

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



Th 7c

Addendum

May 1, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **TH 7c**, Coastal Commission Permit Application
#A-6-LJS-07-114 (Mehl), for the Commission Meeting of 5/8/08

Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 4 of the staff report, Special Condition No. 2 shall be revised as follows:

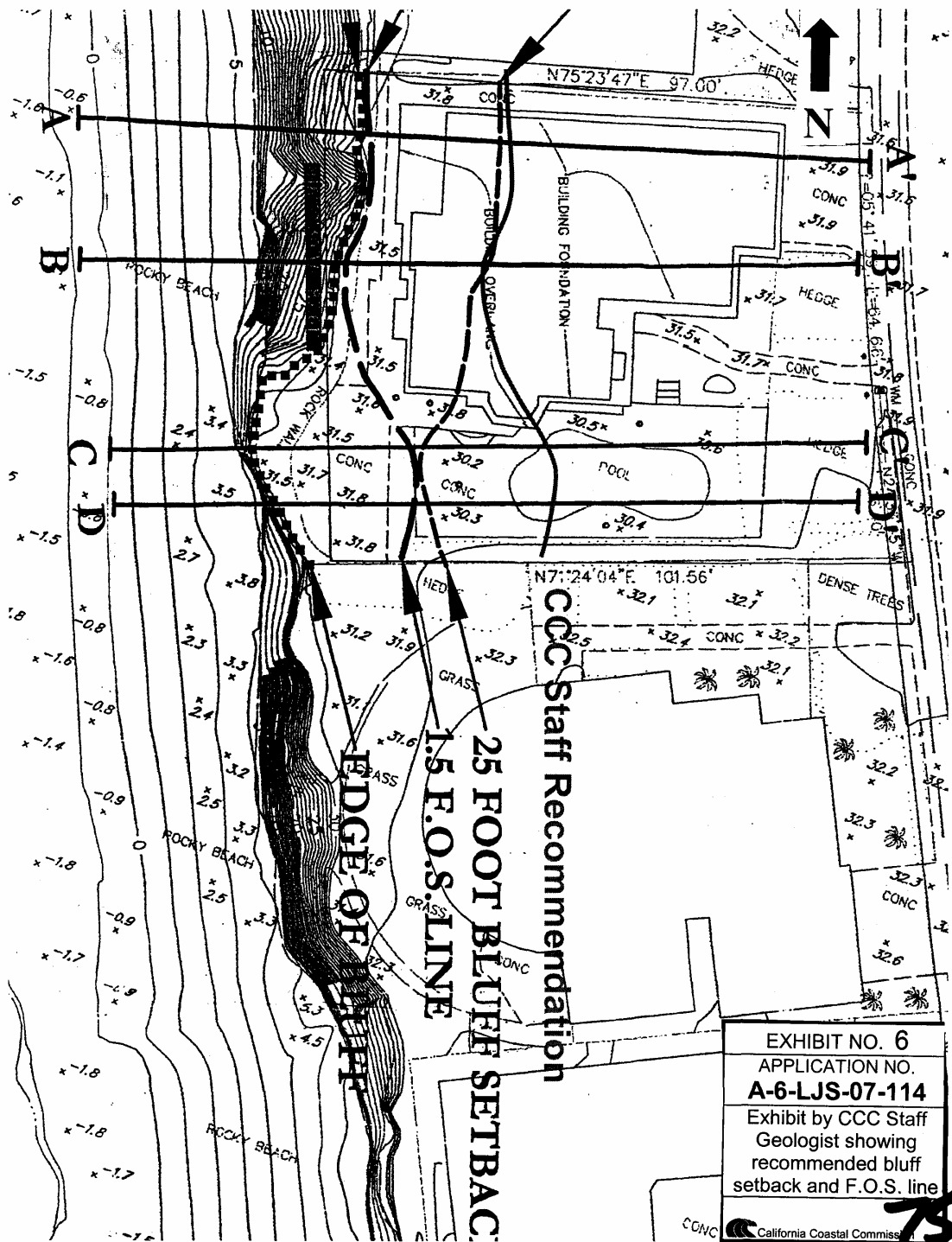
2. Revised Landscape/Yard Area Fence Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, revised landscaping and fence plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Mark D. Lyon, dated 1/18/07, except for the revisions required by this condition. The plans shall be revised to keep the north and south yard areas (or setbacks) clear to enhance public views from the street toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 4 ft. wide in the north side yard and 10 ft. wide in the south side yard area shall be preserved. All proposed landscaping in the north and south yard areas shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean.
- b. All landscaping shall be either drought-tolerant and native or non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. No permanent irrigation shall be permitted on the site.

[...]

2. The attached exhibit shall be added to the staff report as Exhibit No. 6.

(G:\San Diego\Reports\Appeals\2007\A-6-LJS-07-114 Mehl addendum.doc)





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Th7c

OF COUNSEL
PAUL A. PETERSON

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File No.
6948.001

May 1, 2008

Chairperson Patrick Kruer and Members of
The California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

Re: Thursday May 8th, 2008 Agenda Item #7(c)
David and Bonnie Mehl's Home – Appeal #A-6-LJS-07-114

Dear Chairperson Kruer and Members of the California Coastal Commission:

We represent David and Bonnie Mehl with regard to the above referenced
matter.

We have reviewed the Staff Report and Recommendation dated 4/17/08 and are
pleased to inform you that our client concurs with your Staff's analysis and agrees with
all recommended special conditions.

Receiver

MAY 01 2008

California Coastal Commission
San Diego Coast District

Sincerely,

PETERSON & PRICE
A Professional Corporation



Matthew A. Peterson

Letter from Applicant's Agent

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Chairperson Patrick Kruer and Members of
The California Coastal Commission
May 1, 2008
Page 2

cc: David and Bonnie Mehl
Sherilyn Sarb, Deputy Director
Deborah Lee, District Manager
Lee McEachern, District Regulatory Supervisor
Laurinda Owens, Coastal Planner

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APPEAL -6-LJS-07-114

Th7c

GRANT THE APPEAL

**Summary
Dr. Tim Barnett**

RECEIVED

APR 29 2008

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

NOTE to Commissioners: I am sorry I cannot present this personally, but other obligations require I be out of State. But please take a few minutes to look over this evidence. It is compelling. Tks.

The commission found substantial issue with the decision of the City of San Diego to allow a 25' setback on proposed new construction at 5380 Calumet, La Jolla. Through bizarre logic, coupled with erroneous assertions made to it, the Staff is now recommending the project. *I request the original appeal be upheld on grounds that a simple ruse, improper interpretation of Code and incorrect assertions, have been used to qualify the property for their recommendation.*

Background

The Staff report shows gunite protection applied to a section of coastal bluff at subject property. Section 143.0143(f) of the Coastal Bluff and Beach Guidelines states the property is immediately disqualified from obtaining the 25' setback, a 40' foot setback being required instead. The Code sections states this restriction must apply "if...erosion control measures...HAVE BEEN INSTALLED due excessive erosion on a premise..." Everyone agrees and attached photographic evidence (Fig 1) shows that erosion protection has been installed at the site.

The Ruse

The applicant's lawyer, Mr. Matt Peterson, has laid out the following plan to gain a 25' setback (and, in my view, avoid the section of code referred to above). A geotechnical 'expert' asserted to the Staff that the existing erosion control is not currently acting as a shore protection device and that the existing gunite was put in place by neighbors for reasons other than erosion control. All of these assertions are false. The plan then calls for the removal of the gunite since it is allegedly serving no purpose. The final 'step' comes by now claiming that since the gunite is no longer on the property, section 143.0143 no longer applies and a 25' setback can/should be granted. This is clearly just a scheme to circumvent the original code section and its INTENT.

Letter from Appellant

The real story

Many of the applicant's paid consultant's statements are incorrect. Evidence in the attached Figures 2 and 3 clearly shows visually erosion at both the northern and southern edges of the gunite section in question, but no change in the gunite section itself. In fact, the southern half of the applicants' property, the part NOT protected, shows severe undercutting. *The staff geologist for the CCC also states of the erosion control "it clearly is reducing the rate of bluff retreat, especially in the short term" (Mark Johnsson, email 24 April, 2008).* He goes on to state this situation will not hold in the long term (as the gunite crumbles). *Bottom line ...there is no evidence to substantiate the paid consultant's conjectures that the protection is ineffective.*

The gunite was applied to the bluff by the then owners of the property (C. & H. Shaw whom I knew personally) after bluff collapse cost them several hundred square feet of land in the northwest corner of the lot; about 8 feet of land along the northern property line. This is shown as the hatched region in Staff Exhibit 5. *Clearly, the owners felt threatened. The paid consultant's rendition of the events surrounding the installation of the protection and reasons for it are fiction as nearly as I can tell, but it was all the staff had to go on.*

So now there is no legitimate reason to remove the gunite, a happening that I'm sure swayed Staff in their recommendations. In fact, it seems unfortunately clear that the gunite should remain since the bluff is eroding at either end of the protected section. It is also true that what ever mechanism caused the original bluff collapse is likely still present, but being held back by the protection.

A careful reading of section 143.0143 shows that the 25' setback must be denied if bluff protection has been applied (see above). There is nothing said about a free pass if the protection is removed. Nor is anything said about the effectiveness of the gunite. ***Indeed, removing the gunite does not remove the INTENT of 143.0143. If one follows the code there is no valid reason to justify the granting of a 25' setback, when code says it should be 40'; except to satisfy the desires of the applicant.***

Precedent

Several years ago the CCC denied a permit to build with a 25' setback for a lot three doors south from the subject property. Recently, new construction about 100m north of the subject property, on a nearly identical bluff site, was required to make the setback 40'. ***It is difficult to see why the current applicants and their proposal should receive special treatment.*** This is especially true when one considers the manner in which the rules are being manipulated to even be able to make a claim.

An additional problem is that the proposed structure is about 30% larger than the average size of the seven largest homes in the Sungold Point community (see Staff report). Fairness to others that built before would seem to require some level of conformity in building size. In my view, 30% exceeds the fairness level.

Other items

Coastal erosion

The proposed house is to be located 25 feet from bluff edge. In 75 years, the structure design life, erosion at 1/3 ft/yr claimed by CWE would place the bluff edge coincident with the western edge of the house. *Of course, the house/bluff would*

likely have collapsed before that time. The 25' setback is clearly a design condition to be avoided.

In fact, if positioned 25' from the bluff edge, the house will never see its 75th birthday. The real rate of bluff retreat, according to recession rate equations, will be much faster than the 1/3 foot noted above by 200-300% toward the middle of this century. *This will be due to the 3-5 foot sea level rise due to global warming; the most recent numbers to come out of studies that post-date the IPCC report and include melting rates of the great ice sheets.*

Incorrect FAR calculations

The original area of the lot at 5380 Calumet was used to calculate the FAR. Figure 4 shows the original plat line for the western edge of the subject property and the one immediately to its north. Note a single straight line (orange) defines their western boundary. Figure 5 shows the approximate position of the western boundary of the property as it was originally platted (orange line) imposed on a picture of the property as it is today. The loss of level building area from the earlier bluff collapse is obvious, yet the original area was used in the FAR calculation; the FAR was computed using phantom land, land that has since stopped being useable for residence construction. The City allowed this, thus violating the 'unity of use' clause in the City's instruction for computing FAR.

Further, the lot contains a view corridor at its southern end that is a deed restricted entity (Fig 6). The original Sungold Point developers allowed an extra 20 feet onto this lot in order to make up for land used in the view corridor. This land can never be built on.

So the lot holds three different types of land: The deed and LCP protected view corridor, the phantom land lost to erosion that also cannot be built on and the remaining (real) land that can be built on (Fig 6). The first two pieces of land cannot be included in the FAR since they violate the 'unity of use' requirement in defining the FAR....the three disparate pieces of land have no common use! Contrary to Code requirements, the applicant has incorrectly used the entire original area of the lot in the FAR. That is one of the reasons they can jam such a large house on such an apparently small piece of land. BTW, *the proposed house is about 30% bigger than the average of the CCC staff defined 7 largest houses in Sungold Point* (pg 16, Staff Report). *Just when do bulk and size considerations kick in?* To my knowledge the applicant has steadfastly refused to reduce the size of the proposed 'box' house they originally proposed.

Action requested: Establish by survey the actual area of the property that is build able and use that number in the FAR calculation.

PLEASE UPHOLD THE APPEAL

Thank you for your consideration,



Tim Barnett
Marine Research Physicist RTAD
Scripps Institution of Oceanography

Erosion control (gunited cliff face) at subject
property (the one w/ pool)



Fig 1

Cliff failure at house second to the north. The two scalloped areas red arrows) indicate the recent erosion and fact the failure mode is vertical, i.e. characteristic of rock cliffs

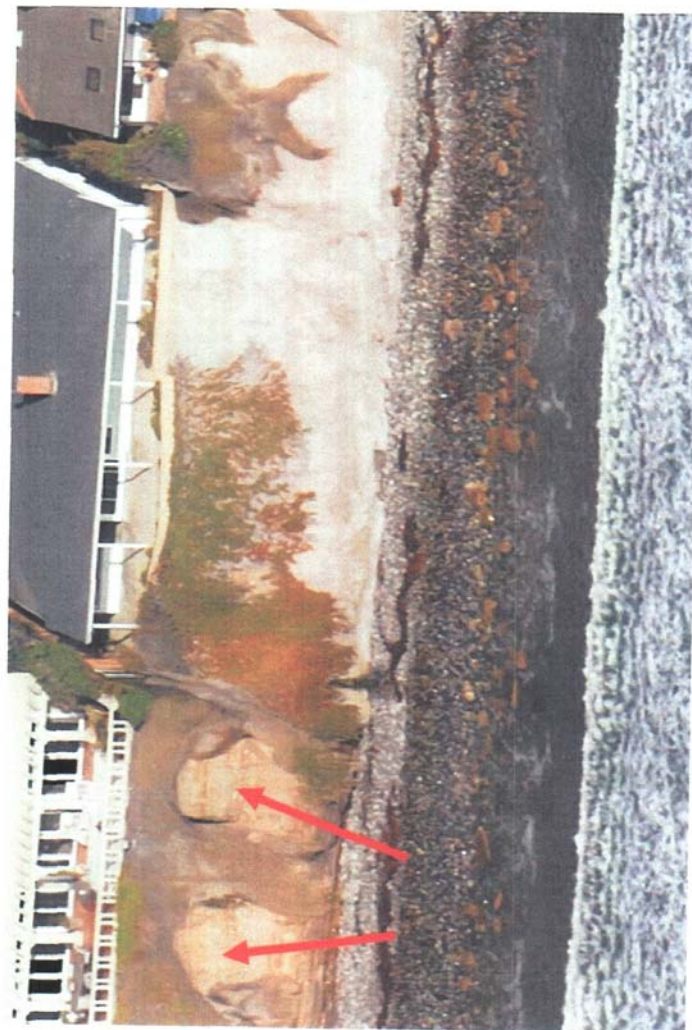


Fig 2

Bluff Undercut: Mehl south Unprotected bluff = erosion

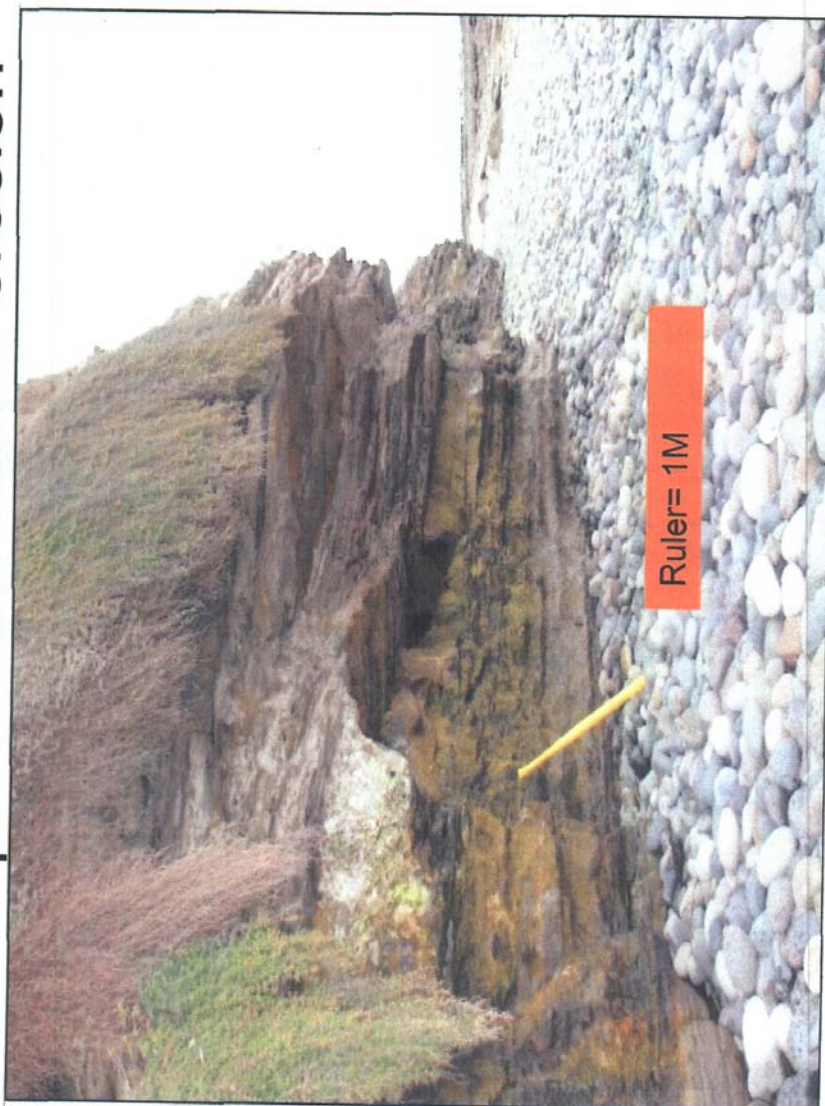
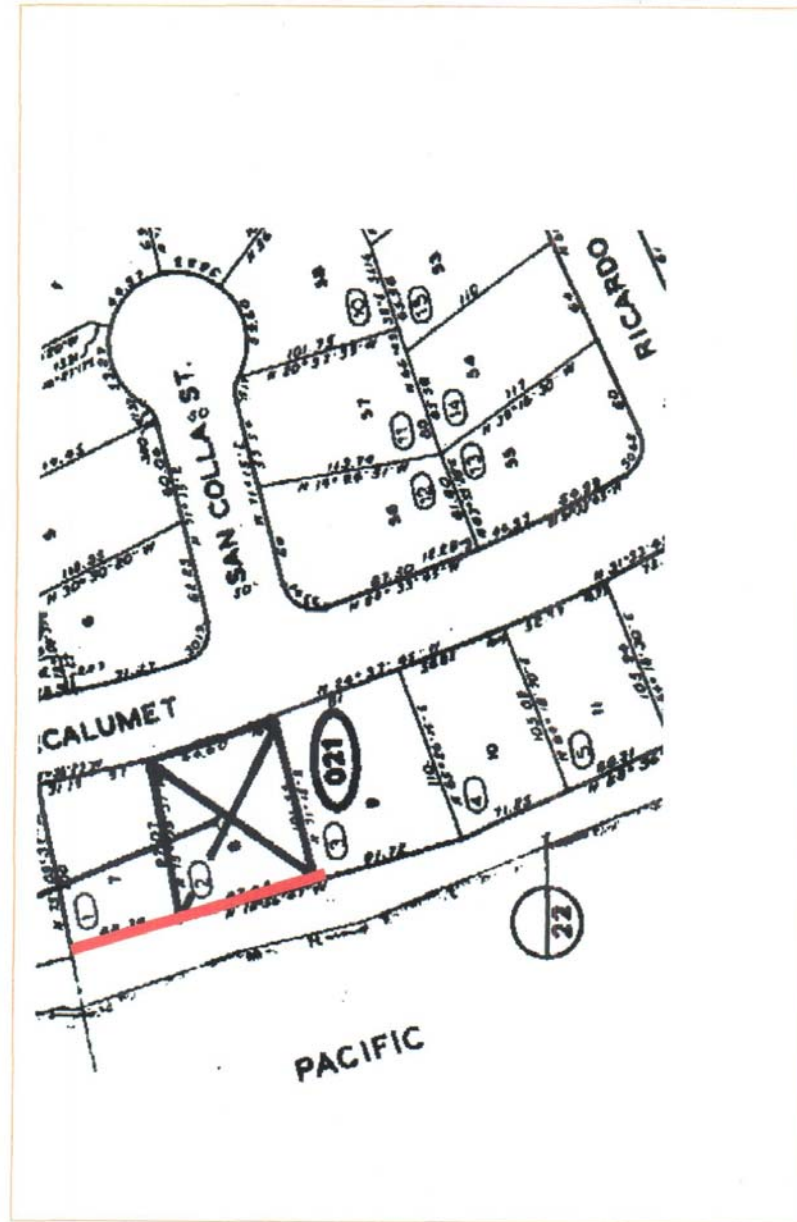


Fig 3

Original western property line



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Unbuildable Space (colored)

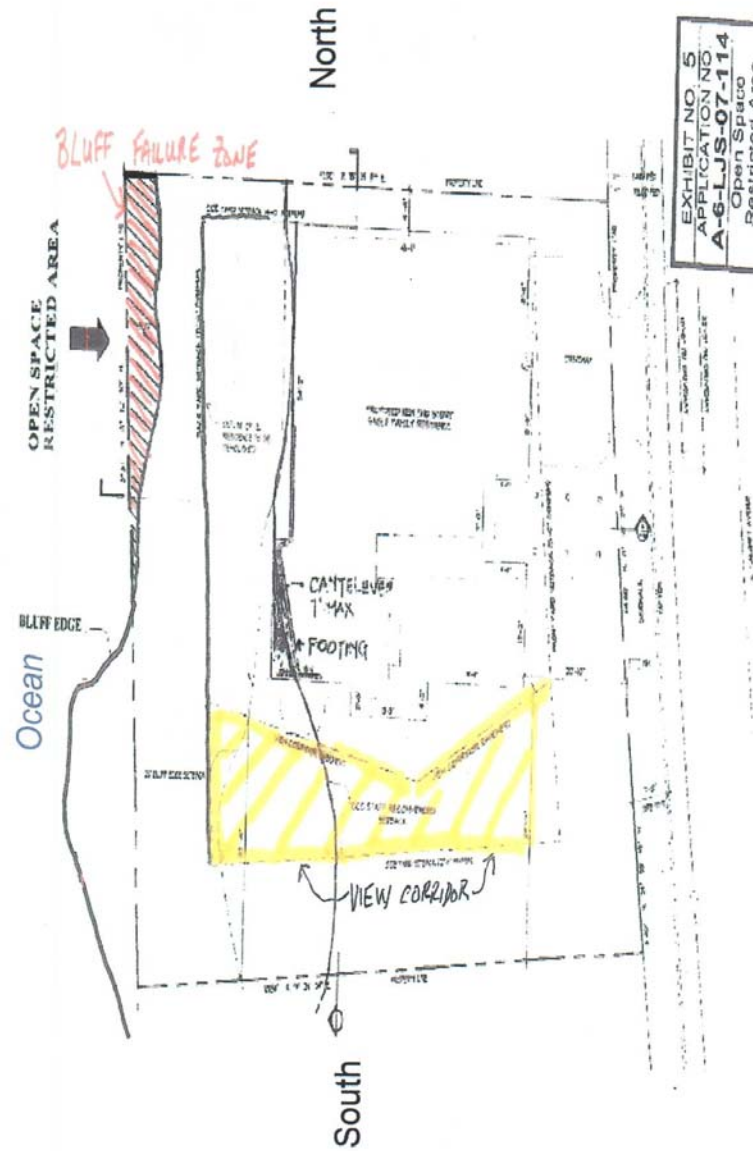


Fig 6

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
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(619) 767-2370



Th 7c

Staff: Laurinda Owens-SD
Staff Report: 4/17/08
Hearing Date: 5/7-9/08

STAFF REPORT AND RECOMMENDATION ON APPEAL

Application No.: A-6-LJS-07-114

Applicant: David and Bonnie Mehl

Agent: Matt Peterson

Description: Demolition of an existing one-story, single-family residence including removal of a swimming pool and construction of a two-story, 4,569 sq.ft. single-family residence with a roof deck and attached two-car garage on an 8,282 sq.ft. ocean blufftop lot. Also proposed is the removal of gunite from the face of the coastal bluff fronting the site.

Site: 5380 Calumet Avenue, La Jolla, San Diego, San Diego County.
APN 415-021-02

STAFF NOTES:

At it's 12/12/07 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

Summary of Staff's Preliminary Recommendation: Staff recommends the Commission approve the de novo permit with several special conditions. The proposal raises the issues of geologic hazards with regard to an adequate setback from the bluff edge given the presence of gunite on a portion of the bluff face, as well as protection of public views. The City's LCP requires that all development maintain a 40 ft. bluff edge setback that can be reduced to 25 ft. based upon recommendations of a geology report which documents that such a reduced setback would still provide an adequate blufftop setback to assure the new development is safe throughout its anticipated life. The LCP further states that if there is a seawall or other stabilization or erosion control measure installed due to excessive erosion on a site, that a reduction in the required 40-foot setback is not permitted. In this particular case, the applicant has indicated that the gunite was placed on the face of the bluff by a neighbor many years ago and it is not acting as shoreline stabilization or a bluff erosion control measure and is not needed in any way to protect the existing or proposed home and is therefore proposing to remove the gunite from the face of the bluff. As the applicant is proposing to remove the gunite from the bluff face because it is not providing bluff stabilization, the above LCP provision related to a reduction in the 40 ft. setback does not apply.

The Commission's geologist has reviewed the project and has recommended the home be setback from 25 to 51 ft. from the bluff edge. In order to comply with the geologist's setback requirements, the applicant is proposing that a small portion of the home in the south west corner be cantilevered such that the home extends to 36 ft. from the bluff edge, but all loads for geologic purposes are behind the geologic setback line, which is 43 ft. from the bluff edge at that location. Protection of visual resources and public views associated with the proposed development will be addressed through landscape and fence requirements in Special Condition #2. It requires that new landscaping be limited to a height of 3 ft. and that any fencing in the north and south yards of the house be composed of 75% open materials to prevent a "walled off" effect. In addition Special Condition #6 requires that the applicant waive all future rights to shoreline protection. Other conditions include assumption of risk and submittal of a construction Best Management Practices plan. With the attached conditions, the project can be found consistent with the certified LCP.

Standard of Review: The City of San Diego certified LCP and the public access and recreation policies of the Coastal Act.

Substantive File Documents: Appeal Forms; City of San Diego Coastal Development Permit No. 335185 and Site Development Permit No. 456239; Certified La Jolla LCP Land Use Plan (2003); Certified City of San Diego LCP Implementation Plan; Geotechnical Reports by Christian Wheeler Engineering dated 11/9/05 and updated 4/21/06, 8/21/06, 8/28/06, 2/22/07, 4/19/07, 7/11/07, 2/20/08 and 4/7/08; Letters from GeoSoils Inc. dated 7/19/07, 2/15/08 and 4/11/08.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-LJS-07-114 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit 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 THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP and the public

access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Revised Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, final building, site, foundation and grading plans for the proposed development that have been approved by the City of San Diego. Said plans shall be in substantial conformance with the revised lower level and foundation level plans submitted by Mark D. Lyon, dated 4/14/08, which include that:

- a. The proposed residential structure will be set back a minimum of approximately 25 ft. from the bluff edge on the subject site, as shown in concept, in Exhibit No. 3.
- b. Foundation plans, including structural calculations, that document that the southwest portion of the proposed structure will be cantilevered a distance of one ft. to a maximum 7 ft. seaward of the geologic setback line, as shown in concept, in Exhibit Nos. 3 & 4.
- c. All existing and proposed accessory improvements shall be identified. All accessory improvements (including, but not limited to, patios, decks, walkways, and open shade structures) proposed within the geologic setback area must be "at-grade" and located no closer than 5 ft. from the edge of the existing bluff, as shown in concept, on Exhibit No. 2.
- d. The removal of all of the gunite from the face of the coastal bluff seaward of the proposed residence shall be performed consistent with the construction techniques described in the letter from GeoSoils, Inc. dated 4/11/08 and shall occur prior to or concurrent with development of the home and be completed prior to occupancy of the residential structure.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment

to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Landscape/Yard Area Fence Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, revised landscaping and fence plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by Mark D. Lyon, dated 1/18/07, except for the revisions required by this condition. The plans shall be revised to keep the north and south yard areas (or setbacks) clear to enhance public views from the street toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 4 ft. wide in the north side yard and 10 ft. wide in the south side yard area shall be preserved. All proposed landscaping in the north and south yard areas shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean.
- b. All landscaping shall be either drought-tolerant and native or non-invasive plant species. No permanent irrigation shall be permitted on the site.
- c. A written commitment by the applicant that all required plants on this site shall be maintained in good growing condition and whenever necessary, shall be replaced with new plant materials to ensure compliance with the approved landscape requirements.
- d. Any fencing in the yard areas shall permit public views and have at least 75 percent of its surface area open to light.

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

3. Runoff/Drainage Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final drainage plan, approved by the City of San Diego, which shows that drainage and runoff from the roof, driveway and other impervious surfaces shall be collected and directed away from the coastal bluff and toward the street into the storm drain system.

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. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, bluff retreat 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.

5. Other Special Conditions of the CDP #335185. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

6. No Future Bluff or Shoreline Protective Device

A(1) By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-LJS-07-114 including, but not limited to, construction of a new, approximately 4,569 sq.ft., two-story single family residence, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

A(2) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the approximately 4,569 sq.ft., two-story single family residence, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

7. **Open Space Restriction**

- A. No development, as defined in section 30106 of the Coastal Act (such as installation of any structure or accessory improvement including fencing, etc.) shall occur on the face of the coastal bluff seaward of the proposed residence as described and depicted in an Exhibit No. 5 attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

1. **The removal of the gunite on the face of the bluff seaward of the proposed home.**

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 5 attached to this staff report.

8. **Deed Restriction.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant 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.

9. **As-Built Plans.** **WITHIN 60 DAYS FOLLOWING COMPLETION OF THE PROJECT**, the permittee shall submit as-built plans of the approved residential structure and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the home and associated structures have been constructed in conformance with the approved plans for the project and that the gunite on the face of the bluff has been removed.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/Permit History. Proposed is the demolition of an existing one-story single-family residence and removal of a swimming pool and other landscape features on an 8,282 sq.ft. blufftop lot. In the area where the swimming pool is proposed to be removed, the applicant proposes to install either a small lawn or low ornamental plantings and a BBQ. The existing residence is located approximately 10 ft. from the bluff edge at its closest point. Also proposed is the construction of a new, two-story, 4,569 sq.ft., single-family residence with roof deck, an attached two-car garage and landscape improvements. In addition, the applicant proposes the removal of all the gunite on the coastal bluff seaward of the proposed home. The new residence is proposed to be sited a distance of 25 ft. from the bluff edge at its closest point, with a small portion of the home in the southwest corner cantilevered such that the foundation loads are projected behind the geologic setback line.

The 8,282 sq. ft. subject site is located on the west side of Calumet Avenue in the community of La Jolla in the City of San Diego. The nearest cross streets are Midway Street to the north and Sea Ridge Drive to the south. The residences along the seaward side of Calumet Avenue are situated on blufftop lots. Access to the shoreline in this area is gained from Linda Way, sixteen lots south of the subject site where there is an existing improved vertical public access stairway. Although there is informal access available at Calumet Park, just two lots north of the subject site, the unimproved trail traverses a coastal bluff and is not considered safe and as such, is not recognized as an improved public access.

The City approved the proposed development on 10/10/07. On 11/01/07, the local Commission office received the notice of final local action regarding the project. On 11/02/07, Dr. Tim Barnett filed an appeal of the project and on 11/16/07 Coastal Commissioners Patrick Kruer and Sara Wan filed an appeal of the project.

The standard of review is the certified LCP and the public access and recreation policies of the Coastal Act.

2. Shoreline Hazards. As approved by the City, the residence on the site was proposed to be sited a minimum distance of 25 ft. from the bluff edge. However, as noted above, there is gunite on a portion of the bluff face fronting the subject site. As stated in the project geotechnical report, the gunite extends from the toe of the bluff up to the bluff edge on an approximately 30-foot high coastal bluff and covers approximately $\frac{1}{3}$ to $\frac{1}{2}$ of the bluff face. The applicant's representatives have estimated that the gunite has been in place since the 1950s or 1960s.

Pursuant to the City's certified LCP, all proposed development on a coastal bluff must observe a required setback of 40 feet from the bluff edge unless a site-specific geology report is completed which makes findings that a lesser setback can be permitted.

Specifically, Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs states the following:

- (f) All *development* including buildings, *accessory structures*, and any addition to existing *structures* shall be set back at least 40 feet from the *coastal bluff edge*, except as follows:
 - (1) The City Manager may permit *structures* to be located between 25 and 40 feet from the bluff edge where the evidence contained in a geology report indicates that the site is stable enough to support the *development* at the proposed distance from the *coastal bluff edge* and the project can be designed so that it will not be subject to or contribute to significant geologic instability throughout the anticipated life span of the primary *structures*, and no shoreline protection is required. Reductions from the 40-foot setback shall be approved only if the geology report concludes the *structure* will not be subject to significant geologic instability, and not require construction of shoreline protection measures throughout the economic life span of the *structure*. In addition, the applicants shall accept a deed restriction to waive all rights to protective devices associated with the subject property. The geology report shall contain:
 - (A) An analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards;
 - (B) An analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information;
 - (C) An analysis of the potential effects of past and projected El Nino events on bluff stability;
 - (D) An analysis of whether this section of coastline is under a process of retreat.
 - (2) Accessory *structures* and landscape features customary and incidental to residential uses shall not be closer than 5 feet to the *coastal bluff edge* provided, however, that these shall be located at *grade*. Accessory *structures* and features may be landscaping, walkways, unenclosed patios, open shade *structures*, decks that are less than 3 feet above grade, lighting standards, *fences* and wall, seating benches, *signs*, or similar *structures* and features, excluding garages, carports, building, pools, spas, and upper *floor* decks with load-bearing support *structures*.

In addition, the City's certified Coastal Bluffs and Beaches Guidelines contain the above same citation but have a footnote at the end of Section 104.0143(f) which states the following:

[Note: If a seawall (or other stabilization/erosion control measure) has been installed due to excessive erosion on a premises, that premises shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge. Since the instability of the coastal bluff necessitated the installation of the seawall, the coastal bluff would not be considered stable enough to support development within the 40-foot bluff edge setback.] [Emphasis added]

In the case of the subject project, the City approved the proposed development at a setback of 25 ft. from the bluff edge. However, a portion of the bluff seaward of the proposed development contains gunite. The issue whether or not that gunite is shoreline protection was not addressed in the City's report. Therefore, it is necessary to determine whether or not that gunite is shoreline protection and the appropriate setback that should be permitted from the bluff edge. The policies of the certified LCP require that structures be located between 25 and 40 feet from the bluff edge when supported by the findings of a geology report that indicates the site is stable enough to support the development at the proposed distance from the coastal bluff edge without contributing to significant geologic instability throughout the life span of the principal structures and that no shoreline protection is required.

The geotechnical reports completed for the project conclude that the new development will not be affected by bluff instability, will not contribute to significant geologic instability and will not require any shoreline protection measures, throughout the anticipated 75 year economic life span of the structure. In addition, the report states that the project complies with the "ESL Regulations and the Coastal Bluff and Beaches Guidelines" and that the residence has been designed to observe a 25-foot bluff edge setback as recommended by the geologic investigation.

As cited above, the City's LCP requires that many factors be analyzed within the geotechnical report for new development on the blufftop. The geotechnical report prepared by the applicant's consultant (Christian Wheeler Associates) has estimated the long-term erosion rate for the area of the subject development to be approximately 0.33 ft. per year. As discussed in the 8/21/06 CW report, this rate (0.33 feet per year) is based in part on a Geotechnical Exploration, Inc. report dated 1/31/90 and is taken as a conservative (large) value for the expected future erosion rate. Christian Wheeler expresses the opinion that the actual erosion rate will be "much less". The Commission's staff geologist, who has reviewed the submitted reports and visited the site, agrees that this rate is higher than the average long-term historic rate in the area, but when possible future increases in the bluff retreat rate due to accelerated sea level rise associated with global warming, this value is a reasonable estimate of future bluff retreat rates averaged over the economic life of the structure (75 years).

However, in order to find the appropriate geologic setback for the bluff top home, the Certified LCP requires that an analysis of bluff retreat and coastal stability for the project site be completed according to accepted professional standards which includes that not only the long-term erosion rate be adequately identified but also that the geotechnical report demonstrate an adequate factor of safety against slope failure (i.e., landsliding), of

1.5 or greater will be maintained throughout its economic life. However, as noted above, in order to find the appropriate geologic setback, the technical report must demonstrate not only that an adequate factor of safety against landsliding be shown under present conditions, but also that it addresses stability throughout its economic life of 75 years. Therefore, in estimating an appropriate setback for new blufftop development, it is necessary to first estimate the configuration of the bluff 75 years from now. The simplest way to accomplish this is to assume that the bluff will have the same topographic configuration as at present, but the entire bluff will have migrated landward due to coastal bluff retreat. Next, it must be demonstrated that the site will have a factor of safety against landsliding of 1.5 or greater given the 0.33 ft/yr, estimated erosion rate. In this case, the Commission's staff geologist recommends a geologic setback for a residence constructed on traditional shallow foundations of approximately 25 to 51 ft. from the edge of the bluff.

The applicant's geotechnical consultant has recommended that a 25 ft. setback from the bluff edge is sufficient to assure the proposed home is safe for its economic life. However, the Commission's staff geologist has reviewed the project and technical reports submitted by the applicant and does not agree with this proposed setback. Specifically, the Commission's geologist has recommended that the geologic setback be offset 25 feet (corresponding to an estimated 75 feet of bluff retreat) from the 1.5 F.O.S. (Factor of Safety) line identified by Christian Wheeler Associates (CW) in their 4/21/06 report.

In response to the concerns raised by the Commission's staff geologist, the applicant has revised his project to incorporate the use of a small cantilever in the southwest portion of the home. Specifically, the applicant has indicated that they can design the home such that all of the load bearing and foundation systems would be located landward of the Commission geologist's recommended setback line (ref. Exhibit 4 attached). The cantilevered portion of the home would be a very small triangular-shaped portion of the lot in the southwestern portion which ranges from about one foot to a maximum of 7 ft. This coincides with the only portion of the building footprint that was proposed to be located seaward of the Commission staff recommended setback line. The Commission's geologist has reviewed the applicant's cantilever design foundation proposal and concurs that it is acceptable from a geologic standpoint.

As noted above, the LCP includes a provision which does not permit a reduction in the 40 ft. blufftop setback if there is existing shoreline protection and states, in part:

If a seawall (or other stabilization/erosion control measure) has been installed due to excessive erosion on a premises, that premises shall not qualify for a reduction of the required 40-foot distance to the coastal bluff edge.

In this particular case, the Commission finds that the above-cited LCP provision does not apply because the applicant claims that the gunite is not serving as a bluff stabilization measure and is therefore willing to remove it from the bluff face. The intent of this LCP provision is to avoid placing a home on the blufftop in an area where it will be subject to threat in the future. If, in the past, excessive erosion occurred such that the property

owner at that time felt that the home was threatened, then that previous threat should be considered when determining the setback for new development on the site. However, in this particular case, the applicant has indicated that the gunite that covers about ½ of the bluff face fronting the subject site was installed by a neighbor at the same time gunite was placed on the bluff in front of their home. According to the applicant, it appears the gunite was placed as an “end protection” for the gunite on the neighbor’s property, not to address excessive erosion on this site. The applicant’s geotechnical consultant has also stated that the gunite fronting the subject site is not currently functioning as a shoreline protective device and is not necessary to assure geologic stability for the proposed new home. As a result, the applicant has proposed with this application to remove all of the gunite from the face of the bluff fronting the subject site. Thus, according to the applicant’s geotechnical consultant, the gunite at the site is not performing a bluff stabilization or erosion control purpose and it will be removed from the face of the bluff. The LCP provision prohibiting a reduction of the required 40 ft. setback is therefore not applicable here because there will be no gunite on the bluff once the new home is constructed.

Moreover, the removal of the gunite from the bluff face is one of the goals and policies of the certified LCP which contains the following applicable policy:

4. Coastal Bluffs

b. Set back new development on property containing a coastal bluff at least 40 feet from the bluff edge so as to not impact the geology and visual quality of the bluff. This setback may be reduced to not less than 25 feet if evidence is provided that indicates the site is stable enough to support the development at the proposed location without requiring construction of shoreline protective measures throughout the economic lifespan of the structure (not less than 75 years). Require applicants to accept a deed restriction to waive all rights to protective devices associated with new development on coastal bluffs. Do not allow a bluff edge setback less than 40 feet if erosion control measures or shoreline protective devices exist on the site which are necessary to protect the existing principal structure in danger from erosion. Require removal of obsolete or unnecessary protective devices, when feasible, and in a safe manner, or otherwise allow such devices to deteriorate naturally over time without any improvements allowed, to restore the natural integrity and visually quality of the coastal bluff over the long-term. When appropriate, development may include open fencing to deter trespassing and protect fragile resources.... [Emphasis added]

The proposed project is unusual in that it includes the removal of the gunite from the bluff face---something which was not proposed at the time the project received City approval. The Commission has reviewed numerous oceanfront and blufftop projects in La Jolla and rarely, if ever, has any existing gunite on the bluff face been proposed for removal. Much of the gunite that was placed on the coastal bluffs was done without benefit of a coastal development permit or done at time that pre-dated the Coastal Act.

As noted above, one of the goals of the certified LCP is to remove such devices on the bluff face and return the bluffs to their natural condition.

Because the removal of gunite also has the potential to result in adverse effects to the geologic integrity of the bluff, it must be done in a careful manner. The applicant's engineer has indicated that the removal process will include the use of a hand saw cut and hand removal of small 2' x 2' or 2' x 3' pieces. Because there is no structural footing at the base of the gunite, most of it is already separated from the bluff (and cracked) and it appears that there is no rebar or other tiebacks extending into the bluff. The applicant's engineer has provided a letter dated 4/11/08 which assesses the gunite removal. The letter states that the gunite can be removed without significantly damaging the natural bluff. The removal can be accomplished without the use of mechanized equipment on the beach. After the demolition of the existing house, it is proposed that a crane move to within about 15 feet from the bluff edge and reach over the bluff. Working from the crane, it is proposed that the covering be saw cut into 2 x 2 foot pieces and lifted off the face, also by crane. The letter also states that the upper portion of the gunite blanket might be thin enough to allow its removal by hand. It is proposed that all gunite removed from the bluff be trucked offsite and disposed of outside of the coastal zone. The Commission's staff geologist has reviewed this proposal and concurs that the gunite can be removed, as proposed, without significant impacts to the bluff.

Therefore, in summary, the proposed project can be constructed with the recommended geologic setback that ranges in distance from approximately 25 ft. to 51 ft. inland from the coastal bluff edge. As noted by the Commission's geologist, this setback can be found safe for the economic life of the structure and also takes into account likely acceleration of bluff erosion rates due to accelerating sea level rise associated with global warming. While the language of the certified LCP indicates that if gunite exists on a property, a reduced geologic setback from 40 ft. to 25 ft. cannot be permitted, here the gunite will be removed from the bluff face, and it is clear that the intent of this LCP policy language is to discourage the construction of shoreline protection. The removal of obsolete or unnecessary erosion protective devices is one of the key goals of the certified LCP addressing coastal bluffs and beaches in order to improve the visual quality of the coastal bluffs as well as to restore them to their natural state. Furthermore, the Commission's geologist has concurred that the gunite removal can be accomplished without significant damage to the coastal bluff with the proposed construction techniques and methods described by the applicant's engineer.

With regard to the applicant's proposal to cantilever a small portion of the proposed residence that is located seaward of the recommended geologic setback line, the area in question is very small in size and will eliminate the need for the applicant to redesign the residence. Also, it is further assured that all of the load bearing and foundation systems would be landward of the recommended setback line. The cantilevered portion would range from about 1 to a maximum of 7 ft. at the southwest corner of the residence. The foundation elements of the new residence will maintain a setback of 25 ft. to 51 ft. from the coastal bluff edge; whereas, the existing residence to be demolished is set back only 10 ft. from the bluff edge at its closest point. Furthermore, as noted by the applicant's

representative, upon review of aerial photos, several of other blufftop lots to the north and south of the subject site are located as close to the coastal bluff as the proposed residence. It is one of the primary goals and policies of the certified LCP Land Use Plan to re-establish the line of development further inland through the removal of older non-conforming structures such as the existing residence as well as the removal of obsolete or alternative erosion control measures that do not meet current blufftop setback regulations. In addition, several accessory improvements are also non-conforming as they are located closer than 5 ft. to the bluff edge. All of these improvements will be removed. The new development will include accessory improvements that observe the required 5 ft. setback from the edge, consistent with the certified LCP.

Therefore, through the demolition of the existing residence and the construction of a new residence that will be setback a minimum of 25 ft. from the bluff edge, the overall geologic integrity of the coastal bluffs will be improved and is found consistent with the certified LCP. Special Condition #1 requires submittal of revised plans that assure that the proposed development observes the recommended setback of 25 ft. to 51 ft. per Exhibit No. 3 and that all the accessory improvements are sited a minimum distance of 5 ft. from the bluff edge. The condition further specifies that the gunite be removed from the bluff face in the manner described by the applicant's engineer, in order to avoid adverse impacts to the bluff and that the gunite be removed entirely prior to occupancy of the home. Special Condition #9 requires submittal of as-built plans within 60 days after completion of the project along with certification by a registered civil engineer that verifies that the home and associated structures have been built in conformance with the approved plans and that the gunite on the bluff face has been removed. Lastly, the condition requires foundation plans that document that only the southwest portion of the structure will be cantilevered into the geologic setback zone

In addition, Special Condition #6 has been attached which requires the applicant to waive all rights to future protection for new development on the blufftop. Such a condition will assure that the bluff will be protected from unnatural alteration of the bluff for shoreline protection purposes. Also, due to the inherent risk of shoreline development, Special Condition #4 requires the applicant to waive liability and indemnify the Commission against damages that might result from the proposed development. To protect the geologic integrity of the coastal bluff seaward of the proposed residence, Special Condition #7 requires that an open space deed restriction be placed over the bluff face to prohibit construction or the placement of any structures on it (with the exception of the removal of the gunite) and to protect it in perpetuity. In order to assure that future owners of the property receive notice of the conditions of this permit, Special Condition #8 requires that the terms and conditions of this permit be recorded as a deed restriction.

Therefore, in summary, the Coastal Commission concurs that the proposed residence will be adequately set back from the bluff edge (a minimum of 25 feet) and that the existing gunite on the bluff face is not necessary to support the new development, that it can be safely removed from the bluff without damage to the integrity of the bluff and is therefore consistent with the provisions of the City's certified LCP. As such, future shoreline protection is not necessary for the proposed development. As conditioned, the

integrity of the coastal bluff will be assured and the landform will be restored to its natural appearance after removal of the structures, consistent with the geologic and blufftop stability provisions of the City's certified LCP. Therefore, the proposed development is consistent with the provisions of the certified LCP addressing geologic hazards and blufftop setbacks.

3. Public Views. Landscaping and fencing in the north and south yard areas of the house have the potential to obstruct public views of the ocean. Section 132.0403 of the Land Development Code states the following:

- (a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,
 - (1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and
 - (2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.
 - (b) A visual corridor of not less than the side *yard* setbacks or more than 10 feet in width, and running the full depth of the *premises*, shall be preserved as a deed restriction as a condition of Coastal Development permit approval whenever the following conditions exist [emphasis added]:
 - (1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and
 - (2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.
 - (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.
- [...]
- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

The certified La Jolla-La Jolla Shores LCP Land Use Plan also contains numerous policies addressing the protection of public views toward the ocean which are applicable to the proposed development and these include, in part, the following:

La Jolla's relationship to the sea should be maintained. Existing physical

and visual access to the shoreline and ocean should be protected and improved.

View corridors utilizing side yard setbacks, should be encouraged along shoreline and blufftop areas, in order to avoid a continuous wall effect. Even narrow corridors create visual interest and allow for sea breezes to refresh passersby....

In addition, the LCP Land Use Plan also includes the following applicable policy:

- 2.f. Avoid the placement of sea walls, fences and gunite on bluffs, where feasible, in order to preserve the natural and scenic quality of shoreline bluffs...[emphasis added]

The subject site is located at the west side of Calumet Avenue in La Jolla. All existing structural development is proposed to be removed from the subject property. Presently, there are views across the subject site in the side yard setback areas. In addition, the project site is identified as a “scenic overlook” in the certified La Jolla LCP Land Use Plan where a view over private property from a public right-of-way can be seen. The subject site is unique in that there is an approximately 20 ft. – 29 ft. wide view corridor that was created as a condition of the grant deed transferring this property from Union Title Insurance and Trust Company to John D. and Jessie H. Yates in 1955 when the original subdivision was created. The current owners took title to the property subject to this restriction which requires that no house, building or other structure be erected on that part of the property.

The LCP states that the view areas to be preserved be at least as wide as the distance required for side yard setbacks but not wider than 10 ft. The existing restriction on the property, that pre-dates the LCP, ensures a 20-29 foot wide view corridor. As noted above, consistent with the LCP provisions, to protect public views, at least 10 ft. of this view corridor will need to be protected as a view corridor. Because the subject site is located between the first public road and sea, the proposed development is required to preserve, enhance or restore the designated public view. The Commission has routinely restricted landscaping in the yard areas to a height of no more than 3 ft., as landscape elements that are higher than 3 ft. would have the potential to impede or block views to the ocean along major coastal access routes and other properties between the first coastal road and sea. Further, only open fencing is permitted in the setback areas to enhance public views and to prevent a “walled off” effect. In the Coastal Overlay Zone of the City’s LDC, open fencing must be at least 75 percent “open”.

Therefore, consistent with the certified LCP, Special Condition #2 requires the north and south yard areas be restricted for purposes of ensuring public views in this location are maintained. The condition requires that any proposed fencing in the side yard setback areas be composed of open materials to assure any existing public views are maintained and potentially enhanced. In addition, the existing gunite on the bluff face is visually obtrusive and is proposed to be removed which will visually enhance the bluff, consistent with the visual resource policies of the certified LCP. Special Condition #1c requires that the gunite be removed prior to or concurrent with development of the home, but in no

case later than occupancy of the new home. Special Condition #8 requires that the permit and findings be recorded to let future property owners know of the restrictions placed on this permit. As conditioned, the project is consistent with the certified LCP.

4. Scale of Development/Community Character. The following policies of the certified La Jolla LCP Land Use Plan are applicable to the proposed development and state the following:

Maintain the character of La Jolla's residential areas by ensuring that redevelopment occurs in a manner that protects natural features, preserves existing streetscape themes and allows a harmonious visual relationship to exist between the bulk and scale of new and older structures. [p. 81]

In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements:

1) Bulk and scale- with regard to surrounding structures or land form conditions as viewed from the public right-of-way and from parks and open space; [p. 90]

With regard to community character, there appears to be a mixture of small scale and large scale residential building types and styles within a two to three block radius of the subject site. While there are many older, one-story single-family residences in the area, there are also several lots that have been redeveloped and contain newer, two-story structures. Specifically, the applicant has submitted an exhibit that illustrates several residences on the west side of Calumet Avenue and within a one block radius of the project site that are newer, two-story single-family homes. Four lots located on the west side of the street south of the subject site were listed as 3,999 sq.ft., 3,143 sq.ft., 3,940 sq.ft. and 4,359 sq.ft. in size. For three lots listed on Sea Ridge St. near Linda Way, the residences are listed as 3,745 sq.ft., 3,369 sq.ft. and 4,178 sq.ft. in size. This information is shown below:

<u>APN</u>	<u># Stories</u>	<u>Size of SFR</u>
414-021-04	2	3,999 sq.ft.
414-031-04	2	3,143 sq.ft.
414-031-05	2	3,940 sq.ft.
414-031-06	2	4,359 sq.ft.
415-033-08	2	3,745 sq.ft.
415-033-06	2	3,369 sq.ft.
415-033-05	2	4,178 sq.ft.

In addition, in other information submitted by the applicant, there are other two-story single-family residences that are similar in size and scale to those listed above. As such, it can be seen that the surrounding neighborhood is a mixture of both one- and two-story single family residences ranging in size from 3,000 to 4,500 sq.ft. in size. While the newer development will result in a larger scale of development (4,569 sq.ft. in two

stories) than presently exists on the site (2,091 sq.ft. in a single story), the proposed development is, nevertheless, consistent with the overall character of the neighborhood and pattern of redevelopment in the area which is characteristic of many nearshore areas. In addition, the proposed home meets all setback, height and FAR requirements of the certified LCP that address size and scale. Therefore, the Commission finds that the proposed project is consistent with the scale/community character provisions of the certified LCP.

5. Public Access. Section 30211 of the Coastal Act is applicable and states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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

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

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

The City's beach and parkland along the shoreline should be expanded wherever possible.

Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible. [emphasis added]

Vertical Access

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

[...]

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

The subject site is located on a blufftop property on the west side of Calumet Avenue in the La Jolla community of the City of San Diego. There is an improved accessway at the street end of Linda Way, approximately ¼ of a mile south of the subject site. There is also an unimproved informal foot trail that descends down a coastal bluff adjacent to Calumet Park two lots north of the subject site. As such, adequate vertical access exists in the area and access at this location is not necessary. The safest vertical access to the

ocean is at the street end of Linda Way, as noted previously, which contains a vertical access stairway. In addition, the applicant is proposing to remove the gunite from the bluff face and the failed portions on the beach which are physical impediments to public access along the shoreline in this area. As such, public access will be improved in this area. Furthermore, the proposed work will occur from the project site and no construction vehicles or equipment will be placed on the beach for any portion of the proposed gunite removal or construction of the home. As such, no construction-related impacts to public access will occur. In summary, the proposed project will not adversely affect public access opportunities in this area and is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

6. Runoff/Water Quality. The certified La Jolla-La Jolla Shores LCP Addendum contains the following policies which are applicable to the subject development:

The ocean and submerged lands within the jurisdictional limits of San Diego should be preserved in their natural state. Plant and marine life in tidepools and offshore waters should be protected from environmental degradation.

...To protect the natural beauty of the coastline while allowing the natural shoreline retreat process to continue, the City and the state aggressively regulate coastal development to prevent activities such as misdirected drainage from increasing natural erosion. Only appropriate erosion control measures that maintain the natural environment, yet allow for the effective drainage of surface water shall be permitted. Surface water drainage shall not be allowed to drain over or near the bluff, but rather shall be directed towards the street or directed into subterranean drainage facilities with energy dissipating devices.

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. All drainage from the development site, including run-off from the roof, is proposed to drain away from the bluff and towards Calumet Avenue into the City's storm drain system. All drainage from the rear yard and portions of the side yards will be directed to the street. 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 a 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 which 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. Special Condition #3 requires submittal of a runoff/drainage plan to assure that drainage is directed to the street to avoid adverse impacts to the coastal bluff as well as water quality of the ocean. Therefore, the Commission finds the proposed project, as conditioned, consistent with the above cited provisions of the certified LCP.

7. Local Coastal Planning. The subject site is zoned RS-1-7 and is designated for residential use in the certified La Jolla Land Use Plan. The proposed single family residence is consistent with that zone and designation. The subject site is also located within the Sensitive Coastal Bluffs overlay zone of the City's implementation plan. The proposed residence, as conditioned, can be found consistent with the ESL overlay. Special Condition #5 advises the applicant that the subject coastal development permit does not have an effect on conditions imposed by the City of San Diego for the subject development.

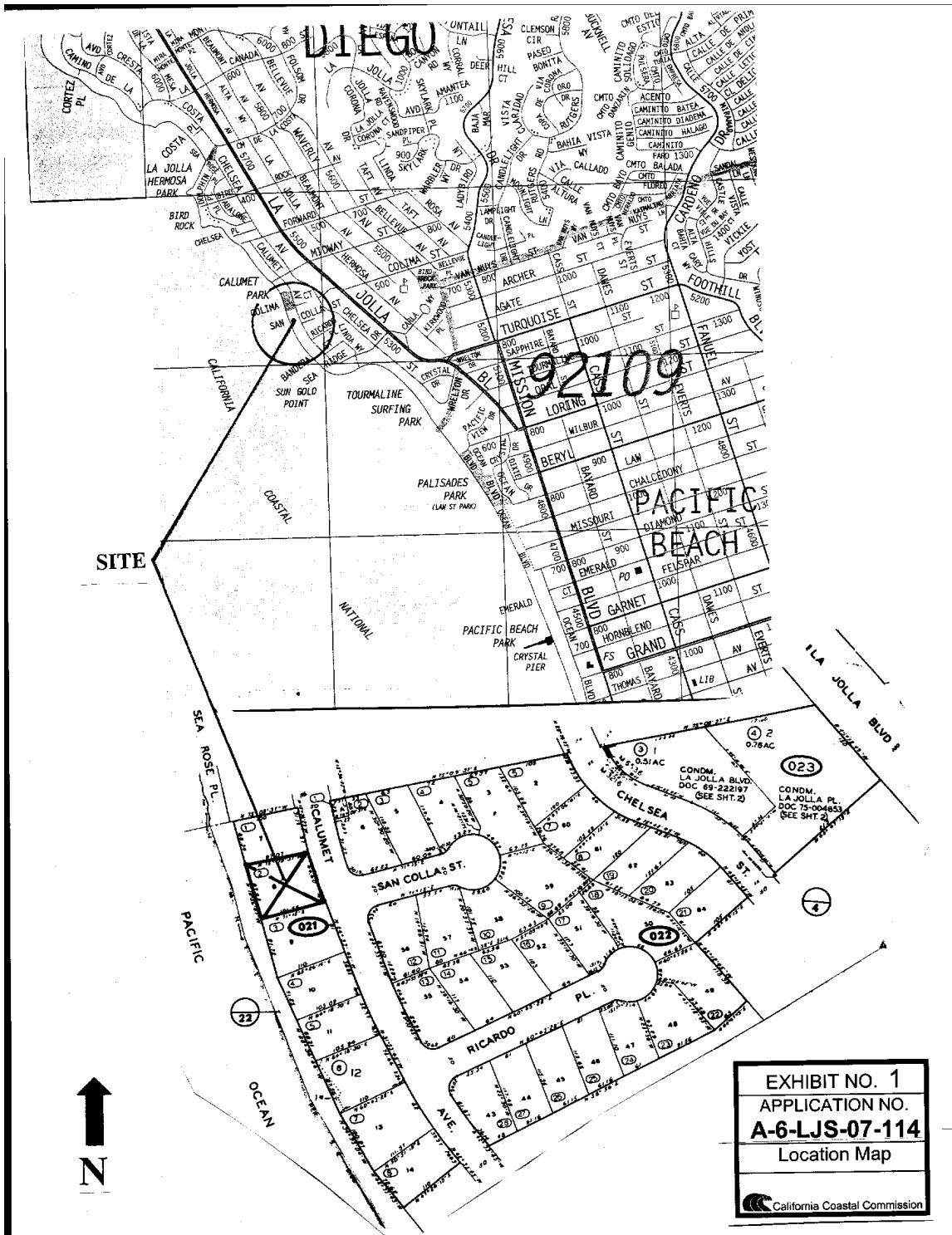
The certified La Jolla-La Jolla Shores LCP Addendum contains policies which address shoreline protective devices, protection and improvement of existing visual access to the shoreline and that ocean views should be maintained in future development and redevelopment. With regard to the proposed siting of the proposed residence, it has been documented that the proposed development will be adequately set back from the bluff edge and is not dependent on the existing gunite. In addition, the certified LUP calls for opening up of yard areas (or setbacks) to enhance visual access to the sea. Therefore, as conditioned such that all new proposed plantings within the yard setback (south and north yards) be low level vegetation so as to not obstruct views toward the ocean in the yard setback areas, and that any proposed fencing be composed of 75% open materials, the proposed development is consistent with the public access policies of the Coastal Act and the certified LUP. Therefore, the proposed development, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla area.

8. 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 certified LCP and the public access policies of Chapter 3 of the Coastal Act. Mitigation measures, including conditions addressing geologic setback, landscaping and fencing to enhance public views to the ocean, 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.

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.



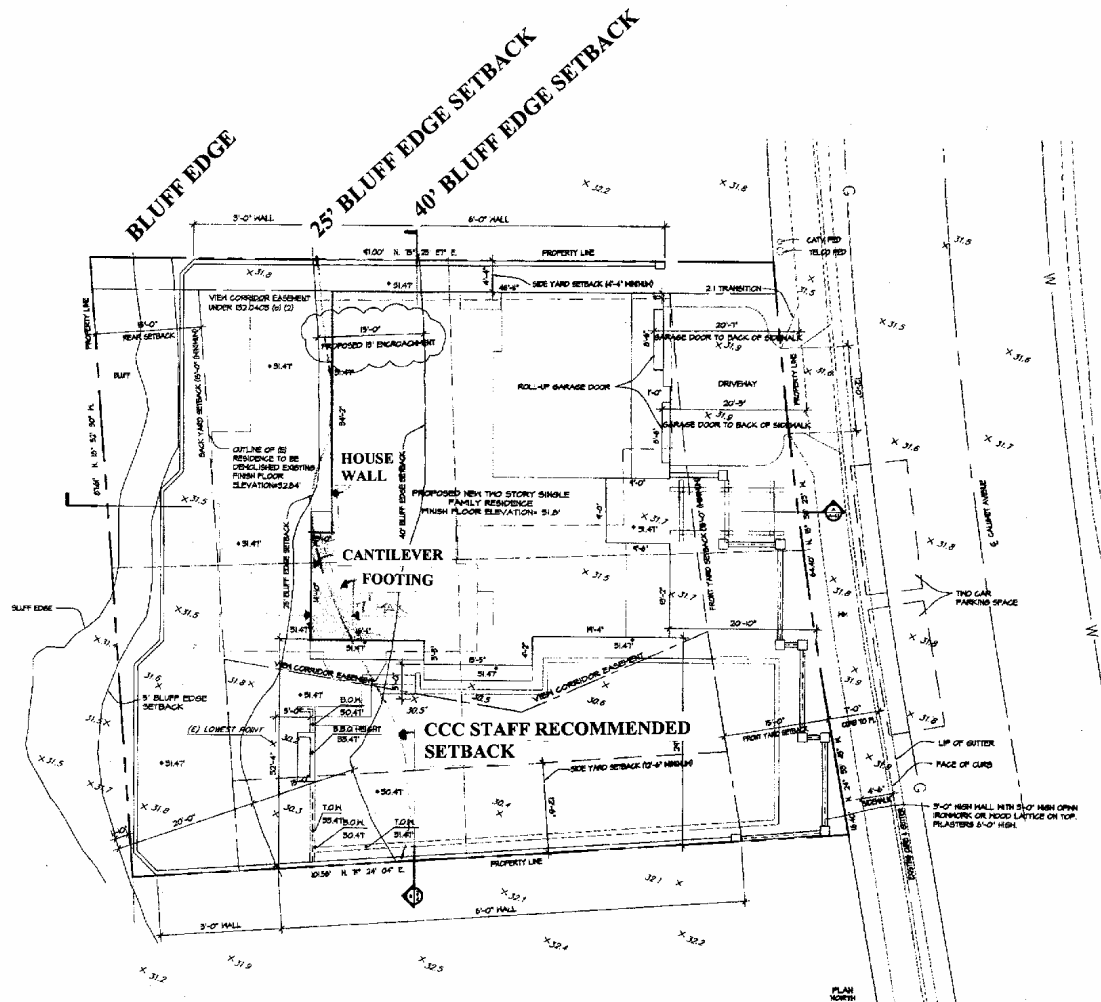


EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-07-114
Detailed site plan
w/recommended
geologic setbacks

 California Coastal Commission

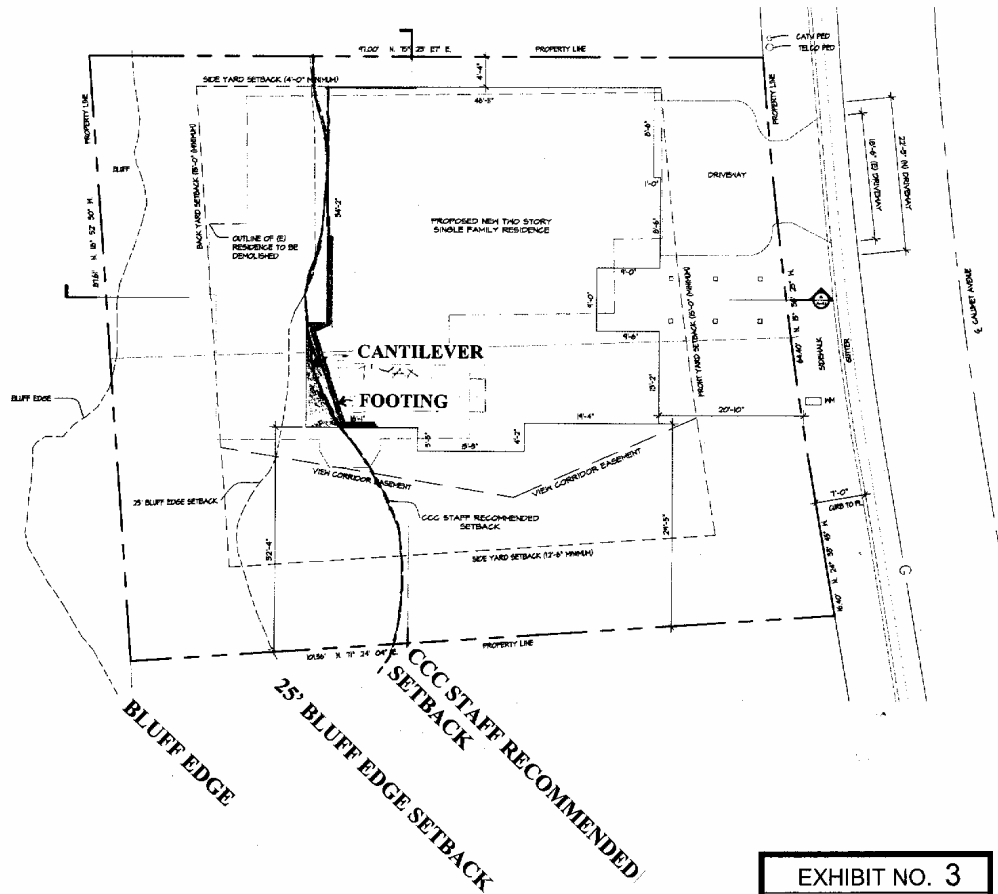


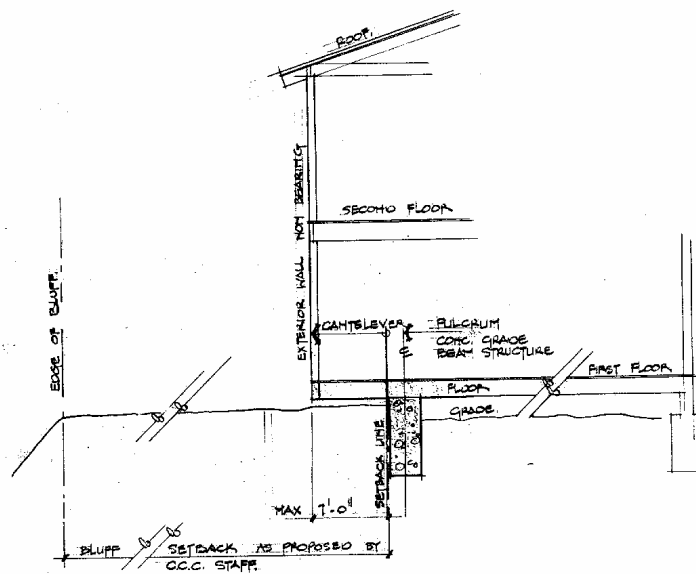
EXHIBIT NO. 3

APPLICATION NO.


A-6-LJS-07-114

Simplified site
plan/proposed
cantilever design




CANTILEVER DESIGN OF SOUTHWEST CORNER OF HOME / 04.11.08
NEHL RESIDENCE
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EXHIBIT NO. 4
APPLICATION NO.
A-6-LJS-07-114
Cross-Section
 California Coastal Commission

