

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**W 19a**

Received: 10/10/06  
Staff: Meg Vaughn-LB  
Staff Report: 7/19/07  
Hearing Date: 8/8-10/07  
Commission Action:

**STAFF REPORT: PERMIT EXTENSION REQUEST****APPLICATION NUMBER: 5-98-307-E7****APPLICANT: Charles & Valerie Griswold****AGENT: Jim Conrad, Architect****PROJECT LOCATION:** 29 Bay Drive, Three Arch Bay, Laguna Beach, Orange County

**PROJECT DESCRIPTION:** Request to extend, for up to one year, previously approved coastal development permit for construction of a single family residence on a vacant, beachfront, reconstructed bluff lot.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends that the permit extension be granted. The Executive Director has determined that no changed circumstances exist that effect the development's consistency with the Chapter 3 policies of the Coastal Act.

**PROCEDURAL NOTES:**

1. **Report of Extension Request.** Section 13169 of Title 14 of the California Code of Regulations ("regulations") provides that permit extension requests shall be reported to the Commission if the Executive Director determines (1) there are no changed circumstances, (2) that an objection to that determination was received but does not identify changed circumstances, or (3) that there are changed circumstances.

2. **Commission Action on Permit Extension Requests.** In this case, the Executive Director has determined that there are no changed circumstances that affect the project's consistency with the Chapter 3 policies of the Coastal Act and that the proposed development remains consistent with the Coastal Act. Two letters objecting to the Notice of Permit Extension were received. Although, the Executive Director has concluded that these letters do not identify changed circumstances that may affect consistency of the development, the Executive Director has decided that the letters present sufficient issues to schedule this matter for a hearing on whether there are changed circumstances. Pursuant to Section 13169(d)(1) of the regulations, if three (3) Commissioner's determine that there are changed circumstances that affect the consistency of the development with the Chapter 3 policies of the Coastal Act, the extension request shall be denied and the application shall be set for a full public hearing as though it were a new application. If no such determination is made by three Commissioners, the permit will be extended for an additional one-year period from the most recent expiration date.

## **STAFF RECOMMENDATION**

Staff has concluded that there are no changed circumstances that affect the consistency of the development with the Chapter 3 policies of the Coastal Act. Unless three Commissioners determine that there are changed circumstances, the permit will be extended.

### **I. ACTION**

"I move that the Commission determine that there are changed circumstances that affect whether the development approved in Coastal Development Permit No. 5-98-307 is consistent with the Chapter 3 policies of the Coastal Act."

Staff recommends a **NO** vote. If three or more Commissioners vote YES, the motion passes and the permit extension is denied. If the motion fails for lack of three Commissioners who find changed circumstances, the permit will be extended and the following resolution and findings will be adopted.

### **II. Resolution**

The Commission hereby approves the request to extend the time in which development must commence under permit number 5-98-307 in order for the permit not to expire, on the grounds that there are no changed circumstances that affect whether the development approved in the permit is consistent with the Chapter 3 policies of the Coastal Act.

### **III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

#### **A. Project Description, Location and Permit History**

The subject site is located at 29 Bay Drive, Laguna Beach, Orange County, in the private gated community known as Three Arch Bay. The project originally approved by the Commission allowed construction of a 5,078 square foot, 5 level single family residence with an attached 750 square foot three-car garage and 1,278 square feet of deck area. The residence as approved would step down a vacant, reconstructed, beachfront, bluff lot. Also included in the approval was 12,250 cubic yards of grading. That permit, 5-98-307, is the subject of this extension request.

A related coastal development permit, 5-97-371 (Conrad), was approved by the Commission on August 13, 1998. Coastal Development Permit No. 5-97-371 allowed reconstruction of a slope that failed due to landsliding. The development approved included construction of a shoring system, overexcavation and recompaction of slide

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debris to create buttress fill, a buried toe protection wall near the toe of the slope, and installation of drainage devices. Approval also resulted in four lots at the site where, previously, there had been five. The bluff stabilization project and lot reconfiguration has been completed. Three other coastal development permits have been approved for single family residences on three of the four lots (5-98-020, Conrad; 5-98-064, Barnes; 5-98-178, McMullen), all of which have been constructed. The current extension request concerns the coastal development permit (5-98-307) for a single family residence on the fourth lot. That permit was issued by the Executive Director, however, the applicant has not commenced development.

**B. Standard of Review**

The City of Laguna Beach Local Coastal Program ("LCP") is effectively certified. However, the subject area is located in an area known as Three Arch Bay, a gated private community located between the first public road (South Coast Highway) and the sea. Three Arch Bay is one of the areas within the City of Laguna Beach's coastal zone that was deferred certification due to public access issues. Therefore, pursuant to Section 30519 of the Coastal Act, the standard of review for the permit approval is the Chapter 3 policies of the Coastal Act, and the issue before this Commission on this extension request is whether there are changed circumstances that affect the consistency of the development with the Chapter 3 policies of the Coastal Act. However, the certified LCP may be used for guidance in evaluating the proposed project for consistency with the Chapter 3 policies of the Coastal Act.

**C. Objections Received**

The request to extend Coastal Development Permit No. 5-98-307 was received on October 10, 2006, prior to the permit's expiration date of October 13, 2006. The permit was approved on October 13, 1998. Prior to this extension application, six permit extensions have been granted.

Notice of Extension Request for Coastal Development Permit was mailed on November 7, 2006. Two letters objecting to the extension request were received within the 10 day objection period, on November 14, 2006 and November 16, 2006 (see exhibits 3 and 4).

The first letter of objection, received on 11/14/06, raises two objections: 1. the topographic plans for the subject lot were altered such that the pad grade is approximately 10 feet above the grade originally approved, and, 2. drainage from the site is much greater than was anticipated at the time of the original hearings, and that drainage dumps directly onto the sandy beach area. The second letter of objection, received on 11/16/06, raises the following objection: the site plan was altered to add 10 feet to the contours of the site.

**D. Evaluation of Changed Circumstances and Consistency of Approved Development with the Chapter Policies of the Coastal Act**

1. Altered Topographic Map

Both letters of objection assert that the topographic site plan has been altered since the original approval of the project and that the alteration results in a pad elevation 10 feet higher than was approved by the Commission. One of the objection letters asserts that the 10 feet of fill has already been placed on the site.

It is accurate that the subject site is 10 feet higher than the neighboring sites that were all part of the bluff reconstruction permit (5-97-371, Conrad). However, review of the approved bluff reconstruction plans reveal that the reconstruction was approved with varying pad elevations. The increased height at the subject site was approved under the underlying bluff reconstruction permit. The existing pad at the site appears to be consistent with the elevations approved at that time. The residence subsequently approved under coastal development permit 5-98-307 was approved at the pad elevation approved at the time bluff reconstruction was considered. Furthermore, visual impacts due to the residence are not expected. When considering potential visual impacts due to the proposed residence, the Commission found:

*The proposed home is stepped down the hillside, with only the proposed garage located at street level. The proposed garage would only extend 12 feet above the centerline of Bay Drive. Thus, when viewed from the level of Bay Drive (a private street), only the garage would be visible. This is similar to the character of the adjacent homes, where only the garages of the homes are visible since the remainder of the homes step down the hillside.*

*In addition, the proposed project is located in a private community. Therefore, the proposed project would not block any public views to the shoreline. Public views along the coast from public trust land seaward of the mean high tide line would be similar to the views which currently exist since the bluffs are altered and developed with homes which step down the bluff face. Further, since the private beach is flanked on either side by rocky headlands which extend several hundred feet into the ocean, it would be difficult for the public to access the part of the beach seaward of the mean high tide line in order to view the bluffs. Even if the public were to be able to view the private bluffs (e.g., from a boat offshore), the proposed homes would be consistent with the character of the adjacent homes which are also multi-level and step down the hillside. ”*

These same findings were also included in the Commission's approval findings for the coastal development permits allowing the bluff stabilization and construction of the residences on the other three lots (5-97-371, 5-98-020, 5-98-064, and 5-98-178). Thus, the Commission did consider potential visual impacts due to construction of the subject residence. The pad elevation of the approved project is consistent with the pad elevation

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that was approved both for the underlying slope stabilization project and for the subject residence. Visual resources were considered at the time the Commission acted. There is no evidence that there are changed circumstances which affect the approved project's consistency with the Coastal Act.

2. Site Drainage

The letter of objection received on 11/14/06 also raises concerns regarding site drainage. It states: "Additionally, previous approvals for the CDP at 23, 25, 29 and 31 Bay Drive, for architect Jim Conrad, have a drainage pipe that dumps uncontrolled runoff from the properties directly onto the beach. That drain was never supposed to be uncontrolled and it was represented by Conrad that it would be "a gallon per day" of runoff, but it has actually been measured at 17,000 gallons per day – every day of the year!"

The subject coastal development permit, 5-98-307, allows construction of a single family residence at 29 Bay Drive. Each of the residences on the four lots on the reconstructed bluff have individual coastal development permits (5-98-020, 5-98-064, and 5-98-178). In addition, the bluff stabilization project has a separate coastal development permit (5-97-371). Drainage for all four lots was approved as part of the bluff stabilization project under coastal development permit 5-97-371. Specifically, development approved under 5-97-371 included:

*"The proposed drainage system would be comprised of a mira-drain barrier, located behind the proposed shoring wall (i.e., on the landward side of the shoring wall, between the wall and Bay Drive, parallel to the wall and Bay Drive), which would channel groundwater to french drains located at the bottom of the shoring wall. The french drains would be situated perpendicular to Bay Drive at the center of each lot. From this point, groundwater would be conveyed to the beach via non-erosive drain lines. Where the proposed drain lines meet the beach, seepage pits are proposed to be installed to promote seepage of the ground water into the ground rather than having the water run across the sand to the ocean and causing beach erosion."*

The drainage system permitted through coastal development permit 5-97-371 was designed to address drainage of ground water beneath all four lots created by that permit. The residence approved under coastal development permit 5-97-307 does not have a direct impact on the underlying groundwater drainage system approved under 5-97-371 because the footprint of the approved residence (5-98-307) does not preclude future corrections to the existing groundwater drainage system, if such are determined necessary. If development has occurred inconsistent with approved coastal development permit 5-97-371, the matter would appropriately be addressed through an enforcement investigation, not as grounds to deny a permit extension. Staff has not investigated whether a violation of permit 5-97-371 has occurred.

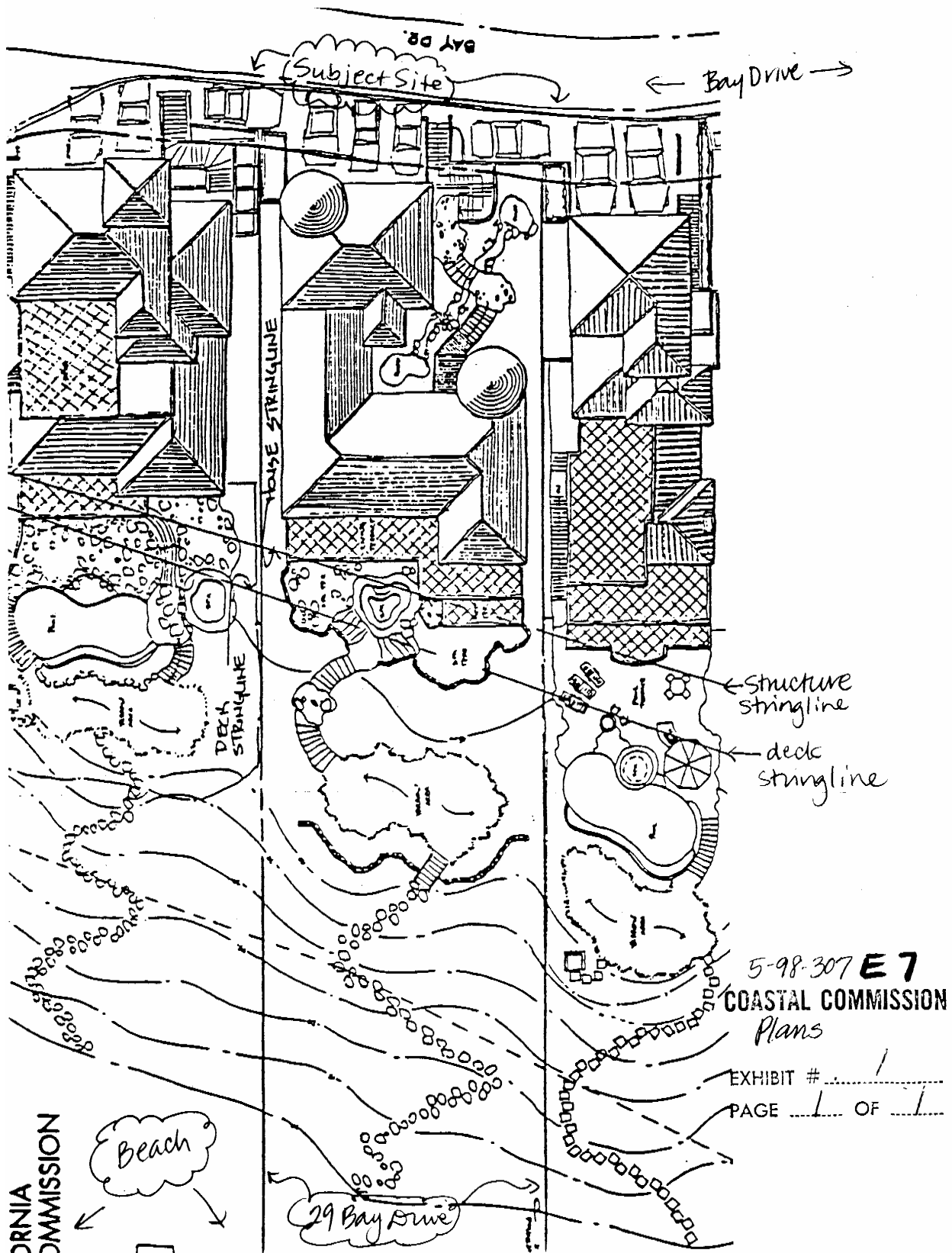
Finally, drainage due to runoff from the subject project (as opposed to the groundwater drainage system that was approved in permit 5-97-371) would be incorporated in

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construction of the subject project and is addressed through special conditions included in the subject permit. Construction of the subject project has not commenced, hence the request for the permit extension. Therefore, there is no evidence that there are changed circumstances which affect the approved project's consistency with the Coastal Act.

Therefore, the Commission concurs with the Executive Director's determination that there are no changed circumstances that would cause the previously approved development to be inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the permit may be extended.

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ORANGE CO. SEE 972 MAP

DETAIL

LAGUNA

PACIFIC

THREE ARCH BAY

site

OCEAN

598-307E7

COASTAL COMMISSION

VICINITY map

EXHIBIT # 2

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DANA POINT HARBOR

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20 Bay Drive • Laguna Beach, CA 92651 • (949) 715 – 1984

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November 10, 2006

Mr. Karl Schwing  
California Coastal Commission  
South Coast District  
PO Box 1450  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 9082-4416

**RECEIVED**  
South Coast Region  
NOV 14 2006  
CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Schwing:


I am in receipt of your letter regarding the extension request for a CDP at 29 Bay Drive. As you may have recently been made aware, there are serious developments in the authenticity of a number of documents by the property owner and their architect. Hunsaker & Associates have uncovered altered topographical data in the project site plans that were mistakenly approved by Three Arch Bay and The City of Laguna Beach. The city council is currently considering revoking all approvals for the project.

In reviewing these altered plans we have looked at photographs from 2002 while construction was underway at adjacent properties (see enclosed photos). The property at 29 Bay Dr. clearly has a massive amount of imported fill dirt on it, which will make the house tower above the neighboring homes. One would presume that was the desired affect by the imported fill. However, the Coastal Commission never approved that fill dirt and it would appear to be in violation of the CDP.

Additionally, previous approvals for the CDP at 23, 25, 29 and 31 Bay Drive, for architect Jim Conrad, have a drainage pipe that dumps uncontrolled runoff from the properties directly onto the beach. That drain was never supposed to be uncontrolled and it was represented by Conrad that it would be "a gallon per day" of runoff, but it has actually been measured at 17,000 gallons per day – every day of the year!

In light of just these misrepresentations, what else might be wrong with the project that Three Arch Bay, the city, and the Coastal Commission do not know about? I respectfully request that the extension for the CDP be denied.

Sincerely,



Craig N. Miller

enclosures

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NOV-16-06 THU 10:40 AM PARKER BOILER CO FAX NO. 13237222848 P. 01

November 16, 2006

via US Mail and  
Fax:

Karl Schwing, Orange County Area Supervisor  
California Coastal Commission  
PO Box 1450  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416

**RECEIVED**  
South Coast Region

NOV 16 2006

Ref: Notice of Extension Request 5-98-307-E7  
29 Bay Drive, Laguna Beach, Griswold / Conrad

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Schwing:

Thank you for returning my call to discuss this project. As discussed I have enclosed a complete copy of the report by Hunsaker & Associates (H&A) that was presented to the Laguna Beach City council in support of our position that all city approvals should be revoked. This report states:

**The Site Plan clearly shows 10 feet was added to the contours on the Total Topographic Survey  
We disagree with the lot depth and slope calculations**

When the City Council asked Mr. Conrad to respond to the Hunsaker presentation, his attorney refused to allow him to respond. The City Council then requested a written response which was delivered yesterday. The response attempts to justify Mr. Conrad's misrepresentation by stating:

**Jim Conrad used an earlier Topographic Survey to design the house**

**Both Mr. Conrad and Total Engineering have been unable to find the earlier survey**

**Mr. Conrad's 1998 plans are beyond the applicable statutes of limitations for FRAUD**

We do not believe that the California Coastal Commission should extend a Coastal Development Permit where the main defense of the plans is that they are beyond the STATUTE OF LIMITATIONS FOR FRAUD.

Since you, Meg Vaughn and Debra Lee are so familiar with Mr. Conrad's other misrepresentations to the Coastal Commission on his Bay Drive projects, we felt you might know of a Coastal Act basis to either deny the extension or revoke the permit.

Thank you for your consideration.

Sincerely,

*Sid D. Danenhauer*  
Sid D. Danenhauer  
5930 Bandini Blvd.  
Los Angeles, CA 90040  
Ph: 323 / 727-9800 x138  
Fax: 323 / 722-2848

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



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ACTION ON APPLICATION

- ☒ Approved as Recommended  
☐ Permitted as Recommended  
☐ Withdrawn with Changes  
☐ Denial  
☐ Other

Filed: July 30, 1998  
49th Day: September 17, 1998  
180th Day: January 26, 1998  
Staff: John T. Auyong-LB *John*  
Staff Report: September 24, 1998  
Hearing Date: **October 13-16, 1998**  
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-98-307

APPLICANT: Charles and Valerie Griswold

AGENT: Jim Conrad

PROJECT LOCATION: 29 Bay Drive, Three Arch Bay, City of Laguna Beach, County of Orange

PROJECT DESCRIPTION: Construction of a 5,078 square foot, 5 level single-family residence with attached 750 square foot three-car garage and 1,278 square feet of deck area which will step down a vacant, reconstructed bluff lot, and 12,250 cubic yards of grading.

Lot Area	18,520 square feet
Building Coverage	2,950 square feet
Pavement Coverage	650 square feet
Landscape Coverage	14,920 square feet
Parking Spaces	Three
Height above final grade	53 ft. from lowest to highest point

LOCAL APPROVALS RECEIVED: City of Laguna Beach Variance 6505 and Design Review 98-095.

SUBSTANTIVE FILE DOCUMENTS: City of Laguna Beach certified local coastal program; Coastal development permits 5-97-371 (Conrad), 5-98-020 (Conrad), 5-98-064 (Barnes), and 5-98-178 (McMullen); "Preliminary Geotechnical Investigation", Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2); "Supplemental Geotechnical Investigation", Proposed Residential Development, Lots 26, 27, 28, 29, and 30 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc. (Project No. 1800.3); August 11, 1998 letter from Osman Pekin of Leighton and Associates, Inc. to Three Arch Bay (Leighton and Associates, Inc. Project No. 1971218-001).

COASTAL COMMISSION

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w/o exhibits

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**SUMMARY OF STAFF RECOMMENDATION – STAFF NOTE:**

Staff is recommending approval of the proposed project with special conditions for: 1) an assumption-of-risk deed restriction, 2) conformance with geotechnical recommendations, 3) the use of drought-tolerant landscaping and conformance with the deck stringline, 4) prohibition on the placement of construction materials and equipment on the beach, 5) disposal of construction debris, and 6) mitigation measures to minimize leaks from proposed courtyard water features.

At the August 1998 Coastal Commission hearing, the Commission approved coastal development permit 5-97-371 for a shoring system/slope stabilization project across five lots, along with the merger of three of these lots into two, in the private beachfront community of Three Arch Bay in the City of Laguna Beach. At the same hearing, the Commission approved permits for the construction of one home each on three of the four resultant lots. The Commission reviewed conceptual drawings for the home on the fourth lot. The subject permit application is for the construction of the home on the fourth lot. The special conditions being recommended are identical to those of the other 3 permits for homes approved in August.

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**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions**

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development 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 effects on the environment within the meaning of the California Environmental Quality Act.

**II. 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 this permit is reported to the Commission. 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.

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3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions 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 project during its development, 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.

**III. Special Conditions**

1. **Assumption-of-Risk.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and all landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant and all landowners understand that the entire site may be subject to extraordinary hazards from landslides/slope failure and wave attack, and the applicant assumes the liability from such hazards; (b) that the applicant and all landowners unconditionally waive any claim of liability on the part of the Commission and agree to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to the natural hazards, and (c) that the applicant agrees that no shoreline protective devices shall be constructed on the parcel; and (d) the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures or erosion on the site. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. **Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two sets of final revised site plans, floor plans, elevations, grading, drainage, foundation, and engineering plans for the proposed home and related accessory development (e.g., courtyard water features, patios, etc.) approved by this permit. These plans shall show all cut and fill slope profiles extending the entire length of the site from the

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existing beach/toe of existing slope interface through the seaward edge of Bay Drive. These plans shall be consistent with the preliminary plans received by the Commission on July 14, 1998, as generally depicted in the exhibits to the staff report for the October 1998 Coastal Commission hearing for this permit except that these plans shall incorporate the recommendations pertaining to the homes and accessory development contained in both; 1) the "Preliminary Geotechnical Investigation", Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2), 2) the "Supplemental Geotechnical Investigation", Proposed Residential Development, Lots 26, 27, 28, 29, and 30 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc. (Project No. 1800.3), and 3) the August 11, 1998 letter from Osman Pekin of Leighton and Associates, Inc. to Three Arch Bay (Leighton and Associates, Inc. Project No. 1971218-001).

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that the appropriate licensed professional has reviewed and approval all final design and construction plans and certified that each of those final plans incorporates all of the recommendations specified in the above referenced documents.

The approved development shall be constructed in accordance with the final revised plans as approved by the Executive Director. Any proposed deviations from said plans shall require a Coastal Commission-approved amendment to this permit, or unless the Executive Director determines a permit amendment is not needed.

**3. Landscaping.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised landscaping plans. The revised landscaping plans shall: 1) be consistent with the preliminary landscaping plans dated September 12, 1997 prepared by Lawson's Landscape Services, 2) be prepared by a licensed landscaped architect, and 3) incorporate the following criteria: (a) planting shall be of drought tolerant plants (native, non-invasive drought tolerant plants are preferred), (b) the turf grass areas depicted seaward of the proposed homes shall be deleted unless planted with drought tolerant plants which do not need to be irrigated, (c) all hardscape and structural development, including patios, stairs, and all paths to the beach, located seaward of the deck stringline shall be deleted, and (d) only temporary irrigation to help establish the landscaping shall be allowed. The applicant shall undertake the approved development in compliance with the plans approved by the Executive Director.

**4. Staging and Storage of Construction Materials and Equipment.** Construction material and equipment shall not be staged or stored on the beach. Any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.

**5. Disposal of Landslide and Construction Debris.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and

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approval of the Executive Director, the location of the disposal site of the exported excavated soil and debris resulting from the proposed project. A coastal development permit shall be obtained for the disposal site, if in the coastal zone, prior to disposal occurring. Disposal shall occur at the approved disposal site.

**6. Minimizing Water Feature Impacts.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a written plan to mitigate for the potential for leakage from the proposed ponds, waterfall, stream, and other courtyard water features. The plan shall include, at a minimum: 1) installing separate water meters for the water features which are separate from the water meters for the house to allow for the monitoring of water usage by the water features, and 2) identification of the materials, such as plastic linings or specially treated cement, to be used to waterproof the undersides of the water features to prevent leakage, and information regarding the past success rates of these materials. The applicant shall comply with the mitigation plan approved by the Executive Director.

**7. Drainage.** All runoff and drainage from the site shall be directed to the street except where it is infeasible to do so. Where it is infeasible to direct drainage and runoff to the street, drainage and runoff shall be appropriately collected and conveyed to the beach in a non-erosive manner and discharged at the base of the bluffs with an energy dissipator at the drain outlet. The drainage devices which direct runoff and drainage to the beach shall be below grade unless it is infeasible to do so. If the drainage devices cannot be below grade, they shall be designed to blend in with and maintain the natural character of the bluffs.

#### IV. FINDINGS AND DECLARATIONS

##### A. Detailed Project Description and Location

The applicant is proposing to construct a 5,078 square foot, 5 level single-family residence with attached 750 square foot three-car garage and 1,278 square feet of deck area which will step down a vacant, reconstructed bluff lot. The proposed home would be 53 feet tall from the finished floor of its lowest level to the top of the highest point of the roof. Only the proposed garage level, however, would be above street level. The proposed garage would be 12 feet high above street level. Also proposed is 12,250 cubic yards of grading (6,125 cubic yards of cut and 6,125 cubic yards of fill).

##### B. Chapter 3 Policy Analysis

###### 1. Geologic Hazards

Section 30253 of the Coastal Act states, in relevant part:

*New development shall:*

*(l) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

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*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The subject site is a vacant lot in the private community of Three Arch Bay in the City of Laguna Beach. It is one of a group of five contiguous former blufftop residential lots upon which a landslide exists. The Commission approved coastal development permit 5-97-371 (Conrad) to repair the landslide and rebuild the bluff. As part of this permit for bluff repair, the Commission also approved the merger of three of the lots into two. The subject site is one of the two lots which resulted from the merger.

The geotechnical reports submitted by the applicant's geotechnical consultant are: 1) the "Preliminary Geotechnical Investigation, Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California", dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2), 2) the "Supplemental Geotechnical Investigation, Proposed Residential Development, Lots 26, 27, 28, 29 and 30 of Tract 970, Three Arch Bay, South Laguna Beach", dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc., (Job No. 1800.3, Log No. 4376), and 3) the "Preliminary Geotechnical Parameters for Structural Design of Toe Wall" prepared by Hetherington Engineering, Inc. on June 19, 1998 (Project No. 1800.3, Log No. 4561). In addition, at the August hearing, the geologist for the Three Arch Bay Homeowner's Association presented recommendations.

The proposed home would be built on the buttress fill approved under coastal development permit application 5-97-371. The Commission found in approving permit 5-97-371 with conditions that the site will be stable for the construction of a home. Structural integrity would be ensured in part because: 1) the proposed home would be setback 100 feet from the seacliff, and 2) the slope stabilization on the site approved by coastal development permit 5-97-371 includes a buttress keyway and a toe protection wall which would stabilize the adjacent structures and also provide protection for the proposed home.

The proposed home would be built on caisson-grade beam foundations which would be tied into the approved shoring wall to provide stability. The Commission finds that it is necessary for the applicant to submit plans depicting the final foundation and house designs which incorporate the recommendations contained in all the geotechnical reports to further assure structural integrity. For example, the supplemental geotechnical report dated January 26, 1998 (Hetherington Engineering, Inc. Project No. 1800.3, Log No. 4376) provided by the applicant includes recommendations that the drilled piers for the proposed foundation extend at least 10 feet into the bedrock, provide a minimum horizontal clearance of 30 feet from the face of the slope to the outer edge of the bearing surface, and that the piers be a minimum diameter of two feet.

In addition, because groundwater levels have contributed to the landslide episodes on the subject site, the Commission also finds that it is necessary to lessen the amount of groundwater on-site. Therefore, the Commission finds that it is necessary to: 1) require the

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submittal of measures to minimize and mitigate leakage from the proposed courtyard water features (e.g., pond, waterfall, etc.) to reduce the amount of groundwater on-site, 2) require that drainage be directed to the street, except that where it cannot be feasibly directed to the street, it shall be conveyed over the bluff to the beach in a controlled and non-erosive manner, and 3) minimize irrigation on the site and require drought-tolerant landscaping. Drought-tolerant landscaping may include yarrow, as requested by the applicant.

To further ensure structural integrity and stability, as part of its approval of coastal development permit 5-97-371 for the bluff repair of the subject site and lot merger, the Commission required a deed restriction which requires the proposed house to conform with the deck and structural stringlines to minimize the creation of hardscape, pools, and paths which could serve as conduits for runoff which would cause gullying and erosion, resulting in bluff instability.

Further because landsliding has occurred several times on the subject site, the Commission also finds that, as a condition of approval, the applicant must record an assumption-of-risk deed restriction to inform the applicant and all current and future owners of the subject site that the site is subject to hazards from landslides and coastal erosion/wave attack.

As conditioned for: 1) an assumption-of-risk deed restriction, 2) the incorporation of the recommendations contained in the applicant's geotechnical reports, 3) the elimination of water dependent landscaping areas, 4) directing drainage to the street or, if not feasible, over the bluff in a controlled manner, and 5) measures to mitigate water feature leakage, the proposed home is consistent with Section 30253 of the Coastal Act.

## 2. Shoreline Protective Devices

Section 30235 of the Coastal Act states, in relevant part:

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

The subject site is on a beach. The subject beach is a deep pocket beach approximately 1,400 feet long flanked by headlands that project seaward from either end of the crescent shaped beach by about 800 feet. The Commission approved coastal development permit 5-97-371 for a bluff repair/stabilization project that involved construction of both a shoring wall along Bay Drive and part way along the sides of the adjacent properties, and a buried vertical wall seaward of the toe of the repaired slope. Although these walls would alter natural shoreline processes, the Commission found that the project was consistent with Section 30235 of the Coastal Act because: 1) the project is necessary to protect existing structures (the Bay Drive roadway and the existing homes at 21 and 33 Bay Drive) in close proximity to the subject site, and 2) the project will not result in adverse impacts to natural shoreline sand supply. As described above, the approved vertical wall would provide

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protection for the proposed home, although the primary reason for the vertical wall is to protect the stabilized slope which in turn protects adjacent existing structures.

However, there are no existing structures on the subject site itself. Therefore, the Commission finds that, in order to minimize the need to construct additional seawalls that would have an adverse impact on shoreline processes to protect the proposed home, the assumption-of-risk deed restriction must include a provision that no shoreline protective devices shall be constructed. Thus, the Commission finds that the proposed project is consistent with Section 30235 of the Coastal Act.

**3. Marine Resources/Water Quality**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The applicant has indicated that no construction equipment or supplies would be placed upon the sandy beach. (See Exhibit E, Page 2) The applicant has indicated that a flat pad would be graded approximately midway on the slope for temporary storage of equipment and materials to be used in the construction of the approved shoring wall. The pad would then serve as a base for the lowest level of the proposed home. The applicant has indicated that contractors would be briefed as to minimizing the occurrence of and containing spills of petroleum and other toxic fluids. A health risk to marine life and swimmers would be created if toxic substances were to get on the beach and leak into the ocean. In addition, staging or storing construction equipment and material on the beach would take up beach area needed for grunion spawning, thus resulting in adverse impacts on the grunion.

In order to ensure that adverse impacts to marine resources and water quality are minimized, the Commission finds that it is necessary to require a condition which prohibits the staging or storing of construction equipment or materials on the beach and to minimize and control

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spillage of toxic substances. Further, the Commission finds that the construction debris must be disposed of outside the coastal zone, or at an approved site in the coastal zone, to minimize adverse impacts on marine resources. As conditioned, the proposed project is consistent with Section 30231 of the Coastal Act.

**4. Public Access**

Section 30212 of the Coastal Act states, in relevant part:

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

*(2) adequate access exists nearby . . .*

The subject site is a beachfront site located between the nearest public roadway and the shoreline in the private community of Three Arch Bay. The toe of the slope contains an easement, between 46 to 57 feet wide, for access and recreation purposes solely for the residents of the private Three Arch Bay community. The beach is a cove beach separated from public beaches by rocky headlands. Thus, the beach is not readily accessible from nearby public beaches. A December 10, 1997 survey of the mean high tide line indicates that the mean high tide line is anywhere from approximately 275 feet to 365 feet from Bay Drive. (See Exhibit D) The seaward most extent of the proposed project would be only 220 to 250 feet seaward of Bay Drive. The California State Lands Commission ("CSLC") has acknowledged the presence of the above mentioned private recreation easement on the beach. Thus, it appears the proposed project would not extend seaward of the mean high tide line onto sovereign land.

In addition, the CSLC has written in regards the issue of encroachment of the proposed development onto state lands. (See Exhibit C) The CSLC is not asserting any claim at this time that the proposed development intrudes onto state lands. However, the CSLC indicates that the decision not to assert a claim at this time does not prejudice any future assertion of state ownership or public rights.

The subject site is in a private community. The proposed development would not result in direct adverse impacts, either individually or cumulatively, on physical vertical or lateral public access, or on sovereign lands seaward of the mean high tide line. Vertical public access and public recreation opportunities are provided at nearby Salt Creek County Beach Park a mile to the southeast. Therefore, the Commission finds that no public access is necessary with the proposed development. Thus, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

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5. Visual Quality

Section 30251 of the Coastal Act 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.*

The proposed home is stepped down the hillside, with only the proposed garage located at street level. The proposed garage would only extend 12 feet above the centerline of Bay Drive. Thus, when viewed from the level of Bay Drive (a private street), only the garage would be visible. This is similar to the character of the adjacent homes, where only the garages of the homes are visible since the remainder of the homes step down the hillside.

In addition, the proposed project is located in a private community. Therefore, the proposed project would not block any public views to the shoreline. Public views along the coast from public trust land seaward of the mean high tide line would be similar to the views which currently exist since the bluffs are altered and developed with homes which step down the bluff face. Further, since the private beach is flanked on either side by rocky headlands which extend several hundred feet into the ocean, it would be difficult for the public to access the part of the beach seaward of the mean high tide line in order to view the bluffs. Even if the public were to be able to view the private bluffs (e.g., from a boat offshore), the proposed home would be consistent with the character of the adjacent homes, which are also multi-level and step down the hillside.

However, the Commission required, as a condition of approval for permit 5-97-371 for the underlying slope repair and lot merger, a deed restriction that any homes to be built on the repaired slope must conform to deck and structural stringlines. The Commission found that to allow development, such as swimming pools or paths and stairs to the beach, seaward of the stringlines would not be in character with the nature of existing development and would result in adverse visual impacts.

The City's certified local coastal program ("LCP") is not effective in Three Arch Bay because the area is not certified, but it can be used for guidance. The LCP generally requires a structural setback of 25 feet from the edge of the bluff or a setback ascertained by a stringline, whichever is more restrictive. The Commission has consistently required in Orange County that development be setback a minimum of 25 feet from the edge of a coastal bluff. The Commission has also recognized that in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies,

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no part of the proposed development should be built further seaward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes.

In this case, the applicability of the 25 foot setback from the edge of a coastal bluff is moot since the proposed development is occurring on a bluff face. The use of a stringline therefore is the appropriate solution for determining the seaward extent of development considering that the proposed residential development is infill development. Normally, the stringline is applied to a new house which is being built between two existing houses. However, in this situation, because of a prior landslide which destroyed prior development, the application of the stringline must be modified to use existing residential structures and accessory structures on either side of the proposed development that were not affected by the landslide as the "anchors" for determining the stringline since this is bluff face development. Taking this approach is reasonable and equitable since it would limit new development to the seaward extent of existing development.

The applicant is proposing development seaward of the stringlines drawn between the nearest existing decks and structures on either side of the subject site. (See Exhibit B, Page 1) The structure stringline limits the seaward extent of enclosed living areas. The deck stringline limits the seaward extent of all other accessory structures including swimming pools, spas, hardscape, decks, and at-grade patios. Though the proposed residence complies with the structural stringline, development occurring seaward of the deck stringline consists of hardscape, patios, stairs, and paths. The purpose of the stringline is to minimize the impacts of new development on both bluff stability and visual resources. The geologic instability of the project site has been detailed in preceding sections of this report. Though development is occurring on the bluff face rather than the bluff top because virtually no bluff top exists on the subject site, forcing the development to step down the hillside, the intent of the stringline and bluff top setback policies must be kept intact.

The Commission's regularly used stringline policy applies to all structures whether they are at grade or above grade since all impermeable surfaces act to accelerate and increase the amount of runoff and erosion of slope areas and may adversely impact bluff stability and visual resources. The Commission has routinely required that all non-habitable accessory structures and hardscape conform to the deck stringline.

The intent of the bluff top and stringline policies of the LCP is similar to the Commission's policy for controlling seaward encroachment of development, including hardscape. Chapter 25.50.004 of the City's Zoning Code states that "no new buildings, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or be closer than twenty-five feet to the top of an ocean front bluff; the more restrictive shall apply." While the City does allow hardscape up to ten feet from the bluff edge, it does not usually allow development on the bluff face.

In the case of the subject application, the adjacent existing residences do not have beach paths or stairways to the beach or hardscape seaward of the deck stringline. To allow such development with the proposed project would result in an adverse visual impact and would

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not be consistent with existing development patterns. Therefore, the Commission finds it necessary to impose a special condition requiring the applicant to submit revised landscape plans which show that the hardscape and other structural development seaward of the deck stringline have been deleted. Further, this was a requirement of the approval of permit 5-97-371 for the underlying bluff stabilization and lot merger as well as the approvals of the permits for the other three homes on the stabilized slope. Thus, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

**C. Local Coastal Program**

The City of Laguna Beach local coastal program ("LCP") is effectively certified. However, several locked-gate beachfront communities are deferred, including Three Arch Bay. The subject site is located in Three Arch Bay. Therefore, the standard of review for the proposed project is conformity with the Chapter 3 policies of the Coastal Act and not the certified LCP. However, Section 30604(a) provides that a coastal development permit should not be approved for development which would prejudice the ability of the local government to prepare an LCP consistent with the Chapter 3 policies.

The proposed project is also consistent with the certified LCP, which may be used for guidance in non-certified area. Land Use Plan Policy 10-C provides, in part, that projects located in geological hazards areas are required to be designed to void the hazards where feasible. The proposed project has been conditioned to assure geologic stability and structural integrity. The proposed project has also been conditioned to comply with the stringline provisions of the certified LCP.

Further, the proposed project, as conditioned, would be consistent with the geologic hazards, marine resources, and visual resources policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that the proposed project would not prejudice the ability of the City of Laguna Beach to prepare an LCP for the Three Arch Bay community, the location of the subject site, that is consistent with the Chapter 3 policies of the Coastal Act.

**D. California Environmental Quality Act**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed development is located in an urban area. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the development policies regarding hazards, shoreline protection devices, and marine resources of Chapter Three of the Coastal Act. To assure structural stability and to minimize risks to life and property from geologic hazards, feasible mitigation measures

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requiring: 1) an assumption-of-risk deed restriction, 2) conformance with geotechnical recommendations, 3) landscaping requirements and adherence to the deck stringline, 4) prohibiting the staging and storing of construction equipment and materials on the beach, 5) identifying the disposal site, and 6) controlling runoff and drainage; would minimize all significant adverse environmental effects.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.