

CALIFORNIA COASTAL COMMISSION

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Staff: Gary Cannon-SD
Staff Report: April 19, 2007
Hearing Date: May 9-11, 2007

F10b

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-138-A1

Applicant: Renita Greenberg

Agent: Bob Trettin

Original

Description: Construction of an approximately 15 foot-high, 100 foot-long, 2 foot-wide tiedback concrete seawall at the toe of the bluff; a below-grade upper bluff retention system consisting of 16 piers placed eight-foot on center in the rear yards of the residential structures extending for approximately 100 feet in length; one row of tiebacks at elevation +19 (MSL) and; chemical grouting of an area of exposed clean sands approximately 100 feet-long and 8 feet in depth located at approximate elevation +25 to +30 ft (MSL) on the face of the bluff. The face of the proposed seawall has been designed for coloring, texturing and sculpting to allow for a more natural appearance. The chemical grouting and tiebacks are currently being installed, pursuant to an emergency permit.

Proposed

Amendment: Installation of colored and sculpted shotcrete over the exposed portions of a below-grade upper bluff retention system and removal of an approximately 12 ft. long, 3 ft. wide section of an overhanging concrete slab that extends seaward of the below grade piers on the north side of the property. Also proposed are additional shotcrete applications as necessary for visual treatment in the future as additional portions of the retention system become exposed.

Site: On the bluff below 327 Pacific Avenue, Solana Beach, San Diego County.
APN #263-301-11

STAFF NOTES:

The City of Solana Beach does not yet have a certified LCP. Therefore, Chapter 3 policies of the Coastal Act is the standard of review.

Summary of Staff's Preliminary Recommendation: Staff is recommending approval, with special conditions, of the proposed color and texture treatment of the exposed sections of the retention system and removal of the overhanging concrete. The project

will serve to mitigate the adverse visual impacts associated with the exposure of the upper bluff retention system that lies within the bluff. The subject development was constructed pursuant to emergency permits in approximately 2001. Subsequently the Commission approved a regular coastal development permit for that emergency work, however, the applicants of the regular permit have not yet satisfied the Special Conditions of approval and the permit has not been issued. The subject amendment request has been conditioned to require the applicant to satisfy the original permit conditions prior to release of the subject permit amendment. In addition, the project has been conditioned to require the applicant to remove all portions of concrete that hang over the edge of the upper bluff retention system, prohibits the use of clear glass in any proposed windscreen/fencing so as to inhibit bird strikes, requires the applicant to assume all risk associated with the project and notifies the applicant that all previous conditions of the original permit remain applicable.

Substantive File Documents: City of Solana Beach General Plan and Zoning Ordinance San Diego County LCP; Conditional Use Permit #17-00-20; "Preliminary Geotechnical Evaluation of Coastal Bluff 325 and 327 Pacific Avenue, Solana Beach" by Soil Engineering Construction dated June 26, 2000; "Alternative Analysis 325 and 327 Pacific Avenue" by Soil Engineering Construction (not dated); CDP Nos. 6-84-579/Valenta, 6-00-91-G/Kinzel, Greenberg; 6-00-002/Gregg, Santana; 6-00-138/Kinzel, Greenberg and; 6-01-163-G/Kinzel, Greenberg

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 6-00-138 pursuant to the staff recommendation.*

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 Chapter 3 of the Coastal Act and 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. 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. 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 AMENDMENT**, the applicant shall submit for review and written approval of the Executive Director final plans for the concrete covering of the exposed upper bluff retention system and removal of overhanging sections of concrete and Plexiglas wall. Said plans shall first be approved by the City of Solana Beach and be in substantial conformance with the submitted plans dated 8/23/06 by Soil Engineering Construction except that they shall be revised as follows:

- a. All portions of the overhanging sections of concrete seaward of the upper bluff retention system shall be removed.
- b. The Plexiglas windscreen located seaward of the existing upper bluff retention system shall be removed. Any replaced windscreen or other wall shall not exceed 42 inches in height and shall be installed 5 ft. landward of the bluff edge. Any Plexiglas or other glass wall shall be non-clear, tinted, frosted or incorporate other elements to inhibit bird strikes.

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. Issuance of Original Permit. **WITHIN 90 DAYS OF COMMISSION ACTION AND PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall satisfy all prior to issuance conditions of Coastal Development Permit #6-00-138.

3. Storage and Staging Areas/Access Corridors. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and written approval, final plans indicating the location of access corridors to the construction site and staging areas. The final plans shall indicate that:

- a. No overnight storage of equipment or materials shall occur on sandy beach or within Fletcher Cove public parking spaces. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to construct the seawall. Construction equipment shall not be washed on the beach or in the Fletcher Cove parking lot.
- b. Access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach on weekends or holidays between Memorial Day weekend and Labor Day of any year.
- d. The applicant shall submit evidence that the approved plans/notes have been incorporated into construction bid documents. The staging site shall be removed and/or restored immediately following completion of the development.

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.

4. As-Built Plans/Photographs. Within 60 days following completion of the project, the permittee shall submit as-built plans of the approved structures and shall submit color photographs documenting the appearance of the structures as seen from beach below. In addition, within 60 days following completion of the project, the permittee shall submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the structures have been constructed in conformance with the approved plans.

5. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit amendment, 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.

6. Future Maintenance/Debris Removal. Within 15 days of completion of construction of the protective devices the permittee shall remove all debris deposited on the bluff, beach or in the water as a result of construction of shoreline protective devices. The permittee shall also be responsible for the removal of debris resulting from failure or damage of the shoreline protective devices in the future. In addition, the permittee shall maintain the permitted structures in its approved state. Any change in the design of the project or future coloring and texturing of exposed portions of the upper bluff retention system, beyond exempt maintenance as defined in Section 13252 of the California Code of Regulations to restore the structure to its original condition as approved herein, will require a coastal development permit. In addition, any amendment for future coloring and texturing of the exposed sections of the upper bluff retention must include the removal of any structures extending seaward over the edge of the upper bluff retention system. **However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Commission office to determine whether permits are necessary, and, if necessary, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance.**

7. Future Development. This permit is only for the development described in coastal development permit amendment No. 6-00-138-A1 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 shoreline protective devices, 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 amendment No. 6-00-138-A1 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.

8. Prior Conditions of Approval. All special conditions adopted by the Coastal Commission as part of the original permit action (Ref. CDP #6-00-138) remain in full force and effect.

9. Construction Activities. If during construction, site conditions warrant changes to the approved plans (e.g., as a result of changed geologic conditions), the applicant shall contact the San Diego District office of the Coastal Commission immediately, prior to any changes to the project in the field. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Best Management Practices. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director a Best Management Plan that effectively assures no shotcrete or other construction byproduct or debris will be allowed onto the bluff face, sandy beach and/or allowed to enter into coastal waters. During shotcrete application and removal of the concrete patio and Plexiglas windscreen specifically, the

Plan shall at a minimum provide for all shotcrete and other debris to be contained through the use of tarps or similar barriers that completely enclose the construction area and that prevent shotcrete and other debris from contact with bluff material, beach sands and/or coastal waters. All shotcrete and other construction byproduct shall be properly collected and disposed of off-site.

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

11. Condition Compliance. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT AMENDMENT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are 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.

12. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded 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 (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and 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 applicant’s entire parcel or parcels. 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.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The proposed amendment request involves the construction of colored and textured shotcrete material to be placed over the exposed portions of an upper bluff retention system. In addition, the applicant is requesting to cut off an approximately 12 ft.-long, 3 ft. wide section of concrete patio area that currently

overhangs and extends seaward over the bluff edge on the northern portion of the upper bluff retention system. Finally, the applicant is requesting that the subject amendment authorize any future color and texture applications that might be necessary in the future when additional portions of the upper bluff retention system become exposed.

The existing upper bluff retention system consists of nine concrete piers 40 ft. in depth placed eight-foot on center and capped by an approximately 4 ft. high concrete beam. The structure is located in the rear yard of the residential structure for approximately 50 feet in length along the western edge of the bluff. In addition, the applicant has constructed a cantilevered concrete patio three feet seaward of the upper bluff retention system and constructed an approximately 3 to 4 ft.-high Plexiglas wall along the western side of the concrete patio. Both the 3 ft. cantilevered concrete patio and the Plexiglas wall were constructed in violation of the terms and conditions of the original permit (Ref. CDP #6-00-138) which prohibited any structures to be located further seaward than 16 ft. from the residence and required that all walls or other accessory improvements be located no closer than 5 ft. landward of the bluff edge. The concrete patio and windscreen are located up to 19 feet from the residence and a portion of the concrete patio on the northern side was cantilevered to hang over the bluff edge at the time of construction. Because of ongoing bluff sloughage the concrete patio now hangs over the bluff edge by approximately 3 ft. on both the north and south sides of the upper bluff retention system.

The subject development is located at the top of an approximately 80 ft.-high coastal bluff on a site that contains a single-family residence. The residence is located approximately ¼ mile north of Fletcher Cove Beach Park, the City's primary beach access location. The residence received Coastal Commission approval for its construction in 1985 (CDP #6-84-159R/Valenta and 6-84-159R-A/Valenta; see permit history discussion below).

The City of Solana Beach does not yet have a certified LCP. Therefore, Chapter 3 policies of the Coastal Act is the standard of review.

2. Site/Permit History. In 1984 the Commission approved development of a second story addition to an existing approximately 2,000 sq. ft. single-family residence at 327 Pacific Avenue (CDP No. 6-84-159/Valenta). The addition and its footings were designed to be placed at least 25 feet landward of the existing bluff edge. The applicant subsequently requested a reconsideration of the Commission action objecting to a special condition that required the recordation of a deed restriction which would notify potential property owners that the removal of an existing blufftop concrete slab and patio wall would be a preferred and practical alternative to shoreline protection if the structure were threatened in the future. Because the requirement of a deed restriction was not included as part of a pending County of San Diego LCP regulation, the Commission agreed to the reconsideration request and subsequently approved the development request eliminating the need for a deed restriction (CDP No. 6-84-159-R). However, the Commission did approve a special condition that essentially served the same function, only that is not be recorded as a deed restriction:

In the event that erosion threatens the existing patio slab and patio wall in the future, the Coastal Commission will consider removal of these structures as preferred and practical alternatives to proposals for bluff and shoreline protective works, pursuant to Board of Supervisors Policy 1-82 on Shoreline erosion.

Additional special conditions for the residential addition included final plans, a requirement that any additional bluff face development would require Commission review and an assumption of risk by the property owner.

The applicant subsequently demolished the existing residence inconsistent with the approved coastal development permit for the residential addition, and commenced construction of a new residence located 25 feet landward of the then existing edge of the bluff. In 1985, the applicant subsequently submitted (and the Commission approved) an amendment to the original coastal development to authorize the after-the-fact demolition and the construction of a new residence (CDP No. 6-84-159-A/Valenta). No additional special conditions were required.

In July of 2000, (and again in October 2000) the Executive Director granted an emergency permit to the subject applicant and her neighbor (Kinzel) to apply a chemical grout throughout an exposed layer of clean sands for a depth of 8 feet in an attempt to slow down the erosion potential of the clean sands. In addition, because the applicants identified fractures within the lower bluff that could immediately create an additional failure of the bluff below the clean sands lens, the emergency permit also authorized the installation of two rows of 10 tiebacks for the length of the property at elevation 13+ feet and 19+ feet (MSL) to shore up the bluff face (Emergency Permit #6-00-91-G/Kinzel,Greenberg). Because the applicants were unable to perform the work within the prescribed time limits of the emergency permit, the first emergency permit expired. The applicants received a second emergency permit in October 2000 (Emergency Permit #6-00-155-G/Kinzel,Greenberg), however, the applicants were unable to finish the work during the prescribed time period.

In March of 2001, the Commission approved a Coastal Development Permit (Ref. 6-00-138/Kinzel, Greenberg) for these previously authorized emergency measures and for the construction of a seawall and upper bluff retention system fronting both the subject residence at 327 Pacific Avenue and the adjacent southern property at 325 Pacific Avenue. The approved structure was an approximately 15 foot-high, 100 foot-long, 2 foot-wide tiedback concrete seawall to be located at the toe of the bluff. The below-grade upper bluff retention system consisted of 16 piers placed eight-foot on center in the rear yards of the residential structures extending for approximately 100 feet in length. Because the applicants were unable to comply with the special conditions of approval in a timely manner and because the Executive Director determined an emergency continued to exist, an Emergency Permit was issued to the two applicants authorizing the construction of the seawall and upper bluff retention system (Ref. Emerg. Permit #6-01-163-G/Kinzel, Greenberg). The development approved by the Commission is now complete.

In addition, although the Commission approved these structures in March of 2001, the applicants to date have not satisfied their prior to issuance of permit conditions such that the Coastal Development Permit for these structures has not been issued. To assure that the original applicants complete the required Special Conditions so that the original permit can be issued, Special Condition #2 has been attached. Special Condition #2 prohibits the release of the subject amendment permit until all Special Conditions of CDP #6-00-138 have been satisfied and the permit released.

3. Geologic Conditions and Hazards. Section 30235 of the Coastal Act states, in part:

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.

In addition, Section 30253 of the Coastal Act states, in part:

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...

The proposed project involves the installation of a colored and sculpted concrete covering over exposed portions of a previously approved upper bluff retention system which is located along the western edge of the top of the bluff.

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” solutions alter natural shoreline processes. Thus, such devices are required to be approved only when necessary to protect existing structures. In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection only for existing principal structures. The Commission must always consider the specifics of each individual project, but has found in many instances that accessory structures such as patios, decks and stairways are not required to be protected under Section 30235 or can be protected from erosion by relocation or other means that does not involve shoreline protection. The Commission has historically permitted at grade structures within the geologic setback area recognizing they are expendable and capable of being removed rather than requiring a protective device that alters natural landforms along bluffs and cliffs.

In support of the original project for the construction of the upper bluff retention system and lower seawall, the applicant submitted a detailed geotechnical report which identified the existing homes at the top of the bluff were threatened by erosion (Ref. “Preliminary Geotechnical Evaluation of Coastal Bluff 325 and 327 Pacific Avenue, Solana Beach” by Soil Engineering Construction dated June 26, 2000). The report identified that in February of 2000, the subject site experienced significant bluff sloughage and fracturing affecting the lower bluff involving an area approximately 20 feet high, 5 feet deep and 60 feet long. The geotechnical report identified that the base of the bluff consisted of a near vertical and undercut 20 to 25+ ft. high sea cliff which contained several “adverse oriented planes, joints and fractures with potential for future failures along these weak zones”. The bluff sloughage of February 2000 also resulted in the exposure of the approximately 5-foot high geologic segment located between the Torrey Sandstone and Marine Terrace Deposits (at approximately elevation 25-30 ft.) described as “a clean sands lens”. The presence of this clean sands lens within the bluffs along the Solana Beach shoreline has previously been identified in geotechnical reports submitted in conjunction with seawall, seacave and notch infill projects throughout the Solana Beach Shoreline (ref. CDP #6-99-100/Presnell, et. al, #6-99-103/ Coastal Preservation Association, 6-00-66/Pierce, Monroe).

In addition, the applicant’s geotechnical report identified that the shoreline in close proximity to the subject site had experienced a significant increase in bluff erosion estimated at between 3 ft. to 12 ft. over a 3-4 year period. Combined with the exposure of the clean sands lens, the geotechnical report identified the factor of safety against sliding for the residences was at approximately 1.04, a level that the applicant’s engineer identified represented an immediate threat the homes. (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.) The Commission subsequently determined that the homes at the top of bluff was threatened by erosion and, therefore, was required to approve shoreline altering devices to protect the existing structures, pursuant to Section 30235 of the Coastal Act.

In this case, the Commission conditioned the original permit for the shoreline protective devices to assure they would be monitored and maintained over the lifetime of the development and specifically required that if the below-grade upper bluff retention system were to become exposed in the future that the applicant would apply for an amendment to color and texture the exposed walls to make them appear more natural. Following a subsequent upper bluff collapse, portions of the approximately 4 ft. high grade beam that caps the 9 below-grade concrete caissons has become exposed. In compliance with the requirements of the original permit, the applicant is proposing to color and texture the exposed grade beam portion of the upper bluff retention system.

However, while the proposed color and texturing of the exposed wall is consistent with the Commission’s previous action, the applicant’s request to retain overhanging sections of a concrete slab patio that extends 3 feet seaward of the bluff edge is inconsistent with the Commission’s previous action. Special Condition #1 of Coastal Development Permit

#6-00-138 required that the below-grade upper bluff retention system be redesigned such that it would not be located any further seaward than 16 feet west of the residence. In addition, Special Condition #1 also required that any replaced accessory structures such as decks, patios or walls be placed no closer than 5 ft. landward of the bluff edge. In this case, the applicant constructed a concrete patio and Plexiglas wall 19 ft. west of the residence, inconsistent with Special Condition #1 of the permit. In addition, the applicant also constructed a portion of the Plexiglas wall and concrete patio 3 ft. seaward of the bluff edge at the northwest corner of the blufftop, again, inconsistent with Special Condition #1 of the original permit.

Following additional bluff collapses the concrete patio and Plexiglas wall now hang over the bluff edge on both the northwest and southwest corners of the blufftop. However, the applicant is only proposing to remove the section of concrete and Plexiglas wall that extends over the bluff edge at the northwest corner of the blufftop because the City has determined its construction in 2001 or 2002 was in violation of City code that prohibited structures from extending over the bluff edge. Therefore, Special Condition #1 has been attached which requires the applicant to submit revised final plans to include the removal of all concrete patio and Plexiglas wall sections that extend beyond the edge of the bluff. In addition, because it is a violation of the original permit, Special Condition #11 requires that the applicant satisfy all "Prior to Issuance of Permit" conditions of the subject amendment request within 90 days of Commission action so that the removal of these structures can occur in a timely manner.

Special Condition #1 does not, however, require the concrete patio be removed from the center portion of the western blufftop at this time, although these improvements were also constructed in violation of the original permit. Currently this section is located landward of the bluff edge, but the Commission's coastal engineer has identified that requiring its removal at this time may precipitate further bluff erosion at the top of the bluff. Eventually it is anticipated that this section of upper bluff will collapse exposing the center section of the upper bluff retention system and resulting in the remaining concrete patio extending beyond the bluff edge. Following that exposure the applicant is required as part of the maintenance requirements of the original permit to submit an application to color and texture future exposed sections of the wall. In addition, Special Condition #6 has been attached which requires, among other things, that the applicant include the removal of any concrete patio that extend beyond the edge of the bluff, or in this case, over the edge of the upper bluff retention system with any future requests for maintenance of the approved retention system. With this condition the Commission can be assured that eventually the unpermitted development will be removed.

In addition, the applicant has requested authorization to color and texture any future exposure of the upper bluff wall without the need to obtain additional approval. However, while such treatment is required after exposure, such work has the potential of adversely affecting geologic stability and public access unless the specific work is controlled and monitored pursuant to a coastal development permit or amendment. Therefore, Special Condition #7 advises the applicant that all future work on the subject shoreline protective devices will require an amendment or new coastal development

permit. In addition, Special Conditions #3 and #8 of the original permit requires the applicant to monitor and maintain the shoreline devices and to apply for an amendment or coastal development permit if additional work including visual treatment of the structures is required.

As previously described, the Commission approved installation of an approximately 15 ft. high seawall and upper bluff retention system in 2001 and anticipated that additional visual treatment of the structures would be necessary, particularly the below grade upper bluff retention system. Rather than color and texture the exposed sections of the upper bluff wall, an alternative would be to reconstruct the bluff using structural elements such as a geogrid retention system to build up the face of the bluff so as to cover the exposed upper wall. However, the applicant has identified that to do so would require that the lower 15 ft. high, approximately 100 ft. long seawall would need to be increased in height up to approximately 35 ft. in order to provide support for a reconstructed bluff face so as to extend to the top of the 80 ft. high coastal bluff and cover the upper wall. As such, this alternative which would block views of the natural bluff as seen from the beach an additional 20 ft., and would have more adverse impacts to the natural appearance of the bluff than the proposed project. The applicant has identified that to address the Commission's requirement that the exposed upper bluff wall be visually treated to appear more natural, the proposed project is less environmentally damaging than the geogrid retention system alternative.

If the proposed concrete covering of the upper bluff wall were damaged in the future (e.g. as a result of erosion, storms, etc.) it could threaten the stability of the site, which could lead to requests for more bluff alteration. Damage to the concrete covering of the upper bluff wall could adversely affect the beach by resulting in debris on the beach and/or creating a hazard to the public using the beach. Therefore, in order to find the shoreline protective structures consistent with the Coastal Act, the Commission has previously found that the upper bluff wall and lower seawall must be maintained in its approved state for the estimated life of the structure. In addition, in order to ensure that the permittee and the Commission know when repairs or maintenance are required, the permittee is required by Special Condition #3 and #8 of the original permit to monitor the condition of the shoreline protective structures annually and report any damage to or weathering of the structures so as to determine whether repairs or other actions are necessary to maintain the structures in its approved state. To remind the applicant of their responsibility to monitor and maintain the permitted structures, Special Condition #8 has been attached which advises the applicant that all conditions of approval for the original permit, except as modified herein, remain in full effect. In other words, the requirement to monitor and maintain the shoreline devices will include the subject improvements.

To assure the proposed maintenance and removal has been constructed in compliance with the approved plans, Special Condition #4 has been proposed. This condition requires that, within 60 days of completion of the project, as built-plans and photographs of the finished structure be submitted verifying that the proposed visual treatment of the upper wall and removal of the cantilevered concrete and Plexiglas wall have occurred in

accordance with the approved plans. In addition, the condition requires a certification from a registered civil engineer that the structures were constructed or removed as proposed.

Because the bluff is experiencing ongoing erosion such that site conditions may change before implementation of the subject project, Special Condition #9 has been attached which requires the applicant to contact the Commission before commencing any revision to the proposed project that may become necessary because site conditions change. For example, if additional areas of the upper bluff retention device become exposed and need to be visually treated, more cantilevered portions of the concrete patio become undermined or worker safety devices need to be installed, the applicant is required to contact the Commission before commencing the additional work. Any revisions to the project will require an amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

Also, due to the inherent risk of shoreline development, Special Condition #5 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. Although the Commission has sought to minimize these risks, the risks cannot be eliminated entirely. Given that the applicants have chosen to construct the proposed shoreline devices despite these risks, the applicants must assume the risks. In addition, Special Condition #12 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.

Special Condition #6 notifies the applicants that they are responsible for maintenance of the herein-approved shotcrete application and concrete removal to include removal of debris deposited on the bluff face or beach during and after construction of the structures. The condition also indicates that, should it be determined that maintenance of the proposed structures is required in the future the applicant shall contact the Commission office to determine if permits are required.

In summary, the applicants have documented that portions of the previously approved below-grade upper bluff retention system have become exposed. Pursuant to the requirements of the original permit, the applicant is proposing to color and texture the exposed portions of the upper wall. With conditions to assure that the color and texture of the exposed portions of the upper wall is effective, that portions of the unpermitted cantilevered concrete patio and Plexiglas wall are removed and that ongoing monitoring of site conditions occur, the Commission finds that the proposed project is consistent with Sections 30235, and 30253 of the Coastal Act.

4. Visual Resources. Section 30251 of the Coastal Act states, in part:

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

and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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

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

The proposed project is located at the top of the bluff in Solana Beach along a shoreline that has 60 to 80 ft.-high coastal bluffs. Most of the bluff faces along the Solana Beach shoreline are in their natural state although many of them have 15 to 35 ft. high seawalls at their base. The appearance of much of the bluff face at the subject site (between the seawall and the upper bluff wall) is natural and so is the bluff face to the south. On the adjacent property to the north, the applicant has reconstructed the bluff face between a lower seawall and an upper bluff retention system with a geogrid structure that mimics the appearance of the natural bluff and includes native vegetation. In addition, the property owner to the north has constructed a highly visible perpendicular modular retaining wall that extends from the lower seawall to the top of the bluff along their southern property line. Without the perpendicular wall, the geogrid reconstructed bluff could not be supported along its south side. In addition, at the time of the modular wall construction it had been anticipated that eventually the subject applicant would reconstruct the bluff face below their residence using a similar geogrid structure and thereby cover up the modular retaining wall (Ref. CDP #6-02-002/Gregg, Santana). However, that is not occurring with the subject application.

While the upper bluff retention system at the subject site consists of 9 buried concrete caissons that extend approximately 40 ft. into the ground, the only portions of the upper wall that have become exposed is the approximately 4 ft.-high concrete grade beam that extends over the 9 concrete caissons. Therefore, the applicant is only proposing some minimal visual treatment to enhance the appearance of the exposed 4 ft.-high grade beam. In the future, if significant portions of the below grade caissons become exposed the applicant may decide that visual treatment of the exposed caissons could more effectively be done by reconstruction of the bluff. At this time however, the applicant has identified that to reconstruct the bluff in order to cover the 4 ft.-high section of the wall at the top of the bluff would require an increase of approximately 20 ft. to the height of the lower seawall in order to create the lower support for a backfill that would reach the top of the bluff. The applicant has identified that the visual impact of increasing the existing 15 ft. high seawall to 35 ft. would have more adverse impacts to the visual resources of the area than simply coloring and texturing the exposed sections of the upper bluff retention system to match the surrounding natural bluff.

In addition to the visual treatment of the exposed upper bluff retention system, the removal of the unpermitted concrete patio and Plexiglas windscreen that extends over the bluff edge approximately 3 ft. will serve to enhance the visual appearance of the site. Special Condition #1a and b require these overhanging improvements be removed and that they not be replaced any closer than the 5 ft. landward of the bluff edge.

In addition, Section 30240(b) requires that new development located adjacent to park and recreation areas and environmentally sensitive habitat areas be designed to avoid impacts that would degrade the area or be incompatible with the continuance of the habitat area. In that regard, the use of clear glass in windscreens or other fencing along the top of the bluff has the potential of injuring birds that fly along the shoreline since birds are unable to see the glass and may fly into it. Therefore, Special Condition #1b prohibits the use of clear glass in any proposed windscreen or fencing and requires that any glass be non-clear, tinted, frosted or in some other way be designed to inhibit bird strikes.

While the proposed project will temporarily mitigate the adverse visual impact of the exposed portion of the upper bluff retention system, the color and condition of the visual treatment must be maintained overtime in order to prevent its decay or visual degradation. Therefore, Special Condition #8 serves to remind the applicant that all Special Conditions of the original permit remain in effect. In particular, Special Condition #3 and #8 of the original permit require the applicant to prepare an annual evaluation of the performance and visual appearance of the lower seawall and upper bluff retention system and to apply for an amendment or coastal development permit if visual treatment or other repairs are needed (CDP #6-00-138/Kinzel, Greenberg). With these requirements, the Commission can be assured that the appearance of the proposed structure will be maintained over its lifetime in a way that blends with the natural bluffs to the maximum extent feasible.

Therefore, as conditioned, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible and the proposed project will reduce potential visual impacts associated with exposure of the existing upper bluff retention system. Thus, the project is consistent with Sections 30240(b) and 30251 of the Coastal Act.

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

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

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

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

Additionally, Section 30220 of the Coastal Act provides:

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

The project site is located on bluff adjacent to a public beach utilized by local residents and visitors for a variety of recreational activities. The site is located approximately ¼ mile north of Fletcher Cove, the City's primary beach access location and approximately ¼ mile south of Tide Beach Park public stairway. The beach along this area of the coast is narrow and, at high tides and winter beach profiles, the public may be forced to walk virtually at the toe of the bluff or the area could be impassable. As such, an encroachment of any amount onto the sandy beach reduces the beach area available for public use and is therefore a significant adverse impact. This is particularly true given the existing beach profiles and relatively narrow beach. In addition, shoreline structures on the face of the bluff also reduce the amount of sand that is contributed to the beach from the otherwise eroding bluff. Therefore, public access is also adversely affected as shoreline structures reduce the supply of sand, however minimal that may be.

In approving the seawall located at the base of the bluff fronting the subject site and the installation of the upper bluff retention system at the top of the bluff, the Commission found that the projects would have direct and indirect impacts on public access and recreational opportunities. (Because of those impacts, the Commission required the applicant to pay an in-lieu fee of \$15,268.50 into the SANDAG sand replenishment fund that is designed to help pay for the placement of sand along the San Diego County shoreline.) In this case, however, the proposed project involves the color and textural treatment of the exposed portions of a previously approved upper bluff retention system. None of the proposed color and texture of the upper wall will occur on the public beach such that direct public access will be affected and the visual treatment will have no additional effect on sand supply to the beach.

Although the proposed project will not have any direct impact on public access because of its location, the use of the beach or public parking areas for staging of construction materials and equipment can also impact the public's ability to gain access to the beach. While the applicant has not submitted a construction staging and material storage plan for the subject development, the closest beach access point within the City of Solana Beach

would occur via Fletcher Cove which is located approximately ¼ mile south of the subject site.

In other developments for shoreline protection along the Solana Beach shoreline, the Commission has authorized the temporary placement of construction equipment within the Fletcher Cove parking lot. However, since the City is in the process of redeveloping the Fletcher Cove parking lot into a multi-purpose park, the City has advised Commission staff that Fletcher Cove Beach Park will no longer be available for construction storage. Therefore, at this time, it is not known where the applicant will store construction equipment or even if storage will be necessary for this minimal work. However, to assure that public access is not affected, Special Condition #3 prohibits the applicants from storing vehicles on the beach overnight, using any public parking spaces within Fletcher Cove for staging and storage of equipment, and prohibits washing or cleaning construction equipment on the beach or in the parking lot. The condition also prohibits construction on the sandy beach during weekends and holidays between Memorial Day to Labor Day of any year.

In addition, debris dislodged from the structural infill or backfill either during construction or after completion also has the potential to affect public access. Therefore, Special Condition #6 has also been proposed which notifies the applicant that they are responsible for maintenance and repair of the pier structures and that should any work be necessary, they should contact the Commission office to determine permit requirements. In addition, the condition requires the applicants to be responsible for removal of debris deposited on the beach during and after construction of the project. Therefore, impacts to the public will be minimized to the greatest extent feasible. Thus, as conditioned, the Commission finds the project consistent with the public access and recreation policies of the Coastal Act.

6. Protection of Ocean Waters/BMP's. Section 30230, 30231 and 30232 of the Coastal Act requires that new development be designed so that ocean waters and the marine environment be protected from polluted runoff and accidental spill of hazardous substances:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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 entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The proposed development involves the application of shotcrete that is sprayed over the face of exposed portions of an upper bluff retention system and the removal of concrete patio area and a Plexiglas windscreen that hang over the edge of the bluff. During construction some of the shotcrete will likely rebound off the structure and construction debris is likely to fall onto the face of the bluff. According to the Commission's water quality division and staff of the State Regional Water Quality Control Board, San Diego Region, the mixing of this rebound shotcrete and other debris with ocean waters is a violation of the State Water Quality Act since it would involve the unauthorized discharge of a pollutant into ocean waters. To assure that this polluted material does not fall from the top of the approximately 80 ft. high bluff to the beach below and mix with ocean waters, Special Condition #10 has been attached. Special Condition #10 requires the applicant to submit a polluted runoff control plan that incorporates Best Management Practices (BMPs) for Executive Director review and approval that is designed to assure all rebound concrete and other polluted debris will be collected and removed from the site before it can fall to the beach below. With appropriate BMPs, the potential for this polluted material from the site making its way into the ocean will be eliminated. Therefore, as conditioned, the Commission finds the proposed development consistent with the marine and water quality protection policies of the Coastal Act.

7. Violation of Coastal Act. The existing shoreline protective devices were approved by the Commission in 2001 pursuant to CDP No. 6-00-138, but the Prior to Issuance conditions were never satisfied and the permit was never issued. CDP No. 6-00-138 has special conditions that require the upper bluff retention system be located no further seaward than 16 ft. from the residence and that all accessory improvements such as patios or walls be located no closer than 5 ft. east of the bluff edge. In addition, the special conditions require the applicant to submit yearly monitoring reports to the Executive Director as to the condition, performance and appearance of the shoreline devices. In violation of the approved permit, the applicant constructed elements to the upper bluff retention system (concrete patio and Plexiglas wall) that are located 19 ft. west of the residence, located these accessory improvements 3 ft. seaward of the bluff edge and failed to submit yearly monitoring reports for the shoreline protective devices. If the applicant's do not remove the unpermitted windscreen as part of the proposed

development for this permit amendment, the removal of the unpermitted windscreen may be pursued through a separate enforcement action by Commission Enforcement staff.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #2 requires that the applicant satisfy all conditions of CDP No. 6-00-138 that are prerequisite to the issuance of that permit within 60 days of Commission action. In addition, Special Condition #11 requires that the applicant satisfy all conditions of this amendment application (CDP No. 6-00-138-A1), which are prerequisite to the issuance of this permit within 90 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although unpermitted development has occurred on the subject site, consideration of this amendment application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site.

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

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. The City will, in all likelihood, prepare and submit a new LCP for the area to the Commission for review. Because the County LCP was never effectively certified, it is not the standard of review.

The project site is designated for Open Space Recreation in the City of Solana Beach Zoning Ordinance and General Plan, and was also designated for open space uses under the County LCP. As conditioned, the subject development is consistent with these requirements. Based on the above findings, the proposed visual treatment of the exposed portions of the shoreline device has been found to be consistent with the Chapter 3 policies of the Coastal Act in that the proposed project mitigates the visual appearance of the exposed upper bluff retention system.

Therefore, the Commission finds the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

9. Consistency with the 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, as conditioned, 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 which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the geologic hazards, visual quality, and public access policies of the Coastal Act. Mitigation measures required under the original for monitoring and maintenance of the structural and visual appearance of the upper bluff retention system over its lifetime 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 is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

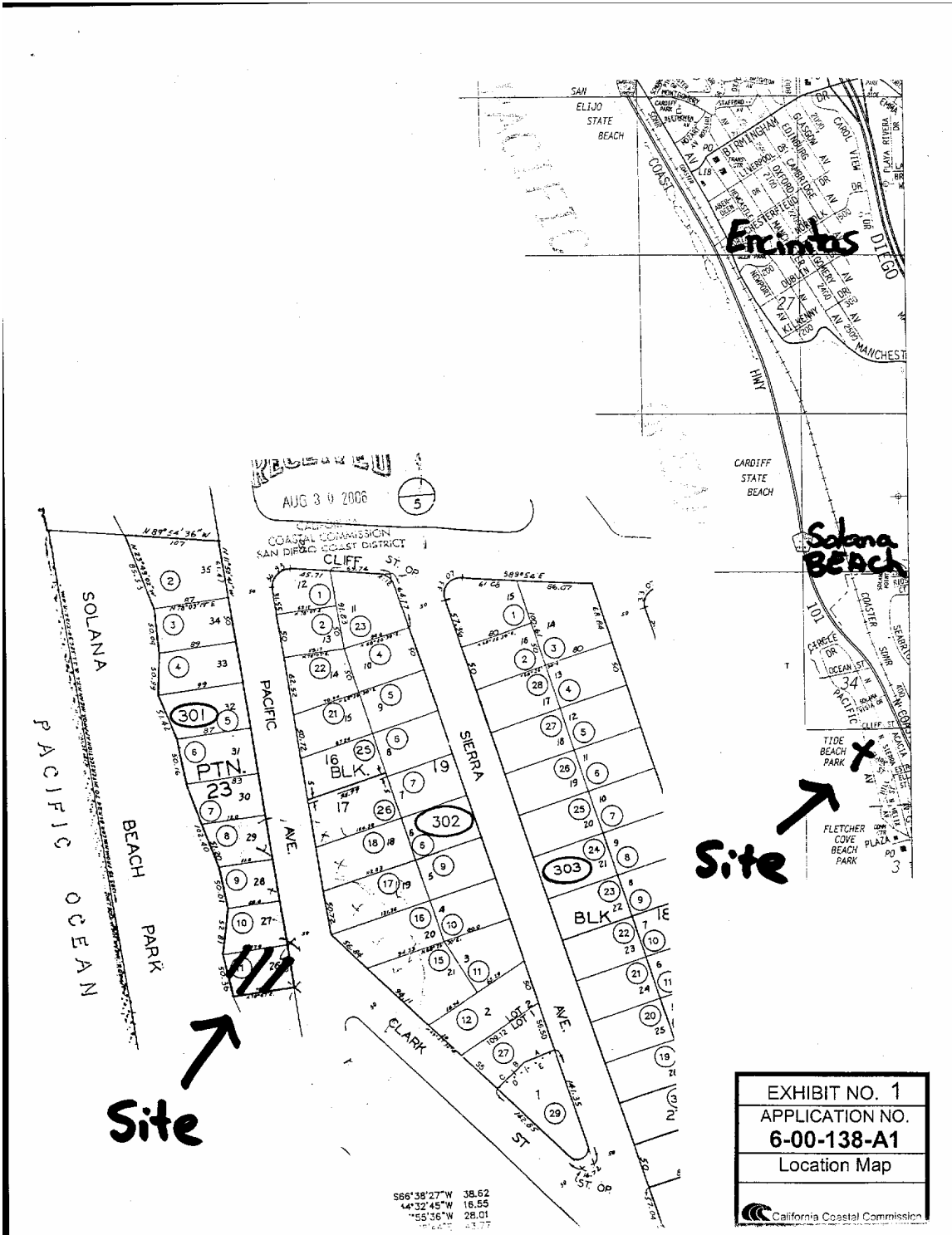
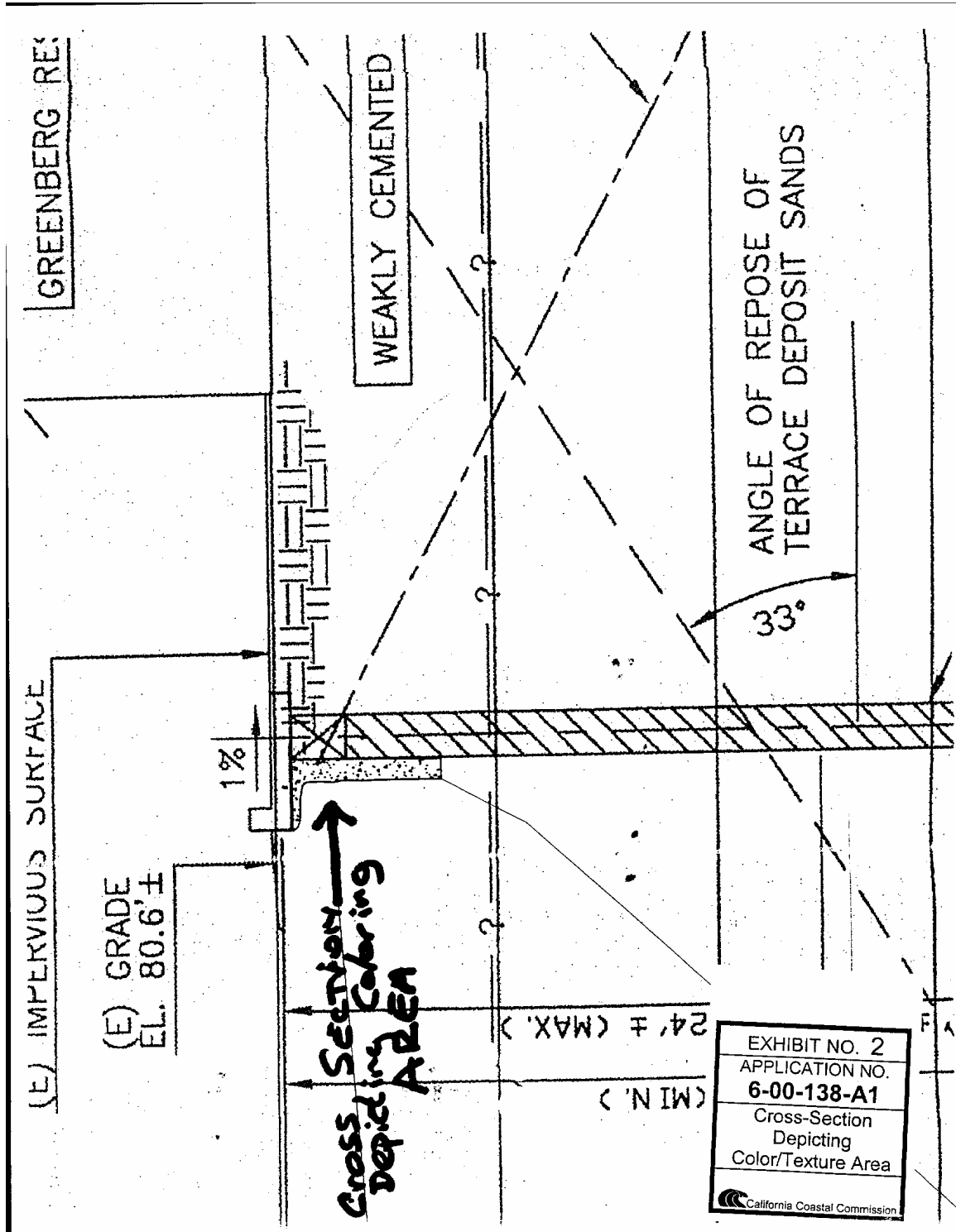


EXHIBIT NO. 1
APPLICATION NO.
6-00-138-A1
Location Map

California Coastal Commission



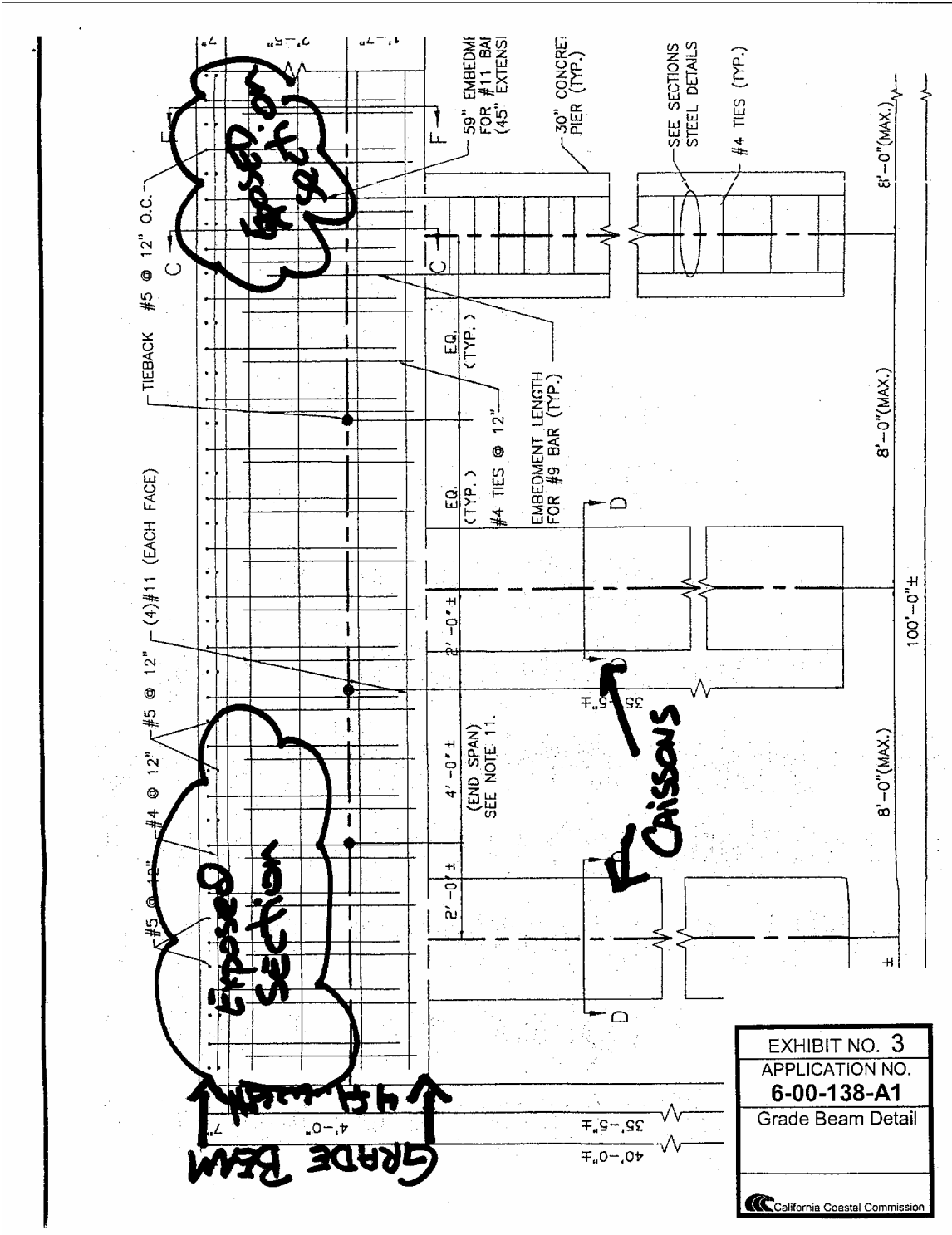
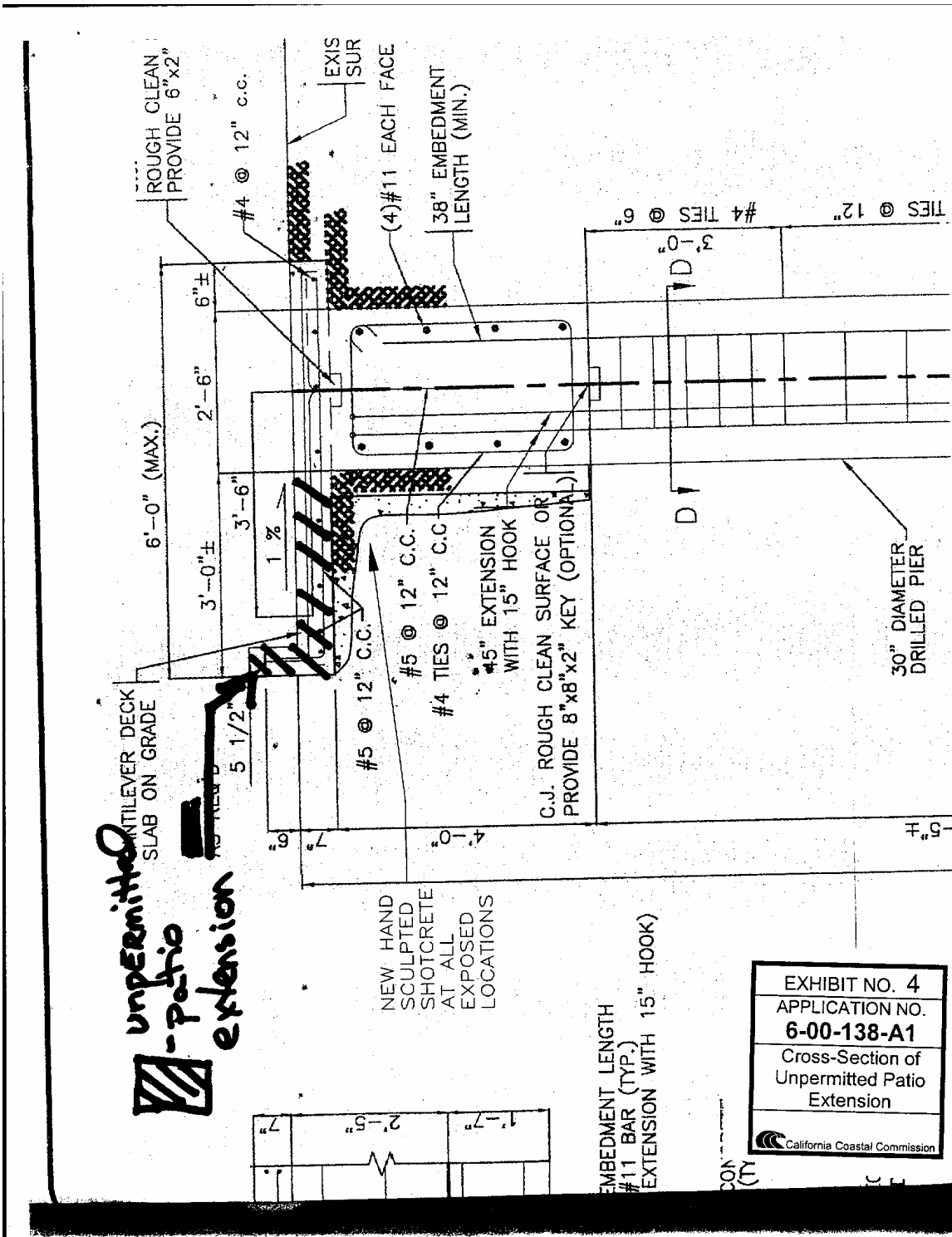


EXHIBIT NO. 3
APPLICATION NO.
6-00-138-A1
Grade Beam Detail
California Coastal Commission



unpermitted
-patio
extension

NEW HAND
 SCULPTED
 SHOTCRETE
 AT ALL
 EXPOSED
 LOCATIONS

EMBEDMENT LENGTH
 #11 BAR (TYP.)
 EXTENSION WITH 15" HOOK

EXHIBIT NO. 4
APPLICATION NO. 6-00-138-A1
Cross-Section of Unpermitted Patio Extension
California Coastal Commission