete or natural stone. White and natural earth colors should predominate. Primary colors may be used for accent.

To preserve the seaside character of the community each building shall be sited and designed so as to protect public views from public rights-of-way and public places and provide for see-throughs to the ocean.

Lighting which highlights architectural features of a structure shall be permitted. Such lighting shall

c. One (1) person for each usable off-street parking space on the premises, developed, located and maintained in accordance with the provisions of Division 8 of this Article, plus one additional person; provided, however, that not more than two (2) parking spaces may be in tandem, nor more than one (1) curb cut per front yard, street side yard or alley be allowed for determining occupancy limits based on parking restrictions.

2. No such rental dwelling unit may be rented if it does not have at least one room, other than a bedroom, with a minimum of 150 square feet of habitable net floor space.

D. ADMINISTRATION

1. The Planning Director, in conjunction with the City Manager, is authorized to promulgate administrative procedures and regulations for the administration and enforcement of this section, and may require a site plan or a certificate description of an affected premise to be furnished for administrative purposes. It is unlawful for an owner, following thirty (30) days notification by the Planning Director, to fail to file any site plan or certificate description required by regulation to be filed pursuant to this subsection.

2. Routine and periodic inspections necessary to verify any information required to be provided by the owner and to generally enforce these regulations shall be conducted in accordance with San Diego Municipal Code section 101.0212 F.

E. ENFORCEMENT

1. Violations of this section may be enforced by criminal or civil judicial actions as provided in San Diego Municipal Code section 13.0201 and 13.0202 or in combination with any of the administrative remedies enumerated in Chapter 1, Article 3 of the Municipal Code.

2. In addition to any other remedy, the Planning Director, in coordination with the City Manager, may notify the State Franchise Tax Board concerning violations of this section pursuant to the provisions and procedures of Revenue and Taxation Code sections 17274 and 24436.5 regarding the nondeductibility of certain rental expenses and deductions respecting structures in violation of code.

F. APPLICATION OF THIS SECTION TO NON-CONFORMING STRUCTURES AND USES

Notwithstanding the provisions of Municipal Code sections 101.0301, 101.0302, and 101.0303 which provide for nonconforming structures and uses, any use of a one-family dwelling in violation of subsection C. of this section, which use existed on July 3, 1991, shall be unlawful from and after July 3, 1992.

(New Sec. 101.0463 — One-Family Dwelling Rental Regulations — added 6-3-91 by O-17652 N.S.; the addition of Sec. 101.0463 made by Ordinance No. O-17652 N.S. shall not apply in the coastal zone until the Coastal Commission unconditionally certifies Ordinance No. O-17652 N.S.)

§ 101.0480 SCR (Sensitive Coastal Resource) Overlay Zone

A. PURPOSE AND INTENT

The purpose and intent of the Sensitive Coastal Resource Overlay ("SCR") Zone is to protect, maintain, and enhance the overall quality of the coastal zone environment and its natural resources; to promote balanced utilization and conservation of coastal zone resources; and to maximize public access to and along the shoreline consistent with sound resource conservation principles and the rights of private property owners. More specifically, these regulations are designed to ensure that new development within this SCR Zone protects public beaches from erosion and adverse impacts on local shoreline sand supply, maintains the geologic integrity of the coastal bluffs, protects identified wetland areas, and provides for physical and visual public access to and along the shoreline.

B. APPLICATION OF THE SENSITIVE COASTAL RESOURCE OVERLAY ZONE

After a public hearing conducted pursuant to Chapter X, Article 1, Division 2, of the Municipal Code, and upon finding that the public health, safety, and general welfare and good zoning practice will be served thereby, the SCR Zone shall be applied to all property located within the boundaries designated on Map Drawing No. C-713, filed in the office of the City Clerk under Document No. OO-17062. Where any portion of a parcel is located within the SCR Zone, the regulations of the SCR Zone shall be applicable to all remaining portions of the parcel located within the Coastal Zone. The regulations of the SCR Zone shall not apply to any property or portion thereof which is removed from the Coastal Zone through proper legislative authority.

C. PERMITTED USES

Permitted uses shall be those permitted by the underlying zone subject to the regulations and restrictions of the underlying zone, except as limited below.

1. Beach Areas. Permitted uses allowed in the beach areas, as shown on the SCR Zone maps, shall be limited to the following:

- a. Lifeguard towers and stations and associated life and security facilities.
- b. Public comfort stations.
- c. Public piers.
- d. Safety and public information signs.

e. Shoreline protective works necessary to prevent bluff and beach erosion, where needed to protect coastal dependent uses, public beach roadways, or existing principal structures in danger from wave and wind action; and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

f. Stairways, ramps, and other physical access structures, as proposed within an adopted community or other applicable plan.

g. Public recreational equipment.

2. Coastal Bluff Areas. Permitted uses allowed in

the coastal bluff areas, as shown on the SCR Zone maps, shall be limited to the following:

- a. Bicycle storage facilities.
- b. Bluff repair and erosion control structures necessary to protect existing principal structures. Such erosion control structures include but are not limited to, retaining walls and other appropriate devices.
- c. Public comfort stations.
- d. Public pergolas and gazebos.
- e. Public parking lots.
- f. Public seating benches.
- g. Open fences, provided that they do not interfere with existing or designated public accessways.
- h. Safety and public information signs.
- i. Stairways, ramps, and other physical access structures, as proposed within an adopted community or other applicable plan.
- j. Subject to the special regulations set forth in Subsection D. hereof, single-family residences together with accessory structures and landscape features incidental to residential uses.

3. Wetland Areas. Permitted uses allowed in the wetland areas, as shown on the SCR Zone maps, shall be limited to the following:

- a. Aquaculture, nature study projects or similar resource dependent uses.
- b. Wetland restoration projects.
- c. Incidental public service projects, where there is no feasible, less environmentally damaging alternative, and where mitigation measures have been provided to minimize adverse environmental effects.

4. Wetland Buffer Areas. Permitted uses in the wetland buffer areas, as shown on the SCR Zone maps, shall be limited to the following:

- a. Access paths.
- b. Fences.
- c. Other improvements necessary to protect wetlands.

5. All Areas. Any other use, which the Planning Director or the Planning Commission on appeal may find to be similar in character to the uses enumerated in this section and consistent with the purpose and intent of this SCR Zone, provided that uses proposed for wetland areas shall be limited to those uses authorized under Section 30233 of the State of California Public Resources Code.

D. SPECIAL REGULATIONS

Where a development, grading, landform alteration, the placement or removal of vegetation, except for historic and ongoing agricultural operations, land division or subdivision is proposed on sensitive coastal resource areas, as identified on Map Drawing No. C-713, filed in the office of the City Clerk under Document No. OO-17062, the following regulations shall apply:

1. 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 fol-

lowing uses:

- 1) Essential bluff top improvements including, but not limited to, a walkway leading to a permitted beach access facility; drainage facilities; and open fences to provide for safety and to protect resource areas.

- 2) Bluff repair and erosion control measures including, but not limited to, structures needed to repair damage to, or to prevent or retard erosion of, the bluff face in order to protect existing principal structures; provided, however, that no such measures or structures shall cause significant alteration of the natural character of the bluff face.

- 3) Accessory structures and landscape features customary and incidental to residential uses; provided, however, that these shall be located at grade and at least five (5) feet from the bluff edge. Such structures and features may include: walkways, unenclosed patios, open shade structures, decks, lighting standards, walls, public seating benches, signs, and similar structures and features, excluding pools, spas, garages, and upper floor decks with load bearing support 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 (see Subsection E.1.) indicates that: 1) the site is stable enough to support the development with the proposed bluff edge setback; and 2) that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures.

- c. Where a proposed development would lie wholly or partially upon a coastal bluff, the following shall apply:

- 1) Buildings and other structures shall be sited, designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

- 2) The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

- 3) Landscaping materials shall be installed and maintained so as to assure that neither during growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

- 4) Native and other drought-tolerant plant species shall be utilized in order to minimize irrigation requirements and to reduce potential slide hazards due to overwatering of the bluffs.

- 5) All drainage from the site shall be directed away from any bluff edges.

2. Wetlands.

- a. A buffer zone of one hundred (100) feet in width shall be maintained around all identified wetland areas, unless the applicant demonstrates

that a buffer of lesser width will protect the resources of the wetland, based on site-specific information. Such information shall include, but is not limited to, the type and size of the development and/or proposed mitigations (such as planting of vegetation or construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the wetland. Maps and supplemental information submitted as part of the application shall be used to determine the specific boundaries of the wetland and buffer. The California Department of Fish and Game and the United States Fish and Wildlife Service shall be consulted in such buffer determinations.

b. All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.

E. SENSITIVE COASTAL RESOURCE OVERLAY ZONE PERMIT PROCEDURE

1. Permit Application. The application for an SCR Permit shall include site plans, grading plans, sections, elevations, landscaping and irrigation plans, and drainage and runoff control plans. In addition, all applications for shoreline protective works or bluff development shall include a geologic report prepared by a licensed geologist who has specific expertise in coastal bluff erosion processes. For applications on parcels within or partially within the SCR designated wetland and/or wetland buffer areas, the precise wetland boundary and buffer area shall be mapped and environmentally sensitive habitats identified by a qualified biologist who has specific expertise in wetland habitats. When all such plans, documents, and/or reports are received and determined to be adequate by the Planning Director, the application shall be accepted.

2. Public Hearing. The Planning Director shall conduct a noticed public hearing for all project applications in accordance with SEC. 101.0220.

3. Permit Exemptions. An SCR Permit shall not be required for interior modifications or repairs, nor any exterior repairs, alterations or maintenance which does not increase the envelope of an existing building or accessory structure.

4. Administration of Permit. The Planning Director or a designated representative shall administer the SCR Permit. An SCR Permit shall not be issued unless the available information supports the findings of fact as set forth in Subsection E.5. of this section. In issuing an SCR Permit the conditions of permit approval, as set forth in Subsection E.6., and any other applicable conditions, shall be imposed where necessary and desirable to protect the public health, safety, and general welfare.

5. Required Findings of Fact. Based on the information derived from the plans, documents, and studies submitted; from testimony received at the public hearing; and from any field investigations

made, the Planning Director (or the Planning Commission or City Council on appeal) shall decide whether to issue the SCR Permit as requested. A permit shall be issued provided that all of the findings of fact set forth below can be supported by the information available at the time of the hearing and by the conditions imposed:

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.

6. Conditions of Permit Approval. In approving the issuance of an SCR Permit, the Planning Director (or Planning Commission or City Council on appeal) shall impose conditions as deemed necessary or desirable to enable the required findings of fact to be fairly made and/or to be sustained in their validity. The conditions imposed shall, where applicable, include but need not be limited to the following:

a. Where property on which a proposed development would be located lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731, and includes a sandy or cobble beach or passable rock headland, lateral access along the shoreline for passive recreational use shall be offered for dedication as a public easement. Access shall be at a minimum width of twenty-five (25) feet measured from either: 1) the toe of an existing coastal bluff; or 2) the first line of terrestrial vegetation where there is no coastal bluff; or 3) an existing or proposed seawall or other protective device, to the mean high tide line. If the beach or headland width is less than twenty-five (25) feet, the lateral access shall include the entire beach or headland area.

b. Where property on which a proposed development would be located lies between the shoreline and the first public roadway, a vertical and/or visual accessway not less than ten (10) feet in width and running the full depth of the property shall be

offered for dedication as a public easement; provided that the need for such accessway has been identified within an adopted community or other applicable plan, or that no other such easement exists within a lateral distance of five hundred (500) feet of the project site. If there is evidence of an existing public accessway on-site, such accessway shall be retained if feasible; if not feasible, an alternative accessway shall be provided on-site.

c. Where a proposed development would lie wholly or partially upon a coastal bluff:

1) The permittee shall, prior to the approval of the SCR Permit, execute and record a waiver of public liability for the approved development.

2) The bluff face including all the area between the toe of the existing bluff and the bluff edge shall be conserved through a deed restriction, open space easement or other suitable instrument acceptable to the City.

d. Where a shoreline protective device, cliff-retaining wall or similar structure is proposed, the permittee shall, prior to the approval of the SCR Permit, execute and record a waiver of public liability for the approved development.

e. Where a proposed development would be situated on a parcel located within or partially within the SCR designated wetland or wetland buffer area, the documented wetlands or wetland buffer zone, as required in Subsection D.2. of this section, shall be conserved through an open space easement or other suitable instrument acceptable to the City. In reviewing and approving development plans, the Planning Director shall determine that the development is consistent with the special regulations contained in Subsection D. of this section. Where a review of the development plan is sought in conjunction with a conditional use permit, planned development permit or coastal development permit, the Planning Director shall add to such permits, any conditions which are determined necessary to find the development consistent with the requirements of the SCR Zone.

7. Appeal of Permit. The decision of the Planning Director may be appealed to the Planning Commission in accordance with SEC. 101.0230. The decision of the Planning Commission may be appealed to the City Council in accordance with SEC. 101.0240.

8. Final Action. The decision of approving, conditionally approving or disapproving the application by the Planning Director (or Planning Commission or City Council on appeal) shall be filed with the City Clerk, the Zoning Administrator, the Engineering and Development Department, and the Building Inspection Department and a copy shall be mailed to the applicant.

9. Expiration. Any SCR Permit granted as herein provided shall be conditioned upon the privileges granted being utilized within thirty-six (36) months after the effective date thereof, except as otherwise provided within a phasing program contained in: 1) a development agreement entered into between the City and the owners of the subject property; 2) a

specific plan applicable to the subject property; or 3) as otherwise provided by resolution approved by the City Council upon recommendation of the Planning Commission. Failure to utilize such permit within such period will automatically void same, unless an extension of time has been granted by the Planning Director or the Planning Commission as set forth in Subsection E.10. of this section. Construction must actually be commenced within the stated period and must be diligently prosecuted to completion, pursuant to SEC. 101.0508.

10. Extension of Time.

a. The Planning Director may, by resolution, grant one or more extensions of time, with no single extension to exceed thirty-six (36) months, for a valid SCR Permit. To initiate a request for extension of time, the property owner or owners shall file a written application with the Planning Department prior to the expiration of the SCR Permit. The Planning Director may grant the extension of time if it is found from the evidence submitted that there has been no material change of circumstances since the permit was originally granted.

b. The decision of the Planning Director regarding an extension of time may be appealed to the Planning Commission in accordance with SEC. 101.0230. The decision of the Planning Commission may be appealed to the City Council in accordance with SEC. 101.0240.

(Added 4-18-88 by O-17062 N.S.)



San Diego Municipal Code

Land Development/ Zoning Code Update

DRAFT Coastal Bluffs & Beaches Guidelines

Revised
November 1997

November 1997

Note: This Draft Document was Adopted by City Council on December 9, 1997. The regulations do not become effective until approval by the California Coastal Commission. Commencement Hearings are anticipated in March-April 1998.

This information, document, or portions thereof, will be made available in whole or in part upon request.



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EXHIBIT NO. 15
APPLICATION NO.
A-6-LJS-99-160
City of San Diego 11/97 Draft Coastal Bluffs and Beaches Guidelines
(1 of 16)
 California Coastal Commission

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COASTAL BLUFFS AND BEACHES GUIDELINES INTRODUCTION

Approved - November 18, 1997

The Coastal Bluffs and Beaches Guidelines are intended to assist in the interpretation and implementation of the development regulations for sensitive coastal bluffs and coastal beaches contained in Chapter 14, Article 3, Division 1, Environmentally Sensitive Lands Regulations. Every development proposed on a sensitive coastal bluff (within 100 feet of the bluff edge) or on a site containing a coastal beach (where the development will be within 100 feet of the beach) will be subject to the environmentally sensitive lands regulations and will be evaluated for conformance with these guidelines as part of the review process for the required Site Development Permit unless the proposed development is exempt from the environmentally sensitive lands regulations pursuant to Section 143.0110(c). In addition to the findings required for the Site Development Permit, supplemental findings for environmentally sensitive lands must also be made to approve the development. A Coastal Development Permit will be required in addition to the Site Development Permit.

The Coastal Bluffs and Beaches Guidelines are divided into three sections as follows:

Section I: Explanation of Definitions

This section provides additional explanations of the definitions for terms pertaining to coastal bluffs and coastal beaches that are defined in Chapter 11, Article 3, Division 1, Land Development Terms. The distinction between coastal bluffs and sensitive coastal bluffs is clarified.

Section II: Description of Regulations

This section provides detailed explanations for specific regulations contained in the environmentally sensitive lands regulations. The environmentally sensitive lands regulations must be complied with and the Coastal Bluffs and Beaches Guidelines provide details on the regulations and explanations on how compliance can be achieved.

Section III: Coastal Bluff Measurement Guidelines

This section provides detailed guidelines and illustrations for determining the location of the bluff edge for sensitive coastal bluffs and measuring the required setbacks from the bluff edge.

Section I Explanation of Definitions

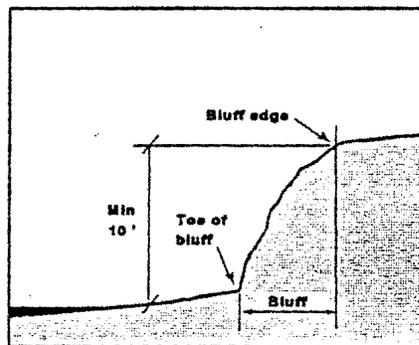
For each of the following terms, the definition is repeated (in italics) from Chapter 11, Article 3, Division 1, Land Development Terms, followed by additional information intended to clarify the definitions. The additional information provided is not part of the definition.

(A) Coastal Bluff

Coastal Bluff means an escarpment or steep face of rock, decomposed rock, sediment, or soil resulting from erosion, faulting, or folding of the land mass that has a vertical relief of 10 feet or more and is located in the coastal zone.

A coastal bluff is a naturally formed precipitous landform that generally has a gradient of at least 200 percent (1:2 slope) with a vertical elevation of at least 10 feet. See Diagram I-1. The gradient of a coastal bluff could be less than 200 percent but the vertical elevation must always be at least 10 feet. A coastal bluff is a form of environmentally sensitive lands that is included in the definition of steep hillsides. The coastal bluff includes the bluff face which is all the area between the toe of the bluff and the bluff edge. Steep Landforms meeting the criteria of coastal bluffs occur both inside and outside the Coastal Zone. These landforms and all other steep hillsides, both inside and outside the Coastal Zone, are regulated by the steep hillside regulations of the environmentally sensitive lands regulations (Section 143.0142) and are subject to the Steep Hillside Guidelines.

Diagram I-1: Coastal Bluff



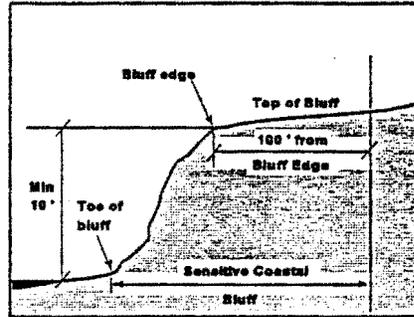
(B) Sensitive Coastal Bluff

Sensitive Coastal Bluff means a coastal bluff that is designated within Hazard Category Numbers 41 through 47, inclusive, on the City's Geologic Hazard Maps plus the area of an additional 100-foot landward strip located landward and contiguous to the coastal bluff edge.

Sensitive coastal bluffs are a form of coastal bluffs that are generally located along the shoreline and adjacent to coastal beaches. Sensitive coastal bluffs include the bluff face and the area of the top of bluff located within 100 feet of the bluff edge. See Diagram I-2. Because of their location, sensitive coastal bluffs are regulated differently than other coastal bluffs (or steep hillsides). Although they technically meet the definition of steep hillsides,

sensitive coastal bluffs are regulated by a separate regulation section in the environmentally sensitive lands regulations (Section 143.0143) and are subject to the Coastal Bluffs and B Beaches Guidelines.

Diagram I-2: Sensitive Coastal Bluff

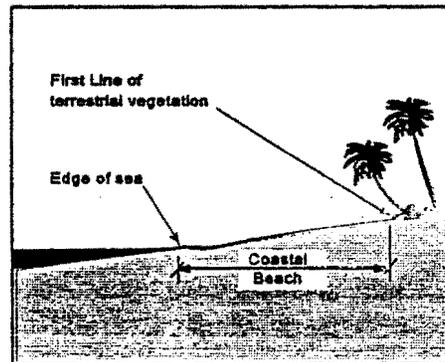
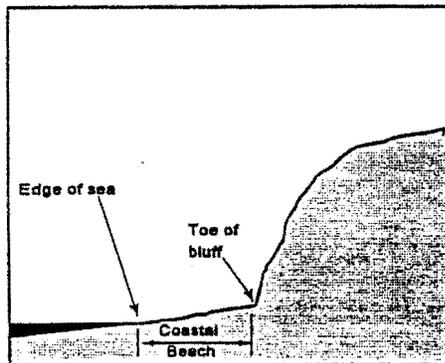


(C) Coastal Beach

Coastal Beach means the land between the edge of the sea and the first line of terrestrial vegetation or development or the toe of an adjacent sensitive coastal bluff or seawall, whichever is most seaward.

A coastal beach is an Environmentally Sensitive Land that is generally defined as the land lying between the shoreline and the toe of the adjacent sensitive coastal bluff or seawall. If no seawall or bluff exists, the landward limits of the coastal beach shall be the first line of terrestrial vegetation. See Diagram I-3

Diagram I-3: Coastal Beach



(D) Coastal Bluff Edge

Coastal Bluff Edge means the seaward-most termination of the top of a sensitive coastal bluff where the downward gradient of the land surface begins to increase more or less continuously until it reaches the general gradient of the coastal bluff face.

The coastal bluff edge is the upper termination of a coastal bluff face where the downward gradient of the top of bluff increases more or less continuously until it reaches the general gradient of the bluff face. When the top edge

of the coastal bluff is rounded away from the bluff face as a result of erosional processes related to the presence of the bluff face, the coastal bluff edge shall be defined as that point at the top of bluff nearest the bluff face beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the bluff face. If evidence shows that the rounding is a result of geologic processes other than processes related to the presence of the bluff face, the location of the coastal bluff edge shall be determined through consideration of the available geologic data.

In a case where there is a step like feature at the top of the coastal bluff, the landward edge of the topmost riser shall be considered the coastal bluff edge.

The coastal bluff edge is a continuous line across the entire length of the coastal bluff on the premises from which all bluff setbacks shall be measured.

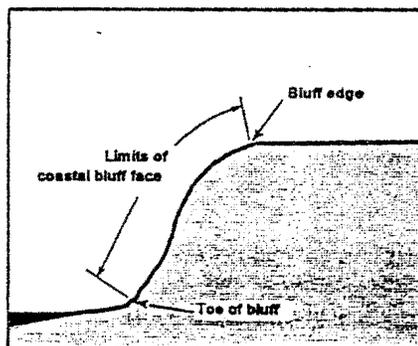
See Section III, part (A) for details on determining the location of the coastal bluff edge for sensitive coastal bluffs.

(E) Coastal Bluff Face

Coastal Bluff Face means that portion of a sensitive coastal bluff lying between the toe of the existing bluff and the coastal bluff edge.

The coastal bluff face is vertical or contains a relatively steep consistent gradient and may be rounded at the top, adjacent to the coastal bluff edge. When the bluff is rounded at the top as a result of erosional processes due to the presence of the bluff face, the bluff face shall include the rounded portion. The coastal bluff face of a sensitive coastal bluff (at least at the toe of the bluff) is typically subject to marine erosion. See Diagram I-4.

Diagram I-4: Coastal Bluff Face



Generally, no development is permitted on the face of a sensitive coastal bluff, except as permitted in Section 143.0143(h) and (I) of the Environmentally Sensitive Lands regulations.

Section II Description of Regulations

The regulations for development proposed on a sensitive coastal bluff are located in Section 143.0143. The regulations for development proposed on a site containing a coastal beach are located in Section 143.0144. The following guidelines are intended to aide in the interpretation and implementation of pertinent development regulations in these sections. The numbers referenced for each development regulation refer to the Code section numbers of the draft environmentally sensitive lands regulations. The text provided for each regulation does not repeat the Code language but rather restates the regulation with more details and explanations.

(A) 143.0143(a) Development on the Face of a Sensitive Coastal Bluff

In general, development is not permitted on the face of a sensitive coastal bluff. Only erosion control facilities, essential public drainage facilities, and public physical beach access facilities are permitted on the face of a sensitive coastal bluff, subject to the regulations in Section 143.0143(g) and (h). Other uses identified in Section 143.0130(a) are permitted on the sensitive coastal bluff, landward of the bluff edge, and only in compliance with the required setbacks from the bluff edge, pursuant to Section 143.0143(f).

Where a stepped bluff landform exists, all of the area of the site that is seaward of the bluff edge (measured at the uppermost riser within the premises) shall be considered the bluff face. This shall include the generally horizontal steps that are below the uppermost riser.

(B) 143.0143(f) Distance from Coastal Bluff Edge of Sensitive Coastal Bluffs

Development proposed on a sensitive coastal bluff, including primary and accessory structures, and grading, shall be located at least 40 feet landward from the coastal bluff edge, except as follows:

- (1) A distance of more than 40 feet from the coastal bluff edge may be required based on current geologic conditions.
- (2) Development may be located less than 40 feet but not less than 25 feet from the coastal bluff edge if there is evidence in a geology report that the site is stable enough to support the development at the proposed distance and if the development will neither be subject to nor contribute to significant geologic instability. In determining the stability of the sensitive coastal bluff, consideration shall be given to the rate of bluff retreat to determine whether the proposed development will be impacted within a reasonable economic life-span, taken to be 75 years. If a development is approved with a less-than-40-foot distance to the coastal bluff edge, future erosion control measures may be precluded if it cannot be demonstrated that the bluff stability is in danger. Air-placed concrete, retaining walls and seawalls will only be permitted when the principal structure or public improvements are in eminent danger.

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

- (3) A distance of five feet from the coastal bluff edge may be granted for landscape features and accessory structures that are located at grade so that they are not elevated at the base or constructed with a raised floor. Permitted features and structures include landscaping, paved walkways, at-grade decks, unenclosed patios, open shade structures, lighting standards, fences and walls, seating benches, and signs. A distance of five feet from the coastal bluff edge may not be granted for buildings, garages, carports, pools, spas, and raised decks with load bearing support structures.
- (4) Fences on the side property lines are not subject to a distance requirement from the coastal bluff edge as long as the fence is an open fence and does not exceed 5 feet in height. This type of fence may extend to the coastal bluff edge only when it is located at the side property line, but in no case may the fence extend onto the coastal bluff face. Any fence proposed across the coastal bluff (i.e. parallel to the coastal bluff edge) must be set back at least 5 feet from the coastal bluff edge, unless it is determined that the fence is needed to provide safety and to protect resource areas, in which case such fence must be an open fence and shall not exceed a height of 5 feet.

(C) 143.0143(g) Erosion Control Measures

Erosion control measures include, but are not limited to, retaining walls, air-placed concrete, and other structures, devices or methods appropriate for controlling or minimizing erosion of the sensitive coastal bluff. All feasible methods of erosion control shall be considered, including sandbags, revegetation, and drainage diversion and improvements.

Erosion control measures do not include those preventive measures required for soil stabilization or drainage.

Air-placed concrete, retaining walls, and buttress fills shall only be used to protect existing principle structures or public improvements and if it is determined that no other feasible less impacting method will accomplish the erosion control. Such measures shall not be used to accommodate proposed development nor to increase the area of the top of bluff.

The installation of erosion control measures shall not affect the location of the coastal bluff edge.

(D) 143.0143 (j) Visual Corridors for Sensitive Coastal Bluffs

A site-specific analysis shall be conducted to determine and quantify the impact of the proposed development upon visual access to the ocean. If a visual corridor is feasible and all criteria in Section 143.0143(j) are met, the appropriate corridor shall be required as a condition of development approval. Consideration may be given to the development of the adjacent property in determining the appropriate width of the view corridor on the subject premises, so that the overall width of the corridor is at least 10 feet when measured across both properties. Any such required corridor shall be created and approved by the City Manager prior to the commencement of any construction on the premises.

No structures or other obstructions that will impede views shall be installed within the boundaries of any required visual corridor. Open fencing and landscaping may be installed within the view corridor provided such improvements do not significantly obstruct views to the ocean.

When remodeling is proposed to an existing structure and the existing development is to be retained which precludes the establishment of a 10-foot wide visual corridor, the preservation of any partial existing visual corridor on the premises will be accepted.

(E) 143.0143 (k) Vertical Public Access Easements for Sensitive Coastal Bluffs

A site-specific analysis shall be conducted to determine and quantify the impact of the proposed development upon vertical access to the ocean. If the impacts of the proposed development justify in nature and scope the need for such access, the appropriate easements shall be required as a condition of development approval. Any such required easements shall be created and approved by the City Manager prior to the commencement of any construction on the premises.

No structures or other obstructions that will impede access shall be installed within the boundaries of any required vertical access easement. Open fencing and landscaping may be installed within vertical easements provided such improvements do not hinder access or significantly obstruct views to the ocean.

If vertical access is determined to be required on a premises where there is evidence that such access exists, the existing access shall be retained, if feasible, through the easement requirement. If not feasible, an alternative access easement shall be provided on the same premises.

In determining whether the proposed development justifies the need for the requirement of a vertical public access easement, the following factors shall be considered:

- Appropriateness of access
- Privacy rights of landowner
- Existing public access
- Historic public use
- Intensification of land use
- Habitat values of the site
- Topographic constraints of the site
- Fragility of environmentally sensitive lands in the vicinity
- Nature of development in the vicinity
- Development's effect on current and projected demands for access and recreation
- Physical obstructions and the aesthetic, visual or recreational value of public use areas
- Recreational needs of the public
- Impact of development on public's use of beach areas

(F) 143.0144(a) Development on Coastal Beaches

Any site that contains any portion of a coastal beach shall be subject to a Site Development Permit unless the proposed development qualifies for an exemption pursuant to Section 143.0110(c). The uses permitted on the coastal beach are only those listed in Section 143.0130(b), all of which are public facilities. If a privately owned premises contains a coastal beach, the private development shall occur on the portion of the premises that does not contain the coastal beach. If no such area exists or if such area is infeasible for development, a deviation from the environmentally sensitive lands regulations must be requested with the Site Development Permit.

(G) 143.0144(c) Visual Corridors for Coastal Beaches

A site-specific analysis shall be conducted to determine and quantify the impact of the proposed development upon visual access to the ocean. If a visual corridor is feasible and all criteria in Section 143.0144(c) are met, the appropriate corridor shall be required as a condition of development approval.

Consideration may be given to the development of the adjacent property in determining the appropriate width of the view corridor on the subject premises, so that the overall width of the corridor is at least 10 feet when measured across both properties. Any such required corridor shall be created and approved by the City Manager prior to the commencement of any construction on the premises.

No structures or other obstructions that will impede views shall be installed within the boundaries of any required visual corridor. Open fencing and landscaping may be installed within the view corridor provided such improvements do not significantly obstruct views to the ocean.

When remodeling is proposed to an existing structure and the existing development is to be retained which precludes the establishment of a 10-foot wide visual corridor, the preservation of any partial existing visual corridor on the premises will be accepted.

(H) 143.0144 (d) and (e) Vertical and Lateral Easements for Coastal Beaches

A site-specific analysis shall be conducted to determine and quantify the impact of the proposed development upon vertical and lateral access to the ocean. If the impacts of the proposed development justify in nature and scope the need for such access, the appropriate easements shall be required as a condition of development approval. Any such required easements shall be created and approved by the City Manager prior to the commencement of any construction on the premises.

No structures or other obstructions that will impede access shall be installed within the boundaries of any required easement. Open fencing and landscaping may be installed within a vertical easement provided such improvements do not hinder access to the ocean.

If vertical or lateral access is determined to be required on a premises where there is evidence that such access exists, the existing access shall be retained, if feasible, through the easement requirement. If not feasible, an alternative access easement shall be provided on the same premises.

If a beach or headland width is less than 25 feet, the lateral access easement shall include the entire beach or headland area.

In determining whether the proposed development justifies the need for the requirement of a vertical public access easement or a lateral access easement, the following factors shall be considered:

- Appropriateness of access
- Privacy rights of landowner
- Existing public access
- Historic public use
- Intensification of land use
- Habitat values of the site

- Topographic constraints of the site
- Fragility of environmentally sensitive lands in the vicinity
- Nature of development in the vicinity
- Development's effect on current and projected demands for access and recreation
- Physical obstructions and the aesthetic, visual or recreational value of public use areas
- Recreational needs of the public
- Impact of development on public's use of beach areas

**Section III
Bluff Measurement Guidelines**

The following guidelines provide details on determining the location of the bluff edge for sensitive coastal bluffs and measuring the required bluff edge setback.

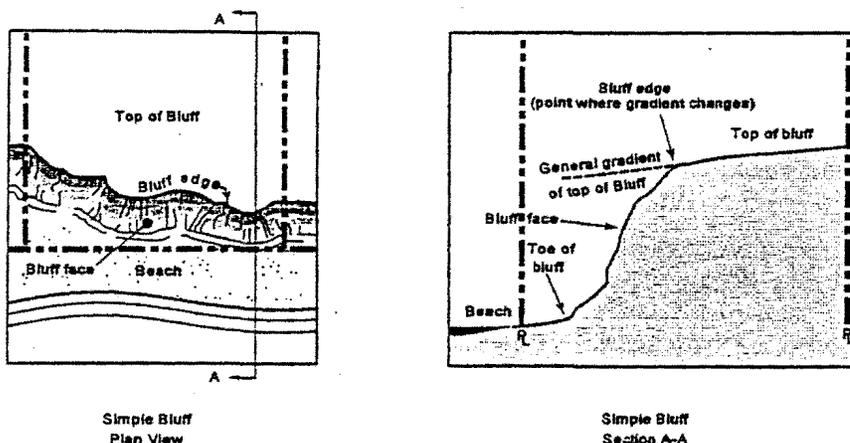
(A) Determination of Coastal Bluff Edge for Sensitive Coastal Bluffs

The following are examples of typical sensitive coastal bluff configurations with the determination of the coastal bluff edge identified:

(1) Simple Bluff

The coastal bluff edge is a line across the sensitive coastal bluff at the seaward edge of the top of bluff. The line of the coastal bluff edge is formed by measuring the uppermost point of change in gradient at any location on the subject premises. See Diagram III-1.

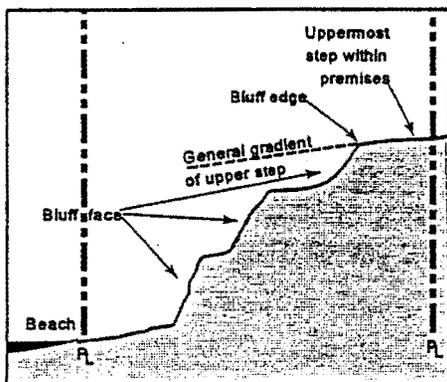
Diagram III-1: Simple Bluff



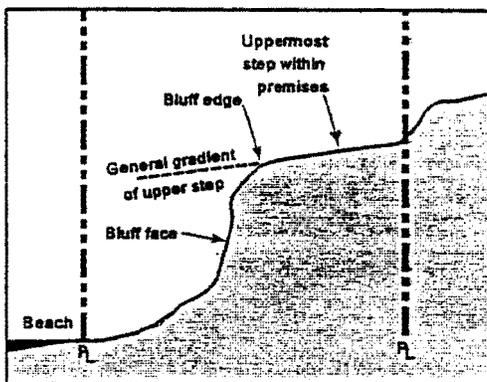
(2) Step-like Bluff Formation:

If the sensitive coastal bluff contains a step-like feature, the coastal bluff edge shall be measured at the change in gradient of the uppermost step within the subject premises. See Diagram III-2.

Diagram III-2: Step-like Bluff Formation



Multiple Steps within Premises



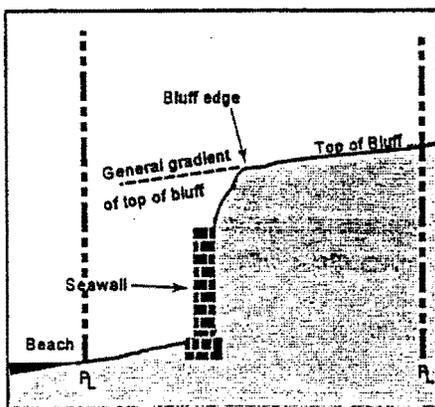
Single Step within Premises

(3) Sensitive Coastal Bluff with a Seawall

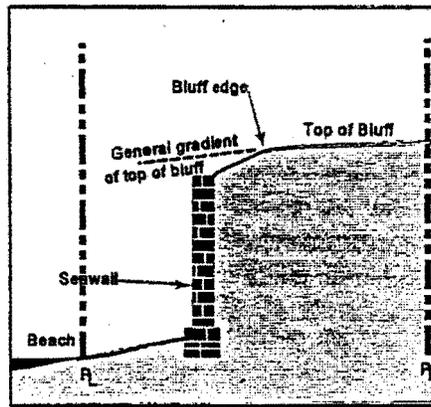
If the coastal bluff face has been partially altered with the installation of retaining walls, seawalls, or other device, the coastal bluff edge shall be considered the pre-existing change in gradient and shall continue to be measured as described in (a), above. That is, the installation of a seawall shall not affect the location of the coastal bluff edge. See Diagram III-3.

Note: If a seawall has been installed on a premises due to excessive erosion, that premises shall not qualify for development at a reduced distance from the coastal bluff edge. Since the instability of the sensitive coastal bluff necessitated the installation of the seawall, the sensitive coastal bluff would not be considered stable enough to support development within the 40-foot distance to the coastal bluff edge.

Diagram III-3: Sensitive Coastal Bluff with a Seawall



Seawall with Extreme Gradient Change

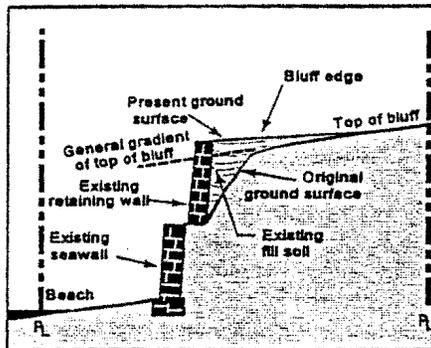


Seawall with Gradual Gradient Change

(4) Modified Landform

Where a coastal bluff face has been altered by grading and/or retaining wall, the coastal bluff edge shall be determined from the original geometry of the natural ground surface, projected to the present ground surface. See Diagram III-4. This may be determined by geotechnical investigation and/or historic documents such as photographs and maps.

Diagram III-4: Modified Landform



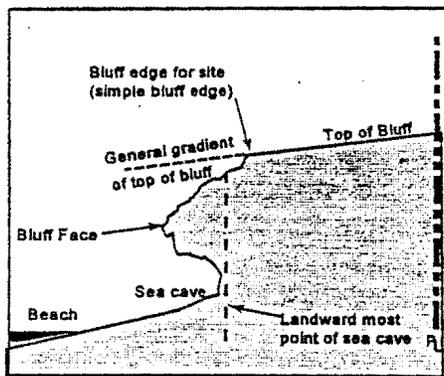
Modified Landform

(5) Sea caves

Where a sea cave (a natural cavity or recess beneath the surface of the earth that is formed by or a result of marine erosion) or overhang exists, the coastal bluff edge shall be either the simple bluff edge (See Diagram III-5(A)) or a line following the landward most point of the sea cave projected to the ground surface above (See Diagram III-5(B)), whichever is more landward.

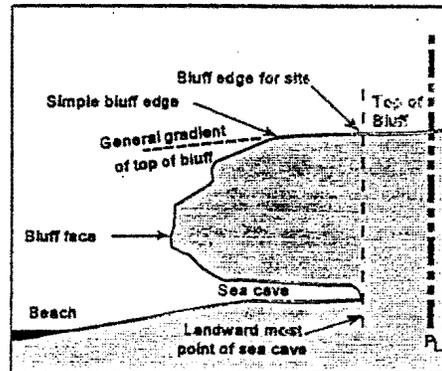
Diagram III-5: Sea Caves

(A)



Shallow Sea Cave

(B)

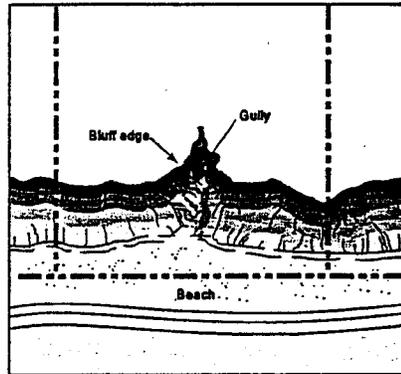


Deep Sea Cave

(6) Gullies

Where a gully (a small, local erosional feature that results in a minor perturbation of the bluff face) has developed that does not accommodate drainage from off-site, the coastal bluff edge shall follow the landward limits of the gully. See Diagram III-6:

Diagram III-6: Gully

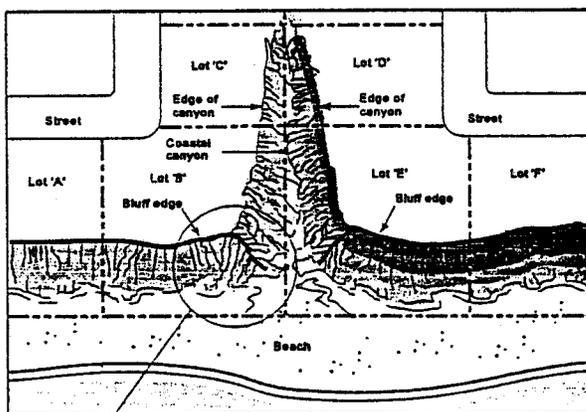


Gully

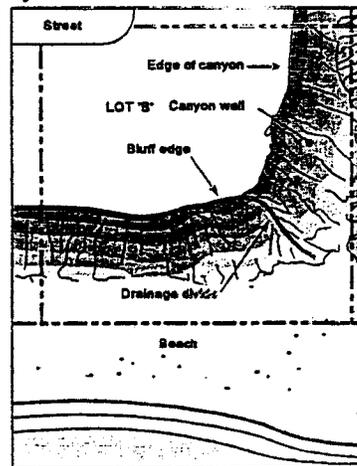
(7) Coastal Canyons

Where a site is bounded on at least one side by a coastal canyon (a large, established regional drainage course that traditionally accepts runoff from off-site), the coastal bluff edge is defined as the portion of the site which drains directly into the ocean. That portion of the site which drains first to the canyon (landward of the drainage divide) is not considered to be a sensitive coastal bluff. See Diagram III-7.

Diagram III-7: Coastal Canyon



Coastal Canyon

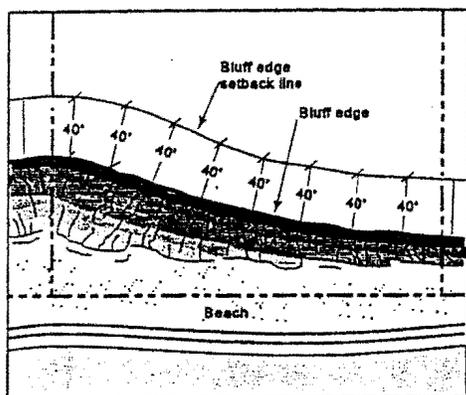


Coastal Canyon/Bluff Edge detail

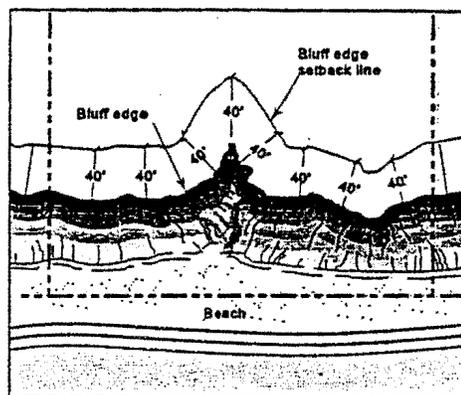
(B) Measurement of Distance from Coastal Bluff Edge for Sensitive Coastal Bluffs

The distance from the coastal bluff edge required for development on a sensitive coastal bluff is measured landward and perpendicular to every point along the coastal bluff edge. The line of the required distance from the coastal bluff edge will result in a line that is parallel to the coastal bluff edge. See Diagram III-8.

Diagram III-8: Distance from Coastal Bluff Edge



Distance from Coastal Bluff Edge



Distance from Coastal Bluff Edge

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A PROFESSIONAL CORPORATION

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File No.

4196.004

Via Fax & Messenger

April 12, 2000

RECEIVED

APR 13 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
3111 Camino Del Rio No., Ste. 200
San Diego, CA 92108-1725

Re: Summit Resources, LP
Coastal Development Permit No. A-6-LJS-99-160
Coastal Commission Meeting May 8-12, 2000

Dear Sherilyn:

Attached please find a copy of a letter addressed to Tim Martin dated April 11, 2000 from Curtis Burdett of Christian Wheeler Engineering. His letter addresses two issues which were discussed at the Coastal Commission meeting on Monday, April 10, 2000.

LANDSCAPING AND IRRIGATION

The first deals with landscaping. It is our client's desire to have Special Condition No. 3B modified to be consistent with the recommendations as contained within the attached letter. It is our understanding having discussed this matter with Lee McEachern and Laurinda Owens that Staff would consider a modification to the Landscaping and Irrigation Condition if it could be demonstrated that landscaping and irrigation (if restricted and controlled) would not adversely affect the stability of the bluff.

EXHIBIT NO. 16
APPLICATION NO. A-6-LJS-99-160
Letter dated 4/12/00 from Applicant's Representative w/attachments
(Page 1 of 29)

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 2

SAFETY OF EXISTING STRUCTURES

The second issue, which is addressed by the attached letter, is the issue which was brought up by Chairperson Wan and a couple of the other Commissioners. Some of the Commissioners wanted some type of assurance that the existing structure(s) located within the 25 ft. setback are safe and would not be adversely affected by the proposed improvements landward of the 25 ft. setback. As you can see by the attached letter, these assurances have now been made.

NONCONFORMING USES AND STRUCTURES (Municipal Code §103.0303.2)

Based upon the testimony of Ralph Faust, Esq. at the last hearing and the fact that it has been determined inappropriate for Staff to use the 50% demolition of the exterior walls "Rule of Thumb" to classify the project as "new development," our client will proceed with the project as approved by the City of San Diego. As you know, our client's home reduces the degree of nonconformity in certain portions of the existing structure. As Mr. Faust stated, the standard, which is applicable to the project, is contained within the Certified LCP in Municipal Code §103.0303.2. In addition to subparagraph D, which states that improvements, repairs and alterations ... "shall be permitted," we also assert that subparagraph A is applicable. If the Commission were to require demolition, then obviously our client would not be able to "use the building" pursuant to §103.0303.2(A). In

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Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 3

light of these legal determinations, we would again urge the Staff to revise its report consistent with the ~~strikeout~~/underline, which is attached hereto.

If Staff continues to persist in classifying this project as new development, our client's slightly modified project which retains over 50% of the exterior walls as submitted to Staff last Thursday, April 6, 2000 is still available to the Commission for approval in May.

BLUFF EDGE DETERMINATION

Finally, as we understand it, Staff has taken the position that they do not agree with the City of San Diego's determination of the location of the bluff edge. Please provide us with your Geotechnical, Soils, and Land Surveying Studies and Analysis which substantiate your position in this regard consistent with the City's definition of bluff edge as contained in the Certified LCP. Also, please provide us with an Exhibit or Diagram which depicts Staff's determination of the location of bluff edge on or before Monday, April 17, 2000. Obviously, our client's Development and Design Team would like the opportunity to evaluate Staff's location of bluff edge to determine what effect, if any, the Staff proposed location of the bluff edge will have on the proposed project.

As a final note, if Staff is going to be presenting an Addendum or any Supplemental Information (or revised Conditions) to the Coastal Commission for its hearing in May, we

(3 of 29)

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 4

would sincerely appreciate receiving that information by no later than Monday, May 1, 2000 so that our client's Development and Design Team can have an opportunity to evaluate and respond to the Supplemental Information.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation

Matthew A. Peterson

Enclosure

cc: Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Debra Lee, Deputy Director
Ralph Faust, Esq., Chief Legal Counsel
Lee McEachern, Supervisor of Regulation & Planning
Laurinda Owens, Coastal Planner
Mark Johnson, Senior Geologist, State of CA Coastal Commission
Curtis R. Burdett, C.E.G., Christian Wheeler Engineering
Michael J. Pallamary, Director of Mapping, P&D Consultants, Inc.
Tim Martin, Associate, Don Edson Architects AIA & Associates
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, LP
(All with copies of Enclosures)

(4 of 29)



CHRISTIAN WHEELER
ENGINEERING

April 11, 2000

Don Edson Architect, A.L.A. & Associates, Inc.
5752 Oberlin Drive, Suite 104
San Diego, California 92121

CWE 198.054.10

ATTENTION: Tim Martin

SUBJECT: RESPONSE TO CALIFORNIA COASTAL COMMISSION, SINGLE-FAMILY RESIDENCE REMODEL, 1900 SPINDRIFT DRIVE, LA JOLLA, CALIFORNIA.

REFERENCES: 1) Geologic Reconnaissance, Single-Family Residence Remodel Project, 1900 Spindrift Drive, La Jolla, California by Christian Wheeler Engineering, Report No. 198.054.1, dated October 2, 1998.

2) Report of Preliminary Geotechnical Investigation, Single-Family Residence Remodel, 1900 Spindrift Drive, La Jolla, California by Christian Wheeler Engineering, Report No. 198.054.5, dated March 23, 1999.

3) Slope Stability Analysis, Single-Family Residence Remodel, 1900 Spindrift Drive, La Jolla, California by Christian Wheeler Engineering, Report No. 198.054.7, dated February 25, 2000.

4) Coastal Development Permit Application #A6-LJS-99-160/Summit Resources, Single-Family Residence Remodel, 1900 Spindrift Drive, La Jolla, California by Christian Wheeler Engineering, Report No. 198.054.9, dated March 23, 2000.

Dear Ladies and Gentlemen:

In accordance with the request of Mr. Matthew Peterson of Peterson & Price, we have prepared this letter to present additional information that was requested orally by the California Coastal Commission in their April 2000 meeting in Long Beach. The two issues discussed in this letter include: 1) the possible effects of on-site irrigation on the stability of the bluff, and 2) the safety of the existing improvements that are within 25 feet of the edge of the bluff.

IRRIGATION

We understand that irrigation is to be limited to those portions of the site greater than 25 feet from the edge of the bluff. The referenced slope stability report indicates that the bluff has a factor of safety with regard to slope failure of at least 1.5 for all portions of the site greater than 25 feet landward of the edge of the bluff. It is our opinion that if the on-site irrigation is designed, installed, and maintained in accordance with the City of San Diego landscaping guidelines, the irrigation will have no

significant adverse impact on the stability of the bluff. In order to ensure that the irrigation will have no adverse effect on the stability of the bluff, the following additional measures are recommended:

- 1) All new landscaping to be located within the 25-foot setback from the edge of the bluff should be drought-tolerant native species.
- 2) No irrigation should be permitted within 25 feet of the edge of the bluff.
- 3) All irrigation systems should incorporate the following:
 - a) Include and install a City-approved, electrically controlled, automatic rain-shutoff device.
 - b) Include and install an electric irrigation controller. The controller should be seasonally adjusted to operate the system with the least practical amount of water applied (minimum evapotranspiration rate).

SAFETY OF EXISTING IMPROVEMENTS

The referenced reports (see above) which were provided to the City of San Diego and to the California Coastal Commission as evidence supporting a 25-foot setback for any new structures indicate that the site is very stable. There is an existing seawall built in the 1920's, as well as gunite that protects the face of the coastal bluff from erosion. These improvements, which were acknowledged and authorized by a California Coastal Commission permit in 1977 (F-5929), have performed well over the years, and although probably not needed to stabilize the site at the time of installation, have effectively stopped both basal erosion and recession of the upper edge of the slope/bluff. A review of available historical photographs indicates that conditions have remained essentially unchanged at the site for the past 50 to 60 years.

The referenced reports indicated that recession of the Cretaceous-age bedrock in the vicinity of the site is generally limited to a few inches per decades, even if there were no seawall, or gunite on the bluff. The recession rate of the Quaternary-age terrace deposits is greater than that of the Cretaceous-age sediments but the terrace deposits are very thin at the project site and have only a minor effect on the overall stability of the site. The referenced slope stability analysis indicates that the factor of safety with regard to gross stability of the westerly-facing slope at the site (even with the seawall and the gunite not present) is at least 1.5 at a horizontal distance of only a few feet landward of the existing edge of the slope. Further, the referenced slope stability report provided, in our opinion, a worst-case scenario utilizing a seismic coefficient of 0.40 for the pseudo-static analysis, rather than the more commonly used industry-standard seismic coefficient of only 0.15.

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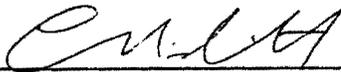
In addition, it should be noted that the southwestern portion of the existing residence, which is the portion of the structure that is closest to the existing edge of the westerly-facing slope, is founded on piers which extend at least 23 feet below existing grade, well into formational materials.

Based on the studies performed and other information available to date, it is our opinion that, with the current site conditions, those portions of the existing residential structure located within 25 feet of the edge of the bluff (whether defined by Coastal staff or as established by our firm in consultation with Precision Survey and Mapping and Mr. Robert Hawk, the City of San Diego geologist, by utilizing the City of San Diego's definition of bluff edge in the certified LCP) are safe and suitable for continued human habitation. Further, as previously stated in the referenced reports, the new structural additions beyond the 25-foot setback from the bluff edge, if constructed in accordance with the structural plans and foundation systems as proposed, will not, in any way, adversely affect the stability of the existing slope/bluff or the existing structures that are located within the 25-foot bluff edge setback.

If you have any questions after reviewing this letter, please do not hesitate to contact our office. This opportunity to be of professional service is sincerely appreciated.

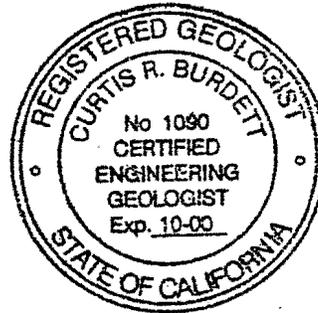
Respectfully submitted,

CHRISTIAN WHEELER ENGINEERING



Curtis R. Burdett, C.E.G. #1090
CRB:crb

cc: (2) Submitted
(1) Client



CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

~~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

Revised Report

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: *Remodel* *resulting in* 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. *Revised* based upon revisions to the project submitted on 4/6/00.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed *remodel* 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

the remodel of a home

New Development / Additions

(8 of 29)

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:

4/3/00

~~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.~~

a. 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.

b. No maintenance of the existing non-conforming boathouse/cabana shall be permitted.

c. 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 5/21/99, 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:

- 4/3/00
- 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.~~ *within the 25ft Bluff Edge Setback* *within the 25ft Bluff Edge Setback*
 - 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:

Remodel

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~~ *resulting in a 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~~ *slightly above* 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.

within the 25ft bluff edge setback
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 *that are attached to* 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. *as previously submitted was*

Previously Proposed ^{was} 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

Previously

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and Bluff

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 ~~is~~ consistent 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 previously

On 4/16/00 The Applicant's Architect submitted Revised Plans which indicated that with some minor modifications to the project that only 28.4% of the exterior walls will now be removed. In addition by the Applicant's Architect calculated over 52% of the existing structure will be retained and all remaining...

~~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.~~

Since the revised project now qualifies as

would not be (does not)

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

for new structural improvements

from a geologic point of view that only a minimal bluff edge setback is warranted, and that
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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/improvements

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 ^{and 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.~~ ^{retain portions of the structure within the 25 ft Bluff edge setback} As conditioned to not permit any portion of the proposed ~~principal residence~~ ^{New Development/Activities} 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.~~

remodel

within the front yard setback area

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

the adjacent
 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~~ *Lower* 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,

New

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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.

(G:\San Diego\LEEA-6-LJS-99-160 Summit Resources, L.P. DN stfrpt.doc)

Project Site

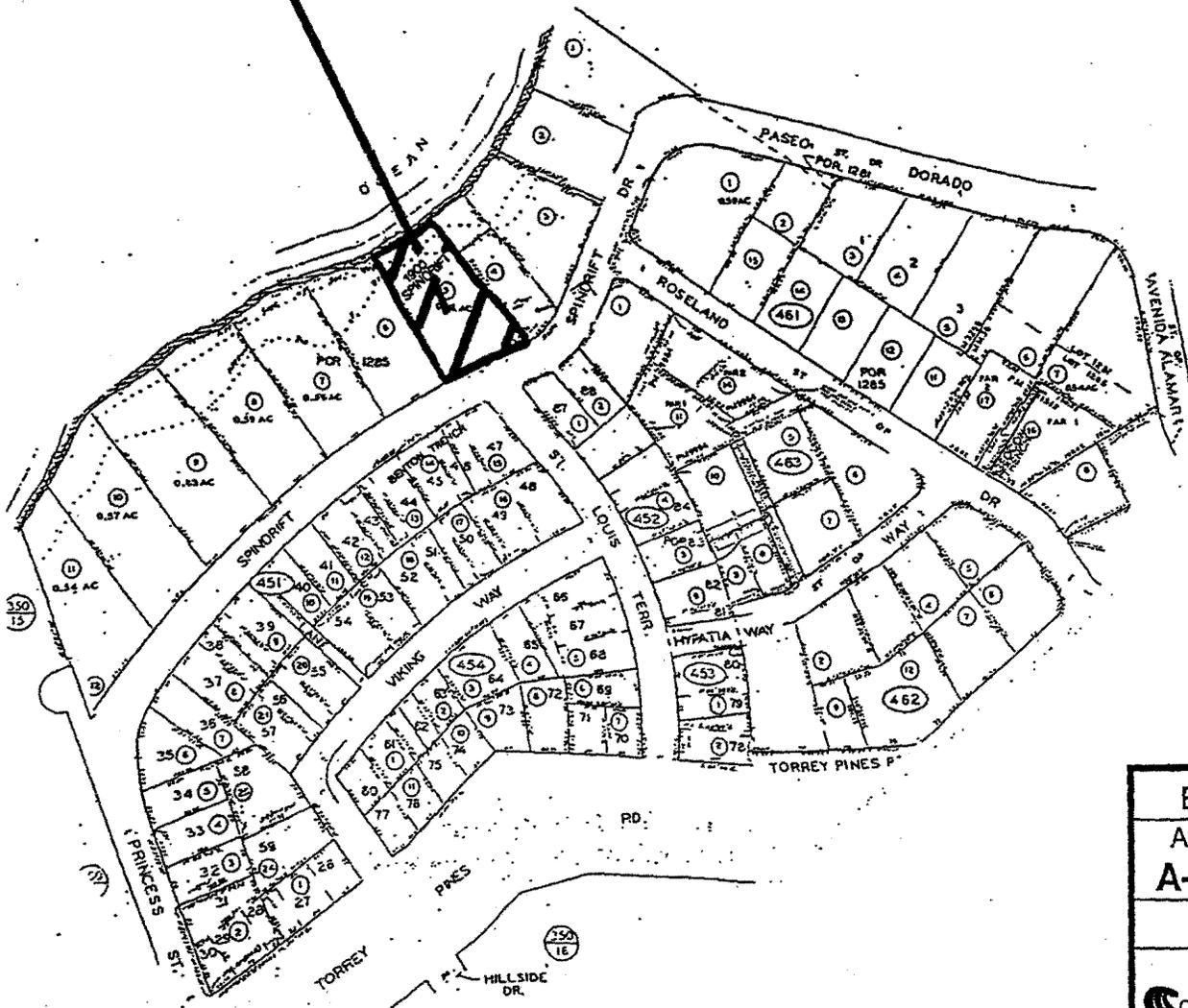
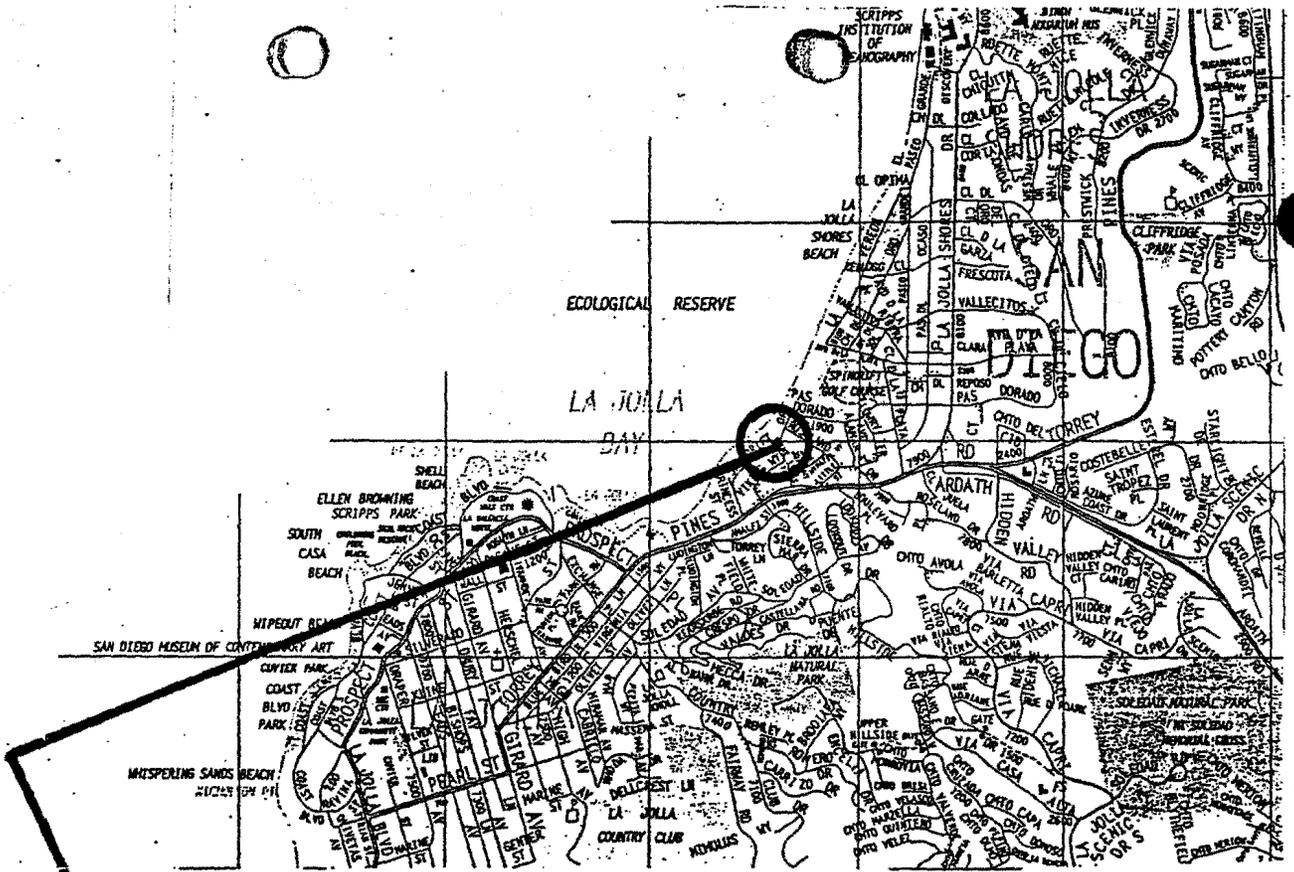
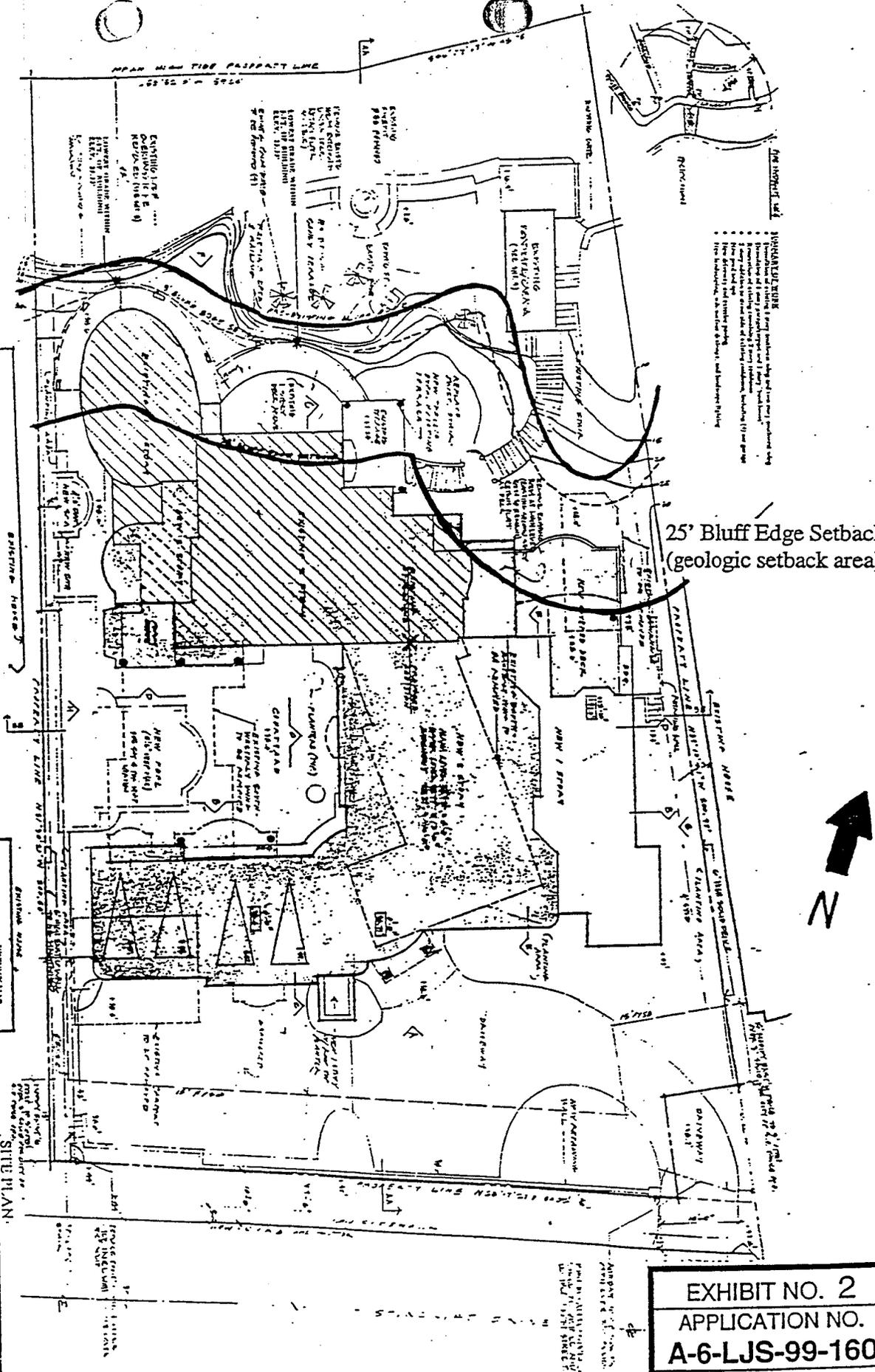


EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-99-160
Location Maps
California Coastal Commission

NO.	DESCRIPTION	DATE	BY	REVISIONS
1	PRELIMINARY	11/11/99	DAVID	
2	REVISED	11/11/99	DAVID	
3	REVISED	11/11/99	DAVID	
4	REVISED	11/11/99	DAVID	
5	REVISED	11/11/99	DAVID	
6	REVISED	11/11/99	DAVID	
7	REVISED	11/11/99	DAVID	
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25' Bluff Edge Setback
(geologic setback area)



DON EDSON
ARCHITECT A LA 452-1860
5752 OBERLIN DRIVE-104
SAN DIEGO CALIF. 92121

1900 SPINDRIFT DRIVE
LA JOLLA, CA

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-99-160
Site Plan

California Coastal Commission



San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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

RECEIVED

APR 05 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Hon. Sara Wan, Chair
California Coastal Commission
April 4, 2000

SUBJECT: MON 24c:Summit Resources, L.P; A-6-LJS-99-160

Dear Chairman Wan and Commissioners:

The San Diego Sierra Club, through its Coastal Committee, strongly supports the Staff recommendation on appeal for this project. Currently, there are at least seven shoreline projects in the San Diego pipeline which raise similar issues. Of particular importance in these projects are 1) the 50% demolition rule in regard to new development and nonconforming rights for existing structures; and 2) the protection of visual access to the shoreline. Because of the cumulative impacts to the shoreline and visual access from these multiple projects, as well as what we believe to be a serious misinterpretation by both the City and applicants' agents of the Local Coastal Program and Land Use Plan regulations and policies, we urge your adoption of all of the Special Conditions as recommended by staff. Such clarification by the Commission as to the correct interpretation of the LCP will help both applicants and the public in addressing future development. As such, the Special Conditions are critical to our support for this project.

1. The 50% demolition rule (SDMC 105.0204 A.1):

Both City staff and applicants' agents make the argument that the 50% demolition rule only refers to whether a CDP exemption may be obtained. Since a CDP was required and obtained, they believe they have satisfied the regulations. Our interpretation, to the contrary, has been that of your staff. We believe the requirement for a CDP indicates that the project constitutes "new development," which, accordingly, requires conformance with current Local Coastal Program and Land Use Plan regulations and policies. In this case, therefore, we believe the proposed project should observe current geologic setback requirements since more than 50% of the existing structure is apparently being demolished.

Should the nonconforming portions of the structure be retained seaward of the geologic setback line, the existing nonconformity would be dramatically increased through the sheer bulk and scale of an essentially new structure in a geologically hazardous location, such that future shoreline protection requirements could become problematic by eliminating the possibility of alternative considerations of the least environmentally damaging alignment and design.

3820 Ray Street, San Diego, CA 92104-3623
www.sierraclub.org



EXHIBIT NO. 17
APPLICATION NO.
A-6-LJS-99-160
Letter From Sierra Club in Support of Staff Recommendation
California Coastal Commission



San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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

Summit Resources
Page 2
April 5, 2000

2. Visual Access:

Both the Appeal and the Staff Report correctly state the visual resource policies of the certified La Jolla-La Jolla Shores LCP Land Use Plan. While the community anticipated specific implementation of those policies after certification of the 1983 Plan, it rarely happened. Thus, in an effort to insure the implementation intended since 1983, the requisite specificity has been included in the 2000 Land Development Code. Thus, we strongly support Staff's Conditions requiring opening up of side yards and fences in order to prevent the continuous wall effect that has been created since 1983 through failure of both implementation and enforcement. And we believe both the 1999 Municipal Code, as well as the 2000 Land Development Code support Staff's position.

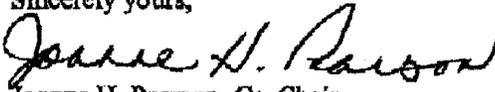
3. Enforcement:

In San Diego, it is well known that enforcement of code violations is almost nonexistent, because of the City's budget choice to restrict funding for both the Code Enforcement Dept. and the Park and Recreation Dept. Currently, much enforcement is allocated to lifeguards. Given this reality, we would appreciate clarification from the Commission as to what mechanism exists, or will be used, beyond the deed restriction, to ensure the prohibition against maintenance and repair of the nonconforming accessory structures and to assure the maintenance of landscaping to provide visual access through the sideyard setbacks. Who will monitor these conditions?

4. Conclusion:

The San Diego Sierra Club greatly appreciates the dedication, persistence, and professionalism of the local Coastal Staff in addressing this difficult project. The Staff recommendations, if adopted, will go far in bringing shoreline development in San Diego into compliance with the letter and intent of the certified LCP and La Jolla Land Use Plan. Thank you for your consideration.

Sincerely yours,


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





THE WILLIS ALLEN COMPANY

ANDREW E. NELSON
President

Exclusive Affiliate

SOTHEBY'S
INTERNATIONAL REALTY

January 24, 2000

Rusty Areias
Chairman
California Coastal Commission
1400 "N" Street, Suite 9
Sacramento, CA 95814

RECEIVED

JAN 27 2000

CALIFORNIA
COASTAL COMMISSION

RECEIVED

JAN 28 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: 1900 Spindrift Drive, La Jolla

Dear Chairman:

I am writing again on behalf of the proposed project to be constructed at 1900 Spindrift in La Jolla, California 92037.

I have reviewed the plans in detail and give my complete endorsement and support for this project. It's not often an architect can create something that matches a site as well as this and I salute the architect, Don Edson, for his work.

The plan shows a home that will fit in well with the established character of La Jolla neighborhoods. The style and setting well represents our La Jolla coastal community.

I urge you to approve the owners design plan. Thank you ahead of time for your thoughtful consideration of this project.

Very truly yours,

Willis Allen Company

Andrew E. Nelson
President/CEO

cc: Peter Douglas
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105-2219

EXHIBIT NO. 18
APPLICATION NO.
A-6-LJS-99-160
Letter From Interested Party in Support of Applicant's Proposal
California Coastal Commission

858.459.4033 La Jolla Office • Fax: 858.459.7538 • Direct: 858.459.4035 ext
1131 Wall Street, La Jolla, CA 92037 • P.O. Box 1887, La Jolla, CA 92037

RECORDING REQUESTED BY
CITY OF SAN DIEGO
PLANNING & DEVELOPMENT REVIEW

AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LA JOLLA SHORES PLANNED DISTRICT/COASTAL DEVELOPMENT AND
SENSITIVE COASTAL RESOURCE OVERLAY ZONE PERMITS NO. 99-0007
(MMRP)
1900 SPINDRIFT DRIVE
PLANNING COMMISSION

This Permit, is granted by the PLANNING COMMISSION of the City of San Diego to SUMMIT RESOURCES, L.P., Owner/Permittee pursuant to Sections 103.0300, 111.1201, 101.0480 AND 111.0508 of the Municipal Code of the City of San Diego. The 0.56 acre site is located at 1900 Spindrifft Drive at the intersection with Saint Louis Terrace in the SF (Single-Family) zone of the La Jolla Shores Planned District within the boundaries of the La Jolla Community Plan area. The project site is legally described as a Portion of Pueblo Lot 1285, Map No. 1762.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to remodel an existing 9,960 square-foot residence, demolishing 4,745 square-foot and adding 9,415 square-feet, resulting in a 14,630 square-foot residence with a 0.59 Floor Area Ratio, described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A", dated December 2, 1999, on file in the Planning and Development Review Department. The facility shall include:

- a. Remodel an existing 9,960 square-foot single-family residence with demolition and new construction resulting in a 14,630 square-foot residence with a FAR of 0.59;
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. Maintenance of an existing boathouse, walls, fences, decks and mature landscaping.
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an

EXHIBIT NO. 19
APPLICATION NO. A-6-LJS-99-160
City's LJ Shores PDO/CDP/SCR Permit #99-0007
(1 of 15)
 California Coastal Commission

Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decisionmaker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to Planning and Development Review; and
- b. The Permit is recorded in the office of the San Diego County Recorder.

3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

6. Issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)

7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated December 2, 1999, on file in the Planning and Development Review Department. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable

or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

10. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action, following all appeals.

11. Title Restrictions. Prior to the commencement of any work or activity authorized by this permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Development Services Director, or designated representative which shall provide: a) that the applicant understands that no new accessory structures and landscape features customary and incidental to residential uses shall be developed within five feet of the Bluff Top (as illustrated on approved plan Exhibit "A," dated December 2, 1999, on file in the Planning and Development Review Department) or on the face of the Bluff; and b) that the applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and c) the applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards. This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The owner/permittee shall comply with the Mitigation, Monitoring and Reporting Program (MMRP) as specified in Mitigated Negative Declaration No. 99-0007 (LDR No. 99-0007), to the satisfaction of the City Manager and the City Engineer. Prior to the issuance of the first grading permit and/or recordation of the first final map, all mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas: Historical Resources and Geology.

ENGINEERING REQUIREMENTS:

13. Prior to the issuance of any building permits, the applicant shall obtain a grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

14. The drainage system proposed with this development is subject to approval by the City Engineer.

15. Prior to building occupancy, the applicant shall conform to the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

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

PLANNING/DESIGN REQUIREMENTS:

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

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

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

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

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

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

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

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

25. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
26. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
27. No merchandise, material or equipment shall be stored on the roof of any building.
28. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure and in compliance with the applicable building height regulations.

LANDSCAPE REQUIREMENTS:

29. Prior to issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated December 2, 1999,, on file in the Planning and Development Review Department. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.
30. Prior to issuance of grading permits, interim landscape and erosion control measures for those slopes requiring revegetation, shall be submitted to the satisfaction of the City Manager and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated December 2, 1999, on file in the Planning and Development Review Department and all other applicable conditions of related permits.
31. Prior to final inspection it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.
32. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.
33. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.
34. The irrigation system shall incorporate the following items:
 - a. Include and install a City-approved electrically controlled automatic rain shut-off device.

- b. Include and install a City approved moisture-sensing device for turf irrigation circuits.
- c. Include and install low precipitation rate nozzles. Heads shall be located to minimize overspray. Adjustment and timing of the heads shall be coordinated to reduce the potential for run-off.
- d. Include and install an irrigation electric controller. The controller shall be seasonally adjusted to operate the system with the least practical amount of water applied (minimum ETO).

APPROVED by the PLANNING COMMISSION of the City of San Diego on December 2, 1999.

ALL-PURPOSE CERTIFICATE

Type/Number of Document: LJS/CDP/SCR No. 99-0007
Date of Approval: December 2, 1999.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Robert Korch, Development Project Manager

On _____ before me, BETH ANN CARROLL (Notary Public), personally appeared Robert Korch, Development Project Manager of Planning and Development Review of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____
Beth Ann Carroll

(Seal)

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed _____ Signed _____
Typed Name Typed Name

STATE OF _____
COUNTY OF _____

On _____ before me, _____ (Name of Notary Public) personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

PLANNING COMMISSION
RESOLUTION NO.
LA JOLLA SHORES PLANNED DISTRICT/COASTAL DEVELOPMENT AND
SENSITIVE COASTAL RESOURCE PERMITS NO. 99-0007(MMRP)
1900 SPINDRIFT

WHEREAS, SUMMIT RESOURCES, L.P., Owner/Permittee, filed an application with the City of San Diego for a permit to remodel an existing 9,960 square-foot residence; demolishing 4,745 square-feet and adding 9,415 square-feet to result in a 14,630 square-foot residence (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 99-0007, on portions of a 0.56 acre site and;

WHEREAS, the project site is located at 1900 Spindrift drive at the intersection of Saint Louis Terrace in the SF zone of the La Jolla Shores Planned District and within the boundaries of the La Jolla Community Plan area and;

WHEREAS, the project site is legally described as a Portion of Pueblo Lot 1285, Map No. 1762, and;

WHEREAS, on December 2, 1999, the PLANNING COMMISSION of the City of San Diego considered LJS/CDP/SCR Permit No. 99-0007 pursuant to Sections 103.0300, 111.1201, 101.0480 and 111.0508 of the Municipal Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the PLANNING COMMISSION of the City of San Diego as follows:

That the PLANNING COMMISSION adopts the following written Findings, dated December 2, 1999.

FINDINGS:

LA JOLLA SHORES (PDO) ~(MUNICIPAL CODE SECTION 103.0300)

- A. THE PROPOSED CONSTRUCTION AND USE OF THIS SITE MEETS ALL TECHNICAL REQUIREMENTS SET FORTH IN THE ADOPTED LA JOLLA SHORES PLANNED DISTRICT ORDINANCE AND THE LA JOLLA SHORES DESIGN MANUAL RELATING TO ARCHITECTURAL STYLE, VARIETY AND DIVERSITY IN DESIGN, HEIGHT, LOT COVERAGE, LANDSCAPING, ORIGINALITY, AND NO VARIANCES ARE REQUIRED.

The subject 0.56 acre site is existing fully developed with a 9,960 square-foot single-family residence, accessory bunk house, boat house, guest quarters and other accessory improvements. The project site is within a neighborhood of diverse lot configurations and diverse architectural styles. The project site is on a bluff top over the Pacific Ocean and surrounded on the remaining three sides by

similar development. The existing house dates to 1928 and was designed and resided in by persons of significance and, although the structure and site are environmentally historically significant, the property has not been designated by the Historical Sites Board.

The project proposes to demolish 4,745 square-feet of existing improvements and construct 9,415 square-feet of new improvements resulting in a total floor area of 14,630 square-feet and a Floor Area Ratio of 0.58 and a building height of 28-feet 8-inches. The existing architectural style is being modified with a sense of retention of some of the existing style. Materials utilized for the roof, walls, windows and trim are compatible with the neighborhood, as specified in the La Jolla Planned District Ordinance and consistent with the existing architectural structure. The La Jolla Planned District Advisory Board has reviewed the project and found that it conformed to the PDO and the La Jolla Shores Design Manual.

B. THE PROPOSED CONSTRUCTION AND USE OF THIS SITE IS CONSISTENT WITH THE LA JOLLA SHORES PLANNED DISTRICT ORDINANCE WHICH STATES THAT PUBLIC VIEWS FROM PUBLIC RIGHTS-OF-WAY AND PUBLIC PLACES SHALL BE PROTECTED.

The project site is on the coastal bluff overlooking the Pacific Ocean and is opposite the intersection of St. Louis Terrace which intersects with Spindrift Drive. The site is occupied with existing improvements of a single-family residence and accessory structures on the 24,461 square-foot lot. The property is surrounded by similar development on both sides and has an overheight hedge on the front propertyline. The site is not shown for coastal view on the La Jolla/ La Jolla Shores Local Coastal Program and is not generally accepted as providing any existing views to the coast or ocean from any adjoining public rights-of-ways. The partial demolition and new construction will not alter any existing public views or impact public places.

C. THE PROPOSED USE WILL NOT ADVERSELY AFFECT THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LA JOLLA COMMUNITY PLAN OR THE LA JOLLA SHORES PRECISE PLAN.

The demolition of 4,745 square-feet of an existing 9,960 square-foot single-family home and new construction of 9,415 square-feet of floor area to result in a total of 14,630 square-feet on a 24,461 square-foot lot, will not adversely affect the City of San Diego Progress Guide and General Plan or the La Jolla Community Plan and La Jolla Shores Precise Plan that designate this site for single-family use consistent with the design as proposed and as sited.

COASTAL DEVELOPMENT ~ (Municipal Code Section 105.0202)

A. THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY

EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE GENERAL PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN AN ADOPTED LCP LAND USE PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.

The proposed development will result in the partial demolition of an existing single-family detached residence and accessory structures and the addition of new floor area and improvements to a 24,461 square-foot SF zoned lot located at 1900 Spindrift Drive overlooking the Pacific Ocean from atop a 22-foot high coastal bluff. No existing physical public accessway or proposed accessway exists or is proposed within the La Jolla/La Jolla Shores Local Coastal Program and this Program does not identify any public views or view corridors across this property. This property, by the shape and configuration of the coastline to the north, south and west, affords views of other bluff, beach and coastal improvements and this property is visible from these other locations as well, however, the improvements as ultimately to be built-out, will become the view from these points but will not be in conflict with the provisions of these plans and programs.

B. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT IDENTIFIED MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE AREAS, OR ARCHAEOLOGICAL OR PALEONTOLOGICAL RESOURCES.

This 0.56 acre lot was developed 70 years ago with a single-family residence that has been modified a number of times in the intervening years. The current project proposes a partial demolition and new construction to result in a 14,630 square-foot residence. The site has an existing seawall, boat house and other minor improvements on the ocean bluffs and lower beach areas of the lot as well as structural improvements within the 40-foot blufftop setback and 25-foot blufftop setback permissible with a supporting geotechnical report. The project approval will require removal of landscaping installed on the sandy beach areas. The Environmental Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program No. 99-0007, requires archaeological monitoring and recovery and that a "Notice of Geologic and Geotechnical Conditions" be signed by the owner and recorded that reflects the potential for ground rupture along the fault trace discovered on-site. No other adverse affect have been identified on Marine Resources, environmentally sensitive areas or archaeological or paleontological resources.

C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE REQUIREMENTS RELATED TO BIOLOGICALLY SENSITIVE LANDS AND SIGNIFICANT PREHISTORIC AND HISTORIC RESOURCES AS SET FORTH IN THE RESOURCE PROTECTION ORDINANCE, CHAPTER X, SECTION 101.0462 OF THE SAN DIEGO MUNICIPAL

CODE, UNLESS BY THE TERMS OF THE RESOURCE PROTECTION ORDINANCE, IT IS EXEMPTED THEREFROM.

The remodel of an existing single-family residence with a partial demolition and new additions on a 0.56 acre lot in the SF (single-family) zone within the La Jolla Shores Planned District, will comply with the biologically sensitive lands and significant prehistoric and historic resources provisions of the Resource Protection Ordinance. No biologically sensitive lands are within this project area and previously added landscaping on the sandy beach area will be required to be removed. The property and improvements therein, were considered by the City of San Diego Historical Sites Board for possible designation but was not deemed to qualify. Because of the age of the improvements existing on the site and location, requirements for Historical Resources have been identified in the accompanying Mitigated Negative Declaration and made a part of the conditions for approval of the project.

D. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT IDENTIFIED RECREATIONAL OR VISITOR-SERVING FACILITIES OR COASTAL SCENIC RESOURCES.

This site is not identified in the La Jolla/La Jolla Shores Local Coastal Program as a public view corridor to or from the ocean and the site is within a developed single-family neighborhood. A private recreational club is located to the north and a public beach and park lie beyond that. The remodeling of this residence through a partial demolition and new construction will have no adverse affects on these identified recreational and visitor serving facilities and coastal scenic resources.

E. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS TO ENVIRONMENTALLY SENSITIVE HABITATS AND SCENIC RESOURCES LOCATED IN ADJACENT PARKS AND RECREATION AREAS, AND WILL PROVIDE ADEQUATE BUFFER AREAS TO PROTECT SUCH RESOURCES.

The existing single-family residence requesting to be remodeled, will have no adverse impacts on scenic resources or parks and recreation areas as specified in Item D above. Private recreation and public parks are located to the north and are not adjacent to this site which shares common lot lines with similar zoned and utilized properties. A geotechnical report has been completed which analyzed stability of the site for the location of the existing and proposed improvements and staff review and completion of a Mitigated Negative Declaration have investigated any possible impacts to sensitive habitats and scenic resources and found that there are no adverse impacts associated with this proposed project.

F. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE

ALTERATIONS OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISKS FROM GEOLOGIC AND EROSIONAL FORCES AND/OR FLOOD AND FIRE HAZARDS.

The site is existing improved since the 1920's and is a relatively flat with a slope towards the ocean bluff that descends about 22-feet to the beach area below. The site requires minor alteration of existing grades and through review of a required geotechnical report, has been determined that the partial demolition and new construction to the residence will not result in undue risks from geologic and erosional forces. A seawall already exists on the bluff/beach that has protected the site from natural erosion and also protected the house above which is considered a blufftop improvement. No flood or fire risks or hazards are unaddressed by this project.

- G. THE PROPOSED DEVELOPMENT WILL BE VISUALLY COMPATIBLE WITH THE CHARACTER OF THE SURROUNDING AREA, AND WHERE FEASIBLE, WILL RESTORE AND ENHANCE VISUAL QUALITY IN VISUALLY DEGRADED AREAS.**

This area of the La Jolla Shores Planned District is composed of older single-family homes punctuated by newer construction following demolition and other remodeled homes. It is an area of individually designed and sited homes that offers owners wider choices in design to maintain the character of the area. The area is not considered visually degraded. The partial demolition and new additions proposed to this existing residence will result in a maintaining of architectural integrity and visual quality of the site and neighborhood.

- H. THE PROPOSED DEVELOPMENT WILL CONFORM WITH THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LOCAL COASTAL PROGRAM, AND ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS IN EFFECT FOR THIS SITE.**

The maintenance of this existing single-family residence conforms to the La Jolla Shores Planned District Ordinance, the La Jolla Community Plan and the Progress Guide and General Plans, the La Jolla/La Jolla Shores Local Coastal Program and all other City Ordinances, Codes and Policies for development of this lot. Through this application and review for the goals and purposes of the ordinances and the completion of a Mitigated Negative Declaration, this determination has been made.

SENSITIVE COASTAL RESOURCE ~(MUNICIPAL CODE SECTION 101.0480)

- A. THE PROPOSED DEVELOPMENT WILL BE SITED, DESIGNED, AND CONSTRUCTED TO MINIMIZE, IF NOT PRECLUDE, ADVERSE IMPACTS UPON SENSITIVE COASTAL RESOURCES AND**

ENVIRONMENTALLY SENSITIVE AREAS.

The 24,461 square-foot single-family zoned lot is improved with an existing 9,960 square-foot residence and accessory improvements including a seawall, boat house, landscaping and other minor improvements. The partial demolition and new construction proposed has been sited and designed to meet the City of San Diego bluff top setback as permitted based on a supporting Geotechnical Report and to utilize the large buildable area present. The improvements have been reviewed as well and recommended for approval by the La Jolla Shores Planned District Advisory Board. The proposed development will minimize and preclude to the extent possible, adverse impacts to sensitive coastal resources and environmentally sensitive areas.

- B. THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE GENERAL PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN THE ADOPTED COMMUNITY PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.**

The proposed development will result in the partial demolition of an existing single-family detached residence and accessory structures and the addition of new floor area and improvements to a 24,461 square-foot SF zoned lot located at 1900 Spindrift Drive overlooking the Pacific Ocean from atop a 22-foot high coastal bluff. No existing physical public accessway or proposed accessway exists or is proposed within the La Jolla/La Jolla Shores Local Coastal Program and this Program does not identify any public views or view corridors across this property. This property, by the shape and configuration of the coastline to the north, south and west, affords views of other bluff, beach and coastal improvements. This property is visible from these other locations as well, however, the improvements as ultimately to be built-out, will become the view from these points but will not be in conflict with the provisions of these plans and programs.

- 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 ON SITE.**

Minimal grading is proposed to this existing improved 24,461 square-foot single-family zoned lot located atop a 22-foot coastal bluff. A Geotechnical report has been submitted and reviewed with the City's Geologists accepting the conclusions within the report. No new development will be nearer than 25-feet to the bluff top and the Mitigation Monitoring and Reporting Program in conjunction to the Mitigated Negative Declaration, requires that proof of a "Notice of Geologic and Geotechnical conditions" be signed by the owner/permittee and recorded with the

county Recorder prior to the issuance of building permits. Site drainage and roof top drainage is required to be directed to the City street to the east and not over the bluff to the ocean below in order to minimize risk of erosion to the bluff and beach. The Fire marshal has reviewed the project application and determined that fire risks and hazards have been adequately addressed.

- 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.**

This 24,461 square-foot SF (single-family) zoned lot is improved with an existing 9,960 square-foot residence and accessory uses, including a boat house, seawall and other shoreline improvements. Proposed partial demolition and new construction will result in a total floor area of 14,630 square-feet of improvement. New development, based on a Geotechnical Report, will be a minimum of 25-feet back of the bluff top and through conditions in the accompanying La Jolla Shores Planned District Permit, Coastal Development Permit and Sensitive Coastal Resource Permit, will remove non-approved existing landscaping from the sandy beach area and condition the non-conforming boat house and other improvements to limited repair and maintenance. Improvements to the existing structure and site will not contribute to erosion of public beaches or adversely impact local shoreline sand supply. All surface and rooftop drainage is to be intercepted on site and directed to the street to flow through the City drainage system. No new shoreline protective works are proposed with this permit.

- E. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT THE CITY'S PROGRESS GUIDE AND GENERAL PLAN, THE LOCAL COASTAL PROGRAM, OR ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS IN EFFECT FOR THIS SITE.**

The proposed demolition of a portion of an existing single-family residence and construction of new additions on a lot located between Spindrift Drive and the Pacific Ocean, has been reviewed by City Staff, the La Jolla Shores Advisory Board and the La Jolla Community Planning Board as the project pertains to the City of San Diego Progress Guide and General Plan, the La Jolla/La Jolla Shores Local Coastal Program, the La Jolla Community Plan and La Jolla Shores Planned District Ordinance and existing SF zoning and all other related codes, ordinances and policies. The project has been found in compliance as proposed and will not adversely affect these identified plans and programs.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, LJS/CDP/SCR Permit No. 99-0007, is hereby GRANTED by the PLANNING COMMISSION to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 99-0007, a copy of which is attached hereto and made a part hereof:

ROBERT KORCH
Project Manager
Planning and Development Review

LINDA LUGANO
Legislative Recorder to the
Planning Commission

Adopted on: December 2, 1999.



NORTH

ASSIGNMENT AND RIGHT OF WAY
A DRIVEWAY FROM SANDY BEACH
TOGETHER WITH THE DISBURSE
PERPETUAL RIGHT TO PLANT,
CARE AND MAINTAIN SHRUBS
5 FEET WIDE NEARBY OF SAID
DRIVEWAY PER DEED IN BOOK 53
PAGE 10 OF OFFICIAL RECORDS
DATED SEPTEMBER 22, 1954.

LOT AREA (TOTAL)
17,907.77
ACRES

Bluff edge at this point
beneath structure is as
shown on cross-section A-A
of Christian Wheeler report

Bluff edge concealed
by vegetation; line
shown is approximate

Approximate 25-foot geologic setback line

25 feet

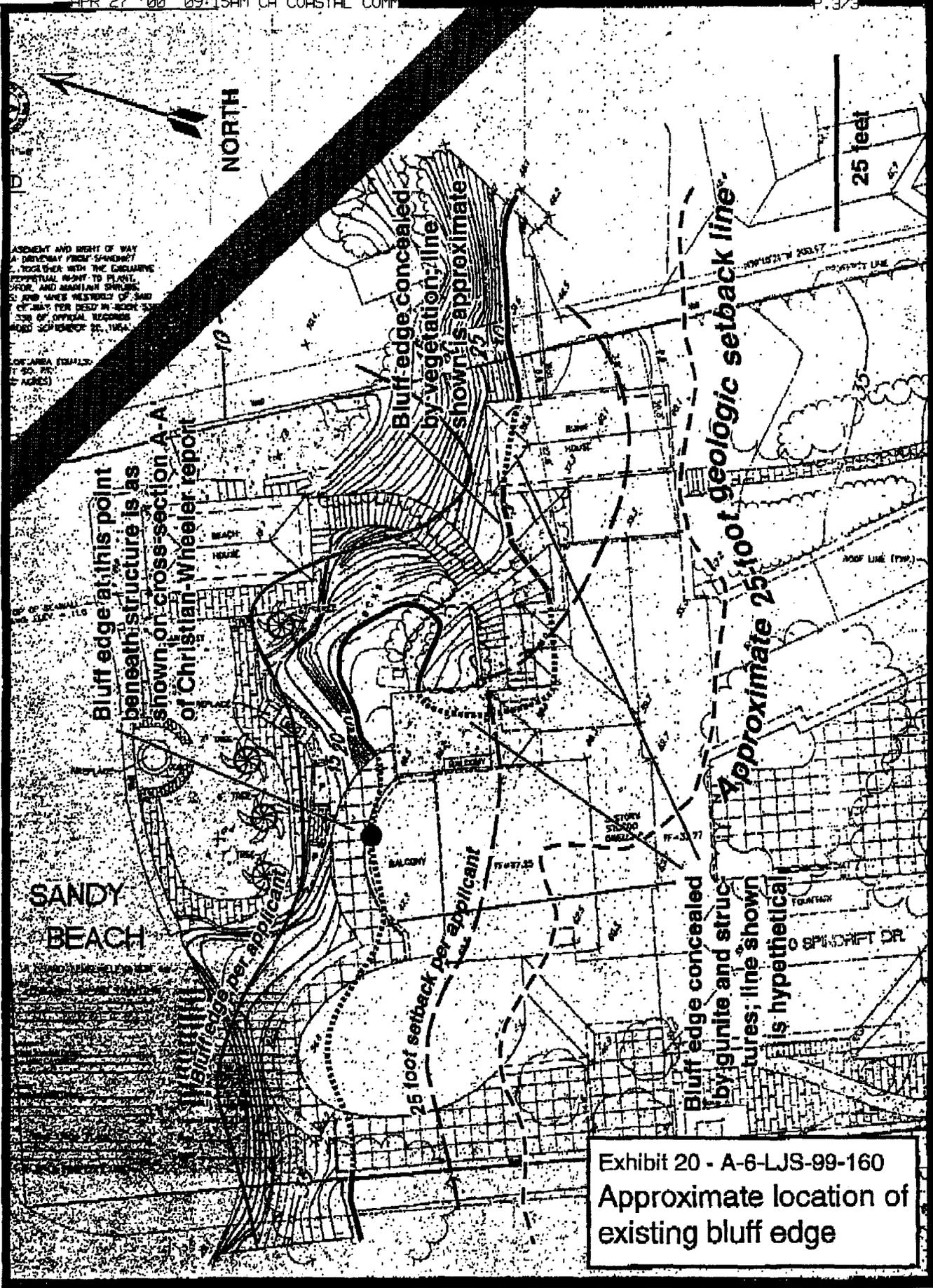
SANDY
BEACH

Bluff edge per applicant

25 foot setback per applicant

Bluff edge concealed
by ignite and struc-
tures; line shown
is hypothetical

Exhibit 20 - A-6-LJS-99-160
Approximate location of
existing bluff edge



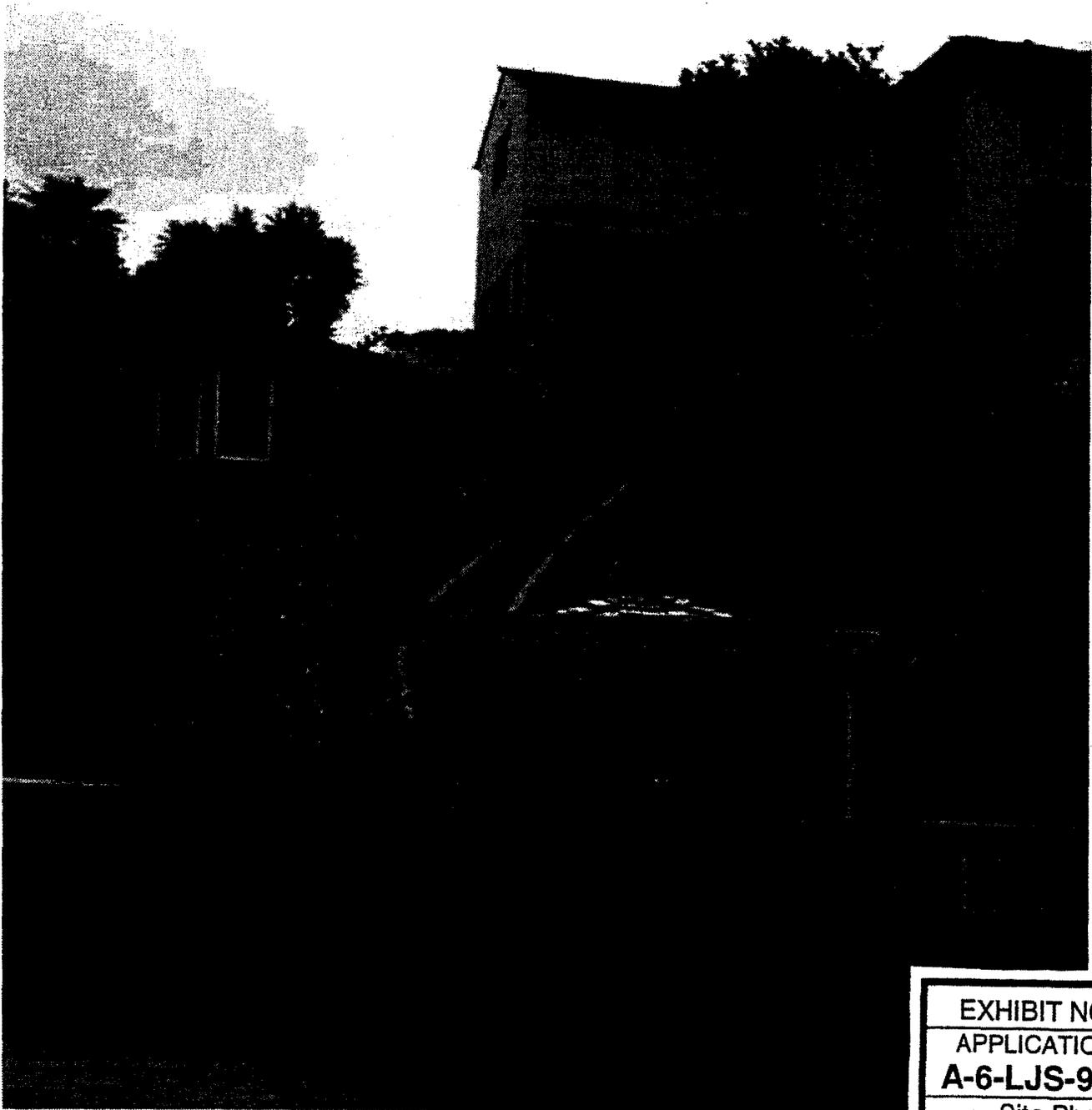
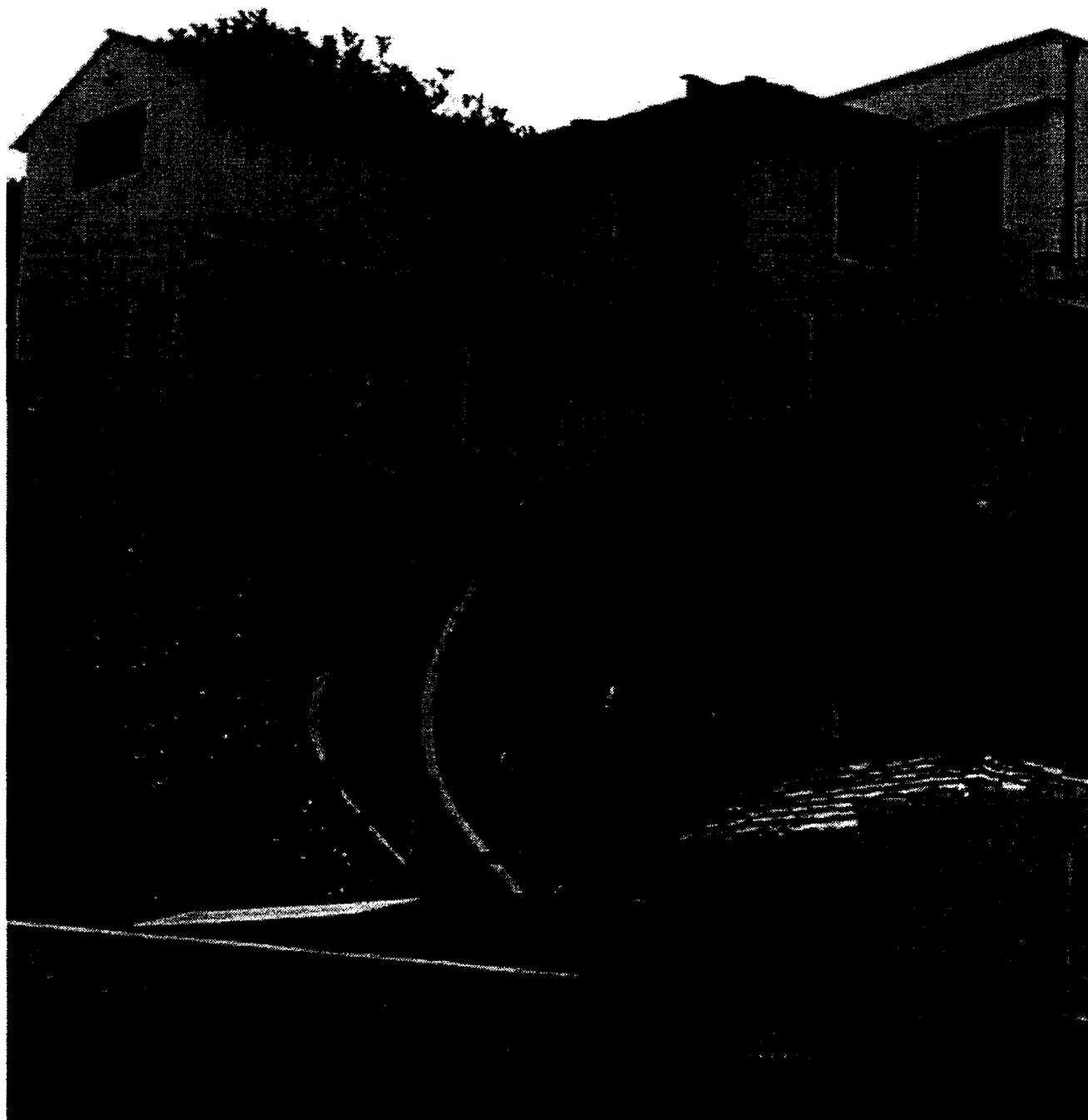
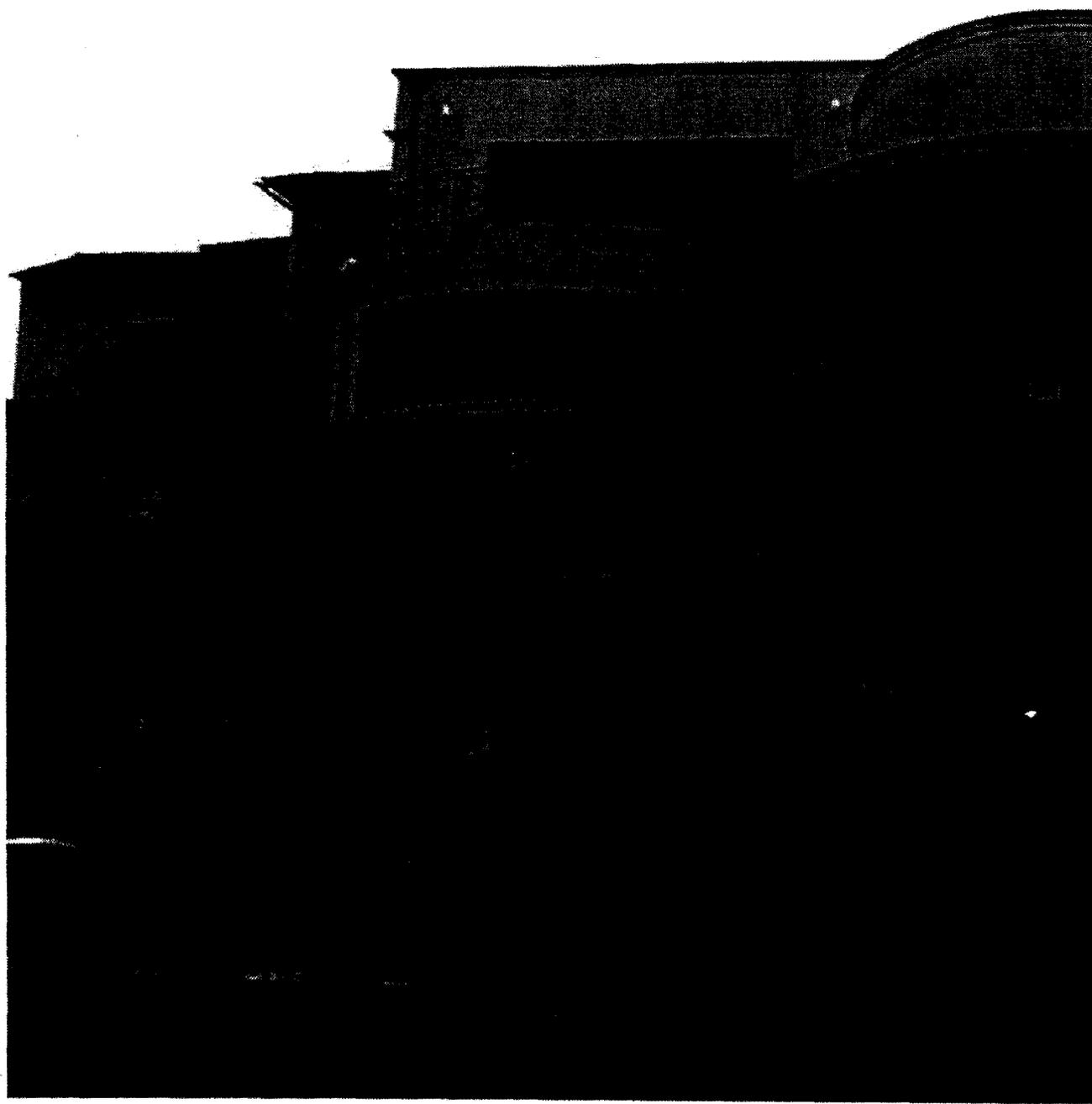


EXHIBIT NO. 21
APPLICATION NO.
A-6-LJS-99-160
Site Photo
 California Coastal Commission





MAZZARELLA, DUNWOODY & CALDARELLI LLP

ATTORNEYS AT LAW
550 WEST "C" STREET, SUITE 530
SAN DIEGO, CALIFORNIA 92101-8575
TELEPHONE: 619.238.4900
FACSIMILE: 619.238.4959

RECEIVED

APR 24 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

April 21, 2000

VIA FACSIMILE & U.S. MAIL

WED 14e

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

Re: Response to March 29, 2000 Request for Documents Relating to Coastal
Commission Appeal No. A-6-LJS-99-160 (1900 Spindrift, La Jolla California)

Dear Lee:

Thank you for your April 7, 2000 response to my March 29, 2000 document request in the above-referenced matter. I note that you have indicated that your computer records do not readily reveal appeal document creation dates. We have learned from past experience with similar computer document dating problems that computer experts can accurately determine document creation dates from residual electronic data on a computer's hard drive.

Time is of the essence. We therefore request immediate access to the computer hard drive in question. To the extent that you require a formal California Public Records Act Request pursuant to Government Code Section 6250 et seq., please consider this letter to constitute such a request for any and all electronic and or computer records in their original digital form that mention, discuss, or in any way pertain to the property commonly known as 1900 Spindrift Lane, La Jolla, California, which is the subject of Appeal No. A-6-LJS-99-160. Our expert can quickly copy the necessary information from your computer when given access to do so. Needless to say, we expect that all electronic data will be retained by the Commission pending our inspection.

Please give me or my associate, Brian Goodwin, a call at your earliest convenience to let us know when we can review your computer files on this matter to verify creation dates and other relevant information.

You also indicated in your letter of April 7, 2000 that the original signed appeal forms are sent to the San Diego office via the Commission's courier service, and that a copy of the courier log showing that a courier delivery was made to the San Diego office on December 21, 1999 (the date the appeal forms were received by San Diego staff) would be available. I would like a copy of the log.

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LETTER FROM
APPLICANT REPRESENTATIVE 11

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
April 21, 2000
Page 2

More importantly, I would like to know how San Diego staff could have: (1) spoken to the commissioners who filed the appeal; and then (2) requested the original signed appeals form from San Francisco; and then (3) received them on December 21, 1999 when the telephone records you produced to us previously reflect that the discussions that purportedly took place between Charles Damm and Commissioners Wan and Daniels occurred late in the morning and late in the afternoon on December 21, 1999. There was, therefore, no opportunity to have in fact first obtained the commissioners' approval, then contact San Francisco and then have forms sent via overnight messenger to San Diego in order to be filed late afternoon on the 21st.

As you may recall, Matt Peterson advised you, Sherilyn Sarb and Deborah Lee during our meeting on March 10, 2000, that when he first saw the file on this matter in the Coastal Commission's office, all that existed were xeroxed copies of the commissioners' signatures on the appeals. Furthermore, when he first saw the appeals forms the words "See Attached" were not typed on them. We were advised during our meeting on March 10, 2000 that Mr. Peterson was mistaken, and in fact originals were in the file, and further that the words "See Attached" were added at a later date, not because the materials were generated at a later date, but in order to make it clear that the appeal and the findings in the file were related (a fact that would seem quite obvious).

When Mr. Peterson first inquired months ago as to the process utilized to file the appeals, he was told that xeroxed copies of the commissioners' signatures on the appeal forms were kept in the San Diego office, and used by the local staff to file appeals. This was consistent with what he saw in the file. In our meeting on March 10, 2000, this was denied. Instead, Ms. Lee stated emphatically:

"[the blank signed appeal forms] are kept under the control of Peter Douglas' executive assistant. Whoever makes the calls and contacts the commissioners has to call her and indicate that **THEY HAVE GOTTEN** that specific authorization, **THEN** those two forms are sent down to the district office ..." [Emphasis added.]

Obviously, the required procedure did not occur in this case. Calls could not have been made to the commissioners on December 21, and the blank signed appeal forms received from San Francisco and filed on December 21st.

I appreciate, as was explained to us at our meeting on March 10, 2000, that at the time this matter was coming to a head, Laurinda Owens was out ill, and two other staffers were on vacation, and that Chuck Damm, who generally works out of Ventura, was pinch-hitting. That may explain why required procedures were not followed, and the appeal deadline was missed. But it does not excuse the late filing. The local staff should acknowledge the true facts to the Commission; and the appeal should be voluntarily dismissed.

Upon reviewing the transcript of our meeting on March 10, 2000, an additional public records request has come to mind. In that transcript either Sherilyn Sarb or Deborah Lee stated, "There were several appeals being filed at that time." I would like copies of whatever other appeals were filed by the

MAZZARELLA, DUNWOODY & CALDARELLI LLP

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
April 21, 2000
Page 3

local San Diego Coastal Commission staff between December 20 and December 24, 1999. I would also like a copy of the tape of your meeting with Matt Peterson, Tim Martin, Laurinda Owens, Sherilyn Sarb and Deborah Lee on April 3, 2000. Enclosed is a check for \$5.00 to cover what I understand to be the cost of duplication. Please consider these formal California Public Records Act Requests pursuant to Government Code Section 6250 et seq.

I look forward to your response to these requests and questions.

Very truly yours,



Mark C. Mazzarella

MCM:dll

cc: Matthew Peterson, Peterson & Price
Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Ralph Faust, Esq. Chief Legal Counsel
Laurinda Owens, Coastal Planner
Summit Resources, LP

MAZZARELLA DUNWOODY & CALDARELLI LLP

PH. 619-238-4900
550 W. C STREET, STE. 530
SAN DIEGO, CA 92101

1734

90-3210/1222

DATE 4.21.00

PAY
TO THE
ORDER OF

CALIFORNIA Coastal Commission

\$ 5.00

Five and 00/100

DOLLARS  Security Features
Included. Details on back.



CALIFORNIA BANK & TRUST

SAN DIEGO OFFICE
525 B ST., SAN DIEGO, CALIFORNIA 92101

FOR _____

Michael J. Ruden MP

⑈001734⑈ ⑆122232109⑆ 2070010231⑈

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CALIFORNIA COASTAL COMMISSION

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



Wed 14e

May 4, 2000

RECEIVED

MAY 05 2000

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

Mark Mazzarella, Esq.
 Mazzarella, Dunwoody & Caldarelli LLP
 550 West "C" Street, Suite 530
 San Diego, CA 92101-3532

Re: Your April 21, 2000 Request In Connection With Coastal Commission
 Appeal No. A-6-LJS-99-160

Dear Mr. Mazzarella:

Your above-referenced letter, which was received in the Commission's San Diego office on April 24, 2000, has been referred to me for response. Your letter requests the following:

1. access to the computer hard drive that contains documents relating to the above-referenced appeal and "all electronic and or computer records in their original digital form" relating to the property that is the subject of the above-referenced appeal,
2. a copy of the Commission's log showing that our courier made a delivery from the San Francisco office to the San Diego office on December 21,
3. a copy of all appeals filed in the San Diego office between December 20 and 24, 1999 (aside from the appeal of the Summit Resources permit), and
4. a copy of the tape recording of the meeting on April 3, 2000, between San Diego staff and Matt Peterson and Tim Martin.

In response to item 2, a copy of the Commission's log is enclosed. We do not have any documents responsive to item 3; it appears that there were no other appeals filed in the San Diego office between December 20 and 24. With respect to item 4, we no longer have the tape recording of the April 3 meeting. Ms. Owens does not routinely retain tape recordings of meetings that she attends. If a copy of a tape recording is requested before she has recorded over the tape, she may be able to accommodate the request. If you had asked for a copy of the tape at the end of the meeting, as you had with the tape of the March 10, 2000 meeting, she would have been able to provide you with a copy. However, at this time, Ms. Owens has already re-recorded over the tape of the April 3 meeting.

With respect to the first item, we are unable to provide you with access to the hard drive of the Commission's computers. Under the Public Records Act, the form in which computer data is provided is to be determined by each agency. (Govt. Code § 6253(b).) The

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 STAFF RESPONSE
 LETTER

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Mark Mazarella, Esq.

May 4, 2000

Page 2

Commission's San Diego District keeps all of its public records relating to permits and appeals in hardcopy. All disclosable public records relating to permits and appeals that are created on the computer are printed and stored in hardcopy.

Further, our computers contain documents and information that are exempt from disclosure under the Public Records Act (such as drafts, attorney-client communications, personnel information, etc.). To allow access to the hard drive would result in the release of records that are exempt from disclosure and that were not intended to be disclosed. For these reasons, the Commission has chosen to provide its computer data in hardcopy. Therefore, when you previously requested all public records relating to the property at 1900 Spindrift, we made available to you the hardcopy permit and appeal files relating to this property (excluding any exempt documents). As we previously indicated, the Commission does not prepare or retain computer data in the ordinary course of business that reflects when appeal documents were prepared by staff.

Finally, with respect to the Commissioner appeal of the Summit Resources permit, your letter states: "required procedures were not followed, and the appeal deadline was missed." The appeal deadline for the Summit Resources permit was December 22, 1999. Two Commissioner appeals (each consisting of a completed appeal form and an attachment titled: "Summit Resources L.P. Attachment to Appeal") were prepared and placed in the hardcopy appeal file on December 21, 1999. It would appear that you have independent verification that the appeals were timely filed because at least two Commission staff members recall that Matt Peterson came to the Commission's office and obtained a copy of the Commissioner appeals on December 22, 1999. Staff subsequently attached a copy of Sara Wan's appeal to the substantial issue staff report (dated February 1, 2000). That appeal is exactly the same as the appeal retrieved by Mr. Peterson on December 22 with the exception of the words "See Attached," which were added to the appeal form after the appeal was filed. (The words "see attached" did not affect the substance of the appeal, they simply indicate that the grounds for appeal are stated in the attachment rather than in the appeal form.) Given the fact that Mr. Peterson obtained copies of the appeals on December 22, we fail to understand how you could believe that the appeal deadline was missed. In any event, Commission staff has confirmed that the appeals were filed on December 21, 1999, one day before the deadline.

Furthermore, there are no "required procedures" for the filing of Commissioner appeals. Neither the Coastal Act nor its implementing regulations require that Commissioners or staff use a certain procedure for the filing of Commissioner appeals. The Commission staff follows a process that was created for internal management purposes only. The process is designed to facilitate the expeditious filing of Commissioner appeals while eliminating the potential for an appeal to be filed without authorization of the named Commissioner. When the staff determines that a local government action on a permit may raise issues of consistency with an LCP, they contact individual Commissioners by telephone and orally obtain their permission to file an appeal on their behalf. Staff prepares the appeal by completing the appeal form, preparing and attaching the reasons for the appeal, and filing the appeal. As part of this process, individual Commissioners sign blank appeal forms that are kept by the Commission's Executive Assistant in the San Francisco office. When a

Mark Mazarella, Esq.

May 4, 2000

Page 3

Commissioner has authorized the filing of an appeal on his or her behalf, staff uses that Commissioner's pre-signed form. The Executive Assistant usually releases the pre-signed form only upon being informed that the Commissioner has consented. However, in light of the quick time frame for filing appeals, the forms are sometimes released prior to staff's having obtained a Commissioner's consent to use the form. In that case, the forms are used only if the individual Commissioner does authorize the appeal, and unused forms are returned to the Executive Assistant. The Commission's regulation governing the filing of appeals does not require the signature of a Commissioner on an appeal form. (See Cal. Code of Regs. tit. 14, Div. 5.5, § 13111.) The use of pre-signed forms is simply an internal management measure designed to ensure that a Commissioner has actually authorized an appeal filed on his or her behalf.

In this case, the forms to appeal the Summit Resources permit were requested on December 20, 1999, before staff knew whether the Commissioners would decide to appeal. This was necessary because even though the appeal was not due until December 22, staff's schedules required them to complete and file the appeal by December 21. The appeal form and reasons for appeal were prepared on December 21, 1999. On that same day, Chuck Damm contacted Commissioners Wan and Daniels who authorized the appeals. The appeals were subsequently filed that same day, December 21, 1999. Thus, the day before the appeal in this case was due, two Commissioners indicated that they authorized an appeal of the permit, and staff filed two properly completed appeal forms on behalf of those two Commissioners. Accordingly, the appeals are valid.

We trust this responds to your request. Since we do not have the tape recording of the April 3 meeting, we will return (under separate cover) your check in the amount of \$5.00, which you included with your request to cover the cost of copying the tape.

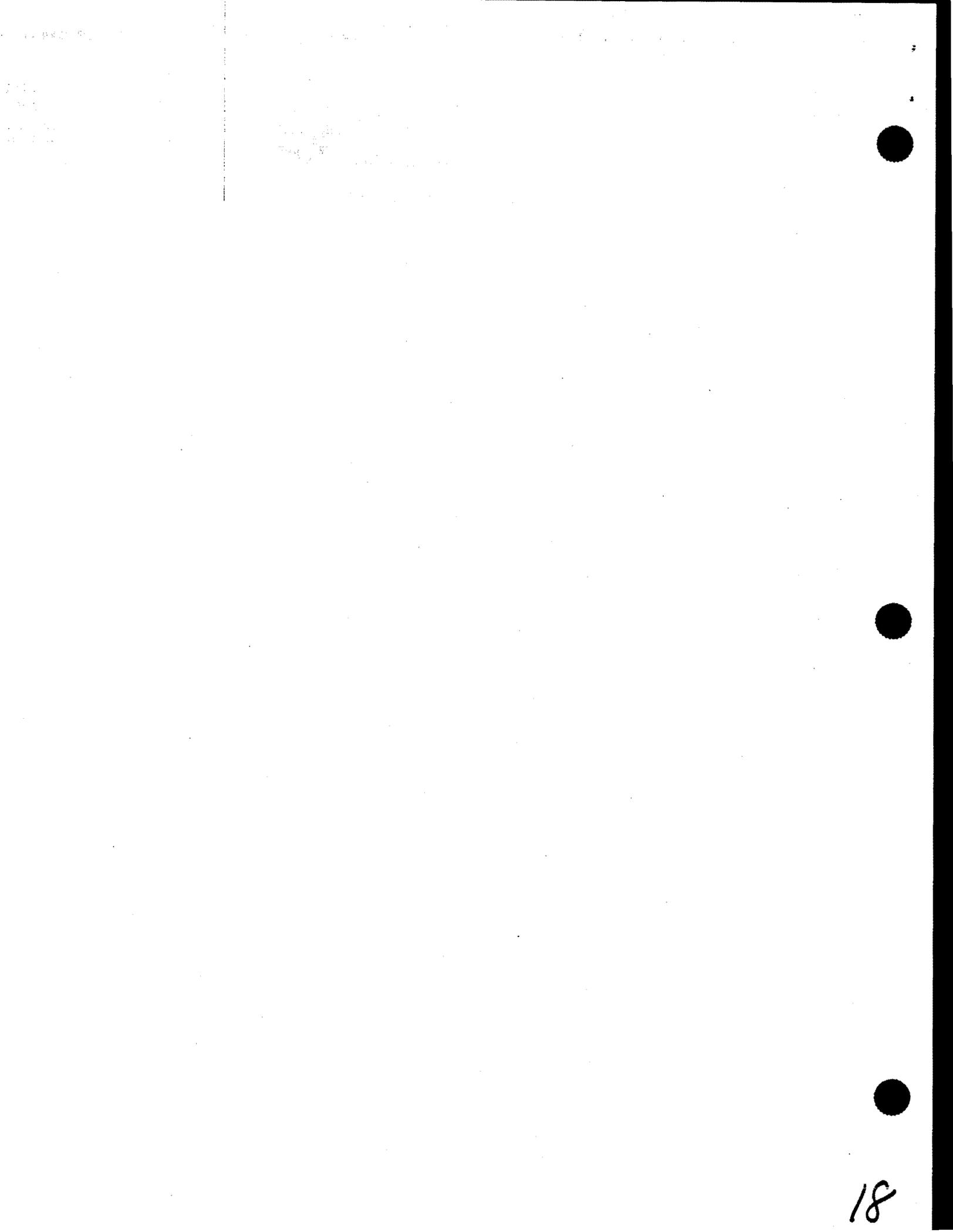
Sincerely yours,



AMY ROACH
Senior Counsel

enc.

cc: Ralph Faust
Deborah Lee
Sherilyn Sarb





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APR 13 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Hon. Sara Wan, Chair
California Coastal Commission
April 12, 2000
Sierra Club Addendum to Summit Resources Mon24c letter for May 2000 hearing

Dear Chairman Wan and Commissioners:

Our letter for the Monday April 10 consideration of this item was not included in the material for your consideration because of a request for continuance submitted by the applicant. Having learned of applicant's rescission of the request, and subsequent continuance to the May meeting, we urgently ask you to give careful consideration to the issues raised by this project. Your decision will have a major impact on the ability to defend the LCP and Coastal Act shoreline hazard and visual resource policies in upcoming projects involving nonconforming structures. One is already on appeal by the Sierra Club, with several others in the City's pipeline. Please consider the points below.

Impacts on the shoreline from demolition and reconstruction, with retention of nonconforming structures, are not dependent on how the project is characterized, i.e., whether it is deemed to be an "improvement," or "new development." Under our further review of the LCP, we can find nothing that limits your consideration to any certain percentage of demolition and reconstruction in evaluating an increase in nonconformity. In other words, we do not see that either the City's nonconforming regulations or the CDP 50% rule preclude the Commission from evaluating the impacts on the shoreline from substantial demolition and reconstruction, no matter how the project is characterized. It was for that reason, and in consideration of Commission comments during the Moncrieff Appeal, that, in our letter to you for the "Substantial Issue" part of the Summit Resources appeal, we cited the City Attorney memorandum issued as clarification for the Moncrieff appeal.

The memo cites San Diego Municipal Code 101.0303 which provides that proposals to modify nonconforming structures cannot increase the degree of nonconformity or exceed 50% of the value of the improvements, minus the cost of paint, shingles, and exterior stucco. The City Attorney concludes by stating that, even in light of 101.0303, it is entirely within the discretion of the decisionmaker, under the certified LCP, "to then decide whether or not the development proposal conforms to the policies and development regulations contained in our certified Local Coastal Program and to act on the project accordingly." What, then, constitutes an increase in nonconformity?

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*A-6-LJS-99-160
LETTER OF CONCERN*

19



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San Diego Chapter

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Summit Resources Addendum

Page 2

For May, 2000 continuance hearing

What constitutes an increase in nonconformity? A few examples:

-An increase in the 75 year life of a structure: In Moncrieff, we argued that once a project had reached its 75 year life, the nonconformity should not be allowed to continue for another 75. We continue to believe that would be a significant increase in nonconformity.

-Retention of nonconforming geologic setbacks and structures: We believe that, that regardless of nonconforming rights, the project as a whole should be required to observe current geologic setbacks. To do otherwise would increase the project's nonconformity, to the detriment of the purpose and intent of LCP shoreline hazard policies and regulations.

-Significant increase in bulk and scale of the new project to the detriment of future shoreline protection alternatives: In our Substantial Issue letter for this project, we recognized that the Commission, by law, must protect the "existing principal structure." To grant an applicant a significant increase in the bulk and scale of the structure, as well as retention of nonconforming rights, thus jeopardizing future shoreline protection alternatives, would, in our opinion, be an unsupportable increase in nonconformity, no matter how the improvement is characterized.

Can a project be segmented into a review of the nonconforming portion separate from the entire project?

Under the City's review of current projects, the nonconforming portion of the structure is often analyzed by City staff separate from the remainder of the project. As a result, applicants are being granted permits that allow them to have it both ways, i.e., a wholly new, significantly larger structure, with nonconforming portions retained that do not comply with current LCP policies and regulations. We believe that, under this LCP interpretation by the City, projects are going forward in direct contravention of the purpose and intent of the certified LCP. In order to evaluate project impacts correctly, we believe the impacts from the demolition and reconstruction of the project, in association with impacts from retention of nonconforming rights, should be looked at as a whole. Nothing we can find in the LCP directs otherwise.

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Summit Resources Addendum
Page 3
For May 2000 continuance hearing

Thank you for your consideration of our concerns. There is no one area of LCP implementation more critical to shoreline protection. We look forward to your clarifications both for this project and those to come.

Sincerely,

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



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MEMORANDUM

TO: Commissioners and
Interested Parties

May 5, 2000

FROM: Deborah N. Lee, Deputy Director
San Diego District

SUBJECT: Addendum to Commission Meeting for Wednesday, May 10, 2000
San Diego District

AGENDA #

APPLICANT

DESCRIPTION

REGULAR CALENDAR

Wed 14e A-6-99-160

Summit Resources

Letters from Applicant
Representatives

EXHIBIT NO. 6
APPLICATION NO. A-6-LJS-99-160-R
Addendum to Original Staff Report (Page 1 of 39)
 California Coastal Commission

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Fax (760) 431-4579

File No.

4196.004

Via fax & U.S. mail

EDWARD F. WHITTIER
MARSHAL A. SCARR
MATTHEW A. PETERSON
LARRY N. MURNANE
LOUIS A. GALUPPO
KELLY A. GRALEWSKI
TAMARA L. GLASER

OF COUNSEL
PAUL A. PETERSON

April 28, 2000

Mr. Peter M. Douglas, Executive Director
The California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

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MAY 01 2000

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Summit Resources, LP, 1900 Spindrift Dr.
CDP Application No. A-6-LJS-99-160

Dear Peter:

Our client and we are extremely disappointed and quite frankly shocked about how the local Staff has handled the processing of the above-referenced appeal.

Although your Staff has been presented with a plethora of evidence that this Project complies in every manner with the Certified LCP, they have at every stage attempted to delay the processing of the appeal and impose rules, regulations and policies, which are not applicable to our client's home. These attempts have included but are not limited to the following:

1. Staff's attempt to apply a "Rule of Thumb" to the Project, which your own Legal Staff concluded and testified at the last Coastal Commission hearing, was inappropriate and not applicable to this Project.
2. Staff's attempt to evaluate the Project based upon the New Land Development Code, which 1) did not come into effect until after the Project had received all of its final discretionary approvals at the local level, 2) was not in effect when Staff's invalid appeals were filed concerning the Project, and 3) by the terms of the Ordinances which implemented the new Land Development Code specifically exempted this Project from the new Land Development Code. After a monumental effort on our and the City's part, the Staff finally reversed its position in this regard.

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 2

3. Staff's multiple attempts to somehow classify the site as "unstable" and Staff's unreasonable requests for costly and time-consuming soils and geologic analysis and reports. Such reports have been far beyond anything that we have ever heard of both in terms of the scope and in terms of a very worst-case analysis. Even with this very worst-case analysis, the City's approval is fully supported by the evidence in the record.
4. Staff's latest attempt to apply provisions of the Municipal Code which are not applicable to this Project, specifically related to the retention of, and the repairs, alterations and improvements to the legal nonconforming portions of the structure.
5. Staff's attempt to mislead us with regard to the procedures utilized concerning the filing of the invalid appeal (see Mark Mazzarella, Esq. letter dated April 21, 2000 – copy attached).

We previously forwarded to you a copy of our letter to Tracy Elliot-Yawn dated April 20, 2000 (which contained a copy of our letter to the Commission, dated April 7, 2000). We are now enclosing a copy of a letter to the California Coastal Commission dated April 21, 2000 from the City of San Diego which specifically deals with your Staff's inability (or unwillingness) to acknowledge or understand the City's Municipal Code or the City's policies regarding legal nonconforming structures.

On Wednesday, April 26, 2000 (5 days after your Staff received the letter from the City), we received a letter from Lee McEachern (copy attached) requesting even more information on the Project purportedly in an attempt to fashion some recommended Staff condition or restriction that would severely limit the repairs, alterations and modifications to the legal nonconforming portions of the structure to 50% of the Fair Market Value of such improvements.

We are amazed that Staff, in light of the Coastal Commissioner's "strong" words concerning the public's perception of the Commission at the last hearing, would nevertheless continue to persist in such an inappropriate manner. We view this latest Staff request as an attempt to somehow

Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 3

further delay the Project or to justify Staff's invalid appeals and impose conditions on this Project, which are clearly not contained within the Certified Local Coastal Program (the standard by which this Project must by law be evaluated on appeal).

As can be seen by literally all of the correspondence and information that your Staff has been provided (well before Mr. McEachern's latest letter to us), Municipal Code §101.0303 is not applicable to this Project. Simply because a "standard" condition was erroneously included in the local approval does not give your Staff the legal justification to completely disregard the Certified LCP which has specific and unequivocal language concerning the retention of, and the permitted repairs, modifications, and alterations of legal nonconforming structures.

Although you appear to have avoided involvement in this case, obviously the San Diego District Office needs guidance and immediate direction from you and your Legal Staff concerning the processing of this appeal.

Per Mr. McEachern's request, which we received by mail on Wednesday, April 26, 2000, we have requested that the Architect forward the reduced site plans. However, we do not have, and will not be providing any information requested in the bullet points of Mr. McEachern's letter.

This requested information is well beyond the scope of the Commission or Staff's legal authority and is not necessary to determine if the City's approval was in compliance with the Certified LCP.

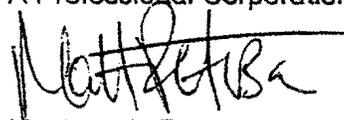
Mr. Peter M. Douglas, Executive Director
California Coastal Commission
April 28, 2000
Page 4

We would request an immediate written response to this letter and your and Ralph Faust's direct and immediate involvement in these matters. In the interim, our client has directed Mr. Mazzarella to immediately file a Writ of Mandate and Declaratory Relief Action against the Coastal Commission.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosures

cc: Governor Gray Davis
Chairperson Sara Wan & Members of Commission
Ralph Faust, Esq., Legal Counsel
Chuck Damm, Senior Deputy Director
Debra Lee, Deputy Director
Sherilyn Sarb, District Manager
Lee McEachern, Supervisor of Regulation and Planning
Laurinda Owens, Coastal Planner
Tim Martin, Associate, Don Edson Architects AIA & Associates
Lynne L. Heidel, Esq., Sullivan Wertz McDade & Wallace
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, L.P.
(All via fax with enclosures)

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- File No.

4196.004

Via Messenger

April 20, 2000

Ms. Tracy Elliot-Yawn, Associate Planner
Development Services
THE CITY OF SAN DIEGO
CITY OPERATIONS BLDG.
1222 First Ave., 5th Floor
San Diego, CA 92101

Re: Summit Resources, L.P. – 1900 Spindrift Dr.
CDP No. A-6-LJS-99-160

Dear Tracy:

It is my understanding that City Staff had a discussion with the California Coastal Commission Staff ("Commission Staff") about the above-referenced Project.

You indicated to me this morning that Commission Staff is or will be requesting that our client perform and submit a valuation assessment to determine if the Project complies with Municipal Code §101.0303 – "Continuance of Nonconforming Uses and Structures". To date, we have not received such a request from the Commission Staff.

As the Commission Staff is well aware, Municipal Code §101.0303 is not applicable to this Project. At the last hearing at the California Coastal Commission ("The Commission"), it is our recollection that Ralph Faust, Esq., The Commission's

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 2

Legal Staff, advised the Commission Staff that the regulations that were applicable to this property were contained within Chapter X, Article 3, Division 3 entitled "La Jolla Shores Planned District" (see Municipal Code §103.0300 et seq.)(hereafter referred to as "The Planned District"). In addition to Mr. Faust's legal opinion, we have directly communicated this to The Commission and to the Commission Staff in letters dated April 7, 2000 and April 12, 2000 (see attached copies).

If you look at the attached letter dated April 7, 2000, page 4 clearly spells out the applicable standard for the retention of, and the repairs, alterations and modifications to the legal nonconforming structures of the Project. In addition, we also provided The Commission and Commission Staff with a Xerox copy of the applicable portions of Chapter X, Article 3, Division 3 – La Jolla Shores Planned District (and even highlighted those portions, which were applicable to this Project!). Please note that Municipal Code §103.0303.4 entitled "Planning, Zoning and Subdivision Regulations Which Shall Apply", clearly indicates which portions of the Municipal Code are applicable to projects within The Planned District and which portions of the Municipal Code are not applicable to projects within The Planned District. Please note that the last sentence of the above-referenced Section states:

"All other Divisions of Chapter X, Article 1 are superseded in the La Jolla Shores Planned District by the regulations contained within Chapter X, Article 3, Division 3."

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 3

What this means, and what Commission Staff apparently refuses to acknowledge, is that Municipal Code §101.0303 (which is contained within Chapter X, Article 1, Division 3) has been superseded by the applicable provisions as contained within The Planned District (Chapter X, Article 3, Division 3). Therefore, no valuation assessment or an analysis of the Project's compliance with Municipal Code §103.0303 is required.

The Commission Staff appears now to be "grasping at straws" in an attempt to require that the approved Project be modified. Municipal Code §103.0303 (which contains the 50% Fair Market Value limitation to proposed repairs, alterations and modifications to legal nonconforming structures) is not applicable to this Project. The applicable provisions of the Municipal Code to this Project which deal with "Nonconforming Uses and Structures" is contained within The Planned District as set forth in Municipal Code §103.0303.2. As you know, the Planned District does not contain any limitation as to the amount, extent or nature of such improvements, repairs or alterations so long as such improvements, repairs and alterations do not "increase the degree of nonconformity of a nonconforming building, structure or improvement".

As you know, through the City's review and unanimous approval of this Project, the improvements, repairs and alterations to those portions of the Project which are located within the 25 ft. bluff edge setback do not increase the degree of nonconformity.

Ms. Tracy Elliot-Yawn, Associate Planner
April 20, 2000
Page 4

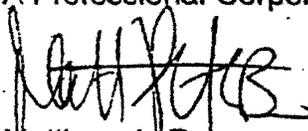
In fact, the alterations proposed decrease the degree of nonconformity by removing certain portions of the legal nonconforming structure(s), which are within the 25 ft. setback.

Please be advised that if the Commission Staff asks the City for any further information concerning the Fair Market Value of the existing improvements or for an estimate of the aggregate value of the proposed repairs, alterations and improvements, our client respectfully requests that the City deny the request and not provide any further information to the Commission Staff pursuant to Municipal Code §103.0303.

Should you have any questions, please don't hesitate to call.

Sincerely,

Peterson & Price
A Professional Corporation



Matthew A. Peterson

Enclosures

cc: Peter M. Douglas, Executive Director, California Coastal Commission
Ralph Faust, Chief Legal Counsel, California Coastal Commission
Robert M. Korch, Senior Planner, Land Development Review, City of San Diego
Summit Resources, L.P.
(With Enclosures)

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File No.

4196.004

April 7, 2000

Chairperson Sara Wan and Members of
The California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

THIS WRITTEN MATERIAL IS SUBMITTED TO THE CALIFORNIA COASTAL COMMISSION IN ACCORDANCE WITH THE EX PARTE COMMUNICATION REQUIREMENTS OF PUBLIC RESOURCES CODE SECTIONS 30319-30324. THIS MATERIAL IS A MATTER OF PUBLIC RECORD AND HAS BEEN SUBMITTED TO ALL COASTAL COMMISSIONERS, THEIR ALTERNATES, AND THE COASTAL COMMISSION STAFF.

Re: Summit Resources, LP, Monday, April 10, 2000
Agenda Item No. 24C, 1900 Spindrift Dr.
Appeal No. A-6-LJS-99-160

Dear Chairperson Wan and Members of the California Coastal Commission:

We along with Lynne L. Heidel, Esq., and Mark C. Mazzarella, Esq. represent Summit Resources, LP with regard to the above-referenced matter. For the record, please be advised that our client is proceeding with this appeal hearing under protest based upon the fact that we assert that the appeals that were filed were not properly prepared, are invalid, and the decision of the City of San Diego is final.

We have reviewed the Staff Report dated March 23, 2000 and with the exception of Special Conditions No. 1A and 3B, our client is generally in concurrence.

First, we would ask the Commission to clarify Condition No. 3B to indicate that landscaping within the 25 ft. bluff edge setback shall be drought tolerant native species and that no irrigation shall be permitted within the 25 ft. bluff setback.

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 2

As it relates to Special Condition No. 1A, Staff has recommended that "all portions of the residential structure shall be removed or relocated such that no portion of the principal residential structure shall be sited closer than 25 ft. from the bluff edge." Although this Condition also references a pool and spa, neither of these improvements are located within the 25 ft. bluff edge setback. Staff's justification of this very onerous recommendation is based upon Staff's conclusion that the Project involves "a substantial demolition and construction of a new residential development on the property." Staff reaches this conclusion based upon the fact that 59% of the exterior walls of the structure would have been demolished as part of this remodel project.

First and foremost, the Notice of Hearing and the description in the Agenda indicate that the City of San Diego authorized a Permit with Conditions to "demolish a 9,960 sq. ft. single family home and construct a 14,630 sq. ft. single family home" This statement is inaccurate and misleading. By our client's Architect's calculation, over 52% of the existing home will be retained by this remodel. In addition, with the very minor modifications, which our client has presented to the Coastal Staff on April 6, 2000, virtually the same Project will result in only 48.4% of the perimeter walls being removed! Therefore, it is inaccurate to conclude that this Project involves the substantial demolition and the construction of a new residence.

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 3

There is no "Rule of Thumb" in the Certified LCP

Although the standard is not included in the Certified LCP, the La Jolla Shores PDO, the Coastal Act, or any other documents that we, or Staff is aware of, Staff utilizes a 50% demolition of exterior walls as their "rule of thumb" in attempting to classify a remodel project as "new development." Once classified as new development, Staff then requests that all portions of the structure located closer than 25 ft. from the bluff edge be removed and/or relocated. Staff has, on more than one occasion, admitted that this "rule of thumb" is not contained within any provisions of the San Diego Municipal Code, the La Jolla Shores PDO, the Certified La Jolla/La Jolla Shores Local Coastal Program, or the Coastal Act. The only possible connection between Staff's "rule of thumb" and the Certified LCP is a provision within the City Municipal Code which provides for an exemption from the need to obtain a Coastal Development Permit. Obviously, this Project has processed Coastal Development Permits, and clearly the exemption criteria is not applicable.

Since this "Rule of Thumb" is not contained within the existing LCP (the standard upon which the appeal(s) must be based), Staff cannot classify this Project as "a substantial demolition" or as "new development".

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 4

The Retention, Repairs, Alterations and Modifications to Legal
Nonconforming Structures are Allowed Pursuant to the Certified LCP

The La Jolla Shores PDO (the Certified LCP) is abundantly clear as it relates to Legal Nonconforming Rights. San Diego Municipal Code §103.0303.2 is restated verbatim in the Staff Report on page 10 (also see attached copy of pertinent sections). It states that: "improvements, repairs, and alterations which do not increase the degree of nonconformity of a nonconforming building structure or improvement shall be permitted." (Emphasis Added.) Since the existing home is legal and nonconforming and was built with validly issued building permits (including a California Coastal Commission Permit issued in 1977 as Coastal Development Permit No. F-5929!) The Sensitive Coastal Resource ("SCR") Overlay Zone, which was adopted and incorporated into the La Jolla Shores PDO on April 18, 1988 by Ordinance No. 0-17078 NS, is not applicable to the legal nonconforming portions of the home. As indicated in the Staff Report, the PDO permits the improvement, repair and alteration to those legal nonconforming structures which do not increase the degree of nonconformity. None of the proposed improvements, repairs or alterations increase the degree of nonconformity. In fact, the Project as approved by the City actually reduced the degree of legal nonconformity!

Finally, even if one were to apply the SCR Overlay Zone to this Project, the terms and conditions of it have been complied with because there is no new structural improvements to be located within the 25 ft. setback as determined by the City of San

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 5

Diego. All new structural improvements and "new development" is sited beyond the 25 ft. setback and supported by the Geology Reports (with the concurrence of the California Coastal Commission Geologist). Further, the SCR Overlay Zone anticipated that certain structures would be "located upon coastal bluffs (see Municipal Code §101.0480D(1)(b)). Each and every one of the five (5) criteria of that Section has been adhered to.

By the terms of the Certified LCP, the nonconforming structure can be maintained, and improvements, repairs and alterations can be made which do not increase the degree of nonconformity. As your Staff is aware, none of the proposed improvements, repairs or alterations increase the degree of nonconformity to those portions of the home that are legal and nonconforming within the 25 ft. bluff edge setback. In fact, as previously stated, our client's proposal significantly reduces the degree of nonconformity by eliminating portions of the structure that are within the 25 ft. setback.

If Staff Insists, Our Client Will Retain 50% of the Exterior Walls

Based upon the Staff recommendation and Staff's justification for classifying the Project as new development, our client's Architects were directed to prepare very minor modifications to the Plans which would retain enough of the exterior walls so that the remodel would involve less than 50% demolition of the exterior walls. We presented this Plan to Staff on Thursday, April 6, 2000. The ironic part of the Staff recommendation is that it forces our client to retain more of the nonconforming structure than what was

Chairperson Sara Wan and Members of the
California Coastal Commission
April 7, 2000
Page 6

originally proposed and approved by the City of San Diego. If the Commission agrees with the Staff recommendation, then we have submitted a very minor revision to avoid Staff's unenforceable "rule of thumb."

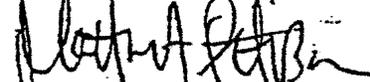
Although it is still our client's desire to have the Coastal Commission approve the Project that was approved by the City, which reduces the degree of nonconformity, our client has submitted the revised Plan for your consideration.

In summary, we would request that Staff's Special Condition No. 1A be deleted and Special Condition No. 3B be modified as referenced above.

Thank you for your consideration of this request.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosure

cc: Peter M. Douglas, Executive Director
Debra Lee, Deputy Director
Sherilyn Sarb, District Manager
Laurinda Owens, Coastal Planner
Lee McEachern, Supervisor of Regulation and Planning
Bob Korch, Development Project Manager, Dev. Services, City of San Diego
Tim Martin, Associate, Don Edson Architects AIA & Associates
Lynne L. Heidel, Esq., Sullivan Wertz McDade & Wallace
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, L.P.

DIVISION 3

La Jolla Shores Planned District

(Added 5-30-74 by O-11332 N.S.)

§ 103.0300 Purpose and Intent

The public health, safety, and welfare require that property in La Jolla Shores shall be protected from impairment in value and that the distinctive residential character and the open seascape orientation of the La Jolla Shores Area shall be retained and enhanced.

The development of land in La Jolla Shores should be controlled so as to protect and enhance the area's unique ocean-oriented setting, architectural character and natural terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast. The proper development of La Jolla Shores is in keeping with the objectives and proposals of the Progress Guide and General Plan for the City of San Diego, of the La Jolla Community Plan, and of the La Jolla Shores Precise Plan.

(Added 5-30-74 by O-11332 N.S.)

§ 103.0301 Boundaries

The regulations as defined herein shall apply in the La Jolla Shores Planned District which is within the boundaries of the La Jolla Shores Area in the City of San Diego, California, designated on that certain Map Drawing No. C-403.4 and described in the appended boundary description, filed in the office of the City Clerk under Document No. 00-16006.

Amended 7-18-83 by O-16006 N.S.)

§ 103.0302 Administrative Regulations

The administrative regulations as defined herein shall apply in the La Jolla Shores Planned District.

(Amended 6-9-76 by O-11852 N.S.)

§ 103.0302.1 Administration of the La Jolla Shores Planned District

A. The Development Services Director shall administer the La Jolla Shores Planned District.

B. Powers and Duties

It is the duty of the Development Services Director to administer and ensure compliance with the regulations and procedures contained within this Division in the manner prescribed herein for both public and private developments; to recommend to the Planning Commission any changes to the regulations, provided such

alterations to such buildings will not increase the degree of nonconformity and will conform in every respect with all the District regulations.

B. Any discontinuance of a nonconforming use for a continuous period of 12 months shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the Division.

C. Any change from a nonconforming use of land or buildings to a conforming use shall constitute abandonment of such nonconforming rights.

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

E. If any nonconforming building be destroyed by fire, explosion, act of God, or act of the public enemy to the extent of twice the assessed value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations of this Division. In the event it is determined by the Fire Chief of The City of San Diego the destruction was incendiary in origin then the building may be completely restored or rebuilt not exceeding the size of the original building.

(Amended 12-22-76 by O-11973 N.S.)

§ 103.0303.3 Height Limitation — Measurement Of

The height of the building or structure, and measurement thereof shall be in accordance with this Division and Municipal Code sections 101.0214, 101.0215 and 101.0216.

(Amended 1-6-92 by O-17726 N.S.)

§ 103.0303.4 General Design Regulations

Concurrent with the adoption of this Division, the City Council by resolution adopted architectural and design standards to be used in evaluating the appropriateness of any development for which a permit is applied under this Division; such architectural and design standards shall be filed in the office of the City Clerk as a numbered document.

A. CHARACTER OF THE AREA

In this primarily single-family residential community, a typical home is characterized by extensive use of glass, shake or shingle overhanging roof, and a low, rambling silhouette. Patios, the atrium or enclosed courtyard, and decks facilitate the "inside-outside" orientation of life in Southern California. Spanish Mediterranean and Mexican influences are seen in the prevalent use of the arch and of terra cotta and glazed tiles. The residential and commercial structures incorporate an honest use of natural building materials and, in many instances, are characterized as a truly American style of architecture, fusing the purity and geometry of the Mexican-Spanish period with a simplicity of materials and detail with integrated landscape design.

B. DESIGN PRINCIPLE

Within the limitations implied above, originality and diversity in architecture are encouraged. The theme "unity with variety" shall be a guiding principle. Unity without variety means simple monotony; variety by itself is chaos. No structure shall be approved which is substantially like any other structure located on an adjacent parcel. Conversely, no structure will be approved that is so different in quality, form, materials, color, and relationship as to disrupt the architectural unity of the area.

C. DESIGN REQUIREMENTS

Building materials and color are the most critical unifying elements. For this reason, roof materials within the La Jolla Shores Planned District shall be limited to wood shakes, wood shingles, clay tile, slate or copper of good quality where the pitch is 4 in 12 or greater, or other materials which would contribute to the character of the surrounding neighborhood. Roofs with a pitch of less than 4 in 12 may also be covered with crushed stone of muted dark tone. Exterior wall materials shall be limited to wood siding, wood shingles, adobe and concrete blocks, brick, stucco, concrete or natural stone. White and natural earth colors should predominate. Primary colors may be used for accent.

To preserve the seaside character of the community each building shall be sited and designed so as to protect public views from public rights-of-way and public places and provide for see-throughs to the ocean.

Lighting which highlights architectural features of a structure shall be permitted. Such lighting shall be unobtrusive and shielded so as not to fall excessively on adjacent properties.

Appurtenances on the roof shall be enclosed or otherwise designed or shielded to be attractive.

D. GRADING REGULATIONS

1. It is the intent of these regulations to preserve canyons and to prevent the cutting of steep slopes and the excessive filling to create level lots. No grading or disruption of the natural terrain shall be permitted until a permit which includes grading has been approved by the Director.

2. Grading plans may be approved if it is concluded that:

a. The development will result in minimum disturbance of the natural terrain and vegetation commensurate with the proposed use of the lot or premises.

b. Grading, excavation and filling proposed in connection with the development will not result in soil ero-

PETERSON & PRICE
A PROFESSIONAL CORPORATION

EDWARD E. WHITTIER
MARSHALA A. SCARR
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Suite 170
Carlsbad, California 92009-1026
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Fax (760) 431-4579

File No.

4196.004

Via Fax & Messenger

April 12, 2000

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
3111 Camino Del Rio No., Ste. 200
San Diego, CA 92108-1725

Re: Summit Resources, LP
Coastal Development Permit No. A-6-LIS-99-160
Coastal Commission Meeting May 8-12, 2000

Dear Sherilyn:

Attached please find a copy of a letter addressed to Tim Martin dated April 11, 2000 from Curtis Burdett of Christian Wheeler Engineering. His letter addresses two issues which were discussed at the Coastal Commission meeting on Monday, April 10, 2000.

LANDSCAPING AND IRRIGATION

The first deals with landscaping. It is our client's desire to have Special Condition No. 3B modified to be consistent with the recommendations as contained within the attached letter. It is our understanding having discussed this matter with Lee McEachern and Laurinda Owens that Staff would consider a modification to the Landscaping and Irrigation Condition if it could be demonstrated that landscaping and irrigation (if restricted and controlled) would not adversely affect the stability of the bluff.

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 2

SAFETY OF EXISTING STRUCTURES

The second issue, which is addressed by the attached letter, is the issue which was brought up by Chairperson Wan and a couple of the other Commissioners. Some of the Commissioners wanted some type of assurance that the existing structure(s) located within the 25 ft. setback are safe and would not be adversely affected by the proposed improvements landward of the 25 ft. setback. As you can see by the attached letter, these assurances have now been made.

NONCONFORMING USES AND STRUCTURES (Municipal Code §103.0303.2)

Based upon the testimony of Ralph Faust, Esq., at the last hearing and the fact that it has been determined inappropriate for Staff to use the 50% demolition of the exterior walls "Rule of Thumb" to classify the project as "new development," our client will proceed with the project as approved by the City of San Diego. As you know, our client's home reduces the degree of nonconformity in certain portions of the existing structure. As Mr. Faust stated, the standard, which is applicable to the project, is contained within the Certified LCP in Municipal Code §103.0303.2. In addition to subparagraph D, which states that improvements, repairs and alterations ... "shall be permitted," we also assert that subparagraph A is applicable. If the Commission were to require demolition, then obviously our client would not be able to "use the building" pursuant to §103.0303.2(A). In

Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 3

light of these legal determinations, we would again urge the Staff to revise its report consistent with the ~~strikeout~~/underline, which is attached hereto.

If Staff continues to persist in classifying this project as new development, our client's slightly modified project which retains over 50% of the exterior walls as submitted to Staff last Thursday, April 6, 2000 is still available to the Commission for approval in May.

BLUFF EDGE DETERMINATION

Finally, as we understand it, Staff has taken the position that they do not agree with the City of San Diego's determination of the location of the bluff edge. Please provide us with your Geotechnical, Soils, and Land Surveying Studies and Analysis which substantiate your position in this regard consistent with the City's definition of bluff edge as contained in the Certified LCP. Also, please provide us with an Exhibit or Diagram which depicts Staff's determination of the location of bluff edge on or before Monday, April 17, 2000. Obviously, our client's Development and Design Team would like the opportunity to evaluate Staff's location of bluff edge to determine what effect, if any, the Staff proposed location of the bluff edge will have on the proposed project.

As a final note, if Staff is going to be presenting an Addendum or any Supplemental Information (or revised Conditions) to the Coastal Commission for its hearing in May, we

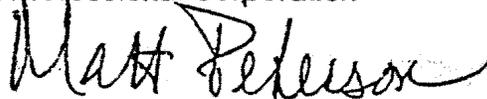
Ms. Sherilyn Sarb, District Manager
California Coastal Commission
April 12, 2000
Page 4

would sincerely appreciate receiving that information by no later than Monday, May 1, 2000 so that our client's Development and Design Team can have an opportunity to evaluate and respond to the Supplemental Information.

Thank you for your courtesy.

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Enclosure

cc: Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Debra Lee, Deputy Director
Ralph Faust, Esq., Chief Legal Counsel
Lee McEachem, Supervisor of Regulation & Planning
Laurinda Owens, Coastal Planner
Mark Johnson, Senior Geologist, State of CA Coastal Commission
Curtis R. Burdett, C.E.G., Christian Wheeler Engineering
Michael J. Pallamary, Director of Mapping, P&D Consultants, Inc.
Tim Martin, Associate, Don Edson Architects AIA & Associates
Mark C. Mazzarella, Esq., Mazzarella, Dunwoody & Caldarelli LLP
Summit Resources, LP
(All with copies of Enclosures)



THE CITY OF SAN DIEGO

April 21, 2000

California Coastal Commission
Sherilyn Sarb, District Manager, San Diego Office
3111 Camino del Rio North, Ste 200
San Diego, CA 92101

Subject: Summit Resources; 1900 Spindrift Dr. SCR/CDP/LIS No. 99-0007

Dear Sherilyn:

This letter is written to further clarify our recent discussion on the subject matter and your request for interpretation of San Diego Municipal Code Section 101.0303 dealing with the continuance of nonconforming uses and structures. You have raised questions that pertain to the paragraph which deals with "repairs and alterations" and what is considered "increasing the degree of nonconformity". You have asked how this section relates to bluff top development and for the City to clarify its own interpretation of "new development".

SDMC Section 101.0303, Continuance of Nonconforming Uses and Structures, states....."Repairs and alterations which do not increase the degree of nonconformity of a nonconforming building, structure or improvement or increase the size or degree of nonconformity of a use may be made provided 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 or alterations occur." Our City Attorney has opined that "repairs and alterations" can be any repair or change to the structure (interior or exterior) so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco)." (see Enclosures, City Attorney's Memo dated November 12, 1997 and March 4, 1998). Our City Attorney has also clarified that a reconstruction project (because of the demolition required) does not constitute a "change from a nonconforming structure" to a more conforming structure and would not constitute abandonment of non-conforming use rights.

As discussed, SDMC Section 101.0303 allows not only bluff top home owners an opportunity to maintain existing structures but it affects many property owners City-wide. As a result of significant code changes over the years, the City of San Diego has created many non-conforming structure and uses. It is not the intent of the City to discourage redevelopment of property. In fact, it allows the City an opportunity to encourage modifications that reduce the degree of nonconformity. Although our offices disagree on this point, the City must continue processing



Planning and Development Review

1222 First Avenue, MS 501 • San Diego, CA 92101-4155

Tel (619) 446-5460

Ms. Sherilyn Sarb

April 21, 2000

page 2

projects under the purview of "non-conforming" rights as established by long time Department Policy substantiated by City Attorney concurrence.

In the case of the Summit Resource project, the La Jolla Shores Planned District Ordinance (PDO) has it's own section on nonconforming uses and structures. Pursuant to the provisions of the PDO, it was determined that the improvements would not "increase the degree of nonconformity", hence, the project was approved. Although the permit contains a standard condition that is normally applied to city-wide zoned property; the 50% fair market value limitation to proposed repairs, alterations and modifications to legal nonconforming structures is not applicable to this project. According to the LJS PDO (Chapter X, Article 3, Division 3), San Diego Municipal Code Section 101.0303 would be superseded by the PDO.

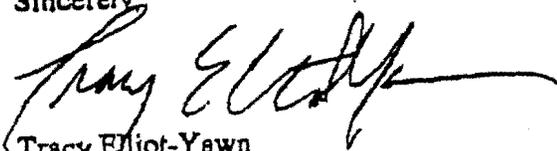
Your questions on clarifying remodel vs. new development can also be addressed. The Coastal Ordinance specifically defines "Coastal Development" (SDMC Section 111.0107). A Coastal Development Permit (CDP) is required for "coastal development" within the boundaries of the Coastal Zone as illustrated on Map no. C-730.1 unless an exemption can be granted pursuant to San Diego Municipal Code Section 105.0204 (old code). The Summit Resource project is located on a bluff top site and lies within the Sensitive Coastal Resource Overlay Zone. The proposed development exceeds the exemption criteria therefore, is considered "Coastal Development" that would require a Coastal Development and Sensitive Coastal Resource Permits.

There also seems to be some confusion with respect to remodel vs. new development. The City's Coastal exemptions were amended in 1990 to restrict improvements to an existing structure or structures by limiting the removal of up to 50% of exterior linear walls. This threshold was established to allow the City to look at development within the coastal boundaries. As you know, consistent with the State CC exemptions, the City already has a strict requirement for review of new development (additions, remodels and/or demolition and new construction) that are located within the sensitive areas such as beaches and bluffs, or within 300 ft. of a mean high tide line or within the first public roadway. Outside these areas, the communities desired a higher level of scrutiny on development. Therefore, the City developed several formulas. As a result of public hearings, City Council adopted the "50% rule" which was subsequently certified by the Coastal Commission.

Ms. Sheryllyn Sarb
April 21, 2000
page 3

I hope you find this information useful. We look forward to our meeting next week to discuss the geological and landscape issues on the subject matter. If you have any questions please call me at 446-5340.

Sincerely



Tracy Elliot-Yawn
Senior Planner, Coastal Section
City Planning and Development Review

ENCLOSURES

cc: Lee McEachern, Supervisor of Regulation
Laurinda Owens, Coastal Planner
CDP/SCR/LJS file

Office of
The City Attorney
City of San Diego

MEMORANDUM

533-5800

DATE: November 12, 1997
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures

In a memorandum dated November 5, 1997, you asked our office to provide you with an interpretation of San Diego Municipal Code ("SDMC") section 101.0303. Specifically, you have asked whether a project which proposes to demolish and reconstruct nonconforming exterior walls (the value of which does not exceed fifty percent of the fair market value of the improvement) should be considered an abandonment of nonconforming rights which must be reconstructed in conformance with all applicable regulations or a permissible alteration. This memo responds to that issue.

SDMC section 101.0303 reads as follows:

SEC. 101.0303 Continuance of Nonconforming Uses and
Structures

The lawful use of land existing at the time the Zone Ordinance became effective, with which ordinance such use did not conform, may be continued provided no enlargement or addition to such use is made.

The lawful use of buildings existing at the time the Zone Ordinance became effective, with which ordinance such building did not conform with respect to the development regulations, may be continued provided any enlargements, additions or alterations to such building will not increase its degree of nonconformity and will conform in every respect with the development regulations of the zone in which the building is located, except as hereinafter provided by zone variance.

Any discontinuance of a nonconforming use for a continuous period of two years shall be deemed to constitute abandonment of any nonconforming rights existing at the time of the enactment of the ordinance.

Any change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights.

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.

If any nonconforming building or use be destroyed by fire, explosion, act of God or act of the public enemy to the extent of fifty percent (50%) or more of the fair market value, according to the assessment thereof by the County Assessor for the fiscal year during which such destruction occurs, then and without further action by the City Council, the said building or use and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by the Zone Ordinance for the district in which such building was located. The provisions of this paragraph shall not apply to any nonconforming building for which a Reconstruction Permit has been or is obtained pursuant to Municipal Code Section 101.0500(B).

If the use is a medical or counseling service and is prohibited pursuant to Sections 101.0410(B)(9)(c), 101.0423(B)(1), 101.0426(B)(1), 101.0427(B)(1), or 101.0435.2(B)(11)(e), and if such use existed on August 13, 1984, it shall become a nonconforming use and shall be governed by the provisions of this section. Any such medical or counseling service existing on the effective date of the ordinance shall have ninety (90)

days to cease operation, after which time the service shall be unlawful at that site and shall constitute a violation of this Code unless a Conditional Use Permit is obtained in accordance with Section 101.0513.

If an investigation by the Development Services Department reveals that a particular property contains a legal, nonconforming use or structure, a "Notice of Nonconforming Rights," may be recorded in the County Recorder's office. This notice is designed to provide constructive notice to any successors in interest that nonconforming rights as to the property or structures existed at the time of the recordation of notice. Nothing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right.

If a subsequent investigation reveals that a previous nonconforming right as to the property's use or structure has been lost, a cancellation of the Notice of Nonconforming Rights shall be recorded.

The state of the law in this area is such that "[m]ost nonconforming provisions of local ordinances do not permit structural alterations because they may lead to the creation of a nonconforming building that will better accommodate and make the nonconforming building use more permanent." Longtin's California Land Use section 3.82[4] (1987) (emphasis added). However, as you can tell from reading SDMC section 101.0303, The City of San Diego does not follow the norm. SDMC section 101.0303 does not preclude alterations. Rather, we specifically permit alterations which do not exceed fifty percent of the fair market value of the improvement. The provision with section 101.0303 addressing "Notices of Nonconforming Rights" also provides that "[n]othing in this notice shall permit the continuation of a nonconforming use or structure that was subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous nonconforming right." This provision further reiterates the point that nonconforming rights can only be extinguished through expansion, enlargement, abandonment or destruction and not by any act qualifying as a repair or alteration.

Evidently, based on your memorandum and my recent conversations with City staff, the sentence in SDMC section 103.0303 which reads "[t]he terms "repairs" and "alterations" do not include painting or replacement of exterior stucco siding, or shingles," has been given special meaning. This sentence has historically been interpreted to define the permissible scope of a "repair" or "alteration." I do not believe this is a legally defensible interpretation of the sentence and I

suggest instead that the sentence must be interpreted and applied within the context of the entire paragraph. ~~I think the correct interpretation of the sentence in light of the whole paragraph is that~~ it provides for an exception to the formula for calculating the value of the repair or alteration. In other words, in calculating whether a repair or alteration constitutes more or less than fifty percent of the fair market value of the improvement, the cost of painting, exterior stucco and shingles should not be included. Therefore, using the application I have suggested, any repair or change to the structure (interior or exterior) is permissible so long as that change does not increase the degree of nonconformity or exceed fifty percent of the value of the improvements (minus the cost of paint, shingles and exterior stucco).

A second issue raised by your question involves whether a proposed alteration or repair of a nonconforming structure which involves demolition and reconstruction constitutes an abandonment of a nonconforming right. On this point, SDMC section 101.0303 contains a sentence which provides that "[a]ny change from a nonconforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such nonconforming rights." Precisely, the question is whether a reconstruction project (because of the demolition required) constitutes a "change from a nonconforming structure" to a more conforming use or structure.

I believe that precluding reconstruction under the above referenced provision amounts to an overly restrictive interpretation of the Code. If plans are submitted and building permits are issued which result in a structure that is more conforming to the code, clearly in that situation, all or some partial degree of the nonconforming right is abandoned. The land owner cannot later come back to reclaim the right that was abandoned. The horn book law on this point states:

A change in structure occurs when the landowner modifies an existing building or structure, either by repair or physical alteration of the premises. In most cases, a change in the physical structure involves merely a minor expansion of the same use. However, in some cases a change in the structure, if extensive enough, may amount to a substantial expansion or change of use.

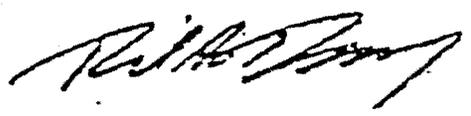
Longtin's California Land Use section 3.82[4] (1987).

The legal definition of the word "abandonment" is: "Knowing relinquishment of one's right or claim to property without any future intent to again gain title or possession." Barron's Law Dictionary, Second Edition. This commonly accepted definition of the term is consistent with the example I used above where permits are issued for a project which results in a structure exhibiting a lesser degree of nonconformity. However, if someone is proposing an alteration to partially reconstruct a nonconforming structure, without expanding the degree of nonconformity, it is generally not their intent to relinquish or forfeit their nonconforming rights. For these reasons, in

Gary Halbert
November 12, 1997
Page 5

a situation where a project proposes demolition and reconstruction, unless the end result of the project amounts to an expansion in the structure, I do not think the reconstruction itself qualifies as a "change" which constitutes "abandonment."

CASEY GWINN, City Attorney



By
Richard A. Duvernay
Deputy City Attorney

RAD:lc:600
cc: Linda Johnson
Tracy Elliot-Yawn
LADUVERNA MEMORANDUMS ON CONZL MNO

MAR 05 1998

Office of
The City Attorney
City of San Diego

DEVELOPMENT SERVICES

MEMORANDUM

533-5800

DATE: March 4, 1998
TO: Gary Halbert, Deputy Director, Land Development Review
FROM: City Attorney
SUBJECT: Alteration of Nonconforming Structures in the Coastal Zone

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

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

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

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

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

Gary Halbert
March 4, 1998
Page 2

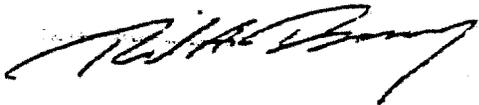
enlargement of buildings, structures, signs, advertising displays, improvements, or premises than is imposed or required by such ordinance, rules, regulations or permits, the provisions of this Chapter shall control.

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

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

CASEY GWINN, City Attorney

By


Richard A. Duvernay
Deputy City Attorney

RAD:lc:600x605.3.1

Attachment

cc: Linda Johnson

Tracy Elliot-Yawn

LDUVERNAY@MICHIGANONCO.COM

CALIFORNIA COASTAL COMMISSION

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



April 25, 2000

Mr. Matt Peterson
Peterson and Price
530 B Street, Suite 1700
San Diego, CA 92101-4454

Re: Coastal Development Permit Application #A6-LJS-99-160 Summit Resources

Dear Mr. Peterson:

This letter is a follow-up to our conversation yesterday wherein I requested that you provide additional information to complete our review. City staff indicates the following condition is attached to the permit in order to assure the improvements do not exceed 50% of the fair market value of the residence.

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

While you indicated that you do not have this information readily available, it is pertinent to our review of this application. Thus, please provide the following information as soon as possible:

- Copies of any construction estimates that have been done by licensed contractors for the renovation and addition to the existing residence located at 1900 Spindrift Dr., La Jolla, as proposed in the above referenced permit application and as approved by the City of San Diego in CDP/SCR Permit No. 99-0007;
- The estimate should include the aggregate value of the entire reconstruction project including improvements to the portion of the structure being retained, demolition costs and construction of the new addition;
- The submittal should include the documents that form the basis for the construction estimates. The documents should clearly describe the work being performed including, the new addition, and work within the portion of the structure being retained such as, upgrades to wiring and/or plumbing, and/or modifications to the walls, windows and/or floor structure to comply with current UBC requirements.

Mr. Matt Peterson

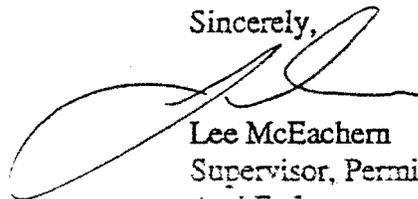
April 25, 2000

Page 2

- Copy of the most recent assessed fair market value of the existing residence done by the County Assessor.

In addition, in our conversation I requested, and you agreed to provide, a complete set of reduced (8 1/2" X 11") plans for use as exhibits to the staff report (site plan, floor plans and elevations). Thank you in advance for your cooperation.

Sincerely,



Lee McEachern
Supervisor, Permits
And Enforcement

cc: Mark Mazzarella
Sherilyn Sarb
Laurinda Owens

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MAZZARELLA, DUNWOODY & CALDARELLI LLP

ATTORNEYS AT LAW
550 WEST "C" STREET, SUITE 530
SAN DIEGO, CALIFORNIA 92101-8575
TELEPHONE: 619.238.4900
FACSIMILE: 619.238.4959

April 21, 2000

VIA FACSIMILE & U.S. MAIL

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
3111 Camino del Rio North, Suite 200
San Diego, CA 92108

Re: Response to March 29, 2000 Request for Documents Relating to Coastal
Commission Appeal No. A-6-LJS-99-160 (1900 Spindrift, La Jolla California)

Dear Lee:

Thank you for your April 7, 2000 response to my March 29, 2000 document request in the above-referenced matter. I note that you have indicated that your computer records do not readily reveal appeal document creation dates. We have learned from past experience with similar computer document dating problems that computer experts can accurately determine document creation dates from residual electronic data on a computer's hard drive.

Time is of the essence. We therefore request immediate access to the computer hard drive in question. To the extent that you require a formal California Public Records Act Request pursuant to Government Code Section 6250 *et seq.*, please consider this letter to constitute such a request for any and all electronic and or computer records in their original digital form that mention, discuss, or in any way pertain to the property commonly known as 1900 Spindrift Lane, La Jolla, California, which is the subject of Appeal No. A-6-LJS-99-160. Our expert can quickly copy the necessary information from your computer when given access to do so. Needless to say, we expect that all electronic data will be retained by the Commission pending our inspection.

Please give me or my associate, Brian Goodwin, a call at your earliest convenience to let us know when we can review your computer files on this matter to verify creation dates and other relevant information.

You also indicated in your letter of April 7, 2000 that the original signed appeal forms are sent to the San Diego office via the Commission's courier service, and that a copy of the courier log showing that a courier delivery was made to the San Diego office on December 21, 1999 (the date the appeal forms were received by San Diego staff) would be available. I would like a copy of the log.

Lee McEachern, Supervisor,
Permits and Enforcement
California Coastal Commission
April 21, 2000
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More importantly, I would like to know how San Diego staff could have: (1) spoken to the commissioners who filed the appeal; and then (2) requested the original signed appeals form from San Francisco; and then (3) received them on December 21, 1999 when the telephone records you produced to us previously reflect that the discussions that purportedly took place between Charles Damm and Commissioners Wan and Daniels occurred late in the morning and late in the afternoon on December 21, 1999. There was, therefore, no opportunity to have in fact first obtained the commissioners' approval, then contact San Francisco and then have forms sent via overnight messenger to San Diego in order to be filed late afternoon on the 21st.

As you may recall, Matt Peterson advised you, Sherilyn Sarb and Deborah Lee during our meeting on March 10, 2000, that when he first saw the file on this matter in the Coastal Commission's office, all that existed were xeroxed copies of the commissioners' signatures on the appeals. Furthermore, when he first saw the appeals forms the words "See Attached" were not typed on them. We were advised during our meeting on March 10, 2000 that Mr. Peterson was mistaken, and in fact originals were in the file, and further that the words "See Attached" were added at a later date, not because the materials were generated at a later date, but in order to make it clear that the appeal and the findings in the file were related (a fact that would seem quite obvious).

When Mr. Peterson first inquired months ago as to the process utilized to file the appeals, he was told that xeroxed copies of the commissioners' signatures on the appeal forms were kept in the San Diego office, and used by the local staff to file appeals. This was consistent with what he saw in the file. In our meeting on March 10, 2000, this was denied. Instead, Ms. Lee stated emphatically:

"[the blank signed appeal forms] are kept under the control of Peter Douglas' executive assistant. Whoever makes the calls and contacts the commissioners has to call her and indicate that THEY HAVE GOTTEN that specific authorization, THEN those two forms are sent down to the district office ..." [Emphasis added.]

Obviously, the required procedure did not occur in this case. Calls could not have been made to the commissioners on December 21, and the blank signed appeal forms received from San Francisco and filed on December 21st.

I appreciate, as was explained to us at our meeting on March 10, 2000, that at the time this matter was coming to a head, Laurinda Owens was out ill, and two other staffers were on vacation, and that Chuck Damm, who generally works out of Ventura, was pinch-hitting. That may explain why required procedures were not followed, and the appeal deadline was missed. But it does not excuse the late filing. The local staff should acknowledge the true facts to the Commission; and the appeal should be voluntarily dismissed.

Upon reviewing the transcript of our meeting on March 10, 2000, an additional public records request has come to mind. In that transcript either Sherilyn Sarb or Deborah Lee stated, "There were several appeals being filed at that time." I would like copies of whatever other appeals were filed by the

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Lee McEachern, Supervisor,
Permits and Enforcement
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local San Diego Coastal Commission staff between December 20 and December 24, 1999. I would also like a copy of the tape of your meeting with Matt Peterson, Tim Martin, Laurinda Owens, Sherilyn Sarb and Deborah Lee on April 3, 2000. Enclosed is a check for \$5.00 to cover what I understand to be the cost of duplication. Please consider these formal California Public Records Act Requests pursuant to Government Code Section 6250 et seq.

I look forward to your response to these requests and questions.

Very truly yours,



Mark C. Mazzarella

MCM:dll

cc: Matthew Peterson, Peterson & Price
Chairperson Sara Wan and Members of the California Coastal Commission
Peter M. Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Deborah Lee, Deputy Director
Ralph Faust, Esq. Chief Legal Counsel
Laurinda Owens, Coastal Planner
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Michael J. ...

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