

CALIFORNIA COASTAL COMMISSION

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AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: F6200-A3

Applicant: Inyaha, LLC

Agent: Victor Fargo

Original

Description: Construction of five (5) detached single-family homes to include a community pool, sauna and tennis court (subsequently amended to 4-unit PRD).

Proposed

Amendment: Demolish above-grade portions of existing unauthorized pool on steep hillside, puncture holes in pool floor and walls and abandon remaining portions in place, back fill over unauthorized pool, regrade steep hillside to 2:1 slope, plant with native, drought-tolerant and non-invasive plants and record "no-build" restriction over new slope area. No import or export of graded material is permitted. Also proposed is the demolition of a 1,400 sq. ft. wooden deck, construction of a 900 sq. ft. pool with water feature and spa on non-steep hillside portion of site and construction of approximately 1,300 sq. ft. of elevated decks extending over the steep hillside portion of the site (with supporting piers extending into the steep hillside). The proposal also includes after-the-fact authorization of approximately 1,349 sq. ft. of one- and two-story additions to the existing 5,830 sq. ft. single family home located on the flat, non-steep portions of the site.

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

STAFF NOTES:

At the February 2006 Coastal Commission hearing, the Commission denied, on de novo review, an appeal to authorize a (almost completed) pool and spa on the steep hillside portion of a subject site, finding that the project was inconsistent with the steep hillside provisions of the City's certified LCP (ref. CDP #A-6-LJS-05-071/Fargo). At the same hearing, the Commission denied an amendment request to allow a somewhat "scaled-

down” version of the pool denied on appeal, as the scaled-down pool was also proposed on steep hillsides, inconsistent with the certified LCP (ref. CDP #F6200-A2/Inyaha, LLC). Litigation was filed by the applicant. The proposed project is the result of a settlement negotiation between the applicant and the Commission.

Summary of Staff’s Preliminary Recommendation:

The staff recommends that the Commission approve the proposed development with special conditions. The proposed project will result in removal of unpermitted structures on a steep hillside area and restoration and planting of the steep hillside. The new pool and spa, as proposed, will be located off the steep hillside area consistent with LCP requirements. However, staff is recommending conditions that require revisions to the proposed project to eliminate any encroachment into the steep hillside for deck pier supports and pool equipment. As conditioned, the project is consistent with all LCP provisions regarding protection of steep hillsides, ESHA and scenic visual resources.

STANDARD OF REVIEW: Certified City of San Diego Local Coastal Program and the public access and recreation policies contained in Chapter 3 of the Coastal Act.

Substantive File Documents: Certified City of San Diego Local Coastal Program (LCP); CDP #F6200 and amendments; CDP A-6-LJS-05-071.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. F6200 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would

substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Conditions.

The amended permit is subject to the following conditions:

1. Revised Final Plans. **PRIOR TO THE ISSUANCE OF THE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F6200-A3**, the applicant for that amendment shall submit, for review and written approval of the Executive Director, final, revised plans (drainage plans, floor plans, site plans and elevations) for the proposed pool, spa, deck and home additions that have been approved by the City of San Diego. Said plans shall be in substantial conformance with the submitted plans dated April 18, 2006 by Morengo Morton Architects, but shall be revised to include the following:

- a. No portion of the pool, spa or water feature shall extend beyond (westward) or onto the steep hillside area of the site which is defined as that area of the subject site located west of the 72.5 ft. elevation contour as depicted on the submitted plans dated April 18, 2006 by Morengo Morton Architects. Minimal fencing to comply with pool safety is permitted (if necessary), but must be located no further down the steep hillside than the edge of the proposed deck.
- b. No portion of the existing pool to be abandoned shall extend above the elevation of the approved graded slope.
- c. No piers or other supports for the pool or deck shall be placed on the steep hillside area of the site which is defined as that area of the subject site located west of the 72.5 ft. elevation contour as depicted on the submitted plans.
- d. No concrete pads, retaining walls, pool equipment or other structures (other than minimal fencing for pool safety purposes, if necessary) shall be placed on the steep hillside area of the site which is defined as that area of the subject site located west of the 72.5 ft. elevation contour as depicted on the submitted plans.
- e. No portion of the proposed elevated decking shall extend greater than 10 ft. beyond (west) of the 72.50 elevation contour line as depicted on the submitted plans.
- f. All drainage from the proposed pool, deck and single family residence shall be collected and directed away from the steep hillside area towards storm drain improvements in the street.
- g. The color of the deck shall be restricted to a color compatible with the surrounding environment (earth tones) including shades of green, brown, and gray, with no white or light shades and no bright tones.

- h. The use of glass as an element of any deck railing shall be prohibited.
- i. Any proposed lighting shall be directed away from the steep hillside area and be shielded to limit impacts on adjacent natural areas and regraded slope.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Landscape Plan. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F6200-A3**, the applicant for that amendment shall submit, for the review and written approval of the Executive Director, a revised landscape plan that has been developed in consultation with the University of California at San Diego Natural Reserves Manager and approved by the City of San Diego. Said plan shall be in substantial conformance with the submitted plans dated April 18, 2006 by Morengo Morton Architects, but shall be revised to include the following.

- a. The proposed palm trees shall be deleted.
- b. The plan shall indicate the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features on the site. A minimum of 24 plants (either trees or shrubs) that attain a height at maturity of at least 14 ft. shall be planted on the reconfigured slope below the proposed deck and spaced to screen the deck and pool from views from the west.
- c. All landscaping shall be drought-tolerant, native and non-invasive plant species (i.e., no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site). No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized.
- d. A planting schedule that indicates the planting plan shall commence within 60 days of completion of the pool construction.
- e. A written commitment by the applicant that all required plantings will be maintained in good growing condition, and whenever necessary, will be replaced with new plant materials to ensure continued compliance.
- f. A written commitment by the applicant that five years from the date of completion of the pool, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies

whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Final Brush Management Plans. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F6200-A3**, the applicant shall submit to the Executive Director for review and written approval, a detailed brush management plan addressing the area within 100 feet of the proposed pool that has been approved by the City of San Diego Fire Department and shall include the following:

- a. Within the area that lies between the proposed pool/decking and the western, northern and southern property boundaries, the plans shall identify that only native, fire-resistant, irrigated vegetation may be present. No invasive species are permitted.
- b. Within the open space area beyond the western, northern and southern property boundaries, the plans shall note that no brush clearance is permitted. If necessary to meet fire safety requirements, only dead and dying plant material shall be removed or cut. No clear cut, grubbing (removal of roots below the soil surface) or trimming of living plants shall occur, and no irrigation is permitted.
- c. A licensed biologist shall be present during any necessary brush management operation to assure that no work occurs if California Gnatcatchers are present, and that all work is in accordance with the approved plan. If it is determined that Gnatcatchers are present, brush management work shall be postponed until the biologist determines that no Gnatcatchers are present.
- d. Any future brush clearance within the designated brush management area, other than removal of invasive and non-native plant species and removal of dead and dying plants shall require approval of a coastal development permit or amendment

to the subject permit, unless the Executive Director determines no permit or amendment is legally required.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved brush management plan should be reported to the Executive Director. No changes to the approved plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Open Space Restriction.

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the steep hillside area located west of the pool/deck as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

The removal/dismantling of the existing pool, punching holes in the pool walls and floors, backfilling of the existing pool with dirt, regrading of the steep hillside area to a 2:1 slope, installation of landscaping and necessary irrigation and approved fencing of the property to comply with pool safety requirements.

- B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT AMENDMENT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #2 attached to this staff report.

5. As-Built Plans. **WITHIN 60 DAYS FOLLOWING COMPLETION OF THE POOL**, the permittee shall submit as-built plans of the approved pool/spa and associated structures and submit certification by a licensed surveyor, acceptable to the Executive Director, verifying the pool/spa and associated structures have been constructed in conformance with the approved plans for the project.

6. Future Development Restriction. This permit is only for the development described in coastal development permit amendment No. F6200-A3. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, additions to the existing single-family home, shall require an amendment to Permit No. F6200 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

7. Deed Restriction. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT AMENDMENT F6200-A3**, the applicant for this amendment shall submit to the Executive Director for review and written approval documentation demonstrating that

the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

8. Prior Conditions of Approval. All other terms and conditions of the original approval of Coastal Development Permit #F6200, as amended, not specifically modified herein, shall remain in full force and effect.

9. Condition Compliance. **WITHIN 60 DAYS OF COMMISSION ACTION ON AMENDMENT F6200-A3**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

10. Implementation of Removal of Existing Pool, Grading of Slope and Landscaping. **WITHIN 90 DAYS OF ISSUANCE OF AMENDED PERMIT F6200-A3**, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove the existing pool, regrade the steep hillside and plant the slope consistent with the plans approved pursuant to Special Condition Nos. 1 & 2 of this permit amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The proposed project involves an amendment to a 4-unit planned residential development (PRD) to demolish the above-grade portions of existing unauthorized pool on a steep hillside, puncture holes in the pool floor and walls and abandon remaining portions in place, back fill over unauthorized pool, regrade steep hillside to 2:1 slope, plant with native, drought-tolerant and non-invasive plants and record "no-build" restriction over new slope area. No import or export of graded material is proposed or permitted. Also proposed is the demolition of a 1,400 sq. ft. wooden deck, construction of an approximately 900 sq. ft. pool with water feature and spa on non-steep hillside portion of site and construction of approximately 1,300 sq. ft. of elevated decks

extending from 9 ft. to 16 ft. over the steep hillside portion of the site (with supporting piers extending into the steep hillside). A chain link fence currently exists along the perimeter of the property on the steep hillside. This fence will be removed to allow a natural connection between the offsite open space and the proposed restored steep hillside. If necessary to meet pool safety requirements, the fence may be relocated and placed on the slope along the edge of the deck. The proposal also includes after-the-fact authorization of approximately 1,349 sq. ft. of one- and two-story additions to the existing 5,830 sq. ft. single family home located on the flat, non-steep portions of the site.

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 inland of the sea 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.

While the project site is located within the City of San Diego's CDP permit jurisdiction, the project is being reviewed by the Commission as an amendment to a previously issued coastal development permit approved by the Commission (ref. CDP #F6200). Thus, the standard of review is the certified LCP as well as the public access and recreation policies of the Coastal Act.

2. Development History. The creation of the lot (through a subdivision) and the construction of the home were originally approved by the City of San Diego Planning Commission on September 8, 1977 as part of a 5-unit Planned Residential Development (PRD) on 2.7 acres (PRD #114). Subsequently, on November 4, 1977, the Coastal Commission approved a coastal development permit (CDP) for the same development (ref. CDP #F6200). The CDP included special conditions that restricted development on those lots bordering the canyon (which includes the subject site) to the flat portions of the site such that no development could occur "west or canyonside of the 72.50 elevation line as indicated" on the project plans and that the development be graded such that drainage into Sumner Canyon was not increased significantly over that which occurred naturally. The 72.50 elevation line corresponds approximately with the edge of the steep hillside portions of the sites where the sloping hillside joins the flat pad on the canyon top. In March of 1978, the Commission approved an amendment to CDP #F6200 to reduce the number of residential units from five (5) to four (4). All other features and special conditions of the original approval remained the same. Upon review of the approved grading plans for the amended project by Commission staff, it was confirmed that no grading was proposed or permitted beyond the canyon edge, and no other coastal development permits or amendments to CDP #F6200 have since been approved by the City or the Coastal Commission for grading of the steep hillside.

However, in 1989, the City of San Diego approved an amendment to its original PRD to allow a 100 sq. ft. addition to the existing home at the subject site and a deck and lap pool in the rear yard of the home (ref. PRD #89-0734). At that time, the City had been delegated coastal development permit authority (authority was transferred in 1988). However, the City did not approve a corresponding CDP for the development approved

by the amendment to the PRD, as the Commission had done in 1978. Instead, the City exempted the project from coastal development permit review on the basis that it involved an improvement to a single-family home located between the sea and the first public road parallel to the sea that did not increase floor area by more than 10% (ref. City of San Diego old Municipal Code section 105.0204(A)3). However, this development was never constructed. Subsequently, the City approved a different project adding to the existing home, finding that the proposed residential additions were in “substantial conformance” with PRD #89-0734. Specifically, in November of 1993, the City authorized a 476.75 sq. ft. addition to the existing 4,700 sq. ft. home and the addition of a wooden deck in the rear yard extending west over the steep hillside portion of the site (ref. November 16, 1993 letter from Kevin Sullivan to Michael Brekka – Exhibit #6). This time however, the proposal did not include a pool but did include a more than a 10% addition of floor area to the existing home located between the first public road and the sea. Therefore, it did not qualify for the exemption in section 105.0204(A)3 of the City’s old Municipal Code. Nevertheless, the City did not require a coastal development permit for the proposed addition.

Subsequently, on April 5, 2004, the City of San Diego issued Ministerial Permit #75384/PTS #29138 allowing the construction of a pool on the steep hillside portion of the site. 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 had 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. During this time the project was revised by the applicant, shifting the pool approximately 10 ft. to the north and adding a deck around the pool, relocating the pool equipment and adding landscaping on the slopes surrounding the pool. The City subsequently authorized work to again commence on this new pool project without requiring a coastal development permit. While the City’s records do not indicate when construction was again permitted to continue, a landscape plan approval was stamped as approved by the City on April 29, 2005. Thus, it was sometime after this date that the City authorized the applicant to commence work on the now revised project.

On July 19, 2005 an appeal of the City’s decision to not require a coastal development permit for the pool development was filed with the Commission (ref. CDP #A-6-LJS-05-071/Fargo). On August 9, 2005 the Commission found that the appeal raised a Substantial Issue, as the proposed project did not qualify for an exemption from Coastal Act permitting requirements pursuant to either the City’s certified LCP or the regulations promulgated by the Commission to implement the Coastal Act. Subsequently, upon de novo review at the February 2006 hearing, the Coastal Commission denied the pool, finding it was inconsistent with the steep hillside provisions of the certified LCP.

At the same hearing, the Commission also reviewed an amendment request by the applicant for a somewhat “scaled-down” version of the pool being reviewed by the

Commission on appeal. The “scaled-down” pool was proposed in the same location on the steep hillside, but eliminated the lower pool level and most of the decking surrounding the pool and relocated the spa from the southern end of the pool to the eastern side of the pool (closest to the house) resulting in an approximately 15 ft. by 45 ft. one-level pool. However, while the size of the finished pool was proposed to be reduced, the foundation, pool floor and most of the walls for the larger pool, which had already been constructed, were proposed to remain as retaining walls for the slope. The Commission also denied this amendment request, finding the “scaled down” pool was still located on the steep hillside portion of the site and thus, was inconsistent with the steep hillside provisions of the certified LCP.

The applicant has challenged the Commission’s jurisdiction on the appeal and has filed litigation. The proposed amendment request is a result of settlement negotiations between the applicant and the Commission.

3. Development on Steep Hillsides. The subject development involves removal/abandonment of a pool/spa on a steep hillside area and construction of a pool/spa on the non-steep hillside area of the site. The 15,316 sq. ft. project site contains an existing two-story single-family residence on the level portion of the lot adjacent to Inyaha Lane. West of the residence there is an existing tiled patio that extends approximately 16 ft. to 24 ft. from the home. Beyond the edge of the patio, the site slopes steeply downward (greater than 25% gradient) to the western property line. There is also an approximately 1,400 sq. wooden deck that extends beyond the tiled patio out over the steep hillside. From the property line westward, the slope continues down and into a large natural canyon (Sumner Canyon) that extends to the Pacific Ocean.

Steep Hillside areas are defined in the City’s certified implementation plan (Land Development Code) as follows:

Steep hillside 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 feet, 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 addition, the LCP (Steep Hillside Guidelines) provides clarification in determining if steep hillside areas are present as follows:

If the site contains steep hillside areas but does not have 50 feet of vertical elevation, an off-site analysis of the adjacent property(s) must be made to determine whether the steep hillside areas on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevation. See Diagram 1-2. If the 50-foot elevation is met when considering the extension of the steep hillside areas off-site, the subject site will be subject to the steep hillside regulations.

As cited above, in order for an area to be considered a “steep hillside” under the City’s LCP, three criteria must be met: 1) the land must have a slope with a natural gradient; 2) the slope must be 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater; and, 3) there must be a minimum elevation differential of 50 feet. As is explained below, the western portion of the subject site meets all three of these criteria.

a. Natural Gradient

It is not clear what, if any, vegetation existed on this steep hillside prior to the grading as the entire area has been cleared and graded. However, according to the applicant, native vegetation was not present on the slope as it had been removed to meet necessary brush management requirements for the home/deck. While vegetation on hillside may have previously been removed to meet necessary fire safety regulations, such brush management requirements did not include grading (the presence of native vegetation on the slope is not necessary in determining whether or not the slope gradient is natural) and the gradient of the slope remains natural. As noted in the project description above, when the Coastal Commission approved development of the site, a special condition was placed on the permit to protect the steep hillside area and the adjacent Sumner Canyon which states:

Special Conditions:

1. That no development occur to the west or canyonside of the 72.50 elevation line as indicated on the attached plot plan. This would prevent any filling or supportive structures which may create or contribute significantly to erosion or geologic instability of the site.

The findings supporting this condition state that:

...adherence to Special Condition 1 will effectively assure that development along the canyon rim will not create nor contribute significantly to erosion or geologic instability **while providing for preservation of the canyon rim natural landforms.** [emphasis added]

Subsequently, the permit was amended to reduce the development from 5 to 4 units. Specifically, the amended project description is as follows:

PROPOSED AMENDMENT: The applicant proposes to reduce the number of residences from five to four. The amended project would result in more landscaped open space and less building coverage. **All the special conditions attached to the original approval remain in force.** [emphasis added]

Based on the above, it is clear that the 72.50 ft. elevational contour is what the Commission determined to be the edge of the slope, beyond which no development could occur. In reviewing the amended project plans, Commission staff determined that the

proposed home at 2610 Inyaha Lane, while increased slightly in size (approximately 250 sq. ft.), was re-sited further back from the top of the slope than the originally-approved home and now included a deck extending slightly beyond the top edge of the slope. As the approved grading plans do not show any grading beyond the top of the slope, it is assumed the portion of the deck that extended beyond the top of slope was cantilevered. This would be consistent with the previous special conditions that prohibited development beyond the top of slope to prevent any filling or supportive structures. No other coastal development permits have been issued to authorize development or grading beyond the top of the slope.

While it may be that some limited fill has been previously placed on the steep slope area, such fill placement has never been authorized through a coastal development permit. Thus, if any grading has occurred on the steep hillside portion of the site, it was done without proper authorization and is inconsistent with the Commission's approval as originally issued or as amended. Therefore, the western facing slope of the subject site must be considered a "natural gradient".

b. 25% Gradient and 50 Foot Height

In addition, the project plans for the original development document that the slope beyond the 72.50 ft. elevational contour has a gradient of greater than 25 percent. Lastly, while the elevational differential on the subject site is less than 50 ft. (approximately 25 ft in elevation drop from the top of the slope to the western property line), the LCP includes a provision explaining how the elevation differential is to be calculated and expressly stating that an off-site analysis of the adjacent property is appropriate to determine whether the slopes on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevational differential requirement. As cited above, the LCP provides that if the 50-foot elevation is met when considering the extension of the steep hillsides off-site, the subject site will be subject to the steep hillside regulations. In this particular case, the hillside continues well past the western property line with a total elevational differential of greater than 100 ft. Therefore, based on the above discussion, that portion of the subject site that lies west of the 72.50 ft. elevation contour meets all of the LCP requirements to be considered a steep hillside. Therefore, the Steep Hillside Regulations of the City's LCP apply and state, in part:

i) LUP Policies

Policy 4 (Page 51/52) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

4. Steep Hillsides

- a. The City shall apply the Environmentally Sensitive Lands regulations to all new development on property in La Jolla having slopes with a natural gradient of 25 percent or greater and a minimum differential of 50 feet. The Environmentally Sensitive Lands regulations provide supplementary

development regulations to underlying zones such as development encroachment limits for natural steep slopes, erosion control measures and compliance with design standards identified in the Steep Hillside Guidelines. Development on steep hillsides shall avoid encroachment into such hillsides to the maximum extent possible. When encroachment is unavoidable, it shall be minimized and in accordance with the encroachment limitations standards contained in the plan. These regulations assure that development occurs in a manner that protects the natural and topographic character of the hillsides as well as insure that development does not create soil erosion or contribute to slide damage and the silting of lower slopes. Disturbed portions of steep hillsides shall be revegetated or restored to the extent possible.

- b. The City shall not issue a development permit for a project located on steep hillsides in La Jolla, unless all the policies, recommendations and conditions identified in this plan element are met.

Plan Recommendation 5 (Pages 61-64) of the Natural Resources and Open Space Element of the certified La Jolla LUP states, in part:

5. Steep Hillsides

In addition to the recommendations contained in the Residential Element of this plan and the requirements of the Land Development Code, including the Environmentally Sensitive Lands regulations and the Steep Hillside Guidelines of the Land Development Manual, the following Hillside Development Guidelines shall be used as requirements in evaluating new development on all properties containing slopes in La Jolla which equal or exceed 25 percent:

- a. Keep driveways, parking areas, tennis courts, swimming pools, and other accessory uses to a minimum, and locate them on more level portions of the site in slopes below 25 percent.

[...]

- k. Set back large residential structures from the top of steep hillsides so that the design and site placement of a proposed project respect the existing natural landform and steep hillside character of the site. This is especially important for those locations that are visible from natural open space systems, parklands, major coastal access routes and the seashore. The reservation of the natural character of these areas depends upon minimizing visual intrusions.

ii) Implementing Ordinances

The Environmentally Sensitive Lands (ESL) Regulations of the City's Land Development Code address development on steep hillsides. The following provisions of the ESL Regulations are applicable to the proposed development.

Section 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;

[...]

Section 143.0113 Determination of Location of Environmentally Sensitive Lands, Applicability of Division and Decision Process

- (a) In connection with any permit application for development on a parcel, the applicant shall provide the information used to determine the existence and location of environmentally sensitive lands in accordance with Section 112.0102(b).
- (b) Based on a project-specific analysis and the best scientific information available, the City manager shall determine the existence and precise location of environmentally sensitive lands on the premises.

Section 143.0142 Development Regulations for Steep Hillsides

Development that proposes encroachment into steep hillsides or that does not qualify for an exemption pursuant to Section 143.0110(c) [not applicable here] is subject to the following regulations and the Steep Hillside Guidelines in the Land Development Manual.

- (a) Allowable Development Area

[...]

- (4) Within the Coastal Overlay Zone, steep hillsides shall be preserved in their natural state....

[...]

(D) for the purposes of Section 143.0142, encroachment shall be defined as any areas of twenty-five percent (25%) or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to displacement required for the building, accessory structures or paving...

- (b) All development occurring in steep hillsides shall comply with the design standards identified in the Steep Hillside Guidelines in the Land Development Manual [see below] for the type of development proposed.

[...]

- (f) Any increase in runoff resulting from the development of the site shall be directed away from any steep hillside areas and either into an existing or newly improved public storm drain system or onto a street developed with a gutter system or public right-of-way designated to carry surface drainage run-off.
- (h) All development on steep hillsides located in La Jolla or La Jolla Shores Community Plan areas, shall, in addition to meeting all other requirements of this section, be found consistent with the Hillside Development Guidelines set forth in the La Jolla – La Jolla Shores Local Coastal Program land use plan.

In order to help the City interpret the development regulations for steep hillsides, the City of San Diego has developed the Steep Hillside Guidelines (which are included as a component of the City's certified LCP). The following provisions of the guidelines are applicable to the proposed development.

Steep Hillside Guidelines Introduction

The Steep Hillside Guidelines are divided into four sections, each providing standards and guidelines intended to assist in the interpretation and implementation of the development regulations for steep hillsides contained in Chapter 14, Article 3, Division 1, Environmentally Sensitive Lands. **Every proposed development that encroaches into steep hillsides will be subject to the Environmentally Sensitive Lands Regulations and will be evaluated for conformance with the Steep Hillside Guidelines as part of the review process for the required Neighborhood Development Permit, site Development Permit or Coastal Development Permit.** [emphasis added]

[...]

Section 1

DESCRIPTION OF REGULATIONS

(A) 143.0110 When Environmentally Sensitive Lands Regulations Apply

Generally, the steep hillside regulations of the environmentally Sensitive Lands regulations are applicable when development is proposed on a site containing any portions with a natural gradient of a least 25 percent (25 feet of vertical distance for every 100 feet of horizontal distance) and a vertical elevation of at least 50 feet....

[...]

(B) 143.0113 Determination of Location of Environmentally Sensitive Lands, Applicability of Division and Decision Process

The determination of the precise location of the steep hillsides on a site shall be made with the information submitted by the applicant, and any other information available, including City maps and records and site inspections....Within the Coastal Overlay Zone, a Neighborhood Development Permit or Site Development Permit is required whenever steep hillsides are located on the premises regardless of encroachment into the steep hillside, and a Coastal Development Permit is required for all coastal development, unless exempt pursuant to Section 126.0704 of the Coastal Development Permit procedures.

[...]

If the site contains steep hillsides but does not have 50 feet of vertical elevation, an off-site analysis of the adjacent property(s) must be made to determine whether the steep hillsides on the subject site are part of a steep hillside system that extends off-site and exceeds the 50-foot elevation. See Diagram 1-2. If the 50-foot elevation is met when considering the extension of the steep hillsides off-site, the subject site will be subject to the steep hillside regulations.

[...]

- (4)(a) Within the Coastal Overlay Zone, projects proposing to encroach into steep hillsides shall be subject to the discretionary regulation identified in Section 143.0142(a)(4) of the Environmentally Sensitive Lands regulations. Projects shall be evaluated on a case-by-case basis to determine if encroachment, as defined in Section 143.0142(a)(4)(D) of the Environmentally Sensitive Lands regulations, can be permitted. It is the intent of the regulations and the Steep Hillside Guidelines that development be located on the least sensitive portions of a site and that encroachment into areas containing steep hillsides, sensitive biological resources, geologic hazards, view corridors identified in adopted land use plans or viewsheds designated on Map C-720, be avoided or

minimized if unavoidable. Projects proposing to encroach into steep hillsides shall demonstrate conformance with the Environmentally Sensitive Lands regulations and the Design Standards in Section II of the Steep Hillside Guidelines and result in the most sensitive design possible.

Encroachment shall not be permitted for the following:

- Projects where the encroachment is solely for purpose of achieving the maximum allowable development area;
- **Accessory uses or accessory structures including, but not limited to patios, decks, swimming pools, spas, tennis courts, other recreational areas or facilities, and detached garages, ...**
[emphasis added]

[...]

In approving the original PRD development, the Commission required that no development extend beyond the canyon edge onto the steep hillside area of the site. As discussed above, the Commission determined the canyon edge to correspond to the 72.50 ft. elevational contour (as depicted on the approved plans for the original PRD). Thus, any portion of the subject site located west of the 72.50 ft. elevational contour is a steep hillside and subject to the steep hillside provisions of the certified LCP.

It should be noted, that because of site grading associated with construction of the existing unauthorized pool (proposed to be removed) and possible other previous non-permitted grading, the 72.50 ft. elevation contour no longer exists on the subject site. Thus, in order to assure that any new proposed development does not impact on-site steep hillside areas, the location of the 72.50 ft. elevational contour needs to be plotted. To accomplish this, the applicant made copies of the originally approved project plans for the PRD that depicted the 72.50 ft. elevation contour and then, using those copies, plotted the 72.50 ft. elevational contour line on a current site plan. However, due to numerous identified scaling errors and inconsistencies on the plans, it was determined that the 72.50 ft. elevational contour could not be plotted accurately on a current site plan using only the original project plans.

To address this issue, Commission staff and the applicant agreed to have the applicant's surveyor measure and stake the location of 72.50 ft. elevational contour at the project site (as noted above, not the actual elevation, but the location of this contour based on the Commission approved plans from the original PRD) and then have those measurements and staking reviewed and approved by a third party licensed surveyor acceptable to Commission staff. Once the location of the 72.50 ft. elevational contour was determined on site, that line could then be plotted onto a current site plan to document the location of the steep hillside areas of the site. However, for the same reasons noted above, the location of the 72.50 ft. elevation contour line could not be accurately verified on the subject site (ref. Exhibit #6 attached). On April 3, 2006, Commission staff met at the site

with the applicant, his surveyor and the third party surveyor. After viewing the “staked and flagged” plotting of the 72.50 ft. elevational line on the site and discussing its accuracy with both surveyors, it was agreed that this plotting was as close to accurate as possible and within a “couple of feet” (plus or minus) of the 72.50 ft. elevational contour line depicted on the original plans for the PRD approved by the Commission. Thus, that line was then transferred to the current site plan and is depicted on the plans submitted with this amendment application.

Therefore, to be consistent with the steep hillside provisions cited above, all development associated with the proposed pool and spa must not extend onto the steep hillside area of the site beyond the 72.50 ft. elevational contour. As noted previously, the applicant is proposing to remove several improvements that currently are constructed on steep hillsides including a 1,400 sq. ft. wooden deck (and several piers supporting the deck) and all above grade portions of the existing swimming pool. Holes will then be punched into the walls and floor of the remaining portions of the pool to facilitate drainage. The remaining portions of the existing pool will be then be abandoned in place, backfilled and the slope regraded to a 2:1 slope and planted with native plants. Thus, other than having a slightly steeper slope, the steep hillside area of the site will be visually restored to its pre-existing condition.

The new pool and spa are proposed to be located landward (east) of the identified 72.50 ft. elevational contour line and thus will not extend onto the steep hillside areas of the site. There are however, elements of the project that are proposed to extend onto steep hillsides. As noted in the project description, the applicant is proposing to construct an elevated deck that extends approximately 9 ft. to 16 ft. west of the 72.50 ft. elevational contour line. To support the deck, several piers are proposed that would extend into the steep hillside areas of the site. As cited above, encroachment into a steep hillside is defined as any area of 25% slope or greater in which the natural landform is altered by grading or is rendered incapable of supporting vegetation due to displacement required for structures. Thus, while the elevated deck itself that extends out over the steep hillside area is not inconsistent with the steep hillside provisions, the proposed piers to support the deck are inconsistent. In discussing this issue with the applicant and his consultants, it was expressed that, while not preferred, the raised decking could be cantilevered such that any necessary supports would not extend into the steep hillside area. If in fact, the deck cannot be constructed without the use of piers or supports that extend into the steep hillside, then either the deck needs be reduced to a size that could be supported as a cantilever or the deck must be eliminated from the project.

In addition, the applicant is proposing to construct an approximately 3 ft. by 5 ft. concrete slab with a 4 ft. high retaining wall behind it to accommodate the filter/heater and equipment for the pool. The pad and equipment is proposed on the steep hillside portion of the site, approximately 6 ft. beyond (west) the 72.50 ft. elevational contour line, inconsistent with the steep hillside provisions of the certified LCP. Thus, to be consistent with the steep hillside provisions of the certified LCP, the pool equipment and any necessary pad/support need to be relocated off the steep hillside area.

To address these issues and assure no portion of the proposed pool or spa extend onto the steep hillside areas of the site, Special Condition #1 is proposed. This condition requires the applicant to submit plans that have been approved by the City of San Diego which have been revised to eliminate the piers and concrete pad, retaining wall and pool equipment that extend onto the steep hillside areas of the site.

To assure the project is constructed in compliance with the approved plans such that no encroachment into the steep hillside areas of the site has occurred, Special Condition #5 requires that within 60 days of completion of the pool, the applicant submit as-built plans that have been certified as constructed in conformance with the approved plans.

Special Condition Nos. 4, 6 and 7 include provisions to assure the steep hillside areas of the site are protected in the future. Special Condition #4 requires that an open space restriction be placed on the steep hillside areas of the site limiting development in this area to only the proposed pool removal, grading, planting of the slope and fencing for pool safety (if necessary). Special Condition #6 puts the applicant on notice that any future development on the site will require review and approval by the Coastal Commission or the City under a coastal development permit or amendment. Finally, Special Condition #7 requires that the permit conditions be recorded as a deed restriction to notify future owners of the conditions imposed on this site.

As noted, the project also includes a request to authorize, after-the-fact, several additions to the home, resulting in a 7,767 sq. ft. home on the site. However, none of the proposed residential additions will occur beyond the canyon edge or on steep hillsides.

In summary, the proposed project will result in the removal of unauthorized structures on the steep hillside portions of the site and regrading and planting of this area to restore the steep hillside to as close to pre-existing conditions as possible. As conditioned to require the project be modified to eliminate any further encroachments onto steep hillsides, the Commission finds the proposed project is consistent with the above-cited steep hillside provisions of the certified LCP.

4. Public Access. Section 30210 of the Coastal Act is applicable and states:

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

In addition, Section 30212 of the Coastal Act pertains to the proposed development and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

Upon reliance of these policies of the Coastal Act, the certified La Jolla-La Jolla Shores LCP contains policies to protect public access, which include the following:

La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved.

New development should not prevent or unduly restrict access to beaches or other recreational areas.

Vertical Access

...In all new development between the nearest coastal roadway and the shoreline the City will make a determination of the need to provide additional vertical access easements based upon the following criteria:

[...]

e) public safety hazards and feasibility of reducing such hazards. [...]

The subject site is located on 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 project site 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. Currently, no formal public access into Sumner Canyon from the subject site is provided, nor would such access be desirable due to the steepness of the canyon and the need to protect the habitat values of the canyon. There is an access path that loops through the nearby Scripps Coastal Reserve available to the public off of La Jolla Farms Road, approximately 2 blocks north and west of the subject site. However, due to the extensive canyon system, no direct public access to the shoreline is available in the surrounding area. In any case, the proposed project will not adversely affect public access opportunities in this area and is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

5. Protection of Visual Resources. The following policies of the certified La Jolla Community Plan and Local Coastal Program LCP Land Use Plan are also applicable to the subject project:

Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private coastal properties at yards and setbacks. (p. 50).

Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated public views. (Plan Recommendation 2.c., p. 56)

Implement the regulation of building envelope to preserve public views through the height, setback, landscaping and fence transparency regulation of the Land Development code and that limit the building profile and maximize view opportunities. (Plan Recommendation 2d., p. 56)

Plant and maintain landscaping or vegetation so that it does not obstruct public views of coastal resources from identified public vantage points as identified in Figure 9. (Plan Recommendation 2g., p. 57)

The subject site is located on the northwest end (cul-de-sac) of Inyaha Lane, just west of La Jolla Shores Drive in La Jolla. The site contains an existing single-family residence with a rear yard patio. The western portion of the site slopes steeply down from the patio. Beyond the western property line the steep slopes continue to the west and into a large natural canyon (Sumner Canyon) and open space area that extends to the Pacific Ocean. Sumner Canyon and the surrounding area (including the Scripps Coastal Reserve located north and west of the subject site) is for the most part natural. Single-family residential development does border the canyon, but is set back along the canyon rim. For the most part, no structures extend beyond the canyon rim into the adjacent steep natural hillsides.

The purpose and intent of the Steep Hillside Regulations is to assure that development occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area. The reservation of the natural character of these areas depends upon minimizing visual intrusions. This is especially important for those locations that are visible from natural open space systems, as is the case with the subject proposal, which is located adjacent to, and is visible from, the Scripps Coastal Reserve. It is for these reasons that the Commission, in approving the original PRD development, required that no development extend beyond the canyon edge onto the steep hillsides.

The subject site is located between the first coastal road (La Shores Drive) and the ocean. La Jolla Shores Drive is designated as a scenic roadway in the certified La Jolla Community Plan Local Coastal Program Land Use Plan. In the case of the proposed development, there are not currently any public views of the ocean available across the subject site due to the elevation of the site and its orientation and, therefore, the proposed development will not result in impacts to existing public views of the ocean.

Relative to the proposed pool and deck, impacts to public views must also be addressed. Removal of the existing improvements and restoring the steep hillside area will result in a

positive visual improvement for the area as the steep hillside area will again blend with adjacent natural areas. Although the project will result in existing unpermitted structures on the steep hillside to be removed and the steep hillside area restored and planted, the project also includes construction of a new pool/spa and deck that will be visible from offsite locations. The proposed new pool and spa will be constructed on the landward side of the canyon edge (east of the 72.50 ft. elevation contour line) and thus will not extend or encroach onto the steep hillside. However, the western most edge of the pool will extend approximately 6 ft. above the restored hillside. In addition, a deck at the same elevation of the pool is proposed to extend up to 10 ft. beyond the pool over the steep hillside. At its farthest point west, the deck will be elevated approximately 11 ft. above the restored hillside, with a 3 ft. high railing on top. Thus, both the pool and decking will be visible from offsite and represent a visual intrusion into the otherwise natural surrounding landscape (as discussed in the previous section, the proposal also includes piers and pool equipment on the steep hillside which are inconsistent with the steep hillside provisions of the certified LCP and the project has been conditioned to eliminate these encroachments).

In order to address this issue, the applicant is proposing to landscape the steep hillside area west of the deck/pool with native plants. While the Commission concurs that screening the deck/pool with native landscaping will help to reduce the visual intrusion of these structures, the plants proposed by the applicant are not adequate (in quantity or size). The proposed deck will extend approximately 90 ft. across the subject site and as noted above, will be elevated almost 11 ft. above the restored hillside and include a 3 ft. high railing on top of that. Thus, to effectively screen the deck from views offsite, proposed landscaping needs to be spaced such that views between plantings are minimal, if any, and proposed plants need to achieve a height of greater than 14 ft. As proposed by the applicant, none of the proposed plant species achieve a height at maturity above 10 ft. In addition, these plants are spaced such that large areas of the deck and pool below it will be visible (ref. Exhibit #4 attached).

Therefore, in order to assure the proposed deck and pool are effectively screened, Special Condition #2 is proposed. This condition requires the applicant to submit revised landscape plans that include the provision of plantings (either trees or shrubs) that achieve a height of at least 14 ft. and that they be spaced such that the deck and pool are screened from offsite views. To assure that proposed plantings are appropriate for the area, this condition requires that the proposed palm trees be deleted and that all plants be native and non-invasive (and that plant species be approved by the Scripps Coastal Reserve Manager). This condition also requires the planting occur within 60 days of completion of the project and that five (5) years from completion, the applicant prepare and submit a landscape monitoring report that assures on-site landscaping is in conformance with the approved landscape plan.

To further reduce the visibility and visual intrusion of these structures, Special Condition #1g is proposed. This condition requires that the deck be colored utilizing only earth tone colors that are comparable to the surrounding natural environment.

With regard to community character, the proposed development will expand the existing two-story, 6,418 sq. ft. home by 1,349 sq. ft., resulting in a 7,767 sq. ft. home. While the project will result in a somewhat larger home, the proposed expanded structure is still comparable in size and consistent with the pattern of redevelopment for the coastal area and meets all the LCP required setbacks, height restrictions and does not exceed the required floor area ratio for this residential zone, all of which are used to address bulk and scale. In addition, the proposed new additions occur for the most part at the rear of the structure and will not be visible from the public street. However, the proposed residential additions will be visible from offsite across the canyon to the west. However, they will only be minimally visible as they will be constructed with similar architecture, building materials and colors as the existing home and thus, will not result in any adverse impacts on public views.

With regard to potential impacts of the bulk and scale of the proposed residence to the open space area, although there may be foot trails in the open space area further west of the project site, it is not a highly used area nor it is regularly used to gain access to the ocean. The trails that exist in this area are nature trails and a loop trail that provide views looking west to the ocean (Scripps Coastal Reserve). Construction of the proposed residential addition east of this area (i.e., the subject site and residence) would not impede those views nor would it result in a significant visual impediment to the character of the surrounding area. As such, the proposed bulk and scale of the proposed expanded residence will not result in any visual impacts from this open space area, consistent with the certified LCP.

In summary, the Commission finds that the proposal, as conditioned, is consistent with the view protection policies of the certified LCP and will not result in adverse impacts to public views to the ocean and the proposed development is compatible in size and scale with the surrounding development.

6. Protection of Adjacent Natural Open Space. As noted earlier, the subject site is located at the end of Inyaha Lane, next to a very large open space area known as Sumner Canyon. As such, proposed development must be reviewed to assure that adjacent natural areas are protected from encroachments (brush management), erosion and sedimentation and from invasive plants (landscaping).

The certified LUP contains the following policies that address these concerns:

- 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;
- 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.

To begin with, the proposed development will not encroach into the adjacent open space areas as all development is confined to the project site. In addition, the project includes restoration of the steep hillside area, planting this area with native plants and then placement of the restored steep hillside in open space. The proposed project site is not located within the Multiple Habitat Planning Area (MHPA) of the Multiple Species Conservation Program (MSCP) Subarea Plan, but it is adjacent to the MHPA. Due to the proximity of the site to the MHPA, it is important that any required brush management for fire safety for the proposed project not result in impacts to or removal of vegetation within the adjacent natural open space areas. To assure any required brush management does not result in impacts to these areas, Special Condition #3 is proposed. This condition requires the applicant to submit final brush management plans that have been approved by the City of San Diego Fire Department. The condition also states that plans must indicate that no clearing in the adjacent open space area is permitted, except for necessary removal by hand of any dead and dying plants. To protect the California gnatcatcher from impacts during any necessary brush management operation, Special Condition #3c requires a licensed biologist be onsite and that, if it is determined that gnatcatchers are present, all brush management work be discontinued until the biologist determines no gnatcatchers are present.

To assure the adjacent open space areas are protected from runoff and erosion, Special Condition #1f requires that plans document that drainage from the development (pool/spa, deck and expanded residence) will be collected and directed away from the steep hillside area into existing facilities located on the public street.

To further protect birds and other wildlife that may use or occupy the adjacent natural canyons areas, Special Condition Nos. 1h and 1i are proposed. Even though the applicant is proposing rod iron railing around the proposed deck, Special Condition #1h is proposed to reiterate that use of glass as an element of the deck railing is prohibited. Reports have shown that glass railings, even tinted, can result in birds strikes against the glass, which would be especially troubling in a location such as this, given the adjacent resources. Special Condition #1i requires that any proposed lighting for the deck and pool be directed away from the adjacent open space area and that it be shielded to limit intrusion in to the adjacent sensitive areas.

In summary, while the development is located on a site that is in proximity to a sensitive coastal canyon, as conditioned, no direct or indirect impacts to the adjacent habitat area or other sensitive coastal resources will result from the proposed development. Thus, the

Commission finds that the proposal is consistent with the above-cited policies of the certified LCP and will not result in adverse impacts on coastal resources.

7. Violation of Coastal Act. Unpermitted development has occurred on the subject site including, but not limited to, the demolition of an existing wooden deck and partial construction of a 25 ft. by 56 ft. split level pool with spa and grading on a steep hillside without the required coastal development permit, and is a violation of the Coastal Act. While the City of San Diego did authorize work to begin on the pool, the City's decision to allow such work to occur without issuing the required coastal development permit for the pool project was appealed to the Coastal Commission on July 19, 2005. On July 27, 2005, the applicant was informed of the appeal by Coastal Commission staff and was instructed in writing to stop work on the development, because once an appeal is filed, the City's authorization is "stayed" pending the outcome of the appeal. However, the applicant did not stop work on the development until the Executive Director issued an Executive Director Cease and Desist Order on August 12, 2005. The applicant filed suit challenging the Cease and Desist Order and, at the applicant's request, the Court then allowed the applicant to proceed with certain portions of the pool construction that the applicant asserted were needed to stabilize the site; however, the court clearly indicated that the applicant would do this work at its own risk of a subsequent permit denial.

To ensure that the unpermitted development addressed by this application is resolved in a timely manner, Special Condition #9 requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, Special Condition #10 requires that the applicant remove the existing pool and restore the steep hillside area, consistent with Special Condition Nos. 1 & 2 of this permit, within 90 days of issuance of the coastal development permit amendment.

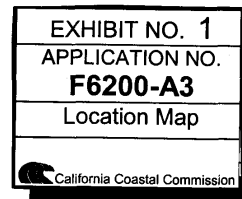
Although development has taken place prior to submission of this permit amendment request, consideration of this application by the Commission has been based solely upon the policies and provisions of the certified City of San Diego LCP as well as the public access and recreation policies of Chapter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



8. Local Coastal Planning. The City of San Diego has a certified LCP and has been issuing coastal development permits for its areas of jurisdiction, including the La Jolla area, since 1988. The subject site is zoned and designated for residential use in the certified LCP. The proposed swimming pool and spa is consistent with that zone and designation. However, the subject site contains a steep hillside and is subject to the Steep Hillside Regulations of the City's implementation plan. While the proposed pool and spa are not located within on-site steep hillside areas, supports for the decking surrounding the pool as well as a concrete pad and retaining wall to support the pool equipment are proposed on the steep hillside. As conditioned, no improvements, other than fencing for

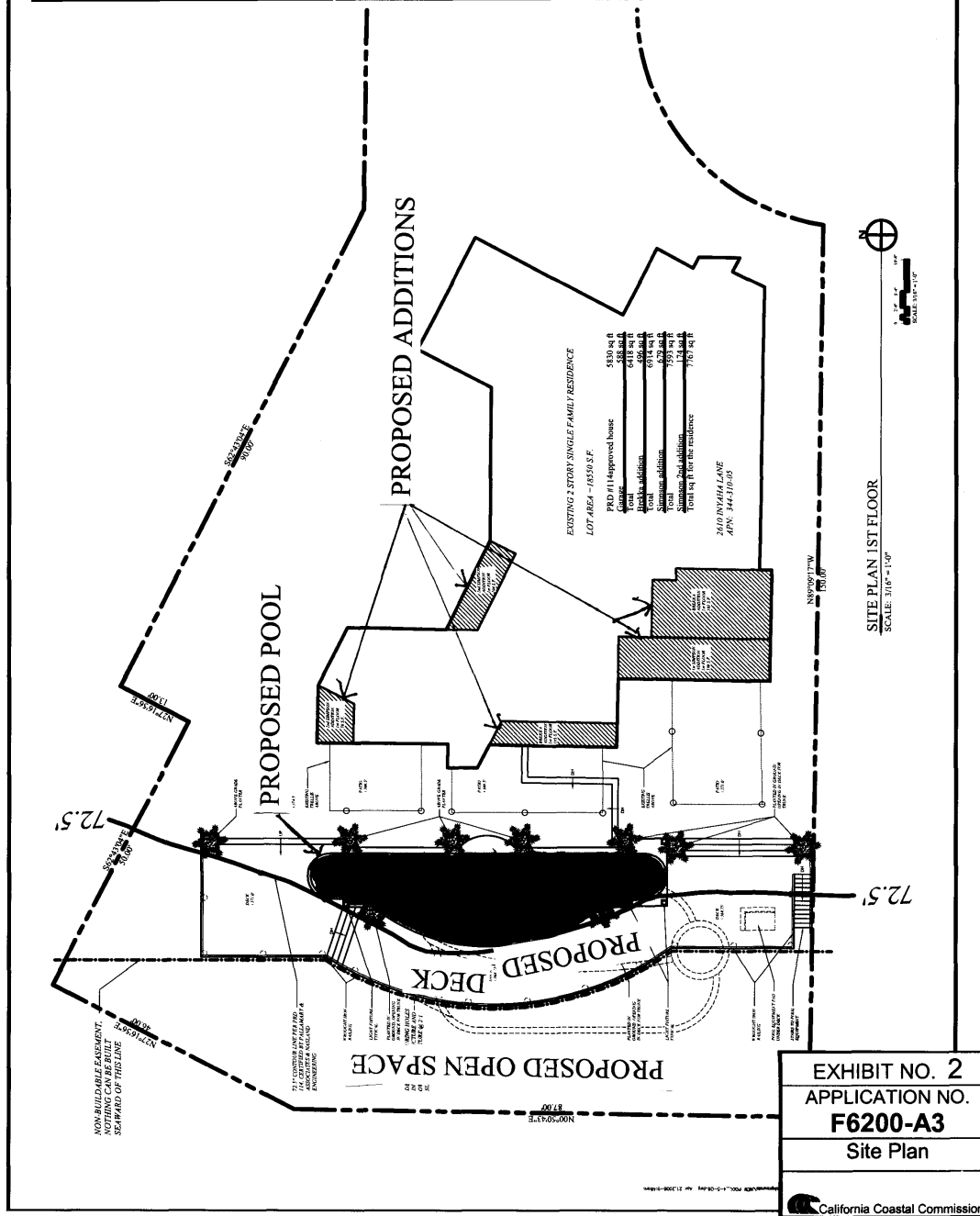
necessary pool safety and restoration of the slope (grading and planting with native plants) will occur on the steep hillside portion of the site. Potential impacts on public views will be reduced by requiring the proposed decking to be of earth tone colors and through implementation of landscaping that includes native trees that reach a height sufficient to screen the proposed improvements. Therefore, the Commission finds that the subject proposal is consistent with the certified LCP as well as with the Commission's previous actions on this site and will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla area of the City of San Diego.

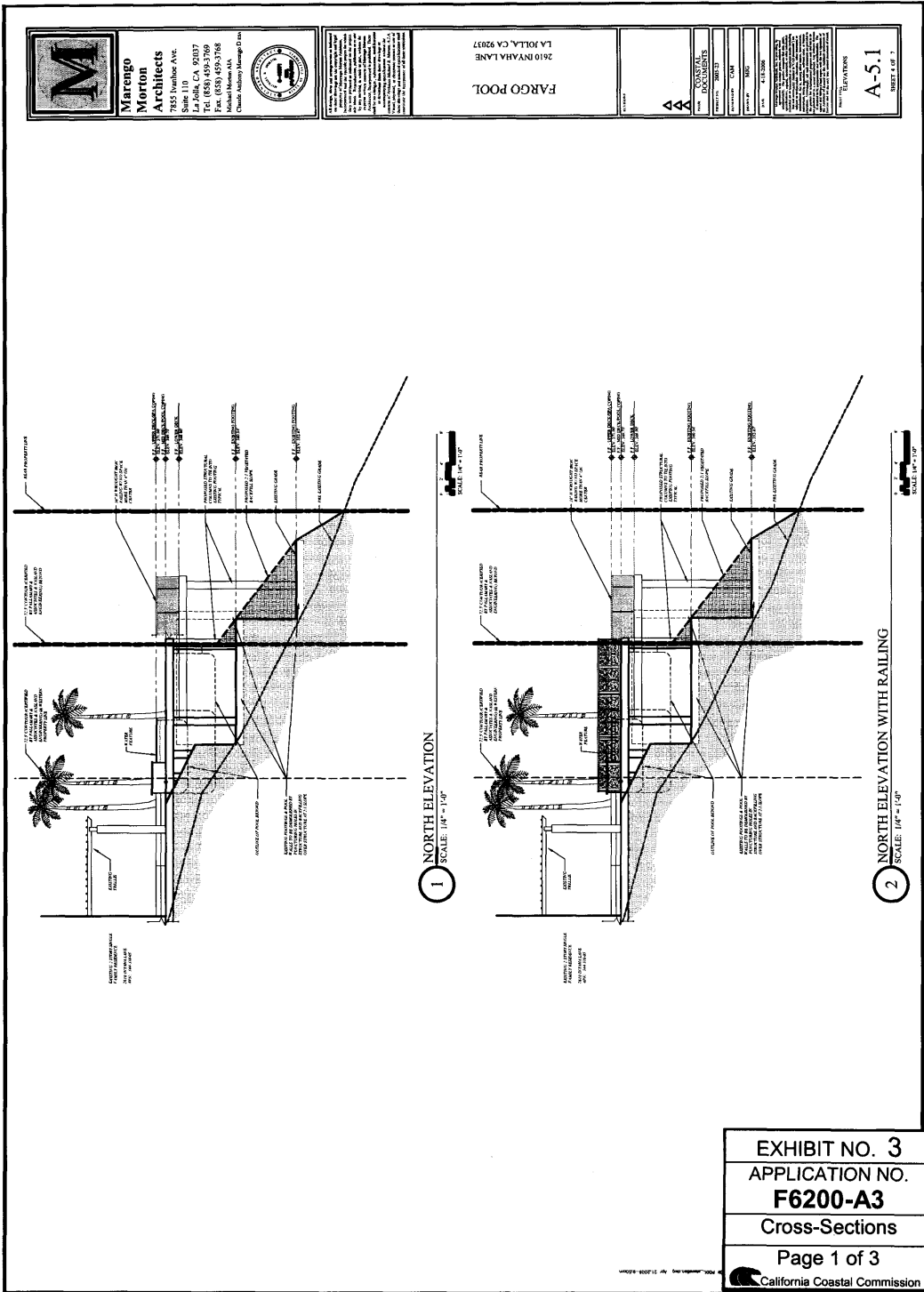
9. California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

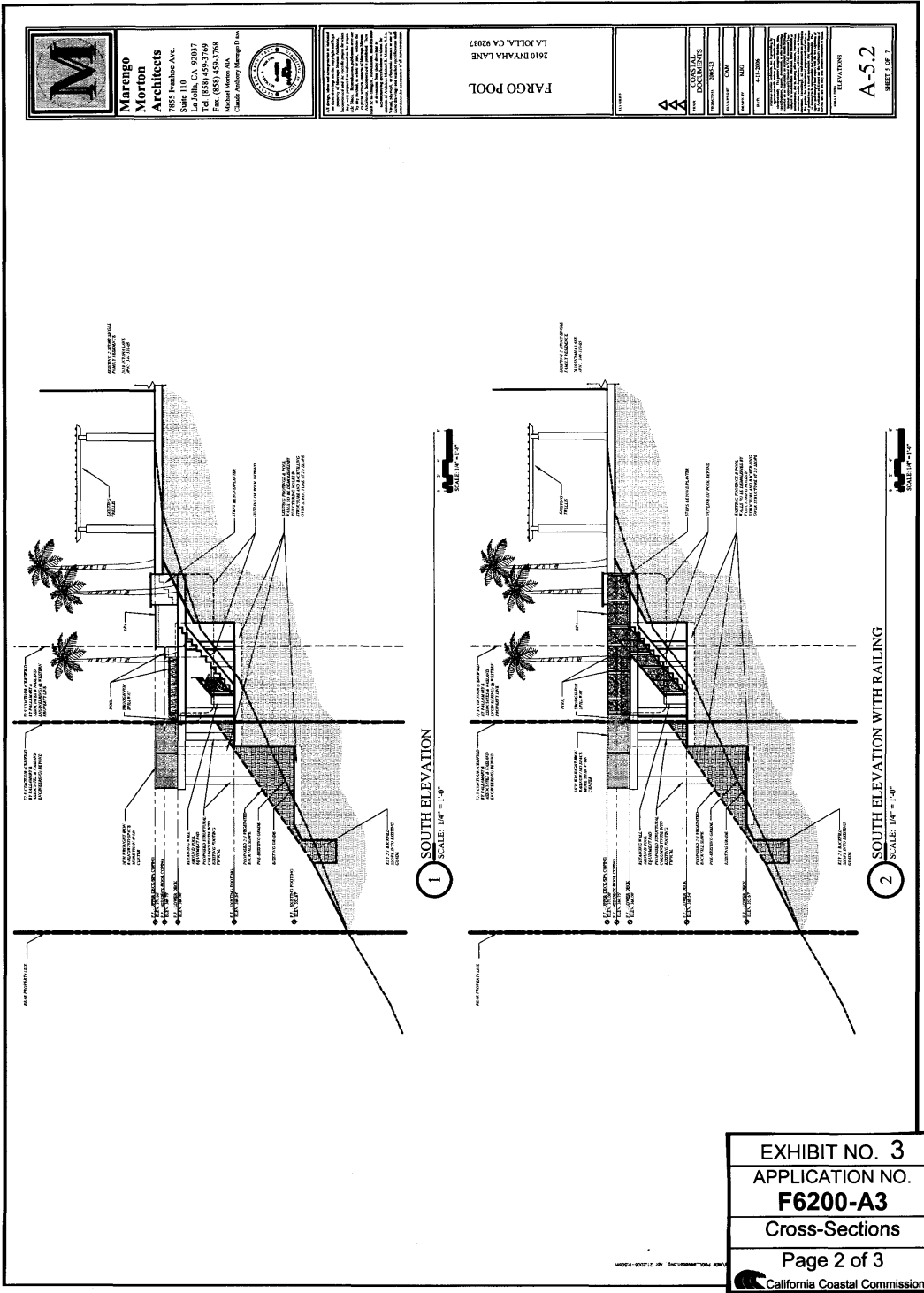
As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the steep hillside, visual resource and provisions of the certified LCP as well as with the public access policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is found consistent with the requirements of the Coastal Act to conform to CEQA.

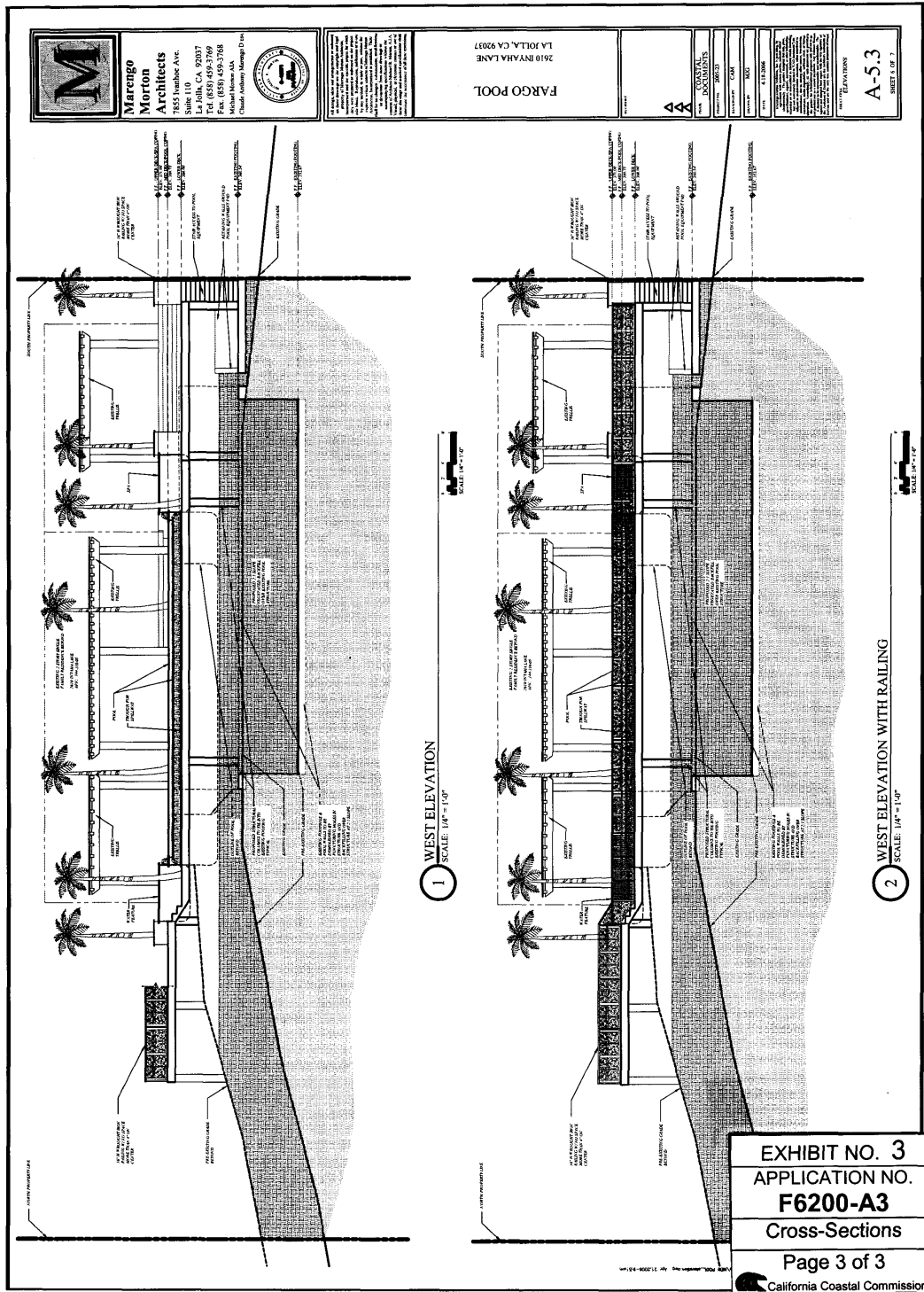


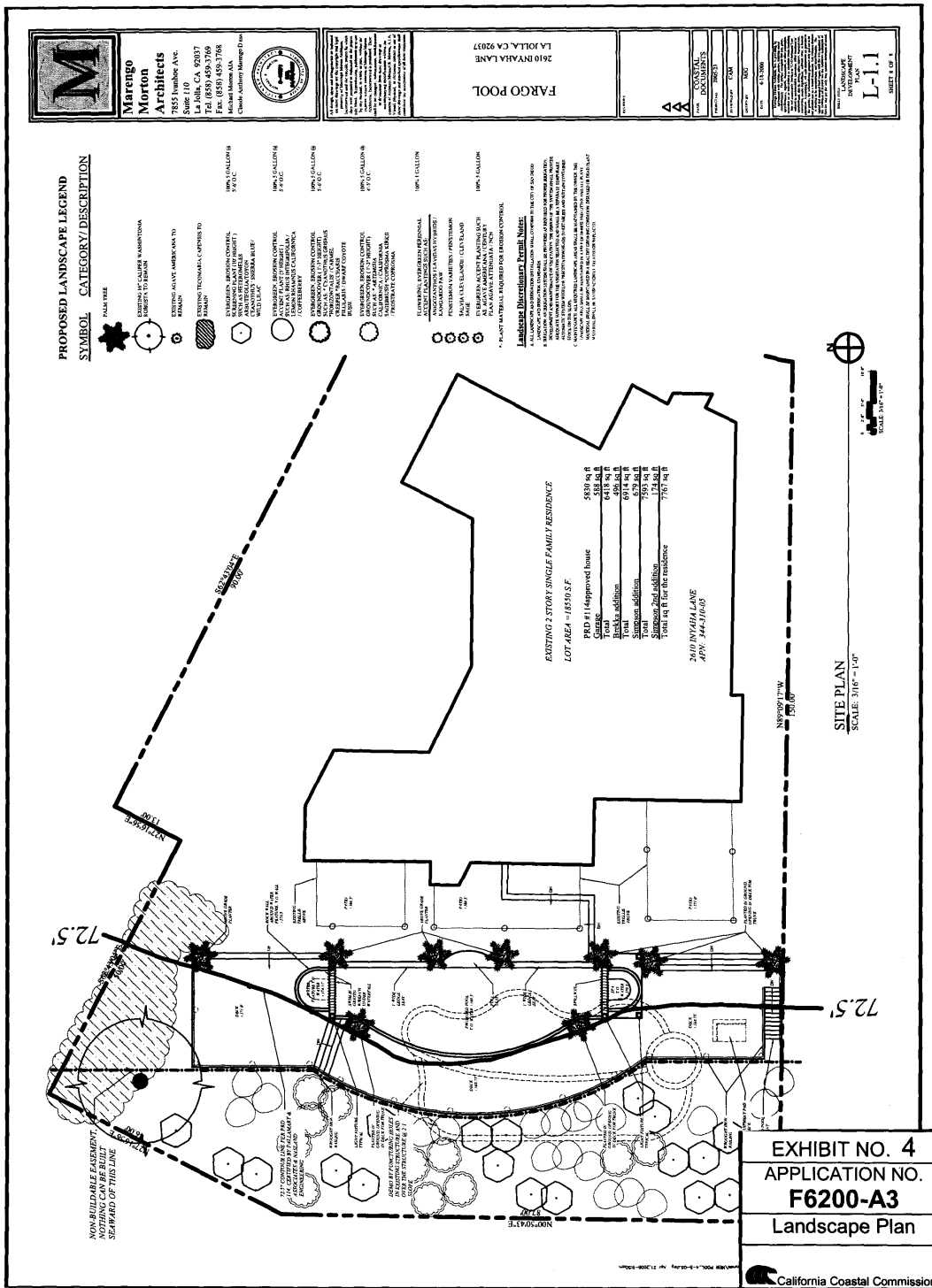
	Marango Morton Architects 7855 Lombard Ave. Suite 110 La Jolla, CA 92037 Tel (619) 469-3769 Fax (619) 469-3768 Michael Marango AIA Charles Anthony Marango D. des.			2610 DYANA LANE LA JOLLA, CA 92037		FARGO POOL	2610 DYANA LANE LA JOLLA, CA 92037	
	7855 Lombard Ave. Suite 110 La Jolla, CA 92037 Tel (619) 469-3769 Fax (619) 469-3768 Michael Marango AIA Charles Anthony Marango D. des.			2610 DYANA LANE LA JOLLA, CA 92037				

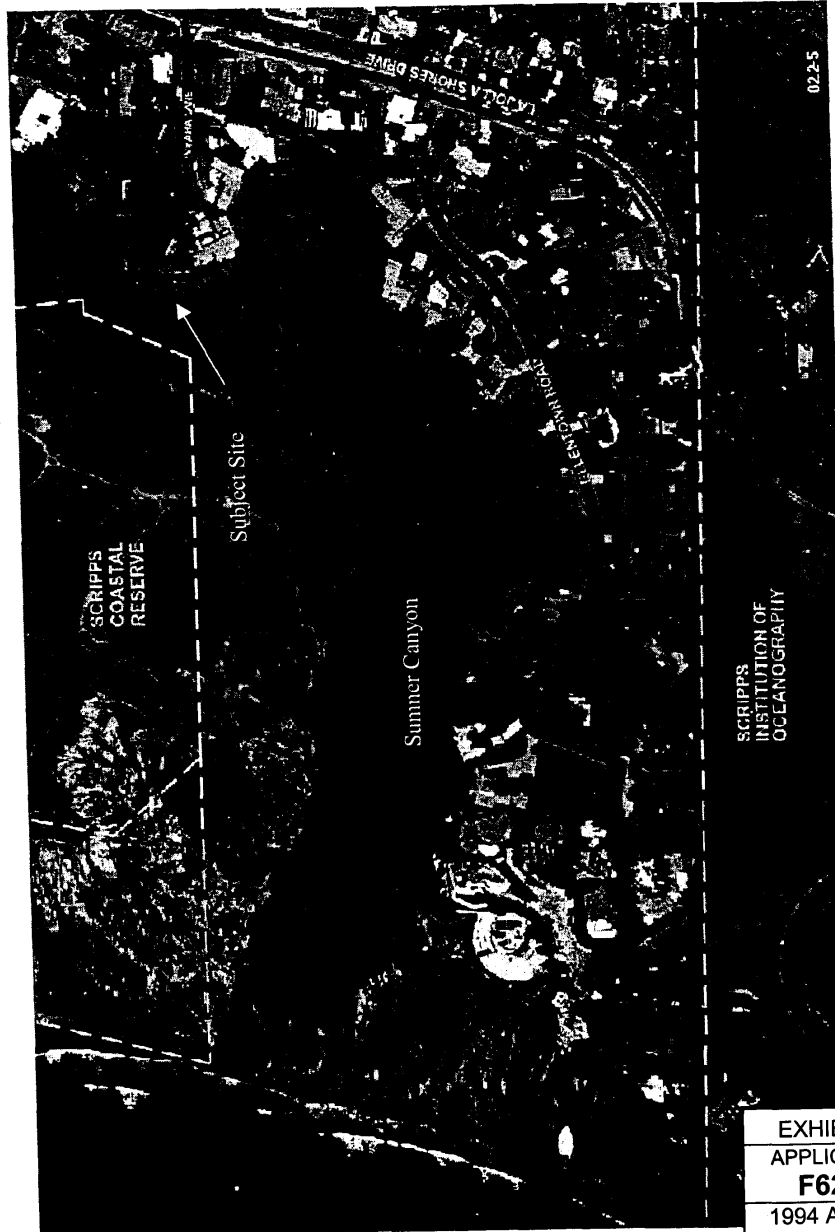













1994 Aerial view of site and surrounding area

EXHIBIT NO. 5
APPLICATION NO. F6200-A3
1994 Aerial of Site and Surrounding Area
 California Coastal Commission



NASLAND ENGINEERING

CIVIL ENGINEERING • SURVEYING • LAND PLANNING

March 30, 2006
N.E. Job No. 106-077.1

Victor Fargo
1055 Torrey Pines Road
La Jolla, CA 92038

Dear Mr. Fargo:

At your request, we have reviewed the site plan prepared by Mr. Michael Pallamary in connection with his efforts to depict the location of the "72.5" contour line as depicted by the orange line drawn on a copy of the 5-unit plan for the Inyaha Lane project on file with the California Coastal Commission; the copy dated 04/26/77. Other documents were also reviewed and considered including the 4-unit site plan for this property; dated 01/27/78.

After considerable effort, we are unable to offer a conclusive opinion as to the accuracy of Mr. Pallamary's work due to the fact that the underlying site plans are unreliable with respect to scale and position. Our review of the 04/26/77 plan along with other maps and records considered in this exercise discloses numerous inconsistencies and gross scaling errors. These are of such magnitude and random character that numerous interpretations can be made of these plans. Therefore, depending on which feature is held as being in a correct position, the contour line I question can be plotted in various locations. It is for this reason that we are unable to comfortably confirm or dispute Mr. Pallamary's work.

Unfortunately we are unable to provide you with a more definitive answer. As noted, if the plans were more accurate and did not contain so many conflicts and errors, I am confident we could have completed this task to our mutual satisfaction.


Thank you for this opportunity to be of service to you. If you have any questions or comments, please feel free to call.



Very Truly Yours,
NASLAND ENGINEERING

D.K. Nasland, P.E., P.L.S.
Principal

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EXHIBIT NO. 6
APPLICATION NO.
F6200-A3
Third Party Review
 California Coastal Commission