

CALIFORNIA COASTAL COMMISSION

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



Mon 8a

Staff: LRO-SD
Staff Report: 3/14/02
Hearing Date: 4/8-12/02

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

RECORD PACKET COPY

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-99-147

APPLICANT: Stephen Rutherford

AGENT: Diane Abbitt

PROJECT DESCRIPTION: Remodelling and construction of an approximately 1,546 sq.ft. one-story addition to an existing 2,873 sq.ft., one-story single-family residence on a 16,480 sq.ft. oceanfront lot.

PROJECT LOCATION: 7080 Neptune Place, La Jolla, San Diego, San Diego County.
APN 351-210-02

APPELLANTS: Commissioners Sara Wan and Christine Kehoe

STAFF NOTES:

The Commission found Substantial Issue on this appeal at its April 6, 2000 meeting. The applicant requested a postponement of the de novo permit in order to have more time to prepare and submit new geologic information to Commission staff. Since that time, the applicant has provided updated geologic information, most recently on January 22, 2002.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project subject to several special conditions. The primary issue raised by the proposed development relates to the seaward addition and whether or not it will be safe from erosion. The proposal involves remodelling and making several additions to an existing beachfront home. One portion of the project involves an addition to the home that will extend seaward of the existing residence and to within four feet of the western property line and within 60 feet of the beach. Based on their geotechnical reports, the applicants have asserted that the proposed seaward addition will be safe for its anticipated life from a geologic standpoint.

The Commission's staff geologist concurs with that conclusion. However, the submitted technical reports also acknowledge that some damage to the residence and proposed addition could occur in the future due to waves and flying rocks. Thus, should the home/addition be threatened in the future, the proposed seaward addition, which is proposed very close to the western property line, would not leave sufficient room on private property to construct shoreline protection. However, based on the submitted geotechnical information, the erosion rate for this particular site is extremely low due to several offshore reefs which significantly reduce the wave energy reaching the beach. As such, it is highly unlikely that a shoreline protection device would ever be needed. On a worst case scenario, the toe of the coastal slope fronting the residence may erode or wash away but the applicants have indicated that in lieu of construction of a shoreline protective device, they propose instead to replace the artificial fill at the toe of the slope. Furthermore, the applicants have proposed to waive their rights to future shoreline protection with this proposal through recordation of a legal instrument. Therefore, staff is recommending that the Commission approve the development, with several special conditions.

Other concerns are related to protection of public views. Public view concerns are addressed through the requirement to deed restrict the side yards such that only low-level landscaping and open fences are permitted. With the attached conditions, the project can be found consistent with the certified LCP and public access policies of the Coastal Act.

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Land Use Plan; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Planning Commission dated 11/24/99; CDP #6-88-141; Report of Limited Soil Investigation, Geologic Reconnaissance, Beach Erosion and Wave Run-Up Study by Geotechnical Exploration, Inc. dated 1/8/99; Updates to geotechnical reports by Geotechnical Exploration, Inc. dated 3/23/99 & 7/22/99; Addendum to Report of Limited Soil Investigation by Geotechnical Exploration, Inc. dated 4/13/00; and, Forecast of Shoreline Erosion by Geotechnical Exploration, Inc. dated 5/25/00 and updated 7/20/01 and 1/22/02.

PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

- I. **MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-LJS-99-147 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Local Coastal Program and with the public access and public recreation policies of Chapter 3 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.

The permit is subject to the attached standard conditions.

III. Special Conditions.

The permit is subject to the following conditions:

1. No Future Bluff or Shoreline Protective Device.

- A(1) By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. *A-6-LJS-99-147* including, the proposed 784 sq.ft. family addition to the existing residence and its pier foundation, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2) By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the proposed 784 sq.ft. family room addition to the existing residence and its pier foundation, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose

of the material in an approved disposal site. Such removal shall require a coastal development permit.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded, free of all prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Erosion of Slope Seaward of Residence. In the event that the toe of the slope seaward of the residence erodes as a result of storm or wave action, the applicant may apply for a coastal development permit to repair the slope with additional fill materials. However, replacement of non-native landscaping shall not be permitted.

3. Assumption of Risk.

A. By acceptance of this permit, the applicant, on behalf of itself and its successors and assigns, acknowledges and agrees (i) that the site may be subject to hazards from storm waves 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.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final drainage and runoff control plan to the Executive Director for review and written approval. The plan shall document that the runoff from the roof, driveway and other impervious surfaces will be directed into

landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site in a non-erosive manner.

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.

5. Landscape Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final landscape plans approved by the City of San Diego to the Executive Director for review and written approval. The plans shall be in substantial conformance with the conceptual landscape plans as submitted by Jay Brian Evarts Architect, dated 3/31/99, except as this condition requires it to be revised. The plans shall be revised to include the following:

- a. A plan showing the type, size, extent and location of all proposed landscaping on the site, such that all new landscaping in the side yards will not exceed a height of three feet above street elevation to preserve views from the street toward the ocean.
- b. Drought tolerant native or non-invasive plant materials shall be utilized.
- c. A written commitment by the applicant that all plants on this site will be maintained to assure that neither during growing stages nor upon reaching maturity will such plants exceed three feet in height above street elevation or obstruct views from the street toward the ocean, and will be trimmed whenever necessary to ensure continued compliance with the applicable landscape requirements.
- d. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the

original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the landscape 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.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the above requirements. The restriction shall provide that landscaping shall be implemented in accordance with Special Condition #5 and consistent with those plans approved with CDP #A-6-LJS-99-147. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. City of San Diego Sensitive Coastal Resource Permit No. 98-0294. This action has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

IV. Findings and Declarations.

1. Project Description/History. Proposed is a remodel and additions to an existing one-story, 2,873 sq.ft. single family residence situated on a 16,480 sq.ft. oceanfront site. The proposed additions will total approximately 1, 546 sq.ft. resulting in a one-story, 4,419 sq.ft. single family residence. The additions consist of a 784 sq.ft. family room addition including bath at the northwest corner of the residence, a 125 sq.ft. kitchen addition at the southern side of the residence, a 548 sq.ft. garage addition at the east side of the residence and also an 89 sq.ft. entry addition. The existing residence is shaped in a somewhat "U" fashion with an interior courtyard in the middle of the residence, surrounded by enclosed living area on three sides and partially on the fourth side (refer to Exhibit No. 2). The 784 sq.ft. family room addition will be located eight feet further seaward than the westernmost part of the existing residence and approximately four feet from the western property line.

The subject site is located on the west side of Neptune Avenue where it meets Fern Glen Avenue within a well-developed residential area in the community of La Jolla in the City of San Diego. The subject beach area is known as Windansea Beach. The site consists of two legal lots—the southernmost lot is where the existing residence is situated. The northern lot is a paper street (Fern Glen) which provides access to the proposed residence and a City pump station to the north. The City has an easement across the subject site for purposes of gaining access to the sewer pump station. A mechanical wrought-iron gate is

located at the Neptune Avenue frontage which both the applicant and the City have access to. A small opening to the north of the gate allows for pedestrian access along this road to gain access to the beach.

Immediately seaward of the residence is a large vegetated slope area consisting of both grass at the eastern portion and iceplant at the far western portion. The upper most portion of this landscaped area is on the subject property, with the remainder on City owned parkland (Windansea Park). The landscaped area descends in elevation to the toe of the slope where an existing approximately two ft. high retaining wall exists. The distance between the retaining wall and the residence is approximately 60 feet. The retaining wall is situated across approximately the southern half of the public park area seaward of the residence and continues in a southerly direction across public parkland seaward of several other residences along the shoreline. Beyond the retaining wall are sandy beach and sandstone shelves and outcroppings. The retaining wall appears to have been constructed prior to the passage of the Coastal Act.

Prior to the effective certification of the City's LCP for the La Jolla area, the Commission approved a coastal development permit (CDP #6-88-141) by the same property owner on 1/10/89 for the construction of a 767 sq.ft. game room addition to the existing residence. The addition was also a seaward addition to the residence in approximately the same location as the currently proposed addition. However, the addition was smaller (767 sq.ft. vs. the currently proposed 1, 546 sq.ft. addition). Also, the former addition was curvilinear in shape and was not proposed to extend as far seaward as the currently proposed addition. The former addition would have extended to about 5 ½ to 7 feet inland of the western property line whereas the currently proposed addition will only be four feet inland of the western property line. According to the findings of the staff report for the former addition, if any future shoreline protection would be necessary, a vertical seawall could be accommodated entirely on the project site itself without any encroachment onto the public sandy beach. The coastal development permit included a special condition for future development which required that all future shoreline protective devices, if justified, be located entirely on the applicant's property and that no encroachment by a seawall, wall footing or toe stone beyond the western private property line onto adjacent public property would be permitted. In addition, an assumption of risk condition was also required. The applicants never complied with the special condition requirements nor constructed the addition and the permit has now expired.

The applicant has revised the foundation of the proposed addition such that it would consist of caissons embedded into the bedrock instead of the terrace deposits to improve geologic stability. In addition, the applicants are also proposing to waive their rights to the construction of a future seawall on the subject property through recordation of a legal instrument and to accept the potential risks that may result from a seaward addition including damage from wave action such as broken windows, etc.

The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores LUP and other applicable sections of the former implementation plan

(municipal code) that were in effect at the time that the application for the proposed development was filed with the City. Because the proposed development is located between the first public road and the sea, the development must also be consistent with the public access and recreation policies of the Coastal Act.

2. Shoreline Hazards. The subject site is an oceanfront property containing an existing one-level single family residence. Seaward of the residence is a vegetated slope and a low-level retaining wall/berm (approximately 60 feet). The retaining wall is located on City parkland at the foot of the slope that runs from the seaward side of the residence to the beach. This wall was most likely constructed prior to the passage of the Coastal Act in connection with the residences, probably to protect them from wave action. The certified Sensitive Coastal Resource Overlay ordinance is applicable to the site. Specifically, portions of that overlay ordinance state the following:

“the proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional force and/or flood and fire hazards.”

“the proposed development will not contribute to the erosion of public beaches or adversely impact 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.”

The certified LCP Land Use Plan also contains policies addressing shoreline protective devices. The most applicable and pertinent policy states the following:

- 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.
- The placement of any necessary shoreline protective works should not be allowed to encroach on any area utilized by the public unless engineering studies indicate that minimal encroachment may be necessary to avoid significant adverse erosion conditions, and that no better alternatives exist. Any infilling between protective devices shall encroach no further seaward than adjacent functioning protective works.

As noted above, this area of shoreline consists of relatively flat lots that gently slope down in elevation to the beach. As such, the subject site is not a “coastal bluff” which, pursuant to the SCR Overlay ordinance, requires a 40 foot setback for principal structures from the edge of the coastal bluff. In this case, there is a slope area consisting of terrace deposits and fill material planted with landscaping and ice plant between the existing home and the beach. Nonetheless, prudent siting of the structure will assure that the proposed development will be safe from wave overtopping and erosion from storm waves.

When the project was reviewed by the City, its findings of approval indicated that the proposed additions and the main residence may require some type of shoreline protective device within the design lifespan of 75 years. It was further found that a seawall may be required to protect the proposed addition after 35 years, based on estimates of erosion and sea level rise. At that time, the applicant's consultant recommended the extension to the north of the small existing retaining wall on park property, to slow erosion of the slope on the subject property. A subsequent geotechnical study confirmed that there had been an error in the wave run-up figures in the initial report and that it was concluded that the extension of the retaining wall would not be necessary.

The Commission's geologist reviewed the initial geotechnical reports in order to determine whether the reports adequately addressed whether the principal structure and addition would be safe from wave action and erosion and whether a seawall would be required for protection of the existing structure and the additions throughout their anticipated life. The initial two geotechnical reports and analyses address the recommended foundation design for the proposed addition and the most recent report addresses future shoreline erosion forecasts. As a proposed improvement along the shoreline, the siting of the development must be located in a manner that would not necessitate shoreline protection. Based upon review of the initial geotechnical reports, the Commission staff geologist concluded that the applicant had not documented that the proposed seaward expansion would be safe for its anticipated life such that a seawall would not be needed in the future. A related concern was that if a seawall were needed in the future, because the proposed addition would only be sited four feet inland of the western property line, it would now allow any future shoreline protection for the residence on private property. The siting of a seawall on public beach park would be inconsistent with numerous policies of the City's LCP and the Coastal Act.

Upon consultation with the Commission staff's engineer it was determined that the need for a seawall would only arise if the back yard were to completely erode in the next 35 to 70 years or if the back yard would erode to the point such that the foundation of the house would be threatened. In order to address this concern, the applicants revised their proposed foundation for the addition such that it would be built on caissons embedded a minimum of two feet into the dense formational materials (as opposed to the terrace deposits). The applicant's engineer has indicated that such a foundation design is necessary in any case as a "normal" spread footing would not be supported as the soil underlying the seaward addition is loose, uncompacted fill.

With the proposed revised foundation, the structural integrity of the home will not be threatened. However, there is still the potential for the home to be damaged by flying rocks and debris as the addition will be located within 60 feet from the beach. As noted previously, the proposed room addition will be located only four feet from the western property line. Thus, if any shoreline protection for the addition is warranted in the future to protect the home from wave/storm damage, there would be inadequate room to site such a structure within the property lines of the subject site without encroaching onto public beach.

The initial geotechnical reports submitted for the project relied on erosion rates for the area based on older studies not specific to this particular coastline. As such, the Commission's staff geologist questioned the assumption regarding setbacks based on these studies. In response to the need for more site-specific erosion rates for this site, the applicants had a third update to their geotechnical report completed in January, 2002 which consisted of a site-specific erosion analysis done for the subject site. The updated report documented a very low erosion rate on vertical faces of rock outcrops (about 0.7 feet per year). Due to a rock outcropping seaward of this shoreline the waves break some distance offshore and the area is not subject to the same type of threat through wave action as it is in other areas along the coast. In addition, the updated reports note that the area seaward of the subject site is not a coastal bluff, but more of a gentle slope which is comprised of artificial fill (also referred to as terrace deposits). The geotechnical report outlines several features of the site that further accounts for the low erosion rates which include, in part: sand on beach covering Cretaceous bedrock, extensive, discontinuous, resistant Cretaceous bedrock outcrops up to 5 ft. high on beach just north of site; absence on beach of very hard, angular concrete fragments and natural gravel which, if present, would scour bedrock; artificial fill up to 9 ft. thick covering bedrock; and, erosion resistant Cretaceous bedrock with slopes of 25:1 (H:V) extending 40 to 50 ft. seaward of proposed remodel addition [Geotechnical Exploration, Inc., 1/22/02].

Based upon review of this update, the Commission's geologist concurs that the rate of erosion at the shoreline fronting the subject site is low. The Commission's geologist also concurs that the embankment seaward of the applicant's property is not a coastal "bluff"—but rather-- a coastal "slope". In fact, the site is on a beachfront not a blufftop. The top of the slope is located at the 22-foot contour and this is the point from where a setback should be measured, as determined by the Commission's staff geologist. Based on the new erosion rates, 0.07 feet per year over 75 years would equal about 5 feet. The applicants propose a setback of approximately 15 feet from the top of this slope which is adequate pursuant to the Commission's geologist.

In summary, upon review of all of the submitted geotechnical information, the Commission staff's geologist concurs that with the proposed revised foundation design and geologic setback from the top of the slope, the proposed addition will be safe from erosion. As noted previously, based on recent updated geotechnical information, the erosion rate for this particular shoreline is extremely low. As such, it is highly unlikely that a shoreline protection device would ever be needed. On a worst case scenario, the toe of the coastal slope may erode or wash away. However, as noted previously, the Commission staff coastal engineer does acknowledge that the addition may be damaged by wave runup (i.e., flying rocks, etc.) over its lifetime. To address this concern, the applicants have indicated that in lieu of construction of a shoreline protective device, they propose to waive their rights to a shoreline protection in the future and instead pursue approval to replace any seaward fill that is washed away by severe storm conditions.

The applicants have adequately demonstrated that with the proposed revised foundation design (pier foundation imbedded in bedrock) for the seaward addition, the new addition

will not be subject to hazard from erosion. Thus, there would not be a need for shoreline protection in the future to protect the structural integrity of the residence. This eliminates the concerns with regard to the future construction of a shoreline protective device and the inadequacy of room on the subject site to construct such a structure as well as all of the potential impacts associated with such devices on local sand and shoreline supply and public access. Furthermore, the applicant has included with his application a proposal to waive his right to a future seawall through recordation of a legal instrument. Special Condition #1 requires recordation this waiver of any rights to future shoreline protection for the proposed development.

The applicants propose to pursue replacement of any fill materials that are lost at the toe of the slope in the event of storm activities in lieu of constructing a seawall. The Commission can support this approach in lieu of construction of a seawall, however, if any of the existing non-native landscaping on the slope is damaged or lost, the replacement of such landscaping will not be permitted. As discussed in the findings for public access, the existing iceplant on the slope of the public parkland seaward of the subject site is somewhat inhibiting to public access in this area. As such, if it is lost or removed through storm activities, it will not be permitted to be replaced. Special Condition #2 allows the applicant to apply for a coastal development permit to replace fill that is washed away by storm action, but not to replace non-native landscaping.

In addition, the Commission recognizes the inherent risk of shoreline development. There is a risk associated with any shoreline development including damage to the property as a result of wave and storm action. Given that the applicants have chosen to construct the proposed additions despite these risks, the applicants must assume the risks. Accordingly, Special Condition #3 requires that the applicants record a deed restriction that evidences their acknowledgement of the risks and that indemnifies the Commission against claims for damages that may be brought by third parties against the Commission as a result of its approval of this permit. While the proposal involves a seaward addition to an existing beachfront home, the applicant has demonstrated, and the Commission's technical staff agrees, that the proposed addition will be reasonably safe and will not result in the need for shoreline protection in the future. As conditioned, the proposed development is consistent with the shoreline hazard policies of the certified LCP Land Use Plan and the SCR overlay ordinance of the City's former implementation plan of its certified LCP.

3. Public Access. The certified La Jolla-La Jolla Shores LCP contains the following policies addressing protection of public access:

"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."

"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..."

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

In addition, the following Coastal Act policies are applicable to the subject proposal, and state:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

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.

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The proposed project is located on an oceanfront site which consists of two legal lots. The northernmost lot consists of an access road to a City pump station. The entrance to this access road is gated. There are also private accessory improvements situated on public parkland seaward of the site consisting of a sidewalk and stairs that lead down to the beach. In addition, there is an irrigation system that is used to water the existing lawn and iceplant. Aerial photographs taken in June of 1972 of the subject site and immediate shoreline indicate that the landscaping was existing at that time and thus, pre-dates the Coastal Act. Both the certified LCP and the Coastal Act contain policies protecting physical access to the beach and ocean. The subject site is located between the first public roadway and the sea adjacent to Windansea Beach, a popular stretch of shoreline in the southern part of La Jolla. The area seaward of the subject site is used by residents and beach-goers alike for strolling, surfing and other recreational activities.

Seaward of the existing residence is a gentle slope that descends in elevation to the beach. Immediately adjacent to the residence is a grassy lawn area. Seaward of the lawn

area is iceplant which is located seaward of the western property line. This vegetation encroaches onto City park land. Beyond this area to the west is sandy beach and sandstone shelves. The other residences to the south of this site also contain lawn areas and several of the lawns appear to extend seaward beyond the western property line to the toe of the berm. The presence of this vegetation on public park, with the retaining wall separating it from the sandy beach suggests that the area is "private area associated with the residences" which discourages use of this area by members of the public. The iceplant is particularly inhibiting of public use as it is difficult to walk on. Thus, even though it is public park land, it is not used by the public. Whereas, if it was grass or some other type of low vegetation or bare dirt, it would facilitate pedestrian use and public access.

In the review of this project at the City, the applicants were required to obtain an encroachment removal agreement from the Department of Park and Recreation for the "seawall, landscaping and irrigation system" encroachments located on Windansea Shoreline Park. The reference to a "seawall" is meant to apply to the low-level retaining wall on park land. The City also required a condition that stated the following:

The following requirements shall be complied with regardless of any proposed Encroachment Removal Agreement:

23. All stairs and sidewalks on dedicated park property shall be removed.
24. A wall, fence or curb shall be constructed on the western property line of this subject site delineate private property from dedicated park property.
25. A shut off valve shall be installed within the dedicated park land westerly of the subject site to provide for the City's ability to disconnect the irrigation system if the City deems necessary.
26. All areas disturbed by the removal of or adjustments to existing or proposed encroachments shall be replanted in a manner acceptable to the Park and Recreation Department.
27. A sign, visible from the beach, shall be installed on the property line or immediately easterly of said line identifying the property ownership. Wording shall read "dedicated park land ends at this point – please respect the private property from this point on", or similar wording approved by the City Manager.

As such, the City required the removal of an existing concrete walkway and stairs seaward of the site that encroaches onto public park and installation of other improvements in this area to delineate the area that is private vs. public, but permitted the landscaping that encroaches on City park to remain. The City also required that the applicants install a sign on the property line that is visible from the beach that makes it clear where private property ends and public property begins. The City suggested that

the sign also advise the public to respect private property, etc. The applicant's representatives have indicated that the applicant is not opposed to the removal of the vegetation and replanting of the area with some other kind of vegetation. Special Condition No. 6 clarifies that the local permit conditions imposed by the City that do not implement Coastal Act requirements continue to apply and are not superceded by the Commission's action.

Another related issue pertains to the dedicated easement across the northern part of the site which provides access to the residence and maintenance vehicle access to the City-owned pump station at the terminus of Fern Glen. An existing wrought-iron gate is located at the entrance to the access road off of Neptune Place. A small opening located to the right of the gate provides pedestrian access down the road that leads to the shoreline. The public currently uses the accessway to get to the beach at this location. As cited earlier in this report, the certified LCP Land Use Plan calls for a comprehensive sign program throughout La Jolla to identify existing but underutilized access points including installing signage at the accessway entrances and along major streets, etc. The proposed development is located entirely on the applicant's other, adjoining parcel and does not affect any existing public access.

As noted earlier, the applicants have demonstrated that this particular site is not subject to the threat for storm and wave activity as other areas of the coast and the erosion for this site is extremely low. As such, a shoreline protective device is not needed. Furthermore, the applicants propose to simply replace any fill materials that are lost at the toe of the slope in the event of storm activities in lieu of constructing a seawall. The applicants have offered to waive their right to a seawall through recordation of a legal instrument. In addition, the seaward addition of the home will not impede public access in any way and will be contained entirely within private property lines. The proposed seaward addition to the residence will be within the "stringline" of development immediately to the north and south. Therefore, the Commission finds that with the attached conditions, public access to and along the beach will be maintained consistent with the public access and recreation policies of the certified LCP and Coastal Act.

4. Visual Access. The certified La Jolla LCP Land Use Plan contains numerous policies addressing the protection of visual access to the shoreline. Some of these policies 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."

"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 within the designated view corridors of both Neptune Place and Fern Glen Avenue. Based on photographs contained in the City file, it can be seen that a small portion of the roofline of the northern part of the proposed residential addition will intrude approximately seven feet beyond the footprint of the existing residence in a northerly direction toward the adjacent identified view corridor. The proposed kitchen addition at the south side of the residence will also extend into the south side yard. In numerous projects, the Commission has found that opening up the side yard areas or maintenance of these areas free from obstructions such as landscaping and solid fences enhances views to the ocean and helps to prevent a “walled-off effect” as set forth in the policies of the certified La Jolla Land Use Plan. Although portions of the proposed additions are proposed to extend both seaward and into the north side yard, the proposed development will not adversely impact public views toward the ocean. Although the proposed kitchen addition will extend into the south side yard, it will not result in less than the required minimum 4 ft. side yard setback. In addition, this portion of the addition will not result in a reduction of views to the ocean currently available in this location and, as such, does not significantly encroach into a designated public view corridor.

With regard to the proposed seaward addition, a small portion of the northern part of this addition (roofline) and roof deck will encroach into the view corridor north of the subject site. The deck is proposed to have an open fence with wooden slats or railings that are open in nature (ref. Exhibit No. 5). Thus, the proposed intrusion into the small blue-water view is extremely minute in nature and will incorporate open elements to allow one to “see-through” to the ocean. In addition, the fence around the roof deck is only proposed to be 3 1/2 feet high. This is consistent with the City’s former municipal code which specifically required that fences in the side yards of properties located between the first coastal road and sea to be a maximum of 6 feet in height with 50% or more of the fence consisting of “open” materials only. The City’s certified LCP requires a sideyard setback of four feet from the property lines. In this particular case, since the subject site consists of two legal lots, the required setback is measured from the north side of Fern Glen Avenue as opposed to the south side of this right-of-way, which is closest to the existing residence. In any case, given that the residence will observe a greater than 4-foot setback from Fern Glen Avenue, the proposed development complies with these requirements.

In addition, in this case, the site is immediately adjacent to the access road to the north that is used by City personnel to maintain the pump station at the end of Fern Glen. The maintenance/access road is the designated public view corridor at this location and is

“open” in nature providing panoramic views toward the ocean. As such, this particular project is unique in that the proposed residence is not located in the middle of a block where “opening up” of the side yards would be more critical in an effort to try to recapture small glimpses toward the ocean and form functional view corridors or in those situations where there is an existing narrow public view corridor where such an intrusion would significantly reduce or impede public views. Views are preserved by this easement which is much wider than any normal side yard setback. Furthermore, the addition on the northwest side of the house includes a roof deck with open railing. The openness of these improvements will also minimize any impact on public views.

Nonetheless, any encroachment into the side yards currently provided on properties located between the first coastal road and sea must continue to be considered carefully to assure conformance with the policies of the certified LCP Land Use Plan. In this particular case, the proposed development is proposed to be sited on the sloping lot such that the proposed addition would not significantly impact ocean views. While standing or driving along Neptune looking west, the majority of the proposed additions to the residence will be out of public view as the residence is situated on a sloping lot and public views of the ocean are visible above the roofline of the structure. As noted earlier, the roofline of the northern portion of the proposed addition will slightly encroach into the area where ocean horizon views currently exist. The lot is bisected by two public view corridors (reference Exhibit No. 3). Although this encroachment is minimal, it does slightly impede blue water/ocean horizon views looking west. However, in this case, the proposed minimal encroachment north of the residence will not significantly impede views and it is immediately adjacent to the above-described maintenance road for the sewer pump station northwest of the site. The roadway is open and will continue to provide clear and unobstructed views toward the ocean. Furthermore, in this particular case, the view corridor is very wide in nature as opposed to an opening between two residentially developed lots which is typically the case and similar to that which existed in other past precedents reviewed by the Commission (i.e., A-6-LJS-98-162/Hicks, A-6-LJS-98-85/Holmes, and A-6-LJS-99-160-R/Summit Resources).

With regard to landscaping in the proposed sideyards of the residence, several of the policies of the certified La Jolla-La Jolla Shores LCP call for maintaining ocean views whenever possible, using sideyard setbacks as view corridors to avoid a continuous wall effect, keeping setbacks and view corridors free of obstacles including untrimmed landscaping and other improvements which may impede views toward the ocean. In the review of several past development proposals between the sea and the first coastal road, the Commission has interpreted these policies to mean that no encroachment shall be permitted into a designated public view corridor in order to be found consistent with the policies of the certified LCP. In other similar projects (A-6-LJS-98-162/Hicks, A-6-LJS-98-85/Holmes, and A-6-LJS-99-160-R/Summit Resources) the Commission has required that sideyard setbacks be deed restricted for low-level landscaping and that only open fencing be installed in the sideyard setbacks. As noted in the findings for A-6-LJS-99-160-R/Summit Resources:

"In addition, the Commission has also historically required that fencing in the side yard areas be composed partially of open materials for the purposes of opening up views toward the ocean and preventing a walled off effect. The Commission has taken the position in past similar projects (A-6-LJS-98-85/Holmes,..) that through installation of open fencing in the side yard setbacks along the eastern frontage of the properties between the first coastal road and sea, a "window" to the ocean in the side yard setback areas can be preserved while looking west from the street elevation, as is supported by the policies of the certified LCP. Even small glimpses of the ocean while driving or walking by give passersby the feel of being close to the ocean and eliminates a continuous wall effect. As noted in the earlier cited LCP policy language, "...Even narrow corridors create visual interest and allow for sea breezes to refresh passersby..." In those cases where views would still not be achieved through installation of open fencing, it is still required to help to prevent a "walled off" effect.

In the Hicks coastal development permit, the residence was required to be re-designed to significantly reduce the amount of encroachment into the adjacent designated public view corridor. That particular residence was within the "viewshed" of the designated public view corridor and portions of the proposed second story would have eliminated ocean horizon views from the designated public view corridor. In the Holmes coastal development permit, the required minimum side yards were deed restricted and only low-level landscaping was permitted to be planted in the side yards as well as open fencing to preserve views toward the ocean as well as to eliminate a "walled off" effect. Again, while this particular residence does not have a "true" north sideyard, maintenance of low-level vegetation north of the residence will help to preserve public views toward the ocean.

Therefore, to assure the side yard setback maintains visual clearance, Special Condition #5 requires that all proposed landscaping in the side yard setbacks shall not exceed a height of three feet above street elevation. Special emphasis shall be placed on the installation and maintenance of vegetation so as to assure that neither during growing stages nor upon reaching maturity will such materials encroach into the area which would obstruct views toward the ocean in the established view corridor. This condition also requires recordation of a deed restriction to assure that future property owners will be notified of the landscape requirements for the sideyard setback areas. The condition further requires monitoring provisions to assure that the landscaping is maintained in conformance with the performance standards specified in the landscaping plan pursuant to the coastal development permit. In summary, the remainder of the proposed additions to the residence not located in the south side yard or immediately north of the existing residence (located at the southern and eastern portions of the site), will not encroach into the designated view corridor or existing side yards.

In addition, the seaward addition of the home will not encroach further seaward than the adjoining development to the north and south. As noted previously, the subject site is located at an angle to the shoreline where Neptune Place and Fern Glen Avenue meet. The immediate lot to the north consists of a maintenance and vehicular accessway for a

nearby pump station. On the other side of this road is an existing single family residence. To the south are other single family residences. The proposed seaward addition to the residence will be within the "stringline" of development immediately to the north and south. Therefore, the proposed development, as conditioned, is consistent with the certified LCP.

5. Runoff/Water Quality. The certified La Jolla-La Jolla Shores LCP contains the following policies addressing protection of water quality:

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

"Where necessary, existing street drainage outlets should be improved with energy dissipating devices or other similar measures to minimize erosion caused by quantity, velocity or content of runoff." [...]

The project site is currently developed with an existing single-family residence. Runoff from the site currently drains directly to the ocean. The proposed project will result in additional impervious surfaces and runoff will be discharged directly toward the ocean untreated.

No drainage plans or provisions to address water quality are proposed. As such, in order to reduce the potential for adverse impacts to water quality resulting from drainage runoff from the proposed development, Special Condition #4 has been attached which requires that runoff from the roof, driveway and other impervious surfaces be directed into the landscaped areas on the site for infiltration and/or percolation, prior to being conveyed off-site. Directing 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 proposed landscaping will serve to reduce any impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act.

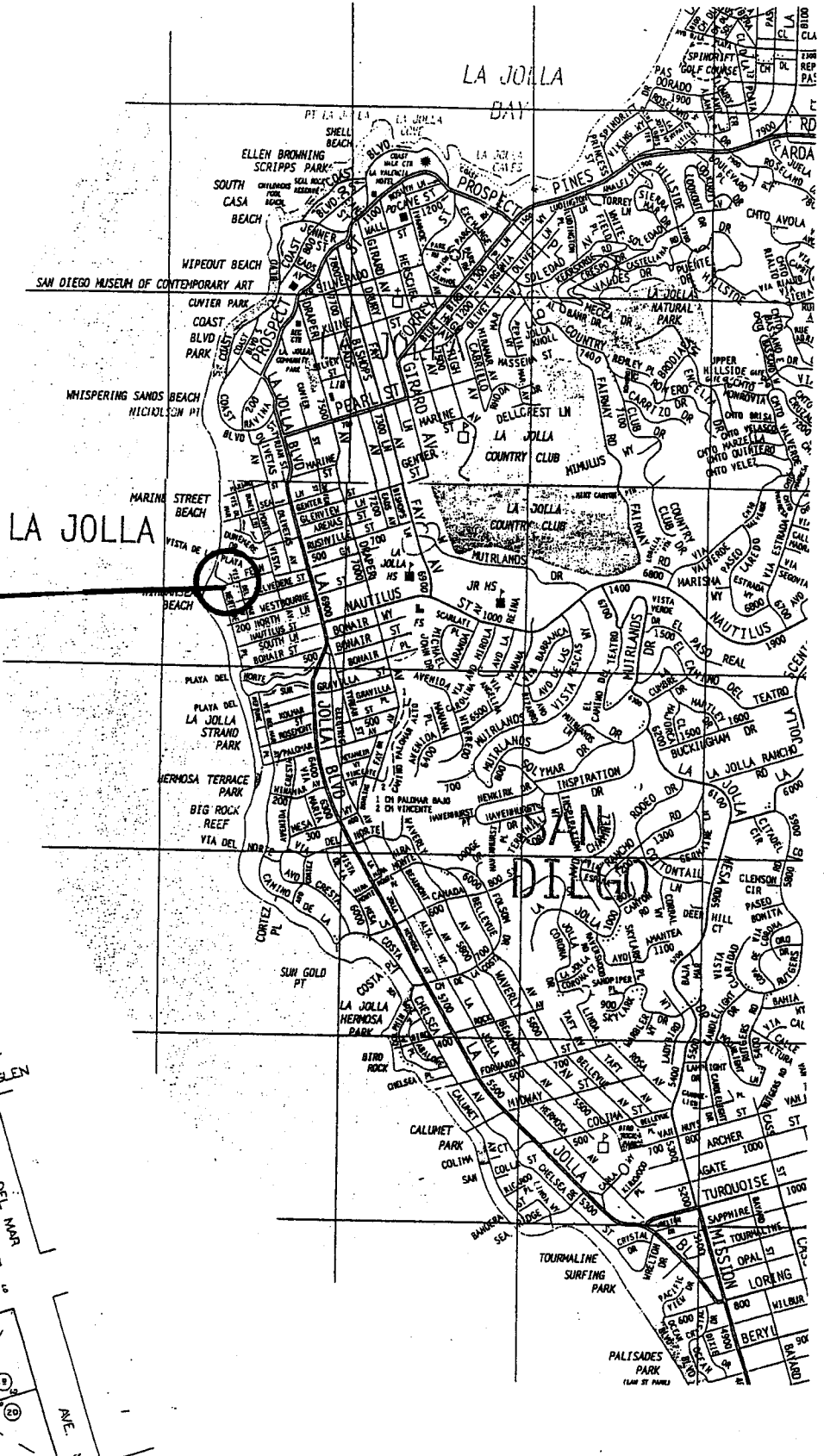
6. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental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

The proposed project has been conditioned in order to be found consistent with the shoreline hazards, public access, visual resource, and water quality policies of the certified LCP and the public access and recreation policies of the Coastal Act. Mitigation

measures, including conditions addressing waiver of future rights to a seawall, replacing fill at toe of slope in event of erosion, assumption of risk, public rights, landscaping and signage, 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 under CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Project Site

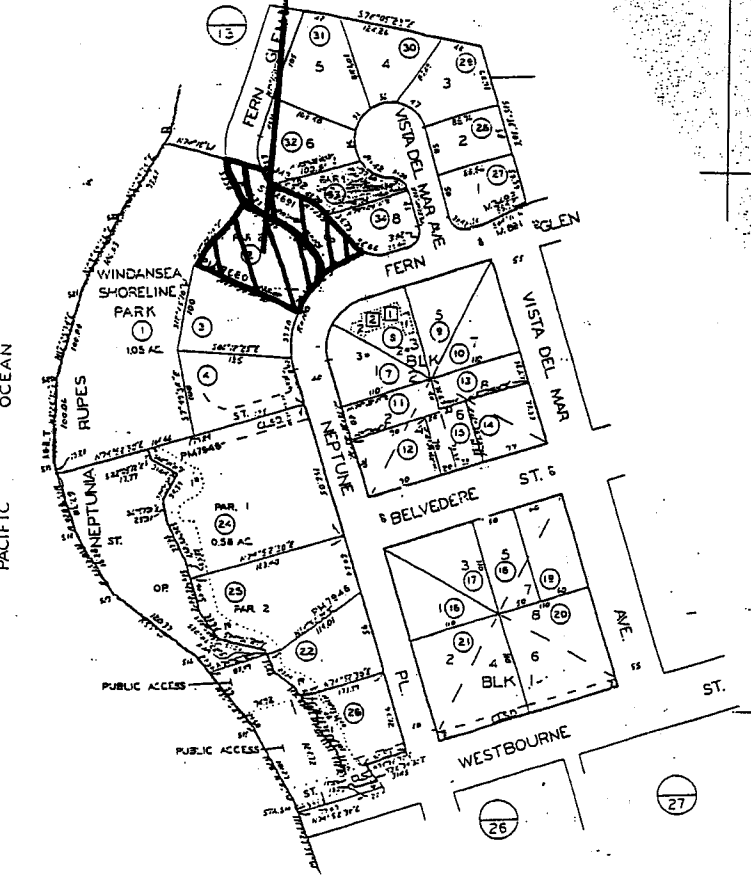

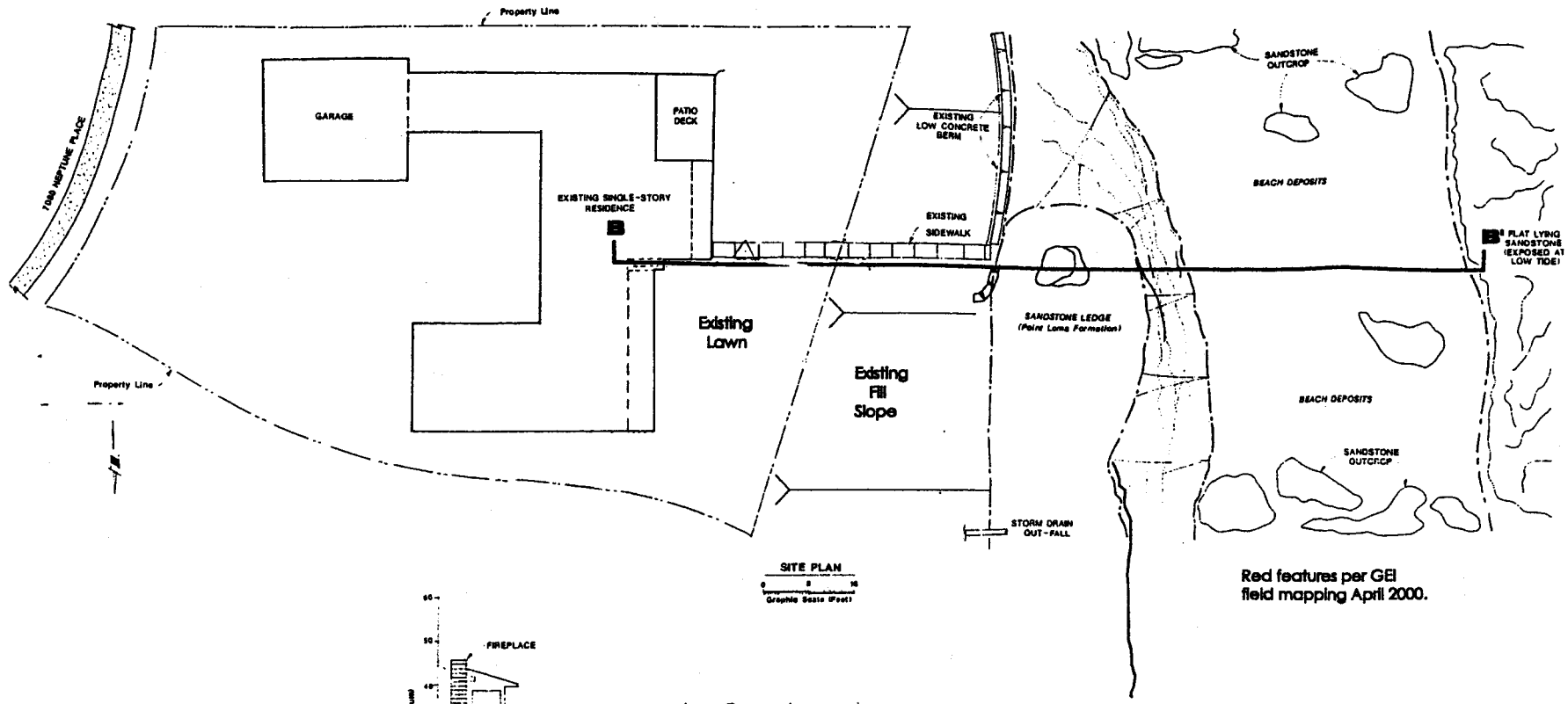
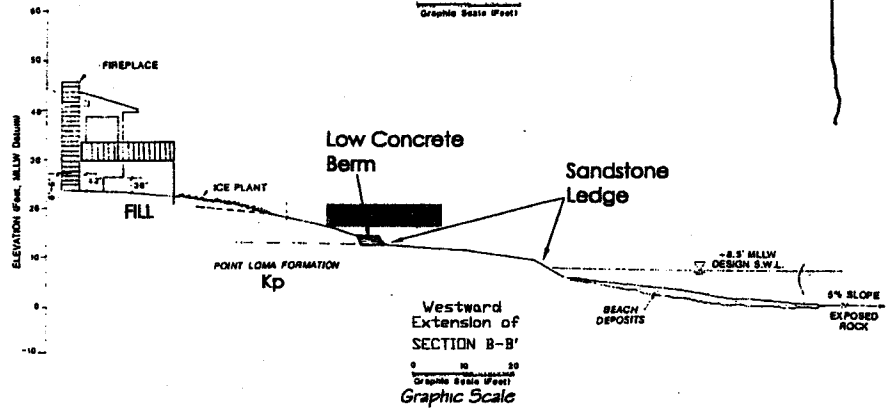


EXHIBIT NO. 1
 APPLICATION NO.
 A-6-LJS-99-147
 Location Maps

 California Coastal Commission



Red features per GEI field mapping April 2000.



NOTE: This plan was prepared from a base map prepared by Woodward-Clyde Consultants in September 1988 and from GEI field measurements April 2000. Location of 1988 proposed addition is approximately coincident with current condition.

BEACH LEDGE PLAN

RUTHERFORD RESIDENCE ADDITIONS
 7080 NEPTUNE PLACE
 LA JOLLA, CA.
 FIGURE NUMBER IV
 JOB NUMBER 98-7418



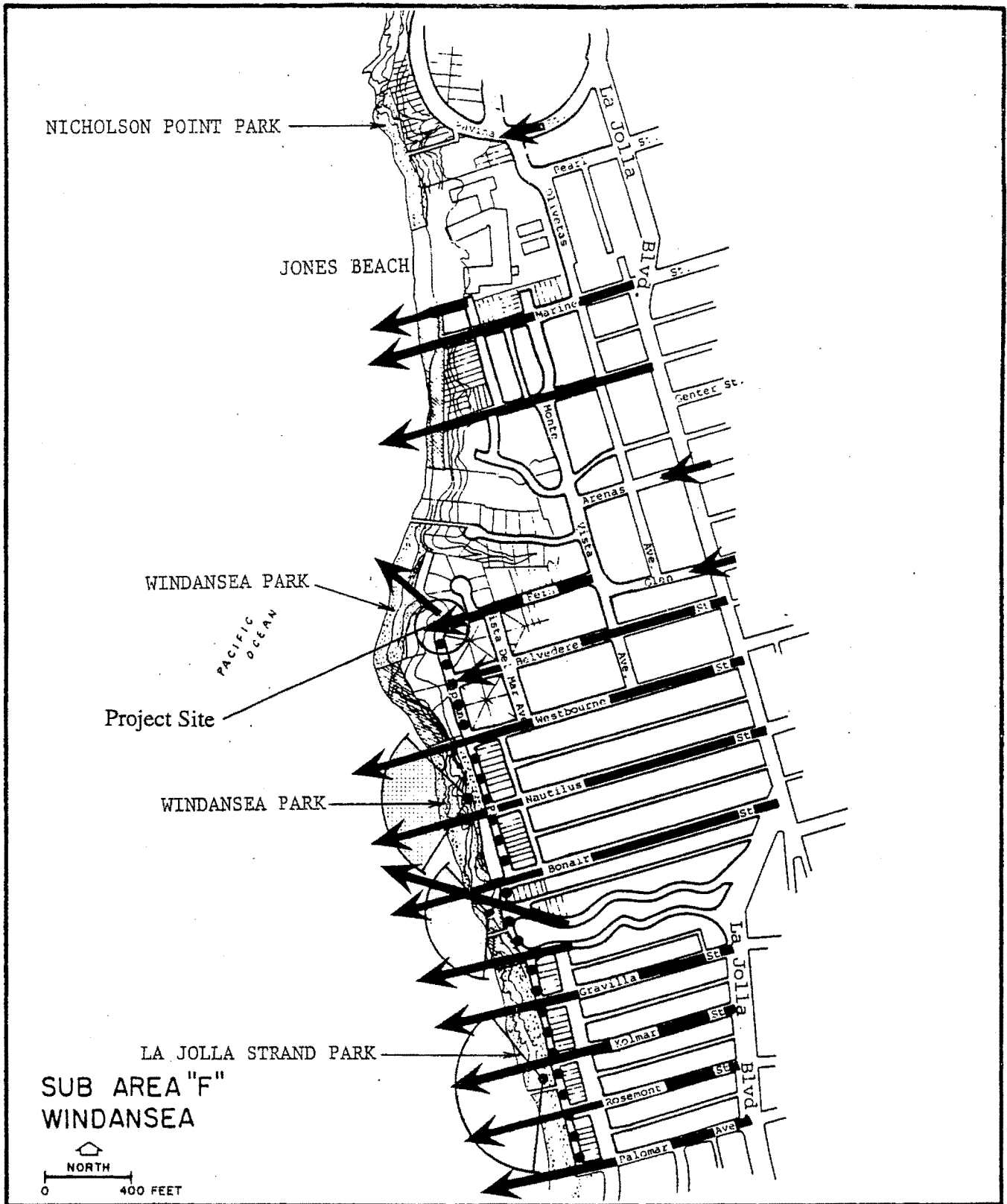
APRIL 2000

California Coastal Commission

EXHIBIT NO. 3

APPLICATION NO. A-6-LJS-99-147

Beach Ledge Plan



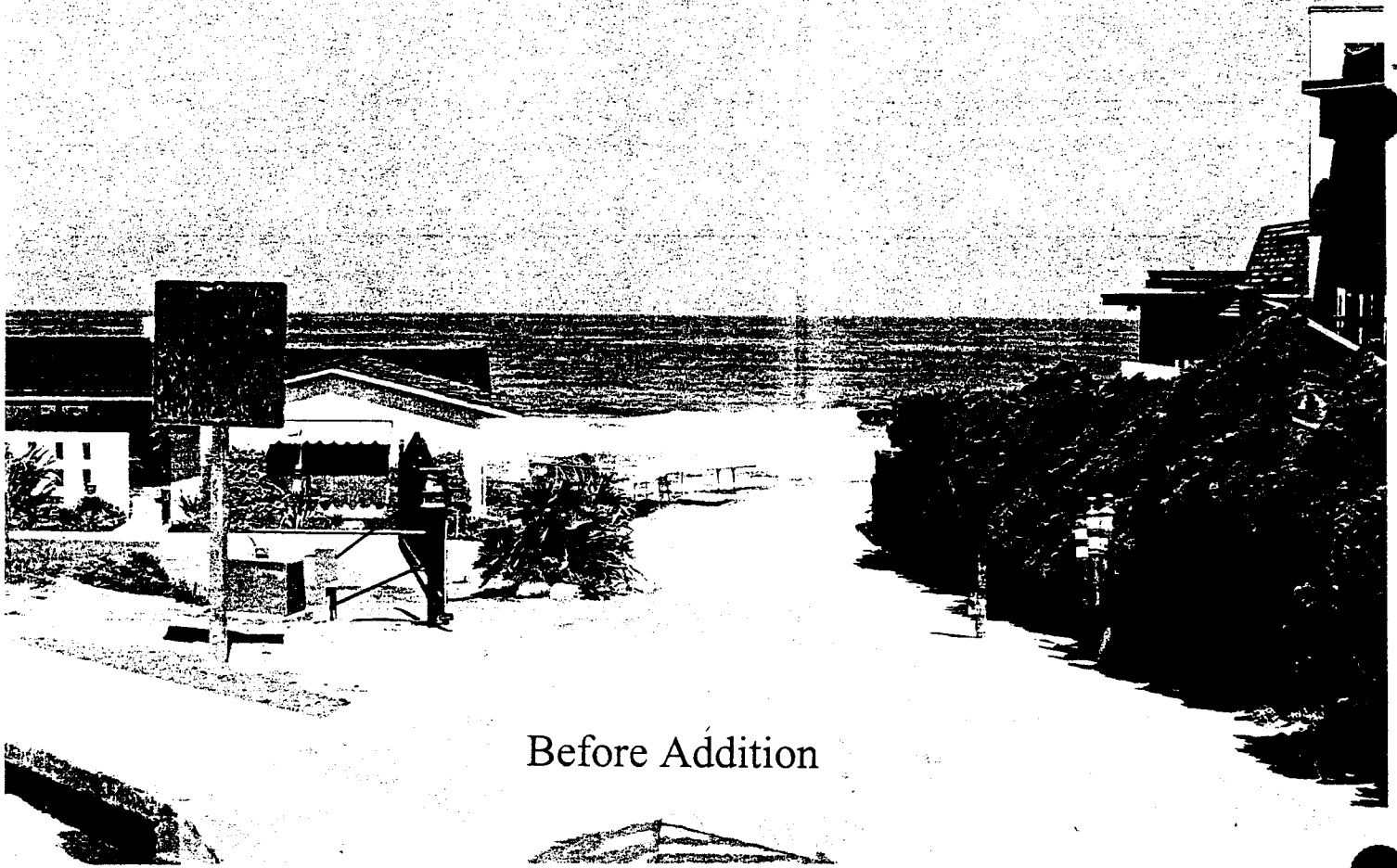
La Jolla • La Jolla Shores
LOCAL COASTAL PROGRAM • VISUAL ACCESS



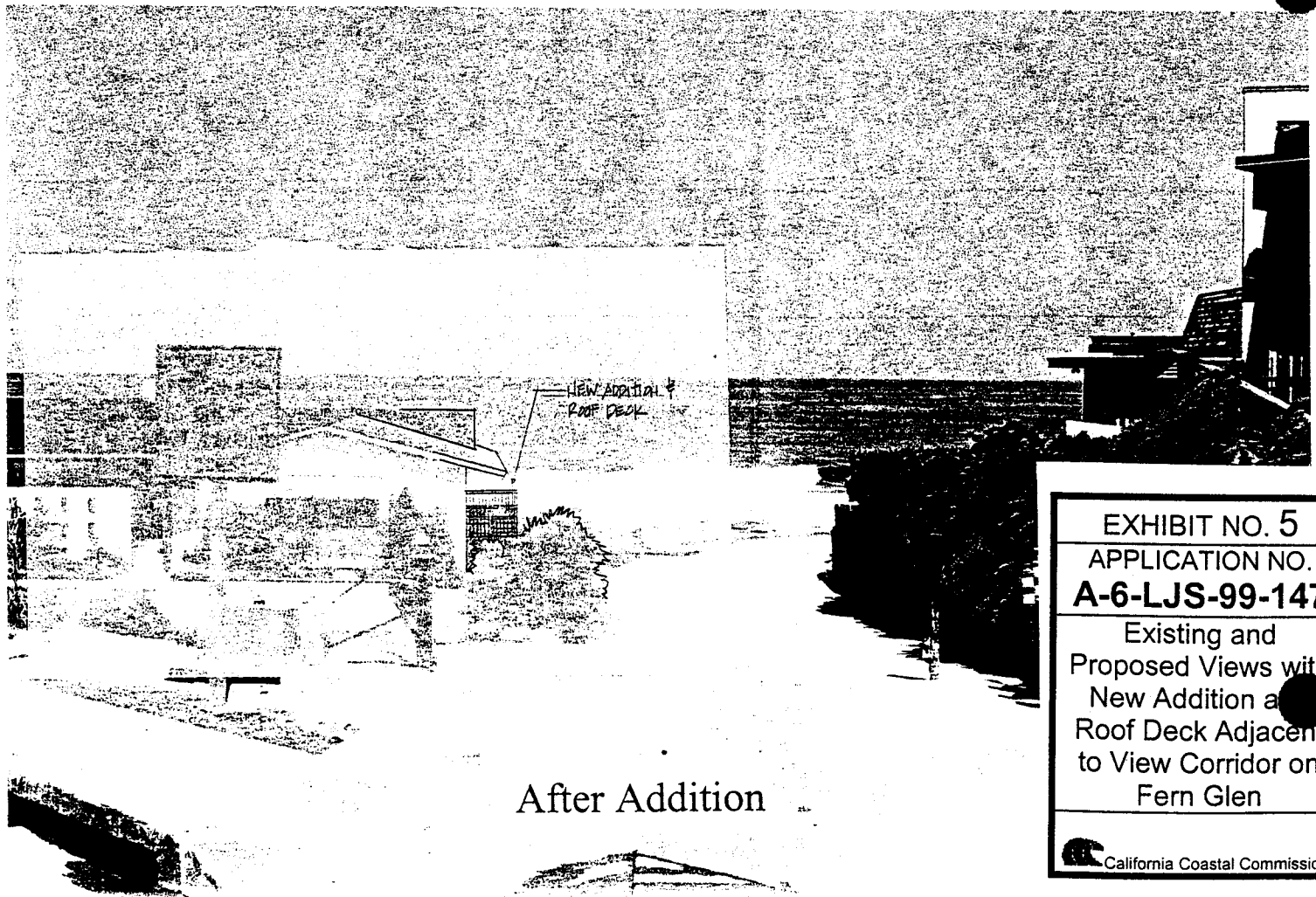
CITY OF SAN DIEGO
 PLANNING DEPARTMENT

- MAJOR VISTA POINT
- ← VISUAL ACCESS CORRI (existing)
- SCENIC ROADWAY

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-99-147
Designated Public View Corridor
California Coastal Commission



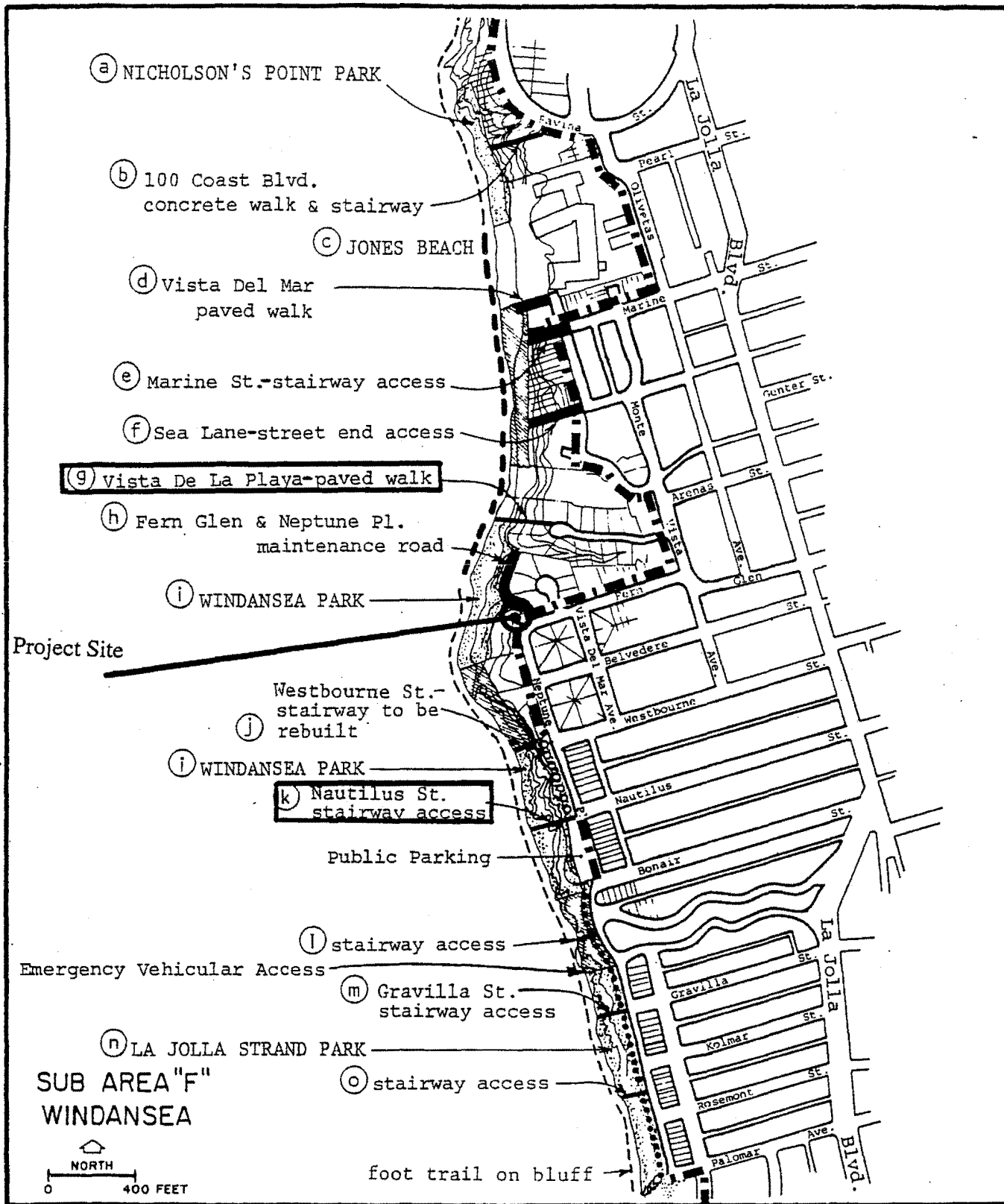
Before Addition



After Addition

EXHIBIT NO. 5
APPLICATION NO.
A-6-LJS-99-147

Existing and
Proposed Views with
New Addition and
Roof Deck Adjacent
to View Corridor on
Fern Glen



La Jolla • La Jolla Shores

LOCAL COASTAL PROGRAM • PHYSICAL SHORELINE ACCESS

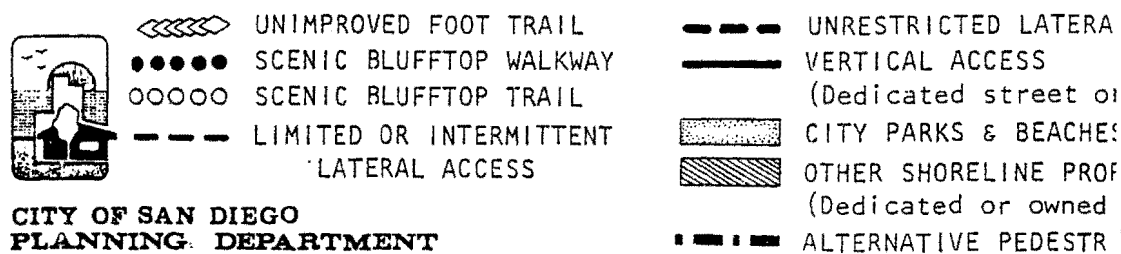


EXHIBIT NO. 6
APPLICATION NO.
A-6-LJS-99-147
Nearest Vertical
Access Ways in
Proximity to Site

