

W22A/B

From: Lee Strother [strotherbeach@hotmail.com]
Sent: Thursday, December 03, 2009 8:20 AM
To: Karl Schwing
Subject: Access on Lot 11

Good Morning Karl,

Having taken a closer look at the submitted drawings where the access across lot 11 is indicated in the appeal I would like to offer a further clarification. It APPEARS from the drawings that there is a fairly good sized space between the existing house to the South of lot 11 and the existing pump station below lot 11. From the angle of the aerial view it also APPEARS as if there is adequate space for the applicants movement of the beach access point when in fact there IS NOT. The drawings AND the aerial view are deceptive in regards to the actual reality of the siting of the proposed alternative public beach access, and short of actually visiting the site Christy Rios has submitted photographs to help bring clarity to their misrepresentations. To the South of the pump station are also obstacles related to the pump building itself that do not appear in any drawings or aerial photographs submitted to the Commission. Why not? I think my first letter answers that question.

Furthermore, the Applicant's Appeal and Position states "The location will have a greater visibility by the street approaching the beach (Not true at all. Walk down Boca del Canon and there is no doubt where the existing beach access point is, so the proposed location hidden beside a house is not an improvement and certainly NOT "greater".) and more visibility from the beach to the street. (Again not true at all. How is it possible that a proposed trail terminus tucked behind a sewer pumping station would provide "more visibility". Especially when the rail crossing point for the public using the Beach Trail is to the NORTH of the pump station and therefore the primary direction from which the public would be approaching the proposed access point that would now be hidden behind a sewer pumping station). The new entrance will be a four foot wide cement path and stairway, (The same could be said for an improvement to the existing public beach access and if done it would be even better than anything that is proposed in the appeal.) where now there exists an extremely steep, (I wouldn't classify this as "extremely steep" at all. Fairly steep might be a more accurate clarification.) eroded dirt path two feet wide, highly deteriorated (Yes, some erosion and some deterioration but if anything just evidence and PROOF of the EXTENSIVE usage of this access by the public for over 30 YEARS. Also stating that this access is "two feet wide" is just not true. The small portion where there is a rut the actual rut might be two feet wide in the CENTER of a wider portion of the trail and again evidence of the daily, weekly, yearly, decades long usage by the public. Dirt does that when constantly used. However, the overall dimension of the access trail is closer to 4+ feet.) and extremely dangerous (I have already commented on this characterization in my other letter to you, and the Commission, and this is just further proof of the applicants efforts to mislead and misrepresent important considerations before the CCC.)".

Karl, I would appreciate it if you would also include these comments, along with the other letter I have sent to you, in the addendum to the Commission. As before, my position is to offer clarity to what I perceive as an attempt to mislead the Commission in the appeal before them and the public's interest in this is too important to not speak out.

Sincerely, Lee Strother

Get gifts for them and cashback for you. [Try Bing now.](#)

27

12/3/2009

W22A/b

From: Lee Strother [strotherbeach@hotmail.com]
 Sent: Tuesday, December 01, 2009 5:25 PM
 To: Karl Schwing
 Subject: FW: 323 and 325 La Rambla, San Clemente, CA

Sorry but I errored in the e-mail address and left out the "k". I am forwarding this to you from my "sent" file with the corrected address. Lee

From: strotherbeach@hotmail.com
 To: schwing@coastal.ca.gov
 Subject: 323 and 325 La Rambla, San Clemente, CA
 Date: Tue, 1 Dec 2009 17:08:11 -0800

Dear Karl,

I was notified a little over a week ago of the hearing up in San Francisco that pertains to the properties located at 323 and 325 La Rambla. I was then able to locate the notice of appeal, CCC denial and took awhile to go over the majority of the findings. As with the current property being developed at 319 La Rambla there are more than a few misrepresentations made by the representatives of the owners.

One of several examples used to sway a change in favor of the property owner's interests from the CCC, and in turn diminish the public's more than 30+ years of prescriptive use of the property, pertains to the beach access pathway from the street "Boca del Canon" to the public "Beach Trail" and beach. They imply that the access across lot 11 will be realigned with "greater visibility" to the left (South) of the "Pump Station" and will be a much wider access ("four foot wide cement path and stairway") than, as they characterize, the "two feet wide" and "extremely dangerous" access currently used by the public. For a pathway that they characterize as being "extremely dangerous" I have never, in over 30 years, heard about someone from the public sustaining an injury and it is used DAILY!! No doubt someone, during the thousands of passages in 30+ years, has sprained an ankle or gotten a scrape, but certainly not a characterization of "extremely dangerous" and I am positive that the lack of police, fire and rescue records pertaining to injuries at this important beach access would refute their characterization. However, if this is predominately all you knew about this public beach access point it sure sounds like the present owners have the best interests of the public in mind. First of all the pathway that has been used for over 30 years by the public, across lot 11, is probably more than 4 feet wide with a portion having a smaller "rut" in the middle do to the decades of public usage. This pathway also declines in an arching left hand turn due to the drop in height and therefore is a much better configuration for continued usage by the public. This is also an access point of importance to many since it does not involve stairs and so I see almost daily young mothers with their baby strollers using it to get to and from the beach. The stairs at "T Street" beach are not as easy for a young mother to navigate with a stroller in order to reach the Beach Trail and ocean and so they often go down to the Boca del Canon access point. The suggested redirection of the access across lot 11 is NOT, nor will it ever be, the best configuration for the public compared to the direction, visibility and location of what they are now using daily. Have a CCC representative come down and look at the location where they would have the beach access terminate and it becomes immediately clear of what the owners of lot 11 would like to pull off and why. Even the aerial photograph, with their red outline of the "Proposed Beach Access", is misleading and does not give a clear understanding of this important issue. Their effort to sugar coat a negative does not fly if the truth is known.

12/3/2009

d/a SCW

I could go over, in similar detail, several of the other misrepresentations but suffice it to say this one example should be clear enough to point out some of the "half-truths" used by the applicants to try and swing an approval. Looking at the size and location of the public viewpoint on the top of the coastal bluff (see aerial photo in the appeal), which is a part of the MOU, is NOT consistent with the size and location of what the public uses daily and has used for more than several decades!! Look at the denuded portion of the coastal bluff that the public has predominately used for viewing for over 30 years and compare that with the area outlined in red as the "proposed view point". This is an EXTREMELY IMPORTANT coastal viewpoint for the public and to diminish it in any way is not in conformance with prescriptive usage by the public for possibly 40 years.

The reason for this e-mail is because, after reading most of the information in the appeal, I have come across more than a few issues similar to the two I have mentioned above. I have great concern about any decisions on an appeal when there is distortion and misinformation presented to those that are making the decisions. From the misrepresentations that I have come across I concur with the Executive Director that the applications are incomplete for the many reasons mentioned and that more public input is needed regarding the public's interests as they are discussed in the MOU.

I would appreciate any updates or timely information that you could send to me so that I would be able to balance the CCC's knowledge of this very important coastal resource. From reading the appeal I was very pleased to see that you have addressed many important points and have done so quite well. However, when reading the response by the owner's attorney my concern is raised since others may be listening to what they imply without true understanding. Again I reference the beach access across lot 11 as just one example and the idea of the fox guarding the henhouse certainly comes to mind when I read their reply.

Sincerely, Lee Strother

Get gifts for them and cashback for you. [Try Bing now.](#)

Get gifts for them and cashback for you. [Try Bing now.](#)

W 22A / b

From: Christy Rios [christy.rios@gmail.com]
Sent: Wednesday, December 02, 2009 11:36 AM
To: Karl Schwing
Subject: access lot 11
Attachments: IMG_3109.JPG; IMG_3110.JPG

Hi Karl,

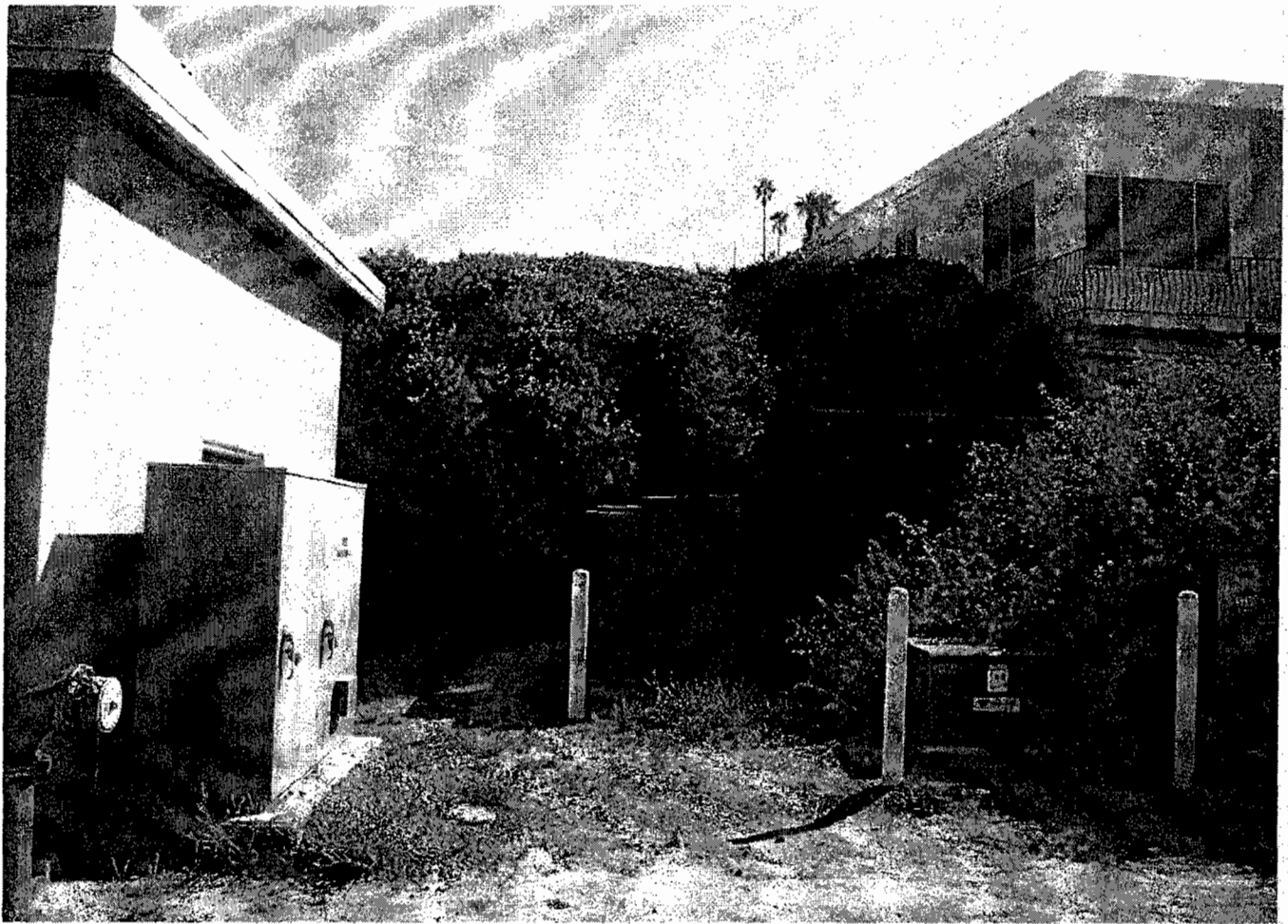
Lee Strother sent you an email and made reference to the access way across Lot 11. The proposed access can not be done because of the location of the pump house and which they show it's location on their diagrams incorrectly. I have attached photo's to show.

Christy

P.S. I will send 2 more pics under separate cover

--
Christy Armstrong
Armstrong Petroleum
949-650-4000 Ofc.
949-500-6692 Cell
949-645-1127 Fax
christy.rios@armstrongpetroleum.com

30



31



BARBARA K. Meserve
307 La Rambla
San Clemente, California 92672
December 3, 2009

W22a/b

California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

Re: Public Hearing on December 9, 2009; Item Nos. W22a & W22b
Appeal of Filing Determination 5-09-133-EDD & 5-09-134-EDD

To Whom It May Concern:

This letter serves to address the appeal of the Executive Director's Determination deeming the above-referenced Coastal Development Permit Applications incomplete, pursuant to Section 13056(d) of Title 14 of the California Code of Regulations. I agree with the Executive Director's Determination and submit that the appeal should be denied in its entirety.

The applicants have failed to provide essential information required by the Executive Director. This is not a "de minimis" violation, as defined by California Public Resources Code section 30825(d)(2), but rather, a critical violation that directly impacts the development of the lots at issue.

The findings of the California Legislature, as stated in the California Coastal Act, Section 30001 of the Public Resources Code, summarize why this appeal should be denied:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

The determination by Executive Director, deeming the applications incomplete, is in accordance with the purpose of the California Coastal Act.

Thank you for allowing affected homeowners to express their concerns regarding this matter.

Sincerely,

Barbara K. Meserve

33

W22a/b

From: dmscib@aol.com
Sent: Thursday, December 03, 2009 6:26 PM
To: Karl Schwing
Subject: Public Hearing scheduled for December 9, 2009

Reference: Item Nos. W22a and W22b and Appeal of Filing Determination 5-09-133-EDD & 5-09-134-EDD

Dear Commissioners:

As a concerned resident of southwest San Clemente, I respectfully ask you to consider the following points when reviewing the above items at the 12/9/2009 Public Hearing:

- The owners of the properties signed an MOU agreeing to submit information about the "cumulative impact of development on the subject lots with similar projects that might be built in the same area," an area which has previously experienced a massive landslide!
- After executing the MOU, the owners are now proposing not to comply with the terms of the MOU.
- As a result of the egregious actions of the owners not to comply with the MOU, the State is now required to waste valuable time and money considering the applicants' petition not to comply.
- Non-compliance with the MOU will fail the scrutiny of judicial review, i.e., non-compliance with CEQA and the Coastal Act.

The applicants should be held to fulfilling the requirements of the MOU and provide a comprehensive geotechnical analysis, including a stabilization plan for the entire site. The cost of not fulfilling these obligations could be catastrophic for this area.

Thank you for your consideration.

Dale Scibelli
313 W Paseo de Cristobal
San Clemente, CA

34

W22a/b

December 3, 2009

RECEIVED
South Coast Region

DEC 7 - 2009

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Item NO.s W22 and W22b
Date: Wednesday, December 9, 2009
Time: 9:00 a.m.
Location: San Francisco City Hall
Legislative Chambers, Room 250
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Sir/Madam:

My name is Kenneth Bonar and I own the home located at 311 La Rambla, San Clemente, California with my wife, Ann Bonar. Thank you for the opportunity to give input on this critically important decision.

In our letter to the California Coastal Commission dated November 12, 2007, (copy enclosed), we state several of our concerns regarding this proposed development. Our main issue (in previous letter), is the proposed project has significant and unique issues with potential impacts, many of which could negatively impact adjacent homes, roadways and beaches. Because of these unique issues at the site and cumulative impacts that likely will result from piecemeal development, we point out the need for a comprehensive plan and studies that address these issues and potential catastrophic problems, prior to approvals and construction.

The potential cumulative impacts of piecemeal development of the area are real, and it is wrong for development in this area to proceed without further environmental studies and general master planning of this site.

For these reasons, we respectfully request that you uphold the Executive Director's determinations that these permit applications are incomplete.

Sincerely,



Kenneth R. Bonar

35

W22a/b

November 12, 2007

California Coastal Commission
South Coast Area Office
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

DEC 7 - 2009

CALIFORNIA
COASTAL COMMISSION

Dear Sir/Madam:

My name is Kenneth Bonar and I own the home located at 311 La Rambla, San Clemente, along with my wife, Ann Bonar. We are writing in opposition to approval of Application Numbers 5-07-070 and 5-07-056. Our home is located across the street from the proposed development. We are asking the Coastal Commission to not approve the applications for development adjacent to our home at this time. Our issues at this point are as follows:

First, with our home being directly next door, and well remembering and observing the catastrophic slides in 1966, we are very concerned with the future general geology and slope stability impacts of the entire proposed development. The development of two lots could easily have negative slope stability impacts on existing homes and future developments in the area. It is our opinion the Coastal Commission is negligent if it does not require an overall geological hazard, slope stability and site development plan for the entire proposed development. Allowing two lots to proceed on a piece meal development basis is dangerous and shortsighted. It also seems that approving piece meal development in this area of proven slope instability does not fulfill the Coastal Commission's obligation to consider the cumulative impacts of the entire proposal. This entire multi lot proposal could well fit within the "individually minor but collectively significant" CEQA guidelines and need to be analyzed as one project despite separate ownership.

Second, it seems the issue of public beach access is still problematic. As the house on the corner of La Rambla and Boca Del Canon we already are concerned about overcrowded, overused public access adjacent to our home having a negative impact our lifestyle, quality of life and property values. Can this area accommodate additional traffic? Has the owner of the street (Boca Del Canon) approved this use and increased traffic. The access point, onto the beach, above the rail tracks is also likely a right of way issue. It is

36

steep and generally dangerous and likely not approved and for sure not improved by the City of San Clemente. Is it necessary for this public access to meet ADA standards? It seems here too an overall master plan should be required to resolve the neighbor's issues and insure the public's right to safe and adequate beach access.

And lastly, we do not understand why the Costal Commission is not requiring a master plan for the entire development. Let's face it...the development site has issues! These many issues will be better addressed in a master or comprehensive plan. As stated above, in my opinion, these many issues fall into the CEQA guidelines-Section 15355 defining cumulative impacts. Several issues in this proposal need to be looked at in total and not on a piece meal basis. At the end of the day, this is likely going to be a good project if there is a proper planning process. Please do not approve these two projects at this time as the public and neighbors deserve a complete and thorough master planning process that has yet to happen.

Sincerely,

Kenneth and Ann Bonar
3212 Danish Way
Salt Lake City, UT 84121

37

RECEIVED
South Coast Region

W22a/b

December 3, 2009

DEC 7 - 2009

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90902-4302

CALIFORNIA
COASTAL COMMISSION

RE: Item: NO.s W22a & W22b
Date: Wednesday, December 9, 2009
Time: 9:00 a.m.
Location: San Francisco City Hall
Legislative Chambers, Room 250
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

My wife and I are resident owners of a beautiful home at 315 Boca Del Canon, across the street from the proposed project. We have lived in our home since 1976 and are extremely concerned about the development of the bluff top property without a complete and comprehensive master plan addressing all of the vital issues. We are, also, in total support of the attached letter dated December 2, 2009, by the eight people filing the petition set before you.

For your review I have attached a picture of a Landslide which occurred on Boca Del Canon, San Clemente, Ca. in 1966.

The following are issues we are particularly concerned with:

1. With this letter and photo, I am making this a “matter of record by which I am putting you on notice to the condition of this bluff area and the severe consequences it could cost our community and the City of San Clemente. I don't believe you are aware of the intensity of this landslide, thus a complete master plan of development analyzing all of the issues seems proper before issuing any approvals. As you can see this was not a “small” landslide. In fact it took the bluff, and part of the Boca Del Canon Street. If you check the previous property Tax records you will see that the previous owner, Ted Tafe, never paid property taxes on this property because as he stated to me, the City and County Assessors viewed it as just a “pile of dirt, unbuildable.”

Nothing has been done to this property to insure that a landslide will not happen again.

THE BIG QUESTION IS, “WHO WOULD COVER THE LIABILITIES WHEN LAWSUITS OCCUR DUE TO A LANDSLIDE? WHAT RECOURSES WOULD THE ASSOCIATION AND RESIDENCES OF LA LADERA HAVE IF YOU GRANT THESE APPROVALS AND ALLOW THE POSSIBLE DISRUPTION OF THIS BLUFF AREA AND STREET?”

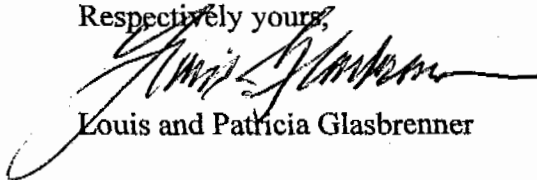
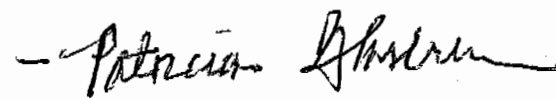
38

PAGE TWO...

2. If approved, the landowners will be getting approval without a master plan thus passing the liability of geotechnical work to each individual lot owner without the developer assuming any liability!

We truly appreciate your consideration and hope that you will listen to our serious concerns as represented through our representative that will be speaking at the meeting.

Respectively yours,

 - 
Louis and Patricia Glasbrenner

W22a/b

December 2, 2009

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

Re: Item NO.s W22a & W22b
Date: Wednesday, December 9, 2009
Time: 9:00 a.m.
Location San Francisco City Hall
Legislative Chambers, Room, 250
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

These comments are submitted by eight individuals who own single-family homes in the neighborhood that would be affected by the Coastal Development Permit Applications at issue here. These individuals also have filed a Petition for Writ of Mandate challenging (under CEQA) Coastal Development Permit Applications granted by the Commission for Lots 5 and 6 of the same Tract 4947, which Petition is scheduled for hearing by the court in May of 2010. (Strother, et al. v. California Coastal Commission, et al., Case No. 00042374 (Superior Court of California, County of Orange).)

BACKGROUND

Our Petition alleges, among other things, that the granting of permits for Lots 5 and 6 violated CEQA because the Commission failed properly to consider the cumulative impacts of those projects together with similar projects that might be built in the same area, like those now proposed for Lots 7 and 8. Specifically, the Petition challenges the Commission's reliance in approving the Lot 5 and 6 permits on purported mitigation measures that were to be addressed by an MOU between the Commission and the lot owners. The MOU then was not in existence but subsequently was executed by the Commission and by the owner of Lots 5-11 of Tract 4947.

Having executed the MOU, the owners of Lots 7 and 8 now refuse to comply with the requirements of their agreement, necessitating this hearing. Their refusal underscores the concerns we had at the time we opposed the granting of permits for Lots 5 and 6 and when we filed our lawsuit: Development of all these lots must be considered as a whole

40

in determining whether the proposed development on any lot is consistent with each of the important subjects that CEQA requires that the Commission consider, namely, coastal access, coastal views, slope stability and wildlife habitat. We believed then, and still believe, that such important concerns in such a sensitive area can only be addressed by a comprehensive plan addressing all of the lots. At the very least, the Commission should insist on compliance with the MOU it created to address the need for coordinated consideration of development permits for those lots.

Our Position On The Issue Now Before The Commission

We submit that the issue for decision by the Commission today is simple and straight-forward. The Commission should deny the applicants' motions and uphold the Executive Director's determinations that the permit applications are incomplete. The reasons for upholding the Executive Director's determination are obvious and indisputable. And there are no valid countervailing considerations.

The Executive Director's determinations are correct from the perspective of both contract law and, more importantly, the statutes that the Commission is charged with enforcing -- the Coastal Act and CEQA. Looking first to contract law (including the old-fashioned notion of living up to one's word), there are only two pertinent facts: First, the applicants agreed that prior to issuance of any permit they would provide a comprehensive development plan for all of the lots subject to the MOU. (MOU, paragraphs 8,12). Second, no such comprehensive development plan has been submitted. Indeed, the applicants have failed even to provide the basic information requested by Commission staff to evaluate the applications in the context of the MOU and possible future development plans on the other lots. The applicants should not be allowed to welch on the deal they made with the Commission.

From the perspective of the Commission's obligations under CEQA and the Coastal Act, the Executive Director's determinations are even more clearly correct. The Staff Report makes several important observations in this regard:

- "the only way the landowners could demonstrate such consistency with the requirements of the MOU (and ultimately the requirements of the Coastal Act) would be to provide a comprehensive geotechnical analysis including a stabilization plan for the entire site (Lots 7-11)." (Report, at p.9.)

- “Commission staff has not yet been provided with enough information to determine whether the development proposed on Lots 7 and 8, including the stabilization method and location of the homes, could be found consistent with Coastal Act policies regarding minimizing landform alteration and avoiding the use of protective devices that alter natural landforms.” (Report, at p.3)
- “To date no quantifiable assurance of the stability of the development of the entire site (Lots 7-11) [as required by Section 30253 of the Coastal Act] has been provided.” (Report, at p.11)
- “Without such information [required by Section 13053.5 of Title 14 of the California Code of Regulations] the Commission cannot make findings of consistency with the Coastal Act.” (Report, p.12)

Obviously, if the applicants fail to provide information that is necessary for the determinations required by CEQA and the Coastal Act, any decision approving development permits on such an incomplete record will be invalidated by a reviewing court. Proceeding without such information as applicants suggest would waste the time not only of the Commission but of the courts and would cause all parties, including applicants themselves, needless expenses. The Commission, instead, should affirm the Executive Director’s determinations so that the permits can be considered on the merits only after all necessary information has been provided. Only at such a time could the Commission make any decision that could withstand judicial review.

Finally, there is no reason to proceed as applicants urge. Upholding the Executive Director’s decision will not deprive applicants of any property rights, as they hysterically claim. It only will require them to live up to the agreement they made with the Commission that there be a comprehensive development plan covering all the interrelated lots. It also will provide them their only chance of obtaining permits that possibly could withstand judicial review. Perhaps most importantly though, upholding the Executive Director’s determination is the only way this Commission can discharge its duties under CEQA and the Coastal Act.

For these reasons, we respectfully request that you uphold the Executive Director’s determinations that these permit applications are incomplete.

California Coastal Commission
December 2, 2009
Page 4

We appreciate your consideration and hope to be able to present testimony at the hearing.

Respectfully submitted,

Lee Strother
309 La Rambla
San Clemente, California

Christy and Casey Armstrong
318 West Avenida Gaviota
San Clemente, California

Ronald and Gay Redcay
316 West Avenida Gaviota
San Clemente, California

Jim and Kathleen Sigafos
_____ La Rambla
San Clemente, California

Tricia Madding
_____ West Avenida Gaviota
San Clemente, California



Figure 3
Landslide which occurred in the City of San Clemente, 1966.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: W 220 Eb (5-09-133-EDD) (5-09-133-EDD) (Yeskin)

Date and time of receipt of communication: 11:30 AM 12/4/09

Location of communication: La Jolla, Calif.

Type of communication (letter, facsimile, etc.): meeting

Person(s) Initiating communication: Dave Nersh SR.

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Applicants want their applications deemed complete and staff is requesting information on adjacent lots of which the applicants don't own. And Lawson and associates Geotechnical Consulting, Inc. has said that the stability of lots 7 & 8 is not predicated on the development of lots 9, 10, & 11. They are requesting the CCC ask staff to deem their application complete.

12/4/09
Date

Patricia Komer
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

45

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
200 OCEANGATE, SUITE 1000
LONG BEACH, CA 90802
(562) 590-5071

W22a&b

Submitted: 11/2/2009
Staff: K. Schwing-LB
Staff Report: 11/19/2009
Hearing Date: December 9, 2009



STAFF REPORT: APPEAL OF EXECUTIVE DIRECTOR DETERMINATION

DISPUTE RESOLUTION NOS: 5-09-133-EDD and 5-09-134-EDD

APPLICANTS: David Yeskin (5-09-133); Rachel Staver (5-09-134)

AGENT: David York, David York Architect and
Robert J. Krup, Attorney at Law

PROJECT LOCATION: 323 & 325 La Rambla (Lots 7 & 8, Tract 4947)
San Clemente, CA

EDD APPEAL DESCRIPTION: Appeal of the Executive Director's Determination deeming Coastal Development Permit Applications 5-09-133 and 5-09-134 incomplete, pursuant to Section 13056(d) of Title 14 of the California Code of Regulations.

MOTIONS & RESOLUTIONS: **Motion #1 (relative to 5-09-133) on Page 4**
Motion #2 (relative to 5-09-134) on Page 5

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **concur** with the Executive Director's determination that the subject coastal development permit applications are incomplete. Commission staff requested several documents, information, and/or types of analyses (collectively, "incomplete items") that staff determined were needed in order to complete the applications. The applicants have objected to all of these requests.

The subject sites are two of 9 vacant lots located along coastal bluffs in the southerly area of the City of San Clemente. These lots are affected by a landslide that extends to about 50 feet below the top of bluff. Seven (7) of these nine lots, including the subject sites, have remained vacant since the area was divided into smaller lots in the 1960s. The other two (2) of the nine vacant lots were once developed with single family residences, but those residences were destroyed in a landslide in 1966, and the lots have remained vacant since that time. Also, the nine-lot area has been the subject of a prescriptive rights survey that has shown substantial public use of the subject sites for access to the beach and ocean and for public viewing to and along the bluffs, beaches and ocean.

Development of these lots is highly constrained by the fact that these are coastal bluffs that are highly visible from public vantage points, they are impacted by significant geologic hazard, and the need to reserve areas to accommodate the existing and historic public use of the properties for public access and viewing. The Commission

and the lots owners have recognized that any effort to seek development approvals for each lot individually would significantly limit the range of alternatives that must be considered in order to achieve a plan that is consistent with all Coastal Act policies. Therefore, in 2007, in conjunction with Commission authorization of development of homes on two of the vacant lots (Lots 5 and 6 that were just outside the landslide), the owners of those two lots, as well as the owners of five of the other lots (Lots 7-11)(including the owners that are party to the applications that are the subject of this dispute), agreed to participate in the formation of a Memorandum of Understanding (MOU) regarding the future development on the remainder of the lots. The main tenets of the MOU were to outline the manner in which the public would continue to have access across the lots and to the beach, as well as access to and views from a public viewpoint. As part of that MOU, the applicants agreed to provide a comprehensive development plan that involves all of the undeveloped lots. The idea behind the comprehensive plan was to try to find the best possible way to stabilize the site to provide public access and view opportunities that were equivalent to the existing access and view opportunities, and accommodate residential development, while addressing the adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices that alter natural landforms. There could be a variety of ways of carrying out such a project, thus, alternatives would need to be considered. The comprehensive plan was to precede any further development and was to be submitted to the Executive Director for review and approval.

Following staff's issuance of the permits for Lots 5 and 6, in July 2009, Commission staff received two applications for development of Lots 7 and 8 with single family residences. However, no comprehensive plan had been developed or submitted for Executive Director review. In its non-filing letter, Commission staff reminded the applicants of their obligation, under the MOU, to prepare and submit a comprehensive development plan before pursuing any development on the lots. To date, the applicants have submitted a drawing of a comprehensive plan, but no other details. A drawing alone does not demonstrate that the public access and viewpoint improvements, as drawn, can be constructed and will be 'safely usable by the public' as required in the MOU. The only way the landowners could demonstrate such consistency with the requirements of the MOU (and ultimately the requirements of the Coastal Act) would be to provide a comprehensive geotechnical analysis including a stabilization plan for the entire site (Lots 7-11). Such analysis must address how stabilization is to be achieved in conjunction with any other development on the lot(s) and whether such stabilization is consistent with the Coastal Act and will be adequate to make the public access improvements and viewpoint safely usable by the public and capable of being maintained and/or relocated within the identified easements. Commission staff has held that the subject applications cannot be filed complete until a satisfactory comprehensive plan including stabilization approach and alternatives analysis is submitted. This is necessary to be sure the planned location of the public access and viewpoint improvements in the 9 lot area can be safely constructed and operated, and that homes can be accommodated, all in a manner consistent with the Coastal Act.

In this appeal, the applicants are attempting to circumvent the requirements of the MOU and to unravel prior efforts at a comprehensive approach to resolving the significant issues present at this site. The applicants have devised a stabilization plan that isolates

Lots 7 and 8 from the remainder of the lots and leaves stabilization of the remainder lots unresolved. Addressing these sites apart from the remainder area may foreclose environmentally preferable alternatives. Also, they have identified the location of public accessways they would dedicate across Lots 7 and 8, but, with the information provided to date, there is no way to be sure that the accessways, public viewpoint and other development drawn on the other lots can be carried out safely and in a manner that is consistent with the Coastal Act. Therefore, there is no way to assure that the accessways on Lots 7 and 8 are appropriately located such that they will ultimately connect with the accessways on the other lots that provide connections to the beach and viewpoint.

Furthermore, Commission staff has not yet been provided with enough information to determine whether the development proposed on Lots 7 and 8, including the stabilization method and location of the homes, could be found consistent with Coastal Act policies regarding minimizing landform alteration and avoiding the use of protective devices that alter natural landforms. The information staff has requested would address these issues as well. In fact, without further information staff could only now conclude that the development proposed on Lots 7 and 8 does not minimize landform alteration and results in the use of protective devices that alters natural landforms. Therefore, it has requested the applicant to submit information so that a takings analysis can be appropriately undertaken. The applicants have objected to the request for this information as well.

The disputed incomplete items are necessary for staff's analysis of the development proposals, and for the Commission's consideration of the CDP applications, to determine whether the projects comply with all relevant policies of the Coastal Act. Due to the related nature of the pending coastal permit applications and their incomplete status, the subject appeals are being addressed in one staff report.

SUBSTANTIVE FILE DOCUMENTS: Memorandum of Understanding Between the California Coastal Commission and Ernest F. Alvarez, Jr. and Paulette M. Alvarez, as trustees of the Alvarez Family Trust Dated September 23, 2000, Mark D. Cragun, David Yeskin, Rachel Staver, David Schneider, Hadi Fakouri, and Carl Grewe Regarding Provision of Off-Site Access and Development Phasing of Lots 7, 8, 9, 10, and 11, Tract 4947, San Clemente, California; Geotechnical letter report re: response to California Coastal Commission Notice of Incomplete Applications dated August 6, 2009 Regarding Lots 7 and 8 of Tract 4947...dated September 9, 2009 and prepared by Lawson & Associates Geotechnical Consulting, Inc.; Geotechnical letter report re: geotechnical addendum report and response to City review comments for Lots 7 and 8 of Tract 4947...dated January 25, 2008 prepared by Lawson & Associates Geotechnical Consulting, Inc.; Geotechnical report re: geotechnical grading plan review, lots 7 through 11 of Tract 4947 and Lots 28 and 29 of Tract 882...dated May 1, 2006 and prepared by Lawson & Associates Geotechnical Consulting, Inc.; Coastal Development Permit Application File No.s 5-07-056 (Cragun) and 5-07-070 (Alvarez).

LIST OF EXHIBITS

1. Location Map
2. Parcel Map
3. Undated Letter Received November 2, 2009, from Robert J. Krup and David York re: Appeal of October 21, 2009 Notice of Incomplete Applications (w/ Exhibit B only, remainder exhibits on file)
4. Letter dated October 21, 2009, from California Coastal Commission to David York and Robert J. Krup re Status of Incomplete Applications
5. Undated Letter Received September 24, 2009, from Robert J. Krup and David York (w/o exhibits, on file)
6. Letter dated August 6, 2009, from California Coastal Commission to David York and Robert J. Krup re Notice of Incomplete Applications
7. Memorandum of Understanding between the California Coastal Commission and the owners of Lots 5-11, Tract 4947, San Clemente, CA
8. Copy of Section 13053.5 of the California Code of Regulations
9. Comprehensive Plan For Lots 7-11 Submitted on 9/24/09
10. Plans for Development of Lot 7 Submitted on 9/24/09
11. Plans for Development of Lot 8 Submitted on 9/24/09
12. Public Access Concept Showing Existing OTDs and Applicant's Plan for Future Access and Viewpoint

I. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following findings and resolutions to uphold the Executive Director's determination that the applications for coastal development permits remain incomplete.

MOTION#1: *I move that the Commission reject the Executive Director's determination that Coastal Development Permit Application No. 5-09-133 is incomplete.*

STAFF RECOMMENDATION ON MOTION #1:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the application for coastal development permit is incomplete, pursuant to Section 13056 of the Commission's regulations, (2) the coastal development permit application remaining unfiled, and (3) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

RESOLUTION #1:

The Commission hereby (1) finds that Coastal Development Permit Application No. 5-09-133 is incomplete, pursuant to Section 13056 of the Commission's regulations, and (2) adopts the following findings in support of its decision.

MOTION#2: *I move that the Commission reject the Executive Director's determination that Coastal Development Permit Application No. 5-09-134 is incomplete.*

STAFF RECOMMENDATION ON MOTION #2:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the application for coastal development permit is incomplete, pursuant to Section 13056 of the Commission's regulations, (2) the coastal development permit application remaining unfiled, and (3) the Commission's adoption of the following resolutions and findings. A majority of the Commissioners present is required to approve the motion.

RESOLUTION #2:

The Commission hereby (1) finds that Coastal Development Permit Application No. 5-09-134 is incomplete, pursuant to Section 13056 of the Commission's regulations, and (2) adopts the following findings in support of its decision.

II. APPEAL PROCEDURES

Pursuant to Section 13056(d) of Title 14 of the California Code of Regulations, an applicant may appeal to the commission a determination by the executive director that an application is incomplete. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days after receipt of the appeal of the filing determination and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The Commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand.

In this case, the Commission received the appeals on November 2, 2009. The 60th day after Commission receipt of the appeals is January 1, 2010. Therefore, in accordance with Section 13056(d), the subject appeals have been scheduled for the December 2009 Commission hearing.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PERMIT APPLICATION BACKGROUND AND APPEAL OF EXECUTIVE DIRECTOR'S DETERMINATION DEEMING APPLICATIONS INCOMPLETE

On July 9, 2009, the Commission received Coastal Development Permit (CDP) Application Nos. 5-09-133 (Yeskin) and 5-09-134 (Staver) for residential development on two adjacent vacant properties. On August 6, 2009, Commission staff sent a letter to the applicants' common agent, notifying him that the applications were incomplete and outlining the items that needed to be submitted in order for Commission staff to deem the applications complete (**Exhibit 6**). On September 24, 2009, the Commission received a partial response to its letter (**Exhibit 5**) dated August 6th. On October 21, 2009, Commission staff sent a letter to the agent, notifying him that the applications remained incomplete for information previously requested and outlined some additional information needed in order to fully understand the new information that was submitted on September 24th(**Exhibit 4**). On November 2, 2009, the applicants' representatives submitted an undated letter (**Exhibit 3**), appealing the Executive Director's decision not to file the coastal development permit applications.

The subject sites are two of 9 vacant lots located seaward of the first public road inland of and parallel to the sea ("first public road"), at the mouth of Toledo Canyon, along coastal bluffs within and adjacent to the La Ladera residential community in the southerly area of the City of San Clemente (**Exhibit 1 and 2**). Seven (7) of these nine lots, including the subject sites, were identified on Tract No. 4947, which was filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map (Lot No. 5-11, Tract 4947). The other two (2) of the nine vacant lots (Lots 28 and 29 that are part of separate Tract No. 822) were once developed with single family residences, but those residences were destroyed in a landslide in 1966, and the lots have remained vacant since that time. The entire nine-lot area and the privately owned street, Boca del Canon, are the subject of a prescriptive rights survey. Surveys submitted to date show substantial public use of the subject sites, the other seven lots, and Boca del Canon, for the past several decades for access to the beach and ocean. The survey also indicates substantial public use of these properties for public viewing to and along the bluffs, beaches and ocean (i.e. visual access).

In 2007, the Commission granted CDP No. 5-07-056 (Cragun) and 5-07-070 (Alvarez) to develop two of the nine undeveloped lots (Lot No. 5 and 6) with one single family residence on each lot. Those two lots were adjacent to but not within the landslide area; the two pending applications are in the landslide. The Commission required and the applicants agreed to offer to dedicate and to construct public accessways across Lots 5 and 6 (**Exhibit 12**). These applicants, as well as the owners of five of the other lots (Lots 7-11), also agreed to participate in the formation of a Memorandum of Understanding (MOU) regarding the future development on the remainder of the lots. The main tenets of the MOU were to outline the manner in which the public would

continue to have access across the lots and to the beach, as well as access to and views from a public viewpoint.

The Commission and the applicants recognized that any effort to seek development approvals for each lot individually would significantly limit the range of alternatives that must be considered in order to achieve a plan that is consistent with all Coastal Act policies. Since there are constraints associated with the development of the lots, such as the need to reserve areas to accommodate the existing and historic public use of the properties for public access and viewing, and the need to address adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices that alter natural landforms, the applicants agreed to provide a comprehensive development plan that involves all of the undeveloped lots. Although applications have not yet been submitted for residential development of three of the remaining lots subject to the MOU (Lots 9, 10 and 11), information regarding the development of those lots is necessary in order to determine whether the proposed accessway and public viewpoint are appropriately sited, can be constructed and whether their proposed location would prevent alternative development configurations that are environmentally preferable. The MOU was signed by the applicants of the subject applications and was recorded against their land.

The project descriptions for each permit application that are the subject to this dispute resolution are as follows:

CDP Application No. 5-09-133 (Yeskin)(323 La Rambla, Lot 7, Tract 4947)

Grade site and install caisson shoring/retaining walls and construct 5,942 sq. ft., 33 ft.-high, single family residence, plus 703 sq. ft. of decks, including offer to dedicate 5 ft.-wide public access easement and construct 4 ft.-wide sidewalk within that easement at property line along Boca del Canon (adjacent to existing narrow sidewalk), and offer to dedicate 5 ft.-wide public access easement and construct 4 ft.-wide sidewalk along property frontage within an undeveloped extension of the La Rambla public right-of-way. **(Exhibit 10)**

CDP Application No. 5-09-134 (Staver)(325 La Rambla, Lot 8, Tract 4947)

Grade site and install caisson shoring/retaining walls and construct 6,013 sq. ft., 34 ft.-high, single family residence plus 606 sq. ft. of decks, including offer to dedicate 5 ft.-wide public access easement and construct 4 ft.-wide sidewalk within that easement at property line along Boca del Canon (adjacent to existing narrow sidewalk), and offer to dedicate 5 ft.-wide public access easement and construct 4 ft.-wide sidewalk along property frontage within an undeveloped extension of the La Rambla public right-of-way. **(Exhibit 11)**

B. ANALYSIS OF APPLICANTS' APPEALS OF EXECUTIVE DIRECTOR DETERMINATION DEEMING APPLICATIONS INCOMPLETE

The applicant's agent submitted a letter in response to staff's October 21, 2009, letter stating that staff's information requests were unnecessary and that "[t]he applicants, Yeskin and Staver, have provided everything requested and required for the Staff and Commission to approve their individual homes to be built" and that the applicants wished to appeal the Executive Director's "incomplete" determination to the Commission pursuant to Section 13056(d) of Title 14 of the California Code of Regulations (**Exhibit 3**). Due to the related nature of the proposed development for each application and similarity of issues, the items requested by staff in each incomplete letter were nearly identical. The applicants' objections are addressed individually below, in the order that they appear in the subject appeals.

Objection 1a. Comprehensive Development Plan – Geotechnical Stabilization Plan

In staff's August 6, 2009 incomplete letter to the applicants regarding the CDP applications, Commission staff requested they provide a comprehensive development plan for Lots 7-11 of Tract 4947, including a comprehensive geotechnical stabilization plan for all of the lots, as required by the MOU. In response, the applicants provided drawings titled "Comprehensive Plan for Lots 7, 8, 9, 10 and 11 Tract 4947" that consist of preliminary grading plans and floor plans and elevations to construct a home on each of those lots (**Exhibit 9**). However, there was no geotechnical information provided to support the suggested layout. Therefore, in staff's October 21, 2009 letter, staff requested the applicant submit a geotechnical evaluation of the planned grading and stabilization design shown on the comprehensive plan. Commission staff also advised the applicants that based on the drawings of a comprehensive development plan submitted, it appeared to staff that the plan raises significant issues as to conformity with the requirements of the Coastal Act.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives asserted that the preliminary grading plan they had previously submitted "meets all the requests of the MOU" and also assert that the geotechnical information submitted for the subject lots, 7 and 8, is sufficient. The Commission disagrees.

The MOU (**Exhibit 7**) contains a number of terms and conditions with which the owners of Lots 7-11 agreed to comply. Among those is Section III, subsection 3, wherein the property owners agree to provide a public viewpoint upon the bluff top within Lot 9 including public access to such viewpoint across Lots 7 and 8. Furthermore, in Section III, subsection 4, the property owners agree to provide a public accessway from La Rambla, along Boca del Canon, to the beach, across Lots 7, 8, 10 and 11. Furthermore, Section III, subsection 6, states that these accessways and viewpoints are to be maintained in perpetuity and must be relocated inland within their easements if they are threatened with geological hazard. Section III, subsection 8 of the MOU, states that the owners of Lots 7, 8, 9, 10 and 11 must "...provide a comprehensive plan for and agree to construct all improvements necessary to make the Public Viewpoint, Public

Accessways and Beach Access safely usable by the public...[emphasis added]. Section III, subsection 9, requires the owners of Lots 7-11, to provide for dedication and construction of the Public Viewpoint, Public Accessways and Beach Access (herein 'public access and viewpoint improvements') in the comprehensive plan, and to assure timely construction of those facilities. The comprehensive plan is subject to the review and approval of the Executive Director. Finally, Section III, subsection 12, requires the landowners to develop the lots consistent with the comprehensive plan approved by the Executive Director, but does allow for the submittal of CDP applications for Lots 7 and 8 separately from any CDP application for Lots 9-11.

The 'comprehensive plan preliminary grading plan' (herein 'applicants drawing') submitted in conjunction with the subject applications does not address all of the requirements of the MOU. The applicants' drawing is merely a graphical depiction of the planned location of the homes and the public access and viewpoint improvements. However, a drawing alone does not demonstrate that the public access and viewpoint improvements, as drawn, can be constructed and will be 'safely usable by the public' as required in the MOU. Furthermore, a drawing does not demonstrate that the public access and viewpoint improvements could be maintained in perpetuity in their location and/or whether such improvements could be relocated inland within the easements that the landowners are depicting if they are threatened with geological hazard. The only way the landowners could demonstrate such consistency with the requirements of the MOU (and ultimately the requirements of the Coastal Act) would be to provide a comprehensive geotechnical analysis including a stabilization plan for the entire site (Lots 7-11). Such analysis must address how stabilization is to be achieved in conjunction with any other development on the lot(s) and whether such stabilization is consistent with the Coastal Act and will be adequate to make the public access improvements and viewpoint safely usable by the public and capable of being maintained and/or relocated within the identified easements. This information is also necessary in order to ensure that approval of the accessway and public viewpoint locations does not foreclose environmentally preferable alternatives regarding future residential development.

In conclusion, the Commission finds that the comprehensive geotechnical stabilization plan is information necessary for the Commission's consideration of the subject applications and their consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 1b/c. Comprehensive Development Plan – Alternatives Analysis

In its August 6, 2009 incomplete letter to the applicants, Commission staff requested that the applicants identify alternatives for stabilizing and developing the site in a manner that is consistent with the Coastal Act and among other issues, that minimizes landform alteration. Toward that goal, staff requested the applicants to identify the safest places to place development on the lots and to provide alternatives that concentrate development in those areas. The applicants did not provide such an analysis and responded that their desire is to develop the lots in their existing configuration and in the manner proposed. In its October 21st letter, Commission staff

reiterated its concerns that the proposed manner of stabilizing and developing the lots could not be found consistent with Coastal Act requirements regarding minimizing landform alteration and avoiding the use of protective devices that substantially alter natural landforms to assure the stability of the proposed development. Commission staff restated and rephrased its request that the applicants look at the overall stability of the site (Lots 7-11) to see what level of development is suitable and explain where it will be possible to safely construct homes without relying on landform alteration and protective devices that substantially alter natural landforms. Commission staff also stated that if there are no areas that can be developed without reliance on landform alteration and/or protective devices that substantially alter natural landforms, that the applicant needs to identify the areas that can be safely developed with the least amount of landform alteration. The analysis needed to be prepared by an appropriately qualified professional.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives' state, in reference to geological information previously submitted, that they have "utilized the most advanced and all encompassing geotechnical method of analysis" and that they had previously identified alternatives including mass grading the site and use of a bluff tieback wall system. The applicants' representatives also claim that they have "designed at 150% safety ratio with no land form alteration".

The 'alternatives analysis' provided to staff was comprised of eight sentences in a bullet point format written by the applicants' architect and attorney, neither of whom is licensed to supply analysis that should be undertaken by a geologist or civil engineer. The geologic reports submitted with the applications did not contain analysis of the 'mass grading' and 'bluff tieback wall system' that was briefly described in the November 2nd letter. Even a cursory review of the 'comprehensive plan' drawing shows significant grading and landform alteration to support development. The geologic information submitted only considers the stability of Lots 7 and 8, and not the overall stability of Lots 7-11. Also, there is no analysis of whether there are any areas on the site that could be developed without relying on landform alteration and protective devices that alter natural landforms. While the applicants make certain claims, they have not provided the technical documentation or analysis to support them.

In its future consideration of the subject applications, the Commission must consider alternatives to the proposed projects to determine if there is an alternative that would lessen or avoid significant environmental impacts to such an extent that it would be consistent with Section 30253's mandate to minimize risks to life and property while avoiding construction of protective devices that would substantially alter natural landforms. As such, staff requested that the applicants provide information regarding potential alternatives to the proposed development.

In conclusion, the Commission finds that the alternatives analysis prepared by a qualified professional is information necessary for the Commission's consideration of the subject applications and their consistency with the Chapter 3 policies of the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 2a/b (Stability Analysis) & 4a/b (Geologic Review) – Relating to Stability Analysis

In its August 6th letter, and again in its October 21st letter, Commission staff requested submission of seismic slope stability analyses for the proposed development. Instead, the applicants' response provides reasons for not providing such analysis. As required in Section 30253 of the Coastal Act, Commission staff explained that we need quantifiable assurance that the proposed development will be safe. In addition, the quantitative analysis would help identify areas where development is possible that is safe and stable without reliance on protective structures that substantially alter natural landforms either now or in the future. Staff identified certain types of quantitative analysis that it wanted but offered the applicant the opportunity to quantify stability in other ways.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives state that their geotechnical consultant has assured that the Lots 7 and 8 can be adequately stabilized independent of stability on adjacent lots. The applicants explain, again, their rationale for not relying on the type of quantitative analysis that staff had identified, but did not attempt to quantify stability in other ways than staff identified.

Section 30253 of the Coastal Act requires that new development assure stability and structural integrity and minimize risks to life and property in areas of high geologic hazard. To date no quantifiable assurance of the stability of the development of the entire site (Lots 7-11) has been provided. Without such information the Commission cannot make findings of consistency with Section 30253 of the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 2a/b (Stability Analysis) & 4a/b (Geologic Review) – Relating to Geologic Review

In its October 21st letter, Commission staff advised the applicants that it will be seeking geologic review of all of the geologic information provided, including review of the issue of slope stability analyses for the proposed development (once received). Commission staff advised the applicant that the review would be conducted by a geologist under the direction of the Commission and that the applicant would be required to pay for that review as part of the filing of the application if such review needed to be undertaken by a third party reviewer.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives state that their own geologic information that has been submitted, in conjunction with review of that information by the City, is adequate and that any further review should be conducted by Commission staff after the application has been filed complete. Although not explicitly stated, the applicants presumably also object to paying for any additional geologic review required by the Commission.

While the applicant and City have conducted a certain level of geologic review, it is clear such review has not been conducted in a manner that is mindful of the mandates of Chapter 3 of the Coastal Act. The applicants have submitted a geologic report titled

Geotechnical Grading Plan review, Lots 7 through 11 of Tract 4947 and Lots 28 and 29 of Tract 882 dated May 1, 2006. That document provides some history of the site and the geologic setting and characterizes the landslide and geologic structure of Lots 7-11, 28/29. That report provides a slope stability analysis stating there is a landslide on the site and that the site has a factor of safety of less than 1.5 and then goes on to recommend an array of caissons and caisson-supported walls throughout the site for stabilization purposes. No alternatives are identified in the report. The City of San Clemente reviewed that report and provided a number of comments in a transmittal dated March 27, 2007 that raises questions about many elements of the stabilization concept identified in the May 2006 report. In one statement the City says "...all concerned parties are to realize that this is an all or nothing design for all of the lots. Acceptable stability of the landslide mass can only be achieved by the method presented if the entire program of landslide piercing caissons is implemented." A subsequent report, dated January 25, 2008, responds to the City's March 2007 comments with a new stabilization design that isolates Lots 7 and 8 from Lots 9-11 and 28/29 and does not attempt to identify stabilization measures for those other lots. Again, no alternatives are considered in the report. No evidence of subsequent review of the January 2008 report by the City was submitted. Commission staff sent a letter in August 2009 (**Exhibit 6**) requesting additional geotechnical information. In response, a letter report titled "Response to California Coastal Commission Notice of Incomplete Applications dated August 6, 2009 Regarding Lots 7 and 8 of Tract 4947..." dated September 9, 2009 was submitted. This time, the applicants provided a copy of the City's April 14, 2008 review of the January 2008 report. In its transmittal the City accepts the report but also requests additional information. The applicant did not provide any evidence that it supplied the information the City requested nor whether the City was satisfied. Furthermore, the applicants' September 2009 submittal was not fully responsive to Commission staff's request as is discussed elsewhere in these findings and outlined in Commission staff's October 21, 2009 letter (**Exhibit 4**) which the applicants are now appealing.

Section 13053.5. of Title 14 of the California Code of Regulations states, in part, that an applicant must provide all information and resources deemed necessary by the Executive Director to determine the consistency of the proposed development with the Coastal Act. In this case, the Executive Director has determined that additional geologic review of all required geotechnical information by a third party reviewer under the direction of the Commission is necessary to determine whether the proposed development is consistent with the Chapter 3 policies of the Coastal Act, that it is the preferred alternative, that it does not foreclose environmentally preferable alternatives, and that it includes any feasible mitigation measures available to substantially lessen the significant adverse impacts which the development may have on the environment. Without such information the Commission cannot make findings of consistency with the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 3. Lot 9 Stability and Rate of Erosion

In response to the applicants' provision of the comprehensive preliminary grading plan drawing, Commission staff requested in its October 21st letter that the applicants provide information about the stability of Lot 9 and the public viewpoint depicted on that site and

whether the home planned for that site or viewpoint would be threatened by erosion or other geologic stability issues over their life. Staff requested a geologic analysis that documents the historic and anticipated future rate of erosion at that site along with an analysis of if or when the viewpoint or the home would be threatened by such erosion and whether the viewpoint or home would need to be stabilized with any protective devices either at the time of its development or in the future.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives state that Lot 9 is not part of the subject application and that information regarding that lot need not be submitted at this time.

The stability of Lot 9 and the planned location of the public access and viewpoint improvements are relevant to the development now being contemplated on Lots 7 and 8. All of the subject lots are constrained in some fashion by geologic stability issues and the presence of prescriptive use. As provided in the MOU, areas must be reserved to accommodate the existing and historic public use of the properties for public access and viewing and future development must address adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices that substantially alter natural landforms. The Commission previously concluded and the landowners agreed that these issues would be best addressed in the context of a comprehensive development plan that involves all of the undeveloped lots. It is not possible to determine whether the location of the public access and view improvements on Lots 7-11 depicted on the 'comprehensive plan' drawing are appropriate without also having information on the stability of all of the lots and the manner in which they are to be stabilized. Without such information the Commission cannot make findings of consistency with Section 30253 of the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 5. Lot 9 View Impacts

In response to the applicants' provision of the comprehensive preliminary grading plan drawing, Commission staff requested in its October 21st letter that the applicants provide information about development of Lot 9 shown on the plan of an above-grade house. Commission staff requested that the applicants provide a public view impact analysis of this development, particularly from the public access along La Rambla and the 'public drive' and from the street.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives state Lot 9 is not part of the present application, thus, a view analysis of development on that Lot should not be required to file the applications for Lot 7 and 8.

Commission staff's request for information about the impacts of development on Lot 9 stem from the requirement in the MOU for a comprehensive development plan for all of Lots 7-11. According to the MOU, the Executive Director is required to review and approve the comprehensive plan submitted by the applicants. However, the Executive Director must have complete information about the impacts of the development shown

on the comprehensive plan before giving any authorization of it. In this case, the siting of residential development on Lot 9 could have impacts on the siting of the public access and viewpoint improvements shown on the comprehensive plan. If the siting of residential development on Lot 9 has adverse impacts on views from the public access improvements on Lot 7 or 8 (or any of the other lots) and/or from the public viewpoint, and there are feasible alternatives and/or mitigation that would avoid or minimize those impacts, then the Executive Director could not approve the comprehensive plan. Without such information the Commission cannot make findings of consistency with Section 30251 of the Coastal Act. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 6. Public Access Across Lot 11

In response to the applicants' provision of the comprehensive preliminary grading plan drawing, Commission staff requested in its October 21st letter that the applicant provide information about the alignment of a beach access pathway that is shown on the plan that crosses Lot 11. Commission staff requested information about the alignment of the beach access pathway shown, its visibility from the beach, and the presence of any obstructions in the area that might hinder the use of the beach access pathway that is shown on the comprehensive plan.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives' state that Lot 11 is not part of the present application, thus, the information requested should not be a filing requirement for the applications for Lot 7 and 8. Nevertheless, the applicants representatives provided a minimal response to the questions in that they said the beach access path across Lot 11 would have "...more visibility from the beach to the street...".

Commission staff's request for information about the location of the beach access path across Lot 11 stems from the requirement in the MOU for a comprehensive development plan for all of Lots 7-11. According to the MOU, the Executive Director is required to review and approve the comprehensive plan submitted by the applicants. However, the Executive Director must have complete information about the impacts of the development shown on the comprehensive plan before giving any authorization of it. In this case, the siting of the beach access path across Lot 11 may not be appropriate. While the applicants' representatives statement partly answers the questions asked by staff -if accurate- it does not fully address the issue or respond to all of the questions asked. Photographs of the area available on web based mapping programs such as Bing.com and Google maps suggest that there are physical obstructions between the beach and the entry point to the beach access path shown on the comprehensive plan. If there are such obstructions or other impediments to access (physical or legal), then the alignment of the beach access path across Lot 11 may not be appropriate.

If the siting of the beach access path across Lot 11 isn't appropriate, then the alignment of public access improvements on Lot 7 or 8 (or any of the other lots) may also not be appropriate. Without such information the Commission cannot make findings of consistency with the public access and recreation policies of the Coastal Act.

Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 7. Access Dedications (between Lot 6 and Lots 7/8)

In its August 6th letter, and again in its October 21st letter, Commission staff requested that written evidence that the owner of Lot 6 will provide an access dedication over part of their lot in order to accommodate the alignment of the planned public access improvements across Lots 7 and 8. If such written evidence could not be supplied, then staff requested that the applicants identify an alternative alignment that did not rely upon dedication of an access easement on Lot 6.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants' representatives state that the owner of Lot 6 has recorded access dedications in the past and would do so in this case as well. However, no written evidence from the owner of Lot 6 has been supplied.

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Since the owners of Lots 7 and 8 are proposing development on their lots that relies on development within Lot 6, the owners of Lots 7 and 8 must demonstrate their legal ability to undertake the development on Lot 6.

If the owners of Lots 7 and 8 are unable to get the owner of Lot 6 to agree to the dedication of a public access easement on Lot 6 and construction of a connective public accessway between Lots 6, 7 and 8, then the owners of Lots 7 and 8 will need to find an alternative way to link the accessway on their lots with the access along La Rambla. Since the development of Lots 7 and 8 will interfere with existing access, the only way the Commission could find that development consistent with the public access and recreation policies of the Coastal Act is to be assured that equivalent alternative access is being provided across Lots 7 and 8. Therefore, the Commission concurs with the Executive Director's determination regarding filing.

Objection 8. Public Access Across Lots 7 & 8

In response to the applicants' provision of the comprehensive preliminary grading plan drawing, Commission staff requested in its October 21st letter that the applicant provide information about whether stairs within a proposed sidewalk/public access pathway

along the northwesterly side of Lot 7 (along the 'public drive' extension of La Rambla) present any problem with satisfying Americans with Disability Act (ADA) requirements.

In the applicants' response and November 2nd appeal of staff's non-filing letter, while somewhat unclear, it appears that the applicants' representatives state that the accessway on Lots 7 and 8 won't be ADA compliant until improvements are also made on Lot 9. The applicants also state that "...the technical requirements for ADA compliance are an issue for the City, not the Coastal Commission." However, pursuant to the MOU, the applicants must demonstrate the public access improvements are able to be constructed and open for public use in perpetuity.

Commission staff requested the information about ADA compliance for the very reason the applicant states (i.e. that ADA compliance is an issue for the City), and because handicap accessibility is also a factor to be considered in any public access plan. The public accessways and viewpoint are to be offered for dedication to a public or non-profit entity. ADA compatibility is sometimes an issue that entities, like the City, consider when determining whether to accept and maintain an offered accessway. Therefore, Commission staff requested the information.

As explained by the applicants, it appears the design they have chosen will not be ADA compatible until development occurs on an adjacent lot. Commission staff does not believe such a plan would be acceptable and thus will likely require the applicant to provide an ADA compliant design that does not rely upon development of the adjacent lot.

Objection 9. Takings Information

In its August 6th letter, and again in its October 21st letter, Commission staff requested that the applicants submit information that would allow for a takings analysis. A limited response was provided in the applicants' response but it did not include all of the information staff requested.

In the applicants' response and November 2nd appeal of staff's non-filing letter, the applicants supply the same non-responsive information they provided to staff in their August 6, 2009 letter. They also reassert that the subject sites are "...not located in a ... coastal hazard area" and that "...there are no Coastal Act policies that may prohibit development..." of homes on the subject lots. Finally the applicants' representatives state that staff's request for information "...will be deemed to have effected a total regulatory taking of the applicants' property, and those of the adjacent landowners, without compensation in violation of the Fifth Amendment of the U.S. Constitution as applicable through the Fourteenth Amendment; and may be deemed an interference of such magnitude such as to restrict the exploitation of the applicants property interests; and interference with applicants' primary expectations concerning use of the property."

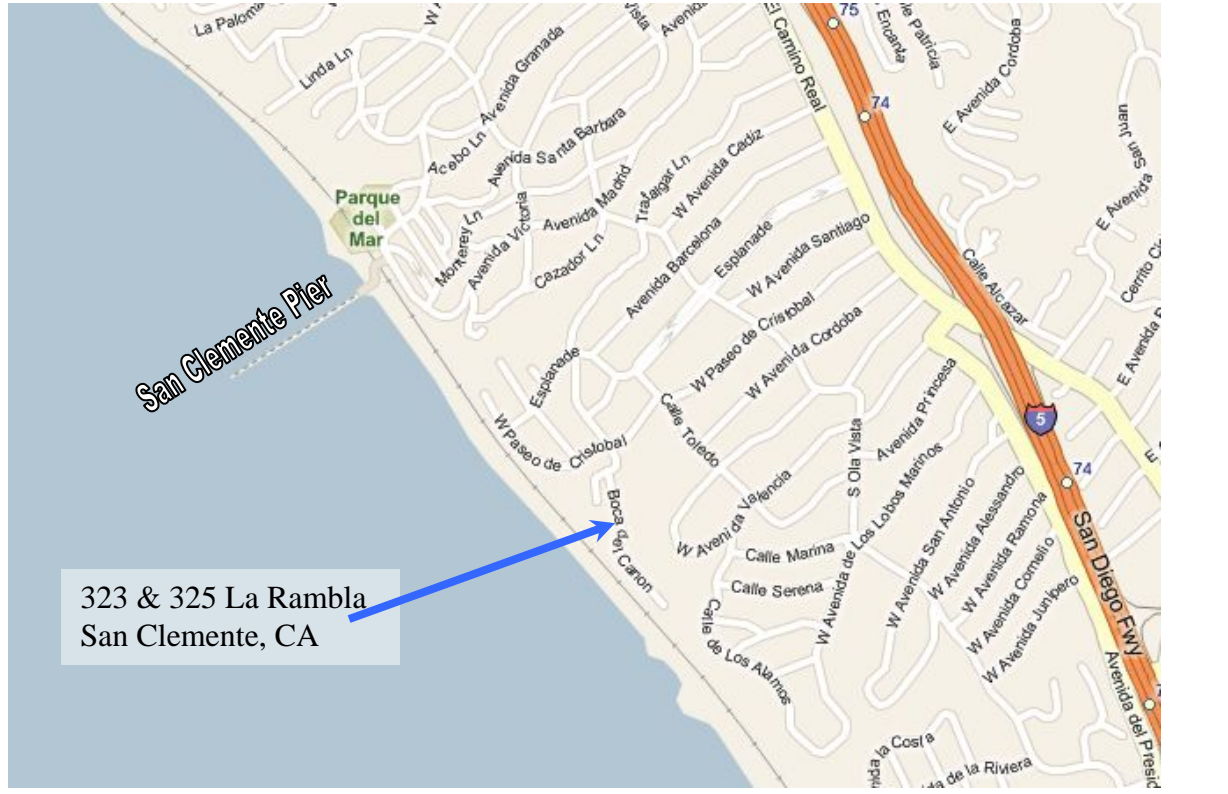
Here, staff's mere request for information has generated a takings claim by the applicants. Clearly, if there is a Commission action that is not in keeping with the applicants' expectations there is a high likelihood that a takings claim will be made then as well. Thus, the request for information to analyze the potential for such a claim is relevant in this case.

Furthermore, Commission staff believes the presence of significant geologic hazards on the site (i.e., the landslide) renders these sites to be within a significant coastal hazard area. There are a number of Coastal Act policies that are applicable to the proposed development, including but not limited to Section 30253 of the Coastal Act which requires that new development “assure stability and structural integrity...[without reliance on] protective devices that would substantially alter natural landforms along bluffs and cliffs.” Furthermore, Section 30251 of the Coastal Act requires that permitted development “minimize the alteration of natural landforms”. As it now stands, Commission staff does not believe it could find the proposed development consistent with either of these policies since the proposed development relies on protective devices (in the form of caisson supported foundation systems and retaining walls) and causes significant landform alteration. Therefore, Commission staff’s request for information that is needed in order to address the potential for a takings remains relevant, particularly in the absence of any changes to the development proposed on the subject lots. If the information provided is sufficient to establish that requiring full compliance with the Chapter 3 policies of the Coastal Act would result in a taking, Section 30010 of the Coastal Act authorizes the Commission to approve development to the extent necessary to avoid a taking. In the absence of the requested information, the Commission would not have an evidentiary basis to allow development that would otherwise be inconsistent with Coastal Act requirements in order to avoid a taking. Therefore, the Commission concurs with the Executive Director’s determination regarding filing.

C. CONCLUSION

The Commission **concurs** with the Executive Director’s determination that the subject coastal development permit applications are incomplete. The Commission concludes that all of the information requested by staff is necessary for staff’s analysis of the development proposals, and for the Commission’s consideration of the CDP applications to determine whether the projects comply with all relevant policies of the Coastal Act.

323 & 325 LA RAMBLA SAN CLEMENTE, CALIFORNIA 92672



323 & 325 La Rambla
San Clemente, CA

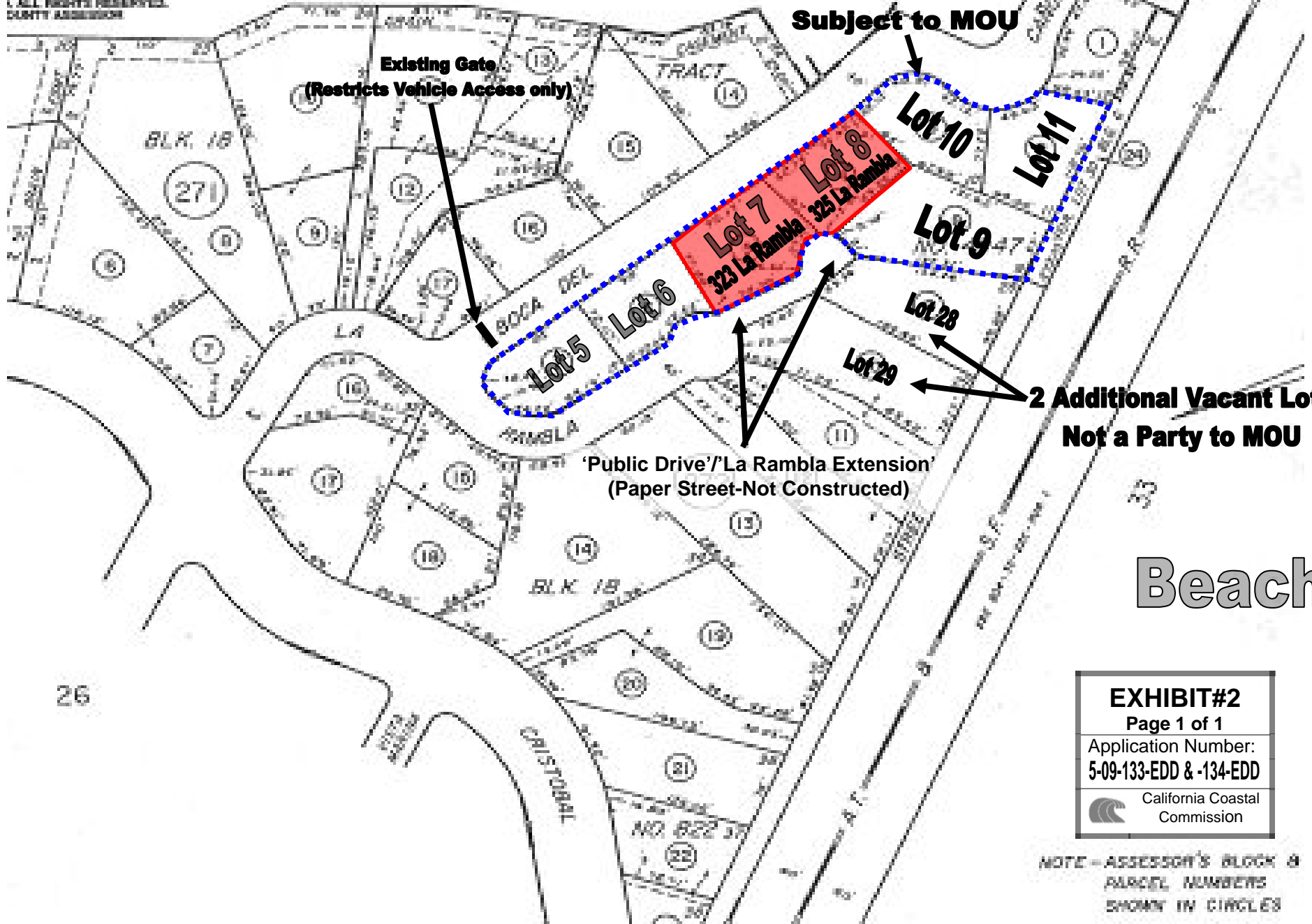
EXHIBIT# 1
Page 1 of 1
Application Number: 5-09-133-EDD & - 134-EDD
 California Coastal Commission

FOR ORANGE COUNTY
2002 ONLY. THE ASSessor
TREATS TO ITS ADJACENT
LITY FOR OTHER LOTS.
ALL RIGHTS RESERVED.
COUNTY ASSessor

28

**Dashed Line =
Area of 7 Vacant Lots
Subject to MOU**

**Existing Gate
(Restricts Vehicle Access only)**



**2 Additional Vacant Lots
Not a Party to MOU**

Beach

EXHIBIT#2
Page 1 of 1
Application Number: 5-09-133-EDD & -134-EDD
 California Coastal Commission

NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

26

RECEIVED
South Coast Region

NOV 2 2009

CALIFORNIA
COASTAL COMMISSION

ROBERT J. KRUP
Attorney at Law
31103 Rancho Viejo Road, Suite 2145
San Juan Capistrano, California 92675
(949) 388-3656
(949) 388-3657 facsimile
October 30, 2009

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Copies w/o Exhibit D also sent to:
Chairman Neely and Commissioners
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor, Regulation
Louise Warren Esq., Staff Counsel

Re: Appeal of October 21, 2009 Notice of Incomplete Applications
Applications No.s 5-09-133 (Yeskin) & 5-09-134 (Staver)
Property Addresses: 323 & 325 La Rambla, San Clemente, CA
Lots: 7 & 8, Tract 4947

Dear Mr. Douglas:

This appeal is being presented in collaboration with David York on behalf of the applicants David Yeskin and Rachel Staver, regarding the subject coastal development permits for single family residences on previously subdivided lots (Lots 7 & 8, Tract 4947) at 323 and 325 La Rambla, San Clemente, California.

Pursuant to California Code of Regulations, Title 14, section 13056(d), we are hereby filing an appeal to the Commission staff's determination dated October 21, 2009 that the Yeskin and Staver applications are incomplete. See attached letter marked as **Exhibit A**, and requesting a hearing before the Coastal Commission on the next available hearing date.

ISSUES ON APPEAL

1. Staff has requested alternative uses and a new plan reducing five (5) individually owned lots to a lesser number of lots. Karl Schwing states: "So, assume that Lots 7, 8, 9, 10 and 11 are a single lot..."(Notice of Status of Incomplete Application, 10/21/09, p. 2).
2. All other references of incomplete requested information in the October 21, 2009 letter pertain to issue number 1 above, and to other people's property (i.e., Lots 9-11), not the applicants' lots 7 & 8.

OPENING STATEMENT

The staff is rejecting the applications of Yeskin and Staver, the owners of Lots 7 & 8, by requesting that the applicants **combine their individually owned properties with their three neighbors' properties into one large lot**. This suggested re-subdivision of the remaining un-built lots in the tract is not feasible.

The Five empty lots are owned by individuals, all of whom have individual property rights. Each of the land owners is in the process of building their homes. Each has worked in good faith with the Coastal Commission over the last 4 yrs to come to a Memorandum of Understanding ("MOU") in November 2007.

It required the last two years for the staff and the Coastal Commission's attorneys to finalize the detailed MOU. The lot owners have spent over \$300,000 in legal fees to complete the MOU requirements.

As a result, a comprehensive plan for the building of the five houses has been completed. As part of the MOU as reflected on the Comprehensive Plan the five lots owners are willing to dedicate and build a sidewalk along Boca De Canon leading through a private gated community and across the owners parcels leading to a beach access. In addition the owners are willing to build an additional sidewalk along La Rambla and across three of the lots to the beach bluff in order to provide a bluff view point.

The comprehensive plan is for five houses on parceled lots in a subdivision approved and built in 1960; and gives **A NEW BEACH ACCESS and A NEW BEACH VIEW POINT** that neither the public nor the Coastal Commission legally possesses presently.

The blatant fact is that the staff member, Karl Schwing, is trying to change the MOU by requesting a combining of all the lots into one lot, or a reconfiguration of all the lots. His actions can be considered an anticipatory **breach of the MOU**. Those actions can be deemed to have effected **a total regulatory taking of the applicants' property**, and those of the adjacent landowners, without compensation in violation of the Fifth Amendment of the U.S. Constitution as applicable through the Fourteenth Amendment; and may be deemed an interference of such magnitude such as to restrict the exploitation of applicants' property interests; and interference with applicants' primary expectations concerning use of the property.

The applicants, Yeskin and Staver, have provided everything requested and required for the Staff and Commission to approve their individual homes to be built. The applications should be approved and the staff member, Karl Schwing, needs to be reprimanded in his actions.

FACTUAL BACKGROUND

1. Lots 7 & 8 of Tract 4947 are part of **an approved developed subdivision** since approximately 1960. Each of the other lots in the tract is privately and individually owned by other parties. **Lots 7 & 8 are not located on bluff faces. Lots 7 & 8 are four (4) lots from the ocean and cannot be seen from the beach. See attached aerial photo Exhibit B.**

2. The City of San Clemente ("City") has designated the lots as **RL land-use**. The City has General Plan designated and **zoned the lots for single family residential use** and such use comports with applicable City codes and the Coastal Act. (*Gov. Code* sections 65580 *et seq.*; section 65851.)

3. The lots are not within a sensitive habitat area, do not contain coastal dunes or wetlands, and they are not located in a critical viewshed or coastal hazard area. Instead, they are located in a neighborhood of existing single-family residences, and to this writer's knowledge there are no Coastal Act policies that may prohibit development for similar use.

4. In response to staff's **Notice of Incomplete Applications dated August 6, 2009** applicants submitted the following additional information as requested (a copy of the applicants' response submitted to staff on September 24, 2009 is attached hereto as **Exhibit C**):

a. **Comprehensive Development Plan** with reference to the location of the new sidewalk along Boca de Canon and the new access to the beach across Lot 11; and the new sidewalk along La Rambla across Lot 9 to the new viewpoint on Lot 9. The Comprehensive Plan illustrates that the designs for Lots 9-11 are within City building setbacks and Coastal Act bluff setback line of 25 feet. **Lots 7 & 8 are not located on bluff faces.** See attached Comprehensive Plan **Exhibit D**.

b. A **view analysis** showing no view limitation and the proposed viewpoint allows a 180 degree view of the coastline (View analysis page 4); and showing that the proposed houses on Lots 7 & 8 are situated inland from the viewpoint.

c. **Lawson & Associates Geotechnical Consulting, Inc. ("LGC") September 9, 2009 response** to the Notice of Incomplete Applications dated August 9, 2009. LGC's response states "...the reviewer concurred that from a geotechnical perspective, Lots 7 & 8 can be constructed without requiring any geotechnical stabilization on the remaining lots." The reviewer referred to in the quote is the City of San Clemente geotechnical engineer. The Lots are being stabilized by caisson sheer pins not by grading. Therefore, no grading is required to stabilize the lots. As stated in LGC's report **the safest geotechnical stabilization plan is by the use of caisson sheer pins** as described in LGC's reports. The sheer pin system will provide the **least amount of landform alteration**. The shear pin system is the best stabilization method, which is

below ground level, and is the only system that will **leave the terrain unchanged** or the least amount of landform alteration.

d. **The County of Orange, Environmental Management Agency Letter** dated May 3, 1989 and the attached referenced recorded Document number 84855, Book 3137 Pages 511 through 515, inclusive. The documents state that the **City of San Clemente has accepted ownership as a public drive.**

e. **Landscape plans** with plant analysis.

f. **OCFA approval** with signatures on the site plan.

g. **Taking information** with the City of San Clemente letter dated October 14, 2008 showing the RL land-use designation. These lots have been a part of an approved subdivision since approximately 1960. There are no other uses authorized in the subdivision. The lots are individually owned. The City of San Clemente has General Plan designated and zoned the lots for single family residential use and such use comports with applicable City codes and the Coastal Act. (*Gov. Code* sections 65580 *et seq.*; section 65851.)

APPEAL OF
NOTICE OF INCOMPLETE APPLICATIONS DATED OCTOBER 21, 2009

Staff submitted to applicants it Status of Incomplete Application dated October 21, 2009 stating that the "applications remain incomplete for the following:"

1. STAFF COMMENT:

"Comprehensive Development Plan."

APPLICANTS' APPEAL AND POSITION:

A. Applicants and other lot owners, Schneider, Grewe, and Farkouraghai, have submitted a Comprehensive Plan that meets all the requests of the MOU. Applicants Yeskin (Lot 7) and Staver (Lot 8) **have submitted geotechnical studies for Lots 7 and 8** that have been reviewed and approved by the City of San Clemente. The homes have been analyzed geotechnically by LGC, the geotechnical engineering firm. LGC states that the homes can be built independent of any other lot in the subdivision.

B. LGC, the geotechnical engineering firm, see report, has utilized the most advanced and all encompassing geotechnical method of analysis. No changes in existing parcels are required. Applicants previously responded and listed alternate methods in their September 24, 2009

response, **Exhibit C**, to Staff's Notice of Incomplete Application dated August 6, 2009. The response at page 3 stated:

"Reply:

- An alternative stabilization method would be to mass grade the entire site; however, that would encompass removing the entire site and re-compacting. This would entail removing all material passed the landslide approximately 40-50 feet of removal.
- This method would significantly change the existing land topography and the natural hillside which is contrary to the Coastal Commissions desires.
- Mass grading would also be problematic and does not meet the Coastal Commission's objectives.
- A third method would be to do a bluff tieback wall system.
- However, that system would leave an exposed wall to the beach.
- Our understanding is that the Coastal Act discourages exposed tie back walls.
- In conclusion; the shear pin system is the best stabilization method, which is below ground level, and is the only system that will leave the terrain unchanged or the least amount of landform alteration. "

C. Lots 7 & 8 have been geotechnically designed at 150% safety ratio with no land form alteration. See geotechnical reports. The Comprehensive Plan for Lots 7 & 8 shows that the lots have been designed to the highest level of safety and least amount of land form alteration. See geotechnical reports. Although lots 9-11 are not part of this application, they too have been designed with caisson sheer pin system which maximizes safety stabilization and minimum land form alteration.

2. STAFF COMMENT:

"**Stability Analysis.** Commission staff requested submission of seismic slope stability analyses for the proposed development...."

APPLICANTS' APPEAL AND POSITION:

A. On May 1, 2006 the report submitted by Lawson & Associates Geotechnical Consulting, Inc. ("LGC"), upon which staff is formulating its comments, is no longer the relevant report. In LGC's **September 9, 2009 response**, a copy of which is attached hereto as **Exhibit E**, to the Notice of Incomplete Applications dated August 6, 2009, LGC states:

"...Subsequent to our May 1, 2006 report, we have provided two reports regarding the development of only Lots 7 and 8 of Tract 4947. These reports have concluded that from a geotechnical perspective, Lots 7 and 8 can be adequately stabilized and constructed independently of all the remaining lots...."

"On January 25, 2008 LGC issued an addendum report and response to City review comments specifically regarding development of Lots 7 and 8... without any development of the surrounding lots (LGC, 2008a). In this report LGC provided adequate stability analysis and recommendations for the development of Lots 7 and 8Based on our updated slope stability analysis, a system consisting of caissons underneath the proposed residential foundations and caisson supported retaining walls will provide a factor of safety of greater than 1.5 against the slope instability on Lots 7 and 8, independent of any remediation on the remaining lots. See LGC, 2008a for complete details....

"Another set of City Geotechnical Review Comments were provided on February 23, 2008 and were later responded to in LGC's report dated March 27, 2008...

" ...LGC's March 27, 2008 report was received by the City of San Clemente's geotechnical reviewer and was approved on April 14, 2008...the reviewer concurred that from a geotechnical perspective, Lots 7 and 8 can be constructed without requiring any geotechnical stabilization on the remaining lots..."

B. As indicated staff has received multiple reports from LGC regarding stability analysis. The City has approved LGC's independent geotechnical report and design. If the staff requires additional review, it should be done after the applications are deemed complete and during the investigation time period before the Commission hearing on the applications. The application should be deemed complete and staff will have standard time for any additional third party review as standard procedure.

3. STAFF COMMENT:

"**Lot 9, stability and rate of erosion.** The comprehensive plan depicts a public viewpoint on Lot 9 that is constructed near the bluff edge identified by you. In addition, a home is planned for that lot. Commission staff need to understand whether the home or viewpoint would be threatened by erosion or other geologic stability issues over their life..."

APPLICANTS' APPEAL AND POSITION:

LOT 9 IS NOT PART OF THE PRESENT APPLICATION. The applications at issue are for Lots 7 & 8, **NOT** Lot 9. The applications for Lots 7 & 8 should be deemed complete. The issue of Lot 9 should be addressed when an application is filed by the owner of Lot 9.

4. STAFF COMMENT:

"**Geologic Review.** Commission staff will be seeking review of all of the geologic information provided, including review of the issue of slope stability analysis for the proposed development....In all likelihood, the review will be conducted by the California Geological

Survey on behalf of the Commission. You will be required to pay for that review and **the application filing will not occur until the geological review is completed** and all fees are paid..." (*Emphasis added*)

APPLICANTS' APPEAL AND POSITION:

A. As stated in the LGC's **September 9, 2009 response** to the Notice of Incomplete Applications dated August 9, 2009:

"It is well known that pseudostatic slope stability analysis is a very crude method of seismic slope stability analysis, as it ignores the cyclic nature of an earthquake and instead replaces the earthquake shaking by a single constant unidirectional lateral force. So it must be recognized that the accuracy of pseudostatic analysis is limited by the accuracy with which the simple pseudostatic inertial force can represent the complex dynamic inertial forces that actually exist in an earthquake.The shortcomings of the pseudostatic slope stability model are well known locally when dealing with soils in which the bedding planes are less than 12 degrees. As previously indicated in our reports, the Orange County Grading Code and the City of Los Angeles both recognize that the results of a pseudostatic slope stability analysis are not meaningful and therefore are not required when the bedding planes are less than 12 degrees, as the factors of safety are overly conservative (factor of safety is too low), because of the geometry of the failure plane. **For this reason, a pseudostatic analysis is not required** and therefore was not presented by LGC in our referenced reports. **For completeness, our pseudostatic analysis indicates a factor of safety of 0.73 for Cross-Section B-B' when it was subject to a k=0.15....**

"In summary, the pseudostatic method of analysis provides inaccurate, inappropriate, and overly conservative factors of safety (too low) when the bedding planes are flatter than 12 degrees, **which is the case on the subject site**. Permanent displacement methods of analysis (Newmark or others) use yield acceleration as an input parameter,...**Since these seismic displacement methods use an erroneous yield acceleration, the calculated result is also erroneous.** ... Therefore we request the California Coastal Commission geotechnical reviewer accept the conclusions of this report and local governing agencies that the requested analysis is not required for this landslide geometry...." (*Emphasis added*)

B. As indicated staff has received multiple reports from LGC regarding stability analysis. The City has approved LGC's independent geotechnical report and design. If the staff requires additional review, it should be done after the applications are deemed complete and during the time period before the Commission hearing on the applications. The application should be deemed complete and staff will have six months for any additional third party review.

5. **STAFF COMMENT:**

"**Lot 9 view impacts.** Development of Lot 9 in the comprehensive plan includes an above-grade house. Please provide a public view impact analysis at this development, particularly from the public access along La Rambla and the 'public drive' and from the street."

APPLICANTS' APPEAL AND POSITION:

LOT 9 IS NOT PART OF THE PRESENT APPLICATION. Applicants have provided a view analysis and site plan as pertains to Lots 7 & 8. The applications at issue are for Lots 7 & 8, **NOT** Lot 9. The applications for Lots 7 & 8 should be deemed complete. The issue of Lot 9 should be addressed when an application is filed by the owner of Lot 9.

6. **STAFF COMMENT:**

"**Public access across Lot 11.** The existing footpath across Lot 11 to the beach crosses in a diagonal fashion with its seaward endpoint north of an existing utility building that is seaward of Lot 11. This path is visible from the beach. In the comprehensive plan, this access is moved to the southwest to a paved pathway with stairs running straight across Lot 11...If the endpoint were relocated to this area are there any obstructions or other conditions in that area...that would deter public access and use of the access across Lot 11? How would the public see the access path from the beach if it were relocated to this area?"

APPLICANTS' APPEAL AND POSITION:

LOT 11 IS NOT PART OF THE PRESENT APPLICATION. The applications at issue are for Lots 7 & 8, **NOT** Lot 11. The applications for Lots 7 & 8 should be deemed complete. The issue of public access across Lot 11 should be addressed when an application is filed by the owner of Lot 11. **The owners of Lots 7 & 8 do not have control over the beach access.** However, **as agreed in the MOU, a new, safe sidewalk and stairs will be provided by the owner of Lot 11 to be used as beach access upon approval of the Lot 11 CDP as shown on the Comprehensive Plan.** The location will have a greater visibility by the street approaching the beach and more visibility from the beach to the street. The new entrance will be a four foot wide cement path and stairway, where now there exists an extremely steep, eroded dirt path two feet wide, highly deteriorated and extremely dangerous.

7. **STAFF COMMENT:**

"**Access Dedications.** Your latest letter states that the owner of Lot 6 will provide an access dedication over part of their lot in order to accommodate the planned public access improvements. However, there was no written indication from the owner agreeing to do so. Please provide such written evidence of [sic] identify other alternatives that can be accomplished without reliance on access across Lot 6."

APPLICANTS' APPEAL AND POSITION:

The owner of Lot 6 has signed the MOU and signed easement and dedication documents allowing the public to access the sidewalk on his property. A legal description of the easement describing the corner of Lot 6 has been provided to staff as with all dedications. Staff will prepare the easements as part of the CDP approval process. The owner of Lot 6 will have to sign the easement as a condition of approval of the CDP. The applications for Lots 7 & 8 should be deemed complete.

8. **STAFF COMMENT:**

"**Public access across Lots 7 & 8.** The plans provided show stairs within a proposed sidewalk/public access pathway along the northwesterly side of Lot 7 (along the 'public drive' extension of La Rambla). Does the presence of stairs present any problem with satisfying Americans with Disabilities Act (ADA) requirements?... any safety fencing needed in such cases and if so what type of fencing is proposed. Any fencing used should minimize visual impacts."

APPLICANTS' APPEAL AND POSITION:

A. At present there is a gradual sloping dirt path to the bluff top just 10' north of the rear of the property line of Lot 7 & 8 located on the City owned public drive. Access to this path will not be interrupted by the development of Lots 7 & 8.

B. The new sidewalk and stairs will be at the present grade and will be temporary until lot 9 builds out the public driveway. When lot 9 builds the public drive the new sidewalk on lots 7, 8 and 9 will be ADA accessible. At present time the grade at the rear of lots 7 and 8 is unstable dirt, extremely steep, dangerous and is not presently used as a pathway to the bluff edge on Lot 9. A new temporary sidewalk and stairs will enhance the safety of access to the bluff and will have city approved hand railings to enhance safety. In addition to the new temporary sidewalk, the existing dirt path on the public driveway, adjacent to the sidewalk will be assessable for ADA usage as it is in present condition.

C. The applications at issue are for Lots 7 & 8, **NOT** Lot 9. The applications for Lots 7 & 8 should be deemed complete. The issue of ADA requirements on Lot 9 should be addressed when

an application is filed by the owner of Lot 9. The technical requirements for ADA compliance are an issue for the City, not the Coastal Commission.

9. STAFF COMMENT:

"Takings information. Commission staff previously requested that you submit information that would allow for a takings analysis. A limited response was provided but did not include all of the information staff requested....please provide all of the information previously requested."

APPLICANTS' APPEAL AND POSITION:

A. As applicants stated in their response to staff's Notice of Incomplete Applications dated August 6, 2009:

"See the City of San Clemente letter dated October 14, 2008 showing the RL land-use designation. These lots have been a part of an approved subdivision since approximately 1960.

There are no other uses authorized in the subdivision. The lots are individually owned.

The City of San Clemente has General Plan designated and zoned the lots for single family residential use and such use comports with applicable City codes and the Coastal Act. (*Gov. Code* sections 65580 *et seq.*; section 65851.)

Moreover, not only will residential development of the lots assist the City in meeting its SCAG-imposed Regional Housing Need Allocation ("RHNA") obligation to provide for development within the City of at least 239 market-rate housing units for the period January 1, 2006 through June 30, 2014, but the lots cannot be used for any purpose other than residential development under the uniformity requirement of the state's Planning and Zoning Law. (*Ibid.*; *Gov. Code* section 65852; *Neighbors in Support of Appropriate Land Use v County of Toulumne* (2007) 157 Cal. App. 4th 997.

Finally, the lots are not within a sensitive habitat area, do not contain coastal dunes or wetlands, and they are not located in a critical viewshed or coastal hazard area. Instead, they are located in a neighborhood of existing single-family residences, and to this writer's knowledge there are no Coastal Act policies that may prohibit development for similar use."

B. The staff's actions in such a request will be deemed to have effected a **total regulatory taking of the applicants' property**, and those of the adjacent landowners, without compensation in violation of the **Fifth Amendment** of the U.S. Constitution as applicable through the **Fourteenth Amendment**; and may be deemed an interference of such magnitude such as to restrict the exploitation of applicants' property interests; and interference with applicants' primary expectations concerning use of the property.

C. Applicant's position is that this issue is not a staff decision and should not be grounds for the "Incomplete Application". The applications should be deemed complete and the Commission should make the decision at the hearing on the completed application.

CONCLUSION

The applicants, Yeskin and Staver, owners of Lots 7 & 8 have worked in good faith with the Coastal Commission, and the adjacent landowners, over the last 4 yrs to come to a Memorandum of Understanding ("MOU") in November 2007.

It required the last two years for the staff and the Coastal Commission's attorneys to finalize the detailed MOU. The lot owners have spent over \$300,000 in legal fees to complete the MOU requirements.

As a result, a comprehensive plan for the building of the five houses has been completed. As part of the MOU as reflected on the Comprehensive Plan the five lots owners are willing to dedicate and build a sidewalk along Boca De Canon leading through a private gated community and across the owners parcels leading to a beach access. In addition the owners are willing to build an additional sidewalk along La Rambla and across three of the lots to the beach bluff in order to provide a bluff view point.

The comprehensive plan is for five houses on parceled lots in a subdivision approved and built in 1960; and gives **A NEW BEACH ACCESS and A NEW BEACH VIEW POINT** that neither the public nor the Coastal Commission legally possesses presently.

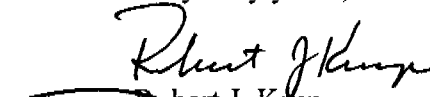
Applicants believe that they have provided full, complete and satisfactory responses to each of staff's inquiries; however, due to staff's desire to prevent any building along the coast, the staff has refused to accept the applications as complete. Staff is circumventing the provisions of California Code of Regulations, Title 14, section 13056(a) (and Gov. Code, section 65920) for staff completion of filing determinations "within ten (10) working days if feasible, but in no event later than thirty (30) calendar days" by a pattern of action that automatically has a notice of incomplete application at the end of each 30 day period. Applicants have yet to experience a response anywhere close to the 10 day period.

The staff has requested information that does not pertain to the applications for Lots 7 & 8. This is a technique to stall and cost the applicants unnecessary additional costs and delay. The notice of incomplete applications are based upon inaccurate and/or pretextual reasons (e.g. demanding information already provided and on file, demanding unnecessary information, asserting need for "alternatives analysis" based upon erroneous scientific methods.

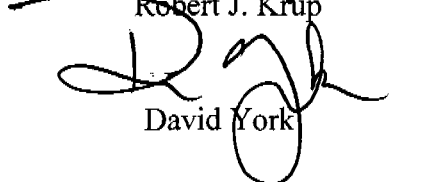
It is respectfully requested that the Commission rule that the applications for Lots 7 & 8 be deemed complete and set a hearing on the completed applications as soon as a date can be set after requisite public notices.

Please advise my office if you have any questions regarding this matter.

Very truly yours,



Robert J. Krup



David York

Enclosures:

- A- Notice of Incomplete App. 10/21/09
- B- Aerial Photo
- C- Applicants' 9/24/09 Response w/o exhibits
- D- Comprehensive Plan
- E- LGC report dated 9/9/09

cc: Chairman Neely and Commissioners
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor, Regulation & Planning
Louise Warren Esq., Staff Counsel

w/o Enclosure Exhibit D



PROPOSED
BEACH ACCESS

PROPOSED
VIEW POINT

BLUFF TOP

LOT 8

LOT 7

LOT 6
UNDER
CONSTRUCTION

LOT 5
UNDER
CONSTRUCTION

CALIFORNIA COASTAL COMMISSION

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



October 21, 2009

David York
David York Architect
12 W. Avenida San Gabriel
San Clemente, CA 92672

Robert J. Krup, Attorney at Law
31103 Rancho Viejo Road, Suite 2145
San Juan Capistrano, CA 92675

Re: **STATUS OF INCOMPLETE APPLICATIONS**
Application No. 5-09-133 (Yeskin) & 5-09-134 (Staver)
323 & 325 La Rambla, San Clemente, CA (Lot No.s 7 & 8, Tract 4947)

Dear Mr. York & Mr. Krup:

Commission staff sent you a letter dated August 6, 2009, requesting additional information to complete the above-named applications. On September 24, 2009, Commission staff received a response from you. Commission staff have reviewed the information submitted and determined that the applications remain incomplete, pending receipt of information previously requested and additional information necessary to clarify the information most recently submitted. The applications remain incomplete for the following:

Comprehensive Development Plan. Commission staff previously requested that you prepare and submit a comprehensive development plan for Lots 7-11 of Tract 4947, as required by the previously signed memorandum of understanding. In your latest response you provided drawings titled "Comprehensive Plan for Lots 7, 8, 9, 10 and 11 Tract 4947" that consist of preliminary grading plans and floor plans and elevations to construct a home on each of those lots. However, there was no geotechnical information provided to support the suggested layout. Previously submitted geotechnical information relates to a different stabilization design than appears to be being used with this comprehensive development plan. Therefore, Commission staff would need you to submit an updated geotechnical evaluation of the planned grading and stabilization design shown on the comprehensive plan in order for us to give it further consideration and you should submit that information if you wish for us to give it further consideration. However, as discussed further below, based on the limited information we have on this comprehensive plan it appears that the plan raises significant issues as to conformity with the requirements of the Coastal Act.

Commission staff previously requested that you identify alternatives for stabilizing and developing the site in a manner that is consistent with the Coastal Act and among other issues, that minimizes landform alteration. Toward that goal, we also asked that you look at changing the arrangement of the existing land division such that development could be concentrated into those areas where it is safest to develop. Your response did not provide such analysis. It simply states that the landowners want to develop the lots in their existing configuration and that the manner proposed on Lots 7 and 8 involves the least amount of landform alteration. Unfortunately, Commission staff does not believe the proposed manner of stabilizing and developing the lots can be found consistent with Coastal Act requirements regarding minimizing landform alteration and avoiding the use of protective devices to assure the stability of the proposed development. Perhaps our prior request was unclear, thus, I'll explain our request for an alternatives analysis in a different way, as follows:

Lots 7-11 are areas of high geologic hazard. The Coastal Act requires that new development minimize risk to life and property and not rely on protective devices/retaining structures and significant landform alteration in order to do so. Due to hazards and visual impacts, among other issues, development should also not be located on bluff faces. At least three of the subject lots include bluff face areas and the comprehensive plan provided to us shows development on the bluff face. We are asking you to explain where it will be possible to construct homes and how this area can it be developed safely without relying on landform alteration and protective devices, avoiding construction on bluff faces, while assuring adequate safety for the development. We don't see how the proposed projects, or the comprehensive plan, meet those standards. Thus, we are

Status of Incomplete Applications

5-09-133 & 5-09-134

Page 2 of 3

encouraging you to look at the overall stability of the site (Lots 7-11) to see what level of development is suitable.

So, assume that Lots 7, 8, 9, 10 and 11 are a single lot. Identify the location(s), if any, of area(s) of land where development can be constructed without reliance on significant landform alteration (e.g. mass grading the site) and/or the installation of significant protective devices such as the proposed deepened foundation systems (e.g. caissons) and retaining walls. Such analysis would need to be conducted by a qualified professional, such as the project geotechnical engineer. If such area(s) can be identified, also explain how many residential units could be placed in that area. If there are no areas that can be developed without reliance on landform alteration and protective devices, identify the areas that can be developed with the least amount of landform alteration and either no or minimal use of protective devices. Again, explain how many residential units could be constructed in that area. We understand that the outcome of this analysis may not be the project you wish to propose. Nevertheless, we need such an analysis in order to continue to process your applications.

Stability Analysis. Commission staff requested submission of seismic slope stability analyses for the proposed development. Your latest response provides reasons, again, for not providing such analysis. We understand you may have reasons for not providing the analysis requested. However, we need assurance that the proposed development will be safe. In addition, we're requesting this analysis, in part, to find areas where development is possible that is safe and stable without reliance on protective structures either now or in the future. Therefore, we want some quantification of the stability. If you want to quantify stability in other ways, we can refer that quantification to our third party geologic reviewer, as discussed below, under 'geologic review'.

Lot 9, stability and rate of erosion. The comprehensive plan depicts a public viewpoint on Lot 9 that is constructed near the bluff edge identified by you. In addition, a home is planned for that lot. Commission staff need to understand whether the home or viewpoint would be threatened by erosion or other geologic stability issues over their life. Therefore, please provide a geologic analysis that documents the historic and anticipated future rate of erosion at that site along with an analysis of if or when the viewpoint or the home would be threatened by such erosion. Furthermore, the geologic analysis must look at stability issues on that property and identify whether the viewpoint or home would need to be stabilized with any protective devices either at the time of its development or in the future.

Geologic Review. Commission staff will be seeking review of all of the geologic information provided, including review of the issue of slope stability analyses for the proposed development. Pending the outcome of that review, Commission staff may insist on the provision of the previously requested seismic slope stability analyses, or different analyses. Once we have received all required technical documents and plans, the Commission will select a geologist to review all information on geological conditions at the site. In all likelihood, the review will be conducted by the California Geological Survey on behalf of the Commission. You will be required to pay for that review and the application filing will not occur until the geologic review is completed and all fees are paid (and any other filing requirements are met).

Lot 9 view impacts. Development of Lot 9 in the comprehensive plan includes an above-grade house. Please provide a public view impact analysis of this development, particularly from the public access along La Rambla and the 'public drive' and from the street.

Public access across Lot 11. The existing footpath across Lot 11 to the beach crosses in a diagonal fashion with its seaward endpoint north of an existing utility building that is seaward of Lot 11. This path is visible from the beach. In the comprehensive plan, this access is moved to the southwest to a paved pathway with stairs running straight across Lot 11 along that lot's southwesterly property line such that the seaward endpoint is just south of the existing utility building. If the endpoint were relocated to this area are there any obstructions or other conditions in that area seaward of the end point that would deter public access and use of the access across Lot 11? How would the public see the access path from the beach if it were relocated to this area?

Status of Incomplete Applications

5-09-133 & 5-09-134

Page 3 of 3

Access Dedications. Your latest letter states that the owner of Lot 6 will provide an access dedication over part of their lot in order to accommodate the planned public access improvements. However, there was no written indication from the owner agreeing to do so. Please provide such written evidence of identify other alternatives that can be accomplished without reliance on access across Lot 6.

Public access across Lots 7 & 8. The plans provided show stairs within a proposed sidewalk/public access pathway along the northwesterly side of Lot 7 (along the 'public drive' extension of La Rambla). Does the presence of stairs present any problem with satisfying Americans with Disability Act (ADA) requirements? How would individuals that are unable to use the stairs, get around them? Also, this walkway is adjacent to a slope on both Lots 7 and 8; is any safety fencing needed in such cases and if so what type of fencing is proposed. Any fencing used should minimize visual impacts.

Takings Information. Commission staff previously requested that you submit information that would allow for a takings analysis. A limited response was provided but did not include all of the information staff requested. Your rationale for not providing the information is your conclusion, in part, that the site isn't a coastal hazard area and that there are no policies in the Coastal Act that would prohibit the development of the subject sites for residential purposes. Commission staff believes the presence of significant geologic hazards on the site (i.e. landslide) renders these sites to be within a significant coastal hazard area. There are a number of Coastal Act policies that are applicable to the proposed development, including but not limited to Section 30253 of the Coastal Act which requires that new development "assure stability and structural integrity...[without reliance on] protective devices that would substantially alter natural landforms along bluffs and cliffs." Furthermore, Section 30251 of the Coastal Act requires that permitted development "minimize the alteration of natural landforms". As it now stands, Commission staff does not believe it could find the proposed development consistent with either of these policies since the proposed development relies on protective devices (in the form of caisson supported foundation systems and retaining walls) and causes significant landform alteration. Therefore, our prior request remains relevant. Thus, please provide all of the information previously requested.

Please let me know if you have any questions, or wish to discuss further.

Sincerely,
[original signed by]

Karl Schwing
Supervisor, Regulation & Planning

ROBERT J. KRUP
Attorney at Law
31103 Rancho Viejo Road, Suite 2145
San Juan Capistrano, California 92675
(949) 388-3656
(949) 388-3657 facsimile
September 17, 2009

RECEIVED
South Coast Region

SEP 24 2009

CALIFORNIA
COASTAL COMMISSION

Mr. Karl Schwing
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Applications No.s 5-09-133 (Yeskin) & 5-09-134 (Staver)
Property Addresses: 323 & 325 La Rambla, San Clemente, CA
Lots: 7 & 8, Tract 4947

Dear Mr. Schwing:

This letter is being presented in collaboration with David York on behalf of the applicants David Yeskin and Rachel Staver, regarding the subject coastal development permits. In response to your Notice of Incomplete Applications dated August 6, 2009 we hereby submit the following additional information as requested:

A. Comprehensive Development Plan:

1. Location of Access ways in context of overall access plan:

Reply:

- Please see the attached Comprehensive Development Plan submitted herewith. See sheet C-1.
- Please note the new sidewalk along Boca de Canon and the new access to the beach across Lot 11.
- Also note the new sidewalk along La Ramba across Lot 9 to the new viewpoint on Lot 9.

2. Location of public viewpoint identified and any impact on views from viewpoint

Reply:

- Please see the attached Comprehensive Development Plan submitted herewith. See sheets C-1 and 9-S.
- See the view analysis submitted herewith.
- In conclusion there is no view limitation and the proposed viewpoint allows a 180 degree view of the coastline. See view analysis page 4.
- All the proposed houses on Lots 7 through 11 are situated inland from the viewpoint.

3. Geologic stability issues

- (i) **San Clemente's review 3/25/07 only work if whole system is in place not piecemeal;**

Reply:

- Please see the attached Response to California Coastal Commission Notice of Incomplete Applications dated August 9, 2009 Regarding Lots 7 & 8 of Tract 4947, Boca Del Canon, San Clemente, CA submitted by Lawson & Associates Geotechnical Consulting, Inc. ("LGC") dated September 9, 2009.
- See LGC's responses to Comments number 1 and 2 on page 2. As LGC states "...the reviewer concurred that from a geotechnical perspective, Lots 7 & 8 can be constructed without requiring any geotechnical stabilization on the remaining lots."
- The reviewer referred to in the quote is the City of San Clemente/State geotechnical engineer.
- Lots are being stabilized by caisson sheer pins not by grading.
- Therefore, no grading is required to stabilize the lots.

- (ii) **Comprehensive geotechnical stabilization plan and a construction phasing plan, assure safe development consistent with Coastal Act requirements.**

Reply:

- Please see the attached Response to California Coastal Commission Notice of Incomplete Applications dated August 9, 2009 Regarding Lots 7 & 8 of Tract 4947, Boca Del Canon, San Clemente, CA submitted by Lawson & Associates Geotechnical Consulting, Inc. ("LGC") dated September 9, 2009.
- Please read LGC's entire report.
- As stated in LGC's report the safest geotechnical stabilization plan is by the use of caisson sheer pins as described in LGC's reports.

- (iii) **Total quantity of grading for stabilization over all lots (broken down for each lot)**

Reply:

- Please see the attached Response to California Coastal Commission Notice of Incomplete Applications dated August 9, 2009 Regarding Lots 7 & 8 of Tract 4947, Boca Del Canon, San Clemente, CA submitted by Lawson & Associates Geotechnical Consulting, Inc. ("LGC") dated September 9, 2009.
- We are not grading to stabilize.
- We are using caisson sheer pins and not grading to stabilize the lots.
- The sheer pin system will provide the least amount of landform alteration.

(iv) Identify the range of feasible alternatives for stabilization, including minimizing landform alteration and reasons why proposed stabilization method chosen

Reply:

- An alternative stabilization method would be to mass grade the entire site; however, that would encompass removing the entire site and re-compacting. This would entail removing all material passed the landslide approximately 40-50 feet of removal.
- This method would significantly change the existing land topography and the natural hillside which is contrary to the Coastal Commission's desires.
- Mass grading would also be problematic and does not meet the Coastal Commission's objectives.
- A third method would be to do a bluff tieback wall system.
- However, that system would leave an exposed wall to the beach.
- Our understanding is that the Coastal Act discourages exposed tie back walls.
- In conclusion; the shear pin system is the best stabilization method, which is below ground level, and is the only system that will leave the terrain unchanged or the least amount of landform alteration.

(v) Does the method involve the least amount of landform alteration.

Reply:

- Yes.
- Caisson shear pins have been chosen in order to stabilize the landslide without mass grading thus the least amount of landform alteration.
- The houses will be supported on the caissons.
- This method will leave the terrain as natural as possible.
- The caissons will support the houses and stabilize the landslide as well.

4. Location and intensity of development and infrastructure on all lots must be considered in an alternative analysis in order to develop the lots consistent with the Coastal Act including adequate space for setback from bluff.

Reply:

- The Comprehensive Plan illustrates that the designs for Lots 9-11 are within City building setbacks and Coastal Act bluff setback line of 25 feet.
- See C-1, 9-S and 11-S of the comprehensive plan.
- These are legally subdivided lots zoned for residential.
- It is not feasible to readjust the approved lot lines and the zoning.
- See City of San Clemente letter dated October 14, 2008.
- Each lot 7-11 is separately owned and each individual family future desire is to build their home.
- Lots 28 & 29 are not part of the MOU or this Comprehensive Plan.
- Lots 28 & 29 are not providing access or a viewpoint and are not part of this Comprehensive Plan.

B. Geologic Reports:

1. Seismic slope stability analysis, Coastal Comm requires even though City did not to minimize risks to life and property as required by Coastal Act.

(i) Slope stability for all cross sections using either:

- (a) Pseudo static slope stability analyses, or**
- (b) Newmark-type analysis.**

Reply:

- Please see the attached Response to California Coastal Commission Notice of Incomplete Applications dated August 9, 2009 Regarding Lots 7 & 8 of Tract 4947, Boca Del Canon, San Clemente, CA submitted by Lawson & Associates Geotechnical Consulting, Inc. ("LGC") dated September 9, 2009.

C. Scope of Proposed Development:

1. Identify and document present owner of "Public Drive"

Reply:

- Please see the attached County of Orange, Environmental Management Agency Letter dated May 3, 1989 and the attached referenced recorded Document number 84855, Book 3137 Pages 511 through 515, inclusive.
- The documents state that the City of San Clemente has accepted ownership as a public drive.

2. Clarify through narrative and plans whether development (sidewalk, staging, access etc.) on that area of land is proposed.

Reply:

- The proposed sidewalk will be constructed completely on Lots 7 & 8 including a recorded public access easement for the sidewalk.
- We will not be using the “Public Drive” for construction staging, sidewalk, street improvements or access.
- See revised preliminary grading plans for Lot 7 & 8 as part of the City approved in concept drawings.
- Also, see sheets G-3 and G-4.

3. If we do not own the Public Drive, evidence that owner has granted ability to undertake development

Reply:

- The City owns the Public Drive and the City has approved the project in concept.
- We are not improving the Public Drive for the development of Lots 7 & 8.
- Please see the attached County of Orange, Environmental Management Agency Letter dated May 3, 1989 and the attached referenced recorded Document number 84855, attached hereto.

4. Ultimate design and alignment of potential street and driveway access for all lots must be addressed in comprehensive plan.

Reply:

- Please refer to the Comprehensive Plan sheet C-1 for street alignment and driveway access for all lots.
- Access to Lot 7 and 8 shall be from the street Boca del Canon as approved by the City in concept approval.

D. Access Easements:

1. Provide a graphic and legal description of public access easements

Reply:

- Owners are intending to provide public access easements continuation of the sidewalk along Boca del Canon and along La Rambla.
- Please refer to the Comprehensive Plan and the attached proposed easements with legal descriptions.

2. Linkage between a sidewalk on Lot 6 to sidewalk along Lots 7 & 8.

Reply:

- Access easements are proposed in the applications and per the Comprehensive Plan and the attached proposed easements with legal descriptions.
- An offer to dedicate will be drafted as a condition of approval by the Coastal Commission in the same form as was required in the approval of Lots 5 & 6.

3. Lot 6 owner must grant linkage.

Reply:

- As stated in the MOU, the owner of Lot 6 has provided access by easement and dedication of a sidewalk and will provide linkage to Lot 7 sidewalk.
- Lot 6 will sign easement/dedications as condition of issuance of CDP for Lot 7.
- See the attached proposed easements with legal descriptions.
- Please see the attached deed restrictions and offer to dedicate for Lots 5 & 6.

4. If not, alternative linkage must be identified.

Reply:

- Not applicable.

E. Cross Sections:

1. Provide cross sections showing elevations compared with Public Drive and Lots 9 & 10.

Reply:

- Please see the attached Comprehensive Plan sheet C-2 and C-3 as well as in concept approval plans sheets G-2 through G-5.

F. Grading Plan Inconsistencies

1. Provide approved in concept by the City. Do not need framing and electrical.

Reply:

- Please see the resubmitted in concept approved plans signed by the City.

G. View Impacts:

1. Visual impact analysis

Reply:

- Please see attached view analysis by architect David York.
- Also see sheet 6 of the view analysis which shows heights of proposed vegetation.

H. Landscape Plans- Drought tolerance

1. Provide analysis by a landscape architect.

Reply:

- Plant material is all California native.
- See attached landscape plant analysis by David York, Architect and the revised landscaping plans.
- Per B&P code sections 5500.1 architects are allowed to prepare landscaping plans.

I. Grading/Earthwork Removals:

1. Estimate the quantity of earthwork removals for geotechnical purposes for each lot. Additional fees apply?

Reply:

- Regarding quantities: Lot 7 requires 418 yards of over-x and re-compaction in addition to the original estimate for a total earth work quantity of 2543 yards.
- See sheet G-2 of the revised in concept drawings.
- Lot 8 requires 290 yds of over-x and re-compact in addition to the original listed estimate for a total earth work quantity 2591 yds.
- As listed on G-2 for Lot 8. See also LGC's response for comment 9.

J. Parking:

Reply:

- Lot 7 will have a three car garage. See revised in concept drawings.

K. Guest Casitas – Lot 7

1. If separate living quarters need two parking spaces.

Reply:

- There is no "Guest Casitas."
- It was an error in wording.
- It is now referenced as GUEST BEDROOM, See revised in concept approved drawings.

L. Off Site Caissons- Lots 8/9

1. Caissons straddle lot line?

Reply:

- Caissons shall be constructed completely on lot 8.
- This has been corrected on the in concept drawings sheet G-2, G3-and G-4.

M. Land Ownership

1. Provide documentation regarding transfer of ownership since MOU.

Reply:

- In the original applications title reports were submitted.
- Ownership has not changed.
- Ownership is in the name of David Yeskin (Lot 7) and Rachel Staver (Lot 8).
- Please see the attached Title Reports.

N. Local Actions

1. Provide correspondence between applicant and representatives and City re proposed development

Reply:

- Correspondence between applicant and City have been:
 - (a) Planning Department approval,
 - (b) Building and Grading Department in concept approval,
 - (c) The geotechnical soils report approvals, (included in the soils response), and
 - (d) Letter dated October 14, 2008 attached hereto.

O. OCFA Approval:

1. Provide written evidence of review of landscaping plans by OCFA and identification of design requirements necessary to reduce fire susceptibility, including wind driven.

Reply:

- OCFA has reviewed and approved the site plan. Please see drawings with OCFA approval attached.

P. Taking Information

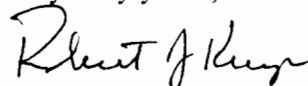
Reply:

- See City of San Clemente letter dated October 14, 2008 showing the RL land-use designation.

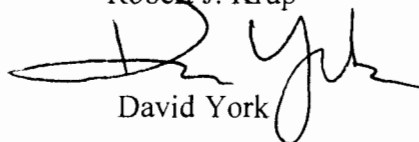
- These lots have been a part of an approved subdivision since approximately 1960. There are no other uses authorized in the subdivision.
- The lots are individually owned.
- The City of San Clemente has General Plan designated and zoned the lots for single family residential use and such use comports with applicable City codes and the Coastal Act. (*Gov. Code* sections 65580 *et seq.*; section 65851.)
- Moreover, not only will residential development of the lots assist the City in meeting its SCAG-imposed Regional Housing Need Allocation ("RHNA") obligation to provide for development within the City of at least 239 market-rate housing units for the period January 1, 2006 through June 30, 2014, but the lots cannot be used for any purpose other than residential development under the uniformity requirement of the state's Planning and Zoning Law. (*Ibid.*; *Gov. Code* section 65852; *Neighbors in Support of Appropriate Land Use v County of Toulumne* (2007) 157 Cal. App. 4th 997.
- Finally, the lots are not within a sensitive habitat area, do not contain coastal dunes or wetlands, and they are not located in a critical viewshed or coastal hazard area. Instead, they are located in a neighborhood of existing single-family residences, and to this writer's knowledge there are no Coastal Act policies that may prohibit development for similar use.

We believe that we have provided full, complete and satisfactory responses to each of your inquiries; however, if you require any further additional information please do not hesitate to contact me.

Very truly yours,



Robert J. Krup



David York

Enclosures

CALIFORNIA COASTAL COMMISSION

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



August 6, 2009

David York
David York Architect
12 W. Avenida San Gabriel
San Clemente, CA 92672

Re: **NOTICE OF INCOMPLETE APPLICATIONS**
Application No.s 5-09-133 (Yeskin) & 5-09-134 (Staver)
323 & 325 La Rambla, San Clemente, CA (Lot No. 7 & 8, Tract 4947)

Dear Mr. York:

On July 9, 2009, our office received the subject coastal development permit applications. The proposed projects are to construct two single family residences on two vacant lots. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your applications and schedule them for a public hearing. Please accept this letter as notification that your applications are incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your applications please submit the following:

- **Comprehensive Development Plan.** A Memorandum of Understanding (MOU) was executed between the Commission and the owners of the subject lots and Lots 5-6 & 9-11 in 2008. That MOU was recorded against all the subject lots and is therefore known to the applicants. Among the many provisions of the MOU is a requirement that a 'comprehensive plan' be prepared that addresses how all of the subject lots would ultimately be developed such that the location of required public accessways and a viewpoint are identified and the timing for construction of those facilities is also identified. No such comprehensive plan has been submitted to the Executive Director for review and approval. The comprehensive plan is important in the case of these lots, in part, because the location of proposed accessways on these lots must be shown to work in the context of the overall access plan. In addition, the location of the public viewpoint must be identified so that we can determine whether the development proposed on these lots would have any impact on views from the viewpoint.

The MOU also requires that the lots '...be developed in a comprehensive manner consistent with the comprehensive plan...'. This provision exists, in part, to assure that geologic stability issues associated with the site are identified for all of the lots, as is the geotechnical solution. The City of San Clemente's Geotechnical Review sheet dated March 25, 2007, suggests that a geotechnical stabilization plan for the site can only work if the whole system is put in place for all of the lots (not in piecemeal fashion). This underscores the need for the completion of a comprehensive development plan, including comprehensive geotechnical stabilization plan and a construction phasing plan, in order to assure that the lots can be developed in a safe manner, and in a manner that is consistent with Coastal Act requirements. In this description, please be sure to estimate the total quantity of grading over all the lots (broken down for each lot) that will be needed for stabilization purposes. In addition to identifying the overall plan, that analysis will need to identify the range of feasible alternatives for stabilization, including all those that minimize landform alteration, and describe the reasons why the proposed stabilization method was chosen and whether it is the method that involves the least amount of landform alteration.

Development on Lots 7 and 8 that would foreclose possible implementation of environmentally superior alternatives for development of all the lots must not be allowed. The location and intensity of development and necessary infrastructure on all the lots must be considered in an alternatives analysis. The arrangement of the existing land division may need to be modified in order to develop the lots consistent with the Coastal Act. For instance, there may not presently be adequate space on Lots 9-11 (or in Lots 28/29 of Tract

Notice of Incomplete Applications

5-09-133 & 5-09-134

Page 2 of 4

822) in their present configuration to provide a setback from the bluff that is adequate to avoid reliance on a bluff protective device or other significant landform alterations (which would be inconsistent with Section 30253 of the Coastal Act). Some lot reconfiguration may be necessary in order to create safe building sites that can be developed consistent with the Coastal Act. Otherwise, you may be left with lots that are undevelopable.

The Comprehensive Plan is intended to address these issues. The subject applications cannot be filed or presented to our Commission for action unless and until a comprehensive plan has been submitted to and approved by the Executive Director.

- **Geologic Report.** Seismic slope stability analyses were not included in the geologic information supplied. The geologists' response to the City, which also requested seismic slope stability analyses, states that the Orange County grading code doesn't require such analyses in this case due to certain factors. Even though the County does not require such analyses here, the Commission needs this information in order to ensure that the proposed development minimizes risks to life and property as required by Coastal Act section 30253. Therefore, please submit seismic slope stability analyses for all the cross sections for which static analyses were done. You may either do pseudostatic slope stability analyses demonstrating a minimum factor of safety of at least 1.1 with a $k = 0.15$ or do Newmark-type analyses demonstrating permanent horizontal displacement of no more than 50 millimeters. If you have questions regarding these requirements, please contact Dr. Mark Johnsson, our staff geologist, at 415-904-5200.
- **Scope of Proposed Development.** West of and adjacent to Lots 7 and 8 there is an area of land identified on the grading plans as 'Public Drive' that appears to be an extension of La Rambla. Please identify and provide documentation of the present ownership of this area of land. Please also clarify, through written narrative and plans, whether any development (e.g. sidewalk, public accessway, street improvements, construction staging or access, etc.) on that area of land is proposed in the subject applications (the plans are unclear on this issue as the property line dividing Lots 7 and 8 from the 'Public Drive' is not clearly identified). If the owners of Lots 7 and 8 do not own the 'Public Drive' then you must show evidence that the owner of the 'Public Drive' has granted the owners of Lots 7 and 8 the ability to undertake the development they are proposing on those lots. In addition, the ultimate design and alignment of potential street and/or driveway access for all the lots included in the comprehensive plan must be addressed in the comprehensive plan.
- **Access Easements.** Are the applicants proposing public access easements in these applications? If so, please provide a graphic (and legal description, if feasible) of the proposed easements. Also, the plans submitted indicate an 'access easement' on adjacent Lot 6 near La Rambla that appears to provide a linkage between a sidewalk located in front of Lot 6 to a sidewalk along Lots 7 and 8.. Is this access easement proposed in these applications? If so, the owner of Lot 6 must grant the owners of the subject lots the ability to carry out that proposal. If not, then an alternative linkage between the existing/approved sidewalk in front of Lots 5 and 6 along La Rambla and any sidewalks along La Rambla/'Public Drive' in front of Lots 7 and 8 must be identified.
- **Cross Sections.** Cross Sections provided do not clearly show the final elevations of the proposed homes, retaining walls, fences, land, compared with La Rambla/'Public Drive' and Lots 9 & 10. Please provide cross sections that clearly show these elevations.

Notice of Incomplete Applications

5-09-133 & 5-09-134

Page 3 of 4

- Grading Plan Inconsistencies- Lot 7. Several copies of the preliminary grading plans were submitted. One set, combined with floor plans, elevations, electrical, framing, etc¹. is different from the other sets that were submitted separately (without the electrical, framing, etc.). Which set was approved-in-concept by the City and should we be using for purposes of this application?
- View impacts. Please submit a visual impact analysis of the proposed development as viewed from La Rambla, existing and proposed public accessways, the beach and coastal trail. Please be sure to include the visual impact of the proposed landscaping. Maximum heights of proposed vegetation need to be identified.
- Landscape Plans-Drought tolerance/invasiveness. Please submit an analysis by a landscape architect (or similar) of the drought tolerance and invasiveness of the individual plant species proposed in the landscape plans. The analysis must include whether the plant species proposed are considered non-drought tolerant and/or invasive according to: California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>); and whether the plants are considered to be 'low water use' or 'ultra low water use' plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).
- Grading/Earthwork Removals. The application materials indicate that grading quantities for Lot 7 are 3217 cubic yards (2880 + 337) and for Lot 8 are 2301 cubic yards (1726+575). However, the geotechnical report recommends earthwork removals for recompaction purposes. Please estimate the quantity of earthwork removals for geotechnical purposes for each lot. If that grading, plus the previously identified grading, exceeds a combined 10,000 cu.yds. on either lot, additional fees will apply.
- Parking. The application for Lot 7 doesn't contain the quantity of proposed on-site parking spaces. Please identify the total quantity of proposed parking spaces on Lot 7.
- Guest Casitas-Lot 7. Plans for the home on Lot 7 indicate there will be a proposed "Guest Casitas". Is this intended as a separate living quarters/unit? If so, based on past Commission action, 2 parking spaces would be required to serve that unit, in addition to 2 spaces required for the main residence.
- Off-site caissons-Lot 8/9. Grading plans submitted for Lot 8 show that caissons/deepened foundation systems are proposed to be constructed for Lot 8 on adjacent Lot 9 (the caissons straddle the lot line between these lots). If such off-site construction is required, please submit evidence that the owner of Lot 9 has granted approval to the owner of Lot 8 to construct development on their lot.
- Land Ownership. Provision 16 of the MOU requires that any transfers of ownership of the subject lots be identified within 30 days of such transfer. Please provide details/documentation regarding any such transfers of ownership that have occurred since execution of the MOU.
- Local Actions. Please submit copies of all correspondence between the applicants/representatives and the City regarding the proposed development. In addition, please submit copies of any materials related to local hearings on the proposed development (e.g. staff reports, resolutions of approval, etc.), if any.

¹ PLEASE NOTE: ON ANY FUTURE PLAN SUBMITTALS, YOU DO NOT NEED TO INCLUDE FRAMING AND ELECTRICAL PLANS. COMMISSION STAFF DO NOT REVIEW THESE PLANS. FRAMING AND ELECTRICAL REQUIREMENTS ARE THE PURVUE OF THE CITY.

Notice of Incomplete Applications

5-09-133 & 5-09-134

Page 4 of 4

- OCFA Approval. The Orange County Fire Authority (OCFA) often requires modifications to landscaping plans (also known as fuel modification plans) that affect final project design. Please provide written evidence of review of the proposed landscaping plans by the OCFA and identification of any design requirements of the proposed residences that are necessary (or recommended) to reduce the structures susceptibility to fire, including but not limited to, wind-driven fires.
- Because there are significant constraints on development of the lots subject to the comprehensive development plan requirement in terms of geologic stability and alteration of natural landforms, the Commission may find that any significant development of some or all of the lots would be inconsistent with Coastal Act requirements. In that case, the Commission would be able to approve development of those lots only if it finds that denial of development would constitute a taking of private property without compensation in violation of Constitutional requirements. To allow the Commission to undertake that analysis, please provide the information specified in the enclosed "Takings Information" form with respect to lots 7, 8, 9, 10, and 11. In addition to the information requested on that form, please also indicate whether any agreements exist that relate to (1) compensation of the owners of those lots by third parties if the owners are unable to obtain regulatory approvals for development of the lots or (2) acquisition of those lots by, or compensation to, third parties if the owners of the lots do obtain regulatory approvals for development of the lots. If any such agreements exist, please provide copies of those agreements.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,



Karl Schwing
Supervisor, Regulation & Planning
Orange County Area

Attachment: Takings Information

cc: File
David Yeskin, Applicant
Rachel Staver, Applicant

CALIFORNIA COASTAL COMMISSION

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



Takings Information

In some cases, additional application information is needed regarding an applicant's investment-backed expectation (including, but not limited to, cases where development is proposed in environmentally sensitive habitat areas (such as coastal dunes and wetlands), other highly sensitive areas (such as critical viewsheds), high hazard areas, etc.

BACKGROUND

If an applicant for a coastal development permit can demonstrate that he or she has a sufficient real property interest in the property to allow the proposed project, and that denial of the proposed project based on application of Coastal Act policies would deprive his or her property of all economically viable use, some development may be allowed even where a Coastal Act policy may otherwise prohibit it, unless the project would constitute a nuisance under State Law. A specific development proposal may still be denied, however, if a more modest alternative proposal could be approvable, and thus assure the property owner of some economically viable use. Any development approved pursuant to this provision must conform to all other applicable Coastal Act requirements.

Information Needed

Since the Coastal Commission must analyze whether its action in denying a permit application would constitute a taking, in order to comply with Section 30010 of the Coastal Act and the California and United States Constitutions, the application filing requirements shall include information about the nature of the applicants' property interest. When an application involves property in which development could potentially be completely prohibited (for example, because the property contains environmentally sensitive habitat areas, is located in the critical viewshed, is subject to coastal hazards, etc.), the applicant shall submit the following information as part of their coastal development permit application:

1. Date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it. Describe the basis upon which the fair market value is derived, including any appraisals done at the time.
4. Changes to general plan, zoning or similar land use designations applicable to the subject property since the time of purchase of the property. If so, identify the particular designation(s) and applicable change(s).
5. At the time the applicant purchased the property, or at any subsequent time, has the property been subject to any development restriction(s) (for example, restrictive covenants, open space easements, etc.), other than the land use designations referred to in question (4) above?

Takings Information

Page 2 of 2

6. Any changes in the size or use of the property since the time the applicant purchased it. If so identify the nature of the change, the circumstance and the relevant date(s).
7. If the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicate the relevant date(s), sales price(s), rent assessed, and nature of the portion of interest sold or leased.
8. Is the applicant aware of any title report, litigation guarantee or similar document prepared in connection with all or a portion of the property? If so, provide a copy of each such document, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.).
9. Has the applicant solicited or received any offers to buy all or a portion of the property since the time of purchase? If so, provide the approximate date of the offer and the offered price.
10. Identify, on an annualized basis for the last five calendar years, the applicant's costs associated with ownership of the property. These costs should include, but not necessarily be limited to, the following:
 - a. property taxes
 - b. property assessments
 - c. debt services, including mortgage and interest costs; and
 - d. operation and management costs;
11. Apart from any rent received from leasing all or a portion of the property (see question #7, above), does the applicant's current or past use of the property generate any income? If the answer is yes, list on an annualized basis for the past five calendar years the amount of generated income and a description of the use(s) that generates or has generated such income.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CALIFORNIA COASTAL COMMISSION
AND
ERNEST F. ALVAREZ, JR. AND PAULETTE M. ALVAREZ, AS TRUSTEES OF THE
ALVAREZ FAMILY TRUST, DATED SEPTEMBER 23, 2000, MARK D. CRAGUN,
DAVID YESKIN, RACHEL STAVER, DAVID SCHNEIDER, HADI FAKOURI, AND
CARL GREWE
REGARDING
PROVISION OF OFF-SITE ACCESS AND
DEVELOPMENT PHASING OF LOTS 7, 8, 9, 10, AND 11, TRACT 4947,
SAN CLEMENTE, CALIFORNIA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the California Coastal Commission ("Commission"), a public agency, the owner/coastal development permit ("CDP") applicants of Lot 5, Tract 4947 (Alvarez) and Lot 6, Tract 4947 (Cragun) and prospective CDP applicants and all owners of Lots 7, 8, 9, 10 and 11 of Tract 4947. Lots 5, 6, 7, 8, 9, 10 and 11 will be referred to collectively as The Lots. The Commission and the owners of The Lots are hereinafter referred to collectively as the Parties.

I. RECITALS

- A. WHEREAS, Ernest F. Alvarez, Jr. and Paulette M. Alvarez as Trustees of the Alvarez Family Trust, dated September 23, 2000 and Mark D. Cragun (collectively, "Applicants") are the owners of and have filed Application No. 5-07-070 and Application No. 5-07-056 for CDPs for the construction of single family residences on respectively, Lot 5, Tract 4947 and Lot 6, Tract 4947, in the City of San Clemente;
- B. WHEREAS, the Applicants and the owners/prospective CDP applicants of Lots 7, 8, 9, 10 and 11, Tract 4947, while not agreeing that there is substantial public use of any of the referenced properties, have sought to address Public Resources Code Section 30211 by providing alternative beach access and a permanent public viewpoint location;
- C. WHEREAS, Coastal Act Section 30211 provides, in part, that, "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization ..."
- D. WHEREAS, The Lots are currently undeveloped, but there are numerous informal dirt footpaths that cross The Lots.
- E. WHEREAS, the Parties have agreed that the provision and construction of a public viewpoint and accessway thereto, on and across Lots 7, 8, and 9, in connection with the development of such lots and in conjunction with the review and approval of a CDP for

such lots, will provide a public viewpoint and accessway that is equivalent in time, place and manner to the existing public accessway and viewpoint in this location;

- F. WHEREAS, the Parties have agreed that a beach access across Lot 11, via a public accessway from La Rambla to Lot 11 that is on and across Lots 5, 6, 7, 8, and 10 and is adjacent and contiguous to Boca del Canon, will provide a public accessway that is equivalent in time, place and manner to the existing public accessway along Boca del Canon and an informal dirt footpath across Lot 11, and will address the Commission's goal of achieving enhanced coastal access at Boca del Canon;
- G. WHEREAS, on November 14, 2007, the Commission approved CDP No. 5-07-070 (Alvarez) and CDP No. 5-07-056 (Cragun) subject to several conditions, including Special Condition No. 6 which requires the Parties' execution of the MOU;
- H. WHEREAS, the Executive Director of the Commission is authorized to enter into this agreement on behalf of the Commission by CDP No. 5-07-070 and CDP No. 5-07-056.

Now, therefore, in consideration of the owner of The Lots' agreement to cooperate in the dedication and improvement of the alternative beach access and public viewpoint and accessway referenced herein, the Commission's agreement that the viewpoint and accessways are equivalent in time, place and manner to existing views and accessways, and the issuance of CDP No. 5-07-070 and CDP 5-07-056 by the Commission, the Parties do hereby agree, as follows:

II. DEFINITIONS

"Public Viewpoint" shall mean an improved and all-weather viewing area that shall be located in Lot 9, providing views to and along the beach and ocean, with public access thereto via a Public Accessway.

"Public Accessway" shall mean a 5 foot-wide corridor that is open to the public 24 hours per day, including a 4 (four) foot-wide sidewalk. The owners of The Lots shall record easements on each of their respective lots offering to dedicate to the public the Public Accessway(s) located on their lot, pursuant to paragraph 7 of this MOU.

"Beach Access" shall mean a corridor that is open to the public 24 hours per day, connecting to the Public Accessway along Boca Del Canon St., including an all-weather walkway plus area for a bench and trash receptacle. The Beach Access shall be located on the southern perimeter of Lot 11 adjacent to Lot 12, extending from the Public Accessway along Boca del Canon to the seaward side of the lot. The owner of Lot 11 shall record an easement on Lot 11 offering to dedicate to the public the Beach Access, pursuant to paragraph 7 of this MOU.

III. TERMS AND CONDITIONS

1. This Memorandum of Understanding ("MOU") is executed as of the date on which it has been signed by the authorized representatives of all the Parties;
2. Upon receipt of a copy of this MOU executed by all the Parties, and final completion and approval of all other requirements of Special Condition No. 6 and all other conditions that the Applicants must satisfy prior to issuance of CDPs No. 5-07-070 and No. 5-07-056, the Executive Director of the Commission ("Executive Director") shall issue the CDPs for Application No. 5-07-070 and Application No. 5-07-056;
3. The owners of The Lots ("Landowner(s)") shall agree to provide the Public Viewpoint, as defined, upon the bluff top within Lot 9, providing views to and along the beach and ocean with public access thereto via a Public Accessway from La Rambla on and across Lots 7 and 8 to the Public Viewpoint within Lot 9;
4. The Landowner(s) shall agree to provide a Public Accessway along an improved easement from the existing access point at the intersection of Boca del Canon and La Rambla down Boca del Canon and connecting to the Beach Access across Lot 11. This Public Accessway shall be located upon Lots 7, 8, 10 and 11, connecting to the Public Accessway upon Lots 5 and 6 imposed on CDP No. 5-07-070 and 5-07-056 through Special Condition No. 2 of these permits;
5. The Landowner(s) shall agree to provide the Beach Access across Lot 11 to the beach;
6. The Public Viewpoint and each of the Public Accessways and the Beach Access required by this MOU shall be maintained in perpetuity, and if the Public Viewpoint or any of the Public Accessways is threatened from geological hazard, the affected Public Viewpoint or Public Accessway(s) shall be relocated inland within the required easements.
7. Prior to any development on Lots 7, 8, 9, 10 and 11, the owners of each of these lots shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of the Public Viewpoint and/or Public Accessway and/or Beach Access located on their respective lots. These recorded document(s) shall reflect the following restrictions: i) The Public Accessway, Public Viewpoint and Beach Access shall be open to the general public for use for up to 24-hours per day; ii) The owners of each lot shall, or, at the election of the easement holder, the easement holder shall, maintain the easement area; iii) Any development, as defined in Section 30106 of the

Coastal Act, that diminishes permanent public pedestrian access and passive recreational use of the easement is prohibited; iv) No development, as defined in Section 30106 of the Coastal Act, shall occur within the Public Accessway or Public Viewpoint or Beach Access except for the following development: grading and construction necessary to construct the viewpoint, public access walkway and appurtenances, underground utilities to serve the proposed development on the lots, vegetation removal and planting, construction of drainage devices, and maintenance and repair of the approved development within the easement. The recorded document(s) shall include legal descriptions and graphic depictions, prepared by a licensed surveyor, of both the entire project site and the area of the offered easement(s). The offer(s) shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer(s) shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

8. The owners of Lots 7, 8, 9, 10 and 11 shall, prior to issuance of any CDP for residential development of Lots 7, 8, 9, 10 or 11 (including any preparation of said lots for residential development), provide a comprehensive plan for and agree to construct all improvements necessary to make the Public Viewpoint, Public Accessways and Beach Access on these lots safely usable by the public prior to or concurrent with development of Lots 7, 8, 9, 10 and 11;
9. Regardless of the status or timing of any CDPs for residential development on Lots 7, 8, 9, 10 and 11, the comprehensive plan required pursuant to paragraph 8 shall be submitted to the Executive Director for his or her approval no later than three (3) years after execution of this MOU. The comprehensive plan shall provide for dedication and construction of the Public Accessways, Public Viewpoint and Beach Access within five (5) years of the execution of this MOU. The construction of the Public Accessways, Public Viewpoint and Beach Access requires a CDP. Once the comprehensive plan has been approved by the Executive Director, the owners of Lots 7, 8, 9, 10 and 11 may include the construction of the Public Accessway, Public Viewpoint and/or Beach Access located on each of their lots as part of an application for a CDP for residential development, or they may apply for a separate CDP solely for construction of the Public Accessway, Public Viewpoint and/or Beach Access on their individual lot, as long as construction of the Public Accessways, Public Viewpoint and Beach Access takes place within five (5) years of execution of this MOU;
10. The MOU shall be binding on the Landowner(s) and all successors and assigns of each and every Landowner(s) and shall be disclosed in any real estate transaction involving any of The Lots. The MOU shall also be recorded against The Lots through a deed

restriction on each of The Lots, subject to the review and written approval of the Executive Director, recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction;

11. Each Landowner(s) must obtain all necessary regulatory permits and approvals, including, but not limited to, a CDP, prior to commencement of any development on the Landowner(s) own lot;
12. Lots 7, 8, 9, 10 and 11 shall be developed in a comprehensive manner consistent with the comprehensive plan submitted by the owners/prospective CDP applicants of Lots 7, 8, 9, 10 and 11 and approved by the Executive Director of the Commission, although CDPs for Lots 7 and 8 may be submitted separately from CDP applications for Lots 9, 10 and 11;
13. Until a comprehensive plan for the Public Viewpoint, Public Accessways, Beach Access and development is implemented on Lots 7, 8, 9, 10 and 11, the Landowner(s) and any successors and assigns shall not interfere with any existing public use of Lots 7, 8, 9, 10 and 11. Subject to applicable coastal development permit requirements, the applicants and/or Landowner(s) may take reasonable steps to prevent any dangerous conditions on Lots 7, 8, 9, 10 or 11, the exposure to which could foreseeably result in landowner third party liability;
14. The MOU is executed in counterparts, each of which shall be considered a duplicate original;
15. Notices: Any demand upon or notice required or permitted to be given by one party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the parties in paragraph 14. Notice of a change of address shall be given by written notice in the manner set forth in this section;
16. For the purposes of this MOU, all information, requests, or other business including any demand upon or notice required shall be coordinated through the following representatives:

*Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr. and Paulette M. Alvarez as
Trustees of the Alvarez Family Trust, dated September 23, 2000.
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,*

Ernest F. Alvarez Jr. and Paulette M. Alvarez, Trustees of the
Alvarez Family Trust, dated September 23, 2000
19551 Elderwood Circle
Huntington Beach, CA 92648

Mark D. Cragun
28 Via Divertirse
San Clemente, CA 92673

David Yeskin
52 Burning Tree
Newport Beach, CA 92660

Rachel Staver
189 Grandview
Encinitas, CA 92024

David Schneider
1801 Avenida Salvador
San Clemente, CA 92672

Hadi Fakouri
20845 Canada Road
Lake Forest, CA 92630

Carl Grewe
13 Camino Lienzo
San Clemente, CA 92673

*Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr. and Paulette M. Alvarez as
Trustees of the Alvarez Family Trust, dated September 23, 2000,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,*

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

with copy to: California Coastal Commission
South Coast District Office
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

Written notification of any changes to the individuals, entities and/or addresses listed above by the individual or entity making such change, including but not limited to changes of property ownership, shall be provided within 30 days of such change to all of the Parties.

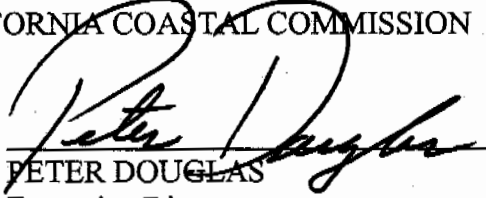
17. This MOU shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties;
18. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California;
19. The terms of this MOU shall become effective upon execution by both Parties. The MOU may be altered, changed, or amended by mutual consent of the Parties. Any changes or amendments must be in writing and signed by the Parties before such change or amendment shall take effect; and
20. Should any provision of this MOU be found void or unenforceable, it shall be severable from the rest of the MOU and the remaining terms shall be enforced as if the unenforceable term had not existed.
21. Each of the signatories to this MOU, with the exception of the Executive Director of the California Coastal Commission, hereby certifies that he or she owns in fee title the real property identified by the lot number listed underneath his or her signature on this agreement and/or that he or she is authorized to execute contracts on behalf of, and

Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr. and Paulette M. Alvarez as
Trustees of the Alvarez Family Trust, dated September 23, 2000.
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

otherwise bind all of the owners of the lot number listed underneath his or her signature
with regard to the relevant property (herein "Authorized Signatory").

STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION

By:

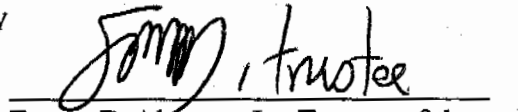

PETER DOUGLAS
Executive Director

Date:

6/17/08

Owner and/or Authorized Signatory of Lot(s) 5
of Tract 4947, City of San Clemente, Orange
County

By:



Ernest F. Alvarez, Jr., Trustee of the
Alvarez Family Trust, dated September
23, 2000

Date:

5-29-08

Owner and/or Authorized Signatory of Lot(s) 5
of Tract 4947, City of San Clemente, Orange
County

By:



Paulette M. Alvarez, Trustee of the
Alvarez Family Trust, dated September
23, 2000

Date:

5-29-08

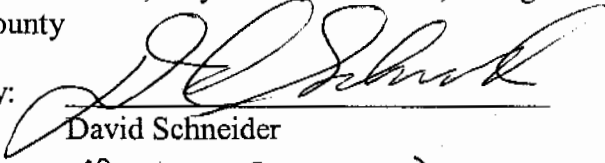
Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr., Paulette M. Alvarez,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: 
Mark D. Cragun

Date: May 29, 2008

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: 
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: _____

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: 
Hadi Fakouri


Date: 5/23/08

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: _____

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: 
Carl Grewe

Date: 5-23-08

Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr., Paulette M. Alvarez,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: _____
Mark D. Cragun

Date: _____

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: 5-22-08

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: _____
Hadi Fakouri

Date: 5/23/08

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: _____

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: _____
Carl Grewe

Date: 5-23-08

Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr., Paulette M. Alvarez,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: _____
Mark D. Cragun

Date: _____

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: _____

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: _____
Hadi Fakouri

Date: _____

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: 5-24-08

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: _____
Carl Grewe

Date: 5-23-08

§ 13053.5. Application Form and Information Requirements.

The permit application form shall require at least the following items:

(a) An adequate description including maps, plans, photographs, etc., of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act, including sufficient information concerning land and water areas in the vicinity of the site of the proposed project, (whether or not owned or controlled by the applicant) so that the Commission will be adequately informed as to present uses and plans, both public and private, insofar as they can reasonably be ascertained for the vicinity surrounding the project site. The description of the development shall also include any feasible alternatives or any feasible mitigation measures available which would substantially lessen any significant adverse impact which the development may have on the environment. For purposes of this section the term "significant adverse impact on the environment" shall be defined as in the California Environmental Quality Act and the Guidelines adopted pursuant thereto.

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

(c) A dated signature by or on behalf of each of the applicants, attesting to the truth, completeness and accuracy of the contents of the application and, if the signer of the application is not the applicant, written evidence that the signer is authorized to act as the applicant's representative and to bind the applicant in all matters concerning the application.

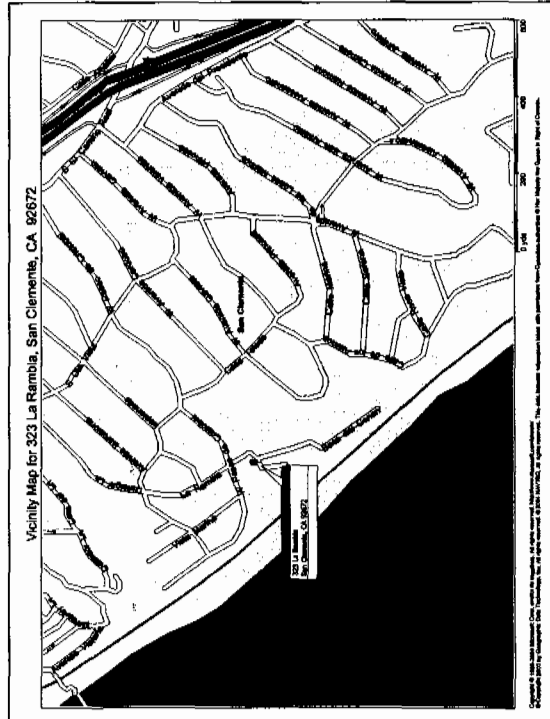
(d) In addition to full size drawings, maps, photographs, and other exhibits drawn to scale, either one (1) copy of each drawing, map, photograph, or other exhibit approximately 8 1/2 in. by 11 in., or if the applicant desires to distribute exhibits of a larger size, enough copies reasonably required for distribution to those persons on the Commission's mailing lists and for inspection by the public in the Commission office. A reasonable number of additional copies may, at the discretion of the Executive Director, be required.

(e) Any additional information deemed to be required by the commission or the commission's executive director for specific categories of development or for development proposed for specific geographic areas.

(f) The form shall also provide notice to applicants that failure to provide truthful and accurate information necessary to review the permit application or to provide public notice as required by these regulations may result in delay in processing the application or may constitute grounds for revocation of the permit.



COMPREHENSIVE PLAN FOR LOTS 7,8,9,10 AND 11 TRACT 4947 IN CITY OF SAN CLEMENTE

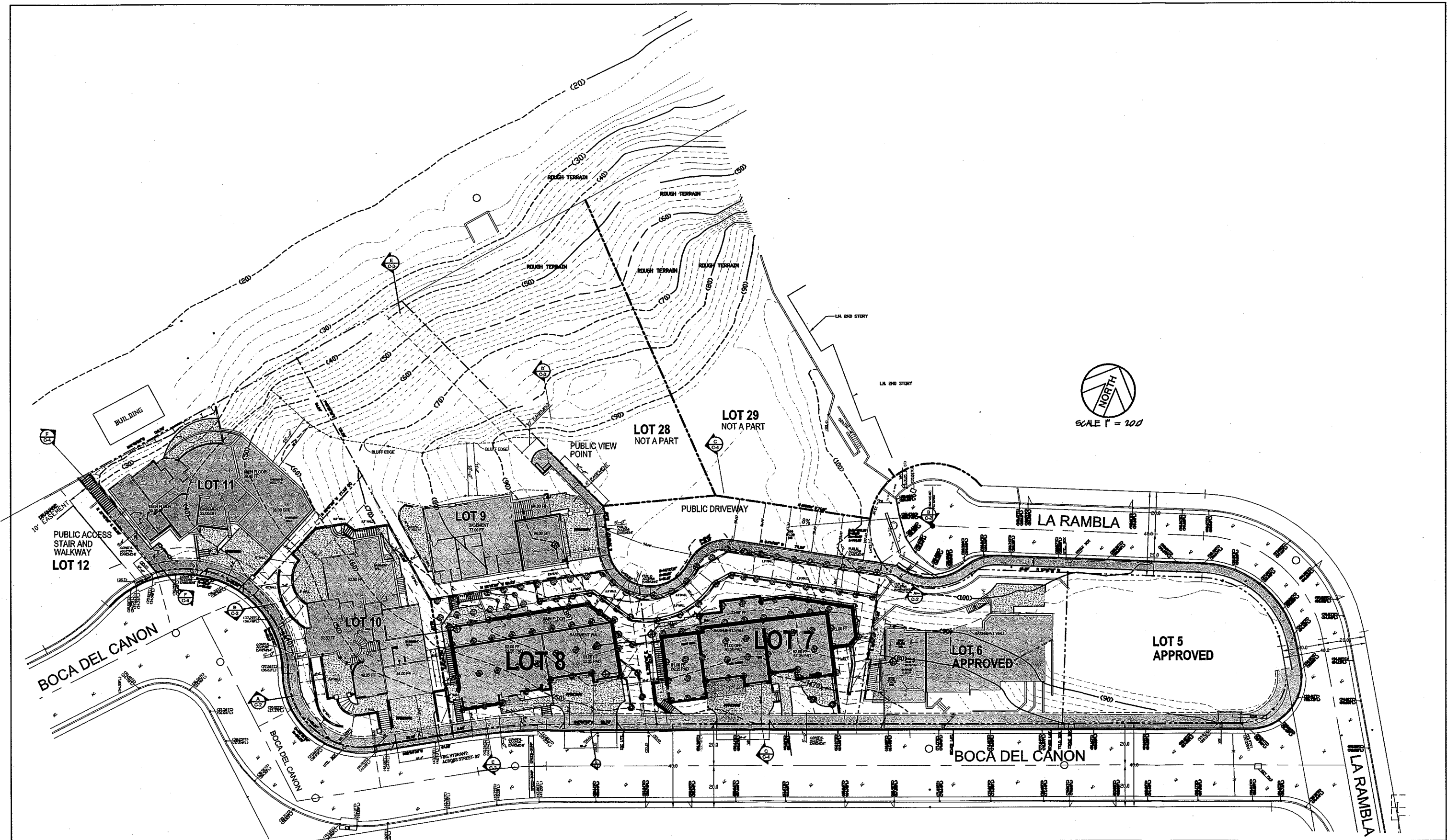


- LOT #11**
 OWNER: ERENE P. CAMINO LENDO SAN CLEMENTE, CA 92672
 PROJECT: CUSTOM RESIDENCE LOT #11 TRACT 4947 LA RAMBLA SAN CLEMENTE, CA 92672
- LOT #10**
 OWNER: TIKIARI ZORAB CAMANO RD. LAURE FOREST, CA 92640
 PROJECT: CUSTOM RESIDENCE LOT #10 TRACT 4947 LA RAMBLA SAN CLEMENTE, CA 92672
- LOT #9**
 OWNER: SCHROEDER BOB ANDREA SALVADOR SAN CLEMENTE, CA 92672
 PROJECT: CUSTOM RESIDENCE LOT #9 TRACT 4947 LA RAMBLA SAN CLEMENTE, CA 92672
- LOT #8**
 OWNER: BARNES P. CAMINO LENDO SAN CLEMENTE, CA 92672
 PROJECT: CUSTOM RESIDENCE LOT #8 TRACT 4947 LA RAMBLA SAN CLEMENTE, CA 92672
- LOT #7**
 OWNER: VIEKIN SE DURNING TREE NEWPORT BEACH, CA 92660
 PROJECT: CUSTOM RESIDENCE LOT #7 TRACT 4947 LA RAMBLA SAN CLEMENTE, CA 92672

C	SHEET INDEX
C-1	COVER SHEET
C-2	COMP. SITE PLAN
C-3	COMP. SITE SECTIONS
C-4	COMP. SITE SECTIONS
9-S	LOT 9 SITE PLAN
9-1	FIRST - SECOND FLOOR
9-2	BASEMENT
9-3	ELEVATIONS
9-4	ELEVATIONS
10-S	LOT 10 SITE PLAN
10-1	FIRST FLOOR
10-2	SECOND FLOOR
10-3	BASEMENT
10-4	ELEVATIONS
10-5	ELEVATIONS
11-S	LOT 11 SITE PLAN
11-1	FIRST FLOOR
11-2	BASEMENT
11-3	ELEVATIONS
11-4	ELEVATIONS

C

COVER SHEET



SOILS ENGINEER:
 LEC
 1919 CALLE AVANZADO
 SAN CLEMENTE, CA 92673
 PH (949) 363-4141, FAX (949) 363-4142

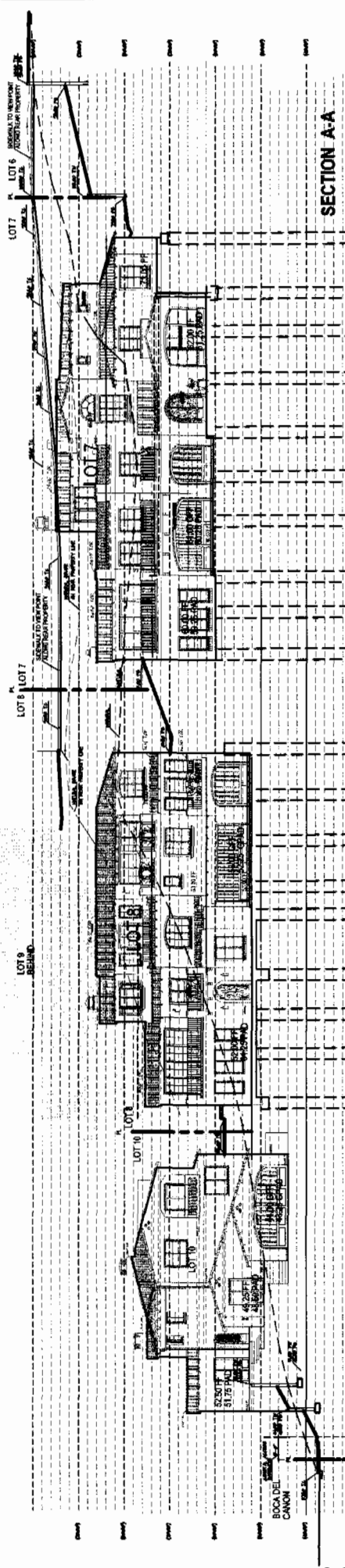
THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF:
 DAVID YORK, ARCHITECT LIC NO. 224208 DATE:

LOTS 7,8,9,10 AND 11
 TRACT 4947
**COMPREHENSIVE PLAN
 PRELIMINARY GRADING PLAN**
 DAVID YORK, ARCHITECT
 #12 W. SAN GABRIEL
 SAN CLEMENTE, CA 92673
 (949) 867-8024

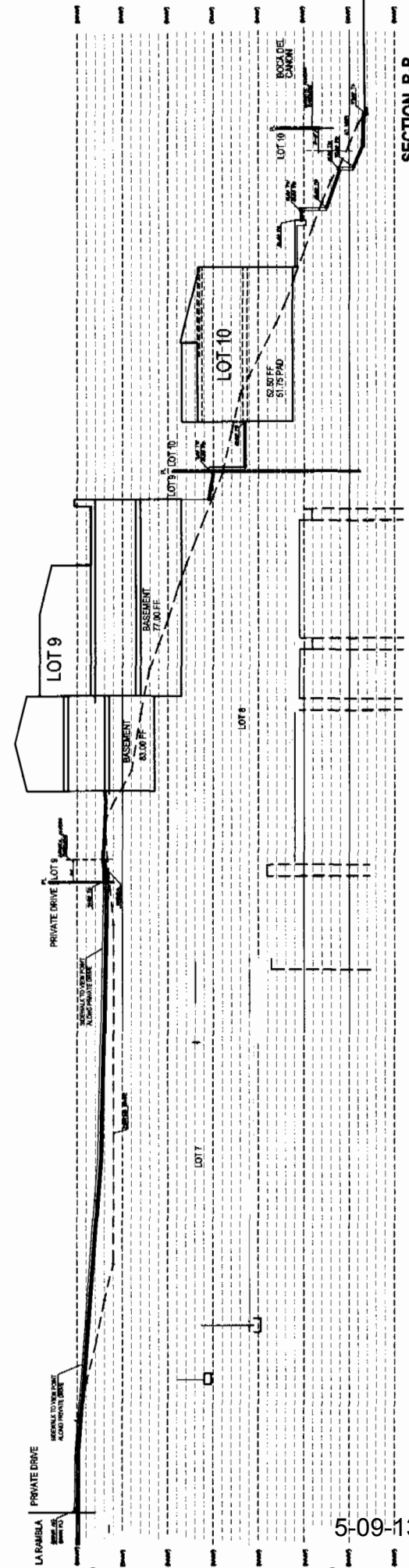
COMPREHENSIVE PLAN DRAWING

15-09-134-EDD
 Exhibit 09
 2 of 21

EXHIBIT D



SECTION A-A



SECTION B-B

	COMPREHENSIVE SECTIONS
	DAVID YORK ARCHITECT 1000 W. 10TH ST. #207 LOS ANGELES, CA 90057 TEL: (213) 487-1074

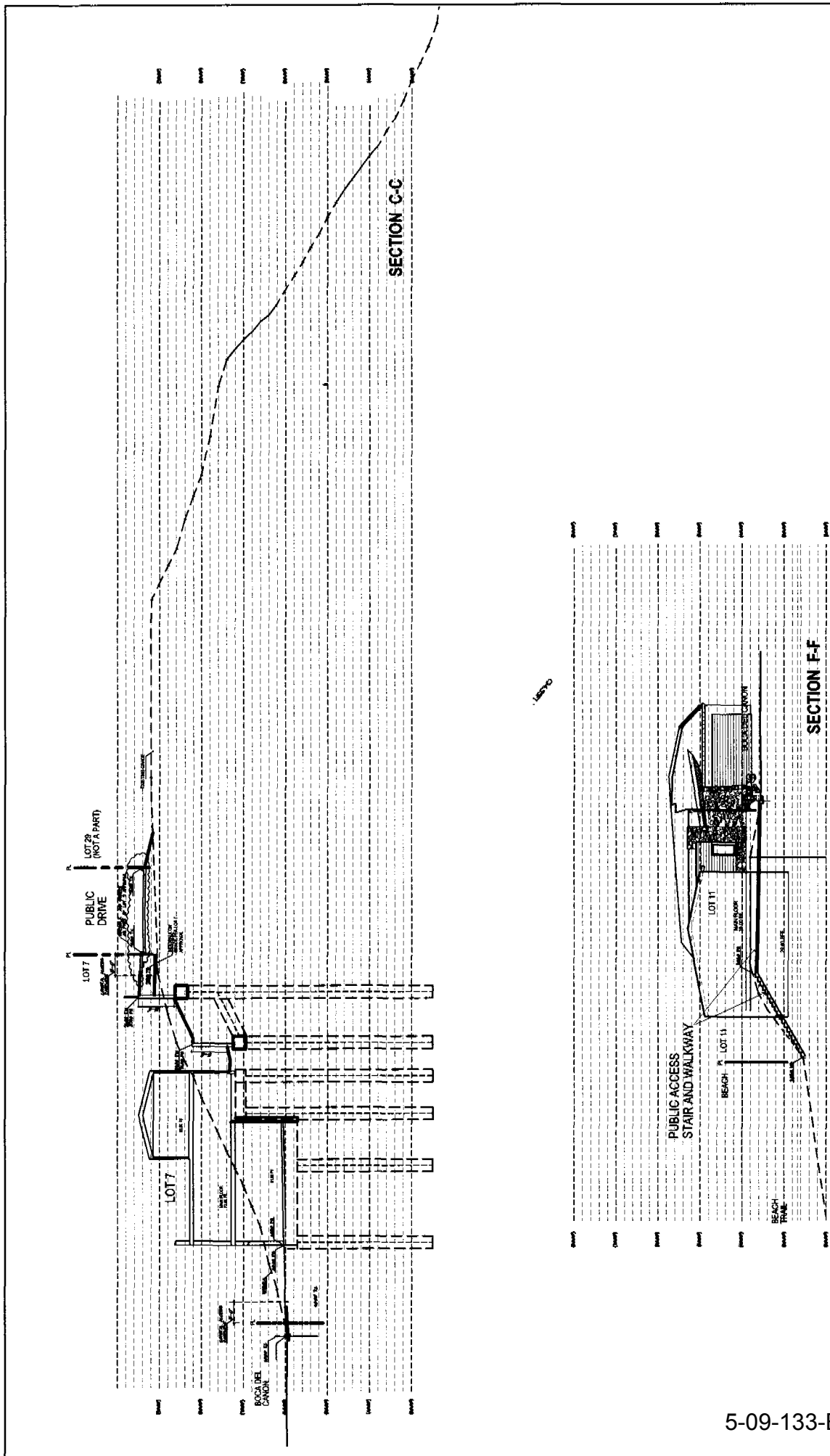
THESE PLANS HAVE BEEN PREPARED UNDER THE SUPERVISION OF
 DAVID YORK ARCHITECT 1000 W. 10TH ST. #207
 LOS ANGELES, CA 90057
 TEL: (213) 487-1074

C-2

5-09-133-EDD & 5-09-134-EDD

Exhibit 09

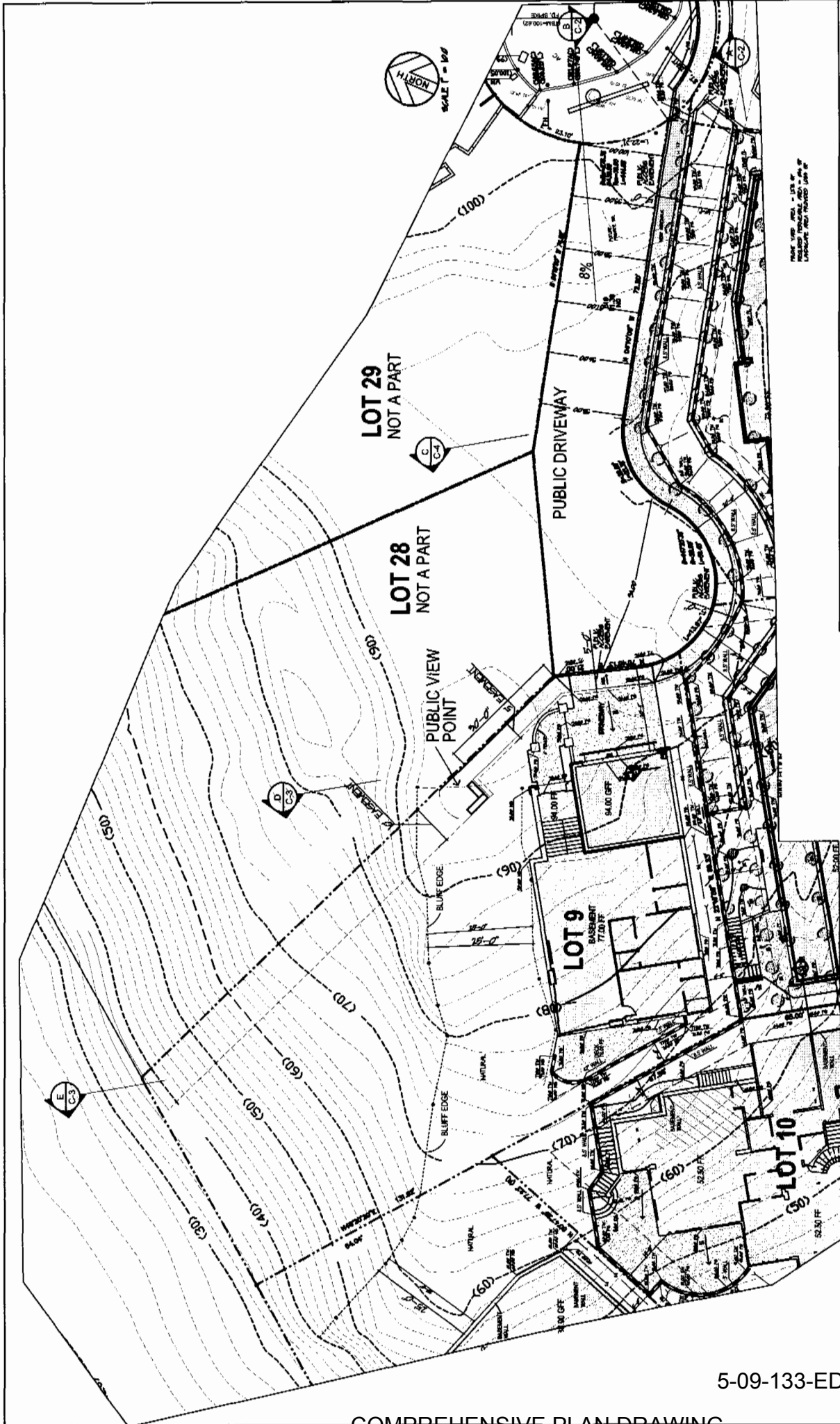
3 of 21




COMPREHENSIVE SECTIONS	
DAVID YORK, ARCHITECT 200 W. 8th STREET SAN ANTONIO, TEXAS 78204	
THESE PLANS HAVE BEEN REVIEWED UNDER THE SUPERVISION OF:	
NAME:	LICENSE NO.:
TITLE:	EXPIRES:

SEALS ENGINEER:	
DR. J. L. HARRIS 1000 W. 10th STREET SAN ANTONIO, TEXAS 78204	

C-4




PRELIMINARY GRADING PLAN LOT 9
 DAVID YORK, ARCHITECT
 25 W. SAN CARLOS
 SAN CLEMENTE, CA 92673
 (949) 397-6004

THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF:
 DAVID YORK, ARCHITECT LE: THE ARCHITECT

SALE AND EXHIBIT CERTIFICATION:
 THIS DOCUMENT IS THE PROPERTY OF THE ARCHITECT AND IS TO BE USED ONLY IN CONNECTION WITH THE RESPONSIBILITY AS SET FORTH IN THE CONTRACT. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.
 DATED: _____
 FOR ARCHITECT: _____
 BY: _____

SALE CHECKED:
 LEO CALLE AVILA/RO
 SAN CLEMENTE, CA 92673
 (949) 397-6004

5-09-133-EDD & 5-09-134-EDD
 Exhibit 09
 6 of 21

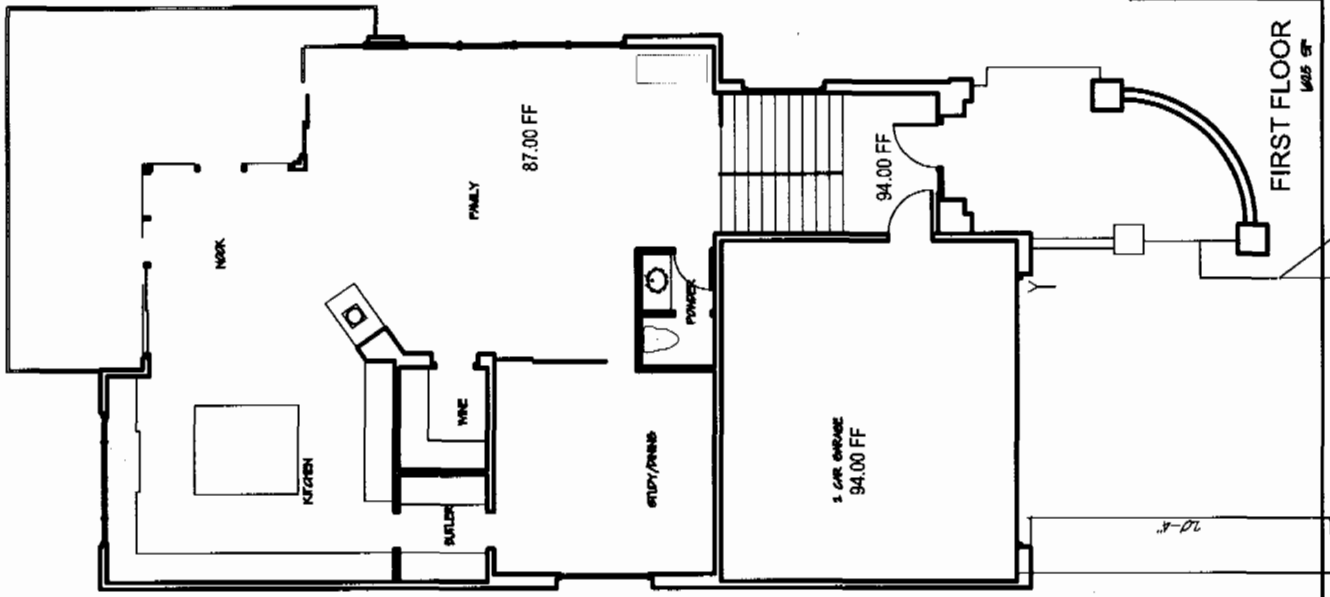
9-1


FLOOR PLAN

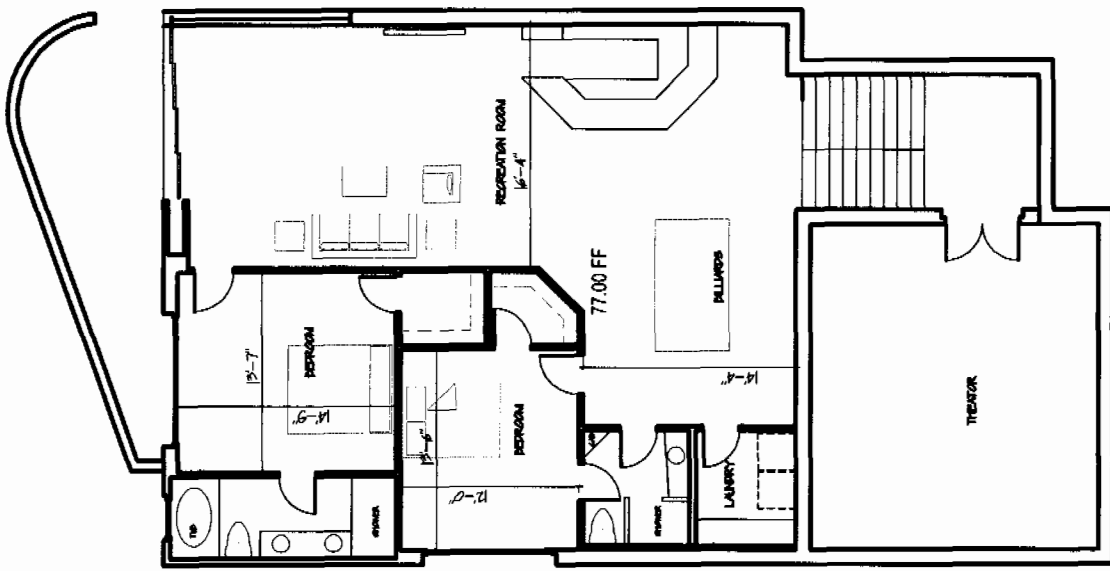
LOT #9

OWNER:
SCHNEIDER
554 AVONDA SALVADOR
SAN CLEMENTE, CA 92672
PROJECT:
CUSTOM RESIDENCE
LOT #9, TRACT 4581
SAN CLEMENTE, CA 92672


FIRST FLOOR	1465 SF
SECOND FLOOR	1478 SF
BASEMENT	2008 SF
TOTAL LIVING	594 SF
GARAGE	432 SF
PALLONY	251 SF

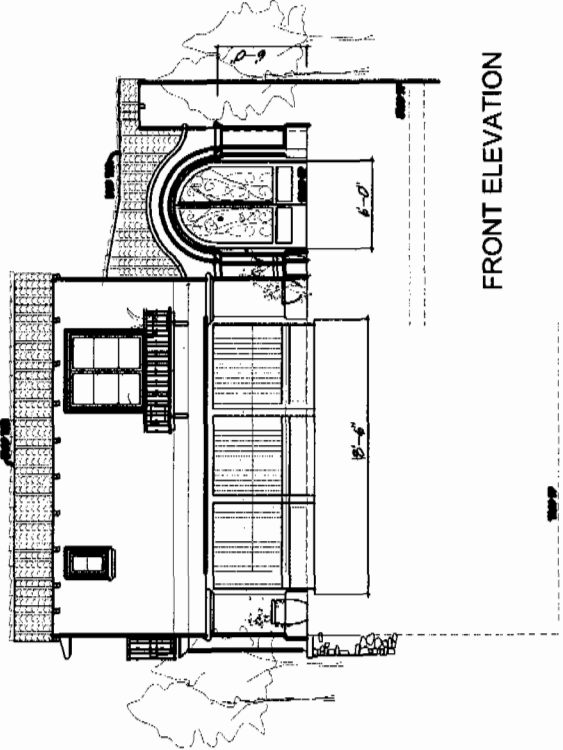


	9-2
FLOOR PLAN	
LOT #9	
OWNER: DAVID YORK 1201 WILSON, SAN VICENTE, SAN CLEMENTE, CA. 92672	
PROJECT: CUSTOM RESIDENCE LOT #9 TRACT 1581 SAN CLEMENTE, CA. 92672	

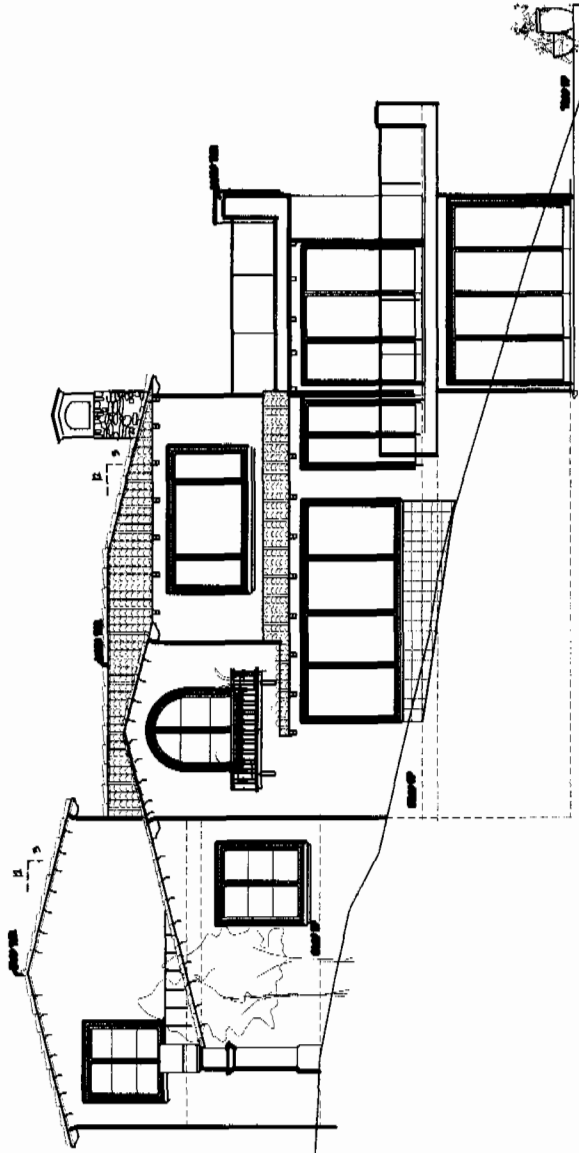


BASEMENT
1008 SF


	9-3
ELEVATION	
LOT #9	
OWNER: SCANDER 884 AVENIDA SALVADOR SAN CLEMENTE, CA 92678	
PROJECT: CUSTOM RESIDENCE LOT #9, TRACT 254 SAN CLEMENTE, CA 92678	



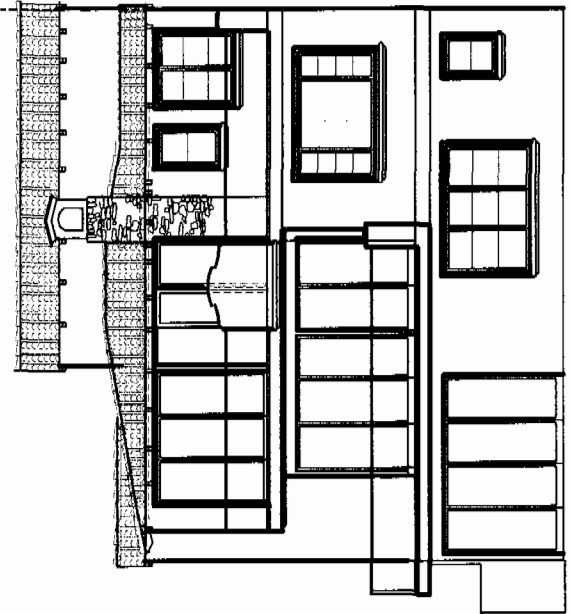
FRONT ELEVATION



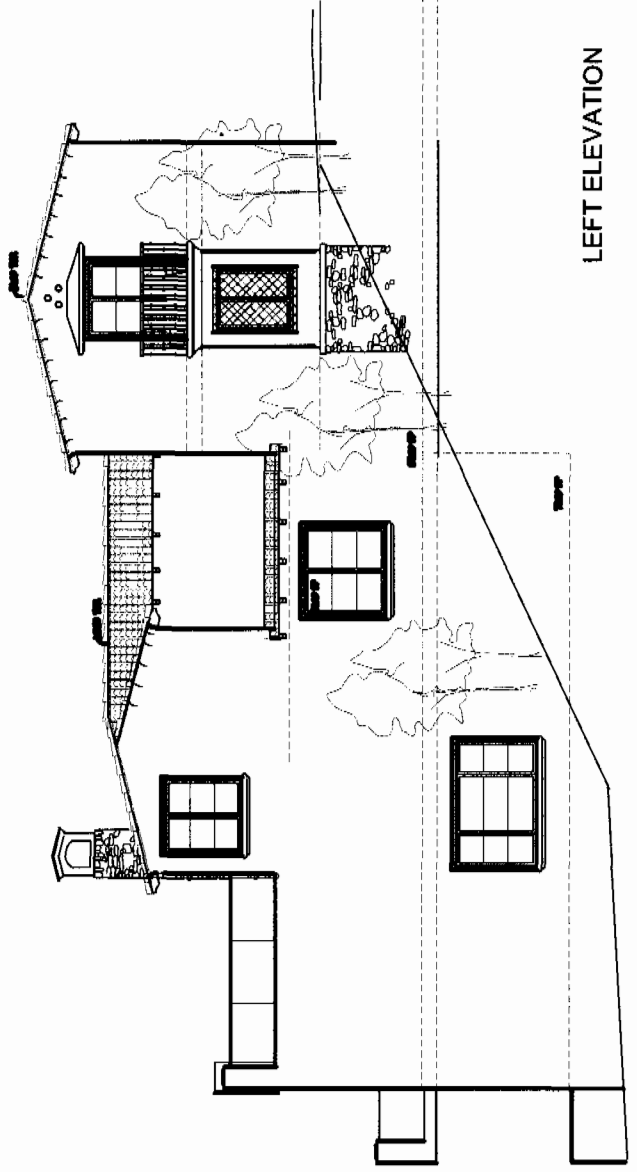
RIGHT ELEVATION

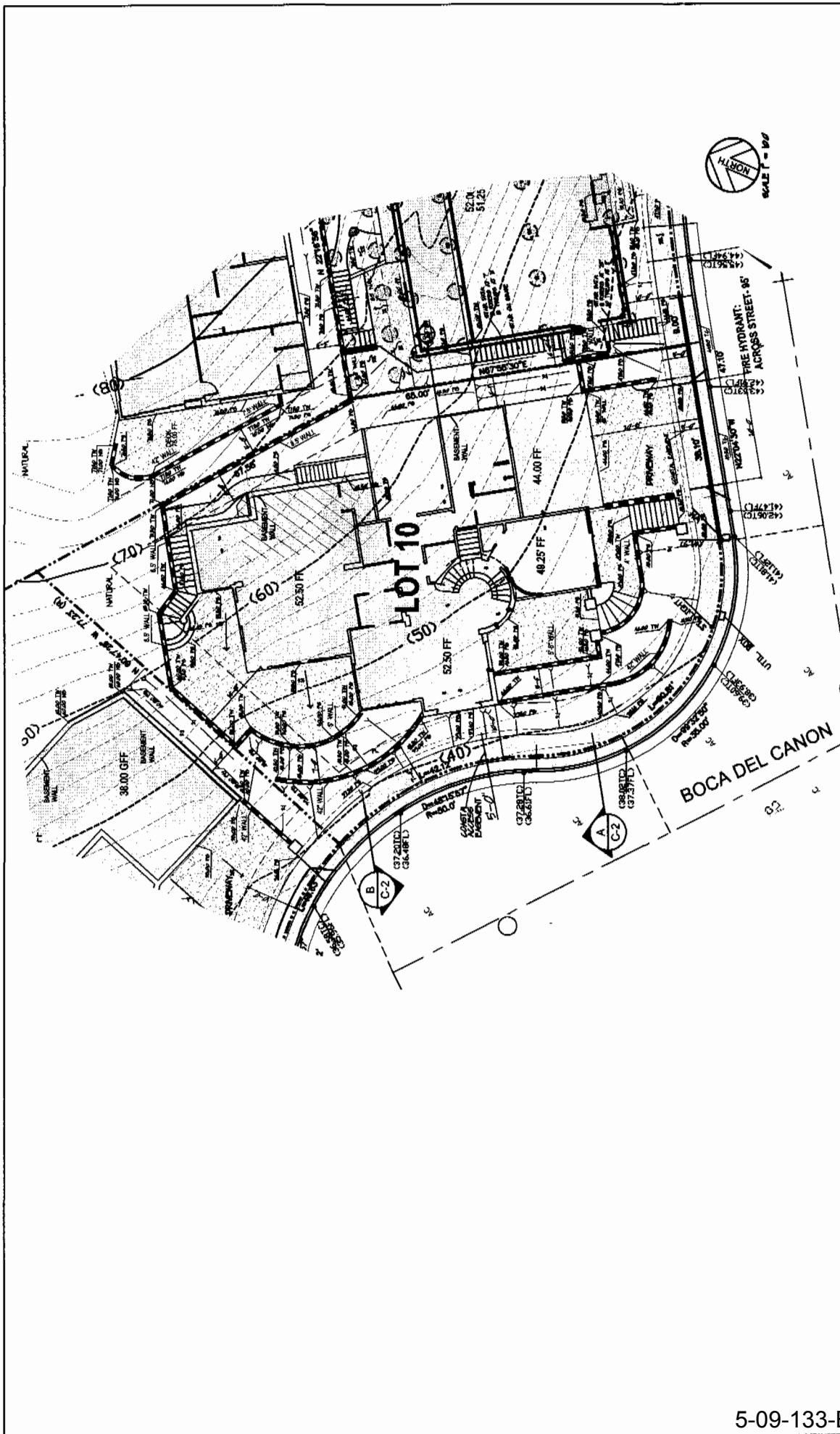
	9-4
ELEVATION	
LOT #9	
OWNER:	SALVADOR SALVADOR 501 AVENIDA SALVADOR SAN CLEMENTE, CA 92674
PROJECT:	CUSTOM RESIDENCE LOT #9 SAN CLEMENTE, CA 92674

REAR ELEVATION



LEFT ELEVATION





PREPARED BY: **DAVID YORK ARCHITECT**
 65 W. SAN ANSELMO
 SAN ANSELMO, CA 94060
 (415) 452-1000

PRELIMINARY GRADING PLAN LOT 10
 THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF:
 DAVID YORK, ARCHITECT 1515 THE GARDEN DRIVE

SOils AND GEOLoGIC CoNTRIBUTIoN
 THIS DRAWING AND THE DATA HEREON ARE THE PROPERTY OF DAVID YORK ARCHITECT AND SHALL BE KEPT IN CONFIDENCE. NO PART OF THIS DRAWING OR THE DATA HEREON SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DAVID YORK ARCHITECT.

SOils ENGINEER:
 LEO CALLE ANGELES
 150 CALLE ANGELES
 SAN ANSELMO, CA 94060
 TEL: (415) 452-1000

10-S

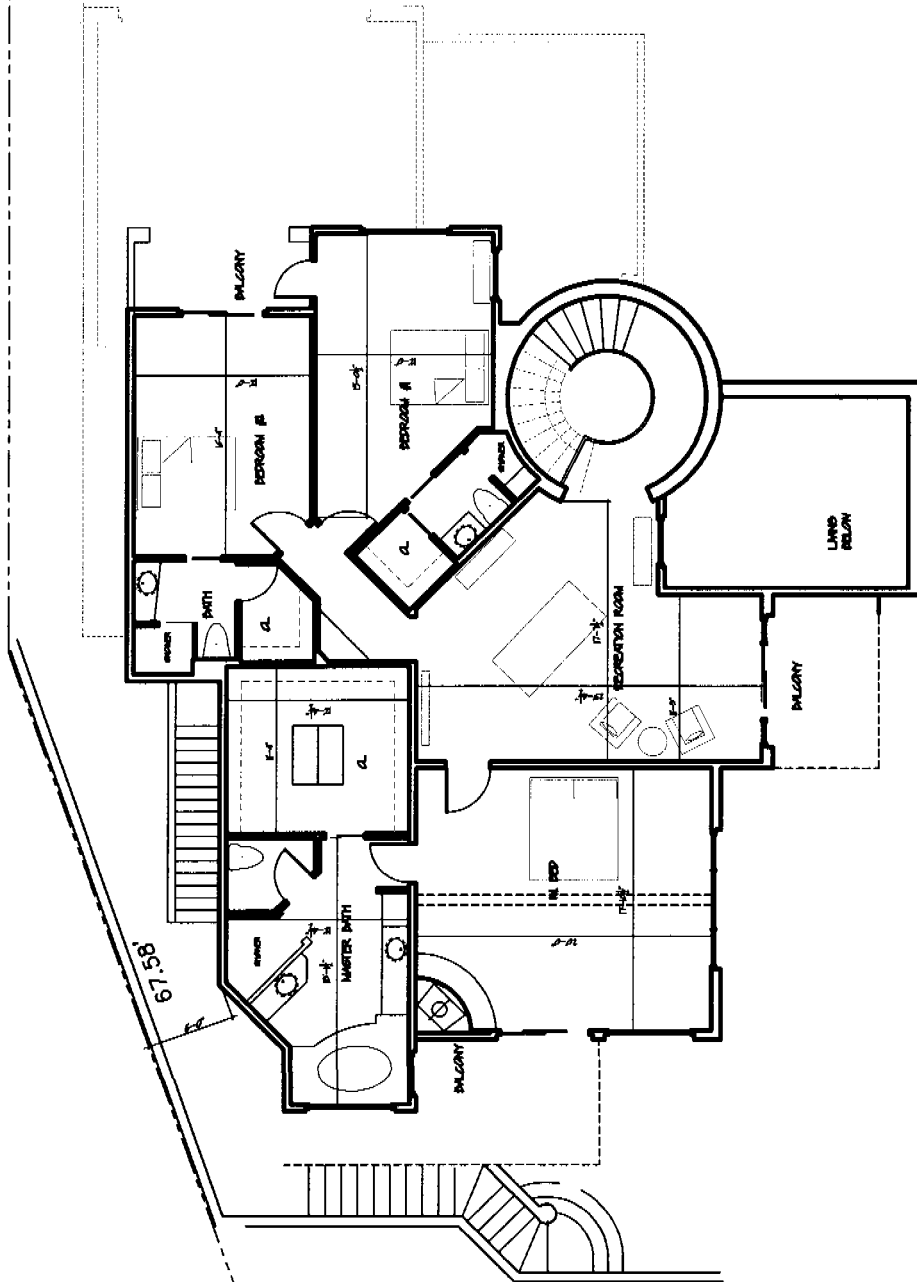
FIRST FLOOR 2380 SF
 SECOND FLOOR 1200 SF
 GARAGE 1200 SF
 TOTAL LIVING 5000 SF
 GARAGE 1200 SF
 PORCH 1200 SF

FLOOR PLAN

LOT #10

OWNER: MARIO PASCARI
 20000 CANADA RD.
 LAKE FOREST, CA 92650
 PROJECT: CLAYTON RESERVE
 LOT #10, TRACT #547
 SAN CLEMENTE, CA 92672

10-2



10-3

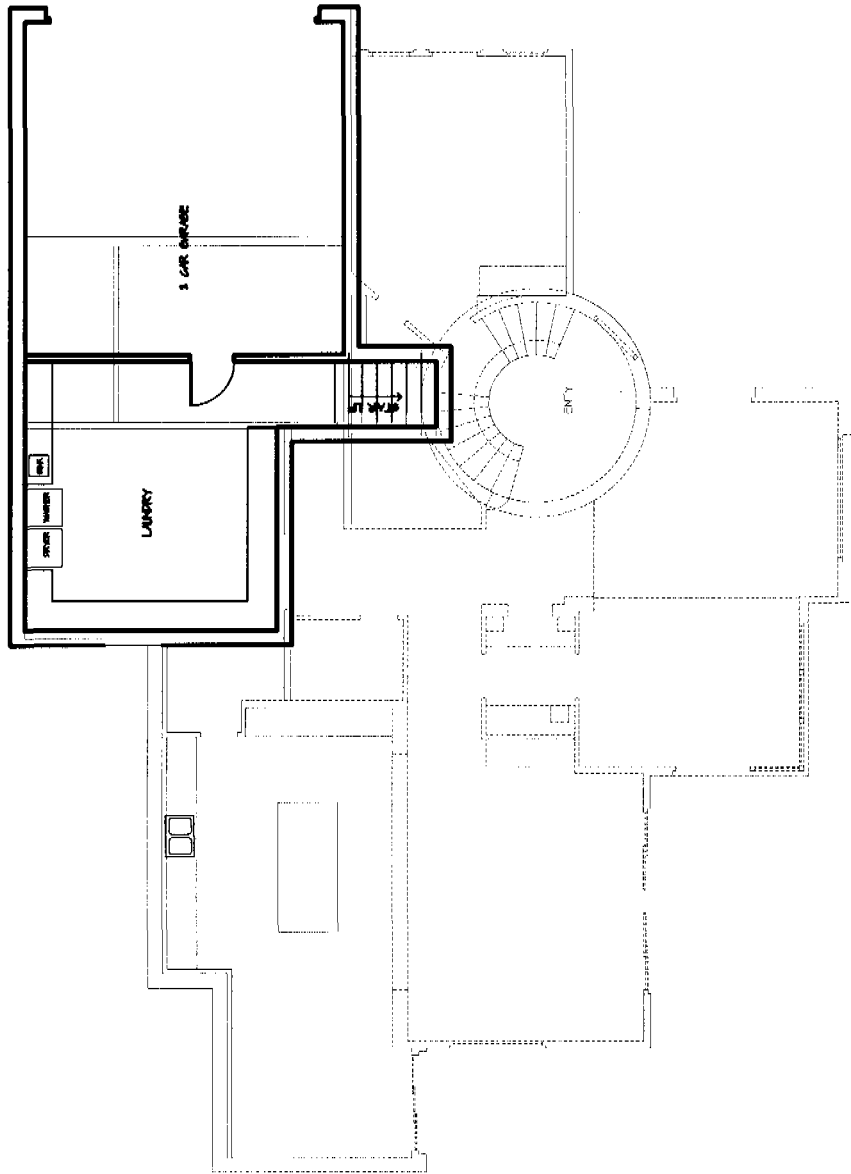
FLOOR PLAN

LOT #10

OWNER: PASCARI
 1740 PASCARI
 20845 CANADA RD.
 LAKE FOREST, CA 92640

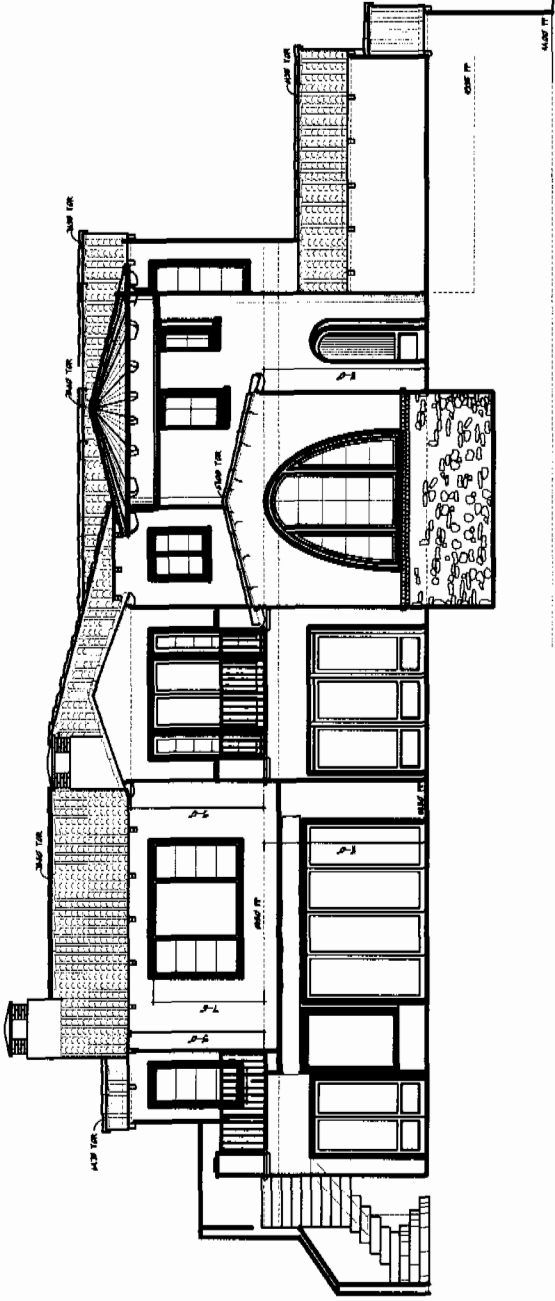
PROJECT:
 CUSTOM RESERVE
 LAKE FOREST #57
 SAN CLEMENTE, CA 92672

FIRST FLOOR 1747 SF
 SECOND FLOOR 2284 SF
 TOTAL LIVING 4031 SF
 GARAGE 2200 SF
 PAD 200 SF

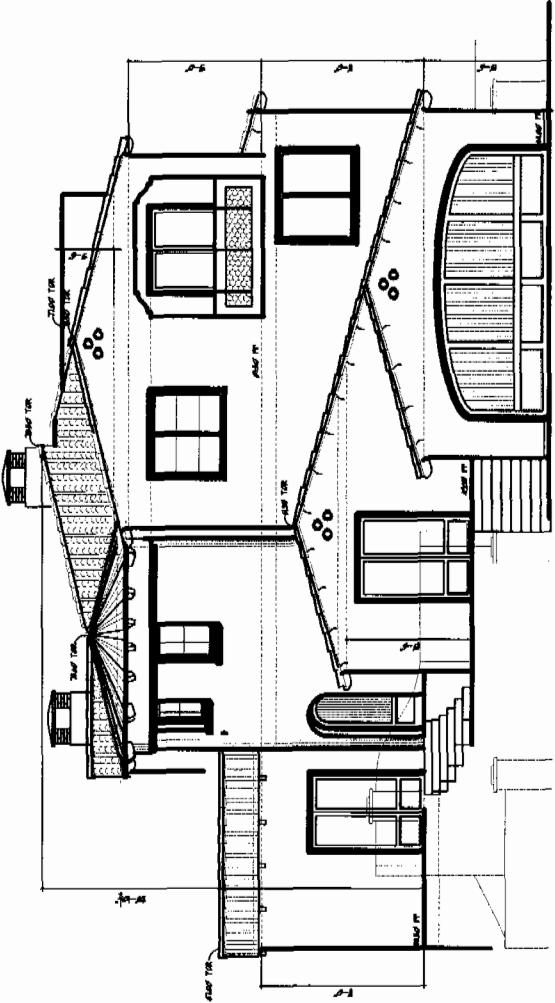


ELEVATION
LOT 10
OWNER: PAUL MAGUIRI
20045 CANADA RD.
LAKE FOREST, CA. 92650
PROJECT: CUSTOM RESIDENCE
LOT 10
SAN CLEMENTE, CA. 92678
10-4

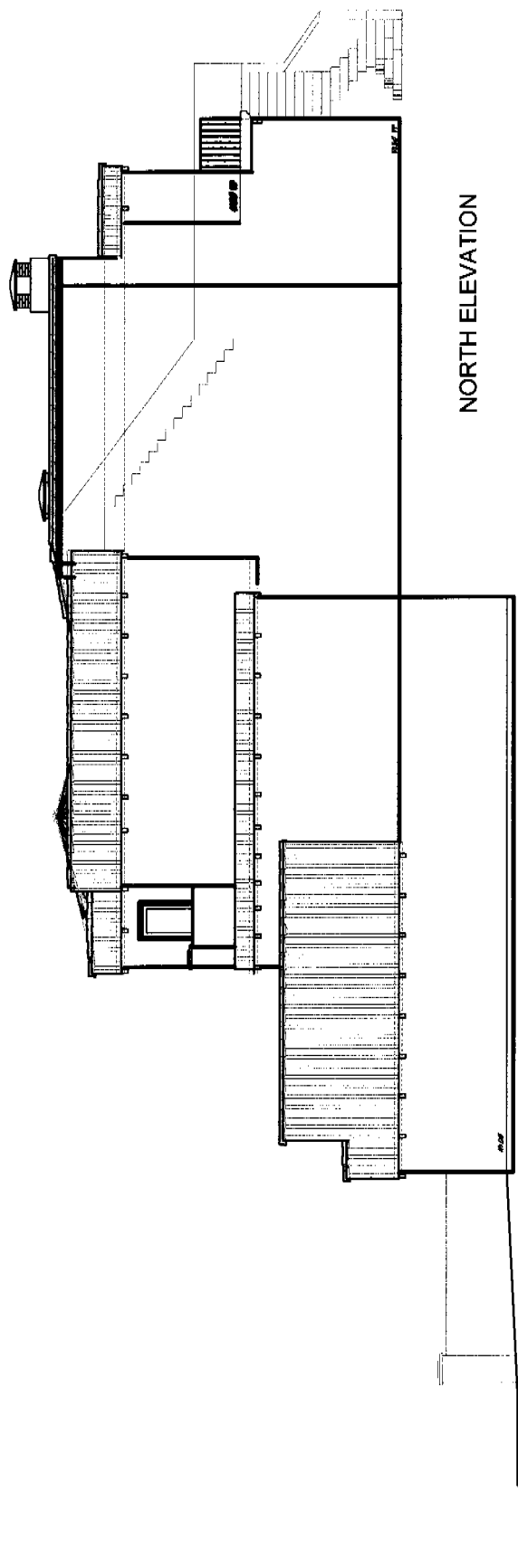
SOUTH ELEVATION



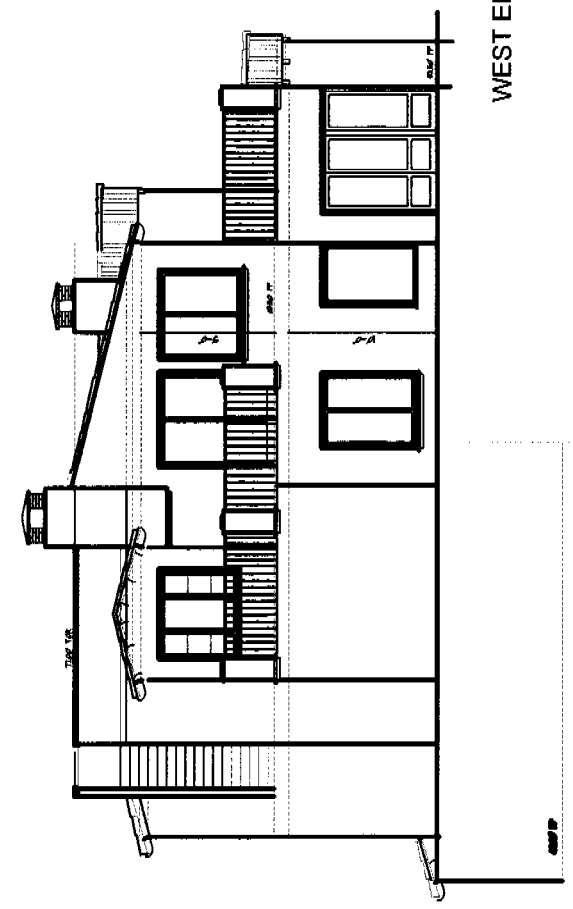
EAST ELEVATION



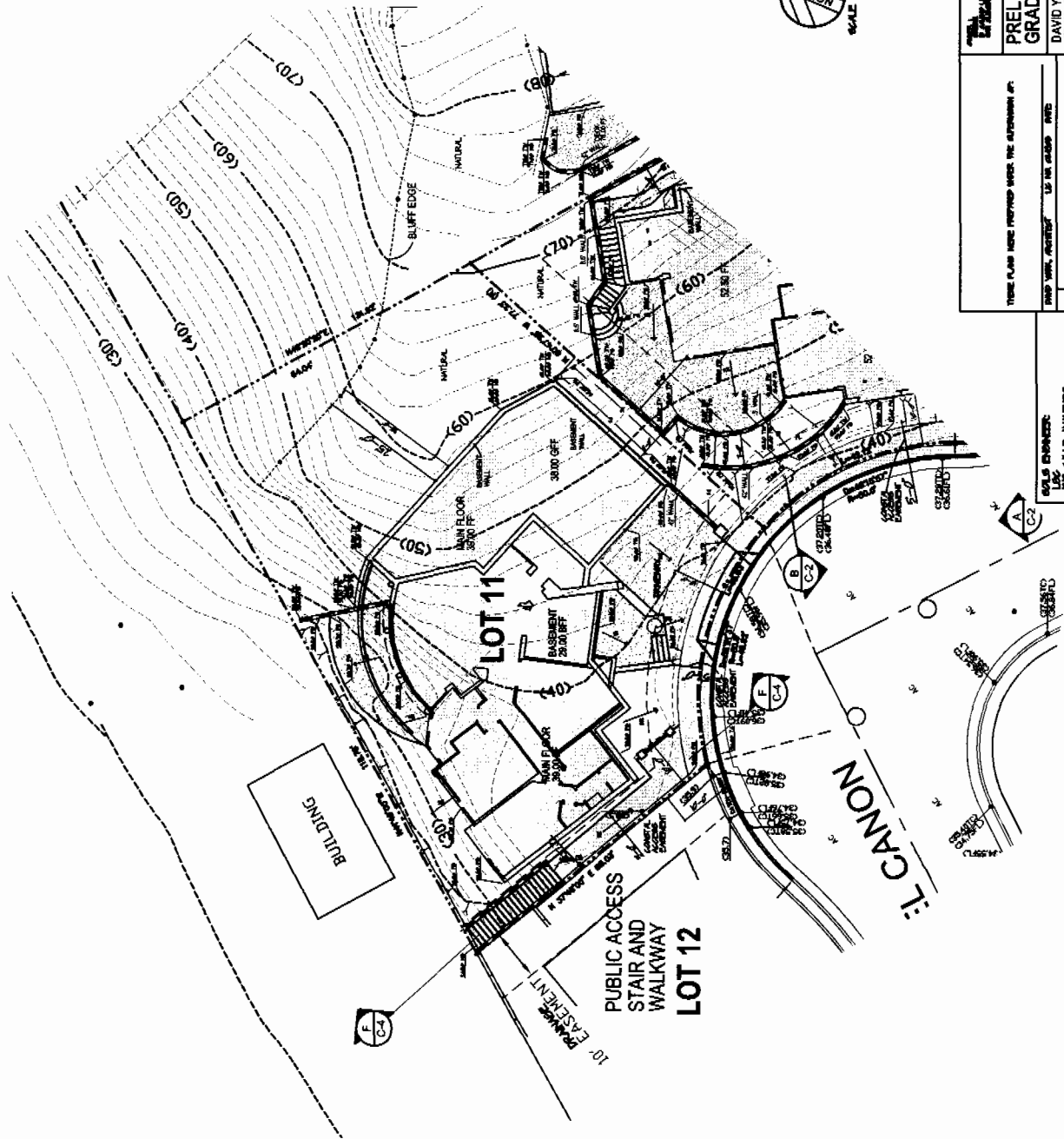
ELEVATION
LOT 10
OWNER: HUI FANG LI
22045 CANADA RD.
LAKE FOREST, CA 92640
PROJECT:
CUSTOM RESIDENCE
LOT 10 TRACT 1541
SAN CLEMENTE, CA 92672
10-5



NORTH ELEVATION



WEST ELEVATION



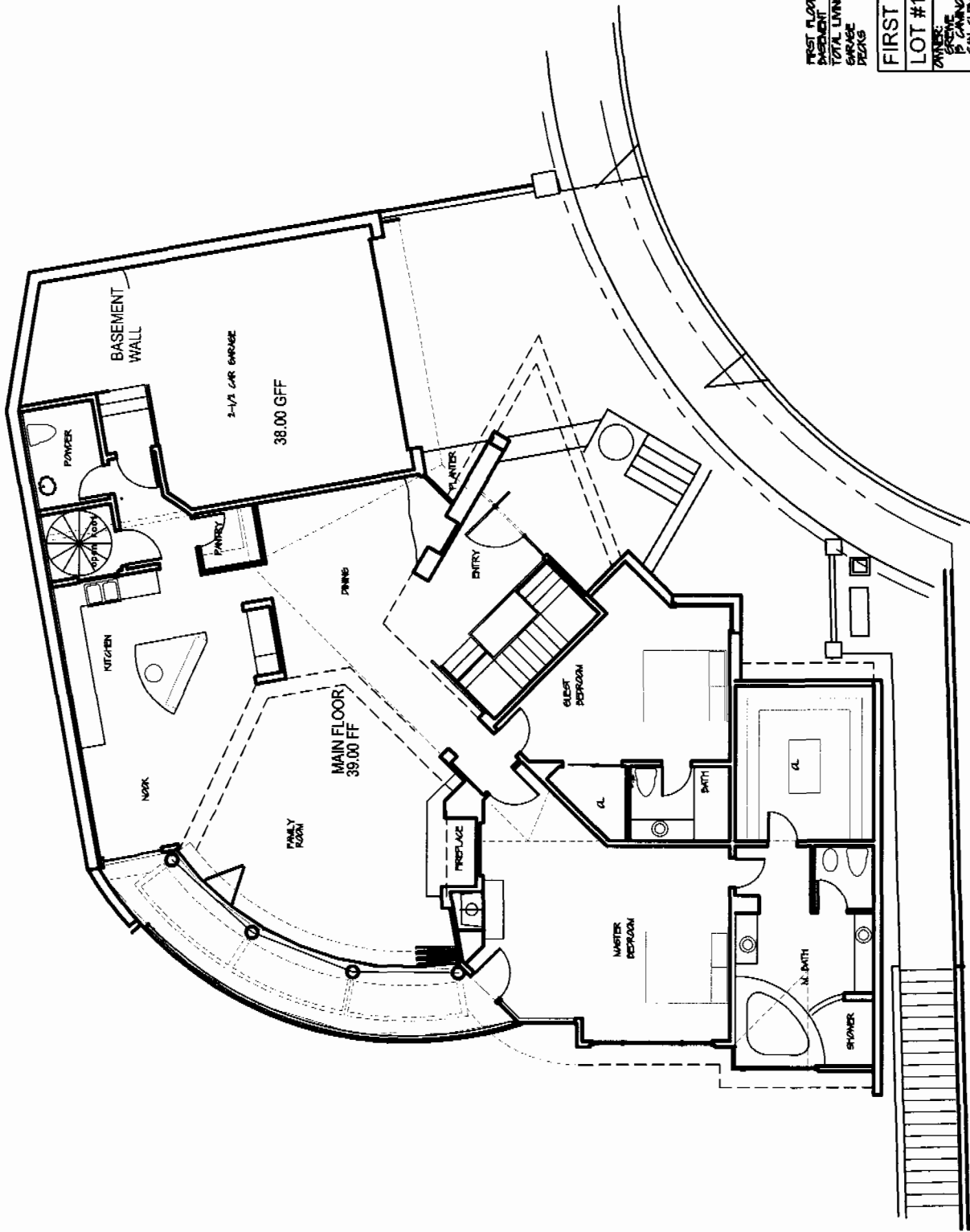
<p>THESE PLANS HAVE BEEN PREPARED UNDER THE SUPERVISION OF:</p> <p>DAVID YORK ARCHITECT</p> <p>100 W. SAN GABRIEL</p> <p>SAN GABRIEL, CA 91776</p> <p>PH: (909) 897-8074</p>	<p>PRELIMINARY GRADING PLAN LOT 11</p>
<p>DATE: 5-09-133</p>	<p>11-S</p>

FIELD ENGINEER
 DR. GALE ANAZCO
 SAN GABRIEL, CA 91776
 PH: (909) 897-8074

FIRST FLOOR	2890 SF
BASEMENT	1290 SF
TOTAL LIVING	4180 SF
GARAGE	844 SF
DECKS	1000 SF

FIRST FLOOR
LOT #11
 OWNER:
 SERRA
 15 CANINO LINDO
 SAN CLEMENTE, CA 94777
 PROJECT:
 CUSTOM RESIDENCE
 LA PALMA TRACT 255
 SAN CLEMENTE, CA 94777

11-1



FIRST FLOOR 2900 SF
 BASEMENT 1000 SF
 TOTAL LIVING 4000 SF
 SQUARE FEET 5000 SF
 PERKS 1000 SF

BASEMENT

LOT #11

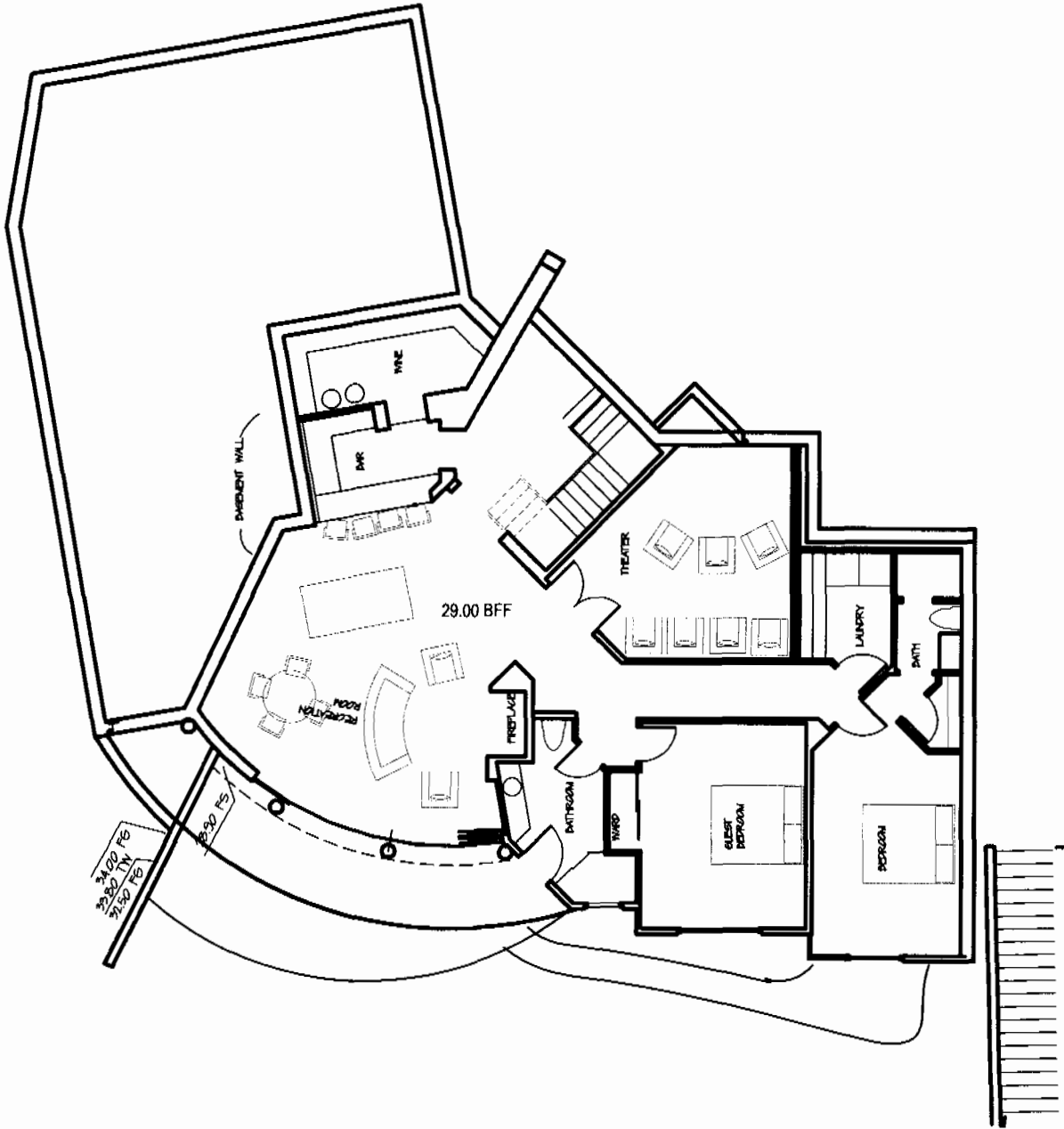
OWNER:

SHANE
 P. CARINO LINDO
 SAN CLEMENTE, CA 92679

PROJECT:

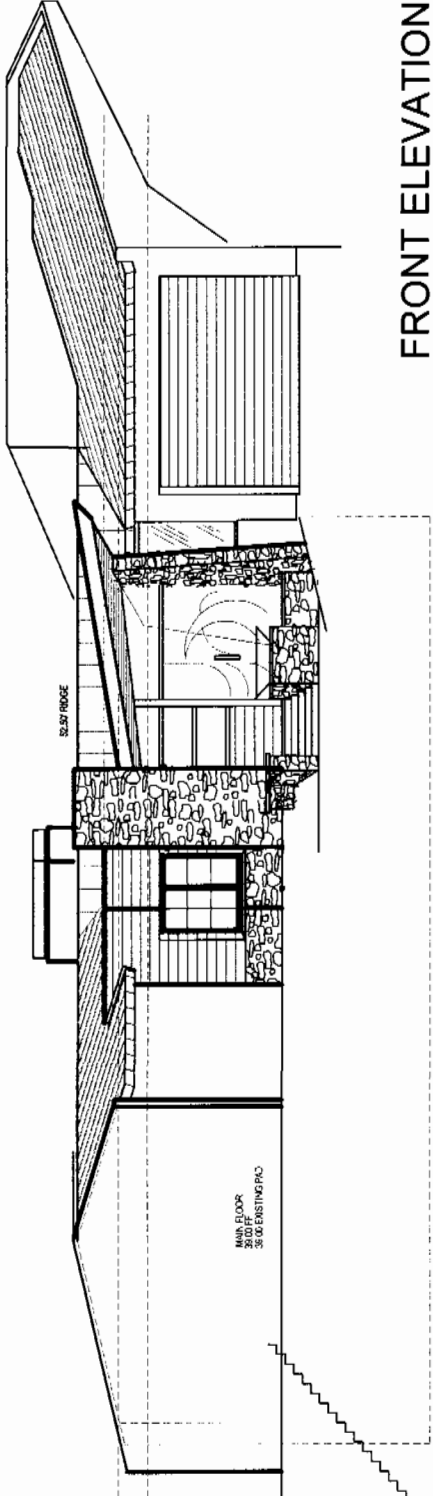
CUSTOM RESIDENCE
 LA PALMA
 SAN CLEMENTE, CA 92672

11-2

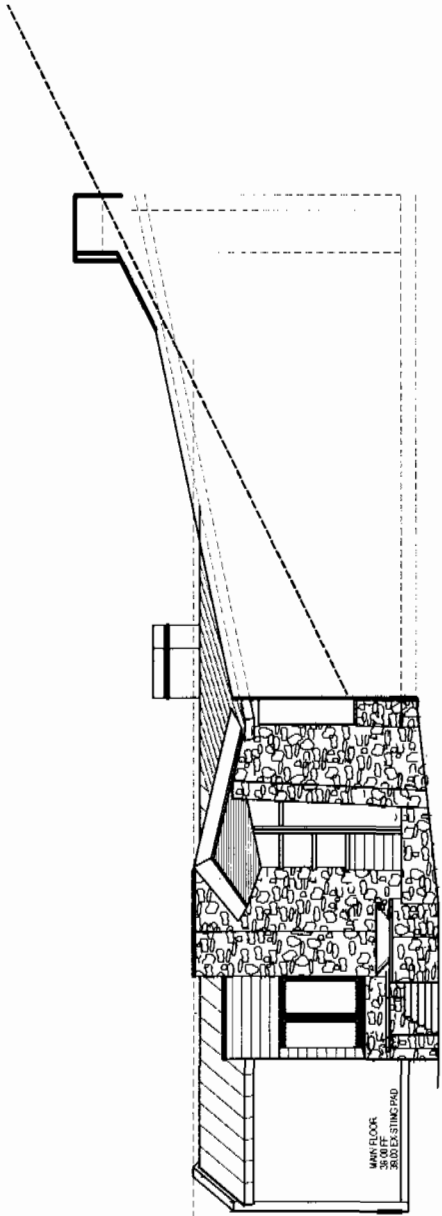


ELEVATION	
LOT #11	
OWNER:	DAVID YORK ARCHITECT
DESIGNER:	DAVID YORK ARCHITECT
ADDRESS:	12 AVE. W. SAN GABRIEL, SAN CLEMENTE, CA. 92672
PROJECT:	11-3
DATE:	05/11/11

FRONT ELEVATION

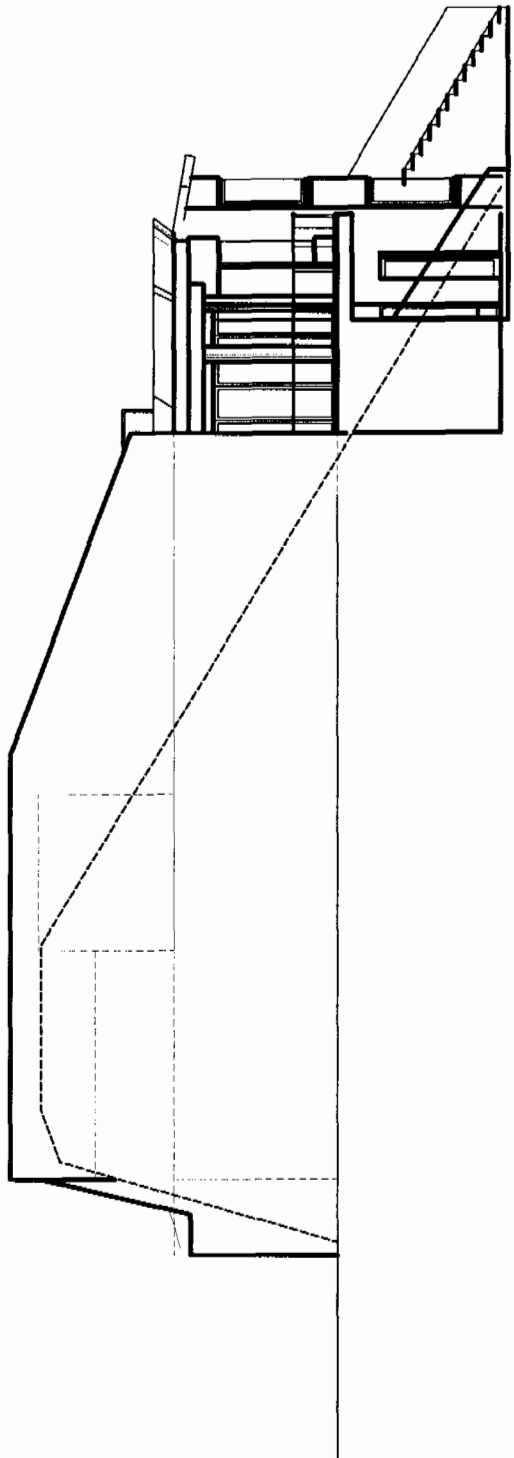


RIGHT ELEVATION

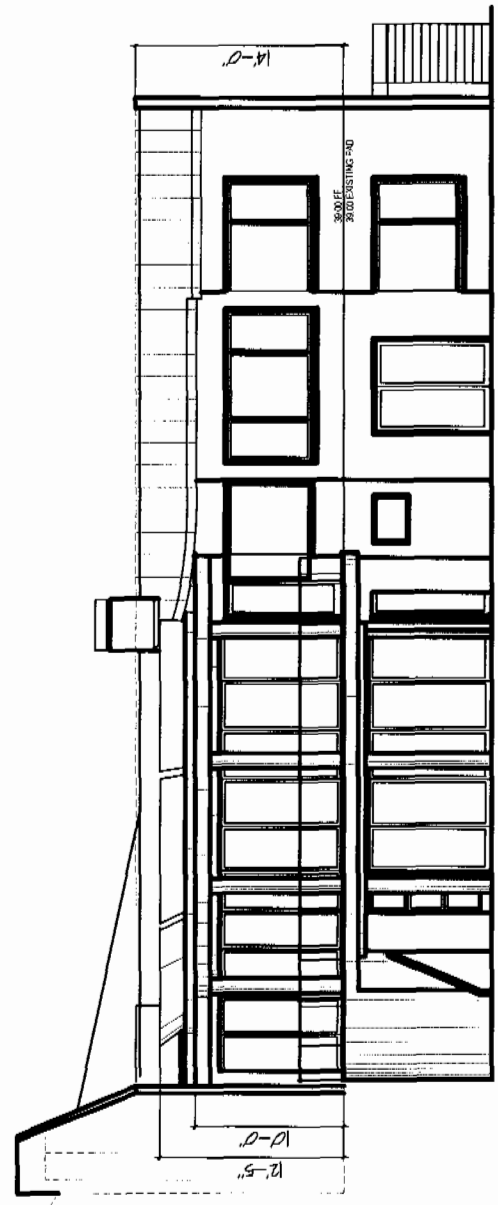


ELEVATION	11-4
LOT #11	
OWNER: IS CARLOS LENZO SAN CLEMENTE, CA. 92678	
PROJECT: CLAYTON RESERVE LOT #11 TRACT 2581 SAN CLEMENTE, CA. 92678	

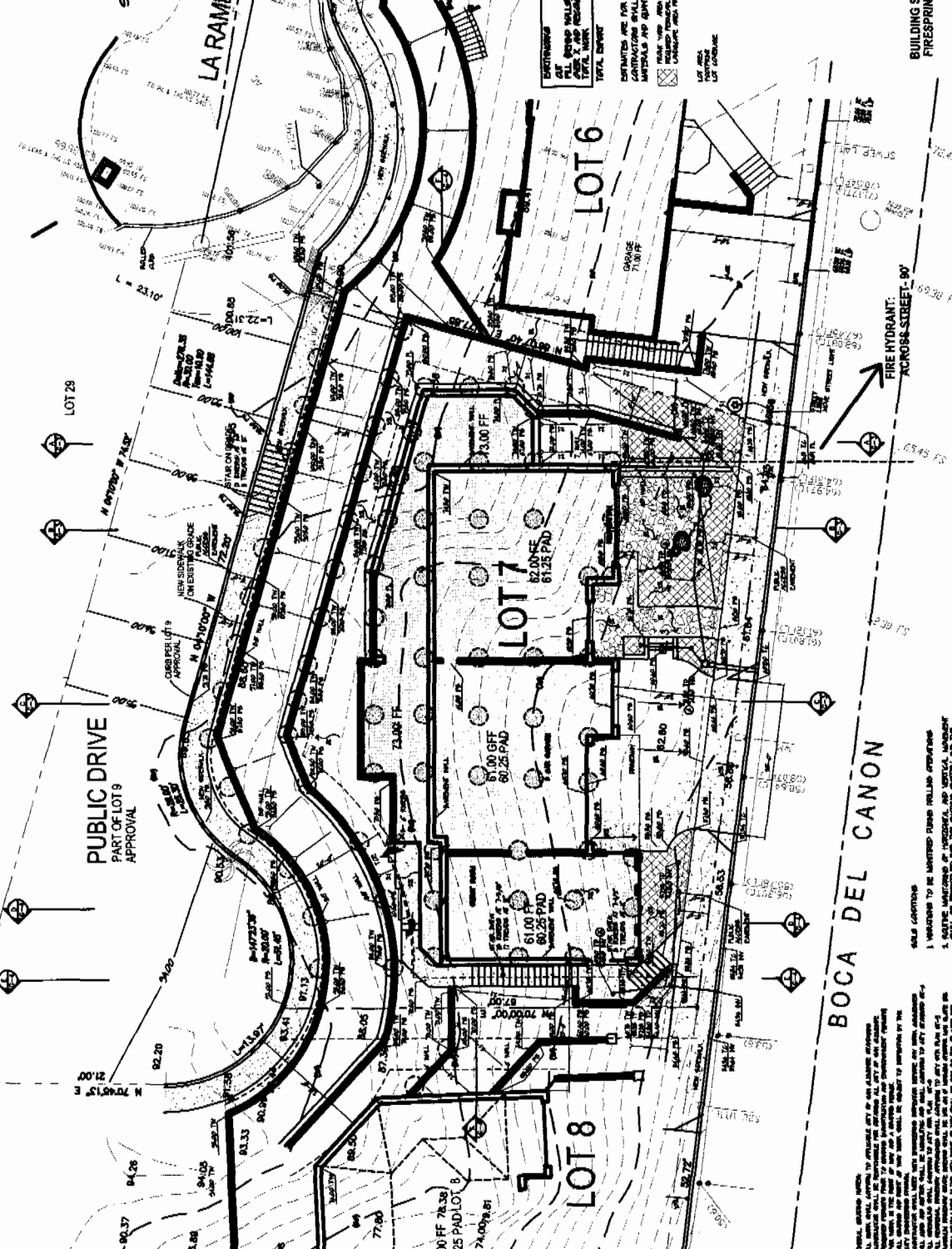
LEFT ELEVATION



REAR ELEVATION



1. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
2. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
3. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
4. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
5. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
6. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
7. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
8. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
9. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
10. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
11. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
12. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
13. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
14. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
15. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
16. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
17. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
18. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
19. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.
20. ALL ELEVATIONS SHALL BE TO THE FINISHED GRADE UNLESS OTHERWISE NOTED.



NO.	DESCRIPTION
G-2	PRECISE GRADING PLAN
G-3	SECTIONS
G-4	SECTIONS
1	BASEMENT
2	FIRST FLOOR
3	SECOND FLOOR
4	ELEVATIONS
5	ELEVATIONS
6	ROOF PLAN

DAVID YORK ARCHITECT
 800 GLENN DRIVE
 SAN CLEMENTE, CA 92673
 (949) 897-9004

PRELIMINARY GRADING PLAN LOT 7

G-2

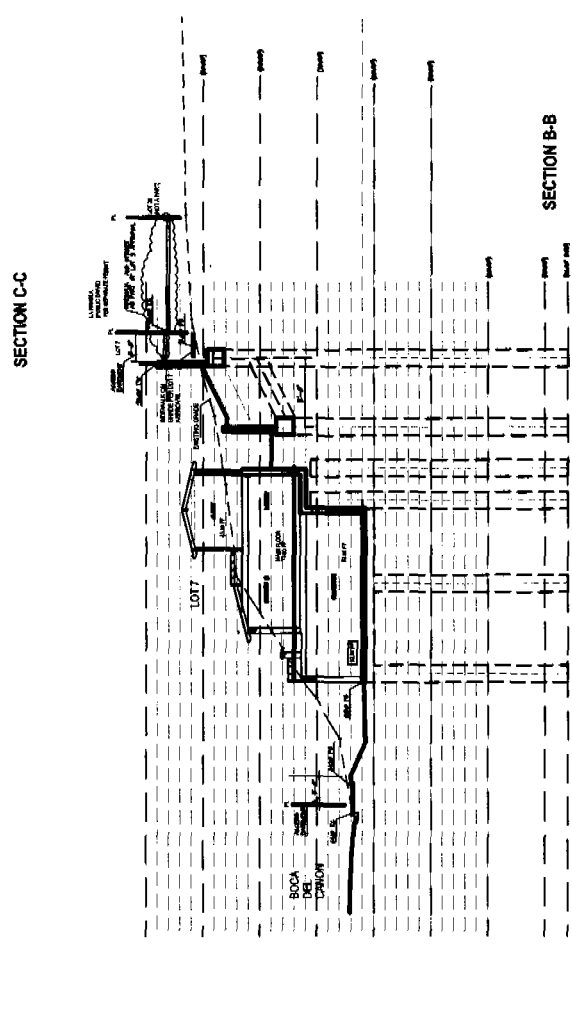
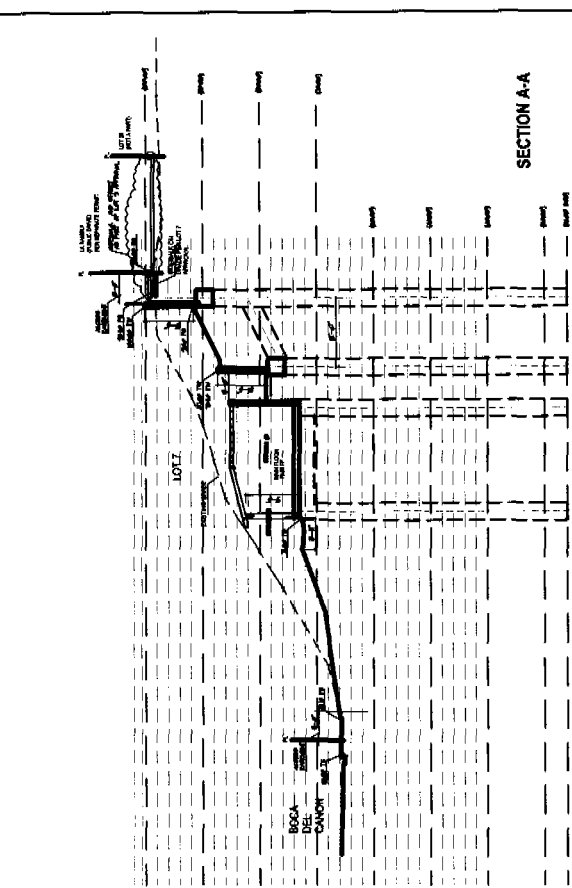
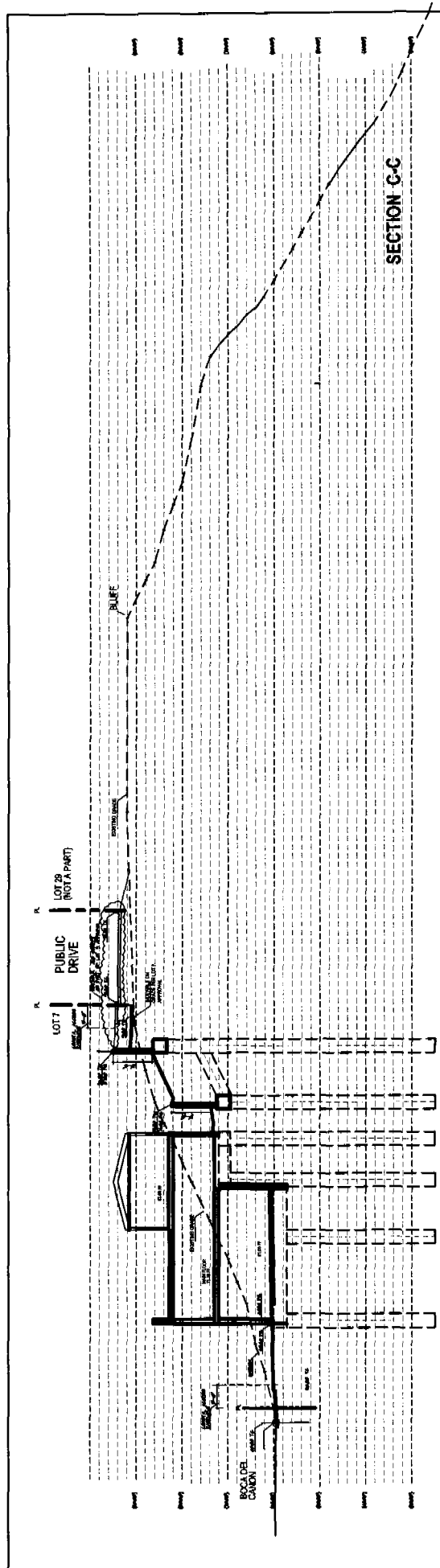
THESE PLANS HAVE BEEN REVIEWED UNDER THE SUPERVISION OF:

DAVID YORK ARCHITECT LP No. 20008 DATE:

SEAL AND REGISTERED CERTIFICATION
 THE GRADING PLAN HAS BEEN REVIEWED BY THE
 ENGINEER AND FOUND TO BE IN ACCORDANCE
 WITH THE REQUIREMENTS AS OUTLINED IN
 THE FILLING AND EROSION REPORT
 DATED DATE OF PRELIMINARY EROSION CONTROL

SEAL ENGINEER:
 DR. GALE ARANZO
 800 GLENN DRIVE
 SAN CLEMENTE, CA 92673
 PH: (949) 400-4444 THE (949) 400-4444

1. WORKSHOPS TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
2. ALL WORK SHALL BE ACCORDING TO THE CITY ENGINEER'S APPROVAL.
3. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
4. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
5. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
6. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
7. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
8. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
9. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.
10. ALL EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.



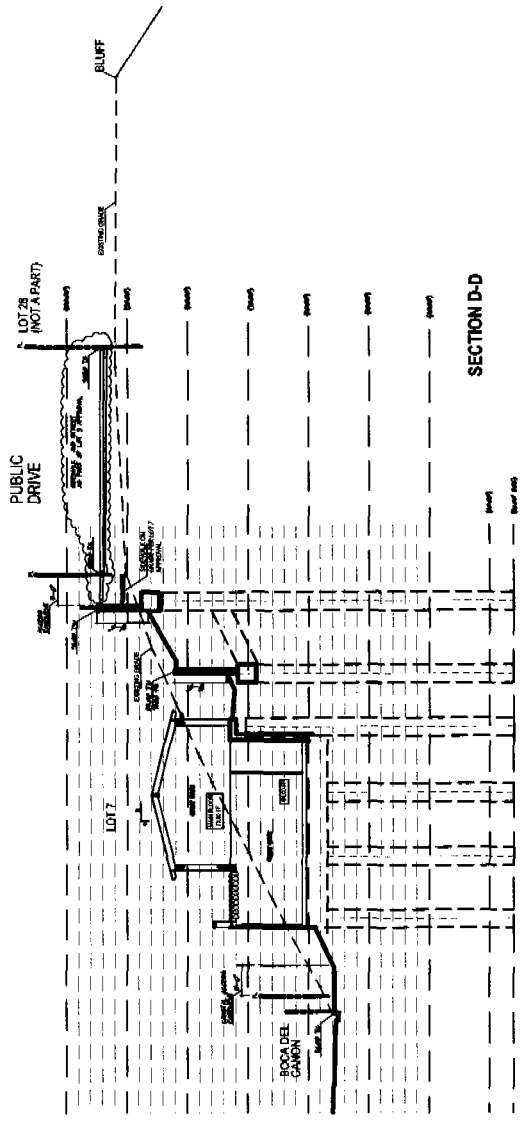
THESE PLANS HAVE BEEN PREPARED UNDER THE SUPERVISION OF
 DAVID YORK ARCHITECT
 100 W. 4TH STREET
 NEW YORK, N.Y. 10014
 (212) 697-8000

DATE: 5-9-83

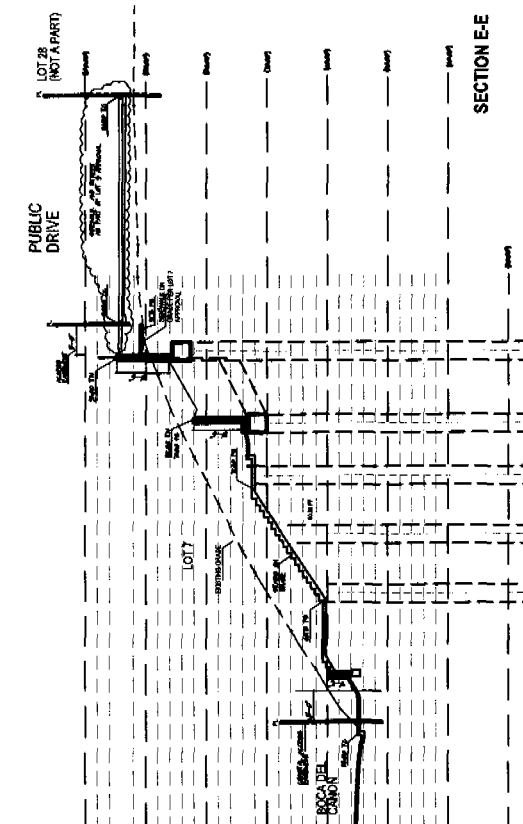
PROJECT: BOCA CHURCH

NO. OF SHEETS: 10

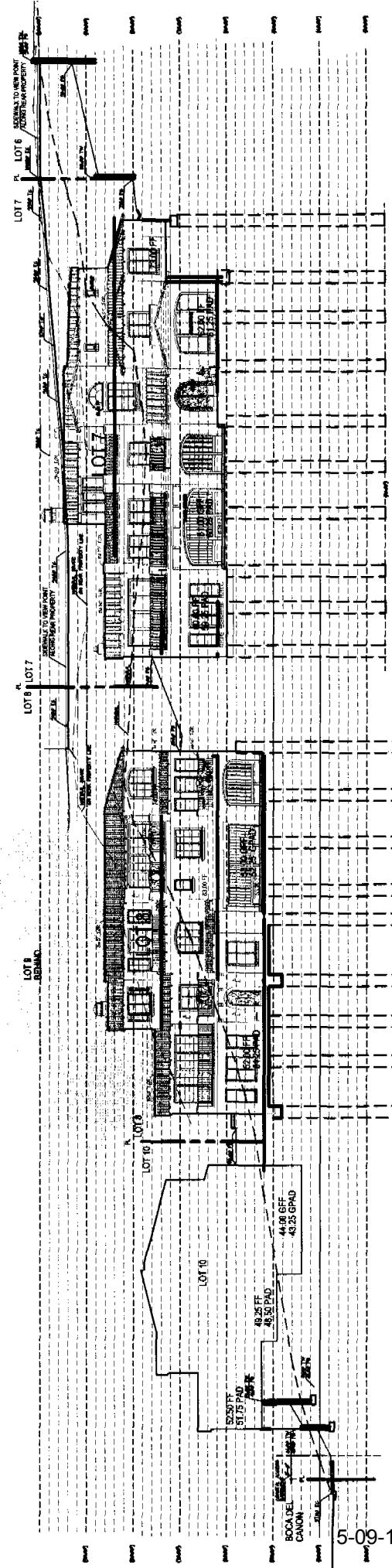
SHEET NO.: G-3



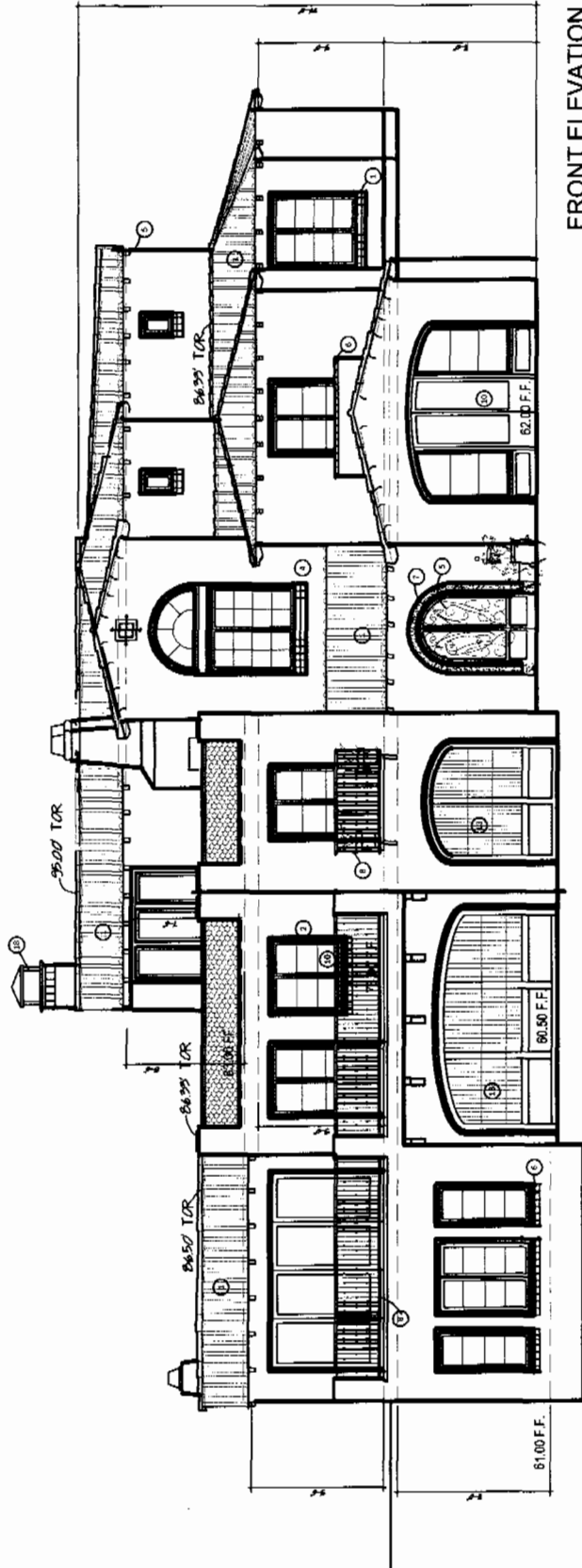
SECTION D-D



SECTION E-E



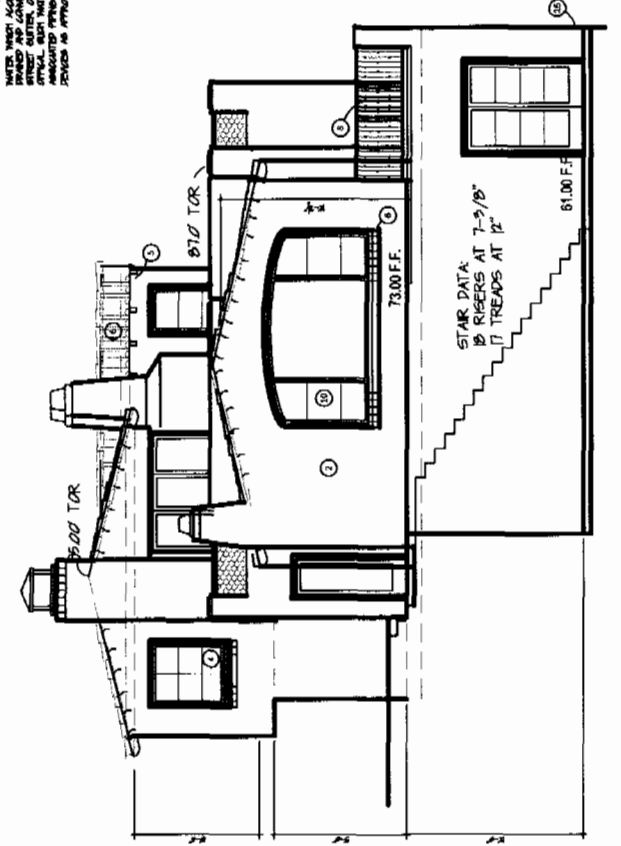
<p>THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF</p> <p>DAVID YORK, ARCHITECT 121 W. SAN GABRIEL BOCA DEL CANYON, CALIF. 92501</p>	<p>DATE: 5-14-69</p> <p>PROJECT NO.: 5-14-69</p> <p>SCALE: AS SHOWN</p>
<p>GRADING PLAN</p> <p>CROSS SECTION</p>	
<p>DAVID YORK, ARCHITECT 121 W. SAN GABRIEL BOCA DEL CANYON, CALIF. 92501</p>	
<p>UPPER CROSS SECTION</p>	
<p>G-4</p>	



FRONT ELEVATION

ROOF AND DECK DRAINAGE:
WATER MUST ACCUMULATE ON A ROOF SHALL BE EFFECTIVELY
DRAINED AND CONVEYED TO THE STREET OR TO AN ADJACENT
STREET. DOWN SPILLS SHALL BE COLLECTED THROUGH AUTOMATIC
DRAINAGE SYSTEMS OR OTHER MEANS OF DRAINAGE SYSTEMS
DESIGNED AS APPROVED BY THE BUILDING OFFICIAL.

- EXTERIOR ELEVATION NOTES
1. ROOF TILE: 18" CLAY TILE RAFFING
 2. GABLE TILES: 24" AND 18" RAIN
 3. MAIN BODY PLASTER: FINISH AND PAINT
 4. GABLE END: "LA IMPERIA BRISQ" BRICKWORK 3-4"
 5. GABLE END: "LA IMPERIA BRISQ" BRICKWORK 3-4"
 6. GABLE END: "LA IMPERIA BRISQ" BRICKWORK 3-4"
 7. BRICKWORK: RECORDED MIX ON MORTAR
 8. BRICKWORK: RECORDED MIX ON MORTAR
 9. BRICKWORK: RECORDED MIX ON MORTAR
 10. BRICKWORK: RECORDED MIX ON MORTAR
 11. BRICKWORK: RECORDED MIX ON MORTAR
 12. BRICKWORK: RECORDED MIX ON MORTAR
 13. BRICKWORK: RECORDED MIX ON MORTAR
 14. BRICKWORK: RECORDED MIX ON MORTAR
 15. BRICKWORK: RECORDED MIX ON MORTAR
 16. BRICKWORK: RECORDED MIX ON MORTAR
 17. BRICKWORK: RECORDED MIX ON MORTAR
 18. BRICKWORK: RECORDED MIX ON MORTAR



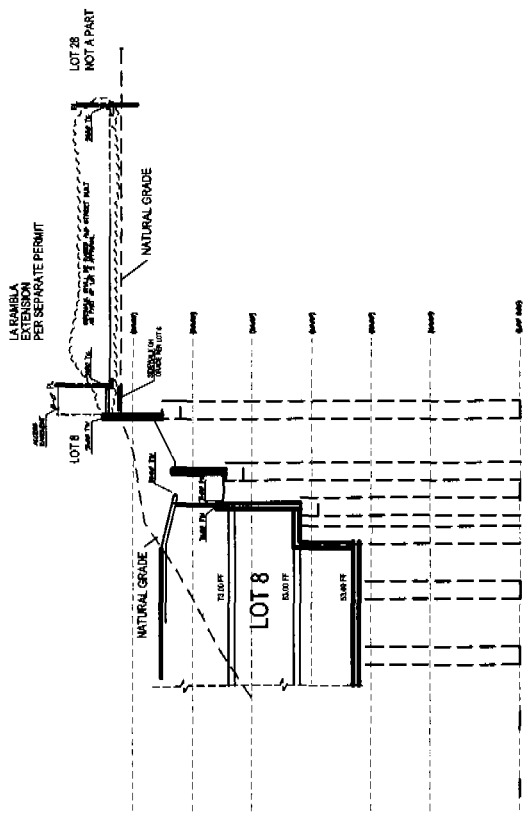
LEFT ELEVATION

STAR DATA:
B RISERS AT 7-9/8"
IT TREADS AT 12"

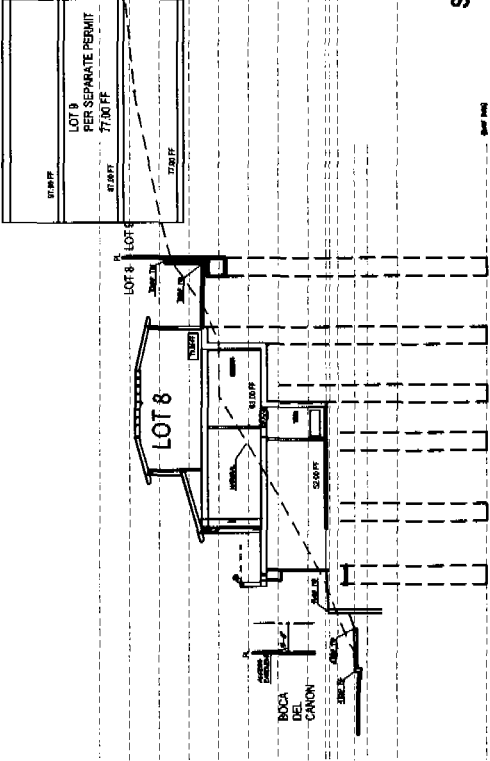
ELEVATION
LOT #7

OWNER:
DAVID YORK
12 AVE. W.
SAN GABRIEL, CA. 94603

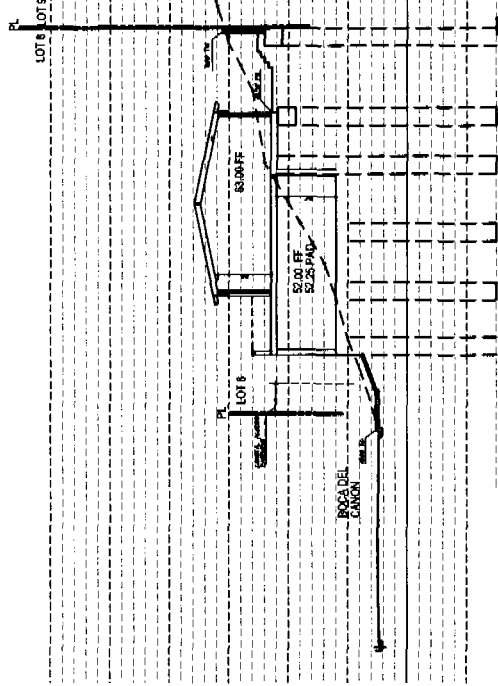
PROJECT:
COURT HOUSE
305 LA SALLE
SAN CLEMENTE, CA. 92672



SECTION F-F



SECTION C-C



SECTION D-D

SCALE 1"=40'	DATE 11-20-09
PROJECT: BOCA DEL CANYON	PROJECT NO: 007
CLIENT: BOCA DEL CANYON	CLIENT NO: 007
LOCATION: BOCA DEL CANYON, CA 94705	LOCATION: BOCA DEL CANYON, CA 94705
GRADING PLAN CROSS SECTION	
DAVID YORK ARCHITECT P.O. BOX 1000 SAN FRANCISCO, CA 94101 (415) 398-1000	
G-4	




THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF

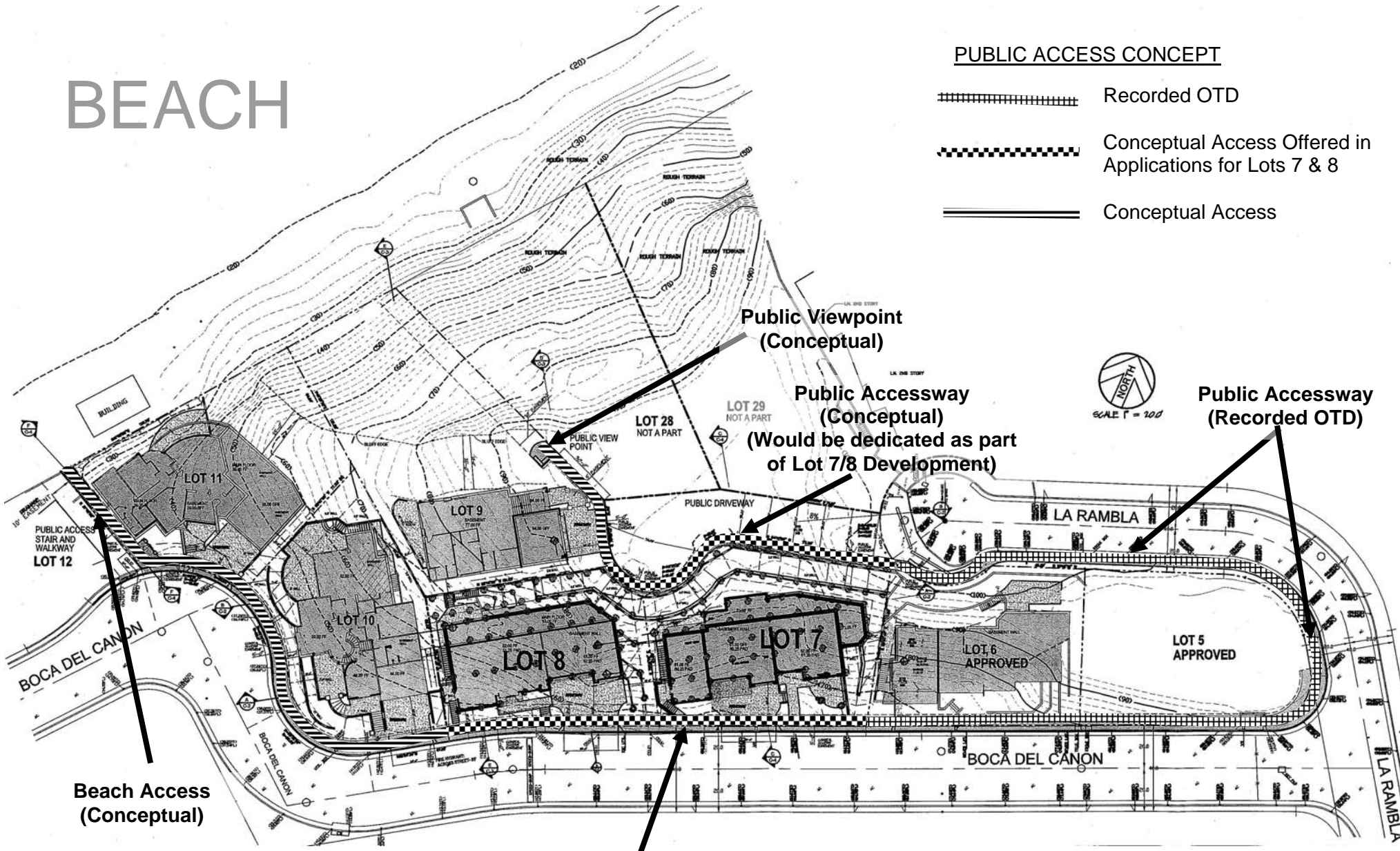
DATE: 11-20-09

BY: DAVID YORK ARCHITECT

BEACH

PUBLIC ACCESS CONCEPT

-  Recorded OTD
-  Conceptual Access Offered in Applications for Lots 7 & 8
-  Conceptual Access



Public Viewpoint
(Conceptual)

Public Accessway
(Conceptual)
(Would be dedicated as part
of Lot 7/8 Development)

Public Accessway
(Recorded OTD)

Beach Access
(Conceptual)

Public Accessway (Conceptual)
(Would be dedicated as part of Lot 7/8 Development)

PUBLIC ACCESS CONCEPT
(APPLICANTS PROPOSAL/NOT APPROVED BY EXECUTIVE DIRECTOR)

EXHIBIT#12
Page 1 of 1
Application Number: 5-09-133-EDD/ -134-EDD
 California Coastal Commission