

## CALIFORNIA COASTAL COMMISSION

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**Thu 9b**

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Staff: LRO-SD  
Staff Report: 5/23/02  
Hearing Date: 6/11-13/02

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

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SUMMARY OF STAFF RECOMMENDATION:

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

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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.

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I. Appellants Contend That: The appellants contend that the development, as approved by the City, may be inconsistent with the certified LCP. Specifically, the

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. In addition Special Condition #6 requires that the applicant waive all future rights to shoreline protection

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.

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#### STAFF NOTES:

The subject project was originally scheduled for review in June 2002 and then again in October 2002 but at the request of the applicant, was postponed in order to respond to local opposition and to the staff recommendation. It is Commission staff's understanding that the applicant is now in agreement with the staff recommendation. However, there still remains local opposition to the project.

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#### 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 City's certified LCP Section 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 appellants further contend 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 yard areas 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.

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## 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.

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## 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 a 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.

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#### 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.

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## 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 bluff edge. 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 appellants have 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.

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, not 25 feet as approved by the City. It is not clear if the existing wooden structures on the face of the bluff are needed for stabilization especially when one of the geology reports relied on by the City recommended the structures be augmented.

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.

Based on the above LCP provision, it appears the City may have relied on an incorrect bluff edge description, thereby potentially allowing the pool and home to be sited closer to the bluff than what may be safe. Therefore, due to the presence of the wooden structures on the bluff face that may be a shoreline protective device, as well as conflicting information regarding the coastal bluff edge, the appellants have raised a



substantial issue regarding the conformity of the development with the policies 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 Street and Calumet Avenue which is a public street that runs in an east-west direction and is perpendicular to the subject site. The Midway Street 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 Street 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 Street. 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 Street. As such, the "side yards" as defined by the City's certified implementation plan (i.e., Land Development Code) and as referenced in the La Jolla-La Jolla Shores LCP Land Use Plan, 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 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. 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 yard area is not maintained free of vegetation (no greater than 3 ft. in height) such that trees or a tall hedge is planted, views of the ocean along this corridor would be affected. The Commission has routinely restricted landscaping in the yard areas to be restricted to a height of no more than 3 ft. as landscape elements that are higher than 3 ft. would have the potential to impede or block

views to the ocean along major coastal access routes and other properties between the first coastal road and sea. This is even moreso for downsloping lots. 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 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 appellants 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 appellants have therefore raised a substantial issue regarding conformity of the proposed project with the public view protection policies of the certified LCP.

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#### 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 (including, but not limited to, patios, decks, walkways, and open shade structures ) 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, as delineated on Exhibit No. 3.
- b. No maintenance of the existing non-conforming wooden retaining structures on the bluff face shall be permitted.
- c. The property owner shall be responsible for monitoring the condition of the non-conforming wooden retaining structures over time. If the monitoring reveals that the wooden structures pose a threat to public safety or that the structures can be safely removed without destabilizing the bluff, the applicant shall apply for a coastal development permit to remove the structures or portions thereof.

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/Yard Area 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 yard areas (or setbacks) 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 yard areas. All proposed landscaping in the north and south yard areas shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean.
- b. All landscaping shall be drought-tolerant native or non-invasive plant species. No permanent 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 yard areas shall permit public views and have at least 75 percent of its surface area open to light.

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 of San Diego, which shows that drainage and runoff from the roof, driveway and other impervious surfaces shall be directed away from the coastal bluff and toward the street into the storm drain system.

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.

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. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

6. No Future Bluff or Shoreline Protective Device

- A(1) By acceptance of this permit, the applicant agrees, on behalf of itself 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-02-68 including, but not limited to, construction of a new, approximately 5,790 sq.ft., two-story single family residence with attached two-car garage, swimming pool, and hardscape and landscape improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself 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 itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including construction of a new, approximately 5,790 sq.ft., two-story single family residence with attached two-car garage, swimming pool, and hardscape and landscape improvements, 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.

7. Disposal of Graded Spoils. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

8. 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 side 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. Although there is an unimproved foot trail which descends to the beach from Calumet Park about three lots south of the subject site, access to the beach is somewhat difficult due to the steepness of the trail which sometimes becomes wet and slippery, as well. The closest improved vertical accessway is two blocks to the north at the end of Bird Rock Avenue.

2. Shoreline Hazards. The proposed new swimming pool on the subject site 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. In addition, the policies of the certified LCP also require that that structures be located between 25 and 40 feet from the bluff edge when supported by the findings of a geology report that indicate the site is stable to support the development at the proposed distance from the coastal bluff edge without contributing to significant geologic instability throughout the life span of the principal structures and that no shoreline protection is required. The Commission's geologist and coastal engineer have reviewed the project geotechnical reports/engineering information and have concurred that the small wooden structures on the bluff face are not stabilization or erosion control structures (i.e., shoreline protection devices) that were installed due to excessive erosion to protect the existing home. Instead, they are remnants of a viewing platform and ramp that existed on the bluff that have not been removed. In addition, the Commission's geologist and coastal engineer have determined that the coastal bluff is stable to support the proposed swimming pool at a distance of 25 feet from the bluff edge. 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 consultants. 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 bluff 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 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.

Based on the above cited LCP provisions, the Commission's staff geologist has also determined that the most seaward bluff edge, as shown in a figure in the geotechnical report (identified as "natural bluff edge") by the applicant's geologist, is the accurate bluff edge (ref. Exhibit No. 3) This is the bluff edge from which the geologic setbacks should be measured for the proposed swimming pool and new residence.

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, and agrees that these wooden structures should 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 structures over time. If monitoring indicates that the wooden structures pose a threat to public safety or

that they can be removed safely without destabilizing the bluff, the applicant must apply for a coastal development permit to remove the structures.

In this case, the applicant has documented that the existing wooden bluff structures are neither existing shoreline protection devices nor are they needed to provide stability to the project site in association with any proposed development. Therefore, the proposed residence which will be sited a distance of 40 feet from the bluff edge, and the proposed swimming pool, which will be sited a distance of 25 feet from the bluff edge, are not dependent on the existing wooden structures for structural support or stability (ref. Exhibit No. 2). In addition, given that the applicant's consultants and the Commission's geologist have also concurred the proposed new development will be adequately set back from the bluff edge, the construction of any future shoreline protection devices to protect the new development are not warranted.

In addition, the policies and guidelines of the certified La Jolla-La Jolla Shores LCP also contains the following related provisions:

"The shoreline bluffs are one of La Jolla's most scenic natural resources...Over time, as the bluffs continue to recede, existing developments will become increasingly susceptible to bluff hazards. In many cases, seawalls, revetments, and other types of erosion control structures will be required to stabilize the bluff. Such structures, while necessary to protect private property, are poor substitutes for adequate site planning...."

The LCP then goes on to cite the following guidelines:

[...]

"The geotechnical report...should document that the "area of demonstration" is stable enough to support the proposed development and that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the estimated lifespan of the project structures...."

As such, Special Condition #6 has been attached which requires the applicant to waive all rights to future protection for new development on the blufftop. Such a condition will assure that the bluff will be protected to the maximum extent possible from unnatural alteration of the bluff.

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. In order to assure that future owners of the property receive notice of the conditions of this permit, Special Condition #8 requires that the terms and conditions of this permit be recorded as a deed restriction.

Therefore, in summary, the Coastal Commission's geologist and coastal engineer have concurred that the small wooden structures on the bluff face are not stabilization or

erosion control structures and that the proposed swimming pool is not required to be set back 40 feet from the bluff edge, consistent with the provisions of the City's certified LCP. In addition, the applicants have adequately demonstrated that the newly proposed residence and swimming pool will be adequately set back from the bluff edge (40 feet and 25 feet, respectively) and that the existing wooden structures on the bluff face are not necessary to support the new development. As such, future shoreline protection is not necessary for the proposed development. The proposed wooden structures on the bluff face cannot be removed at this time as they will potentially result in damage to the bluff. However, they will be allowed to deteriorate over time and the applicant will be required to apply to remove them if they become a safety hazard in the future (i.e. are in danger of falling onto the beach where they could potentially injure people). As such, the geologic integrity of the coastal bluff will be assured and the landform will be restored to its natural appearance after removal of the structures in the future, consistent with the geologic and blufftop stability provisions of the City's certified LCP. Therefore, the proposed development is consistent with the provisions of the certified LCP addressing geologic hazards and blufftop setbacks.

3. Public Views. Landscaping and fencing in the north and south 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 Street. 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 page 10.

The subject site is located at the southwest corner of Midway Street and Calumet Avenue. Midway Street 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 Street 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 Street. As such, "side yards" as defined by the City's certified implementation plan (i.e., Land Development Code) and as referenced in the La Jolla-La Jolla Shores LCP Land Use Plan are actually on the west and east sides of the residence which are areas that would not provide public 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 yard area is 13 feet wide and the north yard area is 15 feet wide.

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 yard) and along the rear portion of the site (south 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 yard areas are not maintained free of vegetation (no greater than 3 ft. in height), such that trees or a tall hedge is planted, views of the ocean along this corridor would be affected. As noted previously in the findings for Substantial Issue, the Commission has routinely restricted landscaping in the yard areas to a height of no more than 3 ft., as landscape elements that are higher than 3 ft. would have the potential to impede or block views to the ocean along major coastal access routes and other properties between the first coastal road and sea. It is also easier to monitor post-Commission action condition compliance if an exact measurement for the proposed landscaping in these restricted areas is required. In this particular case, 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 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".

If restrictions on landscape materials and fencing were not imposed in the yard areas of the subject site, public views toward the ocean would not be enhanced, pursuant to the policies of the certified LCP. Presently, there are views on the north side of the residence looking west along Midway Street toward the ocean. However, there are no views in the south yard as it is obstructed by existing landscaping. In this particular case, all existing development is being removed from the subject site. As such, there is an opportunity to improve and enhance public views toward the ocean in both the south and north yard setback areas of the subject site through requirements to include low-level (no higher than 3 ft.) landscape elements in these areas and that fencing contain open materials as well.

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 to be maintained/enhanced is the north or south yard, as opposed to the east or west yard, then this is the view that should be protected. Therefore, consistent with the certified LCP, Special Condition #2 requires the north and south 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. In addition, although the existing wooden structures on the bluff face are somewhat visually obtrusive, they cannot be removed at this time as they will cause damage to the bluff. However, over time, as the structures deteriorate, the applicant will be required to apply to remove them, which will visually enhance the bluff, consistent with the visual resource

policies of the certified LCP. Special Condition #8 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 through an unimproved foot trail. 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 away from the coastal bluff and toward the street into the storm drain system. 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.

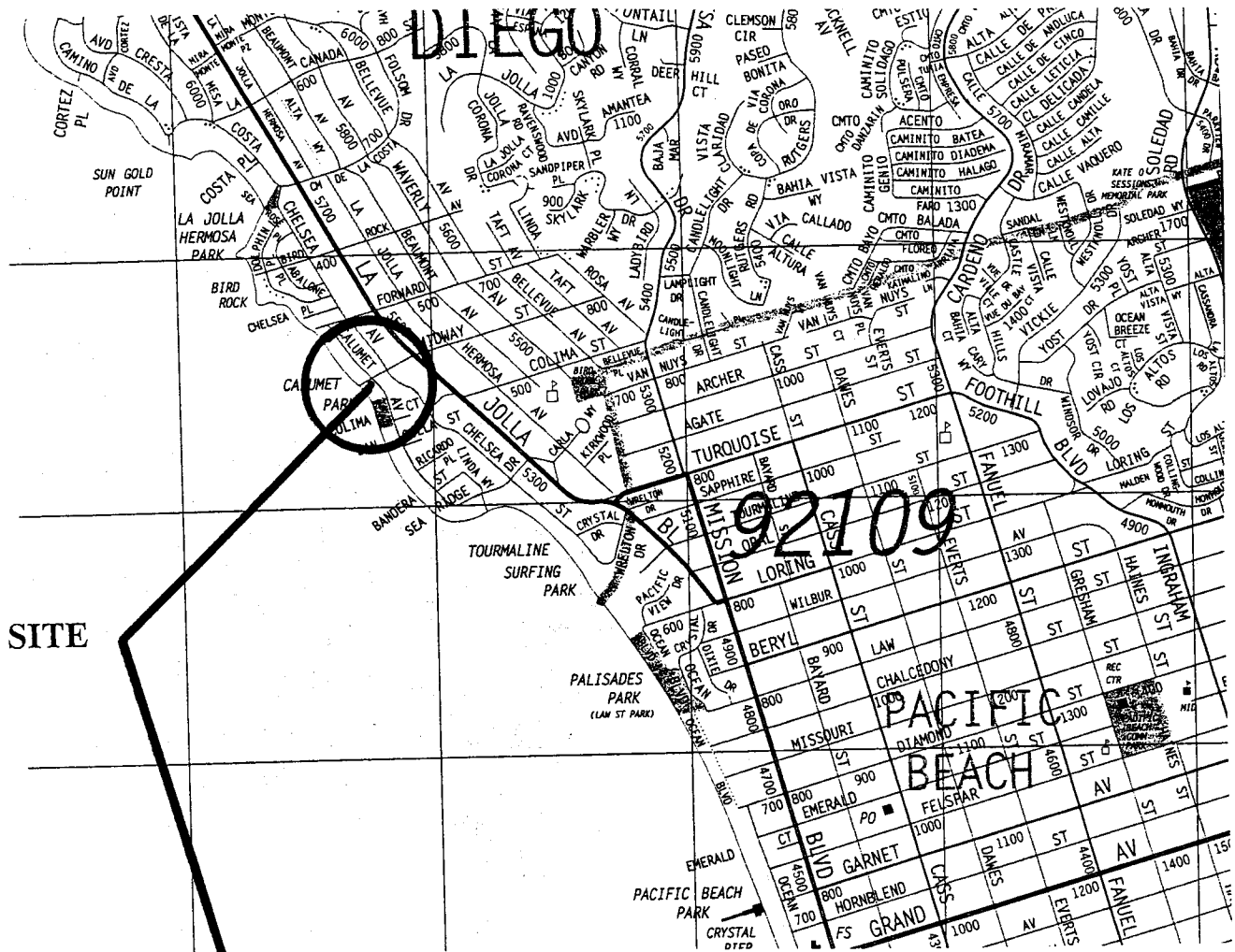
The subject site is zoned RS-1-7 and is designated for residential use in the certified La Jolla Land Use Plan. The proposed existing single family residence is consistent with that zone and designation. The subject site is also located within the Sensitive Coastal Bluffs overlay zone of the City's implementation 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 yard areas (or setbacks) to enhance visual access to the sea. Therefore, as conditioned such that all new proposed plantings within the yard setback (south and north yards) be low level vegetation so as to not obstruct views toward the ocean in the yard setback areas, is the proposed development consistent with the public access policies of the Coastal Act and the certified LUP. In addition, the applicant has not identified the location of the disposal site for the excess graded material. Special Condition #6 requires the applicant to identify the location for the disposal of graded spoils. If the site is within the coastal zone, a separate coastal development permit or permit amendment must first be obtained from the Coastal Commission. Therefore, 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

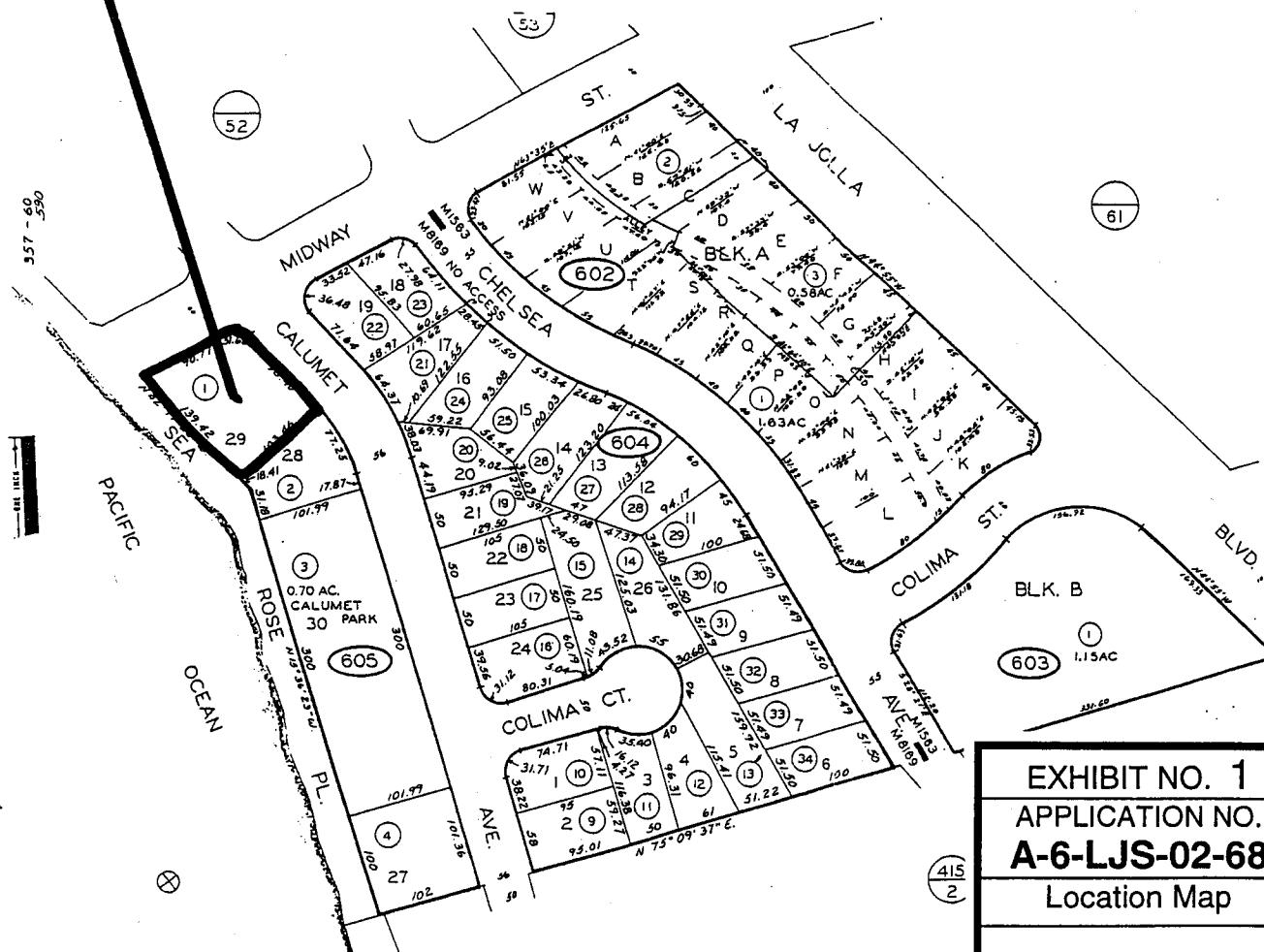


EXHIBIT NO. 1  
APPLICATION NO.  
**A-6-LJS-02-68**  
Location Map

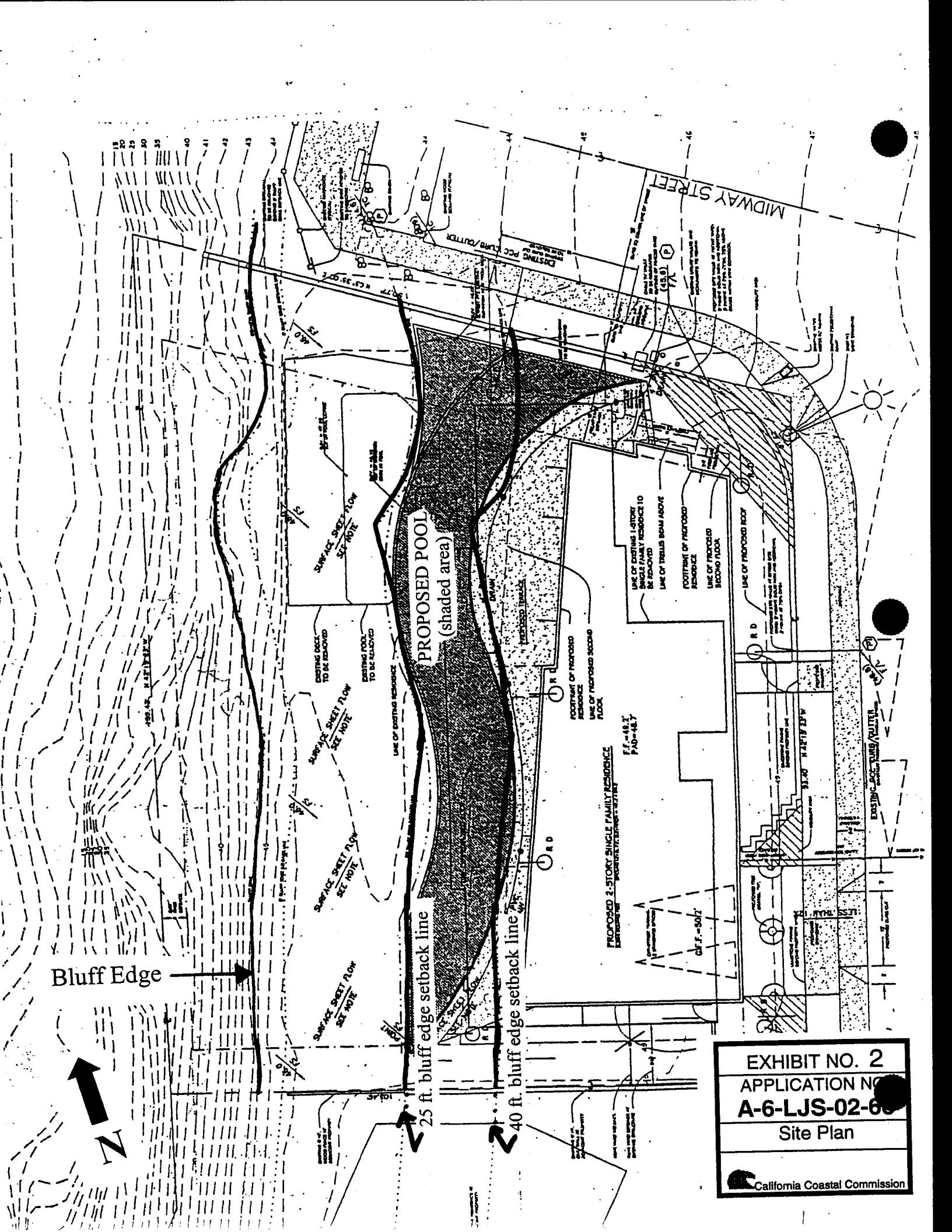
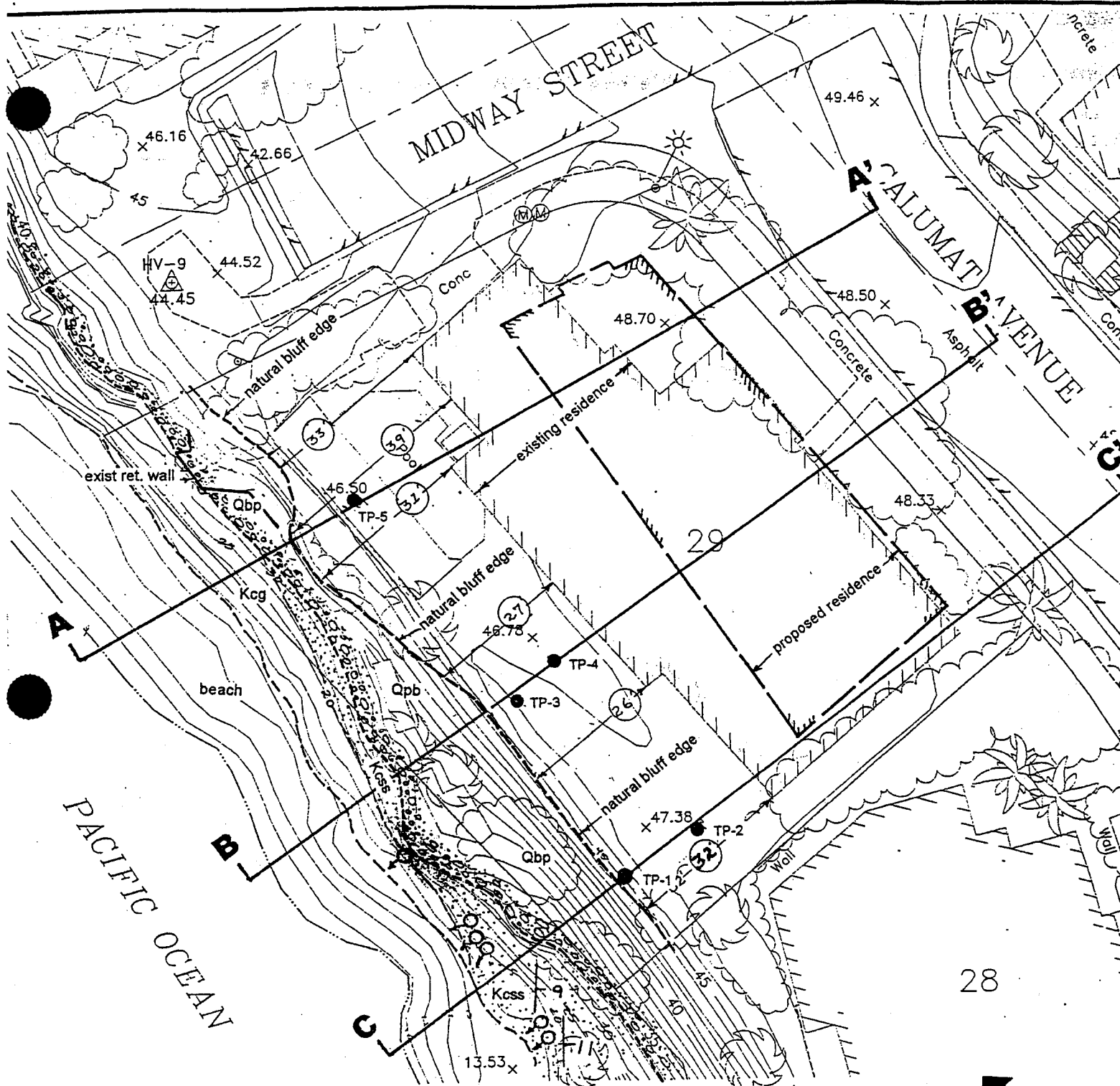


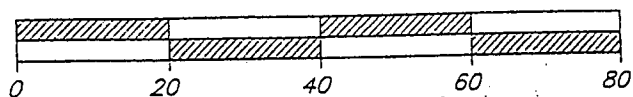
EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-02-60
Site Plan
California Coastal Commission



### 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

Scale



28

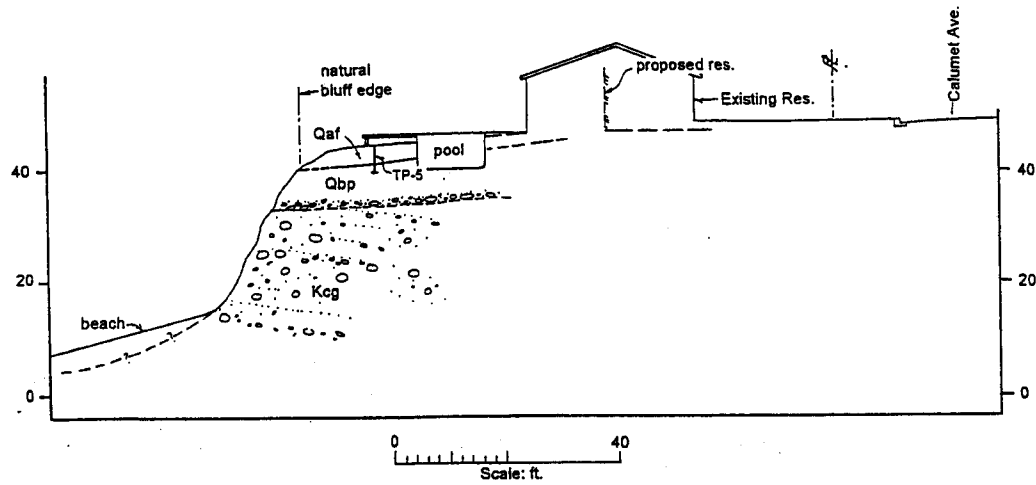
EXHIBIT NO. 3

APPLICATION NO.

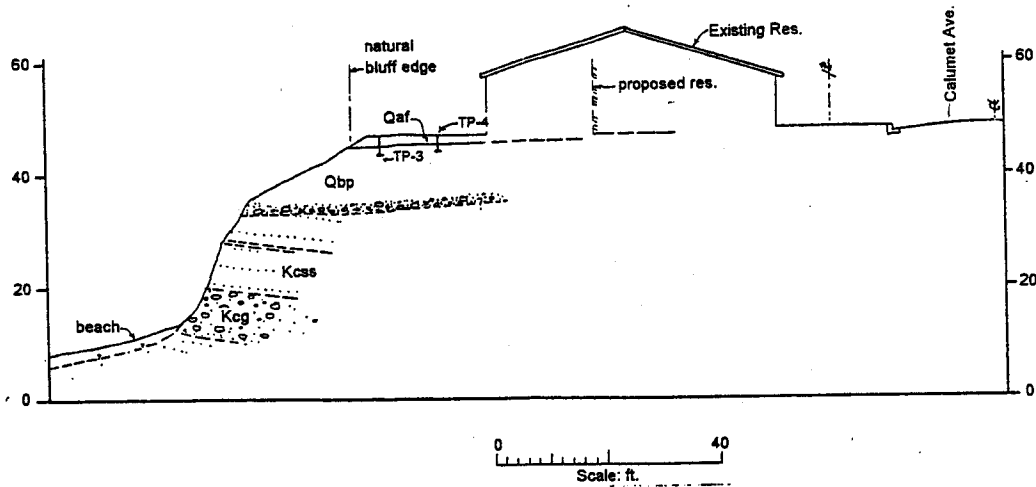
**A-6-LJS-02-6**

Geotechnical Report

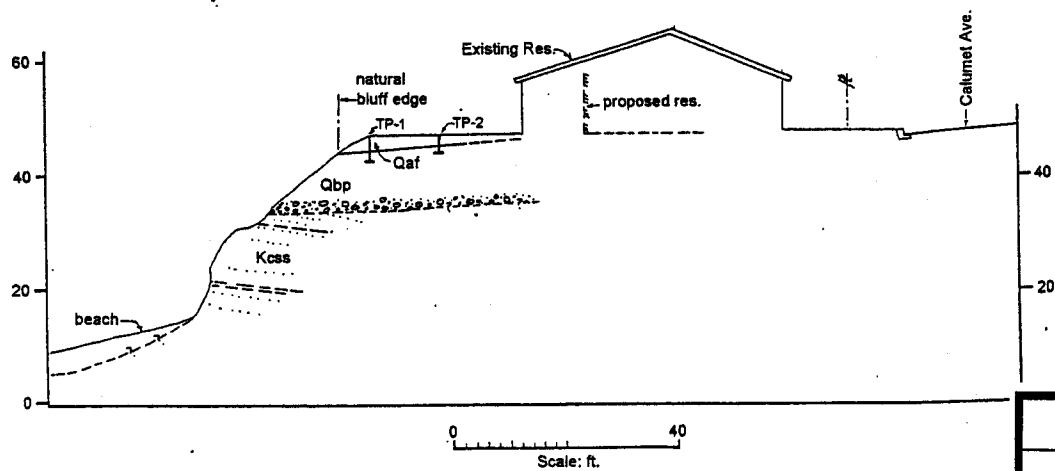
Bluff Edge Figure



**SECTION A - A'**



**SECTION B - B'**



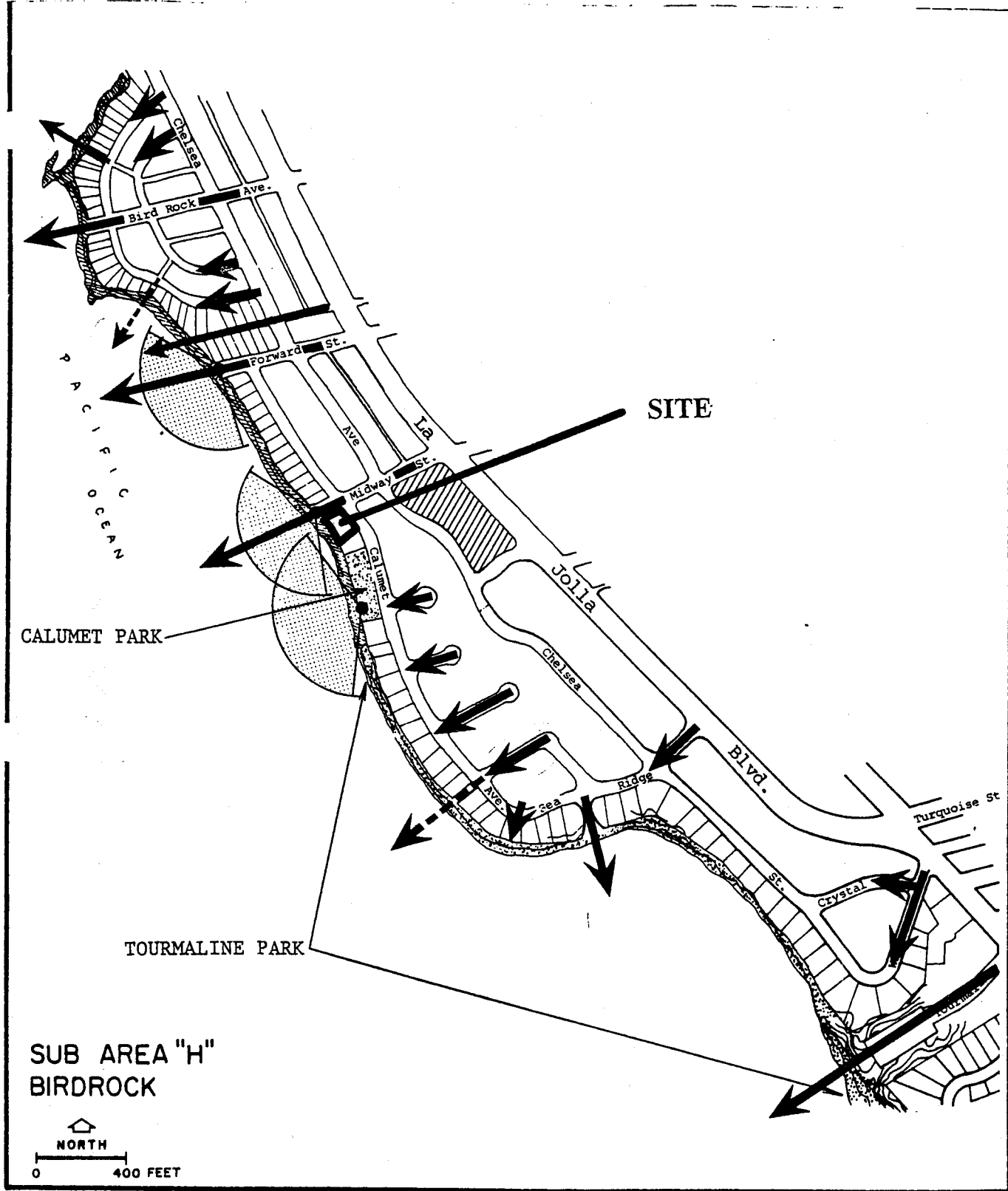
**SECTION C - C'**

EXHIBIT NO. 4  
 APPLICATION  
**A-6-LJS-02-68**  
 Cross Sections From  
 Geotechnical Reports



6

 California Coastal Commission



## La Jolla • La Jolla Shores

### LOCAL COASTAL PROGRAM • VISUAL ACCESS



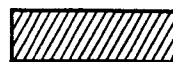
CITY OF SAN DIEGO  
PLANNING DEPARTMENT

← - - - - POTENTIAL VISUAL ACCESS

← - - - - VISUAL ACCESS CORRIDOR  
(existing)



MAJOR VISTA P



HIGH POTENTIAL  
ACCESS IN COM  
DEVELOPMENT

EXHIBIT NO. 6  
APPLICATION  
**A-6-LJS-02-68**

Visual Access Map  
from Certified LCP



California Coastal Commission



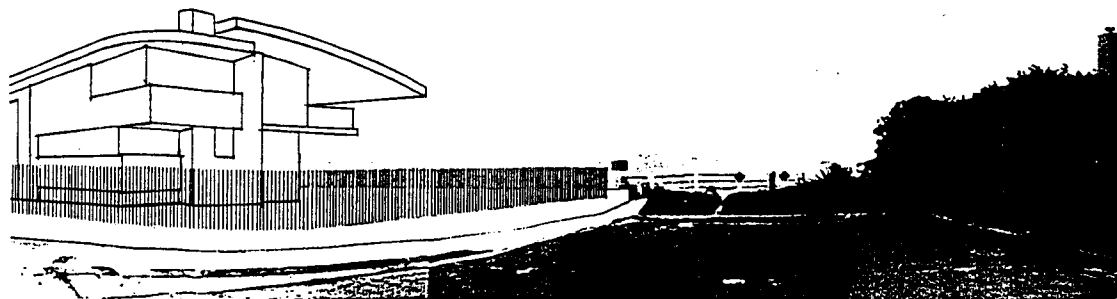
SHEET TITLE:  
 PHOTOGRAPHIC ANALYSIS  
 FIGURE A-1: VIEW CORRIDOR DOWN  
 MIDWAY STREET WITH EXISTING  
 DEVELOPMENT



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



## VISUAL ANALYSIS

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

EXHIBIT NO. 7  
 APPLICATION NO.  
**A-6-LJS-02-68**

View Analysis by  
 applicant contained  
 in Negative  
 Declaration



California Coastal Commission

## CALIFORNIA COASTAL COMMISSION

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

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

RECEIVED  
APR 23 2002  
CALIFORNIA COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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: CDP/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. 8
APPLICATION NO.
<b>A-6-LJS-02-68</b>
Appeal
California Coastal Commission

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

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  
G.A.P.*

Orrin Gabsch, President

RECEIVED

APR 09 2002

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

CITY OF SAN DIEGO  
**COASTAL DEVELOPMENT PERMIT**  
NOTICE OF FINAL ACTION

Laurinda - Please note that this is the second time I've mailed this document. It sounds like the copy of the revised permit (Condition 20) that I sent last week was lost in the mail. Please post asap & call me with questions. Thanks, Michel

DATE: April 2, 2002

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

APPLICATION NUMBER: CDP/SDP No. 1505

PROJECT DESCRIPTION: A Coastal Development Permit/Site Development Permit for the demolition of the existing residence and the construction of a new, approximately 5,790-square-foot, two-story, single residential dwelling with attached two-car garage, pool, hardscape, and landscape, on a 0.30-acre site.

PROJECT NAME: Poseidon Point LLC

LOCATION: 5490 Calumet Avenue, La Jolla, CA

APPLICANT'S NAME/ADDRESS: Poseidon Point LLC; Bruce E. Tabb, Owner  
402 W. Broadway, Suite 2175  
San Diego, CA 92101

FINAL ACTION: ☒ Approved with Conditions

ACTION BY: ☒ HEARING OFFICER

ACTION DATE: March 13, 2002

CONDITIONS OF APPROVAL: See attached permit.

FINDINGS: See attached resolution.

☒ Appealable to the Coastal Commission

Attachments: CDP/SDP 1505 Permit and Resolution

cc: California Coastal Commission

Project Planner: Michelle Sokolowski  
(619) 446-5278  
MS 501

NOTE: NOFA already received by CC. all documents. This only inclu permit/reso since Condition 20 only changed.

EXHIBIT NO. 9  
APPLICATION NO.  
**A-6-LJS-02-68**  
City of San Diego  
CDP/SDP

**RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
DEPARTMENT**

**WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COASTAL DEVELOPMENT PERMIT/SITE DEVELOPMENT PERMIT NO. 1505  
JOB ORDER NO. 41-0495  
POSEIDON POINT, LLC  
HEARING OFFICER**

This Permit is granted by the Hearing Officer of the City of San Diego to POSEIDON POINT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Owner/Permittee, pursuant to the Land Development Code of the City of San Diego. The 0.30-acre site is located at 5490 Calumet Avenue in the RS-1-7 Zone, the Coastal Overlay Zone (appealable), the Coastal Height Limit Overlay Zone, the Beach Parking Impact Overlay Zone, the First Public Roadway, within the La Jolla Community Plan area. The project site is legally described as Lot 29, Calumet Park, Map No. 8169.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to demolish the existing residence and construct a new, two-story, single dwelling unit with attached two-car garage, pool, hardscape, and landscape, described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A", dated March 13, 2002, on file in the Office of the Development Services Department. The facility shall include:

- a. Demolition of the existing residence and the construction of a new, approximately 5,790-square-foot, two-story, single dwelling unit with attached two-car garage, pool, hardscape, and landscape; and
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Land Development Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal/Land Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.



2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
  - a. The Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the office of the San Diego County Recorder.
3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. Issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated March 13, 2002, on file in the Office of the Development Services Department. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.
9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without

the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

10. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action, following all appeals.

11. Title Restrictions. Prior to the commencement of any work or activity authorized by this permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Development Services Department Director, or designated representative which shall provide: a) that the applicant understands that no new accessory structures and landscape features customary and incidental to residential uses shall be developed within five feet of the Bluff Top (as illustrated on approved plan Exhibit "A," dated March 13, 2002, on file in the Office of the Development Services Department or on the face of the Bluff; and b) that the applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and c) the applicant unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its advisors relative to the City of San Diego's approval of the project and for any damage due to natural hazards. This Notice of Hazardous Conditions-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

#### **PLANNING/DESIGN REQUIREMENTS:**

12. No fewer than two off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated March 13, 2002, on file in the Office of Development Services Department. Parking spaces shall comply at all times with requirements of the Municipal/Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

13. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

14. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

15. A topographical survey conforming to the provisions of the Municipal/Land Development Code may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the Permittee.

16. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
17. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
18. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
19. All walls and fences shall comply with Chapter 14 of the Land Development Code, unless otherwise stated herein.
20. The Owner/Permittee acknowledges that the existing deck, and other associated wood structures, located on the rear coastal bluff, do not conform to current Municipal Code regulations. The City will not require removal of the non-conforming structures (located on the bluff) at this time, due to the anticipated adverse effects (structural damage) on the coastal bluff face. It is anticipated that the wood deck and walls will deteriorate over a period of time. It is the Owner/Permittee's responsibility to remove the deck and associated debris (everything except the deck's footings) as it deteriorates naturally or in the event unsafe conditions exist. It is also understood by the Owner/Permittee that the non-conforming deck and structures are not to be repaired or maintained to extend the period of use, but simply to let the deck deteriorate naturally to the point at which it needs to be removed, as earlier stated.
21. All netting on the bluff face shall be removed within 60 days of the date of this permit.
22. Prior to the issuance of construction permits, the Owner/Permittee shall record a Deed, Restriction preserving a visual corridor a minimum 13'-0" wide along the rear setback (opposite and most distant from the Midway Street frontage) in accordance with the requirements of the Land Development Code. Open fencing and landscaping may be permitted within this visual corridor, provided such improvements do not significantly obstruct public views of the ocean. Landscape within this visual corridor shall be planted and maintained not exceed 3'-0" in height in order to preserve public views.
23. A reduction from the 40-foot bluff setback to 25 feet has been permitted; therefore, the owner shall waive all rights to protective devices associated with the subject property in accordance with Land Development Code Section 143.0143.f.1.
24. No development shall be permitted on the coastal bluff face.
25. All development, including buildings and accessory structures, shall be set back at least 25 feet from the coastal bluff edge.
26. At grade accessory structures and landscape features customary and incidental to residential uses shall not be closer than five feet to the coastal bluff edge, in accordance with the requirements of the Land Development Code.

**LANDSCAPE REQUIREMENTS:**

27. Only native or other drought-tolerant plant species shall be used in landscaped areas within 40'-0" of the bluff edge.

28. All required landscape plant materials shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to it's mature height and spread.

29. The Permittee or subsequent Owner shall be responsible for the maintenance of all street trees and landscape improvements (right-of-way and median landscaping) consistent with the Landscape Standards. A Landscape Maintenance Agreement and bond shall be entered into prior to issuance of any grading or construction permit.

30. 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.

31. All irrigation systems (existing and proposed) within forty feet of the coastal bluff edge shall incorporate a Water Management Plan, an electrically controlled automatic rain shut-off device or moisture-sensing device, low precipitation rate nozzles and an irrigation electric controller. The controller shall be seasonally adjusted in accordance with the Water Management Plan.

#### **ENGINEERING REQUIREMENTS:**

32. All drainage on the premises shall be directed away from the coastal bluff and either into an existing or newly improved public storm drain system or onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off. All drainage from any unimproved areas shall be appropriately collected and discharged in order to reduce, control, or mitigate erosion of the coastal bluff.

33. Prior to building occupancy, the applicant shall conform to Municipal Code provisions for "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

34. Prior to the issuance of any building permits, the applicant shall submit an elevation certificate signed by a Registered Civil Engineer or a Licensed Land Surveyor, certifying the pad elevation based on USGS datum, satisfactory to the City Engineer.

35. Prior to the issuance of any building permits, the applicant shall obtain an encroachment removal agreement, from the City Engineer, for a private walkway in Calumet Avenue and landscaping in Calumet Avenue and Midway Street.

36. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the closure of the existing driveway on Midway Street with restoration to full-height curb, gutter and sidewalk, the installation of a new 12-foot driveway on Calumet Avenue and the installation of 2 sidewalk underdrains each on Calumet Avenue and Midway Street, all satisfactory to the City Engineer.

**INFORMATION ONLY**

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit/tentative map, may protest the imposition within 90 days of the approval of this development permit/tentative map by filing a written protest with the City Clerk pursuant to California Government Code 66020.

APPROVED by the Hearing Officer of the City of San Diego on March 13, 2002.

HEARING OFFICER  
RESOLUTION NO. 2090  
COASTAL DEVELOPMENT PERMIT/SITE DEVELOPMENT PERMIT NO. 1505  
JOB ORDER NO. 41-0495  
POSEIDON POINT, LLC

WHEREAS, POSEIDON POINT, LLC, Owner/Permittee, filed an application with the City of San Diego for a permit to demolish the existing residence and construct a new, two-story, single dwelling unit with attached two-car garage, pool, hardscape, and landscape (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No.1505), on portions of a 0.30-acre site, and;

WHEREAS, the project site is located at 5490 Calumet Avenue in the RS-1-7 Zone, the Coastal Overlay Zone (appealable), the Coastal Height Limit Overlay Zone, the Beach Parking Impact Overlay Zone, the First Public Roadway, within the La Jolla Community Plan area, and;

WHEREAS, the project site is legally described as Lot 29, Calumet Park, Map No. 8169, and;

WHEREAS, on March 13, 2002, the Hearing Officer of the City of San Diego considered Coastal Development Permit/Site Development Permit No. 1505 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated March 13, 2002.

**COASTAL DEVELOPMENT PERMIT FINDINGS:**

- A. THE PROPOSED COASTAL DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY THAT IS LEGALLY USED BY THE PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN A LOCAL COASTAL PROGRAM LAND USE PLAN; AND THE PROPOSED COASTAL DEVELOPMENT WILL ENHANCE AND PROTECT PUBLIC VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS AS SPECIFIED IN THE LOCAL COASTAL PROGRAM LAND USE PLAN.**

The subject property is located on the bluff top above the Pacific Ocean, at the southwest corner of Midway Street and Calumet Avenue. The property fronts on Midway Street, with the street side setback along Calumet Avenue. The rear setback (opposite and most distant from the Midway Street frontage) provides an opportunity for a view corridor from Calumet Avenue.

Sea Rose Lane is a paper street located at the bottom of the bluff below the site, which provides lateral public access across the coastal segment at the base of the bluff. Midway Street extends to Sea Rose Lane, and therefore provides vertical access to the beach, however the access down the bluff is steep and hazardous at this point. A stairway providing safer vertical access to the Pacific Ocean exists two blocks to the north at the end of Bird Rock Avenue.

Midway Street has a dedicated bluff top view point at the end of the street which provides visual access. In addition, Midway Street is a visual access corridor identified in the adopted La Jolla-La Jolla Shores Local Coastal Program. The proposed demolition of the existing residence and the construction of the new, two-story residence with a pool will conform with all setback, height, and floor area ratio requirements and will enhance public views to and along the ocean since the proposed project has been designed to observe greater setbacks than the existing residence from both the front property line along Midway Street and the rear property line. The 13'-0" rear setback will be preserved as a visual corridor as a condition of permit approval (Condition 19). Conditions have also been included with the permit which will prohibit the maintenance of landscape material exceeding 3'-0" in height within this visual corridor (Conditions 19 and 27) to further protect the visual access. The construction would occur on private property and will conform with Land Development Code requirements.

**B. THE PROPOSED COASTAL DEVELOPMENT WILL NOT ADVERSELY AFFECT ENVIRONMENTALLY SENSITIVE LANDS.**

The project consists of the demolition of the existing residence and the construction of the new, two-story residence with a pool. The project site, located within an urbanized area of La Jolla, contains environmentally sensitive lands in the form of a sensitive coastal bluff. The proposed project has been designed to remove the existing pool and turf from the bluff edge setback, and to construct the new pool and residence observing the 25-foot bluff edge setback recommended by the geologic reconnaissance report. In addition, the permit contains conditions which protect the bluff face and restrict the type of landscape material planted on the sensitive coastal bluff to native and other drought-tolerant species (Conditions 20 through 23). The incorporation of these project features will ensure the sensitive coastal bluff will not be adversely impacted by the proposed development.

**C. THE PROPOSED COASTAL DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM LAND USE PLAN AND COMPLIES WITH ALL REGULATIONS OF THE CERTIFIED IMPLEMENTATION PROGRAM.**

The proposed demolition of the existing residence and the construction of the new, two-story residence with a pool has been designed to conform with the adopted La Jolla-La Jolla Shores Local Coastal Program and is consistent with the recommended residential land use, design guidelines, and development standards in effect for this site per the adopted La Jolla Community Plan and the City of San Diego Progress Guide and General Plan.

**D. FOR EVERY COASTAL DEVELOPMENT PERMIT ISSUED FOR ANY COASTAL DEVELOPMENT BETWEEN THE NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL OVERLAY ZONE, THE COASTAL DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE CALIFORNIA COASTAL ACT.**

The project site is located between the nearest public road and the Pacific Ocean. The subject property is located on the bluff top above the Pacific Ocean, at the southwest corner of Midway Street and Calumet Avenue. The property fronts on Midway Street, with the street side setback along Calumet Avenue.



Sea Rose Lane is a paper street located at the bottom of the bluff below the site, which provides lateral public access across the coastal segment at the base of the bluff. Midway Street extends to Sea Rose Lane, and therefore provides vertical access to the beach, however the access down the bluff is steep and hazardous at this point. A stairway providing safer vertical access to the Pacific Ocean exists two blocks to the north at the end of Bird Rock Avenue.

The public use of and access to the Pacific Ocean as a recreation area is available nearby at the Bird Rock Avenue access point. In addition, Calumet Park is located on the bluff top two lots to the south of this site. Calumet Park provides visual access and a public walkway along the bluff top, but does not provide access to the shoreline except for a hazardous trail at the north end of the park. The proposed site improvements will not encroach beyond the existing development line of the subject site, nor that of adjacent residential development.

Based on the above information, the proposed demolition of the existing residence and the construction of the new, two-story residence with a pool and related site improvements conform with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

#### **SITE DEVELOPMENT PERMIT FINDINGS:**

**A. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT THE APPLICABLE LAND USE PLAN.**

The project proposes the demolition of the existing residence and the construction of the new, two-story residence with a pool and related site improvements. The subject site is located on a site designated for single-family residential use in the applicable land use plan and the proposed project therefore will not adversely affect the La Jolla Community Plan and Local Coastal Program Land Use Plan Addendum.

**B. THE PROPOSED DEVELOPMENT WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.**

The project proposes the demolition of the existing residence and the construction of the new, two-story residence with a pool and related site improvements. The proposed project is conditioned to proceed in accordance with applicable health and safety regulations contained within local and state laws and will not be detrimental to the public health, safety, and welfare.

**C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE APPLICABLE REGULATIONS OF THE LAND DEVELOPMENT CODE.**

The project proposes the demolition of the existing residence and the construction of the new, two-story residence with a pool and related site improvements. The proposed project is required to proceed in accordance with applicable regulations of the Land Development Code, as conditioned within Coastal Development Permit/Site Development Permit No. 1505.



**D. THE SITE IS PHYSICALLY SUITABLE FOR THE DESIGN AND SITING OF THE PROPOSED DEVELOPMENT AND THE DEVELOPMENT WILL RESULT IN MINIMUM DISTURBANCE TO ENVIRONMENTALLY SENSITIVE LANDS.**

The project site has been previously disturbed and an existing residence with a subterranean pool and on-grade deck is currently located within the 25-foot bluff edge setback. The proposed project will remove the existing pool and deck from this environmentally sensitive area, and will place all such structures beyond the 25-foot bluff edge setback, as required, which will result in the minimum disturbance to this area. There are no other environmentally sensitive lands located on the property.

**E. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE ALTERATION OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISK FROM GEOLOGIC AND EROSIONAL FORCES, FLOOD HAZARDS, OR FIRE HAZARDS.**

The proposed project will be sited on an 0.30-acre lot currently developed with an existing residence and pool. The site is located at top of the bluff, where Midway Street and Calumet Avenue intersect. There are no other steep hillsides on the project site.

The project site is located in a seismic area with a Geologic Hazard Rating of 53 (level or sloping terrain; unfavorable geologic structure; low to moderate risk) and 45 (coastal bluff: moderately stable, some minor landslides, minor erosion). Based on the geologic reconnaissance report prepared by the applicant's engineer, the City's Geology staff has concluded that the bluff is stable enough to support a 25-foot bluff edge setback and that proper engineering design for all new structures would ensure that the potential for geologic and erosional hazards would not be significant. The proposed development would not result in undue risk of flood and fire hazards.

**F. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS ON ANY ADJACENT ENVIRONMENTALLY SENSITIVE LANDS.**

The proposed two-story, single dwelling unit project will be located entirely on the private property and, as specified in Coastal Development Permit Finding "B," above, has been designed to avoid impacts to any adjacent environmentally sensitive lands, specifically the sensitive coastal bluffs.

**G. THE PROPOSED DEVELOPMENT WILL BE CONSISTENT WITH THE CITY OF SAN DIEGO'S MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) SUBAREA PLAN.**

The proposed project is not within or adjacent to the Multiple Habitat Planning Area and therefore is consistent with the City of San Diego's Multiple Species Conservation Program Subarea Plan.

**H. THE PROPOSED DEVELOPMENT WILL NOT CONTRIBUTE TO THE EROSION OF PUBLIC BEACHES OR ADVERSELY IMPACT LOCAL SHORELINE SAND SUPPLY.**

The development area of the subject property is located on the bluff top above the Pacific Ocean, approximately 45 feet above the beach below, and therefore, would not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

**I. THE NATURE AND EXTENT OF MITIGATION REQUIRED AS A CONDITION OF THE PERMIT IS REASONABLY RELATED TO, AND CALCULATED TO ALLEVIATE, NEGATIVE IMPACTS CREATED BY THE PROPOSED DEVELOPMENT.**

The proposed project avoids impacts to environmentally sensitive lands and Negative Declaration No. 41-0495 has been prepared for this project in accordance with State CEQA guidelines; therefore, no mitigation is required for the proposed development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Coastal Development Permit/Site Development Permit No. 1505 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1505, a copy of which is attached hereto and made a part hereof.

---

MICHELLE SOKOLOWSKI  
Development Project Manager  
Development Services

Adopted on: March 13, 2002

ALL-PURPOSE CERTIFICATE

Type/Number of Document SDP/CDP 1505  
Date of Approval March 13, 2002

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Michelle Sokolowski, Development Project Manager

On \_\_\_\_\_ before me, STACIE L. MAXWELL, (Notary Public), personally appeared **Michelle Sokolowski**, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature \_\_\_\_\_  
Stacie L. Maxwell

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed \_\_\_\_\_ Signed \_\_\_\_\_  
Typed Name Typed Name

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (Name of Notary Public) personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**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.

## 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:**

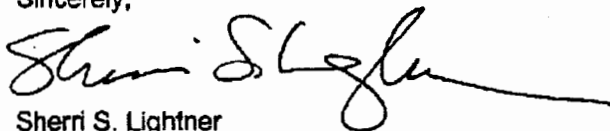
Under the City's interpretations, only those applicants who have installed erosion control devices the right way, i.e., through a Coastal Commission permit, would have to observe the 40' setback line. Those who have installed devices without permits could be rewarded by being allowed development to the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



Hon. Sara Wan, Chair  
California Coastal Commission

**A-6-LJS-02-068, POSEIDON POINT, LLC.**

Dear Chairwoman Wan and Commissioners:

We are disappointed that this project, which has been a highly contentious one at the community and City levels, will be heard in Eureka, where none of us is able to appear. While we appreciate the staff's analysis of this project, we believe there is Substantial Issue in regard to the proposed Bluff Edge Determination, as detailed below. Other questions also remain which we believe merit additional analysis and clarifications in order to address the issues raised by this application.

**RECOMMENDATIONS:**

- 1. CONTINUE ITEM TO SAN DIEGO TO INSURE PUBLIC INPUT.**
- 2. REQUIRE APPLICANT TO ADDRESS ANY CODE VIOLATION ISSUES PRIOR TO VOTING ON THE PROJECT APPLICATION.**
- 3. DETERMINE SUBSTANTIAL ISSUE FOR BLUFF EDGE SETBACK BASED ON 10' LOSS OF UPPER BLUFF SINCE 1991, NEW INFO OF RECENT COASTAL BLUFF FACE COLLAPSE, AND ADDITIONAL 10' FUTURE UPPER BLUFF LOSS PROJECTED BY GEOLOGIST TO OCCUR WITHIN LIFE OF THE STRUCTURE. STRUCTURE WOULD, THUS, BE AT 15' SETBACK FROM THE BLUFF EDGE, WHERE INSTABILITY OF THE BLUFF AS A WHOLE WOULD REQUIRE 40.'**
- 4. REQUIRE FURTHER ANALYSIS OF PHOTOGRAPHIC EVIDENCE AND FIRST HAND KNOWLEDGE OF SITE CONDITIONS SUBMITTED BY PROJECT NEIGHBORS. NO BORINGS WERE DONE ON SITE, JUST HAND DUG TEST PITTS.**

**DISCUSSION:**

**BLUFF EDGE DETERMINATION:**

Based on information and photos received recently from project neighbors, we believe there is evidence of upper and lower bluff instability on site and along the adjacent shoreline as well, which mitigates against establishing the bluff edge at the 25' line. The information includes highly credible first hand evidence of recent grading and construction activities on the project bluff area which City files show were reported to Code Enforcement within the last 6-9 months, but which have not been addressed in the City or Commission staff reports. An on site visit by Staff would make this information clearer.



A-6-LJS-02-O68

PAGE 2

SEPTEMBER 30, 2002

Photographic evidence shows that the current "bluff edge" as determined by Mr. Hart, was located some 10-12 feet seaward in 1991. (Attachment 1). Mr. Hart indicates that there will likely be a loss of an additional 10' of upper bluff material during the life of the structure, which would put any house or pool only 15' from the bluff edge. Evidence seems to document large scale destabilization of the entire coastal bluff area by grading done in the 1950's by the former owner.

Apparently, to forestall projected future loss, Mr. Hart's recommendations in the July 2000 Geologic Reconnaissance Report include retention and repair of the existing timber retaining walls, with construction of a new wall along the central portion of the site. (Attachment 2). Now, however, evidence shows that the applicant has already removed certain elements, recontoured the bluff face, and installed new concrete footings and decking apparently without permits (Sept. 30, 2002, letter to Commissioners from K. Pifer).

**If, therefore, you take a vote on this project in Eureka, it is our strong recommendation, that you require the applicant to address any Code violations, and, in order to accommodate the upper bluff loss of approximately 10' since 1991, the collapse of coastal bluff face along the southern shoreline within the past 18 months, and the geologist's projected loss of 10' more of upper bluff, that you specify the bluff edge setback at 40' to avoid the likelihood of either a house or pool being reduced in the future to 15' from the bluff edge.**

#### **EROSION CONTROL DEVICES AND SITE STABILITY:**

**We are concerned that the bluff should be looked at as a whole.** We ask the Commission to review first hand testimony and photographic evidence from the shoreline in the block immediately north of the site which demonstrates that notches and sea caves are typical of this area. (Attachment 3). Although Mr. Hart states he was unable to evaluate the likelihood of such structures at the foot of the bluff because of a large cobble berm, first hand evidence from the adjoining neighbor documents that the berm is the result of a large bluff face collapse approximately 18 months ago.

**Where, as here, there are extensive upper bluff failures, as well as a recent bluff face collapse, why is it prudent to allow structures to claim setback exemptions? Should there not be further investigation into the bluff collapse prior to approving a 25' bluff edge setback?**

**While we understand the Commission does not interpret the north concrete retaining wall and the extensive timber retaining devices as "erosion control devices," we would appreciate a more extensive explanation of the relationship between these upper bluff devices, the bluff face collapse, and overall site stability, so that we may have a better understanding of the conditions that might trigger setback exemptions.**



A-6-LJS-02-068, Page 3

SEPTEMBER 30, 2002

#### **CUMULATIVE IMPACTS:**

Because the City of San Diego does not use the CEQA definition of "cumulative impacts," and because the environmental document failed to consider project alternatives, we believe the Commission would benefit from public testimony about past, other current, and reasonably foreseeable projects raising similar issues. This information has not been included in the City documents before you. We would be pleased to provide such documentation.

In order to protect adjacent property, including the dedicated public viewshed, we request the Commission to consider establishing the bluff edge setback at 40' in order to address the reasonably foreseeable likelihood of further upper bluff collapse. Such a determination would also constitute an environmentally preferable alternative under CEQA.

#### **COASTAL COMMISSION APPROVAL:**

An advertisement in the June 18, 2002, Union-Tribune featuring the Poseidon Point property advises "Remodel this existing home, build your dream home to your own requirements, or build the spectacular masterpiece home designed by noted architect Wally Cunningham.

**While these conceptual drawings have been approved by the California Coastal Commission, they may be customized to suit your needs."**(Attachment 4).

While we have no information regarding any prior Coastal Commission approval, we would welcome the Commission's taking the opportunity to correct the record. We would also welcome Commission comment on what procedures would be required should there be modification of the current application. We are particularly concerned that no modifications come through as "Substantial Conformance Review," or "Minor Amendments."

#### **CONCLUSION:**

In conclusion, we'd like to express our appreciation to the City of San Diego geologist, Rob Hawk, and City Planner Michelle Sokolowski for their willingness to meet with us to discuss the issues at hand. Our thanks, as well, go to the local Coastal staff, whose advice to the local jurisdiction on LCP implementation is critical to preserving our sensitive coastal resources.

Sincerely,

*Sherri Lightner, By Direction J.A.P.*

Sherri Lightner, President

La Jolla Town Council





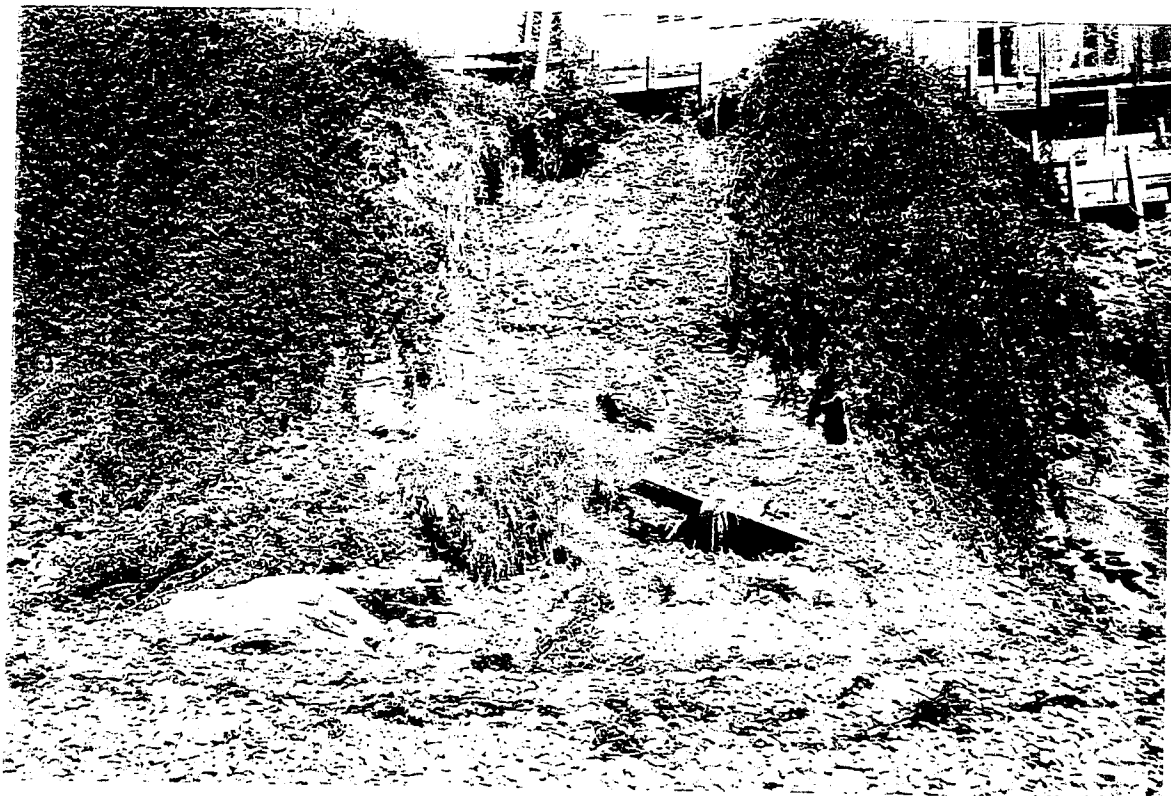


File No. 446-2000  
Calumet St. Residence  
July, 2000

2. The estimated long-term rate of sea-bluff recession at the site is approximately 1 to 1.5 inches per year (6 to 10 feet in 75 years). This estimated recession rate is based on published rates for similar geologic units in the Sunset Cliffs area of San Diego.
3. The proposed residence will be located a minimum of 40 feet from the bluff edge. The swimming pool will be located 25 feet from the edge of the upper more gently sloping portion of the bluff. Based on the above estimated rate of erosion, it is our opinion that the proposed residence and swimming pool will not be adversely affected by bluff erosion during the anticipated structural life of approximately 75 years. In addition, it is our opinion that the construction of the residence and pool will not have an adverse effect on the stability of the bluff provided proper drainage is provided for the deck areas. Landscaping improvements located within 10 feet of the edge of bluff may be subject to distress resulting from bluff recession during the life of the structure.
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

References:

- Kennedy, M.P., 1973, Sea Cliff erosion at Sunset Cliffs, San Diego, California, California Geology, Vol. 26, No. 2.
- Kennedy, M.P., 1975, Geology of the San Diego Metropolitan area, California, Bull. 200, California division of Mines and Geology.
- Lee, L., Pinckney, C., and Bemis, C., 1976, Sea Cliff Base Erosion, San Diego, California, preprint 2708, ASCE National Water Resources and Ocean Engineering Convention, San Diego, California.
- Treiman, J., 1993, The Rose Canyon fault zone, southern California, California Division of Mines and Geology, Open File Rept. 93-02.



5490 CALUMET  
AUG 1996



5490 CALUMET  
AUG 1996

ATTACHMENT 2, page 2

NEW

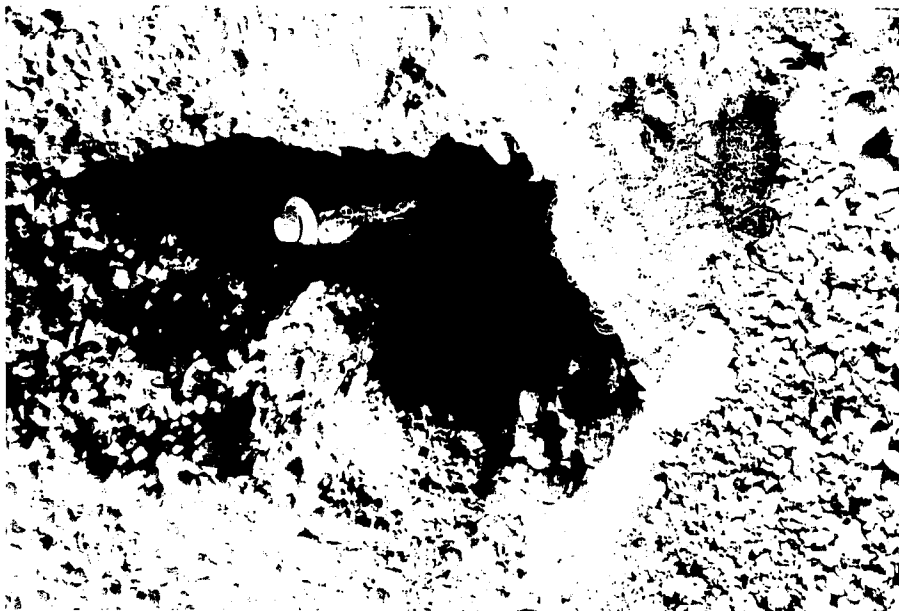


5490 CALUMET AVE  
SEPT 1995 (SOUTHWEST CORNER)



5490 CALUMET AVE  
SEPT 1995  
NORTH CORNER

ATTACHMENT 2  
PAGE 3

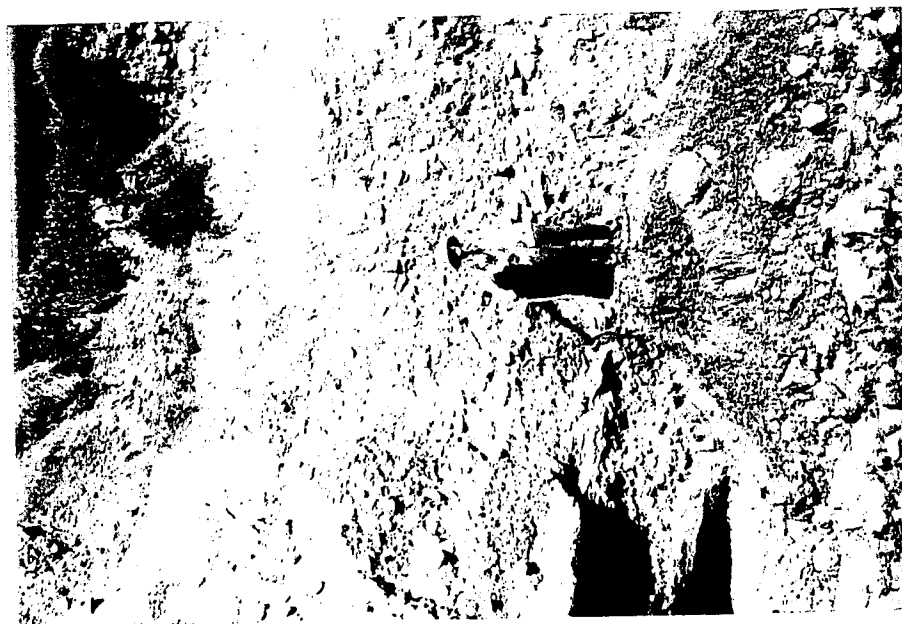
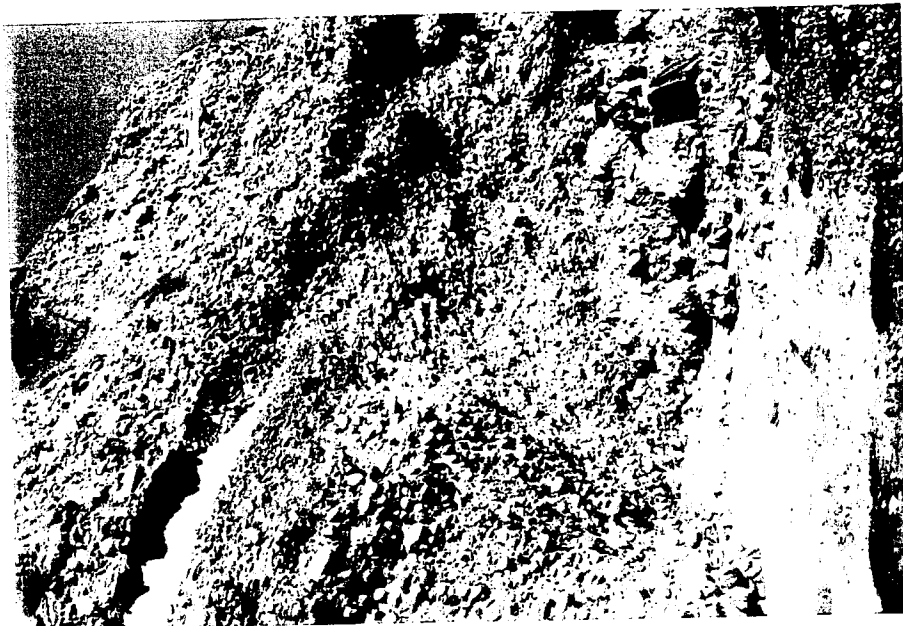


NOVEMBER 1973



CAVES MARCH 1990

ATTACHMENT 3, PAGE 1



RESULTS OF EROSION - 1973

ATTACHMENT 3, PAGE 2





# Oceanfront Dream

*La Jolla, California*

**ATTACHMENT 4**

Direct oceanfront site with 139 feet of frontage and an extremely rare oceanfront pool. Wonderful west-by-southwest orientation provides year-round sunsets, fantastic rolling surf, plus night light views. Remodel this existing home, build your dream home to your own requirements, or build the spectacular masterpiece home

designed by noted architect Wally Cunningham. While these conceptual drawings have been approved by the California Coastal Commission, they may be customized to suit your needs. This is a truly exceptional property that must be visited to appreciate its splendor.

Offered at \$3,995,000

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FROM  
MASTERSIDE SAND EGG  
SD SUNSHINE TRIBE IN-ART  
JUNE 13 2002



K

5436 Calumet Avenue  
La Jolla, California 92037  
858-459-6875  
email: [jpifer1@san.rr.com](mailto:jpifer1@san.rr.com)

September 30, 2002

BY FAX: 619-767-2384  
Sarah Wan, Chair,  
California Coastal Commission  
7575 Metropolitan Drive  
San Diego, Ca 92108

Re: Poseidon Point, LLC/Item Tue 10-b

Dear Chair Wan and Commissioners:

I am the next door neighbor and adjoining property owner to the project as referenced above. My first request would be that you please continue the item to San Diego in November. It is an enormous burden on all of us – the neighbors of this project – to expect us to come to Eureka to bring matters to your attention. Please give us an extension of time and a change of venue so that we can all bring our concerns to your attention.

Such concerns include the fact that the swimming pool has tipped approximately 1' toward the ocean during the last two years. This has been rather cleverly obscured by the fact that new level decking has been placed around the pool, and has been extended some 8' toward the ocean, with new supporting members embedded in concrete presumably to stop further erosion and movement of the pool. This work has been done apparently without permits. We understand that such supports are not considered erosion control devices because the principal structure was not in danger.

We feel the city's action failed to consider recent bluff collapses not only on this property but also on the properties to the north between Midway and Forward Street. In particular, the small parklike area between the subject property and the next house to the north has suffered a major collapse with approximately 10' of bluff area disappearing totally and the remainder having collapsed inward causing large troughs in the cliff face.

EXHIBIT NO. 11
APPLICATION NO.
<b>A-6-LJS-02-68</b>
Additional Letters From Interested Persons

The magnitude of the bluff collapses at that time can be seen from the cracks across the lower part of the exterior garage sidewalk, the cracks in the wall, and new cracks running throughout the flooring in the house.

The cobbled berm at the foot of the subject property, which obscured the geologist's ability to evaluate whether or not a sea cave exists on site, occurred approximately eighteen months ago after major falls from the subject property cliff face. It is clear from photographs taken in 1991 that a large palm tree was approximately 12' from the edge of the cliff at that time. Today it is right on the edge in danger of collapse.

Extensive work has been done on the cliff face by the present owner, all of it without permit. Structures were removed, plantings were done, grading was changed from the definitive terraces that previously existed to rounded shapes which exist now. We believe that such activity raises questions of whether there has been a violation that should be addressed by the coastal commission prior to approving this project.

It is our view that during the extension cliff works carried out by Bruce Taub and his men during the last two years has caused cracking, possibly in our foundation or at the very least as evidenced by a crack in our wall on that side of the property. We ask you to seriously consider the impact that a neighboring property owner will experience if this project is allowed to extend out to the proposed 25' set back line.

In conclusion, we believe that any decision by the commission should be delayed until these issues have been addressed by your staff.

Very truly yours,

  
Kate Pifer

Email to: Sherilyn Sarb, California Coastal Commission at [SSarb@coastal.ca.gov](mailto:SSarb@coastal.ca.gov)

Hon. Sara Wan, Chair  
California Coastal Commission  
Sept. 30, 2002

RE: ITEM Tue 106, Poseidon Point, LLC.

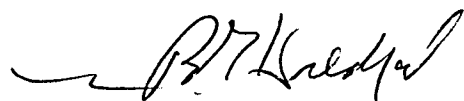
Dear Chair Wan and Commissioners:

As an "interested party" to this appeal, I  
am discouraged to hear that the project  
will be heard in Eureka.

I am also surprised not to have  
received a Staff Report.

Please continue this project to San Diego  
to allow maximum public input.

Sincerely,



R. G. Hilliard  
5550 Calumet  
La Jolla CA 92037

RECEIVED

OCT 01 2002

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

September 30, 2002

Donald F. Schmidt  
5536 Calumet Avenue  
La Jolla, CA 92037

Sarah Wan, Chair  
California Coastal Commission  
7575 Metropolitan Drive  
San Diego, CA 92108

RE: Poseidon Point, LLC/Item Tue 10-b

Dear Chair Wan and Commissioners:

I'm writing you to inform you that I strongly disagree with staff's report on the determination of the bluff edge on this property.

I believe that the first geological report on this property done by Mr. Skelley determined the bluff edge correctly, which determines the edge of the bluff at a point right before the edge goes down slope. This is in conflict with the idea of edge being determined by the vertical face of the cliff.

Although I believe the proposed house is at a proper setback from that Skelley bluff edge, the proposed pool is not. I believe the pool will NOT survive the 75 year life span of the house. When the pool fails, it will create a very dangerous condition for the homeowner to the south and Midway Avenue to the north.

There seems to be accelerated erosion occurring on this property. This property was originally purchased by Mr. Robert L. Haniman in the late 1940's. Mr. Haniman built the current house that stands there today. He also graded a path all the way down to the beach. During that grading process, part of the cliff collapsed. The path is quite evident in aerial photos in the mid to late 1950's. Today, there is little left of this path. Also, it has been pointed out several times that there is water seeping out from the bottom of the bluff on the south side of the property.

Along with those problems, there is a serious concern of an accelerated erosion problem at the end of Midway Street. During the rainstorms of the winter of 2000, a large ditch formed at the top of the this bluff creating an ever growing erosion problem. As a member of the board of the of the Bird Rock Community Council, I contacted the city twice on this matter. The last time a letter was sent directly to Councilmember Scott Peters, who did nothing. This is a problem that will get worse with the next major rainy season. Not only will more drainage over the cliff it put this bluff in danger, but it will also endanger the property at 5490 and 5502 Calumet Avenue. It seems to be a drainage problem the City of San Diego has chosen to ignore, for whatever reason.

I understand that your agenda is full for November, but I think that it would be the right and proper thing to do to postpone this item to the November meeting in San Diego. This issue of bluff edge determination is a serious issue in San Diego and needs to be resolved. I would assume that it would also be easier for the applicant to have this heard in San Diego. Please postpone this item to the November Coastal Commission meeting.

Sincerely,

A handwritten signature in dark ink, appearing to read "Donald F. Schmidt", written over a horizontal line.

Donald F. Schmidt

cc: Sherri Lightner  
President  
La Jolla Town Council

