

CALIFORNIA COASTAL COMMISSION

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



Wed 12.5

Filed: 2/19/03
49th Day: Waived
Staff: LRO-SD
Staff Report: 6/19/03
Hearing Date: 7/9-11/03

STAFF REPORT AND RECOMMENDATION ON APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

RECORDS DIVISION COPY

APPEAL NO.: A-6-LJS-03-021

APPLICANT: Dr. Stephan Lemperle

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new, 2,576 sq.ft. single family residence on a 4,296 sq.ft. blufftop lot.

PROJECT LOCATION: 5672 Dolphin Place, La Jolla, San Diego, San Diego County.

APPELLANTS: Commissioners Mike Reilly and Patrick Kruer

SUMMARY OF STAFF RECOMMENDATION:

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

SUBSTANTIVE FILE DOCUMENTS: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Addendum; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Hearing Officer dated 12/18/02; Mitigated Negative Declaration No. LDR 42-0252 dated 12/4/02; Geological Reconnaissance Report by Michael W. Hart, Engineering Geologist dated October, 2001; and updated 8/25/02 & 8/21/03.

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 the proposed residence because the coastal bluff currently contains shore and bluff protection consisting of gunite on the bluff face and rip rap on the beach at the base of the bluff. 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.

In apparent contradiction to the City's certified LCP Section 143.0143(a) and (g), an earlier geotechnical report for the site recommends repairs to the gunite and that an existing sea cave be filled to avoid block falls that may occur if left unattended. However, in the final approval of the project, the City found that the existing gunite and riprap were not necessary for protection of the proposed residence (but did not require their removal and instead allowed the structures to deteriorate over time) and allowed the home to be sited closer than 40 feet from the bluff edge. The City did not address whether removal of the nonconforming structures would have a detrimental effect on the bluff.

In addition, the appellants question the bluff edge determination. Due to an existing sea cave on the site, it appears that the bluff edge should be more landward than it actually is.

II. Local Government Action: The coastal development permit was approved by the City Manager on 1/15/03. 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; and, landscaping.

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. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

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

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3.

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.

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-03-21 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-03-21 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.

Findings and Declarations.

1. Project Description/Permit History. Proposed is the demolition of an existing one-story single-family residence and other landscape features on a 4,296 blufftop lot. The existing residence is located approximately 7-20 ft. from the bluff edge. Also proposed is the construction of a new, approximately three-story, 2,576 sq.ft., single-family residence with an attached garage and landscape improvements. The new residence is proposed to be sited a distance of 25 ft. from the bluff edge. The subject site is located on the west side of Dolphin Place in the community of La Jolla in the City of San Diego. The residences along the seaward side of Dolphin Place are situated on blufftop lots. Access along this shoreline is gained from Bird Rock Avenue six lots north of the subject site where there is an existing improved vertical access way.

The City approved the proposed development on 1/15/03. On 2/3/03, the local Commission office received the notice of final local action regarding the project. On 2/19/03, Commissioners Reilly and Krueger filed appeals of the project. On 3/18/03, the Commission received a letter from the applicant's agent waiving the 49-day time limit for a hearing on the appeal. In a letter dated 4/11/03, Commission staff requested more information addressing the potential removal of the existing rip rap and gunite including potential impacts, alternatives to removal and whether or not such removal would be exposed a result of such removal. On 4/28/03, the applicant submitted an update by their geologist dated 4/21/03 in response to Commission staff's inquiries regarding the shoreline protection. On 6/11/03, the Commission received a letter from the applicant's agent purporting to rescind the applicant's waiver of the 49-day time limit. Staff has not yet completed its review of the geologic information submitted by the applicant. This report is therefore restricted to whether the appeal raises a substantial issue regarding the conformity of the proposed development with the certified LCP.

2. Shoreline Hazards. The appellants contend that the City's approval of the proposed new single-family residence on the subject site is inconsistent with the City's certified LCP as it pertains to geologic blufftop setbacks. Specifically, the City approved the proposed residence to be located a minimum distance of 25 ft. from the bluff edge. However, there is gunite on the bluff face of the subject site and rip rap at the toe of the coastal bluff on the beach. As stated in the project geotechnical report, the gunite covers all of the approximately 20-foot high coastal bluff. The beach below the bluff is covered with rock revetment or rip rap that extends a horizontal distance of approximately 25 feet seaward of the toe of the bluff. These structures are estimated to have been in place for several years although this could not be documented. The City, through its conditions of approval, acknowledged these were non-conforming structures on the bluff. The City did not require removal of the non-conforming structures on the bluff because of concerns related to the adverse effects such removal would have on the coastal bluff if removed. Condition #21 of the City's permit states that the gunite is expected to deteriorate over time. The condition further prohibits the applicant from repairing or maintaining the gunite. However, the City did not address the existing rip rap at all.

The geotechnical report completed for the project makes suggests that the proposed residence located at 25 ft. from the bluff edge will be safe from threat and not affect stability of the bluff. However, an earlier geotechnical report for the site recommended repairs to the gunite and that an existing sea cave be filled to avoid block falls.

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:

- (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*.

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's approval of the existing residence sited a distance of 25 feet from the bluff edge is inconsistent with the above-cited policies of the City's LDC because there is existing shoreline protection on the subject site. The rip rap at the toe of the coastal bluff and the gunite on the bluff face were placed there many years ago, at an unknown time. According to the City, at the time they were added, the existing home was not threatened and the protection was installed only as a preventive measure, and as such, the above cited LCP provision does not apply. The placement of riprap and installation of gunite on the bluff face is a significant expense and was likely prompted by some perceived problem occurring along the shoreline at that time, that could have been "excessive erosion". As noted above, the LCP provision does not require that the home be threatened, only that the protection was installed due to excessive erosion, suggesting the site may not be stable enough to support a less than 40 ft. setback. As such, in this particular case, it does not appear a less than 40 ft. blufftop setback should have been permitted.

Based on the above-cited guidelines, due to the presence of the gunite on the bluff face and beach, a reduction in the required 40-foot bluff edge setback appears to be inconsistent with the requirements of the certified LCP. The appeal therefore raises a substantial issue regarding the conformity of the proposed development with the setback requirements of the LCP.

Another issue raised by the appellants is that it appears that the southwest corner of the proposed residence will be cantilevered approximately six feet beyond the proposed 25 ft. blufftop setback into the geologic setback area. However, the geotechnical reports do not address this design feature and the plans submitted by the City do not include a detailed foundation plan. Therefore, absent further geotechnical/engineering information regarding the proposed cantilevering, there exist potential concerns with regard to consistency with the certified LCP.

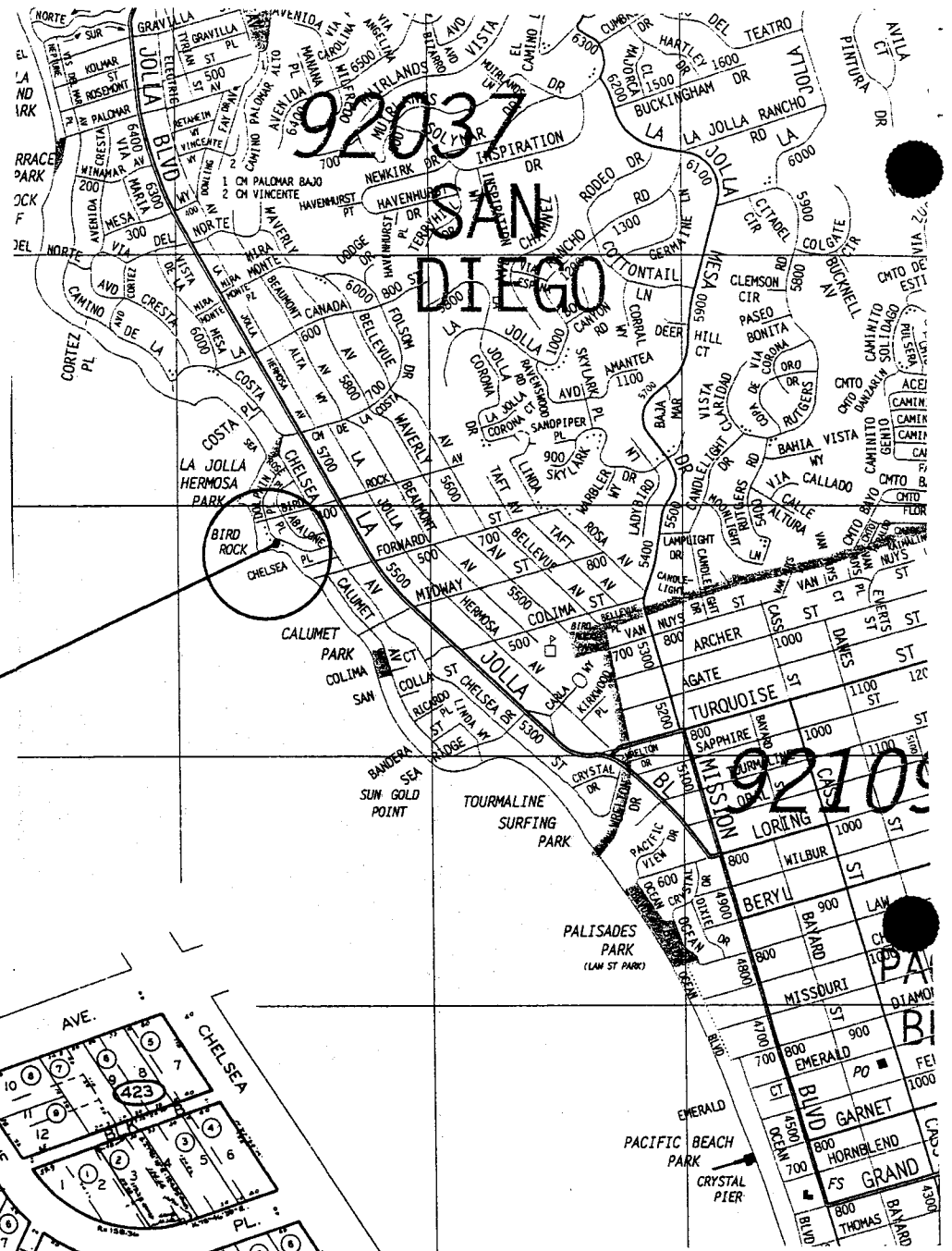
In addition, there is also conflicting information regarding the location of the bluff edge. The geotechnical report has identified a sea cave at the southern toe of the bluff that

extends approximately 20 feet into the bluff. The sea cave is about 10 feet wide at its mouth , narrowing to only one foot wide at its inland extent (Ref. Exhibit No. 3 attached). However, the City's Bluffs and Beaches guidelines indicate how a bluff edge should be determined in those situations where there is a sea cave. Specifically, Section III(A)(5) of the guidelines states:

(5) Sea caves

Where a sea cave (a natural cavity or recess beneath the surface of the earth that is formed by or a result of marine erosion) or overhang exists, the coastal bluff edge shall be either the simple bluff edge (See Diagram III-5(A)) or a line following the landward most point of the sea cave projected to the ground surface above (See Diagram III-5(B)), whichever is more landward (Ref. Exhibit No. 6—attachment to appeal form).

Based on the above LCP provision, it appears the bluff edge used by the City for the proposed development does not appear to be consistent with the above cited provision because the inland extent of the sea cave was not used to determine the bluff edge, thereby potentially allowing the home to be sited closer to the bluff than allowed under the certified LCP. Therefore, the appellants have raised a substantial issue regarding the conformity of the development with the policies of the certified LCP.



SITE

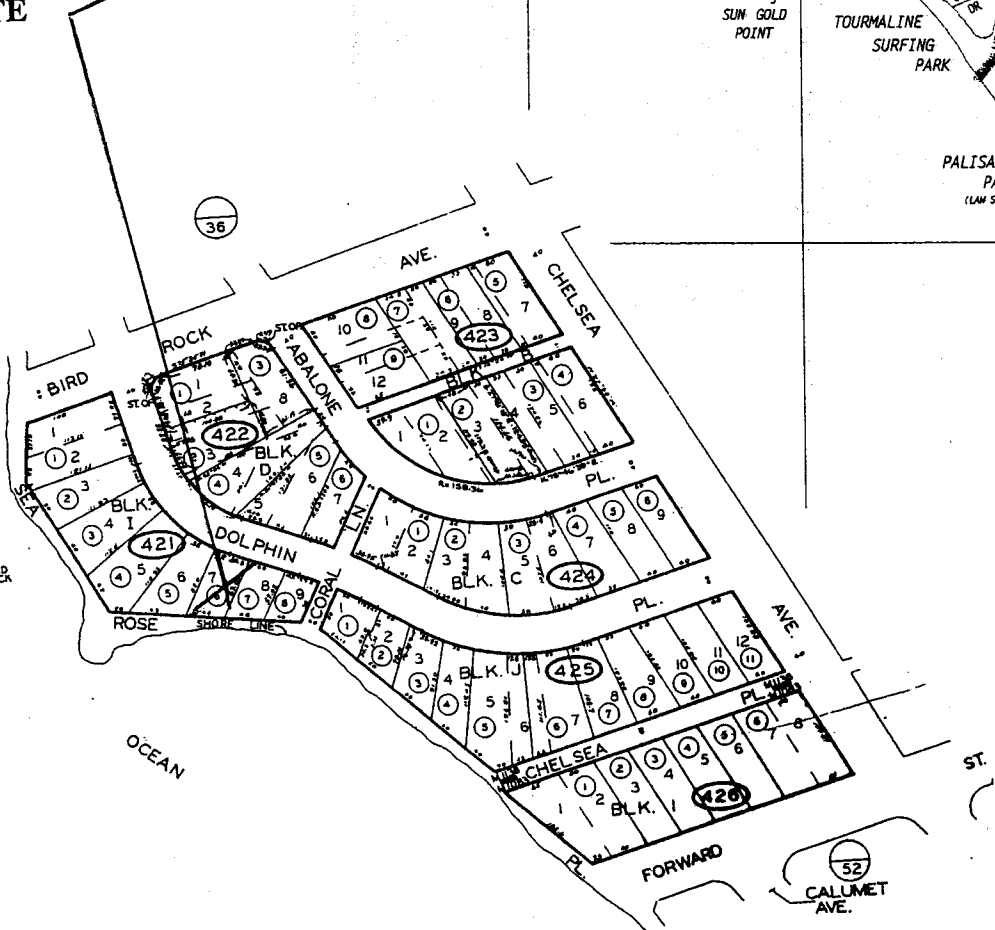
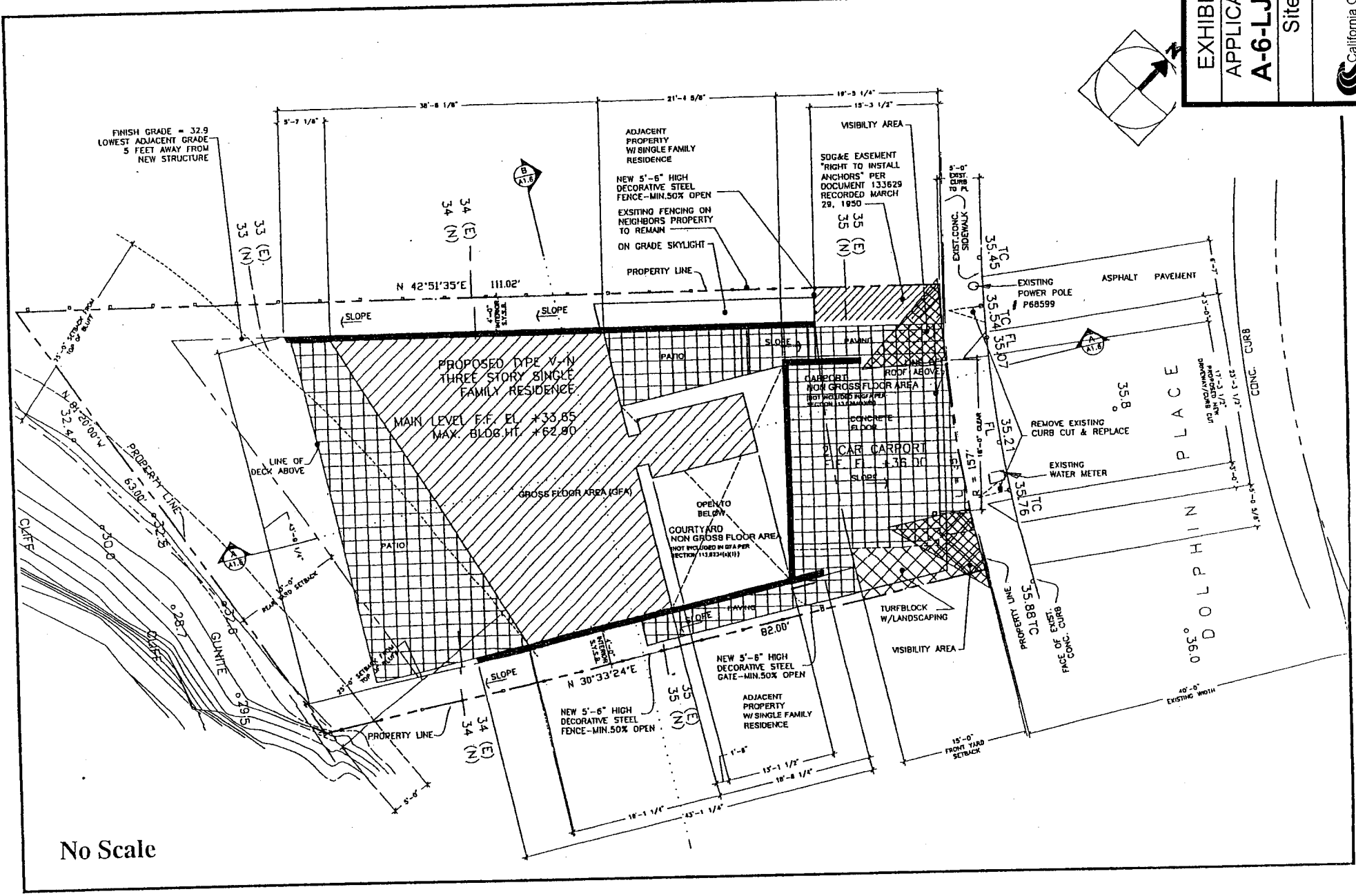



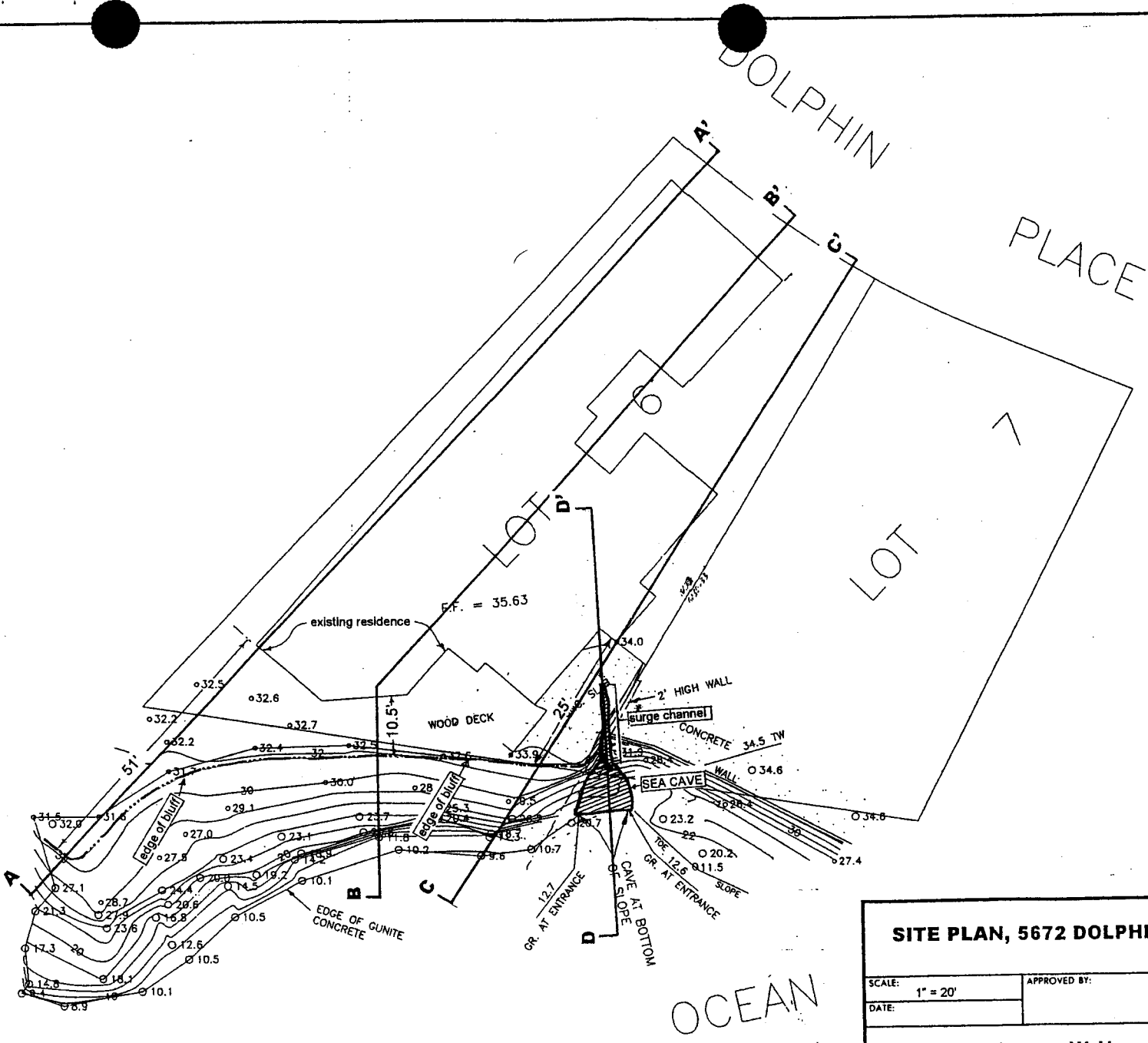
EXHIBIT NO.
APPLICATION NO.
A-6-LJS-03-21
Location Map
California Coastal Commission



FINISH GRADE = 32.9
 LOWEST ADJACENT GRADE
 5 FEET AWAY FROM
 NEW STRUCTURE

No Scale

EXHIBIT NO. 3
 APPLICATION NO.
A-6-LJS-03-7
 Site Plan from
 Geotechnical Report




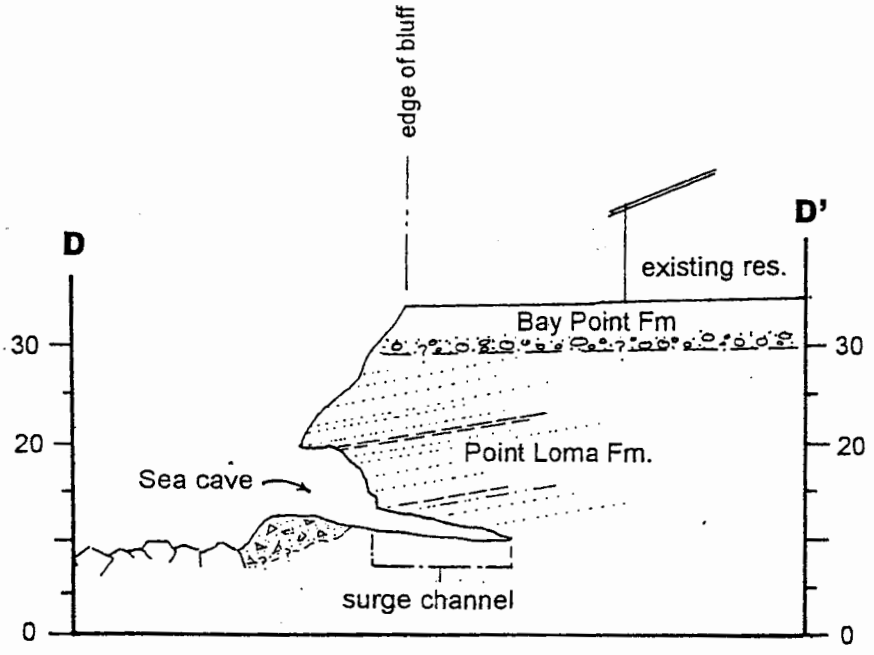
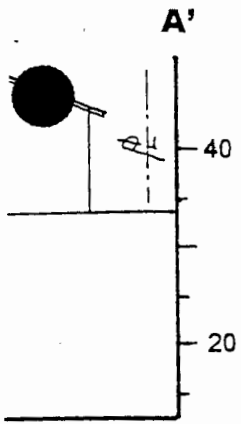
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APR 28 2003

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

SITE PLAN, 5672 DOLPHIN PLACE, LA JOLLA, CALIF.		
SCALE: 1" = 20'	APPROVED BY:	DRAWN BY:
DATE:		REVISED:
MICHAEL W. HART, ENGINEERING GEOLOGIST P.O. Box 261227 SAN DIEGO CALIFORNIA 92196 PH. 858.578.4672		
		DRAWING NUMBER Figure 2

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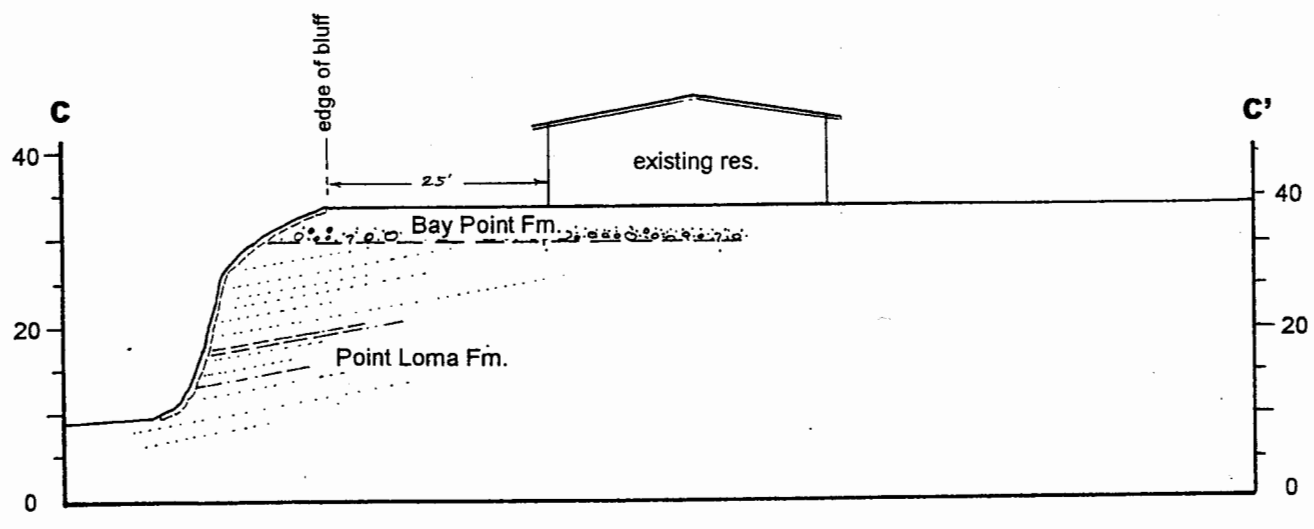
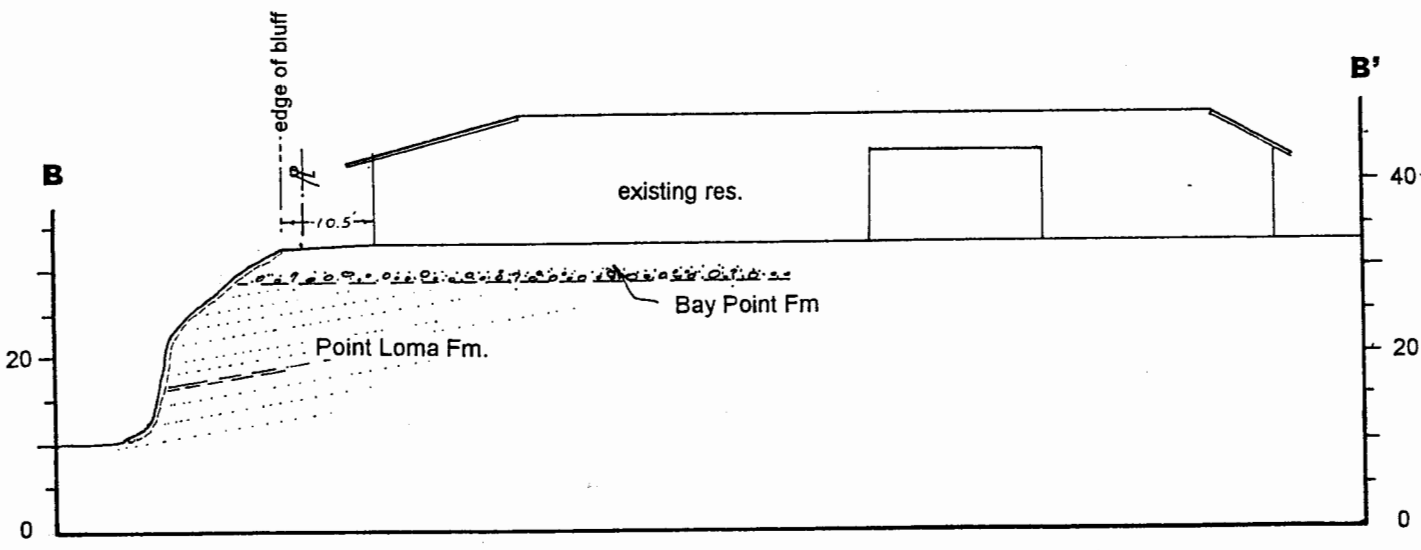
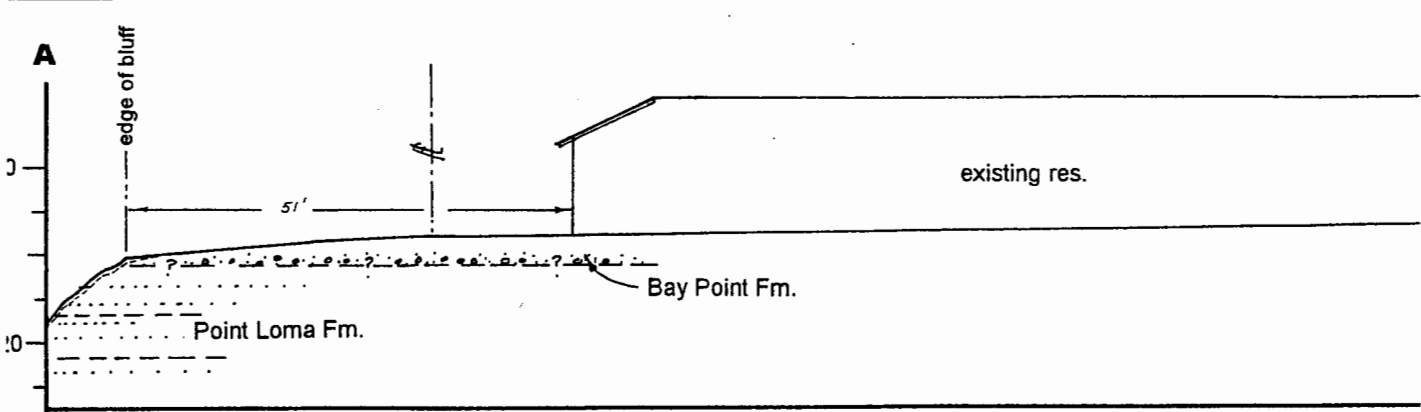
APR 28 2003

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

GEOLOGIC SECTIONS A-A' - D-D'

SCALE:	APPROVED BY:	DR.
DATE:		REV
MICHAEL W. HART, ENGINEERING GEOLG P.O. Box 261227 SAN DIEGO CALIFORNIA 92196 PH.		
		DR.

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-03-21
Cross-Sections from Geotechnical Rpt



NO/YES

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6-15-2003 020
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COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

THE CITY OF SAN DIEGO

RECEIVED
FEB 03 2003

**COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION
JOB ORDER No. 42-0252**

FEB 04 2003
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

DATE: January 31, 2003

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: Project No. 3255, CDP No. 5508, SDP 5509 & VAR 5510

PROJECT DESCRIPTION: Coastal Development Permit, Site Development Permit (for Environmentally Sensitive Lands), and Variance request to demolish a single story dwelling unit and construct a new three-story dwelling unit, to total 2,578 square feet, on a 4,296 square foot property. The Variance is to allow for a five-foot (5) setback for a carport to be placed within the required fifteen foot front yard setback. The project site is located at 5672 Dolphin Place, in the RS-1-7 Zone, Coastal Overlay Zone (appealable), Coastal Height Limitation Overlay, Beach Parking Impact Overlay Zone, and Environmentally Sensitive Lands/Sensitive Coastal Resource Overlay Zone, within the La Jolla Community Plan Area.

PROJECT NAME: Lemperle Residence

LOCATION: 5672 Dolphin Place

APPLICANT'S NAME: Dr. Stephan Lemperle

FINAL ACTION: APPROVED WITH CONDITIONS

ACTION BY: City Manager

ACTION DATE: January 15, 2003 (Appeal period ended on January 30, 2003)

CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission only after a decision by the City Council (or Planning Commission for Process 3 Coastal Development Permits) and within ten (10) working days following Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing

to the appropriate Coastal Commission District office.

California Coastal Commission
San Diego Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402
Phone (619) 767-2370

cc: California Coastal Commission

Project Manager: Glenn Gargas
(619) 446-5142
M.S. 501

H:\Lemperle\NOFA.frm
updated 01/30/02 wct

EXHIBIT NO. 5
APPLICATION NO. A-6-LJS-03-21
City of San Diego CDP/SDP/VAR
California Coastal Commission

RECEIVED
FEB 03 2003
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
DEPARTMENT

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

JOB ORDER NO. 42-0252

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COASTAL DEVELOPMENT PERMIT NO. 5508
SITE DEVELOPMENT PERMIT NO. 5509
VARIANCE NO. 5510
HEARING OFFICER

LEMPERLE RESIDENCE - PROJECT NO. 3255 (MMRP)

This Permit is granted by the HEARING OFFICER of the City of San Diego to Dr. Stephan Lemperle, Individual, Owner/ Permittee, pursuant to the Land Development Code of the City of San Diego. The 4,296 square-foot site is located at 5672 Dolphin Place, in the RS-1-7 Zone, Coastal Overlay Zone, Coastal Height Limit Overlay Zone, Sensitive Coastal Resource Overlay Zone, within the La Jolla Community Plan Area. The project site is legally described as Lot 6, Block 1, Resubdivision of a portion of Bird Rock City by the Sea, Map No. 1138.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/ Permittee to demolish an existing dwelling unit and construct a new three-story dwelling unit described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated January 15, 2003, on file in the Office of the Development Services Department. The facility shall include:

- a. Demolition of an existing dwelling unit and the construction of one, three-story dwelling unit with basement to total approximately 2,578 gross square feet of floor area;
- b. Variance to reduce the front yard setback to five (5) feet for the placement of a proposed carport.
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking facilities (a minimum of two parking spaces);
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the 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 Exhibits "A," dated January 15, 2003, (the Exhibits "A", may need to be modified, with regard to the front yard setback variance, based on the conclusion of the Final Decision) 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. 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 January 15, 2003, 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.

11. 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.

PLANNING/DESIGN REQUIREMENTS:

12. No fewer than two (2) off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated January 15, 2003, on file in the Office of the 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 subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

19. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure.

20. The owner/permittee shall not be allowed to maintain the existing gunite and riprap located along the coastal bluff area on and adjacent to the subject property (as identified in the related Geotechnical Reports prepared by Michael W. Hart, Engineering Geologist). The existing gunnite and riprap shall be allowed to deteriorate naturally.

21. The Owner/Permittee acknowledges that the existing gunite located on the bluff do not conform to current Municipal Code - Development Standards. The City will not require removal of the gunite at this time, due to the anticipated adverse effects (structural damage) on the coastal bluff face. It is anticipated that the gunite and riprap will deteriorate over a period of time. It is the Owner/Permittee's responsibility to remove the gunite and associated debris as it deteriorates naturally or in the event unsafe conditions exist. It is also understood by the Owner/Permittee that the non-conforming gunite will not be repaired or maintained, but simply to let the structure deteriorate naturally to the point at which it needs to be removed, as earlier stated.

22. 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.

23. No development shall be permitted on the coastal bluff face.

24. All development, including buildings and accessory structures, shall be set back at least 25 feet from the coastal bluff edge.

25. 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

26. Prior to the issuance of construction permits, The Owner/Permittee shall record a Deed Restriction Preserving a visual corridor a minimum than 4'-0" wide along the side setbacks in accordance with the requirements of the Land Development Code. Open fencing and landscaping may be permitted within these visual corridors, provided such improvements do not significantly obstruct public views of the ocean. Landscape within this visual corridor shall be planted and maintained so as not to exceed 3'-0" in height in order to preserve public views.

27. Prior to this permit being recorded with County Recorders Office, the Exhibits "A" shall be revised, if necessary, based on the final decision regarding the Variance for the reduced front yard setback. All other design features indicated on the plans shall be in substantial conformance with the plans forwarded to the decision maker, to the satisfaction of the City Manager.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

28. The owner/permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Lemperle Residence Mitigated Negative Declaration (No. 42-0252), satisfactory to the City Manager and the City Engineer. Prior to issuance of any grading permit, all mitigation measures as specifically outlined in the MMRP shall be implemented for: Paleontological Resources.

ENGINEERING REQUIREMENTS:

29. Prior to building occupancy, the applicant shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

30. Prior to the issuance of any building permits, the applicant shall obtain an Encroachment Maintenance and Removal Agreement, from the City Engineer, for a force main sidewalk underdrain in Dolphin Place.

31. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the installation of a sump pump and a force main sidewalk under drain, satisfactory to the City Engineer.

32. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the replacement of the existing driveway with a new driveway, and the replacement of the existing curb with new curb and gutter, all satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

33. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit has been granted by the City. All plan specifications and notes mentioned in the conditions below shall be consistent with the Land Development Code and Landscape Standards, Exhibits "A" Landscape Concept Plan, Details and Notes on file in the Office of the Development Services Department.

34. All required landscape plant materials shall be maintained in a disease, weed and litter free condition at all times.

35. The Permittee or subsequent Owner shall be responsible for the maintenance of all landscape improvements consistent with the Landscape Standards.

36. If any required landscape improvements (including existing or new planting, hardscape, landscape features, etc.) are damaged or removed during demolition or construction, they shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager, within 30 days of damage and prior to final inspection.

37. Prior to final inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape.

38. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation plans, details and specifications (including maintenance specifications), shall be submitted to the City Manager for approval.

39. 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 electronic irrigation controller. The controller shall be seasonally adjusted in accordance with the Water Management Plan.

40. Landscaping within the side yard view corridors shall not exceed 3 feet in height and shall be planted and maintained to preserve public views.

41. Open fencing shall have at least 75 percent of its surface area open to light.

INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit 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 January 15, 2003.

HEARING OFFICER RESOLUTION NO. D-4205
COASTAL DEVELOPMENT PERMIT NO. 5508
SITE DEVELOPMENT PERMIT NO. 5509
VARIANCE NO. 5510
LEMPERLE RESIDENCE - PROJECT NO. 3255

WHEREAS, Dr. Stephan Lemperle, Individual, Owners/Permittee, filed an application with the City of San Diego for a Coastal Development Permit (CDP) No. 5508, Site Development Permit (SDP) No. 5509, and Variance No. 5510 (as described in and by reference to the approved Exhibits "A", and corresponding conditions of approval for the associated Permit Numbers 5508, 5509 & 5510), on portions of a 4,296 square-foot site; and

WHEREAS, the project site is located on the west side of Dolphin Place, just south of Bird Rock Avenue and north of Chelsea Place, and is addressed as 5672 Dolphin Place, RS-1-7 Zone, the Coastal Overlay, Sensitive Coastal Resource Overlay, Coastal Height Limitation Overlay, and Beach Impact Overlay Zones, within the boundaries of the La Jolla Community Plan; and

WHEREAS, the project site is legally described as Lot 6, Block 1, Resubdivision of a portion of Bird Rock City by the Sea, Map No. 1138; and

WHEREAS, on December 18, 2002, and then continued to January 15, 2003, the HEARING OFFICER of the City of San Diego considered Coastal Development Permit No. 5508, Site Development Permit No. 5509, and Variance No. 5510, pursuant to Sections 126.0701, 126.0501 and 126.0801 of 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 January 15, 2003.

Coastal Development Permit - Municipal Code Section 126.0708

- 1. The proposed coastal development will not encroach upon any existing physical access way 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 4,296 square foot project site is currently developed with a single dwelling unit, with the proposed development being a new three-story dwelling unit, and is located directly adjacent to the coastline. The project features and overall development of the site will not encroach upon any existing or proposed physical access to the coast, nor will it obstruct ocean or other scenic views from public vantage points. The project is conditioned in the

permit to preserve public views down side yard setbacks through a recorded view easement. The project site is located along a narrow local residential street, which does allow vehicular and pedestrian traffic in and out to the nearby beach and coastal shoreline areas.

- 2. The proposed coastal development will not adversely affect environmentally sensitive lands.**

The 4,296 square foot project site is currently developed with a single dwelling unit. The current proposal for a new three-story dwelling unit is on the previously disturbed portion of the site, all site drainage will be directed and pumped toward the public street, and will not affect any environmentally sensitive lands. However, the project site is underlain by a Bay Point formation (potentially rich formation for Paleontological resources) and the project's Environmental Document, a Mitigated Negative Declaration, requires (and through Condition 28 of the permit) Paleontological Monitoring during grading activities. All surrounding properties have been developed.

- 3. 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 three-story dwelling unit, with the proposed 25 foot coastal bluff setback, is in compliance with the City of San Diego adopted Land Development Code [more specifically for the RS-1-7 Zone (except for the requested Variance) and Sensitive Coastal Resource Overlay Zone], the La Jolla Community Plan and the Progress Guide and General Plan. The Land Development Code requires that development adjacent to a bluff edge observe a 40-foot setback. This requirement may be waived to allow a 25-foot setback when the site is stable enough to support the development with the proposed bluff edge setback and the project is designed so that it will neither be subject to nor contribute to significant geologic instability through the anticipated life span of the principal structures. This project's design proposes a 25 foot setback from the edge of bluff, which has been supported by the geologic analysis (submitted and reviewed geotechnical report). The report also noted the existing gunitite and riprap along the coastal bluff area and concluded that they were not required as a coastal protective device. In addition, the proposed development of a three-story dwelling unit was determined through the permit review process to be in conformance with the Certified Local Coastal Program and the Implementation Program.

- 4. 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 4,296 square foot site, currently developed with a dwelling unit and proposed to be

redeveloped with a new three-story dwelling unit, is located between the first public road and the sea or coastline. Development of this project is to occur wholly within the private property. Public access to the sea and public recreation areas will not be impaired or compromised by the proposed dwelling unit. The proposed project is designed with two off-street parking spaces, to take access off the existing public street (Dolphin Place), and vehicular and pedestrian circulation adjacent to the site will remain unaltered.

Site Development Permit - Municipal Code Section 126.0504

1. The proposed development will not adversely affect the applicable land use plan.

The proposed development, demolition of an existing dwelling unit and construction of a three story dwelling unit, utilizing a 25 foot coastal bluff setback, will not adversely affect the La Jolla Community Plan nor the La Jolla-La Jolla Shores Local Coastal Plan, because the proposed development has been found consistent with the plan's land use designation (Residential - Low Density 5-9 DU/Acre), allowed density, and design development regulations and recommendations. The 4,296 square foot project site is designated for residential development, the geologic analysis has determined the site to be stable, and the proposed design meets all current development regulations, except for the proposed variance to the front yard setback.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The proposed, demolition of an existing dwelling unit and construction of a three-story dwelling unit, has been designed to comply with all of the applicable development regulations, including those of the RS-1-7 Zone (except for the proposed front yard Variance), and of the Sensitive Coastal Resource Overlay Zone. The proposed demolition and re-construction of a single dwelling unit would therefore not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The proposed three-story dwelling unit will comply to the development regulations of the RS-1-7 Zone (except for the proposed Variance to the front yard setback), the development regulations of the Sensitive Coastal Resource Overlay Zone, the Beach Impact Overlay Zone, and found to be consistent with the La Jolla - La Jolla Shores Local Coastal Program and the La Jolla Community Plan. The site is zoned RS-1-7 for single family use and within the Sensitive Coastal Resource Overlay Zone, the site and proposed development (drainage, geologic stability, landscape material, off-street parking, building height, and building setbacks) all comply with the requirements of that zone (except for the proposed variance to the front yard setback).

Supplemental Findings - Environmentally Sensitive Lands, Municipal Code Section 126.0504 (b)

1. 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 proposed, demolition of an existing dwelling unit and construction of a three-story dwelling unit, will be located directly within the existing area of disturbance. Based on staff's review of the proposed grading plans with drainage details, landscape plans, and the project's Geologic Reconnaissance Report it was determined that the proposed site has adequate geologic stability (to support the 25 foot bluff setback), all drainage will be directed back toward the street and away from the bluff, and the landscape material will not require irrigation, resulting in a minimum disturbance to the adjacent coastal bluffs (environmentally sensitive lands).

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

The proposed, three-story dwelling unit, will be located within an area of previous disturbance, so there will be no further alteration of the natural land form with this development. A Geologic Reconnaissance Report was prepared and reviewed, which addressed the geologic hazards potentially effecting the proposed project. The report concluded that the site is stable enough to support the proposed 25 foot coastal bluff setback, that the existing gunitite wall and riprap is not required as a coastal protection device and that there are no other site specific conditions that pose a significant geologic hazard to the proposed project.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

The proposed, three-story dwelling unit, is sited within the portion of the site previously disturbed (existing development), which is directly adjacent to Sensitive Coastal Resources/Environmentally Sensitive Lands (Coastal Bluffs). The project was designed to direct drainage away from the coastal bluff, to utilize landscape material which would not need irrigation, and to place all structures/improvements all within the area of past disturbance and away from the bluff. The proposed development was found through the City's review process (Coastal Permit Review, Geology Review, and Environmental Analysis) to have no further impacts to nor encroachment into environmentally sensitive lands.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;

The project site contains "Sensitive Coastal Resources - Coastal Bluffs" along the site's western edge only, and is within an area that is developed with residential development on the other three sides. The project site is not located in or adjacent to the MSCP lands, thus it not subject to any MSCP development regulations.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

The proposed, three-story dwelling unit, is located on a property which is directly adjacent to the local shoreline. The project was designed to direct all drainage away from the coastal edge portion of the site and into the public storm drain system. The landscape plan and materials were designed to minimize any need for irrigation. Through the Environmental Review process (Initial Study and Negative Declaration LDR No. 42-0252), no erosion or drainage related issues which would impact the local shoreline were identified nor anticipated.

6. 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 development is to demolish an existing dwelling unit and construct a new three story dwelling unit in approximately the same location on the 4,296 square foot property. The mitigation measures required as a condition of this permit are a result of the Environmental Document, Review, and associated Mitigating, Monitoring and Reporting Program (Mitigated Negative Declaration LDR No. 42-0252), which focuses on the monitoring for potential paleontological resources. The subject property was found to be underlain with Bay Point Formation, which is known to be rich with marine invertebrate fossils (paleontological resources). In addition, several known paleontological resource sites are located within a mile of the project site. Based on the sensitivity of the formation and the projects proposed excavation depth of over ten feet, the project's development could result in significant impacts to paleontological resources. In order to reduce this impact below a level of significance, it was determined through the Environmental Analysis, that excavation within previously undisturbed formations should be monitored by a qualified paleontologist or paleontological monitor.

Findings for Variance - Municipal Code Section 126.0805

1. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations.

The project site has a lot size of 4,296 square feet, which is under the current minimum for the underlying, RS-1-7 Zone, which is 5,000 square feet. Coastal bluffs are located

directly along the western edge of the project site, which requires a minimum building setback from the coastal bluff edge of 25 feet. The existing structures on the property have a front setback of five feet, equal to that of the proposed project. Therefore, due to these constraints the building envelope of the property would be reduced to a point that it would severely limit design options and deprive reasonable use of the property.

2. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises.

The property currently contains a dwelling unit with a garage, which is setback five feet off the front property line and is proposed to be demolished. The proposed development, a three-story dwelling unit, is required to observe a minimum 25 foot setback from the adjacent coastal bluffs to the rear of the property, which places the developable portion of the property closer to the public street. The current RS-1-7 Zone, allows for a single dwelling unit residential use. The requested Variance, to reduce the front setback to five feet is part of a proposed redevelopment of the site and this reduced setback would be consistent with the development pattern for the surrounding area.

3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.

The proposed variance to reduce the front setback to five feet is consistent with the existing development currently on the property and in general, is consistent with the development of many of the neighboring properties which back up to the coastline. Granting the requested variance would not alter the development pattern within the neighborhood from how it currently exist, and thus would not be detrimental to the public health and welfare of those surrounding properties.

4. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.

The requested variance will not adversely affect the La Jolla Community Plan. The plan designates this site for Low Density Residential development (5-9 dwelling units per net acre), and the proposed single dwelling unit is consistent with that designation. The proposed project is associated with a Coastal Development Permit/Site Development Permit and through its review was found to be consistent with the La Jolla - La Jolla Shores Local Coastal Plan.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the HEARING OFFICER, Coastal Development Permit No. 5508, Site Development Permit No. 5509, and Variance No. 5510 are hereby GRANTED by the HEARING OFFICER to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit Numbers 5508, 5509, & 5510, copies of which are attached hereto and made a part hereof.

GLENN R. GARGAS
Development Project Manager
Development Services Department

Adopted on: January 15, 2003

H:\LemperleResReso.frm
02/20/01zzb

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Mike Reilly
 Mailing Address: 575 Administration Drive, Room 100
Santa Rosa, CA 95403-2887
 Phone Number: 707/565-2241

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Demolition of an existing single-family residence and construction of a new, 4,296 sq.ft. single family residence on a blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 5672 Dolphin Place, La Jolla, San Diego, San Diego County.
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - c. Denial:

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-03-021

DATE FILED: 2/19/03

DISTRICT: San Diego

[This appeal form is identical to an appeal form also signed and dated 2/19/03 by Commissioner Patrick Kruer contained in the permit file. Only this copy is reproduced here as an exhibit to the staff report]

EXHIBIT NO. 6
APPLICATION NO.
A-6-LJS-03-21
Appeal Form

CALIFORNIA COASTAL COMMISSION

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



February 19, 2003

ATTACHMENT "A" – Lemperle Appeal

The proposal involves the demolition of an existing single-family residence and construction of a new, 2,578 sq. ft, three-story single-family residence located on a 4,296 sq. ft. ocean blufftop lot at 5672 Dolphin Place in La Jolla. The existing home to be removed is located approximately 7-20 ft. from the edge of the coastal bluff and the City approved the proposed residence with a setback 25 ft. from the bluff edge. The face of the coastal bluff currently contains shore and bluff protection consisting of gunite on the bluff face and riprap at the base.

The geotechnical reports for the project conclude that while the existing gunite and riprap have essentially halted recession and erosion of the bluff, it is anticipated that bluff retreat without these protective structures would be about 7 ft. over the expected 75 year lifespan of the structure. Thus, a 25 ft. blufftop setback is acceptable for the site. However, an earlier geotechnical report for the site recommends repairs to the gunite and that an existing seacave be filled to avoid block falls that may occur if left unattended.

The City's certified LCP requires that development be setback a minimum of 40 ft. from any coastal bluff edge. Specifically, Section II(C) of the certified Coastal Bluffs and Beaches Guidelines states, in part:

Development proposed on a sensitive coastal bluff, including primary and accessory structures, and grading, shall be located at least 40 feet landward from the coastal bluff edge, except as follows:

1. A distance of more than 40 feet from the bluff edge may be required based on current geologic conditions.
2. Development may be located less than 40 feet but not less than 25 feet from the coastal bluff edge if there is evidence in a geology report that the site is stable enough to support the development at the proposed distance and if the development will neither be subject to nor contribute to significant geologic instability or require a shoreline or bluff erosion control device....[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

Based on the above-cited certified guidelines, because shoreline protective devices have previously been installed to protect the existing home (and are still providing protection to the existing home), a reduction in the required 40 foot bluff edge setback is not permitted. As the subject proposal is to construct a new home up to 25 ft. from the bluff

edge, the proposed development appears to be inconsistent with the provisions of the certified LCP.

In approving the project, the City found that the existing gunite and riprap were not necessary for protection of the proposed residence. However, instead of requiring that these non-conforming structures be removed, the City included a condition that the applicant not be permitted to maintain the existing gunite and riprap, but instead these structures be allowed to deteriorate over time. The City failed to address whether these nonconforming structures can be removed without detrimental effects to the bluff.

In addition, based on the preliminary building plans, it appears portions of the proposed new residence (southwestern corner) will be cantilevered approximately 6 ft. beyond the proposed 25 ft. blufftop setback into the geologic setback area. However, it is unclear how this is to be accomplished and the submitted geotechnical reports do not address this aspect of the development. More information is needed to evaluate potential concerns raised by this issue to determine its consistency with the certified LCP setback provisions.

Another issue raised by the development pertains to the bluff edge determination. The geotechnical report for the project has identified an existing sea cave at the southern toe of the bluff. The sea cave extends more than 20 ft. into the bluff and is approximately 10 ft. wide at its mouth, tapering down to approximately one foot wide at its furthest extent. Section III(A)(5) of the certified Coastal Bluffs and Beaches Guidelines details how the bluff edge is to be determined on sites that contain sea caves, and states:

(5) Sea caves

Where a sea cave (a natural cavity or recess beneath the surface of the earth that is formed by or a result of marine erosion) or overhang exists, the coastal bluff edge shall be either the simple bluff edge (See Diagram III-5(A)) or a line following the landward most point of the sea cave projected to the ground surface above (See Diagram III-5(B)), whichever is more landward.

What this means is that when a sea cave exists at the base of the bluff, the bluff edge for the site shall be determined by drawing a vertical line through the bluff from the most inland extent of the sea cave to the ground surface (ref. attached exhibit). If this line intersects the ground surface inland of the natural bluff edge, then the landward most line shall be used for determining the bluff edge. The bluff edge utilized by the City for the proposed development does not appear to be consistent with the above cited provision in that the inland extent of the sea cave was not used to determine the bluff edge.

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 City Manager

Date of local government's decision: 1/15/03

Local government's file number (if any): CDP No. 5508; SDP No. 5509; VAR No. 5510

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Dr. Stephan Lemperle
5672 Dolphin Place
La Jolla, CA 92037

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

Joanne Pearson, La Jolla Town Council
7734 Herschel Avenue, Suite F
P.O. Box 1101
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.

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

See Attachment A dated February 19, 2003

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

SECTION V. Certification

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

Signed: *Mike Ruff*
Appellant or Agent

Date: 2/19/03

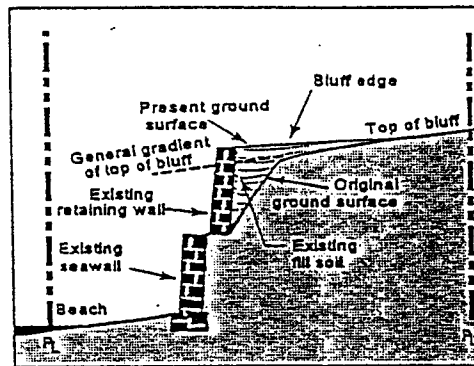
Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Where a coastal bluff face has been altered by grading and/or retaining wall, the coastal bluff edge shall be determined from the original geometry of the natural ground surface, projected to the present ground surface. See Diagram III-4. This may be determined by geotechnical investigation and/or historic documents such as photographs and maps.

Diagram III-4: Modified Landform

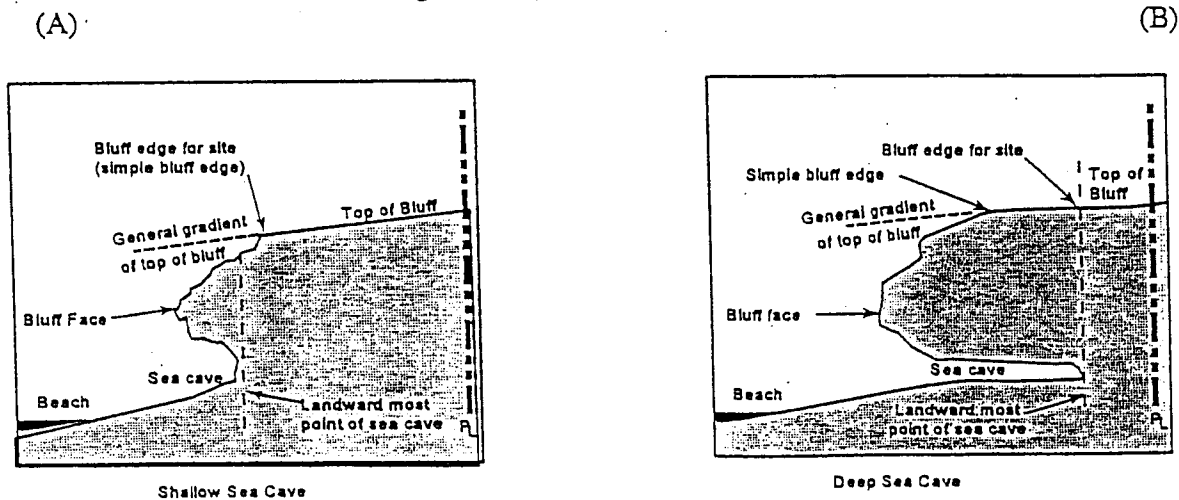


Modified Landform

(5) Sea caves

Where a sea cave (a natural cavity or recess beneath the surface of the earth that is formed by or a result of marine erosion) or overhang exists, the coastal bluff edge shall be either the simple bluff edge (See Diagram III-5(A)) or a line following the landward most point of the sea cave projected to the ground surface above (See Diagram III-5(B)), whichever is more landward.

Diagram III-5: Sea Caves



(6) Gullies