

CALIFORNIA COASTAL COMMISSION

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Thu 18g

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REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-06-104

Applicant: VAMS, LLC

Agent: Matthew Peterson

Description: Construction of an approximately 150 sq. ft. first floor (above basement garage) addition to an existing approximately 3,201 sq. ft. two-story single-family residence on an approximately 5,525 sq. ft. blufftop lot and a request for an after-the-fact lot merger of a bluff face lot (Parcel B = 4,998 sq. ft.) and a blufftop lot (Parcel A = 5,525 sq. ft.).

Lot Area	5,525 sq. ft.
Building Coverage	1,830 sq. ft. (33%)
Pavement Coverage	1,701 sq. ft. (31 %)
Landscape Coverage	1,994 sq. ft. (36 %)
Parking Spaces	2
Zoning	MR 5-7 dua
Plan Designation	Medium Residential
Ht abv fin grade	24 feet

Site: 139 Pacific Avenue, Solana Beach, San Diego County
 APN 263-323-07 and 298-010-68.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff recommends that the Commission take one vote adopting a two-part resolution, which would approve portions of the development and deny other portions of the development. Staff recommends the Commission **approve** the applicant's request for the proposed residential addition since the addition will not require shoreline protection over its lifetime and is a relatively minor addition located approximately 82 ft. from the bluff edge. Special Conditions have been attached which require the applicant to assume all risk associated with the project, eliminate any blufftop irrigation devices, requires

Commission review of all future development on the site and requires submission of a thorough alternatives analysis with any future application request for shoreline protection.

Staff recommends that the Commission **deny** the applicant's request for after-the-fact merger of the bluff face lot with the blufftop lot since the bluff face lot is an unpermitted lot for which the applicant has not requested approval and because creation of the bluff face lot and subsequent conveyance of the lot to private ownership raises serious Coastal Act concerns regarding public access, recreation, and protection of natural landforms. The City of Solana Beach quitclaimed the publicly owned portion of the bluff face to the blufftop homeowner in 1988 without obtaining a required coastal development permit. Without the lot merger of the two lots, the existing home and the proposed addition, will exceed the floor area ratio requirements of the City's zoning code. However, even though the addition will result in the home exceeding City floor area ratio requirements, as conditioned, the proposed addition does not result in any adverse impacts on coastal resources and is consistent with Chapter 3 Policies of the Coastal Act

Standard of Review: Chapter 3 policies of the Coastal Act

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance; "Preliminary Geotechnical Investigation" by Coast Geotechnical, August 18, 2006; Certificate of Compliance Adjustment Plat No. 05-01; CDP #6-88-448/Peto, 6-5-130/O'Neal/City of Solana Beach.

I. PRELIMINARY STAFF RECOMMENDATION:

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

MOTION: *I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit No. 6-06-104, with the approval subject to the conditions recommended by staff, by adopting the two-part resolution set forth in the staff report.*

RESOLUTION:

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

The Commission hereby **GRANTS, as conditioned**, a coastal development permit for the portion of the project consisting of the addition of approximately 150 sq. ft. first floor addition and other interior improvements to an existing approximately 3,201 sq. ft. two-story single-family residence and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the

Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** a coastal development permit for the after-the-fact lot merger of the bluff face lot (Parcel B) and the blufftop lot (Parcel A) and adopts the findings set forth below, on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final site and building plans that have been approved by the City of Solana Beach and that substantially conform with the plans by Gregory J. Castle Architect, Inc. dated 8/8/06, but revised to include the following:

- a. Any existing permanent irrigation system located on the bluff top site shall be removed or capped and no new permanent irrigation system shall be installed.
- b. The existing residence and accessory improvements (i.e., decks, patios, walls, etc.) located on the site shall be detailed and drawn to scale on a surveyed site plan that is tied into stable monuments.

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

2. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff collapse and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards

in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. Future Response to Erosion. If in the future the permittee seeks a coastal development permit to construct bluff or shoreline protective devices, the permittee shall include in the permit application information concerning alternatives to the proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, public access and recreation and shoreline processes. Alternatives shall include but not be limited to: relocation of portions of the principle structures that are threatened, structural underpinning, and other remedial measures capable of protecting the principal structures and providing reasonable use of the property, without constructing bluff or shoreline stabilization devices. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission or the applicable certified local government to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting existing structures that are in danger from erosion. No shoreline protective devices shall be constructed in order to protect ancillary improvements (patios, decks, fences, landscaping, etc.) located between the principal residential structures and the ocean.

4. Future Development. This permit is only for the development described in coastal development permit No. 6-06-104. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the existing single family residence other than those authorized by coastal development permit No. 6-06-104, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations section 13252(a)-(b), shall require an amendment to permit No. 6-06-104 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

5. Deed Restriction. **PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant for this permit shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit.

The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The proposed development involves a request to construct an approximately 150 sq. ft. first floor addition on top of an existing approximately 429 sq. ft. basement garage that is attached to an approximately 3,201 sq. ft. two-story single-family residence. The existing residence is located as close as 40 ft. from the edge of the bluff and the proposed addition will be located approximately 82 ft. from the bluff edge. In addition to the 150 sq. ft. addition, the applicant is proposing a number of interior improvements such as removal of a fireplace, removal of several interior non-bearing walls, construction of new roof overhangs and installation of new windows and doors. The applicant is also requesting an after-the-fact lot merger of an approximately 4,998 bluff face lot with the subject approximately 5,525 sq. ft. blufftop lot in order to create an approximately 10,523 sq. ft. lot. The lot merger was approved by the City in 2006 and has already been recorded by the applicant without first obtaining the required coastal development permit. The bluff face lot was quitclaimed to the blufftop property owner in 1988 as part of the local government approval for the construction of the existing residence.

The existing residence was constructed in approximately 1989 pursuant to Coastal Development Permit #6-88-448 (Peto) which authorized the construction of an approximately 3,800 sq. ft. three-story, single-family residence (including garage) on an approximately 5,500 sq. ft. blufftop lot. In addition, the approval required the applicant to place a small section of the bluff face that was owned by the applicant within an open space deed restricted area to prohibit future development. The coastal development permit application for the home did not include a request for the bluff face to be quitclaimed to the blufftop property owner and the subsequent coastal permit did not authorize the quitclaim of the bluff face to the blufftop property owner. The bluff face lot was “carved-out” of a larger City owned lot that included the beach below the bluff and the bluff face to the south and north of the subject site. However, the creation of this bluff face lot did not subsequently receive a required coastal development permit and is, therefore, unpermitted.

The proposed development is located on a blufftop lot adjacent to the north side Fletcher Cove Beach Park, the City of Solana Beach’s primary beach access location. The City of Solana Beach has not yet prepared a Local Coastal Plan, therefore, Chapter 3 of the Coastal Act is the standard of review.

V. APPROVAL FINDINGS AND DECLARATIONS

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

1. Geologic Stability/Blufftop Development. The following Coastal Act Policies are applicable to the subject development:

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235

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

A. Blufftop Stability. The proposed development involves an approximately 150 sq. ft. first floor addition to the landward side of an existing approximately 3,201 sq. ft. two-story single-family residence on an approximately 5,525 sq. ft. blufftop. The existing home was constructed in approximately 1989 and is located as close as 40 ft. from an approximately 82 ft. high coastal bluff that is devoid of shoreline protective devices. The shoreline below the development site is a highly used recreation area used by the public for a variety of ocean and beach activities. In addition, Fletcher Cove Beach Park is located immediately south of the subject site and is the City's primary beach access point.

New development on the blufftop, whether it is a new residence or an addition to an existing residence, must be consistent with Section 30253 of the Coastal Act which requires the new development remain stable and not require a seawall or other shoreline protective device throughout its useful life. To make these findings for blufftop residences or residential additions in Solana Beach and Encinitas, the Commission has required that such developments be setback a "safe" distance from the bluff edge. In

previous permit actions, the Commission has required that new development observe a minimum setback of 40 feet from the top of the bluff that is supported by site specific geotechnical report documenting that the residence or residential additional will be sited at a safe location such that over its lifetime it will not require the construction of shoreline protection. However, because of the unstable nature of the bluffs along the Solana Beach shoreline it is likely setbacks in excess of 40 ft. will be required.

Because of the natural process of continual bluff retreat, coastal bluffs in this area are considered a hazard area and have threatened many blufftop homes. In October 2000, the Commission approved an approximately 50 ft.-long, 40 ft. in depth, 17 ft.-high seacave fill below the property located immediately north of the subject site (CDP #6-00-66/Pierce, Monroe). In October 1999, the Commission approved the fill of an approximately 400 ft. long section of seacave/undercut areas located 3 lots north of the subject site (CDP #6-99-103/Solana Beach Coastal Preservation Assoc.). In addition, immediately north of the seacave/undercut fills, the Commission approved the construction of an approximately 352 ft. long seawall, 35 ft. long seawall (CDP #6-99-100/Colton, et al.). Since then other seawalls have been approved north of the 352 ft. long seawall such that the bluffs commencing north of the subject site are fortified with shoreline protective devices for a distance of approximately 622 ft. (CDP #6-00-36/Corn, Scism; 6-00-138/Kinzel, Greenberg; and 6-02-002/Gregg, Santana). In addition, numerous shoreline protective devices have been approved to protect the condominiums that lie at the top of the bluffs approximately 300 ft. south of the subject site (Ref. 6-05-72/Las Brisas and 6-03-33/Surfsong). In addition, although it is not currently threatened, it is likely the existing residence on the subject site will require shoreline protection over the next 75 years, based on the information provided in the applicant's geotechnical report (Ref. "Preliminary Geotechnical Investigation" by Coast Geotechnical, August 18, 2006).

One of the reasons the bluffs along the Solana Beach shoreline are considered particularly hazardous and susceptible to failure involves the presence of a clean sand layer within the bluffs. This clean sands layer has previously been identified in geotechnical reports submitted in conjunction with seawall, seacave and notch infill projects along the City's shoreline both north and south of the subject site (ref. CDP Nos. 6-99-100/Presnell, et. al, 6-99-103/ Coastal Preservation Association, 6-00-66/Pierce, Monroe and 6-02-84/Scism, 6-00-9/Del Mar Beach Club, 6-00-138/Kinzel, Greenberg, 6-02-2/Gregg, Santana and 6-03-33/Surfsong). In addition, while not currently exposed on the subject bluff face, the clean sands layer has become exposed on the lot to the immediate south below the Fletcher Cove Park community center.

According to the Commission's staff geologist, the typical mechanism of sea cliff retreat along the Solana Beach shoreline involves the slow abrasion and undercutting of the Torrey Sandstone bedrock, which forms the sea cliff at the base of the bluffs, from wave action which becomes more pronounced in periods of storms, high surf and high tides. Other contributing factors to sea cliff retreat include fracturing, jointing, sea cave and overhang collapse and the lack of sand along the shoreline. When the lower sea cliff is undercut sufficiently, it commonly fails in blocks. The weaker terrace deposits are then

unsupported, resulting in the collapse of the terrace deposits through circular failures. Such paired, episodic failures eventually result in a reduction in the steepness of the upper bluff, and the landward retreat of the bluff edge. Such retreat may threaten structures at the top of the slope. When failures of the upper bluff have sufficiently reduced the overall gradient of the upper bluff, a period of relative stability ensues, which persists until the lower bluff becomes sufficiently undercut to initiate a block failure once more, triggering a repetition of the entire process. The mechanism of bluff retreat that occurs in conjunction with the exposure of the clean sand layer is somewhat different than the paired, episodic failure model described above. Because of the cohesionless character of the clean sands, once they are exposed they continue to slump on an ongoing basis as a result of very small triggers such as traffic vibrations or wind erosion.

The applicant has submitted a geotechnical report for the subject site relating to a proposed addition that includes a site-specific quantitative slope stability analyses and an estimation of the long-term erosion rate for the area. The analysis has taken into account the exposed clean sands layer on the bluff. The slope stability analysis measures the likelihood of a landslide at the subject site. According to the applicant's geotechnical report, a minimum factor of safety of 1.5 (the industry standard) against a landslide is approximately 25 ft. landward of the edge of the bluff on the southerly portion of the lot and approximately 53 landward of the edge of the bluff on the northerly portion of the lot. (The factor of safety is an indicator of slope stability where a value of 1.5 is the industry-standard value for new development. In theory, failure should occur when the factor of safety drops to 1.0, and no slope should have a factor of safety less than 1.0.) This implies that the proposed addition which is setback approximately 82 ft. from the southerly bluff edge and approximately 104 ft. from the northerly bluff edge will be safe from erosion over 75 years. However, in addition to the landslide potential, the bluff will be subject to long-term erosion and retreat and the geologic setback will need to be based on an accurate estimate of this retreat rate as well.

The applicant's geotechnical report estimates a long-term erosion rate for the area at approximately .27 per year. This translates into approximately 20 ft. over 75 years. However, based on a review of this report by the Commission's technical services division, the estimate is not based on site-specific information. In the absence of site-specific data, regional data from the literature may be substituted. The current state-of-the-art for establishing bluff retreat rates in this area is a FEMA-funded study done as part of a nationwide assessment of coastal erosion hazards. Data presented in Benumof and Griggs (1999), indicate that the long-term bluff retreat in the general area is from 0.15 to 0.49 feet per year. To allow for accelerated average bluff retreat rates in the future, which are a likely result of any acceleration in the rate of sea level rise, it is appropriate to establish the setback for new development on the basis of the larger value (0.49 ft/yr). Given an estimated 75-year design life, about 37 feet of erosion might be expected to occur at the subject site based on this historic long-term erosion rate. Based on the combination of slope stability analyses that estimates a minimum factor of safety of 1.5 at 25 ft. along the southern portion of the lot and approximately 53 ft. from the northern section of the bluff edge and the estimated erosion rate of .49 ft. per year, the Commission would typically require that any new development at the subject site be

located a minimum of approximately 62 ft. landward of the southerly bluff edge and approximately 90 ft. landward of the northerly bluff edge. In addition, the Commission has in the past also required an additional 10 ft. buffer to allow for surficial slumping and to allow for uncertainties in the analysis. In this case, it would translate into a setback of 72 ft. from the southerly bluff edge and approximately 100 ft. from the northerly bluff edge. In this case, the proposed addition will be located approximately 82 ft. from the southerly bluff edge and approximately 104 ft. from the northerly bluff edge. Therefore, based on the geotechnical information provided by the applicant and as revised to incorporate a more up-to-date erosion rate estimation, sufficient documentation has been provided to assure the proposed residential addition at 82 ft. from the bluff edge will not be threatened over its lifetime and will not require shoreline protection. Based on this, the proposed addition is consistent with the requirements of Section 30253 of the Coastal Act and will.

However, based on the applicant's slope stability analyses it appears that the existing home may be threatened by erosion over the next 75 years. In approving the existing residence in 1988, the Commission had been provided geotechnical information identifying that the residence would not be threatened over its lifetime if it were sited at least 40 ft. from the bluff edge. However, the existence of the clean sands layer within the bluffs was not known to the Commission or the applicant's geotechnical representatives at that time and since then more accurate long-term erosion rate data has been collected for the Solana Beach/Encinitas shoreline. Since shoreline protection may be required in the future to protect the existing residence, Special Condition #3 notifies the applicant that any future request for shoreline protective devices must include a thorough alternatives analyses to any proposed bluff or shoreline protection that will eliminate impacts to scenic visual resources, public access and recreation and shoreline processes. In addition, Special Condition #1b has been attached which requires the applicant identify on the final plans the location of the residence and all accessory improvements including, but not limited to, decks, patio and walls tied to monument markers. In the future, this information can be used to establish site specific erosion rates as well as to identify the location of all authorized development and those accessory improvements that do may not qualify for shoreline protection.

In addition, although the applicant asserts that the proposed development can be constructed safely despite ongoing erosion and the potential of landslide, the bluffs along the Solana Beach shoreline are known to be hazardous and unpredictable. Given that the applicant has chosen to construct a residential addition despite these risks, the applicant must assume the risks. Accordingly, Special Condition #2 requires the applicant to acknowledge the risks and indemnify the Commission against claims for damages that may occur as a result of its approval of this permit. In addition, Special Condition #5 requires the applicant to record a deed restriction imposing the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

B. Retention of Structures in Hazardous Locations. The applicant proposes to add approximately 150 sq. ft. to the existing approximately 3,201 sq. ft. one-story single-family residence which is located as close as 40 ft. from the edge of the bluff. In addition, the applicant is proposing a number of internal improvements throughout the

existing residence that include the removal of a fireplace and several interior non-bearing walls, construction of new roof overhangs and installation of new windows and doors. The City's municipal code requires residential structures on blufftop lots be setback a minimum of 40 feet landward of the bluff edge unless an engineering geology report is prepared that certifies a setback of less than 40 feet (but not less than 25 feet) is adequate to assure the residence will be safe from erosion over an estimated 70 years. As identified above, the Commission has more recently found that the appropriate setback for new development must be based on site-specific geologic stability analysis such that a property owner, the City and the Commission can no longer assume a 40 ft. setback established in a zoning code is sufficient. In this case, that setback for new development may be as much as 100 ft. from the northerly bluff edge and up to 74 from the southerly bluff edge.

In the context of proposals to enlarge and reconstruct existing structures, the Commission has in some instances required such structures be brought into conformity with shoreline hazards policies of the Coastal Act or certified LCPs if the reconstruction results in essentially a new residence (Ref. A-6-LJS-99-160/Summit Resources). Also, in its recent action on the Malibu LCP, the Commission certified ordinances that identify when repair and maintenance or improvements to existing blufftop structures would not require the entire structure be brought into conformance with the certified standards for new development. These criteria include when there is no demolition and/or reconstruction that results in replacement of more than 50 percent of the existing structure, and when additions do not increase the size of the structure by more than 50 percent. In this instance, although much of the existing structure is in a location where the Commission could not now authorize new development due to the potential need for shoreline protection in the future, the proposed development does not result in a new home and the new addition to the existing structure is fairly minor in scope and meets the above stated criteria. The proposed development, therefore, does not warrant requiring the entire existing structure to be brought into conformity with Chapter 3 policies regarding shoreline development. However, to assure that future improvements to the residence do not occur without review by the Commission, Special Condition #4 requires that all future modifications that otherwise may be exempt from the need of a coastal permit must be reviewed and approved by the Commission as an amendment to the subject permit or as a new coastal development permit.

Therefore, based on the geotechnical information submitted by the applicant and concurred with by the Commission's technical services division, the proposed residential addition will likely be safe over its lifetime and so as to not require shoreline protection. In addition, the proposed addition and interior improvements are minor nature such that the existing residence does not need to be brought into conformity with shoreline hazards policies of the Coastal Act. As conditioned, the proposed development is consistent with Section 30253 and 30235 of the Coastal Act.

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

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

The proposed development will be located at the top of the bluffs overlooking the Pacific Ocean. As such, drainage and run-off from the development could potentially affect water quality of coastal waters as well as adversely affect the stability of the bluffs. To reduce the risk associated with unattended running or broken irrigation systems, Special Condition #1 restricts the property owner from installing permanent irrigation devices and requires the removal or capping of any existing permanent irrigations systems. In addition, in order to protect coastal waters from the adverse effects of polluted runoff, the Commission has typically required that all runoff from impervious surfaces be directed through landscaping as filter mechanism prior to its discharge into the street. In this case, however, directing runoff into blufftop landscape areas could have an adverse effect on bluff stability by increasing the amount of ground water within the bluff material can lead to bluff failures. Therefore, in this case, reducing the potential for water to be retained on the site, will be more protective of coastal resources. In addition, no changes to the existing on-site landscaping is proposed with this application. The restriction on irrigation will minimize the amount of polluted runoff from the property to the extent feasible. Therefore, the Commission finds the proposed project consistent with Sections 30231 of the Coastal Act.

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

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The subject development involves additions to an existing single-story blufftop residence. The proposed additions will occur on the landward side of the existing residence and the additions will not exceed the height of the existing structure. Although the existing development is visible from the beach below, the proposed additions will not likely be visible from the beach since views of the addition will be blocked by the existing residence. In addition, views across the site to the shoreline are not currently available. The proposed development does raise issues regarding the project's compliance with the City's floor-to-area ratio (FAR) requirements, but in this instance the FAR does not raise any Coastal Act concerns regarding visibility or compatibility with neighborhood character. Therefore, it is not anticipated that the proposed development will have any

adverse effect on scenic or visual resources such that the project is consistent with Section 30251 of the Coastal Act.

4. Public Access/Recreation. Section 30212 of the Coastal Act requires, 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, . . .

The subject site is located between the Pacific Ocean and the first public roadway, which in this case is Pacific Avenue. The project site is located within a developed single-family residential neighborhood. Adequate public access to the shoreline is currently available at Fletcher Cove Beach Park which is located less than 200 ft. south of the subject site. Therefore, vertical access through the site is not necessary nor warranted, given the fragile nature of the bluffs and the availability of public access nearby. As previously discussed, new development which would require the construction of shoreline protective devices over the lifetime of the development would be inconsistent with Section 30253 of the Coastal Act. Because shoreline protective devices such as seawalls are typically located on the public beach and adversely affect sand supply, public access would also adversely affected. However, in this case, the landward additions to the existing single-family residence will not themselves require the construction of shoreline protective structures. Based on the applicants' geotechnical report, shoreline protection may be required in the future to protect the existing residence which if threatened could be consistent with the Coastal Act. However, because the proposed additions will not themselves result in the need to construct shoreline devices, the proposed project will have no direct impact on public access, consistent with the public access policies of the Coastal Act.

6. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

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

In preparation of an LCP, the City of Solana Beach is faced with many of the same issues as the City of Encinitas, located immediately north of Solana Beach, whose LCP was certified by the Commission in March 1995. The City of Encinitas' LCP includes the intent to prepare a comprehensive plan to address the coastal bluff recession and

shoreline erosion problems in the City. The plan will include at a minimum, bluff top setback requirements for new development and redevelopment; regulations for non-conforming structures, alternatives to shore/bluff protection such as beach sand replenishment, removal of threatened portions of a residence or the entire residence or underpinning existing structures; addressing bluff stability and the need for protective measures over the entire bluff (lower, mid and upper); impacts of shoreline structures on beach and sand area as well as mitigation for such impacts; impacts from groundwater and irrigation on bluff stability and visual impacts of necessary/required protective structures.

The bluffs in this section of the Solana Beach coastline are mostly in public ownership. Approval of blufftop development that results in substantial additions to existing nonconforming structures would send a signal that there is no need to address a range of non-structural alternatives to protect both the public bluffs and beaches and existing development such as those identified above. It would be premature to commit the entire Solana Beach shoreline to armoring without a thorough analysis of alternatives that include bringing nonconforming structures into conformity. Planning for comprehensive protective measures should include a combination of approaches including limits on future bluff development, ground and surface water controls, beach replenishment, continual lower bluff protection when required and constructed in substantial segments, groundwater control, and/or seacave and notch fills as preventative measures. Decisions regarding future bluff and shoreline protection must be done through a comprehensive planning effort that analyzes the impact of approving such protection on the entire City shoreline. These issues of shoreline planning will need to be addressed in a comprehensive manner in the future through the City's LCP certification process.

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

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

The proposed project has been conditioned in order to be found consistent with the future development, public access, and geologic stability policies of the Coastal Act. Mitigation measures, including restrictions addressing assumption of risk, future development, submittal of final project plans and a prohibition of permanent irrigation devices, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

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

VI. DENIAL FINDINGS AND DECLARATIONS

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

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description For Lot Merger. The proposed development request also involves a request for an after-the-fact lot merger of the approximately 4,998 bluff face lot with the approximately 5,525 sq. ft. blufftop lot in order to create an approximately 10,523 sq. ft. lot. The lot merger was approved by the City in 2006 and has already been recorded by the applicant without first obtaining the required coastal development permit. The lot merger was approved by the City in order to resolve an existing non-conformity in that the existing home along with the proposed addition exceeds the Floor Area Ratio (FAR) for the subject lot. By merging the lots, the square footage of the existing home along with the proposed addition will conform to the City's FAR requirements.

2. Findings for Denial of the Lot Merger. The Commission cannot approve the lot merger because the bluff face lot is not a legal lot. In 1988 the City of Solana Beach approved a resolution to allow the transfer of publicly owned coastal bluff face to each blufftop homeowner whenever development on the blufftop lot was proposed (Resolution No. 88-45). The purpose of the resolution was to transfer the liability associated with the eroding bluff and any future shoreline device to the blufftop homeowner. Since 1988, the City has created and quitclaimed approximately 6 or 7 bluff face lots to the blufftop property owners including the subject property which was quitclaimed as part of the City approval of the existing single-family home (Ref. Resolution 88-81 and CDP No. 6-88-448/Peto). However, in approving the coastal development permit for the home in 1998 a request for the creation of the bluff face lot was not included and the subsequent coastal permit did not authorize the creation of the bluff face lot.

Land divisions such as the "carving out" of lots from publicly owned land constitutes development under the Coastal Act and requires a coastal development permit. However, although new lots have been divided from the larger City owned beach and bluff face lot, no coastal development permits have ever been approved for these quitclaimed lots and, therefore, each of these quitclaimed lots are unpermitted. Therefore, since the bluff face lot proposed to be merged is not a legal lot, the applicant's request to merge the unpermitted lot with the blufftop lot must be denied.

In addition, even if the applicant and the City were to request an after-the-fact application for dividing the bluff face lot and the creation of a new lot, such a request would not likely be approved because the transfer of publicly owned bluff face to private owners raises a number of Coastal Act consistency concerns related to scenic resources, public access, recreation and shoreline sand supply.

The following Chapter 3 policies are applicable:

Section 30210

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.

Section 30240

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

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30253

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. . . .

In 1995, the Commission denied a request by the City and a property owner for a lot line adjustment to transfer the bluff face to the blufftop property owner at 211 Pacific Avenue approximately 5 lots north of the subject site (Ref. 6-5-130/O'Neal, City of Solana Beach). The Commission found that the transfer of the public bluff face would have adverse impacts to public access in that over time, the bluff face area would erode back to create beach area which potentially would be privately owned. The private ownership of a section of the beach could, therefore, interfere or hinder public access and recreation along of the shoreline. In addition, the Commission found that the scenic quality and geologic stability of the bluffs is better served by the retention of the bluff face in public ownership in that transferring to private ownership raises the potential of unpermitted development on the bluff face. The Commission noted, for example, that in the City of Encinitas, those portions of the bluff face owned privately have a larger number of unpermitted stairways and terraces than those which are privately owned.

As previously identified, denial of the lot merger does not render the proposed 150 sq. ft. addition inconsistent with Coastal Act requirements. However, approval of the addition and denial of the lot merger will not resolve the legal status of the unpermitted bluff face lot.

In summary, the proposed lot merger cannot be approved because the bluff face lot has not received the required Coastal Act authorization. In addition, approving the lot merger and thereby acquiescing to the creation of the bluff face lot would be inconsistent with Sections 30210, 30240, 30251 and 30253 of the Act and must be denied.

3. Unpermitted Development. Unpermitted development has occurred on the subject site in the form of a subdivision of the bluff face lot without the required coastal development permit. Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. The Commission's action on the applications does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

4. Local Coastal Planning. Section 30604 (a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

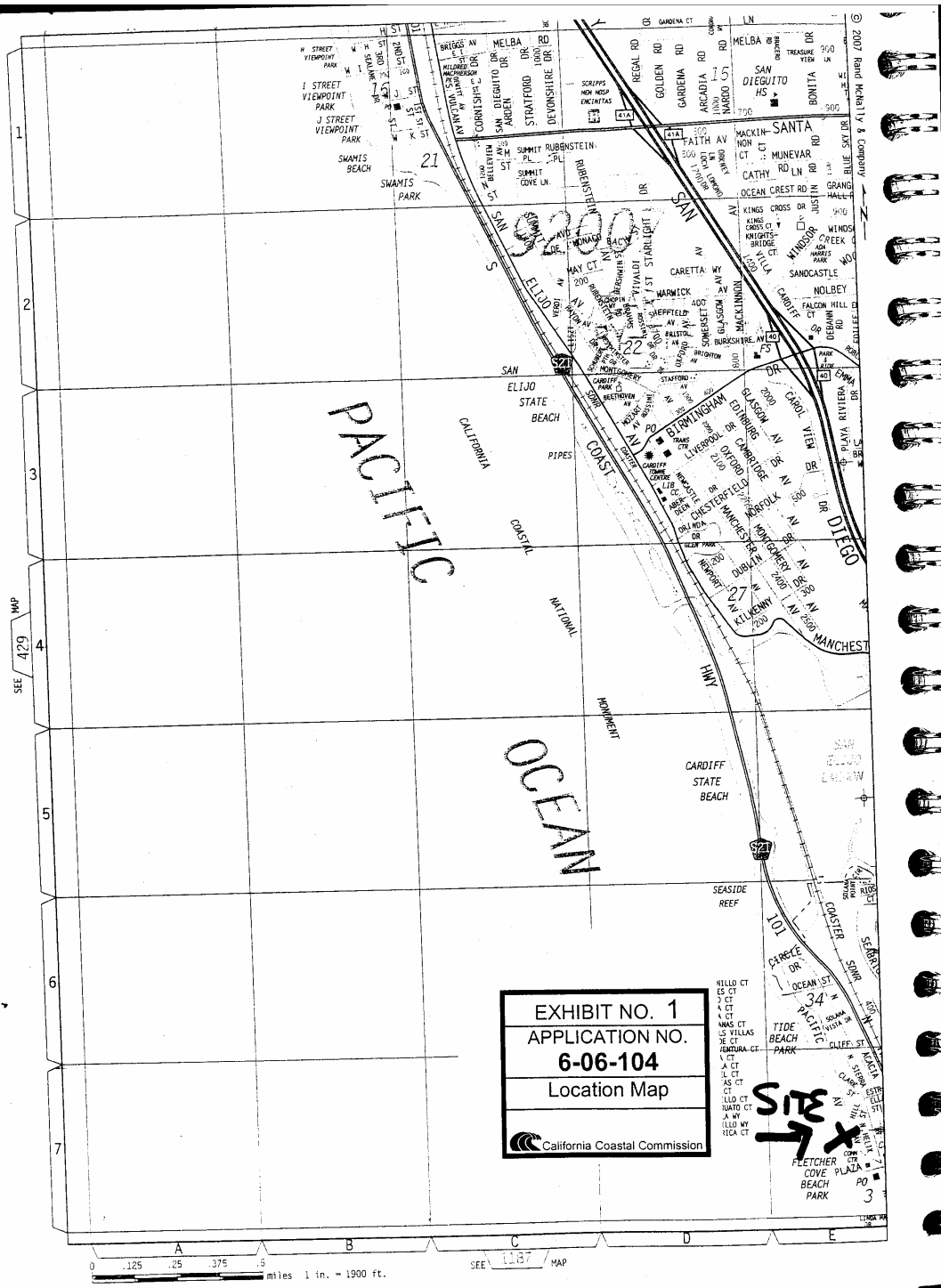
The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. The City is currently preparing an LCP for submittal to the Commission for review.

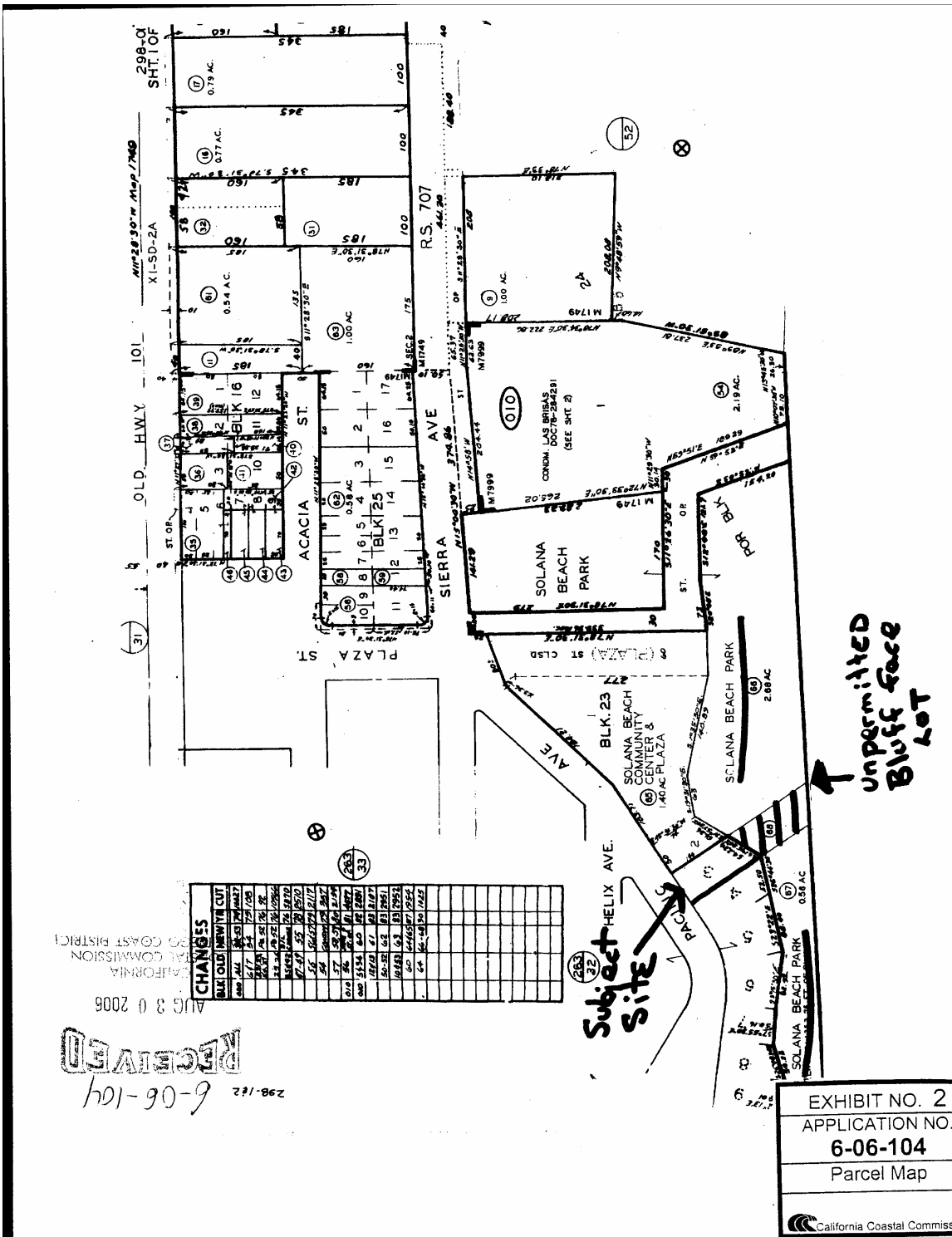
In preparation of an LCP, the City of Solana Beach is faced with many of the same issues as the City of Encinitas, located immediately north of Solana Beach, whose LCP was certified by the Commission in March 1995. The City of Encinitas' LCP includes the intent to prepare a comprehensive plan to address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

The City of Solana Beach is currently in the process of developing its LCP. In the case of the subject development to merge the bluff face lot with the blufftop lot, the merger has been found to be inconsistent with the Chapter 3 policies of the Coastal Act in that the merger would adversely affect scenic resources, public access and recreation. The Commission therefore finds that approval of the lot merger would prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program and denies the request.

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

As described above, the proposed lot merger would have adverse environmental impacts. There are feasible alternatives or mitigation measures available such as the no project alternative that would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.



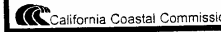


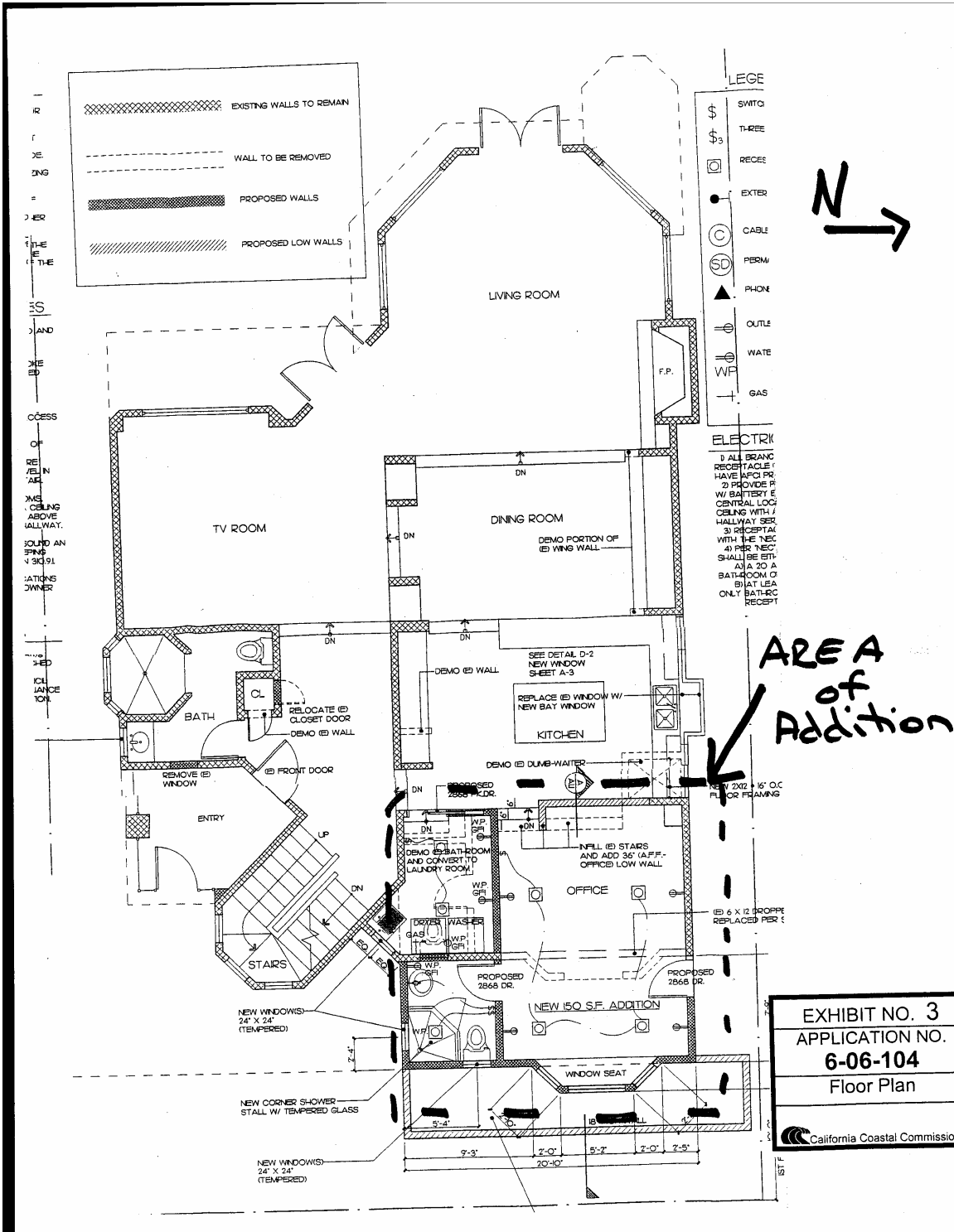
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6-06-104
298-162

AUG 3 0 2006
CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT

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EXHIBIT NO. 2
APPLICATION NO.
6-06-104
Parcel Map







FRONT ELEVATION

EXHIBIT NO. 4
APPLICATION NO.
6-06-104
Front Elevation
 California Coastal Commission

6-06-104

LOT CONSOLIDATION PLAT

PACIFIC AVENUE
(50.00 FEET WIDE)

RECEIVED

AUG 30 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COUNTY DISTRICT

N44°29'30"W 50.00'

139 PACIFIC
EXIST.
HOUSE

121.00'

N45°39'59"E

200'±

PARCEL "A"
5525 SQ. FT±

PARCEL "B"
4998 SQ. FT±

TOTAL = 10523 SQ FT±
LOT SIZE

TOE OF BLUFF

100.00'

N45°39'59"E

218'±

24

1724

BLOCK

MAP

SCALE 1"=30'

EXHIBIT NO. 5
APPLICATION NO. 6-06-104
Lot Consolidation Plat
 California Coastal Commission

DOC # 2006-0493787



JUL 13, 2006 12:12 PM

Recording Requested and
When recorded mail to:

City of Solana Beach
Office of City Clerk
635 South Highway 101
Solana Beach, CA 92075

5819

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 14.00
PAGES: 3



2006-0493787

SPACE ABOVE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

(Section 66499.35 of the Government Code)

The City Engineer has determined that the real property described below has been divided or has resulted from a division or combining of lots in compliance with the Subdivision Map Act and with the provisions of the Solana Beach Municipal Code pursuant thereto.

OWNER: VANS LLC, A DELAWARE LIMITED LIABILITY CO.
ADDRESS: 139 PACIFIC AVENUE, SOLANA BEACH, CA (LOT 3, BK 24, M1749)
ASSESSOR'S PARCEL NO: 263-323-07

OWNER: PAP LLC, A DELAWARE LIMITED LIABILITY CO.
ADDRESS: 139 PACIFIC AVENUE, SOLANA BEACH, CA (BLUFF)
ASSESSOR'S PARCEL NO: 298-010-68

DESCRIPTION: (See Exhibit "A" and "B" attached)

NOTE: The description of Exhibit A attached has been provided by the owner of the property and neither the City of Solana Beach or any of its officers or employees assume responsibility for the accuracy of said description.

This Certificate of Compliance shall have no force and effect if the above owners or any subsequent transferee or assignee acquires any contiguous property other than a lot or lots shown on a recorded subdivision map, parcel map or record of survey map filed pursuant to and prior to repeal (Stats. 1955, Ch.1593) of Section 11575 of the Business and Professions Code.

This Certificate of Compliance shall in no way affect the requireme county, state or federal agency that regulates development of real prop

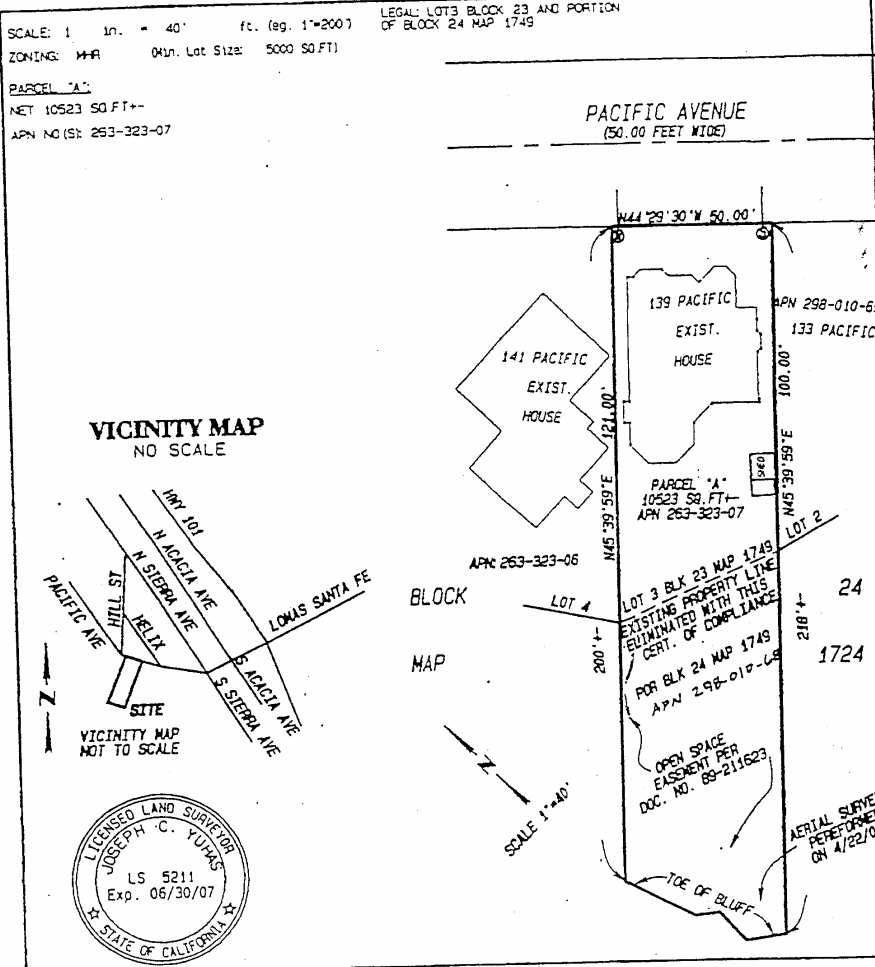
By Chandra P. Collure Date July 10, 2006
CHANDRA P. COLLURE,
City Engineer RCE 31567

Adjustmer

EXHIBIT NO. 6
APPLICATION NO.
6-06-104
Certificate of Compliance for Lot Merger
California Coastal Commission

5820

LOT CONSOLIDATION PLAT ATTACHMENT 'A'



REVIEWED BY: *J. Yuhas*
DATE: 10-17-05

CITY ENGINEER: *Michael P. ...*
DATE: July 10, 2006

PLAT NO. 05-01

PARCEL A OWNER: VAMS LLC, A DELAWARE LIMITED LIABILITY CO. ADDRESS: 139 PACIFIC AVENUE
CITY: SOLANA BEACH ZIP: 92075 P.O.E.

PARCEL B OWNER: PAP LLC, A DELAWARE LIMITED LIABILITY CO. ADDRESS: 139 PACIFIC AVENUE
CITY: SOLANA BEACH ZIP: 92075 P.O.E.

THIS PLAT WAS PREPARED WITH MY/OUR KNOWLEDGE AND CONSENT: *Alexander Yuhas (President VAMS LLC)* *Alexander Yuhas (President PAP LLC)*

PARCEL C OWNER(S): N/A MAP PREPARED BY: *Joseph C. Yuhas* LS 5211

ADDRESS: N/A ADDRESS: 535 N. HIGHWAY 101
CITY: SOLANA BEACH, CA ZIP: 92075 P.O.E. 259-8212

EXHIBIT 'A'

ATTACHMENT 'B' 5821

PARCEL "A"

LEGAL DESCRIPTION

LOT 3 IN BLOCK 23 TOGETHER WITH ALL THAT PORTION OF BLOCK 24 LYING BETWEEN THE WESTERLY PROLONGATIONS OF THE NORTHERLY AND SOUTHERLY LINES OF SAID LOT 3, OF SOLANA BEACH, IN THE CITY OF SOLANA BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO 1749, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY MARCH 5, 1923.

EXCEPTING THEREFROM THAT PORTION THEREOF LYING SEAWARD OF THE TOE OF THE BLUFFS.



EXHIBIT 'B'