

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
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RECORD PACKET COPY

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Filed: 7/19/05
49th Day: 9/6/05
180th Day: 1/15/2006
Staff: LJM-SD
Staff Report: 7/28/05
Hearing Date: 8/9-12/05

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: No coastal development permit is required

APPEAL NO.: A-6-LJS-05-071

APPLICANT: Victor Fargo

PROJECT DESCRIPTION: Construction of a pool and spa on steep hillside in the rear yard of single-family residence on a 15,316 sq. ft. site located between the first public road and the sea.

PROJECT LOCATION: 2610 Inyaha Lane, La Jolla, San Diego, San Diego County.
APN 344-310-05

APPELLANTS: Patricia M. Masters and Douglas L. Inman

SUMMARY OF STAFF RECOMMENDATION:

The subject appeal is unusual as it is an appeal of the City's decision to allow development to proceed without requiring a coastal development permit for a project that is located within the City of San Diego's LCP coastal development appeals jurisdiction. At the time of this report, Commission Staff has asked for, but not received the City file and thus, has very little information with regard to the City's action. However, to meet statutory deadlines, the appeal must be heard by the Commission within 49 days of the date the appeal was filed. Thus, the Commission must act on the appeal at its August 2005 hearing. Based on the information available, staff has determined that the City's decision to not require a coastal development permit for the subject development is not consistent with the requirements of the certified LCP and therefore, staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of San Diego Local Coastal Program (LCP).

I. Appellants Contend That: The proposed project, which was exempted from coastal development permit review, should not have been exempted, but should have been subjected to such review and found inconsistent with several provisions of the certified LCP pertaining to geologic stability, encroachment onto steep hillsides, protection of adjacent natural open space (Sumner Canyon) and sensitive habitat areas and protection of visual resources. In addition, the appellants contend the project will create an adverse precedent resulting in other projects for pools, spas and accessory structures to be constructed on the steep natural slopes of Sumner Canyon.

II. Local Government Action: The City of San Diego did not require a coastal development permit for the subject development and issued Ministerial Permit #29138 on April 5, 2004.

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 or claims of exemption. One example is that the approval of projects or issuance of exemption determination may be appealed if the projects are located within mapped appealable areas.

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 conduct a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-LJS-05-071 raises NO substantial issue with respect to the grounds on which the appeal has been filed.*

STAFF RECOMMENDATION:

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-LJS-05-071* presents a substantial issue with respect to the grounds on which the appeal has been filed regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

Findings and Declarations.

1. Project Description/History. The development involves the construction of a 2-level pool with attached spa in the rear yard of a lot containing an existing single-family residence. To accommodate the pool, an existing approximately 900 sq. ft. wooden deck will be demolished and grading of the steep hillside slope is required. The subject site is located on the northwest end (cul-de-sac) of Inyaha Lane, just west of La Jolla Shores Drive (the first public road in this area) in the La Jolla community of the City of San Diego. The 15,316 sq. ft. lot contains a relatively flat pad where the existing home is located and then slopes steeply down to the west and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean.

The subject site was created as part of a 6-lot subdivision approved by the Coastal Commission in 1977 (ref. CDP #F6086). The coastal development permit history for construction of the existing home is not clear. However, records indicate that the City did issue a Planned Residential Permit for the home construction and then subsequently issued an amendment to that permit in 1989 to allow an addition to the home along with a deck and swimming pool in the rear yard area. The pool was to be constructed within the deck area directly next to the existing home. No records have been located regarding a coastal development permit for either the home construction or the subsequent addition/pool.

While the 1989 City approval (amendment) authorized a residential addition, wooden deck and pool, only the addition and deck were constructed. Years later, the applicant requested authorization from the City to construct the pool, however the request involved a pool in a different size and location than was previously authorized. The new pool will be constructed on the steep hillside slope and involves removal of the existing wooden deck and grading and retaining walls on the steep hillside area of the site. The City reviewed the request and found that the new proposed pool did not require review under the City's delegated Coastal Act authority or issuance of a coastal development permit and on April 5, 2004 issued Ministerial Permit #29138 allowing the pool to be constructed.

Subsequently, construction on the pool began and a number of complaints were filed with the City by neighbors claiming that the steep hillside area of the site was graded and that this grading extended beyond the property line into the open space area of Sumner Canyon. Upon review by City staff, it appeared that grading exceeded that authorized in the ministerial permit and work was required to stop. Since that time, the City has been coordinating with the applicant to get additional information and require plans for restoration of the area where grading extended beyond the property line into the canyon. Recently, the City authorized work to again commence without requiring a coastal development permit and thus, the appeal was filed with the Commission.

2. Non-Compliance with the Certified LCP. The City of San Diego has a certified LCP and has been issuing coastal development permits in its jurisdiction since 1988. The City's LCP contains, among other things, coastal development permit procedures. Sections 126.0702 and 126.0704 of the City's Land Development Code (LCP implementing regulations) address when a coastal development permit is required and state, in part:

126.0702 When a Coastal Development Permit Is Required

- (a) Permits issued by the City. A Coastal Development Permit issued by the City is required for all coastal development of a premises within the Coastal Overlay Zone...unless exempted by section 126.0704...

126.0704 Exemptions from a Coastal Development Permit

The following coastal development is exempt from the requirements to obtain a coastal development permit.

- (a) Improvements to existing structures are exempt, except if the improvements involve any of the following:

[...]

(7) Any significant non-attached structures such as garages, fences, shoreline protective works or docks on property located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance.

As noted previously, the subject property is located at the end of Inyaha Lane, just west of La Jolla Shores Drive. La Jolla Shores Drive in this location is the identified first public road paralleling the sea and therefore, the subject property is located between the first public road and the sea. While the above cited provisions of the City's LCP do not specifically identify pools as a "significant non-attached structure", the Commission has consistently considered pools to be significant detached structures when construing the analogous provision of its own regulations (Section 13250(b)(4) of Title 14 of the California Code of Regulations) and has required a coastal development permit for pools on properties located between the first public road and the sea. A pool is at least as significant a structure as a fence and thus clearly satisfies the significance criterion.

In this particular case, according to the information available, the proposed pool and spa will be constructed on the face of the steep hillside, down slope and west of the existing residence. The proposed pool/spa involves grading of the steep hillside and construction of retaining walls down the sloping hillside. In addition, unlike the pool originally approved by the City, the proposed pool/spa is not attached to the residence and thus constitutes a significant non-attached structural element on this sloping hillside. Therefore, the City's decision to not require a coastal development permit for the proposed pool/spa is not consistent with the above-cited LCP provisions and thus raises a substantial issue with regards to the appellants contentions.

It should be noted that the Coastal Act (Section 30610(a)) and California Code of Regulations (Section 13250) form the basis for the exemptions listed in the City's regulations cited above and under those provisions, this project is also not exempt. Thus, even if the City's regulations were ambiguous, if the project is not exempt under the Coastal Act and the California Code of Regulations, then the City could not exempt it. Therefore, the City's regulations would have to be interpreted to require a coastal development permit for the subject development.

In addition to the above-cited LCP provisions, the City's certified LCP includes provisions for development in and around Environmentally Sensitive Lands (ESL). The ESL regulations include provisions for protection of, among other things, steep hillsides and include limitations on development on steep hillsides. Specially, Section 143.0110 of the City's certified Land Development Code states, in part:

143.0110 When Environmentally Sensitive Lands Regulations Apply

This division applies to all proposed development when environmentally sensitive lands are present on the premises.

(a) Where any portion of the premises contains any of the following environmentally sensitive lands, this division shall apply to the entire premises, unless otherwise provided in this division:

(1) Sensitive biological resources;

(2) Steep hillsides;

[...]

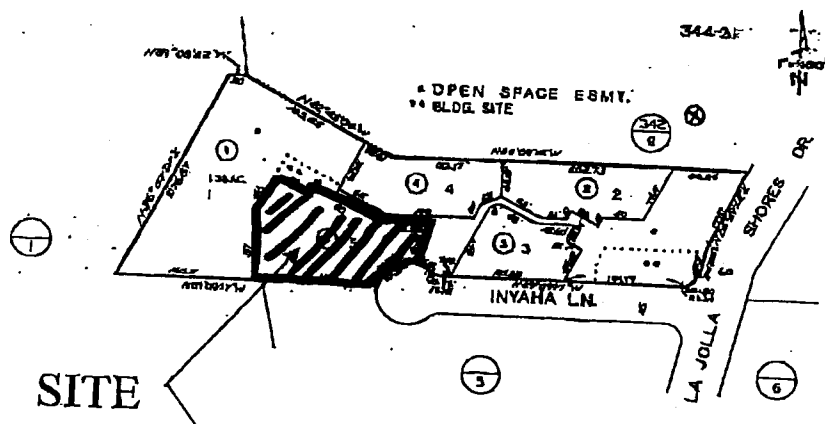
In addition, the City's Land Development Code defines a steep hillside as:

Steep hillsides means all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 ft, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

In this particular case, the western portion of the subject site, where the proposed pool/spa is to be constructed, is a steep hillside as it is entirely comprised of slopes of 25% or greater and continues into the adjacent canyon with an elevation differential of greater than 50 ft. Thus, the above-cited Environmentally Sensitive Lands Regulations apply to the subject site. In addition, the Environmentally Sensitive Lands Regulations address coastal development permit review. Section 143.0110(b)(1) of the certified Land Development Code states, in part:

If coastal development is proposed in the Coastal Overlay Zone, a Coastal Development Permit is required in accordance with Section 126.0702.

The subject property is located within the Coastal Overlay Zone and as noted above, the proposed pool/spa constitute coastal development that is not exempt from the coastal development permit regulations of the certified LCP. Thus, a coastal development permit is required and the City's decision to not require a coastal development permit for the proposed pool/spa is not consistent with the above-cited LCP provisions. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.



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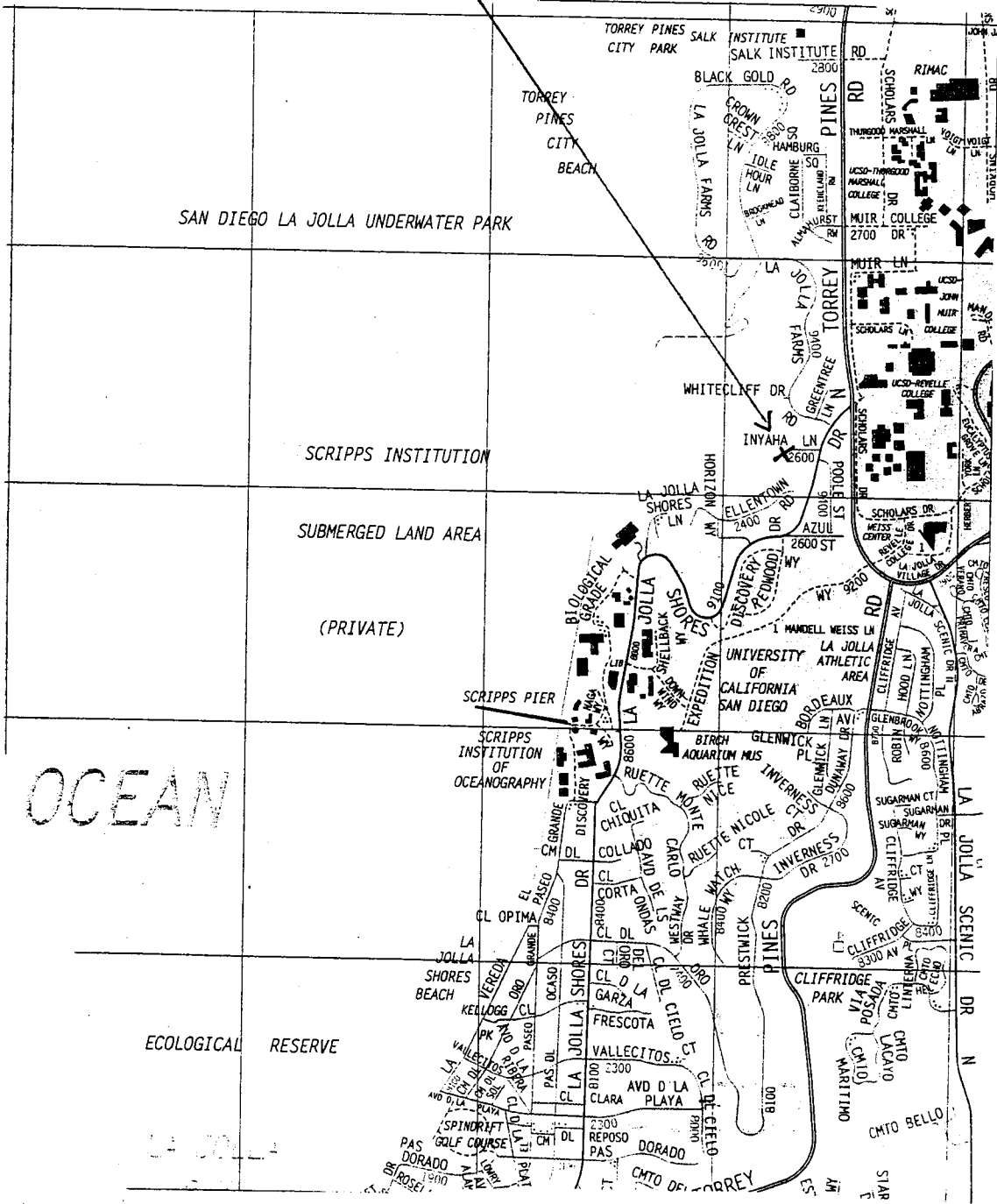
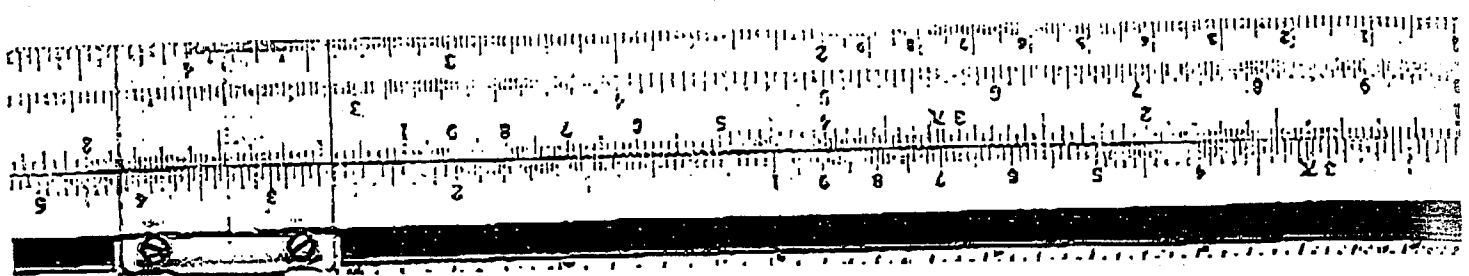


EXHIBIT NO. 1
 APPLICATION NO.
A-6-LJS-05-071
 Location Map



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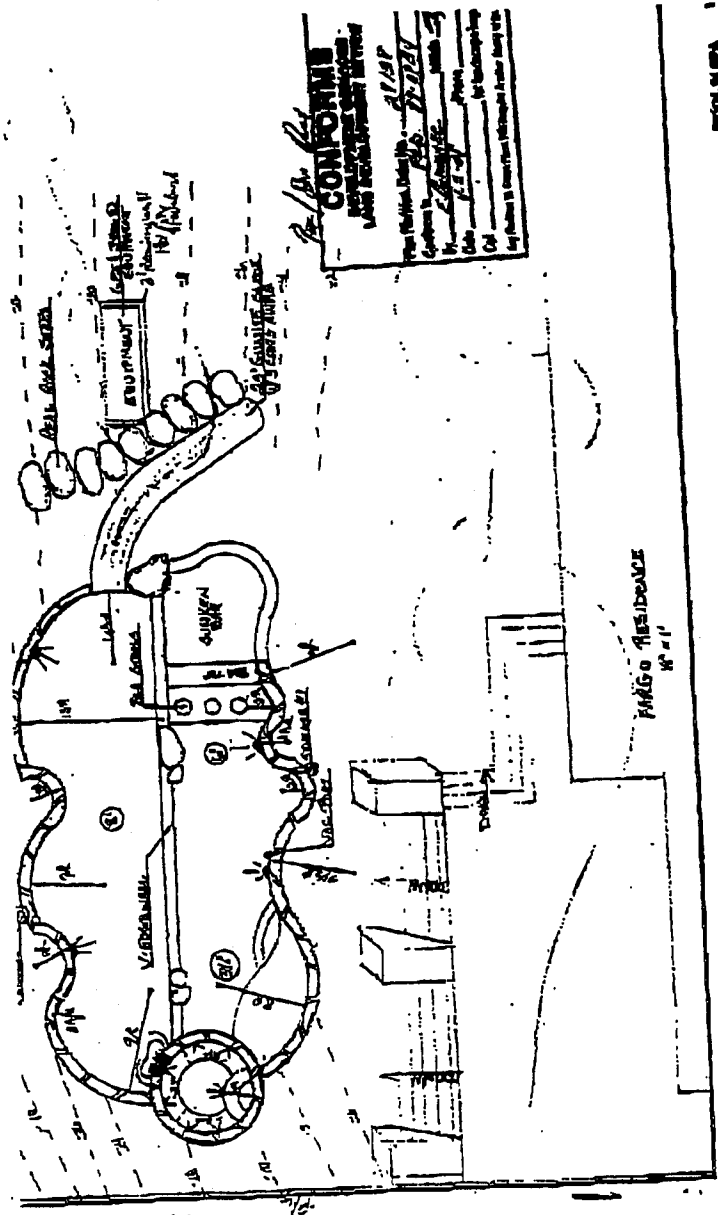
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COMMENTS
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For: [Signature]

**2004 CITY APPROVED PLANS
FOR CONSTRUCTION OF NEW POOL**

PAA 04-1014

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
 200 OCEANGATE, 10TH FLOOR
 LONG BEACH, CA 90802-4418
 VOICE (562) 590-5071 FAX (562) 591-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s)

Name: Patricia M. Masters and Douglas L. Inman

Mailing Address: 2604 Ellentown Road

City: La Jolla

Zip Code: 92037

Phone: 858-453-1445

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of San Diego Development Services

2. Brief description of development being appealed:

a pool and spa on a steep hillside seaward of the deck at 2610 Inyaha Lane

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

2610 Inyaha Lane, La Jolla, parcel #344-310-0500. Cross street is La Jolla Shores Drive

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-05-071

DATE FILED: 7/19/05

DISTRICT: San Diego

RECEIVED

JUL 19 2005

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

EXHIBIT NO. 3

APPLICATION NO.

A-6-LJS-05-071

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: 4/5/2004

7. Local government's file number (if any): Project # 29138

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:

Victor Fargo
2610 Inyaha Lane
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) Mel and Linda Simon
2484 Ellentown Road
La Jolla, CA 92037

(2) Walter and Judy Munk
9530 La Jolla Shores Drive
La Jolla, CA 92037

(3) Yvonne and John Hildebrand
2621 Inyaha Lane
La Jolla, CA 92037

(4) Isabelle Kay
Reserve Manager, UCSD Natural Reserve System
9500 Gilman Drive
La Jolla CA 92093-0116

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.

We are appealing a ministerial permit #29138 issued to Victor Fargo by San Diego Development Services for construction of a pool/spa at 2610 Inyaha Lane, La Jolla, which is within the appeals zone. The permit allows grading and construction on a 46% slope in Sumner Canyon. This is the only natural coastal canyon open space in La Jolla, and as such, we believe the proposed development constitutes a substantial coastal impact.

The La Jolla LCP specifies a number of requirements regarding Steep Hillides that are being ignored or violated by this permit. On slopes with grades above 25%, swimming pools and other accessory uses are to be minimized and located on more level portions of the site (p. 61, 5a). The Fargos already have a swimming pool located on the level portion of their planned residential development. These hillides are in a known landslide area, prone to failure when watered (see Potiker landslide of 1999). Downslope of this proposed development is the University of California Natural Reserve (Scripps Coastal Reserve) which is part of the MSCP reserve. This proposed development is excessively altering the natural hillside conditions and slope stability, endangering the biologically sensitive slopes and canyon below the site. The project is hardscaping the majority of the upper slope which will alter natural drainage and leave the canyon prone to problems of erosion, landslides or damage to plant and animal life -- resources which are specifically protected under the LCP (p. 61, 5e). On at least three occasions since July 2004, grading (without a grading permit) has caused spillage of soils downslope into the reserve and disturbed natural coastal sage scrub habitat (in violation of requirement p. 62, 5g). This development is in full view from the natural open space of the SCR and Sumner Canyon where the LCP specifies that structures should be set back from the top of the slope to respect the natural landforms and hillside character (p.62, 5k). Far from minimizing visual intrusions, the pool/spa will add almost another 30 feet of structure above finished grade to the 30 feet height of the existing residence visible from the reserve, in violation of the LCP Hillside Development Guidelines (p. 64, 5w) which require reducing the perceived bulk and scale of proposed structures.

All of these concerns have been brought to the attention of the City of San Diego Development Services staff in written communications and personal meetings. The City has tacitly acknowledged our objections by requiring redesign of the project, but they refuse to address the primary issue: the PRD that allowed the original development specified 0% development on the slope of Sumner Canyon and the environmental review (89-0734) did not apply to the area now being graded. Because the slope was designated a brush management zone, the City deems it a manufactured slope and not a natural hillside subject to protection under the LCP.

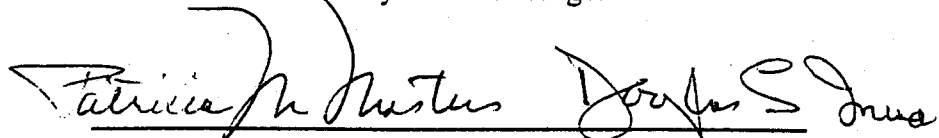
This policy propagates itself as a cumulative impact on all steep hillsides within the City of San Diego. Our subdivision, Scripps Estates Associates (SEA), adjoins the Fargo property and we have 18 lots on the rim of Sumner Canyon. Under current City policy, all of our lot owners could be granted permits to build pools, spas, and other accessory structures on the slopes of Sumner Canyon. One intrusion will inevitably lead to many more structures and impacts to the canyon.

We wish to note that the environmental review and noticed hearing in 1989 concerned a lap pool to be built at the top of the slope adjacent to the existing residence. SEA had the opportunity to comment at that time and did not object to that plan because the lap pool did not intrude onto the canyon's steep slope. We would support that pool design again, but the current plan has metastasized into the canyon and sets a worrisome precedent for these steep hillsides. The majority of SEA's 42 members have submitted a petition to the City requesting environmental review of the current pool/spa plans and an opportunity to comment.

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.



Signature of Appellant(s) or Authorized Agent

Date: 19 July 2005

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

the 1989 environmental review, thus triggering a requirement under CEQA for potential new mitigation measures. An environmental review would provide the appropriate venue to assess, the effects of this construction and the arguments describing the scope of the dangers that this project presents to the integrity of the canyon and the reserve.

Conclusion

We maintain that the city acted contrary to established coastal/hillside guidelines in reaching its decision to grant project permit #29138. We request a full environmental review of the proposed construction by the City and the opportunity for comment by affected neighbors.

Yvonne Hildebrand

President, SEA Board

2621 Inyaha LN

La Jolla, CA. 92037

(858)657-0332

Members of Scripp's Estates Associates and Adjacent Neighbors		
	Name	Address
1	Ann Hildebrand	2621 INYAHA LN, L.J. CA 92037
2	Diana Simon	2604 Ellentown Rd L.J. CA 92037
3	Patricia A. Mastus	2604 Ellentown Rd L.J. 92037
4	Linda Simon	2484 Ellentown Rd L.J. 92037
5	Elizabeth B. Santonastasi	2641 Inyaha Ln. L.J. 92037
6	Miriam L. Forman	2504 Ellentown Rd L.J. 92037
7	Lance Ticho	2434 Ellentown L.J. 92037
8	Georgianne M. Simon	2522 Horizon Way, CA 92037
9	Diana Simon	9470 La Jolla Shores Drive
10	Fred Spiess	9450 La Jolla Shores Dr.
11	R. Fazio	9440 La Jolla Shores Dr.
12	MR & Janny	9460 La Jolla Shores Drive

	Name	Address
13	Victoria East-Towner	2512 Horizon Way L.J.
14	Judith & Wade Munk	4530 La Jolla Shores
15	Teon & Dan Gist	2611 Inyokan Ln
16	Nora & Alan Taffe	2424 Ellentown Rd.
17	Sally Ladden	2451 Ellentown Rd L.J.
18	Betty Scott	2655 Wheaton Rd, La Jolla
19	Jean Zobell	2404 Ellentown Rd, La Jolla
20	C. Pitt	2525 Ellentown Rd, La Jolla
21	James H. Hildreth	2621 Inyokan Ln, La Jolla CA,
22	James Arnold	2425 Ellentown Road, La Jolla, CA
23	Louise C. Arnold	2425 Ellentown Rd. La Jolla
24	Michael & Simon	2484 Ellentown Rd La Jolla
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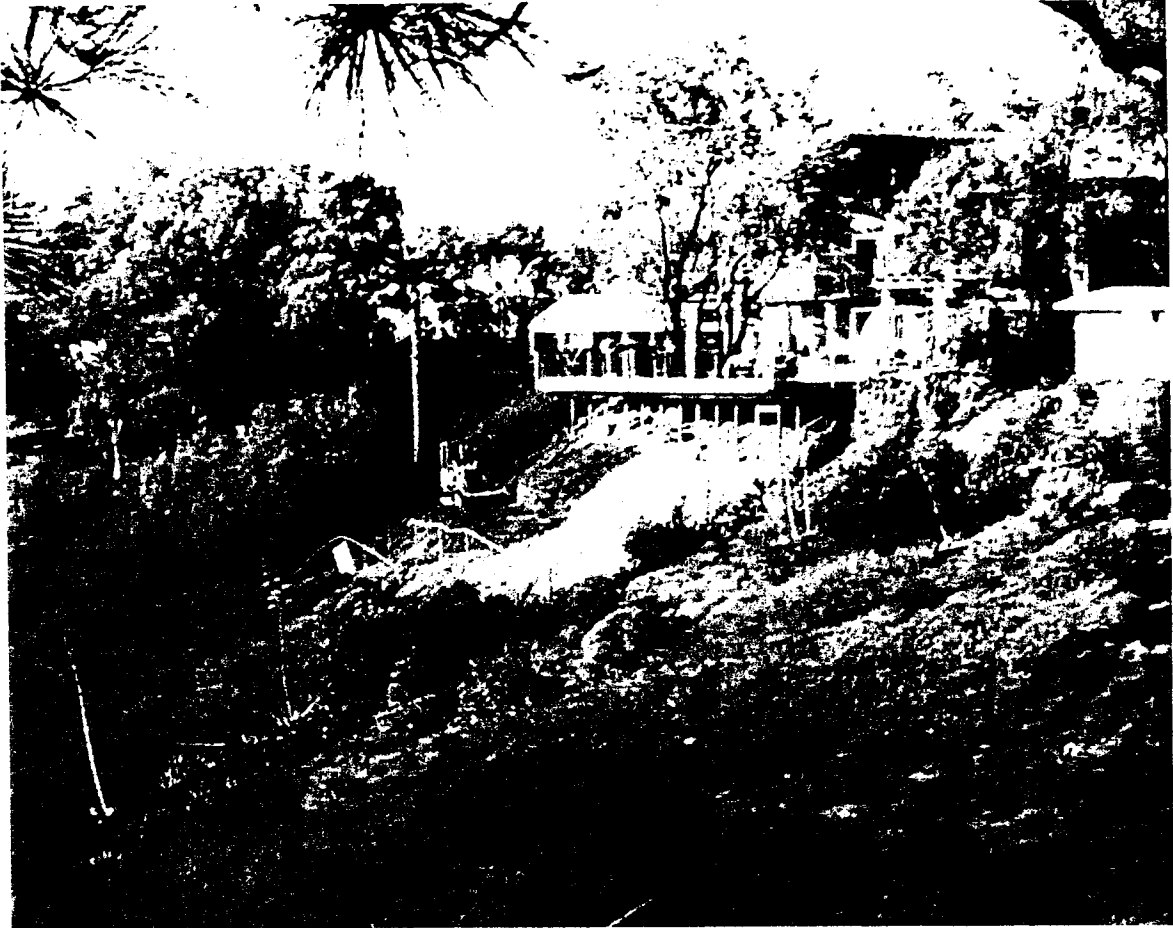


Image #1. 21 July 2004

