

## **CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# Th11b

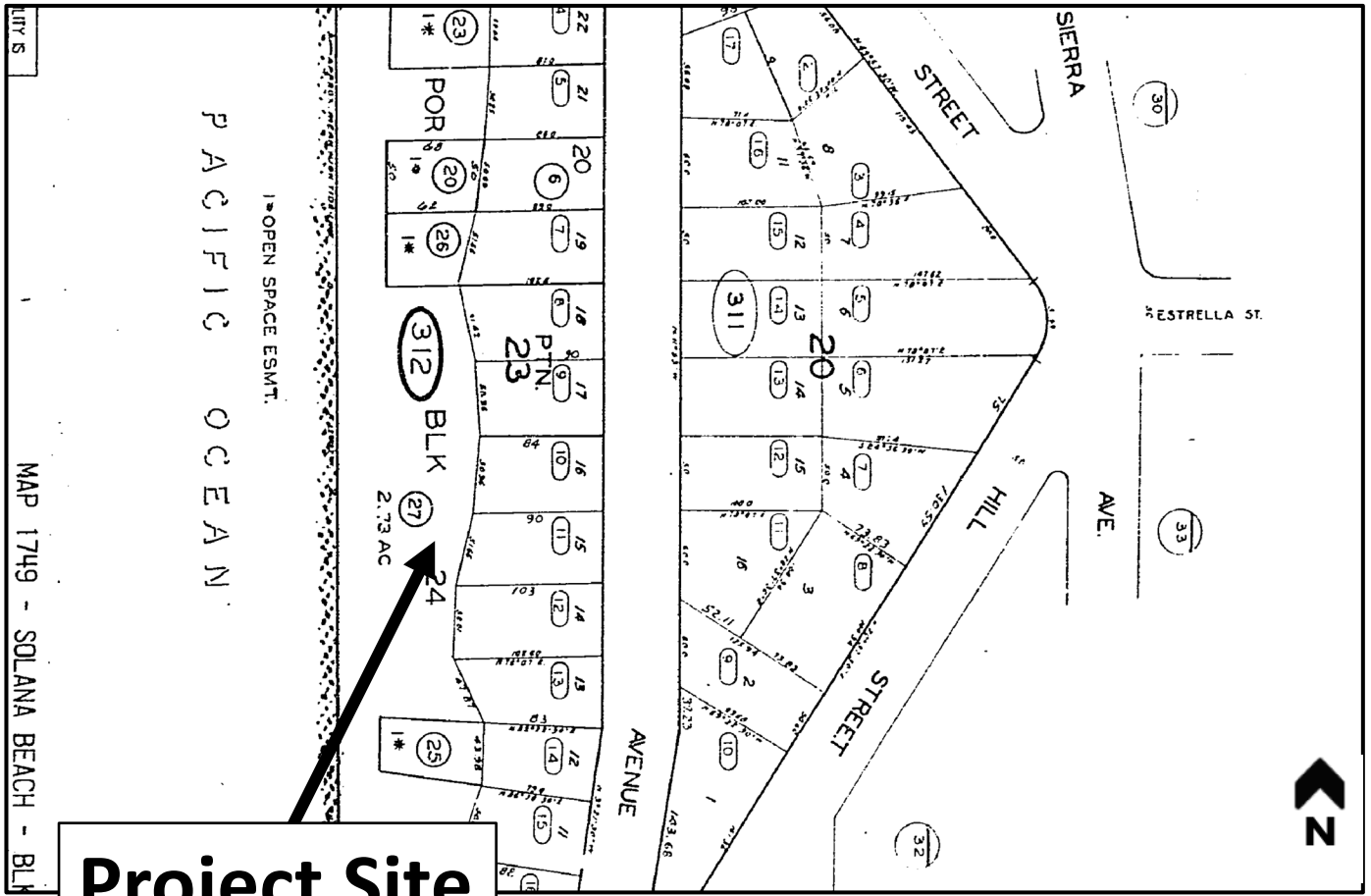
**6-21-0278 (DESIMONE, SCHRAGER, JOKIPII, & OENE)**

**JUNE 2021**

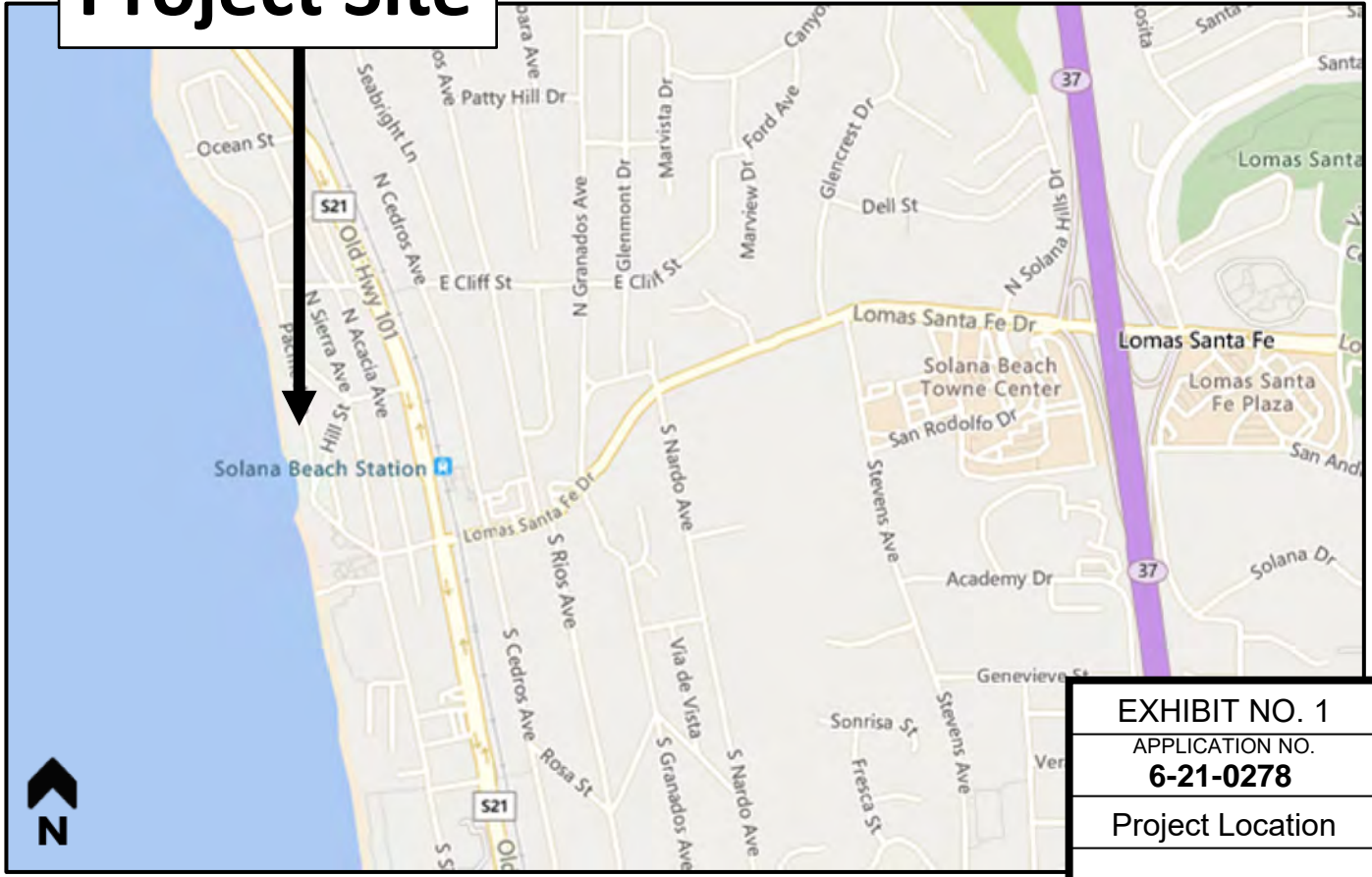
### **EXHIBITS**

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**Project Site**



<b>EXHIBIT NO. 1</b>
APPLICATION NO.
<b>6-21-0278</b>
<b>Project Location</b>
 California Coastal Commission



376 ft. long  
seawall approved by  
various CDPs

50 ft. long gap

100 ft. long  
seawall approved by  
CDP #6-18-0288

Pacific Avenue

249

245

241

235



EXHIBIT NO. 2
APPLICATION NO. <b>6-21-0278</b>
Aerial Photograph
 California Coastal Commission



249 Pacific Avenue

245 Pacific Avenue

241 Pacific Avenue

235 Pacific Avenue



EXHIBIT NO. 4	
APPLICATION NO.	
6-21-0278	
Proposed Project	
	California Coastal Commission



## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by Richard A. Schrager and the Schrager Community Property Funnel Trust (“Schrager”), Mark Van Oene and the Van Oene-Spooner Family Trust (“Van Oene”), Robert E. DeSimone and the DeSimone Family Trust (“DeSimone”), and Eron Jokipii (“Jokipii”) (collectively, the “Property Owners”) and the California Coastal Commission (“Commission”) related to the petition for writ of mandate, declaratory judgment, and injunction *Schrager, Richard, et al. v. California Coastal Commission*, San Diego County Superior Court Case No. 37-2020-00038678-CU-WM-NC (the “Petition”). The Property Owners and the Commission desire to attempt to resolve this case by entering into this Agreement.

### RECITALS

- A. The Property Owners own the bluff-top properties from 235 through 249 Pacific Avenue, Solana Beach, California. DeSimone owns 235 Pacific Avenue; Schrager owns 241 Pacific Avenue; Jokipii owns 245 Pacific Avenue; and Van Oene owns 249 Pacific Avenue.
- B. Three Property Owners—Schrager, Van Oene, and DeSimone (“Petitioners”)—have filed the Petition, seeking to set aside the Commission’s denial of their Coastal Development Permit application No. 6-19-1291 (the “Original CDP Application”) to construct upper bluff stabilization and a seawall on the public beach and bluff for the benefit of the Property Owners.
- C. Jokipii was not an applicant on, but would be a beneficiary of, the Original CDP Application and is not a party to the Petition. The Jokipii property (245 Pacific Avenue) is subject to a recorded waiver of certain rights to bluff stabilization or seawall protection, but would benefit from the protection of the seawall and upper bluff stabilization proposed in the Original CDP Application. Jokipii agrees to be party to this Agreement and an applicant on a new CDP application that proposes the same seawall and upper bluff stabilization project, but with new or modified conditions and with Jokipii and the Jokipii property as a co-applicant.
- D. Jokipii represents and warrants that he owns the property located at 245 Pacific Avenue, Solana Beach, California, in his sole individual capacity.
- E. The Commission disagrees with each and all of Petitioners’ legal claims in the petition for writ of mandate, declaratory relief, and injunction. However, in an effort to settle the litigation, the Property Owners agree to submit a new, modified CDP application for the same upper bluff stabilization and seawall protection project that will include Jokipii as a co-applicant and be subject to new or modified conditions as described in this Agreement (“Modified CDP”). The Commission will conduct a new public hearing on the Modified CDP.

### AGREEMENT

In consideration of the mutual promises and covenants made in this Agreement, the parties agree as follows:

1. *Incorporation of Recitals.* Recitals A-E above are incorporated herein by this reference.
2. *Modified CDP.* The Property Owners shall submit the Modified CDP to the Commission. The Modified CDP shall be a new application for the same seawall project with upper bluff stabilization

EXHIBIT NO. 5

APPLICATION NO.

**6-21-0278**

Settlement Agreement



California Coastal Commission

proposed in Coastal Development Permit Application No. 6-19-1291 and considered by the Commission during the hearing on September 10, 2020. The Property Owners agree to be bound by conditions substantially similar to the conditions that Commission staff recommended for approval in the August 27, 2020, Staff Report for the September 10, 2020, Commission hearing on CDP Application No. 6-19-1291, with changes specified in this Agreement. The Property Owners agree to the following modifications to the CDP Application and permit conditions:

- 2.1. Jokipii shall be a co-applicant on the Modified CDP application, in addition to the applicants for CDP Application No. 6-19-1291.
  - 2.2. Modification of Special Condition 3 in the August 27, 2020, Staff Report to specify that authorization of the seawall expires when any of the residences at 235 Pacific Avenue, 241 Pacific Avenue, 245 Pacific Avenue, or 249 Pacific Avenue are redeveloped as defined in Special Condition 4.
  - 2.3. Modification of Special Condition 14 in the August 27, 2020, Staff Report to specify that the applicants, including the owners of 235 Pacific Avenue, 241 Pacific Avenue, 245 Pacific Avenue, and 249 Pacific Avenue, shall record a deed restriction as set forth in the condition.
  - 2.4. A Special Condition requiring the Property Owners to satisfy all requirements of this Agreement prior to permit issuance.
  - 2.5. The Property Owners agree to pay the Sand Mitigation Fee and Public Recreation Fee required by the City of Solana Beach certified Land Use Plan, calculated as of the year the Commission acts on the permit application.
3. *Application Fee.* The Property Owners shall pay the required application fee upon submittal of the new application for the Modified CDP and agree not to request a waiver of the fee.
4. *Waiver of Waiting Period for Modified CDP.* The Commission agrees to waive the six-month waiting period for submittal of the Modified CDP for the same project.
5. *Conditional Terms of Agreement.* The following terms of this Agreement are contingent upon the Commission's conditional approval of the Modified CDP or upon the Property Owners' failure to satisfy Section 2 or Section 3 of this Agreement:
  - 5.1. Petitioners shall file a request for dismissal, with prejudice, of San Diego Superior Court Case No. 2020-00038678-CU-WM-NC, within 5 days of the Commission's issuance of the Notice of Intent (NOI) following conditional approval of the Modified CDP.
  - 5.2. Prior to issuance of the permit, Jokipii shall deposit one-hundred-and-forty thousand dollars (\$140,000) into an interest-bearing account, to be established and managed by the Nature Collective, San Dieguito River Valley Regional Open Space Park Joint Powers Authority, State Coastal Conservancy, or similar entity, to be determined by the Commission's Executive Director. The Executive Director may split the donation among approved entities.

- 5.2.1. The purpose of the account will be to fund public access and public recreation improvements in Solana Beach or surrounding areas as a first priority and for sand replenishment as a secondary priority. To effectuate this purpose, each approved entity will use the funds pursuant to a memorandum of understanding (MOU) between the Commission and each approved entity.
- 5.2.2. The Executive Director shall send notice to Jokipii with authorization to transfer the funds to the designated entities within 45 days after the Commission's issuance of the NOI.

- 5.3. The Property Owners agree that the Commission and its agents, officers, and employees are released from all claims that the Property Owners have raised or could raise in San Diego Superior Court Case No. 37-2020-00038678-CU-WM-NC with respect to the Commission's 2020 denial of the CDP application.
- 5.4. The Property Owners waive any and all rights to file a lawsuit challenging the Commission's conditional approval of the Modified CDP or any conditions imposed on the Modified CDP as set forth in this Agreement or that the Property Owners may accept in writing or verbally at the Commission hearing.

6. *Commission's Discretion.* The Commission retains full discretion as allowed by law to grant, condition, or deny the CDP application after full public hearing. If the Commission proposes to add or amend conditions of approval that do not substantially conform to the conditions described in this Agreement, the Commission shall give the Property Owners opportunity to withdraw the application before a vote to approve with such substantially nonconforming conditions.

7. *Fees and Costs.* The Property Owners and the Commission shall assume and pay for their respective attorneys' fees and legal costs and expenses in the subject action.

8. *Counsel.* The Property Owners and the Commission represent that they have consulted or have had the opportunity to consult legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

9. *Binding.* The Property Owners and the Commission agree that the terms, conditions, and provisions of this Agreement are binding upon, and shall inure to the benefit of, all assigns and successors-in-interest.

10. *Entire Agreement.* Except as otherwise provided in this Agreement, this Agreement constitutes the entire and only agreement between the Property Owners and the Commission with reference to its subject matters and supersedes any prior representation or agreement, oral or written, with respect to its subject matters. The Property Owners and the Commission further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited in this Agreement and that in entering into this Agreement, no party is relying upon any representation, warranty, agreement, or covenant not expressly set forth in this Agreement.

11. *No Admissions.* Each Property Owner and the Commission agrees that this Agreement is made in compromise of disputed claims and that by entering into and performing the obligations of this

Agreement, no party concedes or admits the truth of any claim or any fact and the execution and performance of this Agreement shall not be construed as an admission.

12. *Governing Law.* This Agreement shall be construed, enforced, and governed by the laws of the State of California, and shall constitute a binding settlement by the parties which may be enforced under the provisions of the California Code of Civil Procedure.

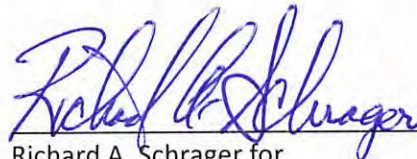
13. *Mutual Drafting.* The Property Owners and the Commission represent that this Agreement was mutually drafted and agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or their counsel participated in the drafting of this Agreement.

14. *Amendment.* This Agreement may only be amended by a writing signed by each signatory to this Agreement.

15. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same Agreement. Facsimile, PDF, or DocuSign signatures will have the same force and effect as original signatures.

16. *Authority.* The Property Owners and the Commission represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntarily, or by operation of law), to any person or entity, any right, title, or interest in any claim released and discharged.

Date: 03/29/2021



Richard A. Schrager for  
Petitioner *Richard A. Schrager* and  
*The Schrager Community Property Funnel Trust*

Date:

Mark Van Oene for  
Petitioner *Mark Van Oene* and  
*The Van Oene-Spooner Family Trust*

Date: 03/29/2021



Robert E. DeSimone for  
Petitioner *Robert E. DeSimone* and  
*The DeSimone Family Trust*

Date:

Eron Jokipii for  
*Eron Jokipii*  
DocuSigned by:

Date: 03/26/2021

*John Ainsworth*

020ACF9D159C473...  
John Ainsworth, Executive Director  
*California Coastal Commission*

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Date:

\_\_\_\_\_  
Richard A. Schrager for  
Petitioner *Richard A. Schrager* and  
*The Schrager Community Property Funnel Trust*

Date:

\_\_\_\_\_  
Mark Van Oene for  
Petitioner *Mark Van Oene* and  
*The Van Oene-Spooner Family Trust*

Date:

\_\_\_\_\_  
Robert E. DeSimone for  
Petitioner *Robert E. DeSimone* and  
*The DeSimone Family Trust*

Date: 2021 MAR 30

\_\_\_\_\_  
*Eron Jokipii*  
Eron Jokipii for

Date: 03/26/2021

DocuSigned by:  
*John Ainsworth*  
\_\_\_\_\_  
John Ainsworth, Executive Director  
*California Coastal Commission*

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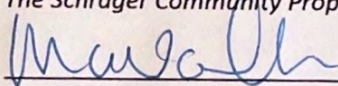
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Date:

Richard A. Schrager for  
Petitioner *Richard A. Schrager* and  
*The Schrager Community Property Funnel Trust*

Date: 03/30/2021

  
Mark Van Oene for  
Petitioner *Mark Van Oene* and  
*The Van Oene-Spooner Family Trust*

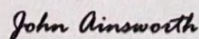
Date:

Robert E. DeSimone for  
Petitioner *Robert E. DeSimone* and  
*The DeSimone Family Trust*

Date:

Eron Jokipii for

*Eron Jokipii*  
DocuSigned by:

  
*John Ainsworth*

Date: 03/26/2021

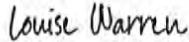
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John Ainsworth, Executive Director  
*California Coastal Commission*

Approved as to form:

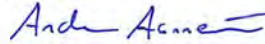
Date: March 30, 2021

Date: 03/30/2021

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Louise Warren, Chief Counsel  
California Coastal Commission



Anders Aannestad  
Aannestad Andelin & Corn LLP  
Attorney for Petitioners and Property Owners  
Schrager, Van Oene, DeSimone, and Jokipii



Andrew Contreiras, Deputy Attorney General  
Attorney for Respondent  
California Coastal Commission

**SOIL  
ENGINEERING  
CONSTRUCTION INC.**

September 24, 2019

TO: Bob Trettin, Applicants' Agent  
Schrager (241 Pacific) and Van Oene (249 Pacific)

FROM: Soil Engineering Construction, Inc.  
John Niven, P.E.

RE: Sand Fee Worksheet; City Bluff Property Located Between  
241 and 249 Pacific Avenue, Solana Beach, CA

**SAND MITIGATION FEE WORKSHEET**

City Bluff Property Located Between 241 and 249 Pacific Avenue, Solana Beach  
50' Seawall

W = 50 ft.  
E = 0 (project is subject to a beach recreation / public access fee)  
v = 0.90  
R = 0.4 (from GeoSoils Coastal Hazard Report; 2017)  
L = 20 yrs.  
S = 0.74 (from USACOE 2015 Solana Beach Study)  
Hs = 35 Hu = 50 Rcu = 0.4 Rcs = 0

$$V_b = (S \times W \times L) \times [(R \times h_s) + (1/2 h_u \times (R + (R_{cu} - R_{cs})))] / 27$$

$$\text{Where } (S \times W \times L) = (.74 \times 50 \times 20) = 740$$

$$V_b = (740) \times [(R \times h_s) + (1/2 h_u \times (R + (R_{cu} - R_{cs})))] / 27$$

$$V_b = 931.85 \text{ cu. yds.}$$

$$V_t = V_b \quad V_t = 931.85$$

VAC= Volume of Sand Already Contributed Through Failure

$$VAC = 300 \text{ cubic yards} \times .74 ;$$

$$VAC = 300 \text{ cu./yds.} \times .74 = 222$$

$$VAC = 222 \text{ cu./yd.}$$

560 N. Hwy 101, Suite 5, Encinitas, California (760) 633-3470 Fax (760) 633-3472

EXHIBIT NO. 6

APPLICATION NO.  
**6-21-0278**

Sand Mitigation Calc.



California Coastal Commission

**SOIL  
ENGINEERING  
CONSTRUCTION<sub>INC.</sub>**

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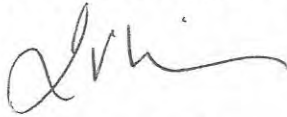
Vt Final = Vt - VAC      Vt Final = 931.85 - 222 = 709.85  
M = Vt Final x C      709.85 x \$14.47\*\* = \$10,272 (rounded)

**M = \$10,272.00**

\*\* Based on attached bids from qualified licensed contractors.

Respectfully submitted,

SOIL ENGINEERING CONSTRUCTION, INC.



John Niven, R.C.E.



<b>Table 1 – Public Recreation Impact Mitigation Fee Schedule</b>		
<b>Permit Year</b>	<b>Initial Area Rate (Per SF)</b>	<b>Bluff Retreat Rate (Per LF)</b>
2018	\$126	\$662
2019	\$129	\$698
2020	\$131	\$737
2021	\$134	\$780

Seawall Initial Area = Seawall Width x Seawall Length

Public Recreation Fee = ((Seawall Initial Area x Initial Area Rate) + (Seawall Length x Bluff Retreat Rate))

Seawall Width (ft.)	2.333
Seawall Length (ft.)	50
Seawall Initial Area (sq. ft)	116.65
Initial Area Rate (\$/sq. ft.)	134
Bluff Retreat Rate (\$/linear ft.)	780
<b>Public Recreation Fee (\$)</b>	<b>\$54,631.10</b>

<b>EXHIBIT NO. 7</b>
APPLICATION NO. <b>6-21-0278</b>
Public Recreation Calc.
 California Coastal Commission

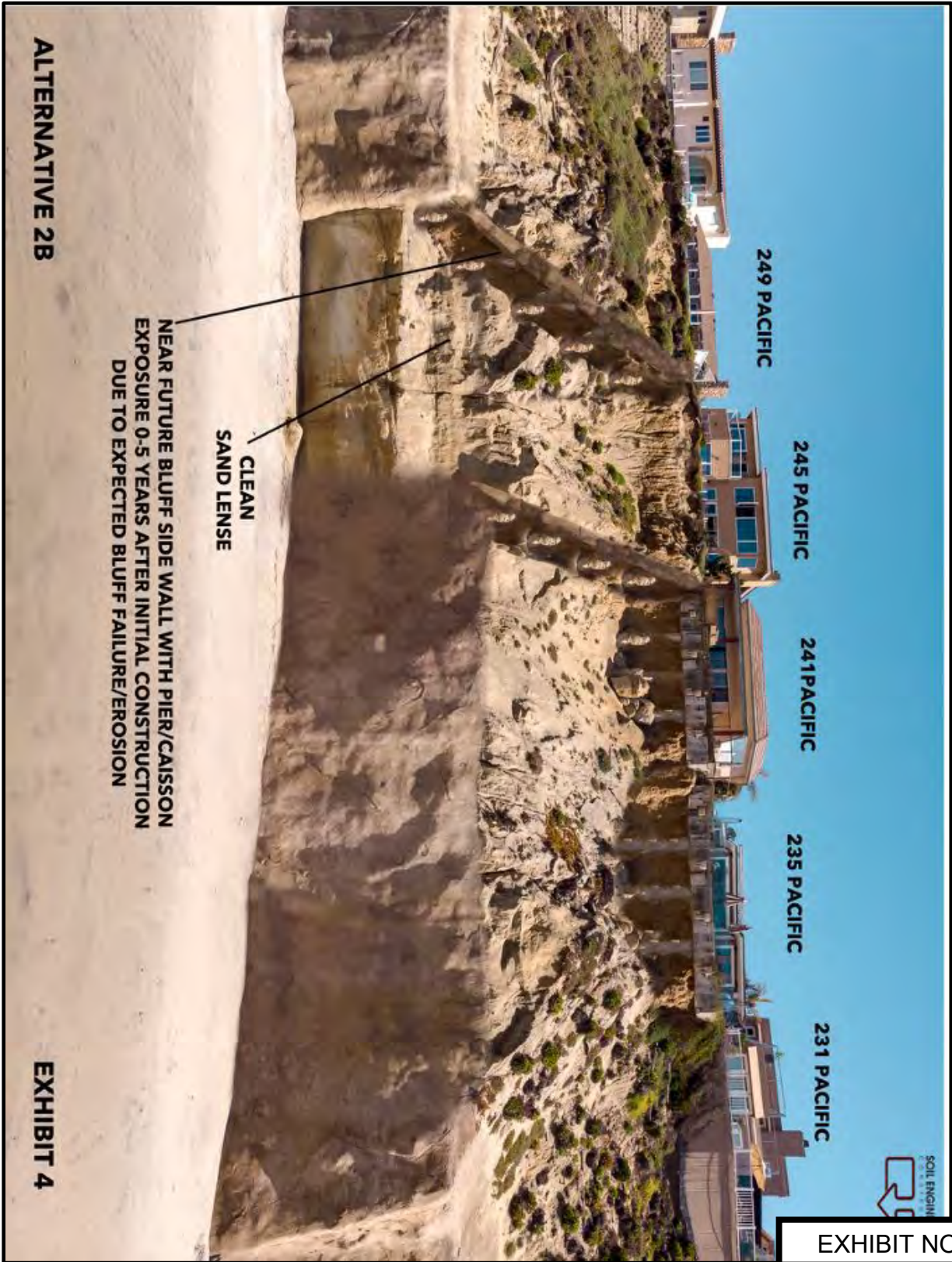
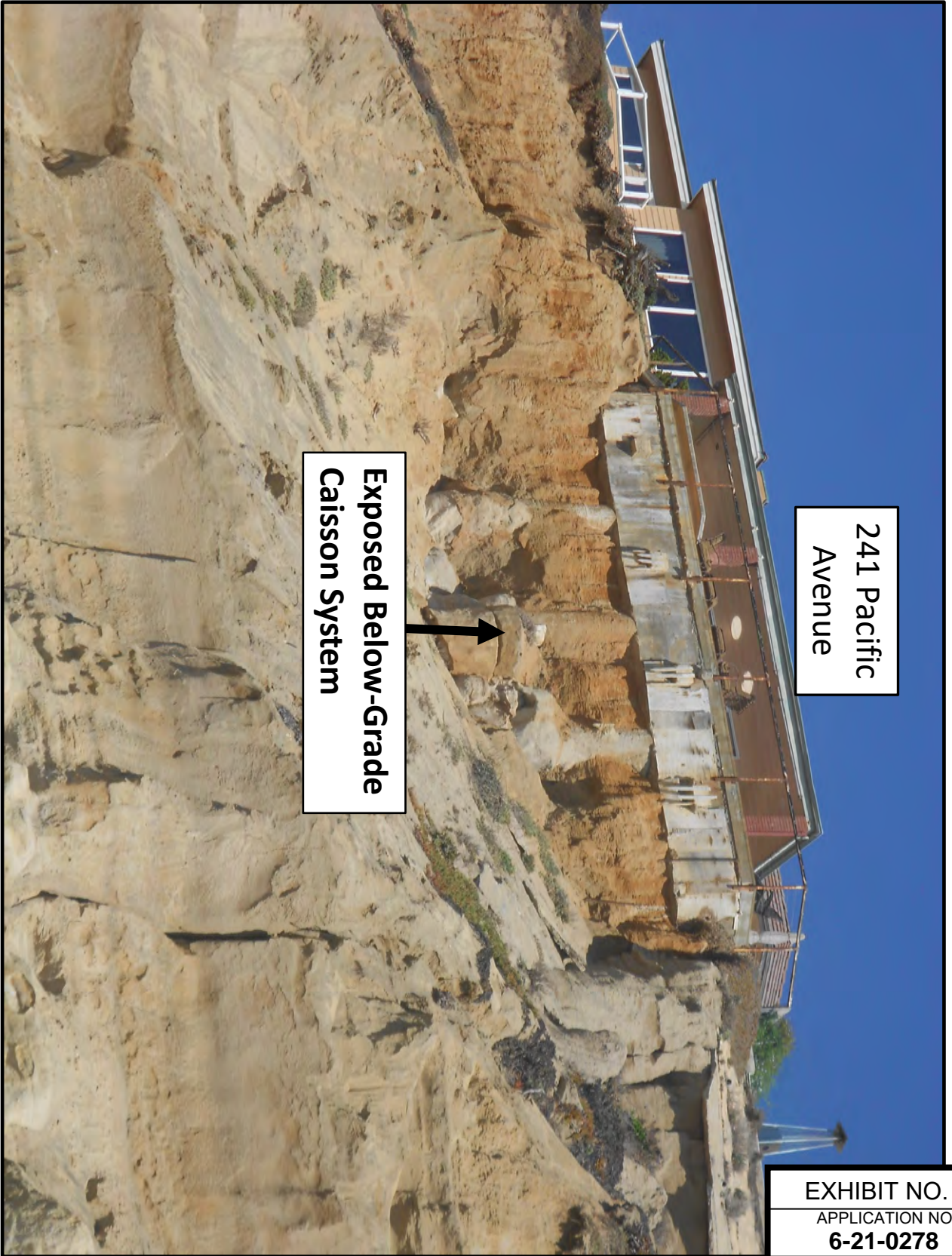


EXHIBIT NO. 8
APPLICATION NO. <b>6-21-0278</b>
Return Walls Alt.
 California Coastal Commission



241 Pacific  
Avenue

Exposed Below-Grade  
Caisson System

EXHIBIT NO. 9

APPLICATION NO.

**6-21-0278**

Exposed Caissons



California Coastal Commission



50 ft.  
wide gap

CDP #6-18-0288  
Seawall

EXHIBIT NO. 10
APPLICATION NO. <b>6-21-0278</b>
Adjacent Seawalls
 California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

455 MARKET STREET, SUITE 228  
 SAN FRANCISCO, CA 94105-2219  
 VOICE (415) 904-5200  
 FAX (415) 904-5400



August 26, 2020

**SUPPLEMENTAL GEOTECHNICAL REVIEW MEMO**

To: Dennis Davis II, Coastal Program Analyst II

From: Lesley Ewing, Ph.D. PE, Sr. Coastal Engineer *Lesley Ewing*  
 Joseph Street, Ph.D. PG, Staff Geologist *Joseph Street*

Subject: 235, 241 and 249 Pacific Avenue, Solana Beach, CDP #6-19-1291

Following the March 7, 2019, Commission hearing in which the Commission voted to approve a lower seawall and mid-bluff wall at 235 and 241, but to not approve any shoreline protection at 245 Pacific Avenue, technical staff had several conversations with the applicants' representation, Bob Trettin, and the applicants' engineer, John Niven with Soil Engineering Construction (SEC), concerning options to comply with this decision by the Commission. In addition to these conversations, the Commission's Sr. Coastal Engineer and Geologist have received and reviewed new information provided by the applicants' engineer, listed below.

This memo is an update to our memo dated February 21, 2019 (provided here as **Appendix A**) and should be read in conjunction with that earlier review. In addition to the materials reviewed for the prior memo, we have reviewed the following reports:

- Soil Engineering Construction, Inc. (March 29, 2019) memo from John Niven to Karl Schwing, et al. Re: Coastal Commission Action; CDP #6-18-0288. Request for Clarification of Coastal Commission Direction.
- Soil Engineering Construction, Inc. (2019-04-05, Niven Memo) Alternatives Review.
- Soil Engineering Construction, Inc. (October 7, 2019) Updated Geotechnical Evaluation of Coastal Bluff Seawall Extensions, 235, 241 and 249 Pacific Avenue.
- Soil Engineering Construction, Inc. (received December 18, 2019) Project Alternatives Analysis 241 and 249 Pacific Avenue.
- Soil Construction Engineering, Inc. (May 5, 2020) DeSimone et al. Seawall Gap Fill (DCP #6-19-1291); Response to Coastal Staff e-mail dated 4/6/20.

**Summary**

Despite considerable effort on the part of staff and the applicants' representatives, due to the engineering challenges and geologic constraints of the site, we have been unable to establish any method that would allow for the safe construction and maintenance of any protection of 241 Pacific Avenue that would avoid any construction of shore protection across the city-owned bluff face fronting 245 Pacific Avenue, Solana Beach. Given that

EXHIBIT NO. 11

APPLICATION NO.

6-21-0278

Technical Memo

situation we find that the proposed project, with a lower seawall fronting the bluff at 245 Pacific Avenue, is the option that would provide protection for the residence at 241 Pacific Avenue while being the least damaging to the coastal bluff and least dangerous for workers. The SEC (December 2019) memo identifies that 25 feet of seawall north of the approved seawall at 241 Pacific Avenue, across 245 Pacific Avenue, would be needed to protect the residence at 241 Pacific Avenue from erosion developing at the northern terminus of the 241 Pacific Avenue property line. The memo also recommends that an additional 25 feet of seawall be construction south of the existing seawall at 249 Pacific Avenue, to protect this property from the lateral spreading of erosion from the gap that would exist at the lower bluff of 245 Pacific Avenue, immediately south of 249 Pacific Avenue. The two 25' seawall extensions would result in full lower bluff armoring seaward of 245 Pacific Avenue.

## Evaluation of Alternatives

The reports/memos from SEC collectively examine several alternatives that were in line with some of the suggestions from staff or that were in line with other approaches used to protect bluff top property. These options included:

- No project
- Removal and/or relocation of threatened portions of the residential structures at 241 and 249 Pacific Avenue
- Upper bluff retention systems in lieu of reconstruction of failed areas of the coastal bluff between 241 and 249 Pacific Avenue
- Provide a landscaping treatment to failing areas of the city-owned coastal bluff
- Construction of lateral walls, from the top of seawall to top of bluff at both 249 Pacific Avenue and 241 Pacific Avenue
- Construction of very short-term, temporary measures to protect 241 and 249 Pacific Avenue from failure originating on the city-owned bluff between those two properties
- Construction of a temporary seawall seaward of 245 Pacific Avenue for construction safety

The SEC reports/memos characterize the bluffs seaward of 241, 245 and 249 as being very unstable, with a low Factor of Safety against failure, and highly susceptible to continued erosion. Bluff instability and erosion hazards at the site are discussed in greater detail in our previous memo, attached here as **Appendix A**. SEC has stated that the stability of the bluff face has deteriorated since the March 2019 Commission hearing and little work can be done safely on the bluff. The “no project” alternative would fail to address the erosion and instability hazards to the existing homes at 241 and 249 Pacific Ave., and in time these structures would be damaged or destroyed. Removing the more seaward, at-risk portions of the residences at 241 and 249 Pacific Avenue would reduce their near-term risk, but would not treat the underlying bluff instability, and in a relatively short period of time, the remaining portions of the homes would become threatened. There is little room on these lots to relocate any of the existing development. The upper bluff at 241 Pacific Ave. has, to date, been partially supported by a caisson-grade beam retention system, but this system is now in danger of being undermined due to on-going bluff erosion. The relocation of the residence would not prevent or stop the undermining and eventual collapse of this wall.

The fragility of the bluff also restricts what can be constructed on the bluff face, or on the bluff top near the bluff edge. At 241 Pacific Ave., there is not sufficient space between the house and bluff edge to construct a new or enhanced upper bluff retention system from the landward side of the property, so the only feasible way to expand or replace the existing caisson-grade beam system would be to build a construction bench on the bluff face. However, the bluff face is too unstable to support such a feature, even temporarily, and there is a relatively high likelihood that a bluff failure would occur if installation of a construction bench were attempted.

Use of lateral return walls, either permanent or temporary, would limit the lateral spread of bluff retreat of the bluff face seaward of 245 Pacific Avenue from threatening the bluff stability at 241 and 249 Pacific Avenue, but SEC could not develop any way to structure such walls without triggering additional bluff collapse, possible caisson collapse and putting the workers at significant risk. Even if such walls could be constructed, they would result ultimately in a narrow, 50-ft wide corridor with 85-ft high walls that would eventually need to be extended into the side-yards between both 241 and 245 Pacific Avenue and 245 and 249 Pacific Avenue. These walls could not be constructed without causing damage to the bluff on the 245 Pacific Ave. property. Additionally, constructing these walls would require access across part of the yard at 245 Pacific Avenue.

Landscaping and temporary measures such as plastic sheeting or interlocking walls would not be adequate to address the long-term bluff instability that now exist along this section of the coast. Overall, protection for the residences at 241 and 249 Pacific Avenue cannot be confined to the boundaries of these two properties.

Since many of the difficulties with alternatives to protect 241 and 249 Pacific Avenue result from the overall instability of the bluff face, staff requested that SEC examine the option of constructing a temporary wall at the toe of the bluff fronting 245 Pacific Avenue that would help stabilize the bluff and allow protective structures for the neighboring properties to be installed safely and with minimal disruption to the bluff face. The construction of a bluff toe wall is feasible; in fact, it is the first step of the project proposed by the applicant. The difficulty lies in the eventual removal of such a temporary wall. The temporary wall would need to be robust enough to stabilize the bluff face and provide lateral support to the highly unstable mid-bluff clean sand layer, but also be removable without destabilizing the bluff. SEC's analysis indicates that the removal of a temporary wall might be neither safe nor possible and that significant instability and bluff damage could occur during removal. We concur with these findings. SEC was also concerned that the temporary wall would cost \$300,00 to \$500,000 to construct and remove.

Since several of the options proposed by SEC were eliminated from consideration because they could not be constructed, staff also asked for more details about the construction process to see if other options, not considered by SEC, might make one or more of these options possible. Such a request is not part of a normal project review; however, since the Commission's direction was to avoid protection on the bluff fronting 245 Pacific Avenue, this seemed to be appropriate to determine, with confidence, that every option had been fully examined. After review of these options and the greater construction detail provided, staff was not able to provide alternative construction methods that would make these options possible.

While some measures might provide protection for these structures for several years, or decades (such as the lateral walls), these options cannot be installed without the high

potential for damage to the city-owned bluff face seaward of 245 Pacific Avenue. At this time, we are not aware of any options that would be safe to construct and that would allow the protective features for 241 and 249 Pacific Avenue to stop at their property lines. The proposed alternative will address the engineering constraints and geologic challenges posed by this site and there appears to be no less damaging feasible alternative.

**Appendix A: February 21, 2019 Geotechnical Review Memo (attached)**

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904- 5200  
FAX (415) 904-5400  
TDD (415) 597-5885  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



February 21, 2019

**GEOTECHNICAL REVIEW MEMORANDUM**

To: Eric Stevens, Coastal Program Analyst  
From: Joseph Street, Staff Geologist  
Lesley Ewing, Senior Coastal Engineer  
Re: 235, 241 and 245 Pacific Ave., Solana Beach (DeSimone, Schrager and Jokipi Residences),  
Coastal Development Permit No. 6-18-0288

**Summary**

Based on our review of the applicants' geotechnical reports and other relevant information, we conclude that the principal structures at 235 and 241 Pacific Ave., and the seaward portion of the house at 245 Pacific Ave., are, or soon will be, in imminent danger from on-going bluff erosion and slope failures, and that shoreline protection and/or bluff stabilization measures are warranted. Furthermore, we agree with the additional analysis demonstrating that bluff failures originating on the 245 Pacific Ave. property could threaten existing structures on the neighboring properties at 241 and 249 Pacific. A project alternative which does not include the proposed lower bluff seawall and geogrid structure at 245 Pacific Ave. would eventually require the inland extension of shore protection on neighboring properties.

**Introduction**

In connection with the above-referenced coastal development permit application, we have reviewed the following documents directly related to the subject properties:

- 1) Soil Engineering Construction, Inc. (SEC), 2009, "Repairs to Upper Bluff, Hawkins Residence, 241 Pacific Avenue, Solana Beach, California 92075", as-built project plans dated August 23, 2009, signed by R.D. Mahony.
- 2) TerraCosta Consulting Group, Inc. (TerraCosta), 2010, "Coastal Bluff Evaluation and Basis of Design Report, 235 – 249 Pacific Avenue, Solana Beach, California", report dated November 4, 2010, and signed by D.B. Nevius, B.R. Smillie and W. F. Crampton.
- 3) TerraCosta, 2012, "Coastal development permit application, Proposed shoreline stabilization, 245-249 Pacific Avenue, Solana Beach, California", letter report dated July 6, 2012 and signed by W.F. Crampton.
- 4) GeoSoils, Inc., (GeoSoils) 2017a, "Coastal Hazard Discussion for Proposed Shore Protection 235, 241 and 245 Pacific Avenue, Solana Beach, San Diego County, California", dated November 6, 2017, signed by D.W. Skelly.
- 5) SEC, 2017a, "Emergency Repairs to Coastal Bluff, 235 – 245 Pacific Avenue, Solana Beach, CA 92075", project plans, dated June 30, 2017, signed by R.D. Mahony.
- 6) SEC, 2017b, "Response to 3<sup>rd</sup> Party Review by Geopacifica Dated October 16, 2017, Repairs to Coastal Bluff – Shoreline Stabilization, 235, 241, 245 Pacific Avenue, Solana Beach", dated November 24, 2017, signed by J.W. Niven and R.D. Mahony.

- 7) GeoSoils, 2017b, “Memorandum – Sand Fee Worksheet 235, 241 and 245 Pacific Avenue, Solana Beach”, dated November 27, 2017, signed by D.W. Skelly.
- 8) SEC, 2018a, “Response to 3<sup>rd</sup> party Review by Geopacifica Dated February 26, 2018, Repairs to Coastal Bluff – Shoreline Stabilization, 235, 241, 245 Pacific Avenue, Solana Beach”, dated February 28, 2018, signed by J.W. Niven and R.D. Mahony.
- 9) SEC, 2018b, “2018 Upper Bluff Retention System/Coastal Bluff Monitoring Report, 241 Pacific Avenue, Solana Beach, California 92075”, report dated June 5, 2018, signed by J. Niven and B. Trettin.
- 10) GeoSoils, 2018, “Response to California Coastal Commission (CCC) May 16, 2018 Letter Concerning CDP #6-18-0288, Proposed Shore Protection 235, 241 and 245 Pacific Avenue, Solana Beach, San Diego County, California”, dated June 15, 2018, signed by D.W. Skelly.
- 11) SEC, 2019, “Additional Slope Stability Analyses – Justification for Bluff Stabilization Measures, 235 – 245 Pacific Avenue, Solana Beach, California”, dated January 3, 2019, and signed by J. Niven.

We have also reviewed a previous review memorandum (dated April 22, 2014) prepared by the Commission’s retired staff geologist, Dr. Mark Johnsson, in relation to a prior CDP application (#6-13-0437) involving the property at 245 Pacific Ave. In addition, Dr. Street has visited the base of the coastal bluff at this site, most recently on October 10, 2018.

The purpose of this memo is to evaluate the degree of danger from erosion and bluff instability to the principal structures across the three subject properties, and to provide commentary on a possible project alternative that would exclude the construction of the lower bluff seawall and geogrid structure at 245 Pacific Ave.

### **Geologic Background**

TerraCosta (2010) (Ref. 2) provides a description of the geologic conditions and erosional threats to the principal structures at 235 - 245 Pacific Avenue. Typical of the Solana Beach coastline, the coastal bluff at these sites consists of a lower bluff approximately 25 - 30 feet high composed of relatively dense, well-cemented bedrock of the Eocene-aged Torrey Sandstone, overlain by an upper bluff consisting of less consolidated sands and gravels, collectively referred to as marine terrace deposits. The lower ten feet of these deposits are comprised of very well-sorted, unconsolidated, cohesionless sands that form very unstable slopes when exposed in the coastal bluff. Overlying this “clean sand lens” are approximately 50 feet of late Pleistocene-aged sands and gravels, often referred to as the Bay Point Formation or “older paralic deposits.”

Cycles of bluff retreat in Solana Beach are typically triggered by wave-driven notching and collapse of the Torrey Sandstone bedrock, followed by the exposure and failure of the much weaker clean sand lens immediately above the bedrock. Once exposed, the clean sand lens is extremely vulnerable to subaerial erosion (e.g., wind & runoff), leading in relatively quick succession to the progressive failure of the overlying terrace deposits. Many structures north and south of the subject sites have required protection from this cycle of bluff failure through the construction of seawalls, usually designed to protect the bluff toe from marine erosion and encapsulate the clean sand lens, and/or upper bluff retention devices.

At the subject site, the applicants have proposed the construction of a 150-foot long, 35-foot high lower bluff seawall and an approximately 45- to 130-foot wide, approximately 50-foot high upper bluff geogrid structure in order to protect against marine erosion and on-going upper bluff instability.

### **Existing Site Conditions & Danger from Erosion**

The need for the proposed bluff protection is justified in the applicants' geotechnical reports by the ongoing nature of upper bluff failures on all three parcels and quantitative slope stability analyses which show low factors of safety for cross sections through all three properties. To varying degrees, each of the three properties has experienced on-going upper bluff erosion and periodic slope failures related to the surface exposure of the mid-bluff clean sand lens. However, as described in greater detail below, the degree of threat to the principal structures is not uniform across the project site.

#### 235 & 241 Pacific Ave.

TerraCosta (2010) (Ref. 2) reports that the 241 Pacific Ave. property, in particular, experienced severe lower bluff erosion during 1997-98 winter storms, which subsequently exposed the clean sand lens and triggered progressive upper bluff failure. In 2008, the Commission approved emergency and regular CDPs for a drilled-pier upper bluff retention system intended to stabilize the upper bluff and protect the existing home at 241 Pacific Ave. However, the Commission recognized at the time of approval that there was a high likelihood that additional protective measures would be needed in the future. The zone of upper bluff failure at 241 Pacific Ave. has subsequently expanded both landward and laterally across the bluff face below both 235 and 245 Pacific Ave. (Refs. 2, 6, 9). SEC (2018b) (Ref. 9) has documented 8 to 12 feet of retreat in the clean sand lens and upper bluff below 241 Pacific over the past decade, and reports that the drilled piers have been exposed to depths of over 20 feet, with visible flanking of the system occurring on either side. The expanding slope failure has also severely undermined and fractured a pre-Coastal Act gunite surface covering a portion of the upper bluff below 235 Pacific Ave. (Ref. 2).

TerraCosta (2010) (Ref. 2) provides the results of a slope stability analysis for a bluff cross-section at 235 Pacific Ave. This analysis, using the Modified Bishop Method, indicates that the bluff at this site may be vulnerable to slope failures originating in the mid-bluff clean sand lens, with a minimum factor of safety of 1.22 under static conditions, and 0.95 under pseudostatic (or seismic) conditions, assuming a ground-shaking intensity of 0.15g. The modeled critical failure surfaces daylight approximately eight feet inland of the bluff edge, and just a few feet seaward of the existing house at 235 Pacific Ave. based on the project plans provided in Ref. 5. The slope stability analysis indicates that the bluff at this site is only marginally stable, and that the next major slope failure could undermine the seaward portion of the existing home.

Slope stability analyses conducted for 241 Pacific Ave. provided by TerraCosta (2010) (Ref. 2) and SEC (2018a) (Ref. 8) report low minimum factors of safety (1.12 static / 0.90 seismic; Ref. 8) along critical surfaces daylighting approximately 20 feet inland of the bluff edge, which, as noted above, had by 2018 retreated to the margins of the existing drilled pier system (Ref. 10). Neither of these analyses included the existing piers and any stability benefits the system may still afford,<sup>1</sup> making it difficult to evaluate the actual stability of the bluff under existing conditions. Nonetheless, the balance of the available evidence, including the low calculated factors of safety, the continued exposure of the clean sand lens, the recent upper bluff failures which have exposed the upper portions of the caissons, the fact that the caissons were originally embedded to an elevation (+40 feet MSL) that is above the elevation of the clean sand lens (Ref. 1), and the observed degree of undercutting at the bluff toe (3 – 4 feet, Ref. 9), indicate that the site remains very vulnerable to erosion and slope failure. Further undercutting or collapse of the lower bluff is likely to occur in the foreseeable future, triggering cycles of upper bluff instability that could undermine the caisson

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<sup>1</sup> SEC (2017b) (Ref. 6) states that the caisson system has reached its "maximum design exposure", and that the slope stability analyses "assume that the existing upper bluff retention system ... would be undercut in a bluff collapse rendering it useless in protecting the residential structure above."

system and threaten the existing house, which is located less than five feet inland of the bluff edge (Ref. 5).

Based these considerations we concur that the principal structures at 235 and 241 Pacific Ave. are at presently at risk from erosion, and that shoreline protection at these sites is warranted.

#### 245 Pacific Ave.

Similar to the neighboring properties, the bluff at 245 Pacific Ave. has in recent decades experienced lower bluff notching and block failures, exposure of the clean sand lens, and progressive sub-aerial erosion of the upper bluff (Ref. 2). The slope stability analysis provided by TerraCosta (2010) (Ref. 2) indicates a high risk of slope instability, with minimum factors of safety of 0.99 and 0.80 for the static and seismic conditions, respectively. In contrast to the neighboring sites, where the existing houses are located closer to the bluff edge, the house at 245 Pacific Ave. (constructed in 1996) is currently 22 to 28 feet inland of the bluff edge. The critical failure planes with the minimum factors of safety daylight only 7 to 8 feet landward of the bluff edge, indicating that the most likely bluff failure would still leave the new bluff edge some 14 to 21 feet from the principal structure. Thus, the degree of risk to the house at 245 Pacific Ave. may be less than at the neighboring properties. However, we also note that the calculated factors of safety remain very low (1.06 static/0.83 seismic) along a modeled failure plane daylighting approximately 20 feet inland of the bluff edge (Ref. 2), suggesting that the bluff at the seaward edge of the house remains vulnerable to a large slope failure event, with a factor of safety well below the 1.2 (static) threshold often used by the Commission in assessing slope stability hazards. TerraCosta (2012) (Ref. 3) reports that the failure plane corresponding to a 1.2 factor of safety daylights approximately 40 feet inland of the bluff edge.

In summary, though the most likely slope failure at this site would not appear to threaten the principal structure at 245 Pacific Ave., we conclude that the seaward portions of the house are presently at risk from a larger slope failure, and that a series of smaller failures could place the seaward edge of the house at risk within the next several years. At this juncture, we do not see any evidence that the more landward portions of the house (greater than 40 feet from the bluff edge) face imminent danger from erosion or slope instability.

#### **Vulnerability of Neighboring Sites to Bluff Failures at 245 Pacific Ave.**

At the request of Commission staff, SEC (2019) (Ref. 11) provided an additional slope stability analysis to evaluate the degree to which the stability of the principal structures at 241 and 249 Pacific Ave. would depend on the construction of a lower bluff seawall and bluff retention at 245 Pacific Ave.<sup>2</sup> SEC evaluated slope stability along oblique cross-sections intersecting the base of the bluff at 245 Pacific, and the top of the bluff at 241 and 249 Pacific, respectively. The analysis indicates that there is currently a minimum factor of safety (static) of 1.11 along the 245 - 241 Pacific cross-section, and a minimum factor of safety of 1.16 along the 245 – 249 Pacific cross-section. In both cases, the critical failure planes daylight inland of the seaward edge of the existing structures. SEC concludes that a “bluff failure through the clean sand lense at 245 will cause a significant adverse impact to the residential structures at 241 & 249 Pacific.” Based on the provided analysis, we agree that, absent other remedial measures, constructing the seawall and geogrid structures only at 235 –

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<sup>2</sup> Per the special conditions of CDP #6-96-021, the house at 245 Pacific Ave. is not entitled to construct any upper or lower bluff stabilization devices to protect the portion of the residence located seaward of the 40 ft. blufftop setback, and the construction of a seawall across the unprotected “gap” at this property would only be allowable if (a) it is necessary to alleviate an imminent threat to structures on the neighboring properties, and (b) if the seawall were the least damaging feasible alternative.

241 Pacific Ave. and leaving an unprotected “gap” in the shoreline armoring at 245 Pacific would leave the structures on the neighboring properties vulnerable to bluff failure.

**Alternative to Shore Protection at 245 Pacific Ave.**

One alternative to the proposed seawall and geogrid structure, which would cross all three of the subject properties, would be to provide armoring for only 235 and 241 Pacific Ave., leaving an approximately 50-foot wide gap in the shore protection along the 245 Pacific Ave property. Such a gap is easier to address at the time that the adjacent structures are being constructed, but it is not necessary that the gap always be part of the armoring design. The following discussion about ways to maintain protection for the properties on either side of the gap, while allowing the gap to erode, is general in nature and should not be the basis for design decisions. The actual measures to maintain the gap while protecting the adjacent properties would be designed to address the circumstances that occur at the site.

While the gap appears to be a linear opening in a line of armoring, the opening will eventually become a three-dimensional space as the shoreline at the gap segment continues to retreat inland in response to marine erosion. The lower bluff will erode inland of the up- and down-coast seawalls, and eventually some form of protection to prevent scour and erosion of the material behind the seawalls will be needed. This protection would most likely consist of a vertical seawall that would be perpendicular to the main wall and that could be extended overtime to address further inland retreat.

The proposed lower bluff shore protection will go up to about elevation +35' NAVD, and should be high enough to encompass the exposed clean sand lens. It is likely that the protection within the gap would likewise be high enough to enclose the clean sands. This protection of the clean sand layer should help minimize retreat of the upper bluff material, but it is not likely to prevent all upper bluff retreat. Eventually the protective side walls within the gap would likely need to extend higher to protect the upper bluff material or other measures might be needed, such as plugs of erodible concrete.

**Conclusion**

In summary, we concur with the applicants' analysis that the principal structures at 235 and 241 Pacific Ave. are in danger from bluff erosion and slope failure, and that shoreline protection and bluff stabilization measures are necessary. We also conclude that the seaward portion of the house at 245 Pacific Ave. is in danger from erosion and slope failure. The additional analysis provided by SEC (2019) (Ref. 11) demonstrates that structures at 241 and 249 Pacific Ave. are at risk from bluff failures originating on the slope at 245 Pacific. As a result, a project alternative which does not include the proposed lower bluff seawall and geogrid structure at 245 Pacific Ave. would eventually require the inland extension of shore protection on neighboring properties.

Please do not hesitate to contact us with any further questions.

Sincerely,

  
Signature

Joseph Street, Ph.D., PG  
Staff Geologist

  
Signature

Lesley Ewing, Ph.D., PE, F.CE  
Senior Coastal Engineer

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036

Filed: March 22, 1996  
49th Day: May 10, 1996  
180th Day: September 18, 1996  
Staff: DL-SD  
Staff Report: April 16, 1996  
Hearing Date: May 7-10, 1996



REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-96-21

Applicant: Mr. and Mrs. Donald Ratkowski Agent: Edward M. Eginton

Description: Demolition of an existing 1,135 sq.ft. single-family residence and 186 sq.ft. detached garage and construction of a 3,951 sq.ft., tri-level single-family residence on a blufftop lot.

Lot Area	4,830 sq. ft.
Building Coverage	2,114 sq. ft. (44%)
Pavement Coverage	1,327 sq. ft. (28%)
Landscape Coverage	1,127 sq. ft. (23%)
Unimproved Area	262 sq. ft. ( 5%)
Parking Spaces	2
Zoning	Medium Residential
Plan Designation	Medium Residential (5-7 du/ac)
Ht abv fin grade	25 feet

Site: 245 Pacific Avenue, Solana Beach, San Diego County.  
APN 263-312-11.

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed development subject to a special condition which gives the applicant the option of either (1) revising the project such that the new residence would be sited a minimum 40 ft. from the bluff edge or, (2) as proposed by the applicant, allow the new residence to be constructed a minimum of 25 ft. from the top edge of the bluff with recordation of a deed restriction agreeing to waive the right to future shoreline protection and to remove threatened portions of the home in the future rather than construct shoreline protection. Other conditions of approval include deed restrictions relative to the applicant's assumption of risk, future shoreline protective works, and future development on the site; the submittal of final landscape plans; and the identification of the location of export material.

EXHIBIT NO. 12

APPLICATION NO.

6-21-0278

CDP #6-96-021



California Coastal Commission

Substantive File Documents: Certified County of San Diego Local Coastal Program (LCP); City of Solana Beach General Plan and Zoning Ordinance; City of Solana Beach Resolution No. 96-13; Southland Geotechnical Consultants, "Addendum to Geotechnical Investigation, Proposed Single-Family Residence, 245 Pacific Avenue," October 19, 1995; Southland Geotechnical Consultants, "Response to Coastal Commission Letter Dated March 1, 1996," March 18, 1996.

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PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Final Project Plans. Prior to the issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, final building, foundation, drainage and grading plans, approved by the City of Solana Beach, which shall include the following:

a.. All surface drainage shall be collected and directed away from the edge of the bluff towards the street.

b. Foundation plans shall be in substantial conformance with the preliminary foundation plans submitted with this application, which incorporate a foundation design that does not preclude, but facilitates, removal of portions of the home seaward of 40 feet, or other incremental portions of the house, or the entire house in the future.

c. Said plans shall clearly indicate both the 25 ft. and 40 ft. blufftop setback lines (measured from the top of the bluff as depicted on the plans by Edward M. Eginton dated 3/18/96) and reflect compliance by the applicant with one of the following options:

1. Revised site plan shall indicate a minimum 40 ft. setback for all portions of the principal residence from the edge of the bluff as depicted on the plans by Edward M. Eginton dated 3/18/96 (ref. Exhibit #2). Accessory structures permitted seaward of the residence shall be at grade (no extensive footings) and no closer than 5 feet from the bluff edge.

OR

2. Provision of a minimum 25 ft. setback for all portions of the principal residence from the top edge of the bluff, utilizing the bluff edge depicted on the plans by Edward M. Eginton dated 3/18/96, and recordation of a deed restriction pursuant to Special Condition #2 of CDP #6-96-21 below.

2. Deed Restriction. Prior to the issuance of the coastal development permit; and only if the applicant chooses option c.2 of Special Condition #1 above, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, which shall provide the following:

a. That the landowner waives all right to construct any upper or lower bluff stabilization devices (other than "preemptive" filling of seacaves at the base of the bluff as approved through a coastal development permit) to protect that portion of the residence located seaward of the 40 ft. blufftop setback as depicted on the plans submitted in accordance with Special Condition #1, in the event that such portion of the structure is threatened or subject to damage from erosion, storm wave damage, or bluff failure in the future.

b. That in the event the edge of the bluff recedes to within 10 feet of the principal residence, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the residence are threatened, and identifies all those immediate or potential future alternative measures necessary or desired to stabilize the principal residence without shore or bluff protection, including, but not limited to, removal or relocation of those portions of the principal residence located seaward of the 40 ft. blufftop setback as depicted on the plans submitted in accordance with Special Condition #1.

c. If erosion or bluff failure proceeds to a point where the edge of the bluff recedes to within 10 feet of the principal residence, and any portion of the principal residence located seaward of the 40 ft. blufftop setback as depicted on the plans submitted in accordance with Special Condition #1 is determined by a geotechnical report and the City of Solana Beach to be unsafe for occupancy, then the landowner shall, in accordance with a coastal development permit, remove that portion of the structure in its entirety.

The document shall be recorded free of all prior liens and encumbrances and shall run with the land and bind all successors and assigns.

3. Assumption of Risk: Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from bluff retreat and erosion and the applicant assumes the liability from such hazards, and (b) the applicant unconditionally waives any claim of liability on the part of the Commission or its successors in interest for damage from such hazards and agrees to indemnify and hold harmless the Commission, its offices, agents, and employees relative to the Commission's approval of the project for any damage. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

4. Future Shoreline Protective Works. Prior to the issuance of the coastal development permit, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, which shall provide that in the event any bluff or shoreline protective work is anticipated in the future to protect those portions of the residence sited inland of the 40 ft. blufftop setback as depicted on the plans submitted in accordance with Special Condition #1, the applicant acknowledges that as a condition of filing an application for a coastal development permit, the applicant must provide the Commission or its successor agency with sufficient evidence enabling it to consider all alternatives to bluff protective works, including, but not limited to, consideration of relocation of portions of the residence that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include bluff or shoreline stabilization devices. The document shall be recorded free of all prior liens and encumbrances and shall run with the land and bind all successors and assigns.

5. Future Development. Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the coastal development permit #6-96-21; and that any future additions or other development as defined in Public Resources Code Section 30106 will require an amendment to permit #6-96-21 or will require an additional coastal development permit from the California Coastal Commission or from its successor agency, unless such development is explicitly exempted under the Coastal Act and the Commission's Code of Regulations. The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property.

6. Landscaping Plan. Prior to the issuance of the coastal development permit, the applicant shall submit a detailed landscape plan indicating the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features. Drought and salt tolerant native or naturalizing plant materials shall be utilized to the maximum extent feasible. Plans shall also indicate that any existing permanent irrigation system located seaward of the 40 ft. blufftop setback shall be capped or removed and that no landscaping, accessory structures or permanent improvements shall be located within five feet of the bluff edge. Said plan

shall be first approved by the City of Solana Beach and submitted to, reviewed and approved in writing by the Executive Director.

7. Disposal of Graded Spoils. Prior to the issuance of the coastal development permit, the applicant shall identify the location for the disposal of graded spoils. If the site is located within the coastal zone, a separate coastal development permit or permit amendment shall first be obtained from the California Coastal Commission or its successors in interest.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the demolition of an existing 1,135 sq.ft. single-family residence and 186 sq.ft. detached garage, and construction of a 3,951 sq.ft., tri-level single-family residence. The 4,830 sq.ft. lot is a blufftop lot located on the west side of Pacific Avenue, north of the intersection with Hill Street, in the City of Solana Beach. The existing residence is located as close as 24 feet to the bluff edge. An existing concrete patio on the western side of the site has been undermined by erosion, and the seaward portion of the slab overhangs the bluff by up to 3 feet. The project includes removal of the existing patio.

The new residence is proposed to be located a minimum of 25 feet from the edge of the coastal bluff. A deck will be located on the western side of the residence up to 15 feet from the bluff edge. The applicant has proposed as part of this application to record a deed restriction against the property, waiving future rights to any bluff or shore stabilization to protect any portion of the principal residence located within 40 ft. of the bluff edge (as the edge presently exists) and, that when the bluff erodes to a point at which the portions of the principal residence located seaward of the 40 ft. blufftop setback are threatened, then those portions of the residence will be removed.

Approximately 148 cubic yards of excavation are required to prepare the site for the new construction and the underground garage. Because a location for the disposal of the graded material has not yet been identified, Special Condition #7 requires the applicant to identify the export site and obtain all necessary coastal permits for the deposition.

The site is bounded by single-family residential structures to the north, south, and east, and the Pacific Ocean to the west. The coastal bluff adjacent to the site is approximately 85 feet in height, and generally slopes at a gradient of approximately 45 degrees at the lower portion of the slope, to near-vertical at the uppermost bluff portion. There are no indications of seacave development at the site or on the immediately adjacent lots. The face of the bluff (except for a small upper portion owned by the applicant) and the beach below are owned by the City of Solana Beach. There are no structures on the bluff face.

2. Shoreline/Blufftop Development. The following Chapter 3 policies are applicable to development along the shoreline, and acknowledge the scenic and

recreational values of nearshore areas as unique resources of public and statewide significance worthy of protection. Section 30250 addresses new residential, commercial, or industrial development and provides that "new development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

In addition, Section 30253 of the Act states, that "new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard" and "assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Further, Section 30253 provides that, where appropriate, new development shall "protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses."

Further, to address the visual impact of development along the shoreline, Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Therefore, the above policies provide a strong emphasis for permitted development to avoid significant impacts on coastal resources, both individually and cumulatively, and to acknowledge that the scenic value of shoreline areas is a coastal resource of public importance, worthy of protection. There is also an acknowledgment that protective devices that substantially alter natural landforms along bluffs and cliffs should be discouraged, and that new development should be sited and designed to avoid the need for such structures.

Section 30235 addresses when such shoreline protection shall be permitted and states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on

local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Therefore, there is an acknowledgment of the potential need for shoreline protective devices to address the fact that there is existing development along the shoreline, some of which is pre-Coastal Act and some of which has been approved by the Commission, that may require protection for the remainder of its useful or economic life. However, there is also an acknowledgment that such structures alter natural shoreline processes, and that such impacts to sand supply must be mitigated if such protection is approved.

Further, most of the sandy beach areas in San Diego County, including those adjacent to the subject site, are in public ownership as public parkland. In this particular case, the vertical portion of the bluff below the subject site is owned by the City of Solana Beach as parkland. Section 30240 states that "development in areas adjacent to environmentally sensitive habitat and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas." Therefore, there is additional support in this policy to assure that blufftop development, if approved, should not precipitate the need for shoreline structures which would serve to decrease the adjacent public recreational beach area for long-term public use, or degrade the scenic quality of the coastal bluffs for public enjoyment.

Finally, to further support the need to avoid approval of blufftop development which will eventually require shoreline protection, Section 30210 states that "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." This policy suggests the need to consider the impacts of development in the coastal zone on public access and recreational opportunities, taking into consideration not only the right of private property owners to protect their shorefront development, but also the public's right to use a safe, and not overly crowded, sandy beach. Because shoreline protective devices result in the loss to the public of the sandy beach area occupied by the structure, permanently fix of the back of the beach which leads to narrowing and eventual disappearance of the beach in front of the structure, and adverse visual impacts, approval of blufftop development which will eventually require such structures is inconsistent with many of the above cited Coastal Act policies.

In recognition of these concerns, the Commission has in recent permit approvals for blufftop development identified a number of alternatives, including the use of increased setbacks and moving portions or entire structures, as potential feasible alternatives to shoreline protection. Most recently, in review of requests for development proposed closer than 40 ft. from the bluff edge, the Commission has only approved the residence when accompanied by a recorded deed restriction that requires portions of the home that are threatened in the future from erosion and bluff failure to be removed

(ref. CDP Nos. 1-90-142/Lansing, in CDP Nos 6-91-81/Bannasch, 6-91-129/Silveri, 6-93-20/Cramer, 6-93-181/Steinberg, and 6-95-23/Bennett).

This concept, known as "planned retreat", allows the line of development to recede commensurate with bluff retreat. This approach offers the homeowner reasonable use of their property in a hazardous area for a limited period of time, i.e., until the hazardous nature of bluff retreat threatens the residence. It also requires the property owner to recognize there is a limit to the useful life of the residence, and the measures that can be taken to protect the structure in the event it becomes threatened by erosion. The useful life is dictated by the rate of bluff retreat, which cannot be predicted with exact science. Although Section 30235 allows shoreline protective devices when required to protect existing structures, again, as supported above, it cannot be the only policy that is considered in order to find shoreline development consistent with the Coastal Act.

The proposed development is located in a hazardous location atop a coastal bluff in the City of Solana Beach. Continual bluff retreat and the formation and collapse of seacaves have been documented in northern San Diego County, including Solana Beach and the City of Encinitas. The community of Encinitas, located on the northern border of Solana Beach, is located in the same littoral cell as the shoreline of Solana Beach, and bluffs in this location are subject to similar erosive forces and conditions (e.g., wave action, reduction in beach sand, seacave development). As a result of these erosive forces, the bluffs and blufftop lots in the Solana Beach and Encinitas area are considered a hazard area. Documentation has been presented in past Commission actions concerning the unstable nature of the bluffs in this area of the coast and nearby communities (ref. CDP Nos. 6-93-181/Steinberg, 6-92-212/Wood, 6-92-82/Victor, 6-89-297-G/Englekirk, 6-89-136-G/Adams, and 6-85-396/Swift). In addition, a number of significant bluff failures have occurred along the Solana Beach/Encinitas coastline which have led to emergency permit requests for shoreline protection (ref. CDP Nos. 6-93-36-G/Clayton, 6-91-312-G/Bradley, 6-92-73-G/Robinson, 6-92-167-G/Mallen et al, and 6-93-131/Richards et al), including a major bluff failure just over one mile north of the subject site, and a recent substantial seacave collapse on the bluffs approximately 1,200 feet north of the subject site (6-93-181/Steinberg, 6-93-024-G/Wood and 6-92-212/Wood). In light of the instability of bluffs near the applicant's property, the potential exists for significant retreat of the bluff that supports the applicant's property.

Historically, to address the bluff stability problems found along the shoreline of Solana Beach and Encinitas, the Commission has typically required new development to observe a minimum setback of 40 feet from the edge of the bluff, with a reduction to 25 feet allowed only subject to the finding of a certified engineering geologist that bluff retreat will not occur to the extent that the principal permitted structure would be endangered within its economic life (75 years). When the County of San Diego had jurisdiction over the area, the County adopted the Coastal Development Area regulations as part of their LCP Implementing Ordinances, which had similar requirements. The City of Solana Beach has also utilized a 40-foot setback which may be reduced to 25 feet following a discretionary review process which finds that the

construction will not be subject to foundation failure during the economic life of the structure.

However, due to the number of slope failures which have occurred in recent years in the North County coastal bluff area, and the number of requests for permits to construct seawalls, the Commission has questioned the appropriateness of reducing the 40 foot setback to as close as 25 feet. Particularly, some of the failures have been on or adjacent to sites in Encinitas where previous geotechnical studies done for blufftop residences had indicated that a 25 foot setback would be sufficient, and that blufftop construction would not be threatened by erosion (ref. 6-88-515/McAllister, 6-87-678/Morton). The Commission recognizes slope and bluff stability research is an inexact science, and geotechnical reports cannot be considered (nor do they claim to be) infallible.

In the case of the proposed development, the residence is proposed to be located up to 25 feet from the bluff edge. A geotechnical report submitted by the applicant determined that, based on research studies of regional historic bluff retreat, a conservative estimate of bluff retreat at the project site is a maximum of 16.5 to 25 feet over the lifespan of the residence (75 years). However, taking into account site-specific conditions and historic bluff retreat on this particular site, the report estimates that bluff retreat on the project site will be no more than 4.7 feet to 16.5 feet over the next 75 years.

In addition, the report notes that there are no indications of seacave development at the subject property. The nearest seacave to the site is located approximately 90 feet south of the site, and was infilled with concrete in 1992. There is also an approximately 17-foot deep seacave approximately 170 feet north of the site. Monitoring of the stability of this seacave was required through the approval of CDP #6-95-23 for construction of a single-family residence on the blufftop. The orientation of the seacave does not project towards the subject property. The report states that if either or both of these seacaves failed within the next 75 years, their collapse would not impact the subject property. The report concludes that if the new residence is set back a minimum of 25 feet from the top of the bluff, the construction should not be endangered by coastal bluff retreat over the next 75 years.

Nevertheless, the maximum estimated retreat rate of 25 feet of the bluff would bring the location of the bluff edge immediately up to the line of the proposed development. It has been Commission experience that encroachment of the bluff top to within 5 to 10 feet of a dwelling can trigger concern and, in many situations, could place the structure in danger (6-92-212/Wood, 6-91-312-G/Bradley). In addition, while the use of historic data to predict future trends is a valid and established technique, bluff recession tends to be episodic, and it is impossible to predict the exact location of the bluff top at a specific time in the future.

The report notes that there are many factors that influence the rate and magnitude of bluff retreat. Some are favorable, such as proper maintenance of

a bluff-stabilizing vegetative cover, enhanced site drainage, and beach sand replenishment. Other factors can increase the rate of erosion, including misdirected drainage, water line breaks, and very heavy storm precipitation. In fact, the report speculates that some human activity, perhaps misdirected roof/surface drainage or a broken irrigation/water line, may have concentrated blufftop surface waters and directed them over the bluff edge on the southern side of the site, resulting in the undermining of the existing concrete patio.

Although the geotechnical review states that the portions of the residence located 25 feet from the bluff edge will not be endangered, the maximum predicted bluff retreat is 16.5, with a worst-case scenario of bluff failure resulting in as much as 25 feet of erosion. As previously noted, Section 30253 of the Coastal Act requires that new development not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In this case, a minimum 40-foot geologic setback is necessary to provide a buffer between new development and the natural bluff erosion process, thereby insuring the new development will not require a seawall over the course of its useful life. By definition, the geologic setback area is an area that can erode away over the lifetime of the structure. In requiring the minimum 40 foot setback, the Commission is ensuring the development will not require shoreline protective devices in its useful lifetime. This is a conservative, yet pro-active, approach to addressing the line of new development along an eroding shoreline, with the goal being to avoid the need for substantial bluff and shoreline stabilization measures in the future.

Because the applicant would prefer to construct the residence closer than 40 ft. and remove any portion of the residence that should be threatened rather than adhere to a minimum 40 ft. blufftop setback, the applicant has proposed to record a deed restriction evidencing their agreement to waive their right to shoreline protective devices and to remove portions of the residence as they become threatened. Accordingly, Special Condition #1 gives the applicant two options for siting the residence. The first is to revise the project such that the entire residence is sited a minimum of 40 feet from the bluff edge. The second option allowed under Special Condition #1 reflects the concept of "planned retreat", as described previously.

Utilizing this proposal by the applicant, Special Condition #2 requires a deed restriction be recorded that notifies the owner and subsequent owners that no upper or lower stabilization devices shall be constructed to protect that portion of the residence located seaward of the 40 ft. blufftop setback area in the event that it is threatened from erosion or other natural hazards in the future. The deed restriction also requires that a geotechnical study examining removal of the residence and other alternative measures necessary to stabilize the residence be performed when the bluff erodes to within 10 ft. of the residence (which based on past Commission experience, is the approximate distance from the top of the bluff when applications for bluff stabilization are sought by owners of existing residences along this section of the coastline). The condition further states that when the bluff erodes to a point at which that portion of the principal residence located seaward of the 40 ft. blufftop setback area is determined to be unsafe for occupancy by the

City of Solana Beach and/or a geotechnical report, that a coastal development permit application shall be submitted for removal of the threatened portions of the residence.

The planned retreat approach brings to light the issue of appropriate siting of new development on eroding coastal bluffs. This is a planning issue of concern to the Commission as the bluffs will continue to erode. If setbacks are not increased with new development, and addressed for non-conforming structures, the alternative is massive upper and lower bluff stabilization structures and their documented impacts on public access, visual quality and shore and beach sand supply. Given the proposed special conditions requiring either a minimum 40 ft. setback for the residence or the future removal of that portion of the home seaward of the 40 ft. blufftop setback when it is determined to be unsafe for occupancy, the stability of the coastal bluff at this location shall be protected to the maximum extent feasible, consistent with Sections 30235, 30240, 30250, 30253 and the public access and recreation policies of the Coastal Act.

Because the applicant is proposing development in a geologic hazard area, Special Condition #4 has been proposed to insure the applicant and future owners of the property are aware of the requirements relating to future applications to construct shoreline protective devices. This condition requires the applicant to record a deed restriction against the property, placing the applicant and their successors in interest on notice, that no bluff or shoreline protective devices shall be permitted unless the alternatives described in the condition are demonstrated to be infeasible. Although the applicants have proposed waiving their right to a seawall to protect the portions of the proposed residence seaward of 40 feet from the bluff edge, the condition states that in the event any bluff protective work is anticipated in the future, the applicant acknowledges that as a condition of filing an application for a coastal development permit, the applicant must provide the Commission or its successor agency with sufficient evidence enabling it to consider all alternatives to bluff protective works, including consideration of relocation of portions of the residence that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include bluff or shoreline stabilization devices.

In addition, in order to implement the above condition, the home must be designed in such a fashion that would accommodate ease of removal in the future, should it be warranted. The submitted preliminary structure and foundation plans indicate a design that would allow for the structure to be removed in the future. Special Condition #1b requires that the final foundation plans be in substantial conformance with the preliminary plans and incorporate a design such that removal would not be precluded in the future.

Due to the inherent risk of shoreline development and the Commission's mandate to minimize risks (Section 30253), the standard waiver of liability condition has been attached through Special Condition #3. By this means, the applicant is notified of the risks and the Commission is relieved of liability in permitting the development. Pursuant to Section 13166(a)(1) of the Commission's administrative regulations, an application may be filed to remove

Special Condition #3 from this permit if new information is discovered which refutes one or more findings of the Commission regarding the existence of any hazardous condition affecting the property and which was the basis for the condition.

In addition, Special Condition #5 requires recordation of a deed restriction that puts the applicant and subsequent owners of the property on notice that a separate coastal development permit or amendment is required for any future additions to the residence or other development as defined in the Coastal Act on the subject site. Requiring an amendment or new permit for all future development allows the Commission to insure that the placement of structures or alteration of natural landforms will not create or lead to the instability of the coastal bluff or adverse visual impacts. The deed restriction insures that the applicant and all future owners of the property are aware of the Coastal Act permit requirements. Placing the applicant and future owners on notice reduces the likelihood that unpermitted development that could lead to bluff instability or adverse visual impacts will occur. While other types of development, such as additions to the principal structure, are typically visible from the frontage road, development activities in the rear yard immediately adjacent to the coastal bluff can occur unnoticed and without adequate review.

Special Condition #6 would require the submittal of a detailed landscape and irrigation plan for the proposed residence, indicating that drought and salt tolerant plant materials would be utilized in the setback area and that no permanent irrigation system would be installed in that area. The absence of high water demand plantings and irrigation systems will serve to reduce the potential for water-related bluff failures and upper bluff stability problems. No accessory structures, permanent improvements or landscaping would be allowed closer than five feet to the bluff edge consistent with the County's CD area regulations. Only at-grade expendable improvements without substantial footings are permitted within the geologic setback area.

In summary, as conditioned to require either a 40 ft. blufftop setback for the proposed residence or to waive future rights to shoreline protection and agree to remove portions of the home located seaward of the 40 ft. blufftop setback should they become threatened (as proposed by the applicant), the Commission is taking a more prudent approach to addressing development along an eroding shoreline. This approach is supported by the uncertainties surrounding bluff stability and health and safety concerns associated with permitting new development in a known hazard area. Therefore, the Commission finds the subject proposal, as conditioned, meets the requirements of all applicable Chapter 3 policies of the Coastal Act.

3. Public Access. Section 30604 (c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

In addition, Section 30211 of the Coastal Act 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.

The subject site is located between the Pacific Ocean and the first public roadway, which in this case is Pacific Avenue. The project site is located within a developed single-family residential neighborhood. Public vertical access is provided approximately three blocks south of the subject site at the City of Solana Beach Fletcher Cove public beach as well as approximately two blocks north of the site at the City of Solana Beach Tide Park public access stairway.

The subject site property boundary extends slightly seaward of the top edge of the bluff and does not extend onto the beach below. The construction of the residence itself will have no direct impacts upon the public's ability to access the coast at this location. Therefore, the proposed project can be found consistent with all the public access and recreation policies of the Coastal Act.

4. Community Character/Visual Impacts. Section 30251 of the Coastal Act states, in part:

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

The subject proposal, as conditioned, can be found compatible with the character of the surrounding community, which consists of one, two, and tri-level residences of similar size and scale to the proposed project. The subject site is not visible from Highway 101 and no public view blockage will occur as a result of the proposed development. Therefore, the Commission finds the subject proposal consistent with Section 30251 of the Coastal Act.

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

The subject site was previously in the County of San Diego Local Coastal Program (LCP) jurisdiction, but is now within the boundaries of the City of Solana Beach. The City will, in all likelihood, prepare and submit for the Commission's review a new LCP for the area. Because of the incorporation of

the City, the certified County of San Diego Local Coastal Program no longer applies to the area. However, the issues regarding protection of coastal resources in the area have been addressed by the Commission in its review of the San Diego County LUP and Implementing Ordinances. As such, the Commission will continue to utilize the San Diego County LCP documents for guidance in its review of development proposals in the City of Solana Beach until such time as the Commission certifies an LCP for the City.

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

The City of Solana Beach should also address these items in the context of a comprehensive approach to management of shoreline resources. Within the limits of the proposed project development, and as proposed and conditioned to remove portions of the residence which are threatened by erosion, the project can be found consistent with the Chapter 3 policies of the Coastal Act, and will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program. However, these issues of shoreline planning will need to be addressed in a comprehensive manner in the future through the City's LCP certification process.

The project site is designated for medium density single-family residential development in the City of Solana Beach Zoning Ordinance and General Plan, and was also designated for medium residential uses under the County LCP. The subject development adheres to these requirements and the proposed residence will have no effect on the overall density of development for the site. The Commission finds the proposed development, as conditioned, conforms to all applicable Coastal Act Chapter 3 policies. Therefore, as conditioned, the subject development will not prejudice the ability of the City of Solana Beach to complete a certifiable local coastal program.

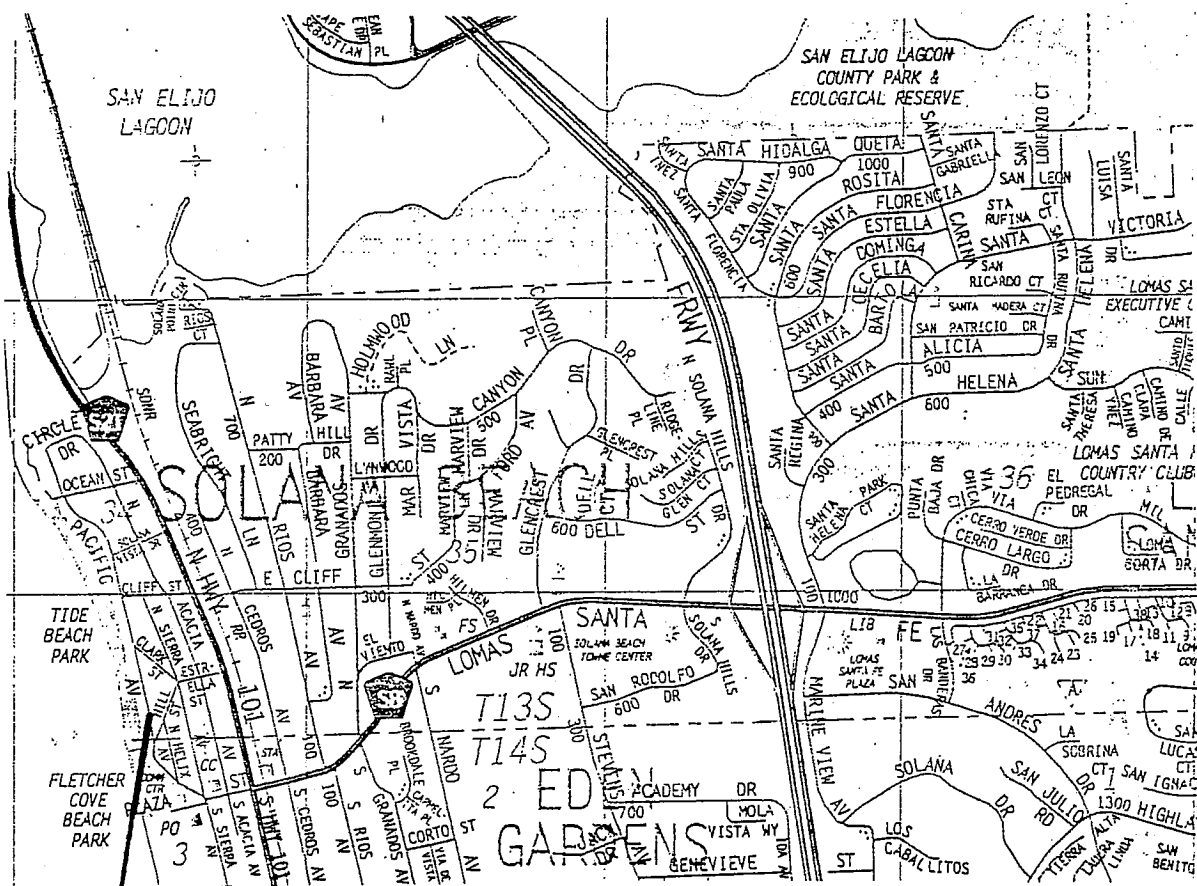
6. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the future development and geologic stability policies of the Coastal Act. Mitigation measures, including recordation of a future development deed restriction, and submittal of final project plans indicating a minimum 40 ft. setback for all new proposed development or a 25 ft. blufftop setback along with recordation of a deed restriction agreeing to waive future rights to shore or bluff protection and an agreement to remove portions of the home if they become threatened in the future, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.



# SITE

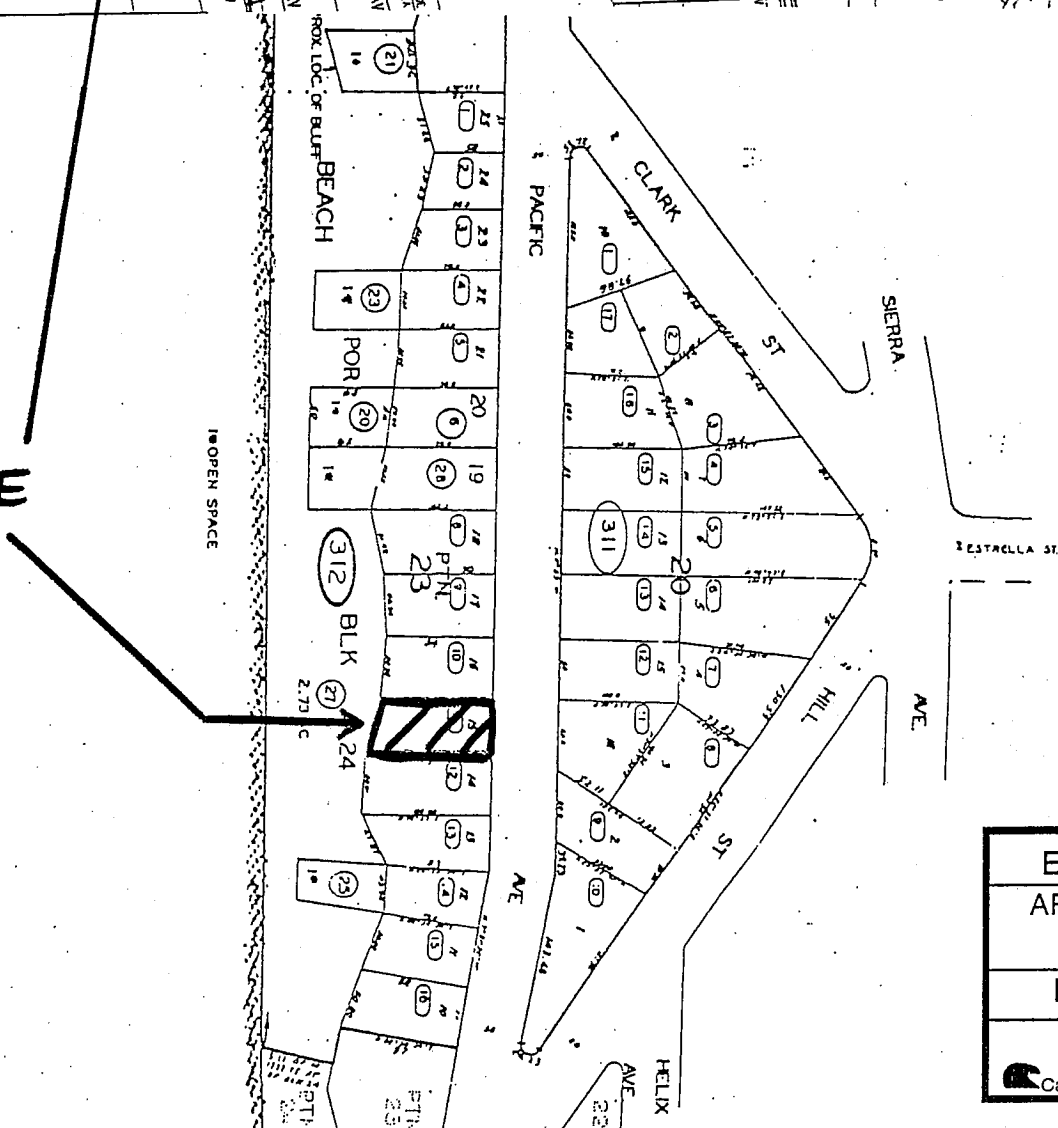
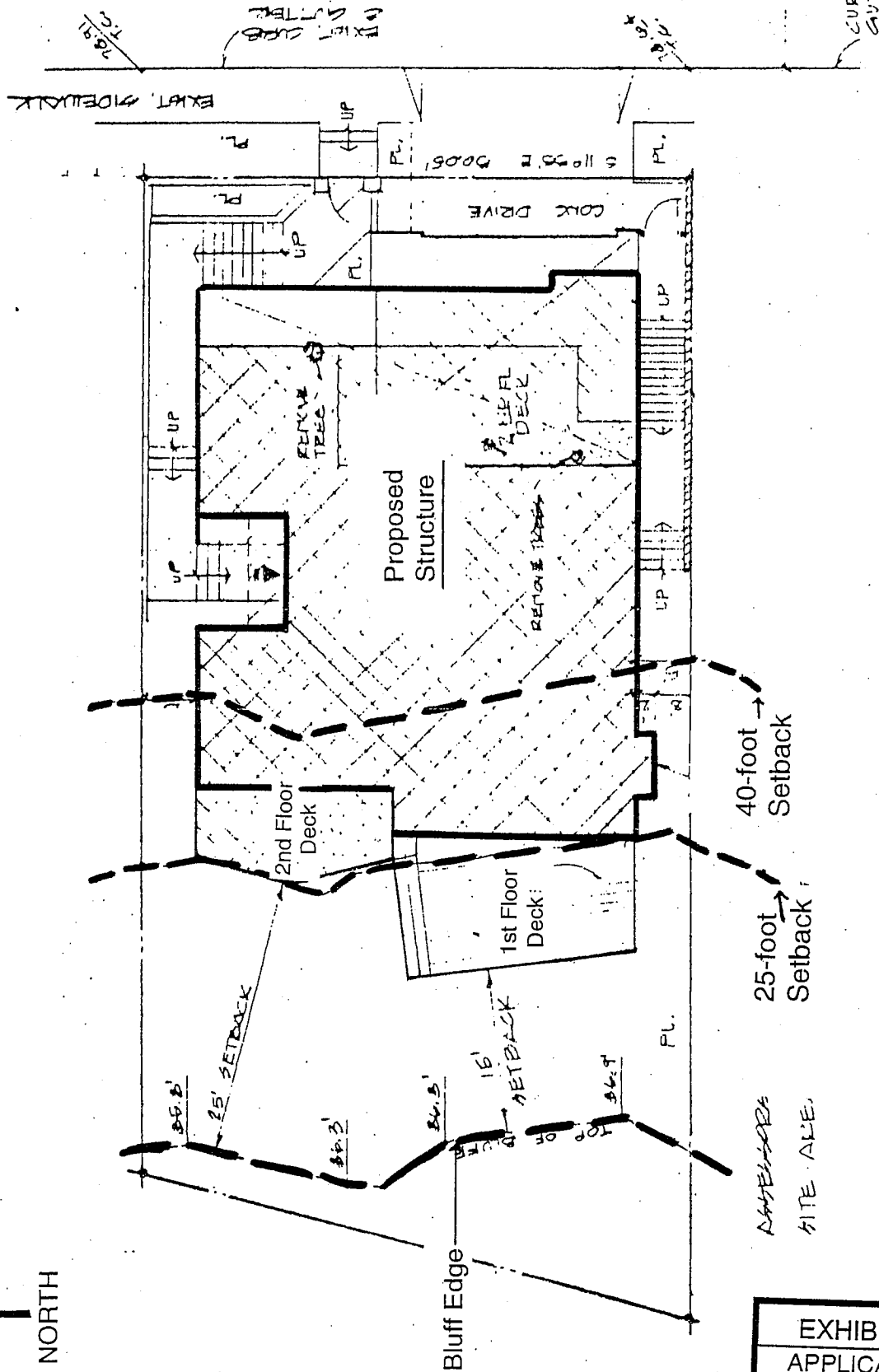
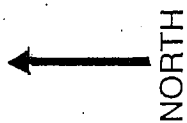


EXHIBIT NO. 1  
APPLICATION NO.  
**6-96-21**  
Location Maps




California Coastal Commission

GARAGE AREA 667 S.F.  
 FIRST FLOOR AREA 1879 S.F.  
 SECOND FLOOR AREA 1405 S.F.  
 3951 S.F.



# SITE PLAN

EXHIBIT NO. 2
APPLICATION NO.
6-96-21
Site Plans
 California Coastal Commission



June 4, 2021

Delivered via email

To: Karl Schwing  
District Director, San Diego Coast  
California Coastal Commission

**Re: Application No. 6-21-0278, 235, 241, 245, & 249 Pacific Avenue, Solana Beach**

Dear Mr. Schwing,

The Surfrider Foundation is a nonprofit grassroots organization dedicated to the protection and enjoyment of our world's ocean, waves, and beaches through a powerful network. We are writing now to implore the Coastal Commission to act in the strongest possible manner to protect the public's beaches in the city of Solana Beach. If the Commission grants a permit to build a seawall and upper bluff protection - in front of a new home with a deed restriction waiving the right to protection - additional mitigation and the strongest possible conditions must be applied.

## **Suggested corrections to the staff report**

We appreciate all of the hard work staff has done for this very difficult situation. Clearly they are trying to reach a compromise that works for all parties involved. However, we would like to ensure the staff report accurately reflects the current situation.

### **245 Pacific Ave is at risk**

As written, a section of the staff report may give the impression that 245 Pacific Ave is not currently at risk:

*The applicants' geotechnical representative has demonstrated that the existing blufftop residential structures located at 235, 241, and 249 Pacific Avenue are in danger from erosion due to ongoing bluff collapse and exposure of the clean sand layer below the residences. (page 2)*

It should be made abundantly clear that 245 is in danger from erosion and therefore will directly benefit from the construction of a seawall in front of the house. The staff report confirms this later on when it states that the seaward portion of 245 Pacific Ave is threatened:

*While the slope stability analysis showed that the seaward portion of the home at 245 Pacific Avenue was threatened by erosion, the analysis did not indicate that the portion of the home inland of the 40 ft. bluff setback was at risk. (page 21)*

The Coastal Commission, Commission staff, the applicants' geotechnical experts, and third-party geotechnical experts have concluded since 2010 that the property is unsafe, and Surfrider compiled these in our 2020 letter regarding a similar permit application<sup>1</sup>.

### **All of 245 Pacific Ave is new development**

The staff report appears to afford different portions of the new post-Coastal Act home at 245 Pacific Ave different rights to seawalls, depending on the relative location of that portion of the house:

*The stability analysis does not indicate that the portion of the home landward of the 40 ft. bluff edge setback is currently at risk. Thus, the Commission is not required to approve shoreline armoring to protect the bluff top residence at 245 Pacific Avenue. (page 2)*

As 245 Pacific Ave is a new home built after the effective date of the Coastal Act, the Commission would not be required to approve shoreline armoring to protect any portion of the home, regardless of its location relative to the bluff setback. We recommend stating that 'The Commission is not required to approve shoreline armoring to protect the bluff top residence at 245 Pacific Ave as it is a new home constructed after the effective date of the Coastal Act.' or simply deleting this section entirely to avoid confusion.

### **Shoreline armoring damages the environment**

We understand that staff use of the terminology 'least environmentally damaging feasible alternative' is a technical designation. However, we object to this language. How can armoring ever be considered the least environmentally damaging feasible alternative?

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<sup>1</sup>[https://drive.google.com/file/d/1Gc9jiXKLSRL9GRaJBVL\\_sLOYWpY1Z1pw/view?usp=sharing](https://drive.google.com/file/d/1Gc9jiXKLSRL9GRaJBVL_sLOYWpY1Z1pw/view?usp=sharing)

*This is not the first project where the Commission has been faced with the decision on whether to leave a “gap” of unarmored bluff in Solana Beach for multi-property shoreline armoring requests where some of the homes had either waived their right to shoreline protection or could achieve an adequate level of stability without shoreline armoring. In these past applications, the Commission determined that approval of shoreline armoring fronting the “gap” property was the least environmentally damaging feasible alternative. (pages 2-3)*

We should be honest about what’s at stake - this application is not a consideration of different environmental impacts; it is a prioritization of the protection of private property over the preservation of public lands. The Commission may be compelled to construct armoring to protect existing homes, but this is a financial and legal consideration, not an environmental one. Instead of stating ‘approval of shoreline armoring fronting the “gap” property was the least environmentally damaging feasible alternative’ the staff report should state something along the lines of ‘approval of shoreline armoring fronting the “gap” property was necessary to protect the neighboring homes which predate the Coastal Act.’

## **245 is not an existing home**

The staff report incorrectly refers to 245 Pacific Ave as an existing home. Additionally, staff included the statement from the applicants that protection is not required for 245 Pacific Ave, despite their own geotechnical reports that state the opposite. We have added strikethroughs to the staff report text that we disagree with:

*The proposed protection would be located on the City-owned public beach and bluff, the seawall below ~~an existing~~ single-family residence located at 245 Pacific Avenue, and the geogrid below three adjacent residences at 245, 241, and 235 Pacific Avenue, in the City of Solana Beach. ~~The applicants have stated that the protection is not required for the residence located immediately above the gap at 245 Pacific Avenue, but~~ It is needed to protect the residences on either side; 249 Pacific Avenue to the north, and 241 and 235 Pacific Avenue to the south. (page 20)*

245 Pacific Ave should not be allowed to be referred to as ‘existing’ in any portion of the staff report. Likewise, the applicants’ incorrect statement that 245 is not currently at risk should be removed as that is demonstrably false.

## **Long-term consequences**

As the Commission has rightfully pointed out in its two previous denials of seawalls in front of 245 Pacific Ave, we appear to be at an inflection point where we must confront the future of coastal development. All of our beaches are at risk while we continue to armor our coastline as a short-term band-aid for natural bluff retreat and sea level rise.

### **Our beaches are not being protected by the City or county**

The staff report optimistically points to regional planning efforts as a way to restore our coastline:

*...the prevention and eventual removal of seawalls in Solana Beach is more effectively approached through regional planning efforts than on a project-by-project basis.*

Unfortunately, history has clearly shown that the City of Solana Beach is unwilling to act as directed by section 30007.5 of the Coastal Act:

*'...conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.'*

Time and time again, the City has proven they will not stand up for the rights of the public, choosing instead to bow to the power and financial might of the blufftop private property owners. When the San Diego chapter of Surfrider contacted the City to request they investigate the current unsafe situation at 245 Pacific Ave, their response was that the City was not a party to the deed restriction and that the Coastal Commission has the sole permitting authority to address any related concerns.

The City has stated on the record, numerous times, that the deed restriction is 'silent' on enforcement, and since the deed restriction was a condition imposed by the Coastal Commission, it is not the City's responsibility to enforce it. This argument allows the City to grant CDPs for seawalls for properties like 245 Pacific Ave, because they claim the deed restriction is not relevant for their consideration.

This is why the Coastal Commission exists - to uphold the principles of the Coastal Act and protect the beach-going public when local jurisdictions are unwilling to do so. The many attempts to put a seawall in front of 245 Pacific Avenue highlight the weakness of deed restrictions. Ironically, one of the limiting conditions that staff suggests placing on the applicants is the recording of deed restrictions that will "put future property owners on notice of all standard and special conditions required by this permit." (page 4, Staff Report<sup>2</sup>)

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<sup>2</sup> <https://documents.coastal.ca.gov/reports/2021/6/Th11b/Th11b-6-2021-report.pdf>

While we see that staff has taken measures to strengthen language in the deed restriction, the Commission needs to repair the weak points of deed restrictions by addressing the need for enforcement. Only this would serve the public's best interest as the City has consistently sided with the interests of the private property owners who will continue to destroy the public's beaches.

### **New development is not feasible west of Pacific Ave**

The City's LUP is unrealistic concerning the effectiveness of sand replenishment as a solution to protect the beaches. Likewise, the only way to safely site development along the tops of the bluffs is to move the current development back from the bluff's edge. The bluffs for the length of the City are entirely developed already. The staff report accurately states the following about the City's LUP:

*One of the main goals of the certified LUP is to limit bluff retention devices on the public bluffs and beach area through the appropriate siting of new development and by aggressively pursuing implementation of a comprehensive beach sand replenishment and retention program, as the best approach to buffer the shoreline from wave attack and reduce the need for bluff retention devices. (page 3)*

Unfortunately, sand replenishment is a short-term solution for a long term problem. For the southern portion of the City, safely locating structures will mean removing portions of condominium associations that are teetering on the bluffs edge. For the northern portion of the city, the lots between the bluff and the first road are not large. Either homes will need to be smaller to move them back from the bluffs edge, or homes should be sited east of the first road. To implement such a policy, we cannot continue to allow homes to be redeveloped on the bluff's edge and perpetuate that development by protecting it with seawalls. It must be made crystal clear to bluff-top homeowners that there is an end date for these houses - either at the end of the home's economic life, or when a seawall is needed to protect a new home. Alternative options open to loopholes, as was offered to the applicants at 245 Pacific Avenue when they chose to redevelop in 1996, should not be given.

### **Mitigation must reflect the costs to our beaches**

The suggested mitigation for the proposed 245 Pacific Ave seawall grossly undervalues our beaches, perpetuating the inequities we are currently experiencing along our coastline. The staff report states:

*The applicants will be required to submit a payment of \$54,631.10 into a*

*Shoreline Account established by the City of Solana Beach to mitigate for impacts to public access and recreation for the initial 20-year mitigation period for the proposed seawall. The applicants will also be required to submit a payment of \$10,272 into a Shoreline Account established by the City of Solana Beach to mitigate for impacts to sand supply for the initial 20-year mitigation period for the proposed seawall. The owner of the residence at 245 Pacific Avenue will also deposit \$140,000 into an interest- bearing account that shall be used for public access and public recreation improvements in Solana Beach or surrounding areas as a first priority and for sand replenishment as a secondary priority.*

\$204,903 mitigation for a 20-year permit amounts to \$10,245/year, \$853.75/month, or \$28/day. Compare this to a nearby AirBnB on Pacific Ave that rents for over \$1,000/day. (<https://www.airbnb.com/rooms/25776525>, accessed May 29, 2021).

### Refurbished Hi-Tech Hideaway bordering the ocean and simply magnificent

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#### Entire house hosted by Brenda

6 guests · 2 bedrooms · 4 beds · 2 baths



\$1,102 / night

★ 5.0 (59 reviews)

Entire home

CHECK-IN  
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The proposed mitigation fees grossly undervalues the beach and bluff property that will be destroyed by the seawall's existence. In this case, it is reasonable to increase the required mitigation for a seawall that should never have been built to begin with. The certified LUP specifies that mitigation be charged for existing homes:

*"...some amount of lower bluff protection has been and will continue to be unavoidable to protect existing structures in danger from erosion pursuant to*

*Section 30235 of the Coastal Act. (chapter 4, page 12, emphasis added)*

However, the LCP is silent on how to calculate mitigation fees for new homes, such as 245 Pacific Ave. Therefore, the Commission is within its rights to increase the mitigation fees for such extraordinary circumstances.

We also object to this raise in fee being referred to as a 'donation' on page 2 of the staff report. Such language suggests altruism on behalf of the applicants as well as arbitration in calculating the cost owed to the public.

### **Strengthen special condition 4**

Special condition 4 in the staff report states that over 50% redevelopment shall trigger removal of the seawall:

*(a) Development that consists of alterations including (1) additions to an existing structure, (2) exterior or interior renovations, or (3) demolition or replacement of an existing home or other principal structure, or portions thereof, which results in:*

*i. Alteration (including demolition, renovation or replacement) of 50% or more of major structural components including exterior walls, floor structure, roof structure or foundation, or a 50% increase in gross floor area. Alterations under this definition are not additive between individual major structural components.*

*OR*

*ii. Alteration (including demolition, renovation or replacement) of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the date of certification of the LUP; or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved on or after the date of certification of the LUP. (Special Condition 4, page 14)*

In the past, we have seen how the 50% redevelopment threshold is insufficient to temper coastal redevelopment. For example, at 475 Pacific Ave in Solana Beach, an existing home was redeveloped as follows:

- 48.5% of exterior walls
- 48.2% of roof
- 31.5% of foundation

- 15.7% of floor.

Here are several photographs of what was touted as sub-50% redevelopment:



2015 Existing home



2018 Construction photos



Redeveloped home, 2019

Redevelopment triggers should be strengthened to reflect that the 50% threshold is insufficient to prevent the unfair indefinite extension of an existing home's lifetime.

### **Require recordation of encroachment permit**

We request that the Commission require an encroachment permit rather than leaving it to the discretion of the City. The City has continually ceded to the threat of legal action or financial might of private property owners. Require the homeowners to get an encroachment permit, so that if the City ever gets the political will to start protecting public property, the encroachment permit will be in place.

*Encroachment Agreement. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed an Encroachment Agreement with the City, recognizing that the seawall is located on property owned by the City and is subject to removal by request of the City at any time, ~~or evidence that an Encroachment Agreement is not required by the City.~~ Within 90 days of the City's request for removal, the applicants shall submit an amendment to this CDP proposing removal of the*

*encroachment in its entirety. Permittees shall remove the encroachment within 90 days after the Commission issues the CDP amendment. (Special Condition 11, page 17, suggested strikethrough)*

## 245 Pacific Ave is responsible for this situation

In 1990, the current owners of 245 Pacific Ave knowingly decided to build too close to the bluff's edge. The Coastal Commission warned them this was a bad idea, and placed a deed restriction on the home to ensure that any future owners would be aware of this poor decision. The current owners of 245 Pacific Ave accepted this responsibility when they purchased the home. The neighboring properties could have opposed this restriction if they had the foresight to think of the longer-term consequences of the deed restriction. The current property owners should hold 245 Pacific Ave accountable, not the Coastal Commission and the people of California, whose land they are demanding to occupy.

## Permit history in this area of Solana Beach

To demonstrate how neighbors can collude to build seawalls in front of new homes - even homes with deed restrictions that waived the right to protection - we include the permit history of the neighboring properties and the homes currently being considered here. Houses in bold indicate new homes (that post-date the Coastal Act), properties with deed restrictions, or other limits on protection.

Address	Permits / Property Status <sup>3</sup>
211 Pacific Ave	<u>1961</u> : original home constructed <u>1995</u> : Commission approved a remodel and construction of first, second, and third floor additions. The approved project resulted in a 1,944 sq. ft. addition to the existing 1,718 sq. ft. home (ref. CDP 6-95- 095/O'Neal) <u>2010</u> : 256 ft long 35 high seawall. Property not threatened but seawall built to avoid gap. (CDP 6-09-033)
<b>215 Pacific Ave</b>	<b><u>1995</u>: original home construction</b> <u>1998</u> : first and second floor addition

<sup>3</sup> Permit history for 211-231 Pacific Ave from CDP 6-15-1717 (Mark and Felicia Barr) and CDP 6-09-033-A1 (O'Neal et al.).

Permit history for 235-249 Pacific Ave from CDP 6-18-0288 (DeSimone, Schrager, & Jokipii) and CDP 6-19-1291 (DeSimone, Schrager, & Oene)

Permit history for 249-311 Pacific Ave from CDP 6-99-100

	<p>approved. The approved project resulted in a 1,355 sq. ft. addition to the existing 1,509 sq. ft. home (CDP 6-98-131/Glasgow)</p> <p><u>2010</u>: 256 ft long 35 high seawall.</p> <p>Property not threatened but seawall built to avoid gap. (CDP 6-09-033)</p>
<b>219 Pacific Ave</b>	<p><b><u>1984</u>: New home approved by the Commission in 1984 (ref. CDP# 6-84-062)</b></p> <p><u>2010</u>: 256 ft long 35 high seawall.</p> <p>Property not threatened but seawall built to avoid gap. (CDP 6-09-033)</p>
<b>225 Pacific Ave</b>	<p><u>1926</u>: original home constructed</p> <p><u>2010</u>: 256 ft long 35 high seawall.</p> <p>Property not threatened but seawall built to avoid gap. (CDP 6-09-033)</p> <p><b><u>2016</u>: Existing home demolished, new home constructed (CDP 6-15-1717)</b></p>
231 Pacific Ave	<p><u>1958</u>: original home constructed.</p> <p><u>1988</u>: Commission approved first and second floor additions. The approved project resulted in a 1,657 sq. ft. addition to the existing 1,674 sq. ft. home (ref. CDP 6-88-006/Victor).</p> <p><u>2010</u>: 256 ft long 35 high seawall.</p> <p>Property not threatened but seawall built to avoid gap. (CDP 6-09-033)</p>
235 Pacific Ave	No post-1977 permits
241 Pacific Ave	<p><u>1950s</u>: original home constructed</p> <p><u>1989</u>: Commission approved a remodel and a 2,040 sq. ft. second story addition to the residence, resulting in a total of 3,419 sq. ft. (CDP 6-89- 029/Haggerty).</p> <p><u>2008</u>: caissons installed and the bluff failed shortly thereafter exposing the caissons. (6-07-132/Hawkins)</p>
<b>245 Pacific Ave</b>	<p><b><u>1996</u>: demolition of existing home and construction of new home 25 ft from bluff's edge. Deed restriction waiving rights to shoreline protection. (CDP 6-96- 021/Ratkowski)</b></p>

249 Pacific Ave	<p><u>1958</u>: Original home constructed</p> <p><u>1999</u>: 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue (CDP #6-99-100/Presnell et. al.)</p> <p><u>2014</u>: 24 ft. long, 35 ft. high seawall extension (CDP #6-13-0437 /Presnell/Graves LLC)</p>
<b>255 Pacific Ave</b>	<p><u>1974</u>: new home constructed</p> <p><b><u>1992</u>: 1 and 2 story seaward addition. Conditioned that Commission consider removal of threatened portions of home as preferred and practical alternative to protection (CDP 6-91-309)</b></p> <p><u>1999</u>: 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue (CDP #6-99-100/Presnell et. al.)</p>
<b>261 Pacific Ave</b>	<p><b><u>1984</u>: demolition of existing home and construction of new home built 27 ft from bluff's edge. (CDP 6-84-168)</b></p> <p><u>1998</u>: permit to fill 30 ft wide, 12 foot high, 7 ft deep sea cave</p> <p><u>1999</u>: 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue (CDP #6-99-100/Presnell et. al.)</p>
<b>265 Pacific Ave</b>	<p><b><u>1995</u>: New home constructed 25 ft from bluffs edge. Deed restriction waiving right for shoreline protection (CDP 6-95-23)</b></p> <p><u>1999</u>: 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue(CDP #6-99-100/Presnell et. al.)</p>
269 Pacific Ave	<p><u>1994</u>: First and second story addition (CDP 6-94-33)</p> <p><u>1999</u>: 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue(CDP #6-99-100/Presnell et. al.)</p>
<b>301 Pacific Ave</b>	<p><b><u>1989</u>: First and second story addition conditioned that removal of threatened portion of home preferable to seawalls (CDP 6-29-288)</b></p> <p><u>1998</u>: 45 ft wide, 16 ft high, 13 ft deep sea</p>

	cave filled <u>1999</u> : 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue(CDP #6-99-100/Presnell et. al.)
<b>309 Pacific Ave</b>	<b><u>1990</u>: New second story on one story home. Permit conditioned that removal of threatened portions of home preferable to building a seawall</b> <u>1998</u> : 38 ft wide, 12 ft high, 15 ft deep seacave filled <u>1999</u> : 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue(CDP #6-99-100/Presnell et. al.)
311 Pacific Ave	<u>1999</u> : 352-foot long, 35-foot high seawall build below 249-311 Pacific Avenue(CDP #6-99-100/Presnell et. al.)

There is now a continuous seawall from 475 Pacific Ave to 245 Pacific Ave. There is a gap at 245 Pacific Ave, and then another seawall continues from 241-211 Pacific Ave. Filling in the gap at 245 Pacific will result in a continuous seawall from 475 to 211 Pacific Ave, amounting to armoring over ¼ mile long, in front of 21 houses. This represents the majority of the homes in the northern half of the cities. As such, the seawall should be treated as one structure, and seawall removal and potential removal of threatened portions of homes should be subject to consideration whenever any home behind the seawall wants to make a change that requires a CDP.

As we are arriving at the eventuality of a continuous seawall, we suggest that the entire seawall should be re-evaluated to determine where viable gaps can be reopened, by removing portions of the seawall. A prime possibility is the portion of the seawall in front of 255, 261, and 265 Pacific Ave. None of these homes should have a seawall in front of them, as they are either new homes or were redeveloped with the condition to waive a seawall. The same could be said for 215, 219, and 225 Pacific Ave. These are new homes constructed in the 80s and 90s.

Here are two opportunities to re-open 100-foot portions of the bluffs to give the beach back to its rightful owners, the public. For example, if a 100-foot gap was opened, centered in front of 261 Pacific Ave, there would still be 25 feet of sea wall in front of 255 and 265 Pacific Ave to maintain protection of its neighbors at 249 and 265 Pacific Ave, who still have not redeveloped or accepted deed restrictions waiving the rights to a seawall. The same could be said for 215, 219, and 225 Pacific Ave and its neighbors.



Homes outlined in red indicate homes with a deed restriction waiving the right to a seawall or removal of threatened portions of home. Approximate seawall location indicated in blue, with potential location for 100 gap

## Neverending story

In the past, the Coastal Commission has justified permitting large swaths of seawalls (for example, the 1999 permit for 241-311 Pacific Ave) by stating they are taking a comprehensive look at shoreline armoring, rather than granting armoring on a house-by-house basis. This argument was used to justify the 1999 construction of a

seawall in front of both 261 and 265 Pacific Ave, even though those homes had accepted deed restrictions waiving their rights to seawalls. It also allowed the seawall to remain in front of 255 Pacific Ave, even though that home was completely demolished and rebuilt in 2016. It is again being used to justify a seawall to protect 245 Pacific Ave, despite their seawall waiver deed restriction. It is clear the result of this 'comprehensive approach' has resulted in the surrender of the public's property solely for the protection of private property. Clearly this approach is failing the public, and must be reevaluated.

We now need to look for ways to slowly chip away at the armoring that is destroying our bluffs and beaches, and that starts with not approving seawalls for homes that have waived their rights to seawalls. It should continue by removing seawalls from in front of homes that never should have gotten a seawall in the first place.

If we are going to be serious about prioritizing the protection of our public beaches, we must start by removing armoring and restoring our bluffs to their natural unarmored state.

### **Good intentions gone wrong**

The permit and development history of this stretch of Solana Beach demonstrate how the good intentions of the Coastal Commission of the past have failed. The Commission has relied on tools like deed restrictions, redevelopment restrictions, and mitigation fees to condition permits for blufftop homes and armoring projects. We now see how all of these options have been unraveled.

The City of Solana Beach is unwilling to enforce deed restrictions, and neighbors can work together to protect new homes by claiming threats to existing neighboring homes. Redevelopment restrictions are also not effective; homes like 475 Pacific Ave have shown that existing homes can get a seawall as allowed by the Coastal Act, redevelop up to 49%, and essentially have a brand new bluff-top home with a fully permitted seawall. Mitigation fees are also not going to be sufficient. We are already doing horrible damage to the visual beauty of our coastal bluffs. And, with sea level rise, our beaches will slowly disappear over the next 30-50 years as fixing the back of the beach will prevent the erosion of the bluffs to maintain natural width of the beach. How can we put a price on the loss of our beaches? There are almost 40 million residents in the state of California, and the beaches belong to every one of us. When our beaches are all gone, how can we possibly pay for that loss?

### **Few remaining options**

Given that the current tools have proved ineffective at preventing reckless coastal development, we are left with fewer options. Blufftop property owners must be put on

notice that their homes have an expiration date. Perhaps the life of the structure should be tied to the life of the seawall, ensuring that the seawalls cannot exist in perpetuity. Redevelopment should be limited further to ensure that economic life of existing homes cannot be indefinitely extended. We have also seen how property owners' geotechnical experts can cook their calculations to their advantage. Projected bluff top retreat is always underestimated when it comes to calculating setbacks, but always overemphasized when needed to justify the construction of armoring. One option here would be to tie setback calculations into state-wide SLR information to take away subjectivity when determining retreat rates and setbacks. Our beaches are at a tipping point, and the Coastal Commission should act now in a manner most protective of our precious coastal resources.

### **The need for personal responsibility**

We all accept a certain amount of risk that is inherent in a natural setting. We don't sue the National Parks when there is a rockslide in Yosemite; we don't sue the Coast Guard if a storm sinks our ship and they aren't able to rescue us; we don't sue the state of California when there is an earthquake and our home is destroyed. These are all known risks we accept for living where we do. It has been a known fact that the coastline of California has been eroding for the last 11,000 years. People who choose to buy or build a house on an eroding blufftop should accept responsibility for their choice, and should not expect the public to bail them out by allowing them to indefinitely occupy our public lands. We ask the Commission not to give applicants any options for increasing their risk or the public's, to focus on enforcement of known violations, to think more creatively about how to restore the public's beach, and to continue to apply measureable and enforceable conditions for this work.

Sincerely,

Kristin Brinner and Jim Jaffee  
Residents of Solana Beach  
Co-Leads of the Beach Preservation Committee  
San Diego County Chapter, Surfrider Foundation

Laura Walsh  
Policy Manager  
San Diego County Chapter, Surfrider Foundation