

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
619-557-2370



Mon 10b

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Staff Report: 7/17/01
Hearing Date: 8/6-10/01

RECORD PACKET COPY

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego.

DECISION: Approved with conditions.

APPEAL NO.: A-6-LJS-01-95

APPLICANT: Ure R. & Diane M. Kretowicz

PROJECT DESCRIPTION: Removal of unpermitted improvements on face of coastal bluff and construction of pool with spa, concrete deck, retaining walls, drains, landscaping and dedication of an emergency access easement along southern edge of 1.31 acre blufftop lot.

PROJECT LOCATION: 7957 Princess Street, La Jolla, San Diego, San Diego County.

APPELLANTS: Coastal Commissioners Patrick Kruer and Patricia McCoy.

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Land Use Plan; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Planning Commission dated 2/7/01; City of San Diego Manager's Report dated 5/30/01; Negative Declaration for Kretowicz Rear Yard Landscaping dated 12/21/00; Update of Geologic Reports dated August 9, 1997 by Michael W. Hart; CDP Nos. F5265, F6760, F-6760-A, 221-78 (appeal), A-133-79.

I. Appellants Contend That:

The appellants contend that the development, as approved by the City, may be inconsistent with the certified LCP as well as with the public access and recreation policies of the Coastal Act. Specifically, the appellants contend that the development is inconsistent with the shoreline hazards policies of the certified LCP pertaining to blufftop development standards and alteration of landforms. The appellants also contend the development is inconsistent with the LCP provisions which protect visual quality in scenic coastal areas as well as the public access policies of the certified LCP and the Coastal Act as it relates to the provision of a public access easement (ref. attached appeal - Exhibit #3).

II. Local Government Action:

The coastal development permit was approved by the Planning Commission on February 17, 2001. The project was subsequently appealed to, and approved by, the City Council on June 5, 2001. The conditions of approval address, in part, the following: open space on the bluff face, drainage, landscaping and irrigation, building materials, emergency vertical access easement, lateral access along the beach and hold harmless agreement.

III. Appeal Procedures:

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

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If

substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

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

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

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-LJS-01-095 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-LJS-01-095* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description/Permit History. The subject development approved by the City involves the construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of a blufftop site that contains an existing single-family residence. The proposal also includes removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm trees) on the face of the coastal bluff. No changes to the existing single-family residential structure were proposed or permitted.

The 1.31 acre site is situated atop a 55-ft. high coastal bluff located off a cul-de-sac at the northern terminus of Princess Street in the La Jolla community of the City of San Diego. The existing residence is situated on flatter portion of the site, directly adjacent to Princess Street, with the site sloping steeply from the home to the north and west. There is no existing shoreline or bluff protection on the subject site. Surrounding development includes single family homes to the east and south and the Pacific Ocean to the north and west.

The home on the site was originally constructed around 1915. Over the years, the home was added to and remodeled several times. In June of 1977, the then Regional Commission denied an application (F5265) for a substantial addition (3,300 sq. ft.) to the 1,350 sq. ft. home on the site finding that the development would have a significant adverse impact on scenic resources in the area as it would significantly encroach onto the visually prominent bluff seaward of the existing home.

In June of 1978, the Regional Commission approved CDP #F6760 for construction of a 3,066 sq. ft. addition to an existing 1,350 sq. ft. single-family residence finding that this "scaled-back" version of the previous application did not project further seaward than the existing line of development, thereby reducing its impact on visual resources. The permit was approved with special conditions requiring that the development comply with the recommendations of the geology report, that the southwest corner of the proposed addition (15 ft. x 15 ft.) be cantilevered to "ensure the integrity of the slope", and the final drainage plans be submitted. The decision on this matter was appealed to the State Commission (A-221-78) which found no substantial issue on July 18, 1978. The applicant subsequently complied with the conditions and commenced development.

A lawsuit was then filed against the Commission for not having made adequate findings regarding public access and recreation as required by Section 30604 of the Coastal Act for development located between the first public road and the sea. The court subsequently found that the development was located between the first public road and the sea and that the finding on public access and recreation was not sufficiently specific to comply with the requirements of Section 30604(c) of the Act. The court ordered that the matter be remanded back to the regional commission for a specific finding on only the issue of public access and recreation. The Regional Commission subsequently adopted findings regarding public access and recreation with no special requirements for

the provision of public access at the site. This decision was then appealed to the State Commission (A-133-79). On September 20, 1979, the State Commission found that public access should be required and imposed a special condition requiring the applicant to record both lateral (from the toe of the bluff to the mean high tide line) and vertical (5 ft. wide extending from street down bluff along southern property line) public access easements. However, the access easements were never recorded and the addition was completed pursuant to the previously issued permit, in apparent violation of the Commission's action.

Then, in 1980, the applicant requested and received approval of an amendment to the original permit (#F6760-A) to revise the approved drainage plan which had already been constructed without authorization.

The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores Land Use Plan (LUP) and the former implementation plan (municipal code) that was in effect at the time that the proposed development was reviewed and accepted for filing 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 to and found complete by the City prior to the effective date of the LCP amendment. The Commission finds that in this case, the appropriated standard of review is the LCP that was in effect prior to the effective date of the LCP amendment (i.e., the former municipal code).

2. Shoreline Hazards/Alteration of Landforms/Scenic Quality. The proposed development involves the removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm trees) on the face of the coastal bluff and construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of a single-family residence. The location of the subject site where the proposed pool and spa are to be located is seaward of the residence on a very steeply sloping portion of the site. The pool will be cut into the slope and then supported by an approximately 9 ft. high retaining wall on the western facing portion of the slope (ref. Exhibit #2).

The appellants contend that the development as approved by the City is inconsistent with the shoreline hazards provisions of the certified LCP as they relate to blufftop setbacks and alteration of natural landforms. Specifically, applicable provisions of the La Jolla-La Jolla Shores LCP Land Use Plan are as follows:

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 structures 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

- [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.
- 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]

In addition, the Sensitive Coastal Resources (SCR) Overlay provides development requirements for beaches and coastal bluffs. The SCR regulations are designed to ensure that new development protect public beaches from erosion, maintain geologic integrity of coastal bluffs and provide for physical and visual public access to and along the shoreline. For coastal bluffs, the ordinance specifies the permitted uses and development regulations. Specifically, the SCR ordinance states, in part:

- a. No structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within forty (40) feet of any point along a coastal bluff edge, except for the following uses:

1. Essential bluff top improvements including but not limited to, a walkway leading to a permitted beach access facility; drainage facilities, and open fences to provide for safety and to protect resource areas.

[...]

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 benches, pools, spas, garages and upper floor decks with load bearing support structures.

Additionally, specific findings of fact which must be supported by the information in the file include:

- 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 City, in its review of the development, describes the project site as at the "nexus of a coastal bluff and coastal canyon above the Pacific Ocean." The City found that the southern portion of the site should be described as a "coastal canyon" and not as a "coastal bluff". As a coastal canyon, the City found that portions of the proposed development would not be subject to the blufftop setback requires of the LCP, thus

allowing the swimming pool, spa and landscape improvements to be constructed seaward of the upper termination of the slope, typically considered the "bluff edge".

The SCR Ordinance does not contain provisions to differentiate between a coastal bluff and coastal canyon; such a difference is detailed in the City's Coastal Bluffs and Beaches Guidelines. However, these guidelines, while utilized informally by the City, were not part of the City's LCP at the time this subject development was approved and thus are not the standard of review. The guidelines address a coastal canyon as follows:

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 offsite), the coastal bluff edge is defined as the portion of the site which drains directly to the ocean. The portion of the site which drains first to the canyon (landward of the drainage divide) is not considered to be a sensitive coastal bluff. [ref. Exhibit #4]

Aside from the guidelines not being the formal standard of review for the proposed development, the Commission is concerned with the City's interpretation of the above cited provision. Upon site inspection by Commission staff, it appears that the "coastal canyon" that the City describes as part of the southern portion of the site is more accurately described as a small gully on the face of a coastal bluff that accepts drainage from a couple of home sites and the small street adjacent to the subject site. In addition, while it does accept some runoff from offsite, to classify this "gully" as a "large established regional drainage course" is questionable. Also, the "coastal canyon" does not outlet directly onto the beach, but outlets on the face of the coastal bluff on the subject site, where the toe is subject to marine erosion at all but the lowest tides. Again, even if the guidelines were the standard of review, the City's interpretation that they apply to the subject site is questionable, resulting in the construction of a swimming pool and spa and other improvements seaward of the bluff edge and on the face of the coastal bluff. Also, the City's findings failed to specifically address the potential need for shoreline protection for the proposed improvements.

The subject site is highly visible from public areas to the south, including the Coastwalk trail, a public trail along the bluffs leading up from La Jolla Cove, a major public access point, and directly across La Jolla Bay from the subject site. Aside from potential geologic concerns, development of these structures on the face of the bluff would include significant alteration of this natural landform and potentially raise concerns with respect to public views, inconsistent with the above cited policies and findings which require that blufftop development minimize the alteration of natural landforms and adverse impacts to highly scenic areas. These findings would be applicable to the proposed project regardless of whether the natural landform is a coastal bluff or a coastal canyon.

In addition, the development as approved by the City appears to be inconsistent with the past coastal development permit approved by the Commission in that the proposed development encroaches beyond the seaward limits applied by the previous permit. Specifically, the Commission was concerned that adequate geologic blufftop setbacks be provided to ensure the geologic integrity of the coastal bluff. However, the proposed

development at this time appears to encroach beyond the previously-delineated "bluff edge" and into the previously delineated geologic blufftop setback area. Therefore, the proposed development raises several potential concerns with regard to consistency with blufftop development standards contained in the certified LCP and past Commission action. Additionally, an amendment to the previously-issued CDP may be required.

3. Public Access. The proposed development raises concerns with regard to consistency with the public access policies of the Coastal Act and the certified LCP. Specifically, the certified La Jolla-La Jolla Shores LCP states the following:

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.

New development should not prevent or unduly restrict access to beaches or other recreational areas.

In addition, Section 30211 of the Coastal Act is applicable and states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The subject site is at the terminus of Princess Street in the La Jolla community of the City of San Diego. The site is a natural promontory, bounded on the north and west by the ocean. The beach below the subject site (and to the south) is small rock/cobble beach bounded by steep bluffs that is only accessible at very low tides from the north (the nearest public access point is adjacent to the Marine Room, approximately ¼ mile to the north). There is no access to this beach from the south.

As noted above, there have been a number of previous Commission actions regarding development on the subject site. Utilizing the public access and recreation policies of the Coastal Act, the Commission ultimately required that both lateral (from the toe of the bluff to the Mean High Tide Line) and vertical (from Princess Street down the bluff to the beach) public access easements be recorded as a condition of approval for allowing a substantial addition to the home (ref. Exhibit #5). Based on review of City file, it does not appear that the easements were ever recorded. However, the residential addition was completed. Resolution of the violation of the the special conditions of the past coastal development permit will be pursued as a separate matter and may require an amendment to that permit.

Section 105.0218 of the Municipal Code states the following regarding prior Commission approval:

No development that has a valid permit approval from the California Coastal Commission shall be required to obtain a new coastal development permit from the City of San Diego pursuant to this section. The Californai Coastal Commission

shall be exclusively responsible for the issuance of an amendment to a coastal development permit which has been previously approved by the California Coastal Commission, regardless of jurisdictional boundaries governing applications for new coastal development permits. The California Coastal Commission shall be exclusively responsible for the issuance of an extension of time to a coastal development permit which has been previously approved by the California Coastal Commission, regardless of jurisdictional boundaries governing applications for new coastal development permits. The Planning Director, Planning Commission, or City Council, shall not grant a coastal development permit for any proposed development on which site another development is authorized pursuant to a coastal development permit which has been issued by the California Coastal Commission unless such permit has expired, or has been forfeited to the issuing agency.

The proposed development appears to be inconsistent with coastal development permit #F6760 approved by the Commission in that it permits new development to encroach into an area that was required to be offered as a public vertical access easement pursuant to a special condition of said permit. The Commission's previous action required the applicant to record a 5 ft. wide vertical access easement (for public pedestrian use from sunrise to sunset and for emergency rescue access 24 hours a day) along the southern property boundary from Princess Street to the beach. Although it appears this easement offer has never been recorded as required, in an apparent violation of the coastal development permit, approval of the subject development in this area could preclude recordation of the offer in the future. The proposed swimming pool and spa are to be located on the west of the existing home in close proximity to the southern property boundary. A proposed retaining wall to support these improvements (as they are proposed on the face of a slope), is proposed extending to approximately 3 ½ ft. of the southern property boundary. Thus, as approved by the City, the proposed development will encroach directly into the previously required easement area.

Additionally, the City's action reduces the access easement to 3 ½ ft. in width and eliminates use by the general public, making it available to only lifeguards for emergency access. The City found that access by the public in this area was not safe, nor appropriate for stability reasons. However, opponents of the development at the City have stated that this area has been used by the public for many years to access the beach, but this issue was not addressed by the City in its review. Because the proposed development appears to be inconsistent with the previous Commission action which required public access easements and the City did not address the issue of prescriptive use by the public, the Commission finds the proposed development raises a substantial issue with regards to the conformity of the development with the public access policies of the Coastal Act and the certified LCP.

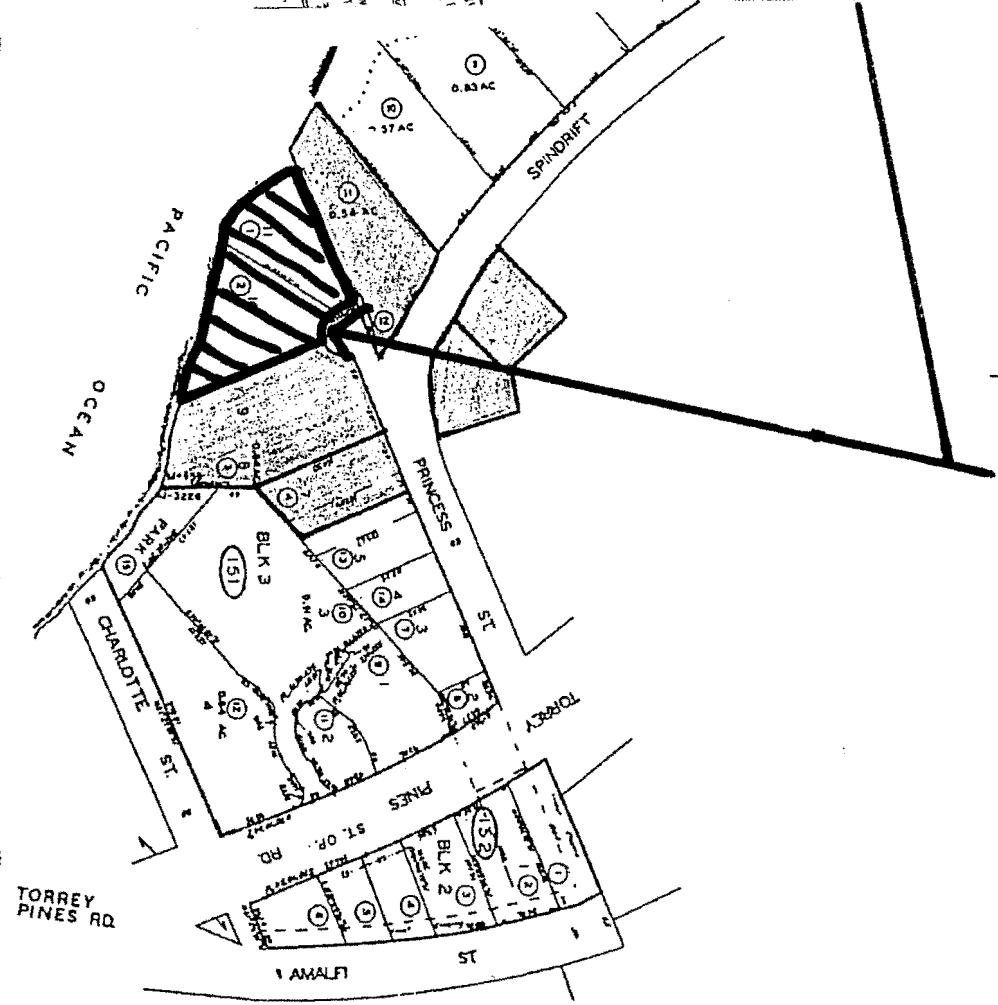
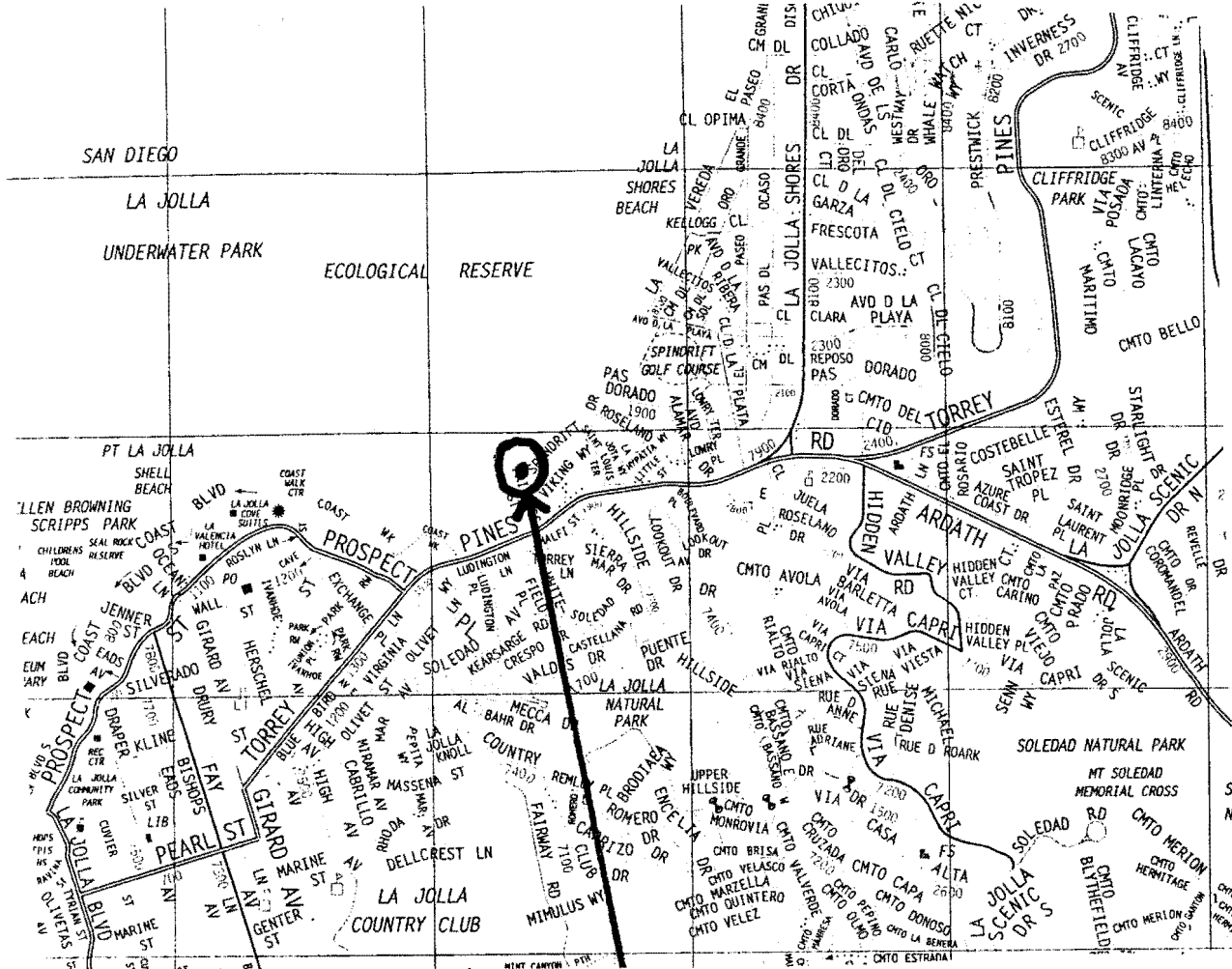
4. Drainage. The appellants contend the development includes drainage provisions which appear to be inconsistent with the drainage and runoff plans previously approved by the Commission. The Commission's previous action on the site permitted drainage improvements (collecting on and off-site drainage) that discharged into a riprap energy dissipater approximately ½ way down the bluff in the adjacent drainage gully to the south

of the subject site. Based on review of the site by Commission staff, the drainage actually outlets on the lower face of the bluff on the subject site, with no energy dissipator visible. This is not only inconsistent with the previous Commission action, but also appears to be inconsistent with provisions of Section 101.0480 D.1.c.5 of the SCR Ordinance that requires that all drainage from the site be directed away from any bluff edge. Therefore, the Commission finds the proposed development raises a substantial issue with regards to the conformity of the development with the drainage provisions of the certified LCP.

5. Standard of Review. The appellants also contend the City utilized the wrong standard of review for the proposed development. Specifically, Section C under the Coastal Development Permit Findings for the development state that the development must comply with the provisions of the Resource Protection Ordinance (RPO) as it relates to biologically sensitive lands and significant prehistoric and historic resources. However, the subject site is not located within the mapped RPO area shown in the LCP and thus, is not subject to the provisions of the RPO. Thus, it appears the City has applied the wrong standard of review in its approval of the subject development.

In summary, the City's approval of the proposed improvements at the site of an existing single family residence appear to be inconsistent with several policies of the certified LCP and the public access policies of the Coastal Act. As approved by the City, the proposed development raises consistency concerns relative to appropriate blufftop setbacks, geologic stability, alteration of landforms, and protection of scenic quality. In addition, the proposal will result in impacts to public access as the development will encroach into a previously required public access easement. For these reasons, the City's action raises a substantial issue with respect to the conformity of the development with the policies of the certified LCP and the public access policies of the Coastal Act.





PROJECT SITE

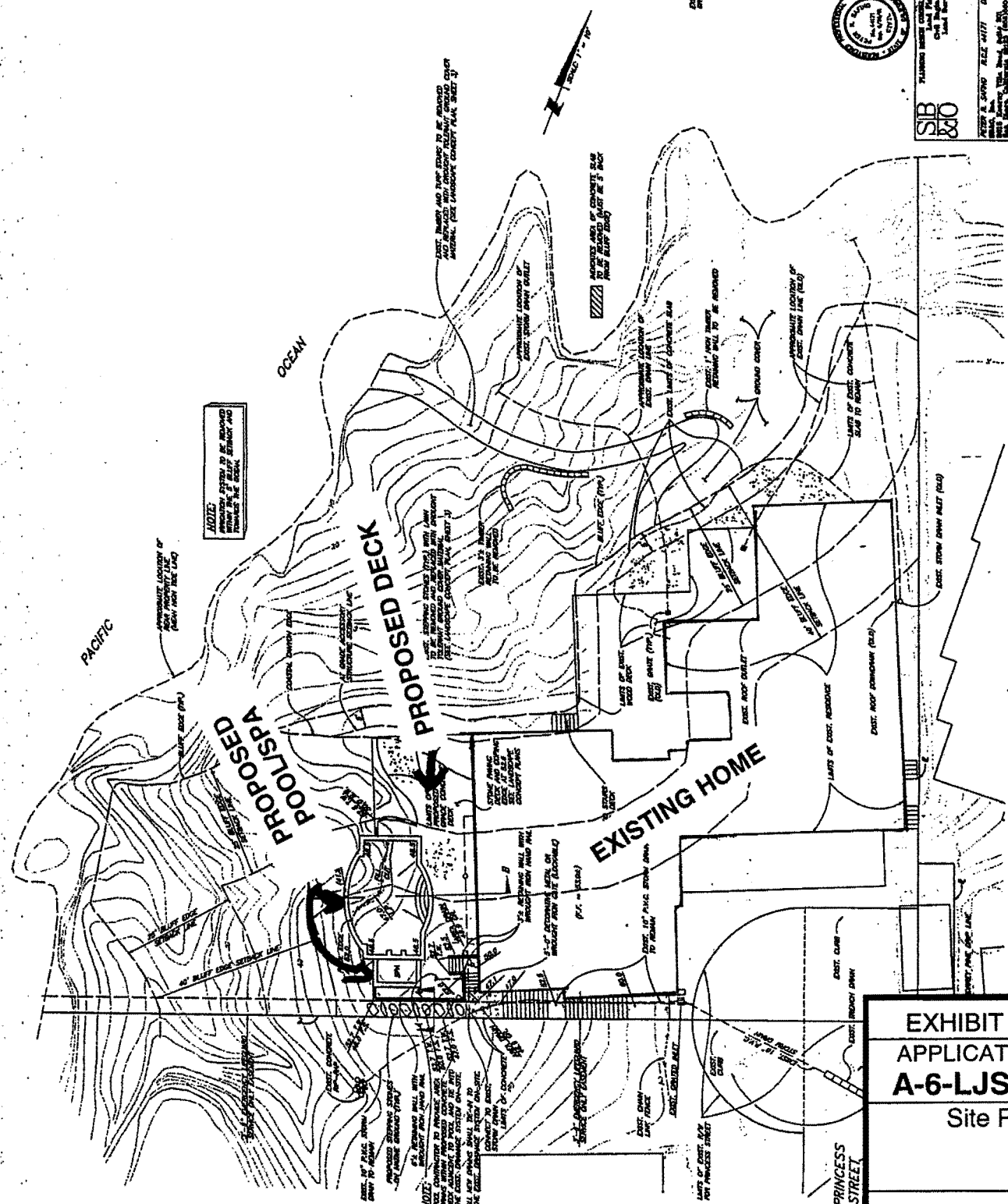
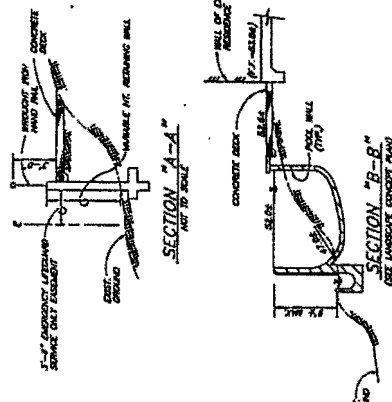
EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-01-95
Location Maps
California Coastal Commission

LEGAL DESCRIPTION

ALL OF LOTS 10 AND 11 OF BLOCK 3 OF ANNUAL SUBDIVISION, IN THE CITY OF SAN ANTONIO, TEXAS, AND ALL THE INTERESTS THEREIN, TOGETHER WITH THE CONVEYANCE OF SAID LOTS 10 AND 11 TO THE COUNTY OF BEXAR, TEXAS, FOR THE PURPOSE OF SAID LOTS 10 AND 11 BEING PLACED UNDER THE CONTROL OF SAID COUNTY OF BEXAR, TEXAS, AND SAID LOTS 10 AND 11 BEING PLACED UNDER THE CONTROL OF SAID COUNTY OF BEXAR, TEXAS, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 14, TITLE 14A OF THE TEXAS CONSTITUTION AND THE ACTS OF THE LEGISLATURE THEREOF, AS AMENDED.

GRADING DATA

1. TOTAL AMOUNT OF SITE TO BE GRADED: 1.800 S.F./A.P. A.
2. PERCENT OF TOTAL SITE GRADED: 82.
3. AMOUNT OF SITE WITH AS PERCENT SLURRIES OF CONCRETE: ALMOST 51.0% OF A.P.
4. AMOUNT OF SITE WITH 12 PERCENT SLURRIES OF CONCRETE: 500 S.F.
5. AMOUNT OF SITE WITH 18 PERCENT SLURRIES OF CONCRETE: 500 S.F.
6. PERCENT OF TOTAL SITE WITH ALL CONCRETE: ALMOST 51.0%.
7. AMOUNT OF GRASS AND CEMENT MIXTURE: 100 S.F.
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SIB
 SIB & SONS
 1000 N. MICHIGAN ST.
 SUITE 100
 ANN ARBOR, MI 48106-1144
 PHONE: 313.963.1111
 FAX: 313.963.1112
 PROJECT ADDRESS: 1234567890 STREET
 PROJECT NUMBER: 1234567890
 SHEET NUMBER: 1 OF 2
 SHEET TITLE: SITE PLAN
 DATE: 12-12-95
 DRAWN BY: J. SMITH
 CHECKED BY: M. JONES
 APPROVED BY: K. BROWN

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-01-95
Site Plan

California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4402
 619-237-2370



APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Patrick Kruer
 Mailing Address: 2445 5th Avenue, Suite 400
San Diego, Ca 92101
 Phone Number: (619) 231-3637

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Removal of unpermitted improvements on face of coastal bluff and construction of pool with spa, concrete deck, retaining walls, drains, landscaping and emergency access easement along southern edge of 1.31 acre blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
7957 Princess Street, La Jolla, San Diego, San Diego County
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-01-095

DATE FILED: 6/25/01

DISTRICT: San Diego

EXHIBIT NO. 3
APPLICATION NO. A-6-LJS-01-95
Appeals
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Patricia McCoy
Mailing Address: 132 Citrus Avenue
Imperial Beach, Ca 91932
Phone Number: (619) 423-0495

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Removal of unpermitted improvements on face of coastal bluff and construction of pool with spa, concrete deck, retaining walls, drains, landscaping and emergency access easement along southern edge of 1.31 acre blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
7957 Princess Street, La Jolla, San Diego, San Diego County
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-01-095

DATE FILED: 6/25/01

DISTRICT: San Diego

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

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

Date of local government's decision: 6/5/01

Local government's file number (if any): SCR/CDP 96-7148

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Ure R. & Diane M. Kretowicz
7957 Princess Street
La Jolla, Ca 92037

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

<u>1. La Jolla Town Council</u>	<u>2. Peterson & Price</u>
<u>7734 Herschel Avenue, Suite F</u>	<u>530 B Street, Suite 1700</u>
<u>P.O. Box 1101</u>	<u>San Diego, CA 92101</u>
<u>La Jolla, CA 92037</u>	<u>Attn: Matt Peterson</u>
<u>Attn: Joanne Pearson</u>	

SECTION IV. Reasons Supporting This Appeal

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

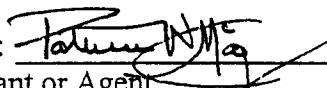
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A" Dated June 25, 2001

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 6/25/01

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

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370



June 25, 2001

ATTACHMENT "A" - Kretowicz Appeal

The subject proposal consists of the removal of bluff improvements (currently in violation) and installation of a pool with spa, concrete deck, barbeque counter, retaining walls, area drains, landscaping and emergency access easement along the southern property edge, within portions of the coastal bluff and coastal canyon. The subject 1.31 acre site is located atop a coastal bluff containing an existing single family residence.

The proposed development appears to be inconsistent with the shoreline hazard policies of the certified LCP. Specifically, the certified La Jolla-La Jolla Shores LCP Addendum contains the following policies, in part:

Blufftop development 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.

Blufftop 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]

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

Coastal Bluffs

a. No structure or improvement or portion thereof shall be placed or erected and no grading shall be undertaken, within forty (40) feet of any point along a coastal bluff edge, except for the following uses:

- 1) Essential bluff top improvements...
- 2) Bluff repair and erosion control measures...
- 3) Accessory structures....

[...]

b. A bluff edge setback of less than forty (40) feet but in no case less than twenty-five (25) feet, may be granted by the Planning Director where the evidence contained in the geology report indicates that: 1) the site is stable enough to support the development with the proposed bluff edge setback so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated life span of the principal structures....

The site is located at the end of Princess Street and the west portion of the site faces the coastal bluffs and ocean. Specifically, the project raises concerns with regard to the delineation by the City of portions of the site as being a "coastal canyon" vs. a "coastal bluff", the applicable geologic blufftop setbacks that would be required if the site were not considered a coastal canyon, and the potential need for shoreline protective devices for the proposed accessory improvements. The City found that portions of the south-facing property are a "coastal canyon" and not a "coastal bluff" and thus allowed the proposed swimming pool and landscaping in the area seaward of the upper termination of the slope, typically considered the "bluff edge". The Commission questions what provisions are contained in the certified LCP and applicable to the proposed development which would allow the designation of this area as a coastal canyon. In any event, these improvements would be constructed on the face of the slope and would significantly alter existing natural landforms and be inconsistent with the provisions of the certified LCP. Additionally, the City's findings fail to specifically address the potential need for shoreline protection for the proposed improvements.

The proposed development also appears to be inconsistent with the past coastal development permit approved by the Commission in that the proposed development encroaches beyond the seaward limits applied by the previous permit. Specifically, the Commission was concerned that adequate geologic blufftop setbacks be provided to ensure the geologic integrity of the coastal bluff. However, the proposed development at this time appears to encroach beyond the previously-delineated "bluff edge" and into the previously required geologic blufftop setback area. Therefore, the proposed development raises several potential concerns with regard to consistency with blufftop development standards contained in the certified LCP and past Commission action. Additionally, an amendment to the previously-issued CDP may be required.

The proposed development raises concerns with regard to consistency with the public access policies of the certified LCP. Specifically, the certified La Jolla-La Jolla Shores LCP states the following:

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."

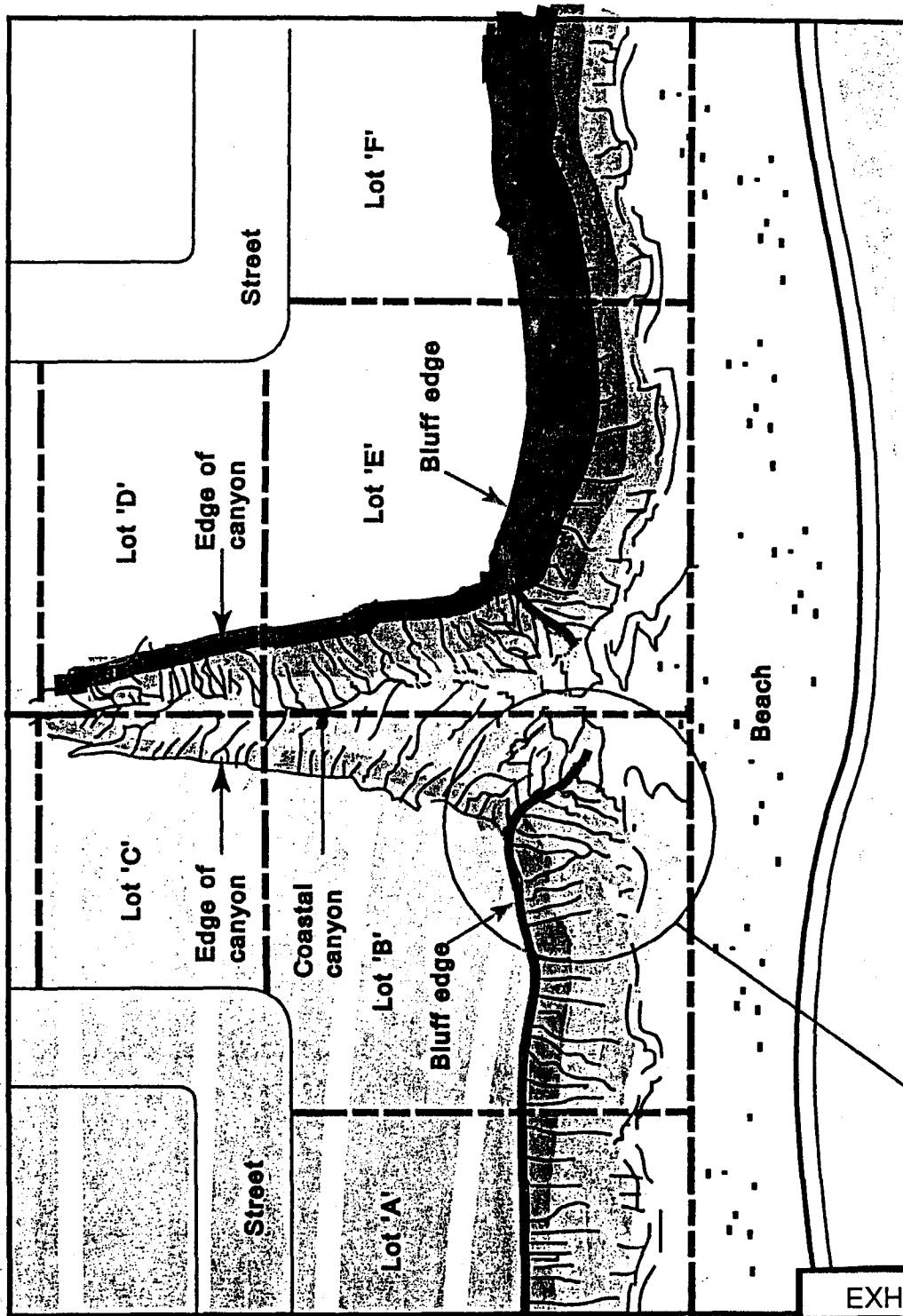
New development should not prevent or unduly restrict access to beaches or other recreational areas.

The proposed development appears to be inconsistent with a past coastal development permit #F6760 approved by the Commission in that it permits new development to encroach into an area that was required to be offered as a public vertical access easement pursuant to a special condition of said permit. Although this easement offer has never been recorded as required, in an apparent violation of the coastal development permit, approval of the subject development in this area could preclude recordation of the offer in the future. Additionally, the City's permit requires only emergency access and would eliminate the requirement for vertical public access in this area. Resolution of the

violation of the the special conditions of the past coastal development permit will be pursued as a separate matter and may require an amendment to that permit.

In addition, the proposed drainage for the subject site raises concerns with regard to consistency with the drainage and runoff control plan that was approved pursuant to the original coastal development permit. In addition, the City's findings (p. 11 of 15) state the project is consistent with the Resource Protection Overlay (RPO) zone; however, the RPO is not applicable to the subject site. The City action raises questions as to the standard of review that was applied by the City staff in review of the proposed development.

Coastal Canyon



Coastal/Bluff Edge Detail

Coastal Canyon

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-01-95
Coastal Canyon -
From Beaches and
Bluffs Guidelines
 California Coastal Commission

F6760

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

NOTICE OF INTENT TO ISSUE PERMIT

RECEIVED

SEP 28 1979

CALIF. COASTAL COMMISSION
SAN DIEGO REGION

On September 20, 1979, by a vote of 9 to 0, the California Coastal Commission granted to Jane B. Baker

Permit A- 133-79, subject to the attached conditions, for development consisting of single-story addition to existing two-story, single-family residence

more specifically described in the application file in the Commission offices.

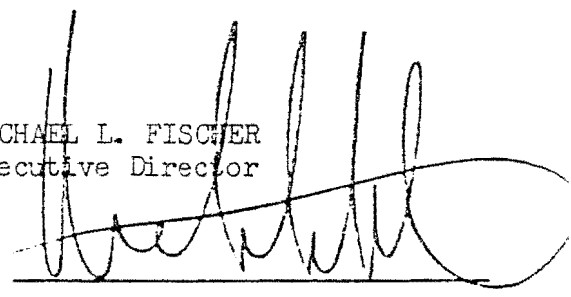
The development is within the coastal zone in San Diego County at one-half mile east of La Jolla Cove at 7957 Princess Street, La Jolla, City of San Diego.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your understanding, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on September 25, 1979.

NO CONSTRUCTION IS AUTHORIZED BY THIS DOCUMENT—THIS IS NOT A PERMIT

MICHAEL L. FISCHER
Executive Director



By Janet A. Lusk

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit A- 133-79, and fully understands it contents, including all conditions imposed.

EXHIBIT NO. 5
APPLICATION NO.
A-6-LJS-01-95
Notice of Intent -
A-133-79

Date _____ Permittee _____

Please sign and return one copy of this form to the Commission office.

Permit A- 133-79, is subject to the following conditions:

A. Standard Conditions.

1. Assignment of Permit. This permit may not be assigned to another person except as provided in the California Administrative Code, Title 14, Section 13170.
2. Notice of Receipt and Acknowledgment. Construction authorized by this permit shall not commence until a copy of this permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of its contents, is returned to the Commission.
3. Expiration. If construction has not commenced, this permit will expire two (2) years from the date on which the Commission voted on the application. Application for extension of this permit must be made prior to the expiration date.
4. Construction. All construction must occur in accord with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviations from the approved plans must be reviewed by the Commission pursuant to California Administrative Code, Title 14, Sections 13164-13168.
5. Interpretation. Interpretation or revisions of the terms or conditions of this permit must be reviewed by the State Coastal Commission or its Executive Director. All questions regarding this permit should be addressed to the State Commission office in San Francisco unless a condition expressly authorizes review by the Regional Commission or its staff.

B. Special Conditions.

Public Access. Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, a document irrevocably offering to dedicate to a public agency or private association approved by the Executive Director easements for public access to and along the shoreline in accordance with the provisions of this condition. The approved document shall be irrevocable for a period of 21 years running from the date of recordation. The documents shall be recorded free of all prior liens and encumbrances except for tax liens and shall constitute a covenant running with the land in favor of the People of the State of California binding the applicant, heirs, assigns, and successors in interest to the subject property. The documents shall provide for offers to dedicate easements for:

a. Lateral Access along the shoreline. The easement shall extend across the ocean frontage of parcel from the toe of the bluff seaward to the mean high tide line; where sea caves exist, the easement shall extend to the inland extent of the cave. The easement shall allow for passive recreational use by the public and shall allow accepting agency to post signs indicating that marine life cannot be removed from the area.

b. Vertical Access extending from Princess Drive to the mean high tide line. The easement shall be 5 ft. in width and shall extend along the southern edge of the property adjacent to the garage and down the bluff along the trail currently existing on the site. The exact location of the easement shall be plotted on a map subject to the review and approval of the Executive Director and shall be attached as an exhibit to the recorded document.

The easement shall be available for public pedestrian use from sunrise to sunset and for emergency rescue operational 24 hours per day. The terms of the easement shall allow the accepting agency, with the concurrence of the Coastal Commission or its successor in interest, to construct improvements to the accessway to ease the public's ability to reach the shoreline. The easement shall also allow the accepting agency to post signs informing the public of the existence of the accessway.

Nothing in this condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights or public trust lands which may exist on the parcel itself or on the designated easement.

Kretowicz Residence

Unpermitted
work

pool

Emergency access easement

from Coast Walk

EXHIBIT NO. 6
APPLICATION NO.
A-6-LJS-01-9
View of Site from the
South