

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4421

(619) 767-2370

RECORD PACKET COPY

**Th 13a**

Filed: 2/3/05
49th Day: 3/24/05
180th Day: 8/2/05
Staff: LRO-SD
Staff Report: 3/3/05
Hearing Date: 3/16-18/05

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved with Conditions

APPEAL NO.: A-6-LJS-05-14

APPLICANT: William R. Olsen Jr. and Wanda W. Tang

PROJECT DESCRIPTION: Demolition of an existing single family residence and construction of a new 4,943 sq.ft., two-story single family residence with an 1,820 sq.ft. basement and attached 616 sq.ft. garage. Also proposed is the relocation of an existing private storm drain pipe outside of the footprint of the new residence on a 7,148 sq.ft. lot.

PROJECT LOCATION: 348 Vista de la Playa, La Jolla, San Diego, San Diego County.
APN 351-13-05

APPELLANTS: Joseph F. Marrone

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. Based on review of the City's file and information provided by the applicant and the appellant, staff has concluded that the development, as approved by the City, is consistent with all applicable LCP provisions and will not result in any adverse impacts on coastal resources.

SUBSTANTIVE FILE DOCUMENTS: Appeal Form dated 2/3/05; City of San Diego Report to the Planning Commission dated 10/26/04; Certified La Jolla Community Plan and Local Coastal Program Land Use Plan (February 2004).

I. Appellants Contend That: that (1) the City failed to properly characterize the relocated storm drain pipe for the project as a public storm drain and failed to follow the requirements of the City's Drainage Design Manual such that the project will result in significant hydrology impacts on adjoining properties and will violate the Clean Water Act by discharging untreated pollutants and (2) the City should have required an EIR for the project instead of issuing Negative Declaration due to project impacts on hydrology and historical resources.

II. Local Government Action. The coastal development permit was approved by the Hearing Officer on November 4, 2004. The project was subsequently appealed to the Planning Commission on 1/19/05. The Planning Commission denied the appeal and approved the Coastal Development Permit. The conditions of approval address, in part, the following: landscaping; off-street parking; drainage; building height; photo documentation of the existing residence to the La Jolla Historical Society for their record of an early architect Russell Forrester work; and water quality.

III. Appeal Procedures.

After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that the approved "development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission 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.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. title 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City of San Diego does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

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-05-014 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 YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo 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-05-014 does not present 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 single family residence and the construction of a new 4,943 sq.ft., two-story single-family residence with a 1,820 sq.ft. basement and attached 619 sq.ft. garage. Also proposed is the relocation of an existing private storm drain pipe so it will be outside of the footprint of the new residence on a 7,148 sq.ft. lot. The subject site is located on the north side of Vista De La Playa, just west of Monte Vista Avenue (approximately one block east of the ocean) in the La Jolla community of the City of San Diego between the first public road and the sea. As such, the standard of review is the certified LCP and the public access and recreation policies of the Coastal Act.

2. Drainage/Hydrology. The appellant's representative contends that the City failed to properly characterize the relocated storm drain pipe for the project as a public storm drain and failed to follow the requirements of the City's Drainage Design Manual such that the project will result in significant hydrology impacts on adjoining properties and violates the Clean Water Act for discharging untreated pollutants. It is asserted that these impacts include flooding of the appellant's property back yard and home. The appellant's representative asserts that because the private storm drain pipe proposed to be relocated on the subject site will have two near-90-degree turns, it will reduce water flow

and decrease existing capacity by 5 % resulting in a potential for localized flooding on the adjacent private residential property.

The certified LUP contains the following policies addressing drainage:

For proposed projects and future development in the La Jolla Community Plan, adhere to the policies and recommendations developed and included in the Storm Water Standards Manual as a result of the City's watershed urban runoff management program efforts.

- To achieve project designs that minimize impact to water resources and attempt to mimic the site's natural hydrologic regime, and as required by the Storm Water Standards Manual and, as applicable, BMPs shall be incorporated into the project design....

Site design and source control BMPs shall be included in all developments. When the combination of site design and source control BMPs are not sufficient to protect water quality, structural treatment BMPs will be implemented along with site design and source control measures. The following design principles shall be incorporated in general order of importance:

- Site and design new development on the most suitable portion of the site while ensuring protection and preservation of natural and sensitive site resources;
- Minimize impervious areas in the site's design;
- Minimize high polluting surfaces exposed to runoff using appropriate source control measures, including non-native or non-drought tolerant landscaping to minimize the need for irrigation and the use of pesticides and fertilizers;
- Minimize the amount of impervious areas directly connected to the storm drain system;
- Maintain and use natural drainage features;
- Conserve other natural areas including significant trees, native vegetation, and root structures and maximizing the preservation of natural contours; and
- Maximize infiltration and filtration of runoff by incorporating the site's landscaping and natural drainage features (if any) into the site's drainage design.

A storm drain that originates with a curb inlet on Monte Vista Avenue to the east, traverses a number of private lots and, within the subject property, passes below the existing residence and then connects to another curb inlet and crosses Vista de la Playa in a southerly direction. An existing 18" C.P. storm drain pipeline that traverses the subject site below ground is proposed to be abandoned. The proposed development includes a relocation/re-routing of the 18" PVC storm drain pipe from its drop inlet along the east side interior property line toward the street and across the front of the lot to the existing curb inlet, all on the private property (ref. Exhibit No. 5). The applicant is also proposing to install an 8" PVC pipe and a 12" PVC pipe to accommodate drainage from two neighboring properties (one of which is the appellant) to the east. In addition, the applicant has designed the project such that no drainage from the project site will enter the private storm drain pipe; instead, all drainage generated from the project site will be collected and directed through on-site landscaping prior to being conveyed offsite in a non-erosive manner. During the review of the coastal development permit at the City level, the City's engineers determined that the realigned private storm drain has been designed consistent with the City's Storm Drain Design Manual and will function as well as or better than the existing system and that no adverse impacts to water quality and/or drainage should result from project approval. In addition, to assure the relocated private storm drain continues to function as designed, the City required that the applicant maintain the storm drain facilities within the subject property and determine at the onset of the rainy season each year that the storm drain is not blocked or clogged so that the obstruction of the flow of water would not occur.

The Commission concurs with the City's conclusions enumerated above. The proposed relocation of the private storm drain pipe along with the proposal to install drains to address drainage on the adjacent properties will improve the drainage on the subject site and will minimize the possibility of flooding on the adjacent property owner's site. Also, with regard to the appellant's assertion that the proposed development will violate the Clean Water Act by discharging untreated pollutants, an alleged violation of the Clean Water Act is not a valid ground for an appeal pursuant to Section 30603(b). Thus, the Commission finds that the proposal to relocate an on-site private storm drain is consistent with the above-cited policies of the certified LCP and will not result in adverse impacts on coastal resources. Furthermore, the Commission finds that there is no substantial issue with respect to the grounds on which the appeal was filed.

3. Historical Resources. One of the contentions of the appellant is that the existing residence to be demolished is historically significant and as such, should not be permitted to be demolished.

The certified La Jolla Land Use Plan contains the following policies and recommendations regarding the preservation of historic resources:

Preserve the heritage of La Jolla by identifying structures or natural features within the community that are important local landmarks or that hold community-wide significance and by designating them as historic sites. (p. 127)

1. The City should protect sites of significant archaeological, architectural and historical value within the residential and commercial areas of La Jolla for their scientific, education and heritage values. (p. 128)
 2. The City, in cooperation with the Historical Resources Board and the community, should conduct a survey of historic and architecturally significant sites that are eligible for historic designation. This survey should be updated on a periodic basis per the Secretary of Interior Standards. (p. 128)
 3. The City should encourage the adaptive reuse of historic structures to encourage their retention in order to preserve the structural integrity, usefulness and potential historic value of these buildings. Relocation of a historic structure to another site within the community should be utilized only after all other means to retain the structure on the original site have been exhausted, and the action has been deemed to meet the Secretary of Interior Standards criteria. (p. 128)
-
1. Preserve all designated historic sites in La Jolla. Maintain the existing cultural Zone designation within the La Jolla Planned district in order to retain those structures and sites of designated architectural and historic value. (p. 131)
 2. Pursue local historic designation of significant historic resources as recommended in Figure 21, through preliminary historic surveys. The surveys identify those sites that should be saved in their present location, those that should be saved but moved to another location; and those that could simply be photographed and documented prior to demolition. (p. 131)

The following policies of the City's Land Development Code are applicable to the proposed project:

Section 123.0202 Designation Process for Historical Resources

- (a) Nominations. Nominations of a *historical resource* to become a *designated historical resource* may originate from the Historical Resources Board, the City Manager, the City Council, or any member of the public including the property owner by submitting a research report or similar documentation, as identified in the Historical Resources Guidelines of the Land Development Manual, to the Board's administrative staff for consideration by the Board. Nominations from the City Manager may originate as a result of a site-specific survey required for the purpose of obtaining a construction or *development permit* consistent with Section 143.0212.
- (b) Public Notice to Owner. The owner of a property being considered for designation by the Historical Resources Board shall be notified at least 10 business days before the Board hearing. Notice to the owner shall contain information about the potential impacts of designation and a request to contact the Board's administrative staff regarding information for making a presentation

to the Board on the proposed designation. No action shall be taken by the Board to designate a *historical resource* except at a public hearing that provides all interested parties an opportunity to be heard.

- (c) **Adequacy of Research Report.** The decision on whether or not to designate a *historical resource* shall be based on the information in a research report, as specified in the Historical Resources Guidelines of the Land Development Manual. If the Board determines, either by public testimony or other documentary evidence presented to it, that the research report is not adequate to assess the significance of the *historical resource*, the Board may continue its consideration of the property for up to two regular meetings and direct that a research report be prepared by the applicant with specific direction from staff as to the inadequacies of the original report. The revised research report may be prepared by City staff or volunteers, with a copy provided to the owner at least 10 *business days*.
- (d) **Continuance.** At the request of the property owner, the Historical Resources Board shall grant a continuance of one scheduled Board meeting after the motion has been made to designate a *historical resource*.
- (e) **Historical Resources Board Decision.** The Historical Resources Board shall view the Research Report and shall make a decision on whether to designate a *historical resource* based on the criteria specified in, and consistent with the procedures of the Historical Resources Guidelines of the Land Development Manual. The action to designate shall require the affirmative vote by eight members of the Board.
- (f) **Findings.** The decision to designate a *historical resource* shall be based on written *findings* describing the historical significance of the property.
- (g) **Re-initiation of Designation Proceedings.** Designation procedures may not be re-initiated within 5 years without owner consent, absent significant new information.

Section 143.0212 Need for Site-Specific Survey and Determination of Location of Historical Resources

- (a) The City Manager shall determine the need for a site-specific survey for the purposes of obtaining a *construction permit* or *development permit* for *development* proposed for any parcel containing a *structure* that is 45 or more years old and not located within any area identified as exempt in the Historical Resources Guidelines of the Land Development Manual or for any parcel identified as sensitive on the Historical Resource Sensitivity Maps. [...]

During the City's review period, because the structure proposed for demolition was constructed over 45 years ago, the potential of the residence being a historical resource

was evaluated pursuant to the certified LCP, as noted above. An Historical Report was subsequently prepared and forwarded to the Historical Resource Board Policy Subcommittee. However, the Subcommittee found that the existing structure did not meet the criteria for designation and thus it did not warrant the full Board's consideration.

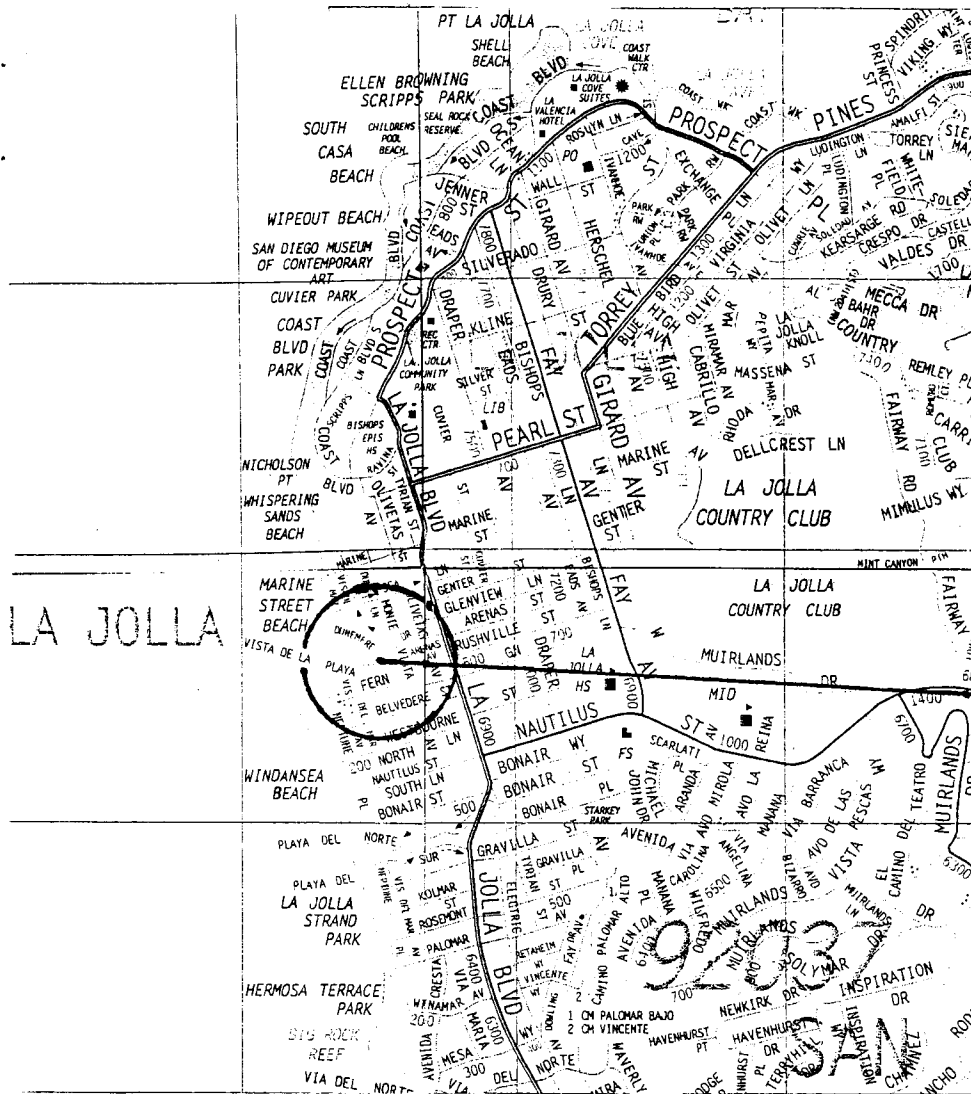
Pursuant to Section 123.0202 of the LDC, as cited above, only the Historical Resource Board (HSB) can make a determination and designation of a historical structure. In this particular case, no such designation has been made. Although noted architect Russell Forester designed the existing structure, it was determined that the subject home is not a representative example of his work as it is not in the style of architecture that made him famous (Modern International Style). The Commission concurs with the City's conclusions that the existing structure is not historically or architecturally significant and that it has not been associated with important events or individuals in terms of local, state or national history.

Although there are a number of historic structures in the surrounding area; none were designed by Architect Russell Forester. In this instance, the proposed project does not affect any coastal resources, historical resources or raise any other substantial issues regarding the consistency of the proposed development with the Certified LCP. Based on these findings, the proposed residential development does not raise a substantial issue regarding conformity with the certified Local Coastal Program.

4. Substantial Issue Factors. As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The proposed project is typical in size and scale of other projects in the vicinity and is not of unusual particularly significant extent or scope. The City's implementation of its LCP did not involve any interpretation of ambiguous policy language or otherwise clarify how the LCP would be interpreted in a manner that would have a precedential impact on future interpretations of the LCP. Finally, objections to the project do not raise any substantial issues of regional or statewide significance, and there are no significant coastal resources at stake.

5. CEQA Issues. One of the contentions of the appellant is that the City failed in its review by issuing a Negative Declaration in its Environmental Determination as to the project's impact on hydrology and historical resources. The appellant further asserts that the project's impact on hydrology exacerbates the City's Clean Water Act violation. The appellant asserts that the City should prepare an EIR to fully analyze the impacts and mitigation for the significant hydrology impacts that will occur to the appellant's residence as a result of the proposed project. In addition, another contention of the appellant is that the existing residence to be demolished is potentially historically significant. In an addendum to the appeal, the appellant's representative stated that a number of expert opinions from opponents claimed that the project would meet the criteria for listing on the California Register of Historic Resources. The City was also presented with testimony from supporters of the permit that the property was not historic.

According to the appellant, when there is conflicting expert testimony as to whether or not a property is a historic resource, a full EIR should be required. The opponent cites, CEQA Guideline Section 15064(f)(1) which states in part, "...if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." However, in this particular case, the City of San Diego is the lead agency in the review of the proposed development. As such, it is the City that must make decisions pertaining to CEQA and the City determined that an EIR was not warranted. In any case, the matter as to whether or not a full EIR is required has been address by the City and will not result in adverse impacts on any coastal resources. Thus, the allegation could not support a conclusion that the appeal raises a substantial issue with respect to the grounds on which the appeal was filed pursuant to section 30603.



SITE

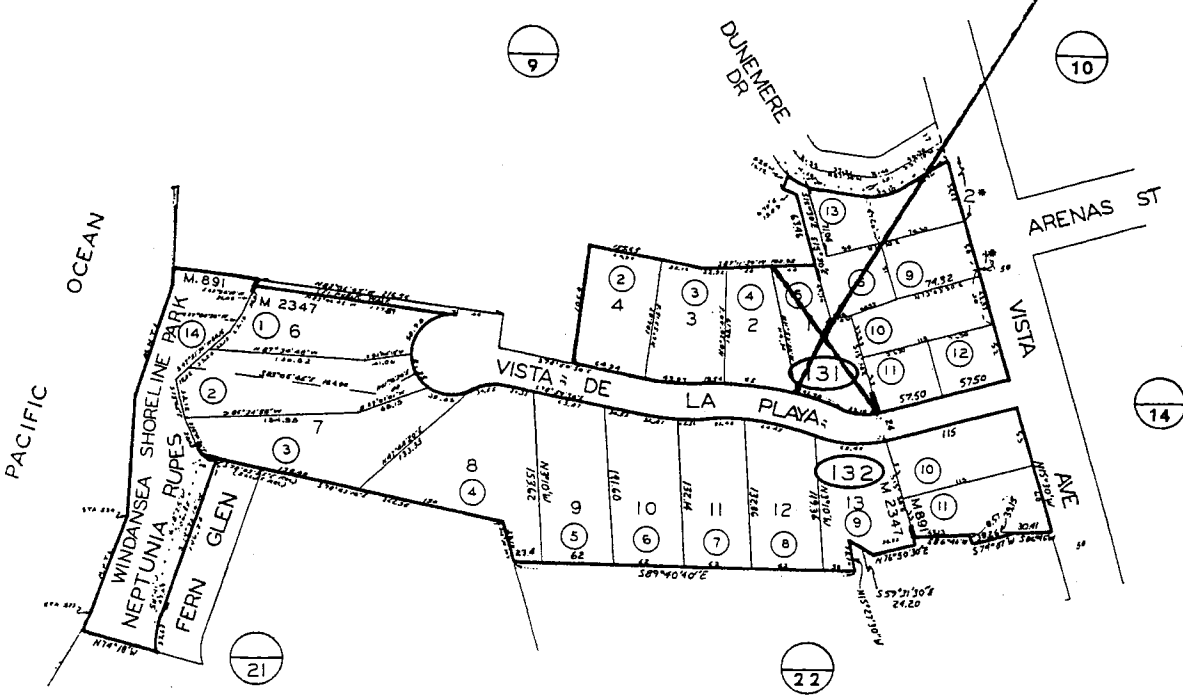
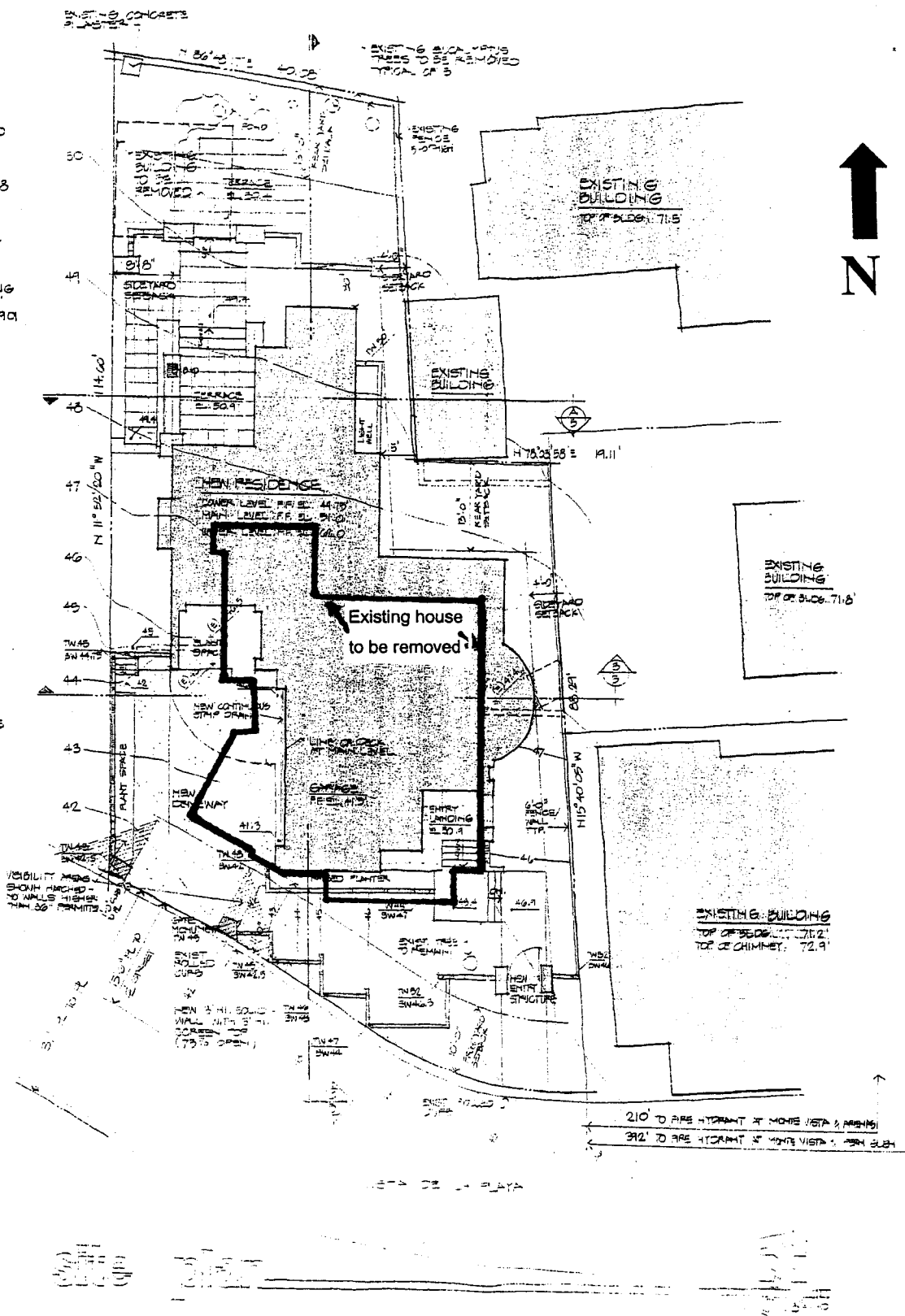
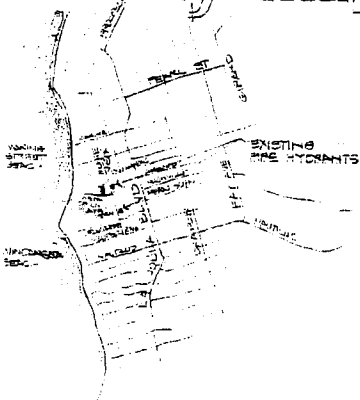


EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-05-14
Location Map

California Coastal Commission

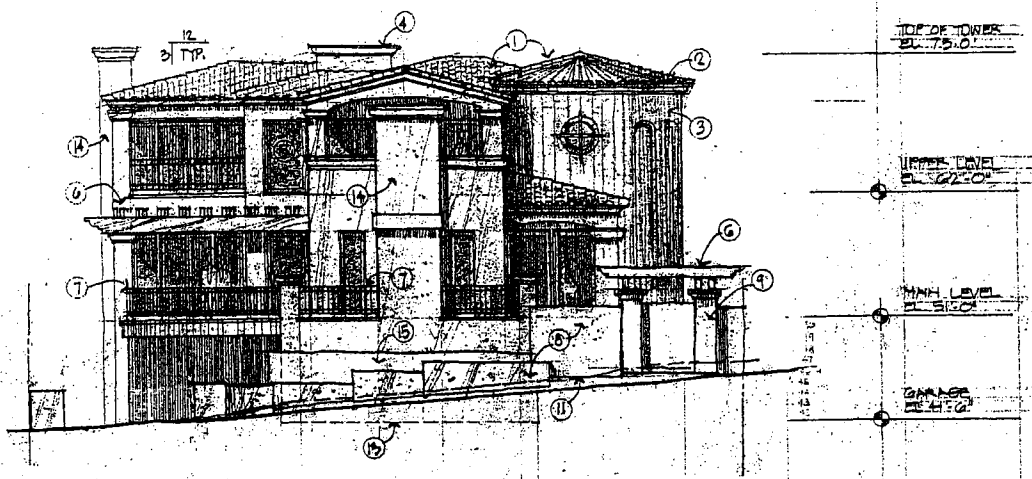
SALES ENGINEER:

1. DEVELOPMENT SUMMARY, SITE PLAN,
PROJECT TEAM, SHEET INDEX &
VICINITY MAP
2. TOPOGRAPHIC SURVEY
3. GRADING PLAN
4. FLOOR PLANS
5. FLOOR PLAN, SITE/BUILDING SECTIONS
6. EXTERIOR ELEVATIONS
7. LANDSCAPE CONCEPT PLAN
8. LANDSCAPE LIGHTING PLAN

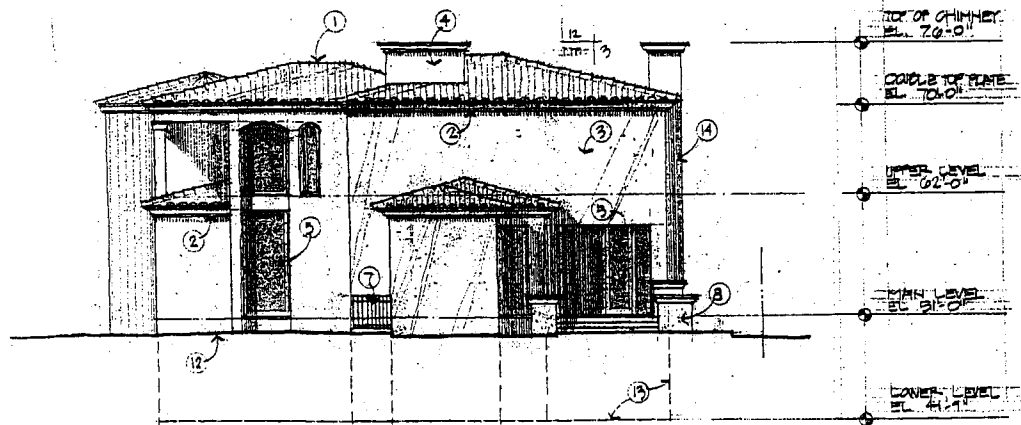


Shaded area= Proposed building footprint

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-05-14
Site Plan

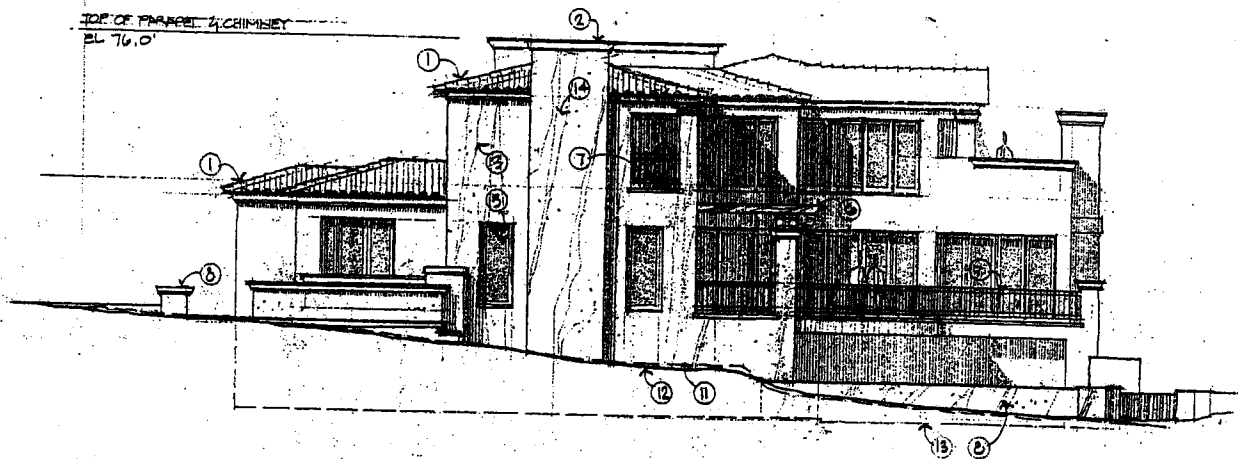


South (Street Elevation)

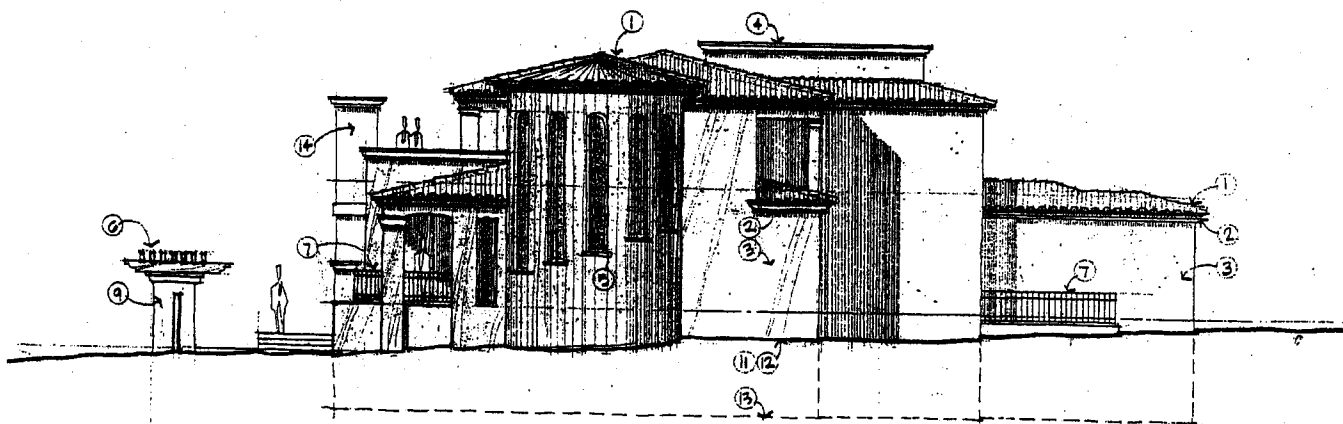


north

EXHIBIT NO. 3
APPLICATION NO.
A-6-LJS-05-14
South & North
Elevations



west



east

EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-05-14
West & East
Elevations

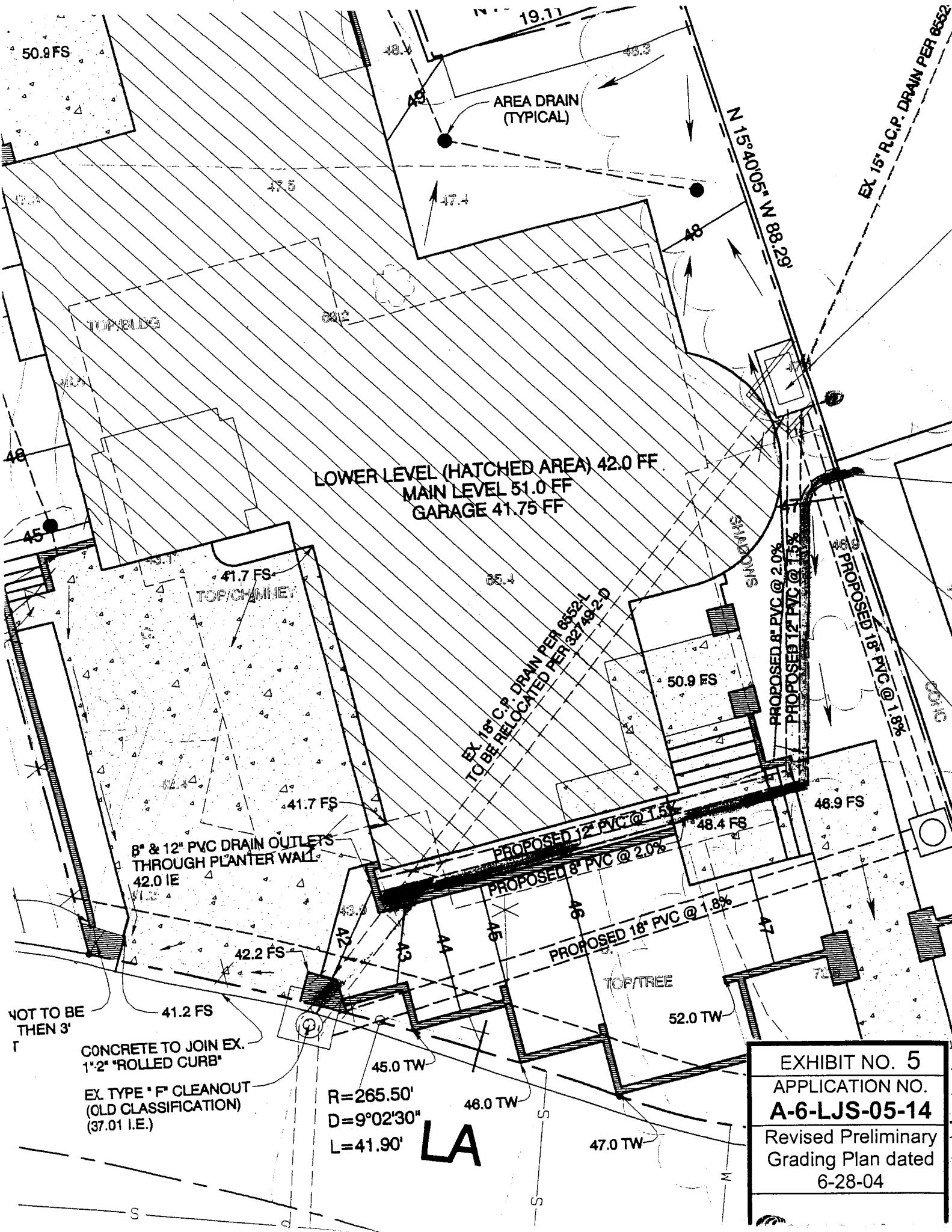


EXHIBIT NO. 5
 APPLICATION NO.
A-6-LJS-05-14
 Revised Preliminary
 Grading Plan dated
 6-28-04

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
15 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov



NOTIFICATION OF APPEAL PERIOD

DATE: January 31, 2005
TO: Robert Korch, Planner, MS 302
City of San Diego Development Services, City Operation Building
1222 First Avenue
San Diego, CA 92101
FROM: Laurinda Owens, Coastal Program Analyst
RE: Application No. 6-LJS-05-029

Please be advised that on January 26, 2005 our office received notice of local action on the coastal development permit described below:

Local Permit #: 6199

Applicant(s): William R. Olsen, Jr. And Wanda W. Tang

Description: Demolition of an existing single family residence and construction of a new 4,943 sq. ft., two-story detached single family residence with a 1,820 sq. ft. basement and attached 616 sq. ft. garage and relocate an existing storm drain pipe currently located below the existing proposed residence outside of the footprint of the new residence on a 7,148 lot.

Location: 348 Vista De La Playa, La Jolla (San Diego County)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on February 9, 2005.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: William R. Olsen, Jr. And Wanda W. Tang

6-LJS-05-029

RECEIVED

JAN 26 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

COASTAL DEVELOPMENT PERMIT

NOTICE OF FINAL ACTION

JOB ORDER 42-3518

DATE: November 9, 2004

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:

PROJECT NAME - NUMBER: Olsen Residence - Project No. 6199

PROJECT DESCRIPTION: Coastal Development Permit to demolish an existing single-family residence and construct a new, 4,943 square-foot, two-story detached single-family residence with a 1,820 square-foot basement (showing a three-story elevation facing the street) and attached 616 square-foot garage and to relocate an existing storm drain pipe (currently located below the existing and proposed residence) outside of the footprint of the new residence.

LOCATION: 348 Vista de La Playa
La Jolla, California 92037

APPLICANT'S NAME William R. Olsen, Jr. and Wanda W. Tang
4455 East Camelback Road, Suite C244
Phoenix, Arizona 85018

FINAL ACTION: ☒ APPROVED WITH CONDITIONS

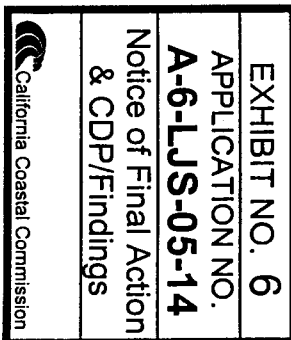
ACTION BY: Planning Commission.

ACTION DATE: November 4, 2004

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 receipt of this Notice, as to the date the Commission's appeal period will conclude.



RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-3518

**CORRECTED JANUARY 24, 2005, TO ADD CONDITION NO. 30 AS
DIRECTED BY THE PLANNING COMMISSION**

Previously recorded on December 23, 2004, Doc.# 2004-1210003

COASTAL DEVELOPMENT PERMIT NO. 10258
OLSEN RESIDENCE - PROJECT 6199
PLANNING COMMISSION

This Coastal Development Permit No. 10258 is granted by the Planning Commission of the City of San Diego to WILLIAM R. OLSEN, JR. AND WANDA W. TANG, Husband and Wife, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] Section 126.0701. The 7,148 square-foot site is located at 348 Vista de La Playa in the RS-1-7 zone of the La Jolla Community Plan, Coastal Overlay Zone (Appealable area), Coastal Height Limit and Beach Parking Impact area. The project site is legally described as Lot 1, Fern Glen Colony, Map No. 2347.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to demolish an existing single-family residence and construction of a new 4,943 square-foot, two-story detached single-family residence with a 1,820 square-foot basement and attached 616 square-foot two-car garage and to relocate an existing storm drain, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated November 4, 2004, on file in the Development Services Department.

The project or facility shall include:

- a. Demolition of an existing two-story, detached single-family dwelling unit, and;
- b. Construction of a new 4,943 square-foot, two-story single-family residence with a 1,820 square-foot basement and an unattached, 616 square-foot two-car garage, and;
- c. The relocation of an existing storm drain, currently traversing the lot below the existing and proposed footprint of the residence, to a location on-site outside of the footprint of the new residence, and;
- d. Landscaping (planting, irrigation and landscape related improvements), and;

e. Off-street parking facilities, and;

f. 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 SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 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 site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 4, 2004, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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 proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

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

ENGINEERING REQUIREMENTS:

11. Prior to the issuance of any building permits, the applicant shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

12. The drainage system proposed for this development, as shown on the site plan, is subject to approval by the City Engineer.

13. 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.

LANDSCAPE REQUIREMENTS:

14. 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 142.0401 and Landscape Standards, Exhibit "A" Landscape Concept Plan, Details and Notes on file in the Office of the Development Services Department.

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

16. The Permittee or subsequent Owner shall be responsible for the maintenance of all landscape improvements

17. If any 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.

18. Prior to issuance of any engineering permits for grading, landscape construction documents for temporary erosion control, and hydroseeding shall be submitted to the City Manager for approval.

19. Prior to issuance of any construction permits for structures, complete landscape and irrigation plans, details and specifications, shall be submitted to the City Manager for approval.

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

PLANNING/DESIGN REQUIREMENTS:

21. 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 Exhibit "A," on file in the Development Services Department. Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

22. 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 a 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.

23. 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.

24. A topographical survey conforming to the provisions of the SDMC 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 regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

25. 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.

26. No building additions shall be permitted unless approved by the City Manager.

27. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

28. The subject property shall be maintained in a neat and orderly fashion at all times.

29. As recommended by the La Jolla Community Planning Association in their motion to approve the subject application, the Owner/Applicant shall provide a record of the photo-documentation of the existing residence to the La Jolla Historical Society for their record of an early architect Russell Forester work. The LJCPA did not determine or find that this existing structure and property is an Historical site.

30. The owner/applicant shall maintain the storm drain facilities within their property and determine at the onset of the rain season that the storm drain is not blocked or clogged so that the obstruction of the flow of water would not occur.

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 ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the Planning Commission of the City of San Diego on November 4, 2004, Resolution No. 3592-PC.

ALL-PURPOSE CERTIFICATE

Coastal Development Permit No. 10258
Date of Approval: November 4, 2004

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO


Robert Korch, Development Project Manager

On January 24, 2005, before me, Stacie L. Maxwell, (Notary Public), personally appeared Robert Korch, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____
Stacie L. Maxwell

ALL-PURPOSE CERTIFICATE

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

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

Signed _____
Typed Name

Signed _____
Typed Name

STATE OF _____
COUNTY OF _____

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

WITNESS my hand and official seal.

Signature _____

PLANNING COMMISSION
RESOLUTION NO. 3592-PC
COASTAL DEVELOPMENT PERMIT NO. 10258
OLSEN RESIDENCE

WHEREAS, WILLIAM R. OLSEN, JR. AND WANDA W. TANG, Husband and Wife, Owner/Permittee, filed an application with the City of San Diego for a permit to demolish an existing single-family residence and construct a new 4,943 square-foot, two-story detached single-family residence with a 1,820 square-foot basement and attached, 616 square-foot two-car garage and to relocate and replace an existing storm drain pipe (currently located below the existing and proposed residence) outside of the footprint of the new residence (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 10258), on portions of a 7,148 square-foot site;

WHEREAS, the project site is located at 348 Vista de La Playa in the RS-1-7 zone of the La Jolla Community Plan, Coastal Overlay Zone (Appealable), Coastal Height Limit and Beach Parking Impact area;

WHEREAS, the project site is legally described as Lot 1, Fern Glen Colony, Map No. 2347;

WHEREAS, on August 11, 2004, the HEARING OFFICER of the City of San Diego opened and continued the hearing on this item until September 8, 2004; and

WHEREAS, on September 8, 2004, the HEARING OFFICER considered Negative Declaration (LDR 6199), materials that were submitted following the close of the public review period for the Negative Declaration, public testimony and Coastal Development Permit No. 10258 pursuant to the Land Development Code of the City of San Diego and APPROVED the Coastal Development Permit No. 10258; and

WHEREAS, an appeal of the Hearing Officer's decision was submitted to the City of San Diego on September 14, 2004, within the appeal period, a Planning Commission hearing was scheduled for and heard on November 4, 2004; NOW, THEREFORE,

BE IT RESOLVED by the PLANNING COMMISSION of the City of San Diego, based on all of the evidence in the record (including the Negative Declaration) and the public testimony presented:

That the PLANNING COMMISSION adopts the following written Findings, dated November 4, 2004.

FINDINGS:

Coastal Development Permit - 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 proposed demolition of an existing single-family residence and construction of a new residence and relocation of an existing storm drain pipe, is all being performed within the boundaries of a previously subdivided and fully developed lot within an existing and fully developed residential neighborhood zoned RS-1-7 within the La Jolla Community Plan area. Public streets for vehicular and pedestrian access and circulation are existing and the proposed development will not encroach upon any physical accessway, existing or proposed, that is legally used by the public as identified in the Local Coastal Program land use plan. The proposed coastal development will not adversely affect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. By complying with the required side, front and rear yard setbacks, the project will be similar to the bulk and scale of the surrounding neighborhood. There are no identified public coastal views across or adjacent to the project site at 348 Vista de La Playa and there are no public views across the site toward identified historic or other scenic resources. The development proposed will be contained within the required setbacks and the identified building area will also comply with the maximum height limit of the RS-1-7 zone and Proposition 'D' Coastal Height Limit. The new split-level, two and three story residence will replace a split level, one and two story residence that was built in 1948.

Therefore, the proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public access way 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.

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

The 7,148 square-foot project site at 348 Vista de La Playa within the RS-1-7 zone of the La Jolla Community Plan area, is not located within any identified environmentally sensitive lands and the demolition of an existing single-family residence and construction of a new residence and relocation and replacement of an existing storm drain, will therefore not adversely affect any environmentally sensitive lands.

The Certified Negative Declaration (LDR 6199) analyzed a number of issues and concluded that the proposed project will not have a significant effect on the environment. One of the issues addressed was whether or not the home, as designed by Russell Forester, was representative of a notable work of a Master Architect. In addition, after the public review had expired for the Negative Declaration, material was submitted asserting that the existing house was historically significant as an example of mid-century modern Polynesian Tiki style architecture. Based upon

significant evidence in the record it has been determined that the existing residence is not a significant example of Forester's architecture and that there's no evidence that Forester established "mid-century modern Polynesian Tiki style architecture." Further, even in the absence of such an association with Forester the existing structure does not qualify as a notable work within this newly asserted style of architecture. The only structure which appears to have had Polynesian influence is a shade structure in the rear portion of the yard which was apparently constructed in mid-60s by subsequent owners identified as the Colemans and was not in any way associated with Mr. Forester (see letter in the record to Marie Burke Lia dated August 4, 2004, and letter from Marie Burke Lia to Donna Clark dated August 12, 2004). There has also been an assertion that the proposed Olsen Residence will detract from or otherwise block public views to other historically designated properties within the immediate vicinity. As stated above, there are no public views of designated historic structures across the subject site. In addition, the architecture, mass and scale of the proposed Olsen Residence is consistent with other newly developed and remodeled homes along Vista de la Playa and Monte Vista Avenue. As such, the proposed home will not block views to or otherwise adversely affect historically designated structures in the immediate vicinity. There has been an insertion that the storm drain realignment (File No. 2472-01) will cause adverse environmental effects on upstream properties. This has been determined not to be the case as the City Engineer has determined that the realignment of the storm drain will have no adverse impact on the neighbor's property adjoining to the east or any other upstream properties (see letter to Joel Incorvaia in the file dated August 4, 2004). As such, it has been determined by the City that the proposed coastal development will not adversely affect environmentally sensitive lands or otherwise have any adverse effect on the environment.

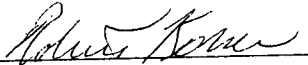
3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

The proposed demolition of an existing single-family residence and construction of a new residence and relocation of a storm drain pipe at 348 Vista de La Playa within the La Jolla Community Plan area, conforms to the City zone designation of RS-1-7 and conforms to the residential land use of the certified Local Coastal Program land use plan and complies with all regulations of the certified 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 7,148 square-foot, RS-1-7 zoned lot within the boundaries of the La Jolla Community Plan, is located between the shoreline of the Pacific Ocean to the west and Monte Vista Avenue to the east which is designated as the nearest public roadway. The project site is addressed as 348 Vista de La Playa which is a dead-end street running west from Monte Vista Avenue toward the ocean. The proposed demolition and new construction does not encroach upon the existing street and public sidewalks and will comply with zoning setback regulations. There are no public recreation areas affected by this development and direct access to beach and coastal resources remain at the west end of Vista de La Playa.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, the appeal of Coastal Development Permit No. 10258 is hereby DENIED by the PLANNING COMMISSION and Coastal Development Permit No. 10258 is hereby GRANTED to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 10258, a copy of which is attached hereto and made a part hereof.


Robert Korch
Development Project Manager
Development Services

Adopted on: November 4, 2004
Job Order No. 42-1291

STATE OF CALIFORNIA - THE RESOURCES AGENCY

RECEIVED

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384

FEB 03 2005

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Mr. Joseph F. Marrone

Mailing Address: 7150 Monte Vista Ave

City: La Jolla

Zip Code: 92037

Phone: 858-459-4173

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of San Diego

2. Brief description of development being appealed:

City of San Diego's approval of Coastal Development Permit, Project No. 6199 (Olsen Residence)

3. Development's location (street address, assessor's parcel no., cross street, etc.):

348 Vista de La Playa
La Jolla, CA 92037

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ 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-05-014

DATE FILED:

2/3/05

DISTRICT:

EXHIBIT NO. 7

APPLICATION NO.

A-6-LJS-05-14

Appeal

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

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

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: 1/19/05

7. Local government's file number (if any): CDP Project No. 6199

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

William R. Olsen and Wanda W. Tang
348 Vista de La Playa
La Jolla, CA 92037

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

(1) Matthew A. Peterson, Esq.
530 "B" Street, Suite 1700
San Diego, CA 92101-4454
(representing Olsen and Tang)

(2) Maureen and Victor Shaner
347 Vista de La Playa
La Jolla, CA 92037

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**SECTION IV. Reasons Supporting This Appeal****PLEASE 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.
- 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.)
- This 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.

The Olsen Project does not conform to the standards set forth in the certified local coastal program for the La Jolla Community Plan for at least the following reasons:

1. City of San Diego ("City") failed to properly characterize the stormdrain for the project as a public drain and failed to follow the requirements in the City Drainage Manual.
2. In violation of CEQA, the City improperly issued a Negative Declaration in its Environmental Determination as to the project's impact on hydrology and historical resources. Both the Planning Commission Report and the City Manager's Report to the City Council mistate and misapply the "Fair Argument" standard so an EIR must be prepared before the permit can be issued. Testimony from certified engineers and historical resource experts, whose qualifications were not challenged, were given that the project either "would" or "may" have a significant impact on hydrology and historical resources.
3. Project's impact on hydrology exacerbates City's Clean Water Act and inverse condemnation violations.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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

Jeffrey W. Forrest
Signature of Appellant(s) or Authorized Agent

Date:

2/3/05

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Wayne Rosenbaum and Jeff Forrest
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Joseph F. Marrone
Signature of Appellant(s)

Date:

2/3/05

February 8, 2005

CLIENT/MATTER NUMBER
048432-0101

Commissioners
Attn: Lee McEachern; Larenda Owen
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RECEIVED

FEB 9 2005

Re: Olsen Residence Demolition;
Coastal Development Permit # 6199
Supplement to Appeal

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Dear Commissioners:

This firm represents Joe and Linda Marrone, who are opposed to Coastal Development Permit # 6199 regarding the demolition and new construction of Ray Olsen's residence located at 348 Vista de la Playa in the Historic La Jolla Barber Tract in San Diego, California. Therefore, on February 3rd, they filed an appeal with the California Coastal Commission ("CCC") of the City of San Diego's ("City") decision to grant the permit. (Exhibit 1). This letter provides a detailed explanation justifying the appeal.

The permit approval is not consistent with the La Jolla Community Plan and Local Coastal Program Land Use Plan ("LCP") for several reasons. First, the LCP requires the City to follow various rules to ensure that projects do not cause flooding or violate water quality laws.¹ This project violates many of those rules. Second, the LCP requires the City to protect historical resources.² This project fails to protect historical resources.

The Olsen project involves the demolition of a home that is an early work of a famous architect, Russell Forrester. More importantly, the project involves relocating a storm drain pipe in a manner that worsens flooding in the Marrone's back yard and threatens to flood their registered historic home. The Olsens' submitted an engineering report claiming the storm drain pipe will

¹ "The City should ensure that proposed development and redevelopment projects adhere to the City's Storm Water Runoff and Drainage Regulations, and Storm Water Standards Manual in order to limit impacts to water resources (including coastal waters), ... minimize flooding hazards, ... and implement federal and state regulations." (LCP at p. 117). "For all new development, meet the requirements of the California Regional Water Quality Control Boards San Diego Region's *Waste Discharge Requirements for discharges of urban runoff from Municipal Separate Storm Sewer Systems (MS4s)* ... (Order No. 2001-01, dated February 21, 2001) ... and the City's regulations implementing these requirements." (LCP at p. 122).

² "The City should protect sites of significant archeological, architectural and historical value in residential and commercial areas of La Jolla for their scientific, education and heritage values." (LCP at p. 131). "Preserve all designated historic sites in La Jolla." (LCP at p. 131).

increase the water flow by 20 percent. Three certified engineers have separately studied Olsen's hydrology report and concluded it is wrong because it pretends the new drain system is replacing a straight concrete pipe with a straight P.V.C. pipe. In fact, the new drain system has two near-90 degree turns in it, which reduces the flow of water. The latest of these studies, conducted by Gene Cook, P.E., is the only one to fully analyze the now redesigned drain system. Mr. Cook's report concludes that the proposed design is insufficient to contain the 100-year storm event and will, in fact, reduce the carrying capacity of the system by 5 percent assuming the drain is never clogged with debris. (Exhibit 18). The Cook Report was never studied by the San Diego City Council.

Therefore, the Marrones request that the CCC deny this permit. In the alternative, they request the CCC (1) require that this public drain be constructed to municipal code specifications; (2) require a detailed drainage study; (3) pre-treat the polluted stormwater leaving the City's public system to the maximum extent practicable, if the City believes this is a private drain system; (4) prepare an EIR to analyze and require mitigation for significant hydrology impacts to the Olsens' residence, which may be eligible as a historic home, and to the Marrones' residence, which is a registered historic home. This letter will explain that the project, as proposed, is likely to cause flooding to either or both residences. We request that the Commission consider our comments carefully, as the City faces liability under the Clean Water Act and under inverse condemnation if it proceeds as proposed.

I. The Drain System is a Public Stormwater Drain that Must be Built to Municipal Code Specifications.

The City Engineer's office has determined that the Olsen's redesigned stormwater system is a "private" drain that does not need to be built to the specifications of a public system using the City of San Diego Drainage Design Manual ("Drainage Manual"). (Ex. 2, at p. 1). The City's justification for characterizing it as a private storm drain system is that the system is entirely located within private properties with no storm drain easements for the City. (*Id.*, at p. 2). This justification is wrong for two reasons. First, the Drainage Manual defines it as a public drain. Second, the Civil Code has already granted the City a vested right to use the storm drains – an implied easement.

First, the Drainage Manual section 1-101.3 provides "[p]ublic drainage is defined as drainage originating within the public right of way or drainage that is carried within a drainage system located within a drainage easement granted to the City." (emphasis added) (Exhibit 3). Here, the water entering the pipe beneath the Marrones' property originates in a public right-of-way (runoff from Monte Vista Avenue and its parallel drains) (See City Storm Drain Map) (Exhibit 4). Drainage from Mr. Marrone's property never enters this pipe. In a heavy storm, it sheet flows, along with excess sheet flow runoff from Monte Vista Avenue, through Mr. Marrone's back patio and through holes in a wall into a catch basin on Mr. Olsen's property. (See Project Photos) (Exhibit 5). Therefore, drainage in the pipe system beneath Mr. Marrone's property is not "on or from private property" as

required by the definition of "private drainage" from Drainage Manual 1-101.3.³ Furthermore, because substantial amounts of water flowing from across Mr. Marrone's patio into Mr. Olsen's catch basin and pipe system originated from excess sheet flow from Monte Vista Avenue, Mr. Olsen's drain is also a public drain.

Second, while there is no recorded drain easement, the City of San Diego continues to exercise its implied easement to use and continue to use the drain system to transport municipal stormwater from Monte Vista Avenue and Vista de la Playa. Civil Code section 1009(d) gives the City of San Diego a vested right to use the drainage system underneath the Marrones' and Olsens' property.⁴ Mr. Marrone was aware of the use of the drains to transport municipal wastewater for more than the 5 years required. (Declaration of Joseph Marrone, at paragraphs 8 and 9)(Exhibit 6) He never gave the city permission to do so, he never took steps to prohibit the city from using it. (Ex. 6, at paragraph 10). The City cleans and maintains the system. (City Maintenance Notification)(Exhibit 6A). The City placed "no dumping" signs at the drain entrance with a city number to call to report polluters, and the City responded to calls from homeowners to clean the system when people dispose of waste in the system. (Ex. 6, at paragraphs 12 and 13) (No Dumping Photo)(Exhibit 7). Under the Civil Code, these actions created a vested right for the City to continue to use the drain pipes to transport public stormwater.⁵ This is the City's pipe.

In short, the City cannot have it both ways. The City cannot exercise its vested legal right to continue to use the drain for public purposes, but at the same time claim that it is a private drain because they have no legal right to use it. As such, the City has an implied drain easement and must treat the drains as a public stormwater system making sure realignment of the system meets the specifications for the City's Drainage Design Manual for public drains.

II. If this is a Private Storm Drain, the City has failed to Control the Runoff from Public Streets onto the Marrone Property.

³ "Private drainage is defined as drainage *on or from private property*. Private drainage can be sheet flow, open channel, or via an underground pipe system." (Design Manual at 1-101.3 (emphasis added)).

⁴ Civil Code section 1009 provides "[w]here a governmental entity is using private lands by...the cleaning or maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvements, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use.

⁵ While Civil Code section 1009 grants an implied easement to the City, the facts of this case just as easily lie within the doctrine of implied acceptance of an offer of dedication. For a work of infrastructure to be public improvement, a project must be either (a) undertaken by a public entity, (b) dedicated to a public entity by an offer to dedicated and acceptance of that offer, or (c) impliedly accepted, through being treated by the public entity as a public work. (See Ackley v. City etc. of San Francisco (1970) 11 Cal.App.3d 108, 113; Tischauser v. City of Newport Beach (1964) 225 Cal.App.2d 138, 145; Gion v. City of Santa Cruz (1970) 2 Cal.3d 29; County of Los Angeles v. Berk (1980) 26 Cal 3d 201.)

If the City continues to characterize the drain system as private, it has a duty to provide adequate drainage for its municipal runoff so as not to burden the private drain. There is no question that Monte Vista Avenue is a public street and the storm drains leading up to the Marrone property are public. As such, the City is liable for the design and maintenance of that street and public drain system. If the City fails to provide sufficient drainage from its public streets, it is liable for damages from the runoff to adjacent property owners. Sheffet v. County of Los Angeles (1970) 3 Cal.App.3d 720. (County was held liable for damage to adjacent landowner from runoff of private street with inadequate drainage because County accepted dedication of the private street and drains into its public system.)

The drain system on the Marrone property cannot support the stormwater flow from the City street and the City drain system. (Ex. 2, at p.2). The City has made no effort to channel its runoff to a properly-sized public stormwater system. (Ex. 4). Therefore, the City has a duty to ensure that this alleged "private drain" is constructed in a manner that prevents runoff from the public street from flooding the basement in the Marrones' historic home. Faced with this potential liability, the City must require the Olsen's to conduct a detailed drainage study before approving this permit. (Ex. 3, at p. 2-5).

III. If this is a Private Storm Drain, the City is Violating the Clean Water Act for Discharging Pollutants from its Municipal Separate Storm Sewer System Without Pre-treating the Stormwater.

Whereas above the City's potential liability stems from its inability to control the quantity of runoff from its public streets and drain system expected to flood the Marrones' historic home, here the City will be in violation of federal and state water quality laws if it insists the Marrones' and Olsens' storm drains are private drains.

The Clean Water Act

Congress enacted the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). 33 U.S.C. § 1311(a) prohibits the discharge of pollutants into the navigable waters of the United States, except in compliance with certain sections of the CWA, including 33 U.S.C. § 1342. The CWA authorizes the Environmental Protection Agency ("EPA"), or delegated States, to issue National Pollutant Discharge Elimination System ("NPDES") permits allowing the discharge of pollutants into waters of the United States. Compliance with the CWA therefore, requires, among other things, compliance with a valid NPDES permit.

For California, EPA has delegated responsibility for implementation of the NPDES program to the State Water Resources Control Board ("SWRCB") and its Regional Water Quality Control Boards ("Regional Board"). On February 21, 2001, the San Diego Regional Board adopted NPDES Permit No. CAS0108758 (Order No. 2001-01) (the "MS4 Permit") which regulates municipal separate storm sewer system water discharges within the San Diego Region. This MS4 Permit

prohibits the City of San Diego from discharging from its MS4⁶ pollutants which have not been reduced to the maximum extent practicable. (MS4 Permit, at A(3)) (Exhibit 8, at p. 9).

The City's Discharges Violate the Clean Water Act

If the City maintains its position that stormwater is leaving their public streets and public drain systems and entering a private drain system beneath the Marrones' and Olsens' property, then the City is discharging from its MS4 system without reducing the wastewater pollutants to the maximum extent practicable in violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act. The MS4 permit has already established that the City of San Diego's urban runoff contains waste, as defined in the California Water Code, and pollutants, as defined in the federal Clean Water Act, and adversely affects the quality of the waters of the State. (Ex. 8, at p.1, Finding 2). As runoff flows over urban areas, it picks up harmful pollutants such as pathogens, sediment, fertilizers, pesticides, heavy metals, and petroleum products. (Ex. 8, at p. 1, Finding 3). These pollutants become dissolved and suspended in urban runoff and are conveyed and discharged to receiving waters. In this case, after the City discharges the pollutants into the alleged "private drain" it re-enters the public drain system and is deposited into the Pacific Ocean at the La Jolla Area of Special Biological Significance which is a Clean Water Act section 303(d) impaired water body.

If the City maintains that the Marrones operate a "private drain," then the Marrones have standing to sue the City of San Diego under the citizen suit provisions of the Clean Water Act for the City's discharge of pollutants into their "private drain" system without first reducing those pollutants to the maximum extent practicable.

However, the City should recognize that the drains beneath the Marrones' and Olsens' properties are public drains via an implied easement or implied acceptance of an offer of dedication. If public, then logically the City will not have discharged the polluted stormwater from its MS4 until much further downstream where it can receive pre-treatment to the maximum extent practicable.

IV. An EIR is Required for this Permit.

California courts have repeatedly affirmed that the purpose of the California Environmental Quality Act ("CEQA") is to require agencies that regulate activities impacting the environment, including impacts on historical resources and hydrology, to fully consider those impacts before

⁶ A Municipal Separate Storm Sewer System is a conveyance or system of conveyances (including roads with drainage system, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, man-made channels, or storm drains): (i) Owned or operated by a ...city...or other public body having jurisdiction over disposal of ... storm water, or other wastes...; (ii) Designated or used for collecting or conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (Ex. 8, at D-4).

exercising their regulatory discretion. It does so by establishing a low threshold for triggering the requirement that the agency prepare an EIR. "Since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives that the act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75 (emphasis added)). This is known as the "fair argument" standard.⁷ CEQA Guideline section 15064(f)(1) states "...if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." Therefore, when there is conflicting expert testimony as to whether the may be a significant impact, the agency is supposed to err on the side of caution and prepare an EIR.

A. The Project May Cause a Significant Hydrology Impact.

CEQA Guidelines provide that there is a significant hydrology impact when the project may contribute to runoff water that exceeds the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff or increase the amount of surface runoff which would result in flooding. (See CEQA Guidelines, Appendix G, VIII (d),(e)) (Exhibit 10). Here, there is a fair argument that this project may have a hydrology impact because there are multiple certified expert opinions to this effect.

The project proponents' and the City's experts, Tony Christensen, City Engineer Mo Sammak, City Engineering Reviewer Don Weston, said that the new drainage system will not worsen the flooding problems on the Marrone's property and that a further storm drain study is not required or necessary to make this conclusion. However, Don Weston's testimony admits that the drainage study that was conducted was restricted to the capacity of the storm drain system that passes through the site that was proposed for relocation. (Ex. 9, at 633-640). Therefore, it did not look at impacts on systems outside the boundaries of the Olsen property. In addition, when the Hearing Officer questioned Mr. Weston about whether the Olsen's new system would meet or exceed City engineering standards, Mr. Weston responded "[i]t would *more or less be*...engineering equations regarding the flow within pipes and also slopes and other parameters affecting drainage design" (Ex. 9, at 644-649).

⁷ The transcript reveals that the Hearing Officer misstated and misapplied the standard. In rendering his decision, the Hearing Officer stated "[a] decision as to whether the project may have a significant effect, one or more, should be based on substantial evidence and at this point, I don't think I have heard substantial evidence that it *would* have a significant effect. (Hearing Transcript at 939-941 (emphasis added) (Exhibit 9)). The Hearing Officer wrongfully raised the legal standard from substantial evidence that the project *may* have a significant effect on a historical resource to substantial evidence that the project *would* have a significant effect on a historical resource. There are two primary areas where the Hearing Officer misapplied the standard for triggering an EIR. First, it was misapplied as to the project's destruction of the Olsen residence – a structure eligible for listing on the California Register of Historic Resources. Second, it was misapplied as to the project's flooding impact on the Marrone property and residence – which is currently a designated historic landmark.

In truth, the Marrone's experts, James Laret, P.E. and Mark Farrington, P.E., reveal just how inadequate the City's review of the drainage system was based on both the system's design and failure to install it properly. First, the simplified hydraulic study performed by Tony Christensen compared the capacity characteristics of a straight section of 18 inch R.C.P (concrete pipe) verses a straight section of an 18 inch P.V.C. (plastic pipe) concluding that water flows faster through plastic pipes than concrete pipes so the Olsen system would increase drainage flow. (Laret Letter, April 13, 2004 at p.1) (Exhibit 11). However, Mr. Laret's expert assessment was that Tony Christensen failed to account for the effect two near 90 degree turns in the new plastic pipe system, flattening the pipe slope, and underestimating the amount of water entering the system from a major storm would have on the new system's flow rate. (Ex. 11 at, p. 2). Mark Farrington, who performed a due diligence study for Mr. Olsen before he bought the property, concurred with Mr. Laret's assessment. (Mark Farrington Letter, August 30, 2004) (Exhibit 12). When the supporter's engineers base their conclusions on a theoretical comparison of a straight pipe design and two project opponent expert engineers base their conclusions on the actual design of the new system, this alone should alert the CCC that the project opponent engineers have a stronger basis for their conclusion that the system may have a substantial impact on hydrology. (See Blueprint for New Drain)(Exhibit 13).

Even so, there was even more substantial evidence presented. Mr. Laret criticized Mr. Christensen's failure to perform a construction survey to insure the construction company would install the pipe according to the engineering plan. (Ex. 11 at, p. 2). In fact, when the pipe was actually installed using a wrongly issued and now revoked⁸ ministerial engineering permit, Mr. Marrone witnessed the city inspector measure a section of the pipe with a zero slope. (Ex. 6, at paragraphs 3-7). Therefore, the pipe has actually been installed flatter than the design called for. Again, the fact that experienced developers like Mr. Olsen and his consultants somehow failed to alert the City engineering department that it was in the process of obtaining a Coastal Development Permit⁹ and should not have received a ministerial engineering permit to install the pipe combined with evidence that the pipe was not actually installed correctly should raise a red flag for the CCC that this is a case where it should not simply defer to the judgment of the City Engineer's office.

Finally, Mr. Laret ran a computer program commonly used in the engineering industry, called "Storm CAD," to evaluate the flow characteristics of the proposed storm drain system. (Ex. 11, at p.2) Even when using the inadequate major storm water quantity figures (20.5 CFS) provided by Tony Christensen, the computer program revealed that the proposed system would raise the water levels in the catch basin on Mr. Olsen's property by 1.22 feet. (*Id.*) Mr. Laret concluded that this elevated water level would be enough to cause more water to pond in Mr. Marrone's patio and ultimately flood the basement of his historic home. (*Id.*) Furthermore, nothing in the design changes to the catch basin made by Mr. Christensen in June 2004 altered Mr. Laret's opinion that a

⁸ See April 7, 2004 Letter from Mohammad Sammak to Ray Olsen and related e-mails. (Exhibit 14)

⁹ Mr. Sammak and Mr. Olsen both knew there was an ongoing Coastal Development Permit process because Mr. Sammak alerted Mr. Olsen and his consultant that one would be required before the house was purchased. (Ex. 17). Despite this notice, Mr. Sammak still maintains that "[w]hen the permit for the storm drain realignment was issued, we were unaware of the Coastal Development Permit process for this project." (Exhibit 2, at p. 1).

study is needed to provide flow calculations that can confirm whether the new drain system will function properly or cause upstream flooding. (Laret Letter, July 26, 2006, at p.2) (Exhibit 15). Such calculations, not those of a straight plastic pipe versus a straight concrete pipe, are part of conventional engineering practice, industry standards, and required by most government agencies. (*Id.*)

The City was presented with two expert engineer opinions, a computerized program analyzing flow rates, and evidence that a pipe that should never have been installed was installed without a slope demonstrating that the project at least may cause a significant impact. In support of the project, the City was presented with expert opinions from engineers who ignored the Coastal Development Permit process, allowed the improper installation of a pipe, confined their flow rate analysis to a straight plastic pipe system that does not resemble the installed system, and were only willing to testify that the system "more or less" meets City engineering standards. This is a classic example of where conflicting expert testimony should trigger an EIR.¹⁰ Only with full knowledge of the consequences the new storm drain design will have on hydrology from an in-depth EIR can the City confidently make a determination that the project will not dump additional polluted runoff or flood Mr. Marrone's property and historic home. The alternative is to wait for the next major storm when the basement in Mr. Marrone's historic home will flood leaving Mr. Olsen and Tony Christensen open to a lawsuit for negligently designing and installing a stormwater system and creating a nuisance. The City will be open to a lawsuit for Clean Water Act violations and an inverse condemnation claim for damages from an inadequately designed public street and public drain.

Finally, during the City Council hearing, some members of the Council believed the Marrone experts failed to meet the "fair argument" standard because none of them had analyzed the subsequent redesigns of the property. They believed that even though the City and the Olsen's engineers failed to do the same and submit a report for the public record, the burden was on the Marrones to demonstrate the subsequent redesigns of the system would worsen the flooding problem. Therefore, the Marrones hired a third engineer, Gene Cook, to analyze the new system. The Cook Report states that the redesigned system will decrease existing capacity by 5 percent, which directly contradicts the Olsen's claim that an imaginary storm drain system with no turns in it will improve the water flow by 20 percent. (Exhibit 18). The Cook Report is the only hydrology study of the currently designed system being offered into the public record. As such, the CCC should give it's conclusion that the redesigned system decreases water flow capacity great weight in determining whether the Marrones have met the "fair argument" standard to trigger an EIR.

B. The Project May Cause a Significant Impact to a Potential Historical Resource -- the Olsen Residence.

¹⁰ In addition to this being a fair argument of a project impact on hydrology, it doubles as a fair argument of a project impact on a historic resource due to flooding damage to the Marrone's historic home. The Marrones signed a Mills Act Agreement with the City of San Diego to protect and preserve their residence as a historical landmark in 1996.

The City was presented with multiple expert opinions from opponents of this permit claiming that the Olsen Residence would meet the criteria for listing on the California Register of Historic Resources. The City was also presented with testimony from supporters of this permit claiming the property was not historic. When there is conflicting expert testimony as to whether a property is a historic resource, the agency is supposed to err on the side of caution and conduct the EIR. CEQA Guideline section 15064(f)(1) states "...if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." With full knowledge of the consequences on historic resources from an in-depth EIR, the agency can confidently make its decision.

The project proponents' and City's testimony demonstrates that they relied upon incorrect assumptions. In particular, the City's environmental analyst, Allison Rapp, revealed that her conclusion was based in part on the Olsen property not being listed in a booklet published by Save Our Heritage Organization ("SOHO") listing the architecturally and historically significant homes in the Historic Barber Tract of LaJolla. Ms. Rapp's assumption was that the booklet was the product of a comprehensive SOHO's architecture study. (Ex. 9, at 765-772). In fact, SOHO's representative, Mr. Coons, provided testimony that the booklet was a convenient tour book guide, not a comprehensive architectural survey of the Barber Tract. (Ex. 9, at 776-803). Finally, a Historic Resources Board employee revealed in the hearing that it had not reviewed the report submitted by one of the project opponent's experts, Ron Mays from Legacy 106 (Ex. 9, at 876-878).

The combination of conflicting expert testimony, the City's erroneous assumptions about SOHO's booklet, and the admission that the department had not reviewed the report of one expert is a classic example of why the agency needs to prepare an EIR that will allow them to review all the information and clear up any erroneous assumptions before it exercises its discretion over this project. For a more detailed explanation of CEQA's standards and this project's impact on the Olsen's historical resource, see the August 2, 2004 letter from Susan Brandt-Hawley to the Development Services Department. (Exhibit 16).

For the reasons stated above demonstrating that this project is not consistent with the La Jolla LCP, the Marrones respectfully request that the CCC deny this permit. In the alternative, they request the Commission (1) require that this public drain be constructed to municipal code specifications; (2) require a detailed drainage study; (3) pre-treat the polluted stormwater leaving the City's public system to the maximum extent practicable, if the City believes this is a private drain system; (4) prepare an EIR to analyze and require mitigation for significant hydrology impacts to the Olsens' residence, which may be eligible as a historic home, and to the Marrones' residence, which is a registered historic home.



Commissioners
February 8, 2005
Page 10

Sincerely,

A handwritten signature in dark ink, appearing to read 'S. Wayne Rosenbaum', written over the typed name.

S. Wayne Rosenbaum
Attorney

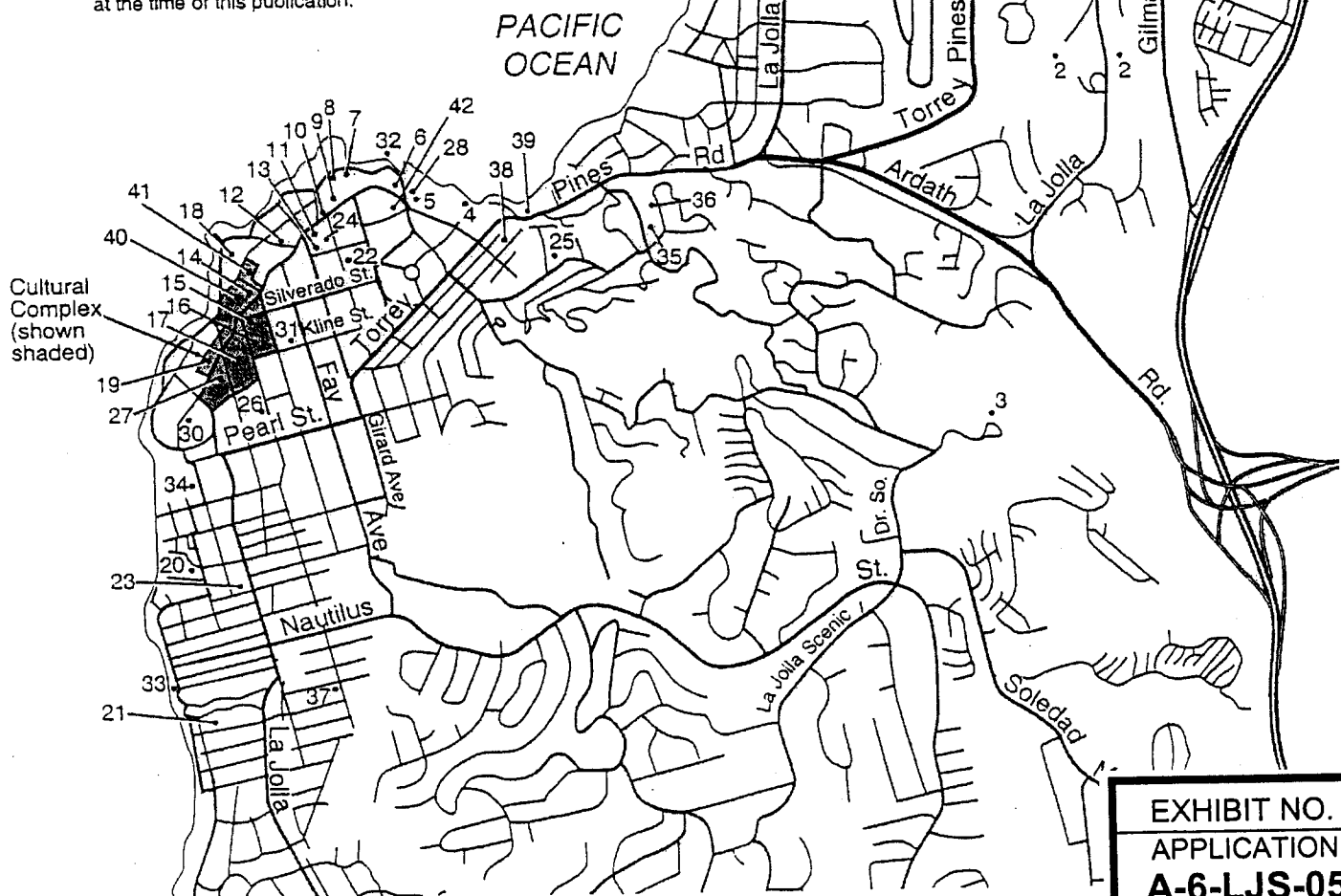
Attachments

cc: Joe and Linda Marrone

Registered Historic Sites

1. G.H. Scripps Marine Biological Laboratory
2. Pottery Canyon Park
3. Mt. Soledad Park
4. Coast Walk
5. Tyrolean Terrace (land only)
6. Green Dragon Colony (land only)
7. Brockton Villa/Dr. Rhodes House
8. Red Rest and Red Roost (Neptune) Cottages
9. La Valencia Hotel
10. Colonial Inn
11. La Jolla Art Association
12. Little-Hotel-By-The-Sea
13. Athenaeum / Public Library
14. Cole's Book Store / Wisteria Cottage
15. Woman's Club
16. George Kautz House
17. La Jolla Recreation Center
18. Casa de Mañana
19. Scripps Clinic Medical Inst.
20. Morgan-Larkin Residence
21. El Pueblo Ribera District*
22. Fire Station No. 13
23. Heritage Place:
Structures relocated to this site:
G.B. Grow Cottage,
H. Rhodes House,
Wall St. Apts.
24. Parker Office Building
25. Martha Kinsey Residence
26. Dr. Martha Dunn Corey Residence
27. Bishop's School Historic District
28. Carey Crest / El Parador / Seaclyffe House
29. Oxley/Neutra House
30. Prospect View / Redwood Hollow
31. Geranium Cottage
32. Cave Store and Professor Shultz' tunnel leading to the Sunny Jim Cove
33. Surf Shack
34. Darlington House
35. Violetta Horton Spec House #1
36. Violetta Horton Spec House #2
37. Gordon-Hooper Archaeological Site
38. Grace Scripps Johanson Residence
39. Juddins / J.L. Wright House
40. Scripps House and Gardens (Part of the Museum of Contemporary Art)
41. Dolly's House
42. The La Crosse House

Note: This represents only those historic sites designated at the time of this publication.



Heritage Resources



La Jolla Community Plan
City of San Diego · Planning Department

EXHIBIT NO. 10
APPLICATION NO.
A-6-LJS-05-14
Heritage Resources
Figure from Certified
La Jolla LUP

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OF COUNSEL
PAUL A. PETERSON

File No.
5928.001

Via Messenger

January 20, 2005

Mayor Murphy and Members of City Council
The City of San Diego
202 "C" Street, 10th & 11th Floors
San Diego, CA 92101

Re: January 25th, 2005
Appeal of Environmental Determination
Olsen Residence, CDP #10258, Project #6199

Dear Mayor Murphy and Members of the City Council:

We represent Ray Olsen and Wanda Tang ("our clients") with regard to the above referenced matter. We will be asking you to deny Joe and Linda Marrone's ("the Marrones") appeal and uphold the unanimous decision of the Planning Commission which denied the Marrone's appeal and affirmed the Hearing Officer's approval of the Coastal Development Permit. There is no evidence that additional environmental review is warranted or necessary.

BACKGROUND

The Marrones who live at 7150 Monte Vista have been opposing our clients' proposed home on a variety of reasons for 3 years now. At the outset, the Marrones made it very clear to our clients that unless they completely redesigned their proposed home to protect Linda Marrone's "peek view" from her 2nd story master bedroom window that they would do everything in their power to oppose, delay and object to our clients' proposed home. True to

EXHIBIT NO. 9
APPLICATION NO.
A-6-LJS-05-14

Letter from
Applicant's
Representative
(without tabs/
attachments)

their word, the Marrones have delayed the approval of our clients' proposed home tremendously and cost our clients well over \$100,000 by lodging many groundless objections, and complaints including but not limited to the following:

1. Concerns over the relocation, upgrade and replacement of the City storm drain (the "New Storm Drain").
2. Sun and light impacts to their home.
3. Objections to the Certified Negative Declaration, including an assertion that a full EIR is required based upon:
 - a. Alleged historic significance (attempted classification of the existing structure as a "Russell Forester Polynesian Tiki style home"),
 - b. Alleged "view and context" impacts,
 - c. Alleged potential impacts to underground archaeology, and
 - d. Alleged impacts associated with the relocation, upgrade and replacement of the storm drain pipe.

In all of my years of land use practice, this is the worst and most shameful abuse of the process that I have ever seen lodged against a client who simply wants to build a house that is consistent with the Zoning, Community Plan and all other applicable regulations.

RELOCATION & REPLACEMENT OF CITY STORM DRAIN LINE
WILL IMPROVE THE SITUATION

There are multiple letters and emails within the City files which address this issue. The letters from Tony Christensen to the City as well as letters from Mo Sammak to Joel Incorvaia, Esq., who at one time represented the Marrones, have thoroughly addressed all of the concerns of the Marrones including the false allegations as contained within the letter submitted by the

Marrone's latest lawyer, (see Tab 1). While the Marrones and their lawyers may, without any factual basis, claim the newly replaced, improved and realigned storm drain pipe will adversely affect them, all of the evidence in the record is contrary to that claim. It is also important to note that upon the completion of our clients' home, none of our clients' outside drainage will be directed into the New Storm Drain. If there is a problem with size or capacity of the storm drain inlet which is in front of the Marrone's house on Monte Vista (or the additional contribution of the Marrone's surface drainage and storm water that flows into the Storm Drain System) then that problem, if there is one, does not at all relate to our clients' proposed house, or their generous offer to upgrade the pipe as it passes through our clients' property. To put it another way, our clients' proposed home and their improvement of the storm drain which runs through their property is not the cause of, or a contributing factor to, the Marrone's allegation of an inadequate storm drain system. At the Planning Commission, Mr. Marrone admitted that, to date, his house has never flooded! If this is true, we ask, "How would our client's proposed home (which eliminates on-site drainage flow into the Storm Drain System, and will improve the Storm Drain System) result in a new Environmental Impact which would trigger the need for a full EIR?" Obviously, no new impact is created and an EIR is not required.

THERE ARE NO SUN & LIGHT IMPACTS
CREATED BY OUR CLIENTS' PROPOSED HOME

The Marrones have a very large 40-50 year old tree in their backyard which appears to be 50-70 feet tall and extends well above and over the roof of their house. The tree is the cause of the shade and shadows over their home. If they are concerned about sunlight, shade, and shadows, then the Marrones should either remove or lace their own trees.

NO EIR IS REQUIRED

The Certified Negative Declaration (LDR 6199) analyzed a number of issues and concluded that our clients' proposed home will not have any significant adverse affect on the environment. One of the issues addressed was whether or not the existing structure was designed by Mr. Russell Forester and if it was representative of a notable work of a Master Architect. After the public review had expired for the Negative Declaration, a tremendous amount of material was submitted by the Marrones various consultants and Save Our Heritage Organization ("SOHO") asserting that the existing structure is somehow historically significant as an example of Mr. Forester's mid-century modern Polynesian Tiki style architecture.

Based upon the preponderance of the evidence in the record it was determined by the City Historical Resources Board Staff and the Historical Resources Board Policy Subcommittee that the existing structure is not a significant example of Mr. Forester's work or architecture (see Tab 2 – Photographs of Existing Structure). Further, there is no evidence that Mr. Forester developed a "mid-century modern Polynesian Tiki style architecture." Mr. Forester was primarily known for Miesian Modernist Architecture involving glass, steel and wood beam construction (see Tab 3 - an excellent example of Mr. Forester's architecture in the La Jolla Shores area). Even in the absence of the connection of the home to Mr. Forester, the existing structure does not qualify as a notable work of Polynesian Tiki style or any other style of architecture. The only structure which appears to have had Polynesian influence is a shade structure in the rear portion of the yard which was constructed in the mid-60s by the Colemans and was not in any way associated with Mr. Forester (see letter to Marie Burke Lia dated August

4, 2004 from George Coleman, Jr. and letter from Marie Burke Lia to Donna Clarke dated August 12, 2004 within Tab 4).

There has also been a strained assertion by the Marrone's that our clients' proposed home will somehow detract from or otherwise block public views of the Marrone's house or other historically designated properties within the immediate vicinity. As stated above, there are no public views of any designated historic structures across our clients' property. In addition, the architecture and scale of our clients proposed home is consistent with other existing, newly developed, and remodeled homes along Vista de la Playa and Monte Vista Avenue (see Tab 5 – Photograph of Homes in the Immediate Vicinity). As such, our clients' proposed home will not block views to, or otherwise adversely affect in any way historic structures in the immediate vicinity.

The Marrones also claim that the storm drain realignment (File No. 2472-01) will somehow cause adverse environmental effects on their home. This has been determined not to be the case. The City Engineer has determined, based upon all of the evidence in the record, that the realignment and replacement of the storm drain will have no adverse impact on the Marrone's property or any other upstream properties (again, see letter to Joel Incorvaia, Esq. dated August 4, 2004 and other letters within Tab 1).

There has been exhaustive analysis on the alleged Historic issue as well as the Environmental issues which have been addressed in the Negative Declaration, the final version of two (2) separate Historical Evaluations and Historic Assessments Report, and multiple letters

from Marie Burke Lia to the City including pertinent email transmissions. As you can see by the attached photographs in Tab 2, the existing structure is not historically or architecturally significant. Robert Mosher, FAIAE concludes:

"Knowing most all of his mature work, I feel that this house is not one for which he would wish to be remembered. I do not consider it to be a significant example of his architecture. ..."

(See letter to Marie Burke Lia from Robert Mosher dated August 2, 2004 in Tab 4.)

While there is no dispute that Mr. Forester was a noted architect, he was never known or recognized for having developed a "Mid-Century Modern Polynesian Tiki style." Neither the Marrone's nor any of their hired consultants have produced any evidence that Mr. Forester was known for this type of architecture, or that the existing residence represents a notable work by Mr. Forester in establishing this, or for that matter, any other architectural style. As previously mentioned, the only structure on the property which has Tiki style elements is a shade patio structure in the back yard which was not designed by Mr. Forester and was not built at the same time the house was built.

The Marrone's consultants have also unsuccessfully attempted to assert that our clients' proposed home will somehow result in "view and context" impacts on: 1) the Marrones residence (which was apparently designated as Historic Site No. 226), and/or 2) on some "Historic District" which does not even exist! There are no public views of the Marrones home either through or across our clients' property. Therefore, our clients' proposed home will in no way adversely affect public views of, or to, a designated historic building. Further, while it may be true that the Marrones may lose some of their "peek" ocean view from their upstairs

bedroom window, there is nothing in the Land Development Code, the Municipal Code, the Community Plan, or any other planning or regulatory document for that matter, which would protect the Marrone's private view of the ocean from their bedroom window.

The Marrone's home was designated historic as a result of the appearance of their home as it was viewed from Monte Vista. Our clients' proposed home will not block public views of the Marrone's Home from Monte Vista or from Vista de la Playa, or otherwise create any negative aesthetic impact on the Marrone's home. Clearly the Marrone's personal, private, and subjective opinions expressing a concern about the aesthetics, mass, and bulk of a project and its impact on their home (view) does not constitute legitimate evidence that a significant aesthetic impact will occur as a result of the construction of our clients' proposed home. No further Environmental Review is necessary.

As mentioned in the Staff Report, our clients' proposed home complies with the La Jolla Community Plan/Certified LCP and with all of the side yard, rear yard, front yard, floor area ratio, and coverage limitations as set forth in the Land Development Code. No variance or deviations are needed or requested.

Attached as Tab 5 are a series of photographs of other large structures within the immediate surrounding neighborhood, one of which is immediately to the east of our clients' proposed home and directly next door to the Marrone's home. These photographs demonstrate the character of the neighborhood and refute the Marrones claim of a significant bulk and mass impact to the "view and context" of the area. There are many other large, new and/or

remodeled structures in the neighborhood which are intermingled with the various designated and non-designated older and smaller homes. Our clients' proposed home will be no different than many of the other newer, remodeled and rebuilt homes within the neighborhood and immediate vicinity.

The assertion that an EIR is required because of alleged drainage impacts also has no merit. All of the evidence in the record indicates that there will be no increased impact to the Marrones property and that in fact the relocated, rebuilt, and upgraded storm drain will function better than the current situation. In addition, our clients will not be directing any of their own on-site storm water runoff into the new storm drain pipe. As such, there will be a net decrease in existing flows into this segment of the storm drain. The new increased flow 18" storm drain pipe is anticipated to provide approximately a 20% improvement in flow. In the unlikely event that the new 18" pipe reaches its capacity our client has also agreed to install an overflow system (second 12" pipe and sheet overflow system) which will be incorporated into the New Storm Drain System (see Tab 1).

Finally, there is another unfounded assertion that our clients' proposed home will somehow result in impacts to subsurface archaeological resources. However, the opposition has not presented the City with any evidence that archaeological resources may or could be present, or that mitigation in the form of monitoring during grading would be necessary or appropriate at this location.

The Planning Commission as part of its Unanimous Motion to deny the Marrone's appeal concluded that the Negative Declaration was adequate and that no EIR was required or otherwise warranted.

BLOCKAGE OF PRIVATE VIEWS

The Marrones entire campaign against our clients' proposed home is a selfish attempt to protect their own private view from their upstairs master bedroom. As you know, there is nothing within the City Codes that protect private views. We think it is extremely inappropriate for the Marrones to utilize this discretionary permit process and the resources of the City, SOHO, and others for the sole and selfish purpose of protecting their private views.

CONCLUSION

Our clients' proposed home complies with all the applicable regulations. The La Jolla Community Planning Association unanimously recommended approval and many adjacent neighbors welcome our clients' proposed home (see Tab 6).

For your convenience, we have attached as Tab 7, a copy of the Hearing Officer's Transcript so that you would have an opportunity to review the initial Hearing Officer's decision and findings approving our clients' proposed home. As you know, the Planning Commission on November 4th, 2004, unanimously rejected the Marrone's appeal and concluded that no EIR was necessary or appropriate.

Therefore, we would respectfully request that you deny the appeal and affirm the Planning Commission's decision of the Hearing Officer's approval of Coastal Development Permit

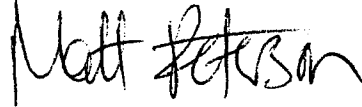
Mayor Murphy and Members of
The City Council
January 20, 2005
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No. 10258 and concluded that the Negative Declaration is accurate, complete, and satisfies the requirements of the California Environmental Quality Act.

Thank you for your consideration of this request.

Sincerely,

PETERSON & PRICE
A Professional Corporation

A handwritten signature in black ink, appearing to read "Matt Peterson", written over the printed name.

Matthew A. Peterson

Enclosures

cc: P. Lamont Ewell, City Manager
Robert M. Korch, DPM, DSD, LDR
Michael Aguirre, City Attorney
Mary Jo Lanza fame, Deputy City Attorney, Civil Division,
Charles Abdelnour, City Clerk
Tom Klauda, Thomas Klauda Designs
George Dewhurst, President, GDC Construction
Antony K. Christensen, PE, PLS, Christensen Engineering & Surveying
Marie Burke Lia, Attorney At Law
Ray Olsen & Wanda Tang