

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-02-068

APPLICANT: Poseidon Point, LLC

PROJECT DESCRIPTION: Demolition of an existing single family residence and swimming pool and the construction of a new, approximately 5,790 sq.ft., two-story single family residence with attached two-car garage, pool, hardscape and landscape improvements on a 0.30 acre blufftop lot.

PROJECT LOCATION: 5490 Calumet Avenue, La Jolla, San Diego, San Diego County.
APN 357-60-01

APPELLANTS: La Jolla Town Council

SUMMARY OF STAFF RECOMMENDATION:

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

Staff also recommends that the Commission approve the de novo permit application with several special conditions. The proposal raises the issues of geologic hazards with regard to adequate setback from the bluff edge and the presence of existing wooden bluff retaining structures on the bluff face. Protection of public views is also an issue. 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 further states that if there is shoreline protection on the site, the reduced setback of 25 feet may not be permitted. The Commission's geologist and coastal engineer have reviewed the project and have

concluded that the small wooden bluff retaining structures on the bluff face are not shoreline protective devices and that the proposed development is proposed to be set back adequately from the bluff edge. Staff recommends that protection of geologic stability associated with the new development be addressed through Special Condition #1 which prohibits maintenance of the existing wooden retention structures on the bluff face and provides for their eventual removal. Protection of visual resources and public views associated with the proposed development will be addressed through landscaping and fence requirements in Special Condition #2. It requires that new landscaping be limited to a height of 3 ft. and that any fencing in the north and south yards of the house be composed of 75% open materials to prevent a "walled off" effect.

Other conditions include assumption of risk and submittal of construction Best Management Practices plan. With the attached conditions, the project can be found consistent with the certified LCP.

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Addendum; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Hearing Officer dated 3/13/02; Mitigated Negative Declaration No. LDR 41-0495 dated 1/3/02; Geological Reconnaissance Report by Michael W. Hart, Engineering Geologist dated 7/25/00 and updated 9/20/01; Letter from Skelly Engineering dated 4/24/01.

I. Appellants Contend That:

The appellants contend that the development, as approved by the City, may be inconsistent with the certified LCP. Specifically, the appellants contend that the development is inconsistent with the shoreline hazard and visual resource policies of the certified LCP. The appellant contends the City should not have allowed a reduction in the required 40-ft. setback from the bluff edge for a swimming pool because there are existing stacked timber retaining walls on the bluff of the subject site. Pursuant to the City's certified LCP Section 143.0143(a), (f), and (g), if a seawall or other stabilization/erosion control measure is installed due to excessive erosion on a site, a reduction in the 40-foot setback for blufftop structures is not permitted. The appellant further asserts that no evidence was presented by either the applicant or the City as to when the existing retaining walls on the bluff face were installed and whether or not they are permitted.

In fact, in apparent contradiction to the 143.0143(a) and (g), the applicant's geologist recommends that the timber walls on the bluff face be maintained and improved, with another timber (or equivalent) wall to be constructed below the central portion of the wood walkway". The appellant further contends that the bluff edge determination is questionable due to the evidence that the site was previously graded, filled and planted with palm trees and other vegetation. If the City's determination of the location of the

bluff edge was correct, the appellants contend that the proposed house and pool do not conform with the certified LCP's setback requirements.

The appellants also contend the development is inconsistent with the visual resource policies of the certified LCP because the City did not require that the side yard adjacent to the designated public view corridor be deed restricted pursuant to the requirements of the certified LCP and that the City did not address the potential impacts of a proposed 5-foot high pool fence adjacent to the designated public view corridor and did not complete a view analysis for the project.

II. Local Government Action.

The coastal development permit was approved by the Hearing Officer on 3/13/02. The conditions of approval address, in part, the following: parking; building height; outdoor lighting; existing non-conforming structures located on the bluff; required coastal blufftop setback; required blufftop setback for accessory structures; landscaping and drainage.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. 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.

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-02-68 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-02-068 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. Proposed is the demolition of an existing single family residence, swimming pool and other landscape features on a 0.30 acre blufftop lot. The existing swimming pool to be removed is located 12 ft. from the bluff edge at its closest point. The existing residence is located approximately 32 ft. from the bluff edge at its closest point. Also proposed is the construction of a new, approximately two-story, 5,790 sq.ft., single family residence with an attached two-car garage, pool, hardscape and

landscape improvements (including required pool fencing). The new residence is proposed to be sited a distance of 40 ft. from the bluff edge and the new swimming pool is proposed to be sited a distance of 25 ft. from the bluff edge. The subject site is located at the southwest corner of Midway Street and Calumet Avenue in the community of La Jolla in the City of San Diego. The residences along the seaward site of Calumet Avenue are situated on blufftop lots. There is a paper street (Sea Rose Lane) at the toe of the coastal bluff seaward of the site which provides lateral public access during low tide conditions. However, it is difficult to gain access to the beach due to the steepness of the bluff. The closest improved vertical accessway is two blocks to the north at the end of Bird Rock Avenue.

2. Shoreline Hazards. The appellants contend that the City's approval of the proposed new single family residence and swimming pool on the subject site is inconsistent with the City's certified LCP as it pertains to geologic blufftop setbacks. Specifically, the City approved a new swimming pool to be located a minimum distance of 25 ft. from the bluff edge. The proposed residence will observe a minimum distance of 40 ft. from the bluff edge. However, there are several existing timber retaining structures on the bluff face of the site. The coastal engineer for the project has indicated that the structures include two tiers of railroad ties on the bluff face seaward of the blufftop. The horizontally placed railroad ties are held in place by vertical ties in shallow footings. The structures are located at about elevation +41.0 ft. MSL and extend to about +30.0 ft. MSL. The existing structure appears to have been part of a multi-level deck system that cantilevered over the blufftop. There was a previous deck seaward of the blufftop which has been removed. According to the current owner, the former owner of the property was wheelchair-bound and built a series of walkways, ramps and decks to view the ocean. These structures are estimated to have been in place approximately 20 years although this could not be documented. The City, through its conditions of approval, acknowledged there were non-conforming uses on the bluff including a deck and other wood structures. The City did not require removal of the non-conforming structures on the bluff because of concerns related to the adverse effects such structures would have on the coastal bluff if they were removed. Condition #20 of the City's permit states that these structures are expected to deteriorate over time. The condition further prohibits the applicant from repairing or maintaining the structures.

The geotechnical report completed for the project makes findings that the swimming pool located at 25 ft. from the bluff edge will not have an adverse effect on the stability of the bluff provided proper drainage is provided for the deck areas. However, further recommendations contained in the report include the following:

"4. The existing timber retaining wall located on the bluff in the northern portion of the property should be properly maintained to reduce the potential for damage to future bluff edge landscape improvements."

"5. It is recommended that repairs be made to the low timber wall located in the southern portion of the bluff opposite the observation deck and that an additional

timber (or equivalent) wall be constructed in the area of the sloughage below the central portion of the wood walkway.”

Although Recommendation #4 pertains only to bluff edge landscape improvements, it is not clear from the findings of the geotechnical report whether or not Recommendation #5 is for the purpose of providing stability to the proposed residence or the proposed swimming pool. In addition, the City’s permit did not address these latter findings of the geotechnical report, in particular, with regard to the recommendation to augment the lower bluff retaining structure.

As such, the appellants contend that the City did not adequately address whether or not the bluff retaining structures are considered shoreline protection devices. Pursuant to the City’s certified LCP, all proposed development on a coastal bluff (including swimming pools) must observe a required setback of 40 feet from the bluff edge unless a site-specific geology report is completed which makes findings that a lesser setback can be permitted. Specifically, Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs states the following:

- (f) All *development* including buildings, *accessory structures*, and any addition to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
 - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary *structures*, and no shoreline protection is required. Reductions from the 40-foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:
 - (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
 - (B) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
 - (C) An analysis of the potential effects of past and projected El Nino events on bluff stability;

(D) An analysis of whether this section of coastline is under a process of retreat.

- (2) Accessory *structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. Accessory *structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade, lighting standards, *fences* and wall, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, building, pools, spas, and upper *floor* decks with load-bearing support *structures*.

Under the LCP, swimming pools are not considered accessory structures, and therefore must observe the same setbacks that other structures are required to observe on a coastal blufftop site. However, the City allowed the new swimming pool to be located a distance of 25 feet from the bluff edge.

In addition, the City's certified Coastal Bluffs and Beaches Guidelines contain the above same citation but have a footnote at the end of Section 104.0143(f) which states the following:

[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.] [Emphasis added]

The appellants contend the City did not adequately address whether or not the upper bluff retaining structures are considered shoreline protection such that a less than 40 ft. blufftop setback may be permitted. If the timber retaining structures are stabilization or erosion control structures, the 25 ft. setback for the pool is inconsistent with the requirements of the certified LCP.

The appellant has also indicated that this particular area of La Jolla is subject to significant erosion and that there is an abundance of drainage pipes associated with older non-conforming residences that extend out onto the bluff face that exacerbate the erosion problems. The appellant has also stated that the rate of erosion for this shoreline is greater than average and, for this reason, it is even more important to assure that new development be sited the appropriate distance from the bluff edge to assure the long-term geologic integrity of the coastal bluffs.

The Commission's geologist and coastal engineer have reviewed all of the geotechnical/engineering information submitted by the City in its file and has determined that wooden structures on the bluff face are not shoreline protective devices that were installed due to excessive erosion to protect the existing home. As noted above, if there

is a seawall (or other stabilization/erosion control measure) that has been installed due to excessive erosion on a site, then the required geologic setback from the bluff edge is 40 feet. In this case, as it has been determined that the existing wooden structures on the bluff face are not currently performing as means to stabilize the foundation of the existing residence and swimming pool, nor is the new development on the site dependent on the retention of such structures for stability, the new development on the site is not required to be sited a minimum of 40 feet from the bluff edge. Thus, the proposed development may be sited between 25 to 40 feet from the bluff edge, consistent with the certified LCP if site-specific analysis demonstrates that it is safe to do so. Furthermore, given that the wooden structures are not shoreline protective devices necessary to provide stability to the site, it is not necessary that the structures be augmented, as recommended in one of the project geotechnical reports. Therefore, the appellant has not raised a substantial issue regarding the conformity of the setback for the pool with the policies of the certified LCP.

In addition, there are also conflicting bluff edge determinations in the City file from two different engineers. The setback for the development was calculated with reference to the more seaward of the two bluff edge calculations. This has the effect of allowing the pool and new house to be located closer to the sea than if the other bluff edge determination were used. The appellant further states that the bluff edge determination is subject to question due to the evidence that the site was previously graded, filled and planted with palm trees and other vegetation.

One of the determinations was by a coastal engineer and the other by a geologist. The coastal engineer's determination was based on a visual inspection only of the bluff and did not include any analysis relative to historic fill on the site. However, the geologist's determination went a step further and is characterized by City staff as a "geomorphic projection" of the previous bluff edge as it existed in the 1950's prior to grading that was performed when the original subdivision was created. The geologist's determination is also located about 8-10 feet seaward and downslope of the coastal engineer's determination. It was the geologist's bluff edge, the most seaward of the two, that the City used as a basis for determining the appropriate set back from the bluff edge.

The Land Development Code's Coastal Bluffs and Beaches Guidelines defines a coastal bluff that has been modified, such as is the subject site, as follows:

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. This may be determined by geotechnical investigation and/or historic documents such as photographs and maps.

With regard to this issue, the Commission's geologist has also determined that the most seaward bluff edge, as shown in the geotechnical report by the applicant's geologist, is

the accurate bluff edge. This is the bluff edge from which the geologic setbacks should be determined for the proposed swimming pool. Therefore, the appellant has not raised a substantial issue regarding consistency of the City's bluff edge determination with the standards of the certified LCP.

3. Public Views. The appellant contends that the proposed development is inconsistent with the view protection policies of the certified LCP. Specifically, the appellant contends that the City should have required a deed restriction for the side yard view corridor setback in order to assure that any proposed landscaping in this area does not exceed 3 ft. or higher. In addition, the appellant also states that the City did not address the potential visual impacts a 5-ft. high pool fence would have on public views and that the City should have performed a visual analysis to protect the viewshed.

Section 132.0403 of the Land Development Code states the following:

- (a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,
 - (1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and
 - (2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.
- (b) A visual corridor of not less than the side *yard* setbacks or more than 10 feet in width, and running the full depth of the *premises*, shall be preserved as a deed restriction as condition of Coastal Development permit approval whenever the following conditions exist [emphasis added]:
 - (1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and
 - (2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.
- (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[...]

- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

In addition, the City's certified implementation plan defines open fencing as "a fence designed to permit public views that has at least 75 percent of its surface area open to light." Given that the proposed development is located between the first coastal road and sea, it is subject to the above-cited LCP policies and ordinances that protect visual resources. In addition, the subject site is also located on a designated public view corridor, Midway Place.

The following policies of the certified La Jolla-La Jolla Shores LCP Land Use Plan are also applicable to the subject project.

"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.

The subject site is located at the southwest corner of Midway Place which is a public street that runs in an east-west direction and is perpendicular to the subject site. The Midway Place streetend is a dedicated blufftop view point which provides visual access to the ocean. Midway is also a designated public view corridor in the certified LUP. While traveling in a westerly direction along Midway, there are existing horizon ocean views looking west and there is a viewshed associated with the view corridor at the end of the street. All structural development (with the exception of the bluff retaining devices) is proposed to be removed from the subject property including some of the landscaping improvements in order to construct the new proposed development. Attached to the negative declaration are three photos of the streetend of Midway Place which were submitted by the project applicant. The photos show the view corridor superimposed over the existing and proposed development. The photos are in black and white, however, and do not clearly show the ocean in the photos. In the photo of the existing development there are several trees and other landscaping along the street

frontage adjacent to the Midway Place. The photo depicting the site with the new development shows all of the landscaping removed and the area looks more "open" in nature.

However, as noted above, the appellants contend that the City's action is inconsistent with the LCP because the City did not require that the landscaping or fencing in the side yards be required to be deed restricted pursuant to the requirements of the City's Land Development Code. In discussions with City staff, it was stated that this particular property does not contain "true side yards" due its orientation. In other words, because the subject site is a corner lot, it has more frontage along Calumet Avenue than it does on Midway Place. As such, the so-called "side yards" are actually on the west and east sides of the residence which are areas that would not provide views to the ocean. Instead, it is the north and south areas of the site that are the actual "side yards" that provide the potential views to the ocean. The City's analysis determined that the rear setback on the south side of the house (opposite and most distance from the Midway Street frontage) provided an opportunity for a view corridor from Calumet Avenue. However, the language above does not require only side yards be restricted. It says a visual corridor of not less than the side yard or more than 10 feet in width shall be provided. This does not mean only the true side yard needs to be addressed and protected. As such, the City required that the views in the south yard be maintained through Condition No. 30 of its coastal development permit. This condition was required to be recorded against the subject property through a deed restriction in the City's Condition No. 22 of the coastal development permit. Specifically, condition No. 30 required:

Landscape material shall be installed and maintained so as to assure that neither during the growing stages nor upon reaching maturity will such material obstruct views to the ocean from public vantage points. There shall be no landscaping that will grow to a height of more than three feet in the rear yard setback. Palm trees planted in the right-of-way to fulfill street tree requirements shall have a minimum brown trunk height of eight feet.

In addition, with regard to the proposed landscaping, as shown on the landscape plans, there appears to be both existing and proposed landscaping but the plans are not clear as to which plants that are remaining adjacent to the designated view corridor (north side yard) and along the rear portion of the site (south side yard) will be low level vegetation (3 ft. or lower). Also, at the northeast corner of the property adjacent to the designated view corridor, the landscape plans show a hedge for screening purposes that will be planted along this frontage extending in a westerly direction but not all the way to the street end. It remains unclear whether or not this landscaping will impede public views to the ocean along this designated public view corridor. However, as noted in the language of the LDC cited above, for those project sites between the first public road and sea that are located within a view corridor designated by the certified land use plan (as is the case with the subject proposal), the development should be designed to preserve, enhance or restore the designated public view. If the north side yard area is not maintained free of vegetation (no greater than 3 ft. in height, such that tall trees or a hedge is planted, views of the ocean along this corridor would be affected. As such, it appears that through

reducing the height of the vegetation in the north yard, views of the ocean would be enhanced. In addition, absent a deed restriction in the north side yard area for purposes of ensuring that public views in this location are maintained, the proposed development appears to be potentially inconsistent with the certified LCP and raises a substantial issue.

Another potential concern raised by the appellant is with regard to whether or not the City analyzed the potential view impacts associated with a proposed pool fence in the west side yard. However, neither the site plan or the permit and findings describe the proposed pool fence. Nonetheless, fences or other safety devices are required to be installed around new swimming pools pursuant to the Land Development Code. As noted in the LDC language cited above, only open fencing is permitted in the view corridor to enhance public views and to prevent a walled off effect. In the Coastal Overlay Zone of the City's LDC, open fencing must be at least 75 percent "open". Thus, it is important that fences in the side yard areas meet the requirements of the code for open materials to assure any existing public views are maintained and potentially enhanced. The appellant has therefore raised a substantial issue regarding conformity of the proposed project with the public view protection policies of the certified LCP.

STAFF RECOMMENDATION ON THE COASTAL PERMIT

The staff recommends the Commission adopt the following resolution:

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-LJS-02-68 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and 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 certified LCP and the public access policies of the Coastal Act. 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.

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 site plan that has been approved by the City of San Diego. Said plans shall be in substantial conformance with the plans submitted with this application by Kawasaki, Theilacker Ueno & Associates dated 5/11/01, except that they shall be revised to include the following:

- a. All existing and proposed accessory improvements shall be identified. All 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.
- b. No maintenance of the existing non-conforming wooden retaining structures on the bluff face shall be permitted. Removal of the structures shall be permitted as provided below.
- c. The property owner shall be responsible for monitoring the condition of the non-conforming wooden retaining structures over time and for removing all or portions of the structures when they can safely be removed without destabilizing the bluff, and/or prior to the structures becoming a public safety concern. Prior to removal of the structures, the property owner shall notify the Executive Director to confirm no mechanized equipment or placement of materials on the beach is necessary, and, thus, no permit amendment is required. When the structures are completely removed, the property owner shall install drought-tolerant, native landscaping on the bluff face to minimize instability.

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 legally required.

2. 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 Kawasaki, Theilacker Ueno & Associates, dated 5/11/01, except for the revisions cited below. The plans shall be revised to keep the north and south side yard areas clear to enhance public views from the street toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 10 ft. wide shall be preserved along both the north and south side yard areas. All proposed landscaping in the north and south side yard areas shall 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 non-invasive 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 side yard areas shall be composed of 75% open materials on top.

The permittee 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 legally required.

3. Runoff/Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a drainage plan, approved by the City, which shows that drainage and runoff from the roof, driveway and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration and/or percolation, prior to being conveyed off-site to storm drain(s).

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.

4. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, bluff retreat and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. Other Special Conditions of the CDP/SDP No. 1505. This action has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

6. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations.:

The Commission hereby finds and declares:

1. Project Description. Proposed is the demolition of an existing single family residence, swimming pool and other landscape features on a 0.30 acre blufftop lot. The existing swimming pool to be removed is located 12 ft. from the bluff edge at its closest point. The existing residence is located approximately 32 ft. from the bluff edge at its closest point. Also proposed is the construction of a new, approximately two-story, 5,790 sq.ft., single family residence with an attached two-car garage, pool, hardscape and landscape improvements. The new residence is proposed to be sited a distance of 40 ft. from the bluff edge and the new swimming pool is proposed to be sited a distance of 25 ft. from the bluff edge. The subject site is located at the southwest corner of Midway

Street and Calumet Avenue in the community of La Jolla in the City of San Diego. The residences along the seaward site of Calumet Avenue are situated on blufftop lots. There is a paper street (Sea Rose Lane) at the toe of the coastal bluff seaward of the site which provides lateral public access during low tide conditions. However, it is difficult to gain access to the beach due to the steepness of the bluff. The closest improved vertical accessway is two blocks to the north at the end of Bird Rock Avenue.

2. Shoreline Hazards. The proposed new single family residence and swimming pool on the subject site appears to be inconsistent with the City's certified LCP as it pertains to geologic blufftop setbacks. Specifically, the proposed new swimming pool will be located a minimum distance of 25 ft. from the bluff edge. The proposed residence will observe a minimum distance of 40 ft. from the bluff edge. As noted in the findings for Substantial Issue, there are existing timber retaining structures on the bluff face of the site. The structures are non-conforming structures which were placed on the bluff face by the previous owner absent a coastal development permit. The City allowed the structures to remain and deteriorate over time but conditioned the permit to prohibit the applicant from repairing or maintaining the structures.

The geotechnical report completed for the project makes findings that the swimming pool located at 25 ft. from the bluff edge will not have an adverse effect on the stability of the bluff provided proper drainage is provided for the deck areas. However, further recommendations contained in the report include the following:

"4. The existing timber retaining wall located on the bluff in the northern portion of the property should be properly maintained to reduce the potential for damage to future bluff edge landscape improvements."

"5. It is recommended that repairs be made to the low timber wall located in the southern portion of the bluff opposite the observation deck and that an additional timber (or equivalent) wall be constructed in the area of the sloughage below the central portion of the wood walkway."

Pursuant to the City's certified LCP, all proposed development on a coastal bluff must observe a required setback of 40 feet from the bluff edge unless a site-specific geology report is completed which makes findings that a lesser setback can be permitted. Specifically, Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs states the following:

- (g) All *development* including buildings, *accessory structures*, and any addition to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
 - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be

designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary *structures*, and no shoreline protection is required. Reductions from the 40-foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:

- (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
 - (E) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
 - (F) An analysis of the potential effects of past and projected El Nino events on bluff stability;
 - (G) An analysis of whether this section of coastline is under a process of retreat.
- (2) Accessory *structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. Accessory *structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade, lighting standards, *fences* and wall, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, building, pools, spas, and upper *floor* decks with load-bearing support *structures*.

In addition, the City's Coastal Bluffs and Beaches Guidelines, which are a component of the certified LCP, include the above same citation but also contains a footnote at the end of Section 104.0143(f) which states the following:

[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.] [Emphasis added]

In order to determine whether or not the swimming pool can be sited 25 feet from the bluff edge, it is necessary to determine if the structures on the bluff face are in fact, shoreline protection devices. The Commission's geologist and coastal engineer have reviewed the project geotechnical reports/engineering information and have concurred

that the retaining wall structures on the bluff face are not stabilization or erosion control structures (i.e., shoreline protection devices) that were installed due to excessive erosion. As such, the proposed swimming pool is not required to be sited a minimum distance of 40 feet from the bluff edge and is, in fact, consistent with the certified LCP provisions cited above.

As noted in the findings for Substantial Issue discussed earlier in this report, there are also conflicting bluff edge determinations for the subject project from two different engineers. The setback for the proposed development was calculated with reference to the more seaward of the two bluff edge calculations. This has the effect of allowing the pool and new house to be located closer to the sea than if the other bluff edge determination were used.

One of the determinations was by a coastal engineer and the other by a geologist. The coastal engineer's determination was based on a visual inspection only of the bluff and did not include any analysis relative to historic fill on the site. However, the geologist's determination went a step further and is characterized by City staff as a "geomorphic projection" of the previous bluff edge as it existed in the 1950's prior to grading that was performed when the original subdivision was created. The geologist's determination is located about 8-10 feet further seaward than the coastal engineer's determination. Due to this conflicting information, the Commission's geologist has reviewed the geotechnical reports for the subject project and other materials. The Commission's geologist has concurred that it is the most seaward of the two bluff edge determinations that is the correct bluff edge and the location from where all blufftop setbacks should be measured from.

The Land Development Code's Coastal Bluffs and Beaches Guidelines defines a coastal bluff that has been modified, such as is the subject site, as follows:

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. This may be determined by geotechnical investigation and/or historic documents such as photographs and maps.

With regard to this issue, the Commission's geologist has also determined that the most seaward bluff edge, as shown in the geotechnical report by the applicant's geologist, is the accurate bluff edge. This is the bluff edge from which the geologic setbacks should be determined for the proposed swimming pool.

With regard to the existing non-conforming bluff retaining structures on the bluff face, the applicant has indicated that there is concrete supporting these wooden bluff structures but it is unknown whether or not there are any concrete footings supporting them. The former property owner installed the structures by excavating or drilling holes in the bluff

face and then set the vertical railroad tie member in and cemented it in and put horizontal members up against that. In the review of the subject project at the City, the City's geologist made a determination that the removal of the bluff structures could cause damage to the bluff face. The structures are visually obtrusive and alter the character of the natural bluff face. They also pose a potential hazard to people on the beach should they deteriorate and fall in the future. The Commission's coastal engineer has reviewed the project and has determined that the structures may damage the bluff if removed, but instead states that the wooden bluff retaining structures should be permitted to be abandoned in place and that they not be maintained. Therefore, Special Condition #1 requires that the property owner shall be responsible for monitoring the condition of the non-conforming wooden retaining structures over time and for removing all or portions of the structures when they can safely be removed without destabilizing the bluff, and/or prior to the structures becoming a public safety concern. In addition, the condition requires that prior to removal of the structures, the property owner shall notify the Executive Director to confirm no mechanized equipment or placement of materials on the beach is necessary, and, thus, no permit amendment is required. When the structures are completely removed, the property owner is required to install drought-tolerant, native landscaping on the bluff face to minimize instability.

Also, due to the inherent risk of shoreline development, Special Condition #4 requires the applicant to waive liability and indemnify the Commission against damages that might result from the proposed development. Therefore, as conditioned, the proposed project is found consistent with the shoreline hazard policies of the certified LCP.

3. Public Views. Landscaping and fencing in the north and south side yard areas of the house have the potential to obstruct public views of the ocean. Section 132.0403 of the Land Development Code states the following:

- (a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,
 - (1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and
 - (2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.
- (b) A visual corridor of not less than the side *yard* setbacks or more than 10 feet in width, and running the full depth of the *premises*, shall be preserved as a deed restriction as condition of Coastal Development permit approval whenever the following conditions exist [emphasis added]:
 - (1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and

- (2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.
- (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[...]

- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

In addition, the City's certified implementation plan defines open fencing as "a fence designed to permit public views that has at least 75 percent of its surface area open to light." Given that the proposed development is located between the first coastal road and sea, it is subject to the above-cited LCP policies and ordinances that protect visual resources. In addition, the subject site is also located on a designated public view corridor, Midway Place. The certified La Jolla-La Jolla Shores LCP Land Use Plan also contains numerous policies addressing the protection of public views toward the ocean and these are cited in the Substantial Issue portion of this staff report on pages 1-12.

The subject site is located at the southwest corner of Midway Place and Calumet Avenue. Midway Place is a public street that runs in an east-west direction and is perpendicular to the subject site. As noted in the certified La Jolla-La Jolla Shores LCP, the Midway Place streetend is a dedicated blufftop view point which provides visual access to the ocean. Midway is also a designated public view corridor in the certified LCP. While traveling in a westerly direction along Midway, there are existing horizon ocean views looking west and there is a viewshed associated with the view corridor at the end of the street. All structural development (with the exception of the bluff retaining devices) is proposed to be removed from the subject property including some of the landscaping improvements in order to construct the new proposed development.

The subject site is a corner lot, with more frontage along Calumet Avenue than on Midway Place. As such, the so-called "side yards" (relative to necessary setbacks) are actually on the west and east sides of the residence which are areas that would not provide views to the ocean. Instead, it is the north and south areas of the site that are the actual "side yards" that provide the potential views to the ocean. Specifically, the south side yard is 13 feet wide and the north side yard is 15 feet wide.

In review of the LDC language, the LCP does not state that "side yards" need to be restricted, only that view areas that are at least as wide as the distance required for sideyard setbacks but not wider than 10 ft. be maintained. In addition, with regard to the proposed landscaping, as shown on the landscape plans, there appears to be both existing and proposed landscaping but the plans are not clear as to which plants that are remaining adjacent to the designated view corridor (north side yard) and along the rear portion of the site (south side yard) will be low level vegetation (3 ft. or lower). Also, at the northeast corner of the property adjacent to the designated view corridor, the landscape plans show a hedge for screening purposes that will be planted along this frontage extending in a westerly direction but not all the way to the street end. It remains unclear whether or not this landscaping will impede public views to the ocean along this designated public view corridor. However, as noted in the language of the certified LCP cited above, because the subject site is located between the first public road and sea and it is also designated as public view corridor in the certified land use plan, the proposed development is required to preserve, enhance or restore the designated public view. If the north and south side yard areas are not maintained free of vegetation (no greater than 3 ft. in height), such that tall trees or a hedge is planted, views of the ocean along this corridor would be affected. As such, restricting landscaping to low-level vegetation in the north and south yards, potential views of the ocean will be enhanced. In addition, as noted above, only open fencing is permitted in the side yard setback areas to enhance public views and to prevent a "walled off" effect. In the Coastal Overlay Zone of the City's LDC, open fencing must be at least 75 percent "open".

Regardless whether the "true" side yard is along the east/west frontage of the property or the north/south frontage, the intent of the above-cited language in the certified LCP is to enhance or maintain any potential public views across a property between the first coastal road and sea. If the view is provided in the north or south yard as opposed to the east or west side yard, then this is the view that should be protected. Therefore, consistent with the certified LCP, Special Condition #2 requires the north and south side yard areas be restricted for purposes of ensuring public views in this location are maintained. The condition requires that the proposed fence in the north yard be composed of open materials to assure any existing public views are maintained and potentially enhanced. Special Condition #6 requires that the permit and findings be recorded to let future property owners know of the restrictions placed on this permit.

In addition, the newly proposed two-story residence will be visually compatible in scale and size with the character of the surrounding community. As conditioned, the project is consistent with the certified LCP.

4. Public Access. 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.

Upon reliance of these policies of the Coastal Act, the certified La Jolla-La Jolla Shores LCP contains policies to protect public access as well which include 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 City's beach and parkland along the shoreline should be expanded wherever possible."

"Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible." [emphasis added]

"Vertical Access

...In all new development between the nearest coastal roadway and the shoreline the City will make a determination of the need to provide additional vertical access easements based upon the following criteria:

[...]

e) public safety hazards and feasibility of reducing such hazards. [...]"

The subject site is located on a blufftop property at the southwest corner of Calumet Avenue and Midway Street. Sea Rose Lane, a paper street, is located at the toe of the coastal bluff. There is no improved accessway at the streetend of Midway Street and the bluffs are steep and dangerous. Adequate vertical access exists in the area and access at this location is not necessary. The safest vertical access to the ocean is two blocks to the north at the streetend of Bird Rock Avenue which contains a vertical access stairway. In addition, approximately three lots south of the subject site, adjacent to Calumet Park, the bluffs are lower in height and access to the beach below is possible. However, the shoreline is predominantly a rocky one. In summary, the proposed project will not adversely affect public access opportunities in this area and is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

5. Water Quality. The certified La Jolla-La Jolla Shores LCP Addendum contains the following policy:

"The ocean and submerged lands within the jurisdictional limits of San Diego should be preserved in their natural state. Plant and marine life in tidepools and offshore waters should be protected from environmental degradation."

The proposed development will occur atop a coastal bluff adjacent to the ocean. Associated with the proposed development is grading consisting of approximately 600 cy. of soil excavation and 100 cy. of fill. Potential impacts to water quality may occur as a result of sedimentation caused by erosion, runoff carrying contaminants and direct discharge of other pollutants. Drainage directed towards the bluff could also result in impacts to water quality. However, in this particular case, all surface and urban runoff will be directed to the street into the City's storm drain system. In order to further reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, Special Condition #3 has been attached which requires submittal of a drainage plan which documents that runoff from the roof, driveway and other impervious surfaces will be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing on-site runoff through landscaping for filtration of on-site runoff in this fashion is a well-established Best Management Practice for treating runoff from small developments such as the subject proposal. As conditioned, the final drainage plan will serve to reduce the potential for impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project is consistent with policies addressing water quality of the certified LCP.

6. 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. In this case such a finding can be made.

The subject site is zoned RS-1-7 and is designated for residential use in the certified La Jolla Land Use Plan. The proposed existing single family residence is consistent with that zone and designation. The subject site is also located within the Sensitive Coastal Bluffs overlay zone of the City's implementation plan. The proposed residence, as conditioned, can be found consistent with the ESL overlay.

The certified La Jolla-La Jolla Shores LCP Addendum contains policies which address shoreline protective devices, 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 swimming pool, it has been documented that the proposed development will not be dependent on the existing timber retaining structures on the bluff face seaward of it. 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 side yard setback (south and north side yards) be low level vegetation so as to not obstruct views toward the ocean in the side yard setback areas, is the proposed development consistent with the public access policies of the Coastal Act and the certified LUP. In summary, the proposed development, as conditioned, is consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act.

7. 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 geologic hazard, visual resource and public access and recreation policies of the Coastal Act. Mitigation measures, include conditions addressing geologic setback, non-maintenance, monitoring and future removal of the wooden bluff retaining structures from the bluff face, and landscaping and fencing to enhance public views to the ocean, 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 is consistent with the requirements of the Coastal Act to conform to CEQA.

SITE

557 - 60
590

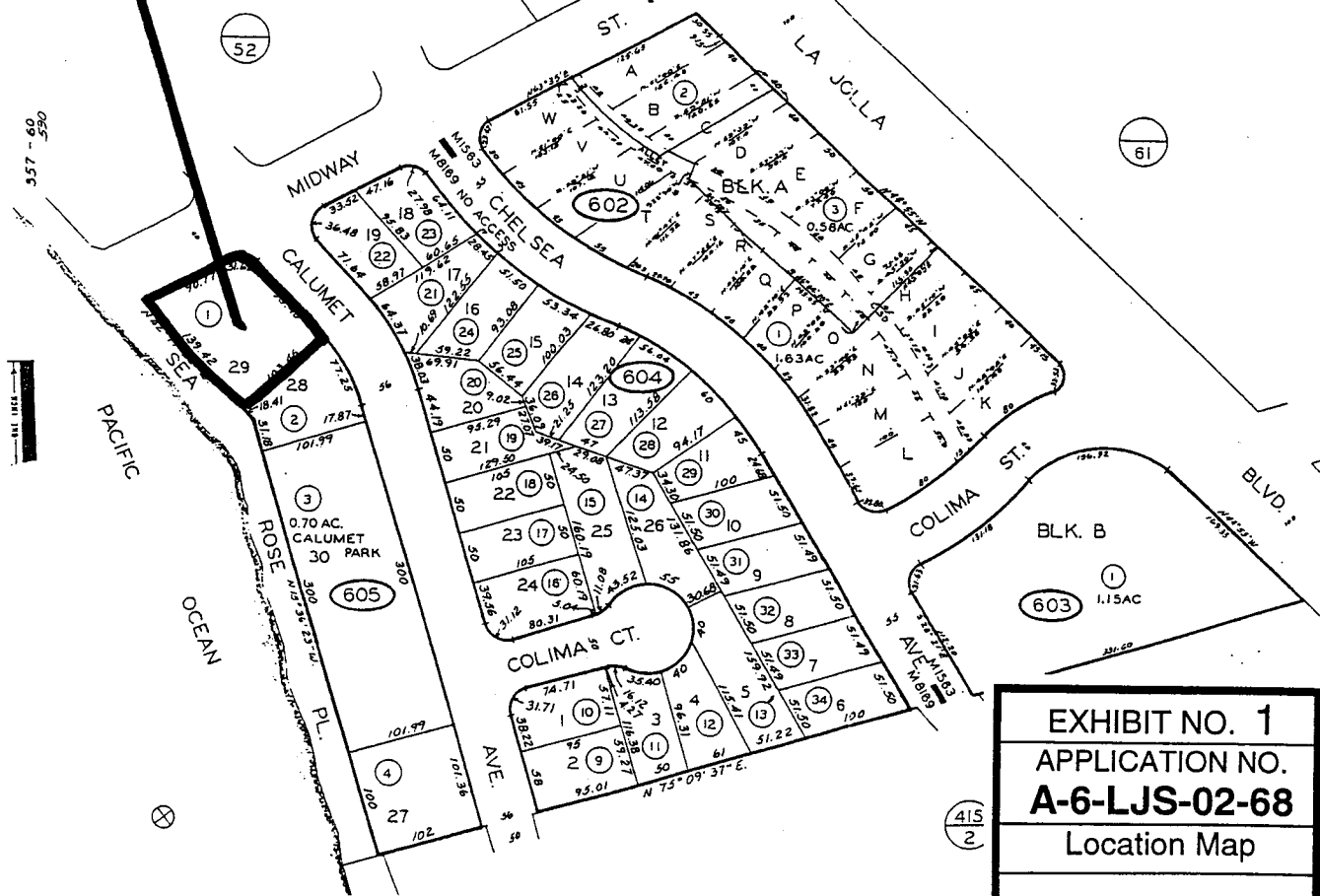
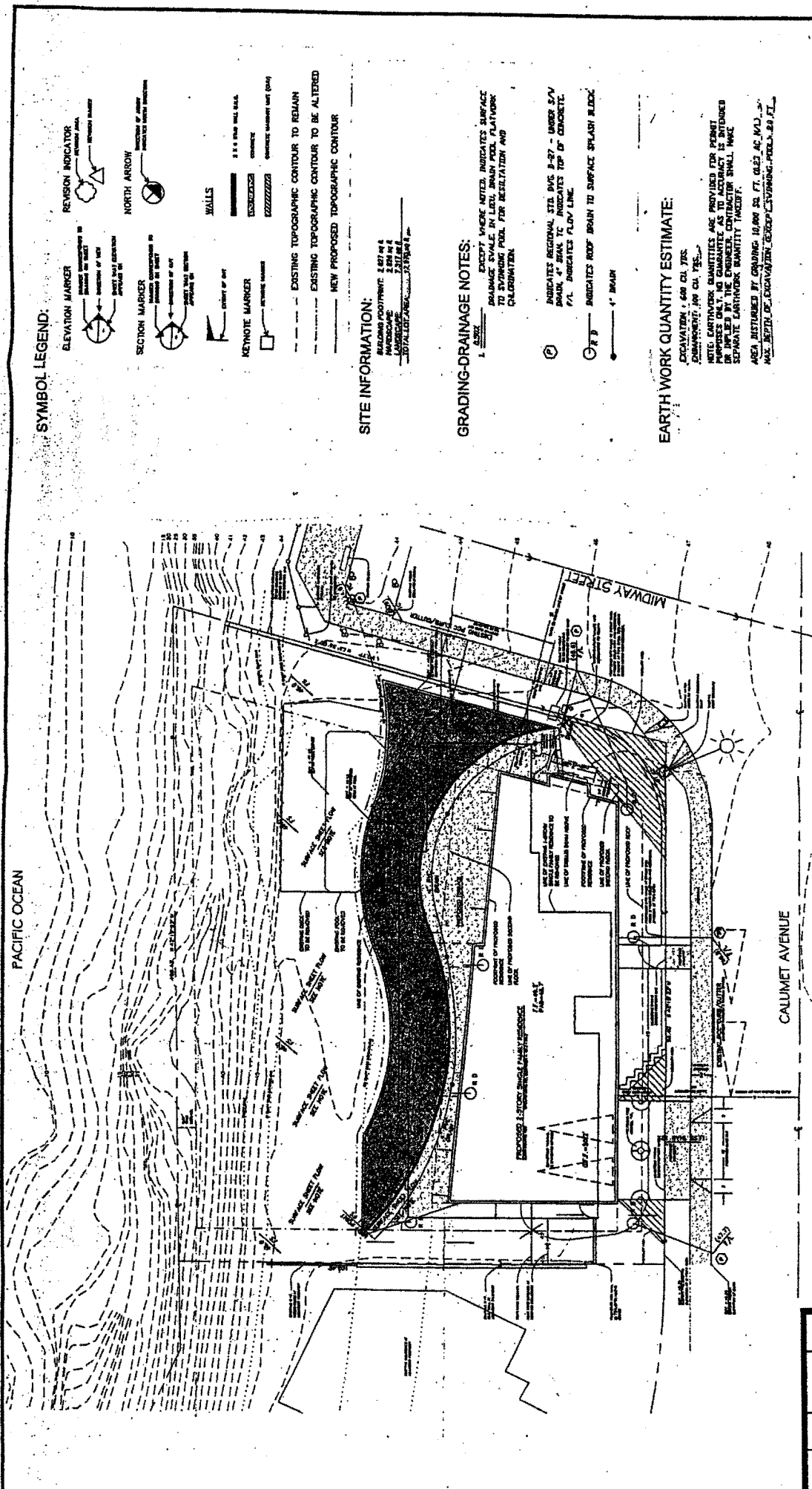


EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-02-68
Location Map



SYMBOL LEGEND:

- ELEVATION MARKER: ELEVATION MARKER
- SECTION MARKER: SECTION MARKER
- WALLS: WALLS
- KEYNOTE MARKER: KEYNOTE MARKER
- REVISION INDICATOR: REVISION INDICATOR
- NORTH ARROW: NORTH ARROW
- EXISTING TOPOGRAPHIC CONTOUR TO REMAIN: EXISTING TOPOGRAPHIC CONTOUR TO REMAIN
- EXISTING TOPOGRAPHIC CONTOUR TO BE ALTERED: EXISTING TOPOGRAPHIC CONTOUR TO BE ALTERED
- NEW PROPOSED TOPOGRAPHIC CONTOUR: NEW PROPOSED TOPOGRAPHIC CONTOUR

SITE INFORMATION:

BUILDING FOOTPRINT: 2,807 sq. ft.
 TOTAL AREA: 12,895 sq. ft.
 TOTAL LOT AREA: 12,895 sq. ft.

GRADING-DRAINAGE NOTES:

- EXCEPT WHERE NOTED, INDICATES SURFACE DRAINAGE SLOPE IN FEET PER HUNDRED FEET TO SYMBOLIC POOL FOR REGULATION AND CALCULATIONS.
- INDICATES REGIONAL JTS. DIVE 9-27 - UNDER S/V BRAIN, 4" DIA. TO INDICATES TOP OF CONCRETE. P/L INDICATES FLOW LINE.
- INDICATES ROOF DRAIN TO SURFACE DRAINAGE BLOCK.
- 4" DIA.

EARTH WORK QUANTITY ESTIMATE:

EXCAVATION: 400 cu. yds.
 CONCRETE: 100 cu. yds.
 NOTE: EARTHWORK QUANTITIES ARE PROVIDED FOR PERMIT PURPOSES ONLY. NO GUARANTEE AS TO ACCURACY. TO BE USED BY THE ENGINEER. CONTRACTOR SHALL MAKE SEPARATE EARTHWORK QUANTITY TAKEOFF.
 AREA DISTURBED BY GRADING: 10,000 sq. ft. (0.23 AC. +/-)
 MAX. DEPTH OF EXCAVATION: 3.00' (3.00' +/-)



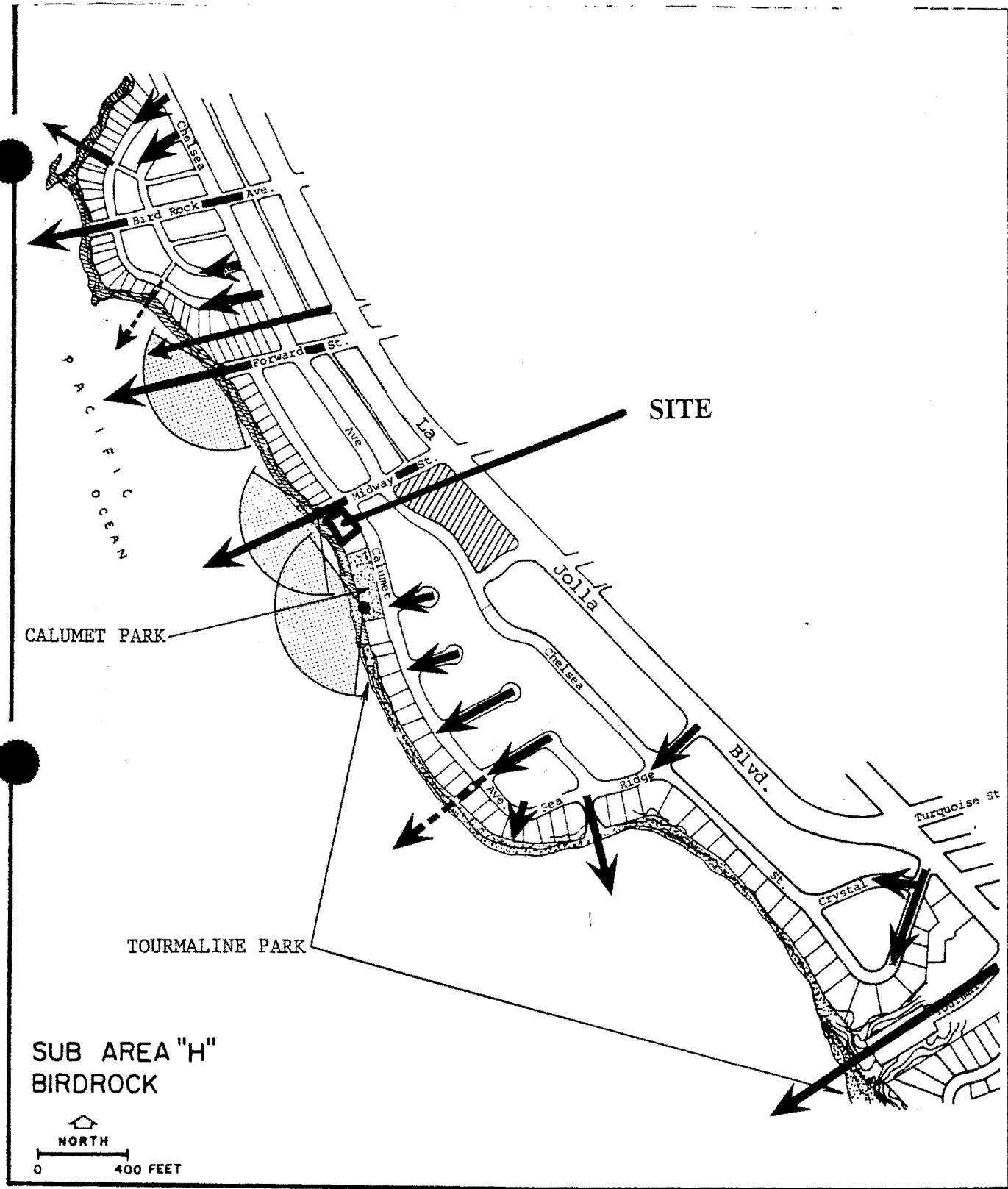
Figure **2**

(238-1686) 12-5-2001 bl.

41-0495

N
 Analysis Section
 GO • DEVELOPMENT REVIEW

EXHIBIT NO. 2
 APPLICATION NO.
 A-6-LJS-02-66
 Site Plan



La Jolla • La Jolla Shores

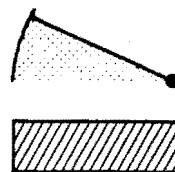
LOCAL COASTAL PROGRAM • VISUAL ACCESS



CITY OF SAN DIEGO
PLANNING DEPARTMENT

←--- POTENTIAL VISUAL ACCESS

← VISUAL ACCESS CORRIDOR
(existing)



MAJOR VISTA P

HIGH POTENTIAL
ACCESS IN COM
DEVELOPMENT

EXHIBIT NO. 3

APPLICATION NO.

A-6-LJS-02-68

Visual Access Map
from Certified LCP



California Coastal Commission

SHEET TITLE:
 PHOTOGRAPHIC ANALYSIS
 FIGURE A-1: VIEW CORRIDOR DOWN
 MIDWAY STREET WITH EXISTING
 DEVELOPMENT



SHEET TITLE:
 PHOTOGRAPHIC ANALYSIS
 FIGURE A-2: VIEW CORRIDOR DOWN
 MIDWAY STREET WITH PROPOSED
 DEVELOPMENT SUPERIMPOSED OVER
 EXISTING DEVELOPMENT



SHEET TITLE:
 PHOTOGRAPHIC ANALYSIS
 FIGURE A-3: VIEW CORRIDOR DOWN
 MIDWAY STREET WITH PROPOSED
 DEVELOPMENT



PROJECT /
 S.
 S.
 PROJECT NA
 PC



PREPARED BY:
 NAME: WALLAC
 ADDRESS: T
 S
 PHONE: (C
 FAX: (C



VISUAL ANALYSIS

Environmental Analysis Section
 CITY OF SAN DIEGO • PLANNING & DEVELOPMENT REVIEW

EXHIBIT NO. 4
 APPLICATION NO.
A-6-LJS-02-68
 View Analysis
 applicant contained
 in Negative
 Declaration

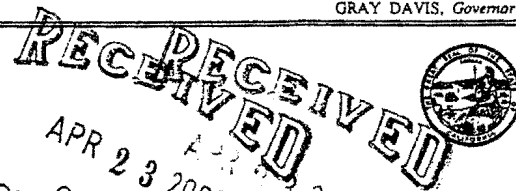
CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

LA JOLLA TOWN COUNCIL
7734 HERSCHEL AVE
LA JOLLA, CA 92037 (858) 454-1444
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed

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

2. Brief description of development being appealed: COP/SDP To demolish existing s.f.d/construct a new 2 story sfd and pool

3. Development's location (street address, assessor's parcel no., cross street, etc.): 5490 Calumet Ave. Cross Street: Midway St.

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-02-68

DATE FILED: 4/23/02

DISTRICT: San Diego

EXHIBIT NO. 5
APPLICATION NO.
A-6-LJS-02-68
Appeal

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

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

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

6. Date of local government's decision: March 13, 2002

7. Local government's file number (if any): Project No. 1505

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

WALLACE E. CUNNINGHAM, INC., DAVID UNDERWOOD
1126 WEST ARBOR DR.
SAN DIEGO, CA 92103

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

- (1) POSEIDON POINT LLC.
402 W. BROADWAY, STE. 2175
SAN DIEGO, CA 92101
- (2) BENJAMIN HILDYARD
5550 CALUMET AVE.
LA JOLLA, CA 92037
- (3) GEO. WALTON HALL
316 BANDERA ST.
LA JOLLA, CA 92037
- (4) DONALD SCHMIDT
5536 CALUMET AVE.
LA JOLLA, CA 92037

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.

Please see attached sheets

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

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

Please see attached sheets.

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

SECTION V. Certification

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

Signed James H. Pearson for Devin Gabsch
Appellant or Agent

Date 4-23-02

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

Signed _____
Appellant

Date _____



POSEIDON POINT LLC., PROJECT 1505: REASONS FOR APPEAL
APRIL 23, 2002

1. EXEMPTION FOR A POOL FROM THE 40' SETBACK LINE SHOULD NOT BE GRANTED ON SITES WITH EXISTING SHORELINE PROTECTION DEVICES. (LDC 143.0143(a), (f), and (g). The City of San Diego's approval would allow the applicant an exemption from the 40 foot setback requirement for a swimming pool on a property with stacked timber retaining walls on both north and southwest portions of the bluff, as well as below the center portion of the wood walkway. Evidence of sloughing, subsidence of the bluffs, and shoring up of the bluffs was presented during the public review of the project through Geology Reports from Michael Hart, Engineering Geologist, and historic photographs in those reports, as well as through submittals and testimony by members of the public.

LAND DEVELOPMENT MANUAL SECTION II C., P. 5, SPECIFICALLY STATES: "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' distance to the coastal bluff edge. Since the instability of the coastal bluff necessitated the installation ..., the coastal bluff would not be considered stable enough to support development within the 40' bluff edge setback."

No evidence was presented by either applicant or City as to whether, or under what circumstances, the retaining walls were permitted and/or installed. In fact, in apparent contradiction to 143.0143 (a) and (g), the applicant's geologist recommends that the timber walls on the bluff face be maintained and improved, with another timber (or equivalent) wall to be constructed below the central portion of the wood walkway.

2. BLUFF EDGE DETERMINATION: Historic evidence indicates that prior grading and installation of palm trees and other vegetation, as well as subsequent fill on the site, raise credible questions as to whether the location of the bluff edge as a step-like feature accurately addresses past grading that extended down to the beach below. Soil samplings in the geology report for the proposed project show the likelihood of fill soil below the building pad. In addition, a prior bluff edge determination for the project, (not found in the City's file submittal to the Commission), identified the bluff edge in a location that apparently would not support the current proposal.



POSEIDON POINT LLC. REASONS FOR APPEAL, APRIL 23, 2002
Page 2

3. VISUAL ACCESS DEDICATION: Under the City's Land Development Manual Section II E., page 6, it appears that the City should have required a deed restriction for the sideyard view corridor setback area preservation, in order to maintain proposed landscaping at three feet height or lower. Nor did the City address the potential visual impact or require a 5' pool fence, which would be required by Code along the west side of the pool. A visual analysis from Midway St. through the northerly fence and across the westerly fence could have been required to verify protection of the identified viewsheds.

Based on the lack of conformance with the City's Land Development Code, as referenced above, and the La Jolla Land Use Plan in regard to the above points, we respectfully request the Commission to support the appeal, which the trustees of the La Jolla Town Council approved at their April 11 meeting for submittal through direct appeal to the Commission.

Sincerely yours,

Orrin Gabsch By Direction J.A.P.

Orrin Gabsch, President

**RECEIVED**

MAY 17 2002

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

POSEIDON POINT LLC, A6-LJS-02-050
CLARIFICATIONS OF REASONS FOR APPEAL
MAY 16, 2002

Pursuant to a meeting with City of San Diego staff, as well as a more extensive review of the public record, questions have arisen, based on Code interpretations by the City of San Diego, which we believe need additional clarifications in our reasons for appeal.

1. SHORELINE EROSION CONTROL DEVICES: WHAT QUALIFIES?

According to City staff, there are no "stabilization/erosion control measures" on site because timber retaining walls and a 1985 green concrete retaining wall do not qualify as such. Therefore, according to the City, the pool and principal structure would not have to be located behind the 40' geologic setback line—the applicant merely chose to site the house at the 40' line. The City further stated that the upper bluff erosion devices on the site, and the sloughing and subsidence they apparently hold back, are merely a landscaping issue, since the lower bluff had been determined to be stable.

According to City staff, a 40' geologic setback requirement is required only for seawalls, which have been permitted by the California Coastal Commission, with findings of fact that the device was essential to preserve a principal structure in imminent danger of falling into the sea. Devices, including gunnited bluffs, retaining walls, riprap, revetments, etc., which were installed without a Commission permit would be reviewed by the City for site stability under an after-the-fact permit when new development is proposed. In this case, the City's interpretation, in apparent contradiction to LDC provisions cited in our previous Reasons for Appeal, could allow both the principal structure and pool to be located at the 25' setback line.

2. CONFLICTING BLUFF EDGE DETERMINATIONS:

There have been two bluff edge determinations made for the project: one by Coastal Engineer David Skelly for the 5-11-01 plan submittal, and another by geologist Michael Hart, pursuant to July 25, 2001, direction by City Geologist Rob Hawk to identify the "natural" bluff edge, which was subsequently shown in the 11-2-01 and 12-19-01 plans. The Commission file contains only the 12-02-01 plans.

While Mr. Skelly's determination appears to meet the Code and Land Development Manual Section II descriptions and diagrams that address a Simple Step Bluff edge determination, the 11-9-01 Hart determination is characterized by City staff as a "geomorphic projection" of the previous bluff edge as it existed in the 1950's prior to grading done when the subdivision lots were created. The Hart determination is located approximately 8-10 feet seaward and downslope of the Skelly determination. If the site is stable to 25', the proposed pool would not be possible under the Skelly determination, but would under Mr. Hart's. Under Mr. Hart, accessory structures installed within 5' of the bluff edge would be located, under Mr. Skelly's view, on the bluff face. We urgently request clarification.

EXHIBIT NO. 6
APPLICATION NO.
A-6-LJS-02-68
Letter from Appellant

Poseidon Point, LLC, Reasons for Appeal Clarifications

3. VISUAL ACCESS DEDICATION:

The certified La Jolla-La Jolla Shores LCP states "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**." (Emphasis added). The proposed project would allow landscaping in the public Right of Way without a deed restriction to regulate its height. Midway St. is a 60' dedicated City ROW, which is designated in the La Jolla LUP as a public view corridor with associated viewsheds. Although the street address for the project is Calumet Ave., the City has determined Midway Street to be a front yard under city zoning for corner lots, and has therefore not required deed restricted landscape control, since the LDC protects "side yard setbacks." Without a deed restriction, the City's interpretations do not appear consistent with the certified Land Use Plan, with LDC 132.0403, or with Section 30251 of the Coastal Act.

4. CUMULATIVE IMPACTS:

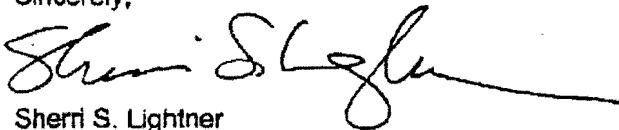
Under the City's interpretations, only those applicants who have installed erosion control devices the right way, i.e., through a Coastal Commission permit, would have to observe the 40' setback line. Those who have installed devices without permits could be rewarded by being allowed development to the 25' line, currently illustrated in other pipeline projects.

In addition, the City's geomorphic bluff edge determination formula, by harking back to previously existing landforms, would allow development to reach further seaward and downslope than would be allowed under the previously cited sections of today's Land Development Code and Manual.

Regarding visual access, there are many corner lots along public view corridors in the La Jolla plan area. Under the City's interpretation, there would be at least the likelihood of inconsistent application of vegetation height controls necessary to protect and improve existing visual access along the length of the ROW. We suggest that protection of the view corridor and viewsheds should apply within any setback along the ROW view corridor whether front, rear, or side yard. Otherwise, zoning would defeat the certified LUP.

In light of the possible detrimental effects, we urgently request the Commission to support the Staff recommendation for Substantial Issue in order that these issues might be clarified at the earliest opportunity. Thank you for your consideration.

Sincerely,



Sherri S. Lightner
President

cc: LJTC Files

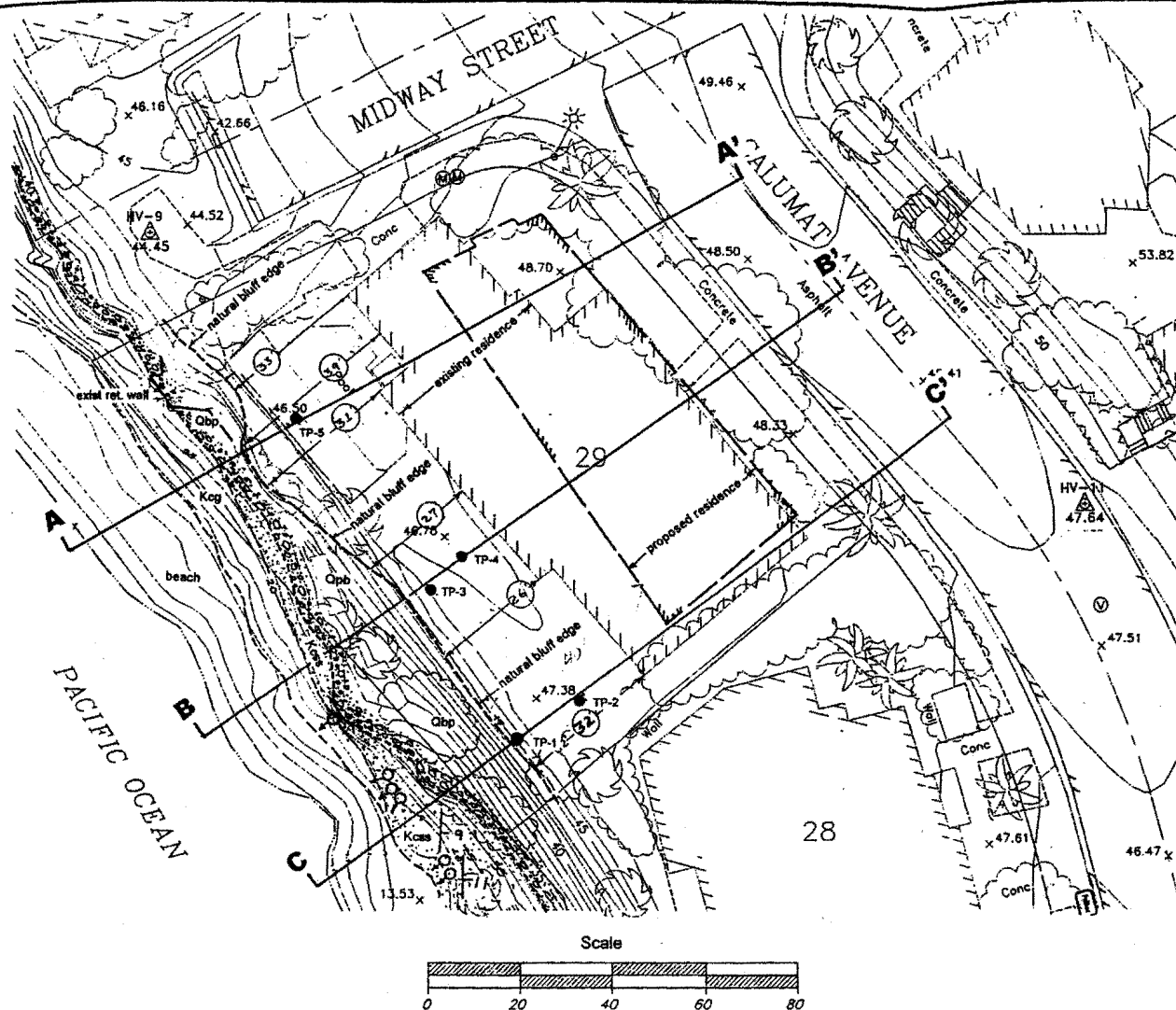
EXHIBIT NO. 7

APPLICATION NO.

A-6-LJS-02-68

Bluff Edge

California Coastal Commission



LEGEND

- Qaf Fill
- Qbp Bay Point Formation
- Kcss Cabrillo Formation (sandstone and shale)
- Kcg Cabrillo Formation (conglomerate)
- Seep
- Strike and dip of bedding
- Location of Cross Section

GEOLOGIC MAP AND SITE PLAN, 5490 CALUMET AVENUE

SCALE:	APPROVED BY:	DRAWN BY:
DATE:		REVISED:
<p>MICHAEL W. HART, ENGINEERING GEOLOGIST P.O. BOX 261227 SAN DIEGO CALIFORNIA 92196 (858) 578-4672</p>		
DRAWING NUMBER		Figure 1