

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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(562) 590-5071



W12a

ADDENDUM

January 4, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W12a**, COASTAL COMMISSION PERMIT APPLICATION **#5-04-0324 (Bredesen)** FOR THE COMMISSION MEETING OF **January 9, 2008**.

Changes to Staff Report

Commission staff recommends modifications and additions to the Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report for clarification purposes. Deleted language is in ~~strike through~~ and new language to be added is shown in **bold, underlined italic**, as shown below:

Page 5 – Modify Section III, Special Conditions, as follows:

5. **Erosion Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a plan for runoff and erosion control.

1. **EROSION CONTROL PLAN**

- (a) The erosion control plan shall demonstrate that:

- (3) The applicant shall employ no hay or straw bales **(other than weed free, native grass hay)** or other weed sources.

Page 8 – Modify Section III, Special Conditions, as follows:

10. **Condition Compliance**

- A. Within ~~sixty~~ **ninety** days of Commission action on this Coastal Development Application or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

- B. Within ~~twelve~~ **twenty-four** months after Coastal Development Permit 5-04-324 has been issued the applicant will install the landscaping and irrigation improvements as conditioned in **Special Condition #6; with 75% of such improvements, including all of the irrigation improvements to be completed within twelve months, and the remaining 25% of such improvements to be completed within twenty-four months.**

Page 26 – Modify Section IV, Findings and Declarations, as follows:

H. Unpermitted Development

Development has occurred on the subject site without benefit of the required coastal development permit including, but not limited to, construction of a bluff toe shade structure with a retaining wall and support columns, grading, drainage structures, a paved walkway on the bluff slope, a two-level concrete patio, storage locker and other structures at the toe of the bluff, and an irrigation system on the bluff face.

The applicant is requesting after-the-fact approval of the walkway on the bluff face, storage locker, two-level patio, and grading at the bluff toe, replacement of the existing shade structure with a smaller shade structure, removal of the irrigation system, and conversion of an existing fire pit at the bluff toe into a planter. In order for the Commission to approve the overall project, **Special Condition #3** requires the applicant to submit revised site plans that show removal of the shade structure and supporting columns prior to issuance of this coastal development permit. **Special Condition # 10** has been required to ensure timely compliance with the permit conditions and implementation of the proposed landscaping plan. ~~**Special Condition #11** ensures that the existing unpermitted shade structure and irrigation is removed in a timely manner.~~

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Filed: November 3, 2004
49th Day: N/A
180th Day: N/A
Staff: Gabriel Buhr-LB
Staff Report: December 20, 2007
Hearing Date: January 9, 2008
Commission Action:

**W12a****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-04-324

APPLICANT: C. G. and V. C. Bredesen Trust,
Chris and Ginger Bredesen, Trustees

AGENT: Sherman Stacey

PROJECT LOCATION: 437 Paseo de la Playa, City of Torrance (Los Angeles County)

PROJECT DESCRIPTION: Request for after-the-fact approval of an existing four foot wide meandering 265 linear foot (1,059 square-foot) wood/concrete and flagstone walkway on a bluff face, an existing 1,218 square-foot two-level patio, demolish an existing 13-foot high 910 square-foot shade structure, replace with 540 square-foot trellis, supported by three concrete columns, leave in place an existing storage locker, convert existing fire pit to planter (all also on the bluff face just above the toe of the bluff), on a 27,808 square-foot beach-fronting lot. In addition, the proposed project includes the new construction of a five-foot high retaining wall, cut into the bluff face, requiring 38 cubic yards grading and new concrete stone faced planters adjacent to the patios. Applicant proposes to mitigate the development on the bluff face by eradicating non-native vegetation on 9,960 square-feet of the slope, and planting approximately 7,770 square-feet with coastal bluff scrub, 1,280 square-feet with plants of the Palos Verdes and Santa Monica Mountains plant communities and 910 square-feet with regionally local climbing plants. As part of the revegetation, the applicant also proposes to remove the existing unpermitted irrigation system, to install new drip irrigation and water quality improvements and to monitor the native vegetation on the bluff slope.

LOCAL APPROVALS RECEIVED:

City of Torrance, Approval in Concept, 5/12/04

SUBSTANTIVE FILE DOCUMENTS:

See Appendix A.

LIST OF EXHIBITS:

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Elevations
 5. 1972 Aerial Photo
 6. 2007 Aerial Photo
 7. Addendum to Revised Native Vegetation Plan
 8. USFWS Approval of Revised Native Vegetation Plan
 9. CCC Staff Biologist Review of Revised Native Vegetation Plan
 10. Original CDP for 437 Paseo de la Playa
 11. Court Decision
-

SUMMARY OF STAFF RECOMMENDATION:

In June 2005, the Commission denied a prior version of the proposed project due to public visual impacts, public access impacts, and geologic safety concerns. The applicant sued the Commission, and a statement of decision from the Superior Court of California was issued. Consistent with the terms of the court's judgment, the court entered an order remanding the matter to the Commission for further proceedings, including a new public hearing on the revised Coastal Development Permit application.

The applicant is requesting after-the-fact approval for construction of an existing meandering 4-foot wide concrete path from a bluff top back yard down the bluff face to the beach, an existing fire ring (proposed to convert to a planter), planters and an existing storage locker for beach equipment all also on the bluff face at the toe of a coastal bluff. In addition, the proposed project includes the after-the-fact approval of an unpermitted, existing 1,218 square -foot two level patio on the bluff face, removal of an existing unpermitted 910 square-foot shade structure and replacing it with a 540 square-foot trellis; after the fact approval of a five-foot high retaining wall with 38 cubic yards grading to support the existing shade structure and the construction of new concrete planters adjacent to the patios. The applicant proposes to mitigate the project by installing coastal bluff scrub, primarily coast buckwheat, *Eriogonum parvifolium*, on about 7,770 square-feet of bluff face and to plant the flatter area around the shade structure (about 2,000 square-feet) with "native vines" and California native riparian plants to soften the outline of the shade structure. The riparian plants would have to be irrigated. Finally, the applicant proposes to remove invasive plants and the unpermitted sprinklers from the revegetation area and install a new drip irrigation system. The proposed project is located on the seaward face of a coastal bluff immediately inland of Torrance Beach, a public beach. The project site is consequently highly visible from the public beach. The applicant indicates that the revegetation is contingent upon approval of the other development included in the application.

The proposed project raises Coastal Act issues regarding visual and geologic hazard impacts. To mitigate these impacts staff is recommending **APPROVAL** of the proposed project with **Ten (10) Special Conditions** addressing: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** submittal of revised plans showing removal of shade structure and support columns and conversion of fire pit to a planter; **4)** additional approvals for any future development; **5)** submittal

of final drainage and erosion control plan; **6)** conformance with submitted landscaping and monitoring plan; **7)** requirement for a coastal development permit to remove installed vegetation once established; **8)** conformance to the geotechnical consultants' recommendations and the requirements of the City of Torrance Department of Building and Safety; **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report, and **10)** requiring condition compliance within sixty days of Commission action.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions by passing the following motion:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-04-324 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

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.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity

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

2. No Future Shoreline Protective Device

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-324 including, but not limited to, the access ways, walls, patios, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the access ways, walls, patios, and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development

from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Submittal of Revised Project Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans that show (1) the shade structure and support columns have been eliminated, and (2) the fire pit converted to a planter.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Development

- A. This permit is only for the development described in coastal development permit 5-04-324. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by the coastal development permit 5-04-324. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to permit 5-04-324 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Erosion Control Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a plan for runoff and erosion control.

1. EROSION CONTROL PLAN

- (a) The erosion control plan shall demonstrate that:

- (1) During construction, erosion on the site shall be controlled to avoid adverse impacts on the beach.
- (2) The following temporary erosion control measures shall be used during installation of the plants: cover crops such as the native grass *Festuca* and biodegradable rolls, and/or geo-fabric blankets and wind barriers, and/or jute (not plastic) sandbags.
- (3) The applicant shall employ no hay or straw bales or other weed sources.
- (4) Following installation of the plants, the site shall be stabilized immediately with jute matting or other BMPs to minimize erosion during the rainy season (November 1 to March 31).
- (5) During establishment of the plants, the applicant shall inspect the area each fall in order to determine if there is erosion. If there is erosion, the

applicant shall replace sandbags and matting and other temporary erosion control measures as necessary.

(b) The plan shall include, at a minimum, the following components:

- (1) A narrative report describing all temporary erosion control measures to be used during construction.
- (2) A site plan showing the location of all temporary erosion control measures.
- (3) A schedule for installation and removal of the temporary erosion control measures.

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

6. Landscaping Installation and Monitoring

- A. The applicant shall undertake plant installation and ongoing monitoring and maintenance as outlined in its proposal (received January 6, 2005): *Revised Native Vegetation Landscaping Plan, Bredesen Trust Property, 437 Paseo De La Playa, Torrance, CA*, prepared by Kelley & Associates Environmental Sciences Inc. and as reviewed and approved by the U.S. Fish and Wildlife Service, consistent with the methods and goals outlined therein, for the five year term described in those documents.
- B. Each year for five years from the date of issuance of Coastal Development Permit No. 5-04-324, the applicant shall submit, as proposed in the Native Vegetation Landscaping Plan received January 6, 2005 for the review and approval of the Executive Director, a monitoring report, prepared by a licensed biologist, landscape architect or qualified resource specialist that assesses whether the on-site restoration is in conformance with the restoration plan received January 6, 2005. The habitat goal is that at five years from the date of the first native plantings, the on-site restoration should provide no less than 75 percent coastal bluff scrub plant cover with 10 percent bare sand and no more than 15 percent exotic plant cover. The monitoring reports shall include photographic documentation of plant species, plant coverage and an evaluation of the conformance of the resultant landscaping with the requirements of this special condition.
- C. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the plan listed above in Section 1A, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or a qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The alternative landscape plan must include appropriate

native plants similar to surrounding properties and provide adequate permanent erosion control.

- D. The permittee shall undertake development in accordance with the approved final plan, schedule, and other requirements. Establishment of the approved habitat should begin no later than the Fall of 2008. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Coastal Development Permit Required For Removal of Vegetation Installed as a Result of This Coastal Development Permit

- A. After establishment of the plants required pursuant to Special Condition 6, the applicant must obtain approval of an application for a coastal development permit or an amendment to this permit 5-04-324 in order to remove of the coastal bluff scrub plants installed as part of this project. This does not apply to the removal and replacement of dead or diseased plants identified in the monitoring program.

8. Conformance of Plans to Recommendations and Requirements

- A. All final design and construction plans shall meet or exceed all recommendations and requirements contained in *Geotechnical Investigation and Evaluation, 437 Paseo de la Playa, Torrance, California* prepared by Cotton Shires and Associates dated March 2004, *Wave Runup and Coastal Hazard Study, 437 Paseo de la Playa, Torrance, California* prepared by Skelly Engineering dated March 2000, and the requirements of the City of Torrance Department of Building and Safety, to the extent that they are consistent with the conditions imposed by the Commission.
- B. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment of this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. Deed Restriction

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of

an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. Condition Compliance

- A. Within sixty days of Commission action on this Coastal Development Application or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- B. Within twelve months after Coastal Development Permit 5-04-324 has been issued the applicant will install the landscaping and irrigation improvements as conditioned in **Special Condition #6**.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project Description and Location

Project Location

The project site is located within an existing residential area at 437 Paseo de la Playa, City of Torrance, Los Angeles County (Exhibits 1, 2). The project site is one of 28 bluff top lots located between the first public road, Paseo de la Playa, and the sea. This group of 28 residential lots extends south of the Torrance Beach Parking Lot to the border of Palos Verdes Estates and the Palos Verdes Peninsula. The project site is the sixth lot to the south of the parking lot. The bluff in question varies in height from approximately 60 feet at the Los Angeles County Torrance Beach Park to the north of the residential lots to 140 feet near the boundary of Palos Verdes Estates. The bluff tops of all 28 residential lots have been developed with single-family residences. Torrance Beach, the beach seaward of the toe of the bluff, is public. Vertical public access to this beach is available to pedestrians via public parking lots and footpaths located at the Torrance Beach Park, which is approximately 500 feet to the north of the project site (Exhibits 2). There is also a vertical beach public access way and public parking in Palos Verdes Estates located approximately $\frac{3}{4}$ of a mile to the south of project site.

Project Description

The applicant requests after-the-fact approval of an existing four foot-wide 1,059 square-foot meandering concrete walkway from the backyard of the bluff top residence (elevation 98 feet) down a 2:1 seaward-facing slope to its toe (elevation 13 feet). The applicant asserts that because a pioneered trail at one time crossed this property, part of his project is improving an existing trail.

At the toe, the applicant requests after-the-fact approval of an existing 1,218 square-foot, two-level concrete patio, existing concrete planters, an existing fire pit, which he proposes to convert to a planter, and an existing equipment storage locker. In addition, the applicant seeks to remove an existing 910 square-foot shade structure (over the upper portion of the patio), after-the-fact approval for a concrete retaining wall to be constructed at the rear wall of the shade structure and to replace the shade structure with a 540 square-foot trellis. The construction, mostly for the retaining wall, required approximately 38 cubic yards of new grading; according to the applicant's engineering consultant, a similar amount of grading took place during construction of the patios, bringing the total grading to about 76 cubic yards. The applicant proposes to mitigate this work by eradicating invasive non-native vegetation on 9,960 square-feet of bluff face, planting coastal bluff scrub vegetation on an extensive portion of the bluff face (about 7,770 square-feet of mid-bluff area), and by planting a 2,180 square-foot area near the patios and shade structure with "horticultural vegetation", mostly California riparian plants, to screen them from view from the beach. In addition, the applicant proposes to remove unpermitted sprinklers from the bluff face, and replace them with a new drip irrigation system and water quality improvements and to monitor the native vegetation¹. While the shade structure, walkway, and patios are in place, the applicant proposes to carry out some changes to respond to concerns raised by the City of Torrance. The applicants, as required by the City are also proposing to install a new five-foot retaining wall (at the rear of the proposed trellis), and planters. In the mid 1970's, the Commission approved a chain link fence at the toe of the bluff on this and the adjacent four lots, separating the bluff face from the public beach. The applicant has covered this fence with screening material, which the applicant asserts, hides the shade structure from public view, and reduces the visual impact of the development. The single-family house was approved with a separate permit in 1976 (P 76-7342). The house is located at approximately 99 feet above sea level (Exhibit 3 and 4).

Prior Development at Subject Site and Surrounding Area

On June 7, 1976, the South Coast Regional Conservation Commission approved a house on the bluff top portion of this lot for the "construction of a 26-foot high, two-story, single-family residence with a detached four-car garage, arcade, and swimming pool with an attached jacuzzi", P 76-7342, with conditions. Consistent with the project plans, the garage, arcade, swimming pool, and jacuzzi are located landward of the home. That permit was approved by the Commission with a condition requiring the applicant to submit revised plans showing no portion of the structure, including decks and balconies encroaching onto the 25-foot bluff setback (Exhibit 10). The house was constructed and complies with the plans. The applicant does not propose any changes to the existing development on the top of the bluff, but with this application, requests after-the-fact approval to construct walkways, decks, retaining walls and a trellis seaward of the 25-foot set back line. Based on the review of historical aerial photographs from 1972, 1993 and 2000, staff has confirmed that no development was present on the bluff face of the subject property prior to September 6, 2000. The applicant's agent has stated that the unpermitted structure at the toe of the bluff was built in 2002. In 1978, the previous owner, Robert Hood, applied for and received a permit for a lot line adjustment between the present lot and the adjacent lot, which he also owned (P 78-8892).

In response to direction by Commission Enforcement Staff to submit an application for removal of the unpermitted development and restoration of the site, the applicant submitted an application for

¹ Comments on the plan by USFWS staffer Mike Bianchi and Staff ecologist John Dixon's are found in Exhibits 8 and 9.

after-the-fact approval for construction of a 400 square-foot “storage shed/beach shade” structure on July 24, 2002. However, the 2002 application was rejected at the initial screening level because the submittal did not contain even the minimal application materials for staff to accept the application. The applicant subsequently resubmitted that permit application, still only seeking authorization for the shade structure, on April 28, 2003 (5-03-242). On December 10, 2003 the applicant withdrew application 5-03-242. On August 12, 2004, the applicant submitted an application (5-04-324) with an augmented project description that contained all unpermitted development on the site, and a restoration plan. The application remained incomplete for a number of months while staff and the applicant worked together to complete the application and to assure that the restoration portion of the package was based on science acceptable to the resources agencies. The application was deemed complete on November 3, 2004.

The completed application was presented to the Commission on June 6, 2005. The accompanying staff report recommended denial of the application because, it found that as a whole, the proposed project was inconsistent with Chapter 3 policies of the Coastal Act, specifically with policies related to public access and recreation, landform alteration, visual impacts, and geologic hazards. The Commission voted to concur with the staff recommendation and to deny the permit application. The applicant then challenged the Commission’s ruling and took the case to the Superior Court of California stating that the Commission abused its discretion in denying the application, and that the evidence in the case did not support the Commission findings. On September 4, 2007 the Court ruled in favor of the applicant and ordered that the application be remanded to the Commission (Exhibit 11). In its decision the Court found that the bluff face development proposed by the applicant was largely in character with the existing development on bluff face lots adjacent to the project site, not making a distinction between lots that had been legally developed pre-Coastal or unapproved development constructed without a Coastal Development Permit. Additionally the court found that there is a significant difference in topography and development patterns between the northern eight lots and the remaining twenty southern lots. The Court did find however that the proposed shade structure and support columns were not in conformity with the pattern of existing development or the policies of the Coastal Act.

Permit History for Bluff Face Development in Project Vicinity

Figure 1 and 2 on the following two pages summarize the permit history of bluff face development for the 28 residential lots located along Paseo de la Playa in Torrance.

FIGURE 1 TORRANCE BLUFFS INVENTORY OF BLUFF FACE DEVELOPMENT PERMITTED AND PRE-COASTAL DEVELOPMENT			
Pre-coastal	Development	Location	Permit number
3	Stairways/ paths	(Paseo de la Playa)	
		413/417	NA
		601	NA
		627	NA
2	Patios/decks²		
		413/417	NA
		627	NA
0	Shade structures		
			NA
0	Retaining walls		
			NA
Approved			
3	Stairways/ paths		
		429	5-85-755
		433	5-90-1041-A3
		515	5-90-1079
0	Shade structures		
3	Retaining walls		
		429	5-85-755
		433	5-90-1041-A3
		449 ³	5-90-355

² Patios/decks listed above are located below concrete drainage swale marking the “historic top of bluff”.

³ Low wall constructed as part of upper bluff repair, not highly visible.

FIGURE 2		
TORRANCE BLUFFS INVENTORY OF BLUFF FACE DEVELOPMENT		
UNPERMITTED DEVELOPMENT		
Unpermitted.	Development	Location
4	Stairways/ paths⁴	(Paseo de la Playa)
		425*
		437*
		445
		[601 ⁵]
		605
3	Patios/decks	
		429
		433
		437
4	Shade structures	
		413
		429
		433
		437

When the Commission assumed jurisdiction in 1973, there were three improved bluff face access ways on this bluff, and there were two platforms perched on the bluff face, one at each end of the row of lots (Exhibit 5). Since 1973, the Commission has approved three ramps or stairways down the bluff face to the toe of the bluff on the 28 lots along Paseo de la Playa. In one (5-85-755), the applicant asserted the need for safe access for permission to build a concrete walkway, a wall at the toe of the bluff and a patio above the beach. In the second, directly north of the applicant's lot, (5-90-1041-A3), the Commission approved a narrow property line stairway, sited along an existing wall to reduce visual impacts, as part of a bluff reconstruction and restoration that the owners requested to repair a massive blow-out. However, the property owners have failed to install vegetation on the bluff in compliance with the conditions of 5-90-1041-A3. Also, the mid-bluff and bluff toe shade structures on the property are not authorized by any coastal development permit. Commission enforcement staff notified the property owners of these Coastal Act violations. The property owners have not applied for a coastal development permit authorizing removal or retention of the shade structures or landscaping changes; therefore further enforcement action is necessary to resolve the violations. A lot located eight lots to the south of the subject lot received a permit in 1991 to stabilize an "existing path "with redwood beams" (5-90-1079). During

⁴ A web of unpermitted paths existed across several lots in 1972. An asterisk indicates that these were further modified without a CDP after 1973.

⁵ This stairway has been rebuilt in a new location. Since there was a stairway on this lot in 1972, even though a permit was needed for its relocation, the relocated stairway is not included in staff report total as "unpermitted".

consideration of the third stairway (5-90-1079), the applicant provided persuasive evidence that placement of redwood ties was merely a repair and stabilization of a pre-existing soft-footed path. The Commission has approved two patios in conjunction with stairways, but it has approved no shade structures at the toe of the bluff.

The Commission has approved other development on the bluff face or at the toe of the bluff. The house directly north of the property received a permit to construct a walkway to an upper bluff terrace, conditioned not to extend seaward of a swale marking the historic top of the bluff. Three lots south of the subject lot, the Commission approved remedial sand colored concrete terrace drains and bluff restoration (5-90-868) but no stairway and no development below mid-bluff. An owner of another lot received approval for a property line fence, extending down the bluff. The Commission denied an application for construction of stairs down the bluff face, a covered observation deck located towards the base of the bluff and bluff restoration for the endangered El Segundo Blue butterfly on a lot near the southern end of the bluff at 613 Paseo de la Playa (5-03-328). The Commission acknowledges that several lots have inconspicuous pioneered paths down the bluff; shared with adjacent lots or the public, these are not improved and appear in 1973 photographs⁶.

The Commission has approved five new houses on the bluff top lots and a number of additions to existing single-family houses and appurtenant structures, such as pools, jacuzzis, and patios on the top of the bluff. Most of the approved additions were at the top of the bluff, or inland of a three foot wide concrete lined drainage structure parallel to the bluff top, that represents the historic top of bluff south of 449 Paseo de la Playa. In approving this development the Commission routinely imposed conditions that limited development to a 25-foot bluff top set back. In making these approvals, the Commission agreed with the applicants that a concrete swale located about ten feet below the house pads and parallel to the bluff top represented the historic top of the bluff (5-01-405-A, P-5-77-716).

Of the twenty-eight residential lots on Paseo de la Playa, three lots have stairs or hardened footpaths that extend down the bluff which received coastal development permits allowing the construction of improved access ways to the beach and three have stairs or hardened footpaths that predate the Coastal Act. Four additional lots, including the subject lot, have unpermitted ramps or stairways under investigation; one property that had a pre-Coastal stairway appears to have relocated the stairway without seeking a coastal development permit. However, eighteen (18) lots do not appear to have any stairs or walkways extending down the bluff face. The existing bluff face development, both approved and unpermitted, is strongly clustered on the northern eight Paseo de la Playa lots. Of the eight northern lots, six have improved access ways down the bluff face, three of which, including the access way on the subject lot, are unpermitted, compared to only three improved access ways on the southern twenty lots (Exhibit 6). This discrepancy in development both approved and unpermitted, is largely due to the significant change in topography that occurs along the Torrance bluffs as they increase in height in a southerly direction toward the Palos Verdes peninsula. The northern six lots gradually increase in height along a moderate 2:1 slope to a bluff top averaging between 60 and 90 feet in elevation. The next two lots begin a transition between the more gradual slopes found to the north, and the significantly steeper and taller bluffs that rise to the south. The remaining southern twenty lots take on a more cliff-like character with steep, sometimes near vertical slopes and rocky components. The judge for the

⁶ The Commission's Enforcement Division is currently investigating unpermitted development along the bluffs at Paseo de la Playa in Torrance, including stairways and toe of slope improvements.

Superior Court also acknowledged this distinction in the decision and based her conclusion, in part, on the fact that the northern lots are significantly more developed than the southern lots, so the subject development was not out of character with the other northern lots.

As shown in the table above, the Commission has approved no structures other than improved access ways and small retaining walls, and has not approved any “shade structures” or trellises at the toe of the bluff. The Commission has approved only minor development near the toe of the bluff. When the beach transferred to the City, the Commission approved a fence at the toe of the bluffs along five lots, including this one, separating the private property from the beach. The northernmost lot has development on the bluff face that includes stairs and a small deck about 30 feet above the toe of the bluff and a volleyball court at sand level. While no coastal permit was approved for this work, the ramp, volley ball court and deck appear in the Commission aerial photo dated 1972 and existed prior to the effective date of the Coastal Act and the Coastal Zone Conservation Act of 1972. However, a shade structure visible in more recent photographs appears to have been constructed after the Coastal Act without a coastal development permit.

B. Scenic Resources/Community Character & Cumulative Adverse Impacts

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

While some bluff faces in southern California have been subdivided and developed, development generally does not extend down the Torrance bluffs. The bluffs extend from about 60 feet high at the north end to approximately 140 feet high as the coast curves toward the Palos Verdes peninsula. The bluff also becomes steeper, changing from a 2:1 slope covered with dune sand to a rocky cliff. From the beach, the roofs of some of the houses on the top of the bluff, parts of the rear walls of those houses and the edges of some patios are visible. With few exceptions, there is little development along the face of the Torrance bluffs, and predominantly, the bluff face to the south, where the bluff rises more steeply, remains undisturbed.

The project site is located near the northern end of the 28 residential bluff top lots. As discussed in the project description section of these findings, the eight northernmost lots include two of the permitted stairways and one pre-Coastal Act stairway and three of the unpermitted stairways (including the stairways subject to the present application). Due to the lower height of the bluffs and the moderate slope, historically nearly all development on the bluff face, both approved and unpermitted, has occurred on these northernmost lots, whereas there is little development on the southern lots.

The proposed project is located on the bluff face immediately adjacent to the public beach. The bluff face at this site is visible from the sandy beach. The applicant requests after-the-fact approval to construct a hardened walkway, patios, planters, storage lockers and a trellis on the bluff face. The applicant proposes to excavate a notch in the bluff (38 cubic yards) to accommodate the patio where the shade structure is now located that will be supported by a five-foot high concrete

retaining wall. The applicant now proposes to demolish the shade structure and replace it with a trellis (still supported by three concrete columns). The patios will be constructed with five-inch thick reinforced concrete leveled pads cut into the bluff, requiring about 38 cubic yards of grading. Some materials were removed to accommodate the patios. Short timber retaining walls will support the walkway and the patio. Subsurface drainage structures at the turns of the ramp will divert water from the face of the bluff to an outlet at the toe. The applicant proposes to mitigate the view impacts of the structure by planting native vines (California rose) to cover the shade structure and by coloring the concrete path.

As described earlier in the permit history section, the proposed development was the subject of a lawsuit. In that case, the Court found that the bluff face development proposed by the applicant was largely in character with the existing development on the bluff face lots adjacent to the project site. The Court remanded the case to the Commission with an order to approve a coastal development permit consistent with its decision that the majority of the bluff face development proposed by the applicant was in character with the surrounding development on the northern lots and was consistent with the Chapter 3 policies of the Coastal Act. The Court also held, however, that the proposed shade structure did not comply with the policies of the Coastal Act.

There are four lots (including the subject site) that have shade structures constructed along the toe of the bluff. All of these structures are highly visible from the adjacent sandy beach and none of these shade structures are approved development by the Commission or were present prior to the enactment of the Coastal Act. Development along the bluffs must be sited and designed to protect views to and along the beach and to minimize the alteration of existing natural landforms. New development must also be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding area. Intensified private development such as the shade structure and its support columns along the toe of the bluff will adversely impact the visual quality of the subject area, and will do so in a manner inconsistent with the community character, and therefore not in conformity with Sections 30251 of the Coastal Act.

In addition, Section 30250(a) of the Coastal Act requires that new development be located where it will not have significant cumulative adverse effects on coastal resources. As described earlier and identified in Exhibit 6, the majority of development along Paseo de la Playa is located on the bluff top. As designed to minimize visual impacts, the proposed development is only compatible with bluff face development in the *immediate* vicinity of the northernmost lots. This development is limited only to the northern lots due to the significant difference in topography (8 northern lots) and development patterns that exist between the six northernmost lots and the remaining twenty-two lots. Over time, incremental impacts can have a significant cumulative adverse visual impact, and it is therefore important to make this distinction between the different geographical features and community character of the northern six lots as compared to the southern twenty-two lots along the Torrance Bluff. Other property owners may begin to request authority for new construction on the bluff face if this distinction is not made, thus contributing to cumulative adverse visual impacts.

In conclusion, the Commission, in compliance with the above-referenced court order, finds that the project, as currently proposed, is designed to protect scenic and visual qualities of the site provided that the proposed trellis and support columns are removed. Accordingly, the Commission imposes **Special Condition #3** requiring that the applicant submit revised site plans that show removal of the shade structure prior to issuance of this coastal development permit. Due to the existing pattern of development present on the immediately adjacent lots, and the unique topographical

characteristics present on these few northern lots, the Commission finds that the proposed project is not out of character with the immediately surrounding residential community.

The development is located within an existing developed area and is compatible with the character and scale of the immediately surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act, the Commission therefore imposes **Special Condition #4** requiring that any future development on the subject site require an amendment to this permit.

C. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

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

Development on a coastal bluff is inherently risky due to the potential for bluff failure. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures and ancillary improvements. In general, bluff instability is caused by environmental factors and impacts caused by man. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding and soils conducive to erosion. Factors attributed to man include bluff over steepening from cutting roads and railroad tracks, irrigation, over-watering, building too close to the bluff edge, grading into the bluff, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, pedestrian or vehicular movement across the bluff top, face and toe, and breaks in water or sewage lines.

As described in the applicant's technical reports, and in other reports on nearby lots, the bluffs in this area consist of sandy material at the north end, slowly being displaced by higher, rocky material as the bluffs extend toward the Palos Verdes Peninsula. The applicant has provide a geologic report that indicates that consistent with former reports on the property the bluff consists of blown sand over Pleistocene dunes. It notes that several lots to the south, Miocene shales are exposed. The report indicates that the surface materials are subject to slippage and erosion and includes a number of recommendations concerning drainage. It indicates that the lot is grossly stable, but cautions that the shade structure may be considered a structure that is not regularly occupied and thus need not be examined for seismic safety.

The project as redesigned and evaluated by the applicant's consultants includes extensive measures to stabilize the development. The applicant's coastal engineer listed the features planned to assure the safety of the existing and proposed patio, walkway, and shade structure.

RESIDENTIAL LOT AND PATIO IMPROVEMENTS AT 437 PASEO DE LA PLAYA. The subject property consists of a trapezoidal residential lot that was subdivided, graded, and developed in the 1970's with a two-story single-family home and appurtenances. The lot measures ~60 feet along its seaward (westerly) side, ~446 feet on the north, ~64 feet on the east (street side), and ~423 feet on the south sides. (See, Exhibit 3, Lanco Engineering, surveyed Topographical Map, 437 Paseo de la Playa, Torrance, 2-26-04). The lot slopes in from approximately +130 feet MSL, along the street, to about +14.8 feet MSL, along the westerly property line, and is fronted by a slope vegetated by primarily non-native vegetation, a wide sandy beach (approximately 200 feet wide), and the Pacific Ocean. The previously approved two-story single-family home, garage, pool/spa, and decks on the subject property are located on the graded pad at the top of the slope, above elevation +99 feet MSL. A path, consisting of a combination of wooden, wood-bordered concrete, and flagstone pavement extends from near the top of slope, near elevation +97 feet down to the toe of slope, near elevation +17 feet MSL and to the gate in the fence at the western property line, near elevation +15⁷ feet MSL. ... A finish color consistent with the restored and enhanced natural landscape is proposed to be applied to the path, and native vegetation is proposed to be planted on the slope for enhanced soil/sand stability and to replace various existing non-native plants, which are to be removed. (K&AES, 2003.)

A two-tier patio is located at, and partly notched into, the toe of the slope to the north of the path. ... The lower patio, -600 SF at elevation +20.5 feet MSL, is bordered on the west and south by two parallel garden walls, ~3-5 feet in height, that define an attractively planted 3 feet wide space. Approximately 40% of this patio consists of flagstones set in grass, and the remainder is paved with concrete. A small grate provides drainage to ground in the northwesterly corner of the lot. The rear (upper) tier of the patio (750 SF) has a -6 inch thick concrete floor, with small drain grates that tie into the discharge to ground. The rear patio steps up 3 feet behind a retaining wall and 2 feet-wide planter border on its westerly side. The retaining/garden wall extends ~10 feet to the east along the northerly and southerly edges of this patio. Three columns on the west, and a combination 5 feet high retaining and wood wall above it, with ~6 feet long wing walls, support a wooden roof that provides shade over the rear patio, as well as space for a small (~25 SF) secure enclosure for recreational equipment. The shade structure contains no bedroom, kitchen, or bathroom. The concrete columns are built with four #7 rebar (vertical) and #3 ties on 8 inches centers, and supported by a 24"x24"x30' concrete grade beam, with two #7 rebar at the top and bottom, and with #3 closed stirrups on 12 inch centers. (SMP, 2004.) The beam and three columns, in turn, are supported, respectively, by 48"x48"x24" thick concrete pads and four #5 bars, as shown on SMP's Sheet No. ... The lower tier patio is completely open to the west and south; the upper tier patio is open to the west and south except for the 18-inch columns and the rear wing walls. The columns and roof of the shade structure are proposed to be vegetated with salt-spray tolerant climbing native vegetation to enhance their aesthetic and functional compatibility with the adjacent restored slope to the east. (K&AES, 2003.) To meet seismic loading standards, two 6 feet long, 8 inch wide shear walls are proposed to be built, in alignment with the northerly and southerly columns,

⁷ Staff has relied on the figures on the survey map to get elevation 13.

from the rear retaining wall forward, and the roof of the shade structure along the northerly property line is proposed to be reduced by ~35 SF to fully meet the City's 3 foot setback requirement. (SMP, 2004.) (Skelly Engineering, 2004)

Regarding the general site conditions, the project geologists, Cotton, Shires & Associates state in part:

Evidence of Past or Potential Landslide Conditions

No indications of deep-seated or shallow slope instability' were observed at, or immediately adjacent to, the project site during our site reconnaissance on November 11, 2003 or during our site visits on February 17 and 18, 2004. ... In addition, aerial photographs of the subject property and its immediate surroundings show no evidence of landsliding or slope instability. Review of pertinent geologic maps and reports also reveal no previous slope instability.

Section 30253 of the Coastal Act of 1976 provides, in relevant part, that "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard, and (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". Based on our evaluation of the site conditions, and the understanding that the recommended actions (mitigations) detailed herein will be incorporated into the comprehensive project description for submittal to Coastal Commission as part of the coastal development permit application and then, subsequently implemented, we conclude that: a) the improvements do not pose a risk to life and property, b) the improvements do not adversely affect stability or structural integrity of the site, c) the improvements do not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, and d) the improvements do not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.(Cotton, Shires, and Associates, Inc.)

In response to these reports, staff geologist Mark Johnsson indicates:

Reference 1(Cotton, Shires, and Associates) contains general information on the site geology, and specific information regarding site stability in terms of bluff recession, surficial and global slope stability, ground and surface water conditions, seismicity, and seismic slope stability. The report indicates that the site is capped by stabilized Late Pleistocene dune sands 3 to 13 feet thick, that overlay the Early Pleistocene San Pedro sand. Locally, the San Pedro sand is overlain directly by artificial fill, where it is retained by landscaping walls on the lower part of the bluff.

No evidence of surficial or global slope instabilities were noted at the site, but instability has been observed at properties just downcoast. A quantitative slope stability analysis, performed using soil strength parameters derived from laboratory testing of samples collected at the site, yielded a minimum factor of safety against deep-seated failures of 1.55 for the static condition and 1.01 for the pseudostatic condition. The latter is below the usual criteria of 1.1 required to demonstrate slope stability under seismic loading, but I note that a

relatively high (i.e., conservative) value of 0.21 g was used for the earthquake loading coefficient; 0.15 is used more commonly in conjunction with a factor of safety of 1.1 to demonstrate slope stability. A Newmark-type analysis of expected seismic displacement during a seismic event yielded a displacement of 5.86 cm. A displacement of this magnitude would adversely affect structures such as buildings and retaining walls. Finally, the report contains an analysis of surficial slope stability using the methods of infinite slopes. No quantitative results are presented in the report, but the report does conclude that “the materials exposed within the slope face may be susceptible to shallow slope failures, particularly in localized oversteepened areas that may be caused by uncontrolled erosion, improper grading, or other anthropogenic processes.” The report makes recommendations for drainage controls to minimize surficial instability.

I concur with the principal conclusion of the report that the slope is grossly stable under static conditions, might be expected to be marginally unstable under seismic loading, and will likely suffer surficial instabilities unless great care is taken to control runoff on the slope.

The existing patios, retaining walls, and shade structure subject to this application are towards the base of the bluff, adjacent to the beach. The Commission finds that the development will be stable but would achieve this stability by hardening portions of the cliff face for the walks and patios and relying on protective devices to support the cliff and protect the structures. The patios are designed to include the installation of drains that will minimize runoff onto the bluff and public beach. Under normal conditions, the shade structure will be safe, although it is not designed to survive an earthquake. The shade structure will require concrete columns supported by a grade beam for support. The Commission is now denying the shade structure and the support columns due to adverse impacts on visual resources. The retaining wall at the rear of the structure is necessary to support the bluff behind it, where it has been excavated, and to protect the structure from the weight of the bluff. The project will also require grading for the installation of the retaining walls at the edges for the paths, supporting the patios and at the rear of the shade structure, these retaining walls are small in height and do not require a significant amount of grading of the bluff face, and are consistent with other approved, small retaining walls on adjacent properties. As designed and as proposed, the development will not be unstable.

The applicants, however, commissioned these reports, and ultimately the conclusion of the report and the decision to construct the project relying on the report is the responsibility of the applicants. The proposed project, even as conditioned, may still be subject to natural hazards such as slope failure and erosion. The geological and geotechnical evaluations do not guarantee that future erosion, landslide activity, or land movement will not affect the stability of the proposed project. Because of the inherent risks to development situated on a coastal bluff, the Commission cannot absolutely acknowledge that the design of the addition to the single family residence and other improvements will protect the subject property during future storms, erosion, and/or landslides. Therefore, the Commission finds that the proposed project is subject to risk from erosion and that the applicants shall assume the liability of such risk.

The applicants may decide that the economic benefits of development outweigh the risk of harm, which may occur from the identified hazards. However, neither the Commission nor any other public agency that permits development should be held liable for the applicants' decision to develop. Therefore, the applicants are required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. The assumption of risk, when recorded against the property as a deed restriction will

show that the applicants are aware of and appreciate the nature of the hazards which may exist on the site and which may adversely affect the stability or safety of the proposed development.

In case an unexpected event occurs on the subject property, the Commission attaches **Special Condition #1**, which requires recordation of a deed restriction whereby the applicants assume the risk of extraordinary erosion and/or geologic hazards of the property and accepts sole responsibility for the removal of any structural or other debris resulting from landslides, slope failures, or erosion on and from the site.

Under Section 30253 of the Coastal Act new development may occur in areas of high geologic, flood, and fire hazard so long as risks to life and property are minimized and the other policies of Chapter 3 are met. The applicants' geologic report concludes that, from a geotechnical perspective, the proposed development is feasible. To minimize risks to life and property and to minimize the adverse effects of development on areas of high geologic, flood and fire hazard, the proposed development has been conditioned to require: adherence to the geotechnical recommendations (**Special Condition #8**) and for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff (**Special Condition #5**). As conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

D. Beach Erosion and Beach Processes

Section 30235 of the Coastal Act states in 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.

According to the applicant's coastal engineer, the project will not be subject to wave attack and will not require a structure on the beach to protect it from wave erosion. This is because the beach has been artificially incremented in the past, and is now protected by structures such as the Redondo Beach breakwater. This stability, in the view of the applicant's coastal engineer should last many years into the future.

The applicant's coastal engineer, David Skelly, states:

The Santa Monica littoral cell extends from Point Dume to Palos Verdes Point, a distance of 40 miles. Most of the shoreline in his littoral cell has been essentially stabilized by man. The local beaches were primarily made by man through nourishment as a result of major shoreline civil works projects (Hyperion treatment plant, Marina del Rey King Harbor) etc. The upcoast and down coast movement of sand along the shoreline is mostly controlled by groins, breakwaters and jetties and is generally to the south. A review of aerial photographs shows little if any overall shoreline retreat.

As addressed more fully below, a review of aerial photographs taken over the last 25 years shows little, if any, overall shoreline retreat along this section of shoreline, principally

because when the sand reaches the nearby upcoast groin, it is trapped and therefore stabilizes the beach. For the purpose of this hazard analysis, a very conservative long-term estimate of the shoreline retreat rate of 0.5 feet per year is used. The wide sandy beach in front of the site is normally 200 feet wide and thus provides adequate protection for the site and the South Coast Bike Trail at the base of the slope upcoast from the subject property. An interview with a long term resident revealed that wave runup has not reached the subject property in at least the last 25 years. The man-made beach in this area is subject to some seasonal erosion and accretion, and potentially also subject over the 75-year life of new development to major erosion that is associated with extreme (>200 year) storm events, which may erode the beach back to near the toe of the slope. (Skelly, 2004)

With respect to this report, staff geologist Mark Johnsson states:

The report goes on to conclude that there has been no overall shoreline retreat at the site over the last four decades, that a conservative estimate of future beach erosion would reduce the beach width by about 50 feet in 100 years, and that the toe of the slope is not likely to be subject to damage even from the most extreme beach erosion and wave attack over the expected economic life of the improvements. I concur with these assessments. I do note, however, that the width of the beach is at least in part due to artificial beach nourishment upcoast, that resulted in a dramatic increase in beach width between 1946 and the present (Leidersdorf et al., 1994).

Historically the sandy bluffs immediately inland of this beach have suffered from sloughing and collapse. While sloughing and collapse have been hazardous for beach visitors climbing on the bluffs, it has resulted in replenishment of the beach. However, as noted above by both the applicants' consultant and the staff geologist, the majority of the sand present on this stretch of wide beach is due to artificial beach nourishment processes created by various man-made structures located upcoast from the subject beach and not due to natural processes such as bluff erosion. The proposed construction of structures on the bluff face adjacent to the beach includes measures to prevent erosion and sloughing (Exhibits 3 and 4), and in most situations would have a negative impact on beach replenishment; without some erosion of the material from the bluffs, sand and other materials from the bluffs would not be available as a source of replenishment of sand for the beaches. Due to the artificial widening of the beach in this location as a result of a stabilized littoral cell from man-made additions to the coastline, it is unlikely that wave uprush will reach the bluff face on the property that would result in bluff face erosion and beach nourishment. Instead the creation of upcoast jetties, break walls and harbors have created a situation where significant beach retreat is unlikely. The proposed small retaining walls will not significantly alter the bluff face, and will have minimal impact on the beach replenishment of the subject beach; the Commission has approved similar small retaining walls on adjacent properties.

The development is not subject to wave runup and flooding. Based on the information provided by the applicants, no mitigation measures, such as a seawall, are anticipated to be needed in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There currently is a wide sandy beach in front of the proposed development that provides substantial protection of the toe of the bluff from wave activity.

To further ensure that the proposed project is consistent with Section 30253 of the Coastal Act, and to ensure that the proposed project does not result in future increased bluff erosion and

adverse effects to coastal processes, the Commission imposes **Special Condition #2** that would prohibit the applicants, or future landowner, from constructing a protective device for the purpose of protecting any of the development approved as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future.

By requiring recordation of a deed restriction agreeing that no protective devices, including retaining walls, shall ever be constructed to protect the development approved by this permit, the Commission makes it clear that this approval is based on the understanding the proposed development will be safe from potential erosion and wave runup damage. Based on Special Condition #2, the Commission also requires that the applicants remove the structures of any governmental agency orders that the structures be removed due to erosion, wave runup or other hazards.

E. Public Access and Recreation

All projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Section 30210 states that maximum access and recreational opportunities shall be provided to protect public rights:

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

The proposed development is located within an existing fully developed residential community partially located between the sea and the first public road paralleling the sea. Torrance Beach, a public beach, is located seaward of the applicants' property line at the toe of the bluff. Public access through the privately owned residential lots in this community does not currently exist and there is no evidence of historic public access across this lot. However, adequate public access to Torrance Beach is available via public parking lots and footpaths at Redondo Beach located to the north of the project site. There is also a beach access way and public parking to the south of the project site in Palos Verdes Estates. The proposed development will not result in any adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project is consistent with the public access policies and recreation policies of the Coastal Act.

F. Habitat

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Legal Mechanisms to Install and Protect Habitat

The US Fish and Wildlife Service encourages the establishment of habitat for an endangered species through the creation of a Safe Harbor Agreement between a private landowner and the federal government. In exchange, the landowner would face no penalties for removal of the established habitat after it has been established and maintained on-site for a period of thirteen years.

The Coastal Act operates differently in regards to established native habitat. If the proposed installation is successful, and the endangered El Segundo blue butterfly becomes established on-site, the land would likely be designated as an environmentally sensitive habitat area (ESHA) and subject to additional habitat restrictions under Section 30240 of the Coastal Act. While it is not likely that the Commission would allow significant development on the bluff even without the proposed habitat restoration and potential creation of ESHA, once the proposed habitat has been established no clearance of the ESHA would be permitted except for the required maintenance of the habitat. This is further established in Special Condition #7. Only uses dependent on the ESHA would be allowed within the habitat area.

Site Description and Habitat Enhancement Plan

Prior to urbanization, bluff faces in the South Bay hosted coastal bluff scrub that supported numerous species, including the El Segundo blue butterfly (*Euphilotes bernardino allyni*), which is currently endangered. Coast buckwheat (*Eriogonum parvifolium*), the host plant for the El Segundo blue butterfly is located in patches throughout the bluff face on many of the lots along Paseo de la Playa. The United States Fish and Wildlife Service (USFWS) provided the Commission written notice of this discovery in 1995 (Letter, Gail Kobetich, 1995). Confirmed by the USFWS and the Commission's former staff ecologist Jon Allen, both the host plant and the butterfly were identified on the lower levels of a nearby lot (5-01-018 and 5-01-409).

This proposed development is four lots away from a lot, 501 Paseo de la Playa where the butterfly and its habitat has been identified. Habitat that supports an endangered species conforms to the Coastal Act definition of an environmentally sensitive habitat area. There is little evidence that this particular lot has supported environmentally sensitive habitat in the recent past. 1970's geology reports indicate that the predominant vegetation on the site is ice plant. The proposed removal of irrigation and introduced invasive species from the bluff face and replacement with coastal bluff

scrub vegetation, more specifically, with *Eriogonum parvifolium* is compatible with continuance of this habitat on nearby lots.

The applicant, as mitigation for the present project, proposes to remove invasive plants from the bluff face that might invade and displace adjacent habitat, and to replace them with no fewer than 175 plants of the host food plant. The larvae of the El Segundo blue butterfly feed on *Eriogonum parvifolium*, and pupate in loose sandy soils under the surface of the soils (Mattoni, 1985, personal communication). *Eriogonum parvifolium*, like many dune plants expands radially through loose soils. Hardening or stabilizing the bluff, or irrigating it is likely to be inconsistent with these processes. The USFWS has reviewed this project and has approved the revegetation with conditions that 175 *Eriogonum parvifolium* plants be installed. The applicant has provided a revised plan as part of this project that conforms to the requirements of the USFWS (Exhibit 7, 8, and 9).

According to the application and Revised Native Vegetation Plan dated January 3, 2005, all container plants (plants that will be used for the restoration) will be propagated from local seeds and/or cuttings. Local sources include the Palos Verdes peninsula with a preference for Malaga bluffs. The landscape plan includes a planting scheme consisting of a list of plants to be installed identified by both their common and scientific names and the quantity of each plant that will be installed. According to the plan, all plant species will be established simultaneously. A mix of native annual species, which include native grasses, will be applied to the site at the time of planting. The grass germinates quickly and will minimize any potential erosion from the site. The plan states in part:

Approximately 300 container plants will be placed in diverse clumps using a model locally known reference sites for coastal buckwheat populations (plants of this community are most often distributed in patches on sandy soils of seaward slopes and bluff tops in the region). Final densities and coverage designed into this plan reflect native coastal bluff scrub communities.

A further revision added:

In order to increase the density of *Eriogonum parvifolium* plants on the west-facing slope, following discussions with the USFWS, a minimum of 175 plants of *Eriogonum parvifolium* shall be planted on 48" centers within the Coast Buckwheat Community planting areas shown on this Revised Native Vegetation Plan.

The enhancement plan notes that trampling the area presents a danger to the success of plantings. However, in this case the revegetation site is on private property so access is limited. A fence currently exists on the site along the western property line that protects the site from those using the adjacent beach.

The landscape plan also includes the repair and replacement of the existing onsite irrigation systems with a low-water irrigation system. This will include retrofitting of existing small water lines and faucets on the slope with automatic cut-off valves to avoid accidental spillage, and retrofitting (replacement as required) of small lateral water lines on the slope with drip irrigation lines for establishment of, and to support native vegetation during prolonged drought conditions.

In addition to the restoration, the Native Vegetation Plan includes a monitoring plan. The proposed monitoring plan includes: 1) Plant Assessments – plant coverage will be quantified twice yearly (in the spring and fall) for five years, and every five years thereafter. The target for native plant covering is 75 percent with 10 percent bare sand and no more than 15 percent exotic plant cover; 2) Photopoints – Progress of revegetation shall be tracked using fixed photopoints (each monitoring report). Monitoring reports incorporating photo surveys will be submitted to the Coastal Commission by June 1 each year for the first five years and every five years thereafter. **Special Condition #6(B)** formalizes this offer by requiring the annual report for up to 5 years from the date of the approved coastal development permit 5-04-324.

A Commission staff biologist reviewed the proposed enhancement plan and monitoring plan and concurs that the submitted plans are appropriate for the type of restoration being proposed. The Commission approved a similar type of bluff restoration project up coast from this site, just north of the Torrance beach public parking lot in the City of Redondo Beach (5-03-280), and more recently along the Torrance Bluff at 529 Paseo de la Playa (5-07-206).

Monitoring is necessary to assure that any restoration project succeeds. Conditions vary with each site. Monitoring can assure that the type of plant is appropriate to that site; that the density of cover is established, and that erosion control weeding and replacement of failing plants occurs. Moreover, there are relatively few coastal bluffs suitable for restoration projects and accessible for such efforts. Restoration is necessary to support the reestablishment of the rare and endangered species that once flourished on these bluffs. While no habitat is displaced in the process, the project represents an opportunity that may not be repeated. Monitoring will provide the applicant and the Commission with useful information for designing future projects.

Monitoring is necessary for a second reason. If disturbance of the existing soils is allowed to enable restoration, there is the possibility of erosion resulting from the activity itself. Sloughing has occurred in the past due to rainfall and pioneered trails. The proposed plan provides for coverage dense enough to prevent rain induced erosion, and the existing fencing system should prevent the public from walking on to the restored area. It is important to monitor and maintain the site to assure that these features can function as proposed and if corrections are needed to propose necessary changes.

The Commission is requiring as a part of **Special Condition #6** that final monitoring plans conform to the plans submitted to the Commission dated January 3, 2005. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping and monitoring plans approved pursuant to this permit, the applicant is required to submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The Commission finds that coastal bluff restoration that provides potential habitat for an endangered species is consistent with Section 30240 of the Coastal Act.

G. Deed Restriction

To ensure that any prospective future owners are made aware of the applicability of the conditions of this permit, the Commission imposes Special Condition #10 requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions, and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

H. Unpermitted Development

Development has occurred on the subject site without benefit of the required coastal development permit including, but not limited to, construction of a bluff toe shade structure with a retaining wall and support columns, grading, drainage structures, a paved walkway on the bluff slope, a two-level concrete patio, storage locker and other structures at the toe of the bluff, and an irrigation system on the bluff face.

The applicant is requesting after-the-fact approval of the walkway on the bluff face, storage locker, two-level patio, and grading at the bluff toe, replacement of the existing shade structure with a smaller shade structure, removal of the irrigation system, and conversion of an existing fire pit at the bluff toe into a planter. In order for the Commission to approve the overall project, **Special Condition #3** requires the applicant to submit revised site plans that show removal of the shade structure and supporting columns prior to issuance of this coastal development permit. **Special Condition # 10** has been required to ensure timely compliance with the permit conditions and implementation of the proposed landscaping plan. **Special Condition #11** ensures that the existing unpermitted shade structure and irrigation is removed in a timely manner.

Although development has taken place prior to submission of this permit application, consideration of this permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

I. Local Coastal Program

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

On June 18, 1981, the Commission approved with suggested modifications the City of Torrance Land Use Plan (LUP). The City did not accept the modifications and the certified LUP, which was valid for six months, lapsed. The major issues raised in the LUP were affordable housing, bluff top development and beach parking. Because the City of Torrance does not have a certified LUP the standard of this review is the Coastal Act.

Based upon the findings presented in the preceding section, the Commission finds that the proposed development consisting of the Habitat Enhancement Plan, as conditioned, will not create adverse impacts on coastal resources and is therefore consistent with applicable policies contained in the City of Torrance certified LUP. In addition, the Commission finds that approval of the proposed habitat enhancement project will not prejudice the City's ability to prepare a Local Coastal Program consistent with the Chapter 3 policies of the Coastal Act, as required by Section 30604(a).

J. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 that the activity may have on the environment.

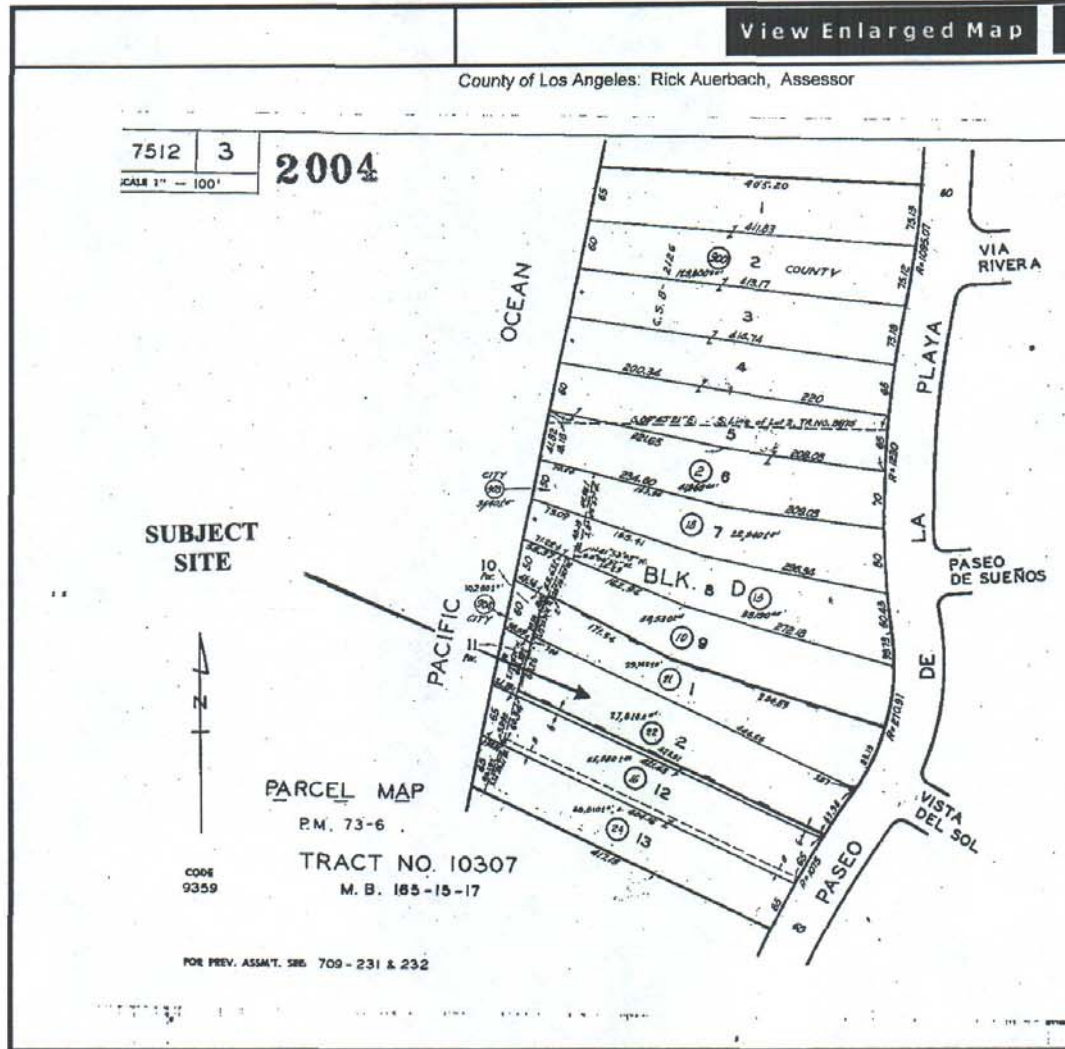
The proposed project, as conditioned, has been found consistent with the visual resource, environmentally sensitive habitat and natural hazard policies of Chapter 3 of the Coastal Act. All adverse impacts have been minimized and there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permits P-7342 (Hood), 5-97-050 (Kreag) and applicable amendments (Prince), 5-84-187 (Briles), 5-84-187-A (Briles), 5-85-755 (Briles), 5-90-1041 and amendments (Stamegna, Hawthorne Savings and Campbell), P-77-716 (Warren), P-7266 (Bacon), A-80-6753 (Bacon), 5-90-868 (Schreiber), 5-01-018 and 5-01-409 (Conger), 5-85-183 (Hall), 5-90-1079 (Wright), 5-91-697 (Wright), A-79-4879 (McGraw), 5-83-618 (Fire), 5-96-167 (Lichter), 5-01-080 (Palmero), 5-03-212 (Bredesen), 5-03-328 (Carey), 5-03-280 (City of Redondo Beach), 5-07-206 (Joyce).
2. Terchunian, A.V., 1988, *Permitting coastal armoring structures: Can seawalls and beaches coexist?* Journal of Coastal Research, Special Issue No. 4, p. 65-75.
3. United States Geological Survey, Monty A. Hampton and Gary B. Griggs, Editors, Professional Paper 1693, *Formation, Evolution and Stability of Coastal Cliffs -- Status and Trends*, pp1-4, Introduction.
4. *Geologic and Soils Engineering Investigation Proposed Single Family Residence, 437 Paseo de la Playa, Torrance, California for Mr. and Mrs. Robert Hood*, (Project No. KB 1935) prepared by Kovacs – Byer and Associates Inc. January 23, 1976.
5. United States Department of the Interior, United States Fish and Wildlife Service, *"Habitat Restoration and Enhancement Plan, C.G. and V.C. Bredesen Trust Property, 437 Paseo de la Playa Redondo Beach, CA,"* letter signed by Ken Corey for Karen Goebel, November 3, 2004
6. Department of Boating and Waterways and State Coastal Conservancy, 2002, *"California Beach Restoration Study,"* Sacramento, California, www.dbw.ca.gov/beachreport.htm.
7. City of Torrance, Aerial photograph, 1978.
8. City of Torrance, Aerial photograph, 1992
9. USGS, 1:40,000 map, Santa Monica Bay, 1893,
10. United States Army Corps of Engineers, 1:62,500 map, Redondo Beach, Quadrangle Sheet, 1944.
11. Cotton, Shires and Associates, Inc., "Geotechnical Investigation and Evaluation, 437 Paseo de la Playa, Torrance, California" March 2004.
12. Skelley Engineering wave run-up and coastal hazard study, 437 Paseo de la Playa Redondo Beach, CA" June, 2004.
13. SMP inc. Structural Analysis of Existing Detached Palapa Patio Cover, 437 Paseo de la Playa Torrance ca 90277" 5-06-04, 8 pages.
14. David Skelly, Geosoils, Memorandum to Mr. Chris Bredesen, November 30, 2004.
15. Stanley E. Remelmeyer, City Attorney, City of Torrance, 1976. Position Paper of the City of Torrance Regarding the Proposal to Acquire Eight (8) Blufftop Parcels at Torrance; Requesting Deletion from the Acquisition List of the Proposal to Acquire Eight (8) Blufftop parcels at Torrance Beach;
16. Kelley, and Associates, Environmental Sciences, Inc. "Supplemental Habitat Enhancement Plan, Native Vegetation Landscape Plan, seaward slope, 437 Paseo de la Playa, Torrance, Los Angeles County, California," January 2005.
17. Kelley and Associates, Environmental Services, Inc., "Native Vegetation Landscaping Plan, 437 Paseo de la Playa, Torrance, Los Angeles County, California, " November 2003.
18. Kelley and Associates, Environmental Sciences, Inc., Supplemental Habitat Enhancement Plan and Supporting Documents, 11 October 2004

Assessor Map

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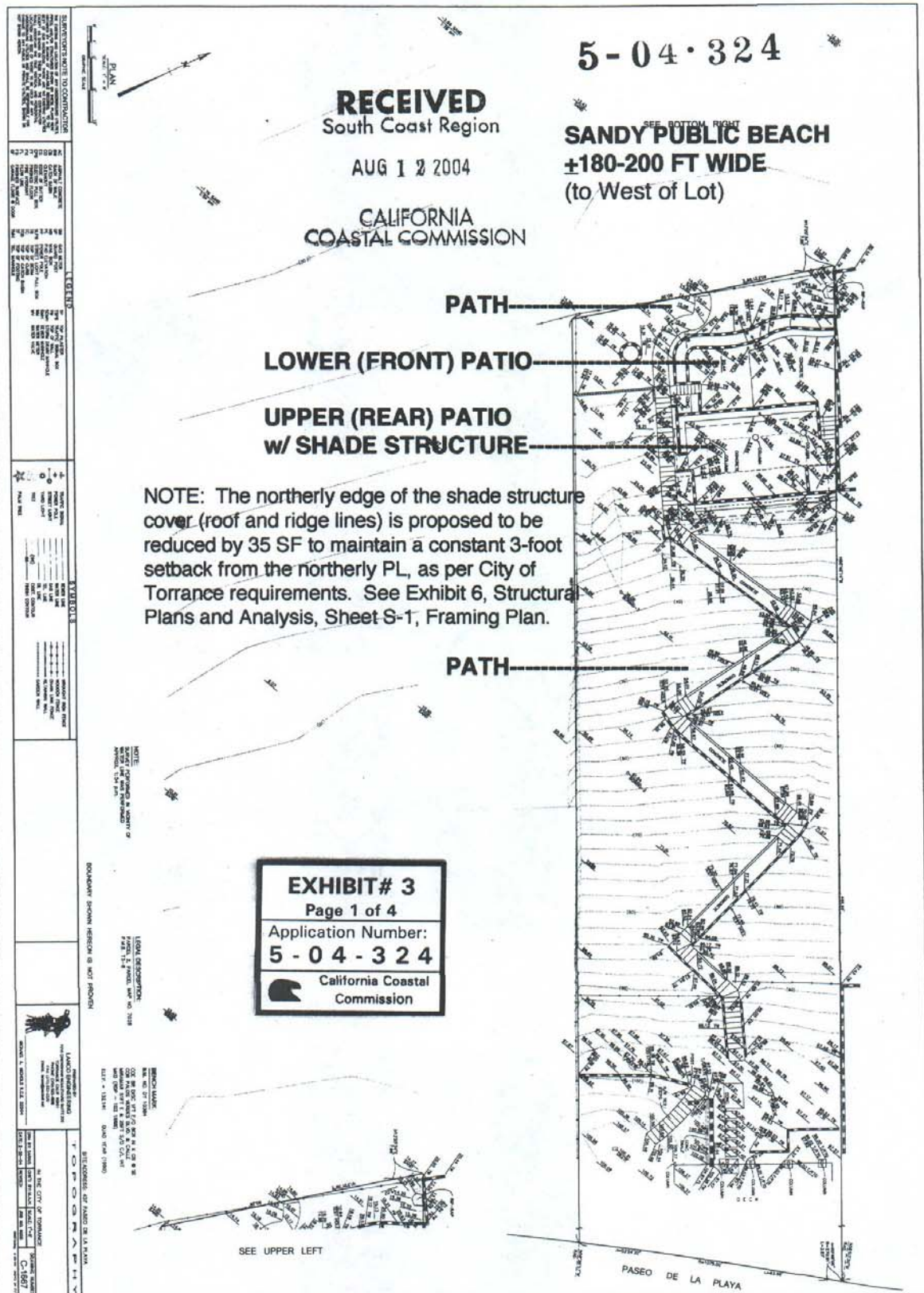
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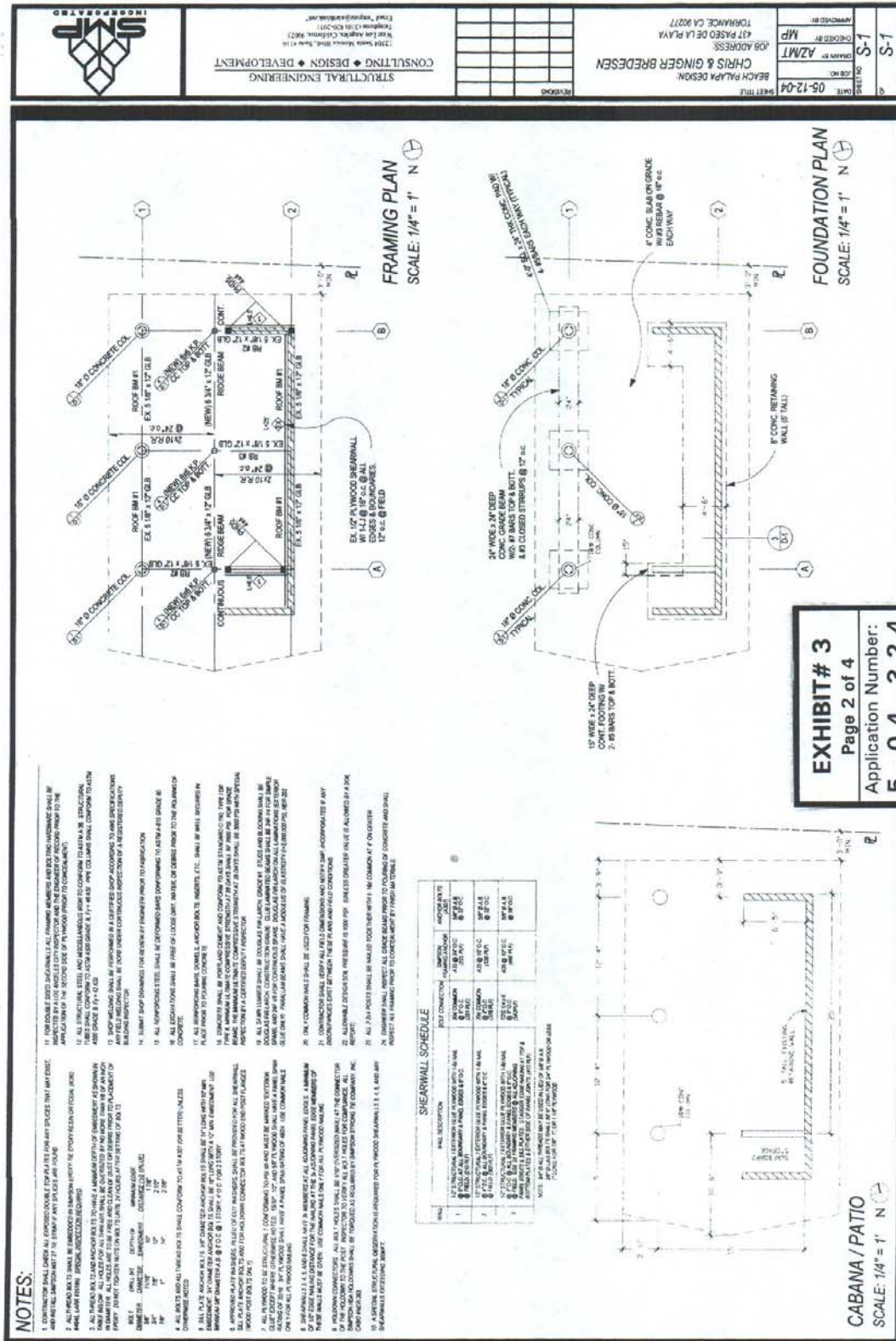
Page 1 of 1

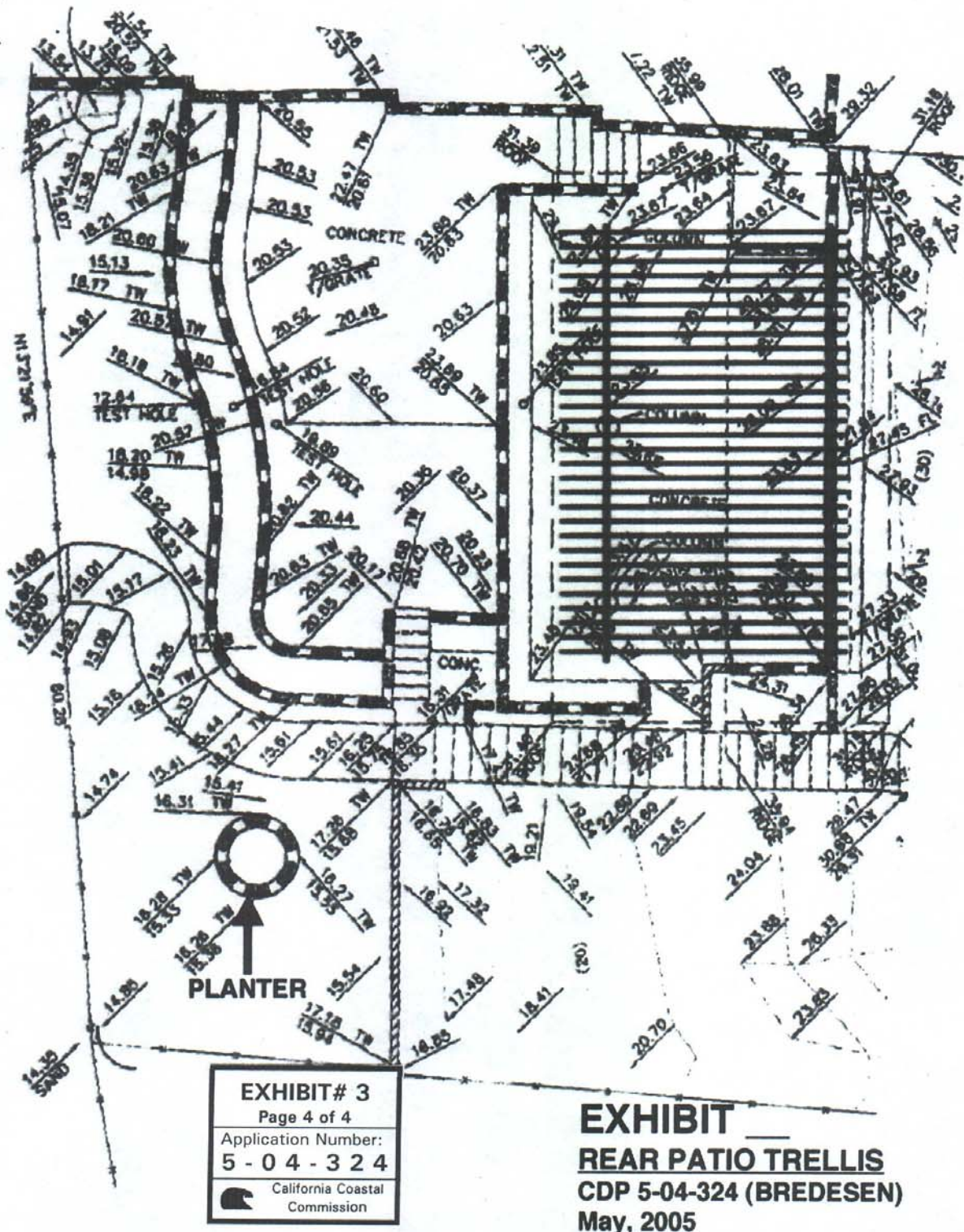
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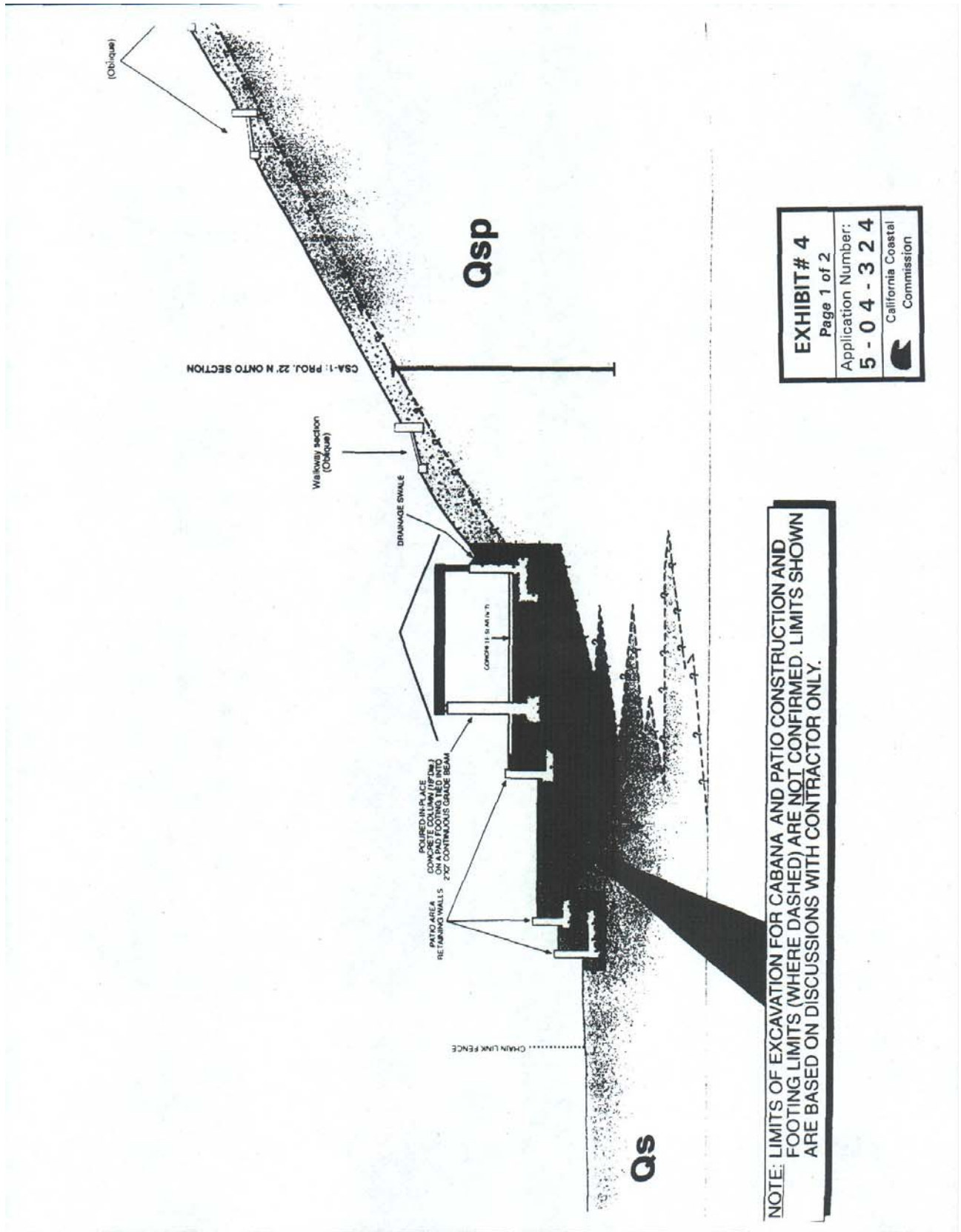
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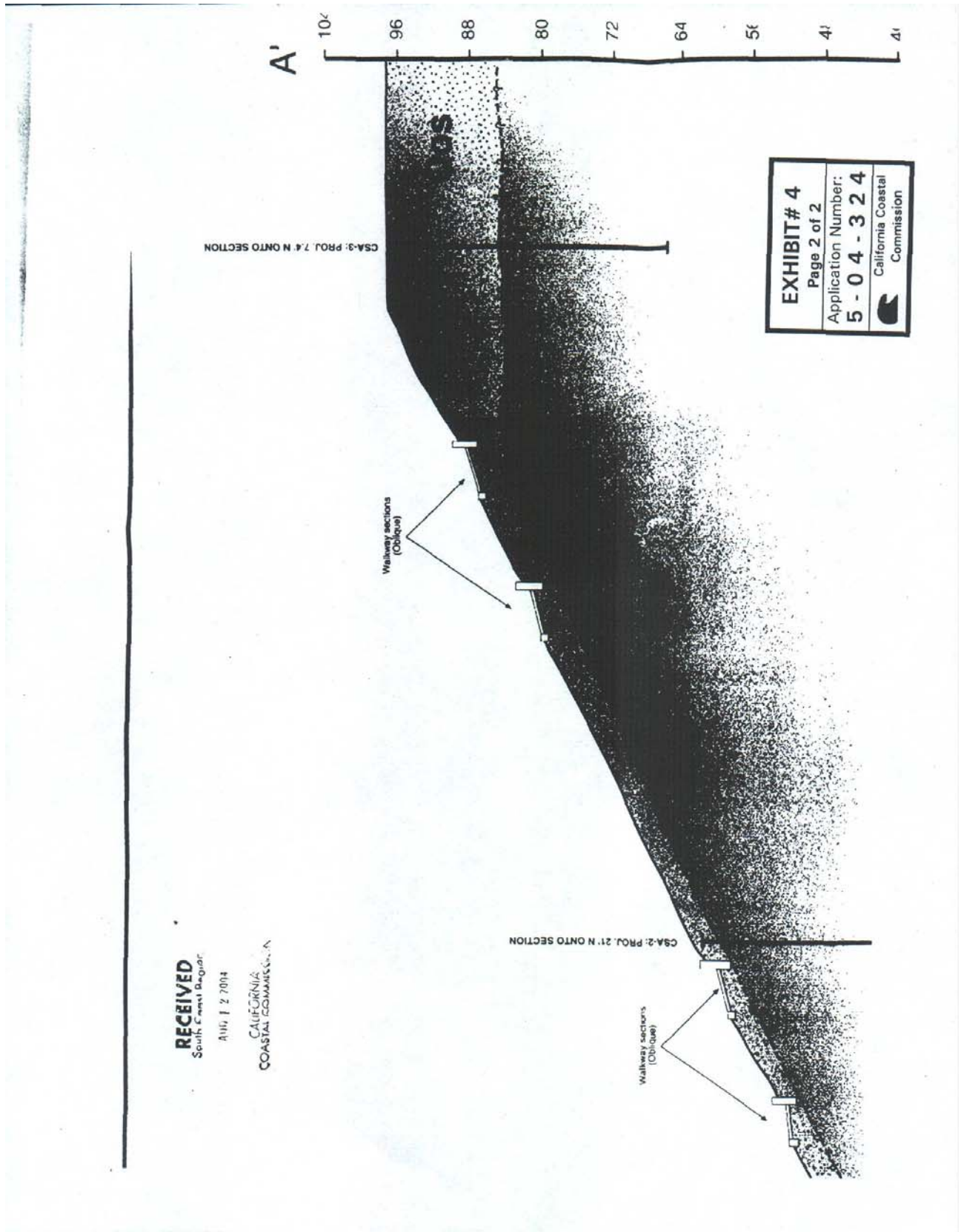
California Coastal
Commission





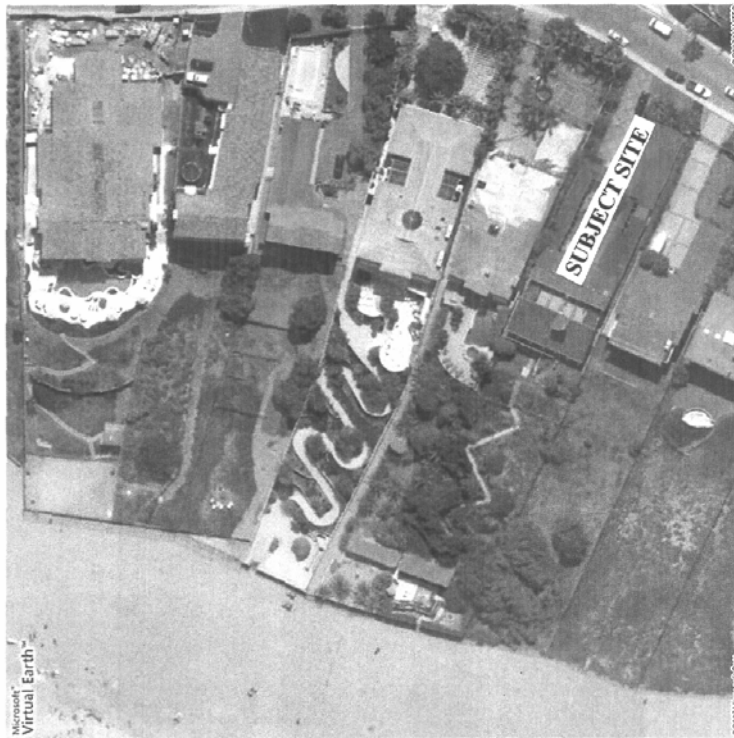









417 – 605 Paseo de la Playa, Torrance, CA, Image from Coastal Records, 1972



417 – 445 Paseo de la Playa, Torrance, CA, Image from Microsoft Earth, 2007



417 – 445 Paseo de la Playa, Torrance, CA, Image from Coastal Records, 2006

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417 – 631 Paseo de la Playa, Torrance, CA, Image from Microsoft Earth, 2007.

DAVID B. KELLEY
Consulting Plant and Soil Scientist

23 December 2004

Mr. Mike Bianchi
U. S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, California 92009
TEL: 760-431-9440 x304
mike_bianchi@R1.sws.gov

RE: Your File #: FWS-LA-4243.1
Habitat Restoration and Enhancement Plan
Property of the CG and VC Bredesen Trust
Chris and Ginger Bredesen, Trustees
437 Paseo de la Playa
Redondo Beach, California 90277

Dear Mike:

Thank you again for your role in providing a letter response (from Karen Goebel, Assistant Field Supervisor, US Fish and Wildlife Service, 4 November 2004) regarding our recently submitted Revised Native Vegetation Landscaping Plan for the Bredesen property in Torrance/Redondo Beach (K&AES, Inc., 24 October 2004). Following our earlier discussions and your recommendations in the memo, we have revised Exhibit 2 of the Plan to reflect and implement your suggestions regarding an increase of the density of *Eriogonum parvifolium* plants in the areas on the west-facing slope of the Bredesen property designated as the Coast Buckwheat Community on the Plan. Pam Emerson of the California Coastal Commission requested your confirmation of our agreement to your recommendations that 150-200 buckwheat plants be planted, rather than the 90 originally proposed. I have added an additional note to the Revised Native Vegetation Plan (Exhibit 2) to my report that states:

Note Added in Revision (23 December 2004)

"In order to increase the density of *Eriogonum parvifolium* plants on the west-facing slope (see Notes 2, 3, and 18, above), following discussions with the USFWS, a minimum of 175 plants of *Eriogonum parvifolium* shall be planted on 48" centers within the Coast Buckwheat Community planting areas shown on this Revised Native Vegetation Plan. If planting of *E. parvifolium* (10 plants) along the downslope side of the walkway is not preferred or approved by the California Coastal Commission, to avoid potential future crowding or shading by adjacent other screening native vegetation, then these plants shall also be located on the slope in areas presently proposed to be vegetated with native grasses."

Kelley & Associates Environmental Science
216 F Street #51 • Bala, CA
Tel: 530-753-1232 • Fax: 530-753-2935 • E-mail: <d

COPY

RECEIVED
South Coast Region

JAN 6 - 2005

CALIFORNIA
COASTAL COMMISSION

EXHIBIT # 7

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Application Number:

5 - 0 4 - 3 2 4

California Coastal
Commission

DAVID B. KELLEY
Consulting Plant and Soil Scientist

I am sending you under separate cover a printed copy of the Revised Native Vegetation Plan (Exhibit 2), to which I have added the above note, for your files and would appreciate your sending Pam Emerson at the Coastal Commission staff (pemerson@coastal.ca.gov) an email note confirming your review of and concurrence with this note as accomplishing the guidance previously provided by USFWS in this regard.

Thank you again for your support of our designs and objectives for this native vegetation planting and your keeping Pam advised thereof. Please call me at 530-753-1232 if you have any questions. Best regards.

Sincerely yours,

David B. Kelley
Consulting Plant and Soil Scientist

P.S. I attempted to send this note by e-mail earlier this week, but it bounced back to me. I think that I have the wrong e-mail address for you. If you could contact me by e-mail with a correction, I would appreciate it. My e-mail address is dbkelley@jps.net

Letter: M. Bianchi • Native Vegetation Plan • December 201

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 California Coastal Commission

5-04-324 (Bredesen)
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Pam Emerson

From: Mike_Bianchi@r1.fws.gov
Sent: Monday, January 03, 2005 3:36 PM
To: pemerson@coastal.ca.gov
Cc: dbkelley@jps.net
Subject: CG and VC Bredeson Trust Landscaping Plan

Ms. Emerson,

I have received a Revised Native Vegetation Plan from K&AES, Inc. (David Kelley) for the Bredeson property. The revised plan has increased the number of coast buckwheat (*Eriogonum parvifolium*) to be planted on the property from 90 plants to 175 plants. The increased number of coast buckwheat on the site is consistent with the spirit and intent of our previous guidance (FWS-LA-4243.1). I anticipate that the increased number of coast buckwheat will better approximate the number of plants found on occupied El Segundo Blue Butterfly (ESB) habitat. If you require any further information regarding this issue, feel free to contact me via email or at the phone number below.

Mike Bianchi
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009
760.431.9440x304



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STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Pam Emerson

SUBJECT: Bredesen landscaping plan

DATE: November 2, 2004



Documents reviewed:

1. David B. Kelley. November 2003. Native vegetation landscaping plan. Seaward Slope, 437 Paseo De La Playa, Torrance, Los Angeles County, California.
2. David B. Kelley. October 11, 2004. Supplemental habitat enhancement plan: Native vegetation landscape plan. Seaward slope, 437 Paseo De La Playa, Torrance, Los Angeles County, California. A report prepared for C.G. and V.C. Bredesen Trust.
3. David B. Kelley. October 30, 2004. Letter to P. Emerson (CCC) in reference to "Revised native vegetation landscaping plan, Bredesen Trust, 437 Paseo De La Playa, Redondo Beach, California 910277."

The landscaping plan is divided into two areas – an area devoted to the coast buckwheat community and a horticultural zone (including a strip immediately adjacent to the stairway to the beach). Both areas will be planted with native species, most of which are common in coastal sage scrub and coastal bluff scrub communities. The plant palette for the coast buckwheat community appears appropriate with the exception of mulefat, a typically riparian species. This species should be removed from the plan unless it can be demonstrated that it is a component of natural coastal bluff scrub communities in the area or that there are overriding ecological reasons for including it in this highly manipulated part of the coast. Coast buckwheat is emphasized because of its importance to the rare El Segundo blue butterfly. Within the horticultural zone, most species are also characteristic of coastal sage scrub or coastal bluff scrub communities. However, some large shrubs/small trees characteristic of chaparral, such as Toyon and California lilac, are also included, presumably for ornamental reasons. California blackberry is also included in the plant palette. I think this is not a good idea. This species is often invasive and could come to dominate areas where it is not desired unless there is intensive maintenance.

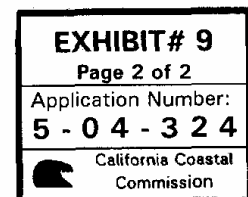
The success criteria are: 1. 80% survival of container plants, 2. 75% ground coverage by native species, 3. No more than 25% bare ground, and 4. No more than 15% cover by annual non-native species. To this should be added: 5. Zero percent cover of

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J. Dixon memo to P. Emerson dated November 2, 2004 re Bredesen landscaping plan. Page 2 of 2.

perennial non-native species or of invasive species. I think these success criteria are adequate for a small project such as this in this setting. The plan should include the following: "Final monitoring for success within the coast buckwheat community shall take place after at least 3 years without remediation or maintenance activities other than weeding and, during drought years, irrigation. After initial plant establishment, irrigation may take place from October through April to supplement rainfall during unusual drought years."

The final plan should include a description of how success will be evaluated and should be subject to approval by the Executive Director.



STATE OF CALIFORNIA

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P. O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 426-4304 (714) 846-0648

590-5071

EXHIBIT# 10

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Application Number:

5 - 0 4 - 3 2 4

California Coastal
Commission

EDMUND G. BROWN JR.

RESOLUTION OF APPROVAL AND PERMIT

FILE COPY

Application Number: P-4-1-76-7342

Name of Applicant: Robert S. Hood

517 Paseo de la Playa, Redondo Beach, CA 902

Permit Type: ☒ Standard

☐ Emergency

Development Location: 437 Paseo de la Playa, Torrance, CA

Development Description: Construct a two-story, single-family
dwelling with detached four-car garage, arcade and swimming
pool with attached jacuzzi, 26 feet above average finished
grade.

Commission Resolution:

- I. The South Coast Conservation Commission finds that the proposed development:
- A. Will not have a substantial adverse environmental or ecological effect.
 - B. Is consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302.
 - C. Is subject to the following other resultant statutory provisions and policies:
City of Torrance ordinances.
 - D. Is consistent with the aforesaid other statutory provisions and policies in that:
approval in concept has been issued.
e following language and/or drawings clarify and/or facilitate carrying out the intent of the South Coast Regional Conservation Commission:
application, site map, plot plan and approval in concept.

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EXHIBIT# 10

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Application Number:

5 - 0 4 - 3 2 4

California Coastal
Commission

II. Whereas, at a public hearing held on June 7, 1976
(date)
at Torrance by a unanimous vote
(location)

the application for Permit Number P-4-1-76-7342 pursuant to
the California Coastal Zone Conservation Act of 1972, subject to the
following conditions imposed pursuant to the Public Resources Codes
Section 27403: Prior to issuance of permit, applicant shall submit:

1. a signed and notarized statement agreeing: a. to either use a
solar heating system only, for the swimming pool or to have an unheated
swimming pool; and b. to use solar heating system only, for the jacuzz
and 2. No portion of the structure, including decks and balconies,
shall encroach upon the 25 ft. bluff setback.

Condition/s Met On June 21, 1976 By jlrc/jr

III. Said terms and conditions shall be perpetual and bind all future
owners and possessors of the property or any part thereof unless
otherwise specified herein.

IV. The grant of this permit is further made subject to the following:

- A. That this permit shall not become effective until the attached
verification of permit has been returned to the South Coast
Regional Conservation Commission upon which copy all permittees
have acknowledged that they have received a copy of the permit
and understood its contents. Said acknowledgement should be
returned within ten working days following issuance of this
permit.
- B. Work authorized by this permit must commence within 360 days of
the date accompanying the Executive Director's signature on the
permit, or within 480 days of the date of the Regional Commission
vote approving the project, whichever occurs first. If work
authorized by this permit does not commence within said time,
this permit will automatically expire. Permits about to expire
may be extended at the discretion of the Regional Commission.

V. Therefore, said Permit (Standard, ~~Emergency~~) No. P-4-1-76-7342
is hereby granted for the above described development only, subject
to the above conditions and subject to all terms and provisions of
the Resolution of Approval by the South Coast Regional Conservation
Commission.

VI. Issued at Long Beach, California on behalf of the South Coast
Regional Conservation Commission on June 21, 1976.

M. J. Carpenter
Executive Director

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NO.348 0002

JB
FILED
LOS ANGELES SUPERIOR COURT
SEP 04 2007
JOHN A. CLARKE, CLERK
S. Barrett
BY S. BARRETT, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

11 CHRIS BREDESEN and GINGER) CASE NO. YS014958
12 BREDESEN, AS TRUSTEES OF THE C.)
13 G. AND V. C. BREDESEN TRUST,) STATEMENT OF DECISION
14)
15 Petitioners,)
16 vs.)
17)
18 CALIFORNIA COASTAL COMMISSION,)
19 PETER DOUGLAS, Executive Officer,)
20 of California Coastal Commission,)
21 and DOES 1 through 10, inclusive,)
22 Respondents.)

23 The above-entitled Petition for Writ of Mandate came on regularly
24 for trial on July 13, 2007, in Department 85 of the above-entitled
25 Court, the Honorable Dzintra Janavs, Judge presiding, and was heard on
26 that date. Sherman L. Stacey, Esq., appeared as counsel for the
27 Petitioners CHRIS BREDESEN and GINGER BREDESEN, AS TRUSTEES OF THE C.G.
28 AND V.C. BREDESEN TRUST ("Petitioners"). Deputy Attorney General Hayley
Peterson appeared as counsel for Respondents CALIFORNIA COASTAL
COMMISSION and its Executive Director PETER DOUGLAS (the "Coastal
Commission").
///

- 1 -

YS014958 Chris Bredesen et al. vs. California Coastal Commission
STATEMENT OF DECISION

EXHIBIT# 11

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Application Number:

5 - 0 4 - 3 2 4

 California Coastal
Commission

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NO.348 0003

1 Without objection, the Court admitted into evidence the 9-volume
2 certified Administrative Record. The Court denied Petitioners' request
3 that the Court make a visit to the site which was the subject of the
4 administrative proceedings before the Commission. No Requests for
5 Judicial Notice were before the Court.

6 The Petition for Writ of Mandate was then argued and submitted for
7 decision after the parties' submissions of a proposed statement of
8 decision on July 27, 2007. The Court, having considered the evidence
9 and heard the arguments of counsel, and being fully advised, issues the
10 following Statement of Decision.

11 I.

12 NATURE OF THE CASE

13 Petitioners challenge the Coastal Commission's denial of Coastal
14 Development Permit No. 5-04-324 (the "CDP") sought by Petitioners for
15 certain improvements at Petitioners' home in Torrance, and seek a writ
16 of mandate ordering the Coastal Commission to set aside its decision to
17 deny the CDP, and to reconsider its action consistent with the Court's
18 ruling in this Statement of Decision.

19 II.

20 DESCRIPTION OF ADMINISTRATIVE ACTION

21 Petitioners' home at 437 Paseo de la Playa (the "Property") is
22 located at the top of a slope that descends to the beach. The
23 Petitioners' private property includes a portion of the beach and is
24 separated from Torrance State Beach by a chain link fence with a gate
25 approved by the Coastal Commission in 1973. (1 AR 110.) Petitioners
26 sought the CDP: (1) to install a four-foot wide, earth tone color
27 pathway of wood, concrete and flagstone from the house to the beach
28 (with railroad ties placed along the sides in some areas and 4" x 4"

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1 posts supporting a rope "handrail" along some portions), (2) to
2 construct a 1,200+ square-foot, two-level concrete and flagstone patio
3 with a roof over it (to be replaced by a trellis), storage lockers, and
4 landscape planters at the base of the slope with a five-foot high
5 retaining wall at the rear of the patio, (3) to place a vinyl fabric on
6 the existing chain link fence to obscure the Petitioners' Property from
7 Torrance State Beach, and (4) to replace non-native vegetation with
8 native vegetation. (7 AR 1361-1362.) These improvements had been
9 permitted by the City of Torrance. (9 AR 1810; 9 AR 1821-1822.)

10 Expert technical reports were submitted that supported the
11 Petitioners' CDP application, including: (i) a "Geotechnical
12 Investigation and Evaluation" by Cotton Shires & Associates, Inc.,
13 Consulting Engineers and Geologists (2 AR 199-250), (ii) a Wave Runup
14 and Coastal Hazard Study by Skelly Engineering, Civil Engineers (2 AR
15 277-293), (iii) a Structural Analysis by SMP Incorporated of the patio
16 and shade structure (2 AR 295-306), and (iv) a Native Vegetation
17 Landscaping Plan by David P. Kelley, Consulting Plant and Soil Scientist
18 (2 AR 251-275; 7 AR 1420-1443). The professional reports generally
19 concluded that the improvements the Petitioners proposed met the
20 policies of the Coastal Act. The Coastal Commission Staff Geologist
21 Mark Johnsson agreed with the Cotton Shires & associates that the slope
22 was "grossly stable under static conditions might be . . . marginally
23 unstable under seismic loading." The improvements would "assure
24 [geologic] stability". (8 AR 1659-1660.) Staff Geologist Johnsson also
25 concurred with Skelly Engineering, that the Petitioners' property would
26 not be "subject to damage from even the most extreme beach erosion and
27 wave attack." (8 AR 1660.) The U.S. Fish & Wildlife Service wrote to
28 say that the landscaping plan was suitable for the el Segundo Blue

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1 Butterfly (8 AR 1497-1498), and Coastal Commission Staff Ecologist John
2 Dixon issued a similar concurrence with suggestions for monitoring
3 conditions. (8 AR 1601, 1657-1658.)

4 Petitioners communicated and worked diligently with Coastal
5 commission staff between November 2003 and April 2005 to arrive at
6 development that would be consistent with Coastal law and policy. (2 AR
7 176, fn. 9; 8 AR 1581, 9 AR 1810-1811.) Coastal Commission Staff
8 recommended denial of the CDP. The hearing before the Coastal
9 Commission was held on June 7, 2005. The Coastal Commission followed
10 its Staff Recommendation and denied the CDP. (9 AR 1865-1866.) The
11 Coast Commission Findings of Fact are found at 8 AR 1576-1714 and
12 consist of adopting its Staff Report as Findings. See, Cal. Code of
13 Adm. Regs., Title 14, § 13096(b).

14 III.

15 STANDARD OF REVIEW

16 The Coastal Commission's denial of the CDP was a quasi-judicial
17 action taken after a hearing and subject to review by the Superior Court
18 under California Code of Civil Procedure section 1094.5. Review of
19 Coastal Commission decisions under Section 1094.5 is expressly provided
20 for in Public Resources Code section 30800(a). Under Section 1094.5,
21 the inquiry focuses on whether the Petitioners received a fair hearing,
22 whether the Coastal Commission acted within or in excess of its
23 jurisdiction and whether the Coastal Commission abused its discretion.
24 The Petitioners focus on the last of these three, abuse of discretion.

25 Abuse of discretion is established when the decision of the Coastal
26 Commission is either not supported by its findings, or when the evidence
27 does not support the findings. (Code Civ. Proc., § 1094.5(b).) In
28 determining whether the evidence supports the findings, subsection (c)

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1 of Section 1094.5 gives two alternative standards: whether the findings
2 are supported by the weight of the evidence (the independent judgment
3 test) or whether the findings are supported by substantial evidence (the
4 substantial evidence test).

5 The Court in *Bolsa Chica Land Trust v. Superior Court* (1999) 71
6 Cal.App.4th 493, 503, held:

7 “(3) “In determining whether substantial evidence
8 supports an agency’s reasoning process, the trial court must
9 look at the ‘whole record.’ [Citations.] ‘The “in light of the
10 whole record” language means that the court reviewing the
11 agency’s decision cannot just isolate the evidence supporting
12 the findings and call it a day, thereby disregarding other
13 relevant evidence in the record. [Citation.] Rather, the court
14 must consider all relevant evidence, including evidence
15 detracting from the decision, a task which involves some
16 weighing to fairly estimate the worth of the evidence.
17 [Citation.] [Citations.] That limited weighing is not an
18 independent review where the court substitutes its own
19 findings or inferences for the agency’s. [Citation.] “It is
20 for the agency to weigh the preponderance of conflicting
21 evidence [citation]. Courts may reverse an agency’s decision
22 only if, based on the evidence before the agency, a reasonable
23 person could not reach the conclusion reached by the agency.”
24 [Citation.]’ [Citation.]”

25 Petitioners urge the Court to apply its independent judgment.
26 Respondent argues that the substantial evidence test applies. The Court
27 finds that the substantial evidence test should be applied. *Sierra Club*
28 *v. California Coastal Commission* (1993) 19 Cal.App.4th 547, 557-557.

IV.

ABUSE OF DISCRETION HAS BEEN ESTABLISHED

23 A. The Coastal Commission’s Findings Are Not Supported by Substantial
24 Evidence, Except As To Roof

25 To approve a CDP for development, the Coastal commission must make
26 findings of fact that: (1) it “is in conformity with Chapter 3
27 (commencing with Section 30200)” (Publ. Res. Code, § 30604(a)); (2) the
28 permitted development will not prejudice the ability of the local

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1 government to prepare a local coastal program that is in conformity with
2 Chapter 3.¹ (Pub. Res. Code, § 30604(a)); and (3) there are no feasible
3 alternatives or feasible mitigation measures available that would
4 substantially lessen a significant adverse effect that the activity may
5 have on the environment (Pub. Res. Code, § 21080.5(d)(2)(A)).

6 1. The Coastal Commission's Findings That The Path, Patio and
7 Other Improvements Are Inconsistent With Visual Quality
8 Policies Are Not Supported By Substantial Evidence, Except As
9 To The Roof Structure

10 Public Resources Code section 30251 states:

11 "30251. The scenic and visual qualities of coastal areas
12 shall be considered and protected as a resource of public
13 importance. Permitted development shall be sited and designed
14 to protect views to and along the ocean and scenic coastal
15 areas, to minimize the alteration of natural land forms, to be
16 visually compatible with the character of surrounding areas,
17 and, where feasible, to restore and enhance visual quality in
18 visually degraded areas. New development in highly scenic
19 areas such as those designated in the California Coastline
20 Preservation and Recreation Plan prepared by the Department of
21 Parks and Recreation and by local government shall be
22 subordinate to the character of the setting."

23 The Petitioners' Property is not in a designated "highly scenic
24 area". (9 AR 1755, fn. 13-14.) Therefore, the standard under Section
25 30251 is consistency with community character. (8 AR 1590.)

26 The finding that "[w]hile there are exceptions, the overall
27 appearance of the bluff along Paseo de la Playa is natural and
28 undeveloped" (8 AR 1578) is not supported by the evidence. The tables

1 The City of Torrance has no local coastal program. A Torrance land
2 use plan (the first step for a local coastal program, see Pub. Res.
3 Code, § 30511(b)) was rejected by the Coastal Commission in 1981. No
4 further activity toward a local coastal program has taken place. The
5 Coastal Commission findings of prejudice to a possible future Torrance
6 local coastal program were based solely on the same faulty findings of
7 inconsistency with Coastal Act policies described herein.

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1 in the findings (8 AR 1582-1583), the decisions of the Commission in
2 Briles and Hawthorne, and observation of the photographs of the area
3 show that the bluff is not natural and free of paths along the northerly
4 eight lots, the distinct area in the findings by the Commission on
5 Permit No. 5-01-018 (Conger). (8 AR 1592.) The eight bluff top parcels
6 are patently different from bluffs southward toward Palos Verdes. They
7 are less steep and rugged and far from pristine. (9 AR 1795 (1976), 9
8 AR 1796-1798.) In 1973, fencing and gates at the beach were approved,
9 presumably for the use of the owners and their guests, not for
10 passersby.

11 The Coastal Commissions's findings on visual quality can be
12 summarized as follows: (i) any path, patio or other improvements on the
13 slope are inconsistent with the visual quality of the area and have an
14 adverse visual effect when viewed from the beach (8 AR 1591); (ii)
15 improvements at the Petitioners' Property do not preserve the community
16 character (ignoring prior findings to the contrary) (8 AR 1592); (iii)
17 no alteration of the slope can be permitted (8 AR 1590); and (iv) denial
18 of any improvements on the slope is consistent with CDP 5-01-018
19 (Conger) and CDP 5-04-328 (Carey).

20 These findings are not supported by substantial evidence, except as
21 regards any roof structure over the patio. The path cannot be seen from
22 the beach, and is only visible in photographs taken from offshore and
23 then only from an airplane. Although such photographs identify the
24 location of the improvements, they do not depict the visual quality from
25 the beach. The visual appearance of an improvement from offshore cannot
26 be the basis of denial of a permit. *Schneider v. California Coastal*
27 *Commission* (2006) 140 Cal.App.4th 1339 [44 Cal.Rptr.3d 867].

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1 Furthermore, the photographs reveal that there are numerous
2 improvements on neighboring properties which establish the character of
3 the area and are far more visible than the Petitioners' path. Some of
4 these improvements predate the 1973 effective date of the Coastal Act
5 (see, *San Diego Coast Regional Comm'n v. See the Sea, Ltd.* (1973) 9
6 Cal.3d 888 [513 P.2d 129; 109 Cal.Rptr. 377]). Others were approved by
7 the Coastal Commission with findings that the improvements were
8 consistent with visual quality of the area. (See, *infra.*)

9 In 1986, the Coastal Commission approved a concrete serpentine path
10 down the slope at 429 Paseo de la Playa, two doors away. (CDP 5-85-755
11 (Briles) 3 AR 534-546, 559-564, 596.) A six-foot masonry wall and paved
12 area at the bottom of the slope and six-foot masonry walls along the
13 side property lines were also approved with the following finding:

14 "The Commission finds that as conditioned, alteration of
15 natural bluff landforms will be minimized, and the scenic and
16 visual quality of Torrance Beach will be protected, consistent
17 with Section 30251 of the Coastal Act." Findings, 5-85-755
18 (Briles) 3 AR 539.

19 In 1995, the Coastal Commission approved a concrete walk and stair
20 and a masonry wall at the beach boundary at 433 Paseo de la Playa, next
21 door to Petitioners' Property.² (CDP 5-90-1041-A2 (Hawthorne); 3 AR 589-
22 612.) The Coastal Commission found:

23 "The proposed stairway is consistent with the stairway
24 approved on the adjoining [Briles] property. Moreover, the
25 proposed site is located within the northern end of this
26 coastal bluff range where slopes are more gradual than the

27 ²Subsequently, in 1996, the Coastal Commission approved a four-foot
28 retaining wall at the bottom of the slope at 433 Paseo de la Playa. The
Coastal Commission found the retaining wall to be immaterial. (CDP
5-90-1041A3; 3 AR 588.) Under the Commission's regulations, an
immaterial amendment is one which has no "potential for adverse impacts,
either individually or cumulatively, on coastal resources or public
access to and along the shoreline." Cal. Code of Adm. Regs., Title 14,
§ 13166(b).

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1 souther area . . . [T]he Commission finds that, as
2 conditioned, the proposed development will not significantly
3 alter the natural bluff landforms, and the scenic and visual
4 quality of Torrance Beach will be protected, consistent with
5 Section 30251 of the Coastal Act." Findings, 5-90-1042A1
6 (Hawthorne) 3 AR 596.

7 The Coastal Commission claims that the photographs show many
8 improvements on the properties which were installed unlawfully without
9 a permit. (See 8 AR 1583; 9 AR 1798-1800.) However, the record
10 contains no evidence beyond the Coastal Commission Staff assertion that
11 some of these improvements are unlawful. It is also unclear to what
12 extent they may be unlawful. Improvements (fences, walls, paths, stairs
13 landscaping, etc.) which the Coastal Commission admits it did approve
14 (and found consistent with the visual quality policy) and other
15 preexisting improvements are all far more visible from the beach than
16 the path and other improvements, except the patio roof.

17 The Coastal Commission construes Public Resources Code section
18 310251 to include the words "or prohibit" after "minimize" as a modifier
19 to "alteration of natural landforms". It appears that the Coastal
20 Commission means to prohibit any improvements on the slope or at the
21 beach when it finds at 8 AR 1590, "Any alteration of this landform would
22 affect views to and along the public beach." The Coastal Commission has
23 no authority to construe the statute with added words. *Schneider v.*
24 *California Coastal Commission*, supra, 140 Cal.App.4th at 1345.

25 While the patio and the retaining wall at the bottom of the slope
26 are obscured from visibility by the fabric with which the Petitioners
27 seek to cover the fence,³ the roof of the patio and its supports are

28 ³Although the Coastal Commission found that the vinyl fabric was not
consistent with the Coastal Act because it was subject to deterioration
(8 AR 1592); no evidence supports this finding.

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1 highly visible from the public beach. (9 AR 1797.) The Petitioners
2 offered to modify or alter the roof with a trellis planted with roses or
3 whatever visually compatible material the Coastal Commission would
4 accept. Such proposed modifications still contemplate a permanent
5 structure (posts and trellis) of some type. Substantial evidence in the
6 record supports the Commission's findings as to any roof type structure,
7 including trellis at the toe of the bluff.

8 2. The Coastal Commission's Findings That The Path, Patio and
9 Other Improvements Are Inconsistent With Public Resources Code
10 Section 30252 Is Not Supported by Substantial Evidence.

11 Public Resources Code section 30253 states:

12 30253. New development shall: (1) Minimize risks to life and
13 property in areas of high geologic, flood, and fire hazard.
14 (2) Assure stability and structural integrity, and neither
15 create nor contribute significantly to erosion, geologic
16 instability, or destruction of the site or surrounding area or
17 in any way require the construction of protective devices that
18 would substantially alter natural landforms along bluffs and
19 cliffs.

17 Engineers John Wallace, William R. Morrison and Stanley
18 Helenschmidt of Cotton Shires & associates performed a technical site
19 evaluation of the Petitioners' Property. (2 AR 199-250.) They
20 concluded that the proposed improvements (a) would not pose a risk to
21 life or property, (b) did not adversely affect stability or structural
22 integrity of the site, (c) would not contribute significantly to
23 erosion, geologic instability, or destruction of the site or surrounding
24 area, and (d) did not require construction of protective devices that
25 would substantially alter natural landforms along the bluffs or cliffs.
26 (2 AR 215.)

27 Coastal Commission Staff Geologist Mark Johnsson concurred with the
28 Cotton Shires findings on stability. (8 AR 1659.) At the hearing

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1 Johnsson expressed unspecific concerns about surficial erosion. (9 AR
2 1847.) The Cotton Shire report contained recommendations for drainage
3 control to minimize surficial erosion. (8 AR 1632-1633.) The slope
4 maintenance measures addressed Johnsson's surficial erosion⁴ concerns.
5 (8 AR 1632-1633.)

6 The wave uprush study prepared for the Property by Skelly
7 Engineering concluded that waves will not impact the subject property.
8 (2 AR 276-293.) Staff Geologist Johnsson also agreed with the Skelly
9 engineering conclusion that "the toe of the slope at the subject
10 property is not likely to be subject ot damage even from the most
11 extreme beach erosion and wave action over the life of the
12 improvements." (2 AR 285; 8 AR 1660.)

13 Despite this uncontroverted evidence, the Coastal Commission relied
14 upon generalized studies of the entire California coastline to conclude
15 that cliffs and bluffs along the coast are subject to erosion and
16 therefore the Petitioners' CDP could not assure stability. The Coastal
17 Commission also noted at argument that in 1964 someone excavated an
18 unengineered tunnel in the sandy slope on another property and was
19 killed in a cave in. (9 AR 1873-1874.) Such event provides no evidence
20 that a properly designed walk and patio are somehow suspect to suffer
21 damage. The broad generalized evidence cited in the record simply does
22 not support this conclusion applied to the Petitioner. Nonspecific
23 evidence cannot be "substantial evidence" when countered by specific
24 expert testimony. *Surfside Colony, Ltd. v. California Coastal*
25 *Commission* (1991) 126 Cal.App.3d 1260, 1260, 1268 [277 Cal.Rptr. 373].

26

27

28 ⁴Surficial erosion was a problem with the historic sandy paths down
the slope. The proposed path would have solved that problem.

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1 The Coast Commission found that the Petitioners' path and patio
2 were not consistent with Section 30253(2), because the improvements
3 require "protective devices that would substantially alter natural
4 landforms along bluffs and cliffs." (8 AR 1596.) These "protective
5 devices" consist of a small five-foot retaining wall at the back of the
6 patio (see 2 AR 305) and some railroad ties along the side of the path
7 to keep sand off of the path. (See 2 AR 250.) The railroad ties along
8 the path do not constitute a "substantial alteration", nor does the
9 small retaining wall.

10 In statutory construction, significance must be given to "every
11 work, phrase, sentence and part of an act". *Tucker Land Co. v. State of*
12 *California* (2001) 94 Cal.App.4th 1191, 1197 [114 Cal.Rptr.2d 891];
13 *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr.
14 722]. The Coastal Commission gives no meaning to "substantially".
15 "[S]ubstantially" . . . suggests 'considerable' or 'to a large degree'.
16 See Webster's Third New International Dictionary 2280 (1976)" *toyota*
17 *Motor Mfg., Kentucky, Inc. v. Williams* (2002) 534 U.S. 184, 196-197 [122
18 S.Ct. 681, 151 L.Ed. 615].

19 The word "substantially alter" means a considerable alteration. By
20 ignoring the word "substantially" the Coastal Commission reads
21 Section 30253 to say that all alterations, both substantial and
22 insubstantial, are prohibited. The minor alterations for the path and
23 patio are not a considerable alteration.⁵ The total movement of soils
24

25 ⁵The "protective devices" are less substantial than those already
26 approved on the next two properties and found consistent with the
27 Coastal Act in the findings from Briles and Hawthorne cited above. The
28 Coastal Commission claims that "new" evidence has caused it to change
its view. However, the "new" evidence in the record does not support
this contention.

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1 for both path and patio amounts to only 38 cubic yards.⁶

2 3. Section 30236 Concerning Seawalls and Natural Shoreline
3 Processes Has No Application to the Petitioners' Property.

4 The Coastal Commission found the Petitioners' project inconsistent
5 with Public Resources Code section 30235 dealing with seawalls and
6 natural shoreline processes.

7 30235. Revetments, breakwaters, groins, harbor channels,
8 cliff retaining walls, and other such construction that alters
9 natural shoreline processes shall be permitted when required
10 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.

11 The Petitioners propose no revetment, no breakwater, no groin, no
12 harbor channel, and no seawall. These sorts of improvements interfere
13 with wave action and are well described at 5 AR 1057-1067. The language
14 of Section 30235 clearly applies to structures that interfere with the
15 wave action on the shore. The Coastal Commission claims that the small
16 retaining walls for the patio and the railroad ties along the path are
17 "cliff retaining wall" not permitted by Section 30235.

18 The Coastal Commission found that the improvements assure stability
19 by "hardening portions of the cliff face for the walks and patios and
20 relying on protective devices to support the cliff, but would not
21 consistent with Section 30253(2), because it requires protective devices
22 that would substantially alter natural landforms along the bluffs and
23 cliffs." (8 AR 1595, 1596.) There is, however, no evidence that
24 Petitioners property is a cliff. There was a long debate among experts
25 as to whether or not the dune structure slope was even a bluff. (See 8
26

27 ⁶The quantity of 38 cubic yards is a small amount. The Coastal
28 Commission approved grading of 550 cubic yards at 417 Paseo de la Plays
in CDP No. 5-97-050A2. (8 AR 1690.)

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1 AR 1586-1589.) The record has pictures of California cliffs at 5 AR
2 1072-1073. Cliff profiles, slopes and geologic composition are nothing
3 like those on the Petitioner's property. There is no evidence that the
4 Petitioners' slope is a cliff. The railroad ties on the path and the
5 small patio retaining wall are not "cliff retaining walls".

6 Section 30235 was not cited with respect to similar development and
7 no similar findings were made by the Coastal Commission concerning
8 Briles or Hawthorne. (See, 3 AR 534-546, 3 AR 589-612.)

9 Statutory construction requires that the "various parts of a
10 statutory enactment must be harmonized by considering the particular
11 clause or section in the context of the statutory framework as a whole".
12 *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [514 P.2d
13 1224, 110 Cal.Rptr. 144]. Statutes must be given "a reasonable and
14 common sense interpretation consistent with the apparent purpose and
15 intention of the lawmakers, practical rather than technical in nature,
16 which upon application will result in wise policy rather than mischief
17 or absurdity." *DeYoung v. City of San Diego* (1983) *supra*, 147
18 Cal.App.3d at 18 [194 Cal.Rptr. 22]; *City of Costa Mesa v. McKenzie*
19 (1973) 30 Cal.App.3d 763, 770 [105 Cal.Rptr. 569].

20 The reasonable and common sense interpretation of Section 30235 is
21 that it deals with devices that interfere with the actions of waves on
22 the shoreline. Where wave energy causes cliff retreat, a retaining wall
23 to protect the cliff is permitted only to protect a structure placed in
24 danger. Where there is not a cliff and where there is no wave energy
25 reaching a slope, Section 30235 does not apply. Other alterations to
26 natural landforms are governed by the lesser standard of Section 30253,
27 which limits only substantial alterations.

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1 Wave energy reaching any particular stretch of cliffs and the
2 presence or absence of a protective beach are major factors related to
3 natural shoreline processes on cliffs. (6 AR 1256.) Contribution to
4 shoreline sand supply from cliff retreat is estimated to be 10-30%. (6
5 AR 1265.) However, that contribution to shoreline sand supply requires
6 that the cliff must retreat. To retreat, a cliff must be subject to
7 wave energy. AT the Petitioners' Property the uncontroverted evidence
8 is that no wave energy reaches the slope.⁷

9 4. There Is No Evidence To Support The Commission's Findings That A
10 Path and Improvements Interfere With Public Access To The Beach.

11 There is no evidence in the record that Petitioners' improvements
12 are inconsistent with the public access policies of Sections 30210,
13 30220 and 30221. Neither is there evidence that the proposed
14 development would "significantly" degrade the public use of the public
15 beach. (Pub. Res. Code, § 30240(b).)

16 The Coastal Commission makes the finding that the mere existence of
17 private improvements on the Petitioner property will detract from the
18 public from use of the beach.

19 "The Commission finds that the area directly seaward of the
20 development is a publicly owned recreation area and that the
21 proposed project would decrease the distance from the public
22 beach to private residential uses, thereby significantly
23 degrading the area for public recreation." (8 AR 1599.)

24 There is no substantial evidence in the record to support this
25 finding. Coastal Staff's opinion, without more, is not evidence. The
26 Briles and Hawthorne improvements have been in place for 10-20 years.

27 ⁷Civil Engineer Skelly and Coastal Staff Geologist Johnsson agree
28 that "the toe of the slope is not likely to be subject to damage even
from the most extreme beach erosion and wave attack over the expected
economic life of the improvements." (8 AR 1660.) There is no contrary
evidence.

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1 Yet there is not one word of testimony, written or oral, to support the
2 finding that the public is deterred from Torrance Beach by the
3 visibility of those private improvements on private property. (8 AR
4 1695-1713; 9 AR 1828-1844.)

5 In contrast, testimony at the hearing and letters from members of
6 the public contained in the record negate the Coastal Commission
7 speculation that development on private property for private residential
8 uses adjacent to a public beach would "significantly" degrade the area
9 for public recreation, and is uniformly supportive of the development.
10 (8 AR 1695-1713; 9 AR 1828-1844.)

11 5. Findings That The Petitioner Project Will Result In Habitat
12 Destruction Are Unsupported.

13 In its efforts to comply with the Coastal Commission Staff (see 7
14 AR 1350) Petitioners proposed to replant more than 7,000 square feet of
15 their property demands with the host plan for the El Segundo Blue
16 Butterfly for purposes of mitigation. There was no evidence that the El
17 Segundo Blue Butterfly had ever been found on the Petitioners' property
18 or that there is presently any habitat suitable to the butterfly. The
19 U.S. Fish and Wildlife Service would, however, like to create such
20 habitat and recognizes that it must obtain the cooperation of private
21 owners to do so. (1 AR 19-21.)

22 Hoping to enhance their chance of success, Petitioners developed a
23 detailed plan for habitat. U.S. Fish & Wildlife Service and the Coastal
24 Commission Staff Ecologist John Dixon approved it. (8 AR 1501-1502,
25 1601, 1657-1658.) The habitat experts concluded that the path and patio
26 and the habitat can coexist as the revegetation plans include the path
27 and patio (see 8 AR 1514).

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1 The Coastal Commission nevertheless denied the project, because
2 some other property owner, on some other project, at some unknown future
3 date, might propose a project that would interfere with some
4 unidentified existing habitat somewhere else and "be severe in degrading
5 what is left of the butterfly habitat". (8 AR 1601.) No evidence
6 supports the finding.

7 6. The Finding That There Would Be A Significant "Cumulative
8 Impact" Is Not Supported By Substantial Evidence.

9 The Coastal Commission found that there would be cumulative impacts
10 from approval of Petitioners' because it would set a precedent "not just
11 for the northern eight lots but along the entire bluff face". (8 AR
12 1591.) The evidence, as well as the prior actions and express findings
13 of the Coastal Commission, establish a clear distinction between lots
14 located at the north end of Torrance Beach (including Petitioners'
15 Property) and the twenty lots lying to the south. (See CDP 5-01-409
16 (Conger), 4 AR 779.) The distinctions are clear in the photographs. (9
17 AR 1793-1984.) There are several relevant factors: (i) the Coastal
18 Commission approved Permit No. A12-20-73-2419 for a fence along the
19 property line on the beach for 5 properties (including Petitioners'),
20 each property having a gate in the fence to go to and from the beach⁸,
21 (ii) the eight lots to the north have their house pads at a much lower
22 elevation, making a path less steep and a path less visible from the
23 beach; (iii) the eight lots to the north have a much gentler slope,
24 making the paths possible without significant grading, engineering or
25

26 ⁸The fence and gate coupled with the existing paths at that time
27 certainly created a reasonable expectation among the five owners that
28 traversing from their home to the beach was expected by the Coastal
Commission.

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1 extraordinary development; and (iv) the majority of the eight lots to
2 the north have a path or paths, fences and retaining walls.

3 The Coastal Commission's December 15, 1995, findings on CDP
4 5-90-1041A2 (Hawthorne) explain the factual differences between the
5 northern area where Briles, Hawthorne and Petitioner are located are
6 located, and the areas to the south depicted by the aerial photographs.

7 "Moreover, the proposed site [433 Paseo de la Playa] is
8 located within the northern end of this coastal bluff range
9 where slopes are more gradual than the southern area. The
10 bluffs in the northern area are also shorter in height. The
11 proposed site is the approximate transitional area between the
12 more gradual sloping bluffs and the steeper taller bluffs."
13 3 AR 596.

14 The Coastal Commission's March 5, 2002, findings on CDP 5-01-409
15 (Conger) identify the precise division line between the distinct
16 formations to the south where paths have not been allowed and the area
17 to the north (including Petitioner) where paths are allowed.

18 "The 28 existing homes are situated in a pattern that reflect
19 the contours of the bluff top and its elevation. Beginning
20 with the most norther lot, 413 down to lot 445, the existing
21 homes are situated much lower than the remaining lots. From
22 lot 449 to lot [6]31⁹, the existing homes are situated
23 higher." 4 AR 779.

24 The Coastal Commission itself distinguished the eight lot area
25 where Briles, Hawthorne and Petitioner are located, and where the
26 Commission has approved improvements on the slope, from the northern
27 twenty lots where Conger is located. The dividing line found by the
28 Coastal Commission is between 445 and 449 Paseo de la Playa.

29 ///

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32 "The findings for Conger contain a typographical error at 4 AR 779
33 in that the southernmost of the 28 lots is 631 Paseo de la Playa, not
34 531 as typed in the findings.

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1 6. The Alternative Proposed By The Coastal Commission Fail As A
2 Matter Of Law.

3 The Coastal Commission found that Petitioner has alternatives.
4 (8 AR 1603-1604.) None of the alternatives is reasonable. The first
5 alternative is that Petitioner can share a path with a neighbor. There
6 is, however, no evidence in the record that Petitioner has a right to do
7 so. Furthermore, the neighbor's path at 433 Paseo de la Playa abuts the
8 boundary of 429 Paseo de la Playa, not Petitioners' Property as stated
9 in the findings. Thus, even if the neighbor agreed to allow
10 Petitioner's family and guests to use its property to go down to the
11 beach, Petitioner would have to walk on the street past the neighbor's
12 house to do so.

13 The remaining alternative suggested is that Petitioners leave their
14 own Property, walk or drive down to enter the public beach some distance
15 away, walk down the public beach to reenter their own Property through
16 the gate approved by the Coastal Commission. These are not reasonable
17 alternatives to the permissible use of Petitioners' own property.

18 B. Denial of Equal Protection.

19 Petitioners have argued that the denial of the CDP by the Coastal
20 Commission denied them the equal protection of the laws guaranteed by
21 the California and United States Constitutions. The record shows that
22 the Coastal Commission approved far more significant improvements
23 serving similar purposes on the next two properties north of
24 Petitioners' Property. As set forth in this statement of decision, the
25 evidence does not support the findings which purport to explain a
26 rational basis for this disparate treatment. However, in view of this
27 Court's determination that the Coastal Commission abused its discretion

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1 and must reconsider its action, it is not necessary and the Court does
2 not reach the constitutional issue urged by the Petitioners.

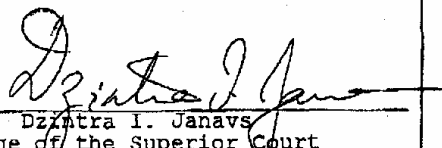
3 C. Other Causes Of Action.

4 The Petition contains nine causes of action. The Petitioners'
5 Motion for Peremptory Writ of Mandate dealt with only the Third, Fourth,
6 Fifth and Sixth Causes of Action. The First Cause of Action (mandate-
7 denial of fair hearing) and the Second Cause of Action (mandate-denial
8 of fair hearing) may be remedied by the further proceedings ordered by
9 this Court and there is no need to reach a conclusion on either of them.
10 Therefore, the First and Second Causes of Action are dismissed. The
11 Seventh Cause of Action (mandate-lack of jurisdiction) is dismissed as
12 it was not raised in the motion. The Eighth and Ninth Causes of Action
13 are for Declaratory Relief. These Causes of Action will be transferred
14 to Department 1 for reassignment unless Petitioner dismisses them, in
15 which case Judgment consistent with this statement of decision will be
16 entered.

17 Parties shall have until September 24, 2007, 4:00 p.m. to file
18 objection, if any, to this Statement of Decision.

19 The parties shall also meet and confer and submit proposed Judgment
20 and Writ consistent with this Statement of Decision September 24, 2007,
21 4:00 p.m.

22 DATED: September 4, 2007

23
24 
25 Dzintars I. Janavs
26 Judge of the Superior Court
27
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