

CALIFORNIA COASTAL COMMISSION

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-86

Applicant: David Winkler

Description: Construction of an approximately 1,296 sq. ft. one-story addition to an existing approximately 2,600 sq. ft. one-story single-family residence on an approximately 15,718 sq. ft. blufftop lot and the request for after-the-fact approval of existing riprap on the public beach seaward of an existing seawall.

Zoning	Medium Residential (5-7 du/ac)
Plan Designation	Medium Residential (5-7 du/ac)
Ht abv fin grade	16 feet

Site: 521 Pacific Avenue, Solana Beach, San Diego County.
APN 263-041-04, 26

STAFF NOTES:

Summary of Staff's Preliminary Recommendation: Staff recommends that the Commission take one vote adopting a two-part resolution, which would approve portions of the development and deny other portions of the development. Staff recommends the Commission **approve** the applicant's request to construct the residential addition with conditions requiring submission of final plans and a deed restriction assuming all risks associated with developing in a hazardous location. The main issue raised by the project relates to the proposed additions to an existing structure in a hazardous location. However, the project is less than a 50% addition to the existing residence and it has been determined that the addition will not require shoreline protection over its estimated life of 75 years.

Staff, recommends that the Commission **deny** the applicant's request for after-the-fact approval of existing riprap at the base of the seawall which fronts the applicant's property. The existing unpermitted riprap has not been found to be necessary to protect

the existing residence and results in impacts on public access. The Commission's enforcement division will evaluate further actions to address this matter.

Substantive File Documents: City of Solana Beach Resolution No. 2003-11;
"Geotechnical Investigation Proposed Addition to Existing Single-Family Residence" by Southland Geotechnical Consultants dated June 18, 2003; "Slope Stability Analysis, 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated December 15, 2003; "Addendum to Slope Stability Evaluation" by TerraCosta Consulting Group dated April 2, 2004; "Required Toestone Protection 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated April 20, 2004; "Blufftop Setback 521 Pacific Avenue 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated July 28, 2004; Plot and floor plans (A-1 and A-2) by Bokal & Sneed Architects dated 7/13/04; CDP Nos. 6-92-212/Wood; 6-92-212-A1/Wood; 6-93-24-G/Wood; 6-97-165-G/Lucker, Wood; 6-97-165/Lucker, Wood; 6-97-166-G/Wood.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following two-part resolution. The motion passes only by an affirmative vote of a majority of the Commissioners present.

MOTION:

I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit No. 6-04-86, with the approval subject to the conditions recommended by staff, by adopting the two-part resolution set forth in the staff report.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **GRANTS, as conditioned**, a coastal development permit for the portion of the project consisting of the residential addition and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** a coastal development permit for the portion of the development consisting of the request for after-the-fact approval of riprap on the beach and adopts the findings set forth below, on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

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

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final site and building plans that have been approved by the City of Solana Beach and that substantially conform with the plans by Bokal & Sneed dated July 27, 2004, but shall be revised to include the following:

- a. Any existing permanent irrigation system located on the bluff top site shall be removed or capped and no new permanent irrigation system shall be installed.

- b. All runoff from the site shall be collected and directed away from the bluff edge towards the street.
- c. The unpermitted riprap seaward of the existing seawall shall be deleted from the plans

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. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff collapse 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.

3. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct bluff or shoreline protective devices, the permittee shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, public access and recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of portions of the principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structures and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. .

4. Future Development. This permit is only for the development described in coastal development permit No. 6-04-86. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the existing residence, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. 6-04-86 from the California Coastal Commission or shall require an additional coastal

development permit from the California Coastal Commission or from the applicable certified local government.

5. 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 finds and declares as follows:

1. Detailed Project Description/History. The proposed project involves an approximately 1,296 sq. ft. one-story addition to an existing approximately 2,600 sq. ft. one-story single-family residence on an approximately 15,718 sq. ft. coastal blufftop lot located on the west side of Pacific Avenue, approximately 6 lots north of Tide Beach Park in Solana Beach. The proposal also includes the request for after-the-fact approval of riprap on the public beach seaward of an existing seawall. The proposed additions include a new garage, master bathroom and closet, new bedroom, hobby room, office, retreat, laundry, hallway and two additional bathrooms and represent a less than 50% increase in square footage over what currently exists. The additions are proposed on the landward side of the existing residence and will be located as close as 48 ft. from the edge of the bluff.

The existing residence was constructed in approximately 1958 and is currently located approximately 15 ft. from edge of the bluff. The residence is protected by an approximately 31 ft. long, 21 ft. high seawall fronting a collapsed seacave that has been filled with concrete and riprap for approximately 26 ft. landward of the seawall. A manufactured backfilled slope consisting of a "geogrid" vegetated slope is located behind the seawall and above the seacave fill. These shoreline protective measures were approved by the Commission in November of 1993 in order to protect the existing residence which was subject to threat by a partially collapsed seacave (CDP #6-92 - 212/Wood). In 1993, prior to completion of construction of the seawall and seacave fills, the Executive Director approved the temporary placement of riprap at the toe of the bluff to protect the site until the seawall and seacave fill could be completed (6-93-24-

G/Wood). This riprap was ultimately placed within the seacave as fill material along with concrete.

In December 1997, the Executive Director approved an emergency permit to place 4-ton sized riprap, approximately 8 ft. high and 15 ft. in width on the public beach seaward of the seawall in order to temporarily protect the site and adjacent bluff promontories from a predicted "El Nino" storm season (Emerg. Permit 6-97-166-G/Wood). The emergency permit required the riprap to be removed by April 15, 1998. The riprap, however, has not been removed and the continued maintenance of the unauthorized riprap on the public beach constitutes non-compliance with the terms and conditions of the previously issued emergency permit and is a violation of the Coastal Act. The applicant is now requesting after-the-fact approval of the permanent placement of the riprap.

The applicant recently purchased the residence and has performed substantial interior renovations although no additional square footage was added. These include conversion of the garage into a media room, construction of a new bathroom, renovated master bedroom, bath and closet, courtyard renovations including opened beamed covering, and new windows and doors. A demolition plan submitted by the applicant documents that the exterior walls of the existing residence largely remained intact such that the work did not involve removal of more than 50% of the exterior walls. Aside from building permits, no discretionary permits were required by the City for these modifications.

The project site is located approximately 6 lots north of the public access stairway to Tide Beach Park in the City of Solana Beach. The City of Solana Beach does not yet have a certified Local Coastal Program (LCP) and, therefore, Chapter 3 of the Coastal Act is the standard of review.

V. APPROVAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the development that is described in Part 1 of the Commission's resolution on this permit application, which portion is therefore being conditionally approved.

1. Geologic Stability.

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253.

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (3) . . .

In addition, **Section 30240(b)** of the Act requires that:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

A. Blufftop Stability. Each of the above cited Coastal act policies is potentially applicable to the Commission's review of new blufftop development and improvements to existing blufftop development such as that proposed. The policies are designed to assure that development in such hazardous locations and adjacent to parks and recreation areas, such as the public beach, are sited and designed to reduce risks and to prevent impacts which would significantly degrade those areas. In review of blufftop development subject to erosion or other geologic hazards, the Commission must assure any development which is approved will not contribute to the destruction of the site or the surrounding area, in this case the adjacent public parkland comprised of the bluffs and beach. Approved development must also be designed to prevent impacts to those areas. One means to assure such protection of public beach recreational areas is to assure, to the extent possible, that improvements or new development will not require protective devices that substantially alter the natural landforms along bluffs and adversely impact visual quality, coastal processes and public access along the shoreline.

The applicant proposes to construct an approximately 1,296 sq. ft. one-story addition on the landward side of an existing one-story approximately 2,600 sq. ft. single-family residence. To find the residential addition consistent with Section 30253, the Commission must find that it will be safe throughout its useful life so as to not require shoreline protection.

The site of the proposed residential addition is on top of an approximately 75 ft.-high coastal bluff area in the City of Solana Beach. Because of the natural process of continual bluff retreat, coastal bluffs in this area and at the subject site are considered a hazard area. Evidence of the instability of the subject site has been documented through the permitting of the existing seawall and seacave fill and two emergency permits for the

placement of riprap at the toe of bluff. Based on the geotechnical reports submitted in connection with these shoreline protective devices, it has been determined that the existing residence is subject to an erosion threat such that it requires shoreline protection (Ref. CDP Nos. 6-92-212/Wood; 6-93-24-G/Wood; 6-97-166-G/Wood). The staff report for the permitted shoreline protection at the subject site identified that:

In the case of this particular site, however, the mechanism of failure involved formation, widening and ultimate collapse of a large seacave that has formed along a fault or joint at right angles to the face of the bluff. As stated above, the outer 50 feet of the seacave has already collapsed, forming a sand-floored cove, with an additional narrow (one-foot wide) cave extending approximately 30 feet into the bluff. The collapse of the seacave has resulted in upper bluff sloughing, which poses the direct threat to the existing residence. . . . In this regard, it should be noted that the predicted angle of repose of the upper bluff materials at this site extends to the area below the foundation of the existing structure. (CDP No. 6-92-212/Wood)

In addition, documentation has also been presented in past Commission actions concerning the unstable nature of the bluffs in this area of the coast (ref. CDP Nos. 6-87-391/Childs; 6-92-82/Victor, 6-93-181/Steinberg, 6-97-165/Wood, Lucker; 6-98-148/City of Solana Beach; 6-99-91/Becker; 6-99-95/City of Solana Beach, 6-99-100/Presnell, et.al; 6-02-015/Schooler). In addition, since 1997, the Executive Director has approved approximately 45 emergency permits for shoreline protection along the Solana Beach shoreline. Clearly the potential exists for significant bluff retreat in this area and at the subject site.

In response to slope stability problems found in Solana Beach in the past, the Commission typically required that all new development observe a minimum setback of 40 feet from the top of the bluff, with a reduction to 25 feet allowed subject to the finding of a certified engineering geologist that bluff retreat will not occur to the extent that the principal permitted structure would be endangered within its economic life (75 years). However, due to the number of slope collapses in the region and, in the case of Solana Beach, the recent discovery of a mid-bluff layer of clean sands within the bluffs, the Commission has more recently required that a minimum 40-foot setback development be maintained in Solana Beach without the option of a reduction to 25 feet. In addition, the Commission has required a geologist's certification that bluff retreat will not occur to the extent that a seawall or other shoreline protective devices would be required to protect the new development within the economic life of the structure.

As cited above, Sections 30253 and 30240 of the Coastal Act require new blufftop development to be sited and designed to minimize risks to life and property, to not require the construction of protective shoreline devices, and to prevent impacts which would significantly degrade parks and recreation areas, such as the adjacent beach and bluffs. In order to achieve those requirements, new blufftop development must be sited as far landward as possible to avoid the need for shoreline protection over its lifetime. The applicant is proposing to construct an approximately 1,296 sq. ft. one-story addition

to the landward side of an existing approximately 2,600 sq. ft. one-story residence. The existing residence is located as close as 15 ft. from the edge of the bluff while the proposed additions will be sited 48 ft. to 80 ft. landward of the bluff edge (approximately 53 ft. landward of the bluff edge on the north side of the lot, approximately 48 ft. landward of the bluff edge on the central portion of the lot and approximately 80 ft. landward of the bluff edge on the south side of lot). To be consistent with the above cited Coastal Act policies, the Commission must determine whether the proposed landward side addition will require shoreline protection over its lifetime or in any way significantly contribute to the need for additional shoreline protection for the existing residence. To determine whether the addition itself will require shoreline protection over its lifetime, the applicant has submitted geotechnical reports that include site-specific quantitative slope stability analyses, an estimation of the long-term erosion rate for the area, and a general discussion of site conditions and the threat from erosion. The Commission has typically used this type of information to evaluate where new development should be sited so as not to require shoreline protection over its lifetime. In the case of the subject site, however, the application of these analyses is complicated by the presence of the existing vertical seawall. Because a 31 ft.-long section of the bluff is currently protected by a seawall and geogrid slope reconstruction, the stability and erosion rate is different landward of the protected section than landward of the unprotected sections on either side. The applicants' reports identify that the existing residence is substantially protected at least in its central and southern sections by the existing approximately 31 ft. long seawall.

The range in slope stability affecting the western edge of the existing structure ranges from a factor of safety 1.29 to 1.5, with the higher value associated with the previously-stabilized portion of the slope. (Ref. "Slope Stability Analysis, 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated December 15, 2003)

The Commission's geotechnical staff concur with the applicant's assertion that the central and southern portions of the lot are adequately protected such that any addition on the landward side of the existing residence in these locations will not contribute to the need to construct shoreline protection over the lifetime of the addition. (The addition in the central section will be no closer than approximately 48 ft. from the bluff and the addition in south section will be no closer than approximately 80 ft. from the bluff edge.) However, the question is whether any portion of the additions that lie on the north side of the lot approximately 53 ft. from the edge of the bluff (where the factor of safety is at the low end (i.e., factor of safety 1.29) would necessitate shoreline protection in the future. To address this question, the applicant's representative prepared a discussion paper analyzing a "worst case scenario" for the northern section of the proposed addition (Ref. "Blufftop Setback 521 Pacific Avenue 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated July 28, 2004).

The applicant's report of July 28, 2004, identifies that the primary threat to any northern side addition to the existing residence may come from the erosion that may occur on the adjacent undeveloped lot. The Commission approved a two-lot subdivision next to the

north side of the subject site in 1991 along with the demolition of an existing home, construction of a single-family residence on the further north of the two lots and the infill of several notches that lie at the base of the neighboring two lots (Ref. CDP #6-91-81/Bannasch). Although not required, the Commission approved the infill as a preventative measure to forestall bluff retreat, but not eliminate it. While the Commission afforded the neighbor properties to the north the ability to maintain the permitted infills, the subject applicant has chosen to assume these infills are not maintained in order to assume a worst-case scenario for coastal erosion as it might affect the proposed addition on the north side of the property. Based on this scenario, the applicant's geotechnical report estimates that over 75 years the bluff adjacent to the subject site could erode up to approximately 43 ft. landward of its current location toward the subject property. Since the applicant is proposing to place the addition no closer than 53 ft. from the edge of the bluff, the report indicates that the proposed addition, even under a worse case scenario, will not require shoreline protection over its lifetime. The Commission's geotechnical staff have reviewed all of the applicant's geotechnical reports and concur with its findings. Therefore, the proposed landward addition to the existing single-family residence will not require shoreline protection over its lifetime consistent with the requirements of Section 30253.

Special Condition #1 has been attached which requires the applicants to submit final plans for the project that demonstrate that all runoff on the top of the bluff is collected and directed away from the bluff and that all permanent irrigation on the blufftop be removed or capped. In review of any development in a blufftop location, the Commission has required implementation of such measures to reduce risk and assure that overall site conditions which could adversely impact the stability of the bluff have been addressed.

Also, due to the inherent risk of developing on a eroding blufftop as documented by the applicants' geotechnical report, Special Condition #2 requires the applicant to waive any claim of liability against the Commission and to indemnify the Commission against damages that might result from the proposed development. Given that the applicants have chosen to construct the proposed additions despite these risks, the applicants must assume the risks.

The subject site is subject to erosion which may, overtime, threaten the existing structure and may result in a request for shoreline protection which would have an adverse impact on the surrounding natural bluffs and the adjacent beach. Special Condition #3 has been attached which requires the applicant to acknowledge that alternative measures which do not result in additional impacts to the adjacent public property must be analyzed on the applicant's blufftop property should the need for further stabilization of the residence occur. With this condition (and recordation of the permit as a deed restriction as required pursuant to Special Condition #5), current and future property owners are put on notice that the site is in a hazardous location and measures on the subject property which would reduce risk to the principle residential structure should be considered, to provide stability and avoid further impacts to the adjacent public parkland.

Finally, Special Condition #4 has been attached, which requires that a separate coastal development permit or amendment be approved for any future improvements to the residence or other development as defined by the Coastal Act on the subject site. Requiring an amendment or new permit for all future development allows the Commission to insure that such development will not create or lead to the instability of the coastal bluffs, impacts to public access, adverse visual impacts or result in the construction or enlargement of the existing structure in a high risk area. Special Condition #5 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. As conditioned, the proposed development is consistent with Sections 30235, 30240 and 30253 of the Coastal Act.

B. Nonconforming Structures

The proposed development raises concerns relating to whether or not it is a substantial addition to a nonconforming structure. The proposal involves an approximately 49% addition to an existing structure (2,600 sq. ft. existing + 1,296 sq. ft. proposed) that is nonconforming in that the City blufftop setback ordinance requires blufftop developments to be setback a minimum of 40 ft. from the edge of the bluff. The existing residence is located as close as 15 ft. from the edge of the bluff.

Section 30253 of the Coastal Act requires that new development be sited so it is safe so as not to require shoreline protection in the future which would result in adverse effects to the natural bluff and beach. The goal of Section 30253 is to avoid construction of upper and lower bluff stabilization devices that alter natural landforms and coastal processes. In the context of proposals to enlarge and reconstruct existing structures, the Commission has sometimes required those structures to be brought into conformity with shoreline hazards policies of the Coastal Act or certified LCPs. (Ref. A-6-LJS-99-160/Summit Resources). Also, in its recent action on the Malibu LCP, the Commission certified ordinances that identify when repair and maintenance or improvements to existing blufftop structures would not require the entire structure be brought into conformance with the certified standards for new development. These criteria include when there is no demolition and/or reconstruction that results in replacement of more than 50 percent of the existing structure, and when additions do not increase the size of the structure by more than 50 percent. In this instance, the addition increases the size of the structure by less than 50 percent (approximately 49 percent). In addition, although much of the existing structure is in a location where the Commission could not now authorize new development due to the threat of shoreline erosion, the new addition will be located in an area that will not require shoreline protection. The changes to the existing structure are fairly minor in scope and meet the above stated criteria that the Commission has used in similar proposals involving development in hazardous areas.

In summary, while the Commission is concerned that remodeling or improvements to existing nonconforming blufftop structures not result in an expansion of the nonconformity in a way that would increase the risk or require shoreline protection in the future, such is not the case here. The addition conforms to the City's blufftop setback

requirements, is located on the landward side of the residence, is less than a 50% addition and will not require shoreline protection over its lifetime. Therefore, the proposed development does not warrant requiring the entire existing structure to be brought into conformity with Chapter 3 policies regarding shoreline development.

2. Public Access/Recreation. Pursuant to Section 30604 (c), the Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. Section 30210 of the Coastal Act is applicable to the proposed development and states:

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

In addition, Section 30212 of the Act is applicable and states, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

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

The proposed project involves a landward side addition to the existing residence and the retention of riprap on the public beach below the existing residence. The subject site is located between the Pacific Ocean and the first public roadway parallel to the ocean, which in this case is Pacific Avenue. The project site is located within a developed single-family residential neighborhood on an approximately 75 ft.-high coastal blufftop lot. Vertical access through the site is not necessary or warranted, given the fragile nature of the bluffs. Adequate public vertical access is provided six lots south of the subject site via a public stairway leading to the City of Solana Beach's Tide Beach Park, as well as approximately ½ mile north at Cardiff State Beach. In addition, since the residential addition will be sited at a safe location such that shoreline protection will not be necessary over its lifetime, the project will not result in the placement of any additional structures on the beach that could impede public access.

Since the proposed addition to the existing residence will not adversely affect public access, the proposed addition is consistent with Sections 30604 (c), 30210, 30212 and 30220 of the Coastal Act.

3. Visual Resources. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The subject development involves additions to an existing single-story blufftop residence. The proposed additions will occur on the landward side of the existing residence and the additions will not exceed the height of the existing structure. Although the existing development is visible from the beach below, the proposed additions will not likely be visible from the beach since views of the addition will be blocked by the existing residence and by the neighboring single-family homes. The proposed addition will occur on a blufftop lot adjacent to similar sized single-family homes. Therefore, the proposed development is compatible with the bulk and scale of development in the surrounding area. In addition, views across the site to the shoreline are not currently available. Therefore, it is not anticipated that the proposed development will have any adverse effect on scenic or visual resources, and therefore the project is consistent with Section 30251 of the Coastal Act.

4. Runoff/Water Quality. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained by, among other means, controlling runoff:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrapment, controlling runoff,

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and run-off from the development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. The City's approval requires that all drainage from the development site, including run-off from the roof, drain away from the bluff. To reduce the risk associated with unattended running or broken irrigation systems, Special Condition #1 restricts the property owner

from installing permanent irrigation devices and requires the removal or capping of any existing permanent irrigations systems. In addition, in order to protect coastal waters from the adverse effects of polluted runoff, the Commission has typically required that all runoff from impervious surfaces be directed through landscaping as filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability by increasing the amount of ground water within the bluff material, which can lead to bluff failures. Therefore, in this case, reducing the potential for water to be retained on the site, will be more protective of coastal resources. The restriction on irrigation will minimize the amount of runoff from the property to the extent feasible. Therefore, the Commission finds the proposed project, as conditioned, to be consistent with Sections 30231 of the Coastal Act.

5. 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 was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. The City is currently preparing an LCP for submittal to the Commission for review.

In preparation of an LCP, the City of Solana Beach is faced with many of the same issues as the City of Encinitas, located immediately north of Solana Beach, whose LCP was certified by the Commission in March 1995. The City of Encinitas' LCP includes the intent to prepare a comprehensive plan to address the coastal bluff recession and shoreline erosion problems in the City. The plan will include at a minimum, bluff top setback requirements for new development and redevelopment; regulations for non-conforming structures, alternatives to shore/bluff protection such as beach sand replenishment, removal of threatened portions of a residence or the entire residence or underpinning existing structures; addressing bluff stability and the need for protective measures over the entire bluff (lower, mid and upper); impacts of shoreline structures on beach and sand area as well as mitigation for such impacts; impacts from groundwater and irrigation on bluff stability and visual impacts of necessary/required protective structures.

The bluffs in this section of the Solana Beach coastline are mostly in public ownership, (although the subject bluff is owned by the applicant). Approval of blufftop development that results in substantial additions to existing nonconforming structures would send a signal that there is no need to address a range of non-structural alternatives to protect both the public bluffs and beaches and existing development such as those identified above. It would be premature to commit the entire Solana Beach shoreline to armoring without a thorough analysis of alternatives that include bringing nonconforming structures into conformity. Planning for comprehensive protective measures should include a combination of approaches including limits on future bluff development, ground and surface water controls, beach replenishment, continual lower bluff protection

when required and constructed in substantial segments, groundwater control, and/or seacave and notch fills as preventative measures. Decisions regarding future bluff and shoreline protection must be done through a comprehensive planning effort that analyzes the impact of approving such protection on the entire City shoreline. These issues of shoreline planning will need to be addressed in a comprehensive manner in the future through the City's LCP certification process.

The City of Solana Beach is currently in the process of developing its LCP. In the case of the subject development, the minor landward additions to the existing residential structure have been found to be consistent with the Chapter 3 policies of the Coastal Act in that the proposed development will not result in substantial renovation of an existing structure within the geologic setback area such that, as a result of the proposed improvements, new or additional bluff and/or shoreline protection would be necessary in the future. The City's LCP will include ordinances to address these issues associated with improvements to existing nonconforming structures in order to meet the requirements of the Coastal Act. The Commission finds that approval of the proposed minor additions to the existing structure would not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

6. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit 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 that the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the future development, public access, and geologic stability policies of the Coastal Act. Mitigation measures, including restrictions addressing assumption of risk, future development and submittal of final project plans 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, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

VI. DENIAL FINDINGS AND DECLARATIONS

The findings in this section apply only to that portion of the proposed development that is described in Part 2 of the Commission's resolution on this permit application, which portion is therefore being denied.

1. Geologic Stability.

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

In addition, Section 30240(b) of the Act requires that:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The applicant is requesting after-the-fact approval of unpermitted riprap that lies on the public beach at the toe of the existing 31 ft.-long seawall that provides protection to the applicant's home. In December 1997, the Executive Director approved an emergency permit that granted authorization to temporarily place 4-ton sized riprap, approximately 8 ft. high and 15 ft. in width on the public beach seaward of the seawall in order to temporarily protect the site and adjacent bluff promontories from a predicted "El Nino" storm season (Emerg. Permit 6-97-166-G/Wood). The emergency permit required the riprap to be removed by April 15, 1998. However, the riprap was never removed. Failure to remove the rip rap by the April 15, 1998, deadline constituted a violation of the terms and conditions of the emergency permit. In addition, the continued maintenance of the riprap after April 15, 1998, constitutes unpermitted development. The applicant is now requesting after-the-fact approval of the continued maintenance of the existing riprap on the beach. An engineering report submitted by the applicant suggests that the riprap ("toestone") has been effective at "eliminating edge waves" which would otherwise erode the natural headland feature of the bluff that occurs on the north and south sides of the seawall. "Premature removal of the toestone now will rapidly accelerate the erosion of the northerly and southerly headlands." (Ref. "Required Toestone Protection 521 Pacific Avenue, Solana Beach, California" by TerraCosta Consulting Group dated April 20, 2004.) The engineering report, however, does not say that erosion of the natural headlands would in any way result in a threat to the residence or the seawall. In fact, the report says, "Interestingly enough, as the ongoing headland erosion eventually results in the shoreline aligned with the existing structure [i.e., seawall], the toestone will no longer serve any purpose and should be incrementally be removed as the shoreline retreats." The "toestone" has, according the applicant's engineer, also reduced the amount of water splash which has eroded some of the geogrid backfill located above the 26 ft. high seawall. While this might be true, it appears there

are alternatives to the use of toestone that might address the water splash concern. For instance, it might be possible to erect a splash guard on top of the seawall to reflect wave run-up or water splash. However, no alternatives have been examined by the applicant other than the continued use of 4-ton rock placed on the public beach. The Commission's technical services division has reviewed the geotechnical material submitted by the applicant and has determined that the riprap is not necessary to protect either the existing seawall or the existing residence. In addition, if in the future the existing seawall requires maintenance or additional shoreline protection is necessary to protect the existing residence, the applicant is required by the previous coastal development permit (CDP #6-99-212/Wood) to apply for an amendment or new coastal development permits to address those concerns.

As cited above, Section 30235 of the Act requires that the Commission approve shoreline protection that is necessary to protect existing structures and when designed to eliminate or mitigate shoreline sand supply. In this case, the existing unpermitted riprap is not necessary to protect the existing residence or seawall and no measures have been included to eliminate or mitigate sand supply. In addition, Section 30240(b) requires that development located adjacent to environmentally sensitive habitat or parks and recreation areas be compatible with uses in those areas. In this case, the continued maintenance of the existing rock riprap on the public beach directly interferes with the recreational use of the beach by the public (which will be discussed in the next section of this report). Therefore, the proposed development involving the retention of unpermitted riprap on the public beach seaward of the applicant's property is inconsistent with Section 30235 and 30240(b) and must be denied.

2. Public Access/Recreation. Pursuant to Section 30604 (c), the Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. Section 30210 of the Coastal Act is applicable to the proposed development and states:

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

In addition, Section 30212 of the Act is applicable and states, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby....

Additionally, Section 30220 of the Coastal Act provides:

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

In addition to geologic concerns, the applicant's request to retain the unpermitted riprap on the public beach will adversely affect public access. The beach at the project site is used by local residents and visitors for a variety of recreational activities. The beach seaward of the existing seawall is public trust lands. In a letter dated May 17, 1998, the State Lands Commission asserted the land on which the emergency permit authorized the temporary placement of riprap (Emerg. Permit 6-97-166-G/Wood) was located within the jurisdiction of the State Land Commission (Ref. Letter to Ken Wood from Robert Lynch, State Lands Commission dated 5/17/98). In addition, depending on the time of year and beach conditions, the riprap may be covered with sand or be exposed. However, when not covered by sand, the existing unpermitted riprap is approximately 15 ft. in width, approximately 31 ft. in length and therefore occupies an area of approximately 465 sq. ft.

The shoreline at this location is narrow and at high tides and winter beach profiles, the public may be forced to walk virtually at the toe of the bluff or the area may be impassable. As such, any encroachment of structures of any significant size onto the sandy beach in this area produces an unacceptable reduction in the beach area available for public use. In addition, as a result wave action and beach erosion the rocks tend to move around and spread out across the beach impacting public access. Also, as stated above, the existing riprap is not necessary to protect the existing residence. Thus, approval of the request for after-the-fact approval of the permanent placement of the unpermitted riprap would result in occupation of beach area that would otherwise be available to the public, which would have adverse impacts on public access.

In summary, the proposed request for after-the-fact approval for the permanent placement of the approximately 465 sq. ft. of riprap on the public beach at the base of the applicant's seawall is inconsistent with the public access requirements of Sections 30604 (c), 30212 and 30220 of the Coastal Act and must be denied.

3. Unpermitted Development. The proposed development will occur on a site that contains unpermitted development in form of rock riprap on the public beach. In December 1997, the Executive Director approved an emergency permit that authorized the temporary placement of 4-ton sized riprap, approximately 8 ft. high and 15 ft. in width on the public beach seaward of the approximately 31 ft.-long seawall in order to temporarily protect the site and adjacent bluff promontories from a predicted "El Nino" storm season (Emerg. Permit 6-97-166-G/Wood). The emergency permit required the riprap to be removed by April 15, 1998. The riprap was not subsequently removed. Failure to remove the rip rap by the April 15, 1998, deadline constituted a violation of the terms and conditions of the emergency permit. In addition, the continued maintenance of the riprap after April 15, 1998, constitutes unpermitted development. The applicant is now requesting after-the-fact approval for the permanent placement of the riprap on the

beach. The Commission's enforcement division will evaluate further actions to address this matter.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

4. 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 cannot be made.

Based on the above discussion, the proposed riprap on the public beach has been found to be inconsistent with numerous Chapter 3 policies of the Coastal Act because the need for the riprap has not been documented and because its adverse impacts on public use and recreation on the beach would be significant. The Commission finds that approval of the proposed riprap will prejudice the ability of the City of Solana Beach to prepare a Local Coastal Program that is in conformity with Chapter 3 policies and, therefore, it must be denied.

5. 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 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 that the activity may have on the environment.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, as described in the sections above that would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

CARDIFF BY THE SEA

PACIFIC OCEAN



Site

Site

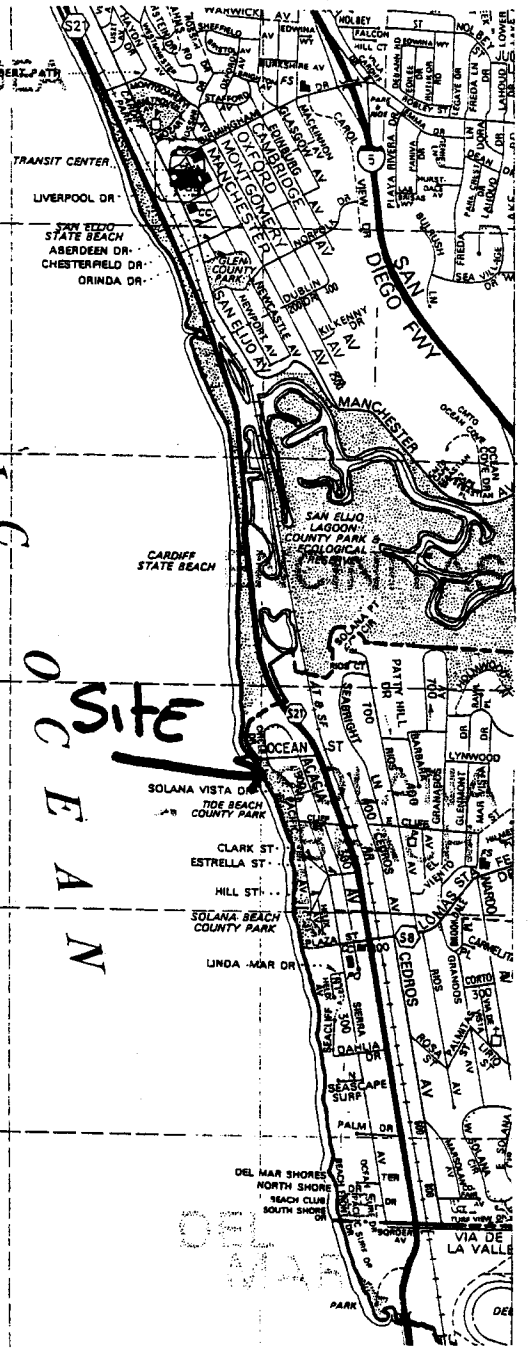
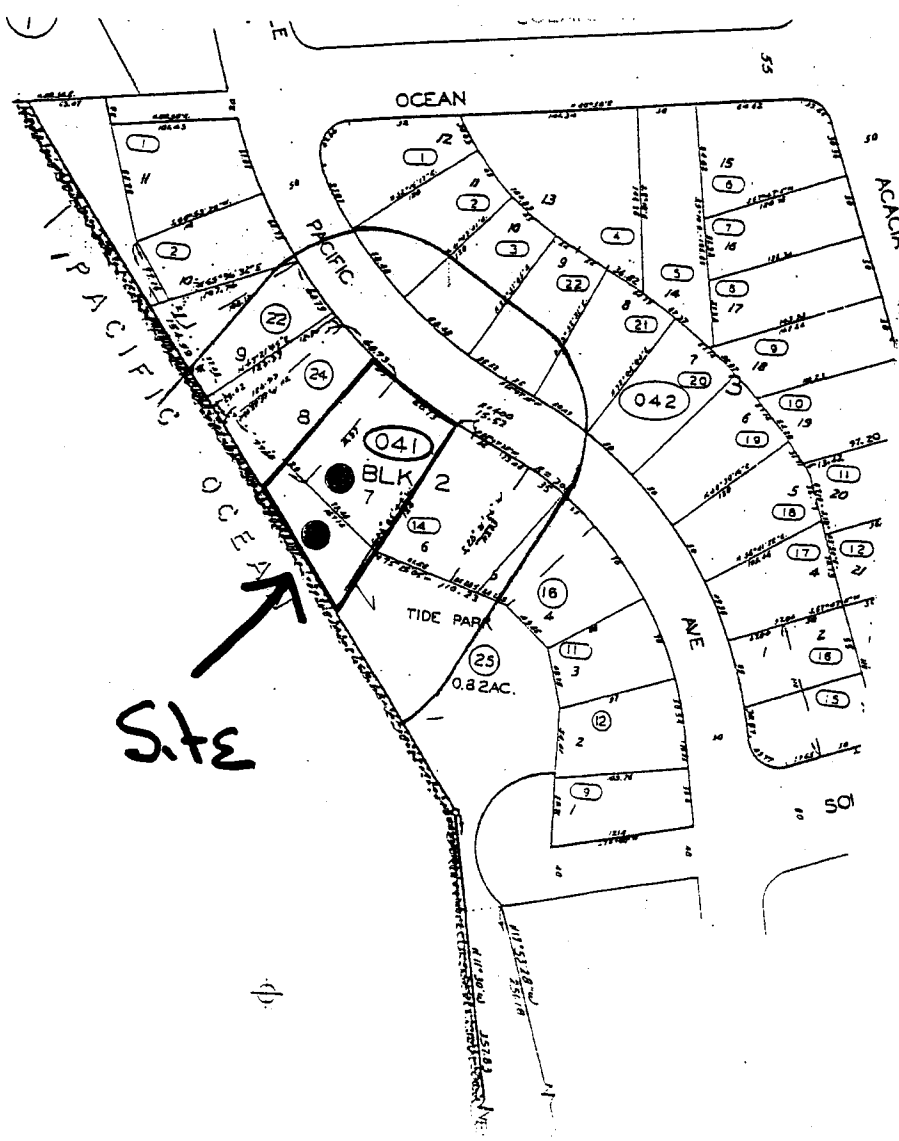


EXHIBIT NO. 1
APPLICATION NO.
6-04-86
Location Map
California Coastal Commission

Existing 40 ft. setback from bluff edge

Applicant's estimated 40 ft. setback following "worst case scenario" bluff erosion over 75 years.

Proposed Addition

Proposed Addition

Existing bluff edge

Existing 40 ft. setback from bluff edge

LEGEND	
	EXISTING RESIDENCE 2,000 SF
	PROPOSED ADDITION 1,700 SF
	TOTAL FLOOR AREA 3,700 SF

WINKLER RESIDENCE ADDITION

521 Pacific Ave., Solana Beach, California

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Sheet Title
PLOT PLAN

	Scale	AS SHOWN
	Date	7-17-86
	Sheet	1 OF 4
	Checked	AGS
	Job No.	8808

A-1

EXHIBIT NO. 2
APPLICATION NO.
6-04-86
Site Plan

Applicant's estimated
40 ft. setback following
"worst case scenario" bluff
erosion over 75 years.

Existing 40 ft. setback
from bluff edge

New Addition

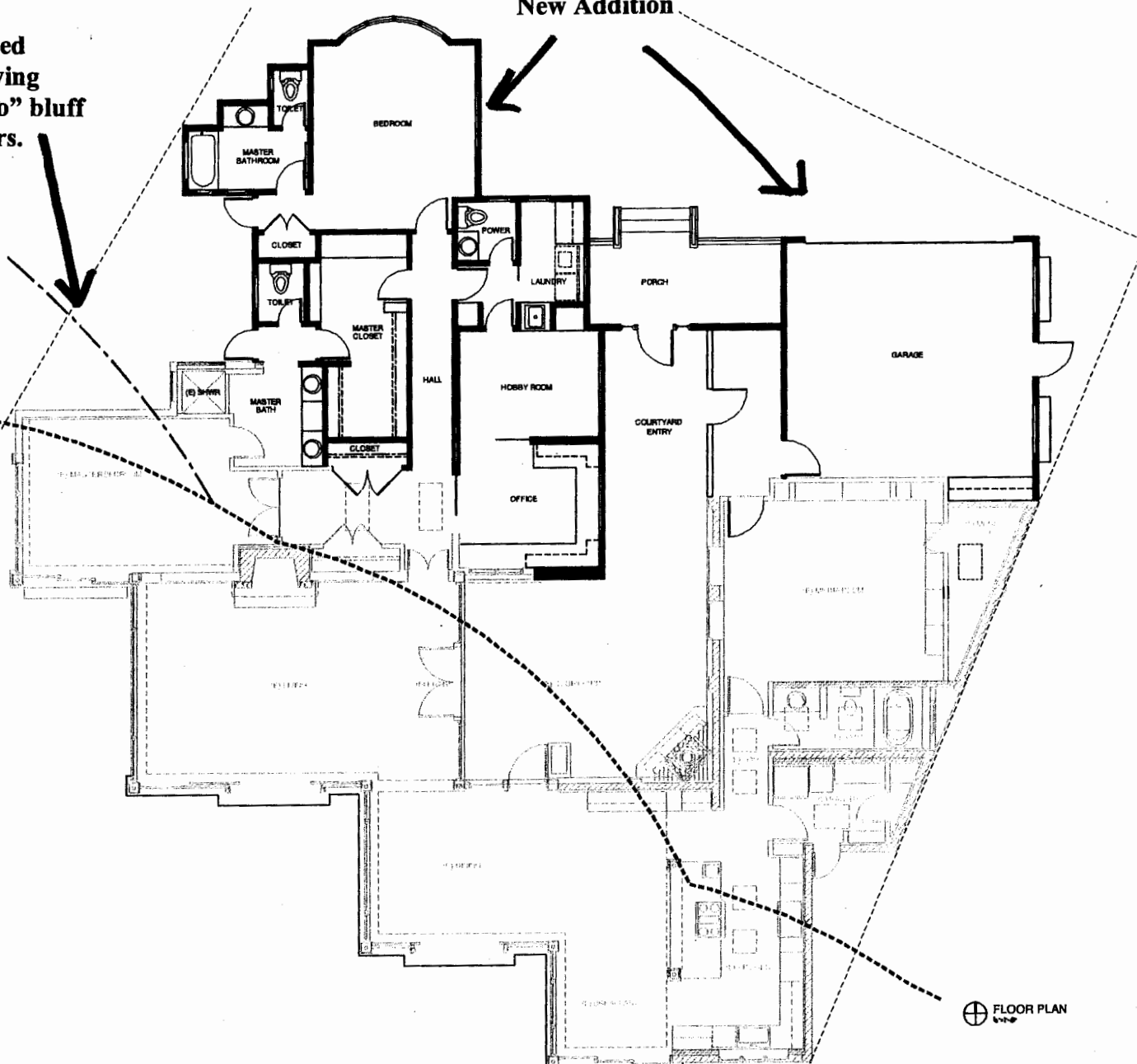


	EXHIBIT NO. 3
	APPLICATION NO.
	6-04-86
	Floor Plan

WINKLER RESIDENCE
ADDITION

521 Pacific Ave., Solana Beach, California

Scale: 1/8" = 1'-0"

FLOOR PLAN

	Scale: 1/8" = 1'-0"
	Date: 1/7/84
	Sheet: 2/2
	Project: 60
No. C21312 18N 774020 STATE OF CALIFORNIA	
A-2	

Ronald W. Lucker, DDS
Marie Lucker
517 Pacific Ave
Solana Beach, CA 92075

October 14, 2004

Re: *Case No. 6-04-86, Winkler*
521 Pacific Avenue, Solana Beach

Dear California Coastal Commissioners and Staff:

We strongly support the retention of rip-rap at the base of the seawall at 521 Pacific Avenue.

As the next door neighbor to the South, we have seen the damage which occurs when high surf hits this seawall with no rip-rap in place. Without the rocks, the headlands at both ends of the existing seawall erode more quickly necessitating more repair, maintenance and lengthening of the seawall. Both the subject property and our property, which abuts the southerly headland, will be adversely affected if the rip-rap is removed.

When the ocean slams into the seawall at 521 Pacific Avenue, the vertical jet of water causes erosion of sand between the layers of geogrid located above the wall. The rip-rap helps prevent this problem from recurring.

The rip-rap has no adverse impact on the public or the beach since it is comprised of small rocks which are covered most of the year, and which do not affect the ability of beachgoers to pass the subject property.


Due to the number of bluff failures in Solana Beach, it is very important for the Coastal Commission to dissuade the public from sitting or walking close to the bluff at all locations. The rip-rap discourages people from getting too close. This is important to help preclude injury or loss of life in other dangerous beach areas adjacent to the bluff.

We respectfully request that the Coastal Commission approve this single-story, attractive proposed addition home at 521 Pacific Avenue, and most importantly approve the continued use of the rip-rap on the beach. The removal of the rip-rap is not in the interest of the public or the affected property owners to the north and south of the subject property.

Yours truly,

Ronald W. Lucker DDS
Ronald W. Lucker, DDS

Marie Lucker
Marie Lucker

EXHIBIT NO. 4
APPLICATION NO.
6-04-86
Letter of Support
 California Coastal Commission

