

RESOLUTION NUMBER R-290999

ADOPTED ON NOVEMBER 24, 1998

WHEREAS, Norma J. Rink, et al., appealed the decision of the Planning Commission of The City of San Diego [Planning Commission] in approving by Planning Commission Resolution No. 2698-PC on September 17, 1998, Sensitive Coastal Resource/Coastal Development Permit [SCR/CDP] No. 96-7544 submitted by Scott Moncrieff, Owner/Permittee, to partially demolish and remodel the existing residence and seawall, located 6102 Camino De La Costa, and legally described as Lot 12, Block 1-A, La Jolla Hermosa Subdivision, Map No. 1810, in the La Jolla Community Plan area, in the R-1-8000 zone; and

WHEREAS, the matter was set for public hearing on November 24, 1998, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to SCR/CDP No. 96-7544:

COASTAL DEVELOPMENT PERMIT FINDINGS (San Diego Municipal Code § 105.0202):

A. The proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in an adopted Local Coastal Program [LCP] Land Use Plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

The subject property is not identified in the City's adopted LCP Land Use Plan as a public accessway. The site is privately owned and improved with a single family residence and sea wall, and therefore would not encroach upon any existing physical accessway legally utilized by the general public.

The project borders Mira Monte Place [Paper Street] which is identified in the La Jolla Community Plan as unimproved access to a small cove beach. The site currently contains a side yard wall which ranges from 6-9 ft. tall that angles into this Paper Street approximately 1-2 ft. at the point closest to the water. The wall pre-dates the adopted LCP and Community Plan. The location of the existing wall does not interfere with any public access to the coast. However, the applicant has nevertheless agreed to remove and relocate the wall outside the Paper Street and replace it with an open fence for the westerly 18 ft. to open up views to and along the ocean.

The remodel will not obstruct coastal or scenic views from any public vantage point. There will not be any increase in building mass of the existing structure. The repairs to the existing sea wall with the contouring, coloring and sculpting to match the adjacent bluff and sandstone formations will enhance the visual quality of the shoreline. The removal of the 6-9 ft. sidewall and the replacement of it with a 5 ft. tall "open" fencing for the westerly 18 ft. will significantly enhance public viewing to and along the coast. The proposed design of the remodel project will eliminate the existing box-like design of the structure, remove a tall unsightly fireplace chimney, remove a boathouse, and reduce the gross floor area by nearly ten percent by the creation of balcony elements.

The proposed interior exterior remodeling activities to the existing single-family home on the subject property would not exceed the height of the existing structure. It has been concluded that implementation of the various improvement features will not adversely obstruct public views to or along the ocean.

Therefore, the proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in an adopted LCP land use plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

B. The proposed development will not adversely affect identified marine resources, environmentally sensitive areas, or archaeological or paleontological resources.

The proposed project is a remodel of an existing single family residence. The entire project site is graded and padded as a result of construction of the existing home and associated improvements on the property. No further grading of the site is required to implement the various improvement features proposed on the subject property. The remodel will utilize the existing footings and foundation. As such, no grading is proposed as part of this application. No natural slopes, sensitive coastal or marine resources or other environmentally sensitive areas will be adversely affected.

Furthermore, as concluded in the Negative Declaration 96-7544, no adverse impacts to marine paleontological or archaeological resources are anticipated to occur as a result of project implementation.

Therefore, the proposed development will not adversely affect identified marine resources, environmentally sensitive areas, or archaeological or paleontological resources.

C. The proposed development will comply with the requirements related to biologically sensitive lands and significant prehistoric and historic resources as set forth in the Resource Protection Ordinance (San Diego Municipal Code Section 101.0462), Unless by the terms of the resource protection ordinance, it is exempted therefrom.

The project site is located within the City of San Diego's coastal zone and is therefore exempt from the City's Resource Protection Ordinance per requirements of the San Diego Municipal Code.

D. The proposed development will not adversely affect identified recreational or visitor-serving facilities or coastal scenic resources.

The project is a proposed remodel to an existing single-family residence. The design of the remodel will reduce appearance of the bulk of the existing structure and incorporate facade articulation and architectural details that will improve the aesthetic appeal when viewed from the street and along the coast. The remodel of this single-family residence will not adversely affect any visitor-serving or recreational facility.

No coastal scenic resources, recreational or visitor-serving facilities were identified on the project site. Therefore, no adverse impacts to such resources would occur as a result of project implementation.

Therefore, the proposed development will not adversely affect identified recreational or visitor-serving facilities or coastal scenic resources. (Also see Finding "A" above and Finding "G" below.)

E. The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.

The project proposes to remodel an existing single-family residence and has been designed to reduce the legal nonconforming nature of the structure. This will be accomplished by increasing the setback from the coastal bluff and reducing the gross floor area [FAR] to be more compatible with current development regulations. The repair of the existing sea wall in its current location, will be accomplished using the latest technology to produce a natural looking sea wall that will visually blend with the native bluff. The repaired sea wall will enhance the appearance of the area.

No adjacent public parks or public recreational areas presently exist or were identified for the area adjacent to and immediately surrounding the subject site. No impacts to these resources would occur as a result of the remodel of the residence or the repairs to the sea wall.

Therefore, the proposed development has been sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.

F. The proposed development will minimize the alterations of natural land forms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

The project site has been graded and padded as a result of construction of the existing structure and associated improvements on the property. No further grading of the site is necessary to implement the proposed remodel. Therefore, no mitigation measures would be necessary to reduce impacts associated with geologic and erosional forces.

The project site is not located within the FW (Floodway) or FPF (Floodplain Fringe) zones. The existing drainage system designed for the project is consistent with relevant requirements of the City Engineer and would minimize risks associated with runoff and erosion.

Therefore, the proposed development will minimize the alterations of natural land forms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

G. The proposed development will be visually compatible with the character of the surrounding area, and where feasible, will restore and enhance visual quality in visually degraded areas.

The scale, design and building materials incorporated into the existing structure are consistent with the varied design and character of existing single-family development in the surrounding area. The majority of the proposed remodeling activities would occur within the existing structure. Exterior remodeling activities would incorporate materials and colors consistent with recently remodeled homes in the vicinity and would be visually compatible with the architectural materials and varied design theme of existing single-family development along Camino de la Costa.

The proposed remodel will reduce the "box-like" appearance of the existing structure as well as building mass by reducing the floor area and adding balcony elements, articulation and glass features to the facade. Further, the repairs to the sea wall will produce a natural looking sandstone appearance that will blend in with the surrounding natural topography features. Finally, the removal of the tall 6-9 ft. nonconforming block wall and its replacement with a 5 ft. open fence for the westerly 18 ft. (closest to the ocean) will restore and enhance the visual quality of the area. Together, these improvements will enhance the visual quality of the site and surrounding area.

Therefore, the proposed development will be visually compatible with the character of the surrounding area, and where feasible, restores and enhances visual quality in visually degraded areas.

H. The proposed development will conform with the City's Progress Guide And General Plan, the LCP, and any other applicable adopted plans and programs in effect for this site.

The proposed project (i.e., remodel of an existing single-family residence) is consistent with the recommended land use, design guidelines, and development standards in effect for the subject property per the adopted La Jolla Community Plan, the Sensitive Coastal Resource [SCR] Ordinance, the City's LCP, and the City of San Diego's Progress Guide and General Plan, which recommend that the subject property be developed with single-family residential development in accordance with development regulations of the existing R-1-8000 zone.

Although the proposed structure will maintain certain legally nonconformities, the remodel will result in an overall decrease in the nonconforming elements of the property including the bluff setback (i.e., removal of the boathouse), a reduction in FAR, and a reduction in the height of the sidewalls. These types of repairs and alterations are allowed pursuant to San Diego Municipal Code section 101.0303.

Therefore, the proposed development conforms with the City's Progress Guide and General Plan, the LCP, and any other applicable adopted plans and programs in effect for this site. (Also see Variance Findings below.)

SENSITIVE COASTAL RESOURCE PERMIT FINDINGS (San Diego Municipal Code § 101.0480):

A. The proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas.

The entire project site is graded and padded as a result of construction of the existing home and associated improvements on the subject property.

No further grading of the site is required to implement the proposed interior and exterior remodeling, alterations, and improvements to the residence. The repairs to the sea wall will not require any grading and will not result in any adverse impacts upon sensitive coastal resources or other environmentally sensitive areas. No sensitive coastal resources or environmentally sensitive areas will be affected by the proposed project.

A Negative Declaration was prepared for this project. No significant (adverse) impacts are anticipated to occur as a result of project implementation (i.e., interior and exterior remodeling of the existing structure and repairs to an existing sea wall). As such, there will be no adverse impacts to environmentally sensitive areas or sensitive coastal resources.

Therefore, the proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas. (Also see Coastal Development Findings "E" above.)

B. The proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in the adopted community plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

As referenced in Coastal Development Finding "A" above, the proposed remodel of the residence and the repairs to the sea wall will not encroach upon any existing or future accessway legally utilized by the public nor will it obstruct views to and along the ocean from public vantage points. (Also see Coastal Development Finding "A" above.)

C. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards on site.

As referenced in Coastal Development Finding "F" above, the proposed development will not result in any alteration of the natural landform and as such, will not result in undue risk from geologic and erosional forces.

D. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.

The proposed project is a remodel to an existing structure and repair and maintenance to an existing sea wall. Therefore, there will not be any increased impacts to the shoreline sand supply. The proposed repairs to the seawall in its current location has been identified in the associated geotechnical report as the minimum necessary to adequately protect the principal structure located on the site. The design and materials used to repair the sea wall will incorporate the structure into the existing native bluff by matching both the colors and texture of the natural coastline. The design and repair of the wall will ensure the protection of the residence while minimizing erosional forces on the shoreline and visually enhancing the coastline.

The project would involve repairs to an existing sea wall. These repairs to the shoreline protective device will not contribute to erosion or otherwise adversely impact the shoreline sand supply.

Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.

E. The proposed development will not adversely affect the City's Progress Guide and General Plan, the LCP, or any other applicable adopted plans and programs in effect for this site.

As referenced in the Coastal Development Findings above, the proposed project will not adversely affect the City's General Plan, LCP, La Jolla Community Plan or any other applicable adopted plan or programs in effect for this site.

VARIANCE FINDINGS (San Diego Municipal Code § 101.0502D):

A. There are special circumstances or conditions applying to the land or buildings for which the adjustment is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to the land or buildings in the neighborhood. Such condition shall not have resulted from any act of the applicant subsequent to the adoption of the applicable zoning ordinance.

The variances include a 7 ft. front yard setback where 15 ft. is required, a 2 ft. street side yard setback where 10 ft. is required, a 6 ft. solid masonry wall with 12 ft. tall gated entry element and front and side yard 6 ft. solid walls and 1 ft. solid and 48" open wrought iron fencing where 3 ft. solid and 3 ft. 50% open is required.

This beachfront residence is located at 6102 Camino de la Costa in La Jolla. The property is constrained on the west by the Pacific Ocean and on the south, by an unimproved paper street (Mira Monte Pl.) which is utilized by the public during the day and night for access down to the beach. Camino de la Costa is heavily traveled by residents and visitors to La Jolla. The home is currently a nonconforming structure with regard to a variety of regulations as contained within the Municipal Code, including FAR, setbacks, and height and location of fences and walls. The shape of the lot is peculiar because of the radius turn in the southeast portion of the lot adjacent to the unimproved Mira Monte Pl. at Camino de la Costa. Because of the high levels of pedestrian activities during the day and through the night, there are issues associated with safety, privacy, quiet, and peaceful enjoyment of the property by the applicant. The terrain is steep in certain areas where the existing southeast wall is located within Mira Monte Pl.

As set forth above, there are special circumstances and conditions applying to the land and building for which adjustment is sought. These circumstances and conditions are peculiar to this property and the residence and do not generally apply to land or buildings in the neighborhood. These conditions have not resulted from any act of the applicant subsequent to the adoption of the applicable zoning ordinance.

B. The aforesaid circumstances or conditions are such that strict application of the provisions of the ordinance would deprive the applicant to the reasonable use of land or buildings and that the variance granted by the city is the minimum variance that will accomplish this purpose.

The requested variances associated with the request to have 6 ft. solid walls along the front property line and along the street side yard adjacent to Mira Monte Pl. stepping down to 1 ft. solid and 5 ft. open fence near the bluff are necessary to provide a minimum level of safety to the public. Mira Monte Pl. is a heavily traveled unimproved access. There have been many occasions when high school and college students have "partied" along Camino de la Costa and down and along unimproved Mira Monte Pl. These activities on the rocks and sandy beach area immediately adjacent to the subject property which extend into the night and at times into the early morning hours are disruptive to the applicant and to the neighborhood without appropriate safety fencing. There also exists a present danger of intrusion onto the existing sea wall. There is a risk that the general public may fall off the top of the sea wall. Therefore, strict application of the provisions of the Municipal Code as it relates to the setbacks, fence height, and materials would deprive the applicant of the reasonable use of the land. In addition, the existing nonconforming structure in its current state is not visually compatible with the character of the surrounding neighborhood. The proposed remodel will provide variety, articulation, and new materials will significantly enhance the visual appearance of the neighborhood and provide the applicant with an opportunity to upgrade the home consistent with some of the more recent remodels within the immediate vicinity. Because the home has legal nonconforming status, a reasonable use includes the ability of an owner to upgrade the property both to protect its investment in the property. These improvements will enhance the appearance to the neighborhood, and protect the general public from undue risk of falling off the sea wall. Without the ability to remodel, the applicant will be deprived of the reasonable use of the property. The proposed southeast wall and wrought iron fencing (which will be located completely out of the Paper Street) is necessary to provide safety to the general public. Absent such a feature extending to the vertical face of the sea wall, there are risks of the general public falling off the sea wall and suffering injury.

The setback issue near Camino de la Costa is exasperated by the property line radius at the corner of Camino de la Costa and Mira Monte Pl., an unimproved right-of-way, requires a street side yard setback of 10 ft. This street is likely to remain unimproved due to the topography of the area and the proximity to the water and could in fact be characterized as an interior side yard (rather than a street side yard) where a 5 ft. setback to the home would be required, and a 6 ft. solid wall would be allowed. With such a side yard classification, the proposed fence would be consistent with the interior side yard regulations of the R-1-8000 Zone.

Additionally, the variance for the solid wall is necessary to provide a buffer between the public activities in the unimproved Mira Monte Pl. and the immediately adjacent home. Mira Monte Pl. is used for coastal access to a small beach at the foot of the bluff. This area is popular for recreation activities normally associated with the ocean. However, the isolated nature of the area also attracts an undesirable element that could pose threats of trespass, vandalism and general misbehavior. Police reports in the area have revealed that 109 calls for service have been logged over a 33-month period, with 55% of those calls being to report a suspected burglary.

C. The granting of the variance will be in harmony with the general purpose and intent of the zoning regulations. It will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The proposed remodel is for an existing, legally nonconforming structure. A 40 ft. setback from the bluff edge would normally be required in accordance with the Sensitive Coastal Resource Ordinance of the San Diego Municipal Code section 101.0480. Since the home was built prior to the Coastal Act and the SCR regulations, a large portion of the site is within the 40 ft. setback and is restricted in terms of further grading and development. The 6 ft. solid front yard wall and gate element is intended to allow for some useable outdoor area on the site and is consistent with similar walls in the immediate area. The 6 ft. solid side yard wall is consistent with development regulations for interior side yards and considered harmonious with the intent of the Single Family Ordinance. These variances have been considered under the provisions of the City's Zoning Ordinance and viewed as fulfilling the purpose and intent of the zoning regulations, and will conditions imposed, are not seen as injurious to the neighborhood.

The proposed variances will provide for a more pedestrian friendly feel along Camino de la Costa through the use of articulation, an entry gate element, and architectural features consistent with other recently remodeled homes within the vicinity. None of these requested variances will adversely affect either access or views to or along the ocean. In fact, the variance related to the southeast wrought iron fencing, 1 ft. solid and 48" open (instead of 3 ft. solid and 3 ft. open), will enhance and improve public viewing along the coast by eliminating the existing 6-9 ft. solid block wall which currently obstructs public viewing opportunities.

The granting of this variance will be in harmony with the general purpose and intent of the zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

D. The granting of the variance will not adversely affect the progress guide and general plan for The City of San Diego or the adopted community plan for the area.

The proposed variances are considered to be minor in scope and would be consistent with design of the remodeled structure. The proposed walls are also considered minor deviations and compatible with the surrounding neighborhood. Due to the minimal nature of the requests, no adverse impacts to the General Plan, or the La Jolla Community Plan and Local Coastal Plan are anticipated.

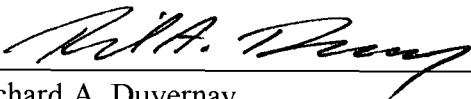
Therefore, the requested variances will not adversely affect the Progress Guide or General Plan for the City of San Diego or the adopted La Jolla Community Plan for this area.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of Norma J. Rink, et al., is denied; the decision of the Planning Commission is sustained; and Sensitive Coastal Resource/Coastal

Development Permit No. 96-7544 is hereby granted to Scott Moncrieff, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc
12/10/98
Or.Dept:Clerk
R-99-694
Form=perapplr.frm

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES**

**AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Sensitive Coastal Resource/Coastal Development Permit No. 96-7544
MONCRIEFF RESIDENCE
CITY COUNCIL**

This Permit is granted by the Council of The City of San Diego to Scott Moncrieff, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0480 and 105.0202. The .23 acre site is located at 6102 Camino De La Costa in the R-1-8000 zone of the La Jolla Community Plan Area. The project site is legally described as Lot 12, Block 1-A, La Jolla Hermosa Subdivision, Map No. 1810.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to partially demolish and remodel the existing residence described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A", dated November 24, 1998, on file in the Office of Development Services. The facility shall include:

- a. A 9,801-square-foot, two-story over basement single-family residence ;
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. Repair and maintenance to an existing seawall at the coastal bluff (subject to the approval of the California Coastal Commission (if deemed necessary) pursuant to condition number 24.
- e. Variances to allow for: a seven-foot front yard setback where 15 feet are required; a two-foot street-side yard setback where ten feet are required; a six-foot solid masonry wall with twelve-foot tall gate element along the front and street-side property line where three feet solid and three feet 50 percent open are required.
- f. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the Permit within 36 months will automatically void the Permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to Development Services; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by The City of San Diego, the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. Issuance of this Permit by The City of San Diego does not authorize the applicant for the Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game (CDFG) pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program (MSCP), The City of San Diego through the issuance of this Permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this Permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Permittee of

mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 24, 1998, on file in the Office of Development Services. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this Permit shall have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the new permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

11. All projects submitted for plan check for the purpose of obtaining building permits shall concurrently submit building plans which meet the submittal requirements of the "Applicant's Guide to Project/Permit Applications," items 11 through 29, as applicable; together with appropriate plan check fees.

12. All projects shall be in compliance with SDMC sections 101.0214 (Maximum Height of a Building or Structure) and 101.0215 (Procedural Requirements for Determination of Structure Height).

13. All projects shall be in compliance with SDMC section 101.0216 (Topographical Survey Requirements) and all building plans shall be predicated upon said concurrently submitted topographical survey. Said topographical survey (and accompanying grading plan) shall accurately depict both pre-existing grade and finished grade as set forth in SDMC section 101.0101.24 (Grade).

14. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action, following all appeals.

15. Title Restrictions. Prior to the commencement of any work or activity authorized by this Permit, the Owner/Permittee shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the Development Services Director, or designated representative which shall provide: a) that the applicant understands that no new accessory structures and landscape features customary and incidental to residential uses shall be developed within five feet of the Bluff Top (except as illustrated on approved plan Exhibit "A," dated November 24, 1998, on file in the Office of Development Services) or on the face of the Bluff; and b) that the applicant understands that the site may be subject to extraordinary hazard from coastal bluff erosion and the applicant assumes the liability from such hazards; and c) the applicant unconditionally waives any claim of liability against The City of San Diego and agrees to defend, indemnify and hold harmless The City of San Diego and its advisors relative to the City of San Diego's approval of The project and for any damage due to natural hazards. This Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement shall be recorded against title to the property and shall run with the land, binding upon all successor and assigns.

ENGINEERING REQUIREMENTS:

16. Prior to the issuance of any building permits, the applicant shall obtain an encroachment removal agreement from the City Engineer for landscaping within the Mira Monte Place right-of-way.

17. Prior to the issuance of any building permit, the applicant shall assure by permit and bond the closure and restoration to full-height curb, gutter and sidewalk of the unused driveway on the northern portion of the frontage to the satisfaction of the City Engineer.

18. All on-site drainage, and drainage from the structure, as well as the Jacuzzi runoff, shall be collected and pumped to Camino De La Costa. This drainage will not in any way impact the Mira Monte Place right-of-way, as the curb elevation given by the consultant shows that any drainage at the curb line is directed to the storm drain intake at 6114 Camino De La Costa.

19. Prior to the issuance of any building permit, the applicant shall provide a building address number visible and legible from the street and show the location of all fire hydrants on the site plan.

PLANNING/DESIGN REQUIREMENTS:

20. No fewer than three (3) off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," dated November 24, 1998, on file in the Office of Development Services. Parking spaces shall comply at all times with SDMC Chapter X, Article 1, Division 8, and shall not be converted for any other use unless otherwise authorized by the City Manager.

21. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
22. The height(s) of the building(s) or structure(s) shall not exceed the height(s) set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.
23. A topographical survey conforming to the provisions of SDMC section 101.0216 may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the Permittee.
24. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
24. Prior to the issuance of any building permit for the repair, replacement or maintenance of the seawall, the applicant shall (if deemed necessary) obtain a Coastal Permit from the California Coastal Commission for the work described above and illustrated on Exhibit A, dated November 24, 1998, or shall provide to The City of San Diego written documentation from the Coastal Commission that the seawall is within the permit jurisdiction of The City of San Diego
25. Prior to receiving any Final Inspection, the applicant shall remove the 5 to 10 foot concrete wall within Mira Monte Place.
26. Prior to issuance of any building permits, the applicant shall submit to the City Engineer and Development Services Manager any plans and reports on the seawall necessary to demonstrate conformance with engineering standards and specifications, and revised plans showing that the seawall incorporates existing landform characteristics including but not limited to internal color, texturing, landscape and topographic features.
27. Prior to the issuance of building permits, the applicant shall submit a construction schedule for review and acceptance by Development Services. The schedule shall detail the construction methods to be used, equipment to be used, routes of access, and any activity necessary for the construction of the approved projects. Operations should be planned and conducted to minimize adverse impacts to other shoreline uses and resources, properties and surrounding area to the greatest extent possible. Any changes to the approved schedule shall also be approved by Development Services.

28. Construction shall be permitted provided that all construction materials shall be managed so as to prevent them from entering the waters.
29. All debris caused by construction must be removed from the site and disposed of at an appropriate land fill location.
30. Prior to the issuance to any building permits, the applicant shall obtain an Encroachment Removal Agreement, from the City Engineer, for any areas of the seawall determined to be within City owned property.
31. All drainage from the site shall be directed away from any bluff edges and into the street developed with a gutter system in accordance with the approved preliminary drainage plan, Exhibit "A," dated November 24, 1998, on file in the office of Development Services.
32. Title Restrictions: Prior to the commencement of any work or activity authorized by this Permit, the applicant shall execute a Notice of Hazardous Condition-Indemnification and Hold Harmless Agreement, in a form and content acceptable to the City Manager, or designated representative.
33. Prior to the issuance of building permits, the applicant shall (if deemed necessary) submit a copy of any permits required by the U.S. Army Corps of Engineers.
34. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

LANDSCAPE REQUIREMENTS:

35. Prior to issuance of any grading, or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated November 24, 1998, on file in the Office of Development Services. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.
36. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 45 days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Technical Manual.
37. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

38. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Permittee, or subsequent owner, shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

39. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

APPROVED by the Council of The City of San Diego on November 24, 1998, by Resolution No. R-290999.

12/11/98

L:\DUVERNAY\PERMITS\96-7544.WPD

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

SCOTT MONCRIEFF
Owner/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

12/11/98
LADUVERNAY\PERMITS\96-7544.WPD