

CALIFORNIA COASTAL COMMISSION

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



W 13a

Addendum

September 5, 2008

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W 13a**, Coastal Commission Permit Application
#6-87-606-A2 (Rubin), for the Commission Meeting of September 13,
2008

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

1. On Page 3 of the Staff Report, the last sentence on the page shall be revised as follows:

[...] After the pool is removed, the area will be filled in with dirt and a new swimming pool will be constructed further inland at a distance of ~~28'6"~~ 25' from the bluff edge.

2. On Page 5 of the Staff Report, the first sentence of the last paragraph on the page shall be revised as follows:

At this time, the applicant is proposing to remove the swimming pool altogether and construct a new pool that will be located a minimum distance of ~~28'6"~~ 25' from the bluff edge, thus, improving the geologic setback for development on the site. [...]

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SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W 13a

Filed: 8/12/08
49th Day: 9/30/08
180th Day: 2/8/09
Staff: Laurinda Owens-SD
Staff Report: 8/18/08
Hearing Date: 9/10-12/08

AMENDMENT REQUEST
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-87-606-A2

Applicant: Gerald and Stanlee Rubin Agent: Guy West, Wallace Cunningham, Inc.

Original

Description: Construction of a four-bedroom, three-story, approx. 7,905 sq.ft. single-family residence on a blufftop parcel with an existing swimming pool.

Proposed

Amendment: Addition of a 475 sq.ft. play/exercise room in basement within footprint of existing single-family residential structure; removal of existing rear yard swimming pool, and construction of new swimming pool and spa on a 16,878 sq.ft. blufftop lot.

Site: 6206 Camino de la Costa, La Jolla, San Diego, San Diego County.
APN 357-011-05

Substantive File Documents: Certified La Jolla LCP Land Use Plan; 6-87-606; 6-87-606-A1 CDP#s: 6-85-75, 6-85-416- 6-87-606- 6-87-606-A1; Report by Geotechnical Exploration, Inc. dated 3/12/08; Updated Plot Plans by Geotechnical Exploration, Inc. dated August, 2008.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed project, with special conditions. The proposed amendment involves the addition to an existing basement level of an existing single-family residence, the removal of an existing swimming pool that does not currently observe the required geologic setback requirements and the construction of a new swimming pool and spa that observe a minimum 25 ft. setback from the bluff edge, consistent with the certified LCP. The proposed changes to the existing residence will bring the residence into conformity with the geologic setback requirements and are consistent with the findings of the submitted geotechnical reports. The Commission's staff geologist has reviewed the project and submitted technical reports and concurs with

their conclusions that the proposed development will be safe and will not require shoreline protection. With the special conditions, the proposed amendment is consistent with all applicable policies of the certified LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act.

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. 6-87-606 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 ground that the development as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program and the public access and recreation policies of the Coastal Act. 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. Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final building, site and structural plans for review and acceptance in writing by the Executive Director. The plans shall be in substantial conformance with the geotechnical report submitted by Geotechnical Exploration, Inc. dated 3/12/08.

The permittee shall undertake the development in accordance with the approved final 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.

2. **Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves during storms and from erosion or landslide potential; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. **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.

IV. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Project History/Amendment Description.** Proposed is the expansion of an existing basement level of an existing three-story single-family residence by 475 sq.ft. to create a play/exercise room on a blufftop site. The lower level is currently 3,473 sq.ft. in size and 2,843.5 sq.ft. of that area is considered a "basement" pursuant to the City's Land Development Code. Also proposed is the removal of an existing swimming pool that at its closest point is approximately 15'7" from the bluff edge. After the pool is removed,

the area will be filled in dirt and a new swimming pool will be constructed further inland at a distance of 28'6" from the bluff edge. A new spa is also proposed. The proposed basement level expansion will be landward of the proposed new pool (ref. Exhibit No. 2).

There have been several past coastal development permit actions involving the subject site. The Commission approved the demolition of a single family residence (with retention of an existing swimming pool) on the site and the creation of two new parcels pursuant to CDP #6-85-75 and the construction of two new single family residences (one each), on the two newly created parcels pursuant to CDP #6-85-416. The residence was demolished under CDP #6-85-75, but the two new parcels were apparently never created as the existing site today contains the same lot configuration as it did in CDP# 6-85-75 prior to the proposed subdivision. In addition, the two residences permitted under CDP #6-85-416 were never constructed and the permit apparently expired.

Subsequently, in January 1987, the Commission approved the construction of a single-family residence on the subject site pursuant to CDP #6-87-606. The proposed residence at that time was for a four-bedroom, three-story, approx. 7,905 sq.ft. single-family residence on a 16,878 sq.ft. blufftop parcel. Also proposed was the refurbishment of an existing swimming pool and surrounding deck, however, these latter improvements were not authorized. Subsequently, the applicants applied for an amendment to construct a 494 sq.ft. bedroom addition to the upper level, conversion of one space of an existing three-car garage into a maid's bedroom and other minor interior remodeling. Those improvements were permitted through an immaterial amendment on 11/21/05. Although the City of San Diego has a certified LCP that covers La Jolla, the subject review is an amendment to a permit previously issued by the Commission. As such, the Commission has review authority, with the City's certified LCP utilized as the standard of review.

2. Geologic Conditions and Hazards. Section 143.0143 addressing Development Regulations for Sensitive Coastal Bluffs of the City of San Diego's certified LCP Implementation Plan 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*.

Under the certified LCP, swimming pools are not considered accessory structures, and therefore must observe the same setbacks as other principal structures are required to observe on a coastal blufftop site (i.e., 40 ft., with a possible reduction to 25 ft. with the necessary geotechnical findings). In this case, the existing swimming pool on the subject site is located 15'7" from the bluff edge. In the original CDP for this project site there was a concern about the stability of the existing swimming pool, which was proposed to be refurbished, as it was located within the 25 foot geologic setback area and the potential impacts to bluff stability had not been addressed in a geotechnical report. As such, a special condition for final plans required that any improvements to the swimming pool be deleted.

At this time, the applicant is proposing to remove the swimming pool altogether and construct a new pool that will be located a minimum distance of 28'6" from the bluff edge, thus, improving the geologic setback for development on the site. Currently the site has no shore or bluff protection and thus, the bluff remains natural. According to the geotechnical report submitted for the project, there are two small sea caves on the subject site. One sea cave is located at the northern part of the site and the other is located near the southern part of the site. The southernmost sea cave is located in close proximity to the proposed improvements. However, the bluff edge has been determined to be located at the back of the sea cave, consistent with the City's Land Development Code, and the proposed improvements have been sited in accordance with that determination.

As noted earlier, through the proposed amendment, a new basement level addition to the proposed residence will also be constructed. This will result in minor excavation of material below the footprint of the proposed residence. In addition, excavation is also proposed for the removal of the above-described swimming pool and construction of the new swimming pool. Because the subject site is a blufftop lot, there is the potential that the proposed excavation could adversely affect the integrity of the coastal bluffs. However, the applicant has obtained an update to the geotechnical report which has addressed this issue. Specifically, the updated geotechnical report states that the soils will be removed and recompacted as part of site preparation prior to addition of any new fill or structural improvements. Excavation for the basement and pool/spa will result in the removal of most of the existing fills at the basement and pool/spa locations. The report includes recommendations for the foundation design and states that with incorporation of these measures that the existing coastal bluff is considered stable in its current configuration and will not be affected by the proposed new development (excavation for basement and swimming pool). It should also be noted that presently there is no gunite on the coastal bluff or any shoreline protection on the subject site nor is any proposed or necessary to support the new improvements.

The existing residence (with new basement addition) will still observe a minimum distance of 40 ft. from the bluff edge, which the geotechnical reports found to be an acceptable setback from a geologic safety aspect. In addition, the geotechnical report completed for the original project found that the residence was adequately set back from the bluff edge. The Commission's staff geologist has also reviewed the proposed project and concurs that the proposed improvements (i.e., swimming pool and spa) as well as the basement level addition are proposed at an appropriate location and will not result in any adverse impacts to the geologic integrity of the coastal bluff.

The applicants have demonstrated that the newly proposed swimming pool and basement level expansion will be adequately set back from the bluff edge (minimum 28'6" and approx. 46' feet, respectively). The spa is also proposed to be set back approx. 27' from the bluff edge. Special Condition No. 1 requires submittal of final plans for the swimming pool and basement level expansion that are consistent with the findings of the geotechnical report prepared for the project. Also, due to the inherent risk of shoreline development, Special Condition #2 requires the applicant to waive liability and indemnify the Commission against damages that might result from the proposed shoreline protective work. The risks of the proposed development include damage from waves and erosion or bluff collapse. 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 swimming pool and basement level addition despite these risks, the applicants must assume the risks. Special Condition #3 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.

In summary, because no shoreline protection is proposed or required, no impacts on beach sand supply are expected. Therefore, as conditioned, the Commission finds that the proposed project is consistent with the above cited provisions of the certified LCP.

3. Public Access. Sections 30210 and 30212 of the Coastal Act are applicable and state:

Section 30210

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

Section 30212

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

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

(2) adequate access exists nearby, or,

The certified La Jolla Community Plan Local Coastal Program also contains numerous policies to protect public access that are similar to those Coastal Act provisions cited above.

The subject site is located on a blufftop property on the west side of Camino de la Costa one lot north of Cortez Place—which is between the first public road and the sea. Cortez Place is an unimproved dedicated street off of Camino de la Costa which provides a blufftop viewing area and a neighborhood access to the shoreline. A lateral bluff trail below the residences to the north facilitates access to a rocky headland. Another unimproved accessway exists at Mira monte Place further south. As such, adequate vertical access exists in the area and access at this location is not necessary, consistent with Section 30212, cited above. The closest improved accessway is a stairway at the southern terminus of Camino de la Costa about 2 ¼ blocks south of the subject site. In summary, the proposed project, as amended, 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.

4. Local Coastal Planning. The subject site is zoned RS-1-5 and the proposed development, which consists of improvements to an existing single-family residence, are consistent with that zone designation. The proposed improvements are also consistent with the geologic setback requirements of the City's certified LCP. As conditioned, the proposed development is consistent with the applicable provisions of the certified LCP along with the public access provisions of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla community.

5. 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 City of San Diego LCP and the public access provisions of the Coastal Act. Mitigation measures, including conditions addressing geologic hazards 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.

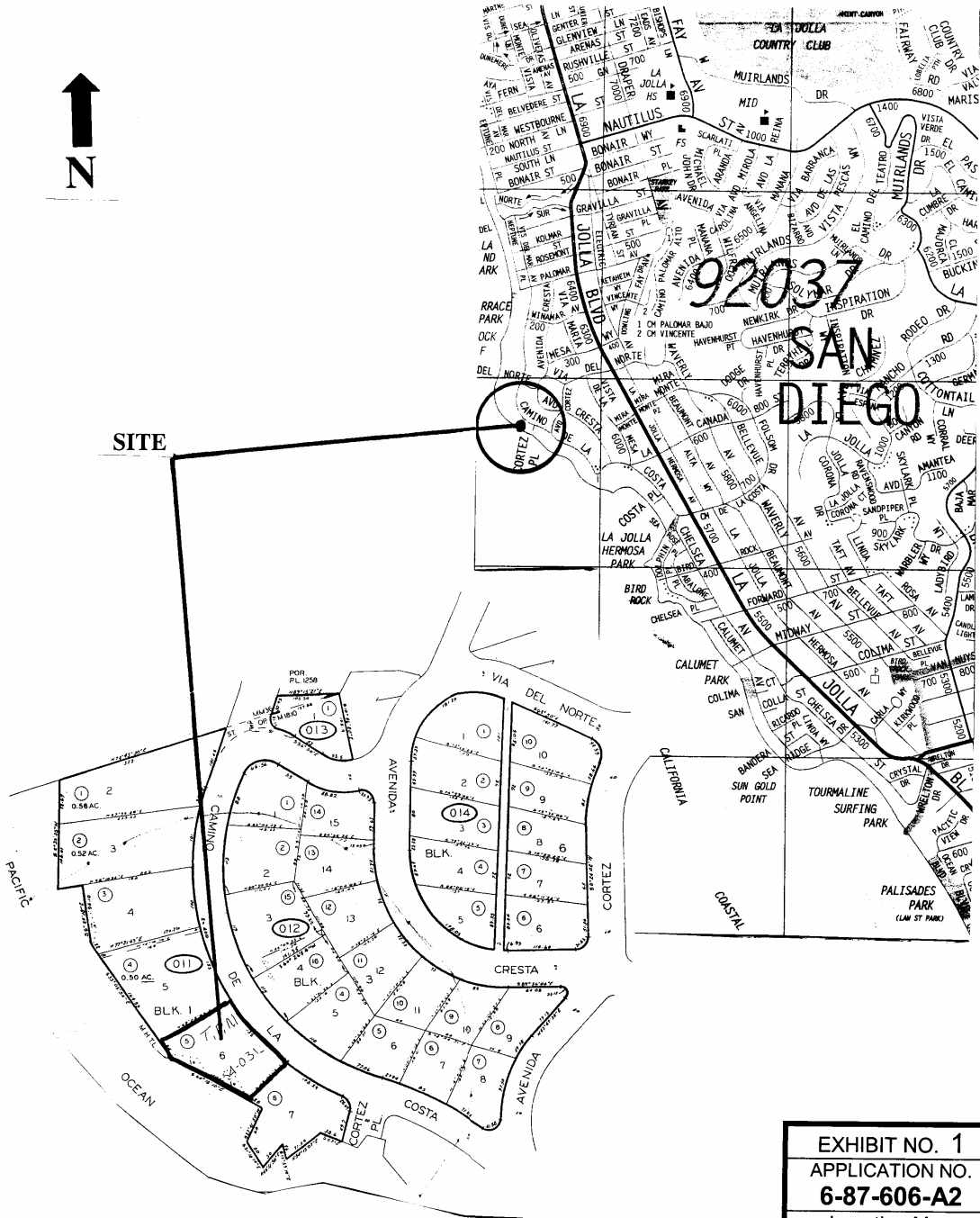



EXHIBIT NO. 1
APPLICATION NO.
6-87-606-A2
Location Map

 California Coastal Commission

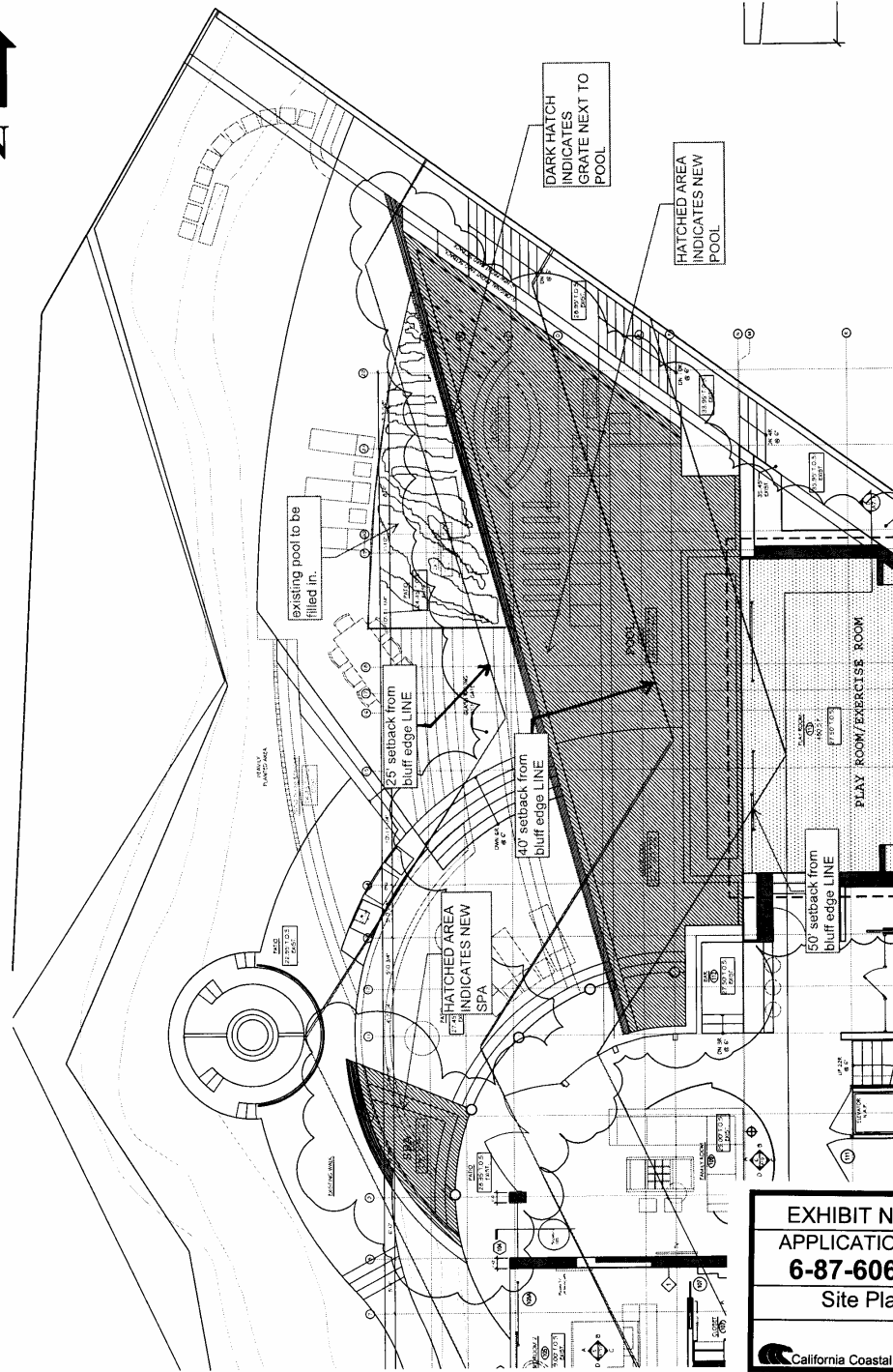


EXHIBIT NO. 2
APPLICATION NO.
6-87-606-A2
Site Plan
California Coastal Commission

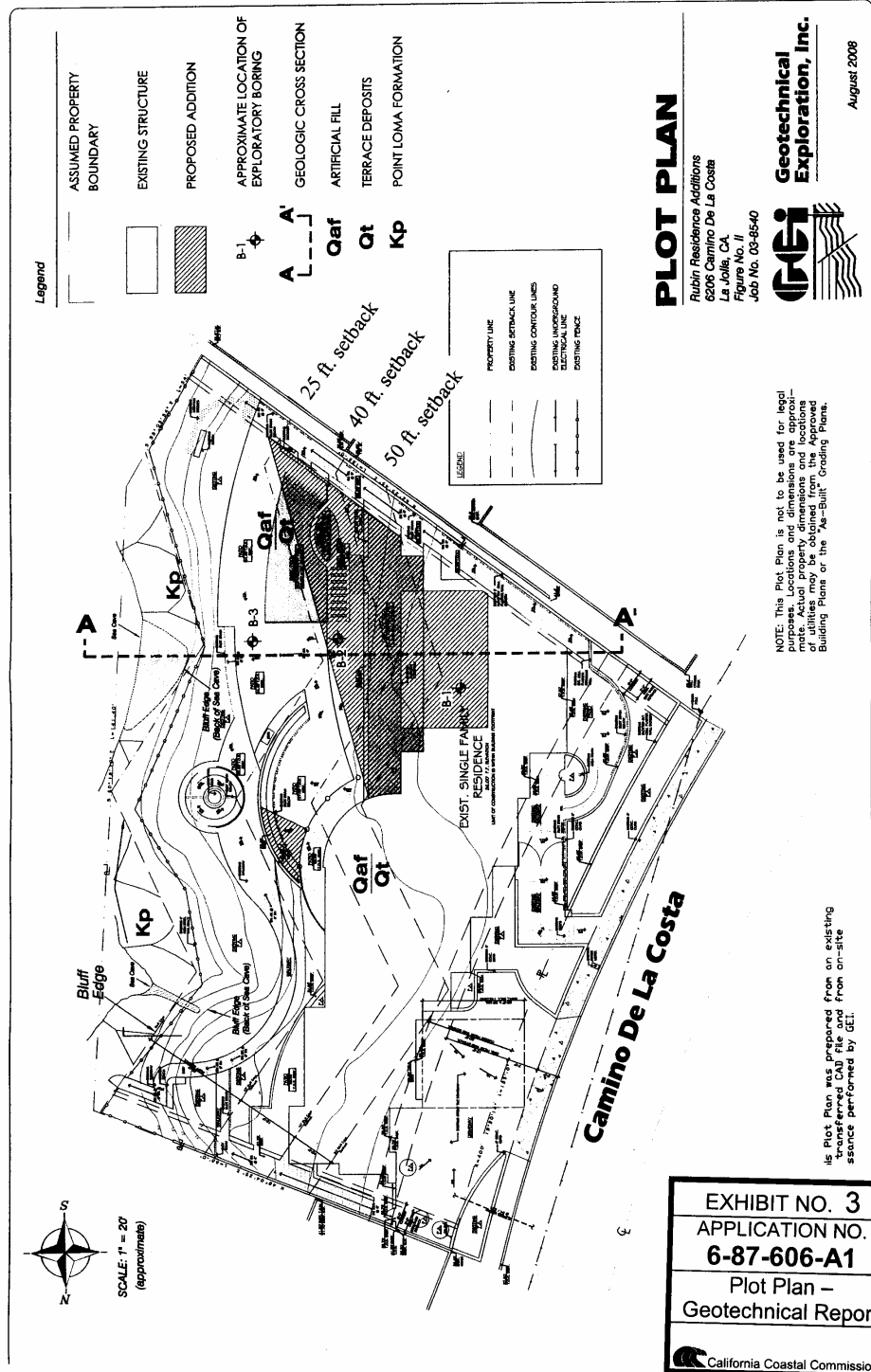


EXHIBIT NO. 3
APPLICATION NO.
6-87-606-A1
Plot Plan -
Geotechnical Report

California Coastal Commission